

**NOMINATIONS OF W. BOOTH GARDNER
AND LYNN M. BRAGG**

HEARING

BEFORE THE

**COMMITTEE ON FINANCE
UNITED STATES SENATE**

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF

W. BOOTH GARDNER TO BE DEPUTY U.S. TRADE REPRESENTATIVE AND
LYNN M. BRAGG TO BE A COMMISSIONER OF THE U.S. INTER-
NATIONAL TRADE COMMISSION

MARCH 16, 1994



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MISSION**

WEDNESDAY, MARCH 16, 1994

**U.S. SENATE,
COMMITTEE ON FINANCE,
*Washington, DC.***

The hearing was convened, pursuant to notice, at 12:25 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Daniel Patrick Moynihan (chairman of the committee) presiding.

Also present: Senators Baucus, Conrad, Packwood, Danforth, Chafee, Grassley, and Wallop.

**OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN,
A U.S. SENATOR FROM NEW YORK, CHAIRMAN, COMMITTEE
ON FINANCE**

The CHAIRMAN. We will now consider two nominations.

Senator WALLOP. Mr. Chairman, I wonder if for the sake of the committee to introduce the second nominee.

The CHAIRMAN. Governor, would you mind since Senator Murray is on her way but not quite here, Lynn Bragg is also appearing and she once was a staff member of Senator Wallop. So, Senator Wallop, would you come forward and introduce Ms. Bragg or you would just as soon do it from there.

Senator WALLOP. I will do it as you wish.

The CHAIRMAN. Here is Senator Murray.

Senator Wallop has the floor.

**OPENING STATEMENT OF MALCOLM WALLOP, A U.S. SENATOR
FROM WYOMING**

Senator WALLOP. Thank you.

Mr. Chairman, it is a pleasure to welcome Lynn Bragg before this committee as the nominee to be a Commissioner at the International Trade Commission. Lynn worked in my office for 10 years, both as my legislative director and towards the end her work in handling some trade issues.

She brought confidence and ability to the tasks as I mentioned. I admire her focus, her persistence and clearly her stamina. She has been waiting here all morning.

Let me also take this opportunity to comment on the overall direction of the International Trade Commission. I fear that the

Commission is becoming overly protectionist in its rulings; that it lacks sufficient restraint in the application of our trade laws. And, unfortunately, without a fundamental belief in free trade, it is all too easy for an institution like the ITC to propose one protectionist measure after another just to please politically connected industries.

The same holds true for the Commerce Department and the administration, in my judgment, generally. So absent a guiding philosophy about the inherent good of open markets and competition, we will deny choices to American consumers and will in the long run undermine our country's own competitiveness.

It is my hope that Lynn will bring to the ITC a point of view that is encompassing and embracing of a nation which properly belongs as a free-trading nation.

The CHAIRMAN. Thank you, Senator.

Ms. Bragg, those are our expectations of you and we will get to you in just a moment. If you would just step back, we will hear the Governor.

Senator WALLOP. Mr. Chairman, I also have a statement from Senator Simpson that he wished to have placed in the record.

The CHAIRMAN. And it will be so done.

[The prepared statement of Senator Simpson appears in the appendix.]

Senator WALLOP. Thank you.

The CHAIRMAN. Now at long last we have the great pleasure of having before us Hon. William Booth Gardner, the former Governor of the State of Washington, who was nominated by the President last November to be Deputy U.S. Trade Representative, with the rank of Ambassador.

We have to offer our explanations and, indeed, some measure our apologies, but, sir, we got the nomination but we never got the paperwork. You have actually been acting in this capacity for a long time. But all the files have finally arrived and so our view.

I see you have the great distinction of having both of your Senators here to introduce you. Senator Gorton, if you would proceed, sir.

STATEMENT OF HON. SLADE GORTON, A U.S. SENATOR FROM WASHINGTON

Senator GORTON. Thank you, Mr. Chairman and Senator Packwood. I regard the nomination of Governor Gardner to this position of Deputy U.S. Trade Representative as one of the truly felicitous nominations of the Clinton administration.

Governor Gardner has played a major role in the economy and the society of the State of Washington, almost from his birth, in business as a public servant and various appointed capacities and is an elected State representative, Pierce County Executive and, of course, Governor of the State.

And while Governor Gardner had many interests and many leadership capacities during the 8 years during which he served as Governor, I believe that he would rank very close to the top of those priorities, foreign trade and the prosperity of the people whom he represented in the State.

The State of Washington is perhaps more dependent on foreign trade in both directions from the perspective of the number or share that is working people who depend upon that trade than any other State in the United States. Governor Gardner was more than conscious of that fact and led many and many successful trade missions to the Pacific Rim, and for that matter to other parts of the world.

So he is already familiar with many of the heads of government and trade ministries and finance ministers with whom he will have to deal in the job for which he has been nominated by the President of the United States.

His work in our State was distinguished. He retired undefeated, untied and unscored upon as Governor and this is not only a wonder reward for him as a capstone of his career, just is a position in which I am convinced he will serve the United States in a distinguished and highly successful fashion.

So I highly recommend him to you, to the other members of your part on this panel, and to the members of my own part as well.

The CHAIRMAN. We thank you so very much, Senator Gorton. Just before you leave, may I just suggest that sending a person to those 90-hour sessions in Geneva is not necessarily a reward. We have to find out what did he do wrong in some previous life.

Senator GORTON. He had some 90-hour sessions with legislators.

Senator MURRAY. Yes, he did.

The CHAIRMAN. He had proctors.

