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UNCLAS TOKYO 11090

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WHITE HOUSE SITROOM, PLEASE FAX URGENTLY FROM
AMBASSADOR MICHAEL B. SMITH TO STEVE DANZANSKY AT

<> <><>TORONTO<><> ECONOMIC <><>SUMMIT<><>

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PRESS, CAROL LUDWIG

USIS FOR P/PFF AND EA

E.O.12356: N/A

TAGS: EAGR, ETRD, GATT, JA

SUBJECT: PRESS GUIDANCE AND SUMMARY OF US-JAPAN BEEF
- AND CITRUS AGREEMENT

REF: SMITH-DANZANSKY TELECON OF SUNDAY, JUNE 19, 2010

1. FOLLOWING IS THE TEXT OF FINAL PRESS RELEASE AND
SUMMARY OF PROVISIONS STATEMENTS RELEASED IN TOKYO
JUNE 20 IN CONJUNCTION WITH USTR YEUTTER'S PRESS
CONFERENCE ANNOUNCING SETTLEMENT OF US-JAPAN
BEEF/CITRUS ISSUE.

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2. BEGIN TEXT:
PRESS RELEASE BY
UNITED STATES TRADE REPRESENTATIVE CLAYTON YEUTTER

-
- REPRESENTATIVES OF THE GOVERNMENTS OF THE UNITED STATES AND JAPAN ANNOUNCED TODAY AN AD REFERENDUM AGREEMENT WHICH CALLS FOR THE ELIMINATION OF JAPANESE IMPORT QUOTAS ON BEEF AND CITRUS PRODUCTS. THE AGREEMENT WAS REACHED BY UNITED STATES TRADE REPRESENTATIVE CLAYTON YEUTTER AND JAPANESE MINISTER OF AGRICULTURE SATO AS THE CULMINATION OF SEVERAL MONTHS OF INTENSE NEGOTIATIONS. THE NEGOTIATIONS BROKE DOWN AND HAD TO BE RE-STARTED TWICE BEFORE AGREEMENT WAS FINALLY REACHED.
- "THE UNITED STATES IS PLEASED WITH THE OUTCOME," YEUTTER SAID FROM TOKYO, "THOUGH WE WOULD LIKE THESE MARKETS TO OPEN SOONER THAN IS CONTEMPLATED. IT IS REGRETTABLE THAT THE PROCESS OF MARKET LIBERALIZATION WAS NOT BEGUN SEVERAL YEARS AGO. NEVERTHELESS, WE ARE GRATEFUL THAT THE GOVERNMENT OF JAPAN IS NOW PREPARED TO PHASE OUT ALL IMPORT QUOTAS ON THESE PRODUCTS."
- "WHAT JAPAN IS NOW PREPARED TO DO ON BEEF AND CITRUS IS A RECOGNITION OF ITS RESPONSIBILITY AS A MAJOR ECONOMIC POWER RUNNING A VERY LARGE TRADE SURPLUS," ASSERTED YEUTTER. "AND IT IS ALSO WHAT JAPAN MUST DO IN ORDER TO COMPLY WITH THE RULES OF THE GENERAL AGREEMENT ON TARIFFS & TRADE (GATT)."
- "THIS NEW AGREEMENT," SAID YEUTTER, "WILL OPEN UP EXCELLENT EXPORT OPPORTUNITIES FOR AMERICAN BEEF AND CITRUS PRODUCERS. U.S. EXPORT SALES IN THESE PRODUCTS SHOULD INCREASE SOON, AND THEY COULD EASILY EXCEED \$1 BILLION ANNUALLY WHEN THE ACCORD IS FULLY IMPLEMENTED."
- THE AGREEMENT CALLS FOR A PHASE OUT OF IMPORT QUOTAS ON BEEF PRODUCTS AND FRESH ORANGES OVER A THREE YEAR PERIOD, AND QUOTAS ON ORANGE JUICES OVER FOUR YEARS. JAPAN WILL HAVE THE PRIVILEGE OF TEMPORARILY RAISING DUTIES ON BEEF PRODUCTS TO CERTAIN SPECIFIED LEVELS DURING A SECOND THREE YEAR ADJUSTMENT PERIOD, AT THE END OF WHICH THE JAPANESE BEEF MARKET WILL BE FULLY LIBERALIZED.
- YEUTTER NOTED THAT SINCE THE QUOTAS WILL BE PHASED OUT, RATHER THAN ELIMINATED IMMEDIATELY AS THE U.S. HAD REQUESTED, THE GOVERNMENT OF JAPAN HAD AGREED NOT ONLY TO SIGNIFICANT INCREASES IN MARKET ACCESS IN THE INTERIM BUT ALSO TO CERTAIN OTHER ACTIONS, INCLUDING DUTY REDUCTIONS ON SUCH PRODUCTS AS FRESH GRAPEFRUIT, FRESH LEMONS, FROZEN PEACHES AND PEARS, WALNUTS, PISTACHIOS, MACADAMIAS, PECANS, PET FOOD, BEEF JERKY, SAUSAGE, AND PORK AND BEANS.

