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NOMINATIONS OF JEFFREY I. KESSLER, ELIZABETH ANN COPELAND, PATRICK J. URDA, AMY KARPEL, AND RANDOLPH J. STAYIN

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF

JEFFREY I. KESSLER, TO BE ASSISTANT SECRETARY FOR ENFORCEMENT AND COMPLIANCE, DEPARTMENT OF COMMERCE; ELIZABETH ANN COPELAND, TO BE A JUDGE OF THE UNITED STATES TAX COURT; PATRICK J. URDA, TO BE A JUDGE OF THE UNITED STATES TAX COURT; AMY KARPEL, TO BE A MEMBER OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION; AND RANDOLPH J. STAYIN, TO BE A MEMBER OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION

JUNE 12, 2018



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NOMINATIONS OF JEFFREY I. KESSLER, TO BE ASSISTANT SECRETARY FOR ENFORCEMENT AND COMPLIANCE, DEPARTMENT OF COMMERCE; ELIZABETH ANN COPELAND, TO BE A JUDGE OF THE UNITED STATES TAX COURT; PATRICK J. URDA, TO BE A JUDGE OF THE UNITED STATES TAX COURT; AMY KARPEL, TO BE A MEMBER OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION; AND RANDOLPH J. STAYIN, TO BE A MEMBER OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION

TUESDAY, JUNE 12, 2018

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

The hearing was convened, pursuant to notice, at 10:07 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Crapo, Cornyn, Thune, Toomey, Heller, Wyden, Cantwell, Nelson, Carper, Cardin, Casey, and McCaskill.

Also present: Republican staff: Chris Allen, Senior Advisor for Benefits and Exempt Organizations; Becky Cole, Policy Director; Jeffrey Wrase, Staff Director; and Nicholas Wyatt, Tax and Nominations Professional Staff Member. Democratic staff: Michael Evans, General Counsel; Ian Nicholson, Investigator; Joshua Sheinkman, Staff Director; and Tiffany Smith, Chief Tax Counsel.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will come to order.

With the permission of Senator Wyden, we are going to move ahead here. He will be here in a few minutes.

I would like to welcome everyone here today to today's hearing on five of this committee's pending nominations. Today we will have an opportunity to hear from nominees for three trade policy positions and two nominees to be tax judges.

Each of these positions is key in enforcing the work and legislation that we produce from this particular committee.

Our first nominee is Mr. Jeffrey Kessler, who has been nominated to serve as Assistant Secretary for Enforcement and Compliance at the Department of Commerce. This is a position that is responsible for administering antidumping and countervailing duty trade laws and ensuring compliance with trade agreements negotiated on behalf of U.S. industries.

If confirmed, Mr. Kessler will need to fully and faithfully administer U.S. trade remedy laws.

As I have said before, it is important that the Department of Commerce consult closely with Congress and members of this committee. And frankly, there is room for improvement in that department. I expect Mr. Kessler to be an asset in improving that relationship.

Today we also have two tax judges, Ms. Elizabeth Ann Copeland and Mr. Patrick J. Urda. The Tax Court is important for many reasons, not the least of which is that it allows taxpayers to challenge a liability before paying it. It is a venue for everyone, from large corporations to individual taxpayers, to get a fair and impartial hearing when a disagreement arises with the Internal Revenue Service.

We are honored today to be joined by Chief Judge Maurice Foley, Judge Tamara Ashford, Judge John Colvin, Judge Albert Lauber, Judge Cary Pugh, and Special Trial Judge Diana Leyden.

Thank you all for attending here today.

Just last year, we signed into law the Tax Cuts and Jobs Act as the largest reform of the tax code in more than 3 decades. We recognize there will potentially be some large questions for the Tax Court.

More than ever, we need brilliant minds to do this important work. Given their credentials, I trust that Ms. Copeland and Mr. Urda will be just what our country needs for the Tax Court to continue to give taxpayers a fair hearing as the TCJA is implemented.

Finally, we also have before us two nominees to the International Trade Commission, Ms. Amy Karpel and Mr. Randy Stayin.

Ms. Karpel and Mr. Stayin, as nominees to be Commissioners of the International Trade Commission, you will play important roles in administering our trade remedy laws and providing Congress and the administration with unbiased, independent analysis.

Now, this work is becoming more important than ever, as far as I am concerned, as trade has become an increasingly larger part of our economy and businesses of all sizes rely on imports and exports.

I expect that each of you will continue the good work of the ITC in administering our trade remedy laws in a fair and unbiased manner.

I want to thank all five of you for your dedication to our country and your willingness to serve. As I have looked through each of your respective resumes, it is clear that the President has selected individuals who are well-qualified to serve in these important posts.

And I hope to see each of you working to improve our country as soon as practicable.

With that, I am going to turn to Senator Wyden, our ranking member, for his opening statement.

[The prepared statement of Chairman Hatch appears in the appendix.]

OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM OREGON

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

We are, as you noted, meeting today to discuss five nominations that are important positions for the executive branch.

Mr. Jeffrey Kessler has been nominated to serve as Assistant Commerce Secretary for Enforcement and Compliance. Ms. Amy Karpel and Mr. Randy Stayin are nominated to serve on the U.S. International Trade Commission. And Ms. Elizabeth Ann Copeland and Mr. Patrick Urda are nominated to serve as judges on the Tax Court.

I am going to speak briefly on each, beginning with the three trade-related nominations.

I think it is an understatement to say that this administration swept into office with a wave of tough talk when it came to trade and creating manufacturing jobs here at home.

I do believe NAFTA needs renegotiating. I agree that the United States needs to step up with tough actions against China's abusive trade practices. There is no question in my mind that China has ripped off our technological innovation and that this has had serious consequences for American employers.

After a year and a half of work, however, the Trump administration has managed to unite our traditional allies with China against us. Now, that really takes some doing, because if you want a full-court press to deal with China, you want as many of your traditional allies and partners with you. And so, in a sort of head-scratching kind of way, the President decided to alienate a big group of allies whom we very much need to have with us as we take on these trade abuses with China.

This gives China a better chance to get away with cheating on trade scot-free. Instead of creating American jobs, this trade policy, in a nutshell, creates yet more chaos.

With respect to today's hearing, the good news is that the three trade-related nominees before us are all set to fill enforcement-related positions. This is particularly important because, if you are pro-trade—and I make no bones about it: I think what we ought to be doing is growing things in America, making things in America, adding value to them in America, and then shipping them all over the world.

The prerequisite to generating more trade is to sharpen trade enforcement and the tools that are on the books to protect American workers.

Mr. Kessler would fill one of the top jobs at the International Trade Administration within the Commerce Department. Ms. Karpel and Mr. Stayin would play key roles as Commissioners at the ITC helping to make sure American trade policies benefit our workers and our businesses.

I consider all three of these individuals to be qualified. I look forward to discussing enforcement issues further with them.

Next, Ms. Copeland and Mr. Urda are nominated to serve as Tax Court judges.

I noted the chairman's comments with respect to the partisan-only tax bill that was passed in this Congress.

I see Senator Nelson and Senator McCaskill here. On this side, we so wanted to have a bipartisan tax reform bill. And in fact, I wrote two actual bills, one with our former colleague Senator Coats, who sat right down there at the end of the dais.

My sense is, given the confusion that this recent tax bill has generated—and Senator McCaskill has pointed out, just on the pass-through provision alone—you folks are going to have your hands full at the Tax Court in the days ahead.

And of course, the Tax Court is the judicial backbone of the Federal tax code. It is the best opportunity Americans have to dispute tax bills before they have to pay, and it keeps them from getting stuck in slow-moving courts when they have a tax issue.

It is a tough job, and they, as far as I can tell, spend a lot of time on the road.

So to Ms. Copeland and Mr. Urda, we are pleased that you are willing to serve.

Mr. Chairman, I appreciate your scheduling this hearing. And as is usually the case, while we can differ on some issues from time to time, most specifically this morning on the effects of the tax bill, we come together in many, many instances when we have an opportunity to pursue good government. And we have a chance to do that this morning. And I look forward to working with you.

The CHAIRMAN. Well, thank you, Senator. I appreciate you. And you have worked well with me. And I hope we can continue to do so.

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

The CHAIRMAN. I would like to extend a warm welcome to each of our five nominees today.

I want to thank you all for coming.

Before we get to that, though, I will briefly introduce each of you in the order you are set to give your opening statements.

First, we will hear from Mr. Jeffrey Kessler, who is currently working as counsel at Wilmer Hale over the past 10 years. Mr. Kessler has counseled global companies on high-profile trade and policy issues.

Mr. Kessler holds a bachelor's degree in philosophy and classics from Yale University, a master's degree in philosophy from the University of Chicago, a master's degree in economics from Stanford University, and a juris doctorate from Stanford University.

Mr. Kessler is a member of the American Bar Association and a term member of the Council on Foreign Relations.

Our second nominee is Ms. Elizabeth Ann Copeland, who will be introduced by Senator Cornyn.

Senator Cornyn, would you please proceed on that?

OPENING STATEMENT ON HON. JOHN CORNYN, A U.S. SENATOR FROM TEXAS

Senator CORNYN. Well, thank you, Mr. Chairman, Ranking Member Wyden, and members of the committee.

It is my privilege to introduce Elizabeth Copeland, a Texan, a fellow San Antonian, who has been nominated this time by President Trump to serve as a judge on the U.S. Tax Court.

She is a certified public accountant and a graduate of the University of Texas School of Law.

She is currently a partner at Clark Hill Strasburger in San Antonio and has more than 20 years' experience resolving complex tax issues, including the handling of employment tax disputes, innocent spouse representations, IRS appeals, and Tax Court litigation.

She is the former attorney adviser to the Tax Court and has served as the chair of the State Bar of Texas Tax Section.

She is responsible for establishing the United States Tax Court's pro bono program, the first State-wide program of its kind in the Nation. This program is now used as a model for other State bars to provide pro bono assistance to low-income taxpayers.

Last year, Ms. Copeland received the San Antonio Tax Lawyer of the Year by *Best Lawyers,* which is a peer-reviewed guide to the legal profession. And finally, Tax Analysts named her a 2012 Tax Person of the Year in its national edition of *Tax Notes,* a publication that many tax experts consider as a leading publisher of tax information.

She has the distinction of being nominated by both President Obama and President Trump, so it goes without saying that she is highly regarded by everyone in the legal community.

She will be a valuable addition to the Tax Court, and I look forward to supporting her nomination and encouraging all my colleagues to do so.

So thank you, Mr. Chairman and Ranking Member Wyden, for the opportunity to introduce Ms. Elizabeth Copeland.

The CHAIRMAN. Thank you, Senator Cornyn.

Our next nominee to speak is Mr. Patrick J. Urda, who will be introduced by Senators Donnelly and Young.

Senator Donnelly, will you please get us started and then hand it off to Senator Young?

STATEMENT OF HON. JOE DONNELLY,
A U.S. SENATOR FROM INDIANA

Senator DONNELLY. Thank you, Mr. Chairman.

Thank you, Mr. Chairman and Ranking Member Wyden, for the opportunity to be here today. Thank you to all of the members of the committee.

I am proud to introduce my fellow Hoosier, Patrick Urda, who has been nominated to be a judge of the United States Tax Court.

Before I speak about Patrick, I would like to take a moment to recognize the people supporting him here today. His parents, Katie and Rich, who are friends of mine, have traveled from South Bend to be here. He is also joined by——

Senator CARPER. Could we ask them to raise their hands?

Senator DONNELLY. Yes.

Senator CARPER. All right. Thank you.

Senator DONNELLY. Is that because you question their wisdom in being my friend, Senator? [Laughter.]

Senator WYDEN. Senator Carper is for family values.

Senator CORNYN. You have to be careful when you raise your hand around here, though. [Laughter.]

Senator DONNELLY. He is also joined by his fiancée Cristina, his sisters Kathleen, Anne, and Libby, and his brother-in-law Braden. I am sure they are all very——

Senator CARPER. Could I ask his brother-in-law to raise his hand, too?

Senator DONNELLY. They are here. I am not making it up, Senator. [Laughter.]

Patrick has been an attorney in the Tax Division of the Department of Justice since 2006. In that time, he has litigated dozens of appeals from the U.S. Tax Court and U.S. district courts. He has also presented oral argument on behalf of the government more than 40 times and in every U.S. court of appeals.

He currently serves as counsel to the Deputy Assistant Attorney General in the Tax Division at DOJ, where he advises on everything from appellate to settlement matters.

Such a breadth of experience on tax issues is imperative for any judge of the U.S. Tax Court.

Patrick is a proud graduate of the University of Notre Dame and then went to a startup law school in Cambridge, MA—Harvard—to conclude his education.

Patrick's talents have regularly been recognized at DOJ. He received the Tax Division's Outstanding Attorney Award five separate times and received DOJ's Distinguished Service Award just last year.

His time at DOJ and his excellent work there are indicators of his passion for public service and work ethic. And, if he is confirmed, they are sure to be assets as he focuses on adapting to the role of judge.

I believe Patrick is strongly qualified and is committed to administering justice in our Nation's Tax Court. He has been and continues to remain dedicated to serving our country, and I strongly support his confirmation. I look forward to hearing his testimony and your questions.

Mr. Chairman, thank you, and, Mr. Ranking Member, thank you.

The CHAIRMAN. Well, thank you, Senator Donnelly.

Senator Young?

STATEMENT OF HON. TODD YOUNG,
A U.S. SENATOR FROM INDIANA

Senator YOUNG. Well, thank you, Mr. Chairman, Ranking Member Wyden, and esteemed members of this committee.

It is my honor to introduce fellow Hoosier Patrick J. Urda to serve as a judge on the United States Tax Court.

Mr. Urda is an extremely qualified nominee. He currently represents the United States in Federal tax matters in the U.S. Court of Appeals. As a Tax Division attorney, he focuses on appellate issues and litigation strategy.

Since 2006, he has successfully litigated more than 80 appeals from the United States District Courts and the United States Tax Court.

Prior to his time at the United States Department of Justice, he served as counsel to the Deputy Assistant Attorney General, advising on legal and administrative issues facing the Tax Division.

And from 2012 to 2015, Patrick was an adjunct professor at American University's Washington College of Law.

Patrick also previously served as a clerk to the honorable Daniel Manion in the United States Court of Appeals for the 7th Circuit.

Not to mention, he was an Eagle Scout.

Mr. Urda has received multiple distinguished professional honors throughout his career, including the Tax Division Outstanding Attorney Award.

Patrick graduated from St. Joseph High School in South Bend, IN. He went on to earn his B.A. from the University of Notre Dame and then his J.D. from Harvard Law School.

Mr. Chairman, Mr. Urda has earned an excellent reputation in the legal community. He is highly regarded and an experienced attorney with the right qualifications to serve as a judge on the United States Tax Court. I fully support his nomination, and I hope my colleagues will do the same.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, thank you. That is high praise for these nominees.

I want to thank you Senators for being here.

Now, our fourth witness to speak will be Ms. Amy Karpel.

We will be happy to excuse Senators Donnelly and Young, who I know have important business to do today. And we want to thank you for being here.

Now, our fourth witness to speak will be Ms. Amy Karpel, Chief Counsel for Negotiations, Legislation, and Administrative Law at the Office of the United States Trade Representative.

Prior to beginning her role at the USTR in 2004, Ms. Karpel was an attorney representing U.S. workers and producers.

Ms. Karpel received her undergraduate degree from the University of Washington and a juris doctorate from American University.

Our final witness will be Mr. Randolph Stayin, who was most recently a partner at the firm Barnes and Thornburg.

Prior to that, Mr. Stayin was the founder and CEO of U.S. Trade Adviser, and much earlier in his career, Mr. Stayin also served as the chief of staff and trade adviser to Senator Robert Taft, Jr.

In total, Mr. Stayin has spent more than the past 40 years practicing law, with a focus on trade policy and trade regulation.

Mr. Stayin received an undergraduate degree in economics and English from Dartmouth College and a juris doctorate from the University of Cincinnati.

I would also like to thank all the witnesses for being here today. We are appreciative to listen to them.

And when you give your opening statements, we will look forward to hearing from you.

So, without further ado, Mr. Kessler, will you please begin?

STATEMENT OF JEFFREY I. KESSLER, NOMINATED TO BE ASSISTANT SECRETARY FOR ENFORCEMENT AND COMPLIANCE, DEPARTMENT OF COMMERCE, WASHINGTON, DC

Mr. KESSLER. Mr. Chairman, Ranking Member Wyden, members of the committee, I am honored to appear before you today as the President's nominee to serve as Assistant Secretary of Commerce for Enforcement and Compliance.

I would like to express my gratitude to President Trump for nominating me for this important position. I am grateful to Secretary Ross for having confidence in my ability to serve as his Assistant Secretary. I am also grateful to Under Secretary Kaplan.

And I thank the many other professionals at the Department of Commerce who have helped with my nomination.

I would like to take a moment to acknowledge some family members in the audience: my wife Bethany and my two young daughters Lucy and Diana; my parents; my parents-in-law; my brother.

Thank you all for being here.

Mr. Chairman, as you said in your opening remarks, the Assistant Secretary of Commerce for Enforcement and Compliance is charged with administering the antidumping and countervailing duty laws. Congress enacted these laws to give U.S. companies and workers an effective remedy against foreign countries' unfair trade practices.

As an international trade lawyer, I work to combat such practices on a daily basis. I have represented U.S. manufacturers in the chemical products and aerospace industries facing foreign subsidies and injurious dumping.

I have worked to stop government policies that prop up favored enterprises and skew the competitive landscape to the detriment of U.S. companies and workers. I have helped U.S. companies decipher and navigate market access barriers imposed by China and other countries.

The scope and scale of unfair trade practices used by foreign governments and companies is truly breathtaking. Unfair trade has serious, real-world consequences: lost jobs, lower wages, plant closures. It puts U.S. workers' livelihoods at risk and undermines the U.S. manufacturing and agricultural base.

This administration has identified aggressive enforcement of U.S. trade laws as a top policy priority. With respect to the antidumping and countervailing duty laws, this means that investigations and other proceedings should be conducted rigorously.

U.S. companies and workers should receive the relief to which they are legally entitled. The duties imposed should truly correct for the distortive impact of unfair trade. Circumvention should not be tolerated.

If confirmed, I will uphold these principles.

If confirmed, I will also seriously consider self-initiating antidumping and countervailing duty investigations.

Last November, the Department of Commerce self-initiated for the first time in more than a quarter century. Continuing this practice has the potential to further strengthen enforcement of trade remedy laws.

The Enforcement and Compliance Unit of the Department of Commerce also has an important role to play in ensuring that for-

eign governments uphold their commitments under existing trade agreements.

Opening up foreign markets to U.S. exports of goods and services is a critical element of the administration's trade strategy, and, if confirmed, I plan to pursue this objective aggressively as well.

Mr. Chairman, I believe that when the playing field is level, U.S. companies, workers, and products can out-compete anyone in the world.

As the administration has stated, true market-based competition should be welcomed. But American workers, farmers, ranchers, service providers, and businesses large and small should not have to endure injurious dumping, subsidies, and other unfair trade practices. That is why we need strict and effective enforcement of the trade remedy laws.

With that, Chairman Hatch, Ranking Member Wyden, and members of the committee, thank you again for your consideration, and I would be happy to answer any questions.

The CHAIRMAN. Well, thank you. And thanks for your willingness to serve.

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

The CHAIRMAN. Ms. Copeland, we will go to you now.

STATEMENT OF ELIZABETH ANN COPELAND, NOMINATED TO BE A JUDGE OF THE UNITED STATES TAX COURT, WASHINGTON, DC

Ms. COPELAND. Chairman Hatch, Ranking Member Wyden, Senator Cornyn, who did my lovely introduction, and other distinguished members of this committee, I want to thank you for the privilege of appearing before you today as the President's nominee for a judge of the United States Tax Court. I am grateful to the President for his confidence in me.

And I wish to thank the staff of this committee for their generous time working with me on my nomination.

I would also like—I can say I would not be here without the support throughout my life of many. I want to introduce my supportive husband Brad Wilder, and my children Lexie Wilder and Preston Wilder, who are here today. Also here are my father William Copeland, my stepmother Barbara Copeland, my sister-in-law Pamela Hurst, and my brother-in-law David Hurst.

The CHAIRMAN. Well, we are grateful to have all of you here. And this is a great honor for Ms. Copeland. And so we will now go to——

Ms. COPELAND. Oh, I am sorry.

The CHAIRMAN. Oh, you are not through yet. [Laughter.]

Ms. COPELAND. I hesitated so they could be recognized.

My stepson Davis and my amazing mother are also watching livestream video.

I apologize, Chairman Hatch.

I am honored to have the attendance of a number of judges from the United States Tax Court, whom you so nicely recognized earlier. They have been both friends and mentors throughout the years.

Early in my career, I had the opportunity to work as attorney adviser at the United States Tax Court for the honorable Mary Ann Cohen. I learned much under her direction.

I also then, upon leaving the Tax Court, returned to my hometown of San Antonio, TX to practice and pursue a career in tax law. I spent over 2 decades specializing in the area of tax controversy and litigation with the law firm Oppenheimer, Blend, Harrison, and Tate, which later became Strasburger and Price and is now known as Clark Hill Strasburger.

While practicing in Texas, I received board certification in tax law by the Texas Board of Legal Specialization. I also was very active in the Section of Taxation for the American Bar Association and with the State Bar of Texas Tax Section, for which I served as chair from 2013 through 2014.

As a member of the Texas State Bar, I recognized the need to assist unrepresented taxpayers, most of whom could not afford legal counsel for their Tax Court cases. Working with the help of Special Trial Judge Peter Panuthos and representatives from IRS Area Counsel, we established an all-volunteer pro bono assistance program which services all five cities in Texas in which the Tax Court holds calendars. It is one of my most treasured accomplishments, and the program is still thriving today.

Working with that program and also in my own practice, I have seen the vital role that the Tax Court plays in shaping tax law. It is imperative for taxpayers to have their cases heard in front of an impartial party for both taxpayers and the government to be treated with respect.

I believe my strong background in tax controversy work will provide me with the foundation to fairly and impartially resolve tax cases in accordance with congressional intent.

If confirmed, I would hope to maintain and enhance the public's confidence in the Tax Court as a neutral prepayment forum for the resolution of tax disputes.

Thank you again, Chairman Hatch, Ranking Member Wyden, Senator Cornyn, and other members of this committee. I am happy to answer any questions you might have.

The CHAIRMAN. Thank you, Ms. Copeland.

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

The CHAIRMAN. We will now turn to Mr. Urda for his testimony.

Mr. Urda?

STATEMENT OF PATRICK J. URDA, NOMINATED TO BE A JUDGE OF THE UNITED STATES TAX COURT, WASHINGTON, DC

Mr. URDA. Chairman Hatch, Ranking Member Wyden, and members of the Finance Committee, it is an honor to be here today. Thank you for holding this hearing to consider my nomination to serve as a judge on the United States Tax Court.

I am grateful to the President for nominating me and thank Senator Donnelly and Senator Young for their kind introductions.

I would also like to express my heartfelt thanks to the committee staff for their support throughout the process.

I sit before you as a nominee because of the support of so many people, some of whom have joined me today, most importantly my

parents, Richard and Kathleen Urda. Dad is a solo practitioner in South Bend, IN. He has been a role model my entire life, consistently demonstrating how to be a good lawyer and a better person. He has a vast knowledge of tax law, and I am hoping I have picked up a few things through genetics or osmosis. [Laughter.]

Some of the earliest memories of my mom are playing in the halls of St. Mary's College, where she taught statistics. As my siblings and I grew older, she spent more time teaching us, not just working with us on math and English, but showing us through her own example compassion, diligence, service, and selflessness.

Any talk of my parents cannot help but make me think of my siblings, Kathleen, Anne, Libby, and Mike, best friends, confidants, and occasional sparring partners. That last category is pretty much Mike. [Laughter.]

And I would not be here without the love and support of Cristina Cardenas, who has traveled all the way from Argentina to be here. Cristina works tirelessly to improve education for children throughout the world. And I am so blessed to have her in my life.

I have been truly lucky in terms of colleagues and friends. I have learned with and learned from attorneys, office managers, paralegals, and legal assistants in Chicago, South Bend, and here in Washington. I have been incredibly fortunate to learn about the tax field from the women and men of the Tax Division as well as my opposing counsel for the last 12 years.

As to my friends, in a very real and sincere way, I do not have friends, I have family. I thank you all, my family.

I have been blessed through the years with great mentors. It would be impossible to name them all, but in particular I thank Judge Dan Manion for hiring his first clerk from South Bend and for teaching me so much about the law and life.

I thank Gil Rothenberg for bringing me to the Tax Division and developing my knowledge and passion for the field.

And I thank Diana Erbsen for selecting me to be her counsel, broadening my view of our tax system.

At the main DOJ building, there is a motto inscribed in Latin that translates as "Our duty is a privilege." That has truly been the case for me. I feel honored to have had the opportunity to litigate tax issues in the circuit courts for the last 12 years. My service has taught me the breadth and complexity of our tax system and has equipped me with the ability to analyze the strengths and weaknesses of different legal positions, whether those of the taxpayer or those of the government.

My job has given me a deep appreciation for the important work of the Tax Court and the need for fair and expeditious resolution of tax controversies.

A long time ago, two wise former AUSAs told me that the government wins its point when justice is done. I try to keep that in mind when I litigate in my current position, and justice, consistent with the law, will be the North Star for me if I am so lucky as to be confirmed.

I pledge to be impartial in approach, diligent in preparation, and absolutely committed to following the law where it leads.

