

**NOMINATIONS OF JAMES S. HALPERN,
KARAN K. BHATIA, SUSAN C. SCHWAB,
FRANKLIN L. LAVIN, AND CLAY LOWERY**

HEARING
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF

HON. JAMES S. HALPERN, TO BE JUDGE OF THE U.S. TAX COURT; HON. KARAN K. BHATIA, TO BE DEPUTY U.S. TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR; HON. SUSAN C. SCHWAB, TO BE DEPUTY U.S. TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR; HON. FRANKLIN L. LAVIN, TO BE UNDER SECRETARY OF COMMERCE FOR INTERNATIONAL TRADE; AND CLAY LOWERY, TO BE DEPUTY UNDER SECRETARY OF THE TREASURY

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OCTOBER 18, 2005
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TREASURY**

TUESDAY, OCTOBER 18, 2005

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

The hearing was convened, pursuant to notice, at 10:06 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Charles E. Grassley (chairman of the committee) presiding.

Also present: Senators Hatch, Smith, Crapo, Baucus, and Lincoln.

**OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.
SENATOR FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. Normally I do not start without Senator Baucus, but he sent word that I could go ahead, and I am happy to do that.

It is my pleasure to welcome several nominees to the Finance Committee today. All of the nominees before us have had long, distinguished careers that make them well-qualified for positions for which they are nominated. I am sure all of them are eager to get started in their new roles or they would not have submitted to the President's request for them to serve.

First, I am pleased to welcome James S. Halpern, who has been reappointed to a second term as Judge of the U.S. Tax Court. Including his exemplary service for the Tax Court, Judge Halpern has more than 33 years experience as a tax lawyer, tax teacher, and tax judge.

Highly regarded by government and private sector members of the Bar, Judge Halpern has shown the intellectual leadership required for the inherent complexity of the tax laws.

Then we have trade nominees. I would like to note two elements of trade policy that I hope they will keep in mind as they serve in their new capacities. First, is the importance of strong monitoring and enforcement. International trade is essential for the U.S. economy.

That is why I fully support efforts to enhance international trade through bilateral and multilateral trade agreements. But we cannot lose sight of the need to ensure that our Trade Representative and our trading partners live up to their obligations under these agreements.

So, as Chairman of this committee, I strive to ensure that we abide by our trade commitments. I fully expect each of you, as well as this administration, to be forceful and to be diligent in pursuing our rights under each of these agreements. The American people deserve to reap the full benefits of each trade agreement that we enter into, and it is our duty to make sure that they do.

The second point that I would make to our trade nominees is to keep in mind the role of consumers in international trade. When governments impose tariffs and other restrictions on goods and services, they increase the cost of those goods and services to consumers and limit freedom of choice.

Government tariffs and restrictions can also stifle innovation and drive up the cost of producing in this country by increasing the cost of inputs, which can needlessly inhibit our ability to compete internationally.

As you develop and implement our trade policies, I say to these nominees, I would urge each of you to not overlook the important role that the consumers play.

I would also welcome Karan Bhatia, the second nominee, for Deputy U.S. Trade Representative. Should he be confirmed, Mr. Bhatia will oversee our trade policies towards East Asia, South Asia, and Africa. He has over 15 years of firsthand experience in international trade, investment, and economic issues, and that experience is going to serve him well in that capacity.

We would welcome Susan Schwab, the President's nominee for Deputy U.S. Trade Representative. Should she be confirmed, Dr. Schwab will help guide our Nation's trade policy in Europe, Latin America, and the Middle East.

Dr. Schwab has an extensive professional career of public and private service, as well as a rich understanding of international trade. The accumulated wisdom over her long career, which includes legislative, corporate, and academic areas, will aid her in her new role.

Ambassador Frank Lavin is the President's nominee for Under Secretary of Commerce for International Trade. Ambassador Lavin has had a long and distinguished career in both the private and public sectors, which makes him a very able candidate. I appreciate his record of public service and appreciate his enthusiasm for working for the American people.

Finally, I will introduce Clay Lowery, the President's nominee for Deputy Under Secretary of International Affairs at the Department of the Treasury. If confirmed, Mr. Lowery will formulate international policy concerning international monetary and financial affairs, trade and debt issues, and participation in international fi-

financial institutions. His strong analytic skills and wealth of experience during his past 15 years are particularly suited for that job.

That said, once again, I would welcome all of our nominees to the committee, and I appreciate your patience with this process, of which Congressional consideration is only part of the red tape that you have had to go through.

I call on Senator Baucus at this point.

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

Senator BAUCUS. Thank you, Mr. Chairman.

I would like to congratulate all of you on your nominations. You all come before this committee strongly recommended and highly qualified.

But no support is more important than that of your families', your spouses and your children, and I congratulate them. I suspect that, without their support, you would not be here today.

I have had the pleasure of meeting some of you, and I have worked with many of your predecessors. I look forward to working with all of you.

Judge Halpern, you have earned an excellent reputation in the 15 years you have already served on the Tax Court, and I am glad that you are willing to serve another term.

Mr. Lowery, you already have a decade of experience at Treasury. You have earned the respect and trust of your superiors.

Dr. Schwab and Mr. Bhatia, you bring many years of experience in trade and international affairs to the USTR. You both will be effective advocates for the United States.

Ambassador Lavin, your long and varied experience in Asia will serve you well as Under Secretary of Commerce. Many of our greatest opportunities and most difficult problems are in Asia.

Your nominations come at a critical point in U.S. economic policy. I believe that we are at a watershed moment. How we fulfill our international economic agenda today will determine whether younger generations view international trade as a contributor of wealth or a cause of hardship.

How we act today will decide whether our children and grandchildren view China and India as an opportunity or as a threat. How we act today will decide whether international, financial, and trade institutions are treated with suspicion and derision or viewed as a forum for hopeful cooperation and progress.

I hope and trust that this is just one of the many times that I will see you in the Senate, and I hope that we can cooperate to pursue an international economic agenda that allows future generations to look abroad for hope, opportunity, cooperation, and prosperity.

Mr. Chairman, thank you for today's hearing.

The CHAIRMAN. You bet. Thank you very much.

Now we have Senator DeWine, who is interested in introducing Ambassador Lavin, and then we have Representative Hoyer, who, it is my understanding, would speak for Susan Schwab.

Senator DeWine?

**STATEMENT OF HON. MIKE DeWINE,
A U.S. SENATOR FROM OHIO**

Senator DeWINE. Mr. Chairman, thank you very much. Senator Baucus, Senator Smith. Thank you for having me.

It is my privilege today to introduce my good friend, Ambassador Frank Lavin, of Canton, Ohio, whom President Bush has nominated to be the Under Secretary of Commerce for International Trade.

Frank has a solid background, Mr. Chairman, in the economic and international issues that his job entails, including advanced degrees from Georgetown, Johns Hopkins, and Wharton.

Professionally, Frank has distinguished himself through over 2 decades of work in Asian affairs in both the government and private sectors. I have known Frank for almost 2 decades, over 2 decades, dating back to his days in the Reagan administration when he worked at the National Security Council as Deputy Executive Secretary. He then went on to serve the White House in the Office of Political Affairs.

Frank was then nominated and served as the Deputy Assistant Secretary of Commerce for Asia and the Pacific, where he was responsible for commercial policy, assisting companies with market access and trade negotiations for the region. He continued his connection with the region during the late 1990s as a banker and venture capitalist in Hong Kong and Singapore.

Mr. Chairman, with his high caliber of professional experience within the region, it was no surprise when President Bush nominated Frank to be Ambassador to Singapore. As Ambassador to Singapore, Frank helped oversee the successful negotiation and enactment of the U.S.-Singapore Free Trade Agreement.

It is important that we have someone in this position who knows business, knows our trade rights and responsibilities, knows our trade partners, and knows how to open markets to U.S. goods.

It is particularly important to have someone like Ambassador Lavin, who has a thorough understanding of the countries in the Far East, which seem to be at the center of so many trade discussions here in Congress.

Frank has a ground-floor view of the region, both from his days in the private sector and from his years spent in government service.

Adding to his professional accomplishments, I would like to mention that Ambassador Lavin is also a Lieutenant Commander in the U.S. Naval Reserves, and has three wonderful children together with his wife, Ann.

Mr. Chairman, I thank you for your kind attention and for allowing me to make this introduction of my good friend, Frank Lavin.

The CHAIRMAN. Thank you, Senator.
Now, Representative Hoyer?

**STATEMENT OF HON. STENY HOYER,
A U.S. REPRESENTATIVE FROM MARYLAND**

Representative HOYER. Mr. Chairman, thank you very much for giving me this opportunity. Senator Baucus, Senator Hatch, Senator Smith, I appreciate very much your allowing a member of the other body to be with you this morning.

Mr. Chairman, I cannot recall immediately, during the 25 years, now 26th year that I have been in the Congress, that I have testified on other than a judicial nomination on the Senate side for an appointee.

Senator Mikulski and Senator Sarbanes, because of scheduling, could not be here, but I am sure that I speak for them.

Dr. Susan Schwab is a good friend of mine, and in that respect I may not be totally objective. But I have had the opportunity of working with her for over a decade in a number of different capacities.

I will not go through her curriculum vitae, but I will say that, as you pointed out in your opening statement, Mr. Chairman, she has a broad range of experience: legislative, executive, and academic.

In all three of those endeavors, she has brought with her the skills, the intellect, and the integrity that one would want in an appointment of this type.

I wanted to come and tell this committee that, at a time when the national trade policy pursued by the United States is one deeply enmeshed in controversy and partisanship, which I believe, personally, is unfortunate, she will be, I think, along with Congressman Portman, our Trade Representative, a person who can bring a greater consensus, a greater sense of collective wisdom, working together to forge a trade policy that is both rational and effective, and bipartisan, which I think is important for our country and for our policy.

She is a positive individual, a perceptive individual. Having worked for Senator Danforth for a number of years, Mr. Chairman, as you know—and perhaps you worked with her during that period of time—she understands the process of bringing people together to forge positions that can be broadly supported, and therefore, in my opinion, more effective.

I am enthusiastic, as someone would be who has served on the Board of Trustees or the Board of Advisors during her tenure as Dean of the School of Public Policy at the University of Maryland, who knows her academic qualifications as a graduate of Williams, a graduate of Stanford, and receiving her doctorate from George Washington.

I know that she will bring the same kind of effective leadership to the Trade Representative's office as she has brought to the University of Maryland, as she brought to Motorola, as she brought to Senator Danforth's office. I congratulate the President on his selection and urge this committee to approve quickly and unanimously the nomination of Dr. Susan Schwab to be Deputy Trade Representative.

Again, Senator, thank you for this opportunity to appear before you.

The CHAIRMAN. I have no questions.

Do any of my colleagues have questions of the Senator or the Congressman? [No response]. All right. We thank you very much for coming.

Senator DEWINE. Thank you.

Representative HOYER. Thank you, Mr. Chairman.

The CHAIRMAN. Would the witnesses all come to the table at the same time? Mr. Halpern, Mr. Bhatia, Dr. Schwab, Mr. Lavin, and then Mr. Lowery.

Before you give your statement, I want to remind you that a long statement will be put in the record. So the extent to which you have anything to say, it will be a matter of the record, and if you could summarize.

But before you do that, we will start with you, Mr. Halpern, for any friends or family that you have with you that you would like to introduce. We would have them stand.

Mr. HALPERN. Thank you, Senator. My wife, the Honorable Nancy Nord, Chairman of the Consumer Product Safety Commission, could not be here with us today, but I would like to acknowledge her support.

I would like to acknowledge that my staff is here, and my two attorneys, Fred Wallach and Allen Stenger, my personal assistant, Velinda Morton-Payne, and my secretary, Deborah Peterson. Thank you.

The CHAIRMAN. Thank you.

Now, Mr. Bhatia?

Mr. BHATIA. Thank you, Mr. Chairman. I would like to recognize my family back there. My wife, Sara, my two sons, Alexander and Teddy. Extremely handsome young men, I must say. My parents, Samir and Janice Bhatia, and my parents-in-law, Marsha and Les Levine. Thank you very much.

The CHAIRMAN. Now, Dr. Schwab?

Dr. SCHWAB. Thank you, Mr. Chairman. I would like to acknowledge my parents, Gerald and Joan Schwab, who are seated back there.

The CHAIRMAN. Would you stand, please? All right. Thank you.

Dr. SCHWAB. And with them, Professor Mac Destler from the School of Public Policy at the University of Maryland, a friend and an expert on trade policy, along with some of our graduate students from the school.

The CHAIRMAN. Thank you. Thank you all.

Now, Mr. Lavin?

Mr. LAVIN. Thank you, Mr. Chairman. My wife is still on station in Singapore, but I would like to acknowledge that my daughter Abby is able to be with us today, as well as my sister-in-law, Lauren, and my two nephews, Seth and Austin.

The CHAIRMAN. Thank you.

Now, Mr. Lowery?

Mr. LOWERY. Thank you, Mr. Chairman. I would like to acknowledge my wife Diana and my father Richard, who are here with me today. And also I would like to acknowledge my deceased mother, Gail, who could not be here, obviously, but thanks to her, I am here.

The CHAIRMAN. Thank you.

Now, in the order in which we have just gone, I would ask you for your opening statement.

Mr. Halpern?

**STATEMENT OF HON. JAMES S. HALPERN, TO BE JUDGE OF
THE U.S. TAX COURT, THE JUDICIARY**

Mr. HALPERN. Thank you, Mr. Chairman.

Mr. Chairman, Senator Baucus, and members of the committee, thank you for scheduling this hearing promptly. It is an honor to have been nominated by the President for a second term as a judge in the U.S. Tax Court.

Fifteen years ago, I appeared before this committee to testify in connection with the then-President's nomination of me to my first term. I hope that during the intervening 15 years the work of the court, and my work in particular, has met with the approval of the committee.

I am sure that I speak on behalf of all of my colleagues on the Court in expressing my appreciation for the support that the committee has shown the Court in connection with the committee's oversight responsibilities towards the Court.

The Court particularly appreciates your efforts, Mr. Chairman, and the efforts of Senators Baucus, Hatch, and Lincoln on behalf of the Tax Court Modernization Act.

I would be pleased to answer any questions that you have.

The CHAIRMAN. Thank you.

Now, Mr. Bhatia?

**STATEMENT OF HON. KARAN K. BHATIA, TO BE DEPUTY U.S.
TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR,
EXECUTIVE OFFICE OF THE PRESIDENT**

Mr. BHATIA. Thank you, Mr. Chairman.

Mr. Chairman, Senator Baucus, distinguished members of the committee, it is my great pleasure to appear before you today. I am deeply honored by the confidence shown in me by the President and by Ambassador Portman, and, if confirmed, I very much look forward to working with you to develop and implement U.S. trade policy.

I will keep my statement brief. If I may, Mr. Chairman, I would again like to extend my thanks and recognize my family. I should also like to extend my appreciation to the members of the committee and their staff, with whom I have had the opportunity to meet over the past several weeks. Those meetings have given me a chance to learn about your concerns and to begin a dialogue about U.S. trade policy that I very much hope to continue.

Over the past 4 years, in my positions at the Department of Commerce and Transportation, I have had the pleasure of working closely with relevant committees in both Houses of Congress, and if confirmed, I look forward to building that same kind of relationship in this job.

Let me also stress my personal commitment to Ambassador Portman's goal of working with both the Majority and Minority to rebuild a bipartisan consensus on international trade.

The evidence, I believe, demonstrates that this country's commitment to open markets, free trade, and sustained international engagement in the post-war era has produced a tremendous record of economic growth, cultural dynamism, and international leadership.

The record also shows that acts of protectionism and isolationism in our history have ill served U.S. national interests and harmed

our workers and farmers, companies, consumers, and communities across the Nation.

At the same time, I recognize that public support for free trade today—which is fragile, even in the best of times—is being tested. News of record trade deficits, challenges in our multilateral trade negotiations, and evidence that some partners are not playing by the rules concern many Americans.

Those concerns, of course, arise against the backdrop of a rapidly changing, globalizing international economy, with its inherent uncertainties, complexities, and dislocations.

Yet, in part, that challenge changes, I would submit, that demand that the United States actively engage in the shaping and integration of the international economic system.

If confirmed, I believe that one of my more pressing challenges will be to help reestablish a consensus through words, actions, and results that international trade is in the best interests of the American people, now more than ever before.

Now, in part, that challenge must be met through continued efforts to open markets abroad for our highly competitive companies, products, workers, and farmers. In the geographic areas that would constitute my area of responsibility, Asia and Africa, I believe that there are significant opportunities for continued market opening, and I pledge to work hard to pursue those opportunities.

Rebuilding a national consensus on trade also requires vigorous enforcement of our existing agreements. Free trade does not mean giving away the store or turning a blind eye to the failures of our trading partners to honor their commitments.

If confirmed, I will join the President and Ambassador Portman in insisting that our partners live up to their responsibilities, and that American companies and their workers receive a fair shake as they strive to take advantage of opportunities in international markets.

Far from being a threat to free trade, a transparent and equitable system of rules that binds trading partners, and a serious enforcement regime to back it up, is actually indispensable to the cause of free trade.

Let me conclude, Mr. Chairman, by noting that, for me, the cause of promoting a free, fair, vibrant, and open international economic system is a deeply-held personal commitment. It is one shaped by my experiences growing up in Asia and Africa. It is one to which I have devoted my professional and academic careers.

It was the focus of my undergraduate and graduate studies. My law practice was dedicated to helping companies work their way through the tangled webs of regulations here and abroad that can so easily derail international trade and investment.

At the Commerce Department's Bureau of Industry and Security, I worked hard to promote a safer and more secure international trading system in our post-9/11 environment.

Over the past 2 years, as Assistant Secretary of Transportation for Aviation and International Affairs, I have been privileged to assist Secretary Mineta in negotiating a series of liberalized air services agreements with nations such as China, India, Indonesia, Thailand, Vietnam, and Ethiopia.

These agreements have helped to open some of our largest air services markets, freeing our airlines to fly where, when, and how they want, and in so doing, to broaden the pipelines through which much of our international trade and commerce flow.

Working closely with this committee and with all affected stakeholders, I look forward to continuing the quest to ensure that international trade and commerce can continue to connect economies and people. I thank you for the opportunity to make this statement and look forward to your questions.

The CHAIRMAN. Thank you, Mr. Bhatia.

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

The CHAIRMAN. Now, Dr. Schwab?

STATEMENT OF HON. SUSAN C. SCHWAB, TO BE DEPUTY U.S. TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR, EXECUTIVE OFFICE OF THE PRESIDENT

Dr. SCHWAB. Mr. Chairman, Senator Baucus, members of the committee, first, I would like to offer my thanks to Congressman Hoyer for his kind words and strong support for the University of Maryland.

It is great to be back with the Senate Finance Committee. I spent many fascinating hours here during the 1980s when it was my privilege to work with Senator John Danforth, who was then chair of your International Trade Subcommittee.

For me, today is about taking a fond look back in anticipation of moving forward. I am grateful for the honor of being here, for the President's and Ambassador Portman's faith in my potential to serve our Nation in this important role.

When I left graduate school in 1977, I came to Washington looking for a job in international trade, development, or agriculture. I arrived at 1800 G Street, which was then the home of the President's Special Representative for Trade Negotiations.

I picked a name off of a directory in the lobby and went upstairs to find its owner. I had in hand a form letter from the office thanking me for my job inquiry and telling me that there were no vacancies.

The gentleman I sought was not there, but his assistant was. She looked at my resume and took me down the hall and introduced me to a friend of hers. This was an agricultural trade negotiator, and it turned out they had a vacancy. Someone had turned down a job the previous week.

An interview with her boss and one security clearance later, and they hired me, just in time for the Tokyo Round multilateral trade negotiations. Ambassador Robert S. Strauss was then the Trade Representative.

It was an amazing office then, it is an amazing office today, with some of the smartest, hardest-working career professionals you will ever meet. It is an honor to be nominated, and it will be a privilege, if I am confirmed, to become their colleague once again.

In the intervening years, I have had the opportunity to work in U.S. trade policy and promotion from multiple perspectives in the government and the private sector, from the executive branch and the legislative branch, as a career foreign service officer, and as a political appointee, as a negotiator who helped open doors for U.S.

business, and as a commercial service employee helping small, medium, and large firms walk through those doors.

I sense that the United States stands at a crossroads in our approach to global trade. We are looked to for leadership in the international trading system, both in what we say and in what we do. We cannot afford to shirk that responsibility.

But neither can we forget that support for open markets at home requires that trade be perceived as fair, as well as free, that negotiation of promising trade agreements be followed by strong enforcement, and that those impacted by the rigors of competition have the opportunity to succeed in today's knowledge-based economy. We will have many opportunities in the coming years to exercise our leadership and to make and reinforce the case for open trade in the United States.

In addition to the negotiation and implementation of agreements that contribute to economic and political freedom around the world, we must ensure that the benefits of trade to the American people are articulated in a clear, consistent, and bipartisan manner.

If confirmed, I look forward to working with colleagues in the interagency process and with industry, agriculture, labor, and other interested groups, both within and outside of USTR's Statutory Advisory Committee structure.

Above all, I look forward to working with members of this committee and your colleagues across the Capitol to ensure that the promise of international trade is realized in the years ahead through forward-looking U.S. trade policy, negotiations, and implementation.

Let me close with a special word of thanks to my parents, Gerald and Joan Schwab. Our lives abroad together and their passion for public service instilled in me a profound appreciation for the United States and for the importance of serving and representing my country to the best of my ability.

If confirmed by the Senate, I look forward to doing so in the role of Deputy U.S. Trade Representative. Thank you.

The CHAIRMAN. Thank you, Dr. Schwab.

[The prepared statement of Dr. Schwab appears in the appendix.]

The CHAIRMAN. Now, Mr. Lavin?

STATEMENT OF HON. FRANKLIN L. LAVIN, TO BE UNDER SECRETARY OF COMMERCE FOR INTERNATIONAL TRADE, U.S. DEPARTMENT OF COMMERCE

Mr. LAVIN. Thank you, Mr. Chairman, Senator Baucus, distinguished members of the committee. Thank you for the opportunity to appear here today. I also want to thank Senator DeWine for his very gracious introduction. I am proud that he represents my home State, and I am certainly grateful for his support.

I am grateful that my daughter, Abby, Lauren, my sister-in-law, and my nephews, Seth and Austin, were able to come by. My wife, Ann, and my children, Nat and Elizabeth, are here in my heart, although the oceans and the miles keep us apart for the moment.

I also want to recognize my fellow nominees here on the panel, and, if confirmed, I would particularly look forward to working with Dr. Schwab and Assistant Secretary Bhatia as they assume their posts in the Office of the Trade Representative.

Mr. Chairman, with your permission, I would like to submit written testimony for the record.

The CHAIRMAN. Without objection.

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

Mr. LAVIN. Thank you. I would like to offer a brief summary of my statement.

It has been a privilege to serve the President and the American people as the U.S. Ambassador to the Republic of Singapore. I am honored that President Bush and Secretary Guttierrez have asked me to serve as Under Secretary of Commerce for International Trade.

Trade is an important source of good jobs for our workers, with new opportunities for entrepreneurs and higher growth for our economy.

Mr. Chairman, as U.S. Ambassador to Singapore and as a banking executive and Commerce official, I helped U.S. companies navigate the international marketplace, breaking down trade barriers, facilitating export financing, and I have seen the opportunities and challenges first-hand.

If confirmed, I will use this experience in the International Trade Administration to promote exports, to open foreign markets, ensure compliance with trade laws and agreements, and support U.S. commercial interests at home and abroad.

Mr. Chairman, my service will be guided by three principles. First, American companies produce world-class goods and services and we can win in the international marketplace.

Second, we must use all the tools at our disposal to ensure that American businesses face fair competition. We must enforce the rules and hold our trading partners accountable to the agreements they have signed.

Third, cooperation between the legislative branch and ITA is essential for constructive international trade policy. I look forward to working with the Congress on the vital issues we face.

In closing, I would like to express my enthusiasm for ITA's mission. If confirmed, I will join an extraordinarily capable group of men and women who work around the world as commercial officers, trade specialists, economists, and trade lawyers, to support that mission.

I believe their work has never been more critical to both our economic well-being and our National security. With your support, I would be honored to lead them in this endeavor. Thank you for your time. I would be happy to answer any questions the committee might have.

The CHAIRMAN. Thank you.

Now, Mr. Lowery?

STATEMENT OF CLAY LOWERY, TO BE DEPUTY UNDER SECRETARY OF THE TREASURY, U.S. DEPARTMENT OF THE TREASURY

Mr. LOWERY. Chairman Grassley, Senator Baucus, and distinguished members of the committee, I am honored to appear before you today as President Bush's nominee to serve as Deputy Under Secretary of the Treasury for International Affairs.

Please allow me to express my gratitude to the President and Secretary Snow for the confidence and trust that they have shown in me, and I would like to thank you for your consideration of my nomination.

I again want to thank my family for providing me the foundation and the passion to pursue a career in public service. I want to particularly thank my wife for supporting me in a career that, at times, has the rewards of long flights abroad, little communication in the field, and interminable hours at the office.

I have served as a career civil servant at the Treasury for the past decade. It has been my privilege to serve in the administrations of President Clinton and President Bush in a number of positions, promoting the national interest in such areas as international development, finance, and economics.

As a desk officer, economist, negotiator, diplomat, and manager, I have been deeply involved in such issues as responding to the emerging market crises of the 1990s, developing the initiative to provide debt relief to the world's poorest countries, and creating the Millennium Challenge Corporation.

For the past year and a half, on loan from the Treasury Department, I have served at the Millennium Challenge Corporation as a member of its investment committee and as vice president.

In this capacity, I have been a leader in building and managing a start-up government corporation to implement President Bush's pioneering initiative to revamp the model for foreign assistance and to reduce poverty by investing in sustainable economic growth in poor countries that rule justly, invest in their people, and encourage economic freedom.

Prior to MCC, I held a variety of positions at the Treasury Department, most recently as Deputy Assistant Secretary for Debt and Development Finance.

In this position, I led a team consisting of four offices with responsibilities for debt work-outs, trade finance, development policy, and cross-cutting financial market analysis.