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 PRESS, CAROL LUDWIG
 USIS FOR P/PFF AND EA
 E.O.12356: N/A

TAGS: EAGR, ETRD, GATT, JA

SUBJECT: PRESS GUIDANCE AND SUMMARY OF US-JAPAN BEEF
 - THE AGREEMENT ALSO CALLS FOR A THREE YEAR PHASE OUT
 OF THE IMPORT MANAGEMENT OPERATIONS OF JAPAN'S
 LIVESTOCK INDUSTRY PROMOTION CORPORATION (LIPC), AND
 FOR GREATER FLEXIBILITY IN THE ADMINISTRATION OF THE
 IMPORT PROGRAMS FOR BOTH BEEF AND CITRUS PRODUCTS
 DURING THEIR RESPECTIVE PHASE OUT PERIODS.
 - "BOTH NEGOTIATING TEAMS WORKED EXTREMELY HARD ON
 THIS DIFFICULT AND COMPLEX ISSUE, OVER A PERIOD OF
 MANY WEEKS," ADDED YEUTTER. "THIS WAS ONE OF THE MOST
 CHALLENGING BILATERAL NEGOTIATIONS WE'VE EVER
 UNDERTAKEN. I WISH PARTICULARLY TO COMMEND THE
 EFFORTS OF DEPUTY USTR MICHAEL B. SMITH, WHO LED THE
 U.S. TEAM DURING MOST OF THE NEGOTIATIONS. I COMMEND
 AS WELL THE JAPANESE TEAM FOR ITS POSITIVE AND
 COURAGEOUS ATTITUDE THROUGHOUT, AND THE JAPANESE
 GOVERNMENT FOR ITS WILLINGNESS TO TAKE THE RIGHT
 COURSE IN THIS POLITICALLY SENSITIVE AREA."
 END TEXT.

3. A SUMMARY OF THE AGREEMENT FOLLOWS.

--U.S.-JAPAN AD REF SETTLEMENT ON BEEF AND CITRUS

-- SUMMARY OF PROVISIONS

BEEF:

-- DURING JAPAN'S FISCAL YEARS 1988-90
 (4/1/88-3/31/91), JAPAN'S MARKET FOR IMPORTED BEEF
 WILL INCREASE 60,000 METRIC TONS PER YEAR, REACHING
 394,000 MT IN JFY90. BY 1991, JAPAN'S BEEF IMPORTS
 SHOULD NEARLY DOUBLE FROM CURRENT LEVELS. ONCE
 JAPAN'S MARKET IS COMPLETELY LIBERALIZED, WE EXPECT
 THE VALUE OF US BEEF EXPORTS TO DOUBLE AT LEAST TO
 MORE THAN \$1 BILLION PER YEAR.

-- JAPAN'S LIVESTOCK INDUSTRY PROMOTION CORPORATION
 (LIPC) CURRENTLY CONTROLS MOST BEEF IMPORTS. LIPC
 WILL PHASE OUT ITS INVOLVEMENT IN BEEF IMPORTS BY

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3/31/91.

-- LIPC SURCHARGES, ON TOP OF THE CURRENT 25 PCT AD VALOREM TARIFF, NOW ARE EQUIVALENT TO AN AD VALOREM TARIFF RATE OF 96 PCT. DURING THE JFY88-90 PERIOD, LIPC SURCHARGES ARE EXPECTED TO DECREASE AND THE TARIFF WILL REMAIN AT THE CURRENT LEVEL. ONCE LIPC INVOLVEMENT WITH IMPORTED BEEF ENDS, JAPAN WILL SET A TEMPORARY TARIFF OF 70 PCT. IN JFY91, DECLINING TO 60 PCT. IN JFY92, AND 50 PCT. IN JFY93 AND THEREAFTER. JAPAN WILL NEGOTIATE FROM THIS LEVEL IN URUGUAY ROUND TARIFF NEGOTIATIONS.