Senator Murray, good morning.

STATEMENT OF HON. PATTY MURRAY, A U.S. SENATOR FROM WASHINGTON

Senator MURRAY. Thank you, Mr. Chairman, Senator Packwood. I assure you I was not one of those legislators who made Governor Gardner have 90-hour sessions when I served in the Washington State Senate.

It is an honor and a pleasure to be here today to introduce former Washington State Governor Booth Gardner and to urge your quick confirmation of him as U.S. Ambassador to the GATT.

During his 8-year tenure Booth Gardner addressed tough issues and made difficult choices so that our State would be able to compete nationally and internationally into the future. When many States were looking backward and running up deficits, Washington State was looking forward and balancing budgets.

And as our State prospered, Both Gardner's popularity soared. He has always been well-liked and well-respected and he is one of our State's most popular public figures.

Booth Gardner really understands the importance of Pacific Rim international trade. Under his direction, Washington State has become a powerhouse. As you know, we are currently the largest trading State per capita in the Nation. He understood the vital—

The CHAIRMAN. No, I did not.

Senator MURRAY. That is correct.

The CHAIRMAN. Very impressive.

Senator MURRAY. He also understood the vital link between trade and jobs. And as member of the National Governors Association he chaired the Committee on International Trade.

On a personal level, I want to tell you that Booth is the type of person who can walk into any room and know everybody's name and all of their kids' names. As a legislator who worked with him in Olympia, I was always impressed with his warm demeanor and his ability to bring people together.

He was exactly what our State needed as the most visible ambassador for our State to the nation and he is exactly the kind of person that this Nation needs as U.S. Ambassador to GATT.

I highly recommend him and it is a delight to be here with you today.

The CHAIRMAN. Thank you very much, Senator Murray. You could not be more generous with your introduction and your time. So, Governor, would you like to offer us your thoughts on this subject?

**STATEMENT OF W. BOOTH GARDNER, TO BE DEPUTY U.S.
TRADE REPRESENTATIVE**

Governor GARDNER. Well, Senator, I am happy to finally be here. I do not have any prepared remarks in the interest of time, but I thought I would make a couple comments on what was stated by my two favorite Senators.

One, they made me out to be a trade expert. I am not a trade expert. I am an expert only by association. You cannot live in the State of Washington and not have some understanding of the importance of trade to the people of our State or to the Pacific Northwest in general.

I would only add further that Senator Gorton said this would be a nice capstone to my career, this is not the end of my career. [Laughter.]

This is the beginning of another career. I was in a position for much of my life where I had to know a little bit about everything. And at this juncture I am looking forward to knowing quite a bit about something and seeing where this takes me. You will see more of me.

The CHAIRMAN. I am sure we will, sir. You are going to be our resident Ambassador in Geneva.

Governor GARDNER. That is correct.

The CHAIRMAN. You come so highly recommended that this Senator has no questions. One comment, which is simply that you are going to be present at the creation of the World Trade Organization. This was something that was contemplated in the immediate post-World War II era, institutional arrangements that led to the World Bank and the International Monetary Fund. There was to be an International Trade Organization. It was to be located in Havana actually.

Well, now we are going to have one. Assuming that we go forward and obviously we are going to do. How that develops, how it starts out, will have a lot to do with it. The International Labor Organization began with a hugely creative French Minister, a Minister of Munitions during World War I, Aberatoma Tomas, and a very creative group of people around them. And not for nothing is it still there, since 1919. Not for nothing is the President of the United States going over to speak there in June at their annual meeting.

I would hope for something the same for WTO. A good start is hugely important and you will be our person there. And in the name of all that is holy, do not recreate Brussels. [Laughter.]

Governor GARDNER. I understand.

The CHAIRMAN. I really plead with you on that regard.

Senator Packwood?

Senator PACKWOOD. I have just one question, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murray.

Senator PACKWOOD. Governor, you were sitting in the audience I think when this previous panel was here.

Governor GARDNER. That is correct.

Senator PACKWOOD. You heard the discussion about labor and environmental issues and whether they should have a high priority in trade. Mr. Sheinkman saying yes while the Chamber of Commerce has some misgivings. Do you have any general views as to how high a priority those issues ought to play in trade negotiations?

Governor GARDNER. I do not think you can separate trade from other things in the world that are important to us, such as environment and worker's rights and competition issues. I think we ought to be very aware of the importance of these issues as we go forward with trade.

There is a concerted effort going forward now as we speak in trying to bring the environmental actors into the trade world. There are a lot of nations which are very interested in having good environmental standards and trying to figure out how they can make that a part of their trade policy.

And in terms of worker rights, I believe that at some juncture we have to come to the point of answering the extent to which we hold nations responsible for adhering to international labor standards. The ILO has been mentioned on many occasions in previous discussions.

On the one hand, I believe, Senator Moynihan, we only have signed 9 to 12 of the some hundred of ILO conventions.

The CHAIRMAN. That is correct, sir. But after a period where we only signed at maritime conventions in the 1930s and one or two organizational ones. We have begun ratifying substantive conventions. The Chamber of Commerce and the AFL-CIO have been working in that regard and there is a record there.

Governor GARDNER. Right. I guess my point is that we are not completely clean on this one. But I think the United States has made a concerted effort to bring the issue of worker's rights forward. It has been stated by others that this will be a very difficult issue to pursue on a worldwide basis.

But I think it is important that we continue to raise the issue and keep it in focus.

Senator PACKWOOD. I am inclined to separate the worker rights and environmental issues. If you look at poor countries that are hard scramble and trying to bring themselves up, they often simply cannot afford the environmental protections we have.

