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WITHDRAWAL SHEET

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Collection Name COBB, TYRUS (NSC): FILES

Withdrawer

LOJ 1/29/2007

File Folder CANADA 1985 (10/01/1985-10/08/1985)

FOIA

F1559

Box Number ~~90901~~ RAC Box 1

ENGLISH

15

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
33259	MEMO	COBB TO MARTIN AND MILLER R 3/1/2013 F1559/1	2	10/1/1985	B1
33260	CABLE	201500Z SEP 85 R 3/1/2013 F1559/1	1	9/20/1985	B1
33261	LETTER	REAGAN TO PM MULRONEY R 3/1/2013 F1559/1	1	10/2/1985	B1
33262	MEMO	ROBERT C MCFARLANE TO THE PRESIDENT, RE EXCHANGE OF LETTER R 2/22/2016 F1559/1	2	10/1/1985	B1
33263	LETTER	DRAFT REAGAN TO MULRONEY R 2/22/2016 F1559/1	1	ND	B1
33282	MEMCON	SAME AS 33258 R 3/1/2013 F1559/1	3	9/26/1985	B1
33283	MEMO	SAME TEXT AS 33262 (DATES CHANGED) R 2/22/2016 F1559/1	2	9/27/1985	B1
33284	LETTER	DRAFT OF 33261 R 3/1/2013 F1559/1	1	ND	B1
33285	LETTER	DRAFT FROM MULRONEY TO REAGAN R 2/22/2016 F1559/1	2	9/26/1985	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

B-3 Release would violate a Federal statute [(b)(3) of the FOIA]

B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]

B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]

B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]

B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]

B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name COBB, TYRUS (NSC): FILES

Withdrawer

LOJ 1/29/2007

File Folder CANADA 1985 (10/01/1985-10/08/1985)

FOIA

F1559

Box Number 90901

ENGLISH

15

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
33286	MEMO	COBB AND DANZANSKY TO MCFARLANE, RE EXCHANGE OF LETTERS R 2/22/2016 F1559/1	1	9/27/1985	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

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C. Closed in accordance with restrictions contained in donor's deed of gift.

COBB

7613

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

Canada

October 1, 1985

ACTION

MEMORANDUM FOR ROBERT C. MCFARLANE

FROM: STEPHEN I. DANZANSKY

SUBJECT: Legal Opinion re President's Obligations on
Commencing Bilateral Negotiations with
Canada

You responded to my memo of September 25 (Tab II) by requesting that we forward a legal opinion addressed to you from USTR to Donald Regan.

Enclosed is the opinion (Tab A) and a cover memo to Regan (Tab I).

RECOMMENDATION:

That you sign the memorandum to Secretary Regan at Tab I.

Approve _____ Disapprove _____

Attachments

- Tab I Memo to Secretary Regan
- Tab A USTR Memo
- Tab II Danzansky/Cobb Memo of September 25

cc: Ty Cobb

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR DONALD T. REGAN

FROM: ROBERT C. MCFARLANE

SUBJECT: Free Trade Negotiations with
Canada -- Legal Memorandum

The attached materials (Tab A) were prepared by USTR at our behest to respond to David Chew's request for a legal opinion on the President's legal obligations regarding the notification of Congress before commencing bilateral negotiations with Canada.

These materials were augmented by an opinion from the White House Counsel's office sent directly to David and concurring with the USTR opinion.

Yeutter concludes:

-- The legal requirements for notification provide considerable flexibility as to when we consult with Congress; political realities dictate consultation with the Hill before formal negotiations begin.

-- That despite numerous bilateral irritants in trade relations between the U.S. and Canada, the Members that Yeutter has spoken to seem prepared to draw a distinction between short-term issues and the historic opportunity presented here.

This approach was previously coordinated at the EPC and the legal opinion with State and USTR.

Attachment

Tab A


USTR Memo

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

September 25, 1985

MEMORANDUM

TO: The Honorable Robert C. McFarlane

FROM: Clayton Yeutter 

SUBJECT: Notice and Consultation Requirements Concerning
Canadian Bilateral Trade Negotiations

In response to your request I asked our General Counsel to provide the attached memorandum describing our legal obligations to notify and consult with the Congress prior to entering into a trade agreement with Canada. The obligations are specific since we would undoubtedly submit the agreement under a "fast track" procedure that has been authorized by Congress.

As you can see, we have to send official notifications to the Congress at least 90 days before we enter into an agreement, and we have to give notice to the Senate Finance and House Ways and Means Committees 60 days prior to that. None of this should be a problem, however, since we'll not likely be "entering into," i.e., signing an agreement with the Canadians for at least another two or three years. This will be a lengthy, complex negotiation.

The more relevant obligation is one of consulting with the Senate Finance and House Ways and Means Committees in a manner responsive to the legislative history of these provisions. This has both political and legal implications. Though the legal requirements provide considerable flexibility as to when we consult, political realities would seem to dictate consultation on the Hill before we begin formal negotiations with Canada.

We have suggested to the Canadians that they use "exploratory" language in their written communication from the Prime Minister to the President. I have provided the suggested language to Jim Kelleher, the Canadian Trade Minister. If they use it, and then follow up with a more formal request later, we will have ample flexibility as to when we consult.

If, on the other hand (for their own political reasons), the Canadians choose to send us a formal request this week, I believe we should consult with the Congressional committees on

this matter relatively soon -- probably during the next 30 days. Legally we could slip it more than that; it would be dangerous to do so politically both here and in Canada.

I have already made informal soundings with some of the key players on both committees. Though they are sensitive to the various bilateral controversies now brewing with the Canadians, most seem prepared to draw a distinction between such short term issues and the longer range, historic opportunity that is presented here.

Call me, Bud, if you would like to discuss further.

Attachment

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

September 25, 1985

MEMORANDUM

To: Ambassador Yeutter
From: Alan F. Holmer *AFH*
Subject: Congressional Notification Concerning Canadian Bilateral
Trade Negotiations

You have asked what legal obligations we have to notify the Congress about any bilateral trade negotiations with Canada. This memorandum describes the applicable legal requirements: (1) to notify the House and Senate at least 90 days before entering into such an agreement, (2) to notify the Senate Finance and House Ways and Means Committees at least 60 days prior to the 90-day notice to the Congress, and (3) to keep Congressional trade advisers "currently informed" of trade negotiating objectives. It also describes the legislative history of the Trade and Tariff Act of 1984, which reflects Congress' expectation that the President will consult with the relevant committees before entering into trade negotiations. While there is no clear legal requirement that we notify the Congress before we begin negotiations, we believe that for political and policy reasons, we have no choice but to notify the Congress formally before entering into trade negotiations.

90-Day Notice to the Congress before Entering into an Agreement.

Section 102 of the Trade Act of 1974, as amended, 19 U.S.C. 2112, allows the President to submit agreements to reduce or eliminate barriers to trade to the Congress for "fast track" review. Any trade agreement negotiated with Canada would be so submitted.

Section 102(e)(1) requires the President to notify the House of Representatives and the Senate of his intention to enter into an agreement to be submitted to the Congress under section 102, at least "90 days before he enters into such trade agreement." This means the President cannot sign a bilateral trade agreement with Canada denoting his intention to seek necessary

domestic implementing authority, until 90 days after he has notified the Congress of his intention to sign.

60-Day Notice to and Consultations with the Senate Finance and House Ways and Means Committees.

Section 401 of the Trade and Tariff Act of 1984, 98 Stat. 2948, 3013-15, amended section 102(b) of the Trade Act of 1974 to add a new paragraph (4)(A). This provision allows the President to submit to the Congress, under section 102, trade agreements (with countries other than Israel) that provide for the elimination or reduction of U.S. duties. The preconditions for such submission under section 102 are that: (1) the other country must have requested the negotiations, and (2) the President must provide written notice to and consult with the Senate Finance and House Ways and Means Committees at least 60 days prior to the 90-day notice to the Congress required by section 102(e)(1).

