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THE WHITE HOUSE
WASHINGTON

January 13, 1986

MEMORANDUM FOR D. LOWELL JENSEN
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING *(orig. signed by FFF)*
COUNSEL TO THE PRESIDENT

SUBJECT: Japan/U.S. Trade

The attached correspondence from Senator Bradley, objecting to the Department's filing as amicus curiae in Matsushita v. Zenith, is forwarded for whatever consideration and response you deem appropriate. I have also attached a copy of my reply to Bradley.

Many thanks.

Attachments

FFF:JGR:aea 1/13/86
cc: FFFielding
JGRoberts
Subj
Chron

BILL BRADLEY
NEW JERSEY

COMMITTEES
FINANCE
ENERGY AND
NATURAL RESOURCES
SPECIAL COMMITTEE ON
AGING
SELECT COMMITTEE
ON INTELLIGENCE

United States Senate

WASHINGTON, DC 20510

November 26, 1985

369021

Honorable Donald T. Regan
Chief of Staff to the President
The White House
Washington, DC 20500

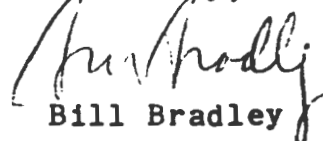
Dear Mr. Regan:

The Justice Department has submitted two friend-of-the-court briefs to The Supreme Court in the case of Matsushita Electric Industrial Company, Ltd., et al., vs Zenith Radio Corporation and National Union Electric Corporation. The briefs argue that the Administration has an interest in assuring that the enforcement of federal laws does not unnecessarily harm international relations; that the Japanese companies accused of anti-trust and dumping violations were compelled to cooperate by the Japanese Ministry of Internal Trade and Industry; and that compelled conduct may not serve as a predicate for anti-trust liability. In view of the fact that Administration intervention in this case is inconsistent with U.S. policy promoting mutually beneficial trade between the U.S. and Japan in accordance with international agreements, I urge the Justice Department to withdraw its briefs.

At a time when frustration with unfair foreign trade practices threatens further U.S. participation in an open international trading system, it is inappropriate and misguided to remove legal remedies to practices that violate the principles of open trade embodied in the GATT and in U.S. trade law. U.S. industry increasingly perceives that foreign businesses enjoy exemptions from rules governing domestic commerce at a time when imports are overwhelming traditionally strong U.S. sectors. Unless we eliminate those perceived exemptions, industry will conclude that our trade deficit is a result of unfair foreign trade practices to which we are unable to respond. Such a conclusion will strengthen industrial sentiment to reverse U.S. policy pursuing open trade.

I look forward to hearing from you on this issue.

Sincerely,


Bill Bradley

BB/daj

THE WHITE HOUSE
WASHINGTON

January 13, 1986

Dear Senator Bradley:

Thank you for your recent letter to White House Chief of Staff Don Regan. In that letter you objected to the amicus curiae brief filed by the Department of Justice in Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corporation. That case was recently argued before the Supreme Court of the United States, and is currently awaiting decision.

It is the general policy of the White House not to discuss the merits of litigation pending before the Supreme Court involving the United States. The views of the Administration in such cases are formulated and presented by the Department of Justice, in the briefs filed by that Department in the course of the litigation.

I have, however, taken the liberty of referring your correspondence to the Department of Justice, so that the Department will have the benefit of your views.

Sincerely,

Original signed by JFB

Fred F. Fielding
Counsel to the President

The Honorable Bill Bradley
United States Senate
Washington, D.C. 20510

FFF:JGR:aea 1/13/86
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

January 13, 1986

MEMORANDUM FOR D. LOWELL JENSEN
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Japan/U.S. Trade

The attached correspondence from Senator Bradley, objecting to the Department's filing as amicus curiae in Matsushita v. Zenith, is forwarded for whatever consideration and response you deem appropriate. I have also attached a copy of my reply to Bradley.

Many thanks.

Attachments

FFF:JGR:aea 1/13/86
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

January 7, 198⁶~~8~~

Dear Senator Bradley:

Thank you for your recent letter to White House Chief of Staff Don Regan. In that letter you objected to the amicus curiae brief filed by the Department of Justice in Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corporation. That case was recently argued before the Supreme Court of the United States, and is currently awaiting decision.

It is the general policy of the White House not to discuss the merits of litigation pending before the Supreme Court involving the United States. The views of the Administration in such cases are formulated and presented by the Department of Justice, in the briefs filed by that Department in the course of the litigation.

I have, however, taken the liberty of referring your correspondence to the Department of Justice, so that the Department will have the benefit of your views.

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Bill Bradley
United States Senate
Washington, D.C. 20510

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057R

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

January 25, 1984

MEMORANDUM

TO: FRED FIELDING
JOHN ROBERTS

FROM: CLAUD C. GENECH, GENERAL COUNSEL

SUBJECT: Meetings between White House Staff and
Private Sector during Section 201 Import Relief
Investigations

As per your request, I have reviewed the import relief laws for possible restrictions on ex parte meetings between the President's staff and private sector lobbyists during investigations under section 201 of the Trade Act of 1974 (19 U.S.C. 2251). I cannot find any due process or statutory restrictions on such meetings, and I believe that none exist. I emphasize, however, that as a matter of discretion, you are free to promulgate appropriate guidelines for contacts between the White House staff and the private sector even in the absence of some legal requirement.

Although ex parte contacts between government decision-makers and private persons are prohibited in certain situations, I can find no prohibition which applies to section 201 investigations. Any prohibition must derive from either (1) the due process clause of the Fifth Amendment or (2) some statutory source, such as the Administrative Procedures Act (5 U.S.C. 550 et seq.). Absent some due process or statutory prohibition, the President's staff may hold ex parte meetings whenever and wherever they please, subject only to the requirements of propriety.

In general, the requirements of due process in proceedings relating to tariff adjustments or import restrictions are minimal. Congress possesses "plenary power in respect to the exclusion of merchandise from foreign countries" and, as a result, "no individual has a vested right to trade with foreign nations." Buttfield v. Stranahan, 192 U.S. 470, 492-93 (1904). Accordingly, in Buttfield v. Stranahan, the Supreme Court held that the Secretary of Treasury, pursuant to statutory authority delegated by Congress, could exclude inferior tea from importation into the United States without providing the owner of the tea with a hearing. In the absence of a right to import, due process does not apply. While I recognize that due process analysis has evolved beyond the right-privilege doctrine, the Supreme Court has never overruled Buttfield v. Stranahan and, in my view, the case remains good law.

In any event, I am confident that the courts would not use due process to bar ex parte contacts between the President's staff and the private sector on the subject of import relief. I am not aware of any instance where the courts have held that due process prohibits ex parte contacts between the White House staff and interested members of the private sector with respect to a wholly unstructured and discretionary decision by the President. c.f. Home Box Office, Inc. v. F.C.C., 567 F.2d 9, 51-59 (D.C. Cir. 1977), cert. denied 434 U.S. 829 (1977). The cases all involve rulemaking proceedings before independent administrative agencies. Such proceedings are easily distinguished from the type of policy-oriented Presidential decision we are talking about here. It would defeat the whole purpose of Presidential review if the President were denied access to the views of foreign governments and U.S. industry representatives as to the national and international economic implications of import relief.

