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THE WHITE HOUSE

WASHINGTON

December 30, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Japan/U.S. Trade

Senator Bradley has written Mr. Regan to complain about the Justice Department filings as amicus curiae in Matsushita v. Zenith, which was argued before the Supreme Court on November 12. You may recall that the Chairman of Zenith wrote Mr. Regan with the same complaint in October. A copy of the memorandum I wrote for you at that time, summarizing the case and the position of the Solicitor General, is attached for your information.

I see no reason to debate Justice's position with Bradley; I would leave that to Justice, if anyone. A standard "pending litigation" response is attached for your signature, as is a brief memorandum for Regan, explaining the proposed response.

Attachment

THE WHITE HOUSE

WASHINGTON

December 30, 1985

MEMORANDUM FOR DONALD T. REGAN
CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Japan/U.S. Trade

You have asked for my views on a response to the attached letter from Senator Bradley to you, complaining about the position taken by the Solicitor General as amicus curiae in Matsushita v. Zenith. In that case, the Solicitor General argued that certain Japanese television manufacturers should not have been subject to a private antitrust suit, because the challenged conduct was compelled by the Japanese government. This "sovereign compulsion defense" is available in private antitrust suits, but not in suits brought by the United States.

It is our usual policy to avoid discussing the merits of particular cases involving the United States that are pending before the Supreme Court. The positions of the Government in such cases are formulated by the Department of Justice, and the arguments are articulated in the briefs. Our policy of avoiding discussion of particular pending cases helps preserve public confidence in the impartial administration of the laws, provides some distance when, for legal reasons, Justice must take politically unpalatable positions, and avoids jeopardizing the normal litigation process. A copy of a proposed reply to Senator Bradley, for my signature, is attached.

Attachment

FFF:JGR:aea 12/30/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

December 30, 1985

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 12/30/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

December 30, 1985

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

FFF:JGR:aea 12/30/85
bcc: FFFielding
JGRoberts
Subj
Chron

**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

O - OUTGOING

H - INTERNAL

I - INCOMING

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

JR-

Name of Correspondent: Senator Bill Bradley

MI Mail Report

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

Subject: Japan / US Trade

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>CS REGA</u>	ORIGINATOR	<u>85112104</u>		<u>0</u>	<u>8512104</u> ^{TR}
<u>✓ CUFIEL</u>	<u>A</u>	<u>85112104</u>			<u>1/1</u>
<u>@WAT18</u>	<u>D</u>	<u>85112106</u>	<u>See Mr. Regan's note</u>		<u>85112116</u> ^{cs}
		<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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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.

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

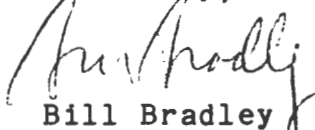
Dear Mr. Regan:

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 7, 1986

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Determination
Regarding Japanese Leather

This determination should not go forward in its present form. The determination announces acceptance of compensation from Japan, and the withdrawal of concessions on Japanese products. The significance of the latter is that it permits an increase in tariffs on certain Japanese goods. This increase must be effected by Presidential proclamation. The determination and proclamation should be simultaneously issued. I have discussed this with USTR, which agrees and which will submit a new package, a combined determination and proclamation, within a few days.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: David Chew

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

Subject: Presidential Determination re: Japanese leather.

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Routing Date YY/MM/DD	Type of Response	Completion Date YY/MM/DD
<u>CUHOLL</u>	<u>ORIGINATOR</u>	<u>86101106</u>		<u>1/1</u>
	Referral Note:			
<u>CUAT 18</u>	<u>R</u>	<u>86101106</u>	<u>S</u>	<u>86101107</u>
	Referral Note:			<u>C.O.B.</u>
		<u>1/1</u>		<u>1/1</u>
	Referral Note:			
		<u>1/1</u>		<u>1/1</u>
	Referral Note:			
		<u>1/1</u>		<u>1/1</u>
	Referral Note:			

ACTION CODES:

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

DISPOSITION CODES:

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- D - Completed
- B - Non-Special Referral
- S - Suspended

FOR DUTYING CORRESPONDENCE:

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

Comments: _____

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 Always return completed correspondence record to Central Files.
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WHITE HOUSE STAFFING MEMORANDUM

DATE: 1/6/86 ACTION/CONCURRENCE/COMMENT DUE BY: C.O.B. 1/7/86

SUBJECT: PRESIDENTIAL DETERMINATION RE JAPANESE LEATHER

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	POINDEXTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MILLER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
BUCHANAN	<input type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CHAVEZ	<input type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/>	<input checked="" type="checkbox"/>	STEELMAN	<input type="checkbox"/>	<input type="checkbox"/>
DANIELS	<input type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	THOMAS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HENKEL	<input type="checkbox"/>	<input type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
HICKS	<input type="checkbox"/>	<input type="checkbox"/>	CLERK	<input type="checkbox"/>	<input checked="" type="checkbox"/>
KINGON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
LACY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Please provide any comments/recommendations by close of business on Tuesday, January 7th. Thanks.

