

**NOMINATIONS OF THELMA J. ASKEY,
JENNIFER ANNE HILLMAN, STEPHEN KOPLAN,
AND PATRICK A. MULLOY**

HEARING
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
ONE HUNDRED FIFTH CONGRESS
SECOND SESSION
ON THE
NOMINATIONS OF

THELMA J. ASKEY, JENNIFER ANNE HILLMAN, AND STEPHEN KOPLAN,
TO BE MEMBERS OF THE U.S. INTERNATIONAL TRADE COMMISSION;
AND PATRICK A. MULLOY, TO BE AN ASSISTANT SECRETARY OF COM-
MERCE

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NOMINATIONS OF THELMA J. ASKEY, JENNIFER ANNE HILLMAN, AND STEPHEN KOPLAN, TO BE MEMBERS OF THE U.S. INTERNATIONAL TRADE COMMISSION; AND PATRICK A. MULLOY, TO BE AN ASSISTANT SECRETARY OF COMMERCE

THURSDAY, APRIL 23, 1998

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

The hearing was convened, pursuant to notice, at 11:20 a.m., in room SD-215, Dirksen Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Present: Senators D'Amato, Moynihan, Baucus, Rockefeller, and Graham.

Also present: Senator Sarbanes and Congressman Rangel.

The CHAIRMAN. The committee will please be in order.

A number of Senators have time restraints, and to cooperate with them I am going to proceed immediately with the introduction of Patrick Mulloy. Mr. Mulloy is here. He is at the witness table.

At this time I would like to ask Mr. Mulloy, who has been nominated to be Assistant Secretary of Commerce at the U.S. Department of Commerce, Mr. Mulloy, are any members of your family here?

Mr. MULLOY. Yes, they are, Senator.

The CHAIRMAN. I would ask that you introduce them.

Mr. MULLOY. Yes, I will. I have over here on the left my wife, Marjorie.

The CHAIRMAN. It is a pleasure to have you here.

Mr. MULLOY. My daughter, Claire.

The CHAIRMAN. Claire, how are you?

Mr. MULLOY. And my son, Daniel. My older daughter, Maura, who is studying in Europe this semester, who is 20, could not be here. But we have the rest of them here, Senator, and I am delighted.

I also have my sister-in-law, Natalie Baumer here with us as well.

The CHAIRMAN. And who is the little girl, is that part of your family?

Mr. MULLOY. I have numerous friends and supporters in the audience. [Laughter and applause.]

The CHAIRMAN. The committee will please be in order.

Well, it is a pleasure to welcome your family. I know it is a proud day for all of them.

At this time I would like to call on Senator—which one is going to speak first?

Senator SARBANES. I will obviously defer to the Chairman, Mr. Chairman.

The CHAIRMAN. Senator D'Amato.

Senator D'AMATO. Mr. Chairman, first of all, let me thank you for your graciousness in giving both Senator Sarbanes and I the opportunity to introduce Pat Mulloy.

Number one, as a member of the Finance Committee I am pleased and privileged to have this opportunity. Second, and maybe first, I have enjoyed the opportunity and the privilege to have one of the great Senate staffers. We hear about staff and they are often maligned. I sometimes join in that. [Laughter.]

Senator D'AMATO. And rather recently, too.

The CHAIRMAN. May I quote you?

Senator D'AMATO. Yes, sir. [Laughter.]

Pat Mulloy exhibits not only knowledge, excellence, the highest standards of academic training, and he brings that knowledge to the U.S. Senate, to the Congress, to the people of this country in the most bipartisan of ways that one could ever have. Indeed, Senator Sarbanes, who has enjoyed Pat's counsel for these past 12 years, and I have very directly and indirectly as a member of the Banking Committee during that period of time, believe that he has demonstrated the kind of resolve, purposefulness, skill, and again, care, for the people of this country.

There is no more important area that he could be undertaking than that of Assistant Secretary, charged with responsibility for market compliance at the Department of Commerce. He brings to this important area the understanding of international finance, the regulation of foreign banks, the multilateral financial services negotiations. This has been an area, Mr. Chairman, that we have been shortchanged in, absolutely.

With someone with Pat's ability and the ability to mold opinion and to focus our attention, I believe that our Nation and our great financial services community will be enhanced in the interests of this country, and he will always put that interest first and foremost.

We will miss Pat. This is a great nomination, but we look forward to working with him in this new position where he can continue to serve the people of this country in the most honorable of ways and traditions. This is a great nomination and I look forward to his speedy confirmation.

The CHAIRMAN. Just let me say, Senator D'Amato, having the pleasure of working with Mr. Mulloy on the Banking Committee, I recognize what you say to be very true. He represents the best in public service and I think we all agree as to the desirability of this appointment.

I know we are looking forward to hearing what Senator Sarbanes would care to say.

STATEMENT OF HON. PAUL SARBANES, A U.S. SENATOR FROM
MARYLAND

Senator SARBANES. Well, thank you very much, Mr. Chairman. I am privileged to have this opportunity to come before the committee with Chairman D'Amato.

I have known Pat ever since he first came to work for the Banking Committee in 1983 as a Congressional fellow from the Justice Department. He made such a strong impression during that period of service that Senator Proxmire sought to retain him, with success, and Pat has been with the Banking Committee as a leading staff member ever since that time. In other words, for the last 15 years. He is now the Chief International Counsel for the committee.

The first point I want to make about him, is that he is a very dedicated public servant. He is a B.A. magna cum laude graduate from King's College, Pennsylvania, an M.A. in international politics from Notre Dame University, and a law degree from George Washington Law School, and a master's in law from Harvard Law School.

Actually, he started out as a foreign service officer from 1965 to 1973. He then went over, having gotten his law degrees, to the Justice Department, where he was a trial attorney in the Land and Resources Division for 4 years, and then became a senior attorney in the Antitrust Division of the Department of Justice. He came from that to the Banking Committee, where he has been since that time.

The Banking Committee has played a lead role in every major international issue the committee has had to deal with, including such things as enactment of the International Lending Supervision Act, amendments to the Foreign Corrupt Practices Act, reauthorization of the Export-Import Bank, the Export Administration Act, the trade promotion programs of the Department of Commerce, exchange rate/Third World debt, provisions of the Trade and Competitiveness Act. He was a Congressional advisor to the recently concluded Agreement on Trade and Financial Services.

Frankly, Mr. Chairman and members of the committee, I cannot think of anyone better prepared or suited to serve in the position of Assistant Secretary of Commerce for Market Access and Compliance. Pat brings a deep background and expertise in international trade and finance. He has served in the executive branch, in the Congress, and in both capacities has worked closely with private sector business and labor groups.

He also brings—and I know this from my own personal knowledge—a very passionate commitment to opening foreign markets to U.S. exports and expanding job opportunities for American workers.

He is really a person of the highest intelligence, integrity, and commitment to public service. He has been an enormously effective member of the staff of the Senate Banking Committee. We have come to rely with great confidence on his expertise and on his judgment.

I think the fact that Chairman D'Amato and I are both here to introduce him suggests the deep professional and personal regard

in which he is held by members of the Banking Committee on both sides of the aisle.

I unreservedly and very strongly commend him to the members of this committee. He will do an absolutely terrific job for our country.

The CHAIRMAN. Well, thank you very much for being here today, Paul. We appreciate that. We are sort of mixing up the regular order of this committee. But what I would like to do now, Pat, is to excuse you and the two Senators, because we will go back to the first panel. But to expedite things for our distinguished colleague from the House side, I thought, Senator Rangel, you might want to—[Laughter.]

The CHAIRMAN. I mean, Congressman.

Senator D'AMATO. Which one of our jobs have you given away, Mr. Chairman?

The CHAIRMAN. The committee will please be in order.

Congressman Rangel, we are always delighted to have you here. I think you are here because you would like to comment on Stephen Koplán.

Congressman RANGEL. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Koplán, if you will come forward. As soon as Congressman Rangel completes his introduction, we will then return to regular order. I appreciate everybody's patience, but I was trying to expedite things for the members who had to leave.

Congressman Rangel?

STATEMENT OF HON. CHARLES B. RANGEL, A U.S. REPRESENTATIVE FROM NEW YORK

Congressman RANGEL. Mr. Chairman, Senator Moynihan, distinguished members of this committee, I sincerely thank you for the courtesy extended to me this morning in allowing me the high privilege of being here today to introduce Steve Koplán to this distinguished Finance Committee.

I fully support his nomination to be a Commissioner of the U.S. International Trade Commission. I urge the Finance Committee to report this nomination favorably to the Senate. The position of Commissioner is absolutely crucial to the proper functioning of the trade laws of this country over which the Ways and Means Committee, as well as the Finance Committee, has jurisdiction.

They are asked to decide in a quasi-judicial setting whether United States industries are entitled to relief under various United States trade statutes, including the escape clause, countervailing duty, and antidumping duty laws.

They also are asked to provide economic advice to the President and to the Congress on a host of international trade issues. In my view, the ideal candidate would have a diverse background in the private and public sector and be able to make impartial decisions in the best interests of the United States of America.

I am pleased to tell you that Steve possesses all of these qualities. He has had 35 years of experience both in the private sector and the public sector. He has worked in the executive and the legislative branches of government, the Justice Department for 12 years handling tax and civil rights matters, another year in the Small Business Administration, 4 years here working in the Sen-

ate, first with former Senator Metcalf, then as General Counsel on what was then the Committee on Postal Service.

In the private sector he served 6 years as a legislative representative for the AFL-CIO. In addition to this personal family that is here with him today, Evelyn Dubrau is here representing the family of labor. He was vice president for Government Affairs for five years at the Seagrams & Sons, and recently was the director for Government and Conservation Affairs for the Safari Club.

He has this rich background. There is no question in my mind that he would serve our Nation well, serve the Finance Committee, the Ways and Means Committee, the Congress, and the President of the United States, and I am honored to introduce him to this distinguished committee.

I am certain that you would approve this recommendation that was made by the President of the United States. Once again, I thank each and every member, including my dear friend from Florida, Senator Graham, for this courtesy.

Congratulations to you.

Mr. KOPLAN. Thank you, Mr. Rangel.

The CHAIRMAN. Well, thank you very much for being here this morning to introduce this nominee. It is always a pleasure to have you here.

Congressman RANGEL. Thank you, Mr. Chairman, Senator.

OPENING STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S. SENATOR FROM DELAWARE, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. We will now return to the regular order with opening statements, and then proceed with the introductions. You can continue to sit there, or whatever you choose is fine, Mr. Koplan.

But, as is obvious, we are hearing today the nominees for the International Trade Commission and the Department of Commerce. There are a few points I would like to emphasize before we turn to the nominees.

First, the committee has tried to move these nominees as expeditiously as possible. We had received their papers from the White House only a short time ago. Some of these positions have been open for more than a year. Pat, I think that, to be candid, is very regrettable. I think that the administration needs to make such nominations on a more timely basis, as it compromises the commission's ability to perform the work for which it is responsible.

Second, with respect to the ITC, I want to underscore that the commission's basic purpose is, of course, to advise Congress on trade. I believe it makes a significant contribution to our understanding now, but, to be candid, it could do considerably more.

I would like to see an increasing focus on that task, not to the detriment of the commission's responsibility in administering the trade laws, but in addition to those responsibilities.

Third, with respect to the market access and compliance function at the Commerce Department, I want to encourage a renewed focus on enforcement. Absent a stronger commitment to the enforcement of the existing agreements, we cannot realistically expect the

American public to support future trade agreements, so the Assistant Secretary role is, indeed, critical to that effort.

Finally, I want to make clear the committee's expectation of you. There is a lot of work to be done on the trade agenda. What each of you will do in your respective positions can make a very, very significant contribution to achieving our goals as a Nation, but, I have to emphasize, it will take your full commitment, energy, and focus. For my part as Chairman of the Finance Committee, I look forward to working with each of you. We have a lot to get done and I want us to get started.

With that, I would turn to my good friend and colleague, Senator Moynihan.

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

Senator MOYNIHAN. Thank you, Mr. Chairman. I would only wish to emphasize how much your feelings are shared on this side of the dais, if you like. Here we have three critical positions on the International Trade Commission that have been empty for a year.

We have just seen the President, in Santiago, meeting with the heads of state of the western hemisphere and he alone, to one's knowledge, is without the power to negotiate trade agreements. This committee, under your leadership, passed out the bill on a voice vote, with one dissent, only to see it still before the Senate, but it has failed in the House.

At the same time, you would think this would energize the appointment process in this area. Instead, it seems to have just slowed it down as if it were not a priority or there was no point. That is not the case. We need an energetic commission.

We need a commission that does, as you said, more than just make decisions, but gives some counsel and leadership here. We welcome these distinguished appointees. I am sure you do not have to say this, but I will suggest that you might say, and about time, too.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Moynihan.

Does anyone else care to make a statement?

Senator Baucus.

**OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR
FROM MONTANA**

Senator BAUCUS. Thank you, Mr. Chairman. First, I might say how honored I am to have Mr. Koplan here. I might add that one of his many jobs was to work for Senator Lee Metcalf from the State of Montana, where I know he served for several years.

Actually, I would like to expand a bit upon the statement just made by our senior Democrat on the committee, Senator Moynihan. The fact of the matter is, in many respects—at least in this Senator's judgment—the ability of the United States to continue to grow and prosper with high-paying jobs, low inflation rates, low unemployment rates, higher growth rates, sustain the stock market, et cetera, will depend very much on the degree to which the United States has a much more vigorous international trade policy,

and particularly working to open up markets overseas and to not let other countries take advantage of the United States.

We are the world leader. We are the big boy on the block. We are, I think, presumed by many countries to be a little easy, to not be as aggressive in standing up for our rights and protecting ourselves as other countries do for their constituents and their people.

I can foresee, and who knows what is going to happen, but when the European Union converts to the euro, that could give the European continent tremendous confidence. It could challenge the U.S. dollar for world supremacy as the currency of choice. It is going to make transactions in Europe much easier with a common currency, common denomination.

I just feel very strongly that the International Trade Commission and other international-related officials in the Federal Government, as well as Congress, that we are going to have to spend a lot more time thinking much more creatively, much more vigorously because I frankly see the next millennium as being one where the Cold War is over, but we could very well have some pretty vicious economic disagreements and misunderstandings and contention.

I just think it behooves us to think ahead to try to not let that happen, to get ahead of the game, ahead of the curve, and that will require a lot of very tough, creative, constructive thinking which I do not think we have enough of yet. I hope Mr. Koplan and others will pursue that.

Senator MOYNIHAN. Well said. Well said.

Senator BAUCUS. Thank you.

The CHAIRMAN. Senator Rockefeller?

Senator ROCKEFELLER. I have specific questions that I will be asking the nominees.

The CHAIRMAN. Thank you.

Senator Graham?

OPENING STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM FLORIDA

Senator GRAHAM. Mr. Chairman, I first want to welcome each of the nominees and I want to let them know that the comments I am about to make are not at all directed personally at any of the nominees, but rather at a sense of disappointment at the fact that we do not have before us a nominee with a particular background in agriculture.

Agriculture is a very significant part of American exports and is the largest single sector of our exports in terms of a positive balance of payment, and an increasing balance of payment. Last year, agriculture increased by 36 percent in terms of its contribution towards our surplus of trade to a total of \$28.5 billion.

Agriculture is also a major contributor to international disputes and they frequently are disputes that are highly detailed and specific. It is my understanding that, as of now, none of the members of the ITC have a background in agriculture. To me, that represents a major void and raises questions as to the relative importance that we are placing on these complex agricultural trade issues.

On March 5, 1997, I wrote a letter to the President indicating that as of that date there were two vacancies to the ITC, the third having been created by an expiration of term in December of 1997, and urged that one of the next appointees be someone with a background in agriculture.

On June 9, 1997, another letter was sent to the President stressing the same need for a person with an agricultural background on the International Trade Commission. That letter was signed by 30 members of the Senate, including a number of members of this committee.

As I say, I am not here to speak adversely to any of those who were appointed, but I am here to say that I am distressed that, with three new appointments, we do not have any appointment who could be said to have a specific background in agricultural trade and agricultural economics.

So the commission continues its practice of, I think, inadequately representing U.S. interests in this important part of our economy, and I will now publicly, and intend again by letter, urge the President to correct this omission at the earliest possible time.

Thank you, Mr. Chairman. I would like, Mr. Chairman, to ask that both the letter of March 5, 1997 and June 9, 1997 be included as part of the record of this hearing.

The CHAIRMAN. Without objection.

[The letters appear in the appendix.]

The CHAIRMAN. I would say to my distinguished friend and colleague from Florida that I share that same concern. I think it is important that agriculture, and for that matter industry, be recognized. I think most of us have had considerable concern about the failure to have these pursuits, particularly agriculture, represented. That is in no way disrespectful or undercutting those who are before us, but I think it is something that needs to be looked at.

Senator BAUCUS. Mr. Chairman, I think it is a very urgent problem. It is almost to the point of a crisis. No disrespect to the nominees, but the nominees have an urban background. They do not understand agriculture. No one with an urban background can and will understand agriculture until he or she spends a lot of time in rural America with farm families, with ranch families to understand it.

Agriculture takes a back seat, regrettably, to the more sexy industries, whether it is electronics, intellectual property, banking, whatever it is, somehow it just takes a back seat.

In the last negotiations in the GATT round, for example, agriculture took a back seat. Whenever I talk to our trade ambassador, I must confess that she does not have a good idea—and she admits she does not have a good idea—of how to better protect agricultural interests. Frankly, and no disrespect particularly to Mr. Mulloy, I see that he has written a paper on banking, and all that. I look at his job description, and it is international trade, generally.

U.S. market share in wheat has declined in the last several years. It has declined. We are getting less of the market worldwide. It is because, basically, other countries have been a lot more aggressive in subsidizing their exports. For example, just a few days ago it was announced that the European Union is subsidizing to

about 60 percent a shipment of barley, 300,000 metric tons, and another close to 500,000 or 600,000 metric tons on its way to California. They claim it is legal by saying, well, it was originally going to Saudi Arabia, Saudi Arabia did not take it, so we took it back, and so now we are shipping it to California. It is a technicality. But the Europeans are very good at this. Our country is not very good at protecting American farmers against that kind of skullduggery. I just say to the nominees, all four who are here, that Senator Graham from Florida is absolutely correct. It is disappointing that there is not anybody here with more of an understanding of agriculture, and I would urge all of the nominees to spend some time and get out from behind your desks here in Washington, DC, and you go out and spend some time on some farms to understand it, so you taste it, feel it, smell it, so you know what it is all about. Otherwise you are not going to understand. Big companies come into Washington, DC. It is access. They talk to you, you talk to them. Farmers are a long way away from Washington, DC so they cannot get here very quickly. They are not organized the same way that the NAM is, for example. NAM is fine. I am all for boosting trade in all areas. But I am being a little lengthy here because there are not many people in Washington, DC who understand agriculture, how important it is, and what dire straits agriculture is in today. The price of wheat, for example, and barley, and cattle has been low for a long time.

I tell you, farmers are going belly up. It was after we passed the Freedom to Farm act where we decoupled price supports from production. The trade-off was, the United States would be much more aggressive in opening up markets overseas. But the U.S. Government has not lived up to its promise of being more aggressive to open up markets overseas, they have just kind of forgotten about it after we got the Freedom to Farm passed. I tell you, it is—I am trying to avoid the word outrage, but it is a big problem that I hope you will address.

Senator MOYNIHAN. What was the word you were trying to avoid, outrage?

Senator BAUCUS. Outrage.

The CHAIRMAN. Thank you.

Senator BAUCUS. Thank you, Mr. Chairman.

The CHAIRMAN. I would note that there is a vote on the floor, so I think we will recess now and come back as rapidly as possible, because I do want to proceed expeditiously.

[Whereupon, at 11:50 a.m., the hearing was recessed and re-convened at 12:05 p.m.]

The CHAIRMAN. The committee will please be in order.

It sounds like our junior Senator. [Laughter.]

Strike that, please. [Laughter.]

I have a statement and some questions from Senator Hatch which I would put in the record, unless there are objections. I would ask that the members of the panel review these questions and answer them as promptly as possible.

[The material cited above appear in the appendix.]

The CHAIRMAN. At this time, and I apologize for the way this hearing has proceeded, but it is a pleasure to welcome Thelma Askey, Ambassador Jennifer Hillman, and Stephen Koplan, of

course, who have been nominated to be commissioners at the U.S. International Trade Commission.

At this time I would like to ask each of you, are there any members of your family here? Ms. Askey?

Ms. ASKEY. Well, at one point my lovely daughter, Joelle, was here. I think she is in the back playing now.

The CHAIRMAN. Smart girl.

Ms. ASKEY. She is her normal cheerful self. If she were here, she would be asking you to get down out of your chair. She would not take an empty one. I hope that is an indication that she would be interested in public service at some time in the future.

The CHAIRMAN. Today is a good day to mention that. Thank you. It is a pleasure to have her.

Ms. Hillman?

Ms. HILLMAN. Yes. Thank you, Mr. Chairman. With me is my husband, Mitch Berger, and my sister, Helen Hillman. That voice that you referred to as the junior Senator is my 2-year-old son Benjamin.

The CHAIRMAN. Congratulations.

Ms. HILLMAN. Who gratefully has left the committee.

The CHAIRMAN. It is nice to have the family here.

Mr. Koplan?

Mr. KOPLAN. Thank you, Mr. Chairman. Yes. With me today is my wife Harriet.

The CHAIRMAN. Welcome. It is nice to have you here.

Mr. KOPLAN. My oldest son Michael, who is an attorney here in town.

The CHAIRMAN. Michael.

Mr. KOPLAN. Our youngest son, Adam, who drove in last night from the University of Michigan, where he is about to finish one more week and then he graduates.

The CHAIRMAN. Very good. Congratulations.

Mr. KOPLAN. And my daughter-in-law, Julie, Michael's wife.

We also have two other sons, one who is in residence in internal medicine at Emory in Atlanta, Georgia, and unfortunately he was not able to get in today. I have another son, David, who is an aspiring actor in California and, like me, he has an audition today so he was not able to get here.

The CHAIRMAN. That is the nicest I have ever heard these hearings described. [Laughter.]

The CHAIRMAN. I would now ask all the nominees to rise so I can swear each of you in.

[Whereupon, the three nominees were duly sworn.]

The CHAIRMAN. Now, we have three standard questions we ask of all nominees who come before the Finance Committee. First, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated? Ambassador Hillman?

Ms. HILLMAN. No.

The CHAIRMAN. Mr. Koplan?

Mr. KOPLAN. No, Mr. Chairman.

The CHAIRMAN. Ms. Askey?

Ms. ASKEY. No, Mr. Chairman.

The CHAIRMAN. Second, do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office for which you have been nominated? Ms. Hillman?

Ms. HILLMAN. No, Mr. Chairman.

The CHAIRMAN. Mr. Koplan?

Mr. KOPLAN. No, Mr. Chairman?

The CHAIRMAN. Ms. Askey?

Ms. ASKEY. No, Mr. Chairman.

The CHAIRMAN. And third, do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress, if you are confirmed?

Ms. HILLMAN. Yes, I do, Mr. Chairman.

Mr. KOPLAN. I do, Mr. Chairman.

Ms. ASKEY. I do, Mr. Chairman.

The CHAIRMAN. Thank you. Now we will proceed with the opening statements. Ms. Askey, do you want to start?

STATEMENT OF THELMA J. ASKEY, NOMINATED TO BE A MEMBER OF THE U.S. INTERNATIONAL TRADE COMMISSION

Ms. ASKEY. Thank you, Mr. Chairman. I am honored to have worked over the past 20 plus years with the Chairman of the Ways and Means Committee, Bill Archer, who was unable to be here today, although he had wanted to introduce me, and the other distinguished members of the Ways and Means Committee.

It has been challenging and gratifying, to say the least, to play a small role in developing trade policies and underlying statutes that have served our country so well and have contributed importantly to the economic well-being of so many in the United States and elsewhere around the world.

These members and the many wonderful professionals I have worked with on the Hill and from the private sector have taught me so much about public policy and public service and about the value of our unique form of government.

Through the nomination by the President of the United States of me to be one of the six commissioners of the International Trade Commission, I am offered the great opportunity to extend and complement my career in public service. I am honored by President Clinton's consideration, and by yours, Mr. Chairman.

I would like to thank Majority Leader Trent Lott, Speaker of the House Newt Gingrich, Majority Leader Dick Armey, the Chairman of the Ways and Means Committee, and the Ranking Member, Charlie Rangel, and the Chairman of the Trade Subcommittee, Philip Crane, for their support of my candidacy. I really appreciate the encouragement and support from both sides of the aisle.

Finally, I am extremely pleased to be sitting here today with fellow nominees Jennifer Hillman and Steve Koplan, both of whom I know and admire. I am excited about the prospect of working with them at the ITC, should we be confirmed.

The U.S. International Trade Commission plays a unique and important role among all Federal agencies that are vested with responsibilities related to international trade.

The ITC is not a policy making body, it does not negotiate trade agreements, nor is it a court of law. Rather, it provides indispen-

sable support to those agencies which perform such functions, and to Congress, through the conduct of objective investigations and analysis of any aspect of international trade that may prove pertinent to the President, the administering agencies, or the Congress.

It is this traditional role of an independent government think tank that was the original mandate of the U.S. Tariff Commission, a precursor to the ITC. Later in 1954, the Tariff Commission was delegated the task of determining whether imports are the cause of material injury to the U.S. industry in dumping investigations.