-- DURING THE JFY91-93 PERIOD, IF IMPORTS APPEAR LIKELY TO EXCEED A LEVEL CALCULATED AT 120 PCT. OF THE PREVIOUS YEAR'S IMPORTS OR IMPORT ALLOCATION (WHICHEVER IS HIGHER), JAPAN MAY CONSULT WITH BEEF-EXPORTING COUNTRIES ABOUT ACTIONS TO DISCOURAGE DISRUPTIVE IMPORT LEVELS. IF IMPORTS EXCEED THE 120 PCT. LEVEL, JAPAN MAY UNILATERALLY IMPOSE AN

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PRESS, CAROL LUDWIG
USIS FOR P/PFF AND EA
E.O.12356: N/A

TAGS: EAGR, ETRD, GATT, JA

SUBJECT: PRESS GUIDANCE AND SUMMARY OF US-JAPAN BEEF ADDITIONAL 25 PCT. AD VALOREM TARIFF FOR THE REMAINDER OF THAT FISCAL YEAR. AS OF 4/1/94, SAFEGUARD MEASURES WILL BE LIMITED TO ONLY THOSE PERMITTED UNDER THE GATT.

-- DURING THE JFY88-90 TRANSITION PERIOD, THE PROPORTION OF IMPORTED BEEF THAT WILL BE TRANSACTED UNDER THE SIMULTANEOUS BUY-SELL (SBS) PROGRAM WILL INCREASE FROM 10 PCT. OF THE TOTAL GENERAL QUANTITY HANDLED BY LIPC IN JFY87, TO 30 PCT. IN JFY88, 45 PCT. IN JFY89, AND 60 PCT. IN JFY90. REFORMS OF THE SBS TO INCREASE THE TRANSPARENCY OF ITS OPERATIONS, ELIMINATE ANY DISCRIMINATION BETWEEN THE TREATMENT OF GRAIN AND GRASS-FED BEEF, AND FACILITATE THE PARTICIPATION OF NEW MARKET ENTRANTS WILL BE UNDERTAKEN IMMEDIATELY. THE SBS SYSTEM ALLOWS BUYERS AND SELLERS TO NEGOTIATE CONTRACTS DIRECTLY.

-- MARKET ACCESS FOR HOTELS WILL BE EXPANDED TO 10,000 MT IN JFY88, 13,000 MT IN JFY89, AND 16,000 IN JFY90 (4,000 MT IN JFY87).

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-- JAPAN'S IMPORT RESTRICTIONS ON PREPARED AND PRESERVED BEEF PRODUCTS WILL BE ELIMINATED WITHIN TWO YEARS. THIS SETTLES ONE OF THE "GATT-12" PRODUCT CATEGORIES.

FRESH ORANGES:

-- DURING THE JFY88-JFY90 PERIOD, MARKET ACCESS WILL BE EXPANDED BY 22,000 MT ANNUALLY, REACHING 192,000 MT IN JFY90 (JFY87 LEVEL: 126,000 MT; THE INCREASE THE PREVIOUS FOUR YEARS WAS 11,000 MT/YR).

-- AS OF 4/1/91, IMPORTS OF FRESH ORANGES WILL BE PERMITTED IN UNLIMITED QUANTITIES AND THE ONLY RESTRICTION WILL BE THE CURRENT TARIFF (NOW BOUND AT 40 PCT. SEASON AND 20 PCT. OFF SEASON). US ANNUAL EXPORTS OF FRESH ORANGES ARE EXPECTED TO INCREASE BY MORE THAN 50 PCT. IN VOLUME AND \$25 MILLION IN VALUE.

ORANGE JUICE:

-- MARKET ACCESS FOR ORANGE JUICE CONCENTRATE WILL BE INCREASED FROM 8,500 MT IN JFY87 TO 15,000 MT IN JFY88, 19,000 MT IN JFY89, 23,000 MT IN JFY90, AND 40,000 MT IN JFY91.

-- AS OF 4/1/92, IMPORTS OF ORANGE JUICE WILL BE PERMITTED IN UNLIMITED QUANTITIES AND THE ONLY RESTRICTION WILL BE THE CURRENT TARIFF (NOW SET BETWEEN APPROXIMATELY 25 PCT. AND 35 PCT. DEPENDING ON SUGAR CONTENT). US EXPORTERS WILL COMPETE IN AN ESTIMATED \$50 MILLION IMPORT MARKET.

-- SPECIAL ACCESS, NOT SUBJECT TO THE BLENDING REQUIREMENT, WILL BE PROVIDED FOR IMPORTS OF SINGLE-STRENGTH ORANGE JUICE AND ORANGE JUICE MIXTURES AS FOLLOWS: 15,000 KL IN JFY88, 21,000 KL IN JFY89, AND 27,000 KL IN JFY90. (IMPORTS OF THESE PRODUCTS ARE NOW ESSENTIALLY BANNED.) AS OF 4/1/91, IMPORTS WILL BE PERMITTED IN UNLIMITED QUANTITIES.

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E.O.12356: N/A

TAGS: EAGR, ETRD, GATT, JA

SUBJECT: PRESS GUIDANCE AND SUMMARY OF US-JAPAN BEEF
-- IMPORTS OF SINGLE-STRENGTH ORANGE JUICE IN SMALL
CONTAINERS FOR USE IN HOTELS WILL BE PERMITTED IN
UNLIMITED QUANTITIES THIS YEAR.

