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NOMINATION OF CHARLOTTE R. LANE

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF

CHARLOTTE R. LANE TO BE A MEMBER OF THE
U.S. INTERNATIONAL TRADE COMMISSION

JUNE 27, 2002

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THURSDAY, JUNE 27, 2002

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

The hearing was convened, pursuant to notice, at 10:00 a.m., in room SD–215, Dirksen Senate Office Building, Hon. John D. Rockefeller IV, presiding.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, A U.S. SENATOR FROM WEST VIRGINIA

Senator ROCKEFELLER. Welcome Charlotte Lane, to our pleasant confusion atmosphere here.

Ms. LANE. Thank you.

Senator ROCKEFELLER. And I am going to make a statement, having called the committee to order. The committee is in order, as far as I can tell, and there are a couple of things I would like to say.

Then I have some standard questions to ask you, which you probably know about, and then some other questions. And then, unless somebody shows up, this ought to be a pretty nice hearing.

I am very happy that you are here. And I am very proud that you are a West Virginian, that you are Charlotte Lane, and that we have known each other for many years. And my purpose is, I want people to understand why I am a strong supporter of you for the International Trade Commission, to which I believe you will be confirmed.

We have a little bit of difficulty on the committee, which some of us are trying to work out, with the other appointment. And the other appointment is deemed to be, necessarily, agricultural. You were brought up on a farm, but that does not somehow make you agricultural.

And so we are trying to work these things out. And it is very interesting, because the agricultural person, is that person agricultural or not? We will see. We will see.

But anyway, you need to know that not everything is resolved here because it is sort of difficult. It is involving only two members, and I talk with them assiduously and hope for good results. We will see what happens.

The ITC plays a large role in the life of myself and our State, and many other things, in the whole concept of trade in this coun-

try and in this world. Its activities are, for the most part, unreported. Most people do not know what it is, and that is just fine because it does extremely important work because it has enormous power and enormous responsibility.

Day in and day out, they make central decisions with respect to trade law and policy decisions. We will talk about that. But they interpret the law, and recently their work has been very, very important.

Oh, I have forgotten something. You need to introduce your family and friends, if you care to.

Ms. LANE. Yes. Thank you.

First, I would like to introduce my daughter, Anne Hatton Lane. Would you stand up, please? And my friend, Beth Elkins from Charleston. And I am also pleased to have my new friends from the ITC come today, commissioners and staff, to support me. And I was also expecting some staff people from Congresswoman Kaptur's office, but I do not think they have arrived yet.

Senator ROCKEFELLER. Well, they probably will be because we started a minute or so early.

Ms. LANE. But I am really happy to have all the support here this morning, and I am really happy to have your support.

Senator ROCKEFELLER. Well, that you have.

So anyway, back to the ITC. Back to the ITC. It literally can make the difference in the way it interprets laws between life and death survival and non-survival.

And whether the American public knows that or not is of no consequence to me. It is simply a consequence of how the commission rules and interprets, and that is of enormous consequence to me, and to our State, and to our country.

I have to say, as I have indicated, that I have known you for years. We have been friends for years. We do not share the same political party. I could care less about that because we share many other much more important things.

I have always been very impressed by your intelligence, by the breadth of your experience which covers really a lot, your judgment, and always, first and foremost, your integrity. That is item number one in public service, always.

I think you are going to make a very valuable contribution to the work of the ITC. You have been a respected public servant in a variety of ways in our State of West Virginia, serving as commissioner of the West Virginia Public Service Commission, which is one of the toughest jobs in the land, I might say. It is extremely tough. You have done that on two different occasions. You have chaired it for 4 years, and then you were previously on it as a commissioner.

Chairing a public service commission—I know because I was a Governor for 8 years—was much easier back then than it is now. It is extremely complicated, intricate, judgmental, with people coming at you in all directions, and it is a very tough job.

You have had a lot of legislative experience. I tend to honor that because I had a minimal amount of it, but nevertheless, it has been very helpful to me. In other words, you have worked at the grassroots in public life, and that is in the West Virginia State House

of Delegates. And you did that on three separate occasions, which is very interesting.

You were also, in 1987—which is very recently in the life of all of us—an interim U.S. attorney in the Southern District of West Virginia, and that is a district where you better be on your toes because there are all kinds of things that could go very wrong, very quickly.

And many people have passed from private life to, well, what do we say, other conditions of life, and so you have done that. And that is hard stuff. You have spent a lot of time in private practice, and in short, Charlotte Lane, you are somebody who has a wealth of experience, who has performed consistently well in a variety of different roles, and as a result, you have, as I indicated, unusually broad perspective on government, on law, on the relationship between the two and economics, and in the private sector.

And all of this, I think, will serve you very, very well when you join the ITC.

You also understand the job of the ITC and being a commissioner, what it is and what it is not. As a lawyer, as a former administrator, and a former legislator, you know the job of an ITC commissioner is to enforce our trade laws, nothing more and nothing less.

And I have never testified before the ITC when the place has not been absolutely jammed with people from all over the world who have passionate views about everything in sight. So it may not be known, but it has a very, very heavy effect.

The ITC is not charged with setting our country's international trade policy. That is the responsibility of the executive branch in the Congress, which we do with either a modicum of intelligence or without that. But nevertheless, that is our job.

And it is the ITC's job to see to it that the antidumping and countervailing duty laws, and on occasion our safeguard statutes, are strictly enforced in accordance with the intent of Congress. I know that you fully understand that and I think that becomes very important.

Now, I go on at some length in my statement about my favorite subject, which is called steel. And I go into a polemic, which I am going to spare not only you but all of my colleagues I hear from, and to simply put that in the record.

I will say that we continue our tradition of promptly moving on the President's nominees, and that is something we do in the Finance Committee. That is something that is more disputed about in other committees, but not here.

I am very proud to say this confirmation hearing is taking place only 20 days after the President nominated you, and that being on June 7.

So we are moving quickly on the President's nomination because hopefully you are going to be filling an empty slot on the ITC, a slot that has stood open since December of last year.

And that is of no consequence to some, but of enormous consequence to all those who care about trade and trade law and trade consequences. And that emptiness has impeded the ITC's operations, in my judgment. So that concludes my statement, the given part of it.

Now, I have three standard questions which we ask every nominee. 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?

Ms. LANE. No, sir.

Senator ROCKEFELLER. Second, do you know of any reason, personal or otherwise, that would prevent you from fully and honorably discharging the responsibilities of the office to which you were nominated?

Ms. LANE. No, sir.

Senator ROCKEFELLER. And third, 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?

Ms. LANE. Yes, sir.

Senator ROCKEFELLER. That takes care of that.

Ms. LANE. Thank you.

Senator ROCKEFELLER. Now, what is it that you would like to say, Charlotte Lane?

STATEMENT OF CHARLOTTE A. LANE, NOMINEE TO BE A MEMBER OF THE U.S. INTERNATIONAL TRADE COMMISSION

Ms. LANE. Senator Rockefeller, I want to thank you personally for everything that you have done throughout my entire career, including giving me a babysitter to raise my only daughter.

And I want to thank you for your support and everything that you have done for the State of West Virginia and this country. I want to thank you for moving this nomination along as quickly as it is progressing.

And I want to thank the members of the committee for setting this up so quickly. I certainly understand the obligations of committee members and why they cannot come here today. And I also want to thank the President for giving me the honor of nominating me for this job.

And if I am confirmed by the Senate, I will do the utmost I can to do my job in a fair and objective manner, apply the law, and be a credit to all of those of you who have shown your confidence in me to date.

I would just like to briefly summarize my written statement and say that for 30 years I have practiced law, I have been a public servant, I have had a wide variety of experience.

And the experience that I have had as chairman and commissioner on the Public Service Commission in looking at complex issues, financial issues, economic issues and the ability to look at those complex issues and analyze them and then come up with fair and objective decisions applying the law, are certainly skills that are transferrable to this new opportunity that has been provided to me.

