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**Folder Title:** JGR/ITC Consent Decisions  
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THE WHITE HOUSE

WASHINGTON

June 13, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

U.S. International Trade Commission  
Determination Regarding Certain Coin-  
Operated Audiovisual Games

Richard Darman has asked for comments on the above-referenced item by close of business today. The U.S. International Trade Commission (ITC) originally determined that an importer of coin-operated audio-visual games was not guilty of unfair import trade practices when it imported games that infringed the complainant's trademark because there was no established domestic industry. The Court of Appeals for the Federal Circuit reversed this determination, and the ITC has now ordered the exclusion of the infringing games.

*August 13*  
*an* Pursuant to 19 U.S.C. § 1337(g), the President has sixty days to review the ITC order. The President may disapprove the order "for policy reasons," may expressly approve it prior to the expiration of the sixty-day period, or may do nothing, in which case the order becomes effective on the sixty-first day. The Trade Policy Committee, with representatives of USTR, Agriculture, Commerce, Interior, Justice, Labor, State, Treasury, and CEA has reviewed the instant order and unanimously recommended that the President take no action, permitting the order to become effective on the sixty-first day, June 19. *a* Ambassador Brock notes in his memorandum for the President that competition in this market is fierce and will not be noticeably diminished by the ITC exclusion order. Brock also notes that the order is not inconsistent with our international trade obligations. I have no legal objections and see no reason to disagree with the unanimous recommendation of the Trade Policy Committee.

Attachment

THE WHITE HOUSE

WASHINGTON

June 13, 1984

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING Orig. signed by FFF  
COUNSEL TO THE PRESIDENT

SUBJECT: U.S. International Trade Commission  
Determination Regarding Certain Coin-  
Operated Audiovisual Games

Counsel's Office has reviewed the recommendation of the United States Trade Representative concerning the above-referenced item, and finds no objection to it from a legal perspective.

FFF:JGR:aea 6/13/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 13, 1984

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: U.S. International Trade Commission  
Determination Regarding Certain Coin-  
Operated Audiovisual Games

Counsel's Office has reviewed the recommendation of the United States Trade Representative concerning the above-referenced item, and finds no objection to it from a legal perspective.

FFF:JGR:aea 6/13/84

cc: FFFielding/JGRoberts/Subj/Chron

## WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 / 1

Name of Correspondent: Richard Dauman

MI Mail Report      User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: U.S. International Trade Commission  
Determination re: Certain Coin-operated  
audiovisual games

**ROUTE TO:**

**ACTION**

**DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
<u>CUHOU</u>	<u>ORIGINATOR</u>	<u>84 06 12</u>		<u>1 / 1</u>
<u>CIAT 18</u>	<u>D</u>	<u>84 06 12</u>	<u>S</u>	<u>84 06 12</u>
		<u>1 / 1</u>		<u>1 / 1</u>
		<u>1 / 1</u>		<u>1 / 1</u>
		<u>1 / 1</u>		<u>1 / 1</u>

**ACTION CODES:**

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure
- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

**DISPOSITION CODES:**

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

**FOR OUTGOING CORRESPONDENCE:**

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

Keep this worksheet attached to the original incoming letter.  
Send all routing updates to Central Reference (Room 75, OEOB).  
Always return completed correspondence record to Central Files.  
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

## WHITE HOUSE STAFFING MEMORANDUM

DATE: 6/12/84 ACTION/CONCURRENCE/COMMENT DUE BY: 6/13/84 c.o.b.

SUBJECT: U.S. INTERNATIONAL TRADE COMMISSION DETERMINATION RE CERTAIN  
COIN-OPERATED AUDIOVISUAL GAMES

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	McMANUS	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	VERSTANDIG	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McFARLANE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

**REMARKS:**

May we have your comments on the attached recommendation by close of business tomorrow, Wednesday, June 13. Thank you.

**RESPONSE:**

Richard G. Darman  
 Assistant to the President  
 Ext. 2702

1984 JUN 12 PM 5:07

1984 JUN 12 PM 3:35

THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON  
20506

June 7, 1984

MEMORANDUM TO THE PRESIDENT

FROM: WILLIAM E. BROCK SUBJECT: U.S. International Trade Commission Determination  
Regarding Certain Coin-operated Audiovisual Games

By June 18, you must decide what action, if any, you will take regarding the U.S. International Trade Commission's determination in its investigation, under section 337 of the Tariff Act of 1930, regarding certain coin-operated audiovisual games. I recommend that you take no action regarding the determination. The Commission originally determined that there was no violation of section 337 in the importation and sale of audiovisual games that infringe the complainant's trademark and copyright, because there was no efficiently and economically operated domestic industry. The Court of Appeals for the Federal Circuit reversed the Commission's finding and directed the Commission to provide a remedy. On remand, the Commission ordered the infringing games excluded from entry into the United States.

Under subsection 337(g)(2), you may disapprove a determination of the Commission for policy reasons, leaving the determination, and any order issued under its authority, without force or effect. You also may approve a determination, making it, and any associated order, final and ripe for appeal on the day on which the Commission receives notice. The determination and associated order become final automatically sixty days following the day on which the you received them for review if you take no action.

Member agencies of the Trade Policy Committee (the Office of the United States Trade Representative, the Departments of Agriculture, Commerce, Interior, Justice, Labor, State, and Treasury, and the Council of Economic Advisors) have reviewed the Commission's determination and approved this recommendation unanimously.

Coin-operated audiovisual games are not necessary to human or animal health and safety. There are many different audiovisual games available and, in general, their lifespans are short. Competition in the market is fierce and is unlikely to be affected by the exclusion order. The complainant can supply such demand for its product as might exist. Consumers will not be affected adversely because of the competitive environment in the industry.