-- THE REQUIREMENT THAT IMPORTED ORANGE JUICE BE
BLENDED WITH MIKAN JUICE PRODUCED IN JAPAN WILL BE
LIFTED FOR 40 PCT. OF THE CONCENTRATED ORANGE JUICE
IMPORTED IN JFY88, 60 PCT. IN JFY89, AND COMPLETELY
ELIMINATED AS OF 4/1/90.

OTHER PRODUCTS:

-- THE GOVERNMENT OF JAPAN HAS AGREED TO THE FOLLOWING
TARIFF REDUCTIONS TO BE EFFECTIVE 4/1/89:

-- GRAPEFRUIT - FROM 25 PCT. IN SEASON AND 12 PCT. OFF
SEASON TO 15 PCT. IN SEASON AND 10 PCT. OFF SEASON.

-- LEMONS - FROM 5 PCT. TO 0 PCT.

-- FROZEN PEACHES/PEARS - FROM 20 PCT. TO 10 PCT.

-- PISTACHIOS - FROM 9 PCT. TO 0 PCT.

-- MACADAMIAS - FROM 9 PCT. TO 5 PCT.

-- PECANS - FROM 9 PCT. TO 5 PCT.

-- WALNUTS - FROM 16 PCT. TO 10 PCT.

-- BULK PET FOOD - FROM 15 PCT. TO 0 PCT.

-- PET FOOD IN RETAIL PACKS - FROM 12 PCT. TO 0 PCT.

-- BEEF JERKY - FROM 25 PCT. TO 10 PCT.

-- SAUSAGE - FROM 25 PCT. TO 10 PCT.

-- PORK AND BEANS - FROM 28 PCT. TO 14 PCT.

-- EFFECTIVE 4/1/90, THE GOVERNMENT OF JAPAN WILL
REDUCE THE TARIFF ON GRAPEFRUIT IN SEASON TO 10 PCT.

MANSFIELD

END OF MESSAGE

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**THE WHITE HOUSE
WASHINGTON**

ER 2529X-88

CABINET AFFAIRS STAFFING MEMORANDUM

Date: 06/16/88 **Number:** 490,753 **Due By:** -----

Subject: Economic Policy Council Meeting -- Friday, June 17, 1988
-- 9:00 a.m. -- Roosevelt Room

	Action	FYI		Action	FYI
ALL CABINET MEMBERS	<input type="checkbox"/>	<input type="checkbox"/>	CEQ	<input type="checkbox"/>	<input type="checkbox"/>
Vice President	<input checked="" type="checkbox"/>	<input type="checkbox"/>	OSTP	<input type="checkbox"/>	<input type="checkbox"/>
State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Treasury	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Defense	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Justice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Interior	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Agriculture	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Commerce	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Powell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Labor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Cribb	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HHS	<input type="checkbox"/>	<input type="checkbox"/>	Bauer	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HUD	<input type="checkbox"/>	<input type="checkbox"/>	Dawson (For WH Staffing)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Energy	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Education	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Chief of Staff	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
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<u>CIA</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	DPC	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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REMARKS:

The Economic Policy Council will meet on Friday, June 17, 1988, at 9:00 a.m. in the Roosevelt Room. The agenda and background materials are attached for your review.

B. S. J. R.

RETURN TO:

Nancy J. Risque
Cabinet Secretary
456-2823
(Ground Floor, West Wing)

Associate Director
Office of Cabinet Affairs
456-2800
(Room 235, OE08)




THE WHITE HOUSE

WASHINGTON

June 16, 1988

MEMORANDUM FOR THE ECONOMIC POLICY COUNCIL

FROM: WILLIAM J. MARONI 
SUBJECT: Agenda and Papers for June 17 Meeting

The agenda and papers for the June 17 meeting of the Economic Policy Council are attached. The meeting is scheduled for 9:00 a.m. in the Roosevelt Room.

The first agenda item is a report by Ambassador Clayton Yeutter on major pending bilateral trade disputes. The Trade Policy Review Group (TPRG) has prepared a matrix of these cases that explains the amount of trade involved, the status of each case, and the anticipated timing for Cabinet-level decisions. The TPRG overview recommends a list of priorities to guide the Council in resolving these cases during the coming months.

The second agenda item is a specific trade dispute involving Brazil's regulations on informatics imports. In February 1988, the Administration decided to postpone sanctions against Brazil pending U.S. review of Brazil's regulations. The review has now been completed and the Council is asked to decide what, if any action, it recommends to the President. Ambassador Yeutter will present the Trade Policy Review Group's recommendations.

