UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Mark Allen Barnett

2. **Position**: State the position for which you have been nominated.

   Judge of the United States Court of International Trade

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   U.S. Department of Commerce
   1401 Constitution Avenue, NW
   Room 3622
   Washington, DC 20230

   Residence: McLean, Virginia

4. **Birthplace**: State year and place of birth.

   1963; Reading, Pennsylvania

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1985 – 1988, University of Michigan Law School; J.D. (*cum laude*), 1988

   1981 – 1985, Dickinson College; B.A. (*magna cum laude*), 1985

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   1995 – Present
   U.S. Department of Commerce

Office of Chief Counsel for Import Administration
1401 Constitution Avenue, NW
Washington, DC 20230
Deputy Chief Counsel (2005 – Present)
Senior Counsel (1999 – 2005)
Attorney (1995 – 1999)

2008 – 2009 (on detail from the Department of Commerce)
United States House of Representatives
Committee on Ways and Means
Subcommittee on Trade
1102 Longworth House Office Building
Washington, DC 20515
Department of Commerce Detailee/Trade Counsel

1988 – 1995
Steptoe & Johnson
1330 Connecticut Avenue, NW
Washington, DC 20036
Associate

Summer 1987
Patton, Boggs & Blow (now Patton Boggs)
2550 M Street, NW
Washington, DC 20037
Summer Associate

Fall 1986
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109
Research Assistant to Professor Bruno Simma

Summer 1986
Kinder & Wuerfel (firm no longer exists)
555 Montgomery Street
San Francisco, California 94111
Law Clerk

Summer 1985
IBM
1100 Berkshire Boulevard
Suite 125
Wyomissing, Pennsylvania 19610
Marketing Support Assistant

Other Affiliations (uncompensated):

2010 – Present
Chesterford Community Association, Inc. (no physical address)
McLean, Virginia 22101
Treasurer

2000 – 2001
Ellison Heights-Mount Daniel Community Association (no physical address)
Falls Church, Virginia 22046
Vice-President

1985 – 1986, 1990 – 1992
International Model United Nations Association
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, Missouri 63102
Chairman, Board of Directors (1991 – 1992)
Vice-Chairman, Board of Directors (1985 – 1986)
Member-At-Large (1985 – 1986, 1990 – 1991)

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the military. I registered for selective service upon turning 18.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Department of Commerce Gold Medal Award (1997, 2002)
   Department of Commerce Silver Medal Award (2002)
   International Trade Administration Bronze Medal Award (2000)
   Department of Commerce, Office of Chief Counsel for Import Administration
   Outstanding Attorney Award (1996, 1999)
   Note Editor, Michigan Yearbook of International Legal Studies, University of Michigan
   Law School (1987 – 1988)
   Phi Beta Kappa, Dickinson College (1985)
   John O. Cockey, Jr. Memorial Scholarship, Dickinson College (estimate 1984)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (1989 – 1995)
Customs and International Trade Bar Association (2010 – Present)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Pennsylvania (1988) (currently inactive)
District of Columbia (1989)

There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Federal Circuit (2008)
United States Court of International Trade (2008)

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Chesterford Community Association (2002 – Present)
Treasurer (2010 – Present)
Dickinson College Admissions Volunteers (2008 – Present)
Ellison Heights-Mount Daniel Community Association (1993 – 2002)
Vice-President (2000 – 2001)
Food Allergy and Anaphylaxis Network (2006 – Present)
Four Seasons Tennis Club (2006 – 2008, 2011)
Friends of the National Zoo (2009 – Present)
Highlands Swim and Tennis Club (2004 – Present)
International Model United Nations Association (1981 – 1992)
Chairman, Board of Directors (1991 – 1992)
Vice Chairman, Board of Directors (1985 – 1986)
Member-At-Large (1985 – 1986, 1990 – 1991)
Local Elementary School Parent Teacher Association (2005 – 2011)

Local Middle School Parent Teacher Association (2011 – Present)
National Geographic Society (1999, 2001, 2005)
Natural Resources Defense Council (2009)
Poplar Heights Recreation Association (approx. 1997 – 2004)
Reading High School Alumni Association (2006 – Present)
Sierra Club (2001 – 2002, 2005 – Present)
Smithsonian Institute (2003 – Present)
United States Tennis Association (2007 – Present)
University of Michigan Alumni Association (1988 – Present)
Washington International Trade Association (2009 – Present)
World Wildlife Fund (2010)
Yosemite Association (2008)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge and belief, none of the organizations listed in response to question 11a currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

The United States Court of International Trade in the Middle—International Tribunals: An Overview, 19 TUL. J. INT'L & COMP. L. 421 (2011). Copy supplied.