Today, the ITC performs injury assessments under a variety of U.S. trade laws, as well as recommends direct remedies, with the President's approval, under the safeguard statute and Section 337.

The first U.S. statute dealing with unfair foreign trade practices was the countervailing duty law passed in 1897. This law, the Anti-dumping Act of 1916, and the Tariff Act of 1930, provided the basis for a rather ad-hoc approach to addressing tariff and nontariff barriers in international trade.

However, it was the Trade Act of 1974 that provided the form and substance of our modern trade laws, defined and coordinated the roles and relationships of the various trade agencies and, perhaps most significantly, established procedures for cooperation between the legislative and executive branches of government in the negotiation and implementation of trade agreements. I must get a plug in for fast track.

Dubbed a unique constitutional experience by the Finance Committee, referring to the fast-track procedures incorporated therein, the Trade Act of 1974 nevertheless was unique in a much broader sense and marked a turning point with respect to how Congress was to exert its constitutional prerogatives to regulate commerce with foreign nations.

From that point on through various pieces of legislation that amended the Act and implemented subsequent trade agreements, Congress has asserted itself very aggressively in the regulation of foreign commerce.

It has done this, among other ways, by being significantly more precise with respect to trade statutes and their application, and by more fully clarifying the functions of and relationships among trade agencies.

The increased precision of the statute is a reflection of more expansive Congressional oversight, as well as many hours of consultations with the executive branch and with impacted parties in the U.S. often having competing interests.

Policy objectives are pursued, certain results and applications are sought, and compromises are struck as trade laws are developed, enacted, and subsequently updated or otherwise amended.

I have given the preceding evaluation as a preamble to what I believe my approach will be to my role as commissioner, if confirmed. First, it is the responsibility of a commissioner to administer U.S. trade laws as written by the Congress. For many years I have had, in my view, an enviable vantage point from which to witness, indeed participate in, the evolution of U.S. trade laws and the negotiation implementation and application of several major trade agreements.

I know the dedication and hard work that went into these efforts from all involved and I know the strong commitment of the Congress, particularly the Finance Committee and the Ways and Means Committee, to the effective enforcement of the U.S. trade laws. I share this commitment and I pledge to you my best efforts to administer the law objectively, fairly, and vigorously.

Second, I would like to reinvigorate the investigative and analytical role of the ITC. As an independent, nonpartisan agency, the ITC is in a unique position to reinforce the credibility of our trade laws, assist in the development of U.S. policy objectives, and reinforce the legislative process by providing independent and unbiased fact-finding studies and analysis.

I approach the ITC and my role there without any personal bias; as I believe is appropriate. I have no further comment and would be happy to answer questions. Thank you, Mr. Chairman and members of the committee.

The CHAIRMAN. Thank you, Ms. Askey.

[The prepared statement of Ms. Askey appears in the appendix.]

The CHAIRMAN. I would hope that each would try to keep to 5 minutes in your preliminary statement. With that, it is a pleasure to welcome you, Ambassador Hillman.

I would like to note that Senator Lugar has sent me a letter this week in support of you. Senator Lugar speaks very highly of Ms. Hillman's capabilities and describes her as a "superb trade negotiator and lawyer." He is also very proud of the fact that Ms. Hillman is a fellow Hoosier from Indiana. So, without objection, we will put the letter in as if read, and please proceed.

[The letter appears in the appendix.]

STATEMENT OF JENNIFER ANNE HILLMAN, NOMINATED TO BE A MEMBER OF THE U.S. INTERNATIONAL TRADE COMMISSION

Ms. HILLMAN. Thank you very much, Mr. Chairman, Senator Moynihan, Senator Rockefeller. I want to thank you and the members of your staff for all of your work in preparing for this hearing.

I would note in Senator Lugar's comments, yes, I am from Indiana. I would note also, from a farm community. So, while I would not ever fashion myself to be an agriculture expert, I would say that I do come with a good degree of sensitivity to agricultural issues from my own personal background.

I am certainly extremely honored to appear before you today as one of President Clinton's nominees to serve as a commissioner at the International Trade Commission. I have long had a strong interest in international trade and have been working in and around the trade field for the past 15 years.

As a young attorney fresh out of law school I started out my practice doing antidumping and countervailing duty work, much of the bread and butter of the commission's work today. I went on to join a man who had been a mentor and an inspiration to me at Duke University, Terry Sanford, when he served here in the Senate. I handled a number of issues for Senator Sanford, including all international trade matters.

While working for Senator Sanford I certainly had the opportunity to hear from a wide variety of North Carolina workers, com-

panies, and farmers about their trade problems, whether they were requests for tariff relief, problems with foreign trade barriers, or plant closings and job losses due, at least in part, to imports.

I think I came away from that with a good deal of sensitivity and a good deal of understanding of trade's implications for American workers, American farmers, and American companies.

In 1993, I was fortunate to have the opportunity to join Ambassador Kantor at USTR, serving for 2 years as our Ambassador and Chief Textile Negotiator, and then went on to serve for the next 2 years as the General Counsel at USTR.

Both positions allowed me to see some of the extraordinary changes we have seen in the field of international trade, with the final touches of the NAFTA and the final negotiations and legislative activity on the Uruguay Round agreements coming during my first two years at USTR, and as General Counsel watching the tremendously explosive growth in the use of the dispute settlement mechanism at the WTO, among other things.

It is these experiences and the trade law I have learned over the years that I would hope to bring to the International Trade Commission.

I see the ITC as giving me the chance to do two things. First, to continue in public service, to which I feel extremely committed, and second, to allow me to use the knowledge of trade law and the appreciation I have gained for trade's implications for American workers and American companies while serving at the ITC.

As I think all of you know, the next few years will be extraordinary ones for the Commission. The Commission is going to need to grapple with the tremendous explosive growth in trade, with imports and exports now equivalent to more than 25 percent of the gross national product of the United States, up from 11 percent in 1970.

Most importantly for the coming few years, the Commission will have to meet the very tough mandates it faces to fairly and effectively review all outstanding antidumping and countervailing duty orders, as required by the sunset provisions of the Uruguay Round Agreements Act.

This means reviewing 324 orders over the next 3 years, which is a huge increase from the Commission's typical consideration of some 40 to 50 dumping or countervailing duty cases in a year.

Finally, it would be my hope that the Commission can continue to expand its role as a provider of solid, nonpartisan trade statistics, research, and analysis to the trade community. If confirmed, I would pledge to you my commitment to do my utmost to uphold faithfully the trade statutes that the Commission is charged with applying and to work to ensure that the process for sunset reviews is done with appropriate care and attention to each individual case, yet done efficiently enough to ensure that the Commission can meet the very tough deadlines that it faces.

I will do all I can to see that the Commission continues to provide high quality trade analysis, advice, data, and technical assistance whenever needed by the Congress or the trade-related government agencies. I thank you very much for this opportunity to appear before you and would welcome any questions you would have.

The CHAIRMAN. Thank you, Ambassador Hillman. Let me say, you came here to work for a very splendid individual, and certainly an outstanding Senator.

Senator MOYNIHAN. Much, much missed.

The CHAIRMAN. No question about it.

Ms. HILLMAN. Thank you.

The CHAIRMAN. Mr. Koplan?

STATEMENT OF STEPHEN KOPLAN, NOMINATED TO BE A MEMBER OF THE U.S. INTERNATIONAL TRADE COMMISSION

Mr. KOPLAN. Mr. Chairman, Senator Moynihan, Senator Rockefeller, I do have some brief comments that I wish to make.

First, I want to thank Representative Rangel, the Ranking Democrat on the House Committee on Ways and Means, for his generous support both today, and through the process leading up to my nomination. I have known him for nearly 20 years and am proud to have earned both his respect and friendship.

I want to thank you, Mr. Chairman, for setting this hearing so promptly, despite being in the midst of an unusually pressing legislative schedule.

I consider it a great honor to have been nominated to this important position by President Clinton. If confirmed, I will be joining the Commission at a time when its responsibilities are greatly increased as we begin 5-year reviews mandated by the Uruguay Round Agreements Act of over 300 countervailing and antidumping duty orders that were in effect as of January 1, 1995.

I want to assure this committee that I take no personal agenda, or policy bias, to the Commission. I understand the role of the International Trade Commission as an independent and non-partisan fact-finding agency, with particular responsibility for anti-dumping and countervailing duty laws under Title 7, unfair import laws under Section 337, fact-finding studies at the request of either the Congress or the administration under Section 332, and Section 22 investigations under the Agricultural Adjustment Act.

In my conversations with the three sitting Commissioners and with both of my fellow nominees, I believe that we all regard a collegial atmosphere as essential to the successful performance of our various responsibilities and I pledge to work with my colleagues in that manner.

In closing, I want to assure this committee that I will administer in a fair, objective, and vigorous manner the trade law as written by the Congress of the United States.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Koplan.

[The prepared statement of Mr. Koplan appears in the appendix.]

The CHAIRMAN. I would like to start out by asking the same question of each of you, and we will go in the same order in which you spoke. What do you plan to do to reinvigorate the ITC and restore its traditional role in advising Congress on trade matters?

Ms. ASKEY. I do think, as I said in my opening statement, that is an important element to achieve because of what it can bring, both to the legislative process and to the decisionmaking process in the administration on policy.

I think we need to raise that priority at the ITC, review its resources and how it organizes its resources and assigns its tasks to make sure that the underlying expertise for evaluating the various complicated aspects of our economy and the trade impact on our economy stays current and at a high level at the ITC. Also the ITC needs to work more closely with the Finance Committee and with the Ways and Means Committee to develop studies that are broader based. The ITC does a lot of studies that are very industry-specific; some of those industries are small and the studies may not have a lot of consequences for other industries that make up our overall economic picture.

I think if we work with the committees and try to develop broader studies that could reinforce how we view fast track, how we view trade policy development, and how we would subsequently implement trade agreements as they are achieved, I think that those things will all help reinvigorate that very traditional role of the ITC.

The CHAIRMAN. Thank you.

Ms. Hillman?

Ms. HILLMAN. I certainly would agree with an awful lot of what Ms. Askey has already said. I would note that the ITC does have some very unique expertise that can, and I hope will, continue to be tapped.

I think they have terrific expertise with respect to our tariffs, how our tariff schedule works, what those items are, as well as very strong expertise in terms of individual industry analyses.

I think the challenge will be to use what is arguably somewhat of a microeconomic focus on the part of a lot of what the ITC does to expand that into more of a macroeconomic picture that will need to be looked at as well.

I think the ITC does need to do everything that it can to coordinate not only with the Congress, but I would say also with the other government agencies that collect a lot of trade data and have a lot of trade information. There is really a great opportunity to expand the ITC's role as one of the sort of central cores of an analytical and research base, also relying and coordinating with a lot of the information that comes in through the Census, through the Commerce Department, through the State Department, and through many of the other government agencies that would have expertise to bear as well.

I would hope to use some of the knowledge that I have gained in the interagency process at USTR to see if we cannot do a better job of coordinating the research and analytical work that is done.

There really is a great deal of expertise that lies throughout the government, it is just dispersed sometimes in different places. I think the ITC could play a very important, embellished role in helping to coordinate and serve as a central repository for a good deal of that analytical research.

The CHAIRMAN. Thank you.

Mr. Koplan?

Mr. KOPLAN. Thank you, Mr. Chairman. Mr. Chairman, I do not have an agenda to make changes in the way the Commission now carries out its various responsibilities. I have had an opportunity

to meet with a number of the Commission staff and am most impressed with their dedication and competence.

I have read the proposed budget for fiscal 1999 and had an opportunity to discuss it in meetings with Trade staff in as many offices of members of this committee as could be scheduled in advance of this hearing.

I know that the Commission has had budget briefings with Senate staff, but I am not aware yet of any suggested changes or problems with what has been proposed. I expect that one of the first things that will take place when we enter on duty will be to have a dialogue as to where things now stand.

I have a sense that there is substantial interest in Congressional requests for even more research studies under Section 332 that were anticipated when the Commission requested \$4.4 million for next year.

I believe that the agency is continually seeking to perfect the skills needed to perform this function, and I look forward to becoming a player in that effort and taking a share of the responsibility for the result of our collective efforts.

Mr. Chairman, I have had the privilege of serving as a Senate staffer on two occasions. I am most sensitive to this committee's continuous need, and the Congress' need, for prompt delivery and response to requests for analytical and economic analyses of international trade related issues. As a Commissioner, I will do all that I can to help assure that the Congressional requests are met satisfactorily. Thank you.

The CHAIRMAN. Senator Moynihan?

Senator MOYNIHAN. Mr. Chairman, I would just like to repeat your first question and refer to Ms. Askey and Ms. Hillman's suggestion. I think you used the term think tank. This is a new idea to me. I have been 22 years on this committee and I have never had one idea come my way from the International Trade Commission, not one. I am open to ideas. What has been the problem?

Ms. ASKEY. Well, I think some of the problem has been—

Senator MOYNIHAN. Because if I could just interrupt, you mentioned the 1974 fast track legislation, which really just, I think, consolidated the practices that began with the reciprocal trade agreements under President Roosevelt and Secretary Cordell Hull.

I was taught this subject, to the degree I understand it, by Harry Hawkins, who negotiated and handled that matter—Ms. Hillman seems to recognize the name—for Hull. All seemed so well. Then suddenly, last year, 70 years of American trade policy stopped dead and all the progressive forces in the United States had noticed themselves regressive forces. The ideas that had shaped the 20th century were rejected in the Congress.

Does anybody in the Trade Commission think they might have had something to do with that, in the sense that there were so few arguments evidently available to persuade the Democratic party and the House of Representatives that this was a Democratic policy and it made for an extraordinary era of economic growth?

Ms. ASKEY. I certainly think that the International Trade Commission can, and perhaps could have done, a better job in providing the analytical background by which members evaluate, and particularly how the administration evaluates, what the goals and ob-

jectives should be for trade negotiations. I think there is a lot of concern that is shared. Clearly it is not the ITC's responsibility to set forth policy options.

The administration, the Congress, the business community, and others can point to difficulties they had in getting this message across. No one is more disappointed than I am that fast track is where it is. I have spent a number of years of my professional life, on behalf of Bill Archer and others, to try to see that fast track got passed. I hope that it is not totally rejected. I think we have an opportunity perhaps—

Senator MOYNIHAN. It is totally rejected for this Congress.

Ms. ASKEY. Well, but perhaps next year. That is why I am hopeful that the ITC can play a greater role, working with the Finance Committee and the Ways and Means Committee, to provide some better analysis.

Senator MOYNIHAN. Ms. Hillman, I do not want to keep you long.

Ms. HILLMAN. Senator Moynihan, in thinking about your question, I think what it really goes to is trying to figure out whether we have a good understanding about why the American public is as skeptical or, indeed, as fearful of trade as it is. I think there has not been as much—

Senator MOYNIHAN. That is a moment of triumph of American economic policy in the world, and we have become fearful of our own policy.

Ms. HILLMAN. There has been very little analytical work about why that is. I was reading a poll the other day of surveys of whether the American people think that Japan is a critical threat to the American economy. They did this survey in 1990, and 63 percent of the people said the answer was yes. They redid the survey this year and only 21 percent now think that Japan is a critical threat to the American economy.

So, clearly, there has been a lot of change in American's perceptions, but I think the sort of fundamental concerns that you sort of feel, hear, or get the pulse of when you talk to people about trade are that trade has somehow had an impact on wage stagnation or on the wage gap between the rich and the poor, or that trade somehow is not addressing a fundamental issue of fairness, that our trading partners are somehow dealing unfairly, or that you get into the issue of corporate responsibility, that trade might be good for IBM, Ford, or whoever, but it is not good for the man on the street, and that there is somehow a disconnect between those two. Or you still, I think, hear arguments of concern over sovereignty, and I think the list could go on.

But my point is, I think there is a real concern among average Americans that somehow trade is not working for them. It is that perception that I do not believe is accurate. If you look at the numbers of all of the good that trade does for our economy in terms of creating these exact jobs that you are referring to, creating a lot of the economic growth that you are referring to, creating a lot of additional economic activity in our country, the fears are not well-founded, but they are real and they are there.

I do believe that one of the things that needs to be done is better analytical work about why these fears are there and how we best collectively, as the trade community, address them.

Senator MOYNIHAN. Good. Thank you. I will spare Mr. Koplan that, and give Senator Rockefeller a chance.

Thank you, Mr. Chairman. Good. You know what the problem is. The CHAIRMAN. Senator Rockefeller?

Senator ROCKEFELLER. Thank you, Mr. Chairman.

I am very happy with all three of the nominees before us. Ms. Askey, I was not in a position to push you, and I am going to vote for you with the administration, I feel very good about your background.

Ms. ASKEY. Thank you, Senator Rockefeller.

Senator ROCKEFELLER. Ms. Hillman, Bill Reich thinks the world of you, and if you had no credentials that would be enough for me.

Ms. HILLMAN. Thank you.

Senator ROCKEFELLER. But you have the credentials and Bill Reich. As with you, Mr. Koplan, you not only have the credentials, but you have the support of another very strong person I admire, Jim Gottlieb, who I believe is your neighbor and who was here earlier, but gave up on the whole process.

Mr. KOPLAN. I plan to keep him as a neighbor, Senator Rockefeller.

Senator ROCKEFELLER. My comments would just be these. What I care about, and I think you all have spoken to this, is that there be very, very strict adherence to antidumping, countervailing, and all the rest.

We are going through an experience now, and this is not your bailiwick but it is in my sense of outrage, a word that was almost used this morning, that Weirton Steel, which is the largest employer in the State of West Virginia, is being undermined by a Korean steel company by the name of Han Bo, which is being subsidized by the Korean government. Nothing new there. The government is even paying off its creditors. As a result, all kinds of jobs at Weirton Steel are in direct jeopardy.

This kind of thing absolutely infuriates me. How we allow it to continue I simply do not know. That is not your particular responsibility. But I just want you to know that.

Senator MOYNIHAN. Well, it is their responsibility, and you are right.

Senator ROCKEFELLER. Yes. All right.

Second, one of the things that I think you could be thinking about, and Senator Moynihan really led into this, we are getting into a new world. Our industries are going to need to know new things, and I think the ITC is going to need to be asking questions of our industries, new things in terms of their own economic position with respect to their ability to compete overseas.

For example, issues like industries' bond ratings, access to capital, need for production, research, and development, long-term factors. All of these. Sometimes you use sales and production to calculate harm, but you can also use these other factors because, as Senator Moynihan said, we are so much a part of a global economy. It seems to me that is something that the ITC could work with in dealing with American industry.

You all strike me, incidentally, that you may not have agricultural backgrounds, but on the other hand you do not have coal mining backgrounds. I do not feel bound to feel badly about you be-

cause of that. Both coal mining and agriculture have suffered enormously, as others have said, through problems with productivity or the advances in productivity.

There are other problems, but nevertheless, you seem to all be of the real world, is the point I am trying to make. You have had experience here. You are not overly just sort of stylized, so to speak, in the way you approach things, and I appreciate that.

Another particular point. This refers to a study which USTR has asked you to undertake. It is a minuscule thing, but very important to me. In the course of the NAFTA there has now arisen a situation in which a company in the State of West Virginia which deals in plastic resins and has a substance called PTA which it has to buy. I cannot even pronounce the P of PTA, that is why I am just saying PTA.

There is an American company which has 100 percent of PTA production in this country and they, therefore, can charge whatever price they want for it. They charge a very high price. Mexico has a rather low price and makes that, and would be an alternative of being able to go and get that. But we have a big tariff on PTA from Mexico.

On the other hand, this one particular company that has 100 percent, which is Amoco, very much wants to see the elimination of the natural gas tariff going the other way. It strikes me like a kind of a win-win situation.

In any event, and I have been working very hard, this is a very difficult issue to push, but I understand that the USTR asked the ITC to do a study on this and to give them the results of that study. I am wondering if, perchance, you know if that is done, or if you do not, when you get it, will you slip me a blind copy? That is a question.

Ms. ASKEY. Mr. Rockefeller, I would say that I have been involved in this case as well because of the interest of some of the members of the Ways and Means Committee.

Senator ROCKEFELLER. You have.

Ms. ASKEY. So I am familiar with the particulars of the case and I am certainly looking forward to the ITC doing an effective analysis of the situation and hopefully giving the USTR some ideas on how to resolve the issue.

Senator ROCKEFELLER. Well, let me ask you this. Can you only make that available to them? I want to know the information involved. I mean, we do trade on this committee. We are the only one that does. You all work on it, USTR works on it. Can you only present it to them? Can you present it to us, too?

Ms. ASKEY. I certainly think there are ways that we can present it to the Finance Committee and the Ways and Means Committee by those committees expressing an interest.

Senator ROCKEFELLER. Yes. Is that generally acceptable?

Mr. KOPLAN. I was also going to say at the conclusion of this hearing I am going to check on it and try and get you an answer.

Senator ROCKEFELLER. Yes. Good. Ms. Hillman, I know you would say yes.

A final question, Mr. Chairman. The legislative history of the Uruguay Round suggests that there can be more than one likely outcome as the result of the revocation of an antidumping or coun-

tervailing duty order. If injury is one likely outcome, the legislative history indicates that the order should be continued.

And that leads me to, would you agree that this indicates that the ITC should give the domestic industry the benefit of the doubt in close cases? You may not want to answer that now, you may want to answer me in writing. But I want to be clear that you understand the question. If you are willing to respond to it, I would like you to.

Ms. ASKEY. I would just say that there are a number of places where guidance is given to the ITC, including vulnerability of the industry and likelihood of injury. I would like to answer you in writing, if I may, but I do believe that the threshold is fairly low. You are looking at whether or not there would be a likelihood of a recurrence of injury. I do not know that I would state it in the terms that you did, but I think that there is considerable guidance on how the ITC should view these possible effects.

Senator ROCKEFELLER. You mean, written ITC guidance.

Ms. ASKEY. No, written guidance from the Statement of Administrative Action.

Senator ROCKEFELLER. All right.

Ms. ASKEY. The statute itself has a number of elements elaborating on what the ITC should look at, and then, of course, there is report language. The ITC, in developing its own regulations, has considered all of these, it is my understanding. The responses to those regulations has been fairly satisfactory. I mean, there has not been any outraged expressed, that I am aware of, for these regulations as they have been presented thus far.

Senator ROCKEFELLER. Well, you are hearing a question from a Finance Committee member. That is all I can offer.

Ms. HILLMAN. Certainly, Senator, I would be happy to respond in writing. Obviously, I would agree with a lot of what Ms. Askey has said. The standard is whether, in reviewing all the outstanding orders, the revocation of the existing order would be likely to lead to a continuation or recurrence of material injury in the domestic industry.

That is the fundamental standard set out in the statute and in the Uruguay Round Agreements Act. I think as Ms. Askey has noted, there is a good deal of guidance given to the ITC in terms of making those determinations, and I think there will be a good deal of caution on the part of the ITC.

Certainly I would intend to look very closely at each individual case to ensure that we are meeting that very precise standard, that we are not simply easily revoking orders, that we are doing a very careful job of analyzing whether the revocation of an order could lead to continuation of injury or increased injury and, in those cases, making sure that we continue to leave the orders in place.

[The answers appear in the appendix.]

Senator ROCKEFELLER. My time, I know, has run out.

Mr. KOPLAN. I agree with that, Senator Rockefeller. I would also add that those regulations have not been finalized yet. I think it will be another 30 days. We will carry that question back as the dialogue continues on that.

Senator ROCKEFELLER. That is what I would ask. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Rockefeller.

I have a number of additional questions which I will submit to you today. I would leave the record open until 5:00 tonight for anyone that has other written questions and request that they be answered no later than Tuesday of next week, as we are anxious to move ahead as fast as possible. Because there are questions we will not try to confirm today.

Again, I want to thank you for being here. Just let me stress that I think you are taking these positions at a time of critical importance. We have lost the consensus on trade. I think it is critically important that we develop a new consensus.

Sometimes I think those who are pro-trade tend to overlook the real problems that are suffered by different trades and industries. But I think that if this country is to grow and prosper we do have to develop a new consensus. So thank you very much for being here with us today. We appreciate it very much.

Mr. KOPLAN. Thank you.

The CHAIRMAN. Now I would call forward again Patrick Mulloy. Would you rise so I can swear you in.

[Whereupon, Mr. Mulloy was duly sworn.]

The CHAIRMAN. Thank you. Please be seated.

As you heard, we have three standard questions. First, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. MULLOY. No, Mr. Chairman.

The CHAIRMAN. Second, do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office for which you have been nominated?

Mr. MULLOY. No, Mr. Chairman.

The CHAIRMAN. Third, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress, if you are confirmed?

Mr. MULLOY. Yes, Mr. Chairman.

The CHAIRMAN. At this time I would invite you to make an opening statement and ask that you limit it to 5 minutes. Your full statement will be included as if read.

STATEMENT OF PATRICK A. MULLOY, NOMINATED TO BE AN ASSISTANT SECRETARY OF COMMERCE

Mr. MULLOY. Thank you, Mr. Chairman.

Chairman Roth, Ranking Member Moynihan, and members of the Senate Finance Committee, it is a great honor for me to be here as President Clinton's nominee for the position of Assistant Secretary for Market Access and Compliance at the Commerce Department.

I very much appreciate your scheduling my confirmation hearing so promptly and look forward, if confirmed, to working with the members of this committee and the staff of this committee on a bipartisan basis.

The position for which I have been nominated is charged with three important responsibilities: (1) developing and implementing

market access policies and programs; (2) monitoring foreign compliance with U.S. trade agreements; (3) coordinating Commerce Department participation in the WTO and other international organizations such as the OECD.