I look forward to answering the committee's questions.

The CHAIRMAN. We are happy to have you here.

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

The CHAIRMAN. Ms. Karpel?

STATEMENT OF AMY KARPEL, NOMINATED TO BE A MEMBER OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION, WASHINGTON, DC

Ms. KARPEL. Chairman Hatch, Ranking Member Wyden, members of the Finance Committee, I am honored to appear before you today as the President's nominee for the position of Commissioner on the U.S. International Trade Commission.

I would like to introduce the members of my family who are here today: my husband Sloane Strickler, my mother Ann Larson, my brother-in-law Andrew Strickler, and my mother-in-law Jo Harriet Haley.

I also want to acknowledge those members of my family who could not be here today: my father John Karpel, my sister Jennifer Seoane, and lastly, my daughter Haley, who is currently enjoying her last week of preschool.

I want to thank all of them for their love and support during the confirmation process and over the years.

I am also grateful to Senate Minority Leader Schumer and Senator Wyden for proposing my appointment as Commissioner.

I also want to thank the President for nominating me.

I greatly enjoyed meeting individually with members of this committee leading up to today's hearing and thank them for their time and insights.

I am honored to be nominated for Commissioner because of the important work the Commission does. The Commission is entrusted with the fair, timely, and objective administration of our trade remedy laws, including in respect to violations of intellectual property rights.

Vigorous enforcement of our trade remedy laws is important because of the relief it provides to help keep U.S. workers employed and U.S. businesses functioning in the face of unfair trade. It is also important because of the role it plays in helping make the case for international trade more broadly. International trade touches nearly all sectors of our economy and is vital to the strength of our economy and the livelihood of the workers and businesses it supports.

If there is not strong enforcement of our trade remedy laws when trade is not fair and when workers or businesses are hurt by trade, it is hard to make that case.

If confirmed as Commissioner, I will administer these laws fairly, objectively, and as Congress intended.

The Commission is also responsible for providing the administration and Congress with objective, expert, fact-finding studies and analysis on tariffs, trade, and U.S. competitiveness. These studies serve as an independent source of information and analysis for policymakers as they develop and implement trade policy.

If confirmed, I commit to carry out this responsibility as Congress intended and to safeguard the independence of the Commission.

I will also, if confirmed, work with my fellow Commissioners to be responsive to congressional requests for information.

I believe my upbringing, background, and experience have prepared me well for the position of Commissioner. I grew up in Washington State along the shores of the Puget Sound. I could see the port of Olympia in the distance from our house. Container ships and tugboats pulling barges full of logs were a regular feature passing by our house.

I was raised by my mother and father and spent a lot of time with my maternal grandmother. My grandmother split her time between St. Louis and her husband's farm in rural Illinois, and when we were kids, my sister and I used to visit in the summers.

My grandmother would prod us awake at 7 a.m., chiding that we were sleeping the day away. Lazy was not something you were allowed to be in our family.

My parents worked hard, both in their occupations and in life, and modeled the importance of doing your part to improve the world around you. They raised my sister and I to do the same.

Since leaving Washington State, I have spent more than 20 years studying and working on international trade issues. I have worked in private practice representing U.S. workers and businesses in trade remedy proceedings, and I have worked in public service for almost 13 years, serving most recently as Chief Counsel at the Office of the U.S. Trade Representative.

Each of these capacities involved working with the laws the Commission is entrusted to administer, first as an advocate for clients petitioning for relief under those laws and then as a policymaker relying on the sound and objective information and analyses those laws call on the Commission to provide.

And I now look forward, if confirmed, to continuing in public service as a Commissioner on the International Trade Commission. In this role I would not be an advocate or a policymaker as in my previous positions. Instead, I would be a fair, objective, and impartial adjudicator, an independent source of expert information and analysis.

It would be an honor to serve in this capacity.

Thank you for your consideration.

The CHAIRMAN. Well, thank you.

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

The CHAIRMAN. Mr. Stayin, we will finish with you.

STATEMENT OF RANDOLPH J. STAYIN, NOMINATED TO BE A MEMBER OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION, WASHINGTON, DC

Mr. STAYIN. Thank you, Mr. Chairman, Ranking Member Wyden, and members of the committee.

I am honored to appear before you today. And I am humbled and grateful to the President for having nominated me to be a Commissioner on the International Trade Commission.

I also want to thank Senators Portman, Roberts, Isakson, and Brown for their support.

But most importantly, I am honored and blessed to have the love and support that I have had from my family throughout my many years in practicing trade law.

With me today is my wife Sharon; my sister Donna; my children Gregg, Todd, and Beth, along with their spouses Stephanie, Laura,

and Scott; and my grandson Christopher. I am always grateful that they are in my life and for the strength they give me.

I began the practice of law as a litigator in Cincinnati, OH. I came to Washington to serve as Chief of Staff for Senator Robert Taft, Jr. In that role, I oversaw political, legal, and policy issues, along with managing the staff.

Among my duties, the Senator asked me to give him advice on the Trade Act of 1974, and thus was the beginning of my involvement in U.S. trade law. It was the first building block in my now 40 years of practicing international trade law.

My career has included litigation of many antidumping and countervailing duty investigations and reviews, section 201 safeguard investigations, and section 232 national security and Generalized System of Preferences investigations.

I also was involved in advising clients during and after the Uruguay Round and the NAFTA negotiations, as well as during Customs investigations to stop circumvention of antidumping duty orders.

My practice also included serving as general counsel and special counsel to 23 trade associations and many companies, a significant number of which contributed to the depth of my understanding of the realities and the difficulties of running a manufacturing company in competition with unfairly traded imports.

Among my many cases I have litigated, I would like to briefly mention one that demonstrates the complexity and commitment involved in defending U.S. companies from unfair trade practices. That case was an antidumping duty investigation of imported petroleum wax candles from China.

In 1984 when I began working on that case, Chinese manufacturers were exporting their candles to the United States at prices significantly below the cost of production for making candles in the United States.

The initial result of that case was a 54-percent antidumping duty order. The Commission determined that the imports materially injured the U.S. industry, and the Department of Commerce found that the imports were unfair trade practices.

There have been many unsuccessful challenges to that antidumping order, including six administrative reviews, nearly 100 scope reviews, two anticircumvention reviews, six Customs investigations, two sunset reviews, and four 5-year reviews, in addition to appeals to the Court of International Trade and the U.S. Court of Appeals for the Federal Circuit, all of which I managed and conducted for the continuing production of this industry.

Not only was the initial 54-percent antidumping duty imposed, it was raised each time we were challenged. With every administrative review where the importers sought to terminate or lower the duty from 54 percent, the duty in fact was increased. It increased to where it is today, at 108 percent, which is very significant, I think most experts would agree.

The antidumping duty order regarding candles from China is the longest continuous antidumping duty order in the history of our country.

Another result of this effort was that from 2000 to 2007, U.S. candle companies received trade injury distributions of over $183

million from the application of the Continued Dumping and Subsidy Offset Act, also known as the Byrd Amendment.

This is only one example of the many products I represented. As you are all aware, it is only one of thousands of U.S. products that are injured by unfair trade practices.

For me, this is an honor. It is a pinnacle opportunity built on my long and successful effort to support and defend fair and equitable trade laws and their application. In presenting arguments before the ITC, I have always respected the very important role that it plays as an independent, nonpartisan, quasi-judicial, fact-finding agency.

Our country's workers, farmers, ranchers, and businesses know that they have an objective and fair place to go when they have been injured by unfairly traded imports. All parties receive a fact-based decision in accordance with due process of law.

I look forward to participating in the ITC process as a leader and key decision-maker and in maintaining the credibility of U.S. trade remedy laws.

If confirmed, I assure you that I will serve with integrity and that all of my decisions will be based on the facts and the law, in accordance with the intent of Congress.

I further assure you that Congress and the executive branch will continue to receive objective, independent, fact-based 332 studies and expert analysis to assist in the development of trade policy.

I will be proud to join the nearly 400 men and women who comprise the ITC. They are to be commended for the excellent work that they do every day for Congress, the executive branch, and, above all, the American people.

Thank you for the privilege of being considered for this honor. I am now happy to answer your questions.

The CHAIRMAN. Well, thank you.

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

The CHAIRMAN. We are happy to have all of you here today. And I have some obligatory questions that I am going to ask all the nominees. And you can each answer across the board here.

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

Mr. KESSLER. No, Senator.

Ms. COPELAND. No.

Mr. URDA. No.

Ms. KARPEL. No.

Mr. STAYIN. No.

The CHAIRMAN. 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. KESSLER. No.

Ms. COPELAND. No.

Mr. URDA. No.

Ms. KARPEL. No.

Mr. STAYIN. No.

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

Mr. KESSLER. Yes.

Ms. COPELAND. Yes.

Mr. URDA. Yes.

Ms. KARPEL. Yes.

Mr. STAYIN. Yes.

The CHAIRMAN. Okay. Finally, do you commit to providing a prompt response in writing to any questions addressed to you by any Senator of this committee?

Mr. KESSLER. Yes.

Ms. COPELAND. Yes.

Mr. URDA. Yes.

Ms. KARPEL. Yes.

Mr. STAYIN. Yes.

The CHAIRMAN. Well, I think I just want to say how proud I am of all of you and how pleased I am that you are willing to accept these very, very important positions in our government. And I have every confidence that each of you is going to be an excellent person in the positions for which you have been chosen.

So with that, I just want you to know how much I appreciate that you are willing to serve.

And I will turn to Senator Wyden.

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

My first question is going to be for our trade enforcers, Mr. Kessler, Ms. Karpel, and Mr. Stayin.

And let me ask it this way. For those of us who are pro-trade, it is particularly important that we get trade enforcement right, because so often in the past it has been either too slow or too weak; we have had cheats ripping us off.

I think I mentioned to you, Ms. Karpel, we had a sting operation when I was chairman of the Trade Subcommittee, and we invited people to cheat, and all over the world we were being flooded with trade cheats.

So in 2015, the Congress made clear the importance of tough enforcement, and particularly Senator Brown's bill, the Leveling the Playing Field Act, really speaks to something you all have jurisdiction over. You are in charge of that area with respect to remedies.

And my first question just for you three—and I hope we can do this in a "yes" or "no" answer—is, will the three of you support vigorously applying this law so that our workers and companies can get relief from unfairly traded imports?

And just go, Mr. Kessler, Ms. Karpel, and Mr. Stayin.

Mr. KESSLER. Yes, Senator.

Ms. KARPEL. Yes.

Mr. STAYIN. Yes.

Senator WYDEN. Good. Let the record note that that was a question about vigorous application of Senator Brown's law.

All right. Let us now go to some additional enforcement questions.

For you, Mr. Kessler: in my view, it is important on trade remedy matters that participants in trade remedy proceedings have the ability to respond to factual information submitted by another

party that could be relied on by the Department in making its decision before that decision is made.

Are you, in general, supportive of that proposition?

Mr. KESSLER. Yes, Senator.

Senator WYDEN. Okay.

Now, let us now move to the section 232 tariffs. And companies have indicated to me that it seems that officials in the Bureau of Industry and Security may be making decisions without giving one side the opportunity to respond to facts submitted by the other. And if the Department wants this to work, if Commerce wants it to work—we all would like to see it work—it seems to me it has got to be a fair and objective process.

Given that the Enforcement Division is going to be involved in this process, if confirmed, will you commit not to provide recommendations to this agency, the Bureau of Industry and Security, on an exclusion request unless and until each side has been able to respond to factual information submitted by the other party?

Mr. KESSLER. Senator, as you mentioned, the Enforcement and Compliance unit plays only a supporting role in the 232 investigations. It is the Bureau of Industry and Security that is primarily responsible for them.

I fully understand the importance of due process in that context as well as the antidumping and countervailing duty context. I can commit to being an advocate for due process and to working with you and your staff to ensure that the requesters get due process.

Senator WYDEN. I think I did not get an answer specifically to the question of you not providing recommendations to the agency on an exclusion request unless there is due process.

I am going to hold the record open on this point, because I know the staff may have talked to you about this fairly recently, so you can flesh out what you think is due process, because I am troubled by this.

And I have discussed it with the Department, and there have been some differences between what some officials in the Department think it is and what the others think it is. To me, this cannot be rocket science. Everybody has got to be in a position to have the facts to respond to what the other side is saying.

So, Mr. Chairman, I support Mr. Kessler, as he knows. I will hold the record open.

And if you could give us a response as to what more specifically you believe constitutes due process there, that would be great.

And then, finally, to our fine nominees for the Tax Court: good luck.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you—I think.

Let me just ask Ms. Karpel and Mr. Stayin, under section 337 of the Tariff Act of 1930, the ITC has the essential task of excluding foreign products that infringe U.S. intellectual property protection.

As you know, the protection of intellectual property is very important to me. And I strongly support the ITC's role in administering section 337 proceedings.

Do you see section 337 as a crucial part of the ITC's mission? And will you explain how you intend to administer the law? That's for Ms. Karpel first and then Mr. Stayin second.

Ms. KARPEL. Thank you for that question. And I very much agree on the importance of protecting intellectual property and the role that section 337 plays in doing so. And if confirmed, I very much look forward to working in that area and ensuring the section 337 law is vigorously enforced.

Mr. STAYIN. I do agree with you with respect to the importance of section 337.

Years ago, there were not very many cases brought before the International Trade Commission. And then all of a sudden, in the last maybe 10, 15 years, there has been a huge volume of unfair trade practices which are committed with respect to patents and trademarks and copyrights.

Vigorous enforcement there is very important. And I think that the agency has done very well in that respect. And I assure you that I will do everything in my power to continue that aggressive and vigorous enforcement.

The CHAIRMAN. Now, let me ask you both this question. Do you see section 337 as a crucial part of the ITC's mission? And will you explain how you intend to administer the law?

Ms. KARPEL. Absolutely, it is a critical part of the ITC's responsibilities and mission. In terms of how I would intend to administer the law, if confirmed, as I mentioned, I would view my role as a Commissioner as an adjudicator who needs to be impartial, fair, and objective. In each case, I would work hard to understand the facts before me and apply the law to those facts as Congress intended that law to be applied.

Thank you.

The CHAIRMAN. Okay.

Mr. Kessler, you mentioned in your testimony that you would seriously consider having the Commerce Department self-initiate antidumping and countervailing duty cases. Typically, AD/CVD cases are initiated by U.S. industry when it believes it has been harmed by dumped or subsidized products entering the United States.

If confirmed, what criteria would you recommend that the Commerce Department apply to determine whether to devote its resources toward self-initiating the AD/CVD cases?

Mr. KESSLER. Senator, I do not have a hard-and-fast rule, but there are some categories of cases that would certainly be candidates for self-initiation. One category of cases is if the domestic industry faces the threat of retaliation from a foreign country as a result of a potential future AD/CVD case and self-initiating would mitigate that threat.

Another example would be if an industry has small companies or is fractured and is unable to petition for relief for that reason. That would be another instance where I would consider self-initiation.

The CHAIRMAN. You know, I have been pretty impressed with each one of you. And I think the President has been very wise to pick you folks for these respective positions. And I am just very grateful to you for being willing to take these positions.

They are not easy, but they are extremely, extremely important. And I do not think we could have better people than you folks. So I am very grateful.

And I do not think there are any politics involved or anything else. It is just a good thing.

Now, this question is for Ms. Copeland and Mr. Urda.

As a Tax Court judge, you will preside over many cases that involve unsophisticated taxpayers with few resources to deploy in making their cases. What lessons do you take from your prior professional experiences to ensure that you treat these taxpayers with respect and understanding while stopping short of awarding them an advantage?

So we will start with you, Ms. Copeland, first and then Mr. Urda.

Ms. COPELAND. Senator Hatch, that is an excellent question. In my practice, as I mentioned in my opening statement, I was responsible for initiating for the State Bar of Texas Tax Section a pro bono assistance program. In connection with that program, I had the opportunity to assist low-income taxpayers, unrepresented taxpayers.

In fact, Chairman Hatch, the Tax Court has something like 70 percent of all cases before it with unrepresented taxpayers, and something like 90 percent in their small cases.

So through the program with the State Bar of Texas and through initiatives by the United States Tax Court, there are volunteer low-income taxpayer clinics as well as volunteer bar organizations that provide pro bono assistance to taxpayers.

As a judge of the United States Tax Court, I would ensure that the parties appearing before me realized that that pro bono assistance is available and that they can consult with the attorneys who will accommodate the volunteer attorneys in my courtroom to provide that assistance. And I would encourage taxpayers to take advantage of the free assistance available.

I would also treat taxpayers as I always have, with dignity and respect. And I am also very patient, so that would help.

The CHAIRMAN. Well, thank you. That would be good.

Mr. Urda?

Mr. URDA. During my career, I have had the opportunity to litigate against a number of pro se people. And I think what Ms. Copeland ended with is the right point: it is to treat them with dignity and respect.

Of course, you have to maintain a neutral position as judge, but you have to allow the issues that that person is bringing to be developed. And you have to work as a judge to really hear what that person is saying and what issues they seek to challenge.

As an appellate litigator, part of our obligation to the Court is to really give respect to the issues that a pro se, maybe inartfully, is trying to raise.

I would take that same experience to the bench, treating them with respect and, consistent with my role as a neutral arbiter, to really allow them to develop in the best way possible those issues, whether themselves or through the resources that Ms. Copeland mentioned.

The CHAIRMAN. Well, thank you so much.

We will turn to the Senator from Washington.

Senator CANTWELL. Thank you, Mr. Chairman.

And I want to say I wish I would have been here earlier to help introduce Amy Karpel to the committee. We were stuck in a hearing with all our FERC Commissioners. But we are glad that she is being nominated to the International Trade Commission, glad that she grew up in Olympia, WA, went to the University of Washington, and then later to American University. So she has a lot of experience at USTR, so that is what we hope that we continue to see there.

I know that you are going to play an important role in analyzing information. And you get how important trade is to the Pacific Northwest. So I think that that just comes as a very day-to-day experience for all of us in the Northwest.

What steps are you going to take to make sure that there is an objective, thorough review of this information while you are at the ITC as a Commissioner?

Ms. KARPEL. Thank you. Thank you for the introduction. I understand you had important matters to cover, so I am glad you are here now.

In terms of what steps, the ITC is an independent agency, and I think that is one of the most important things, that the Commission is safeguarding that independence. And what comes with that is the need to be objective and to be impartial and to look at the facts and do careful and rigorous analysis.

And the ITC does that in a variety of ways. It does it in the context of the trade remedy proceedings that are litigated, and it does it in the context of the analytical work that it does, whether it is per a request under section 332 from one of the committees or from the administration. And that work is critical.

There is a great staff at the Commission that has a wonderful track record of delivering high-quality, independent analysis. And certainly, as a Commissioner, I would want to ensure that is maintained.

Senator CANTWELL. Well, I like to say at home, our home, that we get around the table and agree to a lot because of science. We have a lot of thorny problems, but when we can get around the table and have science to guide us, we usually can get to a lot of conclusions.

I would say the same in your role, that this information and data are very critical to helping us make important policy decisions.

Mr. Kessler, I wanted to ask you about use of trade tools. There are a number of tools to address unfair trade practices. Some disputes result in trade enforcement, while others are resolved through negotiation. When will you prioritize trade enforcement actions over other types of actions?

Mr. KESSLER. Senator, I would enforce the law in the situations where industry is requesting antidumping or countervailing duty investigations. If the industry is interested in some kind of negotiated settlement of an investigation, that is certainly something that I would consider.

Senator CANTWELL. So will you take into consideration possible retaliation to trade enforcement action when deciding how to best proceed?

Mr. KESSLER. Senator, the law is not structured to take that into account, nor should other countries be retaliating against the United States for the legitimate enforcement of our trade laws.

The antidumping and countervailing duty laws represent an internationally accepted mechanism for enforcing the law, for protecting U.S. companies and workers from unfair trade. And I will enforce them rigorously the way that they are written.

Senator CANTWELL. Well, and we have law in the United States of America. And lots of businesses get into disputes and they decide to settle them legally. So we are not taking that away. I am just simply asking, when it comes to trade enforcement, our processes today are seemingly to basically get into that phase of the negotiations first and ask questions later. So we will see where all of this takes us.

I appreciate your comments and your viewpoint. But the key thing that I think is missing in today's debate is—we clearly in our State have been involved with everything from WTO, where we thought Boeing was unfairly protested against, to now saying the Canadians, as it relates to a law that was passed in British Columbia, are not allowing direct access.

But we have reached a point where we had a finding and we wanted to pursue that, which is different than now causing a lot of shelf space to disappear and maybe disappear for decades. So I want to make sure that our strong trading economy, particularly with agriculture, in this whole discussion does not lose shelf space to the Australians or to the Canadians or to somebody else and then, when all this is said and done, we wake up 10 years later and we are 15 or 20 or 30 points behind in a marketplace. So that is why we are asking these questions.

And I so appreciate the time, Mr. Chairman.

The CHAIRMAN. Well, thank you.

We are very grateful for your willingness to serve this government. Each of you is an expert in your fields, and we feel very complimented by the fact that you are willing to serve. And I want to give you every credit for doing so.

And we will try to get this done as quickly as possible and get you confirmed as quickly as possible.

But just so you all feel the same way, I just want you to know that you are very much appreciated by this Senator and I think the other Senators on this committee as well. So I want to thank you all for your attendance and participation today.

I do ask that any member who wishes to submit questions for the record do so by noon on Friday, June 15th.

And with that, this hearing is adjourned. I bet you are glad about that. [Laughter.]

Thanks so much for being here. I am going to come down and shake hands with all of you.

Thanks for being here. And with that, we will adjourn.

[Whereupon, at 11:13 a.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF ELIZABETH ANN COPELAND, NOMINATED TO BE A JUDGE OF THE UNITED STATES TAX COURT

Chairman Hatch, Ranking Member Wyden, Senator Cornyn, and other distinguished members of the committee, thank you for the privilege of appearing before you today as the President's nominee to serve as a judge on the United States Tax Court. I am grateful to the President for his confidence in me and wish to thank the staff of this committee, who have been generous with their time while working with me on my nomination.

I would not be here without the support of many throughout my life and my career. I want to introduce my supportive husband Brad Wilder and my children Lexie and Preston Wilder, who are here today. Also here are my father William Copeland, my stepmother Barbara Copeland, my sister-in-law Pamela Hurst, and her husband David Hurst. My stepson Davis and my amazing mother, Josephine Copeland, are watching by livestream video. I also am honored to have in attendance a number of judges from the United States Tax Court, who have been both friends and mentors throughout the years.

Early in my legal career, I had the opportunity to work as an Attorney Advisor at the United States Tax Court for the Honorable Mary Ann Cohen. I learned much under her direction. Upon leaving the employ of the Tax Court, I returned to my hometown of San Antonio, TX to pursue a career in tax law. I spent over 2 decades specializing in the area of tax controversy and litigation with the law firm Oppenheimer, Blend, Harrison, and Tate, Inc., which later became Strasburger and Price, L.L.P and is now known as Clark Hill Strasburger. While practicing in Texas, I received a board certification in tax law by the Texas Board of Legal Specialization. I also was very active with the Section of Taxation of the American Bar Association and with the State Bar of Texas Tax Section, for which I served as chair in 2013–2014.

As a member of the Texas State Bar, I recognized a need to assist unrepresented taxpayers—most of whom could not afford legal counsel—with the presentation of their cases in Tax Court. Working with the help of Special Trial Judge Peter Panuthos and representatives from IRS Area Counsel, we established an all-volunteer pro bono assistance program to service all five cities in Texas in which the Tax Court holds calendars. It was one of my most treasured accomplishments, and the program is still thriving today. Working with that program and in my own practice, I have seen the vital role that the Tax Court plays in shaping tax law. It is imperative for taxpayers to have their cases heard before an impartial party and for both taxpayers and government attorneys to be treated with respect. I believe my strong background in tax controversy work will provide me with the foundation to fairly and impartially resolve tax cases in accordance with congressional intent. If confirmed, I would hope to maintain and enhance the public's confidence in the Tax Court as a neutral pre-payment forum for the resolution of tax disputes.

Thank you again, Chairman Hatch, Ranking Member Wyden, Senator Cornyn, and other members of this committee, for your consideration. I would be happy to answer any questions you might have.

SENATE FINANCE COMMITTEE

STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Elizabeth Ann Copeland, formerly: Elizabeth Ann Dawson; nicknames: Liz Copeland, Lizzy Copeland and, formerly, Liz Dawson.
2. Position to which nominated: United States Tax Court.
3. Date of nomination: August 3, 2017.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: June 1, 1964; Colorado Springs, Colorado.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list secondary and higher education institutions, dates attended, degree received, and date degree granted):

   Lemont High School, 1978—1979, no degree received (passed 9th grade, then moved from Illinois to Texas).

   Alamo Heights High School, 1979–1980, no degree received (passed 10th grade, then moved school districts).

   Churchill High School, August, 1980–1982, High School Diploma with Honors, May 1982.

   University of Texas at Austin, 1982–1986, BSA Accounting with Honors, May 1986; University of Texas at Austin School of Law, 1989–1992, JD, May 1992.

   Queen Mary and Westfield College (now Queen Mary University of London), September 1991–December 1991, no degree received (Semester in London Program through the University of Texas at Austin School of Law).
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):

   Ernst and Whinney (now Ernst and Young), Senior Accountant, San Antonio, Texas, 1986–1987.

   Ernst and Whinney (now Ernst and Young), Senior Accountant, Dallas, Texas, 1987–1989.

   Vernor, Liipfert, Bernhard, McPherson, and Hand, Chartered (now DLA Piper US, LLC), Summer Associate, Washington DC, summer 1990.

