Collection: Roberts, John G.: Files
Folder Title: JGR/Free Trade Issues
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ID # 347333 CU

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WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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Date Correspondence Received (YY/MM/DD) / /

JR > F

COPY from ORM

Name of Correspondent: Jerry Pearlman

☐ **MI Mail Report** **User Codes:** (A) ______ (B) ______ (C) ______

Subject: Free trade position

ROUTE TO: **ACTION** **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
ORM	ORIGINATOR	85/09/26		C	85/11/07
Referral Note: forwarded by Don Regan					
[illegible] 18	D	85/09/27		C	85/11/07
Referral Note:					
CUFIEL	S	85/11/07	FF	A	85/11/07
Referral Note:					
		/ /			/ /
Referral Note:					
		/ /			/ /
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FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
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Comments: bcc to Donald Regan

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

THE WHITE HOUSE

WASHINGTON

October 7, 1985

Dear Mr. Pearlman:

Thank you for your letter of September 25 to White House Chief of Staff Don Regan. In that letter you objected to the amicus curiae brief filed by the Department of Justice in Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corporation, currently pending before the Supreme Court of the United States.

It is the general policy of the White House not to discuss the merits of litigation pending before the Supreme Court involving the United States. The views of the Administration in such cases are formulated and presented by the Department of Justice, in the briefs filed by that Department in the course of the litigation.

I hope you will recognize the reasons we must adhere to this policy. Thank you for the benefit of your views.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

Mr. Jerry K. Pearlman
Chairman and President
Zenith Electronics Corporation
1000 Milwaukee Avenue
Glenview, IL 60025-2493

bcc: Donald T. Regan
FFF:JGR:aea 10/7/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 3, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Fair Trade Practices

Jerry Pearlman, Chairman and President of Zenith, has written the Chief of Staff to object to the Administration's position as amicus curiae in Matsushita v. Zenith, a pending Supreme Court case set for oral argument on November 12. The case concerns a claim by Zenith that various Japanese television manufacturers conspired to drive American manufacturers out of business, in violation of the antitrust laws. It has been pending for 14 years. The district court granted summary judgment for the Japanese, ruling that much of the evidence Zenith proposed to rely upon was inadmissible and that without that evidence a conspiracy could not be proven. The district court avoided ruling on whether the conduct of the Japanese manufacturers was compelled by the Japanese Government and therefore could not form the basis for a private antitrust suit.

The court of appeals reversed the district court on the evidentiary rulings, and was therefore compelled to reach the sovereign compulsion issue. The court ruled that the defendants were not entitled to summary judgment on this issue, despite the fact that the Japanese Ministry of International Trade and Industry (MITI) filed a brief stating that it had in fact compelled the challenged conduct.

The brief filed by the Solicitor General contends that the grant of summary judgment by the district court in favor of the Japanese manufacturers was appropriate, and should not have been overturned by the court of appeals. In addition, the Solicitor General also argues that the court of appeals erred in not recognizing the sovereign compulsion defense, a defense that is available in private antitrust actions but not in suits brought by the U.S. Government.

Pearlman contends that the brief is inconsistent with the President's recent call for "fair trade." The question of what position to take in this case was addressed at a Domestic Policy Council meeting. I do not think we want to get into the merits with Pearlman, and should simply note that the Administration's arguments are in the brief.

ZENITH

ZENITH ELECTRONICS CORPORATION □ 1000 MILWAUKEE AVENUE □ GLENVIEW, ILLINOIS 60025-2493

JERRY K. PEARLMAN
CHAIRMAN AND PRESIDENT
(312) 391-8082

347333cu

September 25, 1985

The Honorable Donald T. Regan
Chief of Staff and Asst. to the President
The White House
1600 Pennsylvania Ave., N.W.
Washington, DC, 20500

Dear Mr. Secretary:

We were very pleased to hear the President embrace fair trade on Monday when he said:

> "I will not stand by and watch American businesses fail because of unfair trade practices abroad. I will not stand by and watch American workers lose their jobs because other nations do not play by the rules."

This much-welcomed declaration of the President stands in stark contract to the position of the Administration in support of Japanese defendants in a case, now before the U.S. Supreme Court, which could have a profound influence on fair trade practices. The Justice Department, Acting Solicitor General Lawrence Wallace and the State Department are urging the Supreme Court to justify notorious unfair trade practices of large Japanese companies doing business in the U.S. over the past 20 years -- conduct that has decimated the consumer electronics industry here.

