

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Ronald K. Noble to Secretary Bentsen; re: Waco Administrative Review Update (7 pages)	09/09/93	P6/b(6), b(7)(C), b(7)(F)

COLLECTION:

Clinton Administration History Project

OA/Box Number: 24125

FOLDER TITLE:

[History of the Department of the Treasury - Supplementary Documents] [17]

Jimmie Purvis

jp42

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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GENERAL COUNSEL

DEPARTMENT OF THE TREASURY
WASHINGTON

148451

July 25, 1995

MEMORANDUM FOR SECRETARY RUBIN

FROM:

EDWARD S. KNIGHT

Edward S. Knight

SUBJECT:

Waco Hearings' Excerpts Discussing Transfer of ATF
to DOJ/FBI

Please find attached transcript portions of yesterday's Waco Hearings containing exchanges between Director Magaw and Representatives Brewster and Bereuter on the subject of transferring the Bureau of Alcohol, Tobacco and Firearms from Treasury's jurisdiction to the DOJ/FBI's jurisdiction. Undoubtedly, this subject will arise again in the future.

Attachment

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OF THE ORIGINAL DOCUMENT

sent to OGC

MR. NOBLE: I didn't feel uncomfortable, I just didn't have the authority.

REP. BEREUTER: Okay, then did you bounce it up to whomever did have the authority?

MR. NOBLE: That's what I'm saying, is the person who had the authority, his name is John Simpson, he was the Acting Assistant Secretary for Enforcement. He's the person whom I advised about all the concerns I had. He's the person with the de sera and de facto authority to have called off the raid or permit the raid to proceed.

REP. BEREUTER: All right. Whatever your gut reactions were, I salute you. I've got about 19 years of military background and with regards to the tactics and planning, it was very, very poor. Part of Mr. Brewster's question that he asked you, Director -- I'm not sure if

HEARING OF HOUSE JUDICIARY COMMITTEE, CRIME SUBCOMMITTEE, AND GOVERNMENT REFORM AND OVERSIGHT COMMITTEE, NATIONAL SECURITY, INTERNATIONAL AFFAIRS AND CRIMINAL JUSTICE SUBCOMMITTEE, TOPIC: THE 1993 INCIDENT IN WACO, TEXAS
CMTE CO-CHAIRMEN: REP. BILL ZELIFF (R-NH) AND REP. BILL MCCOLLUM (R-FL)
FM-24-20 page# 3 MONDAY, JULY 24, 1995 / P.M. SESSION

I'm in agreement with your response. Because as I sit through these hearings I'm asking about the legitimate roles of government and our oversight functions and I agree with you when you said ATF is an agency that needs close oversight. I mean not only within Treasury but that's our purpose and function constitutionally. And I have been bothered that -- I guess from the Watergate hearings, it's almost laid down the marker in this town that if you have a Congressional oversight hearing that there must be a smoking gun. And I don't think that's necessarily true either. So I want you to know that. I'm being upfront with you.

And I also -- that's not a question.

MR. NOBLE: I just appreciate it.

Start here
REP. BEREUTER: I also though know all the political garbage that's going on in the town too, back and forth, back and forth, and I wish we could just get on with the business. But part of the questions that I go through is is there a future for the ATF, that's what I am asking myself. And if there is a future for the ATF, what kind of future is it? Or do we go back to the don't call them ATF, call them revenueurs again I guess. And moving firearms to FBI. I mean I've been asking that question. I think Mr. Brewster's question was very good. And when you say well let's not really do that because wouldn't that make them just a federal police force. Well isn't that what ATF is now? would you help me answer that question. See I

disagree with that.

MR. MAGAW: ATF has fairly limited jurisdictions. Firearms -- we don't get into financial institution fraud, we don't get into bank robbery, any of those things. And so the firearms, by the fact that it's a regulatory industry, it's also tax collected on that, it all fits very well in the Treasury scheme. And because firearms are so controversial and there's so much passion throughout the country pro and con for them, I believe that you leave them in an agency like this where you have the close oversight. And that's strictly my opinion and my judgment.

REP. BEREUTER: All right, well we're going to keep on that issue because that will be some of the carry over issues after this hearing. Right now I am going to yield the balance of my time to Mr. Ehrlich.

REP. MCCOLLUM: Mr. Ehrlich, you will be recognized. I don't think we have somebody else on this side of the aisle that wants to go right now anyway. So you have the 30 seconds plus your own time, so go ahead.

REP. EHRLICH: Thank you, Mr. Chairman. Please indulge me for a second. We're talking about political garbage, my colleague to my right used the phrase political garbage, and a lot of us on both sides of the aisle were actually trying to get facts. We appreciate your

HEARING OF HOUSE JUDICIARY COMMITTEE, CRIME SUBCOMMITTEE, AND GOVERNMENT REFORM AND OVERSIGHT COMMITTEE, NATIONAL SECURITY, INTERNATIONAL AFFAIRS AND CRIMINAL JUSTICE SUBCOMMITTEE, TOPIC: THE 1993 INCIDENT IN WACO, TEXAS
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FM-24-20 page# 4 MONDAY, JULY 24, 1995 / P.M. SESSION

testimony here today. The source of my utter frustration with this town, being here six months, is comments like the following that were made at the White House press briefing today.

In answer to a question to Mr. McCurry, how specifically are the Republicans trashing law enforcement, this answer was elicited. By implying to the American people that somehow or other the conduct that they are looking at in Waco is representative of the way law enforcement officers behave. And the President is going to stand forthwith with law enforcement officers, four square with law enforcement officers. He is standing up for the law enforcement officers in this country who put their lives on the line while this Republican majority and this committee attempt to undermine confidence in law enforcement officers.

I assure you both, that's not my purpose, and I have a couple of very specific questions for you. Mr. Noble, revisiting hopefully for

different tack in some of the questions, it's my understanding from some discussions I've had that the Texas Rangers felt they were not treated well at all during the siege time at Waco. Are you aware of that feeling?

MR. NOBLE: Sir, I say this with all due respect to the question, I very much would like to leave this hearing not saying anything bad about any law enforcement component unless necessary. I know having been with the FBI's hostage rescue team that when they come into an operation they take over. And I've been with other law enforcement officers when that happens and it is not something that makes law enforcement officers who believe they are able happy. That's just the way it is.

REP. BREWSTER: Was that a yes?

MR. NOBLE: Yes.

REP. BREWSTER: Okay. Along that same line, it was my understanding that Koresh at one point asked to negotiate with the Rangers and they at one point asked to negotiate with him. Is that correct? If we could make it shorter, I don't have a lot of time.

MR. NOBLE: Okay, this is going to be fast. I saw it on TV, yes.

REP. BREWSTER: I'm sorry.

MR. NOBLE: I saw the Texas Rangers interviewed on TV where they said that, so that's the source of my information.

Start here
REP. BREWSTER: Okay, I haven't seen that. Mr. Magaw, I'm certainly impressed with the discussion you and I have had previously and also with your discussions of the many things that went wrong here and how you feel that you are making progress and keeping it from

HEARING OF HOUSE JUDICIARY COMMITTEE, CRIME SUBCOMMITTEE, AND GOVERNMENT REFORM AND OVERSIGHT COMMITTEE, NATIONAL SECURITY, INTERNATIONAL AFFAIRS AND CRIMINAL JUSTICE SUBCOMMITTEE, TOPIC: THE 1993 INCIDENT IN WACO, TEXAS
CMTE CO-CHAIRMEN: REP. BILL ZELIFF (R-NH) AND REP. BILL MCCOLLUM (R-FL)
FM-24-19 page# 5 MONDAY, JULY 24, 1995 / P.M. SESSION

happening again that way. Also I think you've been very straight up in talking about the fact that the tactical intelligence was not good, that you changed the press (ph) structure, that you've made many changes in ATF.

On that same line, and I am just asking a rhetorical question, why would we not be better served for ATF to be part of FBI and FBI do the intelligence part, ATF do the firearms part?

the alcohol and the tobacco industry over the years, not so good a job interfacing with the firearms industry, and we're going to do a better job at that.

MORE

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PA

April 30, 1995

Mr. Secretary:

Per Sylvia Mathews, here are suggested talking points regarding possible Congressional hearings on the Waco events.

These are for your 7:30 a.m. meeting on Monday.

A transcript of the Attorney General's interview on Meet the Press today is included.

Chris Brown/Enforcement
Chris Peacock/Public Affairs

Q. Do you think Congressional hearings to examine the actions of federal law enforcement at Waco are appropriate?

A. We respect Congress' prerogative to examine events at Waco, and we'll cooperate if that happens. But as Attorney General Reno said Sunday on Meet the Press, "I think to link Waco with what happened in Oklahoma City is wrong, because there is absolutely no excuse for what happened in Oklahoma City." I would hope that any such inquiry won't distract us from bringing to justice the people who blew up the federal building filled with more than 500 men, women and children.

ATF's actions at Waco have already been subject to extensive scrutiny. In September 1993 a Treasury review team, supervised by an independent panel, analyzed ATF's investigation and its attempt to serve lawful warrants at the Branch Davidian compound on February 28, 1993. Both parties and the press praised the report for its candid, impartial evaluation of those events.

Treasury acted swiftly. Secretary Bentsen installed new leadership at ATF, including the appointment of John Magaw, the previous director of the Secret Service, as director. The two raid commanders are no longer authorized to carry firearms or lead raids. ATF personnel have received extensive training in crisis management since the incident.

Frankly, ATF does a good job. It found the key evidence in the World Trade Center bombing. In the past ten years lawsuits charging ATF with constitutional violations have been filed in less than half a percent of all cases. Not once has a court ruled against ATF.

Background:

In the last ten years ATF investigated more than 50,000 cases involving nearly 80,000 suspects and served more than 10,000 federal warrants.

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NBC "MEET THE PRESS"
WITH HOST: TIM RUSSERT
JOINED BY: DAVID BRODER AND ROBERT NOVAK

GUEST: JANET RENO, U.S. ATTORNEY GENERAL

SUNDAY, APRIL 30, 1995

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PLEASE CREDIT ANY QUOTES OR EXCERPTS FROM THIS NBC PROGRAM TO "NBC'S MEET THE PRESS."

MR. RUSSERT: And with us now, the attorney general of the United States, Janet Reno. Madam Attorney General, welcome.

What is the latest on Oklahoma City? We have 126 dead, including 15 children. Are we any closer to capturing John Doe -- John Doe II?

ATTORNEY GEN. RENO: Obviously, as I have said on many occasions, to discuss just what is happening would be counterproductive to the investigation, but FBI agents, ATF agents across the country are pursuing every lead. The U.S. attorneys in various districts are working closely with the FBI. I am in constant touch with Director Freeh, and I feel very good about the way the investigation is proceeding.

MR. RUSSERT: There are about a thousand law enforcement officials involved in the investigation, I've read. How long can you maintain that intensity of this manhunt?

ATTORNEY GEN. RENO: I think it is important that we do everything humanly possible to bring the people responsible for this tragedy in Oklahoma City to justice, and we're going to continue that effort.

MR. RUSSERT: Timothy McVeigh, who has been captured, has been told by everyone from the president on down that he's going to get the death penalty, if convicted. Would it be appropriate to say to him, "Listen, talk to us. Tell us who was involved in this bombing, in this conspiracy, come clean, and perhaps we'll give you life imprisonment"?

ATTORNEY GEN. RENO: In all of these situations, we look at the issues as they develop, and we don't deal with "what ifs."

MR. RUSSERT: So there's no possibility we would plea bargain with Mr. McVeigh?

ATTORNEY GEN. RENO: ...

THE PRESS/RENO

PAGE 2

/30/95

STX

s to how to proceed with cooperation or any other factor based on the evidence that is available at the time, but to speculate would not be wise.

MR. RUSSERT: But he's a wealth of information as to what happened.

ATTORNEY GEN. RENO: Again, you have to consider the whole effort in the context of the information we have, the evidence we have, and you've got to make a judgment based on the whole context and where the investigation leads us.

MR. RUSSERT: One of the more interesting things to me, Madame Attorney General, is the money. We have Mr. McVeigh rent a truck, rent hotel rooms, acquire fertilizer, spending probably close to 10,000 over a two-week period. Where did he get the money? He was unemployed.

ATTORNEY GEN. RENO: Obviously, this is one of the issues that will be pursued as this investigation unfolds.

MR. RUSSERT: And you know nothing else at this point?

ATTORNEY GEN. RENO: Again, as you well know, it wouldn't be wise for me to talk about what I know as we're pursuing the investigation or fear of disrupting the investigation.

MR. RUSSERT: Let me talk about some of the rhetoric that has been used over the last couple months about your agency. The head of the NRA, who will be our guest later in the program, has said the following: "You can see it when jack-booted government thugs wearing black, armed to the teeth, break down a door, open fire with an automatic weapon, and kill or maim law-abiding citizens. In Clinton's administration, if you have a badge, you have the government's go-ahead to harass, intimidate, even murder law-abiding citizens."

What's your reaction?

ATTORNEY GEN. RENO: I think the best reaction is to say, "Give us the specifics. Let us look at it." Because what we want to do is to make sure that law enforcement holds people accountable when they commit a crime, when they have engaged in violent acts, but we want to do so according to the Constitution, according to principles of due process, without rhetoric.

I think the most damaging thing that we can do in the country is to talk in generalities or in picturesque terms. I think it is important that we talk based on the evidence and the law and that we enforce the law the right way, firmly, fairly, holding people accountable.

MR. RUSSERT: Congresswoman Helen Chenoweth of Iowa -- Idaho is introducing legislation which says that a federal agent will have to

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THE PRESS/RENO PAGE 3
/30/95
STX

register his firearm with a local sheriff and become deputized before he can carry out his duties. What would you think of that legislation?

ATTORNEY GEN. RENO: I don't think that that legislation could be productive to really a proper enforcement of the law consistent with due process, consistent with the Constitution. I think clearly there are principles of federalism that apply here, and I think we should talk together about how we develop the partnership between federal and state law enforcement. We've been working with law enforcement across this country to make sure that we work together, respecting each agency's role in the ultimate, proper enforcement of the laws.

MR. RUSSERT: And finally, let me ask you about G. Gordon Liddy. He is someone who says he's using pictures of the president and the First Lady for target practice and that if an ATF or FBI agent comes to his house, "I advise shooting them in the head, because they wear flak jackets. Shoot them twice in the body. If that doesn't work, shoot them in the groin."

ATTORNEY GEN. RENO: Again, I think it is so important for all of this nation to talk in measured, reasoned terms about how we prevent violence, about how we bring this nation together.

Something special is happening in Los Angeles, I think today and this weekend. Three years ago, Los Angeles erupted in riots, but today Los Angeles is coming together. Communities across America are working together to bring groups that have engaged in conflict together peacefully so that we can address the ultimate problems of this nation.

MR. RUSSERT: David?

MR. BRODER: General, you referred to the principles of federalism when answering Tim's question. The Supreme Court this week knocked out a federal law banning guns within a thousand feet of any school, said that was just too much of a stress of the interstate commerce clause.

The president has told you to find some way around that decision. What I'm curious about is why, since we have 48 state laws banning guns from schools, why do we need a federal law, except to give some federal official political symbolism credit for passing it?

ATTORNEY GEN. RENO: I don't think it's political symbolism. I think what we're trying to do is to make sure that we have laws that address the issue that we confront. Having been 350 miles down a state far removed from other states' borders, I'm not as sensitive to those issues where problems develop because of crimes that cross district lines or state lines, and I think, as we address the legislation in this next week and thoughtfully work together, I think we can come up with legislation that adheres to the principles of federalism while at the same time provides the necessary protection for our children.

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THE PRESS/RENO

PAGE 4

/30/95

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MR. BRODER: But if it's already a crime in 42 states, how will any child be safer by Congress passing such a law?

ATTORNEY GEN. RENO: Again, there may be situations where that crime may be the factor that can enable the federal government to take action against a gang or others that cross state lines.

It is so important for the states that don't have it, for those that do that may have limited resources that we work with them in a true partnership, focusing on what the federal government should be doing in partnership with state and local government.

MR. BRODER: Now, FBI Director Freeh gave some testimony this week that was pretty startling. He said for two decades, the FBI has been at an extreme disadvantage with regard to domestic groups which advocate violence. We have no intelligence or background information on them until they're violent talk becomes deadly action.

Is that an accurate description of the situation?

ATTORNEY GEN. RENO: When I took office, I was confronted with the guidelines. I had not dealt with the guidelines as a local prosecutor, and when Director Freeh took office, he, I think, found the same concern that I had, that people had interpreted the guidelines in a very limited way. If you read the guidelines, I think they give the FBI the tools to do the job, and we've been working and hope to work in consultation with Congress on how these guidelines should be interpreted to give them the full effect that will provide the protections the guidelines were designed to provide, but, at the same time, not shackle the FBI in its duty to pursue legitimately and properly any lead that is -- leads to violence.

MR. BRODER: But Director Freeh also said to Senator Thompson of Tennessee that if the guidelines that you inherited were interpreted broadly, rather than defensively -- that's his language -- that he could have dealt with a situation like, hypothetically, the Michigan militia.

You've been there two years. Why haven't the guidelines been interpreted in a way that gave you that authority?

