

NOMINATION OF CHARLENE BARSHEFSKY OF THE DISTRICT OF COLUMBIA TO BE U.S. TRADE REPRESENTATIVE WITH THE RANK OF AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY

The legislative clerk read the nomination of Charlene Barshefsky of the District of Columbia to be U.S. Trade Representative with the rank of Ambassador Extraordinary and Plenipotentiary.

The Senate proceeded to consider the nomination.

Ms. SNOWE. Mr. President, I rise in support of Charlene Barshefsky's nomination as the United States Trade Representative.

I have scrutinized Ms. Barshefsky's nomination very carefully. During the time of her confirmation hearing before the Finance Committee, I submitted a list of 10 specific questions concerning her past work on behalf of the Canadian Government, her commitment to aggressively defending and advocating United States trade interests before all foreign parties, and her commitment to raising issues of interest to Maine before the Canadian Government, particularly with regard to Maine's long-running problems on potato trade. I ask unanimous consent that these questions and her responses be printed in the RECORD after my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Ms. SNOWE. My reason for investigating this nomination was simple: to make certain that this nominee could be counted on to defend United States interests in the trade arena, and to ensure that her past legal work for Canadian entities would not in any way influence the exercise of her duties as United States Trade Representative.

Ms. Barshefsky's written responses to my questions, and on her responses to the questions of other senators and the Finance Committee, indicate that her nomination does not pose any such problems.

As has been widely reported, Ms. Barshefsky worked, while an attorney for a Washington, DC, law firm, for several Canadian entities. But as her responses to the Senate detail, this work amounted to a tiny fraction of the total over the course of her 18-year career as a trade attorney in private practice. In fact, Ms. Barshefsky has certified to me and to the Finance Committee that her work for all Canadian Government entities represents less than 1 percent of the total hours that she spent working while in private practice. Furthermore, Ms. Barshefsky states in her responses to me that she never lobbied the U.S. Government on behalf of any foreign government or political party.

I also questioned Ms. Barshefsky closely regarding her commitment to defend American interests in the arena of international trade. Ms.

Barshefsky's responses are unequivocal. She states that she will forcefully defend and advocate American business interests in all international trade disputes, negotiations, and discussions involving the United States. She states that she will aggressively pursue all effective remedies to unfair trade practices committed by other countries against American businesses. And she states that she will pursue the strict adherence to, and vigorous enforcement of, all United States trade laws.

Ms. Barshefsky also specifically says that, if confirmed, she will ensure that the USTR's office raises the issues of concern to the U.S. potato industry during our bilateral meetings with Canada.

In addition to her words on paper, we also have Ms. Barshefsky's track record. She served as Deputy U.S. Trade Representative from 1993 to 1996, and as Acting U.S. Trade Representative for the past year. Her experience in these positions has given us a body of work to evaluate, and a record upon which to judge whether Ms. Barshefsky means what she says. And from what I have seen in her performance of her duties in these positions, through my own dealings with her, and from what other Senators have said, I believe that her deeds will be consistent with her words after she is confirmed.

I have spoken with and sought the assistance of Ms. Barshefsky on several occasions over the past year. In each instance, I have found Ms. Barshefsky to be responsive and cooperative. She displayed a genuine interest in the problems facing my constituents, and offered a number of options through which the administration could be of assistance.

I think it is also instructive to look at the Canadian softwood lumber issue. Although Ms. Barshefsky had, while in private practice, represented Canadian interests on the countervailing duty case that the United States filed against Canada in 1991, she later served as the second-highest ranking trade negotiator in the United States Government and participated in the negotiation of a bilateral agreement approved in 1996 that curtails subsidized Canadian softwood imports into the United States. That agreement has restored a measure of fairness to the lumber trade between the United States and Canada. And we would not have successfully concluded the agreement without the strong support of our senior trade officials like Ms. Barshefsky because the Canadians were under no legal obligations to sign an agreement with us. The United States had lost a succession of binational dispute resolution panel decisions on the issue up to that point, and had no way to legally require Canada to negotiate.

