

**Senator Grassley  
Questions for the Record**

**Jeanne Davidson  
Nominee, Court of International Trade**

- 1. Please describe factors you will take into account as you consider the appropriate level of deference the Court of International Trade (CIT) should give to the U.S. International Trade Commission (ITC) on questions of statutory interpretation, particularly in appeals of determinations in antidumping and countervailing duty cases.**

Response: In resolving questions of statutory interpretation by the U.S. International Trade Commission (ITC), I would apply well-established principles of judicial review of administrative decisions established by the Supreme Court. First, I would consider whether the statute is clear and unambiguous on its face; if so, I would apply the letter of the law as enacted by Congress. Second, if the statute is ambiguous or not specific with regard to the matter in dispute, I would consider whether the ITC's interpretation is reasonable, even if other interpretations are plausible. Because Congress has delegated broad responsibilities to the ITC in administering the antidumping and countervailing duty laws, the ITC's interpretations are entitled to deference, as long as Congress has not spoken directly to the issue.

- 2. Please describe your view on the appropriate level of deference the CIT should give to the ITC on questions of fact when presented with "Substantial Evidence" questions and challenges. What will be your approach to such challenges, and what factors would you consider in such cases?**

Response: By statute, the Court of International Trade reviews ITC factual determinations based upon the administrative record compiled during agency proceedings. These records usually are voluminous and detailed. My approach would be to review the administrative records and to sustain the ITC's determinations if they are supported by "substantial evidence." The Supreme Court in the context of administrative law generally, and the Court of Appeals for the Federal Circuit in review of ITC proceedings, have emphasized that "substantial evidence" means "more than a mere scintilla," but it does not mean that the preponderance of evidence supports the determination or that the record contains no evidence that could support a different result.

- 3. Do you agree with the Federal Circuit's decision in *SKF USA, Inc. v. U.S. Customs and Border Protection*, 556 F.3d 1337 (2009) regarding the constitutionality of the Byrd Amendment to the Continued Dumping and Subsidy Offset Act (CDSOA) of 2000? What will be your approach in cases regulating commercial speech?**

Response: *SKF* is one of several decisions by the Court of Appeals for the Federal Circuit sustaining the constitutionality of the Byrd Amendment. The Supreme Court has denied petitions for writs of certiorari in these cases; the Federal Circuit's decisions are binding

precedent and must be followed by the Court of International Trade. My approach in cases regulating commercial speech would be to study and apply the relevant, binding Supreme Court precedent to the particular facts of each case.

**4. What is the most important attribute of a judge, and do you possess it?**

Response: Among the many important attributes of a judge – including objectivity, fairness, thoroughness, clarity – the most important is fidelity to the rule of law. A judge who adheres to the law as enacted by Congress and decided by the Supreme Court will resolve cases without bias or influence from irrelevant factors. Adhering to the rule of law promotes consistency in decision-making and fairness in treating litigants equally. I believe I possess these attributes.

**5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should treat everyone with respect and should clearly express the court's expectations of the litigants and reasons for procedural and substantive decisions. A judge should strive to ensure that parties and lawyers are satisfied that the court has fully considered their arguments and evidence before making a decision. I believe that I have the appropriate temperament of a judge.

**6. In general, Supreme Court precedents are binding on all lower federal courts, and Federal Circuit precedents are binding on the Court of International Trade. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes. A judge must follow binding precedent regardless of any personal views. If confirmed, I would follow binding precedent faithfully.

**7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In a case of first impression, I would turn first to the text of the constitutional provision, statute, regulation, contract, or other legal instrument at issue. If the matter could not be resolved based upon the plain language, I would consider Supreme Court and other persuasive precedent in analogous cases. In determining the meaning of a statute, if the plain language was not dispositive, I would consider the legislative context, including prior enactments of the statute at issue, and authoritative legislative history, as guided by binding precedent.

- 8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: Court of International Trade judges must follow precedent of the Supreme Court and the Court of Appeals for the Federal Circuit. I would apply that precedent faithfully, even if I believed the Court had erred.

- 9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: It is appropriate for a federal court to declare a statute unconstitutional if this is the only conclusion possible consistent with binding precedent, the presumption that statutes are constitutional, and the doctrine of constitutional avoidance.

- 10. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.**

Response: No. It is never proper for judges to rely on foreign law, or the views of the “world community,” in determining the meaning of the Constitution. The only possible exception of which I am aware concerns the right to trial by jury in civil cases, which the Supreme Court has explained is informed by English common law as it existed in 1791.

- 11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: If confirmed, my decisions would reflect strict adherence to precedent and the rule of law, without regard to any political ideology or motivation. As a Department of Justice attorney for almost a quarter century, serving in five different Administrations, I have never allowed any personal political views to influence my approach to the law, or to particular cases. As a judge, if I am confirmed, consideration of political views would be completely inappropriate.

- 12. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: If confirmed, I will strive to listen to and consider fully all arguments and evidence presented by any litigant, without regard to my personal views. As a trial attorney in the public sector for many years, I understand the need for transparency, clarity, and consistency in the judicial system to engender confidence in the public that their claims and defenses will be considered fully and fairly.

**13. Please describe your understanding of the workload of the Court of International Trade. If confirmed, how do you intend to manage your caseload?**

Response: The Court of International Trade possesses exclusive, nationwide jurisdiction to consider most disputes concerning customs and international trade matters. Cases filed in the Court of International Trade generally are large and complex, involving multiple parties and voluminous records. Some cases are resolved on a *de novo* basis, including extensive discovery, substantive motions practice, and trials. Other cases require review of an administrative determination supported by an enormous administrative record. Court of International Trade cases can be technical, requiring expert testimony, and can involve claims worth billions of dollars. Some cases raise constitutional issues; some concern entire industries; some require expedited consideration; and many require creative case management orders to reduce the costs and burdens of mass litigation. If confirmed, I would manage my caseload by reviewing cases immediately upon docketing, scheduling early conferences with counsel, and setting an appropriate schedule for resolving the dispute.

**14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes. Judges have an obligation to control their dockets to ensure that cases are resolved not only fully and fairly, but also expeditiously and without waste of resources. If confirmed, I would maintain control of the cases on my docket by adopting scheduling orders tailored to the particular case (after consulting closely with counsel), requiring periodic status conferences or reports, attempting to identify and narrow the issues in dispute, promptly resolving motions, and issuing final decisions as quickly as possible after fully considering the law and evidence. Based upon many years as a litigant and participant in bar activities, I am acutely aware of the public's desire for prompt adjudication and concern with the burgeoning costs of litigation.

**15. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: If confirmed, I will reach decisions in the cases that come before me by researching the law, including the Constitution, statutes, regulations, and judicial precedent, and examining the evidentiary record. To be sure, the role of a judge is very different from that of an advocate. It is the responsibility of the lawyers, not the court, to identify the arguments in support of each side's position and to marshal the facts to support the arguments. Accordingly, while I am confident that I will be able to make this transition, I will be mindful of the fundamental change in roles.

**16. President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the**

**world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart.” Do you agree with this statement?**

Response: A judge should be respectful, clear, and patient with all litigants, particularly those who are unfamiliar with the judicial system. Decisions must be made through strict adherence to the rule of law and the relevant record evidence.

**17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: “To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator’s judicial selection committees”.**

**a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No.

**b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

**18. Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on September 24, 2014. I drafted responses and provided them to the Office of Legal Policy of the Department of Justice on October 9, 2014. Following a discussion with a representative of the Office of Legal Policy, I submitted the responses in their final form.

**19. Do these answers reflect your true and personal views?**

Response: Yes.