ATTORNEY GEN. RENO: Again, when I took office, I looked at them and concluded that the interpretation had been limiting.

It was fascinating, because one agency would say -- or one agent would say, "Yes, I can do it." Another would say, "I can't." We wanted to work carefully through this issue, and Director Freeh and I have been doing so.

MR. BRODER: As you know, the reason that the guidelines were put in place was that, almost 20 years ago, the Senate committee found that the FBI and other law enforcement agencies had been engaging in

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THE PRESS/RENO PAGE 5
/30/95
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what they called a pattern of consciously and repeatedly violating the laws and constitutions by investigating the political activities of hundreds of thousands of American citizens, and the report said that was done without the knowledge of presidents or attorney generals.

Now, if you're going to expand the authority of the FBI to infiltrate these organizations, what assurance is there that we won't run into exactly this problem again?

ATTORNEY GEN. RENO: I think what we need to do is to make sure that the guidelines are used not to investigate political reaction, but to investigate any lead that results in evidence that would lead us to violence and lead us to efforts to prevent violence. I think that can be done under the guidelines as they have been announced over these 20 years, and what we want to do is to work with Congress to make sure that they understand how we are interpreting the guidelines, now we are taking steps to avoid the abuses that the guidelines were designed to prevent.

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MEET THE PRESS/RENO ? PAGE 6

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MR. NOVAK: Madame Attorney General, the bombing in Oklahoma City came on the second anniversary of the burning of the Branch Davidian compound in Waco, Texas. Thomas -- Timothy McVeigh, the suspect, was apparently enraged by Waco, visited Waco. In the aftermath of the bombing, it turns out there are a lot of people in this country who are still simmering over and burning over the attack on Waco.

Do you think now, in the interests of a national reconciliation, it is time for you for the first time to admit that you made a mistake in ordering the federal assault at Waco?

ATTORNEY GEN. RENO: First of all, I think to link Waco with what happened in Oklahoma City is -- is wrong, because there is absolutely no excuse whatsoever for what happened in Oklahoma City. Let us address Waco separately.

In any situation where the lives of officers who were executing a lawful warrant were taken -- four officers, four agents, were killed, 16 were wounded in a 45-minute gun battle. That's when I came in.

We didn't attack. We tried to exercise every restraint possible to avoid the violence. We tried, based on what we knew at the time, to negotiate, to work through, to try to understand what we could do to resolve that situation short of violence.

When the decision was made that something had to be done because it was going to go on and it could not be peacefully resolved, we tried to do everything we could. Not one FBI shot was fired.

In the end, independent people came in, independent fire experts came in and concluded that that fire was not set by government, it was set by David Koresh and his followers.

The important thing, Mr. Novak, is that we hold people accountable for their violence, that law enforcement work with everybody concerned to do everything they can to bring people who are violent to account, but that we do so trying to learn from every experience we can how we can do so without violence to those who are not responsible.

MR. NOVAK: But since there are other people, Madame Attorney General, who disagree with that interpretation of what happened in Waco, would you welcome a congressional investigation by the House, the Senate, or both to finally answer the unanswered questions about Waco?

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THE PRESS/RENO PAGE 7

/30/95

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ATTORNEY GEN. RENO: What we have said from the beginning -- and, as you know, I have testified and I have said that we welcome every effort imaginable to figure out how we hold people accountable for their violent acts.

You cannot walk away from the death of four agents and 16 people wounded and say, "Too bad. We're not going to go after them." We've got to do it in a fair, thoughtful way, and I would welcome, as I have, every effort to understand how we hold people accountable while minimizing the violence.

MR. NOVAK: Let me ask you one unanswered question, and that is -- that you have never answered -- and that is for your decision that lead to the death of 81 people at Waco, who told you that there was sexual molestation going on there, which you now say was an incorrect information? A lot of people wonder where did you get that information?

ATTORNEY GEN. RENO: Sir, one of the problems is that you all in the media take something that somebody said and throw it out. What I will do -- I do not have the Waco files with me, but we will get that information to you to show you the evidence of sexual molestation that was available to us. And it is important that as we review Waco that particularly all of you in the media, as we review Waco, review it carefully, based on the evidence, based on the record, so that we do not contribute to the misinformation that so obscures the issues that we've got to confront in this nation.

MR. RUSSERT: Madame Attorney General, do you have any doubt that you'll capture John Doe II?

ATTORNEY GEN. RENO: One of the things that I've learned is that we are going to do everything we can to make sure that that man is brought to justice, and based on what the FBI and federal law enforcement and local law enforcement working together have been able to do, I think we're going to do it.

MR. RUSSERT: We thank you for joining us this morning.

ATTORNEY GEN. RENO: Thank you.

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Apr 30, 1995 11:20 ET

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DEPARTMENT OF THE TREASURY
WASHINGTON

MAR 1 1993

95K

MEMORANDUM FOR SECRETARY BENTSEN

FROM: Ronald K. Noble *RKN*

SUBJECT: Investigation of ATF Waco Operation

*Let's move on
it, subject to the
siege ending
LWB*

ACTION FORCING EVENT:

As a result of our meeting this morning, we have decided to seek the advice of House and Senate Committee Chairmen who have oversight of the Treasury Department with respect to a proposal for reviewing ATF's actions in Waco, Texas.

RECOMMENDATION:

OK OK

That you make phone calls to Chairmen Moynihan, Deconcini, Rostenkowski and Hoyer seeking their advice on the proposed plan. *APR 23*

LWB Agree _____ Disagree _____ Let's Discuss _____

BACKGROUND:

At today's meeting, it was recommended that I, Ronald K. Noble, be charged with responsibility for conducting the Treasury Department's review of ATF's action in Waco, TX. I would oversee an investigation conducted on a day-to-day basis by experts such as former Assistant U.S. Attorneys and supplemented by investigative assistance from Treasury law enforcement components and the General Counsel's office.

I was an Assistant U.S. Attorney in Philadelphia, for four years, where I investigated and prosecuted complex white collar and political corruption cases. I was also the Deputy Assistant Attorney General for the Criminal Division at the Department of Justice, and in that capacity was involved in reviewing a number of high profile and extremely complex criminal cases. I am presently Associate Professor of Law at New York University Law School and am the President's choice for Assistant Secretary (Enforcement) at the Treasury Department.

Your calls to the Chairman of Treasury committees is for the purpose of consulting with them about this proposal, seeking their advice.

Attachment:

Talking Points

Ed

FCT

Josk

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OF THE ORIGINAL DOCUMENT

Talking Points:

o Mr. Chairman, we have been closely monitoring the situation in Waco, TX, since Sunday, February 28th. And, as you may know, the Deputy Secretary himself went down there last week.

o We have also discussed among ourselves the most appropriate, objective method for Treasury to review the sequence of events which led to the Davidian cult standoff. This is not merely to second guess ATF. We are convinced that there are lessons to be learned that can benefit Treasury and other law enforcement agencies in our thorough review of this situation.

o The circumstances of the law enforcement action led to genuine tragedy and I think that we should do everything that we can to determine whether or not there are alternative or additional procedures to avoid similar situations in the future.

o A proposal we are considering and about which I would like your thoughts and advice is the following: Ronald K. Noble is the President's choice for the Assistant Secretary (Enforcement) post here at Treasury. He's also our choice to head up the ATF inquiry. Noble's just come to Treasury, and hasn't been confirmed yet. Would his involvement with the ATF review cause him a problem on the Hill in terms of confirmation?

Noble is an experienced federal prosecutor, and a former Deputy Assistant Attorney General in the Criminal Division at Justice. It has been recommended that Mr. Noble head up a comprehensive review of the Waco standoff. As a practical matter, his leadership could mean hiring experts, such as former Assistant U.S. Attorneys to handle the investigation on a day-to-day basis, subject to Mr. Noble's oversight.

o Mr. Noble would also avail himself of expertise from the Department of Justice, Defense and other state and federal law enforcement entities. At this time, we have not identified a specific individual.

o We would hope that the investigation could be completed within 120 days after all resources have been brought on board. We will, of course, keep you advised of such a review and its results.

to: DISTRIBUTION

Department
of the Treasury

Executive Secretary
and Senior Adviser
to the Secretary

room: _____ date: 3/23/93

SUBJECT: ATF Waco Operation Investigation

Attached is a copy of Ron Noble's memorandum to Secretary Bentsen regarding the above subject. The comments are those of the Secretary.

Any questions, please contact me.

Attachment

DISTRIBUTION: Jack Devore
Mike Levy
Ron Noble
Josh Steiner

Edward S. Knight

room 3408

phone 622-0027

to: _____

Department
of the Treasury

Executive Secretary
and Senior Adviser
to the Secretary

room: _____ date: _____

3/23/93

Gay:

My understanding is that there still is a need for the Secretary to make these contacts. The situation in Waco could resolve itself shortly. Then, the White House in conjunction with Treasury would announce the initiation of a study led by Ron Noble. This assumes none of the key members object.

ED

Ed

*as soon
as the siege
ends. LJB*

Edward S. Knight

room 3408

phone 622-0027



DEPARTMENT OF THE TREASURY
WASHINGTON

93-125854

ASSISTANT SECRETARY

SEP 27 1993

ACTION

MEMORANDUM FOR SECRETARY BENTSEN

FROM: Ronald K. Noble *RKN*
Assistant Secretary
(Enforcement)

SUBJECT: Waco Talking Points for President

ACTION FORCING EVENT:

The Treasury Review of ATF's involvement in the investigation of David Koresh, culminating in the raid on the Camp Davidian Compound last February 28th, is due on Thursday, September 30th.

RECOMMENDATION:

That you review the proposed talking points for appropriateness.

Agree _____ Disagree _____ Let's Discuss _____

BACKGROUND/ANALYSIS:

The White House has requested information related to the forthcoming Treasury report.

ATTACHMENTS:

Talking Points

CERTIFIED TO BE A TRUE COPY
OF THE ORIGINAL DOCUMENT

R.D.

THE WACO ADMINISTRATIVE REVIEW

TALKING POINTS FOR SECRETARY BENTSEN'S MEETING WITH THE PRESIDENT

The Process

-Mr. President, we will be releasing the report of our inquiry of the events leading to the tragic raid near Waco, Texas, February 28, 1993 on Thursday, September 30.

-The roughly 500-page report outlines in great detail the actions that ATF took in planning for and executing the raid as well as ATF's conduct following the raid.

-The Department of Justice will release its report on the siege following the raid and the decision to try to conclude it in a few days. We have been coordinating with Justice throughout the process.

-The Review has relied upon agents from Treasury's law enforcement bureaus other than ATF to conduct the investigation, and outside reviewers and experts have monitored the inquiry, including Chief Willie Williams of the Los Angeles Police Department. The reviewers have made independent assessments and they commend both the integrity and the comprehensive nature of the review.

*Edwin Gathman - Public Affairs - Waco
Hank Ruth - Waco*

-Efforts are underway to consult with the Hill prior to the announcement, and we can brief anyone on your staff if you wish.

The Findings of the Report

The report assesses ATF's actions in a number of areas:

-Despite certain public claims to the contrary, ATF properly investigated Koresh for federal firearms and explosives violations and properly sought arrest and search warrants;

-The tactical plans for carrying out the raid were flawed in several respects, including the absence of careful consideration of potentially less dangerous options and a lack of adequate contingency plans;

-Most of the Review's tactical experts agree that the raid plan had a reasonable chance of success if all of the planners' major factual assumptions had been correct. However, ATF's development and use of intelligence was inadequate. As a result,

the key factual assumptions upon which the plan was built were inaccurate;

-There were problems with the command structure and the positioning of the raid commanders during the execution of the plan;

-ATF lost the element of surprise and the raid commanders knew it. Nevertheless they went forward with the raid, despite clear instructions from both Treasury and ATF's top management that they not proceed if the secrecy of the raid were compromised;

-After the raid, some top ATF officials misled the public and Treasury regarding their knowledge of the loss of the element of surprise. In addition, the two principal ATF raid commanders misleadingly altered the written raid plan after they were asked to produce it, and when confronted with the alterations, lied about their conduct.

Actions Following the Report

-New leadership is necessary to recover from this tragedy and lead ATF forward, regardless of whether parts of ATF are later folded into the FBI.

-ATF Director Steve Higgins has submitted his retirement effective October 30, 1993. He has had a long career and contributed much to ATF, but in light of many factors, I agree with his assessment that we need new leadership at this time.

-I have selected John Magaw, the Secret Service Director, to become the new Director of ATF. He is well regarded in the federal law enforcement community and by line agents. He will bring fresh and professional leadership to the troubled agency.

-The Deputy Director of the Secret Service (Guy Caputo) will serve as its acting Director while we review candidates to replace Magaw. This should not adversely affect the Secret Service or its mission.

-I intend to put the Associate Director for Law Enforcement (Hartnett) and his Deputy (Conroy) on immediate administrative leave with pay. I expect they will retire shortly. If not, they will be reassigned and personnel actions against them will likely be taken.

-I have selected the ATF Special Agent in Charge from New York (Charles Thomson) to become the new Associate Director who will oversee all ATF law enforcement operations. A career ATF employee, Thomson is well regarded throughout the agency and led his office's successful investigation of the World Trade Center bombing.

-In addition, I am replacing ATF's head of Intelligence and the Special Agent in Charge in Houston and his deputy. They all made material misrepresentations following the disaster. They will be put on administrative leave with pay, pending personnel actions. Magaw and Thomson will be making recommendations to me in the next few days of candidates to replace these individuals.

1996-SE-007183



GENERAL COUNSEL

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

August 13, 1996

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INT. IGP DATE 4/27/05

MEMORANDUM FOR SECRETARY RUBIN

FROM: EDWARD S. KNIGHT *ESK*

SUBJECT: FIFTH CIRCUIT AFFIRMANCE OF WACO DEFENDANTS'
CONVICTIONS

On Friday, August 2, the Fifth Circuit issued its opinion in United States v. Branch, the appeal by six Branch Davidians of their convictions arising out of the Waco firefight on February 28, 1993. In a 2-1 decision, the panel affirmed the defendants' convictions; vacated the sentences on one count and remanded for additional findings and resentencing; and affirmed the remaining sentences. The panel held the mandate pending the en banc decision in United States v. Kirk on the constitutionality of 18 U.S.C. § 922(o), criminalizing possession of machine guns, under which one defendant was convicted. This memo briefly summarizes the highlights of the lengthy decision.

Excessive Force

The defendants claimed that the district court erred in denying an instruction on self-defense on voluntary manslaughter. The appeals court held that to entitle defendants to a jury instruction on self-defense, the evidence that the defendants were entitled to defend themselves must be sufficient in light of all the other evidence to create a reasonable doubt on the issue. In this context, the court held, there must be sufficient evidence from which a reasonable juror could conclude either that: (1) the defendants did not know the ATF agents were law enforcement officers, or (2) that the ATF agents' use of force was unreasonable. The court reviewed the record and rejected the first possibility and, on this issue, the dissent did not disagree.

Reviewing the record at length, the majority also rejected the defendants' three arguments with regard to unreasonable use of force: that the ATF agents fired first, that the ATF agents fired indiscriminately, and that excessive force was inherent in the raid. On the key last point, the court held that the decision to execute a "dynamic entry" raid using some 70 agents was not excessive in light of ATF's knowledge of the arsenal at the Davidian compound: "Surely a citizen may not initiate a

firefight solely on the ground that the police sent too many well-armed officers to arrest him." In response, the dissent argued that the majority's test of excessive force provides no outer boundary: "[U]nder the court's sweeping rationale, it would have made no difference if the agents had been supported by armored personnel carriers, or by tanks, or by suppression fire from aircraft."

Pending Challenge to Section 922(o) / Stay of the Mandate

One defendant was indicted under 18 U.S.C. § 922(o) for possessing a machine gun. He moved to dismiss the indictment on the ground that the section, which contains no requirement that the gun have been in interstate commerce, exceeds Congress' power under the Commerce Clause, as the Gun-Free School Zones Act was held to do in United States v. Lopez. The Fifth Circuit stayed the mandate in this case pending resolution of the Lopez challenge to § 922(o) in a separate en banc case, United States v. Kirk. The stay of the mandate will probably delay any further efforts to seek review in this case.

Remand of Sentences under § 924(c)(1) for Additional Findings

Several of the defendants were convicted under 18 U.S.C. § 924(c)(1) for using a firearm during the conspiracy. In a decision after the trial in this case, the Supreme Court held that § 924(c) requires "active employment" of a firearm by the defendant, not just possession. Bailey v. United States (1995). The court upheld the convictions of the defendants, finding that the evidence was overwhelming that each of them actively used a gun during the firefight. However, the court remanded the sentences of the defendants on this ground for the district court to make specific findings about "active employment" in imposing sentences on this count.

The court also rejected the defendants' argument that §924(c) requires the indictment to charge and the jury to find each defendant had used a machine gun in order for the court to impose a sentence under the section's machine gun provision. Reviewing the section's legislative history and statutory structure, the court concluded that the machine gun provision does not create an independent statutory offense but is merely a sentence-enhancement provision. Thus, the determination that each defendant used a machine gun lies with the court at sentencing, not -- as defendants argued -- with the jury at trial. Again, the dissent did not dispute the majority's rulings on this issue.