In the absence of a due process limitation, the only possible source of a prohibition on ex parte meetings during section 201 investigations is a statute. Although the Administrative Procedures Act (APA), 5 U.S.C. 556, 557, bars ex parte contacts during formal rulemaking proceedings and in adjudicatory hearings, section 201 investigations do not fall in either category. As a result, the U.S. International Trade Commission does not follow APA procedures in section 201 investigations. If the Commission's fact-finding investigation is not subject to the APA, it follows that the President's review of the Commission's determination is not subject to the APA either. Although Congress has specifically provided that records be kept of ex parte meetings in antidumping and countervailing duty proceedings, 19 U.S.C. 1677f(a)(3), Congress has never enacted any equivalent limitation for section 201 investigations. Finally, although the Federal Advisory Committee Act, 5 U.S.C. Appendix I, imposes a number of procedural requirements on meetings between the Executive Branch and "advisory committees," section 135(j) of the Trade Act of 1974 provides the President with a limited exemption from the Act. 19 U.S.C. 2155(j). In my judgment, this exemption covers meetings with private industry lobbyists or representatives with respect to matters arising in connection with the President's administration of section 201.

Accordingly, in my opinion, nothing in the Constitution or any statute prohibits ex parte contacts during section 201 investigations. I emphasize, however, that you are free to promulgate appropriate guidelines for meetings between the White House staff and the private sector even in the absence of some legal requirement.

THE WHITE HOUSE

WASHINGTON

February 2, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Determination Under Section 301
Regarding Brazilian Subsidies on
Soybean Exports

Richard Darman has asked for our views by close of business February 3 on a Presidential decision memorandum from William E. Brock concerning a § 301 case involving Brazilian soybeans. Section 301 of the Trade Act of 1974, 19 U.S.C. § 2411, authorizes the President to take "appropriate and feasible action" to enforce the rights of the United States under an international trade agreement or to respond to an unfair trade practice. In early 1983 the National Soybean Processors Association filed a petition with USTR pursuant to 19 U.S.C. § 2412, requesting Presidential action in response to various alleged Brazilian subsidies of the production and export of soybean oil and meal. On May 23, 1983, USTR initiated an investigation into the complaint, 19 U.S.C. § 2412(b)(2), and simultaneously initiated consultations with Brazil under the Subsidies Agreement of the General Agreement on Tariffs and Trade, as required by 19 U.S.C. § 2413. USTR has now submitted a recommendation to the President, as required by 19 U.S.C. § 2414. Pursuant to 19 U.S.C. § 2411(c), the President has twenty-one days to determine what action, if any, he proposes to take, and to publish his determination, and the reasons for it, in the Federal Register. The twenty-one days expires on February 14.

USTR recommends that the President direct USTR to pursue the matter through the Subsidies Agreement process, deferring any decision on what further action, if any, is necessary. The consultations initiated in May resulted in some progress, and our country and Brazil have agreed to exchange additional information as a prelude to possible resolution of all the outstanding issues. The recommendation has the unanimous support of the Trade Policy Committee (USTR, Agriculture, Commerce, State, Treasury, and Justice). USTR has also submitted a draft Memorandum of Determination implementing the recommendation.

I have reviewed the decision memorandum submitted by USTR, and the proposed Memorandum of Determination, and have no legal objections. The pertinent procedures of the § 301 process have been followed.

Attachment

THE WHITE HOUSE

WASHINGTON

February 2, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

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

SUBJECT: Determination Under Section 301
Regarding Brazilian Subsidies on
Soybean Exports

Counsel's Office has reviewed the above-referenced materials, and finds no objection to them from a legal perspective.

FFF:JGR:aea 2/2/84
cc: FFFielding/JGRoberts/Subj/Chron

TA004-03

**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

JV

- OUTGOING**
- INTERNAL**
- INCOMING**
Date Correspondence Received (YY/MM/DD) 1 1 1

Name of Correspondent: Richard G. Durman

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Determination under Section 301
re: Brazilian Subsidies on Soybean Exports

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>CWHOLL</u>	<u>ORIGINATOR</u>	<u>84,01,30</u>		<u>1 1</u>
<u>CWDT18</u>	<u>D</u>	<u>84,01,30</u>	<u>S</u>	<u>84,02,03</u> <u>COB</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: _____


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JR

WHITE HOUSE STAFFING MEMORANDUM

DATE: 1/27/84 ACTION/CONCURRENCE/COMMENT DUE BY: 2/3/84

SUBJECT: DETERMINATION UNDER SECTION 301 RE BRAZILIAN SUBSIDIES ON
SOYBEAN PRODUCT EXPORTS

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

REMARKS:

Please provide any comments to my office by close of business February 3. Thank you.

RESPONSE:


Richard G. Darman
Assistant to the President
Ext. 2702

1984 JAN 27 PM 5:26

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

January 25, 1984

MEMORANDUM TO THE PRESIDENT

FROM: William E. Brock 

SUBJECT: Determination Under Section 301 of the Trade Act of 1974 Regarding Brazilian Subsidies on Soybean Product Exports

You are required to make a decision on what, if any, action should be taken in response to an investigation initiated under Section 301 of the Trade Act of 1974 regarding subsidy practices of Brazil with respect to exports of soybean oil and meal. The decision must be made by February 14, 1984.

Section 301 gives the President discretionary authority to take action in response to practices of foreign governments which are inconsistent with international trade agreement obligations or are deemed unreasonable and a burden on U.S. commerce.

On May 23, 1983, USTR initiated an investigation on the basis of a petition filed by the National Soybean Processors Association alleging that Brazil subsidizes the production and export of soybean oil and meal. The petition claims that through such subsidies, Brazil has stimulated the production and exportation of oil and meal, resulting in a decline in the U.S. share of the world market in these products. As required by law, USTR invoked the dispute settlement procedures of the Subsidies Code in an effort to resolve this problem. Following the filing of the U.S. complaint, Brazil also invoked the dispute settlement procedures to question the consistency with the Code of U.S. agricultural programs as they relate to the production and export of soybean products. The U.S. held consultations with Brazil on November 21, 1983 at which time both sides agreed to a further exchange of information about their respective agricultural programs. If necessary, further consultations will be held in the spring. If the problem is not resolved, USTR will continue the dispute settlement process as set forth in the Subsidies Code.

