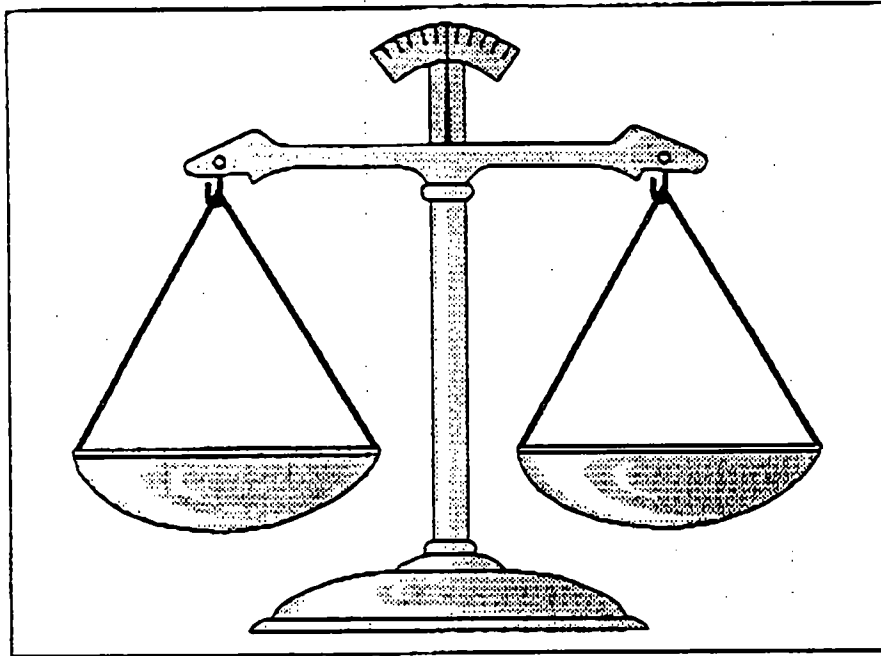


**UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE GENERAL COUNSEL
14TH AND INDEPENDENCE AVENUE, S.W.
WASHINGTON, D.C. 20250-1400**

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S.W.

Top - friends

purchase
securities



DATE: 3/11/98

TO: Tom Friedman

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FROM: Charlie Pawls

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PAGES: 6 INCLUDING COVER SHEET

COMMENTS:

1 **Analysis of Amendment**

2 This amendment would impose minimum domestic tobacco purchase requirements for
3 manufacturers of cigarettes sold in the United States to insure a reasonable supply of such
4 tobacco and to insure that the interests of domestic tobacco producers are protected. Under this
5 amendment, effective beginning with calendar year _____, manufacturers of cigarettes sold in
6 the United States would be required to purchase, in toto, for each calendar year, 600 million
7 pounds of domestic, green weight, burley tobacco and 820 million pounds of domestic, green-
8 weight flue-cured tobacco. Each manufacturer's share would be based on sales in a base period
9 and could be increased in the case of increased sales. Shortfalls could lead to penalties equal to
10 an amount up to 75% of the average market price, as determined by the Secretary, for domestic
11 tobacco of the like kind for the year preceding the year in which the shortage has occurred. Also
12 violators could be barred from further sales of cigarettes. This amendment will help insure that
13 the domestic price support program's necessary income supports do not operate to prevent
14 domestic tobacco from receiving its fair share of the market.

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1 SEC. XXX. MINIMUM PURCHASE REQUIREMENTS OF DOMESTIC FLUE-CURED
2 AND BURLEY TOBACCO FOR MANUFACTURERS OF CIGARETTES SOLD IN THE
3 UNITED STATES.

4 (a) DEFINITIONS.-For the purposes of this section:

5 (1) DOMESTIC TOBACCO.- The term "domestic tobacco" shall mean flue-cured
6 and burley tobacco grown in the United States.

7 (2) MANUFACTURES OF CIGARETTES.- The term "manufacturer of
8 cigarettes" shall mean any enterprise which produces cigarettes sold in the United States
9 having, over a calendar year, a value determined by the Secretary to be more than a de
10 minimus amount, which amount shall not be more than \$1,000,000.

11 (3) SECRETARY.-The term "Secretary" shall mean the Secretary of Agriculture.

