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SECRET

8 September 1987

MEMORANDUM FOR: Distribution

SUBJECT: Inter-Agency Meeting

TYPE OF MEETING	Economic Policy Council
DATE	Thursday, 10 September 1987
TIME	1100
PLACE	Roosevelt Room
CHAIRED BY	Baker
ATTENDEE(S) (probable)	NIO/Econ
SUBJECT/AGENDA	Various - See agenda
PAPERS EXPECTED	Agenda & Attached paper received today
INFO RECEIVED	Per Cabinet Affairs

25X1

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Remarks

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Executive Secretary
9 Sept '87
Date

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THE WHITE HOUSE
WASHINGTON

CABINET AFFAIRS STAFFING MEMORANDUM

Date: 9/8/87 **Number:** 490,689 **Due By:** _____

Subject: Economic Policy Council Meeting -- September 10, 1987 - 11:00 a.m. in the Roosevelt Room

	Action	FYI
ALL CABINET MEMBERS	☐	☐
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State	☑	☐
Treasury	☑	☐
Defense	☑	☐
Justice	☑	☐
Interior	☐	☐
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Labor	☑	☐
HHS	☐	☐
HUD	☐	☐
Transportation	☑	☐
Energy	☑	☐
Education	☐	☐
Chief of Staff	☑	☐
OMB	☑	☐
UN	☐	☐
USTR	☑	☐
CIA	☑	☐
EPA	☐	☐
GSA	☐	☐
NASA	☐	☐
OPM	☐	☐
SBA	☐	☐
VA	☐	☐

	Action	FYI
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Carlucci	☑	☐
Cribb	☑	☐
Bauer	☑	☐
Dawson *(For WH Staffing)*	☑	☐
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REMARKS: The papers and revised agenda for the September 10, meeting of the Economic Policy Council are attached. The meeting is scheduled for 11:00 a.m. in the Roosevelt Room.

RETURN TO:

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

☐ **Associate Director**
Office of Cabinet Affairs
456-2800
(Room 235, OEOB)

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THE WHITE HOUSE

WASHINGTON

September 8, 1987

MEMORANDUM FOR THE ECONOMIC POLICY COUNCIL

FROM: EUGENE J. McALLISTER EM

SUBJECT: Agenda and Papers for the September 10 Meeting

The papers and revised agenda for the September 10 meeting of the Economic Policy Council are attached. The meeting is scheduled for 11:00 a.m. in the Roosevelt Room.

The first agenda item will be a discussion of the U.S.-Canadian FTA. The Council will examine whether in exchange for greater Canadian discipline on subsidies at the Federal and provincial level, the U.S. will commit to explore some possible approaches for increasing the role of binding dispute settlement. A paper prepared by USTR and the Commerce Department is attached.

The second agenda item will be a discussion of whether the Administration should self-initiate a Section 301 case on telecommunications. At a previous meeting, the Council requested that the TPRG undertake a review of the feasibility of self-initiating such a case. A paper outlining the justification for a Section 301 case, as well as potential candidate countries, is attached.

The final agenda item will be a discussion of outstanding Section 301 cases, such as Korean insurance practices. The TPRG has also prepared a paper outlining the possibility of self-initiating a Section 301 case on Kansai airport.

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ECONOMIC POLICY COUNCIL

September 10, 1987

11:00 a.m.

Roosevelt Room

AGENDA

1. Canada FTA
2. Section 301 on Telecommunications
3. Outstanding Section 301 Cases

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UNITED STATES-CANADA FREE TRADE AGREEMENT NEGOTIATIONS: SUBSIDIES AND THE U.S. COUNTERVAILING DUTY LAW

ISSUE

The subsidies/countervailing duty (CVD) law issue could scuttle the FTA talks with Canada, or lead Congress to reject the FTA.

The U.S. and Canada are far apart. Canada's key FTA demand is to substitute agreed rules enforced by binding dispute settlement for U.S. application of its CVD law to Canada. The U.S. has maintained that we must keep our CVD law, but has offered to address Canada's major CVD law concerns if Canada undertakes credible subsidies discipline.

Given the importance of the issue, our negotiators need EPC guidance on how to proceed.

BACKGROUND

The Economics of Subsidies and CVD Cases

In relation to the real world of Canadian subsidies and U.S. CVD cases, the issue is overblown:

- The U.S. has only five outstanding CVD orders on Canadian products with a total 1986 import value of $180 million (see attached chart). The six other cases filed against Canada since 1980 resulted in negative subsidy or injury determinations or withdrawals of U.S. petitions. Two of the cases, however, were on lumber, where a negotiated settlement involving trade of some $2.7 billion was reached in the Lumber II case.

- Although Canada has a wide variety of federal and provincial subsidy programs, the subsidy margins have been small. (Under outstanding orders, the highest margin is 5.8%; two cases had margins under 1%.) The exception was a 15% margin we preliminarily found in Lumber II; nearly the entire 15% was due to Canadian pricing of rights to remove trees from government lands ("stumpage programs").

- Canada's only CVD case against the U.S., a 1986 corn case filed following Lumber II, led to high margins. Few U.S. manufacturing industries, however, would be vulnerable to Canadian CVD cases.

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Canadian Political Views

The Canadian Government has made the CVD issue into the primary political FTA issue in Canada.

- The immense importance of the CVD issue to Canada stems from the lumber cases. In 1983, in Lumber I, the U.S. found that Canadian stumpage programs were not subsidies. In 1986, in Lumber II, the U.S. preliminarily found stumpage countervailable. Lumber II led to a U.S.-Canada agreement under which Canada imposed a 15% lumber export tax and committed to revise stumpage practices in exchange for withdrawal of the case.

- Because forest-based industries (and resource-based industries generally) are central to Canada's economy, the cases and settlement were highly visible in Canada. The lumber decisions led to a widespread Canadian view that the U.S. uses the CVD law to harass, and interprets and applies its CVD law arbitrarily and inconsistently. Canada also fears that the Congress will legislate protectionist changes in the CVD law, particularly on natural resources.

U.S. Congressional and Private Sector Views

It is impossible now to gauge Congressional flexibility to accept U.S. concessions on the CVD law in an FTA. Considerations:

- The subsidies/CVD issue is likely to be the major FTA issue for the trade community on the Hill. A misstep by the Administration in giving Canada too much on the CVD law for too little Canadian subsidies discipline could embroil the FTA in the trade bill debate and have serious trade bill consequences. On the other hand, if the talks fail over this issue, some may charge the Administration with lacking the vision and creativity to reach an historic FTA benefitting U.S. industry.

- U.S. industry's right to invoke, and the U.S. Government's right unilaterally (within broad GATT constraints) to interpret and apply unfair trade laws is sacrosanct to much of the Congress. The Congress is also wary of countries' "commitments" to eliminate subsidies, unless we can enforce the commitments. Senator Bentsen, among others, wants to guard against weakening our CVD position multi-laterally.

- A few members (e.g., Senator Moynihan) have publicly favored the Canadian dispute settlement approach, but most members who have reacted to Canadian demands stress that we cannot give up our CVD law or subject our CVD determinations to a binational tribunal's override.

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- The Hill will judge any concessions on the CVD law by two measures: (1) how good the whole FTA is for the U.S., and (2) how good the subsidies/CVD deal is by itself. Private sector constituencies for other aspects of the FTA, such as investment, may not counterbalance the unfair trade law constituencies.

- Lumber, steel, and other industries (especially natural resources) will lobby against the FTA unless it protects their ability to obtain unilateral U.S. CVD decisions, at least until Canadian practices have changed. (The lumber industry sees a third lumber case as its ultimate enforcement tool for the lumber agreement.) The Hill is sensitive to these industries; Senate Finance threatened to withhold authority for the FTA negotiations because of the lumber issue.

- There is undoubtedly some Congressional flexibility to accept a compromise if it (1) ensures very strong discipline on Canadian subsidies, and (2) maintains unilateral U.S. rights to use the CVD law, at least so long as Canadian subsidies are perceived as a problem.