Choices, Choices: Domestic Courts Versus International Fora: A Commerce Perspective, 17 TUL. J. INT'L & COMP. L. 435 (2009). Copy supplied.

With Sara Khan, Kathy B. Reif, & Elizabeth Shryock, *28 U.S.C. §1581(c)—Review by the Court of International Trade of Antidumping & Countervailing Duty Determinations Issued by the Department of Commerce*, 40 GEO. J. INT'L L. 153 (2008). Copy supplied.

With Melissa G. Skinner, *Suspension of Antidumping and Countervailing Duty Investigations*, in THE COMMERCE DEPARTMENT SPEAKS ON INTERNATIONAL TRADE & INVESTMENT 995 (Practising Law Institute, 1998). Copy supplied.

With Stephen J. Powell, *The Role of United States Trade Laws in Resolving the Florida-Mexico Tomato Conflict*, 11 FLA. J. INT'L L. 319 (1997). Copy supplied.

With Stewart A. Baker, *U.S. – Canada Binational Panel Determinations: 1991 – 1994*, in NORTH AMERICAN FREE TRADE AGREEMENTS (James R. Holbein & Donald J. Musch eds., 1994). Copy supplied.

Jurisdiction—Foreign Sovereign Immunities Act—Commercial Activity Exception, in INTERNATIONAL DECISIONS, 84 AM. J. INT'L L. 262 (Peter D. Trooboff ed., 1990). Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

February 10, 2012: Panelist, *WTO Case Update*, 2012 International Trade Update, Georgetown University Law Center, Washington, DC. Draft remarks and an audio recording of the conference are supplied.

November 18, 2010: Panelist, *CIT in the Middle—Intersection with the Agencies, the Federal Circuit, and International Tribunals*, 16th Judicial Conference of the United States Court of International Trade, New York, New York. Draft transcript and two press articles referencing my remarks are supplied. I am also providing the conference version of a paper which was subsequently published as *The United States Court of International Trade in the Middle—International Tribunals: An Overview*, 19 TUL. J. INT'L & COMP. L. 421 (2011).

February 25, 2010: Panelist, *The Year in Review in AD/CVD Law*, 2010 International Trade Update, Georgetown University Law Center, Washington, DC. An unpublished paper, *Trade I: The Year in Review in AD/CVD Law*, prepared jointly with my fellow panelists and presented at the event, is supplied. I am also supplying an audio recording of the presentation (embedded in a pdf document).

March 6, 2009: Panelist, *After Zeroing, Then What?* 2009 International Trade Update, Georgetown University Law Center, Washington, DC. An audio recording of the conference is supplied.

November 19, 2008: Panelist, *Choices, Choices: Domestic Courts v. International Fora*, 15th Judicial Conference of the United States Court of International Trade, New York, New York. Pre-publication transcript is supplied. I am also providing the conference version of a paper which was subsequently published as *Choices, Choices: Domestic Courts Versus International Fora: A Commerce Perspective*, 17 TUL. J. INT'L & COMP. L. 435 (2009).

February 25, 2008: Panelist, *Customs and International Trade Issues Affecting Seafood Imports*, 2008 International Boston Seafood Show, Boston, Massachusetts. I have no notes, transcript or recording. The Boston Seafood Show does not have a physical address.

March 12, 2007: Panelist, *Customs and International Trade Issues Affecting Seafood Imports*, 2007 International Boston Seafood Show, Boston, Massachusetts. A copy of my notes is supplied.

February 1, 2007: Panelist, *The Year in Review at the WTO—On Beyond Zeroing*, 2007 International Trade Update, Georgetown University Law Center, Washington, DC. A copy of my remarks and an audio recording are supplied.

February 2, 2006: Panelist, *The Year in Customs and Trade—Key Developments at the CIT/CAFC and Lessons Learned for Practice*, 2006 International Trade Update, Georgetown University Law Center, Washington, DC. A copy of my notes and an audio recording are supplied.