These are important responsibilities, particularly in light of the growing interrelationship between our domestic economy and the world economy. I believe, as you do, Mr. Chairman, and as Senator Moynihan believes, that if Americans are going to continue to support an open trading system they must be convinced that the agreements we negotiate are fair to our companies and our workers and that our rights under them are being monitored and enforced vigorously.

The Commerce Department and the administration alone cannot carry out these responsibilities. Officials charged with them must work closely with the Congress and all interested parties, including business and labor. I plan to do so.

The committee should know how much I appreciate having been nominated for this post. In addition to the President, I want to thank Secretary of Commerce William Daley and Under Secretary David Aaron for giving me this opportunity.

I also want to publicly thank a number of people who helped me along the way, because by doing so I think you will get some idea of the type of person I am and of the vigor with which I will exercise my responsibilities, if I am confirmed.

First and foremost are my deceased parents, Hugh Mulloy and Ellen Meagher. My father was born in 1898, the son of an anthracite coal miner, and I wish Senator Rockefeller was here. He had to leave school at age 14 to enter the mines. He got out of the mines when he volunteered to serve our country in World War I and he never went back. When I was young, he emphasized to me the value of education and nurtured my interest in politics and government.

My mother, and I wish Senator Baucus was here, who grew up on a dairy farm in northeastern Pennsylvania, taught grades one through eight in a one-room rural school prior to her marriage. She emphasized to me the importance of achievement.

When I went off to grade school as a child she would put the sign of the cross on my forehead and say, good bye, good luck, God bless you, and grow up to be President. [Laughter.]

So I still have mountains to climb. [Laughter.]

I want to thank the Holy Cross Fathers for the scholarships and the fellowships that enabled me to earn my bachelors and masters degrees at King's College and at the University of Notre Dame respectively.

I also thank my former boss at the State Department, Christian A. Herter, Jr., who encouraged my efforts to get a law degree at night. Senator Moynihan, you and I met when I was working for Chris Herter those many years ago.

An important part of my professional development was the opportunity to work for members of the U.S. Senate, and particularly to serve on the staff of the Senaté Banking Committee, where a bipartisan approach to resolving difficult issues is the norm. You know, Senator Roth, when we put together that interstate bankers bill, how closely we all worked together.

Let me thank Chairmen Proxmire and Riegle for whom I worked, and particularly Senator Sarbanes, who introduced me today, for being such a friend and supporter.

I want to thank Chairman Garn, who led the Banking Committee when I arrived on a fellowship from the Justice Department in 1983, and who helped me stay on the committee staff after that fellowship expired.

I also want to thank very much Chairman D'Amato, who was here, for having introduced me and for the very bipartisan manner in which he and his staff run the Banking Committee.

I am enormously grateful to the support given to me by Senators Dodd, as well as Senators Bryan and Moseley-Braun, and many other Senators, including members of this committee like Senator Breaux.

My wife, Dr. Marjorie Mulloy, a special educator of handicapped children, is my best friend and the mother of our three wonderful children. I wish my daughter Maura, who is studying in France, could be here today, but my 17-year-old son, Daniel, and my 14-year-old daughter, Claire, are here. As you know, children always keep you humble in many ways and acutely aware of the things that matter most in life.

Thank you for allowing me to appear before you today. I would be pleased to respond to your questions.

The CHAIRMAN. Well, thank you for your opening statement. Let me say that your family represents the great American story and we are proud of your role in it.

I would just like to acknowledge publicly, Senator Moynihan, what a distinguished role he did play in the Banking Committee, that he was a great factor towards developing bipartisan consensus. I think that is something we are going to need in this trade area as well, so I congratulate him.

I have a series of questions, but I will only ask you one and we will submit the rest. I think there is a total of four.

Would you consider the establishment of a more formal inter-agency working group on enforcement and monitoring that could report to this committee regularly on its progress?

Mr. MULLOY. Mr. Chairman, one of the new things—and it is amazing to think about it—that has been instituted within the trade community and the agencies of the United States over the last couple of years is an actual monitoring and collection of the trade agreements to see what our rights are under the many treaties that have been negotiated.

I am not quite aware of how they are coordinating enforcement. There is a compliance unit for which I will be responsible in the Commerce Department. There is another enforcement unit in the USTR.

The CHAIRMAN. That is right.

Mr. MULLOY. But you can be sure that when I get down there I will make an effort to understand how this is being coordinated throughout the government and will be very much in touch with you and your committee staff, because it could be that we will need additional legislative tools that might have to be fine-tuned a bit if we are going to enforce our rights under these agreements. I will be very much in touch with you and your staff.

The CHAIRMAN. Well, as you know, I have been a long believer that we need restructuring of trade activities. One of my concerns is that, by the division and fragmenting, it too often leads to rivalry rather than cooperation. I say that is true of past administrations as well.

Senator Moynihan?

Senator MOYNIHAN. Yes. Just one quick statement, as much of a question. As you know, Mr. Secretary, as you will be, one of the issues on which the fast track failed in the House was the insistence on the part of some members that the trade negotiations include labor standards, and the resistance on other parts.

Recently, in December, in Germany, Mr. Ruggerio, the new head of the WTO, said, no, there ought not to be labor standards in trade agreements, that is the work of the International Labor Organization. There was for a moment there the prospect that the ILO might launch an initiative to say there are five core labor standards.

We assume every nation has joined the ILO and signed the Philadelphia Declaration of 1944 and has committed itself to those standards. We want a monitoring arrangement where you can inspect to say, yes, they have been maintained, child labor, collective bargaining, things like that. That has faltered.

The executive committee met in Geneva in March and the Indians, the Pakistanis, the Indonesians said no. Now the International Labor Conference comes up in June. It is one way out of the dilemma of the people who, I think with reason, say trade agreements should be concerned with trade.

The ILO, which we have belonged to since 1919, the oldest international organization of its kind, is concerned, those labor treaties are concerned, with trade. They are meant to equalize labor conditions so you can have open trading arrangements, or rather to insulate from trade advantages labor standards.

Can I hope that you will look into this and get the Labor Department, of which is Secretary Herman and others are much interested, but we are not having much luck?

Mr. MULLOY. Senator Moynihan, I agree with you that one of the trade problems is labor. Many people feel that as you globalize the economy, companies move jobs in order to take advantage of lower labor costs, child labor costs, and other things that are going on abroad and it lessens the consensus here to pursue the global approach. So that is a very key thing, that we make sure that there are some ways to look at minimum standards and that someone is looking after these.

I have been over, in preparation for my new position, to meet with Assistant Secretary McGahe at the Labor Department to talk about how we can institute cooperation on issues such as you have raised here today.

Senator MOYNIHAN. Would you check in with Andrew Sammet also? He is Under Secretary and he used to work with this committee.

Mr. MULLOY. Yes.

Senator MOYNIHAN. Thank you very much, sir.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Moynihan. You heard before that we will submit further questions. I ask that the answers be submitted by next Tuesday so that we can proceed expeditiously with the confirmation.

Thank you very much.

Mr. MULLOY. Thank you, Mr. Chairman. Thank you, Senator Moynihan.

Senator MOYNIHAN. Well done.

The CHAIRMAN. The committee is in recess.

[Whereupon, at 1:00 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

DRAFT

DRAFT

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

March 2, 1998

PRESIDENT CLINTON NAMES THELMA J. ASKEY, JENNIFER ANNE HILLMAN, AND STEPHEN KOPLAN AS COMMISSIONERS ON THE INTERNATIONAL TRADE COMMISSION

The President today announced his intent to nominate Thelma J. Askey, Jennifer Anne Hillman, and Stephen Koplan as Commissioners on the International Trade Commission.

Ms. Thelma J. Askey, of Millington, Tennessee, is presently the Staff Director of the Trade Subcommittee of the House Committee on Ways and Means, where she is responsible for developing and scheduling all trade issues coming before the subcommittee, including oversight of multilateral and bilateral negotiations, fast-track extensions, China's MFN status, trade relations with non-market economies and oversight of key bilateral trade relations with Japan, Canada and Mexico. She is the former Minority Trade Counsel of the Trade Subcommittee where she was the principal trade advisor to the Republican members of the committee. In that capacity, she was responsible for developing issues and strategies and monitoring the Administration's trade policy and programs activities. Ms. Askey holds a Bachelor of Arts degree in History from Tennessee Technological University and has completed graduate work in history and international economics at the University of Tennessee, George Washington University and American University.

Ms. Jennifer Anne Hillman, of South Bend, Indiana, served as General Counsel for the United States Trade Representative (USTR) from 1995-1997, where she was responsible for a wide variety of trade matters, including all U.S. government submissions in dispute settlement cases pending before either the World Trade Organization or NAFTA panels as well as all legal work done in connection with trade negotiations. Prior to that position, she served as Chief Textile Negotiator with the Rank of Ambassador for USTR. Prior to her tenure at USTR, Ms. Hillman was the Legislative Director and Counsel to United States Senator Terry Sanford from

North Carolina. She began her professional career in Washington D.C., as an attorney for the firm *Patton, Boggs & Blow*. Ms. Hillman received her B.A. in political science and an M.A. in Higher Education Administration from Duke University. Ms. Hillman received her J.D. from Harvard Law School.

Mr. Stephen Koplan, of Fairfax, Virginia, most recently was the Director for Governmental and Conservation Affairs at Safari Club International. Prior to his position at Safari Club International, he served as a Principal at the law firm of Bayh & Connaughton in Washington, D.C. Prior to his tenure at Bayh & Connaughton, Mr. Koplan was Vice President of Governmental Affairs for Joseph E. Seagram & Sons, Inc., where he directed the federal legislative and regulatory operations of the company with emphasis on tax and foreign trade. Mr. Koplan also served as a Legislative Representative for the AFL-CIO, acting as their chief lobbyist for tax and foreign trade legislation. Mr. Koplan earned a B.A. from Brandeis, a Juris Doctor from Boston University, and a Master of Laws (in taxation) from New York University.

The International Trade Commission (ITC) is an independent, bipartisan, quasi-judicial agency that serves as an impartial fact-finding and analytic body and provides objective and independent analyses of a wide range of international trade issues. The scope of the ITC's authority has been gradually increased to include additional miscellaneous advisory and investigative functions. The ITC is also responsible for administering U.S. trade law remedies and determining if U.S. industries are entitled to relief. In addition, the ITC makes recommendations to the President about such issues as imposing quotas or tariffs.

The White House,

MAR - 3 1998

19

To the

Senate of the United States.

I nominate

Thelma J. Askey, of Tennessee, to

be a Member of the United States International Trade

Commission for the remainder of the term expiring December

16, 2000, vice Peter S. Watson, resigned.

William J. Clinton

**SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE**

The Committee requests the nominee provide the following information in a single written statement by typing each question in full followed by the nominee's response. Please provide three copies of your typed statement to Jane Butterfield, Chief Clerk, 219 Dirksen Senate Office Building, Washington, D.C. 20510.

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)
Thelma Jane Askey
2. Position to which nominated:
Commissioner, International Trade Commission
3. Date of nomination:
March 3, 1998
4. Address: (List current residence, office, and mailing addresses.)
Current residence: 2055 S. Glebe Road
Arlington, Va. 22204
Office address: 1104 Longworth House Office Building
Washington, D.C. 20515
Mailing addresses: Same as above
5. Date and place of birth:
March 12, 1948
Lakehurst NAS, New Jersey
6. Marital status: (Include maiden name of wife or husband's name.)
Single
7. Names and ages of children:

Tatyana Joelle Askey, daughter, age 2 ½ years

8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)

August 1962-June 1966	Millington Central High School
Sept 1966-August 1970	Tennessee Technological University (Bachelor of Arts-August, 1970)
Sept 1971-March 1972	University of Tennessee School of Law
1974-1976	American University (masters program)
1977-	George Washington University (selected economics, trade, statistics, political science classes)

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

1994-present	Staff Director, Trade Subcommittee, Committee on Ways and Means, U.S. House of Representatives
1980-1994	Minority Trade Counsel, Trade Subcommittee, Committee on Ways and Means, U.S. House of Representatives
1976-1980	Assistant Minority Counsel for Trade, Trade Subcommittee Committee on Ways and Means, U.S. House of Representatives
1974-1976	Editor/Researcher for the National Research Council, National Academy of Sciences, Washington, D.C.
1972-1974	Aide/Press Assistant to Congressman John J. Duncan (R-Tenn), U.S. House of Representatives
1971-1972	Staff Assistant, University of Tennessee, Housing Dept.
1970-1971	Head Resident, Dormitory, Tennessee Tech University

10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)

None

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)

Currently: Board of Visitors, College of Arts and Sciences, Tennessee Tech
University, Cookeville, Tennessee
Board of Trustees, U.S.-Japan Society

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

Henson Park Homeowners Association Board of Directors, president
Salvation Army Leadership Council
Signature Theatre Sponsoring Member

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate.

None

- b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Have periodically handed out candidate material at the polls for the
Arlington County Republicans

- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.

The following may not be a complete list; I made no effort to keep records in this area because it is not associated with a tax deduction. However, it is representative (i.e. there would not be an extensive number or amount of contributions not listed):

Friends of John Warner 1996 Committee	\$ 250
Dole for President Inc (1995)	\$1000
Republican National Committee (1996)	\$ 250
Republican National Committee (1996)	\$ 250
Sandy Bushue for Delegate (1997)	\$ 75
Sandy Bushue for Delegate (1997)	\$ 150
Friends of John Warner (1997)	\$ 100
Governor Bush Committee (1997)	\$ 100

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special

recognitions for outstanding service or achievement.)

Various college scholarships

Phi Alpha Theta, honorary history society, Mu Phi Epsilon, honorary music society, and Mortor Board, honorary academic society, all while in college
Commencement Speaker, Tennessee Tech University (1987)

Visitors Programs to the European Union (1992), Australia (1990) and Germany (selected)

Public Policy Staff Award, 1994

1998 Outstanding Woman in International Trade, the Association of Women in International Trade, Inc.

15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

Symposium: "The 1988 Omnibus Trade Bill--Issues and Perspectives,"
Brigham Young University Law Review, 1989

Symposium: "American Trade Policy: Actors, Issues, Options" Yale Law and Policy Review, 1987

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)

In any year, I would do very few formal speeches where I would make a presentation from a prepared text. I have done so for the Economic Strategy Institute, for the American Enterprise Institute, Women in International Trade, and I believe for Brookings. They were general speeches outlining congressional agenda and calling for continued commitment to trade negotiations and trade liberalization. However, because of several changes in computer systems over recent years, no copies of these very few formal speeches exist.

17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)

During the more than twenty years I have served on the Ways and Means Committee, primarily on the Trade Subcommittee, I have gained extensive knowledge about all aspects of the International Trade Commission (ITC). First of all, I have participated in legislative initiatives and exercises that resulted in the current trade statutes under which ITC injury determinations and other decisions are made. These statutes would include section 201, section 337, antidumping and countervailing duty laws, section 332, and section 406. The

subcommittee also conducted oversight over all trade negotiations that, among other matters, would address practices that would impact on ITC functions. These would include the Tokyo Round, the Uruguay Round, the U.S.-Israel Free Trade Agreement, CBI, NAFTA, and the Uruguay Round. Finally, I have been involved over the years in legislative exercises that helped interpret the impact of trade agreements on these laws and agency functions as well as how Congress, as set forth in the statute, report language, and approved statements of Administrative action, would expect trade laws to be interpreted and ITC functions.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

Yes

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.

No

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.

Yes

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

The Agency Ethics Official at the International Trade Commission (ITC) has

indicated that my ownership of stock in General Motors Corporation is an asset that could potentially be affected by the outcome of a current Commission investigation. I have agreed to recuse myself from that investigation or sell the conflicting asset if I am confirmed as a Commissioner prior to the completion of that investigation. However, I would note that the value of that stock in below the de minimus threshold. I am further advised that recusal from this one investigation would not appreciably diminish my participation in the overall work of the agency. Also, I am advised that I own stock in several companies that make products that could possibly become the subject of a Commission investigation, although the agency is not aware that any party contemplates filing a case with respect to any of those products. If an investigation begins that would have a direct and predictable effect on any of the companies in which I own stock, I will either sell the stock, recuse myself from the investigation, or obtain a waiver under 18 U.S.C. 208(b)(1).

2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

None

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.)

Although individual holdings are small, if a case before the Commission presents a conflict of interest, or appearance of such conflict, I will sell the holding, recuse myself from the particular case or matter, or seek a waiver from the chairman as provided under 18 USC 208(b)(1).

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

When I held the presidency of the Board of Directors of the Henson Park Homeowners Association, a homeowner sued me for destroying his property when I removed an unauthorized fence as agreed by the Board; the case was withdrawn.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.

No

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes

Thelma J. Askey
2055 S. Glebe Road
Arlington, VA 22204
April 28, 1998

The Honorable William V. Roth, Jr.
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Roth:

I want to thank you for your consideration, and that of the other Senators on the Finance Committee, with respect to my nomination by the President to be a commissioner of the International Trade Commission (ITC). As you requested, I am pleased to provide written responses to questions you presented at the hearing on April 23, 1998.

1) Ms. Askey, what do you plan to do to reinvigorate the ITC and restore its traditional role in advising Congress on trade matters?

As I said in my statement before the Committee on April 23, I believe it is particularly important to reinvigorate the investigative and analytical role of the ITC and to make its expertise and independence a more visible element in assisting the Administration and Congress in developing trade policy goals and objectives. Doing so would establish a sound factual and analytical basis upon which to consider policy and legislative initiatives, and help to formulate ideas and options for the consideration of policy makers and legislators. Although the reputation of the ITC staff is quite high, I believe they are sometimes not fully and effectively utilized to support policy making and legislative agendas. Also, through broader studies reflective of current economic trends and conditions, the ITC can play a larger role in educating the general population of the merits to the U.S. economy of an active U.S. role in international trade.

In my view the ITC faces three difficulties in serving a more visible and effective role. One is its own mandate to provide independent, objective fact-finding studies and analysis. Should the ITC take greater initiative to put forward ideas or to undertake studies that address controversial elements or conditions in the U.S.

economy, it could have its independence and objectivity called into question. Secondly, the studies requested of the ITC have often been very narrow in scope (such as the state of the piano or salmon fishing industries in America), or specifically tailored to evaluating the impact of trade agreements on individual industries or elements of the U.S. economy. A third reason is the expectations of the Congress and the Administration about the ITC's role. I am personally aware of situations where ideas emerged from ITC experts, but the development of those ideas through further studies was resisted by congressional staff fearing that such ideas might constitute "recommendations" to the Congress and by the Administration who felt their own priorities should take precedence as the ITC directed its resources. The view seemed to be that the ITC should undertake only what was requested of them and limit their activity to the presentation of facts, not the development of ideas or possible options.

I believe these difficulties can be overcome by close coordination with the Committee on Finance and the Committee on Ways and Means, and with the Administration, to develop broader studies that will better define the context in which U.S. laws are applied, new initiatives are developed, and legislative options are considered. The ITC, in consultation with the committees, should review its resources and develop new studies with an eye toward maintaining a high level of respected expertise. Also, in consultation with the committees, the ITC should consider self-initiated and directed studies that will perhaps help better predict future trends and conditions and alert Congress and other policy makers who might have to address issues related to a changing trade environment.

2) You have quite a record from your years at the Ways and Means as a champion of trade liberalization. There have been times, however, that the unfair trade laws that Congress enacted ran counter to the positions you were advocating in your capacity as Staff Director of the Trade Subcommittee. Would you feel comfortable enforcing the unfair trade laws, even when they reflect policies which you opposed?

As I stated in my remarks before the Committee on April 23, I view my experience with the Trade Subcommittee of the Committee on Ways and Means to have instilled in me a greater understanding and respect for the legislative process from which our trade statutes emerged and the commitment Congress has to the effective enforcement and application of those laws. I again pledge to you my best efforts to administer these laws objectively, fairly and vigorously. During my years with the Subcommittee, I hope I have been a strong and effective advocate of the positions of the Members of the Ways and Means Committee, particularly its chairman and the chairman of the Trade Subcommittee. The Members sometimes have divergent views, and that presents special challenges. Those involved in the legislative process, including the Administration and interested representatives of

the private sector, often have competing interests. Once compromises are reached and laws are enacted, these competing interests can sometimes turn into competing interpretations of the law. As a commissioner, if confirmed, I would be required to step out of my earlier role and apply the law as it is, not as earlier advocates hoped it might be. My experience gives me a unique perspective, I believe, that would enable me to faithfully administer the law as written by Congress. I pledge my best efforts and full commitment to that end.

3) Do you see the ITC as having any policy making role under the antidumping and countervailing duty laws?

I do not believe the ITC has any direct policy making role under the antidumping and countervailing duty laws. Congress has set the policy bounds for action under the statute. However, determinations that are made with each case form the context with respect to the application of the law, and that body of "case law" may affect future policy making.

Again, thank you for scheduling a confirmation hearing for the nominees to the International Trade Commission. If confirmed, I look forward to working with you and the Committee in the future. If any further questions arise, please feel free to contact me at your convenience.

Sincerely,

Thelma J. Askey

Thelma J. Askey
2055 S. Glebe Road
Arlington, VA 22204
April 28, 1998

The Honorable Orrin G. Hatch
United States Senate
SR-135
Washington, D.C. 20510

Dear Senator Hatch:

I am pleased to respond to the questions you submitted for me in conjunction with your statement for the hearing record. First, I want to say that I agree completely with the points you made in your written statement. The International Trade Commission (ITC) plays a critical role in the application of a number of U.S. trade laws, including the antidumping statutes, and it is essential that commissioners remain impartial and fair-minded in order to bring unbiased judgement and integrity to the exercise of their duties.

In my statement before the Finance Committee on April 23, I pledged my best efforts to administer the laws objectively, fairly and vigorously if I am confirmed as a commissioner of the ITC. I reaffirm that commitment to you now. Personal and professional integrity require that I seriously consider the responsibilities and obligations of the position for which I am being considered and, if confirmed, undertake them with the full measure of my effort and ability.

Again, I am pleased to respond to your specific questions.

1) Ms. Askey, like the current chairman of the ITC, you are in a somewhat unusual position. You have served on the staff of a committee with primary jurisdiction over our trade laws. As an ITC Commissioner, you will be called upon to enforce the same laws that you have influenced in their creation or modification. As we know, the laws that emerge from this body reflect positions we may take as part of the legislative process. At other times, laws emerge and get enacted that do not reflect our original position.

And so my question, do you feel that you could rigorously support and enforce the laws as they have been written and adopted, even in those situations where the law may not reflect the policy positions that you may have advocated at the time the laws were written, when you were Staff Director on the Ways and Means Subcommittee on Trade?

Yes I do. As I said in my statement before the Committee, I believe my experience as a staff member of the Ways and Means Committee, working exclusively on trade issues since the early 1980's, has given me a unique position to understand the importance of U.S. trade laws and trade agreements as reflected in those laws -- why they were undertaken, what they were intended to accomplish and how they have evolved in the legislative process over the years. I hope that I have been a strong and effective advocate of the positions and approaches of the Members for whom I worked. I know first hand the strong commitment of the Congress, particularly the Ways and Means Committee and the Committee on Finance, to the effective enforcement and application of U.S. trade laws. Those responsible for making the laws, those affected by them and those who must administer and enforce them worked extremely hard for outcomes that would reflect sound policy, be effective in achieving the intended results, and be broadly supported. Our trade laws are a testament to those efforts. However, as a commissioner of the ITC, I would be required to step out of that earlier role and apply the law as it is, not as any advocate from whatever viewpoint hoped it might be. I pledge to do that to the best of my ability.

2) *Some ITC commissioners apply a rule-of-thumb index to determining whether an industry has suffered material injury from unfair trade practices - the rule seems to be that these practices caused the sector to suffer at least five percent in lost revenues. Would you say that this is an arbitrary standard, and is far too high a threshold for material injury, given that the statute defines injury as any harm that is not inconsequential?*

I do not intend to apply any rule-of-thumb index or arbitrary standard when applying the law to individual cases. Cases and the industries involved are unique, with particular sets of circumstances and facts that would bear on the application of the law. Defining material injury as suffering at least five percent in lost revenues may be too high a standard in some instances and too low in others. All relevant economic factions must be considered.

Thank you for your interest and I remain open to answer any further questions that you may have in the future.

Sincerely,


Thelma J. Askey

International Trade Hearing
April 23, 1998
Questions for ITC Nominee, Thelma J. Askey
submitted by Senator Jay Rockefeller

1) *In the 1979 legislative history to the trade statute, Congress made clear that the causation standard to be applied in injury investigations was very low, and that where imports were merely a "contributing cause" of material injury that was sufficient to find injury. Do you agree that the "contributing cause" standard is still the applicable standard based on the 1979 reports, despite the statements of the Court in the Gerald Metals case?*

The statute states that the Commission must determine that material injury has occurred or is threatened by reason of unfairly traded imports. Material injury is defined in the statute as harm which is "not inconsequential, immaterial or unimportant." The body of report language and Statement of Administrative Action makes clear that causes of injury should not be weighed against each other and that material injury from LTFV imports need not have any particular importance when compared to other causes of injury. The Court in the *Gerald Metals* case affirmed that substantial evidence on the record must support a conclusion that the injury is material and that it is by reason of LTFV imports. The Court in *Gerald Metals* and *United States Steel* also ruled that the statute requires "adequate evidence to show that the harm occurred 'by reason of' the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods." However, neither these two court cases, the statute, report language or the Statement of Administrative Action imply that material injury by reason of imports could not be a contributing cause or even that a negligible cause could not itself rise to the level of material. Although the Court in *Gerald Metals* labels certain Senate report language as a "relaxed standard" compared to the statute, I do not believe this is the case. The report language was affirming that the statute does not require causes to be weighed against each other (as some commissioners at the time were attempting to formalize) nor that LTFV imports be a principal, substantial or significant cause of injury. Neither this particular report language nor the body of the legislative history and Statement of Administrative Action obviates the need for the injury to be material and to be by reason of the unfairly traded imports.

