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Folder Title:
NSC [National Security Council] Policy Review on Trade and the Environment February 23, 1993

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**NSC POLICY REVIEW ON
TRADE AND THE ENVIRONMENT**

**I. Circumstances Under Which Trade Measures Will be Used
to Protect the Environment**

- A. Current Policy
- B. International Situation
- C. Linkages
- D. Specific Issue Areas
 - 1. Trade Measures within International Environmental Agreements (IEAs)
 - 2. Trade Measures pursuant to IEAs
 - 3. Other Trade Measures
 - a) Protection of Natural Resources within the U.S.
 - b) Protection of Natural Resources outside the U.S.
- E. Policy Assessment/Options
- F. Recommendations

II. Basis for Imposition of Trade Measures

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 - 1. Restrictions Based on Product Characteristics
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 - 4. Codes of Conduct
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 - 1. Content of Review
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 - 4. Relationship of GATT Dispute Settlement to IEAs
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 - 1. Notification of Environmental Measures
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 - 1. Policymaking
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XI. Coordination of Trade and Environment Policy within the U.S. Government

- A. Current Policy
- B. International Situation
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 - 1. Institutional Framework for Coordinating Trade and Environment Policies in the Executive Branch
 - 2. Relationship with the Congress
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BACKGROUND

A. U.S. Trade and Environment Policy to Date

Until recently, U.S. trade and environmental policies operated on separate tracks, not institutionally integrated within the U.S. Government. Our ability to formulate a unified trade and environmental policy has been complicated by the actions of Congress and the courts who, prompted by environmental groups, have required the administration to impose trade sanctions for environmental purposes.

In 1991, two events prompted the Bush administration to begin to work toward an integrated approach to trade and the environment:

NAFTA

In May 1991, as a condition for obtaining negotiating authority from the Congress for the NAFTA, the Bush administration committed to obtain certain environmental safeguards in the NAFTA. However, many environmental groups remain skeptical that the safeguards we obtained are adequate to protect U.S. environmental standards and prevent environmental degradation that they believe will result from increased economic activity under the NAFTA.

GATT Tuna-Dolphin Panel Report

In August 1990, in accordance with statutory requirements, the President imposed an embargo against imports of tuna from Mexico (and three other countries) because Mexico's tuna harvesting practices resulted in unacceptably high dolphin kill rates. In accordance with GATT dispute settlement procedures, Mexico requested formation of a panel to examine the U.S. embargo. In August 1991, the panel issued a report which found the embargo to be inconsistent with GATT rules.

Specifically, the panel ruled that the GATT does not permit a country to impose trade restrictions to protect natural resources located outside its own jurisdiction. The panel also questioned the validity of trade restrictions that differentiate among tuna imports based on the method by which the tuna was caught.

The panel's report is not binding on the United States, because it has not been formally adopted by the GATT Council. However, there is virtually unanimous support among U.S. trading partners for the report's conclusions.

These events highlighted three areas of potential conflict between trade and environmental policy:

- 1) An underlying objective of U.S. trade policy -- to increase trade and promote economic growth -- is being questioned by environmental groups, who fear that increased trade may cause environmental degradation.
- 2) Many environmental groups view trade disciplines contained in the GATT and the NAFTA as undue constraints on domestic environmental and health standards.
- 3) Many environmentalists advocate the use of trade restrictions to convince other countries to adopt sounder environmental policies. However, most U.S. trading partners believe that such restrictions violate U.S. obligations under the GATT.

USTR was chosen to lead interagency policy deliberations on trade and the environment because of the focus on the NAFTA and Uruguay Round negotiations. However, a general policy on trade and the environment was never elaborated, because the Bush Administration was consumed with three major international negotiations (the Uruguay Round, the NAFTA and the U.N. Conference on the Environment and Development). Moreover, repeated attempts to obtain guidance at political levels for a general policy failed. Consequently, U.S. positions have been developed on an ad hoc basis, in response to specific crises.

