

The original documents are located in Box C54, folder “Presidential Handwriting, 1/3/1977 (1)” of the Presidential Handwriting File at the Gerald R. Ford Presidential Library.

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

January 3, 1977

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: L. WILLIAM SEIDMAN
FROM: JIM CONNOR *JEB*
SUBJECT: Pending Court Decision Affecting
Imports from Japan

The President reviewed your memorandum of December 29 on the above subject and approved the following option:

Option 1 - Issue a statement expressing your concern and indicating that you are seeking remedial legislation and directing that an appeal be made in the courts. Submit legislation to the Congress upon its return in January.

Please follow up with appropriate action.

cc: Dick Cheney

12/31/76

THE PRESIDENT HAS SERIALIZED

THE WHITE HOUSE

WASHINGTON

December 29, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: L. WILLIAM SEIDMAN *fws*
SUBJECT: Pending Court Decision Affecting Imports from Japan

The U.S. Customs Court is currently considering a suit by the Zenith Radio Corporation against the Secretary of the Treasury because of his decision not to impose countervailing duties on imports of Japanese consumer electronic products. A memorandum from Secretary Simon and Ambassador Dent outlining the potentially widespread and negative impact the Zenith case might have on our foreign trade system is attached at Tab A.

There is a strong possibility that the Customs Court will overrule the Secretary of the Treasury resulting in immediate liability for potential additional duties of ten to twenty percent on imports worth approximately \$1.5 billion annually. This situation would be considered intolerable by our trading partners and might result in retaliation against U.S. goods sold abroad. While it is our best judgment that the Government's position will be upheld on appeal, the time required for such an appeal risks severely straining our trade relations at a time when the danger of protectionism is still great.

Secretary Simon and Ambassador Dent recommend two actions if there is an adverse decision by the Customs Court:

1. Issue a statement expressing your concern and indicating that you are seeking remedial legislation and directing that an appeal be made from this decision in the courts. A draft text of a statement is attached to their memorandum.
2. Submit legislation to the Congress immediately upon its return in January which, when enacted, would waive the necessity for suspending liquidation of customs entries pending final resolution of the matter. Draft legislation is also attached to the Simon-Dent memorandum.

Secretary Simon and Ambassador Dent's memorandum was staffed to the appropriate White House offices whose comments and recommendations are as follows:

White House Counsel's Office	Concur with Simon and Dent recommendation
Max Friedersdorf	Approve Simon and Dent recommendation
Brent Scowcroft	Approve Simon and Dent recommendation
John O. Marsh	I recommend that the President make a statement indicating an intent to vigorously prosecute an appeal but that he defer any possible legislative action to the incoming Administration.

Decision

Option 1

MR?

Issue a statement expressing your concern and indicating that you are seeking remedial legislation and directing that an appeal be made in the courts. Submit legislation to the Congress upon its return in January.

Supported by: Treasury, STR, Counsel's Office, Friedersdorf, Scowcroft

Option 2

Issue a statement indicating an intent to vigorously prosecute an appeal but defer any possible legislative action to the incoming Administration.

Supported by: Marsh



THE SECRETARY OF THE TREASURY
WASHINGTON 20220

DEC 16 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Pending Court Decision Affecting Imports from Japan

The Customs Court is currently considering a suit by the Zenith Radio Corporation against the Secretary of the Treasury because of his decision not to impose countervailing duties on imports of Japanese consumer electronic products. Plaintiff had sought these duties claiming that the rebate of the Japanese commodity tax upon the exportation of these products constitutes an export subsidy.

The Secretary of the Treasury, following nearly 80 years of precedents, found, in January 1976, that this was not a subsidy within the terms of our countervailing duty law. This decision was also fully consistent with our international obligations, which provide clearly that taxes of this kind need not be charged on exports. Similarly, state and local sales taxes and Federal excise taxes in the United States do not apply to exports.

There is a strong possibility that the Customs Court will decide to overrule the Secretary of the Treasury, but our best judgment is that the Government's position will be upheld on appeal. A serious problem arises, however, because the impact on trade of an adverse Customs Court decision is immediate. Importers will become immediately liable for potential additional duties of 10 percent to 20 percent on imports of \$1.5 billion (per annum) of Japanese consumer electronic products. To enter these goods importers will have to post a bond covering this additional possible duty pending final resolution of this matter in the courts, and must, commercially, treat this contingent liability as a very real one.

The issue here goes far beyond these products, however. Almost all manufactured products imported into the U.S. have been exported under similar circumstances. United States Steel has brought a similar case against the Secretary of the Treasury because he declined to assess countervailing duties against the rebate of the value added tax on exports of steel from the European Community subsequently imported into the U.S. A Customs Court decision in the Zenith case likely will serve as a precedent for the U.S. Steel case and for countless similar suits.