I also do not want to make light of the fact that I recognize that this is a great country. We produce many products and all of those products are important to this country and to the world, and it is very important that our trade laws be applied. At the same time, it is very important that we recognize that products are very important on a world-wide basis.

And, finally, I want to say that I did grow up on a farm. My mother is 82 years old, still lives on the family farm, and although she does not continue to raise cattle like we used to, she still allows the neighbors to raise cattle on our farm. She continues to garden, and I wish that she had been able to be here today. My father passed away 10 years ago, but not only did he farm, but he also worked at a chemical plant nearby.

And so I grew up in the Ohio Valley, which has farming, natural gas, oil, and we have manufacturing plants, and power plants. So, that area of the State has a little bit of everything.

I think all of that experience that I have had will make me very sensitive to all of the industries and all of the producers of this country, and I will do my best to apply the law as Congress intended it.

Do you have any questions?

Senator ROCKEFELLER. You grew up in Parkersburg.

Ms. LANE. Part-way between Parkersburg and St. Mary's, really at Willow Island.

Senator ROCKEFELLER. At Willow Island. All right.

Ms. LANE. Yes.

Senator ROCKEFELLER. So that is a famous incident.

Ms. LANE. Yes.

Senator ROCKEFELLER. And I was down there at the time and that was a very distressing incident.

But what is interesting about that part of the State is that it has so much manufacturing and so many chemicals, so much of everything. And it has something called "flat land," which is almost unheard of in West Virginia.

Ms. LANE. Yes.

Senator ROCKEFELLER. And we have lost some plants there, including manufacturing plants, Ames recently. And so the whole concept of interaction in what goes on in the world and what happens to our manufacturing jobs in West Virginia, of which we only have 78,000 total, is extremely important.

Ms. Lane, I have got some questions for you, if that is all right.

Ms. LANE. Yes, sir.

Senator ROCKEFELLER. And they have sort of lengthy beginnings.

Ms. LANE. Yes, sir.

Senator ROCKEFELLER. The questions are sort of one sentence, the question I ask you, but there is sort of a build up to that. So you be patient, will you please?

Ms. LANE. Yes, sir.

Senator ROCKEFELLER. All right.

I have never been treated with such respect.

Ms. LANE. I have been primed.

Senator ROCKEFELLER. Is that right?

Ms. LANE. Senators are always correct.

Senator ROCKEFELLER. Is that right?

Ms. LANE. Yes, sir.

Senator ROCKEFELLER. That is a lesson I have yet to learn.

I have been troubled by the tendency of the ITC to require something called proof of actual losses, and this is to require that an industry be flat on its back before the commission is willing to provide relief.

If you are a foreign producer and you know that you can target a market in this country, and that is where markets are targeted, and do so with impunity until the domestic industry is actually bleeding red ink or worse, why would somebody not take advantage of that opportunity to go after us and to try and strike us down? Why not take the chance to weaken your competitor to the point of destruction? It is the way the world works now.

And there are laws that say that cannot be done, at least in this country. The WTO speaks to that. But it is something people do routinely, and we are always the easy victims.

I also think that puts our trade officials in a very difficult position when they defend these trade laws internationally. As you know, the EU, the Japanese, the Koreans and many others are challenging our steel safeguard measures at the WTO because they argue that by some measures, some U.S. imports were not rising in the last year.

In other words, if the imports were rising, the world must be all right. Well, Section 201 is not about permanency, it is about a temporary situation where things may rise a little bit.

And in our State where we come from, Ms. Lane, the companies talk bravely and worry privately. And their worries do not even always carry them to the end of the year.

So a slackening of imports does not necessarily solve problems, particularly when it is very temporary. And, of course, as you know, in the case of the Section 201, the imports were started at 30, then they went to 24 the second year, and 18 in the third year.

So those imports are going to shoot right back up. But if you do not know those other facts, you can say, oh, well everything seems to be fine, so why should we worry? Well, they are not.

So the administration has rebutted this very forcefully, noting that the ITC investigations looked at the entire period from 1996 to 2001. And I fully support the administration in what they did with respect to that.

And I should note that I find that the Europeans', the Japanese, Korean, and many other countries' positions on our steel safeguards to be the most, if I may say so, shameful hypocrisy I have encountered in my long period of working on trade issues. This is a kind of hypocrisy that I guess I am accustomed to, but you never really do get quite accustomed to it.

The point really is that, by holding off on relief until an industry is driven into loss, by holding off on relief until that time comes or postponing action under our trade laws, I believe the ITC increases the risk that the ultimate implementation of those trade laws may be, will be challenged under WTO rules, and that, of course, is what other countries have in mind.

Whereas, if the ITC acts promptly and sets a more reasonable standard of material injury rather than actual financial losses, as the Europeans and the Chinese did when they quickly imposed steel safeguards of their own earlier this year, our trade laws will not just be more effective, but they will be easier to defend in international fora like the WTO.

So, to me, requiring that an industry show actual losses before any relief can be provided is exactly the wrong approach under the law. And my question is whether you agree that relief must be pro-

vided when industry is being materially affected by imports regardless of whether the industry is actually suffering losses?

Ms. LANE. I agree with you, sir.

Senator ROCKEFELLER. All right.

And can you say a word more?

Ms. LANE. I think that you are exactly right, that the law requires material loss, materially affected.

Senator Rockefeller. Right.

Ms. LANE. And the commission should apply the law.

Senator ROCKEFELLER. All right.

My second question is, U.S. antidumping and countervailing duty laws make clear that material injury is harm that is not inconsequential, not immaterial, and it is not unimportant. That is not a high hurdle. And it is certainly not an invitation to the commission to make policy judgments about how much relief an industry needs or what role imports should have in any given market.

Do you agree that the commission's role is to enforce the law as written, to refrain from allowing policy judgments to enter into an analysis, which is sort of part of human nature—one always likes to inject policy, but if the policy is not part of the work of the body, then it cannot be that work—and to ensure that relief is provided where imports are a cause of injury, that is not inconsequential, not immaterial, and not unimportant?

Ms. LANE. Yes, sir. I agree with that statement. I think that Congress writes the laws and the commission should apply the laws as written, consistent with the intent of Congress.

Senator ROCKEFELLER. Good. I wish you would tell that to the Surface Transportation Board, if you happen to run into any of them. That is a different subject, and was just a bad joke on my part.

My third question, our law clearly instructs the commission to evaluate the question of injury in the context of the business cycle. That provision was put into law for a reason, that is, to take into account that an industry can be injured even during relatively good economic times and when there is a time for the industry's products.

If you are in a cyclical industry and you cannot earn the profits you need when times are good, you are not going to survive when times are bad. That is the point of the law. And it seems to me that it makes very good plain sense.

And my view of the law not only allows but requires that relief be provided if an industry's performance is being materially harmed. That is the standard even if the industry is, at the time of the investigation, profitable and enjoying strong demand, because what happens shortly thereafter could be very different.

Do you agree?

Ms. LANE. Yes, sir. I agree. Profitability and demand do not preclude an affirmative determination.

Senator ROCKEFELLER. Do you know what? There is an Energy conference going on right now which I am meant to be at where folks are at. There are things going on. I am always a little bit embarrassed when I look around and I do not see anybody, as I am sure they are if I am not here.

But, in any event, there are other questions. I want to leave the record open so people can ask those questions to you. They can be written, and you can respond since we will not be acting on this this day.

I want to move on it as quickly as possible. I know that Chairman Baucus does. I talked with him, in fact, on the floor before I came up here. And we need to get the concurrence from the Ranking Member, and one of those on my side of the aisle.

And I know the President wants this to happen, and I know that America needs this to happen. So I have actually a series of questions from the Ranking Member, Senator Charles Grassley.

He has a statement here for the record and he may have questions. He does not, but I am going to enter his statement. It may be that he has some questions, and we will just see. I am sure that you will respond promptly.

Ms. LANE. Yes, sir. I will be glad to do that.

Senator ROCKEFELLER. All right.

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

Ms. LANE. And, sir, I want to thank you again.

And could my written statement that I had prepared be entered into the record, too, please?