   Law, Snakard, and Gambil, P.C., Summer Associate, Fort Worth, Texas, summer 1990.

   Groce, Locke, and Hebdon, Summer Associate, San Antonio, Texas, Summer 1991.

   Oppenheimer, Rosenberg, Kelleher, and Wheatley, Inc., Summer Associate, San Antonio, Texas, summer 1991.

   United States Tax Court, Attorney Advisor to Judge Mary Ann Cohen, Washington, DC, 1992–1993.

   Oppenheimer, Blend, Harrison, and Tate, Inc., Shareholder, San Antonio, Texas, 1993–2012.

   Our Lady of the Lake University, Adjunct Professor, San Antonio, Texas, 1996–1998.

   Strasburger and Price, LLP, Partner, San Antonio, Texas, 2012–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):

South Texas Internal Revenue Service Practitioners Council, San Antonio, Texas, 2002–2005.

Texas State Board of Legal Specialization Tax Law Advisory Commission and Tax Law Exam Commission, Austin, Texas, 2010–2012.

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):

Oppenheimer, Blend, Harrison, and Tate, Inc., Shareholder, San Antonio, Texas, 2001–2014.

Strasburger and Price, LLP, Partner, San Antonio, Texas, 2012–present.

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

American Bar Association Section of Taxation
Member, 1992–present.
Tax Court Committee Chair, 2009–2011; Vice-Chair, 2007–2009; Member, 2002–2013.
Pro Bono Committee, Vice Chair, 2009–2011.
Pro Bono Award Committee, 2014–2016.

American College of Tax Counsel
Member, 2014–present.

American Society of Women Accountants
Member, 2007–2011.

Bexar County Women's Bar Association and Foundation
Vice-President, approx. 2002.
Treasurer, approx. 1997–1998.
Board Member, approx. 1999–2001.
Member, 1994–present.

Girl Scouta of America
Troop Leader, 2006–2013.
Administrative Assistant, 2011–2014.
Assistant Troop Leader, approx. 1988–1989.

San Antonio Bar Association
Member, 2004–present.

San Antonio Bar Foundation
Member, 2015–present.

San Antonio Chapter of the Texas Society of Certified Public Accountants
Member, 1986–1987 and 1995–2013.

State Bar of Texas Tax Section
Chair, 2013–2014.
Chair-Elect, 2012–2013.
Secretary, 2011–2012.
Treasurer, 2010–2011.
Council Member, 2004–2012.
Pro Bono Committee Chair, 2007–2010 and 2017–present.
Tax Controversy Committee Chair, 2002–2004, and Vice-Chair, 2001–2002.

Texas Society of Certified Public Accountants
Member, 1986–1987 and 1995–2013.

Travis Park United Methodist Church
Scholarship Committee Chair, 2004–2005.
Finance Committee, 2006–2006.
Foundation Board Member, 2004–2005.
Staff-Parish Relations Committee, 2007.

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.

Phone Bank for the 2008 Election Campaign of Barak Obama.

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.

Elizabeth Copeland
Political Contributions

Recipient	Date	Amount
2008		
Hillary Clinton for President	May 23, 2008	$50.00
DNC	August 13, 2008	$25.00
DNC	October 6, 2008	$100.00
Obama for America	October 13, 2008	$100.00
2009		
Hillary Clinton	January 24, 2009	$50.00
DNC	April 9, 2009	$50.00
Campaign to Elect Renee McElhaney (R)	June 24, 2009	$100.00
DNC (Reforming Health Care)	October 1, 2009	$100.00
Polly Jackson Spencer Campaign	October 1, 2009	$100.00
Texans for Kay Bailey Hutchison (R)	November 2, 2009	$200.00
Peter Sakai	November 11, 2009	$25.00
2010		
Campaign to Elect Renee McElhaney (R)	February 28, 2010	$50.00
Cathy Stryker (R)	May 2, 2010	$100.00
DNC (Barack Obama B-Day)	July 19, 2010	$100.00
Marialyn Barnard (R)	August 16, 2010	$25.00
DNC (November Elections)	August 24, 2010	$50.00
2012		
Obama for America	January 22, 2012	$50.00
DNC	April 6, 2012	$50.00
Texas Democratic Party	April 6, 2012	$50.00
Obama for America	April 6, 2012	$50.00
Obama Victory Fund	October 16, 2012	$147.00
Obama Victory Fund 2012	October 30, 2012	$112.00
2013		
DNC	February 15, 2013	$100.00
Mayor Julian Castro Campaign	February 21, 2013	$100.00
DNC	April 15, 2013	$50.00
DNC	June 5, 2013	$100.00
State Party Victory Fund	May 20, 2013	$50.00
Texas Democratic Party	May 20, 2013	$50.00
DNC *Onlinedemocrats.org*	October 16, 2013	$10.00
DNC *Onlinedemocrats.org*	November 11 ,2013	$35.00
Democratic Party (online)	November 26, 2013	$10.00
2014		
Patricia Rouse Vargas	February 6, 2014	$100.00
DNC	February 17, 2014	$25.00
DNC	March 9, 2014	$10.00
DNC	March 31, 2014	$15.00
DNC	April 9, 2014	$10.00
DNC	May 4, 2014	$55.00
Renee McElhaney for Judge (R)	June 19, 2014	$100.00
DSCC (Act Blue)	June 30, 2014	$17.00
Act Blue DSCC	July 30, 2014	$25.00
DNC	September 30, 2014	$50.00
DNC	October 8, 2014	$50.00
Democratic Senatorial Campaign Committee	September 30, 2014	$25.00
Pete Gallego	October 10, 2014	$35.00

Elizabeth Copeland
Political Contributions—Continued

Recipient	Date	Amount
2015		
DNC Membership	April 7, 2015	$75.00

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):

Best Tax Lawyers in America, Best Tax Lawyer in San Antonio, 2011, 2017, and 2018, listed in *Best Lawyers,* 2006–present.

S.A. Scene Magazine, San Antonio's Best Tax Law Attorneys, 2004–present.

Thompson Reuters, San Antonio Super Lawyer, 2003–present.

Taxanalysts® *Tax Notes,* 2012 Top 10 Tax Persons of the Year, January 2013.

Bexar County Women's Bar Association, Belva Lockwood Outstanding Lawyer, 2010.

American Bar Association, Section of Taxation, Janet Spragens Pro Bono Award, 2009.

American Society of Women Accountants, Balance Award, 2007.

Bexar County Women's Bar Association, Belva Lockwood Outstanding Young Lawyer, 1998.

Fulbright and Jaworski, Outstanding Second Year Law Student, 1991.

University of Texas at Austin McCombs School of Business, Outstanding Student, 1986.

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

"An Update on Innocent Spouse Claims," *Texas Tax Lawyer,* spring 2013. Copy attached.

16. Speeches (list all formal speeches you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated):

Elizabeth Copeland
Five Year Speech Chart

Date	Speech	Event/Location
	2012 Speeches	
June 12, 2012	Preparing Form 8857, Preparing a Protest, Defending an Innocent Spouse at the IRS Office of Appeals, then Mock Trial—Innocent Spouse Case	Tax Alliance Conference Boot Camp
August 7, 2012	FATCA: The U.S. Attempt to Take on the World: Understanding Form 8938, FATCA, and Other Foreign Account Disclosure Issues	San Antonio CPA Chapter—Speaker Series
August 23, 2012	FATCA: The U.S. Attempt to Take on the World: Understanding Form 8938, FATCA, and Other Foreign Account Disclosure Issues	Rio Grande Valley Chapter of CPAs

Elizabeth Copeland—Continued

Five Year Speech Chart

Date	Speech	Event/Location
September 17, 2012	How to Handle the Most Common IRS Disputes (Independent Contractor vs. Employee, Trust Fund Recovery Penalty, Innocent Spouse, Substantiation, and Reporting Foreign Assets)	Strasburger and Price, LLP 2012 Tax Symposium (Dallas)
September 19, 2012	How to Handle the Most Common IRS Disputes (Independent Contractor vs. Employee, Trust Fund Recovery Penalty, Innocent Spouse, Substantiation, and Reporting Foreign Assets)	Strasburger and Price, LLP 2012 Tax Symposium (San Antonio)
November 9, 2012	Tax Issues in Divorce	Austin Chapter of the Texas Society of Certified Public Accountants
	2013 Speeches	
May 30, 2013	How to Handle the Most Common IRS Disputes (Independent Contractor vs. Employee, Trust Fund Recovery Penalty, Innocent Spouse, Substantiation, and Reporting Foreign Assets)	San Antonio Chapter of the TSCPA
June 13, 2013	Texas Community Property: When Is What Is Mine Ours?	Tax Alliance Conference
August 1, 2013	Planning for the Modern Family: How to Advise Clients Now That the U.S. Supreme Court Has Struck Down DOMA	San Antonio Chapter of the TSCPA
August 6, 2013	Planning for the Modern Family: How to Advise Clients Now That the U.S. Supreme Court has Struck Down DOMA	BCWB Luncheon (San Antonio)
August 13, 2013	Honey! You Shrunk Our Assets! A Discussion of Tax Issues in Divorce	Amarillo Chapter of TSCPA
August 14, 2013	Community Property and Tax Issues	Tax Law 101 Texas Bar CLE (Houston)
August 16, 2013	Hot Issues Under Circular 230: A Dialogue With the Director	Advance Tax Law Course (Houston)
August 26–27, 2013	Handling IRS Appeals and Other Tax Controversies	Strasburger and Price 2013 Annual Tax Symposium
September 27, 2013	A War of the Roses—A Discussion of Tax Issues in Divorce	San Antonio Chapter of the TSCPA 15th Annual CE Symposium

Elizabeth Copeland—Continued

Five Year Speech Chart

Date	Speech	Event/Location
October 17, 2013	Administrative Collection Procedures: Collection Due Process, Offers in Compromise, and Installment Agreements and Section 6672 Penalty Matters	ALI/CLE Handling a Tax Controversy: Audits, Appeals, Litigation, and Collections
November 18, 2013	It's a Small World After All—Understanding FACTA and the IRS's Offshore Voluntary Disclosure Program	2013 Austin CPA Chapter Annual Tax Conference
	2014 Speeches	
January 25, 2014	Foreign Bank Accounts: The Latest Developments in OVDP, Opt Outs, Examinations, and Other IRS Offshore Enforcement Activities	ABA Section of Taxation, Midyear Meeting, Phoenix, AZ
February 21, 2014	Current Issues in Estate Planning: Portability and DOMA	Docket Call in Probate Court Seminar Sponsored by the San Antonio Estate Planners Council
March 5, 2014	Interest Charge Domestic International Sales Corporations (IC–DISC)	Strasburger and Price, LLP Tax Section
May 13, 2014	Attention U.S. Manufacturers and Exporters—You Are Paying Too Much U.S. Tax	San Antonio Chapter of the TSCPA
June 11, 2014	Planning for the Modern Family—Advising Clients After the Supreme Court Overturned Portions of DOMA	Tax Alliance Conference, Plano, TX
July 22, 2014	Don't Get an "F": Learn the Latest on FATCA and FBAR Compliance	ADKF, San Antonio, TX
August 15, 2014	Don't Get an "F": Learn the Latest on FATCA and FBAR Compliance	SACPA Continuing Education Foundation, Inc.
August 25, 2014	Current Developments in Civil and Criminal Controversies	2014 Strasburger and Price Symposium/Dallas
October 23, 2014	Don't Get an "F": The Latest on FATCA and FBAR Compliance	Rio Grande Valley Chapter of CPAs
November 17, 2014	Don't Get an "F": The Latest on FATCA and FBAR Compliance	Austin CPA Chapter 2014 Annual Tax Conference
November 20–21, 2014	Planning for the Modern Family—Advising Clients After the Supreme Court Overturned Portions of DOMA	Texas Society of CPAs 2014 Texas Tax Institute
	2015 Speeches	
May 7, 2015	No Pain—Big Gain: Assisting Self-Represented Petitioners at Calendar Call	ABA Section of Taxation, Annual Meeting, Washington, DC

Elizabeth Copeland—Continued

Five Year Speech Chart

Date	Speech	Event/Location
July 27, 2015	Foreign Bank and Financial Accounts Report ("FBARs")	2015 U.S. Mexico Conference
November 19, 2015	Recent Development in Individual Federal Income Taxation	Annual Texas CPA Tax Institute—Richardson, TX
November 20, 2015	Recent Development in Individual Federal Income Taxation	Annual Texas CPA Tax Institute—San Antonio, TX
	2016 Speeches	
January 25, 2016	Individual Tax Update PATH Act Changes to TEFRA Partnership Audit Rules and Recent Developments in Individual Federal Income Taxation	Akin, Doherty, Klein, and Feuge, P.C. Internal CPE for CPA Firm
March 25, 2016	Qualities of Effective Leaders	2016 Leadership Academy
October 26, 2016	Federal Tax Controversy Hot Topics	State Bar of Texas Annual Advanced Tax Law Course
	2017 Speeches	
May 12, 2017	Breaking Bad—Dealing With the Partnership Audit Rules and Partnership Agreement Drafting Considerations	ABA Section of Taxation May Meeting
June 14, 2017	Effective Representation in Today's IRS Appeals	Texas Federal Tax Institute
July 26, 2017	Breaking Bad—Dealing With the Partnership Audit Rules and Partnership Agreement Drafting Considerations	ABA Section of Taxation Webinar
August 18, 2017	Federal Tax Controversy—Hot Topics 2017	State Bar of Texas Annual Advanced Tax Law

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

I have been practicing tax law in the tax controversy area for over 20 years. I have tried many cases in the United States Tax Court and settled many more over the years. I regularly speak to CPA and attorney groups on tax law topics. Most importantly, I was instrumental in developing the Tax Court Pro Bono Program for the State Bar of Texas Tax Section that assists low-income taxpayers throughout the State of Texas with their cases in front of the United States Tax Court. Because an extremely large percentage of cases that come before the United States Tax Court involve *pro se* litigants, my work and experience with that program will be a valuable resource for understanding how to deal with such persons in the courtroom.

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.

   In connection with the nomination process, I have consulted with the Administrative Office of the U.S. Courts (AOUSC) to prepare and file a financial disclosure report in compliance with the Ethics in Government Act of 1978. The AOUSC Committee on Financial Disclosure has confirmed that my report, which has been provided to the committee, is in compliance with applicable laws and regulations.

   I am not aware of any potential conflicts of interest. Should any matter arise that involved an actual or potential conflict of interest, I would handle it by careful and diligent application of the Code of Conduct for United States Judges as well as other relevant canons and statutory provisions, and I would consult with the appropriate ethics officials in the AOUSC, as applicable.

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.

   Please note that the Tax Court hears cases all over the country. I would unlikely be assigned to administer the Tax Court calendar for my home city of San Antonio, which would eliminate almost all appearances of conflict of interest.

   As a partner in Strasburger and Price, LLP, I could perceive a potential conflict if one of the attorneys from that firm were to appear in my courtroom. I would offer to recuse myself from that litigation, should that occur.

   If Valero Energy Corporation ("Valero") were a litigant in my courtroom, I would also likely need to recuse myself, because they were a large client in the past; however, I am not aware of any Tax Court case pending for Valero.

   I am listed as one of the attorneys for the following Tax Court case that would require me to withdraw as counsel and subsequently recuse myself from the litigation or any Tax Court deliberations: James Ivy.

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.

   As Chair of the State Bar of Texas Tax Section, I submitted the following comment projects on behalf of the Tax Section (copies attached):

   Comments Concerning the Proposed Amendments to Rules 1, 182(e), 183, 200, and 202 of the United States Tax Court Rules of Practice and Procedure (9/6/05);

   Comments Regarding Privacy Protection for Filings Made With the Court (2/2/06):

   Comments Regarding Proposed Amendments to the Rules of the United States Tax Court (2/27/12);

   Comments on the Material Advisor Penalty Regulations (9/19/13);

Comments on the Innocent Spouse Relief Regulations (1/7/14);

Comments on Proposed Section 1411 Department of Treasury Regulations (2/20/14);

Comments on the Proposed Treasury Regulations regarding "Excepted Benefits" for Purposes of the Affordable Care Act (2/24/14);

Comments on the Proposed Regulations Covering Section 706 QDOT Elections (3/19/14);

Comments on Proposed New Texas Comptroller of Public Accounts Rule 3.11 Regarding Settlements on Redetermination (4/4/14);

Comments on Proposed Treasury Regulations Covering Section 1.704–3 (5/5/14);

Comments on Proposed Regulations Regarding Disguised Sales and the Allocation of Liabilities (6/20/14);

Comments on Internal Revenue Notice 2014–5, Discrimination Testing Standards Applicable to Softly Frozen Defined Benefit Pension Plans (6/25/14); and

Comments on Circular 230's Prohibition Against Contingent Legal Fees (6/26/14).

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

   If confirmed, I will carefully review any potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances. I will also consult, as applicable, with the appropriate ethics officials in the AOUSC.

5. Copies of opinions—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.

   Provided to the committee.

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 or 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.

   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.

An Update on Innocent Spouse Claims

BY BRYAN T. CAMP, ESQ. AND
ELIZABETH A. COPELAND, ESQ.[1]

I. ISSUES RELATED TO THE FILING OF RETURNS.

A. Joint Returns and Joint and Several Liability. The decision to file a joint return is one that must be carefully thought out during periods of separation and divorce or within a troubled marriage because of the joint and several liability issues in connection with the filing of a joint return.

B. Consider Filing Separately. Historically, the tax on married couples filing jointly generally has been lower than the combined tax on married couples filing separate returns. Now, however, in many cases, a married couple's tax will be the same whether they file jointly or separately. That's because (1) the end point of the 15% bracket for married couples filing jointly is now twice the end of the 15% bracket for a single filer or a married person filing separately, I.R.C. § 1(f)(8)) and (2) the standard deduction for a married couple filing jointly is twice the standard deduction of a single person or a married person filing separately. I.R.C. § 63(c)(2)). Thus, if there is a pending divorce or a spouse has questionable tax items, there may now be greater occasion to file separately than in the past because, in many cases, filing separately may no longer involve an increased tax cost or may only involve a slightly or moderately increased tax cost. However, joint filing may still produce a lower tax cost in many situations because there is still a marriage penalty for the income brackets above the 15% bracket and numerous tax breaks are unavailable[2] or less favorable on separate returns.

C. Using I.R.C. § 66 to Escape Community Property Rules in Year of Divorce.

In Texas, a community property state, tax returns filed during periods of separation and in the year of divorce can be a trap for the unwary. It is important to note that, with the exception that will be discussed below related to I.R.C. § 66, spouses are required to file either joint returns or married filing separate returns during periods of separation. In addition, in the year of divorce, one-half of all community income must be reported on the federal income tax return of the non-earning spouse, if earned prior to the date the decree becomes final Community income includes wages, partnership income and other business income generated by a former spouse. This means where there is a gross disparity in earning power as between husband and wife, in the year of divorce the lower earning spouse will have a substantial tax liability for the one-half of all community income earned by the higher earning spouse up until the dissolution of the marriage. That lower income spouse may not have the assets to cover that liability.

1. Requirements for I.R.C. § 66.

The United States Congress recognized this potential disparity and passed I.R.C. § 66 as a solution or some spouses. However, the rules under I.R.C. § 66 are very stringent and do not apply in all situations. In order for I.R.C. § 66 to apply:

a. The spouses must live apart **at all times** during the calendar year;
b. They must not file a joint tax return for that year;
c. They must have earned income which is community income; and
d. They must not transfer any portion of that earned income between spouses except for the payment of child support.

If these conditions are met, then the earned community income, meaning wages and self-employment income from trades or businesses or partnerships, will be re-

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[1] Both authors are honored to have been listed as two of nine runners-up for the 2012 Tax Persons of the Year by *Tax Analysts 2013*© in the January 7, 2013 issue of *tax notes*®.

[2] Filing a separate return can result in the loss of important tax credits. For example, a married couple cannot file separate returns and claim the earned income tax credit.

portable by the party who earned the income rather than one-half being allocated to the non earning spouse under community property laws. Very importantly, all other community income such as interest, dividends or capital gains are split equally and must be reported one-half by each spouse, even under the application of I.R.C. § 66.

It should be made clear that alimony payments, during the period of separation, destroy the applicability of I.R.C. § 66 because they allow for the transfer of income. Any support and separate maintenance payments are also problematic to the applicability of I.R.C. § 66. On the other hand, payment of child support during periods of separation is acceptable and does not impair the parties ability to use I.R.C. § 66.

This means that where income is shared between spouses (except for child support) I.R.C. § 66 will not apply. To avoid this egregious result, the earned income between spouses should be separately accounted for during the periods of separation. If there are other assets available to maintain and support the spouse, those assets should be used during the periods of separation. For example, if there is an existing bank account or investment account with sufficient assets to pay the house payment and other direct expenses, those assets should be used rather than the continuing earned income during the year of separation. All checks should be written by the spouse living in and using the house (electricity, etc.). If the earned income of the higher earning spouse is used to make house payments and pay other bills, the provisions of I.R.C. § 66 will not apply.

2. Client Doesn't Want I.R.C. § 66 to Apply.

If it is beneficial to your client to split earned income, he/she may be precluded from doing so under I.R.C. § 66(b), unless such client notifies the other spouse prior to the due date of the return (April 15th) the amount of the community income to be split and the nature of such income (wages, interest earnings, partnership income, etc.).

3. Case Law.

Will the Internal Revenue Service look into these items? What has the Internal Revenue Service done in the past? Although not a targeted area, the Internal Revenue Service has shown a willingness to investigate I.R.C. § 66 abuses. For example, in a case involving a Texas couple, *Cline v. Commissioner,* T.C. Memo 1982–44 (1982), the Clines, a separated but not yet divorced couple who were residents of Texas during 1977, filed married, filing separate returns. Mrs. Cline reported 100% of the community income as it was earned by her. She also paid 100% of the tax liability attributable to that income. In later years, the Internal Revenue Service audited Mr. Cline's return and allocated to him one-half of the community income, even though that tax had already been paid by Mrs. Cline on her return. The court upheld the determination by the Internal Revenue Service.

In another Texas case, *Adams v. Commissioner,* 82 T.C. 563 (1984), a Texas couple was divorced in 1977. The husband was a partner in a CPA firm On each of their returns in the year of divorce, the couple reported their share of the partnership income up until the time of divorce. Mrs. Adams used a per share per day pro rata method of allocating income and Mr. Adams awaited the closing of the books and made an allocation based on the full year's earnings. Mr. Adams' return was subsequently adjusted, even though his manner of reporting the income was an acceptable method. Mr. Adams' method was inconsistent with the methods as between both spouses and resulted in a loss of revenue to the taxing authority based on the different methods used between the parties. The lesson learned in this case was that the parties must agree in the decree of divorce how business income of partnerships, S-corporations, or limited liability companies will be allocated in the year of divorce.

II. OTHER CONSIDERATIONS

A. Using I.R.C. § 7703 to File as Head of Household Prior to Divorce

I.R.C. § 66 helps spouses deal with inequities resulting from the application of community property laws during periods of separation and divorce. In addition, the Internal Revenue Code provides an additional benefit for separated spouses who maintain a household for a dependent child or children. That benefit is found at I.R.C. § 7703.

1. I.R.C. § 7703. Under I.R.C. § 7703, a taxpayer may file an individual return claiming head of household status, even though married, if the following requirements are met:

a. The taxpayer has a child;

b. The taxpayer has paid greater than one-half of the expenses maintaining the household for that child;
c. The parties were separated for greater than 6 months; and
d. The spouse has not lived in the home for the last six months of the tax year.

This is an excellent opportunity for the taxpayer supporting a child to take advantage of the head of household rate schedules, rather than deciding between a Married Filing Separate tax return or the liability associated with a Joint Return. Remember though that I.R.C. § 7703 deals with filing status only; to avoid reporting ½ of community income on the head of household return refer to I.R.C. § 66(b) discussion above.

2. The Noncustodial Spouse. The logical extension of the rule under I.R.C. § 7703 is that the separated spouse, who is not maintaining a household for the child(ren) will have to file under a married filing separate status.

III. OVERVIEW OF INNOCENT SPOUSE RULES.

Thankfully, legislation provides relief to certain spouses who have filed joint returns. The relief is found in I.R.C. § 6015. For an account of the very interesting legislative history of this statute, enacted as part of the 1998 IRS Restructuring and Reform Act, see Bryan T. Camp, *Between a Rock and a Hard Place,* 108 Tax Notes, 359 (July 18, 2005), available at *http://papers.ssm.com/sol3/papers.cfm?abstract_id=911275;* and Bryan T. Camp, *The Unhappy Marriage of Law and Equity in Joint Return Liability,* 108 Tax Notes, 1307 (September 12, 2005): *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1505653.*

After 1998, the following three types of relief are available:

A. § 6015(b) Traditional Innocent Spouse Election

Taxpayers can elect this relief when:

1. A joint return has been filed for the taxable year;
2. There is an understatement of tax on the return attributable to the erroneous items of the non-requesting spouse;
3. In signing the return, the requesting spouse did not know or had no reason to know, that there was such an understatement;
4. Taking into account all of the fact and circumstances, it is inequitable to hold the requesting spouse liable for the deficiency in tax; and
5. The request is made within two years of when IRS collection action first initiated.

B. § 6015(c) Separate Liability Election

Taxpayer can elect this relief when:

1. In signing the return, the requesting spouse had no actual knowledge that there were erroneous items of the non-requesting spouse;
2. At the time the election is filed, the requesting spouse is no longer married to, or is legally separated from, the non-requesting spouse; or the requesting spouse was not a member of the same household as the non-requesting spouse at any time during the 12-month period ending on the date the election is filed; and
3. The request is made within two years of when IRS collection action first initiated.