Mr. President, I was concerned when I first learned about some of Ms. Barshefsky's past work, but upon investigating this matter and questioning Ms. Barshefsky, I accept her assurances that this work will not in-

fluence her decisions and actions as the U.S. Trade Representative. And I am confident that she will defend and advocate American interests in the international trade arena, consistent with the policies of the Clinton administration. I cannot find anything in the record that compels opposition to Ms. Barshefsky's nomination, and I believe that she has earned the support of the Senate.

EXHIBIT 1

WRITTEN RESPONSE TO QUESTIONS FROM SENATOR SNOWE

CANADA/JOURNAL OF COMMERCE

The Journal of Commerce reported on November 15, 1996, that, as a lawyer in private practice, you were retained by the Canadian federal government and the Government of Quebec on issues involving trade with the U.S. in lumber and pork. What was the specific nature of the services that you provided on these governments on these issues, and at what times did you provide these services?

Following is the verbatim response provided to the Senate Finance Committee Questionnaire Statement of Information for Potential Nominees, Question C.6 on Potential Conflicts of Interest:

"Before becoming the Deputy United States Trade Representative in May of 1993, I worked for 18 years as a lawyer with the Washington law firm of Steptoe & Johnson. The vast majority of my work during those 18 years was in the international trade area, particularly in the area of trade litigation, including antidumping, countervailing duty, escape clause, and similar on-the-record litigations arising under the U.S. trade laws. My representation of foreign governments or foreign political parties was limited to Canada, viz, the Government of Quebec and the Embassy of Canada, which were disclosed at the time that I was confirmed in 1993 to serve as Deputy United States Trade Representative. At no time during the 18 years that I practiced law did I ever lobby on behalf of any foreign government or foreign political party."

With respect to the Government of Quebec, my work involved providing guidance and legal drafting assistance to the Steptoe & Johnson lawyers responsible for the client in connection with on-the-record litigation in two trade cases: 1) the administrative reviews of countervailing duty orders on Fresh, Chilled and Frozen Pork from Canada (hereinafter Canadian Pork) and the appeal thereof to an FTA panel; and 2) the petition filed under Section 302 of the Trade Act of 1974 by the G. Heilmann Brewing Company (later joined by Stroh's Brewing Company) concerning Canadian beer practices (hereinafter Canadian Beer). I did not meet with any U.S. government officials or appear on behalf of Quebec in any proceeding, nor did my name appear on any of the briefs or submissions in any of the proceedings. With respect to Canadian Beer, neither I nor the firm were involved in the GATT Panel proceeding.

My work related to the Government of Quebec began in October of 1989 and ended in March 1991, almost six years ago. My time on the Canadian Pork and Canadian Beer matters totaled approximately 240 hours, which represented just over 0.50 percent of my work while in private practice.

With respect to the Embassy of Canada, my former law firm and I were retained by the Embassy to monitor developments in the United States concerning a broad range of substantive areas, including international trade. The contract with the Embassy of Canada for this monitoring work stated that

Steptoe & Johnson was "to provide legal advice to the Canadian Embassy, in Washington, D.C., on political, legislative and regulatory developments in the United States relating to trade and economic issues." The Embassy explicitly prohibited lobbying on its behalf and I did not lobby.

We routinely reviewed developments in the international trade area, which included administrative, legislative and judicial actions on issues of relevance to the Embassy, ranging from changes in U.S. trade law to investment restrictions in various countries. I coordinated the work of other lawyers and paralegals in the firm as well, and routed to them pertinent materials for their use.

Pursuant to the monitoring contract, the Embassy requested that I also provide advice with respect to two specific trade matters. First, I directed the preparation of memoranda on the options and legal consequences if Canada were to terminate its settlement agreement with the United States involving softwood lumber, as well as the implications of judicial, administrative and legislative developments in U.S. trade law on possible future trade litigation in the event that Canada decided to terminate the settlement agreement. I did not recommend to the Embassy what course of action Canada should take with respect to the lumber matter. At the time that I directed this work, the settlement agreement was in force; there was no pending trade litigation and there were no negotiations on softwood lumber between the United States and Canada. In fact, my work on the settlement agreement ended several months before the countervailing duty litigation on *Softwood Lumber from Canada* began.²

Second, I reviewed certain draft composite texts prepared by the Chairmen of the GATT working groups on antidumping and countervailing duty law for circulation to all of the approximately 117 countries that participated in the Uruguay Round MTN. The Chairmen's drafts that I commented on were prepared by the GATT Chairmen as an attempt to reflect the consensus of GATT members. They were not U.S. texts. My review of these draft texts involved comparative analyses of the Chairmen's drafts with past GATT provisions, GATT practice, prior Chairmen's drafts, and U.S. law, as appropriate, and an evaluation of the potential impact of these and alternative texts on U.S. law.