October 2001: Panelist at a session on careers in international law, University of Michigan Law School International Law Society, Ann Arbor, Michigan. I have

no notes, transcript, or recording. The address of the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

September 18, 1998: Presenter, *Suspension of Antidumping and Countervailing Duty Investigations*, in *The Commerce Department Speaks on International Trade & Investment*, organized by the Practising Law Institute, and held at the Marriott Georgetown University Conference Center, Washington DC. My notes are supplied, as is a subsequent article reporting on my presentation. A published paper, prepared in connection with the public conference, is supplied in response to question 12(a).

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Commerce Says EU, Japan Zeroing Deal Does Not Translate to U.S. Courts, INSIDE U.S. TRADE, Feb. 23, 2012. Copy supplied.

Commerce Proposes AD, CVD Enforcement Package to Aid Export Initiative, INSIDE U.S. TRADE, Aug. 27, 2010. Copy supplied.

As part of my duties at the Department of Commerce, on several occasions I have spoken to reporters on background, individually or as part of a group. I do not have specific records of such conversations and did not, at the time, maintain copies of subsequent articles for which I had provided comments or background. Based on personal recollection, I have located and am supplying all articles which I believe reference interviews in which I participated:

Petitioners May Explore New Options to Boost AD Margins in Reviews, INSIDE U.S. TRADE, Feb. 16, 2012. Copy supplied.

Commerce Rule Leaves Door Open to Possible Future Use of Zeroing, INSIDE U.S. TRADE, Feb. 16, 2012. Copy supplied.

Administration Moving Ahead with Implementation of Zeroing Decisions, INSIDE U.S. TRADE, Oct. 20, 2011. Copy supplied.

Rossella Brevetti, *Commerce Official Says Timing of Zeroing Final Rule Cannot Be Predicted*, BNA INTERNATIONAL TRADE DAILY, July 14, 2011. Copy supplied.

Commerce Official Downplays Date for Zeroing Final Rule in OIRA Report, INSIDE U.S. TRADE, July 13, 2011. Copy supplied.

U.S. Official Unsure Whether, When U.S. Will Issue Final Zeroing Proposal, INSIDE U.S. TRADE, June 21, 2011 (different version reprinted June 23, 2011). Copies supplied.

Commerce Still Mulling Whether It Will Use Zeroing in Some AD Reviews, INSIDE U.S. TRADE, Jan. 6, 2011. Copy supplied.

U.S. Continues Fight to Preserve Zeroing in Doha Despite New Proposal, INSIDE U.S. TRADE, Jan. 6, 2011. Copy supplied.

Details of How, When U.S. Will Comply With WTO Zeroing Cases Unclear, INSIDE U.S. TRADE, Jan. 6, 2011. Copy supplied.

U.S. Still Examining Whether It Will Adjust Past Reviews in Zeroing Cases, INSIDE U.S. TRADE, Jan. 5, 2011. Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never been a judge.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

i. Of these, approximately what percent were:

jury trials: ___%
bench trials: ___% [total 100%]

civil proceedings: ___%
criminal proceedings: ___% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

e. Provide a list of all cases in which certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never been a judge.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed

you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never held public office. I have never had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Member, Saxophone Club, Bill Clinton's Presidential Campaign (early 1990's)

In 1977 and 1979, Walker Wadsworth, my uncle, ran for city council in Reading, Pennsylvania. As a junior high and high school student, I did door-to-door canvassing and helped with election related mailings without compensation.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a law clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1988 – 1995
Steptoe & Johnson
1330 Connecticut Avenue, NW
Washington, DC 20036
Associate

1995 – Present
U.S. Department of Commerce
Office of Chief Counsel for Import Administration
1401 Constitution Avenue, NW

Washington, DC 20230
Attorney (1995 – 1999)
Senior Counsel (1999 – 2005)
Deputy Chief Counsel (2005 – Present)

2008 – 2009 (on detail from the Department of Commerce)
United States House of Representatives
Committee on Ways and Means
Subcommittee on Trade
1102 Longworth House Office Building
Washington, DC 20515
Department of Commerce Detailee/Trade Counsel

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

After graduation from law school, I worked as an associate at Steptoe & Johnson. I began in the general litigation section, where I conducted legal research and document review related to government contracts and false claims issues. After roughly 18 months, I transitioned into the international group where my work focused on unfair trade cases, mostly providing advice to foreign parties involved in antidumping and countervailing duty cases before the United States International Trade Commission and the United States Department of Commerce.