Senator ROCKEFELLER. That is as automatic as it gets.

Ms. LANE. Thank you.

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

Senator ROCKEFELLER. So I think there has been a reasonably uncontentious discussion.

Ms. LANE. This has been really very nice and very pleasant, and I have enjoyed almost every second of it. And I took your advice and thought of nice thoughts.

Senator ROCKEFELLER. That is right.

Ms. LANE. And thank you.

Senator ROCKEFELLER. That is right.

And you have done wonderfully. And you will be confirmed.

We stand in recess.

Ms. LANE. Thank you.

Sir, some of my friends have arrived. Can I introduce them, please?

Senator ROCKEFELLER. Absolutely.

But we are no longer in recess.

Ms. LANE. All right.

I would like Aaron Spork, Allison Bivey to stand up. And I want to thank them for coming and supporting me also. They are from West Virginia.

Senator ROCKEFELLER. Yes.

Ms. LANE. They come from Congresswoman Kaptur's office.

Senator ROCKEFELLER. That is right.

Ms. LANE. Yes.

Senator ROCKEFELLER. That is right.

Ms. LANE. Thank you.

Senator ROCKEFELLER. That is right.

So that is very good. And I welcome both of you and all of you. And thank you also, and also members of the ITC staff and commission. It was very good. Thank you.

We stand in recess.

[Whereupon, at 10:26, the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. MAX BAUCUS

Today we will consider the nomination of Ms. Charlotte R. Lane to fill a Republican seat on the United States International Trade Commission. Ms. Lane, I want to begin by congratulating you on your nomination. I think President Bush has made a fine choice. I welcome you and your family and friends to the Finance Committee.

This morning, we are continuing our tradition of promptly moving the President's nominees. I am proud to say that this confirmation hearing is taking place only 20 days after President Bush nominated Ms. Lane on June 7. We are moving quickly on the President's nomination, because Ms. Lane will be filling an empty slot on the ITC—a slot that has stood open since December of last year, impeding the ITC's operations.

The International Trade Commission is on the front line of the fight against unfair trade practices. As I have said many times before, vigorous enforcement of antidumping, countervailing duty, safeguard, and other U.S. trade laws is critical to rebuilding and maintaining a public consensus in this country favoring trade liberalization. The importance of the role played by a Commissioner of the International Trade Commission is upholding U.S. trade laws cannot be underestimated.

A Commissioner must give our domestic industries confidence that our Government will defend them unfair practices by our trading partners. At the same time, she must apply those laws in a transparent, fair and impartial manner that allows us to hold up U.S. trade remedy practices as a model for our trading partners and meet our international obligations. Ms. Lane brings to this position a long record of public service to the State of West Virginia.

She has served several terms in the State legislature. She has been Chairman and is currently a Commissioner of the West Virginia Public Service Commission—a position that calls for the same kind of in-depth economic analysis she will need to bring to bear at the ITC. Ms. Lane also has many years of experience in the private practice of law.

I was disappointed to learn that some of my colleagues on the other side of the aisle are opposed to reporting the President's nominee to the Senate for confirmation today. Some have raised the concern that they would like the next nominee for the ITC after Ms. Lane to be someone with agriculture experience. I agree with this position. That is why I will work to ensure that the next nominee has agriculture expertise and experience. But I don't understand why this concern is a reason to hold up this nominee—who, by the way, grew up on a farm.

We look forward this morning to learning more about our nominee and to moving forward in this process. Congratulations again, Ms. Lane, on your nomination. We thank you for your willingness to serve, we wish you much success, and we intend to work closely with you to achieve results for the American people.

PREPARED STATEMENT OF HON. BOB GRAHAM

Good morning Ms. Lane. I want to welcome you to this hearing and express the committee's gratitude for your taking the time to be here today. The International Trade Commission, to which you have been nominated, is one of the most critical institutions working on trade. The ITC has the important task of administering U.S. trade remedy laws and providing valuable trade expertise to both the legislative and executive branches of government.

Agriculture is also critical to trade. Nearly every state exports agriculture products, with total U.S. agriculture exports reaching an estimated $53 billion. The United States is also a major importer of agriculture commodities and food products. Agriculture imports have risen 72% over the last decade, from $22.7 billion in 1991 to $39 billion in 2001. Many of those imports compete directly with domestically produced commodities such as beef, fruits, juices, vegetables, wine, beer, oilseeds, sugar, and dairy products.

The U.S. average tariff on agriculture imports at 12 percent is much lower than the global average tariff of 62 percent on similar products. That tariff disparity makes the United States particularly vulnerable to unfairly traded agriculture products and import surges. The ITC is increasingly dealing with trade remedy cases that involve agriculture products. There are currently 18 antidumping orders and 8 pending investigations covering agriculture products. Additionally, the "peace clause" with the European Union is set to expire in 2003, which will open the door to agriculture subsidies cases between the United States and Europe.

In considering this growing number of trade cases on agriculture products, the ITC must take into consideration factors such as the seasonality of perishable commodities and must design safeguard mechanisms that can adequately deal with the unique nature of agriculture products. Systems that were designed to address manufactured goods, which are not perishable and are produced throughout the year, are not necessarily appropriate for dealing with agriculture products. In Florida, our vegetable growers have learned this lesson the hard way. Safeguard mechanisms included in the NAFTA to protect U.S. producers from import surges were not effective in keeping Florida tomato growers from being driven out of business by Mexican imports.

Given the importance of increased U.S. trade in agricultural products, and the difficulty applying manufacturing models to agricultural products, I have been encouraging the President—both this President and the past Administration—to name to the ITC a commissioner with agriculture background.

In February, I was joined by 25 Senate colleagues in sending a letter to the President asking that one of his next nominees to the ITC have agriculture background. I note from your biography a distinguished career in the practice of law and in public service on the West Virginia Public Service Commission and as a Member of the West Virginia House of Delegates. I do not see any agriculture expertise. Ms. Lane, if you were from an agricultural economics background, I would be enthusiastic about your nomination. I am assured by the White House that a nominee with agriculture expertise is being considered for a second vacancy on the ITC. I hope this is the case. But until I am satisfied that this is true, I regrettably oppose your nomination.

PREPARED STATEMENT OF HON. CHARLES E. GRASSLEY

Mr. Chairman, I am sorry that I was unable to be here today. As a conferee on the Energy Bill Conference Committee, I had to attend a joint House-Senate conference meeting of the conference this morning. However, I would like to submit the following statement for the record.

Ms. Lane is the President's nominee to become one of the next Commissioners to serve on the International Trade Commission.

Ms. Lane has a long and distinguished record of public service. Her commitment to public service is well documented, having served the people of West Virginia as a member of the House of Delegates, a public service commissioner and most recently as chairman of the Public Service Commission.

I admire her record of public service and appreciate her enthusiasm to continue that work here in Washington.

However, I am disappointed that this nominee does not have a strong background in agriculture or agriculture trade.

The International Trade Commission currently has five Commissioners, none of whom have a background in agriculture. With two terms expiring on the Commission, the make-up of the board needs to reflect the importance of agriculture trade to our economy.

Agriculture trade accounts for over $50 billion in exports a year. The appointments to the International Trade Commission can significantly affect the administration of United States trade laws against unfair practices. I think there needs to be somebody on the Commission that understands agriculture to rule on complex cases which may involve agriculture trade.

There are currently 18 antidumping orders and a significant number of pending investigations affecting agricultural products.

Additionally, the "peace clause" with the European Union is set to expire in 2003, which will open the door to agricultural subsidies cases between the United States and Europe.

The ITC recently concluded sunset reviews of more than 300 duty orders, including many agriculture commodities.

In February Senator Bob Graham and I wrote a letter, signed by many of our colleagues, to President Bush making it crystal clear that the next nominee to the International Trade Commission must have a background in agriculture.

I am disappointed that this nominee does not.

I want to be absolutely sure that the next appointment by President Bush to the ITC is someone with a strong agriculture background who will get quickly confirmed by the Senate before this nominee is cleared.