The exclusion order is not inconsistent with U.S. obligations under the General Agreement on Tariffs and Trade. No foreign government has raised questions about this case. There are, therefore, no foreign or domestic policy considerations present that would justify disapproval or approval of the determination.

OPTIONS

ACTION REQUIRED

Option 1 (recommended)

Take no action.

None, the determination will become final automatically on June 19, 1984.

Option 2

Disapprove the determination.

Inform the Commission of your disapproval. The determination and order will be without force or effect when the Commission receives notice.

Option 3

Approve the determination.

Inform the Commission of your approval. The determination and order will become final when the Commission receives notice.

RECOMMENDATION:

OPTION 1: Take no action.

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

Discuss with me \_\_\_\_\_

Attachments



THE WHITE HOUSE

WASHINGTON

June 11, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: USTR Recommendations: (1) Two Consent Orders Issued by USITC Regarding Certain Poultry Cut Up Machines (2) Cease and Desist Order Issued by USITC Regarding Certain Wooden Handle Kitchen Utensils

Richard Darman has asked for comments on the above-referenced items by noon today. The U.S. International Trade Commission (ITC) is authorized to investigate and take action with respect to unfair import trade practices by 19 U.S.C. § 1337. Pursuant to 19 U.S.C. § 1337(g), if the ITC determines that there has been a violation of the statute, it must refer its determination to the President. The President has sixty days to review the ITC decision, and may disapprove it "for policy reasons," expressly approve it prior to the end of the sixty-day period, or simply take no action. If the President takes no action the ITC order will take effect on the sixty-first day.

The ITC has referred two separate orders to the President for review under 19 U.S.C. § 1337(g). The orders have been reviewed by the Trade Policy Committee, consisting of representatives of USTR, CEA, Agriculture, Commerce, Defense, Energy, Interior, Justice, Labor, State, Transportation, and Treasury. The attached memoranda from Ambassador Brock forwards the unanimous recommendations of the Trade Policy Committee that the President take no action with respect to either of the ITC orders, thereby permitting them to become effective on the sixty-first day (June 13).

In the first matter the ITC issued two consent orders in which respondents admitted that the poultry cut up machines they imported violated patents and common law trademarks held by the complainant. The respondents agreed not to sell the infringing machines in the United States for the life of the patents and not to sell any machines violating the common law trademark for 20 years; the complainant in turn released respondents from all commercial liability. I see no reason to disagree with the recommendation of the Trade Policy Committee that the President take no action with respect to these orders, thereby permitting them to go into effect.

In the second matter the ITC issued a cease and desist order against an importer of wooden handle kitchen utensils and gadgets, after determining that the importer had violated an earlier ITC consent order. The consent order required the importer to seek ITC staff clearance of certain of its items before selling them in the United States. The importer disregarded this requirement of the consent order, and complainant brought an enforcement action before the ITC.

The ITC determined that the importer's product did not infringe the complainant's trademark, but the ITC nonetheless imposed a penalty because the importer violated the prophylactic consent order. Accordingly, the ITC issued an order prohibiting the importer from selling the items in question, even though they did not in fact infringe the complainant's trademark.

As Brock's memorandum notes, the ITC order raises legal issues of first impression concerning the authority of the ITC to take action in the absence of a finding of a violation of 19 U.S.C. § 1337. Certainly the ITC should be permitted to enforce its consent orders; the question is whether the ITC may issue such orders in the first place. The statute does not specifically sanction this procedure, and expressly authorizes action by the ITC only on the basis of a violation of 19 U.S.C. § 1337. Indeed, 19 U.S.C. § 1337(g), the provision requiring Presidential review, is triggered by an ITC determination "that there is a violation of this section, or that...there is reason to believe that there is such a violation." Again, the ITC determined that there was no violation of 19 U.S.C. § 1337 in this case, only a violation of its previous consent order.

I agree with Brock that there is no reason for the President to decide this issue. The President is authorized to disapprove ITC orders "for policy reasons," and the Trade Policy Committee has discerned no policy reason for blocking this order. The importer may appeal to the U.S. Court of Appeals for the Federal Circuit for review of the close legal question of the ITC's authority to block the sale of products in the absence of a finding of a violation of 19 U.S.C. § 1337. Brock has cautioned the ITC that any decision in this case should not be viewed as a blanket endorsement of any action the ITC may take to enforce a consent order.

Attachment

THE WHITE HOUSE

WASHINGTON

June 11, 1984

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING *Orig. signed by FFF*  
COUNSEL TO THE PRESIDENT

SUBJECT: USTR Recommendations: (1) Two Consent  
Orders Issued by USITC Regarding Certain  
Poultry Cut Up Machines (2) Cease and  
Desist Order Issued by USITC Regarding  
Certain Wooden Handle Kitchen Utensils

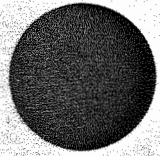
Counsel's Office has reviewed the recommendations of the United States Trade Representative concerning the above-referenced orders issued by the U.S. International Trade Commission (ITC). I have no objection to the recommendation that the President take no action in either case, thereby permitting the orders to become effective on June 13. The order in Certain Wooden Handle Kitchen Utensils and Gadgets raises difficult legal questions concerning the authority of the ITC, but I agree that it is not necessary for these issues to be resolved at this time in the course of the President's review pursuant to 19 U.S.C. § 1337(g).