I know the argument that if we do not enforce environmental protection and insist upon it, it will not happen. But whether I want to say to a third world country you cannot trade with us un-

less you meet not our environment standards, but Sweden's, I am not sure it is fair to them.

Governor GARDNER. I think we are quite a ways from getting to that point, Senator Packwood. There is a debate now as to whether to have a permanent committee in the WTO or to have an ad hoc effort. However that is resolved, I think the issue of environmentalism will be an issue that will be addressed by all of the nations that are members of the World Trade Organization and I think that they will try to have a good deliberation.

Senator PACKWOOD. Thank you, Mr. Chairman. I have no other questions.

The CHAIRMAN. Well, allow me just one war story. You know, there is a new island. An island has appeared in the Bay of Bengal, which is made up of the topsoil of what was once the—

Governor GARDNER. Himultrapardesh.

The CHAIRMAN [continuing]. Flourishing agriculture of Napol and Himultrapardesh. You cut those trees down and the next thing you know you just have rock and you are really in trouble. I mean, the deforestation in parts of the world are life threatening. You know, it is not just to have a more pleasing environment, it is to be alive. It is another matter. And you are going to resolve it.

Governor GARDNER. Good. [Laughter.]

The CHAIRMAN. It is an honor to have you before the committee. We will vote on the first occasion that we have a quorum present and in no time at all, sir, you will be on your way to Geneva.

Governor GARDNER. Thank you.

The CHAIRMAN. Thank you very much for being here.

And now, Ms. Bragg, if you would come forward.

I might say to the Governor as he is departing, we will be voting either tomorrow or Tuesday. So you finally made it.

Ms. Bragg, do you have a statement for us? We welcome you to the committee. You, of course, have been introduced by Senator Wallop.

STATEMENT OF LYNN M. BRAGG TO BE A COMMISSIONER OF THE U.S. INTERNATIONAL TRADE COMMISSION

Ms. BRAGG. Thank you very much, Mr. Chairman. I, too, am very happy to be here today. I would like to thank you for holding the hearing and also thank Senator Wallop and Senator Simpson for their very generous remarks.

In the essence of time, I will not give my statement. But I would just like to note that I am aware of the committee's strong interest and unique relationship with the International Trade Commission. And, if confirmed, I look forward to maintaining that relationship.

I would also like to assure the members of the committee that any matter, all matters before the Commission I will use my own best judgment, my independent thinking, objectivity and fairness. To the best of my ability, I will apply the law as Congress intended it to be applied, to the facts of each case before the Commission.

I would be happy to answer any questions that you might have.

The CHAIRMAN. I have but one question of any substance. It asks here about your political affiliations and activities and you answer member, Virginia Republican Party until 1989, registered Repub-

lican State of Maryland. Services rendered, none. What kind of a party member are you? [Laughter.]

Ms. BRAGG. Well, I consider myself to be a good party member.

The CHAIRMAN. You heard Senator Wallop make the point that the International Trade Commission can find itself falling into ad hoc protectionist matters just simply because of the membership is responsive to this industry or that firm. I think he, as you have worked on his staff for 10 years, I think that was good advice. I hope we can understand that you heard what he had to say.

Ms. BRAGG. I did hear what he had to say and I also agree that it was very good advice.

The CHAIRMAN. Good.

Senator Packwood?

Senator PACKWOOD. Two things, Mr. Chairman. One, I have a statement in support of Ms. Bragg from Senator Dole which he would like placed in the record.

The CHAIRMAN. Oh, good.

[The statement appears in the appendix.]

Senator PACKWOOD. Second, I have some very specific questions from Senator Durenberger that he would like answers to in writing before we act on the nomination. I might ask, could you give me a copy of the answers that you send to him?

Ms. BRAGG. Yes.

Senator PACKWOOD. I will give those to you in writing.

Ms. BRAGG. All right.

[The questions and answers appear in the appendix.]

Senator PACKWOOD. I have no other questions.

The CHAIRMAN. Fine. In that case, we look forward to your responses and to your early confirmation. We congratulate you, Ms. Bragg.

Ms. BRAGG. Thank you very much, Senator.

[Whereupon, at 12:45 p.m., the hearing was adjourned.]



APPENDIX
ADDITIONAL MATERIAL SUBMITTED

PN 972

The White House,

NOV 20 1993

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To the
Senate of the United States.

I nominate Lynn M. Bragg, of Maryland, to be a
Member of the United States International Trade Commission for
the term expiring June 16, 2002, vice Anne E. Brunsdale, term
expired.

WILLIAM J. CLINTON

INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL:

1. Name:

Lynn Munroe Bragg
Lynn Ellen Munroe (maiden name)

2. Address:

3315 Cummings Lane
Chevy Chase, Maryland 20815

3. Date and place of birth:

June 15, 1954
Fort Leonard Wood, Missouri

4. Marital status:

Married; Raymond F. Bragg, Jr.