Domestically, USTR's objective has been to bring the environmental community into the trade policy process. Specifically, we have:

- o Created an interagency working group on trade and the environment, and included in U.S. trade delegations representatives of U.S. environmental agencies (i.e., the Environmental Protection Agency, the State Department's environment office, the National Oceanic and Atmospheric Administration and the Department of Justice) in order to heighten their awareness of the trade implications of environmental measures.
- o Brought private environmental groups (NGOs) into the policy process by appointing key environmental leaders as official USTR advisors, including NGOs on delegations to OECD meetings, and providing frequent and extensive trade policy briefings for the environmental community at large.
- o Encouraged the NGOs to expand their international contacts, in order to create greater awareness among our trading partners of the need to take environmental objectives into account in forming trade policy.

- o Built relationships with Congressional environmental interests, so that USTR is not seen on Capitol Hill as an impediment to environmental objectives.

Internationally, we have tried to avoid being forced to choose between compliance with GATT rules and insistence on our right to adopt unilateral trade measures to protect the environment. At the same time, we have tried to sensitize the international trade community to environmental concerns. Specifically, we have:

- o To date avoided adoption of a ruling in the GATT Council condemning the U.S. tuna embargo by working to resolve our dolphin conservation concerns bilaterally with Mexico. Working with the U.S. environmental community, in October 1992 we obtained the enactment of legislation that will enable us to lift the tuna embargo in exchange for dolphin conservation commitments from Mexico. (These commitments, however, have not yet been forthcoming, and you will need to raise this issue with Minister Serra.)
- o Used the OECD to open up a dialogue between trade and environmental experts, and pushed for guidelines reflecting the interests of both groups.
- o Begun a debate in a GATT working group on the interrelationships between international trade rules and environmental measures.
- o Conducted a review of U.S.-Mexico environmental issues and negotiated environmental provisions in the NAFTA text in order to address many of the concerns raised by the U.S. environmental community.
- o Initiated an exercise in December 1992 to clarify certain provisions of the draft Uruguay Round agreement, in order to address concerns raised by U.S. environmental groups in the areas of standards, dispute resolution and the structure of a Multilateral Trade Organization.

B. Status of the International Debate

Many countries are concerned by what they see as an increasing U.S. tendency to impose unilateral trade restrictions. While most of these restrictions have been imposed to achieve U.S. objectives in areas such as intellectual property rights and access to other countries' markets, most of our trading partners resent our policy of conditioning access to the U.S. market on objectives that we have set unilaterally.

APPENDIX I

Pending Trade Issues Involving Environmental Policy

A. NAFTA

Timeframe: We must negotiate supplementary agreements on the environment **between now and June 1993.**

The major issues to be decided in these agreements are:

- o the structure and function of a "North American Commission on the Environment" and its relationship to the NAFTA;
- o provisions for enforcement of national environmental laws;
- o financing of pollution cleanup and environmental enforcement; and
- o demands from environmental groups for clarification of several provisions in the NAFTA text.

B. The Uruguay Round

Timeframe: Fast-track authority expires **June 1.**

Revisions which the environmental community is seeking to the draft Uruguay Round agreement include:

- o assurances in the text of the agreement that countries can maintain environmental standards higher than international levels;
- o improved public participation in the GATT dispute settlement process;
- o elimination or deferral of a Multilateral Trade Organization pending environmental reform of the GATT; and
- o reform of the GATT to allow wider latitude for the imposition of trade restrictions to achieve environmental objectives.

C. Specific Trade Cases

These cases will require us to outline a position on the relationship between trade and environmental policy.

o **National Environmental Policy Act Lawsuit:**

A lawsuit has been filed by three environmental groups to require USTR to prepare an environmental impact statement for the NAFTA before it submits implementing legislation to Congress. A ruling in favor of the plaintiffs could significantly delay implementation of the NAFTA and create a precedent rendering future agreements extremely difficult to negotiate because of the requirement to conduct environmental impact assessments following the negotiations.

The case has been briefed and argued in U.S. District Court. A decision is pending.

o **GATT Panel on Secondary Tuna Embargoes:**

In order to prevent circumvention of the Mexican tuna embargo, the U.S. placed embargoes on certain intermediary countries, including Spain and Italy. Last summer, the EC requested formation of a GATT panel to determine whether these intermediary embargoes are consistent with GATT rules.