CANADIAN NEGOTIATING POSITION

Canada seeks "predictability" through substitution of agreed rules enforced by binding dispute settlement for U.S. unilateral interpretation and application of the U.S. CVD law. Under Canada's theory, a joint tribunal would interpret CVD-like principles to decide whether a party had met its subsidies discipline commitments, and could impose sanctions if it had not.

The EPC addressed the dispute settlement issue after the Venice Summit, where Prime Minister Mulroney raised it with President Reagan. The EPC approved a U.S. proposal for binding dispute settlement only in mutually agreed instances. The President wrote to Prime Minister Mulroney endorsing that approach.

Canadian negotiators claim that, in exchange for binding dispute settlement, Canada is prepared to undertake serious discipline on subsidies. To date, however, Canada has offered no real subsidies discipline. Canadian proposals would permit subsidies that would clearly be countervailable under U.S. law. We are pressing them for effective discipline. Canada's negotiating strategy to date has been to press us to say what greater discipline we want over Canadian federal and provincial subsidies, but to reject U.S. proposals if they would not fall equally on our state and federal programs.

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The fundamental flaw in Canada's approach is the notion -- appealing though it may seem on the surface -- that the U.S. and Canada can agree on common rules defining what is a subsidy.

- o "Rules" would only give Canada a handbook on how to subsidize. Canada claims we could base the rules on U.S. CVD concepts. But most U.S. CVD concepts are not susceptible of being distilled into clearcut rules; their interpretation depends on the facts and circumstances of a particular case. Trying to transform these concepts into bright-line tests at (or below, in Canada's proposals) approximately the CVD standard would condone subsidies countervailable under U.S. law.

- o Application of U.S. CVD concepts by a binational tribunal would lead inevitably to interpretations conflicting with those of the U.S. Government, the courts, or the Congress. Such tribunal decisions (binding on the U.S., in Canada's scenario) could seriously weaken the U.S. posture on subsidies multilaterally.

U.S. NEGOTIATING POSITION

U.S. negotiators have proceeded on several assumptions:

- o Meaningful subsidies discipline commitments by Canada are a prerequisite to any concessions on the CVD law. Moreover, subsidies discipline commitments -- although they may have to look symmetrical for the U.S. and Canada -- must bite Canada harder than the U.S. Reasons:

  - -- The U.S. is willing to accept Canadian CVD cases when we subsidize, and prefers to continue to deal with Canadian subsidies through our CVD law. Consequently, even limited relief from our current CVD practices would be unacceptable to the Hill unless we obtain in return increased discipline over Canadian subsidies.

  - -- Canadian subsidies frequently are targeted and affect exports to the U.S. Our subsidies usually are generally available and rarely affect trade with Canada. (Canada admits that the only "problem" U.S. subsidies are state incentives to attract major auto sector investments.) U.S. states would lobby against an FTA that limits their subsidies unrelated to Canada.

- o An FTA that is good for the U.S. on other issues, such as investment and intellectual property, is a prerequisite to any concessions on the CVD law.

- o We must maintain our CVD law, unilaterally interpreted, though we can consider some special treatment for Canada in the application of that law.

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CURRENT U.S. OFFER

With these ground rules in mind, the U.S. has made a proposal that would:

- o Keep the CVD law as the enforcement mechanism for subsidies discipline, but
- o In exchange for credible Canadian subsidies discipline, offer significant substantive and procedural concessions:
  - -- Commitments on how we would apply the CVD law to Canada in key areas: natural resources (the major area of potential disputes), regional subsidies (some currently countervailable subsidies would be allowed), and infrastructure.
  - -- Procedural changes to eliminate some CVD cases and enhance the likelihood of suspending others without duties.

Although it may be for tactical reasons, the chief Canadian negotiator has rejected this approach and delayed progress in other areas.

FUTURE U.S. NEGOTIATING POSTURE

U.S. negotiators now require guidance from the EPC on the U.S. negotiating posture in the few weeks remaining.

In the view of our negotiators, there are two prerequisites to either of the options below:

- o Increased Canadian subsidies discipline at the federal and provincial levels, with more stringent discipline applying to Canada than to the U.S.
- o Important Canadian concessions on other FTA issues such as investment and intellectual property.

Option I: Maintain the current U.S. negotiating position, improving the offer in minor ways if warranted by Canadian subsidy commitments.

Assessment. U.S. negotiators believe that the U.S. proposal offers significant CVD concessions which, as a practical matter, go a long way toward addressing Canada's major concerns. The U.S. has not offered such concessions to any other country, including Israel. The concessions on natural resources and regional subsidies could arouse Congressional concern, but our negotiators believe these concessions will be acceptable to the Hill if balanced by Canadian subsidies discipline.

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The current U.S. proposal does not, however, provide the political optics Canada seeks and may require. Canadian negotiators are still at the table, despite clear signals from the President and the U.S. negotiators that the U.S. cannot accept binding dispute settlement in lieu of the CVD law. On the other hand, without some U.S. movement toward meeting Canada's political needs, Canada may not be able to agree to a comprehensive FTA and may have to end the talks.

Option II: Explore possible compromise approaches with Canada, involving some immediate or eventual role for binding dispute settlement. Two examples of the outer limits of such approaches are described below.

- Agreement to the objective of replacing CVD laws between the U.S. and Canada with binding dispute settlement at the end of the ten-year transition period if (1) significant lasting discipline on Canadian domestic subsidies has been demonstrated by then, and (2) the decision on eliminating the CVD law is subject to Congressional approval at that time.

Assessment. Such a commitment in the FTA would not bind the Congress. Any exemption from the CVD law for Canada in ten years would have to be legislated at that time. If Canadian subsidies and CVD disputes had largely disappeared by then, the Congress might agree. If subsidies/CVD cases were still a problem, Congress could refuse.

Given widespread skepticism, however, that Canada will really discipline subsidies, the Congress might balk at a commitment in the FTA that could put pressure on the Congress to give Canada a CVD exemption in ten years. Moreover, the idea that we would ever forego our unilateral CVD rights may be more than the Congress can accept.

Preliminary signals from Canadian negotiators suggest that this kind of commitment to a ten-year objective could solve Canada's political problem in the negotiations. Canada would probably want to reserve the right to withdraw its own commitments in other areas of the FTA, however, if Congress failed to legislate the CVD law away after 10 years.

- Contemplating a limited role for binding dispute settlement on adherence to specific subsidy discipline commitments, either immediately or before the end of the ten-year transition period.

  For example: Require Canada to agree to subsidies discipline beyond that required by our CVD laws. Employ dispute settlement to test whether Canada lives up to its commitments. U.S. CVD law would remain to apply to other practices or breaches of the commitment.

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Assessment. If a threshold dispute settlement test applied a higher standard than the CVD law, the U.S. could gain significant Canadian discipline for little substantive risk that countervailable subsidies would not be subject to CVD cases. It is doubtful that Canada would commit to the necessary discipline level to accept the compromise, but offering it would call Canada's bluff on the level of discipline they are willing to undertake.

On the other hand, the Congress might reject any role for dispute settlement, out of concern that tribunal decisions could bar some CVD cases.

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U.S. COUNTERVAILING DUTY ORDERS AGAINST CANADA

Case	Year	Margin	1986 Import Value*
Live Swine	1985	C$0.0439/lb	56,743,000 (1985)
Raspberries	1985	0.99%	15,588,752
Groundfish	1986	5.82%	44,835,092
OCTG	1986	0.72%	63,227,854
Cut Flowers	1987	1.47%	55,213
			$180,449,911

* Data are based on TSUSA numbers listed in the orders. The data may overstate the value of affected imports because TSUSA categories include basket items, and because some companies may be excluded from the orders. They may also understate the imports affected, if CVD cases chill trade.