2) *Congress also stated in the 1979 legislative history that the International Trade Commission was not to weigh causes of injury in reaching its injury determination. Do you accept this standard or do you believe it is proper for the Commission to weigh other causes of injury against the effects of the unfairly traded imports in its injury analysis?*

The statute does not require that causes of injury be weighed against each other. The legislative history makes it clear Congress does not want the Commission to weigh causes or to establish that material injury by reason of unfairly traded imports has a particular importance when compared to other causes. The Commission must consider all relevant economic factors, which would include other causes of injury, but must only determine whether material injury "by reason of" LTFV imports exists.

3) *In examining the causation standard in a sunset review, do you believe that the standard is the same as the "contributing cause" standard applicable to investigations or is some higher standard?*

The causation standard in a sunset review is the same as that applicable to investigations. In sunset reviews, the Commission determines whether material injury would continue or recur should the order be revoked. A different standard of causation is not stated or implied.

4) *In a five-year review, do you recognize the Commission's obligation to accept the findings of the Commerce Department on the magnitude of the dumping margin or do you believe that the Commission may reexamine this issue on its own?*

The statute requires the Commission to "evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, including...in a proceeding under subtitle B, the magnitude of the margin of dumping." There may be relevant economic factors that would have a bearing on the margin, but the margin found by the Commerce Department would be the one under consideration as provided under the statute. I do not believe there would be a need or a requirement for the Commission to determine a margin on its own.

5) *Do you believe that verification of the accuracy of importer and foreign producer questionnaire responses, in addition to those of the domestic industry, is important in sunset reviews and should be undertaken by the Commission? Would you promote efforts at the Commission to encourage such verifications?*

The statute does not require verification, although currently the Commission conducts spot verifications of certain financial information provided by the domestic industry. I believe the Commission should consider the appropriateness of more expansive verifications, covering both importer and foreign producer as well as domestic industry information, taking into account the resources of the Commission and the extent to which relevant information can be reasonably verified.

6) *Do you think it would be helpful to your analysis to obtain information, both public and proprietary, from the Commerce Department regarding the operations of the foreign producers and importers subject to the sunset reviews? Would you work at the Commission toward establishing a mechanism to encourage such sharing of information between the agencies?*

Under current practice, the ITC may request information, both public and proprietary, from the Commerce Department and other agencies. Commerce is required to supply such information. To maintain its independence and objectivity, it is important for the ITC to collect, analyze, and where appropriate verify information on its own.

7) *If the foreign producers or importers fail to respond to the notice of institution of a five-year review, do you believe it is appropriate to adopt adverse inferences against the non-responding companies in reaching your final determination?*

The statute requires the Commission to rely on best information available if respondents do not cooperate in investigations and draw adverse inferences from this lack of cooperation [Sec. 776(b)]. Section 751(c), governing sunset reviews, states that with respect to inadequate responses from interested parties to a notice of initiation, the Commission is directed to make a final determination based on the facts available, in accordance with section 776. The foreign producer or importer may elect not to respond to the review conducted by the administering authority and an adverse inference is directed with respect to that determination. I believe such adverse inferences could be appropriate in determinations by the Commission in sunset reviews and would carefully consider the facts available to consider what is appropriate in each case.

8) *What role do you think cumulation should play in a five-year review? To the extent that the statutory factors for cumulation are met, do you think the Commission should generally cumulate the unfairly traded imports of the same like product in its sunset analysis?*

Section 752(a)(7) states that the Commission, in sunset reviews, "may cumulatively assess the volume and effect of imports of the subject merchandise from all countries" under certain specific conditions. Also, under this section, the Commission shall not cumulate with respect to a country whose subject imports are likely to have no discernable adverse impact on the domestic industry. I would carefully examine the facts of each case to determine if the statutory criteria is met and cumulation should be applied appropriately.

9) *What weight do you believe should be accorded to the Statement of Administrative Action that accompanied the Uruguay Round Agreements Act? Do you believe that the SAA is akin to legislative history or should it be accorded a different weight?*

The Statement of Administrative Action is approved by the Congress along with the trade agreement itself and the amendments to existing law required to implement the trade agreement. The implementing language incorporating such approval is then signed by the President. Therefore, I would give the SAA greater consideration when applying the statute than legislative history, which normally is not reconciled between the two chambers of Congress.

10) *Do you believe that there is a statutory presumption that an order should be revoked in a five-year review? Are there any presumption that apply in sunset analysis?*

I do not believe the statute establishes any presumptions in sunset reviews. The statute states in section 751(c) that the Commission is to determine whether revocation of the countervailing or antidumping duty order would be likely to lead to continuation or recurrence of dumping or a countervailing subsidy and of material injury. Under section 751(d)(2), the statute provides that in a sunset review, the administering authority "shall revoke a countervailing duty order or an antidumping order...unless" Commerce determines it would be likely to continue or recur and the Commission makes a determination that material injury would be likely to continue or recur. Thus, the Commission is making its injury findings without presumptions or burdens of persuasion.

11) *Question with respect to the evaluation of relevant economic factors in the context of the business cycle, referencing two past cases.*

The statute requires that the Commission evaluate all relevant economic factors specified in the statute "within the context of the business cycle and conditions of competition that are distinctive to the affected industry." The statute also provides that the Commission may consider "other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports." The statute makes it clear that the business cycle is the framework within which to consider the relevant economic factors; but one of those relevant factors certainly could be the fact that the existence of temporary cyclical trends can mask real harm being caused by unfairly traded imports, as noted in Senate report language. I feel I cannot comment on the outcome of any particular case decided in the past by earlier commissioners. I am confident that they took their responsibilities very seriously and spent a great deal of time considering all the evidence on the record, including all of the relevant economic factors. Some of the information before

them may have been confidential or proprietary. Should I be confirmed as a commissioner, I will have all the evidence before me for a particular case as it arises and will carefully consider the relevant economic factors within the context of the business cycle.

12) *As you may already know, or no doubt will soon discover, respondents in Title VII cases often argue that any injury being suffered by the domestic industry is not the result of unfairly traded imports, but rather is the result of the U.S. producers' inability to compete, whether it be because of poor cost management, the inferior quality of U.S. products, and so forth. It certainly is appropriate, under the statute, for the Commission to consider alternative causes of injury, including the argument that an industry's woes are self-inflicted. Indeed, in the legislative history to the 1979 Trade Agreements Act, this Committee states that alternative causes include not only such factors as the effects of fairly traded imports, and contraction in demand, but also "developments in technology" and the "productivity of the domestic industry." However, as the Court of International Trade has observed, "importers take the domestic industry as they find it." In other words, many factors can contribute to a domestic industry's woes, including, in some cases, a lack of competitiveness. However, it is not the function of the ITC to weigh causes, but to determine if one of those causes is unfairly trade imports.*

With this in mind, I would like to ask how you might respond to the argument that despite consistent price underselling by dumped imports and anecdotal evidence of lost sales based on the lower price of the imports, the cause of injury to the industry is the fact that U.S. producers brought on additional capacity, thereby leading to excess supply, and thus declining prices, in the market?

Again, the question before the Commission is whether injury caused by unfairly traded imports is material, not whether other causes of injury, such as lack of competitiveness or poor business decisions, might also be present. I have elaborated on this point in questions 1 and 2. I would carefully consider all relevant economic factors and evaluate all the evidence on the record to determine whether the requirements of the statute are met with respect to any particular case.

13) *The legislative history to the Uruguay Round Agreements Act suggests there can be more than one likely outcome as the result of the revocation of an antidumping or countervailing duty order. If injury is one likely outcome, this legislative history indicates that the order should be continued. Do you agree that this indicates the ITC should give the domestic industry the benefit of the doubt in close cases?*

I would not approach sunset reviews, or regular investigations for that matter, from the point of view of giving any interested party the benefit of the doubt. Commissioners must be objective and fair-minded and carefully consider all the relevant economic factors involved. I agree that there can be more than one likely outcome when considering what would happen to a domestic industry should a countervailing duty or dumping order be revoked. The question is whether that outcome constitutes material injury by reason of imports. Please see my responses to questions 1 through 3 for further elaboration.

International Trade Hearing

April 23, 1998

Questions for ITC Nominee, Thelma J. Askey
submitted by Senators Connie Mack and Bob Graham

1) *For roughly the past 20 years, the ITC has applied a "relaxed standard" when determining material injury resulting from "dumping." This standard essentially required that the dumped goods must be a cause of injury to the domestic industry, but need not be the substantial cause. In contrast to the domestic application, the Uruguay Round set a higher standard suggesting the "dumping" must be the substantial cause of injury. Which do you consider the appropriate standard, and why?*

In antidumping cases, the statute requires the International Trade Commission (ITC) to determine that "an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of that merchandise." Material injury is defined under Section 771(7) of the Tariff Act of 1930 as "harm which is not inconsequential, immaterial, or unimportant." This is the appropriate standard to apply.

In *Gerald Metals v. the United States*, the Court does reference Senate report language which said that the Commission need not "contemplate that the effects from subsidized imports be weighted against the effects associated with other factors....which may be contributing to overall injury to an industry; nor is the issue whether the imports are the principal, a substantial, or a significant cause of material injury" and labels the report language as a more "relaxed standard" compared to U.S. law. I do not believe this is the case. The Senate language was designed to check certain commissioners who at the time were attempting to construct a formalized system for weighing causes, and comparing the various causal effects to each other, perhaps leading to a conclusion that material injury caused by LTFV imports required a certain level of importance when compared to other injurious factors. The Senate report language clarifies that the statute does not contemplate that causes of injury be weighed against each other or that material injury by reason of imports have any significance relative to other factors. I believe this is the correct interpretation of the statute. The Senate report language does not change the requirement to establish material injury or that injury be caused by LTFV imports. In the past, the Court of Appeals has checked the ITC both for requiring too much and for requiring too little, based on substantial evidence on the record, in establishing material injury by reason of imports.

Also, I believe U.S. law is consistent with the Uruguay Round Final Act, which does not require that LTFV imports be the substantial cause of injury. Congress recognized this consistency when it directly approved all three elements — the agreements, the Statement of Administrative Action and the statutory language implementing the necessary changes in U.S. law — as part of the Uruguay Round Agreements Act. In any case, the U.S. law is what must be applied by commissioners when exercising their statutory responsibilities. It is clear from the statute and legislative history that material injury by reason of imports need not be substantial or in any way predominant among causes of injury to a domestic industry.

2) In the recent past, when considering Section 201 cases, the Commission has been split on the question of using "seasonality" as a factor in defining the relevant agricultural market. Given the unique characteristics of perishable commodities (i.e. short shelf life), can you think of any reasons why the relevant agricultural market could not be defined on the basis of "seasonality"? Do you agree that it is an important factor that should be considered?

In Section 201, the statute states that the Commission shall determine "whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article." Two exceptions are specified in the statute. The Commission may determine to treat as the domestic industry: (1) only the portion or subdivision producing the like or directly competitive article of a producer of more than one article; or (2) only production concentrated in a major geographic area under certain specified circumstances. The statute, the Statement of Administrative Action, and the legislative history do not indicate that only the seasonal production of a domestic industry may be considered. The Commission has followed this interpretation. Also, I am aware from my experience on the Trade Subcommittee of the Committee on Ways and Means that several attempts have been made over the years, including by Members for whom I worked, to establish seasonality as an exception when determining the domestic industry in 201 cases. Those efforts have not been successful thus far. Therefore, I am confident that the statute does not indicate such a result. However, seasonality can be an important, even significant factor, in determining whether serious injury is being caused by imports of the like product and as such should be given due consideration. In addition, separate statutory provisions provide for provisional expedited relief when perishable products (including products with a short shelf-life) are involved.

3) *This summer, the ITC will commence sunset reviews of more than 300 duty orders. In reviewing these orders, Congress has provided the ITC with the authority to conduct expedited reviews where there is insufficient interest among parties for a full review. It is our understanding that Congress has also admonished the ITC not to apply a strict numerical threshold in determining whether there is sufficient interest for a full review. Given this background, how would you define the threshold for sufficient interest?*

A strict numerical threshold should not be applied when determining whether there is sufficient interest for a full sunset review. A review of the draft regulations the ITC has proposed for conducting sunset reviews shows that the agency is not contemplating a definitive numerical standard. The draft regulations have outlined numerical parameters in order to provide guidance to industries seeking review. However, it is made clear that factors in the industry rather than any numerical threshold will determine whether there is sufficient interest to proceed, noting that industries that are either concentrated or widely dispersed would have different criteria applied when making a determination of interest. I believe that this is the correct approach.

JOHN BREAUX
LOUISIANA

SENATE
CHIEF STAFF MEMBER
CONSULTANT

COMMERCE, SCIENCE, AND
TECHNOLOGY

FINANCE

SPECIAL COMMITTEE ON ABUSE

Washington Office
202 522-0222
202 522-0223

Internet: jbreaux@sen.gov
<http://www.senate.gov/~johnb>

United States Senate
WASHINGTON, DC 20510-1603

May 14, 1998

STATE OFFICES

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San Antonio, LA 78202
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The Pierre Office
703 Johnson Street, Room 102
Lafayette, LA 70501
(504) 342-0271

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111 North St. Louis, Suite 101A
Monroe, LA 70201
(713) 382-3200

New Orleans Office, Suite 100
501 Poydras Street, Suite 1000
New Orleans, LA 70112
(504) 392-0201

Custom Legislation
(504) 392-0202

Ms. Thekla J. Askey
International Trade Commission Nominee
U.S. International Trade Commission
Room 718
500 B Street, S.W.
Washington, DC 20436

Dear Ms. Askey:

I want to thank you for your appearance before the Senate Finance Committee and your cooperation in answering member's questions regarding your nomination as a commissioner on the International Trade Commission.

I was unable to ask each of the nominees an important question about anti-dumping at your confirmation hearing, and I would appreciate knowing your thoughts on it. The antidumping statute directs that the ITC, "in each case," "shall consider" three factors: (1) the volume of imports of the subject merchandise, (2) the effect of imports of that merchandise on prices in the U.S. for like products, and (3) the impact of imports of such merchandise on domestic producers of like products. 19 USCA 1677(7)(B). The "in each case" language was added in 1988 after Congress learned that some commissioners were not regularly considering the mandatory statutory factors. However, even today, there are commissioners who do not consider these factors in cases where they find domestic industry to be profitable or healthy. As a result, dumping which is injurious to such an industry could continue unabated. If you are confirmed as a commissioner, may the Congress rely on you to consider these three statutory factors in each case that comes before you?

Again, thank you for your cooperation. I look forward to your reply, and would appreciate receiving it as soon as possible.

Sincerely,


JOHN BREAUX
United States Senator

JB/jhl

Thelma J. Askey
2055 S. Glebe Rd.
Arlington, VA 22204
May 18, 1998

Senator John Breaux
United States Senate
516 Hart Office Building
Washington, D.C. 20220

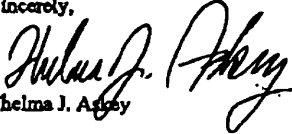
Dear Senator Breaux:

I appreciate your consideration of my nomination by the President to be a commissioner of the International Trade Commission (ITC).

In response to the question contained in your letter of May 14, each commissioner has the responsibility to determine, based on the criteria specified in the statute and all relevant factors, whether a domestic industry which produces a domestic like product is being materially injured by reason of imports. I agree with you that the statute requires that "in each case" the three factors enumerated in section 771 (T)(B) of subtitle D of title VII of the Tariff Act of 1930, as amended, be considered. If confirmed as a commissioner, I intend to apply the law in this manner to the best of my ability.

Again, thank you for your interest and consideration.

Sincerely,



Thelma J. Askey

[SUBMITTED BY SENATOR GRAHAM]

United States Senate
WASHINGTON, DC 20510-0903

March 5, 1997

The Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, DC 20506

Dear Mr. President.

The International Trade Commission currently has two vacancies and another Commissioner's term expires in December of this year. New appointments to the International Trade Commission can drastically affect the enforcement of United States trade laws against unfair practices, greatly impacting American industry and workers. With reauthorization hearings to begin in 1998, this commission becomes even more crucial to our trade policy.

While such appointments by law must be politically balanced, they also must be representational of the numerous trade interests found within the domestic market. Thus, nominees for the International Trade Commission should not only have substantive knowledge of the appropriate laws but also practical experience in their application, whether in business, agriculture, labor, or government. Currently, there is no commissioner with substantive knowledge of agricultural trade issues, although agricultural products account for over 12 percent of total United States' exports. Nearly every state exports farm products. More importantly, our trade surplus in agricultural products is the largest of any economic sector. This surplus increased by 36% in 1995 to \$28.5 billion.

Mr. President, I ask that you remember the crucial role the International Trade Commission plays in our trade policy and give careful consideration to the criteria involved in selecting appropriate nominees. It has been many years since an individual with substantive knowledge of agricultural issues has been appointed to the commission. Recognizing the importance of agricultural trade to our economy, I urge you to consider a nominee with such a background.

Sincerely,



United States Senate

WASHINGTON, D.C. 20510

June 9, 1997

The Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

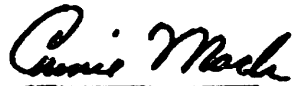
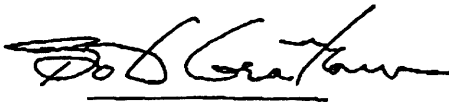
Dear Mr. President:

The United States International Trade Commission currently has two vacancies, and another Commissioner's term expires in December of this year. We urge you to nominate a Commissioner with substantial knowledge of agricultural trade issues for at least one of these vacancies.

Nearly every state exports farm products, and agricultural trade accounts for almost \$60 billion in exports each year. More importantly, our trade surplus in agricultural products is the largest of any economic sector. New appointments to the International Trade Commission can drastically affect the enforcement of United States trade laws against unfair practices, greatly impacting American industry and workers. With reauthorization hearings to begin in 1998, this commission becomes even more crucial to our trade policy. As the number of agricultural cases before the International Trade Commission increases, the appointment of an appropriate Commissioner is critical to American agriculture.

Mr. President, we ask that you remember the crucial role the International Trade Commission plays in our trade policy and give careful consideration to the criteria involved in selecting appropriate nominees. It has been many years since an individual with substantive knowledge of agricultural issues has been appointed to the commission, reversing a long standing tradition. Recognizing the importance of agricultural trade to our economy, we urge you to consider a nominee with such a background.

Sincerely,



The Honorable William Jefferson Clinton
June 9, 1997
Page Two

Carl Brashear

Tim Ball

Paul Wellstone

Chuck Grassley

Max Cleland

Richard Shelby

Jeane Helms

Sam Alberman

Carl Levin

Tom Harkin

Paul Simon

Paul Ryan

Al Franken

Paul Lehman

Pat Bond

Al McConnell

Bill Condon

Jack Hainbuch

The Honorable William Jefferson Clinton
June 9, 1997
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Max Baucus

Mark L. ...

Byron D. ...

Myra G. ...

Richard ...

Paul S. ...

Tim ...

Dale ...

Susan Collins

Jim ...

STATEMENT OF
SENATOR ORRIN G. HATCH
BEFORE A HEARING ON
NOMINATIONS TO
THE UNITED STATES INTERNATIONAL TRADE COMMISSION
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
WASHINGTON, D.C.
APRIL 23, 1998

Mr. Chairman, I want to join your welcome of our distinguished nominees for the U.S. International trade Commission.

The ITC has become an increasingly important element in this country's trade management structure. We must have only the best-qualified candidates for this independent commission. Their decisions reach to the very heart of our economy, which is now dependent more than ever on export growth.

But we cannot separate exports from imports when we undertake serious trade analyses. And indeed the problem of trade management is made even more complex when we balance our need to export with our society's demand for foreign imports - which for the U.S. is a right that we append to our other democratic practices.

It is this continual dispute between market access for U.S. exports and market access by other nations to our import market that makes the ITC so critical to our trade policy. Where imports face challenges from U.S. businesses as to the justification of their presence in the U.S. market, specifically where an anti-dumping case is brought, the ITC role becomes well-defined.

ITC, among other functions, will consider all of the factual, legal and economic issues in the course of an investigation, aided by the Commerce Department. The capability of the ITC to disarm the charges or, conversely, to carry the investigation forward constitutes a form of considerable public authority, power and influence over trade policy. Our commissioners must be fair-minded. They assume adjudicatory

functions that require untainted judgmental integrity. It is for these reasons that this committee, and its Subcommittee on International Trade, both led by distinguished chairmen, review anti-dumping cases and ITC candidates with such intensive rigor.

Whether the case involves sporadic, predatory or persistent dumping, an affirmative finding can lead to remedial or punitive anti-dumping duties. These are intended to nullify the harms found through government investigations, including the preliminary and final inquiries and decisions of the ITC. I do not deny that there remains an evolving nature of our anti-dumping laws. They evolve along with the flow of trade, which is growing at a rate much faster than our apparent ability to manage it, in my opinion. This means that, more than ever, enlightened, fair-minded commissioners must be at the ITC helm.

The effects of ITC decisions, as I suggested earlier, are not trivial. They have been successfully brought by a number of critical sectors in our society. These include cement, steel, pipes and tubes, raspberries, canned pineapple fruit, pasta, fresh garlic, kiwi fruit, Atlantic Salmon, chemicals and pharmaceuticals, advanced technology products (such as semiconductors), and dozens of other types of goods.

My state, Utah, despite its small size, has been spared severe economic dislocations from a number of past ITC decisions affecting cement, chemicals, semiconductors, pipes and tubes, cut flowers, and steel. Virtually all members on this committee have also been affected, and therefore theoretically, at least, have a commitment to and interest in workable anti-dumping laws as a unilateral remedy against unfair foreign trade practices. While I speak only for myself on this subject, I repeat my insistence that our ITC commissioners assure this committee of their fair-mindedness on this important defense against such foreign trade practices.

Mr. Chairman, while I support the panel of nominees for the ITC, as well as the nomination of Patrick Mulloy as Assistant Secretary of Commerce for Market Access and Compliance, I am submitting two questions for the record to be answered by nominee Thelma Askey. Hopefully we will receive her written replies promptly.

In the meantime, Mr. Chairman, I repeat my commitment to the nominees before us, and thank the chair.

The White House,

MAR - 3 1998

19

To the

Senate of the United States.

I nominate

Jennifer Arne Hillman, of Indiana,

to be a Member of the United States International Trade

Commission for the term expiring December 16, 2006, vice Don

E. Newquist, term expired.

William J. Clinton

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name: Jennifer Anne Hillman
2. Position to which nominated: Commissioner at the International Trade Commission
3. Date of nomination: March 3, 1998
4. Address: 4719 Sedgwick Street, N.W.
Washington, D.C. 20016
5. Date and place of birth: January 29, 1957; Toledo, OH
6. Marital status: married to Mitchell R. Berger
7. Names and ages of children: Benjamin Stanley Berger, 2 years old (12/05/95)
8. Education:

Jackson High School, South Bend, Indiana,
1971-1975, high school diploma, June 1975

Duke University, Durham, North Carolina
1975-1978, A.B. Degree, Magna Cum Laude, December 1978

Duke University, Durham, North Carolina
1978-1979, M.Ed. Degree, December 1979

Harvard Law School, Cambridge, Massachusetts
1980-1983, J.D. Degree, June 1983

9. Employment record:

Assistant to the Chancellor, Duke University, Durham, NC
June 1979-August 1980

Summer Associate, Mayer Brown & Platt, Chicago, IL
June 1981-August 1981

Freshman Proctor, Harvard University, Cambridge, MA
 September 1981-June 1982
 September 1982-June 1983

Summer Associate, Patton Boggs, Washington, D.C.
 June 1982-July 1982

Summer Associate, Morrison & Foerster, San Francisco, CA
 July 1982-August 1982

Associate, Patton Boggs, Washington, D.C.
 October 1983-December 1986

Legislative Assistant, U.S. Senator Terry Sanford (D-NC), Washington, D.C.
 December 1986-December 1989

Legislative Director, U.S. Senator Terry Sanford (D-NC), Washington, D.C.
 December 1989-December 1992

Deputy Cluster Coordinator for Financial Institutions, Presidential and Vice-Presidential
 Transition, Washington, D.C.
 November 1992-January 1993

Consultant, U.S. Department of Commerce, Office of the Secretary, Washington, D.C.
 February 1993-March 1993

Ambassador and Chief Textile Negotiator, Office of the United States Trade
 Representative, Washington, D.C.
 March 1993-July 1995 (rank of Ambassador conferred in September 1993)

General Counsel, Office of the United States Trade Representative, Washington, D.C.
 July 1995-March 1997

Consultant, Office of the United States Trade Representative, Washington, D.C.
 April 1997-present

10. Government experience: none other than that listed above

11. Business relationships:

Trustee, Duke University, Durham, NC
 1977-1980

Capital PEBSO, District of Columbia corporation

I was involved in drafting papers to incorporate this corporation while working as an associate at Patton, Boggs. I was listed as a director of Capital PEBSCO, but I never attended any board meetings or received any compensation or was involved in any corporate decisions for Capital PEBSCO.