5. Names and ages of children:

Rachael Heath Bragg 2
Noah Hudson Bragg 13

6. Education:

Mary Washington College
Fredericksburg, Virginia
August 1972-May 1976
B.A., May 15, 1976

Boston University
School of Communications
Boston, Massachusetts
January 1977-May 1978
M.S., May 21, 1978

University of Vienna
Vienna Austria
Summer Study Program July-August 1974
Certificate of Proficiency/German

7. Employment Record:

Employment Counselor
American Personnel Services
Washington, D.C.
September 1976-November 1976

Graduate Assistant
Boston University
School of Communications
Dr. Bernard Rubin, government communications
January-May 1977

Summer Intern
John Adams & Associates
Washington, D.C.
June-August 1977

Staff Writer/Internal Publications
 Editor/External Publications
 Speech/Financial Writer
 Potomac Electric Power Company
 Corporate Affairs Department
 Washington, D.C.
 October 1978-December 1980

Speech Writer
 Legislative Assistant
 Legislative Director
 Office of Senator Malcolm Wallop
 United States Senate
 Washington, D.C.
 January 1981-January 1991

Director Governmental Affairs/
 Fossil Fuels/Industry Structure
 Edison Electric Institute (EEI)
 Washington, D.C.
 September 1991-Present

8. Government Experience:

Office of Senator Malcolm Wallop
 U.S. Army Security Agency
 Summer Intern, May-August 1975

9. Memberships:

Saint Patrick's Episcopal Church
 Welcoming Committee 1990
 Sunday School Program 1990
 116 Club

10. Political Affiliations and
 Activities:

Member, Virginia Republican Party until 1989
 Registered Republican; State of Maryland
 Services rendered/none

11. Honors and Awards:

Vice President, Lambda Iota Tau (National Literary Honor
 Society) 1975-76.
 Deans' List/ Mary Washington College/Four Semesters
 1975-76.
 Bachelor's degree with Final Honors; recognition for
 outstanding academic achievement in third and fourth
 years.
 Graduate teaching assistantship with stipend, government
 communications course, Boston University, Fall semester
 1977.

12. Published Writings:

None

13. Speeches:

None

14. Qualifications:

My ten years of experience in managing public policy and trade policy issues in the office of Senator Wallop provides me with a foundation which will serve me well as a commissioner on the International Trade Commission.

Along with the legislative policy experience I received as the legislative director in the Senator's office, I also had the opportunity to work with the private sector in developing international business trade opportunities for various industries such as soda ash, coal and beef. In addition, I also had the opportunity to assist the Senator when the Congress reformed and strengthened the trade laws in 1988.

Also, I believe the years I have spent in the private sector will contribute to my effectiveness as a commissioner. I have had budget and supervisory responsibilities, and have experienced the impact legislative and regulatory actions can have on the corporate decision making process.

These experiences, I believe, have provided me with a broad background to understand the issues which come before the International Trade Commission, as well as a knowledge of the important role the Commission plays in the broad range of international trade matters.

RESPONSES OF LYNN BRAGG TO QUESTIONS SUBMITTED BY SENATOR ROCKEFELLER

Question No. 1. Do you think a Commissioner should consider the size of the dumping margin or countervailing duty in making a determination or just the volume and prices of the imports? Let me give you a hypothetical: Assuming the same condition for the domestic industry, how would you rule if in one case imports under investigation had a 20% market share, the dumping margin was 5% and the margin of underselling was 10%. In the other case, imports under investigation had a 10% market share, the dumping margin is 25% and the margin of underselling is 10%. Are you more likely to find material injury in the second case because of the higher dumping margin? What if the market share in each case is 20%?

Answer. Although the statute provides no explicit comment, according to the case law, a Commissioner is permitted, but is not required, to consider the margin of dumping or subsidization in making a material injury determination. I have not yet settled on an analytical approach in antidumping and countervailing duty determinations, therefore, I have not decided whether I will consider the margin of dumping or subsidization. Before I decide on any approach, I would prefer to study in detail several records and opinions of a couple of cases.

In evaluating the volume of the subject imports and the effect of subject imports upon prices, the Commission is required to consider specific factors set out in the statute. These include "whether (I) there has been significant price underselling by the imported merchandise as compared with the price of like products of the United States and (II) the effect of imports of such merchandise otherwise depresses to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree." In the absence of more complete information concerning your hypothetical, it is not possible for me to state how I would analyze the situations as outlined in this question.

Question No. 2. Do you believe that an industry already damaged or suffering from the effects of a recession is more vulnerable to material injury in a title VII case?

Answer. I have not yet decided on precisely the approach I will take in making material injury determinations. However, I am aware that the legislative history suggests that industries facing difficulties from a variety of sources are often the most vulnerable to unfair import competition.

Question No. 3. How well do you understand elasticity analysis? How important do you think it is to a material injury determination? Do you think a material injury investigation can be reduced to a single number or two using computer analysis?

Answer. At this time, I do not have an in depth understanding of elasticity analysis. It is my understanding, however, that some Commissioners consider as part of

their causation analysis various economic relationships expressed as elasticity estimates, such as elasticity of supply, or the sensitivity of supply to changes in price.

It is my understanding that use of elasticity estimates is permissible, providing the estimates do not replace consideration of the statutory factors. As with my previous responses, I have not yet decided on what type of analysis I am going to use.

Question No. 4. Section 201 (19 U.S.C. 2251(b)(2)) predicates the domestic industry's entitlement to relief on a finding by the Commission that imports are "a substantial cause of serious injury, or the threat thereof, to the domestic industry." How do you interpret the term "serious injury, or the threat thereof, to the domestic industry?"

Answer. Neither the statute nor the legislative history of section 201 defines the term "serious injury." The statute directs the Commission to consider "all economic factors which it considers relevant" including, but not limited to those listed in section 202(c)(1)(A). These are: (i) The significant idling of productive facilities in the domestic industry, (ii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and (iii) significant underemployment or underemployment within the domestic industry.