Since 1995, I have worked in the Office of Chief Counsel for Import Administration at the United States Department of Commerce. As a staff attorney, I provided legal advice to Import Administration officials regarding the conduct of antidumping and countervailing duty investigations and provided legal support to them in negotiating suspension agreements with parties to these cases. As determinations were made and parties challenged those determinations in domestic courts, I drafted briefs for the United States Department of Justice in defense of the determinations and prepared the Justice attorneys for argument.

In 1999, I became a Senior Counsel in the Office of Chief Counsel for Import Administration. As a Senior Counsel, I provided supervisory

advice to staff attorneys working with the Import Administration in the conduct of antidumping and countervailing duty cases. In addition, I participated in defending determinations by the Import Administration in dispute settlement proceedings at the World Trade Organization (WTO) and provided senior level guidance on significant issues in domestic litigation and in litigation before bi-national panels under the North American Free Trade Agreement. I also participated in the Doha Round of World Trade Organization negotiations to revise the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Antidumping Agreement), providing legal and negotiating advice to senior officials of the International Trade Administration.

Since 2005, I have been the Deputy Chief Counsel for Import Administration. In that role, I am involved in the supervision of all aspects of the legal services provided by an office of approximately 30 attorneys. I have continued to conduct and supervise litigation before World Trade Organization dispute settlement panels and its Appellate Body and I regularly coordinate these efforts with senior officials at the Office of the United States Trade Representative and the United States International Trade Commission. I have provided oversight and advice on significant legal issues in litigation before NAFTA Chapter 19 bi-national panels and before U.S. courts. I have advised agency and congressional officials regarding implementation of WTO dispute settlement reports and issues arising in the WTO Agreements as well as both the Doha Round rules negotiations and Trans-Pacific Partnership negotiations. In addition to my legal and supervisory duties, I also have been overseeing the office budget, office administration and hiring.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

While in private practice, much of my work was on behalf of foreign respondent companies such as Teijin, Ltd., Nippon Steel Corporation, and Ausimont, USA, involved in antidumping proceedings before the United States International Trade Commission and the United States Department of Commerce. Since 1995, the United States government has been my only client.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

In private practice, a significant amount of my work was involved in representing clients before administrative agencies in trade disputes, a quasi-judicial type of proceeding. I appeared in court twice, but did not argue either case.

As an attorney with the Office of the Chief Counsel for Import Administration, approximately one-half of my work has involved litigation before various tribunals. As a staff attorney, I drafted briefs for domestic litigation, assisted co-counsel from the Department of Justice in preparing for oral argument, and attended hearings with them, but did not argue the cases. As a senior counsel and as Deputy Chief Counsel, I supervise the work of staff attorneys on complex or highly significant litigation matters for the agency. I have also briefed and argued a number of cases before international tribunals (bi-national panels established pursuant to Chapter 19 of the North American Free Trade Agreement (NAFTA) and dispute settlement panels and the Appellate Body of the World Trade Organization (WTO)). For purposes of this response, I have included these international tribunals as "other courts."

i. Indicate the percentage of your practice in:
   1. federal courts: 40%
   2. state courts of record: 0%
   3. other courts: 40%
   4. administrative agencies: 20%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings: 0%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

While in private practice, I appeared in two cases as an associate counsel which were tried to final judgment. While with the United States Department of Commerce, I have appeared, as agency counsel, in 30 cases before the Court of International Trade, and at least 10 cases before the Court of Appeals for the Federal Circuit, each of which were tried to final judgment. In such cases, I drafted briefs or portions of briefs for the Department of Justice (DOJ), assisted DOJ counsel in preparation for oral argument, and often attended oral argument with them. In addition, I have participated as co-counsel, arguing certain issues, in three bi-national panels pursuant to the North American Free Trade Agreement, and at least 10 dispute settlement proceedings at the World Trade Organization, all of which were defended through the issuance of a final report by the relevant dispute settlement body.

i. What percentage of these trials were:
   1. jury: 0%
   2. non-jury: 100%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