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

September 3, 1987

MEMORANDUM FOR THE ECONOMIC POLICY COUNCIL

FROM THE TRADE POLICY REVIEW GROUP

SUBJECT: TELECOMMUNICATIONS: POSSIBLE SELF-INITIATION OF 301s

Issue

The Economic Policy Council has requested that we determine whether certain countries' telecommunications trade and investment practices would be actionable under Section 301 of the Trade Act of 1974, in preparation for its review of possible self-initiation of 301 investigations. In preparing this issue for EPC review, the TPRG has ranked the countries under review in terms of the restrictiveness of their practices.

Background

o U.S. industry does not support initiating any section 301 complaints on telecommunications at this time. As indicated in a meeting with industry reps on August 24, this is true both of those who support and those who oppose telecom legislation.

-- The former believe current legislation contains a more positive, clear and productive approach.

-- The latter are concerned that initiation of 301s at this time will be seen as "caving in" to Congressional pressure and are concerned about possible limitations on access to imported equipment.

-- Current telecom legislation requires the Administration to develop objectives for telecom with industry input, enter into negotiations, and achieve results or retaliate, generally within three years.

o The TPRG reviewed 12 countries to determine their significant barriers, the extent to which practices are unreasonable within the meaning of section 301, the estimated effect of barriers, the history of consultations, and advantages and disadvantages of self-initiation. Individual country reviews are attached.

o The following common themes became apparent in the technical review at the staff level leading up to the TPRG discussion:

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-- The Administration's willingness to self-initiate would demonstrate high priority attention to telecommunications, partly in response to Congressional and private sector concerns.

-- On the other hand, self-initiation could be counter-productive, since many countries are taking or contemplating steps toward liberalization, and the more confrontational approach might reverse this trend. Moreover, taking action against any EC Member State in particular would enable that country to shift the locus of negotiation to the Commission, which has no competence over national PTTs.

-- For most countries studied, it could be argued that their practices are unreasonable within the meaning of section 301, based on lack of national treatment and/or of fair and equitable market opportunities. Therefore, they would be actionable under section 301 if they burdened or restricted U.S. commerce. However, since the U.S. has one of the very few open telecommunications markets, it may be inappropriate to label widespread, common foreign practices as unreasonable.

-- Most of the burdensome and potentially unreasonable practices are nevertheless not inconsistent with countries' GATT obligations. Were we to retaliate ultimately by restricting imports of goods, we would likely violate our own GATT obligations, leaving ourselves open to possible GATT sanctions.

-- For countries with which we have treaties of friendship, commerce and navigation (FCN) (e.g., which includes all countries reviewed, except China and Brazil), those accords probably do not provide an international legal basis for action, since communications enterprises are largely excluded from the key establishment article in such treaties. Were we to retaliate in such instances, we could also be accused of breaching the MFN obligations of the FCN.

-- It is not clear that we have the necessary leverage through taking or threatening 301 action on telecom trade to open foreign markets. Countries that have the most restrictive practices (e.g., Germany) may be net telecom importers from us; countries that have a telecom surplus (e.g., Japan) may have relatively more open policies. Thus, we would probably need to restrict import access on non-telecom items if retaliation were necessary.

-- We need to assess each case carefully in light of current bilateral and multilateral efforts. Self-initiating in telecommunications could "poison the well" for achieving positive results in other on-going issues (e.g., Airbus).

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Moreover, initiation of 301s could result in overt or covert retaliatory action against U.S. firms based overseas.

-- Achieving only national treatment may be a Pyrrhic victory in countries with telecommunications monopolies; in those cases, improvements in market access should be sought.

Interagency Consideration

The Trade Policy Review Group (TPRG) reviewed a number of options regarding self-initiation.

o There was considerable skepticism about self-initiating 301 action at this time, particularly in light of private sector opposition. At the same time, there was concern that our current low profile strategy on telecommunications will continue to yield only minimal results. Consequently, a more aggressive strategy short of self-initiating a 301 is needed, although no specific suggestions for such a strategy were put forward. It was also agreed that a decision not to take 301 action at this time should not preclude possible self-initiation at some future date, and that we should send a clear signal to our trading partners that future 301s are not precluded.

o The TPRG also considered self-initiation only against Germany. Agencies generally agreed that Germany's practices are among the most restrictive and its market among the most significant. However, it would be difficult to justify singling out Germany's practices, since they are no more egregious than certain other countries' barriers. It was also pointed out that there are certain powerful forces for liberalization in Germany that could be undermined by self-initiating a 301 at this time. Moreover, there are certain non-trade factors with regard to Germany that must be considered at present (i.e., Germany's role in U.S./Soviet arms negotiations).

Country Ranking

To facilitate EPC consideration of individual countries, the TPRG ranked them broadly according to the restrictiveness of their practices. At the same time, the TPRG believes the EPC should take certain other factors into account in any final "accounting" of countries, including the significance of the market, the relative importance of telecommunications on our bilateral trade agenda, and the chances for the success of a section 301 effort. Countries are listed below in broad categories of restrictiveness of barriers. China and India, although reviewed by the TPRG, are not included on the table, because they were considered entirely inappropriate for any 301 action.

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COUNTRY RANKING

Country	Other Considerations
Most Restrictive	
Brazil	Would complicate efforts to conclude earlier self-initiated 301 (informatics). Slim chances for success.
Germany	Long history of unsatisfactory consultations. Should consider relative to importance of non-trade issues at this time (i.e., arms negotiations).
Korea	Consultations only began within past year; going fairly well. Other priority issues "on our plate."
Less Restrictive	
Austria	Non-EC European country (therefore no "competence" problem). But, have held no consultations.
France	Has made some moves toward liberalization.
Italy	Not as large as other EC markets and not as influential in policy-setting. Actual practices more liberal than regulations.
Spain	New law being considered would be step in right direction, although not sufficient.
Least Restrictive	
Netherlands	Although existing system is undesirable, considering legislation that would make significant improvements.
United Kingdom	U.K. telecom system is the most liberal in Europe.
Japan	From regulatory standpoint, relatively open, although real market access improvements have not occurred to the extent we would like. $60 billion trade surplus with us should be considered.

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September 3, 1987

MEMORANDUM FOR THE ECONOMIC POLICY COUNCIL

FROM: THE TRADE POLICY REVIEW GROUP

SUBJECT: SECTION 301 DEVELOPMENTS

Summary

This memorandum outlines likely section 301 developments between now and year's end. The Economic Policy Council may wish to take them into account in deciding whether to initiate investigations or recommend action under section 301 to the President regarding telecommunications, Korean insurance, and Japan Kansai practices.

EC Meat Issues

Third Country Meat Directive. On May 1, 1987, the EC began implementing its Third Country Meat Directive, which precludes the importation of meat products from any plant outside the EC that does not pass EC inspection. The directive establishes detailed requirements, such as:

- o the maintenance of separate rooms for various meat slaughter and processing operations, and
- o a prohibition on the use of wooden pallets, knife handles, structural beams or fencing.

Of the more than 400 U.S. plants inspected by the EC since 1984, only 7 slaughter and 3 cutting plants have been certified. Another 59 slaughter plants are approved only until December 31, 1987, and must be reinspected by EC officials.

In 1986, U.S. meat exports (beef, veal, pork, horse and variety meats) to the EC exceeded $165 million in value, or about 15 percent of total U.S. meat exports that year. USDA currently accepts meat imports from over 250 European plants.

Last year we undertook a fact-finding investigation under section 305 of the Trade Act of 1974 on our own motion. The EC offered to cooperate but never responded to the questions we posed.

On July 22, Ambassador Yeutter initiated a section 301 investigation in response to a petition filed by the American Meat Institute,

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U.S. Meat Export Federation, National Pork Producers Council, American Farm Bureau Federation and National Cattlemen's Association. They charge that the directive denies national treatment (because its standards are not enforced in trade between EC member states, and do not apply within member states), and cannot be justified on the basis of scientific evidence. Because these issues arise under the GATT and Standards Code, we requested consultations under Article 23:1, which are scheduled this month.

