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Record Group/Collection: George H.W. Bush Presidential Records
Collection/Office of Origin: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: White House Offices Files

OA/ID Number: 29181
Folder ID Number: 29181-003

Folder Title:
Policy Development (Porter) (1990) [2]

Stack:	Row:	Section:	Shelf:	Position:
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Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Memo	From Roger Porter to John Sununu Re: Sugar Import Quota (1 pp.)	1/16/90	P5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff to the President, Office of the
Series: Sununu, John, Files
Subseries: White House Offices File
WHORM Cat.:
File Location: Policy Development
(Porter) (1990) [2]

Open on Expiration of PRA
(Document Follows)
By JF (NLGB) on 10/28/05

Date Closed: 12/15/2004	OA/ID Number: 29181-003
FOIA/SYS Case #: 1998-0004-F[1]	Appeal Case #:
Re-review Case #: 2005-0426-S	Appeal Disposition:
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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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THE WHITE HOUSE

WASHINGTON

January 16, 1990

THE CHIEF OF STAFF
has seen

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RBP*

SUBJECT: Sugar Import Quota

file ✓

USTR is announcing today an increase in the sugar import quota by 325,000 tons. This increase will offset the decline in the 1990 domestic sugar crop due to frost in Texas and Florida that USDA projected on January 11. Sugar prices have been high in past weeks due to tightness in supply.

The increased import quota provides an occasion to restore Panama's quota of 30,000 tons, which was taken away when economic sanctions were applied. To avoid preempting the imminent announcement of the economic recovery program for Panama, the USTR announcement will not specifically address the Panama sugar allocation. Rather, the announcement will contain a 30,000 ton escrow account. Once the President has made the necessary legal determinations (concerning the Government of Panama's commitment to combatting illegal drugs), the quota will be reallocated to Panama.

cc: Brent Scowcroft

file

THE WHITE HOUSE
WASHINGTON

January 22, 1990

MEMORANDUM FROM THE CHIEF OF STAFF

 1/27/90

TO: Roger Porter
Michael Boskin

RE: Regulatory Reform Steering Group

I have looked at your joint memo on the Regulatory Reform Steering Group, and I think you have laid it out the right way. Let's go ahead with the Group as you recommend, to start.

I do think that the first meeting ought to address the agenda for IPCC.

THE WHITE HOUSE
WASHINGTON

January 17, 1990

THE CHIEF of STAFF
has seen

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER AND MICHAEL J. BOSKIN
SUBJECT: Regulatory Reform Steering Group

This memorandum responds to your request for a brief description of the role and composition of a group to review regularly and provide direction to the Administration's regulatory reform effort.

We see such a Regulatory Reform Steering Group supplementing rather than supplanting the day-to-day activities of the Office of Management and Budget (OIRA) and of the Council on Competitiveness, or of other formal interagency entities. The steering group would have three principal responsibilities:

1. To identify and discuss alternative approaches to large regulatory related issues requiring attention by senior administration officials.

For example, the group might consider alternative approaches the administration might take to a global climate convention or discuss strategies for dealing with major legislation like the Clean Air Act. Again, it would not replace the existing entities established to develop policy on these issues. Its purpose would be to provide coordination and periodic assessment of our strategy on these issues.

2. To identify and discuss opportunities for regulatory reform initiatives.

3. To monitor the range of individual issues under review by the OIRA process and by the Council on Competitiveness and, when appropriate, to serve as a review body for certain sensitive regulatory issues on behalf of the President.

This group, in our view, should be kept informal and flexible. We do not recommend announcing its creation or establishing it with any formal document. We do recommend that it meet, as needed, at the outset, approximately every other week.

In terms of members of the group, we recommend that it include yourself, Dick Darman, Boyden Gray, Michael Boskin, Roger Porter, and Bill Kristol. Others can be added for particular sessions to consider specific subjects on a case-by-case basis.

If you have any questions, or would like to discuss this with us further, please let us know.

We think the next meeting of this group should consider the U.S. position on global climate issues before the IPCC gathering here in Washington in early February.

Withdrawal/Redaction Sheet

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02. Memo	From Roger Porter to John Sununu Re: Conversation w/Senator Kennedy's Staff Re: National Service (1 pp.)	1/22/90	P5	

Collection:

Record Group: Bush Presidential Records
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THE WHITE HOUSE
WASHINGTON

January 22, 1990

THE CHIEF of STAFF
has seen JAN 27 1990

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RBP*
SUBJECT: Conversation with Senator Kennedy's Staff
Re: National Service

Friday, I spoke with Nick Littlefield, Staff Director and Chief Counsel of the Senate Labor and Human Resources Committee. Senator Kennedy is anxious to know if we are willing to compromise on his National Service bill, S. 1430. The bill is currently scheduled for Senate floor consideration immediately following the clean air debate or February 5, if the Clean Air bill is temporarily laid aside.

I explained to Littlefield that we could not support a bill that authorized more than \$25 million for the Points of Light Initiative Foundation and \$25 million for all other programs in the bill. Although we view stipended programs and financial incentives as the antithesis of volunteerism, we recognize a Kennedy bill must contain authorization for Mikulski/Nunn type programs within the \$25 million for political reasons. No funds, however, could be specifically earmarked for stipended programs.

Littlefield felt strongly that some minimum guarantee for Mikulski/Nunn type programs, roughly \$5 million, was essential. I told him we probably would oppose such a measure. He is scheduled to respond today to the parameters I outlined in our conversation.

A primary consideration in negotiating a compromise is that if Kennedy will accept an authorization level of \$25/\$25 million, we may not have support from key Republicans for playing tough on Mikulski/Nunn programs. Senator Hatch has already said that he is not as opposed to these types of programs as is the administration.

I will let you know if I receive any further calls from Senator Kennedy's staff. I consider the ball to be in their court now.

Withdrawal/Redaction Sheet

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03a. Memo	From John Sununu to Roger Porter Re: National Retail Federation and Carla Hills (1 pp.)	1/27/90	P-5	

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✓
**THE WHITE HOUSE
WASHINGTON**

DATE: January 27, 1990

TO: ROGER PORTER

FROM: **GOVERNOR JOHN H. SUNUNU**

I agree that the National Retail
Federation should meet with Carla Hills.

However, I think you, or someone you
designate on your staff, should also
attend the meeting.

bcc: Jackie Kennedy

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
03b. Memo	From Roger Porter to John Sununu Re: Request for Meeting by Textile Importers and Retailers (1 pp.)	1/23/90	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff to the President, Office of the
Series: Sununu, John, Files
Subseries: White House Offices File
WHORM Cat.:
File Location: Policy Development
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THE WHITE HOUSE
WASHINGTON

January 23, 1990

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RBP*
SUBJECT: Request for Meeting by Textile Importers and
Retailers

You will receive a meeting request shortly from Mr. Joseph O'Neil, the President of the National Retail Federation (NRF). The NRF is a new organization representing importers and retailers of textiles and apparel.

While it is useful to have a domestic counterweight to protectionist pressure from the textiles industry, it would be unwise to schedule a meeting at this time. We have succeeded in moving the textiles trade issue out of the White House and over to USTR. As set out in my earlier memorandum (Tab A), Senators Helms and Thurmond will request a meeting shortly to seek your support for the textiles industry's latest quota bill. Meeting with the importers and retailers will make it very difficult for you to turn down a meeting with Helms and Thurmond, who will demand equal access.

It would be unwise for the White House to become directly involved in the textiles issue now. The Administration cannot support global quota legislation and thus cannot satisfy the domestic industry. Reports from USTR suggest that the global quotas option is unlikely to be a basis for negotiations in the Uruguay Round and in any case would be strongly opposed by the retailers and importers. The most likely outcome is some form of continuation of the current Multi-Fiber Arrangement. This will satisfy no one, although the industry, importers, retailers, and foreigners can all live with it.

In short, the issue should be left with USTR as long as possible.

Recommendation

That you turn down a meeting with the National Retail Federation and suggest that they meet instead with Ambassador Hills.

J

THE WHITE HOUSE
WASHINGTON

January 20, 1990

THE CHIEF of STAFF
has seen

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RBP*
SUBJECT: AEI Conference on Fiscal Policy

Andy Mitrusi from our staff recently attended, at my request, a half-day conference at the American Enterprise Institute on "Fiscal Policy in the 1990s." His report on the conference is attached.

Attachment

cc: Larry Lindsey
Andy Mitrusi

Withdrawal/Redaction Sheet

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Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
04. Memo	From Andy Mitrusi to Roger Porter Re: AEI Conference of Fiscal Policy (3 pp.)	1/17/90	b5	

Collection:

Record Group: Bush Presidential Records
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THE WHITE HOUSE

WASHINGTON

January 17, 1990

MEMORANDUM FOR ROGER PORTER

FROM: ANDY MITRUSI

SUBJECT: AEI Conference of Fiscal Policy

I attended a half day conference on "Fiscal Policy in the 1990s" yesterday. Much of what was said has been heard before (except for Kemp's speech) and much was contradictory (most of the speakers were economists). However, the points that were emphasized are indicative of where the mood of economists and perhaps of the conservative elements of the country are heading. For example, Moynihan's Social Security tax cut proposal was on everyone's agenda as the issue of payroll taxes touches a raw nerve with all workers. Even those who are unaware that they are effectively paying twice as much as what is being taken out of their pay check complain of excessive withholdings.

The best part of the conference was a rousing speech which Secretary Jack Kemp gave, sprinkled with dozens of quotes and punctuated by the taking off of his jacket (apparently this is a standard part of his show). He claimed to be flattered that a brainy outfit like the AEI would ask him to speak on economic issues. He praised John F. Kennedy for his fiscal prowess, took credit for himself for the reduction in the progressivity of the income tax in the early 80s (which he correctly pointed out is different from tax cuts) and lambasted the triple taxation of capital (presumably this means the corporate income tax, the personal income tax and the capital gains tax.)

His major theme was the victory of liberal democrats (little "l", little "d") against socialists. He pointed out that CIA estimates which at one time put the Soviet GNP at 60% of the US' now place it closer to 20%. This implied that South Korea would overtake the USSR this year (he must have been referring to per capita GNP.) He talked of curing the ills of the inner city through his enterprize zone package -- altering the system of rewards away from the perverse current incentive structure which favors broken homes and broken lives towards positive economic incentives.

He then got a bit carried away. He talked about unlocking assets from blue chip companies and making them available to the inner city. He proudly pointed out that as a Congressman he voted against the current increases in the payroll tax although he made clear he disapproved of the current Moynihan proposal. Finally, he made his big pitch of the afternoon which he

predicted may be his swan song at HUD. He claimed that the world economy needs a new, stable international monetary system, one free of dependence on M1, M2, and all the other Ms. He used 1948 Germany as an example of the economic miracle that stable money can bring about, turning the ashes of WWII into one of the world's powerhouses. Fortunately, he did not mention specifics of his new monetary order such as the role gold might play in such a brave new system.

The other speakers made some interesting points which I summarize below with minimum editorial intervention.

Rudiger Dornbush of MIT who spoke on deficits:

- o High real interest rates in the U.S. are driven by consumer demand whereas in Europe high rates are driven by investment demand in anticipation of 1992. Balancing the budget would reduce interest rates 1.5 points in the U.S.
- o The US' debt burden is not high (38% of GNP currently) by either historical standards or international standards. The US' debt exceeded 100% of GNP by the end of WWII and did not fall below 40% until the 1960s, but no one seemed to notice or care.
- o The problem with the debt is one of perception, therefore it is a political problem to which Congress is all too likely to respond to with bad economics. The example of Latin America is instructive because there everything is politically impossible. Yet, after each major cataclysm something does get done anyway. The poor results in Latin America suggests early intervention might be a good idea.

Jane Gravelle of the Congressional Research Service:

- o Though not a speaker, Ms. Gravelle pointed out a concern of some economists over the believability of the two NBER papers on IRAs that are commonly cited as proof that IRAs encourage saving. The suggestion, echoed by others at the conference, was that cutting the budget deficit was a surer method of increasing total savings than increasing incentives on private savings through tax favored plans.
- o Others responded that cutting the budget deficit in Britain under Thatcher did not lead to greater total saving but to a precipitous drop in the personal savings rate (which went to zero). They pointed out the silliness of the assertion that increasing the after tax returns on savings might have no effect on the level of savings.