I also want to make sure that this nominee has a balanced approach to deciding cases which may appear before the ITC, particularly steel cases. Recent articles have quoted the nominee as someone with "strong sympathies for the domestic steel industry." Before proceeding with this nomination, I have a number of questions for the record that address this issue.

Mr. Chairman, before concluding there is one other issue that I would like to raise about the International Trade Commission. I am becoming increasingly concerned about attempts to apply political pressure on the International Trade Commission to influence the outcome of pending cases.

Some may view my desire for someone with a strong agriculture background at odds with my concern over politically influencing pending cases.

It is not.

The Senate Finance committee has a constitutional mandate to ensure that Presidential nominees are qualified to serve in their appointed positions.

By seeking someone with a background in agriculture trade, we are exercising our constitutional authority to ensure that the next nominee to the International Trade Commission is qualified to rule on these cases.

The situation is somewhat analogous to appointment to the Supreme court.

We must be sure that the person being appointed is qualified to serve.

However, once appointed, political influence should not be used to influence pending cases.

They should be decided on the facts.

Now, political pressure on the ITC generally comes about in two ways.

First are letters and appearances from Members of Congress. Now there is nothing wrong with a Member of Congress writing the ITC and expressing his or her legal opinion about a case.

But let me be clear.

The fact that one hundred Representatives, or fifty-one Senators, sign a letter in favor of a particular outcome should be relevant only to the degree that the legal arguments put forth in that letter are persuasive.

Second, I am aware of attempts in the past to cut the funding of the International Trade Commission when rulings are made that some Members of Congress do not like.

This is totally inappropriate.

It is important to remember that the ITC is an independent, impartial arbiter in international trade disputes under U.S. trade law. This independent stature was established and is guaranteed by the Congress.

By deciding cases on the merits, the Commission makes decisions that may be unpopular with certain industry sectors or individual Senators and Representatives—including me—and will doubtless do so again. But, despite disagreements the Congress must continue to defend the Commission's independence.

The fact that the Commission and Commissioners can rule on the merits, without fear of political pressure or retribution, is crucial to America's economy at home and our trade negotiations abroad. As other nations begin to implement their own trade remedy laws, they often look to U.S. law and institutions for guidance. It is important that U.S. institutions serve as good models for other nations. One way to do that is for Congress to ensure that the independent nature of the ITC is preserved, regardless of the outcome of any particular case, just as we would any other quasi-judicial agency. It is our duty as elected Representatives.

Again, I would like to welcome Ms. Lane to the Committee. I look forward to your testimony.

PREPARED STATEMENT OF CHARLOTTE R. LANE

I wish to thank the Chairman, Senator Baucus, Senator Grassley, and especially Senator Rockefeller, for making room in the busy schedule of this Committee to conduct this hearing on my nomination to the United States International Trade Commission. I recognize that particularly in these trying and turbulent times there are extreme pressures on the Senators and their Staffs to address numerous legislative issues, schedule and attend fact finding agendas and, just as critical, to be responsive to the many constituents who are demanding of your time. Therefore, I know that you all have scheduled precious time for this hearing on very short notice; and for that I am grateful.

I am a West Virginian, born and bred. I came from a small town on the Ohio River, and grew up with friends and relatives that had ties to agriculture, natural resource production and manufacturing activities. Unlike some areas, where being raised on a farm can place you so far from industrial activities that you can grow up with little direct connection to our understanding of the bricks, mortar and smokestacks of industry, my family's modest farm was located literally in the shadow of a large power plant, in the middle of an oil and natural gas production area and within a few miles of chemical plants, glass plants and other industrial facilities. All involved in domestic and international trade. In fact, my dad actually worked as a laborer at a chemical plant within 3 miles of our farm. He was a member of the OCAW. I grew up aware of the vibrant industrial pulse of this country, watching barge tows moving commodities along the Ohio River. It is that background that helped me to understand, from an early age, the diversity of industry in this country.

As far as professional background is concerned, my experience as a State Legislator and a State Regulatory Commissioner provide me with a unique understanding of the responsibilities and functions of a quasi-legislative, quasi-judicial, Administrative Body like the ITC. I recognize that I will be expected to perform my judicial responsibilities based on evidence in a fair and impartial manner.

I have spent approximately ten years as a Commissioner on the Public Service Commission of West Virginia. Almost 4 years of that tenure on the Commission were as Chairman. This experience has given me the opportunity to consider the financial impact of utility rates on the regulated utilities and on their customers. While some may consider public utilities as being the antithesis of industries operating in competitive markets, it is the financial and economic evaluation function, not the industries involved, that frame the similarities in duties between my present State Regulatory position and a position on the ITC. My experience as a regulatory commissioner will be valuable in weighing the issues that would come before me for adjudication as a commissioner on the ITC. As a State Regulator in West Virginia, I have learned to evaluate competing, and sometimes conflicting, expert testimony and evidence relating to financial and economic history and projections and to use that evidence to arrive at decisions that fairly consider and balance the interests of all parties.

I further recognize that my focus and energies must be trained on administering the law and legislative intent as set forth by Congress. It is not the duty of an Administrative Agency, whether acting in a quasi-legislative capacity or quasi-judicial capacity, to make the law. My experience as a State Commissioner has helped me to understand the wisdom of that requirement, and I will carry that understanding with me in practice, if you afford me the opportunity to serve on the ITC.

Finally, part of the responsibility of the ITC and an ITC Commissioner is to be responsive of the informational needs of Congress as you consider policy and legislative direction. I know how important it was to me as a member of the State Legislature to be able to rely on unbiased and intellectually honest advice from Administrative Agencies. I will not forget those lessons and, if you give me the opportunity, I will commit to be always mindful of your needs for such unbiased and honest advice whenever such advice on trade related matters is sought.

In closing I would simply say that I felt honored when I was told that I was even being considered for this position. I was even more honored to be the President's nominee. I hope that your evaluation of my background, qualifications, dedication to duty and commitment to perform in the best interest of all citizens of our country will allow you to confirm me as a Commissioner of the International Trade Commission. If you afford me that honor, I will accept it with humility and the dedication to public service that you have every reason to expect.

Thank you.

BIOGRAPHICAL INFORMATION

1.	Name:	Charlotte Ann Rolston Lane
2.	Position to which nominated:	Commissioner, United States International Trade Commission.
3.	Date of nomination:	June 7, 2002.
4.	Address:	Home: 914 Chestnut Road, Charleston, WV 25314 Office: 201 Brooks Street, Charleston, WV 25301
5.	Date and place of birth:	August 12, 1948, Parkersburg, WV.
6.	Marital Status:	Divorced.
7.	Name and ages of children:	Anne Hatton Lane, 23 years old.
8.	Education:	West Virginia University Morgantown, West Virginia West Virginia College of Law 1972, J.D. Degree Marshall University Huntington, West Virginia Graduated 1969, A.B. Degree (Journalism and Political Science) St. Marys High School St. Marys, West Virginia Graduated, 1966 Belmont Grade School Pleasants County, West Virginia
9.	Employment record:	Present: Commissioner West Virginia Public Service Commission Term expires June 30, 2003 1997 - January, 2001: Chairman West Virginia Public Service Commission

1990 - 1997:	Law Firm of Dodson, Riccardi & Lutz Charleston, West Virginia Concentration: Regulatory Issues
February 13, 1985 - February 1, 1989:	Commissioner West Virginia Public Service Commission
April 1987 - May 1987:	Interim United States Attorney Southern District Court of West Virginia
1980 - 1985:	Law Firm of Jackson & Kelly.
1974 - 1980:	Law Firm of Fowler, Paterno & Lane.
1973 - 1974:	Staff Counsel West Virginia Housing Development Fund
	Staff Counsel to The Judiciary Committee of the West Virginia House of Delegates during the regular sessions in 1973, 1974, 1975, 1976 and 1977.

10. Government experience: None, other than listed above.

11. Business relationships: None, except for clients represented while I was engaged in the private practice of law. (See items below).