The effect of section 102(b)(4)(A) and (e)(1) is to require 150-day Congressional notice (and consultations with the relevant committees) prior to entering into any bilateral trade agreement with Canada.

Requirement to Keep Congressional Advisers Currently Informed of U.S. Negotiating Objectives.

Section 161(b)(1) of the Trade Act of 1974, 19 U.S.C. 2211 (b)(1), requires the U.S. Trade Representative to keep the officially designated Congressional advisers for trade issues "currently informed on United States negotiating objectives, [and] the status of negotiations in progress" This provision clearly requires that we apprise those advisers of any Canadian bilateral trade negotiations at some point, and arguably could be construed to require advising them prior to entering into negotiations (since negotiating objectives would include entry into negotiations).

Legislative History Suggesting Desirability of Notice and Consultations Prior to Any Negotiations.

In addition to the broad requirements of section 161, the Congress clearly expects notice and an opportunity to consult prior to any trade negotiations, and prudence requires it.

In introducing the conference report on the Trade and Tariff Act (H.R. Rep. No. 1156, 98th Cong., 2d Sess. (1984)), Senator Danforth stated,

Similar authority could be used by the President to negotiate trade agreements with other countries to reduce tariff and nontariff barriers--subject to the approval of the Finance and Ways and Means Committees. (130 Cong. Rec. S13,972 (daily ed. Oct. 9, 1984))

Likewise, Congressman Rostenkowski introduced the report in the House by stating,

[N]o tariff agreement with any other country could be negotiated under the expedited congressional approval procedure without prior agreement of the House Ways and Means and Senate Finance Committees and a congressional consultation period. (130 Cong. Rec. H11,657 (daily ed. Oct. 9, 1984))

Congressman Gibbons added his opinion that,

The provision ... also grants to the President the power to negotiate free trade arrangements with other countries around the world if the President first consults with the Committee on Ways and Means and with the Senate Finance Committee. (130 Cong. Rec. H11,658 (daily ed. Oct. 9, 1984))

From a political perspective, therefore, prudence dictates that we err on the side of caution and initiate consultations prior to entering into negotiations.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

September 25, 1985

INFORMATION

MEMORANDUM FOR ROBERT C. MCFARLANE

FROM: STEPHEN I. DANZANSKY
TYRUS COBB *m*

SUBJECT: Free Trade Negotiations with Canada

*Let's forward
Tab A to Regan
with cover
note.
(Indicate
coord
w/ State
& USTR
& Treas)*

The attached materials (Tab A) were prepared by USTR at our behest to respond to a request by Don Regan for a legal opinion on the President's legal obligations regarding the notification of Congress before commencing bilateral negotiations with Canada. These materials were augmented by an opinion from the White House Counsel's office sent directly to David Chew (Tab B) concurring with the USTR opinion.

The document attached at Tab A is in the form of a memorandum from Clayton Yeutter to you forwarding the USTR General Counsel's opinion. The Yeutter memorandum is highlighted for your review.

Yeutter concludes:

-- The legal requirements for notification provide ~~_____~~ as to when we consult with Congress; political realities dictate consultation with the Hill before formal negotiations begin.

-- That despite numerous bilateral irritants in trade relations between the U.S. and Canada, the Members that Yeutter has spoken to seem prepared to draw a distinction between short-term issues and the historic opportunity presented here.

Attachments

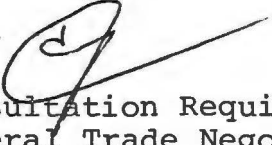
- Tab A Memo from Yeutter
- Tab B White House Counsel Opinion

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

September 25, 1985

MEMORANDUM

TO: The Honorable Robert C. McFarlane

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TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

September 25, 1985

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From a political perspective, therefore, prudence dictates that we err on the side of caution and initiate consultations prior to entering into negotiations.

Received 90
SEP 25 7:50

THE WHITE HOUSE
WASHINGTON
September 25, 1985



MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING 
COUNSEL TO THE PRESIDENT

SUBJECT: Canada-U.S. Free Trade Agreement

You have asked for our views on the requirements for notification of and consultation with Congress prior to the negotiation and conclusion of a free trade agreement with Canada. I understand Prime Minister Mulroney is expected to telephone the President concerning such an agreement tomorrow. I have reviewed the attached memoranda from Ambassador Yeutter and USTR General Counsel Alan Holmer on this subject, and have no legal objection to those memoranda.

I would begin by pointing out that, as a constitutional matter, the President is free to negotiate with other countries without restriction, and submit any necessary implementing legislation to Congress for action. To obtain the desired "fast track" treatment under 19 U.S.C. § 2191, however, the various notification, consultation, and approval requirements must be satisfied. The President must notify Congress 90 days before entering into a free trade agreement, and publish this notification in the Federal Register, 19 U.S.C. § 2112(e)(1), and, at least 60 days before giving that notice, must provide the Senate Finance Committee and House Ways and Means Committee written notice of negotiation of such an agreement, and consult with those committees on the negotiations. 19 U.S.C. § 2112(b)(4)(A)(ii). In addition, a general provision, 19 U.S.C. § 2211(b)(1), requires USTR to keep certain members of Congress "currently informed" on trade negotiations.

In the interest of completeness, I should point out that there is another consultation requirement, not noted in the USTR memoranda, contained in 19 U.S.C. § 2112(c). That provision requires that the President consult with the Senate Finance Committee and the House Ways and Means Committee, and other affected committees, prior to entering into any agreement. This requirement was in the Trade Act of 1974, and may be considered to be redundant or superseded by the more elaborate requirement with respect to these committees added by the Trade and Tariff Act of 1984. Both provisions are still on the books, however, and

19 U.S.C. § 2112(c) refers to the agreement itself, while 19 U.S.C. § 2112(b)(4)(A) refers to the negotiations. Prudence would dictate consulting with the pertinent committees a second time pursuant to 19 U.S.C. § 2112(c), on the agreement, after the consultations required by 19 U.S.C. § 2112(b)(4)(A), on the negotiations.

Strictly speaking, then, there is no legal requirement to advise Congress or the pertinent committees immediately upon Prime Minister Mulroney's call. Notification and consultation is legally required under 19 U.S.C. § 2112 no earlier than 150 days before entering into an agreement, and under 19 U.S.C. § 2211 at some vague point before negotiations progress too far.

Since either the Senate Finance Committee or the House Ways and Means Committee can block fast track treatment, however, 19 U.S.C. § 2112(b)(4)(B)(ii)(II), I agree that prudence may dictate promptly advising Congress of Mulroney's interest.

I understand that the proposal is for Ambassador Yeutter to consult informally with committee members and other members of Congress about Mulroney's interest before commencing negotiations. Formal written notification of the committees would take place if the reaction is favorable, again before commencing negotiations. This is beyond the strict requirements of the law, but I certainly have no objection to the proposed course of action.

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3

7809

~~CONFIDENTIAL~~
NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

~~CONFIDENTIAL~~

October 1, 1985

INFORMATION

MEMORANDUM FOR WILLIAM F. MARTIN
JONATHAN MILLER

FROM: TYRUS W. COBB *AW*

SUBJECT: Considerations for Austrian-Canadian Visits

Earlier in response to Helene's latest cable, you asked what the status was of the visit of Austrian Chancellor Sinowatz. In brief:

- Helene has lobbied for over a year now to get this visit. She received mild encouragement from George Shultz and presumably a firm commitment from Bud that we would pursue this request.
- State did not include Sinowatz on its first half of 1986 visits. Helene cabled that this appeared inconsistent with our commitment and would "make Sinowatz feel betrayed while he faces mounting problems at home."
- Bill Martin PROFFED me a note 9/23 stating that he had talked to Brunson McKinley about this while Bud was Austria. Brunson said Austria was "at the top of the list." Bill said we should propose Sinowatz. Given all this we probably should put Sinowatz on the early '86 visit schedule. (Latest cable from Helene attached at Tab A.)

While we are on the subject, we should also address the question of Canada. As you know, the President and the Prime Minister made a mutual commitment to annual visits. State in their first half 1986 recommendation did not include Mulroney on the priority list, but pointed out that an invitation should also be worked into the first half of 1986 visits. (State obviously is trying to have the White House expend its chits on the Austrian and Canadian visits.)