2000-SE-009453



GENERAL COUNSEL

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

September 25, 2000

MEMORANDUM FOR THE SECRETARY
THE DEPUTY SECRETARY

FROM: NEAL S. WOLIN *NSW*

SUBJECT: *The Waco Litigation*

On September 20, 2000, the United States District Court in Waco, Texas, adopted an advisory jury verdict and issued a favorable decision in *Andrade v. United States*. The decision resolves nine civil lawsuits filed on behalf of deceased Branch Davidians and their relatives, as well as by some survivors of the fire at the Branch Davidian compound. These are the last of the cases arising from ATF's attempt to serve a search warrant on the Branch Davidian compound outside Waco and the gun battle and siege that ensued.

The district court made the following findings with respect to the events involving ATF on February 28, 1993:

- The Branch Davidians initiated a gun battle when they fired from multiple locations at ATF agents who were attempting to serve lawful warrants;
- No ATF agent fired any shot nor used any force against residents of the Compound or the Davidians that was unprovoked;
- ATF agents returned gunfire to the Compound in order to protect themselves and other agents from death or serious bodily injury;
- At all times, the ATF agents' gunfire was directed at those areas of the Compound where they perceived deadly threats;
- ATF agents were prevented from serving the lawfully issued arrest and search warrants by the Davidians' superior fire power and defensive position; and
- ATF agents complied with the law, including identifying themselves and their purpose at the outset, in attempting to execute the arrest and search warrants at the compound.

Because the ATF agents did not fire without provocation or in an indiscriminate manner, the court concluded that the use of force by ATF agents was reasonable under the circumstances and could not result in liability.

With respect to the FBI's actions on April 19, 1993, the district court found:

- The FBI did not prevent or hinder any Plaintiff from leaving the building;
- Although the FBI fired three so-called "military" CS tear gas rounds at approximately 8:00am on April 19, 1993, at the "tornado shelter," no such rounds were fired into the main wooden structure. No Plaintiff was injured by the firing of these rounds, and they had no causal relationship to the fires which broke out shortly after noon;
- The fires where started intentionally by Davidians;
- The fires were neither caused nor contributed to by any act of the United States; and
- Davidians inside the Compound generated the only gunfire on April 19, 1993. There was no gunfire from any employee of the United States that day.

As with ATF, the district court concluded that the actions of FBI could not result in liability.

The plaintiffs have 60 days from the date of the decision to appeal to the United States Court of Appeals for the Fifth Circuit. Plaintiffs have indicated they will appeal.

cc: Under Secretary Johnson
Assistant Secretary Bresee

ADMINISTRATION HISTORY APPENDIX
CHAPTER SIX: TECHNOLOGY AND E-COMMERCE

DIGITAL
SIGNATURES



MEMORANDUM

Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

To: Secretary Rubin
Deputy Secretary Summers

From: Eugene A. Ludwig *EAL*

Date: August 21, 1997

Subject: Digital Signatures

This memo will bring you up to date on congressional activities regarding digital signatures, and summarize some important issues raised by the debate over whether a federal pre-emption of state law is needed in this area to promote electronic commerce. The subject is of broad interest to Treasury because it poses policy questions that affect all participants in retail electronic commerce, and it is relevant to the president's request that Treasury see that government flexibly accommodate the needs of emerging electronic payments systems. In addition, the OCC just received its first application to issue and store digital signatures from Zions First National Bank in Utah. Financial firms are seeking federal legislation to establish legal certainty for electronic contracts and uniform operating requirements. They also may be looking to bypass what they see as unduly burdensome provisions in some state digital signature laws.

The term "digital signature" usually refers to an electronic communication that can serve three functions: It tells the recipient of an electronic message the identity of the sender (authentication), that the message has not been tampered with (integrity), and that the identified sender is, in fact, the person who sent this message (nonrepudiation). Currently, the only way to accomplish all three functions in a secure transmission is through the use of cryptography. In the future, biometric techniques using fingerprints, for example, may well perform the authentication and nonrepudiation functions. But the message, itself, will still be encrypted.

To make this digital signature system work, experts say that designated "trusted third parties" must be authorized to certify that a digital signature is genuine. These are commonly called "certificate authorities." In one sense, these certificate authorities play a similar role to that of notaries public today. Banks and other financial institutions and technology companies are actively pursuing aspects of these business opportunities, as issuers and users of certificates for Internet and other electronic transactions.

The White House, Congress, a number of state legislators, and federal agencies are considering how to adapt current laws premised on a paper-based transactions system to one that uses electronic media. The Administration's recent *Framework for Global Electronic Commerce*, produced by Ira Magaziner, calls for the promotion of a decentralized, contractual basis of law for electronic commerce. To date, 39 states have approved or are considering digital signature/digital authentication legislation, although many states are taking significantly different approaches to the issue. As federal and state initiatives move ahead in the coming months, some may be at odds with each other, reflecting their differing interests.

It is not surprising then that some banking and financial companies interested in the digital signature and certificate authority business have turned to Congress to seek relief from this patchwork of state laws. Several large banks this summer offered draft legislation to House Banking Domestic and International Monetary Policy Subcommittee Chairman Mike Castle and Senate Banking Financial Institutions and Technology Subcommittee Chairman Bob Bennett. The banks proposed to pre-empt state law only for depository institutions, and to authorize the Federal Reserve to oversee these activities. Bennett's staff says that the Senator wants to introduce a bill similar to this one in September.

Castle held a hearing on this issue last month, and his staff is preparing a broader bill that would pre-empt state law for banks and nonbanks, thus requiring approval by the Commerce Committee as well. Drafts we have seen of the proposals being considered by Castle and Bennett both include certain limitations on liability for certificate authorities. This provision might put the legislation in conflict with the Administration's encryption policy, which proposes liability caps as an incentive to certificate authorities that volunteer to participate in a "public-private key escrow" system when using high powered encryption for domestic messages. The policy is intended to give law enforcement officials the opportunity to seek access to these messages. They already would have access to messages sent overseas using high powered encryption, because the Administration would require the key escrow system be used for exported encrypted products. This policy is reflected in Sen. John Kerry's bill to amend the Export Control Act, which awaits floor action in the Senate.

To date, banks and other financial institutions have largely escaped the acrimonious debate over the requirements of a key escrow system, because the Kerry bill and other bills before Congress would exclude banks from this provision when they are using digital signatures attached to financial payments and payments information. However, financial institutions interested in becoming certification authorities that provide digital signatures for their customers' messages, or that are interested in storing digital signatures, as key recovery agents, would not escape the escrow provisions of the legislation.

Right now, only a handful of banks are interested in becoming certificate authorities or getting into the messaging business. But, as their business evolves over time, many banks may find that they need to link messages with payments to satisfy customer needs. A further complicating factor regarding messaging is determining, as a matter of law, the point at which payment information becomes a message. For example, it is unclear whether a letter of credit or the loan documentation that often accompanies a loan payment or payment receipt would constitute payment information or a message.

As with all electronic commerce issues, the timing of government actions is often a balance between public policy goals and the nurturing of new markets. At the OCC, we are conducting our own analysis and working with staff of the Congress to closely monitor legislative developments. I also will raise the issue of digital signatures and related congressional activities at next month's e-money coordinating meeting of the bureaus. I believe that our discussion will lead to a comprehensive understanding of Treasury interests in this area, and will allow us to develop a coordinated response to the legislative proposals.

cc: Under Secretary Hawke
Under Secretary Kelly
Assistant Secretary Carnell
Senior Deputy Assistant Secretary Geithner
Deputy Assistant Secretary Rostow
Treasury Bureau E-Money Coordinating Group

ADMINISTRATION HISTORY APPENDIX
CHAPTER SIX: TECHNOLOGY AND E-COMMERCE

ELECTRONIC COMMERCE

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 14, 1997

MEMORANDUM FOR DEPUTY SECRETARY SUMMERS

FROM: JOSEPH H. GUTTENTAG
INTERNATIONAL TAX COUNSEL

THROUGH: DONALD LUBICK
ACTING ASSISTANT SECRETARY (TAX POLICY)

SUBJECT: STATE TAXATION OF ELECTRONIC COMMERCE

You asked for advice as to the role of the Treasury Department regarding the state taxation of electronic commerce. After meetings with representatives of the Multistate Tax Commission and consultation with the Office of Public Liaison, we are recommending that at present, Treasury play an active, but solely advisory role in helping the states reach a consensus on these issues without any federal intervention. However, Treasury should stress that if the states cannot resolve these issues on their own within some reasonable time period, then it will be necessary for the federal government to act.

In general, although Treasury's paper specifically stated that it was limited to federal income tax issues, state taxation of electronic commerce should be guided by the same general principles that we have proposed for federal taxation. Tax laws should be neutral with respect to whether commerce is conducted by conventional or electronic means and no new taxes should be applied to electronic commerce. A uniform method of allocating income derived from electronic commerce among the states should be devised in order to avoid double taxation and uncertainty. However, the implementation of these principles at the federal level may differ from their implementation at the state level, where there has traditionally been greater reliance on indirect taxes.

At present, attempts are being made at both the federal and state level to address the state taxation of electronic commerce. At the federal level, Ira Magaziner, while acknowledging Treasury's responsibility for tax policy issues, has stated that uniform state taxation is necessary. In addition, yesterday Senator Wyden and Representative Cox introduced a bill, the "Internet Tax Freedom Act," addressing state taxation of electronic commerce. A summary of this bill is attached. In general, it would impose a moratorium on subnational taxation of the Internet or electronic commerce, other than generally applicable income or sales and use taxes, and would require the administration to submit a comprehensive plan to address these issues. This bill will be very controversial and may raise Constitutional questions. For example, a spokeswoman for the National Governor's Association was reported as saying that they regard any federal pre-emption of state and local taxes as an unfunded federal mandate. However, industry representatives have publicly supported the bill.

At the state level, the states are attempting to develop a uniform method to tax electronic commerce. This will take place under the auspices of the National Tax Association (NTA) which will act as a neutral overseer. A preliminary meeting to discuss the scope of this work was recently held.

Since any federal pre-emption of state taxation is politically sensitive, we recommend that Treasury encourage and assist the states in developing a uniform method of taxing electronic commerce by participating in the NTA's project solely as an advisor. However, Treasury should make it clear that this is an important sector of our economy, whose growth will not be impeded by state tax rules. If the states cannot develop and implement a rational and consistent method of taxing this income within a reasonable period of time, then it may be necessary for the federal government to act and that in the interim, the states should voluntarily adopt a moratorium on the imposition of new taxes on the Internet or electronic commerce. We recommend that you announce this policy in an appropriate public forum, perhaps a meeting of the NTA. Consistent with this approach, the Administration should announce that it does not support the Cox-Wyden bill at this time, although it supports its ultimate goals.

Recommendations:

1. Participate as an advisor in the NTA project on uniform state taxation of electronic commerce and continue to participate in other U.S. and state agency initiatives in this area. This policy is to be announced at an appropriate public forum, with the caveat that Treasury will recommend that the federal government act if the states are not able to develop and implement uniform rules and that in the interim, the states voluntarily adopt a moratorium on the imposition of new taxes. Accordingly, the Administration will not support the Cox-Wyden Internet Tax Freedom Act at this time, although we support its goals.

_____ Agree _____ Disagree _____ Let's Discuss

2. Add a statement along these lines to the tax section of Ira Magaziner's paper, "A Framework for Global Electronic Commerce."

_____ Agree _____ Disagree _____ Let's Discuss

Summary of the "Internet Tax Freedom Act"

as introduced by Senator Wyden and Representative Cox on March 13, 1997

1. Imposes an indefinite moratorium of subnational taxation of the Internet, interactive computer services, and electronic commerce, except for:

- income taxes,
- franchise taxes, and
- generally applicable sales and use taxes, administered in a neutral manner.

2. Directs the Secretaries of the Treasury, Commerce, and State, in consultation with other interested parties, to study the domestic and international taxation of the Internet and electronic commerce and jointly submit appropriate policy recommendations to the President, who shall transmit appropriate policy recommendations to Congress.

3. Declares that it is the sense of the Congress that the President should seek bilateral and multinational agreements to establish that "activity on the Internet and interactive computer services is free from tariff and taxation."



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220
August 13, 1997

INFORMATION

MEMORANDUM FOR: SECRETARY RUBIN
DEPUTY SECRETARY SUMMERS

FROM: JOSEPH H. GUTTENTAG, *JS*
INTERNATIONAL TAX COUNSEL

SUBJECT: PRESIDENTIAL DIRECTIVE ON ELECTRONIC COMMERCE

When the Administration's *A Framework for Global Electronic Commerce* was released on July 1st, the President directed Treasury "to work with State and local governments and with foreign governments to achieve agreements that will ensure that no new taxes are imposed that discriminate against Internet commerce; that existing taxes should be applied in ways that avoid inconsistent national tax jurisdictions; and that tax systems treat economically similar transactions equally, regardless of whether such transactions occur through electronic means or through more conventional channels of commerce."

You have asked the Office of Tax Policy to report on how Treasury intends to implement this Presidential directive.

The tax section, attached, of the *Framework* paper was written in conjunction with the Office of Tax Policy and it reflects Treasury's overall policy on the taxation of electronic commerce, as previously set forth in Treasury's November 1996 paper, *Selected Tax Policy Implications of Global Electronic Commerce*. Treasury's basic policy is neutrality, which requires that the tax system treat economically similar transactions equally, regardless of whether such transactions occur through electronic means or through conventional channels of commerce. The best means to achieve neutrality is through an approach which adopts and adapts existing principles, including those found in our present bilateral treaty network — in lieu of imposing new or additional taxes. The *Framework* does not refer to the need for any new agreements.

An approach based on adapting existing principles has been adopted for a number of reasons. It is the best means to achieve neutrality between electronic and conventional commerce since all types of commerce will be subject to the same rules. Although one could attempt to design a new set of tax rules for electronic commerce that would have the same economic effect as current rules have in the case of conventional commerce, this is not likely to be successful. Also, existing international taxation principles, as contained in our network of bilateral tax treaties, embody a preference for taxation by the country where the person earning the income is a resident rather than by countries in which the income has its source. This approach is generally supported by U.S.-based companies, most of whom are the world leaders in their industries.

Consistent with this approach of adapting existing principles, we do not believe it is necessary at this time to negotiate any new international agreements on the taxation of income derived from electronic commerce. International tax issues, with limited exceptions, should be dealt with in bilateral tax agreements under the control of Treasury. There may be pressure in the future to enter into international agreements dealing with electronic commerce and it may be in the interests of the

EXECUTIVE SECRETARIAT

United States to do so, but, with the possibility of limited exceptions, those agreements should not deal with tax issues.

Instead, our existing tax rules and tax treaties should be reinterpreted in light of developments in electronic commerce. For example, sale of goods transactions are subject to different tax rules than intellectual property licensing transactions. However, it can be difficult to distinguish between these two types of transactions when a computer program is transferred over the Internet. Therefore, it is necessary to adapt existing principles to categorize such electronic transactions within the framework of our current tax treaties.

Treasury has been actively involved in developing the tax principles required by electronic commerce both by developing internal guidance and by raising these issues with our treaty partners. The Office of Tax Policy has been working in the OECD to develop a consensus on these issues to be used in interpreting our tax treaties with other OECD members. We have also been discussing these issues with our individual treaty partners. Although the discussions regarding these issues are at various stages, where a consensus has been reached we have generally been able to agree on rules that are acceptable.

Issues also arise in the value added tax (VAT) area. Although the same general neutrality principle applies to value added taxes, this principle may be difficult to administer because consumers can directly import electronic goods (such as computer software downloaded from the Internet) without the tax being imposed at the border. Attention is only beginning to be paid to the VAT issues raised by electronic commerce and it is premature to state whether any new agreements will be necessary. Value added taxes are subject to GATT and other international trade agreements and any issues that arise may be capable of resolution through these agreements' dispute settlement procedures. At present, the issue has only arisen in the context of certain telecommunications services in the EC and the solution adopted by the EC was satisfactory. Treasury, in conjunction with USTR, will continue to monitor developments in this area.

The Office of Tax Policy has also been implementing the Presidential directive at the state level. The current focus of activity involves the Cox-Wyden "Internet Tax Freedom Act" which would bar new state-level taxes on electronic commerce. It would also require that the Administration submit to Congress policy recommendations on domestic and international taxation of electronic commerce. The Act is consistent with the principles contained in the *Framework* and the Administration supports the goals and objectives of the Act. Deputy Secretary Summers testified at the Senate hearing on the bill and Treasury submitted written testimony for the House hearing. We have also been in frequent contact with state and local government organizations to address their concerns regarding the bill's tax moratorium and have been working with the Hill staff to improve the text of the bill. In addition, an Office of Tax Policy representative recently spoke at the annual meeting of the Multistate Tax Commission, an influential organization of state tax officials, and convinced them to take a more moderate position on the bill and to work with us on this issue.

To give you an idea of the nature, diversity and amount of work we are doing in this area, attached is a schedule of forthcoming international meetings with respect to taxation of electronic commerce.