The panel will initiate its deliberations upon submission of the EC brief, which could come at any time. We would expect the panel to issue a report by July 1993.

o **GATT Panel on CAFE Standards:**

The EC plans to request a GATT panel to review U.S. regulations governing Corporate Average Fuel Efficiency (CAFE) standards, as well as our "gas-guzzler" tax. The EC claims that these measures discriminate against imported vehicles.

The EC could put this issue on the GATT Council agenda as early as March 1993.

o **Pending U.S. Trade Sanctions:**

Trade sanctions totalling billions of dollars may be imposed by the President against many U.S. trading partners in response to violations of U.S. laws promoting conservation of endangered species, such as whales, rhinoceroses and sea turtles. If imposed, these restrictions will likely lead to additional GATT cases.

Some of these restrictions could be recommended to the President within the next month.

o **Restrictions on UHT Milk from Canada:**

Canada is using the dispute settlement provisions of the U.S.-Canada FTA to challenge Puerto Rico's restrictions on the sale of UHT milk (i.e., milk processed in a manner that enables it to be stored without refrigeration).

Environmental groups may portray this as a test case of the ability of trade agreements to force states to adopt lower environmental or health standards in order to achieve international harmonization.

All briefs have been filed in this case. A decision is expected in late April.

D. Domestic Legislation

Trade measures are included in the following environmental legislation, likely to be considered in the current session of Congress:

- o Oil import fee / Energy tax
- o Reauthorization of the Endangered Species Act
- o Reauthorization of the Marine Mammal Protection Act
- o Reauthorization of the Resource Conservation and Recovery Act (governing hazardous waste disposal)

E. International Meetings

o **OECD Ministerial:**

In May 1992, OECD ministers committed to an elaboration of guidelines on trade and the environment at their next meeting, scheduled for May 1993.

o **GATT Contracting Parties Session:**

Ministers will assess results of the deliberations of the GATT Working Group on Environmental Measures and International Trade, including followup to the UNCED agreement. This meeting is scheduled for November 1993.

F. International Environmental Agreements

Trade measures may be included in the following agreements that the United States may decide to sign:

- o Biodiversity Agreement
- o Implementing Measures to the Convention on Climate Change
- o International Tropical Timber Agreement
- o Implementation of UN Conference on Environment and Development (UNCED) Forest Principles

APPENDIX II

Elements of a Trade and Environment Policy

A coherent trade and environment policy will require the Administration to make decisions on the following issues:

- 1) The degree to which U.S. trade policy will be influenced by environmental objectives.
- 2) The degree to which U.S. environmental policy will be influenced by trade policy objectives.
- 3) Circumstances under which trade policy tools (including import restrictions and access to GSP preferences) will be used to achieve environmental policy objectives.
- 4) The type of environmental safeguards that the United States will seek to incorporate into trade and investment agreements.
- 5) The kind of environmental review, if any, that will be conducted in association with trade negotiations and any implementing legislation.
- 6) What type of interrelationship is appropriate between countries' commitments under the GATT and international environmental agreements, and how to adjudicate disputes between the GATT and environmental agreements.
- 7) What type of provisions to seek in international trade agreements (including the GATT and OECD) in order to provide enough flexibility for countries to enact measures to safeguard the environment.
- 8) What kind of a review process is appropriate for the inclusion of trade measures in international environmental agreements.
- 9) How to make the trade policy process more transparent for environmental interest groups.
- 10) Whether and under what conditions to permit the participation of business and environmental groups in negotiations on trade agreements with environmental implications.
- 11) Under what conditions the United States should restrict the sale of products based on the process by which they are manufactured ("processes and production methods," or PPMs).

- 12) How to address environmental standards issues, including:
 - the degree of scientific justification necessary to impose a standard stricter than the international norm;
 - the role for international harmonization of standards;
 - under what circumstances national standards should preempt local standards; and
 - the use of scientific evidence in international dispute settlement cases.
- 13) The degree to which international rules are appropriate for national regulations on packaging, labelling and handling.
- 14) Whether to condone environmental subsidies to industry.
- 15) Whether to use countervailing duties to offset competitive advantages derived from producing in a "pollution haven."
- 16) The role of trade as a mechanism for financing environmental cleanup.
- 17) Whether to seek codes of conduct (whether voluntary or mandatory) from businesses on trade and the environment (e.g., not to seek exemptions from countries' environmental standards as an investment incentive).
- 18) Development of agreed terminology on trade and the environment, to be used in international agreements. Agreed terms should include:
 - sustainable development;
 - least trade restrictive;
 - proportionality; and
 - polluter pays.