As agency counsel, I have worked with the United States Department of Justice, Office of the Solicitor General in successfully opposing writs of certiorari in Corus Staal BV v. DOC, 395 F.3d 1343 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023 (2006) and Timken Co. v. United States, 354 F.3d 1334 (Fed. Cir. 2004), cert. denied, mot. granted, Koyo Seiko Co. v. United States, 543 U.S. 976 (2004). In these cases, I supervised the preparation of draft oppositions to certiorari provided to the Office of the Solicitor General, advised members of that office on the intricacies of the unfair trade laws as they reviewed and revised the draft oppositions, and reviewed the final product prior to filing. There were two subsequent efforts to seek Supreme Court review of the same issues and I provided additional, but more limited, assistance in those successful oppositions to certiorari. SNR Roulements v. United States, 341 F. Supp. 2d 1334 (C.I.T. 2004), aff'd, 210 Fed. Appx. 992 (Fed. Cir. 2006), cert. denied, mot. granted, JTEKT Corp. v. United States, 552 U.S. 1007 (2007); and Corus Staal BV v. United States, 387 F. Supp. 2d 1291 (C.I.T. 2005), aff'd, 186 Fed. Appx. 997 (Fed. Cir. 2006), cert. denied, 551 U.S. 1144 (2007). In all four of these cases, certiorari was denied. Copies of the oppositions are supplied.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Ausimont USA, Inc. v. United States, 19 C.I.T. 151, 882 F. Supp. 1087 (C.I.T. 1995), Judge R. Kenton Musgrave.

This case, from the time that I was in private practice, involved the appeal to the Court of International Trade of an affirmative finding by the United States Department of Commerce that Ausimont USA was circumventing an antidumping duty order. Commerce found circumvention based on Ausimont's importation of an intermediate product for finishing in a newly constructed facility in Texas. I had actively represented

Ausimont in the administrative proceeding (beginning in mid-1991) and worked closely with the partner to develop the legal theories and draft the briefs for appeal of Commerce's decision. The court affirmed Commerce's decision to base its determination on a difference in value between the imported good and the finished good that considered qualitative factors and analogous production costs in Italy and disregarded the costs incurred in Texas because it was a start-up operation incurring losses.

Co-Counsel for the Plaintiff:

Daniel J. Plaine (now retired)

Counsel for Defendant United States:

Michael Kane (now deceased)

Jeffery Lowe (of counsel, representing the Department of Commerce)
Mayer Brown
1999 K Street, NW
Washington, DC 20006
(202) 263-3821

Counsel for Defendant-Intervenor E.I. Du Pont de Nemours & Co.:

John Greenwald
Cassidy Levy Kent
2000 Pennsylvania Avenue, NW
Suite 4500
Washington, DC 20006
(202) 567-2300

2. Torrington Co. v. United States, 22 C.I.T. 36, 995 F. Supp. 117 (C.I.T. 1998), Judge Nicholas Tsoucalas.

In this case, the court affirmed the United States Department of Commerce's finding that certain automotive parts were not within the scope of the antidumping duty order on antifriction bearings. The court affirmed Commerce's finding that the scope of the order was clear, that within the miscellaneous automotive parts classification, only so-called "wheel hub units" were included in the scope and all other products entering under that classification code were excluded. The court also affirmed Commerce's decision not to consider new or additional evidence about this scope issue some five years after the antidumping duty order was issued. I was the staff attorney on this case, advising the Import Administration officials making the scope determination, then working with the Department of Justice attorney to defend that determination. I drafted the brief filed with the U.S. Court of International Trade, prepared the Justice attorney for the oral argument and attended the argument.

Co-Counsel for Defendant United States:

Cynthia Schultz
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037
(202) 457-6343

Counsel for the Plaintiff:

James R. Cannon, Jr.
Cassidy Levy Kent
2000 Pennsylvania Avenue, NW
Suite 4500
Washington, DC 20006
(202) 567-2300

Counsel for Defendant-Intervenor Dana Corp.:

Kazumune V. Kano
Katten Muchin Rosenman
525 West Monroe Street
Chicago, Illinois 60661
(312) 902-5200

3. Elkem Metals Co. v. United States, 23 C.I.T. 170, 44 F. Supp. 2d 288 (C.I.T. 1999), Judge Judith M. Barzilay.

During the original investigation in this case, the United States Department of Commerce had entered into a suspension agreement with the Government of the Ukraine as an alternative to an antidumping duty order. The agreement required the Government of the Ukraine to limit the export quantity of the subject merchandise to the United States and to ensure that United States sales of that merchandise were at or above certain reference prices. Commerce annually provided parties with an opportunity to request a review of the suspension agreement. Without taking advantage of these opportunities, the domestic industry sought to invoke the Court of International Trade's residual jurisdiction. Distinguishing a prior case relied upon by the plaintiff, the Court dismissed the case for lack of subject matter jurisdiction, finding that the residual jurisdiction could not be invoked when jurisdiction under another provision could have been invoked and would not have been manifestly inadequate. I worked with the Department of Justice attorney in this case, drafting the brief filed with the U.S. Court of International Trade, preparing the Justice attorney for the oral argument and attending the argument.