My time spent on the MOU settlement agreement and MTN matters totaled approximately 145 hours, or slightly more than 0.30 percent of my work while in private practice. My work on these two matters was done intermittently from May 1990 to December 1991, and ended more than five years ago.

What other Canadian governments, business, industry groups, or organizations have you represented on matters related to trade with the United States? What was the specific nature of the services that you provided to these entities, and at what times did you provide these services?

As indicated in response to question 1, I represented the Canadian Forest Industries Council ("CFIC") in the countervailing duty litigation on *Softwood Lumber from Canada*. CFIC is an unincorporated association comprised of trade associations in the Canadian forest products sector, private Canadian softwood lumber producers, Canadian exporters of softwood lumber, and U.S. importers of softwood lumber. The services provided included those required in an on-the-record trade litigation, such as brief writing, assistance with preparation of responses to Department of Commerce questionnaires, and oral advocacy. I was retained in October, 1991, and my involvement ended when I left

my former law firm, Steptoe & Johnson, in April, 1993.

Were you ever retained by a Canadian entity to work on a particular issue at a time when that entity was engaged in a formal dispute resolution proceeding with the United States related to that issue under trade agreements signed by the United States and Canada? If so, what was the specific nature of the work that you performed for that entity on that issue?

See question 1 which describes all my work relating to foreign governments. As indicated above, I was retained by CFIC in the countervailing duty litigation on *Softwood Lumber from Canada*.

Were you ever retained by a Canadian entity at a time when that entity was involved, either directly as a government, or indirectly as an interest lobbying a Canadian Federal or provincial government, in negotiations on bilateral and multilateral trade agreements to which the United States was a party? If so, can you please describe the specific nature of that work?

With respect to being retained directly by the Canadian government, see response to question 1. I was never retained by any client to lobby Canadian Federal or provincial governments.

Were you ever retained by the Canadian federal government, a provincial government, or any other Canadian entity to perform work related to the Uruguay Round negotiations of the GATT, particularly as these negotiations related to the United States? If so, can you please describe the specific nature of this work?

See response to question 1.

(a) Do you think your past work in the private sector on behalf of Canadian entities will in any way hamper your ability to perform your duties as the U.S. Trade Representative as those duties relate to Canada? (b) Do you feel compelled to recuse yourself on any matters that come before the U.S. Trade Representative's office on issues related to Canada?

(a). No.

(b). No. However, I have recused myself from any particular matter involving specific parties in which I served as counsel on that matter while in private practice, unless I have been authorized to participate in that matter under the provisions of 5 C.F.R. 2635, Subpart E.

Can you assure me and other senators that your past work on behalf of any Canadian entity will not have any bearing on the performance of your duties as the U.S. Trade Representative?

Yes, unequivocally.

American businesses need a forceful, aggressive, and indefatigable advocate in the position of U.S. Trade Representative, particularly when dealing with intransigent and unscrupulous governments like Canada's. (a) Do you intend to forcefully defend and advocate American business interests in all international trade disputes, negotiations, and discussions involving the United States? (b) Will you aggressively pursue all effective remedies to unfair trade practices committed by other countries against American businesses? (c) Will you, to the extent authorized in the position of Trade Representative, pursue the strict adherence to and vigorous enforcement of all U.S. trade laws?

(a) Yes

(b) Yes

(c) Yes

Do you intend to make full use of Sections 201, 202, and 203 of the Trade Act to assist American industries that are suffering from injurious import surges?