I have also had the privilege of working at the National Security Council as the Director of International Finance, a job that allowed me to bring together the complementary imperatives of protecting national security and advancing economic prosperity.

In most of these capacities I have worked very closely with Congress, and, if confirmed, I plan to continue such collaboration on a full range of issues.

Mr. Chairman, this range of issues starts with a juxtaposition. In many respects, the global financial picture could not be stronger, with global growth led by the U.S. economy at roughly 30-year highs, inflation around the world relatively benign, and foreign investment on an upswing in emerging market economies.

This positive news, however, is accompanied by worrisome global financial imbalances, potential complacency in financial circles, and large swaths of poverty in the developing world.

To me, I think the challenge for the United States is to help the American people seek the great opportunities offered by such an environment, while promoting the essential benefits of increased productivity, open markets, and free trade.

If confirmed, I look forward to working with the administration, the Congress, and the Treasury team in addressing these challenges and opportunities, focusing on such key priorities as promoting economic growth worldwide, preventing financial crises and opening up foreign markets to U.S. goods and services, particularly through negotiations to include a strong Doha Development Round.

If confirmed, I also look forward to leading a dedicated Treasury team by continuing to make President Bush's vision of providing more effective development assistance to the poorest people a reality.

Mr. Chairman, Senator Baucus, and members of the committee, I am grateful for the opportunity to appear before you today, and I would welcome any questions that you have. Thank you.

The CHAIRMAN. Thank you very much.

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

The CHAIRMAN. Before we start our 5 minutes of questioning for each member in our first round, I have three questions that I have to ask each of you, and would ask you to answer in the affirmative or in negative.

I am going to ask this of all of you, so I will just state it once.

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

Mr. HALPERN. No.

Mr. BHATIA. No, Mr. Chairman.

Dr. SCHWAB. No, Mr. Chairman.

Mr. LAVIN. No, Mr. Chairman.

Mr. LOWERY. No, Mr. Chairman.

The CHAIRMAN. Thank you.

The second question. 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 to which you have been nominated?

Mr. HALPERN. No, Mr. Chairman.

Mr. BHATIA. No, Mr. Chairman.

Dr. SCHWAB. No, Mr. Chairman.

Mr. LAVIN. No, Mr. Chairman.

Mr. LOWERY. No, Mr. Chairman.

The CHAIRMAN. And the last question. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress, if confirmed?

Mr. HALPERN. Yes, Mr. Chairman.

Mr. BHATIA. Yes, Mr. Chairman.

Dr. SCHWAB. Yes, Mr. Chairman.

Mr. LAVIN. Yes, Mr. Chairman.

Mr. LOWERY. Yes, Mr. Chairman.

The CHAIRMAN. All right.

You do not have to respond to this, but I would like to give an editorial comment on the last question. That is, most of us in Congress—but I tend to specialize—have oversight responsibilities, and I ask for information.

We are, sometimes, not getting responses. I am not speaking just to you or just to your agencies. I am speaking to everybody in the

executive branch of government. Sometimes we do not get answers until we pull teeth to get answers, and then we get partial answers.

There just seems to be some sort of feeling among the executive branch of government, not just in this administration but in every administration I have worked with, that somehow there is information that is not the public's business, unless it is national security, privacy, or executive privilege.

You know, there is nothing that goes on in the executive branch of government that should not be transparent and above-board. We have the constitutional responsibility of oversight. For us to carry out that responsibility, we have to have the cooperation of everybody in the executive branch of government.

Now, as that relates to your nomination, only this, and it is really peripheral. But sometimes members of Congress—and I am not speaking about myself, most often—might hold up your nomination, not because they dislike you or have any fault with you, but it is the only way that somehow we get the attention of the administration, that questions have not been answered, letters have not been answered, information has not been forthcoming.

So I would urge you, the extent to which you can, even though you are not confirmed for the departments that you are being appointed to, that you would urge cooperation with this effort of any member of this committee.

Now, for your specific nomination and your specific approval by the Senate, unless I see that there is a partisan reason for holding up your nomination, I generally respect Republican or Democratic efforts to get answers to questions that you can answer that involve your nomination.

So if you get written questions and they are not for just the sole purpose of delaying things, I would ask you to respond to every one of them. I would back up any member of this committee to get answers to their questions that are submitted as part of this hearing process.

With that said, then we will have 5 minutes of questions, starting with me, and then it will be Senator Baucus, Senator Smith, and Senator Hatch.

Judge Halpern, this is your opportunity to tell this committee—not to answer our questions but to tell this committee—from your perspective of service, where you have been for a long time now, what there is about the Tax Court that deserves further attention and scrutiny from the Finance Committee.

Mr. HALPERN. Thank you, Mr. Chairman. It may seem a long time since 1998 when the Congress passed the Internal Revenue Service Restructuring and Reform Act, which added significant taxpayer protections to the Internal Revenue Code, in particular, provisions for hearings before collection by levy or by lien, and added protections for so-called innocent spouses.

Cases that involve review of the Internal Revenue Service's determinations in that area have come to constitute a substantial portion of the Court's docket. Over the intervening 7 years, we have been called upon to interpret the statute in numerous situations and rule with respect to the IRS's conduct of these hearings and the Court's review of the hearings, and other matters.

It seems to me that, after 7 years, it might be appropriate for the committee to look at our performance and see if the Court has carried out the Congress' will in implementing this statute, and if necessary, make whatever changes or other instructions to the court that might be desirable.

But these cases have come to constitute a substantial portion of our docket, and we would invite, of course, any review that the Finance Committee would care to make and change.

The CHAIRMAN. Thank you.

Mr. Bhatia, I hope the question I am going to ask you is settled before you get sworn in, but we have this Japanese beef issue before us. We have been waiting for an answer for a long period of time.

In fact, I had a meeting with the Ambassador back in March and I thought, maybe by June, there was some hope that something would be done. I recently had another meeting with him, with some hope that something might be done by now, at least. Still, nothing has been done.

So I want you to know that I appreciate the efforts of the President and everybody that works for him, including people doing your work before you get there, to achieve the goal of export of our beef to Japan. But we are not there.

So would you outline for the committee what steps you would take if this is not solved by the time you get in your appointed position?

Mr. BHATIA. Thank you. Thank you, Mr. Chairman. I am well aware of not only the issue, but of your particular interest in it and, frankly, the interest, I know, of many members of the committee. It has been an issue that has been outstanding far too long. The fact that it has not been resolved is deeply, deeply concerning.

This is an issue, just to give you a sense of how broadly I know the administration has been pushing the Japanese, how many in the administration have been pushing the issue, Secretary Mineta and I raised the issue with Prime Minister Koizumi when we were in Japan in April.

My understanding, in terms of the status of the issue, is that Japan's Food Safety Commission is scheduled to complete its deliberations in the coming weeks, and that their recommendations then go to a 30-day comment period. This is consistent, Mr. Chairman, with what you were saying.

Our strong hope, our expectation, is that the Japanese will have resolved this problem by the time the President meets with Prime Minister Koizumi in Japan in November. In the interim period, clearly, we need to continue to keep up the pressure.

I would undertake to speak with my counterparts, and I know Ambassador Portman has been pressing his, but if the issue is not resolved by that period, we will have to look at alternative measures. We will look, I would suggest, at all of the tools available to the administration.

The CHAIRMAN. My time is up. I will call on Senator Baucus. If we just have a few members like this present, I will probably have some more oral questions. But if we have more members come, I am going to have to submit the rest of my questions for answer in writing.

Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Bhatia, I hope that the President is very firm with the Prime Minister when they meet November 15 in Korea. This has been going on way, way too long, and I have very deep, long experience with the Japanese on beef.

They will not do anything unless there is some leverage, unless the President is firm and makes it very clear that they have to act. Otherwise, it will not happen. You say you are hopeful. We are all hopeful. Hopeful does not do it, action does it.

I strongly urge you and Ambassador Portman to get the word up to the White House that they have to mean business or it is not going to happen.

Mr. BHATIA. I very much appreciate that, Senator Baucus, and agree with you.

Senator BAUCUS. I would also like to ask a question now to Mr. Lavin. As you know, Mr. Lavin, there is a recent NAFTA panel which overturned the Department of Commerce's calculation of countervailing duty on Canadian imports, and the panel remanded the case back to Commerce with instructions to recalculate the duties.

There is no question that Canada subsidizes lumber. I mean, that is a given. Now they have this NAFTA panel decision, though. I want you to tell us whether you think that you can find a way to calculate those duties in a way that is consistent with the NAFTA panel, but also makes it clear that it is more than a de minimis determination so that the subsidy is imposed, so with the determination of subsidies, we know how much the duty should be.

Mr. LAVIN. Thank you, Senator. You and I had a chance to discuss this issue in your office. I share your view. If confirmed in this position, I do not want to take any action which is injurious to U.S. workers, U.S. businesses, particularly with regard to—

Senator BAUCUS. I mean, that is your job, to protect U.S. business.

Mr. LAVIN. Absolutely.

Senator BAUCUS. That is what your job would be.

Mr. LAVIN. Absolutely.

Senator BAUCUS. So it is not only not to be injurious, but to be helpful.

Mr. LAVIN. I agree, Senator. I am also optimistic that there are potentially some mechanisms that we can use after this remand. I have not taken office yet, clearly. I have not been sworn in. I cannot offer a specific policy prescription on what to do.

But the trade experts in ITA say there are, indeed, mechanisms that can be used, that this does not necessarily end the dispute of this fourth remand, and that we can go ahead with other techniques to keep this—

Senator BAUCUS. Well, I appreciate hearing that. It is my understanding that there are lots of different ways to interpret this, consistent with the NAFTA panel decision. I would just strongly urge you to find a way that is consistent with helping U.S. business as opposed to Canadian business.

Mr. LAVIN. Absolutely.

Senator BAUCUS. Dr. Schwab, I am concerned about Ambassador Portman's offer to the WTO to reduce Amber Box supports by 60 percent. Could you tell us what is going on here?

Dr. SCHWAB. Thank you, Senator Baucus. The agricultural initiative that was presented last week by Ambassador Portman was developed in conjunction with the Secretary of Agriculture and in consultation with members of Congress, and was a dramatic step forward, designed to jog free the Doha Round discussions.

As you know, things have been moving somewhat more slowly than we would have liked. What was required was an ambitious and bold proposal in agriculture. As you know, the United States can only benefit from market opening in agriculture internationally.

Senator BAUCUS. But can U.S. farmers benefit with a 60-percent reduction in Amber Box supports?

Dr. SCHWAB. I think, Senator, the answer is, if, and only if, our trading partners respond with dramatic cuts of their own. As you know from the 2004 framework, the talks are designed such that those countries with the most trade-distorting practices and protections, tariffs, and export subsidies that distort trade, would be expected to put on the table concessions that would be dramatic as well. The proposal that was put forward last week was not a unilateral proposal. It is contingent on other countries.

Senator BAUCUS. Yes. I appreciate that. I know you and the Ambassador are trying very hard, and I think we all very much appreciate that. I am just asking these questions to reinforce the strong positions that you are taking so you can tell the European Union and the Europeans, "Hey, remember, it is Congress that determines trade policy, and we have to get all this through Congress." Remember whom we represent.

We represent our people, Americans. It is clear that we have to do what we can to get the Europeans to reduce and eliminate their export subsidies and to dramatically reduce the price supports and to get other countries to get rid of their state-trading enterprises, that is, the Australians with their Wheat Board, and also the Canadians with theirs. In doing so, I would just urge you to continue to stand firm because, remember, it is Congress that determines trade policy.

Dr. SCHWAB. Senator, I could not agree with you more. If confirmed, I would look forward to working with you and your colleagues on this.

Senator BAUCUS. Thank you. My time has expired.

The CHAIRMAN. Senator Smith?

Senator SMITH. Thank you, Mr. Chairman.

Mr. Lavin, as we talked in my office, and to Senator Baucus' point about Canadian softwood lumber, apparently the NAFTA panel has found yet again that Canada is not subsidizing by giving away the raw products on their crown lands. I do not need to reiterate to you, but for the record, my State has lost tens of thousands of jobs, family wage jobs, because of the Federal timber policy.

But apparently what NAFTA is saying is that if we turned our public lands into "presidential lands" and gave to American private enterprise the raw products from them free, that that would not be

dumping. That is not a subsidy. Is that how you read their decision?

Mr. LAVIN. Senator, I did not read their decision, but I share your skepticism that the Quebec reference price is not a fair reference price and that we are trying to make a determination about the cost of Canadian lumber vis-à-vis U.S. lumber.

Senator SMITH. Well, I know it is good political fodder in Canada right now to point to these NAFTA decisions. I am, frankly, thankful that I was not here to vote against NAFTA.

If that does not constitute a subsidy and result in their dumping their unemployment to us, I do not know what is. I do not know what you are referring to about recalculating these duties and returning them to Canada and substituting some other provision. Are you allowed to talk to us about that?

Mr. LAVIN. Well, as you know, Senator, I am not in office yet. I think you are making a very important point, if I understand the thrust of your question, which is, we have a set of issues dealing with subsidies and we also have a set of issues dealing with the \$4 to \$5 billion that has been collected so far.

Senator SMITH. Correct.

Mr. LAVIN. We need to, from the U.S. perspective, view those as tools to try to get some kind of negotiated settlement, in my view.

It is interesting to me, Senator, that just in the last week, President Bush, in the course of a phone conversation with Prime Minister Martin, I think, made a very similar point that President Clinton made in the course of a public speech: that a negotiated settlement is going to be fair to all parties and put this issue behind us once and for all.

So one of my goals, if confirmed, is to see if we can get Canada back to the negotiating table and take it away from the seemingly endless litigation and come up with some kind of comprehensive settlement.

Senator SMITH. Well, maybe giving away public property in Canada is not a subsidy. I know it is a hot issue there. It is a hot issue in our home. I just cannot emphasize enough how critical this is, if we are serious about employing the American people and not just being victimized on what is told to us, even by the *Wall Street Journal*, is fair trade. It is not fair when it is free in terms of raw product from the public sector to the private sector. So that point has been made.

Mr. Bhatia, it was a pleasure to meet with you as well. I emphasized to you how urgent it is that we get intellectual property rights. We are just the subject of grand larceny abroad on intellectual property.

Companies like Nike and Intel that are located in my State lose billions of dollars a year to copyright, trademark, and trade secret infringements. I think we just simply have to do better, or else, again, trade is not fair, it is stealing.

In particular, we talked about another issue. I introduced the Tariff Relief and Assistance for Developing Economies Act to help countries like Cambodia so that our retailers have somewhere to go other than China to buy products to sell to the American people, where perhaps we can get better results in protecting trademarks.

Would the administration, in principle, support this TRADE Act that we have introduced?

Mr. BHATIA. Senator Smith, again, I, too, very much enjoyed our conversation and very much share your concern about intellectual property violations.

As we discussed, the importance of this resides not only in ensuring that public faith is maintained in our trade agreements, but as we talked with respect to both companies in your State—but frankly around the United States—the United States' strategic advantage and competitive advantage is in high-technology items, it is in knowledge. So, I cannot tell you how seriously I view this.

It was mentioned in my opening remarks how important I thought enforcement was, and enforcement of intellectual property rights, I think, has got to be number one on the list. Certainly, I would endeavor to make it a very high priority, if confirmed.

With respect to the continuing opening of markets, again, that was also mentioned in my remarks. I do look forward to building stronger trade relationships with other countries in the Asia-Pacific region. And, too, I believe there continue to be important opportunities for our companies there, in the intellectual property area, but also in others. So, I look forward to working with you on that.

With respect to the legislation, I am not immediately familiar with it, but I do look forward to working with you on it.

Senator SMITH. I look forward to working with you as well. I want to say I have, as many of my colleagues on this committee, been supportive of trade legislation and hope to support future legislation. But, frankly, as I look at how NAFTA is operating on an issue that is a dagger to the heart of my State, frankly, my appetite is running out. China needs some competition, but if we cannot get right the agreements we have already entered, there will not be Republican or Democratic support for these things in the future.

Senator BAUCUS. Thank you, Senator.

Senator Hatch?

Senator HATCH. Maybe as a follow-on to Senator Smith's comments, Mr. Lavin, let me ask you this. There are a number of proposals to amend Title 7 of the Tariff Act of 1930 in order to address the problems of unfairly traded Chinese goods, including the possibility of applying our countervailing duty law.

Now, based on your experience with the law, does Commerce already have the legal authority to impose countervailing duties, despite the Federal Circuit's decision in *Georgetown Steel*? If so, under what circumstances would you accept a countervailing duty petition against imports from China?

Mr. LAVIN. Thank you, Senator. My interpretation is that the Commerce Department does have the right to undertake a countervailing duty case against China, and that would be consistent with the *Georgetown Steel* case.

I think the wisdom of such an action is an open question. We have a number of trade actions currently under way against China, 57 antidumping cases at present, I believe more than twice the number we have against any other country.

So the view within the International Trade Administration is that we have a good toolbox, and we are fully prepared to use it with regard to unfair trade practices in China. The question I think

you raise is, does that toolbox need to be augmented or is there value in adding another tool to it?

It is an open question. There are trade experts who tell me that, if we start looking at constructed-value measures with regard to China and countervailing duty, we could inadvertently limit our ability to use antidumping cases. So, there is a trade-off, potentially, that calls for a countervailing duty.

But no countervailing duty petition has been presented with regard to China, and I think you would have to say it is case-specific. If such a petition is presented, we would evaluate it upon receipt.

Senator HATCH. Thank you.

What, in your prior experience, is the most significant tool that we have among our trade laws to combat rampant intellectual piracy in China, India, and elsewhere? What would be the single most important change in our trade laws that you would make to discourage such piracy?

I would just ask a bunch of questions here, because we have limited time. What has been your previous experience in working with local law officials on enforcement of intellectual property rights? What lessons would you draw from your experience in terms of what you would do as Under Secretary?

Mr. LAVIN. Intellectual property rights, Senator, to my mind, is perhaps the most vexing trade issue in China, and I think our progress is going to be incremental. But if we apply ourselves right, we can gain ground.

I think, first and foremost, we need to push on market access, because, when there is good market access and the trade barriers are reduced and our companies have the ability to distribute and sell, that just reduces the scope of activity for the pirates.

So, for example, if American film producers can freely distribute and sell their movies in China, the scope for movie piracy is reduced. Now, of course, they are not freely allowed to do so. So market access, in itself, is a good anti-piracy tool.

I think the second tool is that we have to look at harnessing indigenous constituencies—there are Chinese recording artists, Chinese chemical factories who, themselves, are victims of piracy.

To the extent that we can work with those constituencies, that is a better voice, a better representation to the Chinese government about the economic price that is paid when intellectual piracy takes place. So, those are the kind of steps we would like to take.

We also have, potentially, a very interesting opening in terms of the Doha Round negotiations, because some of the transparency rules we observe are not standards that are globally held.

So if we can get other countries to observe some of the AD/CVD methodology—for example, transparency—we will be in a better position to enforce our anti-piracy goals in third countries. If the good is made in China but shipped, say, to Southeast Asia, we have fewer tools now, but we have to look at a WTO mechanism to get on board to give us tools in that regard.

Senator HATCH. All right.

Now, one of the critically important roles that the Commerce Department has traditionally played in supporting our trade negotiations is that of assembling the numbers behind our tariff proposals.

Now, based on your experience, do you think that the different variations on the Swiss formula that have been put forward more in the context of the Doha Round thus far will address the current imbalance and market access that U.S. exporters face throughout most of the world, particularly in emerging and developing country markets?

If not, what other approach should we take to the negotiation of non-agricultural market access that would accomplish that objective?

Mr. LAVIN. Senator, if you will forgive me, I am not familiar with the Swiss formula. But if you will let me, after this hearing is adjourned, go back to the International Trade Administration and consult with the leadership there, I will get back to you with a response.

Senator HATCH. All right. Sure.

[The information appears in the appendix.]

Senator HATCH. Mr. Vice Chairman, I am going to submit some questions for the panel, and hopefully they can answer them.

[The questions and responses appear in the appendix.]

Senator BAUCUS. Thank you. Thank you very much, Senator.

Senator Lincoln?

Senator LINCOLN. Thank you, Mr. Chairman.

First, let me congratulate all of the nominees that are here today. I have had the opportunity to meet with some of you all in the recent weeks, and we look forward to working with you.

There are so many important issues that come before this committee, so many that are really on the hearts and minds of my constituents. Obviously, as an agricultural State, the integrity of our farm safety net within the Doha Round's negotiations and our ability to react quickly to the instances of unfair trade are issues that really hit home for many American farmers, workers, families, with a tremendous steel industry, poultry industry, and others that we have in our State, these issues are very prevalent on working Americans', and particularly working Arkansans', minds.

I kind of associate myself with Senator Smith, because those of us who have tried so desperately to work within the realms of an open mind to trade and being there working to move forward the initiatives of trade for our country and opening up that global economy, are finding a tremendous amount more resistance from our constituencies who do not believe that, as Americans, we are willing to demand the respect that we need to demand in a global marketplace, and that we do not find that fair trade is as important as free trade.

So I think you all have many, many responsibilities and some very difficult intersections ahead of you in the jobs that you have to do, and I hope that we can work together, as we can bring to you, probably, a more public view of what Americans are thinking, and then you in turn will have to sit down, and I think in many instances at some very hard discussions, and demand that respect, as well as the engagement of other countries in this global economy.

I have to reiterate today that Congress sets the foreign policy in this country. As you all work in the WTO in these coming months, we are really going to have to demand Europeans and others to

step up to the plate and provide meaningful access for our producers. Dr. Schwab mentioned this, as Senator Baucus asked the question about our Amber Box reductions.

I think American farmers have been willing to try opening up markets—Freedom to Farm was that initiative—to say, you know, there is a great, big marketplace out there, why do you not go and play in it? But they also need to have the support that we are going to fight for them in that marketplace, and they did not receive that support.

Consequently, we are back with a new farm bill that was negotiated in, I think, a very bipartisan way to try to provide a kind of safety net that came into effect when our agricultural producers needed it, but when the marketplace was working, it did not activate. I think it was a good beginning.

So, I just think there is a lot of work ahead of us, and I really do hope that we can work together and come up with some positive results, because I think our economy is going to need it in the next several decades. It is going to really need your thoughtful, and somewhat defensive work.

So many of my colleagues have mentioned today many of the other issues that I wanted to bring up. Softwood lumber. We are at a critical point in our Canadian softwood lumber dispute. For the fourth time, as we all know, the NAFTA panel has remanded back to the Commerce Department a decision that interprets our law and instructs the Department to recalculate those subsidies.

Mr. Lavin, I guess my question there is, as Under Secretary for International Trade at Commerce, what can you assure us that you will do to ensure that that original subsidy rate that is going to be now under review, and will continue to be under review, will not go below that de minimis rate?

Mr. LAVIN. Senator, thank you for your question. You and I, I believe, had a very fruitful discussion on this topic, and I am grateful to get back into it.

It is difficult, in the position I currently sit in, to give a precise answer to your question. But I can assure you of this: we will turn over every single stone we can to make sure that American workers are not victimized by unfair trade practices.

We are not simply going to be on the receiving end of a NAFTA remand. So if there are mechanisms we have that allow us to go back into this issue again, we are going to pursue them.

Senator LINCOLN. Well, with all due respect, Mr. Lavin, I have to say, you have talked an awful lot about a big toolbox with lots of tools. For those of us who have been fighting these battles for, unfortunately, more time than we would like to talk about, I think the specifics of what tools you are going to use and how you are going to use that toolbox are completely appropriate.

So, I hope that we will hear more about the tools that you intend to use out of that toolbox and the passion that you intend to put behind them, and I think that is very important.

Dr. Schwab, you were asked by Senator Baucus about agriculture. I guess one of the things that I have great concern about, is that, as we move into these negotiations and the offer that was put on the table by Ambassador Portman with the 60 percent Amber Box reduction, even with the reductions that would be

asked of the other countries, Europe, Japan and others, they are still going to be supplying or providing a greater subsidy than we will because they are so much further ahead of us now. So, obviously they are still going to be ahead. There is no doubt that being able to equalize some of that is very important.

I guess my real question is, how can we really trust those trading partners, that they are going to do what they say they are going to do, when, from our administration's standpoint, particularly in the budget this year, the administration was willing to jump out ahead of the negotiations and the talks and actually ask for reductions in our safety net programs through the budgetary process as opposed to the negotiations of our legislation like our farm bill, or through the actual negotiations of trade agreements.

I mean, if I were our trading partners, I would say, well, why do I need to fight for this? I have got the administration fighting for me in terms of those reductions of subsidies. Why should I have to do anything?

Dr. SCHWAB. Senator, you ask a very good question. When I started out my career as an agricultural trade negotiator, one of the things I learned was that our farmers are as competitive and as hardworking as any you will find in the world, and our \$60 billion in farm agricultural exports last year are a testament to that.

Senator LINCOLN. Well, you will not get any argument out of this farmer's daughter. [Laughter.]

Dr. SCHWAB. But I also never came across a farmer who wanted a subsidy.

Senator LINCOLN. That is right.

Dr. SCHWAB. So I think, clearly, the potential is there for a clear win-win with the kind of framework-dictated disproportionate cuts that we are talking about in trade barriers, enhancement of access to foreign markets for our agricultural products, and the reduction of trade-distorting export subsidies.

Clearly, the negotiations will operate in the context of the existing farm bill, but the idea would be to make those kinds of supports unnecessary and unneeded. In the interim, they exist and we need to be supportive of our agricultural community.

Senator LINCOLN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Bhatia, something dealing with the privatization of Japan's postal service. I assume that that is going to happen because of the reelection of the Prime Minister there.

It is my understanding that there may be an attempt, as this privatization unfolds, of the prospect that Kemper may introduce new or modified insurance products or services before special advantages are eliminated, and so create an unlevel playing field for insurance industries from anyplace in the world that may want to sell insurance there.

Have you studied that? If you have, what would you do to make sure that there is a level playing field?

Mr. BHATIA. Mr. Chairman, you are exactly right. The Japanese postal privatization obviously was at the core of Prime Minister Koizumi's reelection campaign. My understanding is, actually, the legislation was just passed either last Friday or yesterday by the Japanese Diet that allows that to move forward.