Eugene Steuerle of the Urban Institute (formerly of the Department of Treasury):

- o Steuerle pointed out that the combined income and payroll

tax burdens for the lowest and highest income classes have become similar in the 1980s. The middle classes now have the highest burden, especially at the margin. (For example, a worker in my situation has a marginal tax rate on labor income of 44.4%.) The highest tax rates are those facing recipients of transfer payment and in-kind benefits who often face marginal rates well in excess of 100%.

- o Linkage of taxation and expenditure should become the preferred method of raising revenue in the future. User fees come to mind but more tenuous linkages were suggested such as linking higher taxes on cigarettes and alcohol to controlling the problem of illicit drugs.

Congressman Gradison, who serves on the Budget Committee and Ways and Means:

- o The Congressman foresees budget gimmickry being refined as an art form (by all sides.) Gramm-Rudman is not about reducing the budget deficit but about reducing the projected deficit, a totally different beast. The peace dividend is a sham since we have had reductions in real defense spending since 1985.
- o Payroll taxes will be the big issue in near future, especially for small business. The Congressman does not favor Moynihan's proposal but sees a big push to do something about high payroll taxes.

Observations by others:

- o On defense, the old fashioned way to determine the level of spending was to look at the threat and then decide what to spend. Today, the process seems to be driven by budget considerations rather than defense needs.
- o The structure of the Social Security tax needs to be addressed. Progressivity at the high end and a standard exemption at the low end were mentioned.
- o One fellow, John Makin of the AEI, suggested that Social Security system should be abolished.

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THE WHITE HOUSE
WASHINGTON

January 12, 1990

THE CHIEF of STAFF
has seen

MEMORANDUM FOR GOVERNOR SUNUNU

FROM:

ROGER B. PORTER *RBP*

SUBJECT:

Japan: Structural Impediments Initiative

In the past several weeks I have sent you memorandums of conversation on several meetings concerning the Structural Impediments Initiative discussions we have underway with Japan. The attached memorandum reports on a discussion that Steve Farrar and Warren Maruyama had with the Director-General of MITI's International Trade Administration Bureau.

The Director-General, Naitoh, is the author of the Import Expansion Program which the Japanese have been trying so hard to sell in recent weeks.

At some point before the "interim report" in March, we will need to assess closely our strategy for these talks.

Attachment

THE WHITE HOUSE

WASHINGTON

January 10, 1990

MEMORANDUM FOR ROGER B. PORTER

FROM: STEPHEN P. FARRAR ^{SPF}
WARREN MARUYAMA ^{WM}

SUBJECT: Naitoh Visit

We met yesterday with Director-General Naitoh of MITI's International Trade Administration Bureau, who made several interesting points about the Japanese Import Expansion Program and SII.

As the author of the Import Expansion Program, Naitoh spent much of the meeting trying to sell it. He provided a detailed description of the program, drawing heavily from the attached MITI paper. Naitoh contended that SII has identified important structural barriers, but that there are no good solutions to many of them. The Import Expansion Program will offset the higher inventory costs of imported goods and create pressure for businesses to seek out imports directly, thus addressing in part U.S. concerns about exclusionary business practices and the distribution system.

When asked about Martin Feldstein's criticisms, Naitoh responded that 80 percent of the bilateral trade deficit is macroeconomic, but the remaining 20 percent is still important. In this respect, he noted that the yen-dollar exchange rate must fall to the 120-125 range to have an appreciable impact on the bilateral trade balance.

At the end of the meeting, Naitoh made several interesting observations about SII:

- o Treasury and the Ministry of Finance appear to be colluding to prevent discussion of the "financial keiretsu" issue;
- o While repealing the Large Retail Stores Law is politically impossible, it takes less than a year to add new space to existing stores; and
- o It would be useful if the U.S. pressed Japan to eliminate local government administration of the Large Retail Stores Law.

Naitoh closed by saying that he is committed to making SII succeed. He emphasized, however, that this will require high-level guidance for both the U.S. and Japanese negotiators, implying some form of White House participation.

Attachment

IMPORT EXPANSION MEASURES

JANUARY 1990

MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY
OF JAPAN

JAPAN INTRODUCES COMPREHENSIVE IMPORT EXPANSION MEASURES

The Government of Japan has introduced a new program of comprehensive import expansion measures. The program is the result of studies by MITI of various ways to promote imports into the Japanese market and to thereby reduce the amount of surplus in its international balance of payments.

The measures which will be administered by MITI are unprecedented in scope, not only in Japan, but in the world. Included in the plans are tax incentives and financial assistance for importers and a number of new government program initiatives to promote the internationalization of the Japanese market at the grass roots and assistance to exporters around the world.

There will be tax credits offered to importers of manufactured goods. Japan will make a unilateral elimination of tariffs on more than 1,000 products. Import lending programs are being expanded. The loan limits are being raised and for the first time, overseas companies will be eligible for the low-interest loans.

An aggressive, hands-on program to stimulate the Japanese consumer to import will be implemented in every prefecture of Japan. Teams of experts will be dispatched to all parts of the world to find suitable products for importing into Japan. And these experts will provide technical assistance for exporters.

This new import expansion program seeks to be a mirror image of the export promotion program established in the 1960's by Japan. This new program represents a significant step by Japan to become a major importing country.

After Parliamentary approval, these measures are scheduled to be implemented from spring 1990.

I. OUTLINE OF THE MEASURES

1. TAX INCENTIVES TO PROMOTE MANUFACTURED IMPORTS

Comprehensive tax incentives for the promotion of manufactured imports have been established.

A tax credit of 5% of the amount of the increase of imports will be offered to manufacturing industries.

Wholesalers and retailers will be allowed to reserve funds before taxes to develop markets in Japan for manufactured imports.

These measures will be in effect for three years.

Products covered by these measures are duty-free manufactured items, which currently account for approximately 50% of all manufactured imports. The amount of imports involved is estimated to be approximately 5 trillion yen (about \$40 billion) as of 1988. It is estimated that this tax credit will result in government revenue loss of \$1 Billion. Included in these products are computers and semiconductors or ICs. Forty percent of these covered products are currently imported from the United States. (This compares to the overall U.S. share of Japanese imports of 22%.)

2. ELIMINATION OF TARIFFS

Tariffs on manufactured products will be eliminated or reduced. Tariffs on 1,004 products will be eliminated, and those on four products will be reduced. For example, almost all machinery will be imported into Japan duty free. These 1,008 products have an import value of approximately 1.7 trillion yen, or about \$13 billion. Elimination of tariffs on these products will reduce government revenue by \$300 million. A drawback system will also be set up for items which are imported into Japan and then re-exported.

3. PROGRAM BUDGET

The import expansion program budget, which amounted to 1.9 billion yen in fiscal 1989, will be increased sharply to 14.5 billion yen (approximately \$100 million) -- 7.5 billion yen from fiscal 1989 supplementary budget and 7 billion yen from fiscal year 1990 budget.

The main features of the new program include:

Establishment of an information network for promotion of imports.

An active exchange program among importers and exporters.

Experts will be sent to other countries to seek products with import potential.

Implementation of pilot projects to establish comprehensive import promotion centers.

Japan hopes to initiate working level discussions with the United States Government to promote these activities jointly.

4. IMPORT EXPANSION LOAN PROGRAMS

Five major public financing corporations, the Export-Import Bank of Japan, the Japan Development Bank, the Small Business Finance Corporation, the Peoples Finance Corporation and the Japan Small Business Corporation, make low-interest loans to encourage imports. The programs of these corporations will be enhanced and expanded. The amount available for lending under these programs will be 220 Billion Yen. (1.6 Billion).

The number of companies eligible for financing of manufactured imports and the loan limits are being increased. Foreign companies located overseas will be eligible in addition to domestic companies, which are already eligible. These programs are administered by the Export-Import Bank of Japan.

The number of companies eligible and the loan limits have both been increased for the low-interest loan program of the Japan Development Bank to procure and improve import expansion-related facilities. Similarly, the low-interest loan program for direct investment in Japan by foreign companies have been increased by the Japan Development Bank.

Wholesalers and retailers of small and medium-sized businesses will be eligible for low-interest loans for equipment procurement and improvement and on working capital through the Small Business Finance Corporation and People's Finance Corporation.

Financing will be available to procure and improve basic import facilities of small and medium-sized distributors. Such projects will be eligible to receive loans to modernize facilities from the Japan Small Business Corporation.

II. TAX INCENTIVE MEASURES TO PROMOTE MANUFACTURED IMPORTS

1. OBJECTIVE

The process to expand manufactured imports entails tremendous costs and risks in finding new products, sales promotion, marketing, and so forth. By providing various tax incentives including tax credits, such costs and risks will be lessened creating an incentive to expand imports.

These tax measures are similar to the export promotion tax measures which were implemented by Japan in the 1960's.

2. OUTLINE

(1) A system of tax credits and additional depreciation will be offered to manufacturing industries.

Applicable to: Manufacturers whose value of qualified imports in one year is at least 10 percent more than the largest value in recent years.

Qualified goods for import promotion:
Duty-free manufactured products (for items included between the fifth and eighth sections of SITC classification).

Detail: Selection of one of following systems:

(a) Tax Credit

Five percent of increase in value of qualified imports. (Subject to a limit of 10% of corporate tax or 15% in the case of small and medium-sized companies.

(b) Additional Depreciation

Additional depreciation on eligible machinery and equipment that are owned at the end of the taxable year which was bought in that taxable year, or in the two years before the taxable year at the following depreciation rates.

Qualified machinery and equipment: 20%

Other machinery and equipment: 10%

(Subject to a limit of 50% of the amount of increase of qualified imports.)

Duration: Three years for the above measures.

(2) Wholesalers and retailers will be allowed to reserve funds from taxable income for market development of manufactured imports. Qualified companies will be allowed to reserve funds up to 20% of the increased value of qualified imports. One-fifth of the amount of the reserve will be added to income every year during the following five years.

Conditions for this program are the same as those for the manufacturing industries.

Applicable to: Wholesalers and retailers whose value of qualified goods imported in one year is at least 10 percent more than the largest value imported in one year during the past years.

Qualified goods for import promotion: Duty-free manufactured products that are included between the fifth and eighth sections of SITC classification.

Detail: Qualified companies will be allowed to reserve funds up to an accumulation of 20% of the amount of the increase of qualified goods imported. (One-fifth of the amount of the reserve should be added to income every year during the following five years.)

Duration: Three years for the above measures.

The value of qualified imports included in the list of those eligible for these programs is approximately 50% of the amount of total manufactured imports amounting to approximately 5 trillion yen (\$40 million) as of 1988. Consequently, these tax incentives are expected to reduce government revenues by approximately \$1 Billion. Items which are covered by these tax measures are comprised of the following:

Capital goods: over 50% (semiconductors, computers, electric motors, various machinery, parts, etc.)

Intermediate goods: approximately 20% (synthetic rubber, tires, etc.)

Consumer durables: approximately 25% (electrical home appliances, automobiles, sporting goods (golf club, etc.)

The U.S. share of all Japanese imports is 22%, but the U.S. share of the items covered under these tax measures is 40%, primarily made up of capital and intermediate goods.

The major goods which qualify for the tax incentive measures include:

- o Automatic data processing machines
- o Electronic calculating machines
- o Machine tools
- o Electronic parts (such as semiconductor devices, electric integrated circuits and micro-assemblies)
- o Office machines
- o Instruments and appliances for medical, surgical, dental or veterinary use
- o Measuring or checking instruments, appliances and machines
- o Automobiles (including auto parts)
- o Tractors, motor vehicles for transporting goods and special purpose motor vehicles, and bicycles
- o Electric motors and generators
- o Mechanical parts (such as valves and bearings)
- o Optical fibers and optical fiber cables
- o Electronic home appliances (such as refrigerators, washing machines, dryers, record-players, radio broadcast receivers and television receivers)
- o Magnetic tapes and phonographic records
- o Clocks and watches
- o Musical instruments
- o Furniture
- o Sport equipment (such as golf clubs and tennis rackets)
- o Certain chemical products (such as film, aromatic hydrocarbon mixtures, and mineral or chemical fertilizers)
- o Rubber tires
- o Stone products
- o Products made from cement or concrete
- o Pig iron and semi-finished iron products
- o Newsprint in rolls or sheets
- o Paper and paperboard, coated with plastics

III. ELIMINATION OF TARIFFS

On December 20, 1989, the Japanese Government, taking a pioneering course for the world, decided to eliminate or reduce tariffs on manufactured products. After parliamentary approval, the elimination measures are scheduled to be implemented from April 1990.

