THE WHITE HOUSE

WASHINGTON

June 13, 1985

MEMORANDUM FOR CLAUDIA KORTE
PRESIDENTIAL MESSAGES

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Opening Trading on CPI Inflation Futures

You have asked for guidance concerning a request for a Presidential message to the Coffee, Sugar & Cocoa Exchange in New York, commemorating the opening of trading in a Consumer Price Index inflation futures contract. Such a message should not be sent.

Futures exchanges are themselves commercial activities in a competitive business. Another competing exchange could decide to offer trading in CPI inflation futures, and the President should not endorse one particular exchange or one particular futures contract.

THE WHITE HOUSE

WASHINGTON

June 12, 1985

TO: ROGER PORTER, OPD
✓JOHN ROBERTS, Counsel's Office

RE: Opening Trading on CPI Inflation Futures
(JUNE 21 - New York City)

May I please have your guidance on the attached request for a Presidential message to the Coffee, Sugar & Cocoa Exchange on developing the Consumer Price Index inflation futures contract and the opening of trading next week.

We've already checked with Labor Department. They says it's our call, but they're not too enthusiastic about the idea of trading in futures based on government statistics.

Incoming request mentions precedent of President sending congratulations to the Chicago Board of Trade when they recently began trading gold futures, but there's no record of this in WH Files.

Thank you.

CLAUDIA KORTE
Presidential Messages
18-OEOB/Ext. 2941

Burson-Marsteller

Interoffice Correspondence New York

Date June 5, 1985

To Sheila Tate, B-M/Washington
From Sandy Klinzman, B-M/NY
Subject Reagan letter to CSCE

Sheila:

As we discussed yesterday, the Coffee, Sugar & Cocoa Exchange would like to receive a letter from President Reagan commending them for developing the CPI inflation futures contract and congratulating them on opening trading (June 21).

We suggest the letter make the following points:

- June 21 is truly a historic day, when trading begins in the first macroeconomic futures contract: the CPI inflation futures contract.
- The CPI contract is the first financial tool allowing investors to manage macroeconomic risk
- The contract, based on the Department of Labor's Consumer Price Index, finally provides Americans with a market-determined forecast of inflation.
- Americans will be able, for the first time, to manage the risks associated with the uncertainty of the future course of inflation.
- While the administration has taken steps to reduce inflation from its rampant pace of the late 1970s, American business and investors can now benefit from an independant mechanism to manage the uncertainty of inflation's future course.
- The CPI inflation contract is a private sector solution to a problem that has long plagued public policy decision-makers. It is precisely this type of financial innovation that makes our financial marketplace the envy of the world.

A few final points for you to bear in mind, Sheila.

- o The letter should go to Mr. Howard C. Katz, Chairman.
- o Alphonse D'Amato will ring the bell officially opening trading.
- o The Coffee, Sugar & Cocoa Exchange, founded as the Coffee Exchange of New York in 1882, has been trading commodities for over one hundred years.
- o CSCE has established a new division, the Economic Index Market, on which to trade the CPI contract.
- o On March 16 The Commodity Futures Trading Commission approved trading in CPI futures. Susan Phillips, CFTC chairman, is a Republican appointee.
- o It's our understanding that the Chicago Board of Trade, when they recently began trading gold futures, had some sort of congratulatory letter from the White House.

Thanks a lot for your help on this. Please contact Linda Gay Blanc, Mark Boada or me as soon as soon as possible if you have any questions or need additional information. We'll contact you shortly to see what kind of reading you've gotten on the chances of getting the letter.

Sincerely,

Sandy Klinzman

cc: LBlanc
MBoada
ASchreiber

Burson-Marsteller

International Square
1825 Eye Street, N.W.
Suite 950
Washington, D.C. 20006-5498
202 833.8550

June 6, 1985

Ms. Deborah Balfour
East Wing
The White House
Washington, DC 20500

Dear Deb:

Addressee is:

Howard C. Katz, Chairman
Coffee, Sugar & Cocoa Exchange
4 World Trade Center
Eight Floor
New York, NY 10048

But please have letter sent via;

Sheila Tate
Senior Vice President
Burson-Marsteller
1825 Eye Street, NW
Washington, DC 20006

XOX,

Sheila

Sheila Tate
Senior Vice President

ST/dvf

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release June 20, 1985

MEMORANDUM FOR THE
UNITED STATES TRADE REPRESENTATIVE

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

Pursuant to Section 301(a) of the Trade Act of 1974, as amended (19 U.S.C. 2411(a)), I have determined that the preferential tariffs granted by the European Economic Community (EEC) on imports of lemons and oranges from certain Mediterranean countries deny benefits to the United States arising under the General Agreement on Tariffs and Trade (GATT), are unreasonable and discriminatory, and constitute a burden and restriction on U.S. commerce. I have further determined that the appropriate course of action to respond to such practices is the withdrawal of equivalent concessions with respect to imports from the EEC. I will therefore proclaim an increase in duties on pasta products classified in items 182.35 and 182.36 of the Tariff Schedules of the United States imported from the EEC. This action has been necessitated by the unwillingness of the EEC to negotiate a mutually acceptable resolution of this issue. At such time as the United States Trade Representative makes a determination that a mutually acceptable resolution has been reached, I would be prepared to rescind this measure.

Reasons for Determination

Based on petitions filed by the Florida Citrus Commission, the California-Arizona Citrus League, the Texas Citrus Mutual and the Texas Citrus Exchange, the United States Trade Representative initiated an investigation in November, 1976 concerning the EEC's preferential tariff treatment with respect to citrus imports from certain Mediterranean countries. The petitions alleged that these discriminatory tariffs, which are granted in the context of broader trade agreements with the Mediterranean countries, are inconsistent with the most-favored-nation principle of the GATT and placed U.S. exporters at a competitive disadvantage in the EEC market. Similar complaints had been filed by the U.S. industry in 1970 and 1972 under Section 252 of the Trade Expansion Act of 1962.

As a result of this investigation, we have found that since the 1960's, the EEC has levied a higher duty on imports of citrus from the United States than that levied on imports from certain Mediterranean countries. The level of discrimination is significant. In some cases the United States pays a duty five times greater than that paid by other suppliers. This discriminatory tariff treatment has impaired the ability of U.S. citrus exporters to market their fruits in the EEC and is, in the view of the United States, inconsistent with the EEC's obligations under the GATT.

Nevertheless, recognizing the political importance of these preferential tariffs to the EEC, the United States made extensive efforts over the course of a number of years to resolve the matter through bilateral consultations rather than mount a legal challenge against the EEC in the GATT.

more

(OVER)

The United States also tried to resolve this issue in the context of tariff concessions granted during the Tokyo Round of Multilateral Trade Negotiations. With the exception of a few minor tariff reductions resulting from the Tokyo Round, these efforts were without success. Following the conclusion of the Tokyo Round, the United States initiated consultations under the provisions of the GATT, but the EEC again rebuffed all efforts to reach a compromise solution.

With any possibility of a negotiated settlement thus ruled out, the United States invoked the dispute settlement procedures of the GATT as the only alternative means of seeking a redress of our complaint. In 1983, a panel was established to review the U.S. complaint. Throughout this procedure, the United States has continued to demonstrate its willingness to seek a mutually acceptable solution to this problem. For example, the United States agreed to the unusual step of allowing the Director-General of GATT to attempt to arbitrate the dispute before pressing its request for formation of a dispute settlement panel. Unfortunately, the attempt failed. The EEC rejected all efforts at compromise.

In December, 1984, based on a voluminous record, the panel found unanimously that the EEC preferences nullified and impaired U.S. benefits arising under the GATT with respect to U.S. exports of oranges and lemons, two of the eight categories of U.S. citrus exports affected by the tariff preferences. The panel recommended that the EEC reduce its MFN rate of duty on fresh oranges and lemons no later than October 15, 1985.

Although the panel did not rule on this issue, the United States continues to believe that the EEC citrus preferences are inconsistent with the most-favored-nation principle of the GATT, and thus nullify or impair U.S. benefits with respect to exports of the other citrus items as well as lemons and oranges. Nevertheless, the United States has been willing to accept the panel's more limited recommendation for the following reasons. The sole interest of the United States in bringing this issue to the GATT has been to obtain the elimination or reduction of a barrier to U.S. citrus exports. While the panel's recommendation does not call for the elimination of the barriers, we believe its implementation by the EEC would significantly increase access for key U.S. citrus exports to that market. Moreover, the panel's recommendation does not require the EEC to take action inconsistent with its preferential trading arrangements; indeed it would result in lower tariffs for the preference receiving countries as well.

The EEC, however, has been unwilling to accept either the panel's findings or recommendation and has effectively prevented a resolution of this issue in the GATT. Thus, U.S. attempts to resolve this problem at the bilateral or multilateral level have not succeeded.