Tax Section of

A Framework for Global Electronic Commerce

I. Financial Issues

1. CUSTOMS AND TAXATION

For over 50 years, nations have negotiated tariff reductions because they have recognized that the economies and citizens of all nations benefit from freer trade. Given this recognition, and because the Internet is truly a global medium, it makes little sense to introduce tariffs on goods and services delivered over the Internet.

Further, the Internet lacks the clear and fixed geographic lines of transit that historically have characterized the physical trade of goods. Thus, while it remains possible to administer tariffs for products ordered over the Internet but ultimately delivered via surface or air transport, the structure of the Internet makes it difficult to do so when the product or service is delivered electronically.

Nevertheless, many nations are looking for new sources of revenue, and may seek to levy tariffs on global electronic commerce.

Therefore, the United States will advocate in the World Trade Organization (WTO) and other appropriate international fora that the Internet be declared a tariff-free environment whenever it is used to deliver products or services. This principle should be established quickly before nations impose tariffs and before vested interests form to protect those tariffs.

In addition, the United States believes that no new taxes should be imposed on Internet commerce. The taxation of commerce conducted over the Internet should be consistent with the established principles of international taxation, should avoid inconsistent national tax jurisdictions and double taxation, and should be simple to administer and easy to understand.

Any taxation of Internet sales should follow these principles:

- It should neither distort nor hinder commerce. No tax system should discriminate among types of commerce, nor should it create incentives that will change the nature or location of transactions.
- The system should be simple and transparent. It should be capable of capturing the overwhelming majority of appropriate revenues, be easy to implement, and minimize burdensome record keeping and costs for all parties.

- The system should be able to accommodate tax systems used by the United States and our international partners today.

Wherever feasible, we should look to existing taxation concepts and principles to achieve these goals.

Any such taxation system will have to accomplish these goals in the context of the Internet's special characteristics -- the potential anonymity of buyer and seller, the capacity for multiple small transactions, and the difficulty of associating online activities with physically defined locations.

To achieve global consensus on this approach, the United States, through the Treasury Department, is participating in discussions on the taxation of electronic commerce through the Organization for Economic Cooperation and Development (OECD), the primary forum for cooperation in international taxation.

The Administration is also concerned about possible moves by state and local tax authorities to target electronic commerce and Internet access. The uncertainties associated with such taxes and the inconsistencies among them could stifle the development of Internet commerce.

The Administration believes that the same broad principles applicable to international taxation, such as not hindering the growth of electronic commerce and neutrality between conventional and electronic commerce, should be applied to subfederal taxation. No new taxes should be applied to electronic commerce, and states should coordinate their allocation of income derived from electronic commerce. Of course, implementation of these principles may differ at the subfederal level where indirect taxation plays a larger role.

Before any further action is taken, states and local governments should cooperate to develop a uniform, simple approach to the taxation of electronic commerce, based on existing principles of taxation where feasible.

Forthcoming International Meetings Involving Taxation of Electronic Commerce

This is only a partial list to demonstrate the extensive interest in this subject and does not include bilateral tax treaty negotiations at which these issues will be considered.

- September, 1997 Bamberg, Germany: Meeting of G-4 (US delegation headed by Acting Assistant Secretary Lubick) — Discussion of Information Technology lead by IRS including compliance issues raised by electronic commerce
- September, 1997 Paris, France: Meeting of tax treaty group of OECD to consider tax treaty issues including electronic commerce
- October, 1997 New Delhi, India: Meeting of the International Fiscal Association — Discussion of income tax treaty issues raised by electronic commerce
- November, 1997 Turku, Finland: OECD Conference “Dismantling Barriers to Electronic Commerce” — A precursor to the proposed 1998 conference in Vancouver and includes one-half day devoted to taxation in conjunction with the business community.
- 1998 Vancouver, Canada: Proposed OECD Conference “A Borderless World — Realizing the Potential of Global Electronic Commerce”



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220
August 22, 1997

MEMORANDUM FOR: SECRETARY RUBIN
DEPUTY SECRETARY SUMMERS

FROM: TIM GEITHNER 

SUBJECT: *A FRAMEWORK FOR GLOBAL ELECTRONIC COMMERCE:*
PRESIDENTIAL DIRECTIVE ON ELECTRONIC
COMMERCE

You asked for a report on how we intend to implement the Presidential directive on electronic commerce with respect to electronic money.

In the Administration's *Framework for Global Electronic Commerce*, released on July 1st, the President directed the Department of the Treasury "to cooperate with foreign governments to monitor newly developing experiments in electronic payments systems; to oppose attempts by governments to establish inflexible and highly prescriptive regulations and rules that might inhibit the development of new systems for electronic payment; and as electronic payment systems develop, to work closely with the private sector in order to keep apprised about policy development and ensure that governmental activities flexibly accommodate the needs of the emerging marketplace."

The electronic money section of the *Framework* paper was written in conjunction with the Office of the Comptroller of the Currency and with the help of the Office of the Assistant Secretary for International Affairs. The recommendations in the paper are consistent with Treasury and OCC's previous policy initiatives in the area of electronic payment systems.

Treasury and OCC's view is that the emerging nature of new payments systems requires a flexible approach and that early regulation would be premature. Treasury is also committed to opposing attempts by governments to establish inflexible and overly restrictive regulations and rules that might inhibit the development of new systems for electronic payment. For example, Treasury has taken the position that non-banks should not be prohibited from issuing electronic currency.

Within Treasury, OCC has taken the lead on the issue of e-money. However, within the context of the G-10 process, last year, on behalf of Treasury, I chaired and led a delegation to a G-10 Ministers and Governors Working Party on Electronic Money which completed and issued a report. The conclusions of this report were adopted by the Ministers at the Denver Summit of the Eight.

Looking ahead, the most active forum for carrying out the President's directive will be the Basle Committee on Banking Supervision where Treasury is represented via the Comptroller of the Currency. Comptroller Ludwig co-chairs the electronic money sub-committee of this group. However, a number of other fora may also offer the opportunity to

pursue appropriate policy initiatives as well. These are described in the accompanying memo which OCC has prepared.

In OCC's view, the fora described in this memo will provide adequate means to fulfill the President's directive "to cooperate with foreign governments to monitor newly developing experiments in electronic payments systems" and "to oppose attempts by governments to establish inflexible and highly prescriptive regulations and rules that might inhibit the development of new systems for electronic payment."

Nevertheless, it may prove necessary to explore these issues in other fora. OASIA and OCC will monitor developments and, if necessary, raise these issues wherever appropriate.

The second element of the President's directive is that Treasury "work closely with the private sector in order to keep apprised about policy development and ensure that governmental activities flexibly accommodate the needs of the emerging marketplace."

The primary existing mechanism for formalized input from the private sector is the Consumer Electronic Payments Task Force. Composed of the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of Atlanta, the FDIC, the FTC and, within Treasury, the FMS, the OCC and the OTS, and chaired by Comptroller Ludwig, this group has conducted informal exchanges with industry officials and has held public meetings. The task force will prepare a final product on these matters by the first quarter of 1998.

In addition to this forum, staff of OCC, FinCEN, the Secret Service and other bureaus have regular informal contact with industry officials. Treasury staff will continue to hold informal meetings with industry officials from time to time and schedule meetings with senior officials and industry leaders to keep abreast of the emerging marketplace.

The attached memo from the Office of the Comptroller of the Currency describes each of the fora in which international cooperation is currently underway and the current and planned activities in each.

2. ELECTRONIC PAYMENT SYSTEMS

New technology has made it possible to pay for goods and services over the Internet. Some of the methods would link existing electronic banking and payment systems, including credit and debit card networks, with new retail interfaces via the Internet. "Electronic money," based on stored-value, smart card, or other technologies, is also under development. Substantial private sector investment and competition is spurring an intense period of innovation that should benefit consumers and businesses wishing to engage in global electronic commerce.

At this early stage in the development of electronic payment systems, the commercial and technological environment is changing rapidly. It would be hard to develop policy that is both timely and appropriate. For these reasons, inflexible and highly prescriptive regulations and rules are inappropriate and potentially harmful. Rather, in the near term, case-by-case monitoring of electronic payment experiments is preferred.

From a longer term perspective, however, the marketplace and industry self-regulation alone may not fully address all issues. For example, government action may be necessary to ensure the safety and soundness of electronic payment systems, to protect consumers, or to respond to important law enforcement objectives.

The United States, through the Department of the Treasury, is working with other governments in international fora to study the global implications of emerging electronic payment systems. A number of organizations are already working on important aspects of electronic banking and payments.⁶ Their analyses will contribute to a better understanding of how electronic payment systems will affect global commerce and banking.

The Economic Communique issued at the Lyon Summit by the G-7 Heads of State called for a cooperative study of the implications of new, sophisticated retail electronic payment systems. In response, the G-10 deputies formed a Working Party, with representation from finance ministries and central banks (in consultation with law enforcement authorities). The Working Party is chaired by a representative from the U.S. Treasury Department, and tasked to produce a report that identifies common policy objectives among the G-10 countries and analyzes the national approaches to electronic commerce taken to date.

As electronic payment systems develop, governments should work closely with the private sector to inform policy development, and ensure that governmental activities flexibly accommodate the needs of the emerging marketplace.

⁶ E.g., the Committee on Payments and Settlement Systems of the Bank for International Settlements, the Basle Committee on Banking Supervision, and the Financial Action Task Force.

U.S. Participation and Interests in International Initiatives on Electronic Payments

The United States government is represented in a number of international fora dealing with electronic payments. Those efforts deal with the safety and soundness of the payment system, law enforcement issues, consumer protection issues, and cross-border issues. The most active arena currently is the Basle Committee on Banking Supervision. Other fora in which U.S. government representatives participate are following up on initiatives taken last year.

The Treasury department and other agencies also monitor electronic payments issues in other international fora in which the U.S. government is not a participant, but which directly affect U.S. interests. The European Monetary Institute and the European Commission are particularly important, and both are actively engaged in pursuing electronic payments initiatives.

Basle Committee on Banking Supervision. The Treasury Department is represented via the Office of the Comptroller of the Currency on the Basle Committee on Banking Supervision. Supervisory officials from the Federal Reserve and the FDIC are also members. At the urging of Comptroller Ludwig, the Basle Committee has established a working group which is in the process of analyzing risks for banks associated with the provision of electronic money and electronic banking services. The working group will soon compose general guidance supervisors should consider in managing those risks. The working group plans to submit a report to the Basle Committee in November 1997, and the report is scheduled to be finalized by year-end 1997. The next meeting of the working group is planned for the spring of 1998.

G-10 Ministers and Governors Working Party on Electronic Money. Treasury chaired, and sent a delegation to, a G-10 Working Party which reported on consumer protection, law enforcement, supervisory, and cross-border issues related to electronic money. The Working Party's work was completed with the presentation of its report to the G-10 Ministers and Governors. The report was also released to the public.

Bank for International Settlements. The Federal Reserve is a member of the Governors of the G-10 Central Banks under the auspices of the Bank for International Settlements. In 1996, groups reporting to the G-10 Governors produced a series of five studies on various aspects of retail electronic money. Topics covered include security, regulatory, legal, law enforcement, and monetary policy issues. Currently, in accordance with recommendations in those studies, the G-10 Governors are monitoring and gathering information on electronic money developments. In that vein, the G-10 Governors have produced the first of their semiannual surveys on electronic money developments in the G-10 and other countries. The next survey is due in the fall of 1997.

Financial Action Task Force (FATF). Treasury law enforcement authorities represent the U.S. on the FATF, an inter-governmental body created by the G-7 countries to develop and promote policies to combat money-laundering. In June 1996, FATF revised its anti-money laundering recommendations to include a specific recommendation encouraging countries to pay special attention to money laundering threats inherent in new payment technologies. Late in 1996, FATF members met with industry representatives to discuss law enforcement concerns, and how

the industry could respond to FATF recommendations. Those discussions led to the commitment by FATF members to continue a dialogue with industry representatives. The next meeting with industry representatives will be in the spring of 1998 and e-money will be among the topics of discussion.

International initiatives on electronic payments in which the U.S. has a policy interest. Both the European Monetary Institute (EMI) and the European Commission (EC) are considering proposals to member countries that issuance of electronic money not be confined only to credit institutions, and that nonbank issuers not be subject to the full panoply of banking regulations. Those recommendations signal a shift in regulatory posture away from more restrictive measures which many European nations had enacted or contemplated, to regulatory regimes that may make it less difficult for U.S. firms to exploit competitive advantages in new payments technologies. The EMI task force dealing with these issues hopes to make concrete recommendations by year-end 1997. The EC intends to draft a proposal by late 1997 or early 1998 for a directive on e-money issuance. Prior to issuing the draft, the EC will be seeking informal input from the OCC, Federal Reserve Board, and industry representatives in the U.S. and abroad.

TREASURY CLEARANCE SHEET

No. _____
Date: August 25, 1997

MEMORANDUM FOR: SECRETARY DEPUTY SECRETARY EXECUTIVE SECRETARY
 ACTION BRIEFING INFORMATION LEGISLATION
 PRESS RELEASE PUBLICATION REGULATION SPEECH
 TESTIMONY OTHER _____

FROM: Timothy Geithner
 THROUGH: _____
 SUBJECT: A Framework for Global Electronic Commerce

REVIEW OFFICES (Check when office clears)

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| <input type="checkbox"/> Under Secretary for Finance
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<input type="checkbox"/> Management
<input type="checkbox"/> OCC | <input type="checkbox"/> Policy Management
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<input type="checkbox"/> Public Affairs/Liaison
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NAME (Please Type)	INITIAL	DATE	OFFICE	TEL. NO.
INITIATOR(S) Mike Moynihan			DO/UI&I	622-0182
REVIEWERS				

SPECIAL INSTRUCTIONS

Review Officer _____ Date _____ Executive Secretary _____ Date _____



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

February 20, 1998

INFORMATION

MEMORANDUM FOR SECRETARY RUBIN

THROUGH:

John D. Hawke, Jr. *JDH*
Under Secretary for Domestic Finance

FROM:

Richard S. Carnell *RC*
Assistant Secretary for Financial Institutions

Gregory A. Baer *GB*
Deputy Assistant Secretary for Financial Institutions Policy

Meg Lundsager *ML*
Deputy Assistant Secretary for Trade & Investment Policy

SUBJECT:

Data Privacy Issues in Electronic Commerce and Banking

Introduction:

Although privacy issues have always been with us, the rapid expansion of electronic commerce has heightened concerns about who can access information that one would prefer to keep confidential. We met with Deputy Secretary Summers yesterday to discuss these issues. Set out below is a summary of where we are and where we'd like to go.

Status:

On the domestic front, as part of the White House's electronic commerce initiative, headed by Ira Magaziner, Treasury has been assigned responsibility for the issues of internet taxation and electronic payment systems. Under the same initiative, the President directed the Commerce Department and OMB to encourage private industry and privacy advocacy groups to develop effective codes of conduct, industry developed rules, and technological solutions to protect privacy on the Internet. Commerce expects to submit a report on privacy by July 1.

- Commerce has developed a "discussion draft" of privacy principles and enforcement tools for self-regulatory regimes. Ira Magaziner, Secretary Daley, and other Commerce officials are seeking industry conformance to these principles.

- Separately, Sally Katzen, now at the NEC, is exploring the idea of establishing a privacy office. An interagency working group has been formed, but the existence, scope, and location of the office are still to be determined.

On the international front, the European Union Privacy Directive takes effect in October, and is intended to restrict European data flows to any nation that does not provide "adequate" privacy protections. European national law and the Privacy Directive provide a higher degree of protection for European citizens against the unauthorized collection, use and transmission of personal data than is provided under U.S. law. The Europeans take a centralized, comprehensive approach, whereas U.S. tradition favors decentralization.

- Stringent, literal-minded enforcement of the Directive would seriously disrupt data flows to the United States, but no one expects such hard-line enforcement. On the other hand, no one expects the EU to disregard its own directive.
- Commerce staff has initiated negotiations with EU officials, suggesting industry adherence to Commerce's privacy principles as a potential compromise.

Concerns:

Numerous financial services groups and providers -- ABA, Consumer Bankers Association, Securities Industries Association, Chase, Citibank, the Coalition of Service Industries -- have told us of their concern that the financial services industry is not adequately represented in the Commerce/Magaziner process and that Commerce's one-size-fits-all privacy principles are a poor fit for the financial services industry.

Practically speaking, no one really knows what the Europeans will do, including the Europeans. (One possible scenario is limited enforcement against only those firms or industries with the worst practices.) Given this uncertainty, we have some concern that Treasury's interests could be compromised by Commerce discussions of its draft principles with EU officials without prior consultation.

Objectives:

Our objectives at this time are to: 1) ensure a separate "carve out" for financial services in the policy process, with Treasury taking the lead in this area; 2) urge the EU to recognize the uniqueness of the financial services industry; and 3) signal to industry the need for urgent and concerted effort to address the electronic personal data privacy concerns of

domestic consumers and international governmental authorities. Although some industries, such as banking, have some protections in place, others do not.

