

**“Nominations Hearing for James Bernard Coughlan and Halie L. Craig to be Members of
the United States International Trade Commission”
Senate Committee on Finance
December 18, 2024
Questions for the Record for Halie L. Craig**

Senator Elizabeth Warren

Question 1

Can you please share your view of if and how forced labor and low-wage labor caused by union busting and other labor rights violations should be incorporated in antidumping and/or countervailing duty investigation with respect to a particular product?

Response:

U.S. law prohibits all goods made with forced labor from entering the United States. 19 U.S.C. 1307.

With respect to AD/CVD investigations, the Commerce Department is responsible for assessing whether or not dumping or illicit subsidization has occurred. Should Commerce find that forced labor constitutes illicit subsidization, the role of the USITC is to accept Commerce’s affirmative finding and proceed with a determination on material injury.

Question 2

Can you please share your view of if and how the externalization of environmental costs – including air and water emissions, toxic dumping and carbon-intensive production processes –should be incorporated in antidumping and/or countervailing duty investigation with respect to a particular product?

Response:

As with forced labor, environmental costs would have to be evaluated by the Commerce Department as to whether or not they constitute a countervailable subsidy.

Question 3

How should a Commissioner incorporate the concerns of users or consumers of a particular product in an antidumping and/or countervailing duty investigation?

Response:

Current law does not permit the USITC to consider the concerns of users or consumers in antidumping and countervailing duty investigations.

Question 4

As you know, U.S. law gives unions and management equal right to petition for relief from unfairly traded imports. These provisions of our law have become increasingly important as multinational companies face threats of retaliation from foreign adversaries and are thus hesitant to publicly support trade cases even when they are being injured by imports.

Do you support the right of unions to file antidumping and countervailing duty petitions even if management does not publicly support them?

How would the fact that a case was filed by unions alone affect your injury analysis, if at all?

Response:

Yes, current law allows unions to file petitions as sole petitioners.

A petitioner's status as a union is irrelevant to the USITC's analysis of whether or not material injury exists in an AD/CVD case.

Question 5

Domestic industries and workers have been forced to play a game of whack-a-mole to bring cases after case against the same product as companies move production from country to country after orders are imposed. China has been a particular problem, as Chinese companies invest in production in third countries to continue accessing the U.S. market to avoid duties, sometimes with Chinese state support. The bipartisan Leveling the Playing Field Act 2.0 would address these problems, including by streamlining successive injury investigations on the same product from different countries at the ITC.

Do you support Leveling the Playing Field Act 2.0?

As a Commissioner, what would you do to reduce the burden on companies and workers that are injured by repeated surges of dumped and subsidized imports?

Response:

As a nominee to be a member of the USITC, it would be inappropriate for me to take a position on any proposal to amend the trade laws within the Commission's jurisdiction. However, should I be confirmed, I commit to providing you and any member of Congress the information and/or technical assistance that you require from the USITC in order to make policy decisions.

In terms of reducing the burden of appearing before the USITC, it is my understanding that Commissioners are able to meet with petitioners prior to a petition being filed. This can assist the USITC in understanding which cases may enter its docket, pending an affirmative finding from the Commerce Department, and can also assist petitioners in

understanding the USITC's processes upfront. In addition, for investigations involving new countries but a prior subject import, the USITC can and does use information from relevant prior investigations, thereby streamlining its fact-finding process.

Question 6

Do you believe that it is unfair for other countries, such as China, to grant subsidies to their industries that lower their cost of production versus those of American companies producing the same products here? Do you agree that your job as a Commissioner, if confirmed, is to do all you can to protect the domestic industries against the harm caused by foreign subsidization?

Response:

Yes, Congress has decided that subsidies are an unfair trade practice and I agree.

If confirmed, my job as a Commissioner is to uphold the law consistent with congressional intent. Congress has clearly stated that foreign subsidization is an unfair trade practice from which domestic industries are entitled to relief.

Question 7

In some cases, importers flood the U.S. market with imports after antidumping and countervailing duty cases are filed but before preliminary Commerce determinations are issued, in order to avoid duty liability. In such cases, the Commerce Department routinely determines that such post-petition surges create critical circumstances, warranting the imposition of retroactive duties to ensure effective relief. The Commission, however, very rarely upholds these determinations, effectively letting importers off the hook for these harmful surges.

As an ITC Commissioner, how would you evaluate critical circumstances determinations?

Do you see any reason why the ITC should nullify retroactive duties that Commerce has approved?

Response:

The Commerce Department and the USITC have different statutory criteria they must consider in making a critical circumstances determination. As you know, the USITC must consider three factors in making such a determination: The timing and volume of imports, a rapid increase in the inventories of the imports, and "any other circumstances indicating that the remedial effect of the [...] order will be seriously undermined." 19 U.S.C. 1671d(b)(4)(A)(ii), 19 U.S.C. 1673d(b)(4)(A)(ii).