In light of the results of the USTR's investigation, I believe we must recognize that the level of trade concessions between the United States and EEC is no longer in balance. We estimate that the value of annual U.S. exports of oranges and lemons would increase by more than $48 million if the EEC had implemented the panel's recommendation.

The EEC's unwillingness to implement the panel's finding or to otherwise provide adequate compensation to the United States requires us to re-balance the level of concessions in U.S.-EEC trade. Increasing the duty on pasta imports from the EEC is a reasonable and appropriate means by which to achieve this.

This determination shall be published in the Federal Register.

RONALD REAGAN

# # # # # # #

THE WHITE HOUSE

WASHINGTON

July 12, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Determination Under Section 301 of the Trade Act of 1974 Concerning Subsidies Granted by the European Space Agency on Satellite Launching Services

David Chew has asked for comments by July 15 on the above-referenced proposed determination under Section 301 of the Trade Act of 1974, 19 U.S.C. § 2411. On May 24, 1984, a United States company formed to provide commercial satellite launch services filed a petition under 19 U.S.C. § 2412 with USTR, complaining of foreign government subsidies to Arianespace, S.A., a French commercial satellite launching venture. USTR initiated an investigation and conducted consultations and has now submitted a recommendation to the President, as required by 19 U.S.C. § 2414. Pursuant to 19 U.S.C. § 2411(c)(2), the President has 21 days from receipt of the recommendation (until July 30) to determine what action, if any, to take.

USTR has concluded that the practices of the foreign governments in this case are not unreasonable; indeed, many are similar to our own practices. Accordingly, USTR recommends that the President take no action. A proposed determination with reasons is attached for signature by the President and publication in the Federal Register, as required by 19 U.S.C. § 2411(c)(2). I have reviewed the determination and have no objections.

There was some discussion during this investigation of negotiations with foreign governments to develop guidelines on government involvement in commercial satellite launching ventures. All affected agencies except Transportation think we should complete our own review of shuttle pricing policy and related issues before entering into such negotiations. This issue is not legally pertinent to the instant Section 301 issue.

Attachment

THE WHITE HOUSE

WASHINGTON

July 12, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

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

SUBJECT: Determination Under Section 301 of the Trade Act of 1974 Concerning Subsidies Granted by the European Space Agency on Satellite Launching Services

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

FFF:JGR:aea 7/12/85
cc: FFFielding
JGRoberts
Subj
Chron

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 85 7 10

Name of Correspondent: Dave Chew

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

Subject: Determination under Section 301 of the Trade Act of 1974 Concerning subsidies granted by the European Space Agency on Satellite Launching services

ROUTE TO: Office/Agency (Staff Name)	ACTION Action Code	Tracking Date YY/MM/DD	DISPOSITION Type of Response	Completion Code	Completion Date YY/MM/DD
CU HOLL	ORIGINATOR	85,07,10			/ /
	Referral Note:				
CU AT 18	D	85,07,10		S	85,07,12
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				

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.

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: 7/10/85 **ACTION/CONCURRENCE/COMMENT DUE BY:** c.o.b. Monday July 15th

SUBJECT: Determination under Section 301 of the Trade Act of 1974 concerning subsidies granted by the European Space Agency on Satellite Launching Services

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	LACY	☐	☐
REGAN	☐	☑	McFARLANE	☑	☐
STOCKMAN	☑	☐	OGLESBY	☑	☐
BUCHANAN	☑	☐	ROLLINS	☑	☐
CHAVEZ	☐	☐	RYAN	☐	☐
CHEW	☐P	☑S	SPEAKES	☐	☐
DANIELS	☐	☐	SPRINKEL	☑	☐
FIELDING	☑	☐	SVAHN	☑	☐
FRIEDERSDORF	☑	☐	TUTTLE	☐	☐
HENKEL	☐	☐	_____	☐	☐
HICKEY	☐	☐	_____	☐	☐
HICKS	☐	☐	_____	☐	☐
KINGON	☑	☐	_____	☐	☐

REMARKS: Do you have any recommendations on the attached?

RESPONSE:

1985 JUL 10 AM 11:24

David L. Chew
Staff Secretary
Ext. 2702

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

July 9, 1985

MEMORANDUM FOR THE PRESIDENT

FROM: Clayton Yeutter

SUBJECT: Determination Under Section 301 of the Trade Act of 1974 Concerning Subsidies Granted by the European Space Agency on Satellite Launching Services

No later than July 30, you are required to determine what action, if any, to take with respect to the alleged subsidies provided by the European Space Agency (ESA) and its Member States to satellite launch services operations. Section 301 authorizes you to take all appropriate action, including restrictive measures on imports of goods and services, whenever you determine that a foreign government engages in practices which you deem to be unreasonable and a burden on U.S. commerce.

For the reasons set forth below and described more fully in the attached background materials, I recommend that you determine that ESA's practices are not unreasonable within the meaning of Section 301 and that action under Section 301 is not appropriate.

Many of the factual allegations examined during the course of my office's investigation were found to be without merit or lacked sufficient supporting evidence to warrant action under Section 301. Some forms of government assistance provided by ESA or its Member States to Arianespace, e.g. provision of launch services and personnel, were found to exist; however this assistance is not unreasonable within the meaning of the statute. Since there are no international standards governing government action in this service sector, we compared ESA's practices with U.S. practice both with respect to the Shuttle and the newly commercialized expendable launch vehicles (ELV's). We found that ESA's practices were not substantially different from those of the U.S. and thus could not be considered unreasonable.

During the course of the 301 investigation, ESA suggested that further consultations should be held to develop principles or guidelines in order to reduce government involvement in this service sector. This suggestion merits further study. However, because U.S. policy with respect to satellite launching services is in the process of revision, I do not believe that we can determine whether such negotiations are in the U.S. interest at this time. We also need time to determine what our objectives

would be if such negotiations were held. This determination cannot be made until you make your decision on the future Shuttle pricing policy. Therefore, I suggest that you consider the question of further discussions with ESA after the pricing policy decision is made.

This recommendation has the support of the Departments of Agriculture, Commerce, Interior, Justice, Labor, Transportation, Treasury and State, as well as the Council of Economic Advisors. However, the Department of Transportation believes that the U.S. should agree now to hold negotiations with ESA rather than wait for the decision on shuttle pricing policy.

_____ Approve (Sign Determination at Tab A)

_____ Disapprove

Background on Section 301 Investigation on Satellite

Background

On May 25, 1984, Transpace Carriers, Inc. (TCI) filed a petition under Sec. 301 alleging that the governments of the Member States of the European Space Agency (ESA) and their instrumentalities subsidize the commercial satellite launching services offered by Arianespace, S.A. TCI was established in 1982 to provide launch services using the assets, technology and accumulated operational experience of the Delta Launch Vehicle Program which it intends to purchase from NASA. Arianespace is a French firm whose shareholders include the French national space agency, aerospace companies and banks of the ESA Member States.

On July 9, 1984, the United States Trade Representative (USTR) initiated an investigation on the basis of TCI's petition. In the course of this investigation, USTR held four rounds of consultations with ESA, one consultation with Arianespace and met with representatives of numerous U.S. firms, both manufacturers of launchers and satellites and purchasers of launching services.

TCI presented four basic allegations in its petition:

1) a two-tiered pricing structure whereby Arianespace charges a higher price to ESA and its Member States than it charges on "export" launches;

2) the provision of subsidized launch and range facilities, services and personnel to Arianespace by the French national space agency (CNES);

3) the provision of administrative and technical personnel at subsidized rates to Arianespace by CNES; and

4) subsidization of mission insurance rates.

In addition to these allegations, USTR expanded the scope of its examination to include 1) government inducements to purchasers of launch services from Arianespace (e.g. offsets, subsidized financing, and insurance); 2) government assistance to Arianespace, both direct (e.g. provision of subsidized personnel and services, loans, and capital grants to Arianespace by ESA and its Member States) and indirect (e.g. the provision of hardware and other inputs to Arianespace by government-owned suppliers at less than fair market rates); and 3) Arianespace's costs and pricing policy.

USTR's findings with respect to these allegations can be summarized as follows:

Government inducements:

The investigation uncovered no evidence of offsets or insurance being provided by ESA or its Member States. Member States of ESA do provide export financing for Arianespace's customers. However, the terms of the financing are consistent with international agreements to which the U.S. is a party. The U.S. follows a similar practice through its Exim financing.

Direct Government Assistance:

1. Administrative Personnel: Arianespace and CNES entered into a Head Office Services Agreement pursuant to which CNES personnel perform certain administrative functions for Arianespace. CNES charges Arianespace a flat percentage of annual turnover for its services. While the fee is arbitrary, we have no reason to question CNES's assertion that the fee, in fact, covers actual wage costs plus fringe benefits. The amounts paid to date seem reasonable.