Next Steps:

- Undersecretary Hawke will encourage Sally Katzen to confer with Ira Magaziner about establishing a more formal NEC (or perhaps DPC) process around the privacy issue, with Treasury having the lead for the financial services industry. Mr. Summers's staff representative at the Magaziner meetings, Michael Moynihan, broached the subject of Treasury's leadership in financial services yesterday with Mr. Magaziner, who seemed amenable to the idea. Treasury staff will meet with Commerce officials directly to discuss how we can facilitate the process.
 - Following consultation with industry representatives and financial regulatory agencies, Treasury will develop a position on the adequacy of personal data protection in financial services. The position will reflect the unique characteristics of the trust-based industry and its highly regulated environment.
 - All efforts will proceed with a recognition that Treasury can serve most effectively as a shepherd, rather than director, of effective and efficient protection of personal data by financial services firms. U.S. firms' strategic leadership in electronic commerce is at stake. Preemptive action may also forestall undesirable legislative action.
 - Once we have a clearer idea of the appropriate balance to strike between consumers' interest in a more *dirigiste* approach to personal data privacy and industry's satisfaction with the generally *laissez-faire* status quo, we may want to encourage industry action. This could be done through public expressions of Treasury's position in selective fora.
 - A USTR-led interagency group is examining the possibilities for sectors and issues that the United States would suggest including in Sir Leon Brittan's Transatlantic Initiative (if we and the EU decide to launch this initiative this spring). Treasury will suggest that we should include our concerns about how the EU privacy directive might be enforced.
- cc: Deputy Secretary Summers, David Medina, Penny Rostow, Michael Moynihan, Ben Jones, Joan Affleck-Smith, Susan Hart, Sara Cavendish

1999-SE-011505

The Deputy Secretary of the Treasury

October 18, 1999

NOTE FOR KAREN KORNBLUH

Senior Advisor to Deputy Secretary

FROM: STUART E. EIZENSTAT

SUBJECT: Treasury Electronic Commerce

Your memo on e-commerce is excellent. See comments. I would like to really get on top of this issue.

Is there anything I can do to get into the banking area given the working group? The SEC seems to have full control over trading.

The question, with all the actions involved and the Beier/Katzen task force, is where there is room to get into this.

Comments: ok.

ok, but I cannot personally attend each week.

ok-KK, you do

Yes.

No.

This could be held out for the future.

Attachment

cc: Carolyn Keene

Room 3326

622-1080

SEE HAS SEEN

OCT 11 1999

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MEMORANDUM

TO: SEE
FROM: Karen
SUBJECT: Treasury Electronic Commerce Activities and Agenda Development

Per your request, below is a summary of the major e-commerce activities at Treasury. Most of this information has been garnered from the Office of Tax Policy and Domestic Finance, which are working on these activities directly.

As this incomplete list illustrates, Treasury offices and bureaus are working on a broad array of e-commerce policy issues central to Treasury's mission and to the broader debate on the governance of the digital economy. However, many of these activities have not risen to the level of even Asst Secretary-attention, let alone Deputy Secretary or Secretary. The danger is that without more high-level attention, Treasury's policymaking suffers from lack of an integrated perspective and our interests are not preserved in debates within the Administration, with Congress, and with the business community. Just this week, OTP and Econ Policy were each poised to raise concerns with the Administration's proposed "broadband" initiative -- without knowing the other had similar concerns and so without the help of the other's arguments.

My recommendation, for what it's worth, would be that:

- Those e-commerce issues listed below be added to relevant weekly meeting discussions so that you and the Secretary can provide input and a sense of import;
- You endorse (by mentioning it at the various weeklies) David Wilcox's idea of holding a weekly seminar with outside experts (e.g., Joe Farrell, former FCC Chief Economist and expert in telecommunications regulation, Craig Mundy, Microsoft's point man on the merging of the TV and the Internet industries) which will serve as an informal method of bringing together different interested offices within Treasury;
- You and/or the Secretary ask the various offices to submit their e-commerce agendas and then have someone on your or the Secretary's staff convene a meeting to produce a Treasury policy agenda which can be articulated in a speech by you or him.

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Taxation of E Commerce

Internet Freedom Act Commission

Background

Currently, out-of-state purchases (e.g., from a catalog, over the Internet) are not subject to sales tax unless the company selling the product has an "nexus" (e.g., a store) in the same state as the purchaser. The Supreme Court ruled that requiring remote sellers to collect a sales tax imposed an undue administrative burden on them. As a result, these remote purchases are subject only to a "use" tax which purchasers are required to report and pay when they file their annual returns. Few taxpayers report and enforcement is virtually impossible.

This state of affairs became a great cause for concern among the states and localities as projected growth in e-commerce threatened dramatic cuts in their revenue (estimates vary widely). They began to contemplate and in some cases impose Internet taxes. The e-commerce community went to Congress.

Issue

The Internet Freedom Act, endorsed by the President, imposes a moratorium on new Internet taxes until November 2001. In the meantime, it calls for a Commission composed of 18 members -- including one member each from Treasury, Commerce and USTR -- to report to Congress by May 2000 on possible solutions. The Commission as its Chair selected Virginia Governor Gilmore. Treasury is the lead agency within the Administration and is represented by Joe Guttentag, the Treasury (and Administration) expert on Internet taxes. However, the White House is heavily involved because of the delicacy of the subject matter and there is no agreement yet on a strategy to promote any given recommendation or to prevent being scapegoated if the Commission deadlocks, as it well might.

The most likely outcomes at this point:

- Deadlock between those Commissioners like Grover Norquist who believe that the Internet should be a tax-free zone and those state and local government representatives who insist that e-commerce be subject to the same taxes as all other commerce.
- States simplify taxation so that there are uniform definitions and one rate per state. ^{Ms} ^{Ms} In return, Congress requires sellers to collect taxes on remote sales. The problem is getting all localities and states to agree to the simplification. A variant creates an incentive for local governments: an "opt-in" approach in which any state that simplifies is entitled to tax.

This could be held out for the future.
Progressive Policy Institute and Ira Magaziner have separately proposed a "technology" solution that would have a third party (e.g., credit card company) collect taxes on payment. The implementation issues are so vast that most of the companies on the Commission and

elsewhere have rejected this option but perhaps it holds promise for the future.

- Commission could agree to principles for any legislative action. Principles might include that all remote purchases (whether on Internet or from catalog) treated same; simplification should be prerequisite for collection; Internet should not be tax haven not should it bear disproportionate burden, etc.

International

Joe Guttentag and his team, notably Mike Mundaca, through persistent work especially with the OECD have achieved general acceptance for Treasury's principle of non-discrimination and transparency in taxation.

Internet Banking

Background

Internet banking allows a consumer with access to the Internet to access the bank's Web site and – after providing his ID and password – to access his account in order to obtain account information, move money among accounts, get and pay bills on-line, and shop for mortgage, insurance, mutual fund and other services. Vendors are developing smart cards onto which a consumer could transfer “withdrawals” electronically at his computer. (Checks will still need to be deposited by mail or hand.) PC banking, an older technology that requires a customer to load special software onto his computer, is still widely used but expected to be replaced by Internet banking.

Treasury's Office of Financial Institutions Policy has collected data on the growth of Internet banking:

- In December 1995, only 245 institutions had Web sites and only one was transactional (allowed customers to transfer funds or make payments). By June 1999, more than 5,100 institutions offered online banking, and about 25 percent of their sites were transactional (GAO)
- Approximately three to four percent of US households currently use online banking. (Goldman Sachs) Analysts predict that online banking may grow to twelve to twenty percent of US households in the next three years.
- More than 40 percent of the largest consumer banks offer Internet services. Wells Fargo has offered Internet banking since May 1995 and says that it has 840,000 Internet banking customers, which is the largest number of Internet banking customers at one bank. First Union says that it is opening 3,000 to 4,000 online accounts a day and that twenty percent of those are customers new to the bank.

In addition to existing banks that provide Internet banking services, Internet-only banks are cropping up. There are six so far. There is some dispute about whether or not branchless banks enjoy lower overhead than traditional banks. They claim they do and the Office of Financial Institutions Policy reports that NetBank's non-interest expenses in fourth quarter 1998 were 1.6% of earning assets vs. the 4.4% average for similarly-sized traditional banks. However, OTS reports that in general Internet bank overhead is not lower. They do offer better rates and lower fees. Telebank, the largest Internet-only bank, says it has more than 700,000 customers. The bank reported that it topped \$2 billion in total assets in the fourth quarter of 1998, making it one of the 50 largest savings banks. Telebank was recently bought by E-Trade group Inc., the second largest securities broker on the Internet.

In your meeting with Ellen Seidman, she shared her concern that Internet banks have a short-term focus unhealthy for the safety and soundness of the system. OTS sees three factors that give rise to this concern: (1) They feel that a risky asset base is almost a given for an Internet bank which cannot originate loans (they argue that origination requires in-person contact) and so purchases shorter-term assets such as loan packages or securities. (2) It so happens that many of the investors entering the Internet banking field are using the Internet business model of focusing on building market share rather than profitability and so offer rates that do not cover their costs (in contradiction of their claims that their rates reflect lower costs). (3) Other investors are looking to show a quick profitability in order to sell the bank and so "reach for yield," or seek assets with quick, high returns, to make up for the low rates they offer.

Issue

The banking regulators have formed an Internet Banking task force through the FFIEC and chaired by OTS. They are contemplating a new guidance laying out what they will look for in a charter application. They may need policy guidance to balance the need to safeguard the deposit insurance system on the one hand and the goal of encouraging innovation in the banking industry on the other. They are leaning towards requiring Internet banks to hold far more capital than brick-and-mortar banks and a to have a business plan built around obtaining a stable asset base. They may also lay out concerns about existing banks allowing investors to set up Internet banking businesses under their charters – allowing the circumvention of the charter process. Such requirements would certainly constrain experimentation in this industry more than it has been in non-regulated industries.

Bank regulators may need policy guidance as they begin to discuss how various existing financial laws, such as laws regarding consumer protection, CRA and safety and soundness apply to Internet banking. HR10 would require the federal banking agencies to conduct a study and report to Congress on adapting existing requirements on the delivery of financial services to online banking and lending.

Internet Trading

There are more than 100 firms specifically devoted to online trading, up from none in 1994. Full service brokerage firms have started offering online trading as well. The largest online brokerage, Charles Schwab, has a 28 percent market share and handled 61 percent of all its customer trades on the Web last year. Low commissions (the top ten online firms charge on average \$15.75 per trade, compared with a minimum fee of approximately \$50 for traditional brokerage firms) and ease of access have led to a rapid growth in use:

- The more than 7 million online brokerage accounts in the U.S. represent approximately 20 percent of all accounts. That percentage is expected to double in two years. In the last year, online customer assets have doubled to \$420 billion
- Online stock trades increased to an average of 496,074 a day in the last quarter of 1999 –up 49 percent from the last quarter of 1998. (NASD)

Issue

Treasury has largely left this issue to the SEC which has focused on the execution of trading orders, disclosing trading risks and Internet fraud. The SEC is studying Internet trading and SEC Chairman Leavitt has spoken on the issue. He has announced plans to double the staff of its "Cyberforce," which searches for Internet fraud, but has said that the SEC has no immediate plans to propose regulations on online investing.

Privacy

Background

Last year the Vice President called for an Electronic Bill of Rights giving customers the right to choose whether their information is disclosed; how, when and how much of that information is used; and to see the information themselves.

However, the Federal Credit Reporting Act only requires "opt out" for sharing of certain information with certain types of entities:

	<u>Affiliate</u>	<u>Third Party</u>	<u>Credit Agencies</u>
Transactional Info	Permitted	Permitted	Permitted
Other Nonpublic Personal Info (e.g., income, credit history)	Notice & opt-out required	If on a regular basis, notice, access, verification & opt-out required	Notice, access, verification & opt-out required

And only the Fed can issue "interpretations" of FCRA.

Issue

The President in May called for amendments to existing law requiring institutions to give customers the right to "opt out" of sharing of transactional and non-transactional personal information with third parties or affiliates and prohibiting institutions from sharing medical information.

HR 10 privacy provisions do not go as far as the President requested. The bill would require financial opt-out rights for non-transactional personal information shared with third parties – it does not apply to information shared with affiliates or non-transactional information. The bill also would remove prohibitions in the FCRA against rulemaking by federal banking agencies and eliminates constraints on the regulators' ability to examine financial institutions for compliance with the FCRA. It also would require Treasury to report to Congress on information sharing practices among financial institutions and their affiliates and includes pretext calling provisions.

Senator Sarbanes, Senator Leahy and Congressman Markey have each introduced legislation that goes further and Gary and Secretary Summers have endorsed opt-out for some sharing of transactional information with affiliates.

Meanwhile, more voluntary efforts are underway. The OCC has issued guidance to national banks on Web site privacy statements. The guidance provides national banks with examples of effective practices for information consumers who access bank Internet sites about bank privacy policies for the collection and use of personal information. The guidance also discusses examples of effective practices for the development of bank privacy policies and for ensuring adherence to those policies.

The FTC in a report to Congress this July on overall Internet privacy endorsed industry self-regulation rather than government action. It outlined four core privacy principles for industry to follow voluntarily: notifying Internet users of a site's practices; permitting consumers a choice

about the use of data collected from them; giving users access to that information an a chance to challenge it; and taking reasonable steps to ensure that information complied by a Web site is accurate and secure from unauthorized use. A poll of the most popular Web sites shows 81 percent post privacy policies, yet only 10 to 20 percent follow all four FTC guidelines.

Effect on Economy

Broadband Deployment, Access & Competition

Background

The regional Bell operating companies are forced by regulations implementing the Telecommunications Act of 1996 to open their markets to competitors in order to enter long-distance. They argue that their regulatory burdens make it unprofitable for them to deploy the infrastructure that allows fast transmission of large amounts of data ("broadband") to rural areas. Two of the companies commissioned a study showing that the rural states with the lowest broadband penetration were those with the most stringent regulation. Twenty Senators, persuaded by their argument have asked the White House to back regulatory relief. Competitive local phone companies argue that the competition the Act spawned is driving competition and relief for the Bells would slow deployment. Senator Daschle is holding an event with the competitive providers and others to demonstrate the advantages of competition for rural deployment.

AOL joins the Bells in arguing that they are stymied from offering rural access and in addition argues that ATT and other cable companies will be the only provider of broadband in these rural areas. They go on to argue that because the law and regulation impose no requirement on cable to be a "common carrier" these cable companies will limit access to Internet service providers and content producers with whom they have financial arrangements – stifling the competition the ISP market and thereby stifling the openness of the Internet.

The FCC has issued one study on deployment making a case against the need for government action at this time. It instead plans to review deployment annually. It also demurred from regulating "cable open access" arguing that it is too soon to tell if there is or will be a problem. Instead, the Commission laid down a marker to the industry that it will step in if it sees problems emerging.

The FCC is also in the process of reforming universal service – the vast system of telecommunications cross-subsidies that support access by rural and low-income users and schools and libraries through fees on all phone service. There is some talk of adding broadband to the list of subsidized services – which would necessitate increasing the cost of all phone service dramatically if not accompanied by an effort to target the recipient pool narrowly.

Issue

The e-commerce working group chaired by David Beier and Sally Katzen is circulating for comment an Administration policy paper calling for specific actions to promote broadband deployment -- including giving the Bells some regulatory relief and expanding universal service to cover broadband -- and a letter to the FCC asking for study on specific issues of competition and "open access." Treasury has been asked to critique the economic arguments made by the industries and to comment on the draft papers. Both Econ Policy and OTP have reviewed the Administration drafts and have serious concerns about the approach they propose taking -- but neither has yet shared these concerns with the White House.

Productivity Increases

The Internet is changing the structure and behavior of American companies and industries whether or not they are in the electronic industry. Among other factors, it has changed distribution and has improved communication within companies and between companies, their suppliers and their customers. Econ Policy has been following the data and the debate on the effect of technology on productivity. This issue is of course central to understanding issues effecting the stock market and the overall working of today's economy.

Electronic Payments

Background

Treasury was charged by the President a year ago with monitoring developments in electronic payments and working to ensure that the goals of consumer protection and prevention of fraud were met. Most payments today are made by credit card. However, much discussed for future use is "electronic cash" -- a method for transferring monetary value in real time using a smart card or an electronic wallet. It requires sophisticated encryption and authentication technology but can result in lower authentication costs over time. "Electronic checks" are an IOU with room for detailed transactional information for recordkeeping.

FMS is running a number of pilot projects to experiment with a number of technologies, vendors and processes for federal government electronic payments:

- Treasury/FMS is the largest supplier of "stored value" smart cards in the world. The Army and Airforce already use for payroll at all Army training centers and VA medical centers provide cards to patients. Reloadable smart cards are issued to the individuals who can load value on the cards at ATMs and use them at terminals in cafeterias, retail stores and vending machines. Smart cards work well in closed environments to eliminate paper processes.

FMS is conducting one test in Bosnia to see if it can reduce the cost of shipping, securing and accounting for coin and currency in the region; increasing usage of the convertible mark in

Bosnia; and reducing the use of US currency for black market and gambling activities.