The only additional Congressional guidance of which I am aware is contained in the legislative history of section 406, the special safeguard provision regarding imports from Communist countries. It states that "material injury" (the injury standard for section 406) is "intended to represent a lesser degree of injury than the term serious injury" standard employed in section 201."

The term "threat of serious injury" also is not defined in the statute. The legislative history, however, states "that the threat of serious injury exists when serious injury, although not yet existing, is clearly imminent if import trends continued unabated." The statute directs that the Commission take into account all economic factors that it considers relevant, including but not limited to the factors set forth in section 202(c)(1)(B). These are: (i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry, (ii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development, (iii) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article, or on imports of such article into, third country markets."

Question No. 5. The statute (19 U.S.C. 2251(b)(4)) provides that the imports must be both important and "not less than any other cause" in order to constitute "a substantial cause of serious injury." How would you undertake the process of determining which is the most important cause of injury being suffered by a domestic industry?

Answer. I intend to look to the statute for guidance. Increased imports need not be the most important cause of serious injury or threat, but only need be equal to or greater than any other cause—that is, "not less than any other cause" as stated in section 202(b)(1)(B).

In making my determination, I would be mindful of section 202(c)(2)(A) of the Trade Act, which provides that the Commission is to "consider the condition of the domestic industry over the course of the relevant business cycle, but may not aggregate the causes of declining demand associated with a recession or economic downturn in the United States economy into a single cause of serious injury or threat of injury." I also note that the presence or absence of any factor is not necessarily dispositive as to be substantial cause of serious injury, or threat of serious injury.

Question No. 6. Worker assistance will most often be the least costly form of remedy in the short-term. Do you believe that, in determining the most appropriate remedy, the ITC must take into account factors other than short-term cost to the U.S. government or consumers? What about the survival and maintenance of existing industries?

Answer. I intend to look to the statute for guidance. The Commission's task in recommending a remedy is set out in section 202(e)(1). If the Commission makes an affirmative injury determination, it is to "recommend the action that would address the serious injury, or threat thereof, to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition." It is my understanding that the task of the ITC is to recommend the action that it finds would be most effective in facilitating positive adjustment by the industry to import competition.

While section 202(f)(2)(G) requires the Commission in its report to the President to include a description of the short- and long-term effects of implementation of the

recommended action as well as the short- and long-term costs of effects of not taking the recommended action, section 202(e) does not direct the Commission to consider short- or long-term costs or effects in making its recommendation. However, short- and long-term economic and social costs relative to short- and long-term benefits are one of the factors that the President is directed to take into account in determining what action to take. (Section 203(a)(2)(E)).

Question No. 7. Title VII of the Trade Act of 1930 requires the Commission to determine whether a domestic industry is suffering or being threatened with material injury by reason of dumped or subsidized imports. What is your understanding of the meaning of the term "material injury?"

Answer. My understanding of the meaning of the term "material injury" is guided by the definition of "material injury" as contained in section 771(7) of the Tariff Act of 1930. "Material injury" is defined as "harm which is not inconsequential, immaterial, or unimportant."

Question No. 8. Explain your view of the role or function that economic analysis will play in your determinations if you are confirmed as a Commissioner.

Answer. It is my understanding that Commissioners have used a wide variety of analytical approaches in Title VII cases. In doing any analysis, however, I will look to the statute for guidance and will consider relevant economic factors that have a bearing on the state of the industry. I am studying the various approaches that Commissioners have used, and will study in detail several records and opinions of a couple of cases before I decide on an approach.

RESPONSES OF LYNN BRAGG TO QUESTIONS SUBMITTED BY SENATOR DURENBERGER

Question No. 1. Describe in detail the experience you have had on international trade issues, including, but not limited to, the trade remedy laws administered by the Commission. Indicate whether the experience was direct or acting as a supervisor. Also, indicate whether the experience occurred during employment by a current member of the Senate Finance Committee. List any supervisory experience you have had in the past including the number of employees supervised, the employees' level of responsibility, the length of time supervised. List the line of supervision above you for each position.

Answer. From January 1981 until January 1991, I served on the legislative staff of Senator Malcolm Wallop (R-Wyoming).

In early 1986, I became legislative director in addition to continuing my legislative responsibilities in the energy area. The supervision above me included the Administrative Assistant. At that time I was the primary staff person responsible for the Senator's work as a member of the Energy Committee, and had supervisory authority as the legislative director over the professional staff, including lawyers and staff with advanced degrees as well as support staff (this varied during the years from 7-12 people). When I became the legislative director, the Senator was a member of the Finance Committee as well. As legislative director my responsibilities coordinating the Senator's legislative activities and initiatives at both the Committee level and on the Senate floor including the supervisory responsibilities for the tax and trade legislative assistants.

In early 1987, I assumed the additional legislative responsibilities of tax and trade along with my continuing role as the legislative director. These were direct responsibilities, and not supervisory ones. During this period, Senator Wallop was a member of the Finance Committee and a member of the Trade Subcommittee and was therefore more active than most. In the spring of 1987, Senator Bentsen, Chairman of the Finance Committee at that time, began a series of markup sessions on Omnibus trade bill. From this period until the Omnibus Trade and Competitiveness Act (P.L. 100-418) was passed by the Senate in 1988, I personally did the staff work on this bill and continued handling trade issues for about another year after the Senator left the Finance Committee at the end of that session of Congress.