FFF:JGR:aea 6/11/84

cc: FFFielding/JGRoberts/Subj/Chron

## WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
- I - INCOMING  
Date Correspondence Received (YY/MM/DD) 1/1



Name of Correspondent: Richard Darman

MI Mail Report      User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: USITC Recommendations: 1) Two Consent Orders issued by USITC re Certain Poultry Cut Up Machines; 2) Cease & Desist Order by USITC re: Certain Wooded Handle Kitchen Utensils & Gadget

ROUTE TO:	ACTION	Tracking Date	Disposition
Office/Agency (Staff Name)	Action Code	YY/MM/DD	Type of Response Code Completion Date YY/MM/DD
<u>CUTUP</u>	ORIGINATOR	<u>84 10608</u>	<u>1 1</u>
<u>CURT 18</u>	Referral Note: <u>D</u>	<u>84 10608</u>	<u>584 06 11</u> <u>NOON</u>
	Referral Note:	<u>1 1</u>	<u>1 1</u>
	Referral Note:	<u>1 1</u>	<u>1 1</u>
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	Referral Note:	<u>1 1</u>	<u>1 1</u>

- |   |   |
|---|---|
| <p><b>ACTION CODES:</b></p> <ul style="list-style-type: none"> <li>A - Appropriate Action</li> <li>C - Comment/Recommendation</li> <li>D - Draft Response</li> <li>F - Furnish Fact Sheet to be used as Enclosure</li> <li>I - Info Copy Only/No Action Necessary</li> <li>R - Direct Reply w/Copy</li> <li>S - For Signature</li> <li>X - Interim Reply</li> </ul> | <p><b>DISPOSITION CODES:</b></p> <ul style="list-style-type: none"> <li>A - Answered</li> <li>B - Non-Special Referral</li> <li>C - Completed</li> <li>S - Suspended</li> </ul> |
|---|---|

**FOR OUTGOING CORRESPONDENCE:**  
 Type of Response = Initials of Signer  
 Code = "A"  
 Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

Keep this worksheet attached to the original incoming letter.  
 Send all routing updates to Central Reference (Room 75, OEOB).  
 Always return completed correspondence record to Central Files.  
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

## WHITE HOUSE STAFFING MEMORANDUM

DATE: 6/8/84 ACTION/CONCURRENCE/COMMENT DUE BY: 12:00 Noon Monday, 6/11

SUBJECT: USTR RECOMMENDATIONS: SEE BELOW

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	McMANUS	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	VERSTANDIG	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

**REMARKS:**

1. Recommended Actions re Two Consent Orders issued by USITC re Certain Poultry Cut Up Machines
2. Recommended Actions re Cease and Desist Order issued by USITC re Certain Wooden Handle Kitchen Utensils and Gadgets

May we have your comments by 12:00 Noon Monday, June 11. Thank you.

**RESPONSE:**


Richard G. Darman  
Assistant to the President  
Ext. 2702

1984 JUN -8 PM 1:49

THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON  
20506

June 4, 1984

## MEMORANDUM FOR THE PRESIDENT

FROM: William E. Brock 

SUBJECT: Recommended Action Regarding Two Consent Orders  
Issued by the U.S. International Trade Commission  
in Certain Poultry Cut Up Machines

By June 12, 1984, you must decide what, if any, action you will take regarding two consent orders issued by the U.S. International Trade Commission ("ITC") in Certain Poultry Cut Up Machines, Inv. No. 337-TA-159. I recommend that you take no action with respect to the consent orders, thereby allowing them to go into effect.

Background

On April 12, 1984, the ITC terminated its section 337 investigation of Certain Poultry Cut Up Machines, Inv. No. 337-TA-159, through the issuance of two consent orders. Under the terms of the consent orders, respondent, Pritchard Sales Co., Jacobus Eliza Hazebroek, Systemate B.V., Systemate International Ltd., and Numafa B.V. admitted that the poultry cut up machines imported by respondents infringe U.S. Letters Patent 4,016,624 and 4,385,421 and a common law trademark held by complainant FoodCraft Equipment, Inc. The consent orders enjoin respondents from selling infringing machines in the United States for the lives of the patents and from selling machines which infringe FoodCraft's common law trademark for a period of 20 years. In return, complainant FoodCraft released respondents from all commercial liability for the importation of the infringing machines.

Under section 337(g), an ITC order must be transmitted to you for a 60-day period of Presidential review. You may disapprove an ITC order for policy reasons, including the impact of import relief on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive items in the U.S., and U.S. consumers. 19 U.S.C. 1337; S. Rept. No-93-1298, 93rd Cong., 2nd Sess., p. 198-199 (1974). Disapproval by you leaves the order without force and effect. You may also expressly approve an ITC order, rendering the order final and subject to judicial review on appeal. Absent explicit Presidential approval or disapproval, the order becomes final on the day after the expiration of the 60-day review period.



I recommend that you take no action with respect to the ITC's consent orders, thereby allowing the orders to go into effect on June 13, 1984. The members of the Trade Policy Committee (the Office of the United States Trade Representative, the Council of Economic Advisers, and the Departments of Agriculture, Commerce, Defense, Energy, Interior, Justice, Labor, State, Transportation, and Treasury) are in unanimous agreement with this recommendation.

There is no reason to disapprove the ITC's consent orders. Poultry cut up machines are not vital to the public health and welfare and issuance of the consent orders should have little or no effect on competition or consumers. The orders are narrow, since they cover only imported machines which infringe FoodCraft's patents or common law trademark. There are numerous alternative means and methods for cutting up poultry. These non-infringing means and methods are not subject to the consent orders. Therefore, consumers will continue to have access to poultry cut up devices, and competition in the U.S. market should continue. The action taken is consistent with our international obligations and no representations have been received from any foreign government. Accordingly, I recommend that you allow the orders to go into effect.

OPTIONS

PRESIDENTIAL ACTION REQUIRED

Option 1 (recommended)

Take no action to disapprove or to approve the orders.

None, the orders will become final automatically on June 13, 1984.

