

**Senator Grassley
Questions for the Record**

**Gary Stephen Katzmann
Nominee, Judge for the United States Court of International Trade**

- 1. At the hearing you noted that judges on the Court of International Trade are only permitted to address the cases before them and that hold-ups caused by federal agencies, such as the International Trade Commission, cannot be addressed by the courts. In your view, what changes could be made to the International Trade Commission to alleviate the hold-ups and expedite judicial review?**

Response: The Congress has broad oversight powers over agencies and can issue further statutory standards and directives, including those relating to the processing of cases, if it deems that appropriate or necessary to address how those agencies function. Respectfully, within the framework of the separation of powers, the administrative operation of agencies is a matter for the Congress and the agencies, and not the courts.

- 2. Do you believe that Congress should grant standing to domestic entities, such as states and localities, to bring trade cases? How would such an action by Congress affect the Court of International Trade?**

Response: The policy decision to grant statutory standing to domestic entities, and the consideration of the impact of such a decision, are within the province of the Congress, and not matters for the court in our system of separation of powers. The extent to which the Court of International Trade would be impacted would depend on how the Congress legislates on this issue.

- 3. Does the Department of Commerce currently have the authority to treat currency undervaluation as a countervailable subsidy? If so, does it use this authority to bring enforcement actions?**

Response: Consistent with the existing statutory scheme, the Congress has the broad power to authorize that currency undervaluation be treated as a countervailable subsidy. I am aware that the Congress is considering further legislation on this issue. Because, if I am fortunate to be confirmed, the questions -- whether the Department of Commerce currently has the authority to treat currency undervaluation as a countervailable subsidy or whether it has erred insofar as it has declined to use such authority -- might come before me, analysis here should be deferred until the full development of a case or controversy within the judicial process.

- 4. 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: If I am fortunate to be confirmed, in resolving questions of statutory interpretation by the ITC, I would apply the well-established two-step framework governing judicial review as set forth by the Supreme Court in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., et al.*, 467 U.S. 837 (1984). First, if the statute was unambiguous, that would end the matter; I would apply the statute and decide the case in accordance with the plain meaning as expressed by Congress in the statute. Second, if the statute was ambiguous with respect to the issue under review, I would defer to the ITC's interpretation if it was reasonable. I would look to the precedent of the Supreme Court and the Federal Circuit when determining whether the agency interpretation was reasonable.

- 5. 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: With respect to questions of fact, I would defer to the ITC when its decisions are supported by substantial evidence. This is the standard of review required by statute, and interpreted by the Supreme Court and the Federal Circuit. Under the familiar formulation, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It has been described as more than a scintilla but something less than the weight of the evidence. The touchstone is reasonableness, and the judge's role is not to reweigh the evidence. In accordance with precedent, if I am confirmed, after looking at the record as a whole, I would affirm an agency finding supported by substantial evidence.

- 6. Do you agree with the Federal Circuit's decision in *SFK 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: The Federal Circuit's decision in *SKF USA, Inc. v. U.S. Customs and Border Protection* is a precedential decision binding upon the United States Court of International Trade. If I am fortunate to be confirmed, I would follow it as binding precedent. As in all other cases, my approach in cases regulating commercial speech would be to follow the precedent of the Supreme Court and the Federal Circuit.

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

Response: The most important attribute a judge should possess is integrity. Integrity encompasses several elements, including fidelity to the rule of law; impartiality and fairness in every case; conscientious application of the law to the facts; reasoned decision; humility; and respect for the separation of powers and understanding of the limits of the

judicial role within our constitutional system. I believe that in my work as a state court judge I have possessed integrity, and if fortunate to be confirmed, would continue to conduct myself accordingly.

- 8. 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 be courteous and even tempered. A judge should treat the parties with respect and dignity, and the issues with an open mind. A judge should always be mindful that the obligation to adjudicate matters fairly, impartially and transparently is essential to maintaining respect for the legal process. There is no substitute for hard work and thoughtful consideration of the issues. Humility and appreciation of the privilege of being entrusted to resolve disputes under the law are central to judicial temperament. I believe I have demonstrated judicial temperament as a state court judge, and should I be fortunate to be confirmed, I will continue to approach my work with the same abiding values.

- 9. 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. If I were fortunate to be confirmed, I would faithfully follow all Supreme Court and Federal Circuit precedents, regardless of any personal views or disagreement.

- 10. 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: If confirmed, in deciding a case of first impression, I would be guided by the principle that it is the judicial responsibility to interpret statutes in a way that is faithful to Congress. I would examine the words of the text of the provision in issue to determine whether the plain meaning was clear. If it was clear, I would apply the plain and ordinary meaning to the facts of the case under review. If the plain meaning was not clear from the text or ambiguous, I would look for guidance to canons of statutory construction, the statute's structure, legislative context as well as cases from the Federal Circuit and the Supreme Court interpreting analogous provisions. In a case of first impression involving an appeal of an agency interpretation of a statute, I would apply the two-step framework set forth in *Chevron*, noted in response to Question 4.

- 11. 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: I would follow the binding, precedent set by the Supreme Court and the Court of Appeals, regardless of my personal views.

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

Response: Properly enacted statutes are presumed to be constitutional. Under the doctrine of constitutional avoidance, I would consider whether the statute could be interpreted in such a way as to avoid the conclusion that it is unconstitutional. A federal court should declare a statute to be unconstitutional if Congress exceeded its constitutional authority in enacting the statute.

13. 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: It is not proper for judges to rely on foreign law or the views of the “world community” in determining the meaning of the Constitution. A judge should apply the text of the Constitution and applicable Supreme Court precedent.

14. 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 will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation. I believe that my more than eleven years of service as a state appellate court judge evidences that commitment. In addition, in my more than twenty years of service as a federal prosecutor, political ideology or motivation played absolutely no part in my decisions.

15. 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: I believe that my service of more than eleven years as a state appellate court judge evidences my commitment to put aside any personal views and to be fair to all who appear before me. Moreover, my more than twenty years of service as a federal prosecutor reflects my commitment to fairness and the rule of law.

16. If confirmed, how do you intend to manage your caseload?

Response: Having served for more than eleven years on a busy state appellate court with a wide-ranging docket, I very much appreciate the importance of managing my caseload in an efficient and timely manner. In that work, I have gained deep experience in handling appeals from agency decisions and review of summary judgment records. That experience is very much relevant to the work of the Court of International Trade, which adjudicates a substantial and steady caseload largely consisting of appeals of agency determinations on

complex records in unfair trade cases and civil actions often decided on summary judgment records pertaining to the classifications and valuation of imported merchandise. If confirmed, I would manage my caseload by reviewing cases immediately upon docketing, scheduling early conferences with counsel to identify those issues which will proceed to litigation and those which can be resolved expeditiously, and setting an appropriate schedule going forward in the case.

17. 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: Judges have a vital role in controlling the pace and conduct of litigation. The parties must understand that from the outset, the judge is actively involved in the management of the case, and in consultation with the parties implements a schedule that is tailored to the case, imposing reasonable deadlines to control the docket. In addition to the approach described in response to Question 16, I would require periodic status conferences or reports, rule on motions expeditiously, and issue opinions promptly reflecting a full consideration of the law and the evidence.

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

Response: On February 3, 2016, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I prepared these responses and submitted them to the Office of Legal Policy on February 4, 2016. After reviewing them by telephone with an attorney at the Office of Legal Policy, I authorized their submission to the Senate Judiciary Committee.

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

Response: Yes.