In two "friend-of-the-court" briefs filed by the Administration on behalf of the Japanese in that litigation (Matsushita Electric Industrial Co., Ltd. et al v. Zenith Radio Corporation and National Union Electric Corporation), the Court is urged to excuse conduct of foreign companies doing business here, such as predatory dumping and customs fraud, on the grounds that the Japanese Ministry of International Trade and Industry (MITI) "ordered" such activity here.

This sovereign compulsion "defense," the Administration is telling the Supreme Court, must be recognized in private actions, but not in Government proceedings, despite our antitrust and antidumping laws, which provide redress to U.S. companies injured by their violation. The Administration briefs also over look the fact that the Japanese companies consistently filed false statements with MITI and U.S. Customs, as they regularly circumvented MITI's "orders."

The evidence of willful, illegal and unfair dumping and antitrust violations by the Japanese defendants (who are protected by a closed home market) is set forth in our Supreme Court brief. A copy is enclosed for your information. We urge you to read at least the fact section (pages 11-56) of this brief and the procedural history (pages 3-9) that documents 10 years of Japanese delay tactics.

We trust there is solid Cabinet-level support behind the President's call for fair trade and enforcement of our laws. We also hope that, in view of the President's new trade policy, you will urge the Justice Department to withdraw its Supreme Court briefs expressing a contrary philosophy before the case is submitted for decision at the oral arguments scheduled for November 12, 1985.

At the urgent request of the Japanese and the Administration, the Acting Solicitor General has been granted 10 minutes of time allotted to the Japanese interests to urge immunity of the Japanese companies from liability imposed by the relevant acts of Congress.

The U.S. electronics industry needs your support of the President to assure a fair trade environment.

Sincerely,

JKP:JT:av
Enclosure

THE WHITE HOUSE

WASHINGTON

September 25, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

Orig. signed by FFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Canada-U.S. Free Trade Agreement

You have asked for our views on the requirements for notification of and consultation with Congress prior to the negotiation and conclusion of a free trade agreement with Canada. I understand Prime Minister Mulroney is expected to telephone the President concerning such an agreement tomorrow. I have reviewed the attached memoranda from Ambassador Yeutter and USTR General Counsel Alan Holmer on this subject, and have no legal objection to those memoranda.

I would begin by pointing out that, as a constitutional matter, the President is free to negotiate with other countries without restriction, and submit any necessary implementing legislation to Congress for action. To obtain the desired "fast track" treatment under 19 U.S.C. § 2191, however, the various notification, consultation, and approval requirements must be satisfied. The President must notify Congress 90 days before entering into a free trade agreement, and publish this notification in the Federal Register, 19 U.S.C. § 2112(e)(1), and, at least 60 days before giving that notice, must provide the Senate Finance Committee and House Ways and Means Committee written notice of negotiation of such an agreement, and consult with those committees on the negotiations. 19 U.S.C. § 2112(b)(4)(A)(ii). In addition, a general provision, 19 U.S.C. § 2211(b)(1), requires USTR to keep certain members of Congress "currently informed" on trade negotiations.

In the interest of completeness, I should point out that there is another consultation requirement, not noted in the USTR memoranda, contained in 19 U.S.C. § 2112(c). That provision requires that the President consult with the Senate Finance Committee and the House Ways and Means Committee, and other affected committees, prior to entering into any agreement. This requirement was in the Trade Act of 1974, and may be considered to be redundant of or superseded by the more elaborate requirement with respect to these committees added by the Trade and Tariff Act of 1984. Both provisions are still on the books, however, and

19 U.S.C. § 2112(c) refers to the agreement itself, while 19 U.S.C. § 2112(b)(4)(A) refers to the negotiations. Prudence would dictate consulting with the pertinent committees a second time pursuant to 19 U.S.C. § 2112(c), on the agreement, after the consultations required by 19 U.S.C. § 2112(b)(4)(A), on the negotiations.

Strictly speaking, then, there is no legal requirement to advise Congress or the pertinent committees immediately upon Prime Minister Mulroney's call. Notification and consultation is legally required under 19 U.S.C. § 2112 no earlier than 150 days before entering into an agreement, and under 19 U.S.C. § 2211 at some vague point before negotiations progress too far.

Since either the Senate Finance Committee or the House Ways and Means Committee can block fast track treatment, however, 19 U.S.C. § 2112(b)(4)(B)(ii)(II), I agree that prudence may dictate promptly advising Congress of Mulroney's interest.