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4. WTO Panel Report, United States – Anti-Dumping and Countervailing Measures on Steel Plate from India, WT/DS206/R and Corr. 1 (2002), Panel composed of Chairman Tim Groser and Members Salmiah Ramli and Luz Elena Reyes de la Torre.

In this World Trade Organization dispute, India challenged the consistency of certain provisions of the United States' antidumping duty laws and a particular antidumping duty determination made by the United States Department of Commerce. The panel rejected India's arguments and, instead, accepted the United States' arguments that the provisions contained sufficient discretion such that Commerce could apply them in a WTO-consistent manner. The panel did, however, find that Commerce had failed to comply with its WTO obligations in one aspect of its determination. I was the lead attorney at the Department of Commerce on this case. I drafted substantial portions of the briefs filed with the panel, worked closely with attorneys from the United States Trade Representative's Office, and argued several aspects of the case to the dispute settlement panel.

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5. WTO Panel Report, United States – Section 129(c)(1) of the Uruguay Round Agreements Act, WT/DS221/R (2002), Panel composed of Chairperson Claudia Orozco and Members Simon Farbenbloom and Edmond McGovern.

In this dispute, Canada challenged the consistency of a specific statutory provision as being inconsistent with the United States' World Trade Organization obligations. The provision in question provides that determinations made by the United States Department of Commerce or the International Trade Commission, which the United States Trade Representative instructs Commerce to implement, are to be given effect as to imports that occur on or after the date the Trade Representative so instructs. As the lead attorney for the Department of Commerce, I worked closely with the lead attorney at the Office of the United States Trade Representative to develop an approach to the dispute that the panel ultimately adopted. We worked closely together, drafting the briefs, responding to more than 100 written questions from the panel, and arguing the case through two meetings with the panel. Ultimately, the panel accepted the United States' argument that the provision identified by Canada did not mandate how such prior imports were to be treated.

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6. Timken Co. v. United States, 354 F.3d 1334 (Fed. Cir. 2004), Judges Pauline Newman, William C. Bryson, and Sharon Prost.

This was the first case taken to the Court of Appeals for the Federal Circuit in which a party sought to have the court follow a dispute settlement report from the World Trade Organization Appellate Body addressing the issue of so-called "zeroing" – an antidumping calculation approach that does not permit the results of non-dumped sales to offset or reduce any dumping found on other sales. While the court rejected the Government's argument that zeroing was required by the statute, the court agreed with the Government that zeroing was a reasonable interpretation of the statute and that it prevented non-dumped sales from "masking" dumping that otherwise was occurring. The court also rejected the argument that the WTO dispute settlement finding, in a dispute involving the European Union and not the United States, should require a different result. While there were other issues involved in this case, my role in the case was focused on this "zeroing" issue, assisting in the development of the approach to the issue, supervising the drafting of the brief on this issue at Commerce and working closely with the Department of Justice attorneys to prepare for the argument.

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7. Corus Staal BV v. Department of Commerce, 395 F.3d 1343 (Fed. Cir. 2005), Judges Haldane Robert Mayer, S. Jay Plager, and Sharon Prost.

This was the first case involving an appeal of an antidumping duty investigation taken to the Court of Appeals for the Federal Circuit in which a party sought to have the court apply certain dispute settlement reports (including one addressing an antidumping investigation by the United States) from the World Trade Organization Appellate Body addressing the issue of "zeroing." The court agreed with the Government's position that zeroing in the context of an investigation was a reasonable interpretation of the statute. The court declined to give deference to any WTO dispute settlement reports, even when there was a report finding against the use of zeroing by the United States, unless and until that report was adopted by the United States pursuant to the statutory scheme adopted by Congress. I assisted in the development of the approach to the issue, supervised the drafting of the brief at Commerce and worked with the Department of Justice attorneys to prepare for the argument.

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8. World Trade Organization Dispute Regarding Softwood Lumber from Canada Antidumping Investigation.