2. Range Services: The range facilities at Kourou are operated by CNES. Arianespace pays CNES a fee for the use of the range facilities including personnel services. The curent fee is 1 percent of the launch price. ESA and CNES have acknowledged that the fee is arbitrary and that it does not cover the full range costs incurred by Arianespace. ESA claims that when the fee is raised to 5% of the launch price (this will occur after the 20th launch and only if Arianespace launches more than 7 times per year) Arianespace will be paying the full cost of range services attributable to Arianespace's activities. Current U.S. policy offers use of the national ranges and launch support services to commercial ELV's on a direct cost, rather than full cost, reimbursement basis.

3. Loans and Capital Grants: There is no evidence of direct capital grants or soft loans being given to Arianespace by ESA or the Member States other than CNES, which as a stockholder put up equity capital in Arianespace. Of course, Arianespace stockholders, some of whom, e.g. Aerospatiale, are government-owned, have contributed equity capital to the firm. However, we have no evidence to suggest that such transactions are inconsistent with normal commercial practice.

4. Hardware: ESA provided a certain amount of hardware to Arianespace at less than its cost of acquisition. ESA claims that the cost was reduced because some of the hardware had been used. ESA estimated the value of this hardware to be $50,000. NASA's agreement with TCI for the transfer of the Delta program also provided for transfer of certain flight hardware at less than the government's cost of acquisition.

5. Protected Home Market: ESA and its Member States have agreed to give Arianespace a preference over other launch service providers with respect to payloads owned and operated by these government entities. Because of this preference and because almost all European communication satellites are operated by governments, rather than private firms, U.S. ELV's and the Shuttle (STS) have limited opportunity to penetrate the European market. In contrast, much of the U.S. market, which is the major market in the world, is open because communication satellites are owned and operated by private sector firms. However, U.S.G. payloads also are carried almost exclusively by U.S. launch service providers. Thus, there is little difference in the respective treatment by ESA and the U.S. of government payloads. The major difference is in the structure of the market with European communication satellites being operated primarily by government entities.

Indirect Government Assistance:

Because Arianespace's major suppliers are also major stockholders and because some of these suppliers are, in turn, owned in whole or part by Member State governments of ESA there is concern that the governments, through their ownership of these supplier companies, can artificially reduce Arianespace's operating costs. However, the investigation uncovered no evidence to suggest that Arianespace is obtaining significant assistance by reason of low-cost inputs from its suppliers.

Costs and Pricing:

1. Costs: As noted above, Arianespace is not charged the full cost of range services provided by CNES. Also, the amount charged to Arianespace for administrative services may not reflect the full cost of those services. Moreover, Arianespace does not include R&D in the cost structure of its launching service because ESA pays for original and, to a large extent, follow-on R&D. Thus, Arianespace can pass these cost savings on to its customers. Similar cost savings are also passed onto U.S. customers of U.S. launch service providers. As noted above U.S. ELV's enjoy cost savings on range and launch services provided by the U.S.G. They also benefitted by government R&D with respect to the Delta rocket. An important difference to note, however, is that customers of TCI will have to bear the cost of any future R&D.

2. Pricing: Under its present pricing practices Arianespace is not recovering average full costs, nor does it appear that it will in the forseeable future. ESA and Arianespace negotiate a fixed price long-term contract to cover launches of ESA and Member State payloads. The first negotiated price did not cover Arianespace's costs. The second negotiated price (effective with respect to launches contracted after

January 1, 1984 and launched after Jan. 1, 1987) appears to cover costs with respect to dual configuration launches but not with respect to dedicated launches. According to ESA, Arianespace needs to launch 6 times per year at the current negotiated ESA price in order to recover fixed costs. Arianespace's current manifest envisions only 3 ESA launches per year out of a total of 6-8 launches. Thus, unless Arianespace prices at least three of its "export" launches at or above the ESA price, Arianespace will not recover its fixed costs. However, Arianespace has uniformly charged less than the negotiated ESA price for its "export" launches to date.

It is not uncommon for firms to discount their prices in order to establish themselves in the market or in response to low demand. TCI is offering below cost prices now for that reason. However, TCI will have to recover early losses at some time in the future in order to remain in business. It is questionable whether Arianespace faces the same constraints. The ESA governments have made it clear that Arianespace is necessary to their national interests and that they will not let it go out of business. Thus, there is legitimate reason to be concerned that Arianespace will be able to continuously underprice its competitors. However, given the advantage accruing to Arianespace from the overvalued dollar and the fact that market demand is soft right now, we cannot conclude that Arianespace's present prices are the result of unreasonable practices of the ESA governments.

Based on its review of the factual allegations, USTR considered whether the practices were unreasonable within the meaning of Sec. 301.

The term "unreasonable" is not well-defined. It is clearly something less than a breach of an international legal obligation. However, the statute provides no normative standard of reasonableness against which to measure an alleged unfair practice. Since there are no internationally-agreed upon standards for launch services, USTR reviewed ESA's practices in terms of how they compare with U.S. practices (both with respect to Shuttle and ELV's) and with reasonable commercial practice. As shown above, ESA's practices are not sufficiently different from those of the U.S. to be considered unreasonable.

However, USTR's view that ESA's practices are not unreasonable for purposes of Sec. 301 is a technical legal finding and should not be interpreted as an endorsement of the practices. Although the history of U.S. launch services is marked by almost exclusive government involvement, the U.S. is seeking to commercialize ELV's. Thus, U.S. policy in this sector is undergoing revision and once the new policy direction is clearly decided upon we may wish to re-examine Europe's practices. In this regard, ESA has expressed a willingness to develop joint principles of behavior in this field. Thus far, they have proposed a

principle calling for full-cost recovery pricing. It is evident that, as they define full-cost, the principle would lead to a very large increase in STS's prices and little increase in Arianespace's prices.

ESA's offer requires further study before a decision can be made on whether such talks are in our interest. U.S. objectives for such discussions cannot be formulated until decisions relating to U.S. policy for the launch services sector, including the third phase shuttle price decision, are made. Furthermore, we need to consider whether ESA or individual Member State governments are the proper interlocuteur. This will depend on the scope of the discussions.

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

Memorandum for the United States Trade Representative

Pursuant to Section 301(a) of the Trade Act of 1974, as amended (19 U.S.C. 2411(a)), I have determined that the practices of the Member States of the European Space Agency (ESA) and their instrumentalities with respect to the commercial satellite launching services of Arianespace, S.A. are not unreasonable and a burden or restriction on U.S. commerce. While Arianespace does not operate under purely commercial conditions, this is in large measure a result of the history of the launch services industry, which is marked by almost exclusive government involvement. I have determined that these conditions do not require affirmative U.S. action at this time. But because of my decision to commercialize expendable launch services in the United States, and our policies with respect to manned launch services such as the Shuttle (STS), it may become appropriate for the United States to approach other interested nations to reach an international understanding on guidelines for commercial satellite launch services at some point in the future.

Reasons for Determination

Based on a petition filed by Transpace Carriers, Inc. (TCI) the United States Trade Representative (USTR) initiated an investigation on July 9, 1984, of the European Space Agency's policies with respect to Arianespace S.A. Arianespace is a

privately owned company, incorporated under the laws of France for the purpose of launching satellites. Arianespace's shareholders include the French national space agency, and aerospace companies and banks incorporated in the ESA Member States.

The petitioner alleged that 1) Arianespace uses a two tier pricing policy whereby Arianespace charges a higher price to ESA Member States than to foreign customers; 2) the French national space agency (CNES) subsidizes launch and range facilities, and services and personnel provided to Arianespace; 3) the French national space agency subsidizes the administrative and technical personnel it provides to Arianespace; and 4) Arianespace's mission insurance rates are subsidized. In addition to these allegations, the U.S. also investigated three other areas: government inducements to purchasers of Arianespace's services; direct and indirect government assistance to Arianespace; and, Arianespace's costs and pricing policies.

Our findings with respect to these allegations are set forth below. Many of the factual allegations were not supported by evidence on the record. While other allegations were substantiated, the practices were not sufficiently different from U.S. practice in this field to be considered unreasonable under Section 301.

Government Inducements:

The investigation uncovered no evidence of offsets or insurance being provided by ESA or its Member States. Member States of ESA do provide export financing for Arianespace's customers. However, the terms of the financing are consistent with international agreements to which the U.S. is a party.