- FMS working with Citibank to provide 30 companies electronic wallets they can use to purchase technical documents from Commerce "electronic cash."
- FMS is using electronic cash to pay selected vendors
- FMS is testing the e-check as a Federal disbursement mechanism for vendor payments. DOD is using electronic checks to pay 50 contractors
- Customs, INS, VA and BEP are piloting digitally storing and processing paper checks
- FMS encouraging agencies to conduct financial transactions with the public online via credit card. BEP, BPD, and Mint are selling products by credit card from Web sites. FCC and Patent Office allow payment of fees by credit card over the Internet
- FMS leads an inter-agency team to implement use of a Government Purchase Card for making retail payments between Federal entities. Settlement for these transactions will occur within the Treasury's General Account.

The IRS has created an electronic tax administration (ETA) to spearhead electronic filing and payment. Taxpayers can now file electronically, paying their taxes using a credit cards and even using a PIN code so that they need not also file a separate signed paper document.

The EU has issued a directive on e-money requiring issuers to retain reserves and the Basle supervisors Small Group is discussing the issues surrounding e-payments. The OCC has issued a guidance alerting banks to the risks of such payments.

Issue

Treasury may want to think about how to draw lessons from FMS' various experiments and whether and how to disseminate these within the government and to the private sector. Because of Treasury's huge presence in the market, our purchasing decisions will influence development and use of technology.

Other issues that might be worth examining include the effect of an increase in e-payments on monetary supply and broad safety and soundness issues.

Security

Digital Signature/Authentication of Digital Transactions

Background

"Digital signatures" verify the identify of an electronic message's author and are necessary for sensitive transactions (e.g., making payments, agreeing to contracts, making orders). In January 1998, the OCC approved an application by Zions First National Bank to be the first financial institution to serve as a "certification authority," offering digital signatures for different uses, and there are now a number of such certification authorities.

Treasury has been work with OMB to develop a digital signature policy and standards of electronic authentication for the entire federal government.

FMS (which handles approximately 85 percent of government payments) is also conducting a pilot study with the Fed that gives government financial officers the authority to make wire transfers for electronic payments. FMS would be the certificate authority. In addition, selected agencies now have the option of using digital signatures for financial documentation and intra-agency payments. The IRS also has a pilot in which tax preparers can issue PIN numbers to taxpayers filing electronically -- so that they need not send in a hard copy of a signed return even when filing over the Internet.

Issue

Legislation reported out of both the Senate and House Commerce Committees would preempt state laws invalidating electronic signatures in e-commerce transactions. The Senate bill would withdraw the preemption for states adopting laws based on the National Conference of Commissioners of Uniform State Law's model Uniform Electronic Transactions Act. The Administration opposes the House bill -- which takes a more heavy-handed approach to the preemption and prescribes appropriate technologies -- and supports the Senate bill. Both bills are now held up by consumer group concerns that the bills would increase the burden on consumers to prove that a transaction was invalid but may move to the floor if consumers are carved out of the bill's provisions.

The banking regulators have a serious concern that the House legislation will compromise their ability to regulate in this area as safety and soundness concerns arise. These concerns were reflected in the letter opposing the bill send by the Commerce Dept to Chairman Bliley however the amendment the OCC and other banking agencies drafted has only been offered to Commerce - the lead agency on this legislation -- and has not gone to the Hill.

Encryption

Background

Encryption is the technology that allows users to secure messages (e.g., the transmission of balance information between a bank central office and an ATM) and authenticate them (e.g., through construction of a digital signature system). As more of the financial industry and the economy rely on electronic transmissions (critical sectors of the economy become more vulnerable to electronic interception. Stronger and stronger encryption is necessary to secure these transmissions and enable to growth of electronic commerce.

Issue

There are tensions among the economic agencies and the national security/law enforcement agencies over how much to constrain exports of encryption technology and how much access encryption technologies must allow the federal government to have to private communications. The Secretary has asked Econ Policy, Domestic Finance and Enforcement to develop a Treasury policy position so that Treasury can more fully engage in this debate.

Cyber-Terrorism

Background

In laying out the Administration's policy on protecting critical infrastructure, President Clinton directed Treasury to work with the banking and finance sector to develop a plan to: assess the industries' vulnerabilities to cyber attack; recommend a plan to eliminate significant vulnerabilities; propose a system for identifying, preventing, and responding to attacks; educate the industry; and develop a research agenda. Initial implementation must be complete by the end of 2000.

Issue

Treasury has convened industry representatives to an all-day meeting and created an industry coordinating committee, which has begun work. An industry information sharing and analysis committee, expected to open for broad industry membership this Fall, would serve as an information clearinghouse in the event of Y2K difficulties and for cyber threats thereafter.

Government Data

Treasury like other agencies is working to make data gathering and dissemination as efficient as possible. A number of projects rely on streamlining and electronic communication:

- The IRS is providing access to information, forms and taxpayer records. It has created a locator service for finding e-filing practitioners by entering zip code. It is also encouraging electronic filing. This year, a new program in Ohio and Kentucky allows taxpayers to use the telephone to file both Federal and state returns at the same time. The IRS has rolled out a form allowing easy electronic payroll filing for small businesses and is piloting electronic filing of both Federal and state payroll and unemployment data with IRS.
- The International Trade Data System (ITDS) is a NPR-endorsed project to streamline the various requests agencies across the government (e.g., FDA, EPA, Ag, Customs) make of importers. Pilots are scheduled to be rolled out this year. In FY 2001, Customs is slated to take over ITDS and integrate it with ACE.
- Treasury is participating in interagency projects to increase citizen access to government data including through "computer kiosks."

Internet Crime

The President recently directed a number of agencies, including Treasury, to form a task force and issue a report on Internet-related crime. The Attorney General chairs the task force.

1999-SE-013550

The Deputy Secretary of the Treasury

December 14, 1999

NOTE FOR JOE GUTTENTAG

KAREN KORNBLUH

Senior Advisor to Deputy Secretary

FROM: STUART E. EIZENSTAT

**SUBJECT: E-Commerce Commission – Federal
Excise Tax**

Regarding your November 24 memo on the FET,
while I have sympathy with your points, Secretary
Summers is strongly against repeal on budget grounds.
As you know, Podesta's guidance is somewhat more
positive.

Attachment

Room 3326

622-1080

SEE HAS

12/12

From: Joseph H. Guttentag
To: kornbluhk
Date: 11/24/99 2:35pm
Subject: ~~Ecommerce Commission~~ - Federal Excise Tax

DEC 12

To: Joe Guttentag
KK
Fr: Stu

You have said the Stu wanted my views on the importance of the FET to the Ecommerce commission and its report, I had sent a similar though not as detailed memo to Sheryl earlier today.

Regarding your
1/24 memo
on the FET
while I have

We have been trying to avoid focus on the FET as we know repeal creates major revenue problems. We were hoping that the Administration could find a way to deal with the problem either by outright repeal, or if not by reduction immediately, or spread out over a period of time. At least a recognition. I cannot speak for our economists, but generally, I think they would say that targeted excise taxes are not their favorite way to raise revenue. I really think they would go further.

Sympathy with
your points.
LHS is
strongly

Failure to deal with this issue will have a negative affect on the Administration's ability to forge a consensus among the Commissioners supporting the position that we have adopted: i.e. simplification and no change in nexus.

Against repeal
on budget
grounds.

It is essential that we get business support on the Commission. We may have Leavitt, Kirk, Locke, and possibly Lebrun and more remotely Jones., that gives us eight out of the necessary 13. Among the business community we should be able to get Gateway, hopefully Schwab and we need MCI, AT&T, and Time Warner. MCI and AT&T are most concerned about state and local telecommunication taxes and admittedly less about the FET. We intended to leverage our action with respect to the FET to get the states to agree to do something to rationalize their horrendously complicated and burdensome taxes.

As you know,
Puchstein's gu. done
" Surrender
He is
positive.

As you can see, getting a consensus may be a long shot and a similar long shot for the "other side" but the FET would definitely help and its absence hurts us and may cause our other Administration members to take a lower profile and look for some other way out. Pincus, possibly in a moment of pique, said he would be unable to call business members for support if we didn't tackle the FET. We can always make those calls, and maybe he will be persuaded otherwise.

So loss of this card to play is most serious. How serious it is hard to say at this point. Gilmore has proposed repealing the FET over time and while it still exists using the dollars for revenue sharing with the states to make up for the ecommerce revenue that his proposal would cause them to lose. This proposal means that the FET is visible and on table.

I think this is a fair presentation of the issues. If the decision by Treasury is that we can't afford any compromise on this tax, then we should not propose further proceedings. If we feel there is a compromise out there somewhere, which I would hope there is, let's keep the ball in play

CC: talismanj, burmanl, friedmanj, mundacam, sandbergs



THE DEPUTY SECRETARY OF THE TREASURY
WASHINGTON

December 22, 1999

MEMORANDUM FOR SECRETARY SUMMERS

FROM: Stuart E. Eizenstat *SE*

SUBJECT: E-Commerce

Attached is an overview of e-commerce issues in Treasury that Karen prepared for me several months ago and that I understand you wanted to see. At this point in time, I think that we should focus our e-commerce efforts on three policy issues:

Internet Tax. As you know, the politics of this will only increase. I am keeping on top of the issue through Joe Guttentag and meetings that David Beier holds with the agencies. I will continue to keep you informed.

Internet Banking. The banking regulators have formed a task force headed by OTS and one option they are contemplating is requiring *higher* capital standards for Internet banks. There are also CRA issues as well as implications for the future structure of the industry. I plan to meet with Gary Gensler, Ellen Seidman and Jerry Hawke to get briefed on the issue and scope out what initiatives or study are advisable and will report to you my findings.

Facilitating the Growth of E-Commerce/Implementing Executive Memoranda (EM). The President has issued a number of executive memoranda over the past month on e-commerce. Sheryl has suggested and I agree that I should call a meeting of the various Treasury offices, perhaps led by Economic Policy, to kick-start a process to devise a comprehensive agenda of critical policy changes needed for Treasury to enhance the growth of e-commerce and increase access.

- *EM on Facilitating the Growth of Electronic Commerce* instructs all agencies to identify any provision of law or regulation administered or issued by them that may impose a barrier to electronic transactions or otherwise impede the

conduct of e-commerce and to recommend how such laws or regulations may be revised.

- *EM on Use of Information Technology to Improve our Society* directs you along with other agencies to "identify policy initiatives that promote greater access to financial services through the use of information technology."
- *EM on Electronic Government* directs you along with heads of other agencies "to assist agencies in the development of private, secure, and effective communication across agencies and with the public, through the use of public key technology. In light of this goal, agencies are encouraged to issue, in coordination with the GSA, a Government-wide minimum of 100,000 digital signature certificates by December 2000." Don Hammond has been working on this with OMB.

Other issues:

- On Digital Signature, I understand that Sheryl is doing a superb job managing a process with GC, Domestic Finance and Enforcement that is bringing coherence to our internal position.
- In the area of electronic payments, I understand FMS is doing some of the most innovative work in the country. I plan to go out there and learn more. I will report to you if there is an evident way for us to share the lessons they are learning and get Treasury some credit for the innovation at the same time.
- David Wilcox is planning to start research into the issue of broadband deployment - a potentially critical issue to future economic growth and an issue of great controversy between cable companies and AOL at this time.

Attachment

cc: Sheryl Sandberg



WTO E-Commerce. David Beier has taken the lead along with USTR on this issue. But you could be the principal spokesperson for the importance of tariff-free e-commerce in Seattle if Sue Esserman agrees.

Importance to the Economy. David Wilcox has begun a seminar series in order to educate himself on e-commerce issues. When the budget battle is over, he plans to turn his attention to a project on deployment of broadband infrastructure (fat pipes for fast Internet access) throughout the country and the openness of what will be a combined Internet-television delivery system affecting the entire economy. This is a very big, very sensitive philosophical issue being fought three ways among AOL, ATT and the Baby Bells. You could work with David and the industry to ensure that any paper he writes is sensitive to concerns from all parties and articulates sound policy.

The Deputy Secretary of the Treasury

October 18, 1999

NOTE FOR KAREN KORNDLUIH

Senior Advisor to Deputy Secretary

FROM: STUART E. EIZENSTAT

SUBJECT: Treasury Electronic Commerce

Your memo on e-commerce is excellent. See comments. I would like to really get on top of this issue.

Is there anything I can do to get into the banking area given the working group? The SEC seems to have full control over trading.

The question, with all the actions involved and the Beier/Katzen task force, is where there is room to get into this.

Comments: ok.

ok, but I cannot personally attend each week.

ok-KK, you do

Yes.

No.

This could be held out for the future.

Attachment

cc: Carolyn Keene

Room 3326

622-1080

SEE HAS BEEN

OCT 11 1999

10/11
TO: KIC
9/16/99
For DA
Yip's memo on E-commerce is ok. Let
the com. I'll let it really
set on top of this show.
I'll have anything I can do to get
out the

MEMORANDUM

TO: SEE
FROM: Karen
SUBJECT: Treasury Electronic Commerce Activities and Agenda Development

Per your request, below is a summary of the major e-commerce activities at Treasury. Most of this information has been garnered from the Office of Tax Policy and Domestic Finance, which are working on these activities directly.

As this incomplete list illustrates, Treasury offices and bureaus are working on a broad array of commerce policy issues central to Treasury's mission and to the broader debate on the governance of the digital economy. However, many of these activities have not risen to the level of even Asst Secretary-attention, let alone Deputy Secretary or Secretary. The danger is that without more high-level attention, Treasury's policymaking suffers from lack of an integrated perspective and our interests are not preserved in debates within the Administration, with Congress, and with the business community. Just this week, OTP and Econ Policy were each poised to raise concerns with the Administration's proposed "broadband" initiative -- without knowing the other had similar concerns and so without the help of the other's arguments.

My recommendation, for what it's worth, would be that:

- Those e-commerce issues listed below be added to relevant weekly meeting discussions so that you and the Secretary can provide input and a sense of import;
- You endorse (by mentioning it at the various weeklies) David Wilcox's idea of holding a weekly seminar with outside experts (e.g., Joe Farrell, former FCC Chief Economist and expert in telecommunications regulation, Craig Mundy, Microsoft's point man on the merging of the TV and the Internet industries) which will serve as an informal method of bringing together different interested offices within Treasury;
- You and/or the Secretary ask the various offices to submit their e-commerce agendas and then have someone on your or the Secretary's staff convene a meeting to produce a Treasury policy agenda which can be articulated in a speech by you or him.

OK
on but I
can't personally
attend each
week.
on - KIC, you
do

binding case from the
working group?
The SEC doesn't
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Beverly Kagan
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get out there.

Taxation of E Commerce

Internet Freedom Act Commission

Background

Currently, out-of-state purchases (e.g., from a catalog, over the Internet) are not subject to sales tax unless the company selling the product has an "nexus" (e.g., a store) in the same state as the purchaser. The Supreme Court ruled that requiring remote sellers to collect a sales tax imposed an undue administrative burden on them. As a result, these remote purchases are subject only to a "use" tax which purchasers are required to report and pay when they file their annual returns. Few taxpayers report and enforcement is virtually impossible.

This state of affairs became a great cause for concern among the states and localities as projected growth in e-commerce threatened dramatic cuts in their revenue (estimates vary widely). They began to contemplate and in some cases impose Internet taxes. The e-commerce community went to Congress.

Issue

The Internet Freedom Act, endorsed by the President, imposes a moratorium on new Internet taxes until November 2001. In the meantime, it calls for a Commission composed of 18 members — including one member each from Treasury, Commerce and USTR — to report to Congress by May 2000 on possible solutions. The Commission as its Chair selected Virginia Governor Gilmore. Treasury is the lead agency within the Administration and is represented by Joe Guttentag, the Treasury (and Administration) expert on Internet taxes. However, the White House is heavily involved because of the delicacy of the subject matter and there is no agreement yet on a strategy to promote any given recommendation or to prevent being scapegoated if the Commission deadlocks, as it well might.

The most likely outcomes at this point:

- Deadlock between those Commissioners like Grover Norquist who believe that the Internet should be a tax-free zone and those state and local government representatives who insist that e-commerce be subject to the same taxes as all other commerce.
- States simplify taxation so that there are uniform definitions and one rate per state. In return, Congress requires states to collect taxes on remote sales. The problem is getting all localities and states to agree to the simplification. A variant creates an incentive for local governments: an "opt-in" approach in which any state that simplifies is entitled to tax.

This could be held out for the future.

Progressive Policy Institute and Ira Magaziner have separately proposed a technology solution that would have a third party (e.g., credit card company) collect taxes on payment. The implementation issues are so vast that most of the companies on the Commission and

elsewhere have rejected this option but perhaps it holds promise for the future.

- Commission could agree to principles for any legislative action. Principles might include that all remote purchases (whether on Internet or from catalog) treated same; simplification should be prerequisite for collection; Internet should not be tax haven nor should it bear disproportionate burden, etc.

International

Joe Guttentag and his team, notably Mike Mundaca, through persistent work especially with the OECD have achieved general acceptance for Treasury's principle of non-discrimination and transparency in taxation.

Internet Banking

Background

Internet banking allows a consumer with access to the Internet to access the bank's Web site and – after providing his ID and password – to access his account in order to obtain account information, move money among accounts, get and pay bills on-line, and shop for mortgage, insurance, mutual fund and other services. Vendors are developing smart cards onto which a consumer could transfer “withdrawals” electronically at his computer. (Checks will still need to be deposited by mail or hand.) PC banking, an older technology that requires a customer to load special software onto his computer, is still widely used but expected to be replaced by Internet banking.