Implementation Dispute: Panel Report, United States – Final Dumping Determination on Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada, WT/DS264/RW (2006), Panel composed of Chairman Toufiq Ali and Members Gerhard Hannes Welge and Adrián Makuc, as reversed by the Appellate Body Report, WT/DS264/AB/RW (2006), Appellate Body composed of Presiding Member Georges Abi-Saab and Members Luiz Olavo Baptista and Giorgio Sacerdoti.

After the Appellate Body found that "zeroing" in the investigation was inconsistent with certain language in the Agreement, the United States recalculated the antidumping duty margins by using a different comparison methodology not implicated by that language. Canada challenged the implementation, arguing that the United States continued to use zeroing and that even with this different methodology, that use was inconsistent with the Antidumping Agreement. The implementation panel rejected Canada's claim, finding that the Appellate Body's earlier rejection of zeroing was based on specific text limited to one methodology when used in investigations. The Appellate Body disagreed with the panel, finding that the use of zeroing was inconsistent with WTO obligations even in the context of the comparison methodology used in the implementation proceeding. In doing so, the Appellate Body adopted different textual bases for its findings than it had in the initial dispute. Throughout this dispute, I was the lead Department of Commerce attorney on the zeroing issue, drafting the briefs and arguing the issues before both the panel and the Appellate Body.

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9. In the Matter of Certain Softwood Lumber Products from Canada: Final Affirmative Antidumping Determination, Panel No. USA-CDA-2002-1904-02, 2003 FTAPD LEXIS 7 (2003), remanded, 2004 FTAPD LEXIS 2 (2004), remanded, 2005 FTAPD LEXIS 5 (2005), Panel composed of Chairman John M. Peterson, and Members Jeffery Atik, Ivan R. Feltham, W. Roy Hines, and Leon Trakman.

Concurrent with the World Trade Organization dispute discussed above, Canada and various respondent companies and associations challenged the United States Department of Commerce antidumping duty determination before a bi-national panel composed pursuant to Chapter 19 of the North American Free Trade Agreement. While there were numerous issues in dispute, my involvement was focused on briefing and arguing the challenge to Commerce's use of the "zeroing" methodology.

In its initial decision, the panel found that the statute was ambiguous as to the question of zeroing and affirmed the use of zeroing as reasonable. The panel took note of the WTO dispute and suggested that if the WTO dispute were to result in a finding against the United States, the panel might find the use of zeroing to be unreasonable. While this panel process played itself out, the WTO Appellate Body issued its findings that the use of zeroing in the investigation was inconsistent with the WTO Antidumping Agreement. The NAFTA panel ordered additional argument, the result of which was a third remand order because the panel now considered zeroing to be an unreasonable interpretation because it was inconsistent with the United States' WTO obligations.

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10. World Trade Organization Dispute Regarding the Methodology for Calculating Dumping Margins.

Initial Dispute: Panel Report, United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing"), WT/DS294/R (2005), Panel composed of Chairman Crawford Falconer and Members Hans-Friedrich Beseler and William Davey, as modified by the Appellate Body Report, WT/DS294/AB/R (2006), Appellate Body composed of Presiding Member Giorgio Sacerdoti and Members Merit E. Janow and Yasuhei Taniguchi.

This dispute was brought by the European Union against the use of "zeroing" by the United States both in antidumping investigations and, for the first time, in administrative review determinations. The panel followed the prior Appellate Body findings and, on that basis, distinguished between zeroing in investigations (inconsistent) and zeroing in reviews (consistent). The Appellate Body affirmed the panel's finding with regard to investigations; however, with regard to administrative reviews, the Appellate Body rejected the panel's reasoning and, instead, adopted a distinct line of reasoning to find that the United States' use of zeroing in administrative reviews was WTO inconsistent. In this dispute, I drafted and supervised the drafting of most of the briefs submitted on behalf of the United States and argued the position of the United States before both the panel and the Appellate Body. Subsequently, I worked closely with attorneys from the Office of the U.S. Trade Representative both in the implementation dispute and in the negotiation with the European Union of the agreement on additional domestic actions that would lead towards resolution of the dispute.

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18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As an attorney in the Office of Chief Counsel for Import Administration, I participated in a number of matters that were resolved without litigation, as well as other matters that, despite litigation, nevertheless required a negotiated resolution. Four of the most significant examples are:

Mexican Tomatoes Suspension Agreement: This suspension agreement resolved a complex antidumping duty investigation involving tomato imports from Mexico. The investigation arose soon after the North American Free Trade Agreement went into effect and was a source of significant concern for the Government of Mexico. The suspension agreement that was entered into with the Mexican tomato producers relied on a rarely utilized provision of the law and effectively resolved this difficult issue.