12. Memberships: Past President, Charleston Rotary Club, 1998-99;

Board, Charleston Chamber of Commerce, November 1999 to present;

Past President, West Virginia Bar Association, 1999-2000;

Board of Governors, West Virginia State Bar, May, 1999 to May, 2002;

Member, West Virginia State Bar, 1972 to present;

Member, Fourth Circuit Judicial Conference, 1987 to present;

Board Member, National Association of Regulatory Utility Commissioners, November, 1999 to present; and

Past President, Mid-Atlantic Conference of Regulatory Utilities

Commissioners, 1999-2000.

13. Political affiliations and activities:

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

1979-1980; 1984: 1990-1992	Member of the West Virginia House of Delegates from Kanawha County Major Committee: Judiciary
1980, 1982: (Lost)	Candidate for WV House of Delegates (Kanawha County)
1988 General Election: (Lost)	Republican Nominee - Justice - WV Supreme Court of Appeals
1992 General Election: (Lost)	Republican Nominee - Circuit Judge - Circuit Court of Kanawha County, Division III
1996 General Election: (Lost)	Republican Nominee - Attorney General - State of West Virginia

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

I have been a member of the Kanawha County Republican Women's Club. I was elected as a delegate to the Republican National Conventions in 1992, 1996, 2000 and was an alternate in 1988.

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 cannot remember all of the contributions but the ones I do remember are as follows: Shelley Moore Capito, candidate for re-election to the U.S. House of Representatives, $1,000 - April, 2002; Shelley Moore Capito, General Election 2000, $250; Governor Cecil H. Underwood, candidate for re-election 2000, $2,000 (primary and general); and I have made various contributions to local candidates for the West Virginia House of Delegates and the West Virginia State Senate.

14. Honors and awards: Certificate of Merit, W.Va. State Bar, 1988; and Distinguished Alumni Award, Marshall University, 2002.

15. Published Writings: None, except for the West Virginia University College of Law,

Law Review in 1971-72.

16. Speeches:

While I was Chairman of the West Virginia Public Service Commission, I made numerous speeches from 1997 - 2001 on utility issues, including water, sewer, electric, telephone, gas, railroad and truck safety and I have also had newspaper columns during the same period of time. (I did not keep copies).

17. Qualifications:

I have been a practicing lawyer for 30 years. I have represented a broad range of clients and have practiced before federal, state and local courts.

I have represented the people of West Virginia as a member of the West Virginia House of Delegates and as a Commissioner and Chairman of the West Virginia Public Service Commission. My experience and interest in serving the public qualify me for this position.

As Chairman and as a Commissioner on the Public Service Commission, I have presided over complex issues, including rate cases and mergers and acquisitions of utilities. I have also advised the Governor and the Legislature on utility and energy issues.

I have the ability to listen to staff advisors on issues, without being totally dependent upon staff.

My strongest attribute is the ability and willingness to listen to all sides of an issue, keep an open mind, weigh all the issues and interests and reach a fair and reasonable decision.

B. FUTURE EMPLOYMENT RELATIONSHIPS

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

Yes, except for my membership in the W.Va. State Bar and the W.Va. Bar Association.

2. Do you have any plans, commitments or agreement 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, that I am aware of.

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, that I am aware of.

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.

While I was Chairman of the Public Service Commission (1997-2000), I advocated the passage of electric restructuring in West Virginia. As a member of the NARUC Electric Committee and Board of Directors (1997 to present), I have voted on the various resolutions relating to utility issues; which resolutions have been sent to Congress.

In 1997 - 1998, I appeared before the Transportation Committees in Congress (Both House and Senate) speaking about transportation issues.

In 1990 - 1992, when I was in the W.Va. House of Delegates, I voted on various issues.

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

I have no trusts or agreements. If conflicts arise, I would simply not vote or divest myself of the investment causing the conflict, or I will take other appropriate action.

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

Not applicable.

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

Not applicable.

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

Not applicable.

D. LEGAL AND OTHER MATTERS

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

In 1992, when I was a candidate for a county judicial office, someone filed a complaint with the judicial inquiry commission relating to campaign statements I made. The complaint was later dismissed as unfounded.

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.

In my capacity as Chairman of the Public Service Commission, I had grievances filed by employees relating to salary issues, work assignments or promotion issues. (All were successfully decided in my favor or settled with the employee. One case involved the

elimination of a position is pending in the Circuit Court of Kanawha County, West Virginia.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than 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 1.

E. TESTIFYING BEFORE CONGRESS

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

Yes.

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

Yes.

RESPONSE TO A QUESTION FROM SENATOR GRAHAM

Question: As a member of the West Virginia Public Service Commission, you must be familiar with the practice of charging higher rates for utilities such as electricity during high heating and cooling seasons. In the recent past, when considering § 201 cases, the International Trade Commission has been split on the question of using "seasonality" as a factor in defining the relevant agricultural market. Given the unique characteristics of perishable commodities (i.e., short shelf life), can you think of any reasons why the relevant agricultural market could not be defined on the basis of "seasonality"? Do you agree that it is an important factor that should be considered?

Answer: I am familiar with seasonal rates, although the West Virginia Public Service Commission does not set different rates based upon cooling and heating seasons. Although it was before my tenure on the Commission, the West Virginia Commission did consider seasonal peak load pricing alternatives and determined that our electric utilities peaked in completely different seasons in West Virginia than they did in surrounding states. Therefore, after due consideration to the issue, the Commission decided against creating seasonal pricing differentials. I believe that this is a lesson in considering the appropriate resolution of an issued based on the facts and circumstances applicable to a particular case. Seasonality is certainly a very important aspect of a competitive industries' dynamic. A full and clear understanding of industries and their markets is important. To the extent that the law permits, I would, of course, consider the characteristics of specific industries.

RESPONSES TO QUESTIONS FROM SENATOR GRASSLEY

Question 1: An article from the *Associated Press State and Local Wire* dated March 29, 2002 reported that: "Lane said her qualifications [for the International Trade Commission] are that, 'I have been very active in Republican politics, I have practiced law for 30 years and a lot of the issue[s] I have faced on the Public Service Commission in West Virginia are a lot of the same issues facing the country: electric issues, gas issues, water issues and telecommunications issues.'" Knowledge of international trade and/or international trade law was not listed as one of your qualifications. Could you please outline your specific qualifications relating to international trade and/or international trade law?

Answer: I have had no specific training or courses in international law. Both my experience on the West Virginia Public Service Commission, as well as my years in the West Virginia Legislature have given me a broad range of knowledge as to the effects of international trade in the domestic economy. In particular, I believe that

I have a strong practical understanding of many of the issues facing American manufacturers and farmers. Like any new member of the International Trade Commission, if confirmed, I still must master the technical legal issues that arise in the Commission's investigations—and I will do so. However, I am confident that my background gives me a unique and important insight and the analytical tools to perform as a Commissioner. In addition, my thirty (30) years experience practicing law, involve a variety of legal issues, both general laws and technical statutes. My expertise and skill in dealing with complex regulatory issues are transferable to the International Trade Commission. I am prepared to work hard and learn the wide body of statutory and case law applicable to international trade issues. Some of my strongest attributes are the ability to listen to all sides of a case, identify the issues, sort through the facts, apply the law and reach a fair and reasonable decision. The rate cases over which I have presided have very technical, financial and statutory aspects which have to be applied to specific factual issues. Many times it is necessary to really delve into the fine points and evidence in order to design rates for different categories of customers. Of course, this all has to be done within the confines of statutory provisions.

Question 2: Do you have any: specialized knowledge of international trade law?

Answer: See answer to question number 1.

Question 3: Have you written any articles relating to international trade or international trade law?

Answer: Public service has always been a strong interest of mine. The kind of decision making called for as a Commissioner of the International Trade Commission is something I am very familiar with.

Question 4: Have you given any speeches about international trade or international trade law?

Answer: I have spoken often of topics of direct interest as a legislator and as an administrator of the laws.

Question 5: Do you have any specialized academic training in international trade or international trade law?