However, we have no realistic hope of achieving an outcome under GATT dispute settlement procedures by January 1, when the temporary approvals of 59 U.S. plants expire. Unless they are certified, the result will be either a reduction in U.S. meat exports to the EC, or the incurrence of unnecessary expenditures by U.S. plants to conform to EC requirements.

EC Hormones. In January 1987, the U.S. asked for consultations under the Standards Code to complain of the EC's Animal Hormone Directive. This directive precludes the importation into the EC after January 1, 1988, of any meat produced from animals treated with hormones (which is widespread in the U.S.). We believe that hormones can be used safely under prescribed conditions, and that the EC should accept our residue testing program as a sufficient guarantee of the safety of meat from animals treated with hormones.

After the Standards Code Committee was unable to achieve a mutually satisfactory solution, in July 1987 the U.S. asked for the establishment of a technical experts group. The EC has blocked its establishment, interrupting the dispute settlement process. Unless the EC agrees soon to proceed, we may wish to consider self-initiating an investigation or acting under section 301. Even if the EC permits dispute settlement to proceed, however, it could not be completed prior to the implementation January 1 of the EC directive.

As a result of the Third Country Meat and Animal Hormone Directives, as of January 1, 1988, we expect U.S. exports of meat products to the EC to cease abruptly. The issue for the EPC will be whether and how to act unilaterally absent a satisfactory resolution in the interim. This issue must be addressed no later than early November, if public comment on proposed retaliatory measures were to be obtained and retaliation implemented by January 1.

Argentina Soybeans

The Government of Argentina has maintained higher export taxes on soybeans than on processed soybean products. This differential discourages the exportation of beans, puts downward pressure on the price of soybeans in Argentina, and thus provides a competitive advantage to the Argentine crushers of soybeans into soybean meal and oil.

In response to a petition filed by the National Soybean Processors Association in 1986, we initiated a section 301 investigation.

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Last May, the President suspended this investigation based upon the Argentine Government's commitment to eliminate or substantially reduce all export taxes by October 15.

On July 20 Argentina eliminated or significantly reduced the export taxes on all products except soybeans and sunflower seeds. It reduced the differential in taxes on soybeans and processed soybean products from 12 to 11 percent, which we do not consider a substantial reduction.

We are pressing the Argentine Government to fulfill its pledge by October 15. Argentina's Finance Minister will meet with Ambassador Yeutter at the end of September to discuss the problem. However, for Argentine domestic political and revenue reasons, we are skeptical how far the Government will move.

Agencies agree that this export tax differential distorts trade; despite repeated deliberations within the Section 301 Committee, they still disagree whether it is unjustifiable, unreasonable or discriminatory and a burden or restriction on U.S. commerce (the criteria of section 301). However, breach of Argentina's commitment to eliminate or substantially reduce all export taxes by October 15 would be independently actionable under section 301 as unjustifiable, if it also burdened or restricted U.S. commerce.

Absent a satisfactory settlement by October 15, the issue for the EPC will be whether and how to respond to Argentina's breach of its commitment and maintenance of an export tax differential that distorts trade. This issue would arise as of October 15, but there would be no need to act immediately to preserve the status quo (as in the EC meat matters).

Argentina Air Couriers

In 1984 the Air Courier Conference of America complained of the Argentine Government's restrictions on the delivery of time-sensitive commercial documents, which essentially prohibited U.S. couriers from the international carriage of such items. In November 1984 the President determined this practice to be unreasonable and a restriction on U.S. commerce. He directed the Trade Representative to consult further with Argentina, but to submit proposals for action under section 301 within 30 days if the issue were not resolved through consultations.

With the help of this leverage, we persuaded Argentina to eliminate its restrictions. However, it replaced the restrictions with a discriminatory tax on international courier operations, which our industry maintains bore no reasonable relationship to the cost of any services provided. Recently the Argentine Government allegedly has harassed the local franchise of one U.S. company, DHL, on the basis of purported ties to British interests. In addition, the Government is replacing the clearly discriminatory tax system with a nondiscriminatory tax system that may operate nonetheless to the disadvantage of international couriers and to the advantage

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of the Argentine monopoly postal authority, ENCOTEL.

The Section 301 Committee will review the new draft regulations as soon as they are available and meet with U.S. industry representatives and GOA officials. If the Committee concludes that the Argentine Government simply would be replacing one unfair and burdensome practice with another, it will recommend any appropriate action to the Trade Policy Review Group.

Brazil Informatics

President Reagan suspended the procedural and market reserve portions of this case in December 1986, and the intellectual property portion on July 1. The latter suspension was based on passage by Brazil's Chamber of Deputies of legislation that would provide adequate copyright protection to computer software. However, Brazil's Senate does not consider this legislation urgent and may delay its consideration until it completes drafting the Constitution. More ominously, the Brazilian private sector opposes the bill's market reserve provisions for software, which prohibit software imports if a Brazilian company produces a "functional equivalent." Brazilian software user and producer associations have asked the Senate leadership to replace this provision with a tax on imported programs. If the Senate amends the bill, it will be sent back to the Chamber of Deputies, where nationalistic deputies are likely to try to derail the entire bill if they believe that the market reserve policy is threatened.

To further complicate matters, Brazil's Secretariat for Informatics may shortly approve a pending license application for a Brazilian clone of the Apple MacIntosh 512 personal computer. Depending upon these developments, the EPC may have to consider whether to reopen the intellectual property portion of this case. (The investment portion remains active.)

Other Current Section 301 Cases

The following are major developments and deadlines in other active Section 301 cases:

- o Canada Fish (concerning Canadian prohibitions on the export from Canada of unprocessed salmon and herring): We expect the GATT panel report in October. The deadline for the Trade Representative's recommendations to the President is 30 days following the conclusion of dispute settlement.

- o India Almonds (concerning Indian licensing requirements and steep tariffs on imports of almonds): At the Indian Government's request, a second round of GATT consultations is scheduled for the week of September 28; and we have asked for the establishment of a panel in the Licensing Code Committee. The deadline for the Trade Representative's recommendations to the President is 30 days following the conclusion of dispute settlement.

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o Brazil Pharmaceuticals (concerning Brazil's lack of product or process patent protection for pharmaceutical products): After three rounds of consultations, the Brazilian Government indicated it would not grant either product or process patent protection for pharmaceuticals. Public hearings are scheduled for September 14. The deadline for the Trade Representative's recommendations to the President is July 23, 1988.

Possible Section 301 Industry Petitions in the Wings

In addition to pending cases, we are aware of the following petitions that could be filed by U.S. industry:

o Canada wine (concerning provincial barriers to the sale of U.S. wine in Canada): The Wine Institute submitted a draft petition this summer, and is likely to file if FTA negotiations do not resolve this trade barrier.

o Canada printing (concerning various Canadian barriers to the importation of certain U.S. printed publications): Printing Industries of America, Inc. submitted a draft petition late last spring, apparently intended to serve as leverage in the FTA negotiations.

o UK/FRG/France/Spain Airbus (concerning subsidies and inducements to the purchase of Airbus aircraft): Boeing and McDonnell Douglas continue to consider the possibility of petitions under section 301 and/or the antidumping and countervailing duty laws.

o EC Soybeans (concerning the EC's domestic subsidies for soybeans): The American Soybean Association has submitted a second draft petition which the Section 301 Committee is reviewing. ASA says it plans to file September 16, and is determined to proceed regardless of agency comments. This would be a blockbuster case. In 1986 U.S. oilseed and oilseed product exports to the EC totaled $2.3 billion, compared to $4.2 billion five years ago. If filed and initiated, it presumably would be handled as a GATT case; therefore, the deadline for the Trade Representative's recommendations to the President would be 30 days following the conclusion of dispute settlement.

o Argentina/Chile Pharmaceuticals (concerning those countries' lack of product patent protection for pharmaceuticals): The Pharmaceutical Manufacturers Association (petitioner in the Brazil case) advises us that they plan to file petitions on Argentina and Chile as well in November.