I am also well familiar with the issue or concern on the part of many American companies, frankly, that competition with this newly privatized entity—or I guess four entities, as they are looking to break it up—remains, that there is the ability for U.S. companies to compete fairly with them, whether it is in the insurance industry, financial products, or express services. This actually was a subject that was briefed to me when I was in Japan earlier this year by our Chamber of Commerce there. So, I am aware of it.

I think, at this point, without having had any promulgation of regulations or rules by the Japanese government or the implementation, I think it falls to us principally to make very clear to the Japanese government that we would look for that implementation, including in the period that starts right now, to preserve a fair, level playing field for our companies, that they do not have to compete against a Japan Post that continues to retain monopoly powers.

But this is one that is going to bear very close watching and, frankly, a lot of bilateral dialogue between ourselves and our Japanese partners.

The CHAIRMAN. On another point, in dealing with the negotiations now going on in the Doha Round, two things. One, we have a major goal of market access. Number two, India is playing a major and prominent role in these negotiations.

So, if confirmed, what steps would you take to get the Indian government to engage more constructively, particularly in this area of market access liberalization?

Mr. BHATIA. Thank you, Mr. Chairman. I am very cognizant of the important role that India plays, not only in the Doha Round, but frankly, I think, in a regional context in the area. I mean, it is the source both of tremendous opportunities, I think, frankly, but also some significant challenges.

I think there are some signals that India itself is reconsidering its approach to international trade in a way that would be more productive. Recently, earlier this year, I had the privilege of concluding a bilateral Open Skies agreement between the United States and India that basically removes all trade restrictions and completely opens the Indian international aviation and air services market to U.S. companies.

So, there are some signals like that that suggest the Indian government is moving in the right direction. But I would say that the jury is still very much out on that. Part of the basis upon which it will be judged is how constructive a role they are able to play at the WTO in market access, in agriculture, and in other areas, and frankly, what sort of bilateral steps we are able to take.

One thing I would point to is the trade policy forum that was recently launched between Ambassador Portman and Minister Nath in India. I think that would be a very useful tool, or could be a very useful tool, to promote the kind of bilateral cooperation between the U.S. and India in trade that would help us get, frankly, greater support from them in the international multilateral realm as well.

The CHAIRMAN. Yes. Thank you.

Dr. Schwab, I will ask a question and then give some background from my point of view before you answer. I guess I would ask for some sort of a commitment to work to see that Brazil is rightly con-

sidered a developed country—from the standpoint, at least, of agriculture—in the WTO negotiations.

This comes from the fact—and obviously you are up on it more than I am—about how Brazil wants to be considered a developing nation when it comes to agriculture, and they have very advanced agriculture.

Their farms are tremendously large. They are major players in soybeans, pork, cattle, as an example. They are probably as advanced in agriculture as what we have in the United States as far as their commercial agriculture is concerned, and yet they want to be considered a developing nation, get special privileges as a developing nation from the agricultural negotiation standpoint, or at least the results of those negotiations. That is the problem, as I see it.

I guess my question is, how do you see it?

Dr. SCHWAB. Mr. Chairman, you make a very, very good point. As you know, Brazil is the second-largest soybean exporting country in the world, for example, a sector that largely did not exist until the U.S. soybean embargo in 1973. So, this has been a dramatic jump in terms of Brazil's agricultural prowess.

I think you would be pleased to know that, in the agricultural proposal that was put forward last week by Ambassador Portman, the anticipated reductions in barriers to trade and reductions and elimination of trade-distorting practices would apply to countries, regardless of their status, developed or developing. Brazil, as you know, is a leader among the G-20 countries that have been arguing in favor of dramatic action in agriculture.

As a leader of the G-20, it is time for Brazil to not just be asking, but also to be considering what kind of concessions that Brazil and other G-20 countries need to bring to the table in response to the bold proposal that was put forward last week.

The CHAIRMAN. Thank you.

Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

I would ask Mr. Bhatia and Dr. Schwab, what are our largest trade problems in the world today, from the United States' point of view? Which countries present the largest trade barriers to us? If you could just list the top two or three biggest trade problems we have today, wherever they might be.

Dr. SCHWAB. I could start with a couple that have been raised this morning. We talked about intellectual property and protection of intellectual property rights. China has come up as an issue. We have not mentioned Russia.

Senator BAUCUS. So we have IP. What else, more specifically instead of China, generally, as a country?

Dr. SCHWAB. I am talking about intellectual property, in terms of intellectual property rights protection. It is China, Russia, for example, that are the countries where there are particular issues.

Senator BAUCUS. All right. So intellectual property with those countries. That is one.

Dr. SCHWAB. Agriculture. We have talked about the Europeans. We have talked about the Japanese, for example.

Senator BAUCUS. And what Japanese practices?

Dr. SCHWAB. Import restrictions. Karan?

Mr. BHATIA. Clearly, there are issues, Senator, that have come up here, both with respect to the beef ban that continues that is, frankly, very troubling that has not been resolved, as we have discussed, and the new issues that are being posed by the postal privatization.

I think another challenge, frankly, Senator, with respect to Japan, China, and others, is to make APEC and the Asia-Pacific region a dynamic region and one in which we are fully engaged. I mean, I think we are looking now at a plethora of bilateral free trade agreements that are popping up between Japan and Malaysia, between China and Malaysia.

I think one of the challenges that we have before us is to make sure that as that continues, as that integration goes forward, that we are a part of it, we are shaping it, we are driving it, and we are not, frankly, excluded from it. So, that, I would throw into the category of things that I see as being significant trade challenges for us.

Senator BAUCUS. All right. Yes?

Dr. SCHWAB. If you look at the three areas of focus for the Doha Round, non-agricultural market access, services, and agriculture, you are talking about a scope of issues really designed to address in negotiations some of the major barriers and trade-distorting practices that exist in the world today that hinder the potential for U.S. exports and U.S. trade.

Senator BAUCUS. All right. So you are talking about three: Doha, IP, a little bit in Japan, the postal issue, and then in addition to that, U.S. inclusion in shaping a lot of these FTAs going around the world. I am going to ask you to report back to us in 6 months with what progress you have made on each of them.

I want you to quantify it. I want you to quantify it. I want you to quantify what you think the problem is today. That is the benchmark. Then I want you to come back in 6 months and tell us what progress you have or have not made during that period, and then quantify it.

Mr. BHATIA. Thank you, Senator. We would look forward to doing that.

Dr. SCHWAB. Thank you.

Senator BAUCUS. Next, your thoughts on the former Super 301 we used to have. Was that a good statute or not a good statute? It has expired, as you know. Your thoughts about reenacting it in some form. In explaining it, you might tell the world what Super 301 was.

Dr. SCHWAB. Senator, Super 301, as you know, when it was enacted as part of the 1988 Trade and Competitiveness Act, was a systematic means of bringing forward U.S. actions against unjustified, unreasonable, unfair foreign trade practices. "Systematic" means it was linked to the National Trade Estimate report that is issued annually by the U.S. Trade Representative's office.

Senator BAUCUS. Right. But basically it prioritized the most egregious practices.

Mr. BHATIA. Right.

Senator BAUCUS. And basically it then said, all right, USTR, try to negotiate with these countries under the threat of sanction. That is basically what it was. Is that correct?

Dr. SCHWAB. That is correct.

Senator BAUCUS. All right.

So what about reenacting that today?

Dr. SCHWAB. The context for Super 301 has changed. With the establishment of the WTO in 1996, at that point Super 301, as a tool—and to a degree Section 301—became a much harder tool to use as an initiating tool without going crosswise with WTO rules.

We have, though, as you know, brought 75 cases to the WTO since 1996. Of those 75 cases, my understanding is, 24 of them have been resolved through negotiation or without resorting to final action on the case; 24 of them were resolved through panel reports that largely agreed with where the United States' core issues were.

Super 301 can be used with countries that are not WTO members to initiate activities, and it also can be used for retaliation.

Senator BAUCUS. I appreciate that. I am going to be introducing legislation that modifies Super 301. I agree with you that the world has changed since that expired, because the world is more complicated now with WTO, et cetera. But I think that, nevertheless, some modified form is necessary.

The modification would essentially direct the administration to list the most egregious practices and then tell Congress what it is doing about it. That certainly does not violate WTO. There is more transparency. It lets the American people know what the biggest problems are.

It lets Congress know, and the people know, what is or is not being done about all this. I think all of this is very important because, as you said, Dr. Schwab, in your opening statement, we are at a crossroads in American history. What is the future of the United States in terms of not only economic policy, but political and social policy, for that matter?

I believe for a long time the United States, because we have been the big boy on the block, we have been able to kind of let people, as we saw it, kick our shins a little bit, nibble us a little bit, because we can deal with it. We are the United States, after all.

But the world has changed. That is not the world today. The world today is extremely competitive. I think it is more competitive than most Americans realize. I think it is more competitive than most people in government realize, including the executive branch, including some of the trade people, recognize.

We have our work cut out for us. It raises a deeper question of, what clout does the United States have any more? We are extended so thinly worldwide, especially in the Middle East.

Other countries are working so aggressively. You know the figures, what China is doing, what India is doing, Indonesia, and other countries as well. I just think that we in the United States have to stand up a little taller, a little more firmly.

I believe in being fair, but firm. I do not think we have been firm enough. If we are going to still be the biggest, strongest country in the world, particularly for our kids and grandkids, we have our work cut out for us in spades. You have a heck of a job on your hands.

An example, again, is the negotiations at the WTO with respect to agriculture. American farmers today are going to be a lot, lot

more interested in looking to see what is or is not being negotiated. In part, it is because their industry, as well as almost every other industry, is so much more competitive today than it was many years ago.

Many years ago we could, incredibly, as Americans, agree in WTO to let each country, on a percentage basis, reduce its subsidies, which left the Europeans now with three times what we have. I mean, it is incomprehensible that the United States of America would agree to something like that. But we did back then because we could afford it, somewhat. But we cannot any more. We cannot any more let other countries out-negotiate us on trade.

The Canadians tend to because trade is so much more important, proportionately, in Canada than it is in the United States. Trade is almost everything in Canada. It is very little in the psyche of the American mind. Trade is so much more important to Europeans than it is to Americans, so they are much more aggressive. They work a lot harder at it.

You cannot tell me that China does not care about its economic policy. You bet it does. Aggressively. Very aggressively. Very, very aggressively. I just would tell you, we will be looking very closely at your performance, or lack thereof.

But I wish you well. We all wish you very, very well. But you have got a very, very difficult job on your hands, extremely difficult, as does the administration, generally, here. It means us getting smart with China, smart with Japan, smart with other countries, being firm with these countries. These countries are out for themselves, as they should be. No country altruistically, out of the goodness of its heart, is going to lower the trade barrier.

They never do, never have. The only language they understand is leverage. You have to be there with leverage. Words do not do it. I have deep, deep experience with words with these countries on trade matters. I will not tell you all of them, but it goes on forever.

In my experience, for all this to work, again, is leverage, so you have to find the leverage. You have to convince the other agencies in the government, you have to convince the White House to not let other political or other concerns get in the way.

Ultimately, we will only be the country we want to be, politically, economically, if we are very strong economically here at home. That is the bottom line. If we are strong economically at home, we are going to be able to project power, be able to project influence in all corners of the earth, and be able to maintain the high ethical and moral standards that we like to think that we have.

So, good luck. I wish you very good luck. I wish you more good luck than any other nominees that have appeared before this committee, because I think the stakes are that much higher.

Mr. BHATIA. Thank you.

Dr. SCHWAB. Thank you, Senator.

The CHAIRMAN. Thank you, Senator Baucus.

Let me compliment each of you for your desire for further public service. Thank you very much for doing it. The only admonition I would give you at this point would be that if members submit questions for answer in writing, that you would get them back just as soon as you can.

Senator BAUCUS. And if I might add to that, Mr. Chairman, often when we run out of time here we submit questions for the record, and sometimes the answers come back pabulum. I urge you not to give us pabulum.

Give us real, honest answers to these questions, please, because they are asked for a good purpose, a good reason, and that is basically to help advance the ball. That is basically to help the American people lead better lives. Thank you.

The CHAIRMAN. Yes. Thank you all very much.

The hearing is adjourned.

[Whereupon, at 11:34 a.m., the hearing was concluded.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF KARAN K. BHATIA

Chairman Grassley, Senator Baucus, distinguished members of the Committee, it is my great pleasure to appear before you today. I am deeply honored by the confidence shown in me by the President and Ambassador Portman and, if confirmed, I very much look forward to working with you to develop and implement U.S. trade policy.

I will keep my statement brief. If I may, Mr. Chairman, I would like to recognize and extend my thanks to my family here today – my wife Sara, my sons Alexander and Teddy, my parents Samir and Janice Bhatia, and my parents-in-law Marsha and Les Levine.

I should also like to extend my appreciation to the members of the Committee and their staff with whom I have had the opportunity to meet over the past several weeks. Those meetings have given me a chance to learn about your concerns and to begin a dialogue about U.S. trade policy that I hope to continue. Over the past four years – in my positions at the Departments of Commerce and Transportation – I have had the pleasure of working closely with relevant committees in both houses of Congress. If confirmed, I look forward to building the same kind of relationships in this job.

Let me also stress my personal commitment to Ambassador Portman's goal of working with both the majority and minority to rebuild a bipartisan consensus on international trade. The evidence, I believe, demonstrates that this country's commitment to open markets, free trade and sustained international engagement in the post-war era has produced a tremendous record of economic growth, cultural dynamism, and international leadership. The record also shows that acts of protectionism and isolationism in our history have ill-served U.S. national interests and harmed our workers and farmers, companies, consumers, and communities across the nation.

At the same time, I recognize that public support for free trade – fragile even in the best of times – is being tested. News of record trade deficits, challenges in our multilateral trade negotiations, and evidence that some trading partners are not playing by the rules concern many Americans. And those concerns, of course, arise against the backdrop of a rapidly changing, globalizing international economy, with its inherent uncertainties, complexities, and dislocations. And yet, it is precisely these rapid changes that demand that the United States actively engage in the shaping and integration of the international economic system. If confirmed, Mr. Chairman, I believe that one of my most pressing challenges will be to help reestablish a consensus – through words, action and results – that international trade is in the best interests of the American people, now more than ever before.

In part, that challenge must be met through continued efforts to open markets abroad for our highly competitive companies, products, workers, and farmers. In the geographic areas that would constitute my area of responsibility – Asia and Africa – I believe that there are significant opportunities for continued market-opening, and I pledge to work hard to pursue those opportunities.

Rebuilding a national consensus on trade also requires vigorous enforcement of our existing agreements. Free trade does not mean giving away the store or turning a blind eye to the failures of our trading partners to honor their commitments. If confirmed, I will join Ambassador Portman in insisting that our partners live up to their responsibilities, and that American companies and their workers receive a fair shake as they strive to take advantage of opportunities in international markets. Far from being a threat to free trade, a transparent and equitable system of rules that binds trading partners – and a serious enforcement regime to back it up – is actually indispensable to the cause of free trade.

Let me conclude, Mr. Chairman, by noting that, for me, the cause of promoting a free, fair, vibrant and open international economic system is a deeply-held personal commitment – one shaped by my experiences growing up in Asia and Africa, and one to which I have devoted my academic and professional careers. It was the focus of my undergraduate and graduate studies. My law practice was dedicated to helping companies work their way through the tangled webs of regulations here and abroad that can so easily derail international trade and investment. At the Commerce Department's Bureau of Industry and Security, I worked hard to promote a safer and more secure international trading system in our post-9/11 environment. And, over the past two years as Assistant Secretary of Transportation for Aviation and International Affairs, I have been privileged to assist Secretary Mineta in negotiating a series of liberalized air services agreements with nations such as China, India, Indonesia, Thailand, Vietnam, and Ethiopia. These agreements have helped to open some of our largest air services markets, freeing our airlines to fly where, when, and how they want, and, in so doing, broadening the pipelines through which much of our international trade and commerce flows.

Working closely with this committee and with all affected stakeholders, I look forward to continuing the quest to ensure that international trade and commerce can continue to connect economies and people. I thank you for the opportunity to make this statement, and I look forward to your questions.

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

A. BIOGRAPHICAL INFORMATION

- 1. Name: (Include any former names used.)**

Karan K. Bhatia

- 2. Position to which nominated:**

Deputy United States Trade Representative

- 3. Date of nomination:**

September 15, 2005

- 4. Address: (List current residence, office, and mailing addresses.)**

Residence and mailing address:

7005 Endicott Road
Bethesda, Maryland 20817

Office: Office of the Assistant Secretary for Aviation and International
Affairs
U.S. Department of Transportation
Room 10232
400 Seventh Street, SW
Washington, D.C. 20590

- 5. Date and place of birth:**

August 19, 1968; Washington, D.C.

6. **Marital status: (Include maiden name of wife or husband's name.)**

Married.
Wife's maiden name: Sara Levine

7. **Names and ages of children:**

Alexander Bhatia - age 6
Theodore Bhatia - age 3

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

Columbia Law School, New York, NY. Attended from 8/90 - 5/93; received J.D. - 5/93

London School of Economics, London, UK. Attended from 9/89 - 7/90; received M.Sc. - 9/90

Princeton University, Princeton, NJ. Attended from 9/85 - 6/89; received A.B. - 6/89

Walt Whitman High School, Bethesda, MD. Attended from 9/81-6/85; received high school diploma - 6/85

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.)**

Assistant Secretary of Transportation for Aviation and International Affairs; U.S. Department of Transportation; Washington, D.C.; 12/03 - present. (Pending Senate confirmation, I held the position of Senior Advisor to the Secretary of Transportation from 9/03 - 12/03.)

Deputy Undersecretary of Commerce for Industry and Security; U.S. Department of Commerce; Washington, D.C.; 6/02 - 8/03. (Pending White House clearance, I held the position of Senior Advisor to the Under Secretary of Commerce for Industry and Security from 3/02 - 6/02.)

Chief Counsel for Export Administration; U.S. Department of Commerce; Washington, D.C.; 7/01 - 3/02.

Partner; Wilmer, Cutler & Pickering; Washington, D.C.; 1/01 – 7/01. (Prior to being made partner in 1/01, I was counsel and associate at the firm from 10/94 – 12/00.)

Judicial Law Clerk; U.S. District Judge Milton Pollack; New York, NY; 9/93 – 10/94.

Part-time law clerk; Borker & Sussman; New York, NY; 6/93 – 9/93.

Summer Associate; Wilmer, Cutler & Pickering; Washington, D.C.; 5/92 – 8/92.

Summer Associate; Meyer, Hendricks, Victor, Osborn & Maledon; Phoenix, Arizona; 6/91 – 8/91.

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.)**

As noted in question 9 above, I was a partner in the law firm of Wilmer, Cutler & Pickering from 1/01 – 7/01, when I withdrew from the firm to join the government.

From 1/00 – 6/03, I was an adjunct professor at Georgetown University School of Law, co-teaching a course on International Civil Litigation.

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

International Aviation Club, Member
Carderock Springs Swim Club, Member
Council on Foreign Relations, Term member
American Bar Association, Member
Republican National Lawyers Association, Former member
D.C. Bar, Member
New York Bar, 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.**

I performed some volunteer work for Lawyers for Bush Cheney in 2000.

- 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.**

2000 -- \$500 donation to Congressman Dennis Hastert.

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.)**

Outstanding Lawyer of the Year Award, given by the National Association of South Asian Bar Associations, 2004

Award for Outstanding Achievement, given by Global Organization of People of Indian Origin, 2002

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

"Regulating Rates," Airport Finance & Development (co-authored with Jeffrey N. Shane) (1999).

"Republican Reform of Government," 93 Columbia Law Review 1300 (1993).

"Yugoslavia's Centrifugal Forces," Christian Science Monitor, p. 13 (Nov. 16, 1988).

"The Reluctant Cowboy," Policy Review, p. 54 (Fall 1988).

"Avoiding Turkish Tragedy," The Princeton Tory, p. 28 (March 1986).

"The Dishonest Politics of Hide and Speak," The Princeton Tory, p. 27 (May 1986).

"Glasnost -- The Big Lie," The Princeton Tory, p. 18 (May 1987).

"For Whom the Bell Tolls," The Princeton Tory, p. 6 (September 1987).

"The Partisan Politics of the Women's Center," The Princeton Tory, p. 6 (December 1987).

"Attention U-Store Shoppers," The Princeton Tory, p. 10 (April 1988).

"Awaiting the Judgment of History: An Interview with Edwin Meese," The Princeton Tory, p. 33 (December 1988).

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.)**

Over the past five years, I have delivered numerous speeches and participated in a number of panel discussions. These speeches/discussions have been on the subjects of (i) U.S. domestic and international aviation policy, or (ii) export controls. I do not believe that these topics are particularly relevant to the position of Deputy US Trade Representative. Nonetheless, to ensure that the Committee has available to it all potentially relevant information, I list below and enclose copies of the most significant "formal" speeches I have delivered.

Speaker, Association of Asian Pacific Airlines Assembly of Presidents, November 2004 (Taipei, Taiwan)

Speaker, "Washington Trends," AITAL Latin American Airline Leaders Forum, November 2004 (Miami, Florida)

Speaker, George Washington University Business School Conference on "The Plight of U.S. Airlines -- Should Government Be Doing Something Different," September 2004 (Washington, D.C.)

Keynote Speaker, "Cooperation between the United States and India in the Area of Transportation," Federation of Indian Chambers of Commerce and Industry, July 2004 (New Delhi, India)

Speaker, "The New Aviation Environment," National Business Travel Association, May 2004 (Washington, D.C.)

Luncheon Speaker, "U.S. International Aviation Policy in 2004 and Beyond,"

International Aviation Club, May 2004 (Washington, D.C.)

Keynote speaker, "Trade and Security: The New Normalcy," Export Controls and International Trade Compliance, sponsored by American Conference Institute, May 2003 (Washington, D.C.)

Speaker, "International Trade and Security," Speech to National Association of Foreign Trade Zones, February 2003 (Washington, D.C.)

Keynote speaker, Regional Forum on Transshipment Controls, co-sponsored by U.S. State Department and Royal Thai Government, December 2002 (Bangkok, Thailand).

Keynote speaker, Third Latin American Port Security Seminar, co-sponsored by the Organization of American States, the Panamanian Maritime Chamber of Commerce, and the Panamanian Maritime Authority, July 2002 (Panama City, Panama).

Speaker, Conference on Current Developments in International Trade, sponsored by Customs and International Trade Bar Association, February 2002 (Washington, D.C.)

Speaker, Update 2001 Export Control and Policy Conference, sponsored by the Bureau of Export Administration, U.S. Department of Commerce, October 2001 (Washington, D.C.)

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

I believe that I am qualified to serve Deputy U.S. Trade Representative based on my substantial experience in international trade, investment and economic issues in both the public and private sectors over the past 15 years.

Over the past four years, I have been intensely involved in international negotiations, relating to international trade in air services and in controlled goods and technologies. In my current position, as Assistant Secretary of Transportation for Aviation and International Affairs, I have overseen the negotiation of more than a dozen agreements to liberalize trade in air services, including the landmark 2004 air services expansion agreement with China, and the 2005 Open Skies agreement with India. In this position, I have also been responsible for shaping and implementing U.S. international transportation policy, including policies taken in international multilateral and regional fora, have adjudicated U.S. regulatory proceedings on international joint ventures and cross-border investments, and have worked to promote a level playing field for the export of U.S. transportation products and services globally.

Prior to holding my current position, I served at the Department of Commerce, first as Chief Counsel and then as Deputy Under Secretary overseeing the bureau charged with administering U.S. export controls. In this capacity, I worked closely with colleagues at other USG economic agencies in formulating and administering U.S. trade policy in controlled goods and technologies. Among my principal responsibilities was negotiating a new end-use agreement with China designed to facilitate more secure exports of U.S. goods and services to China, and designing a program designed to ensure more reliable exports of goods and services through global transshipment hubs.

Both at Transportation and at Commerce, I have managed diverse workforces of up to 400 people, and offices with budgets of over \$100 million.

Prior to joining government in 2001, I was a partner in the Washington, D.C. law firm Wilmer, Cutler & Pickering. My practice focused largely on international regulatory and transactional matters, and included the negotiation and securing regulatory clearances for numerous international joint ventures, mergers and other complex transactions.

I believe that my professional experience is well complemented by my academic background. I hold an undergraduate degree from Princeton University, where I focused on international economic relations; a masters degree from the London School of Economics; and a JD from Columbia Law School. I have also taught International Civil Litigation at Georgetown University School of Law.

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.**

If confirmed by the Senate, I would resign my current position as Assistant Secretary of Transportation for Aviation and International Affairs.

- 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.**

I am unaware of any investments, obligations, liabilities or other relationships that I have that could involve potential conflicts of interest with the position of Deputy US Trade Representative, except as set forth below:

- As detailed in my completed form SF-278, my wife and I currently hold shares in Time Warner valued in excess of \$15,000 (the *de minimis* level). Pursuant to an ethics agreement cleared by the Office of Governmental Ethics, I will divest my holdings in Time Warner if confirmed to this position.
- As also detailed in my completed form SF-278, my wife and I currently hold shares in Applied Materials, Cisco Systems, Intel Corporation, Microsoft, Oracle, Pfizer, RSA Security, Vodafone, Coca Cola, and Parametric Technologies, with each holding valued less than \$15,000. Pursuant to the ethics agreement cleared by the Office of Governmental Ethics, if any of these holdings rise above the *de minimis* level, at that time I will divest the amount of the holding which exceeds the *de minimis* level.

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.**

As noted above, from 1994-2001, I was in private law practice in Washington, D.C. My practice focused on international transactional and regulatory matters, largely in the transportation, telecommunications, and antitrust/competition

areas, on behalf of domestic and foreign clients. It did not entail practicing before the U.S. Trade Representative's Office. In 2001, I resigned my partnership at the law firm, and terminated my representation of all clients. I am not aware of any way that these or any other business relationships, dealings, or financial transactions that I have had could constitute or result in a conflict of interest in the position to which I have been nominated.