To the best of my recollection, the Senator's most active participation during Committee consideration of this legislation was primarily regarding Chapter 1 of Title III of the Trade Act of 1974 (19 U.S.C., Sec. 2411), or "Section 301." At his request, I drafted several amendments in the markup process one of which was accepted and combined with a similar approaches from other members. In addition, I prepared the Senator's briefing materials and represented the Senator in staff meetings and negotiations regarding all other areas covered by the legislation, including support for modifications to intellectual property right protection, or Sec. 337, for which the Senator had a long-standing record of support.

When the full Senate considered the legislation in August 1988, I staffed Senator Wallop during the debate as he, again, to the best of my recollection, had serious concerns regarding the final language of "Section 301." Again, I prepared his brief-

ing materials and drafted amendments regarding "Section 301," one of which I believe had a roll call vote taken on it. His remarks and any roll call votes can be found in the Congressional Record.

Along with this legislative work, the Senator was always interested in pursuing market opening initiatives for Wyoming products in the Pacific Rim, such as soda ash, beef and coal. I did represent the Senator during meetings with the soda ash industry and in meetings with the Office of the U.S. Trade Representative in efforts to reduce trade barriers for these products. I am unable to recall exactly when, or how many of those meetings took place.

Question No. 2. List and describe any and all conversations you or your husband have had with the current Chairman of the ITC or his staff that relate to current or future administrative or substantive matters before the Commission, including, but not limited to, voting procedures, voting records of Commissioners, possible creation of a new position of executive director (or any similar title) of the Commission, reorganizations of staff or resources of the Commission, staffing of your office once confirmed, staffing of your office should you receive a leadership role at the Commission and budget issues related to the Commission. Please describe the nature of each discussion in detail and where each discussion occurred.

Answer. I have *never* had a conversation with the current Chairman of the ITC, Don Newquist, or his staff, that related to current or future administrative or substantive matters before the Commission. This would include voting procedures, voting records of Commissioners, possible creation of a new position of executive director (or any similar title) of the Commission, reorganizations of staff or resources of the Commission, staffing of my office once confirmed, staffing of my office should I receive a leadership role at the Commission and budget issues related to the Commission.

During my courtesy calls with the trade legislative assistants in January and February I stated that I had made no commitments to any Commissioner, including the Chairman, regarding any matter, substantive or administrative, and I stand by that statement. Further, the first time I was ever made aware of the "possible creation of a new position of executive director, (or similar title) of the Commission," or was told about this issue, was in a meeting with Pat Eveland of your staff in early February. I had no knowledge of such a position prior to that conversation.

Also, I *never* had discussions regarding my receiving a "leadership role at the Commission" with anyone until I began my visits with individual trade legislative assistants in January and February, where the issue was raised to me. Finally, to the best of my knowledge, my husband has never had a conversation with the current Chairman of the ITC, Don Newquist, or any member of his staff, regarding any of these aforementioned issues.

Question No. 3. List and describe all discussions you have had with the current Chairman, his staff, any and all Office Directors of the Commission, or the General Counsel of the Commission, which requested support or suggested a preferred outcome of any administrative or substantive matter considered by the Commission.

Answer. I have *never* had a discussion with Chairman Newquist, his staff, any Office Director, or the General Counsel of the Commission, which requested support or suggested a preferred outcome of any administrative or substantive matter considered by the Commission. I have not discussed these matters at all. As I have stated, if confirmed, my judgment involving all matters before the Commission will be based on independence, objectivity and fairness. I intend to apply the law as Congress intended to the facts of each case.

In preparing for my confirmation hearing, I did request assistance from the General Counsel's office regarding the pertinent statutes under the Commission's jurisdiction. I met with the General Counsel and members of the General Counsel's staff, so I could have questions posed to me regarding the pertinent statutes. It is my understanding that this type of briefing has been provided to past nominees. This was a "moot court" type of situation testing my knowledge of the statutes, and at no time was there any discussion regarding any matter before the Commission.

Also, in the interest of full disclosure, although I did not ask, the General Counsel called to inquire if I would need staff assigned to me temporarily, if confirmed. I accepted that offer as it is my understanding that it is a courtesy provided to all new Commissioners.

Question No. 4. List and describe any and all conversations you have had with persons other than Commission employees and members of the Senate or their staff, regarding matters of any kind before the Commission, including, but not limited to, voting procedures, voting records of Commissioners, reorganizations of staff or resources of the Commission, staffing of your office once confirmed, Title VII or any other cases before the Commission, including those on appeal or about to be appealed.

Answer. I have *never* had conversations with "persons" regarding matters of any kind before the Commission, including, but not limited to, voting procedures, voting records of Commissioners, reorganizations of staff or resources of the Commission, Title VII or any other cases before the Commission including those on appeal or about to be appealed. A conversation of that nature, in my opinion, would be completely inappropriate.

Regarding staffing of my office if confirmed, I have received several unsolicited resumes sent by individuals expressing interest in a possible position on my staff, and I would be happy to provide copies of those to you or Pat. I have not had any discussions with these people, or any other "person," regarding future employment because I felt it was inappropriate to have these discussions until the confirmation process was completed.

RESPONSES OF LYNN BRAGG TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

Question No. 1. Did you promise anything to anyone in the administration to receive the nomination for this position. As a follow-up to this question, can you tell me what your reaction would be if you received a call from someone in the administration, the President himself, or for that matter a Member of Congress asking for you to vote in a specific way on an issue before the Commission?

Answer. I have never promised anything to anyone in the Administration to receive this position, nor did anyone in the Administration seek any commitment on substantive or administrative matters from me. As I stated during my courtesy calls with the trade legislative assistants in January and February, I never would have accepted the appointment if these types commitments or promises were a condition of the appointment. The only commitment sought from me was that I abide by the special ethics rules for appointees, which I agreed to do.