Another Possible Self-Initiation Candidate

Finally, at some point agencies may be called upon to review

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again Japanese soda ash practices. Several times we have considered whether to self-initiate an investigation based upon possible cartel activities among Japanese firms tolerated by the Government, and U.S. soda ash producers' failure to sell as much soda ash in Japan as their comparative advantage would warrant. Senators Wallop and Symms have urged us repeatedly to consider action under section 301.

To date, however, the Justice Department and some other agencies have opposed this step based upon insufficient evidence of the continuation or resumption of an earlier cartel. The Section 301 Committee is monitoring this situation, and will recommend action to the Trade Policy Review Group if evidence of unfair and burdensome practices by the Japanese Government develops.

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DEPUTY UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20506
202-395-5114

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September 10, 1987

MEMORANDUM FOR THE ECONOMIC POLICY COUNCIL

FROM : THE TRADE POLICY REVIEW GROUP

SUBJECT: SECTION 301 ACTION AGAINST KOREAN INSURANCE PRACTICES

ISSUE

Should the President determine under section 301 that Korean practices involving access to its life insurance market are unfair and direct the development of appropriate and feasible counteraction.

RECOMMENDATION

There is consensus in the TPRG that the President issue a section 301 unfairness determation and that, absent a satisfactory negotiated solution, announce retaliation (to be developed by the TPRG) on October 16, 1987.

THE 1986 SECTION 301 AGREEMENT

o Last year we concluded a self-initiated section 301 action against Korean insurance practices intended to provide full market access to that market for U.S. companies. The 1986 agreement (attached) specified that qualified U.S. insurance firms would be promptly licensed. No reference was made to the form of establishment -- branch office, subsidiary or joint venture -- under which U.S. insurance firms would be required to operate in either the life or non-life insurance markets.

o The United States government consistently maintained its position that restrictions on the form of establishment for entry into the Korean insurance market were unacceptable. During April trade consultations and the July Economic Consultations, the Koreans were put on notice that failure to allow joint ventures and subsidiaries in the life market would be viewed by the United States as a derogation of the agreement.

REMAINING MARKET ACCESS BARRIERS

o Implementation of the agreement to date has produced mixed results. U.S. firms have been admitted to the compulsory fire

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pool, two limited life licenses have been approved and numerous procedural/regulatory issues have been resolved. However, we have not achieved the objective of full market access to the life insurance market as a result of Korean limitations on participation in that segment of the market to branch offices.

LEGAL BASIS FOR ACTION

o Ambiguity in the language of the 1986 agreement makes it difficult to assert unequivocally that Korea has violated the agreement. Nonetheless, Korea's pattern of interpreting and implementing the agreement in an unduly narrow manner has prevented U.S. firms from gaining full entry to the life market.

o The August 18, 1987 Korean decision to reject a bona fide joint venture application, as well as its stated intent to reject future joint venture applications and applications of U.S. subsidiaries, clearly signal the Korean policy of continued protection of its life insurance market. Other practices -- such a delays in the issuance of licenses, limitations on the number of products that U.S. insurance firms may market and requirements concerning renewal of licenses every two years-- also underscore the Korean intention to attempt to implement the 1986 agreement in a minimalist fashion.

o It is the consensus of the TPSC Korea Subcommittee responsible for monitoring implementation of the 1986 section 301 agreement that further technical level consultations under the consultative mechanism of the agreement will not accomplish the goal of increased access for U.S. firms. Elimination of restrictions on form of establishment would require a ministerial level decision in Seoul. Such a decision is unlikely in the absence of an unfairness determination and a direction to recommend counter-measures.

o Because these practices deny national treatment and fair and equitable market opportunities, they may be considered unreasonable under section 301. Because they also burden and restrict U.S. commerce (by limiting the sale of insurance by U.S. firms in Korea), they are actionable under section 301.

o In addition, we believe these restrictions violate Article VII of the 1956 U.S.-Korea Treaty of Friendship, Commerce and Navigation. Article VII accords national treatment "with respect to engaging in all types of commercial,...financial and other activities for gain (business activities)..., whether directly or by agent or through the medium of any form of lawful individual entity." In our opinion, the broad scope of this provision covers insurance services. Consequently, Korean government acts, policies and practices are also unjustifiable under section 301.

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PRIVATE SECTOR VIEWS

o The Korean insurance market is the 10th largest in the world with 1986 total life premiums of $6.3 billion. The life market grew at an average annual rate of 30 percent between 1982-1986. Industry analysis predicts average annual growth of 20 percent in the Korean life market over the next five years. Again according to industry analysis, roughly five years of operation by new entrants to the market are required before profits are earned. The International Insurance Council estimated in 1986 that U.S. firms would be able to capture immediately a 5 percent market share if allowed to operate without restriction on form of establishment. We believe this is a conservative estimate given the industry's interest in pursuing entry into the Korean market following the 301 agreement, i.e., letters of intent or applications from six U.S. firms.

o U.S. insurance firms have actively supported our efforts to aggressively enforce the 1986 section 301 agreement. Preliminary soundings of the industry indicate that it will support retaliation.

POSSIBLE RETALIATION

o Based on industry analysis, we estimate that the 1986-90 Korean life market will approximate $55 billion in total premiums. Using an average annual premium level of $11.3 billion, we estimate that U.S. firms are losing in the range of $550 million to $1.1 billion in life premiums annually.

o Preliminary interagency discussions have focused on developing a retaliation package based on imposing prohibitive tariffs on Korean exports in the $0.5 to $1.0 billion range (1986 Korean exports to the U.S. were valued at $13.4 billion).

o It is generally agreed that textiles covered by the bilateral agreement and steel items under restraint should be excluded from any retaliation package. Products appropriate for consideration would include, inter alia, automobiles, various consumer electronics, computers, certain footwear, automobile tires, and processed agricultural products.

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September 3, 1987

MEMORANDUM FOR THE ECONOMIC POLICY COUNCIL

FROM: THE TRADE POLICY REVIEW GROUP

SUBJECT: JAPAN KANSAI AIRPORT CONSTRUCTION PRACTICES

Issue

The Economic Policy Council is to decide whether the Trade Representative will self-initiate a section 301 unfair trade investigation of Japanese Government practices in connection with the construction of the Kansai Airport.

Kansai Airport

The Airport Project: The Kansai International Airport Corporation (KIAC) is building an over $7 billion airport near Osaka. KIAC is a "special" company established under the Kansai International Airport Corporation Law and controlled by the Ministry of Transportation. For example, the Ministry:

- o holds two thirds of KIAC shares;
- o authorizes any issuance of additional shares;
- o approves KIAC's yearly business plan and any subsequent changes to it, the appointment and dismissal of KIAC directors and auditors, and any changes in its articles of incorporation; and
- o in consultation with the Ministry of Finance, can veto KIAC's access to capital markets.

As a result, we consider KIAC an instrumentality of the Government of Japan.

Airport construction is scheduled to proceed in four phases: (1) building sea-walls, landfill and a bridge linking the airport island to the mainland, which has begun; (2) constructing the airport (runways and terminal building), expected to begin in 1990; (3) equipping the airport, scheduled to conclude by 1992; and (4) expanding the airport to include two more runways.

While sizable by itself, the Kansai Airport project is the first of several major such Japanese undertakings including the Trans-Tokyo Highway Bay Bridge and Narita Airport expansion projects.

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Particularly in view of the collapse of the Middle East construction boom and LDC debt constraints, the Japanese market and Japanese-financed projects in third countries are viewed as good prospects for the U.S. construction, civil engineering and architectural design industries outside the U.S. These industries therefore attach great importance to the Japanese market, particularly since Japanese participation in the U.S. construction market is growing (from roughly $1.8 billion in 1985 to $2 billion in 1986 and an estimated $3.4 billion in 1987).