Direct Government Assistance:

Administrative Personnel: Arianespace and CNES entered into a Head Office Services Agreement pursuant to which CNES personnel perform certain administrative functions for Arianespace. CNES charges Arianespace a flat percentage of annual turnover for its services. While the fee is arbitrary, we have no reason to question CNES's assertion that the fee, in fact, covers actual wage costs plus fringe benefits. The amounts paid to date seem reasonable.

Range Services: The range facilities at Kourou are operated by CNES. Arianespace pays CNES a fee for the use of the range facilities including personnel services. The fee is arbitrary and it does not cover the full range costs incurred by Arianespace. ESA claims that when the fee is raised Arianespace will pay the full cost of range services attributable to Arianespace's

activities. Current U.S. policy offers use of the national ranges and launch support services to commercial ELV's on a direct cost, rather than full cost, reimbursement basis.

Loans and Capital Grants: There is no evidence of direct capital grants or soft loans being given to Arianespace by ESA or the Member States other than CNES, which as a stockholder put up equity capital in Arianespace. Of course, Arianespace stockholders, some of whom, e.g. Aerospatiale, are government-owned, have contributed equity capital to the firm. However, we have no evidence to suggest that such transactions are inconsistent with normal commercial practice.

Hardware: ESA provided a certain amount of hardware to Arianespace at less than its cost of acquisition. ESA claims that the cost was reduced because some of the hardware had been used. ESA estimated the value of this hardware to be $50,000. NASA's agreement with TCI for the transfer of the Delta program also provided for transfer of certain flight hardware at less than the government's cost of acquisition.

Protected Home Market: ESA and its Member States have agreed to give Arianespace a preference over other launch service providers with respect to payloads owned and operated by these government entities. Because of this preference and because almost all European communication satellites are operated by governments, rather than private firms, U.S. ELV's and the

Shuttle (STS) have limited opportunities to penetrate the European market. In contrast, much of the U.S. market, which is the major market in the world, is open because communication satellites are owned and operated by private sector firms. However, U.S.G. payloads also are carried almost exclusively by U.S. launch service providers. Thus, there is little difference in the respective treatment by ESA and the U.S. of government payloads. The major difference is in the structure of the market with European communication satellites being operated primarily by government entities.

Indirect Government Assistance: Because Arianespace's major suppliers are also major stockholders and because some of these suppliers are, in turn, owned in whole or part by Member State governments of ESA there is concern that the governments, through their ownership of these supplier companies, can artificially reduce Arianespace's operating costs. However, the investigation uncovered no evidence to suggest that Arianespace is obtaining significant assistance by reason of low-cost inputs from its suppliers.

Costs and Pricing: Under current pricing policies, Arianespace is not recovering its full costs, nor is it likely to do so in the near future. ESA has agreed to long-term, fixed-price contracts for launch services with Arianespace. On the other hand, Arianespace has been quite flexible in its price bids to non-ESA customers, and consistently charges less than the price

charged to ESA. But it is not uncommon for firms to discount heavily in order to establish themselves in the market, especially when demand is low. Therefore, it appears that market forces, especially the current excess supply of launch capacity, are primarily responsible for current low launch prices.

Since there are no international standards of reasonableness for launch services, we have compared ESA practices to U.S. practice, and to reasonable commercial practices. The ESA practices are not sufficiently different from those of the U.S. to be actionable under Section 301. This determination is not an endorsement of ESA practices. Our policies in this area are now undergoing revision, and in the future we may wish to re-examine ESA's practices and their effect on U.S.G. launch services. At that time it may be in our mutual interest to engage in international discussions aimed at establishing appropriate guidelines for the commercial launch industry.

THE WHITE HOUSE

WASHINGTON

August 19, 1985

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: USTR Memorandum Regarding Decision on Import Relief for the Footwear Industry

David Chew has asked for comments by noon August 20 on the attached materials for the President concerning the nonrubber footwear import relief case. As you know, this is a very high-profile trade policy issue that has split the Administration. Our review should be limited to ensuring compliance with the statutory requirements and ensuring the legality of the various options presented to the President.

The present case is the result of a petition filed before the International Trade Commission (ITC) under Section 201 of the Trade Act of 1974, 19 U.S.C. § 2251, by the nonrubber footwear industry. On July 1, 1985, the ITC submitted its report to the President, recommending that quotas be imposed on shoe imports. Pursuant to 19 U.S.C. § 2252, the President has 60 days to determine whether to provide relief, and to publish his determination in the Federal Register. The President "shall provide import relief...unless he determines that provision of such relief is not in the national economic interest." 19 U.S.C. § 2252(a)(1)(A). The President, in reaching his decision, is to consider the nine factors listed in 19 U.S.C. § 2252(c). On the day the President makes a decision under 19 U.S.C. § 2252, he must transmit a report to the Congress detailing the action he has taken, 19 U.S.C. § 2253(b).

Three options have been presented to the President. The first, supported by Treasury, State, Transportation, OMB, CEA, NSC, and OPD, is to grant no import relief, but to announce a commitment to the initiation of Section 301 cases against unfair trade practices in the shoe industry. Option 2, supported by no agency in the Administration, is to adopt the ITC decision and impose import quotas. Option 3, supported by Agriculture, Commerce, Labor, and USTR, is to increase tariffs on shoe imports.

Option 1 -- provide no import relief -- is clearly within the President's prerogatives. See 19 U.S.C. § 2252(a)(1)(A). The implementing documents at Tab A, for publication in the Federal Register and transmittal to Congress, contain the

requisite determination that import relief "is not in the national economic interest." An announcement that the President will pursue Section 301 cases is also within his powers, see 19 U.S.C. § 2411.

Option 3 -- increase tariffs -- is also within the President's statutory powers, see 19 U.S.C. § 2253(a)(1). The implementing documents at Tab B comply with the statutory requirements, including an explanation of the reasons the action taken differs from that recommended by the ITC, 19 U.S.C. § 2253(b)(1).

The attached memorandum for Chew notes no objection to the decision package, reminds Chew of the statutory requirements once a decision is made, and expresses no view on the merits.

Attachments

THE WHITE HOUSE

WASHINGTON

August 19, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: RICHARD A. HAUSER Original signed by RAH
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: USTR Memorandum Regarding Decision on Import Relief for the Footwear Industry

Counsel's Office has reviewed the memorandum for the President and the accompanying materials on the International Trade Commission decision on import relief for the nonrubber footwear industry. We have no legal objection to the decision package. All of the options presented to the President are within his statutory prerogatives, and the implementing materials satisfy the statutory reporting requirements. As a reminder, the letters to Congress must be transmitted on the day the President makes his decision. 19 U.S.C. § 2253(b). That decision not only must be made by August 30, but the decision must also be published in the Federal Register by August 30. 19 U.S.C. § 2252(b). Our office expresses no view on the merits.

RAH:JGR:aea 8/19/85
cc: FFFielding
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WHILE YOU WERE OUT

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of 19 U.S.C. 2253(b)(1)

Phone should be 2253(b)(2)

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Message Dan Marks
David Chew

Operator

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23-020

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release August 28, 1985

BRIEFING
BY
U.S. TRADE REPRESENTATIVE CLAYTON YEUTTER
ON SHOE IMPORT DECISION

The Briefing Room

2:00 P.M. EDT

MR. PETROSKEY: Good afternoon. I'd like to present to you Ambassador Clayton Yeutter, the President's U.S. Trade Representative. Ambassador Yeutter will read a statement by the President on today's decision related to the footwear industry, then answer questions.

This briefing is on the record and for cameras. The statement by the President will be passed out after Ambassador Yeutter finishes reading it. We will also have a message to Congress, memo to Ambassador Yeutter from the President, and three fact sheets.

Q Have these all been distributed in Santa Barbara?

MR. PETROSKEY: No, they have not yet.

Q They have not?

MR. PETROSKEY: No.

Q Will they be?

Q Can we go with --

MR. PETROSKEY: They will be at this moment, simultaneously.

AMBASSADOR YEUTTER: Thank you, Dale.

I'll begin, ladies and gentlemen, by reading the statement by the President. It is as follows: "Today, we increasingly find ourselves confronted with demands for protectionist measures against foreign competition. But protectionism is both ineffective and extremely expensive. In fact, protectionism often does more harm than good to those it is designed to help. It is a crippling "cure", far more dangerous than any economic illness.

"Thus, I am notifying the Congress today of my decision not to impose quotas on non-rubber footwear imports. As President, it is my responsibility to take into account not only the effect of quotas on the shoe industry, but also their broader impact on the overall economy. After an extensive review, I have determined that placing quotas on shoe imports would be detrimental to the national economic interest.

"While we support the principle of free trade, we must continue to insist of our trading partners that free trade also be fair trade. In that regard, I've instructed our Trade Representative to take action to initiate investigations under Section 301 of the Trade Act of 1974, as amended, to root out any unfair trade practices that may be harming U.S. interests.

