Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. Memo	Minutes of meeting (1 page)	1/17/96	P1/b(1)
002. Memo	Minutes of meeting (1 page)	1/17/96	P1/b(1)
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008. Notes	Hard to read handwritten notes. Will be reviewed upon researcher's request (7 pages)	nd	RR
009. report	American Embassy Jakarta - FY 1996 Strategic Commercial Plan (6 pages)	nd	P4/b(4), P5
010. Itinerary	Travel Voucher (partial) (1 page)	2/96	P6/b(6)
011. Itinerary	Travel Voucher (partial) (1 page)	1/10/96	P6/b(6)
012. Itinerary	Travel Voucher (partial) (1 page)	1/10/96	P6/b(6)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 10380

FOLDER TITLE:
[International Internet Trade]

Rhonda Wilson

rw9

RESTRICTION CODES

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

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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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COPY

From: PETER HAN (PETER HAN)
To: JONATHAN GREENBLATT, CAROLA MCGIFFERT, HAL:FOREST, SARA KEMP
Date: Wednesday, February 28, 1996 10:18 am
Subject: Subpoena

Reply requested by Thursday, February 29, 1996

Jonathan G,Carola M,Don F, Sara K
I am working on a grand jury subpoena where it asks for Melinda Yee's travelling partners for all of her trips while she was in ITA. Many are for advance trips either for the Secretary, Jeff Garten and for Rothkopf. Did you accompany her on the advance trips-if so, which ones and names of others... I will run down her trips.

1-7/94 to China
2-8/94 to China
3-11/94 to Jakarta
4-3/95 to Haiti
5-2/94 to Singapore, Jakarta, Beijing, HK, Tokyo
6-4/95 to China
7-5/95 LA & SF, CA (BEM related)
8-5/95 Chicago (BEM related)
9-5/94 SF (BEM related)
10-6/95 Chicago, LA, SF (BEM related for Sect. visit) 11-6/95 Denver for Hemispheric Conf.
12-6/95 SF, NY (BEM related)

Thanks for your cooperation. I REALLY need this info. IMMEDIATELY for noon status report...

COPY

From: Jonathan Greenblatt (JONATHAN GREENBLATT)
To: PETER HAN
Date: Thursday, February 29, 1996 9:24 am
Subject: Subpoena - Reply

**** Proprietary ****

Just saw your note for the first time this AM. Here are the trips that Melinda and I both worked on

2-8/94 to China (I do not recall working directly with her on this trip)
3-11/94 to Jakarta
4-3/95 to Haiti
11-6/95 Denver for Hemispheric Conf.

WITHDRAWAL SHEET
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Collection: Domestic Policy Council
Magaziner, Ira – Electronic Commerce
OA/Box: OA 10380/Box 7 **Archivist:** mpw
File Folder: [Notes January 1997] **Date:** 4/14/2004

DOCUMENT NO & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 3p	1/21/97	
2) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 10p	1/22/ [1997]	
3) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 7p	1/28/ [1997]	
4) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 2p	1/28/ [1997]	
5) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 3p	1/29/97	
6) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 5p	1/30/97	
7) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 3p	1/30/97	

CLINTON LIBRARY PHOTOCOPY

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21 JAN 97

Tenenbaum, CommerceNet
SVSIC, Kaye Caldwell
ICM
JAG

Tenenbaum — CNet starts as gvt-project
Now, largest Net assn for up->down e-food chain
- orgs in 6 ctys, w 12 more xpected soon
- attempty -> build global harmonized mkts

Use prisec co's -> pull gvts in behind them

* 3/97 OECD Conference

Caldwell — SVSIC
- lots of big software co's, also have manuf.
- very concerned abt dom issues -
need -> be considered, ie taxatn on-line

- also, 2B
- concerned abt progress UCC moving forward

Thaum — Very positive stp, only impt get xsctr policy in the - need -> pull in other techs and consider how they will interact in trade envmt

CLINTON LIBRARY PHOTOCOPY

Thorn — Also, worth study abt how new techs affect govt

Caldwell — Ypd xclusive ft $ transactns → Inet transactns
- 3P party escrow creates problems f/ all agnts in system

Thorn — E-[illegible]
- Eff / Cnet project
- GBA - label re: ~~privacy~~ privacy & sec. of site
- can build V-platforms
- fraud-on line : label on line but other studs if not met, fraud law applies

ICM — How abt children online?

SVSIC — Go w parental control — allow parts → control

under systems w diff levels of identity

ICM — 2 Qs
① How → handle kids
② Sanctity of certain informatn (ie health records)

Thorn — Stds are good part of paper -

CLINTON LIBRARY PHOTOCOPY

SVSC

~~Hanna~~ Work Philg about 28 - we could use help -> guide 28-develpt process

ICN We would want -> help

CLINTON LIBRARY PHOTOCOPY

1/22

CSI ROTABLE

ICM INTRO

BURSTINE

CLINTON LIBRARY PHOTOCOPY

BKARMUR BOA — Lots of comments
Go see by sec
Citi has most comments

MIKE MUGNOT CITI — Do tech & legal wk ff citi

Citi highly supportive, all rt themes
Would like -> see more in some areas, some soft pedaling of time

E-C new area - need rules -> fac E-C
Best way ff principles -> ID what they need to agree upon, then agree
- similar -> LOCs, ATMs, G-cards
- all no gvt involvmt

Principles very good
- when applied -> spec. issues

Bob Kramer — very much like principles 1, 2 -
less reg ensure lower consumer prices
too early on design compar. regs in EC
so pls let mkt act b/f we regulate choices

CLINTON LIBRARY PHOTOCOPY

NUGENT / KRAMER
We like pts. on tax side
We like duty-free zone
We are concerned re taxation
- given ocean anonymity, don't rely too much on $, intermediaries → track all financial transactions

CUM
USG believes that gvt can get revenue thru normal profits tax
Qs
① States / cities seriously consid transact tax - how do we address that?
② countrys in VATs – how do we harmonize to integrate VAT →→ sys

SPOONER / KPMG
On taxes, KPMG concerned
- transparent
- no new taxes
- wk w states & int'l gvts to harmonize
- we sept xtd current prples → not, thgh may be need f/ some new ideas
- need → clarify some areas
  - telecom
  - perm establishment

SCOTT BLADEN WINN & CUTLER
What should be on agenda f/ next
Customs comm'n related to this?

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① customs
② rules of origin
We've dealt w Friday rules origin or telecom

TGM | Seem → re rules of o. matter less if no duties anywhere

On broader tariff issues, we are unplumbed ITA, trying → bring tariffs down on IT & Tcom products

Kamm | Only 1/ products deliv. across Net, duty free

Vanhe | How do you get ctys → adpt duty-free zone concept

CEA | Believe that # ctys consid. our proposal and would be amenable, i.e. No EU ctys
Likely → ink snowball strategy
Likely → go → WTO → pursue duty-free compt

In short term, we see prof-services into products rapidly dramatically
yet will △ nkting & distribtn – big economic questions

Barshefsky | Summary
- good on duty-free zone
- agree not worried on record-keeping regs and interested in keeping same principles in play

Nesbitt

EPS
- Talks about restrict, case-by-case spec
- Maybe soft-pedal ~~this~~ - OCE should simply monitor EPS & learn ABT them - Go slow
- dumps of insecure systems, not adequately equipped systems or ones who don't spot privacy - don't want to see those systems
- mine EPS & EC

Cliff

Case-by-Case line frees → do exactly what you said

Cramer-Smith VISA

Expansion has connotation in $-world
- connotes on-site examin
- prefer "monitoring"
"oversight"

Kramer

EPS dev cycle too young - allow it → grow
If any USG study effort, draw heavily ABT privacy - we would even suggest dow. comm

CLINTON LIBRARY PHOTOCOPY

Also, ensure highest possible encryption

Smith

Present ABT that on credit card survey

Nesbitt

O End paper, include Privacy in last section on future network

ICC

Wynt — Sept efforts → rework dom Int'l, also think you should reach out → Int'l Chamber of Commerce (ICC) we think uncover M-law good start

Libby Gleklen — ICC has is good org with who should be consulted

Frank — Input fr USG → do more on dig-sig - need harmonize bf states take action

Cliff — We agree input, but felt best → get agree → do it rather than have USG intervene & interfere

Jim Wilkins HP — Maybe we can wait on states, but do have → move quickly on Int'l side and act now

Ira — We want encourage process but don't want → push it

Wynt — We really should limit state, Int'l processes too slow, may need gender action

CLINTON LIBRARY PHOTOCOPY

UK ⇔ NCUESL and ICAF

Jon & Bradley — UCC process very slow - no legis until 99/2000

Kramer — Concerned abt state laws blk, ⇔ each passed, b/c obstacles → don't harmonized

Craig — we want fed legis. now

Duffus — we'd like to consider legis. approach as the comm. legal tools

Gherkin — This is most imp't of issues
If we lack uniformity, will ↑ costs for all

Kramer — You raised harmonization
Services see harmonization as LCD,
least-common denominator that
Possible alternative = provide diff levels
of authentication

Wright — On timing, already int'l pilots ⇔ way up Sing, Ger:
2 years for int'l discussions are long,
but really probably will take long

CLINTON LIBRARY PHOTOCOPY

Breathe | Could we stage WHO-type event f/ investors, an energy worldwide sess?

We need → break mold, can't just wait

[illegible] | Any new recomms?

Vic Parsa | we are dev. std e-c architecture
Elec Msgg | - lots of comms involved
Assn | - could be more

[illegible]

Penny /
- we have not had much
- not happ. that
- Year 2000

need We to step effort

C/Gt should act forcefully

[illegible] We need to go to low reg —
not going laboriously → slow
and ensuring that chrom
ment explored

How do you make notice & cannot ok?

Marcia Sullivan

CLINTON LIBRARY PHOTOCOPY

Marcia Sells — Real concerns of what constitutes "CONSENT"

Peter Gray — Some members say N&C = Opt In
others say N&C = Opt Out
We would appreciate clarification

Jim Maxon & Brad St. — Trade orgs appreciate Acknowledge, rather than consent

Privacy issues not Net commerce
EU wants health rec, children, etc
to be consid.

Bob V — We have Dataflow WG, have met extensively w EU officials & NTIA, but we have reached sev. concl.
① industry very concerned re: privacy and existing model works well ∴ do not need big new bureaucratic org
② EU okay blends → define US priv systems inadequate
③ we want → escalate priv → trade issue — topic not just abt HR but economics ∴ goto WTO or another appropriate fora
④ we want to continue → raise visibility on subject

CLINTON LIBRARY PHOTOCOPY

Wright — Concern like chys like Nist, Sing, etc. are adopting EV zealous approach ⇒ PETV. — will we have ⇒ study every chy and its approach to privacy

SECURITY

Wright — Crypto also key
Barely has depth but rest world out of luck
Crime not ⇒ allow crypto xpts

ICM — Agree w Doris pts. ~~but~~ crypto policy likely will △
but reader say how in this ppr

Corey — Even Larry Irving agrees must △

Vic Para EMA — ~~was~~ Ira enjoyed - recently found publicized ~~regs~~ discovery but glad ⇒ know you still are emg

CONTENT

M Cade AT&T — Many orgs need ⇒ focus on these issues
but which ones?

ie WIPO mtg, Japan head Del was Culture Min not MITI
Brazil was S&T min

CLINTON LIBRARY PHOTOCOPY

Sir Whittaker ITSP — Need → find new fora, not simply ITU

Code AT&T — We need → think thru these issues very carefully

COOPERATION

Mpt — Need ↑ formal coop w private – not just btwn govts

Don't know if Fincen has been involved but impt esp. b/c they may create fmwk which will be helpful to e-c

IPR

Code AT&T — We appreciate WSIS help you etc provided but now need → ensure paper includes broad essential issues

CLINTON LIBRARY PHOTOCOPY

1/28

CLINTON LIBRARY PHOTOCOPY

CATO
-Gossman
-Bernstein

LG
Pleased → be invited
Supptve of premise of paper, although some criticisms
Major stalking → tackle all these issues on intl level

ICM
Appreciate this oppty → hear your views
Anticipate this will be iterative process
Project stemmed fr/ NTB TF initiative, and based on 'opt-Out' framework

TAX

ICM
Agree w your pt not → tax on Net core
believe corp profit tax will recap value ~ this is spirit of paper

LG
Agree w this spirit
Keep tax rates low as possible (if recess → impose)

ICM
Diff fr/ states / cities b/c rely on sales / transax tax ~ see now how futile it will be,

we don't want preempt states on Net taxes, but unless they get away A/ patchwork model, could see immense pressure on state fed in sev years — weve encased Dem → next w themselves

LG | Really, we need whole new body of int'l law re issues of Net tax

ICM | Quest'n of how we enforce existing tax law - of course, yes — but how, to what extent, still TBD
We are hopeful that states will approve now and Fed will oppose ad hoc efforts

LG | At this pt, CATO hasn't done any wk on this issue

SB | Seton Hall Law Prof Dan Burke suggested that states regs on i-state commerce would be so bad that merit fed interference on grounds of constitutionality

LG | We have looked @ FCC as heavy-handed - want → see your style approach

[tow-> reg int'ly?

CLINTON LIBRARY PHOTOCOPY

ICM | We likely will take snowball approach w many

Diff fora ff diff issues, ie OECD ff data's

SB You need → think abt local licensing or some issues of code in services

KGM Good pt - probably ff NTB / Mkt Access sects

LG Content controls are NTB

KCM We spt CDA blc law
If otwise, not likely we wld spt
CDA-type leg - prefer ratngs, velip
SOCNs → empwr users after then limit
free speech
Ff foreign ctys, we hope they will not restrict content on any grounds

VG When you neg. on this issue, point out econ irrationality of content restrctns -
need → strike balance btwn balancing free speech but avoiding economic irrationality

KCM Singapore anecdote

CLINTON LIBRARY PHOTOCOPY

SB Agree that self-reg ~~idea~~ is positive, but look @ UK: concerned ō one or two ratngs systems emerging as monopolies
Believe that competitive ratngs systems

LG | Allow mkt → solve these problems, dec interfere
think hard abt movement → censor Net – seems
that there could be movement → censor
medium dive → one-off cases

Bottom f/ USG → educate ppls rather than
legislate

EPS

LG | Net could provide mkt f/ fee banking – int'l &
post central banking
Don't foreclose on that possibility in
int'l agreements

ICM | Our approach = monitor EPS f/ now
Believe that EPS providers will have → convince
customers that their systems ok –
likely → want regs

LG | We are long way off effective EPS

CLINTON LIBRARY PHOTOCOPY

VCE

ICM | If cyber-VCE opt-in, OK? Some cos want it now
SB | Think your system = little too detailed; prefer
more flexibility

CLINTON LIBRARY PHOTOCOPY

SB ~~[illegible]~~

IPR

ICM Post-WIPO feedback?

LG Ppl more pleased w ECAT exists now rather than pre-WIPO

ICM Where are you on OSP/Tcom liability?

SB Concerned that OSPs, if forced → act as censors, will not serve as true comm carriers

I prefer not → see OSPs as comm carriers - prefer some variant on notice & takedown
- perhaps require cert order
- perhaps indemnify OSPs thru initial contact

Scientologists example suggests hard → take down

LG On tmk, have we appropriate fora → consider these issues, ie IETF

Perhaps empow such orgs → handle these issues

SB Perhaps resolve linked → copyright attributes

~~Retired~~ or patents, inclined → be skeptical of shifting patent law or software
- create complexities
- complicate commerce

U xisting patent law, software seems → be doing well

ICM We do trying → prevent compulsory licensing

SB We never supt compulsory licensing

privacy

ICM — We take mkt-based approach, grounded in notice & consent
LG — We are worried abt privacy as in govt violating person's privacy
SB — Concerned in mand. labeling - once you move down that road, a lot of regs can follow
Instinctually, this concerns me
LG — You could move down path similar → CDA
ICM — Do you do nothing (could lead → EU-style) or put foot in door now?
SB — If you want → resist foot in the door, just keep in mind that gvt databases now scary than prisec
Need → study how → mk alternatives
- anonimyzer
- filtering techs → control children
ICM — Agree that buyer anonymity impt.
SB — If you get involved, do it by statute not by fed agency interp

CLINTON LIBRARY PHOTOCOPY

security

ICM — Need → balance comm/pvcy v. natsec/law enforcmt
LG — Clearly fed needs keys @ some level but ~~ours~~ burden of proof should be on fed - always needs → matter balance
SB — Interesting that law enfmt agencies have given up on controlling encrypt domestically

Summary

Tax – we discussed
EPS – in sync today, you feel diff. tomorrow
ICC – check w new Pres (seems OK)
IRR – we we hyper on patriots
You prefer more prison most on tank
we are getting more on oil
TS – in sync
CNT – in sync

SB — Intersp – we are skeptical here
VG — we are covered that if ~~CNN~~ onboarding occurs too fast, you will create so many UK competitors who then will come -> USG

Pen

priv – same viewpoint, although USG better positioned than GV approach
See – diff. opinion

CLINTON LIBRARY PHOTOCOPY

1/28

AFMA

Jonas

AFMA mkts films & TV-pgms oseas

Diff w MPAA

- cmpnies not totally mtgd, mdies
- cmnis = pwhrs

We are very intd in EC b/c we are license-oriented industry

we have had some diffs on copyrt. w software industry, others, but on EC, we are very supptive

(1) AFMA very involved w UCC 2B process, very supptive - we'd like → see Fed law amended to supt EC (more than simply state law)
[amend fed law → supt state law process

Tackle it as part of copyrt effort on Hill

(2) Get copyrt. office → supt ant elec. filings (need add. resrcs

(3) focused on secured lendgs - could we move → electronically perform lendgs thru e-filing synth - eventually put UCC-codes online

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This would req. legis. ① → Δ Comm't Δc ② $ resources

We will discuss ā Cohn

Keep the emphasis of WPO this sprint

Elaine Vlamack tie in a Reno
as sprint redux act

HP XOT Rept - 2/15

CLINTON LIBRARY PHOTOCOPY

Beryl Howell — Leahy — Sen Jud - Dem staff
Jane Gradsky — DiFi — 29 Jan 97

Ed Burelt — Leahy
Neil Printer — DiFi
Mein Jenys — Cole

ICM — Intro

BH — What role will Congress play on tax/duty issue?

ICM — To all, 3 places
① on some issues, legis. nec. → implmt
② on others, USG will need → neg. tax
Hys ∴ Congress will need → ratify
③ on others (and maybe all), hearings will be valuable → inform Congress & public

On tort issues, we hope VCE approach will handle - we recognized → legis.
c[illegible] & amnties

BH — Lenz citing certain GOA positns and principles in GSC paper

NP — DiFi very concerned abt content & fact — terrorist info

CLINTON LIBRARY PHOTOCOPY

ICM — We believe ratings & filtering tech best way to handle net content
- censorship would fail
  - allow other govts → censor US content
  - terrible, huge endeavor → try → control

JG — One of criteria we should look @ is - how paper framed
- should we ~~~~ focus on info have / have nots - Δ
  focus → include role of public info

ICM — Mkpt → look @ commerce piece, only part

We may have → deal w universal access issue → ensure all have access to Net

JG — Don't agree that nonreg envmt keeps prices down
ICM — In pople, competn & consumer choice keeps prices down

JG — USDA examples suggest prices might not always be down
ICM — w gvt info, we shouldn't allow prices → hike prices - gvt info diff. than ~~~~ pest

BT — Privacy issues impt. but need to be addressed separately

CLINTON LIBRARY PHOTOCOPY

CLINTON LIBRARY PHOTOCOPY

BH Leahy believes Congress provides we have rec'd, Kemp legal auth than administrative fiat

LCM · We agree

On local loop pricing, WSR & FCC have staked out clear positions on interconnection issues

on dom side, need f/ universal access, questn = how : not sure yet, but impt f/ it → get done - consid. how lucrative this is, telcos and others should mk up @ one pt.

JG Std-setting : should we let other orgs/interests in std-setting process?

LCM we bel. govt can supp w $ f/ R&D, but ISOC should decide

BH On univ. access, how → get ppl → computer to engage in econ impt (but not pt. of this ppr)

JB Also make sure that costs controlled so all _____ can access

30 Jan 97

Oxley
Foster

ICM Intro

Oxley 2/C Tech advs, need divorcibility -> UCC?
ICM Need -> refine -> apply to EC
- widen focus of dom, intl model laws
- speed acceptance
Impact of UCC-passage => global acceptance of contract-model f/ EC (rather than Tcom reg model)

MO Which dom industries push most sppt f/ reg-model?

ICM Some in biotech/ag & con-goods who want -> slow down

MO How is EU?
ICM Reg-model driver: pow, stds, content
We want boost NEC states rather than allow Fr, It, et al -> forward agenda

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CLINTON LIBRARY PHOTOCOPY

ICM - Main pts
- contract-model / vec
- Duty free zone
- No New Taxes
- Let mkt grow: EPS, stds
- N & C approach on privacy

MO Abstract cypress ide? Hengis? Legis?

ICM Agreed, but impt to focus on process as well as product
Desire ff bpt & hp on all these issues

BF Comm staff
- staff briefed & pleased
- finance subcom interested in $-services
Any issues ff our subcomm?

ICM we want → meet & monitor, allow it → develop rather than act now

Desire → balance consumer protection w needs of mktplace - we can do that together

Feb - revisions
Mar - amendment
Post - 3/97, agencies will take lead,
WH w comms as nec → advise ff legis
WH will coordinate any agencies,
drive regs - hope → consult w/ in process

GOJ
MITI

Japanese auto parts

1

② GOJ sports EC b/c prom econ dev & reform
econ ofcls can take adv. efforts & benefits
of EC

- GOJ Policy abt wider input of EC across
Japanese industries b/c will boost econ resty

② We want other govts → keep espace free so we
can develop EC work barriers
- concern abt SOC issues => tele dev (ie privacy)
- need ff MTI coop => harmonization
- Impt → ensure all parties have access → EC
- GOJ/MITI has paper which will
come out soon and discuss ② topics
(late Feb / early March) - will brief
businesses but not just IT - all kinds of
EC will help all

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WH EC paper

I/

① Preamble - we see the → econ platform & drive
for EC : also perhaps work meeting SMEs

② Principles : use not 'rules' but 'EC' b/c EC
more wide :. ensure movement in all 'rd's

③ Policies
- US focus on tax diff b/c no Jpn issue - US has
states but Jpn not yet covered
- DFE = unifying concept but seems harder operationalize

Japanese ppl haven't grasped power of ER as have US ppl
- We underst took issues in such detail yet

III Bom Conf

1 - MITI min accptd Rx rdt invite (face→face)
- we are viewed too focused on neg. aspects of ER ① more infl → focus on positive aes

② focus on SMEs benefit from ER now

③ no ability → achieve conclusive cmts on Net issues & are conf
- Lots issues
- Ltd. Time
- X-cut issues involve lots diff. min's

problem if seen as P3
Brussels—Tokyo—Bom,
perhaps 1st mtg of 2nd stg

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II MITI pr
- need → sell → Japan's pblm comp at ~~advanced~~ e-c

ICM INFO
- type → release March / April : eyes → see your pwr
- MITI → approach more ~~ER~~ MITI Rx ↔ business

CLINTON LIBRARY PHOTOCOPY

GOS Input → Y/J views on issues - hope we can coordinate → do so
High severity MITI init., think true → involve other agencies

LEM We coord. 18 diff. agencies → discuss issues

GOS unclear who will coord. on GOS - hopefully, Office of PM but difficult → say @ this pt.

Your views on Boom Conference ?
- we told US views negative

LEM DOC & DOS have concerns - we are trying → merge that in some way
① timing - can't let interfere in orgy wk
② in other JOs or EC-related issues
③ Ministerial-level - seems too high
③ timing
DOS now discussing in Govs → resolve issues
we think could be helpful, can't prejudge discussions during Electn & not apply rev. :.
now attempt → develop answers

GOS Have can use Com in → send POL msgs →
send msgs → Jp govs & get on impact of EC,

LEM Concern to subject matter (i.e. content controls)

30 Jan 97

Lauzon
Whitney

~~BL~~

KM Intro
BT 40 bit 12-yr old
MA 12-yr-old

Process
- we have a lot ant:
  - need f/ comm policy or tactic
    - how → do it
  - need f/ global strategy
- we will disagree
  - encrypt
    - cellular phone privacy hearings will demonstrate failure of policy
    - led → readjst policy

How can we help?

PWH Push law Enfmt → better usstd
prob

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BT Times-Argus: taps 50 phones/day in NO, CA
- civil liberties ramifications very significant

ICM USDA concern - problem

BT Agree w you on CDA & content controls

ICM We see process = product
Decide → confirm → consult & work together

BT In terms until discussion, let us know where we can help

Also, we will get bipartisan

Some active legislative action regulating Internet
↓ both
We need signals ASAP so we can explore & share

We will focus on issue of from juris. in IOSR - likely to roll & and treat Net

[Policy we need ICM Model to see this

BC I get along w Reed Hundt @ FCC
But if we are wrong →
digital mktplace, do we have
right frmwk in place?
Do we have right agencies in place?

On Univ Access, USG must spot this —
wont happen now wout USG help but
will take place due → natural
course of mktplace

Also, we will need mktplace driven by choice
& competition

Need govt policy → ensure no monopolies —
perhaps FTC, not FCC

we created pro-oriented structure @ FCC — now
in non-monopoly some world, we need →
redefine, reinvent, rewk FCC ?

Not clear where → go but certain we don't
want → be where we are — need → focus on it

* FCC.GOV

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WITHDRAWAL SHEET
Clinton Library

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Magaziner, Ira – Electronic Commerce
OA/Box: OA 10380/Box 7 **Archivist:** mpw
File Folder: [Notes] **Date:** 4/14/2004

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25 Feb

CSIS SPEECH: LIFE AFTER TCOM ACT

⊛ h-link → Tom paper
- b/c NIST pg.

GARRISON Intro

RITTER Intro

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VCM Remarks

Q1 Lots will take int'l amts - which for?

VCM Diff for diff issues

Q2 Int'l ratios f/ bus / govt?

VCM B/C only dealt, only sght pcts f/ US
Some priv. reax which have been
positive - some for cos want → help,
but f/ govts, no offic/ reaction → date

RITTER You say 'price shall lead' but IOs
often do not prov. access → outside price

How can we encourage price leadership
when venues I-G 3rd trad - closed

VCM We are saying on # issues price shd
create SOLNs & govts can endorse this rule
ie. UCC

In some areas, govt sets policy (tax) but
can benefit f/ price coordination

One one issue, see, mpt → have dialogue in
sense & restrictive way
E/all else, P.D. should be done in open &
interactive way & bodies should adopt this approach

Presidents should step up & assert leadership

MILDD ITEOBJON

Yousef US should have posture, but what
about states? what will be process → range
diversity of activities across states?
How will US go forward?

CCM

Need f/ coop btwn states & govts
- states seen → be issue need f/ industry
on IT issues (ie tax)
- we don't want → prompt states - provide
dialogue and, where appr., convey
premise dev. within approach guided
by principles we've already laid down
states see need f/ this b/c entire body
of IT cold impede nation

likely → || int'l discussions

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Q3
CM

Q's or concern interest
Desire → allow sensors → get out
& priv. not sufficient
Also, needs → be ample protect → appr. which enhance
concern about. also will ensure f/ US

Q4 Encrypt?

I4 Balkan 4th ratsee/low effort and convl/econ ints
- both legitimate concerns
- not ideal resolution
- lots ppl o+c!
- we will wrk⇒ wk it

www.HPPC.gov

CLGTOWN PARTY

TP Mtng Ref

① NxtGen net
② Differential quality
③ Apps

Now

① Tghtn USG ntwks
② Engage priv sc on research Agt
③ Cyber-rel bdgt prcess
④ May coforce

Itrw⇒ Get hanked

① acc: app $ with funds
② priv: sppt $ partipt

S2

- State objs
① open mkts
② fair comp
③ Industry has resources

CLINTON LIBRARY PHOTOCOPY

ORACLE

e-c ⊛ just ⊗ goods ⨌ $ -
- long distance (long
- red tolerred
- serv e-gvt

① convened @GOA ⫽ tackling issues ⨌
create cohesive strategy
PARISEE feels it is behind tech
deliv - goods see legal ⨌ reg. sppt

② study sppt ⨌ pipes - convnd
CLOA ⫽ outlying then

US software ind. prvd blk not heavy
regemnt ⨌ ∴ sppt pipes
blk follows our model

③ study sppt → open ⨌ wkup stds
- best way reduce costs ⨌ ↑ drivr

④ several recomms
- prisee should lead: cpt then calls ⫽ USG
to wk in lead on srv issues
(walks tightrope) — we need → find
way ⫽ prisee → input → all this
in timely way

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- CCA mentor reg on wide type issues - approach each w future in mind (priv. & sec.)

- all h; suave, tech will ✓ in S yrs : take adv.

- we sppt CCA call for mtgs on st/loc taxes
  - we agree w no new, but also hard look @ xfuncn
  - appreciate Trs ppr

- crypto - Oracle sppts CCA proposal but crypto must be interop & global — (~30/40 yrs apprch) (reverse ext

- Shyly sppt CCA effort in this area & want to wk hytr going fwd

- Real comp. in dom telecom - nothing for Tel Act 96

CLINTON LIBRARY PHOTOCOPY

Q&A

Rights on ICM & this month: need to be ranked
who count blk dot listen → price or last vertue: is he really
listing?

- cannot do ff funding very unrelated prob
- GHC & price is being listened to
  i.e. GHC gig → DECO to make low
  hear price PoV
- Dr well-stated problem: diff. notions of what
  govt - biz role should be
- believe diary has impt & real purpose
  has been made

CONGRESS PAPER

Heart — HCom — all WDC & sat.
Howell — STud
- look @ whether Telact => comp / consol
- content reg. on Net
- encrypt — Burns / leaky
- copyrt. legis.

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CLINTON LIBRARY PHOTOCOPY

① INTRO

A - welcome → NAFTZ

B - Critical role in strgthg US econ. base, backbone of nat'l econ

C Econ Dimg. now
- info, ~~based~~ in-based
- global mkts & free trade

D USG & C/GA agency → supp

US industry in this fluid econ envmt

② C/GA

A. WH
- Restructured NEC / NSC
- Berger
- Tarullo
- Rubin-dom.

B PRIORITIES

① Keep US comp. - what govt can do
- Fast Trak authority => Chile → NAFTA
- Strg USG resources
- Fed funding f/ educ retraining & skills dvpmt
- Fed fund f/ Inet2 → bld NII

② Open mkts & ↓ barriers
- Cont'd efforts → open Jpn
- Contd effts → Europe TABD, APEC open
- Contd effts → Asia
  - use leverage → bld ties → Europe
  - use leverage → engage PRC in WTO

(3) Stylus word T-style
- 17A

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exec → articulate principles then implement as actg
ie. encryption - principles run counter → policy
CDA - great → hear ICH say anyone
parents & users b/c name of bill
which basically invalid → contr CDA

JIM TIERNEY -

- response → how states will react → user argument:
  - they will like it
  - I like it, state law enft officials who have read it - all like it
  - from intrastate piece good (break down fees)

  If citizens can solve issues themselves, then law enfmt dt have → look for wk
- key ppl want → drive law any P/U's, avoid juris. questns but not focus on trying problems
- limit victims from user argument

DJ: Anyone sense contradict him how online owners can set rules in their space v. fair use doctrine & free flow of ideas?

RP: high → balance as is now f/ all who rep's users (ie. newspapers)
fairly fact intensive inquiries will be nec.

we are bound in OSD Litigation

CLINTON LIBRARY PHOTOCOPY

In all the respects PPR, we need global statement on OSP liability - it must be resolved and marks created, but even in self-reg we ultimately will need legislative action

BBar Country parties & comptr must be reconciled in online envmt; esp tied into IPR - lots of wk will need to be done

[redacted]: Extend dist due process?

Boz: we are pro strong and you agree → play by rules whether you like them or not
Sen Kan forced mt'l debate like. foreigners stood that US jumped gun on content

DJ: Jerry's DNS & trmk - how does OS Congress operate in this envmt

Bill: Congress will need to decide either affirmative legis. role or provide alternative constructive forum

Herman: MCI 2 paradigms - interesting b/c tech might not allow those models → be distinct
What does merger of Net Meta voice & packets in ICM leadership - have approach?

CLINTON LIBRARY PHOTOCOPY

AOL: That's why it's fatile ⇒ regulate - b/c so dynmic & fluid - whatever funk we use of/ global elec comm, we need ⇒ move out of Wash. eg. Reactive - keep it free flwg & laissez faire

RP: Debates now on unv access etc - we need ⇒ think out of box - as w cable & tel, monopolies now challged b/c 100% ease of entry & no bottlenecks ∴ D now you risk

bit = bit - but distinctn betn voice & data disappearing

DJ: there are differences in bits & diff actuals will req. diff rule sets

Q: DNS v. tmk

Burt: "contract vocabulary"

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2/12

IIA MTG.

Dan Owen

Pleased w paper - pt- direct
3 issues of importance
① gvt services on-line
- c/GA mde great strides
- Impt all gvts engage in this blk useful ff priv. ind. & NGOs
② priv
③ fpc - spec. dbase protects
- feel threat by EU
- need → reassure
Udesp positn, don & int'l

LM: Wd appreciate add. rights a how dbase ftr should oper

we think can impartial, but other countrys do have legit concerns

Owen: we've already started → speak w Congress & Adm — wd wld like → be part of GA discuss

Overview = pt multiplane not disrupted -

CLINTON LIBRARY PHOTOCOPY

Owen Be aware of deadline – we need to proceed a little in order to get this done

Delivery

Owen We have been in area for many yrs
Our members care/s use public info –
we see benefits for worst info
public domain
(desire for balance

Abrams Xpsn = major credit bureau
desire for balance – free flow ≠ balance of info

Several comms
① CONSENT V. OPT OUT
- consent = accepts rel. ⇒ security, consent as access control
- opt out = info used → guide mktrs, allows consmrs choice or their info being used by mktg comm'ty

Comms tell us they like choice: opt out approach

Use of term "consent" bothers us –
Consmr Act calls consent opt in
NTIA calls ~~consent~~ opt out

* EXPERIAN paper

This confuses our position totally

We think there should be choice
- give consumers knowledge, then allow them to choose
- problem w opt IN = people Δ - people need → be given choice

[redacted] So you want CHOICE and NOTICE, maybe more?

Thomas Yes

Alden S. Sometimes choice not appropriate, i.e. if info in public record or criminal record → be hired f/ job

Even public records are not easy — Leslie Byrne calls re-using public record opt IN

—

Mehlitz Concern with linkage abuse & privacy -

Dunn Our concern = FBI, and Banker's should be able → gather info f/ bkgd check

Some priv advocates say 3rd parties shd use info gathered by gvt

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CLINTON LIBRARY PHOTOCOPY

Adams

Expain collects pblic sourced info
① ~~pblic~~ info collected fl dissem
- real estate records
- no new restrix
② info collected NOT fl dissem but which has b/n part of info mktplace
- drivers license
③ info ~~collected~~ collected which never should be distributed
- health records

Owen

Impt pl gets → collect info but gvt need → tell consmr what can or can't be collected

Adm S.

Consmr mkt has been driving bk of free flows of info

Hyp mkt developed wnd Cat 2, but now Cat 2 and Cat 1 ~ siege

Netanitz

Rt now US system much better than EU - EU indeed could use priv as NTB

Adm

On gvt info policy, pls consult OECD process & EU

Doman # sci types could dot for guts controlling US info - we appreciate his respect

ICM If co., how its resources, can gain into pub record, then sell pkg as proprietary info

↳ We think this can happen just that use or only collect pub Dom

↓

leads → monopolistic behavior

We want your suggestions on priv, esp how we quantify pub domain's privacy & other concepts

Owen We are seeing this comm now

Morris We believe our US approach, which focuses on balance, has driven US toward strong pt.

We can self-correct in US eg. inappropriate uses of govt info

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F-4

Duran

①
② privacy wh
govt services
③ CIA mtg (4/97)

~~PMF~~ BKFST

2/13/97 CKAM

JEffmach Intro

ICM Intro

Blanos PFF Process = critical

Seems that this = similar → ITC Law of Sea but even if US believes in this, how do we deal w chys who do not?

ICM ① Most chys hv dev policy in form fashion — looking → US fr ldrshp now rather than cementing policy decisions

BIC policy not fixed, we really have opty

② also, mkt-oriented pers & interests in each chy ∴ we want → give them boost in pwr thru this effort

Most govts know they are control Net (Cyprus anecdote) ∴ we want → start process now, build snowball approach

Blanos We also have leverage bc we ~~have~~ can sponsor or veto over ports

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Fritz Hollings — In light of what you said and Singapore ant on tariffs on interactive, does it make sense to launch WTO discussions on Net?

ICM — Exactly what we want to do - when proper b/m's official policy, then we will start to ~~this~~ up this up (after Tom discussions wrel.)

We see dynamic environment Net on-line
- more sales → US co's
- tptr → impose NTBs blc modern comm flows

Our hope is we can win here - it is a fight worth taking on

Bill Moss — Rights on Uruguay-Gx bill & duty free zone?

CM — In prnple, except of no new Net taxes rpt & we will make very clear

We do want to prompt states, but if lots of diff tax regimes emerge, we will have little choice - hopefully we can argue them to do differently now

INTEL — Texas now discussing whether non-banks should issue currency. How can we get involved?

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ICM — We can help you → set up mtg w/ DOC & Vs - just contact us now

At this pt, we believe we should pull bk & allow mkt → drive EDS
Power of mkt should be recognized: consumer protch is impt, but mkt will not protect. regulate, move forward when probs arise

IBM
Inst'l Bus Grp — Any states/ctys models f/ net governance?

ICM — etc say; but will be impt. bc of uniformity, mkt never will achieve potential

Am Express
Levi Strauss — Levi concerned abt trademk infrgmt

ICM — We also concerned
Emergence of diff. DNS attr ⇒ think visitors
This area = very impt → US

Ink Over
Bell Atl. — Priv. big concern on Hill, i.e. Tauzin - privacy = very emotional issue

ICM — We have adv. notice & consent/knowledge & choice policy
We, gvt, should advocate educate anyone some needs if exceptions req we res

II. child privacy

Mark Rhodes — Do you belive all aspects of comm'l activity will occur on-line? We see bifurcated process where buyrs & sellers meet online, then transact in physical world. what = ec?

CR — We address EC where prod/serv deliv. across net we cant → short fuse

ZBN Corp — Where is crypto now & what is middle ground?

ICM — It has been evolving ∴ fuse
E-fuse = legit ites on both sides – think CCA in better place than 1 yr ago, think we will have long way → go

Emmerich — What is role f/ USG → est. identity – wh conflict w desire f/ privacy

ICM — we can believe in what degree of anon. in physical world
Id like to see world in which
① ppl can believe autonomously & anon if desired
② when parties agree → transact, then we may have to forego what level of anon, abide in UCC
③ when prtys agree → transact, may do so outside UCC if so agreed

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Dan Pell, IBM — Do you see moves → centralize activities?

NEM — If move so, not dep. on how tech evolves
What's most impt = voluntarism

Std on this issue might be nice, but hope if gets → impose stds - we don't always know best ways — likely → evolve a little, but not now

Jim Dargat — Agree w you — issue is not ~~only~~ moving → stds but ensuring if penalties & laws req, that they operate in intel. way.

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⊛ Howard Lewis

2/13

PFSSEA

Boyd Mek.

① Compendium of Hist. Sax
② PFSSEA recomm
③ Policy & process

Today to discuss several issues
① Kyle directive
② Update Azi

Timing: 4/1/97 in time of PDSI

KH: liked % proposal but stressed cumpn dynamics

Usld now attitude → control process not wht (his a vis Hill)

Your effort rpt – any hope that we either can bk → old approach /

Need PI bus & labor → come out → spot ever case in PRC – new element: new players dt want → take risks

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Boyd Mek Revin of Kyle rpt

ICM Real need fl the hve - best bet
dve qvant. analysis supptd
by anecdotal infomtn

Boyd Mek We agree
NAM, IIE rpts pending
CSIS rpt pending

Policy

- Likely -> include time or 2 abt. dem-b'dg
- We see value-adding analysis on contingencies
- Min cargo $\bar{o}$

* Still lack of consensus a how Rese pecans should evolve ← labor comty not opp to sanp but additional cargo bad

ICM Or are hard, where Mkt case possible, worth sparty
Even if Unlikely - unless ops in mke estimate for good
But new work beachmks rpt -> Keep in
array in way

New is use mke clear my #
Does work, fl her cty

Tony W We have by history in this area
is one where we can't see progress

*** we need specific clause → get away by probs
please — we can't allow ff good cases
and AF cases allow Chinese behavior
or any other de facto and FOR, CAA,

Art D China case, bad. Major effect, more
than limits

Problem algebra
① no sunset
② no post-acti assessment

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Boyd Nell Offer sunset not approach dem
US state like barrier

How can we move issue of contract sanctity

Ron Need argument in favor of contract sanctity -
that, than US clearly workable appr

No need ff unfair same that interferes
w existing contracts unless urgency
and what

Boyd Nell Perhaps some supporting arguments
could at least for specific

(Mr JT. bus/labor spoke critical

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Collection: Domestic Policy Council
Magaziner, Ira – Electronic Commerce
OA/Box: OA 10380/Box 7
File Folder: [Notes]
Archivist: mpw
Date: 4/15/2004

DOCUMENT NO & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 1p	nd	
2) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 5p	1/19/97	
3) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 1p	nd	
4) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 5p	1/15/ [1997]	
5) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 2p	1/15/ [1997]	
6) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 2p	1/16/97	
7) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 1p	1/16/97	
8) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 1p	1/17/97	
9) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 8p	1/17/97	
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MTC also sees that problem not where seller resides, but buyers

ICM

Seems need of uniform set rules would be best - one that def measure usage but recap's revenue thru cap hurdle Laws

Would prevent companies' transfer

Diversity or company presence = how can quantify econ presence

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1/9/97

BUCKS et al

MTC

MTC = statutory agency charg → encourage vol state adoption of uniform laws on issues rel → interstate commerce

MTC realizes states must respect i-s commerce, but we truly believe in state sov.

MTC concerned about use of taxes?

ICM

Options

① ~~Ma~~ USL deserves ↑ UCC f/ contracts, dom & int'l

② tax separate f/ UCC —

ICM — paper walk-thr

Objective → think ahead 10+ yrs → future emp

On tax

① 0-tax zone

② no new taxes or Net — not body ① if f/ state POV but attempting int'l harmoni

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sucks NTC unease ble gov bigrge combined ↓
stores on Hill → stop state tax

We are concerned ① Net players will try → carve out tax xmpts on all levels
② xisting taxes may be converted → e-comm but problem if we are stymied along way

com 2 problems w taxing Net comm acts:
① trying → enforce on our end transac tax blc you don't know where they are
② diff tax regimes will make it complicated

Seem → we testify → go = develop uniform state tax rec and it should key off seller end (not buyer)

sucks - we agree on uniform state approach
- we could app. USG adv. this approach

Nat Tax Assn offered → serve as neutral org → spot this effort (like = fed ≠ Hill as well as NTC)

- Jury out on how state sales & use tax would wk in world of e-comm

If software sold & Net and buyer dls. report sales likely audited and taxed as ...

On small transx, we need → think creatively
- perhaps ~~ele~~ ~~ESPS~~ who know transax and imbed cost in software
- need → ensure d& C more state sales & use tax by identify transax → Web

WM — Seems likely that fairness will move on-line, not b/c tax but b/c more efficient

I hear CO's say they are carried abt constant stream of diff tax regimes
(↓ if MTC could lead charge ⇒ develop simple system, would be helpful

Bucks — Suspect that CO's will try → go tax free, then they will

Think that imbed tax tech ⇒ ↓ state bureaucracy

No current state tax policy is targeted or Net b/c goes ↓ ~~not~~ → be perceived as stopping industry

Local units govt have taken steps, but very few - its simply been exaggerated

See problems arise here b/c more difficult to cost out

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Need concern abt existing systems and how they operate

Relthelp btwn fed corp income tax & state corp income tax ⇒ need fl & coop btwn TS & NTC

NTC
ICM

We are intd in rhetoric & substance, to say - govt out of way of Net
E-space as duty free zone
no new taxes on Net
why? • for govts consid. potentially draconian measures which could impair Net - want ⇒ help it
• big potential mkt fl US ∴ if we can start ball rolling now

Your role key b/c your effort can stem corp balkanization now bfl discuss fair & uniform tax rules

Also your role can encge business ∴ help to get revenue & spt dall ecy

Predict, simplic, uniformity are what bus. wants

Cohen

On for side, EU & others waiting ⇒ see how our poli evolves

Curiously - at climate, I would urge you > move quickly -> dev clear & simple model, would help down rd

Brdl | EWG sppt preempt. State ability => tax Not?

LM | Not, not @ this time
EOS dst have policy path rel. -> Hill pass release

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DCM

Dam | Cer industry policy fr Legal framk fr e-commerce
- Don't wait too long
- Hold @ highest level

ICM | My enthusiasm tempered by concerns of DOC, DOS
What's most impt - level / timing?

DCM | level may be we don't need another xpts - level mtg

Ustd US industry hesitant but EU industry very eager

perhaps if not summer 97, then fall 97
or if not US @ ministerial level, then DepMin

We would be willing → amend agenda - if more/less issues desired to speak

On issue of whether to have mtg @ Min. level,
good → hold @ that level even if you get a-nts → you still worked elicit attn and drive

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1/15

UCC CALL

FRED MILLER — Worked on UCC all my life
3 clear suggestions
① UCC centerpiece state legisl. re: comm issues, but now moving beyond

Pat Fry – new law re: EC and e-contracting
FM & Connie Ring – trying to step up to wider scope to include

Uniform law on EPS taxation

UCC impt, but not only dimension

LM — We want Uniform Code (UC), not ree. UCC

We belive Net should be dve in terms of contract & code not regulation - oriented

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"Uniform Commercial Set of Laws"

AB Can we comment on in-depth paper

FM We in UCC
attempt → harmonize US laws w/ that of other ctys

Desire of UCC → be consonant w/ UNCITRAL UNIDROIT

Model Law

Q's laws ruled out w/in UNCITRAL UNIDROIT

only if reflects US law

CM Our hope = start w/ MLaw, b/c no conflicts, and get other ctys
Then use dom process → push int'l

FM Not sure that we should focus on UNCITRAL, UNIDROIT only b/c much broader effort

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ie 1) Intl Bar Assn - drying → get etys → buy off on broader principles

we do need formal fty/convertn, we could ask how states → accept

(3) Δ thrust of 3d Pp → reflect that Fed should ask ☺ NCCUSSL → get passage @ states, then consider how → adopt legis. that will help forward state ask

Verl Cohen — 2 diff. types of law @ issue and that we right hurt → get rid of

1st 2 - speed it up / adopt → new models (easy)
2d 3 - new tools ⇒ substantive issues
ie. much debate on registries & how they would work

We would ~~spt~~ any elim. barriers
We should not blindly spt subst. law Δs

Boss — Ctys assure set rles = assign liability (ie. to ISPs)
we must be certain not → create barriers thru subst. new rles

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Ray Nimmer — Also, ~~dda~~ consus mechanisms of assent process of contract develpmt

Major concerns arise around substantive new rules and questions of assent mechanisms

Cohen — Prple of neutrality when it comes -> new technologies

You need more formal statement or need -> embrace new fcts

LeBrun — Goods -> mentn that org. varies bws in diff. ctys can be help -> ~~pass~~ move around

Frye — Questns of jurisdictn very critical

└ Bring them up as mjr. item

Boss — If webmaster puts up pg, then potentially could be liable in states, ctys - no clarity

Qs of liability ~~[illegible]~~ and Choice of Law

└ more than simply contract

* written comments on Fmwk

" " " or BKup

Review of revised Fmwk

UNCITRAL 2/18
EC MTG.

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1/15 SEN JUD STAFF BRF
534 DIRKSEN

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ICM INTRO

Q1 ORGANIZATION
ICM Exec Adm plus, continuity dig. real comms or both sides

Q2 LEGISLATIVE PKG ?
ICM We want to develop leg w/ you as appropriate
① This time, comm or pieces ?
overall approach - when appropriate,
or likely will be good fit your purpose

we want to work w/ you → make this happen

Q3 How are trans on-line currently taxed?
ICM Some St/cities currently collecting
a Q of how → tax, where, who

Staff are good pt where lots of tax juris which will create real problems if all, esp. SMEs

COM What is Internet Commerce?

Q5 Lots of grading from structure that will be real. ⇒ Supp I-Commerce ?
ICM Your list not the list others will

Q3

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O Kim — How do you reject a Fed
CM — They submitted comments & will be invited in future discussions

✓ Q7 — Do you consider buy/sell by securities online analysis -> b/s software?

2 CM — Yes - SEC involved thus far

1/16/97

Sen Jud Hatch

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ICM Intro

Unwell How would chys in reg regmes operate in Net context

ICM Chys key → struggle w control issues likely will lose that debate in ntwked society

Many chys haven't right now

Lockwood Are C/GA offerals consist., export (commercial) encrypton ?

ICM Diff POVs on C/GA re: crypto
Legit concerns both sides
Improved policy exists, but not final answer

LCKWD Sat-based Net modes connects - included in ppsl?

ICM Sat, Icom, all TKS now converging
How that will eventually look - unclear
We think of everyone terms trade
① ensure maximal comp & consum choice
② L from that, liberalize regs → facil. c & ch
③ ensure infrastructure compatability & interoperability

Richard | Sats will challenge how govts can control & regulate – govts won't be able → handle it

ICM | Sense that govts resist this, but simply taking strong stand now → ensure that certain unsavory types ~~stay~~ are discouraged

Bleiker | Sats will ↑ trade ~~to~~ harder f/govts → control than tcom b/c no pipe → shut down, but still can use licensing, culture controls, other ways → inhibit access – if not control transmission, then ability → rec. it

Dow | Timeframe?

ICM | ~~Reasks~~ How end Jan
Revise how end Feb
Focus, VP event Mar

Desire → ck ~~to~~ how & still how this process, and beyond how implemented

Unruh | How → Proceed?

EC Task force ~~beyond~~ to IPU & Jud Com

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1/16 BRT MTG.

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(CN MSPB

CARLSON Refresh approach b/c non-team paradigm, non-neg
In respect → init view, best → center up front ∴ positive,
proactive approach

(CM- PRC - we have prep'd paper which states US mkt-driven
Rqmts → CEA ↓ rel. → EU, J ∴ need → redress these
issues - several conclusions of study
① got dec play mjr role & USG policies not helping
(ie Tsq sanx, J-V, xpt cont)
② improve USG-xpt promarkets
③ balance antag search w more positive ck
↓
more constructive jt. links (a la Ger, J)

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11/17/97

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① 2 Htgs and how → be mplmtd

② Dbase Htg

3L Dscrpt apprch → mplmt 2 Htgs

May attempt → atleet dom sst – now Htg → det whthr mplmtg legis. necessary

PTO believes must st approach – allow sides to resolve issue outside Htg context

Unclear how proce will lobby HWM

Carp Can we xpect 2/3 vote ft(Sen → mplmt ?

3L ~~Only~~ If anti-Gen forces want → hold up Htg

Q's whether NII & Htgs are lkly mdmst and read ft legis.

1/18

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PROF. PRICE, GEORGETOWN
MARK EDDY FIBS,
CME
CRAIG JOHNSON, CSR
DON HAINES ACLU
MEDIA ACCESS PROJECT
JAMES BOYLE, AM
ROSENBERG

JL — Grateful for seeing us & all your work
BOYLE — We appreciate that you have circulated your views
MR — Appreciate your wk. on encrypto although not exactly where we want to be
MAP — Input wk on striking balance btwn censorship & free speech

Want more rhetorical invocation of dem & commerce - we need more discussion & linkages of value of dem & trade

ICM — We aimed for flatter tone going in -> regs biz felt more likely -> ach. results w this approach

MAP — Understand concerns, but since this will be pri & pub document, important for us -> take strong pub stand

LCM — Encourage you → dev some PIs, and language and we will consult it

ACLU — There seem → be certain elmts of CIGA who dst believe in Dem, ie PTO

PRIVACY

MR — Debate sometimes sharp blk so serious
Not looking f/ targets, but my reasons
attract → coherent debate, more on views of consumers & end-users —
not free, pro-reg but does break some new ground
We would like → talk w other agencies and w outside grps → spot process

ACLU — Find reversal on CIGA or privacy
- or when = burden → protect privacy
- in absence of affirm. express, what happens?

"
Rights free → discuss info that they have consent
- How do they get consent?
- What = consent?
- What do they do w it?

LCM — 2 ways
① Clear conditions → protect users
② some areas that are off-limits

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LM | Give me language
- on consent
- on untouchables

MR | N3C
① Do take Priv. agency off-table
- seems → be absence on privity - there are stakeholders eg. priv. but who is for it?

CM | Issue = bureaucracy
How can't → move ball forward

MR | ② concerned abt N3C - acts as waiver policy and don't think its adequate

make "contractual nature" more clear

Boyle, CME | Also functional terms → induce consent
- when MSoft doc. tells → search your iCloud drive, bad
- when you are offered incentives and not informed abt L-T implics, pen you are off

Boyle | How → make more palatable?
Make it biz-friendly - regulate now → avoid pinch and UE implic later
Empower consumer → make choices

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MN	If you can draw lang → empower consum, I will consider it Also, + delete exceptions
CME	Contracts of adhesion - parent should not constitute consent In general, you can broaden pwr Subst. ~~[illegible]~~ consum for citizen
PR	Not N & C Req & permission - better language Also, great concern that US doc not be used to show lack that US data overcompromised
Oakley	Curious if you frame forgets policing or privacy as NTB ?
	Tone down language b/c not intended as NTB
JL	Concerns re Children
Ohlen	we have spec. keyword which notes that children are special category & should be recog. as such
CM	perhaps ① ② Kids etc make contracts

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MAP | lots of interests now ft children → give info → results

ICM | How → protect?

Ellen | perhaps shown rd, dig sig → worthy age
perhaps phone call or another way → get around to get parents

CMS | results
- see how invasive child must
- appreciate large market for cheap

Ellen | You can make sp. case ft children & privacy
On contractual side, dig sig will be dt. seen
Maybe we cite this, but what do we do until we get there?

MAP | We kept sleeve sizes, but maybe we needs be more conducive to compell usage → dev software keys

CMS | We need more than tele device
- Larg ft keypad, (will come ft TC work.)

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LPR

Boyle — Like love of sect
Your role @ NOC might be # people who weren't heard

Fund. disagmt → how → achieve balance in GOC btwn ints
Also, in this & ed & res country, we could have real problem in LT implix

Problems
①
② Δ detroits of the what = copy

How → improve
① not just b/s of P
- citizens have ⇒ be able → use 3rd P. data
- future creators have ⇒ be able → innovate

② look @ tek means protect diffusion
- Q

③ PTO has pushed one view of copyt., but don't seem → hear others' POVs

└ keep process open, allow more agencies ⇒ reins & weight in

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Caucus pts

① concern to discuss early stage

ICM | BL assured that discuss at table - problem is NOT US pushing it, but EU already pressed it

JB | ② We prohibit mandatory [illegible] unless jud. auth

↳ need → broaden it to ensure mnops behave as good corp citizens

CM | We are trying → avoid anti-comp. [illegible] tendencies

JB | I will provide TRIPS-based language on this issue → ensure you are taking into account issues (such as reading services for blind)

CM | on liability, fair use, etc - we expect debate in Hill this summer

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④ Caucus Process

JL | We'd like → ask you abt possib. of [illegible] conference re TPR re: caucus process

Haines | Paper campaigns against particular trade barriers

LWL | Agree we need to highlight importance of current practice, perhaps by listing pro-child policies & some others

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1/17

OECD - pushing fl e-c conference Fall 97 in Finland
- all informal

Proposal - OECD/G7 conference
- US → can → propose → OECD Sec Gen
- OECD Sec will go → Gen & recommend

10/1,2,3 Brussels Stds Org. Conference
(mjr. prsee input)

Sr/Hi-level ec conference 1/98

Summer Hi-level mtg officials

EARLY 98 OECD/EU conference (possib. ministerial)

→ time → talk → ordering
Oppty → refine agenda

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p22 -3P, not rapid or quick
emphasize effective

- we choose too much, too detailed — allow ppl actors to have greater flex.

- but not as parts but function, catalyst

- more descriptive, less prompive

- provide better picture of prod by ppl select trees, per-

- use trees as ~~topics~~ not universal forms

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NYT article

FAX 011 44 171 409 1637

Bruce Reuter (MW)

Steve Wolke

Ed Sperling

OMB — Bruce McConnell

Mark Bathalter

Lee Leaning

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to have priv. office (like civil rts office, advocacy/ ombudsman role)

P14, SEC

- Begin very detailing SOW – what don't discuss SOWs
- ~~Be~~ include more references → mkt
- Keep more conceptual

P16, TII – you interware comp policy

~~Also~~ also ~~outside~~ section – do health

(~~Also~~ also – whole para

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P20, IS

P20, IP, SD: "Open standards..."

They can also

P20 IP lasts

. . or to gain an unfair competitive edge."

P20 3P – quality stds discussions

P21 3P – "Thus in fairly big" those advisory bds

prose can lead if it feels gut needs
to start

perhaps another section (small)

p3, pin #3: access to info → publish
'or no progress over two
years needs (end last decade)

broader, enlarge pin #3

pH - red → recognize likely conflicts

pg, pR: check links w/ pg.

broader ppr: not too focused
on details
- too detailed, e "collecting scales"
- concern → mandatory licensing
caveat: too final, too narrow
- too maximalist and too grand
- last pp:

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p13, prw

remove POLs pl AGU → get out on
front or this issue
- div sorting → bet growth that we could take

ED BACK
12/3
D#8

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Gtwolish PV

I Start w broader intro - more than just e-com
but growth GII and societal benefits
which can flow out of/ this base, ie.
e-com - grow GII in order to be used
effectively for e-com
can't not ⇒ make it unuseful & empty
but e-com

II too much attitude : shall, must, should -
language too definite wording flexibility -
Stop problem rather than give detailed prescriptive
ID parameters, not answers
work

Pl 2P : not just transac but info flows ⇒
access ⇒ nets, auth, IDs
authen up efficiency, upd knowledge upd
nets, auth, etc.

Pl F' : definitional problems: GII & Internet
"Net Infrastructure" as Internet & Info

Trade - ~~expts~~ discuss impts - draw on benefits of concerns (products, info flows, etc)

P2, 1st, sent 1: "Conv'l transax wholly reorted on the Net..." could total

P2 2nd: "Xposure to legal liability" as problem for bus & consrs

~~P2, 3rd~~ Need → focus on tightening - dom & int'l bodies who focus on this area or should focus on it - not create new huge reg bodies, but emphas acknowledge problem and stake → solve it

NEED weaknesses of current 30's
- flexibility
- dynamic ability → ~~flexibility~~
- light-handed

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P3, ~~present~~

Do a better job of clearly articulating gov't rts (copyright, consr fraud, intel prop, invasion of privacy, etc.) - what does gov't stand for?

- too much hand-wringing of misuse

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Collection: **Domestic Policy Council**, Ira Magaziner **Archivist: rfw**
OA/Box: OA 10381/Box 8
File Folder: **[A Framework for International Electronic Commerce – Drafts] [5]**
Date: 8/23/04

DOCUMENT NO & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Report	A Framework for Global Electronic Commerce, Draft #8. Hard to read handwritten notes. Will be reviewed upon researcher's request, 1p (partial)	11/22/96	
2. Report	A Framework for Global Electronic Commerce, Draft #8. Hard to read handwritten notes. Will be reviewed upon researcher's request, 1p (partial)	11/22/96	
3. Report	A Framework for Global Electronic Commerce, Draft #8. Hard to read handwritten notes. Will be reviewed upon researcher's request, 1p (partial)	11/22/96	
4. Report	A Framework for Global Electronic Commerce, Draft #8. Hard to read handwritten notes. Will be reviewed upon researcher's request, 1p (partial)	11/22/96	
5. Report	A Framework for Global Electronic Commerce, Draft #8. Hard to read handwritten notes. Will be reviewed upon researcher's request, 1p (partial)	11/22/96	

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PRM Personal records misfile defined in accordance with 44 USC 2201 (3).

RESTRICTIONS

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B9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

government-owned telephone companies. These services also are often priced at excessive rates, inflating the cost of data services to customers;

Interconnection: On-line service providers must be able to interconnect with the networks of incumbent telecommunication companies so that information can pass seamlessly between all users of the network. Monopoly telephone companies often price inter-connection well above cost, refuse to interconnect because of alleged concerns about "network compatibility" or "absence of need." As well, service providers are often mandated to interconnect to monopolistic or dominant telecommunications companies, and are not free to build their own infrastructure.

- Internet voice and multimedia: Officials of some nations claim that "real time" services provided over the Internet are "like services" to traditionally regulated voice telephony and broadcasting, and therefore should be subject to the same regulatory restrictions that apply to those traditional services. In some countries, these providers must be licensed, as a way to control both the carriage and content offered. Such an approach could hinder the development of new technologies and new services.

In addition, countries have different levels of telecommunications infrastructure development, which may hinder the international provision and use of some Internet-based services.

To address these issues, the Office of the United States Trade Representative is pursuing WTO negotiations to ensure global competition in provision of basic telecommunication services and to address the many underlying issues affecting Internet service providers.

The United States also will ensure that no actions taken by the WTO's Group on Basic Telecommunications (GBT) will adversely affect the provision of Internet services. The existing structure of telecommunications regulation reflects a history of monopoly and government control which does not exist in the open, competitive Internet market. Applying regulations designed for basic telecommunications to the Internet could stifle the deployment of new technologies and services.

Other venues, including bilateral exchanges with individual foreign governments, regional fora such as APEC and CITEL, and multilateral fora such as the OECD and the International Telecommunications Union (ITU), also will be used for international discussions of telecommunications-related Internet issues. These issues include Internet governance, terms and conditions governing the exchange of traffic, and reliability. US Government

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positions at these organizations that might influence Internet pricing, service delivery options or technical standards will reflect the principles established in this paper and US Government representatives should survey the work of their study groups to ensure that this is the case.

8. CONTENT

The U.S. government has long supported the broadest possible free flow of information across international boarders. "Content" is defined broadly to include most material now accessible and transmitted through the Internet, including World Wide Web pages, news and other information services, virtual shopping malls, software, and entertainment features, such as audio and video products.

The United States will pursue negotiations to ensure that measures, policies, and regulations that limit the ability of content providers to transmit their products through the Internet are promulgated only when necessary and implemented in a manner that minimizes trade distortions. This approach is consistent with our ongoing position in trade negotiations in the WTO. There are five priority areas of concern:

- Foreign content quotas - A number of countries (e.g., Australia, Canada, the EU/France, Mexico) currently require that a specific proportion of traditional terrestrial broadcast transmission time be devoted to "domestically produced" content. Problems relating to use of the Internet could arise if changes were proposed to the definition of "broadcasting" that would extend these current regulations to "new services," which would include the Internet. Countries also might decide to regulate Internet content and establish restrictions under administrative authority, rather than under broadcast regulatory structures.

- Regulation of advertising - Some countries regulate television advertising in a manner that would stringently restrict the language, amount, frequency, and duration of teleshopping and advertising spots. While recognizing legitimate cultural concerns, these reasons should not be invoked as anti-competitive inhibitors to trade on the Internet;

- Regulation of content (i.e. pornography, violence, business information) Many countries including the United States, are considering or have adopted laws to restrict access to certain types of content through the Internet. For example, the EU recently ordered a study on mechanisms to control access by children to, and provision of criminal penalties for, transmitting offensive material over the Internet. China restricts transmission of business information through the

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Internet. Because of cultural and political differences, countries emphasize their individual concerns about what content on the Internet should be prohibited. These multiple interests may result in barriers for US providers attempting to enter certain national markets;

- Regulation to prevent fraud: Recently, there have been a number of cases where fraudulent information on companies and their stocks, and phony investment schemes have been broadcast on the Internet. The appropriate federal agencies (i.e. FTC, Securities and Exchange Commission) are determining whether new regulations are needed to prevent fraud through the Internet;

- Differences in defining "seditious" material: Companies wishing to do business over the Internet, and to provide access to the Internet (including U.S. on-line service providers with foreign affiliates or joint ventures), are concerned about being subject to liability based on the different policies of every country through which they transmit their information. This is especially a problem with information considered as "seditious propaganda," but extends to social differences as well. Compuserve, for example, recently removed several Internet newsgroups from its services worldwide in response to complaints from prosecutors in Germany.

To address these concerns, the United States will:

- Develop an informal dialogue with key trading partners on common Internet public policy issues such as advertising, hate speech, pornography, fraud, violence, and sedition to ensure that differences in national regulation, especially those undertaken to foster cultural identity, do not serve as disguised trade barriers;

- Use such a dialogue as a springboard for informal discussions on how to implement the GII principle of promoting diversity of content, including cultural and linguistic diversity, through the Internet;

- Promote the use of industry (e.g. program content providers, on-line providers, advertisers) self-regulation and rating systems, and technical solutions to empower parents and other users to resolve contentious access issues (e.g. children's access, pornography, and violence);

- Highlight OECD role where US already engaged in on Privacy

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- Discuss foreign content quotas in the broader context of economic and social implications of the GII rather than as an isolated US market access (or trade) issue, which can be counterproductive;

Federal agencies such as the U.S. Trade Representative, the Commerce Department (NTIA) and others have already engaged in such efforts to promote such positions, through both bilateral and multilateral channels, including through the Information Society and Development Conference, the Latin American Telecommunications Summits, and the Summit of the Americas process, as well as APEC Telecommunications Ministerials. All agencies participating in such fora will focus on pragmatic solutions based upon the principles in this paper to issues related to content control.

9. TECHNICAL STANDARDS

Standards and other mechanisms for interoperability are critical to the long term success of the Internet as a commercial medium. Standards are important because they can allow products and services from multiple vendors to work together, or interoperate. They also encourage competition and reduce uncertainty in the global marketplace.

Premature standardization, however, can "lock in" users to outdated technology. Standards also can be used as a non-tariff barrier to trade, in essence to "lock out" non-indigenous businesses from a particular national market.

To ensure the growth of global electronic commerce over the Internet, standards will be needed in areas such as:

- Electronic payments;
- Security (confidentiality, authentication, data integrity, access control, non-repudiation);
- Security services infrastructure (e.g. public key certificate authorities);
- Electronic copyright management systems;
- Electronic catalogues;
- Video and data-conferencing;

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- High-speed network technologies (e.g. Asynchronous Transfer Mode, SONET);
- Digital object and data interchange

There will not be one standard for every product or service associated with the GII and technical standards will not necessarily be mandated. In some cases, multiple standards will compete for marketplace acceptance. In other cases, different standards will be used in different circumstances. For example, a "micro-payments" system needs to have low transaction costs and does not need to be as secure as an electronic payment system used to transfer millions of dollars.

The United States believes that the marketplace should determine technical standards, not governments. Technology is moving too rapidly for governments to try to establish technical standards governing the Internet. To attempt to do so would only risk inhibiting technological innovation.

Indeed, one of the reasons the Internet has grown so rapidly has been the prevalence of voluntary standards developed and promoted by industry, not by governments, and an expeditious process of development and acceptance. These standards flourished because of a non-bureaucratic system of development managed by technical practitioners who require demonstrated deployment of systems incorporating a given standard prior to formal acceptance. However, only a handful of countries allow their private sector to develop their own standards; most rely on government-mandated solutions, causing these nations to fall behind on the technological cutting edge.

Under the leadership of the National Institute of Standards and Technology (NIST) and other technical agencies, the United States has encouraged the development of voluntary standards through consortia, testbeds and R&D activities. The US government also has adopted a set of principles to promote domestic and international voluntary standards.

Numerous private sector bodies have contributed to the process of developing voluntary standards which promote interoperability. Organizations such as the Electronic Mail Association, the Institute of Electrical and Electronics Engineers, the Internet Engineering Task Force, American National Standards Institute (ANSI) and its accredited technical committees, the Information Infrastructure Standards panel, and the Cross Industry Working Team among others, are performing important work in this area.

The United States will continue the current approach and urge other governments to do the same. While no formal government sponsored negotiations are called for at this time, the United States should use various fora (i.e., G-7, OECD, the International Standards

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Collection: **Domestic Policy Council,**
Magaziner, Ira
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OA/Box: OA 10353/Box 8
File Folder: **[A Framework for International Electronic Commerce – Drafts [6]**
Date: 9/22/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	To Keun Ho Bae from Ken Clark re: draft paper, 4p	10/9/96	P5
2. Memo	To Susan G. Esserman from John T. Masterson, Jr., re: draft report, 3p	10/11/96	P5
3. Fax	To Jonathan Greenblatt from Jana Gagner re: Magaziner report, 2p	10/30/96	P5

RESTRICTIONS

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UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D.C. 20230

October 9, 1996

TO: Keun Ho Bae

FROM: Ken Clark
OAGC/L&R

SUBJECT: Draft Paper: "A Framework for International Electronic Commerce."

Mike Levitt asked me to coordinate our office's comments on the draft paper. We did not focus on intellectual property issues, as you will doubtless be hearing from PTO regarding them.

We think the best-developed parts of the paper are those dealing with tax and legal issues, where the paper recommends a more or less "business as usual" approach coupled with some international standardization such as a model code like our Uniform Commercial Code. We also find no significant problems with the sections on electronic payment mechanisms and encryption/security.

We find the paper weak in discussing the following areas: (1) how the increasingly crowded Internet will obtain expanded capacity and who will pay for it [This is not even mentioned]; (2) whether some economic regulation may be necessary to ensure access to the expanded GII on fair terms; (3) how to approach other regulatory issues such as censorship, competition between "real-time" services and long-distance phone service, broadcast-type content regulation, and the like. These issues all involve defining the appropriate role of government with respect to specific tough questions involving the GII, as opposed to generalizing about whether government or "market forces" should primarily regulate, or "lead," activity on and affecting the Internet.

In describing even the "ideal" government role, the paper seems to assume too readily that approaches we consider appropriate for the United States (such as voluntary privacy codes and ensuring nearly cost-free, universal access to the GII) are appropriate international models when relevant conditions (such as the existence of competing Internet access providers) differ from country to country.

Here are some specific comments, in the order they arise:

o The paper fails to mention what is perhaps the biggest unresolved problem with the Internet: where will the money come from to pay for its needed expansion,

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and after the money is spent, will users have to pay fees to reimburse for this heavy investment, and if so, will payments for access to this unique resource have to be regulated?

"The GII" and "The Internet" are spoken of consistently in the draft paper in terms of the present "matrix of interconnected computer networks using the Internet Protocol (IP)." The capacity of this current network is spoken of as if it were unlimited, whereas it is already becoming overcrowded and less than ideal for fast bulk transmissions. The current Internet certainly cannot welcome all potential users on its present gratis and "open arms" basis. The original backbone of the Internet was financed by the U.S. Government and was available gratis. Where the money for needed new capacity will come from and how this will affect the internet user needs to be addressed. (A privately-financed international highway with no competitors would have to be regulated, and the paper now speaks as if regulation can be avoided as a matter of policy. This is not necessarily so, unless -- among other issues -- the financing problem is addressed.)

o Near the top of page 2, the list of potential areas of regulation of the Internet should not include "non-tariff barriers to market entry."

This is not parallel with the other items on the list. That is, the differences between countries' regulations can CONSTITUTE non-tariff barriers, but they are not an "area of regulation."

o On page 6, the following sentence needs some work to avoid sounding like advocacy of intrusive governmental tactics:

> In the near term, case-by-case supervision of the entities experimenting in electronic payments is preferred.

o On page 6, the following sentence uses the term "government guidance" with euphemistic irony:

"From a longer term perspective, however, some government guidance may be needed on issues that the marketplace alone may not be well equipped to address.

o The following sentence at the bottom of page 6 could be read as suggesting manipulation of the public's knowledge of plans and policies:

> The timing of such government action and pronouncements in this area will be particularly sensitive.

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o On page 10, the "PTO Version" and the "State version" of certain language are set out for comparison. While PTO would know the underlying substance of this "issue" (We do not.), it might be noted that the State Department language seems to reserve our right to seek U.S.-biased international rules, whereas PTO's language seems directed toward international rules that allow the U.S. (and perhaps other countries) to handle **internal** problems as we see necessary.

o On page 13, a paragraph begins: "To ensure that disparate privacy policies around the world provide adequate privacy protection and do not impede the flow of personal data on the Internet, the United States should adopt a two-tiered privacy strategy." This sentence is difficult to understand: What are privacy policies supposed to do if NOT to "impede the flow of personal data" in appropriate cases?

o The following sentence in the same paragraph also raises problems:

> At the same time, the United States should also engage its key trading partners in a discussion **to build support for a market based approach to privacy, along the lines of the framework established by the privacy principles.**

First, the phrase, "a market based approach to privacy" could be criticized as an oxymoron, as market forces are arguably the cause of the most disturbing new incursions into the average citizen's privacy. Second, we should offer our principles for consideration internationally but probably not immediately propose them for international adoption. Among other issues, there could be much debate as to whether firms will voluntarily limit the amount of data they collect on individuals, as the privacy principles imply. We would suggest substituting the following language for the underscored part of the above-quoted sentence: "aimed at developing consensus on an approach to ensuring adequate privacy protections on the GII."

o The following sentence on page 14, without some qualification, could raise eyebrows:

> Since ..., the Administration consistently has worked to liberalize export controls for commercial encryption products.

Please revise to say something like: "... the Administration has worked to liberalize export controls on commercial encryption products to the maximum extent possible consistent with legitimate law enforcement and national security needs."

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o On page 16, the bullet on "Internet voice and multimedia" seems to confound two issues: (1) whether real-time voice, and "chat" functions unfairly compete with services provided by phone companies; and (2) whether these services or image-transmission are "like" those to which broadcasting-type (i.e., content) regulation traditionally applies. Each issue is complex and deserves more than a bullet. (For example, before opposing regulation in the case of issue #1, the paper needs to deal with the investment-for-expansion issue noted earlier in these comments.)

o The next-to-last paragraph on page 16 adopts a strident rhetoric and -- for reasons already mentioned in connection with financing of the Internet and subsidization of some services -- substantively oversimplifies the issue of whether access to internet services should "(always) remain outside the scope of basic telecommunications regulations." We think a more balanced discussion here would be helpful -- or drop the paragraph.

cc: Mike Levitt
Barry Bird
Pete Dalmut
Beth Van Hanswyk
Eugenie Barton

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UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
OFFICE OF THE CHIEF COUNSEL FOR INTERNATIONAL COMMERCE
Washington, D.C. 20230

October 11, 1996

MEMORANDUM FOR: Susan G. Esserman
Acting General Counsel

THROUGH: Eleanor Roberts Lewis
Chief Counsel for International Commerce

FROM: John T. Masterson, Jr.
Deputy Chief Counsel for International Commerce

SUBJECT: Draft Report on "A Framework for International Electronic Commerce"

Attached are copies of the above-captioned draft report and attachments, with our comments noted thereon. We would particularly note the patent proposals on p. 11 of the draft report, which are phrased in a way that may well create serious political controversy.

The report calls for the establishment of "international standards for determining the validity of a patent claim" and for the holding of trilateral and World Intellectual Property Organization (WIPO) conferences on this topic. From my discussions with staff of the Office of Legislation and International Affairs at the U.S. Patent and Trademark Office, it is my understanding that this proposal is meant to establish standards on how literature on the Internet can be used to establish prior art for novelty (35 U.S.C. Sec. 102) and non-obviousness (35 U.S.C. Sec. 103) purposes.

However, as phrased, the proposals might be read as implying that the U.S. is contemplating moving from a first to invent to a first to file patent system and reentering some form of WIPO patent harmonization negotiations. As you know, Secretary Brown discontinued U.S. Government participation in the patent harmonization talks because of the controversy generated within the patent bar and the small inventors community. In addition, any possible move (or even the remotest hint of a move) from a first to invent to a first to file basis for awarding patents is very controversial, especially with small inventors and their Congressional supporters.

I recommend that this provision be rewritten by PTO to make it absolutely clear that the U.S. is offering only narrow Internet-related prior art proposals, and is not considering changing to first to file or reentering the WIPO Patent Harmonization negotiations as an active participant.

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DRAFT #5 -- October 3, 1996

4. INTELLECTUAL PROPERTY PROTECTION

Commerce on the Internet often will involve the sale and licensing of intellectual property. To promote an effective environment for commerce, sellers must know that their intellectual property will not be pirated and buyers must know that they are obtaining authentic products and not pirate copies.

For this reason, international agreements that establish clear and effective copyright, patent and trademark protection are necessary to protect against piracy and fraud. While technical means of protection, such as encryption, can help combat piracy, an adequate and effective legal framework also is necessary to deter piracy and fraud and to provide effective legal recourse when these crimes do occur.

Copyrights

There are several treaties that establish international norms for the protection of copyrights, most notably the Berne Convention for the Protection of Literary and Artistic Works. These treaties link nearly all major trading nations and provide them with a means of protecting, under their own laws, each other's copyrighted works and sound recordings. Although these treaties do establish certain minimum levels of protection, they need to be updated to account for changes in technology, such as the technical challenges presented by the GII.

With the leadership of the United States, the members of the World Intellectual Property Organization (WIPO) are working to establish three new international agreements — a possible protocol to the Berne Convention, a new agreement for the protection of sound recording producers and performers, and a new agreement for the protection of certain databases. sui generis

The United States government should seek to conclude these international agreements through WIPO in ways which:

- ensure copyright protection for computer programs as literary works;
- ensure copyright protection for certain databases;
- specify the appropriate roles of collecting societies and direct licensing systems in the GII, including the prohibition of mandatory licensing in the GII (except to remedy a practice determined after judicial or administrative process to be anti-competitive),

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DRAFT #5 -- October 3, 1996

to ~~prevent monopoly behavior~~ remedy a practice determined after judicial or administrative process to be anti-competitive

- Require member countries to provide adequate and effective protection for subject matter important to the development and success of the GII.

- Establish international standards for determining the validity of a patent claim.

The United States will pursue these objectives in two fora. Officials of the European, Japanese and United States Patent Offices meet for trilateral conferences each year to foster cooperation on patent-related issues. The United States will recommend at the next meeting that a special committee be established to make recommendations on GII-related patent issues within the next year.

One hundred countries and international intergovernmental organizations participate as members of WIPO's permanent committee on industrial property information (PCIPI). The United States will attempt to establish a working group of this organization to address GII-related patent issues as well.

Trademark

Because trademark rights are national in scope, conflicts may arise where the same or similar trademarks are owned by different parties in different countries, or when different countries apply different standards for determining infringement. Conflicts also may arise where terms are in general use in one country, but restricted as either trademarks or geographical indications in another country.

With regard to access to the GII, conflicts have arisen and may continue to arise where trademark owners are aware that third parties have registered Internet domain names that are identical to their trademarks. An Internet domain name, which identifies an address on the Internet, is not, per se, intellectual property (i.e., a trademark). However, an Internet domain name may be used as a trademark, in which case it would be entitled to protection as a trademark under existing laws.

The United States will lead the effort to establish an international forum for addressing the Internet domain name issues related to trademark protection. The issues addressed in such a forum would include, but would not be limited to, conflicts that may arise where:

- The same or similar trademarks are owned by different parties in different countries.

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NTIA/OIA Comments on October 3, 1996 draft of the Magaziner paper

1. Page 3, Section 5: The heading for this section currently reads "The Internet should be a truly international medium". In view of the already international scope and nature of the Internet, the title should be **amended**. What follows is one suggestion for a possible new heading, "Electronic Commerce over the Internet should be facilitated on an international basis."

2. Page 12, final para. under the trademark section: The following paragraph should be **added**: "Other agencies may play a role, pending the identification of such a need by industry, in working with other governments and/or international institutions on international aspects of domain name registration." This will serve as a marker in the event the USG is approached by industry to assist in addressing international aspects, other than trademark issues, of international Internet domain name registration.

3. Page 16, second full paragraph: This paragraph should be **amended** to reflect the USG's on-going and current efforts within the WTO to negotiate a basic telecom agreement. The text should read as follows, "To address these issues, the Office of the United States Trade Representative is pursuing WTO negotiations to ensure global competition in the provision of basic telecommunications services, which recognize the critical importance of transparent, non-discriminatory, and effective interconnection regulations."