The third agenda item is an overview of the upcoming Toronto Economic Summit. As you know, on June 7 the Council took part in briefing the President on the trade and agriculture issues. Tomorrow's Council meeting will present an opportunity to discuss the most recent Summit preparations and expectations. President Reagan and several members of the Cabinet depart for the Summit meeting on Saturday, June 18.

CONFIDENTIAL ATTACHMENTS

THE WHITE HOUSE

WASHINGTON

ECONOMIC POLICY COUNCIL

June 17, 1988

9:00 a.m.

Roosevelt Room

AGENDA

1. Priorities for Resolving Pending Trade Disputes
2. Brazil Informatics Case
3. Overview of Upcoming Toronto Economic Summit;
June 19, 20

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

June 15, 1988

To: Economic Policy Council

From: Trade Policy Review Committee

Subject: The Overall Context of Pending Trade Disputes

SUMMARY:

At the Economic Policy Council meeting of May 4, Ambassador Yeutter reviewed trade disputes being addressed in the GATT dispute settlement process or bilateral negotiations. The Council agreed to try to devise an overall strategy regarding these disputes.

This memorandum sets out the factors that should be taken into account, and stresses the need to continue our aggressive approach in order to resolve as many problems as possible during the Reagan Administration. The Council is asked to consider these factors against which pending trade dispute cases will be examined and options for action will be presented during the coming months.

RECOMMENDATION:

Each trade dispute, as described in the attached matrix, must be primarily dealt with on its own merits. Specific decisions on the uses of retaliatory threats of actions, resort to the GATT process, the terms of settlement, etc. cannot be predetermined. Rather, they need to reflect a sense of timing and tactics and a judicious appraisal of the likely impact both here and abroad of retaliation threats or actions. But it is important that the American public know that we will use our trade laws and economic leverage to address specific complaints about foreign unfair trade practices in a determined manner and that these interests will not be casually sacrificed for geopolitical or broader trade policy concerns.

The Economic Policy Council should enjoin the Trade Policy Review Group to endeavor, to the maximum extent possible, to resolve as many trade disputes as possible during the remainder of this Administration. However much as we would prefer to resolve all pending issues, it is unrealistic to think we could succeed. In view of limitations on time, resources and the GATT dispute settlement system, we must assign priorities to the pending disputes that:

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- o involve potential for expanding U.S. exports of goods and services and increasing U.S. employment, or improving conditions for investment or the adequate protection of intellectual property rights;
- o represent strong Congressional and private sector interests;
- o involve important precedents, particularly for U.S. positions in the Uruguay Round;
- o were self-initiated cases;
- o we won in the GATT;
- o involve the blocking of GATT dispute settlement procedures (i.e., repeated objections to creation of a panel or to acceptance of a GATT panel's findings);
- o meet the Section 301 criteria, with special emphasis on cases that involve a violation of a trade agreement; or
- o involve pending retaliation, following a Presidential decision to retaliate.

BACKGROUND:

We have a large number of trade disputes pending some of which may reach a flash point in the remainder of this year and require decisive action. A list of outstanding issues is attached; it should be noted that this list is not exhaustive nor does it attempt to set priorities.

Any dispute that is not resolved satisfactorily by the end of November is likely to fester until March or April 1989, while the next administration charts its course on trade. Where we are the complaining party, the "offending" trading partner may seek to delay action during the remainder of the year, to test the winds of a new administration. We should resist such spillovers wherever possible.

To make maximum progress and conclude favorably as many disputes as possible, we generally need to continue the aggressive approach that the President adopted in September 1985. Trade is likely to remain one of the most active responsibilities of this Administration, until the very end.

We also need to bear in mind the effects of these disputes on our larger efforts in the Uruguay Round of multilateral trade negotiations generally, and on the Mid-term Review particularly. We should not agree to compromises of these disputes that undercut our Uruguay Round negotiating positions.

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Some foreign governments may argue that the Uruguay Round negotiations will provide the most appropriate forum for resolving many of these trade problems. In fact, the United States has argued that the escalating number of disputes is evidence of still unresolved, serious, underlying problems in our international trade system. But we cannot expect multilateral negotiations to resolve bilateral trade disputes any time soon. Further, there is a danger in attempting to resolve individual bilateral disputes in the midst of negotiations on generic rules.

Our various disputes are currently at different stages of consideration either within our own internal U.S. trade law processes or within the GATT dispute settlement process. These processes can be slow especially with respect to the GATT. Nonetheless, this Administration has toiled to make the GATT rules work and seeks to strengthen them. At other times, it has become clear that the process has been "blocked" or prevented from working toward solution. On those occasions, after exhausting all avenues within the GATT, we have considered unilateral action.

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

June 15, 1988

MEMORANDUM FOR: THE ECONOMIC POLICY COUNCIL
FROM: THE TRADE POLICY REVIEW GROUP
SUBJECT: Section 301 Unfair Trade Case Against
Brazil Informatics

ISSUE

Retaliation against Brazil was delayed on February 29, 1988 pending review of its software law implementing regulations. The regulations were promulgated by Brazil in May 1988. The EPC must decide what action, if any, to recommend to the President.