Answer: No. My undergraduate degree is in political science. My law degree, from West Virginia University, as with most law degrees, was not specialized. Most learning as a lawyer, as you know, is from hands-on experience. I have a strong background in administrative law, which is really the branch of law most directly applicable to service on the International Trade Commission.

Question 6: Have you participated in any conferences or other types of professional development courses relating to international trade or international trade law?

Answer: No. I have participated in conferences on the matters that I have had immediate responsibility for, such as the Energy Forum in Montreal, Canada in May, 2000, and would expect to do as my duties allowed, were I confirmed to be an ITC Commissioner. I have been a lifelong student of continuing legal education on many topics. In addition, in today's world, utility regulation has an enormous global presence. Furthermore, some of the mergers and utility investment issues that we have considered at the Public Service Commission have involved non-U.S. companies and investments in foreign subsidiaries.

Question 7: Do you have any specialized background and/or knowledge of agriculture or agriculture trade?

Answer: Yes. I was raised on a West Virginia farm which has been in my family since the 1800's. I care deeply about agriculture. While my dad worked at a nearby chemical plant, he raised cattle, corn, pigs, chickens and bees. My 82-year-old mother still lives there. Our primary source of farm-related income came from selling cattle. As a child, I was a member of the 4–H, and my parents were members of the Farm Bureau. We were a small farm, but I had relatives who were full-time farmers. My uncle, in nearby Ohio, ran a large dairy farm and several first cousins owned and operated large farms along the Ohio River Valley, growing grain and cattle. I grew up knowing the joys and pitfalls of family farming. Furthermore, in my years in the West Virginia Legislature, the "farm block" was a very strong voice to which I always gave consideration.

Agriculture is very important to the State of West Virginia, and I have always been attuned to the problems facing our farming industry.

West Virginia is one of the few states where the total percent of land area devoted to farms is increasing. Agriculture in the state is big business managed by small farmers. Nearly 93% of the state's farms are less than 500 acres in size. Thousands of workers account for nearly 15% of the state's total work force and 21,000 farm owners operate the state's 21,000 farms and related industries, with a total economic impact of $1.5 billion.

The poultry industry in the state's Eastern Panhandle alone employs more than 10,000 people.

The state exports over $20 million worth of its agricultural products, and is in the top half of states in poultry, fruits and tobacco production. In addition to the more traditional crops, West Virginia ginseng exports are reported to total between $5–7 million annually.

The West Virginia Public Service Commission often deals with issues important to farms and farm families. Many cases are specific to one or more farms in an area. Water, natural gas and sewer extensions, telecommunications improvements, transportation certifications, landfill operations, utility siting—all have significance for farmers. Obviously, electricity and natural gas rates are of prime importance to farmers and to companies which produce and package agricultural products in the state.

To show how important agriculture is to West Virginia, I have attached a brief West Virginia Agricultural Profile (Attachment A).

Question 8: Do you have any specialized training in agriculture economics or agriculture trade?

Answer: See answer 7 above. I am proud of my family background in agriculture. My schooling in agriculture was not formal. My professional career has been concerned almost exclusively with economic issues addressed within a statutory framework. I believe that I have a good understanding of how to do this and believe that I can do this with respect to agriculture. I know that agricultural issues are as important to my country as they have been to my family.

Question 9: The question of what represents a "like product" in dumping and safeguards cases has become a very important issue in a number of major cases before the ITC recently. In general, without discussing any specific case, what approach would you use to define "like product."

Answer: In dumping and countervailing duty cases, The Department of Commerce defines the imported product subject to investigation and thus, the scope of the inquiry.

The ITC takes that scope as defined by Commerce and determines what domestic product is like that imported product. I do not know what my ultimate approach may be to determine "like product," but I would begin my tenure by using the test that the Commission has developed, examining the following criteria:

1. Physical characteristics of the product;
2. Interchangeability of the products;
3. Channels of distribution;
4. Common manufacturing facilities and employees;
5. Customer and producer perception;
6. When appropriate, price.

Generally, I recognize that under the law, the Commission must define the product that is like, or in the absence of like, most similar in characteristics and uses with, the imported article subject to an investigation. This is, of course, ultimately a decision that depends upon the facts of a particular case and the unique characteristics of the industry and product under investigation. I will not come to the Commission with a particular approach to this "like product" determination, other than to adhere to Congressional intent as expressed in U.S. law, with reference, where appropriate, to Commission precedent as set forth in the criteria above in this area. After I get some experience, I may develop a different approach but always with an eye to adhering to the statute and Congressional intent.

I understand that the concept of "like product" under the safeguard law is somewhat different. Under the safeguard law the like product is the domestic product that is "like or directly competitive" with the imported product. I understand that the term "like" means substantially identical in terms of physical properties, and "directly competitive" means commercially competitive. In deciding the question of like or directly competitive domestic product, I understand that the Commission considers factors similar to those used in antidumping and countervailing duty investigations.

Question 10: As you may know, in the European Union and in other countries, the approach taken to remedying dumping is the "lesser duty rule," which requires that the dumping duty be set at the lowest amount necessary to remedy the injury, not necessarily the amount calculated as the margin of dumping. Do you agree or disagree with the use of the lesser duty rule?

Answer: The decision of what level of duty is appropriate in a dumping or subsidies investigation is assigned by Congress to the Department of Commerce—the Commission has no role in setting margins. Accordingly, I do not believe that it would be appropriate for me to express personal opinions concerning how the Department of Commerce should perform the role Congress has assigned to it.

Question 11: Under current law, consuming industries are not permitted to be full participants as parties in dumping and subsidy cases. Do you think that they should be authorized to be parties in these cases?

Answer: Consistent with the statutes, the Commission Rules provide for participation by consumers in antidumping and countervailing duty investigations. I understand that consumers respond to Commission questionnaires and are permitted to file written views and present testimony. Whether consumers should have a broader role in these investigations is a policy determination for Congress.

Question 12: Under Section 201, in a mid-term review for the President, the International Trade Commission is supposed to evaluate the extent to which the industry has used the first half of the period of import restrictions to adjust to imports. What actions would you look for in terms of industry adjustment to warrant continued trade restrictions?

Answer: I would look to see if firms in the industry had made adjustment efforts consistent with those that they identified in their adjustment plan filed during the section 201 investigation. What is appropriate for one industry may not be for another. Each industry, as I have discovered in utility cases, has different ways to improve their efficiency and productivity. Under U. S. safeguard law, industries are encouraged to submit adjustment plans, and I would look to see what steps they have taken in furtherance of the plan. I understand that the President, but not the Commission, could decide whether Section 201 relief should be modified or terminated after receiving a mid-term review report from the Commission. Under U.S. law, the Commission's responsibility in such matters is to monitor developments with respect to the industry and to submit a report on the results of this monitoring to the President. I recognize that these tasks, which Congress has assigned to the Commission, are very important. Accordingly, I intend to be very diligent in monitoring any ongoing Section 201 relief, in order to provide a thorough and accurate description of industry conditions to the President.

Question 13: Some observers say that it is not and should not be the Commission's job to evaluate the impact that its decisions on trade remedies may have on downstream industries or the economy as a whole, or on U. S. trade relations with other countries. Basically they argue that the laws only authorize the Commission to examine the impact on the complaining industry. Do you think the current trade remedy law limits the Commission in this way?

Answer: Through the trade laws, Congress has established what it considers to be the proper balance between the interests of domestic industries and other relevant U.S. interests. If confirmed as a Commissioner, I will adhere to Congressional intent on this issue as expressed in U.S. law. While I am not aware of any specific statutory provisions that direct the Commission to consider the impact of dumping and subsidies on downstream industries, I know that the Commission frequently hears testimony from a wide range of interests—including downstream industries. Plainly, there are circumstances in which such testimony can be useful to the Commission's analysis of the relevant statutory factors that govern the Commission's material injury determinations.