- The President also indicated to PM Mulroney that he would like to have them come to California for the visit and then join him and Nancy at the ranch. Don Regan passed this information on to us -- after which we had to change the departure statement to reflect the fact that they would see each other in California vis Washington.

~~CONFIDENTIAL~~
Declassify on: OADR

~~CONFIDENTIAL~~

DECLASSIFIED
NLRR F1559 #33259
BY *RW* NARA DATE 3/1/83

-- The Canadians are anxiously anticipating this visit and have pressed us for more information. They feel strongly that they deserve an "official" visit -- Canada has not had one for 10 years. I agree, but do not feel they should get an official visit to Washington and the ranch visit. State has asked just what the White House has in mind given the President's invitation. State feels that the optimum time for such a visit would be in the April thru July time frame. At any rate we need to get back to the Canadians to inform them regarding our thinking.

Peter ~~Spencer~~ concurs.

~~CONFIDENTIAL~~

33260 5

WHITE HOUSE SITUATION ROOM

PAGE 01 VIENNA 3649
SIT484

DTG: 201500Z SEP 85 PSN: 030504
TOR: 263/1511Z

SAYING GOOD-BYE TO THE CHANCELLOR (VIENNA 7301).

DISTRIBUTION: THOM /001
WHSR COMMENT: FOR PAUL THOMPSON

OP IMMED
DE RUEHVI #3649/01 2631501
O 201500Z SEP 85
FM AMEMBASSY VIENNA

TO WHITEHOUSE WASHDC IMMEDIATE

~~CONFIDENTIAL~~ SECTION 01 OF 02 VIENNA 13649

LIMDIS

FOR NATIONAL SECURITY ADVISOR MCFARLANE

E.O. 12356: DECL: OADR
TAGS: OVIP (SINOWATZ, FRED) AU US
SUBJECT: SINOWATZ VISIT TO WASHINGTON

1. ~~CONFIDENTIAL~~ ENTIRE TEXT. FOR YOUR INFORMATION,
I HAVE JUST SENT THE FOLLOWING PLEA TO SECRETARY SHULTZ.

2. I HAVE JUST LEARNED THAT THE DEPARTMENT'S PROPOSAL FOR
OFFICIAL VISITS TO THE UNITED STATES DURING THE FIRST HALF
OF 1986, FORWARDED TO THE NSC LAST WEEK, DID NOT INCLUDE
CHANCELLOR SINOWATZ, EITHER AS A PRINCIPAL OR AS AN
ALTERNATE. FRANKLY, I AM MOST DISTURBED BY THIS DEVELOP-
MENT, SINCE IT WOULD:

- A) APPEAR TO BE AT VARIANCE WITH OUR COMMITMENT TO
THE AUSTRIANS TO PROPOSE SUCH A VISIT TO THE WHITE HOUSE;
AND,

- B) SLOW THE FAVORABLE DEVELOPMENT OF US-AUSTRIAN
RELATIONS WHICH HAS CHARACTERIZED RECENT YEARS.

3. FOR THE PAST YEAR AND A HALF WE HAVE DISCUSSED WITH
EUR THE DESIRABILITY OF INVITING SINOWATZ TO THE UNITED
STATES. WE AGREED WITH EUR THAT GIVEN OTHER, HIGHER
PRIORITIES, A SINOWATZ VISIT COULD BE DELAYED UNTIL THE
END OF HIS SECOND YEAR, OR EVEN TO HIS THIRD YEAR, IN
OFFICE. THERE WAS, HOWEVER, AN UNDERSTANDING THAT A
SINOWATZ VISIT SHOULD THEN RECEIVE PRIORITY, AS WAITING
FOR HIS FOURTH AND LAST YEAR IN OFFICE COULD SEND THE
WRONG SIGNALS TO AUSTRIA'S NOT-SO-NEW HEAD OF GOVERNMENT,
AS WELL AS INTRUDE INTO THE LATE 1986/EARLY 1987 AUSTRIAN
ELECTORAL CAMPAIGN.

4. WHEN YOU, MR. SECRETARY, VISITED VIENNA IN MAY AND
ASKED TO MEET WITH THE CHANCELLOR, THE AUSTRIANS EXPECTED
YOU TO EXTEND TO SINOWATZ A FORMAL INVITATION FROM THE
PRESIDENT TO VISIT WASHINGTON. WHEN YOU DIDN'T BREACH
THE SUBJECT, THE CHANCELLOR'S AIDES TOOK ME ASIDE IN
A PANIC AND ASKED WHAT THEY SHOULD MAKE OF IT (THE
ABSENCE OF ANY REFERENCE TO A WASHINGTON VISIT) AND
WHAT THEY COULD TELL THE PRESS. IN MY ENSUING DISCUSSIONS
WITH YOU, BUD MCFARLANE AND RICK BURT, WE CONCURRED
THEY COULD TALK ABOUT A SINOWATZ VISIT IN EARLY 1986,
IN PRINCIPLE. YOU, MR. SECRETARY, WERE KIND ENOUGH TO
REITERATE THIS COMMITMENT TO WORK FOR A VISIT WHEN

5. MR. SECRETARY, WHAT I HAVE PRIVATELY FEARED HAS
COME TO PASS. WITH ALL THE NEW PLAYERS IN EUR, THE
INSTITUTIONAL MEMORY IS GONE. THAT IS WHY I AM APPEALING
TO YOU--NOT FOR ME, MR. SECRETARY, FOR I WILL NOT BENEFIT
FROM A SINOWATZ VISIT--BUT FOR UNITED STATES-AUSTRIAN
RELATIONS WHICH ARE ON THE UPSWING AND COULD BE FURTHER
ENHANCED. FAILURE TO GET THE ANTICIPATED INVITATION WOULD
IN FACT RESULT IN SINOWATZ FEELING BETRAYED AT A TIME
WHEN HE FACES MOUNTING PROBLEMS AT HOME.

6. TO ASSIST YOU AND OTHERS CONFRONTED WITH THIS MATTER
IN TAKING APPROPRIATE ACTION, LET ME BRIEFLY SUMMARIZE
THE RATIONALE FOR A SINOWATZ VISIT IN EARLY 1986.

- A. FROM THE U.S. PERSPECTIVE:

- 1) A SINOWATZ VISIT WOULD ENHANCE AUSTRIA'S
POSITION AS A SOVEREIGN, WESTERN-ORIENTED NEUTRAL STATE.
MOREOVER, IT WOULD GIVE THE PRESIDENT, YOU AND OTHER
SENIOR OFFICIALS AN OPPORTUNITY TO ENCOURAGE SINOWATZ
TO CONTINUE THE GOA'S ACTIVE PARTICIPATION IN INTERNATIONAL
AFFAIRS GENERALLY, AS WELL AS IN THE UN, WHERE AUSTRIA'S
VOTING RECORD HAS IMPROVED, AND THE FIELD OF HUMAN
RIGHTS, IN PARTICULAR.

- 2) SINOWATZ' PRESENCE WOULD PERMIT US TO
REITERATE THE IMPORTANCE WE ATTACH TO INTENSIVE BILATERAL
COOPERATION IN THE TECHNOLOGY TRANSFER AREA AND EFFECTIVE
IMPLEMENTATION OF THE GOA'S NEW EXPORT CONTROL SYSTEM.
OUR SCOPE FOR PROGRESS IN THIS AREA SHOULD BE ENLARGED
WITH THE PROJECTED EXTENSION OF THE BILATERAL CUSTOMS
AGREEMENT IN DECEMBER 1985.