Practices Actionable Under U.S. Domestic Law. KIAC uses non-transparent, discriminatory procurement procedures; for example:

- It does not release specifications and information necessary for foreign firms to prepare responsive bids in a timely manner.
- It does not notify unsuccessful applicants of its decision to award a contract to another bidder, or provide any right of appeal.
- It has refused even to consider foreign firms for phase 1 of the project (which accounts for two thirds of its expected costs).
- It decides which firms will be allowed to submit bids on major construction contracts based upon subjective criteria, including experience and qualifications in Japan. This presents a chicken-and-egg problem, since no U.S. company has been awarded a major Japanese construction project since 1965.
- Dango, a practice whereby Japanese construction companies collude on bids and pricing to parcel out construction jobs to each other (and exclude outsiders), likely influences KIAC's procurement.

Since we consider KIAC an instrumentality of the Japanese Government, its practices are actionable under section 301 if they violate or deny benefits under a trade agreement, or are otherwise unjustifiable, unreasonable or discriminatory and a burden or restriction on U.S. commerce. These practices probably do not violate the GATT, Government Procurement Code or U.S.-Japan Treaty of Friendship, Commerce and Navigation (FCN). However, they may be said to deny national treatment and fair and equitable market opportunities. Consequently, they may be considered "unreasonable" and "discriminatory" under section 301. They also burden or restrict U.S. commerce, since U.S. design, engineering, construction and consulting experience--particularly in airport design and construction--is so well established that we could fairly assume that we would be competitive in Japan if given fair access to the

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market. Therefore, as a matter of U.S. domestic law, they are actionable under section 301.

Retaliation and U.S. International Obligations. If we were unable to settle this case and compelled to retaliate, we are uncertain how large the retaliation package would be. Commerce's current best estimate, based on a contracted study, is that U.S. firms could reasonably expect to win up to $270 million in equipment and $6 million in services contracts, if given fair access to Kansai procurement. However, this is a rough guesstimate that would require refinement as more information becomes available on Phases 2 and 3 of the project.

We would have difficulty retaliating against Japanese construction services in our market. Section 301 authorizes restriction of prospective, federal "service sector access authorizations" and/or the imposition of fees on services (either against the country concerned or on a nondiscriminatory basis).

- A "service sector access authorization" is defined as a license, permit or regulatory approval that facilitates access by the foreign service industry to the U.S. market. However, almost all such permits required by the construction industry are state or local rather than federal.

- Moreover, imposition of fees or restrictions on "services of Japan" would require us to determine the origin of the services provided. Such retaliation could violate our FCN obligations.

- Neither federal service or construction contracts are covered by the Government Procurement Code. Therefore, any such retaliation against services would not be inconsistent with the Code.

Of course, section 301 also authorizes increased duties or other import restrictions on imports of products. (Regarding procurement, our Buy American laws already discriminate in the procurement of goods used in carrying out a federal construction project.) U.S. retaliation against products of Japan would violate our GATT and FCN obligations. Moreover, any retaliation against any procurement of products covered by the Government Procurement Code would violate it as well.

The Trade Bill. Both H.R. 3 (sec. 908) and S. 1420 (sec. 310) have precisely identical provisions requiring the Trade Representative, within 90 days of enactment, to self-initiate an investigation of Japanese Government barriers to the offering or performance by U.S. persons of architectural, engineering, construction and consulting services. (In fact, the original Murkowski amendment approved by voice vote on the first day of

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the Senate's debate on S. 1420 was later amended to parrot the House provision precisely.) Senator Murkowski moved the Senate amendment on the floor; on Rep. Ritter's initiative, the House Energy and Commerce Committee included the amendment as a noncontroversial matter in its title of H.R. 3.

Moreover, as amended by Senator Murkowski, the Airport and Airway Capacity Expansion Act of 1987 (S. 1184) would prohibit the use of FAA funds for any product or service of a foreign country until USTR determines that such country has a reciprocal policy permitting fair and equitable market opportunities for U.S. firms. This bill has been reported out of the Senate Commerce Committee and is pending floor action.

Private Sector Views. The industries involved include: (1) design firms specializing in architecture and engineering, (2) mainline construction firms and (3) equipment manufacturers. Their interests diverge. Equipment manufacturers are satisfied so long as they can sell their products; they currently believe that pressure on Japan improves their prospects. Two trade associations (the National Constructors Association and the Associated General Contractors) have publicly called for action by the United States to open up the Japanese market. The International Engineering and Construction Industries Council will reportedly soon issue a statement supporting the identical provision in H.R. 3 and S. 1420. U.S. industry representatives in Japan agree that a section 301 investigation would not hurt their efforts to penetrate the Japanese market. However, we believe that many U.S. construction companies and concerned Members of Congress may consider a section 301 case primarily as a vehicle for closing the U.S. market to Japanese competitors. If so, they are likely to be disappointed, since retaliation against Japanese construction services would be difficult for the reasons outlined above.

U.S. and International Air Carriers. Both U.S. and international air carriers fear that design problems that lead to inefficient operations at Narita Airport are being repeated at Kansai airport. Many airlines are prepared to suggest design alternatives that could improve operations at Kansai but have been excluded from the design process. U.S. officials have expressed serious concern to Japanese officials to encourage a sympathetic hearing of other points of view regarding Kansai's design, but have not yet met with success.

Recent USG Efforts to Open the Kansai Market. A chronology of our longstanding efforts to open the Japanese construction market and in particular develop opportunities at Kansai is attached at Tab 1. The highlights are the following:

- o May 1986: Ambassador Yeutter writes the Minister of Transportation to indicate concern about Japan's

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unwillingness to allow U.S. firms to compete for Kansai contracts.

- o June 1986: Murkowski and nine other Republican Senators request information on Kansai under section 305 of the Trade Act.

- o July 1986: Prime Minister Nakasone assures Secretary Baldrige that U.S.firms will be permitted to bid on the latter phases of the project on a "fair and equal" basis.

- o July 1986: TPRG decides to try to resolve Kansai through continued bilateral efforts under Commerce leadership.

- o August 1986: USTR provides information to Senator Murkowski and others under section 305.

- o August 1986: President Reagan writes Nakasone to thank him for his offer to sponsor a seminar on the Kansai project.

- o September 1986: Prime Minister Nakasone responds that he will keep "close personal watch over this issue," but warns it should not be given more importance "than it deserves."

- o October 1986: Commerce organizes a Presidential Trade Delegation with ten industry executives to meet with GOJ and KIAC officials to discuss U.S. participation. These executives and some other U.S. business representatives attend KIAC seminar in Osaka.

- o November 1986: Secretary Baldrige writes Ambassador Matsunaga to reiterate the importance of U.S. participation in Kansai project.

- o January 1987: Assistant Secretary of Commerce Goldfield negotiates U.S. access with GOJ in Tokyo and KIAC in Osaka.

- o May 1987: Commerce Deputy Under Secretary Ferren opens U.S. pavilion at International Airport Construction and Engineering Exhibition in Osaka. Over 60 U.S. firms exhibit their equipment and services.

- o August 1987: Japanese make "final" offer to Under Secretary of Commerce Smart that includes:

  -- 30-day notification of equipment procurement over $150,000 SDRs;

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-- 30-day notification of construction contracts over $5 million;

-- 40-day notice to prepare bids on equipment contracts;

-- 60-day notice to prepare bids on construction tenders;

-- advertising for consulting services contracts over $500,000;

-- notification of non-selection by KIAC and reasons therefor;

-- acceptance of overseas credit ratings, qualifications, experience and test data;

-- specifications for equipment and materials based on performance rather than generic criteria;

-- provision of appeals to: (1) the International Affairs Office of KIAC, and (2) the Kansai International Airport Division in the Ministry of Transportation; and

-- consideration of international arbitration of disputes on a contractual basis.

This "offer" applies only to the Kansai project, and not to other Japanese construction projects. Although this offer represents some movement by the Japanese Government (which it may consider quite significant), it falls short of establishing the transparent, nondiscriminatory procurement system we desire.

Pros of Self-Initiation:

o Increases pressure on Japan and KIAC, without which we and our construction and design industries believe we will gain nothing more, and may lose even our modest gains to date.

o Shows our commitment to open this traditionally closed Japanese market despite GOJ intransigence.