12. Memberships:

Member, District of Columbia Bar
 Member, U.S. Court of International Trade Bar
 Member, U.S. Court of Military Appeals Bar
 Volunteer Teacher, Sacred Heart Adult Learning Center
 Member, Georgetown Presbyterian Church
 Member, Council on Women's Studies, Duke University, Durham, NC
 Member, Supporters Council, Habitat for Humanity
 Member, Dean's Club, Duke University
 Member, Friends of the National Zoo
 Member, Who's Who in America

13. Political affiliations and activities

- a. All public offices for which you have been a candidate: none
- b. All memberships and offices held in and services rendered to all political parties or elections committees during the last 10 years:

Issues Director, Sanford for Senate, 1992
 Campaign Volunteer, Sanford for Senate, 1986

- c. All political contributions of \$50 or more for the past 10 years:

12/17/89	John Kerry for Senate	\$100.00
10/30/90	David Price for Congress	\$ 50.00
9/20/90	Democratic Campaign Committee	\$ 50.00
7/5/90	Harvey Gantt for Senate	\$100.00
6/28/90	David Price for Congress	\$100.00
3/13/90	Evelyn Murphy for Governor	\$100.00
12/20/92	Emily's List	\$100.00
11/16/92	DSCC .	\$200.00
10/20/92	David Price for Congress	\$ 50.00
5/20/92	Carol Mosley-Braun for Senate	\$ 70.00
3/13/93	Democratic National Committee	\$100.00
5/13/93	Democratic National Committee	\$100.00

2/05/94	Emily's List	\$ 50.00
2/05/94	Don DeArmon for Congress	\$ 50.00
5/08/94	DSCC Women's Council	\$100.00
5/09/94	Emily's List	\$100.00
5/09/94	DNC/Federal Account	\$100.00
6/10/94	David Price for Congress	\$100.00
6/10/94	Emily's List	\$100.00
8/26/94	DSCC/Emily's List Committee	\$100.00
8/26/94	Emily's List	\$ 50.00
10/10/94	Lauterer for Congress	\$100.00
10/10/94	Eva Clayton for Congress	\$ 75.00
10/10/94	Wynia for Senate	\$ 50.00
10/10/94	Richard Moore for Congress	\$100.00
10/10/94	McGuire for Congress	\$ 50.00
10/10/94	DCCC Women in Congress	\$100.00
10/10/94	DNC	\$100.00
10/10/94	Campbell for Governor	\$ 50.00
11/20/94	DCCC	\$ 75.00
2/05/95	Emily's List	\$100.00
4/07/95	Emily's List	\$125.00
8/06/95	Clinton/Gore '96 Primary	\$100.00
8/07/95	Emily's List	\$100.00
8/20/95	DNC	\$100.00
10/25/95	David Price for Congress	\$250.00
3/03/96	Mikulski for Senate	\$ 50.00
3/06/96	Emily's List	\$250.00
3/07/96	David Price for Congress	\$100.00
3/06/96	DSCC	\$ 50.00
3/27/96	Natalie Davis for Senate	\$250.00
5/27/96	Emily's List	\$425.00
7/05/96	DNC	\$125.00
7/17/96	McCarthy for Congress	\$100.00
8/17/96	Emily's List	\$150.00
8/31/96	DNC	\$ 50.00
8/31/96	DSCC	\$100.00
8/31/96	Mikulski for Senate	\$100.00
9/27/95	Price for Congress	\$250.00
9/30/96	Don Mooers for Congress	\$250.00
12/13/96	Emily's List	\$125.00
5/02/97	Mikulski for Senate	\$ 50.00
11/07/97	DSCC	\$100.00
1/19/98	Mosley-Braun for Senate	\$100.00
1/19/98	Price for Congress	\$ 50.00

1/27/98

Martin for Senate

\$500.00

14. Honors and Awards:

Phi Beta Kappa
Kappa Delta Pi (education honor society)

15. Published writings: none

16. Speeches:

I gave a number of informal speeches on trade issues while serving as the Ambassador and Chief Textile Negotiator and the General Counsel at USTR. However, none of them were formal speeches delivered from a prepared text.

17. Qualifications:

I have worked in and around trade policy ever since graduating from law school in 1983. My first years as a young law associate were spent working almost exclusively on international trade cases, particularly antidumping, countervailing duty and Section 337 cases. I was involved in researching and drafting briefs for such cases and in preparation for appearances before the International Trade Commission. Such work was done for a variety of domestic industries.

Upon leaving private practice, I began working for Senator Terry Sanford, where I was responsible for all matters coming before the Committee on Banking, Housing and Urban Affairs, as well as all international trade issues. I did all of the work in the Sanford office related to the 1988 Omnibus Trade Act, as well as all other trade legislation, during the six years that I worked in the Senate. As such, I was involved in assessing changes in trade law and the implications of such changes on a large variety of North Carolina industries and interests, including academic interests, commercial, labor, and importer groups.

After a transition period upon leaving the Hill, I began work at the United States Trade Representative's Office in March of 1993 -- a critical time in trade policy, with the work of both the NAFTA and the completion of Uruguay Round facing USTR. During my first two years, I handled all aspects of trade in fiber, yarn, textile and clothing products, including drafting all documents related to the textile provisions in the NAFTA and conducting the final negotiations on the textile related provisions affecting both quotas and tariffs during the Uruguay Round. I was also responsible for drafting all of the textile related provisions in the Uruguay Round Agreements Act and the Statement of Administrative Action that accompanied the legislation. In addition, I negotiated bilateral textile agreements with 38 countries. During that period, I was also very familiar with all ITC reports and actions relating to textiles and clothing.

In July of 1995 I became the General Counsel at USTR. In that position, I became familiar with virtually all aspects of our trade policy and trade laws. I was responsible for overseeing USTR's participation in all disputes under both the NAFTA and WTO and for USTR's response to all ITC actions, including Section 201 cases. I was also responsible for preparing or assisting with USTR's submissions to the Congress, particularly with respect to Section 301 and so-called Super 301, as well as annual reports on intellectual property and government procurement. In addition, I was given the opportunity to work closely with the Congress on a number of USTR initiatives as well as to testify on a variety of matters.

I believe that my broad exposure to and experience working in the international trade field make me well qualified to serve as a Commissioner on the International Trade Commission. Working in the trade area for nearly fifteen years has given me good deal of understanding about our trade laws and how trade affects U.S. companies, workers and importers. I believe that I can put that experience and understanding to good use at the International Trade Commission and if confirmed, look forward to the opportunity to do so.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? Yes
2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? No
3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? No
4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election? Yes

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated: None.
2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated: None
3. Describe any activity during the past 10 years in which you have engaged for the purpose of

directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed: None

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items:

I intend to follow the advice given to me by the Ethics Counsel at the International Trade Commission and the Office of Government Ethics. I am willing to divest any financial holding that I am advised could involve a conflict of interest or potential conflict of interest.

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer or the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position

6. Question for nominees for United States Trade Representative and Deputy United States Trade Representative: Not applicable.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group?: No

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense?: No

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation?: Yes. I was a plaintiff in a class action case brought by a group of condominium owners before the Maryland Real Estate Commission against a realtor who had made false representations when selling a group of condominiums. The Maryland Real Estate Commission found in favor of our plaintiff group.

4. Have you ever been convicted (including plea of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense?: No

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.: None

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the congress on such occasions as you may be reasonably requested to do so? Yes.

2. If you are confirmed by the Senate, are you willing to provide such information as is request by such committees? Yes.

**RESPONSES TO QUESTIONS OF JENNIFER HILLMAN
NOMINEE TO BE A COMMISSIONER AT THE ITC
FROM THE SENATE FINANCE COMMITTEE**

Questions from Chairman Roth

Q. 1. What do you plan to do to reinvigorate the ITC and restore its traditional role in advising Congress on trade matters?

A: The ITC's advice to the Congress has most typically comes in the form of specific requests for advice on particular trade matters pursuant to section 332 of the Tariff Act of 1930, or Congressionally mandated annual reports, or occasionally studies instituted by the Commission on its own initiative. A few things that could be done to reinvigorate the process would be to engage in a broader dialogue with the Congress about some of the larger trade policy concerns the Congress is facing, so that the reports that are issued are providing more cutting-edge, broad based analysis and advice, rather than simply responding to annual reporting requirements or requests for section 332 studies on fairly narrow topics. In addition, more could be done to coordinate such broad-based studies with the other trade-related government agencies to ensure that the disparate knowledge and expertise found in many of the government agencies is incorporated into any wide-ranging studies or advisory documents that are prepared, while still preserving the independent, non-partisan nature of the ITC's advice. Finally, reinvigorating the ITC advisory role will require adequate resources to ensure that the ITC has the staff necessary to provide thorough, objective and nonpartisan analysis and advice at the same time the Commission is faced with a tripling of its caseload as a result of the mandate to conduct sunset reviews of all outstanding antidumping and countervailing duty orders. Sufficient support for the ITC is critical to ensuring that the Commission can continue to provide reliable, impartial and in-depth trade information.

Q. 2. Beyond the ITC's role as an adviser to congress, we ask the Commission to administer the provisions of our trade laws. How do you view your role as a commissioner in that process — is it one of creating law or one of enforcing the laws written by Congress?

A: I see my role as a Commissioner as one of enforcing the laws written by Congress with respect to the Title VII, Section 337 and Section 201 cases on which the Commission makes determinations. I believe each such determination must be made on a case-by-case basis following a thorough review of all of the facts in the case and a careful review of the law as set forth by the Congress in enacting the trade laws.

Q. 3 I have heard some express concern about the consistency of our unfair trade laws with our obligations under the WTO. Some suggest that the ITC simply assumes that, if the Commerce Department has found a subsidy, there is necessarily a causal link between the unfairly traded

imports and injury to the domestic industry, as long as other statutory factors are met. In your view, is that an accurate statement of the Commission's practice and would such an assumption be sufficient to satisfy the causation requirement provided in U.S. law as well as in the WTO subsidies and dumping agreements?

A: I do not believe that is an accurate statement of the Commission's practice. Indeed, in looking at the disposition of countervailing duty investigations over the period of 1980-1996, the statistics show that of the 383 countervailing duty cases with final dispositions during that period, only 22.2 percent had a final affirmative Commission determination, while 46 percent had a negative Commission determination at the preliminary stage and 25 percent had a negative Commission determination at the final stage. Those figures make it clear that affirmative determinations are clearly not simple assumptions on the part of the Commission in every case in which subsidies have been found to have been provided to the imports under investigation.

Moreover, the Commission, in making its determination, is required to consider the volume, price and impact of the subject imports. In evaluating volume, the Commission is required to consider whether the volume of imports, or any increase in the volume of imports, is significant. In looking at the effect on prices, the Commission is required to consider whether there has been significant price underselling by the relevant imports as compared to the domestic like product, and whether the imports have depressed or suppressed prices of the domestic like product to a significant degree. In evaluating the impact of imports, the Commission is required to evaluate all economic factors, including such things as: 1) the actual and potential declines in output, sales, market share, profits, productivity, return on investments and utilization of capacity; 2) factors affecting domestic prices; 3) actual and potential negative effects on cash flow, inventories, employment wages, growth ability to raise capital and investment; and 4) actual and potential negative effects on the existing development and production efforts of the domestic industry. Those economic factors cannot simply be assumed to show material injury just because imports are being subsidized.

Questions of Senators Mack and Graham

Q.1. For roughly the past 20 years, the ITC has applied a "relaxed standard" when determining material injury resulting from "dumping." This standard essentially required that the dumped goods must be a cause of injury to the domestic industry, but need not be the substantial cause. In contrast to the domestic application, the Uruguay Round set a higher standard suggesting that "dumping" must be the substantial cause of injury. Which do you consider the appropriate standard, and why?

A: I do not believe the Uruguay Round either intended to or did change the standard for determining material injury in dumping cases. First the WTO Agreement itself states that "it must be demonstrated that the dumped imports are, through the effects of dumping, as

set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement" (WTO Antidumping Agreement, Article 3.5, emphasis added). The WTO Agreement does not use the phrase or imply that dumping must be the "substantial cause."

Moreover, as the Statement of Administrative Action (SAA) that accompanied the WTO Agreement when it was sent to the Congress notes, the WTO Antidumping Agreement "closely parallels existing U.S. law and practice" and adds that the changes made in U.S. law "do not diminish in any meaningful way the level of protection afforded U.S. industries from dumped imports." The SAA specifically states in the section on determination of injury "Like the 1979 code and U.S. law, Article 3.5 requires that national authorities examine all the information presented and determine whether there is a sufficient causal link between unfairly traded imports and the injury to the domestic industry." (emphasis added). Again, nothing in the SAA suggests that the WTO Agreement did or was intended to change the standard of causation. Finally, the Congress, in enacting the Uruguay Round Agreements Act, did not change the standard of causation that had previously existed in the 1979 Tokyo Round Codes because existing U.S. law already fully implemented the causation standard of the 1979 Codes.

Q. 2. In the recent past, when considering §201 cases, the commission has been split on the question of using "seasonality" as a factor in defining the relevant agricultural market. Given the unique characteristics of perishable commodities (i.e., short shelf life), can you think of any reasons why the relevant agricultural market could not be defined on the basis of "seasonality"? Do you agree that it is an important factor that should be considered?

A: Section 201 cases involve a determination by the Commission as to whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to a domestic industry. In making this determination, the Commission must first define both what producers constitute the "domestic industry" and what domestic products are considered "like" the products being imported. As you may know, when the House Ways and Means Committee held a hearing on your legislation to give the ITC the clear discretion to make Section 201 injury determinations based on separate seasonal industries, I testified as the Administration's witness in favor of such legislation. I noted at that time that the issue related both to whether, for example, a "winter" perishable item was indeed "like" a "summer" crop of the same item and whether the industries producing "winter" products must be aggregated with those producing "summer" products when examining whether the producers as a whole of the like product are being injured. Given that the Commission determines "like" product on a case-by-case basis, relying on a number of factors including the interchangeability of the products, price, and channels of distribution, I believe it is entirely appropriate for the Commission to consider the seasonal nature of a product in certain particular cases.

Q.3. This summer, the ITC will commence sunset reviews of more than 300 duty orders. In

reviewing these orders, Congress has provided the ITC with the authority to conduct expedited reviews where there is insufficient interest among parties for a full review. It is our understanding that Congress has also admonished the ITC not to apply a strict numerical threshold in determining whether there is sufficient interest for a full review. Given this background, how would you define the threshold for sufficient interest?

A: As you know, the ITC is in the process of finalizing the regulations that will govern the conduct of the five-year sunset reviews. In the Notice of Proposed Rulemaking it published last October, the Commission stated that it did not intend to "rely solely on numerical tests" in evaluating the adequacy of responses, thereby reflecting the Congressional admonition not to apply a strict numerical threshold. The Notice of Proposed Rulemaking noted that additional factors that the Commission intends to consider include the structure of the domestic industry, the potential of particular foreign producers to export to the U.S., the extent to which subject imports are effectively excluded from the U.S. market by the order under review, and the prevalence of related party producers. These factors would be considered in addition to the numerical factors relating to the response rates of parties to the notice of a review. Given the clear statements of the Congress not to apply a strict numerical test and the Commission's statement of other factors to be considered, I would not expect to use a bright line test in determining the sufficiency of interest in a full review. I believe a multi-factor test that sets a fairly low threshold is appropriate and would then expect to make each determination on a case-by-case basis.

Questions from Senator Rockefeller

Q.1. In the 1979 legislative history to the trade statute, Congress made clear that the causation standard to be applied to injury investigations was very low, and that where imports were merely a "contributing cause" of material injury that was sufficient to find injury. Do you agree that the "contributing cause" standard is still the applicable standard based on the 1979 reports, despite statements of the Court in the *Gerald Metals* case?

A: First, I do not believe it is clear how widely applicable the *Gerald Metals* decision will be. The court specifically noted that the case at issue was a determination made prior to the enactment of the Uruguay Round Agreements Act (URAA). The 1979 legislative history that you note in your question was approved by the Congress in the Statement of Administrative Action (SAA) accompanying the URAA. The SAA explicitly noted that Articles 3.5 of the Antidumping Agreement and 15.5 of the Subsidies Agreement do not change the causation standard from that provided in the 1979 Tokyo Round Codes and that existing U.S. law and legislative history fully implement the causation standard of the 1979 Codes.

Second, the court in *Gerald Metals* was focusing on significant quantities of fairly traded imports that were not addressed by the Commission in its opinion and seemed to be saying

that under a "contributing cause" standard, it was not appropriate to ignore the role of significant quantities of fairly traded imports that were also in the market for the product. The Court indicated that the "by reason of" requirement meant that imports had to be more than a minimal or tangential cause of harm to the domestic industry. Given the unusual facts of the *Gerald Metals* case, it is not clear to me how broadly applicable the reasoning of *Gerald Metals* will be, although I intend to give it the decision careful consideration. In addition, given the very recent nature of the *Gerald Metals* decision, I believe further study of its implications is necessary.

In making my own determinations, I would expect to rely heavily on the legislative history of the URAA and the SAA that accompanied it, in light of my belief that neither the WTO Agreement itself and nor the Congress in passing the URAA intended to change the causation standard applicable to injury determinations.

Q.2. Congress also stated in the 1979 legislative history that the International Trade Commission was not to weigh causes of injury in reaching its injury determination. Do you accept this standard or do you believe it is proper for the Commission to weigh other causes of injury against the effects of the unfairly traded imports in its injury analysis?

A: As I noted above, I do not believe the WTO Agreement or the Congress in adopting the Uruguay Round Agreements Act intended to make any changes in the standards of causation applicable to injury determinations. As the SAA accompanying the URAA noted, Articles 3.5 of the Antidumping Agreement and 15.5 of the Subsidies Agreement do include new language requiring WTO signatories to "examine all relevant evidence" including "any known factors, other than the dumped [or subsidized] imports which at the same time are injuring the domestic industry." However, as the SAA clearly states, "the obligations embodied in the new language are reflected in the existing statute and legislative history." Therefore, while the WTO Agreement requires the Commission to "examine all relevant evidence", there is no specific requirement to weigh causes of injury. This is consistent with the 1979 legislative history, H.R. Rep. No. 317, 96th Cong., 1st Sess. 47 (1979) which stated that the Commission "will take into account" evidence which demonstrates that harm attributed by the petitioner to subject imports is attributable to other factors, but did not mandate a weighing of causes.

Q.3. In examining the causation standard in a sunset review, do you believe that the standard is the same as the "contributing cause" standard applicable to investigations or is some higher standard?

A: As you know, the URAA set the same standard for causation for use in both the sunset reviews and changed circumstances reviews. However, the legislative history of the URAA and the Statement of Administrative Action (SAA) accompanying it also make clear that the type of decision to be made in these review cases is different from that in a material injury case. The SAA notes that "the determination called for in these types of

reviews is inherently predictive and speculative. There may be more than one likely outcome following revocation or termination. The possibility that there are other likely outcomes does not mean that a determination that revocation or termination is likely to lead to continuation or recurrence of dumping or countervailable subsidies, or injury, is erroneous, as long as the determination of likelihood of continuation or recurrence is reasonable in light of the facts of the case. In such situations, the order or suspended investigation will be continued." (SAA at 883)

The Senate Finance Committee Report goes on to state that "the standard set forth . . . for sunset and changed circumstances reviews is not the same standard as that employed by the ITC in making its determinations of material injury or threat of material injury. . . . Under the likelihood of continuation or recurrence of material injury standard that will be employed in sunset and changed circumstances reviews, the ITC must decide the likely impact, in the reasonably foreseeable future, of an important change in the status quo — the revocation of an antidumping or countervailing duty order or the termination of a suspended investigation." S.Rpt. 103-141, 103rd Cong., 2nd Sess. 47-48 (1994). As such, it is clear that the Congress recognized the fundamentally different nature of the decision that the Commission will be making in sunset cases from the decisions made in material injury cases.

Thus, while it is clear that the type of decision to be made is different, it is not clear that the causal connection is different or that the degree of causation is necessarily different. In determining the appropriate standard for causation in sunset review cases, I would expect to rely on the legislative history of the provision and the intent of the Congress in adopting the URAA while examining carefully the facts of each case. In addition, I intend to take into account the comments submitted to the Commission on the causation standard received as part of the process for determining Commission's procedures for conducting the sunset reviews, as well as the arguments made by the parties in each case.

Q.4. In a five-year review, do you recognize the Commission's obligation to accept the findings of the Commerce Department on the magnitude of the dumping margin or do you believe that the Commission may reexamine this issue on its own?

A: I recognize the Commission's obligation to accept the Commerce Department's findings with respect to the dumping margin and do not believe the Commission should reexamine the issue of the dumping margin on its own.

Q. 5. Do you believe that verification of the accuracy of importer and foreign producer questionnaire responses, in addition to those of the domestic industry, is important in sunset reviews and should be undertaken by the Commission? Would you promote efforts at the Commission to encourage such verifications?

A: As you know, the Commission is not statutorily required to verify information from

either domestic or foreign sources, but has done so on its own on a limited basis to verify certain largely financial information from U.S. producers in material injury cases. I believe similar limited verification of importer or foreign information on certain issues may be appropriate where such verification relates to useful, verifiable information. Given the tremendous increase in the caseload and resource demands on the Commission as a result of the sunset requirements, I would want to ensure that we have adequate resources to do such verifications, whether of domestic, importer or foreign information, efficiently and that we appropriately target such verification efforts to the most needed areas, both domestic and foreign, where the Commission is seeking information that can be readily verified.

Q. 6. Do you think it would be helpful to your analysis to obtain information, both public and proprietary, from the Commerce Department regarding the operations of the foreign producers and importers subject to the sunset reviews? Would you work at the Commission toward establishing a mechanism to encourage such sharing of information between the agencies?

A: I believe obtaining additional information from the Department of Commerce could be helpful and I would be willing to work to establish an appropriate mechanism for such information sharing to occur.

Q. 7. If the foreign producers or importers fail to respond to the notice of institution of a five-year review, do you believe it is appropriate to adopt adverse inferences against the non-responding companies in reaching your final determination?

A: As you know, the Congress in enacting the sunset provisions, authorized the Commission to make a determination upon the facts available whenever interested parties provide inadequate responses to the notice of a five-year review. Clearly, this includes the failure of both foreign producers and importers to provide adequate responses. The SAA accompanying the URAA notes that "the facts available may include prior agency determinations involving the subject merchandise as well as information submitted on the record by parties in response to the notice of initiation." (SAA at 879). Therefore, I would expect in those cases in which the foreign producers or importers fail to respond that I would make a determination based on those facts which are available, which may include significant facts from the domestic producers with little or no countervailing facts presented by foreign producers or importers.

Q. 8. What role do you think cumulation should play in a five-year review? To the extent that the statutory factors for cumulation are met, do you think the Commission should generally cumulate the unfairly traded imports of the same like product in its sunset analysis?

A: The statute calling for the sunset reviews explicitly authorizes cumulation in a five-year review if the reviews are initiated on the same day, and if such imports would be likely to compete with each other and with the domestic like products in the U.S. market. In

addition, the statute provides that the Commission may cumulate imports from countries that were not originally investigated together if the conditions for cumulation provided for in the statute are met. At the same time, the statute precludes the ITC from cumulatively assessing imports if it determines that they are likely to have no discernible adverse impact on the industry. The recognition of the use of cumulation analysis in making injury determinations and in sunset reviews was one of the significant improvements in the WTO Agreement over the 1979 Code. As such, I intend to look very carefully at the statutory factors for cumulation in light of the explicit authorization permitting cumulation when conducting five-year reviews and would expect, in general, to cumulate unfairly traded imports when the statutory factors are met in typical cases.

Q.9. What weight do you believe should be accorded to the Statement of Administrative Action that accompanied the Uruguay Round Agreements Act? Do you believe that the SAA is akin to legislative history or should it be accorded a different weight?

A: The Uruguay Round Agreements Act specifically approved the Statement of Administrative Action (Section 101(a)) and then added in Section 102(d) that "the statement of administrative action approved by the Congress under section 101(a) shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application." Given that the Congress explicitly approved the SAA and noted that it is "authoritative," I would expect to give significant weight to the SAA.

Q.10. Do you believe that there is a statutory presumption that an order should be revoked in a five-year review? Are there are presumptions that apply in sunset analysis?

A: No, I do not believe that the statute enacting the five-year review provisions contains any specific presumptions that the Commission should adopt in deciding whether an order should be revoked. While the statute contains many factors that the Commission must consider in making its determination in the five-year reviews, it does not set forth presumptions that the Commission must apply. Moreover, as I noted above, both the SAA and the Senate Finance Committee accompanying the URAA recognize the speculative nature of these determinations and as the SAA notes "There may be more than one likely outcome following revocation or termination. The possibility that there are other likely outcomes does not mean that a determination that revocation or termination is likely to lead to continuation or recurrence of dumping or countervailable subsidies, or injury, is erroneous, as long as the determination of likelihood of continuation or recurrence is reasonable in light of the facts of the case. In such situations, the order or suspended investigation will be continued." (SAA at 883).

Q.11. [Citing the Commission's failure to find present injury in *Collated Roofing Nails from*

China and Taiwan and Certain Cut-to-Length Carbon Steel Plate from China, Russia, South Africa, and Ukraine, how do you think the Commission should best take into account the requirement to consider relevant economic factors "within the context of the business cycle", particularly in light of the language in the Senate Finance Committee's report accompanying the Omnibus Trade and Competitiveness Act of 1987 that "sometimes, the existence of temporary cyclical trends can mask real harm being caused by unfairly traded imports?"