Option 2

Disapprove the orders.

Inform the ITC of your disapproval. The orders will be without force or effect when the ITC receives notice.

Option 3

Approve the orders.

Inform the ITC of your approval. The orders will become final when the ITC receives notice.

RECOMMENDATION:

Option 1: Take no action

Approve \_\_\_\_\_  
Disapprove \_\_\_\_\_  
Discuss with me \_\_\_\_\_



1984 JUN -8 PM 1:50

THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON  
20506

June 6, 1984

## MEMORANDUM FOR THE PRESIDENT

FROM: William E. Brock

SUBJECT: Recommended Action Regarding Cease and Desist Order Issued by the U.S. International Trade Commission in Certain Wooden Handle Kitchen Utensils and Gadgets

By June 12, 1984, you must decide what, if any, action you will take regarding a cease and desist order issued by the U.S. International Trade Commission ("ITC") in Certain Wooden Handle Kitchen Utensils and Gadgets, Inv. No. 337-TA-125. I recommend that you take no action with respect to the cease and desist order, thereby allowing the order to go into effect.

The Commission issued the cease and desist order after determining that respondent Four Star International Trading Co. had violated the terms of a Commission consent order. Under the consent order, Four Star agreed to submit any new design for an imported wooden handle kitchen utensil for clearance by the ITC staff before selling the utensils in the United States. This clearance procedure was designed to ensure that the new design did not "reasonably resemble" the handle design of complainant Bonny Products, Inc. First, the ITC learned that Four Star had begun soliciting sales of a new kitchen utensil design without seeking the approval of the ITC staff as required by the consent order. Then, after the ITC staff determined that the new design reasonably resembled that of Bonny Products, Four Star continued to solicit U.S. sales in clear disregard of its obligations under the consent order.

After learning of the sales, complainant requested Commission enforcement of the consent order pursuant to Part 211 of the Commission's Rules of Practice and Procedure. In the enforcement proceedings, the Commission determined that Four Star's handle did not in fact infringe complainant's alleged trademark and therefore did not reasonably resemble Bonny Products' handle. Nevertheless, in view of Four Star's repeated violations of the consent order, the Commission determined that Four Star's conduct warranted some penalty. Accordingly, pursuant to section 211.56 of the Commission's rules (19 C.F.R. 211.56), the Commission issued a cease and desist order prohibiting Four Star from selling wooden handle kitchen utensils which were the subject of the Commission's original investigation or reasonably resemble those of complainant Bonny Products.

Under section 337(g), an ITC determination and order must be transmitted to you for a 60-day period of Presidential review. You may disapprove an ITC order for policy reasons, including the impact of import relief on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive items in the U.S., and U.S. consumers. 19 U.S.C. 1337(f). Disapproval by you leaves the order without force and effect. You may also expressly approve an ITC order, rendering the order final and subject to judicial review on appeal. Absent explicit Presidential approval or disapproval, the order becomes final on the day after the expiration of the 60-day review period.

I recommend that you take no action with respect to the ITC's cease and desist order and allow the order to go into effect on June 13, 1984. The members of the Trade Policy Committee (The Office of the United States Trade Representative, the Council of Economic Advisers, and the Departments of Agriculture, Commerce, Defense, Energy, Interior, Justice, Labor, State, Transportation, and Treasury) are in unanimous agreement with this recommendation.

This case involves the first use of the consent order enforcement procedures adopted by the ITC in 1982. While the case raises certain legal questions as to the scope of the Commission's authority to issue and enforce a cease and desist order in the absence of a finding of violation of section 337, I believe that it is unnecessary for you to decide these legal questions here. The legal questions raised by the Commission's order in this case can be left to the courts, since section 337 orders can be appealed to the U.S. Court of Appeals for the Federal Circuit. Accordingly, you need not decide the issues of law in this case, but can limit your review to the policy implications of the order as provided in section 337 (g).

The Commission's cease and desist order does not raise policy problems. Four Star's kitchen utensils are not vital to the public health and welfare. Since there are numerous alternative utensil designs and few barriers to entry, the issuance of the order does not pose a threat to competition or consumers. The kitchen utensil market will remain highly competitive and consumers will continue to have access to numerous alternative designs. The order does not place an undue burden on government resources. It is consistent with the international obligations of the United States and no representations have been received from any foreign government. Accordingly, I recommend that you allow the order to go into effect.

The Commission's order in this case opened up a new area, the policy implications of which are not entirely clear. We have informed the ITC that any decision in this case should not be construed as a blanket endorsement of any measure the ITC may take to enforce a consent order in the future.

OPTIONS

Option 1 (recommended)

Take no action to disapprove or to approve the order.

Option 2

Disapprove the order.

Option 3

Approve the order.

RECOMMENDATION:

Approve \_\_\_\_\_  
Disapprove \_\_\_\_\_  
Discuss with me \_\_\_\_\_

Attachment

PRESIDENTIAL ACTION REQUIRED

None, the order will become final automatically on June 13, 1984.

Inform the ITC of your disapproval. The order will be without force or effect when the ITC receives notice.

Inform the ITC of your approval. The order will become final when the ITC receives notice.

Option 1: Take no action

THE WHITE HOUSE

WASHINGTON

August 1, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Recommended Action Regarding Consent Orders Issued by the U.S. International Trade Commission Regarding Certain Bag Closure Clips, Certain Single-Handle Faucets, etc.

Richard Darman has asked for comments on the above-referenced items by Monday, August 6. In three separate cases the International Trade Commission (ITC) determined that respondents had committed unfair import trade practices in violation of 19 U.S.C. § 1337. The ITC issued consent orders in which respondents agreed to cease importation and sale of the infringing products, and transmitted the orders to the President on June 13, 1984.