Tariffs will be eliminated on 1,004 products and reduced for four, with the total 1,008 products having an import value of 1.7 trillion yen in 1988 (\$13 billion). This elimination of tariffs are expected to reduce government revenues by \$300 million. When the measures are implemented, 56% of manufactured imports will have a zero tariff in Japan, compared to 42% now.

The unilateral elimination of tariffs indicates the determination of the Japanese Government to act positively in the tariff negotiations of the Uruguay Round; and to promote further opening of the Japanese market by achieving the maximum tariff elimination that can be implemented unilaterally.

A drawback system in which tariffs are refunded to importers if the goods are re-exported will be set up to facilitate access to the Japanese market.

IV. IMPORT EXPANSION PROGRAM BUDGET

In light of the significance and urgency of import expansion measures, government budget appropriations for the next fiscal year have been increased to 7 billion yen, in addition to the allocation of 7.5 billion yen from this year's supplementary budget. As a result, the budget for import expansion has jumped to a total of 14.5 billion yen (approximately \$100 million), eight times greater than fiscal 1989. These funds will support the following programs:

1: IN JAPAN

A system of local internationalization centers will be established in each of the prefectures in Japan. The objectives of these centers will be:

1. To examine the issue of price differentials between home and abroad.
2. To promote imported goods in various regions of the country.
3. To provide information on exporting to Japan to those in Japan and abroad on a real time basis.

These local internationalization centers will perform three functions:

1. To act as an information data bank on imports.
2. To promote direct consumer import of products and to provide information on after sales service.
3. To serve an incubator function assisting foreign companies wishing to invest in or import to Japan.

These Grass Roots internationalization center in all prefectures will be equipped with data base terminals and other necessary items to provide information on import promotion to regional distributors from a central data base at JETRO headquarters in Tokyo. In addition, they will provide information to consumers on after-sales service of imported goods and on items imported directly by consumers (mail-order imports).

Terminals will be installed at JETRO's 35 overseas offices in order to provide information to foreign companies interested in exporting to Japan.

Furthermore, the following programs will be initiated:

1. Inviting businessmen, experts from the U.S. and Europe. Funding is established for 260 individuals.
2. Implementing pilot projects for the establishment of three comprehensive import promotion centers.

2. OVERSEAS

To complement the domestic import stimulation program, an extensive program of assistance to foreign exporters will be initiated. This program will include:

Sending experts overseas in order to seek items with import potential (25 experts in FY 1990).

Sending experts overseas to hold exhibitions to assist small and medium-sized distributors to strengthen their ability to procure imported products (17 expert, and two exhibitions in fiscal 1990).

Sending buying missions abroad and sponsoring export promotion missions coming to Japan. Funding has been established for 27 buying missions and 35 export promotion missions.

3. OTHER

In addition, other import promotion programs will be initiated, as follows:

Expansion of prepaid import insurance coverage. MITI will expand its coverage of prepaid import insurance in order to promote imports.

Studying the Japanese distribution system, including distribution channels and business practices and provide this information to those overseas.

Promoting the concept of World Shopping System. In order to improve the access of foreign products to the Japanese markets, this concept aims to create and streamline a joint information network and promote mail-order businesses through catalogues and samples.

Promotion of "International Comprehensive Distribution Centers" which will be located in Osaka and nine other major cities.

V. IMPORT EXPANSION LOAN PROGRAMS

The programs of lending for import related operations will be enhanced and expanded. These measures include:

1. EXPANSION OF FINANCING FOR MANUFACTURED IMPORTS **(EXPORT- IMPORT BANK OF JAPAN AND JAPAN DEVELOPMENT BANK)**

The total lending limit on loans for financing manufactured imports will be increased to 181 billion yen. Foreign corporations located overseas interested in exporting to Japan will also be eligible.

Interest rate: 5.2% for specific articles, and 5.4% for others.

Term of loan: more than one year but less than 10 years.

2. EXPANSION OF FINANCING FOR IMPORT FACILITIES AND INVESTMENT IN JAPAN BY FOREIGN COMPANIES

The existing financing for import facilities and investment in Japan by foreign companies will be sharply expanded. The lending limit for fiscal 1990 has been doubled from that for fiscal 1989 to be 30 billion yen.

1. The Japan Development Bank will expand a program to improve import facilities.

Low interest rate financing will be available for the purchase of facilities (warehouses, display facilities, etc.) that will contribute to the expansion of imports. Wholesalers and retailers will now be eligible for the loans in addition to importers.

Applicable to: importers, wholesalers, retailers, etc.

Interest rate: 5.4%.

Term of loan: maximum of 25 years

Coverage of loan: 40%

2. The Japan Development Bank will expand its program for foreign direct investment in Japan.

Applicable to: Low interest lending for equipment will be available for foreign companies who are now investing in Japan.

Interest rates: 5.4% or 5.9%

Term of loan: maximum of 25 years

Coverage of loan: 40%

3. The Japan Development Bank has established four Centers for Promotion of Direct Investment in Japan. They are in Washington, New York, London and Frankfurt. The functions of the Centers are as follows:

To supply market information on Japan.

To consult on investment projects in Japan.

To introduce potential partner companies.

3. EXPANSION OF FINANCING FOR IMPORT BY JAPANESE SMALL AND MEDIUM-SIZED RETAILERS AND WHOLESALERS.

**(SMALL BUSINESS FINANCE CORPORATION,
PEOPLE'S FINANCE CORPORATION)**

The Small Business Finance Corporation and the People's Finance Corporation have expanded their program to facilitate import sales. Small and medium-sized wholesalers will be eligible for low interest loan for equipment procurement and working capital. Currently, such loans were extended only to small and medium-sized retailers.

Applicable to: small and medium-sized retailers and wholesalers.

Interest rates: 5.4% for the first three years, and
5.9% from the fourth year onward.

Term of loan: 15 years or less for equipment, 5 years or less for working capital.

4. ESTABLISHMENT OF FINANCING FOR INTERNATIONAL COMPREHENSIVE IMPORT CENTERS.

(JAPAN SMALL BUSINESS CORPORATION)

The Japan Small Business Corporation will finance activities by specific companies which have been established to set up international comprehensive distribution centers, and have been funded by small and medium-sized distributors.

- a. Applicable to: Wholesale markets for imported products
(for small and medium-sized distributors).

Coverage of loan: 65%

Interest rate: 2.7%

- b. Applicable to: Facilities and services for promotion
of import procurement (information services,
exhibition space, shared warehouses, etc.).

Coverage of loan: 80%

Interest rate: 0%

Withdrawal/Redaction Sheet

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Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
07. Memo	From Roger Porter to John Sununu Re: Issues for the President's Upcoming Meetings w/World Leaders (2 pp.)	4/10/90	P5	

Collection:

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File Location: Policy Development
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Open on Expiration of PRA
(Document Follows)
By JP (NLGB) on 10/28/05

Date Closed:	12/15/2004	OA/ID Number:	29181-003
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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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

P-1 National Security Classified Information [(a)(1) of the PRA]
P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P-3 Release would violate a Federal statute [(a)(3) of the PRA]
P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
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THE WHITE HOUSE

WASHINGTON

April 10, 1990

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RBP*

SUBJECT: Issues for the President's Upcoming Meetings
with World Leaders

In addition to today's meeting with Prime Minister Mulroney, the President will be meeting with:

- o British Prime Minister Thatcher on Friday, April 13;
- o French President Mitterrand on Thursday, April 19; and
- o EC Commission President Delors on Tuesday, April 24.

These meetings provide an opportunity for the President to build support on issues that will be discussed at the Houston Economic Summit. Three areas come immediately to mind.

1. Global climate change.

Unless we prepare thoroughly, the President will be deluged at Houston with proposals for action even where scientific evidence is incomplete. The attached articles from this week's Economist provide a useful summary of the current state of scientific uncertainty.

2. Environmental issues in general.

It is clear to me that we are not packaging our environmental program well. We are by far the most environmental administration in two decades. We need to take credit. In the President's bilaterals, he should reinforce the points that:

- o We are doing a lot, and
- o In a way that is compatible with economic growth.

Emphasizing these two points will position the environment issue to fit within the likely Houston Summit theme of democracy and free markets.

3. The Uruguay Round.

It is increasingly clear that the sticking points in the Uruguay Round negotiations will be agriculture and textiles. In order to build a consensus in each, we will need to persuade our trading partners that the reforms we have proposed are in their own interests. For example, EC member countries should support a major overhaul of the Community's agricultural program before the effects of German integration and possible membership of East European countries take effect. East Germany, Poland, and Hungary are all low-cost agricultural producers that could sharply drive up the cost of agricultural supports.

A similar point obtains for textiles. We must appeal to the self-interest of our trading partners if we are to achieve a successful outcome to the Uruguay Round.

Attachment

THE WHITE HOUSE

WASHINGTON

April 9, 1990

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RBP*

SUBJECT: Shell Oil Announcement of Cleaner Fuel

This Wednesday, Shell Oil will announce the sale of an environmentally enhanced premium unleaded gasoline, called SU 2000E. The new fuel will be sold at over 2,000 gasoline stations in the same nine ozone nonattainment areas targeted for alternative fuels in the President's clean air bill. The fuel will also be sold in the Washington D.C. area.

According to Shell officials, the fuel will reduce hydrocarbon emissions by 5 to 18 percent and carbon monoxide emissions by 7 to 14 percent per vehicle. These reductions are achieved primarily through lowering the volatility of the fuel from 9 to 8.0 - 8.5 pounds per square inch (psi) and by increasing the oxygen content of the fuel to 1 percent by weight through the addition of MTBE. The fuel is expected, however, to also cause a slight increase in overall NOx emissions.

Premium gasoline sales in the ten cities represent about 41 percent of Shell's overall sales in these markets. Although the fuel will be priced competitively with other premium gasolines, Shell officials state that the fuel will cost two cents more per gallon to produce.

According to Shell officials, the new gasoline required only modest changes at existing refinery operations to produce (primarily the addition of MTBE and the removal of butanes to lower fuel volatility). Any further changes to reformulate the other two grades of fuel sold -- regular unleaded and unleaded plus -- would require significant hardware changes at existing refineries. Shell officials also claimed that new MTBE production plants must be built before the program could be expanded to other areas or other grades of fuel.

Compared to the reformulated gasoline specified in the Daschle amendment which passed in the Senate last Tuesday, the Shell product represents only a partial step. The Shell fuel has a significantly higher aromatic content (40% versus 25%) than the fuel specified in the Daschle amendment, as well as higher benzene levels. The Shell fuel also has less than half the oxygen content (1% versus 2.7%) required as a minimum level in the Daschle amendment.

Withdrawal/Redaction Sheet

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Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
08. Memo	From Roger Porter to John Sununu Re: Super 301 (3 pp.)	4/10/90	P-5	

Collection:

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THE WHITE HOUSE
WASHINGTON

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April 10, 1990

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RBP*

SUBJECT: Super 301

I met today with Ambassador Hills to discuss Super 301 and trade relations with Japan. There appears to be an emerging interagency consensus on not identifying any countries or priority practices as part of this spring's Super 301 exercise -- the so-called zero option. As yet, there is no agreement on the timing of an announcement, largely because a key negotiation over U.S. wood products has not been resolved. For a variety of reasons, an effort should be made to resolve these issues quickly.

Wood Products

There is broad agreement that Japan must resolve the wood products issue, which was part of last year's Super 301 exercise. While a U.S. delegation is in Tokyo for negotiations this week, progress reportedly has been slow. It might be useful to examine possible ways to get Prime Minister Kaifu's office involved, since the Prime Minister has promised to address our concerns. We are working with USTR and NSC on how best to do this.

The Zero Option

If wood products is resolved, all agencies appear to recognize that the Administration is not in a position to identify Japan again as a priority unfair trading country under Super 301 in view of last week's Structural Impediments Initiative (SII) interim report. Since there are no strong candidates for Super 301 designation apart from Japan, a zero option is the logical outcome for this year.

Additional Assurances

There also appears to be agreement that it would be useful to seek additional assurances from Japan before announcing a zero option. Such assurances would provide political cover with Congress. Ambassador Hills wants to raise the following issues with the Japanese to see if an agreement can be reached on processes for settling our differences:

- o Amorphous metals (targeting):
- o Sound recordings (discriminatory failure to provide copyright protection to foreign recordings):
- o Auto parts (the lack of reciprocal access for U.S. auto parts); and
- o Medical-pharmaceutical equipment (discriminatory treatment of U.S. equipment).

