

Response of Claire R. Kelly
Nominee to be a Judge of the United States Court of International Trade
to the Written Questions of Senator Chuck Grassley

- 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: If I were fortunate enough to be confirmed I would review statutory interpretation of the International Trade Commission using *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., et al.*, 467 U.S. 837 (1984). First, I would look to see if the statute was ambiguous. If the meaning was clear, that would end the matter as I would adopt the plain meaning as expressed by Congress in the statute. If the statute was ambiguous, I would defer to the reasonable interpretation of the agency. I would follow the precedent of the Court of Appeals for the Federal Circuit and the United States Supreme Court when determining whether the agency interpretation was a reasonable one.

- 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: I would defer to the ITC when its decisions were supported by substantial evidence. I would follow the precedent of the Court of Appeals for the Federal Circuit and the United States Supreme Court and I would look to see whether the agency determination was based upon “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *U.S. Steel Corp. v. United States*, 621 F.3d 1351, 1357 (Fed. Cir. 2010).

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

Response: The most important attribute of a judge is to be faithful to the rule of law and follow precedent. I do possess these attributes. As a practitioner and academic I have striven to conduct careful and intellectually honest analysis that respects stare decisis and the rule of law.

- 4. 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 must have an even temperament and treat all who come before the court with respect. A judge should be patient, dignified and courteous. As a teacher for fifteen years (and before that as a practitioner) I have behaved according to this standard in my classroom and I would continue to do so in a courtroom if I were fortunate enough to be confirmed.

- 5. 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

- 6. 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: I would look to the words of the statute to try to discern the meaning of the words from the plain text. If the meaning was not clear I would be guided by the canons of construction, any binding precedent, and if there were no binding precedent any analogous precedent. The United States Court of International Trade reviews agency decisions, and therefore, I would follow the appropriate standard of review of agency action.

- 7. 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 precedent set by the Supreme Court and the Court of Appeals.

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

Response: If a court can avoid the constitutional question, it should. If it cannot avoid the question then the court should only declare a statute enacted by Congress unconstitutional if in enacting the statute Congress clearly exceeded its authority granted by the Constitution.

- 9. What will be your approach in cases regulating commercial speech?**

Response: Commercial speech is protected speech and I would follow the precedent of the Supreme Court such as *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980) and all other precedent of the Supreme Court and the Court of Appeals for the Federal Circuit.

10. 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 decides about 150 cases per year. Many of these cases are trade remedies cases or agency determinations with respect to classification, valuation and country of origin of imported merchandise. These cases can be extremely complex. I would take an active role in managing my caseload. I would consult with the Chief Judge regarding the best means of managing my caseload and I would make certain that the cases moved forward at an appropriate pace. I would set reasonable deadlines and ask that the parties follow them. I would set an example to others through my own hard work and diligence.

11. 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 the pace and conduct of litigation. I would consult with the Chief Judge at the Court of International Trade for any advice on how to do this. I expect that I would establish scheduling orders and work with the parties to make certain that we stayed on schedule.

12. You have spent your legal career as an advocate for your clients, or as an academic researching and teaching about the law. 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: A large part of my job now is challenging students to think like a lawyer, and to work carefully through cases and doctrine so that they can be effective advocates for their clients. I believe that there are many attributes that benefit one in the role of teacher or academic that will benefit me in a judicial role if I were confirmed. These attributes include careful research, clarity of expression, and above all, respect for the rule of law. I also think that one cannot walk into a classroom, begin to write a law review article, or represent a client unless one has thoroughly familiarized oneself with the facts of the case, the law, and the arguments on each side. I approached my role as an advocate and as an academic with these principles in mind and I would do so again as a judge if I were confirmed. I expect that

the most difficult part of my transition will be leaving an atmosphere where I challenge students to carefully work through cases and doctrine and engage in that process with them, as that is something I have truly enjoyed and I will miss.

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

Response: I received these questions on January 30, 2013. I forwarded them to the Department of Justice on January 31, 2013. I reviewed them with a representative from the Department of Justice. Afterwards I finalized my responses and authorized the Department of Justice to submit them to the Senate Judiciary Committee.

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

Response: Yes.