I understand that the proposal is for Ambassador Yeutter to consult informally with committee members and other members of Congress about Mulroney's interest before commencing negotiations. Formal written notification of the committees would take place if the reaction is favorable, again before commencing negotiations. This is beyond the strict requirements of the law, but I certainly have no objection to the proposed course of action.

Attachment
FFF:JGR:aea 9/25/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 3, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Fair Trade Practices

Jerry Pearlman, Chairman and President of Zenith, has written the Chief of Staff to object to the Administration's position as amicus curiae in Matsushita v. Zenith, a pending Supreme Court case set for oral argument on November 12. The case concerns a claim by Zenith that various Japanese television manufacturers conspired to drive American manufacturers out of business, in violation of the antitrust laws. It has been pending for 14 years. The district court granted summary judgment for the Japanese, ruling that much of the evidence Zenith proposed to rely upon was inadmissible and that without that evidence a conspiracy could not be proven. The district court avoided ruling on whether the conduct of the Japanese manufacturers was compelled by the Japanese Government and therefore could not form the basis for a private antitrust suit.

The court of appeals reversed the district court on the evidentiary rulings, and was therefore compelled to reach the sovereign compulsion issue. The court ruled that the defendants were not entitled to summary judgment on this issue, despite the fact that the Japanese Ministry of International Trade and Industry (MITI) filed a brief stating that it had in fact compelled the challenged conduct.

The brief filed by the Solicitor General contends that the grant of summary judgment by the district court in favor of the Japanese manufacturers was appropriate, and should not have been overturned by the court of appeals. In addition, the Solicitor General also argues that the court of appeals erred in not recognizing the sovereign compulsion defense, a defense that is available in private antitrust actions but not in suits brought by the U.S. Government.

Pearlman contends that the brief is inconsistent with the President's recent call for "fair trade." The question of what position to take in this case was addressed at a Domestic Policy Council meeting. I do not think we want to get into the merits with Pearlman, and should simply note that the Administration's arguments are in the brief.

THE WHITE HOUSE

WASHINGTON

October 7, 1985

Dear Mr. Pearlman:

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It is the general policy of the White House not to discuss the merits of litigation pending before the Supreme Court involving the United States. The views of the Administration in such cases are formulated and presented by the Department of Justice, in the briefs filed by that Department in the course of the litigation.

I hope you will recognize the reasons we must adhere to this policy. Thank you for the benefit of your views.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

Mr. Jerry K. Pearlman
Chairman and President
Zenith Electronics Corporation
1000 Milwaukee Avenue
Glenview, IL 60025-2493

bcc: Donald T. Regan
FFF:JGR:aea 10/7/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 8, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Message for Aborted Fetuses

On October 3, 1985, Charles Donovan, for Anne Higgins, provided my office with a copy of a proposed Presidential message to be sent to the October 6 memorial service for the aborted fetuses discovered in Los Angeles in 1982, for our review. On October 4, my office telephoned Donovan and advised him that the message should not be sent. This decision was based upon my review of the legal dispute surrounding the burial, and the egregious misuse of a previous Presidential message by the same individual requesting this one.

According to this morning's edition of the New York Times, however, the very message I had explicitly disapproved was in fact sent. I would like an explanation of why the system of review we have in place failed to function in this instance.

cc: Anne Higgins
Charles A. Donovan

FFF:JGR:aea
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 7, 1985

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Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Jerry K. Pearlman
Chairman and President
Zenith Electronics Corporation
1000 Milwaukee Avenue
Glenview, IL 60025-2493

bcc: Donald T. Regan
FFF:JGR:aea 10/7/85
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JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 3, 1985

formulated and

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Counsel to the President

Mr. Jerry K. Pearlman
Chairman and President
Zenith Electronics Corporation
1000 Milwaukee Avenue
Glenview, IL 60025-2493

THE WHITE HOUSE

WASHINGTON

October 3, 1985

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Counsel to the President

Mr. Jerry K. Pearlman
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Zenith Electronics Corporation
1000 Milwaukee Avenue
Glenview, IL 60025-2493

FFF:JGR:aea 10/3/85
bcc: FFFielding
JGRoberts
Subj
Chron

JV

ID # 347333 CU

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WHITE HOUSE
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☐ O - OUTGOING
☐ H - INTERNAL
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Date Correspondence Received (YY/MM/DD) ___/___/___