"With respect to the footwear industry, the Council of Economic Advisors estimates that quotas on non-rubber shoe imports would cost the American consumer almost $3 billion. Low income

consumers would be particularly hard hit as shoe prices rose and less expensive imports were kept off the market.

"Instead of spending billions of consumer dollars to create temporary jobs, I am directing the Secretary of Labor through the Job Training and Partnership Act to develop a plan to re-train unemployed workers in the shoe industry for real and lasting employment in other areas of the economy.

"There is also no reason to believe that quotas would help the industry become more competitive. Between 1977 and 1981, U.S. footwear manufacturers received protection from foreign imports, but emerged from that period even more vulnerable to international competition than before. In fact, while unprotected by quotas, the shoe industry has begun to show positive signs of adjustment. Producers have invested in state-of-the-art manufacturing equipment, modernized their operations, and diversified into profitable retail operations.

"While bringing no lasting benefit to the shoe industry, quotas or other protectionist measures would do serious injury to the overall economy. The quotas proposed by the International Trade Commission would cost over $2 billion in compensatory claims under the GATT, the General Agreement on Tariffs and Trade, and could invite retaliation from our trading partners. The result would be an immediate and significant loss of American jobs and a dangerous step down the road to a trade war -- a war we fought in 1930 with the infamous Smoot-Hawley Tariffs, and lost.

"Our economy is truly interwoven with those of our trading partners. If we cut the threads that hold us together, we injure ourselves as well. If our trading partners cannot sell shoes in the United States, many will not then be able to buy U.S. exports. That would mean more American jobs lost. Thus, we find that the true price of protectionism is very high, indeed. In order to save a few temporary jobs, we would be throwing many other Americans out of work, costing consumers billions of dollars, further weakening the shoe industry, and seriously damaging relations with our trading partners.

"The United States can set an example to other countries. We must live according to our principles and continue to promote our prosperity and the prosperity of our trading partners by ensuring that the world trading system remains open, free, and above all, fair."

Now, before I take your questions, I would like to just do a little additional work with you on -- as general background. This is on the record, but I'd like to provide some background kinds of materials that I think would be useful to you as you deal with this story. You'll have copies now -- the basic material is here. What I'm going to provide for you now is not included in that basic material.

I thought it might be helpful for you to understand precisely how this decision was made and the particular criteria that were involved in making it by the President. In giving you this analysis you can do your own informal decision-making as to how you would have decided this case were you sitting in the seat of the President of the United States.

I'll do this very quickly so that we can go on to questions and I'll embellish some of these points then in questions if you'd like me to do so.

As you all know, this is what is called a safeguards case or some people would call it an escape clause case. It's a case that -- in which a domestic industry that believes it has been inundated by imports can solicit import relief from its government. Now, the process that we follow here in the United States, as you well know

from this case is that the industry must first petition the U.S. International Trade Commission. I alluded to that a little bit earlier.

The U.S. International Trade Commission has one very specific function in the case, and that is to determine whether that particular industry has been injured by imports. And it was done in this case. Just a few months ago, the U.S. International Trade Commission determined, and in the jargon of international trade, determined that imports were a -- quote -- "substantial cause of serious injury" -- end quote -- to the footwear industry.

Once that determination is made, the U.S. International Trade Commission fashions what it considers to be appropriate relief. It did that in this case -- fashioned recommendations of quota relief and sent them on to the President. They come to me for evaluation in the context of the law and for an ultimate recommendation of the President, who then makes the final decision.

Now, this -- the law, our safeguards law or our escape clause law provides the specific criteria that must be used by the President of the United States in deciding whether or not to grant relief. The way it's written is that the President shall grant the relief that is recommended by the U.S. International Trade Commission unless he determines that it is not in the national economic interest to do so.

Now, he can fashion other relief, too, if he so desires. But he must grant relief and must follow through with that basic recommendation of relief of the U.S. ITC unless he determines that it is not in the national economic interest to do so.

As I said and is indicated in that statement, there was a determination here by the President that it is not in the national economic interest to grant relief to the footwear industry.

There are four criteria that are involved in that decision. I will quickly evaluate the four -- or quickly give you the basic background on the four. One is cost to American consumers. The second one is the effective -- the decision on the international economic interests of the United States. The third one is the economic and social costs to taxpayers, communities and workers in this decision. And the fourth one is whether or not relief would promote structural adjustment in the particular industry that is effected. So it's those four factors under which the President must -- those are the four factors of criteria the President must weigh in determining whether or not it is in the national economic interest not to grant relief.

Taking those one by one and giving you a very quick analysis -- and this would be my analysis now. He may have weighed these differently than I would. But I'll give you my basic analysis and the basic facts -- the facts that are involved in them are as follows.

Consumer cost -- that one is obvious. There are numbers there that indicate the Council of Economic Advisors' estimates of consumer costs. They are somewhere in the $2 billion to $3 billion range. That obviously is -- it is difficult to be precise on those because one has to engage in some conjecture as to what the response of the affected countries would be. But a consumer cost -- that is a very major factor.

Second one, the affect on the international economic interests has at least two dimensions. The first dimension is the question of compensation. And I'd like to concentrate a minute on that because it's important to this case and compensation is something that is ordinarily not well understood in trade cases. This is not a free lunch. Many people assume that you can grant -- that the government can grant import relief to an industry like

footwear and it doesn't cost anything internationally. The fact of the matter is that it does.

We have an obligation internationally under the GATT, a legal responsibility to provide compensation for the countries that are adversely affected by our actions. So if import relief had been granted in this case, we would have had a compensation bill, if you will, to be paid to the affected countries. The primary ones, as you can see from your handout materials, would be Taiwan, Korea, Brazil, Spain, and Italy -- those five.

That bill would be in the vacinity of $2 billion that would be one element of the affect on the international economic interest.

The other one, obviously, is simply the question of relationships with our trading partners. Clearly, any country whose exports are adversely impacted by this kind of a decision would not be very pleased with it even if they could obtain compensation in the long fall. And certainly, there would be a significant impact in this case on Brazil which sells in the vacinity of a billion dollars worth of shoes to the United States.

In terms of the -- so first of all, those initial two criteria -- the first two, clearly opt very strongly toward not granting relief.

The others are more difficult in terms of the impact. The question of economic and social costs for taxpayers, communities, and workers is really the question of what's the employment impact or unemployment impact of this kind of a decision? And clearly, the industry that has been affected by imports -- in this case, footwear -- would say in this case that unless relief is granted, we'll have further unemployment in this industry, there'll be more people going out of work, more factories that would close, and, therefore, there is a -- this opts for relief if we're going to help the footwear worker and the footwear firm of America.

One must recognize, however, that there's a flip side to that, too, in that there are jobs involved with exports as well as imports. And to the extent the compensation retaliation factor takes place, we're going to lose some export jobs in order to compensate for any -- we would lose export jobs in order to compensate for any relief granted in footwear. So there are jobs on the export side as well as on the import side and one must evaluate the trade-offs between the two. So that's another factor.

There are also jobs involved with footwear retailing, with small retailers in small town communities who could likewise be adversely affected if relief were granted and the price of shoes went up. They wouldn't be selling as many shoes, of course. So it's a bit difficult to say how that one would balance. Probably it would tilt somewhere toward granting relief.

Finally, the last one is the promotion of structural adjustment by the industry. This one is important, too, because this is really the heart of the case. The whole argument for relief by this or any other industry is that we need breathing space. We need a five-year period in which to make the necessary capital investment to be more productive, more efficient, modernize our plants so that at the end of this structural adjustment period, we will be more competitive in the footwear world.

The idea being that in this particular case the thrust was that if we could bring the cost of footwear in the United States -- the production costs down by about 15 percent, it might be possible for us to again become price competitive and we would have a healthier footwear industry.

Our analysis of this would indicate that that just is not

very likely to occur or at least, to be completely fair to the industry, it is -- simply will not occur to the degree that is prognosticated by the industry itself. My personal judgment is that our footwear industry, by and large, will never by price competitive with imports. Now, that is a generalization, and clearly, some firms will be price competitive, some segments of the industry will be price competitive. One cannot generalize through all facets of the industry. But, basically, we're not going to be a productive -- a strong, productive industry -- we're not going to have a strong, productive industry in footwear simply on the basis of price competitiveness.

The firms, the American firms that have been successful in this industry and are successful today have done so on non-price factors. They've been able to carve out niches in the market that they can fill. By and large, they're sort of the upper middle class segment of the shoe market where they can use production technology very effectively, where they've been able to establish brand loyalty, or where they've been able to sell on the basis of quality or service or other factors of this nature that permits them to carve out that niche. And it hasn't been because they've been price competitive.