- 3) JUSTIFIABLY OR OTHERWISE, THE AUSTRIANS
BELIEVE THEY HAVE A COMMITMENT, IN PRINCIPLE, TO AN
OFFICIAL VISIT BY SINOWATZ IN EARLY 1986, A TIME FRAME
WHICH WOULD ROUGHLY COINCIDE WITH THE PASSAGE OF THREE
QUARTERS OF SINOWATZ' TERM OF OFFICE. THE AUSTRIANS
HAVE BEEN PRESSING, WITH INCREASING IMPATIENCE, FOR
SUCH A VISIT FOR SOME 18 MONTHS. FOR IT NOT TO
MATERIALIZATE AT THIS JUNCTURE WOULD BE A DISAPPOINTMENT
WHICH WOULD ASSUREDLY CAST A PALL OVER AN OTHERWISE
ESSENTIALLY UNTROUBLED BILATERAL RELATIONSHIP. CONVERSELY,
IF THE VISIT WERE TO TAKE PLACE IT WOULD BE OF
INESTIMABLE VALUE TO MY SUCCESSOR, WHOEVER HE OR SHE
MAY BE, IN GETTING OFF TO A GOOD START IN VIENNA.

- B. FROM THE AUSTRIAN PERSPECTIVE:

- THE AUSTRIANS HAVE THEIR OWN REASONS FOR
BT

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NLR P1559 #33260

BY RW: NARA DATE 3/1/13

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Coff

33261
7675 6

Canada

THE WHITE HOUSE
WASHINGTON

October 2, 1985

Dear Mr. Prime Minister:

It was good to speak with you last Thursday and to receive your October 1 letter proposing to explore more directly the scope and prospects for a bilateral trade agreement. I welcome this proposal. As you know, I am committed to the pursuit of free and fair trade and believe that our objective should be to achieve the broadest possible package of mutually beneficial trade barrier reductions. If history has taught us one thing, it is that the freer the flow of world trade, the stronger the tides for human progress and peace among nations.

My Administration is beginning consultations with the Congress and the private sector to get their views regarding negotiations with Canada. As I mentioned to you, I want to see this process moved as promptly as possible. I, too, look forward to reviewing progress at our meeting next year.

Nancy joins me in wishing you, Mila and your children, especially your newborn, all the best.

Sincerely,

Ronald Reagan

The Right Honorable
Brian Mulroney, P.C., M.P.
Prime Minister of Canada
Ottawa

DECLASSIFIED

NLRR # 1599 # 33261

BY RW NARA DATE 3/11/83

NATIONAL SECURITY COUNCIL

ID 8507675

REFERRAL

DATE: 02 OCT 85

MEMORANDUM FOR: STATE SECRETARIAT

DEPARTMENT OF STATE

DOCUMENT DESCRIPTION:

TO: MULRONEY, BRIAN

SOURCE: PRESIDENT

DATE: 02 OCT 85

KEYWORDS: INTL TRADE

CANADA

MULRONEY, BRIAN

HS

SUBJ: PRES 2 OCT LTR TO PM MULRONEY

REQUIRED ACTION: FOR DISPATCH

DUE DATE:

COMMENTS:

William F. Martin
FOR WILLIAM F. MARTIN
EXECUTIVE SECRETARY

The President has seen _____
7675

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NLRR F7559 #33262
BY LAT NARA DATE 2/22/16

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

1985 OCT 1
RR

October 1, 1985

~~CONFIDENTIAL~~

ACTION

MEMORANDUM FOR THE PRESIDENT

SIGNED

FROM: ROBERT C. MCFARLANE *RFM*
SUBJECT: Exchange and Publication of Letters Between
Canadian Prime Minister Mulroney and You re:
U.S.-Canadian Free Trade Arrangement

Issue

Response to Canadian request for an exchange of letters to be published October 1 or October 2, memorializing Canadian and U.S. interest in negotiations on a U.S.-Canada free trade arrangement.

Facts

Last Thursday, the Prime Minister telephoned to inform you that he intends to propose to Parliament comprehensive bilateral trade negotiations with the United States. You responded by welcoming the initiative and informing the Prime Minister of your need to consult with the Congress and private sector. You also indicated that following such consultations you would instruct the United States Trade Representative to give the matter high priority.

The Canadians have indicated that for internal political reasons, they would consider it important for the Prime Minister and you to exchange letters as a follow-up to your telephone conversation, such letters to be published on Tuesday, October 1 or Wednesday, October 2.

Discussion

Because of the current protectionist political climate on the Hill, we recommended that you take a warm but cautious approach to the Canadian initiative to allow some time for Ambassador Yeutter to test the waters in Congress before formally notifying the Congress of our intent to enter into negotiations toward an agreement, a statutory requirement. Ambassador Yeutter has now reported receiving a favorable initial response.

The Prime Minister, on the other hand, having formally notified Parliament of his initiative, is most anxious that the United States respond enthusiastically to their historic

~~CONFIDENTIAL~~

decision. To that end, the Canadians have proposed that, at a minimum, there be an exchange of letters between the two heads of state, memorializing the points made during Thursday's telephone conversation, said letters to be made public in Canada on Tuesday, October 1 or Wednesday, October 2.

The Department of State, the United States Trade Representative and I feel this small gesture would be not only diplomatically proper but politically helpful to the Prime Minister, with no adverse consequences in the U.S. A draft of the Prime Minister's letter to you is attached at Tab B.

Recommendation

OK No

 _____

That you sign the attached response (Tab A) to the Prime Minister's letter, to be made public in Canada on Tuesday, October 1 or Wednesday, October 2, 1985. (The speechwriters have cleared the text.)

Attachments

- Tab A Letter to Prime Minister Mulroney
- Tab B Letter from Mulroney

DRAFT LETTER FROM PRIME MINISTER TO PRESIDENT

Dear Mr. President,

Last March you and I issued an important declaration on trade in goods and services. We agreed "to give the highest priority to finding mutually acceptable means to reduce and eliminate existing barriers to trade in order to secure and facilitate trade and investment flows".

I would, now, like to propose that our two Governments pursue a new trade agreement involving the broadest possible package of mutually beneficial reductions in barriers to trade in goods and services. Such an agreement should secure and enhance access to each other's markets by reducing and eliminating tariff and non-tariff barriers and result in a better and more predictable set of rules whereby our trade is conducted.

I understand that the Administration is consulting the Congress on this proposition. I hope that this process will move swiftly. We look forward to hearing from you on the results of these consultations in order that we can move to negotiations. It should then be possible for you and I to review progress at our next meeting in the Spring of 1986.

The negotiation of a new trade agreement will, of course, be extremely arduous. The challenge to succeed, however, and the fruits of success, are well worth the enormous effort and good faith required for this initiative.

Sincerely,

DECLASSIFIED

NLRR F1559#33263

BY LS NARA DATE 2/22/16

~~DECLASSIFIED~~
White House, August 28, 1997
By LS NARA, Date 1/29/07

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~~CONFIDENTIAL~~
THE WHITE HOUSE
WASHINGTON

CONFIDENTIAL
INFORMATION

September 26, 1985

SUMMARY OF TELEPHONE CONVERSATION

SUBJECT: President's Telephone Conversation With
Prime Minister Mulroney of Canada (U)

PARTICIPANTS: The President
Tyrus W. Cobb, Notetaker

DATE, TIME AND PLACE: September 26, 1985
1:09-1:19 p.m.
The White House

President Reagan greeted PM Mulroney warmly and stated that it is always a pleasure to talk with him. PM Mulroney responded that he always enjoyed talking with his good friend and noted that he had been extremely busy recently -- working on trade matters but also changing diapers.

The Prime Minister said he was pleased to inform the President that, in fulfillment of the agreement in Quebec six months ago, Canada is notifying the U.S. of its willingness to enter into negotiations seeking a comprehensive agreement leading to the elimination of trade barriers. Mulroney added that he would go before the House of Commons this afternoon to formally report on Canada's intention. This was the next step he was required to go through following his consultations with the Privy Cabinet, which were completed yesterday.

Mulroney also informed the President that he would like to state in Parliament today that the US enthusiastically supports this initiative. The Prime Minister pointed out that his statement in Parliament will be one of the most important of his Administration. Any U.S. delay in the US in responding to this initiative would cause him serious embarrassment personally.