JR > F

Name of Correspondent: Don Regan

☐ **MI Mail Report** **User Codes:** (A) ______ (B) ______ (C) ______

Subject: Fair trade practices

ROUTE TO: **ACTION** **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUHALL	ORIGINATOR	85/09/26 TR			/ /
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Zenith

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ZENITH

ZENITH ELECTRONICS CORPORATION □ 1000 MILWAUKEE AVENUE □ GLENVIEW, ILLINOIS 60025-2493

JERRY K. PEARLMAN
CHAIRMAN AND PRESIDENT
(312) 391-8082

September 25, 1985

The Honorable Donald T. Regan
Chief of Staff and Asst. to the President
The White House
1600 Pennsylvania Ave., N.W.
Washington, DC 20500

Dear Mr. Secretary:

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> "I will not stand by and watch American businesses fail because of unfair trade practices abroad. I will not stand by and watch American workers lose their jobs because other nations do not play by the rules."

This much-welcomed declaration of the President stands in stark contract to the position of the Administration in support of Japanese defendants in a case, now before the U.S. Supreme Court, which could have a profound influence on fair trade practices. The Justice Department, Acting Solicitor General Lawrence Wallace and the State Department are urging the Supreme Court to justify notorious unfair trade practices of large Japanese companies doing business in the U.S. over the past 20 years — conduct that has decimated the consumer electronics industry here.

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At the urgent request of the Japanese and the Administration, the Acting Solicitor General has been granted 10 minutes of time allotted to the Japanese interests to urge immunity of the Japanese companies from liability imposed by the relevant acts of Congress.

The U.S. electronics industry needs your support of the President to assure a fair trade environment.

Sincerely,

JKP:JT:av
Enclosure

THE WHITE HOUSE

WASHINGTON

December 10, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Congressional Notification Letters Regarding Canadian Free Trade Negotiations

Counsel's Office has reviewed the memorandum for the President from Admiral Poindexter and the accompanying proposed letters to the Chairman of the Senate Committee on Finance and the Chairman of the House Committee on Ways and Means. Strictly speaking, the Trade and Tariff Act of 1984 does not require notification of these chairmen sixty days before entering into negotiations leading to a free trade agreement. What the Act does require is notification concerning negotiations no less than 150 days before entering into such an agreement -- ninety day notice to Congress before entering into an agreement (19 U.S.C. § 2112(e)(1)) and notice to the chairmen concerning the negotiations sixty days before that (19 U.S.C. § 2112(b)(4)(A)(ii)). Prudence certainly counsels notifying the chairmen prior to commencing negotiations, however, and accordingly we have no objection to the proposed letters.

ID # ______ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) / /

Name of Correspondent: Dave Chew

☐ **MI Mail Report** **User Codes: (A)** ______ **(B)** ______ **(C)** ______

Subject: Congressional notification letters re: Canadian Free Trade negotiations

ROUTE TO: | **ACTION** | **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUHOU	ORIGINATOR	85/12/10			/ /
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5/81

Document No. ______________________

WHITE HOUSE STAFFING MEMORANDUM

DATE: 12/10/85 **ACTION/CONCURRENCE/COMMENT DUE BY:** Noon TODAY

SUBJECT: CONGRESSIONAL NOTIFICATION LETTERS RE CANADIAN FREE TRADE NEGOTIATIONS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	McFARLANE	☐	☐
REGAN	☐	☐	OGLESBY	☐	☐
MILLER	☐	☐	RYAN	☐	☐
BUCHANAN	☐	☐	SPEAKES	☐	☐
CHAVEZ	☐	☐	SPRINKEL	☐	☐
CHEW	☐P	☐SS	SVAHN	☐	☐
DANIELS	☐	☐	THOMAS	☐	☐
FIELDING	☑	☐	TUTTLE	☐	☐
HENKEL	☐	☐	________	☐	☐
HICKS	☐	☐	________	☐	☐
KINGON	☐	☐	________	☐	☐
LACY	☐	☐	________	☐	☐

REMARKS:

Do you have any objection to the attached letters?

RESPONSE:

David L. Chew
Staff Secretary
Ext. 2702

9727

THE WHITE HOUSE

WASHINGTON

December 9, 1985

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: JOHN M. POINDEXTER

SUBJECT: Notification Concerning Canadian Free Trade Negotiations

Issue

To provide formal notification to the Committees on Finance and Ways and Means sixty days in advance of the initiation of negotiations for a free trade arrangement with Canada in order to give them an opportunity to disapprove the negotiations.