^Pursuant to 19 U.S.C. § 1337(g), the President has sixty days to review an ITC order. The President may disapprove an order "for policy reasons," may expressly approve it prior to the expiration of the sixty-day period, or may do nothing, in which case the order becomes effective on the sixty-first day. ^The Trade Policy Committee -- with representatives of USTR, Agriculture, Commerce, Interior, Justice, Labor, State, Treasury, and CEA -- has reviewed the instant order and unanimously recommended that the President take no action, permitting the order to become effective on the sixty-first day, August 13.

Ambassador Brock notes in his memorandum for the President that the consent orders are routine and will not significantly affect competition in the pertinent markets. He also advises that the orders are consistent with our international obligations and that no foreign government has objected. I see no reason to disagree with the unanimous recommendation of the Trade Policy Committee.

Attachment

THE WHITE HOUSE

WASHINGTON

August 1, 1984

MEMORANDUM FOR RICHARD G. DARMAN :  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

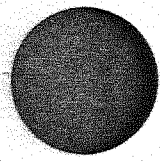
SUBJECT: Recommended Action Regarding Consent Orders  
Issued by the U.S. International Trade  
Commission Regarding Certain Bag Closure  
Clips, Certain Single-Handle Faucets, etc.

Counsel's Office has reviewed the recommendations of the United States Trade Representative concerning the above-referenced orders issued by the U.S. International Trade Commission (ITC). I have no objection to the recommendation that the President take no action in these cases, thereby permitting the orders to become effective on August 13.

FFF:JGR:aea 8/1/84  
cc: FFfielding/JGRoberts/Subj/Chron

## WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
- I - INCOMING  
Date Correspondence Received (YY/MM/DD) 1 / 1



Name of Correspondent: Richard Dorman

MI Mail Report      User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Recommended Action Regarding  
Consent Orders Issued by the U.S. Int'l. Trade  
Commission Re: Certain Bag Closure Clips,  
Certain Single-Handle Faucets, etc.

ROUTE TO:	ACTION	DISPOSITION	
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code      Completion Date YY/MM/DD
<u>CUHOLL</u>	ORIGINATOR	<u>8410801</u>	<u>1 1</u>
<u>CUAT 18</u>	Referral Note: <u>D</u>	<u>8410801</u>	<u>S 8410806</u>
_____	Referral Note: _____	<u>1 1</u>	<u>1 1</u>
_____	Referral Note: _____	<u>1 1</u>	<u>1 1</u>
_____	Referral Note: _____	<u>1 1</u>	<u>1 1</u>
_____	Referral Note: _____	<u>1 1</u>	<u>1 1</u>

**ACTION CODES:**  
 A - Appropriate Action  
 C - Comment/Recommendation  
 D - Draft Response  
 F - Furnish Fact Sheet  
     to be used as Enclosure

I - Info Copy Only/No Action Necessary  
 R - Direct Reply w/Copy  
 S - For Signature  
 X - Interim Reply

**DISPOSITION CODES:**  
 A - Answered      C - Completed  
 B - Non-Special Referral      S - Suspended

**FOR OUTGOING CORRESPONDENCE:**  
 Type of Response = Initials of Signer  
 Code = "A"  
 Completion Date = Date of Outgoing

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Keep this worksheet attached to the original incoming letter.  
 Send all routing updates to Central Reference (Room 75, OEOB).  
 Always return completed correspondence record to Central Files.  
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

# WHITE HOUSE STAFFING MEMORANDUM

DATE: 7/31/84 ACTION/CONCURRENCE/COMMENT DUE BY: 8/6/84

SUBJECT: RECOMMENDED ACTION REGARDING CONSENT ORDERS ISSUED BY THE U.S. INTL. TRADE COMMISSION RE CERTAIN BAG CLOSURE CLIPS, CERTAIN SINGLE-HANDLE FAUCETS, ETC.

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	VERSTANDIG	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McFARLANE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McMANUS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

**REMARKS:**

May we have your comments/edits on this by close of business Monday, August 6. Thank you.

**RESPONSE:**

1984 JUL 31 PM 6:21

Richard G. Darman  
Assistant to the President  
Ext. 2702



1984 JUL 31 PM 2:51

THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON  
20506

July 27, 1984

## MEMORANDUM FOR THE PRESIDENT

FROM: William E. Brock

SUBJECT: Recommended Action Regarding Consent Orders Issued by the U.S. International Trade Commission in Certain Bag Closure Clips, Certain Single-Handle Faucets, and Certain Office Desk Accessories and Related Products

By August 12, 1984, you must decide what, if any, action you will take regarding a series of consent orders issued by the U.S. International Trade Commission ("ITC") in Certain Bag Closure Clips, Inv. No. 337-TA-170, Certain Single-Handle Faucets, Inv. No. 337-TA-167, and Certain Office Desk Accessories and Related Products, Inv. No. 337-TA-157. I recommend that you take no action with respect to the consent orders, thereby allowing them to go into effect.

BACKGROUND

The consent orders in question were transmitted to you by the ITC on June 13, 1984. The consent orders terminated ITC investigations of respondents charged with violating section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) through the importation and sale of merchandise which allegedly infringed a U.S. patent, common law trademark, or design patent.

The investigations were settled through the issuance of the standard ITC consent order. The operative clause of the consent order is an agreement by the respondent to cease the importation and sale of the allegedly infringing merchandise.