The safeguard law provides that the Commission is to consider the impact of imports on the domestic industry producing the like or directly competitive domestic product, and to recommend the remedy that will prevent or remedy serious injury to the industry and facilitate adjustment. However, the Commission is required to include in its report to the President a description of the short and long-term effects of the remedy action recommended on other domestic industries. I understand that the President, in deciding what action to take, is required to consider factors relating to the national economic interest, including the impact on consumers and competition.

Question 14: Do you seethe Commission's job as applying the law objectively and independently, or do you believe that the Commission should be sensitive to the political nature of many trade cases, and respond to demands from Congress that the law be applied in one way or another?

Answer: The law should be applied as written. Congress created the International Trade Commission to be an independent, objective, quasi-judicial Commission to decide trade issues based upon the facts and the law. I understand that members of Congress regularly testify before the Commission and also send letters to the Commission concerning particular cases. I believe that input of this kind from Congress is important to the Commission's work, because members of Congress have specific information concerning the industries appearing before the Commission, as well as the relationship between those industries and their local communities. It is important for the Commission to take into account such factual information in objectively applying the law to the specific facts of the case.

Question 15: Do you think the interests of U.S. consumers, especially low-income consumers, are relevant to U.S. trade remedy law?

Answer: The views and information from everyone are relevant because we do not live in a vacuum, but the law does not make provisions to weigh consumer interest in dumping and countervailing duty cases. However, as I mentioned above in response to Question 13, Congress has established what it considers to be the proper balance between the interests of domestic industries and other relevant U.S. interests, such as the interests of low-income consumers. Again, as noted above, while I'm not aware of any statutory provision that specifically directs the Commission to consider the interests of low-income consumers, I know that the Commission often considers testimony from a wide range of interests. In that context, testimony concerning the effects of subject imports on low-income consumers could be relevant to the Commission's analysis of the statutory factors that govern the Commission's injury determination.

In safeguard cases the Commission considers the impact of imports on the domestic industry producing the like or directly competitive domestic product, and if it finds the requisite injury, recommends the remedy that will prevent or remedy serious injury to the industry and facilitate adjustment. I understand that the President, in deciding what action to take, considers factors relating to the national economic interest, including the impact on consumers.

Question 16: Should Commissioners be influenced by letters from Members of Congress in voting on trade remedy cases?

Answer: The views of members of Congress and the public are useful to put the issues in a case into a factual context. I will apply the law based upon the facts of each case, and I will not be swayed by anyone's opinion which is inconsistent with the economic facts of a case or applicable law. To the extent members of Congress present facts and analysis applicable to a particular case, the International Trade Commission should certainly consider those facts. As noted above, in response to Question 14, it is appropriate for the Commission to receive information from members of Congress, who often have a unique perspective on the issues before the Commission. I believe Commissioners should consider that information, along with any other relevant information on the record, and make an objective determination based upon the law and the particular facts of each case.

Question 17: Do you believe that when only a finding of threat of injury is determined by the Commission that restrictive duties still should be imposed which harms U.S. consumers?

Answer: Congress has decided that a determination of dumping or countervailing subsidies by the Department of Commerce, along with a finding of threat of material injury by the Commission, should result in the levying of duties on the relevant unfairly-traded imports. This policy decision is enshrined in U.S. law. As a Commissioner, if confirmed, my responsibility would be to apply the law as Congress intended.

In safeguard cases, if the Commission finds that increased imports threaten serious injury, the statute requires that the Commission recommend the remedy that will prevent serious injury and facilitate adjustment. The President makes the final decision on remedy, and I understand that the statute directs that he consider the impact of the remedy on consumers in making his decision.

Question 18: Do you believe that consumers should be given more standing in U.S. trade dispute cases, especially since today's marketplace is more global in nature?

Answer: This question raises a policy matter that is in my opinion, properly left to Congress.

Question 19: An article from the April 1, 2002 edition of *American Metal Market*, described you as someone with "strong sympathies for the domestic steel industry." Do you believe that this statement accurately describes your feelings toward the domestic steel industry?

Answer: My first duty, if confirmed as a Commissioner, would be to apply the law. West Virginia is home to a significant number of steelworkers, as well as some of the largest steel companies in the United States. Naturally, in the course of my career in West Virginia, I have seen the importance of the steel industry, both to my state and to the nation as a whole. This background would allow me to bring to bear a practical knowledge of this industry to my objective analysis of the specific facts in any particular case concerning the steel industry. I believe in the marketplace. I am sympathetic to all producers of goods and their employees and want a level playing field for all. It is the job of the International Trade Commission to apply the law, consistent with the intent of Congress, and I would do that job if given the opportunity.

Question 20: The International Trade Commission is often called upon to determine whether imports have caused injury to the domestic steel industry. Can you

assure me that any sympathy you may have for the domestic steel industry will not in any way affect your ability to be an impartial in rendering decisions in cases involving domestic steel manufacturers?

Yes, I can assure you that I will listen to the facts in each case and apply the law in an impartial and objective manner. Whatever sympathies I have will not affect my judgment when looking at each case.

Question 21: The April 1, 2002 edition of the *American Metal Market* also reported that: "When asked about President Bush's decision to impos[e] steel import tariffs, Lane said she was very supportive of his actions." Can you describe the legal basis for your support of the President's decision to impose steel import tariffs?

Answer: I made my remarks based upon the fact that the International Trade Commission had found the industry to be seriously injured by increased imports and had voted to recommend to the President certain remedies. Because of the controversy of the issue, I admired the President for acting on his convictions.

ATTACHMENT A

West Virginia Agricultural Profile
(From WV Dept. of Ag, based on Yr. 2000)

Number of Farms: 21,000

Economic Impact
- -Total economic impact is $1.5 Billion, including commodities, value-added products and the food industry
- -Agriculture commodities at the farm gate contribute $400+ million to the state's economy

Poultry Industry
- -92 million broilers, value $124 million
- -Cattle and calves, $94 million
- -4 million turkeys, $38 million
- -More than 249 million eggs produced each year, $30 million
- -Leading commodity industry in the state
- -The poultry industry in E. Panhandle employs more than 10,000

Cattle industry
- - 400,000 head; inventory value of $248 million
- -Cattle and calves produced $98 million in gross income in 2000
- -265 million pounds of milk produced in 2000, value of $37 million
- -Second leading commodity industry

Apples/Peaches
- -Apples, nearly $10 million
- -Peaches, $1.7 million

Honey industry
- -2000 production up 62 percent from 1999, 1.2 million pounds
- -1000 more colonies in production in 2000
- -Production value nearly double of 1999
- -Total value, nearly $500,000

Agribusiness
- -20 years ago, the state department of agriculture established the WV Grown Program
- -Recent economic survey indicates 400 businesses connected with the program contribute $70+million to WV economy, with 1,500+ jobs

-Growth in Value-added products equals more production agriculture

Farm Employment:
http://www.ers.usda.gov/Data/FarmandRelatedEmployment/ViewData.asp?GeoAreaPick=STAWV_west%20virginia
-Production: 23,000
-Proprietors: 21,000
-Wage and Salary Workers: 2,149
-Ag wholesale/retail trade: 86,409
-Total Farm and Farm Related Employment: 124,632 (14.9% of total state employment)

Timber Industry
(WV Div. Of Forestry)
-All value added, $3.1 billion
-30,000 employees

ADDITIONAL RESPONSES TO QUESTIONS FROM SENATOR GRASSLEY

Question 1: During your confirmation hearing, you were asked whether you agreed that relief "must" be provided when an industry is being materially affected by imports, regardless of whether the industry is actually suffering losses, and you stated that you agreed. You then stated that "the law requires material loss or materially affected." Could you please clarify your position on this issue? Do you take the position that even if a domestic industry is losing money or jobs, the Commission is required to find injury if imports are "affecting" the industry in some manner? Please bear in mind that the Commission is an independent body that is given authority to decide questions of injury in dumping cases precisely because the factors that define injury are subject to differing interpretations. What are the specific measures you would apply in determining whether a domestic industry has been injured as a result of dumped or subsidized imports?