I support seeking additional Japanese assurances. One of the aims should be to space out resolution of the individual issues, so as to avoid building toward another trade crisis with Japan. Carla agrees that the request for additional assurances must be very carefully framed. Otherwise, the Japanese may conclude that showing flexibility to the U.S. on trade merely generates additional demands. This would seriously undermine our credibility and weaken our ability to build on our recent SII success in the July final report.

We should keep in mind that, if the Japanese fail to provide satisfactory assurances, we can always initiate section 301 investigations based on the petition by Allied-Signal (amorphous metals) and the petition due to be filed shortly by the Recording Industry of America (sound recordings). This would be another way of showing that the Administration is maintaining the pressure on Japan and remains prepared to use section 301. Keeping up firm but measured pressure is the key to success in managing our trade problems with Japan.

Timing of Decision

Assuming wood products can be resolved and we go with the zero option, we must weigh carefully the best time to announce it. Some agencies (USTR and Commerce) argue that we should wait right up to the statutory deadline at the end of the month. In their view, an accelerated announcement could increase Congressional opposition to the zero option by making it appear that the Administration has acted in a burst of euphoria after last week's successful interim report on the Structural Impediments Initiative (SII).

But there are also reasons to act more quickly. Early announcement will create good will with Japan and take advantage of the public perception that we have gained momentum in relations with Japan after last week's SII interim report. An accelerated announcement would also minimize the Congressional reaction, which may be critical. (Senator Danforth has already written to the President opposing the zero option.) Finally, prolonged deliberations regarding the zero option will only

increase the number of leaks, which are already starting to appear.

As a practical matter, announcement of a Super 301 decision probably cannot be made until the week of April 23, due to Carla Hills' absense next week. Assuming wood products is resolved in the meantime, I believe that we should prepare to announce as early as possible that week.

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

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THE WHITE HOUSE

WASHINGTON

April 12, 1990

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RP*
SUBJECT: Presidential Speech on Trade

At today's EPC meeting on the Uruguay Round, it was generally agreed that a Presidential speech on U.S. trade policy would be extremely useful in building support for the Uruguay Round, both in this country and abroad. It was also pointed out that increasing numbers in the business community have noted that the President has yet to deliver a major address on trade.

To have maximum effect, a trade speech should be delivered sufficiently ahead of the May 30 OECD Ministerial meeting to affect positions taken there. The OECD Ministerial is an important preview of positions the G-7 nations take at the Economic Summit.

One possible occasion for a trade speech that is already on the President's calendar is the April 30 Chamber of Commerce address. However, as we discussed, the Chamber may not be an ideal forum for the speech.

I suggest that we explore alternate forums. If it would be helpful, I will be glad to quietly check regarding other possibilities, such as the Business Roundtable.

Agree _____ Let's Discuss _____

*Sounds ok
in principle -
What about an
outline to review*

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
10a. Memo	From Roger Porter to John Sununu Re: Conversation w/Chairman Rostenkowski Regarding Nomination to the International Trade Commission (1 pp.)	4/12/90	P-2, P-8	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff to the President, Office of the
Series: Sununu, John, Files
Subseries: White House Offices File
WHORM Cat.:
File Location: Policy Development
(Porter) (1990) [2]

Open on Expiration of PRA
(Document Follows)
By *gf* (NLGB) on 10/28/05

Date Closed: 12/15/2004	OA/ID Number: 29181-003
FOIA/SYS Case #: 1998-0004-F[1]	Appeal Case #:
Re-review Case #: 2005-0426-S	Appeal Disposition:
P-2/P-5 Review Case #:	Disposition Date:
AR Case #:	MR Case #:
AR Disposition:	MR Disposition:
AR Disposition Date:	MR Disposition Date:

RESTRICTION CODES

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THE WHITE HOUSE

WASHINGTON

April 12, 1990

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RBP*

SUBJECT: Your Conversation with Chairman Rostenkowski
Regarding Nomination to the International Trade
Commission

After your telephone conversation with Chairman Rostenkowski this morning, his office transmitted the attached memorandum regarding his candidate, Janet Nuzum, for the Democratic vacancy on the U.S. International Trade Commission (ITC).

Ms. Nuzum appears well qualified for the position. In my view, it would be unwise to antagonize Rostenkowski when we have a number of important trade initiatives that are likely to come before the Ways and Means Committee. I understand that Senators Kennedy and Bradley also have a candidate (Richard Feinberg, whom I am told is a solid economist) and it is true that they are highly influential on certain issues. Nevertheless, Rostenkowski, as Chairman of the Ways and Means Committee, basically controls trade legislation in the House and deserves preference on this issue.

While I understand the concern about ceding control over Presidential nominations, Rostenkowski is correct that there is a longstanding informal practice of deferring to the Ways and Means and Finance Committees on ITC nominations, particularly those involving the opposite party. This practice was followed by the Carter and Reagan Administrations. Changing it now would pose a real problem in getting any nominees for the ITC confirmed. Under the circumstances, given that she is well-qualified, there seems to be a compelling case for going with Janet Nuzum.

Attachment

cc. Chase Untermeyer
Nick Calio
Nancy Miller

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
10b. Memo	From Dan Rostenkowski to John Sununu Re: Follow-up to our telephone conversation of April 12 (1 pp.)	4/12/90	P 2 , P 8	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff to the President, Office of the
Series: Sununu, John, Files
Subseries: White House Offices File
WHORM Cat.:
File Location: Policy Development
(Porter) (1990) [2]

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By JP (NLGB) on 10/28/05

Date Closed: 12/15/2004	OA/ID Number: 29181-003
FOIA/SYS Case #: 1998-0004-F[1]	Appeal Case #:
Re-review Case #: 2005-0426-S	Appeal Disposition:
P-2/P-5 Review Case #:	Disposition Date:
AR Case #:	MR Case #:
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COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

April 12, 1990

ROBERT J. LEONARD, CHIEF COUNSEL AND STAFF DIRECTOR

PHILLIP D. MOSELEY, MINORITY CHIEF OF STAFF

TO: Governor John H. Sununu
Chief of Staff to the President

FROM: Dan Rostenkowski, Chairman

RE: Follow-up to our telephone conversation of April 12

John,

Pursuant to our phone conversation, I am providing the information you requested regarding the Democratic vacancy about to occur at the International Trade Commission (ITC). Historically, prior to the Reagan years, there was an informal arrangement whereby the Democratic vacancies at the Commission were appointed on a rotating basis, based on recommendations made by the Chairman of House Committee on Ways and Means and the Chairman of the Senate Committee on Finance.

In June, there will be a Democratic vacancy at the Commission when Commissioner Cass resigns. Lloyd Bentsen who had recommended the most recently appointed Commissioner, Don Newquist, is now recommending Bob Mallet to fill the upcoming vacancy. The only ITC Commissioner who I have been involved in placing at the Commission was Dave Rohr—over six years ago. I, however, am recommending Janet Nuzum, a highly qualified individual who has served on my trade staff for the past eight years. I strongly believe that because of her trade expertise that she ought to be nominated to be the next Commissioner.

It has recently come to my attention that Senators Kennedy and Bradley are now promoting another individual, David Feinberg, for the Democratic vacancy at the Commission. I strongly believe, based on historical precedents and institutional prerogatives as well as the fact that Janet is so highly qualified for the position, that Janet ought to be the nominee.

I would greatly appreciate any assistance you could offer to secure her nomination.

The other matter which we discussed today concerns the upcoming chairmanship vacancy at the Commission. The only candidate who is now statutorily eligible is Dave Rohr. Senator Bentsen is advocating that his appointee, Don Newquist, be appointed Chairman. I do not have strong views on the chairmanship vacancy. However, I do strongly feel that Janet Nuzum should be appointed to the Commission.

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
11. Memo	From Roger Porter to John Sununu Re: Need for Food Safety Legislation (3 pp.)	4/24/90	P5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff to the President, Office of the
Series: Sununu, John, Files
Subseries: White House Offices File
WHORM Cat.:
File Location: Policy Development
(Porter) (1990) [2]

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(Document Follows)
By JF (NLGB) on 10/28/01

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THE CHIEF of STAFF
has seen

THE WHITE HOUSE

WASHINGTON

April 24, 1990

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RBP*
SUBJECT: Need for Food Safety Legislation

You asked for the rationale behind seeking food safety legislation in this Congress. The arguments for legislation fall into two categories - shortcomings in existing Federal law and previous and anticipated action by the states, principally California.

1. Shortcomings in Existing Federal Law

a. The Delaney Paradox - The Federal Food, Drug, and Cosmetic Act (FFDCA) regulates the presence of pesticides on foods in two ways. First, EPA sets tolerances for the level of pesticides allowed on raw agricultural products. These tolerance levels are to be set at levels necessary to protect the public health, while taking into account the need for "an adequate, wholesome, and economical food supply." By contrast, EPA may not grant a tolerance for the presence of a pesticide residue (considered a food additive) in processed foods if the pesticide has been found to "induce cancer." The Delaney clause allows no carcinogenic pesticide, no matter how weak and no matter how great the benefits, to be used in a manner that remains in processed foods.

As a result, carcinogenic pesticides may be used in a way that leaves a legal residue on raw agricultural products yet would not be allowable if the same product is processed (this is known as the Delaney paradox). This paradox has become deeper as science has progressed and methods of detecting pesticide residue have been refined. Improved toxicological methods have made the Delaney Clause a barrier to bringing new, and safer, pesticides on the market.

The 1988 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA '88) require all older pesticides to be reconsidered in the light of contemporary science. A failure to resolve the Delaney paradox threatens to eliminate the pesticides that make possible broad segments of the US food industry, as older pesticides are cancelled as unsafe.

b. Cancelling a Pesticide Registration - FIFRA '88 requires that EPA review and "reregister" all existing pesticides intended for use beyond 1997. When new data suggests that a pesticide seeking reregistration poses a risk to human health when used on food, the EPA cancellation process takes as long as six to eight years.

2. California Law

California recently passed what is known as proposition 65. The proposition defines negligible risk for carcinogens at a bright line figure of 10^{-5} . Products with residues above that level may still be marketed but must be labeled as containing carcinogens. This fall, the California voters will vote on an initiative referred to as "Big Green". It is "apple pie" environmentalism: oil spill protection, safer water, and curbs on pesticide use. If enacted, it would have the effect of banning many carcinogenic pesticides from the state even if they meet a negligible risk standard.

In the past, other states with laws equivalent to the FDCA and FIFRA have simply incorporated the federal tolerances by reference. Few states had the resources to do the science necessary for setting tolerances on their own. If Big Green passes, those same states will be pressured in to adopting the California standard (a ban of some pesticides) instead of the Federal standard (a range of 10^{-6}).

This lack of uniformity not only creates potentially significant problems for those shipping commodities in interstate commerce, it is inconsistent with the harmonization arguments we have been making with our fellow participants in the GATT.

Dick Darman mentioned our ability to attack this problem by rulemaking. You will recall that the Reagan Administration left us a policy of not preempting Proposition 65. We could reconsider that policy and publish a rule preempting state tolerances inconsistent with the federal tolerance. However, we cannot by regulation resolve the Delaney paradox.

The Administration's Food Safety Initiative was developed through a working group of the Domestic Policy Council. USDA, EPA and FDA worked closely in developing what is a consensus package that sets out principles by which to judge proposals being offered by Members of Congress. It also called for revisions in seven major areas of food safety law to enhance consumer confidence in the safety of the American food supply

and to remove the disincentives of existing law that keep safer pesticides off the market and inhibit R & D in new products. A copy of the Administration's fact sheet on this initiative is attached.

On several occasions I have asked high level representatives of the agencies whether we really need a bill this year. The answer is always yes but couched in terms of the potentially devastating effect of the California initiative on pesticide use and food production. Clearly, the Big Green initiative, which is heavily favored to pass, poses a significant threat to the agricultural industry in the rest of the country.

If we do not obtain food safety bill this year, we start anew next year with the weight of the California precedent against us. To get uniformity, the price we must pay in terms of stricter timetables and enforcement will be higher. If we never resolve the Delaney paradox, we face losing whole sectors of our agriculture and limiting the productivity of others.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

October 26, 1989

**FACT SHEET:
PRESIDENT BUSH'S FOOD SAFETY PLAN**

In order to improve the federal government's ability to protect American consumers and the environment from potential dangers posed by the use of pesticide chemicals, President Bush today proposed a comprehensive program to enhance food safety for all Americans.

The President's plan calls for major revisions to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and to the Federal Food, Drug and Cosmetic Act (FFDCA).