DISCUSSION

Under section 337(g), an ITC order must be transmitted to you for a 60-day period of Presidential review. You may disapprove an ITC order for policy reasons, including the impact of import relief on the public health and welfare, competitive conditions

in the U.S. economy, the production of like or directly competitive items in the U.S., and U.S. consumers. 19 U.S.C. 1337; S. Rept. No-93-1298, 93rd Cong., 2nd Sess., p. 198-199 (1974). Disapproval by you leaves the order without force and effect. You may also expressly approve an ITC order, rendering the order final and subject to judicial review on appeal. Absent explicit Presidential approval or disapproval, the order becomes final on the day after the expiration of the 60-day review period.

I recommend that you take no action with respect to the ITC's consent orders, thereby allowing the orders to go into effect on August 13, 1984. The members of the Trade Policy Committee (the Office of the United States Trade Representative, the Council of Economic Advisers, and the Departments of Agriculture, Commerce, Defense, Energy, Interior, Justice, Labor, State, Transportation, and Treasury) are in unanimous agreement with this recommendation.

The consent orders in question are routine and fully consistent with the public interest. The products involved in the investigations were low-cost, mass produced consumer items for household or office use. While the ITC's orders will restrict the importation of certain types of bag closure clips, kitchen faucet designs, and office desk accessories, none of these items is vital to the public interest. The U.S. market should remain highly competitive, since there are many firms who sell such devices, few barriers to entry, and many alternatives available. The action taken is consistent with our international obligations and no representations have been received from any foreign government. Accordingly I recommend that you take no action and thereby permit the orders to go into effect.

#### OPTIONS

#### PRESIDENTIAL ACTION REQUIRED

##### Option 1 (recommended)

Take no action to disapprove or to approve the orders.

None, the orders will become final automatically on August 13, 1984.

##### Option 2

Disapprove the orders.

Inform the ITC of your disapproval by August 12, 1984. The orders will be without force or effect when the ITC receives notice.

Option 3

Approve the orders.

Inform the ITC of your approval. The orders will become final when the ITC receives notice.

RECOMMENDATION:

Option 1: Take no action


Approve \_\_\_\_\_  
Disapprove \_\_\_\_\_  
Discuss with me \_\_\_\_\_

THE WHITE HOUSE

WASHINGTON

January 17, 1985

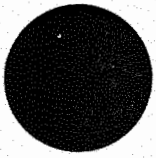
MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: JOHN G. ROBERTS   
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Recommended Action Regarding Certain  
Processes for the Manufacture of Skinless  
Sausage Casings and Resulting Product

Counsel's Office has reviewed the recommendations of the United States Trade Representative concerning the above-referenced orders issued by the U.S. International Trade Commission (ITC). We have no objection to the recommendation that the President take no action in these cases, thereby permitting the orders to become effective on January 26.

## WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET



- O - OUTGOING
- H - INTERNAL
- I - INCOMING  
Date Correspondence Received (YY/MM/DD)   1  /  1  /

Name of Correspondent: Richard Dorman

MI Mail Report                      User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Recommended Action Re: Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product

ROUTE TO:	ACTION	DISPOSITION		
Office/Agency    (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
<u>CU HOLD</u>	ORIGINATOR	<u>85 01 15</u>		<u>1 1</u>
	Referral Note:			
<u>CUAT 18</u>	<u>R</u>	<u>85 10 15</u>	<u>S</u>	<u>85 10 22</u> <u>1000</u>
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		<u>1 1</u>		<u>1 1</u>
	Referral Note:			
		<u>1 1</u>		<u>1 1</u>
	Referral Note:			
		<u>1 1</u>		<u>1 1</u>
	Referral Note:			

- |  |   |   |
|--|---|---|
| <p><b>ACTION CODES:</b></p> <ul style="list-style-type: none"> <li>A - Appropriate Action</li> <li>C - Comment/Recommendation</li> <li>D - Draft Response</li> <li>F - Furnish Fact Sheet to be used as Enclosure</li> </ul> | <ul style="list-style-type: none"> <li>I - Info Copy Only/No Action Necessary</li> <li>R - Direct Reply w/Copy</li> <li>S - For Signature</li> <li>X - Interim Reply</li> </ul> | <p><b>DISPOSITION CODES:</b></p> <ul style="list-style-type: none"> <li>A - Answered</li> <li>B - Non-Special Referral</li> <li>C - Completed</li> <li>S - Suspended</li> </ul> |
|--|---|---|

**FOR OUTGOING CORRESPONDENCE:**  
 Type of Response = Initials of Signer  
 Code = "A"  
 Completion Date = Date of Outgoing

Comments: \_\_\_\_\_  
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Keep this worksheet attached to the original incoming letter.  
 Send all routing updates to Central Reference (Room 75, OEOb).  
 Always return completed correspondence record to Central Files.  
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

# WHITE HOUSE STAFFING MEMORANDUM

DATE: 1/15/85 ACTION/CONCURRENCE/COMMENT DUE BY: 1/22 - NOON

SUBJECT: RECOMMENDED ACTION RE CERTAIN PROCESSES FOR THE MANUFACTURE OF SKINLESS SAUSAGE CASINGS AND RESULTING PRODUCT

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	VERSTANDIG	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McFARLANE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McMANUS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

**REMARKS:**

Please provide any edits/comments to my office by Noon on Tuesday, 1/22. Thank you.

**RESPONSE:**

133 JAN 15 1985 9:46

**Richard G. Darman**  
Assistant to the President  
Ext. 2702

THE UNITED STATES TRADE REPRESENTATIVE

WASHINGTON

20506

MEMORANDUM FOR THE PRESIDENT

FROM: William E. Brock ✓

SUBJECT: Recommended Action Regarding Exclusion Orders Issued by the U.S. International Trade Commission in Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product

By January 25, 1985, you must decide what action you will take regarding two exclusion orders issued by the U.S. International Trade Commission (ITC) in Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product, Inv. Nos. 337-TA-148 & 169. I recommend that you take no action with respect to the exclusion orders, thereby allowing the orders to go into effect.