Answer: I was paraphrasing the statute which provides that in order to reach an affirmative determination, the Commission must find material injury (or threat of material injury or material retardation) to the domestic industry by reason of the dumped or subsidized imports. In conducting an injury inquiry under the antidumping law, the Commission must consider all relevant economic factors including those listed in the statute, and the statute provides that no factor is necessarily dispositive. Profitability and employment are among the factors that must be considered, but as with other factors, neither is necessarily dispositive.

Question 2: The VVTO "sunset" rules are a very important issue with regard to the long-term nature of dumping duties. The U.S. process for evaluating sunset situations has raised objections in the WTO. The basic conflict here is between those who contend that the WTO Agreement in this area creates a presumption in favor of sunsetting dumping orders, and places the burden of proof on objecting parties to demonstrate that dumping will resume if the order is revoked. The U.S. takes the opposite position: that there is a presumption that dumping will resume if the order is revoked and the burden of proof is on those petitioning for revocation to demonstrate that dumping will not resume. There is no "U.S. law" on this issue. What is your view of how revocations should be handled in the ITC?

Answer: The issue of whether dumping or subsidies are likely to continue or recur is decided by the Department of Commerce. The Commission's role in Sunset reviews is to determine whether material injury is likely to continue or recur if the order at issue were revoked. The statute contains detailed directions to the Commission on the factors it is to consider in making this decision. If confirmed as a Commissioner, I would apply the law as directed by the statute.

Question 3: The question of whether imports are the "cause" of injury in dumping, subsidy and safeguards cases has been the subject of much controversy and a number of WTO cases involving the U.S. and especially ITC decisions. The U.S. has found to be acting inconsistent with WTO rules in failing to demonstrate that imports are the primary cause of injury to a domestic industry, rather than simply a contributing cause. What position do you take on the causation issue? Keep in mind, U.S. law for purposes of dumping and safeguards does not provide specific direction

to the ITC as to how to evaluate causation, so your position on this question is very important.

Answer: I am aware that the issue of causation has been debated both under domestic law, as well as in the context of WTO disputes. It is my understanding that the relevant statutory provisions governing this issue differs with regard to Title VII investigations and Safeguards investigations. I have not formulated a general approach or theory of causation but, if confirmed, I intend to closely reference the statutory language, relevant expressions of congressional intent and precedent in this area when evaluating the facts in a specific case.

Question 4: In general, how do you believe that the ITC should address WTO decisions which find that ITC practice is inconsistent with WTO rules. Again, these are not questions of what U.S. law says, but of how the ITC interprets that law in specific cases. When the WTO rules that the ITC has acted in a manner inconsistent with WTO rules, how do you believe that the ITC should implement that decision and on what timetable? Should the ITC act immediately to review the decision involved and bring it into consistency with the WTO ruling, or should the ITC feel free to ignore the WTO ruling, since any further dispute will be between the U.S. government and other WTO member governments, rather than directly involving the ITC and its practices?

Answer: Section 129 of the Uruguay Round Agreements Act provides specific guidance on whether, and under what circumstances, the ITC may conduct a redetermination following an unfavorable WTO decision. Under that provision, the USTR may seek advice from the ITC on whether it could reach a decision that is not inconsistent with the WTO decision in light of the requirements of U.S. law. If a majority of the Commission advises that it can, the USTR may, but isn't required, to ask the Commission to conduct such a redetermination. Absent such a request from the USTR, the ITC has no authority to take such action.

Question 5: During your confirmation hearing you agreed with a statement that the ITC's "role is to enforce the law as written, to refrain from allowing policy judgments to enter into an analysis." In your answers to questions for the record, you stated that "it is appropriate for the Commission to receive information from Members of Congress, who often have a unique perspective on the issues before the Commission. I believe Commissioners should consider that information, along with any other relevant information on the record, and make an objective determination based upon the law and the particular facts of each case." Communications by Members of Congress to the Commission often contain political statements and allegations that are not supported by empirical evidence or economic analysis. Do you believe that the Commission should give such statements equal weight with documented factual analysis, briefs, etc. For example, some communications from Congress presumptively allege that a domestic industry has been injured even when market conditions are positive—increasing sales and prices, etc. Do you believe such statements seek "policy judgments," rather than objective determinations based on the law and the facts?

Answer: The Commission is an independent body which applies the law to the facts of each case in a fair and unbiased manner. Members of Congress may have opinions on cases, but a distinction must be drawn, as I said in my reply, between "information" and opinion. Of course, information from any source, including data contained in Congressional correspondence should be evaluated together with all other information in the record.

Question 6: During your confirmation hearing you agreed that "our law instructs the commission to evaluate the question of injury in the context of the business cycle . . . the law . . . requires that relief be provided . . . even if the industry is, at the time of the investigation, profitable and enjoying strong demand because what happens shortly thereafter could be very different." You stated that "profitability and strong demands do not preclude an affirmative determination." Do you take the position that an injury finding can and should anticipate future market conditions—that an industry enjoying strong demand and profitability should be found to be suffering injury because it is possible that at some future point the business cycle could turn downward and that industry would suffer losses? If an injury finding were made on this basis, and imports were eliminated or reduced, how could a subsequent downturn and losses be blamed on reduced or non-existent imports? Can you please clarify your answer before the committee?

Answer: The statute does not preclude an affirmative determination of present material injury if an industry is not yet in the red and there is continuing demand for the product. The statute provides that the Commission should consider whether the industry is presently materially injured, or if not, whether the domestic industry is threatened with material injury. However, the statute is also clear that this is not a question of whether the industry will suffer material injury at "some point

in time" but only if material injury is imminent. The imposition of anti-dumping duties based on a finding of imminent material injury may well result in changes in the marketplace so that material injury in fact does not occur.

Question 7: What steps are you taking or will you take to become more familiar with U.S. trade law and how it is administered by the ITC, as well as current issues surrounding ITC activities? Please be specific as to any individuals who are advising you in this regard, including any individual you consulted prior to your formal nomination to the International Trade Commission.

Answer: I am reading the relevant statutes, reviewing the annual reports of the ITC, reviewing items found on the ITC website and reviewing past decisions of the ITC. I am reading all trade stories in newspapers and I have been watching the trade issue debates in the U.S. Senate on CSpan. I have talked with various people about the ITC and its specific functions, including former Commissioner, Alfred E Eckes, Jr.; Senator John D. Rockefeller and his staff; Senator Robert C. Byrd's trade staff; Senate Finance Staff (Shara Aranoff); Senator Charles Grassley's staff (Everett Eissenstat and Richard Criss); and Grant Aldonis, Under Secretary of Commerce and former Senate Trade Counsel, about the role of the ITC as it relates to the Department of Commerce, the USTR, the Executive and the Legislative branches.

In analyzing the statutes and functions of the ITC, I have also talked with all of the current ITC Commissioners and the ITC General Counsel.

After I was nominated and as part of the vetting process and in preparation for the Senate Confirmation hearing, I talked with various people in the trade community, including a West Virginian, Hank Barnette; Robert Lighthizer, former staff director of the Senate Finance Committee and former deputy USTR; and Alan Wolff, former deputy USTR.

Question 8: When asked in prior questions for the record whether you had written any articles relating to international trade or international law, you responded: "Public service has always been a strong interest of mine. The kind of decision making called for as a Commissioner of the International Trade Commission is something I am very familiar with." Please be more specific as to whether you have written any articles relating to international trade or international law. Also, please elaborate on how you developed your familiarity with the "kind of decision making called for as a Commissioner of the International Trade Commission."

Answer: I have written no articles about international trade law, but as I said above, I have been doing extensive reading of the statutes and other material available from the internet. As a Commissioner now serving on a quasi-judicial body, I am continuously using decisionmaking skills.

Question 9: When asked in prior questions for the record whether you have given any speeches about international trade or international trade law, you responded: "I have spoken often of topics of direct interest as a legislator and as an administrator of the laws." Please answer specifically as to whether you have given any speeches about international trade or international law.

Answer: I have given no speeches about international trade or international trade law.