4. Page 16, third full paragraph: Although this paragraph appears intended to separate Internet issues from the ongoing WTO basic telecom negotiations, it nonetheless implies that there will be "WTO market access negotiations for Internet service providers". Such a statement could be interpreted as USG support for WTO negotiations on Internet related issues, which would be both premature and inappropriate. As such, the phrase "WTO market access negotiations for" should be **deleted** from the first sentence in this paragraph.

5. Page 16, final paragraph: After the words "Other venues, such as..." **add** "bilateral exchanges with individual foreign governments and".

6. Page 16, footnote: This footnote should be put in **brackets**, pending confirmation from the U.S. mission to the OECD regarding the status of this working group. The USG has some outstanding concerns regarding the composition of the group and its expected output (e.g. the working group has not been open to all interested parties, nor to government representatives of OECD members; as such, its status as an "experts" group providing guidance to OECD member governments is currently in question).

7. Page 17, second paragraph: This paragraph suggests that the USG is planning to undertake trade negotiations on Internet content issues as the primary/sole approach to addressing and resolving differences in national regulations regarding content. Unless the USG has already initiated such negotiations under the WTO, the paragraph should be modified to indicate that WTO negotiations are a **possible** option that could be

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pursued. Changing the opening paragraph in this fashion would be more consistent with the final paragraphs in this section, which more appropriately suggest a variety of approaches the U.S. can and should pursue with foreign governments on the content issues.

8. Page 18, final paragraph under the Content section: Consistent with the comments above, this sentence should be modified to indicate that the USG **may** undertake WTO negotiations. It may ultimately be determined that such negotiations would NOT be appropriate, and that efforts to promote self-regulation models would be the primary focus of USG efforts.

not nece.

drafted by: S.Settle, NTIA/OIA
10/28/96

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Date: 8/23/04

DOCUMENT NO & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Report	A Framework for Global Electronic Commerce, Draft #8. Hard to read handwritten notes. Will be reviewed upon researcher's request, 5p (partial)	11/27/96	
2. Report	A Framework for Global Electronic Commerce, Draft #8. Hard to read handwritten notes. Will be reviewed upon researcher's request, 5p (partial)	11/27/96	

RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
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P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
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P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

PRM Personal records misfile defined in accordance with 44 USC 2201 (3).

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B9 Release would disclose geological or geophysical information

- SG & App. Gen stc
- pursuit win
③ best stretch
③ worst inaccurate

DRAFT #9 -- November 27, 1996

- careful what you lump together

- ratings system yes, but not as be-all, end-all

this counter to CDA

A FRAMEWORK FOR GLOBAL ELECTRONIC COMMERCE

BACKGROUND

World trade involving computer software, entertainment products (motion pictures, videos, games, sound recordings), information services (databases, on-line newspapers), technical information, product licenses, and professional services (businesses and technical consulting, accounting, architectural design, legal advice, travel services, etc.) has been growing rapidly over the past decade, now accounting for well over $40 billion of U.S. exports alone.[1]

The Global Information Infrastructure (GII), has the potential to revolutionize commerce in these and other areas by accelerating the growth of trade and thereby enriching the lives of consumers and citizens around the world.[2] Specifically, the Internet, intranets, and other computer networks can lower transaction costs dramatically, and facilitate new types of commercial transactions and new arrangements of buyers and sellers that would make commerce easier.

Commerce on the Internet could total several billions of dollars by the turn of the century. Such commercial activity already has begun, with sales estimated at $200 million in 1995.[3] Many businesses and consumers, however, are still wary of conducting extensive

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[1] Survey of Private Services Transactions, Bureau of Economic Analysis, US Department of Commerce, November, 1996. The estimate covers 1995 and does not include transactions between affiliated companies which could add as much as $47 billion in additional exports.

[2] The GII represents the worldwide infrastructure that supports the transmission and delivery of electronic content, including the goods and services involved in electronic commerce. The Internet is a global matrix of interconnected computer networks using the Internet Protocol (IP) to communicate with each other. For simplicity, the term "Internet" is used throughout this paper to encompass all such data networks, even though some electronic commerce activities may take place on proprietary networks that are not technically part of the Internet. The term "on-line service provider" is used to refer to both companies that provide access to the Internet and other on-line services, and companies that create content that is delivered over those networks.

[3] Internet Commerce, American Electronics Association/American University, September 1996.

regulations to "new services," which would include the Internet. Countries also might decide to regulate Internet content and establish restrictions under administrative authority, rather than under broadcast regulatory structures.

- Regulation of advertising - Some countries regulate television advertising in a manner that would stringently restrict the language, amount, frequency, and duration of teleshopping and advertising spots. While recognizing legitimate cultural concerns, these reasons should not be invoked as anti-competitive inhibitors to trade on the Internet;

- Regulation of content (i.e. pornography, violence, business information) Many countries including the United States, are considering or have adopted laws to restrict access to certain types of content through the Internet. For example, the EU recently ordered a study on mechanisms to control access by children to, and provision of criminal penalties for, transmitting offensive material over the Internet. China restricts transmission of business information through the Internet. Because of cultural and political differences, countries emphasize their individual concerns about what content on the Internet should be prohibited. These multiple interests may result in barriers for US providers attempting to enter certain national markets;

- Regulation to prevent fraud: Recently, there have been a number of cases where fraudulent information on companies and their stocks, and phony investment schemes have been broadcast on the Internet. The appropriate federal agencies (i.e. FTC, Securities and Exchange Commission) are determining whether new regulations are needed to prevent fraud through the Internet;

- Differences in defining "seditious" material: Companies wishing to do business over the Internet, and to provide access to the Internet (including U.S. on-line service providers with foreign affiliates or joint ventures), are concerned about being subject to liability based on the different policies of every country through which they transmit their information. This is especially a problem with information considered as "seditious propaganda," but extends to social differences as well. Compuserve, for example, recently removed several Internet newsgroups from its services worldwide in response to complaints from prosecutors in Germany.

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WITHDRAWAL SHEET
Clinton Library

Collection: Domestic Policy Council
Magaziner, Ira – Electronic Commerce
OA/Box: OA 10381/Box 9 **Archivist:** mpw
File Folder: [Notes] **Date:** 4/15/2004

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 7p	12/9/96	
2) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 6p	12/10/96	
3) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 1p	nd	
4) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 6p	12/11/ [1996]	
5) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 2p	nd	
6) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 2p	12/16/ [1996]	
7) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 2p	12/16/96	
8) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 5p	12/17/ [1996]	
9) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 2p	12/17/ [1996]	
10) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 5p	1/8/ [1997]	

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2329
RHOB

Jean Pruitt

(229 K)

- (1) COP – set up convers ⇐ KK & ICM
- (2) White & Gallagher
- (3) DOJ call
- (4) DOC re: Redfern
- (5) USNet Council – mats f/ Wed?
- (6) IUB speech

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- (*) Mandego quest re: Tauzin Dyell
- (*) John Emerson re: US Net Council speech
- (*) Cox
- (*) White
- (*) Ana Snow
- (*) Tim Hacker
- (*) NTIA
- (*) Danny Weitzner
- (*) Cheri Carter
- (*) Calvanese (Fax)

Sun & MSoft

- (*) NTIA Strategy
- Tauzin
- Wyden
- Oxley
- Eshu

(*) Todd Lippi
Castor Dyrkacz

Security
UCC
Tech st
Interceptions
Net Scrambler
IPR Paper needs to be revised
Follow conclusion of WIP talks
Streaming content paper.
Cl work/wps.1/
wp/trade/E-com/appeals

9 DEC 96

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BOUCHER

MANDIGO

ICM - Spt 8 gal ~~gas~~ NOS dealer
Now dare → consult ITM, pull
in your advice

Bruce - Seen it prelim
Appreciate time → consider it
in detail and send comments

ICM - Intrd in your rights blk we
wants get it rt.

Boucher - Input. f/ e-com for there → ke
story emphs

very app. → first wave & empt
policy - new are very interstg

If book on hold its own leg,
That would seem → make
sense, be good this year

Still might intd some gp
still pressed in Congress

ICM | Badnty @ wht is CSPP (last wk still some have not pkd — also some software comps also not pkg

Personal PW — let it out bc u control it

RB | I agree but would be pkd → help CIOA at power. If it is as I understand it → be

what abt IP?

ICM | 3 areas a little too gen
- crypto
- IP
- (portt)

Personally feel we need stg copyrt & insurance → math for use, (or hacking) more conduit.

We have made some progress ① (this admin) did make sure that int'l discussions addnt prejudice dom discussions ordered by

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② must be able → get proce, acadms, etc to agree → compose for fair use & new conduit & security

Why not state what's implicit explicitly? Don't = std why gov't must do this now.

RB Comm that we will see 50 or 10's of diff "regimes across world

ICM User current view = prob (see this will △

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RB Also CDA
I believe Cypress shd get involved — use tech → decide issue

ICM ① Follow f/ ratings systems → dev
② Move f/ tech SOLNs so parents can control @ home

If we don't use this approach dom & Hilly, we could have problems b/c for govts will use as NTBs

RB If Symmetricom finds flaw in net, [illegible] Cypress will go back to drawing board → answer context

low cold play positive role by getting G/GA → say, now that CDA off table, G/GA will sppt ratings systems & tech SOWs

ICM Agree that if was good idea — we would do this

RB what's wk tgthr on this

ICM Also, I'd like → note
① we are sppting contract-based model fl reg & policy — this is fund diff fl OAV govts and some USG agencies upward
② duty-free zone & No New Taxes — very impt, fl dom & intl POV

RB Is there diff. fl item ordered in net vs. via catalog

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ICM 2 steps
① If deliv. ō net, then tax free (except fl visitor tax regime) and duty-free
② If deliv. ō net, same law as applies → direct mktg

This might wk b/c software tricky deliv. ō net ... but two-tier

approach - real volume down rd

Other issue → flag = Net telephony
- taxation if v-access fund
- we do not begin gets → to reg
Net access, ie how tele-mongers to control access
- but we haven't decided internal issues

RB Net telephony v-access should be done as access charges
Should be done as private how responsibility

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Access charges & v-fee subsidy

RBOC's in local telecom mkt will incur v-access responsibility and do so accordingly

Chandigo Net co's tell you that if you ask them → do that, will drive up costs (lack of cost record keeping)

How will co know who is making call? how?

MM Telcos have to be dereg so restrictions taken off & competition can prevail

RB Good to see this
① concerned is where VP ~~[illegible]~~ and c/GA has been on these issues
② seemed that c/GA tripped to LD providers

RB Talk → B Tauzin, chair subcom (B) (P)
Mike Oxley
↳ less or Net, more or fewer your director will be consistent w those gen P/H2 bent

↳ JDingell, darkly (D)
RWhite
Ann Eshoo
Howard Koppel
Barney Frank
↳ content-oriented in his approach
Bob Goodlatte

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10/02/96

PAENAN
MOGG
SNOW
ROTENBERGER

MOGG why a data prot. $\$$ serv.
- stim. by US policies
- US

we have released comm. → Euro Council
"Putting services to work"
- discuss services
- announce policy approch on e-comm

EU ands fairly developed, ~~but~~ on
some issues
ie e-money

3d set: provide structure → allow
interrelated policies → fit on

ICM US init marketed by some pt. of
origin — realize xpt potential
of medium not lac
into

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Desire → est dialogue w you on these issues prior → finalize this init.

MOGG Difficult → get policies raised → level ppl to make decns
① issues too complex
② turf
③ ppl don't know what → do
ie e-money
encryption

WH Would like you → join prior & provide detailed objective

Appreciate your views on substance & avenues f/ discussion

- We are pursuing contractual mode of equity, pvt sector set UEC
- Cyspace as duty-free zone & no new taxes etc

More difficult areas
- encryption
- copyright
- content

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MOGG | On Reg v. Alt. approach – agree w your approach: gvt take bold contrt in teamtype regime but this = false comfrt

On tax, EC has not est. clear position – cannot head erosion will move by policy recently / agree w your anx but EC not have yet officially – agree that OECD/GFA = best place -> start discussions (globality & competence)

On IPR, there are historical diff's btw US & EU w/in WIPO arena, but also in historical problems w US Del @ WIPO, we are in somewhat similar place

On EPS, suffers by being neglect b/c so many experts @ so many diff. levels doing so much – I believe in gradualist, cautious approach on EPS b/c so fluid — complicated w unique structure of Euro banking & merging & EU

On Privacy, we note this is US problem and unless you organize yourself in a coordinated way – we could like -> help:. keep us posted
– issue has taken off in recent yrs and while we don't want -> impose EU models on US, we want a system which will assure EU members
– most immediate, probably need

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on issues re: fora, problems or which + how
- which - remove subs @ odds
- how, which fora, also at odds
why together, we can work it out

ICM Joins Now My am concur until
they realize it is another pile

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JM VCC
messages
① ② No diff in trade, except dec. right now may be
some modest
US —

MF As a trend delays and is occurring —
need for basic culture biz
such restrictions

ICM As you have n-states questions, how
re those which you require any quota subsets

JM Ross?

ICM: and no problem — biz we are looking
for phenomenon, we are looking for low
like things

HP Perhaps item for TAI?
Oppty to submit ext wk

CM Propose → do this, but perhaps
ext ~~week~~ submit in Summer 97

JM ~~My~~ hesitancy = if TAI, then DG1
and we lose right of issue
Jt. WG or ECom must help

CM How many diff issues?

JM ~~DG15~~ 3 issues
DG15 Series
DG~~13~~3 - Tcom
DG13
DG1 XML Rels
DG21 Taxdata
DG31 consumer prot
we have gained issue of tax rel → new mtg

Industry issues more private blc
shared / exclusive arguments than
BC & minor state

Frank may be pro-reg, but heavy uts
(Sen VA, MD) are [illegible]

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See ghost love us together

I have sense we will win to
Miss, make it fun

We should be ready by redress
- VH1
- MTO egs

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INTERNET OUTREACH

mid next wk, Black events

☆ ~~Rick White~~ Mike Gallagher
Diedtra Henderson, Sat

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12/11
US NET COUNCIL

(*) agrees → full USNetCouncil
↳ Bill Myers

(*) Pls explain how "these attributes" would work?
Technologically, what do yu suggest?

Corbett: Intro of ICM
ICM: Proj run-thru

O&A
George Grein, KS

GG: POWS has taken stg std on ch & tobacco
would he take stg std on reg. tobacco
advtsg or not?

ICM: Unsure b/c we have discussed - prefer voluntary approaches what content but this approach could include tobacco, ie must be ratings system, and might be considered how → integrate in ratings syst

Fan Schubert NC: Appreciate this - where can we get info

ICM: will happy

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CM	This is jumping off pt for discussions :. diff fora, diff time goals
Ron May Co	Who is using or model law for states and how do we get involved?
CM	NCUSSL & ALI - we like concept of enlisting grass-roots efforts to develop common law Finally, UNCITRAL & UNIDROIT
CDT	How can we spot?
CM	PKs submit cmts & we need all spot we can muster – FedReg – Hill – Web
Janet Calvey IBM	Apply → collab comply – % up hrs & gaps → submit cmts
Ronald Gourley VC	Diff. state laws – how do you address gambling?
CM	Net points problems of Fed regs & regulatory consumer activities

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Sen Gill frightening

When this is put out – could we go forward w only some parts of paper and not all (ie controversial items)

Gen

Possible – we will have to adjust as appropriate – we do see this as useful move to shrink ft/ controversy, but also to engage issues and get their validity down rd

Once paper issued, still fluid

Bill F WA

You mentioned encrypt – this paper seems to reflect govt desire to control encryption Net (ie encrypt) – is that true?

Lin

@ last Ce no, progress made, but not all the way yet

Might view how other govts operate on issue

We need
① encrypt right
② need to improve it
③ don't want to disadv US manuf. vs. int'l competitors
④ need ft way ft law enf. agencies to conduct

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law enf unions we legitimate – USpkh would not be pissed if law enf c& do its job

☆ This document is attpt → interact & edu. USG staff as well as gen pblc – how is USG on these issues?

[illegible] We are starting iterative process – we will wk→ ensure all parties were along

J Berman CDT I agree w/ # of these prnples, but vedibility of docum = content & security

Prob = USG & C/GA acting belie prnples in this paper

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[illegible] Legit b/c we see, narrate here but here we go

Content – C/GA dec spot CDT but once legis passed, now law of land ∴ DOJ will spot

Yes there is some inconsistency but we believe its true ∴ rather than hammer@ consistency

Except - there are details - we have to make more progress

Owen Mulligan COT — Dan, we can test but I'll, or can't — How will you proceed?

ICM — We see this will be challenging but personally hope SCT will act, [redacted] and Congress will review prior policies and hope things will

George [redacted] KS — Talk → having hi-tek co's → KS will you encourage SMEs in this paper?

ICM — Input from SMEs that these companies, industry

Other MF's we are using or this paper will be helpful, ie. SBA/KM paper

SOV & state laws?

ICM — Nothing which would interfere w SOV of state laws
- UCC is v/l
- content approach - we will advocate this → states

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(NE) Raleigh

certainly believe that those states which adopt free market approach stand → benefit the most

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Mike Gallagher
- appreciate ~~effort~~ consult
- learn diff POV
- prins consist w how white ~~products~~ probs solv or not
- 85% - ~~Rep~~ comm agenda
  - w white hse
- dereg
- priv-ld
- mkt oriented

- lots open issues which need be nailed down - "proof in pudding"
  - comput, patnt, telmk, EPS
  - real stuff = next steps - ~~outreach~~ spec. flows from this
    (ie Adm posn on encrypt
    - Arg amicus
    - current "
- on gen. level, ct. track

- specific thm we wld strgly oppt
  - consent secty

- 3 things to be careful of
  - tel cbds: admit we dt know everything
  - UCC: hotbed of resistance - think dot codes of conduct' ble ppl will say, "Why do we need restrictive laws"

Listen a lot - go slow - more
VCC bill, bogged down w Amdts
[at state levels]

- Litmus test: tactical Δs c/GA will have → make in order → conform w pm's

Vast majority makes lots of sense

Notwithstanding: pgwcd by lack of WH cabinet

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⊛ advance copy

12/16

Dep Mnr Cons, Ger:

deBrún — INFO MKT, Lux

Schott — Ger Emb

snow

Conference idea re: conflicts → use global info strategy
- telecom infrastr & liberalizatn
- customs & equipmt

New topics: content & usage
- need → be considered int'lly
- Ger very concerned ... desire → org. conference
  w cooperatn w EC (but int'l)

LCM — Conf = good idea
Setting ground rules f/ Net is impt

certain only content? Seems other impt issues also → discuss

Ger: — list of Topics

LCM — also include DNS, UCC, tech stnds, Net telephony
know select ctys

Ger: — diffs bet select ctys

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LCM — If we will ... A f/ ...

GC | we hope to elab. substance – we would appreciate regular contact

Labor

who to be invited ft/ vs ?

Labor

who to deliver dinner speech ?

plays up

which surprises ? hip & smile ?

what to assess

- long legislative process
- start w ind assn's

* 1st ind assn's
1st Govts

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RITTER
12/16/96

- 22 companies
- credited as testbed
- will sponsor OECD conf. on "Law E-Comm"
- two pilot projects
  - dig-sig
  - content blocking technologies

Elec Comm World Institute
- Montreal-based

① Mtg w sponsoring orgs re: ILPF & GEC Framk

② Regnl conferences - pub/pri -
to discuss paper

Diff btw self-reg & global Comm. reg
- diff balance w collab structure
- why gps have diff. pulpit

Need P/I govt agree → recognize industry approach -
will reg. balance

CLN
Concern #1: gvt needs to buy in → ind self-reg
#2: possib. of comp. embarrass of

Need → get process rt. → neutralize adverse implications of corruption

PW — Reassemble → use tech stds model f/ ind self-led efforts in order → dev flex regs f/ ind.-led policy dev efforts (*)

JR — Unit its helpful → have counter ; esp. if it emerges f/ trad institutions who are ceding themselves bwd → space

Need → ratchet up corrupts – real ppl
③ higher level – could POTUS write letter?

IA — unlikely b/c don't want → present appearance

JR — Funding Zs:

ITU – poise & get funding

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RW — Worth discussing – need → dev ind-self-reg orgs where trad orgs lacks

12/17

Eisenach
ICM
JG

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JE Problem areas
- encrypt
- content
  - ensure ability and use of
  - software approach best (not V-chip) - inform pol actor how dictate technology

Encrypt
- Natsec types give, but C/O needs deal
- can't be stopped ISPs, and you'll never get Intl Amt
- since no way → keep it in a box, don't try

ICM How opt self-policing policy?

JB Problem could be ones in individual, and not ct

Problem in person = you can't target

Pull in legislators — get McCain in

Real issue = watch what I do, not what I say
- what will C/GA do → follow on this,
  - w regulate
  - w policy
  - w $ support

Itw
① appt veh-carry commissioner f/ FEC?

② posth on CDA
- time right before → Bill Ratify
  Read w/ mix

Can Myers we need bipp. effort 1971-ult to

[illegible]

Dont deal w LDS php re CDA
goto stars

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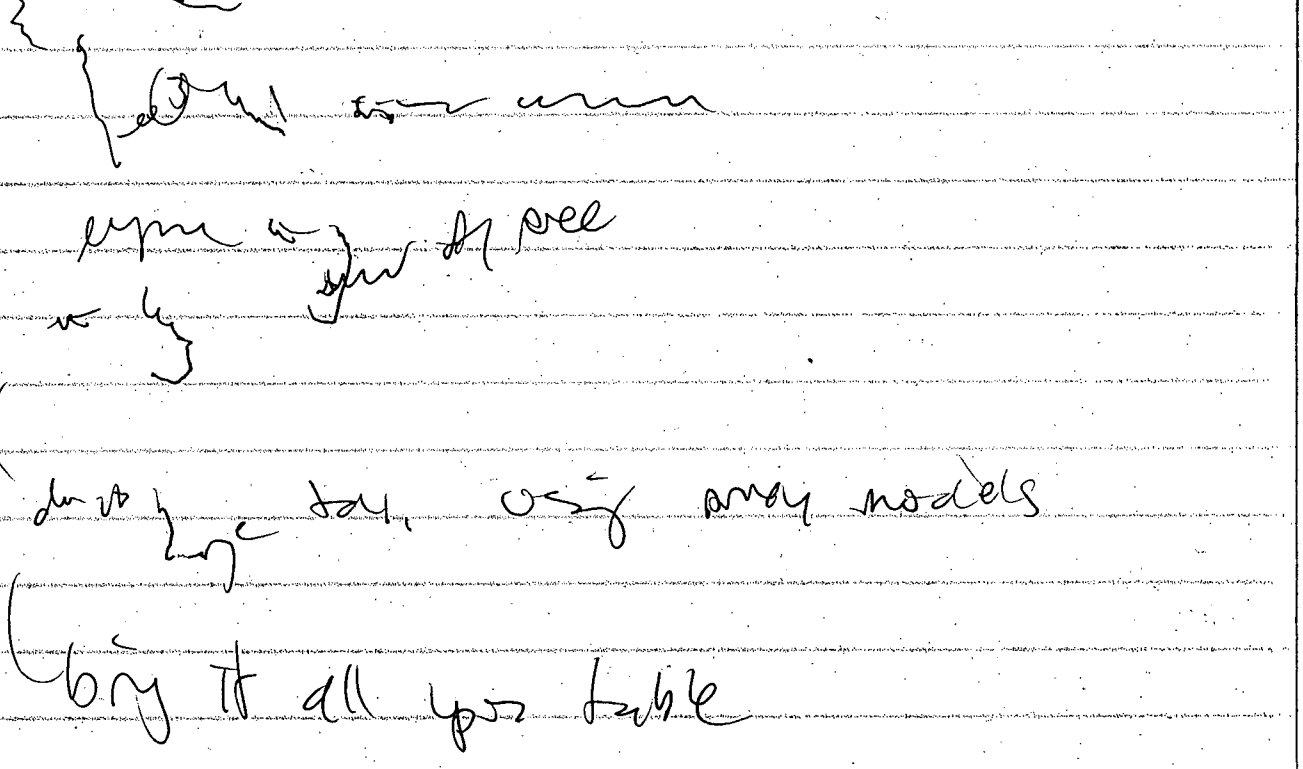
(3) Need control over 5 things

(1) ~~[illegible]~~ PR ave apts — BBUCS



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UNAcc

Net access shd stem bc tax unbalance ppl?

① Distilled liquor ads - USG should leave it alone

② FCC should leave interconnect order alone
- FCC hasn't done a great job on a # of issues

SUMMARY

1. Encrup
2. IP
3. Content
4. U-Access
5. Wiring schools

④ use press statements
③ each web site of involved agencies

McCain
Tacke - Tahkee
Hyde
Hatch
Bliley
Roth
Burns

① make personal phone calls
② use surrogates

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P3F ~~Foundation~~

- make more clear, no discrim. taxes on Web

Protect Net & other guts

POST-MTG

Clark
Gates
Grove
Valenti

① To Do list
② T-pts & lang

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12/17

MITI
E-COMM

Jpnese offic — MITI ordered 300 co's → propse Pjcts — US rejcts rel → e-commerce

MITI wants → encrge int → e-comm
but only has 2 rles
① foster interop → sppt e-comm, creates defacto std
② legal issues
- how → apply exstg laws → e-c
- how → apply taxatn regme → e-c

Mr. Kawabata
I
Only MITI

(*) Mtg w MITI Electronics Head end Jan 97

MITI has # projects mostly e-comm & retailing, aiming → sppt industry self-regulatn

(WIPO?), France wants → regulate

Other rel. ministries — Telecom, finance

(*) mtg w Chair @ Tokyo U.

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use term WG rather than task force

- what does that mean, facilitate trade ≠ Net
- current universe chaotic?
- extend US laws → for ctys?
- isn't this risky approach b/c Net organically developed?
- some ppl might say you are trying → tax those currently escaping tax laws?
- don't want → record taxes?

* non-reg envmt
* UCC - dvelpd by prisec

- also makes vce
- isn't this good-oppsd
- what about pornography and US post?
- IRS part of your grp? IRS wants to tax Net?

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1/8

DAVE BYER
ROBERGOLL
TRAINAGER
LAWSON HOLL

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Byer — ~~BYER~~ / SPA MANDATES
- PRACY
- OUT AFF

SPA Supportive of proposal
- SPA wants → minimize reg → achieve $ max competition
  - SPA will stand behind cost or technical issues, ie instant → schools ff ed-tech
- SPA ~~&~~ agree on copyrt, encrypt, sec lit

ICM — two reasons ff/ prop
① Card coherence → USG policy making re: e-com
② Act → stem ~~agree~~ grants & reg not $ e-com

Nebergall — $ section
- appreciate approach unsure ~~w~~ w/ US rep
- lack of comfort on state, local tax concern → US $ tax community

My view a appropriate regime would be residence based tax
- residence should look at → tax
- state & use tax is state driven, state should tax and

we need certainty → make it clear
- if in-state, then attach state tax → sale
- if out-state, then ① det. nexus ② if simply web access, then not enough obligation of seller → tax

Problem of not knowing location buyer real problem - diff → ↑ need

Unsure how → enforce let taxes b/c challenge of anonimity, det. locate

Agree salience → allow gov't → capture revenue from fed tax w fed profits

CA treats software download as intangible transaction

Concept - Fed Statute decreeing that dig. products download would be viewed as intangible
∴ not subject → state / use taxes ② any levels

Fed law 96-272 - prohibits income tax

Perhaps either
① USG forbids state & local gov'ts
②
profit-maximizing agent b/w co's → give states path of strictly tax owed on dig. commerce

bottom line: bigger ↓ trade costs → ↑ mkt → ↑ profits → ↑ revenue for

CLINTON LIBRARY PHOTOCOPY

capital accum.
well-educated populace
good team athlete
entrepreneurism

⇒ allev. need f/ deep capital & importance of geo-centric urban center

∴ keep dev $ & adv. $ of big cities

[illegible] Need → mesh NAFTA approach w/ VAT CVD approach

MKT ACCESS

[illegible] Importance of duty-free zone – link → ITA

1. Content
   - very concerned re cultural rationale as NTB
   - quantifiable content
     - see Software Council Vol. ratings approach
     - RSAC or Internet will do same
   - question re cultural content – not issue of principle of subsidy, but important not to subordinate off back of US cos

   important → tell friends that Net dx have to be only in Engl – problem is we have diff. phil. views re regul. and content – also we want → adopt law but

CLINTON LIBRARY PHOTOCOPY

SEA rules working how → make $ of web—
now we use clearance & make it sft value-added; if
Icon's dry → enter mkt, they also will take same
issues - they must △ and rles in Bern as necessary

IPR

- OSP inability hard ? - need balance
- feel that WIPO result was positive and
won't require mjr Δs → US law

Concerned pk some characterizing IPR as regulate or Net - we
see IPR as property rt.

On T-mk & Patents, we will have carrot
- on DNS, need → preserve ability of pol in well
- we will look toward hearings

On Patents, noting theologically diff't ~~the~~ software patents and normal patents
- e-data point
- your proposal lays out bk door approach →
point harmonize

Use

On rules f/ Net need → what
① freedom of contract
② Contract must be enforceable
Last yr 1st case validated software license

CLINTON LIBRARY PHOTOCOPY

[illegible] concept of attributes makes sense - allow ppl -> engage in UCC world if they want

technical stds - [illegible] spots C/GT pilot 100?
- test beds & USG-driven R&D good - helps
- interop down fed. : NIST has role to play

ENCRYPT

[illegible] study won't C/GT proposals, but all crypto has lots econ value - we could lose VC mkt share b/c USG point

[illegible] Any [illegible] co's like MEA amt?

[illegible] Bods or hse pts but in gen'l agree
Questions rise
- is system fair?
- what IO will monitor? (ie. not OECD)
- who holds keys?
We want mkt-sensitive policy consistent dom & overseas

CLINTON LIBRARY PHOTOCOPY

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From AmEmbassy London re: VAT (4 pages)	01/10/97	P5

CLINTON LIBRARY PHOTOCOPY

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 10383

FOLDER TITLE:

[Cable on Application of VAT - Value Added Tax]

Rhonda Wilson

rw99

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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

United States Department of State

Washington, D.C. 20520

January 10, 1997

UNCLASSIFIED
MEMORANDUM

TO:	Phone	FAX
EUR/ERA: Paul Aceto	647-1708	647-9959
EUR/UBI: Eric Kittner	647-6591	647-3463
EB/TPP/IPC: Dianne Markowitz	647-2777	647-5936
EB/TPP/BTA/DCT: Laura Lane	647-1979	647-6540
DOC/NTIA/OIA: Suzanne Settle	482-1854	482-1865
DOC/ITA/OT: Myles Denny-Brown	482-0398	482-5834
DOC/ITA/Services:Jennifer Tallarico	482-5820	482-4775
DOC/PTO: Carmen Guzman Lowrey Michael Keplinger Keith Kupferschmid	703-305-9300	703-305-8885
FCC: Tom Wasilewski	418-1475	418-2824
ITC: Marie Wold	205-3450	205-3161
DOJ: Dave Turetsky	307-2032	514-0306
Carl Willner	514-5813	514-6381
Treasury/OCC: Emily Marwell	874-5200	874-5374
Treasury: Richard Zechter	622-1246	622-1254
USTR: Don Abelson	395-6864	395-3891
USTR: Bill Corbett	395-9586	395-3891
USTR: Jim McGlinchey	395-5656	395-9674
USTR: Carol Balassa	395-9580	395-3911
WH/NEC: Tom Kalil	456-2801	456-2223
WH/OSTP:Mike Nelson	456-6039	456-6023
WH/OVP: Greg Simon	456-6222	456-6231
WH: Ira Magaziner/ Jonathan Greenblatt	456-5593	456-5557
DISA: Martha Clark	703-607-6147	703-607-4090

FROM:EB/CIP - Timothy C. Finton TCF 647-5385 647-0158
(E mail: fintontc@6820wpoa.us-state.gov)

SUBJECT: Cable on Application of VAT

For your information, attached is a useful cable from Embassy London which came in today, providing more information to supplement the Financial Times article on applying the value-added tax to services provided by foreign telecom companies.

cc:EB/CIP:Ed Malloy/Andrew Weinschenk/Mike McCabe

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Printed By: Timothy C. Finton

ACTION CIP-00

INFO	LOG-00	INLB-01	AID-00	CEA-01	CIAE-00	CTME-00	INL-01
	OASY-00	DODE-00	ANHR-01	SRPP-00	EB-00	EUR-01	E-00
	FCC-01	FRB-00	H-01	IMMC-01	TEDE-00	INR-00	ITC-01
	LAB-01	ADS-00	NSAE-00	OMB-01	OPIC-01	CIO-00	SP-00
	SSO-00	SS-00	STR-00	USIE-00	DRL-09	G-00	/021W

-----------8E4899 101853Z /38

R 101847Z JAN 97
FM AMEMBASSY LONDON
TO SECSTATE WASHDC 0774
INFO USDOC WASHDC
WHITEHOUSE WASHDC
ALL EUROPEAN UNION POST COLLECTIVE
DEPT OF TREASURY WASHDC

UNCLAS E F T O SECTION 01 OF 02 LONDON 000360

STATE FOR EB/CIP, EUR/UBI AND EUR/ERA
USDOC FOR 3133/USFCS/OIO/NEGRETTI
USDOC FOR NTIA/SSETTLE
STATE ALSO PASS TO FCC
PARIS ALSO FOR USOECD

E.O. 12958: N/A
TAGS: ECPS, EFIN, EUN, UK
SUBJECT: VAT ON FOREIGN TELECOMS PROVIDERS: UK GOVERNMENT
- VIEWS AND INITIAL REACTION OF U.S. FIRMS

LONDON 01 OF 02 360

1. SBU -- CONTAINS BUSINESS VIEWS GIVEN IN CONFIDENCE. PLEASE PROTECT APPROPRIATELY.

2. (SBU) SUMMARY: ON JANUARY 8, THE FINANCIAL TIMES PUBLISHED AN ARTICLE INDICATING THAT SOME HERETOFORE UNTAXED TELECOMS SERVICES PROVIDED FROM OUTSIDE THE EU WERE TO BE MADE SUBJECT TO A HEFTY 17 TO 25 PERCENT VALUE-ADDED TAX. EMBASSY HAS LEARNED THAT THE UK WAS AMONG THE MEMBER STATES PUSHING FOR CLOSURE OF WHAT IS VIEWED AS A TAX LOOPHOLE, BUT HMG PLANS TO BE FLEXIBLE IN ITS EVENTUAL IMPLEMENTATION. BASICALLY, THE EU HAS COME TO THE CONCLUSION THAT WHEN AN EU RESIDENT OR COMPANY GETS "USE AND ENJOYMENT" OF A TELECOM SERVICE, IT SHOULD PAY THE RELEVANT VALUE-ADDED TAX, REGARDLESS OF WHERE THE SELLER OF THE SERVICE IS LOCATED. IN A QUICK, INFORMAL SURVEY OF U.S.-BASED FIRMS, ECONOFF GOT A VARIETY OF RESPONSES TO THE PROPOSED VAT REFORM, THOUGH VIRTUALLY ALL SEEMED ULTIMATELY PREPARED TO ACCEPT THE MEASURE. HOWEVER, THEY HAD SOME CONCERNS ABOUT HOW IT WOULD BE INTERPRETED AND IMPLEMENTED IN THE VARIOUS MEMBER STATES. END SUMMARY.

THE PROPOSAL

3. (U) HMG CONTACTS INDICATE THEY EXPECT THE EUROPEAN COMMISSION TO APPROVE DRAFT LEGISLATION WHICH WILL CLOSE A LOOPHOLE WHICH HAS ALLOWED TELECOMS SERVICE PROVIDERS OUTSIDE THE EU TO FOREGO PAYING THE SAME VALUE-ADDED TAX (VAT) AS THEIR EU-BASED COMPETITORS. THIS WILL EFFECT CALL-BACK SERVICES, CHARGE CARD SYSTEMS WHICH BYPASS LOCAL TELECOMS OPERATORS, ONLINE GROUPS AND POSSIBLY OTHERS. THE LOOPHOLE HAS NOT BEEN UNIFORMLY USED BY SERVICE-PROVIDERS BASED OUTSIDE THE EU, NOR HAVE UK FIRMS--PARTICULARLY IN THE FINANCIAL SERVICES SECTOR--BEEN PRECLUDED FROM EXPLOITING IT. HMG REPS SAY THE UK PRESSED THE EU TO CLOSE THE LOOPHOLE BOTH TO PRESERVE VAT REVENUES (800 MILLION BPS, OR USD 1.4 BILLION, PER ANNUM) AND TO SHORE UP A LEVEL PLAYING FIELD SO THAT DOMESTIC SERVICE PROVIDERS WOULD NOT BE AT A DISADVANTAGE.

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WHY THE PROBLEM?

4. (U) THE LOOPHOLE STEMS FROM THE EUROPEAN COMMUNITY'S 1977 "SIXTH VAT DIRECTIVE" WHICH DICTATED THAT THE RATE OF VAT CHARGED ON TELECOMS SERVICES WOULD BE DETERMINED BY THE PLACE OF SUPPLY (READ: ADDRESS OF SUPPLIER). AT THE TIME, NO ONE FORESAW THE DRAMATIC GROWTH IN THE VOLUME AND VARIETY OF TELECOMMUNICATIONS SERVICES OR THE PROBLEMS WHICH WOULD ARISE FROM THE EXISTENCE OF DIFFERENT TAX PRINCIPLES ELSEWHERE IN THE WORLD. SOME FINANCIAL INSTITUTIONS AND TELECOMS SERVICE PROVIDERS HAVE REPORTEDLY TAKEN ADVANTAGE OF THIS LOOPHOLE. IN SOME CASES, THE 17.5 PERCENT TAX SAVINGS WAS A BONUS ON TOP OF LOWER OVERALL COSTS CHARGED BY SERVICE PROVIDERS IN LOWER-WAGE COUNTRIES. IN OTHER CASES, NON-EU FIRMS WITH OPERATIONS IN BRITAIN SIMPLY ARRANGED FOR SERVICES TO BE PROVIDED BY THEIR OVERSEAS PARENT FIRM. HOWEVER, SOME FINANCIAL SERVICES COMPANIES HAVE ALLEGEDLY SET UP PAPER "TELECOMS SERVICES" SUBSIDIARIES OUTSIDE THE EU SPECIFICALLY TO AVOID THE VAT CHARGES ON THEIR SUBSTANTIAL DATA TRANSFERS, ETC.

TIMING

5. (U) ALTHOUGH THE UK WAS FIRST TO RAISE THE ISSUE OF THE LOOPHOLE IN THE EU, HMG CONTACTS SAY, IT WILL NOT BE IMPLEMENTING CHANGES IN ADVANCE OF THE EU CHANGES TO ITS VAT RULES, AS FRANCE AND GERMANY HAVE. (COMMENT: HMG AND PRIVATE SECTOR SOURCES ECHO THE JAN 8 FINANCIAL TIMES REPORT THAT FRANCE, AND INDEED GERMANY, INSTITUTED CHANGES TO NATIONAL VAT RULES AS OF JANUARY 1, 1997. END COMMENT) HMG EXPECTS TO MAKE THE FIRST SET OF CHANGES IN ITS LEGISLATION IN THE APRIL-MAY 1997 TIMEFRAME, FOLLOWING FINAL ADOPTION OF VAT CHANGES IN BRUSSELS. TO ACT EARLIER, THEY INSIST, WOULD OPEN HMG UP TO LAWSUITS, BECAUSE EU LEGISLATION "HAS PRIORITY" OVER NATIONAL LEGISLATION WHEN IT COMES TO VAT. HMG WILL REQUIRE PAYMENT OF VAT ON ALL TELECOM SERVICES TO PERSONS AND COMPANIES WHOSE PRINCIPLE ADDRESS IS IN THE UK. UK SERVICE PROVIDERS WILL LIKELY CONTINUE TO BE REQUIRED, FOR AN INTERIM PERIOD, TO COLLECT VAT ON SERVICES THEY PROVIDE TO CUSTOMERS OUTSIDE THE EU. HMG'S POSITION IS THAT, IN THE LONGER TERM (PERHAPS IN 1998), THIS SHOULD BE RATIONALIZED SO THAT SUCH SERVICES WOULD ONLY BE TAXED AT THE RATE SET BY THE NON-EU CUSTOMER'S GOVERNMENT. ANOTHER "SECOND-ROUND" MODIFICATION WHICH HMG SUPPORTS IS THE ESTABLISHMENT OF A SINGLE POINT OF VAT REGISTRY FOR THE EU, FOR NON-EU SERVICE PROVIDERS.

IMPLEMENTATION

6. (U) FIRST, UK OPERATIONS OF FOREIGN-OWNED BUSINESS WILL NOT

LONDON 02 OF 02 360

BUSINESSES WILL SIMPLY DEDUCT THESE CHARGES FROM THE VAT THEY ARE OTHERWISE PAYING.

7. (U) FOR THOSE COMPANIES SERVING NON-BUSINESS CUSTOMERS, THE UK (AND OTHER EU MEMBER STATES) WILL REQUIRE THAT THEY OBTAIN VAT REGISTRATION. A CUSTOMS CONTACT STATED THAT HMG WOULD BE FLEXIBLE DURING THE TRANSITION AND NOT INSIST THAT ALL OF ITS VAT ACCOUNTING REQUIREMENTS BE MET OQROVIDED THAT THE APPROPRI T REVENUES ARE NONETHELESS REMITTED. OUR CONTACT ADMITTED THAT THERE MAY BE A POLICING PROBLEM WITH SOME SMALLER OPERATORS AND, IN FACT, THE UK WILL BE RAISING THIS VERY PROBLEM IN THE OECD. NEVERTHELESS, HE SAID THAT THESE COMPANIES GENERALLY WILL BE VISIBLE IN THE EU, FOR ADVERTISING OR OTHER PURPOSES, AND HE FELT EU GOVERNMENTS WOULD LARGELY SUCCEED IN OBTAINING COMPLIANCE.

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Printed By: Timothy C. Finton

BUSINESS VIEWS

8. (SBU) IN RESPONSE TO ECONOFF INQUIRIES, SOME TELECOMS OPERATORS STATED THEY FELT UNAFFECTED, BECAUSE THEY WERE ALREADY PAYING THE TAX. IN SOME NICHE MARKETS, SUCH AS UNIVERSITIES, SOME HAD NOTICED THAT COMPANIES CIRCUMVENTING THE TAX WERE BEATING THEM ON THE BASIS OF PRICE, AND WERE SOMEWHAT RELIEVED THAT THE LOOPHOLE WAS BEING CLOSED SO THEY WOULDN'T HAVE TO CONTEMPLATE "VAT MITIGATION" THEMSELVES. ANOTHER FIRM, WHICH OFFERS VAT-FREE BILLING ON ITS INTERNATIONAL SERVICES PROFESSED NOT TO BE TOO CONCERNED BY THE IMMINENT VAT INCREASE, BUT INDICATED THAT IT MAY CONSIDER PRICE REDUCTIONS IN DIFFERENT AREAS TO MITIGATE THE CHANGE'S IMPACT ON OVERALL CHARGES TO CUSTOMERS.

9. (SBU) OTHERS HAD CONCERNS ABOUT THE INCONSISTENCIES AND BURDENS WHICH SEEM LIKELY TO ARISE WITH IMPLEMENTATION--PARTICULARLY FOR U.S.-BASED SERVICES, SUCH AS CALLING CARDS AND CALL-BACK. ONE COMPANY COMPLAINED, FOR INSTANCE, THAT WHILE GERMANY HAS MADE THE ASSUMPTION IN ITS NEW RULES THAT THE FINAL EU TEXT WILL TREAT EU AND NON-EU SUPPLIERS THE SAME, THERE ARE INDICATIONS THAT THE EU TEXT MAY ONLY APPLY THE CUSTOMER-LOCATION CRITERIA TO NON-EU FIRMS. IN ADDITION TO THE POTENTIALLY DISCRIMINATORY IMPACT OF THE LATTER APPROACH, THE POTENTIAL DISCREPANCY WILL ADD TO THE ACCOUNTING PROBLEMS--AND CONFUSION--GENERATED BY THE VAT CHANGES. ONE LARGE FIRM PREDICTED THAT WHILE MAJOR COMPANIES WOULD UNDOUBTEDLY COMPLY WITH THE NEW EU RULES, SMALL RESELLERS IN THE U.S. WOULD BE "OUT OF REACH" OF EU AUTHORITIES AND MIGHT AVOID THE TAX-REMITTANCE OBLIGATIONS TO GAIN A CONSIDERABLE COST ADVANTAGE. ERNST AND YOUNG IS REPORTEDLY LEADING A GROUP OF REPRESENTATIVES OF SOME UK-BASED FIRMS TO BRUSSELS THE WEEK OF JANUARY 13 TO MEET WITH DG-XXIII REGARDING THEIR CONCERNS. (COMPUSERVE AND AMERICA ONLINE DO NOT HAVE UK OFFICES, AND SO WERE NOT AVAILABLE FOR COMMENT, BUT THEIR SERVICES TO UK/EU CUSTOMERS WOULD BE SUBJECT TO VAT UNDER THE PROPOSED LEGISLATION.)

10. (SBU) COMMENT: THIS MEASURE APPEARS TO BE AIMED MORE AT PRESERVING RATHER THAN AUGMENTING TAX REVENUES. NEVERTHELESS, IT RAISES THE BROADER QUESTION OF HOW TO HANDLE TAXATION AND DUTY-COLLECTION IN THE BURGEONING TELECOMS-BASED SERVICES SECTOR. IN THIS CASE, THERE IS SOME POTENTIAL FOR INCONSISTENT APPLICATION OF THE VAT (I.E. CHARGES LEVIED ON BOTH NON-EU SERVICE PROVIDERS AND NON-EU CUSTOMERS OF EU TELECOM SERVICES), AT LEAST IN THE NEAR TERM. ASIDE FROM THAT, U.S. FIRMS IN THE UK WITH WHICH WE HAVE SPOKEN SEEM TO INDICATE THAT THEY WILL BEAR THE ADDED BURDENS AS PART OF THE COST OF DOING BUSINESS IN THE EU. WHAT WE HAVE NOT BEEN ABLE TO DETERMINE IS HOW U.S. FIRMS WHICH HAVE NO REPRESENTATION IN THE UK AND OFFER SERVICES DIRECTLY FROM THE U.S., SUCH AS COMPUSERVE AND AMERICA ONLINE, WILL REACT TO THE PROPOSED EU TAX CHANGES. END COMMENT.

CROWE

CLINTON LIBRARY PHOTOCOPY

WITHDRAWAL SHEET
Clinton Library

Collection: Domestic Policy Council
Magaziner, Ira – Electronic Commerce
OA/Box: OA 10383/Box 12
File Folder: [Notes – January 1997]

Archivist: mpw
Date: 4/15/2004

DOCUMENT NO & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 3p	1/14/97	
2) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 2p	1/14/97	
3) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 1p	nd	

CLINTON LIBRARY PHOTOCOPY

RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
P2 Relating to 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 advice 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].
PRM Personal records misfile defined in accordance with 44 USC 2201 (3).

B1 National security classified information [(b) (1) of the FOIA].
B2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
B3 Release would violate a Federal statute [(b)(3) of the FOIA].
B4 Release would disclose trade secrets or confidential commercial financial information [(b)(4) of the FOIA].
B6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
B7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
B8 Release would disclose information concerning the regulation of financial institutions [(b)(9) of the FOIA].
B9 would disclose geological or geophysical information

14 Jan 97 TPR

Jamie L. quest of Net governance – how
can it funct in intl envt ?

– how do we govern

can end

① Cspace as PPZ
② Encrypt / Protocol element ?
③ Gate / network orders
④ DigSig – UNCITRAL work)

work w/ we have to be
we need ...

4 Mos for next stg

Gov areas work

advantage/shm → use
as pilots

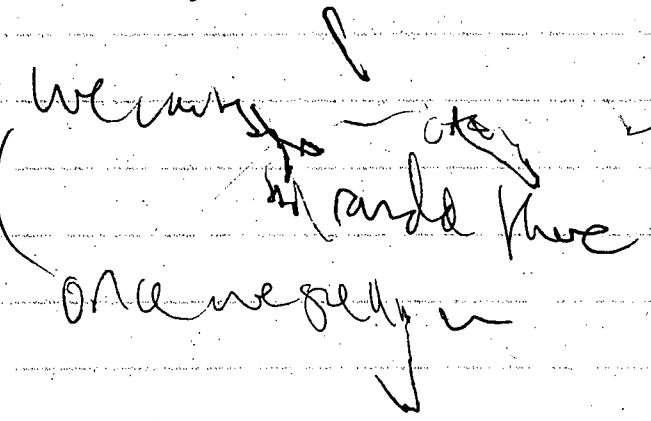
– shifts

CLINTON LIBRARY PHOTOCOPY

CMS Ctr f/ Media Educ
- fence - no new fee structures
but CDA pushing f/ New Net =>
new targets & levies -> fund restructure

JCM ~~Mtgs take of~~ Balance when ~~standing~~
some things. And contrasting shows
Clint always balancing w/ 3 voices
pros

If forget ~~acct~~ response, he can't



CLINTON LIBRARY PHOTOCOPY

Mr Ferris [illegible] our privacy sector will [illegible]

Leon

[illegible] and [illegible]

WH Ok by us

W we should [illegible]

if we [illegible]

If the ex [illegible]

5:30 - 8:30 [illegible]

W [illegible]

If we take it [illegible]

Let's see how [illegible]

CLINTON LIBRARY PHOTOCOPY

14 JAN

① NXT-GEN NET
② GII
③ MEDIATING LEGAL ASPECTS TECH
④ ~~INTL LEGAL~~ & INTEGRATING POLICY X-S II
⑤ BEYOND ITF
- NATL COMMISSION ON GLOBAL I-NET POLICY
- NAMED BY STAFF

PRINCIPLES GOVERNING GOOD
3+4 CORRELATES TO ONE
↓
① ~~&~~ PRIVATE SECTOR LEAD
② ~~NO GVT-UNDUE RESTRICTIONS~~
-
② TRANSP. MINIMIST etc.
③ NOT AS INTL FORUM

CLINTON LIBRARY PHOTOCOPY

-WHO W CONSULT SIMILAR-MINDED NXT ECCs
ie NOTEU ctys should be brought along

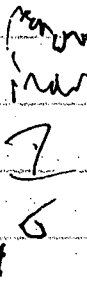
IP = very difficult → maintain a balanced, better appropriate, protections

PATENTS ->

- current

- and Ben U-C fats

- Fed Circuit rules method



I am glad

That way you can accum. all prizes

Agreement w/ other

You still see problems

Opportunity to resolve the many

Extends PNS

Impulse to buy anyway - ease of decision making

CLINTON LIBRARY PHOTOCOPY

Perhaps creatively use Medicare

- Kahn statements on Plot
  applicants funding as opposite
- Pulse to get Egypt
- Real debate on health
  - talks
- Pres - Pres brdr = you reckon what
  + Rep

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	U.S. Policy on reforming Economic Sanctions - C (11 pages)	nd	P1/b(1)
002. cable	From AmEmbassy Paris re: OECD Ad Hoc Meeting of Experts on Cryptography Policy, June 26-27, 1996 (4 pages)	07/10/96	P5

CLINTON LIBRARY PHOTOCOPY

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 10383

FOLDER TITLE:

[Internet Issues] [2]

Rhonda Wilson

rw100

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]
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Printed By: Tara Feret Erath x72420

ACTION EUR-01

INFO	LOG-00	AID-00	CEA-01	CIAE-00	CIP-00	CTME-00	OASY-00
	DODE-00	ITCE-00	SRPP-00	EB-00	EXME-00	E-00	FCC-01
	FRB-00	H-01	TEDE-00	INR-00	IO-00	ITC-01	LAB-01
	L-01	ADS-00	MMP-00	NSAE-00	OES-01	OMB-01	OPIC-01
	SP-00	SSO-00	STR-00	TRSE-00	USIE-00	DRL-09	G-00
	/019W						

4CE38A 101403Z /38

R 101401Z JUL 96
FM AMEMBASSY PARIS
TO SECSTATE WASHDC 6839
WHITE HOUSE
DEPARTMENT OF JUSTICE
USDOC WASHDC

UNCLAS SECTION 01 OF 03 PARIS 15184

FROM USOECD

STATE PASS OMB/MCCONNELL
WHITE HOUSE FOR OSTP/NELSON AND NSC/APPEL
JUSTICE FOR CHARNEY
CIP/BEAIRD/MAERKLE AND EUR/ERA
USDOC FOR NTIA/SHAW AND NIST/ROBACK
USDOC FOR 4122/IEP/OMA/MORGAN
USDOC FOR 3133/USFCS/OIO/NEGRETTI

SENSITIVE BUT UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

PARIS 01 OF 03 15184

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E.O. 12958: N/A
TAGS: ETRD, ECPS, KSCA, OECD
SUBJECT: OECD AD HOC MEETING OF EXPERTS ON CRYPTOGRAPHY POLICY, JUNE 26-27, 1996. DELEGATION REPORT

SUMMARY

1. THE OECD AD HOC GROUP OF EXPERTS ON CRYPTOGRAPHY POLICY HELD ITS SECOND MEETING ON JUNE 26-27, 1996. SEVERAL CRITICAL ISSUES MUST BE RESOLVED TO MEET THE SPRING 1997 DEADLINE SET FOR THE DEVELOPMENT OF CRYPTOGRAPHY PRINCIPLES. CANADA IS PRESSING FOR THE INCLUSION OF A "PRIVACY PRINCIPLE," OPPOSED BY THE US AND FRANCE IN PART BECAUSE IT IMPLIES THAT THE ONLY CRITICAL FUNCTION FOR CRYPTOGRAPHY IS PROTECTING PRIVACY; IN THE US VIEW, PROTECTING COMPUTER SECURITY AND COMMERCE ARE EQUALLY IMPORTANT. IN ADDITION, FRANCE HAS TABLED A PROPOSAL REQUIRING ALL KEYS TO BE ESCROWED IN THE COUNTRY WHERE THE CRYPTOGRAPHY PRODUCT IS USED. THE OECD'S BUSINESS INDUSTRY ADVISORY COMMITTEE (BIAC) STRONGLY OPPOSES THIS PRINCIPLE AS TOO BURDENSOME. THE US TABLED LANGUAGE ON TIMELY INTERNATIONAL LAW ENFORCEMENT ASSISTANCE AND ARE AWAITING FRENCH REACTION. THE OECD SECRETARIAT WILL DISTRIBUTE A REVISED SET OF PRINCIPLES IN ADVANCE OF THE NEXT MEETING, SEPTEMBER 26-27. IN ADDITION, THE US IS CONSIDERING A USOECD PROPOSAL TO EXPAND NON-MEMBER

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COUNTRY OUTREACH VIA AN OECD EMEF WORKSHOP (SEE PARA 9 ACTION REQUEST). END SUMMARY.

RECENT DEVELOPMENTS IN CRYPTOGRAPHY POLICY

2. THE MEETING BEGAN WITH A NUMBER OF PROCEDURAL MATTERS, INCLUDING THE SELECTION OF PETER FORD TO SERVE AS CHAIRMAN BECAUSE LATE-BREAKING EVENTS IN AUSTRALIA PREVENTED NORMAN RAEBURN FROM ATTENDING. THEREAFTER, SIX DELEGATIONS DISCUSSED RECENT DEVELOPMENTS WITHIN THEIR RESPECTIVE COUNTRIES. OF PARTICULAR NOTE, DENMARK NOTED THAT IT HAD DELIBERATELY DECIDED NOT TO USE A KEY ESCROW SYSTEM IN IMPLEMENTING ITS NATIONAL CITIZEN'S CARD, WHILE FRANCE INDICATED THAT ITS NEW LAW (REQUIRING KEY ESCROW) HAD BEEN PASSED. THE US DISCUSSED THE ADMINISTRATION'S DRAFT WHITE PAPER ON ENCRYPTION.

CRYPTOGRAPHY PRINCIPLES DISCUSSION

3. MOST OF THE TWO DAY SESSION WAS DEVOTED TO THE TEXT OF THE CRYPTOGRAPHY PRINCIPLES. ALTHOUGH THE SECRETARIAT IS NOW PREPARING A NEW DRAFT FOR DELEGATION REVIEW, ELEVEN SPECIFIC PRINCIPLES WERE DISCUSSED. THE MOST IMPORTANT PRINCIPLES CALL FOR (1) PROMOTING TRUST IN THE GLOBAL INFORMATION INFRASTRUCTURE BY ENCOURAGING THE USE OF STRONG CRYPTOGRAPHY, (2) ALLOWING USERS TO CHOOSE ENCRYPTION PRODUCTS, (3) RELYING ON THE MARKET TO

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DETERMINE WHAT ENCRYPTION SOLUTIONS WILL BE DEVELOPED, (4) ALLOWING THE MARKETPLACE TO DEVELOP STANDARDS FOR CRYPTOGRAPHIC METHODS, (5) DEVELOPING RULES REGARDING CIVIL LIABILITY, AND (6) ENSURING LAW ENFORCEMENT ACCESS TO EITHER PLAINTEXT OR DECRYPTION KEYS.

4. OF COURSE, THE USER CHOICE AND MARKET DRIVEN PRINCIPLES MAY RESULT IN CRYPTOGRAPHIC SOLUTIONS WHICH DO NOT ENSURE LAW ENFORCEMENT ACCESS TO PLAINTEXT. THUS, THESE PRINCIPLES MAY APPEAR TO CONFLICT. TO RESOLVE THIS ISSUE, THE UK SUGGESTED A HARMONIZATION PRINCIPLE. AS CURRENTLY WRITTEN, THIS PRINCIPLE RECOGNIZES THAT THERE IS A NATURAL TENSION BETWEEN THE USER CHOICE, MARKET DRIVEN, AND LAW ENFORCEMENT ACCESS PRINCIPLES, AND PROVIDES THAT THE GOVERNMENT ACCESS PRINCIPLE SHOULD BE IMPLEMENTED IN A MANNER WHICH DOES NOT UNDULY RESTRICT THE OTHER PRINCIPLES. ALTHOUGH THE GERMAN DELEGATION COMPLAINED THAT THIS PLACED THE LAW ENFORCEMENT ACCESS PRINCIPLE AHEAD OF USER CHOICE AND MARKET DRIVEN, THE CONSENSUS APPEARED TO BE THAT THE PRINCIPLE SHOULD STAND AS WRITTEN. THIS IS, OF COURSE, CRITICAL TO US LAW ENFORCEMENT INTERESTS.

5. AT THE END OF THE TWO DAY SESSION, IT WAS AGREED THAT THE SECRETARIAT WOULD PRODUCE A NEW DRAFT OF THE PRINCIPLES BY JULY 14, INFORMAL COMMENTS WOULD BE PROVIDED BY DELEGATES BY JULY 31, A REVISED DOCUMENT WOULD BE REDISTRIBUTED BY SEPTEMBER 5 FOR MEMBER NATION

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REVIEW, AND THE NEXT MEETING WOULD BE HELD ON SEPTEMBER 26-27.

CRITICAL ISSUES REMAIN UNRESOLVED

6. NOTWITHSTANDING THE PROGRESS MADE, THERE ARE STILL SOME CRITICAL ISSUES UNRESOLVED. WITH REGARD TO THE PRINCIPLES, CANADA IS ATTEMPTING TO INSERT A "PRIVACY PRINCIPLE" WHICH COVERS NOT ONLY THE CONFIDENTIALITY OF DATA, BUT ALSO MORE TRADITIONAL INFORMATION PRIVACY ISSUES. THIS PRINCIPLE WOULD RELATE NOT ONLY TO THE USE OF CRYPTOGRAPHY TO PROTECT THE CONFIDENTIALITY OF DATA, BUT ALSO TO HOW CRYPTOGRAPHY MAY BE USED TO PROTECT TRANSACTIONS SO THAT INFORMATION CANNOT BE COLLECTED AND USED FOR MARKETING AND OTHER PURPOSES. THIS TYPE OF PRIVACY—WHICH INVOLVES THE RIGHT OF INDIVIDUALS TO DECIDE WHAT INFORMATION ABOUT THEMSELVES WILL BE DISCLOSED TO AND USED BY OTHERS—RAISES PRIVACY ISSUES FAR BROADER THAN THOSE RAISED BY CRYPTOGRAPHY. THE US AND FRANCE ARGUED STRONGLY AGAINST SUCH A PRINCIPLE BECAUSE IT APPEARED TO BE AN ATTEMPT TO ADD TO THE OECD'S 1980 PRIVACY GUIDELINES. MOREOVER, ITS ADDITION WOULD INCORRECTLY SUGGEST THAT THE ONLY CRITICAL FUNCTION OF CRYPTOGRAPHY IS PROTECTING PRIVACY; PROTECTING COMPUTER SECURITY AND COMMERCE IS EQUALLY IMPORTANT.

7. ANOTHER UNRESOLVED AREA OF CONTENTION IS A FRENCH SPONSORED PRINCIPLE WHICH WOULD REQUIRE ALL KEYS TO BE ESCROWED IN THE COUNTRY WHERE THE CRYPTOGRAPHY PRODUCT IS USED. NOTE: IN SOME CASES, THE US ALLOWS KEYS TO BE STORED OUTSIDE THE US. BIAC STRONGLY OPPOSED THIS PRINCIPLE, CLAIMING IT WOULD PLACE AN UNACCEPTABLE BURDEN ON BUSINESS. THE US ADDED THAT SINCE THERE IS NO REQUIREMENT THAT INDIVIDUALS AND ORGANIZATIONS STORE THEIR DATA IN THE COUNTRY WHERE THEY RESIDE, REQUIRING THE STORING OF KEYS LOCALLY MIGHT NOT RESOLVE THE BROADER CONCERN THIS PRINCIPLE WAS DESIGNED TO ADDRESS: PROMPT LAW ENFORCEMENT ACCESS TO DATA. IN AN ATTEMPT TO RESOLVE THIS ISSUE, THE US OFFERED LANGUAGE PROMOTING TIMELY INTERNATIONAL LAW ENFORCEMENT ASSISTANCE, BUT THERE WAS NO IMMEDIATE FRENCH FEEDBACK ON THE PROPOSAL.

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8. LAST, THERE HAS ALSO BEEN LITTLE EXPLANATORY TEXT WRITTEN, ALTHOUGH ALL DELEGATES AGREED THAT CRYPTOGRAPHY ISSUES ARE TOO COMPLEX TO BE RESOLVED BY TERSE GUIDELINES WITHOUT EXPLANATION. THEREFORE, MUCH WORK REMAINS TO BE DONE, ESPECIALLY IF THE OECD HOPES TO COMPLETE THIS PROJECT BY FEBRUARY 1997 AS PLANNED.

POSSIBLE OUTREACH TO NONMEMBERS?

9. IN A SEPARATE MEETING WITH USOECD AMBASSADOR AARON, THE US PRIVATE SECTOR REPRESENTATIVES DISCUSSED THE POSSIBLE EXTENSION OF THE GROUP'S WORK BEYOND OECD MEMBER COUNTRIES. THE PRIVATE SECTOR IDENTIFIED SEVERAL

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COUNTRIES INCLUDING CHINA AND INDIA WHICH WOULD BENEFIT FROM A BETTER UNDERSTANDING OF THE OECD'S WORK IN THIS AREA. ONE POSSIBILITY DISCUSSED WAS THE OECD'S EMERGING MARKET ECONOMIES FORUM (EMEF) WORKSHOP. EMEF WORKSHOPS ARE USUALLY HELD IN PARIS (UNLESS A COUNTRY AGREES TO SPONSOR THE CONFERENCE AND THEREFORE, UNDERWRITE THE COSTS) AND CAN COVER ANY TOPIC AND INCLUDE ANY COUNTRY. AMBASSADOR AARON DISCUSSED THIS PROPOSAL WITH THE USG OFFICIALS; INITIAL REACTION WAS POSITIVE LEAVING OPEN THE QUESTIONS OF TIMING AND POSSIBLE PARTICIPANTS. ACTION REQUEST: MISSION WILL EXPLORE THE POSSIBILITY OF SCHEDULING A CONFERENCE WITH THE OECD SECRETARIAT IF WASHINGTON IS INTERESTED; PLANNING FOR A WORKSHOP IN THE SPRING 1997 SHOULD BEGIN IN SEPTEMBER 1996. (DELEGATION REPORT PREPARED BY SCHARNEY/DOJ).
WEINGARTEN

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1) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 3p	11/5	

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11/5

BROCK MEEKS
Bill Reinsch

Wertzner
Berman
Greenblatt
Miller

CDT Privacy WG
- Microsoft
- AOL
- CPP
- Telco's
- Adv.

- E-Trust
- WH Conference on User Control (+)
  - CDA-2

Parental Empowerment, Ratings Systems

Coats, Crosby privacy CDA-type legis. in 2d round

JB CDT desire → build proactive wk-grps to move out ahead of CDA-2, prior to Supreme Ct. verdict
- PICS & ATW.
- PICS & IBTA.

PW desire f/ signal fr WH on PICS & IBTA

JB Citizens by. Consort. - led by CDT
- RCA
- AOL
- PIAA
- PA Alliance
- ATA Ref.

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MN | Privacy W-paper

JB | Net Priv WG
— ask them

2 Schemes
- EPIC : Data Agency
- self-reg or no reg

Issue - look for middle gd
- combo self-reg & PKS
- need for some ost. & enforcement mech
((slow whistle))

MN | Sen needs
① consumer prot.
②

JB | PKS reg driven by fact that

DW | COT page => comms dev.
lucid priv. policies —
self-reg can happen

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2 issues
① nuisance problem (mktng)
② sectors problems (med, $ - records)

Need for some sector driven efforts

JB | frame discussion
① PRS as baseline
+ guidelines
② Need f/ enforcement (sector by sector)
- sensitivity of records
- amt. potential harm

MN | E-comm effort

JB: | Create Int'l EQBA regime
- ok on encryption => net
gain on privacy

* OECD Draft on Encryption

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10/17

SANDFORD SPECHT, AMI

STEVEN PHILLIPS, AMI

10/17/96

NEC

Fauver
Frankel
Sand
Schafer
Moos
Sweet
Kyle
Ley

~~I. RUSSIA / OECD~~

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US-EU SUMMIT

1. TRANSATL AGENDA – SAND
   - action oriented agenda focused on econmics
     with world compliant NATO sec & pol

- problems on each side: ME, Cuba, Iran
  stm - will be discussed @ transh. summit in 12/96
- Ital pres. of EU not very productive, but
  some deliverables f/ 12/96 mtg
  - IT a-mt
  - MRAs
  } two big deals which could end endlessly → small pkg
  - Customs
  - Vet Equivalency Amt
  - Chem precursor
  - Caribbean Rep
  - S&T amt
  - health, science coop

Gwb TA in good shape (surprisingly)
- very prod. sessions & past 2 wks on details
- 2 problems re Dublin mtg
  - some sensitive sectors, ie trans-related glass
  - tariff cuts present some probs (mgw) EU want do
    it want Asians coming on bd - Sing dk
    want it (although could improve Asian mkt access in EU)

We need deal w Asians → ensure US-EU Sum
but → get that, we need EU-Asia discussions
(which aren't happening at now)

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Think Sir Leon wants TA
1) Believes good f/ EU industrially & as world ldr
2) afraid only piece of TA which will succeed
3) personally wants thing

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We will wk ~ Joan, make comm ō next cen dep

SN NRAs almost dne, 5 of ~~7~~, $40M
Only 2 areas (both FDA juris) where we CE get ant
- pharms
- red dev
Seems FDA will give core leeway
- allow ½ for testg (unless obj; im prod)
- del testg → 5 US inst's & 2 EU inst's

Sr Leon has taken all / nothg approach - really wants chemo but SE has expl. why FDA stance will never be reformed

Because he may take 5/7 or will walk,
Thinkg ICA plenty and NRAs not nece

Seems that EU industry spts, but need pharm → lobby EC → get Sr Leon → come around

* NRA blw US FDA & Swed in 73
@73 - 20 visits b/c US → check Swed labs
post-73 - Ø visits

Sme other chys are int'd - Switz, ~~Ger~~, Jpn, Austral

Eng We need → think abt this testg issue Chicago

Brs not pleased w our posth but we ct adopt their posth

SE — We can use TABD brmssgs → push EU

JL — we need → make sure TABD not anngy to US but prsng EU -

DT
- OE take lead on TABD
- VSTR can start
- ~~keep~~ make it clear that we are consid. other optns

II EMU

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JSchafer Bkgd

DT will come bk ⇒ discuss issue more

RUSSIA & ~~NATO~~ OECD

Speso 'Strobe & I agree - Need H2O carefully how big gap btwn now & full access
- Picking: ct launch full process now, but bg them in slowly, educating them personally, ct think we need official posit

They have cmts on sme subcoms as observer

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DT Believe this is correct path ~~regardless~~ (shd SFT - we want pull in Russia slowly, encourage the reform process
Good ⇒ pull Russia in as observers b/c educates them wont make strong reqvmts

Lang Good wk on Russia ⇒ WTO - we truly could have Rus ⇒ WTO on credible terms in 1½ - 2 yrs
1) Urgvmt EU opp ⇒ Rus as observer @ OECD until full access ⇒ WTO - EU dont want Russia's in OECD until enforceable trade rels in place

Problem is WTO membership - but Rus govt officials: OECD would distract them, divert attn ⇒ problems on WTO

Since OECD ~~dont~~ go anywhere until Rus ⇒ WTO, dont distract them

Spec Believe our posn should be
1) spt Rus ⇒ ~~WTO~~ OECD
2) spt Rus ⇒ (or (WTO OECD) ⇒ spt reform mvmt

Not whether but when and how

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3) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 5p	12/18/96	
4) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 2p	12/19/96	
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16 DEC 96

HOUSE COMMERCE FORD 316

MIKE O'REILLY
ED HEARST
ROBERT GORDON

WM INTRO

SUMMARY DISTINCTN BTWN COMMERCE & NON-COMMERCE

- CONTRACT V. TORT
- UCC APPROACH
- DOMAIN / TRADES
- EDI / SIGNATURES
- CONTENT
- TCP/IP INTEROP.
- PRW PRIVACY
- 3RD PARTY IPR
- SECURITY

DOCUMENT AS ITERATIVE ROADMAP

DISPARATE TRENDS EMERGING IN DIFF CTYS
∴ WE WANT → ~~ENCODE~~ AS LOR NOW

RG WHAT CTS TRYING → CONFUSED NOT?
WHAT IS PROGRESS IF ERPS LOOKING AT EPS?
ARE YOU PUTTING IT OUT UNLAST OR
WILL YOU TRY TO PUSH THRU OT?
SEE MODELLO?
OTHER NON-FED GOVT ORGS?

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FOCUSED ON INT'L OBSTACLES WHAT ABOUT DOM OBSTACLES?

WHAT IS VSG DOING ON FRNO?

HOW DO YOU SQUR MD SOLF-REG?

WHAT ROLE F/ HILL?

- INFORM HOUSE
- CONGRESS ENVMT ← RESOLVES TTY RATIFICATION

(*) DON'T PRES GOV AS US-DRIVEN

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12/18

JAVASOFT

AB Java = new comp platform f/ ntwked envts
- write once, run anywhere
- safe delivery

① W-O, R-A
- good in all geogly envts

② SD
- can be shipped anywhere
- no viruses, no corruption

Keys → ntwked envt for apps
good for any tool / device

Java ∆s Net f(ntwk → comply-tool

Sun has built its bsnss
on open stds - all architecture
should be free & fully avail.

Java platform = ops envnt in
which Java apps execute -
unique aspect = can be imbedded → any O/S

Sun wins
① licenses platform
② sells Java O/S

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Sun dueling Java platforms - w # other cos —
this as unlock Msoft - Intel nexus ∴
Java relevels playing field

?'s of ntwk system → develop dependence in Java
↳ engrs consumers & designers,
esp in ntwked envmt

Sun generates revenue
- core systems benefit indirectly - more can sell
- ntwk company " - more can sell
- direct benefits
  - licig platform
  - licencig Java apps
  - licencig Java sppt services

fixed yearly fees but not # - generator
servers

software → hardwired → new low end apps ∴
Sun derives revenues

b/c Java = scalable, will enable it → sell
on more lowend products

challenge of Windows CE - if Msoft lev.
its desktop adv → master new ~~net~~ techs

all cmpnis' dueling Java w Sun b/c

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Apps

All licencees must pass test of compatibility to ensure they are deliv. products fully compatible → Java

↘ all co's can develop xtensions, but bad if Δ Java → fit

New "100% Pure Java" will guarantee that any app ā 100% PJ will run on Java compat o/s

↳ now co's will tell their devlprs → write 100% PJ apps so wd locked out

Java has spnd so much no. so rapidly b/c shy desire → impact msoft mkt share, esp among developrs

Lots writing Java apps - Sun wins more b/c it will devlp its own apps

- developing desktop f/ Java ā mail browse calendar
- " server → sppt Java desktop
- " software devlpmt envmt f/ devprs, editors, debuggrs
- " chips which will act as accelerators in wkd. systms / as base f/ new computg devices

Wade Miller

All omreo's can use chip architecture, can license ~~design~~ platform & layout if they want w/ diff. licensing schemes if each

Security v. Safety

Java & prov. security (crypto/priv.)
Java prov safety
- HP
- no corrupt
Some bugs in implmtn, not in architecture
(

Sure
Even removed functionality & library
Even improved O/S w/ checks
to prevent bugs

MSoft is purely bad. "embrace & extend" model — problem = MS extensions run only on windows platforms
- ☹ high end: why not use w's?
- ☹ low end: lev. adv. of desktop hegemony

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Sarah – Agreed with all messages

Concern – messages too high level
– how?
– what timeframe?

Pulled together 4 important issues

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12/18 CSPP mtg.

Ken Kay
John Young
ICM JRG

* Interoperability paper

Key Achievements

① process signal -
- now have leverage → Δ process
- impetus → pull together all agencies

② how industry will organize itself
- all mechanisms for USG to support
  - where will industry lead?
  - what are trad. grps

ICM Well like your thoughts
└ UCC & TK Stds wk'ed ..
need similar model

③ T-com driven model on Mkt Access - need software & h-ware perspective

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Applications are critical
- App-specific impediments are significant
  - health care
  - law enforcement
  - education

} ① address these impediments in policy dev.

② identify 23 new apps, dom & int'l

~~Vice Chair~~

Dr. Jay Sanders
Telemedicine Assn.
~~Vice~~ American Telemed. Assn

Telemed

Education

ENCRYPTION

- sense that we are close → deal
- Kantor felt that current language too weak fl companies
- if cos positn ends up in regs, they will be pleased

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1) Gvt should have decontrolled 56 bit DES and ~~controlled~~ all above it
Key recoed

↳ VP was ambiguous but law enfcmt node regs specific

2) Relthship of DOJ & FBI → technology - appear tech incompetent

Offer → speak → DOJ or tech turned down

Key Recov has → uk
- either self-held keys proliferates
- whole system breaks down

Speedy balance encrypt, btwn apps & Java

WK ⇒ DOJ — desire ⇒ designate
CTO ⊙ DOJ

Hope → see progress continue
- move → chip, software and debates
- improved non-confrontational

basis created bfore ind's bus, keep that cool '97 - mid '98

Ont needs → be briefed abt ind efforts

CIC

Dom copyrt. grp
- not fighting now - allowing Int'l IIPA → ft.
- ~~Tak~~ are preparing f/ dom battle

Fee conduit is continuous issue
- not telephone issue
- OSPs have tried → ~~work~~ ark around pt → pt model, but when they make content choices (ie. Top 10 Sites)
- other navigators choose ~~for~~ also concerned abt ~~the~~ content

We need help f/ ~~other~~ ~~order~~ Ad Hoc

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compose possible hatred is very sure
Comfort.

We need leaps (. world arms cross
~~used~~ cubs by.

close may have by hotel.

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12/19

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NATHAN M

NM — sorta @ this level you look for rt. level of principles & PHIL - this paper = there — good start

LM — This attpt → pull togthr disparate issues btwn IS diff agencies

NM — UCC
- terrific concept
- needs → be modernized for Net & globalized
- we agree w direction - key thing is → get guiding principles rt.
bc then lawmakers will go rt. way

LM — Agree w you that UCC = rt. medium and would be helpful → get your wgps to focus on this

-

NM — DigSig: impt → get gut recog of dig sigs and binding nature of contracts even if no paper form available

also, protect e-mail and sanctity of contracts done thru email

NM
CSIM

Also, agree that security = impt ∴ encrypt
Desire → more in degrees → more
stored more retrievable possible
in CIA

NM

On LEnforcement, these ppl take narrow
view of their responsibility
- they need → fight eg. elec. crimes
- you don't leave keys in your car
LE thinks don't include digital
crimes
- charter LE to mission → understand e-crimes
and institutionalize it in LE bodies

I believe key escrow = impt. part of
successful commerce - unbreakable encrypt = not conducive
to business

Acceptable f/ LE → get access to ~~key~~ prime legal
authority

f/ those ppl who deal in terrorists, due
process will take care of that

CMKt is on your side, but if your fight
encrypt on principle, you lose

Encrypt = US-centric - if you play your
hand, might we accept ∴ out of luck

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Tek Stds

MS big fan of allowing industry → take it out and gvt not mandated

Better if more strongly worded → ensure no gvt involvement here

EU has axe → grind on stds : want gvt stds → advantage their Euro players

EPS

Appreciate approach

No innovations in currency & gvt since char - prices for currency & credit cards

There will be proliferation of purpose-oriented comms

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~~Lawyers~~ — see paper

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PRIVACY

Like your approach, although devil in details
- use like personal priv
- seems that some EU chys have
  - more cbd
  - no rent

No mention of e-mail &/or tampering

↳ Postal Service courts authority ⇔ assure
~~Security~~ security of email - perhaps
to compete in mkt, but not
to have monopoly

(*) call box to roam

Customs & Tax

Agree in your approach, but we think
problem = bigger than you think

Legal Q's are complicated
- where is commerce - local / nat'l ?
- did consumer travel to your page?

Provide (with [illegible] other govs, intnl

ppled sft. ie unsued, nne is answr

⊛ Need dev new pnples

Mail order not subject → local tax, just where shipping ~~tax~~ site

⊛ org very mtg w/ MS tax lwyrs

TII

Good sond pprech

we believe in mkt-based ppreh - al pys dt want govt-imp'ed Zip - pleased now w/ mkt-driv status q.v.o

Pnples & gnerals - effect → large audnce

Yet dt need → sy more tha importnce than intrpatn

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ENCRYP

PRW

VAp

WITHDRAWAL SHEET
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Collection: **Domestic Policy Council,** Magaziner, Ira
OA/Box: OA 10383/Box 15
File Folder: **Dept. Notes**

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Date: 10/8/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Notes	Handwritten meeting notes, 6p	n.d.	P5
2. Notes	Handwritten meeting notes, 3p S/b 5	n.d.	P5
3. Memo	From Lael Brainard to group re meeting on Trade Barriers Assessment, 1p (partial)	10/3/95	P3/B3
4. Notes	Handwritten meeting notes, 2p S/b 4	n.d.	P5
5. Notes	Handwritten meeting notes, 3p S/b 6	n.d.	P5
6. Notes	Handwritten meeting notes, 3p S/b 6	n.d.	P5
7. Notes	Handwritten meeting notes, 8p ✓	n.d.	P5
8. Notes	Handwritten meeting notes, 3p S/b 6	n.d.	P5
9. Notes	Handwritten meeting notes, 2p S/b 4	n.d.	P5
10. Notes	Handwritten meeting notes, 1p (partial)	n.d.	P3/B3
11. Notes	Handwritten meeting notes, 1p ✓	n.d.	P5
12. Report	Re: China	9/27/95	P1/B1 (S)
13. Letter	From Takakazu Kuriyama to Ronald H. Brown, 1p	8/16/94	P1/B1
14. Letter	From Ronald H. Brown to Takakazu Kuriyama, 1p	8/16/04	P1/B1

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RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
P2 Relating to 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 advice 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].

PRM Personal records misfile defined in accordance with 44 USC 2201 (3).

B1 National security classified information [(b) (1) of the FOIA].
B2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
B3 Release would violate a Federal statute [(b)(3) of the FOIA].
B4 Release would disclose trade secrets or confidential commercial financial information [(b)(4) of the FOIA].
B6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
B7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
B8 Release would disclose information concerning the regulation of financial institutions [(b)(9) of the FOIA].
B9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

Charlene (1)

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Bob Cass - eg
Mark Linscott - corruption.

Mak - can't do it reason

Procurements - is an area you see it that.
WTO agreement doesn't have large membership.
1) conditions for qualify
2) evaluation criteria
These assume transparency.