The exclusion orders were issued by the ITC after investigations pursuant to sections 337 and 337a of the Tariff Act of 1930. In one investigation (Inv. No. 337-TA-148), the ITC determined that skinless sausage casings manufactured by Viscofan S.A. and Industria Navarra de Envolturas Artificiales S.A. (Cearsa) of San Sebastian, Spain infringe a U.S. process patent owned by Teepak, Inc. of Chicago, Illinois. The ITC determined that the appropriate remedy for the violation was a general exclusion order barring the importation of any skinless sausage casing produced by a process infringing the Teepak patent.

In a second investigation (Inv. No. 337-TA-169), the ITC determined that Viscofan and Cearsa had violated section 337 by misappropriating trade secrets owned by the Union Carbide Co. of Danbury, Connecticut. The ITC found that the appropriate remedy for this violation was a limited exclusion order barring the importation into the U.S. of skinless sausage casings manufactured by Viscofan and Cearsa for a period of 10 years.

Under section 337(g), ITC orders must be transmitted to you for a 60-day period of Presidential review. You may disapprove an ITC order for policy reasons, including the impact of relief on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive items in the U.S., and U.S. consumers. Disapproval by you leaves the



order without force and effect. You may also expressly approve an ITC order, rendering the order final and subject to judicial review on appeal. Absent explicit Presidential approval or disapproval, the order becomes final on the day after the expiration of the 60-day review period.

I recommend that you take no action with respect to the ITC's exclusion orders and allow the orders to go into effect on January 26, 1985. The members of the Trade Policy Committee (the Office of the United States Trade Representative, the Council of Economic Advisors, and the Departments of Agriculture, Commerce, Defense, Energy, Interior, Justice, Labor, State, Transportation, and Treasury) are in unanimous agreement with this recommendation.

After reviewing the orders, the Trade Policy Staff Committee (TPSC) found no public interest factors sufficient to justify Presidential disapproval.

While the TPSC had some reservations as to the ITC's decision to issue a general exclusion order, the TPSC concluded that the order did not raise an unreasonable barrier to legitimate trade and would not present significant enforcement problems. With respect to the public interest factors, the TPSC concluded that the order's impact on competition should be relatively limited, since Teepak's process patent expires in approximately 19 months. Upon expiration of the patent, any company (except Viscofan and Cearsa) will be free to import and sell sausage casings in the U.S. market. The order therefore is unlikely to have a significant adverse impact on competition or consumers.

The limited exclusion order bars the importation of skinless sausage casings manufactured by Viscofan and Cearsa for 10 years. The ITC found that it would have required approximately 10 years for the Spanish companies to develop the Union Carbide trade secrets on their own. The TPSC found no reason to disagree with the ITC's choice of a remedy and found no public interest factors sufficient to justify disapproval. Issuance of the orders will enforce U.S. intellectual property rights and benefit U.S. production of sausage casings. Accordingly, I recommend that the orders be permitted to go into effect.

OPTIONS

PRESIDENTIAL ACTION REQUIRED

Option 1 (recommended)

None, the order will become final automatically on January 26, 1985.

Option 2

Inform the ITC of your disapproval by January 25, 1985. The order will be without force or effect when the ITC receives notice.

Option 3

Inform the ITC of your approval. The order will become final when the ITC receives notice.

RECOMMENDATION:

Option 1: Take no action

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

Discuss with me \_\_\_\_\_

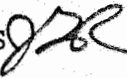
Attachment

THE WHITE HOUSE

WASHINGTON

January 30, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Duracell ITC Case

The attached letter from Duracell counsel James N. Bierman advises that his client plans to challenge the President's disapproval of the I.T.C. decision in court. Mr. Bierman also asks for a meeting to discuss a compromise to avoid litigation.

As we have discussed, the appropriate response is to refer the correspondence to the Department of Justice. A memorandum doing so is attached, as is a brief acknowledgment to Bierman.

Attachment

THE WHITE HOUSE

WASHINGTON

February 4, 1985

Dear Mr. Bierman:

Thank you for your letter of January 23, advising that you plan to litigate the question of the President's disapproval of the recent International Trade Commission decision involving your client Duracell. In that letter you also raised the possibility of a "compromise solution."

In light of your announced plans I have referred your correspondence to the Department of Justice for handling as that Department considers appropriate.

Sincerely,

Orig. signed by FFF

Fred F. Fielding  
Counsel to the President

James N. Bierman, Esquire  
Foley & Lardner  
1775 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-4680

FFF:JGR:aea 2/4/85  
bcc: FFFielding  
JGRoberts  
Subj  
Chron

THE WHITE HOUSE

WASHINGTON

January 30, 1985

Dear Mr. Bierman:

Thank you for your letter of January 23, advising that you plan to litigate the question of the President's disapproval of the recent International Trade Commission decision involving your client Duracell. In that letter you also raised the possibility of a "compromise solution."

In light of your announced plans I have referred your correspondence to the Department of Justice for handling as that Department considers appropriate.

Sincerely,

Fred F. Fielding  
Counsel to the President

James N. Bierman, Esquire  
Foley & Lardner  
1775 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-4680

FFF:JGR:aea 1/30/85

cc: FFFielding  
JGRoberts  
Subj  
Chron

THE WHITE HOUSE

WASHINGTON

February 4, 1985

MEMORANDUM FOR CAROL E. DINKINS  
DEPUTY ATTORNEY GENERAL

FROM: FRED F. FIELDING Orig. signed by FFF  
COUNSEL TO THE PRESIDENT

SUBJECT: Duracell ITC Case

In the attached letter, counsel for Duracell advises that his client plans to litigate the question of the President's authority to disapprove the recent I.T.C. decision involving Duracell. He also suggests a compromise to avoid litigation. In light of the imminent lawsuit I am referring this correspondence, along with a copy of my brief acknowledgment, to the Department.