Facts

On September 26, 1985, Prime Minister Mulroney telephoned you to propose that the U.S. and Canada enter into free trade negotiations. The Trade and Tariff Act of 1984 requires that sixty days before entering into negotiations leading to a bilateral free trade arrangement the Senate Committee on Finance and the House Committee on Ways and Means must be notified in writing of such negotiations. During this sixty day period (measured in legislative days), either Committee can disapprove the negotiations.

Discussion

At the time of your conversation with Mulroney, you welcomed his call and informed him that it was necessary for you to consult with Congress before beginning negotiations. Since September 26, the United States Trade Representative (USTR) has informally consulted with the two relevant Committees and recommends that it is now appropriate that the Committees be formally notified in order to begin the period during which the Committees can determine whether to approve or disapprove the negotiations. It is the judgment of the USTR that Committee approval of the negotiations is likely.

The Mulroney government has made a significant political commitment to pursue these negotiations. Canada will welcome the notification of the Congress in order to get the process underway and to that end, I am also recommending

cc Vice President

that a personal call be placed by you to the Prime Minister informing him of this action.

Recommendation:

OK No

___ ___ That you sign the attached letters (Tab A) notifying the Chairmen of the Finance and Ways and Means Committees of your desire to enter into free trade negotiations with Canada. (The speechwriters have cleared the texts of the letters.)

Attachment
Tab A Letters to Rostenkowski and Packwood

Prepared by:
Stephen I. Danzansky

THE WHITE HOUSE

WASHINGTON

Dear Mr. Chairman:

On September 26, Prime Minister Mulroney proposed bilateral trade negotiations on the "broadest possible package of mutually beneficial reductions in barriers to trade in goods and services." As you know, Canada is both our largest trading partner and our fastest growing export market, representing one fifth of our total exports.

I welcomed the Prime Minister's proposal for trade talks as consistent with the efforts of both my Administration and the Congress to open foreign markets for U.S. exporters. Therefore, pursuant to Section 102(b)(4)(A)(ii)(I) of the Trade Act of 1974, I am notifying the Committee on Finance of the Administration's desire to enter into bilateral trade negotiations with Canada. The United States Trade Representative, Clayton Yeutter, has already begun consultations with the Committee and is prepared to continue that process throughout the negotiations.

I am aware that some Members are concerned about pending trade disputes with Canada, and have suggested that negotiations be delayed until those matters are resolved. I firmly believe, however, that we should not delay. With the enormous volume of trade that flows between our two countries, some differences of opinion are bound to arise. We must not permit such transitory frustrations, important though they may be, to obstruct the improvement of our long term trade relationship -- an issue, by the way, that will be of immense significance in the coming decades.

The initiation of new bilateral trade negotiations may significantly enhance our efforts to eliminate current trade frictions with Canada. And in any event, I assure you and the other Members of your Committee that the Administration will do everything possible to resolve such disputes in a reasonable and timely manner.

Sincerely,

The Honorable Bob Packwood
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

Dear Mr. Chairman:

On September 26, Prime Minister Mulroney proposed bilateral trade negotiations on the "broadest possible package of mutually beneficial reductions in barriers to trade in goods and services." As you know, Canada is both our largest trading partner and our fastest growing export market, representing one fifth of our total exports.

I welcomed the Prime Minister's proposal for trade talks as consistent with the efforts of both my Administration and the Congress to open foreign markets for U.S. exporters. Therefore, pursuant to Section 102(b)(4)(A)(ii)(I) of the Trade Act of 1974, I am notifying the Committee on Ways and Means of the Administration's desire to enter into bilateral trade negotiations with Canada. The United States Trade Representative, Clayton Yeutter, has already begun consultations with the Committee and is prepared to continue that process throughout the negotiations.

I am aware that some Members are concerned about pending trade disputes with Canada, and have suggested that negotiations be delayed until those matters are resolved. I firmly believe, however, that we should not delay. With the enormous volume of trade that flows between our two countries, some differences of opinion are bound to arise. We must not permit such transitory frustrations, important though they may be, to obstruct the improvement of our long term trade relationship -- an issue, by the way, that will be of immense significance in the coming decades.

The initiation of new bilateral trade negotiations may significantly enhance our efforts to eliminate current trade frictions with Canada. And in any event, I assure you and the other Members of your Committee that the Administration will do everything possible to resolve such disputes in a reasonable and timely manner.

Sincerely,

The Honorable Dan Rostenkowski
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515