12 (a) PURCHASE REQUIREMENT.

13 (1) IN GENERAL.- Effective beginning with calendar year _____,
14 manufacturers of cigarettes shall be required to purchase at a minimum a quantity of
15 domestic tobacco which is equal to ~~the~~ their respective share of target quantity
16 determined in accordance with subsection (b).

17 (2) REPORTING REQUIREMENT.- Manufactures of cigarettes shall report such
18 purchases in such manner and at such times as the Secretary may, by regulation,
19 proscribe.

20 (b) TARGET QUANTITY AND PRORATED MANUFACTURER'S SHARE.

21 (1) IN GENERAL.-For the purposes of this section, the target quantity of tobacco
22 shall for each calendar year shall be 600 million pounds of domestic, green weight burley
23 tobacco and 820 million pounds of domestic, green-weight flue-cured tobacco.

1 (2) CIGARETTE MANUFACTURE'S SHARE.-Each manufacturer of cigarette's
2 share for each calendar year and each kind of tobacco shall be determined by the
3 Secretary based on the manufacturer's share of the total quantity of cigarettes sold in the
4 United States for the preceding year, as determined by the Secretary, unless it is
5 determined impracticable by the Secretary to use that year as the base period in which
6 case the Secretary may utilize some other base period for that purpose as deemed
7 appropriate.

8 (3) ADJUSTMENTS.-The amount of purchases determined by the Secretary for
9 any manufacturer for any calendar year may be increased by any increase in sales by the
10 manufacturer of cigarettes in the United States for that calendar year as compared with
11 the base period.

12 (4) AFFILIATES.-For purposes of the calculations required in this subsection, the
13 Secretary may combine with sales of affiliated manufacturers as determined to be needed
14 or appropriate.

15 (c) PENALTY FOR VIOLATIONS.

16 (1) IN GENERAL.-In the event that a manufacturer of cigarettes shall fail to make
17 the required purchases for a calendar year such manufacturer shall be subject to a penalty
18 except that in the event that the cigarettes have been imported into the United States, the
19 Secretary may, as determined appropriate or necessary to insure full enforcement of this
20 section, assess the penalty amount against the importer or other party involved in the
21 marketing of the cigarettes.

22 (2) LIABILITY.-The manufacturer of cigarettes or other party potentially liable

1 for the penalty will bear the burden of presenting satisfactory proof of the required
2 purchases.

3 (3) NOTICE AND HEARING.-The Secretary shall assess the penalty after notice
4 and opportunity for a hearing.

5 (4) AMOUNT OF PENALTY.-The amount of such penalty shall be equal, for
6 each pound of the shortage, to an amount not to exceed 75% of the average per pound
7 market price, as determined by the Secretary, for domestic tobacco of the like kind for the
8 calendar year preceding the calendar year in which the shortage has occurred.

9 (5) ENFORCEMENT.-

10 (A) BARRING OF SALES OF CIGARETTES.-Until the amount of a
11 penalty assessed under this section is paid, such manufacturer of cigarettes and its
12 affiliates, or other party assessed such penalty and its affiliates, may be barred by
13 the Secretary from further sales of cigarettes in the United States. The Secretary
14 may seek enforcement of such order in the district courts of the United States.

15 (B) ADDITIONAL REPORTS AND SANCTIONS.-Further, the Secretary
16 may demand such interim reports of purchases as may be deemed to be warranted
17 and may demand reasonable interim assurances of compliance with this section.
18 In the event that there are no such assurances forthcoming, the Secretary may
19 likewise bar such manufacturer from further sales of cigarettes in the United
20 States and enlist the aid of the United States district courts for enforcement of this
21 provision by injunctive relief or by such other relief as may be appropriate.
22

1 (6) RELATION TO OTHER SUMS DUE.-Penalty amounts assessed under this
2 section shall be in addition to other amounts as may be due, including, but not limited to,
3 late fees and interest.

4 (7) DISPOSITION OF FUNDS. - Notwithstanding any other provision of law,
5 sums collected as penalties, late fees or interest under this section shall be deposited in
6 the no net cost account or fund of, or for, the relevant associations handling the domestic
7 tobacco which is the subject of the shortage producing the collection, as determined by
8 the Secretary.