C. § 6015(f) Equitable Relief:

The Service will grant this relief when:

1. Relief is not available under I.R.C. §§ 6015(b) or (c); and
2. Taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable.

To help taxpayers and Courts with this "facts and circumstances" test, the IRS has published guidance laying out a variety of factors that its employees will use in deciding whether to grant relief requested under subsection (f). While these are very helpful for practitioners to know, the Tax Court has repeatedly emphasized that: "In section 6015(f) cases, however, we do not simply count [the IRS factors]. Likewise, we are not bound by them. The factors are guidelines we use in evaluating all of the relevant facts and circumstances to reach a conclusion." *Henson v. Commissioner,* T.C. Memo 2012–288.

The last published guidance from the Service on what factors it would consider in determining relief under subsection (f) was Rev. Proc. 2003–61. On January 5, 2012, the Service issued Notice 2012–8 which proposed a revenue procedure that, if finalized, would revise the factors and supersede Rev. Proc. 2003–61.

Notice 2012–8 states that, "until the revenue procedure is finalized, the Service will apply the provisions in the proposed revenue procedure instead of Rev. Proc. 2003–61 in evaluating claims for equitable relief under section 6015(f)." However, the Notice also states that a taxpayer requesting relief can choose either set of factors to be evaluated under.

As of the date this Article was submitted, the IRS has not issued a final Rev. Proc. That supersedes Rev. Proc. 2003–61. In *Sriram v. Commissioner,* T.C. Memo. 2012–91 the Tax Court said it would "continue to apply the factors in Rev. Proc. 2003–61, 2003–2 C.B. 296, in view of the fact that the proposed revenue procedure is not final and because the comment period under the notice only recently closed."

The main difference between the Rev. Proc. factors and the Notice 2012–8 factors is the Service's treatment of the abuse and financial control factors. The Service has eliminated "abuse" as a separate factor. Instead, the Service will now consider both spousal abuse and control of household finances as part of its determination on whether the requesting spouse knew or had reason to know of either the understatement of tax or the underpayment, as the case may be. If the requesting spouse was abused (and the Notice describes a broad concept of abuse in 4.03(2)(c)(iv)) or if the other spouse kept control of the household finances by restricting the requesting spouse's access to financial information, then such situations could make this factor neutral or weigh in favor of the granting the requested relief.

IV. PROCEDURES FOR SEEKING SPOUSAL RELIEF.

Taxpayers can use a combination of administrative procedures and judicial procedures to get spousal relief.

A. Administrative Procedures to Seek Relief.

The IRS basically has two jobs: to determine the proper tax, which it then assesses, and to collect a properly assessed but unpaid tax. Taxpayers can seek spousal relief from the IRS in both the tax determination stage and tax collection stage.

First, taxpayers can seek spousal relief as **part of the deficiency proceedings.** Before 1998, this was the only procedure available. Taxpayers would ask for relief as part of the audit process, including any meetings with the Office of Appeals. If the IRS denied relief, that would be part of the Notice of Deficiency (NOD), which is the "ticket to the Tax Court." So taxpayers could then obtain Tax Court review of that denial as part of a petition contesting the deficiency.

Second, taxpayers can seek relief **as part of the Collection Due Process (CDP) hearing.** This second procedure is one Congress added in the 1998 IRS Restructuring and Reform Act (RRA 98). It is a post-assessment procedure. Before the IRS may use its full lien and levy powers, it must give taxpayers a chance to show why liens and levies were not appropriate collection actions. See § 6220, 6230. The IRS does this through a special notice, called the CDP Notice, which gives taxpayers 30 days to ask for a CDP hearing with the Office of Appeals. As part of the hearing about the appropriateness of collection, taxpayers could ask for spousal relief After all, it's not appropriate to collect a tax that should not have been assessed! The Office of Appeals makes its decision by issuing a document called a "Notice of Determination" (note the "NOD" abbreviation here—that's on purpose). Just like a "Notice of Deficiency," the "Notice of Determination" is a ticket to Tax Court review. If you want Tax Court review, you must have an NOD of some sort!

Notice that both the NOD procedures allow taxpayers to ask for spousal relief *as part of* another procedure (either review of a proposed deficiency or review of a proposed collection action).

Third, a taxpayer can seek spousal relief at any time after the IRS has begun collection action against him or her. This third procedure results in what is called a **"stand-alone" petition for relief.** It is not part of any other type of proceeding. The taxpayer can then appeal any denial of relief to the Office of Appeals who will issue a Notice of Determination that is, once again, a ticket to Tax Court review. See § 6015(e).

Fourth, taxpayers can seek spousal relief through a claim for refund. This is a very different procedural posture from the other three. The first three procedures are all pre-payment procedures. However, a claim for refund is a post-payment procedure.

That is, whenever a taxpayer has fully paid all the taxes assessed by the IRS, that taxpayer can file an administrative claim for refund, giving any good reason why the taxpayer may have overpaid. Section 6511 requires that administrative claims for refunds be filed either within 3 years after a return was filed or within 2 years after the payment was made. Remember, however, that refunds are not allowed as part of the relief under § 6015(c), but only for (b) and (f) relief.

1. Preparing the Administrative Claim: Form 8857

In all of the above procedures, the taxpayer starts the administrative claim process with a Form 8857. Although claims for refund are made on Form 1040x, taxpayers would attach a Form 8857 to it. Further, although the Internal Revenue Manual (IRM) says that the IRS will accept any submission so long as it contains all the information, it is best to use Form 8857. That is the form the IRS designed and that is the form IRS employees are trained to interpret.

The basic rule here is: be as thorough as possible *as time permits.* Putting in the time and effort on the front end will not only save time and effort on the back end, but will also increase the chances of success. Thoroughness will not only help the IRS employee see the truth but will also demonstrate the taxpayer's determination to obtain relief. That determination itself may persuade an IRS employee to grant relief in a close case. This is especially true at the Office of Appeals level where the Appeals Officers are supposed to take "hazards of litigation" into consideration. For the particular rules that the Office of Appeals uses to review Spousal Relief denials, see IRM Part 25, Chapter 15, Section 12 (*e.g.,* IRM 25.15.12).

The most important part of being thorough is finding documents that support the information given on Form 8857. For example, if the taxpayer claims abuse, try to find documentary evidence of that. If there are no police reports, or women's shelter reports, or medical reports, try at least getting witness statements. Abuse is not simply a one-time event. It is often a pattern of over-controlling that can be demonstrated by eyewitnesses over a period of time. On Part V of the form, try to provide as much documentation as possible about current financial position. Current economic hardship can play a huge role in getting spousal relief

Experienced practitioners strongly suggest attaching documentation. The best practice here is to attach a narrative. Tell the story and methodically explain the basis for relief If the taxpayer seeks equitable relief under subsection (f) the best practice is to include a chart summarizing each of the "equitable factors" contained in Rev. Proc. 2003–61, with an explanation of how those factors play out. Here's one suggestion:

Factor	Favors IRS?	Favors Taxpayer?	Neutral?
Marital status			
Economic hardship			
Knowledge or reason to know			
– mitigated by abuse?			
– mitigated by lack of control over finances?			
Legal obligation to pay			
Significant benefit			
Compliance with tax laws			
Mental or physical health			
Total			

2. Timing

Administrative requests must be made timely. **As with much else in law, the first action to take to seek spousal relief is to figure out how much time to you have to file Form 8857. To do this, the best practice is to get a transcript of your client's accounts.** The easiest way to get transcripts is through the

IRS e-Services route. If you are not a current e-Services user and/or lack access to the e-Service products, you must complete an on-line IRS *e-file* application and pass a suitability check which is the same check required by Electronic Return Originators. Publication 3112, (IRS e-file Application) contains additional details on the application and suitability processes. You can also get a transcript by calling the practitioner hotline (866–860–4259).

A request for spousal relief must not be made too soon or too late. Too soon is before the IRS has selected the return for audit or, for underpayment situations, before the IRS has taken a collection action against the requesting spouse. The following IRS actions open the door to requesting spousal relief: (1) sending the requesting spouse a § 6330 Collection Due Process (CDP) Notice; (2) making a § 6402 offset of an overpayment made by the requesting spouse; (3) filing suit against the requesting spouse in court; or (4) filing a claim for payment of the tax in any proceeding where the requesting spouse is a party or which involves property of the requesting spouse. Other actions that might be thought of as collection don't count, such as notice and demand, the filing of a Notice of Federal Tax Lien (NFTL) (although the IRS must send the CDP notice shortly after filing the NFTL.

Waiting more than 2 years after the first IRS collection jeopardizes spousal relief. The statute says that a taxpayer must seek subsection (b) or (c) relief within 2 years after the first collection action (listed above). Although the Treasury regulations also create a similar 2-year period for requests for equitable relief under subsection (f), the IRS has stated, in Notice 2011–70, that it will no longer enforce the regulation.

3. How the IRS Processes the Administrative Claim

Be sure to fill out the current version of the Form 8857, available on the IRS website. Send the Form to the Cincinnati Centralized Innocent Spouse Operation (CCISO) in the Covington, Kentucky IRS Campus. For clients under audit, or who have reached the point in the collection process where they get personal "service" from an IRS Revenue Officer, give a copy to the IRS employee. But the determination gets made in at the Cincinnati Centralized Innocent Spouse Operation (CCISO) in Covington, Kentucky. See IRM 25.15.8.2.2 (Collection Policy Decision) (08–17–2010). So always be sure to send it there.

The first action the IRS takes with each Form 8857 is to see whether it is filled out with enough information to make a determination. To be processable, the form must at least (1) identify the tax periods for which relief is requested; (2) identify the requesting spouse's taxpayer identification number; and (3) have a valid signature (one that says it is signed under the penalties of perjury). The IRS generally accepts faxed documents and considers faxed signatures valid. See IRM 25.15.7.5.2 (Screening Procedures) (02–25–2011). Competent practitioners, however, should give much more information than the bare minimum.

Once an IRS employee accepts a Form 8857 for processing, that employee will enter certain freeze codes in the requesting spouse's account to prevent further collection actions. See *e.g.,* IRM 25.15.8.5.2.2 (Processable Form 8857) (08–17–2010). That's the good news. The bad news is that the CSED is suspended for the period during which the IRS is prohibited from levying against the requesting spouse. See § 6015(e)(2).

After the IRS employee decides the submitted Form 8857 is processable, a CCISO employee will make a substantive decision about relief. That outcome will depend in part on how thorough a Form 8857 is presented. If the IRS denies relief, the requesting spouse has a right to go to theOffice of Appeals. Good information about representing a client in Appeals is here: *http://www.irs.gov/individuals/content/0,,id=98196,00.html.*

4. Judicial Review of the Administrative Procedure

If the IRS (including the Office of Appeals) denies a taxpayer's request for spousal relief, it is generally possible to petition the Tax Court for review of the IRS decision, unless the request for spousal relief was part of a claim for refund. In that latter situation, the proper court is a federal district court or the U.S. Court of Federal Claims.

Whether spousal relief arises as part of a deficiency proceeding, a CDP proceeding or a stand alone proceeding, the Tax Court now applies the same rules of procedure: it allows taxpayers to introduce new evidence and reviews the IRS decision *de novo.* In the past the Tax Court had different rules for different procedures but *Porter v.*

Commissioner, 132 T.C. 203 (2009) changed that and illustrates how judicial review works.

In *Porter,* Suzanne Porter asked for equitable relief from the tax and penalties relating to mis-reporting of an early IRA distribution taken by her ex-husband. The IRS denied relief. When Porter asked the Tax Court to review the case, the IRS argued that the Tax Court should use an "abuse of discretion" review. That is, the Court should (1) just consider the information that the IRS considered, and (2) defer to the IRS decision unless the Tax Court thought it was so wrong headed as to be an abuse of the IRS discretion. In contrast, Mrs. Porter asked the Tax Court to use a "de novo" standard of review. That is, the Court should (1) consider new information that she wanted to give, and (2) not defer to the IRS decision but instead make a completely independent decision.

Historically, the Tax Court had used de novo review for § 6015(b) and (c) cases, but it had reviewed denials of § 60 l 5(f) relief using abuse of discretion standard. That was because the language in the Code gave the Tax Court jurisdiction over (b) and (c) cases but not (f) cases. However, when Congress passed the Tax Relief and Health Care Act of 2006 (TRHCA), 120 Stat. 2922, 3061 (TRHCA), it explicitly gave the Court jurisdiction over stand-alone (f) petitions. The Court decided that it could apply the same standard of review for § 6015(f) relief cases as for (b) and (c) cases. Accordingly, in cases brought under I.R.C. § 6015(f), the Court now applies a de novo standard of review as well as a de novo scope of review.

Applying that standard in *Porter* the Court concluded that Ms. Porter was entitled to § 6015(f) equitable relief. The Court found that the factors favoring relief were: she and her husband were divorced; she would suffer hardship if relief were not granted; she didn't receive a significant benefit beyond normal support from the IRA distribution; and she diligently complied with income tax laws in later years. Factors against relief were that Porter had reason to know of the IRA distribution because it appeared on the face of their return. Despite that, the Court allowed relief; noting that while it had upheld similar denials of relief under the abuse of discretion standard, the Court was no longer required to defer so much to the IRS. The Court decided that Porter's knowledge of the item was outweighed by the other factors and was further tempered by the fact that she regularly inquired into her husband's :finances during the preceding year and he refused to answer or answered evasively.

The Ninth Circuit has recently upheld the Tax Court's decision that "de novo" review was the appropriate scope and standard for it to use in reviewing the Service's denial of spousal relief *Wilson v. Commissioner,* 705 F.3d 980 (9th Cir. 2013).

5. Reconsideration

The IRS has started a spousal reconsideration program, similar to audit reconsideration. See IRM 25.15.17. Generally, the IRS will reconsider a previously denied claim if the taxpayer shows that the taxpayer's previous request was denied because of some communication glitch. This is useful if a client tried to get relief on his or her own or if a client's spouse had previously sought administrative relief for the spouse and had failed, such as was the case in *Lantz v. Commissioner,* 132 T.C. 131 (2009), *rev 'd* 607 F.3d 479 (7th Cir. 2010) (jailed dentist tried to obtain spousal relief for his wife from deficiencies attributed to his income from Medicare fraud).

B. Seeking Relief Directly from a Bankruptcy Court.

One additional procedure to obtain spousal relief may be bankruptcy. Section 505 of the Bankruptcy Code allows a bankruptcy court to "determine the amount or legality of any tax." Bankruptcy courts have used this authority to hear and decide requests for spousal relief. Sometimes bankruptcy courts require the debtor to first file an administrative claim. See *In re Shafman,* 267 B.R. 709, 714–717 (Banla. N.D. W. VA. 2001) (after filing bankruptcy debtor filed adversary proceeding seeking spousal relief from the IRS and court had debtor first seek relief from IRS. IRS denial was reviewed (and in part reversed) by bankruptcy court). Sometimes they do not. See *In re Hinckley,* 256 B.R. 814 (Banla. M.D. Fla. 2000) (debtor requested relief in an objection to IRS tax claim and court ruled on issue without requiring administrative determination, granting relief). See also *In re Waggoner,* 100 A.F.T.R.2d (RIA) 6426 (Bankr. N.D. Tex. 2007) (debtor sought spousal relief in an adversary proceeding and court rejected the IRS defense that the debtor had not first sought administrative relief).

As a statutory matter, there is no reason a bankruptcy court cannot, independently of the IRS, decide a request for spousal relief under either 6015(b) or (c). However, because the statutory language in 6015(f) says that "the Secretary may relieve such

individual of such liability," bankruptcy courts have declined to make any independent judgment, but instead require the taxpayer to seek relief first from the IRS and then review the IRS decision under a more deferential standard than the Tax Court uses. See *In re Cummings,* 2005 Bankr. LEXIS 2040 (Bankr. S.D. Fla. 2005).

C. Procedural Problems to Watch For.

The reasonable practitioner should be aware of several procedural problems (or traps).

1. The 2-year rule for § 6015(b) and (c) relief

In order to obtain relief under § 6015(b) or (c), the requesting spouse must ask at the right time, which is the 2-year period after the Service initiates collection action against the requesting spouse. This 2-year rule creates some problems. Recall that Treas. Reg. 1.6015–5 says that the 2 year period begins to run from the earliest of the following IRS actions: (1) sending the requesting spouse a § 6330 Collection Due Process (CDP) Notice; (2) making a § 6402 offset of an overpayment made by the requesting spouse; (3) filing suit against the requesting spouse in court; or (4) filing a claim for payment of the tax in any proceeding where the requesting spouse is a party or which involves property of the requesting spouse. This generally means a federal bankruptcy proceeding, although it might also include a state receivership proceeding or a probate proceeding.

The problem is that your client will not always know when the 2-year period has started. It is particular difficult to tell when the IRS may have performed a setoff of an overpayment that starts the 2-year period. That is why it is critical to obtain the account transcript for the years the requesting spouse seeks relief Only a transcript will reveal whether and when the IRS has taken one of the collection actions that trigger the 2-year period.

2. The One Bite Rule in § 6015(g)

The best way to think of the § 6015(g) rule is to recall the difference between claim preclusion and issue preclusion. Claim preclusion operates to deny a litigant the ability to re-litigate a "claim" regardless of whether the litigant has new legal arguments or new evidence regarding that claim. Claim preclusion bars re-litigating any matter that was actually raised or that **could have been raised** in the prior proceeding. In contrast, issue preclusion operates to bar re litigation of a particular legal issue when that issue was **actually** raised and litigated in a prior proceeding.

Section 6015(g) establishes a rule of issue preclusion. Section 6015(g) basically says that taxpayers get only one chance to ask for spousal relief from a court, whether under subsections (b), (c), or (f). Specifically, 6015(g) says that if a taxpayer "participated meaningfully" in any judicial proceeding where a court actually considered the issue of spousal relief: then that taxpayer is barred from asking any other court for relief.

The problem is knowing when taxpayers have taken that first bite. This problem comes up in many ways. It most commonly arises when the IRS has audited a return and the couple contests the proposed deficiency in Tax Court. If both spouses are parties to the petition, then it may be difficult for either spouse to later ask for spousal relief because they were supposed to do it as part of the deficiency proceeding. The problem is what does "participated meaningfully" mean? The Tax Court has a good discussion of this in *Deihl v. Commissioner,* 134 T.C. 156 (2010). In that case, the taxpayer and her husband were petitioners for petitions covering 3 years: 1996, 1997, and 1998. The 1996 pleadings had raised the issue of § 6015 relief, but the taxpayer withdrew her claim for innocent spouse relief in the stipulation of facts. Neither of the petitions for 1997 and 1998 raised the issue. The Tax Court decided that (1) the issue was not actually raised because it was not in the pleadings for two of the years and it got dropped as uncontested in the other year, and (2) the taxpayer did not participate meaningfully in the deficiency.

This case has a pretty good discussion of what counts for meaningful participation. You can see that by why the Court thought Mrs. Deihl had not participated meaningfully in the deficiency proceeding:

> Petitioner, who is not an attorney and did not complete her high school education, did not sign any court documents in the consolidated cases. She did not review the petitions or the stipulations of facts, nor did she agree to any of the stipulations. Mr. MacPherson and Mr. Hartmann did not discuss these documents with petitioner. In fact, she saw them for the first time at trial in the present matter. Petitioner did not meet with any IRS personnel, participate in any settlement negotiations with the IRS, or sit in on any such meetings be-

tween her attorneys and the IRS during the litigation in the consolidated cases. However, petitioner was called as a witness in the 2004 trial and testified briefly about certain expenses for entertainment and computers deducted by her and Mr. Deihl's S corporation.

Another time this problem comes up is when the IRS denies a claim, the taxpayer does not appeal, and then the taxpayer later submits a new claim for spousal relief Can the taxpayer avoid the one-bite rule by failing to appeal the first denial? The regulations say no. A requesting spouse is entitled to only one final administrative determination of relief for a given assessment, unless the spouse was still married at the time of the first request and so did not qualify for (c) relief In that case the taxpayer can later ask for (c) relief and take an appeal See the discussion in *Barnes v. Commissioner,* 130 T.C. 248 (2008), where the court dismissed a §6015(f) claim because the IRS had previously denied what was essentially the same claim and the taxpayer had not appealed that denial

3. The Intervening Spouse

In *Nunez v. Commissioner,* T.C. Memo 2012–121, the tax liability arose from the operation of a California business. The issue was whether the requesting spouse met the 7th "threshold" conditions for relief in Rev. Proc. 2003–61, §4.01, that the tax liability be solely attributable to the non-requesting spouse unless the reason the requesting spouse had joint liability was solely because of community property law. Ms. Nunez claimed that income and expense items were attributable to her solely due to the operation of California's community property law. Her ex-husband had asked to intervene during the administrative process but had not responded to either of two letters asking for information and so Appeals closed the case by offering the taxpayer full relief. Eventually, the ex-husband contacted Appeals and convinced them that the requesting spouse was co-owner of the business and so Appeals changed its decision to a grant of 50% relief rejecting her testimony that she was listed on the business documents only because of California law.

The taxpayer rejected the offer of partial relief and sought review in the Tax Court. Again, the ex-husband intervened and his testimony helped convinced the Tax Court that the requesting spouse was not only the co-owner but that she had actively participated in the business. The Court concluded: "After weighing the testimony and evidence in this fact-intensive and nuanced case, we hold petitioner is not entitled to relief from joint and several liabilities for the joint income tax for each of the years at issue."

4. Representing Non-Requesting Spouses

Non-requesting spouses face problems as well. Rev. Proc. 2003 19; 2003 1 C.B. 371 sets out the rights of non-requesting spouses. Basically, the non-requesting spouse can participate in the administrative process but has only limited rights to judicial review.

Specifically, if the requesting spouse gets an administrative denial and takes it to Tax Court, the non-requesting spouse can intervene and participate (if the non-requesting spouse learns of the Tax Court petition). See *King v. Commissioner,* 115 T.C. 118 (2000) in which a non-requesting spouse was allowed to intervene. See also T.C. Rule 325.

However, if the IRS grants relief administratively, there is precious little the non-requesting spouse can do about it. In *Maier v. Commissioner,* 119 T.C. 267 (2002), The IRS granted relief under §6015(f) to Judith Maier during the administrative proceedings. Husband John Maier filed a petition in Tax Court seeking a redetermination of the innocent spouse relief to Judith. Noting that it is a court of limited jurisdiction, the Tax Court held that if the Judith did not file a petition for review of the Internal Revenue Service determination, John could not file a petition and oppose the administrative determination granting relief as Congress had not given the Tax Court with jurisdiction to hear his case.

V. RECENT DEVELOPMENTS

A. Changes in Equitable Factors.

On January 5, 2012, the Internal Revenue Service (IRS) released Notice 2012–8, 2012–4 I.R.B. 309, which proposed a revenue procedure that, if finalized, would revise the factors the IRS will use to evaluate a requesting spouse's claim for equitable relief under section 6015(f) and would supersede Rev. Proc. 2003–61.

Notice 2012–8 states that, "until the revenue procedure is finalized, the Service will apply the provisions in the proposed revenue procedure instead of Rev. Proc. 2003–

61 in evaluating claims for equitable relief under section 6015(f).” As of the date this Article was submitted, the IRS has not issued a final Rev. Proc. that supersedes Rev. Proc. 2003–61. However, Notice 2012–8 also states that a taxpayer requesting relief can choose either set of factors to be evaluated under. The major conceptual change in the Notice was to take what had been a separate factor—abuse—and use it instead to ameliorate the knowledge factor.

In *Sriram v. Commissioner,* T.C. Memo. 2012–91 the Tax Court said it would “continue to apply the factors in Rev. Proc. 2003–61, 2003 2 C.B. 296, in view of the fact that the proposed revenue procedure is not final and because the comment period under the notice only recently closed.”

B. Elimination of the 2-Year Period for Requesting (f) Relief.

Treas. Reg. § 1.6015–5(b)(1), implemented by Revenue Procedure 2003–61, § 4.01(3) both provide that a requesting spouse must file a claim for equitable relief (whether under § 6015(f) or § 66(c)) no later than 2 years after the date of the Service’s first collection activity.

The Tax Court had consistently held that the Treasury Regulation was invalid. Just as consistently, it was overruled by Circuit Courts of Appeal See Bryan T. Camp, *Interpreting Statutory Silence,* 128 Tax Notes 501 (August 2, 2010). On April 18, 2011 three U.S. Senators and forty-nine Congressmen sent letters to IRS Commissioner Douglas Shulman urging the IRS to reconsider its position of applying a two year limitations period to § 6015(f) relief requests. The Congressmen reasoned that the IRS was violating “the spirit of the law,” which was intended to make it easier for taxpayers to apply for innocent spouse relief. The Senators wrote that “the 2-year limitation served to deny equitable relief to the very taxpayers the law was designed to reach.”

The Service responded with Notice 2011–70, saying it would not enforce the regulatory 2-year rule. Sure enough, in § 4.01(3) of Notice 2012–8, the Service has proposed removing the 2-year rule from its evaluation of § 60 l 5(f) claims. Instead, the Notice provides that requests for equitable relief under § 6015(f) or § 66(c) must be filed before the expiration of the period of limitation for collection under § 6502, or, if applicable, the period of limitation for credit or refund under section 6511.