IRA - WTO procurements is a good model
Mark - yes - misses a few things - "Fed absolute - need more flexibility
Steve - office of Federal procurement policy
details
IRA - who signed on to this.

Mark - EU, U.S. and countries, Singapore, Korea (Transition phase)
Taiwan - not much leverage with members who have not signed on.
- recently using APEC & FTAA
if
Bid - challenge forum
- In phase of getting these countries to talk to US.
- It would be easier to get these countries to join WTO the sign something similar ⇒. Most countries won't join because its to rigid ⇒ & MFN ⇒ Under Procurement code exception is allowed ⇒ they want MFN
IRA - Way of getting at this without settling up bureaucratic system.
Mark - principles & loose practices. is a better way to go.
IRA - Make principles based have loose goals then get countries

IRA ~~-~~ leverage is WTO accession.

Mark - 2 Europeans are interested - Business alliance commission is interested in doing this -

DP - helpful in APEC process.

IRA - what are prospects for getting together with them.

Mark - Quad meeting it's been brought up - but overshadowed by comp policy - not seen as sexy.

Bribery corruption link has given it new life

IRA - OECD process

Mark - good process but on supplies ours focuse on those demanding goods.

IRA - Any interested on supplier side.

Mark -

Mark - info-tech get others to agree to ~~our proposal~~ our own Agreement.

IRA - get a file of what you think - Areas of pressures a positive ~~SEW~~ SEW on issue.

Mark - use EITA & APEC - paint it as picture of this can be bad for yours -> Taiwan sign on because of this.

If APEC countries agree to negotiate this it is faster.

IRA - if you raise it up to higher level

Charlene - no. higher ops benefits from this or relatives

IRA - Brings up S.E.A. -> are things changing?

Mark - yes - but we need ~~to~~ to do Any ~~CHA~~ effort non-agressive

IRA - Is there a broader strategy

Charlene - has Quad ever taken this up.

Mark - all agree that they should take it up - no action plan.

Charlene - could divide up the world. DP - Asia - U.S Latin Amer

Mark - coordinate with EU - Eastern Europe.

- Items Transpacific Agreement.

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Bot- to get at currency issue
"get Development Bank to help out on this
Bart- no

Ch. no currency to have transparency
no injectable relief or appeals.

ASEAN →

IRA - undertake neg with ASEAN countries to develop transparency & investment rules - then go to APEC - Business Roundtable. →
- create a positive competitive environment.

Bot - ~~as you asked~~ so you expand IRA ASEAN
& its rules → ~~for~~ companies decide to locate because
of how far country has gone along toward harmonizing.
Currently there is a disequilibrium among them.
Indonesia has to create 1 million jobs a year to maintain
employed levels. - companies decide based on these different rules.
ASEAN meters are coming here - ASEAN - Economic Ministers.
AFTA & NAFTA linkages - areas we could
~~insist~~ attack.

Charlene - don't allow right of establishments same as
locally companies.
one problem - we should not be negotiating agreement in
APEC - but would feel differently about ASEAN.

IRA - Investment issues, transparency, sectorial issues (auto),
Services, (Telecom, tourism, professional services) Customs procedures.

Bot-→ as national market they are saturated.

IRA - case for them - export to India - 500 continent but to make
this real they need

Bot - they all agreed to implement TRIPS. CLINTON LIBRARY PHOTOCOPY

IRA - problem on trade marks.

(4)

IRA - ~~Has~~ what could you do to move market share. - Investment

Bob - Supported Business Roundtable Raise Investment as issue

Char B. - we excel in tech areas. → foreigners argue - we don't need 7th generation we will take 1st generation tech.

~~IRA~~ -

Charlene - 1) they need to qualify contract - EO. go with flow letter

2) ~~Don't~~ Don't get long-term relationship

Bob - U.S. companies finance from U.S. Banks → debt market → forces U.S. companies to be less flexible

Bob → Two categories 1) ~~as~~ financing

2) rules of game

companies that go out there are going to China not ASEAN → U.S. companies will go out there as intergration occurs. - we should be encouraging intergration.

alliance for mutual Growth

AMG

~~IRA Sp~~

Bob - Spring material

Bob - Malaysia - ~~as~~ only country that can actual lead ASEAN →

if they fall back so will asean. Gov placement will be tough - because you

IRA - Is Indonesia changing →

Bob - ~~Sort~~ Suharto → does it in a predictive WAY.

Joe - ~~not that~~ Malaysia is not as corrupt as other countries

Indonesia is much worse.

~~Bob~~ IRA - what about this spring.

Bob - Apec - NAFTA linkages

how do you define ~~oppenness~~ Openness

Charlene - all ministers suggested this → much less tense meeting

if they brought up question of NAFTA - Looked

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(5)

Bob - like to talk to Austria - N.Z
to E.E.R.
Charlene - may be between MAY + June.

IRA - where to go →
Bob - if they ~~they~~ they will a passive is a TAX treaty.
Thailand, S. Nagapore, Indonesia,
IRA - phil they are best - Thailand

China.
Charlene - ~~No~~ U.S companies say they can't make money in China. - not sure I know ANSWER.
→ U.S. companies - ~~not~~ to conservative.
MAYOR of SHANGHAI SAYS. on thing - central gov SAYS another - U.S. companies waffle - EU ~~companies~~ companies go ahead.
If chinese like a deal they will go for it.
1) financing
2) more flexibility of deal.
3) less threat of trade actn
within WTO - trading rts → can't import without ~~getting~~ using chinese govt. level of tolerance is less → may have sanctions - maybe import committee
exports are up 16% this year.
IRA - we have leverage now - we won't
Charlene - b.c we don't use it.
If we decide WTO is leverage - go after trading rights, ~~tariffs~~ tariffs & others. if it not leverage (it's not)
on bilateral side - wants this as counterpart to OP,
2) superpower, 3) we are suckers - can get our tech. 4)

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(6)

8 to 17 billion → -they have plans to it's leverage - because they don't want it to happen.

IRA -

Charlene - they have to believe that there is some consequences. "~~They was~~ they had how ~~leverage~~ friends ~~except~~

IRA - Pres says Gorbi - give us market share or else we may have to revoke MFN. - (can't support this).

share of your imports.

Charlene - 1) → debate within.

2) we may not take any action →

→ ~~we were docile~~

1) not a no issues.

2) has consequences - they

Is U.S. prepared to put trade policy about foreign policy.

~~this case~~ this could be a problem.

IRA - If we stay when we are don't do above strategy is there a positive relationship we can build -

Charlene - we have given them a number of things super computers etc we could move to lift tiAmerican sanctions however, your bonefides are going to have to change - change market share - this may be easier.

IRA - ~~increase~~ if you could sell that increasing our exports is important you might be able to convince congress.

1)

2) Commit types views china different ly

Charlene - - multiple approaches.

IRA - Paper trail

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T.A. - meeting 10/2/95

V.C. Looking at export performance & competitiveness come up with ~~regulatory~~ recommendations from U.S. industry on how U.S.G. can ~~improve~~ do to make U.S. industry more competitive.

G.M. → ~~3~~ 4 parts (publications) to the publication.

IRA - what are may good.

G.M. → Financial incentives ~~especially~~ toward high-tech exports. components → short term & longer term - ATP program partnership with Labs. be sure emerging technologies are done in U.S. to create diffuse technology are longer term.

IRA - regulatory.

G.M. - medical equipment

K.H. - 1) if it's approved by OECD country then we should approve it.

2) → Product liability (m.o.) → so bad that companies are not doing research here - many offshore export.

IRA - what else? Kent - 1) Securities litigation? - high-tech companies are sued for fraud anytime their stock fluctuates downward. → Looking for a safe harbor - be able to say where you

2) software - want ~~risk~~ benefits → be treated as movie a book - Treasury is not opposed to registration - but we are waiting

3) ASSestian talks - with Austria ... etc → Semiconductor industry would like to use these to get 0-0 tariff reductions.

deliverable.

IRA - can we document the loss of medical equipment. - yes.

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Elliott - what about environmental area.

M.G. → EPA standards are so tough that companies (EPA) can't do they kind of research they want (Business want predictability & speed)

Some of these tech move fast & Reg have not kept pace.

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G.M. → EPA Approves process takes long.
example.

M.B. - FDA has structure to test product but EPA does not even have this → get an example - U.P. is supporting

K.C. after you get your permit & test fail you then have a Liability is you make it worse.

→ also look at best available technology - after tech is Approved NO incentive to improve this - change to performance standard.

M.G. - yes → EPA - 1) Afraid ~~that~~ Industry will try to cheat. ~~not live up~~

2) not set up to do testing

3) Demands by Congress

M.G. more of a cultural problem.

E.M. → Anything that weakens the like with this congress they are afraid to give anything ground.

M.B → 1) EPA does not recognize its impact.

2) EPA needs a product Approval process → certifications would go along way → ~~private sect~~ private sector could set this up.

K.C. → beyond compliance (expand) - EPA ~~tak~~ lets ~~can~~ these companies (propose ~~exp~~) (because of their good record) ~~get~~ not have to get permits.

M.G. State - Fed partnership - to get a common standard.

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IRA - ~~Comp~~ Other countries comp programs.

Germany - Doing some creative things.

Fraunhofer institutes - setting those up in U.S. -> labs.

~~have them~~ -> mechanism that gives German machine tools a leg up.

-> use German ~~equipment~~ equipment - also doing this in Singapore

& put 1st Lab in Malaysia. -> money comes from Fraunhofer which gets money from Gov.

also puts them close to our technology centers to get our technology.

German houses are opening -> incubators for German small businesses - free rent + export subsidies - getting help from banks.

IRA - is this working

Recognition that direct support does not help.

IRA - What about JP.

E. Mac - going to double budgets in next 5 years.

Robots, nanotechnology, clean car, distillation & related technology in bio tech areas. - it was surprising easy for them to get money.

M.G. -> China has changed -> ~~could get~~ used to not need joint ventures. Now you must put technology on the ground in China. -> we have no policy. ->

IRA -- what are they JP doing -> M.G. They are moving. Figure its worth getting in ON ground floor. Also playing countries off each other.

M.B. -> WTO - you can't use govt domestic content -> chinese want 10 year exemption from this provision.

M.G. - we know of two Universities that agree to train chinese in high tech

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areas.

→ we are not asking for a priori doc.

K. H. → Aerospace - there is hope that 3 companies can agree not to share technology. NEC - group listening to machivest (BO)

M.B. → electronics firm → takes 3 year to get U.S. factor to get to world class standards. JP only 2½ years.

IN China it one year. → getting cream of crop of china.

IRA - Add that the E.O. controls imports to E.O. → everything comes our way.

M.G. - Chinese are only 5 years behind us.

Chinese buy American equipment & don't need to convert it to chinese → (Jp companies have to spend time translating, no time lost.

IRA - Policies from EU & JP are focused where.

All → target ASIA & are now focusing on Chile, Brazil & argentina. Germans.

IRA - How do you regard India -

M.G. → people are optimistic about India in software market. (Carlos)

IRA - what

Indonesia, Sing, Thailand - All ASEAN.

G.M. Chemical companies are going to put plants in Malaysia to export to China. Chem companies are building plants in ASIA, but we need to provide incentives to keep R&D here.

M.G. → what are incentives to keep R&D & higher level MANufacturing here.

E.M. → gives us data on market access

M.G. 1. try to JP market share.

2. trying to get JP standards

IRA → make clear - dynamics for laying foundation for export

R&D

get IRA - size of ASEAN market

→

(5)

Tech ~~Admin~~ → Investment cycle is key.

G. M. → more than just money - but a strategic issue → set standards for next ten years.

G. B. → change to a dynamic view of trade → more investment oriented.

E. M → competitors don't build policy around domestic market consumption.

G. M. → ~~exp~~ trade has helped U.S. industry →

1) motivates U.S. Industry

2) provides # U.S. Industry with bigger market.

K. H. → Machinest → say you are losing some high-wage jobs because of trade policy.

M. G. → how do you get multinationals to stay here.

G. M. → ~~coat~~ ~~dev~~ countries are ~~developing~~ focusing on a common set of ~~tools~~ to get engines for economic growth. but congress is reversing this.

IRA - write up clear vision of where tech is headed.

G. M. what about E. E. → my experience they want to form better business balances with U.S. → ~~but~~ IRA → E.O. to balance E.E. ~~made~~ leverage.

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Standards ⇒ need background describing standards setting.

Healthcare medical Devices in Germany - ~~Procurement~~ get certification but don't on Approval list.
Different system in EU - looks good on paper (Very subjective)

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Heydemann - we restricted our trade in India to our detriment
Indian needed cryogenic engines systems for their space program
they got it from Russia ⇒ we protested then stop selling to Indias space program - lost $300 mill in trade for 3 years
Sacrificed trade for questionable political goal.

Mary S. $7.5 billion contract with Amoco ⇒ wanted to send people to be trained in Standards setting. but could not because of Sect 901 → vote.
Aberzadan

Mark B. → satellite sale to china -

get from may examples of these ~~Taipei~~ embargoes.

get U.S. Gov & Industry to focus on ~~standards~~ helping to set international Standards - 1.) we rely on private sector.
2) U.S. Agencies don't have Authority or where they do they don't have budget (no benefit for showing incubent for being involved internationally.
NIST - send an engineer to Saudia Arabia to help them with their standards. - resulting in $700 million in exports
So we sent ~~two~~ one to S.A. & one to Russia. - Congress is cutting back & not allowing NIST to put anybody overseas.
↳ reorganizing state.

Germany has a $40 million in S.A. intense effort to help set up Standard organization in other countries. - teach German Approach.

get from may - example

U.S. - react after the fact.

EU approach - work to get it right is time.

our presence in Saudi Arabia has reverse their trend

Honey - would have ruled out U.S. processing system.

$10 million

electrical ->

e

Spain has already has somebody in Mexico - other countries have standards as part of their aid program.

IEC - International Electrical Commission - EU has been very involved.

~~Brussels ->~~

ISO - one vote per country - EU has 20 votes

5 Big companies will be able to respond - may be lose some product development time as they don't see standards develop. but small and medium-sized ~~companies~~ exporters will lose out.

~~removes our~~

measure electrostatic charges - U.S. has best product, but may have to accept lower standard because EU. is try to get their standards world standard.

VAN order

- Proformance based standard. in construction ~~not~~ ~~to~~ in construction we don't have standard within our states much less ~~have~~ are able to influence or get certification in other countries - EU. ~~does~~ etc do. and are able to get approval for project in Latin America

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Standards (3)

FDA - get ~~account~~ account to ~~work with~~ tap into for projects.

→ FDA would like to ~~see~~ send somebody to Latin America

~~Mutual recognition~~ mutual recognition →

IRA There are barriers in

- foreign companies have better access to our standards setting than our companies have in the EU & JP.

~~- EU is government is much more A~~

SAE - proffesional society - JP has 7000 members and have access to our standard setting - in JP this is gov agency.

If you have a subsidiary ~~one~~ in EU. you can listen to proceedings.

~~FOR~~ - but no foreign ~~go~~ companies are involved - in U.S.

- focus on process issues ~~more~~ harder for us to get accesses

Product Approval processes.

OSHA - they recognize private ~~do~~ labs to do testing & certification. - ~~&~~ EU. companies have to ~~get~~ go to ~~us~~ our labs.

but we are working on a ~~NOR~~ mutual recognition agreement

next monday & tues

medical devices - E.U. has private sector ~~labs~~ LaOS this is uncomfortable for U.S. (FDA).

export controls - FDA ~~made~~ approval process makes our expating difficult - Congress has some legislation to make this easier. - soon as product goes to E.U. it does not have to go

NO EPA today

Baxter lab - could not U.S. standard but ~~could not meet~~ India had no India standard and so Baxter labs could not make a comp product.

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Standards (4)

FCC - EU only wants to talk about ~~certification~~ approval for harmonized equipment - so new technology get left off the table.

Transportation - Self certification process in U.S. JP is a type approval process - they want to see test reports & documentation. Mexico will not accept our process also. SAME requirements as US.

Korea - same requirements as US. but U.S. companies have to go ~~there~~ through process anyway.

US ~~FDA~~ FDA - FDA - Does not ~~trust~~ trust other ~~agencies~~ government.

~~E & IPR~~

what has not been mentioned

IPR.

Physical standards

Elliot - Industry advises Gov in promotion of technology development in producing products for NII

-B. -

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Gerry DAN Fritz Lester CL JB Wright Lindsey Tom Legault - DEC.

Wingate - DPT

DGN Kraft - Tues.

1). Per Diem

2). → on fair

Business Roundtable → FCP

Premeeting → WSJ article.

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IRA - Intro

~~J.B~~ J.B - working group - chaired by G. E. in business Roundtable.

C.L. → have had meetings with DAN Tarullo, Chase Bank, SEC.

- about 8 month ago CEO discussed illicit business practices.

its a touchy issue - because most companies have good guidelines but most companies have revenue sides are afraid they can be sued.

How to grapple with this?

- there has been a change in world - since the FCP act was passed. Free Press is starting to pick up on this - ~~not~~ multi party systems now - other parties use scandles to knock ~~us~~ competitors out of power.

we are concerned about congress taking another look at this issue. → world Bank

→ we are looking at this from north problem & and a south problem.

• Admin - is make a break through in OECD - got industrialized countries to agree to a work plan - U.S.G. should be supportive of OECD process → should be mirrored with other fora → APEC - launch project that is similar - take inventory & set out guidelines.

• World Bank - is so prestigious - that if we can get World Bank to agressively pursue these issue can have big effect.

1) do study on economic affects of corruption

2) amend its procurement guidlines - to ensure more transparency

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3)?

- SEC - FCPA does not apply to foreign companies. A lot of companies have ADR. MAY be appropriate to have companies that have ADR make statement that they will follow FCPA -> not much teeth -> but if they don't will require book-keeping if they don't.

I have an internal Anti-bribes procedures if not ten may have to comply with book keeping

- WTO - probably undercut work in OECD. -> deserves spotlight

More transparency in gov procurement -> most of bribery occurs here. good guidelines in WTO but gov proc part you were not a requirement to sign. Now only 30 countries have signed.

Discussion in APEC on gov procurement is starting should use WTO transparency statements -> it has teeth behind this Transparency part be binding -> but may be hard because it does not have teeth.

Businesses have a responsibility here too. International COC 1977 did set some guidelines but could scrapped

ICC is now close to completing revised international guidelines - does eliminate gross judicial process -> replaces with ICOC prostituting this around the world. French -> G.E. has lost

Fritz - G.E. has lost tons of on the bases of bribery.

- time is ripe for action but its a long term process - setting up system where costs start to outweigh benefits.

no progress will be made without U.S. pressure. hard because its a moral issue.

In OECD - we have nothing to bargain with -> we already do everything.

- U.S. 70's U.S. companies were a result of watergate moral ignita

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- there are good W.B. guidelines that say no bribery - but there is no enforcement.
- Adopt treaty → but would take long-term in coming.

Fritz - can't do this in Germany because it disadvantages us with regards to Japanese.

~~Bad~~ if we say CIA is involved in this is the kiss of death.

In Germany - the development people are starting to balk at giving money - why give money to Africa countries when it ends in Swiss Bank account - when it could go to E. Germany.

IRA - Do Foreign companies feel they have an advantage?

Fritz → mixed bag → CEO of Siemens had to testify about bribing Munich officials to get contract about airport.

C.L. → On this committee is British consume goods company that doesn't want change - does not bribe → but is against this because he doesn't want gov interference. → so we should not try to impose our system.

IRA - 1) Take OECD format to other fora
2) World Bank become more active player.
→ have more explicit guidelines - ~~state responsibility~~
3) SEC.
4) Transparency ~~with~~ in Gov procurement part of WTO → possible this in APEC & other means - ~~separate from~~ a requirement in WTO,

then look at Regional Agreements & see if you can get binding & transparency would you tie this to anything else to get leverage? → C.L. → it's an embarrassment issue (why do you want to hide everything)

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now it's foreign press that is finding out about U.S. companies need to get right ~~pressure~~ balance of pressure.

Summit of Americas got it on their Agenda Last Dec (Miami?)
- we got Latins to ~~put~~ put it on the Agenda.

LINO - Ben Gillman is having testimony - On Commission for Government procurement reform.

C.L. → Admin had a great success. - How to you push OECD further. get Summit of Americas & OECD to

~~A~~ to push issue.

Lester - World Bank - is looked at by all regional Banks → so it will have impact on this. (investment W.B. set guidelines that has had a major effect).

Bank is involved in governance ~~of Bank~~ FCP through project what to do?

concentrate → get message to Jim Wolfenson → report now being prepared on this subject (Ms. Williams (controller). CAN NOT push this a only a matter for U.S. exports → need INTL'l supports. have Wolfenson talk to U.S.

- The effect of corruption on Econ develope - World Bank ought to ~~is~~ do a report. Christian (chief procurement officer - went to Russia) just got back from Russia?

W.B. only ~~always it does~~ Gives loans when things are nosier.

- I.F.C. does not do this relies on private - should be made more careful

- Bank - issues model forms of contracting - have these model forms address F.C.P. →

- World Development Report → 96 - will deal with transition Econ - get

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C. L. → Intelligence

- concerned that business may be one involved → could lose contracts if foreign gov think U.S. company is involved with CIA.

Fritz - Don't have to convince foreign gov that this is a problem.

→ Fred Bregstrom - is having a conference on this.

Scheduled in ~~March~~ March

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IRA - what countries do we lose the most money with

C. Leoteis -> ~~FE~~ • china
• India
• Indonesia
• Russia.

Fritz - go after FAX deductability of bribes -> MAY be easiest - time is not right.

IRa - do this through OECD process -> JPs
Russia ? ... outliers.

IRA - leverage on GOV procurement ->

C.L. - put eggs in WTO -> get them to sign (raise in Singapore)
- put it in good government.
APEC commit to build support for Singapore.

IRA - role of president ->

Fritz - depends - no preaching or moralizing -> it is on G-7.

C.L. -> build off presidents speech yesterday.

J.B - don't like it -> comes across that pres is preaching to college.

IRA - pres should talk to Wolfenson -> can use buzz word like good gov.

IRA - you would include this ~~good~~ as one of the four or five ~~off~~ things but do it quietly.

C.L. - don't have USTR have big negotiations.

1) get report -> last pages ->
2). get in more detail of each of these.

Development committee of W.B. & IMF. - preparing a report to go to ~~head~~ of gov. task force of Development committee

Govenence - tell Schaffer ~~that~~ Jeff U.S. Rep. he should raise this

Lino - is a group of 12 companies working on china - also repeal of Jackson V amch.

IFE Autos. Jack - half U.S. employers
Ken Flom Dessler Janet Lee
Bruce Hyman Pastor
Lunch. (1)

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Pre Lunch. - Discussion of NAFTA. →

Jack - - consciences building
- to show free trade is creating employment.

Dessler - primary focus
1) Look at labor adjustment to change - trade may be responsible for part of the income distribution.
2). How we achieve Liberalization → good ride we got on 301 in Asia is over-e use to

Janet ⇒ Investment Impediments in APEC
- Lack of understanding by U.S. companies of Gov Regulation
- Understanding of how business practices are effect by or regulations.

Pastor → Free trade does benefit all nations as a whole
but doesn't benefit all groups → having a disproportionate effect on classes → ~~people~~ its a presidential issue → with Buchanan - part Buchanans face on Rep Party ~ get Pole to defend it.
- get at integration effect of trade.
- NAFTA not about trade but about integration of North American economy. NO NAFTA Secretary Under Don't

Bruce Hyman - NAFTA been success despite Peso crises - Don't Be ray → need to move on Fast track → lose opportunity for next 2 years → Foreign assistance should be privatized

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Kim Flower - working on ~~America~~ Software & high tech.
not just an foreign issue.
Domestic law enforcement
Immigration policy, Telecommunication, focus

R · ~~Tech~~ U.S. Industry does that better - country should be facilitating this.

1) Rest of world watching U.S. as to how ~~we~~ we introduce competition in telecommunications → we need ~~to do it~~ show leadership

JAnet JAnet - we have opportunity to hardware software, into networks.

→ concerned that telecom bill may not become law →
fighting over caller rates - lost big picture.

· copy write protections → e
wave white paper is good.

· Export controls - Software companies are munitions producers. (Encryptonations) FBI wants clipper chip → foreign companies already make this.

Bruce - Export - process needs to be simplified & speed up and made clear.
NSC → process is simplified - ~~but~~

B →

· Immigrations - for High-Tech companies - need to bring in these workers - for translation. - legal immigration has been swept up as well.

ANN/-5 Kim If you can't bring them ~~overseas~~ here you will set up overseas - Microsoft & Novell-> want to do it here
Kim/Ann → In China → not doing fundamental design work.

There
IRA - Export controls. Companies want clear rules
Bruce → In satellites - we ~~have~~ no technology different than 747 & it's delivered ~~overseas~~ in space → but we have guidelines

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Kim - greater recognition in NSC of utility of controls.
Bruce - Encryption is made everywhere & available outlaw.
IRA - Telecom
Bruce - we are model
~~Ann~~ - Also that adopt our standards - get us control

Employment =>
NAC -> TAA - 5 currencies this year - shows minimal
state of Art in training needs to be improved ->
help people find jobs works.

Pastor - Pres cut for TAA -> ~~that~~ when originated
TAA was to get AFL on board. was not enough
this time. New leadership may ~~help~~ open door.
- Lot of research on impact of trade on impact of jobs
and the economy -> think about trying to get commission
that can emerge with consensus that Unions could buy onto.
That Package could be broad as income tax credit -> for needs
to allow a consensus.
In NAFTA not much ~~resource~~ resource.
need a broader vision of where we are going. 1st issue
after GATT President goes bilateral. -> ~~we~~ Policy needs to
evolve - Rep are united in opposition to International issue.
can do to - can help ~~America people~~ make this clear to American people.
Mack - is support for International Approach.
-> fast track -> - LABOR issue - need to build coalition
Pastor - need to get fast track - 4 week - things are already
slowing down - Chile is not worth stalling process over.
Janet - APEC - ~~need to~~ U.S. said will pull
U.S. industry is frustrated with process - they are not allowed

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Jack - in Europe - trade issues are no longer for technocrats ->
-> ~~this~~ is Becoming more political. EC -> is getting out of its technical role to political -> needs to be well coordinated with states. - ~~no~~ but advantage as no one state can take the ~~possibilities~~ lead.

population ~~employment~~ There is a mechanism with the E. C. Why should we support initiatives towards free trade. Large corp are seen in bed with Gov & creating employment.
SME - are creating employment
The Social partners need to be involved.
· Structural Adjustment - countries are struggling with deregulations.

IRA - Transatlantic free trade possible
Br. Emerges
Mac - Skeptical
Jack -> should happen - but EU has institutional problem
Leon Britain - wants to make initiates but ~~does~~ with want to to be specific.
Pastor - if you talk about US - EU area - you are talking about Global trade system - reaction is regional where problems that UR could not solve could be extrapolated to WTO -> would not work very well
IRA: not something
Mac - Agri - is problem -> US & Europe are two ultimate trade powers - should collaborate on getting WTO to work not be seen as ~~the~~ building barriers
Jack - ID building blocks ->
Why should we go for Free trade environment - easier to make case in U.S. -> not in Leon.
Janet -> more dialogue with EU & Asia - this is going to

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(5)

Look back to USEFC's issues.

JTA and ASIA -> Advocacy has been short term. - been done for big companies -> need

Main driver of software - training, setting up (SME's) U.S. standard of business.

Pastor - work out different incentives.

Bruce - Telesis -> did work for G.E. to keep T.V. tubes.

Mac - what about company that wasn't in it.

Bruce - depended on quality of person -> didn't depend on system - better tended to be political remunerate them on productivity

French - from E.O. - we are watching what commerce is doing with Admiration - and you are talking of getting rid of it. coordination is key.

Jones -> no body sells a trade opportunity better than companies in Asia who WANT U.S. exports. ->

China - Market opportunities in china are precious opportunity now. Chinese are getting to point where sanctions don't mean as much to them. - gotten good at playing ASEAN companies off of them. constructive engagement.

Hi-tech - IPR was critical -> what happens with Hong Kong is important.

Mac - Delina of how tough to be with WTO - other countries are letting U.S. carry load?

Bob -> our exports are small -> join Mumm nights a market opening. Asia is fastest growing area but not fastest in terms of our exports - may decide we need to look bilateral we JP becomes dependent on auto serious when we do. -> we need a broader approach in not making it one sided

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IRA - How do you not make it one sided,

Bob - In favor of broader approach - but will then have to go bilaterally.

take 1st 6 products & demand computer access.

Increase incentive for greater access.

High tech - confuse what's good for world system with what's good for U.S. system.

also maritime negotiations ~~Maritime~~ Do trade negotiations on air rights always

Works - like case we are tough on market access.

IRA -

Mace - we should not worry about bilateral balance

look at expanding markets & export to them.

In SII - were able to get JP allies -> In this Admin we were not able to get

get allies within the country -> could be

Commercial interest.

Bob - U.S. & Europe have worked this well between each other.

Janet -> will work in China

IRA - Latin America

~~Bruce~~ Broader & deeper NAFTA regardless of fast track. Mercer -> not confident it will be meaningful -> after Chile should be our next target. 1) Inter American development bank OAS abolish country preference rules -> Don't give Brazil 15 to 8% preference.

2) Press bank to press FCP out.

IRA - FCP out

Bob - structural deficit - don't do this year by year -> had surplus last four years but not now. Look we should focus on cronic deficit.

Brazil is coming out to it own. Argentina is ~~the~~ better. Mercer don't negotiate. Only two countries Mexico & Brazil -> 1) negotiate with the sub regions
2) set rules - here's where you need to be to negotiate. - MAY not be most effective
3) wait for somebody to knock on our door.

Bruce - have model on table - NAFTA.

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Roundtable

DJ-II

IRA - Intro

-> President's statement

-> we

ABE OK -> P/O committee on various trade and investment issues. international business issue.

we feel Investment time has come. -> many medium-sized companies have gone global - need to be

- close to market, and take advantage of R&D.

33% of exports are to affiliates

- Don't have consolidated frame work we have in trade. OECD
  - -> code of capital movement & Invisible transactions, in OECD
  - -> some bit - but coverage is spotty. -> confusion about obligations between countries remains.
- Time for negotiated treaty.
- OECD - national treatment was only instrument available but was not binding - we tried to bind it but EC wanted states to be bounded. -> only way to do this is to get all encompassing instruments to get it through

History of evolvement of MAI

EC - MAI -> OECD - good place to start this can get high standards.

Concerned that Bogor would set lower standard.

ABE OK -> The issue of target - E.U. says next target in Developing Countries. -> Leon Britain thinks when this goes to WTO -> Developing countries will walk away.

In U.R. get rid of few investment & trade related barriers

In Geneva - interest is not very high. or promising.

we only have 2 staff members watching this - bring this into WTO while it's still open - so developing countries can have an impact.

(9)

OECD is consensus organization - but we've insisted that ~~has to be~~ a country like Turkey could not block it.

If we have E.U. - U.S. Canada, JP Some Scand & Maybe Aust target is June of 97 →

ultimate objective is to move it to WTO.

Two ~~issues~~ sticking pt.

1). regional E.O. will want exemption from MFN for regional integration.

2) cultural carve out - French & Canadian.

Chris (Tom) → ~~why~~ the paradox behind this is GII

its not close down U.S. plant & move overseas. → but rather its important for building GII → big part is investment in services (some hardware → switches computers etc.

What we want to see.

1). National treatment - some of U.S. Gov funded R&D

2). some liberalization ~~in~~ in E.U. → French still screen for investment, cultural in Canada, oil in Mexico, privatization - don't just codify current system.

3) Investment protections - expropriation compensation

4) Dispute resolution system - ~~to~~ helps to Avoid use of protectionist measures.

Abe → good relationship with exec branch (Al Larson).

not just a U.S. company views - BIAC with Shell & others.

Don't want to go forward & then see have a U.S. political decision → we know

IRA - can we project a few years & what are the basis which to course.

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ABC -> o

BANGOR -> non binding declaration

we are concerned that this will play back into OECD -> EC used this to push their position ->

we sent letter to cab officials involved

got them to focus on one country at a time.

C.L. - under current that we have all these agreements that have different standard - Have half measures in APEC.

. what about grandfathering - not just a standstill. -> don't put existing companies under pressure.

Gomi Indian Uruguay - the WAY Asia is growing we have to be there -> once we have made the investment we don't want to see it ~~changed~~ liberalized -> we have about 2 years.

C.L. -> In some sectors we will lose employment.

~~BOT~~ BIM- BIT- handful Taiwan, Thailand, S. Ngapore, S.K., India

AFTA - threatens to become an APEC exercise -> working group is Costa Rica -> MAY codifying what's already in existence

EC -> 1/3 of APEC members are in OECD. -> Chile & Argentina will exceed.

IRA - OECD - is wave process -> but bilateral

C.L. -> OECD is Lynch pin. -> is this doesn't turn out right then everything else is moot. -> Why did we get good investment in NAFTA - Mexico got something from U.S. -> now ~~Act~~ Investment is put out of dynamic - no incentives to other Countries in APEC -> CAN you create new negotiating dynamic

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(4).

GM -> justifies Singapore & Indonesia are player - figure out what their interests are. -

IRA - can you set registers in ASEAN that would be of ~~long~~ ~~towards~~ for short-term and

TI -> more of a Taiwan company in Taiwan -> think more along these lines -> given APEC a tremendous advantage over us.

IRA - focus process through OECD & then more that in WTO.
C.L. -> no -> not if you have regional strategy may undercut WTO
Abe -> no -> OECD instrument is ~~kept~~ open
OECD has done good
TI -> China ->

IRA -> OECD agreements comes then options -> 1) go to WTO 2) ~~force~~ allow countries to opt in.

GNO track -> bilateral
nervous about APEC & AFTA - weak.
what Pres action could help?

Abe - not time for Pres to come out ->
is a turf issue with E.U. -> I am suspicious of them
trying to carve out an E.U. exemption -> may pressure E.U. us
to move it to WTO -> so that they can get work ker agreement.
Pres - should indicate that we ~~must~~ support this

J.B. -> may be make Investment ~~out~~ larger
Agreements

IBM - When Pres meets Kohl & Patchie major -> should he indicate its importance
Countries are more important than E.U. -> put something in G-7
Context - not just words.

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Mustafa → play three card game → strategy

C.L. - important pt about sending signals → EU has been better than us of getting playing w LDC.

- Europeans are scared of our ability to carry out these regional Alliances.
- NAFTA → new approaches if NAFTA → we said to Mexicans in unity of places - we let them stage their implementation this is different than transitions.

IBM - NAFT - chapter 11.

IRA - talk about bilateral pieces →

1) Dynamic effect
2) trigger back onto OECD process - buy into this
3) Lot of Business decisions being made in next few years.

→ this says we need model agreements.

Abe → remember every country has bits.

Mustafa → have to be put in context of broader game plan.

Align ourselves with countries that want us there.

IRA - How would you do this → 1) look at ASEAN - go to MAHATHIR
2) bilaterally. 3) APEC

C.L. → problem with BIT → IPR goes with this & some countries take exceptions.
→ get child then you can put pressure on

TI - what are our goals in ASIA - we have positioned ourselves as them (we should be viewed same as emerging countries.

- education → need to get bilateral business agenda to

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TI → U.S. has lots of expertise we are not

Majatear → JP have been good about bringing Gov along → but one company specific. must be careful that we are not preaching-B

~~IRA - F~~

C.L. → NAFTA was package that had caveats.

IRA → 2 ways - 1) could dictate.
JP - does what's cultural acceptable →

TI - we sometimes it because USG has given them any choice.

C.L. → Ministers says I

MAJAT → ~~Do~~ Malaysia

IRA - state our goal - zeroed in on ASEA - growth & losing marketshare.
if we try to force legal agreement → but if we can bring influence of our companies with U.S. negotiation & put together package → we could get ASEAN to b.t. APEC not the place.

ABe - Concerned that you are negotiating and not including investment.

IRA - need to get these countries engages

Maj - not dealing with rules based system

IRA →

C.L. - Always been skeptical of Bit process - got to think in broader terms.

TT → ~~they~~ need to work our image - other countries exploit this. problem with Free trade & open door → ~~Sharing~~ of U.S. shutting - Smallpox

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-> do mistake first

U.S. go to MAhatir -> get companies to talk to him -> get him & most of ASEAN follow - do a better P.R. job.

C.L. - they want tariff cuts.
- better work on standards

IRA - if G.M. built big plant it would be worth more to them than any agreement.
This helps create climate for trade ->

DAN - get in position where G.M. says unless you do this I won't invest.

MAJ - they want America there ->
1) more willing to transfer tech.
2) contain balance with JP.
3). Security.

C.L. -> Did this in NAFTA -> catalyst was you US because going down there. and asking them if we they were ready -

TI -> put plant in TE -> Taiwan

IBM - Tech transfer has to be on our terms. -> put in plant in China

IRH - What we choose to do is more than JP. -> not talk about what they get() ->

C.L. - SALines want to Davos And all E.U. was talking about going to E.E. -> realized he wanted capital. - use the competition.
TE ->

C.L. -> how does labor & environment fit it -> ASEAN won't be able to do this.

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IRA - Investment piece of broader agreement is accepted one of OECD ~~not~~ MAI.

IRA - look at ASEAN core group.
Korea, Taiwan

IBM - have to look at China + India → MAY be 5 years down the road. →

C.L. → what about APEC?
IRA - if it surprises us then great if not it will take care of itself.
Abe - always a danger when head of states meet.
you need to get involved in Osaka & 6-7
pressure to you have to reach some agreement. →

IRA - APEC has certain things it can do besides Investment.
Investment is low.

DAN - speed of accomplishment is key.
IRA - if the Indonesia is afraid of us cutting deal with MIA/Asia
C.L. - Constructive fear.

May →
IRA - in ASEAN going to move forward.
group → yes - use as counter weight to APEC.

IRA - helpful to get more info about OECD →
we have lots of communication work to be done →
C.L. - if OECD is agreed to then we have some real work to do to sell this.

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State - Japan

Bob Reese office dir JP. → ~~89~~ before 84 we only pushed on quotas & tariffs

late 70's - we responded to business complaints cites, beef.

Tokyo-Round 74-75 - got ~~red of~~ reduced tariffs.

but standards became an apparent stroking pt.

Bob Cornell at treas. - come up with MOSS.

Med equip, F.P., elect - state, Agri., USTR, USTR, telecom

→ ~~got into details~~ were successful

1). got bureau together.

2). ~~to~~ CRS of ~~Congress~~ study showed exports in these areas increasing faster than other sectors.

still problems stand with standards, regulatory barriers, & gov procurement.

By 1989 - STI - JP fiscal policy meant there was lower growth. → looked at distribution systems.

- But didn't solve the problem - cross hold shares.

have ave gone down from 20% - to high 60.

1993 - Framework talks → looked at glass, med equip, auto's

~~medical~~, exports have gone up in those areas.

JAPanese

1.) ~~many~~ business practices - stay in play place ~~one~~ despite ~~people~~ ~~to~~ our attempts.

two ways to deal with JP

~~Try to~~ 1) Need a MAVerick company - Toys R US to come in and push issues.

2) finding regulation that they don't enforce.

3) MOSS - worked → had a powerful political force ~~in~~ both

Sec of state meet often (6 times) and reviewed what Undersec were doing.

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(2)

what is going on. now.

Bob - ~~Double~~ Bubble has not completely Burst

1) ~~of~~ companies still have large staff

2) Nikkei is ~~still~~ 8000 - or 1% ~~Depression~~ return.

3) ~~regulations~~ Keidenren does ~~not~~ represent ~~enough~~ who is interested in deregulation.
not enough hardships to ~~get~~ get regulations through.

3) Have keep same system in place

~~How many~~ Major companies are having to get more efficient 1) compet more has ~~to~~ as from ASIA.

2). we and other Develop Centres are more competitive;

~~J.H -> Bobble Bubble psychology Burning bubble time was.~~ shw

IRA - Roderick

Is there really a ∆.

Chair -> 1). temp ary change

2). But their is an erosion in faith in the system.

MITI has become defensive, but Business no longer has faith in Miti.

-> Business people will see balance sheet and see the regulations are costing us money. ->

IRA -> will Deregulations leave them stronger -> but not reduce barriers.?

Keidenren has list of 10,000 regs to change. - but not very similar to our list. heat

Chair - The calculus is changing everywhere except in but deregulation Diatshu - we take less than we want to do. they won't do.

J.H. -> can't deregulate with that kind of pressure.

IRA - Aresp getting tougher in their policy towards us.

Bob -> 2+2 - Meeting - resulted in confirmation that U.S. Security presence is need for stability - 1) keep 5th fleet in Persian Gulf.

2) New NW allowsp to have piece-keeping forces

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(3) OP/State

E.U. ministers meeting in Madrid.

(con't) and this has change their Attitude → more willing to look at Global security issues.

~~South~~ Is relation ARE any areas bad like trade.

Okanowa - - no by in large relation is good ~~Strong~~ base

~~IRA~~ problems in Okanowa.

chair → the wellness ~~degree~~ of our relationship is what helps us get ~~relations~~ agreement.

IRA - ~~What~~ what does our ~~see~~ relationship give them. -

1). Buffer against chinese 2) Asian reaction against OP.

right → They

Investment → look at preparation for ~~min~~. Investment talks.

→ lot of barriers are nothing we can do.

1). land is expensive → but their is another things. [Ralph to Al. Larson & Ann] negotiated this.

~~Other~~ thing we do that is unfair

~~2~~ 1) tax structures → U.S. brings back ex-pat after 5 years

2). Dumping cases on components → force U.S. companies to go offshore → to get cheaper components - go to Sing a pore to buy OP - Flat Panel screen.

Bob. TAX. JPP TAX global income after 5 years - this means you have a OP expert who then has to leave.

(right) ~~Re~~ Main pt of Investment was to get JBD loan for U.S. companies.

Bob → talk to AACOC. tax person.

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(4)

IRA How much ~~effor~~ effort ~~have~~ we have we gotten for our effort.
chair. 100 bureacy have increased beef exports 6x
$100 million

↳ need to better coordinate trade & promotion policy - make sure that when cracks are opened there are companies to take advantage of this.

Scott Agr - wants to put extra person over in Tokyo - but post is resisting because it costs state too much. → have 6 embassy people + cooperatives (cotton association) → promoting

Right → we are driven by which Industries come in to complain to us. Our effort is not directed towards those areas which could benefit us the most → much concentration in Agriculture → we are putting too much emphasis on Almonds.

IRA - Auto Parts.

John H. → deregulate some of garages & could have some effect ↑ more competition may get them to buy more stock.

• Get our people to talk to their people

main problem - cost a lot in terms of political capital & expectations are high - but it will take time to see effect.

JAWBONING - JP no longer says their sales is different

So JAWBONING has had a effect

Bush

Right. sectors with potential - telecom (call back services) → we stopped may not have much regulations. telecommunications

(software) these success are not measured - we need to spend time stopping

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(5)

Right) we spend too much time on things like rice.

IRA → T-R. US. any example - ~~LPS~~ auto retail sales law

Chair · was good set precedence & help in other areas through linkage.
· ~~Commerce~~ opened up retail sectors. →
air condition

Right civil Aviations → ~~our carriers want~~ DP want to restrict our carriers.
because they are so efficient → as airport projects
~~keep~~ come on line ~~they want~~ are concerned ~~they~~ there
airlines won't be able to compete.

IRA military acquisition - Bob not a growth industry. their budget is small and can't afford much.
Right → flow back → we want more tech not hardware.
~~IRA~~

IRA - summary areas of focus.
· TAX issues both gov impose
· sectors where there is potential
Right · not a big pool of potential employees ~~to~~ who can go to
DP → cross-degree programs.

IRA → where's are leverage → ~~Kee~~ Chair → keep pressure on but our
leverage is decreasing → ~~make~~ build overall. relationship → not sanctions in themselves.
but the way they hurt the relationship ← use sanctions judiciously - TAX
low for a while.
Right · can we use multilateral fora - don't sue your friends/but
has changed. → use APEC OECD. → ganged up DP who was questioning United
IRA → DP ~~Reed~~ are scared of being isolated. - Asian Bob are concerned that they aren't be next.

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HHCJ. Trade benefits repeat.

(6)

Is there an issues that they could pull their credit back.
Scott But they would shoot themselves → they have brought high & would sell low.
-Chair →

→ NAFTA got their attention → made them nervous.
they don't want to be outside. - in particular concerned about APEC.

- Don't see TAFTA as a threat → not much there to worry about.

DRA - can we use ASEAN as leverage.
- Get U.S. companies more familiar with ASEAN. → ~~as cos~~ But ~~& pay them~~
cost of expat are raising.

Chair → Financial system & deregulation.
~~Bill Finn~~ Gothenor or ~~Bo Finn~~ John Weaks.
Tim Gothner -

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~~Do~~

China - ~~D~~.

Don, Heather, Dan (coming later)

~~EEA~~

Don - look to a roadmap leading to normalization

OPIC, the Deal Agency - in world bank - focus on Human aid. ~~Only~~ restrictions on export licenses

TDA - 5 million ~~was~~ for china - Budget ~~was~~ is now 40 to 60 million -> all of projects in china over $3 million have to have a feasibility study. Foreign gov - JP + EU ~~supply~~ support feasibility studies. TDA formula if project is 100 to 150 times value of feasibility ~~TDA~~ goes after it -> looking this further.

COAL is another area - ~~they~~ they are ~~burning~~ ~~using~~ facing an environmental disaster. If summit is successful we could all Energy projects.

OPIC - companies need political risk insurance.

Ex-Im - project financing is a whole new frontier

~~&~~ NOT enough money ~~to fi~~ among financing institutions to help them - ~~or~~ this is a competitive advantage for US. - Ex-Im need resources - Ex-Im looks at it ~~as~~ a black hole - no feasibility studies -> still falls short of what foreign gov ~~falls~~ do. ~~So~~ Chinese share info on priority project to countries that provide soft loan.

Export controls - chinese are adding 4 to 6 billion in next 6 years (2 to 4 in reality) ~~even~~ we have best tech. French have an advantage as they

(Brought by Gov. Babbitt)

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Heather → need to get them to play by the rules. give are trading companies trading rights. - ~~and this~~ ~~as~~ chinese have admitted that they don't give national treatment. Business are supportive.

Get rid of ~~quotas~~, have been EO, tariffs → (chinese say they system is in accord with International norms, rendering ~~quotas~~ rights are more of a problem.

IRA - what about others countries. EU. - help us on NTM and JP ~~have~~ have been.

Don - Grey market - re machined xerox machines. - ~~xerox~~ this is not covered by any rules.

IFA - ~~is change a whole article~~ will our share change relative to

Don - our market share is ~~23~~ 10% of total & its evenly divided between JP & EU.

IRA - if chinese are allocating market do these other things matter?

Don - price matter - financing. (when political situation is even → price counts) but its hard to increase market share.

IRA - if we are considering priorities with rest of world. how important is china. → if they have $40 to do so billion in project a spontaneous swing in market share is important. → what's your sense of overcoming their dist system.

Don - U.S. companies ~~also~~ not have distortions - coca cola say that chinese will be half of their growth in next few years - this is huge.

(3)

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IRA - Who should we see.
See
Don - Bob Cap
Bill Worick - Amcham - president in 3 chinas
~~Frank Macchiarola~~
Need to see G. E., Motorola, Westinghouse, Xerox - add to Francis (cruises) Kent Foundation). & retailers.

Dcct 3 arbitrators
Heather → ① Dcct meeting in 3rd of October → attendees - U.S. business in China, U.S. gov workers, Chines Gov. → & Chinese ~~gov~~ a session with chinese gov officials. - ~~&~~
② USTR - Dorthy Doskin - ~~heads~~ USTR's ~~office~~ WTO accession. Chris Beaty & John. Ellis - takes place in Geneva. 4 times a year secretariat chairs. 25 to 30 active participants could take 2 weeks
③ MOU. Neither Lee should & Dorthy participate in WTO accession. → focus on IPR & MOU → signed in 1992.
1) listed products for reducing tariffs ~~by~~ 50 %
2). unknown - ask Lardy. ~~Fact~~
to confirm this - we ask companies, look at market

~~Taiwan~~
IRA - What about Taiwan - ~~in~~ Heather - they are ready to ~~get~~ become member - Agri issues ~~esp~~. China is blocking it → U.S. gov doesn't want to let Taiwan in first.

Any other significant problems? ~~Set Chinese~~ pressures to let china into (state) WTO ~~for~~ political reasons. IRA - would you let them have MFN (they want MFN before WTO) - Heather ~~yes~~ MFN. - MOFTAC does not know what other Agencies are doing.
IRA - we ~~are going~~ are the ones with the deficit → Heather - in order for U.S. company to invest they ~~have~~ can't repatriot profits, and have to give technology.

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Exporter here has no idea of the ~~de~~ as to they need to see to get their product ~~over~~ what license they have to pay.

~~IRA specific that~~

Inspec →

- The President has ask NEC/NSC to start a trade barries project - he ideas to identify barries against which we could leverage to increase our exports.
  - It's an interagency effort → USTR, State, Treasury, Commerce, agric. Principle Agencies.
  - a secondary goal is political one. → the Administration wants to be able to address Accatacks from Labor man on left and Buchanan on right & front where ever he is.

we are still in the formative stages of the project
The effort is being headed by IRA Magazines.

AFTAA → looking at comp policy. - I II IRR - ~~Market Barriers~~
American business forum → seven working groups - look at market Barries - not customs. Day before ministerial

→ DOE → ~~other~~ putting together with AI writing a Trade ID every forum.

DOT - ministerial level meeting - Maritime & Aviation.
Infrastructure committ → sprint

~~Report~~ Business Alliances
- Each side developing working papers →

Trade
Trade & Barriers Read table → used

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WITHDRAWAL SHEET
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Collection: **Domestic Policy Council,** Magaziner, Ira
OA/Box: OA 13114/Box 16
File Folder: **Domain Names [2]**

Archivist: rfw

Date: 10/18/04

DOCUMENT NO & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	From Kelly to Weinberg re: What we want from NSI, 3p	1/6/98	P5
2. Memo	Draft re: What we want from NSI, 3p	1/13/97	P5
3. Cable	Incoming cable, 3p	3/23/97	P1/B1

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RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
P2 Relating to appointment to Federal office [(a)(2) of the PRA].
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P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

PRM Personal records misfile defined in accordance with 44 USC 2201 (3).

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B7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
B8 Release would disclose information concerning the regulation of financial institutions [(b)(9) of the FOIA].
B9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

Ira - list from Elliot/DOJ

From: Christopher Kelly <Christopher.Kelly@justice.usdoj.gov>
To: Receipt Notification Requested <JWEINBER@fcc.gov>
Date: 1/6/98 5:52pm
Subject: What we want from NSI -- some thoughts from Antitrust Div.

Attached is a WordPerfect document incorporating Jon Weinberg's draft list and adding some thoughts from over here.

As I mentioned earlier, we provide these with serious underlying concern about our ability to get a satisfactory deal if negotiations are undertaken solely with NSI, instead of through an open transition solicitation. There is also some thought over here that the list should also incorporate a very firm deadline as to when shared registration will be in place rather than leaving that to subsequent negotiation after we've already cast our lot with NSI. Otherwise, we could see this stretch out indefinitely while NSI reaps whatever monopoly rents we've inadvertently left on the table.

CC: Receipt Notification Requested <Deborah.Connor@int...

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What we want from NSI -- revised version

A. Development of shared-registry system

1.NSI must provide an operating environment and software, or supply all necessary architecture, specs and code sufficient to allow a third party to write software, supporting a shared-registry system with the following characteristics:

a. It can support multiple registrars (up to several hundred).

b. It provides security and authentication for requests from registrars.

c. SLD owners can change registrars seamlessly, without changing their domain names.

d. The system affords competing registrars access to services and functionality on an equal basis ("equal access"), including the following characteristics:*[Shouldn't equal access principles apply whoever's running the registry, and whether or not the registry's also acting as a registrar?]*

i. The order in which the registry deals with requests from registrars is neutral as to the identity of the registrars; *[Round-robin or any other specific order might be better determined by the advisory body.]* and

ii. Any other characteristics specified by an independent technical advisory body, to be funded by the registry, to be essential to equal access.

B. Operation of the System

1. The prices the registry charges registrars for registry services are subject to approval by ___*[NTIA? FCC? Certainly not the Antitrust Division, but somebody needs to be the arbiter.]*, must be justifiable on the basis of demonstrated costs, and not so high as to unduly *[if they're justifiable, they should be okay even if they discourage the faintharted from entry]* discourage registrar entry. *[This requirement should apply whether or not the registry has moved into the registrar business.]*

2. If the registry wishes to act both as registry and registrar, it must do so through separate subsidiaries. Appropriate accounting and confidentiality safeguards shall be used to ensure that the registry subsidiary's business is not utilized in any manner to benefit the registrar subsidiary to the detriment of any other registrar. *[We need to make clear that it's not just a formal accounting separation but an absolute Chinese Wall, lest the registry tip its registrar affiliate off to potential new customers on the basis of requests it gets from other registrars.]*
3. The aforementioned independent technical advisory body shall certify periodically

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whether, based on its specifications, the registry is in fact providing equal access.

4. The registry must provide ready access to searchable databases containing domain name and contact information, either directly or through nonexclusive bulk access to directory service providers. *[Shouldn't access be general? It's not just current owners of trademarks who have an interest in knowing who's registered.]*

C. Intellectual property

1. NSI must acknowledge USG's intellectual-property rights in the software and databases created under the auspices of this agreement and the Cooperative Agreement. *[This needs some input from our colleagues in the Civil Division so that we can define a little more precisely. What's critical is acknowledgement of the USG's right to copy, use, modify, distribute, and authorize the further copying, use, etc. of this material.]*

2. NSI will license, on reasonable and nondiscriminatory terms and conditions, to any other registry any software it develops for the purpose of supporting a shared-registry system.

D. General

1. NSI must commence work on this project as of 1/15/98 (say); further timetables and deadlines should be determined jointly by USG (including NSF), NSI and the technical advisory body.

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DRAFT

What we want from NSI -- 1/13/97 version

Appendix D [illegible] competition in the .com, .net, .org domain name system

A. Development of shared-registry system

1. Until such time ast the IANAO concludes that the public interest will be served by TLDs in direct competition with each other, the registry shall be operated on a not-for-profit, equal access shared-registry basis.

2. NSI must provide an operating environment and software, or supply all necessary architecture, specs and code sufficient to allow a third party to write software, supporting a shared-registry system with the following characteristics:

   a. It can support multiple registrars (up to several hundred).

   b. It provides security and authentication for requests from registrars.

   c. SLD owners can change registrars seamlessly, without changing their domain names.

   d. The system affords competing registrars access to services and functionality on an equal basis ("equal access"), including the following characteristics:

      i. The order in which the registry deals with requests from registrars is neutral as to the identity of the registrars; and

      ii. Any other characteristics specified by an independent technical advisory body, to be funded by the registry, to be essential to equal access.

B. Operation of the System

1. The registry shall be subject to governance by the IANAO, which has the power to "de-recognize" the registry, *i.e.*, unhook it from the root server in the event that the registry does not conform to IANAO policies.

2. The prices the registry charges registrars for registry services are subject to approval by (regulator), must be justifiable on the basis of demonstrated costs, and not so high as to unduly discourage registrar entry. Conduct not subject to approval by (regulator) shall enjoy no immunity from application of the antitrust laws.

   a. If NSI is to serve as the registry, any contracts pursuant to which it will provide registration services and which are in either facially or effectively exclusive, must be opened at some point during the first x months of competitive registration to

relinquish roots

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allow customers to obtain registration services from other registrars.

b. NSI may not agree with any other party that the other party will not serve as a registrar.

3. If the registry wishes to act both as registry and registrar for the same TLD, it must do so through separate subsidiaries. Appropriate accounting and confidentiality safeguards shall be used to ensure that the registry subsidiary's business is not utilized in any manner to benefit the registrar subsidiary to the detriment of any other registrar. None of the registrar subsidiary's conduct shall be immune from the application of the antitrust laws.

3. The aforementioned independent technical advisory body shall certify periodically whether, based on its specifications, the registry is in fact providing equal access.

4. The registry must provide ready access to searchable databases containing domain name and contact information, either directly or through nonexclusive bulk access to directory service providers.

C. Intellectual property

1. NSI must acknowledge USG's right to use, copy, and disseminate for further use and copying, the software and databases created under the auspices of this agreement and the Cooperative Agreement.

2. NSI will license, on reasonable and nondiscriminatory terms and conditions, to any other registry any software it develops for the purpose of supporting a shared-registry system.

D. General

1. NSI must commence work on this project as of 1/15/98 (say); further timetables and deadlines should be determined jointly by USG (including NSF), NSI and the technical advisory body.

4 root

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WITHDRAWAL SHEET
Clinton Library

Collection: Domestic Policy Council
Magaziner, Ira – Electronic Commerce
OA/Box: OA 13114/Box 16
Archivist: mpw
File Folder: Domain Names [5] **Date:** 5/27/2004

DOCUMENT NO & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1) Memo	To: Magaziner, From: Kelly, RE: Competition in Internet Domain Name Registration Services, 6p	12/18/97	P5
2) Notes	Hard to read Handwritten notes. Will be reviewed upon Researcher's Request, 4p	nd	
3) Letter	To: Magaziner, From: Bordogna,, RE: Internet Domain Name Transfer, 2p	10/31/97	P5
4) Memo	To: Burr, Kahil, From: Rudolph, RE: Legal Concerns of the National Science Foundation, 3p	10/31/97	P5
5) Memo	From: Sonya Patterson, RE: Domain Names Breakfast Meeting participants, 1p (partial)	6/17/97	P6/B6
6) Memo	To: USSS, Workers and Visitor Services System, RE: Domain Names Breakfast Meeting participants, 1p (partial)	6/17/97	P6/B6

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Fernello;

1 authority to keep a united net - must be FAIR - must be international -- Internet Governance ---

- To be clear that no one body owns root - Ians root
- support for Alternate roots - primary or not. Alternic
- US can will provide A Free Public not for Transfer control to private sector; Authority & Infrastructure - terms
  - Assume selected TLDs at gov date ICANN, Icann, etc.
  - Detail policies under what TLDs can be accepted
  - US can will provide existing of request of policies but to private organizations
  - US trademark administered under U.S. laws
- Private & Public Roots
- IANA functions & DOC interest how to be dealt with

DNS rights should demonstrate some prior & related capability - Sept 98 option

-- GTLD / MOU is okay but not forced --

U.S. Root

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1. Encryption ✓ Overall Legacy
2. Project: INTL agreements
Digital Economy continue
~~Privacy~~ Self Reg issues

IPOC proposal
- ITU involvement - Funding IPOC (Icann, Isoc, etc)
- ISP liability on Research - when you get a court order to spy, dispute forum
- Could become WTO too much govt involvement
ENTA, Info Society, WIPO, ITU

TODAY we have 200 Monopoly with License From John Postel

- Registries are free to form
- Registry form as a poly oligopoly Everbest vs VRSN model
- Costs legitimate & have two competing types market but not both necessary
- Litigations take place when TLD is based
- Specific Study Marks would be excluded as own TLD -- Maybe too - WIPO Decides
Directories For Rest;
- Root server HAS to be in U.S.
- Use Funds to Finance Transition; IPOC ~~Board~~ comp

IPOC
NSI
Research community -- solicitation responses for
ISPs e Dooley; Europe & Asian Those ASIO C.
USERS - Public Nine Right Coalition - Cathy Klensin
- EFF
- CASI Asian community

Federal notary could could have due concern but now not interested
NRC could invest -- visited Reset Could
could be commerce. OR NSF

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Instability
IPOC can't manage
Lawsuits pure distrust
Too many Root Servers that don't talk & backstabbers

ARIN;

PC rather just says authority for net name and number allocations

IANA FUNCTIONS

Scott — STandards go to IETF

ADDRESS functions go to Board of Registries of ARIN, RIPE, APNIC

Common Names policy - TLD or Country Codes + registries form a group to do this

Gallagher — Global

STandards

Root Server issues

For TLD form group of not just US to limit

ISOC a STandards body which could be policy group

Raboy — Support IANA

Kim Dr — Allocation of IP registries, what about limits when / entity to change

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Trademark

1. challenger should be able to bring claim to Alternate Dispute resolution ~~or~~ and that can be mediation or a panel and then either side can go to court

Create guidance for dispute Arb ~~individually~~ will ~~have~~ now make sure that Arb

2. Administrative challenge panels set up by WIPO can decide ~~that is automatically~~ ~~will know and has~~ authority to decide good faith ~~against~~ issuing a domain name or that loss

3. Administrative challenge panels can decide when a domain name applicant ~~is~~ the Arb is just a cybersquatter as per the Applicant's other losses ~~that is alleged~~

4. the Arb administrative challenge panels can decide to deny an ~~the~~ applicant based on a determination that false information has been provided

5. Can see where Domain name applicant ~~has gone to~~ where registrar is located

6. Application designed to make sure information available on applicant

need company

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NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

OFFICE OF THE
DEPUTY DIRECTOR

October 31, 1997

PRIVILEGED AND ~~CONFIDENTIAL~~

DETERMINED TO BE AN ADMINISTRATIVE MARKING Per E.O. 12958 as amended, Sec. 3.3 (c)
Initials: KDE **Date:** 03127114

Mr. Ira C. Magaziner
Senior Advisor to the President
for Policy Development
Old Executive Office Building, Rm. 216
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Ira,

I am writing to convey the National Science Foundation's policy and legal concerns about certain aspects of the transition plan being developed for the withdrawal of the federal government from its role in the administration of the name and number addressing systems of the Internet. NSF has participated extensively in the discussions leading up to the present set of working documents, and we appreciate the continuing opportunity to provide the views of the Foundation on specific issues the interagency Working Group has considered. Our previous meetings to discuss these matters directly with you have also been very much appreciated.

I would like to state at the outset that the Working Group's efforts on this transition plan are to be applauded. The group has wrestled with many difficult issues, and brought them to a comprehensible scale. It is precisely because the work is good, and the project is important, that these concerns should be raised now, rather than after decisions are made that commit the government to particular directions or strategies.

In this project, the implementation plan -- and the legal underpinnings for that plan -- are as important for the success of the transition as the ultimate soundness of the substantive policies set forth in the Working Group's current paper. My understanding is that the most recent version of the transition plan contemplates a Cooperative Agreement between the government and one or more private entities. As proposed, the solicitation for the Cooperative Agreement would be jointly issued by NSF and NTIA. We believe that the transition plan could be in jeopardy if the vehicle selected for implementation is ill-considered, or if the legality of the vehicle is invalidated or even called seriously into question by virtue of NSF's direct involvement in this solicitation.

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As you know, NSF has stated both publicly and in internal discussions its intent to "get out of" the administration of the domain name registration system of the Internet at the end of the current Cooperative Agreement with Network Solutions, Inc. ("NSI"), because further activities in connection with this function are inconsistent with NSF's mission and outside its institutional competence. In addition, NSF has several legal concerns that argue strongly against NSF's involvement beyond the existing term of the current Cooperative Agreement with NSI.

I have asked NSF's General Counsel to convey those concerns directly to the Working Group, thus affording everyone an opportunity to discuss these matters in as informed a manner as possible. I want to let you know that the attached memorandum on these legal issues has been delivered to the Working Group for its consideration.

NSF will gladly continue its participation in the interagency Working Group discussions and provide assistance on the issues that the Working Group will be considering during the upcoming months. We remain concerned, however, that the Administration's efforts not be jeopardized by unnecessarily involving NSF in a transition plan outside its mission and beyond its authority.

Sincerely,

Joe

Joseph Bordogna
Acting Deputy Director

Enclosure

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DETERMINED TO BE AN ADMINISTRATIVE
MARKING Per E.O. 12958 as amended, Sec. 3.3 (c)
Initials: KDE Date: 03127/2014

PRIVILEGED AND ~~CONFIDENTIAL~~

MEMORANDUM TO: J. Beckworth Burr, Esq.
Brian Kahin, Esq.
Co-Chairs, Interagency Working Group

FROM: Lawrence Rudolph LR for
General Counsel, NSF

SUBJECT: Legal Concerns of the National Science Foundation

DATE: October 31, 1997

The National Science Foundation (NSF) has several legal concerns about certain aspects of the transition plan being developed for the withdrawal of the federal government from its role in the administration of the name and number addressing systems of the Internet. In order to provide you with an opportunity to discuss those concerns, I request that you share this memorandum with the other members of the Working Group. Please realize, however, that these documents must remain privileged and confidential in view of ongoing litigation against the government.

The premise of current draft documents by the interagency Working Group is that the proposed policies will be implemented by a cooperative agreement, or some other vehicle, between NSF and NTIA on the government side, and one or more entities on the private sector side. That arrangement depends on NSF's and NTIA's authority to enter into a cooperative agreement of the type contemplated by the draft solicitation.

NSF's legal concerns are as follows:

(1) NSF's authority over the administration of the domain name and numbering systems of the Internet has been challenged by lawsuits filed in two federal district courts. Either court could rule at any time during the next six to twelve months that NSF does not have the legal authority to exercise the control it presently asserts over the domain name registration system of the Internet. Pending complaints could also be amended, as was recently done in the PGMedia case, to challenge NSF's authority to engage in the proposed transition activities.

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On the question of NSF's authority, the most relevant provisions in NSF's organic legislation, the National Science Foundation Act of 1950, as amended, 42 U.S.C. § 1861 et seq., are 42 U.S.C. § 1862(a)(4) and 42 U.S.C. §1862(g)("subsection (g)"). Section 1862(a)(4) provides that the Foundation is authorized and directed "to foster and support the development and use of computer and other scientific and engineering methods and technologies, primarily for research and engineering in the sciences and engineering." Subsection (g) provides that "in carrying out [Section 1862(a)(4)] the Foundation is authorized to foster and support access by the research and education communities to computer networks which may be used substantially for purposes in addition to research and education in the sciences and engineering, if the additional uses will tend to increase the overall capabilities of the networks to support such research and education."

Subsection (g) was added in 1992 in response to concerns expressed by NSF and others that NSF was not authorized under existing law to adopt an "Acceptable Use Policy" for the NSFNet, a predecessor to the present Internet, that would allow commercial users to send non-research or -education traffic over the NSFNet "backbone." The proponents of subsection (g) believed that if commercial users were allowed to send non-research or -education traffic over the NSFNet backbone, that would advance the interests of the scientific and educational users of NSFNet, because it would reduce the unit costs of traffic on the "backbone" and would provide a more stable and robust environment for research into networking. That was against the backdrop of Congress' view that NSF could support the Network *only* if and to the extent it was used for scientific research and education. Subsection (g) did not repeal the "primary purpose" language of Section 3(a)(4); it only provided a limited amount of flexibility to allow commercial activity on the NSF-supported network, "if the additional uses will tend to increase the overall capabilities of the networks to support such research and education activities."

NSF allocates its resources consistent with its statutory authority. In the context of rapidly changing technology, particularly in the area of computer networking where technology advances are often "cutting edge," NSF supports facilities directly. As the technology becomes commercially viable, however, NSF must discontinue its support of the facilities, and redirect its assistance to not-for-profit scientific research and educational institutions to enable them to obtain those services from the commercial sector. At this point in the evolution of computer networking, the Internet is a mature environment. Although NSF continues to support research and educational users' access to the Internet, we discontinued our financial support of the Internet as a network some time ago. The NSFNet "backbone" was discontinued in 1993, and the registration activities associated with the Internet became self-supporting through charges to the commercial registrants in 1995.

Accordingly, it would be difficult to argue in court that the Working Group's contemplated involvement of NSF with the commercial uses of the present generation Internet will "tend to increase the overall capability of the network to support" scientific research and education activities.

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(2) The degree of control contemplated in the policy document and the draft solicitation is, in many respects, even more detailed and regulatory in nature than that which is at issue in the pending court cases. Even if NSF's authority under the existing cooperative agreement with NSI were to be sustained in the current litigation, we would have serious misgivings regarding NSF's authority to enter into any new cooperative agreement that asserted the Working Group's proposed degree of control over the administration of the Internet name and numbering system. Accordingly, I would be obliged to seek an appropriate legal opinion from the Office of Legal Counsel of the U.S. Department of Justice on this issue of authority before advising NSF to enter into any such cooperative agreement.

My concerns about NSF's authority are by no means intended to suggest that the federal government is without means to implement this transition. There are a number of agencies in the Executive Branch that may have the authority to do so, starting with the NTIA itself.

With respect to the "policy-creation" aspects of the transition plan, the NTIA serves as the President's principal advisor on telecommunications policy, trade and technology issues. See 47 U.S.C. § 902; ITS "Blue Book" at 1. It develops and promulgates telecommunications and information policy. It promotes the transfer and commercialization of Federal telecommunications technology and coordinates Federal telecommunications activities. It further has the authority to conduct studies and make recommendations concerning the impact of the convergence of computer and communications technology. 47 U.S.C. § 902(b)(2)(M).

With respect to the "operations" aspects of the transition plan, the Federal Technology Transfer Act (FTTA), 15 U.S.C. § 3706, authorizes the Secretary of Commerce to make grants and enter into cooperative agreements to serve the purposes of the FTTA, which include stimulating the transfer of federally funded, owned or originated technology to the private sector. 15 U.S.C. §§ 3702, 3710(a). The Secretary's authority presumably could be administratively delegated to the Assistant Secretary of Commerce for Communications and Information.

The FTTA also authorizes federal laboratories to enter into cooperative research and development agreements (CRADAs) with private industry, universities or public or private foundations to implement the technology transfer goals of the FTTA. 15 U.S.C. § 3710a. Through a CRADA, a federal laboratory and a non-federal partner may exchange personnel, services, facilities, equipment, intellectual property or other resources to carry out specified research or development goals.[1] Because of its flexibility, the federal government has frequently used the CRADA vehicle to transfer federal computer and telecommunications technology to the private computer industry.[2]

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[1] Although the FTTA prohibits federal laboratories from providing funds directly to non-federal parties, an agency may provide funds to a CRADA partner through a grant, cooperative agreement or contract.

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	From Lawrence Rudolph to Kathy Smith re: Cooperative Agreement (2 pages)	05/12/98	P5

COLLECTION:

CLINTON LIBRARY PHOTOCOPY

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13115

FOLDER TITLE:
Digital Signatures

Rhonda Wilson

rw105

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]
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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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

OFFICE OF THE
GENERAL COUNSEL

May 12, 1998

Ms. Kathy Smith
Office of the Chief Counsel
U.S. Department of Commerce/NTIA
Room 4725, HCH Building
Washington, DC 20230

Dear Ms. Smith:

Thank you for your willingness to exchange draft documents regarding the roles of the National Science Foundation (NSF) and the Department of Commerce/NTIA during the flexibility period of the Cooperative Agreement (CA) between NSF and Network Solutions. We all recognize how important this issue is to our respective agencies, and I appreciate your participation and help on this and other related matters.

But I must be candid with you regarding the differences between our draft agreements. On March 16, 1998, NSF sent to the Department of Commerce/NTIA a draft Memorandum of Understanding for the transfer of the CA. In response, Commerce sent to NSF a revised draft on April 24th. NSF's document proposes to transfer to Commerce the full authority to administer the CA. Under the revised Commerce version, NSF would transfer only the authority to negotiate the "termination" of the CA.

These are two very different agreements. The substantive issue regarding the scope of the functions to be transferred needs to be resolved in order for any agreement to be completed. As anticipated by the "Green Paper," negotiations between Commerce and Network Solutions are expected to take up the entire set of conditions under which Network Solutions will operate after the CA expires. We believe those negotiations can best be done if Commerce holds the authority to negotiate any element of the CA that may be involved in promoting competition in the domain name space.

The premise of Commerce's draft is that the authority to negotiate a new agreement with Network Solutions should be exercised separately from the operational authority over the CA. NSF submits that such an arrangement, while theoretically possible, is dysfunctional as a practical matter, and is inherently inconsistent with the Green Paper and the unambiguous pronouncements of the National Science Board regarding NSF's role in the Internet.

To the extent that the existing CA provides a source of authority and influence in negotiations between Commerce and Network Solutions, we believe it would help Commerce in those negotiations if it also were the governmental entity responsible for the

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Cooperative Agreement. That will send the strongest possible message to Network Solutions that any delay on their part will not preserve the status quo. In view of the instruction from the National Science Board that NSF will have no role in Internet management after September 30, 1998, there will be a potentially harmful mixed message if NSF retains operational responsibilities while the negotiations are taking place.

I believe that transferring the Cooperative Agreement would not be a burden for Commerce. In most respects, Network Solutions conducts the activities described in the CA with little or no advance consultation with NSF. The remaining matters facing Commerce as the CA administrator, therefore, are likely to involve either the subject matter of the negotiations or policy issues surrounding implementation of the final rule. For example, one pending policy issue is the question of whether the government should defend NSF's trademark, InterNIC, which is now being used, with some confusion to the public, as "INTERNIC.com" by a for-profit entity based in Australia.

In order to help resolve the issue of Commerce accepting both the responsibility to implement the final rule and the authority under the CA, we have revised our original draft to take into account some of the provisions that Commerce included in its document. And we have also agreed that NSF will be responsible for any additional litigation arising out of actions taken by NSF or Network Solutions prior to the transfer of the CA. Accordingly, I propose that Commerce and NSF execute the attached version of the Memorandum Of Agreement, which transfers to Commerce the full authority with regard to all aspects of the CA. (This draft, which reflects the recent passage of the Act making emergency supplemental appropriations), generally incorporates the terminology of the Commerce draft in those instances in which it differs from the original NSF version.)

NSF understands the need for prompt resolution of this matter, and we are prepared to meet with you to reach closure. Our position has been discussed at the highest levels of NSF, and is also being conveyed directly to Mr. Magaziner by Dr. Joseph Bordogna, Acting Deputy Director, NSF.

Again, I hope we can reach agreement on this issue, and I thank you in advance for your help in this matter.

Sincerely,

Lawrence Rudolph

Lawrence Rudolph
General Counsel

cc: Ms. Beckwith Burr, NTIA

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	From Lawrence Rudolph to Kathy Smith re: Cooperative Agreement (2 pages)	05/12/98	P5

COLLECTION:

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Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13115

FOLDER TITLE:
Domain Names [3]

Rhonda Wilson

rw106

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]
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C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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Sincerely,

Lawrence Rudolph

Lawrence Rudolph
General Counsel

cc: Ms. Beckwith Burr, NTIA

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DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1) Memo	From: Abelson, To: Magaziner, RE: Draft Response to Ikawa Letter of 4/6/98, 1p (partial)	4/9/98	P5

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RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
P2 Relating to appointment to Federal office [(a)(2) of the PRA].
P3 Release would violate a Federal statute [(a)(3) of the PRA].
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PRM Personal records misfile defined in accordance with 44 USC 2201 (3).

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B2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

600 17th Street NW
Washington, DC 20506
tel (202) 395-3417
fax (202) 395-3911

FAX TRANSMITTAL

To: Ira Magaziner

From: DON ABELSON FAX: 202 395 3891 PH: 202 395

Date: Thursday, Apr 9, 1998 11:59 a.m.

Pages: 3 (including cover page)

MESSAGE

Ira: here's a draft response to Ikawa's letter slamming the U.S. duty free cyberspace initiative. Ikawa clearly wants to stop the G8 Ministers from endorsing the proposal; G8 endorsement could be important in building momentum in May towards a WTO decision. Ikawa is voicing the same opposition you heard from MOF in Tokyo; I belive we should respond: BOTH thru this letter and thru Summers to Sakihabara.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From USEU Brussels re: Electronic Commerce: US Industry Reps on the Bangemann Charter (5 pages)	06/05/98	P5
002. cable	From USEU Brussels re: Electronic Commerce: US Industry Reps on the Bangemann Charter (5 pages)	06/05/98	P5
003. cable	From USEU Brussels re: Electronic Commerce: Charter Roundtable Gives (6 pages)	07/06/98	P5

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COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13116

FOLDER TITLE:

Bangemann Charter

Rhonda Wilson

rw107

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]
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214.

PAGE 01 OF 05
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SIT: NSC

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E.O. 12958: N/A
TAGS: EINT, ECPS, EUN
SUBJECT: ELECTRONIC COMMERCE: US INDUSTRY REPS ON THE BANGEMANN CHARTER

REF: A) BRUSSELS 2961; B) WEINSCHENK-HELMER FAX OF 6/1/98

1. (U) THIS MESSAGE IS SENSITIVE BUT UNCLASSIFIED.

2. (SBU) SUMMARY: US INDUSTRY REPRESENTATIVES IN BRUSSELS SAY THEIR FIRMS RELUCTANTLY ARE AGREEING TO PARTICIPATE IN THE COMMISSION'S JUNE 29 ROUNDTABLE ON COMMISSIONER BANGEMANN'S PROPOSED INTERNATIONAL COMMUNICATIONS CHARTER. THEY CONTINUE TO HAVE MAJOR CONCERNS ABOUT THE ORGANIZATION AND THE OBJECTIVES OF THE CHARTER INITIATIVE, BUT DO NOT BELIEVE IT WILL BE POSSIBLE TO STOP IT. RATHER THAN BE PRESENTED WITH A FAIT ACCOMPLI, THEY INTEND TO WORK FROM WITHIN TO DILUTE ITS CONTENTS AND OTHERWISE SHIFT THE INITIATIVE INTO MORE ACCEPTABLE CHANNELS. US INDUSTRY REPS WELCOMED THE RESPONSES OF SENIOR WASHINGTON OFFICIALS TO COMMISSIONER BANGEMANN'S LETTER ON THE CHARTER, BUT WORRY ABOUT A REPEAT OF THE JULY 1997 BONN MINISTERIAL CONFERENCE, WHERE USG OFFICIALS AGREED TO PARTICIPATE AT THE LAST MINUTE AND WERE IN A POOR POSITION TO INFLUENCE THE OUTCOME. THEY SUGGESTED THAT IT MIGHT BE BETTER FOR THE USG TO TAKE A MORE ACTIVE APPROACH TO THE CHARTER, AGREEING TO PARTICIPATE, BUT EXTRACTING APPROPRIATE CONCESSIONS FOR THIS AGREEMENT. POST AGREES THAT IT MAY BE TIME TO CONSIDER THIS TYPE OF APPROACH. END SUMMARY.

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3. (SBU) BRUSSELS-BASED REPRESENTATIVE FOR 8 US FIRMS -- WORLD LEADERS IN THE COMMUNICATIONS, INFORMATION AND MEDIA SECTORS, AND LOCAL LEADERS IN THE EU COMMITTEE OF THE AMERICAN CHAMBER OF COMMERCE -- CALLED ON EST OFFICER AND SENIOR TRADE ADVISER JUNE 5 TO DISCUSS COMMISSIONER BANGEMANN'S PROPOSED INTERNATIONAL COMMUNICATIONS CHARTER. 6 OF THE 8 FIRMS PRESENT HAD RECEIVED INVITATIONS TO THE JUNE 29 INDUSTRY ROUNDTABLE ON THE CHARTER (REF A). ALL HAVE RELUCTANTLY DECIDED TO SEND REPRESENTATIVES, ALTHOUGH IN MOST CASES IT WILL BE THE SENIOR MANAGER FOR EUROPE, AND IN NO CASE WILL IT BE THE CEO OF THE FIRM, AS REQUESTED BY THE COMMISSION. THE INDUSTRY REPS SPECIFICALLY REQUESTED TO MEET AT THE US MISSION IN ORDER TO BE ABLE TO CONCEAL THE EXISTENCE OF THE DISCUSSION FROM THE COMMISSION. THE CONTENTS OF THIS MESSAGE SHOULD THEREFORE BE CONSIDERED SENSITIVE.

US INDUSTRY'S POSITION

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4. (SBU) INDUSTRY REPRESENTATIVES HAVE MAJOR CONCERNS ABOUT THE ORGANIZATION AND OBJECTIVES OF THE CHARTER. THEY ACKNOWLEDGE THE COMMISSION'S CLAIM THAT THE CHARTER PROCESS WILL BE INDUSTRY LED, BUT OBSERVE THAT THE COMMISSION'S CONCEPT OF INDUSTRY LEADERSHIP IS FOR THE PRIVATE SECTOR TO PROPOSE REGULATORY SOLUTIONS WHICH GOVERNMENTS WILL DEVELOP AND IMPLEMENT. IT DOES NOT RELY ON MARKET-BASED SOLUTIONS, WHICH US INDUSTRY SEES AS THE BEST APPROACH TO MOST E-COMMERCE ISSUES. NEVERTHELESS, IT IS THE JUDGMENT OF BRUSSELS-BASED US INDUSTRY REPRESENTATIVES THAT IT WILL NOT BE POSSIBLE TO STOP THE COMMISSION FROM GOING FORWARD WITH THE CHARTER IN SOME FORM OR ANOTHER. THE COMMISSION, AND COMMISSIONER BANGEMANN PERSONALLY, HAVE INVESTED TOO MUCH IN THE CHARTER TO LET IT DIE. THEREFORE, RATHER THAN BE PRESENTED WITH A FAIT ACCOMPLI, US FIRMS INTEND TO WORK FROM WITHIN TO DILUTE THE CONTENTS OF THE CHARTER AND DIRECT IT INTO MORE ACCEPTABLE CHANNELS.