A: I must note at the outset that I am not familiar with the entire record in either of the two cases you cite in your question, including the business proprietary information that may have played a role in the Commission's determination in those cases. Therefore, I do not believe that I can comment on the specifics of those cases.

On the more general issue of the importance of considering cases in light of the relevant business cycle, I can state that I believe that understanding and considering the business cycle is very important. I am well aware of the Commission's obligation to examine relevant economic factors in the context of the business cycle and fully intend to ensure that a careful examination of the business cycle and its impact on the affected industry is included in my analysis of each case in which the business cycle plays a role in the market. I can assure you that should I be presented with facts similar to those in the two cases you cite, I would carefully consider the entire record, including the business cycle, and come to an appropriate decision based on the facts presented and the statutory law governing the case.

Q. 12. [Noting that it is not the function of the ITC to weigh causes but to determine if one of those causes is unfairly traded imports,] how do you respond to the argument that despite consistent price underselling by dumped imports and anecdotal evidence of lost sales based on the lower price of the imports, the cause of injury to the industry is the fact that US producers brought on additional capacity, thereby leading to excess supply, and thus declining prices, in the market?

A: Before I could make a determination in the hypothetical case you cite, I would need to examine a number of the other statutory factors that the Commission is required to consider in order to make a determination. As you know, the statute directs the Commission to consider a large number of factors in making its determination of whether there is material injury or a threat thereof to the domestic industry by reason of imports. The statute makes it equally clear that no single factor is necessarily dispositive. I can assure you that if confirmed to serve as a Commissioner, I would carefully consider all relevant information pertaining to each of the factors that Congress has set forth in the statute, as well as information regarding consistent price underselling and confirmed lost sales.

JOHN BRBAUX
LOUISIANA

MEMORY
CHIEF DEPUTY MOP
COMMITTEE

COMMERCE, SCIENCE, AND
TRANSPORTATION

FINANCE

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May 14, 1998

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Ms. Jennifer Anne Hillman
International Trade Commission Nominee
U.S. International Trade Commission
Room 718
500 E Street, S.W.
Washington, DC 20436

Dear Ms. Hillman:

I want to thank you for your appearance before the Senate Finance Committee and your cooperation in answering member's questions regarding your nomination as a commissioner on the International Trade Commission.

I was unable to ask each of the nominees an important question about anti-dumping at your confirmation hearing, and I would appreciate knowing your thoughts on it. The antidumping statute directs that the ITC, "in each case," "shall consider" three factors: (1) the volume of imports of the subject merchandise, (2) the effect of imports of that merchandise on prices in the U.S. for like products, and (3) the impact of imports of such merchandise on domestic producers of like products. 19 USCA 1677(7)(B). The "in each case" language was added in 1988 after Congress learned that some commissioners were not regularly considering the mandatory statutory factors. However, even today, there are commissioners who do not consider these factors in cases where they find domestic industry to be profitable or healthy. As a result, dumping which is injurious to such an industry could continue unabated. If you are confirmed as a commissioner, may the Congress rely on you to consider these three statutory factors in each case that comes before you?

Again, thank you for your cooperation. I look forward to your reply, and would appreciate receiving it as soon as possible.

Sincerely,



JOHN BRBAUX
United States Senator

JB/ghl

May 14, 1993

The Honorable John Breaux
United States Senator
U.S. Senate
Washington, D.C. 20510-1803

Dear Senator Breaux:

I write in response to your letter of May 14, 1993 raising the question of my views as an International Trade Commission nominee regarding an interpretation of the antidumping statute.

Your question was: "If you are confirmed as a commissioner, may the Congress rely on you to consider these three statutory factors [volume of imports, effect of imports on prices, and impact of imports on domestic producers] in each case that comes before you?"

My answer is yes. I believe the statute is clear and unambiguously requires each commissioner to consider all three factors in making injury determinations in every antidumping case that comes before the Commission. I assure you that, if confirmed, I will consider all three factors in every antidumping determination that I make.

Please let me know if there is any further information you need from me on this or any other issues that are of concern with respect to my nomination.

Sincerely,

Jennifer A. Hillman

Statement of Stephen Koplan

Mr. Chairman, I do have some brief comments that I wish to make. First, I want to thank Representative Rangel, the ranking Democrat on the House Committee on Ways and Means, for his generous support both today, and through the process leading up to my nomination. I have known him for nearly twenty years and am proud to have earned both his respect and his friendship.

I want to thank you, Mr. Chairman, for setting this hearing so promptly, despite being in the midst of an unusually pressing legislative schedule.

I consider it a great honor to have been nominated to this important position by President Clinton. If confirmed, I will be joining the Commission at a time when its responsibilities are greatly increased as we begin five-year reviews, mandated by the Uruguay Round Agreements Act, of over 300 countervailing and antidumping duty orders that were in effect as of January 1, 1995.

I want to assure this Committee that I take no personal agenda or policy bias to the Commission. I understand the role of the International Trade Commission as an independent and nonpartisan fact-finding agency, with particular responsibility for antidumping and countervailing duty laws under Title VII, unfair import laws under Section 337, fact-finding studies at the request of either the Congress or the Administration under Section 332, and Section 22 investigations under the Agricultural Adjustment Act.

In my conversations with the three sitting Commissioners and with both of my fellow nominees, I believe that we all regard a collegial atmosphere as essential to the successful performance of our various responsibilities and I pledge to work with my colleagues in that manner.

In closing, I want to assure this Committee that I will administer in a fair, objective, and vigorous manner, the trade law as written by the Congress of the United States.

The White House,

WAR - 3 1908

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*To the
Senate of the United States.*

I nominate Stephen Koplan, of Virginia, to be
a Member of the United States International Trade Commission
for the term expiring June 16, 2005, vice Janet A. Musum,
resigned.

William F. Clinton

**SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE**

A. BIOGRAPHICAL INFORMATION

1. Name
Stephen Koplan
2. Position to which nominated:
Commissioner, U.S. International Trade Commission
3. Date of nomination:
March 3, 1998
4. Address: (List current residence, office, and mailing addresses)
4133 Lenox Drive Fairfax, Virginia 22032-1112
5. Date and place of birth
March 24, 1936
Boston, Massachusetts
6. Marital status: (Include maiden name of wife or husband's name.)
Married to Harriet E. Koplan (maiden name, Lindenbaum)
7. Names and ages of children:
Michael S. Koplan, 31
Bruce A. Koplan, 29
David S. Koplan, 26
Adam S. Koplan, 22
8. Education: (List secondary and higher institutions, dates attended, degree received, and date degree granted.)

<u>School</u>	<u>Dates Attended</u>	<u>Degree Received</u>	<u>Date Degree Granted</u>
New York University, Graduate Law Division	1/61 to 1/62 Summer 62	Master of Laws (in Taxation)	10/62
Boston University, School of Law	9/57 to 6/60	Juris Doctor	6/60
Brandeis University	9/53 to 6/57	Bachelor of Arts	6/57

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

<u>Job Description</u>	<u>Employer</u>	<u>Job Location</u>	<u>Dates</u>
Busboy	Fieldston Hotel	Swan Lake, NY	Summer, 1957
Counselor	Camp Adventure	Ridgefield, Conn.	Summer, 1958
Collection work	First Realty Co. of Boston	Boston, Mass.	1959 (part-time)
Attendant	Belmont Hill Service Station (active duty)	Belmont, Mass. Fort Dix, N.J. Fort Gordon, Ga.	Summer, 1959 July-December 1960
United States Army	(2-week summer reserve camps and periodic meetings)		I performed this training during the period 1960-1966.
Trial attorney	U.S. Department of Justice, Tax Division	Washington, D.C.	1962- 1967
Senior Trial Attorney	U.S. Small Business Administration	Washington, D.C.	1967
Staff Attorney	Office of U.S. Senator Lee Metcalf	Washington, D.C.	1967-1970
Attorney, Partner	Freedman, Levin and Koplan	Washington, D.C.	1970-1971
Attorney	Self-employed	Alexandria, Va	1971
Trial Attorney	U.S. Department of Justice, Civil Rights Division	Washington, D.C.	1971-1974
General Counsel	U.S. Senate, Committee on Post Office and Civil Service	Washington, D.C.	1974- 1975
Chief, Federal Programs Section	U.S. Department of Justice, Civil Rights Division	Washington, D.C.	1975- 1979
Legislative Representative	AFL-CIO	Washington, D.C.	1979- 1985
Vice President, Governmental Affairs	Joseph E. Seagram & Sons, Inc.	Washington, D.C.	1988-1993

<u>Job Description</u>	<u>Employer</u>	<u>Job Location</u>	<u>Dates</u>
Attorney, Principal	Bayh & Connaughton, P.C	Washington, D.C.	1993- 1995
Director, Governmental and Conservation Affairs	Safari Club International (SCI)	Herndon, Virginia	1996- 1997
Consultant/legal services	Self-employed	Fairfax, Va.	11/95- 1/96 11/97-1/98

10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)

None other than those listed above.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)

None

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

District of Columbia Court of Appeals
 Supreme Judicial Court of Massachusetts (retired)
 High Court of American Samoa
 United States District Court for the District of Massachusetts
 United States Court of Claims
 Tax Court of the United States
 United States Supreme Court
 United States Court of Appeals for the District of Columbia Circuit

13. Political affiliations and activities:

--- I am a registered Democrat in the Commonwealth of Virginia.

- a. List all public offices for which you have been a candidate.

None

- b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

During the period 1988-1993 I served as the Vice Chairman of the Joseph E. Seagram & Sons, Inc. Political Action Committee (JESPAC). Bipartisan political contributions were made by JESPAC to individual members of Congress, to both the Democratic and Republican political parties and to their House and Senate election committees. As Vice President of Governmental Affairs in charge of the corporation's Washington, D.C. office, I served on a regular basis as its representative to various political events.

- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.

June 1990, Synar for Congress Committee, \$100
 April 1992, Clinton for President Committee, \$1,000
 (includes \$500 drawn by my wife on our joint account)
 March 1993, Bob Packwood Legal Defense Fund, \$1,000
 October 1993, Rostenkowski Legal Defense Fund, \$1,000
 October 1994, Rostenkowski for Congress Committee, \$500
 September 1997, Committee to Re-Elect Ira Pike, \$100

Joseph E. Seagram & Sons, Inc. Political Action Committee (JESPAC) :

1988	\$400.00
1989	\$400.05
1990	\$465.56
1991	\$465.60
1992	\$499.92
1993	\$300.00

14. Honors and Awards (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievement.)

I received letters of commendation for criminal tax trial assignments when employed in the Tax Division, U.S. Department of Justice as follows: 1962 and 1963 from Attorney General Robert F. Kennedy, 1965 from Attorney General Nicholas deB. Katzenbach.

I received a Special Commendation for Outstanding Service at the Attorney General's 1978 Annual Awards Ceremony while Chief of the Federal Programs Section, Civil Rights Division, U.S. Department of Justice.

15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

None

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)

None

17. Qualifications: (State what, in your opinion qualifies you to serve in the position to which you have been nominated.)

A substantial portion of my experience as a lawyer has included international trade. It began with Senator Lee Metcalf when he was a member of this Committee. I joined his personal staff in the 90th Congress and for three years was the legislative aide assigned responsibility for Committee on Finance legislation. In the private sector beginning in 1979, I gained familiarity with international trade laws by reason of my employment in various capacities including first, organized labor and later, the business sector. For example in 1983, I testified before the Subcommittees on International Trade of both the Committee on Finance and the House Ways and Means Committee regarding the budget for the ITC. My experience has included an appearance before the ITC in April 1986 on behalf of the Task Force for the Survival of American Fishermen, Processing Plants and Jobs, an ad hoc business coalition, regarding a foreign subsidization investigation.

I am mindful that the Congress expects ITC Commissioners to serve in an impartial manner both as fact-finders and in an advisory capacity. If I am confirmed, I pledge to carry out that responsibility to the best of my ability.

B Future Employment Relationships

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

Yes

2. Do you have any plans, commitments, or agreements to pursue outside employment with or without compensation, during your service with the government? If so, provide details.

No

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.

Yes

C. POTENTIAL CONFLICTS OF INTEREST

- 1 Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

To the best of my knowledge, none.

2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

To the best of my knowledge, none

- 3 Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

During the period 1988-1993, I was the Vice President of Governmental Affairs and a registered lobbyist for Joseph E. Seagram & Sons, Inc. as well as Vice Chairman of the Joseph E. Seagram & Sons, Inc. Political Action Committee (JESPAC). The political action committee was funded with voluntary contributions from nonunion employees of the corporation. The legislative issues of interest to the corporation included those that would affect the distilled spirits, wine and juice industries, including tax, trade, health, and environmental legislation. During my period of employment with Seagram, I testified at a hearing before the Federal Election Commission jointly with Edgar Bronfman, Jr., then President and Chief Operating Officer. The issue under consideration was whether a U.S. subsidiary whose stock was over fifty percent owned by a foreign parent corporation should be allowed to have a U.S. political action committee (pac). I testified in my capacity as the Vice Chairman of the corporation's pac.

During the period 1993-1995, I was an attorney and partner in the law firm of Bayh & Connaughton, P.C. In that capacity, I was registered as a lobbyist on behalf of various firm clients. The issues did not involve the subject of international trade.

During the period 1996-1997, I was employed as a registered lobbyist and Director of Governmental and Conservation Affairs for Safari Club International. The principal legislative issues with which we were concerned were the Endangered Species Act, the National Wildlife Refuge Improvement Act and the Conservation Reserve Program. We also focused on the Convention on International Trade in Endangered Species (CITES). Our issues did not require contact with the ITC.

- 4 Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements)

I would either recuse myself from the investigation, or, if the interest is not substantial, obtain a waiver of conflict of interest restriction from the appropriate official

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.
6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative.

Not applicable.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

Yes. In 1985, at a store in Fairfax, Virginia, I inadvertently set off two large visible electronic monitors when I stepped into their range with an item of merchandise. A store employee then had a dispute with me as to whether I had intended to leave without paying for the item. Two Fairfax police officers were called to the scene to investigate. After questioning me and the employee, they left saying they believed me. I left thinking this was a closed matter. However, the store employee went to a local magistrate that same evening and filed a misdemeanor complaint. I was not arrested. The store employee and I appeared in Fairfax County General District Court on the return date. I did not retain counsel. The law enforcement agency was the Fairfax County Commonwealth Attorney's Office. That morning, I was advised by an assigned Fairfax County social services court employee, that under Virginia law I could have the case dismissed without my entering a plea, and subsequently expunged, if I elected to perform a minimal amount of community service. I chose to do that.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Yes In either 1979 or 1980 I was a plaintiff against my employer, the AFL-CIO, for payment of certain dental benefits for one of my sons. The matter was heard by the Federal Mediation and Conciliation Service which ruled in my favor. In 1972 I brought suit as a plaintiff in Small Claims Court in the District of Columbia against my former landlord, Charles E. Smith & Co., for return of my security deposit. On the day the case was to be heard, defendant agreed to refund the deposit.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? If so, provide details.

No

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None

E. Testifying Before Congress

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of Congress on such occasions as you may be reasonably requested to do so?

Yes

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes

RESPONSES OF STEPHEN KOPLAN TO QUESTIONS SUBMITTED BY CHAIRMAN
WILLIAM ROTH

Question No. 1. What do you plan to do to reinvigorate the ITC and restore its traditional role in advising Congress on trade matters?

Answer. I do not have an agenda to make changes in the way in which the Commission now carries out its various responsibilities. I have met with a number of the Commission's staff and am most impressed with their dedication and competence. I have reviewed the proposed budget for FY 99 and had an opportunity to discuss it in meetings with trade staff in as many offices of members of this Committee as could be scheduled in advance of this hearing. I know that the Commission has had budget briefing meetings with Senate staff but am not presently aware of any suggested changes or problems with the proposal. I expect that one of the first things that will take place when we enter on duty will be to have a dialogue as a Commission as to where things now stand.

I have a sense that there is substantial interest in Congressional requests for even more research studies under Section 332 than were anticipated when the Commission requested \$4.4 million dollars for next year. I believe that the agency is continually seeking to perfect the skills needed to perform this function, and I look forward to assisting in that effort and sharing the responsibility for the result of our collective efforts.

I have had the privilege of serving as a Senate staffer on two occasions. I am most sensitive to this Committee's continuous need for prompt delivery in response to requests for analytical and economic analyses of international trade related issues. As a Commissioner I will do all that I can to help assure that Congressional requests are responded to in a competent and timely manner.

Question No. 2. You have an impressive background as a trial attorney and as a governmental affairs specialist. What can you tell me about your experience with the trade laws, and the confidence you have in interpreting and enforcing those laws?

Answer. A substantial portion of my experience as a lawyer has included international trade. My introduction to the Committee on Finance was in the 90th Congress when I joined the staff of Senator Lee Metcalf of Montana, who was then a member of this Committee. I served as the legislative aide assigned the responsibility to cover this Committee's legislation and remained with the Senator for three years. In the private sector beginning in 1979, I continued to work with international trade laws by reason of my employment in various capacities including first, organized labor and later, the business sector. I feel fortunate to have had the opportunity to have gained broad experience from the perspective of both the workforce and the corporate sector.

My initial exposure to the International Trade Commission came in 1983, when I testified before the Subcommittees on International Trade of both the Committee on Finance and the Committee on Ways and Means regarding the budget of the ITC. Subsequently, as Vice President for Governmental Affairs of Joseph E. Seagram & Sons, Inc., whose interests are global, I was responsible for advising the corporation's top officers and taking principal responsibility for formulating our international trade agenda. In addition, as a member of the McNair law firm prior

to joining Seagram, I had a responsibility for counseling clients on international trade issues. While with that firm, I appeared before the ITC on behalf of an ad hoc business coalition that was a party to a countervailing duty investigation.

I am confident that the range of experience that I described has prepared me to interpret and enforce the trade laws with competence.

Question No. 3. There has been a great deal of criticism directed at our unfair trade laws over the years. What is your view of the purpose of these laws?

Answer. I view the purpose of our unfair trade laws as they relate for example, to investigations involving either dumping or countervailing duties, as intended to offset the margin of dumping or subsidy and thereby enable a materially injured U.S. industry to compete on a fair and level playing field. I agree that there has been a great deal of criticism directed at these laws. That is to be expected with some degree of frequency from parties to an adversarial proceeding. As a Commissioner, I will apply the statutory standards provided by the Congress fairly and objectively.

RESPONSES OF STEPHEN KOPLAN TO QUESTIONS SUBMITTED BY SENATORS
CONNIE MACK AND BOB GRAHAM

Question No. 1. For roughly the past 20 years, the ITC has applied a "relaxed standard" when determining material injury resulting from "dumping". This standard essentially required that the dumped goods must be a cause of injury to the domestic industry, but need not be the substantial cause. In contrast to the domestic application, the Uruguay Round set a higher standard suggesting the "dumping" must be the substantial cause of injury. Which do you consider the appropriate standard, and why?

Answer. While I am not aware of a conflict or tension between the Uruguay Round Amendments and US. law with regard to the causation standard in antidumping and countervailing duty investigations, I fully intend to administer the trade laws of the United States as written by the Congress of the United States.

The Statement of Administrative Action implementing the Uruguay Round Agreements Act states at page 181:

Article 3.5 of the Antidumping Agreement and 15.5 of the Subsidies Agreement do not change the causation standard from that provided in the 1979 Tokyo Round Codes. Existing U.S. law and legislative history fully implement the causation standard of the 1979 Codes. Thus, existing U.S. law fully implements Articles 3.5 and 15.5. Articles 3.5 and 15.5 do include new language requiring WTO signatories to 'examine all relevant evidence' including 'any known factors, other than the dumped [or subsidized] imports which at the same time are injuring the domestic industry.' The obligations embodied in the new language are reflected in the existing statute and legislative history.

(Emphasis supplied; bracketed phrase in the original).

The statute requires the Commission to make a determination of whether a domestic industry is materially injured, or threatened with material injury, or whether establishment of an industry is materially retarded, by reason of imports of merchandise which the Department of Commerce has determined to be subsidized or sold at less-than - fair -value.

That the statute does not itself define the phrase, "by reason of," suggests to me that Congress intended for "by reason of" to be assessed on a case-by-case basis. Thus, what may constitute "by reason of" with regard to merchandise from one country dumped or subsidized at certain margin may not constitute "by reason of" with regard to margin from another country dumped or subsidized at a different margin.

As a Commissioner, I intend to assess fully the facts in each investigation, and determine whether, in each investigation, the relevant domestic industry is materially injured by reason of the subject imports.

Question No. 2. In the recent past, when considering Section 201 cases, the commission has been split on the question of using "seasonality" as a factor in defining the relevant agricultural market. Given the unique characteristics of perishable commodities (i.e. short shelf life), can you think of any reasons why the relevant market could not be defined on the basis of "seasonality"? Do you agree that it is an important factor that should be considered?

Answer. In a Section 201 (or "global safeguard") investigation, the Commission determines whether increased imports from all countries, whether an absolute increase or relative to U.S. production, are a substantial cause of serious injury to the domestic industry producing a product which is like or directly competitive with the merchandise being investigated.

As a nominee, I do not have yet have the benefit of whatever legal briefing, both internal and by the parties, the Commissioners may have received in the course of the specific safeguard investigation to which your question refers. However, given the physical characteristics of the product subject to investigation, I believe "seasonality" could have been one of the many important factors to have been considered and expressed that belief to Senator Mack's staff prior to my nomination hearing.

In addition, I am aware that on December 11, 1995 Senator Graham introduced S.1463, a bill to amend Section 202 of the Trade Act of 1974, which was cosponsored by Senator Mack on January 2, 1996. This bill, which passed in the Senate by voice vote on January 26, 1996, specifically addressed this issue. In addition, on April 25, 1996 the Subcommittee on Trade, Committee on Ways and Means, held a hearing on H.R. 2795, a similar proposal. I have read Senator Graham's testimony before the Subcommittee in support of that bill as well as the testimony of ITC nominee, Jennifer Hillman, who, as then General Counsel of the Office of the U.S. Special Trade Representative, presented the Administration's position in support of this proposal. However, the 104th Congress adjourned with the legislation still pending. On November 11, 1997 Representative Karen Thurman introduced what appears to be a similar proposal in the 105th Congress. That bill is now pending in the House Committee on Ways and Means.

Question No. 3. This summer, the ITC will commence sunset reviews of more than 300 duty orders. In reviewing these orders, Congress has provided the ITC with the authority to conduct expedited reviews where there is insufficient interest among the parties for a full review. It is our understanding that Congress has also admonished the ITC not to apply a strict numerical threshold in determining whether there is sufficient interest for a full review. Given this background, how would you define the threshold for sufficient interest?

Answer. On October 23, 1997 the Commission published a Notice of Proposed rulemaking in the Federal Register regarding sunset reviews. The Section-by-Section Analysis of the Proposed Regulations states: "The Commission does not intend to apply strict numerical tests to determine adequacy of interested party responses." It is also stated that "the determination of adequacy will be made on a case-by-case basis taking several factors into account." "For example, a response rate that may seem to be inadequate for a highly concentrated industry may be adequate for a highly fragmented industry". A deadline of December 22, 1997 was set for written comments and January 21, 1998 for rebuttal comments. Final regulations are expected to be published in approximately a month. As a nominee, I cannot participate in the ongoing deliberative process within the Commission but do agree that determinations concerning "sufficient interest" should be considered on a case-by-case basis.

RESPONSES OF STEPHEN KOPLAN TO QUESTIONS SUBMITTED BY
SENATOR JAY ROCKEFELLER

Question No. 1. In the 1979 legislative history to the trade statute, Congress made clear that the causation standard to be applied in injury investigations was very low, and that where imports were merely a "contributing cause" of material injury that was sufficient to find injury. Do you agree that the "contributing cause" standard is still the applicable standard based on the 1979 reports, despite the statements of the Court in the Gerald Metals case?

Answer. I believe the 1979 legislative history was clearly provided by the 96th Congress. See, S. Rep. No. 96- 249 at 74 (1979); H. Rep. No. 96- 317 at 46-47 (1979).

For example, the 1979 Senate Report explained that the law did not contemplate a causation standard requiring

that the effects from [the] less-than fair-value imports [] be weighed against the effects associated with other factors. . . which may be contributing to overall injury to an industry. Nor is the issue whether the less-than-fair-value imports are the principal, a substantial, or a significant cause of material injury. Any such requirement has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources; industries that are often the most vulnerable to less-than-fair-value imports.

. . . [T]he petitioner will not be required to bear the burden of proving the negative. That is, that the material injury is not caused by such other factors.

In this regard, I note that where Congress did intend for the causal relationship between imports and injury to be "substantial," it is expressed in the statute, i.e., the global safeguard provision.

Previous Commission decisions citing this legislative history have been upheld by the Commission's reviewing courts. See, Pasco Terminals, Inc. v. United States, 634 F. 2d 610 (CCPA 1980), adopting 477 F. Supp. 201, 221 (Cust. Ct. 1979); Grupo Industrial Cameasa v. United States, 85 F. 3d 1577 (Fed. Cir. 1996); Trent Tube Div. v. Avesta Sandvik Tube AB, 975 F. 2d 807 (Fed. Cir. 1992); Suramerica de Aleaciones Laminadas, C.A. v. United States, 44 F. 3d 978 (Fed. Cir. 1994); and Atlantic Sugar, Ltd. v. United States, 744 F. 2d 1556 (Fed. Cir. 1984). With regard to Gerald Metals, on December 23, 1997 the case was remanded to the United States Court of International Trade where it is now pending. As such, I do not believe that I should comment on it at this time. In the meantime, I intend to administer the statute consistent with current Congressional intent.