C. Ninth Circuit Upholds Tax Court De Novo Standard and Scope of Review.

Wilson v. Commissioner, 705 F.3d 980 (9th Cir. 2013) is a Ninth Circuit case where the panel spit 2–1 over whether the Tax Court properly reviewed the IRS decision to deny spousal relief to Ms. Wilson. In its review the Tax Court had considered new evidence presented by Ms. Wilson that she had not presented during the consideration of her case by the IRS Office of Appeals. The Tax Court also applied a de novo standard of review, essentially substituting its judgment for the IRS’s judgment. In light of the new evidence, the Tax Court decided that Ms. Wilson was eligible for relief.

The government appealed two issues: (1) whether the Administrative Procedure Act limited the Tax Court’s review to only such information as was in the administrative record; and (2) whether, since the grant of § 6015(f) relief was discretionary on the part of the IRS, the Tax Court could just substitute its judgment for that of IRS, or must instead simply review the decision to ensure the IRS did not abuse its discretion.

As to the first issue, the Ninth Circuit found it of great significance that when Congress gave the Tax Court jurisdiction to “determine” § 6015(f) “petitions” for relief it used the words “petition” and “determine” rather than “appeal” in § 6015(e). The Circuit then explained that giving the Tax Court the ability to hear new evidence made sense in light of the statutory placement of the Tax Court in tax administration and said that not to allow the Tax Court the ability to hear new evidence and conduct a de novo hearing in § 6015(f) stand-alone petitions would create an anomaly with the Court ability to do so when § 6105(f) relief was raised during a deficiency proceeding.

As to the second issue, the Ninth Circuit again decided to read the “plain” language of § 6015(e) as allowing the Tax Court to apply a de novo standard of review. Here the word was “determine” which the Ninth Circuit thought was good enough. The court agreed with the government that it was illogical for the Tax Court to “review” the IRS decision for abuse of discretion on the basis of evidence that the taxpayer may not have presented to the IRS during the administrative process. However,

since the Tax Court acted properly to allow new evidence, this logic cut against the government's contention that the Tax Court was limited to abuse-of-discretion review.

QUESTIONS SUBMITTED FOR THE RECORD TO ELIZABETH ANN COPELAND

QUESTION SUBMITTED BY HON. JOHN THUNE

Question. Some have criticized the Tax Court for restricting access to court documents, when similar documents are publicly available in cases being heard by Federal District and Circuit Courts. I understand that steps would have to be taken to protect taxpayers who are representing themselves so that personal information is not accidentally disclosed. What are your views on whether the Tax Court should move to public electronic access via the Internet to court documents in order to increase the transparency of the Tax Court's proceedings?

Answer. Transparency of United States Tax Court (the "Tax Court") proceedings is an important goal. As you note, the Tax Court takes a restrictive approach to access, only allowing online public access to its own orders and decisions. In analyzing the issue of electronic access, I would bring to the Tax Court my perspective as a practitioner working outside of the DC area, who, on occasion, needs access to Tax Court documents. I understand the important task of protecting personal information present in most Tax Court proceedings. Unrepresented taxpayers make up a very large percentage of the Tax Court's docket and have often failed to properly redact personal information such as social security numbers from pleadings, motions and other court filings. Attorneys representing taxpayers have likewise inadvertently failed to redact social security numbers and other personal information. If confirmed, I would work with Tax Court staff to achieve the benefit of electronic access without creating the risk of accidentally disseminating personal taxpayer information.

QUESTION SUBMITTED BY HON. BILL NELSON

Question. Given all of the glitches and general confusion created by the new tax law (Pub. L. 115–97), how do you plan to help ordinary Americans navigate these waters and resolve any complications brought on by the new tax law?

Answer. The new tax law (Pub. L. 115–97) is indeed complex and will present challenges to taxpayers. Before passage of the law, it was already procedurally difficult for taxpayers to navigate the Internal Revenue Code. If confirmed, I would respectfully allow taxpayers to present their facts and understanding of the law and provide government attorneys the same courtesy. I would encourage those who are unrepresented to seek the help of free legal counsel provided by low income taxpayer clinics and state bar association attorneys who volunteer their time at Tax Court calendar calls in order to understand how Pub. L. 115–97 affects their tax matter. I would strive to issue timely and clearly written opinions interpreting the text and Congressional intent of the law to assist both taxpayers and the government in its understanding and application.

PREPARED STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH

WASHINGTON—Senate Finance Committee Chairman Orrin Hatch (R–Utah) today delivered the following opening statement at a hearing to consider pending trade and tax nominations.

Today, we will have an opportunity to hear from nominees for three trade policy positions, and two nominees to be tax judges.

Each of these positions is key in enforcing the work and legislation we produce from this committee.

Our first nominee is Mr. Jeffery Kessler, who has been nominated to serve as Assistant Secretary for Enforcement and Compliance at the Department of Commerce.

This is a position that is responsible for administering anti-dumping and countervailing duty trade laws and ensuring compliance with trade agreements negotiated

on behalf of U.S. industries. If confirmed, Mr. Kessler will need to fully and faithfully administer U.S. trade remedy laws.

As I have said before, it is important that the Department of Commerce consult closely with Congress and members of this committee.

And, frankly, there is room for improvement in that department.

I expect Mr. Kessler to be an asset in improving that relationship.

Today we also have two tax judges, Ms. Elizabeth Ann Copeland, and Mr. Patrick J. Urda.

The Tax Court is important for many reasons, not the least of which is that it allows taxpayers to challenge a liability before paying it.

It is a venue for everyone, from large corporations to individual taxpayers, to get a fair and impartial hearing when a disagreement arises with the Internal Revenue Service.

We are honored today to be joined by Chief Judge Maurice Foley, Judge Tamara Ashford, Judge John Colvin, Judge Albert Lauber, Judge Cary Pugh, and Special Trial Judge Diana Leyden.

Thank you all for attending today.

Just last year, we signed into law the Tax Cuts and Jobs Act. As the largest reform of the tax code in more than three decades, we recognize there will potentially be some large questions for the Tax Court.

More than ever, we need brilliant minds to do this important work.

Given their credentials, I trust that Ms. Copeland and Mr. Urda will be just what our country needs for the Tax Court to continue to give taxpayers a fair hearing as the TCJA is implemented.

Finally, we also have before us two nominees to the International Trade Commission, Ms. Amy Karpel, and Mr. Randy Stayin.

Ms. Karpel and Mr. Stayin, as nominees to be commissioners of the International Trade Commission, you will play an important role in administering our trade remedy laws, and providing Congress and the administration with unbiased, independent analysis.

This work is becoming more important than ever, as trade has become an increasingly larger part of our economy, and businesses of all sizes rely on imports and exports.

I expect that each of you will continue the good work of the ITC in administering our trade remedy laws in a fair and unbiased manner.

I want to thank all five of you for your dedication to our country and your willingness to serve.

As I've looked through each of your respective resumes, it's clear that the President has selected individuals who are well-qualified to serve in these important posts.

And I hope to see each of you working to improve our country as soon as practicable.

PREPARED STATEMENT OF AMY KARPEL, NOMINATED TO BE A MEMBER OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION

Chairman Hatch, Ranking Member Wyden, members of the Finance Committee, I am honored to appear before you today as the President's nominee for the position of Commissioner on the U.S. International Trade Commission.

I would like to introduce the members of my family who are here today: my husband Sloane Strickler, my mother Ann Larson, my brother-in-law Andrew Strickler, and my mother-in-law Jo Harriet Haley. I also want to acknowledge those members of my family who couldn't be here today: my father John Karpel, my sister Jennifer Seoane, and lastly my daughter Haley, who is currently enjoying her last week of preschool. I want to thank all of them for their love and support during the confirmation process and over the years.

I am also grateful to Senate Minority Leader Schumer and Senator Wyden for proposing my appointment as Commissioner. I also want to thank Senator Cantwell for her kind introduction and the President for nominating me. I greatly enjoyed meeting individually with members of this committee leading up to today's hearing and thank them for their time and insights.

I am honored to be nominated for Commissioner because of the important work the Commission does. The Commission is entrusted with the fair, timely and objective administration of our trade remedy laws, including in respect of violations of intellectual property rights. Vigorous enforcement of our trade remedy laws is important because of the relief it provides to help keep U.S. workers employed and U.S. businesses functioning in the face of unfair trade. It is also important because of the role it plays in helping make the case for international trade more broadly. International trade touches nearly all sectors of our economy and is vital to the strength of our economy and the livelihoods of the workers and businesses it supports. If there is not strong enforcement of our trade remedy laws when trade is not fair and when workers or businesses are hurt by trade, it is hard to make that case. If confirmed as Commissioner, I will administer these laws fairly, objectively, and as Congress intended.

The Commission is also responsible for providing the administration and Congress with objective, expert fact-finding studies and analysis on tariffs, trade and U.S. competitiveness. These studies serve as an independent source of information and analysis for policy makers as they develop and implement trade policy. If confirmed, I commit to carry out this responsibility as Congress intended and to safeguard the independence of the Commission. I will also, if confirmed, work with my fellow Commissioners to be responsive to congressional requests for information.

I believe my upbringing, background, and experience have prepared me well for the position of Commissioner. I grew up in Washington State along the shores of the Puget Sound. I could see the port of Olympia in the distance from our house. Container ships and tug boats pulling barges full of logs were a regular feature passing by our house. I was raised by my mother and father, and spent a lot of time with my maternal grandmother. My grandmother split her time between St. Louis and her husband's farm in rural Illinois, and when we were kids, my sister and I used to visit in the summers. My grandmother would prod us awake at 7 a.m., chiding that we were "sleeping the day away." Lazy was not something you were allowed to be in our family. My parents worked hard, both in their occupations and in life, and modeled the importance of doing your part to improve the world around you. They raised my sister and I to do the same.

Since leaving Washington State, I have spent more than 20 years studying and working on international trade issues. I have worked in private practice representing U.S. workers and businesses in trade remedy proceedings. And I have worked in public service for almost 13 years, serving most recently as Chief Counsel at the Office of the U.S. Trade Representative. Each of these capacities involved working with the laws the Commission is entrusted to administer, first as an advocate for clients petitioning for relief under those laws and then as a policy maker relying on the sound and objective information and analyses those laws call on the Commission to provide.

And I now look forward, if confirmed, to continuing in public service as a Commissioner on the International Trade Commission. In this role I would not be an advocate or a policy maker as in my previous positions. Instead, I would be a fair, objective, and impartial adjudicator and an independent source of expert information and analysis. It would be an honor to serve in this capacity.

Thank you for your consideration.

SENATE FINANCE COMMITTEE

STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Amy Karpel.

2. Position to which nominated: Commissioner, U.S. International Trade Commission.

3. Date of nomination: February 27, 2018.

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

5. Date and place of birth: Springfield, MO; June 7, 1974.

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

7. Names and ages of children:

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

   Capital High School, 1988–1992, high school diploma received/granted June 1992.

   University of Washington, Jackson School of International Studies, 1992–1996, B.A. with honors received/granted June 1996.

   American University, Washington College of Law, 1996–1999, J.D. received/granted May 1999.

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):

   The Limited, Sales Clerk, Washington, DC, July 1997–April 1998.

   American University, Residence Hall Desk Clerk, Washington, DC, January 1997–May 1997.

   Law Offices of Stewart and Stewart, Law Clerk, Washington, DC, June 1998–April 1999.

   Law Offices of Stewart and Stewart, Associate, Washington, DC, September 1999–April 2004.

   Office of the United States Trade Representative, Assistant/Associate General Counsel, Washington, DC, April 2004–January 2011.

   Office of the United States Trade Representative, Director for Environment and Natural Resources, Washington, DC, January 2011–October 2012.

   Office of the United States Trade Representative, Chief Counsel for Negotiation, Legislation, and Administrative Law, Washington, DC, October 2012–February 2017.

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):

    Federal Communications Commission, Legal Intern, Washington, DC, July 1997–August 1997.

    U.S. Department of State, Legal Extern, Washington, DC, January 1998–May 1998.

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 of the New York Bar (admitted January 2000); Member of the District of Columbia Bar (admitted April 2001).

    Ambassador (volunteer) for the Greater DC Diaper Bank (I will resign upon my confirmation).

    Member of the American Bar Association (approx. 2000–2006).

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.

I believe I contributed to President Obama's presidential campaigns but cannot recall the amounts; it was likely in the $50–$100 range.

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):

I received two small academic-based scholarships while at the University of Washington, one for Phi Beta Kappa, and one I believe was called a Certificate of High Scholarship.

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

Co-author, *Rules in a Rules-Based WTO: Key to Growth; The Challenges Ahead* (Transnational Pub. 2002).

Co-author, "Handbook of WTO/GATT Dispute Settlement" (Transnational Pub. 2003) (Pierre Pescatore and Stewart and Stewart eds.).

Terence P. Stewart and Amy Ann Karpel, "Review of the Dispute Settlement Understanding: Operation of Panels," 31 *Law and Pol'y Int'l Bus.* 593–655 (2000).

Amy Ann Karpel, "The European Commission's Decision on the Boeing McDonnell Douglas Merger and the Need for Greater U.S–EU Cooperation in the Merger Field," 47 *Am. U.L. Rev.* 1029 (1998).

16. Speeches (list all formal speeches you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated):

None.

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

I have nearly 2 decades of experience in trade law and policy, initially as a law clerk and attorney for nearly 6 years with the Law Offices of Stewart and Stewart representing U.S. companies and workers in trade remedy proceedings and later as an attorney and policy adviser for nearly 13 years at the Office of the United States Trade Representative (USTR). From my years of public service at USTR and in the private sector working on behalf of U.S. companies and workers, I have a deep knowledge of U.S. trade law and policy across a wide range of trade and trade-related issues, as well as the process by which trade laws and policies are developed and implemented within the United States. While at Stewart and Stewart I represented U.S. companies and workers in antidumping and countervailing duty proceedings, including investigations before the U.S. International Trade Commission. While at USTR, I served as Chief Counsel where I managed a staff of over 30 attorneys on a range of trade law and policy issues, including with respect to USTR's policy review of U.S. International Trade Commission section 337 determinations. In addition, at USTR, I advised senior USTR officials on the application of U.S. trade law and the negotiation and implementation of U.S. trade agreements, drafted and negotiated U.S. trade agreements, and regularly engaged with other regulatory agencies, congressional staff, and members of the public on a range of regulatory and legislative matters affecting U.S. trade law and policy.

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.)

No conflicts of interests. I will resign as an Ambassador for the Greater DC Diaper Bank upon my confirmation.

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.

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.

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.

QUESTIONS SUBMITTED FOR THE RECORD TO AMY KARPEL

QUESTIONS SUBMITTED BY HON. RON WYDEN

TRADE ENFORCEMENT—GENERAL

Question. I am committed to standing up for all American workers through tough trade enforcement. It is absolutely vital—to my home state of Oregon and to the American people—that our country fully enforces its trade laws and addresses unfair trade. Our trade enforcement has sometimes been too slow or too weak to keep up with the cheats who seek to undermine our domestic industries. In 2015, Congress made clear the importance of tough enforcement when it passed Senator Brown's bill, the Leveling the Playing Field Act, a package of substantial improvements to U.S. enforcement laws.

Will you commit to fully applying that law so U.S. workers and companies can get relief from unfairly traded imports?

Answer. Yes, if confirmed, in making determinations in trade remedy proceedings, I commit to fully enforcing the U.S. antidumping and countervailing duty laws, which were designed to provide relief to U.S. workers and businesses hurt by dumped or subsidized imports.

TRADE ENFORCEMENT AT THE ITC

Question. Too often, trade relief is too little, too late for hard-working Americans facing unfair trade. In 2015, Congress amended the definition of material injury and the factors the International Trade Commission ("ITC") examines in evaluating injury to prohibit the ITC from finding that there has been no injury merely because an industry happens to be profitable or if its financial situation has recently improved. For a range of Oregon industries—including softwood lumber, solar, and steel producers—this clarification is critical to ensuring that companies can get relief while they are still in the black and *before* they are on life support.

Do you agree that a domestic industry may suffer material injury from dumped and subsidized imports even though it manages to remain profitable or its performance has improved? Do you agree there are circumstances in which the Commission could find material injury where an industry would have done better, but for dumped and subsidized imports?

Answer. Yes. The 2015 amendments to title VII of the Tariff Act of 1930 (codified at 19 U.S.C. 1677(7)(J)) make clear that an industry may be materially injured by dumped or subsidized imports even though it remains profitable or its performance has recently improved. If confirmed, in making determinations in antidumping and countervailing duty investigations, I commit to applying the law as Congress intended.

DIGITAL TRADE

Question. Digital Trade is increasingly important to all aspects of the U.S. economy. The Internet sector alone reportedly accounts for more than five million jobs, and this does not count all of the manufacturers and small businesses that rely on digital trade. In recent years, the ITC, at my request, has done important analysis

of barriers to digital trade, an issue of importance to my constituents in Oregon. The first of three reports on this subject was released to the public in September 2017; the second is expected this fall; and the third is due to be delivered in spring 2019.

Do you view as important the ITC's studies of barriers to digital trade? Will you commit to continued analysis of these issues?

Answer. Yes, the ITC's studies on barriers to digital trade are very important. Digital trade and technologies are transforming business and international trade and are helping fuel economic growth in the United States and globally. Yet, many countries have imposed regulatory and policy barriers that slow or halt the adoption of digital technologies and digital trade flows. If confirmed, I commit to continuing these studies and undertaking additional analysis of these issues if requested by the Senate Finance Committee, House Ways and Means Committee or the U.S. Trade Representative.

ITC INDEPENDENCE AND OBJECTIVITY

Question. The ITC is charged with providing technical advice on trade policy issues to USTR and to both this committee and the House Ways and Means Committee. The Commission has rightly prided itself in the past on the objective, thorough, non-partisan nature of its advice to these entities.

Can you commit to this committee that you will do your utmost to ensure the ITC's analysis will be independent and thorough, not rushed, and that the process will be driven by substance, rather than political pressure?

Answer. Yes, if confirmed, I commit to do my utmost to safeguard the independence of the Commission and ensure its analysis is thorough, not rushed (but timely) and driven by the law and facts and not political pressure.

CONSULTATION WITH AGENCIES IN SECTION 337 INVESTIGATIONS

Question. Section 337 of the Tariff Act of 1930 requires the Commission to consult with other Federal departments and agencies—including the Federal Trade Commission—during the course of its section 337 investigations. The FTC and other Federal agencies will often have critical insights about the potential impact of section 337 investigations on competition, including how to maintain vibrant and competitive U.S. domestic industries.

Will you commit to me that, if you are confirmed, the International Trade Commission will consult closely with the FTC and other agencies on cases where the U.S. public interest is at issue?

Answer. Yes, if confirmed, I commit to ensure that, in analyzing the public interest in section 337 investigations, the ITC will "consult with, and seek advice and information from, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it considers appropriate" (19 U.S.C. 1377(b)(2)).

ASSESSING THE BALANCE OF TRADE

Question. In making assessments about the balance of trade between the United States and its trading partners, the President only takes into account the trade in goods, and does not include trade in services, even though the United States is a global leader in providing high-level services to the world.

In your view, shouldn't services exports be included in assessing whether our trade relationship with other countries is balanced?

Answer. The United States is the world's largest services market and the largest cross-border services exporter and importer. U.S. exports of services in 2017 totaled nearly $798 billion, giving the United States a $255 billion dollar trade surplus in services. Services trade is clearly a fundamental and critical part of U.S. trade and the U.S. trade balance, and any full assessment of the U.S. trade relationship with other countries should include services. If confirmed, I commit to conducting assessments of the U.S. trade relationship with other countries, in accordance with U.S. law and as may be requested by the Senate Finance Committee, House Ways and Means Committee, or the U.S. Trade Representative.

QUESTIONS SUBMITTED BY HON. SHERROD BROWN

Question. My bill, the Leveling the Playing Field Act, became law in 2015 and strengthened U.S. trade remedy statutes. One specific provision of the law expanded the criteria the ITC must consider when evaluating industry and clarified that an industry can be profitable but still be injured by imports. These provisions were enacted to ensure that U.S. businesses and workers could obtain relief from unfair trade practices without having to close their doors or lose their jobs.

If confirmed, will you commit to fully implementing the Leveling the Playing Field Act, including the changes to injury criteria, as Congress intended?

Answer. Yes. The 2015 amendments to title VII of the Tariff Act of 1930 make clear that an industry may be materially injured by dumped or subsidized imports even though it remains profitable or its performance has recently improved. If confirmed, in making determinations in antidumping and countervailing duty investigations, I commit to applying the law as Congress intended.

In making its injury determinations, the ITC decides whether U.S. industries and workers obtain relief from unfair trade practices.

Question. If confirmed, will you commit to applying trade remedy law in a way that ensures there is a real remedy available to industries and workers who are adversely affected by unfair trade practices?

Answer. Yes, if confirmed, I commit to applying the trade remedy laws as Congress intended to provide relief to domestic industries materially injured by dumped or subsidized imports.

Sometimes when U.S. petitioners file trade remedy cases, foreign competitors will flood the market with products to beat any antidumping or countervailing duties that may be applied. A provision in U.S. statute called critical circumstances is intended to provide relief to the U.S. industry in this instance.

Question. Will you commit to interpreting the law as Congress intended and providing retroactive relief when the statutory test for critical circumstances is met?

Answer. "Critical circumstances" is a provision in the antidumping and countervailing duty laws that allows for retroactive imposition of duties if certain conditions are met. Affirmative determinations of critical circumstances, by both the Department of Commerce and the Commission, result in the retroactive imposition of duties on unliquidated entries entered on or after the date which is 90 days prior to the date the duties would normally be levied. If confirmed, I commit to applying this provision as Congress intended and providing such relief when the statutory criteria are met.

QUESTION SUBMITTED BY HON. JOHN THUNE

Question. I support the administration's efforts to address unfair trade practices that are harming U.S. industries. However, I am concerned about the impact that anti-dumping and countervailing duties can have on U.S. users of the product as a result of antidumping investigations.

Do you think the International Trade Commission's determination on an antidumping duty investigation should include an analysis of the economic impact to the U.S. consumers of the product that will be affected by the duties in instances where the ITC reaches affirmative determinations?

Answer. The focus of the antidumping law as written by Congress is to provide relief to domestic industries that are materially injured by dumped or subsidized imports. The law does not make the impact that an antidumping order may have on consumers or downstream industries a relevant factor in the Commission's analysis of whether a domestic industry is injured by dumped or subsidized imports, and if confirmed, I would be bound to apply the law as Congress intended. I know that consumers and downstream industries of products can be affected by the imposition of antidumping duties on those products, and the antidumping law directs the Commission in its investigations to provide an opportunity for consumers and industrial users to submit relevant information concerning material injury to the domestic industry by reason of dumped or subsidized imports.

QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

Question. Accurate and detailed trade data is necessary for private businesses to track imports and exports of their products as well as for government agencies to administer trade policy. Section 484f of the Tariff Act of 1930 provides authority for the Secretary of Treasury, the Secretary of Commerce, and the USITC to adopt statistical reporting numbers for these purposes.

What is your understanding of the current process used by the USITC to evaluate requests from industry to adopt more detailed statistical reporting numbers than presently exist? What factors do Treasury, Commerce, and the USTIC take into consideration when evaluating such a request from domestic industry? When such a request is denied, what opportunities exist for domestic industry to appeal the ruling?

Answer. Any interested entity, foreign or domestic, may request under section 484(f) that tariff categories be adopted or modified to gather data of particular interest. Requests to the 484(f) Committee, comprising the USITC, the U.S. Customs and Border Protection (CBP) and the U.S. Department of Commerce's Bureau of the Census (Census Bureau), are accepted based on two deadlines: March 15th, for HTS and Schedule B provisions to take effect on the following July 1, and July 15th, for HTS and Schedule B provisions to take effect on the following January 1st.

After the USITC does an initial review of a request to ensure it is complete and contains no confidential information, CBP reviews each request to verify the correct tariff classification of the covered good or goods and the description's administrability. The USITC and CBP work with the requesting party to resolve any issues identified in either agency's respective review, and then USITC sends the request to the Census Bureau. The Census Bureau does a survey to determine the annual level of trade in the product or products that are the subject of the request, to ensure that publishing the statistical data requested would not disclose confidential information, by having too few firms reporting shipments. At the same time, USITC's Office of Industries assesses the potential benefits to the domestic industry/trade of granting the request and the feasibility of reporting data as requested. A summary of the Census Bureau's and the USITC's Office of Industries' assessments is made publicly available in the committee's minutes. If the relevant tests are met, the request will generally be granted.

The 484(f) Committee meets, usually in late May and in mid-October, to discuss the requests received and determine which ones to grant and which ones to deny. The following criteria are used in the 484(f) Committee's decision-making process:

- Each proposed 10-digit non-legal statistical category must cover an individual good, or a grouping of goods, typically having $1 million in annual trade.
- The requested annotation must have a clear and administrable description and commonly used units of quantity.
- There must be at least 3 importers or exporters reporting shipments in the requested statistical category on an average monthly basis to avoid disclosure of confidential information.

After the committee meets, the committee provides feedback in writing to each requestor on the committee's decision. If a request is denied, follow-up discussions can be arranged with committee members to see if a request can be modified or supplemented to meet the tests above. In such cases, the requestor may resubmit the request as soon as the next committee cycle, taking into account the reasons the committee denied the original request. As noted above, requests meeting these tests are generally granted. Governmental requests relating to program needs can be processed off-cycle, for example to administer antidumping or countervailing duty orders.