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

February 25, 1993

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Assistant to the President
for National Security
The White House

MS. KATIE MCGINTY
Deputy Assistant to the
President for Environmental
Policy

MR. RONALD BLACKLEY
Chief of Staff
Department of Agriculture

MR. JAMES R. OLIVER
Executive Secretary
Central Intelligence Agency

MS. PATTY MCHUGH
Acting Executive Secretary
Department of Commerce

COL MICHAEL B. SHERFIELD
Executive Secretary
Department of Defense

MS. ANN LAVIN
Director, Executive
Secretariat
Department of Energy

MR. ROBERT M. YAHN
Director, Executive
Secretariat
Department of Justice

MR. DAVID G. MEIN
Acting Executive Secretary
Agency for International
Development

MR. EDWARD S. KNIGHT
Executive Secretary
Department of the Treasury

MS. RAMONA BURCH
Director, Executive
Secretariat
Department of the Interior

MS. JEANNE SMITH
Acting Director
Executive Secretariat
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MR. WILLIAM ITOH
Executive Secretary
National Security Council

MR. LEON FUERTH
Assistant to the Vice
President for National
Security Affairs

MR. THOMAS O'DONNELL
Acting Special Assistant to
the Chairman
Council of Economic Advisors

MS. ANN HARDISON
Acting Chief of Staff
Environmental Protection
Agency

MS. CAROL RASCO
Assistant to the President
for Domestic Policy
Domestic Policy Council

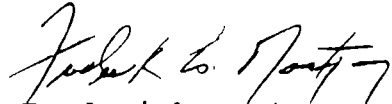
MR. MARC GROSSMAN
Executive Secretary
Department of State

MR. W. BOWMAN CUTTER
Deputy Assistant to the
President for Economic Policy
National Economic Council

MR. GORDON ADAMS
Associate Director
National Security and
International Affairs
Office of Management and
Budget

SUBJECT: Meeting on Trade and the Environment

Please transmit the attached memorandum regarding an organizational meeting on March 2 for the Interagency Working Group on Trade and the Environment to the appropriate individual in your department or agency.


Frederick Montgomery
Executive Director,
Policy Coordination

Attachment: As stated

OFFICE OF THE UNITED STATES
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EXECUTIVE OFFICE OF THE PRESIDENT
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February 25, 1993

FROM: Carmen Suro-Bredie ^{CSB}
Assistant USTR for the Environment
and Intellectual Property

SUBJECT: Organizational Meeting of the Interagency
Working Group on Trade and the Environment

PRD/NSC-12 of February 15, 1993, ordered a comprehensive review of global environmental policies and programs. As part of this review, the Office of the U.S. Trade Representative has been tasked with coordinating a review of trade and environment policy.

I will convene an organizational meeting of the Interagency Working Group on Trade and the Environment on Tuesday, March 2, at 2:00 p.m. in Room 403 of the Winder Building (located at 600 17th Street, N.W.). I ask that all interested departments and agencies send the person at assistant secretary level who will be responsible for coordinating trade and environment issues. If that person is not yet in place, please send a substitute who can speak for the department or agency head. Pursuant to PRD/NSC-12, attendance will be limited to one representative from each department or agency.

The purpose of this meeting is to decide how to organize quickly an effective interagency process to conduct a review of trade and environment policy, which is to be completed by March 30. I ask that the representatives to this meeting come prepared to identify critical issues that must be addressed, to offer necessary personnel to help complete this review on schedule, and to name a principal point of contact on their staff.

Please phone Hattie Jones-Hill at (202) 395-7320 to provide the name of your attendee by COB Monday, March 1.