Question 2. Congress also stated in the 1979 legislative history that the International Trade Commission was not to weigh causes of injury in reaching its injury determination. Do you accept this standard or do you believe it is proper for the commission to weigh other causes of injury against the effects of the unfairly traded imports in its injury analysis?

Answer. I accept this standard. The legislative history expresses concern that weighing causes may tend to force the petitioner to prove the negative, and thereby make relief more difficult to obtain. I intend to administer the statute consistent with Congressional intent.

The Uruguay Round Amendments do require the Commission to "examine all relevant evidence" including "any known factors, other than the dumped [or subsidized] imports which at the same time are injuring the domestic industry." (Article 3.5 of the Antidumping Agreement and 15.5 of the Subsidies Agreement). However, the Statement of Administrative Action is clear that the Commission is not required to discuss statutory factors or arguments of parties that are not germane to an investigation.

Question No. 3. In examining the causation standard in a sunset review, do you believe that the standard is the same as the "contributing cause" standard applicable to investigations or is some higher standard?

Answer. In Title VII investigations, the Commission determines whether a domestic industry is materially injured, or threatened with material injury, or whether establishment of an industry is materially retarded, by reason of imports of merchandise which the Department of Commerce has determined to be subsidized or sold at less-than-fair-value. In sunset reviews, the Commission will determine whether revocation of an antidumping or countervailing duty order, or termination of a suspension agreement, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

While not the same factors, these determinations are closely related. Indeed, the Statement of Administrative Action notes at 886 that :

As in the case of injury and threat determinations, the Commission must consider all factors, but no one factor is necessarily dispositive. In particular, the Commission need not determine that both the volume and price effects of imports are likely to be significant to determine that material injury is likely within a reasonably foreseeable time.

Accordingly, I believe that the causation standard for sunset reviews is intended to track or parallel the standard that Congress intended for traditional antidumping and countervailing duty determinations.

Question No. 4. In a five year review, do you recognize the Commission's obligation to accept the findings of the Commerce Department on the magnitude of the dumping margin or do you believe that the Commission may reexamine this issue on its own?

Answer. The Commerce Department has the authority to determine dumping and subsidy margins, both for traditional Title VII investigations and sunset reviews. The Statement of Administrative Action expressly states at 887 that :

The Commission shall not itself calculate or otherwise determine likely dumping margins or net countervailable subsidies or the nature of the subsidies in question.

Indeed, the Commerce Department has had the responsibility for determining margins since 1979, and before that the Department of the Treasury.

As a result of the long history of bifurcating the Title VII functions, the Commerce Department, not the International Trade Commission, has the resources and capability to determine dumping and subsidy margins.

Question No. 5. Do you believe that verification of the accuracy of importer and foreign producer questionnaire responses, in addition to those of the domestic industry, is important in sunset reviews and should be undertaken by the Commission? Would you promote efforts at the Commission to encourage such verifications ?

Answer. In order for the Commission to completely and confidently administer sunset reviews, all factual information presented should be verified, to the extent practicable. Verified foreign producer and importer data will be of paramount importance in assessing whether revocation of an order or termination of a suspension agreement would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

Question No. 6. Do you think it would be helpful to your analysis to obtain information, both public and proprietary, from the Commerce Department regarding the operations of the foreign producers and importers subject to the sunset reviews? Would you work at the Commission toward establishing a mechanism to encourage such sharing of information between the agencies?

Answer. I do not believe that the Commission and Commerce share such data now in traditional Title VII investigations. I am mindful that the Commission and Commerce are assigned separate and distinct roles in connection with sunset reviews that parallel traditional Title VII investigations. Accordingly, I do not believe the statute or either agency's sunset review regulations contemplate establishing such a mechanism.

Question No. 7. If the foreign producers or importers fail to respond to the notice of institution of a five-year review, do you believe it is appropriate to adopt adverse inferences against the non-responding companies in reaching your final determination?

Answer. The statute provides that if interested parties, such as foreign producers and importers, provide inadequate responses to a notice of initiation, the Commission may issue, without further investigation, a final determination based on the facts available. Indeed, the statute contemplates that the Commission may use an inference that is adverse to the interests of parties that do not respond to the notice of initiation. See, 19 U.S.C. Section 1677e(b).

As explained in the Statement of Administrative Action at 880 :

If parties provide no or inadequate information in response to a notice of initiation, it is reasonable to conclude that they would not provide adequate information if the agencies conducted a full-fledged review.

I intend to make determinations concerning interested parties' lack of response to notice of initiation in a manner consistent with the statute and Statement of Administrative Action.

Question No. 8. What role do you think cumulation should play in a five-year review? To the extent that the statutory factors for cumulation are met, do you think the Commission should generally cumulate the unfairly traded imports of the same like product in its sunset analysis?

Answer. The statute expressly permits cumulation for the purposes of sunset investigations.

Congress, as well as the courts, have long recognized that cumulation is an important tool in traditional Title VII investigations.

As perhaps best articulated by the Customs Court in City Lumber,

an investigation of imports from only one country, in disregard of the effect on the market area in question, of sales at less than fair value from other countries, would result in a study and conclusions that would be myopic and unrealistic. An investigation so limited and restricted would not help achieve the statutory remedy envisaged by the enabling legislation. It would seem clear that the mischief that the act aimed to remedy required a broad solution. Surely Congress did not seek to fashion a remedy to the problem of dumping 'by solutions only partially effective.'

City Lumber Co. v. United States, 311 F. Supp. 340, 348 (U.S. Cust. Ct., First Division, Appellate Term 1970) (emphasis added) (citation omitted).

Indeed, it may well be the case that in a sunset review of imports of a product from five countries, for example, revocation of each order, individually, may not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. However, in the aggregate, which will be the marketplace reality, revocation of all orders will lead to such material injury.

Question No. 9. What weight do you believe should be accorded to the Statement of Administrative Action that accompanied the Uruguay Round Agreement Acts? Do you believe that the SAA is akin to legislative history or should it be accorded a different weight?

Answer. Pursuant to Section 1103 of the Omnibus Trade and Competitiveness Act of 1988, before a trade agreement entered into by the President may actually enter into force, the President

must provide to Congress: a copy of the final text of the agreement; draft implementing legislation; a statement of administrative action; and certain additional information.

Congress expressly adopted the Statement of Administrative Action (SAA) and stated that the SAA, "shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the [URAA] in any judicial proceeding in which a question arises concerning such interpretation or application." 19 U.S.C. Section 3512 (d).

As a Commissioner, I will administer all relevant trade laws in a manner consistent with Congressional intent as expressed in the various statutes, legislative histories, and approved statements of administrative action.

Question No. 10. Do you believe that there is a statutory presumption that an order should be revoked in a five-year review? Are there any presumptions that apply in sunset analysis?

Answer. The statute provides, in pertinent part, that five years after the date of publication of an antidumping or countervailing duty order, or suspension agreement. See, 19 U.S.C. 1675.

the administering authority [the Department of Commerce] and the Commission shall conduct a review to determine ...whether revocation of the countervailing or antidumping duty order or termination of the investigation suspended...would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy...and of material injury.

I do not view this provision as presumptive.

The statute does permit the Commerce Department to make specific presumptions with regard to the continuation or recurrence of dumping and countervailable subsidies, provided the relevant interested party (i.e., foreign government or foreign producer) has waived its participation in Commerce's review.

Question submitted at hearing by Senator Jay Rockefeller

The legislative history to the Uruguay Round Agreements Act suggests there can be more than one likely outcome as the result of the revocation of an antidumping or countervailing duty order. If injury is one likely outcome, this legislative history indicates that the order should be continued. Do you agree that this indicates the ITC should give the domestic industry the benefit of the doubt in close cases?"

Answer. As implemented by Congress, the sunset provision requires the Commission to determine whether revocation of an antidumping or countervailing duty hearing, or termination of a suspension agreement, "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."

In considering whether revocation will lead to continued or recurring material injury, the statute and the Statement of Administrative Action ("SAA") direct the Commission to take into account whether the industry may be vulnerable to such injury. The statute and SAA also explain that "a reasonably foreseeable time" is a period which exceeds an "imminent" time.

The Statement of Administrative Action at page 883 states that:

The determination called for in these types of reviews is inherently predictive and speculative. There may be more than one likely outcome following revocation or termination. The possibility of other likely outcomes does not mean that a determination that revocation or termination is likely to lead to recurrence of dumping or countervailable subsidies, or injury, is erroneous, as long as the determination of likelihood of continuation or recurrence is reasonable in light of the facts of the case. In such situations, the order or suspended investigation will be continued.

Based on the dictates of the statute, particularly when considered in conjunction with the parameters and standards enunciated in the SAA, I agree that Congress intends for antidumping and countervailing duty orders to remain in effect if revocation would otherwise lead to the continuation of recurrence of material injury to a vulnerable domestic industry.

Question - I'd like to take several minutes to discuss with you the business cycle provision in the statute, that is, the instruction that the Commission consider relevant economic factors such as output, sales, capacity utilization, profits, and so forth "within the context of the business cycle...."¹

The purpose of this provision, it seems to me, is straightforward. As this Committee stated in its report accompanying the Omnibus Trade and Competitiveness Act of 1987, "[w]hen determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry. Sometimes, the existence of temporary cyclical trends can mask real harm being caused by unfairly traded imports." S. Rep. 100-71 (June 11, 1987) at 116 (emphasis added). Also, as the Court of International Trade observed in the case of *Republic Steel Corp. v. United States*:²

¹ 19 U.S.C. § 1677(7)(C)(iii).

² 591 F. Supp. 640, 649 (Ct. Int'l Trade 1984).

A "healthy" industry can be experiencing injury from importations and an 'unhealthy' industry can be unaffected by importations. The purpose of the ITC's investigation is to determine whether imports are a cause of any effect on an industry which would amount to "material injury."

With this background, I want examine two recent cases in point, where I'm concerned that the Commission decided perhaps to take the safe route of rendering an affirmative threat determination, even though the data (when considered in the context of the business cycle) strongly supported a present injury finding. This is more than just an academic point since, as I'm sure you realize, dumped imports that enter the US during the six month period between the Commerce Department's preliminary determination and the Commission's final determination are subject to the assessment of antidumping duties only in cases where the Commission's renders a present injury finding. Where a threat determination is issued, the relief is prospective only from the date of the order.

The first case is *Collated Roofing Nails from China and Taiwan*.³ There the Commission found that imports increased 60 percent over the three-year POI, and increased faster than consumption. Certain Commissioners found this increase not to be significant, noting that some domestic producers had placed customers on allocation and therefore were unable to supply the increase in demand during the POI. Of course, in periods of tight domestic supply you would expect to see prices rise, and yet what the Commission determined was that based on:

consistent underselling by significant margins, declines in prices and net sales per pound for the domestic products over the period of investigation, and lost sales due to low subject import prices, we find that the increasing volume of subject imports from China and Taiwan... depressed prices for the domestic like product to a significant degree.

Id. at 19. In other words, the Commission found that, during a period where there was a significant increase in consumption and domestic supply constraints, instead of prices rising,

³ Inv. Nos. 731-TA-757 and 759 (Final), USITC Pub. 3070 (November 1997).

dumped imports caused prices and profits to fall.

The Commission concluded, however, that these effects were not "sufficient in magnitude to constitute material injury" because "[m]any important indicators of the domestic industry's condition improved over the period of investigation." *Id.* at 20. And what were these improving indicators? — production, shipments, total net sales, and number of production related workers, *that is, indicators that always improve during an upswing in the business cycle and therefore can hardly be said to show that imports are not injurious!*

The second case I was to discuss is *Certain On-to-Length Carbon Steel Plate from China, Russia, South Africa, and Ukraine*.⁴ There, domestic consumption slumped somewhat from 1995 to 1996, but then rose by some 12 percent in 1997 to a period high.⁵ Domestic production increased, however, by just six percent.⁶ The domestic industry's market share fell steadily from 82 percent to 78 percent over the period of investigation.⁷ Dumped imports, on the other hand, went from 8.5 percent to 15 percent of the market, as they increased 94 percent (from some 650,000 tons to 1.25 million tons) from 1994 to 1996.⁸ In interim (Jan. - March) 1997 the imports increased 76 percent compared with interim 1996, and captured 20 percent of total consumption, while US producers' share fell to 72 percent of total

⁴ Inv. Nos. 731-TA-753-756 (Final).

⁵ See Final Determination, USITC Pub. 3076 at C-11.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

consumption.⁹

The pricing data that was gathered showed underselling by imports in "the overwhelming majority of comparisons," by margins ranging as high as 36 percent.¹⁰ Also, the Commission found that in 1996 and continuing into Interim 1997, the industry experienced declines in prices, profits and capital expenditures.¹¹ One Commissioner specifically found that the imports prevented price increases, which would otherwise have occurred, to a significant degree.¹²

And yet, this evidence was found to be insufficient to warrant an affirmative present injury determination. Two principle reasons were cited -- one, the fact that the most significant declines occurred in Interim 1997, and the Department said it was unwilling to ascribe great weight to a single quarter of data. *Id.* at 23. The second factor cited, however, was the fact that (quote):

important indicators of the domestic industry's condition improved overall during the first three years of the investigative period... specifically, production, capacity, capacity utilization, US shipment, net sales...

Id. at 22. Also mentioned by one Commissioner was the fact that the industry remained profitable.¹³

⁹ *Id.*

¹⁰ *Id.* at 20.

¹¹ *Id.* at 22.

¹² *Id.* at 21 n.133.

¹³ *Id.* at 21 n.134 (Vice-Chairman Bragg).

Again, I am more than a little puzzled as to why consistent underselling by steadily increasing imports, resulting in price suppression, a loss by the US industry of 4% of its home market and a 10 percent drop in operating income in full-year 1997⁶, even before the surge in imports in 1st quarter 1997 when operating incomes fell another 40 percent, does not suffice to establish a finding of present material injury. In my view, this clearly is another instance where, citing again the language in this Committee's report on the Omnibus Trade and Competitiveness Act, the Commission seems to have allowed "the existence of temporary cyclical trends... (to) mask real harm being caused by unfairly traded imports."¹⁴

I now would invite your comment on this issue, recognizing of course that you may not have previously been familiar with the record in these two investigations.

¹⁴ A similar problem concerns the idea, or the fallacy, that in order for lower priced imports to be injurious, there must be a direct between import price trends and the condition of the US For example, some Commissioners have argued that if dumped imports undersold the domestic like product by sizeable margins, both when the industry was profitable and when it was not, the imports therefore cannot be injurious. Or, the notion that although the condition of the industry worsened during the period of investigation, the difference between domestic and import prices did not change, so the imports therefore had no significant price effects. See *Polyvinyl Alcohol from China, Japan, and Taiwan, Inv. Nos. 731-TA-726, 727, and 729 (Final) (ITC Pub. 2960) (May 1996)* at 39, 40 (Negative Determinations of Chairman Watson and Vice Chairman Nuzuma) ("We note that the domestic industry's financial performance was strong in 1992 and 1993, even though subject imports undersold domestic product as frequently in those two years as they did in 1994 (when the industry did poorly).... The pricing data, however, do not indicate to us any significant changes in the relative price levels between the domestic product and subject imports in that year [(1994)] as compared to 1992 and 1993, when the industry was operating profitably").

This notion that imports that undersell US products cannot be injurious to an industry that is losing money, because they also undersold the domestic like product when the industry was profitable, is absurd. So too is the idea that where the condition of the industry worsened, but the margin of underselling did not change, the condition of the industry is totally unaffected by imports. The Commission should not ignore the fact that imports aren't the only factor influencing the industry's performance; that import prices may not always move in exact tandem with the domestic industry's performance; and that lower priced imports can be a drag on the industry's performance whether the industry is profitable or not.

Answer to Senator Jay Rockefeller's Narrative Question No. 1.

In order to respond to this question, I obtained the public versions of both final determinations. It is my understanding that in both investigations, confidential business information was redacted from the public version of the views of the Commission and accompanying reports. Consequently, the full record in those investigations is not available to me. I do note that both of the public versions routinely contain a discussion of business cycles when evaluating conditions of competition in the U.S. market.

I am aware that the statute requires the Commission "to evaluate all relevant economic factors . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry." Also, I understand Congressional concern that "the existence of temporary cyclical trends can mask real harm being caused by unfairly traded imports."

At this point in time, I am only able to reiterate my intention to administer the statute consistent with Congressional intent, and assure you that your question has served to put me on notice as to the importance of my giving proper consideration to the business cycle provision in Title VII investigations.

Question - As you may already know, or no doubt will soon discover, respondents in Title VII cases often argue that any injury being suffered by the domestic industry is not the result of unfairly traded imports, but rather is the result of the US producers' inability to compete, whether it be because of poor cost management, the inferior quality of US products, and so forth. It certainly is appropriate, under the statute, for the Commission to consider alternative causes of injury, including the argument that an industry's woes are self-inflicted. Indeed, in the legislative history to the 1979 Trade Agreements Act, this Committee states that alternative causes include not only such factors as the effects of fairly traded imports, and contraction in demand, but also "developments in technology" and the "productivity of the domestic industry."¹⁵ However, as the Court of International Trade has observed, "importers take the domestic industry as they find it."¹⁶ In other words, many factors can contribute to a domestic industry's woes, including, in some cases, a lack of competitiveness. However, it is not the function of the ITC to weigh causes, but to determine if one of those causes is unfairly trade imports.

With this in mind, I would like to ask how you might respond to the argument that despite consistent price underselling by dumped imports and anecdotal evidence of lost sales based on the lower price of the imports, the cause of injury to the industry is the fact that US producers brought on additional capacity, thereby leading to excess supply, and thus declining prices, in the market?

¹⁵ S. Rep. No. 249, 96th Cong. 1st Sess. 74 (1979).

¹⁶ *Fuatsu Electric Co., Ltd. v. US*, 13 ITRD 1121 1131 (Ct. Int'l Trade 1991).

Response to Narrative Question No. 2

While I am not aware of the investigation to which the question refers, I have reviewed Iwatsu Electric Co., Ltd. As I understand that decision, the Court of International Trade essentially adopted the tort law theory that "one takes her plaintiff as she finds him "

Thus, in the context of a Title VII investigation, it may well be that a domestic industry has, to some degree, inflicted injury upon itself, but that such self-infliction does not necessarily preclude a finding that dumped or subsidized imports are a cause of material injury.

Indeed, an industry's self-inflicted injury may in fact be in response to competition from unfair imports. For example, as in the hypothetical, perhaps the domestic industry brought on additional capacity in order to lower unit costs and reduce per unit selling price, thereby attempting to become more price competitive with the unfair imports.

As referenced in the previous question, the statute requires the Commission to consider all relevant economic factors within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

I interpret the law of Iwatsu as wholly consistent, if not contemplated, by the statute's mandate.

JOHN BREAUX
LOUISIANA

MISSOURY
CHIEF DEPUTY WHIP
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May 14, 1998

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Mr. Stephen Koplan
International Trade Commission Nominee
U.S. International Trade Commission
Room 718
500 B Street, S.W.
Washington, DC 20436

Dear Mr. Koplan:

I want to thank you for your appearance before the Senate Finance Committee and your cooperation in answering member's questions regarding your nomination as a commissioner on the International Trade Commission.

I was unable to ask each of the nominees an important question about anti-dumping at your confirmation hearing, and I would appreciate knowing your thoughts on it. The antidumping statute directs that the ITC, "in each case," shall consider three factors: (1) the volume of imports of the subject merchandise, (2) the effect of imports of that merchandise on prices in the U.S. for like products, and (3) the impact of imports of such merchandise on domestic producers of like products. 19 USCA 1677(T)(B). The "in each case" language was added in 1988 after Congress learned that some commissioners were not regularly considering the mandatory statutory factors. However, even today, there are commissioners who do not consider these factors in cases where they find domestic industry to be profitable or healthy. As a result, dumping which is injurious to such an industry could continue unabated. If you are confirmed as a commissioner, may the Congress rely on you to consider these three statutory factors in each case that comes before you?

Again, thank you for your cooperation. I look forward to your reply, and would appreciate receiving it as soon as possible.

Sincerely,



JOHN BREAUX
United States Senator

JB/jhl

STEPHEN KOPLAN
4133 Lenox Drive
Fairfax, Virginia 22032

May 15, 1998

The Honorable John B. Breaux
United States Senator
Senate Hart Building-Room 516
United States Senate
Washington, D C 20515-1803

Dear Senator Breaux

This is in response to your letter dated May 14, 1998 in which you asked whether the Congress may rely on me as an ITC Commissioner to consider the following three statutory factors in each anti-dumping case that comes before me:

1. the volume of imports of the subject merchandise,
2. the effect of imports of that merchandise on prices in the U.S. for like products, and
3. the impact of imports of such merchandise on domestic producers of like products 19 USCA 1677(7)(B)

I fully intend to consider each of the above listed factors in each anti-dumping case. On April 9, 1998 the United States Court of Appeals for the Federal Circuit considered the statutory language which you cite in holding that

"This language contains no ambiguity. It unmistakably requires the Commission to consider the three listed factors in making its material injury determination." Angus Chemical Company v. United States, 97-1166 (Fed. Cir. 1998).

The Court's holding included the requirement that "the three mandatory factors must be considered in each case"

In sum, both the statutory language and most recent case law clearly mandate my responsibility in this regard.

Sincerely,



**Opening Statement
of
Patrick A. Mulloy**

Chairman Roth, Ranking Member Moynihan and members of the Senate Finance Committee, it is a great honor for me to be here as President Clinton's nominee for the position of Assistant Secretary of Commerce for Market Access and Compliance. I appreciate your scheduling my confirmation hearing so promptly and look forward, if confirmed, to working with the members and staff of this Committee on a bipartisan basis.

The Assistant Secretary position for which I have been nominated is charged with important responsibilities. Among them are: (1) developing and implementing market access policies and programs; (2) monitoring foreign compliance with U.S. trade agreements; and (3) coordinating Commerce Department participation in matters related to the World Trade Organization (WTO), and other international organizations.

These are important responsibilities particularly in light of the growing interrelationship between our domestic economy and the world economy. I believe that if Americans are going to continue to support an open trading system, they must be convinced that the agreements we negotiate are fair to our companies and our workers and that our rights under them are monitored and enforced vigorously. The Commerce Department and the Administration alone cannot carry out such responsibilities. Rather officials charged with these duties must work closely with the Congress and all interested parties including the business and labor communities. I plan to do so.

In the questionnaire given me by this Committee, I was asked, "What in your opinion qualifies you to serve in the position for which you have been nominated?" When I considered that question, I realized that one of my most important qualifications is the experience I have gained from my service in both the Executive and Legislative branches. I have a clear understanding of the political and economic realities surrounding trade issues having spent the last fifteen years working in several senior positions on the staff of the Senate Banking Committee.

In my tenure with the Committee, I have worked on most of the international trade and finance issues within the Committee's jurisdiction such as third world debt, international economic coordination and exchange rates, trade promotion, export controls and, international banking. I have also served as a Congressional Adviser to U.S. delegations at meetings of the WTO, World Bank and International Monetary Fund. I understand the legislative process and the need for close cooperation between the Executive and Legislative branches. Prior to coming to the Senate, I also had a chance to work as a foreign service officer at the Department of State and as an attorney in the Justice Department's Antitrust and Lands Divisions. I believe these varied experiences have helped to prepare me now to serve our nation as the Assistant Secretary for Market Access and Compliance.

This Committee should know how much I appreciate having been nominated for this post. In addition to the President, I want to thank Secretary of Commerce William Daley and Under Secretary David Aaron for giving me this opportunity. I also want to publicly thank a number of people who helped me along the way. First and foremost are my deceased parents Hugh Mulloy and Ellen Meagher. My father was born in 1898, the son of an anthracite coal miner, and he had to leave school at age 14 to enter the mines. He got out of the mines when he volunteered to serve our country in World War I and never went back. In my youth, he emphasized to me the value of education and nurtured my interest in politics and government. My mother, who grew up on a dairy

farm in Northeastern Pennsylvania, taught grades one through eight in a one room rural school prior to her marriage and emphasized the importance of achievement. When I went off to grade school each morning she said, "Goodbye, good luck, and God Bless You and grow up to be President."

I thank the Holy Cross Fathers for the scholarships and fellowships that enabled me to earn my Bachelors and Masters degrees at King's College and the University of Notre Dame respectively. I also thank my former boss at the State Department, Christian A. Herter, Jr., who encouraged my efforts to get a law degree at night.

An important part of my professional development was the opportunity to work for members of the United States Senate and particularly to serve on the staff of the Senate Banking Committee where a bipartisan approach to resolving difficult issues is the norm. Let me thank Chairmen Proxmire and Riegle for whom I worked, and particularly Senator Sarbanes for being such a friend and supporter. I would also like to thank Chairman Garn, who led the Banking Committee when I arrived on a fellowship from the Justice Department in 1983, and who helped me stay on the Committee staff when my fellowship expired.

I want to also thank Chairman D'Amato for being here today to introduce me and for the very bipartisan manner in which he and the Committee approach the legislative process. I am enormously grateful to the support given me by Senator Dodd as well as Senators Bryan and Moseley-Braun and many other Senators, including members of this Committee.

My wife, Marjorie, a special educator of handicapped children, is my best friend and the mother of our three wonderful children. My 20 year old daughter, Maura, could not be present today because she is studying abroad this semester, but my 17 year old son, Daniel, and my 14 year old daughter, Claire, are here. They always keep me acutely aware of the things that matter most in life.