My understanding is that it is typically the Commission's practice to weigh import quantities six months prior to the filing of a petition against import quantities six months following the filing of a petition in making a determination as to whether the order will

be “seriously undermined.” To date, the USITC has successfully defended all of its critical circumstances decisions that have come before the Court of International Trade.

Question 8

In some injury investigations and sunset reviews, foreign producers do not fully cooperate with the ITC’s injury investigations, resulting in an incomplete record that understates foreign production and capacity, and thus the threat that foreign producers pose. The ITC has the authority to impose adverse inferences in such cases of non-cooperation, thus supporting an affirmative determination despite the lack of a complete record. Yet the ITC rarely or ever exercises this power.

As an ITC Commissioner, will you support the application of adverse inferences if foreign producers do not cooperate with your investigations or reviews?

Response:

Yes, it is reasonable to assume that if a party is deliberately withholding information, it is doing so because such information would be detrimental to its interests. However, there are cases where apply adverse inferences could disadvantage cooperating parties. In those cases, it is my understanding that the Commission generally prefers to use the facts otherwise available in lieu of adverse inferences.

Question 9

In addition to its injury investigations, the ITC plays an important role in conducting economic analyses of trade and tariff actions. In the past, the ITC has used economic models that have minimized the harmful impact of free trade agreements on production and jobs. The Commission has also been responsible for analyzing the impact of tariff actions under Section 232 and Section 301.

As an ITC Commissioner, what would you do to make sure that these economic impact studies appropriately take into account the positive role that tariffs can have as part of an industrial policy that supports American industries, workers, and communities?

Response:

It is critical that the USITC function as a neutral, objective, fact-finding body. In conducting any economic analysis, I would work to ensure that the Commission collects a robust docket of evidence, including input from all interested stakeholders. Such evidence can be collected not only through public hearings in Washington, D.C., but also field hearings, written submissions, site visits, and meetings with Commissioners and their staffs. When I served as a legislative staffer for former Senator Toomey, I benefited greatly from the office’s de facto “open door” policy for Pennsylvanians seeking to speak with the office. To the extent practicable and in accordance with the law, I would maintain such a policy as a Commissioner.

Question 10

Please share an example of an antidumping or countervailing duty order that, in your view, has effectively addressed unfair trade and helped to maintain the operations of American businesses.

Response:

Given that ongoing orders are subject to continuing sunset reviews, it would be inappropriate for me to comment on the merits of any specific case.

Question 11

Can you describe your experience with trade-affected communities in the United States? What industry did the community rely on? What kinds of government policy intervention would have helped the community?

Response:

Every community in the United States is a trade-affected community. I know that through my efforts as a congressional staffer. Pennsylvania, for example, is a leading producer of steel, dairy, mushrooms, heavy equipment, energy, and chemicals—to name a few.

As a general matter, policy solutions have assisted domestic producers include improving market access, combatting unfair trade as defined by Congress, and working to ensure that U.S. trading partners are playing by the same set of rules.

Question 12

What is your view of how U.S. trade data gathering and reporting can be improved? When the USITC conducts analysis of trade pact impacts or projections about new pacts, what data set do you believe should be employed – domestic exports or general exports? What is your view about how counting re-exports as if they were domestic exports distorts U.S. trade balance data?

Response:

The USITC should ensure that trade data can be broken out into as much detail as possible to help policymakers. While the data must be granular enough to be useful, it should never understate or overstate any economic impact.

The USITC should ensure that export data accurately reflects whether goods are manufactured in the United States or are transshipped through the United States.

Question 13

If trade agreements contain rules that allow tech companies to plead “illegal trade discrimination” to avoid accountability for monopolistic and discriminatory behavior, not only

will personal privacy and consumers' trust in the Internet be threatened, but the United States' economic and national security as well.

Do you support the new U.S. digital trade position, which has involved eliminating data flow, source code and digital products rules that constrain domestic tech regulatory policy space?

More broadly, do you believe that U.S. trade agreements must not include terms that could conflict with U.S. domestic law? How would you evaluate the impact of such provisions, if the ITC was tasked with doing so, and what methodologies would you use?

Response:

Trade negotiations are handled by USTR and not the USITC. A trade agreement cannot supersede domestic law absent implementing legislation passed by Congress. If asked to analyze such negotiations, I would do so in an objective and impartial manner.

Senator Sheldon Whitehouse

Question 1

As you know, antidumping and countervailing duty (AD/CVD) proceedings are a central responsibility of ITC Commissioners. Can you please share your view on how the externalization of environmental costs – including air and water emissions, toxic dumping and carbon-intensive production processes – should be incorporated in AD/CVD investigations with respect to a particular product?