5. (SBU) THE RPRESENTATIVES OF THE US FIRMS INVITED TO THE ROUNDTABLE SAY THEIR COMPANIES HAVE BEEN PUT IN A VERY AWKWARD POSITION. THEY POINT OUT THAT THERE WILL ONLY BE ABOUT 10 US REPRESENTATIVES AT THE MEETING, AS OPPOSED TO 50 EUROPEAN PARTICIPANTS AND 20 FROM THE REST OF THE WORLD. IN ADDITION, THE COMMISSION AND SOME EU MEMBER GOVERNMENTS WILL BE REPRESENTED, BUT NO OTHER GOVERNMENTS. THE US FIRMS ANTICIPATE THAT THE COMMISSION WILL BILL THEM AS SPEAKING FOR ALL OF US INDUSTRY, SOMETHING WHICH THEY CLEARLY ACKNOWLEDGE THEY HAVE NO AUTHORITY TO DO. ALSO, THEY ARE HESITANT TO SAY ANYTHING CLEARLY NEGATIVE ABOUT THE CHARTER FOR FEAR OF POSSIBLE

REPRISAL BY COMMISSIONER BANGEMANN AND HIS STAFF. THEY HOPE TO BE ABLE TO EXTRICATE THEMSELVES FROM THE SPOTLIGHT BY BILLING THEMSELVES AS SPEAKING FOR INDUSTRY ASSOCIATIONS, AS OPPOSED TO INDIVIDUAL FIRMS, WHERE POSSIBLE, AND EVENTUALLY STEPPING BACK FROM THE PROCESS AND LETTING ASSOCIATIONS TAKE THE PUBLILEAD.
UNCLAS SECTION 02 OF 03 BRUSSELS 003459

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SUBJECT: ELECTRONIC COMMERCE: US INDUSTRY REPS ON THE BANGEMANN CHARTER

REF: A) BRUSSELS 2961; B) WEINSCHENK-HELMER FAX OF 6/1/98

6. (SBU) ALL EIGHT REPRESENTATIVES COMPLAINED THAT THE COMMISSION HAS IN THE PAST TAKEN CAUTIOUSLY-WORDED INDUSTRY STATEMENTS AND MISREPRESENTED THEM AS SUPPORT FOR THE CHARTER. THEY EXPECT THAT THE COMMISSION WILL PUT ITS OWN SPIN ON ANYTHING INDUSTRY SAYS, SO THEY PLAN TO TRY TO PUBLISH A FEW INDUSTRY ASSOCIATION STATEMENTS IN ADVANCE OF THE MEETING TO GET THEIR POSITION OUT CLEARLY. THEY WILL ALSO LOOK FOR OPPORTUNITIES IN THE MONTHS AHEAD TO RAISE THE CHARTER IN PRIVATE SECTOR CONFERENCES AND OTHER FORA WHERE THEY CAN HAVE MORE INFLUENCE OVER THE PROCEEDINGS.

7. (SBU) US INDUSTRY REPRESENTATIVES ARE CURRENTLY ENGAGED IN DISCUSSIONS WITH EUROPEAN INDUSTRY REPRESENTATIVES TO SEE IF THEY CAN REACH A CONSENSUS ON A JOINT POSITION PAPER IN ADVANCE OF THE JUNE 29 MEETING. THE NEGOTIATIONS ARE NOT PROCEEDING SMOOTHLY. IN THE VIEW OF US INDUSTRY REPS, EUROPEAN INDUSTRY HAS SIGNED ON FULLY TO THE COMMISSION'S INITIATIVE AND CANNOT BE COUNTED ON AS A RELIABLE ALLY IN THIS GAME. THE PROSPECTS OF THE TWO INDUSTRIAL GROUPS BEING ABLE TO AGREE ON A JOINT STATEMENT ARE UNCERTAIN.

8. (SBU) US INDUSTRY REPS SAY THEY HAVE BEEN TOLD THAT THE COMMISSION ENVISAGES THE END PRODUCT OF THE ROUNDTABLE AS BEING AN ACTION AGENDA WHICH IDENTIFIES PRIORITY ISSUES TO BE RESOLVED, ASSIGNS THESE ISSUES TO SPECIFIC INTERNATIONAL BODIES, AND ESTABLISHES A

TIMETABLE FOR THEIR RESOLUTION. US INDUSTRY REPS SEE THIS AS A PROGRAM FOR MORE REGULATION, SOMETHING WHICH THEY HOPE TO AVOID. IN THEIR DISCUSSIONS WITH EUROPEAN INDUSTRY, AND SUBSEQUENTLY IN THE ROUNDTABLE ITSELF, THEY HOPE TO BE ABLE TO REDUCE THE LIST OF ISSUES TO NO MORE THAN THREE OR FOUR, AND TO DILUTE THE LANGUAGE TO WEAKEN ANY MANDATE FOR GOVERNMENT ACTION. THEY ANTICIPATE THAT THE COMMISSION WILL TRY TO DIRECT AS MUCH WORK AS POSSIBLE TOWARD THE WTO, WHERE IT HAS THE FIRMEST GRIP ON EU POLICY, AND AWAY FROM FORA LIKE THE OECD, WHERE IT IS ONLY AN OBSERVER.

RECOMMENDATION TO THE USG
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9. (SBU) US INDUSTRY REPS WELCOMED THE RESPONSES OF SECRETARY DALEY AND UNDER SECRETARY EIZENSTAT TO COMMISSIONER BANGEMANN'S LETTER ON THE CHARTER (REF B). THEY ASKE IF IT WOULD BE POSSIBLE TO GET A PUBLIC USG STATEMENT ALONG THESE LINES. IN THE ABSENCE OF SUCH A CLEAR PUBLIC STATEMENT, THEY WORRIED THAT THE COMMISSION WOULD BE FREE TO MISREPRESENT THE US GOVERNMENT POSITION, IN THE WAY THAT IT HAS MISREPRESENTED THE US INDUSTRY POSITION IN THE PAST.

10. (SBU) WHILE AGREEING WITH THE US GOVERNMENT POSITION THAT THE CHARTER IS UNNECESSARY, AND THAT EXISTING INTERNATIONAL COORDINATION IS ADEQUATELY ADDRESSING THE PROBLEMS OF ELECTRONIC COMMERCE, THEY NEVERTHELESS ARE CONVINCED THAT THE CHARTER IS INEVITABLE. THEY WORRY ABOUT A REPEAT OF THE JULY 1997 BONN MINISTERIAL CONFERENCE, WHERE USG OFFICIALS INSISTED THAT THEY WOULD NOT PARTICIPATE, BUT THEN AGREED TO COME AT THE LAST MINUTE AND WERE IN A POOR POSITION TO INFLUENCE THE OUTCOME. THEY SUGGESTED THAT IT MIGHT BE MORE ADVISABLE FOR THE USG TO TAKE A MORE ACTIVE APPROACH TO THE CHARTER, AGRENG TO PARTICIPATE NOW, WHILE IT IS STILL BEING DEVELOPED, AND EXTRACTING APPROPRIATE CONCESS[ONS FOR THIS AGREEMENT.

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COMMENT
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11. (SBU) COMMENT: THE PRIVATE SECTOR PARTICIPANTS IN THIS MEETING, LIKE THE OFFICERS OF THIS MISSION, SPEND THEIR DAYS WORKING THE CORRIDORS OF THE COMMISSION. LIKE US, THEIR VIEW OF THE WORLD INEVITABLY IS INFLUENCED BY THEIR FOCUS ON THE EU. IT WOULD NOT BE SURPRISING IF THEY REACHED A SOMEWHAT DIFFERENT CONCLUSION AS TO THE COSTS AND BENEFITS OF ACCOMMODATING THE COMMISSION'S

INITIATIVE THAN THEIR WASHINGTON COUNTERPARTS. HOWEVER,
UNCLAS SECTION 03 OF 03 BRUSSELS 003459

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TAGS: EINT, ECPS, EUN
SUBJECT: ELECTRONIC COMMERCE: US INDUSTRY REPS ON THE BANGEMANN CHARTER

REF: A) BRUSSELS 2961; B) WEINSCHENK-HELMER FAX OF 6/1/98

THEIR DAILY CONTACT WITH COMMISSION OFFICIALS MAKES THEM EMINENTLY QUALIFIED TO JUDGE THE MOTIVES AND INTENTIONS OF COMMISSIONER BANGEMANN AND HIS STAFF.

12. (SBU) LIKE OUR INDUSTRY CONTACTS, WE DO NOT BELIEVE THAT THE COMMISSION WILL TAKE THIS INITIATIVE OUT OF PLAY SIMPLY BECAUSE THE US SAYS IT IS UNNECESSARY. BANGEMANN AND HIS STAFF WILL PROCEED, AS THEY DID WITH THE BONN MINISTERIAL, AND SEEK TO BUILD IRRESISTIBLE PRESSURE ON THE US TO PARTICIPATE. IF THE US IS NOT PREPARED TO ACTIVELY AND VOCALLY OPPOSE THE CHARTER, THEN IT MAY BE TIME TO CONSIDER ACTIVELY COOPERATING, IN EXCHANGE FOR SIGNIFICANT CONCESSIONS ON ITS CONTENT AND ORGANIZATION. END COMMENT. (DRAFTED:ECON:CHELMER)

KURSCH
<^SECT>SECTION: 01 OF 03
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SUBJECT: ELECTRONIC COMMERCE: US INDUSTRY REPS ON THE BANGEMANN CHARTER

REF: A) /RUSSELS 2961; B) WEINSCHENK-HELMER FAX OF 6/1/98

1. (U) SENSITIVE BUT UNCLASSIFIED PROTECT ACCORDINGLY.

2. (SBU) SUMMARY: US INDUSTRY REPRESENTATIVES IN BRUSSELS SAY THEIR FIRMS RELUCTANTLY ARE AGREEING TO PARTICIPATE IN THE COMMISSION'S JUNE 29 ROUNDTABLE ON COMMISSIONER BANGEMANN'S PROPOSED INTERNATIONAL COMMUNICATIONS CHARTER. THEY CONTINUE TO HAVE MAJOR CONCERNS ABOUT THE ORGANIZATION AND THE OBJECTIVES OF THE CHARTER INITIATIVE, BUT DO NOT BELIEVE IT WILL BE POSSIBLE TO STOP IT. RATHER THAN BE PRESENTED WITH A FAIT ACCOMPLI, THEY INTEND TO WORK FROM WITHIN TO DILUTE ITS CONTENTS AND OTHERWISE SHIFT THE INITIATIVE INTO MORE ACCEPTABLE CHANNELS. US INDUSTRY REPS WELCOMED THE RESPONSES OF SENIOR WASHINGTON OFFICIALS TO COMMISSIONER BANGEMANN'S LETTER ON THE CHARTER, BUT WORRY ABOUT A REPEAT OF THE JULY 1997 BONN MINISTERIAL CONFERENCE, WHERE USG OFFICIALS AGREED TO PARTICIPATE AT THE LAST MINUTE AND WERE IN A POOR POSITION TO INFLUENCE THE OUTCOME. THEY SUGGESTED THAT IT MIGHT BE BETTER FOR THE USG TO TAKE A MORE ACTIVE APPROACH TO THE CHARTER, AGREEING TO PARTICIPATE, BUT EXTRACTING APPROPRIATE CONCESSIONS FOR THIS AGREEMENT. POST AGREES THAT IT MAY BE TIME TO CONSIDER THIS TYPE OF APPROACH. END SUMMARY.

3. (SBU) BRUSSELS-BASED REPRESENTATIVE FOR 8 US FIRMS -- WORLD LEADERS IN THE COMMUNICATIONS, INFORMATION AND MEDIA SECTORS, AND L;CAL LEADERS IN THE EU COMMITTEE OF THE AMERICAN CHAMBER OF COMMERCE -- CALLED ON EST OFFICER AND SENIOR TRADE ADVISER JUNE 5 TO DISCUSS COMMISSIONER BANGEMANN'S PROPOSED INTERNATIONAL COMMUNICATIONS CHARTER. 6 OF THE 8 FIRMS PRESENT HAD RECEIVED INVITATIONS TO THE JUNE 29 INDUSTRY ROUNDTABLE ON THE CHARTER (REF A). ALL HAVE RELUCTANTLY DECIDED TO SEND REPRESENTATIVES, ALTHOUGH IN MOST CASES IT WILL BE THE SENIOR MANAGER FOR EUROPE, AND IN NO CASE WILL IT BE THE CEO OF THE FIRM, AS REQUESTED BY THE COMMISSION. THE INDUSTRY REPS SPECIFICALLY REQUESTED TO MEET AT THE US MISSION IN ORDER TO BE ABLE TO CONCEAL THE EXISTENCE OF THE DISCUSSION FROM THE COMMISSION. THE CONTENTS OF THIS MESSAGE SHOULD THEREFORE BE CONSIDERED SENSITIVE.

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US INDUSTRY'S POSITION

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4. (SBU) INDUSTRY REPRESENTATIVES HAVE MAJOR CONCERNS ABOUT THE ORGANIZATION AND OBJECTIVES OF THE CHARTER. THEY ACKNOWLEDGE THE COMMISSION'S CLAIM THAT THE CHARTER PROCESS WILL BE INDUSTRY LED, BUT OBSERVE THAT THE COMMISSION'S CONCEPT OF INDUSTRY LEADERSHIP IS FOR THE PRIVATE SECTOR TO PROPOSE REGULATORY SOLUTIONS WHICH GOVERNMENTS WILL DEVELOP AND IMPLEMENT. IT DOES NOT RELY ON MARKET-BASED SOLUTIONS, WHICH US INDUSTRY SEES AS THE BEST APPROACH TO MOST E-COMMERCE ISSUES. NEVERTHELESS, IT IS THE JUDGMENT OF BRUSSELS-BASED US INDUSTRY REPRESENTATIVES THAT IT WILL NOT BE POSSIBLE TO STOP THE COMMISSION FROM GOING FORWARD WITH THE CHARTER IN SOME FORM OR ANOTHER. THE COMMISSION, AND COMMISSIONER BANGEMANN PERSONALLY, HAVE INVESTED TOO MUCH IN THE CHARTER TO LET IT DIE. THEREFORE, RATHER THAN BE PRESENTED WITH A FAIT ACCOMPLI, US FIRMS INTEND TO WORK FROM WITHIN TO DILUTE THE CONTENTS OF THE CHARTER AND DIRECT IT INTO MORE ACCEPTABLE CHANNELS.

5. (SBU) THE REPRESENTATIVES OF THE US FIRMS INVITED TO THE ROUNDTABLE SAY THEIR COMPANIES HAVE BEEN PUT IN A VERY AWKWARD POSITION. THEY POINT OUT THAT THERE WILL ONLY BE ABOUT 10 US REPRESENTATIVES AT THE MEETING, AS OPPOSED TO 50 EUROPEAN PARTICIPANTS AND 20 FROM THE REST OF THE WORLD. IN ADDITION, THE COMMISSION AND SOME EU MEMBER GOVERNMENTS WILL BE REPRESENTED, BUT NO OTHER GOVERNMENTS. THE US FIRMS ANTICIPATE THAT THE COMMISSION WILL BILL THEM AS SPEAKING FOR ALL OF US INDUSTRY, SOMETHING WHICH THEY CLEARLY ACKNOWLEDGE THEY HAVE NO AUTHORITY TO DO. ALSO, THEY ARE HESITANT TO SAY ANYTHING CLEARLY NEGATIVE ABOUT THE CHARTER FOR FEAR OF POSSIBLE

REPRISAL BY COMMISSIONER BANGEMANN AND HIS STAFF. THEY HOPE TO BE ABLE TO EXTRICATE THEMSELVES FROM THE SPOTLIGHT BY BILLING THEMSELVES AS SPEAKING FOR INDUSTRY ASSOCIATIONS, AS OPPOSED TO INDIVIDUAL FIRMS, WHERE POSSIBLE, AND EVENTUALLY STEPPING BACK FROM THE PROCESS AND LETTING ASSOCIATIONS TAKE THE PUBLIC LEAD.

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6. (SBU) ALL EIGHT REPRESENTATIVES COMPLAINED THAT THE COMMISSION HAS IN THE PAST TAKEN CAUTIOUSLY-WORDED INDUSTRY STATEMENTS AND MISREPRESENTED THEM AS SUPPORT FOR THE CHARTER. THEY EXPECT THAT THE COMMISSION WILL PUT ITS OWN SPIN ON ANYTHING INDUSTRY SAYS, SO THEY PLAN TO TRY TO PUBLISH A FEW INDUSTRY ASSOCIATION STATEMENTS IN ADVANCE OF THE MEETING TO GET THEIR POSITION OUT CLEARLY. THEY WILL ALSO LOOK FOR OPPORTUNITIES IN THE MONTHS AHEAD TO RAISE THE CHARTER IN PRIVATE SECTOR CONFERENCES AND OTHER FORA WHERE THEY CAN HAVE MORE INFLUENCE OVER THE PROCEEDINGS.

7. (SBU) US INDUSTRY REPRESENTATIVES ARE CURRENTLY ENGAGED IN DISCUSSIONS WITH EUROPEAN INDUSTRY REPRESENTATIVES TO SEE IF THEY CAN REACH A CONSENSUS ON A JOINT POSITION PAPER IN ADVANCE OF THE JUNE 29 MEETING. THE NEGOTIATIONS ARE NOT PROCEEDING SMOOTHLY. IN THE VIEW OF US INDUSTRY REPS, EUROPEAN INDUSTRY HAS SIGNED ON FULLY TO THE COMMISSION'S INITIATIVE AND CANNOT BE COUNTED ON AS A RELIABLE ALLY IN THIS GAME. THE PROSPECTS OF THE TWO INDUSTRIAL GROUPS BEING ABLE TO AGREE ON A JOINT STATEMENT ARE UNCERTAIN.

8. (SBU) US INDUSTRY REPS SAY THEY HAVE BEEN TOLD THAT THE COMMISSION ENVISAGES THE END PRODUCT OF THE ROUNDTABLE AS BEING AN ACTION AGENDA WHICH IDENTIFIES PRIORITY ISSUES TO BE RESOLVED, ASSIGNS THESE ISSUES TO SPECIFIC INTERNATIONAL BODIES, AND ESTABLISHES A TIMETABLE OR THEIR RESOLUTION. US INDUSTRY REPS SEE THIS AS A PROGRAM FOR MORE REGULATION, SOMETHING WHICH THEY HOPE TO AVOID. IN THEIR DISCUSSIONS WITH EUROPEAN INDUSTRY, AND SUBSEQUENTLY IN THE ROUNDTABLE ITSELF, THEY HOPE TO BE ABLE TO REDUCE THE LIST OF ISSUES TO NO MORE THAN THREE OR FOUR, AND TO DILUTE THE LANGUAGE TO WEAKEN ANY MANDATE FOR GOVERNMENT ACTION. THEY ANTICIPATE THAT THE COMMISSION WILL TRY TO DIRECT AS MUCH WORK AS POSSIBLE TOWARD THE WTO, WHERE IT HAS THE FIRMEST GRIP ON EU POLICY, AND AWAY FROM FORA LIKE THE OECD, WHERE IT IS ONLY AN OBSERVER.

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RECOMMENDATION TO THE USG

9. (SBU) US INDUSTRY REPS WELCOMED THE RESPONSES OF SECRETARY DALEY AND UNDER SECRETARY EIZENSTAT TO COMMISSIONER BANGEMANN'S LETTER ON THE CHARTER (REF B). THEY ASKED IF IT WOULD BE POSSIBLE TO GET A PUBLIC USG STATEMENT ALONG THESE LINES. IN THE ABSENCE OF SUCH A CLEAR PUBLIC STATEMENT, THEY WORRIED THAT THE COMMISSION WOULD BE FREE TO MISREPRESENT THE US GOVERNMENT POSITION, IN THE WAY THAT IT HAS MISREPRESENTED THE US INDUSTRY POSITION IN THE PAST.

10. (SBU) WHILE AGREEING WITH THE US GOVERNMENT POSITION THAT THE CHARTER IS UNNECESSARY, AND THAT EXISTING INTERNATIONAL COORDINATION IS ADEQUATELY ADDRESSING THE PROBLEMS OF ELECTRONIC COMMERCE, THEY NEVERTHELESS ARE CONVINCED THAT THE CHARTER IS INEVITABLE. THEY WORRY ABOUT A REPEAT OF THE JULY 1997 BONN MINISTERIAL CONFERENCE, WHERE USG OFFICIALS INSISTED THAT THEY WOULD NOT PARTICIPATE, BUT THEN AGREED TO COME AT THE LAST MINUTE AND WERE IN A POOR POSITION TO INFLUENCE THE OUTCOME. THEY SUGGESTED THAT IT MIGHT BE MORE ADVISABLE FOR THE USG TO TAKE A MORE ACTIVE APPROACH TO THE CHARTER, AGREEING TO PARTICIPATE NOW, WHILE IT IS STILL BEING DEVELOPED, AND EXTRACTING APPROPRIATE CONCESSIONS FOR THIS AGREEMENT.

COMMENT

11. (SBU) COMMENT: THE PRIVATE SECTOR PARTICIPANTS IN THIS MEETING, LIKE THE OFFICERS OF THIS MISSION, SPEND THEIR DAYS WORKING THE CORRIDORS OF THE COMMISSION. LIKE US, THEIR VIEW OF THE WORLD INEVITABLY IS INFLUENCED BY THEIR FOCUS ON THE EU. IT WOULD NOT BE SURPRISING IF THEY REACHED A SOMEWHAT DIFFERENT CONCLUSION AS TO THE COSTS AND BENEFITS OF ACCOMMODATING THE COMMISSION'S INITIATIVE THAN THEIR WASHINGTON COUNTERPARTS. HOWEVER,

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THEIR DAILY CONTACT WITH COMMISSION OFFICIALS MAKES THEM EMINENTLY QUALIFIED TO JUDGE THE MOTIVES AND INTENTIONS OF COMMISSIONER BANGEMaN AND HIS STAFF.

12. (SBU) LIKE OUR INDUSTRY CONTACTS, WE DO NOT BELIEVE THAT THE COMMISSION WILL TAKE THIS INITIATIVE OUT OF PLAY SIMPLY BECAUSE THE US SAYS IT IS UNNECESSARY. BANGEMANN AND HIS STAFF WILL PROCEED, AS THEY DID WITH THE BONN

MINISTERIAL, AND SEEK TO BUILD IRRESISTIBLE PRESSURE ON THE US TO PARTICIPATE. IF THE US IS NOT PREPARED TO ACTIVELY AND VOCALLY OPPOSE THE CHARTER, THEN IT MAY BE TIME TO CONSIDER ACTIVELY COOPERATING, IN EXCHANGE FOR SIGNIFICANT CONCESSIONS ON ITS CONTENT AND ORGANIZATION. END COMMENT. (DRAFTED:ECON:CHELMER)

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TAGS: EINT, ECPS, ETRD, EUN
SUBJECT: ELECTRONIC COMMERCE: CHARTER ROUNDTABLE GIVES
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BRUSSELS 01 OF 05 4174

BIRTH TO THE GLOBAL BUSINESS DIALOGUE

1. (U) THIS MESSAGE IS SENSITIVE BUT UNCLASSIFIED. PLEASE DO NOT DISTRIBUTE IT OVER THE INTERNET OR IN OTHER PUBLICLY-ACCESSIBLE CHANNELS.

SUMMARY
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2. (SBU) SUMMARY: 69 FIRMS AND OTHER PRIVATE ENTITIES PARTICIPATED IN THE JUNE 29 ROUNDTABLE HELD TO DISCUSS COMMISSIONER BANGEMANN'S PROPOSAL FOR AN INTERNATIONAL COMMUNICATIONS CHARTER. ON THE SURFACE, THE PRIVATE SECTOR WAS IN CHARGE, BUT ACCORDING TO SOME US FIRMS WHICH PARTICIPATED IN THE EVENT IT WAS REALLY THE COMMISSION WHICH RAN THE SHOW, WORKING THROUGH A GROUP OF MAINLY-GERMAN FIRMS WHICH MANAGED THE EVENT AT BANGEMANN'S BEHEST. US FIRMS COMPLAIN THAT BERTELSMANN BOARD MEMBER THOMAS MIDDELHOFF, WHO SERVED AS CHAIR OF THE EVENT, RAN THE DISCUSSION WITH AN IRON FIST AND ALLOWED LITTLE SCOPE FOR OPPOSING VIEWS. NEVERTHELESS, US FIRMS BELIEVE THEY GOT AN ACCEPTABLE PACKAGE IN THE PUBLIC STATEMENT OF THE CONCLUSIONS OF THE CONFERENCE, AND PLAN TO CONTINUE TO PARTICIPATE IN WHAT THEY SEE AS AN UNSTOPPABLE, IF UNNECESSARY, EXERCISE. THE NEXT STEP IN THE PROCESS WILL BE THE FORMATION OF A STEERING COMMITTEE TO LAUNCH A "GLOBAL BUSINESS DIALOGUE" (GBD). THE GBD IS SCHEDULED TO HAVE ITS FIRST MEETING DURING THE FIRST HALF OF 1999. US FIRMS SAY THEY INTEND TO WORK HARD TO ENSURE THAT THE STEERING COMMITTEE AND ITS

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OPERATIONS ARE MORE REPRESENTATIVE, OPEN AND TRANSPARENT THAN THE GROUP WHICH RAN THE ROUNDTABLE.

3. (SBU) COMMISSION STAFF ARE PREDICTABLY PLEASED BY THE OUTCOME OF THE CONFERENCE, SEEING IT AS AN ENDORSEMENT OF BANGEMANN'S CALL FOR AN INTERNATIONAL COORDINATING MECHANISM FOR ISSUES RELATED TO THE INTERNET AND E-COMMERCE. THEY OBSERVE THAT IF THE GBD EVOLVES AS ANTICIPATED INTO AN ORGANIZATION ALONG THE LINES OF THE TRANSATLANTIC BUSINESS DIALOGUE (TABD), IT WILL NEED SOME SORT OF GOVERNMENTAL COUNTERPART, ANALOGOUS TO THE NEW TRANSATLANTIC AGENDA (NTA). BANGEMANN'S STAFF REPORT THAT THE COMMISSIONER PLANS TO WRITE TO SECRETARY DALEY AND UNDER SECRETARY EIZENSTAT SOON TO PROVIDE HIS PERSPECTIVES ON THE ROUNDTABLE. END SUMMARY.

A PRIVATE SECTOR ROUNDTABLE

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4. (SBU) THE COMMISSION'S JUNE 29 ROUNDTABLE ON THE PROPOSED GLOBAL CHARTER FOR THE INTERNET ATTRACTED 69 PARTICIPANTS, BUT FEW OF THE CEO'S THAT THE COMMISSION WAS SEEKING. 10 US FIRMS SENT REPRESENTATIVES, IN MOST CASES THEIR HEADS OF EUROPEAN OPERATIONS. EUROPEAN FIRMS DOMINATED THE ROUNDTABLE, BOTH IN NUMBERS AND IN POSITIONS OF CONTROL. BERTELSMANN BOARD MEMBER (AND REPUTED FUTURE CEO) THOMAS MIDDELHOFF SERVED AS CHAIR AT THE INVITATION OF COMMISSIONER BANGEMANN. IN ADDITION, BERTELSMANN REPS CHAIRED PRE-EVENT ORGANIZATIONAL ACTIVITIES AND THE DRAFTING SESSION WHICH PRODUCED THE PUBLIC STATEMENT OF THE CONCLUSIONS OF THE MEETING. EUROPEAN FIRMS, MOST OFTEN GERMAN FIRMS, REPORTEDLY WERE ALMOST ALWAYS THE FIRST TO SPEAK ON THE ISSUES DISCUSSED, ONCE THE ASSIGNED LEAD SPEAKER HAD HIS SAY (THERE WERE NO FEMALE LEAD SPEAKERS). MOREOVER, BECAUSE OF THEIR NUMBERS, EUROPEAN FIRMS HAD A MAJORITY OF THE SPEAKING TIME. INTERESTINGLY, BERTELSMANN WAS THE ONLY FIRM WITH TWO REPRESENTATIVES AT THE MEETING.

5. (SBU) OFFICIALS WERE PRESENT FROM THE COMMISSION AND THE THREE EU "TROIKA" GOVERNMENTS (AUSTRIA, GERMANY AND THE UK). A MITI OFFICIAL ATTENDED UNDER COVER OF REPRESENTING A TRADE ASSOCIATION. COMMISSIONER BANGEMANN PRESENTED OPENING REMARKS IN THE MORNING AND THE AFTERNOON, AND COMMISSIONER SIR LEON BRITTAN SPOKE ON E-COMMERCE AND THE WTO, BUT NO OTHER OFFICIALS SPOKE. OECD DEPUTY SECRETARY GENERAL JOANNA SHELTON WAS PRESENT, BUT DID NOT SPEAK.

6. (SBU) THE DAY WAS DIVIDED INTO TWO PARTS: A MORNING SESSION ON SUBSTANTIVE ISSUES AND AN AFTERNOON SESSION ON

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NEXT STEPS. SEVEN FIRMS (2 EU, 2 US, 2 JAPANESE AND 1 CANADIAN) SERVED AS LEAD SPEAKERS FOR THE SUBSTANTIVE SESSION WHICH COVERED THE TOPICS OF TAXATION, TARIFFS, IPR, ENCRYPTION, AUTHENTICATION, DATA PROTECTION, AND LIABILITY. COPIES OF THEIR PRESENTATIONS HAVE BEEN FAXED TO WASHINGTON AGENCIES. THE COMMISSION HAS POSTED SOME OF THESE PAPERS, AS WELL AS A FULL SET OF OFFICIAL DOCUMENTS RELATING TO THE CHARTER INITIATIVE, ON THE ISPO WEB SITE AT WWW.ISPO.CEC.BE, UNDER THE HEADING "GLOBALIZATION AND THE INFORMATION SOCIETY."

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7. (SBU) ACCORDING TO THE US PARTICIPANTS, THERE WAS GENERAL AGREEMENT AMONG THE FIRMS PRESENT ON MOST OF THE SEVEN SUBSTANTIVE ISSUES, WITH THE EXCEPTION OF IPR AND LIABILITY. HERE THERE WERE PREDICTABLE DIFFERENCES BETWEEN CONTENT PROVIDERS AND SERVICE PROVIDERS. US FIRMS REPORT THAT THEY SOUGHT IN THE PRE-ROUNDTABLE ORGANIZATIONAL MEETINGS TO KEEP LIABILITY OFF THE AGENDA, BELIEVING THAT THIS ISSUE IS NOTYET RIPE FOR FORMAL INTERNATIONAL DISCUSSION, BUT WERE OVERRIDDEN BY BERTELSMANN REPS. US PARTICIPANTS BELIEVE THAT BERTELSMANN STAFF KEPT LIABILITY ON THE AGENDA AT THE BEHEST OF COMMISSIONER BANGEMANN.

8. (SBU) THE AFTERNOON SESSION, WITH AN ALL-EUROPEAN CAST OF LEAD SPEAKERS, DISCUSSED THE CREATION OF A GLOBAL BUSINESS DIALOGUE (GBD). THE GBD WOULD BE MODELED ON THE TRANSATLANTIC BUSINESS DIALOGUE (TABD), BUT WITH WIDER GEOGRAPHICAL REPRESENTATION, AND A SUBSTANTIVE SCOPE LIMITED TO ELECTRONIC COMMERCE AND ISSUES AFFECTING ITS DEVELOPMENT. CHAIRMAN MIDDELHOFF PROPOSED THE CREATION OF A STEERING COMMITTEE FOR THE GBD WHICH HE WOULD PERSONALLY ORGANIZE, DRAWING PERHAPS ON THE FIRMS WHICH SERVED AS LEAD SPEAKERS AT THE ROUNDTABLE. US PARTICIPANTS SAY THEY STRONGLY RESISTED MIDDELHOFF'S EFFORTS TO "PACK THE COMMITTEE" AND THAT, IN THE END, ITS COMPOSITION WAS LEFT OPEN. IN THE DAYS SINCE THE ROUNDTABLE, SOME US FIRMS SAY THE PROPOSED COMPOSITION OF THE STEERING COMMITTEE HAS EVOLVED TO INCLUDE A BROADER, MORE GLOBALLY REPRESENTED GROUP, ALTHOUGH ANOTHER RUMOR HAS IT THAT BERTELSMANN ALREADY HAS SCHEDULED A FIRST ORGANIZATIONAL MEETING LIMITED TO ITS PREFERRED GROUP. (COMMENT: THE MANAGEMENT OF THIS INITIATIVE REMAINS LESS THAN TRANSPARENT, EVEN TO THE US FIRMS MOST CLOSELY INVOLVED.)

9. (SBU) THE STEERING COMMITTEE IS SUPPOSED TO PRODUCE A PROPOSED PLAN FOR THE GBD BY SEPTEMBER, IN TIME FOR IT TO BE INTRODUCED AT THE OCTOBER OECD CONFERENCE ON ELECTRONIC COMMERCE IN OTTAWA. THE FIRST FULL MEETING OF THE GBD IS PLANNED TO TAKE PLACE DURING THE FIRST HALF OF 1999. AUSTRIA HAS OFFERED TO HOST THIS EVENT IN VIENNA, BUT OTHER SITES ARE POSSIBLE. US FIRMS WHICH PARTICIPATED IN THE ROUNDTABLE SAY THEY FOUGHT, BUT LOST, A BATTLE TO KEEP THE POSSIBILITY OF A GBD MEETING AN OPEN ISSUE, OR AT LEAST TO AVOID A FIXED DEADLINE FOR HOLDING SUCH A MEETING. THEY FEEL THEY ARE NOW COMMITTED TO SOME SORT OF GLOBAL PRIVATE SECTOR CONFERENCE DURING THE FIRST HALF OF NEXT YEAR (NOTE: DURING THE GERMAN PRESIDENCY OF THE EU COUNCIL. END NOTE.)

10. (SBU) A PUBLIC STATEMENT OF THE CONCLUSIONS OF THE ROUNDTABLE WAS PRODUCED IN A CONCURRENT DRAFTING SESSION. THE STATEMENT ENDORSES IMPROVED COORDINATION BETWEEN INDUSTRY, CONSUMERS, GOVERNMENTS, AND INTERNATIONAL ORGANIZATIONS TO ADDRESS CRITICAL ISSUES FOR THE GLOBAL ONLINE ECONOMY. IT STATES THAT THIS COORDINATION SHOULD TAKE PLACE AT A GLOBAL LEVEL, AND PROPOSES TO SET UP A BUSINESS STEERING COMMITTEE AND A GLOBAL BUSINESS DIALOGUE TO ENSURE THAT INITIATIVES IN THIS AREA REMAIN BUSINESS-LED AND GLOBAL. THE BUSINESS STEERING COMMITTEE WILL ANNOUNCE IN SEPTEMBER THE DATE, PLACE AND PROPOSED AGENDA FOR THE FIRST CONFERENCE OF THE GLOBAL BUSINESS DIALOGUE, TO OCCUR IN THE FIRST HALF OF 1999.

PAY NO ATTENTION TO THE MAN BEHIND THE CURTAIN

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11. (SBU) AS INDICATED ABOVE, US PARTICIPANTS WERE UNHAPPY WITH THE WAY THAT BERTELSMANN AND OTHER GERMAN

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FIRMS BANDED TOGETHER TO ORCHESTRATE THE CONFERENCE. AS ONE US PARTICIPANT PUT IT, "BANGEMANN'S OLD BOYS NETWORK HAD BEEN GIVEN THEIR ORDERS." BERTELSMANN BOARD MEMBER MIDDELHOFF WAS CRITICIZED FOR HIS IRON-FISTED APPROACH TO CHAIRMANSHIP OF THE EVENT, THE MOST EGREGIOUS EXAMPLE BEING HIS ATTEMPT TO PACK THE STEERING COMMITTEE. A FEW US FIRMS, NOTABLY BERTELSMANN COMMERCIAL PARTNER AMERICA ONLINE (AOL), WERE ALSO CRITICIZED FOR SUPPORTING THE EUROPEAN EFFORT TO STEER THE ROUNDTABLE.

12. (SBU) US FIRMS WERE ALSO UNHAPPY WITH THE COMMISSION. SEVERAL SOURCES SAID THAT THEY HAD SPOKEN TO BANGEMANN STAFF ABOUT A JOINT LINE TO TAKE WITH THE PRESS AND HAD BEEN TOLD THAT THERE SHOULD BE NO PUBLIC COMMENT AS THIS WAS A "PRIVATE" EVENT. HOWEVER, THE COMMISSION HAD A PRESS STATEMENT OUT THAT SAME DAY. US FIRMS ALSO REPORT THAT WHEN THEY COMPLAINED TO COMMISSION OFFICIALS ABOUT THE WAY BERTELSMANN WAS RUNNING THINGS, THEY WERE TOLD TO TALK DIRECTLY TO BERTELSMANN AS THIS WAS AN INDUSTRY-LED CONFERENCE AND THE COMMISSION DID NOT WANT TO INTERFERE.

13. (SBU) DESPITE THESE COMPLAINTS, US FIRMS WHICH PARTICIPATED IN THE ROUNDTABLE BELIEVE THEY MANAGED TO NEGOTIATE AN ACCEPTABLE PACKAGE IN THE STATEMENT OF THE CONCLUSIONS OF THE CONFERENCE. THEY PLAN TO CONTINUE TO PARTICIPATE IN WHAT THEY SEE AS AN UNSTOPPABLE, IF UNNECESSARY, EXERCISE. THEY SAY THEY INTEND TO WORK HARD TO ENSURE THAT THE STEERING COMMITTEE AND ITS OPERATIONS ARE MORE OPEN AND TRANSPARENT THAN THE ORGANIZATION OF THE ROUNDTABLE. ONE STEP IN THIS EFFORT WILL PROBABLY BE A LETTER FROM THE EU COMMITTEE OF THE AMERICAN CHAMBER OF COMMERCE TO MIDDELHOFF, WITH COPIES TO BANGEMANN, SECRETARY DALEY AND AN APPROPRIATE JAPANESE GOVERNMENT OFFICIAL, INSISTING THAT BOTH THE STEERING COMMITTEE AND THE GBD AS A WHOLE MUST BECOME MORE OPEN AND DEMOCRATIC IF THEY ARE TO HAVE ANY PUBLIC CREDIBILITY AND ACCEPTANCE.

THE COMMISSION DECLARES A SUCCESS

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14. (SBU) COMMISSION STAFF ARE PREDICTABLY PLEASED BY THE OUTCOME OF THE CONFERENCE, WHICH THEY SEE AS ENDORSEMENT OF BANGEMANN'S CALL FOR AN INTERNATIONAL COORDINATING MECHANISM FOR ISSUES RELATED TO THE INTERNET AND E-COMMERCE. TIMOTHY FENOULHET, ADVISER TO DG XIII (TELECOMS & INFO SOCIETY) DIRECTOR GENERAL ROBERT VERRUE AND ONE OF THE COMMISSION OFFICIALS MOST CLOSELY INVOLVED IN ORGANIZING THE ROUNDTABLE, TOLD EST OFFICER THE COMMISSION WAS PLEASED TO SEE THE PRIVATE SECTOR "TAKING UP COMMISSIONER BANGEMANN'S CHALLENGE TO DEVELOP SELF-REGULATING MECHANISMS WHICH CAN BE ENFORCED INTERNATIONALLY." HE SAID IT IS NOW UP TO INDUSTRY TO ORGANIZE ITSELF AND GET THE GBD MOVING.

15. (SBU) FENOULHET SAID THE COMMISSION SEES ITS ROLE AT THIS STAGE AS BEING AN ADVOCATE FOR THE GBD PROCESS. THE COMMISSION WILL COMMUNICATE TO GOVERNMENTS, INTERNATIONAL ORGANIZATIONS AND NON-GOVERNMENTAL

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ORGANIZATIONS ITS PERCEPTIONS OF THE ROUNDTABLE AND THE GBD, AND TRY TO CONVINCE THEM TO LEND THEIR SUPPORT. HE EMPHASIZED THE CONTINUING INTEREST OF THE COMMISSION IN GAINING US GOVERNMENT SUPPORT, AND SAID THAT COMMISSIONER BANGEMANN PLANS TO WRITE TO SECRETARY DALEY AND UNDER SECRETARY EIZENSTAT SOON TO PROVIDE HIS PERSPECTIVES ON THE ROUNDTABLE. HE ALSO INDICATED THAT THE COMMISSION WILL HOST A JULY 22 BRIEFING SESSION IN BRUSSELS FOR TRADE AND CONSUMER ASSOCIATIONS TO INFORM THEM ABOUT THE GBD.

16. (SBU) PRESSED ABOUT THE COMMISSION'S COMMITMENT TO INDUSTRY SELF-REGULATION, FENOULHET RESPONDED THAT A GOVERNMENT ROLE IS ESSENTIAL TO THE RESOLUTION OF SOME ISSUES. HE CITED INTELLECTUAL PROPERTY, TAXES AND TARIFFS AS EXAMPLES. HE INSISTED, HOWEVER, THAT THE COMMISSION TRULY SUPPORTS THE PRINCIPLE OF NO MORE REGULATION THAN IS ABSOLUTELY NECESSARY TO PROVIDE CERTAINTY AND SECURITY IN THE ONLINE ENVIRONMENT. HE MAINTAINED THAT THIS WAS ONE OF THE DRIVING FORCES BEHIND

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BANGEMANN'S INITIATIVE. IN THE ABSENCE OF INTERNATIONAL COORDINATION, NATIONAL GOVERNMENTS WILL TAKE INDEPENDENT APPROACHES WHICH COULD LEAD TO DUPLICATE OR EVEN CONFLICTING REGULATION. HE CONCLUDED THAT IF THE PRIVATE SECTOR COMES FORWARD WITH SOLUTIONS, WHICH CAN BE EFFECTIVELY IMPLEMENTED AND ENFORCED ON AN INTERNATIONAL BASIS, THEN THE COMMISSION WILL SUPPORT THEM. HE EVEN EXTENDED THIS TO THE REALM OF PRIVACY, SUGGESTING THAT "IF THE PRIVATE SECTOR CAN DEVELOP EFFECTIVE SELF-REGULATORY CODES, THEN THIS WILL HAVE TO BE TAKEN INTO ACCOUNT."

17. (SBU) FENOULHET'S TAKE ON THE DISCUSSION OF SUBSTANTIVE ISSUES WAS THE SAME AS THAT OF THE US BUSINESS PARTICIPANTS. THERE WAS BROAD CONSENSUS ON ALL SEVEN ISSUES, EXCEPT FOR IPR AND LIABILITY, WHERE THERE WERE THE EXPECTED SECTORAL DIFFERENCES. HE SAID THAT HE PERCEIVED NO DIFFERENCE BETWEEN GEOGRAPHIC REGIONS IN THEIR APPROACHES TO THESE ISSUES. HOWEVER, REPRESENTATIVES FROM DEVELOPING COUNTRIES DID RAISE A FEW SPECIAL ISSUES OF THEIR OWN, E.G., CONCERNS ABOUT PROTECTING NATIONAL CULTURES IN A GLOBALIZED MEDIA ENVIRONMENT. FENOULHET OBSERVED THAT INTEGRATING THE DEVELOPING WORLD INTO THE GBD PROCESS WILL BE A DIFFICULT CHALLENGE. THE COMMISSION WANTS THE GBD TO BE BROADLY REPRESENTATIVE, BUT DOES NOT WANT TO SEE IT BECOME A "UNITED NATIONS TYPE" BODY.

18. (SBU) ASKED ABOUT THE DIFFERENCE BETWEEN THE PROPOSED GBD CONFERENCE DURING THE FIRST HALF OF 1999 AND COMMISSIONER BANGEMANN'S PROPOSAL FOR A MINISTERIAL CONFERENCE IN VIENNA DURING THIS SAME PERIOD, FENOULHET RESPONDED THAT THERE HAD BEEN MUCH CONFUSION ABOUT THIS. HE MAINTAINED THAT COMMISSIONER BANGEMANN HAD NEVER PROPOSED A "MINISTERIAL," BUT HAD ALWAYS HAD IN MIND A CONFERENCE INVOLVING SIGNIFICANT PRIVATE SECTOR PARTICIPATION. NOW, FENOULHET SAID, ONLY ONE EVENT IS PLANNED -- THE GBD CONFERENCE. THE ROLE OF GOVERNMENTS IN THIS MEETING WILL BE UP TO THE STEERING COMMITTEE AND THE OTHER GBD PARTICIPANTS. FURTHERMORE, THE TIME AND PLACE OF THIS EVENT WILL ALSO BE UP TO THE STEERING COMMITTEE. VIENNA IS CURRENTLY THE ONLY OFFER ON THE TABLE, BUT IF OTHER OPTIONS MATERIALIZE THERE IS NO

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REASON WHY IT HAS TO BE IN AUSTRIA.

19. (SBU) BANGEMANN CABINET OFFICIAL PAUL VERHOEF TOLD EST OFFICER THAT COMMISSIONER BANGEMANN WAS VERY PLEASED WITH THE OUTCOME OF THE CONFERENCE. HE SAID THE COMMISSIONER FEELS THE GBD COULD BE THE PERFECT MECHANISM TO ADDRESS THE INTERNATIONAL COORDINATION PROBLEM HE IDENTIFIED WHEN HE PROPOSED THE CHARTER, BUT IT IS UP TO INDUSTRY TO DELIVER. VERHOEF ADDED, HOWEVER, THAT EVEN WITH AN EFFECTIVE GLOBAL BUSINESS DIALOGUE, THE COMMISSION STILL SEES A NEED FOR SOME SORT OF INTERNATIONAL GOVERNMENT FORUM WHICH CAN INTERACT WITH THE GBD. HE OBSERVED THAT THE TRANSATLANTIC BUSINESS DIALOGUE (TABD) HAS ITS COUNTERPART IN THE NEW TRANSATLANTIC AGENDA (NTA). SOMETHING ANALOGOUS TO THE NTA WILL NEED TO BE DEVELOPED TO GIVE GOVERNMENTS AN INTERFACE WITH THE GBD.

20. (SBU) VERHOEF SAID COMMISSIONER BANGEMANN RECOGNIZES THAT THE GBD PROCESS WILL ULTIMATELY FAIL WITHOUT THE SUPPORT OF THE US GOVERNMENT. HE ALSO NOTED BANGEMANN'S INTENTION TO WRITE TO SECRETARY DALEY AND UNDER SECRETARY EIZENSTAT. IN ADDITION, HE SUGGESTED THAT THEY MIGHT WANT TO MEET ON THE MARGINS OF THE OTTAWA CONFERENCE, WHICH ALL THREE CURRENTLY ARE EXPECTED TO ATTEND, BY WHICH TIME THE GBD STEERING COMMITTEE WILL HAVE ANNOUNCED ITS PLANS, AND THE CHARACTER AND CONTENTS OF THE GBD PROCESS WILL BE CLEAR.

AN UGLY DUCKLING

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21. (SBU) COMMENT: THE COMMISSION'S CHARTER INITIATIVE HAS HATCHED THE GLOBAL BUSINESS DIALOGUE. TIME WILL TELL WHETHER THIS UGLY DUCKLING WILL BECOME A SWAN, BUT WE CAN BE SURE THAT COMMISSIONER BANGEMANN WILL CONTINUE TO TAKE A CLOSE INTEREST IN ITS CARE AND FEEDING. (DRAFTED BY

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BIRTH TO THE GLOBAL BUSINESS DIALOGUE

ECON:CHELMER)

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003. cable	From AmEmbassy Singapore re: Bilat Meeting with China (3 pages)	06/09/98	P5
004. cable	From AmEmbassy Singapore re: Bilat Meeting with Thailand (2 pages)	06/09/98	P5
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STATE ALSO FOR EAP/CIP AND EAP/CM

STATE PASS USTR FOR CORBETT

E.O. 12958: N/A
TAGS: ECPS, ETRD, APECO, USTR, HK
SUBJECT: BILAT MEETING WITH HONG KONG AT APEC TELMIN 3

SENSITIVE BUT UNCLASSIFIED - PLEASE PROTECT ACCORDINGLY

1. SUMMARY: IN THE U.S.-HONG KONG BILAT MEETING AT APEC TELMIN 3, THE U.S. DELEGATION URGED HONG KONG TO TAKE A LEADING ROLE ON ACCOUNTING RATE REFORM AND TO USE THE LIBERALIZATION PROCESS TO LEAD THE HONG KONG TELECOMS MARKET TOWARDS OPEN COMPETITION. HONG KONG DELEGATES AGREED ON THE NEED FOR RAPID PROGRESS ON ACCOUNTING RATE REFORM OVER THE NEXT FIVE MONTHS AND WILL PROPOSE PLANS FOR A TRANSITION TO THE NEW REGIME AT THE JUNE 8 MEETING OF THE INTERNATIONAL TELECOMMUNICATIONS UNION (ITU) FOCUS GROUP ON SETTLEMENT RATE REFORM. END SUMMARY.

2. DURING A JUNE 4 BILATERAL MEETING AT THE THIRD APEC TELECOMMUNICATIONS MINISTERIAL IN SINGAPORE, DIRECTOR GENERAL OF TELECOMMUNICATIONS ANTHONY WONG SAID HE AGREED WITH AMBASSADOR VONYA MCCANN ABOUT THE NEED TO MAKE THE MOST OF THE NEXT FIVE MONTHS IN THE ITU FOCUS GROUP ON SETTLEMENT RATE REFORM. LIKEWISE, MR. WONG AGREED WITH AMBASSADOR MCCANN THAT THE FOCUS GROUP SHOULD AVOID DEVELOPING COST METHODOLOGY AND FOCUS ON DEVELOPING A TRANSITIONAL MECHANISM. HE SAID HE WAS PREPARING A PAPER FOR THE JUNE 8 MEETING, IN WHICH HE WOULD FOCUS ON THE TRANSITION FROM THE CURRENT REGIME TO A MARKET-BASED MECHANISM OF ACCOUNTING RATES.

3. MR. WONG SAID HIS PREFERENCE WAS FOR A PROXY COST-BASED TERMINATION RATE AUGMENTED BY A TRANSITIONAL UNIVERSAL SERVICE CHARGE. THE LATTER WOULD HAVE AN ELEMENT OF SUBSIDY, WHICH EACH COUNTRY WOULD DETERMINE FOR ITSELF. THE NEW RATES WOULD BE SET NO HIGHER THAN THE CURRENT RATES AND THE SUBSIDIES WOULD BE PLOWED BACK INTO TELECOMMUNICATIONS INFRASTRUCTURE DEVELOPMENT. AMBASSADOR MCCANN NOTED THAT THE U.S. DID NOT OPPOSE TERMINATION CHARGES, PROVIDED THEY WERE COMPARABLE TO RATES IN A COMPETITIVE MARKET. MR. WONG SAID HE BELIEVED THAT MOST COUNTRIES WOULD

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ACCEPT THIS PRINCIPLE. CONCLUDING THE DISCUSSION OF ACCOUNTING RATE REFORM, AMBASSADOR MCCANN ASKED MR. WONG TO STAY IN CLOSE CONTACT WITH THE U.S. AND MAINTAIN A HIGH LEVEL OF COOPERATION.

4. ON THE ISSUE OF LIBERALIZATION, HONG KONG SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING K.C. KWONG SAID HONG KONG IS STILL WORKING ON ITS TRANSITION TO OPEN COMPETITION AND NOTED THAT THE MORATORIUM ON NEW FIXED-LINE LICENSES WILL END THIS MONTH. KWONG SAID THAT JUST AS FOREIGN TELCOS ARE LOOKING TO GET INTO HONG KONG, HONG KONG TELCOS ARE LOOKING TO GET INTO FOREIGN MARKETS AND MENTIONED THAT ONE HONG KONG TELCO WAS CURRENTLY HAVING DIFFICULTY ENTERING THE U.S. MARKET. FCC OFFICIALS EXPLAINED THAT THE HONG KONG TELCO IN QUESTION HAD ESSENTIALLY ASKED THE FCC TO CREATE A NEW CATEGORY OF SERVICE. WHILE NOTING THE UNUSUAL NATURE OF THE REQUEST, FCC OFFICIALS PROMISED TO RESPOND TO THE APPLICATION ASAP AND SAID THAT CHAIRMAN KENNARD WAS AWARE OF THE ISSUE.

5. EMPHASIZING THE POINT THAT MANY U.S. TELCOS WOULD LIKE TO COMPETE IN HONG KONG, AMBASSADOR MCCANN URGED SECRETARY KWONG TO LET THE MARKET DECIDE HOW MANY TELCOS THE MARKET WILL BEAR. SECRETARY KWONG SAID THAT IT WAS RELATIVELY EASY FOR FOREIGN FIRMS TO ENTER THE HONG KONG MARKET. MOREOVER, HE SAID THAT COMMENTS ABOUT HONG KONG'S TELECOMS POLICIES FROM FOREIGN FIRMS WERE TREATED SERIOUSLY.

6. HONG KONG'S DELEGATION WAS LED BY SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING K.C. KWONG AND INCLUDED DIRECTOR GENERAL FOR TELECOMMUNICATIONS ANTHONY S.K. WONG.

7. USDEL WAS LED BY AMBASSADOR VONYA MCCANN AND INCLUDED COMMERCE ASSISTANT SECRETARY LARRY IRVING, FCC OFFICIALS ARI FITZGERALD AND IRENE WU, USTR OFFICIAL BILL CORBETT, AND ECONOFF (NOTETAKER).

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GENEVA PASS USTR

PARIS FOR OECD

STATE ALSO FOR EB/CIP AND EAP/RSP/TC

STATE PASS USTR FOR CORBETT

E.O. 12958: N/A
TAGS: ECPS, ETRD, APECO, USTR, TW
SUBJECT: BILAT MEETING WITH CHINESE TAIPEI AT APEC TELMIN 3

SENSITIVE BUT UNCLASSIFIED - PLEASE PROTECT ACCORDINGLY

1. SUMMARY: DURING THE U.S.-CHINESE TAIPEI BILAT MEETING AT APEC TELMIN 3, TAIPEI REVIEWED ITS EFFORTS TO PROMOTE E-COMMERCE AND EXPRESSED ITS INTEREST IN FINDING SOLUTIONS TO THE PROBLEMS OF ACCOUNTING RATE REFORM AND INTERNET BANDWIDTH FINANCING. THE MINISTER EVEN SUGGESTED THAT SOME SORT OF ACCOUNTING RATE REGIME BE APPLIED TO INTERNET BANDWIDTH, TO WHICH THE U.S. DELEGATION POLITELY DEMURRED. MEANWHILE, THE U.S. URGED TAIPEI TO CONSIDER USE OF THE APEC TELECOM MRA FOR BUREAU OF COMMODITIES INSPECTION QUARANTINE (BCIQ) CERTIFICATIONS OF ELECTRICAL PRODUCTS TO AVOID PROCEDURES WHICH U.S. FIRMS HAVE CALLED COSTLY AND REDUNDANT. END SUMMARY.

2. DURING A JUNE 2 BILATERAL MEETING AT THE THIRD APEC TELECOMMUNICATIONS MINISTERIAL IN SINGAPORE, TAIPEI MINISTER OF TRANSPORTATION AND COMMUNICATIONS (MOTC) LIN FONG-CHENG GAVE AN OVERVIEW OF TAIPEI'S EFFORTS TO PROMOTE E-COMMERCE, DEMONSTRATING THE IMPORTANCE THAT TAIPEI PLACES ON IT. HE POINTED OUT THAT THERE WAS SIGNIFICANT PRIVATE SECTOR INVOLVEMENT AND SPECIFICALLY WELCOMED THE PARTICIPATION OF U.S. FIRMS. THE MINISTER SAID THAT TAIPEI SUPPORTS THE FIVE PRINCIPLES OF THE U.S. GLOBAL ELECTRONIC COMMERCE INITIATIVE, BUT HAD TECHNICAL PROBLEMS WITH THE ZERO-TAX PROPOSAL.

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3. IN LIGHT OF THE GROWTH OF THE INTERNET AND E-COMMERCE, THE MINISTER SAID, TAIPEI IS INCREASINGLY CONCERNED ABOUT INTERNET BANDWIDTH FINANCING. HE SUGGESTED THAT THERE BE A MULTILATERAL FRAMEWORK FOR ADDRESSING THIS ISSUE AND SUGGESTED THAT A REGIME LIKE THE CURRENT ACCOUNTING RATE SYSTEM MIGHT BE NEEDED. AMBASSADOR VONYA MCCANN COUNTERED THIS PROPOSAL ARGUING THAT THE INTERNET WAS STILL TOO NEW AND CHANGING TOO FAST TO BE SADDLED WITH SUCH A HEAVY-HANDED SOLUTION. SHE EMPHASIZED THE IMPORTANCE OF FINDING A MARKET-BASED SOLUTION TO ANY PROBLEMS AND STATED THAT OPEN TELECOMS MARKETS THAT ENTICE INFRASTRUCTURE INVESTMENT WOULD BE THE BEST SOLUTION TO THE BANDWIDTH FINANCING PROBLEM.

4. AMBASSADOR MCCANN RAISED THE ISSUE OF BCIQ RULES REQUIRING THE CERTIFICATION OF ELECTRICAL EQUIPMENT, INCLUDING PRODUCTS ALREADY AVAILABLE IN TAIWAN. SHE EXPRESSED U.S. INDUSTRY CONCERN THAT THESE CERTIFICATIONS ARE BOTH COSTLY AND REDUNDANT. WHILE BCIQ IS NOT UNDER HIS AUTHORITY, THE MINISTER RESPONDED BY SAYING THAT THE IMPLEMENTATION OF THESE RULES (AVAILABLE AT WWW.MOEA.BCIQ.GOV.TW) HAD ALREADY BEEN DELAYED SIX MONTHS BEFORE BEING IMPLEMENTED IN JANUARY 1998. THE MINISTER SAID THAT HE HAD MADE REQUESTS TO BCIQ FOR COOPERATION ON THE IMPLEMENTATION OF REGULATIONS ON FREQUENCY AND RADIATION AND FOR THE TRANSFER OF AUTHORITY FOR FAXES, MODEMS, AND TELEVISIONS TO MOTC. HE SAID HE HOPED THAT ALL TELECOMS PRODUCTS WOULD EVENTUALLY FALL UNDER THE AUTHORITY OF MOTC.

5. USTR CORBETT SUBSEQUENTLY FOLLOWED UP ON THIS TOPIC WITH MOTC CHAIRMAN FOR INTERNATIONAL AFFAIRS CHEN WEN-HSIEN. MR. CHEN AGREED TO LOOK INTO WHETHER BCIQ COULD JOIN IN THE APEC TELECOM EQUIPMENT MRA, THEREBY ALLOWING TESTING AND, AS NECESSARY CERTIFICATION OF EQUIPMENT IN THE U.S. PRIOR TO EXPORT.

6. THE CHINESE TAIPEI DELEGATION WAS LED BY MOTC MINISTER LIN FONG-CHENG AND INCLUDED MOTC CHAIRMAN FOR INTERNATIONAL AFFAIRS CHEN WEN-HSIEN, MOTC DIRECTOR GENERAL OF TELECOMMUNICATIONS TENG TIEN-LAI, AND MINISTRY OF FOREIGN AFFAIRS DEPUTY DIRECTOR GENERAL FOR ECONOMIC AND TRADE AFFAIRS LIN YI-MIN.

7. USDEL WAS LED BY AMBASSADOR VONYA MCCANN AND INCLUDED COMMERCE ASSISTANT SECRETARY LARRY IRVING, FCC OFFICIALS ARI FITZGERALD AND IRENE WU, USTR OFFICIAL BILL CORBETT, AND ECONOFF (NOTETAKER).

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E.O. 12958: N/A
TAGS: ECPS, ETRD, APECO, USTR, CH
SUBJECT: BILAT MEETING WITH CHINA AT APEC TELMIN 3

SINGAPORE 01 OF 02 2531

SENSITIVE BUT UNCLASSIFIED - PLEASE PROTECT ACCORDINGLY

1. SUMMARY: IN THE U.S.-CHINA BILAT MEETING AT APEC TELMIN 3, THE CHINESE MINISTER GAVE AN OVERVIEW OF THE NEWLY-CREATED MINISTRY OF THE INFORMATION INDUSTRY (MII), EMPHASIZING THE SEPARATION OF THE OPERATIONAL AND REGULATORY ROLES AND NOTING THAT ENTERPRISES WOULD BE EXPECTED TO MANAGE THEIR OWN AFFAIRS. THE U.S. DELEGATION URGED THAT CHINA ADOPT THE WTO REFERENCE PAPER AS A BLUEPRINT FOR ITS REGULATORY REFORM. CITING HIGH-LEVEL U.S. GOVERNMENT INTEREST IN THIS ISSUE, THE U.S. DELEGATION ASKED THE MINISTER TO MOVE AS QUICKLY AS POSSIBLE TO GRANT LICENSES FOR CDMA MOBILE PHONE TECHNOLOGY. FINALLY, BOTH DELEGATIONS ASKED FOR SUPPORT FOR CANDIDACIES TO THE ITU COUNCIL. END SUMMARY.

2. DURING A JUNE 4 BILATERAL MEETING AT THE THIRD APEC TELECOMMUNICATIONS MINISTERIAL IN SINGAPORE, CHINESE MINISTER FOR INFORMATION INDUSTRIES WU JICHUAN GAVE AN OVERVIEW OF HIS NEWLY-CREATED MINISTRY'S RESPONSIBILITIES. HE SAID THAT THE MII WAS DESIGNED TO SEPARATE THE RESPONSIBILITIES OF OPERATIONAL AND REGULATORY ROLES THE GOVERNMENT PLAYED IN THE INFORMATION INDUSTRY. MII'S ROLE WILL BE TO FORMULATE PLANS, STRATEGY, LAWS, AND REGULATIONS FOR THE INFORMATION INDUSTRY IN ADDITION TO MANAGING THE COUNTRY'S INFORMATION RESOURCES (SIC). THE MINISTER SAID THAT, EVEN THOUGH MOST INFORMATION INDUSTRY FIRMS ARE STATE-OWNED, MII CANNOT MANAGE THE BUSINESS OF THE VARIOUS ENTERPRISES

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IN THE INFORMATION SECTOR, SO THEY WILL HAVE TO MANAGE THEMSELVES. HOWEVER, MII WILL ASSIST THEM IN RESTRUCTURING AND, FOR EXAMPLE, WILL ENCOURAGE CONSOLIDATION OF THE PAGING INDUSTRY, WHICH HAS OVER 2000 FIRMS, TO MAKE MORE EFFICIENT USE OF RADIO SPECTRUM.

3. MINISTER WU SAID THAT CHINA'S INFORMATION INDUSTRY IS FACED WITH THE TWIN CHALLENGES OF COPING WITH RAPID ECONOMIC GROWTH AND REDUCING STRUCTURAL INEFFICIENCIES. HE SAID THAT THE SEPARATION OF THE OPERATIONS AND REGULATION ASPECTS OF THE INFORMATION INDUSTRY WILL LEAD TO GREATER COMPETITION. HOWEVER, HE ADVOCATED AN ORDERLY INTRODUCTION OF COMPETITION AND SAID THAT MII MUST ENSURE THAT NETWORKS MEET UNIFORM STANDARDS AND ARE INTEROPERABLE.

4. NOW SEPARATED FROM THE TELECOMS SECTOR, THE CHINESE POSTAL SYSTEM IS UNDER MII. CITING THE SUCCESSFUL REFORM OF THE U.S. POSTAL SERVICE AS A MODEL, MINISTER WU SAID THAT CHINA WANTS TO BRING ITS POSTAL SYSTEM INTO PROFITABILITY WITHIN THE NEXT FEW YEARS. UNTIL SUCH TIME, HE SAID, THE STATE WOULD CONTINUE TO REGULATE THE POSTAL SYSTEM.

5. ALTHOUGH HE COULD NOT YET GIVE A FULL PICTURE OF MII'S OVERALL STRUCTURE, MINISTER WU SAID HE WOULD STREAMLINE HIS MINISTRY BY CUTTING PERSONNEL TO ABOUT 400. THE TWO MINISTRIES AND VARIOUS OTHER AGENCIES WHICH WERE FOLDED INTO MII NOW EMPLOY ABOUT 800 WORKERS. THE MINISTER SAID SOME RESPONSIBILITIES SUCH AS MONITORING STATIONS AND INSTITUTIONS TO DEVELOP STANDARDS AND WOULD BE HIVED OFF FROM THE MINISTRY AND SET UP AS SEPARATE ENTITIES, WHOSE STAFF MEMBERS WILL NOT BE CIVIL SERVANTS.

6. AFTER A BRIEF PRESENTATION ON THE BENEFITS OF OPEN COMPETITION, AMBASSADOR VONYA MCCANN ASKED MINISTER WU TO CONSIDER USE OF THE WTO REFERENCE PAPER AS THE BLUEPRINT FOR MII'S REORGANIZATION. COMMERCE ASSISTANT SECRETARY IRVING AFFIRMED THE VALUE OF THE REFERENCE PAPER PRINCIPLES.

6. AMBASSADOR MCCANN AND ASST. SECRETARY IRVING RAISED THE ISSUE OF THE LICENSING OF CDMA MOBILE PHONE TECHNOLOGY IN CHINA, URGING THE CHINESE TO ALLOW THE SYSTEM TO BE INTRODUCED TO THE MARKET. MINISTER WU SAID THAT THE 800MHZ SYSTEM PROVIDED A NECESSARY SOLUTION TO SOME OF CHINA'S SPECTRUM PROBLEMS. MOREOVER, HE SAID THAT CHINA LOOKED FORWARD TO THE THIRD GENERATION OF CDMA TECHNOLOGY AND NOTED THAT THE STANDARDIZATION OF BROADBAND CDMA BY THE ITU WOULD BE AN IMPORTANT STEP.

7. URGING U.S. CONSIDERATION, MINISTER WU RAISED THE LANDING ISSUE OF THE U.S.-CHINA CABLE NETWORK, WHICH WILL SOON BE UNDER CONSTRUCTION. HE ALSO ASKED FOR FURTHER DISCUSSION OF THE U.S.-CHINA ACCOUNTING RATE. IN CONCLUSION, THE CHINESE MINISTER ASKED FOR U.S. SUPPORT OF ITS CANDIDATE FOR DIRECTOR AT THE ITU PLENIPOTENTIARY IN OCTOBER. IN TURN, THE U.S. ASKED FOR CHINA'S

SUPPORT IN ITS BID TO RETURN TO THE ITU COUNCIL AND, NOTING PRIOR CLOSE COOPERATION ON THE ISSUE OF COST RECOVERY, HOPED THAT CHINA TOO WOULD RETURN TO THE COUNCIL.

8. THE CHINESE DELEGATION WAS LED BY MINISTER FOR INFORMATION INDUSTRIES WU JICHUAN AND INCLUDED DIRECTOR GENERAL ZHAO XINTONG, DIRECTOR SUN BENJI, DEPUTY DIRECTOR JIANG LIN, AND AN INTERPRETER.

9. THE U.S. DELEGATION WAS LED BY AMBASSADOR VONYA MCCANN AND INCLUDED COMMERCE ASSISTANT SECRETARY LARRY IRVING, FCC OFFICIALS ARI FITZGERALD AND IRENE WU, USTR OFFICIAL BILL CORBETT, AND ECONOFF (NOTETAKER).

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	CIAE-00	CTME-00	DINT-00	DODE-00	ITCE-00	DOTE-00	SRPP-00
	EAP-01	EB-00	EXME-00	EUR-01	E-00	UTED-00	FRB-00
	H-01	TEDE-00	INR-00	IO-00	ITC-01	JUSE-00	LAB-01
	L-01	ADS-00	NSAE-00	NSCE-00	OIC-02	OMB-01	OPIC-01
	PA-00	PRS-00	CIO-00	SP-00	SSO-00	SS-00	STR-00
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P 090154Z JUN 98
FM AMEMBASSY SINGAPORE
TO SECSTATE WASHDC PRIORITY 1966
INFO USDOC WASHDC PRIORITY
APEC COLLECTIVE PRIORITY
USMISSION GENEVA PRIORITY
FCC WASHDC PRIORITY

UNCLAS SINGAPORE 002529

SENSITIVE

USDOC FOR NTIA/STEINOUR

STATE ALSO FOR EB/CIP AND EAP/BCLTV

STATE PASS USTR FOR CORBETT

GENEVA PASS USTR

FCC FOR KENNARD, FITZGERALD, AND WU

E.O. 12958: N/A
TAGS: ECPS, ETRD, APECO, USTR, TH
SUBJECT: BILAT MEETING WITH THAILAND AT APEC TELMIN 3

SENSITIVE BUT UNCLASSIFIED - PLEASE PROTECT ACCORDINGLY

1. SUMMARY: IN THE U.S.-THAILAND BILAT MEETING AT APEC TELMIN 3, THE THAI DELEGATION SAID IT WAS WORKING TOWARD THE LIBERALIZATION OF THE THAI TELECOMS MARKET AND HOPED TO PRIVATIZE THE TWO STATE-OWNED CARRIERS BY 1999, ALLOWING GREATER COMPETITION IN 2006. END SUMMARY.

2. DURING A JUNE 4 BILATERAL MEETING AT THE THIRD APEC TELECOMMUNICATIONS MINISTERIAL CONFERENCE IN SINGAPORE, MINISTER SUTHEP REVIEWED THAILAND'S TELECOM MASTERPLAN, WHICH MANDATED THE ESTABLISHMENT OF A NATIONAL COMMUNICATIONS COMMISSION AND PRIVATIZATION OF THE TWO STATE-OWNED TELECOM CARRIERS. THE MONOPOLIES OF THESE STATE ENTERPRISES WILL ALSO BE ABOLISHED.

3. THE MINISTER NOTED THAT IMPLEMENTATION OF THE PLAN WAS COMPLICATED BY ARTICLE 40 OF THE NEW CONSTITUTION, WHICH MANDATES AN INDEPENDENT BODY TO ALLOCATE NATIONAL RESOURCES - INCLUDING RADIO SPECTRUM IN THE TELECOM AREA. HE SAID THE MINISTRY WAS TRYING TO PERSUADE THE GOVERNMENT THAT THERE NEED NOT BE ONLY ONE INDEPENDENT BODY FOR RESOURCE ALLOCATION. THERE COULD BE A SEPARATE ONE FOR TELECOM, FOR EXAMPLE. THE MINISTER EXPECTED INTERPRETATION OF THE CONSTITUTION TO BE SETTLED IN THE NEXT TWO MONTHS.

4. THAILAND'S PLAN IS TO PRIVATIZE TOT AND CAT BY OCTOBER 1999. THE MARKET WILL BE OPEN TO COMPETITION IN 2006. THE MINISTER ALSO WELCOMED PARTICIPATION OF U.S. COMPANIES TO JOIN THE TWO STATE ENTERPRISES AS STRATEGIC PARTNERS. HE NOTED HE HAD ALREADY BEEN APPROACHED BY NORTEL AND SINGAPORE TELECOM.

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5. THE MINISTER NOTED THAT THE MAIN CHALLENGE IN THE PRIVATIZATION PROCESS WAS TO WIN THE SUPPORT OF THE CURRENT EMPLOYEES. HE SAID THAT HE WOULD VISIT EVERY PROVINCE, BEGINNING JUNE 5, TO SPEAK TO EMPLOYEES TO EXPLAIN THE NEED FOR PRIVATIZATION.

6. THE THAI DELEGATION REQUESTED FUTURE COOPERATION WITH THE FCC AS THEY UNDERGO DISCUSSIONS TO ESTABLISH THE NATIONAL COMMUNICATIONS COMMISSION. THE FCC WELCOMED FURTHER DIALOGUE WITH THE MINISTRY.

7. THE THAI DELEGATION WAS LED BY MINISTER OF TRANSPORT AND COMMUNICATIONS (MOTC) SUTHEP THAUGSUBAN AND INCLUDED MOTC PERMANENT SECRETARY MANIDOL CHANTRANGKURN, POST AND TELEGRAPH DEPARTMENT DIRECTOR-GENERAL SETHAPORN CUSRIPITUCH, MOTC ADVISOR FOR AIR TRANSPORT SARIN SKULRATANA, ADVISOR TO THE MINISTER LIKIT HONGLADAROM, AND AN INTERPRETER.

8. USDEL WAS LED BY AMBASSADOR VONYA MCCANN AND INCLUDED COMMERCE ASSISTANT SECRETARY LARRY IRVING; STATE OFFICER MIKE MCCABE, FCC OFFICIALS ARI FITZGERALD AND IRENE WU, AND USTR OFFICIAL BILL CORBETT.

9. THIS CABLE WAS CLEARED BY THE MEMBERS OF THE U.S. DELEGATION.

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P 090119Z JUN 98
FM AMEMBASSY SINGAPORE
TO SECSTATE WASHDC PRIORITY 1963
INFO USDOC WASHDC PRIORITY
APEC COLLECTIVE PRIORITY
AMEMBASSY PARIS PRIORITY
WHITE HOUSE WASHDC PRIORITY
USMISSION GENEVA PRIORITY
FCC WASHDC PRIORITY

UNCLAS SECTION 01 OF 02 SINGAPORE 002527

SENSITIVE

WHITE HOUSE FOR IRA MAGAZINER

USDOC FOR NTIA/STEINOUR

FCC FOR KENNARD, FITZGERALD, AND WU

GENEVA PASS USTR

PARIS PASS OECD

STATE PASS USTR FOR CORBETT

E.O. 12958: N/A
TAGS: ECPS, ETRD, APECO, USTR, JA
SUBJECT: BILAT MEETING WITH JAPAN MPT AT APEC TELMIN 3

SINGAPORE 01 OF 02 2527

SENSITIVE BUT UNCLASSIFIED - PLEASE PROTECT ACCORDINGLY

1. SUMMARY: THE U.S.-JAPAN BILAT MEETING AT APEC TELMIN 3 WAS HIGHLIGHTED BY AGREEMENT ON SUPPORT FOR THE MUTUAL RECOGNITION ARRANGEMENT (MRA) AND BY DIFFERENCES ON THE ISSUES OF ACCOUNTING RATE REFORM AND INTERNET BANDWIDTH FINANCING. JAPAN CALLED ON THE FEDERAL COMMUNICATIONS COMMISSION (FCC) TO WITHDRAW ITS BENCHMARK RULE AND REQUESTED FURTHER TALKS ON THE INTERNET BANDWIDTH FINANCING ISSUE. THE U.S. REITERATED ITS PREFERENCE FOR A MULTILATERAL SOLUTION TO ACCOUNTING RATE REFORM BUT NOTED THAT THE BENCHMARK RULE HAD PROVIDED A MUCH NEEDED IMPETUS TO NEGOTIATIONS IN THE INTERNATIONAL TELECOMMUNICATIONS UNION (ITU). BOTH COUNTRIES REITERATED THEIR SUPPORT OF THE MRA. END SUMMARY.

2. DURING A JUNE 2 BILATERAL MEETING AT THE THIRD APEC TELECOMMUNICATIONS MINISTERIAL IN SINGAPORE, JAPANESE STATE SECRETARY FOR THE MINISTRY OF POST AND TELECOMMUNICATIONS GEN NAKATANI EXPRESSED JAPAN'S SUPPORT FOR THE APEC MRA ON TELECOMS EQUIPMENT TESTING AND SAID THAT JAPAN WOULD IMPLEMENT IT BY JULY 1999. THE U.S. DELEGATION SAID IT WOULD MEET THAT DEADLINE AND REITERATED SUPPORT FOR THE MRA.

3. ON ANOTHER ISSUE OF MUTUAL CONCERN, MR. NAKATANI ASKED HOW RAPIDLY E-COMMERCE WAS SPREADING IN THE U.S. COMMERCE ASSISTANT SECRETARY LARRY IRVING GAVE AN OVERVIEW OF THE COMMERCE

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DEPARTMENT'S RECENT REPORT ON THE EMERGING DIGITAL ECONOMY, HIGHLIGHTING THE FACT THAT HIGH-TECH INFORMATION-BASED INDUSTRIES HAVE BECOME THE ENGINE THAT DRIVES THE U.S. ECONOMY.

4. RAISING THE ISSUE OF ACCOUNTING RATE REFORM, AMBASSADOR VONYA MCCANN SAID SHE LOOKED FORWARD TO JAPANESE ACTION AND LEADERSHIP IN THE ITU FOCUS GROUP. SHE SAID IT WAS IMPORTANT FOR THE FOCUS GROUP TO COME UP WITH TRANSITIONAL MECHANISMS WHICH WILL LEAD TO A COST-BASED SYSTEM OF INTERCONNECTION. SHE URGED THAT THE FOCUS GROUP NOT GET BOGGED DOWN BY COST METHODOLOGY, WHICH WAS BEING HANDLED BY A SEPARATE GROUP, I.E. ITU TELECOMMUNICATIONS STUDY GROUP 3.

5. AFTER MR. NAKATANI EXPRESSED HIS HOPE THAT THE FCC WOULD WITHDRAW ITS BENCHMARK RULE, ASST. SECRETARY IRVING REITERATED THE U.S. PREFERENCE FOR A MULTILATERAL SOLUTION TO THE QUESTION OF ACCOUNTING RATE REFORM. HOWEVER, HE POINTED OUT THAT THE BENCHMARK RULING HAD GIVEN A STRONG IMPETUS TO EFFORTS IN THE ITU TO RESOLVE THE PROBLEM. FCC OFFICIALS NOTED THAT THE FCC WOULD CONSIDER MODIFICATION OF THE BENCHMARK RULES IF A MULTILATERAL SOLUTION WERE ACHIEVED. HOWEVER, MR. NAKATANI SAID HE REMAINED UNCONVINCED BY U.S. ARGUMENTS AND URGED THE U.S. TO RESPECT THE ITU PROCESS.

6. MR. NAKATANI ALSO SAID HE LOOKED FORWARD TO A DISCUSSION WITH THE U.S. ON THE INTERNET BANDWIDTH FINANCING PROBLEM, WHICH HE ATTRIBUTED TO AMERICA'S DOMINATION OF THE INTERNET. ASST. SECRETARY IRVING POINTED OUT THAT THE INTERNET BACKBONE IS EVIDENCE OF THE EFFECTIVENESS OF PRIVATE SECTOR INITIATIVE, NOT GOVERNMENT REGULATION. HE SAID THAT ANY COUNTRY CAN MAKE ITS PRESENCE FELT ON THE INTERNET BY DEREGULATING ITS TELECOMS MARKETS AND ENTICING INVESTMENT IN INFRASTRUCTURE. HE ARGUED THAT ENCUMBERING THE DYNAMISM OF THE INTERNET WITH AN ARCHAIC, INEFFICIENT REGULATORY (I.E. ACCOUNTING RATE) SYSTEM WOULD HAMPER THE GROWTH OF E-COMMERCE AND NOT LEAD TO A MARKET-BASED SOLUTION OF INTERNET BANDWIDTH FINANCING.

7. THE U.S. DELEGATION NOTED THE RECENT AGREEMENT REACHED BETWEEN THE U.S. AND JAPAN AT THE G-8 MEETING IN BIRMINGHAM, U.K., ON A SCHEDULE TO IMPLEMENT A LONG-RUN, INCREMENTAL COST MODEL FOR INTERCONNECTION IN JAPAN. THE FCC'S ARI FITZGERALD INDICATED SUPPORT FOR MPT'S EFFORTS TO LOWER INTERCONNECTION RATES AND LOOKED FORWARD TO CONTINUED DIALOGUE. VISIBLY NERVOUS, MEMBERS OF THE JAPANESE DELEGATION CALMED WHEN IT BECAME CLEAR THAT FURTHER NEGOTIATION OF THE AGREEMENT ON INTERCONNECTION PRICES WOULD NOT BE HELD AT THIS MEETING.

8. USDEL WAS LED BY AMBASSADOR VONYA MCCANN AND INCLUDED COMMERCE ASSISTANT SECRETARY LARRY IRVING, FCC OFFICIALS ARI FITZGERALD AND IRENE WU, USTR OFFICIAL BILL CORBETT, AND ECONOFF

SINGAPORE 02 OF 02 2527

(NOTETAKER).