In the FIFRA, the President's revisions will streamline EPA's ability to remove potentially hazardous pesticides from the market, and enhance the agency's enforcement program to ensure the safe use of pesticide chemicals. In the FFDCA, the President would eliminate a long-standing inconsistency in the law governing pesticide residues in foods, and establish a "negligible risk" standard for such residues.

The President's plan is designed to eliminate unacceptable risks to the public health, and to provide for more orderly regulation of pesticides and their use.

Although the need for reform in this area has been widely recognized, the sensitivity of the issues involved has long divided the affected private interests as well as the federal agencies charged with administering the laws. This has contributed to difficulties the Executive Branch and the Congress have had in dealing with this matter.

President Bush's plan was developed with input from the private sector and from all the relevant government agencies. The result is a sensible approach to complex and contentious issues, which takes into account the varied private interests and represents an unprecedented consensus among the federal agencies involved.

The President's plan will:

- o Establish a periodic review of all pesticides and terminate the ability to use pesticides for which manufacturers have not provided adequate data on safety.
- o Improve the definition of what is considered an "imminent hazard" posed by a pesticide, and allow more rapid utilization of regulatory authority to remove from use pesticides that are so designated.
- o Simplify and make more effective the process of cancelling the use of a pesticide found to be harmful to public health.
- o Improve enforcement by increasing the penalties for mis-use of pesticides, and providing more authority for EPA to conduct inspections and collect necessary information on the distribution, use and testing of pesticide products.
- o Establish scientifically sound threshold tolerance levels for pesticides in or on food, identifying a negligible risk level below which public health is not threatened. While this plan specifically addresses pesticide residues, the principle of negligible risk, based on scientific determination, is one which has wide applicability.
- o Provide for national uniformity in the tolerance levels which are established following a review of the latest scientific evidence, and in accordance with new procedures, with the possibility of waivers justified by special local circumstances, such as unusual food consumption patterns.

Fundamental Principles:

Four goals underlie the President's food safety proposals and the means for accomplishing them.

o Protecting the Public's Health. The plan will prevent harmful exposure of the public to pesticides in the food supply.

o Improving Regulatory Certainty for the Agricultural Sector. The plan will simplify and make more workable the regulation of pesticide use in agriculture, thereby assisting farmers in knowing and following food safety laws.

o Strengthening the Oversight of Pesticides and Their Use.

The plan will assure that unsafe pesticides are not used and will speed the development of safe alternatives.

o Building Public Confidence.

The plan will enhance public confidence in the safety of America's food supply, and will assure consumers that it will remain safe in the future.

These proposals will improve the government's ability to remove from the market pesticides posing threats to human health and the environment.

Background:

Federal jurisdiction over pesticide residues in food is divided among the Environmental Protection Agency (EPA), the U.S. Department of Agriculture (USDA) and the Food and Drug Administration (FDA). Monitoring and enforcement responsibilities for domestically produced and imported foods are handled by USDA (meat, poultry and some egg products) and FDA (all other foods). EPA is responsible for regulating all pesticide products sold or distributed in the United States.

In regulating the use of pesticides, the federal government acts under two statutes, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Federal Food, Drug and Cosmetic Act (FFDCA). Under FIFRA, EPA registers or grants a license for the use of pesticides. Under FFDCA, EPA sets tolerances -- the maximum amount of a pesticide residue that can legally occur in raw agricultural commodities and processed food.

Periodically, old pesticides have to be "reregistered", or systematically reevaluated. 1988 amendments to FIFRA require EPA to accelerate the process of reregistration. In particular, EPA has been directed, within the next nine years, to complete reregistration of the 600 active ingredients appearing in approximately 25,000 different pesticide products. This means that EPA will be receiving a large volume of new data over the next few years. We can expect that some of the new data will raise concerns about the safety of these pesticides and EPA must be prepared to take swift, effective action to modify or eliminate their use.

The controversy in March 1989 over Alar, a chemical used to improve the color and freshness of apples, heightened public concern regarding food safety issues. It also focused attention on EPA's ability to promptly suspend or cancel the use of a potentially dangerous pesticide on food. Critics have charged that existing statutory requirements and procedures are too time-consuming.

Currently, the administrative process for removing a dangerous pesticide from the market can take four to eight years. The process begins with an initial determination by EPA that use of the pesticide poses some threat to human health or the environment. If EPA decides to pursue cancellation, a formal administrative process ensues, which includes extensive opportunity for public comment, as well as independent review by a scientific advisory panel and the US Department of Agriculture. That decision can be challenged in a hearing before an Administrative Law Judge. Additional judicial review of EPA's final order is also available. Throughout the whole administrative review and hearing process, the product remains on the market unless EPA finds that it poses an "imminent hazard." Such a finding permits immediate temporary cancellation (suspension) of the chemical, but the current threshold for recognizing an imminent hazard is so high that such a finding has only rarely been made (only three times in eighteen years). Overall, the current mechanism for removing pesticides from the marketplace is cumbersome and confusing.

In addition to problems with existing suspension and cancellation procedures, the statutory standards for decision-making under FIFRA and FFDCA are inconsistent. FIFRA and FFDCA require EPA to consider costs, risks and benefits in setting tolerances, and in registering or cancelling a pesticide. However, the Delaney Clause, which governs one section of FFDCA applying to residues of carcinogenic pesticides in processed food, contains a more stringent, risk-only standard. Read literally, the Delaney Clause bars EPA from setting a tolerance for any pesticide residue in processed food if the pesticide causes cancer in humans or animals no matter how insignificant the risks to health or how great the costs to society.

The Administration's interagency discussion of food safety has identified and addressed seven principal issues. These issues, together with the President's proposals are summarized below.

**Federal Insecticide, Fungicide, and Rodenticide Act Proposals:
Streamlining the Suspension, Cancellation, and Re-registration
Process**

Termination of Registration: Cancellation; Failure to Establish Continued Eligibility

Under current law (and not changed by these proposals), a registered pesticide chemical may have its registration terminated either temporarily (suspension) or permanently (cancellation). EPA also has general authority to suspend registrations for failure to provide required data. In addition to current suspension authority, the President's plan specifies that:

- A. Registrants should bear responsibility to ensure that EPA is provided with data and information necessary to permit EPA to determine, in light of the then-applicable standards for new pesticide registrations, whether a cancellation proceeding in a given instance is warranted. Data should be provided within prescribed time frames: Following first registration, 19 years for pre-1984 registrations, and 15 years for 1984 and later registrations. Thereafter, every 9 years.
- B. If a registrant fails to provide EPA with the data and information required by applicable regulations or guidelines within a reasonable time after it is due or requested, EPA should be authorized to order temporary termination (suspension) of the registration.

Definition of "Imminent Hazard"

Under current law, EPA has authority to suspend a registration if it is found to pose an "imminent hazard" to health or to the environment. Current suspension authority has a very high risk threshold that can rarely be sustained, and has little practical utility regardless of the nature or immediacy of the risk. The President's plan proposes that an "imminent hazard" be redefined to exist in either of the following circumstances:

- A. When continued use of the pesticide during the period required for cancellation poses a substantial risk to the environment or to human health based on lifetime risk, and the risk of continued pesticide use (1) exceeds the risk posed by the substitution of alternative pesticides or other available pest control methods, or (2), in the absence of alternative pest control methods, exceeds the adverse effects of any pest which would have been controlled by the pesticide during the period required for cancellation; or

- B. When continued use of the pesticide causes a less than substantial but significant risk to health or the environment, which, in light of the reasonably available facts and circumstances, is unreasonable, taking into account the price and availability of raw agricultural commodities and processed foods.

Simplification of the Cancellation Process

Under the existing cancellation process, there is first an administrative review process in which the registrant fully participates. Then, if requested, a formal adjudicatory process with a full de novo evidentiary hearing before an Administrative Law Judge (ALJ) may be pursued. Finally, the registrant may also seek a full judicial review.

The President proposes to simplify the process, and in lieu of the middle step (the full de novo evidentiary hearing before an ALJ), the President's plan would require EPA to publish (in the Federal Register) notice of, and the grounds for, its intended action. The process would include an opportunity for the registrant and others to make written submissions during a specified comment period (typically 60 days).

The EPA Administrator could also hold an informal public hearing on the issue during the comment period. There would be no requirement that anyone be forced to testify or respond to cross examination.

If the registrant requests such a public hearing, the EPA Administrator should hold the hearing unless the Administrator determines a hearing is not warranted and the registrant is not prejudiced thereby.

Consultation within the Government

Current consultation among EPA, USDA and HHS primarily occurs in the form of written comment during the cancellation process. The President has decided that closer consultation throughout the process would be beneficial. Accordingly, the President's plan would require appropriate consultation among EPA, USDA and HHS prior to issuance of cancellation and suspension orders, and at such other times as may be agreed to in a Memorandum of Understanding.

Such a Memorandum of Understanding would specify the points in the process at which consultation should occur, and would stipulate how consultation should be accomplished. Such consultation would be for the benefit of the Administration's implementation of its programs, and would be subject to oversight

by the Executive Office of the President. As such it would not be the subject of judicial review.

Enforcement

Finally, the President's plan proposes to amend FIFRA to strengthen penalties, recordkeeping requirements, and provisions regarding entry onto premises for inspection and sampling.

Enhanced enforcement provisions are appropriate because violations of FIFRA -- which involve misuse of dangerous chemicals -- result in harms that are similar in nature to, and equally as serious as, violations of other environmental statutes. Those violations result in penalties, both civil and criminal, that are much more severe than FIFRA currently provides. Most environmental statutes (Clean Water Act, Resource Conservation and Recovery Act, Superfund, and the Safe Drinking Water Act) have been revised in recent years to strengthen civil and criminal enforcement provisions significantly. Primarily, they provide felony penalties for knowing violations of the acts, and for "knowing endangerment" offenses. They also have expanded civil and administrative penalty provisions.

The President's proposed FIFRA provisions would apply to pesticide producers, testing facilities and persons who sell, distribute, or commercially apply pesticides. Private applicators, such as farmers, would be required to keep records of their use of restricted use pesticides and could be inspected for cause. Farmers, and others, who only use general use pesticides would not be required to keep records, but could be inspected for suspected violations or when the Agency or states are seeking information as part of an inquiry into specific environmental or health problems.

Maximum allowable civil administrative penalties would be increased from \$5,000 to \$25,000 per day for violations of provisions governing sales, distribution, or commercial use. EPA will be able to take mitigating factors into account in determining whether a warning or lesser penalty is appropriate, as current law provides. Private applicators who violate FIFRA while using a restricted use pesticide would be subject to a maximum first time penalty of \$1,000. Knowing violation of the Act would be raised to a felony for most parties (e.g., registrants, distributors, pesticide testing facilities) and a new "knowing endangerment" offense would be established for all persons subject to the Act. Knowing violations by private applicators would remain misdemeanors, unless they constitute knowing endangerment.

The statutory provisions granting primary enforcement authority to the states would not be altered.

Federal Food, Drug, and Cosmetic Act Proposals:
Tolerance Setting and Uniformity

Establishment of Tolerance Levels: Standards and Implementation

Current law is not consistent because the usual process of tolerance setting based on risk assessment is precluded in one particular situation, namely residues of a carcinogen in processed foods. Read literally, the Delaney Clause imposes a "zero-risk" standard in this case. This means that no substance which causes cancer in humans or animals can be deemed safe for use in any amount -- no matter how insignificant the risks to health or how great the costs to society. In light of current scientific ability to measure residues in minute amounts, a strict interpretation of the Delaney Clause poses a virtually impossible standard.

The President's plan proposes that, for pesticide residues in food posing carcinogenic risks, FFDCA should be amended to eliminate the Delaney Clause and add a tolerance threshold at or below which the public health is not threatened. The term which sets the standard for this new threshold is "negligible risk." The President's plan sets forth the following:

- A. There should be a tolerance level for pesticide residues in food, below which it is deemed that the public health is not threatened, thus permitting a pesticide which satisfies this requirement to remain in use. The tolerance level for various carcinogenic chemical substances should be established based on a predicted risk level as stated below. (This de minimis risk level replaces the concept of zero risk for cancer contained in the Delaney Clause.)
 1. Standard. The level of risk below which public health is not threatened is a level that is found to be negligible. Under appropriate regulatory risk-assessment procedures, this translates into a statistical risk level at or below a range of risk of 10^{-5} to 10^{-6} based on lifetime exposure.
 2. Implementation and enforcement. In implementing and enforcing this standard, EPA, in consultation with USDA and FDA, should describe through rulemaking or other formal guidance the following:
 - a. The process and procedures through which the specific tolerance level determinations are to be made; and
 - b. The nature and types of human carcinogens to which the standard will be applied. This

could be in terms of the existing carcinogen classifications that relate to animal and human carcinogenicity, or in other terms.