Thank you for allowing me to appear before you today. I would be pleased to respond to your questions.

The White House,

FEB 23 1898 19

To the
Senate of the United States.

Innominate Patrick A. Mulloy, of Virginia, to

be an Assistant Secretary of Commerce, vice Charles F.

Meissner.

William B. Eustace

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

February 12, 1998

**PRESIDENT CLINTON NAMES PATRICK A. MULLOY AS
ASSISTANT SECRETARY FOR MARKET ACCESS AND COMPLIANCE
AT THE DEPARTMENT OF COMMERCE**

The President today announced his intent to nominate Patrick A. Mulloy as Assistant Secretary for Market Access and Compliance at the Department of Commerce.

Mr. Patrick A. Mulloy, of Kingston, Pennsylvania, is currently Chief Democratic International Counsel for the Senate Committee on Banking, Housing and Urban Affairs. During his fifteen year tenure with the Banking Committee, Mr. Mulloy has also served as the Committee's Senior Counsel and International Affairs Advisor, General Counsel, and Minority General Counsel. In those positions, he contributed to much of the international trade and finance legislation reported by the Committee including titles of the Omnibus Trade and Competitiveness Act of 1988, dealing with international economic coordination and exchange rates, foreign bribery and export controls, and the Export Enhancement Act of 1992, which established the Trade Promotion Coordinating Committee. Prior to coming to the Senate, Mr. Mulloy served as a Senior Attorney with the Antitrust Division of the Department of Justice and was a Foreign Service Officer with the Department of State.

Mr. Mulloy has a LL.M. from Harvard University Law School, a J.D. from George Washington University Law School, an M.A. from the University of Notre Dame, and a B.A. from King's College.

The Assistant Secretary for Market Access and Compliance advises the Under Secretary of Commerce for International Trade and the Secretary of Commerce on the analysis, formulation, and implementation of U.S. international economic policies of a bilateral, multilateral, and regional nature. The Assistant Secretary also carries out programs to promote international trade, improve access by U.S. companies to overseas markets, and strengthen the international trade and investment position of the United States.

Mr. Mulloy resides in Alexandria, Virginia, with his wife, Marjorie, and their three children.

**SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE**

A. BIOGRAPHICAL INFORMATION

1. **Name: (Include any former names used.)** Patrick A. Mulloy
2. **Position to which nominated:** Assistant Secretary of Commerce for Market Access and Compliance
3. **Date of nomination:** February 23, 1998
4. **Address: (List current residence, office, and mailing addresses.)**
 - a. **Current Address:** 304 West Masonic View Alexandria, VA 22301
 - b. **Office Address:** Senate Banking Committee
Room 534 Dirksen Senate Office Building
Washington, D.C. 20510
 - c. **Mailing Address:** 304 West Masonic View Alexandria, VA 22301
5. **Date and place of birth:** September 14, 1941 in Wilkes-Barre, PA
6. **Marital status: (Include maiden name of wife or husband's name.)**
Married to Marjorie Baumer Mulloy
7. **Names and ages of children:**
Maura Alice (20); Daniel Patrick (17); Claire Ellen (14)
8. **Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)**
 - a: Diploma: West Side Central High School, Kingston, Pennsylvania, 6/59. Attended 9/55- 6/59.
 - b: B.A.: History and Government, King's College, Pennsylvania, 6/63. Attended 9/59-6/63.
 - c: M.A.: Government and International Relations, University of Notre Dame, Ind. 6/65. Attended 9/63-8/64.

- d: J.D.: George Washington University Law School, D.C., 8/71.
Attended 9/68-8/71.
- e: L.L.M.: Harvard University Law School, MA 6/78.
Attended 9/77-8/78.

9. **Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)**
- a: Teacher, West Side Central High School, Kingston, PA 1/65-6/65
 - b: Foreign Service Officer, U.S. Department of State, Washington, D.C. 6/65-1/73
 - 1. U.S. Consulate General, Montreal, Canada 1966-1968
 - 2. Office of International Environmental Affairs 1969-1971
 - 3. Office of United Nations Political Affairs 1972-1973
 - c: Attorney, U.S. Department of Justice, Washington, D.C. 1/73-6/84
 - 1. Trial Attorney, Lands and Natural Resources Division 1/73-8/77
 - 2. Senior Attorney, Antitrust Division 9/78-6/84
 - d: Several different senior staff positions on the U.S. Senate Banking Committee from June 1984 to the present. I am now the Committee's Chief Democratic International Counsel
10. **Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)**
None other than positions listed above.
11. **Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)**
Advisory Committee, McGowan School of Business, King's College, Wilkes-Barre, PA 1993-present
12. **Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)**
- a: Member of the Bar of the Commonwealth of Pennsylvania since 1972 (presently inactive service)
 - b: Member of the Bar of the District of Columbia since 1972 (presently inactive status)

- c: Member of the Bars of the U.S. Courts of Appeal for the Second, Fifth, Sixth, Ninth and District of Columbia's Circuits since various dates in mid 1970s
- d: Member of the Bar of the U.S. Supreme Court since 1975
- e: Member Federal Bar Association since 1984
- f: Member Notre Dame Alumni Club of the District of Columbia since 1973
- g: Member Father's Club of Gonzaga High School of D.C. since 1995
- h: Member Army Navy Country Club, Arlington, VA. 1991 to present
- i: Member St. Mary's Church, Alexandria, VA. 1979 to present. Served on Parish Council 1991-1994
- J: Member Advisory Committee, McGowan School of Business, King's College, Wilkes-Barre, Penna. 1993-present
- k: Former member American Bar Association. 1973-1984
- l: Former member Ancient Order of Hibernians. 1983-1987

13. **Political affiliations and activities:**

- a. **List all public offices for which you have been a candidate.**
None
- b. **List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.**
 - Member Alexandria, VA Democratic Committee 1996-1998
 - Member Democratic National Committee 1992-1998
 - Member Democratic Senatorial Campaign Committee 1992-1998
 - Robb for Senate campaign 1994
- c. **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.**
 - 1. Armando Falcon for Congress (San Antonio, Texas) 1997/98 \$85.00
 - 2. Bill Dolan for Virginia Attorney General 5/97 \$50.00
 - 3. Carper for Delaware 8/97 \$50.00
 - 4. Citizens for Sarbanes 1994 \$200.00
 - 5. Tsongas for President 2/92 \$100.00
 - 6. Clinton for President 7-10/92 \$300.00
 - 7. Clinton transition team 12/92 & 2/93 \$125.00
 - 8. Clinton/Gore campaign 1995-96 \$205.00
 - 9. Alexandria Democratic Committee-Since 1993 \$125.00

14. **Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)**

- Academic scholarship to King's College, Penna. (1959)
- B.A.: Magna Cum Laude King's College, Penna. 1963
- M.A.: University Fellow at University of Notre Dame. 1965
- J.D.: Honors George Washington University Law School. 1971
- Department of Justice Special Achievement Award for Work in Antitrust Division, 1982
- Presidential Congratulatory Letter and Signing Pen for my work on the Interstate Banking and Branching Act of 1994
- Award for twelve years of meritorious service in the U.S. Senate May, 1995

15. **Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)**
- a: "Political Storm Signals Over the Oceans" The Natural History Magazine, December 1973
 - b: "International Aspects of Environmental Problems" Land and Resources Journal, 1973 (U.S. Department of Justice Publication)
 - c: "The Interstate Banking and Branching Act of 1994: Responding to Global Competition" Journal of Legislation, Notre Dame Law School, 1995
16. **Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)**
- I have spoken many times to groups such as the Industrial College of the Armed Forces, the American Bankers Association, the Institute for International Bankers, the European Institute, and numerous other groups over the last five years but normally speak from notes about issues before the Senate Banking Committee. I have not delivered any such talks for publication and normally reflect the views of the members of the Banking Committee for whom I have worked.
17. **Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)**
- I have been very fortunate to have spent the last fifteen years of my life working in several senior positions on the staff of the Senate Banking Committee. In that time, I have had a chance to work on most of the international trade and finance issues within the Committee's jurisdiction such as third world debt, international economic coordination and exchange rates, trade promotion, export controls, international banking, and issues related to the International Monetary Fund. I have also served as a Congressional Adviser to U.S. delegations at meetings of the GATT and WTO, and the World Bank and International Monetary Fund. I have learned much about the legislative process and about the need for

close cooperation between the Executive and Legislative branches in shaping effective national policies. Prior to coming to the Committee, I had a chance to get a good education and to work as a foreign service officer at the Department of State and as an attorney in the Justice Department's Antitrust and Lands Divisions. I really believe these varied experiences have helped to prepare me now to serve our nation as the Assistant Secretary for Market Access and Compliance where I will have a chance to help open foreign markets for U.S. exporters.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. **Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.**
Yes, except I will retain my non-paying position on the Advisory Council of the McGowan School of Business at King's College in Wilkes-Barre, PA, if the Committee has no objection.
2. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.**
No
3. **Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.**
No
4. **If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.**
Yes

C. POTENTIAL CONFLICTS OF INTEREST

1. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.**
None
2. **Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been**

nominated.

None

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.
None
4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.)
I will consult with the General Counsel of the Department of Commerce and, if appropriate, divest myself of the conflicting interests, recuse myself, or obtain a waiver of the conflict of interest restrictions if the interest is not substantial.
5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.
The Department of the Commerce designated agency ethics official and the U.S. Office of Government Ethics will send their opinions directly to the Committee.
6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

Not Applicable

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional

conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.
No

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.
No
3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.
No
4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.
No
5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

I have worked with members and staff of the Senate Finance Committee during my service on the staff of the Senate Banking Committee and will continue to do so if confirmed as Assistant Secretary for Market Access and Compliance.

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?
Yes
2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?
Yes

F. FINANCIAL DATA

**Answers to Questions for the Record
Submitted to
Patrick A. Mulloy,
Nominee for Assistant Secretary for Market Access and Compliance**

Senator Roth Questions

QUESTION #1

—Q: Some have expressed concern about the potential overlap between your new responsibilities and those of USTR in the enforcement of our trade agreements. Can you tell me how roles of the two agencies differ and what you will do to ensure cooperation in the enforcement of our trading rights?

A: Overlap among Executive Branch agencies is something that has concerned me for a long time and, if I am confirmed, ensuring that Commerce and USTR use their scarce enforcement resources efficiently will be one of my top management goals. Fortunately, I understand that staff from Commerce's Trade Compliance Center and USTR's Monitoring and Enforcement Unit already meet routinely to share information and to coordinate their monitoring and enforcement efforts.

Regarding the differing enforcement roles of the two organizations, I understand the delineation to be that the USTR unit focuses its enforcement attention on litigation using WTO-based dispute settlement procedures, and on enforcement actions using the full range of the U.S. trade laws that USTR administers. I further understand that Commerce's Market Access and Compliance (MAC), in contrast, monitors and analyzes economic data and other information dealing with the over 250 trade agreements in its on-line database, and oversees compliance jawboning and negotiation efforts that are aimed at improving implementation of trade agreements by foreign governments. MAC, of course, also supports USTR in helping develop information that underpins our dispute settlement litigation in the WTO and other bilateral enforcement efforts.

I want MAC to work closely with the USTR, industry, labor, and the Congress to help identify and prioritize trade agreement violations that most adversely impact American companies and their workers and to determine ways to ensure that the United States gets the full benefits of its trade agreements.

Senator Roth Questions**QUESTION #2**

Q: Given the current economic crisis in Asia, what would you suggest we do to ensure that our Asian trading partners are not tempted to export their way out of their current economic problems through the use of various unfair trade measures?

A: I think we all realize that due to the currency devaluations in many Asian countries and the slowed nature of their economic activity that our imports from Asia are likely to increase while our exports to Asia are likely to decline. This will add to our already large trade deficits with many of our Asian trading partners. That being said, I will work to ensure that these trading partners do not employ unfair measures to block imports from the U.S. or spur their own exports. MAC country desk experts are well suited to work with officers in our Embassies and with the business and labor communities to review actions by these countries in that regard. I understand these experts are also analyzing trade data and practices to ensure our rights under trade agreements are not violated. I also understand that Commerce's Import Administration is examining the subsidies programs in these countries to ensure they do not violate WTO subsidy rules.

Clinton Administration officials, including Secretary Daley, have warned Asian countries not to use unfair trade practices to spur their recovery and instead have called on them to focus on domestic economic restructuring and deregulation as the means to solve their current economic problems and build a solid basis for their future economic growth.

QUESTION #3

Q: How can we make more effective use of State and Commerce Department officers assigned to overseas postings to bolster monitoring of our trade agreements? How can you use your position to galvanize the effort?

A: I understand that State Department Economic officers, with their host government trade policy contacts, and the Commerce Department's Commercial officers, with their knowledge of the local business community and business climate, each have important roles in monitoring our trade agreements with host countries. Having served abroad as a young foreign service officer, I know that our officers abroad prioritize their efforts on matters they are asked to focus on by officials in Washington. If confirmed, I will examine what directives, including instructions from Secretary Daley and Secretary Albright, have been issued to our posts abroad about enforcing trade agreements and will determine what additional steps need to be taken to raise the priority of such efforts. I will also work closely with the Director General of the U.S. and Foreign Commercial Service, who also serves in Commerce's International Trade Administration, to ensure commercial officers in the field are evaluated in part by how well they carry out their trade monitoring and compliance duties.

Senator Roth Questions

QUESTION #4

Q: Would you consider the establishment of a more formal inter-agency working group on enforcement and monitoring that could report to the Committee regularly on its progress?

A: I understand that USTR and Commerce co-chair a relatively new interagency group on trade enforcement and monitoring. Following up on your question, I will, if confirmed, make it a priority to examine how this interagency group works in order to determine how it could be improved. I will then discuss with Finance Committee staff the best means to ensure the Committee is fully abreast of trade agreements monitoring and enforcement efforts and issues. In fact, I look forward to regular consultations with Committee staff on these activities in order to solicit guidance on additional efforts MAC might undertake and also to discuss whether existing monitoring and enforcement tools and resources are adequate.

Senators Graham and Mack Questions

QUESTION #1

Q: One of our long-standing concerns on the trade front has been the perception by the general public and many in Congress that our trade agencies have not been effectively coordinating their efforts. Specifically, once USTR negotiates an agreement, they do not appear to look back to ensure that the agreement is being enforced. What, if anything, can be done to enhance interagency communication and to ensure that the Department of Commerce plays an active role in trade negotiations, enabling it to provide feedback to USTR up to and after the negotiation of a trade agreement?

A: I share your belief that the Commerce Department must play a major role in enforcing our rights under trade agreements and that is one reason why I hope to be confirmed for the position of Assistant Secretary for Market Access and Compliance (MAC). The Administration, with strong support from the Congress, created the Trade Compliance Center (TCC) within MAC to monitor our rights under trade agreements and to ensure that American companies and workers receive the benefits that we bargained for in such agreements. If foreign governments are not complying with such agreements then the Administration, in consultation with Congress, must figure out how to enforce our rights.

Presently, staff from MAC's Trade Compliance Center and USTR's Monitoring and Enforcement Unit meet regularly to share information and to coordinate enforcement efforts. I understand that USTR focuses its attention on litigation by using WTO based dispute settlement procedures or applying the full range of the U.S. trade laws that USTR administers to enforce our rights. MAC works directly with individual small and medium sized businesses to identify trade barriers and possible trade agreement violations, and to determine ways to ensure that the United States is getting the full benefits of its trade agreements. It oversees jawboning and negotiation efforts aimed at improving foreign implementation of trade agreements, short of dispute settlement where possible, and works closely with our foreign commercial service in doing so. MAC, of course, also supports USTR in developing information and strategies when dispute settlement cases are brought in the WTO or when bilateral enforcement efforts are undertaken.

MAC's Trade Compliance Center (TCC) has broadened its focus so that in addition to the role described above, it is now also the Trade Complaint Center --providing a "Hot Line" for U.S. companies to inform the U.S. government of trade barriers or agreement violations they are encountering. If confirmed, I intend to seek an even closer working relationship with the exporting community to boost exports and jobs. Among the functions I will focus on are: 1) providing market access information to exporters, (2) making trade and related agreement texts more available and understandable; and (3) acting on trade complaints from U.S. firms expeditiously. I will seek to improve coordination with the Congress, trade associations, industry groups and also labor unions, in order to learn of market access and trade agreement problems and to ensure we do something about them.

Senators Graham and Mack Questions**QUESTION #2**

Q: With respect to perishable agricultural products, one of the most common complaints brought to our attention is that existing law is ineffective both in the enforcement of agreements and in the provision of adequate relief due to the inherently slow nature of monitoring and the subsequent review process. Given these concerns, how would you envision Commerce, in cooperation with other relevant agencies, addressing this problem?

A: I am not too familiar with this particular issue as it would not fall directly under my responsibilities at Commerce. I have brought it to the attention of officials at Commerce's Import Administration who do deal with such matters. They have informed me that the most prominent case involving highly perishable agricultural products is the Agreement Suspending the Antidumping Investigation on Tomatoes from Mexico which has been in force for over a year. The Commerce Department's Import Administration works closely with the Customs Service to ensure effective enforcement of the agreement. Primary enforcement activities include: daily monitoring of prices in major markets; both regularly scheduled and unannounced "surprise" verifications; rapid response to allegations of agreement violations; and, when necessary, enforcement action.

Over the past year, I understand that Import Administration has met repeatedly with all parties, including U.S. growers and distributors, and Mexican signatories, to ensure the smooth implementation and aggressive enforcement of the agreement. Most recently, Robert LaRussa, Assistant Secretary for Import Administration, met with U.S. growers in Florida, and distributors in Arizona, to ensure that domestic concerns about the agreement are being addressed. In addition, I understand he is scheduled to meet with California and Mexican growers in the near future in an effort to increase the number of signatories and to stress continued compliance with the agreement.

Senators Graham and Mack Questions

QUESTION #3

Q. One of our longstanding trade objectives has been to foster long term stability in international currency markets, and to develop mechanisms to assure greater coordination, consistency, and cooperation between international trade and monetary systems and institutions. The recent Asian crisis has highlighted the trade implications of currency value fluctuations. What role do you see Commerce playing in protecting domestic markets against the adverse trade consequences of unanticipated currency valuation movements?

A: I know that the Congress has long been interested in achieving better macroeconomic policy coordination by G-7 countries to help achieve greater exchange rate stability and to identify countries that manipulate exchange rates to get trade advantages. In fact, provisions of the 1988 Omnibus Trade Bill require the Treasury Department to submit a report to the Senate Banking Committee on such matters every six months. In the past, the Banking Committee held hearings on such reports with senior Treasury officials testifying.

Congress, in enacting that provision, recognized that the Treasury Department has the lead responsibility for such matters and for the U.S. Government's relationship with international monetary institutions such as the IMF. The Commerce Department does have a key role to play in this area by emphasizing within Governmental councils the adverse impact unwarranted currency exchange values have on trade flows and our industries and workers

Senators Graham and Mack Questions

QUESTION #4

Q: One of your new responsibilities will be to monitor and presumably improve market access for U.S. companies. In addition to identifying trade barriers, what actions can Commerce take to eliminate these barriers where they exist? Many cases involving such barriers will be brought before the World Trade Organization (WTO) by USTR. In your opinion, should there be a greater role for Commerce in bringing such matters before the WTO? Aside from the WTO, what other mechanisms are available to address these barriers?

A: If confirmed, I certainly will be focusing not just on monitoring agreements, but also on seeking to improve market access for U.S. companies. I want to amplify a point I made in answering your first question, that is, MAC has direct responsibility, in coordination with USTR, to improve the implementation of trade agreements by foreign governments and to address compliance problems short of dispute settlement. That means that MAC not only supports USTR in developing information and strategies about when dispute settlement cases are necessary, but that it also undertakes jawboning efforts to remedy compliance problems before decisions are made to go to WTO dispute settlement or to institute bilateral enforcement actions. There are many tools which can be used to promote compliance with agreements other than WTO dispute settlement. Individual contacts with foreign government officials by all levels of the Commerce Department, from Secretary Daley on down, have been one way of raising concerns about and resolving market access problems. Of course when advocacy fails we must be prepared to go to the WTO or to pursue other remedies permitted under our trade laws and international obligations.

Frequently, the problem facing U.S. companies is not that a trade agreement is inadequate, but that it is being improperly administered by working level officials in the foreign government. I understand that such officials sometimes interpret their country's regulations in ways that make it very costly for U.S. firms to enter foreign markets. Smaller U.S. companies generally lack the time and staffs to deal with these kinds of problems and MAC must be ready to come to their assistance. If confirmed as head of MAC, I will work closely with the Director General of the U.S. and foreign commercial service to ensure we are able to be on the spot to help U.S. exporters with such matters in the field.

It is essential that one agency have the lead responsibility in pursuing cases before the WTO to ensure consistency in policy and legal argumentation. USTR presently has that responsibility. If confirmed, I will work with USTR to ensure we emphasize cases that have the "most bang for the buck" in terms of our priorities in opening foreign markets to U.S. firms.

Senator Murkowski Questions

QUESTION #1

Q: Last July, the International Association of Drilling Contractors petitioned Commerce to revoke the Anti-Dumping Order for drill pipe because of short domestic supplies. This petition was supported by the largest drill pipe manufacturer in the U.S. (Grant Prideco with 75% of the domestic market) with regard to lifting the orders for imports from Mexico.

Commerce rejected the request in part because of a "significant portion" of the domestic industry opposed the request.

Q) On what basis does the Department determine opposition from a "significant portion of the industry?" Is that 95%, 85%, 75%, 65% of the industry? Or is there no set figure?

Q) What type of evidence does Commerce require from a domestic producer who objects to removing a product from the scope of an order? In the case of drill pipe, what evidence did the 25% of the industry that objected to the lifting of duties present as to the harm they would endure?

Q) Mr. Mulloy, the largest domestic producer, PrideCo, accounting for 75% of the domestic production, now has a backlog of \$325 million in orders for drill pipe.

I am told that drilling companies have to wait at least 6 months and as long as a year and a half before their orders are received.

Isn't this clear evidence that there is a critical short supply problem for finished drill piping?

If this does not constitute "short supply", in your mind, what would constitute short supply? A wait of 2 years, 3 years?

Q) Do you think we should re-consider, by legislation, the standards that we apply in determining what is a "short supply" situation?

If not, why not, when we have clear evidence that exploratory drillers are currently facing what in any other industry would be considered extraordinarily delays in meeting their equipment needs?

Q) When do you think other domestic producers will be able to meet domestic demand?

A: The matters raised in your question are within the province of the Commerce Department's Import Administration, rather than the Market Access and Compliance unit which I have been nominated to head. I have, however, asked Import Administration to give me information upon which to base a reply to your multi-part question. They have done so and have also indicated that because the questions you ask involve novel and complex issues involving the Department's procedures for handling problems with domestic availability and short supply, Robert LaRussa, Assistant Secretary for Import Administration, is preparing more detailed responses. He will forward them to you in the very near future.

I understand that new regulations recently promulgated by the Department of Commerce introduced new procedures and deadlines to address short supply issues at the outset of an antidumping or countervailing duty investigation. See 62 FR 27323 (May 19, 1997). In addition, I understand that the Department routinely addresses the issue of domestic availability through a proceeding called a "changed circumstances review." Recent examples where the Department used such a review to grant partial revocations on a product-specific basis, include microwave amplifiers from Japan, rayon yarn from Germany, corrosion-resistant steel from Japan, cookware from Taiwan and Korea, and rails from Canada.

Assistant Secretary LaRussa is aware of the concerns raised by your questions and has asked me to assure you that he will continue to work to resolve this issue.

RICHARD G. LUGAR
INDIANA
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WASHINGTON, DC 20510
202-224-4214

COMMITTEES
AGRICULTURE, NUTRITION, AND FORESTRY
CHAIRMAN
FOREIGN RELATIONS
SELECT COMMITTEE
ON INTELLIGENCE

United States Senate

WASHINGTON, DC 20510-1801

April 20, 1998

The Honorable Bill Roth
Chairman, Senate Finance Committee
215 Dirksen Building
Washington, DC 20510

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Dear Chairman Roth:

I write in support of President Clinton's nominee Jennifer Hillman to serve as Commissioner on the International Trade Commission (ITC). Having worked with Jennifer when she served on the staff of Senator Terry Sanford, I can attest to her professionalism and the quality and thoroughness of her work. She would be a strong addition to the ITC.

Since leaving the Senate in 1992, Jennifer has distinguished herself as a superb trade negotiator and lawyer. Her tenure as USTR's Ambassador and Chief Textile Negotiator included negotiating a record-breaking 38 bilateral agreements over the course of nine months, while simultaneously addressing the final textile and clothing provisions included in both the NAFTA and Uruguay Round agreements. Recognizing her talents, Ambassador Kantor promoted Jennifer to become his general counsel two years later. In this capacity, Jennifer presided over the entire legal work of the Trade Representative's Office, including the successful reorganization of the USTR general counsel's office.

On a personal note, I commend the President's choice of a fellow Hoosier. Jennifer's Indiana roots are well-established in the South Bend community. Her family's printing and lithography business, now in its third generation, lies at the heart of the South Bend business community. Jennifer's grandmother, Gertrude Moasberg, recently celebrated her 100th birthday in her South Bend home designed by Frank Lloyd Wright. Jennifer would serve Hoosiers proudly upon being confirmed to the Commission.

Given her broad experience in all areas of trade law, including the private sector, the Senate, and the USTR, I am confident that Jennifer would serve the International Trade Commission with distinction. I recommend her nomination to you.

Sincerely,



Richard G. Lugar
United States Senator

RGL/wlw

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