Treasury's Office of Financial Institutions Policy has collected data on the growth of Internet banking:

- In December 1995, only 245 institutions had Web sites and only one was transactional (allowed customers to transfer funds or make payments). By June 1999, more than 5,100 institutions offered online banking, and about 25 percent of their sites were transactional (GAO)
- Approximately three to four percent of US households currently use online banking. (Goldman Sachs) Analysts predict that online banking may grow to twelve to twenty percent of US households in the next three years.
- More than 40 percent of the largest consumer banks offer Internet services. Wells Fargo has offered Internet banking since May 1995 and says that it has 840,000 Internet banking customers, which is the largest number of Internet banking customers at one bank. First Union says that it is opening 3,000 to 4,000 online accounts a day and that twenty percent of those are customers new to the bank.

In addition to existing banks that provide Internet banking services, Internet-only banks are cropping up. There are six so far. There is some dispute about whether or not branchless banks enjoy lower overhead than traditional banks. They claim they do and the Office of Financial Institutions Policy reports that NetBank's non-interest expenses in fourth quarter 1998 were 1.6% of earning assets vs. the 4.4% average for similarly-sized traditional banks. However, OTS reports that in general Internet bank overhead is not lower. They do offer better rates and lower fees. Telebank, the largest Internet-only bank, says it has more than 700,000 customers. The bank reported that it topped \$2 billion in total assets in the fourth quarter of 1998, making it one of the 50 largest savings banks. Telebank was recently bought by E-Trade group Inc., the second largest securities broker on the Internet.

In your meeting with Ellen Seidman, she shared her concern that Internet banks have a short-term focus unhealthy for the safety and soundness of the system. OTS sees three factors that give rise to this concern: (1) They feel that a risky asset base is almost a given for an Internet bank which cannot originate loans (they argue that origination requires in-person contact) and so purchases shorter-term assets such as loan packages or securities. (2) It so happens that many of the investors entering the Internet banking field are using the Internet business model of focusing on building market share rather than profitability and so offer rates that do not cover their costs (in contradiction of their claims that their rates reflect lower costs). (3) Other investors are looking to show a quick profitability in order to sell the bank and so "reach for yield," or seek assets with quick, high returns, to make up for the low rates they offer.

Issue

The banking regulators have formed an Internet Banking task force through the FFIEC and chaired by OTS. They are contemplating a new guidance laying out what they will look for in a charter application. They may need policy guidance to balance the need to safeguard the deposit insurance system on the one hand and the goal of encouraging innovation in the banking industry on the other. They are leaning towards requiring Internet banks to hold far more capital than brick-and-mortar banks and a to have a business plan built around obtaining a stable asset base. They may also lay out concerns about existing banks allowing investors to set up Internet banking businesses under their charters - allowing the circumvention of the charter process. Such requirements would certainly constrain experimentation in this industry more than it has been in non-regulated industries.

Bank regulators may need policy guidance as they begin to discuss how various existing financial laws, such as laws regarding consumer protection, CRA and safety and soundness apply to Internet banking. HR10 would require the federal banking agencies to conduct a study and report to Congress on adapting existing requirements on the delivery of financial services to online banking and lending.

Internet Trading

There are more than 100 firms specifically devoted to online trading, up from none in 1994. Full service brokerage firms have started offering online trading as well. The largest online brokerage, Charles Schwab, has a 28 percent market share and handled 61 percent of all its customer trades on the Web last year. Low commissions (the top ten online firms charge on average \$15.75 per trade, compared with a minimum fee of approximately \$50 for traditional brokerage firms) and ease of access have led to a rapid growth in use:

- The more than 7 million online brokerage accounts in the U.S. represent approximately 20 percent of all accounts. That percentage is expected to double in two years. In the last year, online customer assets have doubled to \$420 billion
- Online stock trades increased to an average of 496,074 a day in the last quarter of 1999 –up 49 percent from the last quarter of 1998. (NASD)

Issue

Treasury has largely left this issue to the SEC which has focused on the execution of trading orders, disclosing trading risks and Internet fraud. The SEC is studying Internet trading and SEC Chairman Leavitt has spoken on the issue. He has announced plans to double the staff of its "Cyberforce," which searches for Internet fraud, but has said that the SEC has no immediate plans to propose regulations on online investing.

Privacy

Background

Last year the Vice President called for an Electronic Bill of Rights giving customers the right to choose whether their information is disclosed, how, when and how much of that information is used, and to see the information themselves.

However, the Federal Credit Reporting Act only requires "opt out" for sharing of certain information with certain types of entities:

	<u>Affiliate</u>	<u>Third Party</u>	<u>Credit Agencies</u>
Transactional Info	Permitted	Permitted	Permitted
Other Nonpublic Personal Info (e.g., income, credit history)	Notice & opt-out required	If on a regular basis, notice, access, verification & opt-out required	Notice, access, verification & opt-out required

And only the Fed can issue "interpretations" of FCRA.

Issue

The President in May called for amendments to existing law requiring institutions to give customers the right to "opt out" of sharing of transactional and non-transactional personal information with third parties or affiliates and prohibiting institutions from sharing medical information.

HR 10 privacy provisions do not go as far as the President requested. The bill would require financial opt-out rights for non-transactional personal information shared with third parties - it does not apply to information shared with affiliates or non-transactional information. The bill also would remove prohibitions in the FCRA against rulemaking by federal banking agencies and eliminates constraints on the regulators' ability to examine financial institutions for compliance with the FCRA. It also would require Treasury to report to Congress on information sharing practices among financial institutions and their affiliates and includes pretext calling provisions.

Senator Sarbanes, Senator Leahy and Congressman Markey have each introduced legislation that goes further and Gary and Secretary Summers have endorsed opt-out for some sharing of transactional information with affiliates.

Meanwhile, more voluntary efforts are underway. The OCC has issued guidance to national banks on Web site privacy statements. The guidance provides national banks with examples of effective practices for information consumers who access bank Internet sites about bank privacy policies for the collection and use of personal information. The guidance also discusses examples of effective practices for the development of bank privacy policies and for ensuring adherence to those policies.

The FTC in a report to Congress this July on overall Internet privacy endorsed industry self-regulation rather than government action. It outlined four core privacy principles for industry to follow voluntarily: notifying Internet users of a site's practices; permitting consumers a choice

about the use of data collected from them; giving users access to that information an a chance to challenge it; and taking reasonable steps to ensure that information compiled by a Web site is accurate and secure from unauthorized use. A poll of the most popular Web sites shows 81 percent post privacy policies, yet only 10 to 20 percent follow all four FTC guidelines.

Effect on Economy

Broadband Deployment, Access & Competition

Background

The regional Bell operating companies are forced by regulations implementing the Telecommunications Act of 1996 to open their markets to competitors in order to enter long-distance. They argue that their regulatory burdens make it unprofitable for them to deploy the infrastructure that allows fast transmission of large amounts of data ("broadband") to rural areas. Two of the companies commissioned a study showing that the rural states with the lowest broadband penetration were those with the most stringent regulation. Twenty Senators, persuaded by their argument have asked the White House to back regulatory relief. Competitive local phone companies argue that the competition the Act spawned is driving competition and relief for the Bells would slow deployment. Senator Daschle is holding an event with the competitive providers and others to demonstrate the advantages of competition for rural deployment.

AOL joins the Bells in arguing that they are stymied from offering rural access and in addition argues that ATT and other cable companies will be the only provider of broadband in these rural areas. They go on to argue that because the law and regulation impose no requirement on cable to be a "common carrier" these cable companies will limit access to Internet service providers and content producers with whom they have financial arrangements – stifling the competition the ISP market and thereby stifling the openness of the Internet.

The FCC has issued one study on deployment making a case against the need for government action at this time. It instead plans to review deployment annually. It also demurred from regulating "cable open access" arguing that it is too soon to tell if there is or will be a problem. Instead, the Commission laid down a marker to the industry that it will step in if it sees problems emerging.

The FCC is also in the process of reforming universal service – the vast system of telecommunications cross-subsidies that support access by rural and low-income users and schools and libraries through fees on all phone service. There is some talk of adding broadband to the list of subsidized services – which would necessitate increasing the cost of all phone service dramatically if not accompanied by an effort to target the recipient pool narrowly.

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FMS is conducting one test in Bosnia to see if it can reduce the cost of shipping, securing and accounting for coin and currency in the region; increasing usage of the convertible mark in

Bosnia; and reducing the use of US currency for black market and gambling activities.

- FMS working with Citibank to provide 30 companies electronic wallets they can use to purchase technical documents from Commerce "electronic cash."
- FMS is using electronic cash to pay selected vendors
- FMS is testing the e-check as a Federal disbursement mechanism for vendor payments. DOD is using electronic checks to pay 50 contractors
- Customs, INS, VA and BEP are piloting digitally storing and processing paper checks
- FMS encouraging agencies to conduct financial transactions with the public online via credit card. BEP, BPD, and Mint are selling products by credit card from Web sites. FCC and Patent Office allow payment of fees by credit card over the Internet
- FMS leads an inter-agency team to implement use of a Government Purchase Card for making retail payments between Federal entities. Settlement for these transactions will occur within the Treasury's General Account.

The IRS has created an electronic tax administration (ETA) to spearhead electronic filing and payment. Taxpayers can now file electronically, paying their taxes using a credit cards and even using a PIN code so that they need not also file a separate signed paper document.

The EU has issued a directive on e-money requiring issuers to retain reserves and the Basle supervisors Small Group is discussing the issues surrounding e-payments. The OCC has issued a guidance alerting banks to the risks of such payments.

Issue

Treasury may want to think about how to draw lessons from FMS' various experiments and whether and how to disseminate these within the government and to the private sector. Because of Treasury's huge presence in the market, our purchasing decisions will influence development and use of technology.

Other issues that might be worth examining include the effect of an increase in e-payments on monetary supply and broad safety and soundness issues.

Security

Digital Signature/Authentication of Digital Transactions

Background

"Digital signatures" verify the identify of an electronic message's author and are necessary for sensitive transactions (e.g., making payments, agreeing to contracts, making orders). In January 1998, the OCC approved an application by Zions First National Bank to be the first financial institution to serve as a "certification authority," offering digital signatures for different uses, and there are now a number of such certification authorities.

Treasury has been work with OMB to develop a digital signature policy and standards of electronic authentication for the entire federal government.

FMS (which handles approximately 85 percent of government payments) is also conducting a pilot study with the Fed that gives government financial officers the authority to make wire transfers for electronic payments. FMS would be the certificate authority. In addition, selected agencies now have the option of using digital signatures for financial documentation and intra-agency payments. The IRS also has a pilot in which tax preparers can issue PIN numbers to taxpayers filing electronically -- so that they need not send in a hard copy of a signed return even when filing over the Internet.

Issue

Legislation reported out of both the Senate and House Commerce Committees would preempt state laws invalidating electronic signatures in e-commerce transactions. The Senate bill would withdraw the preemption for states adopting laws based on the National Conference of Commissioners of Uniform State Law's model Uniform Electronic Transactions Act. The Administration opposes the House bill -- which takes a more heavy-handed approach to the preemption and prescribes appropriate technologies -- and supports the Senate bill. Both bills are now held up by consumer group concerns that the bills would increase the burden on consumers to prove that a transaction was invalid but may move to the floor if consumers are carved out of the bill's provisions.

The banking regulators have a serious concern that the House legislation will compromise their ability to regulate in this area as safety and soundness concerns arise. These concerns were reflected in the letter opposing the bill send by the Commerce Dept to Chairman Bliley however the amendment the OCC and other banking agencies drafted has only been offered to Commerce - the lead agency on this legislation - and has not gone to the Hill.

Encryption

Background

Encryption is the technology that allows users to secure messages (e.g., the transmission of balance information between a bank central office and an ATM) and authenticate them (e.g., through construction of a digital signature system). As more of the financial industry, and the economy rely on electronic transmissions, critical sectors of the economy become more vulnerable to electronic interception. Stronger and stronger encryption is necessary to secure these transmissions and enable to growth of electronic commerce.

Issue

There are tensions among the economic agencies and the national security/law enforcement agencies over how much to constrain exports of encryption technology and how much access encryption technologies must allow the federal government to have to private communications. The Secretary has asked Econ Policy, Domestic Finance and Enforcement to develop a Treasury policy position so that Treasury can more fully engage in this debate.

Cyber-Terrorism

Background

In laying out the Administration's policy on protecting critical infrastructure, President Clinton directed Treasury to work with the banking and finance sector to develop a plan to: assess the industries' vulnerabilities to cyber attack; recommend a plan to eliminate significant vulnerabilities; propose a system for identifying, preventing, and responding to attacks; educate the industry; and develop a research agenda. Initial implementation must be complete by the end of 2000.

Issue

Treasury has convened industry representatives to an all-day meeting and created an industry coordinating committee, which has begun work. An industry information sharing and analysis committee, expected to open for broad industry membership this Fall, would serve as an information clearinghouse in the event of Y2K difficulties and for cyber threats thereafter.

Government Data

Treasury like other agencies is working to make data gathering and dissemination as efficient as possible. A number of projects rely on streamlining and electronic communication:

- The IRS is providing access to information, forms and taxpayer records. It has created a locator service for finding e-filing practitioners by entering zip code. It is also encouraging electronic filing. This year, a new program in Ohio and Kentucky allows taxpayers to use the telephone to file both Federal and state returns at the same time. The IRS has rolled out a form allowing easy electronic payroll filing for small businesses and is piloting electronic filing of both Federal and state payroll and unemployment data with IRS.
- The International Trade Data System (ITDS) is a NPR-endorsed project to streamline the various requests agencies across the government (e.g., FDA, EPA, Ag, Customs) make of importers. Pilots are scheduled to be rolled out this year. In FY 2001, Customs is slated to take over ITDS and integrate it with ACE.
- Treasury is participating in interagency projects to increase citizen access to government data including through "computer kiosks."

Internet Crime

The President recently directed a number of agencies, including Treasury, to form a task force and issue a report on Internet-related crime. The Attorney General chairs the task force.

2000-SE-002604



THE DEPUTY SECRETARY OF THE TREASURY
WASHINGTON

March 6, 2000

MEMORANDUM FOR UNDER SECRETARIES
GENERAL COUNSEL
ASSISTANT SECRETARIES
BUREAU HEADS

FROM: STUART E. EIZENSTAT *SE*

SUBJECT: Reducing Barriers to Electronic Commerce

As I mentioned at the January 21 Bureau Heads meeting, on November 29, 1999, President Clinton signed the attached memorandum on "Facilitating the Growth of Electronic Commerce." In the memorandum, the President notes the great promise that electronic commerce holds for the American people, including significantly greater choice and convenience as well as enhanced competition.

The President's memorandum also highlights the need to update our laws and regulations that may have the unintended effect of impeding business-to-business and business-to-consumer online transactions. To accomplish this, the President directs each Federal agency to identify laws and regulations administered by the agency that may impose barriers to electronic commerce and to recommend how such laws or regulations may be revised to allow electronic commerce to proceed while maintaining protection of the public interest.

This effort is very important, and I know that many of you already have spent considerable time successfully adapting e-commerce to some of the programs administered by your offices. I want to emphasize, however, that the President has directed us to cast a wide net in identifying barriers to e-commerce. This means that each and every Treasury office and bureau should look beyond purely technical issues to the full set of policies, procedures, regulations and statutes that it has in place, and analyze those thoroughly.

I ask each of you who have not already done so to designate as soon as possible someone in your office to be the contact person on this topic. This person should be a policy or legal official, as opposed to information technology (IT) staff. We have designated Michael Beresik, Deputy Assistant Secretary for Financial Institutions Policy, and Tom McGivern, Counselor to the General Counsel, to coordinate this project in the Department. Please provide the name of your office's contact directly to Michael (michael.beresik@do.treas.gov or 202-622-2600) or Tom (tom.mcgivern@do.treas.gov or 202-622-2317). Chief Information Officer Jim Flyzik and his organization, working with your IT staff, also will play an important role, providing technical and other assistance as the process of identifying barriers to e-commerce, and solutions for eliminating those barriers, moves forward.

In the November 29 memorandum, the President also directed the Administration's Working Group on Electronic Commerce to establish a subgroup led by the Commerce Department: (1) to identify Federal, State, and local laws and regulations that impose barriers to the growth of electronic commerce, and (2) to recommend how these laws and regulations should be revised to facilitate electronic commerce while also ensuring that protection of the public interest, including consumer protection, is equivalent to that provided with respect to offline commerce.

The Sub-Group met in January to discuss its first project, a *Federal Register* notice that was issued on February 1 and that invites the public to identify laws or regulations that may obstruct or hinder electronic commerce (attached). To assure that we receive comments on this notice from members of the public that your agencies deal with on a daily basis, I would like you to think of creative methods of informing them of the notice, such as highlighting it on your web site. Finding ways to assure that we receive comments focused on the statutes and regulations your offices oversee will help us identify the e-commerce barriers that are of greatest interest to the public.