In light of the foregoing I recommend that you direct USTR to pursue a resolution of this problem through the Subsidies Code dispute settlement process and that you defer a decision on what, if any, further action to take pending the results of these efforts. I do not believe that consideration of further action is appropriate at this time. Brazil has suspended two of the subsidy programs about which we have complained, although the future status of this suspension is unknown. Moreover, it is not yet clear to what extent the remaining programs are adversely affecting U.S. exports. The consultation process referred to earlier will assist us in clarifying this issue. The opportunities for further fact-finding and negotiated solutions provided by the dispute settlement process offer the greatest likelihood of resolving this issue.

This recommendation is supported by the following interested Trade Policy Committee agencies: USDA, Commerce, State, Treasury and Justice.

_____ Approve (sign determination at Tab A)

_____ Disapprove

Memorandum of Determination Under Section 301
of the Trade Act of 1974

Memorandum to the United States Trade Representative

Pursuant to Section 301(a)(1) of the Trade Act of 1974, as amended (19 U.S.C. 2411 (a)(1)), I have determined that the action described below is appropriate and feasible to enforce U.S. rights under the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code) with respect to the subsidy practices of the Government of Brazil concerning exports of soybean oil and meal. With a view toward eliminating or reducing the harmful effects of the Brazilian subsidies on soybean oil and meal exports, I am directing the United States Trade Representative (USTR) to pursue the dispute settlement procedures which have already been initiated under the Subsidies Code.

Statement of Reasons

The USTR initiated an investigation under Section 301 on May 23, 1983 (48 FR 23947) on the basis of a petition filed by the National Soybean Processors Association. The petitioner alleged that Brazil has acted inconsistently with its obligations under the Subsidies Code by granting subsidies on the production and exportation of soybean oil and meal. These subsidies include: 1) the provision of preferential loans to oil and meal exporters for

operating funds and for the purchase of raw materials to be processed and exported; 2) the partial exemption from income tax of profits from oil exports; and 3) the exemption from tax of gains from foreign hedging operations. The petitioner further alleged that as a result of the Brazilian subsidy programs, Brazilian exports of oil and meal have increased and have displaced U.S. exports in third country markets.

In an effort to resolve this problem, the U.S. held consultations with Brazil on November 21, 1983. Those consultations focussed on the U.S. complaint and on a subsequent Brazilian complaint against U.S. programs as they relate to the production and export of soybean oil and meal. During the consultation process it was learned that Brazil had suspended the application of two of its subsidy programs to soybean products. Both parties agreed to a further exchange of information regarding their respective programs which is scheduled to occur within the next month. If a resolution to the problem is not reached through consultations, the U.S. will continue the dispute settlement process as set forth in the Subsidies Code.

While it is disappointing that the dispute settlement process has not moved more expeditiously, we believe that the process is moving smoothly and that U.S. interests would be best served by following that process to its conclusion. We expect the USTR to pursue a resolution of this issue in a diligent and expeditious manner.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

February 14, 1984

February 13, 1984

MEMORANDUM FOR THE UNITED STATES TRADE REPRESENTATIVE

SUBJECT: Memorandum of Determination Under
Section 301 of the Trade Act of 1974

Pursuant to Section 301(a)(1) of the Trade Act of 1974, as amended (19 U.S.C. 2411 (a)(1)), I have determined that the action described below is appropriate and feasible to enforce United States rights under the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code) with respect to the subsidy practices of the Government of ██████████ concerning exports of ██████████ and meal. With a view toward eliminating or reducing the harmful effects of the Brazilian subsidies on soybean oil and meal exports, I am directing the United States Trade Representative to pursue the dispute settlement procedures which have already been initiated under the Subsidies Code.

This determination, together with the Statement of Reasons, shall be published in the Federal Register.

RONALD REAGAN

more

(OVER)

STATEMENT OF REASONS

The United States Trade Representative (USTR) initiated an investigation under Section 301 on May 23, 1983 (48 FR 23947), on the basis of a petition filed by the National Soybean Processors Association. The petitioner alleged that Brazil has acted inconsistently with its obligations under the Subsidies Code by granting subsidies on the production and exportation of soybean oil and meal. These subsidies include: 1) the provision of preferential loans to oil and meal exporters for operating funds and for the purchase of raw materials to be processed and exported; 2) the partial exemption from income tax of profits from oil exports; and 3) the exemption from tax of gains from foreign hedging operations. The petitioner further alleged that as a result of the Brazilian subsidy programs, Brazilian exports of oil and meal have increased and have displaced United States exports in third country markets.

In an effort to resolve this problem, the United States held consultations with Brazil on November 21, 1983. Those consultations focussed on the United States complaint and on a subsequent Brazilian complaint against United States programs as they relate to the production and export of soybean oil and meal. During the consultation process it was learned that Brazil had suspended the application of two of its subsidy programs to soybean products. Both parties agreed to a further exchange of information regarding their respective programs which is scheduled to occur within the next month. If a resolution to the problem is not reached through consultations, the United States will continue the dispute settlement process as set forth in the Subsidies Code.

While it is disappointing that the dispute settlement process has not moved more expeditiously, I believe that the process is moving smoothly and that United States interests would be best served by following that process to its conclusion. I expect the USTR to pursue a resolution of this issue in a diligent and expeditious manner.

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THE WHITE HOUSE

WASHINGTON

March 14, 1984

FOR: FRED F. FIELDING
FROM: WENDELL L. WILLKIE ^{7/27/84}
SUBJECT: Bethlehem Steel Request to Discuss 201 Petition

Craig Fuller has asked us to draft for his signature a response to the January 25 letter to Ed Meese from Donald Trautlein, Chairman and Chief Executive Officer of Bethlehem Steel Corporation. Trautlein requests a meeting to discuss the 201 petition which the United Steelworkers of America and Bethlehem had jointly filed on January 24 before the U.S. International Trade Commission (USITC). I am advised that Meese met with Bethlehem previously and attempted to dissuade Bethlehem from filing the 201 petition.

The (unrelated) January 25 memorandum to you from Claud Gingrich, General Counsel of the Office of the United States Trade Representative, indicates there are no due process or statutory restrictions on ex parte meetings between the President's staff and private sector lobbyists during USITC investigations under section 201. (Tab A) Nor are there at present any White House guidelines, or other rules I can discern, that would necessarily make such ex parte contacts inappropriate. 1/ Although we might prefer routinely to discourage such meetings while a petition was pending before an independent fact-finding Commission, in certain instances such a meeting might in fact be advisable. Although I have not been able to determine the extent of such ex parte contacts in section 201 cases in the past, I am reminded that Executive Office of the President officials and others in the Government had extensive contacts with petitioners in the section 303 case involving Chinese textiles, an analogous circumstance. As in that case it may well be necessary or desirable in certain section 201 cases to meet with the petitioners and negotiate a settlement that would include withdrawal of the petition prior to issuance of a report by the fact-finding body. This option - adopted in the Chinese textile case - would not be available were we to adhere to a policy precluding contacts between Executive Office of the President officials and petitioners when matters are pending before bodies such as the USITC. I am reluctant to

1/ The only possible exception would be 3 C.F.R. §100.735-4(c)(5), which dictates that employees of the Executive Office of the President shall avoid any action creating the appearance of making a government decision outside of official channels.

recommend such a policy, which is, as Gingrich pointed out and as the USITC General Counsel has confirmed, legally gratuitous, and which will have the effect of limiting the President's options in confronting international trade questions. The USITC is, after all, in this case required to report its findings and any recommendations, as to the need for relief from import competition, to the President, whose decisions are inherently based, and presumed to be based, on a broad range of policy considerations; the procedure thus far transcends the adjudication of the merits of an individual claim. 2/ In short, I do not believe, on the facts presented, that there would be any legal or other substantive objection to the occurrence of a meeting between White House staff and representatives of Bethlehem to discuss this petition.