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.**

When in private law practice (1994-2001), I represented clients in a variety of legal and policy matters in many proceedings before U.S. and foreign executive branch agencies and U.S. courts. In particular, I represented a variety of transportation concerns in administrative and quasi-judicial proceedings before the Department of Transportation; and represented parties before the Department of Justice on antitrust/competition matters. Although on occasional matters I would interact with congressional staff, my practice did not typically involve seeking to influence legislation.

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.)**

Please see ethics agreement (attached).

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.

No

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.**

I was named as a defendant in a civil action (Kay L. Holzwordt v. Karan K. Bhatia et al., No. CV 91-18313) brought in Arizona State Superior Court for Maricopa County, deriving from a traffic accident that occurred in Phoenix, Arizona on June 12, 1991. The plaintiff alleged injury to her car and person. I was represented in the case by my insurance carrier, which settled the claim. The case was dismissed with prejudice on June 29, 1993.

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.

October 24, 2005

Senate Committee on Finance
Questions for the Record
The Honorable Karan Bhatia
Nominee for Deputy United States Trade Representative
Before the Senate Committee on Finance, October 18, 2005

From Senator Bunning:

1. **I understand that there is some consideration begin given to waiving the countervailing duties currently in place on Mexican cement imports. Could you please comment for me on whether this is being considered, the reasons behind the consideration and what impact such a waiver could have on the domestic cement industry?**

Answer:

The imposition or waiver of countervailing duties is not a matter directly within USTR's jurisdiction. However, I understand the Department of Commerce has received inquiries about the possibility of suspending or eliminating duties on cement to aid in reconstruction in the aftermath of Hurricanes Katrina and Rita. I understand further that the Administration is currently monitoring conditions in the affected Gulf Coast areas to ensure that reconstruction efforts are not hampered by shortages of building materials. At the same time, the Administration is in talks with the Government of Mexico and U.S. cement producers about the possibility of reaching a negotiated resolution to the cement dispute that would bring greater market certainty and predictability. As the imposition of countervailing duties is not an issue in the jurisdiction of USTR, I cannot make any assessment of the impact of a waiver on the domestic cement industry, although I know that the Administration is committed to considering the interests of all stakeholders, both producers and consumers, in reaching any decision regarding this subject.

2. **I have a question regarding the privatization of Japan Post, particularly Kampo, the insurance arm of Japan Post. Assistant USTR Wendy Cutler said before the Ways & Means Committee two weeks ago that the U.S. Government is calling on Japan to eliminate the advantages Japan Post gets now, that it not be permitted to expand its product offerings until a level playing field has been established, and that it make the coming privatization process fully transparent for all the parties to see.**

Obviously, this is an important issue for U.S. companies in the life insurance business in Japan. They are very concerned about the impact on their businesses if Japan Post is permitted to expand its products before it has to pay taxes, operate under the same regulations, drop its product guarantees, etc.

Assuming your nomination will be approved, you will soon be facing this issue. What will be your approach?

Answer:

I am fully aware of the importance of this issue to U.S. industry. Indeed, I was briefed on this subject by representatives of the American Chamber of Commerce in Japan prior to an April 2005 trip to Japan. If confirmed, I will urge Japan to ensure that Japan Post's U.S. competitors are treated fairly in the privatization process, and that these reforms do not result in Japan Post and private sector companies competing on unequal terms.

As the privatization process unfolds over the next several years, we will watch closely to ensure that U.S. companies get a fair shake. If confirmed, one of my priorities will be to engage Japan on these issues, both through our regular bilateral consultative processes as well as through timely interventions. I would also continue the close coordination that I understand exists between USTR and U.S. industry as well as with other U.S. agencies so that our message to Japan remains coordinated, clear, strong, and effective. I also look forward to working with the Committee and the Congress on these issues.

3. Regarding the current negotiations of a settlement of the Softwood Lumber cases with the Canadian federal and provincial governments, has USTR or the Commerce Department done a calculation of the impact of the different proposed settlement options on U.S. homebuyers?

Answer:

I understand that, as of now, it is not clear what a settlement may look like. I know the Administration is committed, as am I, to taking into account the interests of all stakeholders in reaching a negotiated solution. An agreement would bring stability and predictability to the market, to the benefit of producers and consumers alike. If confirmed, I would seek to support Ambassador Portman and my fellow Deputy U.S. Trade Representative, Susan Schwab, who, if confirmed, would have principal responsibility for trade issues with Canada, in reaching such an agreement.

From Senator Crapo:

As American agriculture and manufacturing face significant challenges domestically and internationally, it is essential that we maintain our trade remedy laws. The U.S. should not sign an agreement that would erode the ability of the U.S. to enforce its trade laws and decrease the effectiveness of domestic and international disciplines on unfair trade or safeguard provisions. What are your plans for preserving the strength of our trade remedy laws?

Answer:

If confirmed, I will work to preserve the effectiveness of U.S. trade laws. This is consistent with the Doha mandate for the WTO Rules negotiations, which states that the basic concepts, principles and effectiveness of the trade remedy rules will be preserved. It is also consistent with the objectives that Congress established in the 2002 Trade Promotion Authority legislation. The United States needs strong and effective remedies against unfair trade practices, including dumping, to ensure that the benefits gained from trade liberalization are not undermined.

If confirmed, I will support a U.S. strategy that seeks to ensure that the strength of our trade laws is maintained, to address the unfair trade practices of others, and to promote greater transparency and due process in foreign trade remedy proceedings so that U.S. exporters are fairly treated. I look forward to working closely with you to determine how best to advance this strategy.

From Senator Baucus:

1. There is a perception in the Congress that the Administration is not adequately enforcing the agreements we have entered into. China is probably the best example.

USTR has described counterfeiting and piracy in China as “epidemic,” causing economic harm to virtually all sectors of our economy. But we have yet to take strong action to address this problem.

It is very difficult to maintain support for trade agreements if the perception is that the Administration cares only about getting more agreements, not on tending to those we already have.

Do you have any thoughts on how to address this perception in Congress?

Do you have any plans for more aggressive enforcement measures?

Do you think that your colleagues in Asia are aware of Congress’s growing impatience with lack of enforcement, and possible consequences for U.S.-Asian relations?

Answer:

Enforcing our existing trade agreements is critically important – both to ensure that those agreements serve the interests of U.S. businesses, workers, and farmers, and to maintain support for future trade liberalizing initiatives. As I stated before the Committee, a vigorous enforcement regime, far from hindering free trade, is indispensable to the cause of free trade.

You refer to intellectual property rights (IPR) infringement in China. I agree this is a major problem, and one to which I intend to devote significant energies if confirmed. I know that Ambassador Portman shares the frustration of many Members of Congress regarding IPR infringement in China, and since his confirmation this spring has traveled to Beijing twice to press for meaningful steps by China's senior leaders. He has also made clear that the Administration will utilize all tools at its disposal as it seeks to ensure that U.S. IPR is protected. In the past months, USTR has been working actively with affected industry groups to improve protection of IPR in China and to develop our WTO options relating to China's compliance with its TRIPS obligations.

If confirmed, I would not hesitate to use the full range of enforcement tools when appropriate to ensure that our existing trade agreements are honored. Those tools can include: diplomatic pressure exerted in informal discussions, formal trade dialogues such as the U.S.-China Joint Commission on Commerce and Trade, and standing committees under trade agreements; the invocation of domestic trade remedies; and international litigation before the WTO or other tribunals. If confirmed, I will work with Ambassador Portman and the USTR team to ensure that we are using these tools in the most effective possible way to ensure that our trading partners are honoring their commitments.

Finally, I agree that we must communicate the full extent of Congressional concern to our trading partners, and continue to work closely with you and others in Congress on our trade agenda in Asia, including on enforcement issues. In his October 17 letter to Senators Grassley and Baucus, Ambassador Portman committed to increased cooperation with the Congress on China trade issues -- to ensure that the Congress understands our efforts and that those efforts properly reflect Congressional priorities. I view this as an important principle, and one to which I will faithfully adhere if confirmed.

2. I believe India is a tremendous opportunity for U.S. exporters. Tariffs have plummeted and our trade with India is already soaring. But problems remain. Agriculture tariffs are intolerably high. Counterfeiting and piracy are rampant. Non-tariff barriers persist.

How will you use your position – and the new Trade Policy Forum that will be launched in November – to open India's market further? What are your priorities? How serious is India about continuing its economic reforms?

Answer:

I agree with your assessment that India offers great potential for US exports. Since 2003, India has been the United States' fastest-growing major export market. But our two-way trade in goods and services with India still only amounts to about \$30 billion, roughly one-tenth of our trade with China, for example. The trend in our trade with India is positive but there is much that can be done to encourage it to achieve its potential. If confirmed, growing the U.S.-India trade relationship would be one of my highest priorities.

Addressing India's remaining barriers to trade – some of which are referenced in your question – would be central to that endeavor. To that end, it bears noting that India began opening itself seriously to trade only in recent years, once India itself concluded that its economic development would be better served by a more open economic environment. Its experience with economic reform – coming after more than three decades of pursuing an import substitution developmental model that gave the central government a major role in the economy – has mainly been quite positive and there are signs that the Indian Government is quite serious about continuing them. Nonetheless, it is clear that there remain forces in India opposing greater market opening and closer economic relations with the United States.

Accordingly, a core part of any effort to grow the US-India economic relationship will be to support India as it continues to move down an export-led growth strategy and to convince all affected constituencies in India that removing remaining trade barriers will continue to be in its own best interest.

The recently-formed US-India Trade Policy Forum offers us a potentially important bilateral consultative mechanism both to develop and implement a constructive bilateral trade agenda and to address lingering problems. The National Trade Estimate provides an overview of the problems that impede trade with and investment in India. I understand that these subjects will be raised in the Forum and in our numerous and increasing contacts with Indian officials and business executives. For my part, if confirmed, I intend to take an active role in engaging senior Indian officials on trade issues.

3. I was pleased to hear that Ambassador Portman is optimistic about the possibility of free trade agreements with Korea and Malaysia. I have been a long-time supporter of both.

While I support pursuing both agreements, I firmly believe we cannot do so until all outstanding issues are resolved. For Korea, this means first and foremost lifting the ban on imports of U.S. beef. It also means addressing non-tariff barriers to U.S. autos.

How do you evaluate these two countries' readiness to engage in FTA talks? How do you think they will progress?

I also believe Taiwan is a strong candidate. Studies by the International Trade Commission and the Institute for International Economics have confirmed the economic merit of a U.S.-Taiwan FTA. Is this a possibility that you would consider?

Answer:

Ambassador Portman indicated at the recent Congressional Oversight Group meeting that the Administration has identified Korea and Malaysia as two of four potential FTA candidates.

Korea is our 7th largest trading partner, 5th largest agricultural market, and close ally, and an FTA between our two countries could generate significant benefits for both economies. I understand that USTR is working closely with other USG agencies and our stakeholders to consider what issues need to be addressed to pave the way for an FTA.

I understand that over the past year, Korea has made progress in some significant areas of concern to the United States from a trade perspective – particularly related to improving its intellectual rights protection/enforcement regime and in resolving some outstanding SPS issues. But, as your question points out, other troubling areas remain that need to be addressed. If confirmed, I will continue to push Korea to resolve outstanding concerns and further open its markets. In particular, I will place a high priority on reopening Korea's beef market. I will also press Korea in other areas of priority to U.S. industry including autos, pharmaceuticals, and the movie industry.

With \$39.1 billion in two-way goods trade last year, Malaysia is also a significant trading partner, one with which we seek to expand our trade relationship. I know that we are carefully examining Malaysia's readiness for FTA negotiations under the United States-Malaysia Trade and Investment Framework Agreement (TIFA) and through consultations with Congress, our industry, and other stakeholders. I understand that recent TIFA discussions with Malaysia were productive, covering Malaysia's new national auto policy, its IPR laws and enforcement efforts, its efforts to work toward lifting its BSE-related ban on U.S. beef, and current Doha Round negotiations, in which Malaysia is playing an active and constructive role. At this point, however, no decision has been taken on launching formal FTA negotiations.

Taiwan is also a significant U.S. trading partner; one with which we have a strong relationship. Last year, the Administration reinvigorated our TIFA dialogue with Taiwan and held a Joint Council meeting in November, the first such meeting since 1998. Whether to pursue an FTA with Taiwan would require careful consideration of all relevant factors, including availability of resources and Taiwan's progress in addressing a number of outstanding bilateral trade issues, including in the areas of intellectual property, telecommunications, pharmaceuticals, and market access for agricultural products.

4. While the privatization of Japan Post and its insurance services is very positive, the privatization process may be devastating for U.S. insurance companies if it is not done on a level playing field.

What will you do to ensure the privatization of Japan Post does not put U.S. insurance companies at an unfair disadvantage?

Answer:

I am fully aware of the importance of this issue to U.S. industry. Our insurance industry has achieved real inroads in Japan's market over the past several years, and it is vital that unfair practices do not undermine the access to the market that these companies currently have. If confirmed, I will urge Japan to ensure that Japan Post's U.S. competitors are treated fairly in the privatization process, and that these reforms do not result in Japan Post and private sector companies competing on unequal terms.

As the privatization and reform process unfolds over the next several years, we must remain vigilant and respond swiftly and strongly if U.S. companies are being treated unfairly. If confirmed, I will work to ensure the Administration remains engaged with Japan on these issues, both through our regular bilateral consultative processes as well as through timely interventions. I will also continue the close coordination I understand exists between USTR and U.S. industry as well as with other U.S. agencies so that our message to Japan remains coordinated, clear, strong, and effective. I also look forward to working with the Committee and the Congress on these issues.

From Senator Rockefeller:

1. For those of us who are concerned about preserving U.S. trade laws, the current dynamic in the WTO rules negotiations is very disturbing. Congress has mandated that preservation of these laws constitute a principal negotiating objective for the United States. But as far as I can tell from the progress of the Doha talks, the Administration has done little to build support for these laws, or to prepare and submit the type of detailed, substantive trade law strengthening proposals that are necessary to counterbalance the weakening proposals on the other side.

Those countries that benefit from dumping and subsidies, and who want to increase the enormous trade surpluses that they already enjoy with the United States, are determined to undermine these vital laws. They have put forward dozens and dozens of very specific and very harmful proposals. They have forged a broad coalition to seek to dismantle the trade laws. And, unlike the United States, they have adopted a very aggressive stance in the talks.

To be honest, I do not see how the current negotiating dynamic could possibly result in an agreement acceptable to the American people and Congress. Given what has been put on the negotiating table, any "compromise" at this point would be completely skewed toward weakening and undermining the fair trade laws. I would like to ask you two things. First, if you are confirmed by the Senate, will you be committed to fully preserving U.S. trade laws, and are you fully prepared to reject any new trade agreement that fails to meet this standard? Second, how do you

propose that we alter the current negotiating dynamic such that the process will generate an acceptable agreement from the U.S. standpoint?

Answer:

If confirmed, I will work to preserve the effectiveness of U.S. trade laws. This is consistent with the Doha mandate for the WTO Rules negotiations, which states that the basic concepts, principles, and effectiveness of the trade remedy rules will be preserved. It is also consistent with the objectives set by Congress in the 2002 Trade Promotion Authority legislation. The United States needs strong and effective remedies against unfair trade practices, including dumping, to ensure that the benefits gained from trade liberalization are not undermined. The WTO Rules negotiations encompass a wide range of issues, including subsidies, antidumping and countervailing duties, as well as fisheries subsidies, and regional trade agreements.

Although WTO negotiations would principally fall into the portfolio of the other Deputy USTRs, to the extent I am involved, I will, if confirmed, support a U.S. strategy that seeks to ensure that the strength of our trade laws will be maintained, to address the unfair trade practices of others, and to promote greater transparency and due process in foreign trade remedy proceedings so that U.S. exporters are fairly treated.

I understand that the United States has been tabling detailed, substantive proposals in the WTO as part of that strategy, such as recent U.S. proposals to address the problem of circumvention of trade remedy orders. I also understand that an interagency team focused on the Rules negotiations has been working closely with the private sector on these issues. If confirmed, I intend to keep an open door, working with Ambassadors Portman and Allgeier, and would look forward to working closely with you to determine how best to advance our proposals on these issues.

2. How urgently is USTR pursuing Japan to attain a level playing field in financial services? Now that Japanese privatization has reached an implementation phase, how is USTR planning to handle the implementation of a newly restructured Japan Post? What understanding do we have with Japan about transparency in this regard? Will you be personally involved in this issue? Do you have any idea how U.S. market participants would be able to recoup lost market share if Japan Post fully enters the marketplace while still retaining its government advantages (and potentially attaining new advantages) over a ten year transition?

Answer:

I am fully aware of the importance of this issue to U.S. industry and, if confirmed, would be personally involved in the issue. Indeed, I was briefed by the American Chamber of Commerce of Japan on their concerns with respect to postal privatization last April in connection with a trip to Tokyo. If confirmed, I will urge Japan to ensure that Japan

Post's U.S. competitors are treated fairly in the privatization process, and that these reforms do not result in Japan Post and private sector companies competing on unequal terms.

I know that the Administration has given high priority to the Japan Post issue in our trade and economic relationship with Japan, and that U.S. officials have consistently raised key concerns. Now that the Diet has recently approved a reform package that appears to set the stage for the removal of Japan Post's unfair advantages over private companies, it is important to remain vigilant as implementation moves forward so that that a level playing field is actually achieved. This includes continuous engagement with Japan on our concerns, both under our regular bilateral consultative mechanisms as well as through other timely interventions as necessary.

As you note, it is also important that this process be transparent at every stage. The Administration has consistently underscored this, and if confirmed, I will also strongly urge Japan to make continued progress in this area.

3. In his confirmation hearing, I asked Secretary Gutierrez about his plans for the Continuing Dumping and Subsidies Offset Act (CDSOA), known familiarly as the Byrd Amendment. I also spoke with USTR Portman about this issue. They both assured me that the Department of Commerce and the US Trade Representative's office would work together to protect this provision of law, as set forth in Appropriations report language, from an attack by a misguided and off-base decision of the WTO Dispute Resolution Panel. As you may know, the Byrd Amendment simply allows domestic companies injured by imports to recover some of their costs with the duties collected. It is unreasonable for the WTO and our trading partners to take the view that the United States cannot compensate companies injured by imports deemed subject to a duty. Can you please give me an update on these talks in the Doha Round and assure me that you will continue to work with Congress and its strong expression that the Byrd Amendment be retained?

Answer:

I understand the United States has put forward a proposal in the WTO Rules negotiations to recognize the right of WTO Members to distribute monies collected from antidumping and countervailing duties. Although WTO negotiations would principally fall into the portfolio of the other Deputy USTRs, to the extent I was involved, I will, if confirmed, seek to continue to promote this proposal as the negotiations proceed. I understand that the initial reaction of our trading partners to our proposal was not positive, so we will need to work closely with Congress in determining the best way to forge the required consensus in the WTO negotiations.

From Senator Lincoln:

Mr. Bhatia, in our meeting we briefly discussed the impact of the Japanese border remaining closed to U.S. beef. Our cattle producers are growing increasingly frustrated, as this ban on U.S. beef imports has cost the industry \$5.4 billion since 2003. Japanese officials have indicated that they plan to open the border by the end of the year. As Deputy USTR, what steps will you take to ensure the Japanese live up to their word?

Answer:

I appreciate having had the opportunity to visit with you prior to my confirmation hearing to discuss your concerns on this issue. As discussed, I share your and the U.S. cattle producers' frustration with Japan's delayed decision to reopen its market to U.S. beef. This has gone on for far too long. I can assure you that until the market is reopened, we will keep up the pressure on the Japanese Government. This issue remains a top priority for the President and I know Ambassador Portman and other senior U.S. Government officials have taken every opportunity to press their Japanese counterparts to reopen the Japanese market to U.S. beef. If confirmed, I will work closely with my interagency colleagues and our Embassy in Tokyo to resolve this problem. Until that happens, we will pursue all appropriate avenues and leave open all options.

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

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)
James S. Halpern
2. Position to which nominated:
Judge, United States Tax Court
3. Date of nomination:
Sept. 6, 2005
4. Address: (List current residence, office, and mailing addresses.)
(O, mailing) United States Tax Court, Washington DC 20217
(H) 65 Observatory Cir., N.W., Washington DC 20008
5. Date and place of birth:
Oct. 16, 1945; Brooklyn, NY
6. Marital status: (Include maiden name of wife or husband's name.)
Married to Nancy A. Nord
7. Names and ages of children:
W. Dyer Halpern; 24 years old.
Hilary A. Halpern; 19 years old.
8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)
Law School, New York University, 1974-1975, LL.M (in taxation), June

1975.

Law School, University of Pennsylvania, 1969-1972, JD, May 1972.
Wharton School, University of Pennsylvania, 1963-1967, BS, May 1967.
Hackley School, Tarrytown, NY, 1960-1963, Diploma (Highschool).
Scarsdale Highschool, Scarsdale, NY, 1959-1960.

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.)

Judge, United States Tax Court, Washington DC 1990-present.
Partner, Baker & Hostetler, 1050 Connecticut Ave, N.W., Washington DC, 1983-1990.
Principal Technical Advisor, Internal Revenue Service, Washington DC, 1980-1983.
Associate Attorney, Roberts & Holland, New York NY, 1979-1980.
Visiting Professor, Law School, New York University, New York NY, 1978-1979.
Assistant Professor, Law School, St. John's University, Queens NY, 1976-1978.
Assistant Professor, Law School, Washington & Lee University, Lexington VA, 1975-1976.
Associate Attorney, Mudge, Rose, Guthrie & Alexander, New York NY, 1972-1974.
Officer, U.S. Army, Washington DC 1967-1969 (active duty); 1969-1997 (reserve duty)
Adjunct Professor, Law School, George Washington University, 1983-present.

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.)

None.

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

Member: Appalachian Mountain Club; University of Pennsylvania Club of

New York City; Temple Micah. I hold no office in those organizations.

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.

None.

- 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.

None.

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.)

Legion of Merit, United States Army, 1997.

Meritorious Service Medal, United States Army, 1969.

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

See list at Attachment A.

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.)

I have served as a judge of the United States Tax Court for the past 15 years.

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.

I am presently employed as a judge on the United States Tax Court, a position to which I have been renominated.

Law School, George Washington University; see answer to question B.2.

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.

Yes. To continue teaching two courses on a part-time basis at the Law School, George Washington University. The courses are (1) Basic Federal Income Taxation, and (2) Quantitative Analysis for Lawyers.

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, except for investments and liabilities disclosed in answer to question F.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.)

Recuse myself from consideration of the issue.

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.

See answer to question D.3., re: "1984. Marylouise Dionne vs. New York University (NYU) and James S. Halpern."

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.

1974. Plaintiff in a contract dispute for rental of an apartment brought in small claims court in Scarsdale, NY. My wife and I, as plaintiffs, won. I do not remember the name of the defendant, nor do I have any records of the lawsuit.

1979. Plaintiff in automobile collision action brought in small claims court in Bronx, NY. Settled by insurance company. I do not remember the name of the defendant, nor do I have any records of the lawsuit.

1984. Marylouise Dionne vs. New York University (NYU) and James S. Halpern. Civil action begun in June 1984 and concluded in May 1990 by summary judgment in favor of NYU and James S. Halpern. The action was brought in Supreme Court (trial level court of general jurisdiction of State of New York), County of NY, Index No. 16260/84, I.A.S. Part 6, the Hon. Elliot Wilk presiding. Plaintiff, a former part-time graduate student at NYU Law School, sued both NYU and me for the award of a graduate law degree, \$10 million and other relief. Plaintiff was a student of mine, for one semester, in a graduate tax law course that I taught at NYU in 1979. Plaintiff claimed defamation, harassment, negligence, and malicious prosecution. Her claims were without merit. Her lawsuit followed her complaints (on similar grounds) to the disciplinary authorities of the bar in both New York and Washington, D.C. Those complaints were dismissed. I have attached hereto as Attachment B correspondence from S. Andrew Schaffer, Vice President and General Counsel, NYU, which was submitted in 1990 to the Hon. C. Boyden Gray, Counsel to the President, and to Vanda B. McMurtry, Staff Director and Chief Counsel, Committee on Finance, United State Senate, in connection with my 1990 nomination and subsequent appointment to the United State Tax Court. That correspondence contains additional details concerning Ms. Dionne's actions. Attached to that correspondence are copies of letters from the disciplinary committees of both Washington, D.C., and New York dismissing her complaints. My files contain a complete record of all Ms. Dionne's actions, which I will provide to you on request. Included are numerous affidavits from officials of NYU and others, rebutting all of Ms. Dionne's allegations.

2003. Kevin C. Weisgerber, t/a "KCW Contractor," Plaintiff, vs. James S. Halpern and Nancy A. Nord. Civil action begun in April 2003 and concluded in November 2003 by settlement between the parties. The action was removed from State court to US District Court for the Western District of Virginia, Charlottesville, VA; Civ. Action # 3:03CV00026. The action involved a contract dispute between plaintiff Weisgerber and me and my wife concerning construction of a residence in Sperryville, VA.

2003. Harvey Flamholtz, Plaintiff, v. Helen Weinstein, as Trustee of the Lillie Feinberg Term Trust, Andrew Hilford, James Hilford, Jeffrey Hilford, James Halpern, Richard Kashuk, Barbara Kashuk, Radish Corp., Tiffany Fuel Oil, Inc., Pacific Energy Corp. and Pacific Transp & Weather Fuel, Defendants. Civil action begun in September 2003 and concluded in October 2003 by discontinuance of the action by the plaintiff. The action was brought in Supreme court, County of New York, Index No. 115924/03. The action involved a tort claim involving personal physical injury by a tenant in property owned by a

partnership owning two commercial-residential buildings located at 31 and 33 West 8th Street, NY, NY (the 8th Street Partnership). I owned a 12.5 percent interest in the 8th Street Partnership.

2005. Nicolo Pinzolo, an infant by his mother and natural guardian, Suso Pinzolo and Suzo Pinzolo, individually, Plaintiffs, against Barbara Kashuk, Richard Kashuk, James Halpern, Richard Halpern and Silk & Halpern Realty Associates. Civil action begun in February 2005 and pending. The action is brought in Supreme Court, County of New York, Index No. 102367/2005. The action involves a tort claim by a tenant involving lead paint abatement in one of the buildings that was owned by the 8th Street Partnership. On May 2, 2005, the 8th Street Partnership sold the buildings in question.