So our judgment is that the granting of relief over the next five years would probably help only in a very modest way to permit this industry to restructure and become more competitive; that at the end of the five-year period, irrespective of the relief that were granted, the industry would not be much more competitive than it is today.

Summarizing then, it seems to me that the first two factors, consumer cost and the impact on -- or international economic relationships, strongly opt against granting relief. The last two probably tilt somewhat toward granting relief, but only modestly so. As I balance those four out, I come out to the same decision that was made by the President. And as I said, obviously, he had to do his own balancing, and whether he evaluated the criteria the same way I did or not, I cannot tell you. But the decision is that there would be no relief.

Now I'll take your questions.

Q Ambassador, does this decision mark the beginning of the end of the American shoe industry?

AMBASSADOR YEUTTER: No, in my judgment, it does not at all. This is not an industry that is on its last legs, by any means. In fact, there are significant segments of this industry that are quite profitable. Over the last few years, a substantial segment of this industry had higher earnings than the average in manufacturing in this country, and that was not withstanding the fact that we went through a recession.

I, personally, believe that a substantial segment of this industry has carved out a very successful -- has successfully carved out a niche that they will be able to preserve, irrespective of import competition.

Q Mr. Yeutter --

AMBASSADOR YEUTTER: Yes, sir.

Q Aside from the fact that U.S. Shoe Corporation just today reported 124 percent increase in profits, mainly because of the low-end soft women shoe market improving, let me ask you a question that deals in a broader sense with what you just said. My understanding was that the shoe decision was going to be used as a vehicle for enunciating somewhat of a broader, tougher trade position. Is this the broader, tougher trade position?

AMBASSADOR YEUTTER: Be patient.

Q What is the --

AMBASSADOR YEUTTER: That's coming.

Q Well, what is it?

AMBASSADOR YEUTTER: That's coming. Well, I'm not going to announce it to you today, obviously, because that's for the President of the United States to do. But the President will be -- the administration, generally, and probably the President, specifically, will be making some statements on this subject within the next two weeks.

Q Is it, therefore, correct to assume, as we have up until now, that the administration, all elements of the administration still haven't reached agreement on it?

AMBASSADOR YEUTTER: Well, this is an issue that demands a great deal of attention and debate and discussion. We have already had three Cabinet level discussions on this particular subject. There will be additional meetings at that level next week. And, hopefully, the reassessment will be completed within the next two weeks, perhaps, and after a very thorough comprehensive analysis of all aspects of our overall trade policy.

It's not -- certainly, there are disagreements within the administration on priorities. That would be expected in any administration at any time. So that's not unusual. That's healthy. But in terms of the overall sense of direction, I really believe that there is substantial uniformity, if not total uniformity, within the Cabinet which is clearly sensitive to the President's own basic principles in this area.

Now, that has to get translated into the handling of individual issues, which is a different matter -- one, it's going from the macro to the micro -- becomes more difficult. But I really believe the overall sense of direction is fixed and will be fully articulated by the President in due time.

Q Well, in sense of direction --

AMBASSADOR YEUTTER: I'd better take some more questions.

Q Just let me -- let me just follow up very briefly.

AMBASSADOR YEUTTER: Okay.

Q In sense of direction, that means concentrating on individual cases or individual industries, is that right, rather than a broad policy?

AMBASSADOR YEUTTER: No. We're talking -- I'm talking here about a much broader policy that will have -- clearly have implications as to how those individual cases are handled. But the reassessment that is underway is a very broad one encompassing all facets of our overall trade policy.

Yes, sir.

Q Could you elaborate a little more about the President's intention in exercising his power under the 301 clause?

AMBASSADOR YEUTTER: Well, I haven't said anything about exercising power under 301 today except for what is in the statement. There's simply one sentence there that alludes to the need to respond in a vigorous way to the unfair trade practices of other nations. That's really the message that is encompassed in that particular sentence and, clearly, the method for doing so or the technique for doing so under American law is through the use of what is called

Section 301 of the Trade Act.

As the statement indicates, the President has asked me as U.S. Trade Representative to initiate some specific investigations in this particular area, and those will be articulated more fully a few days from now.

Q I suppose you know that this decision is going to make a lot of people on Capitol Hill very unhappy and already they're saying that, by this decision, you're leaving it up to Congress to do anything about import problems. They feel this is a slap in the face and that you've already had this 301 power, I believe, for about eleven years and they think, well, if they haven't done anything in eleven years, they're not going to do anything now. How are you going to counter this when Congress gets back?

AMBASSADOR YEUTTER: Jean, the statement, itself, should counter any arguments to that effect with respect to Section 301. In other words, that should be clear from the one sentence that is encompassed in this press release today and will become even more clear over the next couple of weeks. So the 301 question will be fully answered in due time.

With respect to 201, which is this particular case, I would hope that the Congress would be more preceptive than that -- than what you have alluded to. This is not the end of Section 201 in my judgment. This was an unpersuasive Section 201 case. If a persuasive Section 201 case were articulated through the U.S. ITC to the President, I have no doubt that the President would act accordingly. But the burden of persuasion is strong because he is a strong believe in the principles of free and open trade, as this case indicates. I am a strong believer in the principles of free and open trade as well.

But this is not to say that Section 201 has been extricated from the laws of the land, as some members of the Congress may suggest in the aftermath of this case. They really ought to go back and look at -- go through the analysis I just gave you with respect to the criteria involved and ask themselves whether they would have made a different decision had they been sitting in the chair of the President of the United States.

Q More particularly about the Congressional unhappiness, there are going to be a flurry of footwear bills introduced, as you probably know. Some of them have already been. There will be an effort probably to attach them to other bills which are already underway -- trade bills. Is the administration concerned about this, and what will they do when those bills come to you?

AMBASSADOR YEUTTER: Well, that depends on the content of the bills, of course. Obviously, one cannot judge a hypothetical. But if the bills are sheer protectionism, the probabilities of a veto are obviously very high. The President has effectively articulated his basic principles in this case. He has done so consistently over the past four and a half years. He will do so again as we provide you with a reassessment of our overall trade policy in the relatively near future. And so it seems to me that the basis for the President's decision ought by now be quite obvious. That is, the basis for his decision-making deliberations.

Now, as to a particular case, though, you have to tell me what the bill will say.

Q Let's say a footwear bill which Senator Cohen is going to promote or --

AMBASSADOR YEUTTER: Well, I'm not sure what the footwear bill will say.

Q Well, a five-year quota plan which is what he's --

AMBASSADOR YEUTTER: It is unlikely that that would be greeted with any more enthusiasm than this. And I would hope that the Congress would evaluate the work that has been done on this particular case and then draw its own conclusions -- not based on emotion, but based on objective analysis of what there is to be gained by granting relief to this industry. In other words, will the objectives of that legislation really be accomplished? Votes -- if it's to be purely on that basis, that's another matter. But it seems to me if they want to be at all statesman-like, they ought to evaluate the issue on an objective basis.

Yes, sir.

Q Is there any tariff option considered in this case?

AMBASSADOR YEUTTER: There were a number of options considered in this case, one of which was tariffs.

Q Could you describe the economic research into that option?

AMBASSADOR YEUTTER: Well, there was a lot of deliberation of all the options. I find it hard to say -- to comprehend what you really mean by economic research. But, clearly, the administration spent a lot of time on this case on an interagency basis. So there were several options that were thoroughly explored, including that particular option.

But in terms of economic research, I really can't be very responsive to that because I'm not sure what you mean by the term.

Q Well, did the President decide this on the basis of either quotas or what you've just announced or did he decide this with a tariff option that you haven't told us more about?

AMBASSADOR YEUTTER: It seems to me that describing the options is not of any great relevance at this point in time. But the answer to your question is that the final options that were presented to him included quotas -- that is, the option that had been prescribed by the U.S. ITC -- that must be presented to him by law -- the option of deciding as he did today, and the third option was a tariff option.

Q Does the President propose to make additional money available under the Jobs Partnership Act, Job Training and Partnership Act for the training of shoe workers?

AMBASSADOR YEUTTER: The language in the statement will really have to stand on its own in that regard. I do have a representative of the Labor Department here, though. If you'd like him to embellish upon that, I would be happy to have him come up and do so.

This is Mr. Columbo.

MR. COLUMBO: There are no plans at the moment that I'm aware of to increase the amount of money available under the Job Training Partnership Act. Title III does provide $222,500,000 this year for dislocated workers and that money could be used to serve these individuals.

Q How much has been used already of that money?

MR. COLUMBO: Well, the program year started July 1. 75 percent of the funds goes out to the states and they make the decision on the use of the funds. 25 percent is reserved by the Secretary. That's $55,250,000. Very little of that has been committed yet.