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	FRB-00	H-01	IM-01	TEDE-00	INR-00	ITC-01	LAB-01
	LOC-01	L-01	ADS-00	NSAE-00	OMB-01	OPIC-01	PA-00
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FM AMEMBASSY BRUSSELS
TO SECSTATE WASHDC IMMEDIATE 8663
INFO WHITE HOUSE WASHDC
USDOC WASHDC
ALL EUROPEAN UNION POST COLLECTIVE

UNCLAS SECTION 01 OF 05 BRUSSELS 003524

SENSITIVE

WHITE HOUSE FOR MAGAZINER

STATE FOR EB/CIP, EB/TPP/BTA/DCT AND EUR/ERA

STATE PASS USTR FOR DON ABELSON

USDOC FOR NTIA - BURR AND ITA - WELLBERY
E.O. 12958: N/A
TAGS: ECPS, ETRD, KIPR, EUN, BE
SUBJECT: ELECTRONIC COMMERCE: MAGAZINER AND PM DEHAENE

REF: (A) BRUSSELS 3325 (B) BRUSSELS 00926

BRUSSELS 01 OF 05 3524

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1. SUMMARY: (SBU) IN THEIR MAY 26 MEETING IN BRUSSELS, BELGIAN PRIME MINISTER JEAN-LUC DEHAENE AGREED WITH PRESIDENTIAL ADVISOR IRA MAGAZINER THAT DEVELOPMENT OF ELECTRONIC COMMERCE IS CRUCIAL TO SPUR ECONOMIC GROWTH AND JOB CREATION. GOVERNMENT "SHOULD NOT INTERFERE TOO MUCH" IN DEHAENE'S VIEW, BUT MUST NONETHELESS CREATE THE LEGAL FRAMEWORK TO SOLVE PROBLEMS, LIBERALIZE TELECOMMUNICATIONS TO CREATE AN OPEN ENVIRONMENT, AND DEVELOP RULES AND STANDARDS "IN A EUROPEAN CONTEXT" TO ENSURE PRIVACY AND SAFETY ON THE INTERNET. MAGAZINER NOTED THAT WE SHARE THE SAME GOALS, ESPECIALLY WITH RESPECT TO PROTECTING PRIVACY, BUT SOMETIMES DIFFER ON THE BEST MEANS TO ACHIEVE THEM. IT IS A "FALSE PROMISE" FOR GOVERNMENT TO SUGGEST IT CAN PROTECT PRIVACY WITH 10,000 NEW WEBSITES A WEEK COMING ON LINE; INDUSTRY-LED CODES OF CONDUCT AND WEBSITE SEALS OF APPROVAL BACKED UP BY FRAUD LAWS WILL BE MORE EFFECTIVE. SIMILARLY, MARKETS SHOULD DEVELOP VEHICLES TO PROVIDE VARYING DEGREES OF ELECTRONIC AUTHENTICATION FROM WHICH CUSTOMERS CAN CHOOSE; GOVERNMENT LICENSING OF SPECIFIC MEANS WILL BE RAPIDLY OUTSTRIPPED BY NEW TECHNOLOGIES. DEHAENE ACKNOWLEDGED THAT PERHAPS "YOU DON'T NEED RESTRICTIONS AT FIRST, YOU NEED A CERTAIN TIME TO TAKE RISKS, AND ACCIDENTS AT A LATER STAGE" WILL LEAD TO APPROPRIATE REGULATION. HE AGREED WITH MAGAZINER'S ASSESSMENT THAT BELGIUM'S HIGH CABLE PENETRATION, RAPID INSTALLATION OF WIDE BANDWIDTH, AND SOPHISTICATED BANKING SYSTEM SHOULD MAKE IT A LEADER IN DEVELOPING E-COMMERCE. HOWEVER, HE ADDED, THERE IS A LACK OF TECHNOLOGICAL KNOWHOW IN THE PUBLIC SECTOR, WHICH INCREASINGLY IS LOSING THE BEST

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TALENT TO THE PRIVATE SECTOR. THE BUREAUCRACY'S CONSERVATISM HAD CAUSED BELGIUM TO MISS THE FIRST WAVE OF THE INFORMATION REVOLUTION; CHANGING THAT MINDSET REMAINS A FORMIDABLE TASK. END SUMMARY

2. (SBU) WHILE IN BRUSSELS MAY 26 TO DELIVER THE KEYNOTE ADDRESS AT BELGIUM'S ANNUAL TELECOMMUNICATIONS TRADE FAIR, ADVISOR TO THE PRESIDENT FOR POLICY DEVELOPMENT IRA MAGAZINER MET TO DISCUSS ELECTRONIC COMMERCE WITH BELGIAN PRIME MINISTER JEAN-LUC DEHAENE, TELECOMMUNICATIONS AND ECONOMIC AFFAIRS MINISTER ELIO DI RUPO (SEPTEL), BELGIAN BUSINESS LEADERS AND PRESS, AND EU COMMISSIONER MARTIN BANGEMANN (REF A).

3. (SBU) IN HIS WIDELY REPORTED KEYNOTE ADDRESS (TEXT SEPTEL) AND IN HIS MEETINGS WITH BELGIAN OFFICIALS AND BUSINESS LEADERS, MAGAZINER HIGHLIGHTED THE FACT THAT RAPID ECONOMIC GROWTH AND JOB CREATION IN THE US IS BEING DRIVEN BY NEW INFORMATION TECHNOLOGY INDUSTRIES AND ELECTRONIC COMMERCE. HE UNDERSCORED THAT THEY WILL BE ENGINES OF GROWTH FOR THE WORLD ECONOMY, AS WELL, IF THE RIGHT CONDITIONS ARE PUT IN PLACE GLOBALLY. IN THE US ALONE IN THE PAST THREE YEARS, OVER A THIRD OF REAL ECONOMIC GROWTH HAS BEEN DRIVEN BY THE INFORMATION TECHNOLOGY INDUSTRY, PRIMARILY THE BUILD-OUT OF THE INTERNET. OVER SEVEN MILLION NEW JOBS HAVE BEEN CREATED IN THIS SECTOR; THESE JOBS PAY ON AVERAGE TWO THIRDS MORE THAN THE AVERAGE WAGE. U.S. INFLATION HAS DROPPED, DRIVEN BY THE DECLINE IN COMPUTER PRICES. USERS OF THE INTERNET HAVE JUMPED FROM 4 MILLION TO 100 MILLION IN THREE AND A HALF YEARS, AND COULD REACH 1 BILLION IN SEVEN YEARS. THE AMOUNT OF TRAFFIC ON THE INTERNET DOUBLES EVERY 100 DAYS. COMMERCE ON THE INTENET AMOUNTED TO $6 BILLION IN 1997, AND COULD REACH $300 BILLION BY THE YEAR 2002.

4. (SBU) MAGAZINER EXPLAINED TO HIS BELGIAN INTERLOCUTORS THAT IN ORDER TO ESTABLISH A FRAMEWORK TO SPUR SIMILAR DEVELOPMENT OF E-COMMERCE GLOBALLY, THE US HAS BEEN SEEKING INTERNATIONAL AGREEMENTS ON A VARIETY OF E-COMMERCE RELATED ISSUES. THE EXTRAORDINARY BOOM IN USE OF THE INTERNET AND ELECTRONIC COMMERCE WHICH THE US HAS EXPERIENCED IS DUE TO THE FACT THAT WE HAVE LET THE MARKET DRIVE DEVELOPMENT AND NOT SOUGHT TO OVERTAX OR OVER-REGULATE, WHICH WOULD STRANGLE DEVELOPMENT. THE ECONOMIC GROWTH WHICH HAS RESULTED HAS HAD GREAT BENEFITS, INCREASING TAX REVENUES AND HELPING REDUCE THE BUDGET DEFICIT.

DEHAENE: GOV'T SHOULD NOT INTERFERE TOO MUCH, BUT...

BRUSSELS 02 OF 05 3524

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E.O. 12958: N/A
TAGS: ECPS, ETRD, KIPR, EUN, BE
SUBJECT: ELECTRONIC COMMERCE: MAGAZINER AND PM DEHAENE

REF: (A) BRUSSELS 3325 (B) BRUSSELS 00926

5. (SBU) DEHAENE, ACCOMPANIED BY THE CEO OF THE LEADING BELGIAN INDUSTRY ASSOCIATION THAT SPONSORED THE TELECOMS FAIR AT WHICH MAGAZINER SPOKE (PHILIPPE DE BUCK VAN OVERSTRAETEN) AND CABINET COUNSELOR HENDRIK LARMUSEASU, TOLD MAGAZINER AND THE AMBASSADOR HE AGREED THE DEVELOPMENT OF E COMMERCE IS CRUCIAL. MOREOVER, AS POINTED OUT BY EU COMMISSIONER BANGEMAN IN HIS WHITE PAPER, "PUBLIC AUTHORITIES SHOULD NOT INTERFERE TOO MUCH." THE PRIMARY TASK FOR GOVERNMENT, DEHAENE SUGGESTED, IS TO "CREATE THE LEGAL FRAMEWORK TO SOLVE

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PROBLEMS LINKED TO DEVELOPMENT OF E COMMERCE AND TO LIBERALIZE THE WHOLE TELECOMS SECTOR TO CREATE AN OPEN ENVIRONMENT."

6. (SBU) A SECOND IMPORTANT TASK FOR GOVERNMENT IS TO "DEVELOP STANDARDS AND RULES SO THE INTERNET CAN WORK IN A SAFE WAY FOR EVERYONE." EUROPE NEEDS TO DEVELOP RULES AND STANDARDS IN A EUROPEAN CONTEXT, BUT US-EU DISCUSSIONS ALSO ARE KEY "SO WE HAVE A SIMILAR FRAMEWORK, PERMITTING ACTIVITY TO GO EASILY FROM ONE CONTINENT TO ANOTHER." A CHALLENGE FOR PUBLIC AUTHORITIES IS HOW BEST TO USE THE INTERNET AND E COMMERCE TO FACILITATE PUBLIC BUSINESS. FOR EXAMPLE, ONE WAY TO LIGHTEN THE ADMINISTRATIVE BURDEN ON BUSINESS WOULD BE TO FACILITATE ELECTRONIC PAYMENTS BETWEEN THE PRIVATE AND PUBLIC SECTORS, SUCH AS THOSE FOR TAXES OR SOCIAL SECURITY. THIS WOULD REQUIRE A CHANGE IN PUBLIC SECTOR THINKING, DEHAENE SAID; BELGIUM IS TRYING TO GO IN THAT DIRECTION AND "HOPES FOR EUROPEAN ACTION IN THAT AREA" AS WELL.

7. (SBU) DEHAENE ASKED MAGAZINER IN WHICH SECTORS OF THE ECONOMY THE US HAD SEEN THE MOST GROWTH AND POTENTIAL FOR E-COMMERCE, AND WHAT ARE THE MAJOR PRIORITIES FOR THE US AND EU TO ADDRESS TO ESTABLISH A LEGAL FRAMEWORK FOR "PRIVATE SAFETY AND ACCOUNTABILITY" IN ELECTRONIC TRANSACTIONS.

8. (SBU) MAGAZINER REPLIED THAT WE HAVE SEEN SIGNIFICANT PRODUCTIVITY GAINS AND GROWTH IN VIRTUALLY EVERY SECTOR; RETAIL, BANKING AND MANUFACTURING, AMONG OTHERS. OVER 15 MILLION PEOPLE NOW BANK ON LINE. TWENTY PERCENT OF THE BOOKS, FIVE PERCENT OF THE CARS AND FIVE PERCENT OF THE CLOTHES SOLD IN THE US ARE SOLD ON THE INTERNET. COMPANIES ARE INCREASINGLY CONDUCTING THEIR INVENTORY, LOGISTICS, CUSTOMER RELATIONS AND OTHER FUNCTIONS ON LINE. BUSINESS TO BUSINESS ELECTRONIC TRANSACTIONS ARE EXPECTED TO AMOUNT TO $300 BILLION IN A FEW YEARS.

KEY US-EU PRIORITIES: PRIVACY, CONTENT, TAX, AUTHENTICATION

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9. (SBU) THE KEY PRIORITIES FOR THE US-AND EU TO ADDRESS INCLUDE PRIVACY, CONTENT, TAXATION AND AUTHENTICATION, MAGAZINER TOLD DEHAENE. AREAS OF GREATEST DIFFERENCE BETWEEN THE US AND THE EU ARE PRIVACY AND AUTHENTICATION. IN GENERAL, THE US THINKS IT A MISTAKE FOR GOVERNMENTS TO TAKE TOO HEAVY A ROLE IN REGULATING THE INTERNET. THE INTERNET CANNOT BE CENSORED OR CONTROLLED; GOVERNMENT INTERVENTION IS NOT LIKELY TO BE EFFECTIVE. WITH RESPECT TO ELECTRONIC AUTHENTICATION, THE US BELIEVES WE SHOULD PERMIT THE MARKET TO DEVELOP THE MEANS, AND LET THE BUYER AND THE SELLER CHOOSE THE ONE MOST APPROPRIATE TO THEIR TRANSACTION. LICENSING OF PARTICULAR TEHNOLOGIES WOULD BE TOO BUREAUCRATIC AND INFLEXIBLE, AND WOULD SOON BE OUTSTRIPPED BY TECHNOLOGICAL DEVELOPMENTS. WE SHOULD AGREE ON MUTUAL REOGNITION OF EACH OTHER'S SYSTEMS, HOWEVER.

PRIVACY

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10. (SBU) ON PRIVACY, THE EU'S INSISTENCE ON A GOVERNMENT ROLE IN PROTECTING PRIVACY IN ITS PRIVACY DIRECTIVE (COMMENT: DUE TO GO INTO EFFECT IN OCTOBER 1998. END COMMENT), IF NOT ADDRESSED, WILL BREAK DOWN DATA FLOWS BETWEEN THE US AND THE EU. ON TAX, THE US IS WORKING ON THE OECD WITH JAPAN AND THE EU TO DEVELOP A UNIFORM APPROACH.

11. (SBU) DEHAENE REPLIED THAT OUR DIFFERENCES ON PRIVACY

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AND AUTHENTICATION OF DIGITAL SIGNATURES REFLECT "THE CLASSIC DIFFERENCE IN HOW PEOPLE REACT ON EACH SIDE OF THE ATLANTIC...RULES TO PROTECT PRIVATE LIFE HAVE ALWAYS BEEN VERY DEVELOPED IN EUROPE. EVEN IN DISCUSSIONS IN OUR

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GOVERNMENT, I SIDE WITH THOSE WHO SAY THAT PRIVACY SHOULD BE PROTECTED. RULES CAN ONLY GO SO FAR, BEFORE YOU LOSE EFFICIENCY OF THE SYSTEM, BUT YOU NEED LIMITS. HOW CAN WE LEAVE IT TO THE PRIVATE SECTOR?"

12. (SBU) MAGAZINER REPLIED THAT THE US AND EUROPE AGREE ON THE GOAL -- INDEED, THE US, AS MUCH AS EUROPE, BELIEVES IN THE PROTECTION OF PRIVACY. HOWEVER, WE DISAGREE ON THE BEST WAY TO ACHIEVE IT. IT IS CLEAR THAT RULES ARE NEEDED; THE QUESTION IS, WHO SHOULD ENFORCE THEM? THE US BELIEVES THE OECD PRIVACY PRINCIPLES SHOULD GOVERN -- THE CONSUMER HAS THE RIGHT TO DENY USE OF HIS PERSONAL DATA AND TO CHECK IT FOR ACCURACY. BUT WITH 10,0000 NEW WEBSITES COMING ON LINE EVERY WEEK, NO GOVERNMENT AGENCY CAN POLICE THEM. ESTABLISHMENT OF A PRIVACY BOARD OR PASSAGE OF LEGISLATION IS A FALSE PROMISE -- GOVERNMENT SAYING IT WILL PROTECT PRIVACY WHEN IN FACT IT CANNOT.

13. (SBU) A BETTER APPROACH IS DEVELOPMENT OF CODES OF CONDUCT AND SEALS OF APPROVAL WHICH WEBSITES THAT RESPECT THE CODE MAY DISPLAY. CONSUMERS CAN APPEAL TO THE ORGANIZATION ISSUING THE SEAL IF THEY FEEL THE SITE DISPLAYING IT IS NOT RESPECTING THE TERMS OF THE CODE OF CONDUCT. SITES FRAUDULENTLY DISPLAYING THE SEALS CAN BE PROSECUTED BY THE FEDERAL TRADE COMMISSION. MAGAZINER CONCLUDED THAT IN REALITY, NO ONE YET KNOWS WHICH APPROACH WILL BE MOST EFFECTIVE; EACH SIDE SHOULD TRY ITS APPROACH, SEE WHICH WORKS BEST, AND THEN ADAPT. IN THE MEANTIME, WE NEED TO FIND A WAY TO AVOID STOPPING DATA FLOWS BETWEEN THE US AND EUROPE.

AUTHENTICATION
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14. (SBU) ON DIGITAL SIGNATURES, DEHAENE SAID THAT HIS FIRST REACTION WAS THAT IT WOULD BE RISKY TO "MULTIPLY THE NUMBER OF CERTIFICATIONS AND SIGNATURES" THAT CAN BE ACCEPTED FOR PAYMENTS AND OTHER COMMERCIAL TRANSACTIONS. IT WOULD BE "BEST TO HAVE ONE SYSTEM THAT EVERYONE KNOWS AND CAN RELY ON, LIKE CHECKS." MAGAZINER POINTED OUT THAT IN FACT, THE AUTHENTICATION SYSTEM WOULD WORK MORE LIKE CREDIT CARDS. BANKS, INSURANCE COMPANIES AND ACCOUNTING FIRMS ARE CREATING SERVICES AND INSTRUMENTS TO OFFER VARIOUS LEVELS OF AUTHENTICATION, DEPENDING ON THE DEGREE OF SECURITY DESIRED BETWEEN A BUYER AND A SELLER - WHICH IN TURN DEPENDS ON THE RELATIONSHIP BETWEEN THE BUYER AND THE SELLER. AFTER A PERIOD OF EXPERIMENTATION, THE MARKET WILL SHAKE OUT AND THREE OR FOUR MAJOR SYSTEMS WILL REMAIN AND COMPETE -- NOT BECAUSE THE GOVERNMENT LICENSED THEM, BUT BECAUSE THE MARKET CHOSE THEM. THIS IS MORE EFFICIENT THAN THE GOVERNMENT SELECTING AND LICENSING SPECIFIC TECHNOLOGIES.

TAX: INTERNATIONAL AGREEMENT ON UNIFORM APPROACH NEEDED

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15. (SBU) DEHAENE SAID THE ISSUE OF TAX AND E COMMERCE IS KEY FOR GOVERNMENTS. THE VALUE ADDED TAX IS VERY IMPORTANT; THE PROBLEM IS HOW TO DECIDE WHERE THE TAX IS LEVIED. MAGAZINER AGREED THAT THERE ARE A SIGNIFICANT NUMBER OF IMPORTANT ISSUES TO BE ADDRESSED WITH RESPECT TO TAX AND THE INTERNET. INTERNATIONAL AGREEMENT IS NEEDED, OR THE POTENTIAL FOR TAX AVOIDANCE WILL REMAIN HIGH. WE HAVE ADVOCATED INTERNATIONAL DISCUSSION ON TAX IN THE OECD IN PREPARATION FOR THE OCTOBER 1998 OTTAWA CONFERENCE ON E COMMERCE. WE EXPECT THAT LEGISLATION WILL BE PASSED IN THE US SOON WHICH WILL DECLARE A MORATORIUM ON NEW TAXES ON E COMMERCE AND ESTABLISH A COMMISSION TO STUDY A NEW APPROACH.

16. (SBU) BECAUSE IT IS VIRTUALLY IMPOSSIBLE TO KNOW THE LOCATION OF THE SELLER ON THE INTERNET, THE US THINKS THAT TAX WILL NEED TO BE COLLECTED BASED ON THE RESIDENCE OF THE BUYER. A CONSUMER'S SMART CARD OR SOFTWARE CAN BE PROGRAMMED TO AUTOMATICALLY COLLECT TAX BASED ON HIS RESIDENCE. THE TAX AUTHORITIES CAN HIRE A BANK OR CREDIT CARD COMPANY AS AN ESCROW AGENT TO RECEIVE THE TAX. THE ADVANTAGE OF THIS APPROACH TO THE BUYER IS ITS AUTOMATICITY; TO THE SELLER, THE FACT THAT HE NEED NO LONGER COLLECT OR FORWARD TAXES; AND TO THE GOVERNMENT, THE FACT THAT IT WILL RECEIVE TAX PAYMENTS MORE RAPIDLY AND WITH A HIGHER DEGREE OF COMPLIANCE. THE ONLY DOWNSIDE TO THIS APPROACH IS THAT OF DISTRIBUTION OF

E.O. 12958: N/A
TAGS: ECPS, ETRD, KIPR, EUN, BE
SUBJECT: ELECTRONIC COMMERCE: MAGAZINER AND PM DEHAENE

REF: (A) BRUSSELS 3325 (B) BRUSSELS 00926

TAXES: POPULAR TOURIST DESTINATIONS WOULD LOSE TAX REVENUES, WHICH WOULD INSTEAD GO TO A CONSUMER'S PLACE OF RESIDENCE. THE OECD NEEDS TO DISCUSS HOW TO DEAL WITH THIS. DEHAENE NOTED THAT THERE WOULD BE PROBLEMS WITH PROTECTING PRIVACY WITH THIS APPROACH AS PERSONAL DATA WOULD GO TO A THIRD PARTY. MAGAZINER SAID THAT THIS CAN BE AVOIDED AS CONSUMERS COULD USE "CASH CARDS" WHICH IDENTIFY THEM ONLY BY RESIDENCE.

17. (SBU) NOTING THAT MORE AND MORE TRANSACTIONS WILL BE CONDUCTED ELECTRONICALLY AS TIME GOES ON, MAGAZINER EMPHASIZED THAT WE NEED AN INTERNATIONAL AGREEMENT ON A UNIFORM APPROAH SOON. OTHERWISE THE POTENTIAL FOR TAX AVOIDANCE IS GREAT. WE HAVE SUGGESTED THAT THE OECD TRY TO DEVISE SOLUTIONS BETWEEN NOW AND 2000.

BELGIUM HAS TECHNOLOGICAL BASIS TO LEAD IN E COMMERCE

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18. (SBU) MAGAZINER TOLD PM DEHAENE THAT BELGIUM HAS KEY PIECES OF INFRASTRUCTURE IN PLACE WHICH SHOULD ALLOW IT TO LEAD IN DEVELOPING E COMMERCE. BELGIUM AND SINGAPORE WILL BE THE FIRST IN THE WORLD TO HAVE BROADLY AVAILABLE THE WIDE BANDWIDTH NEEDED FOR E COMMERCE. IN ADDITION, BELGIUM ALREADY HAS SOPHISTICATED ELECTRONIC BANKING AND "SMART CARD" PAYMENT SYSTEMS. BELGIUM IS PURSUING TELECOMS LIBERALIZATION. IT IS SURPRISING, THEREFORE, THAT THE UK, SCANDINAVIA AND THE NETHERLANDS ARE AHEAD IN DEVELOPING E COMMERCE. THE REASON, MAGAZINER SUGGESTED, IS THAT THESE COUNTRIES HAVE TAKEN A LIBERAL APPROACH, LESS ORIENTED TOWARDS REGULATION. BUT JUST AS BELGIUM SUCCEEDED IN THE PAST BY ESTABLISHING AN OPEN INVESTMENT ENVIRONMENT, IT CAN

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BE A LEADER NOW IN E COMMERCE BY ESTABLISHING AN OPEN ENVIRONMENT.

19. (SBU) DEHAENE REPLIED THAT HE IS AWARE THAT BELGIUM HAS IMPORTANT ADVANTAGES IN ITS HIGHLY DEVELOPED CABLE ACCESS, HIGH TELEPHONE PENETRATION AND SOPHISTICATED FINANCIAL SYSTEM. THE LIBERALIZATION OF THE TELECOMS SECTOR IS ALSO IMPORTANT AND HAS CREATED A DYNAMIC THAT "SHOULD NOT BE UNDERESTIMATED." IMPLYING THAT THE EU'S APPROACH MAY BE TOO INTERVENTIONIST, HE SAID HIS "BIGGEST CONCERN" FOR BELGIUM IS THAT THE LEGAL FRAMEWORK GOVERNING E COMMERCE "WILL BE MORE AND MORE A EUROPEAN ONE." THIS WILL HAVE A DIRECT IMPACT ON BELGIUM'S ABILITY TO DEVELOP E COMMERCE. ANOTHER PROBLEM IS "RIGIDITIES IN THE PUBLIC SECTOR" WHICH RESULTED IN BELGIUM MISSING THE FIRST WAVE OF ADAPTING TO INFORMATION TECHNOLOGY. "TWO YEARS AGO, I USED TO TELL PEOPLE THAT IF THEY ENTERED AN OFFICE AND IT WAS FULL OF PC'S, IT WAS IN THE PRIVATE SECTOR; IF IT WAS FULL OF TYPEWRITERS, IT WAS IN THE PUBLIC SECTOR," DEHAENE JOKED.

20. (SBU) THE SITUATION IS BETTER NOW, HE CONTINUED, BUT THE DIFFERENCES ARE STILL ENORMOUS. TECHNOLOGICAL KNOWHOW IN THE PUBLIC SECTOR IS LACKING THROUGH EUROPE. THE PRIVATE SECTOR IS INCREASINGLY ATTRACTING THE BEST TALENT. CONSEQUENTLY, IT IS DIFFICULT TO CONVERT CONSERVATIVE THINKING IN THE PUBLIC SECTOR. ON TELECOMS LIBERALIZATION, FOR EXAMPLE, ALTHOUGH COMPETITIVE FORCES ARE WORKING AND THINGS ARE CHANGING RAPIDLY, BELGIUM REMAINS "HANDICAPPED" BECAUSE "MONOPOLIES ADAPT SLOWLY." MOREOVER, THERE IS A NEED TO "INTRODUCE ANOTHER MENTALITY TO PUBLIC ADMINISTRATION -- TO REGULATE ONLY ESSENTIAL THINGS, AND NOT TO SUPPORT THE INTERESTS OF YOUR MONOPOLY."

21. (SBU) DEHAENE SAID THAT REGULATION OF E COMMERCE WILL DEVELOP MUCH AS REGULATION OF INDUSTRY DID: "YOU DON'T NEED RESTRICTIONS AT FIRST, BUT ACCIDENTS WILL AT A LATER STAGE LEAD TO MORE REGULATION. BUT YOU NEED A CERTAIN TIME TO TAKE RISKS. " MAGAZINER AGREED, AND ADDED THAT IF THE MARKET IS PERMITTED TO DEVELOP, WHEN IT BECOMES NECESSARY FOR GOVERNMENTS TO ACT, THEY CAN DO SO "PRECISELY."

COMMENT

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22. (SBU) MAGAZINER'S MESSAGE WAS COVERED WIDELY AND POSITIVELY IN THE BELGIAN MEDIA AND APPLAUDED BY THE PRIVATE SECTOR, WHICH HAS BEEN WELL AHEAD OF THE BELGIAN GOVERNMENT IN RECOGNIZING THE POTENTIAL OF ELECTRONIC COMMERCE AND THE

BRUSSELS 05 OF 05 3524

PAGE 02 BRUSSE 03524 05 OF 05 091726Z
TAGS: ECPS, ETRD, KIPR, EUN, BE
SUBJECT: ELECTRONIC COMMERCE: MAGAZINER AND PM DEHAENE

REF: (A) BRUSSELS 3325 (B) BRUSSELS 00926

DOWNSIDE OF EXCESSIVE GOVERNMENT INVOLVEMENT AND REGULATION. DEHAENE'S COMMENTS SUGGEST THAT THIS POINT REGISTERED FULLY, BUT HE ALSO MADE NO BONES ABOUT THE DIFFICULTY HE FACES IN PROMOTING A MORE OPEN MINDSET IN BELGIUM'S CONSERVATIVE BUREAUCRACY. OUR BEST HOPE OF WINNING BELGIAN SUPPORT FOR THE US APPROACH LIES IN CONTINUING TO WORK CLOSELY WITH THE PRIVATE SECTOR, AND ESPECIALLY, IN HELPING THE PRIVATE SECTOR MAKE THE CASE FOR MINIMAL INTERVENTION WITH SENIOR BELGIAN POLICYMAKERS, AS THE MAGAZINER VISIT DID SO EFFECTIVELY.

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23. (U) MR. MAGAZINER DID NOT HAVE AN OPPORTUNITY TO CLEAR THIS CABLE.

BLINKEN

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From AmEmbassy Brasilia re: Botafogo Expresses Interest in Discussing Joint E-Commerce Statement (2 pages)	07/10/98	P5

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13116

CLINTON LIBRARY PHOTOCOPY

FOLDER TITLE:
Brazil-Joint Statement

Rhonda Wilson

rw109

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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

UNCLASSIFIED

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ACTION CIP-00

INFO	LOG-00	ACDA-08	ACDE-00	AID-00	ARA-01	CEA-01	CIAE-00
	CTME-00	DODE-00	ITCE-00	SRPP-00	EB-00	EXME-00	OIGO-01
	E-00	UTED-00	FCC-01	FRB-00	H-01	TEDE-00	INR-00
	ITC-01	L-01	ADS-00	NSAE-00	NSCE-00	OMB-01	OPIC-01
	SP-00	SSO-00	SS-00	STR-00	TRSE-00	USIE-00	DRL-04
	G-00	NFAT-00	SAS-00	/021W			

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TO SECSTATE WASHDC PRIORITY 2233
USDOC WASHDC PRIORITY
AMEMBASSY BUENOS AIRES
AMEMBASSY MONTEVIDEO
AMEMBASSY ASUNCION
AMCONSUL RECIFE
AMCONSUL RIO DE JANEIRO
AMCONSUL SAO PAULO

UNCLAS BRASILIA 002610

DEPARTMENT FOR EB/CIP (JDEASY)

USTR PASS TO PALLGEIER/DABELSON

USDOC FOR ITA: RVARGO, JANDERSON

E.O. 12958: N/A
TAGS: ECPS, ETRD, BR
SUBJECT: BOTAFOGO EXPRESSES INTEREST IN DISCUSSING JOINT E-COMMERCE STATEMENT

1. (U) SENSITIVE BUT UNCLASSIFIED. PLEASE TREAT ACCORDINGLY.

2. (SBU) AMBASSADOR RAISED THE SUBJECT OF A POSSIBLE U.S.-BRAZIL JOINT STATEMENT ON GLOBAL ELECTRONIC COMMERCE WITH MINISTER OF INDUSTRY AND TRADE BOTAFOGO DURING A FAREWELL CALL ON JULY 8. BOTAFOGO HAS BEEN AT THE FOREFRONT OF GOB EFFORTS ON ELECTRONIC COMMERCE, AND, AS REPORTED EARLIER, HAS SET UP A NEW WORKING GROUP IN THE MINISTRY OF INDUSTRY AND TRADE TO FOLLOW DEVELOPMENTS IN ELECTRONIC COMMERCE AND THE DEVELOPMENT OF A DIGITAL ECONOMY IN BRAZIL.

3. (SBU) BOTAFOGO TOLD AMBASSADOR, ALBEIT CAUTIOUSLY, THAT HE WAS INTERESTED IN BEGINNING SOME FORM OF DISCUSSION ON AN E-COMMERCE AGENDA THAT COULD DEVELOP INTO A POSSIBLE JOINT STATEMENT. HE AGREED THAT BRAZIL WAS PRESENTLY FURTHER ALONG IN ITS AWARENESS AND UNDERSTANDING OF E-COMMERCE THAN IT WAS LAST OCTOBER, PRIOR TO PRESIDENT CLINTON'S VISIT, WHEN USG OFFICIALS RAISED THE SUBJECT FOR THE FIRST TIME WITH HIM. HE SAID THAT HE THOUGHT THAT THE UNITED STATES HAD "MADE A MISTAKE" BY PRESENTING BRAZIL WITH WHAT LOOKED LIKE A FINAL TEXT, ALTHOUGH HE ALSO ADMITTED THAT THE GOB DID NOT KNOW ENOUGH ABOUT THE SUBJECT AT THE TIME.

4. (SBU) BOTAFOGO SAID HE THOUGHT THAT THE U.S. INTEREST PRIOR TO THE POTUS VISIT HAD BEEN IN GETTING BRAZIL TO SIGN ON TO A PRE-PREPARED U.S.-MERCOSUL OR JOINT U.S.-ARGENTINA-BRAZIL STATEMENT. AMBASSADOR TOLD HIM HE THOUGHT BRAZIL WAS CURRENTLY MORE ADVANCED ON E-COMMERCE THAN SOME OF ITS NEIGHBORS, AND NOTED THAT WE HAD ISSUED STATEMENTS WITH OTHER INDIVIDUAL COUNTRIES SUCH AS JAPAN, THE NETHERLANDS AND FRANCE. BOTAFOGO SAID HE HAD

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SEEN THE FRENCH BACKGROUND PAPER. AMBASSADOR ALSO SUGGESTED THAT THE ISSUE COULD BE DISCUSSED AT A WORKING LEVEL BEFORE HIS NEXT VISIT TO THE U.S. HE SAID HE WOULD DIRECT HIS SECRETARY FOR INDUSTRIAL TECHNOLOGY AMBASSADOR OSCAR LORENZO FERNANDEZ TO PURSUE THE ISSUE. LEVITSKY

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From USEU Brussels re: The EU Data Protection Directive (6 pages)	07/06/98	P5
002. cable	From AmEmbassy Singapore re: Bilat Meeting with Australia (2 pages)	06/08/98	P5
003. cable	From AmEmbassy Singapore re: Bilat Meeting with Singapore (3 pages)	06/08/98	P5

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13116

FOLDER TITLE:
General Cables

Rhonda Wilson

rw110

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]
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ACTION EB-00

INFO LOG-00 CIAE-00 CIP-00 COME-00 SRPP-00 EUR-01 UTED-00
FCC-01 IMMC-01 TEDE-00 INR-00 LAB-01 L-01 ADS-00
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TO SECSTATE WASHDC
INFO USDOC WASHDC
ALL EUROPEAN UNION POST COLLECTIVE

UNCLAS SECTION 01 OF 04 BRUSSELS 004184

SENSITIVE

STATE PASS USTR FOR ABELSON
STATE FOR EB/CIP, EB/TPP/O'BRIEN AND EUR/ERA
USDOC FOR NTIA - BURR
USDOC FOR ITA - WELLBERY
PARIS ALSO FOR OECD

E.O. 12958: N/A
TAGS: EINT, ECPS, EUN
SUBJECT: THE EU DATA PROTECTION DIRECTIVE: BE PREPARED

BRUSSELS 01 OF 04 4184

1. (U) THIS MESSAGE IS SENSITIVE BUT UNCLASSIFIED. PLEASE DO NOT DISTRIBUTE IT OVER THE INTERNET OR IN OTHER PUBLICLY ACCESSIBLE CHANNELS.

2. (SBU) SUMMARY AND INTRODUCTION: THE EU DATA PROTECTION DIRECTIVE WILL ENTER INTO FORCE ON OCTOBER 25, 1998. THIS LAW WILL ALMOST CERTAINLY HAVE A MAJOR IMPACT ON TRANSATLANTIC DATA FLOWS AND THEREFORE TRANSATLANTIC TRADE. UNDER THE DATA PROTECTION DIRECTIVE, EU MEMBER STATES AND THE COMMISSION ARE REQUIRED TO REVIEW FOREIGN TRANSFERS OF PERSONAL DATA CONCERNING EU CITIZENS TO ENSURE THAT THE RECIPIENTS (E.G., US FIRMS) WILL PROVIDE "ADEQUATE" PROTECTION FOR THIS DATA. IF IT IS DEEMED THAT AN ADEQUATE LEVEL OF PROTECTION IS NOT PRESENT, THE RECIPIENT WILL BE CUT OFF FROM ALL EU DATA FLOWS. SINCE THE US APPROACH TO DATA PRIVACY, BASED ON INDUSTRY SELF-REGULATION, DIFFERS CONSIDERABLY FROM THE EU APPROACH, WHICH RELIES ON GOVERNMENT REGULATION AND OVERSIGHT, THE POTENTIAL FOR PROBLEMS IS HIGH.

3. (SBU) USG OFFICIALS HAVE BEEN ENGAGED IN AN INTENSIVE DIALOGUE WITH EU COMMISSION OFFICIALS, NOTABLY IN DISCUSSIONS BETWEEN COMMERCE U/S DAVID AARON AND DG XV DIRECTOR GENERAL JOHN MOGG, TO INFORM THEM ABOUT PRIVACY PROTECTION IN THE US, GAIN A BETTER UNDERSTANDING OF THE DIRECTIVE, FIND WAYS TO MESH OUR DIFFERING APPROACHES AND AVERT A MAJOR DISRUPTION. NEVERTHELESS, BECAUSE OF THE WAY THAT CASES ARE PROCESSED UNDER THE DATA PROTECTION DIRECTIVE, SOME INCIDENTS ARE LIKELY TO OCCUR EVEN IN THE BEST OF CIRCUMSTANCES. THE INITIATORS OF ACTION UNDER THE DIRECTIVE WILL BE THE NATIONAL DATA REGISTRARS (I.E., NATIONAL DATA PROTECTION AUTHORITIES) IN THE EU MEMBER STATES. WITH 15 DIFFERENT NATIONAL AUTHORITIES ASSESSING MILLIONS OF DATA TRANSACTIONS IN THE LIGHT OF 15 DIFFERENT SETS OF NATIONAL PRIVACY LAWS AND TRADITIONS, IT SEEMS LIKELY THAT US PARTIES WILL BE THE TARGET OF A NUMBER OF COMPLAINTS.

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4. (SBU) POSTS IN SOME EU MEMBER STATES HAVE ALREADY ESTABLISHED A WORKING RELATIONSHIP WITH HOST COUNTRY DATA PROTECTION AUTHORITIES AS A RESULT OF CASES WHERE US FIRMS HAVE RUN AFOUL OF EXISTING DATA PRIVACY LAWS. POSTS WHICH HAVE NOT MAY WANT TO BEGIN TO DEVELOP RELATIONSHIPS WITH THEIR LOCAL DATA REGISTRARS AND MINISTRIES OF JUSTICE TO PREPARE FOR POSSIBLE REQUESTS FOR ASSISTANCE WHEN THE EU DIRECTIVE ENTERS INTO FORCE. TO ASSIST IN THIS EFFORT, FOLLOWING IS A BRIEF PRIMER ON THE DATA PROTECTION DIRECTIVE. USEU STANDS READY TO ASSIST POSTS WITH ADDITIONAL INFORMATION, AND TO INTERCEDE WITH EU COMMISSION OFFICIALS ON BEHALF OF US DATA RECIPIENTS AFFECTED BY THE DIRECTIVE. END SUMMARY AND INTRODUCTION.

SWEEPING EU PRIVACY LEGISLATION

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5. (SBU) THE EU DATA PROTECTION DIRECTIVE WAS APPROVED ON OCTOBER 24, 1995. IT SET A THREE-YEAR DEADLINE FOR MEMBER STATES TO TRANSPOSE ITS REQUIREMENTS INTO NATIONAL LAW. EU COMMISSION OFFICIALS HAVE INDICATED THAT TRANSPOSITION IS PROCEEDING SATISFACTORILY AND THAT THE LAW WILL ENTER INTO FORCE AS SCHEDULED ON OCTOBER 25, 1998. THE DIRECTIVE IS BASED UPON THE CONCEPT THAT THE RIGHT TO PRIVACY IS A FUNDAMENTAL HUMAN RIGHT, RECOGNIZED, FOR EXAMPLE, IN THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, AND IN EUROPEAN COMMUNITY LAW. EXTENDING THIS LOGIC, SOME COMMISSION OFFICIALS, ALTHOUGH NOT THE COMMISSION AS A WHOLE, HAVE EXPRESSED THE VIEW THAT QUESTIONS SUCH AS THE PUBLIC AND PRIVATE COSTS OF IMPLEMENTING THE DIRECTIVE ARE IRRELEVANT, SINCE FUNDAMENTAL HUMAN RIGHTS ARE AT STAKE.

6. (SBU) THE DIRECTIVE APPLIES TO ALL PROCESSING OF PERSONAL DATA BY ANY ENTITY WHOSE ACTIVITIES ARE GOVERNED BY COMMUNITY LAW, INCLUDING, FOR EXAMPLE, US FIRMS ENGAGED IN COMMERCIAL TRANSACTIONS WITH EU CITIZENS. "PERSONAL DATA" MEANS ANY INFORMATION RELATING TO AN IDENTIFIED OR IDENTIFIABLE NATURAL PERSON. AN IDENTIFIABLE PERSON IS ONE WHO CAN BE IDENTIFIED, DIRECTLY OR INDIRECTLY, FROM THE DATA BEING PROCESSED (E.G., THROUGH SOME SORT OF IDENTIFICATION NUMBER). THE DIRECTIVE ONLY COVERS AUTOMATED DATA PROCESSING, OR DATA PROCESSED THROUGH A FILING SYSTEM STRUCTURED ACCORDING TO SPECIFIC CRITERIA RELATING TO INDIVIDUALS, SO AS TO

PERMIT EASY ACCESS TO PERSONAL DATA.

7. (SBU) THE DIRECTIVE DEFINES THE PERSON OR BODY WHICH DETERMINES THE PURPOSES AND THE MEANS OF PROCESSING THE DATA AS THE "DATA CONTROLLER." A DATA CONTROLLER IS OBLIGED TO COMPLY WITH THE NATIONAL LAW OF THE MEMBER STATE WHERE HE OR SHE IS ESTABLISHED. WHEN THE DATA CONTROLLER IS NOT ESTABLISHED IN THE EU (E.G CONTROLLER IS NOT ESTABLISHED IN THE EU (E.G., WHEN THE CONTROLLER IS EMPLOYED BY A FOREIGN FIRM) HE OR SHE MUST COMPLY WITH THE LAW OF THE COUNTRY WHERE THE PROCESSING EQUIPMENT (E.G., COMPUTER CENTER) IS LOCATED. ONE OF THE ISSUES WHICH IS LIKELY TO CREATE CONSIDERABLE CONFUSION IN THE IMPLEMENTATION OF THE DIRECTIVE IS JUST WHO EXACTLY IS THE DATA CONTROLLER IN A MODERN DISTRIBUTED COMPUTING NETWORK WHERE DATA CAN BE RESIDENT ANYWHERE AND ACCESSED FROM ANYWHERE ON THE SYSTEM.

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8. (SBU) IN TRANSPOSING THE DIRECTIVE INTO NATIONAL LAW, MEMBER STATES ARE REQUIRED TO DEFINE THE CIRCUMSTANCES UNDER WHICH THE PROCESSING OF PERSONAL DATA ARE UNLAWFUL. THE BASIC REQUIREMENTS OF THE DIRECTIVE ARE THAT THE DATA PROCESSED MUST BE:

-- ADEQUATE, RELEVANT AND NOT EXCESSIVE IN RELATION TO THE PURPOSE FOR WHICH THEY ARE PROCESSED;

-- ACCURATE AND CURRENT;

-- USED ONLY FOR LEGITIMATE PURPOSES THAT ARE DETERMINED AT THE TIME OF THE COLLECTION OF THE DATA; AND

-- KEPT IN IDENTIFIABLE FORM NO LONGER THAN NECESSARY TO ACHIEVE THE PURPOSES FOR WHICH THEY WERE COLLECTED. FURTHER PROCESSING OF DATA FOR HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES IS ALLOWED PROVIDED MEMBER STATES ESTABLISH SUITABLE SAFEGUARDS.

9. (SBU) PERSONAL DATA MAY BE PROCESSED WITH THE UNAMBIGUOUS CONSENT OF THE SUBJECT FOR THE PERFORMANCE OF A BINDING CONTRACT ON THE SUBJECT, AS REQUIRED BY LAW TO PROTECT A VITAL INTEREST OF THE SUBJECT, FOR THE PERFORMANCE OF A TASK CARRIED OUT IN THE PUBLIC INTEREST OR BY PUBLIC AUTHORITIES, OR WHENEVER THE CONTROLLER OR A THIRD PARTY HAS A LEGITIMATE INTEREST IN DOING SO AND THIS INTEREST IS NOT OVERRIDDEN BY THE INTEREST OF PROTECTING THE FUNDAMENTAL RIGHTS OF THE SUBJECT.

10. (SBU) PROCESSORS OF DATA MUST INFORM PERSONS FROM WHOM THEY INTEND TO COLLECT DATA OF THE PURPOSE FOR THE PROCESSING, OF THE SUBJECT'S RIGHT OF ACCESS TO AND OPPORTUNITY TO CORRECT DATA CONCERNING HIM OR HERSELF, AND OF THE NAME AND ADDRESS OF THE DATA CONTROLLER. MEMBER STATES MAY DETERMINE THE CIRCUMSTANCES IN WHICH PERSONAL DATA MAY BE USED OR DISCLOSED TO A THIRD PARTY IN THE CONTEXT OF LEGITIMATE ORDINARY BUSINESS ACTIVITIES.

11. (SBU) THE DIRECTIVE REQUIRES EACH MEMBER STATE TO ESTABLISH AN INDEPENDENT PUBLIC AUTHORITY, OFTEN CALLED THE DATA REGISTRAR, TO SUPERVISE THE PROTECTION OF PERSONAL DATA. EACH AUTHORITY MUST HAVE THE POWER TO INVESTIGATE DATA PROCESSING ACTIVITIES, TO INTERVENE TO BLOCK PROPOSED PROCESSING, TO ORDER THE ERASURE OF DATA, AND TO BLOCK PROPOSED TRANSFERS OF DATA TO THIRD PARTIES. THE DIRECTIVE REQUIRES DATA CONTROLLERS TO NOTIFY THE APPLICABLE NATIONAL AUTHORITY BEFORE BEGINNING DATA PROCESSING. NATIONAL AUTHORITIES ARE REQUIRED TO INVESTIGATE ANY DATA PROCESSING WHICH "POSES SPECIFIC RISKS TO THE RIGHTS AND FREEDOMS OF INDIVIDUALS." FOR CERTAIN ROUTINE PROCESSING WHICH DOES NOT POSE A SIGNIFICANT THREAT TO INDIVIDUAL RIGHTS, THE DIRECTIVE PERMITS MEMBER STATES TO SIMPLIFY OR ELIMINATE THE NOTIFICATION REQUIREMENT. EACH AUTHORITY IS REQUIRED TO MAINTAIN AND MAKE AVAILABLE TO THE PUBLIC A "REGISTER OF NOTIFIED PROCESSING OPERATIONS."

12. (SBU) THE DIRECTIVE REQUIRES MEMBER STATES TO PROVIDE FOR PENALTIES AGAINST DATA CONTROLLERS WHICH DO NOT COMPLY WITH NATIONAL DATA PROTECTION LAWS. DATA CONTROLLERS MAY ALSO BE SUBJECT TO CIVIL LIABILITY FOR UNLAWFUL PROCESSING ACTIVITIES. THE DIRECTIVE MANDATES THE CREATION OF A "RIGHT OF EVERY PERSON TO JUDICIAL REMEDY FOR ANY BREACH OF THE RIGHTS GUARANTEED BY THIS DIRECTIVE."

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WITH EXTRATERRITORIAL REACH

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13. (SBU) ARTICLE 25 OF THE DIRECTIVE REQUIRES MEMBER STATES TO GIVE NATIONAL DATA PROTECTION AUTHORITIES THE POWER TO BLOCK THE TRANSFER OF PERSONAL DATA TO FOREIGN PARTIES (E.G., COUNTRIES, FIRMS OR OTHER ENTITIES) WHICH DO NOT PROVIDE AN "ADEQUATE LEVEL OF PROTECTION" FOR THIS DATA. ECONOMIC SECTORS WHICH COULD EXPERIENCE IMMEDIATE PROBLEMS FROM THIS PROVISION INCLUDE AIRLINE AND OTHER TRAVEL RESERVATION SYSTEMS, PHARMACEUTICAL FIRMS WITH LARGE PATIENT DATABASES, AND FINANCIAL AND CREDIT CARD FIRMS. ANY MULTINATIONAL FIRM WITH AN AUTOMATED PERSONNEL DATA BASE WOULD HAVE TO MANAGE THE DATA IN A MANNER WHICH CONFORMS TO THE REQUIREMENTS OF EU LAW. EVEN A TRAVELING SALESMAN WITH A LAPTOP COMPUTER WOULD BE COVERED IF HE ENTERS INFORMATION FROM HIS SALES CALLS. COMPLIANCE COSTS FOR THE PRIVATE SECTOR WILL NOT BE NEGLIGIBLE.

14. (SBU) COMMISSION OFFICIALS HAVE CONFIRMED THAT AN ADEQUATE PROTECTION SYSTEM DOES NOT HAVE TO MIRROR THAT CREATED BY THE DATA PROTECTION DIRECTIVE, ALTHOUGH IT MUST PROVIDE THE SAME TYPES OF PROTECTIONS (E.G., ADEQUACY, ACCURACY, LEGITIMACY), GIVE THE SAME RIGHTS OF ACCESS AND REDRESS, AND HAVE MECHANISMS TO ENSURE COMPLIANCE. THEY HAVE ACKNOWLEDGED THAT THE TYPE OF INDUSTRY-LED, SELF-REGULATING SYSTEMS CURRENTLY BEING CREATED IN THE UNITED STATES MAY MEET THEIR TEST OF ADEQUACY, BUT HAVE INSISTED THAT THEY WANT TO SEE "SELF-REGULATION WITH TEETH" (I.E., CREDIBLE MEASURES TO ADDRESS NON-COMPLIANCE).

15. (SBU) ARTICLE 26 OF THE DIRECTIVE ESTABLISHES A LIMITED NUMBER OF EXCEPTIONS WHICH CAN PERMIT TRANSFERS WHICH MIGHT OTHERWISE BE BLOCKED UNDER ARTICLE 25. THESE INCLUDE CIRCUMSTANCES WHERE THE DATA SUBJECT HAS CONSENTED UNAMBIGUOUSLY TO THE TRANSFER (OPT-IN CONSENT), OR WHERE THE TRANSFER IS NECESSARY TO THE PERFORMANCE OF A CONTRACT CONCLUDED IN THE INTEREST OF THE DATA SUBJECT BETWEEN THE DATA CONTROLLER AND A THIRD PARTY. ALSO, ARTICLE 26 ALLOWS A MEMBER STATE TO AUTHORIZE TRANSFERS OF PERSONAL DATA TO FOREIGN PARTIES WHICH ARE DEEMED TO LACK ADEQUATE PROTECTION IF THE CONTROLLER PROVIDES ADEQUATE SAFEGUARDS. SUCH SAFEGUARDS MAY IN PARTICULAR INCLUDE CONTRACTUAL ARRANGEMENTS. CONTRACTUAL SOLUTIONS MAY EVENTUALLY PROVE TO BE A KEY ELEMENT IN THE INTEGRATION OF THE US AND THE EU APPROACHES TO DATA PRIVACY.

16. (SBU) USG OFFICIALS HAVE BEEN ENGAGED IN AN INTENSIVE DIALOGUE WITH EU COMMISSION OFFICIALS, NOTABLY IN DISCUSSIONS BETWEEN COMMERCE U/S DAVID AARON AND DG XV DIRECTOR GENERAL JOHN MOGG. IN THESE MEETINGS, THE US HAS SOUGHT TO INFORM THE EU ABOUT THE DEVELOPMENT OF PRIVACY PROTECTION IN THE US, TO GAIN A BETTER UNDERSTANDING OF HOW THE EU DATA PROTECTION DIRECTIVE WILL OPERATE, TO FIND WAYS TO MESH OUR DIFFERING APPROACHES TO PRIVACY, AND TO AVERT A MAJOR DISRUPTION IN TRANSATLANTIC DATA FLOWS AND TRADE. THE DISCUSSIONS HAVE GONE A LONG WAY TOWARD BRIDGING THE GAPS BETWEEN OUR POSITIONS, BUT MUCH WORK REMAINS TO BE DONE. MOREOVER, GIVEN THE COMPLEXITY OF THE DIRECTIVE, AND THE FACT THAT ACTION UNDER IT WILL BE INITIATED BY THE NATIONAL DATA REGISTRARS, THE POTENTIAL FOR TROUBLESOME CASES WILL BE HIGH EVEN IN THE BEST OF CIRCUMSTANCES.

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KEY ROLE OF MEMBER STATES

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17. (SBU) THE STARTING POINT FOR ACTION UNDER THE DIRECTIVE OCCURS WHEN A COMPLAINT IS BROUGHT TO ONE OF THE 15 NATIONAL DTA REGISTRARS. IN SOME MEMBER STATES, THE MIISTRY OF JUSTICE MAY ALSO HAVE A ROLE IN THE PROCESS. THE COMPLAINT COULD BE BROUGHT BY AN INDIVIDUAL, OR BY AN ORGANIZATION (E.G., A PRIVACY ACTIVIST GROUP) ON BEHALF OF AN INDIVIDUAL OR GROUP OF INDIVIDUALS. COMMISSION OFFICIALS HAVE INDICATED THAT, SHOULD A MEMBER STATE DATA REGISTRAR DECIDE TO BLOCK DATA TRANSFERS TO A FOREIGN PARTY, THAT BLOCKAGE WILL REMAIN IN FORCE FOR TRANSFERS FROM THAT MEMBER STATE ONLY (NOT OTHER EU MEMBER STATES) UNTIL IT IS REVIEWED BY THE COMMISSION. THE COMMISSION'S REVIEW WILL DETERMINE WHETHER THE DATA REGISTRAR'S DECISION IS VALID, IN WHICH

CASE IT WILL BE APPLIED IN ALL MEMBER STATES, OR INVALID, IN WHICH CASE THE IMPEDIMENT TO DATA TRANSFERS WILL BE LIFTED. WHILE COMMISSION OFFICIALS HAVE INDICATED THAT THEY WILL TRY TO COMPLETE THEIR REVIEW WORK EXPEDITIOUSLY, EVEN A RECIPIENT WHICH IS CLEARED OF WRONGDOING BY THE COMMISSION WOULD STILL EXPERIENCE SOME DISRUPTION IN DATA FLOWS FROM AT LEAST ONE MEMBER STATE.

18. (SBU) WITH 15 DIFFERENT NATIONAL AUTHORITIES POTENTIALLY REVIEWING MILLIONS OF DATA TRANSACTIONS IN THE LIGHT OF 15 DIFFERENT SETS OF NATIONAL LAWS AND TRADITIONS RELATING TO PERSONAL PRIVACY, IT SEEMS LIKELY THAT US PARTIES WILL BE THE TARGET OF A NUMBER OF COMPLAINTS, AT LEAST UNTIL EU-WIDE PRECEDENTS ARE ESTABLISHED AND ALL THE PARTICIPANTS IN THE PROCESS HAVE A CLEARER PICTURE OF HOW THE LAW WILL OPERATE. CURRENT DISCUSSIONS WITH THE COMMISSION SUGGEST THAT THE CHANCES ARE LOW THAT THE US COULD OBTAIN A BLANKET CLEARANCE FROM ACTION UNDER THE DIRECTIVE. AT THE SAME TIME, COMMISSION OFFICIALS HAVE INDICATED THAT THEY WANT TO MINIMIZE DISRUPTION TO TRANSATLANTIC COMMERCE AND THAT THE CHANCES OF A TOTAL BLOCK ON DATA TRANSFERS TO THE US ARE ALSO LOW. THE LIKELIEST SCENARIO, IN PARTICULAR GIVEN THE ENORMOUS ENFORCEMENT BURDEN CREATED BY THE DIRECTIVE, IS THAT MEMBER STATE AUTHORITIES AND THE COMMISSION WILL TAKE TARGETED ACTION AGAINST A FEW INDIVIDUAL FIRMS, HOPING THAT THIS WILL PERSUADE OTHERS TO ADOPT MORE RIGOROUS PROTECTION POLICIES.

19. (SBU) ANOTHER POINT WHERE THE MEMBER STATES WILL HAVE A KEY ROLE IS IN THE SO CALLED "ARTICLE 31 COMMITTEE." ARTICLE 31 OF THE DIRECTIVE CREATES A COMMITTEE COMPOSED OF MEMBER STATE REPRESENTATIVES AND CHAIRED BY THE COMMISSION. THE COMMISSION IS REQUIRED TO SUBMIT TO THIS COMMITTEE DRAFTS OF MEASURES TO BE TAKEN UNDER THE DIRECTIVE. THE COMMITTEE WILL DELIVER AN OPINION BY WEIGHTED MAJORITY VOTE, ACCORDING TO THE FORMULA LAID OUT IN ARTICLE 148(2) OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY. IF THIS VOTE GOES AGAINST THE COMMISSION RECOMMENDATION, THEN IMPLEMENTATION OF THE ACTION WILL BE DEFERRED FOR SUBSEQUENT DECISION BY THE EU COUNCIL. THE ARTICLE 31 COMMITTEE AND THE COUNCIL, BOTH INSTITUTIONS COMPOSED OF MEMBER STATE REPS, THEREFORE COULD BE AN OPTION FOR TURNING BACK AN ADVERSE COMMISSION DECISION.

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BE PREPARED
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20. (SBU) COMMENT: USEU IS AWARE THAT POSTS IN SOME EU MEMBER STATES ALREADY ARE ENGAGED IN ACTIVE DISCUSSIONS WITH HOST COUNTRY PRIVACY AUTHORITIES AS A RESULT OF CASES WHERE US FIRMS HAVE RUN AFOUL OF EXISTING NATIONAL PRIVACY LAWS. ON THE OTHER HAND, POSTS WHICH DO NOT YET HAVE A GOOD WORKING RELATIONSHIP WITH THEIR NATIONAL DATA REGISTRAR MAY WANT TO ESTABLISH CONTACTS TO PREPARE FOR POSSIBLE REQUESTS FOR ASSISTANCE FROM US FIRMS AND OTHER DATA RECIPIENTS WHICH ENCOUNTER PROBLEMS WITH THE DATA PROTECTION DIRECTIVE. MINISTRY OF JUSTICE CONTACTS MAY ALSO BE USEFUL IN SOME CASES. USEU STANDS READY TO ASSIST ANY POST WITH ADDITIONAL INFORMATION ON THE EU DATA PROTECTION DIRECTIVE, AND TO INTERCEDE WITH EU COMMISSION OFFICIALS ON BEHALF OF US DATA RECIPIENTS WHICH ENCOUNTER PROBLEMS WITH THIS NEW, SWEEPING PRIVACY LAW. END COMMENT. (DRAFTED:ECON:CHELMER)

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ACTION CIP-00

INFO	LOG-00	ACDA-08	ACDE-00	AGRE-00	AID-00	AIT-03	CEA-01
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	EAP-01	EB-00	EXME-00	EUR-01	E-00	UTED-00	FRB-00
	H-01	IM-01	TEDE-00	INR-00	IO-00	ITC-01	LAB-01
	L-01	ADS-00	NSAE-00	OIC-02	OMB-01	OPIC-01	PA-00
	PRS-00	CIO-00	SP-00	SSO-00	SS-00	STR-00	TRSE-00
	USIE-00	DRL-04	G-00	NFAT-00	SAS-00	/027W	

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P 080610Z JUN 98
FM AMEMBASSY SINGAPORE
TO SECSTATE WASHDC PRIORITY 1942
INFO APEC COLLECTIVE PRIORITY
WHITE HOUSE WASHDC PRIORITY
USMISSION GENEVA PRIORITY
USEU BRUSSELS PRIORITY
USDOC WASHDC PRIORITY
FCC WASHDC PRIORITY

UNCLAS SECTION 01 OF 02 SINGAPORE 002504

SENSITIVE

WHITE HOUSE FOR IRA MAGAZINER

USDOC FOR NTIA/STEINOUR

FCC FOR KENNARD, FITZGERALD, AND WU

STATE ALSO FOR EB/CIP AND EAP/ANP

STATE PASS USTR FOR CORBETT

GENEVA PASS USTR

E.O. 12958: N/A
TAGS: ECPS, ETRD, APECO, USTR, AU
SUBJECT: BILAT MEETING WITH AUSTRALIA AT APEC TELMIN 3

SINGAPORE 01 OF 02 2504

SENSITIVE BUT UNCLASSIFIED - PLEASE PROTECT ACCORDINGLY

1. SUMMARY: DURING THE U.S.-AUSTRALIA BILAT MEETING AT APEC TELMIN 3, THE U.S. BRIEFED AUSTRALIA ON INTERNET ISSUES INCLUDING DOMAIN NAME SYSTEM REFORM, PRIVACY, AND TAXATION. NOTABLY, AUSTRALIAN DELEGATES SAID THAT THEY HAD ALREADY SEEN A DOWNTURN IN STORE SALES OF COMPACT DISCS AND WORRIED ABOUT THE FISCAL IMPACT OF THE GROWTH OF (UNTAXED) ELECTRONIC TRANSACTIONS. END SUMMARY.

2. DURING A JUNE 2 BILATERAL MEETING AT THE THIRD APEC TELECOMMUNICATIONS MINISTERIAL IN SINGAPORE, COMMUNICATIONS MINISTER RICHARD ALSTON SHOWED INTEREST IN U.S. VIEWS ON PRIVACY AND TAXATION ON THE INTERNET AS WELL AS DOMAIN NAME SYSTEM REFORM. THE MINISTER ASKED WHETHER THE U.S. PLANNED ANY NEW JOINT STATEMENTS ON CYBERSPACE. AMBASSADOR VONYA MCCANN EXPRESSED GENERAL INTEREST IN SIGNING MORE JOINT STATEMENTS ON E-COMMERCE AND SAID THE U.S. WOULD BE OPEN TO CONSIDERING ONE WITH AUSTRALIA.

3. COMMERCE ASSISTANT SECRETARY IRVING INFORMED THE AUSTRALIAN DELEGATES OF THE UPCOMING ISSUANCE OF THE FEDERAL TRADE COMMISSION'S REPORT ON PRIVACY PROTECTION ON THE INTERNET, NOTING THAT EARLY INDICATIONS ARE THAT THE PRIVATE SECTOR HAS SHOWN AN APPALLING LACK OF LEADERSHIP IN THIS AREA. IRVING SAID IT HOPED TO USE THE REPORT AS A "CUDGEL" TO WAKE UP THE PRIVATE SECTOR TO

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THE NEED FOR BETTER PROTECTION OF CONSUMERS' PRIVACY.

4. MINISTER ALSTON ASKED ABOUT THE U.S. APPROACH TO PROTECTING PRIVACY AND WONDERED WHETHER THE EU WOULD ACCEPT AN INDUSTRY CODE OF CONDUCT. NOTING THAT THE EU RECENTLY BEGAN MITIGATING ITS COMMENTS, IRVING SAID THAT HE WAS OPTIMISTIC ABOUT STRIKING COMPROMISE WITH THE EU AND THOUGHT THERE WOULD BE NO STOPPAGE IN DATA FLOWS. MOREOVER, HE BELIEVED THERE WERE INITIAL SIGNS OF COOPERATION IN PRIVATE SECTOR. THE PRIVACY ISSUE, HE SAID, STRIKES ACROSS E-COMMERCE TO INCLUDE ALL SORTS OF DATA TRANSMISSIONS CARRYING PERSONAL INFORMATION.

5. THE MINISTER ASKED HOW THE U.S. PLANNED TO IMPLEMENT A CODE OF CONDUCT THAT WOULD KEEP BUSINESSES FROM FALLING THROUGH CRACKS, NOTING THAT BIG FIRMS WOULD COME ON BOARD BUT THERE WOULD ALWAYS BE FLY-BY-NIGHTS WHO FLOUT THE RULES. AMBASSADOR MCCANN SAID THERE WAS NO NEED FOR LEGISLATION BECAUSE MARKET FORCES WOULD FORCE MOST BUSINESSES TO COMPLY. ASST. SECRETARY IRVING EXPRESSED HOPE THAT THE THREAT OF LEGISLATION, RATHER THAN ACTUAL LEGISLATION, WOULD BE EFFECTIVE IN MOTIVATING THE PRIVATE SECTOR TO ADDRESS THE ISSUE.

6. ON THE ISSUE OF DOMAIN NAME SYSTEM REFORM, ASST. SECRETARY IRVING SAID THAT THE REFORM PACKAGE IS NEAR COMPLETION. HE NOTED THAT MUCH OF THE FEEDBACK RECEIVED ON DOMAIN NAME SYSTEM REFORM, INCLUDING THAT FROM AUSTRALIA, HAD BEEN INCORPORATED INTO THE FINAL PRODUCT.

7. IN THE AREA OF TAXATION, THE MINISTER SAID THAT AUSTRALIA HAD ALREADY SEEN A DOWNTURN IN THE SALE OF CD'S, WHICH APPEARED TO BE LINKED TO THE RISE OF ELECTRONIC COMMERCE. HE EXPRESSED CONCERN ABOUT THE IMPLICATIONS OF A LOSS OF TAX REVENUE DUE TO ON-LINE SALES. AMBASSADOR MCCANN SAID THAT THE TREASURY DEPARTMENT WAS WORKING ON ISSUES OF TAXATION AND NOTED THAT THE U.S. STATES AND MUNICIPALITIES ARE ALSO VERY CONCERNED ABOUT THE POTENTIAL LOSS IN SALES TAX REVENUE.

8. ON A WORRYING NOTE, MINISTER ALSTON EXPRESSED CURIOSITY ABOUT CONTENT AND THE EFFECTIVENESS AND COST OF FILTERING SYSTEMS. THE MINISTER SAID HE WOULD BE SEEKING MORE INFORMATION ON THIS TOPIC, IN PART BECAUSE OF HIS IMPRESSION THAT PROXIES DID LITTLE TO SLOW INTERNET SERVICE IN SINGAPORE.

9. THE AUSTRALIAN DELEGATION WAS LED BY MINISTER FOR COMMUNICATIONS, THE INFORMATION ECONOMY, AND THE ARTS RICHARD ALSTON AND INCLUDED DEPARTMENT OF COMMUNICATIONS AND THE ARTS (DOCA) SECRETARY NEVILLE STEPHENS AND DOCA TELECOMMUNICATIONS INDUSTRY DIVISION FIRST ASSISTANT SECRETARY FAY HOLTHUYZEN.

10. USDEL WAS LED BY AMBASSADOR VONYA MCCANN AND INCLUDED

SINGAPORE 02 OF 02 2504

COMMERCE ASSISTANT SECRETARY LARRY IRVING, FCC OFFICIALS ARI FITZGERALD AND IRENE WU, USTR OFFICIAL BILL CORBETT, AND ECONOFF (NOTETAKER).

11. THIS CABLE WAS CLEARED BY THE MEMBERS OF THE U.S. DELEGATION.

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	DOTE-00	SRPP-00	EAP-01	EB-00	EXME-00	EUR-01	E-00
	UTED-00	FRB-00	H-01	IM-01	TEDE-00	INR-00	IO-00
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FM AMEMBASSY SINGAPORE
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USDOC WASHDC PRIORITY
FCC WASHDC PRIORITY

UNCLAS SECTION 01 OF 02 SINGAPORE 002503

SENSITIVE

C O R R E C T E D C O P Y - (TEXT IN PARA 1)
USDOC FOR NTIA/STEINOUR
USDOC FOR 4430/MAC/OA/KBOYD

FCC FOR KENNARD, FITZGERALD, AND WU
GENEVA PASS USTR

STATE ALSO FOR EB/CIP AND EAP/PIMBS

STATE PASS USTR FOR CORBETT

E.O. 12958: N/A
TAGS: ECPS, ETRD, BEXP, APECO, USTR, SN
SUBJECT: BILAT MEETING WITH SINGAPORE AT APEC TELMIN 3

SINGAPORE 01 OF 02 2503

SENSITIVE BUT UNCLASSIFIED - PLEASE PROTECT ACCORDINGLY

1. SUMMARY: DURING A 45-MINUTE BILATERAL MEETING WITH THE SINGAPORE COMMUNICATIONS MINISTER MAH BOW TAN, USDEL EXPRESSED CONCERN ABOUT SINGAPORE'S "SLOW" PROGRESS IN OPENING ITS TELECOMS MARKET AND URGED SINGAPORE TO REPLACE ITS "MANAGED COMPETITION" MODEL OF TELECOMS REGULATION WITH AN "OPEN MARKET" MODEL. SINGAPORE COMMUNICATIONS MINISTER MAH DID NOT WAVER ON THE ISSUE OF COMPETITION AND URGED THE U.S. TO WORK TOWARDS A MULTILATERAL SOLUTION ON INTERNET BANDWIDTH FINANCING. END SUMMARY.

2. DURING A JUNE 2 BILATERAL MEETING AT THE THIRD APEC TELECOMMUNICATIONS MINISTERIAL, AMBASSADOR VONYA MCCANN EXPRESSED U.S. CONCERN OVER THE "SLOW" PACE OF LIBERALIZATION IN THE SINGAPORE TELECOMS MARKET AND THE DIFFICULTY U.S. FIRMS HAD IN ENTERING. SHE URGED SINGAPORE TO APPLY AN "OPEN MARKET" PHILOSOPHY IN LIBERALIZING ITS TELECOMS SECTOR, THEREBY ALLOWING MORE COMPETITORS INTO THE MARKET. ADDITIONALLY, AMBASSADOR MCCANN DELIVERED A COPY OF A LETTER FROM U.S. TRADE REPRESENTATIVE CHARLENE BARSHEFSKY TO SINGAPORE DEPUTY PRIME MINISTER LEE HSIEN LOONG, WHICH REINFORCED THE USDEL'S MESSAGE.

3. SINGAPORE COMMUNICATIONS MINISTER MAH BOW TAN TOLD AMBASSADOR MCCANN THAT SINGAPORE DID NOT BELIEVE THAT A "FREE-FOR-ALL" WOULD BE IN THE BEST INTEREST OF EITHER SINGAPORE'S CONSUMER OR PROVIDERS OF TELECOMS SERVICES. HE NOTED THAT SINGAPORE HAD TAKEN IMPORTANT STRIDES TOWARD A MORE LIBERALIZED TELECOMS

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MARKET, INCLUDING THE LICENSING IN APRIL OF ONE ADDITIONAL MOBILE PROVIDER AND ONE ADDITIONAL BASIC TELECOMS PROVIDER. WITH THE GOAL OF ENHANCING SINGAPORE'S TELECOMS INFRASTRUCTURE, MAH EMPHASIZED THAT SINGAPORE HAD FOCUSED ON ATTRACTING FACILITIES-BASED OPERATORS RATHER THAN RESELLERS IN THE MOST RECENT TENDER FOR NEW BASIC LICENSES.

4. REGARDING THE RECENT TENDER FOR BASIC TELECOMS LICENSES (IN WHICH A CONSORTIA INVOLVING THE U.S. FIRM WORLDCOM FAILED TO OBTAIN A LICENSE), MAH SAID THE GOVERNMENT HAD ALWAYS SAID IT WOULD ISSUE "UP TO TWO" BASIC TELECOMS LICENSES. EACH BIDDER WAS ASKED TO SUBMIT BIDS BASED ON TWO SCENARIOS: 1) A MARKET WITH TWO FIXED-LINE COMPETITORS AND 2) A MARKET WITH THREE FIXED-LINE COMPETITORS. MAH SAID THE GOVERNMENT HAD HOPED TO ISSUE TWO LICENSES. HOWEVER, WHEN THE EVALUATION COMMITTEE REVIEWED THE BIDS, IT FOUND THAT SOME BIDDERS PLANNED TO INVEST CONSIDERABLY LESS IN INFRASTRUCTURE IN THE SECOND SCENARIO THAN IN THE FIRST. BASED ON THESE PROPOSALS, THE EVALUATION COMMITTEE CONCLUDED THAT THE MARKET WOULD NOT BEAR TWO NEW COMPETITORS AT THE LEVEL OF INFRASTRUCTURE INVESTMENT EXPECTED. THEREFORE, THE COMMITTEE RECOMMENDED THAT ONLY ONE OPERATOR BE GIVEN A LICENSE.

5. AMBASSADOR MCCANN TOLD THE MINISTER THAT U.S. TELECOMS FIRMS, ESPECIALLY WORLDCOM, WERE EAGER TO GET INTO THE SINGAPORE MARKET. SHE ARGUED THAT THESE FIRMS RISKED THEIR OWN CAPITAL AND SHOULD BE ALLOWED TO COMPETE. THE MINISTER TOLD AMBASSADOR MCCANN THAT HE HAD A PHILOSOPHICAL DIFFERENCE ON THIS POINT. HE SAID HE SAW NO BENEFIT TO CONSUMERS OR PROVIDERS OF TELECOMS SERVICES IN OPENING THE SINGAPORE MARKET RAPIDLY AND COMPLETELY BECAUSE IT WOULD RESULT IN LOWER INFRASTRUCTURE INVESTMENTS AND LEAD TO HIGHER TARIFFS AS BIG COMPETITORS KNOCK SMALLER FIRMS OUT OF CONTENTION. HOWEVER, ADMITTING THAT DUOPOLY WAS A DANGEROUS SITUATION, THE MINISTER REITERATED THE GOVERNMENT'S COMMITMENT TO ALLOW MORE FIRMS TO ENTER THE MARKET BY 2002. MINISTER MAH SAID THAT SINGAPORE HAD NOT RENEGED ON ITS WTO COMMITMENTS AND WOULD NOT RETREAT FROM THESE COMMITMENTS. THE QUESTION, HE SAID, IS NOT THE END POINT BUT THE STAGING.

6. FINALLY, CONCERNING THE POSSIBILITY OF U.S. FIRMS (LIKE WORLDCOM) ENTERING THE SINGAPORE MARKET SOONER THAN 2002, THE MINISTER SAID THAT SINGAPORE WOULD WELCOME CREATIVE PROPOSALS FOR SERVICES THAT FALL OUTSIDE THE SCOPE OF THE BASIC LICENSES. HE NOTED THAT THE BASIC TELECOMS LICENSES WERE LIMITED IN SCOPE AND LEFT ROOM FOR OTHER SERVICE PROVIDERS TO OFFER SPECIALIZED TELECOMS SERVICES.

7. AS THE MEETING DREW TO A CLOSE, MINISTER MAH RAISED THE ISSUES OF INTERNET BANDWIDTH FINANCING AND HUMAN RESOURCE DEVELOPMENT. HE SOUGHT SUPPORT FOR A SINGAPORE PROPOSAL TO THE APEC TELECOMMUNICATIONS WORKING GROUP FOR A STUDY OF INTERNET FINANCING ISSUES AND HANDED THE U.S. DELEGATION A WRITTEN PROPOSAL FOR CONSIDERATION. HE ALSO NOTED THE NEED TO MAKE

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BETTER USE OF THE RESOURCES CURRENTLY ALLOCATED TO THE DEVELOPMENT OF HUMAN RESOURCES IN THE TELECOMS SECTOR.

8. THE SINGAPORE DELEGATION WAS LED BY COMMUNICATIONS MINISTER MAH BOW TAN AND INCLUDED TELECOMMUNICATIONS AUTHORITY OF SINGAPORE (TAS) ASSISTANT DIRECTOR FOR INTERNATIONAL AFFAIRS VALERIE D'COSTA, TAS DIRECTOR FOR POLICY NG CHER KENG, AND MINISTRY OF COMMUNICATIONS ASSISTANT DIRECTOR FOR LAND TRANSPORT COLIN LIM.

9. THE USDEL WAS LED BY AMBASSADOR VONYA MCCANN AND INCLUDED COMMERCE ASSISTANT SECRETARY LARRY IRVING, FCC OFFICIALS ARI FITZGERALD AND IRENE WU, AND USTR OFFICIAL BILL CORBETT. USDEL

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9. THIS CABLE WAS CLEARED BY THE MEMBERS OF THE U.S. DELEGATION.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From AmEmbassy Paris re: E-Commerce: French Views on Proposed International Convention on Electronic Transactions (2 pages)	06/17/98	P5
002. cable	From AmEmbassy Madrid re: Spain: First Bilateral Telecommunications Dialogue, May (partial cable) (4 pages)	06/19/98	P5

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13116

FOLDER TITLE:

Cables

Rhonda Wilson

rw112

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]

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b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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PAGE 01 OF 02
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TO RUEHC/SECSTATE WASHDC PRIORITY 6842
INFO RUEHXQ/ALL EUROPEAN UNION POST COLLECTIVE
RUEHKO/AMEMBASSY TOKYO 7182
RUEHGP/AMEMBASSY SINGAPORE 4266
RUCPDOC/USDOC WASHDC
RHEHAAA/WHITE HOUSE WASHDC
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STATE PASS USTR FOR ABELSON
STATE FOR EB/CIP, EB/TPP AND EUR/ERA
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E.O. 12958: N/A
TAGS: ECPS, EINT, ETRD, EUN, FR
SUBJECT: E-COMMERCE: FRENCH VIEWS ON PROPOSED INTERNATIONAL CONVENTION ON ELECTRONIC TRANSACTIONS

REF: A) STATE 93859 B) PARIS 10507 (NOTAL)

1. (U) WE DELIVERED REF A TALKING POINTS AND DRAFT CONVENTION UPONSCEIPT TO E-COMMERCE POLICY MAKERS IN THE PRIME MINISTER'S OFFICE, THE FINANCE MINISTRY, AND THE FOREIGN MINISTRY. AS NOTED REF B, WE HAD ALREADY PASSED A NON-PAPER CONTAINING THE GIST OF THE U.S. PROPOSAL TO ENCRYPTION CZAR MICHEL FERRIER, STATE SECRETARY FOR INDUSTRY CHRISTIAN PIERRET, AND E-COMMERCE CZAR FRANCIS LORENTZ DURING THE VISIT TO PARIS OF COMMERCE U/S AARON IN LATE APRIL. REACTION TO THE U.S. NON-PAPER WAS GENERALLY FAVORABLE DURING U/S AARON'S VISIT.

2. (U) THE GOF SUPPORTS DISCUSSION OF DIGITAL SIGNATURES IN UNCITRAL, BUT HAS NOT YET FINALIZED ITS POSITION FOR THE LATE JUNE MEETING OF EXPERTS IN NEW YORK, ACCORDING TO FOREIGN MINISTRY CONTACTS.

3. (U) GOF ADMINISTRATIVE LAW JUDGE ISABELLE FALQUE-PIERROTIN PROVIDED A SUBSTANTIVE REACTION TO THE U.S. PROPOSAL ON JUNE 4. FALQUE-PIERROTIN IS THE GOF'S LEGAL EXPERT ON INTERNET ISSUES AND LEADS GOF NEGOTIATIONS WITH THE EU COMMISSION ON THE UPCOMING DIGITAL SIGNATURES DIRECTIVE. SHE IS DRAFTING A REPORT ON LEGAL ISSUES RELATED TO ELECTRONIC COMMERCE, INCLUDING DIGITAL SIGNATURES, WHICH THE ADMINISTRATIVE LAW COURT (CONSEIL D'ETAT)

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WILL SUBMIT TO THE JOSPIN GOVERNMENT IN JULY. THE REPORT WILL BE MADE PUBLIC IN THE FALL AND FORM THE BASIS FOR GOF LEGISLATIVE AND/OR REGULATORY INITIATIVES.

4. (SBU) FALQUE-PIERROTIN MADE THE FOLLOWING POINTS:

-- AUTHENTICATION OF ELECTRONIC TRANSACTIONS IS PART OF A BROADER PROBLEM OF CONSUMER PROTECTION ON-LINE. (SHE ASKED FOR OUR OFF-LINE VIEWS ON A POSSIBLE FRENCH PROPOSAL FOR AN INTERNATIONAL AGREEMENT ON E-COMMERCE CONSUMER PROTECTION.)

-- ANY INTERNATIONAL CONVENTION ON ELECTRONIC TRANSACTIONS SHOULD BE DESIGNED TO BE INTEROPERABLE WITH BOTH THE U.S. CONTRACTS-BASED APPROACH AND THE EUROPEAN REGULATIONS-BASED APPROACH.

-- THE INTERNATIONAL COMMUNITY SHOULD PURSUE AUTHENTICATION SOLUTION$WHICH ARE TECHNOLOGY-NEUTRAL. THE DEFINITION OF VALID AUTHENTICATION METHODS SHOULD BE BASED SOLELY ON FUNCTIONAL CRITERIA, I.E. IDENTIFICATION OF THE SENDER, INTEGRITY OF THE MESSAGE, AND NON-REPUDIATION. ELECTRONIC CONTRACTS "SIGNED" BY VALID DIGITAL SIGNATURES SHOULD BE HAVE THE SAME LEGAL VALIDITY AS HAND-SIGNED PAPER DOCUMENTS.