Attachments

FFF:JGR:aea 2/4/85  
cc: FFFielding  
JGRoberts  
Subj  
Chron

THE WHITE HOUSE

WASHINGTON

January 30, 1985

MEMORANDUM FOR CAROL E. DINKINS  
DEPUTY ATTORNEY GENERAL

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Duracell ITC Case

In the attached letter, counsel for Duracell advises that his client plans to litigate the question of the President's authority to disapprove the recent I.T.C. decision involving Duracell. He also suggests a compromise to avoid litigation. In light of the imminent lawsuit I am referring this correspondence, along with a copy of my brief acknowledgment, to the Department.

Attachments

FFF:JGR:aea 1/30/85

cc: FFFielding  
JGRoberts  
Subj  
Chron



11004-09

WHITE HOUSE  
CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
- I - INCOMING

Date Correspondence Received (YY/MM/DD) 8/18/09

Name of Correspondent: James N. Bierman

MI Mail Report User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Legitimacy of President's decision in the Duracell case

ROUTE TO:	ACTION	DISPOSITION
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD
<u>W Holland</u>	<u>ORIGINATOR</u>	<u>8510124</u>
<u>WAT 18</u>	<u>Referral Note:</u>	<u>Continuing Cases</u>
	<u>Referral Note:</u>	<u>8510124</u>
	<u>Referral Note:</u>	<u>8510204</u>
	<u>Referral Note:</u>	
	<u>Referral Note:</u>	
	<u>Referral Note:</u>	

- ACTION CODES:**
- A - Appropriate Action
  - C - Comment/Recommendation
  - D - Draft Response
  - F - Furnish Fact Sheet to be used as Enclosure

- L - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

- DISPOSITION CODES:**
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  - B - Non-Special Referral
  - C - Completed
  - S - Suspended

**FOR OUTGOING CORRESPONDENCE:**  
 Type of Response = Initials of Signer  
 Code = "A"  
 Completion Date = Date of Outgoing

Comments: See ID 284251 PD DATA

Keep this worksheet attached to the original incoming letter.  
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**FOLEY & LARDNER**  
1775 PENNSYLVANIA AVENUE, N. W.  
WASHINGTON, D. C. 20006-4680  
TELEPHONE (202) 862-5300  
TELEX 904136



282548 CU

IN MILWAUKEE, WISCONSIN  
**FOLEY & LARDNER**  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WIS. 53202-5367  
TELEPHONE (414) 271-2400  
TELEX 26-819

WRITER'S DIRECT LINE  
(202) 862-5358

MADISON, WISCONSIN  
JACKSONVILLE, FLORIDA  
TAMPA, FLORIDA

January 23, 1985

BY HAND

The Honorable Fred F. Fielding  
Counsel to the President  
The White House  
Washington, D.C. 20500

Dear Mr. Fielding:

Although I assume that you could live the rest of your life without hearing of the Duracell case again, I am afraid that its lawyers are even more long-lasting than the batteries themselves. With that in mind, I think it only proper to let you know that Duracell will file a notice of appeal in the Court of Appeals for the Federal Circuit later this week. In addition, I want you to know of Duracell's continued desire to pursue an avenue of settlement in this proceeding.

From our perspective, the President's disapproval of the decision was unlawful under Section 337 of the Tariff Act because it was done on legal rather than policy grounds. His letter of disapproval makes that clear with respect to Section 42 of the Lanham Act. Moreover, to state that the "policy" reason involved is essentially one of legal consistency is to render any distinction between policy and law meaningless; the statute surely did not intend such a result. That, at least, is our view and one that we will pursue in the C.A.F.C. As you can imagine, I do not relish the idea of challenging Presidential power nor do I believe it should be looked forward to by the White House.

In that regard, I do believe that a compromise solution would be possible if the ITC could be persuaded to produce a narrower opinion, in no way challenging the Treasury regulations. That could be done, however, only if it were made clear that such a solution would be acceptable to the President. It should be remembered that all five Commissioners found a violation of Section 337 in this case and all five agreed that the batteries in foreign-language packages should be excluded.

The Honorable Fred F. Fielding  
January 23, 1985  
Page Two

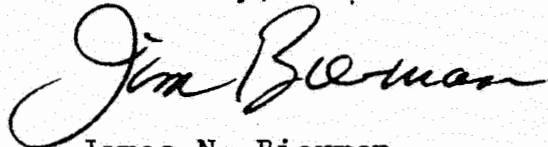
Indeed, they can be seen as dangerous to consumers because important instructions and warnings are not in English. Even putting aside the questions of the loss of American jobs and the loss of millions of dollars in balance of payments because of their importation, it is clear that those batteries ought not to be sold here. With respect to the foreign DURACELL batteries in English-language packaging, the Commission split as to the proper remedy--exclusion or labeling; there could be room for compromise as to those batteries.

For what it is worth, I do think that if Messrs. Baker, Regan (wearing whatever hats they want to), Fielding and Bierman were to sit down for fifteen minutes, this case finally could be made understandable and palatable to the White House and the Department of the Treasury. The result as it now stands is improper and one that simply will not go away on its own.

Once more, I appreciate your personal involvement. Though I realize that such a meeting is unlikely, ultimately it would save everyone a lot of time. More importantly, it would help to produce a result that is both fair to my client and sensible for this Administration.

With best regards.

Sincerely,

A handwritten signature in cursive script that reads "Jim Bierman". The signature is written in dark ink and is positioned above the printed name.

James N. Bierman

JNB:ddk