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.

**Written Statement by Ambassador Franklin L. Lavin
Under Secretary-Designate
International Trade Administration
U.S. Department of Commerce
October 18, 2005
10:00 a.m.**

Mr. Chairman, Senator Baucus, and distinguished Members of the Committee, thank you for the opportunity to appear here today.

I want to thank Senator DeWine for his gracious introduction. I am proud that he represents my home state, and I am grateful for his support.

I am thrilled that my daughter, Abby, my sister-in-law, Lauren, and my nephew, Seth, are here. My wife, Ann, and other children, Nat and Elizabeth, are here in my heart, although many miles separate us today.

I would also like to recognize my fellow nominees here on the panel, and if confirmed, I particularly look forward to working with Dr. Susan Schwab and Assistant Secretary Karan Bhatia in the Office of the U.S. Trade Representative.

It has been a privilege to serve the President and the American people as the U.S. Ambassador to the Republic of Singapore. I am honored that President Bush and Secretary Gutierrez have asked me to serve as Under Secretary of Commerce for International Trade. Trade is an important source of good jobs for our workers, new opportunities for our entrepreneurs, and higher growth for our economy.

Mr. Chairman, as U.S. Ambassador to Singapore and as a former banking executive and Commerce official, I helped U.S. companies navigate the international marketplace. From breaking down trade barriers to facilitating export financing, I have seen the challenges and opportunities firsthand. If confirmed, I will use this experience in the International Trade Administration to promote exports, open foreign markets, ensure compliance with trade laws and agreements, and support U.S. commercial interests at home and abroad.

If confirmed, my service will be guided by three principles. First, American companies produce world-class goods and services and we can win in the global marketplace. Second, we must use all of the tools at our disposal to ensure that American businesses face fair competition. We must enforce the rules and hold our trading partners accountable to the agreements they have signed. Third, cooperation between the legislative branch and ITA is essential for a constructive international trade policy. I look forward to working with the Congress on the vital issues we face. Please allow me to elaborate on these three principles.

First, I believe that U.S. companies can compete successfully in the international marketplace and there are many export opportunities for U.S. companies, large and small. Americans are resourceful, innovative, and quite nimble at adapting to change. We are living in an era of economic transition, but I have no doubt that American companies can successfully meet this challenge. U.S. exports are higher than at any time in our history. Indeed export growth might be one of the brightest spots in our overall economy as jobs in exports pay more on average than other jobs. To put these numbers differently, our exports this year will be larger than the entire GDP of Canada. But even with this success, the experience may be daunting for companies looking to export for the first time. For many businesses, ITA's involvement is a significant factor in export success.

My second principle is that we must open markets and enforce the rules that govern trade. Although the U.S. Trade Representative negotiates trade agreements, ITA oversees compliance and enforcement. The Department of Commerce is involved in every step of the implementation process. ITA staff works to ensure that American companies and their employees have every opportunity to succeed internationally.

Enforcement will be a priority for me. ITA works to ensure that American exports are afforded the proper protections, including respect for intellectual property. Intellectual property is a component in products from snowshoes to lawnmowers to computer software, and IPR protection is key to their success in the marketplace.

Third, I believe that to be effective in our mission, we must work closely with the Congress. The Senate is uniquely positioned to know first-hand about trade problems encountered by constituent companies and individuals. At the same time, you have a full appreciation of the relationship of open markets to the high standard of living we enjoy in the United States. If confirmed, you have my commitment that I will work closely with you and remain attuned to any concerns about ITA-related matters.

As an example of these principles, I would like to cite the Singapore Free Trade Agreement. It committed Singapore to maximum liberalization for bilateral trade in goods and services. It included state-of-the-art commitments in e-commerce, customs cooperation, transparency, and the protection of intellectual property rights, and it incorporated a constructive model for workforce and environmental matters. Since this FTA went into effect in 2004, U.S. exports have grown at a run-rate of almost 30 percent.

In closing, I would like to express my enthusiasm for ITA's mission. If confirmed, I will join an extraordinarily capable group of men and women who work around the world as commercial officers, trade specialists, economists, and trade lawyers to support that mission. I believe their work has never been more critical to both our economic well-being and our national security. With your support, I would be honored to lead them in this endeavor.

Thank you for your time. I would be happy to answer any questions that the Committee may have.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)

Franklin Leo Lavin

2. Position to which nominated:

U.S. Department of Commerce, Undersecretary for International Trade

3. Date of nomination:

July 29, 2005

4. Address: (List current residence, office, and mailing addresses.)

Residence:
8 Leedon Park
Singapore 267855

Office:
United States Embassy
27 Napier Road
Singapore 258508

Mailing:
United States Embassy
PSC 470 – EXEC
FPO AP 96507

5. Date and place of birth:

October 26, 1957
Canton, Ohio

6. Marital status: (Include maiden name of wife or husband's name.)

Married since 1980 to Ann Wortley Lavin

7. Names and ages of children:

Abigail, 21
Nathaniel, 16
Elizabeth, 13

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

Wharton Graduate School of Business, University of Pennsylvania, 1994-96, MBA (finance) 1996
School of Advanced International Studies, the Johns Hopkins University, 1981-1991, MS (international economics and international relations) 1991
Georgetown University, Graduate School, 1980-85, MA (Chinese language and history) 1985
National Taiwan Normal University, 1980. (Chinese) no degree
School of Foreign Service, Georgetown University, 1975 – 1979, B.Sc.F.S. (international politics) 1980
Phillips Andover Academy, 1971-75, high school diploma

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.)

2001-present, U.S. Ambassador to the Republic of Singapore, Department of State, Singapore

2000-2001, Managing Director, InternetMediaHouse Asia, Hong Kong

1999-2000, Principal, Bank of America, Singapore

1996-1999, Vice President, Citibank, Hong Kong

1994-1996, Managing Director, Asia Pacific Policy Center, Washington D.C.

1991-1993, Deputy Assistant Secretary for Asia/Pacific, U.S. Department of Commerce, Washington ,D.C.

1989-1991, Managing Director, Johnson Smick International (previously named Smick Medley International), Washington D.C.

1987-1989, Deputy Assistant to the President and Director, Office of Political Affairs, The White House, Washington, D.C.

1986-1987, Deputy Executive Secretary, National Security Council, Washington, D.C.

1984-85, Associate Director, Office of Public Liaison, The White House, Washington, D.C.

1983-84, Assistant to the Assistant Administrator for Africa, U.S. Agency for International Development, Washington, D.C.

1982-1983, Executive Director, President's Commission on Executive Exchange, Washington, D.C.

1981-1982, Director, Private and Voluntary Organizations, Bureau for Asia, U.S. Agency for International Development, Washington, D.C.

1981, Staff Assistant, Office of Presidential Personnel, The White House, Washington, D.C.

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.)

United States Naval Reserves, 1987-Present

Consular Assistant, American Institute in Taiwan, 1980

Congressional Page, summer 1974

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.)

None.

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.

1999, Pioneer fundraiser, Presidential campaign of Governor George W. Bush.

1997-99, Board Member and Vice President, Republicans Abroad Hong Kong

1996, volunteer, Republican National Convention.

1996, candidate for Republican delegate, Phil Gramm for President

1995, National Finance Committee, Phil Gramm for President

- 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.

LAZIO, RICK A
VIA LAZIO 2000 INC
 08/19/2000 500.00 20020270918

BUSH, GEORGE W
VIA BUSH FOR PRESIDENT INC.
 06/17/1999 1000.00 99034572272

REPUBLICAN NATIONAL COMMITTEE
 10/27/2000 250.00

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.)

U.S. Navy: National Service Medal, Marksman ribbon (rifle), Distinguished Unit Citation

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

"The Age of Small Victories," The American Spectator Online, January 10, 2001

"After NAFTA: Free Trade and Asia," Heritage Lecture, October 6, 1992

- "Asphyxiation or Oxygen? The Sanctions Dilemma," Foreign Policy, Fall 1996
- "Better US - Indian Relations in Sight," The Christian Science Monitor, November 1, 1989
- "Bircher Democrats," The American Spectator Online, February 20, 2001
- "Big Thunder, Little Rain," The New York Times, November 12, 1993
- "Boosting Export Figures, Not Exports," The Wall Street Journal, June 6, 1996
- "Building on NAFTA," Australian Financial Review, November 24, 1993
- "Bush's Asian Farewell Gifts," The Asian Wall Street Journal, January 11, 1993
- "Can the Brits Go It Alone? Without Hong Kong to Prop Them Up, Don't Be So Sure," The Washington Post, June 30, 1996
- "Challenging Beijing Is Not the Way Forward for Hong Kong," International Herald Tribune, March 10, 1997
- "Charm and Anti-Charm," The American Spectator Online, February 6, 2001
- "Clinton and Trade," The National Interest, Summer 1993
- "Clintonism Without Clinton," The American Spectator Online, January 4, 2001
- "Coming to APEC: Freer Trade," Journal of Commerce, November 4, 1994
- "Confucius and the John Birch Society," The American Spectator Online, February 13, 2001
- "God Speed, President-Elect Bush," The American Spectator Online, December 8, 2000
- "Half a Loaf is Better than None," Address at The Heritage Foundation, June 5, 2000
- "Heal Bush," The American Spectator Online, December 18, 2000
- "How to Lose Friends and not Influence People," Australian Financial Review, July 1, 1993
- "If Kinnock Conceded as Much to Bosses," The Wall Street Journal, February 9, 1984
- "In Clinton's Footsteps," The American Spectator Online, December 29, 2001

- "Incrementalism, Part two," The American Spectator Online, January 16, 2001
- "Isolationism and US Foreign Policy," Brown Journal of World Affairs, Winter/Spring 1996
- "Isolationism in US Foreign Policy," Common Sense, Spring 1996
- "Let Them Eat Spam," The Weekly Standard, May 29, 2000
- "Manager's Journal," The Asian Wall Street Journal, June 16, 1994
- "The May 1990 Elections in Romania" NRI/NDI team report
- "More Than a 'Great Communicator,'" The Wall Street Journal, June 9, 2004
- "Negotiating with the Chinese or How Not to Kowtow," Foreign Affairs, July/August 1994
- "Open Skies in Asia: Will the U.S. Catch This Flight?" The Asian Wall Street Journal, July 6, 1995
- "Pacific Purposes Need To Be Clearly Defined," Australian Financial Review, June 6, 1996
- "Perfect Storm," CFO Asia, July/August 2000
- "Positive Reasons for Negative Campaigning," The American Spectator Online, February 27, 2001
- "Ripping Off Jeans Hurts China," The Asian Wall Street Journal, March 1, 1996
- "Risky Vietnam no Easy Killing," Australian Financial Review, February 22, 1994
- "See Spots Run," The Wall Street Journal, August 6, 2004
- "Should Policymakers Listen to the Public?" Georgetown Journal of International Affairs, Winter/Spring 2000
- "So You Want to Cover the Campaign?" The Weekly Standard, October 25, 1999
- "Snooty Fault-Finding," The American Spectator Online, March 14, 2001

- "The Sound of One Hand Clapping," Chicago Tribune, March 10, 1994
- "The Third Generation" Ben Hart, ed., 1987
- "Threat of Sanctions puts Clinton on War Footing," Australian Financial Review, February 16, 1994
- "Treading Carefully in Vietnam," The Journal of Commerce, March 4, 1994
- "The Truth About Linda Chavez," The American Spectator Online, January 8, 2001
- "United States - Republic of Korea Relations After the Cold War,"
Korean Institute for International Economic Policy, Dec 1993
- "US-Australian Trade Policies in the 1990s", Institute for Pacific
Affairs Feb 1993
- "US Trade Policy Under Clinton," The Sydney Papers, Autumn 1993
- "Washington And Canberra: Focusing On Ties And Trends," Australian Financial Review, July 19, 1995
- "Watch Out, Republicans, for the Personality Trap," The Los Angeles Times, December 18, 1995
- "Watching the Dragon," National Review, October 14, 1996
- "The West's New Protectionism," The Asian Wall Street Journal, April 14, 1994
- "When Competing in China, Know the Rules," The Asian Wall Street Journal, June 20, 1994
- 11 September 2004 **We are not out of harm's way yet;** Straits Times
- 06 August 2004 **Culture & Thought – Media: See Spots Run --- Old Television Campaign Ads Are Now on the Web;** The Asian Wall Street Journal
- 08 June 2004 **Leadership lessons from president Reagan;** Straits Times/Wall Street Journal
- 24 October 2001 **Taking up the mantle of the 'long twilight struggle;** Business Times Singapore

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.)

Aug 27, 2004 Free Trade Agreement Fashion Agreement

Jul 28, 2004 U.S.-Singapore Free Trade Agreement: A Year in Profile at the IBM Forum

May 20, 2004 Letter of Intent between US Environmental Protection Agency (EPA) and Singapore Institute of Environmental Science & Engineering (IESE) Signing Ceremony

Apr 16, 2004 "United States-Singapore Free Trade Agreement: Highlights and Insights" Ambassador Frank Lavin's Remarks at the IPS Book Launch

Nov.6, 2003 Remarks at the 16th Annual Asia Managers Conference to the PHRMA Group

Oct.29, 2003 The US and FTAs: Partnering for Mutual Benefits

Oct.3, 2003 American Chamber of Commerce 30th Anniversary

Sep.27, 2003 Ambassador Participates in AmCham's Corporate Community Day

July 22, 2003 Reinvention and the US-Singapore FTA at the IBM Forum

June 30, 2003 Remarks at the Bureau of Industry Security (BIS) Export Control Seminar

November 21, 2002 Doing Business in the United States

May 30, 2002 Launch of Corporate Citizenship Initiative

May 4, 2002 U.S. Business in Asia: Learning From Our Mistakes to the Singapore Fulbright Association

March 22, 2002 U.S.-Singapore FTA: Taking Singapore Higher

February 28, 2002 Asian Aerospace 2002 Reception

See Appendix for speech texts

17. Qualifications: (State what, in your opinion, qualifies you to serve in the position

to which you have been nominated.)

I have spent much of my professional life helping U.S. businesses in the international marketplace, be it at the Commerce Department, in banking, or in my current position. In these positions, I have led trade missions, helped resolve commercial disputes, and helped U.S. businesses enter new markets. I value undertaking outreach to businesses in the U.S., particularly small businesses and I make a special effort to work closely with Congress on a non-partisan basis.

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.

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.)

Not applicable.

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.

To be provided directly as per request.

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.

Not applicable.

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.

**Senate Committee on Finance
Questions for the Record
Ambassador Franklin Lavin
October 24, 2005**

The Honorable Charles Grassley

Question 1: Ambassador Lavin, the Senate recently addressed the issue of our participation in the Rules negotiations as part of the Doha Round of trade negotiations at the World Trade Organization. In the end, a solid majority of the Senate rejected the idea that we should disengage from those negotiations. Can you identify areas in which our participation in the Rules negotiations will lead to a strengthening of our trade remedy laws, assuming we get an agreement in the Doha Round?

Answer: Two issues which are important to the United States in the WTO Rules negotiations are circumvention and transparency. These issues are applicable to both antidumping and countervailing duty cases. Since U.S. exporters are increasingly involved in antidumping cases brought by other countries, transparency is an important initiative that will assist these exporters. Circumvention of current antidumping duty orders adversely affects U.S. petitioners, and we hope to strengthen rules regarding this practice.

Question 2: Ambassador Lavin, as you know, the World Trade Organization has determined that one of our laws, known as the Continued Dumping and Subsidy Offset Act, is inconsistent with our obligations as a Member of the WTO. Supporters of that legislation argue it is necessary to strengthen our trade remedy laws. Can you respond to that argument and in particular, can you offer your perspective on the adequacy of our trade remedy laws to ensure a level playing field in the event the Continued Dumping and Subsidy Offset Act is repealed?

Answer: Our current strong enforcement of the antidumping and countervailing duty laws represents an effective response to dumping or subsidies. While the Continued Dumping and Subsidy Offset Act (CDSOA) directs how duties collected from antidumping and countervailing duties are disbursed, it does not affect how the Commerce Department investigates antidumping and countervailing duty cases and calculates margins.

Question 3: Mr. Lavin, in response to a question regarding the softwood lumber dispute during your testimony before the Senate Finance Committee your were quoted as saying that: "We have a set of issues dealing with \$4 or \$5 billion ... From the U.S. perspective, we view those as tools to try to get some kind of negotiated settlement." Could you please

elaborate on this statement? Specifically, can you please explain how the U.S. views the \$4 to \$5 billion which is at dispute in the softwood lumber case as a “tool” to reach a negotiated settlement?

Answer: A significant issue in the lumber negotiations has been the ultimate disposition of duties that have been collected. In the past, Commerce has explained its position that NAFTA determinations are prospective in nature. This leaves the distribution of funds as potentially an important one in terms of any negotiated settlement.

The Honorable Orrin Hatch

Question 1: One of the critically important roles that Commerce has traditionally played in supporting our trade negotiations is that of assembling the numbers behind our tariff proposals. Based on your experience, do you think that the different variations on the Swiss formula that have been put forward in the context of the Doha Round thus far will redress the current imbalance in market access that U.S. exporters face throughout most of the world, particularly in emerging developing country markets? If not, what other approach should we take to the negotiation of non-agricultural market access that would accomplish that objective?

Answer: The United States and other countries seeking a strong market result from the Doha Round have proposed the use of the standard Swiss formula:

$$\text{Swiss Formula: } T_1 = (T_o * x) / (T_o + x)$$

T_1 is the new tariff T_o is the current tariff
 “x” is the coefficient to be applied to each tariff line.

The standard Swiss formula cuts higher tariffs proportionately more than low tariffs. The United States has proposed allowing developing countries to use a higher coefficient (x) than developed countries. This approach, if the dual coefficients are low enough and not too far apart, will provide our exporters with new market access in developing countries while still providing limited flexibility for developing countries to retain some protection for sensitive products. The challenge we face is to get other countries to agree to coefficients that will allow us to meet that goal. Currently Members are discussing coefficients that are too far apart, but we working hard to close that gap.

The variation on the Swiss formula proposed by Argentina, Brazil, and India (the ABI proposal) will not address the current imbalance in market access that U.S. exporters face in many countries. The ABI proposal allows countries with high tariffs – many in emerging developing country markets – to avoid making the deep tariff cuts that we need to see. Mathematically, the ABI proposal achieves this by using a country’s average tariff rate as its coefficient in the Swiss formula, meaning that countries with high average tariff rates would be required to do less tariff cutting.

In addition to the Swiss formula approach, the United States is also pushing hard for a complementary approach, a sectoral component to the negotiations that will also help us obtain new market access. Sectoral agreements would allow WTO Members to go beyond the tariff cuts

provided by the formula for goods in a given industry, and thus provide additional market access. Discussions are currently underway on a number of potential sectoral agreements, including electronics, sporting goods, fish and forest products, chemicals, gems and jewelry, medical devices, and environmental goods. We are aware of the TPA mandate to provide substantially equivalent competitive opportunities in foreign markets for U.S. exporters of textiles and apparel.

Question 2: **Because both the Chairman and I are members of the Judiciary Committee as well as Finance, we are acutely aware of the fact that certain services sector proposals on the table in the Doha round – the so-called Mode IV discussions – would require significant changes to our immigration laws. Based on your experience, which of those proposals would you suggest would be appropriate balance between our interest in securing market access for our own financial services firms and our interest in maintaining control of our own immigration policies? What role do you think the Congress should play in an arena where it holds plenary legislative power under Constitution? Should those arrangements fall within the scope of the President’s negotiating authority?**

Answer: In trying to achieve a success in the services negotiations, I feel it is important to distinguish between the temporary entry issues – linked generally to conducting business and temporary visits to the United States for such purposes – and the broader immigration concerns touching, say illegal immigration or control of the borders. While I was Ambassador to Singapore, I saw first-hand the benefit of movement of business personnel across borders. Mode IV focuses on the ability of service suppliers to move across borders on a temporary basis. United States industry continues to believe that this is an important part of our trade agenda – both to allow U.S. service suppliers the opportunity to provide their services abroad and to allow specialists and executives into the United States to improve our sales and service overseas. The commitments we undertook in the Uruguay Round relate to professional workers, services salespeople and inter-corporate transferees. That is where the emphasis in these negotiations should be with respect to Mode IV: the temporary movement of professional service suppliers. We have made it very clear in the negotiations that requests to improve transparency with respect to laws, regulations and procedures affecting Mode IV are appropriate but seeking commitments with respect to the entry of low-skill workers is not feasible or appropriate. The Administration is committed to working with the Congress to properly address the issue as we recognize Congressional authority in this matter.

Question 3: **The Commerce Department previously produced an enormously helpful report on the challenges facing our manufacturing sector in**

the United States. Part of the motivation was to ensure that we are doing what was necessary at home to remain competitive so that we would have a stronger hand in what we negotiated in the way of trade agreements. How many of the recommendations have been acted on?

Answer: 32 of the 57 recommendations have been implemented and are ongoing. Of the 25 remaining recommendations, 3 fall to the Department of Commerce, 10 to other agencies, and 12 to Congress. If confirmed, I will work closely with our sister agencies and with Congress to expedite action on the remaining recommendations.

Question 3 (cont.): Which, in your experience, is likely to have the strongest impact in terms of enhancing the competitiveness of our manufacturing sector?

Answer: Of the 32 recommendations implemented to date, the Class Action Fairness Act of 2005 (P.L. 109-2) and the Energy Policy Act of 2005 (P.L. 109-58) are likely to have a large impact on enhancing the competitiveness of U.S. manufacturers. The passage of these two bills could result in direct cost savings and reduction of frivolous litigation costs for U.S. manufacturers.

Streamlining regulations, which is part of the President's economic agenda, will have an important impact on improving U.S. business competitiveness. Because manufacturing bears a disproportionate share of overall regulatory costs in the economy, it is paramount that every effort is made to reduce the cost of compliance. A recent report by the Small Business Administration indicates that the overall regulatory costs to the economy total \$1.1 trillion annually. The Administration has taken several positive steps toward the facilitation of regulatory reform, including identifying regulations affecting manufacturing, in-depth assessment of the economic impact of regulations, and reaching out to manufacturers to take stock of the regulatory issues facing their industries.

Question 3(cont.): What more would you suggest we do within the framework of our trade agreements or trade laws to enhance the ability of American manufacturers to compete globally?

Answer: We are working on several fronts. In the World Trade Organization Doha Round, we are seeking to lower or eliminate tariffs and non-tariff barriers, as well as to open up services markets. In our Free Trade Agreement negotiations, we are seeking to eliminate tariffs and bring our FTA partners to up to U.S. standards of openness in all areas, including goods and services as well as in transparency. In other fora, such as the Asia-Pacific Economic Cooperation, we are seeking to enhance trade and investment liberalization and facilitation.

The United States is also vigorously engaged in the WTO Rules negotiations where we are submitting proposals aimed at strengthening the WTO agreements on antidumping and subsidies and countervailing measures. Since U.S. exporters are increasingly involved in antidumping cases brought by other countries, transparency is an important initiative that will assist these exporters. Circumvention of current antidumping duty orders adversely affects U.S. petitioners, and we hope to strengthen rules regarding this practice.

Question 4: Much has been made about the Chinese currency peg, but what many commentators would suggest that the more fundamental issue is the lack of a functioning capital market in China that can price risk accurately and rationally allocate capital, which results in serious distortions in investment, over-capacity and trade friction when Chinese products are dumped on world markets. In addition, the fact that Chinese state-owned banks have such a high rate of non-performing loans implies that Chinese manufacturers are benefiting from an effective zero cost of capital. What tools, in your experience, would contribute most to cleaning up the serious problems in China's capital markets? Are those Chinese practices currently actionable under our unfair trade laws?

Answer: Commerce Department antidumping methodology avoids distortions that might be present in non-market economies such as China. In calculating antidumping duty margins in cases involving China, the Commerce Department does not use actual prices and costs from Chinese companies. Instead, we value those inputs using prices from a comparable market economy that are not distorted by subsidies or dumping.

Chinese capital markets remain an area of focus. The United States is working in the WTO Rules negotiations to strengthen disciplines on subsidies and other market-distorting practices, including those involving the banking sector. Further, under the auspices of the Structural Issues Working Group, a sub-group under the JCCT, Commerce officials are engaged with their Chinese counterparts in wide-ranging discussions of structural and institutional issues and market distorting practices in China, including subsidies to state-owned enterprises and the capital allocation system.

Question 5: Do you agree with the following statement? If so, what is your position on how to remedy this problem, if not, why not? "For decades, U.S. producers have been grossly disadvantaged by economically irrational international rules that favor foreign Value Added Tax ("VAT") systems over the income tax system used in the U.S. Essentially, U.S. producers are double taxed on export sales, by

being subjected to both domestic income taxes and foreign VATs, while foreign producers, after VAT rebates, pay considerably less. Many believe that, in affect, foreign producers receive a 15 percent subsidy. Congress has specifically made elimination of this disparity a principal negotiating objective for Doha Round, yet little progress has been made on this issue.”

Answer: As the statement you reference implies, there is much debate in the United States, especially among industry, as to whether U.S. industries are disadvantaged by the differences in U.S. tax law and how those may be treated in the context of trade rules. While I understand that U.S. industry has voiced its concern, this is a complex issue that encompasses many agencies in the U.S. government. As you know, there is a Presidential Tax Commission examining this issue, and it plans to release recommendations in November. The Department of Commerce will be engaged to ensure U.S. businesses have their voices heard as this process moves forward.

Question 6: The World Trade Organization’s dispute settlement system is one of limited authority. Under the existing rules, panels and the Appellate Body are not permitted to create additional rights and obligations that are not contained in the underlying agreements. Yet many have expressed concern that, in a number of cases, this is exactly what these bodies have been doing. What steps is the Administration taking to ensure U.S. sovereignty?

Answer: I share your concern on this issue. In the Dispute Settlement Body negotiations we have raised proposals aimed at clarifying this process. Further, in the Rules negotiations the United States is emphasizing the importance for clearly written rules so that the Dispute Settlement mechanism will not need to rely on interpretation as often.