QUESTION SUBMITTED BY HON. JOHN CORNYN

Question. There will soon be billions of computing and communications devices that depend on 5G technology, including devices that the U.S. Government, private companies, and consumers use for critical applications and infrastructure. The United States cannot afford to let other nations lead the race to develop and implement 5G technology.

Can you commit that you will take into consideration the national security imperative of the United States having a domestic supply base that can lead the world

in the development of 5G technology and products when hearing cases before the ITC?

Answer. The section 337 statute states that "if the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry." If confirmed, I commit that, in any section 337 investigation before me, I will apply the section 337 statute as Congress intended along with any applicable case law to the facts of the investigation, including with respect to any national security issues that may be relevant to the Commission's examination of the public interest.

QUESTIONS SUBMITTED BY HON. PATRICK J. TOOMEY

Question. I have serious concerns about the administration's decision to use the pretext of a national security concern to raise taxes on imported steel and aluminum products. This policy will inevitably increase costs on Pennsylvania consumers, workers, and employers. Moreover, the section 232 tariffs punish some of our Nation's closest allies, including the European Union, Canada, and Mexico, and will invite retaliation on U.S. goods and services.

As you know, the International Trade Commission (ITC) conducts sunset reviews every five years on existing antidumping (AD) and countervailing duty (CVD) orders to determine whether revocation of those orders would likely cause material injury to the domestic industry. During these investigations, Federal statute requires that the ITC take into account relevant economic factors within the context of the business cycle and competitive factors that are distinctive to the affected industry. As a result, future sunset reviews will likely be affected by the recently imposed section 232 tariffs on steel and aluminum, which are applied in addition to AD/CVD duties already in effect. For example, if a 25-percent steel tariff is imposed under section 232 on a product that is also under an AD/CVD order, then the tariff may reduce the likelihood that future imports of that product will injure the domestic industry, and thus the AD/CVD duty is no longer needed.

If confirmed, how will you account for the recently imposed section 232 tariffs on steel and aluminum during the ITC's 5-year sunset review process? Do you anticipate that some AD/CVD orders will be rescinded due to the section 232 tariffs?

Answer. The antidumping and countervailing duty statutes direct the Commission to "evaluate all relevant economic factors within the context of the business cycle and the conditions of competition that are distinctive to the affected industry" (19 U.S.C. 1675a(a)(4)). If confirmed, I commit to evaluating trade remedy measures such as any relevant section 232 tariffs as a relevant economic factor within the context of the conditions of competition for the industry at issue in making antidumping and countervailing duty determinations. I cannot speak to a particular antidumping or countervailing duty order at this time because each determination would be based on evaluating the facts and the relevant statutory factors in the review at issue.

The sunset review process provides the ITC with the opportunity to remove AD/CVD duties that are no longer needed to protect the domestic industry. However, in practice, ITC rarely revokes AD/CVD orders. According to ITC data, between 2013 and 2017, only 23 orders were revoked under sunset reviews, while 156 new orders were imposed. Moreover, these orders cover a substantial value of trade. In 2017 alone, newly imposed AD/CVD orders resulted in duties on imported goods worth approximately $12 billion.

Question. With that in mind, can you describe how you would approach sunset reviews, if confirmed? Do you believe that there are orders currently in effect that have outlived their purpose, and if so, which?

Answer. Under the likelihood standard in a 5-year review, the Commission engages in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo—the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports. Thus, the likelihood standard is prospective in nature. The U.S. Court of International Trade has found that "likely," as used in the 5-year re-

view provisions of the Act, means "probable." If confirmed, I commit to applying that standard in 5-year reviews when considering the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated. I cannot speak to a particular antidumping or countervailing duty order at this time because each determination would be based on evaluating the facts and the relevant statutory factors in the review at issue. I note however that all parties, including importers, foreign producers, and purchasers who may believe that an "order has outlived its usefulness," have an opportunity to participate and submit evidence in five-year reviews which the Commission will consider with the other evidence in the record in making its determination.

After the Commerce Department receives an AD/CVD petition, the ITC conducts a short preliminary investigation before the case can advance. The preliminary phrase is designed to avoid unnecessary investigations for cases where there is no reasonable indication that imports are causing material injury to the domestic industry. However, the ITC rarely disapproves preliminary investigations. Allowing weak cases to progress to a full investigation has several negative consequences, including high legal costs to participating firms and taxpayers, as well as market disruptions and uncertainty during the course of the investigation.

Question. Do you consider preliminary investigations to be a useful process for weeding out weak cases, or do you think that all petitions deserve the expensive investigative process involved in a full investigation?

Answer. At the preliminary phase of antidumping and countervailing duty investigations, the Commission determines based on the information available to it at the time whether there is a reasonable indication that a domestic industry is materially injured or threatened thereof by reason of the subject imports. The reasonable indication standard as set forth by the Federal Circuit in *American Lamb* requires more than a finding that there is a possibility of material injury. If confirmed, I commit to applying this standard when making preliminary determinations in antidumping and countervailing duty investigations.

PREPARED STATEMENT OF JEFFREY I. KESSLER, NOMINATED TO BE ASSISTANT SECRETARY FOR ENFORCEMENT AND COMPLIANCE, DEPARTMENT OF COMMERCE

Mr. Chairman, Ranking Member Wyden, members of the committee, I am honored to appear before you today as the President's nominee to serve as Assistant Secretary of Commerce for Enforcement and Compliance. I would like to express my gratitude to President Trump for nominating me for this important position. I would like to thank Secretary Ross and Under Secretary Kaplan for their support, as well as many other outstanding professionals at the Department of Commerce who have helped with my nomination.

I would like to take a moment to acknowledge some family members in the audience: my wife Bethany, and my two young daughters Lucy and Diana.

Mr. Chairman, the Assistant Secretary of Commerce for Enforcement and Compliance is charged with administering the antidumping and countervailing duty laws. Congress enacted these laws to give U.S. companies and workers an effective remedy against foreign countries' unfair trade practices.

As an international trade lawyer, I work to combat such practices on a daily basis. I have represented U.S. manufacturers in the chemical products and aerospace industries facing foreign subsidies and injurious dumping. I have worked to stop government policies that prop up favored enterprises and skew the competitive landscape to the detriment of U.S. companies and workers. I have helped U.S. companies decipher and navigate market access barriers imposed by China and other countries. The scope and scale of unfair trade practices used by foreign governments and companies is truly breathtaking.

Unfair trade has serious, real-world consequences—including lost jobs, lower wages, and plant closures. It puts U.S. workers' livelihoods at risk, and undermines the U.S. manufacturing and agricultural base.

This administration has identified aggressive enforcement of U.S. trade laws as a top policy priority. With respect to the antidumping and countervailing duty laws, this means that investigations and other proceedings should be conducted rigorously. U.S. companies and workers should receive the relief to which they are legally entitled. The duties imposed should truly correct for the distortive impact of

unfair trade. Circumvention should not be tolerated. If confirmed, I will uphold these principles.

If confirmed, I will also seriously consider self-initiating antidumping and countervailing duty investigations. Last November, the Department of Commerce self-initiated for the first time in more than a quarter century. Continuing this practice has the potential to further strengthen enforcement of the trade remedy laws.

The Enforcement and Compliance unit of the Department of Commerce also has an important role to play in ensuring that foreign governments uphold their commitments under existing trade agreements. Opening up foreign markets to U.S. exports of goods and services is a critical element of the administration's trade strategy, and if confirmed I plan to pursue this objective aggressively as well.

Mr. Chairman, I believe that when the playing field is level, U.S. companies, workers, and products can out-compete anyone in the world. As the administration has stated, true market-based competition should be welcomed. But American workers, farmers, ranchers, service providers, and businesses large and small should not have to endure injurious dumping, subsidies, and other unfair trade practices. That is why we need strict and effective enforcement of the trade remedy laws.

With that, Chairman Hatch, Ranking Member Wyden, and members of the committee, thank you again for your consideration and I would be happy to answer any questions.

SENATE FINANCE COMMITTEE

STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Jeffrey Ian Kessler.
2. Position to which nominated: Assistant Secretary of Commerce for Enforcement and Compliance.
3. Date of nomination: November 2, 2017.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: December 12, 1982, Washington, DC.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list secondary and higher education institutions, dates attended, degree received, and date degree granted):

   Institution: Stanford University.
   Dates attended: August 2007 to July 2010.
   Degree(s) received: JD, MA (economics).

   Institution: University of Chicago.
   Dates attended: June 2005 to June 2007.
   Degree(s) received: MA (philosophy).

   Institution: Yale University.
   Dates attended: September 2001 to May 2005.
   Degree(s) received: BA (classics and philosophy), *magna cum laude.*

   Institution: Walt Whitman High School.
   Dates attended: Fall 1997 to Spring 2001.
   Degree(s) received: 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):

   Name of employer: Wilmer Cutler Pickering Hale and Dorr LLP (WilmerHale).
   Title/description: Counsel.

Location of work: Washington, DC.
Dates of employment: January 2011 to the present.

Name of employer: Stanford University.
Title/description: Research Assistant for Professor A.M. Polinsky.
Location of work: Stanford, CA.
Dates of employment: March 2009 to December 2010.

Name of employer: King and Wood (now King and Wood Mallesons).
Title/description: Foreign Student Intern.
Location of work: Beijing, China.
Dates of employment: September 2010 to October 2010.

Name of employer: Department of the Treasury.
Title/description: Intern, Office of Investment Security.
Location of work: Washington, DC.
Dates of employment: August 2009 to September 2009.

Name of employer: Wilmer, Cutler, Pickering, Hale, and Dorr LLP (Wilmer-Hale).
Title/description: Summer Associate.
Location of work: Washington, DC.
Dates of employment: June 2009 to August 2009.

Name of employer: Office of the U.S. Trade Representative.
Title/description: Intern, Office of General Counsel.
Location of work: Washington, DC.
Dates of employment: May 2008 to July 2008.

Name of employer: BetterEssays.
Title/description: Edited essays part-time.
Location of work: New Haven, CT and Chicago, IL.
Dates of employment: November 2002 to June 2007 (estimated).

Name of employer: Pamnani and Pamnani Advocates and Solicitors.
Title/description: Legal Assistant.
Location of work: Mumbai, India.
Dates of employment: June 2006 to July 2006.

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):

I am a limited partner in The Pyramid Company, L.L.L.P., which is a Virginia-based company with real estate holdings in Virginia.

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

I am a member of the American Bar Association, and a Term Member of the Council on Foreign Relations.

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.

- Portman for Senate Committee ($500), February 12, 2016.
- Jeb 2016, Inc. ($500), February 11, 2016.
- Jeb 2016, Inc. ($500), January 12, 2016.
- Romney for President, Inc. ($100), October 25, 2012.

- Harabedian for City Council 2012 ($50); January 26, 2012.

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):

- John M. Olin Law and Economics Academic Year Fellowships (Stanford University, 2008–2009 and 2009–2010).
- Century Fellowship for graduate studies in philosophy (University of Chicago, 2005).
- Master-Adams Cup for leadership and character (Jonathan Edwards College, Yale University, 2005).
- Berkeley, Biddle, and Woolsey fellowship for travel and research (Yale University, 2005).
- Paskus Summer Fellowship for travel and writing (Jonathan Edwards College, Yale University, 2004).
- Winthrop Prize for ancient Greek translation (Yale University, 2004).
- Paul Mellon Undergraduate Research Grant for travel and research (Yale University, 2003).
- Berkeley, Biddle, and Woolsey Travel Fellowship (Yale University, 2003).
- Bristed Scholarship for ancient Greek translation (Yale University, 2003).

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

- "What to Expect From a Trump Administration Trade Policy: Revisiting NAFTA." WilmerHale (Dec. 16, 2016) and republished in Law360 (Jan. 3, 2017, with different title and different authors).
- "What to Expect From a Trump Administration Trade Policy." WilmerHale (Nov. 21, 2016) and republished in Law360 (Dec. 23, 2016, with different title).
- "China's Cybersecurity Law Imposes New Requirements on Doing Business in China." WilmerHale (Nov. 10, 2016) and republished in Mondaq (Nov. 14, 2016).
- "U.S.-China Trade and Investment: 2014 JCCT Yields Significant Market Access Commitments by China." WilmerHale (Jan. 6, 2016) and republished in Mondaq (Jan. 7, 2015, with different authors).
- "U.S. and China Agree to Reduce Tariffs and Expand High-Tech Trade Through the Information Technology Agreement." WilmerHale (Nov. 24, 2014) and republished in Mondaq (Nov. 25, 2014).
- "Competing Interests in China's Competition Law Enforcement: China's Anti-Monopoly Law Application and the Role of Industrial Policy." U.S. Chamber of Commerce (Sept. 9, 2014). (I was the lead author, but the report does not identify me.)
- "Laying the Political Groundwork for Continued Economic Reform: The Chinese Communist Party Central Committee's Third Plenum." WilmerHale (Nov. 15, 2013) and republished in Mondaq (Nov. 16, 2013).
- "U.S., EU and International Sanctions Against Libya." WilmerHale (Mar. 10, 2011).
- Book review: "Contingent Protectionism in International Trade." *Stanford Journal of International Law* (2010).

In addition, from 2009 to 2010 I contributed to an informal blog titled *globalpolicymemo.com,* which has been defunct for several years.

16. Speeches (list all formal speeches you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated):

None.

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

As an international trade attorney in private practice, I have advised leading global companies and U.S. industry associations on a wide range of high-profile, cutting-edge international trade, investment, and market access issues. Through this work, I have developed expertise in international trade law and policy, including the challenges that unfair trade poses to U.S. companies and workers.

With respect to domestic trade remedies, I have represented U.S. manufacturers in the chemicals and aerospace industries before the U.S. Department of Com-

merce, the U.S. International Trade Commission, and the U.S. Court of International Trade.

In the area of World Trade Organization dispute resolution, I have been involved in litigating several precedent-setting cases, with successful challenges to foreign country trade practices that restrict billions of dollars of international trade per year, as well as successful defenses of U.S. trade practices.

I have also assisted U.S. companies and industry associations—especially those in innovative, IP-intensive industries—to decipher and navigate Chinese trade and investment barriers, such as sector-wide subsidy programs, IP policy and enforcement, cybersovereignty and related policies, technology transfer requirements, national security-related technical standards, and restrictions on the supply of foreign services.

I have also advised U.S. companies on free trade agreement rules and negotiations, export controls, and other trade-related matters.

I earned a BA *magna cum laude* from Yale University, an MA from the University of Chicago, and a JD and MA from Stanford University, where I was an Articles Editor of the Stanford Law Review and a John M. Olin Law and Economics fellow. I am a member of the American Bar Association and a Term Member of the Council on Foreign Relations. I have working knowledge of French, Spanish, and Mandarin.

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. I will maintain my account in a 401(k) plan sponsored by my current employer, WilmerHale, which is independently managed by John Hancock Retirement Plan Services. No further contributions will be made to my account following termination of my employment.

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.

   Any potential conflict of interest will be resolved in accordance with the terms of my ethics agreement, which was developed in consultation with ethics officials at the Department of Commerce and the Office of Government Ethics. I understand that my ethics agreement has been provided to the committee. I am not aware of any potential conflict other than those addressed by my ethics agreement.

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.

   Any potential conflict of interest will be resolved in accordance with the terms of my ethics agreement, which was developed in consultation with ethics officials at the Department of Commerce and the Office of Government Ethics. I understand that my ethics agreement has been provided to the committee. I am

not aware of any potential conflict other than those addressed by my ethics agreement.

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.

As an international trade attorney in private practice, I have advised clients on international law and policy, so that they can assess, among other things, whether and how to raise concerns about possible violations of international agreements and other trade policy matters with government agencies. For example, I have:

- Represented The Boeing Company in connection with World Trade Organization disputes, including by supporting the litigation efforts of attorneys at the Office of the U.S. Trade Representative.
- Advised the Semiconductor Industry Association on efforts to inform U.S. policymakers about China's semiconductor-related industrial policies.
- Advised and served as the lead author for a U.S. Chamber of Commerce report regarding China's discriminatory application of competition law. (See response to Question A.15 above.)
- Advised The Business Roundtable regarding its trade policy agenda and associated outreach.

I have also represented clients in discrete matters involving administrative and judicial proceedings; applications for export licenses and import certificates; voluntary disclosures of violations of trade controls or Customs laws; and communications with government officials regarding Customs, export controls, and sanctions compliance.

In addition, I advised a Task Force on U.S.-China Policy organized by the Asia Society's Center on U.S.-China Relations and the University of California San Diego's 21st Century China Center.

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

Any potential conflict of interest will be resolved in accordance with the terms of my ethics agreement, which I understand has been provided to the committee.

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.

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.

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.

QUESTIONS SUBMITTED FOR THE RECORD TO JEFFREY I. KESSLER

QUESTION SUBMITTED BY HON. ORRIN G. HATCH

Question. IP is a driver of the U.S. economy and of digital trade in particular. The Department of Commerce found that the largest share of our ICT trade surplus is from IP licensing. Yet, rampant IP theft online continues to curb the United States' ability to fully compete in the global digital marketplace.

Do you agree that strong IP protections are critical to the health and sustainability of the digital marketplace and that we must avoid exporting broad legal loopholes from liability?

Answer. The Trump administration's trade policy focuses on promoting innovation and protecting intellectual property (IP), and ensures that U.S. rights holders can use and profit from their IP globally. I support this policy and agree that strong IP protections are critical to the health and sustainability of the digital marketplace. TPA laid out important negotiating objectives with respect to intellectual property and digital trade, and I support the pursuit of these objectives in trade agreement negotiations—which is primarily the responsibility of the Office of the U.S. Trade Representative.

QUESTIONS SUBMITTED BY HON. RON WYDEN

FAIRNESS IN SECTION 232 INVESTIGATION PROCESS

Question. In its antidumping and countervailing duty proceedings, Commerce's Enforcement and Compliance division ("E&C") follows a clear and transparent process for collecting and responding to the views of all interested parties. This ensures everyone has a fair opportunity to provide their views on information that might be the basis for a decision before that decision is made. In contrast, it seems that officials in the Bureau of Industry and Security ("BIS") may be making decisions in the section 232 tariff exclusion process without even giving one side the opportunity to respond to facts submitted by the other. If Commerce wants this process to work—and I think we would all like to see it work—it has to be fair and objective. Specifically, Commerce officials have given conflicting guidance on whether a company requesting an exclusion can respond to objections filed by U.S. steel manufacturers if they believe that the objections do not fairly portray the availability of the steel product for which an exclusion is requested.

Given that E&C has been tasked with assisting BIS with the exclusion process, and may be called upon to assist in future investigations, if confirmed, will you commit not to provide recommendations to BIS on an exclusion request unless and until each side has been able to respond to factual information submitted by the other party?

Answer. I agree that the section 232 product exclusion process should be fair and objective. I also understand the rationale for giving each side an opportunity to respond to factual information submitted by other parties. At the same time, Commerce must establish limits on opportunities to comment, so that rulings are expeditious. Furthermore, if certain information pertains to national security, it might be inappropriate to disclose it to the parties.

If confirmed, I will have greater visibility into the product exclusion process, and I will be in a better position to determine whether companies requesting an exclu-

sion can respond to objections filed by other parties. If they cannot, I will assess why. On that basis, I will consider whether any modifications to E&C's portion of the exclusion process are appropriate.

BALANCING RESOURCES OF COMMERCE'S ENFORCEMENT DIVISION

Question. E&C seems to have experienced a substantial increase in its caseload last year—an approximately 60-percent increase in new trade remedy cases filed by industry. The President's budget for next year calls for a modest increase in funding for the enforcement division, but it also proposes that the division establish a team dedicated to running section 232 national security investigations, as well as continuing to enhance its ability to self-initiate more AD and CVD investigations. Expansion of trade enforcement initiatives is welcomed, but it is critical that they be pursued in a robust manner and geared towards achieving effective and meaningful results.

As Chairman Hatch and I have pointed out in a recent letter to Secretary Ross, the section 232 product exclusion process has been a disaster. How do you think Commerce's enforcement division can best be deployed to improve the section 232 process? How would you ensure that Commerce's enforcement unit continues to issue timely decisions in trade remedy cases and remains a strong administrator of trade remedy laws while taking on this expanded role in the section 232 process?

Answer. My understanding is that E&C plays only a supporting role in the section 232 process. Specifically, E&C determines whether articles that are the subject of exclusion requests are produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality, based on the evidence presented. However, the final decision as to whether to grant an exclusion—as well as the overall structure of the exclusion process—is up to BIS.

Commerce has already begun to improve the section 232 process by dedicating additional resources outside of BIS to assist with the caseload. In particular, I understand that E&C personnel, detailees from elsewhere in the Department of Commerce's International Trade Administration, and contractors working under the supervision of E&C have recently been tasked with assisting in this effort. These additional resources are part of an unprecedented effort to process exclusion requests expeditiously, while also ensuring that determinations are fair and transparent.

E&C's core function is and should remain the conduct of AD/CVD cases, in a timely and high-quality manner. Domestic business and workers that are injured by dumped and subsidized goods must receive the relief to which they are entitled under U.S. trade remedy laws. If confirmed, I will manage E&C resources to ensure that E&C continues to perform this core function, while also supporting BIS with the additional resources described above.

SEMICONDUCTOR TRADE ENFORCEMENT

Question. Semiconductors are an export of particular importance to my home State of Oregon, as well as an industry of strategic importance to maintaining U.S. technological leadership. China has been targeting this industry as part of its "Made in China 2025" policies, reportedly by using massive subsidies which could create excess chip supply in the global market and put pressure on American manufacturers like those in my State.

In our meeting in advance of the hearing to consider your nomination, you told me about your experience representing American semiconductor producers dealing with trade-related challenges. Based on that experience, what could you do in your role leading Commerce's enforcement division to help ensure that American semiconductor producers and their employees are not harmed by China's unfair tactics?

Answer. Semiconductors—the microchips that power the digital economy—are an important driver of American innovation and productivity, and central to many emerging technologies. Semiconductors are core elements of cutting-edge technologies including artificial intelligence, aerospace systems, autonomous vehicles, and the Internet of things.

However, China is actively seeking to displace the United States as the world leader in semiconductor technology. For example, one of China's policy documents calls for China to reach an advanced world level in all major segments of the semiconductor industry by 2030. To that end, China resorts to unfair, non-market-based policies such as massive, sector-wide subsidies. The economic and national security ramifications for the United States are quite serious.

In my view, the United States should consider all trade policy "tools in the toolbox" to counter China's disruptive, market-distorting policies. One tool is the imposition of antidumping and countervailing duties, if the relevant legal requirements are met. Other potentially available tools include tariffs imposed pursuant to section 301 of the Trade Act of 1974; CFIUS; export controls; WTO cases; and working with U.S. partners and allies to strengthen international rules disciplining the types of unfair practices that China engages in. If confirmed, I will work with counterparts in other trade-related agencies in support of a strong, rules-based, whole-of-government response to China's semiconductor-related industrial policies.

TRANSPARENCY AND CONSULTATION

Question. Meaningful consultations with Congress and communications with the public are necessary for every aspect of our trade agenda. I note that consultations will only be meaningful if conducted in a way that allows Members of this committee and their staffs to actually reflect on what is being considered and to offer comments. It is simply unacceptable to only engage the committee *just before* a proposal is offered or an agreement is reached. Especially now, when the administration has so many irons in the fire regarding trade, it is critical that Commerce and other agencies keep Congress informed of trade initiatives and developments. This administration continues to fall short in providing us with timely and detailed briefings on critical developments in trade that are having big impacts on American workers and businesses.

If confirmed will you commit to brief my Finance Committee staff on the enforcement division's activities promptly and in detail upon request?

Answer. Yes.

MAINTAINING THE EFFECTIVENESS OF TRADE REMEDY INVESTIGATIONS

Question. I am committed to standing up for all American workers through tough trade enforcement. It is absolutely vital—to my home State of Oregon and to the American people—that our country fully enforces its trade laws and addresses unfair trade. Our trade enforcement has sometimes been too slow or too weak to keep up with the cheats who seek to undermine our domestic industries. In 2015, Congress made clear the importance of tough enforcement when it passed the Leveling the Playing Field Act, a package of substantial improvements to U.S. enforcement laws.

Will you commit to fully applying that law so U.S. workers and companies can get relief from unfairly traded imports? What will you do to prevent China and other countries from reducing the effectiveness of U.S. trade remedies through litigation at the WTO and elsewhere?

Answer. Yes; if confirmed, I will fully apply the Leveling the Playing Field Act. The Act is an important legal tool that expands and clarifies the Department of Commerce's authority to apply adverse facts available (AFA)—a critical tool for encouraging foreign companies and governments to cooperate in antidumping and countervailing duty proceedings. I appreciate that Congress passed the Act to strengthen U.S. trade remedy laws and to ensure that U.S. manufacturers and workers get the relief they deserve from unfair trading practices, and if confirmed I intend to administer the law accordingly.

Other countries are using WTO litigation to try to weaken U.S. trade remedies, and have unfortunately been doing so for many years. If confirmed, I will support USTR in defending U.S. trade remedy laws aggressively at the WTO. I will also seek out opportunities to defend U.S. trade laws through collaboration with interagency colleagues as well as outreach to other WTO members. In addition, if confirmed, I will ensure that determinations under the antidumping and countervailing duty statutes reflect a rigorous interpretation of U.S. law, as enacted by Congress—not the findings of the WTO, which does not have the authority to enact or modify U.S. law or administrative determinations.

ASSESSING THE BALANCE OF TRADE

Question. In making assessments about the balance of trade between the United States and its trading partners, the President only takes into account the trade in goods, and does not include trade in services, even though the United States is a global leader in providing high-level services to the world.