Response:

With respect to AD/CVD investigations, the Commerce Department is responsible for assessing whether or not dumping or illicit subsidization has occurred. Should Commerce find that illicit subsidization has occurred, the role of the USITC is to accept the Commerce's affirmative finding and proceed with a determination on material injury.

Question 2

The ITC is often asked to conduct studies on specific trade issues and agreements. Can you please share your perspective on how to account for constraints that a trade deal may impose on a country's ability to protect the environment, protect consumers from unsafe products, and enact other measures meant to protect the public interest?

Response:

The Commission would need to determine whether the issues you raised will have economic impacts, but as a general matter, failure to enforce environmental laws can obviously have economic costs. Should such issues be relevant to an economic impact study, I will analyze them in an impartial and objective manner.

Senator Bill Cassidy

Question 1

BACKGROUND

19 U.S.C.A. § 1337

§ 1337. Unfair practices in import trade

(d) Exclusion of articles from entry

(1) 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. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry.

Will you commit, in advance of supporting the issuance of an exclusion order, to consider 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 as required by 19 U.S.C.A. § 1337(d)(1)?

Response:

Yes.

Senator John Cornyn

Question 1

Will you ensure that in your role as an ITC Commissioner you will consider the statutory public interest factors laid out by Congress and use them to prevent the issuance of exclusion orders that would be against the public interest? The factors in 19 U.S. Code §1337(d)(1) include the public health and welfare, the competitive conditions in the U.S. economy, productions of competitive articles in the U.S., and protection of U.S. consumers.

Response:

Yes.

Senator Steve Daines

Question 1

One of the United States International Trade Commission's (ITC) important duties is completing investigations into potential unfair practices in import trade, including antidumping and countervailing duties investigations. Both Sec.701 and Sec.731 of P.L. 103-465 cite a finding of "material injury" of an American industry as a catalyst for potential duty impositions.

How would you define "material injury" as written in existing statute?

Response:

U.S. law defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant." 19 U.S.C. 1677(7)(A). The statute also enumerates specific factors that the Commission must consider in making a material injury determination. No single factor is meant to be dispositive, and each case must be decided on the basis of the underlying facts and evidence. Among the factors that the Commission must consider are the volume of imports of the subject merchandise, the effect of the imports on prices, and all relevant economic factors that impact the state of the domestic industry. The statute is also clear that the Commission may not issue a negative material injury finding "merely because the industry is profitable." 19 U.S.C. 1677(7)(J).

Question 2

Section 201 investigations undertaken by the ITC require a finding of "serious injury, or threat thereof, substantially caused by imports to the domestic industry producing a like or directly competitive article" before the President can initiate enforcement measures against certain foreign products.

How would you define "serious injury" as written in existing statute?

Response:

U.S. law defines "serious injury" as "the significant overall impairment of a domestic industry." 19 U.S.C. 2252(c)(6)(C). The statute also enumerates specific factors that the Commission must consider in making a determination of serious injury, including the significant idling of productive facilities, the inability of a significant number of firms to carry out domestic production at a reasonable profit, and significant unemployment or underemployment in the domestic industry. 19 U.S.C. 2252(c)(1)(A).

Question 3

Do you believe that the practice of certain countries, like China, subsidizing their domestic industries and artificially lowering the cost of production compared to their American counterparts that produce the same goods represents an unfair trade practice?

Response:

Yes, Congress has decided that subsidies are an unfair trade practice and I agree.

Question 4

Do you agree that your job as a Commissioner, if confirmed, is to protect domestic industries against the harm caused by foreign subsidization?

Response:

If confirmed, my job as a Commissioner is to uphold the law consistent with congressional intent. Congress has clearly stated that foreign subsidization is an unfair trade practice from which domestic industries are entitled to relief.

Question 5

In order to exclude certain goods from entry into the United States, 19 U.S. Code § 1337(d)(1) requires the ITC to consider the effects that an exclusion may have on the health and welfare, the competitive conditions in the U.S. economy, productions of competitive articles in the U.S., and U.S. consumers when making a determination.

If confirmed, how will you ensure that prescribed public interest factors required by Congress are measured to ensure any potential exclusion orders do not harm public interest?

Response:

I will weigh each statutory factor carefully and thoroughly as required by the law. The law requires that the USITC apply a public interest test in all Section 337 cases and, further, gives the USITC flexibility to tailor its remedy so as to mitigate harm to the public interest.

Question 6

Current statute requires the ITC to weigh public interest when issuing determinations and remedies for intellectual property (IP) infringement. This is important to ensure that any ITC determination on IP cases does not undermine general welfare or competition within the US economy and protects domestic consumers. The ITC often does not use these public interest components in such cases in line with Congressional intent.

If confirmed, will you ensure the ITC weighs these elements before issuing a decision on an exclusion order?