As we have been requested to prepare a response, however, I spoke with Olin Wethington, Deputy Under Secretary for Trade at Commerce, as well as Claud Gingrich, to obtain their views. Their shared view was that an additional meeting with Bethlehem at this time would serve no purpose and was not recommended. Furthermore, to meet with Bethlehem might necessitate a meeting with the other major firms, to avoid the appearance of favoritism, especially toward the one steel company whose posture toward the Administration has been particularly problematic. Finally, this letter has the appearance of a pro forma request, particularly if one assumes that no further request has been received in the intervening six weeks. It thus may easily be declined. 3/

Accordingly, I have prepared for Fuller's review and signature a letter to Trautlein, suggesting that any such meeting be postponed until the USITC has reported its findings to the President. This letter has received the input and approval of Gingrich and Wethington. Also attached for your review and signature is a memorandum to Fuller, setting forth our recommendations as to the letter.

2/ This raises the question in my own mind as to whether it is possible to develop a feasible and comprehensive set of guidelines in this area, a doubt which John Roberts shares. John has been considering the general question since receipt of Gingrich's memorandum, and concurs in the views expressed in this memorandum.

3/ This view was expressed notwithstanding the fact that the petition was most probably filed in January in order to force a Presidential response before the election. (The USITC must report to the President within six months of the filing of a 201 petition. The President then has two months to act upon the USITC's findings and recommendations.)

cc: Richard Hauser
✓ John Roberts

THE WHITE HOUSE

WASHINGTON

March 14, 1984

MEMORANDUM FOR CRAIG L. FULLER
ASSISTANT TO THE PRESIDENT FOR
CABINET AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Bethlehem Steel Request to Discuss 201 Petition

You have requested that we prepare a letter for your signature on behalf of Ed Meese, in response to the January 25 request of Donald Trautlein, President and Chief Executive Officer of Bethlehem Steel Corporation, to meet with White House staff. Trautlein wants to discuss the 201 petition which Bethlehem and the United Steelworkers of America filed on January 24 with the U.S. International Trade Commission (USITC). The petition seeks relief for the domestic steel industry from harm said to be caused by import competition. We understand that Meese met with Bethlehem previously and attempted to dissuade Bethlehem from filing the petition.

It should be stated at the outset that ex parte contacts between the White House and an interested party during the pendency of a 201 petition before the USITC, while ordinarily to be discouraged, are not inherently inappropriate. As distinguished from the rulemaking and adjudicatory proceedings before independent administrative agencies, the USITC under Section 201 reports its findings and recommendations to the President, who is then called upon to make the policy-oriented decisions. It should therefore be noted that we would have no legal objection to such a meeting in these circumstances.

We have consulted informally with the Department of Commerce and the Office of the U.S. Trade Representative on this matter. Commerce and USTR both expressed the view that a meeting with Bethlehem at the present time would serve no useful purpose and might in fact necessitate subsequent meetings with the other major steel companies, in order to avoid the appearance of favoritism to Bethlehem, a steel company whose posture has been particularly problematic for the Administration. Furthermore, as the Bethlehem letter has the appearance of a pro forma request, it may easily be declined.

Attached for your review and signature is a proposed letter to Trautlein, suggesting that any such meeting be postponed until the USITC has reported its findings to the President. This letter has received the input and informal approval of both Commerce and USTR.

THE WHITE HOUSE

WASHINGTON

March 14, 1984

Dear Mr. Trautlein:

Edwin Meese, Counsellor to the President, has forwarded to me for response your letter of January 25, requesting a meeting with members of the White House staff to discuss the 201 petition that Bethlehem Steel Corporation and the United Steelworkers of America have filed with the International Trade Commission.

At the present time we believe it would be better to wait until the Commission reports its findings to the President before scheduling such a meeting. As you know, the Commission is an independent body empowered by statute to investigate fully the claims presented in your petition. After this procedure has run its course and the Commission has reported its findings we can certainly consider the utility of further discussions.

If there are particular circumstances that strongly warrant a meeting at this time to discuss your petition, we assume you will so advise us.

Sincerely,

Craig L. Fuller
Assistant to the President
for Cabinet Affairs

Mr. Donald H. Trautlein
Chairman and Chief Executive Officer
Bethlehem Steel Corporation
Bethlehem, Pennsylvania 18016

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

H. J. Res. 600, National Commission on
Agricultural Trade and Export Policy

Richard Darman has asked for comments on the above-referenced enrolled resolution as soon as possible. The resolution would establish a National Commission on Agricultural Trade and Export Policy. This Commission would review government programs, policies, and practices in the area of agricultural exports, and develop recommendations to be considered in the framing of the 1985 farm bill. The Commission is to be composed of three nonvoting members appointed by the President, twenty members from private life appointed by the President pro tempore of the Senate and the Speaker of the House (ten each), and twelve ranking members of Congress from pertinent committees.

The Administration mildly opposed the resolution, but it passed both Houses by voice vote. None of the affected agencies recommend disapproval, but Justice suggests a signing statement objecting to the hermaphroditic character of the Commission, partly legislative and partly executive. Since the functions of the Commission are purely advisory, there are no Appointments or Incompatibility Clause problems, but Justice nonetheless contends commissions of this sort should clearly serve either the Executive or the Legislature. A draft signing statement prepared by OMB reflects this concern, and also emphasizes that many different groups are working on recommendations for the 1985 farm bill.

I have reviewed the memorandum for the President prepared by Director Stockman, and the resolution itself. I agree that the Commission is totally unnecessary, and is simply a means for elements in Congress to give added stature and credibility to their views on the farm bill, probably at the expense of Administration views. Nonetheless, a veto seems inadvisable. I have also reviewed the draft signing statement, and have no objections to it.

Attachment

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

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

SUBJECT: H. J. Res. 600, National Commission on
Agricultural Trade and Export Policy

Counsel's Office has reviewed the above-referenced enrolled resolution, and finds no objection to it from a legal perspective. The Commission seems designed simply to give added stature and credibility to the views of elements in Congress on the farm bill, but since the functions of the Commission are purely advisory its composition does not raise constitutional problems. I agree that the draft signing statement should be issued, so that our concerns about the creation of these hermaphroditic commissions will be known.