In your view, shouldn't services exports be included in assessing whether our trade relationship with other countries is balanced?

Answer. I recognize the United States' global leadership role in providing high-level services to the world. The U.S. services sector is highly innovative and a key driver of economic growth.

Maintaining a vibrant U.S. services sector and expanding U.S. services exports are vital to a healthy economy and a core objective of U.S. trade policy.

The Bureau of Economic Analysis includes both goods and services in their official estimate of the U.S. trade balance. However, in the context of particular policy discussions, it may be appropriate to focus on either the goods or services portion of the trade balance.

RETALIATORY TARIFFS AND "TRADE WARS"

Question. Shortly after announcing the United States would be imposing tariffs on steel and aluminum, the President tweeted that "trade wars are good, and easy to win."

In light of the retaliatory tariffs and other repercussions that U.S. businesses and workers are now facing from our trading partners, do you agree with the President's statement that "trade wars are good and easy to win"?

Answer. The President's statement is an expression of confidence in the U.S. ability to confront and eliminate other countries' unfair trade practices. I agree with this sentiment.

Retaliatory tariffs imposed by U.S. trading partners are a serious concern, particularly when they jeopardize U.S. businesses or the livelihoods of U.S. workers, farmers, or ranchers. Potential retaliation should be weighed carefully when making major trade policy decisions. However, the threat of retaliation should not prevent the United States from pursuing its national interests, including with respect to the legitimate enforcement of trade laws.

QUESTIONS SUBMITTED BY HON. SHERROD BROWN

Question. As you know, in 2015 Congress enacted my bill the Leveling the Playing Field Act to restore strength to our trade remedy laws in response to foreign competitor's efforts to weaken them. That bill has helped workers and manufacturers more successfully petition for relief in the face of unfair trade practices, but I'm concerned that the attacks on our antidumping and countervailing duty laws continue.

Do you believe there are ongoing efforts by our trading partners and foreign competitors to weaken our trade remedy laws? If so, how should the U.S. respond to these attacks?

Answer. Yes, there are ongoing efforts to weaken U.S. trade remedy laws. These efforts take many forms, such as WTO litigation, attempts to circumvent antidumping and countervailing duties, and duty evasion.

I believe it is critical for the U.S. to counter such efforts vigorously. At the WTO, the U.S. should aggressively defend U.S. trade laws. Simultaneously, the U.S. should exercise its sovereign right to enforce the antidumping and countervailing duty laws rigorously, recognizing that the WTO does not have the legal authority to enact or modify U.S. law or administrative determinations. The U.S. should be vigilant about circumvention of antidumping and countervailing duties and fully utilize the statutory authority for countering circumvention (*e.g.,* 19 U.S.C. § 1677j). In addition, U.S. Customs and Border Protection should work to mitigate the risk of duty evasion. If confirmed, I will strongly support these objectives.

With respect to the Leveling the Playing Field Act: I appreciate that Congress passed the Act to strengthen U.S. trade remedy laws and to ensure that U.S. manufacturers and workers get the relief they deserve from unfair trading practices, and if confirmed I intend to administer the law accordingly.

Question. There has been bipartisan support in Congress for investigating currency undervaluation as a countervailable subsidy.

If confirmed as Assistant Secretary of Commerce and if a petition were filed that alleged currency undervaluation in addition to other subsidies, would you investigate the currency undervaluation allegation in addition to Commerce's other work on the case?

Answer. I fully appreciate the distortive and unfair effects that currency manipulation can have on trade flows. If confirmed, I will examine any allegation of currency undervaluation carefully, and assess whether it meets the legal requirements for initiating a countervailing duty investigation. This assessment will depend on the particular allegations and supporting information contained in the relevant petition.

Question. As I'm sure you're aware, respondents from China and other countries work aggressively to circumvent antidumping and countervailing duty orders after they're applied. These circumvention efforts undercut the effectiveness of our trade remedy laws.

If confirmed, will you make it a priority to consider expeditiously any circumvention cases brought by U.S. petitioners?

Answer. Yes. If confirmed, I will ensure that Enforcement and Compliance considers any allegation of circumvention carefully and expeditiously.

QUESTION SUBMITTED BY HON. JOHN THUNE

Question. The administration has indicated its strong preference and intention to negotiate bilateral trade agreements with countries that currently do not have trade measures in place with the United States. That's an objective that I think will garner significant bipartisan support as a constructive solution to many of the trade imbalances that the President is seeking to address.

Given the role that the Commerce Department has played as part of the trade team in this administration, how do you see your role in facilitating the negotiation and implementation of future bilateral trade agreements?

Answer. I support the administration's goal of negotiating trade deals that work for all Americans, including through new bilateral trade agreements where possible. As I stated at my confirmation hearing, opening up foreign markets to U.S. exports of goods and services is a critical element of the administration's trade strategy, and if confirmed I plan to pursue this objective aggressively.

As an international trade lawyer, I have worked for years to open up foreign markets and combat other countries' foreign trade practices. In addition, if confirmed, I will be charged with monitoring the operation of trade agreements and seeking foreign government compliance with such agreements. If confirmed, I will bring all of this experience to bear in the context of any new trade agreements that the administration considers, so as to open up new markets for U.S. businesses, workers, farmers, ranchers, and services providers, on the basis of strong, enforceable disciplines.

QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

Question. Mr. Kessler, in instances where a domestic company has applied for a product exclusion from the section 232 tariffs on steel or aluminum, and domestic industry has not filed comments in opposition, how will the Department evaluate whether to grant such an exclusion?

Answer. The Bureau of Industry and Security has primary responsibility for administering the section 232 product exclusion process. The Department of Commerce's Enforcement and Compliance unit (which I will lead if confirmed) plays only a supporting role.

My understanding is that in situations where the Department posts product exclusion requests for public comment, and no comments are received, the Department will evaluate the requests on the basis of information in the requests themselves, as well as information from interagency consultations, in light of the Department's criteria for accepting or rejecting exclusion requests.

Question. Would such a fact pattern enable the Department to make a final determination more quickly? If there is no opposition from domestic industry, under what circumstances would the Department deny the application?

Answer. My understanding is that the Department seeks to process all product exclusion requests expeditiously, including those in response to which no comments are filed. The Department may deny product exclusion requests if the relevant product is available domestically in a satisfactory quality and in sufficient quantity, if

it is not in the U.S. national security interest to grant the request, if the request is legally insufficient, or if the request would be unadministrable if granted.

Question. New Jersey has many manufacturing companies that benefit from enforcement of our AD/CVD laws but also has many others whose businesses and workers are put at risk by the imposition high duties.

What are your views about the relevance under the law of downstream industries and their workers, particularly those who provide added manufacturing value? If confirmed, how will you consider these issues when rendering your decisions?

Answer. If confirmed, I will be responsible for administering the antidumping and countervailing duty statutes. Commerce's determinations under these laws address the existence and magnitude of dumping and subsidization for the relevant class of imported articles. Downstream industries and workers are not a factor in such determinations. However, the International Trade Commission may consider all relevant economic factors in determining whether the domestic industry is materially injured, or threatened with material injury, by reason of imports or sales for importation.

QUESTIONS SUBMITTED BY HON. BILL NELSON

Question. As you might know, Florida growers were not able to get the Commerce Department to self-initiate a trade case against Mexican growers for the dumping of subsidized tomatoes, cucumbers, blueberries, strawberries, and bell peppers during the winter months.

Considering how costly and difficult it is for local growers to successfully mount a trade case against Mexico for seasonal trade abuses, do you agree that it's important for NAFTA to allow regional growers to use seasonal data in antidumping and countervailing duty cases—to make it easier for growers to obtain a level of fairness in the marketplace?

Answer. One of USTR's NAFTA negotiating objectives (as of November 2017) is to seek a separate domestic industry provision for perishable and seasonal products in AD/CVD proceedings. I support USTR's prerogative to negotiate trade agreements on the basis of negotiating objectives that it formulates, consistent with TPA.

Question. If confirmed, you'll be in charge of enforcing U.S. trade law and holding companies accountable for any trade violations.

If state-sponsored companies, like ZTE or Huawei, willfully violate our laws, how do you plan to deal with external pressure from other areas of the executive branch or from other countries, like China?

Answer. There are no exceptions under the antidumping and countervailing duty laws for state-sponsored companies. If confirmed, I will enforce the law rigorously as it is written. External pressure will not distract me from this task.

PREPARED STATEMENT OF RANDOLPH J. STAYIN, NOMINATED TO BE A MEMBER OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION

Good morning.

Mr. Chairman, Ranking Member Wyden, and members of the committee, I am honored to apprear before you today, and I am humbled and grateful to the President for nominating me to serve as a Commissioner on the United States International Trade Commission. I also want to thank Senator Portman for his support and kind introduction today. Most importantly, I am honored and blessed to have the love and support of my family; not only throughout my years of trade law practice, but every day. My wife Sharon, my sister Donna, and my children Greg, Todd, and Beth, and her husband Scott, are here with me today.

I began the practice of law as a litigator in Cincinnati, OH. I came to Washington to serve as Chief of Staff for Senator Robert Taft, Jr. Among my duties, Senator Taft asked me to be his advisor regarding The Trade Act of 1974, which was the beginning of my involvement with U.S. trade law, and was the first building block in my, now, 32 years of practicing international trade law. My career has included litigation of many anti-dumping and countervailing duty investigations and reviews, section 201 safeguard investigations, 232 national security and Generalized System of Preferences investigations, advising clients on NAFTA and Uruguay Round nego-

tiations, and Customs investigations to stop circumvention of antidumping and countervailing duty orders.

My law practice has also included serving as general counsel and special counsel to 23 trade associations and many companies, a significant number of which contributed to the depth of my understanding of the realities and difficulties of running manufacturing companies that are in competition with unfairly traded products.

Among the many trade cases I have litigated, I would like to briefly mention one that clearly demonstrates the complexity and commitment involved in defending U.S. companies from unfair trade practices: an antidumping investigation of imported candles from China, beginning in 1984, which came about due to Chinese manufacturers exporting their candles at prices significantly below the production costs of U.S. products. The initial result of that case was a 54-percent duty being imposed on Chinese imports once Commerce found unfair trade practices and the Commission determined that those imports materially injured the U.S. industry. For over 30 years, that duty has been unsuccessfully challenged many times, including six administrative reviews, nearly 100 scope reviews, two anticircumvention reviews, six Customs investigations, two sunset reviews, and four 5-year reviews, in addition to appeals to the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit, all of which I managed and conducted for the continuing protection of this U.S. industry. Not only was the initial 54-percent duty imposed, it was raised each time it was challenged, to the eventual level of 108 percent, where it has remained for the last 10 years, making it the longest standing U.S. antidumping order. Another result of this effort, from 2000–2007, was that U.S. candle companies received trade injury distributions of over $183 million dollars from the application of the Continued Dumping and Subsidy Offset Act, also know as "the Byrd Amendment."

This example is only one of the many U.S. products I have represented, and as you all are aware, it is only one of thousands of U.S. products we must ensure will not be injured by unfair trade practices.

For me, this honor is the pinnacle opportunity built from a long and successful effort to support and defend fair and equitable trade laws and their application. In presenting arguments before the ITC, I have always respected the very important role it plays as an independent, nonpartisan, quasi-judicial, fact-finding agency. Our country's workers, farmers, ranchers, and businesses know that they have an objective and fair place to go when they have been injured by unfairly traded imports. All parties receive a fact-based decision in accordance with due process of law.

I look forward to participating in the ITC process as a leader and key decision-maker, and in maintaining the credibility of U.S. trade remedy laws. If confirmed, I assure you that I will serve with integrity and that all of my decisions will be based on the facts and the law, in accordance with the intent of Congress. I further assure you that the Congress and the executive branch will continue to receive objective, independent, fact-based 332 studies and expert analysis to assist in the development of trade policy. I will be proud to join the nearly 400 men and women who comprise the ITC. They are to be commended for the excellent work they do every day for Congress, the executive branch, and, above all, the American people.

Thank you for the privilege of being considered for this honor. I am now happy to answer your questions.

SENATE FINANCE COMMITTEE

STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Randolph J. Stayin (Randy).
2. Position to which nominated: Commissioner, U.S. International Trade Commission.
3. Date of nomination: September 28, 2017.
4. Address (list current residence, office, and mailing addresses):

5. Date and place of birth: October 30, 1942, Cincinnati, OH.

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

7. Names and ages of children:

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

University of Cincinnati Law School (Cincinnati, OH)—1965–1967—Juris Doctor—1967.
Northwestern Law School (Chicago, IL)—1964–1965.
Dartmouth College (Hanover, NH)—1960–1964—Bachelor of Arts.
Western Hills High School (Cincinnati, OH)—1956–1960—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):

Partner—Barnes and Thornburg Law Firm (Washington, DC)—1988–2010.
Partner—Taft, Stettinius, and Hollister Law Firm (Washington, DC)—1977–1988.
Chief of Staff—U.S. Senator Robert Taft, Jr. (Washington, DC)—1973–1976.
Associate—Frost and Jacobs Law Firm (Cincinnati, OH)—1967–1972.

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):

Advisory Committee for the U.S. and Foreign Commercial Service—(unpaid) in the 1980s (during Reagan administration).

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):

See Question A–9—Barnes and Thornburg Law Firm: Managing Partner of DC Office, Chairman of International Trade Practice, Member of Management Committee.

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

DC Bar, American Bar Association, Ohio Bar Association.
Washington National Cathedral: Chairman of Fund Committee and Co-Chair of 1907 Society.
President, Cincinnati Recreation Commission.
President, Cincinnati Mental Health Commission.

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):

Rated "AV Preeminent," Martindale-Hubbell; listed in "Who's Who in American Law" and in "The World's Leading International Trade Lawyers."

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 5 years which are on topics relevant to the position for which you have been nominated):

No "formal" speeches in the last 5 years, but presented many "current status" trade issue updates on international trade issues throughout my career; also participated in international trade panel discussions, seminars, and meetings with national and international groups and associations.

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

See "Attachment A: Qualifications."

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.

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.

Nothing on legislation. I was engaged by clients to represent them in antidumping investigations and other unfair trade remedies provided by U.S. laws.

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

I would recuse myself from any matter that would involve conflict of interest.

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.

It will be done; provided by the ITC.

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.

   See "Attachment B: Additional Information—List of Supporters" and additional character reference letter (in addition to those character references provided during the FBI interviews).

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.

Attachment A—Qualifications—Question A–17

Question A–17: State what, in your opinion, qualifies you to serve in the position for which you have been nominated.

INTERNATIONAL TRADE ATTORNEY

- I have over 40 years of international trade litigation and trade legislative and regulatory advisory experience in international trade policy, international trade law, and international trade regulatory compliance.
- My career has focused on trade law, trade regulation, and trade policy, representing clients seeking relief from unfair and unlawful trade practices, clients seeking compliance with U.S. trade laws, and clients impacted by other countries' trade practices.
- My international trade services span the range from trade litigation, to regulatory relief, to government policy, to legislation, to corporate strategy, to general business consulting.
- I have litigated antidumping and countervailing duty investigations, sunset reviews, administrative reviews, scope and anticircumvention investigations, 201 safeguards, 232 national security, Generalized System of Preferences, export regulation, trade sanctions, antiboycott issues, and U.S. Customs enforcement.
- I have achieved an exceptional record of success in cases/matters litigated and positions defended. Many cases were litigated before the U.S. International Trade Commission, the U.S. Department of Commerce, and the U.S. Trade Representative.

- I have represented individual clients and entire industries, in matters involving international standards, export regulation, trade sanctions, foreign corrupt practices, and antiboycott issues. In addition, I conducted U.S. Customs and compliance investigations regarding duty preference regimes, valuation, tariff classification, country-of-origin, and fraud matters.
- In appeals of U.S. international trade decisions, I have represented clients before the U.S. Court of International Trade, the Court of Appeals for the Federal Circuit, and in dispute resolution hearings before NAFTA panels.
- During the NAFTA and Uruguay Round negotiations, I played lead roles in representing client positions in government and industry discussions and deliberations.
- I have advised clients on trade and import–export policy matters, including representation before White House officials, members of the U.S. Senate and the U.S. House of Representatives, and U.S. department heads and senior staff.
- I have regularly consulted on trade matters with private-sector principals and colleagues throughout the world.
- I have advised, represented, and litigated on behalf of individuals, corporations, trade associations, and coalitions of large portions of entire industries.

OUTSIDE GENERAL OR SPECIAL COUNSEL

- I have advised many national and international associations, including but not limited to, the American Gear Manufacturers Association, the Bicycle Parts Manufacturers Association, the Canadian Lumber Remanufacturers Alliance, the Food Processing Suppliers Association, the Hot-Dip Galvanizers Association, the Machinery Dealers National Association, the Meat Industry Suppliers Association, the National Candle Association, the Process Equipment Manufacturers Association, the Quebec Lumber Manufacturers Association, the Water and Wastewater Equipment Manufacturers Association, and the Wheat Gluten Industry Council.

CHIEF OF STAFF—UNITED STATES SENATE

- I am the former Chief of Staff and Director of Legislation to U.S. Senator Robert Taft, Jr., serving as Senator Taft's top strategic, political, and legislative advisor.
- I served as the Senator's lead trade advisor in negotiating the passage of the Trade Act of 1974.
- I managed Senator Taft's legislative, political, and support staffs on Capitol Hill and in Ohio, totaling 60 political, legislative, and administrative personnel.
- I had a Top Secret security clearance.

MANAGER AND PUBLIC SPEAKER

- I managed legal, political, and support staffs of up to 60 individuals.
- At the Barnes and Thornburg Law Firm I served as Managing Partner of the Washington office, Chair of the International Trade Practice Group, and as a member of the Management Committee. At the Taft, Stettinius, and Hollister Law Firm I served as Chair of the International Trade Practice Group.
- I have been a frequent speaker at trade association meetings, legal seminars, and University programs and have been a member of the American Society of Association Executives (active in its law and international sections).

INTERNATIONAL TRADE REPRESENTATIVE MATTERS

Following is a sampling of the many international trade litigations, trade reviews, trade regulation, and trade practice matters I have successfully conducted. These matters are a strong indication of the breadth and depth of my international trade experience, and my successes in international trade law, regulation, and policy.

- Represented the National Candle Association as petitioner in an antidumping investigation of candles from China, including nine administrative reviews, over 400 scope reviews, two anticircumvention reviews, four sunset reviews, a new shipper investigation, six Customs investigations, and appeals to the U.S. Court of International Trade and to the U.S. Court of Appeals for the Federal Circuit—resulting in a continuous 108-percent duty and CDSOA distributions of

$183 million to U.S. candle companies. (The original dumping duty was 56 percent, but with each administrative review challenge by Chinese exporters, the duty rose to 108 percent, where it still remains.)

- Represented U.S. manufacturers of baseball hats, as petitioners in antidumping investigation, against headware from China.
- Represented U.S. sparkler manufactures, as petitioners in an antidumping investigation of sparklers from China, resulting in an affirmative determination.
- Represented a coalition of U.S. importers of emulsion styrene-butadiene rubber from South Korea, resulting in a negative injury determination.
- Represented an importer of outboard engines from Japan, resulting in a negative injury determination.
- Represented a Canadian producer of thermostatically controlled appliance plugs, resulting in a negative injury determination.
- Represented Quebec lumber manufacturers of softwood lumber from Canada in the Binational Panel review of the countervailing duty investigation in the 1990s, resulting in a settlement between the U.S. and Canadian governments.
- Represented Canadian lumber remanufacturers of softwood lumber in the Binational Panel review of the countervailing duty investigation in the 2000s, resulting in a settlement by the U.S. and Canadian governments.
- Represented a Brazilian producer of tillage tools, resulting in termination of the countervailing duty order.
- Represented U.S. producers of wheat gluten in a § 201 market distribution/safeguards investigation, resulting in a 3-year quota and a subsequent grant from the Department of Agriculture of $40 million.
- Represented a Japanese manufacturer of ceramic packages in a § 232 investigation by the U.S. Commerce Department of the impact of the imports on U.S. national security, resulting in no restrictions on exports to the U.S.
- Represented U.S. producers of glassware from Mexico in Generalized System of Preferences investigations, resulting in withdrawal of GSP duty-free treatment of imports from Mexico and in Uruguay Round multilateral trade negotiations.
- Represented U.S. producers in Generalized System of Preferences investigations of saccharin from South Korea, resulting in withdrawal of GSP duty-free treatment of the imports from South Korea.
- Advised American Gear Manufacturers and European association on international standards process in order to avoid trade barriers.
- Challenged standards of the National Fire Protection Association (NFPA) on two separate matters, successfully resulting in NFPA withdrawing the standards, returning them to committee, and adding representatives of the client association to its committee.
- Challenged two proposed standards (Teflon coated re bar and mud-flaps for trucks) at Federal Highway Administration and National Highway Safety Administration that would exclude products of two different associations, successfully resulting in withdrawal of both proposed standards.
- Advised clients regarding the beneficial requirements and positive impacts of, and strategies for responding to, Federal and State "Buy America" legislation.
- Represented exporter in U.S. Customs investigation of Export Control violation.
- Represented U.S. exporter in acquiring the necessary export license for high technology equipment.
- Represented U.S. manufacturer in acquiring the necessary export license for medical supplies and equipment to export to a country subject to U.S. sanctions.
- Represented foreign manufacturer in excluding its products from application of U.S. sanctions, thereby allowing export to the U.S.
- Represented three trade associations in dual use equipment export control negotiations, leading to narrowing the scope of dual use export controls over process equipment.

- Represented U.S. importer of motorcycle pedals from China in Customs seizure based on alleged trademark infringement/counterfeit goods, resulting in a ruling in favor of the imports.

Attachment B—Additional Information

List of Supporters—Additional Character References

LIST OF SUPPORTERS

- The Honorable Rob Portman, U.S. Senator (OH).
- The Honorable Kevin Brady (TX), chairman, House Ways and Means Committee.
- The Honorable Lewis Eisenberg, U.S. Ambassador to Italy, former finance chair, RNC.
- The Honorable Bill Archer, former chairman of the House Ways and Means Committee.
- The Honorable Mitch Daniels, president of Purdue University, former Governor of Indiana.
- The Honorable Robert Taft II, former Governor of Ohio.
- Gil Kaplan, nominee for Under Secretary of Commerce for International Trade.
- The Honorable Grant Aldonas, director, Georgetown University Law Center—Institute of International Economic Law, former Under Secretary of Commerce for International Trade.
- The Honorable David Spooner, former Assistant Secretary of Commerce for Import Administration.
- Dan Carmichael, former general counsel, Eli Lilly.

C. Raymond Marvin

U.S. Senate
Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510–6200

Dear Senators,

A friend of many years has been nominated by the President to be member of the U.S. International Trade Commission: Randolph J. Stayin. I have known Randy since the mid-90s as a fellow volunteer at the Washington National Cathedral. We worked together to raise financial support for the Cathedral's mission and vision and succeeded in breaking records together. He was the chair of the Cathedral Fund Committee for many years, while I served on the committee and then succeeded him as chair. We became social and Cathedral friends and have stayed in contact over the years. I know of his personal values and character and believe that he is a man of impeccable honesty, inherent fairness, ethical conduct, and strong intellectual capability. I have not had experience working with him on any law or international trade matter, and cannot speak to that, nor do I express any view about any policy matters that may be presented to the USITC. I do voice support for Randy Stayin's character and his personal temperament. I believe that if he is confirmed by the Senate, he will serve as a Commissioner with energy, judiciousness, fairness, and distinction. If you are able to meet with him personally, you will likely understand how easily he engenders confidence on the part of those with whom he works. It is a pleasure and honor for me to speak up for Randy Stayin as being eminently qualified by knowledge, experience, and temperament to be confirmed as a member of the USITC. And for the record, I have never had and will never have any matter in which I have any economic or political interest involving the USITC.

Thank you for giving Randy the best of your serious consideration, as you consider his nomination.

With appreciation for your service to our Nation in the Senate,

C. Raymond Marvin.

QUESTIONS SUBMITTED FOR THE RECORD TO RANDOLPH J. STAYIN

QUESTIONS SUBMITTED BY HON. RON WYDEN

TRADE ENFORCEMENT—GENERAL

Question. I am committed to standing up for all American workers through tough trade enforcement. It is absolutely vital—to my home State of Oregon and to the American people—that our country fully enforces its trade laws and addresses unfair trade. Our trade enforcement has sometimes been too slow or too weak to keep up with the cheats who seek to undermine our domestic industries. In 2015, Congress made clear the importance of tough enforcement when it passed Senator Brown's bill, the Leveling the Playing Field Act, a package of substantial improvements to U.S. enforcement laws.

Will you commit to fully applying that law so U.S. workers and companies can get relief from unfairly traded imports?

Answer. Yes, if confirmed, I commit to strictly enforcing the statute in making determinations in antidumping and countervailing duty investigations.

TRADE ENFORCEMENT AT THE ITC

Question. Too often, trade relief is too little, too late for hard-working Americans facing unfair trade. In 2015, Congress amended the definition of material injury and the factors the International Trade Commission ("ITC") examines in evaluating injury to prohibit the ITC from finding that there has been no injury merely because an industry happens to be profitable or if its financial situation has recently improved. For a range of Oregon industries—including softwood lumber, solar and steel producers—this clarification is critical to ensuring that companies can get relief while they are still in the black and *before* they are on life support.

Do you agree that a domestic industry may suffer material injury from dumped and subsidized imports even though it manages to remain profitable or its performance has improved? Do you agree there are circumstances in which the Commission could find material injury where an industry would have done better, but for dumped and subsidized imports?