-- PARTIES TO ELECTRONIC CONTRACTS SHOULD BE FREE TO CHOOSE THEIR OWN AUTHENTICATION METHODS; SUCH AGREEMENT AND/OR APPROVAL BY CERTIFICATE AUTHORITIES SHOULD CONVEY THE ASSUMPTION OF LEGAL VALIDITY; DISPUTES BETWEEN THE PARTIES CAN BE CONSIDERED ON A CASE-BY-CASE BASIS BY APPROPRIATE JUDICIAL AUTHORITIES. STATES SHOULD NEGOTIATE MUTUAL RECOGNITION OF CERTIFICATE AUTHORITIES.

5. (SBU) FALQUE-PIERROTIN SAID THE CURRENT DRAFT EU DIRECTIVE ON DIGITAL SIGNATURES WAS "TOO RIGID" FOR FRANCE. SHE NOTED THAT FEW EU MEMBER STATES WERE FOLLOWING THE ISSUE CLOSELY; SHE EXPECTED FRANCE WOULD PREVAIL IN ITS EFFORTS TO HAVE THE EU ENDORSE A MORE FLEXIBLE APPROACH. SHE WAS CRITICAL OF THE GERMAN APPROACH TO DIGITAL SIGNATURES.

PARMLY
<^SECT>SECTION: 01 OF 01
<^SSN>3620
<MSGID> M3339091

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ACTION IMMA-02

INFO	LOG-00	ACDA-08	ACDE-00	AGRE-00	AID-00	A-00	CEA-01
	CIAE-00	COME-00	CTME-00	DINT-00	DODE-00	DOTE-00	SRPP-00
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UNCLAS SECTION 01 OF 08 MADRID 006278

SENSITIVE

EB/CIP FOR AMB. MCCANN AND E.MALLOY

FCC FOR INTERNATIONAL BUREAU/HAAN, KEENEY AND MCBRIDE

USTR FOR ABELSON, CORBETT AND DEMARCELLUS

USDOC FOR 4220/IEP/OWE/SED/ACORRO
USDOC FOR 3133/USFCS/OIO/NNEGRETTI
USDOC FOR 6320/TD/TAI/OT/MOTTUR AND DENNY-BROWN
USDOC FOR NTIA/BURR

USDOJ FOR C.WILLNER

E.O. 12958: N/A
TAGS: ECPS, ETRD, ECON, EUN, INT, SP
SUBJECT: SPAIN: FIRST BILATERAL TELECOMMUNICATIONS DIALOGUE, MAY 11-13, 1998

REFS: A) MADRID 4649 B) MADRID 4553
C) MADRID 4103 D) MADRID 2790

MADRID 01 OF 08 6278

ENTIRE CABLE SENSITIVE BUT UNCLASSIFIED. INTENDED FOR USG USE ONLY. PLEASE TREAT ACCORDINGLY.

1. SUMMARY. DURING THE FIRST ROUND OF BILATERAL TELECOM TALKS, HELD MAY 12-13 IN MADRID, U.S. AND SPANISH DELEGATIONS PROVIDED OVERVIEWS OF THEIR TELECOMMUNICATIONS MARKETS, DISCUSSED CONVERGENCE AND INFORMATION ISSUES (E-COMMERCE, DOMAIN NAME REFORM, PRIVACY) AND COMPARED POSITIONS ON INTERNATIONAL ISSUES (ITU, WRC, INTELSAT AND INMARSAT). WE BELIEVE THIS INITIAL MEETING HAS SUCCESSFULLY PREPARED THE GROUNDWORK TO DEEPEN TIES BETWEEN BOTH COUNTRIES ON TELECOMMUNICATIONS AND INFORMATION POLICY ISSUES. WE SHOULD BUILD ON THIS STRONG START TO ENSURE U.S. INTERESTS ARE REFLECTED IN SPAIN'S $20 BILLION ANNUAL TELECOMMUNICATIONS MARKET. END SUMMARY.

2. ON MAY 12-13, THE U.S. AND SPANISH GOVERNMENTS HELD AN INITIAL ROUND OF DISCUSSIONS IN MADRID ON TELECOMMUNICATIONS AND INFORMATION POLICY, WITH DETAILED EXPLANATIONS, AS WELL AS INTENSIVE QUESTION AND ANSWER SESSIONS, REGARDING EACH OTHERS' REGULATORY AND LEGISLATIVE ENVIRONMENTS.

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THIS APPROACH, THE USG HAS BEEN VIGILANT TO FACILITATE COMPETITION IN FOUR AREAS: 1) ACCESS TO DOMINANT OPERATORS' OPERATING AND BILLING SYSTEMS ON NON-DISCRIMINATORY TERMS; 2) PREVENTION OF ONGOING DISCRIMINATION (VIA PERFORMANCE

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MEASUREMENTS); 3) ESTABLISHMENT OF FORWARD-LOOKING PRICING FOR UNBUNDLED SERVICES; AND 4) REVIEWING HOW NEW OPERATORS CAN BUNDLE SERVICES TO PROVIDE NEW SERVICES.

18. SPANDEL ASKED FOR CLARIFICATION ON WHETHER A NEW ENTRANT FIRST HAD TO CONSULT WITH THE FCC OR STATE PUC TO CONNECT TO A LOCAL LOOP. USDEL REPLIED THE NEW ENTRANT WOULD BE ENTITLED TO REQUEST ACCESS USING THE TERMS OF AN EXISTING AGREEMENT OR COULD INTERCONNECT VIA (PUC-APPROVED) STATEMENTS OF GENERAL TERMS AND CONDITIONS, WHICH ARE ANALOGOUS TO INTERCONNECTION REFERENCE RATES.

19. REGARDING INTERNATIONAL STRATEGIC ALLIANCES, WILLNER SAID THE COLLAPSE AND CREATION OF MANY OF THE RECENT STRATEGIC ALLIANCES HAS NOT BEEN DRIVEN BY REGULATORY CONSTRAINTS SO MUCH AS BY CHANGING STRATEGIES RESPONDING TO SHIFTING MARKET CONDITIONS. WITH RESPECT TO INTERNATIONAL ACQUISITIONS, USDEL ACKNOWLEDGED SPAIN (TELEFONICA)'S HUGE PRESENCE IN LATIN AMERICA, INCLUDING ARGENTINA, CHILE, PERU AND VENEZUELA. USDEL ALSO NOTED SOME CONTINUING PROBLEMS GAINING ACCESS TO INTERNATIONAL CABLES (VIA CABLE LANDING POINTS) AND BACKHAUL.

CONVERGENCE AND INFORMATION ISSUES

20. ELECTRONIC COMMERCE: NTIA'S BECKY BURR REFERRED TO THE RECENTLY ISSUED REPORT ON THE DIGITAL ECONOMY, WHICH ESTIMATED THAT INFORMATION TECHNOLOGY HAS GENERATED ABOUT 8% OF U.S. GDP AND HAS ALSO HAD A SIGNIFICANT INFLATION-DAMPENING EFFECT IN THE PAST YEAR. (NOTE: EMBASSY WILL REITERATE REPORT'S AVAILABILITY AT WWW.ECOMMERCE.GOV, AND PASS COPIES TO RELEVANT GOS OFFICIALS.) BURR ALSO NOTED THE GUIDING PRINCIPLES FOR OUR APPROACH TO E-COMMERCE ISSUES, WHICH ARE DESCRIBED IN DETAIL IN THE 7/97 "FRAMEWORK ON GLOBAL ELECTRONIC COMMERCE." SPANDEL AGREED WITH ALMOST ALL OF THE USG POSITIONS DESCRIBED AND CITED THE EU COMMON POSITION IN ITS INTERNATIONAL LETTER ON E-COMMERCE. NOTING THERE ARE A WIDE RANGE OF FORA WORKING ON E-COMMERCE ISSUES, SPANDEL SAID PERHAPS THERE SHOULD BE A MORE COHERENT, UNIFIED APPROACH ON E-COMMERCE ISSUES TO AVOID CONTRADICTORY POSITIONS.

21. DUTY-FREE CYBERSPACE: SPANDEL AGREED WE SHOULD MAINTAIN NEUTRALITY AND NON-DISCRIMINATION PRINCIPLES AND AVOID CREATING NEW DUTIES DUE TO NEW TECHNOLOGIES. IN REPLY TO FINANCE MINISTRY COMMENTS QUESTIONING WHETHER WE SHOULD CONSIDER ALL E-COMMERCE TO BE SERVICES, BURR SAID IT WAS MORE USEFUL TO CONSIDER E-COMMERCE AS ELECTRONIC TRANSMISSIONS (LIKE FAX OR E-MAIL MESSAGES) WHICH ARE NOT CURRENTLY SUBJECT TO ANY DUTIES.

22. DOMAIN NAME REFORM: BURR DESCRIBED THE EVOLUTION OF USG EFFORTS TO REFORM THE DOMAIN NAME SYSTEM, STRESSING OUR EMPHASIS ON PASSING ITS MANAGEMENT ON TO A NON-GOVERNMENTAL ENTITY, INTRODUCING COMPETITION, MAINTAINING A PREDICTABLE AND STABLE ENVIRONMENT, AND FACILITATING SUCH REFORM ON A GLOBAL BASIS. BURR SAID WE HAVE RECEIVED MANY COMMENTS AND SUGGESTIONS, ARE ACTIVELY TAKING THEM INTO ACCOUNT AND WILL SOON ISSUE A REVISED PAPER IN THE NEXT FEW WEEKS. BURR ALSO ACKNOWLEDGED THE ACTIVE PARTICIPATION OF THE SPANISH INTERNET USERS ASSOCIATION AND STRESSED THAT, ALTHOUGH IT MAY BE PUBLISHED AS A FINAL ACTION, WE SHOULD CONTINUE TO

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WORK TOGETHER TO DEVELOP THE RAISED PLAN FURTHER. SPANDEL LOOKED FORWARD TO SEEING THE MODIFIED PROPOSAL AND ALSO NOTED IT HAD EARLIER PASSED COMMENTS TO THE USG (REF A).

23. PRIVACY: BURR SAID WE ALL AGREE ON THE NEED FOR FAIR INFORMATION PRACTICES AND BELIEVE OUR GOALS AND THOSE OF THE EU PRIVACY DIRECTIVE ARE FUNDAMENTALLY THE SAME. BURR ADDED WE ARE CONSULTING CLOSELY WITH DG-XV IN BRUSSELS ON DEVELOPING EFFECTIVE SELF-REGULATION. SPANDEL AGREED WE NEED CONTINUITY IN DATA FLOWS AND URGED WE WORK TOGETHER TO PROMOTE A CODE OF CONDUCT IN THIS AREA AS IN THE CASE OF THE INTERNET.

INTERCONNECTION

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24. SPANDEL EXPRESSED GREAT INTEREST IN HEARING ABOUT THE U.S. INTERCONNECTION REGIME SINCE THE GOS IS CURRENTLY REVISING ITS DRAFT INTERCONNECTION REGULATIONS AND IS INTERESTED IN PROVIDING A REGIME WHICH PROMOTES BOTH COMPETITION AND INFRASTRUCTURE DEVELOPMENT. SPANDEL ALSO SAID THE GOS MAY SOON CONSIDER NEW LEGISLATION REGULATING PARTICIPATION IN THE LOCAL LOOP.

25. FCC'S KEENEY SAID THAT, IN THE 1980S, THE FCC FIRST DEVELOPED ACCESS CHARGES TO SPUR COMPETITION IN LONG DISTANCE. NEXT, AS PART OF IMPLEMENTING THE 1996 ACT, THE FCC ESTABLISHED THE INTERCONNECTION REGIME TO TRY TO SPUR LOCAL COMPETITION. UNDER U.S. LAW, INTERCONNECTION CHARGES ARE APPLICABLE TO THREE DIFFERENT TYPES OF CARRIERS: ALL TELECOM CARRIERS; LOCAL EXCHANGE CARRIERS; AND INCUMBENT LOCAL EXCHANGE CARRIERS. ALSO, THERE ARE THREE WAYS FOR A COMPANY TO ENTER THE U.S. MARKET: FACILITIES-BASED NETWORK; USE OF UNBUNDLED NETWORK ELEMENTS; AND RESALE. KEENEY STRESSED THE RESALE OPTION WAS A GOOD WAY FOR NEW ENTRANTS TO GET STARTED, CITING THE EXAMPLE OF MCI. SINCE THE FCC AND STATE PUCS CANNOT ARBITRATE EVERY INTERCONNECTION NEGOTIATION, IT HAS ESTABLISHED GENERAL GUIDELINES AND REQUIRED PARTIES TO NEGOTIATE IN GOOD FAITH. KEENEY STRESSED THE ROLE OF THE REGULATOR SHOULD NOT BE TO MICRO-MANAGE, BUT TO MAINTAIN A PRESENCE, ESPECIALLY AT THE OUTSET, SINCE THERE IS USUALLY UNEQUAL BARGAINING POWER BETWEEN THE INCUMBENT AND NEW OPERATORS AT THAT TIME. THUS FAR, U.S. CABLE COMPANIES HAVE NOT RUSHED IN TO PROVIDE COMPETING LOCAL TELEPHONE SERVICE BECAUSE THEIR EXISTING NETWORKS ARE NOT DESIGNED FOR TELEPHONY (THEY ARE ONE-WAY NETWORKS) AND IT IS TOUGH TO GO UP AGAINST THE LOCAL TELECOM PROVIDER. SPANDEL SAID SPAIN CURRENTLY HAS AN ASYMMETRICAL MODEL, WHICH HEAVILY REGULATES INCUMBENT TELEFONICA. AS A RESULT, TELEFONICA HAS NO INTEREST IN BARGAINING WITH NEW OPERATORS (NOTE: GOS HOPES THE NEW REGULATIONS WILL CHANGE THIS SCENARIO.)

UNIVERSAL SERVICE

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26. USDEL EXPLAINED HOW THE 1996 TELECOM ACT INTRODUCED THE CONCEPT THAT HIGH QUALITY TELEPHONY SERVICE SHOULD BE MADE AVAILABLE TO ALL AT REASONABLE, AFFORDABLE RATES. THE FCC HAS ADDED THAT SUCH SERVICE SHOULD BE COMPETITIVELY NEUTRAL (I.E. SHOULD NOT FAVOR ANY PARTICULAR TECHNOLOGY). INTERNET PROVIDERS ARE NOT CURRENTLY CONSIDERED TO BE TELECOM SERVICE PROVIDERS AND THEREFORE DO NOT CONTRIBUTE TO FINANCING OF UNIVERSAL SERVICE. HOWEVER THIS IS SUBJECT TO FUTURE REVIEW.

27. SPANDEL ASKED WHO SETS UNIVERSAL SERVICE RATES. USDEL

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REPLIED IT IS A JOINT DECISION BY STATE COMMISSIONS AND THE FCC. SPANDEL NOTED THEY ARE CURRENTLY WORKING ON REGULATIONS FOR SPAIN, AND THE EU WILL REVIEW THIS ISSUE NEXT YEAR, POSSIBLY INCLUDING INTERNET ACCESS FOR LIBRARIES, HOSPITALS AND SCHOOLS. AS PART OF ITS UNIVERSAL SERVICE PROVISIONS, THE GOS MAY ESTABLISH SPECIAL RATES FOR EDUCATION, HEALTH AND CULTURAL OBJECTIVES. SPANDEL NOTED THEY HAD TO BE ESPECIALLY VIGILANT IN DRAFTING EQUITABLE RULES DUE TO CONCERNS THAT UNIVERSAL SERVICE, IF TOO ONEROUS, COULD BE VIEWED AS A BARRIER TO ENTRY.

28. ALTHOUGH WE HAVE SOME DIFFERENT ISSUES DUE TO OUR JURISDICTIONAL CHALLENGES, USDEL OFFERED TO PROVIDE A COPY OF U.S. RULES. ALSO, FCC'S KEENEY INFORMED SPANDEL THE FCC WOULD BE SPONSORING A WORKSHOP JUNE 15-17 IN WASHINGTON, WHICH WOULD INCLUDE ISSUES SUCH AS UNIVERSAL SERVICE. CMT REPS TENTATIVELY AGREED TO ATTEND.

TRADE COMMITMENTS

29. USDEL SAID THE USG ADOPTED RULES TO FACILITATE ENTRY OF FOREIGN CARRIERS APPLYING FOR SERVICES COVERED BY THE WTO AGREEMENT. THE NEW SYSTEM INCLUDES A PRESUMPTION OF ENTRY, WITH A 90-DAY DEADLINE (THUS FAR, NO APPLICATIONS HAVE BEEN TURNED DOWN.) IN THE CASE OF A TELMEX APPLICATION, THE DATE

OF THE APPLICATION PRECEDED THE WTO AGREEMENT AND THEREFORE CAME UNDER THE OLD, ECO TEST. USDEL ANNOUNCED THAT THIS PAST WEEK 214 APPLICATIONS FOR TELEFONICA WERE APPROVED AND SUBMARINE CABLE LICENSES WOULD BE FORTHCOMING SOON. (NOTE: DURING A MAY 12 RECEPTION HOSTED BY CHARGE, WE WERE INFORMED BY A U.S. TELECOM OPERATOR THAT TELEFONICA IS RELUCTANT TO PROVIDE ACCESS TO ITS LANDING POINT AT ESTEPONA FOR THE FLAG SUBMARINE CABLE AND ITS SUBMARINE CABLE LICENSE APPLICATIONS MAY THUS MERIT SUBSEQUENT REVIEW.)

30. BENCHMARKING: USDEL SAID THE ACCOUNTING RATE ISSUE IS BECOMING ACADEMIC SINCE NEW TECHNOLOGIES ARE CAUSING CARRIERS WHICH INSIST ON MAINTAINING HIGH ACCOUNTING RATES TO LOSE MARKET SHARE. USDEL STRESSED WE WOULD WELCOME A MULTILATERAL SOLUTION TO GETTING RATES DOWN TO APPROACH ACTUAL COSTS. IN THE CASE OF SPAIN, SPANDEL SAID RETEVISION DOES NOT YET HAVE ANY DIRECT ACCESS SUBSCRIBERS AND MUST STILL GO THROUGH TELEFONICA TO PROVIDE SERVICE. ONCE IT HAS ITS OWN INFRASTRUCTURE AND GETS DIRECT ACCESS SUBSCRIBERS, THEN IT WILL BE INTERESTED IN NEGOTIATING LOWER SETTLEMENT RATES. ALSO, IN REPLY TO A GOS QUERY, USDEL CONFIRMED EXISTING OPERATORS HAVE A LIMITED TIME PERIOD TO ADJUST THEIR BENCHMARK RATES WHILE NEW OPERATORS MUST SATISFY BENCHMARK CONDITIONS IMMEDIATELY. CMT REP SAID PERHAPS SPAIN SHOULD APPLY THE PRINCIPLE OF RECIPROCITY AND APPLY BENCHMARK RATES FOR U.S. OPERATORS ENTERING THE SPANISH MARKET.

31. FOREIGN OWNERSHIP: FCC'S KEENEY EXPLAINED THAT THE 25% CAP ON FOREIGN OWNERSHIP OF A U.S. CARRIER CAN BE EXCEEDED IF IN THE PUBLIC INTEREST. FOR WTO MEMBERS, THE USG NOW PRESUMES IT IS IN THE PUBLIC INTEREST.

ITU ISSUES

32. ADMINISTRATIVE: SPANDEL NOTED SPAIN'S RESERVATION FOR OPERATORS HAVING EQUAL STATUS WITH MEMBER STATES. THE GOS BELIEVES THE PRIVATE SECTOR SHOULD NOT BE ACTIVE IN EVERY CASE. SPAIN GENERALLY AGREES WITH THE DECISIONS TAKEN AT ITU 2000. ON THE PROPOSAL TO PREVENT MEMBERS FROM BEING ELECTED

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	Partial cable re: Internet Issues (2 pages)	nd	P5

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13116

FOLDER TITLE:

Content [Internet Issues]

Rhonda Wilson

rw111

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]
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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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b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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PITFALLS, SUCH AS THE MORE PRESCRIPTIVE DIRECTION THE FRENCH WERE ADVOCATING AT ONE POINT. HIS MAIN WORRY, HE SAID, IS THAT RESOURCES WILL GET DIVERTED FROM THE CONCRETE ISSUES AT HAND (E.G., TAXATION, INTELLECTUAL PROPERTY RIGHTS ETC.). SENIOR ADVISOR MAGAZINER RELATED THAT HE HAD TOLD BANGEMANN THAT A ROADMAP APPROACH WOULD BE ACCEPTABLE, THOUGH THE POTENTIAL IMPLICATION THAT NOTHING COULD HAPPEN WITHOUT GOVERNMENT AUTHORIZATION IS TROUBLING. ALTHOUGH HE SAID U.S. PARTICIPATION HADN'T BEEN RULED OUT, THE USG DOES NOT ATTACH A GREAT DEAL OF IMPORTANCE TO THE CHARTER.

DG-IV WILL MAKE ANTITRUST DETERMINATION ON DNS CORPORATION

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4. (SBU) MACINTYRE,THANKED THE USG FOR ALL THAT IT HAD DONE TO ADDRESS EU CONCERNS REGARDING THE DOMAIN NAME SYSTEM (DNS) PROPOSAL. INTERNATIONAL POLICY CHIEF NEIL FEINSON POINTED OUT THAT THE INTERNATIONAL NON-PROFIT CORPORATION SET UP TO ADMINISTER THE DNS WOULD BE SUBJECTED TO EX POST FACTO SCRUTINY BY DG-IV (COMPETITION POLICY) OF THE EUROPEAN COMMISSION. FEINSON EXPLAINED THAT ONCE THE COMPANY WAS ESTABLISHED IT WOULD NEED TO FILE A "NOTIFICATION" WITH DG-IV. THE COMMISSION CAN THEN EITHER GRANT APPROVAL/CONSENT OR, IF IT DETERMINES THAT THE CORPORATION FALLS OUTSIDE THE BOUNDS OF ARTICLE 85 OF THE TREATY OF ROME, DECLARE IT EXEMPT. MAGAZINER RESPONDED THAT THE JUSTICE DEPARTMENT IS ALREADY CONSULTING WITH DG-IV. HE ADDED THAT WHILE A REVIEW OF THE CORPORATION IN TERMS OF ITS STRUCTURE IS ALTOGETHER APPROPRIATE, THE USG WOULD HAVE A MAJOR OBJECTION IF THE DG-IV REVIEW BECAME POLITICIZED.

DATA PRIVACY

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5. (SBU) MAGAZINER BRIEFED MACINTYRE ON USG EFFORTS TO MEET THE PRIVACY OBJECTIVES SET OUT IN THE JULY 1997 FRAMEWORK FOR GLOBAL ELECTRONIC COMMERCEv HE NOTED THAT COMPANIES REPRESENTING OVER 80 PERCENT OF ONLINE ACTIVITY HAD JUST ANNOUNCED AN ALLIANCE TO INSTITUTE BETTER PRIVACY PROTECTIONS. HE EXPLAINED THAT, FOLLOWING THE JUNE 22 USDOC PRIVACY "SUMMIT" WITH THE PRIVATE SECTOR, THE USG OBJECTIVE IS TO HAVE A SYSTEM OF ONLINE PRIVACY PROTECTION IN PLACE BY AUGUST. THE FTC MAY SUBSEQUENTLY BE GIVEN AUTHORITY TO ENFORCE OECD PRIVACY GUIDELINES, POSSIBLY WITH A PRESUMED EXEMPTION FOR ONLINE PRIVACY ALLIANCE MEMBERS. IN RESPONSE TO FEINSON'S INQUIRY AS TO WHAT SANCTIONS MIGHT BACK UP THE PROTECTIONS, MAGAZINER STATED THAT THE "SEAL" WOULD BE REVOKED, AND IN THE SECOND INSTANCE, THE FTC COULD INVOKE EXISTING ANTI-FRBUD MEASURES.

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ELECTRONIC TRANSACTIONS
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6. (U) MAGAZINER ASKED FOR THE UK'S LATEST THINKING ON THE U.S. CONVENTION PROPOSAL FOR ELECTRONIC TRANSACTIONS AND
UNCLAS E F T O SECTION 02 OF 02 LONDON 007155

USDOC FOR NTIA/LIRVING/BBURR
USDOC FOR 6300/ITA/TD/RLAYTON
WH FOR POLICY/MAGAZINER
PARIS ALSO FOR USOECD

SENSITIVE

NOFORN

E.O. 12958: N/A
TAGS: EINT, ECPS, ETRD, EUN, UK
SUBJECT: INTERNET ISSUES

REF: LONDON 6361

EXPRESSED CONCERN THAT SYSTEMS LINKED TOO CLOSELY TO A PARTICULAR TECHNOLOGY WOULD BECOME DE FACTO MANDATORY BEFORE WE HAVE SUFFICIENT EXPERIENCE TO JUDGE WHAT WORKS BEST. HE STRESSED THAT WHAT THE U.S. WANTS IS MUTUAL RECOGNITION OF ELECTRONIC SIGNATURE SYSTEMS. DTI SECURITY SYSTEMS CHIEF NIGEL HICKSON SAID THAT THE UK WOULD SUPPORT THE U.S. CONVENTION PROPOSAL BUT ADMITTED THAT THE EU IS LEANING TOWARDS GIVING PRESUMPTION OF VALIDITY TO DIGITAL SIGNATURES. MACINTYRE SAID HE IS OPEN TO REEVALUATING THAT POSITION.

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001. cable	From AmEmbassy Manila re: E-Commerce - Philippine Position Still Evolving (2 pages)	05/06/98	P5

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13116

FOLDER TITLE:
General Cables

Rhonda Wilson

rw113

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]
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	EXME-00	E-00	FBIE-00	UTED-00	FCC-01	FRB-00	H-01
	TEDE-00	INR-00	IO-00	ITC-01	JUSE-00	L-01	ADS-00
	NSAE-00	NSCE-00	OIC-02	OMB-01	OPIC-01	CIO-00	SP-00
	SSO-00	SS-00	STR-00	TRSE-00	USIE-00	DRL-04	G-00
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USDOC WASHDC
ASSOCIATION OF SOUTHEAST ASIAN NATIONS

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GENEVA FOR USTR/TAGLIANI

STATE ALSO PASS USTR FOR ABELSON/ROHDE

STATE ALSO FOR EB/CIP - WEINSCHENK

USDOC FOR 4430/IEP/EAP/OPB/KELLY

USDOC ALSO FOR NTIA
E.O. 12958: N/A
TAGS: ETRD, ECPS, WTRO, RP
SUBJECT: E-COMMERCE -- PHILIPPINE POSITION STILL EVOLVING

REF: (A) 98 STATE 034869; (C) 98 MANILA 02659

Sensitive But Unclassified. Protect Accordingly.

1. (U) THE "PHILIPPINE STAR" REPORTED MAY 3 THAT SECRETARY OF TRADE AND INDUSTRY BAUTISTA HAD SAID THE PHILIPPINES HAS "PROBLEMS" WITH THE U.S. E-COMMERCE PROPOSAL IN THE WTO. BAUTISTA IS QUOTED AS SAYING "THE U.S. IS TRYING TO RAM THIS ISSUE, BUT I DON'T THINK WE CAN INK OUR COMMITMENT ... UNTIL WE KNOW MORE ABOUT IT." DTI ASSISTANT SECRETARY CUSTODIO IS QUOTED ELABORATING ON BAUTISTA'S POINT BY SAYING THAT THE PHILIPPINES NEEDS TO LOOK AT THE "FISCAL IMPACT AS WELL AS STANDARDS, FORMAT, SECURITY MEASURES AND ITS IMPACT OF INTELLECTUAL PROPERTY RIGHTS." BAUTISTA NOTED THAT THE U.S. PROPOSAL IS MAINLY SUPPORTED BY DEVELOPED COUNTRIES AND DOES NOT HAVE SUPPORT FROM DEVELOPING COUNTRIES.

2. (SBU) ECONCOUNS MET MAY 5 WITH DTI UNDER SECRETARY FOR INTERNATIONAL TRADE JOSE JULIANO TO SEEK CLARIFICATION OF BAUTISTA'S REPORTED REMARKS. JULIANO HAS BEEN CHARGED BY BAUTISTA WITH COORDINATING THE PHILIPPINE APPROACH TO E-COMMERCE AND CHAIRS THE GOVERNMENT-INDUSTRY E-COMMERCE COUNCIL. JULIANO INSISTED THAT THERE IS NO OFFICIAL PHILIPPINE POSITION ON THE U.S. PROPOSAL, BUT DID NOT OFFER ANY CLARIFICATION OF HIS SECRETARY'S REPORTED COMMENTS.. JULIANO WAS HOLDING A CABLE FROM THE PHILIPPINE GENEVA MISSION OUTLINING THE U.S. PROPOSAL AND ASKING GUIDANCE. HE SAID THAT THE E-COMMERCE COUNCIL WILL MEET ON MAY 7 TO DISCUSS THE PHILIPPINE POSITION.

3. (SBU) JULIANO CHARACTERIZED THE U.S. PROPOSAL AS TWO SEPARATE PROPOSALS AND SAID THAT THE PROPOSAL THAT THE

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UNCLASSIFIED

Printed By: Andrew J. Weinschenk

WTO STUDY JURISDICTIONAL AND OTHER ISSUES IS MORE OF A PROBLEM FOR THE PHILIPPINES THAN THE DUTY-FREE PROPOSAL. JULIANO SAID THAT THE TARIFF PROPOSAL IS "NOT NECESSARILY" A PROBLEM BUT THE PHILIPPINES WANTS TO GET EVERYONE'S VIEWS. HE ALSO SAID THAT SOME OFFICIALS WONDER WHAT IS "HIDDEN" IN THE U.S. PROPOSAL. ECONCOUNS EXPLAINED THE U.S. POSITION, POINTING OUT THAT SOMEONE, SOMEWHERE HAD TO BEGIN STUDYING THE ISSUES THAT E-COMMERCE RAISES FOR BOTH THE INTERNATIONAL TRADING SYSTEM AND FOR INDIVIDUAL COUNTRIES' LEGAL SYSTEMS. THE WTO OFFERS THE BROADEST FORUM, GROUPING BOTH DEVELOPING AND DEVELOPED COUNTRIES. JULIANO ACKNOWLEDGED THE POINT BUT STILL OBSERVED THAT THE PHILIPPINE POSITION NEEDS TO BE COORDINATED.

HUBBARD

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To Ira Magaziner and Don Abelson from Drew Quinn re: E-Commerce Tariffs: GOJ Position (4 pages)	04/21/98	P5

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13116

FOLDER TITLE:

WTO [World Trade Organization]

Rhonda Wilson

rw114

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]
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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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
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April 21, 1998

TO: White House -- Ira Magaziner
202-456-5557

USTR -- Don Abelson
202-395-3891

FROM: Tokyo -- Drew Quinn DQ

SUBJECT: E-commerce tariffs: GOJ position

I went over to MITI today to discuss, inter alia, e-commerce tariff issues.

It appears that the GOJ is gearing up to support the Canadian proposal for a standstill on e-commerce tariffs till 2000 at the Quad meeting at the end of this month. I guess the Canadians have been reasonably active in soliciting GOJ support, and seem to have formed an unholy alliance with MOF on the issue. I was passed informally the inter-agency GOJ position (see page two) being prepared for the Quad meeting, in support of the Canadian proposal.

It has not yet been possible to gauge the impact of the Treasury interventions with MOF on the tariff issue that occurred in Washington late last week.

Noting that the GOJ's statement for the Quad, even with its limitations, seemed in some respects more forthcoming than what MOF had proposed for our bilateral joint statement, I asked (explaining I was speaking only for myself) if MITI thought MOF could use some of that language as the basis for a new section on "Tariffs" in our joint statement. For example, I thought it would be useful to drop the extraneous language that just duplicates what's elsewhere in our joint statement, and make the standstill provision extend not just till 20 months from now (a Canadian proposal that's irrelevant in the bilateral US-J context) but until the multilateral organizations decide how e-commerce will be handled (with the implication that through US/J efforts we will ensure that e-commerce receives tariff free treatment.) MITI said they thought MOF could sign off on an approach like that since it embraced key concepts/language they already cleared on for the Quad paper. My very rough idea of how you could structure something like that -- discussed aloud with MITI but drafted after I returned to the office -- is attached (page 4, item A).

I think that new language (at p. 4/A) is a little better than the language in the GOJ re-draft joint statement, but it's still fairly weak, and could be read basically as saying "we won't impose tariffs until we change our mind." Hardly the ringing endorsement of tariff free cyberspace we're after. In the interest of getting a dialogue going on this in the limited time remaining, I do, however, see the benefit of going back to the GOJ with a new draft that uses at least some of the key language/concepts from their own paper. For that

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reason, I have put together a stronger version (page 4, item b) that not only indicates support for a standstill on tariffs but outlines the position the U.S. and Japan will take in the multilateral fora considering this issue.

I have some ideas on how we might try to move this forward in the coming week, and will try to call you both later to discuss this further.

Attachments:

p. 3 -- GOJ draft in support of Canadian "standstill" proposal for Quad
p. 4 -- notional DQ re-draft on language on tariffs for joint statement
p. 5 -- language on tariffs from GOJ re-draft of joint statement (3/9/98)

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P. 3

Global electronic commerce, via Internet and other means, will be one of the major promoters of the economic growth of the world in the next century. We believe that the private sector should play a leading role in promoting electronic commerce and that we should refrain from imposing undue restrictions on electronic commerce.

Regarding customs duties, there ~~is~~ are no customs duties on electronic commerce at the present time. In view of the importance of electronic commerce we have expressed a need to closely examine the relation between the WTO agreements and electronic commerce.

We agree to start comprehensive examination in WTO on the trade-related aspects of electronic commerce, bearing in mind that electronic commerce relates to various aspects of the WTO agreements, and to aim to reach a conclusion expeditiously on any necessary steps to be taken. In the meantime, without prejudice to our future decisions regarding ~~tariffs~~ customs duties, we agree to apply no new measures that would result in application of customs duties on electronic commerce, and to review this standstill after January 1, 2000.

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p- 4

A) Possible re-draft based on GOJ text for Quad:

There are currently no customs duties on electronic commerce. Moves are underway to clarify the relationship of electronic commerce to existing and future WTO agreements. Until those issues are resolved in international fora, the United States and Japan will apply no new measures that would result in application of customs duties on electronic commerce.

B) Enhanced re-draft based on GOJ text for Quad:

There are currently no customs duties on electronic commerce. The United States and Japan believe that this duty-free environment should remain, for free trade in electronic commerce will promote the growth of economic commerce, and of economic growth worldwide.

Both nations will work in multilateral fora to see this adopted formally as international practice. Until an international consensus is achieved, the United States and Japan will apply no new measures that would result in application of customs duties on electronic commerce.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. Memo	From Charles F. C. Ruff to Executive Office of the President Staff (2 pages)	5/5/97	P5
002. Memo	From Alan H. Magazine to Ira Magaziner re: FDA Commissioner (1 page)	05/05/97	P2, P5, b(6)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13117

FOLDER TITLE:
Misc. - Need to Sort

Rhonda Wilson

rw3

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]
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002. Memo	From Alan H. Magazine to Ira Magaziner re: FDA Commissioner (1 page)		P2, P5

COLLECTION:
Domestic Policy Council

Ira Magaziner - Electronic Commerce
OA/Box Number: 13117

FOLDER TITLE:
Misc. - Need to Sort

Rhonda Wilson

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THE WHITE HOUSE

WASHINGTON

May 5, 1997

MEMORANDUM TO: Executive Office of the President Staff

FROM: Charles F.C. Ruff
Counsel to the President

RE: Document Request

We have received requests seeking documents relating to certain entities and individuals. Accordingly, please conduct a thorough and complete search of all your records -- whether electronic, paper, or other form -- for the following materials.

1. Any and all documents and/or communications from January 1, 1994 to the present, reflecting, related or referring to Webster ("Webb") Hubbell or Suzanna ("Suzy") Hubbell.

2. Any and all documents and/or communications from January 1, 1994 through December 31, 1995 reflecting, related or referring to any of the following individuals or entities. (In the case of government employees, you need not produce documents that relate only to their official duties unless otherwise specified.)

Individuals
Arkatov, Alan S.
Arnold, Anita
Arnold, Truman
Berman, Michael S.
Boggs, Timothy A.
Boxer, Doug
Broad, Eli
Budetti, Peter
Conn, Carroll Wayne
Davidson, James
Driscoll, John J. "Jack"
Hannaman, Gary or Hanman, Gary
Hedlund, Karen J.
Hoover, Pete
Jacoby, Leonard
Johnson, James A.

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If you have already provided the documents to the Counsel's Office, you do not need to do so again. If any of the entities above have had matters before your office that would result in large volumes of responsive documents (e.g., the telecommunications bill) please call Shelli Peterson at 6-7804 for instructions on whether to provide the documents.

Documents include, but are not limited to, memoranda, correspondence, notes, minutes from meetings, schedules, messages, appointment logs or calendar entries, telephone logs or messages, photographs, and computer or database entries.

Each employee is responsible for searching all of his or her files and records to ensure a comprehensive search. In the White House Office, the Office of Policy Development, and the Executive Residence, each Office Head or Assistant to the President must certify that his or her staff has done a complete search. For all other EOP agencies or entities, the General Counsel must certify that all agency records have been provided.

ALL DOCUMENTS MUST BE PROVIDED TO SHELLI PETERSON, ROOM 482 BY FRIDAY, MAY 16, 1997. If you have any questions, please call Shelli Peterson at 6-7804.

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. report	Meeting of Senior Encryption Policy Officials December 4, 1997, Baltimore (6 pages)	nd	P5
002. report	Encryption Export Controls - Wassenaar Issues (2 pages)	09/12/97	P5
003. list	Responses by other countries to U. S. Statements (1 page)	nd	P5

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13118

FOLDER TITLE:

Encryption [2]

Rhonda Wilson

rw116

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]
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Meeting of Senior Encryption Policy Officials
December 4, 1997, Baltimore

Report of Meeting

Summary

On December 4, 1997, senior encryption officials from the US, Canada, France, Germany, Japan, the Netherlands, Sweden and the UK met in Baltimore to discuss the progress of the working groups on compatible infrastructures and encryption export controls, and next steps. (See attached participants list). The meeting was chaired by Ambassador David L. Aaron, the US Special Envoy for Cryptography.

The senior officials provided updates of their national encryption policymaking efforts. They also considered strategies for dealing with encryption in the context of the Wassenaar Arrangement and discussed the option of inviting additional countries including Australia, Switzerland and Russia to future meetings. Following are highlights of the working groups.

- **The Working Group on Compatible Infrastructures** -- The working group has made significant progress in narrowing issues for consideration by governments. The senior officials supported continued work by the working group in three areas: compatibility among certificate authorities; minimum constraints on confidentiality; and the development of a future work program. For compatibility of certificate authorities, the group agreed that after more work, the objective for the final product is its introduction at the OECD, UNCITRAL or some appropriate forum sometime later in 1998. Regarding the paper on minimum constraints, the group agreed that the final product will take the form of a "non-paper" so as not to commit countries to an official, public position; countries were encouraged to use the document in bilateral consultations. This paper may also be submitted later to an appropriate forum. The working group was instructed to develop a list of priorities and present a detailed work program at the next senior officials meeting.

- **The Working Group on Export Controls** -- The UK, France, Sweden and the US agreed to table a high-level proposal at the upcoming Wassenaar Plenary, scheduled for December 9-10 in Vienna. The proposal outlines three broad objectives for reformulating encryption controls in Wassenaar including: updating Category 5 part 2 to reflect the greatly expanded private use of cryptography in the modern world; refining the General Software Note to exclude category 5.2; and acknowledging in Wassenaar that law enforcement is a valid reason for control of cryptography. Others countries agreed to provide statements of support at the Plenary. The group agreed to continue work on the more detailed proposal which includes suggested language for rewording Category 5 part

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2, further decontrol notes, and a Statement of Understanding for streamlined licensing procedures. The deadline for producing a detailed proposal is early February, prior to the next meeting of the Wassenaar encryption experts group.

The senior officials agreed to invite Australia and Switzerland to participate in future meetings and to meet again in early 1998 to review the progress of the working groups.

Updates on National Policies

United States. The US began the discussion with an update of US legislative activities, noting that the Congress had recessed this Fall without taking any action on pending encryption bills. Since this is just a break in the session, all of the bills which were introduced and pending action this Fall will be rolled over for consideration when the Congress resumes in January. This intervening time will be used for stocktaking. Representatives of the Administration will be meeting with industry and members of Congress to determine the course of action for the next half of the session. A fight is expected with the US software industry which has already begun lobbying against bills introduced in the House which are more favorable to law enforcement.

Germany. Previously reported as informal, the German Government has now formalized its decision not to take any position on the confidentiality aspects of encryption during this government; all decisions are pending until late 1998. During this interim period, there will be no domestic regulations on encryption.

United Kingdom. The UK's public consultation period is taking longer than expected; the current plan is to submit a proposal to Ministers before the end of the year.

Canada. The Government will begin a public consultation period soon. The plan is to present Ministers with a range of policy options. They expect to have their policy announced early next year.

Sweden. A report from an inter-ministerial group studying encryption is now out for public consultation. The Swedish government has decided to leave the discussion of confidentiality until a later date to avoid conflicts with international policy discussions. Viewed as an important instrument in addressing law enforcement requirements, export controls will remain even if there are Wassenaar reforms. There will be no restrictions on the use of cryptography domestically and no mandatory use of trusted third parties.

Japan. There has been no real progress on encryption policy since the October meeting. The Justice Ministry is considering whether digital signature can be used as evidence in court. There is a Diet proposal which has yet to be introduced to authorize the interception of communications when used in criminal activities. Lastly, Japanese industry, supported by MITI

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through its electronic commerce projects, is developing data recovery systems for commercial purposes.

The Netherlands. There have been no significant developments since the last meeting. A report and the conclusions of the TTP pilot project will be delivered to the Government before the end of the year.

France. French decrees on encryption and trusted third parties will be in force before the end of the year. The French will liberalize the import, export and domestic use of all encryption below 40-bits; all strong encryption products will be strictly controlled. These rules apply to both hardware and software.

Report from the Working Group on Compatible Infrastructures

As chair, David Hendon of the UK reported on the recent activities of the working group, noting that the meeting report provided to the seniors had not been cleared with the other members of the group and therefore, represented the views of the chair. He acknowledged the sensitivity within the group arising from the varying levels of encryption policymaking among the participating countries. The working group is currently focused on three tasks: compatibility among certificate authorities (CA); minimum constraints on confidentiality; and the development of a future work program. The completion of these tasks will require a considerable amount of personal and resource commitment of the working group members, including support from the senior officials. Hendon called on the seniors to provide feedback on the usefulness of the work and guidance on how to proceed. All countries present supported continued work; following are specific recommendations in each area.

Common Elements Required for CA Compatibility. An obvious minimum set of common criteria has not emerged from the group's discussions. The group has produced a matrix comparing criteria from several different country policies including Germany, Canada and Japan. While on its surface the matrix shows consistency in the selection of criteria, there are significant differences in technical, political and legal approaches. Hendon expressed the view that the work is not duplicative of work underway in other fora and could serve as a useful guide for other countries as they develop their CA criteria. He offered that this work might compliment work underway in the OECD or UNCITRAL on related infrastructure issues. Germany called for additional work on defining precisely what is meant by the terms key recovery agent, trusted third party, and certificate authority.

The group agreed that more work would be required to meet the objective to have a final product introduced at the OECD or UNCITRAL sometime later in 1998. After their next meeting in late January, the working group will then decide whether the document can be approved by written procedure or requires further discussion at the next senior officials meeting.

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Minimum Constraints on Confidentiality. Hendon began the discussion by reiterating the concerns of several participating countries in discussing the encryption and confidentiality issues. Appendix 2 of the Chair's report, Constraints on Architectures for Confidentiality, builds on the work of the European G-5 (France, Germany, the Netherlands, Sweden and the UK) and reflects refinements offered by Canada, Japan and the US. It serves to further the understanding of the necessary elements for building compatible key management infrastructures. Germany reminded the group of their view that digital signature and confidentiality should be dealt with as separate issues and provided a written statement to countries which underscores this view. (See attached.)

Ambassador Aaron noted that this work is not being carried out in any other fora; it was suggested that countries use the final product in their encryption discussions with others including the European Commission, Australia, Israel and Russia. The group agreed that the final product will take the form of a "non-paper" so as not to commit countries to an official, public position; the non-paper represents the "thinking" of country experts involved in this issue. Bearing this in mind, the working group was tasked to prepare an introductory statement to "frame" the non-paper.

Future Work. Appendix 3 of the Chair's report is a list of eight proposals for future government-to-government cooperative projects. These tasks would be useful but are very resource intensive. The working group called for seniors' guidance in identifying those tasks of the most utility to the participating countries and those which could be left to other international organizations.

The seniors agreed on the importance and complexity of the work, approving a continuation of the group's activities through 1998 while at the same time recognizing the resource constraints of the member countries. The working group was instructed to develop a list of priorities based on the tasks outlined in Appendix 3. Inspired by Germany's offer to lead the work on item 6., Status Paper on the Legislation and Proposals on Digital Signature, the US suggested, and the participating countries agreed, that countries volunteer to lead the agreed upon tasks. A detailed work program will be presented at the next senior officials meeting.

Report from Working Group on Export Controls

Ambassador Aaron called on John Barker, head of the US delegation to the Wassenaar Arrangement, to provide background on the Arrangement and prospects for agreement at the Plenary meeting, December 9-10 in Vienna. Barker emphasized the importance of close coordination between the senior encryption policy officials and the national delegations to Wassenaar.

Ambassador Aaron then provided the US views on the working group's framework proposal. He began by reviewing the timeline for the Wassenaar process. First, if the group

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agrees, a proposal would be put forward at the Wassenaar Plenary meeting (December 9-10) which lays out, in broad terms, common objectives for encryption export controls. In February, Wassenaar encryption experts will begin meeting to refine the technical proposals and determine what compromises are needed to move ahead. Finally, in April or May, Wassenaar will begin list review discussions which will attempt to finalize changes in encryption controls over several months. The working group would continue to meet to further refine and flesh out their proposal in support of the Wassenaar discussions.

Ambassador Aaron outlined his objectives for this framework proposal. First, the US proposes to close up the General Software Note loophole by excluding more sensitive encryption; at the same time, we would decontrol less sensitive items. Second, Wassenaar members would be asked to agree on a Statement of Understanding which acknowledges the special relationship of encryption to public safety. This will allow countries that depend on the Wassenaar Arrangement as their legal basis for export controls to make changes that will take law enforcement into account. Third, Wassenaar members would also agree on streamlined licensing procedures for key recovery and similar products consistent with law enforcement interests and reach agreement to implement additional national controls to limit software encryption exports much like the US has done. Jim Lewis, chair of the working group, provided an overview of the framework proposal for Wassenaar developed by the group.

Japan stated that the general ideas in the proposal were acceptable but specific points would require careful scrutiny; they support the idea of a comprehensive proposal provided it is "well-balanced." Japan asked that its proposal for decontrolling DVD and pay TV equipment be considered in advance of obtaining agreement on the comprehensive package, calling on the US to lift its reservation at the upcoming Wassenaar Plenary. Germany indicated its support for many of the ideas in the proposal, e.g., that encryption products should remain under control, a revision to the General Software Note excluding strong encryption products, and decontrol of certain 56-bit products. Though unable to co-sponsor the proposal, the Netherlands agreed that the GSN needs a review and there is a need for decontrol of certain mass-market encryption products, cautioning countries not to pretend to control those items which cannot be controlled. The Dutch could also accept a Statement of Understanding acknowledging law enforcement interests as long as they were not obliged to follow it. Canada noted that national discussions are underway on each element of the proposal, there was no resolution yet and they were therefore not in a position to co-sponsor the proposal. The Canadians also noted that the issue of "controllability" of products which can be transferred over the phone or internet must be considered in any discussion of amending the General Software Note.

In the end, the UK, France and Sweden agreed to co-sponsor the proposal along with the US at the upcoming Wassenaar Plenary. With minor modifications, these countries agreed to table the paper outlining three broad objectives for reformulating encryption controls in Wassenaar including: updating category 5 part 2 to reflect the use of cryptography in the modern

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world; refining the General Software Note to exclude category 5.2; and acknowledging in Wassenaar that law enforcement is a valid reason for control of cryptography. Other countries agreed to provide statements of support. The group agreed to continue work on a more detailed technical proposal which includes suggested language for rewording category 5 part 2, further decontrol notes, and a Statement of Understanding for streamlined licensing procedures. In continuing this work, the working group was tasked to examine the issue of 40-bits versus 56bits as the control baseline and prepare a set of definitions as requested by the Germans. Canada agreed to prepare a paper on the questions arising from GSN terms such as "substantial support" and "installation by users." The working group was tasked with bridging differences in order to put forward an agreed upon text to the February meeting of the Wassenaar encryption experts group.

Other Business

Before adjourning the meeting, Ambassador Aaron returned to the question of inviting additional members, specifically Switzerland, Australia and Russia, to join the group. Ambassador Aaron reported on his bilateral meeting with the Swiss. He noted that the Swiss appreciated the opportunity to consult and were quick to clarify their position regarding the removal of encryption from the Sensitive List. In fact, the Swiss are not calling for removal of encryption rather they are proposing that encryption remain on the Sensitive List and that "transfer reporting" requirements no longer be required. Regarding a possible Statement of Understanding, the Swiss indicated that they too would need an international agreement to deny dual use encryption exports to non-target countries based on public safety grounds. The group agreed that Switzerland and Australia should be invited and it was premature to invite Russia. While agreeing in principle, Japan noted that they would have to consult within their own government and promised to report back to Jim Lewis, the Chair of the Working Group on Export Controls as soon as possible.

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Attachment C

Responses by other countries to U.S. statements:

Sweden stated its support and also tabled a paper on its own policies to promote the voluntary use of TTPs.

The **UK** highlighted the importance of reform on encryption matters.

France was silent most likely due to lack on internal coordination within the French government (but France's senior encryption official has assured Ambassador Aaron that France is closely aligned with the U.S.).

Australia made generally supportive statements.

Japan welcomed the initiative without endorsing specifics in the paper. It also advocated the need to remove reporting requirements for smart cards and other consumer products.

Canada indicated that it was in the process of developing a national policy which it does not expect to complete before February.

The **Netherlands** strongly endorsed the U.S. initiative while noting that specific issues would need further work before they could be agreed.

Germany stated that it would have to wait until after its 1998 fall national elections before formulating an encryption policy but welcomed the U.S. initiative.

Russia, after the plenary, welcomed U.S. suggestions for bilateral encryption consultations and expressed appreciation for the high levels at which the U.S. is handling this issue.

Switzerland, in a bilateral meeting, said that while they could not agree to provide the U.S. with encryption keys, they could support law enforcement access to plaintext as a principle for encryption exports and would be willing to provide decrypted plaintext to U.S. law enforcement agencies.

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From AmEmbassy Manila re: Electronic Commerce (3 pages)	01/12/98	P5

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13118

FOLDER TITLE:

U.S. State Department Cables

Rhonda Wilson

rw117

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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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INCOMING

ACTION CIP-00

INFO	LOG-00	ACDA-08	ACDE-00	AID-00	CEA-01	CIAE-00	CTME-00
	OASY-00	DODE-00	ANHR-01	SRPP-00	EAP-01	EB-00	E-00
	FBIE-00	FCC-01	FRB-00	H-01	TEDE-00	INR-00	IO-00
	ITC-01	L-01	ADS-00	NSAE-00	OIC-02	OMB-01	OPIC-01
	CIO-00	SP-00	SSO-00	SS-00	STR-00	TRSE-00	USIE-00
	DRL-04	G-00	/023W				

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FM AMEMBASSY MANILA
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WHITE HOUSE WASHDC
USMISSION GENEVA
AMEMBASSY TOKYO
ASSOCIATION OF SOUTHEAST ASIAN NATIONS

UNCLAS E F T O SECTION 01 OF 02 MANILA 000315

SENSITIVE

GENEVA FOR USTR

STATE ALSO PASS USTR -PAPOVICH

STATE ALSO FOR EB/CIP - WEINSCHENK

WHITE HOUSE ALSO FOR MAGAZINER

USDOC FOR 4430/IEP/EAP/OPB/KELLY

USDOC ALSO PASS NTIA

E.O. 12958: N/A
TAGS: ETRD, ECPS, RP
SUBJECT: PHILIPPINES - ELECTRONIC COMMERCE

SENSITIVE BUT UNCLASSIFIED. PROTECT ACCORDINGLY.

Ref: 98 State 00706

MANILA 01 OF 02 315

1. (U) Action request. Please see paras. 4 and 7.

Summary
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2. (SBU) Summary: The GOP is in the process of establishing an interagency/private-sector task force to discuss the policy framework for and the promotion of electronic commerce in the Philippines. Department of Trade and Industry (DTI) Undersecretary Jose Juliano, who is charged with developing the task force, told us he is using the Electronic Commerce Promotion Council of Japan as a model. He does not expect the body to tackle substantive issues until mid-1998, after the May 1998 Presidential and Congressional elections. Econoff passed Juliano a copy of the U.S.-EU Understanding on Electronic Commerce. Juliano will be traveling to the United States in February to participate in a Microsoft-organized program for foreign officials. He asked our assistance in suggesting West Coast-based private-sector individuals or firms he could talk with about "big picture" electronic commerce issues. End summary.

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Task Force for E-commerce

3. (SBU) In October, DTI Secretary Cesar Bautista tasked DTI Undersecretary Jose Juliano to set up a joint GOP interagency and private- sector task force to discuss/promote electronic commerce. Econoff met with Juliano December 18 to review the status of the task force. Juliano showed us a draft executive order establishing the task force, which had been discussed earlier that day by an interagency group. He said he was using the Electronic Commerce Promotion Council of Japan as a model for the task force. Juliano says the exact composition of the task force is still being developed and discussed interagency, but he showed econoff a proposed list of government representatives, as well as a longer list of possible private-sector invitees, drawn heavily from the financial and retail trade sectors.

4. (SBU) Juliano noted the Philippines has not begun to tackle in detail the policy and regulatory challenges that need to be addressed to create a hospitable environment for E-commerce to flourish. He hopes the creation of the task-force could provide a stimulus for the discussion of such issues. We passed Juliano -- and other relevant GOP officials -- a copy of the recent U.S.-EU understanding on Electronic Commerce, and noted it might provide useful guidance on some issues. Juliano confided he wanted to better understand the universe of services that could be considered E-commerce. He noted he planned to participate in an upcoming program for foreign officials (apparently organized by Microsoft) in February in Seattle. He asked if we could suggest West Coast-based private sector contacts who would be willing to discuss with him "big picture" E-commerce issues. (Comment: Juliano told us he plans to retire before the middle of 1998, but said he wants to set up a solid basis for promoting E-commerce before he leaves. End comment.)

IT Board

5. (U) Juliano explained the task force would be a component of a "National Information Technology Board," a proposed entity that would replace the moribund existing National Information Technology Committee. The impetus for the Board comes in part from the private sector; one local information technology executive said the GOP needs a body that can effectively coordinate IT policy among various government agencies. He said the existing

MANILA 02 OF 02 315

committee, which is financially and administratively dependent on the National Computer Center and whose membership is heavily weighted towards the government, has failed to provide the leadership he believes is needed to ensure policy implementation. A paper Juliano shared with us, prepared by a local policy foundation, notes the existing Committee has met infrequently, due to the myriad other responsibilities of the senior officials designated to participate in it.

6. (SBU) While precise details of the new Board are still being discussed internally within the GOP, the proposal would place the Board within the Executive Office of the President, and would "be the lead agency on all IT matters, provide policy recommendations to the national

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leadership, formulate unified interdepartmental plans, and facilitate implementation." It suggests private-sector representatives compose the majority of the Board's members, and the Board's chairman be from the private sector. The Board would be complemented by a 50-member industry advisory council. The proposal also suggests the Board have permanent staff, and closes by asserting both Singapore and Malaysia (perceived rivals of the Philippines in the IT sector) have "created effective government structures to turn their plans into concrete realities." (Comment: It is not obvious that placing the Board within the Executive Office of the President would raise the profile of the issue. Nor is there any guarantee of adequate funding and staffing, or of a paramount position in interagency debate. The Executive Office already contains many boards and agencies. End Comment.)

Action Request
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7. (U) We would appreciate information on West Coast-based, private sector contacts, in business or academia, who are recognized "authorities" on E-commerce issues, whose names we could pass to Undersecretary Juliano. Embassy appreciates Washington agencies' assistance.

HUBBARD

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From AmEmbassy Beijing re: New PRC Internet Regulation (partial - pp. 1-2 of 7) (2 pages)	01/07/98	P5
002. cable	From AmEmbassy Singapore re: US-EU Joint Statement on Electronic Commerce (3 pages)	01/12/98	P5

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13118

FOLDER TITLE:

General Cables

Rhonda Wilson

rw118

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.
- **PRM.** Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
- **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]
- **b(2)** Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- **b(3)** Release would violate a Federal statute [(b)(3) of the FOIA]
- **b(4)** Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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- **b(9)** Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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ACTION EB-00

INFO LOG-00 AF-01 AIT-03 ARA-01 CIAE-00 CIP-00 OASY-00
SRPP-00 EAP-01 EUR-01 FCC-01 IMMC-01 TEDE-00 INR-00
IO-00 ADS-00 NEA-01 NSAE-00 OIC-02 SS-00 STR-00
SVC-00 SA-01 /013W

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AMCONSUL GUANGZHOU
AMCONSUL HONG KONG
AMCONSUL SHENYANG
USDOC WASHDC
USMISSION GENEVA
USIA WASHDC 8924
SCIENCE COLLECTIVE

UNCLAS SECTION 01 OF 06 BEIJING 000374

SENSITIVE

STATE PASS USTR FOR CASSIDY, LUND, CHENG, FIELD
STATE PASS FCC FOR WU
USDOC FOR 6320/TD/TAI/RSTECHSCHULTE/JHENRY
USDOC FOR 4420/ITA/MAC/OCEA/DFOREST
USDOC FOR 4121/KCLAMAN
USIA FOR EA

GENEVA PASS USTR/TAGLIANI, SELF

E.O. 12958: N/A
TAGS: ETRD, EINT, ECPS, WTRO, CH
SUBJECT: NEW PRC INTERNET REGULATION

REF: FBIS 111254Z DEC 97

BEIJING 01 OF 06 374

1. SENSITIVE BUT UNCLASSIFIED. PROTECT ACCORDINGLY.

2. (SBU) SUMMARY: THE NEW PRC INTERNET REGULATION ADOPTED ON DECEMBER 30 DOES NOT APPEAR SIGNIFICANTLY DIFFERENT FROM THE INTERIM REGULATION IT REPLACED (INFORMAL EMBASSY TRANSLATION OF REGULATION IN PARA 8, FULL CHINESE TEXT OF REGULATIONS AT: HTTP://WWW.EDU.CN/LAWGLBF.HTML). EMBASSY CONTACTS AT LOCAL INTERNET SERVICE PROVIDERS, U.S. INTERNET SOFTWARE COMPANIES, AND TECHNICAL ADVISORS TO THE PRC GOVERNMENT ALL DOWNPLAYED THE NEW REGULATION AS ESSENTIALLY CLARIFICATIONS OF PREVIOUS INTERIM REGULATIONS, WITH RESPONSIBILITIES, PROCEDURES AND PENALTIES SPELLED-OUT IN GREATER DETAIL. AT THE SAME TIME, OFFICIALS MAINTAIN THAT PRC POLICY IS TO ENCOURAGE AND POPULARIZE USE OF THE INTERNET, FULLY RECOGNIZING THAT THIS ENABLES POTENTIAL ACCESS TO PROSCRIBED INFORMATION. AS ONE OFFICIAL POINTED OUT: IF DETERMINED ENOUGH, A PERSON WILL FIND A WAY TO OBTAIN PORNOGRAPHY, IT IS IMPOSSIBLE TO STOP THEM, ALTHOUGH THEY CAN BE ARRESTED LATER. END SUMMARY.

THE NEW REGULATION

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3. ON DECEMBER 29 CHINA'S MINISTRY OF PUBLIC SECURITY ANNOUNCED A FIVE-CHAPTER, 25-ARTICLE REGULATION ON MANAGING THE SECURITY OF INTERNATIONAL COMPUTER INFORMATION NETWORK CONNECTIONS WHICH

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OUTLINED DUTIES AND RESPONSIBILITIES OF CHINA'S INTERNET SERVICE PROVIDERS AND PUNISHMENTS FOR INTERNET USE TO LEAK STATE SECRETS, DAMAGE STATE INTERESTS, THREATEN STATE SECURITY OR DISTRIBUTE HARMFUL INFORMATION. ALTHOUGH REPORTED OUTSIDE OF CHINA AS A "CRACKDOWN" ON INTERNET USAGE, THE NEW REGULATION CONTAINS NO NEW PROHIBITIONS, AND GOES BEYOND THE PREVIOUS INTERIM INTERNET REGULATION ONLY IN THE LEVEL OF DETAIL ON PROCEDURES, RESPONSIBILITIES AND PENALTIES FOR VIOLATORS. (INFORMAL EMBASSY TRANSLATION OF REGULATION IN PARA 8 AND AT THE EMBASSY WEBSITE HTTP://WWW.REDFISH.COM/USEMBASSY-CHINA/SANDT/NETREG.HTM, FULL CHINESE TEXT OF REGULATIONS AT HTTP://WWW.EDU.CN/LAWGLBF.HTML).

4. (SBU) THREE BEIJING INTERNET SERVICE PROVIDERS SEPARATELY TOLD EMBASSY THEY DID NOT EXPECT THE REGULATIONS TO HAVE ANY SIGNIFICANT IMPACT ON THEIR OPERATIONS OR ON THEIR CUSTOMERS SINCE THE NEW REGULATION CONTAINED NO NEW RESTRICTIONS. ONE SERVICE PROVIDER SAID THAT THE NEW REGULATION HIGHLIGHTED A NEED TO IMPROVE THEIR RECORD KEEPING. HOWEVER, THEY POINTED OUT THAT SOME ASPECTS OF THE REGULATION, SUCH AS HOLDING THE SERVICE PROVIDERS RESPONSIBLE FOR WHAT SITES THEIR CUSTOMERS VISITED ONLINE, WERE UNREALISTIC. THERE WAS NO PRACTICAL WAY TO MONITOR THE ON-LINE ACTIVITY OF CHINA'S HUNDREDS OF THOUSANDS OF INTERNET USERS. THE SERVICE PROVIDERS WERE ALREADY RESPONSIBLE FOR REGISTERING THEIR CUSTOMERS WITH THE MINISTRY OF PUBLIC SECURITY AND ENTERING THE ADDRESSES OF BLOCKED SITES (DISTRIBUTED BY THE MINISTRY OF PUBLIC SECURITY) INTO THEIR NETWORK SERVER COMPUTERS, BUT THEY HAD NO WAY OF KNOWING WHAT SITES REMAINED UNBLOCKED OR WHAT OTHER ACTIVITIES THEIR CUSTOMERS DID ONLINE.

A RELAXATION OF RESTRICTIONS?

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5. (SBU) DEPUTY SECRETARY GENERAL OF THE STATE COUNCIL STEERING COMMITTEE OF NATIONAL INFORMATION INFRASTRUCTURE YU RENLIN TOLD EMBOFFS ON DECEMBER 29 THAT THE NEW REGULATION WAS RELATED TO A RELAXATION OF CONTROLS OVER INTERNET USAGE INTENDED TO ENCOURAGE MORE WIDESPREAD INTERNET USE. YU SAID INTERNET POLICY-MAKERS RECOGNIZED THAT IT WAS IMPOSSIBLE TO BLOCK ALL OBJECTIONABLE INTERNET SITES AND THERE WERE MULTIPLE WAYS AROUND SUCH BLOCKS. ACCORDING TO YU THE REGULATION AND ELECTRONIC BLOCKING OF CERTAIN PORNOGRAPHIC, VIOLENT OR SUBVERSIVE WEB SITES WERE INTENDED TO DETER PEOPLE WHO MIGHT CASUALLY ACCESS SUCH SITES, BUT THAT 'IF AN INDIVIDUAL IS INTENT ENOUGH ON OBTAINING PORNOGRAPHY, THAT PERSON WILL FIND A WAY TO GET IT.' YU ADDED THAT CURRENT TECHNOLOGY MADE IT FAIRLY EASY TO MONITOR WHICH INTERNET ACCOUNTS WERE USED TO MAKE ONLINE VISITS TO RESTRICTED SITES, ALLOWING THE PUBLIC SECURITY MINISTRY TO GATHER EVIDENCE SUFFICIENT FOR AN ARREST.

NOTE BY CIB: PARA 3 ISN'T MARKED. CORRECTION TO FOLLOW.

BEIJING 02 OF 06 374

6. (SBU) HOWEVER, YU EMPHASIZED THAT IN RECENT MONTHS THE PRC HAD LIFTED RESTRICTIONS ON SOME PREVIOUSLY BLOCKED INTERNET SITES AND HAD DECIDED IT WOULD NOT BLOCK SITES UNLESS THEIR 'ERRORS' WERE REPEATED. YU IDENTIFIED RECENT PRC EFFORTS TO ENCOURAGE USE OF THE INTERNET AS INCLUDING NETWORK UPGRADES, LOWER PHONE LINE LEASE PRICES, USAGE RATES AND INSTALLATION CHARGES. NOTE: EMBOFFS HAVE OBSERVED THAT THE CNN WEBSITE IS NOW ACCESSIBLE THROUGH SOME INTERNET SERVERS, THOUGH NOT AT OTHERS. THE NEW YORK TIMES WEBSITE IS GENERALLY BLOCKED, WHILE THE WASHINGTON POST WEBSITE IS NOT. END NOTE.

CHEAPER RATES FOR USERS AND SERVICE PROVIDERS

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ACTION STR-00

INFO	LOG-00	ACDA-08	ACDE-00	AID-00	CEA-01	CIAE-00	CIP-00
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	TEDE-00	INR-00	IO-00	ITC-01	L-01	ADS-00	NSAE-00
	NSCE-00	OIC-02	OMB-01	OPIC-01	CIO-00	SP-00	SSO-00
	SS-00	TRSE-00	USIE-00	SNRO-00	DRL-04	G-00	/023W

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AMEMBASSY PARIS

UNCLAS SINGAPORE 000123

GENEVA FOR USTR

PARIS FOR OECD

STATE PASS USTR FOR DON ABELSON

USDOC FOR 4430/IEP/RAP/OPB/HVINEYARD

E.O. 12958: N/A
TAGS: ECPS, ETRD, EUN, SN
SUBJECT: US-EU JOINT STATEMENT ON ELECTRONIC COMMERCE

REF: STATE 706

1. THIS IS AN ACTION REQUEST - PLEASE SEE PARA 3.

2. ECONOFFS DELIVERED THE US-EU JOINT STATEMENT ON ELECTRONIC COMMERCE ALONG WITH REFTEL TALKING POINTS ON JANUARY 9 TO TRADE DEVELOPMENT BOARD SENIOR DIRECTOR FOR TRADE POLICY NG KIM NEO. MS. NG HEADS A COMMITTEE ON TRADE ISSUES WITHIN SINGAPORE'S ELECTRONIC COMMERCE HOTBED, AN INTERAGENCY TASK FORCE RESPONSIBLE FOR DEVELOPING SINGAPORE'S E-COMMERCE POLICY. MS. NG HAD NO IMMEDIATE COMMENT ABOUT THE JOINT STATEMENT, BUT ASKED HOW THE U.S. PLANNED TO ADVANCE THE APEC WORK PROGRAM ON E-COMMERCE. SPECIFICALLY, SHE ASKED WHETHER THE SENIOR OFFICIALS WILL DELEGATE WORK TO THE COMMITTEE ON TRADE AND INVESTMENT (CTI) OR WHETHER THERE WOULD BE A SEPARATE TASK FORCE TO COORDINATE THE WORK OF MORE SPECIFIC SUB-GROUPS ON E-COMMERCE THAT WOULD REPORT DIRECTLY TO THE SOM. SHE SUGGESTED THAT THE LATTER WAY MAY BE PREFERABLE BECAUSE OF THE LACK OF EXPERTISE WITHIN THE CTI. MEANWHILE, WE WILL CONTINUE TO MONITOR SINGAPORE'S STANCE ON E-COMMERCE AND WILL REPORT ANY FUTURE REACTION TO THE JOINT STATEMENT.

3. ACTION REQUESTED: WE WOULD APPRECIATE RECEIVING INFORMATION WHICH WE CAN PASS TO MS. NG IN RESPONSE TO HER QUESTIONS (PARAGRAPH 2) ABOUT U.S. PLANS FOR ADVANCING E-COMMERCE IN APEC.

MONROE

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Task Force for E-commerce

3. (SBU) In October, DTI Secretary Cesar Bautista tasked DTI Undersecretary Jose Juliano to set up a joint GOP interagency and private- sector task force to discuss/promote electronic commerce. Econoff met with Juliano December 18 to review the status of the task force. Juliano showed us a draft executive order establishing the task force, which had been discussed earlier that day by an interagency group. He said he was using the Electronic Commerce Promotion Council of Japan as a model for the task force. Juliano says the exact composition of the task force is still being developed and discussed interagency, but he showed econoff a proposed list of government representatives, as well as a longer list of possible private-sector invitees, drawn heavily from the financial and retail trade sectors.

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IT Board

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MANILA 02 OF 02 315

committee, which is financially and administratively dependent on the National Computer Center and whose membership is heavily weighted towards the government, has failed to provide the leadership he believes is needed to ensure policy implementation. A paper Juliano shared with us, prepared by a local policy foundation, notes the existing Committee has met infrequently, due to the myriad other responsibilities of the senior officials designated to participate in it.

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INCOMING

ACTION CIP-00

INFO	LOG-00	ACDA-08	ACDE-00	AID-00	CEA-01	CIAE-00	CTME-00
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	FBIE-00	FCC-01	FRB-00	H-01	TEDE-00	INR-00	IO-00
	ITC-01	L-01	ADS-00	NSAE-00	OIC-02	OMB-01	OPIC-01
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INFO USDOC WASHDC
WHITE HOUSE WASHDC
USMISSION GENEVA
AMEMBASSY TOKYO
ASSOCIATION OF SOUTHEAST ASIAN NATIONS

UNCLAS E F T O SECTION 01 OF 02 MANILA 000315

SENSITIVE

GENEVA FOR USTR

STATE ALSO PASS USTR -PAPOVICH

STATE ALSO FOR EB/CIP - WEINSCHENK

WHITE HOUSE ALSO FOR MAGAZINER

USDOC FOR 4430/IEP/EAP/OPB/KELLY

USDOC ALSO PASS NTIA

E.O. 12958: N/A
TAGS: ETRD, ECPS, RP
SUBJECT: PHILIPPINES - ELECTRONIC COMMERCE

SENSITIVE BUT UNCLASSIFIED. PROTECT ACCORDINGLY.

Ref: 98 State 00706

MANILA 01 OF 02 315

1. (U) Action request. Please see paras. 4 and 7.

Summary
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2. (SBU) Summary: The GOP is in the process of establishing an interagency/private-sector task force to discuss the policy framework for and the promotion of electronic commerce in the Philippines. Department of Trade and Industry (DTI) Undersecretary Jose Juliano, who is charged with developing the task force, told us he is using the Electronic Commerce Promotion Council of Japan as a model. He does not expect the body to tackle substantive issues until mid-1998, after the May 1998 Presidential and Congressional elections. Econoff passed Juliano a copy of the U.S.-EU Understanding on Electronic Commerce. Juliano will be traveling to the United States in February to participate in a Microsoft-organized program for foreign officials. He asked our assistance in suggesting West Coast-based private-sector individuals or firms he could talk with about "big picture" electronic commerce issues. End summary.

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. Cable	Cover Sheet. From: Weinschenk, re: Incoming Cable (1 page)	4/9/97	P1/b(1)
002. cable	From AmEmbassy Kuala Lumpur re: E-Commerce in APEC (4 pages)	04/05/98	P5
003. cable	From AmEmbassy Paris re: Electronic Commerce: Ira magaziner Hears Further French Views on Domain name Management and Privacy (5 pages)	04/07/98	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13118

FOLDER TITLE:
Recording Industry Association

Rhonda Wilson

rw5

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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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ACTION EAP-01

INFO LOG-00 AMAD-01 CIP-00 EB-00 UTED-00 IM-01 TEDE-00
ADS-00 NSCB-00 STR-00 SAS-00 /003W
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P 080658Z APR 98
FM AMEMBASSY KUALA LUMPUR
TO SECSTATE WASHDC PRIORITY 0876
USDOC WASHDC
USIA WASHDC 1671
INFO APEC COLLECTIVE PRIORITY

UNCLAS SECTION 01 OF 03 KUALA LUMPUR 001267

SENSITIVE

USDOC FOR ARLENE MAYEDA

WHITE HOUSE FOR IRA MAGAZINER

USIA FOR EA, I/TES

STATE PASS USTR FOR DON ABELSON AND BILL CORBETT

E.O. 12958: N/A
TAGS: MY, ECPS, APEC, BEXP
SUBJECT: E-COMMERCE IN APEC: SUSPICIONS OF U.S. MOTIVES AND TURF BATTLES COMPLICATE GOM POSITION

UNCLASSIFIED

KUALA LUMP 01 OF 03 1267

REF: SECSTATE 34344

1. (U) THIS MESSAGE IS UNCLASSIFIED BUT CONTAINS SENSITIVE INFORMATION WHICH SHOULD NOT BE RELEASED OUTSIDE THE U.S. GOVERNMENT. PLEASE SEE ACTION REQUESTS PARA 14. THIS MESSAGE ALSO PROVIDES A PRELIMINARY RESPONSE TO QUESTIONS POSED REFTEL. SEE PARA 8.

2. (SBU) SUMMARY. ECONCOUNS AND ECON ASSISTANT CALLED ON MINISTRY OF ENERGY, TELECOMMUNICATIONS AND POSTS (MINETP) DEPUTY SECRETARY GENERAL SHAIK SOEKARNO ON MARCH 20 TO DISCUSS THE GOM'S POSITION ON CREATING A DOMESTIC ENVIRONMENT TO PROMOTE E-COMMERCE, ON PROMOTING E-COMMERCE WITHIN APEC, AND ON U.S. BUSINESS' PROBLEMS SECURING TYPE APPROVALS FOR TECHNOLOGICALLY SOPHISTICATED TELCOM PRODUCTS. THE CONVERSATION REVEALED STRONG SUSPICIONS OF U.S. MOTIVES IN PROMOTING E-COMMERCE WITHIN THE MINISTRY AND AMONG OTHER ASEAN STATES. SOEKARNO ALSO VIEWED DARKLY THE APEC E-COMMERCE TASK FORCE, BELIEVING THAT APEC'S WORK
THAT APEC'S WORK ON THE ISSUE SHOULD REMAIN WITHIN THE TELECOMMUNICATIONS WORKING GROUP. WE BELIEVE WE MADE SOME PROGRESS IN DISABUSING SOEKARNO OF SOME OF HIS DEEPEST SUSPICIONS ABOUT U.S. INTENTIONS, BUT HE TENDS TOWARDS SUCH ATTITUDES AND HIS SIGNIFICANT ROLE IN DETERMINING GOM POLICIES, AND HIS READING OF THE STANCE OF OTHER GOM AGENCIES AND APEC ECONOMIES, SUGGEST A CHALLENGING PATH IN ADVANCING U.S. GOALS ON E-COMMERCE.

3. (U) SOEKARNO AND HIS DEPUTY WERE VERY ATTENTIVE WHEN U.S. BUSINESS' PROBLEMS SECURING TYPE APPROVALS WERE DESCRIBED AND UNDERTOOK TO LOOK IN TO THE SITUATION. WHILE WARY OF THE U.S. E-COMMERCE AGENDA, SOEKARNO MADE TWO REQUESTS FOR USG ASSISTANCE: HE WANTED TO KNOW WHETHER THERE MIGHT BE ANY INTEREST AMONG U.S. COMPANIES

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IN SETTING UP A INTERNET ACCESS POINT IN MALAYSIA; AND HE WANTED USG ASSISTANCE IN SETTING UP A TRAINING PROGRAM, DRAWING ON U.S. ACADEMIC EXPERTS, FOR GOM OFFICIALS ON E-COMMERCE. WE ARE EXPLORING WITH USIS THE POSSIBILITY OF BRINIGN AN ACADEMIC EXPERT HERE FOR WORK IN THIS AREA. ACTION REQUESTED: EMBASSY WOULD APPRECIATE RESPONSES SOONEST FROM WASHINGTON AGENCIES TO THE ISSUES POSED IN PREVIOUS SENTENCE. END SUMMARY.

4. (U) SOEKARNO WAS JOINED IN THE MEETING BY YEOH BENG KEAT, PRINCIPAL ASSISTANT SECRETARY. SOEKARNO EXPLAINED THE GOM'S STRUCTURE FOR DEVELOPING NATIONAL POSITIONS ON E-COMMERCE: THE MULTIMEDIA DEVELOPMENT CORPORATTION (MDC), THE AGENCY RESPONSIBLE FOR THE DEVELOPMENT OF THE MULTIMEDIA SUPER CORRIDTOR (MSC), CHAIRS THE INTERAGENCY EFFORT. UNDER IT, ONE COMMITTEE, CHAIRED BY MITI, FOCUSES ON THE INTERNATIONAL TRADE ASPECTS OF E-COMMERCE, THE OTHER, CHAIRED BY MINETP, DEALS WITH INFRATRUCTURE ISSUES.

5. (U) SOEKARNO EXPRESSED CONCERNS ABOUT THE NEW APEC TASK-FORCE ON E-COMMERCE, ARGUING THAT THE BUSINESS FACILITATION STEERING GROUP (BFSG) OF THE TEL WG HAD ALREADY UNDERTAKEN RELEVANT INITIATIVES AND HAS PROGRESSED QUITE FAR. NOW WE HAVE THE APEC TASK FORCE, WHICH WILL RESULT IN SOME OVERLAP. HE THOUGHT THAT THE APEC TASK FORCE MUST HAVE CLEAR TERMS OF REFERENCE AND BE OF SHORT DURATION. ECONCOUNS EXPLAINED THAT THE AUSTRALIAN AND SINGAPORE CO-CHAIRS OF THE TASK FORCE HAD ESTABLISHED A WORK PROGRAM WHICH FOCUSED FIRST, ON MUTUAL EDUCATION, AND SECONDLY ON FINDING JOINT AGREEMENT ON PRINCIPLES, AND THUS SHOULD NOT CONFLICT WITH THE TEL WG'S WORK. AT THE SAME TIME, SOEKARNO COMPLAINED THAT THE TEL WG WAS BEING DRAWN AWAY FROM ITS PRIMARY AND RIGHTFUL FOCUS ON THE TECHNICAL ISSUES OF TELECOMMUNICATIONS. HE THOUGHT THAT THE U.S. SHARED THIS CONCERN TO SOME EXTENT.

6. (U) ASKED ABOUT MALAYSIA'S ROLE AS APEC CHAIR IN PROMOTING ACCEPTANCE OF AN APPROACH TO E-COMMERCE AMONG OTHER APEC MEMBERS, SOEKARNO SAID THAT THE GOM HAD BEEN CONSULTING CLOSELY WITH OTHER ASEAN COUNTRIES, AND HAD DETECTED CONSIDERABLE SUSPICION ABOUT U.S. MOTIVES IN PROMOTING AN E-COMMERCE AGENDA, THAT THE USG HAS PUT FORWARD ITS OWN APPROACH AND JUST WANTS EVERYONE ELSE TO SIGN UP, WITHOUT ADITIONAL INPUT. HE SAID THAT MANY COUNTRIES HAVE COME TO THE GOM URGING CAUTION ABOUT PROCEEDING ON E-COMMERCE. MALAYSIA HAS BEEN "WARNED" TO

KUALA LUMP 02 OF 03 1267

REF: SECSTATE 34344

BE CAUTIOUS ABOUT THE POSSIBLE LOSS OF SOVEREIGNTY WHICH MIGHT RESULT FROM HASTY ACCEPTANCE OF THE USG'S IDEAS.