FFF:JGR:aea 8/27/84
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: Don Marks

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: H.J. Res. 600, National Commission on Agricultural Trade and Export Policy

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>8/4/08/14</u>		<u>1/1</u>
<u>CUAT 18</u>	<u>D</u>	<u>8/4/08/14</u>		<u>5/8/4/08/17</u>
				<u>COB</u>
				<u>1/1</u>
				<u>1/1</u>
				<u>1/1</u>

ACTION CODES:

- A - Appropriate Action
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Comments: _____

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

THE WHITE HOUSE
WASHINGTON

August 14, 1984

DICK HAUSER:

Attached is a copy of H.J.Res. 600, a Joint Resolution which would establish a National Commission on Agricultural Trade and Export Policy. The resolution passed the Congress just before adjournment and has not yet been received here. The earliest anticipated date of receipt is Friday, August 17th.

We bring the resolution to your early attention because this office sees it as a likely veto candidate. It presents what we consider to be a clear violation of the President's appointment powers.

The "Establishment" paragraph ("Sec. 1219) at the bottom of page 1 states that the Commission shall be composed of 23 members appointed or designated by the President. Then it proceeds to permit him a free hand in selecting only three members. The remaining 20 are to be appointed/designated by him alright. But those 20 are to be those individuals selected by the Speaker of the House and the President pro tempore of the Senate!


Dan Marks

Ninety-eighth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-third day of January,
one thousand nine hundred and eighty-four*

Joint Resolution

To amend the Agriculture and Food Act of 1981 to provide for the establishment of a commission to study and make recommendations concerning agriculture-related trade and export policies, programs, and practices of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That title XII of the Agriculture and Food Act of 1981 is amended by inserting after subtitle B a new subtitle C as follows:

"SUBTITLE C—AGRICULTURAL TRADE AND EXPORT POLICY COMMISSION ACT

"SHORT TITLE

"SEC. 1217. This subtitle may be cited as the 'Agricultural Trade and Export Policy Commission Act'.

"FINDINGS AND DECLARATION OF POLICY

"SEC. 1218. (a) Congress finds that—

"(1) the economic well-being of the Nation's agricultural industry is directly related to its ability to compete in international markets; and

"(2) a thorough examination of agriculture-related trade and export policies, programs, and practices of the United States is needed to ensure that such policies, programs, and practices increase the competitiveness of United States agricultural commodities and products in international markets.

"(b) It is hereby declared to be the policy of Congress to expand international trade in United States agricultural commodities and products and to develop, maintain, and expand markets for United States agricultural exports.

"ESTABLISHMENT

"SEC. 1219. (a) There is established a National Commission on Agricultural Trade and Export Policy to conduct a study of the agriculture-related trade and export policies, programs, and practices of the United States.

"(b) In addition to the ex officio congressional members specified in subsection (c) of this section, the Commission shall be composed of twenty-three members appointed or designated by the President and selected as follows:

"(1) The President shall select three members from among officers or employees of the Executive branch who shall serve in an ex officio capacity without voting rights; and

"(2) The President pro tempore of the Senate and the Speaker of the House of Representatives shall each select ten members from among private citizens of the United States to represent industries that are directly affected by agriculture-related trade

H. J. Res. 600—2

and export policies, programs, and practices of the United States, including, but not limited to, the following:

“(A) producers of major agricultural commodities in the United States;

“(B) processors or refiners of United States agricultural commodities;

“(C) exporters, transporters, or shippers of United States agricultural commodities and products to foreign countries;

“(D) suppliers of production equipment or materials to United States farmers;

“(E) providers of financing or credit for domestic and export agricultural purposes; and

“(F) organizations representing general farm and rural interests in the United States.

“(c) The chairmen and ranking minority members of the House Committee on Agriculture, the Senate Committee on Agriculture, Nutrition, and Forestry, the House Committee on Foreign Affairs, the Senate Committee on Foreign Relations, the House Committee on Ways and Means, and the Senate Committee on Finance shall serve as ex officio members of the Commission and shall have the same voting rights as the members of the Commission selected and appointed under the provisions of subsection (b)(2) of this section. The chairmen and ranking minority members may designate other members of their respective committees to serve in their stead as members of the Commission.

“(d) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

“(e) The Commission shall elect a chairman from among the members of the Commission who are selected and appointed under the provisions of subsection (b)(2) of this section.

“(f) The Commission shall meet at the call of the chairman or a majority of the Commission.

“CONDUCT OF STUDY

“Sec. 1220. The Commission shall study the agriculture-related trade and export policies, programs, and practices of the United States and the international and domestic factors affecting such policies, programs, and practices, including the intergovernmental activities of the United States that affect the formulation of policies. In conducting the study, the Commission shall consider, among other things, the following:

“(1) the effectiveness of existing agricultural export assistance programs, and the manner in which they can be improved;

“(2) new export assistance programs that should be considered, and the conditions under which they can be implemented;

“(3) practices of foreign countries that impede the export of United States agricultural commodities and products, and appropriate responses for the United States;

“(4) the effectiveness of the trade agreements program of the United States with respect to agriculture-related trade and exports, and the manner in which it can be improved;

“(5) international economic trends that affect agricultural exports, and the manner in which the United States can best adjust its policies, programs, and practices to meet changing economic conditions;

H. J. Res. 600—3

“(6) potential areas of conflict and compatibility between international agricultural trade and foreign food assistance programs, and the manner in which any conflict can be resolved; and

“(7) the relationship between international agricultural trade and foreign economic development and food programs, and the manner in which they can be made more compatible.

“RECOMMENDATIONS AND REPORTS

“SEC. 1221. (a) On the basis of its study, the Commission shall make findings and develop recommendations for consideration by the President and Congress with respect to the agriculture-related trade and export policies, programs, and practices of the United States, and the manner in which such policies, programs, and practices can be improved to better develop, maintain, and expand markets for United States agricultural exports.

“(b) The Commission shall submit to the President and Congress—

“(1) a report containing its initial findings and recommendations by March 31, 1985,

“(2) such additional interim reports on its work as may be requested by the chairman of any of the Committees set forth in section 1219(c) of this subtitle, and

“(3) a report containing the final results of its study and its recommendations therefrom by July 1, 1986.

“ADMINISTRATION

“SEC. 1222. (a) The heads of Executive agencies, the General Accounting Office, the International Trade Commission, and the Congressional Budget Office shall, to the extent permitted by law, provide the Commission such information as it may require in carrying out its duties and functions.

“(b) Members of the Commission shall serve without any additional compensation for work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service under sections 5701 through 5707 of title 5, United States Code.

“(c) To the extent there are sufficient funds available to the Commission in advance under section 1223 of this subtitle, and subject to such rules as may be adopted by the Commission, the chairman, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, shall have the power to—

“(1) appoint and fix the compensation of a director; and

“(2) appoint and fix the compensation of such additional staff personnel as the Commission determines necessary to carry out its duties and functions.