The President replied that, in fact, he strongly supports this initiative and that we believe this represents a historic step in relations between our two countries. At Quebec we both recognized that we have a unique economic relationship but we do need more to reinvigorate it. For that reason, we gave the highest priority to finding the means to reduce and eliminate existing barriers to our bilateral trade. This way we can secure and facilitate trade and investment.

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Declassify on: OADR

~~CONFIDENTIAL~~

NLRR F1559 # 33282
BY RW NARA DATE 3/1/13

As you are no doubt aware, the President noted, we must consult with our Congress and the private sector before we can enter formal negotiations. The President said that following these informal consultations with the Hill, he would instruct his trade representative, Clayton Yeutter, to give high priority to the Canadian initiative. The President added that he would appoint a U.S. team to begin exploratory discussions with the Canadians.

Responding, Mulroney noted that he was delighted to hear this from the President and that he knew President Reagan could not completely control Congress and was required to work closely with them. Mulroney added that he would publicly characterize these initial discussions as "exploratory talks", with the objective of enhancing trade between our two countries. He added that this initiative should help the common Canadian and American objective in Geneva of starting a new round of GATT talks.

Mulroney pointed out that Canada entered these talks with a clear agenda and no preconditions. He said he knew the President understood the potential impact these talks will be perceived to have on questions relating to Canadian sovereignty. This is only a smaller aspect of the discussions but the matter of impingement on Canada's cultural sovereignty will certainly arise. The Prime Minister concluded by noting that this will require working together very closely.

The President responded that he definitely agreed that it was important to work very closely on this important initiative. He then noted that this conversation also gave him the opportunity to thank the Prime Minister for his recent intervention with the Japanese on bilateral trade issues. The President noted that having our concerns expressed by the Prime Minister, as the leader of a major trading nation, will be very helpful.

Mulroney replied that he hoped he made the point very clearly to the Japanese. He then added that he wished to shift to another point for a minute. He wanted to thank the President again for the actions he took in Quebec on acid rain. Mulroney pointed out that he knew Drew Lewis was under considerable criticism in the US, just as Bill Davis was in Canada. But it was very important to support these envoys. Mulroney said he felt that the modest but important recommendations these envoys will make are very important. The President responded that he, too, was pleased with the appointment of special envoys on acid rain. He indicated he had not seen their report but would read it with interest.

The President told the Prime Minister that he would also like to discuss the upcoming meeting this week with Soviet Foreign Minister Shevardnadze. As he had written earlier to the Prime Minister, he would welcome any thoughts that might assist us in our preparations for this meeting and the sessions with General

Secretary Gorbachev in November. The President added that he would send the Prime Minister a special letter following the Shevardnadze meeting providing more details on how that session went. He reiterated that he would appreciate any thoughts PM Mulroney might offer.

The Prime Minister assured the President that he would study that letter carefully; that he does have some thoughts on the very important Geneva meeting which he will provide prior to the President's departure. Mulroney stated that the President went into these negotiations with the fervent hopes and prayers of all those who yearned for peace and deep reductions of nuclear weapons. The President warmly thanked the Prime Minister for his kind words and indicated they should stay in touch closely over the next two months.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

7675
ADD-ON

Re: [unclear]

[unclear]

September 30, 1985

ACTION

MEMORANDUM FOR WILLIAM F. MARTIN

FROM: STEPHEN I. DANZANSKY

SUBJECT: Exchange of Letters Between Canadian Prime
Minister and the President

In a memo sent to the President last Friday, (#7675), two attachments were enclosed including a draft letter from the Prime Minister to the President and a Presidential response.

Responding to a Canadian request to renegotiate the contents of those letters, we asked Dave Chew to hold the memo until today. Over the weekend, at the State Department's request, we met with the Canadians and each made certain changes in the proposed letters to be exchanged on Tuesday or Wednesday.

State and USTR have approved these alterations and the letters and covering memo (changed to reflect the new dates) are enclosed to forward to Chew as a substitute for the package which is being held in his safe.

Please have Bud resign (or John for him) the memo to the President and forward this to Dave immediately.

Ty Cobb concurs.

RECOMMENDATION

That you obtain signature and forward Mr. McFarlane's memo to the President.

Approve lm

Disapprove _____

Attachments

Tab I Memo to the President
Tab A Letter to Prime Minister Mulroney
B Letter from Mulroney
II Memo of Conversation

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NLRR F1559 #33283

BY WAT NARA DATE 2/22/16

THE WHITE HOUSE
WASHINGTON

SEP 27 1985
September 27, 1985

~~CONFIDENTIAL~~

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ROBERT C. MCFARLANE *RCM*

SUBJECT: Exchange and Publication of Letters Between
Canadian Prime Minister Mulroney and You re:
U.S.-Canadian Free Trade Arrangement

Issue

Response to Canadian request for an exchange of letters to be published September 30, memorializing Canadian and U.S. interest in negotiations on a U.S.-Canada free trade arrangement.

Facts

Last Thursday, the Prime Minister telephoned to inform you that he intends to propose to Parliament comprehensive bilateral trade negotiations with the United States. You responded by welcoming the initiative and informing the Prime Minister of your need to consult with the Congress and private sector. You also indicated that following such consultations you would instruct the United States Trade Representative to give the matter high priority.

The Canadians have indicated that for internal political reasons, they would consider it important for the Prime Minister and you to exchange letters as a follow-up to your telephone conversation, such letters to be published on Monday, September 30.

Discussion

Because of the current protectionist political climate on the Hill, we recommended that you take a warm but cautious approach to the Canadian initiative to allow some time for Ambassador Yeutter to test the waters in Congress before formally notifying the Congress of our intent to enter into negotiations toward an agreement, a statutory requirement. Ambassador Yeutter has now reported receiving a favorable initial response.

The Prime Minister, on the other hand, having formally notified Parliament of his initiative, is most anxious that the United States respond enthusiastically to their historic

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cc: Vice President

decision. To that end, the Canadians have proposed that, at a minimum, there be an exchange of letters between the two heads of state, memorializing the points made during Thursday's telephone conversation, said letters to be made public in Canada on Monday, September 30.

The Department of State, the United States Trade Representative and I feel this small gesture would be not only diplomatically proper but politically helpful to the Prime Minister, with no adverse consequences in the U.S. A draft of the Prime Minister's letter to you is attached at Tab B.

Recommendation

OK

No

That you sign the attached response (Tab A) to the Prime Minister's letter, to be made public in Canada on Monday, September 30, 1985. (The speechwriters have cleared the text.)

Attachments

Tab A

Letter to Prime Minister Mulroney

Tab B

Letter from Mulroney

THE WHITE HOUSE

WASHINGTON

Dear Mr. Prime Minister:

It was good to speak with you last Thursday and to receive your September 27 letter proposing to explore more directly the scope and prospects for a bilateral trade agreement. Like you, I am committed to the pursuit of free and fair trade and share your views that our objective should be to achieve the broadest possible package of trade barrier reductions. If history has taught us one thing, it is that the freer the flow of world trade, the stronger the tides for human progress and peace among nations.

My Administration is beginning consultations with the Congress and the private sector to get their views regarding negotiations with Canada. As I mentioned to you, I want to see this process moved as promptly as possible. I, too, look forward to reviewing progress at our meeting next year.

Nancy joins me in wishing you, Mila and your children, especially your newborn, all the best.

Sincerely,

The Right Honorable
Brian Mulroney, P.C., M.P.
Prime Minister of Canada
Ottawa

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NLRR F1559 #33284

BY RW NARA DATE 3/1/13

1:07 PM

September 26, 1985

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DRAFT LETTER FROM PRIME MINISTER TO PRESIDENT

Dear Mr. President,

Last March 18 you and I issued an important Declaration on trade in goods and services. We agreed "to give the highest priority to finding mutually acceptable means to reduce and eliminate existing barriers to trade in order to secure and facilitate trade and investment flows." We charged Minister for International Trade James Kelleher and United States Trade representative Clayton Yeutter to advise us within six months on the best way to achieve this objective.