7. (U) SOME COUNTRIES (VIETNAM?) QUESTIONED THE USG POSITIONS AS "CAPITALIST" BECAUSE OF THEIR EMPHASIS ON MINIMAL GOVERNMENT INVOLVEMENT. IN GENERAL, COUNTRIES WERE EXTREMELY CONCERNED BECAUSE THEY DID NOT UNDERSTAND THE IMPLICATIONS OF E-COMMERCE. IN PARTICULAR, MANY POORER COUNTRIES ARE CONCERNED ABOUT THE USG PRINCIPLES RELATING TO NO TAXATION OR TARIFFS, BECAUSE SUCH COUNTRIES BADLY NEED THE REVENUES, AND SOME ARE STILL VERY DEPENDENT ON TARIFFS AS A REVENUE SOURCE. COUNTRIES WERE ALSO VERY CONCERNED ABOUT THE IMPACT ON THEIR OWN COMPANIES OF A NEW TECHNOLOGY WHICH MIGHT PLACE THEM IN CLOSER COMPETITION WITH U.S. AND OTHER DEVELOPED COUNTRY

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GIANTS. SOEKARNO CONVEYED THE IMPRESSION THAT SOME WITHIN THE MALAYSIAN BUREAUCRACY SHARED SOME OF THESE CONCERNS, IN PARTICULAR ABOUT THE ABILITY OF MALAYSIAN FIRMS TO COMPETE WITH THE U.S. "GIANTS" LIKE MICROSOFT. COUNTRIES ARE ALSO CONCERNED ABOUT HOW E-COMMERCE WILL AFFECT PAYMENTS ARRANGEMENTS AND MONETARY POLICY GENERALLY.

8. (U) SOEKARNO EXPRESSED PARTICULAR ANNOYANCE THAT THE USG HAD TABLED ITS PAPER ON CUSTOMS TREATMENT OF E-COMMERCE AT THE BRUNEI TELGROUP MEETING. FOR ONE THING, THE TEL GROUP DID NOT DEAL WITH CUSTOMS ISSUES. WAS THE USG UP TO SOMETHING? HE THOUGHT IT BEST TO CREATE THE (PRESUMABLY TECHNICAL) CONDITIONS FOR THE DEVELOPMENT OF E-COMMERCE AND TO "LET THE CUSTOMS ISSUE BE" AND DEAL LATER WITH CUSTOMS ISSUES. HE REFERRED TO DEVELOPING COUNTRY CONCERNS ABOUT FOREGOING POSSIBLE SOURCES OF INCOME AND SAID OUR POSITION IS INCONSISTENT WITH THE VIEWS OF THE REST OF APEC. HE EXPRESSED CONCERN ABOUT THE U.S. EFFORT TO PUT THE ISSUE ON THE WTO AGENDA. EMBASSY WILL CONTINUE TO PRESS THE POINTS REFTEL TO OTHER GOM AGENCIES BUT EXPECT MORE TIME AND EDUCATION WILL BE REQUIRED TO BRING THE GOM ON BOARD.

9. (U) ECONCOUNS RESPONDED WITH A DEFENSE AND EXPLANATION OF U.S. POLICIES AND GOALS ON E-COMMERCE. SHE EXPLAINED THAT THE QUESTIONS POSED TO GOVERNMENT POLICY MAKERS AND REGULATORS HAD COME TO THE USG'S ATTENTION EARLY ON BECAUSE OF OUR OWN DIVISION OF POWER BETWEEN THE NATIONAL AND STATE GOVERNMENTS AND THAT THE PRESIDENT'S INITIATIVE WAS A RESPONSE TO AN OBVIOUS NEED. SHE EXPLAINED THAT THE USG PROPOSAL FOR A CUSTOMS-FREE E-COMMERCE ENVIRONMENT WOULD NOT DEPRIVE POOR COUNTRIES OF TRADITIONAL SOURCES OF REVENUES LEVIED ON PHYSICAL GOODS TRANSACTIONS. SHE SAID WE RECOGNIZED THAT OTHER COUNTRIES, SUCH AS AUSTRALIA AND THE EU, ALSO HAD THEIR OWN IDEAS, AND WE HAD COME TO A MUTUAL UNDERSTANDING WITH THE EU. ALSO, WE ARE QUITE PLEASED THAT AUSTRALIA AND SINGAPORE AGREED TO CO-CHAIR THE APEC TASK FORCE.

10. SHE EXPLAINED THE SCOPE OF WORK FOR THE TASK FORCE AS DEFINED BY ITS CO-CHAIRS, WHICH WOULD FOCUS FIRST ON MUTUAL EDUCATION ON THE KINDS OF ISSUES WHICH SOEKARNO HAD RAISED AND THEN TURN TO DEFINING AN AGREED SET OF PRINCIPLES. THE WORK OF THE TASK FORCE THUS SHOULD NOT CONFLICT WITH THAT OF THE TEL WG. SHE ALSO EXPLAINED THAT THE COMPANIES WHICH ARE BENEFITING THE MOST FROM THE DEVELOPMENT OF E-COMMERCE ARE SMALL AND MEDIUM-SIZED COMPANIES, AND THAT WE SEE THAT E-COMMERCE WILL PROVIDE THE SAME OPPORTUNITIES FOR SMES ON A GLOBAL SCALE, PARTICULARLY WHEN ACCOMPANIED BY, FOR EXAMPLE, APEC-WIDE MEASURES TO CREATE AN ENABLING ENVIRONMENT FOR EXPRESS PACKAGE DELIVERY.

11. (U) APPEARING SOMEWHAT REASSURED BY THE EMBASSY'S EXPLANATIONS, SOEKARNO ASKED IF THERE WAS ANY POSSIBILITY THAT THE USG COULD FACILITATE THE ESTABLISHMENT OF SOME KIND OF TRAINING PROGRAM IN E-COMMERCE ISSUES TO BE CONDUCTED BY EXPERTS FROM U.S. UNIVERSITIES. THE GOM WOULD BE IN A POSITION TO DISCUSS FUNDING FOR SUCH A PROGRAM. WE WILL FOLLOW UP ON THIS REQUEST BY SOLICITING ASSISTANCE THROUGH USIA'S I-BUREAU. SOEKARNO ALSO ASKED IF THE EMBASSY COULD HELP FOSTER U.S. INDUSTRY INTEREST IN ESTABLISHING ADDITIONAL INTERNET ACCESS POINTS IN MALAYSIA. BEGINNING IN JUNE, THE GOM WILL OPEN UP

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REF: SECSTATE 34344

INTERNET SERVICE TO ALL INTERESTED PROVIDERS IN MALAYSIA, RATHER THAN THE TWO THUS FAR GIVEN CONTROL OF THE LOCAL MARKET. HOWEVER, ALL PROVIDERS WOULD STILL REMAIN DEPENDENT ON COSTLY ACCESS TO THE U.S. UNLESS AN ACCESS POINT WERE ESTABLISHED IN MALAYSIA.

12. (SBU) ECONCOUNS THEN TURNED THE DISCUSSION TO THE SEVERE PROBLEMS REPORTED TO US BY ONE LARGE U.S. TELCOM COMPANY IN OBTAINING TYPE APPROVALS FOR ITS STATE OF THE ART NETWROKING PRODUCTS. AT THE COMPANY'S REQUEST, WE RAISED THE PROBLEM ONLY IN GENERAL TERMS, INFORMING SOEKARNO THAT APPROVALS IN MALAYSIA CAN TAKE 3-5 MONTHS COMPARED TO 1-2 MONTHS ELSEWHERE, THAT THE HEAVY REGULATORY BURDEN REQUIRED TO OBTAIN THE APPROVAL IMPOSES SEVERE COSTS ON EXPORTING COMPANIES, AND THAT MALAYSIA SUFFERED REPEATED TECHNOLOGY LAGS AS A RESULT. BOTH SOEKARNO AND YEOH APPEARED SHOCKED AT THE DESCRIPTION OF THE TYPE APPROVAL PROCESS AND UNDERTOOK TO INQUIRE INTO THE SITUATION.

13. COMMENT. (SBU) DEPUTY SECRETARY GENERAL SOEKARNO IS A HIGH-RANKING MEMBER OF THE GOM'S INTERAGENCY GROUP TO ESTABLISH THE GOM'S OWN NORMS FOR PROMOTING AND REGULATING E-COMMERCE. HIS DOWNBEAT ASSESSMENT IS IN PART A REFLECTION OF HIS OWN GENERAL DEMEANOR BUT ALSO APPEARS TO REFLECT FAIRLY WIDESPREAD ATTITUDES WITHIN THE MALAYSIAN BUREAUCRACY AND OTHER ASIAN COUNTRIES. MOREOVER, WE HAVE HEARD ELSEWHERE THAT THE GOM'S PROCESS OF DETERMINING POSITIONS ON E-COMMERCE ISSUES IS BEING COMPLICATED BY TURF BATTLES. NONETHELESS, THE GOM AT THE HIGHEST LEVELS HAS ESTABLISHED A PRIORITY TO DEVELOP E-COMMERCE, AND HAS MADE E-COMMERCE A PRIORITY FOR ITS APEC CHAIRMANSHIP YEAR, SO THE NAY-SAYERS WITHIN MALAYSIA WILL HAVE TO BE ACCOUNTABLE FOR ANY FAILURE TO ACHIEVE PROGRESS. WE CAN BEST HELP MOVE THE PROCESS FORWARD BY RESPONDING TO THE GOM'S REPEATED REQUESTS FOR ASSISTANCE IN "BRIEFING UP" ON THE ISSUES. EMBASSY HOPES THAT PRESIDENTIAL SENIOR ADVISOR WILL BE ABLE TO TRAVEL TO MALAYSIA IN JUNE TO BRIEF APEC SENIOR OFFICIALS AND OTHERS IN KUCHING. IN ADDITION, EMBASSY HOPES WASHINGTON AGENCIES WILL RESPOND ASAP TO THE ACTION REQUESTS IN FOLLOWING PARAGRAPH. END COMMENT.

14. ACTION REQUESTS. EMBASSY REQUESTS WASHINGTON AGENCY ASSISTANCE IN ADVISING ON A RESPONSE TO THE GOM REQUEST DESCRIBED PARA 11 FOR FACILITATION OF A TRAINING PROGRAM ON E-COMMERCE ISSUES TO BE CONDUCTED BY U.S. ACADEMIC EXPERTS. EMBASSY ALSO REQUESTS GUIDANCE ON HOW TO RESPOND TO PARA 11 REQUEST FOR ELICITING U.S. INDUSTRY INTEREST IN ESTABLISHING AN INTERNET ACCESS POINT IN MALAYSIA. WE ADMIT TO IGNORANCE ABOUT THE TEHNICALITIES OR REASONABLENESS OF SOEKARNO'S REQUEST BUT WOULD APPRECIATE ANY EDUCATION FROM WASHINGTON SHOULD WE NEED TO GO BACK TO HIM FOR MORE INFORMATION. END ACTION REQUESTS.

MALOTT

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ACTION CIP-00

INFO	LOG-00	ACDA-08	ACDE-00	INLB-01	AID-00	AMAD-01	CEA-01
	CIAE-00	CTME-00	INL-01	DODE-00	ITCE-00	SRPP-00	EB-00
	EXME-00	EUR-01	E-00	FAAE-00	UTED-00	FBO-01	FRB-00
	H-01	IMMC-01	IM-01	TEDE-00	INR-00	ITC-01	JUSE-00
	L-01	ADS-00	NSAE-00	OMB-01	OPIC-01	CIO-00	SP-00
	SSO-00	SS-00	STR-00	TRSE-00	USIE-00	SNRO-00	DRL-04
	G-00	SAS-00	/025W				

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TO SECSTATE WASHDC PRIORITY 4942
INFO WHITE HOUSE WASHDC PRIORITY
USDOC WASHDC
FCC WASHDC
ALL EUROPEAN UNION POST COLLECTIVE

UNCLAS SECTION 01 OF 04 PARIS 007906

STATE ALSO FOR EB/CIP WEINSCHENK AND EUR/WE
STATE PLEASE PASS USTR FOR DON ABELSON
WHITE HOUSE ALSO FOR MAGAZINER
USDOC FOR NTIA - BECKY BURR
USDOC ALSO FOR 1000/ITA/UNDERSECRETARY AARON
USDOC ALSO FOR 4212/ITA/MAC/EUR/MDORSETT
FCC FOR INTERNATIONAL/BRETT HAAN AND TECHNOLOGY POLICY/MIKE NELSON
BRUSSELS FOR COLIN HELMER
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E.O. 12958: N/A
TAGS: ECPS, EINT, ETRD, EUN, FR
SUBJECT: ELECTRONIC COMMERCE: IRA MAGAZINER HEARS FURTHER FRENCH VIEWS ON DOMAIN NAME MANAGEMENT AND PRIVACY

REF: A) PARIS 5846 B) STATE 34000 C) PARIS 3938 D) PARIS 1082

PARIS 01 OF 04 7906

1. (U) SUMMARY. DURING TWO DAYS OF MEETINGS IN PARIS (MARCH 19-20), SENIOR WHITE HOUSE ADVISOR FOR POLICY IRA MAGAZINER DEFENDED THE USG'S PROPOSAL FOR REFORMING INTERNET DOMAIN NAME SYSTEM (DNS) MANAGEMENT. HE ACKNOWLEDGED LEGITIMATE FRENCH CONCERNS WITH RESPECT TO THE COMPOSITION OF THE BOARD OF DIRECTORS OF THE PROPOSED "NEW CORPORATION" WHICH WOULD BE CREATED TO MANAGE THE NEW DNS, AND WITH U.S. LEGAL JURISDICTION OVER TRADEMARK DISPUTES RELATED TO DOMAIN NAMES. MAGAZINER STRESSED, HOWEVER, THAT THE USG COULD NOT/NOT COMPROMISE ON THE PRINCIPLE THAT THE NEW CORPORATION WOULD BE U.S.-BASED. GOF OFFICIALS AGREED TO HELP TONE DOWN THE NEGATIVE RHETORIC IN OFFICIAL REACTIONS TO THE U.S. PROPOSAL. THEY PRESSED FOR INTERNATIONAL, POLITICAL LEVEL TALKS IN ADVANCE OF FORMAL LAUNCHING OF THE NEW CORPORATION IN THE FALL. ON THE PRIVACY ISSUE, GOF OFFICIALS ACKNOWLEDGED GENERAL AGREEMENT WITH THE U.S. ON DATA PROTECTION PRINCIPLES AND SOUGHT PRACTICAL SOLUTIONS TO DEAL WITH DIFFERING U.S. AND EUROPEAN ENFORCEMENT MECHANISMS. THEY SAID THAT FRANCE WOULD SEEK TO REFORM FRENCH AND EUROPEAN APPROACHES TO DATA PRIVACY IN THE COMING MONTHS. END SUMMARY.

2. (U) SENIOR WHITE HOUSE ADVISOR FOR POLICY IRA MAGAZINER MET WITH GOF OFFICIALS MARCH 19 AND 20 TO DISCUSS THE USG'S PROPOSAL FOR REFORMING INTERNET DOMAIN NAME SYSTEM (DNS) MANAGEMENT AND INTERNET PRIVACY ISSUES. MAGAZINER MET PRIME MINISTER JOSPIN'S INFO-TECH ADVISOR JEAN-NOEL TRONC (AND MATIGNON LEGAL ADVISOR ROBERT GELLI); FOREIGN MINISTRY U/S-EQUIVALENT FOR ECONOMIC AND EUROPEAN AFFAIRS CLAUDE MARTIN (ACCOMPANIED BY FOREIGN MINISTRY OFFICIALS YVES CHARPENTIER, MICHEL FILHOL, AND AURELIE LAPIDUS);

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FRENCH E-COMMERCE CZAR FRANCIS LORENTZ (AND INFO-TECH ADVISOR GILLES BAUCHE); AND FRENCH INTERNET SOCIETY (ISOC) PRESIDENT BRUNO OUDET. MAGAZINER ALSO EXCHANGED VIEWS ON ELECTRONIC COMMERCE WITH THE U.S. BUSINESS COMMUNITY (AMCHAM) AND HELD A PRESS CONFERENCE WITH FRENCH JOURNALISTS. EMBASSY TELECOMS OFFICER ACCOMPANIED MAGAZINER TO ALL MEETINGS; MINISTER COUNSELOR FOR ECONOMIC AFFAIRS JOHN MEDEIROS AND SCIENCE COUNSELOR BUD ROCK JOINED MAGAZINER FOR RELEVANT CALLS. MAGAZINER'S MEETING WITH FINANCE MINISTER DOMINIQUE STRAUSS-KAHN FOCUSED ON THE UPCOMING VISIT TO WASHINGTON BY FRENCH PRIME MINISTER JOSPIN AND IS REPORTED SEPTEL.

PRIME MINISTER'S OFFICE SEEKS POLITICAL LEVEL TALKS ON DOMAIN NAMES

3. (U) PRIME MINISTER JOSPIN'S INFO-TECH ADVISOR JEAN-NOEL TRONC FOCUSED ON TWO ISSUES DURING HIS MARCH 19 DISCUSSION WITH MAGAZINER: REFORM OF THE INTERNET DOMAIN NAME SYSTEM (DNS), AND PRIVACY. TRONC NOTED THAT HE HAD CONSULTED WIDELY ON THESE ISSUES, INCLUDING A FEBRUARY MEETING WITH NTIA/BECKY BURR IN PARIS (REF C) AND A MARCH 18 MEETING WITH EU COMMISSIONER BANGEMANN IN BRUSSELS. ON DNS REFORM, TRONC TICKED OFF FAMILIAR FRENCH OBJECTIONS TO THE U.S. "GREEN PAPER:"

-- NO REFERENCE TO THE INTERNATIONAL TELECOMMUNICATIONS UNION (ITU) MEMORANDUM OF UNDERSTANDING (ALTHOUGH TRONC SAID HE UNDERSTOOD U.S. RELUCTANCE TO ENTRUST DNS MANAGEMENT TO THE ITU);

-- NO MENTION OF DISCUSSIONS IN THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) AND A POTENTIALLY SERIOUS LACK OF ADEQUATE TRADEMARK PROTECTION, PARTICULARLY FOR NON-U.S. TRADEMARK HOLDERS; TRONC NOTED THE CURRENT SYSTEM FAILED TO PROVIDE ADEQUATE PROTECTIONS AND ASKED IF EXISTING "VIOLATIONS" OF TRADEMARKS WOULD BE CORRECTED OR "GRANDFATHERED" INTO THE NEW DNS MANAGEMENT SYSTEM;

-- CONCERN ABOUT THE STATUS OF FUTURE PRIVATE, COMPETITIVE REGISTRARS AND REGISTRIES WHICH WOULD SUCCEED THE CURRENT MONOPOLIES MANAGED BY THE INTERNET ASSIGNED NUMBERS AUTHORITY (IANA) AND NETWORK SOLUTIONS INCORPORATED (NSI); TRONC WONDERED IF TURNING OVER MANAGEMENT OF DOMAIN NAME DATA BASES TO A STILL NON-EXISTENT ORGANIZATION WOULD DESTABILIZE THE INTERNET; HE SUGGESTED THAT NON-PROFIT REGISTRIES MIGHT PROVIDE BETTER COORDINATION OF DNS ISSUES;

-- MAINTENANCE OF NATIONAL CONTROL OVER COUNTRY-CODE TOP LEVEL DOMAINS (E.G., .FR).

4. (SBU) TRONC ACKNOWLEDGED THAT PRACTICAL SOLUTIONS COULD BE FOUND TO ADDRESS ALL THE ABOVE "TECHNICAL" ISSUES. HE NOTED, HOWEVER, THAT INTERNET WAS A VICTIM OF ITS OWN SUCCESS, AND HAD BECOME A GLOBAL PHENOMENON OF STRATEGIC INTEREST TO FRANCE, THE

PARIS 02 OF 04 7906

U.S. AND THE WORLD. TRONC IMPLICITLY ACCEPTED THE MID-APRIL DEADLINE FOR FINALIZING OF THE U.S. PAPER, BUT URGED THAT THE U.S. CONSIDER "FORMAL, POLITICAL-LEVEL TALKS" DURING THE SUMMER OF 1998, PRIOR TO FORMAL ESTABLISHMENT OF THE NEW CORPORATION. HE SAID THAT HOLDING SUCH TALKS WOULD MAKE IT EASIER FOR FRANCE AND EUROPE TO ACCEPT A U.S.-BASED ENTITY SUBJECT TO U.S. LAWS WITH RESPONSIBILITY FOR MANAGING THE GLOBAL INTERNET DOMAIN NAME SYSTEM.

5. (U) IN A SEPARATE MEETING MARCH 19, FRENCH E-COMMERCE CZAR FRANCIS LORENTZ PRESSED MAGAZINER HARD ON THE GEOGRAPHICAL LOCATION OF THE NEW CORPORATION'S HEADQUARTERS. HE NOTED THAT WITH THE RAPID GROWTH OF DATA TRANSMISSIONS VIA THE INTERNET, THE NEW CORPORATION WOULD QUICKLY ECLIPSE THE GENEVA-BASED ITU AS THE LEAD INTERNATIONAL TELECOMMUNICATIONS BODY. HE URGED MAGAZINER TO

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CONSIDER HOLDING BOARD MEETINGS OF THE NEW CORPORATION IN GENEVA, REGARDLESS OF THE LOCATION OF ITS TECHNICAL OPERATIONS, IN ORDER TO MEET EUROPEAN DEMANDS FOR A TRULY INTERNATIONAL DNS MANAGEMENT BODY.

6. (SBU) IN A SEPARATE MEETING MARCH 20, FRENCH INTERNET SOCIETY PRESIDENT BRUNO OUDET STRESSED THE PRACTICAL PROBLEMS CREATED BY POOR MANAGEMENT OF THE ".COM" REGISTRY BY NSI, PARTICULARLY WITH RESPECT TO FRENCH TRADEMARKS AND "CYBER-SQUATTING." HE SAID IT TYPICALLY COST FRENCH CORPORATIONS UP TO USD 40 THOUSAND IN LEGAL FEES (IN THE U.S.) TO RECOVER DOMAIN NAME TRADE MARKS LOST TO U.S. CYBER-SQUATTERS. HE URGED THE USG TO TAKE A MORE "INTERNATIONALIST" APPROACH TO FORMULATING DNS REFORM POLICY, ARGUING THAT THE CURRENT U.S. APPROACH ONLY REINFORCED EUROPEAN CONCERNS ABOUT U.S. HEGEMONY OVER THE INTERNET. HE ADVOCATED A MORE CENTRAL ROLE FOR THE INTERNET SOCIETY (ISOC) IN INTERNET MANAGEMENT, NOTING THAT ISOC WAS COMPLETELY MARGINALIZED IN THE CURRENT U.S. PLAN. (COMMENT: IN REPLY, MAGAZINER NOTED THAT IN THE U.S., ISOC WAS NOT VIEWED AS BROADLY REPRESENTATIVE OF ALL INTERNET USERS, PARTICULARLY BY COMMERCIAL AND INDUSTRIAL USERS. END COMMENT.) OUDET ALSO RECOMMENDED THAT THE NEW CORPORATION BE LOCATED OUTSIDE THE U.S., OR, AS AN ALTERNATIVE, THAT IT MAINTAIN SHADOW ROOT SERVER SYSTEMS -- WITH ALL NECESSARY HARDWARE AND SOFTWARE -- IN BOTH EUROPE AND ASIA. HE ALSO CALLED FOR U.S. ENDORSEMENT OF NEW REGIONAL TLD'S FOR EUROPE AND ASIA (E.G., .EU FOR EUROPE). OUDET SAID THAT ALL EUROPEAN CHAPTERS OF ISOC WOULD MEET IN BRUSSELS APRIL 21 AND WOULD SURELY FOCUS ON THE DNS REFORM PROPOSAL.

7. (U) IN REPLY, MAGAZINER SAID THAT MANY OF THE FRENCH COMMENTS ON THE GREEN PAPER REFLECTED LEGITIMATE CONCERNS; THE U.S. COULD BE FLEXIBLE ON MOST OF THEM BUT COULD NOT/NOT CONCEDE ON THE ISSUE OF ESTABLISHING THE NEW CORPORATION OUTSIDE THE U.S. HE CLARIFIED THE U.S. POSITION AS FOLLOWS:

-- THE USG'S TOP PRIORITIES IN DNS REFORM ARE MAINTAINING STABILITY OF THE INTERNET AND PRIVATIZATION; USG AUTHORITIES AND RESPONSIBILITIES FOR DNS MANAGEMENT WOULD BE HANDED OVER TO THE NEW CORPORATION IN A MANNER CONSISTENT WITH STABILITY OF THE INTERNET.

-- THESE RESPONSIBILITIES WOULD INCLUDE MANY OF THE FUNCTIONS CURRENTLY CARRIED OUT UNDER CONTRACT FOR THE USG BY NSI AND IANA, INCLUDING MANAGING TLD DATA BASES (I.E., .COM, .NET, .ORG); MANAGING THE INTERNET ROOT SERVER SYSTEM; REGISTERING INTERNET PROTOCOLS; ALLOCATING NUMBER BLOCKS TO REGIONAL NUMBERING AUTHORITIES IN NORTH AMERICA (ARIN), ASIA (APNIC) AND EUROPE (RIPE); AND SETTING TLD POLICY (E.G., CREATION OF NEW TLD'S). MAGAZINER SAID THE USG WAS LEANING TOWARD NOT/NOT CREATING ANY NEW TLD'S BEFORE ESTABLISHMENT OF THE NEW CORPORATION.

-- THE NEW CORPORATION WOULD BE MANAGED BY A TRULY INTERNATIONAL BOARD OF DIRECTORS WHOSE MEMBERS WOULD REPRESENT INTERNET STAKE-HOLDERS, INCLUDING 7 REPRESENTATIVES OF USER GROUPS (BOTH COMMERCIAL AND NON-PROFIT, WHO COULD BE NOMINATED ON A REGIONAL BASIS), AND 7 REPRESENTATIVES OF THE INTERNATIONAL TECHNICAL COMMUNITY (INTERNET ARCHITECTURE BOARD, INTERNET ENGINEERING TASK FORCE) AND REGIONAL NUMBERING AUTHORITIES. HE NOTED THAT AS DEVELOPING COUNTRIES JOINED THE GLOBAL INTERNET COMMUNITY, BOARD MEMBERSHIP COULD BE ADJUSTED TO INCLUDE REPRESENTATIVES OF AFRICA AND LATIN AMERICA.

-- U.S. LAWS GOVERNING NON-PROFIT ORGANIZATIONS ARE SUFFICIENTLY FLEXIBLE TO PERMIT THE NEW CORPORATION'S BY-LAWS TO CONFORM WITH EUROPEAN ANTI-TRUST AND TRADEMARK LEGISLATION.

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-- ENFORCEMENT OF TRADEMARK PROTECTION WOULD BE IN CONFORMANCE WITH WIPO PRINCIPLES AND PRACTICE: TRADEMARK HOLDERS WOULD BE ABLE TO BRING SUIT AGAINST INFRINGERS IN THEIR OWN NATIONAL COURTS; THEY WOULD NOT/NOT BE FORCED TO BRING SUIT IN U.S. COURTS. THE USG WOULD PROPOSE A WIPO STUDY OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS. THE NEW CORPORATION COULD DECIDE HOW TO HANDLE CURRENT CASES OF TRADEMARK INFRINGEMENT WHEN IT ASSUMED RESPONSIBILITY FOR DNS MANAGEMENT.

-- NEW DOMAIN NAME REGISTRIES WOULD BE REQUIRED TO PROVIDE ADEQUATE TRADEMARK PROTECTION AND ALTERNATIVE DISPUTE RESOLUTION MECHANISMS, ENSURE TRANSPARENCY IN ISSUING DOMAIN NAMES, AND TAKE APPROPRIATE STEPS TO PROHIBIT "CYBER-SQUATTING." THE USG FAVORED FOR-PROFIT REGISTRIES IN ORDER TO STIMULATE INNOVATION AND EFFICIENCY, BUT RECOGNIZED ADVANTAGES OF NON-PROFIT REGISTRIES AS WELL.

8. (SBU) MAGAZINER PRESSED HIS INTERLOCUTORS TO "TONE DOWN THE RHETORIC" OF OFFICIAL RESPONSES TO THE U.S. GREEN PAPER, NOTING THE UNNECESSARILY HARSH TONE OF THE INITIAL DRAFT EU RESPONSE, AND RECENT AD HOMINEM ATTACKS IN THE FRENCH PRESS. THE U.S SOUGHT BROAD AGREEMENT WITH FRANCE AND EUROPE ON DNS REFORM, NOT CONFRONTATION, HE SAID. ALL MAGAZINER'S INTERLOCUTORS CONCURRED WITH THIS APPROACH; TRONC UNDERTOOK TO ENSURE THAT THE FORMAL EU REPLY TO THE U.S. PAPER REFLECTED A MORE MEASURED TONE. (NOTE: THE FINAL EU REPLY WAS ISSUED TWO DAYS LATER AND DID INDEED REFLECT A MORE MEASURED TONE.)

FRANCE WILL REVISE PRIVACY RULES, SEEK EU CONSENSUS

9. (U) ON PRIVACY, TRONC NOTED THE IMPORTANCE OF THE EU PRIVACY DIRECTIVE WHICH, HE SAID, MUST BE TAKEN INTO ACCOUNT AS WE SEEK PRAGMATIC SOLUTIONS. FRENCH LAW IS NOT THE PROBLEM, HE SAID, THE EU DIRECTIVE IS THE PROBLEM. TRONC SAID HE HAD DISCUSSED THE PRIVACY ISSUE MARCH 18 WITH EU COMMISSIONER BANGEMANN, INCLUDING A MUTUAL RECOGNITION APPROACH (MRA) AS A POSSIBLE MEANS TO RECONCILE DIFFERING U.S. AND EUROPEAN APPROACHES TO DATA PROTECTION. FRANCE'S APPROACH TO DATA PROTECTION WAS STILL EVOLVING, TRONC SAID. PRIME MINISTER JOSPIN WOULD PROPOSE A REVISION OF THE 1978 LAW GOVERNING FRENCH DATA PROTECTION BY THE END OF THE SUMMER, BASED ON THE REPORT ON "PERSONAL DATA AND THE INFORMATION SOCIETY" RECENTLY COMPLETED BY ADMINISTRATIVE LAW JUDGE (CONSEILLER D'ETAT) GUY BRAIBANT. (NOTE: LORENTZ ALSO RAISED THE ISSUE OF A DATA PROTECTION MRA AND ASKED FOR U.S. VIEWS ON HOW SUCH AN APPROACH WOULD BE APPLIED IN PRACTICE.)

10. (SBU) TRONC SAID THAT FRANCE'S APPROACH TO DATA PROTECTION WOULD EVOLVE TOWARD AN EX-POST REGULATORY REGIME FROM THE CURRENT (CUMBERSOME, SEE REF D) EX-ANTE REGIME ADMINISTERED BY THE STATE PRIVACY BOARD (CNIL). TRONC SAID THAT FRANCE WOULD SEEK TO LAUNCH INTRA-EU DISCUSSIONS THIS SUMMER AIMED AT FINDING NEW APPROACHES TO DATA PROTECTION, BASED ON THE BRAIBANT REPORT. (NOTE: THE BRAIBANT REPORT WAS COMPLETED MARCH 3, IT HAS NOT YET BEEN RELEASED TO THE PUBLIC. GENERAL INFORMATION ON THE REPORT CAN BE FOUND AT WWW.PREMIER-MINISTRE.GOUV.FR. THE PRIME MINISTER'S INSTRUCTIONS TO BRAIBANT CALLED FOR BALANCING THE NEEDS OF PROTECTING PERSONAL PRIVACY WITH TECHNOLOGICAL ADVANCES AND PROMOTION OF ECONOMIC GROWTH.)

11. (U) MAGAZINER REPLIED THAT THE U.S. AND FRANCE AGREED ON THE SUBSTANCE OF THE PRIVACY ISSUE, INCLUDING THE APPLICABILITY OF OECD PRIVACY PRINCIPLES. OUR APPROACHES DIFFERED MAINLY IN TERMS OF ENFORCEMENT, WITH THE U.S. FAVORING AN INDUSTRY-LED APPROACH AND FRANCE (AND EUROPE) FAVORING STATE-LED ENFORCEMENT. HE SAID HE HAD HAD GOOD TALKS ON THE PRIVACY ISSUE WITH THE EU COMMISSION, AND PRESSED FOR A RESOLUTION OF THE ISSUE BY JUNE 1998.

FOREIGN MINISTRY OFFICIALS FOCUSED ON PROCEDURAL ISSUES

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12. (U) MAGAZINER'S DISCUSSION WITH FOREIGN MINISTRY U/S CLAUDE MARTIN FOCUSED ON THE AREAS OF COMPETENCY OF RELEVANT INTERNATIONAL ORGANIZATIONS FOR ELECTRONIC COMMERCE ISSUES. MARTIN SAID HE HAD MET WITH WTO CHAIRMAN RUGGIERO MARCH 18 AND SENSED THAT THE WTO WAS ANXIOUS TO ENGAGE FULLY ON E-COMMERCE ISSUES; HE WONDERED IF THERE WAS GROWING COMPETITION BETWEEN MULTILATERAL BODIES IN THIS AREA. ON FISCAL ISSUES, HE NOTED THE DIFFICULTY OF CLASSIFYING ELECTRONIC TRANSACTIONS AS GOODS OR SERVICES. MARTIN RAISED THE UPCOMING OECD

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MINISTERIAL IN OTTAWA (OCTOBER 1998) AND ASKED WHAT WERE U.S. OBJECTIVES FOR THE CONFERENCE. MARTIN STRESSED THE IMPORTANCE OF INCLUDING CHINA AND DEVELOPING COUNTRIES IN MULTILATERAL DISCUSSIONS OF ELECTRONIC COMMERCE AND INTERNET ISSUES.

13. (SBU) IN REPLY, MAGAZINER OUTLINED THE GENERAL DIVISION OF LABOR BETWEEN INTERNATIONAL ORGANIZATIONS ON ELECTRONIC COMMERCE ISSUES, INCLUDING THE WTO (IMPORT DUTIES/TARIFFS), THE OECD (DOMESTIC TAXES, PRIVACY), AND THE WIPO (TRADEMARKS, IPR). HE NOTED THAT DEVELOPING COUNTRIES COULD BE EASILY ASSOCIATED WITH OECD DISCUSSIONS. ON THE OTTAWA CONFERENCE, HE SAID THE USG WOULD SEEK TO FOCUS DISCUSSION ON TAXATION (INCLUDING AN ENDORSEMENT OF COMMON PRINCIPLES), ANALYSIS (OF THE SOCIO-ECONOMIC IMPACT OF ELECTRONIC COMMERCE), AND PRIVACY (TO INCLUDE PRIVATE SECTOR PARTICIPATION).

14. (SBU) COMMENT. MAGAZINER MET ALL THE KEY PLAYERS ON FRENCH E-COMMERCE POLICY DURING HIS VISIT TO PARIS, IN TERMS OF INFLUENCE ON THE SUBSTANTIVE ISSUES HE COULD NOT HAVE BEEN RECEIVED AT A HIGHER LEVEL. THE FRENCH CLEARLY SEE A CONVERGENCE OF VIEWS AND INTERESTS ON MANY ELECTRONIC COMMERCE ISSUES, INCLUDING PRIVACY. THEY HAVE COMPLETED THE NECESSARY CONCEPTUAL SPADEWORK (E.G., THE LORENTZ REPORT ON E-COMMERCE AND THE BRAIBANT REPORT ON DATA PROTECTION) AND ARE NOW PREPARED TO MOVE FORWARD IN INTERNATIONAL DISCUSSIONS. JUNE MAY BE AN OPPORTUNE TIME FRAME FOR REACHING AGREEMENT ON COMMON PRINCIPLES WHICH COULD PAVE THE WAY FOR BROADER AGREEMENT WITH BRUSSELS.

15. (SBU) COMMENT CONTINUED. ON THE NARROWER DOMAIN NAME ISSUE, THE FRENCH HAVE TWO CLEAR OBJECTIONS TO OUR PROPOSAL. ON PROCESS, THEY OBJECT TO OUR "UNILATERAL" APPROACH; THEY ARGUE THAT CONSULTATIONS DO NOT EQUAL NEGOTIATIONS. IN THE FINAL ANALYSIS, THAT CONFLICT IS PROBABLY UNAVOIDABLE BUT NOT INSURMOUNTABLE. SOME OF THOSE CONCERNS MAY BE MET BY ORGANIZING BROADER POLITICAL LEVEL DISCUSSIONS PRIOR TO FORMAL ESTABLISHMENT OF THE NEW CORPORATION, PERHAPS LINKED TO ELECTIONS OF BOARD MEMBERS BY CONSTITUENT STAKEHOLDER GROUPS. ON THE SUBSTANTIVE ISSUE OF U.S. LEGAL JURISDICTION OVER THE NEW CORPORATION, PRIVATE-SECTOR REGISTRIES, AND INEVITABLE TRADEMARK DISPUTES, IT WILL BE IMPORTANT TO FIND PRACTICAL SOLUTIONS, SUCH AS ALTERNATIVE DISPUTE RESOLUTION MECHANISMS (PERHAPS LINKED TO WIPO AGREEMENTS). THE KEY ISSUE FOR THE FRENCH WILL BE DETERMINING WHAT COURT SYSTEM HAS JURISDICTION OVER A DISPUTE BETWEEN A U.S. NATIONAL AND A FOREIGN (E.G., FRENCH) TRADEMARK HOLDER.

16. (U) THIS CABLE WAS CLEARED BY IRA MAGAZINER.
ROHATYN

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From AmEmbassy Rome re: Italy Telecoms: Bilateral Meeting (2 pages)	02/03/98	P5

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13118

FOLDER TITLE:

State Department Memos

Rhonda Wilson

rw119

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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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ACTION CIP-00

INFO LOG-00 INLB-01 AMAD-01 CIAE-00 INL-01 SRPP-00 EB-00
EUR-01 UTED-00 FCC-01 IMMC-01 IM-01 TEDE-00 INR-00
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SENSITIVE

STATE FOR EB/CIP/FINTON; EUR/WE/PIERANGELO; AND EB/DCT
PASS FCC FOR KIRK MCBRIDE
PASS USTR FOR ABELSON AND DE MARCELLUS
USDOC FOR NTIA/IRVING; 6320/TD/TAI/OT/MOTTUR AND DENNY-BROWN; AND
4220/IEP/EUR/OWE/ACORRO
GENEVA FOR USTR

E.O. 12958: N/A
TAGS: ECPS, EUN, IT
SUBJECT: ITALY TELECOMS: BILATERAL MEETING
REF: a) 97 ROME 10724; b) FINTON-REYNOLDS E-MAIL, 1/30/98

SENSITIVE BUT UNCLASSIFIED -- PLEASE PROTECT ACCORDINGLY. ACTION REQUEST IN PARA. 4.

1. (SBU) Ref a responded to Washington agencies' questions regarding the status of telecommunications liberalization in Italy, and strongly recommended a follow-up USG/GOI telecommunications bilateral in the first quarter of 1998. From ref b, post understands that interagency discussions of a possible meeting are ongoing in Washington.

2. (SBU) Post again strongly recommends a USG/GOI telecoms meeting as an excellent opportunity to press our telecoms agenda with the GOI and encourage the (by then) newly-appointed members of the independent communications regulatory agency (Authority) to make Italian telecoms regulation as independent, even-handed and transparent as possible. The current outlook is for Parliament to approve all eight members of the Authority February 12. Authority president Enzo Cheli was confirmed January 15.

3. (SBU) Post's previous reporting has highlighted the importance of the Italian telecoms market. Telecom Italia is the world's seventh largest telecoms operator in terms of 1996 revenues (Dols 19 billion), sixth largest in minutes of international telephone traffic. Italy already has one of the largest and most rapidly-expanding mobile telephone markets in Europe. But Italy has also been recognized by the EU as lagging in deregulation, slow to allow new entrants, and perhaps overly protective of the dominant market position of its former telecoms monopoly. As argued ref a, a bilateral allows a chance to persuade the Authority, at an early stage of its life, of the benefits of liberalization.

4. (SBU) The Communications Ministry has proposed late March/early April for a bilateral in Rome. Ambassador Foglietta will make his initial courtesy call on Communications Minister Maccanico February 11, at which time we expect Maccanico to raise the question of the bilateral. Post would like for the Ambassador to be able to respond positively -- at a minimum to have a concrete

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reply for the GOI -- and would appreciate Washington agencies' response to the GOI-proposed timeframe in time for his meeting.

Foglietta

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. report	Report on Vienna Meeting on Encryption Policy and Export Controls 22 April 1997 from James Lewis and Charlotte Knepper (5 pages)	04/16/97	P5

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13118

FOLDER TITLE:

Unnamed [Encryption] [2]

Rhonda Wilson

rw120

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]
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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16 May 1997

Subject: Report on Vienna Meeting on Encryption Policy and Export Controls; 22 April 1997

From: James Lewis, DOC
Charlotte Knepper, NSC

Representatives of Canada, France, Japan, the Netherlands, Sweden, the UK and the US met informally in the US Embassy in Vienna to discuss recent developments in encryption policy and their implications for export controls. The US (led by Ambassador Aaron) hosted the day-long meeting. The chief topics of discussion were the development of national encryption policies, the desirability of maintaining export controls on strong encryption, and the need to adjust export controls in light of the rapid growth of international electronic commerce. At its conclusions, participants agreed that the meeting had been very useful, had exposed several areas where further multilateral discussion is necessary, and agreed (after some demurrage by Canada and Japan) to meet again in London at more senior levels to establish a basis for future multilateral discussion.

The session began with remarks by Ambassador Aaron, who thanked the representatives for attending and sketched out the US goals and objectives in meeting. This was an informal meeting with a focus on export controls. Specific law enforcement issues were being discussed in a separate fora led by our Justice Department. He stated that the nature of encryption technology had changed radically in the last few years. The widespread practice and reliance on networking computers had changed the nature of doing business and there is now widespread commercial demand for such encryption items to secure business and financial information. Export controls will need to be adjusted in light of this, but it was in the interest of all present to maintain controls on the export of strong encryption to allow nations time to develop their national encryption policies. Importantly, the widespread use of strong encryption represents significant challenges to law enforcement. Accordingly, the US has reframed its encryption policy to promote development and establishment of trusted public key management infrastructures that allow for key recovery, needed by users but also a tool for law enforcement.

Aaron noted that he had visited with each of the countries represented in their capitals; in each capital he heard common concerns on the effect of this growing use

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of encryption on law enforcement and public safety. It was now time to see if these common concerns could be addressed multilaterally. While the OECD guidelines represent a valuable tool in pursuing national encryption policies, this meeting could also serve as an initial exchange of views.

This was followed by a presentation by NSA on public key encryption, and the role of public key management infrastructure services. The central element was that widespread electronic commerce would succeed best and perhaps only if trusted infrastructure services emerge to provide for authentication and message integrity. Strong encryption is also needed to ensure privacy of data; with that key recovery is a recognized requirement to ensure access to data in the event of loss of keys. This presentation set the tone for the rest of the meeting and focused discussion on an infrastructure that also supports recoverability of keys and data.

Each participant then described their national policies. From the presentations, it was clear that the UK and France had well-developed national policies which are generally compatible with US policy (the UK and France differed from the US in a greater emphasis on trusted third parties (TTPs) as the preferred model for encryption). The UK noted that the "time is ripe" for adjusting export controls to support national policies, and discussed its recently published Consultative Paper on proposals for legislation for TTP provision of encryption services. The Netherlands and Sweden are in the preliminary stages of policy development, but were amenable to approaches similar to those put forth by the US and UK. Japan and Canada expressed doubt over the viability of key recovery. The Japanese representative stated that she was authorized only to discuss export controls (reflecting the bureaucratic divisions in the GOJ). Japan stressed it would honor its Wassenaar commitments (to require and review exports of encryption products). The Canadians expressed general skepticism of the approaches described by the US, France and the UK, and said that key recovery was "not a panacea" and that the Key Management Infrastructure would not work.

The US presentation described the October 1 1996 policy and the December 30 1996 regulation and its emphasis on recovery of plaintext and law enforcement access. Several US companies have received approval of their key recovery business plans and can now export their DES products. In response to questions from the UK and France about the interim liberalization for 56 bit DES, the US explained that while 56 bit DES still posed formidable problems for national security and law enforcement, the temporary release was to provide incentives for industry to include key recovery in their stronger encryption products. The US

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noted that industry considered DES passe from a market perspective and the level for most new products in the US was 128 bits. The US explained that it is now prepared to allow the free export of unlimited encryption in products that meet key recovery criteria, and that several large US companies will soon bring very strong key recovery products to the market.

The overtaking of DES and the likely emergence of stronger key recovery products freely allowed for export appeared to startle many in the room and, at least for the UK, France, Sweden, and the Netherlands, increase the sense that a cooperative approach to encryption is needed. The U.S. discussed the issues of self escrow, escrow overseas, and cross border recognition and development of compatible practices and requirements for trusted third parties, stressing that export controls should help build an infrastructure compatible with OECD guidelines and that further multilateral discussion was necessary.

After the presentations of national policies, discussion revolved around law enforcement access as a criteria for export; treatment of key escrow/key recovery encryption exports; the need to adjust Wassenaar control on encryption to reflect law enforcement concerns and the treatment of "intangible technology" under Wassenaar's General Software Note. The UK, in particular, is unable to effectively control the posting and transfer of software over the Internet. Various countries noted that the situation we found ourselves in was comparable to the "Prisoner's Dilemma" model found in game theory, where each party, not knowing what others were doing, is tempted to take drastic steps. This heightened the sense of the need for coordination and transparency in encryption policies. There was also some discussion of the viability of a key recovery approach versus one limited to key escrow/TTPs, with the UK and France judging the later to be more preferable, while the US expressed support for a broader approach which allows for self-escrow and recovery.

In response to the US release of DES, other nations indicated that they are under political pressure to likewise release DES, but without commitments to key recovery or TTPs. Both the UK and Canada have published statements of presumption of approval of DES export applications. Particularly alarming was their initial reaction to the fact that many triple-DES key recoverable products will soon be available and exported from the US: Canada indicated that it might likewise be under similar pressure to release triple-DES. Other nations recognized, *some for the first time*, that US industry is moving forward in this area and hence rapid international understandings on overall long-term objectives with encryption must be reached.

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At the conclusion of these discussions, the UK raised the issue of next steps. HMG was prepared to sponsor another meeting in London at a more senior level. It was amenable to having this meeting chaired by Ambassador Aaron, or by a senior HMG representative. This more senior group could set terms of reference for an export control working group to continue discussion of the issues raised in Vienna, and could also consider the benefit of establishing another working group to discuss issues of interoperability (at a high level) and common practices and requirements for trusted third parties and certificate authorities. The US stressed that a common end goal and clear objectives must be provided by the senior group for the various working groups to make progress.

At this point, the Canadian representative, initially opposed to a senior level meeting, made a vociferous statement that Canada would not attend unless Germany and Switzerland were also present. The Japanese representative, in what appeared to be a coordinated movement, agreed with the Canadians.

The US retorted that it too hoped that the Germans would attend, and noted that they had been invited to the Vienna meeting but declined to come. Germany will be invited to the senior level meeting. As to Switzerland, the US asked that countries consider national production, market share, and support for law enforcement. The Swiss had said, in bilateral meetings, that they were not prepared to support the approach laid out by the US nor did they have an alternative approach. Until the Swiss change their position or at least indicate active consideration and support of law enforcement requirements, the US did not accept that a niche producer making specialized products that accounted for only a small portion of the world-wide encryption market could be allowed to undermine or veto the efforts of the rest of the group. Certainly, the US would continue its bilateral dialogue with the Swiss. After this exchange, the group then agreed to meet at senior levels in London to continue discussion. This meeting will take place on 12 June 1997.

FOLLOW-ON STEPS:

1. Recommend that US law enforcement and/or national security agencies undertake to ensure, where bilateral relationships exist, that their counterparts in these other nations are fully informed and understand the goals and steps taken by the US. It was not clear during the Vienna meeting to what degree the law enforcement authorities of the other nations are being kept informed or engaged in the development of their national policies. Scott Charney, DOJ, has assumed the

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action to touch base with his foreign counterparts and encourage their participation in these issues.

2. For the 12 June UK-hosted meeting of senior participants from each nation, Ambassador Aaron and Tony Pawson of the UK will bilaterally discuss broad agenda in advance.

3. Working level US-UK bilaterals are needed to prepare high-level issues paper and terms of reference for senior meeting. The bilaterals will be preceded by an exchange of papers. Action: Michelle O'Neill, Jim Lewis, Charlotte Knepper, Scott Charney.

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To Ira Magazine From Rick Mills re: Latest Version of Draft U.S.-Irish Policy Statement (2 pages)	06/23/98	P5

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13120

FOLDER TITLE:
Ireland Trip

Rhonda Wilson

rw121

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]
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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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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Embassy of the United States of America

June 23, 1998

SENSITIVE BUT UNCLASSIFIED

TO: Mr. Magaziner

FROM: PEO - Rick Mills RMills

SUBJECT: Latest Version of Draft U.S.-Irish Policy Statement

Welcome back to Dublin.

Attached is a revised Irish draft of a possible U.S.-Irish Policy Statement on Electronic Commerce. New language is in italics; language that would be deleted is black-lined. Also attached is the original U.S. draft. There are five changes to this draft from the previous version:

Change #1: additional language on the "WTO Customs Moratorium." Pushed the Irish on this, but this formulation was as forward leaning as Irish side would be in a public document. Irish are afraid of incurring EU Commission wrath, if they agree to language that calls for an extension of the one-year moratorium or, our suggestion, states Ireland supports a review of whether the moratorium should be extended. Irish argument is that they are generally in agreement with the U.S. on extending the moratorium, but to say so in this document will lessen their future effectiveness at arguing the issue within the EU. To get any change on this would require your intervention with A/S Tuohy.

Change #2: deletion of "internationally-recognized standards" of authentication. Deletion of this phase now makes this section completely track the original U.S. version.

Change #3: Change to "Content" section. The Irish suggested dropping the section on "Cryptography" which they had inserted and instead adding this new language on cooperation between law enforcement authorities to combat illegal Internet activities. According to the Irish, this language on law enforcement cooperation comes from the Minister of Justice who is concerned that that issue of law cooperation be recognized in the statement, if at all possible. Suspect Irish will drop this, if we strongly object.

Change #4: "Common content-rating system." This is another late addition from the Ministry of Justice. I told the Irish that this insertion is significant and may not be something that can be agreed to overnight. The Irish position is that if obtaining approval for this new language means the Statement could not be agreed upon before your departure, then they will delete it. Irish do not want to hold up agreement just to get his language inserted.

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Change #5: "Irish-U.S. computer industry." This cosmetic revision reflects a Washington comment, which your office passed on to us, that, for sake of balance, it would be good to mention both the U.S. and Irish computer industries in this paragraph.

The Irish understand that it still may not be possible to reach agreement on a statement before your departure Thursday morning. They stand ready to respond to any additional comments or revisions we have tomorrow morning.

If agreement is possible, they like the idea of announcing it at some point before the close of tomorrow's symposium and then releasing the Joint Statement and a press release jointly over the Internet within the next several days.

Additions to Tomorrow's Program

The leading (and only) Irish business-specific radio program, as well as RTE Television, have asked if they could have a joint on-the-record interview with you for five minutes tomorrow before the scheduled 4:30 press roundtable. The 4:30 roundtable will be too late to make their evening broadcasts. I think this is a very good idea, if you are game, and we could arrange for it to happen right after lunch (approx. 14:00) in a side room at Dublin Castle before you return for the afternoon session of the symposium.

We can talk tomorrow morning and, if you agree, I can arrange it after the meeting with the Taoiseach.

See you and your family a little before 09:00 tomorrow morning. If you need to reach me tonight, don't hesitate to call me at my home number -- 668-6714.

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From USEU Brussels re: Electronic Commerce: Bangemann and Brittan Staff on International Charter, Tariff Free Proposal (partial) (1 page)	03/12/98	P5

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13120

FOLDER TITLE:
ITU - D/Malta

Rhonda Wilson

rw81

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
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RR. Document will be reviewed upon request.

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

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Printed By: Andrew J. Weinschenk

HOWEVER, NOT ALL EU MEMBER STATES ARE WILLING TO AGREE TO REFRAIN FROM IMPOSING NEW TAXES ON THE INTERNET. SHE SAID THERE WAS CONSIDERABLE DISCUSSION OF THIS AT THE ECOFIN MEETING AND THAT ONE COUNTRY IN PARTICULAR WAS "DISPUTATIOUS." WHEN EST OFFICER SUGGESTED THAT THAT COUNTRY WAS BELGIUM, SHE AND VERHOEF LAUGHED AND SAID "YOU HAVE GOOD SOURCES."

DATA PRIVACY
---

12. (SBU) VERHOEF OBSERVED THAT, AFTER USDOC SPECIAL COUNSEL BARBARA WELLBERY'S FEBRUARY 19 MEETING WITH COMMISSIONER MONTI'S CABINET (REF E), HE HAD RECEIVED A CALL FROM MONTI STAFF MEMBER ADRIANNA VANNINI THANKING HIM FOR ARRANGING THE MEETING. LAUGHING, HE SAID THAT VANNINI HAD TOLD HIM THAT MONTI'S STAFF HAD BEEN UNAWARE THAT THE EU DATA PROTECTION DIRECTIVE HAD BECOME SUCH A CONTROVERSIAL ISSUE FOR COUNTRIES OUTSIDE THE EU!

COMMENT
---

13. (U) COMMENT: EST OFFICER POINTED OUT TO VERHOEF AND KONTOU THAT IT WOULD BE VERY DIFFICULT TO CREATE, ORGANIZE AND SUSTAIN A TRANSATLANTIC BUSINESS DIALOGUE FOR THE WORLD, EVEN ON THE SINGLE SUBJECT OF ELECTRONIC COMMERCE. HOWEVER, IF IT COULD BE DONE, THERE MIGHT BE MERIT IN THE IDEA OF AN

BRUSSELS 04 OF 04 1570

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From AmEmbassy Bonn Re: ADD (Telecoms) Talks up in the air over Scheurle's illness (4 pages)	10/21/97	P5
002. form	Re: Ira Magaziner's travel (partial) (1 page)	10/09/97	P6/b(6)
003. form	Re: Ira Magaziner's travel (partial) (1 page)	10/09/97	P6/b(6)
004. cable	From AmEmbassy Bonn re: ADD (Telecoms) Talks, German Reaction to Proposed Agenda Changes (3 pages)	10/10/97	P5

COLLECTION:

Domestic Policy Council
Magaziner, Ira (Electronic Commerce)
OA/Box Number: 13121

FOLDER TITLE:

ADD Talks Bonn, Germany October 27-28

Rhonda Wilson

rw41

RESTRICTION CODES

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

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PAGE 01 OF 04
PRT: MAGAZINER
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FM AMEMBASSY BONN

TO RUEHC/SECSTATE WASHDC IMMEDIATE 1562
INFO RHDIFCC/FCC WASHDC IMMEDIATE
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RUEHBS/USEU BRUSSELS
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UNCLAS SECTION 01 OF 02 BONN 013086

STATE FOR EB/CIP (VMCCANN, EMALLOY AND TFINTON)
STATE FOR EUR/AGS (EKROPF)
STATE FOR EB/TPP/BTA/DCT (RO'BRIEN)
STATE PASS TO USTR FOR DABELSON AND WCORBETT
USEU BRUSSELS FOR CHELMER
WHITEHOUSE WASHDC FOR MAGAZINER
FCC INTERNATIONAL DIVISION FOR DCORNELL AND BHAAN
DOJ ANTITRUST DIVISION FOR CWILLNER
DOJ COMPUTER CRIME SECTION FOR B-ESHAVE
USDOC FOR NTIA/IRVING/SHAW/BURR
USDOC FOR OGC/BWELLBERRY
USDOC FOR 6320/TD/SE/OT/DENNY-BROWN
USDOC FOR 4212/MAC/EUR/GERMANY DESK
USDOC FOR 3133/USFCS/OIO/EUR/JWILSON

E.O. 12958: N/A
TAGS: ECPS, ETRD, EUN, GM
SUBJECT: ADD (TELECOMS) TALKS UP IN THE AIR OVER SCHEURLE'S ILLNESS

REF: (A) CHISHOLM-FINTON TELEPHONE CONVERSATION OF OCTOBER 20; (B) BONN 5708; (C) BONN 7681; (D) BONN 8076; E) BONN 12736; (F) CHISHOLM-FINTON FAX OF OCTOBER 21

-- SENSITIVE BUT UNCLASSIFIED - PROTECT ACCORDINGLY --

1. (U) THIS IS AN ACTION CABLE RECOMMENDING THAT THE ADD TALKS NEXT WEEK GO FORWARD DESPITE THE ILLNESS OF KLAUS-DIETER SCHEURLE. SEE PARAGRAPH 7.

2. (U) PER REF A, KLAUS-DIETER SCHEUERLE, FUTURE PRESIDENT OF THE POST AND TELECOMS REGULATORY AUTHORITY, HAS FALLEN ILL AND WILL NOT BE AVAILABLE TO ATTEND THE ADD TALKS ON OCTOBER 27/28. WE HAVE INFORMED THE POST AND TELECOMS MINISTRY OF THE USG DESIRE TO HAVE ARNE

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BOERNSEN PARTICIPATE IN THE TALKS IN HIS FUTURE CAPACITY AS VICE PRESIDENT OF THE AUTHORITY. THE MINISTRY HAS MADE IT CLEAR THAT WHILE IT INTENDS TO INVITE BOERNSEN TO A DINNER IN HONOR OF THE DELEGATION, IT IS UNWILLING TO INCLUDE HIM IN THE TALKS.

3. (U) IN EXPLAINING ITS POSITION, THE MINISTRY EMPHASIZES THAT REGULATORY AUTHORITY LIES WITH THE MINISTRY UNTIL THE END OF THE YEAR, UNDER THE DIRECTION OF SCHEUERLE, AND THAT IN SCHEUERLE'S ABSENCE FROM THE ADD TALKS, REGULATORY ISSUES WILL BE CAPABLY HANDLED BY HIS DEPUTY, JOERG SANDER. SANDER IS SLATED TO BECOME HEAD OF THE TELECOMS DIVISION AT THE NEW REGULATORY AUTHORITY ON JAN. 1, AND, AS SUCH, BRINGS EXPERTISE AND VALUABLE CONTINUITY TO THE ADD TALKS. FURTHERMORE, THE MINISTRY POINTS OUT THAT IT HAS PUT TOGETHER A HIGH-LEVEL DELEGATION LED BY STATE SECRETARY LAUFS (DEPUTY MINISTER LEVEL), TWO PRESENT OR FUTURE DIVISION HEADS (ASSISTANT SECRETARY LEVEL) - FEIER AND SANDER, AND AN ECONOMICS MINISTRY DEPUTY ASSISTANT SECRETARY (BERGER).

4. (U) ALTHOUGH THE POST AND TELECOMS MINISTRY ITSELF SOON DISSOLVES, WE WILL CONTINUE TO DEAL WITH MOST OF THE SAME KEY GOVERNMENT OFFICIALS, WHETHER THE NEW YEAR FINDS THEM SERVING AT THE POST AND TELECOM DIVISION OF THE ECON MINISTRY, THE REGULATORY AUTHORITY OR THE FINANCE MINISTRY. AS SUCH, THE PLANNED GERMAN DELEGATION DOES CONSTITUTE A USEFUL BRIDGE TO THE FUTURE AND FULFILLS THE MAIN GOAL OF FACILITATING AN EXCHANGE OF OPINION AMONG KEY TELECOMS DECISION MAKERS. A FINAL POINT NOTED BY THE MINISTRY IS THAT, AS HOST OF THE TALKS, IT RESERVES THE FINAL SAY ON THE MAKE-UP OF ITS OWN DELEGATION.

5. (SBU) OUR MINISTRY INTERLOCUTORS TELL US THAT IT IS NOT APPROPRIATE FOR BOERNSEN TO TAKE SCHEUERLE'S PLACE AT THE TALKS FOR A WIDE RANGE OF REASONS. THERE IS CONSIDERABLE FRICTION BETWEEN MINISTER BOETSCH AND BOERNSEN AFTER MONTHS OF HARANGUING OVER KEY REGULATORY AUTHORITY POSITIONS (REFS C,D,E), AS WELL AS BETWEEN SCHEUERLE AND BOERNSEN. FRICTION HAS ARISEN OVER MANY ISSUES, INCLUDING MOST RECENTLY THE HEATED POSTAL REFORM DEBATE IN WHICH BOERNSEN, SPD MEMBER OF PARLIAMENT AND CHAIRMAN OF THE BUNDESTAG COMMITTEE ON POSTAL AND COMMUNICATIONS AFFAIRS, HAS BEEN ONE OF THE MOST ARDENT OPPONENTS OF LIBERALIZATION. (COMMENT: BOERNSEN HAS BEEN A SUPPORTER OF TELECOM LIBERALIZATION, BUT HAS COME OUT AGAINST "JOB KILLING" POSTAL REFORM. OUR CONTACTS TELL US THAT THESE DAYS HE IS REGARDED AT THE MINISTRY AS "THE ENEMY". AN INVITATION FROM MINISTER BOETSCH TO BOERNSEN TO PLAY A LEADING ROLE AT THE ADD TALKS IS THEREFORE A NON-STARTER. END COMMENT)

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6. (U) COMMENT/RECOMMENDATION: WE NOTE THAT THE GERMAN GOVERNMENT HAS ACQUIESCED ON ALMOST ALL USG PROPOSALS FOR THE ADD TALKS, INCLUDING OUR AGENDA PROPOSALS: INCLUSION OF ELECTRONIC COMMERCE/COMPUTER CRIME ISSUES (REF E) AND PARTICIPATION OF A LAW ENFORCEMENT AGENCY (THE LATEST UNCLAS SECTION 02 OF 02 BONN 013086

STATE FOR EB/CIP (VMCCANN, EMALLOY AND TFINTON)
STATE FOR EUR/AGS (EKROPF)
STATE FOR EB/TPP/BTA/DCT (RO'BRIEN)
STATE PASS TO USTR FOR DABELSON AND WCORBETT
USEU BRUSSELS FOR CHELMER
WHITEHOUSE WASHDC FOR MAGAZINER
FCC INTERNATIONAL DIVISION FOR DCORNELL AND BHAAN
DOJ ANTITRUST DIVISION FOR CWILLNER
DOJ COMPUTER CRIME SECTION FOR B-ESHAVE
USDOC FOR NTIA/IRVING/SHAW/BURR
USDOC FOR OGC/BWELLBERRY
USDOC FOR 6320/TD/SE/OT/DENNY-BROWN
USDOC FOR 4212/MAC/EUR/GERMANY DESK
USDOC FOR 3133/USFCS/OIO/EUR/JWILSON

E.O. 12958: N/A
TAGS: ECPS, ETRD, EUN, GM
SUBJECT: ADD (TELECOMS) TALKS UP IN THE AIR OVER SCHEURLE'S ILLNESS

AGENDA, REF F, INCLUDES MOEHRENSCHLAGER OF THE JUSTICE MINISTRY). THE POSTAL MINISTRY, AT USG PRODDING, HAS ALSO DISINVITED DEUTSCHE TELEKOM AG FROM DIRECT PARTICIPATION, AS A DELEGATE, IN THE TALKS, NEWS WHICH WE UNDERSTAND DT RECEIVED AS A SLAP IN THE FACE. RAW NERVES ARE EVIDENT EVERYWHERE AT THE MINISTRY AS JAN. 1 APPROACHES, NONETHELESS, OUR KEY INTERLOCUTORS CONTINUE TO VALUE THE BILATERAL DIALOG AS AN IMPETUS TO FURTHER LIBERALIZATION AND ARE LOOKING FORWARD TO NEXT WEEK'S TALKS IN BONN.

7. (SBU) THE EMBASSY CONTINUES TO SEE BENEFIT IN MAINTAINING A STRONG DIALOG WITH KEY PLAYERS DURING THE TRANSITION PERIOD. IN DECIDING WHETHER TO POSTPONE THE TALKS, WE SHOULD KEEP IN MIND THE EXTENT TO WHICH DIALOG AND USG ADVOCACY HAVE KEPT THE MINISTRY ON THE PATH TOWARD LIBERALIZATION IN THE PAST YEAR, AT TIMES TO ITS CONSIDERABLE IRRITATION. POSTPONEMENT OF THE TALKS AS A RESULT OF ONE MAN'S UNFORESEEN ILLNESS WILL ALMOST CERTAINLY CHILL THE DIALOG AT A TIME WHEN THE MINISTRY IS GRAPPLING WITH KEY REGULATORY DECISIONS. INDEED, A KEY CONTACT TELLS US THAT POSTPONEMENT AT THIS LATE DATE AND FOR THE REASONS GIVEN WOULD BE PERCEIVED AS A POLITICAL BOMBSHELL AT THE MINISTRY. PLEASE ADVISE.

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PAGE 04 OF 04

KORNBLUM
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ACTION CIP-00

INFO	LOG-00	ACDA-00	ACDR-00	INLB-01	AID-00	CEA-01	CIAE-00
	COME-00	CTME-00	INL-01	OASY-00	DODE-00	ITCE-00	SRPP-00
	EB-00	EAME-00	EUR-01	E-00	UTED-00	FCC-01	FRB-00
	H-01	IMMC-01	TEDE-00	INR-00	ITC-01	JUSE-00	LAB-01
	L-01	ADS-00	NSAE-00	NSCE-00	OMB-01	OPIC-01	C10-00
	SP-00	SSO-00	SS-00	STR-00	TRSE-00	USIE-00	SNRO-00
	DRL-04	G-00	EBAD-00	CWCI-00	/024W		

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R 100934Z OCT 97
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TO SECSTATE WASHDC 1491
INFO FRG COLLECTIVE

UNCLAS SECTION 01 OF 02 BONN 012736

STATE FOR EB/CIP (VMCCANN, EMALLOY AND TFINTON)
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E.O. 12958: N/A
TAGS: PCRS, ETRD, EUN, GM
SUBJECT: ADD (TELECOMS) TALKS: GERMAN REACTION TO PROPOSED AGENDA CHANGES

REF: (A) STATE 185157; (B) CHISHOLM-FINTON TELEPHONE CONVERSATION OF OCT 2

BONN 01 OF 02 12736

--- SENSITIVE BUT UNCLASSIFIED - PROTECT ACCORDINGLY --

1. THIS IS AN ACTION CABLE. SEE PARAGRAPH 8.

2. SUMMARY: THE POST AND TELECOMS MINISTRY WELCOMES USG INPUT (REF A) TO THE PROPOSED ADD (TELECOMS) TALKS AGENDA. THE MINISTRY, HOWEVER, REMAINS PAROCHIAL IN ITS APPROACH TO THE SCOPE OF THE MEETINGS. IT HAS EXPRESSED CONCERN THAT THE USG PROPOSALS TO WIDEN BOTH THE TOPICS AND GERMAN GOVERNMENT AGENCIES PRESENT AT THE TALKS WILL PUSH THE AGENDA TOO FAR BEYOND ITS HISTORICAL FRAMEWORK AND RISK SHORTCHANGING A MEANINGFUL EXCHANGE OF VIEWS ON CORE TELECOMS ISSUES. THE MINISTRY ALSO OBJECTS TO THE USG PROPOSAL TO EXCLUDE PRIVATE INDUSTRY FROM PART OF THE TALKS. WE SEE THE FIRST REACTIONS AS SYMPTOMATIC OF THE GENERALLY CONSERVATIVE, NON-FORWARD LOOKING STANCE OF THE MINISTRY. END SUMMARY.

3. EMBASSY RECEIVED THE POSTAL MINISTRY'S RESPONSE TO THE USG'S PROPOSED REVISIONS (REF A) TO THE ADD (TELECOMS) TALKS AGENDA. THE MINISTRY WELCOMES INPUT TO THE AGENDA, BUT RAISES OBJECTIONS TO SEVERAL USG PROPOSALS:

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INTERNATIONAL ALLIANCES - ANTI-TRUST ISSUES

4. IN REPLY TO THE USG PROPOSAL TO INCLUDE THE FEDERAL CARTEL OFFICE IN THE DISCUSSION ON INTERNATIONAL ALLIANCES, THE POSTAL MINISTRY POINTED OUT THAT THE ECONOMICS MINISTRY HAS RESPONSIBILITY FOR ESTABLISHING ANTI-TRUST RULES AND POLICY GUIDELINES, WHILE THE FEDERAL CARTEL OFFICE APPLIES THE RULES IN INDIVIDUAL CASES. IT THEREFORE HAS INVITED DR. MANFRED WITTE, HEAD OF OFFICE FOR ECONOMIC-POLITICAL ISSUES IN POST AND TELECOMS AT THE ECON MINISTRY, TO ADDRESS THE DELEGATION ON INTERNATIONAL ALLIANCES/ANTI-TRUST ISSUES, AND DOES NOT PROPOSE TO INCLUDE THE CARTEL OFFICE IN THE TALKS.

COMPUTER CRIME/ELECTRONIC COMMERCE

5. THE POSTAL MINISTRY IS RELUCTANT TO EXPAND THE BREADTH OF ISSUES ON THE ADD AGENDA BEYOND TRADITIONAL TELECOMS TOPICS. IT QUESTIONS, FOR EXAMPLE, THE USG PROPOSAL TO INCLUDE DISCUSSIONS ON COMPUTER CRIME ON THE AGENDA, CITING A CONCERN THAT SUCH DISCUSSIONS BREAK TRADITIONAL BOUNDARIES OF THE TALKS AND COULD ROB DISCUSSION TIME FROM CORE TELECOMS ISSUES DURING THE ONE-AND-A-HALF DAY TALKS. WHILE WILLING TO ACCOMMODATE A BRIEF REPORT ON COMPUTER CRIME FROM A MEMBER OF THE US DELEGATION IN THE SCHEDULE, THE POSTAL MINISTRY DECLINES TO INVITE A COUNTERPART FROM GERMAN LAW ENFORCEMENT AGENCIES OR THE JUSTICE MINISTRY.

6. ON DEVELOPMENT OF ELECTRONIC COMMERCE, THE POSTAL MINISTRY HAS INVITED ECON MINISTRY DEPUTY ASSISTANT SECRETARY DR. WOLFRAM BERGER TO SPEAK. BERGER'S SCOPE OF RESPONSIBILITY INCLUDES THE DEVELOPMENT OF GERMAN ENCRYPTION POLICY. HIS PRESENCE AT THE TALKS WILL THEREFORE HAVE VALUE IN THE DISCUSSION OF COMPUTER CRIME.

PARTIAL EXCLUSION OF PRIVATE INDUSTRY FROM TALKS

7. LASTLY, THE POSTAL MINISTRY ARGUES THAT PAST ADD TALK PRACTICE DID NOT EXCLUDE PRIVATE INDUSTRY FROM SESSIONS, AND DOES NOT SUPPORT THE USG PROPOSAL TO RESERVE A PORTION OF THE AGENDA SOLELY FOR GOVERNMENT-TO-GOVERNMENT DISCUSSION. THE MINISTRY ARGUES THAT THE ADD TALKS, SINCE THEIR INCEPTION AT USG INITIATIVE, HAVE HAD A HISTORY OF OPEN DISCUSSION WITH PRIVATE INDUSTRY, AND THAT THE MAIN GOAL OF THE TALKS IS NOT TO NEGOTIATE,

BONN 02 OF 02 12736

RATHER TO EXCHANGE VIEWS, PROMOTE AN UNDERSTANDING OF EACH PARTY'S POSITIONS AND CONCERNS, AND BECOME ACQUAINTED WITH ONE ANOTHER. THE MINISTRY NOTES THAT THERE WILL BE AMPLE OPPORTUNITY AROUND THE TALKS AND DURING SIDE EVENTS FOR INDIVIDUAL CONFIDENTIAL DISCUSSIONS, AND CONCLUDES THAT THE MEETINGS MUST TAKE PLACE WITH PRIVATE INDUSTRY'S FULL PARTICIPATION.

8. COMMENT/ACTION: THE POSTAL MINISTRY HAS TAKEN A NARROW VIEW OF THE UPCOMING ADD TALKS FROM THE START. IT OBJECTED, FOR EXAMPLE, TO INVITING SCHLEGEL AND BOERNSEN, DUE TO BECOME VICE PRESIDENTS OF THE NEW TELECOMS AND POSTAL REGULATORY AUTHORITY ON JAN. 1, 1998, TO THE TALKS, ARGUING THAT THE REGULATORY AUTHORITY HAS NOT YET

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BEEN ESTABLISHED, AND THAT IT WOULD BE UNSEEMLY FOR BOERNSEN, STILL A MEMBER OF PARLIAMENT, TO PARTICIPATE IN THE TALKS. FROM THE START, THE POSTAL MINISTRY ONLY RELUCTANTLY INCLUDED ELECTRONIC COMMERCE, WHICH IT SEES AS BEYOND ITS JURISDICTION, ON THE AGENDA. OUR VIEW IS THAT WE ARE UNLIKELY TO SUCCEED IN PERSUADING THE MINISTRY TO INCLUDE OFFICIALS FROM THE CARTEL OFFICE OR GERMAN LAW ENFORCEMENT AGENCIES IN THE TALKS. HOWEVER, IF WE CAN DEMONSTRATE THAT EXCLUSION OF PRIVATE SECTOR REPRESENTATIVES FROM SELECTED PORTIONS OF THE TALKS IS CONSISTENT WITH PAST PRACTICE (SUCH AS BY PROVIDING A COPY OF A PREVIOUS AGENDA), THEN WE MAY BE ABLE TO PREVAIL ON THIS POINT. OUR UNDERSTANDING IS THAT WE HAVE IDENTIFIED ONLY ONE AGENDA POINT -- "ASPECTS OF WTO IMPLEMENTATION" -- FOR GOVERNMENT-TO-GOVERNMENT DISCUSSIONS. PLEASE ADVISE.
KORNBLUM

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To the File from Barbara S. Wellbery re: Converstation re Privacy agreement with Don Kursch and Mike Gallagher (2 pages).		P5

COLLECTION:

Domestic Policy Council
Magaziner, Ira (Electronic Commerce)
OA/Box Number: 13122

FOLDER TITLE:
Privacy

Rhonda Wilson

rw51

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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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MEMORANDUM TO THE FILE

FROM: BARBARA S. WELLBERY

RE: CONVERSATION RE PRIVACY AGREEMENT WITH DON KURSCH and MIKE GALLAGHER

I raised with Don and Mike the questions raised at yesterday's interagency meeting, specifically, (1) how would we finalize an agreement with the European Commission on data protection and (2) how do we make it binding on the member states.

With respect to how we finalize the agreement, they thought the best approach of the three suggestions made at yesterday's meeting was to have Daley and Monti sign an agreement. According to them, Monti is well respected and does not carry the disadvantages that Brittain and Bangemann carry. Also, they cautioned us that dealing with someone other than Monti could be perceived by Monti as an insult since Mogg reports to him.

Their view is that we should finalize the agreement as quickly as possible but that it will be impossible to do it before September, since the Commission pretty much closes down on Friday. (I know SBinns will be in for in August and perhaps she and I can work on drafting the agreement in August.) They also confirmed that we should ask Mogg his views on how to proceed.

Kursch's view is that we should avoid at any cost negotiating with 15 member states since they will only "nickel and dime us." Instead, we should put the burden on the Commission and take the tack that we expect the Commission to make sure the agreement we have with them is honored by the member states. He also cautioned us about getting out in front of the Commission.

According to Don and Mike, only political issues go to the troika of past, present, and future presidents. They also argue against the US going to the EU Council for two reasons. In their view, we want to put the burden on the Commission of bringing the member states along; they are also concerned that the Council will introduce extraneous political issues if we take the issue there. It is also not clear if the Council needs to approve any agreement on this issue.

They also recommend that we start working with the US side of the TABD as soon as possible so that they can help us sell this through their European counterparts and to European governments.

On the issues of visits to key member states, they vacillated somewhat. At various points, Don suggested that we wait until we know whether we have

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problems and at others he suggested visiting all the member states after we have an agreement. He does think we need to have a particular strategy for Germany. Noting Germany's tendency to be very strict on data protection and to be very legalistic, he views Germany as the most likely to be a problem in this area. (I agree.) He suggested we contact the our embassy in Germany and work with them on a strategy. (When I spoke to Bill Primrosch at State, he thought we should plan to visit the key member states as soon as we have an agreement.) Don also thought we needed to include the Austrians because they hold the Presidency and that we should consult with Mogg on when and how to do so.

On the question of how we make any agreement legally binding on the member states, the general view is that it cannot be done in any definitive way. In the past, we have gotten assurances from the Commission that the EU, its institutions and member states concur in the agreement. My sense is that it will have to be done politically.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From AmEmbassy Burssels re: Eectronic Commerce: Belgian Priorities for Ottowa (5 pages)	09/28/98	P5
002. cable	From AmEmbassy Brussels re: Electronic Commerce: Belgian Concerns on Ottawa and Tax (4 pages)	09/23/98	P5
003. cable	From AmEmbassy Kuala Lumpur re: E-Commerce: Malaysian Update (5 pages)	09/24/98	P5
004. cable	From AmEmbassy Madrid re: 20th International Data Protection Conference Santiago De Compostela, Spain (9 pages)	09/24/98	P5
005. cable	From AmEmbassy Bonn re: German Wiretapping Proposal Shelved (partial) (1 page)	07/17/98	P5
006. cable	From AmEmbassy Tokyo re: Electronic Commerce: EU Commission (2 pages)	07/19/98	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13122

FOLDER TITLE:
Cables

Rhonda Wilson

rw52

RESTRICTION CODES

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

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P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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NOFORN

TREASURY FOR JOSEPH GUTTENTAG, J. WEINER AND M. MUNDACA

PARIS FOR OECD -- MORFORD/KESHISHIAN

STATE FOR EB/CIP, EB/TPP/BTA/DCT AND EUR/ERA
STATE PASS USTR FOR DON ABELSON

USDOC FOR NTIA -- BURR AND ITA -- WELLBERY

E.O. 12958: N/A
TAGS: ECPS, ETRD, KIPR, EUN, BE
SUBJECT: ELECTRONIC COMMERCE: BELGIAN PRIORITIES FOR OTTAWA

REF: (A) DERSE/WEINER/MORFORD TELCONS 9/25/98
(B) BRUSSELS 5772
(C) BRUSSELS 5842

BRUSSELS 01 OF 04 5877

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1. (SBU) SUMMARY: ACCORDING TO THE MINISTRY OF FOREIGN AFFAIRS AND TRADE'S (MFAT) NEW COORDINATOR FOR E COMMERCE, BELGIUM'S NEW TRADE MINISTER HAS MADE E COMMERCE AND THE MULTILATERAL INVESTMENT AGREEMENT PRIORITIES FOR HIS TENURE UNTIL BELGIUM'S JUNE ELECTIONS, AND "WILL NOT BE SATISFIED" WITH A SOLUTION ON CONSUMER PROTECTION THAT RELIES SOLELY ON INDUSTRY SELF REGULATION. AT HIS INSTRUCTION, BELGIUM WILL CONTINUE TO INSIST IN OECD AND OTHER INTERNATIONAL FORA THAT CONSUMERS BE "GUARANTEED" THE SAME LEVEL OF PROTECTION IN ELECTRONIC AND NON-ELECTRONIC TRANSACTIONS. THE FINANCE MINISTRY REMAINS DEEPLY CONCERNED WITH POTENTIAL REVENUE LOSSES FROM E COMMERCE AND WILL ATTEND OTTAWA "IN FORCE AND AT A HIGH LEVEL" TO DEFEND ITS INTEREST, BUT PLANS NO SURPRISES AS LONG AS AGREED POSTIONS ON TAX REMAIN UNCHANGED. BELGIAN OFFICALS HAVE THE IMPRESSION THAT THERE HAS BEEN "BACKPEDALLING" BY SOME, INCLUDING THE US, WHO EARLIER PRESSED STRONG POSITIONS ON THE ISSUES FOR OTTAWA BUT NOW APPEAR TO BELIEVE THAT "THE TIME IS NOT RIPE" FOR ENLARGING THE E COMMERCE AGENDA AND MAKING SUBSTANTIVE DECISIONS. END SUMMARY

2. (SBU) FOLLOWING UP ON OUR SEPTEMBER 21 DISCUSSION WITH

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BELGIAN TAX OFFICIALS WHO WILL ATTEND THE OECD OTTAWA CONFERENCE ON ELECTRONIC COMMERCE (REF B). WE SPOKE ON SEPTEMBER 25 WITH THE NEWLY APPOINTED MINISTRY OF FOREIGN AFFAIRS AND TRADE (MFAT) COORDINATOR FOR E COMMERCE, BENOIT RYELANDT. RYELANDT PROVIDED FURTHER INSIGHT INTO THE MINISTRY OF FINANCE'S SPECIFIC CONCERNS WITH RESPECT TO E COMMMERCE AND TAX AND OTHER BELGIAN GOVERNMENT PRIORITIES FOR OTTAWA, AND ON THE NEW TRADE MINISTER'S PRIORITIES GENERALLY.