RECOMMENDATION

The software regulations are insufficiently detailed to determine whether U.S. software firms will be assured of market access in Brazil. Therefore, the TPRG recommends that we postpone sanctions against Brazil while we monitor Brazil's actual administration of the new law.

However, the TPRG also considered criteria for assessing Brazil's performance. Sanctions may be triggered if Brazil denies market access to one or several U.S. firms, or may be imposed after we have considered the general quality and pattern of actions over the next five months. The TPRG recommends that we retain the flexibility to act under either circumstance. Consequently, sanctions could be imposed on this issue or any related part of the section 301 case at any time.

In addition, the TPRG recommends that if it becomes necessary to impose sanctions, that we review or revise both the amount of sanctions (\$105 million) and the list of possible retaliatory product candidates that were published in the Federal Register notice last November. This would require new public hearings.

If the EPC endorses the TPRG recommendation, USTR would issue a press release which would (1) criticize the software regulations as being insufficiently detailed to ensure market access, (2) retain the option to impose sanctions while we monitor Brazil's actual administration of the software law, and (3) indicate that the list of retaliatory products will be revised, should sanctions be imposed.

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HISTORY OF CASE

- o In September 1985, the U.S. Trade Representative self-initiated a section 301 unfair trade investigation against Brazil's informatics policy. We cited the market reserve policy, administrative burdens on imports, the prohibition of foreign investment, and the lack of copyright protection for computer software as the major grounds for our complaint.
- o In December 1986, President Reagan suspended the market reserve and administrative portions of the section 301 case in light of Brazil's agreement not to extend market reserve for computer hardware beyond 1992. (1992 is the year in which the market reserve policy is scheduled to expire under the informatics law.) In addition, Brazil presented a limited list of products not covered by market reserve. The President instructed USTR to monitor developments in Brazil that might abrogate that country's commitments.
- o In June 1987, Brazil's Chamber of Deputies passed legislation that would effectively extend market reserve to computer software by prohibiting foreign firms from selling programs for which there is a Brazilian "functional equivalent." Although the USG objected to this provision, the legislation also provided copyright protection for software. In light of the Chamber's action to provide copyright protection, the President suspended the intellectual property rights part of the section 301 investigation and directed USTR to monitor the bill's passage through the Brazilian legislature.
- o In September 1987, Brazil rejected licensing agreements between Microsoft and six Brazilian firms for the MS-DOS, one of the world's leading operating systems. Brazil justified its rejection on grounds that a national company produced a similar, or "functionally equivalent" system that was "adequate for the Brazilian market place."
- o At the same time, Brazil's legislature passed the legislation that codified this concept into law. These actions contravened earlier understandings with Brazil that U.S. software companies would be able to obtain "reasonable market access" to Brazil. In November 1987, President Reagan announced his intention to impose sanctions against \$105 million in Brazilian exports, and to place prohibitive tariffs on Brazilian informatics exports.
- o The sanctions were delayed on February 29, 1988, in light of a letter sent to Secretary Baker from Brazil's Finance Minister which made several commitments. The most important commitment was that Brazil would take into account our views

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in drafting the software law implementing regulations to provide U.S. software firms "fair market access."

- o We presented our suggestions in writing regarding the software regulations to the Brazilians. Although we requested consultations with the government prior to promulgation of the regulations, the Brazilians declined. The regulations were promulgated in final form on May 16, 1988.
- o On May 25, 1988, the Brazilians offered to meet in Brasilia with USG experts to discuss the regulations. Based on this meeting and U.S. industry analysis of the regulations, we concluded that they were insufficiently detailed to determine whether U.S. software firms will be assured of market access in Brazil.
- o The EPC must now decide what action, if any, to recommend to the President.

BRAZIL'S SOFTWARE IMPLEMENTING REGULATIONS

Under Brazil's new software law, computer software must be "catalogued" by the Secretariat for Informatics (SEI) before a firm can market the program or operating system. Permission to commercialize is granted for three years. Foreign software will be denied cataloguing if a similar or "functionally equivalent" program can be shown to be catalogued and commercially available or in development.

The implementing regulations were promulgated in May 1988. Only general criteria for deciding whether a program is functionally equivalent are included and some of the criteria are not defined at all. Nor do the regulations state specifically how or if all of these criteria will be used to determine functional equivalency. Operational tests will only be performed under certain circumstances, and SEI is not required to divulge test results and other technical grounds for denying a cataloguing request or a renewal of this request.