0 Establishes a time limit on negotiations, since the Trade Representative would be required to recommend action to the President within one year of initiation.

0 Responds to a particularly egregious unfair trade practice, for which there is no other logical next step except further negotiations.

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- Could build on our track record of concluding procurement agreements with Japan (NTT, supercomputers).

Cons of Self-Initiation:

- May be too late to reap any political credit for self-initiating, given identical provisions in both bills and the broader coverage of those provisions.
- Would be perceived as rejecting Prime Minister Nakasone's pledge on this matter.
- The Japanese Government may not have sufficient leverage over the influential construction industry to enforce a new, nondiscriminatory procurement system.
- Absent a satisfactory settlement, may result in retaliation that probably would not reduce Japanese participation in the U.S. construction market, which may be U.S. construction industry's real aim.
- Could jeopardize potential equipment sales on Kansai project.
- Picks a big fight with Japan at a time when we're also juggling the trade bill, Canada FTA negotiations, other section 301 matters, etc.
- If compelled to retaliate, such retaliation could provoke a successful Japanese challenge in the GATT or under the FCN (which calls for submission of disputes to the International Court of Justice unless some other agreement is reached).

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APPENDIX

1

KANSAI INTERNATIONAL AIRPORT PROJECT
CHRONOLOGY

5/28/86 USTR Yeutter writes to Minister of Transportation Mitsuzuka saying: (1) Japan is ignoring its international obligations by restricting participation to domestic designated bidders; (2) the GOJ holds 2/3 of KIAC and is obliged at a minimum to ensure that KIAC adopts a system of open competitive bidding; (3) exclusion of foreign bidders is contrary to Japan's commitment to a more open market under the Action Program and the Maekawa Report; (4) USG reserves right to pursue the restrictive bidding issue bilaterally or in multilateral fora.

6/5/86 Baldrige letter to Nakasone requests open bidding procedures and cites projects Japanese firms have undertaken here.

6/19/86 Senate Republican Conference Task Force on International Trade Policy (chaired by Murkowski) requests USTR section 305 inquiry.

7/15/86 Nakasone becomes involved: instructs his cabinet that Kansai project should not become a source of embarrassment.

7/23/86 Matsunaga letter to Yeutter argues Japan not shirking its international responsibilities, there is no discrimination against foreign companies -- Procurement Code not applicable, KIAC is private, foreign participation in Phase I impossible; describes designated bidding system.

7/28/86 Nakasone assures Baldrige that U.S. firms will be permitted to bid on the later (post-landfill) stages of the project on a "fair and equal" basis. Baldrige warns Nakasone that "Kansai is on the way to becoming an emotional national issue". Nakasone answers that there are no international rules for tendering construction projects, and that the Kansai Airport Project will be carried out according to the established rules and practices of Japan. These do not exclude foreign firms, he continues, but do present a "challenge" which interested parties will have to overcome. Nakasone conveys his assurances to President Reagan that foreign firms will be able to compete on a fair and equal footing in the latter stages of Kansai project.

Baldrige does not concede U.S. access to sales of equipment for Phase I, or on <u>any</u> of Phases II and III (when actual airport and handling facilities will be built and tower control equipment will be purchased).

7/28/86 Hashimoto Meeting - Transportation Minister Hashimoto promises Baldrige that he would not permit Japanese firms to form a group which could exclude foreign participation.

7/30/86 On the basis of Nakasone and Hashimoto promises, TPRG agrees to

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endorse Commerce-proposed seminar for potential U.S. suppliers, and to seek GOJ commitment that no contracts for the project would be let until procedures consistent with Nakasone's commitment were developed and explained to U.S. firms; Commerce mission under Smart to pursue equal access in procurement procedures.

8/7/86 Baldrige letter to Hashimoto transmits this expectation, proposing KIAC Seminar, pressing for open access, and seeking GOJ commitment that no contracts for the project would be let until procedures consistent with Nakasone's commitment were developed and explained to U.S. firms. States "only full and immediate implementation of this policy will forestall formal trade action by my Government." Requests written understanding spelling out principles of a non-discriminatory system to be applied to Kansai and other major public works contracting.

8/15/86 Section 305 Response - Yeutter sends nonconfidential summary of available information on Kansai issue to requesting Senators. Response concludes that GOJ has effective control over the KIAC and that the KIAC has so far followed "nontransparent, discriminatory procedures."

8/15/86 Pres. Reagan writes to Nakasone thanking him for his offer to sponsor a seminar for U.S. firms interested in participating in the Kansai project. As a symbol of the "great value which I personally place on the effort," President informs Nakasone that he is sending a Presidential Trade Delegation to participate in the seminar and to assess "extent of real business opportunities for us."

8/18-22/86 Smart visit to Tokyo; during 4-day visit, Smart unable to obtain "set of principles" or other such written commitment to specific open principles. Letter from MOT Min. Hashimoto states that details of procedures for contracts other than in initial phase of project are not decided, and assures that U.S. firms will receive timely and equal access to information on contracting methods, procurement plans, bid procedures and award criteria, and be treated no less favorably than Japanese firms when contracting methods are developed.

9/3/86 Nakasone Letter to President- Nakasone indicates that he will keep "close personal watch over this issue," but cautions that the issue should not be given more importance "than it deserves."

10/6&7/86 **Presidential Trade Delegation**, 77 high-level representatives from over 47 U.S. firms in U.S. construction services industry, meets in Tokyo with GOJ and Japanese industry to discuss KIAC bidding and procurement procedures, and attends seminar given by KIAC in Osaka. Seminar provides some information and contacts, but no clear understanding of content or timing of KIAC procurement. KIAC points to opportunities in Phase I consulting work and equipment/machinery supply, but GOJ and KIAC hold firm on closing

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bidding process for Phase I, seem intent upon keeping foreign involvement in other phases to a minimum.

Nagoya Visit: U.S. del meets with Aichi Prefecture Gov. Reiji Suzuki to discuss plans for Chubu International Airport project.

10/10/86 Goldfield letter to Vice Min. of Construction Toyokura asks MOC: (1) to provide all necessary information for U.S. firms to obtain registration and licenses; (2) to give favorable consideration to U.S. firms' applications in light of American worldwide experience; (3) to provide specific information on contract awards, including characteristics and relative advantages of winning tenders, and contract prices; (4) to provide U.S. Embassy with a list of future major projects. Goldfield asks for assurances that U.S. firms will be able to obtain necessary information to participate from the start on major Japanese projects, such as proposed Trans-Tokyo Bay Highway; and asks that MOC establish an office where U.S. firms can get information and documents necessary to qualify.

10/10/86 Similar Goldfield letter to MOT Parliamentary Vice Min. Kakizawa asks MOT to provide all information needed to comply with procurement requirements. In addition to requesting the major elements contained in the Toyokura letter, Goldfield asks that MOT provide immediate and full access to American firms, and asks that MOT ensure quick responses to questions or complaints from U.S. firms.

10/31/86 Goldfield letter to Dirgen Watanabe of MOFA Economic Bureau requests list of associated works for the Kansai Airport project and local government entities supervising procurement; notes USG expectation that local government procurement procedures will be guided by principles of the Government Procurement Code, as stated in Japan's Action Program (July 1985).

10/31/86 Presidential Trade Delegation report concludes, "No discernible progress was realized on the broader objective of appraising specific steps taken by the Nakasone government to provide a 'fully open, transparent, and nondiscriminatory' bidding system." Many participants felt seminar just defended the designated bidding system, and formal explanation of open and competitive bidding procedures never happened.

11/2/86 At TPRG meeting, Goldfield states he will provide the TPRG a detailed list of Japanese bidding opportunities for U.S. firms, and will review Japanese bidding procedures and get the Japanese to change them to allow more open and timely access for U.S. suppliers. TPRG implies need for a commitment from Japanese on U.S. participation in Phase I subcontracting and equipment supply. Smith directs 301 Committee to evaluate actionability and explore retaliatory options.