“(d) Upon request of the Commission, the Secretary of Agriculture shall furnish the Commission with such personnel and support services as are necessary to assist the Commission in carrying out its duties and functions.

H. J. Res. 600—4

“(e) Upon request of the Commission, the heads of other Executive agencies and the General Accounting Office are each authorized to furnish the Commission with such personnel and support services as the head of the agency or office and the chairman of the Commission agree are necessary to assist the Commission in carrying out its duties and functions.

“(f) The Commission shall not be required to pay or reimburse any agency or office for personnel and support services provided under this section.

“(g) In accordance with section 12 of the Federal Advisory Committee Act, the Secretary of Agriculture shall maintain such financial records as will fully disclose the disposition of any funds that may be at the disposal of the Commission and the nature and extent of its activities, and the Comptroller General of the United States, or any of the Comptroller General’s authorized representatives, shall have access to such records for the purpose of audit and examination.

“(h) The Commission shall be exempt from section 7(d), section 10(e), section 10(f), and section 14 of the Federal Advisory Committee Act.

“(i) The Commission shall be exempt from the requirements of sections 4301 through 4305 of title 5, United States Code.

“PUBLIC SUPPORT

“Sec. 1223. (a) Following the appointment or designation of the members of the Commission, notwithstanding the provisions of section 1342 of title 31, United States Code, the Secretary of Agriculture may receive, from persons, corporations, foundations, and all other groups and entities within the United States, contributions of money and services to assist the Commission in carrying out its duties and functions. Any money contributed under this section shall be available to the Commission for the payment of salaries, travel expenses, per diem, and other expenses incurred by the Commission under this subtitle. In no event may the contributions from any one person, corporation, foundation, or other group or entity exceed 5 per centum of the Commission’s total budget.

“(b) If the contributions provided under subsection (a) are insufficient for payment of Commission salaries, travel expenses, per diem, and other expenses incurred by the Commission, under this subtitle, the Secretary of Agriculture is authorized to use the funds of the Commodity Credit Corporation for such purposes in an amount not to exceed a total of \$1,000,000.

H. J. Res. 600—5

“(c) The Secretary of Agriculture shall keep, and shall make available for public inspection during normal business hours, records that fully disclose a complete list of every person, group, and entity making a contribution under this section, the address of the contributor, the amount and type of each such contribution, and the date the contribution was made.

“(d) Any amount of money available to the Commission under this section that remains unobligated upon termination of the Commission shall be deposited in the Treasury as miscellaneous receipts.

“TERMINATION

“SEC. 1224. The Commission shall terminate sixty days after the transmission of its final report to the President and Congress.”.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

JGR

O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence Received (YY/MM/DD) 84/08/23

Name of Correspondent: Richard Darman

MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Enrolled Resolution H.J. Res. 600 - Agricultural Trade and Export Policy Commission Act.

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 08 23</u>		<u>1 1</u>
<u>CUAT 18</u>	<u>D</u>	<u>84 08 23</u>		<u>84 08 27</u> <u>10:00am</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>

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WHITE HOUSE STAFFING MEMORANDUM

DATE: 8/23/84 ACTION/CONCURRENCE/COMMENT DUE BY: 10:00 A.M. MONDAY 8/27

SUBJECT: ENROLLED RESOLUTION H.J. RES. 600 - AGRICULTURAL TRADE AND EXPORT
POLICY COMMISSION ACT

	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 checked="" type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
STOCKMAN	<input 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 checked="" 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 on the attached Bill and Signing statement by 10:00 a.m. Monday, August 27. Thank you.

Approval _____

Disapproval _____

RESPONSE:

Richard G. Darman
 Assistant to the President
 Ext. 2702



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET 1984 AUG 23 PM 1:19
WASHINGTON, D.C. 20503

AUG 23 1984

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Resolution H.J.Res. 600 - Agricultural Trade
and Export Policy Commission Act
Sponsors - Reps. de la Garza (D) Texas, Foley (D)
Washington, and Madigan (R) Illinois

Last Day for Action

August 31, 1984 - Friday

Purpose

Establishes a National Commission on Agricultural Trade and Export Policy to conduct a study of the agriculture-related trade and export policies, programs, and practices of the United States.

Agency Recommendations

Office of Management and Budget	Approval (Signing statement attached)
Department of Agriculture	Approval
Department of State	No objection
Department of Commerce	No objection
General Services Administration	No objection
Office of Personnel Management	No objection (informally)
Department of Justice	Cites concerns (Signing statement attached)
Department of the Treasury	Cites concerns (informally)
U.S. Trade Representative	No comment (informally)
Council of Economic Advisers	Disapproval

Discussion

The Enrolled Bill

H.J.Res. 600 would establish a National Commission on Agricultural Trade and Export Policy to conduct a study of the agriculture-related trade and export policies, programs, and practices of the United States, including the impact of international and domestic factors. The scope of the Commission's study would include consideration of existing and new agricultural export assistance programs, foreign impediments to U.S. agricultural exports and appropriate counter-measures, trade agreements, international economic trends, and the interaction of international agricultural trade with foreign food assistance and economic development.

The Commission would be composed of the following 35 members:

- Three Executive branch members, selected by the President, serving in an ex officio capacity without voting rights.
- Twenty voting members from among U.S. private citizens, half selected by the President pro tempore of the Senate and half selected by the Speaker of the House of Representatives, to represent industries directly affected by agriculture-related international trade.
- The chairmen and ranking minority members of the House Agriculture, Foreign Affairs, and Ways and Means Committees, and the Senate Agriculture, Foreign Relations, and Finance Committees, all serving as ex officio members with voting rights.

The Commission would be required to report its findings and make recommendations to the President and Congress on how better to develop, maintain, and expand markets for U.S. agricultural exports (1) in preliminary form by March 31, 1985; (2) as interim reports whenever requested by any of the committee chairmen cited above; and (3) in final form by July 1, 1986. The Commission would terminate sixty days after the transmission of its final report.

Members of the Commission would serve without additional compensation except those members who are private citizens, who could be paid travel and per diem expenses. The Secretary of Agriculture would be required to provide personnel and support services at the request of the Commission on a nonreimbursable basis. The Secretary of Agriculture could receive private donations to assist the Commission, although use of up to \$1,000,000 of Commodity Credit Corporation funds is authorized if donations are not sufficient to pay Commission staff salaries, travel expenses, per diem, and other expenses.

Congressional Views

H.J.Res. 600, and the Senate companion resolution, S.J.Res. 319 (sponsored by Senators Dole, Huddleston, Helms, Dixon, Boschwitz, Leahy, Cochran, Zorinsky, Jepsen, Boren, Andrews, Heflin, Kassenbaum, Kasten, Roth, and Percy) were both introduced in June and congressional hearings were held in July. Congressional proponents of H.J.Res. 600 argued that the Commission's study of U.S. agriculture-related trade and export policies, programs, and practices is needed because:

- U.S. agricultural exports, which have declined seriously since 1980/81, are a mainstay of profitability in the U.S. agricultural economy;

- agricultural exports help to significantly reduce our balance of trade deficit;
- the contraction of overseas sales since 1980 has placed tremendous pressure on U.S. producers in the face of mounting agricultural surpluses; and
- initial and interim Commission reports would be useful in considering the 1985 farm bill.