Comprehensive Steel Agreement with Russia: In the late 1990's, Russia's emergence as a steel exporter was a matter of concern to domestic steel producers. After several antidumping investigations resulted in individual suspension agreements with Russia, the two governments entered into talks to seek a broader resolution with respect to steel trade. The novel solution we developed was an executive agreement, entered into pursuant to section 125 of the Trade Act of 1974, which established an export limit regime in effect for five years and covered 16 major categories of steel products. I participated in the negotiation of the agreement and was a primary drafter of the text.

Doha Rules Negotiations: The Doha Round of trade negotiations was launched in late 2001 and included a "Rules Negotiating Group." Within the mandate of that group is the World Trade Organization Antidumping Agreement, establishing the basic rules for conducting antidumping investigations and reviews of antidumping measures. I have been a member of the team representing the United States in these negotiations for almost a decade and have drafted or edited numerous formal and informal submissions to the negotiating group – taking into account both prior dispute settlement experience and concerns about potential future dispute settlement exposure.

Informal Agreements with European Union and Japan Regarding Zeroing Implementation: The use of so-called "zeroing" (not allowing non-dumped sales to offset the dumping found on other sales) was found to be inconsistent with the United States' obligations under the World Trade Organization Agreements in two disputes involving the European Union and one involving Japan. After those reports were adopted, the United States had a period of time to implement the reports. Follow-on disputes resulted in findings that the United States had not taken appropriate action to comply with the

findings and the European Union and Japan sought retaliation rights against U.S. exports worth hundreds of millions of dollars. Over a period of more than two years, I was a member of a team devoted to developing a defensible implementation approach and negotiating agreements with the European Union and Japan to allow that implementation approach to be put into effect and draw the disputes towards resolution.

I have never performed lobbying activities or registered as a lobbyist.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

    I have not taught any courses.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    I have no such arrangements.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    I am currently the Treasurer (uncompensated) for my local non-profit homeowners association of 42 homes. This association holds a small piece of common land and accounts at a local bank. As a current government employee, I recuse myself from any representation of the association before any federal government agency (e.g., I would not represent it before the Internal Revenue Service) and, if I am confirmed, I would continue to limit my role as the association Treasurer in the same manner.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My wife is a Principal with Capitol Counsel LLC. If I am confirmed, I would recuse myself from cases involving clients of Capitol Counsel. I also would recuse myself from all cases from the United States Department of Commerce, International Trade Administration, Import Administration for a period of 18 months, as well as any subsequent cases from Import Administration over which I had supervisory responsibility. Because of the statutory deadlines for completing the administrative proceedings, any determination appealed to the Court of International Trade after 18 months would likely have been initiated after my departure from the Department. I would use court procedures to identify the cases in which the conflicts could arise and I would take appropriate action.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If I am confirmed, I would follow the federal recusal statutes and the Code of Conduct for United States Judges. If any issue of a potential conflict were to arise, I would consult with applicable statutes and the Code and, if necessary, would seek advice from the Judicial Conference. In cases of uncertainty, I would err on the side of recusal.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Because of the conflicts that can arise as a government attorney providing pro bono services, I have not provided traditional pro bono services since becoming an attorney with the Department of Commerce. However, while I was in private practice, I provided pro bono services to an individual seeking political asylum based on the persecution he would have suffered if returned to his native country. In addition, I have served the community as a tutor for disadvantaged students in the District of Columbia. I have also devoted time to counsel current and former college and law students on government service opportunities.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In 2009, while I was on detail to the House Ways and Means Committee, I discussed my possible interest in becoming a judge on the Court of International Trade with the Staff Director of the Trade Subcommittee. In 2011, when I learned that two seats had become available on the Court, I again contacted the Staff Director to express my interest. In November 2011, the Staff Director forwarded my resume and statement of interest to the White House Office of Legislative Affairs.

Since April 13, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 23, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On July 12, 2012, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

I, __Mark A. Barnett_____, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

July 16, 2012_____ _____
(DATE) (NAME)

Sandra E. Lambright
(NOTARY)

Sandra E. Lambright
Notary Public, District of Columbia
My Commission Expires 01/01/2013