Response:

Yes.

Question 7

In your view, what steps need to be taken to strengthen this clause to ensure that exclusion orders uphold public interest?

Response:

As a nominee to be a member of the USITC, it would be inappropriate for me to take a position on any proposal to amend the trade laws within the Commission's jurisdiction. However, should I be confirmed, I commit to providing you and any member of Congress the information and/or technical assistance that you require from the USITC in order to make policy decisions.

Question 8

Can you detail the principles that you will apply to unfair trade cases that are brought to the Commission?

Response:

As a conservative and as a current legislative staffer, I believe strongly that it is the role of the Executive Branch and independent agencies to apply the law as written and never to substitute my personal judgment or policy preferences.

The USITC's caseload is growing and increasingly complex. In order to assess each case fairly and on the merits, it is critical that commissioners are actively engaged, ask extensive and probing questions, and bring to the table high technical acumen.

When I served as a legislative staffer for former Senator Toomey, I benefited greatly from the office's de facto "open door" policy for Pennsylvanians seeking to speak with the office. To the extent practicable and in accordance with the law, I would maintain such a policy as a Commissioner. I believe it is critical that every litigant before the USITC feels that they will get a fair shake regardless of the personal views each Commissioner may hold.

If confirmed, I am committed to approaching every case with an open mind and applying the law, consistent with congressional intent, in a neutral, fact-based manner.

Senator Chuck Grassley

Question 1

As we see with the relationship between the phosphate fertilizer and the row crop industries, often times one industry can have a large impact on the other. In fact, fertilizer is often the highest input cost for farmers. Therefore, when countervailing duties are levied on one industry,

particularly with limited domestic suppliers like phosphate fertilizer, the impact may be felt widely across other domestic industries such as row crop agriculture.

In determining the application of countervailing duties, how would you weigh the impacts of tariffs on other affected domestic industries?

Response:

You raise an important concern about the livelihood of America's farmers. I also appreciate that you, Senator Moran, and others have written to the Commerce Department about the phosphate duties. Ultimately, our AD/CVD laws do not allow public interest determinations or an analysis of the impact on downstream enterprises. If Congress wishes to change the law, I will, if confirmed, provide the data and technical assistance that policymakers require to inform their decision-making.

Senator Todd Young

Question 1

In the past, you have expressed views favoring more open trade policies. As an ITC Commissioner, however, your role involves applying the law to determine whether unfairly traded imports cause injury to a U.S. industry.

Could you explain how you would approach Title VII cases and ensure that your decisions are guided solely by the relevant statutory criteria and the factual record, rather than by any prior policy positions you may have expressed?

Response:

As a conservative and as a current legislative staffer, I believe strongly that it is the role of the Executive Branch and independent agencies to apply the law as written and never to substitute my personal judgment or policy preferences.

The USITC's caseload is growing and increasingly complex. In order to assess each case fairly and on the merits, it is critical that commissioners are actively engaged, ask extensive and probing questions, and bring to the table high technical acumen.

When I served as a legislative staffer for former Senator Toomey, I benefited greatly from the office's de facto "open door" policy for Pennsylvanians seeking to speak with the office. To the extent practicable and in accordance with the law, I would maintain such a policy as a Commissioner. I believe it is critical that every litigant before the USITC feels that they will get a fair shake regardless of the personal views each Commissioner may hold.

If confirmed, I am committed to approaching every case with an open mind and applying the law, consistent with congressional intent, in a neutral, fact-based manner.

Question 2

How would you approach issues where Congress asks the ITC for guidance regarding key trade policies, such as analyzing new tariffs or new trade agreements?

Response:

I would approach any requests from Congress or the Executive Branch objectively and impartially. As a Commissioner, my role would be to ensure that the analysis provided is rigorous, complete, reliable, and responsive to the initial request.

Question 3

The ITC's credibility depends on impartiality. What measures would you employ to reassure stakeholders—both domestic industries and importers—that your decisions are guided by law and facts, rather than any personal trade philosophy?

Response:

I will ensure that my determinations are clearly explained in the record and are clearly based on the statutory factors. I also will ensure that my decisions can be objectively sustained before the Court of International Trade—which is able to reject USITC determinations for, among other factors, abuse of discretion—as well as defended before Congress and any relevant stakeholders.

Question 4

There has been ongoing interest in ensuring transparency regarding third-party litigation financing in Section 337 investigations. How would you approach the issue of disclosing third-party funders in patent litigation before the ITC, and do you believe such disclosure requirements could help maintain fairness, deter frivolous claims, or otherwise strengthen the integrity of the Section 337 process?

Response:

I would be interested in examining the legal mechanisms available at the USITC to increase transparency in the 337 process, particularly given that information about litigation financing could be relevant to the required public interest analysis.