Administration Position

Although the Administration was not invited to testify in either House on this legislation, the Department of the Treasury did advise Representative Coleman of Missouri, a member of the House Agriculture Committee, that a high-level export commission to study agricultural export trade issues was not necessary because several public and private groups are already investigating ways of resolving agricultural export problems. A Statement of Administration Policy was sent to the House on August 3, 1984, and reports from Treasury were sent to the Senate Governmental Affairs and Agriculture Committees on August 9, also opposing the resolution on these grounds. Nevertheless, in an August 10 statement on the Senate floor, Senator Dole asserted that "...the Administration has appropriately chosen to take no official position..." and that "...I hope that USDA officials will adopt a positive and constructive attitude toward the Commission's work..."

In recommending approval of the enrolled resolution, the Department of Agriculture notes the importance to U.S. agriculture of the trade policy issues that the Commission will study and the "... desirability of enlisting in their consideration a considerable breadth of knowledge, experience and perspective."

In its enrolled bill letter, Justice notes that while the Commission would appear to serve primarily legislative functions, it would also appear to reside in part within the Executive branch, given (1) the three Executive members and (2) the considerable support Agriculture is to give the Commission. While not recommending veto, because the Commission's functions are solely advisory, Justice states its belief that the creation of such hybrid commissions is undesirable, and expresses concern that this resolution could set "...an unwise precedent for future commissions or advisory bodies that would be set up with similar membership." Accordingly, Justice recommends that you issue a signing statement which urges that such commissions be structured to serve only one master--either the Executive branch or the Legislative branch.

Treasury informally reiterates the concerns it set forth in its reports to the Congress, and also has serious reservations that the Commission's funding by private donations would enable such private entities to unduly influence the Commission and thereby undermine the credibility of its recommendations (Senator Eagleton strongly voiced similar concerns in his floor remarks). Treasury informally advises, however, that its reservations are not sufficient to warrant veto.

The Council of Economic Advisers recommends that you veto H.J.Res. 600 because the resolution would (a) duplicate existing groups studying agricultural export issues and (b) heavily bias membership on the Commission in favor of members of Congress and individuals appointed by members of Congress.

Conclusion

On the merits, I agree with the several agencies that H.J.Res. 600 is unnecessary, duplicates existing studies of agricultural export issues, and is heavily weighted to favor a congressional perspective. In fact, the Commission's predominance of congressional members or appointees raises the very serious concern that its recommendations may sharply conflict with the Administration's views on how to structure the 1985 farm bill. No doubt the Congress will seek to promote these so-called "independent" recommendations, and it could be difficult to keep them out of next year's farm bill.

On balance, however, I recommend that you sign H.J.Res. 600 because:

- the recommendations of the Commission, given its obvious congressional bias, will probably be discounted accordingly;
- next year's farm bill could well serve as watershed legislation; its ultimate form will be shaped by a multitude of parties and interests, and the Commission's report will be just one of many sets of recommendations with which the Administration will have to contend;
- a veto could be extremely difficult to justify to the Congress or the public, and it would be perceived by the farm and agribusiness community as a sign of Administration hostility; and
- a veto would be very difficult to sustain in view of the strong bipartisan support for H.J.Res. 600.

H.J.Res. 600 passed both Houses of the Congress by voice vote.

In lieu of Justice's proposed signing statement, we have prepared for your consideration an alternative statement that incorporates Justice's concerns regarding the composition of the Commission while taking a less laudatory view of the Commission itself.

A handwritten signature in black ink, appearing to read "David A. Stockman". The signature is written in a cursive style with a long, horizontal flourish extending to the right.

David A. Stockman
Director

Enclosures

STATEMENT BY THE PRESIDENT

I have today signed H.J.Res. 600, the "Agricultural Trade and Export Policy Commission Act."

H.J.Res. 600 would establish a National Commission on Agricultural Trade and Export Policy to conduct studies of agricultural trade and export policies, programs, and practices of the United States, and to make recommendations to the President and Congress.

The Congressional sponsors of this legislation see the Commission's work as providing recommendations for the agriculture community, the Administration, and the Congress to consider as they work together in developing the 1985 farm bill. I expect the 1985 farm bill to be an historic watershed in laying the groundwork for assuring the continuation of a prosperous and productive agricultural economy. While I am not convinced that we need yet another commission to study agricultural policy, I hope the Commission will constructively join the debate on the future direction of American agriculture, including that of agricultural trade and exports.

Numerous other groups, including the President's Export Council, official industry advisory groups, and the President's Working Group on Future Food and Agriculture Policy, are also examining the many issues that can affect the future course of

American agriculture. We hope that the free exchange and critical review of all such views will lead to the development of farm legislation that sets a sound course for agricultural policy.

In signing H.J.Res. 600, however, I must express my concern about the membership of the Commission. Under this bill the Commission is to be composed of three officers from the Executive branch, who serve in a nonvoting capacity, and thirty-two members who are either selected by, or are members of, Congress. Although the Commission would appear to serve primarily legislative functions, this bill would place the Commission partly within the Executive branch. I believe that creation of such a commission, which is neither clearly within the Executive branch, nor clearly within the Legislative branch, tends to blur the functional distinction between the political branches that is fundamental to the concept of separation of powers. It would be more appropriate for the Commission to be composed either entirely of members selected by the Legislative branch, if it is to serve primarily legislative functions, or entirely of members appointed by the President, if it is to serve the Executive branch. I hope that bills presented for my approval in the future will not suffer from this defect.

Ninety-eighth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-third day of January,
one thousand nine hundred and eighty-four*

Joint Resolution

To amend the Agriculture and Food Act of 1981 to provide for the establishment of a commission to study and make recommendations concerning agriculture-related trade and export policies, programs, and practices of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That title XII of the Agriculture and Food Act of 1981 is amended by inserting after subtitle B a new subtitle C as follows:

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"SHORT TITLE

"SEC. 1217. This subtitle may be cited as the 'Agricultural Trade and Export Policy Commission Act'.

"FINDINGS AND DECLARATION OF POLICY

"SEC. 1218. (a) Congress finds that—

"(1) the economic well-being of the Nation's agricultural industry is directly related to its ability to compete in international markets; and

"(2) a thorough examination of agriculture-related trade and export policies, programs, and practices of the United States is needed to ensure that such policies, programs, and practices increase the competitiveness of United States agricultural commodities and products in international markets

"(b) It is hereby declared to be the policy of Congress to expand international trade in United States agricultural commodities and products and to develop, maintain, and expand markets for United States agricultural exports.