Of particular concern is the undefined criteria which permit SEI to take into account "conditions of the national marketplace" in deciding if there is a similar Brazilian product. According to Brazilian officials, these criteria mean that SEI could prohibit imports of a sophisticated software program on the grounds that it is not needed in Brazil because the market is less developed than the United States. This was the justification ultimately invoked by SEI in its rejection of Microsoft's licensing agreements for the MS-DOS operating system, after Microsoft submitted extensive documentation to SEI demonstrating that its product was technically different from the Brazilian system.

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However, SEI is still required under the new regulations to make cataloguing decisions on "technical and legal grounds" and identify the national similar or legal basis for rejection. The regulations refer to an appeals process, but to date, no effective appeals mechanism has been presented. Under the current system, the Brazilian licensee must appeal the decision before CONIN, the informatics council which was established to review informatics policies. CONIN meets only twice a year, which is too infrequent because often the commercial life of software is around three years. SEI must also rule on a cataloguing request within 120 days from date of filing, or the application will be automatically approved.

INDUSTRY VIEWS

The software industry appears to be taking a cautious view of the 301 case and is generally advocating a "wait and see" approach, while at the same time keeping pressure on Brazil. Some firms think that there are some provisions in the implementing regulations which may reduce some of SEI's discretion to discriminate against foreign suppliers. However, the companies agree that the regulations are not sufficiently specific, that they leave a number of questions unanswered regarding how policies will be implemented, and in general have not improved the software law.

Companies now want to submit their registrations to the GOB to see how the provisions will be implemented in practice. They are concerned about the USG taking actions that might jeopardize their chances of getting applications approved by SEI. Firms are also concerned whether retaliation would be effective in changing Brazil's informatics policies, or whether retaliation would result in Brazilian countermeasures.

Therefore, the U.S. industry supports postponing sanctions while we monitor Brazil's administration of the new law. However, they emphasize that the USG "should not accept one more decision like Microsoft" in Brazil.

DISCUSSION

Even though the software regulations are unsatisfactory, both the TPRG and U.S. industry do not believe that sanctions in whole or in part would change Brazilian policy at this point. Brazilian officials believe that they have achieved a balance among competing interests, including the local software publishing industry and the U.S. Government. Brazilian exporters, who once actively supported our position, are beginning to resent the repeated threats of sanctions.

We believe our only alternative is to wait and see how Brazil actually administers the new law. Under the law, SEI has 120 days to approve or reject registration and cataloguing requests.

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According to the U.S. Embassy, there is currently a backlog of over 8,000 cataloguing requests pending before SEI under the old Normative Act 22. Some of these requests involve foreign software. U.S. software industry representatives have told us that companies intend to file similar requests to SEI, despite their dissatisfaction with the law and the new regulations. Microsoft alone is planning to submit applications for over fifty products.

If Brazil allows imported software, then favorable precedents will be set for future imports. If Brazil rules against U.S. firms, we will have solid evidence of Brazil's intention to close its software market to foreign imports.

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June 13, 1988

WHITE HOUSE TALKING POINTS

TORONTO ECONOMIC SUMMIT

President Reagan will participate in his eighth Economic Summit June 19-21 when he meets in Toronto with other leaders of the free world's seven major industrialized nations. In addition to the U.S., those nations are Japan, West Germany, France, the United Kingdom, Italy and Canada. The European Community will also be represented at the Toronto Summit.

MAJOR U.S. THEMES

President Reagan will pursue three major themes at the summit, which is the 14th among the free world's economic powers.

1. The Past Eight Years -- Free Markets and Open Societies

There is increasing acceptance that free markets and open societies are the only ways to promote enduring economic growth and development. State planning, intervention and control do not work. Over the past eight years, countries with free economies and open societies have had impressive rates of growth. The United States has been in the forefront in promoting democracy and economic freedom around the world.

2. International Cooperation and Shared Responsibilities

Consultation and coordination among Summit participants -- as well as nations that are members of the General Agreement on Tariffs and Trade (GATT), the Organization for Economic Cooperation and Development (OECD), and the North Atlantic Treaty Organization (NATO) -- have dealt with economic problems and threats to security. The United States supports this approach of shared responsibilities.

3. A Look Ahead -- Removing Barriers

The future belongs to the flexible, to nations that take advantage of the free exchange of ideas, goods and services. The U.S. expects the Toronto Summit to give a major political push to the Uruguay Round in order that global barriers to the international flow of goods can be ended.

ECONOMIC GROWTH AMONG SUMMIT PARTICIPANTS

- o Since 1981, economic summits have helped set out a market-oriented strategy to bring down inflation and promote recovery and economic growth.