Q Senator Danforth is talking not only about particular quotas and so on, but revising the whole escape clause mechanism. Perhaps -- I don't think he said this specifically -- but perhaps to make a 201 recommendation mandatory. What would you think of that?

AMBASSADOR YEUTTER: Well, I would hope that the Senator would reconsider that particular proposal. I've discussed this at some length with him as recently as within the past 24 hours, and we've discussed this case at considerable length. He clearly does not wish to do anything that would be unreasonable and irrational. He's an outstanding Senator, extremely interested in international trade, very knowledgeable, and very committed to the 201 and 301 processes. So I don't expect him to do anything that wouldn't -- would not make good sense.

He is disappointed in the outcome of this case for a number of reasons, as might be expected. Footwear is a major industry in the state of Missouri. But at the same time, I hope he comprehends now, as a result of our discussions not too many hours ago, that this is not the end of Section 201; that our judgment -- that is, the President's judgment based upon recommendations of the Cabinet -- was that this was not a persuasive Section 201 case. It is not because -- the decision was not made simply to write 201 out of the law.

Q You don't feel that changing 201 to make it mandatory would be a rational change?

AMBASSADOR YEUTTER: No, I do not, simply because I'm not a believer in rigid legislative propositions, particularly in the area of international trade. I've said this with respect to the textile bill and a lot of other legislation. I just simply do not believe that one can effectively legislate in an area that is as complex and ever-changing as international trade. Therefore, it is imperative to allow flexibility to the Executive Branch of government in areas such as Section 201.

Yes, sir. We're going to go in the back for a change. Yes.

Q Mr. Ambassador, does the decision today mean that footwear is not likely to be a 301 candidate in a week's time or --

AMBASSADOR YEUTTER: Oh, I would think it would be most unlikely that footwear would be a Section 301 candidate because there was no evidence of unfair trade practices surfaced during the deliberations on footwear.

Q What message does this send to our trading partners about the administration's overall trade policy, in general? What would you like them to read into this?

AMBASSADOR YEUTTER: Well, they'll get a more definitive message, of course, in a couple of weeks as we complete the reassessment of the overall trade policy. But if I can try to be responsive to your question and zero in on what is here today, I believe it says two things -- one, that this is not a protectionist nation, and that as far as the administration is concerned and the President of the United States is concerned, we are not going to go the protectionist route;

that even though times are tough for our import-sensitive industries, the President has a great deal of empathy for that, an understanding of that situation.

We know that import-sensitive industries such as footwear are under substantial stress, but notwithstanding that, the President feels very strongly that the answer to any problems of the footwear industry has, or that any other import-sensitive industry has, do not lie within the concept of protectionism. That that, at best, provides short term relief. In the long run it will be detrimental even in the interest of those specific industries, clearly detrimental to the interest of the United States as a whole -- and very, very costly. So, we are not going to go the protectionist route. That's number one message.

The second message, however, relates to the fair trade part of this argument and, as you know, there's been some criticism of the administration for not having been more vigorous and aggressive in responding to the unfair trade practices of other nations. It would seem to me that just the one line that has a reference to Section 301, should sent a signal to the rest of the world that those days, if they were ever here before, are now long gone. That is, we we will in the future be very aggressive in defending, articulating, and pursuing the interest of the United States in the face of unfair trade practices of other nations.

Let me go over to the left.

Q One of the problems in the shoe industry that's been raised by a number of members of Congress has to deal with the profile of the industry itself -- concentrated in small towns, rural areas, large proportion of the workers older, largely older women. How are they going to benefit from the Job Partnership Training Act being used?

AMBASSADOR YEUTTER: The adjustment process for some of those folks will obviously be a very difficult one. There are a substantial number of people in the footwear industry who are not well educated and, as you point out, who do come from rural areas and therefore do not have a great deal of geographic mobility and a good many of them are women with family obligations. I assume, that would also make it somewhat difficult for them to shift to other geographic areas for work.

Nevertheless, that does not mean the problem is an impossible one to deal with. It seems to me that calls for creative activity in the provision of relief for them under the Job Training and Partnership Act and hope that occurs. And at the same time, I would add that there is certainly nothing in this decision that should indicate that all of those firms are going to go out of business.

I'm convinced that a good many of those relatively small firms can succeed and will succeed if they do carve out the market niche that I'm talking about. There are a lot of successful relatively small firms in the footwear industry, and with top-flight management, creativity and marketing programs, solid selling activities, and indentification of market niches some of those firms that are located -- not just some -- a good many of those firms that are located out in the rural areas are going to do very well indeed. Some will not, there clearly will be some attrition in this industry irrespective of whether or not relief is provided.

In a capitalist society we do not have all survivors. We are going to have some firms in this and in all other industries in the United States that will not survive and an adjustment then becomes a fact of life. And hopefully, we can deal with that in a compassionate way and in a comprehensive way. But clearly we're not going to -- the government of the United States is not going to guarantee a job for everyone in this country, no matter what the

economic circumstances.

One more in the back, the lady in the back.

Q Do you have an estimate on the number of workers that you expect to be misplaced by this decision as far as your attrition waiver?

AMBASSADOR YEUTTER: My judgment is that the additional attrition will not be terribly high. That obviously is a matter of conjecture because there is no way for any of us to know what will happen over the next five years in the footwear industry. That depends on macroeconomic conditions, the strength of the dollar, tax issues, the strength of our own ecomony, consumer confidence and another twenty criteria that could be used to evaluate that question.

But if I simply looked at the static state of this industry and make my own projections as to what the dynamic world of footwear would look like over the next five years, my personal prognostication would be that it will not change a lot, irrespective of whether relief is or is not granted. So, I do not anticipate a high mortality. You are going to have some people who say that the footwear industry is going to go down the tubes in the United States and the U.S. will no longer be a producer of footwear. I do not believe there is any chance of that happening. And one reason, of course, is because there are a lot of firms in this industry that are doing very well. They're generating enough profit to be able to do the capital investments that they need and do the marketing plans and so on. This is not a low-earnings industry.

Yes, sir.

Q There are a lot industries that are being hurt by imports right now that could come in for relief requests in the near future. You gave the criteria for why the shoe industry did not qualify for relief, what kind of criteria would probably make it likely that a company -- industry would get relief, if anyone?

AMBASSADOR YEUTTER: Well, the criteria there, we spent a lot of time on them and in each case, obviously, the administration and the President will evaluate the application of those criteria. So, you have to give me a specific case, and obviously we can't do that today because that requires a U.S. ITC investigation on a lot of data. But the criteria will remain the same unless they are changed by the Congress and is simply an application of those same four criteria to whatever situation ensues.

Q What if you are wrong?

MR. PETROSKEY: Two more questions.

AMBASSADOR YEUTTER: Let me go back to the middle -- I'm sorry, then I'll come back to you next.

Q When Congress --

MR. PETROSKEY: Two more --

AMBASSADOR YEUTTER: Two more -- okay, that one and this one.

Q When Congress changed the trade laws last year many of those changes were made specifically with the footwear case in mind. Doesn't this just flat-out rejection of either quotos or tariffs for footwear leave you vunerable to a whole series of far more restrictive protectionists actions on a lot of other things -- textiles, apparel, right across the board?

AMBASSADOR YEUTTER: That's a decision that will have to be made on Capitol Hill over the next few weeks. I would hope that

we have elected people to Congress in the United States who will conduct themselves in a responsible, statesman-like way and who will look at these issues in that light. If they do, we'll avoid a lot of protectionist legislation because they will determine on their own that this is not in the best interest of the United States.

Now, to get back to the implications of this case, simply because the Congress last year said to the U.S. ITC, go back and take another look and see if you can find injury because you couldn't find it last year, does not say to me that the President of the United States should prostitute his decision-making process in determining, in the national economic interest, the criteria established in the law. The President of the United States has an obligation to define those criteria -- define the application of those criteria to a particular case in the best way he can and to do so with integrity and credibility.

I believe that was done in this case, and in my judgment there is no doubt as to how that case should have been decided by the President of the United States based upon those criteria. The President did the right thing and in my particular judgment there were compelling reasons for the President to have made the decision that he did. So, I would hope the Congress realizes that.

One more.

Q Just in case you could be wrong, how absolute is your commitment to this stance? If particularly in the footwear and on other cases, if three years from now you see nothing but ruins, in this industry and elsewhere, what is your threshold of pain? Where does that stop?

AMBASSADOR YEUTTER: One has to attempt to reach reasonable rational decisions in all these cases. That's what judgment is all about. And one must do that objectively and thoroughly and I believe we did that on the fact situation that was before us in this particular case. If the fact situation is completely different three years from now, I would unhesitatingly recommend a different result to the President of the United States, and in my judgment the President will unhesitatingly alter his decision. He will not alter his principles, but he may well make a different determination on a different set of facts.