As to your follow-up question, the International Trade Commission is an independent, bi-partisan, quasi-judicial agency, and I feel very strongly that it is incumbent upon every Commissioner to vigorously guard their own independence and that of the Commission. A call from the President or a member of Congress would have no bearing on my vote on any matter before the Commission. My vote would be based on my own best objective judgment, the facts and evidence of the case under consideration, and application of the law as Congress intended.

Question No. 2. Please respond to the allegations cited in the Journal of Commerce which was written by John Maggs?

Answer. In response to issues raised in the March 16, 1994 Journal of Commerce:

No one recruited me for the position of Commissioner at the ITC, including the Chairman, Don Newquist. I sought this appointment on my own initiative beginning with a phone call to Senator Wallop's chief of staff in November 1992. Having worked for a member of the Trade Subcommittee of the Finance Committee, I was familiar with the ITC and knew that a Republican seat held by Anne Brunnsdale would be open as of June 16, 1993. Senator Wallop initiated the process by sending a letter of support on my behalf to the President in February 1993.

I continued to update both the Senator and his chief of staff on the status of my nomination from February until late October 1993 when I was notified that the President intended to nominate me. In addition, I also sought and received, support from other members of the Senate Finance Committee as well as other members of the Republican Leadership.

I have no knowledge whatsoever that any attorney, representing any specific industry, including the steel industry, promoted my nomination to anyone, nor did I ever ask anyone to. Never once, during the nomination process did I seek out or receive the endorsement of any industry or special interest. Based upon reports in the trade press, it appeared that the support of the steel industry was solidly behind another candidate.

To suggest that there could be a big shift in balance at the ITC with my nomination, assumes that I have already taken positions on issues before the Commission, which I have repeatedly stated that I have not. I have made no commitments whatsoever on any matter, substantive or administrative, before the Commission to anyone in the Administration, or anyone on the Commission including the Chairman.

During my discussions with trade legislative assistants, I have stated that I have a solid, fundamental belief in free trade, and that I believe it is incumbent upon each Commissioner to approach all matters before the Commission in a fair, open-minded and independent manner. Further, I stated that I will base my decisions on the individual facts of each case, and on the language and intent of the statutes. I continue to stand by all of those statements.

Regarding my experience with trade, and related legislation—while on the staff of Senator Wallop for 10 years, 1981 to 1991, I personally handled a variety of is-

sues for the Senator, one of which was trade. At the same time, I also was legislative director.

During the time I covered trade issues, from approximately 1987 to 1989, the Congress considered and passed the Omnibus Trade and Competitiveness Act (P.L. 100-418), which has been characterized as one of the most significant pieces of trade legislation in ten to 20 years. Senator Wallop was a member of the Trade Subcommittee of the Finance Committee during this time. I personally provided the staff work on this legislation from markup to floor consideration. The Senator offered amendments both in committee and on the floor which I worked on. In addition, I also worked on other trade-related matters for important Wyoming industries such as soda ash, beef and coal.

It is my belief that those Senators who expressed their support of me to the President did so because they determined that because of my experience I was qualified for the position.

I have stated in my meetings with the trade legislative assistants, that I have known Don Newquist for approximately five years, and my husband has known him for over a decade. However, neither my husband nor I ever asked Chairman Newquist to pursue any activities on my behalf as I sought this nomination. Chairman Newquist, did not recruit me for this position, nor did anyone else. The Chairman never discussed with me, much less sought to influence, my opinion on any trade related matter. He never asked for any commitment on any administrative or other substantive matter that will be before the Commission, nor would I ever give it. I have not committed, nor has anyone at the Commission asked me to commit, to support his or her views in return for anything.

Regarding the issue of the Chairmanship—I did not have discussions with anyone on this issue until the trade legislative assistants raised it with me during my courtesy visits in January and February. I have made no "deals" regarding the Chairmanship with anyone, nor have I been asked to.

PREPARED STATEMENT OF SENATOR BOB DOLE

Mr. Chairman, I am pleased to have before this committee today Lynn Bragg's nomination as commissioner of the international trade commission.

As the newest Republican on the Commission, she will bring to the Office of Commissioner a balance of view and a commitment to the careful execution of Congress' mandate in the law.

Ms. Bragg is familiar with the trade laws, and also understands the importance of the Commission's independence in trade matters. With the implementation of the Uruguay Round, the Commission is expected to be a busy place. I am confident that Ms. Bragg is well-prepared to tackle this task with the same energy and intelligence that she has applied to all of her prior undertakings.

Thank you, Mr. Chairman.

The White House,

NOV 20 1993

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To the

Senate of the United States.

I nominate William Booth Gardner, of Washington,

to be a Deputy United States Trade Representative, with the rank of Ambassador, vice Michael H. Moskow, resigned.

WILLIAM J. CLINTON

OUTLINE OF INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL:

1. Name: Booth Gardner

2. Address:

Current Residence: 2125 First Ave #3302, Seattle, WA 98121. Mailing Address: Gardner & Gardner, 1402 Norton Building, 801 Second Ave., Seattle, WA 98104.