11/12/86 Kakizawa reply to Goldfield insists that all information required

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to comply with procurement requirements was provided to the USG at the KIAC seminar; directs additional requests for information on specific MOT projects to the policy division of the Bureau of International Transport and Tourism. MOT agrees to provide information about specific projects named by USG, on a case-by-case basis. MOT provides its Five-Year Plan for Airport Improvements and the Five-Year Plan for Ports and Harbors Improvement. MOT recommends that private U.S. firms collect information on major projects, and make efforts to win confidence of commissioning entities for each project (an allusion to the Trans-Tokyo Bay Highway project) on which they wish to bid.

11/17/86 Toyokura reply to Goldfield pledges to treat U.S. firms' applications in the same manner as Japanese firms', while permitting U.S. companies to list their construction work outside Japan in their applications. MOC Economic Affairs Bureau designated as liaison office for U.S. firms to contact for information and consultation on specific problems. Toyokura declines to provide comprehensive list of all future major projects, but agrees to provide information on specific projects on USG request; advises American firms to gather project-related information and "make a corporate effort to convince the commissioning organization of their reliability.". Toyokura notes that commissioning organization itself performs project surveying, planning, and coordination, and thus has authority to decide which firms participate in bidding.

11/24/86 Baldrige letter to Amb. Matsunaga - states that he is pleased that a foreign company was included in consultants asked to draw up plans for Kansai terminal building, but expresses concern that the foreign company will not be on an equal footing with its Japanese competitors. Reiterates U.S. interest in participating in the island, bridge and associated works portion.

11/28/86 Watanabe reply to Goldfield stresses that MOFA and other national government agencies must respect local government autonomy, and therefore cannot supply a comprehensive list of associated works for the Kansai Airport project. However, Watanabe agrees to make available, through Embassy Tokyo, translated documents on general guidelines on transportation and infrastructure around the Kansai facility. Watanabe states that procurement of construction and other services is not covered by the GATT Government Procurement Code or the Action Program.

12/3/86 KIAC designates 31 marine and civil engineering firms for competitive bidding on the seawall; requests proposals for seawall construction to be submitted by 12/23/86. The 31 firms then organize themselves into 20 consortia.

12/7/86-12/11/86 Goldfield and interagency delegation meets with GOJ + KIAC for three days. Goldfield asks Takeuchi for specifics of procedures for phases II and III, timetable for future contracts, and indication that U.S. companies will be invited to bid on forth-

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coming contracts for bridge substructure, island reclamation, design and engineering contracts, and rock crushing equipment; gives Takeuchi the Baldrige-Matsunaga letter.

Takeuchi agrees to consider worldwide experience of U.S. firms in assessing bidder responsibility, states new system for announcing contract awards effective Jan. 1, 1987: however, Takeuchi repeats that Phase I is off limits. In meetings, MOT shows similar lack of movement, while giving assurances that MOT will give administrative guidance to KIAC to ensure that principles of transparency and fairness are followed. MOC assures Goldfield that MOC will give guidance to ensure U.S. companies are given equal and fair treatment in projects under MOC jurisdiction. All ministries state Phase I is off limits (MOFA refers to deal between GOJ and construction interests to this effect).

12/7/86-12/8/86 Murkowski tours airport site, meets with Takeuchi; no positive response.

12/23/86 20 consortia present proposals for seawall construction to KIAC on 12/23/86. The same day, KIAC announces that construction of airport seawall, divided into 6 sectors, has been awarded to 6 construction consortia including 20 companies; total contract value for the 11 km. seawall is ¥91,320 million ($571 million). Construction will begin in January after MOC construction approval is granted.

1/9/86 International Engineering and Construction Industries Council (IECIC) approves position paper favoring consideration of self-initiated 301 case.

1/20-24/87 Smith and Smart visit Tokyo for talks on subjects including Kansai.

3/11/87 Sen. Murkowski testifies at House Energy and Commerce Committee hearing on Kansai.

3/16/87 Associated General Contractors adopt position paper endorsing self-initiation of a section 301 case.

3/18/87 Sen. Murkowski and 16 co-sponsors introduce S. 742, barring foreign firms from federally-funded airport construction unless a firm is from country that does not discriminate against U.S. firms in similar construction procurement.

3/19/87 Florio subcommittee of House Energy and Commerce Committee reports Murkowski language requiring initiation of section 301 investigation on construction and engineering sector trade barriers in Japan (not just Kansai); language reported out 3/25 by full committee, becomes section 908 of H.R. 3.

4/24/87 Smart meets with Takeuchi and hands him a letter, dated April 21,

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urging that KIAC adopt a list of specific improvements in procurement procedures (developed by Commerce staff spring 1987 through Kansai talks). Takeuchi discusses KIAC statement dated April 24, "Participation of Foreign Companies in the Kansai International Airport Project" (also published in the Kampo (official gazette)), which announces:

(1) Thorough non-discriminatory treatment will be given in designated bidding.
(2) Planned procurement for each fiscal year will be published in the Kampo (together with an English summary), stating quantities, type and delivery schedule, right after the yearly plan for work projects is determined. For contracts over a certain size, the subject matter, bid dates and names of designated bidders will be made available at the KIAC reception desk, and the subject matter, awardee(s) and contract amounts will be made available at the KIAC reception desk. KIAC will establish an international affairs office.
(3) KIAC will consult with foreign airport authorities in drawing up its air terminal design, and will seek cooperation from prominent foreign consultants in the area of internal airport systems to be adopted by KIAC in future.
(4) There will be ample opportunities for foreign companies in equipment procurement if they are competitive on price, quality and afterservice. Actual orders have already been placed with foreign companies.
(5) Actual collaboration between foreign and Japanese companies by joint venture or technical agreements is now in progress. This is one of the best approaches for enhancing foreign companies' participation. KIAC will introduce foreign companies to Japanese companies on request.

5/12-5/15/87 ACE Airport Construction Exhibition held in Osaka. 60 U.S. companies attend, with facilitation by Commerce Department.

5/20/87 National Constructors Association approves position endorsing self-initiation of section 301 case on Kansai.

6/15/87 Takeuchi writes back to Smart rejecting essentially all of USG requests.

6/17/87 Kakizawa letter to Smith endorses Takeuchi letter.

6/19/87 Smart writes to Takeuchi stating that Takeuchi's letter is unacceptable.

6/25/87 Senate approves Murkowski floor amendment to Senate trade bill by voice vote (actively supported by NCA).

7/8/87 Takeuchi letter to Smart regrets lack of agreement, looks forward to seeing Smart in August.

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7/15/87 Smart writes to Kakizawa of MOT, Watanabe of MOFA and Inoue of MOC urging the GOJ to reconsider his suggestions.

8/12/87-8/21/87 Smart and Farren visit Tokyo and Osaka, consult with MOT, KIAC, MOC and MOFA. KIAC and GOJ make "final offer" to Undersec. Smart, including:

-- 30-day notification of equipment procurement over $150,000 SDRs;

-- 30-day notification of construction contracts over $5 million;

-- 40-day notice to prepare bids on equipment contracts;

-- 60-day notice to prepare bids on construction tenders;

-- advertising for consulting services contracts over $500,000;

-- notification of non-selection by KIAC and reasons therefor;

-- acceptance of overseas credit ratings, qualifications, experience and test data;

-- specifications for equipment and materials based on performance rather than generic criteria;

-- provision of appeals to: (1) the International Affairs Office of KIAC, and (2) the Kansai International Airport Division in the Ministry of Transportation; and

-- consideration of international arbitration of disputes on a contractual basis.

"Offer" applies only to the Kansai project, and not to other Japanese construction projects. Although offer represents some movement by the Japanese Government, it falls short of establishing the transparent, nondiscriminatory procurement system we desire.

8/17/87 Farren sends Watanabe of MOFA a letter asking for improvement and clarification of some matters informally promised to us.

8/20/87 USG receives two draft procurement procedures, one each from MOT and KIAC.

Sept. 1, 1987

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