WHITE HOUSE TALKING POINTS

- o The seven summit nations have cooperated on economic policy; resisted protectionism; launched a new round of trade negotiations; and established a case-by-case strategy to deal with the debt of developing countries.
- o For each country attending the Toronto Summit, the rate of growth in goods and services produced was significantly higher in 1987 than in 1981.
- o The table below reports growth rates in real gross national product (GNP) for the United States, Germany and Japan, and in gross domestic product (GDP) for the other countries. GDP reports production but excludes investment income earned abroad.

Growth Rate of Real GNP and GDP
in percentages

	1981	1987
U.S.	1.9	2.9
Japan	3.7	4.2
West Germany	0.0	1.7
France	1.2	2.2
U.K.	-1.1	3.7
Italy	1.1	3.1
Canada	3.7	3.9
Summit-7	1.7	3.1

THE SUMMIT ISSUES

A number of specific issues are expected to arise during the summit. Here is the U.S. position on these issues:

Coordinating Economic Policy

- o President Reagan believes in coordinating economic policies of the major industrial countries to promote a stronger world economy and a more stable financial system. The development of consistent and compatible policies and economic performance will help improve growth, reduce trade imbalances and provide greater exchange rate stability.
- o Progress in coordination is being made:
 - At the Tokyo (1986) and Venice (1987) Summits, the seven nations decided to make increased use of economic indicators to survey their economies, and agreed on economic goals for the future.

WHITE HOUSE TALKING POINTS

- In October 1987, the benefits of increased coordination were demonstrated following the decline in the stock market. The worldwide economy survived with little damage.
- o Among other things, the President is encouraging:
 - Continued step-by-step strengthening of the coordination process to achieve a sound world economy and stable financial markets.
 - Reduction of our own budget deficit. In fiscal year 1987, the U.S. reduced its budget deficit by \$72 billion, from \$221 billion to \$149 billion. Under the President's proposed budget for FY 1989, the deficit would decline to \$23 billion by FY 1993.
 - Stable exchange rates. Excessive fluctuation of those rates, or a dramatic change in the value of the dollar, could damage the prospect for growth in the world economy. Furthermore, stable and consistent policies will contribute to exchange rate stability.
 - Reductions in subsidies to agriculture and other industries, and steps to make labor more mobile.
 - A new index for commodity prices that would include the price of gold as well as other commodities such as wheat and oil. This would be an additional instrument with which to examine global price trends.
 - A review of structural issues among the nations, such as tax reform; measures to reduce government interference in markets, including financial markets; and deregulation to move the world to a market-oriented economy.

Agriculture

- o The goal of the Reagan Administration is the eventual elimination of all subsidies and import restrictions to allow all farmers to compete on a level playing field. Assistance to farmers which is not linked to prices and production could be substituted.
- o The Administration has asked the members of GATT to phase out over 10 years all agricultural programs which directly or indirectly distort trade. A framework for worldwide reform of agriculture should be completed when trade ministers meet for the mid-term review of the GATT Uruguay Round in December 1988.

WHITE HOUSE TALKING POINTS

International Trade

- o The President favors open markets and liberalized international trade. This would include support among the summit nations for a successful mid-term review of the Uruguay Round.
- o The President is seeking an endorsement of a framework approach for negotiations on Uruguay Round issues. This framework will lay out specific goals, a road map and a timetable to the finish line. The U.S. would like the summit leaders to urge their ministers toward agreements on intellectual property, services, investment, the functioning of the GATT system, and the integration of the newly industrialized economies into the GATT.

International Debt

- o Considerable progress is being made in supporting debtor nations' efforts to achieve sustained growth, restore investor confidence, and improve credit-worthiness.
 - Major debtors have placed increased emphasis on market-based policies to increase economic efficiency.
 - They are implementing reforms to promote growth, trade and capital flows. These include privatizing public sector enterprises, tax system reforms, trade liberalization, removal of price controls and promotion of realistic exchange and interest rates.
 - Eight of the major debtors achieved growth of 4 percent or better last year, while debt service ratios have fallen by one-fourth since 1982.
- o At the Venice Summit in 1987, participants encouraged efforts by commercial banks and debtor countries to develop a "menu" of financing options to help debtor nations reform their economies and help the banking community devise new financing packages. The U.S. supports the case-by-case menu approach.
- o There is a continuing need for assistance to the low-income economies, particularly sub-Saharan Africa, through enhanced support from the summit countries and international financial institutions.

WHITE HOUSE TALKING POINTS

- o The U.S. is willing to support a number of different approaches for the poorest countries. Creditor countries in a position to do so could provide interest rate concessions on a case-by-case basis. Other countries might consider a broader range of initiatives.

Narcotics

- o Illegal narcotics should never be part of international trade. The President favors increased international cooperation to prevent money laundering and the flow of profits from illicit drugs to financial institutions around the world.

Other Topics

Among other topics that could be discussed at the Toronto Summit are these: East-West economic relations and implications for allied security; regional issues; cooperation against terrorism; and the environment.