Question 7: One of the innovations introduced by Assistant Secretary Lash in the past four years at Commerce was a case log designed to track compliance cases and, if no positive result was reached, to refer those cases to USTR for WTO action when appropriate. Based on your experience with enforcing trade agreements, what conditions do you think such cases should meet before you would refer them to action by USTR and what role does your legal authority for market access and compliance give you in terms of the actual litigation of such cases?

Answer: The Administration has no hesitancy in referring unresolved cases to dispute settlement. However, rather than using a rigid set of criteria for determinations regarding the initiation or referral of WTO cases to dispute settlement, the Administration is focused on achieving results as quickly as possible, using the most expedient and appropriate tools available to enforce our trade agreements. Using this approach, we have successfully

resolved over 100 cases in the past four years. However, where enforcement of our trade agreements is not achievable through our compliance and diplomatic efforts and U.S. industry wishes to press further, Commerce will refer unresolved matters to USTR for potential WTO dispute settlement.

The Honorable Rick Santorum

Question 1: As you may know, an antidumping order has been in place on Mexican cement since 1990. As a result of the order, U.S. cement producers have been able to invest in more cement capacity and to hire more cement workers to meet growing demand. Meanwhile, the Mexican cement market remains closed to U.S. and other foreign cement producers and high dumping margins have been found every year since 1990. I understand that the Commerce Department, however, is considering lowering or waiving antidumping duties on Mexican cement. Such an action could permit a renewed import surge from Mexico. Can you assure me that you will use your best efforts to make sure that the antidumping order on Mexican cement is vigorously enforced?

Answer: The Commerce Department has vigorously enforced the order on cement from Mexico since it was first issued in 1990. Moreover, we are conducting negotiations with the Mexican government with the aim of concluding an agreement that would provide certainty to the U.S. market and continued relief from dumped imports to the U.S. industry. Since Hurricanes Katrina and Rita, Commerce has received requests by U.S. consuming companies to waive the current antidumping duties in order for rebuilding to occur at a faster pace. Commerce believes that a long-term agreement is the best solution; however, we are monitoring the situation to ensure that an adequate cement supply is maintained in light of this crisis. Commerce has been working with the domestic cement industry regarding both the issue of a long-term agreement and a short-term duty waiver, and we take their comments very seriously.

Question 2: Representatives of constituent cement companies inform me that the problem with U.S.-Mexican cement trade is that while the United States has the most open cement market in the world, Mexico is a closed market that operates for the benefit of a small oligopoly of Mexican producers led by the cement giant CEMEX. It is my understanding that virtually no cement is imported into Mexico from other countries. As a result, Mexican cement consumers pay among the highest prices in the world. I also understand that Mexico maintains a sectoral registry that keeps new importers from entering the Mexican market. What assurances can you give me that the Administration will take action to open Mexico up to free trade in cement from the United States and other countries?

Answer: In the current cement negotiations, Commerce has formally proposed market access provisions. I view this as an important part of any settlement.

The Honorable Jim Bunning

Question 1: I understand that there is some consideration being given to waiving the countervailing duties currently in place on Mexican cement imports. Could you please comment for me on whether this is being considered, the reasons behind the consideration and what impact such a waiver could have on the domestic cement industry?

Answer: The Commerce Department has been engaged in negotiations with the Mexican government regarding a long-term agreement on Mexican cement. Since Hurricanes Katrina and Rita, Commerce has received requests by U.S. consuming companies to waive the current antidumping duties in order for rebuilding to occur at a faster pace. Commerce believes that a long-term agreement is the best solution; however, we are monitoring the situation to ensure that an adequate cement supply is maintained in light of this crisis. Commerce has been working with the domestic cement industry regarding both the issue of a long-term agreement and a short-term duty waiver, and we take their comments very seriously.

Question 2: I have a question regarding the privatization of Japan Post, particularly Kambo, the insurance arm of Japan Post. Assistant USTR Wendy Cutler said before the Ways & Means Committee two weeks ago that the U.S. Government is calling on Japan to eliminate the advantages Japan Post gets now, that it not be permitted to expand its product offerings until a level playing field has been established, and that it make the coming privatization process fully transparent for all the parties to see.

Obviously, this is an important issue for U.S. companies in the life insurance business in Japan. They are very concerned about the impact on their businesses if Japan Post is permitted to expand its products before it has to pay taxes, operate under the same regulations, drop its product guarantees, etc.

Assuming your nomination will be approved, you will soon be facing this issue. What will be your approach?

Answer: Postal reform has long been one of Prime Minister Koizumi's central goals. However, we need to work closely with his government to ensure that the ultimate outcome does not disadvantage U.S. firms.

As implementing regulations are developed between now and the start of the privatization process in 2007, if confirmed, I will urge the Japanese Government to ensure that a level playing field is realized between Japan Post and its competitors. I also will urge the Japanese Government to

ensure transparency in the privatization process. It is important for Japan to provide meaningful opportunities for interested parties to make their views known and to factor these views into the deliberative process.

I know that the Administration's concerns regarding Japan Post privatization have been raised with Japan in regular bilateral fora, including under our Regulatory Reform Initiative, as well as through direct engagement between Administration officials and Japanese Government officials. We will work closely with our interagency counterparts to ensure that the Japanese Government is aware of our views and concerns, and I also will raise them during my meetings with the appropriate Japanese ministries. We have been working closely with U.S. insurers throughout this process and will continue to do so.

Question 3: Regarding the current negotiations of a settlement of the Softwood Lumber cases with the Canadian federal and provincial governments, has USTR or the Commerce Department done a calculation of the impact of the different proposed settlement options on U.S. homebuyers?

Answer: To my knowledge, USTR and the DOC have not performed such a calculation, although I understand that there are some industry studies regarding this issue. The Commerce Department maintains that a negotiated agreement with Canada regarding softwood lumber would give certainty to the market in terms of price and supply, which would be beneficial to all U.S. consumers, including homebuyers.

The Honorable Mike Crapo

Question 1: I share the interest of my colleagues on this committee with the way in which the Department of Commerce will respond to the NAFTA panel's decision to instruct the Department to recalculate the Canadian Softwood Lumber import duties. I'm certain you are well aware of the importance of this issue to many on the committee and in the timber industry.

Unfortunately, just last week the Stimson Lumber Company announcement that they will be closing the Atlas mill in Coeur d'Alene, Idaho. I do not want to see any more mills close due to the increase of unfairly subsidized and dumped softwood lumber imports.

Does the Department of Commerce plan to use its discretion to maintain the duties in place against subsidized and dumped Canadian softwood lumber imports?

Answer: If confirmed, I will work to ensure that U.S. workers and companies are not injured by unfair trade. Regarding the most recent NAFTA Panel Remand, we are considering all legal options. I cannot speak further to this issue, as it is a matter currently pending litigation. Commerce's response to the most recent Remand is due on October 28.

Question 2: I understand that the United States has put forward a proposal in the Doha Round negotiations to clarify that member countries are permitted to distribute antidumping and countervailing duties as the U.S. currently does under the Continued Dumping and Subsidy Offset Act. Specifically, I understand that the proposal states that member countries may distribute the duties collected when respondent companies continue to dump or receive subsidies as determined by that WTO member country. Do you intend to support the proposal the United States has already put on the table before the WTO in the Doha negotiations?

Answer: Congress has directed us to pursue the topic of the right of WTO Members to distribute antidumping and countervailing duties in the WTO Rules negotiations, and we will continue to raise this issue as the negotiations continue. Because of an adverse WTO decision, the Continued Dumping and Subsidy Offset Act (CDSOA) has exposed U.S. industry to retaliation by certain WTO members. I note that the USTR has indicated he will take a flexible approach in working with Congress to craft appropriate legislation to implement the WTO decision.

The Honorable Max Baucus

Question 1: You have extensive experience in Asia. How should we engage in Asia? What do you think our priorities for Asia should be?

Answer: Asia today is our most dynamic and often most difficult market. Physical distance and differences in language and culture, among other factors, make our economic relations with the countries of Asia more complex than, for example, with Europe or Latin America. Also, China's economic growth and engagement is shifting the economic structure of the region. India is a difficult yet growing market that continues its gradual opening to international commerce. Finally, in recent years we have seen a revival of thinking about the establishment of economic groupings in the region that do not include the United States.

Against this backdrop it is essential that we continue to be very actively engaged in the region. We need to use all the tools at our disposal in this effort, including active participation in APEC and ASEAN-related fora, formal negotiations, technical assistance and exchanges, and senior-level visits in both directions to ensure that existing commitments, such as on IPR, as well as new ones provide greater access for U.S. companies and U.S. workers.

We need to continue our priority focus to ensure that China fully implements its WTO commitments and ensure that bilateral trade proceeds on a level playing field. We also must encourage Japan to continue to implement economic reforms and improve market access for our companies in that important market. Our efforts should include completing the free trade agreement (FTA) with Thailand and looking at other potential FTAs in the region. They should include initiatives to remove barriers to the free flow of goods, services, and capital in areas where an FTA is not a near-term goal. We should look at ways to reduce red tape and harmonize procedures to speed up economic flows and reduce costs. We also need to maintain an active trade promotion effort in support of U.S. companies.

There is reason for optimism: Trade with Asia is at an all-time high, reaching \$210 billion in 2004. Since 1994, exports to Asia are up 45%. In fact, in 2004 total U.S. exports to Asia were greater than U.S. exports to the European Union. This is good news for U.S. companies, showing they can compete in the Asian market. We expect exports to continue to increase to the region, thus providing future opportunities for U.S. business growth.

Question 2: I believe that Americans can compete in a globalized economy, but we will need to work a little harder, study a little longer, and invest in the future. We need to improve our competitiveness.

What do you think about our economy's competitiveness and what must be done to improve it?

Answer: The U.S. economy remains resilient amidst challenges. The United States is still the best place in the world to do business because of our legal system, entrepreneurial spirit, financial institutions, and skilled workforce. These strengths enable our economy to be flexible and prosperous. However, greater international linkages mean that our companies face more competition than ever. We need to ensure they remain competitive in this globalized economy. We need to be mindful of the additional burdens placed on U.S. companies and work to tackle issues such as health care costs, tort reform, regulatory burdens and pension costs, among others.

Question 3: The NAFTA and U.S. law require Chapter 19 panels to apply the same standard of review as would a U.S. court, that is, determine whether an agency's decision is supported by substantial evidence. Yet Chapter 19 panels have ignored this standard, second guessing U.S. agencies' factual findings and ignoring binding precedent. The recent NAFTA binational dispute panel finding on Canadian softwood lumber is the most recent example of such runaway Chapter 19 panels. Chapter 19 has also yielded questionable results for other U.S. industries, including wheat, cement, and magnesium.

In your opinion, what should the administration do to make Chapter 19 work better?

Some have advocated that we should renegotiate NAFTA to eliminate or revise Chapter 19. How do you respond to these suggestions?

Answer: I share your concerns regarding this matter. There are a number of issues pertaining to the Chapter 19 process that we are working jointly with USTR to address in the Chapter 19 Working Group. If confirmed, I will ask the Commerce representatives to report to me on the progress of the Working Group and based on their input explore ideas to address these concerns.

Question 4: I am seriously concerned about the progress of the Rules negotiations in Geneva. The so-called friends of anti-dumping negotiations – which include the most flagrant and consistent violators of trade remedy laws – continue to make an enormous effort to weaken our laws, submitting proposal after proposal to accomplish their objectives. By contrast, the United States, meanwhile, has appeared

slow and uncertain in pursuing an aggressive agenda of its own to offset these weakening proposals. This negotiating dynamic is troublesome and appears likely to produce an agreement that will have tremendous difficulty finding support in Congress or among the American people.

As you know, the trade negotiating objectives of the Trade Act of 2002 instruct our negotiators to “preserve the ability of the United States to enforce rigorously its trade laws ... and to avoid agreements that lessen the effectiveness of domestic and international disciplines” on trade remedies.”

These are not just words. They are direction from Congress that we expect the administration to follow. In that regard, I like you to provide your commitment that you will do whatever it takes to ensure that any new agreement fully preserves these critical laws and the ability of U.S. manufacturers and workers to respond to foreign unfair trading practices.

Answer: If confirmed, I will work to ensure that the trade remedy laws remain effective tools to combat unfair trade. Two issues that are very important to the United States in the WTO Rules negotiations are improvements of the existing rules relating to circumvention and transparency. These issues are applicable to both antidumping and countervailing duty cases. Since U.S. exporters are increasingly involved in antidumping cases brought by other countries, transparency is an important initiative that will assist these exporters. Circumvention of current antidumping and countervailing duty orders adversely affects U.S. petitioners, and we hope to strengthen rules regarding this practice.

The Honorable John Rockefeller

Question 1: For those of us who are concerned about preserving U.S. trade laws, the current dynamic in the WTO rules negotiations is very disturbing. Congress has mandated that preservation of these laws constitute a principal negotiating objective for the United States. But as far as I can tell from the progress of the Doha talks, the Administration has done little to build support for these laws, or to prepare and submit the type of detailed, substantive trade law strengthening proposals that are necessary to counterbalance the weakening proposals on the other side.

Those countries that benefit from dumping and subsidies, and who want to increase the enormous trade surpluses that they already enjoy with the United States, are determined to undermine these vital laws. They have put forward dozens and dozens of very specific and very harmful proposals. They have forged a broad coalition to seek to dismantle the trade laws. And, unlike the United States, they have adopted a very aggressive stance in the talks.

To be honest, I do not see how the current negotiating dynamic could possibly result in an agreement acceptable to the American people and Congress. Given what has been put on the negotiating table, any "compromise" at this point would be completely skewed toward weakening and undermining the fair trade laws. I would like to ask you two things. First, if you are confirmed by the Senate, will you be committed to fully preserving U.S. trade laws, and are you fully prepared to reject any new trade agreement that fails to meet this standard? Second, how do you propose that we alter the current negotiating dynamic such that the process will generate an acceptable agreement from the U.S. standpoint?

Answer: If confirmed, I will commit to preserving the U.S. trade laws. I am prepared to reject trade agreements that fail to preserve or meet this standard. Two issues that are very important to the United States in the WTO Rules negotiations are improvements of the existing rules relating to circumvention and transparency. Since U.S. exporters are increasingly involved in antidumping cases brought by other countries, transparency is an important initiative that will assist these exporters. Circumvention of current antidumping and countervailing duty orders adversely affects U.S. petitioners, and we hope to strengthen rules regarding this practice.

Question 2: In his confirmation hearing, I asked Secretary Gutierrez about his plans for the Continuing Dumping and Subsidies Offset Act (CDSOA), known familiarly as the Byrd Amendment. I also spoke with USTR Portman about this issue. They both assured me that the Department of Commerce and the US Trade Representative's office

would work together to protect this provision of law, as set forth in Appropriations report language, from an attack by a misguided and off-base decision of the WTO Dispute Resolution Panel. As you may know, the Byrd Amendment simply allows domestic companies injured by imports to recover some of their costs with the duties collected. It is unreasonable for the WTO and our trading partners to take the view that the United States cannot compensate companies injured by imports deemed subject to a duty. Can you please give me an update on these talks in the Doha Round and assure me that you will continue to work with Congress and its strong expression that the Byrd Amendment be retained?

Answer: Congress has directed us to pursue the topic of the right of WTO Members to distribute antidumping and countervailing duties in the WTO Rules negotiations, and we will continue to raise this issue as the negotiations continue. Because of an adverse WTO decision, the Continued Dumping and Subsidy Offset Act (CDSOA) has exposed U.S. industry to retaliation by certain WTO members. I note that the USTR has indicated he will take a flexible approach in working with Congress to craft appropriate legislation to implement the WTO decision.

The Honorable Blanche Lincoln

Question 1: As my distinguished colleagues have mentioned today, we are at a critical point in the Canadian Softwood lumber dispute. For the fourth time, a NAFTA panel has remanded back to the Commerce Department a decision that interprets U.S. law and instructs the Department to recalculate its subsidy findings.

It is my understanding that the Department has within its legal authority the discretion to keep the existing relief in place, a decision which could bring parties back to the negotiating table and help level the playing field for our domestic industry.

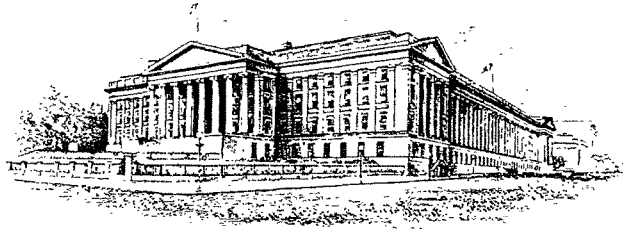
Amb. Lavin, as the new Undersecretary of International Trade at Commerce, what will you do to ensure that the original subsidy rate, now under review, will not be allowed to go below the de minimis rate?

Answer: We are vigorously enforcing this order, including defending it in NAFTA panels, WTO Dispute Settlement Body proceedings, and the U.S. Court of International Trade. Specifically, regarding the most recent NAFTA Panel Remand, we are considering all legal options. I cannot speak further to this issue, as it is a matter currently pending litigation. Commerce's response to the most recent Remand is due on October 28.

Question 2: I am pleased that Amb Portman and Secretary Gutierrez have agreed to work with me to address concerns I have our trade remedies. Many industries, including steel, have suffered continuing injury from persistent dumping. If imports increase from new countries after a dumping order is imposed, an entirely new dumping petition and investigation are required to obtain a remedy against the new sources. The process can take up to three years to obtain a remedy against the new sources. We must look for ways on our end to expedite this process for the domestic industry.

Amb. Lavin, in your new position at Commerce, I would like to know your thoughts on how we might be able to achieve this result?

Answer: I share your concern that our regulatory antidumping and countervailing mechanisms may result in time lags that do not always keep pace with a modern economy. We need to ensure that our system is not susceptible to manipulation by foreign countries. However, while I'm sure there are things that can be done to improve the process, I would point out that the procedures of the current system have enormous value for U.S. companies, and I would not want them to be undermined. My understanding is that Secretary Gutierrez is scheduled to meet with you to discuss this issue, and if confirmed, I look forward to joining this dialogue.



**DEPARTMENT OF THE TREASURY
OFFICE OF PUBLIC AFFAIRS**

**Statement of Clay Lowery
Nominee to be Deputy Under Secretary for International Affairs
U.S. Department of the Treasury
Before the Senate Committee on Finance**

Chairman Grassley, Ranking Member Baucus, and members of the Committee on Finance, I am honored to appear before you today as President Bush's nominee to serve as Deputy Under Secretary of the Treasury for International Affairs. Please allow me to express my gratitude to the President and Secretary Snow for the confidence and trust they have shown in me, and I would like to thank you for your consideration of my nomination.

I am pleased to be here with my family – my wife, Diana, and my father, Richard. Together, along with my deceased mother, Gail, my brother, and some very close friends, I owe a debt of gratitude for providing me the foundation and the passion to pursue a career in public service. I want to particularly thank my wife for supporting me in a career that, at times, can feel somewhat like a long flight abroad: little communication when in the field, and interminable hours at the office.

As a career civil servant at the Treasury for the past decade, it has been my privilege to serve in the Administrations of President Clinton and President Bush in a number of positions promoting the national interest in international development, economics, and finance. As a desk officer, economist, negotiator, diplomat and manager, I have been deeply involved in such issues as responding to the emerging-market crises of the 1990s, developing the initiative to provide debt relief to the world's poorest countries, and creating the Millennium Challenge Corporation (MCC).

For the past year and a half – on loan from the Treasury – I have served as a Vice President at the MCC and a member of its Investment Committee. In this capacity, I have been a leader in building and managing a “start-up” government corporation to implement President Bush's pioneering initiative to revamp the model for foreign

assistance: reducing poverty by investing in sustainable economic growth in poor countries that rule justly, invest in their people, and encourage economic freedom.

Prior to MCC, I held a variety of positions at the Treasury, most recently Deputy Assistant Secretary for Debt and Development Finance. In this position, I led a team consisting of four offices with responsibilities for debt workouts, trade finance, development policy and cross-cutting financial market analysis. I also worked at the National Security Council as Director of International Finance – a job that allowed me to bring together the complementary imperatives of protecting national security and advancing economic prosperity.

In many of these capacities, I have worked closely with Congress and, if confirmed, I plan to continue such collaboration on a full range of issues.

Mr. Chairman, this range of issues starts with a juxtaposition. In many respects, the global financial picture couldn't be stronger with global growth – led by the U.S. economy – at 30-year highs, inflation around the world relatively benign, and foreign investment on an upswing in emerging-market economies. This positive news, however, is accompanied by worrisome global financial imbalances, potential complacency in financial circles, and large swaths of poverty in the developing world. To me, I think the challenge for the United States is to help the American people seek the great opportunities offered by such an environment while promoting the essential benefits of increased productivity, open markets, and free trade.

If confirmed, I look forward to working with the Administration, the Congress, and the Treasury team in addressing these challenges and opportunities, focusing on such key priorities as promoting economic growth worldwide, preventing financial crises, and opening up foreign markets to U.S. goods and services – particularly through negotiations to conclude a strong Doha Development Round. If confirmed, I also look forward to leading a dedicated Treasury team by continuing to make President Bush's vision of providing more effective development assistance to the poorest people a reality.

Mr. Chairman, Senator Baucus, Members of the Committee, I am grateful for this opportunity to appear before you today. I would be pleased to answer any questions you may have.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)
Clay Lowery
2. Position to which nominated:
Department of the Treasury: Deputy Under Secretary for International Affairs
3. Date of nomination:
September 6, 2005
4. Address: (List current residence, office, and mailing addresses.)
Home
2101 Commonwealth Ave.
Alexandria, Va. 22301

Office
875 15th St., NW
Washington, DC 20005-2203
5. Date and place of birth:
May 9, 1967
Charlottesville, Va.
6. Marital status: (Include maiden name of wife or husband's name.)
Married: Diana Lee Lowery (maiden name: Robertson)
7. Names and ages of children:
N/A
8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)
London School of Economics; 1993-1994; Masters of Science; July 1994
University of Virginia; 1987-1990; Bachelors of Arts; May 1990
Trinity College (Ct.); 1985-1987; no degree rewarded (transferred)
Yorktown High School (Va.); 1981-1985; Graduated June 1985
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.)
Millennium Challenge Corporation; February 2004 to Present; Vice President --Markets and Sector Assessments; Washington, DC.

U.S. Department of the Treasury; January 1995 to February 2004 (brief stints elsewhere noted below); Washington DC
 Deputy Assistant Secretary -- Debt and Development Finance (2002 – 2004)
 Director -- Office of Debt Policy (2000 - 2001)
 Paris Club Negotiator (1999)
 Special Assistant to Under Secretary International Affairs (1997 – 1998)
 Mexico Task Force -- Economist (1995-1996)
 Technical Assistance – Program Officer (1995)

National Security Council (detail from Treasury); March 2001 to July 2002; Director -- International Finance; Washington DC.

Bayerische Vereinsbank; July 1997 to December 1997; Assistant to the CEO for U.S. office of a German bank; New York, NY.

International Republican Institute; August 1990 to July 1993; Program Officer -- Africa for a democracy development NGO; Washington DC.

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.)

N/A

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.)

N/A

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

Army Navy Country Club -- Waiting List Guest (June 2005 to Present)

13. Political affiliations and activities:

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

N/A

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

N/A

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.

N/A

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.)

2002 – SES Award for Excellence (Department of the Treasury)

2000 – Performance Award (Treasury)

2000 – 2 Special Act Awards (Treasury)

1999 – Performance Award (Treasury)

1999 – Special Act Award (Treasury)

1998 – Performance Award (Treasury)

1996 – Performance Award (Treasury)

1995 – Secretary’s Certificate (Treasury)

1994 – Distinction Earned for Thesis (London School of Economics)

1990 – Phi Beta Kappa (University of Virginia)

1990 – Pi Sigma Alpha (political science honors) (University of Virginia)

1987 – 1990 – Dean’s list multiple times (University of Virginia)

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

N/A

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.)

Given numerous presentations/speeches over the past five years for the U.S. Government -- Treasury Department, NSC, and MCC. Subjects were usually about debt relief, international finance, or international development. None of these remarks were provided from a formal text.

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

The Deputy Under Secretary (Assistant Secretary) for International Affairs supports the Under Secretary for International Affairs in advising and assisting the Secretary and Deputy Secretary of Treasury in the formulation and execution of United States international policy. These responsibilities include covering policy areas as diverse as international monetary and financial affairs to trade and debt issues to participating in the international financial institutions and the G-7.

For the past fifteen years, I have worked on issues in all of these areas at progressive levels of responsibility. The skills and experiences I have acquired are particularly suited to the job that I have been nominated for by President Bush.

At MCC, which is a new government corporation designed to provide development assistance to poor countries that are demonstrating solid policy performance, I have helped start up the organization. As one of the seven original people, I have been a large part of an organization that now has almost 150 people, which has committed roughly \$1

billion to help countries in Africa, Latin America, and the former Soviet Union, and is developing new ways to reward performance, measure results, and allow countries to own their priorities. I have worked on MCC since the idea was introduced when I was at the NSC, through detail design and working with Congress when I was at Treasury, to building out the organization, managing six divisions, and working in partnership with countries at the MCC.

Over roughly a decade of experience at Treasury, I have overseen or worked on such issues as:

- negotiating the HIPC debt reduction program for the poorest countries with the G-7, IMF, and World Bank;
- designing a system to identify emerging market vulnerabilities;
- overseeing an office responsible for official trade finance;
- creating multi-faceted debt workout arrangements with such countries as Pakistan, Russia, and Zambia to name a few;
- leading inter-agency teams to investigate the environmental impact of loans from an international financial institution;
- coordinating multiple offices in Treasury's response to the Asian financial crisis in 1997 and 1998; and
- analyzing financial markets, balance of payments prospects, and the macroeconomic framework for Mexico during the 1995 Mexican financial crisis.

At the NSC, I worked as the Director of International Finance which included designing support programs to assist the countries that were helping the U.S. in the war on terror, coordinating the U.S. response at the IMF and World Bank to financial crises in Turkey, Argentina, Brazil, and Uruguay, and assisting the G-8 sherpa to prepare President Bush for two G-8 Summits.