Mr. Kelleher has now reported to me and concluded that the time has come to explore more directly with the United States the scope and prospects for a new trade agreement. I understand you received a similar recommendation from Mr. Yeutter. Both Mr. Kelleher and Mr. Yeutter have concluded that bilateral negotiations would complement and reinforce our efforts to initiate a new round of multilateral trade negotiations under the auspices of the GATT.

I would, therefore, like to propose that our two governments now explore more directly the scope and prospects for a new trade agreement involving the broadest possible package of mutually beneficial reductions in barriers to trade in goods and services. Such an agreement should secure and enhance access to each others' markets by reducing and eliminating tariff and non-tariff barriers and result in a better and more predictable set of rules whereby our trade is conducted. The negotiation of a new trade agreement will, of course, be extremely arduous. The challenge to succeed, however, and the fruits of success, is well worth the enormous effort and good faith required for the undertaking.

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NLRR F1559 #33285

BY LJI NARA DATE 2/22/16

1:07 PM

September 26, 1985

- 2 -

CONFIDENTIAL

I understand that the Administration is consulting the Congress on this proposition. I hope that this process will move swiftly. We looked forward to hearing from you on the results of these consultations in order that we can move to negotiations. It should then be possible to review progress at our next annual meeting in the Spring of 1986.

Sincerely,

Brian Mulroney

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NLRR F1559 #33286

BY LA NARA DATE 2/22/16

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

~~CONFIDENTIAL~~

September 27, 1985

ACTION

MEMORANDUM FOR ROBERT C. MCFARLANE

FROM: STEPHEN I. DANZANSKY
TYRUS COBB *[Signature]*

SUBJECT: Exchange and Publication of Letters
Between the Canadian Prime Minister and
the President

The Canadians have been somewhat disappointed and nervous about the perceived lack of USG enthusiasm to their free trade initiative.

Because of the current sentiment on Capitol Hill, we have told the Canadians that if they announced the bilateral initiative at this time, we would be required to test the waters a bit before formally notifying the Congress of the President's intention to enter into negotiations.

The President emphasized this point in his conversation with Prime Minister Mulroney last Thursday, but our approach has the Canadians somewhat edgy. The conversation between the two leaders was a bit more distant than usual; clearly each was reading from a carefully prepared script (Tab II).

The Canadians have indicated their desire to send the President the attached letter (Tab B), thus further formalizing the exchange.

They have also asked that we assent to publication of the two letters in Canada next Monday. State, STR, and we agree with this approach. We have drafted a response (Tab A), the wording of which has been concurred in by State and STR.

RECOMMENDATION:

That you sign ^{the} memorandum to the President at Tab I.

Approve _____ Disapprove _____

Attachments

- Tab I Memo to President
- Tab A Letter to Mulroney
- Tab B Letter from Mulroney
- Tab II Memorandum of Telephone Conversation with Mulroney

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DECLASSIFY ON: OADR

**NATIONAL SECURITY COUNCIL
DISTRIBUTION RECORD**

Log Number 7675

Date October 2, 1985

Subject: PRES 2 OCT LTR TO PM MULRONEY

CLASSIFICATION: TOP SECRET SECRET CONFIDENTIAL UNCLASSIFIED

ADDITIONAL ADDRESSEES SHOULD INCLUDE ADDRESS AND ROOM NUMBER TO INSURE PROMPT/APPROPRIATE DELIVERY

EXTERNAL DISTRIBUTION: # CYS Date Time Received/Signed For By:

NICHOLAS PLATT					
DEPARTMENT OF STATE	ORIG	10/2	5:15pm	<i>Ray S. Bates</i>	

DATE, TIME & SIGN THIS RECEIPT & RETURN TO: BT MERCHANT, SITUATION ROOM, WHITE HOUSE

WASHFAX RECEIPT

THE WHITE HOUSE

C

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ENCLOSURE(S)

105
1129/07

CONFIDENTIAL

MESSAGE NO. _____ CLASSIFICATION _____ PAGES one

FROM WILLIAM MARTIN 456-2224 _____
(NAME) (EXTENSION) (ROOM NUMBER)

MESSAGE DESCRIPTION PRES LTR TO PM MULRONEY OF CANADA

LOG #: 7675

<u>TO (AGENCY)</u>	<u>DELIVER TO:</u>	<u>DEPT/ROOM NO.</u>	<u>EXTENSION</u>
<u>STATE</u>	<u>NICK PLATT</u>	<u>EXECUTIVE SECRETARY</u>	_____
_____	_____	_____	_____
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REMARKS FOR IMMEDIATE CABLING; ORIGINAL TO FOLLOW

URGENT

WASHFAX RECEIPT

THE WHITE HOUSE

C

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ENCLOSURE(S)

State Verbal

02 1605

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105 1129/07

3 2 P3: 50

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CONFIDENTIAL

MESSAGE NO. 777 CLASSIFICATION _____ PAGES one

FROM WILLIAM MARTIN 456-2224 _____
(NAME) (EXTENSION) (ROOM NUMBER)

MESSAGE DESCRIPTION PRES LTR TO PM MULRONEY OF CANADA

LOG #: 7675

<u>TO (AGENCY)</u>	<u>DELIVER TO:</u>	<u>DEPT/ROOM NO.</u>	<u>EXTENSION</u>
<u>STATE</u>	<u>NICK PLATT</u>	<u>EXECUTIVE SECRETARY</u>	
_____	_____	_____	_____
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REMARKS FOR IMMEDIATE CABLING; ORIGINAL TO FOLLOW

URGENT

Call

7613

THE WHITE HOUSE
WASHINGTON

October 7, 1985

*File
- CTR # 10*

MEMORANDUM FOR DONALD T. REGAN

FROM: ROBERT C. MCFARLANE *RCM*
SUBJECT: Free Trade Negotiations with
Canada -- Legal Memorandum

The attached materials (Tab A) were prepared by USTR at our behest to respond to David Chew's request for a legal opinion on the President's legal obligations regarding the notification of Congress before commencing bilateral negotiations with Canada.

These materials were augmented by an opinion from the White House Counsel's office sent directly to David and concurring with the USTR opinion.

Yeutter concludes:

-- The legal requirements for notification provide considerable flexibility as to when we consult with Congress; political realities dictate consultation with the Hill before formal negotiations begin.

-- That despite numerous bilateral irritants in trade relations between the U.S. and Canada, the Members that Yeutter has spoken to seem prepared to draw a distinction between short-term issues and the historic opportunity presented here.

This approach was previously coordinated at the EPC and the legal opinion with State and USTR.


Attachment
Tab A USTR Memo

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

September 25, 1985

MEMORANDUM

TO: The Honorable Robert C. McFarlane

FROM: Clayton Yeutter 

SUBJECT: Notice and Consultation Requirements Concerning
Canadian Bilateral Trade Negotiations

In response to your request I asked our General Counsel to provide the attached memorandum describing our legal obligations to notify and consult with the Congress prior to entering into a trade agreement with Canada. The obligations are specific since we would undoubtedly submit the agreement under a "fast track" procedure that has been authorized by Congress.

As you can see, we have to send official notifications to the Congress at least 90 days before we enter into an agreement, and we have to give notice to the Senate Finance and House Ways and Means Committees 60 days prior to that. None of this should be a problem, however, since we'll not likely be "entering into," i.e., signing an agreement with the Canadians for at least another two or three years. This will be a lengthy, complex negotiation.

The more relevant obligation is one of consulting with the Senate Finance and House Ways and Means Committees in a manner responsive to the legislative history of these provisions. This has both political and legal implications. Though the legal requirements provide considerable flexibility as to when we consult, political realities would seem to dictate consultation on the Hill before we begin formal negotiations with Canada.

We have suggested to the Canadians that they use "exploratory" language in their written communication from the Prime Minister to the President. I have provided the suggested language to Jim Kelleher, the Canadian Trade Minister. If they use it, and then follow up with a more formal request later, we will have ample flexibility as to when we consult.

If, on the other hand (for their own political reasons), the Canadians choose to send us a formal request this week, I believe we should consult with the Congressional committees on

this matter relatively soon -- probably during the next 30 days. Legally we could slip it more than that; it would be dangerous to do so politically both here and in Canada.