Sections 201, 202 and 203 are the so-called escape clause or safeguards sections of our trade laws. These provisions are adminis-

tered primarily by the International Trade Commission (ITC), not the USTR. The law permits an entity that is representative of an industry, including a trade association, firm, union or group of workers to petition the ITC for relief. Alternatively, the President, USTR or House Committee on Ways and Means or Senate Committee on Finance may request the ITC to conduct an investigation. The ITC's investigation is to "determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article." Once the ITC makes an affirmative injury determination, the ITC then recommends to the President certain actions to address the injury to the domestic industry. USTR is also involved in providing a recommendation to the President as to what course of action would best assist an industry in adjusting to a surge in imports. If confirmed as USTR, I would intend to review all recommendations by the ITC to grant relief to an injured industry in order to ensure that USTR provides the President with the most considered recommendation possible regarding remedy actions that might be taken.

Based on our past discussions, I know that you are aware of the long-running trade problems that the potato industry in Maine and other states has had with Canada. If confirmed, do you intend to make the satisfactory resolution of potato-related trade disputes with Canada a high-ranking and continuous priority of the United States? Will you take steps to ensure that this issue is prominently featured on the agenda of any major bilateral trade discussions with Canada?

As you know, in close consultation with the Maine potato industry, I sent a formal request to Marcia Miller, Chairman of the ITC, requesting a formal 332 investigation on conditions of competition in the fresh and processed potato industry. This investigation will focus on the factors affecting trade between the United States and Canada. I expect to receive this report by July 15. The report will provide information on Canadian prices and costs of production which may be useful to the Maine potato industry and the U.S. government.

I have become very familiar with this issue and will work closely with you over the months ahead on finding ways to address the concerns of this important industry. You can be assured that we will continue to raise the issues of concern for the Maine potato industry at our bilateral meetings with Canada.

Mr. DOMENICI. Mr. President, it is my pleasure to support the nomination of Charlene Barshefsky to become the U.S. Trade Representative.

Mr. President, one of the things I find most interesting about Charlene Barshefsky is that in many ways she is a study in contradiction. On the one hand, she is a tough-as-nails trade negotiator who has developed a reputation for bringing the most experienced and determined of opponents to their knees. On the other hand, she is a loving and supportive wife and mother who recognizes the importance of family and, despite having very important responsibilities, makes time for her children.

Mrs. Barshefsky's tough negotiating strategy has earned her the nickname "Stonewall" from her colleagues, and "Dragon Lady" from the Japanese.

This reputation, however, was not gained at the expense of attention to her children. It has been reported that she has been known to help her children with homework while on the telephone to Hong Kong and other far off places.

Mr. President, I have had an opportunity to witness Mrs. Barshefsky's abilities first hand in the 1980's. At that time, a number of my colleagues and I fought to stop Chile from dumping Government subsidized copper on the world copper market potentially putting thousands of people in New Mexico and throughout the United States out of work. Although U.S. copper producers ran the most competitive mining operations in the world, Americans were losing jobs because the Chilean Government was subsidizing its industry with Government revenues and development funds from the World Bank and the International Monetary Fund. Charlene Barshefsky was one of the primary people who worked to rectify this situation.

Mrs. Barshefsky has successfully worked on numerous other trade related issues since then. She became the Deputy U.S. Trade Representative in May, 1993, and Acting Trade Representative in April, 1996. She marshaled support for the Global Information Technology Agreement and successfully concluded negotiations on the Basic Telecommunications Services Agreement to expand telecommunications trade and facilitate the building of a global information infrastructure. She played a vital role in solving trade disputes with Japan and China. She fought to open markets for the U.S. agricultural industry, and is leading efforts to expand trade with Europe. In fact, it's hard to find an area of trade where Mrs. Barshefsky has not been involved.

Charlene Barshefsky's tenacity and skill as a trade negotiator is well known the world over. Her demonstrated ability to do an exceptional job, her reputation for being a supreme tactician and tough negotiator, and her ability to do all of this and still make time for her family makes her an ideal choice for this post. For these reasons and others, it gives me great pleasure to support Charlene Barshefsky's nomination.

Mr. GORTON. Mr. President, I am pleased to voice my strong support for the nomination of Charlene Barshefsky as U.S. Trade Representative. Ambassador Barshefsky has done an outstanding job as acting USTR since her appointment last April.

I believe Ambassador Barshefsky is one of the best nominations President Clinton has made and am honored to have the opportunity to speak on her behalf. Charlene Barshefsky is an aggressive and articulate advocate of U.S. trade interests and has been very successful in defending U.S. business and agriculture throughout the world. The Office of the U.S. Trade Representative is vital to opening up trade mar-

kets to U.S. goods, and Charlene Barshefsky has proven herself to be very effective at doing just that.