Our goal in this effort is to identify additional significant actions that the Department will take to eliminate barriers to e-commerce. As I mentioned at the Bureau Heads meeting, I would like each office and bureau to develop an initial list of actions they plan to take over the next 30 days.

Thank you for your assistance.

Attachments

cc: Secretary Summers
Sheryl Sandberg
Neal Comstock

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

November 29, 1999

November 29, 1999

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Facilitating the Growth of Electronic Commerce

The rapid growth of the Internet and its increasing use throughout the world for electronic commerce holds great promise for American consumers and for the Nation. Consumers will have significantly greater choice and convenience and will benefit from enhanced competition for their businesses.

It is essential for consumers and the health of the economy that government facilitate not only retail activity, which has increased substantially, but also the movement to the online environment of other categories of transactions. We must update laws and regulations developed before the advent of the Internet that may have the unintended effect of impeding business-to-business and business-to-consumer online transactions. Impediments may include regulatory or licensing requirements and technical standards and other policies that may hinder electronic commerce in particular goods or services. While some of these legal restrictions are the subject of pending legislation, other potential barriers are outside the scope of those legislative proposals.

Under the Government Paperwork Elimination Act, Federal agencies are addressing issues regarding electronic transactions within the Federal Government and between the Federal Government and other parties. We should provide for similar consideration of laws and regulations governing electronic commerce in the private sector.

In adapting laws and regulations to the electronic environment, it is critical that consumers and the public at large be assured of a level of protection in electronic commerce equivalent to that which they now enjoy in more traditional forms of commerce. Any disparity in protection may undermine consumer confidence in electronic commerce and impede the growth of this important new trade medium. At the same time, we must recognize that different media may require different approaches and that public interest protections designed for the physical world may not fit in the electronic commerce arena. We should attempt to develop an equivalent level of protection, recognizing that different means may be necessary to accomplish that goal.

The United States Government Working Group on Electronic Commerce (the Working Group) shall establish a subgroup, led by the Department of Commerce, to: (1) identify Federal, State, and local laws and regulations that impose barriers to the growth of electronic commerce, and (2) recommend how these laws and regulations should be revised to facilitate the development of electronic commerce, while ensuring that protection of the public interest (including consumer protection) is equivalent to that provided with respect to offline commerce. This subgroup shall carry out the responsibilities identified below on behalf of the Working Group, with the exception of reporting to the President.

Within 60 days of the date of this memorandum, the Working Group shall invite the public to identify laws or regulations that may obstruct or hinder electronic commerce, including those laws and regulations that should be modified on a priority basis because they are currently inhibiting electronic commerce that is otherwise ready to take place. The Working Group also shall invite the public to recommend how governments should adapt public interest regulations to the electronic environment. These recommendations should discuss ways to ensure that public interest protections for online transactions will be equivalent

to that now provided for offline transactions; maintain technology neutrality; minimize legal and regulatory barriers to electronic commerce; and take into account cross-border transactions that are now likely to occur electronically.

The Working Group shall request each Federal agency, including independent regulatory agencies, to identify any provision of law administered by such agency, or any regulation issued by such agency, that may impose a barrier to electronic transactions or otherwise impede the conduct of commerce online or by electronic means, and to recommend how such laws or regulations may be revised to allow electronic commerce to proceed while maintaining protection of the public interest.

The Working Group shall invite representatives of State and local governments to identify laws and regulations at the State and local level that may impose a barrier to electronic transactions or otherwise to the conduct of commerce online or by electronic means, to discuss how State and local governments are revising such laws or regulations to facilitate electronic commerce while protecting the public interest, and to discuss the potential for consistent approaches to these issues.

The Working Group shall report to the President in a timely manner identifying:

- (1) laws and regulations that impose barriers to electronic commerce or that need to be amended to facilitate electronic commerce, and
- (2) recommended steps for addressing the barriers that will facilitate the growth of electronic commerce and will ensure continued protection for consumers and the public at large.

WILLIAM J. CLINTON

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DEPARTMENT OF COMMERCE**Office of the General Counsel; Laws or Regulations Posing Barriers to Electronic Commerce**

AGENCY: Department of Commerce.

ACTION: Notice: Request for public comment on laws or regulations posing barriers to electronic commerce.

SUMMARY: The Department of Commerce, on behalf of the Subgroup on Legal Barriers to Electronic Commerce ("Legal Barriers Subgroup") of the U.S. Government Working Group on Electronic Commerce, requests public comments and suggestions concerning policies, laws or regulations that need to be adapted in order to eliminate barriers to and promote electronic commerce, electronic services, and electronic transactions.

DATES: Comments are requested by March 17, 2000.

ADDRESSES: Comments may be submitted via the Web at <http://www.ecommerce.gov/ebarriers/respond>. Alternatively, electronic submissions may be sent as documents attached to E-mail messages addressed to ebarriers@ita.doc.gov. Submissions made as E-mail attachments or submitted on floppy disks should be in WordPerfect, Microsoft Word or ASCII format. Diskettes should be labeled with the name of the party and the name and version of the word processing program used to create the document. Paper submissions may be mailed to the Subgroup on Legal Barriers to Electronic Commerce, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 2815, Washington D.C. 20230. If possible, paper submissions should include floppy disks in WordPerfect, Microsoft Word or ASCII format. Except for floppy disks with paper submissions, duplicate copies should not be submitted.

FOR FURTHER INFORMATION CONTACT: Kenneth Clark, phone: 202-482-3843; E-mail kclark@doc.gov.

SUPPLEMENTARY INFORMATION:**Background**

On November 29, 1999, President Clinton issued a Presidential Memorandum to the Heads of Executive Branch Departments and Agencies entitled "Facilitating the Growth of Electronic Commerce." The President noted that the rapid growth of the Internet and its increasing use throughout the world for electronic commerce holds great promise for American consumers and for the Nation. Consumers will have significantly greater choice and convenience and will

benefit from enhanced competition for their business. To realize this promise, the President said, it is essential that government facilitate "not only retail activity, which has increased substantially, but also the movement to the online environment of other categories of transactions."

The President noted that laws and regulations developed before the advent of electronic commerce may significantly impede consumers and businesses in conducting various kinds of transactions electronically. These impediments can involve requirements that particular types of transactions be conducted on paper or in person, or that records be maintained or provided in written form. They may also include regulatory, statutory or licensing requirements, or technical standards and other policies, that hinder electronic commerce or otherwise require business or transactions to be conducted in a way that discriminates against the online environment.

Such requirements and policies must therefore be reviewed and, where appropriate, adapted to the new electronic environment. But the President noted that in making these adaptations, it is essential to ensure that electronic commerce is as safe for consumers as traditional forms of commerce.

To implement these objectives, the President mandated that the United States Government Working Group on Electronic Commerce: (1) Identify laws and regulations that impose barriers to the growth of electronic commerce, and (2) recommend how these laws and regulations should be revised to facilitate the development of electronic commerce, while ensuring that protection of the public interest (including consumer protection) is equivalent to that provided with respect to offline commerce. The President mandated that the Commerce Department lead a subgroup to implement this work, and the Subgroup on Legal Barriers to Electronic Commerce has been formed to carry out those responsibilities.

The President directed the Subgroup to invite the public to participate in this effort by identifying laws or regulations that may obstruct, hinder or discriminate against electronic commerce, including those that should be modified on a priority basis. The Subgroup was also charged with inviting public comment on how such laws and regulations could be adapted to the electronic environment while ensuring that public interest protections will be equivalent to those now provided in offline commerce. This

Notice and Request for Comment implements those directives.

Scope of This Request*Areas of Focus for the Working Group***Electronic Transactions**

These include business-to-business and consumer-to-business transfer of information, money, or other resources. (Note that transactions between government agencies and the public are excluded from this review because they are being addressed as to federal agencies pursuant to the Government Paperwork Elimination Act.)

Merchandise Sales

The Legal Barriers Subgroup is interested in all types of policy, legal and regulatory impediments to electronic commerce and invites comment on any that may be identified. Conducting business in the sale of goods on the Internet may involve a wide range of issues besides the actual transaction, from incorporation and notice requirements to warranty or liability policies. Respondents are invited to comment on such issues and to identify policies, laws or regulations that may impede the offering of goods for sale electronically. Comments are also requested concerning how such barriers could be removed while ensuring that equivalent consumer protections to those guaranteed in traditional commerce will apply to the sale of goods online.

Offering Services

Comment is also invited concerning the provision of professional or other services by electronic means. Such services differ from industry to industry, but may be dependent on certain statutory or regulatory frameworks. Respondents are invited to comment on whether these frameworks discriminate against the provision of services by electronic means or make electronic provision of services more difficult. Respondents are also invited to discuss how best to adapt these frameworks appropriately to the online environment.

Multiple Party Regulation

The Committee is especially interested in comments on regulations governing the relationship or exchange of information between different categories of private parties (e.g., between banks and students or insurance companies and doctors). Respondents are invited to comment on regulatory provisions that address communication between parties, whether these provisions impede

electronic commerce due to requirements for written documentation or other actions that create a disincentive to electronic information transfer, and how such impediments could be removed while still protecting the public interest.

Independent Agencies Included Within the Scope of the Inquiry

This request invites comments concerning laws or regulations administered by any federal agency, as the President's Memorandum invites participation in the Working Group by independent agencies concerned with its work. Any comments concerning laws or regulations administered by independent agencies will be forwarded to those agencies for their consideration.

Areas of Law and Regulation Excluded

This request for comment focuses on domestic laws or regulations that may adversely affect electronic commerce (although the potential effects of such laws or regulations on cross-border commerce are relevant to this inquiry and may be included in any response). However, the Legal Barriers Subgroup will refrain from reviewing laws and regulations in areas where comprehensive activities are already underway to remove regulatory or legal barriers to electronic commerce. Areas excluded from this inquiry include the following:

(1) Treaties, international laws, conventions or agreements, or the laws of countries other than the United States.

(2) Tax laws or regulations.

(3) The following consumer protection regulations, which are subject to current rulemaking proceedings of the Board of Governors of the Federal Reserve: Regulation B, relating to the Equal Credit Opportunity Act; Regulation E, relating to the Electronic Fund Transfer Act; Regulation M, relating to the Consumer Leasing Act; Regulation Z, relating to the Truth in Lending Act; and Regulation DD, relating to the Truth in Savings Act.

(4) Issues being addressed pursuant to the Government Paperwork Elimination Act, which mandates steps to be taken by the Federal Government to remove barriers to electronic communications with and within the Federal government.

Note concerning State or local laws and regulations: Barriers to electronic commerce may arise simply from a lack of uniformity in policies, laws, standards or codes among different jurisdictions. Although we do not request comments about individual state or local laws or regulations, respondents may

wish to identify general areas in which barriers to electronic commerce result from State or local policies, laws, or practices; or from differing State and federal policies, laws, licensing requirements, standards or other practices. Respondents also may wish to comment on whether increased coordination is needed between the Federal and State governments to avoid unnecessary impediments to electronic commerce.

Basic Questions for Public Comment

Comments on any issue within the scope of this inquiry are welcome. However, responses to the following specific questions would be most helpful to the Working Group.

1. Does any federal agency-administered law or regulation impose an impediment to the conduct by electronic means of commercial transactions between you or your firm, company or organization and any other non-government party or parties? (Be as specific as possible in citing or otherwise identifying the law or regulation.)

2. If so:

(a) What is the degree of the impediment? (For example, does it completely bar the transaction from occurring electronically, or does it make the transaction more difficult, expensive, or time-consuming without barring it altogether?)

(b) What is the nature of the impediment? (For example, is it a recordkeeping requirement, a "written notice" requirement, or some other type of requirement?)

(c) Can you provide information as to the costs that are associated with or result from the legal or regulatory impediment?

(d) What do you understand to be the reason for imposing the requirement that causes the impediment?

(e) Can you suggest alternative ways, other than through the requirement that causes the impediment, by which the agency could achieve the goal of the requirement? (Most helpful would be examples that work in other contexts.)

(f) Can you suggest ways in which the requirement can be modified to remove or reduce the impediment while continuing to provide consumer protections for electronic transactions that are equivalent to those that exist for offline transactions.

Additional Issues or Questions for Public Comment

3. Do federal laws or regulations in any particular field or area generally impose significant impediments to the conduct of commercial transactions by electronic means? If so, please indicate how they result in such impediments and provide any suggestions you may

have to remove or reduce the impediments, while achieving the purposes of the laws or regulations and maintaining equivalent consumer protections.

4. Are there particular federal laws or regulations that should be modified on a priority basis because they currently inhibit electronic commerce that is otherwise ready to take place? In responding to this and other questions, you are urged to take into account cross-border transactions that are now likely to occur electronically.

5. Are there federal laws or regulations that should be clarified to facilitate electronic commerce by preserving important public interests in the area of online commerce such as consumer protection, civil rights or law enforcement?

6. Are there federal laws or regulations that constitute disproportionate or particular barriers to electronic commerce for small businesses? If so, are there changes or solutions you can suggest that would enable small businesses to engage more easily in electronic commerce?

7. To the extent that the adaption of laws or regulations to the electronic environment requires electronic notices or disclosures, can you offer specific suggestions as to formatting or other requirements for such notices or disclosures to ensure that they are conspicuous and will be received and understood?

8. From the standpoint of consumers, are there federal laws or regulations that have already been adapted to the electronic environment in a manner that has resulted in a lessening of consumer protections—including protections against fraud, or against over-reaching by unscrupulous or exploitative entities? If so, what is the degree of the harm involved, or the amount of cost imposed?

9. Are there federal laws or regulations that have already been adapted to the electronic environment in a manner that has resulted in a lessening of other public-interest protections, such as those involving health, safety or the environment?

10. Have you encountered areas in which barriers to electronic commerce result from: (a) Particular subject areas or types of State laws; (b) a lack of uniformity, or conflicts, among State laws; or (c) differing or conflicting State and federal laws?

11. Have you encountered impediments to electronic commerce that stem from licensing requirements, technical standards, codes, or other policies? If yes, what are they and how could they be removed?

12. Have you encountered impediments to electronic commerce that stem from a lack of uniformity in such requirements, standards, codes, or other policies among State or local governments or between them and the Federal Government?

Specificity of Responses and Comments

Comments and responses to the questions posed in this notice will be most helpful if they are specific in (1) identifying federal laws or regulations imposing impediments to electronic commerce, and (2) estimating costs associated with these impediments through reduced sales or business efficiency. The Working Group would appreciate receiving suggestions for modifying the law, regulation or policy to reduce or remove the impediments, or alternative ways (other than through the provision at issue) by which the agency could achieve the goal of the provision while maintaining consumer and public protections equivalent to those provided for transactions taking place by non-electronic means. Questions 1 and 2, above, provide an example of the degree of detail in responses that would be most helpful.

Publication

Comments will be published online at <http://www.ecommerce.gov/ebarriers/review>. Respondents should not submit materials that they do not desire to be made public.

Authority: Presidential Memorandum, "Facilitating the Growth of Electronic Commerce," dated November 29, 1999.

Dated: January 27, 2000.

Andrew J. Pincus,
General Counsel, Department of Commerce.
[FR Doc. 00-2198 Filed 1-31-00; 8:45 am]
BILLING CODE 3510-BW-U

DEPARTMENT OF COMMERCE

International Trade Administration
[A-357-007]

Carbon Steel Wire Rod From Argentina: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 19, 1999, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order

on carbon steel wire rod from Argentina (64 FR 63283). We preliminarily determined that sales of the subject merchandise were made below normal value. This review covers one manufacturer/exporter of the subject merchandise to the United States, Acindar Industria Argentina de Aceros S.A. ("Acindar") and the period November 1, 1997 through October 31, 1998.

We gave interested parties an opportunity to comment on the preliminary results. No comments were received. We have made no changes for the final results. We have determined that Acindar has made sales below normal value during the period of review. Accordingly, we will instruct the U.S. Customs Service to assess antidumping duties on entries subject to this review.

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Helen M. Kramer or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-0405 or 482-3833, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Trade and Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act of 1994 (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

The Department published the preliminary results of this review on November 19, 1999 (64 FR 63283). We received no comments from interested parties. The Department has now completed this review in accordance with section 751(a) of the Act. We made no changes in the calculation methodology from the preliminary results.

Scope of the Review

The product covered by this review is carbon steel wire rod. This merchandise is currently classifiable under HTS item numbers 7213.20.00, 7212.31.30, 72113.39.00, 721113.41.30, 7213.49.00, and 7213.50.00. These HTS subheadings are provided for convenience and U.S. Customs purposes. The written

description of the scope of the proceeding is dispositive.

Final Results of Review

As a result of this review, we have determined that the following margin exists for the period November 1, 1997 through October 31, 1998:

Manufacturer/exporter	Margin (percent)
Acindar Industria Argentina de Aceros S.A	2.63

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, the duty assessment rate will be a specific amount per metric ton. The Department will issue appropriate appraisement instructions directly to the Customs Service. Further, the following deposit requirements shall be effective for all shipments of the subject merchandise from Argentina that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for Acindar will be the rate established above in the "Final Results of Review" section; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 119.11 percent, the "All Others" rate made effective by the LTFV determination. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to

SEE signed 3/6/00

original w/ Tom McGivern

Please login.

3/8/00