I have already made informal soundings with some of the key players on both committees. Though they are sensitive to the various bilateral controversies now brewing with the Canadians, most seem prepared to draw a distinction between such short term issues and the longer range, historic opportunity that is presented here.

Call me, Bud, if you would like to discuss further.

Attachment

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

September 25, 1985

MEMORANDUM

To: Ambassador Yeutter
From: Alan F. Holmer *AFH*
Subject: Congressional Notification Concerning Canadian Bilateral
Trade Negotiations

You have asked what legal obligations we have to notify the Congress about any bilateral trade negotiations with Canada. This memorandum describes the applicable legal requirements: (1) to notify the House and Senate at least 90 days before entering into such an agreement, (2) to notify the Senate Finance and House Ways and Means Committees at least 60 days prior to the 90-day notice to the Congress, and (3) to keep Congressional trade advisers "currently informed" of trade negotiating objectives. It also describes the legislative history of the Trade and Tariff Act of 1984, which reflects Congress' expectation that the President will consult with the relevant committees before entering into trade negotiations. While there is no clear legal requirement that we notify the Congress before we begin negotiations, we believe that for political and policy reasons, we have no choice but to notify the Congress formally before entering into trade negotiations.

90-Day Notice to the Congress before Entering into an Agreement.

Section 102 of the Trade Act of 1974, as amended, 19 U.S.C. 2112, allows the President to submit agreements to reduce or eliminate barriers to trade to the Congress for "fast track" review. Any trade agreement negotiated with Canada would be so submitted.

Section 102(e)(1) requires the President to notify the House of Representatives and the Senate of his intention to enter into an agreement to be submitted to the Congress under section 102, at least "90 days before he enters into such trade agreement." This means the President cannot sign a bilateral trade agreement with Canada denoting his intention to seek necessary

domestic implementing authority, until 90 days after he has notified the Congress of his intention to sign.

60-Day Notice to and Consultations with the Senate Finance and House Ways and Means Committees.

Section 401 of the Trade and Tariff Act of 1984, 98 Stat. 2948, 3013-15, amended section 102(b) of the Trade Act of 1974 to add a new paragraph (4)(A). This provision allows the President to submit to the Congress, under section 102, trade agreements (with countries other than Israel) that provide for the elimination or reduction of U.S. duties. The preconditions for such submission under section 102 are that: (1) the other country must have requested the negotiations, and (2) the President must provide written notice to and consult with the Senate Finance and House Ways and Means Committees at least 60 days prior to the 90-day notice to the Congress required by section 102(e)(1).

The effect of section 102(b)(4)(A) and (e)(1) is to require 150-day Congressional notice (and consultations with the relevant committees) prior to entering into any bilateral trade agreement with Canada.

Requirement to Keep Congressional Advisers Currently Informed of U.S. Negotiating Objectives.

Section 161(b)(1) of the Trade Act of 1974, 19 U.S.C. 2211 (b)(1), requires the U.S. Trade Representative to keep the officially designated Congressional advisers for trade issues "currently informed on United States negotiating objectives, [and] the status of negotiations in progress" This provision clearly requires that we apprise those advisers of any Canadian bilateral trade negotiations at some point, and arguably could be construed to require advising them prior to entering into negotiations (since negotiating objectives would include entry into negotiations).

Legislative History Suggesting Desirability of Notice and Consultations Prior to Any Negotiations.

In addition to the broad requirements of section 161, the Congress clearly expects notice and an opportunity to consult prior to any trade negotiations, and prudence requires it.

In introducing the conference report on the Trade and Tariff Act (H.R. Rep. No. 1156, 98th Cong., 2d Sess. (1984)), Senator Danforth stated,

Similar authority could be used by the President to negotiate trade agreements with other countries to reduce tariff and nontariff barriers--subject to the approval of the Finance and Ways and Means Committees. (130 Cong. Rec. S13,972 (daily ed. Oct. 9, 1984))

Likewise, Congressman Rostenkowski introduced the report in the House by stating,

[N]o tariff agreement with any other country could be negotiated under the expedited congressional approval procedure without prior agreement of the House Ways and Means and Senate Finance Committees and a congressional consultation period. (130 Cong. Rec. H11,657 (daily ed. Oct. 9, 1984))

Congressman Gibbons added his opinion that,

The provision ... also grants to the President the power to negotiate free trade arrangements with other countries around the world if the President first consults with the Committee on Ways and Means and with the Senate Finance Committee. (130 Cong. Rec. H11,658 (daily ed. Oct. 9, 1984))

From a political perspective, therefore, prudence dictates that we err on the side of caution and initiate consultations prior to entering into negotiations.

NATIONAL SECURITY COUNCIL
 WASHINGTON, D.C. 20506

October 1, 1985

ACTION

MEMORANDUM FOR ROBERT C. MCFARLANE

SIGNED

FROM: STEPHEN I. DANZANSKY

SUBJECT: Legal Opinion re President's Obligations on
 Commencing Bilateral Negotiations with
 Canada

You responded to my memo of September 25 (Tab II) by requesting that we forward a legal opinion addressed to you from USTR to Donald Regan.

Enclosed is the opinion (Tab A) and a cover memo to Regan (Tab I).

RECOMMENDATION:

That you sign the memorandum to Secretary Regan at Tab I.

Approve

Disapprove

Attachments

Tab I	Memo to Secretary Regan
Tab A	USTR Memo
Tab II	Danzansky/Cobb Memo of September 25

cc: Ty Cobb

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

September 25, 1985

INFORMATION

MEMORANDUM FOR ROBERT C. MCFARLANE

FROM: STEPHEN I. DANZANSKY
TYRUS COBB *m*

SUBJECT: Free Trade Negotiations with Canada

*Send
to Regan
Tab A with cover
note.
Indicate
coord w/ State
& USTR
& Treas.*

The attached materials (Tab A) were prepared by USTR at our behest to respond to a request by Don Regan for a legal opinion on the President's legal obligations regarding the notification of Congress before commencing bilateral negotiations with Canada. These materials were augmented by an opinion from the White House Counsel's office sent directly to David Chew (Tab B) concurring with the USTR opinion.

The document attached at Tab A is in the form of a memorandum from Clayton Yeutter to you forwarding the USTR General Counsel's opinion. The Yeutter memorandum is highlighted for your review.

Yeutter concludes:

-- The legal requirements for notification provide considerable flexibility as to when we consult with Congress; political realities dictate consultation with the Hill before formal negotiations begin.

-- That despite numerous bilateral irritants in trade relations between the U.S. and Canada, the Members that Yeutter has spoken to seem prepared to draw a distinction between short-term issues and the historic opportunity presented here.

Attachments


- Tab A Memo from Yeutter
- Tab B White House Counsel Opinion

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

September 25, 1985

MEMORANDUM

TO: The Honorable Robert C. McFarlane

FROM: Clayton Yeutter 

SUBJECT: Notice and Consultation Requirements Concerning
Canadian Bilateral Trade Negotiations

In response to your request I asked our General Counsel to provide the attached memorandum describing our legal obligations to notify and consult with the Congress prior to entering into a trade agreement with Canada. The obligations are specific since we would undoubtedly submit the agreement under a "fast track" procedure that has been authorized by Congress.

As you can see, we have to send official notifications to the Congress at least 90 days before we enter into an agreement, and we have to give notice to the Senate Finance and House Ways and Means Committees 60 days prior to that. None of this should be a problem, however, since we'll not likely be "entering into," i.e., signing an agreement with the Canadians for at least another two or three years. This will be a lengthy, complex negotiation.

The more relevant obligation is one of consulting with the Senate Finance and House Ways and Means Committees in a manner responsive to the legislative history of these provisions. This has both political and legal implications. Though the legal requirements provide considerable flexibility as to when we consult, political realities would seem to dictate consultation on the Hill before we begin formal negotiations with Canada.