Ambassador Barshefsky understands that U.S. agriculture and industry can compete very effectively in the international market, but only if trade barriers are torn down. She has been relentless in her efforts to expand market access for U.S. exports and to promote U.S. trade interests abroad.

I am particularly impressed with Ambassador Barshefsky's work on intellectual property rights. My State is home to the Nation's largest software producer and to many smaller software and video game companies. These businesses have faced devastating problems with the counterfeiting of their products overseas. Ambassador Barshefsky has been a leader in the fight to end such violations of U.S. intellectual property rights. Last year, she negotiated a tough deal with China. By threatening sanctions against \$2 billion in Chinese exports to the United States, she was successful in forcing Beijing to crackdown on software counterfeiters. While intellectual property theft still occurs, Ambassador Barshefsky has made great strides in defending United States interests in Asia.

She has also worked as a tough negotiator on Pacific Northwest wheat exports to China. As many of my colleagues know, China has, for the past 25 years, imposed arbitrary restrictions on the importation of wheat from the United States. The Chinese Government claims that Washington State wheat is infected by TCK Smut disease and therefore forbids its import into China for fear that the disease will spread to Chinese wheat. Unfortunately, their claim has no scientific basis. Ambassador Barshefsky has worked diligently to eliminate trade restrictions based on unsound science. Although her efforts have not yet been successful, she has been the strongest voice Washington state wheat growers have had in the administration for several years.

Mr. President, I strongly support the nomination of Charlene Barshefsky, and I urge my colleagues to join me in voting to confirm her as U.S. Trade Representative.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, once more, I strongly endorse the nomination of Ambassador Barshefsky. I urge my colleagues to vote for her. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MOYNIHAN. Mr. President, I do want to assert that she is extraordinary and will be plenipotentiary.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Charlene Barshefsky, of the District of Colum-

bia, to be U.S. Trade Representative, with the rank of Ambassador Extraordinary and Plenipotentiary? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.
The result was announced—yeas 99, nays 1, as follows:

[Rollcall Vote No. 27 Ex.]

YEAS—99

Abraham	Feinstein	Mack
Akaka	Ford	McCain
Ashcroft	Frist	McConnell
Baucus	Glenn	Mikulski
Bennett	Gorton	Moseley-Braun
Biden	Graham	Moynihan
Bingaman	Gramm	Murkowski
Bond	Grams	Murray
Boxer	Grassley	Nickles
Breaux	Gregg	Reed
Brownback	Hagel	Reid
Bryan	Harkin	Robb
Bumpers	Hatch	Roberts
Burns	Helms	Rockefeller
Byrd	Hollings	Roth
Campbell	Hutchinson	Santorum
Chafee	Hutchison	Sarbanes
Cleland	Inhofe	Sessions
Coats	Inouye	Shelby
Cochran	Jeffords	Smith, Bob
Collins	Johnson	Smith, Gordon
Conrad	Kempthorne	H.
Coverdell	Kennedy	Snowe
Craig	Kerrey	Specter
D'Amato	Kerry	Stevens
Daschle	Kohl	Thomas
DeWine	Kyl	Thompson
Dodd	Landrieu	Thurmond
Domenici	Lautenberg	Torricelli
Dorgan	Leahy	Warner
Durbin	Levin	Wellstone
Enzi	Lieberman	Wyden
Faircloth	Lott	
Feingold	Lugar	

NAYS—1

Allard

The nomination was confirmed.

Mr. ROTH. Mr. President, I move to reconsider the vote.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

MORNING BUSINESS

Mr. ROTH. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak therein for up to 5 minutes each, with the exception of 20 minutes under the control of Senator SHELBY.

The PRESIDING OFFICER. Without objection, it is so ordered.

HERE'S WEEKLY BOX SCORE ON U.S. FOREIGN OIL CONSUMPTION

Mr. HELMS. Mr. President, the American Petroleum Institute reports that for the week ending February 28, the United States imported 7,105,000 barrels of oil each day, 776,000 barrels more than the 6,329,000 imported during the same week a year ago.

Americans relied on foreign oil for 52.5 percent of their needs last week,