Outside of the government, I have worked at a large financial institution on emerging market issues and an NGO to design development programs in Africa. Finally, my education at both the undergraduate and graduate levels were focused on the areas of economics and foreign affairs.

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.

N/A

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.

N/A

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.

N/A

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.)

N/A

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.

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.

See #4

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.
April 1991 -- paid a fine for Drunk in Public in Charlottesville, Va. I was walking from a bar and came upon friends who had been in an altercation and were in the process of being arrested by the police. Although I was not involved in the altercation, the police arrested me as well and charged me for Drunk in Public. I pled guilty and paid a fine.

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

N/A

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

Senate Committee on Finance
 Questions for the Record
 Mr. Clay Lowery
 October 18, 2005

From Senator Grassley:

Last month the Under Secretary for international affairs called for the International Monetary Fund (IMF) to crack down on countries that violate the fund's rules against currency manipulation. I agree with the Under Secretary in insisting that the IMF confront China and other countries to urge for flexibility in their currency regimes. Monetary policy reforms should be discussed in a multilateral forum and the IMF should play central role facilitating needed reforms.

However, if the International Monetary Fund continues to be "asleep at the wheel" as the Under Secretary suggested, what options does the Department of Treasury have in urging China and other countries to move swiftly in revaluing its currency?

Over the last two years, Secretary Snow has led an intensive effort with China aimed at hastening China's move to a more flexible exchange rate. This effort has included working to build a consensus in the G-7, APEC, IMF, and key Chinese officials themselves that such a move is good for the Chinese economy and for the global economy. In addition, the Treasury Department led an effort to provide technical cooperation to the Chinese authorities to overcome obstacles they see in greater exchange rate flexibility at the technical level. This engagement has started to bear fruit:

- China moved from its decade-long peg to the dollar on July 21, and has since increased the scope for participation in the foreign exchange market.
- China has adopted measures to increase the volume of foreign exchange trading, for example: eliminating the foreign exchange surrender requirement for many commercial firms and allowing domestic Chinese insurance firms to invest in overseas capital markets.
- China has taken steps to develop foreign exchange market instruments and increase financial institutions experience in dealing with fluctuating currencies; for example, foreign exchange forward contracts can now be offered in China and domestic Chinese banks can now trade dollars against other foreign currencies – not just renminbi.

While these steps are notable, the Treasury Department has explained to the Chinese authorities that they are not sufficient and China should use these new mechanisms to introduce even greater flexibility that reflects underlying market conditions. If confirmed, I will work with my Treasury colleagues in monitoring the evolution of the new exchange rate system to determine whether, in fact, China's exchange rate increasingly reflects underlying market conditions.

In addition, Treasury is broadening its economic and financial engagement with China beyond exchange rates. As China becomes further integrated into the global financial community, other key ways to address global imbalances, and maximizing growth while minimizing market disruptions, are for China to shift to more domestic demand-based growth and for its financial sector to be broadened and deepened. On this front, the Treasury is already very active. Just last week, Secretary Snow led a mission that included Chairman Greenspan, SEC Chairman Cox, and CFTC Chairman Jeffrey to Beijing to discuss these issues with the Chinese. At the same time that Treasury is shutting down offices around the world because of budget constraints, we are opening up an office in Beijing for direct and continuous contact with the Chinese government on exchange rate policy and other issues. In fact, within the past few weeks, one of the most senior Treasury officials we have sent overseas as an attaché, David Loevinger, has been selected to be our first financial attaché to China.

In last week's US-China Joint Economic Committee discussions in Beijing, the Chinese committed to enhance the flexibility and the role of market forces in the exchange rate regime. If confirmed, I will work with Secretary Snow, Deputy Secretary Kimmitt, Under Secretary Adams and the rest of the Treasury and Administration team to hold China to this commitment and to further engagement on a range of economic and financial issues.

From Senator Baucus:

Question 1

I believe that we must close our current account gap. It is not sustainable. I believe that in order to do so, Japan, China, and our other Asian trading partners must cease intervention in currency markets that serves to prop up the dollar.

What do you think is the role of the Treasury Department in getting Asian economies – the Chinese economy in particular – to let their currencies appreciate?

What is the role of the IMF? Is it doing enough?

One of the largest concerns in international finance is addressing global imbalances. The adjustment of global imbalances is a shared responsibility that must be undertaken in a way that maximizes sustained global growth. First, in the United States, policies should aim at continuing solid economic growth while increasing saving by the public sector and the private sector. Second, in Europe, Japan, and China, policies for further structural reforms are needed to boost sustained, domestic-led growth. Third, greater flexibility of exchange rates is needed in China and in other large economies that lack flexibility. Also, an ambitious outcome from the Doha Round is essential to enhancing global growth.

Over the last two years, Secretary Snow has led an intensive effort with China aimed at hastening China's move to a more flexible exchange rate. This effort has included working to build a consensus in the G-7, APEC, IMF, and key Chinese officials themselves that such a move is good for the Chinese economy and for the global economy. In addition, the Treasury Department led an effort to provide technical cooperation to the Chinese authorities to overcome obstacles they see in greater exchange rate flexibility at the technical level. This engagement has started to bear fruit:

- China moved from its decade-long peg to the dollar on July 21, and has since significantly increased the scope for participation in the foreign exchange market.
- China has adopted measures to increase the volume of foreign exchange trading, for example: eliminating the foreign exchange surrender requirement for many commercial firms and allowing domestic Chinese insurance firms to invest in overseas capital markets.
- China has taken steps to develop foreign exchange market instruments and increase financial institutions experience in dealing with fluctuating currencies; for example, foreign exchange forward contracts can now be offered in China and domestic Chinese banks can now trade dollars against other foreign currencies – not just renminbi.

While these steps are notable, the Treasury Department has explained to the Chinese authorities that they are not sufficient and China should use these new mechanisms to introduce even greater flexibility that reflects underlying market conditions. In last week's US-China Joint Economic Committee discussions in Beijing, the Chinese committed to enhance the flexibility and the role of market forces in the exchange rate regime. If confirmed, I will work with Secretary Snow, Deputy Secretary Kimmitt, Under Secretary Adams and the rest of the Treasury and Administration team to hold China to this commitment and to further engagement on a range of economic and financial issues.

The IMF has a fundamental responsibility to undertake surveillance of members' exchange rate policies. No other multilateral institution is charged with this responsibility. Exercising "firm surveillance over the exchange rate policies of members," as required by the IMF's Articles, involves reviewing and consulting with country authorities on the consistency and sustainability of a country's exchange rate regime with both domestic and external conditions, including consideration of whether a different exchange rate regime might be more appropriate.

IMF surveillance has over time de-emphasized exchange rate policies and focused more heavily on domestic economic policies. The current international monetary system places great importance on the pursuit of sound macroeconomic policies to help achieve an orderly international financial system. However, I believe the IMF can and should achieve a better balance in the surveillance process, with a clearer focus on exchange rates. The IMF should be more active in evaluating the impact of countries' exchange

rate regimes not just on their domestic economies but also on international trade and capital flows. I believe that the IMF can and will make progress in strengthening exchange rate surveillance under the leadership of Managing Director de Rato.

Question 2

Article IV of the IMF's Articles of Agreement stipulate that each member country shall "Avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payment adjustment or to gain unfair competitive advantage over other member countries."

The same Article IV states that the IMF shall "oversee the compliance of each member with its obligations..."

Do you think that countries such as China are violating their obligations under this article? Is the IMF doing an adequate job of oversight, or is it asleep at the wheel?

The Administration believes that the IMF needs to be more ambitious in its surveillance of exchange rates, and the Treasury Department is working with IMF management and other shareholders to deepen and strengthen the Fund's efforts in this area. Of key importance is achieving a better balance in the surveillance process, with a clearer focus on exchange rates. This means that the IMF needs to be more active in evaluating the impact of countries' exchange rate regimes on their domestic economies and also on international trade and capital flows. The IMF also needs to sharpen its analytical tools and re-evaluate its operational procedures.

China's exchange rate policies in particular are a continuing area of discussion in the Fund and by the Fund with China. The Fund has stated consistently that greater exchange rate flexibility is in the interests of China's own economic growth and in the interests of promoting adjustment of global imbalances. The importance of this message is one the U.S. Government has repeatedly emphasized.

Question 3

Under Secretary Tim Adams recently called for reform of the IMF. Specifically, he said that reform was necessary to give emerging Asian economies a larger say and more representation in the IMF.

In your opinion, is the IMF in need of reform? Do you think this is politically possible? What does the United States stand to gain from such a reform?

The IMF has an important role to play in promoting growth and international financial stability in its member countries and the global economy as a whole. I believe that by refocusing on the core mission envisaged by the IMF's founders at Bretton Woods the IMF can carry out this role more effectively, to the benefit of the United States and the global economy.

Among key needed reforms is change in the IMF's governance structure. The IMF is a financial and shareholder institution whose governance should evolve with the global economy. In short, change in the world economy has outpaced that at the IMF, particularly as emerging market countries have achieved fast-paced growth and currency union has proceeded in Europe.

To help modernize the IMF's governance, the Administration has proposed a voluntary rebalancing of quotas within the existing total and a consolidation of European Chairs on the Executive Board to increase the relative voice of emerging market and developing country members.

These are complex issues, and progress to modernize governance will not be easy or immediate. But I firmly believe that change is important to the IMF. To remain effective, the IMF needs the support of all of its shareholders, including those in Asia. A strong and effective IMF that is relevant and responsive to all its shareholders will be better placed to promote growth and stability – an undertaking of key interest to the United States which itself accounts for over one-third of the world economy.

From Senator Rockefeller:

In his confirmation hearing, I asked Secretary Gutierrez about his plans for the Continuing Dumping and Subsidies Offset Act (CDSOA), known familiarly as the Byrd Amendment. I also spoke with USTR Portman about this issue. They both assured me that the Department of Commerce and the US Trade Representative's office would work together to protect this provision of law, as set forth in Appropriations report language, from an attack by a misguided and off-base decision of the WTO Dispute Resolution Panel. As you may know, the Byrd Amendment simply allows domestic companies injured by imports to recover some of their costs with the duties collected. It is unreasonable for the WTO and our trading partners to take the view that the United States cannot compensate companies injured by imports deemed subject to a duty. Can you please give me an update on these talks in the Doha Round and assure me that you will continue to work with Congress and its strong expression that the Byrd Amendment be retained?

I understand from the Office of the U.S. Trade Representative that U.S. negotiators from the Commerce Department and USTR have put forward a proposal in the WTO Rules negotiations to recognize the right of WTO Members to distribute monies collected from antidumping and countervailing duties. The initial reaction of our trading partners to our proposal was not positive, but the Administration will work closely with Congress in determining the best way to achieve a consensus in these WTO negotiations.

STATEMENT OF HON. BARBARA MIKULSKI

Ms. MIKULSKI. Chairman Grassley and Ranking Member Baucus, I speak today in support of the nomination of Dr. Susan Schwab to be Deputy U.S. Trade Representative. I have known Susan for a long time and seen her great leadership and vision as Dean of the University of Maryland School of Public Policy. As Dean, Susan helped the School grow into one of the top public policy programs in the nation.

I believe that the Deputy U.S. Trade Representative is one of the most important foreign policy positions in the federal government. The growth of globalization means that U.S. trade policy touches the lives of every American. We need trade officials who are tough, smart, and have experience standing up for American interests. I believe that Dr. Schwab fits that bill.

Dr. Schwab's qualifications for this position are first-rate. She is a former Foreign Service Officer, serving in the U.S. Embassy in Tokyo and as a trade negotiator at the USTR. The experience of serving on the front lines of an office she will now help lead is particularly important. Dr. Schwab also has extensive experience in both the legislative and executive branches of the federal government. She was legislative director for Senator John Danforth and served as Assistant Secretary of Commerce and Director-General of the U.S. & Foreign Commercial Service in the first Bush Administration.

In addition to her practical experience, Dr. Schwab is accomplished academically. While Dean of the Maryland School of Public Policy, she taught a variety of graduate courses on U.S. trade policy and international relations. Dr. Schwab received her Ph.D. in Public Administration and International Business from the George Washington University. She holds a Master's in Development Policy from Stanford University and a Bachelor's from Williams College.

I ask my colleagues to support this nomination. Thank you, Mr. Chairman.

**Statement of Susan C. Schwab
Nominee for Deputy United States Trade Representative
Before the Senate Committee on Finance
October 18, 2005**

Chairman Grassley, Senator Baucus, Members of the Committee,

My parents, Gerald and Joan Schwab, are here today, along with Professor Mac Destler and some of our students from the University of Maryland School of Public Policy. I would also note that my husband, Curtis Carroll, and my sister Teresa and her husband, Steve Marshall, were unable to be here today, but are certainly with me in spirit.

It is great to be back with the Senate Finance Committee. I spent many fascinating hours here during the 1980s when it was my privilege to work for Senator John Danforth, then chair of your International Trade Subcommittee.

For me, today is about taking a fond look back in anticipation of moving forward. I am grateful for the honor of being here; for the President's and Ambassador Portman's faith in my potential to serve our nation in this important role.

When I left graduate school in 1977, I came to Washington looking for a job in international trade, development and agriculture. Arriving at 1800 G Street, then the home of the President's Special Representative for Trade Negotiations (STR), I picked an interesting title from the directory in the lobby, and went upstairs to find its owner. I had in hand a form letter from their office thanking me for my job inquiry and advising me there were no vacancies. The gentleman I sought was not there, but his assistant was, and she looked at my resume and introduced me to her friend down the hall who was an agricultural trade negotiator. It turned out they had a vacancy – someone had turned down a job the previous week. An interview with her boss, and one security clearance later, they hired me; just in time for the Tokyo Round Multilateral Trade Negotiations. Ambassador Robert S. Strauss was then the Trade Representative.

It was an amazing office then; it is an amazing office today – with some of the smartest, hardest working career professionals you will ever meet. Their dedication to representing America's interests in international trade is unparalleled. It is an honor to be nominated and it will be a great privilege to become their colleague once again.

In the intervening years, I have had the opportunity to work in U.S. trade policy and promotion from multiple perspectives – in the government and the private sector; from the executive branch and the legislative branch; as a career foreign service officer and as a political appointee; as a negotiator who helped to open doors for U.S. business, and as a Commercial Service employee helping small, medium and large firms walk through those doors. My current role at the University System of Maryland – while not directly engaged in trade negotiations – has reinforced my belief that the work we do at

America's public universities contributes to U.S. competitiveness and to our ability to hold our own in global commerce.

I sense that the United States stands at a crossroads in our approach to global trade. We are looked to for leadership in the international trading system, both in what we say and in what we do. We cannot afford to shirk that responsibility. But neither can we forget that support for open markets at home requires that trade be perceived as fair as well as free; that negotiation of promising trade agreements be followed by strong enforcement; and that those impacted by the rigors of competition have the opportunity to succeed in today's knowledge-based economy.

We will have many opportunities in the coming years to exercise our leadership and to make and reinforce the case for open trade in the United States. In addition to the negotiation and implementation of agreements that contribute to economic and political freedom around the world, we must ensure that the benefits of trade to the American people are articulated in a clear, consistent, and bipartisan manner.

If confirmed, I look forward to working with colleagues in the interagency process; and with industry, agriculture, labor and other interested groups both within and outside of USTR's statutory advisory committee structure. And above all, I look forward to working with members of this Committee and your colleagues across the Capitol to ensure that the promise of international trade is realized in the years ahead -- through forward looking U.S. trade policy, negotiations and implementation.

Let me close with a special word of thanks to my parents, Gerald and Joan Schwab. They dedicated their lives to public service in the United States' military, the Department of State, the U.S. Agency for International Development and the International Labor Organization. Our lives abroad together, and their passion for public service, instilled in me a profound appreciation for the United States and for the importance of serving and representing my country to the best of my abilities.

If confirmed by the Senate, I look forward to doing so in the role of Deputy United States Trade Representative.

Susan Carroll Schwab
 Senate Finance Committee Questionnaire
 October 6, 2005

A. BIOGRAPHICAL INFORMATION

1. Name: Susan Carroll Schwab (previously Susan Carol Schwab)
2. Position to which nominated: Deputy United States Trade Representative
3. Date of Nomination: October 6, 2005
4. Address(es):
 Residence: 4 Market Quay, Annapolis, MD 21401
 Office: University System of Maryland
 3300 Metzert Road
 Adelphi, MD 20783
5. Date/place of birth: March 23, 1955; Washington, D.C.
6. Marital Status: Married to Curtis Alexander Carroll
7. Names and ages of children: No children
8. Education (secondary and higher education institutions, dates attended, degree received, and date degree granted)

1969-70	Aiglon College, Villars, Switzerland (high school)
1970-72	International School of Bangkok, Bangkok, Thailand (1972); High School Diploma
1972-76	Williams College, Williamstown, Mass. (1976); B.A. in Political Economy
1976-77	Stanford University, Stanford, CA. (1977); Food Research Institute; M.A. in Development Policy
1986-93	George Washington University, Washington, D.C. (1993); School of Business and Public Management; Ph.D. in Public Administration and International Business
9. Employment Record (all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment):

- 2004 – present UNIVERSITY SYSTEM OF MARYLAND FOUNDATION AND UNIVERSITY SYSTEM OF MARYLAND, Adelphi, Maryland
President/CEO (USM Foundation), Vice Chancellor (USM)
- 2003 Consultant (part time), U.S. Department of Treasury (3 months)
- 2003 – present UNIVERSITY OF MARYLAND, College Park, Maryland
Professor, School of Public Policy (on leave of absence since 2004)
- 1995-2003 UNIVERSITY OF MARYLAND, College Park, Maryland
Dean, School of Public Affairs
- 1993-1995 MOTOROLA INC., Schaumburg, Illinois
Director, Corporate Business Development
- 1989-1993 U.S. DEPARTMENT OF COMMERCE, Washington, D.C.
Assistant Secretary of Commerce and Director General,
U.S. & Foreign Commercial Service (US&FCS)
- 1986-1989 OFFICE OF SEN. JOHN C. DANFORTH (R-Mo), Washington, D.C.
Legislative Director
- 1981-1986 OFFICE OF SEN. JOHN C. DANFORTH (R-Mo), Washington, D.C.
Chief Economist and Legislative Assistant for International Trade
- 1979-1981 AMERICAN EMBASSY, Tokyo, Japan
Trade Policy Officer, U.S. Foreign Service
- 1977-1979 OFC. OF THE U.S. TRADE REPRESENTATIVE, Washington, D.C.
U.S. Trade Negotiator (Agriculture), Executive Office of the President

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

- U.S. Air Force Academy Board of Visitors (2004 – present)
- U.S. General Accounting Office (GAO) Comptroller General's Educators' Advisory Panel (2001-2003)
- Member, Executive Council, Maryland Governor-elect Robert Ehrlich transition team (November 2002 – January 2003)
- Member, Transition Committee for Maryland Comptroller William Donald Schaefer (1998)

- National Academy of Sciences (National Research Council) Committees on Japan (1994-99) and Standards/Certification (1993-95)

11. Business relationships (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):

- President & CEO, University System of Maryland Foundation, Adelphi, MD. A 501(c)(3). Also, Director, Board of the USM Foundation. (2004 – present)
- Professor, School of Public Policy University of Maryland, College Park, MD. (2003 –present (on leave of absence since 2004))
- Dean, University of Maryland, College Park, MD. (1995-2003)
- Director, Vice President, and Assistant Secretary, Class Act Cabaret, Inc. A small business (S Corp) established in Florida by my husband. CAC, Inc. will be shut down by the end of 2005 with the demise of the Magic & Mischief Theatre he opened in Orlando, Florida in March 2004. Business address of CAC, Inc. is our home at 4 Market Quay, Annapolis, Maryland. (2004-2005)
- U.S. Air Force Academy Board of Visitors, Colorado Springs, CO. (2004 – present)
- Director, Board of Governors, Lee Kuan Yew School of Public Policy, National University of Singapore. A graduate school of public policy and international affairs. (2005 – present)
- Director, Board of Directors, Calpine Corporation, San Jose, CA. Chair, Nominating & Governance Committee (2002 – present); former Chair and current member, Compensation Committee (1997 – present). (1997 – present)
- Director, Board of Directors, Adams Express Company and Petroleum & Resources Corporation, Baltimore, MD. Member, Retirement Benefits and Audit Committees (2004 – present). Former member, Compensation and Executive Committees (2000-2004). (2000 – present)
- Trustee, Board of Trustees, Council for Excellence in Government. (1996 – present)
- Chairman, Board of Directors, Public Policy and International Affairs (PPIA) Program (a 501-c-3). (2001 – 2003)
- President, Association of Professional Schools of International Affairs (APSIA). (2002 – 2003)

- Member, National Selection Committee, Innovations in American Government Awards Program, Kennedy School of Government, Harvard. (1998 – present)
- Panel member; Panel on Off-Shoring Project, National Academy for Public Administration. Congressionally chartered organization; study is congressionally mandated; panel advises NAPA staff. (2005 – present)
- Institute for International Public Policy (IIPP) Program; advisory board member. IIPP is affiliated with the United Negro College Fund. (2003 – 2004)
- Consultant/Instructor, Robert H. Smith School of Business, University of Maryland. (1996 – 2002)
- Consultant, Mathematica Public Policy Research (2000-2002)

12.

Memberships (all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations). In addition to those noted above:

- Council on Foreign Relations
- National Academy of Public Administration
- Women’s Forum of Washington, D.C.
- Trade Policy Forum
- Terrapin Club
- Cosmos Club

13. Political affiliations and activities:

- a. Public offices for which you have been a candidate: none
- b. Memberships and offices held in and services rendered to all political parties or election committees during the last 10 years: none
- c. 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. (Please note that the list below reflects the information currently available in my files; it may not be complete.)

1993

Bobbie Kilberg 50
 Kay Bailey Hutchison 50
 RNC 50

1994

William Weld 50
 George Ryan 50
 Alliance for American Leadership 100
 Bill Brock 250
 Jim Kolbe 50

RENEW 1000
RNC 750

1995

Robert Dole 1000
Rudy Boshwitz 200
RNC 100 or 200

1996

Victory '96 (Robert Dole) 250
Barbara Hoffman 100
William Weld 50
Steny Hoyer 100
RNC 250

1997

Howard Rawlings 60
Rob Mosbacher. 250
George W. Bush 50
Steny Hoyer 100

1998

Christie Todd Whitman 50
William Donald Schaefer 300
Maryland Republican Party 100
Governor Bush Committee 75
Richard D'Amato 100
Howard Rawlings 100
Steny Hoyer 100
WISH 50

1999

George W. Bush 1000
Christie Todd Whitman 50
WISH 100

2000

Olympia Snowe 100
Connie Morella 100
Victory 2000 (RNC) 1000
Paul Sarbanes 100

2001

Williams Donald Schaefer 250
Connie Morella 100
Barbara Hoffman 250
Kathleen Kennedy Townsend 500

2002

William Donald Schaefer 1000
Ira Shapiro 200
Robert Ehrlich 250
Susan Collins 100

Connie Morella 100
Bush/Brogan 500
2003
2004
WISH List 500
William Donald Schaefer 1000
Bush Cheney '04 1000
Bush Cheney 100
Steny Hoyer 300
2005
William Donald Schaefer 1000

14.

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

- Public Policy and International Affairs (PPIA) Leadership Award (2005)
- Elected Fellow, National Academy of Public Administration (1998)
- Elected to Omicron Delta Kappa National Leadership Honor Society (1998)
- National Association of Professional Schools of Public Affairs and Administration (NASPAA) Dissertation Award (1994)
- Mead Government Internship Award, Williams College (1974)

15.

Published writings (all titles, publishers, and dates of all books, articles, reports, or other published materials):

"In Praise of Public Policy/International Affairs Education," Carnegie Reporter, Carnegie Corporation of New York, forthcoming

Trade-Offs: Negotiating the Omnibus Trade and Competitiveness Act. Harvard Business School Press, Boston, Massachusetts, 1994.

"Korea: A Congressional Commentary" (with Ira Wolff), Korea-U.S. Relations: Changing Political, Strategic and Economic Factors, East Asian Institute, University of California, Berkeley, 1988.

"The Last U.S. Trade Bill?" The International Economy, Fall 1987.

"Politics, Economics and U.S. Trade Policy," Stanford Journal of International Law, Stanford University, Spring 1987.

"Japan and the U.S. Congress," Journal of International Affairs, Columbia University, June 1983.

16.

Speeches (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):

To the extent I am able to recall speeches I have given since 1999, I am unable to recall any formal speeches using a written text. Other speeches, lectures or panel presentations that I recall giving during this time frame of potential relevance to the position for which I have been nominated include:

- Luncheon speeches or lectures approximately once a year since 1996 to the Maryland Government Executive Institute, a training program for state government executives, on professional development, ethics, managing complex organizations, differences between the public and private sectors, etc.
- Occasional (three or four since 2003) lectures for U.S. Department of Commerce senior executives and emerging leaders. Management and leadership topics similar to those noted above.
- Seminar/lectures once or twice a year until 2003 to Northrup Grumman Corporation employees about exporting and government assistance available to U.S. exporters.
- Washington Institute of Foreign Affairs speech on 12/14/99 on U.S. trade policy.

17.

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

- Professional experience in the public and private sectors; most recently, leading one of the nation's top graduate programs of public policy, management and international affairs.
- Policy and management experience at senior levels of government and the private sector involving a range of fields, including international trade and commerce, corporate business development, international economic development, the congressional budget process, U.S.-Japan and U.S.-China relations.
- Experience working both in and with Congress, including several Senate and House committees involved in U.S. economic policymaking and oversight.

- Experience in multiple federal agencies, including USTR early in my career, involved in U.S. international economic and trade interests; extensive experience in interagency cooperation and processes.
- Direct experience in the executive branch of government in both political and career capacities; participation in recent years in multiple study groups addressing the future of public service (sponsored by Harvard, Brookings, the GAO, Partnership for Public Service, etc.)
- Demonstrated leadership and management qualities at a senior level in a university setting and in a large, complex U.S. government agency (Commerce/US & FCS experience involved U.S. and international employees, close to 200 field offices in the U.S. and abroad, and, at the time, severe challenges related to mission and focus, budget, performance measurement, computer & communications systems.)
- International negotiation and management experience on behalf of U.S. agriculture and business interests.
- Educational background in public management, international business, international trade and development, political economy.
- Corporate and organizational governance expertise gained through the negotiation and establishment of joint ventures and through both non-profit and corporate board experiences.