Okay, thank you all.

2:40 p.m. EDT

THE WHITE HOUSE

WASHINGTON

August 23, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Letter from Senator Kasten and Representative Sensenbrenner Concerning West Bend v. United States

Senator Kasten and Congressman Sensenbrenner wrote Ed Rollins to demand a review of the handling of West Bend v. United States. Rollins sent an interim reply and referred the incoming to our office.

You are familiar with the unfortunate imbroglio concerning West Bend v. United States, and the erroneous Federal Register publication of a Presidential determination in that case. Briefly, West Bend, a Wisconsin company, imported hot-air popcorn poppers from Hong Kong, and sued the United States in the Court of International Trade to recover duties paid during a one-year period (March 30, 1980 - March 30, 1981) when the poppers were not listed as entitled to duty-free entry. The Court, in a troublesome order, directed USTR to investigate and the President to determine under 19 U.S.C. § 2464(d) whether a product competitive with the poppers was manufactured in the United States on January 3, 1975. Before amendment last fall, 19 U.S.C. § 2464(d) provided for duty-free treatment if the President determined that no competitive products were produced in the U.S. on that date. USTR prepared a determination that competitive products were produced in the U.S. on January 3, 1975, and erroneously published that in the Federal Register.

In the interim, 19 U.S.C. § 2464(d) had been amended, to change the operative date to January 3, 1985, so that when the President's determination appeared in the Federal Register it was not only unauthorized but legally meaningless. Justice attorneys handling the case reported the error to the Court. The plan is now for USTR to prepare a determination under the amended 19 U.S.C. § 2464(d), with respect to January 3, 1985, that contains a recital of facts with respect to January 3, 1975. It is hoped that this will satisfy the Court. In the meantime, the Government has moved for summary judgment on unrelated legal grounds.

For present purposes, it is enough to note that this is a particular matter pending before the courts, and accordingly the White House should generally not interfere in the Justice handling of the case. The problem, of course, is that in this case the court has dragged the White House into the case, by hinging it on a Presidential determination under 19 U.S.C. § 2464(d). The reply to the Congressmen cannot, accordingly, be as haughty as our usual "we don't get involved" reply. Whether we like it or not, we -- and the President -- are directly involved in this particular pending litigation. The attached draft simply advises that we cannot comment on the course of the litigation, and that the USTR review under 19 U.S.C. § 2464(d) -- all the parties are aware of it -- is not yet complete.

Attachment

THE WHITE HOUSE

WASHINGTON

August 23, 1985

Dear Bob Kasten:

Your letter of July 26 to Ed Rollins concerning West Bend v. United States was recently referred to this office for consideration.

West Bend v. United States is currently pending before the United States Court of International Trade. Pursuant to established White House policy, we will not comment on particular matters pending before the courts. The views of the Government in that litigation have been presented by the Department of Justice.

In connection with that litigation, the United States Trade Representative is conducting a review of the appropriate treatment of hot air popcorn poppers under 19 U.S.C. § 2464(d). That review is not yet complete.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

The Honorable Robert W. Kasten, Jr.
United States Senate
Washington, D.C. 20510

bcc: Ed Rollins
FFF:JGR:aea 8/23/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

August 23, 1985

Dear Congressman Sensenbrenner:

Your letter of July 26 to Ed Rollins concerning West Bend v. United States was recently referred to this office for consideration.

West Bend v. United States is currently pending before the United States Court of International Trade. Pursuant to established White House policy, we will not comment on particular matters pending before the courts. The views of the Government in that litigation have been presented by the Department of Justice.

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Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

The Honorable F. James Sensenbrenner, Jr.
United States House of Representatives
Washington, D.C. 20515

bcc: Ed Rollins
FFF:JGR:aea 8/23/85
bcc: FFFielding
JGRoberts

ID# 336449 CU

TP004109

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) [redacted]

Name of Correspondent: Robt. Barnes & 7 Others Senatorenner, Jr.

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

Subject: West Bend v. United States

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Central		ORIGINATOR	85/08/12			/ /
		Referral Note:				
Cent 18		D	85/08/13		S	85/08/23
		Referral Note:				
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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: Aug 6 85 John Roberts memo attached

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.
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THE WHITE HOUSE

WASHINGTON

August 6, 1985

MEMORANDUM FOR JOHN G. ROBERTS

FROM: JOHN ROBERTS

SUBJECT: WEST BEND V. UNITED STATES

Per our telephone conversation yesterday, I am forwarding the joint letter from Senator Kasten and Representative Sensenbrenner regarding USTR and the West Bend Company.

We have sent an acknowledgement letter to each of the signatories indicated that the matter has been forward to Counsel for further consideration, and noting that you will be in touch with them directly.

Thanks for your advice and assistance.

Attachments: as stated

ROBERT W. KASTEN, JR.
WISCONSIN

United States Senate

WASHINGTON, D.C. 20510

336449

July 26, 1985

The Honorable Ed Rollins
The White House
490 O.E.O.B.
Washington, D.C. 20500 Attention: Mr. Haley Barbour

Dear Ed:

We are greatly concerned about a matter brought to our attention by The West Bend Company, Division of Dart Industries Inc., a manufacturer of home appliances located in West Bend, Wisconsin, and employing over 1,500 Wisconsonites. It involves a determination which President Carter was supposed to make by law, and which President Reagan was asked to make by the Court of International Trade.

An unusual discrepancy was recently discovered. It deserves your scrutiny. On May 21, 1985, a Federal Register notice, published at 50 Fed. Reg. 21,006 , copy attached, announced that the President had made a determination. In fact, the Government has now conceded that he did not decide the matter and the Federal Register notice was "inadvertent."

By way of background, West Bend began to import in the late 1970's hot-air popcorn poppers, a newly patented product which was invented in 1978. Hot-air poppers were entitled to duty-free entry under Generalized Systems of Preference (GSP) when West Bend first started importing them. Then, in President Carter's 1980 GSP Executive Order, the applicable tariff item was deleted from the GSP list with regard to Hong Kong.

West Bend protested the deletion because hot air poppers were not like or directly competitive with any product manufactured in the United States on January 3, 1975, and the statute (504(d) of the Trade Act of 1974, 19 U.S.C. 246(d)) provided an exemption from delisting. The poppers were restored to GSP in 1981 and remained GSP eligible. Since 1983, the West Bend Company has been manufacturing these poppers only in the United States, at West Bend, Wisconsin.

The Court of International Trade agreed with West Bend that no proper Presidential determination had been made in 1980. It remanded the matter so that the United States Trade Representative's Office (USTR) could investigate the matter and report their findings to the President for a decision by him.

Last fall, the USTR, and at its request the International Trade Commission (ITC), held hearings and developed an extensive record. The testimony presented at the hearing overwhelmingly agreed with West Bend's position that there was no like or directly competitive article manufactured in the United States in 1975. Attached is an Executive Summary drawn from the evidence in the record. Also enclosed is the related public portion of the ITC report and the transcript of the hearing at the USTR, both of which are wholly consistent with West Bend's summary.

When the Federal Register notice appeared on May 21, 1985, we were dismayed to discover it did not seem to coincide with the public hearings and reports. You can imagine, then, our shock when we learned a few days ago, because of admissions made by the Department of Justice to the Court of International Trade, that the President did not, in fact, consider the matter, and therefore, that the remand has not been completed. All this raises significant concerns related to the handling of this issue.

Given the circumstances of this matter, we urge that you look into it from both a procedural fairness and a substantive standpoint. The West Bend company would be happy to visit with you or anyone on any part of the matter. We think that given the strong record supporting West Bend's position, the President should find that there were no products produced domestically on January 3, 1975, which were like or directly competitive to hot-air popcorn poppers.

Ed, without relief, The West Bend Company could lose approximately $1 million. There is no evidence that the facts were reviewed by policy level people in the White House and we would hope that that would occur at this time. We look forward to hearing from you soon.

Best regards,

Robert W. Kasten, Jr.

F. James Sensenbrenner, Jr.

RWK/FJS/plm

John G. Roberts -
FYI

August 6, 1985

The Honorable Robert W. Kasten
United States Senate
Washington, D. C. 20510

Dear Senator:

I want to thank you for bringing to my attention the facts concerning West Bend v. United States.

I have forwarded the information you provided to the Counsel's office for a thorough review. I am certain that they will be in touch with you directly regarding this case.

Please do no hesitate to let me know if I can be of further assistance.

Sincerely,

Edward J. Rollins
Assistant to the President
for Political and
Governmental Affairs

August 6, 1985

The Honorable F. James Sensenbrenner, Jr.
U.S. House of Representatives
Washington, D. C. 20515

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