3. Date and place of birth:

Tacoma, Washington
August 21, 1936

4. Marital status

Married
Jean Gardner, nee Forstrom

5. Names and ages of children:

Doug Gardner, 31
Gail Nettleston, 29

6. Education

University of Washington, Seattle, WA BA awarded 1958
Harvard University, Boston, MA, MBA awarded 1963

7. Employment record:

Assistant to the Dean, Harvard Business School, Boston,
MA 1966-1967
Director, School of Business and Economics,
University of Puget Sound, Tacoma, WA 1967-1971
Senator, Washington State, Olympia, WA 1970, 1972
President, Laird Norton Company, Seattle, WA, 1972-1980
Pierce County (WA) Executive, Tacoma, WA 1980-1984
Governor, State of Washington, Olympia, WA 1985-1993

8. Government experience:

Senator, Washington State, Olympia, WA 1970-1972
Pierce County (WA) Executive, Tacoma, WA 1980-1984
Governor, State of Washington, Olympia, WA 1985-1993

9. Memberships:

Seattle Tennis Club, member
Pacific West (athletic Club, member

10. Political affiliations and activities

Pierce County (WA) Executive, Democrat, 1980-1984
Governor, State of Washington, Democrat, 1985-1993

11. Honors and awards:

Honorary J.D., University of Puget Sound, Tacoma, WA
McGraw-Hill Excellence in Education Award, 1993

12. Published writings:

See 13 below

13. Speeches:

All speeches and published writings (primarily Op-Ed pieces) over the past 3 years were done in my capacity as Governor. Many speeches were given for public events, openings, brief receptions, etc. Some of these are in the Washington State Archives. Many other speeches were given from hand-written notes which no longer exist. Some speeches were written out and are stored. If necessary, we will attempt to locate and deliver to you.

14. Qualifications:

During my eight years as Governor of the State of Washington, I emphasized international trade, education and health. I travelled throughout the world in conjunction with bringing foreign business to Washington state and increasing state exports into foreign markets.

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

Mr. Chairman, as we continue to work through the long process of completing the implementing legislation to the Uruguay Round, I appreciate the opportunity to hear from the many different sectors and industries that are affected by it.

As we consider the impacts of the agreement on the U.S. economy and the potential impact that we in Congress will have on the final product by working with the Administration to draft implementing legislation, I hope we will not lose sight of the goal we should all have in mind. The goal I am talking about is the reduction of trade barriers and the opening up of trade opportunities throughout the world. We must keep this uppermost in our minds.

Having said that, I look forward to hearing from our distinguished panel of witnesses that you have assembled here today, Mr. Chairman.

But before I yield to my colleagues on the committee, I would like to take the opportunity to briefly address the nominations that will be coming before us later this morning. I think it behooves the committee and the nominees themselves to realize the seriousness of these positions.

As you know, Mr. Chairman, we are rapidly moving toward a more trade-oriented and economically connected globe. What once played second fiddle to military and political considerations, economic and trade policies are becoming increasingly important to the future of this country and our survival within a global economy:

Currently, we are seeing an emphasis on trade law as it relates to the agreements that we are entering into such as the Uruguay Round, NAFTA, and other multilateral and bilateral trade agreements. However, once we enter into these agreements, the economic and business realities that will accrue from these agreements will help steer the direction of the world economy.

Mr. Chairman, we must have a clear perspective and understanding of these issues. Without this understanding, we risk setting ourselves back economically while the world continues to move toward increased trade and investment at a frightening pace.

Therefore, both the private sector and the government must be able to grasp the economic realities that this changing environment is bringing and will continue to bring. This heightens the importance of the two positions for which Mr. Gardner and Ms. Bragg are being nominated. I hope they both grasp the critical nature of their potential appointments and the potential they have to substantially impact individual businesses, industries, and sectors. These microeconomic entities will provide the staying power for the U.S. in the increasingly competitive and dynamic world marketplace.

With this in mind, Mr. Chairman, I look forward to reviewing the testimony of the two nominees who will be addressing the committee today.

 PREPARED STATEMENT OF SENATOR ALAN K. SIMPSON

I would like to voice my vigorous and strong support of Lynn Munroe Bragg who is seeking to fill the Republican post on the International Trade Commission. She is a fine and able woman who has consistently demonstrated an uncommon degree of common sense and I feel she would serve the Commission so very well.

Lynn is well known to me and to the Wyoming delegation through her hard work on behalf of my fine colleague Malcolm Wallop from 1981 to 1991. Her good judgment and special command of issues provided Malcolm with vital information and insight throughout the consideration of the 1988 Trade and Competitiveness Act. She was particularly knowledgeable and dedicated to foreign market opportunities for U.S. domestic industries—with special attention paid to soda ash. She knew her issues, did her homework well and would work unceasingly at a project. List me as a fan!

I have found Lynn to be a highly motivated, energetic, thoughtful, kind and disciplined individual and I feel she would surely serve our nation beautifully on the International Trade Commission.

 PREPARED STATEMENT OF SENATOR MALCOLM WALLOP

It is a pleasure to welcome Lynn Bragg before this committee pursuant to her nomination as a Commissioner at the International Trade Commission.

Lynn worked in my office for 10 years. Both as my legislative director and in her work handling my trade issues, she brought a great deal of competence and ability to the tasks. I admire her focus, her persistence and her stamina.

Let me take this opportunity to comment on the overall direction at the International Trade Commission. I fear the Commission is becoming overly protectionist in its rulings, and lacks sufficient restraint in applying our trade laws. Unfortunately, without a fundamental belief in free trade, it is all too easy for an institution like the ITC to propose one protectionist measure after another just to please politically connected industries. The same holds true for the Commerce Department and this administration generally. Absent a guiding philosophy about the inherent good of open markets and competition, we will deny choices to American consumers and will, in the long term, undermine our own competitiveness.

I trust that Commissioner Bragg will embody these free trade principles.