RESPONSE:

•THE UNITED STATES TRADE REPRESENTATIVE

WASHINGTON
20506

December 24, 1985

MEMORANDUM TO THE PRESIDENT

From: Ambassador Clayton Yeutter *Clayton Yeutter*
Subject: Presidential Determination to Impose Specified
Tariff Increases

Mr. President, on November 21 the Economic Policy Council sent you a memorandum recommending specified tariff increases against Japan if we were unable to reach a satisfactory settlement by December 1 concerning its unfair trade practices on leather and leather footwear. Through intensive negotiations, we have settled this dispute. Our agreement is for Japan to provide \$236 million of compensation, and for the United States to withdraw \$24 million of trade concessions. The trade concessions we will withdraw are on Japanese imports into the United States of the products on which Japan maintains the import quotas that were the subject of our case. Therefore, attached for your signature is a Presidential Determination reflecting this decision to increase tariffs.

Following this Determination, we will transmit a Presidential Proclamation to implement the withdrawal of concessions.

THE WHITE HOUSE

WASHINGTON

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 to accept compensation from the Government of Japan and also to withdraw certain concessions in order to resolve this case. In that regard, I have determined that the global quotas maintained by the Government of Japan on imports of leather and leather footwear deny benefits to the United States arising under the General Agreement on Tariffs and Trade (GATT), are unreasonable and constitute a burden and restriction on U.S. commerce. I will therefore accept compensation to restore the balance for the major portion of this case and proclaim an increase in duties on imports from Japan. ?

Reasons for Determination

In 1973, the United States initiated a Section 301 investigation after receiving a petition from the U.S. Tanners Council alleging that Japanese tariffs, quotas and administrative practices concerning leather imports effectively denied U.S. exporters access to the Japanese market. After bilateral discussions with the Japanese Government failed, the United States requested formation of a panel under Article XXIII of the General Agreement on Tariffs and Trade (GATT) and threatened preemptive retaliation. In early 1979, we reached an agreement with Japan in which Japan promised to: (1) give U.S. exporters a specified number of quota licenses; (2) provide the names of the quota holders, and (3) expand the quota on wet blue, finished and upholstery leather. We believed at that time that these measures would improve our access to the Japanese market. In 1982, however, the United States refused to extend the agreement. We noted that the U.S. industry was still unable to penetrate the Japanese market because of the lack of transparency of the Japanese administrative system, the deterrence imposed by the very low level of quotas to the significant marketing efforts by U.S. firms, and the high leather tariffs. Instead, we reinstated our GATT complaint.

In 1984 a GATT panel found that Japan had violated Article XI of the GATT. The panel further determined that the illegal quota had damaged U.S. exports. Subsequent to the adoption of the GATT panel report, the Japanese Government: (1) reduced the tariff on semi-finished leather to zero; (2) promised to liberalize the allocation of the quota on semi-finished leather; and (3) agreed to publish the level of the quota on a regular basis. The tariff reduction on semi-finished leather imports has been of modest value to the U.S. industry, because it affects only a miniscule portion of their exports to Japan. Additionally, the publication of the level of the quota, while useful information, has not aided U.S. leather exporters in increasing their sales. U.S. exporters remain substantially excluded from the Japanese market and there is no prospect that this situation will change in the foreseeable future.

In December 1982, we initiated a Section 301 investigation based on a petition filed by the Footwear Industries of America, et al which included allegations that the quota and administrative practices maintained by the Government of Japan with respect to leather footwear imports effectively denied U.S. footwear exporters access to the Japanese market. Although there has been no GATT panel finding with respect to the leather footwear quota, it is identical to the leather quota which has been found by a GATT panel to be inconsistent with Article XI of the GATT. The Japanese have taken no steps to liberalize or eliminate the footwear quota.

On September 7, 1985, I announced that I would take counter-measures against Japan unless a satisfactory settlement of our complaint was reached by December 1, 1985.

On September 23, 1985, the Government of Japan notified the GATT Secretariat of its intention to enter into negotiations pursuant to Article XXVIII:5 of the GATT in order to modify or withdraw its tariff concessions on leather and leather footwear imports. The Government of Japan has notified the GATT of its intent to enter into Article XXVIII:5 negotiations so that it can remove its global quotas on leather and leather footwear imports and replace the quotas with new tariff measures.

The United States has agreed to accept \$236 million of compensation and will withdraw \$24 million of trade concessions that together will satisfy the United States fully for trade damage caused by import restrictions on leather and leather footwear. The settlement involves tariff reductions on \$2.3 billion worth of U.S. exports to Japan in 1984. The settlement will increase opportunities for American producers to sell products in Japan. This is far preferable to protectionist measures that would restrict imports without increasing U.S. exports.

This determination shall be published in the Federal Register.