- B. In order to establish a tolerance in cases when the level of human health risk is greater than negligible, the EPA should be required to consider the following factors:
1. Whether the risk to human health or the environment is greater from the uncontrolled pest than from the dietary risk posed by the pesticide chemical residue;
 2. Whether the risk to human health or the environment is greater from alternative methods of pest control than from the dietary risk posed by the pesticide chemical residue;
 3. The economic costs to consumers, including effects on price, availability and quality of food;
 4. The economic effects on producers, whether they be gains or losses, including changes in prices or production; and
 5. Whether reasonable efforts are being made to develop either an alternative method of pest control or an alternative pesticide chemical for use on such commodity or food.

National Uniformity: When Applicable

Under current law, states may set tolerances for pesticide residues in food that are lower than those established by EPA. When states have done so, it has been a source of real concern to the food distribution industry and a source of confusion to consumers. Inconsistent tolerances could have significant adverse impacts on the ability of the United States to participate in international trade of raw agricultural commodities and processed foods. The President's plan has the following approach:

National uniformity should be provided by statute for chemical tolerances established pursuant to the reregistration process described under the 1988 amendments to FIFRA. Any state or local standards applicable to the same chemical substances must be identical to federal standards; provided that a state may enforce a more stringent standard if it has obtained a waiver from EPA pursuant to published procedures and criteria. Waivers will be permitted only when warranted by special local circumstances. States could enforce more stringent standards for old substances that have not undergone reregistration.

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
12a. Memo	From David Bates to POTUS Re: Amending Food Safety Laws and Regulations (1 pp.)	9/22/89	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff to the President, Office of the
Series: Sununu, John, Files
Subseries: White House Offices File
WHORM Cat.:
File Location: Policy Development
(Porter) (1990) [2]

Open on Expiration of PRA
(Document Follows)
By JP (NLGB) on 10/28/05

Date Closed: 12/15/2004	OA/ID Number: 29181-003
FOIA/SYS Case #: 1998-0004-F[1]	Appeal Case #:
Re-review Case #: 2005-0426-S	Appeal Disposition:
P-2/P-5 Review Case #:	Disposition Date:
AR Case #:	MR Case #:
AR Disposition:	MR Disposition:
AR Disposition Date:	MR Disposition Date:

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P-3 Release would violate a Federal statute [(a)(3) of the PRA]
P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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

PRM. Removed as a personal record misfile.

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]
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(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

THE WHITE HOUSE
WASHINGTON

September 22, 1989

attached memo
Approved
OB
10/5
THE PRESIDENT HAS SEEN

MEMORANDUM FOR THE PRESIDENT

FROM: DAVID Q. BATES, 
SUBJECT: Amending Food Safety Laws and Regulations

Attached for your consideration is a proposal for amending laws (and ultimately regulations stemming from those laws) affecting the federal government's ability to protect American consumers and the environment from dangers posed by the use of pesticide chemicals on or in food products.

Although the need for reform in this area has been widely recognized, the extreme sensitivity of the issues involved has long divided the affected agencies. This has contributed to difficulties the Executive Branch has had in dealing effectively with Congress. The sensitivity of the issue has also made it difficult for Congress to develop a coordinated approach.

The attached package was developed by the Domestic Policy Council Health Policy Working Group with the cooperation of EPA, USDA, and FDA. Since March, when the working group took up the issue, an unprecedented consensus has been achieved on the issues, brought about by an extraordinary demonstration of cooperation within the Administration. As a result, all the proposals made have the full support of all concerned.

These proposals are based on a recognition that the government must improve its ability to remove from the market pesticides posing threats to human health and the environment. News stories of the last several months have focused on this problem calling into question the government's ability to deal effectively with food safety and spurring movement in Congress to amend food safety and pesticide laws.

Attachments

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
12b. Memo	From Domestic Policy Council to POTUS Re: Reforming Food Safety Laws and Regulations (5 pp.)	9/22/89	P5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff to the President, Office of the
Series: Sununu, John, Files
Subseries: White House Offices File
WHORM Cat.:
File Location: Policy Development
(Porter) (1990) [2]

Open on Expiration of PRA
(Document Follows)

By JP (NLGB) on 10/28/05

Date Closed:	12/15/2004	OA/ID Number:	29181-003
FOIA/SYS Case #:	1998-0004-F[1]	Appeal Case #:	
Re-review Case #:	2005-0426-S	Appeal Disposition:	
P-2/P-5 Review Case #:		Disposition Date:	
AR Case #:		MR Case #:	
AR Disposition:		MR Disposition:	
AR Disposition Date:		MR Disposition Date:	

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P-3 Release would violate a Federal statute [(a)(3) of the PRA]
P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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

PRM. Removed as a personal record misfile.

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THE WHITE HOUSE

WASHINGTON

September 22, 1989

MEMORANDUM FOR THE PRESIDENT

FROM: THE DOMESTIC POLICY COUNCIL

SUBJECT: Reforming Food Safety Laws and Regulations

Issue:

What steps should the Administration take to improve the federal government's ability to protect American consumers from dangers posed by the use of pesticide chemicals on or in food products?

Background:

Federal jurisdiction over pesticide residues in food is divided among the Environmental Protection Agency (EPA), the U.S. Department of Agriculture (USDA) and the Food and Drug Administration (FDA). Monitoring and enforcement responsibilities for domestically produced and imported foods are handled by USDA (meat, poultry and egg products) and FDA (all other foods). EPA is responsible for the regulation and tolerance-setting of all pesticide products sold or distributed in the United States.

In regulating the use of pesticides, the federal government acts under two statutes, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Federal Food, Drug and Cosmetic Act (FFDCA). Under FIFRA, EPA registers or grants a license for the use of pesticides. Under FFDCA, EPA sets tolerances -- the maximum amount of a pesticide residue than can legally occur in raw agricultural commodities and processed food.

Periodically, pesticides have to be "reregistered" -- the systematic reevaluation of old pesticides. 1988 amendments to FIFRA require EPA to accelerate the process of reregistration. In particular, EPA has been directed, within the next nine years, to complete reregistration of the 600 active ingredients appearing in approximately 20,000 different pesticide products. This means that EPA will be receiving a large volume of new data over the next few years. Some of the new data will raise concerns about the safety of these pesticides and EPA will need to take action to modify or eliminate their use.

Discussion:

The controversy in March 1989 over Alar, a chemical used to improve the color and freshness of apples, heightened public concern regarding food safety issues. It also focused attention on EPA's ability to promptly suspend or cancel the use of a potentially dangerous pesticide on food. Critics have charged that existing statutory requirements and procedures are too time-consuming.

Currently, the administrative process for removing a dangerous pesticide from the market can take four to eight years. The process begins with an initial determination by EPA that use of the pesticide poses some threat to human health or the environment. If EPA decides to pursue cancellation, a formal administrative process ensues, which can include a hearing before an Administrative Law Judge. Additional judicial review of EPA's final order is also available. During this entire time, the product remains on the market unless EPA finds that it poses an "imminent hazard." Such a finding will allow immediate temporary cancellation (suspension) of the chemical, but the current threshold for recognizing an imminent hazard is so high the finding is rarely made (only three times in eighteen years). Overall, the mechanism for removing pesticides from the marketplace is cumbersome and has undermined public confidence in food safety regulation.

In addition to problems with existing suspension and cancellation procedures, the statutory standards for decision-making under FIFRA and FFDCA are inconsistent. FIFRA and FFDCA require EPA to consider costs, risks and benefits in setting tolerances, and in registering or cancelling a pesticide. However, the Delaney Clause, which governs one section of FFDCA applying to residues of carcinogenic pesticides in processed food, contains a rigid, risk-only standard. Read literally, the Delaney Clause bars EPA from setting a tolerance for any pesticide residue in processed food if the pesticide causes cancer in humans or animals no matter how insignificant the risks to health or how great the costs to society. In light of the advanced capabilities of modern science, which is now able to measure residues in extremely minute amounts, this poses a virtually impossible standard.

Congressional Activity:

Although the Alar controversy has spurred public interest, efforts to solve these problems by amending FIFRA and FFDCA have been building in Congress for years. In 1988, Representative Waxman (D-CA) introduced a bill to amend FFDCA. The bill proposed to eliminate the Delaney Clause and adopt a single standard for all pesticide tolerances based on "negligible risk,"

an approach recommended by the National Academy of Science. No action was taken on this bill in the 100th Congress. ||

Early this year, Representative Waxman introduced a second food safety bill with some notable changes. These included a stricter negligible risk standard and a series of very tight deadlines for EPA to reevaluate all tolerances. No provision is made in the current Waxman bill to coordinate these reevaluations with EPA's reregistration deadlines under FIFRA. Furthermore, the bill fails to address other needed reforms, such as consistency between FIFRA and FFDCA.

The Administration's Plan of Action:

In March, 1989, immediately following the Alar scare, the DPC Health Policy Working Group began a thorough review of food safety policy, and tasked EPA, USDA and FDA to prepare a set of recommendations that would streamline and improve the government's ability to respond to food safety concerns arising from the use of pesticides. The interagency discussion has identified and addressed seven principal issues. These issues, together with proposed revisions, are summarized below. A more complete characterization of the issues and the proposals as agreed to by the agencies can be found in the Attachment.

FFDCA ISSUES: Tolerance Setting and Uniformity

ISSUE I: Establishment of Tolerance Levels

✓ It is proposed that FFDCA should be amended to eliminate the Delaney Clause and to adopt a "negligible risk" approach for setting the threshold below which public health is not threatened. The proposal also includes a set of factors to be considered in establishing a tolerance where human health risks are greater than negligible.

ISSUE II: National Uniformity

It is proposed that national uniformity be provided by statute for chemical tolerances on every pesticide chemical which EPA reevaluates under the reregistration process required in the 1988 amendments to FIFRA. Once a new federal standard has been established, states will have to adopt the federal standard unless they obtain a waiver. Waivers will be allowed only where special local circumstances are sufficient to justify a more stringent standard.

FIFRA ISSUES: Streamlining the Suspension, Cancellation, and Re-registration Process

ISSUE III: Termination of Registration

A pesticide chemical may have its registration terminated either temporarily (suspension) or permanently (cancellation). EPA has general authority to suspend registrations for failure to provide required data. It is proposed, in addition to current suspension authority, that the burden be placed on manufacturers to provide EPA with data required to make its determination whether cancellation proceedings may be warranted. EPA would have the authority to order temporary termination of a registration if a manufacturer fails to provide required data within a reasonable time.

ISSUE IV: Definition of "Imminent Hazard"

Under current law, EPA has authority to suspend the registration of a pesticide chemical if the chemical is found to pose an "imminent hazard" to health or the environment. The current suspension authority is of little practical utility, however, because the risk threshold is set so high it can rarely be sustained. It is proposed that the definition of "imminent hazard" be revised according to agreed guidelines.

ISSUE V: Simplification of the Cancellation Process

The existing cancellation process includes an administrative review, a formal hearing before an Administrative Law Judge (ALJ), and the opportunity for a full judicial review. This process, even without the full judicial review, typically takes a period of years. It is proposed that this process be simplified by replacing the middle step (the ALJ hearing) with a requirement for EPA to publish notice of an intended action together with a statement of the grounds for such action. The process would include an opportunity for the manufacturer and others to make written comments during a specified time period, and the possibility, if warranted, of holding an informal public hearing during the comment period.

ISSUE VI: Consultation within the Government

Consultation among EPA, USDA and HHS currently occurs in the form of written comment during the cancellation process. All affected agencies agree that closer consultation throughout the process would be beneficial. Accordingly, it is proposed that appropriate consultation among EPA, USDA and HHS begin prior to the issuance of cancellation or suspension orders, and that the times and procedures for consultations be specified in a Memorandum of Understanding between the concerned agencies.

ISSUE VII: Enforcement

Existing enforcement authorities under FIFRA are inadequate to foster voluntary compliance, and are much weaker than those provided for violations of other environmental statutes. It is proposed that FIFRA be amended to strengthen recordkeeping requirements, provisions regarding entry onto premises for inspection and sampling, and penalties.

Recommendation:

The Domestic Policy Council recommends that you approve these proposals for reforming federal food safety laws and regulations.