"ESTABLISHMENT

"SEC. 1219. (a) There is established a National Commission on Agricultural Trade and Export Policy to conduct a study of the agriculture-related trade and export policies, programs, and practices of the United States.

"(b) In addition to the ex officio congressional members specified in subsection (c) of this section, the Commission shall be composed of twenty-three members appointed or designated by the President and selected as follows:

"(1) The President shall select three members from among officers or employees of the Executive branch who shall serve in an ex officio capacity without voting rights; and

"(2) The President pro tempore of the Senate and the Speaker of the House of Representatives shall each select ten members from among private citizens of the United States to represent industries that are directly affected by agriculture-related trade

and export policies, programs, and practices of the United States, including, but not limited to, the following:

“(A) producers of major agricultural commodities in the United States;

“(B) processors or refiners of United States agricultural commodities;

“(C) exporters, transporters, or shippers of United States agricultural commodities and products to foreign countries;

“(D) suppliers of production equipment or materials to United States farmers;

“(E) providers of financing or credit for domestic and export agricultural purposes; and

“(F) organizations representing general farm and rural interests in the United States.

“(c) The chairmen and ranking minority members of the House Committee on Agriculture, the Senate Committee on Agriculture, Nutrition, and Forestry, the House Committee on Foreign Affairs, the Senate Committee on Foreign Relations, the House Committee on Ways and Means, and the Senate Committee on Finance shall serve as ex officio members of the Commission and shall have the same voting rights as the members of the Commission selected and appointed under the provisions of subsection (b)(2) of this section. The chairmen and ranking minority members may designate other members of their respective committees to serve in their stead as members of the Commission.

“(d) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

“(e) The Commission shall elect a chairman from among the members of the Commission who are selected and appointed under the provisions of subsection (b)(2) of this section.

“(f) The Commission shall meet at the call of the chairman or a majority of the Commission.

“CONDUCT OF STUDY

“SEC. 1220. The Commission shall study the agriculture-related trade and export policies, programs, and practices of the United States and the international and domestic factors affecting such policies, programs, and practices, including the intergovernmental activities of the United States that affect the formulation of policies. In conducting the study, the Commission shall consider, among other things, the following:

“(1) the effectiveness of existing agricultural export assistance programs, and the manner in which they can be improved;

“(2) new export assistance programs that should be considered, and the conditions under which they can be implemented;

“(3) practices of foreign countries that impede the export of United States agricultural commodities and products, and appropriate responses for the United States;

“(4) the effectiveness of the trade agreements program of the United States with respect to agriculture-related trade and exports, and the manner in which it can be improved;

“(5) international economic trends that affect agricultural exports, and the manner in which the United States can best adjust its policies, programs, and practices to meet changing economic conditions;

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“(6) potential areas of conflict and compatibility between international agricultural trade and foreign food assistance programs, and the manner in which any conflict can be resolved; and

“(7) the relationship between international agricultural trade and foreign economic development and food programs, and the manner in which they can be made more compatible.

“RECOMMENDATIONS AND REPORTS

“SEC. 1221. (a) On the basis of its study, the Commission shall make findings and develop recommendations for consideration by the President and Congress with respect to the agriculture-related trade and export policies, programs, and practices of the United States, and the manner in which such policies, programs, and practices can be improved to better develop, maintain, and expand markets for United States agricultural exports.

“(b) The Commission shall submit to the President and Congress—

“(1) a report containing its initial findings and recommendations by March 31, 1985,

“(2) such additional interim reports on its work as may be requested by the chairman of any of the Committees set forth in section 1219(c) of this subtitle, and

“(3) a report containing the final results of its study and its recommendations therefrom by July 1, 1986.

“ADMINISTRATION

“SEC. 1222. (a) The heads of Executive agencies, the General Accounting Office, the International Trade Commission, and the Congressional Budget Office shall, to the extent permitted by law, provide the Commission such information as it may require in carrying out its duties and functions.

“(b) Members of the Commission shall serve without any additional compensation for work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service under sections 5701 through 5707 of title 5, United States Code.

“(c) To the extent there are sufficient funds available to the Commission in advance under section 1223 of this subtitle, and subject to such rules as may be adopted by the Commission, the chairman, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, shall have the power to—

“(1) appoint and fix the compensation of a director; and

“(2) appoint and fix the compensation of such additional staff personnel as the Commission determines necessary to carry out its duties and functions.

“(d) Upon request of the Commission, the Secretary of Agriculture shall furnish the Commission with such personnel and support services as are necessary to assist the Commission in carrying out its duties and functions.

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“(e) Upon request of the Commission, the heads of other Executive agencies and the General Accounting Office are each authorized to furnish the Commission with such personnel and support services as the head of the agency or office and the chairman of the Commission agree are necessary to assist the Commission in carrying out its duties and functions.

“(f) The Commission shall not be required to pay or reimburse any agency or office for personnel and support services provided under this section.

“(g) In accordance with section 12 of the Federal Advisory Committee Act, the Secretary of Agriculture shall maintain such financial records as will fully disclose the disposition of any funds that may be at the disposal of the Commission and the nature and extent of its activities, and the Comptroller General of the United States, or any of the Comptroller General’s authorized representatives, shall have access to such records for the purpose of audit and examination.

“(h) The Commission shall be exempt from section 7(d), section 10(e), section 10(f), and section 14 of the Federal Advisory Committee Act.

“(i) The Commission shall be exempt from the requirements of sections 4301 through 4305 of title 5, United States Code.

“PUBLIC SUPPORT

“SEC. 1223. (a) Following the appointment or designation of the members of the Commission, notwithstanding the provisions of section 1342 of title 31, United States Code, the Secretary of Agriculture may receive, from persons, corporations, foundations, and all other groups and entities within the United States, contributions of money and services to assist the Commission in carrying out its duties and functions. Any money contributed under this section shall be available to the Commission for the payment of salaries, travel expenses, per diem, and other expenses incurred by the Commission under this subtitle. In no event may the contributions from any one person, corporation, foundation, or other group or entity exceed 5 per centum of the Commission’s total budget.

“(b) If the contributions provided under subsection (a) are insufficient for payment of Commission salaries, travel expenses, per diem, and other expenses incurred by the Commission under this subtitle, the Secretary of Agriculture is authorized to use the funds of the Commodity Credit Corporation for such purposes in an amount not to exceed a total of \$1,000,000.

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“(c) The Secretary of Agriculture shall keep, and shall make available for public inspection during normal business hours, records that fully disclose a complete list of every person, group, and entity making a contribution under this section, the address of the contributor, the amount and type of each such contribution, and the date the contribution was made.

“(d) Any amount of money available to the Commission under this section that remains unobligated upon termination of the Commission shall be deposited in the Treasury as miscellaneous receipts.

“TERMINATION

“SEC. 1224. The Commission shall terminate sixty days after the transmission of its final report to the President and Congress.”.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*