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APPENDIX IPending Trade Issues Involving
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The EC could put this issue on the GATT Council agenda as early as March 1993.

o **Pending U.S. Trade Sanctions:**

Trade sanctions totalling billions of dollars may be imposed by the President against many U.S. trading partners in response to violations of U.S. laws promoting conservation of endangered species, such as whales, rhinoceroses and sea turtles. If imposed, these restrictions will likely lead to additional GATT cases.

Some of these restrictions could be recommended to the President within the next month.

o **Restrictions on UHT Milk from Canada:**

Canada is using the dispute settlement provisions of the U.S.-Canada FTA to challenge Puerto Rico's restrictions on the sale of UHT milk (i.e., milk processed in a manner that enables it to be stored without refrigeration). Environmental groups may portray this as a test case of the ability of trade agreements to force states to adopt lower environmental or health standards in order to achieve international harmonization.

All briefs have been filed in this case. A decision is expected in late April.

D. Domestic Legislation

Trade measures are included in the following environmental legislation, likely to be considered in the current session of Congress:

- o Oil import fee / Energy tax
- o Reauthorization of the Endangered Species Act
- o Reauthorization of the Marine Mammal Protection Act
- o Reauthorization of the Resource Conservation and Recovery Act (governing hazardous waste disposal)

E. International Meetings

o **OECD Ministerial:**

In May 1992, OECD ministers committed to an elaboration of guidelines on trade and the environment at their next meeting, scheduled for May 1993.

o **GATT Contracting Parties Session:**

Ministers will assess results of the deliberations of the GATT Working Group on Environmental Measures and International Trade, including followup to the UNCED agreement. This meeting is scheduled for November 1993.

F. International Environmental Agreements

Trade measures may be included in the following agreements that the United States may decide to sign:

- o Biodiversity Agreement
- o Implementing Measures to the Convention on Climate Change
- o International Tropical Timber Agreement
- o Implementation of UN Conference on Environment and Development (UNCED) Forest Principles

APPENDIX II

Elements of a Trade and Environment Policy

A coherent trade and environment policy will require the Administration to make decisions on the following issues:

- 1) The degree to which U.S. trade policy will be influenced by environmental objectives.
- 2) The degree to which U.S. environmental policy will be influenced by trade policy objectives.
- 3) Circumstances under which trade policy tools (including import restrictions and access to GSP preferences) will be used to achieve environmental policy objectives.
- 4) The type of environmental safeguards that the United States will seek to incorporate into trade and investment agreements.
- 5) The kind of environmental review, if any, that will be conducted in association with trade negotiations and any implementing legislation.
- 6) What type of interrelationship is appropriate between countries' commitments under the GATT and international environmental agreements, and how to adjudicate disputes between the GATT and environmental agreements.
- 7) What type of provisions to seek in international trade agreements (including the GATT and OECD) in order to provide enough flexibility for countries to enact measures to safeguard the environment.
- 8) What kind of a review process is appropriate for the inclusion of trade measures in international environmental agreements.
- 9) How to make the trade policy process more transparent for environmental interest groups.
- 10) Whether and under what conditions to permit the participation of business and environmental groups in negotiations on trade agreements with environmental implications.
- 11) Under what conditions the United States should restrict the sale of products based on the process by which they are manufactured ("processes and production methods," or PPMs).

- 12) How to address environmental standards issues, including:
 - the degree of scientific justification necessary to impose a standard stricter than the international norm;
 - the role for international harmonization of standards;
 - under what circumstances national standards should preempt local standards; and
 - the use of scientific evidence in international dispute settlement cases.
- 13) The degree to which international rules are appropriate for national regulations on packaging, labelling and handling.
- 14) Whether to condone environmental subsidies to industry.
- 15) Whether to use countervailing duties to offset competitive advantages derived from producing in a "pollution haven."
- 16) The role of trade as a mechanism for financing environmental cleanup.
- 17) Whether to seek codes of conduct (whether voluntary or mandatory) from businesses on trade and the environment (e.g., not to seek exemptions from countries' environmental standards as an investment incentive).
- 18) Development of agreed terminology on trade and the environment, to be used in international agreements. Agreed terms should include:
 - sustainable development;
 - least trade restrictive;
 - proportionality; and
 - polluter pays.