Decision:

☒ Approved
☐ Disapproved
☐ Approved As Noted

CPB / 10-5-89



Dick Thornburgh
Chairman Pro Tempore

Attachment

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
12c. Report	Proposals for Reforming Federal Food Safety Laws and Regulations (7 pp.)	n.d.	P5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff to the President, Office of the
Series: Sununu, John, Files
Subseries: White House Offices File
WHORM Cat.:
File Location: Policy Development
(Porter) (1990) [2]

Open on Expiration of PRA
(Document Follows)
By JP (NLGB) on 10/28/05

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P-2/P-5 Review Case #:		Disposition Date:	
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AR Disposition:		MR Disposition:	
AR Disposition Date:		MR Disposition Date:	

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PROPOSALS FOR REFORMING FEDERAL FOOD SAFETY LAWS AND REGULATIONS

Below is a full summary of food safety reforms developed by the Domestic Policy Council Health Policy Working Group and agreed upon by the affected agencies (EPA, USDA and FDA):

FFDCA ISSUES: Tolerance Setting and Uniformity

ISSUE I: Establishment of Tolerance Levels: Standards and Implementation

Current law is not consistent because the usual process of tolerance setting based on risk assessment is precluded in one particular situation, namely residues of a carcinogen in processed foods. The Delaney Clause imposes a "zero-risk" standard in this case. This means that no substance which causes cancer in humans or animals can be deemed safe for use in any amount -- no matter how insignificant the risks to health or how great the costs to society. In light of current scientific ability to measure residues in minute amounts, this poses a virtually impossible standard.

All parties agree that, for pesticide residues in food posing carcinogenic risks, FFDCA should be amended to eliminate the Delaney Clause and add a tolerance threshold at or below which the public health is not threatened. The term which sets the standard for this new threshold is "negligible risk." There is interagency consensus on the following approach:

- A. There should be a tolerance level for pesticide residues in food, below which it is deemed that the public health is not threatened, and therefore a pesticide which satisfies this requirement could continue to be used. The tolerance level for various carcinogenic chemical substances will be established based on a predicted risk level as stated below. (This de minimis risk level replaces the concept of zero risk for cancer contained in the Delaney Clause.)
 - 1. Standard. The level of risk below which public health is not threatened is a level that is found to be negligible. Under appropriate regulatory risk-assessment procedures, this translates into a statistical risk level at or below a range of risk of 10^{-5} to 10^{-6} based on lifetime exposure.
 - 2. Implementation and enforcement. In implementing and enforcing this standard, EPA, in consultation with USDA and FDA, will describe through rulemaking or other formal guidance the following:

- a. The process and procedures through which the specific tolerance level determinations are to be made; and
 - b. The nature and types of human carcinogens to which the standard will be applied. This could be in terms of the existing carcinogen classifications that relate to animal and human carcinogenicity, or in other terms agreed to.
- B. In order to establish a tolerance in cases when the level of human health risk is greater than negligible, the EPA shall consider the following factors:
- 1. Whether the risk to human health or the environment is greater from the uncontrolled pest than from the dietary risk posed by the pesticide chemical residue;
 - 2. Whether the risk to human health or the environment is greater from alternative methods of pest control than from the dietary risk posed by the pesticide chemical residue;
 - 3. The economic costs to consumers, including effects on price, availability and quality of food;
 - 4. The economic effects on producers, whether they be gains or losses, including changes in prices or production; and
 - 5. Whether reasonable efforts are being made to develop either an alternative method of pest control or an alternative pesticide chemical for use on such commodity or food.

ISSUE II: National Uniformity: When Applicable

Under current law, states may set tolerances for pesticide residues in food that are lower than those established by EPA. When states have done so, it has been a source of real concern to the food distribution industry and a source of confusion to consumers. USDA believes inconsistent tolerances could have significant adverse impacts on the ability of the United States to participate in international trade of raw agricultural commodities and processed foods. All affected agencies agree on the following approach:

The affected agencies agree that national uniformity should be provided by statute for chemical tolerances established pursuant to the reregistration process described under the 1988

amendments to FIFRA. Any state or local standards applicable to the same chemical substances must be identical to federal standards; provided that a state may enforce a more stringent standard if it has obtained a waiver from EPA pursuant to published procedures and criteria. The criteria will allow waivers only when special local circumstances warrant.

FIFRA ISSUES: Streamlining the Suspension, Cancellation, and Re-registration Process

Since the federal government began regulating pesticides, the underlying science and the consensus on acceptable levels of risk have changed dramatically. Thus, many pesticides have not been fully evaluated for safety by current scientific standards.

Lack of complete and up-to-date scientific evaluation of "old" pesticides is the root cause of dissatisfaction with the current regulatory system, since it results in EPA needing more data to complete risk assessments, and thus delays final decisions on food safety issues. Generally, three specific criticisms are raised: (1) data to determine which old chemicals may pose unacceptable risks are not being obtained fast enough; (2) EPA's assessment procedures are too slow to make decisions about whether a pesticide poses unacceptable risks; and (3) once EPA decides how to deal with a "bad pesticide," the administrative mechanisms available to implement decisions are too slow. All of these criticisms have been prominent in the recent debate about EPA's handling of Alar and other toxic pesticides in the food supply.

Amendments to FIFRA in 1988 significantly accelerated the pace of reregistration, requiring that EPA complete the task before 1997. EPA does not believe it is possible to finish this job sooner than 1997, due to the length of many of the studies which are required and the scarcity of testing facilities and scientific reviewers.

Currently, EPA has two ways to remove a pesticide from the marketplace: 1) cancellation and 2) temporary termination, known as suspension. Cancellation can require an extraordinary amount of time, and suspension is available only in very limited situations. As EPA obtains and reviews new information on currently registered pesticides, it will identify some which may pose previously unrecognized risks to people or the environment. If an "imminent hazard" exists, EPA may immediately suspend sale and use through a temporary termination. Historically, EPA has only made those findings three times--for pesticides known as EDB, 2,4,5-T, and dinoseb. EPA expects such cases to be equally rare in the future.

More often, if new data show a significant risk, EPA will use the procedures for cancellation. The current administrative process to cancel a pesticide (remove it from the market) when new evidence of risk arises can take 4 to 8 years to complete. Registrants submit comments and new data during EPA's risk/benefit evaluation known as Special Review (a 2 to 4 year process). They may then ask for an administrative hearing to challenge the Special Review decision (2 to 4 more years). The pesticide remains in use during both of these procedures. The final EPA ruling may then be challenged in federal court. Faced with this process, the Agency has on occasion negotiated risk reduction measures with registrants in order to achieve more timely protective results; however, this option is not always available.

There is interagency consensus to address these problems through approaches described below for Issues III through VII:

ISSUE III: Termination of Registration: Cancellation; Failure to Establish Continued Eligibility

Under current law (and not changed by these proposals), a registered pesticide chemical may have its registration terminated either temporarily (suspension) or permanently (cancellation). EPA also has general authority to suspend registrations for failure to provide required data. In addition to current suspension authority, this proposal would specify that:

- A. Registrants shall ensure that EPA is provided with data and information necessary to permit EPA to determine, in light of the then-applicable standards for new pesticide registrations, whether a cancellation proceeding in a given instance is warranted. Data will be provided within the following time frames: Following first registration, 19 years for pre-1984 registrations, and 15 years for 1984 and later registrations. Thereafter, every 9 years.
- B. If a registrant fails to provide EPA with the data and information required by applicable regulations or guidelines within a reasonable time after it is due or requested, EPA may order temporary termination (suspension) of the registration.

ISSUE IV: Definition of "Imminent Hazard"

Under current law, EPA has authority to suspend a registration if it is found to pose an "imminent hazard" to health or to the environment. Current suspension authority has a very high risk threshold that can rarely be sustained, and has little practical utility regardless of the nature or immediacy of the risk. Under

the new proposal, an "imminent hazard" will be redefined to exist in either of the following circumstances:

- A. Continued use of the pesticide during the period required for cancellation would pose a substantial risk to the environment or to human health based on lifetime risk, and the risk of continued pesticide use (1) exceeds the risk posed by the substitution of alternative pesticides or other available pest control methods, or (2), in the absence of alternative pest control methods, exceeds the adverse effects of any pest which would have been controlled by the pesticide during the period required for cancellation; or
- B. Continued use of the pesticide will cause a less than substantial but significant risk to health or the environment, which, in light of the reasonably available facts and circumstances, is unreasonable, taking into account the price and availability of raw agricultural commodities and processed foods.

ISSUE V: Simplification of the Cancellation Process

Under the existing cancellation process, there is first an administrative review process in which the registrant fully participates. Then, if requested, a formal adjudicatory process with a full de novo evidentiary hearing before an Administrative Law Judge may be pursued. Finally, the registrant may also seek a full judicial review. There is interagency agreement that streamlining is necessary.

To simplify the process, in lieu of the middle step (the full de novo evidentiary hearing before an ALJ), there would be a requirement for EPA to publish (in the Federal Register) notice of, and the grounds for, its intended action. The process would include an opportunity for the registrant and others to make written submissions during a specified comment period (typically 60 days).

The EPA Administrator could also hold an informal public hearing on the issue during the comment period. There would be no requirement that anyone be forced to testify or respond to cross examination.

If the registrant requests such a public hearing, the administrator shall hold the hearing unless the administrator determines the hearing is not warranted and the registrant is not prejudiced thereby.

ISSUE VI: Consultation within the Government

Current consultation among EPA, USDA and HHS primarily occurs in the form of written comment during the cancellation process. All affected agencies agree that closer consultation throughout the process would be beneficial. Accordingly, it was agreed that there should be appropriate consultation among EPA, USDA and HHS prior to issuance of cancellation and suspension orders, and at such other times as may be agreed to in a Memorandum of Understanding.

This Memorandum of Understanding will lay out the points in the process at which consultation shall occur, and will stipulate how consultation shall be accomplished. This consultation will be for the benefit of the Administration's implementation of its programs, and will be subject to oversight by the Executive Office of the President. It, therefore, should not be the subject of judicial review.

ISSUE VII: Enforcement

EPA believes existing enforcement authorities under FIFRA are inadequate to foster voluntary compliance. EPA proposes to amend FIFRA to strengthen recordkeeping requirements, provisions regarding entry onto premises for inspection and sampling, and penalties.

Enhanced enforcement provisions are appropriate because violations of FIFRA -- which involve misuse of dangerous chemicals -- result in harms that are similar in nature to, and equally as serious as, violations of other environmental statutes. Those violations result in penalties, both civil and criminal, that are much more severe than FIFRA currently provides. Most environmental statutes (Clean Water Act, Resource Conservation and Recovery Act, Superfund, and the Safe Drinking Water Act) have been revised in recent years to strengthen civil and criminal enforcement provisions significantly. Primarily, they provide felony penalties for knowing violations of the acts, and for "knowing endangerment" offenses. They also have expanded civil and administrative penalty provisions.

EPA's proposed FIFRA provisions would apply to pesticide producers, testing facilities and persons who sell, distribute, or commercially apply pesticides. Private applicators, such as farmers, would be required to keep records of their use of restricted use pesticides and could be inspected for cause. Farmers, and others, who only use general use pesticides would not be required to keep records, but could be inspected for suspected violations or when the Agency or states are seeking information as part of an inquiry into specific environmental or health problems.

Maximum allowable civil administrative penalties would be increased from \$5,000 to \$25,000 per day for violations of provisions governing sales, distribution, or commercial use. EPA will be able to take mitigating factors into account in determining whether a warning or lesser penalty is appropriate, as current law provides. Private applicators who violate FIFRA while using a restricted use pesticide would be subject to a maximum first time penalty of \$1,000. Knowing violation of the Act would be raised to a felony for most parties (e.g., registrants, distributors, pesticide testing facilities) and a new "knowing endangerment" offense would be established for all persons subject to the Act. Knowing violations by private applicators would remain misdemeanors, unless they constitute knowing endangerment.

The statutory provisions that grant primary enforcement authority to the states would not be altered.