We have suggested to the Canadians that they use "exploratory" language in their written communication from the Prime Minister to the President. I have provided the suggested language to Jim Kelleher, the Canadian Trade Minister. If they use it, and then follow up with a more formal request later, we will have ample flexibility as to when we consult.

If, on the other hand (for their own political reasons), the Canadians choose to send us a formal request this week, I believe we should consult with the Congressional committees on

this matter relatively soon -- probably during the next 30 days. Legally we could slip it more than that; it would be dangerous to do so politically both here and in Canada.

I have already made informal soundings with some of the key players on both committees. Though they are sensitive to the various bilateral controversies now brewing with the Canadians most seem prepared to draw a distinction between such short term issues and the longer range, historic opportunity that is presented here.

Call me, Bud, if you would like to discuss further.

Attachment

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

September 25, 1985

MEMORANDUM

To: Ambassador Yeutter
From: Alan F. Holmer *AFH*
Subject: Congressional Notification Concerning Canadian Bilateral Trade Negotiations

You have asked what legal obligations we have to notify the Congress about any bilateral trade negotiations with Canada. This memorandum describes the applicable legal requirements: (1) to notify the House and Senate at least 90 days before entering into such an agreement, (2) to notify the Senate Finance and House Ways and Means Committees at least 60 days prior to the 90-day notice to the Congress, and (3) to keep Congressional trade advisers "currently informed" of trade negotiating objectives. It also describes the legislative history of the Trade and Tariff Act of 1984, which reflects Congress' expectation that the President will consult with the relevant committees before entering into trade negotiations. While there is no clear legal requirement that we notify the Congress before we begin negotiations, we believe that for political and policy reasons, we have no choice but to notify the Congress formally before entering into trade negotiations.

90-Day Notice to the Congress before Entering into an Agreement.

Section 102 of the Trade Act of 1974, as amended, 19 U.S.C. 2112, allows the President to submit agreements to reduce or eliminate barriers to trade to the Congress for "fast track" review. Any trade agreement negotiated with Canada would be so submitted.

Section 102(e)(1) requires the President to notify the House of Representatives and the Senate of his intention to enter into an agreement to be submitted to the Congress under section 102, at least "90 days before he enters into such trade agreement." This means the President cannot sign a bilateral trade agreement with Canada denoting his intention to seek necessary

domestic implementing authority, until 90 days after he has notified the Congress of his intention to sign.

60-Day Notice to and Consultations with the Senate Finance and House Ways and Means Committees.

Section 401 of the Trade and Tariff Act of 1984, 98 Stat. 2948, 3013-15, amended section 102(b) of the Trade Act of 1974 to add a new paragraph (4)(A). This provision allows the President to submit to the Congress, under section 102, trade agreements (with countries other than Israel) that provide for the elimination or reduction of U.S. duties. The preconditions for such submission under section 102 are that: (1) the other country must have requested the negotiations, and (2) the President must provide written notice to and consult with the Senate Finance and House Ways and Means Committees at least 60 days prior to the 90-day notice to the Congress required by section 102(e)(1).

The effect of section 102(b)(4)(A) and (e)(1) is to require 150-day Congressional notice (and consultations with the relevant committees) prior to entering into any bilateral trade agreement with Canada.

Requirement to Keep Congressional Advisers Currently Informed of U.S. Negotiating Objectives.

Section 161(b)(1) of the Trade Act of 1974, 19 U.S.C. 2211 (b)(1), requires the U.S. Trade Representative to keep the officially designated Congressional advisers for trade issues "currently informed on United States negotiating objectives, [and] the status of negotiations in progress" This provision clearly requires that we apprise those advisers of any Canadian bilateral trade negotiations at some point, and arguably could be construed to require advising them prior to entering into negotiations (since negotiating objectives would include entry into negotiations).

Legislative History Suggesting Desirability of Notice and Consultations Prior to Any Negotiations.

In addition to the broad requirements of section 161, the Congress clearly expects notice and an opportunity to consult prior to any trade negotiations, and prudence requires it.

In introducing the conference report on the Trade and Tariff Act (H.R. Rep. No. 1156, 98th Cong., 2d Sess. (1984)), Senator Danforth stated,

Similar authority could be used by the President to negotiate trade agreements with other countries to reduce tariff and nontariff barriers--subject to the approval of the Finance and Ways and Means Committees. (130 Cong. Rec. S13,972 (daily ed. Oct. 9, 1984))

Likewise, Congressman Rostenkowski introduced the report in the House by stating,

[N]o tariff agreement with any other country could be negotiated under the expedited congressional approval procedure without prior agreement of the House Ways and Means and Senate Finance Committees and a congressional consultation period. (130 Cong. Rec. H11,657 (daily ed. Oct. 9, 1984))

Congressman Gibbons added his opinion that,

The provision ... also grants to the President the power to negotiate free trade arrangements with other countries around the world if the President first consults with the Committee on Ways and Means and with the Senate Finance Committee. (130 Cong. Rec. H11,658 (daily ed. Oct. 9, 1984))

From a political perspective, therefore, prudence dictates that we err on the side of caution and initiate consultations prior to entering into negotiations.

THE WHITE HOUSE

WASHINGTON

September 25, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING 
COUNSEL TO THE PRESIDENT

SUBJECT: Canada-U.S. Free Trade Agreement

You have asked for our views on the requirements for notification of and consultation with Congress prior to the negotiation and conclusion of a free trade agreement with Canada. I understand Prime Minister Mulroney is expected to telephone the President concerning such an agreement tomorrow. I have reviewed the attached memoranda from Ambassador Yeutter and USTR General Counsel Alan Holmer on this subject, and have no legal objection to those memoranda.

I would begin by pointing out that, as a constitutional matter, the President is free to negotiate with other countries without restriction, and submit any necessary implementing legislation to Congress for action. To obtain the desired "fast track" treatment under 19 U.S.C. § 2191, however, the various notification, consultation, and approval requirements must be satisfied. The President must notify Congress 90 days before entering into a free trade agreement, and publish this notification in the Federal Register, 19 U.S.C. § 2112(e)(1), and, at least 60 days before giving that notice, must provide the Senate Finance Committee and House Ways and Means Committee written notice of negotiation of such an agreement, and consult with those committees on the negotiations. 19 U.S.C. § 2112(b)(4)(A)(ii). In addition, a general provision, 19 U.S.C. § 2211(b)(1), requires USTR to keep certain members of Congress "currently informed" on trade negotiations.

In the interest of completeness, I should point out that there is another consultation requirement, not noted in the USTR memoranda, contained in 19 U.S.C. § 2112(c). That provision requires that the President consult with the Senate Finance Committee and the House Ways and Means Committee, and other affected committees, prior to entering into any agreement. This requirement was in the Trade Act of 1974, and may be considered to be redundant of or superseded by the more elaborate requirement with respect to these committees added by the Trade and Tariff Act of 1984. Both provisions are still on the books, however, and

19 U.S.C. § 2112(c) refers to the agreement itself, while 19 U.S.C. § 2112(b)(4)(A) refers to the negotiations. Prudence would dictate consulting with the pertinent committees a second time pursuant to 19 U.S.C. § 2112(c), on the agreement, after the consultations required by 19 U.S.C. § 2112(b)(4)(A), on the negotiations.

Strictly speaking, then, there is no legal requirement to advise Congress or the pertinent committees immediately upon Prime Minister Mulroney's call. Notification and consultation is legally required under 19 U.S.C. § 2112 no earlier than 150 days before entering into an agreement, and under 19 U.S.C. § 2211 at some vague point before negotiations progress too far.

Since either the Senate Finance Committee or the House Ways and Means Committee can block fast track treatment, however, 19 U.S.C. § 2112(b)(4)(B)(ii)(II), I agree that prudence may dictate promptly advising Congress of Mulroney's interest.

I understand that the proposal is for Ambassador Yeutter to consult informally with committee members and other members of Congress about Mulroney's interest before commencing negotiations. Formal written notification of the committees would take place if the reaction is favorable, again before commencing negotiations. This is beyond the strict requirements of the law, but I certainly have no objection to the proposed course of action.