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:

My employer has requested that once the President has nominated me for the Deputy USTR position that I give notice to resign my current position with the USM and the USM Foundation. If confirmed, I would still retain my tenure as a faculty member at the University of Maryland, College Park, until such time as they or I choose to terminate this status. If I were to return after employment in government, it would be as a professor at the School of Public Policy.

If confirmed, I will resign from all of my for-profit and not-for profit boards. I would remain a member of several professional associations, including the Council on Foreign Relations, the National Academy of Public Administration, the Cosmos Club.

2. Do you have 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? See #1 above.

4. If you are confirmed by the Senate, do you expect to serve out your full term of 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. Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement, which is attached to my financial public financial disclosure form (see question 4).
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 to my knowledge.
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. None, other than indirectly affecting the administration and execution of law or public policy through curriculum development for students who are current or future government employees.
4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items: Pursuant to my ethics agreement, which has been approved by the USTR Ethics Counsel and the Office of Government Ethics, I will divest my holdings (including options) in Calpine Corporation and Petroleum & Resources Corporation. I will also forfeit my unvested restricted stock from the Adams Express Company and Petroleum & Resources Corporation. Finally, I will resign from my positions with the University System of Maryland Foundation, the University System of Maryland (other than my tenure with the University of Maryland College Park), Calpine Corporation, the Adams Express Company and Petroleum Resources Corporation. For one year after these resignations, I will not participate in any particular matter involving specific parties in which any of these organizations is or represents a party, unless I am authorized to do so.
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?
Not to my knowledge.

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? Not to my knowledge.
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.

Public Record Civil Court Actions: As a director on the Board of Calpine Corporation of San Jose, California, I was of defendant in two shareholder derivative complaints. One was in California State Court (Johnson v. Cartwright, et.al., Santa Clara Superior Court, No. 803872). One was in federal district court in the Northern District of California (Gordon v. Cartwright, et.al., U.S. District Court for the Northern District of California, No. C-02-3832 SBA). I was dismissed as a defendant without prejudice in both actions.

In addition, I was named as one of various defendants in three class action complaints (1) filed 03/11/2003 (Hawaii Structural Ironworkers Pension Trust Fund vs. Calpine Corporation, et.al., Superior Court of the State of California, San Diego County, Case # GIC 806973 ("HSI v. Calpine"); (2) filed 04/17/03 ("Class Action Complaint for Violations of the Employee Retirement Income Security Act," filed in U.S. District Court in the Northern District of California); and (3) filed 05/19/03 ("Class Action Complaint for Violations of the Employee Retirement Income Security Act," filed in U.S. District Court in the Northern District of California." On November 18, 2003, I was dismissed as a defendant from the HSI v. Calpine action. The two ERISA class action complaints were consolidated into a single action, In re Calpine Corporation ERISA Action, No. 03-CV-1685 (SBA). On March 30, 2005, I was dismissed as a defendant from the consolidated In re Calpine Corporation ERISA action with prejudice.

I am not currently a defendant in any Calpine action.

For further information on any of these cases, please contact the EVP and General Counsel of Calpine, Corporation, Lisa Bodensteiner, at 408-792-1226 (direct); 408-995-5115 (main).

4. Have you ever been convicted (including pleas 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 that I can think of.

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.

October 24, 2005
Senate Committee on Finance
Questions for the Record
The Honorable Susan Schwab
Nominee for Deputy United States Trade Representative
Before the Senate Committee on Finance, October 18, 2005

From Senator Grassley:

1. Dr. Schwab, the complete liberalization of the U.S.-Mexican sweetener market is scheduled to occur in 2008. I would like an assurance from you that the United States – in order to fulfill the promise of NAFTA – is indeed committed to the complete liberalization of the sweetener trade by that date. Can you give me such an assurance?

Answer:

The NAFTA requires the final tariff reductions agreed to by Mexico and the United States to be implemented on January 1, 2008. Very few products remain subject to tariffs; in fact, the United States, at the request of U.S. firms, has accelerated duty elimination on many of the goods originally subject to the longest staging period. Mexico has three major U.S. agricultural exports subject to duties until 2008: nonfat dry milk powder, corn and dry beans. Remaining sugar duties are scheduled for elimination by both countries on January 1, 2008. It is very much in the U.S. interest to make sure the final NAFTA tariff eliminations are made on schedule.

2. I understand that USTR is undertaking a review of the Generalized System of Preferences program, which is set to expire in December 2006. As you may know, Brazil is one of the top beneficiaries of this program, eligible to export billions of dollars worth of goods duty-free to the United States. At the same time, Brazil and many other GSP beneficiaries are very reluctant to open their markets to exports from other countries. It does not seem fair for countries like Brazil to continue to reap the benefits of duty-free access to our markets under GSP when they will not open their own markets.

As USTR begins reviewing the effectiveness of the GSP program will you take this concern into account? Do you think including a new eligibility requirement, which links continued GSP benefits to cooperation in international trade negotiations, would help us open new markets for our exports?

Answer:

As Congress considers re-authorization of the GSP program, the Administration is reviewing whether its operation of the program should be changed so that benefits are not enjoyed primarily by a few countries, and so that developing countries that traditionally

have not been major traders under the program receive a greater portion of the benefits. The Administration is conducting a public hearing and is requesting public comment on this subject as well as on the optimal number of years to be covered by Congressional re-authorization.

I share your view about the importance of encouraging Brazil and other countries that benefit substantially from our GSP program to open their markets to exports from other countries. Your concern also reinforces why success in the Doha Development Agenda is critical to opening markets worldwide. If confirmed, I would also look forward to considering the question of linkage as we explore the optimal ways to encourage these countries to provide greater market access.

From Senator Bunning:

- 1. I understand that there is some consideration being given to waiving the countervailing duties currently in place on Mexican cement imports. Could you please comment for me on whether this is being considered, the reasons behind the consideration and what impact such a waiver could have on the domestic cement industry?**

Answer:

As you know, the day-to-day administration of our anti-dumping/countervailing duty laws falls outside of USTR's jurisdiction. However, I understand the Department of Commerce has received inquiries about the possibility of suspending or eliminating the countervailing duties on cement in response to the reconstruction following Hurricanes Katrina and Rita. I understand further that the Administration is currently monitoring conditions in the affected areas of the Gulf Coast states to ensure that reconstruction efforts are not interrupted by shortages of building materials. At the same time, the Administration is in talks with the Government of Mexico and U.S. cement producers about the possibility of reaching a negotiated resolution to the cement dispute that would bring greater market certainty and predictability.

While I am not aware of any impact analysis being conducted regarding a duty waiver or negotiated settlement, I know that the Administration is committed to considering the interests of all stakeholders, both producers and consumers, in reaching any decision regarding this subject.

- 2. I have a question regarding the privatization of Japan Post, particularly Kampo, the insurance arm of Japan Post. Assistant USTR Wendy Cutler said before the Ways & Means Committee two weeks ago that the U.S. Government is calling on Japan to eliminate the advantages Japan Post gets now, that it not be permitted to expand its product offerings until a level playing field has been established,**

and that it make the coming privatization process fully transparent for all the parties to see.

Obviously, this is an important issue for U.S. companies in the life insurance business in Japan. They are very concerned about the impact on their businesses if Japan Post is permitted to expand its products before it has to pay taxes, operate under the same regulations, drop its product guarantees, etc.

Assuming your nomination will be approved, you will soon be facing this issue. What will be your approach?

Answer:

If confirmed, my responsibilities will include trade issues that affect U.S. service providers, and I am fully aware of the importance of this issue to U.S. industry. To this end, I would join my colleague, Karan Bhatia – who will have principal responsibility for Japan issues – in urging Japan to ensure that Japan Post’s U.S. competitors are treated fairly in the privatization process, and that these reforms do not result in Japan Post and private sector companies competing on unequal terms.

As the privatization process unfolds over the next several years, we will watch closely to ensure that U.S. companies get a fair shake. If confirmed, I will work to ensure the Administration remains engaged with Japan on these issues, both through our regular bilateral consultative processes as well as through timely interventions. I would also continue the close coordination that I understand exists between USTR and the U.S. industry, as well as with other U.S. agencies to ensure our message to Japan remains coordinated, clear, strong, and effective. I also look forward to working with the Committee and the Congress on these issues.

3. Regarding the current negotiations of a settlement of the Softwood Lumber cases with the Canadian federal and provincial governments, has USTR or the Commerce Department done a calculation of the impact of the different proposed settlement options on U.S. homebuyers?

Answer:

As of now, it is not clear what a settlement may look like. I know the Administration is committed, as am I, to taking into account the interests of all stakeholders in reaching a negotiated solution. An agreement will bring stability and predictability to the market, which will benefit producers and consumers alike.

From Senator Crapo:

1. This month, as a Co-Chair of the Canada – United States Inter-Parliamentary Group, I led a delegation of U.S. Senators to participate in the Group’s annual meeting in Canada with our Canadian counterparts. At the meeting, my colleagues and I discussed the softwood lumber dispute and reached what I believe is a significant joint statement that urges both the U.S. and Canadian governments to seek a speedy resolution to this dispute, as it is having a negative impact on the long-standing and excellent relationship between our two countries as trading nations.

Reaching a timely negotiated settlement is imperative, and I urge the Administration to continue to press the Canadian government to work with the U.S. to resolve this issue. What steps do you foresee the U.S. Trade Representative taking to bring Canada back to the negotiating table?

Answer:

I fully agree that reaching a negotiated solution is the only way forward for bringing long term stability and predictability to the lumber marketplace, and we would like to get the negotiations back on track as soon as possible. It is not clear, however, whether Canada is willing to engage at this time. Nevertheless, we are continuing high level discussions to see if there is an opportunity to resume negotiations in the near future.

2. There is concern with the win-loss record of the United States in dispute settlement proceedings. What steps can the United States take to ensure our trade laws are not eroded by unfair WTO panel decisions?

Answer:

Let me begin by endorsing the fundamental point implicit in your question – namely, that active and effective enforcement of U.S. rights under the WTO is critical to maintaining support in the United States for a healthy open trading system. As I understand it, panels and the Appellate Body have generally shown themselves to be careful interpreters of the texts of the WTO Agreements. This does not mean that every conclusion is beyond criticism. As is the case with decisions of domestic courts, reasonable minds may disagree about the analysis of a panel or the Appellate Body.

Given the size and importance of the U.S. economy, it is not surprising that the United States is a frequent participant in WTO dispute settlement. In general, we have fared well. Of the 52 concluded disputes that we initiated, we have settled 24, won on the core issues in 24, and lost on the core issues in four. Of the 53 completed disputes brought

against us, we have resolved 15 without litigation, won on the core issues in 12 and lost on the core issues in 26.

From Senator Baucus:

1. Protecting American intellectual property rights abroad is a critical component of U.S. trade policy. Losses to U.S. companies to piracy and counterfeiting are astounding. It is theft on a massive scale.

Can you assure us that combating piracy will be a central element of your agenda? Can you also assure us that you will use all means available to you to combat piracy and to keep our trading partners to their commitments to protect intellectual property rights?

Answer:

Ambassador Portman and this Administration are committed to protecting American intellectual property rights (IPR) around the world. It is a commitment I share, and one I will carry forward using all tools available to USTR. Enforcing our trade agreements and the international obligations of our trading partners will be a central focus of my efforts.

The theft of our movies, music and software is a growing problem. Globalization and new technologies have made it easier for thieves to steal, copy and sell pirated goods around the world.

Combating piracy is one of the more challenging issues on our trade agenda. Proven tools, including the comprehensive intellectual property (IP) chapters in U.S. Free Trade Agreements, the annual Special 301 Report, extensive bilateral discussions with trading partners, the GSP program, WTO accession negotiations, cooperative activities with our trading partners bilaterally and within various international forums, and the STOP! initiative, all contribute to improving protection for our IP. Where disputes arise, I will seek to resolve them through the most effective means available. Informal consultations and settlement can often be more efficient and therefore a preferred way of resolving the dispute. Where appropriate, I will not hesitate to use dispute settlement mechanisms to hold our trading partners accountable for compliance with their IPR commitments.

Significant improvement of IPR enforcement in China, Russia, Brazil and several other countries is a major priority for USTR. I will continue to vigorously pursue stronger protection for IPR around the world, with a focus on those countries where our industry is suffering the greatest harm.

Combating counterfeiting and piracy is a team effort, one where I am mindful of the role industry plays as well as other federal agencies charged with IP enforcement. As a consequence, I will engage industry and coordinate with relevant federal agencies to raise awareness and promote seamless execution of policy. I will reach out to industry associations, our small and medium size businesses and other stakeholders so as to ensure USTR remains alert and responsive to the problems companies across our country are encountering protecting their IP.

I look forward to working closely with you and your staff on this very important issue.

2. The NAFTA and U.S. law require Chapter 19 panels to apply the same standard of review as would a U.S. court, that is, determine whether an agency's decision is supported by substantial evidence. Yet Chapter 19 panels have ignored this standard, second guessing U.S. agencies' factual findings and ignoring binding precedent. The recent NAFTA binational dispute panel finding on Canadian softwood lumber is the most recent example of such runaway Chapter 19 panels. Chapter 19 has also yielded questionable results for other U.S. industries, including wheat, cement, and magnesium. In your opinion, what should the administration do to make Chapter 19 work better? Some have advocated that we should renegotiate NAFTA to eliminate or revise Chapter 19. How do you respond to these suggestions?

Answer:

I share your concern in ensuring that Chapter 19 works as intended. While I do not believe that renegotiation of Chapter 19 is necessary, I understand the Administration has an ongoing dialogue with our NAFTA partners, through the NAFTA Chapter 19 working group, to seek improvements in the operation of the chapter. Indeed, Canada and Mexico also have identified issues and concerns regarding the operation of Chapter 19. USTR, along with the Department of Commerce and the International Trade Commission, is actively participating in the working group and I intend to work with our NAFTA partners towards improving the operation of Chapter 19.

3. I am seriously concerned about the progress of the Rules negotiations in Geneva. The so-called friends of anti-dumping negotiations – which include the most flagrant and consistent violators of trade remedy laws – continue to make an enormous effort to weaken our laws, submitting proposal after proposal to accomplish their objectives. By contrast, the United States, meanwhile, has appeared slow and uncertain in pursuing an aggressive agenda of its own to offset these weakening proposals. This negotiating dynamic is troublesome and appears likely to produce an agreement that will have tremendous difficulty finding support in Congress or among the American people.

As you know, the trade negotiating objectives of the Trade Act of 2002 instruct our negotiators to “preserve the ability of the United States to enforce rigorously its trade laws ... and to avoid agreements that lessen the effectiveness of domestic and international disciplines” on trade remedies.”

These are not just words. They are direction from Congress that we expect the administration to follow. In that regard, I like you to provide your commitment that you will do whatever it takes to ensure that any new agreement fully preserves these critical laws and the ability of U.S. manufacturers and workers to respond to foreign unfair trading practices.

Answer:

If confirmed, I will work to ensure that the effectiveness of U.S. trade laws, including our antidumping laws, is preserved. This is consistent with the Doha mandate for the WTO Rules negotiations, which states that the basic concepts, principles and effectiveness of the trade remedy rules will be preserved. It is also consistent with the objectives set by Congress in Trade Promotion Authority enacted in 2002. Strong and effective remedies against unfair trade practices, including those against dumping, are essential to ensure that the benefits gained from trade liberalization are not undermined. The WTO Rules negotiations encompass a wide range of issues, including subsidies, antidumping and countervailing duties, as well as fisheries subsidies, and regional trade agreements.

I support an aggressive U.S. strategy to ensure that the strength of our trade laws will be maintained, to address the unfair trade practices of others, and to promote greater transparency and due process in foreign trade remedy proceedings so that U.S. exporters are fairly treated. I understand that the United States has been tabling detailed, substantive proposals in the WTO as part of that aggressive strategy, such as recent U.S. proposals to address the problem of circumvention of trade remedy orders.

I understand that our Rules interagency team has been working closely with the private sector on these issues. If confirmed, I also look forward to working closely with you and your colleagues to determine how best to advance our proposals on these issues.

From Senator Rockefeller:

1. For those of us who are concerned about preserving U.S. trade laws, the current dynamic in the WTO rules negotiations is very disturbing. Congress has mandated that preservation of these laws constitute a principal negotiating objective for the United States. But as far as I can tell from the progress of the Doha talks, the Administration has done little to build support for these laws, or to prepare and submit the type of detailed, substantive trade law strengthening proposals that are necessary to counterbalance the weakening proposals on the other side.

Those countries that benefit from dumping and subsidies, and who want to increase the enormous trade surpluses that they already enjoy with the United States, are determined to undermine these vital laws. They have put forward dozens and dozens of very specific and very harmful proposals. They have forged a broad coalition to seek to dismantle the trade laws. And, unlike the United States, they have adopted a very aggressive stance in the talks.

To be honest, I do not see how the current negotiating dynamic could possibly result in an agreement acceptable to the American people and Congress. Given what has been put on the negotiating table, any "compromise" at this point would be completely skewed toward weakening and undermining the fair trade laws. I would

like to ask you two things. First, if you are confirmed by the Senate, will you be committed to fully preserving U.S. trade laws, and are you fully prepared to reject any new trade agreement that fails to meet this standard? Second, how do you propose that we alter the current negotiating dynamic such that the process will generate an acceptable agreement from the U.S. standpoint?

Answer:

If confirmed, I will work to ensure that the effectiveness of U.S. trade laws is preserved. This is consistent with the Doha mandate for the WTO Rules negotiations, which states that the basic concepts, principles and effectiveness of the trade remedy rules will be preserved. It is also consistent with the objectives set by Congress in Trade Promotion Authority enacted in 2002. Strong and effective remedies against unfair trade practices, including those against dumping, are essential to ensure that the benefits gained from trade liberalization are not undermined. The WTO Rules negotiations encompass a wide range of issues, including subsidies, antidumping and countervailing duties, as well as fisheries subsidies, and regional trade agreements.

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I understand that our Rules interagency team has been working closely with the private sector on these issues. If confirmed, I look forward to working closely with you and your colleagues to determine how best to advance our proposals on these issues.

2. How urgently is USTR pursuing Japan to attain a level playing field in financial services? Now that Japanese privatization has reached an implementation phase, how is USTR planning to handle the implementation of a newly restructured Japan Post? What understanding do we have with Japan about transparency in this regard? Will you be personally involved in this issue? Do you have any idea how U.S. market participants would be able to recoup lost market share if Japan Post fully enters the marketplace while still retaining its government advantages (and potentially attaining new advantages) over a ten year transition?

Answer:

If confirmed, my responsibilities will include trade issues that affect U.S. service providers, and I am fully aware of the importance of this issue to U.S. industry. To this end, I would join my colleague, Karan Bhatia – who will have principal responsibility for Japan issues – in urging Japan to ensure that Japan Post’s U.S. competitors are treated

fairly in the privatization process, and that these reforms do not result in Japan Post and private sector companies competing on unequal terms.

I know that the Administration has given high priority to the Japan Post issue in our trade and economic relationship with Japan, and that key concerns have been raised consistently by U.S. officials. Now that the Diet has approved a reform package that appears to set the stage for the removal of Japan Post's unfair advantages over private companies, it is important to remain vigilant as implementation moves forward to ensure that a level playing field is actually achieved. This includes continuous engagement with Japan on our concerns, both under our regular bilateral consultative mechanisms, as well as through other timely interventions as necessary.

As you note, it is also important that this process be transparent at every stage. The Administration has consistently underscored this, and if confirmed, I will also strongly urge Japan to make continued progress in this area.

3. In his confirmation hearing, I asked Secretary Gutierrez about his plans for the Continuing Dumping and Subsidies Offset Act (CDSOA), known familiarly as the Byrd Amendment. I also spoke with USTR Portman about this issue. They both assured me that the Department of Commerce and the US Trade Representative's office would work together to protect this provision of law, as set forth in Appropriations report language, from an attack by a misguided and off-base decision of the WTO Dispute Resolution Panel. As you may know, the Byrd Amendment simply allows domestic companies injured by imports to recover some of their costs with the duties collected. It is unreasonable for the WTO and our trading partners to take the view that the United States cannot compensate companies injured by imports deemed subject to a duty. Can you please give me an update on these talks in the Doha Round and assure me that you will continue to work with Congress and its strong expression that the Byrd Amendment be retained?

Answer:

I understand the United States has already put forward a proposal in the WTO Rules negotiations to recognize the right of WTO Members to distribute monies collected from antidumping and countervailing duties. If confirmed, I intend to continue to promote this proposal as the negotiations proceed. I understand that the initial reaction of our trading partners to our proposal was not positive, so we will need to work closely with Congress in determining the best way to forge the required consensus in the WTO negotiations.

From Senator Lincoln:

1. As my distinguished colleagues have mentioned today, we are at a critical point in the Canadian Softwood lumber dispute. For the fourth time, a NAFTA

panel has remanded back to the Commerce Department a decision that interprets U.S. law and instructs the Department to recalculate its subsidy findings.

It is my understanding that the Department has within its legal authority the discretion to keep the existing relief in place, a decision which could bring parties back to the negotiating table and help level the playing field for our domestic industry.

Mrs. Schwab, as the new Deputy USTR, what steps will you take to assure us here in Congress that the Administration will do everything in its power to convince Canada that it must enter into serious negotiations to resolve the Canadian lumber issue?

Answer:

You have my personal commitment – and I know that Ambassador Portman and the White House are committed to this as well – to seek a way forward on this issue. I firmly believe that this dispute will not be resolved through litigation, but rather through a negotiated solution. If confirmed, I intend to consult closely with you and other interested members on this matter. It is not clear that Canada will return to the negotiating table, but we have been engaged in high level discussions to see if there may be an opportunity to negotiate.

2. Mrs. Schwab, I understand that the USTR put a proposal before the WTO on "amber box" reduction that will allow the Europeans to support their farmers at twice the level permitted in the United States. While this is an improvement over the status quo, this is not a level playing field for our farmers. What commitments do we have that the Europeans will provide the necessary market access and reduce their trade-distorting support to offset the cuts this proposal will require to our farm programs?

Answer:

The U.S. agriculture proposal for the WTO negotiations that Ambassador Portman announced on October 10 calls for the total elimination of the disparity between U.S. and EU trade-distorting domestic support in a two-stage process. Contingent on comprehensive reform in market access, export subsidies and trade-distorting domestic support with meaningful commitments by all members (except the least developed countries), stage one of the U.S. proposal would significantly reduce the disparity between European and U.S. trade-distorting domestic support from a 4:1 ratio to a 2:1 ratio. Stage two of the proposal would eliminate the disparity completely over an additional five years, after a five year review period, providing a level playing field for our farmers.

This proposal is clearly contingent upon the EU and other countries agreeing to a significant improvement in market access for agricultural goods. Ambassador Portman

has repeatedly stated, and I reaffirm, that the United States can only agree to cut trade-distorting domestic support if we see significant improvement in market access for U.S. agricultural exports. Ambassador Portman is now in active negotiations with the EU and other WTO members to achieve this goal.

THE HONORABLE GORDON H. SMITH

SENATE FINANCE COMMITTEE

October 18, 2005

Good morning. Let me first thank Chairman Grassley and Ranking Member Baucus for holding this hearing and providing me the opportunity to speak. I also want to thank the nominees for being here today. I enjoyed the opportunity to meet separately with Mr. Lavin and Mr. Bhatia to discuss issues that are important to the people of Oregon. I look forward to working with you as we look to open new markets, advance free trade, and continue to improve and expand our economy.

As I discussed with Mr. Lavin, of particular concern for the people of Oregon is the ongoing trade dispute with Canada over softwood lumber. In the past 15 years, my home state of Oregon has lost tens of thousands of jobs due to the shut-down of federal timberlands. Today, the thousands of family-wage jobs that remain in the forest products sector depend on fair lumber trade, accountable to U.S. trade law.

I am dismayed by Canada's choice to walk away from the last round of negotiations. I am disheartened by Prime Minister Martin's recent statement that the United States has committed a 'breach of faith' with respect to our trade obligations. Such statements and actions may be politically expedient in Canada, but they are offensive, particularly in this Committee whose membership is predominantly made up of timber-producing states. I do not believe that NAFTA allows Canada to export and dump its unemployment to this country.

I look forward to working with you, Mr. Lavin, on this issue and am hopeful that sometime soon we will be able to get to a resolution.

In my meeting with Mr. Bhatia, we discussed the importance of ensuring that our trading partners live up to the intellectual property protection commitments. U.S. companies – such as Nike, Columbia Sportswear, and Intel – lose billions of dollars each year due to worldwide copyright, trademark, and trade secret infringement. U.S. intellectual property is not foreign aid. We must work harder to strengthen intellectual property protections and stop the losses to American businesses.

I believe in free and fair trade. It has always been my hope that free trade will encourage progress and development among all parties involved. I am hopeful that in the coming weeks we will see real progress in furthering the Doha Round.

The Doha Round offers critical opportunities to increase market access for U.S. products and services. Specifically, Oregon's high-tech industry is watching the negotiations closely with hope that a new sectoral agreement can be reached that would eliminate tariff and non-tariff barriers on IT and consumer electronic products.

In the State of Oregon, one out of every four jobs is tied to exports. Our state consistently ranks among the top 10 U.S. states in exports on a per capita basis. For Oregon producers, the elimination of trade barriers through the Doha Round brings the promise of new jobs. A successful round can also bring economic growth to developing world.

If we want to promote a more dynamic global economy, our most important policy should be to encourage free trade so that developing countries have the proper tools to progress to a higher standard of living.

Earlier this year, I introduced legislation – the Tariff Relief and Assistance for Developing Economies, or TRADE Act – which would extend special trade preferences to the Least Developed Countries of the Asia-Pacific region. This legislation stands not only to benefit struggling economies but to help U.S. retailers avoid becoming dependent on Chinese suppliers. I am hopeful that we will be able to get the Administration’s support for what we are trying to do.

I want to thank all of the nominees for be here today.