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
13a. Memo	From Larry Lindsey to John Sununu Re: CFTC vs SEC (1 pp.)	4/11/90	P5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff to the President, Office of the
Series: Sununu, John, Files
Subseries: White House Offices File
WHORM Cat.:
File Location: Policy Development
(Porter) (1990) [2]

Open on Expiration of PRA
(Document Follows)
By *JP* (NLGB) on 10/28/05

Date Closed: 12/15/2004	OA/ID Number: 29181-003
FOIA/SYS Case #: 1998-0004-F[1]	Appeal Case #:
Re-review Case #: 2005-0426-S	Appeal Disposition:
P-2/P-5 Review Case #:	Disposition Date:
AR Case #:	MR Case #:
AR Disposition:	MR Disposition:
AR Disposition Date:	MR Disposition Date:

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P-3 Release would violate a Federal statute [(a)(3) of the PRA]
P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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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]
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(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

THE WHITE HOUSE

WASHINGTON

April 11, 1990

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: LARRY LINDSEY L

SUBJECT: CFTC vs SEC

THE CHIEF of STAFF
has seen APR 25 1990

I understand that you met with people from the commodity futures market last week and with Governor Thompson. Here are my thoughts on the issues as communicated in a memo to Roger Porter.

If I can answer any questions, please do not hesitate to call me at x6402.

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
13b. Memo	From Larry Lindsey to Roger Porter Re: CFTC vs. SEC (4 pp.)	4/4/90	P	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff to the President, Office of the
Series: Sununu, John, Files
Subseries: White House Offices File
WHORM Cat.:
File Location: Policy Development
 (Porter) (1990) [2]

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AR Disposition:		MR Disposition:	
AR Disposition Date:		MR Disposition Date:	

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THE WHITE HOUSE

WASHINGTON

April 4, 1990

MEMORANDUM FOR ROGER B. PORTER

FROM: LARRY LINDSEY

SUBJECT: CFTC vs. SEC

A schism is developing within the Administration regarding regulatory jurisdiction issues between the Commodities Futures Trading Commission (CFTC) and the Securities Exchange Commission (SEC). This memorandum analyzes this issue, and recommends a future course of action.

Background: Securities vs. Futures Regulation

At present the SEC has regulatory jurisdiction over the trading of securities (involving the ownership of financial assets) and the CFTC has jurisdiction over the trading of futurity contracts. The distinction is somewhat artificial as a basis for allocating jurisdiction as securities depend crucially on market assumptions regarding future developments and futures contracts have many of the aspects of a security. The courts have held that any instrument with an element of futurity belongs in the CFTC's jurisdiction. This has prompted concern at the SEC about its ability to effectively police the stock and other securities markets.

The SEC argues that in the case of stocks and stock index futures, the link in valuation between security and future is quite direct. Furthermore, because stock index futures are traded on a secondary market, they are revalued continuously, just as the value of the underlying security, the stock, is revalued. This allows a number of strategies for controlling risks by trading simultaneously in both markets. Therefore, the SEC maintains that effective regulation of stock market risk requires a shift in regulatory jurisdiction to a single agency.

Three strategies have been proposed to accomplish this:

- (1) Merge the SEC and the CFTC into a single regulatory body.
- (2) Transfer jurisdiction over financial futures to the SEC.
- (3) Transfer regulation of stock index futures to the SEC.

A Reagan Administration Executive Order set up a four person working group to discuss jurisdictional and other issues relating

to the regulation of financial markets. The order followed the Brady Commission report on the October, 1987 stock market crash. The four members of the working group are Dep. Sec. Glauber (representing Sec. Brady), Chairman Greenspan of the Fed, Chairman Breeden of the SEC and Chairman Gramm of the CFTC.

Glauber and Breeden favor a move of regulatory jurisdiction to the SEC. Glauber publicly endorsed a limited transfer of stock index futures, although his actual views are unknown. Breeden leans to a broader solution including a merger of the CFTC and the SEC. Gramm opposes any transfer of authority to the SEC. Greenspan tends to agree with her, although he has said that he could "reluctantly" support a transfer of stock index futures.

Analysis of the Standard Case for Change

The case for shifting jurisdiction is based on four premises. While each of these premises is superficially plausible, the bulk of the evidence indicates that the case for change does not survive scrutiny.

Enhanced Volatility and Risk. Supporters of a shift in jurisdiction maintain that the presence of a lightly regulated futures market increases the volatility in the primary market. The overwhelming majority of the finance profession believes that this is not supported by either theory or the data. Chairman Greenspan reflected this professional consensus when he testified that he "does not believe that the division of regulatory authority has increased volatility in the securities markets, nor in this regard is it a threat to the capital formation process."

Intermarket Fraud. The existence of split regulation could, in theory, open up regulatory cracks which would permit unscrupulous practices. Most typical of this class of potential abuses is "frontrunning", manipulating price movements on the thinner exchange (generally futures) in order to induce profitable price moves on the other exchange. A joint investigation by the SEC and CFTC of the October 1987 crash found no evidence of frontrunning. Furthermore, neither the SEC nor the CFTC have ever filed enforcement actions for frontrunning.

One Regulator is Better than Two. This is a particularly plausible claim on the surface. However, there is a corollary theorem of public policy that one regulator should not be asked to carry out competing missions. The SEC is presently in that role. It is both a policeman of securities issuance and a regulator of trading. As a result of the 1929 Crash and this dual function, the SEC instituted policeman type rules in the trading pits which are inappropriate. Most famous is the downtick rule which limits short selling. This is mildly distortionary on the cash market which the SEC regulates. It would be disastrous on the futures market where free price

movement and regulatory price neutrality are essential. If we were to reorganize the regulation of our financial markets, it would make more sense to take regulation of the stock exchanges away from the SEC, leaving them as a securities commission regulating issuers, and turn the trading function over to the CFTC.

Confused Jurisdiction Limits Innovation. We are in a highly competitive world with a global financial industry. Therefore, supporters of a single regulatory jurisdiction maintain that having a single regulator would speed up the approval process. Good point. But, the courts have held that any instrument with an element of futurity belongs to the CFTC. End of jurisdictional confusion. Further history indicates that this is the "right" result from an innovation point of view, as the CFTC and the exchanges it regulates have been the most progressive.

Reasons for Maintaining the Status Quo

The best reason for maintaining the status quo is the old adage, "if it ain't broke, don't fix it". As the above discussion indicates, advocates of change have not met the requisite burden of proof. There are two additional reasons not to change jurisdiction that should be considered.

Maintain Competitiveness Through Flexibility. While there is no necessary relationship between the structure of our regulatory institutions and the competitiveness of our markets, the concentration of regulatory authority over the financial system would be, in Greenspan's words, "a matter of concern". Most public policy models of regulatory behavior would suggest that a large single agency would be less innovative than two smaller, somewhat competing, agencies.

Political Opposition From the Agriculture Community. A letter signed by all of the farm groups, from the Farm Bureau to the National Farmers' Union, has been delivered in support of the CFTC. Removal of any major area of jurisdiction from the CFTC will be seen as an unravelling of their influence. As a majority of CFTC regulated transactions are financial, this concern is probably justified.

A Modest Adjustment

The standard case for a change in jurisdiction does not seem supportable. However, some more modest changes could be made.

1. Expand the Reagan created Working Group to include an odd number of members. The Reagan executive order should be modified to expand the group to either five members, by adding the CEA Chairman or his designee, or to seven members, by adding CEA, OMB, and the White House Counsel.

This will break the current deadlock and lay the groundwork for future action.

2. Coordination of the level of risk tolerated in the futures and cash markets should be encouraged by the working group. It would not be desirable to have one market be either more crash prone or less flexible than the other market. To the extent that either is the case, one market would have to perform risk absorption functions for the other market. Circuit breakers and margin requirements should be coordinated between related markets to allow roughly equal amounts of risk (defined in terms of "crash" probability or market illiquidity) in the two markets. Since the underlying risks in the two markets are different, equal riskiness implies different sets of rules for each market. But, different does not necessarily mean uncoordinated.
3. Require the CFTC to set minimum margin requirements for its markets. Presently, those exchanges set their own margin requirements and vary them according to the perceived levels of risk and liquidity in the market. Setting minimum margin requirements would create the appearance both of action by the Administration and of reducing the volatility problems which some advocates of stronger action allege exist.

DRAFT

April 27, 1990

file

I want to express my views to you concerning the urgent need to reform the disjointed regulation of the markets governing stocks, stock options, and stock index futures. If we do not take the necessary steps to correct the problem now, we are much more likely to see minor events trigger major market disruptions like the ones we experienced in October of 1987 and October of 1989 -- and we will not have the regulatory tools we need to contain the risk to this country's financial system.

The interaction of the recently-created stock index futures with stocks and stock options has caused major market disruptions with serious regulatory problems:

-- Major Market Breaks. In the 52 years between 1930 and 1982 (the year stock index futures began trading) the Dow Jones Industrial Average declined by more than 6 percent only three occasions: when the Germans took the Netherlands in May of 1940

(6.8 percent); when they encircled the Allied forces at Dunkirk just days later in the same month (6.8 percent); and when President Eisenhower suffered a heart attack in September of 1955 (6.5 percent). As the futures markets have grown, such massive one-day selloffs have occurred four times in the last three years:

October 19, 1987 -- 22.6 percent
October 26, 1987 -- 8.0 percent
January 8, 1988 -- 6.9 percent
October 13, 1989 -- 6.9 percent

None of these days corresponded with any major news events like the ones before 1982. But they all shared the characteristic of enormous selling pressure from the stock index futures markets.

-- Clearance and Settlement Breakdown. After the October 1987 break, the clearance and payment system fell over 6 hours behind its normal payment times, with Chicago clearinghouses owing over \$1.5 billion to investment houses. Had these funds been missing for any significantly longer time, it would have unleashed a chain reaction of events where other payments to other creditors would not have been made. This could have caused a collapse of our financial system; it was that close.

-- Dangerously Low Futures Margins. Futures traders can

control so great an amount of stock with so little of their own money that relatively small amounts of capital can concentrate enormous selling pressure on the stock market -- great enough to punch a hole in the fabric of the financial system. Prior to the October 13, 1989 break, a professional trader in the futures market with \$50,000 in cash could control almost \$2,000,000 in stock, which is nearly 10 times more than the \$200,000 that a professional trader in the stock market can control with the same amount of cash. Many observers are shocked that these margins were lowered after the market collapse of October of 1987, showing that no lessons had been learned. Since these margins are set by the futures industry, not a regulator, there is no way to harmonize margins between futures and stocks to protect the public.

-- Evasion of Short Selling Restrictions. For over 50 years the securities laws have restricted bear raiders like the 1920s' Bernard Baruch and Jessie Livermore from selling short in declining markets. The purpose of these restrictions is to prevent "gunning" the market, which drives down the market and drives away small public investors. However, a big seller in the futures market can completely avoid the short selling restriction -- and in fact, because of low futures margins, can make the stock market downdraft even worse.

-- Ineffective Intermarket Enforcement. With two different

regulators, there is no effective way to prevent manipulation and fraud in transactions between the stock and futures markets. As a result, it is extremely difficult to detect the specific practice of intermarket "frontrunning," where a trader trades ahead of his client knowing that the client's trade will drive the market in a particular direction.

These consequences result from a failure to recognize the fundamental reality that stocks, stock options, and stock index futures are all parts of "one market." This "one market" concept was thoroughly discussed after the 1987 collapse and is accepted by the overwhelming majority of scholars and market participants. Because it is "one market," it should have one regulator to coordinate and harmonize conflicting rules that create such substantial risk to the financial system.

Every other country with major trading in stocks and stock index futures has a single regulator to make sure their financial system as a whole is protected. In fact, when the Japanese set up their futures market a few years ago, after detailed study of the U.S. futures/stock market system, they specifically established regulation of stocks and stock index futures in one agency. We should, too.

In short, we should take the steps now to unify and harmonize regulation before we have another cataclysmic selloff

as in October of 1987. It is not a question of if it will happen; it is only a question of when.

One remedy could involve the more substantial action of merging the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), as some members of Congress have suggested. Another would shift the regulation of all financial futures from the CFTC to the SEC. While one of these proposals may be the ultimate path chosen, it seems to me that such a major regulatory change could take too long to enact and is more than is necessary to address the problems we now know about.

I believe instead that we should enact legislation that would take the less drastic step of moving only the regulation of stock index futures to the SEC, with appropriate authority to harmonize conflicting regulation. This approach would unify regulation of the "one market" of stocks, stock options, and stock index futures.

This change would have no effect on the agricultural community, since stock index futures have no relation to agricultural products or agricultural futures. Moreover, the proposal would minimize the effect on the CFTC, because stock index futures represent less than 10 percent of the futures volume under CFTC jurisdiction.

Thirty five years of working in the markets makes me feel strongly about this issue. That is why I would appreciate guidance and judgment from your perspective as to the best steps to take to fix these problems.