Answer. I am aware that 19 U.S.C. 1677(7)(J), which was added to the statute in 2015, states that the Commission may not make a negative determination merely because the domestic industry is profitable or because its performance has recently improved. If confirmed, I commit to strictly enforcing the statute and to consider all the relevant statutory factors when making determinations in antidumping and countervailing duty investigations.

DIGITAL TRADE

Question. Digital Trade is increasingly important to all aspects of the U.S. economy. The Internet sector alone reportedly accounts for more than 5 million jobs, and this does not count all of the manufacturers and small businesses that rely on digital trade. In recent years, the ITC, at my request, has done important analysis of barriers to digital trade, an issue of importance to my constituents in Oregon. The first of three reports on this subject was released to the public in September 2017; the second is expected this fall; and the third is due to be delivered in spring 2019.

Do you view as important the ITC's studies of barriers to digital trade? Will you commit to continued analysis of these issues?

Answer. Yes, for both questions. I view all three of the reports the ITC is preparing in this series as important, and I fully support completion of the second and third reports, which are due by October 29, 2018 and March 29, 2019, respectively. I also support continued ITC analysis of these issues, particularly as may be requested by this committee, the Committee on Ways and Means, and the USTR.

I understand that Ambassador Froman, in his letter requesting the three Commission reports, indicated that USTR intends to classify portions of the second and third reports on the basis that they concern economic matters relating to national

security and that USTR intends to treat the two reports as interagency memoranda containing predecisional advice subject to the deliberative process privilege.

ITC INDEPENDENCE AND OBJECTIVITY

Question. The ITC is charged with providing technical advice on trade policy issues to USTR and to both this committee and the House Ways and Means Committee. The Commission has rightly prided itself in the past on the objective, thorough, non-partisan nature of its advice to these entities.

Can you commit to this committee that you will do your utmost to ensure the ITC's analysis will be independent and thorough, not rushed, and that the process will be driven by substance, rather than political pressure?

Answer. Yes. As a Commissioner, I will do my best to ensure that the ITC's analysis remains independent and thorough, timely but not rushed, and is driven by substance and not political pressure. It is clear from the ITC's enabling legislation that Congress has gone to great length to ensure that the ITC is an independent agency in both name and reality. The ITC serves Congress and the President best when it acts in that capacity.

CONSULTATION WITH AGENCIES IN SECTION 337 INVESTIGATIONS

Question. Section 337 of the Tariff Act of 1930 requires the Commission to consult with other Federal departments and agencies—including the Federal Trade Commission—during the course of its section 337 investigations. The FTC and other Federal agencies will often have critical insights about the potential impact of section 337 investigations on competition, including how to maintain vibrant and competitive U.S. domestic industries.

Will you commit to me that, if you are confirmed, the International Trade Commission will consult closely with the FTC and other agencies on cases where the U.S. public interest is at issue?

Answer. I understand that section 337 states that "during the course of each investigation under this section, the Commission shall consult with, and seek advice and information from, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it considers appropriate" (19 U.S.C. § 1337(b)(2)). As a Commissioner, I commit to applying the statute and applicable case law to the facts of any section 337 investigation before me for deliberation.

ASSESSING THE BALANCE OF TRADE

Question. In making assessments about the balance of trade between the United States and its trading partners, the President only takes into account the trade in goods, and does not include trade in services, even though the United States is a global leader in providing high-level services to the world.

In your view, shouldn't services exports be included in assessing whether our trade relationship with other countries is balanced?

Answer. Yes, services exports should be included. Including trade in both goods and services provides the most comprehensive picture of U.S. global competitiveness.

RETALIATORY TARIFFS AND "TRADE WARS"

Question. Shortly after announcing that the United States would be imposing tariffs on steel and aluminum, the President tweeted that "trade wars are good, and easy to win."

In light of the retaliatory tariffs and other repercussions that U.S. businesses and workers are now facing from our trading partners, do you agree with the President's statement that "trade wars are good, and easy to win?"

Answer. No.

QUESTIONS SUBMITTED BY HON. SHERROD BROWN

Question. My bill, the Leveling the Playing Field Act, became law in 2015 and strengthened U.S. trade remedy statutes. One specific provision of the law expanded the criteria the ITC must consider when evaluating industry and clarified that an

industry can be profitable but still be injured by imports. These provisions were enacted to ensure that U.S. businesses and workers could obtain relief from unfair trade practices without having to close their doors or lose their jobs.

If confirmed, will you commit to fully implementing the Leveling the Playing Field Act, including the changes to injury criteria, as Congress intended?

Answer. I am aware that the Leveling the Playing Field Act, which became law in 2015, expanded the criteria the Commission must consider in antidumping and countervailing duty investigations including clarifying that the domestic industry can be profitable but still injured by imports. If confirmed, I commit to strictly enforcing the statute and to consider all the relevant statutory factors when making determinations in antidumping and countervailing duty investigations.

Question. In making its injury determinations, the ITC decides whether U.S. industries and workers obtain relief from unfair trade practices.

If confirmed, will you commit to applying trade remedy law in a way that ensures there is a real remedy available to industries and workers who are adversely affected by unfair trade practices?

Answer. If confirmed, I commit to strictly enforcing the statute, and to evaluate the facts regarding the U.S. industry and workers and consider all the relevant statutory factors when making determinations in antidumping and countervailing duty investigations.

Question. Sometimes when U.S. petitioners file trade remedy cases, foreign competitors will flood the market with products to beat any antidumping or countervailing duties that may be applied. A provision in U.S. statute called "critical circumstances" is intended to provide relief to the U.S. industry in this instance.

Will you commit to interpreting the law as Congress intended and providing retroactive relief when the statutory test for critical circumstances is met?

Answer. I am aware that, in making changes to the statute regarding critical circumstances in the URAA, Congress stated "the legislation clarifies that the Commission is to determine whether the surge in imports prior to the suspension of liquidation, rather than the failure to provide retroactive relief, is likely to seriously undermine the remedial effect of the order" (SAA at 877). The Commission considers the list of statutory factors and makes its critical circumstances determination independently of Commerce. If confirmed, I commit to strictly enforcing the statute, and to evaluate the facts and relevant statutory factors to determine whether the test for critical circumstances is met.

QUESTION SUBMITTED BY HON. JOHN THUNE

Question. I support the administration's efforts to address unfair trade practices that are harming U.S. industries. However, I am concerned about the impact that anti-dumping and countervailing duties can have on U.S. users of the product as a result of antidumping investigations.

Do you think the International Trade Commission's determination on an antidumping duty investigation should include an analysis of the economic impact to the U.S. consumers of the product that will be affected by the duties in instances where the ITC reaches affirmative determinations?

Answer. I am aware that 19 U.S.C. 1677f(h) directs the Commission to provide an opportunity for consumers and industrial users of subject merchandise to submit relevant information concerning material injury by reason of the dumped or subsidized imports. If confirmed, I would consider all relevant submissions, including any submitted economic analysis, when making determinations in antidumping duty investigations.

QUESTION SUBMITTED BY HON. ROBERT MENENDEZ

Question. Accurate and detailed trade data is necessary for private businesses to track imports and exports of their products as well as for government agencies to administer trade policy. Section 484f of the Tariff Act of 1930 provides authority for the Secretary of Treasury, the Secretary of Commerce, and the USITC to adopt statistical reporting numbers for these purposes.

What is your understanding of the current process used by the USITC to evaluate requests from industry to adopt more detailed statistical reporting numbers than presently exist? What factors do Treasury, Commerce, and the USTIC take into consideration when evaluating such a request from domestic industry? When such a request is denied, what opportunities exist for domestic industry to appeal the ruling?

Answer. Requests to the 484(f) Committee are accepted based on two deadlines: March 15th, for HTS and Schedule B provisions to take effect on the following July 1st, and July 15th, for HTS and Schedule B provisions to take effect on the following January 1st.

After an initial review by the USITC to be sure a request is complete and contains no confidential information, U.S. Customs and Border Protection (CBP) reviews each request for classification and administrability. Any issues after both agencies' reviews are worked out with the requesting party before sending the request to the U.S. Department of Commerce's Bureau of the Census. Census does a trade report to determine the annual import level and to be sure there is no disclosure involved in publishing the statistical data that would be reported in the new annotation. At the same time, USITC's Office of Industries also does a staff report focused on the potential benefits to the domestic industry/trade of creating the requested statistical breakout.

All committee members meet, usually in late May and in mid-October, to discuss the requests received and determine which ones will be accepted and which ones will be denied.

The following criteria are used in the 484(f) Committee's decision-making process:

- Each proposed 10-digit nonlegal statistical category must cover a product or a grouping of goods typically having $1 million in annual trade.
- The proposed annotation must have a clear and administrable description.
- There must be at least 3 importers or exporters reporting shipments in the proposed category on an average monthly basis to avoid disclosure of confidential information.

Feedback on the committee's processing of requests and on the outcomes is provided to each requesting party after the committee meeting. If a request is denied, follow-up discussions can be arranged with committee members. Any denied request can be resubmitted as soon as the next committee cycle with appropriate modifications and/or additional information provided that take into account the basis of the denial.

QUESTION SUBMITTED BY HON. JOHN CORNYN

Question. There will soon be billions of computing and communications devices that depend on 5G technology, including devices that the U.S. Government, private companies, and consumers use for critical applications and infrastructure. The United States cannot afford to let other nations lead the race to develop and implement 5G technology.

Can you commit that you will take into consideration the national security imperative of the United States having a domestic supply base that can lead the world in the development of 5G technology and products when hearing cases before the ITC?

Answer. I understand that under section 337, "if the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry." As a Commissioner, I commit to applying the statute and applicable case law to the facts of any section 337 investigation before me for deliberation.

QUESTIONS SUBMITTED BY HON. PATRICK J. TOOMEY

Question. I have serious concerns about the administration's decision to use the pretext of a national security concern to raise taxes on imported steel and aluminum products. This policy will inevitably increase costs on Pennsylvania consumers, workers, and employers. Moreover, the section 232 tariffs punish some of our Nation's closest allies, including the European Union, Canada, and Mexico, and will invite retaliation on U.S. goods and services.

As you know, the International Trade Commission (ITC) conducts sunset reviews every five years on existing antidumping (AD) and countervailing duty (CVD) orders to determine whether revocation of those orders would likely cause material injury to the domestic industry. During these investigations, Federal statute requires that the ITC take into account relevant economic factors within the context of the business cycle and competitive factors that are distinctive to the affected industry. As a result, future sunset reviews will likely be affected by the recently imposed section 232 tariffs on steel and aluminum, which are applied in addition to AD/CVD duties already in effect. For example, if a 25-percent steel tariff is imposed under section 232 on a product that is also under an AD/CVD order, then the tariff may reduce the likelihood that future imports of that product will injure the domestic industry, and thus the AD/CVD duty is no longer needed.

If confirmed, how will you account for the recently imposed section 232 tariffs on steel and aluminum during the ITC's 5-year sunset review process? Do you anticipate that some AD/CVD orders will be rescinded due to the section 232 tariffs?

Answer. I am aware that section 232 tariffs were recently imposed on steel and aluminum products. In 5-year reviews, the statute directs the Commission to "evaluate all relevant economic factors within the context of the business cycle and the conditions of competition that are distinctive to the affected industry" (19 U.S.C. 1675a(a)(4)). If confirmed, I commit to evaluating trade remedy measures such as the section 232 tariffs as a relevant economic factor within the context of the conditions of competition for the industry at issue in making antidumping and countervailing duty determinations. I cannot speak to a particular antidumping or countervailing duty order at this time because each determination would be based on evaluating the facts and the relevant statutory factors in the review at issue.

Question. The sunset review process provides the ITC with the opportunity to remove AD/CVD duties that are no longer needed to protect the domestic industry. However, in practice, ITC rarely revokes AD/CVD orders. According to ITC data, between 2013 and 2017, only 23 orders were revoked under sunset reviews, while 156 new orders were imposed. Moreover, these orders cover a substantial value of trade. In 2017 alone, newly imposed AD/CVD orders resulted in duties on imported goods worth approximately $12 billion.

With that in mind, can you describe how you would approach sunset reviews, if confirmed? Do you believe that there are orders currently in effect that have outlived their purpose, and if so, which?

Answer. I am aware that, under the likelihood standard in a 5-year review, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo—the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports. Thus, the likelihood standard is prospective in nature. The U.S. Court of International Trade has found that "likely," as used in the 5-year review provisions of the Act, means "probable." If confirmed, I commit to applying that standard in 5-year reviews when considering the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated. I cannot speak to a particular antidumping or countervailing duty order at this time because each determination would be based on evaluating the facts and the relevant statutory factors in the review at issue. I note however that all parties, including importers, foreign producers, and purchasers who may believe that an "order has outlived its usefulness," have an opportunity to participate and submit evidence in five-year reviews which the Commission will consider with the other evidence in the record in making its determination.

Question. After the Commerce Department receives an AD/CVD petition, the ITC conducts a short preliminary investigation before the case can advance. The preliminary phrase is designed to avoid unnecessary investigations for cases where there is no reasonable indication that imports are causing material injury to the domestic industry. However, the ITC rarely disapproves preliminary investigations. Allowing

weak cases to progress to a full investigation has several negative consequences, including high legal costs to participating firms and taxpayers, as well as market disruptions and uncertainty during the course of the investigation.

Do you consider preliminary investigations to be a useful process for weeding out weak cases, or do you think that all petitions deserve the expensive investigative process involved in a full investigation?

Answer. I am aware that at the preliminary phase of antidumping and countervailing duty investigations, the Commission determines based on the information available to it at the time whether there is a reasonable indication that a U.S. industry is materially injured or threatened thereof by reason of the subject imports. The reasonable indication standard as set forth by the Federal Circuit in *American Lamb* requires more than a finding that there is a possibility of material injury.[1] If confirmed, I commit to applying this standard when making preliminary determinations in antidumping and countervailing duty investigations.

PREPARED STATEMENT OF PATRICK J. URDA, NOMINATED TO BE A JUDGE OF THE UNITED STATES TAX COURT

Chairman Hatch, Ranking Member Wyden, and members of the Finance Committee, it is a privilege and honor to be here today. Thank you for holding this hearing to consider my nomination to serve as a judge on the United States Tax Court.

I am grateful to the President for nominating me. I would also like to express my thanks to the committee staff for their support throughout this process.

I sit before you as a nominee because of the support of so many people, some of whom have joined me today, most importantly, my parents Richard and Kathleen Urda. Dad is a solo practitioner in South Bend, IN. He has been a role model my entire life, consistently demonstrating how to be a good lawyer and a better person. He has a vast knowledge of tax, and I'm hoping I've picked up a few of his insights through genetics or osmosis. Some of the earliest memories of my mom are playing in the halls of St. Mary's College, where she taught statistics. As my siblings and I grew older, she spent more time teaching us, not just working with us on math or English, but showing us—through her own example—about compassion, diligence, service, and selflessness. Any talk of my parents cannot help but make me think of my siblings—Kathleen, Anne, Libby, and Mike—my best friends, confidants, and occasional sparring partners. And I would not be here without the love and support of Cristina Cardenas, my fiancée, who works tirelessly to improve education for children throughout the world.

I have been truly lucky in terms of colleagues and friends. I've learned with and learned from attorneys, office managers, paralegals, and legal assistants in Chicago, South Bend, and Washington. I have been incredibly fortunate to learn about the tax field from the women and men of the Tax Division and my opposing counsel for the last twelve years. As to my friends, in a very sincere way, I don't have friends, I have family. I thank you all, my family.

I have been blessed through the years with great mentors. It would be impossible to name them all, but, in particular, I thank Judge Dan Manion for hiring his first clerk from South Bend and for teaching me so much about the law and life. I thank Gil Rothenberg for bringing me to the Tax Division and developing my knowledge and passion for the subject. And I thank Diana Erbsen for picking me to be her counsel, giving me a broader view of the workings of our tax system.

At the main DOJ building, there is a motto inscribed in Latin that translates as "Our duty is a privilege." That has truly been the case for me. I feel honored to have had the opportunity to litigate tax issues in appellate courts for the last 12 years. My service has taught me the breadth and complexity of our tax system, and has equipped me with the ability to analyze the strengths and weaknesses of different legal positions—whether taxpayers' or the Government's. My job has given me a deep appreciation for the important work of the Tax Court, and the need for fair and expeditious resolution of tax controversies. A long time ago, two wise former

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[1] Under the *American Lamb* standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation." *American Lamb Co. v. United States,* 785 F.2d 994, 1001–1004 (Fed. Cir. 1986).

AUSAs told me that the Government wins its point when justice is done. I try to keep that in mind when I litigate in my current position, and justice—consistent with the law—will be the North Star for me if I am so lucky as to be confirmed. I pledge to be impartial in approach, diligent in preparation, and absolutely committed to following the law where it leads.

I look forward to answering the committee's questions.

SENATE FINANCE COMMITTEE

STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Patrick Joseph Urda.
2. Position to which nominated: United States Tax Court.
3. Date of nomination: August 3, 2017.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: August 26, 1976; South Bend, Indiana.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list secondary and higher education institutions, dates attended, degree received, and date degree granted):

   1990–1994, St. Joseph High School, South Bend, Indiana; High School Diploma, June 5, 1994.

   1994–1998, University of Notre Dame; B.A. (*summa cum laude*), May 17, 1998.

   1998—2001, Harvard Law School; J.D., June 7, 2001.
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):

   Gonderman Legal Corporation, P.C. (now dissolved), South Bend, Indiana, Summer Associate (Summer 1998, Summer 1999).

   McDermott, Will, and Emery, Chicago, Illinois, Associate (2001–2003); Summer Associate (Summer 2000).

   Maciorowski, Sackmann, and Ulrich, Chicago, Illinois, associate (2003–2004).

   United States Court of Appeals for the Seventh Circuit, South Bend, Indiana, Law Clerk to the Honorable Daniel A. Manion (2004–2006)

   United States Department of Justice, Tax Division, Washington, DC, Counsel to the Deputy Assistant Attorney General for Appellate and Review (2015–present); Trial Attorney, Appellate Section (2006–present).

   American University, Washington College of Law, Washington, DC, adjunct professor (2012–2015).
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):

    During my time at the Department of Justice, I also have served on two temporary detail assignments outside the Tax Division: United States Department of Justice Office of Legal Policy Nominations Counsel (February–May 2017); and United States Department of Justice, Criminal Division, Office of Overseas Prosecutorial Development Assistance and Training, Trainer (August 2017).
11. Business relationships (list all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, com-

pany, firm, partnership, other business enterprise, or educational or other institution):

Hannah's House, Mishawaka, Indiana, Board of Directors (2005–2006).

St. Thomas the Apostle Church, Washington DC, Young Adults Executive Board (2010–2013).

Washington English Center (formerly Language Etc.), Washington, DC, Associate Board (2014–present).

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

American Society for International Law, Government Attorneys Interest Group, Steering Committee Member (2012–2014).

Edward Coke Appellate Inn of Court, Member (2017).

Indiana Society of Washington, DC, Member (2017).

National Review Institute, Washington Fellow (2012).

Notre Dame Club of Washington, DC, Member (2006–present (intermittent)).

Washington English Center, Washington, DC, Volunteer Teacher (2008–present).

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.

In 2008, I worked in a volunteer phone bank in support of Senator John McCain's presidential campaign, and volunteered on Election Day.

In 2012, I volunteered on Election Day in support of Mitt Romney's presidential campaign.

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.

On October 8, 2012, I contributed $200 to Romney Victory, Inc.

On August 10, 2011, I contributed $50 to Mullen for Congress.

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):

United States Department of Justice Distinguished Service Award, 2017.

Tax Division Outstanding Attorney Award (for work as Counsel), 2016.

Tax Division Outstanding Attorney Award (for work as attorney), 2010, 2012, 2014, 2015.

Internal Revenue Service, Mitchell Rogovin National Outstanding Support to the Office of Chief Counsel Award, 2012.

Glenn D. Peters Scholarship, 1998–2001.

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

None.

16. Speeches (list all formal speeches you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated):

None.

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

My experiences as an appellate litigator in the Tax Division of the Department of Justice, my time as a law clerk for the United States Court of Appeals for

the Seventh Circuit, and my work in private practice have all prepared me for the position of a judge on the United States Tax Court. During my more than decade of service at the Tax Division, I have litigated a wide variety of tax disputes, and, as a result, I have a strong grounding in the substantive issues and procedural aspects of tax law. Many of these appeals have stemmed from decisions of the Tax Court, which has provided an important perspective into the Court's practice, procedures, and docket. In my professional career, both inside and outside the government, I have learned from numerous colleagues, opposing counsel, mediators, and judges, and I firmly believe that the knowledge gained from them will provide invaluable help in carrying out my responsibilities if I am confirmed as a judge. Good judges are impartial in their approach, diligent in their preparation, and absolutely committed to following where the law leads. Thanks to the opportunities that I have had and my strong desire to continue in public service, I will strive every day to be such a judge.

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.

   I have no plans, commitments, or agreements to pursue outside employment during my service.

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 not aware of any potential conflicts of interest due to any investments, obligations, liabilities, or other relationships. If confirmed, I will carefully review and address any real or potential conflict of interest by adhering to the Code of Conduct for United States Judges, 28 U.S.C. § 455 and any and all other laws, rules, and practices governing such circumstances.

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.

   During my service in the Tax Division, I have represented the United States in tax-related cases in the United States Courts of Appeal, including appeals from Tax Court decisions. If confirmed, I would recuse myself from any matters in which I participated during my tenure at the Department of Justice.

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.

If confirmed, I will carefully review and address any real or potential conflict of interest by adhering to the Code of Conduct for United States Judges, 28 U.S.C. § 455 and any and all other laws, rules, and practices governing such circumstances.

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.

See Ethics Disclosure (Financial Disclosure Report) provided to the committee.

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.

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.

QUESTIONS SUBMITTED FOR THE RECORD TO PATRICK J. URDA

QUESTION SUBMITTED BY HON. JOHN THUNE

Question. Some have criticized the Tax Court for restricting access to court documents, when similar documents are publicly available in cases being heard by Federal District and Circuit Courts. I understand that steps would have to be taken to protect taxpayers who are representing themselves so that personal information is not accidentally disclosed. What are your views on whether the Tax Court should move to public electronic access via the Internet to court documents in order to increase the transparency of the Tax Court's proceedings?

Answer. In my practice as an appellate litigator, I have found availability of Federal District and Circuit Court documents on the Internet to serve a valuable function, giving litigants efficient access to court filings and providing the public a direct view of judicial proceedings. Constructing a similar system for the Tax Court would necessarily involve answering a wide range of questions, from the protection of sensitive taxpayer information to practical issues of budgeting and resources. As a nominee to the Tax Court, I am not in a position to comment on the feasibility or

practicality of building such a platform, but, generally, transparency in the tax field serves an important role in building taxpayer confidence in the tax system's fairness and reliability.

QUESTION SUBMITTED BY HON. BILL NELSON

Question. Given all of the glitches and general confusion created by the new tax law (Pub. L. 115–97), how do you plan to help ordinary Americans navigate these waters and resolve any complications brought on by the new tax law?

Answer. It has been my experience that clear decisions, firmly grounded in statutory language, provide good road maps to help taxpayers navigate changes in law and to properly order their affairs. The Supreme Court has explained that interpretation of a particular provision "depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis" (*Dolan v. Postal Service,* 546 U.S. 481, 486 (2006)). If I am so fortunate as to be confirmed as a judge on the Tax Court, I will utilize the tools identified by the Supreme Court (as well as the relevant circuit court and the Tax Court itself) to interpret the provisions of the new tax law and any related administrative guidance.

PREPARED STATEMENT OF HON. RON WYDEN,
A U.S. SENATOR FROM OREGON

This morning the Finance Committee meets to discuss five nominations to important positions in the executive branch. Mr. Jeffrey Kessler is nominated to serve as Assistant Commerce Secretary for Enforcement and Compliance, Ms. Amy Karpel and Mr. Randy Stayin are nominated to serve on the U.S. International Trade Commission, and Ms. Elizabeth Ann Copeland and Mr. Patrick Urda are nominated to serve as judges on the U.S. Tax Court.

I'll speak briefly on each, beginning with the three trade-related nominations. This administration swept into office with a lot of tough talk when it came to trade and manufacturing jobs at home.

I agree that NAFTA needs renegotiating. I agree that the U.S. needs to step up with tough action against China's abusive trade practices.

But after a year and a half of work, the Trump administration has managed to unite our traditional allies with China against us. In many ways, China is getting away with its cheating scot-free. Instead of creating American jobs, this trade policy is creating chaos.

With respect to today's hearing, the good news is that the three trade-related nominees before us are all set to fill enforcement-related positions. In my view, step one when you're looking to sharpen our trade policies and fight for American workers is enforcing the laws on the books. Mr. Kessler would fill one of the top jobs at the International Trade Administration within the Commerce Department, and Ms. Karpel and Mr. Stayin would play key roles as ITC Commissioners helping to make sure our trade policies are benefitting American workers and businesses. All three are qualified nominees, and I look forward to discussing enforcement issues further with them.

Next are Ms. Copeland and Mr. Urda, who are nominated to serve as Tax Court judges. The tax court is the judicial backbone of the Federal tax code. It's the best opportunity Americans have to dispute tax bills before they have to pay—and it keeps them from getting stuck in slow-moving courts when they have a tax issue. It's a tough job that requires a lot of time on the road. So I'm thankful that Ms. Copeland and Mr. Urda are willing to serve.

Thank you, Chairman Hatch, for convening this hearing. I look forward to questions.

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