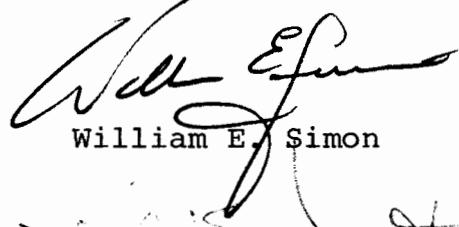
Until this matter is finally resolved in the courts, suspension of liquidation (i.e. the exposure to liability for additional duties equal to the amount of the tax rebate) would be in effect with respect to any of the products subject to an adverse court decision. This situation would be considered intolerable by our trading partners and might result in retaliation against U.S. goods. It is clear that our actions would be contrary to our international obligations and would have a negative effect on the multilateral trading system and our foreign economic relations in general.

The impact on imports described above occurs automatically, by operation of the law, once a court rules to overturn the Secretary's determination. The only course of action that appears available to prevent suspension of liquidation while the appellate process continues is to seek legislation which neutralizes the effect of the court's adverse decision pending a final judicial determination. It may also be possible to appeal directly from the Customs Court to the Supreme Court in order to obtain a rapid final judgment, although as a tactical matter there may be some advantage in going first to the Court of Customs and Patent Appeals. Even on the assumption that we are eventually successful in the courts and in securing temporary legislation, this process will take several months. This delay risks severely straining our trade relations at a time when the dangers of increasing foreign protectionism are very great.

There are certain risks inherent in the attempt to secure temporary legislation of the kind needed here. Preliminary discussions with Congressional Committee staff reveal that we can anticipate efforts to link this matter to the re-negotiation of the international rules on the tax treatment of imports and exports, as well as to import protection for various commodities (TV sets, steel, footwear). Furthermore, we should not underestimate Congressional resistance to intervention in a judicial procedure which is benefiting a hard-pressed domestic industry.

Nevertheless, given the alternatives, if there is an adverse decision by the Customs Court, we recommend that the following steps be taken immediately:

- (1) a statement be made on your behalf expressing your concern over this matter and indicating that you are seeking remedial legislation as well as directing that an appeal be made from this decision in the courts (a draft text of a statement is attached as Annex A); and
- (2) legislation be submitted to the Congress immediately upon its return in January which, when enacted, would waive the necessity for suspending liquidation of customs entries pending final resolution of this matter



William E. Simon



Fredrick B. Dent

DRAFT STATEMENT

The Customs Court held today that the exemption from the Japanese commodities tax on consumer electronic products exported to the United States is a subsidy required to be offset by the imposition of countervailing duties. This decision will not result in the immediate imposition of any increased duties on these products. However the final amount of duty to be assessed will now not be determined until a final resolution of this matter in the courts.

The Secretary of the Treasury has consistently held during the 80 year history of the countervailing duty law that exemption of exports from these kind of taxes does not call for the imposition of increased duties to offset the amount of the tax. The internationally agreed rules with respect to subsidies and countervailing duties also recognize that exports are not to bear these taxes. Thus, for example, U.S. Federal excise taxes, and state and local sales taxes, are not charged on exported goods.

I believe that the consistent position of the Treasury Department, that these tax practices should not be counter-acted, will ultimately be upheld by the courts. Because of the potential serious impact on our trade, this issue has been reviewed with the President and he has decided that an immediate appeal will be pursued in the courts. In addition,

he has decided to submit legislation immediately to the Congress to prevent any interference with United States trade while a final decision is being sought in this matter.

POSSIBLE LEGISLATION

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled,

That notwithstanding any other provision of law, in any case where

(A) an American manufacturer, producer, or wholesaler pursuant to the provisions of Sections 516(c) or (d) of the Tariff Act of 1930, as amended, contests a decision or determination of the Secretary of the

Treasury that no bounty or grant is being paid or bestowed within the meaning of Section 303 of the Tariff Act of 1930, as amended,

(B) such cause of action is sustained in whole or in part by a decision of the United States Customs Court or the United States Court of Customs and Patent Appeals, and

(C) the Secretary determines that the practice contended to provide the bounty or grant is not considered a subsidy under international rules to which the United States is a signatory;

merchandise covered by the Secretary's decision or determination:

(1) shall not be subject to the assessment of additional duties, under Section 303 of the Tariff Act of 1930, and

(2) Notwithstanding the provisions of Section 516(g) of the Act, liquidation of entries of such merchandise shall not be suspended.

Paragraphs (1) and (2) of this section shall apply for a period not exceeding that ending six months after a final judicial disposition of the action, or on the date the negotiating authority granted under Section 102 of the Trade Act of 1974 expires, whichever occurs first.