WHERE IS OTTAWA HEADING?
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3. (SBU) RYELANDT SAID FIRST THAT HE IS A "A BIT PUZZLED" BY THE WAY THE PREPARATORY PROCESS FOR OTTAWA IS MOVING NOW. A FEW WEEKS AGO, HE SAID, HE HAD THE IMPRESSION THAT OTTAWA WOULD BE "ENLARGING THE E COMMERCE AGENDA AND TAKING MORE SUBSTANTIVE DECISIONS." SOME DELEGATIONS AND PRIVATE SECTOR REPRESENTATIVES THEN WERE PUSHING STRONG POSITIONS AND OTTAWA APPEARED TO HEADING TOWARDS INTENSE DEBATE. NOW, THEY SEEM TO HAVE "BACKPEDALLED" BECAUSE "THEY SENSE THE TIME IS NOT RIPE." THE US, FOR EXAMPLE, HAD HAD VERY STRONG VIEWS, BUT NOW APPEARED TO BE PUTTING "MORE NUANCE AND NEUTRALITY" INTO THE OTTAWA DOCUMENTS.

NEW TRADE MINISTER, NEW DIRECTIONS
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4. (SBU) RYELANDT ACKNOWLEDGED THAT UNTIL RECENTLY THE BELGIAN GOVERNMENT HAD NOT BEEN INTERNALLY WELL ORGANIZED TO HANDLE E COMMERCE. EACH MINISTRY HAD BEEN MANAGING ITS ISSUES MORE OR LESS IN ISOLATION, WITH LITTLE INTERNAL COMMUNICATION AND NO "BIG PICTURE" PRIORITIZATION; BELGIUM'S THREE REGIONAL GOVERNMENTS AND LINGUISTIC COMMUNITIES ALL ADVANCED THEIR PARTICULAR INTERESTS INDEPENDENTLY, AS WELL. SOME, AND THE MINISTRY OF FINANCE IN PARTICULAR, HAD BEEN PUSHING THEIR OWN AGENDAS. THE CONCERNS OF THE ACTIVISTS HAD DOMINATED THE BELGIAN GOVERNMENT'S POSITIONS IN INTERNATIONAL FORA, INCLUDING IN THE PREPARATORY PROCESS FOR OTTAWA.

5. (SBU) HOWEVER, THE APPOINTMENT THIS SUMMER OF A NEW TRADE MINISTER WHO IS CONCURRENTLY A "POWERFUL" DEPUTY PRIME MINISTER, THE MINISTER OF ECONOMIC AFFAIRS AND THE MINISTER OF TELECOMMUNICATIONS HAS GIVEN MFAT NEW CLOUT, AND BROUGHT NEW ATTENTION TO E COMMERCE WITHIN THE BELGIAN GOVERNMENT. "SINCE THE MINISTER WEARS FOUR HATS, HE CAN ACT ALONE NOW, EXCEPT FOR THE MINISTER OF FINANCE," RYELANDT SAID. AS A RESULT, MFAT HAS MOVED TO BETTER COORDINATE BELGIUM'S

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POSITIONS ON E COMMERCE, WHICH THEMSELVES HAVE BEEN "MODERATED AND BALANCED" TO REFLECT THE NEW MINISTER'S PRIORITIES -- ESPECIALLY ON CONSUMER PROTECTION AND PRIVACY.

DI RUPO PRIORITIES: E COMMERCE AND MAI
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6. (SBU) RYELANDT NOTED THAT NEW TRADE MINISTER ELIO DI RUPO HAS TAKEN A STRONG PERSONAL INTEREST IN E COMMERCE AND THE OTTAWA CONFERENCE. REFERRING TO DI RUPO'S POSITION AS THE SENIORPARTI SOCIALIST MEMBER OF THE RULING COALITION, RYELANDT SAID THAT DI RUPO "KNOWS HE AS A MANDATE ONLY UNTIL THE UNE ELECTIONS AND ESPECIALLY GIVEN HIS SOCIALIST VIEWS ON GLOBALIZATION AND THE EXTENSION F ECONOMIC RELATIONS

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WORLWIDE, HE SELECTED THESE AS ISSUES TO CONCENTRATE ON." ANOTHER KEY PRIORITY FOR DI RUPO, GIVEN HIS POLITICAL CONSTITUENCY, IS THE MULTILATERAL AGREEMENT ON INVESTMENT (MAI), RYELANDT ADDED. "THIS SUBJECT, TOO, RAISES THE WHOLE PROBLEM OF GLOBALIZATION AND ITS SOCIAL AND ENVIRONMENTAL CONSEQUENCES. OUR PUBLIC OPINION -- CIVIL SOCIETY, NGO'S, PARLIAMENT -- IS MUCH MORE SENSITIVE TO THE POTENTIAL IMPACT THAN BEFORE. THE WHOLE ENVIRONMENT HAS CHANGED -- HENCE DI RUPO'S INTEREST (REF C)."

CONSUMER PROTECTION AND PRIVACY

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7. (SBU) UNDER THE BROAD TOPIC OF E COMMERCE, CONSUMER PROTECTION AND PRIVACY ARE KEY INTERESTS FOR DI RUPO, RYELANDT SAID. "IT IS THE MINISTER'S VIEW THAT CONSUMER PROTECTION SHOULD BE AT THE SAME LEVEL WHETHER A TRANSACTION IS ELECTRONIC OR NON-ELECTRONIC. THE SAME LEVEL OF PROTECTION MUST BE GUARANTEED. THAT'S WHY OUR REPRESENTATIVE IN PARIS RECEIVED INSTRUCTIONS TO INTERVENE IN THIS DIRECTION. HE PROPOSED SEVERAL AMENDMENTS (TO THE OTTAWA DOCUMENTS) TO UNDERSCORE THIS BALANCE. IT IS NECESSARY TO AMEND THE TEXT. THIS IS A DIRECT INTEREST OF AND INSTRUCTION FROM THE MINISTER -- WE WILL INSIST ON THIS AT THE NEXT ECSS."

8. (SBU) RYELANDT ADDED THAT "OUR PEOPLE WILL NOT BE SATISFIED IF THE ONLY SOLUTION PUT FORWARD ON CONSUMER PROTECTION IS SELF-REGULATION, LEAVING THE PRIVATE SECTOR TO DECIDE HOW TO DO IT...THIS IS NOT A SATISFACTORY ANSWER TO OUR CONCERN. THE OTTAWA PRINCIPLES GUARANTEE THAT THE CONSUMER WILL GET THE SAME LEVEL OF PROTECTION. THE SAME LEGAL GUARANTEES SHOULD BE ATTACHED TO CONTRACTS." HE ADDED THAT THIS VIEW IS GENERALLY SHARED IN EUROPE, WHILE ACKNOWLEDGING THAT SOME COUNTRIES ARE MORE SENSITIVE ON THE MATTER THAN OTHERS.

9. (SBU) RYELANDT SAID THAT BELGIUM'S RECENT, HIGH PROFILE PAEDOPHILIA CASES ARE A VERY IMPORTANT AND SENSITIVE ISSUE ON WHICH ALL MINISTERS AND PARTIES IN BELGIUM SHARE CONCERN. HOWEVER, IT IS A "SIDE ISSUE" FOR OTTAWA AND SHOULD NOT BE A SUBJECT OF DISCUSSION, ALTHOUGH THE MINISTER MAY REFER TO IT.

10. (SBU) RYELANDT EXPRESSED OPTIMISM THAT THERE WILL BE PROGRESS ON THE ISSUE OF PRIVACY WITH THE INTERNATIONAL CHAMBER OF COMMERCE'S RELEASE OF PROPOSED STANDARDS AND CODE OF CONDUCT. BELGIUM IS IN LINE WITH ITS EUROPEAN PARTNERS ON PRIVACY; THE ICC CODE, WHILE NOT ENDORSED, IS "PROMISING."

FINANCE STILL CAUTIOUS

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11. (SBU) MFAT CHAIRED TWO INTERAGENCY COORDINATING MEETINGS IN SEPTEMBER (WHICH INCLUDED BELGIUM'S NEW AMBASSADOR TO THE OECD, MR. SCHMIDT, AND HIS DEPUTY), RYELANDT SAID, TO IRON OUT INTERMINISTERIAL DIFFERENCES AND INTRODUCE THE NEW TRADE MINISTER'S PRIORITIES INTO BELGIUM'S POSITIONS ON E COMMERCE IN INTERNATIONAL FORA. THE FINANCE MINISTRY WAS A KEY TARGET. RYELANDT SAID THAT AS A RESULT OF THE MEETINGS, THERE HAS BEEN "MORE OR LESS A MEETING OF THE MINDS" WITH THE FINANCE MINISTRY: "THEY STILL HAVE CONCERNS, BUT THEY UNDERSTAND BETTER NOW WHAT E COMMERCE IS AND ITS POTENTIAL

BENEFITS FOR GROWTH AND EMPLOYMENT...THAT IT IS NOT JUST FISCAL" ISSUES THAT ARE IMPORTANT. (THE MINISTRY OF ECONOMIC

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AFFAIRS ALSO HAD HAD AN INSTINCTIVELY CONSERVATIVE, DEFENSIVE REACTION TO THE WHOLE TOPIC, RYELANDT SAID, EVINCING CONCERN, ABOVE ALL ELSE, WITH "PRESERVING THEIR REGULATIONS.")

12. (SBU) RYELANDT ACKNOWLEDGED THAT THE VIEWS OUTLINED TO EMBOFFS BY THE MINISTRY OF FINANCE CORRECTLY REFLECT FINANCE'S CONTINUING DEEP CONCERN THAT GROWTH IN E-COMMERCE WILL, IN THE END, RESULT IN A DECLINE IN TAX REVENUES (REFS). THE MAIN CONCERN REMAINS HOW TO IMPOSE THE VAT ON ELECTRONIC TRANSACTIONS. BELGIUM STRONGLY SUPPORTS THE EU CONSENSUS THAT THE VAT SHOULD BE COLLECTED TO THE BENEFIT OF THE COUNTRY IN, WHICH THE CONSUMPTION TAKES PLACE.

13. (SBU) THE FINANCE MINISTRY IS EQUALLY CONCERNED, RYELANDT SAID, WITH THE POSSIBILITY OF A REVENUE LOSS DUE TO A DECLINE IN RECEIPT OF CUSTOMS DUTIES. WITH THE ADVENT OF E-COMMERCE, MANY GOODS CAN NOW BE ORDERED ELECTRONICALLY AND DELIVERED EITHER PHYSICALLY, IN WHICH CASE THE CUSTOMS AUTHORITY HAS THE OPPORTUNITY TO COLLECT DUTIES; OR DELIVERED ELECTRONICALLY, BY DOWNLOADING, IN WHICH CASE CUSTOMS DUTIES CANNOT BE COLLECTED. THIS RESULTS NOT ONLY IN DISCRIMINATION BETWEEN THE TWO TYPES OF TRANSACTIONS WITH RESPECT TO THE VENDOR AND CONSUMER BUT ALSO IN A POTENTIAL REVENUE LOSS. "THERE IS NO OBVIOUS SOLUTION AT THIS TIME, SO THEY (FINANCE OFFICIALS) WANT TO PRESERVE THEIR RIGHTS," RYELANDT SAID. HE ADDED THAT IT IS NOT CLEAR WHAT WILL HAPPEN AFTER THE ONE YEAR WTO STANDSTILL ON IMPOSING NEW CUSTOMS DUTIES ON ELECTRONIC TRANSACTIONS COMES TO AN END; THE ISSUE HAS NOT BEEN DISCUSSED BY THE EU'S 113 COMMITTEE SINCE THE GENEVA WTO COUNCIL.

14. (SBU) RYELANDT SAID THAT AS A RESULT OF MFAT'S RECENT "COORDINATING" EFFORTS, FINANCE MINISTRY OFFICIALS NOW UNDERSTAND THAT OTTAWA WILL BE ENDORSING ONLY BROAD PRINCIPLES. THE FINANCE MINISTRY IS IN FULL AGREEMENT WITH THOSE PRINCIPLES, AND HENCE, THERE SHOULD BE NO SURPRISES FROM BELGIUM ON THIS ISSUE. HOWEVER, THE FINANCE MINISTRY HAD INSISTED ON BEING REPRESENTED AT OTTAWA "IN FORCE AND AT A HIGH LEVEL" TO ENSURE THAT NO UNACCEPTABLE LAST MINUTE CHANGES ARE MADE WITH RESPECT TO TAXATION IN DOCUMENTS OR DECISIONS OF THE CONFERENCE. ITS ALSO DEMONSTRATES, RYELANDT SAID, THE IMPORTANCE THE FINANCE MINISTRY ATTACHES TO OTTAWA AS AN OPPORTUNITY FOR NETWORKING WITH "THE INDUSTRIALZIED WORLD" ON THESE ISSUES IN ADVANCE OF WTO DELIBERATIONS ON E COMMERCE -- WHICH FINANCE BELIEVES MAY BE EVEN MORE IMPORTANT. IN ADDITION TO THE THREE TOP CIVIL SERVANTS AT THE MINISTRY, THE FINANCE MINISTER'S CHIEF OF STAFF WILL ATTEND (BELGIAN DEL LIST IN PARA BELOW).

BELGIAN DELEGATION

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15. (SBU) RYELANDT SAID THAT TRADE MINISTER DI RUPO, WHO HAD ORIGINALLY HOPED TO ATTEND THE OTTAWA CONFERENCE, MUST STAY IN BELGIUM TO REPRESENT HIS PARTY IN SENSITIVE RULING COALITION BUDGET NEGOTIATIONS. THE 18 MEMBER BELGIAN DELEGATION WILL BE HEADED BY YVAN YLIEFF, THE MINISTER FOR SCIENCE POLICY. IT WILL INCLUDE RYELANDT HIMSELF; THE FINANCE MINISTER'S CHIEF OF STAFF, JEAN HILGERS, AND FINANCE MINISTRY OFFICIALS JEAN MARC DELPORTE, PAUL NECKEBROECK AND STEPHANE BUYDENS; BELGIUM'S OECD AMBASSADOR SCHMIDT AND HIS DEPUTY; DEPUTY ADMINISTRATOR GEORGE DENEF AND ADVISOR PIET STEELAND OF THE BIPT (BELGIUM'S FCC); THE MINISTRY OF JUSTICE'S ADVISOR ON AUTHENTICATION DR. PATRICK VAN EECKE; DI RUPO E COMMERCE ADVISOR AND COMPUTER EXPERT MR. POULLET; MINISTRY OF ECONOMIC AFFAIRS OFFICIALS MR. STRUMMEL AND MR. ROYENS; AND THE DEPUTY DIRECTOR GENERAL OF BELGIUM'S FOREIGN

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TRADE OFFICE, MR. GOFFIN. THE FRENCH COMMUNITY -- WHICH IS "TOUCHY" ABOUT AUDIOVISUAL MATTERS, WILL ALSO BE SENDING THE LEGAL COUNSEL TO THE MINISTRY OF THE FRENCH COMMUNITY, MADAME DEOM.

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COMMENT

BRUSSELS 04 OF 04 5877

16. (SBU) DI RUPO'S ABSENCE FROM OTTAWA WILL LOWER, PROBABLY HELPFULLY, THE BELGIAN PROFILE THERE. BENOIT RYELANDT AND THE FINANCE MINISTER'S CHIEF OF STAFF, JEAN HILGERS, ARE OBJECTIVE, INTELLIGENT AND PROFESSIONAL OFFICIALS WHO WOULD BE GOOD POINTS OF CONTACT IN THE BELGIAN DELEGATION FOR ANY LAST MINUTE COORDINATION. WE ALSO SUGGEST THAT GIVEN RYELANDT'S NEW ROLE AS THE MFAT E COMMERCE COORDINATOR AND A LIKELY CHIEF INTERLOCUTOR IN THE COMING MONTHS, AND HILGERS' CLOUT AS THE FINANCE MINISTER'S SENIOR ADVISOR, US REPS TAKE ADVANTAGE OF ANY OPPORTUNITIES THAT PRESENT THEMSELVES IN OTTAWA TO MEET THEM AND DISCUSS OUR THINKING ON THE KEY ISSUES -- ESPECIALLY AS RELATES TO THE WTO'S UPCOMING WORK ON E COMMERCE. THE INVESTMENT MAY WELL HELP US HEAD OFF UNHELPFUL FORAYS BY THE BELGIANS DOWN THE ROAD.

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NOFORN

PARIS FOR OECD - MORFORD AND KESHISHIAN

TREASURY FOR JOSEPH GUTTENTAG AND JOANNE WEINER

DEPT PASS USTR FOR DON ABELSON

USDOC FOR NTIA - BURR AND ITA - WELLBERY

E.O. 12958: N/A
TAGS: ECPS, ETRD, KIPR, EUN, BE
SUBJECT: ELECTRONIC COMMERCE: BELGIAN CONCERNS ON OTTAWA AND TAX

REFS: A) DERSE/GUTTENTAG TELCONS 9/23/98
B) DERSE/MORFORD/KESHISHIAN TELCONS 9/23/98

BRUSSELS 01 OF 03 5772

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1. (SBU) SUMMARY: ACCORDING TO THREE SENIOR BELGIAN FINANCE OFFICIALS WHO WILL ATTEND THE OECD'S OTTAWA CONFERENCE ON E COMMERCE, BELGIUM HAS CONTINUED CONCERNS ABOUT POTENTIAL LOSS OF TAX REVENUES IN CONNECTION WITH GROWTH IN E COMMERCE. THESE CONCERNS NEED TO BE ADDRESSED TO "AVOID A NEGATIVE REACTION FROM GOVERNMENTS" WHO SHARE THIS FEAR, THEY SAY. BELGIUM WILL ONLY AGREE IN THE OTTAWA JOINT STATEMENT TO "NO NEW TAXES ON E COMMERCE AT THIS STAGE" TO PRESERVE THE GOVERNMENT'S FREEDOM OF ACTION UNTIL IT HAS BEEN DEMONSTRATED THAT E COMMERCE INDEED INCREASES TAX RECEIPTS. BELGIUM ALSO WANTS TO AFFIRM IN ALL E COMMERCE "PROGRAMS AND PLANS" THAT GOVERNMENTS HAVE THE INTENT AND THE TECHNICAL MEANS TO ENFORCE TAX COMPLIANCE, AND WILL FIGHT "HARMFUL TAX COMPETITION" AMONG STATES WITH RESPECT TO ELECTRONIC TRANSACTIONS. FRANCE AGREES, ACCORDING TO THE BELGIANS. MOREOVER, THE CULTURAL EXCEPTION MUST APPLY UNEQUIVOCALLY TO E COMMERCE, THE BELGIAN OFFICIALS INSISTED. END SUMMARY

2. (SBU) IN A LENGTHY DISCUSSION OVER LUNCH ON SEPTEMBER 21 WITH ECONOMIC AND PUBLIC AFFAIRS COUNSELORS, THREE SENIOR BELGIAN FINANCE OFFICIALS WHO WILL REPRESENT THE FINANCE MINISTRY ON THE BELGIAN DELEGATION IN OTTAWA IN OCTOBER

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OUTLINED THEIR FEAR THAT THE GROWTH OF E COMMERCE MAY RESULT IN A SIGNIFICANT LOSS OF TAX REVENUES. THE LUNCH, SET UP AT THE BELGIANS' INITIATIVE ATER A SERIES OF CONTACTS FROM THE EMBASSY, APPEARED INTENDED BOTH TO REASSURE THE USG THAT BELGIUM GENUINELY WISHES TO SPUR, NOT HINDER, DEVELOPMENT OF E COMMERCE; BUT AT THE SAME TIME, TO MAKE CLEAR THAT THE CONCERN ABOUT A DROP IN TAX REVENUES MUST BE ADDRESSED TO AVOID, AS THEY PUT IT, A "NEGATIVE REACTION FROM GOVERNMENTS FEARING LOSS OF REVENUE."

3. (SBU) OVER THREE HOURS OF ANIMATED DISCUSSION, THE FINANCE MINISTRY'S MOST SENIOR CIVIL SERVANT, GENERAL ADMINISTRATOR JEAN-MARC DELPORTE, AUDITOR GENERAL PAUL NECKEBROECK AND ATTACHE STEPHANE BUYDENS -- ALL RESPONSIBLE FOR TAX COLLECTION -- WERE CANDID THAT THEIR CONCERNS STEM FROM THE FACT THAT THEY ARE FIGHTING A LOSING BATTLE WITH RESPECT TO TAX COMPLIANCE IN BELGIUM. THERE IS "ANARCHY" IN THE TVA SYSTEM, THEY SAID. TAX AVOIDANCE IS "A NATIONAL SPORT." THERE IS NO "CULTURE OF COMPLIANCE"; THOSE WHO DEVISE MORE EFFICIENT OR INNOVATIVE MEANS TO AVOID PAYING TAXES ARE WIDELY ADMIRED HERE. BELGIAN PRIVACY LAWS TIE THE HANDS OF THE TAX AUTHORITIES IN THEIR EFFORTS TO ENFORCE COMPLIANCE. "THE BIG COMPANIES WHO CAN FIND WEAKNESSES IN THE SYSTEM WILL -- THAT'S WHAT WE FEAR" WITH E COMMERCE AS WELL, THEY ADDED. "COMPANIES NEED TO KNOW FROM THE OUTSET THAT WE HAVE THE MEANS AND THE INTENT TO CONTROL" PAYMENT OF TAXES ON ELECTRONIC TRANSACTIONS.

4. (SBU) AGAINST THIS BACKDROP, EARLY USG CALLS FOR MINIMAL GOVERNMENT INTERVENTION AND NO NEW REGULATION OF E COMMERCE HAVE BEEN MISINTERPRETED TO MEAN THAT "THE GOVERNMENT CAN'T AND WON'T CONTROL ANYTHING" ON THE INTERNET, THE BELGIAN OFFICIALS SAID. THIS MISPERCEPTION STILL EXISTS IN SOME BELGIAN GOVERNMENT AS WELL AS PRIVATE SECTOR QUARTERS. IT WOULD BE WORTH THE EFFORT FOR THE USG TO CLARIFY PUBLICLY THAT GOVERNMENTS DO INDEED HAVE A ROLE IN APPROPRIATE REGULATION OF E COMMERCE; AND THAT THE PRINCIPLE OF NEUTRALITY MEANS NO FAVORING OF, AS WELL AS NO DISCRIMINATION AGAINST, ELECTRONIC OVER NON-ELECTRONIC TRANSACTIONS, THEY SUGGESTED.

5. (SBU) IN THIS CONTEXT, "DOCUMENTS, PROGRAMS, PLANS" RELATING TO E COMMERCE NEED TO AFFIRM KEY POINTS IN THE BELGIANS' VIEW: FIRST, THAT GOVERNMENTS FULLY INTEND TO PROTECT THEIR TAX BASE AND TO ENFORCE TAX COMPLIANCE AS E COMMERCE DEVELOPS, AND WILL DO WHAT IS NECESSARY TO DO SO; THAT THEY WILL FIGHT TAX FRAUD; AND THIRD, THAT THE TECHNICAL MEANS TO ENFORCE TAX COMPLIANCE, BY TRACING ELECTRONIC TRANSACTIONS, EXIST.

6. (SBU) IN ADDITION, BELGIUM WANTS TO PRESERVE ITS "MARGIN

OF FREEDOM TO ACT" IN THE EVENT THAT "INDUSTRY SELF-REGULATION DOES NOT WORK" AND THAT GROWTH IN E COMMERCE AND RELATED ECONOMIC ACTIVITY DOES NOT INCREASE THE TAX BASE BUT RATHER RESULTS IN A LOSS OF TAX REVENUES. BELGIUM THEREFORE WILL NOT MAKE A BLANKET PLEDGE IN THE JOINT STATEMENT TO IMPLEMENT "NO NEW TAXES" ON E COMMERCE. BELGIUM WILL AGREE ONLY TO IMPLEMENT "NO NEW TAXES AT THIS STAGE." THE PLEDGE CAN BE MADE PERMANENT LATER, THEY SAID, ONCE IT HAS BEEN DEMONSTRATED IN PRACTICE THAT DEVELOPMENT OF E COMMERCE WILL NOT RESULT IN A LOSS OF TAX REVENUES. "THE MORE REALISTIC THE JOINT STATEMENT, THE MORE ENDURING IT WILL BE," THE BELGIANS ARGUED, NOTING THAT OTTAWA, IN ANY CASE, "WON'T BE THE LAST WORD."

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7. (SBU) BELGIUM ALSO FEARS THE POSSIBILITY OF HARMFUL TAX COMPETITION, WITH SOME STATES SEEKING TO ATTRACT E COMMERCE RELTEDINVESTMENT BY TAXING IT AT A MORE ATTRACTIV RATE, OR NOT COOPERATING IN EXCHANGING INFORMATION NEEDED BY DIFFERENT NATIONAL TAX AUTHORITIES TO ENFORCE TAX COMPLIANCE. THEREFORE, BELGIUM BELIEVES THAT GOVERNMENTS SHOULD AGREE THAT THEY WILL COOPERATE TO FIGHT HARMFUL TAX COMPETITION AS WELL.

8. (SBU) THE BELGIAN OFFICIALS POINTED OUT THAT DISCUSSIONS OF TAX AND E COMMERCE SHOULD INCLUDE THE FINANCIAL WORLD, AS THE TECHNICAL SOLUTIONS FOR ENSURING TAX COMPLIANCE WILL INCLUDE THE BANKS, IN PARTICULAR. HOWEVER, THE BIAC -- THE BUSINESS ADVISORY COUNCIL TO THE OECD -- INCLUDES PRIMARILY LARGE COMPANIES, NOT FINANCIAL INSTITUTIONS. "THE FINANCIAL WORLD WILL NOT BE REPRESENTED AT OTTAWA," THE BELGIANS MAINTAINED. GOVERNMENTS ALSO NEED TO KEEP IN MIND, THEY SAID, THAT THE BIAC CAN AGREE TO ANYTHING, BUT HAS NO POWER TO COMMIT ITS MEMBERS TO ANYTHING. GOVERNMENTS, ON THE OTHER HAND, ARE COMMITTED TO IMPLEMENT WHAT THEY AGREE TO.

9. (SBU) DELPORTE AND HIS COLLEAGUES ALSO SAID THAT THE EU COMMISSIONER MARIO MONTI WOULD NOT BE COMING TO OTTAWA BECAUSE HE "DID NOT WANT TO GIVE THE CONFERENCE ANY PARTICULAR STANDING." RATHER, THE EU IS PUTTING ITS EFFORTS INTO DEVELOPING A EUROPEAN STRATEGY FOR E COMMERCE TO RESPOND TO THAT OF THE US. BELGIUM SUBSCRIBES FULLY TO THIS EFFORT, THEY SAID. ASKED ABOUT BELGIAN VIEWS ON OTHER ASPECTS OF E COMMERCE, DELPORTE REPLIED THAT THESE FALL INTO OTHER MINISTRIES' JURISDICTIONS AND THEY COULD NOT COMMENT -- OTHER THAN TO SAY THAT BELGIUM "WANTS THE CULTURAL EXCEPTION" TO APPLY UNEQUIVOCALLY TO E COMMERCE. COMMENT: FRANCOPHONE SOCIALIST TRADE, ECONOMIC AFFAIRS AND TELECOMMUNICATIONS MINISTER ELIO DI RUPO, WHO WILL HEAD THE BELGIAN DELEGATION TO OTTAWA, IS A STRONG ADVOCATE OF EXTENDING THE CURTUAL EXPCETION TO ACTIVITIES ON THE INTERNET. EDN COMMENT

9. (SBU) AT SEVERAL POINTS IN THE CONVERSATION, THE BELGIAN OFFICIALS STATED BLUNTLY THAT THEY ARE AWARE THAT BELGIUM IS A SMALL STATE, WITH LIMITED CLOUT; HENCE, THEY FEAR THAT A "SOLUTION MAY BE IMPOSED" ON THEM WHICH COULD HAVE NEGATIVE CONSEQUENCES. APPROACHES WHICH MAY BE APPROPRIATE FOR THE US, IN ITS LEGAL AND CULTURAL CONTEXT, MAY NOT BE ADEQUATE FOR BELGIUM. HOWEVER, THEY NOTED, EVEN SMALL STATES HAVE BLOCKING POWER -- AS BELGIUM DEMONSTRATED IN DECEMBER 1997, WHEN IT OBJECTED TO THE US-EU JOINT STATEMENT ON E COMMERCE -- IN REACTION, ONE EXPLAINED, TO THE EUROPEAN COMMISSION'S FAILURE TO TAKE ADEQUATE ACCOUNT OF THEIR CONCERNS.

10. (SBU) IN CLOSING, THE BELGIANS EMPHASIZED AGAIN THAT THEY ARE NOT AGAINST THE DEVELOPMENT OF E COMMERCE, NOR DO THEY HAVE ANY INTENTION OF PUTTING A BREAK ON ITS DEVELOPMENT. BUT, "WE ARE DEFENDING OUR TAX RECEIPT INTERESTS -- WE MUST MAINTAIN THEM," THEY SAID.

11. (SBU) COMMENT: THE BELGIAN GOVERNMENT HAS BEEN HAMPERED IN ITS HANDLING OF E COMMERCE OVER THE PAST YEAR BY INTER-MINISTERIAL RIVALRIES, DISORGANIZATION AND INATTENTION, AND UNTIL NOW HAS BEEN LARGELY UNRESPONSIVE TO OUR APPROACHES ON THE SUBJECT. WE ARE NOT CERTAIN WHAT SUDDENLY HAS PROMPTED THIS STRONG BELGIAN REACTION. IT IS POSSIBLE THAT AS THE GOVERNMENT IS BEGINNING SERIOUSLY TO GEAR UP FOR OTTAWA, THE POLITICAL LEVEL IS NOW FOCUSING ON A PROCESS THAT HAS LANGUISHED, UNTIL NOW, LARGELY IN THE HANDS OF THE BUREAUCRACY, AND THAT THIS MEETING REFLECTS THE NEW POLITICAL

CONCERNS. PER REFS, WE WILL SEEK FURTHER CLARIFICATION OF

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BELGIAN THINKING AND PLANS FROM DELPORTE AND OTHERS INVOLVED IN THE PLANNING FOR OTTAWA AND WILL REPORT FURTHER.

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ACTION EAP-01

INFO	LOG-00	AGRE-00	AID-00	AIT-03	AMAD-01	CIAE-00	CIP-00
	CTME-00	DODE-00	ITCE-00	EB-00	EXME-00	E-00	UTED-00
	TEDE-00	INR-00	IO-00	ITC-01	JUSE-00	ADS-00	NSAE-00
	OIC-02	OMB-01	OPIC-01	SSO-00	STR-00	TRSE-00	DRL-04
	NFAT-00	SAS-00	/014W				

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FM AMEMBASSY KUALA LUMPUR
TO SECSTATE WASHDC 1312
INFO USDOC WASHDC
APEC COLLECTIVE
USMISSION GENEVA

UNCLAS SECTION 01 OF 04 KUALA LUMPUR 004418

SENSITIVE

USDOC FOR ITA/MAYEDA

E.O. 12958: N/A
TAGS: APECO, ECPS, ETRD, WTRO, MY
SUBJECT: E-COMMERCE: MALAYSIAN UPDATE

REF: (A) KUALA LUMPUR 4345

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1. (U) PORTIONS OF THIS TELEGRAM ARE UNCLASSIFIED BUT SENSITIVE AND SHOULD NOT BE RELEASED OUTSIDE THE U.S. GOVERNMENT.

2. (SBU) SUMMARY: (SBU) OVER THE PAST FEW WEEKS, WE HAVE HAD WIDE DISCUSSIONS WITH GOM OFFICIALS AND REPRESENTATIVES OF THE MALAYSIAN AND U.S. PRIVATE SECTORS TO GET A READ ON THE STATE OF ELECTRONIC COMMERCE LOCALLY. THE STRONG SENSE OUR INTERLOCUTORS CONVEY IS ONE OF INTEREST BUT UNCERTAINTY IN ELECTRONIC COMMERCE AND ITS RAMIFICATIONS. THE UNCERTAINTY IS A MAJOR OBSTACLE TO E-COMMERCE DEVELOPMENT AS COMPANIES DO NOT WANT TO INVEST SUBSTANTIALLY - ESPECIALLY IN THE CURRENT UNCERTAIN ECONOMIC CLIMATE - WITHOUT A BETTER UNDERSTANDING OF THE LIKELY INVESTMENT ENVIRONMENT. THE GOM IS PLANNING TO UNVEIL A NATIONAL E-COMMERCE STRATEGY IN NOVEMBER. POST IS MAKING A SUBSTANTIAL EFFORT TO CONVINCE U.S. AND MALAYSIAN E-COMMERCE COMPANIES TO PREPARE CASE STUDIES FOR THE OCTOBER E-COMMERCE TASK FORCE MEETING. END SUMMARY.

GROWING INTEREST

3. (SBU) MARKET RESEARCH HAS SHOWN THAT MALAYSIA HAS GOOD POTENTIAL FOR E-COMMERCE: ITS (APPROXIMATELY 500,000) INTERNET USERS TYPICALLY SPEND MORE TIME ON-LINE THAN THOSE IN OTHER ASEAN COUNTRIES AND MANY HAVE ATTEMPTED AN ONLINE TRANSACTION. ALTHOUGH CREDIT CARD USAGE IN MALAYSIA IS FAIRLY LOW, THOSE HOLDING CREDIT CARDS TEND TO BE BIG SPENDERS. U.S. COMPANIES REPORT THAT INTEREST BY MALAYSIAN COMPANIES IN E-COMMERCE HAS BEEN STEADILY GROWING, BUT FEW LOCAL FIRMS HAVE MOVED FROM INTEREST TO APPLICATION.

4. (SBU) THERE ARE SEVERAL REASONS WHY E-COMMERCE HAS NOT YET TAKEN OFF, WITH EXPENSE THE ONE MOST OFTEN CITED. WITH THE ASIAN ECONOMIC CRISIS, COMPANIES ARE RELUCTANT TO ENGAGE IN WHAT THEY SEE AS UNNECESSARY INVESTMENTS.

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SMALL BUSINESSES SEE EMBARKING ON E-COMMERCE AS A MAJOR FINANCIAL COMMITMENT (PARTICULARLY FOR HIRING A LEASED LINE) THAT THEY ARE UNCERTAIN WILL PAY OFF. CEO'S OF MANY LARGE CORPORATIONS WHICH ARE HAVING PROBLEMS MEETING PAYROLL COSTS ARE NOT INTERESTED IN INVESTING MONEY IN NEW WAYS OF DOING BUSINESS, EVEN WHEN SOME ARE PRODDED BY THEIR CHIEF INFORMATION OFFICERS. WITH REMAINING IN GOVERNMENT FAVOR IMPORTANT TO THE STRATEGIES OF MANY LARGE MALAYSIAN COMPANIES, EVEN COMPANIES FAVORABLY DISPOSED TO ELECTRONIC COMMERCE WILL BE RELUCTANT TO MOVE FORWARD WITHOUT CLEAR POSITIVE SIGNALS FROM THE GOM. SOME FIRMS HAVE CITED A LACK OF BRAND-NAME RECOGNITION AND CONCERNS OVER THE SECURITY OF TRANSACTIONS AS OBSTACLES.

THE GOVERNMENT ROLE

5. (U) THE GOM HAS SET UP A NATIONAL E-COMMERCE COMMITTEE (NECC) TASKED WITH FORMULATING A NATIONAL E-COMMERCE ACTION PLAN AND DEVELOPING A RESPONSE TO PRESIDENT CLINTON'S STATEMENT ON GLOBAL ELECTRONIC COMMERCE. THE NECC IS CHAIRED BY CHIEF SECRETARY TAN SRI ABDUL HARIM ALI AND INCLUDES THE SECRETARIES GENERAL OF ALL CONCERNED MINISTRIES. THE NECC HAS TWO SUBCOMMITTEES: ONE CHAIRED BY THE MINISTRY OF ENERGY, TELECOMMUNICATIONS, AND POSTS (METP) IS CHARGED WITH LOOKING INTO THE ELECTRONIC INFRASTRUCTURE FOR ENABLING E-COMMERCE. THE OTHER, CHAIRED BY THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY, (MITI) LOOKS INTO E-COMMERCE TRADE ISSUES. THREE BIG PROJECTS ARE ON THE COMMITTEE'S AGENDA:

-- (1) (SBU) DEVELOPING A SET OF NATIONAL PRINCIPLES TO GUIDE DEVELOPMENT OF E-COMMERCE -- THESE PRINCIPLES ARE EXPECTED TO BE UNVEILED IN CONJUNCTION WITH THE APEC LEADERS MEETING IN NOVEMBER; WE UNDERSTAND THESE PRINCIPLES ARE BEING DEVELOPED IN CONJUNCTION WITH ASEAN. THE ASEAN E-COMMERCE TASK FORCE MET IN JAKARTA ON SEPTEMBER 18. THERE IS A NEAR-FINAL VERSION OF THE "ASEAN GUIDING PRINCIPLES ON E-COMMERCE." MALAYSIA SHOULD HAVE A FINAL VERSION OF ITS PRINCIPLES BY MID-OCTOBER (ALTHOUGH THEY MAY NOT BE UNVEILED UNTIL NOVEMBER.)

-- 2) (U) A NATIONAL FRAMEWORK FOR E-COMMERCE (BY MID-1999) THAT WILL SET PERFORMANCE INDICATORS, CRITICAL SUCCESS FACTORS, AND MONITORING MECHANISMS FOR E-COMMERCE AT THE CORPORATE, INDUSTRY, AND MACROECONOMIC LEVELS, AS WELL AS MECHANISMS TO TRACK E-COMMERCE TRANSACTIONS WHICH

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TAKE PLACE IN THE COUNTRY FOR MACROECONOMIC PLANNING PURPOSES. IN ADDITION, IT WILL LAY OUT POLICIES IN THE AREAS OF CUSTOMS DUTIES, INTERNET TAXES, PAYMENT SYSTEMS, INTELLECTUAL PROPERTY PROTECTION, PRIVACY, SECURITY, TELECOMMUNICATIONS INFRASTRUCTURE, CONTENT INDUSTRY DEVELOPMENT, AND TECHNICAL STANDARDS FOR INTEROPERABILITY. MALAYSIA'S MULTIMEDIA SUPERCORRIDOR HAS BEEN TAPPED BY THE GOM TO BE THE "HUB" OF ALL E-COMMERCE ACTIVITIES IN THE COUNTRY.

-- (3) A NATIONAL "PLATFORM" TO FACILITATE E-COMMERCE UTILIZATION BY SMALL AND MEDIUM INDUSTRIES.

-- (SBU) IN ADDITION, WE UNDERSTAND ONE OF THE GOM-OWNED COMPANIES - LIKELY EITHER THE ELECTRIC POWER UTILITY

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(TENAGA) OR NATIONAL CARMAKER (PROTON) - WILL BE TASKED TO HOOK ITSELF UP WITH SUPPLIERS VIA AN INTRANET AS A DEMONSTRATION TO THE COUNTRY OF E-COMMERCE BENEFITS.

SOME INDICATIONS OF EVENTUAL GOM POSITION

6. (U) AN INITIAL GOM E-COMMERCE REPORT ISSUED IN OCTOBER 1997 MAY PROVIDE SOME INDICATION OF WHAT MALAYSIA INTENDS FOR ITS FRAMEWORK AND PRINCIPLES AND THE UNDERLYING PHILOSOPHY BEHIND ITS POSITIONS IN APEC AND THE WTO. NOTABLY, IN THAT REPORT, THE GOM INDICATED THAT ITS APPROACH WAS GENERALLY IN LINE WITH THAT OF THE U.S. NEVERTHELESS,

-- INSTEAD OF RECOGNIZING THE LEADING ROLE OF THE PRIVATE SECTOR, MALAYSIA ASSIGNS THE GOVERNMENT THE ROLE OF PROVIDING STRATEGIC DIRECTION AND THE NECESSARY INFRASTRUCTURE AND INFOSTRUCTURE TO FACILITATE THE GROWTH OF ELECTRONIC COMMERCE ACTIVITIES;

-- THE REPORT CASTS THE DEVELOPMENT OF ELECTRONIC COMMERCE IN A NORTH-SOUTH CONTEXT. IT WARNS THAT DEVELOPED COUNTRIES ARE IN A MORE ADVANTAGEOUS POSITION THAN DEVELOPING COUNTRIES AND ARGUES THAT "IN INTERNATIONAL FORA, WE WILL ARGUE FOR THE PROGRESSIVE OPENING UP OF OUR MARKET FOR ELECTRONIC COMMERCE AS WE NEED TIME TO BUILD UP OUR ELECTRONIC COMMERCE CAPABILITY;"

-- A DISADVANTAGE ATTRIBUTED TO ELECTRONIC COMMERCE IN THE REPORT IS THAT IT MAY BE USED "AS A MEANS TO OPEN UP MARKETS." CONSIDERABLE EMPHASIS IS GIVEN TO THE POSSIBILITY THAT ELECTRONIC COMMERCE "MAY BE USED AS A BACKDOOR METHOD TO OBTAIN MARKET ACCESS AND NATIONAL TREATMENT CURRENTLY DENIED UNDER THE GATS;"

-- THE NEED TO TRACK ELECTRONIC COMMERCE TRANSACTIONS FOR THE PURPOSE OF MACROECONOMIC PLANNING IS NOTED. THE REPORT SUGGESTS THAT ELECTRONIC COMMERCE TRANSACTIONS BE CHANNELED THROUGH AUTHORIZED FINANCIAL INSTITUTIONS AND REQUIRING THEM TO IDENTIFY ELECTRONIC COMMERCE TRANSACTIONS BY A SPECIAL CODE.

-- TAXATION ISSUES ARE ALSO KEY TO GOM THINKING. THE REPORT SPECIFICALLY CALLS FOR A NEW FORM OF RECORD KEEPING TO BE DEVELOPED TO ENSURE THAT TAX AUTHORITIES CAN KEEP TRACK OF ALL TRANSACTIONS AND TAXPAYER IDENTITIES SO AS NOT TO ERODE THE REVENUE BASE. EACH COUNTRY HAS TO PROVIDE RULES AND REGULATIONS TO ENSURE TAX COMPLIANCE, AND TAX AUTHORITIES SHOULD BE EMPOWERED TO GAIN ACCESS TO INFORMATION OF ALL TRANSACTIONS CONDUCTED THROUGH ELECTRONIC COMMERCE. FOR MORE EFFECTIVE MONITORING, THE REPORT CALLS FOR DEVELOPING A FORMALIZED AUDIT TRAIL FOR PURPOSES OF ENSURING TAX COMPLIANCE.

7. (SBU) THE GOM'S TRACK RECORD EVOKES LITTLE CONFIDENCE IN ITS ABILITY TO STIMULATE ELECTRONIC COMMERCE. MANY FIRMS REPORT THAT IN THE PAST THE GOVERNMENT PRESSURED THEM TO IMPLEMENT ELECTRONIC DATA INTERCHANGE (EDI) WHICH TURNED OUT TO BE MORE EXPENSIVE AND LESS EFFICIENT THAN THEY HAD HOPED. ONE FEDERATION OF MALAYSIAN MANUFACTURERS REPRESENTATIVE TOLD US THAT HE HOPED THE GOM WOULD NOT EXTEND ELECTRONIC SUBMISSION OF CUSTOMS DOCUMENTS BEYOND KUALA LUMPUR'S PORT KLANG - AT PORT KLANG, MALAYSIAN CUSTOMS WAS REQUIRING SUBMISSION OF BOTH ELECTRONIC AND PAPER DOCUMENTS THUS INCREASING, RATHER

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THAN DECREASING, THE COSTS TO COMPANIES. THE PRESIDENT AND CEO OF MIMOS (ONE OF MALAYSIA'S TWO INTERNET SERVICE PROVIDERS) HAS SIGNALED THAT MALAYSIA MAY WANT TO ATTEMPT TO LEVY TARIFFS ON INTERNET COMMERCE SAYING AT A RECENT

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CONFERENCE THAT "WE BELIEVE THERE ARE VARIOUS ALTERNATIVES TO A TARIFF-FREE E-COMMERCE, SUCH AS A PARTIALLY-TARIFF FREE ENVIRONMENT...A COMPLETELY TARIFF FREE E-COMMERCE COULD POSE SERIOUS RISKS TO MARKET PLAYERS...." ITS RECENT IMPOSITION OF FOREIGN EXCHANGE CONTROLS HAS INTRODUCED MORE UNCERTAINTY.

8. (SBU) THE NECC ITSELF HAS BEEN CHARACTERIZED MORE BY INTERAGENCY SQUABBLING THAN PRODUCTIVE INITIATIVES. ACCORDING TO ONE COMMITTEE STAFF MEMBER, THE CHIEF SECRETARY IS NOT ACTIVIST AND TAKES THE INITIATIVE ONLY WHEN PUSHED BY THE MULTIMEDIA DEVELOPMENT CORPORATION (MDC - FORMED BY THE GOM TO DEVELOP THE MULTIMEDIA SUPERCORRIDOR, IT SERVES AS THE NECC SECRETARIAT). MITI, METP, AND THE OTHER AGENCIES INVOLVED HAVE DEVOTED CONSIDERABLE TIME AND EFFORT TO FIGHTING ABOUT WHO IS IN CHARGE. EVEN WITHIN MITI, THREE DIFFERENT OFFICES CONTEND FOR POLICY FORMULATION RESPONSIBILITY. EACH OF THE MINISTRIES INVOLVED ON THE NECC TRIES TO ASSIGN A ROLE TO ITSELF WHETHER NECESSARY OR NOT. THE MINISTRY OF DEMESTIC TRADE AND CONSUMER AFFAIRS (MDTCA), FOR INSTANCE, HAS ARGUED THAT EACH INDIVIDUAL WEBSITE WITH E-COMMERCE APPLICATIONS WILL HAVE TO BE REGISTERED WITH THE GOM UNDER THE COMPANIES ACT.

MACROECONOMIC CONCERNS

9. (SBU) UNCERTAINTY OVER PAYMENTS MECHANISMS HAS ALSO HELD BACK E-COMMERCE DEVELOPMENT. THE GOM HAS BEEN PREOCCUPIED WITH THE POTENTIAL ADVERSE IMPACT OF E-COMMERCE ON THE BALANCE OF PAYMENTS. IT HAS THUS DESIGNED AND DESIGNATED A PAYMENTS SYSTEM TO ENSURE ALL E-COMMERCE TRANSACTIONS ARE CAPTURED BY THE LOCAL BANKING SYSTEM. SEVERAL PRIVATE AND PUBLIC SECTOR OFFICIALS - INCLUDING A SENIOR MDC OFFICER -- HAVE TOLD US THAT THE EFFECT OF THESE CONCERNS WILL BE TO MAKE IT TECHNICALLY ILLEGAL FOR COMPANIES IN MALAYSIA TO ENGAGE IN E-COMMERCE TRANSACTIONS WITH THOSE NOT HOLDING LOCALLY-ISSUED CREDIT CARDS FROM EITHER MAYBANK OR RHB. OTHER MALAYSIAN OFFICIALS HAVE TOLD US THAT THIS INTERPRETATION IS INCORRECT. HOWEVER, THIS TYPE OF UNCERTAINTY DOES NOT EVOKE CONFIDENCE IN POTENTIAL INVESTORS. IT IS PERHAPS REVEALING THAT ONE MALAYSIAN COMPANY WHICH HAS INVESTED IN E-COMMERCE APPLICATIONS - ROYAL SELANGOR PEWTER - SET UP ITS WEBSITE IN THE UNITED STATES AND USES A SINGAPORE BANK FOR ITS TRANSACTIONS.

APEC MAKING A DIFFERENCE

10. (SBU) UNDOUBTEDLY, USE OF E-COMMERCE WILL CONTINUE TO INCREASE IN MALAYSIA OVER TIME. PARTICIPATION IN MALAYSIAN E-COMMERCE INTERNET FORUMS CONTINUES TO BE STRONG. DR. HAN CHUN KWONG, MDC SENIOR MANAGER FOR BORDERLESS MARKETING RECENTLY TOLD THE PRESS THAT "OUR GUT FEELING IS THAT WITHIN A YEAR THERE WILL BE MORE ACTIVITIES IN THIS AREA." AND THERE ARE INFLUENTIAL PEOPLE WHO RECOGNIZE THE POTENTIAL OF E-COMMERCE TO TRANSFORM THE MALAYSIAN ECONOMY BY CHANGING THE WAY FIRMS DO BUSINESS AND RAISING THEIR STANDARDS, ATTENTION TO QUALITY, AND CUSTOMER SERVICE. ITS RISE COULD ALSO

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PRESSURE THE GOM TO LOWER TRADE BARRIERS AND DEREGULATE TRANSPORTATION INDUSTRIES AS COMPANIES' NEEDS TO SERVICE CUSTOMERS QUICKLY AND WITH A MINIMUM OF RED TAPE COME INTO PLAY.

11. (SBU) APEC'S CONTRIBUTION TO THE E-COMMERCE DEBATE IN MALAYSIA HAS BEEN A POSITIVE ONE. MALAYSIAN OFFICIALS HAVE TOLD US THAT THEY FOUND THE KUCHING E-COMMERCE TASK FORCE MEETING TO BE INSIGHTFUL (ESPECIALLY THE PRIVATE SECTOR INTERVENTIONS) AND HAVING A POSITIVE INFLUENCE ON DISCUSSIONS REGARDING THE MALAYSIAN FRAMEWORK. MALAYSIAN PRIVATE SECTOR OFFICIALS VIEWED THE U.S. PROPOSALS FOR A ROBUST APEC E-COMMERCE TASK FORCE WORK PROGRAM VERY POSITIVELY (ALTHOUGH THIS DID NOT TRANSLATE INTO ENTHUSIASTIC SUPPORT FROM MALAYSIAN GOVERNMENT REPRESENTATIVES ATTENDING THE MEETING). IN THE NEXT FEW DAYS, WE PLAN TO LOBBY U.S. AND MALAYSIAN PRIVATE SECTOR OFFICIALS HEAVILY TO CONTRIBUTE CASE STUDIES FOR THE OCTOBER E-COMMERCE MEETING.

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ACTION EB-00

INFO	LOG-00	AID-00	AMAD-01	ARA-01	A-00	CIAE-00	CIP-00
	CIME-00	DODE-00	ITCE-00	EAP-01	EXME-00	EUR-01	E-00
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	M-00	NSAE-00	OIC-02	OMB-01	OPIC-01	SSO-00	STR-00
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FCC WASHDC
USDOC WASHDC
ALL EUROPEAN UNION POST COLLECTIVE
DEPTOFHHS WASHDC
AMEMBASSY OTTAWA
AMEMBASSY WELLINGTON
AMCONSUL HONG KONG
USMISSION GENEVA

UNCLAS SECTION 01 OF 07 MADRID 009876

SENSITIVE

WHITEHOUSE FOR OMB/MCCONNELL AND BERNSTEIN
WHITEHOUSE FOR OVP/BEIER
WHITEHOUSE ALSO FOR IRA MAGAZINER
DEPT PASS USTR FOR ABELSON AND CORBETT
STATE FOR EB/CIP, EUR/ERA AND EUR/WE
FCC FOR INTERNATIONAL BUREAU
USDOC FOR NTIA - WELLBERY, IRVING, BURR AND FLATTEN
USDOC FOR ITA U/S DAVID AARON AND M.O'NEILL
PARIS FOR OECD
DEPT PASS DHHS FOR JOHN FANNING

E.O. 12958: N/A
TAGS: EINT, ECPS, ETRD, EUN, SP
SUBJECT: 20TH INTERNATIONAL DATA PROTECTION CONFERENCE, SANTIAGO DE COMPOSTELA, SPAIN

REFS: A) STATE 171114
B) MADRID 9260
C) BRUSSELS 4184

MADRID 01 OF 07 9876

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SUMMARY
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1. DURING THE SEPTEMBER 16-18 INTERNATIONAL CONFERENCE ON DATA PROTECTION (DP), PARTICIPANTS BROUGHT UP REPEATEDLY THE LOOMING ENTRY INTO FORCE OF THE EU DATA PROTECTION DIRECTIVE (ON 10/25/98) AS A DEVELOPMENT WHICH WOULD HAVE A MAJOR IMPACT ON INTERNATIONAL DATA FLOWS. PARTICIPANTS PRESENTED THEIR POSITIONS, RANGING FROM SELF-REGULATION (U.S. VIEW) TO THE IMPLEMENTATION OF STRINGENT DATA PROTECTION AND PRIVACY LAWS (EU PERSPECTIVES). ALTHOUGH CONFERENCE PARTICIPANTS GENERALLY AGREED DIALOGUE SHOULD CONTINUE, MOST RECOGNIZED THE POSSIBILITY THERE MAY NOT BE A RAPID SOLUTION WITH RESPECT TO THE DIVERGENT U.S. AND EU POSITIONS. EU REPRESENTATIVES ACKNOWLEDGED THE ONGOING HIGH-LEVEL CONSULTATIONS BETWEEN WASHINGTON AND BRUSSELS WOULD CONTINUE WITH THE OBJECTIVE OF REACHING COMMON GROUND. MANY ARGUED THIS RAPIDLY CHANGING NETWORK ENVIRONMENT JUSTIFIED THE NEED

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TO DEVELOP NEW VENUES FOR INTERNATIONAL COOPERATION. END SUMMARY.

2. DURING THE 20TH INTERNATIONAL CONFERENCE ON DATA PROTECTION, HELD SEPTEMBER 16-18 IN SANTIAGO DE COMPOSTELA, SPAIN, WIDE-RANGING DISCUSSIONS WERE HELD ON NUMEROUS DATA PROTECTION AND PRIVACY ISSUES. CONFERENCE PARTICIPANTS INCLUDED REPRESENTATIVES FROM THE EU, EU MEMBER STATES, THE COUNCIL OF EUROPE, AUSTRALIA, NEW ZEALAND, HONG KONG, CANADA, SWITZERLAND, JAPAN, AS WELL AS BOTH GOVERNMENT AND PRIVATE SECTOR REPRESENTATIVES FROM THE UNITED STATES. THIS REPORTING CABLE FOCUSES ON THE ISSUE OF MOST IMMEDIATE CONCERN TO U.S. INTERESTS -- THE EU DATA PROTECTION DIRECTIVE, SCHEDULED TO ENTER INTO EFFECT ON 10/25/98. (COMMENT: IT SHOULD BE NOTED THAT SPAIN'S DP DIRECTOR JUAN MANUEL FERNANDEZ LOPEZ WAS A LESS THAN CONGENIAL HOST TO U.S. DELEGATION. ONLY AT THE LAST MINUTE, AND AFTER ASKING IF THERE WERE ANY OBJECTIONS BY OTHER DP AUTHORITIES, DID HE ALTER THE AGENDA TO PERMIT USG TO PRESENT ITS VIEWS ON THE EU DIRECTIVE AND EXPLAIN U.S. EFFORTS TO PROVIDE SUFFICIENT PRIVACY PROTECTION. ALSO, CONTRARY TO THE EXPRESSED WISHES OF SEVERAL OF HIS EU COUNTERPARTS, FERNANDEZ REFUSED TO PERMIT USG ATTENDANCE AS AN OBSERVER AT THE SEPTEMBER 18 CLOSED SESSION.)

EU VIEW

3. ULF BRUEHANN PRESENTED THE EU COMMISSION'S VIEW OF THE INTERNATIONAL DATA PROTECTION (DP) ENVIRONMENT FIVE WEEKS BEFORE ENTRY INTO FORCE OF THE EU DIRECTIVE. HE NOTED THUS FAR ONLY FOUR MEMBER STATES HAD ADOPTED LEGISLATION TRANSPOSING THE EU DIRECTIVE INTO NATIONAL LAW: ITALY, GREECE, SWEDEN AND THE UK (NOTE: IN THE CASE OF THE UK, NATIONAL LEGISLATION WOULD NOT TAKE EFFECT UNTIL AFTER ENTRY INTO FORCE OF THE EU DIRECTIVE.) ACKNOWLEDGING SOME MEMBER STATES WOULD MISS THE OCTOBER 25 DEADLINE, HE SAID IT WAS AN UNFORTUNATE, BUT NOT UNUSUAL FACT. THAT MEMBER STATES ARE OFTEN TARDY IN TRANSPOSING EU DIRECTIVES FOR REASONS SUCH AS COMPETING PRESSURES IN PARLIAMENTARY SCHEDULES AND UNFORESEEN POLITICAL EVENTS. BRUEHANN STRESSED THAT LACK OF MEMBER STATE IMPLEMENTATION DID NOT INDICATE LACK OF EU COMMITMENT TO THE DIRECTIVE. AFTER REMINDING EU MEMBER REPRESENTATIVES BRUSSELS WOULD NOT HESITATE TO IMPOSE INFRINGEMENT PROCEEDINGS ON MEMBER STATES WHICH DID NOT ENACT CORRESPONDING NATIONAL LEGISLATION, HE QUICKLY ADDED THAT EVEN IF NOT ENACTED IN TIME, THE EU DIRECTIVE WOULD STILL IMPACT DATA TRANSFERS. SPECIFICALLY, HE SAID EU DATA PROTECTION AUTHORITIES COULD INVOKE THE DIRECTIVE

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LEGISLATION BEFORE NATIONAL COURTS IN ACCORDANCE WITH EU COURT OF JUSTICE CASE LAW WHICH SET A PRECEDENT FOR THIS IN A DECISION HANDED DOWN 11/19/90. THE DIRECTIVE WOULD BE SUFFICIENT FOR COMPLAINANTS TO SEEK REPARATIONS FROM NATIONAL COURTS.

4. BRUEHANN BELIEVED THE FULL IMPACT OF THE EU DIRECTIVE WOULD BE GRADUAL IN NATURE, RATHER THAN IMMEDIATE, WITH THE MOST SIGNIFICANT DATE BEING 10/25/2001, WHEN THE TRANSITIONAL PERIOD FOR ON-GOING DATA TRANSFERS UNDER THE EU DIRECTIVE EXPIRES. ALSO, BECAUSE CHANGES DUE TO THE EU DIRECTIVE WILL NOT BE SUDDEN DOES NOT MEAN THEY WILL NOT BE SIGNIFICANT. BRUEHANN BELIEVED THE DIRECTIVE WOULD DRAMATICALLY CHANGE THE DATA PROTECTION LANDSCAPE. HE CITED AS EXAMPLES THE ACTIVITIES OF SEVERAL EU WORKING GROUPS. THE ARTICLE 29 WORKING GROUP, COMPRISED OF EU MEMBER STATE DATA PROTECTION AUTHORITIES, HAS BEEN VERY ACTIVE IN THE

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PAST YEAR DEVELOPING METHODOLOGY TO ASSESS THIRD COUNTRY PRIVACY, INCLUDING EXCEPTIONS TO THE DIRECTIVE'S REQUIREMENTS. THE ARTICLE 31 WORKING GROUP, WHICH WILL MEET AGAIN BEFORE THE END OF OCTOBER, HAS ALSO BEEN VERY ACTIVE ON THIRD COUNTRY ISSUES.

5. BRUEHANN SAID THE TWO YEARS OF HIGH LEVEL TALKS, BETWEEN DGXV DIRECTOR JOHN MOGG AND USDOC UNDERSECRETARY DAVID AARON, ILLUSTRATE THERE ARE LEGITIMATE CONCERNS FOR CITIZENS' DATA PROCESSED IN THE UNITED STATES. HE SAID THE EU REMAINED INTERESTED IN SEEKING MATERIAL IMPROVEMENTS TO PREVENT THE DISRUPTION OF INTERNATIONAL DATA TRANSFERS. BUT, AT THE SAME TIME, THE EU WANTS A MINIMUM BENCHMARK OF DATA PROTECTION PRINCIPLES TO WHICH COMPANIES MUST ADHERE IF THEY WISH TO EXPORT PERSONAL DATA FROM THE EU. THIS BENCHMARK WOULD INCLUDE EASY AND AFFORDABLE MEANS TO REGISTER COMPLAINTS, AS WELL AS INVESTIGATION AND RECTIFICATION OF COMPLAINTS BY AN INDEPENDENT AUTHORITY. BRUEHANN SAID THE RECENT FTC CASE (GEOCITIES) WAS A POSITIVE DEVELOPMENT, BUT ALLEGED THE U.S. PRIVACY FRAMEWORK WAS STILL ONLY A PATCHWORK OF PROTECTIVE SYSTEMS AND MECHANISMS AND DID NOT IN THE END GUARANTEE PRIVACY PROTECTION.

6. BRUEHANN WOULD NOT SPECULATE WHEN COMMON GROUND BETWEEN THE U.S. AND THE EU POSITIONS MIGHT BE REACHED. HE CITED PROGRESS (FROM THE EU VIEWPOINT) TOWARDS GLOBAL CONSENSUS ON ADEQUATE PRIVACY PROTECTION IN OTHER REGIONS OF THE WORLD, INCLUDING:
-- AUSTRALIA (VICTORIA PROVINCE LEGISLATION MAY PAVE THE WAY FOR NATIONAL DP LEGISLATION IN AUSTRALIA);
-- CANADA (NATIONAL LEGISLATION WAS IN THE WORKS; PROVINCES STILL NEEDED TO FOLLOW SUIT);
-- EASTERN EUROPE (POLAND PASSED A 1997 DP LAW AND ESTABLISHED A DP COMMISSION; SLOVAKIA PASSED A DP LAW IN 1998); AND
-- LATIN AMERICAN COUNTRIES ARE REVIEWING A MODEL DP LAW IN THE CONTEXT OF THE IBEROAMERICAN CONFERENCE OF JUSTICE MINISTERS.

7. BRUEHANN CONCLUDED WITH SOME COMMENTS ON INTERNATIONAL COOPERATION. HE PREDICTED THAT, AT THE OCTOBER 7-9 OTTAWA CONFERENCE, MINISTERS WOULD AGREE TO LANGUAGE ON DATA PROTECTION AND PRIVACY. HOWEVER HE BELIEVED IT WOULD NOT GO FAR ENOUGH -- IT WOULD BE NONBINDING IN CHARACTER, "PARTICULARLY SINCE MANY LDCS HAVE INADEQUATE DATA PROTECTION." HE NOTED ALSO THE WTO HAD ESTABLISHED A WORKING GROUP ON ELECTRONIC COMMERCE, INCLUDING PRIVACY ISSUES, BUT DID NOT EXPECT A RAPID SOLUTION THERE.

8. AS FOR TECHNICAL SOLUTIONS, BRUEHANN COMMENTED ON THE P3P PROPOSAL, IN WHICH NET USERS MAY ACCESS WEB SITES BASED ON THEIR OWN DETERMINATION OF WHAT LEVELS OF DATA PROTECTION WERE SUFFICIENT RATHER THAN ESTABLISHING A MINIMUM PRIVACY STANDARD. HE WARNED THIS APPROACH COULD DIMINISH PRIVACY LEVELS IF NOT IMPLEMENTED CORRECTLY AND NOTED THE JUNE 29

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MEETING OF THE ARTICLE 29 WORKING GROUP MADE SEVERAL RESERVATIONS REGARDING THE P3P PROPOSAL. BRUEHANN CONCLUDED THAT IF A BROAD-BASED DP LAW (SUCH AS THE EU DIRECTIVE) IS TO PROSPER, THEN POLICYMAKERS MUST ASSURE THAT DATA PROTECTION REQUIREMENTS ARE EASILY RECOGNIZED TO DELIVER PROTECTION TO THE INDIVIDUAL.

USG PRESENTATION

9. USDOC NTIA CHIEF COUNSEL BARBARA WELLBERY SAID THE U.S.

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APPROACH IS INFLUENCED BY A CONCERN FOR LIMITING GOVERNMENT INTERVENTION IN THE ECONOMY, AND A HEALTHY RESPECT FOR OUR FIRST AMENDMENT (I.E., WE ARE STRIVING TO BALANCE PRIVACY RIGHTS OF INDIVIDUALS WITH BENEFITS FROM THE FREE FLOW OF INFORMATION). THE U.S. HAS NO PLANS TO ADOPT BROAD, HORIZONTAL LEGISLATION, HOWEVER THERE ARE A NUMBER OF PRIVATE SECTOR, AS WELL AS USG, INITIATIVES BEING DEVELOPED IN RESPONSE TO PRIVACY CONCERNS. (NOTE: WE PROVIDED TO CONFERENCE PARTICIPANTS BACKGROUND INFORMATION ON ALL OF THE FOLLOWING U.S. INITIATIVES, AS WELL AS VP GORE'S ELECTRONIC BILL OF RIGHTS ANNOUNCEMENT AND THE FTC'S GEOCITIES AGREEMENT CONTAINING CONSENT ORDER.)

FOUR U.S. PRIVATE SECTOR INITIATIVES

10. INDUSTRY REFERENCE SERVICE GROUP (IRSG): IRSG, COMPRISED OF 14 PRIVATE COMPANIES, HAS DEVELOPED A SET OF PRIVACY PRINCIPLES AS WELL AS ENFORCEMENT MECHANISMS. PART OF THE ENFORCEMENT PROCEDURE WOULD INVOLVE ANNUAL AUDITS AT A COMPANY'S EXPENSE BY AN INDEPENDENT FIRM. THIS INITIATIVE IS EXPECTED TO BE FULLY IMPLEMENTED BY 12/98.

11. ONLINE PRIVACY ALLIANCE: FORMED IN JUNE 1998 BY APPROXIMATELY 50 U.S. COMPANIES, THIS ALLIANCE SERVES AS A CATALYST FOR U.S. INDUSTRY ADOPTION OF PRIVACY PRINCIPLES AND UTILIZES A SEAL PROGRAM, WHEREBY COMPANIES ARE AUTHORIZED TO DISPLAY A SEAL BASED ON COMPLIANCE WITH SPECIFIC PRIVACY STANDARDS.

12. BBB (BETTER BUSINESS BUREAU) ONLINE: BBB IS A WELL-ESTABLISHED CONSUMER-COMPANY MEDIATION GROUP WHICH FOR YEARS HAS DEALT WITH ISSUES SUCH AS AUTOMOBILE COMPLAINTS (APPROX. 30,000 COMPLAINTS/YEAR). BBB HAS ALSO ADOPTED A SEAL PROGRAM.

13. TRUST-E GROUP: TRUST-E IS COMPRISED OF ABOUT 130 MEMBERS, INCLUDING NETSCAPE, ATT, MICROSOFT, AMERICA ONLINE AND THE NEW YORK TIMES. INITIALLY, THE USG THOUGHT TRUST-E'S EXTERNAL AUDIT PROGRAM DID NOT PROVIDE ADEQUATE PRIVACY PROTECTION. HOWEVER, ESPECIALLY WITH THE ADVENT OF THE ONLINE PRIVACY ALLIANCE AND BBB MEASURES, TRUST-E HAS MADE SIGNIFICANT IMPROVEMENTS IN ACCORDANCE WITH OECD PRIVACY GUIDELINES.

USG INITIATIVES

14. IN RESPONSE TO THE GROWING CONCERN IN THE U.S. REGARDING PRIVACY, THE USG HAS PROPOSED NEW LEGISLATION IN SEVERAL KEY AREAS TO ENSURE PROTECTION OF PERSONAL DATA:
-- MEDICAL: THE CLINTON ADMINISTRATION HAS PROPOSED LEGISLATION TO PROTECT MEDICAL INFORMATION. ALTHOUGH THIS REQUIRES PASSAGE BY CONGRESS, THE U.S. ADMINISTRATION CAN ADOPT MOST OF THE MEASURES THROUGH THE RULEMAKING PROCESS IF CONGRESS DOES NOT ACT WITHIN THE NEXT ONE-YEAR PERIOD.
-- CHILDREN: THE ADMINISTRATION IS PROMOTING MEASURES REQUIRING PRIOR PARENTAL CONSENT TO PROTECT CHILDREN'S PRIVACY.
-- FINANCIAL INFORMATION: THE U.S. ADMINISTRATION SEEKS LEGISLATION TO STRENGTHEN THE FAIR CREDIT REPORTING ACT, TO CRACK DOWN ON IDENTITY THEFT AND TO CRIMINALIZE ACTIONS TO OBTAIN CONFIDENTIAL DATA FROM A BANK THROUGH FRAUDULENT MEANS.

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15. ANOTHER USG INITIATIVE IS TO ESTABLISH A FEDERAL-STATE GOVERNMENT DIALOGUE TO ADDRESS PRIVACY ISSUES.

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16. DURING THE CONFERENCE DISCUSSION ON SECURITY MEASURES FOR PROTECTING PRIVACY, WE DISTRIBUTED COPIES OF THE SEPTEMBER 16 USG ANNOUNCEMENT UPDATING OUR ENCRYPTION EXPORT POLICY, WHICH WAS THE RESULT OF EXTENSIVE REVIEW OF CURRENT REGULATIONS AND INTENSIVE DIALOGUE WITH U.S. INDUSTRY. AS INDICATED IN REF A. THESE REVISIONS WERE UNDERTAKEN ONLY AFTER THOROUGHLY REVIEWING WHETHER THESE MEASURES WERE CONSISTENT WITH OUR FUNDAMENTAL NATIONAL SECURITY AND LAW ENFORCEMENT CONCERNS. CORRESPONDING IMPLEMENTING REGULATIONS WILL BE DEVELOPED IN THE NEAR FUTURE. (NOTE: ON THE WHOLE, THE DATA PROTECTION COMMISSIONERS DID NOT SEEM TO HAVE A SOPHISTICATED UNDERSTANDING OF TECHNOLOGY IN GENERAL AND ENCRYPTION IN PARTICULAR.)

17. FINALLY, THE USG WILL BE STRENGTHENING OMB'S COORDINATION ROLE IN THIS AREA. WE SHOULD SEE AN EXECUTIVE ORDER ON THIS IN THE NEXT FEW MONTHS.

OTHER VIEWS

18. FRANCE: MARCEL PINET FROM THE FRENCH DP OFFICE SAID NEW DATA-GATHERING TECHNOLOGY COULD BE USED FOR EITHER GOOD OR BAD PURPOSES. AS A RESULT, IT IS CRUCIAL THAT DP POLICYMAKERS BE GUIDED BY BASIC PRIVACY PROTECTION PRINCIPLES WHEN REGULATING THE USE OF THESE NEW TECHNOLOGIES. THE FRENCH POSITION IS THAT, ABOVE ALL, PUBLIC INFORMATION USED FOR FRAUDULENT MEANS SHOULD NOT BE TOLERATED AND THE PUBLIC NATURE OF THIS DATA DOES NOT DEPRIVE A PERSON OF PRIVACY FOR THIS INFORMATION. ALSO, PINET SAID WHEN THE PERSONAL DATA MARKET IS NOT/NOT REGULATED, THEN THE AMOUNT OF PERSONAL DATA AVAILABLE TO THE PUBLIC DROPS. FINALLY, PINET CITED THE INCREASING FREQUENCY OF "NO SPAM" APPEARING IN EMAIL MESSAGES AS A CALL BY USERS FOR DATA PROTECTION TO, AT THE LEAST, PROHIBIT RETRIEVAL OF EMAIL MESSAGES FROM NEWSGROUPS AND, MORE BROADLY, ESTABLISH A WORLDWIDE "CODE OF MANNERS."

19. NEW ZEALAND: BRUCE SLANE FROM NEW ZEALAND'S DP AGENCY SAID THE RECENT USG ACTIONS (MENTIONED IN PARA. 14) WERE A CONSIDERABLE STEP FORWARD. EVEN IF IT ONLY AFFECTED THREE SECTORS. HE INTERPRETED U.S. CONCERNS TO BE A FEAR MORE OF PRIVACY LAWYERS, NOT PRIVACY LAW, CITING THE U.S. LEGAL CLIMATE OF POTENTIAL HUGE AWARDS AND DAMAGES. SLANE BELIEVED THE ESTABLISHMENT OF A U.S. DP AUTHORITY WOULD BE ADVANTAGEOUS IN ALLEVIATING THIS AND THAT RESPONSIBLE DIRECT MARKETING AGENCIES DO NOT WANT THEIR REPUTATIONS SULLIED BY A FEW IRRESPONSIBLE PARTIES.

20. ITALY: AFTER APPLAUDING USG EFFORTS TO PROTECT PRIVACY, CITING VP GORE'S ELECTRONIC BILL OF RIGHTS, STEFANO RODOTA OF ITALY'S DP AGENCY SAID NEVERTHELESS THAT IF INDUSTRY SELF-REGULATION DOES NOT WORK, THE EU WOULD TAKE ACTIONS TO PROTECT THE PRIVACY OF ITS CITIZENS. HE ADDED THAT THE PRIVACY ACT WAS CREATED IN THE U.S., BUT NOW THE LEVEL OF PRIVACY PROTECTION IS HIGHER IN EUROPE THAN IN THE U.S. HE CITED THE U.S. LEGISLATIVE ACTIONS ON FINANCIAL AND MEDICAL DATA AS CLEAR INDICATORS THAT CURRENT PRIVACY PROTECTION IN THE U.S. IS INSUFFICIENT. FINALLY, HE EMPHASIZED THAT MUTUAL INTEGRATION OF U.S. AND EU PRIVACY POLICIES SHOULD CLEARLY BE A COMMON OBJECTIVE. CLAUDIO MANGANELLI, ALSO FROM ITALY'S DP AGENCY, SAID OVERLY STRINGENT DP REGULATION COULD END UP HARMING EU COMPANIES. HE THEREFORE SUGGESTED THAT, IN ADDITION TO CONTINUING EFFORTS TO CONVINCE THE U.S. TO SET UP A PRIVACY AGENCY, AN INTERNATIONAL BOARD SHOULD BE ESTABLISHED TO STRIKE A BALANCE BETWEEN U.S., EU AND ASIAN POSITIONS. PRIORITY ISSUES TO BE UNDERTAKEN BY THIS BOARD WOULD BE PERSONAL DATA

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PROTECTION, AUTHENTICATION OF ELECTRONIC TRANSACTIONS AND

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STRONG CRYPTOGRAPHY. GIVEN ESTIMATES IT IS NOW A $1.2 TRILLION BUSINESS, MANGANELLI URGED ALL PARTIES WORK TOGETHER TO AVOID DISRUPTION.

21. HONG KONG: STEPHEN LAU OF HONG KONG'S DP AGENCY, APPRECIATED THE DESCRIPTION OF THE U.S. ELECTRONIC BILL OF RIGHTS AND SAID HONG KONG WAS DEVELOPING A SIMILAR DOCUMENT. LAU BELIEVED DEVELOPMENTS IN THIS AREA SHOULD BE MARKET-DRIVEN AND LED BY THE PRIVATE SECTOR, BUT A REGULATORY FRAMEWORK WAS NECESSARY TO PROTECT CONSUMERS.

22. CANADA: EMPHASIZING THAT LEGISLATION ALONE CANNOT PROTECT PRIVACY, ONTARIO DP AGENCY HEAD ANN CAVOUKIAN SAID TECHNICAL TOOLS ARE ALSO NECESSARY. CAVOUKIAN CITED A RECENT "WIRED" SURVEY IN WHICH RESPONDENTS WERE ASKED WHETHER THEY WOULD PROVIDE PERSONAL DATA AS A PREREQUISITE TO ACCESS A WEBSITE. 94% OF RESPONDENTS WOULD DECLINE TO PROVIDE INFORMATION. ALSO IN THIS SURVEY, 40% OF RESPONDENTS SAID IN SUCH CASES THEY WOULD SIMPLY FABRICATE INFORMATION. GIVEN THIS APPARENTLY WIDESPREAD LACK OF CONSUMER TRUST OF WEB OPERATIONS, CAVOUKIAN SAID THE WORLDWIDE WEB CONSORTIUM HAS BEEN WORKING ON THE PLATFORM FOR PRIVACY PREFERENCES (P3P) STANDARD TO ALLAY THESE CONCERNS (NOTE: CAVOUKIAN STATED SHE HAD BEEN AN INVITED EXPERT ON ONE OF THE P3P COMMITTEES.) CAVOUKIAN THEN QUOTED PROFESSOR ELI NOAM, "DIFFERENT PARTIES WILL HAVE DIFFERENT PRIVACY PREFERENCES, OR 'INFORMATION PERMEABILITIES'." THEREFORE, TO CORRECT THE DEFICIENCIES OF A RESTRICTIVE STATE ROLE, P3P WOULD ALLOW INTERACTIVE NEGOTIATION BETWEEN A WEBSITE AND USER IN DETERMINING PRIVACY LEVEL. CAVOUKIAN ADDED THAT P3P INCLUDES THE OPTION OF WHOLE OR PARTIAL ANONYMITY. SHE CONCLUDED SUCH INNOVATIVE SOLUTIONS WOULD BE KEY TO OVERCOMING CONSUMER DISTRUST WHICH CURRENTLY MAY HAMPER E-COMMERCE DEVELOPMENT. EU COMMISSION REP BRUEHANN REPLIED THAT EFFECTIVE PRIVACY PROTECTION REQUIRES MORE THAN A TECHNICAL PLATFORM SUCH AS P3P -- ENFORCEABLE RULES ARE ALSO NEEDED WORLDWIDE. BRUEHANN ADDED THERE REMAINS MUCH WORK TO DO BEFORE THE P3P STANDARD WOULD BE ACCEPTABLE, BUT IT IS "NOT NECESSARILY LACKING IN VALUE. THESE NEW PLATFORMS ARE IN THEIR INFANCY AND NEED TO BE DEVELOPED FURTHER; THEY SHOULD NOT BE DISMISSED IMMEDIATELY."

23. NETHERLANDS: ON THE MARGINS OF THE CONFERENCE, A DUTCH CONSULTANT COMMENTED TO A USG OFFICIAL THAT THE EU DIRECTIVE WAS AN UNUSUALLY BLUNT INSTRUMENT FOR SUCH A DELICATE (YET FAR-REACHING) ISSUE AS CONTINUED INTERNATIONAL DATA FLOWS. GIVEN THE POTENTIAL PRICE OF STRICT ENFORCEMENT OF THE EU DIRECTIVE -- DISRUPTED INTERNATIONAL DATA FLOWS -- THE CONSULTANT BELIEVED 'EUROCRATS' WOULD HAVE TO RESOLVE TO WORK MORE CLOSELY WITH THE U.S. ON THIS ISSUE AND NOT CONTINUE WITH THREATENED RETALIATION, THAT IS, IF THEY DID NOT WANT TO RISK MAKING THE EU DIRECTIVE IRRELEVANT (I.E., IGNORED IN THE INTERESTS OF CONTINUING INTERNATIONAL DATA TRANSFERS).

24. EU CONSULTANT REIDENBERG: JOEL REIDENBERG, FORDHAM UNIVERSITY LAW PROFESSOR AND CONSULTANT TO THE EU COMMISSION, OFFERED THE FOLLOWING COMMENTS AS PART OF HIS PRESENTATION, WHICH CAN BE DOWNLOADED FROM HIS WEBPAGE AT HTTP://HOME.SPRYNET.COM/SPRYNET/REIDENBERG

A) CRUCIAL STAGE IN INTERNATIONAL DATA TRANSFERS -- INTERNATIONAL DATA FLOWS ARE FORCING DIVERGENT DATA PROTECTION POLICIES TO CONFRONT EACH OTHER WITH EVER GREATER

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FREQUENCY;
-- WITH THE ROBUST GROWTH OF THE INTERNET IN THE LAST TWO YEARS, THIS IS THE MOST SIGNIFICANT ERA FOR INTERNATIONAL FLOWS OF PERSONAL INFORMATION SINCE THE ADVENT OF COMPUTERS IN THE 1970S;
-- THERE ARE SIGNIFICANT QUALITATIVE, AS WELL AS QUANTITATIVE, TRENDS IN DATA TRANSFERS, INCLUDING: CLICKSTREAM DATA (MORE ROBUST THAN TYPICAL TRANSACTION DATA

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FROM ELECTRONIC TRANSACTION OR PHONE CALL); MULTINATIONAL SOURCING; DATA WAREHOUSING AND DATA CREEP (STORAGE COSTS DIMINISHING IN LINE WITH DECLINING COMPUTING COSTS); PRESSURES FOR SECONDARY USE AND PROFILING. REIDENBERG CONCLUDED THESE TRENDS WOULD "DESTABILIZE" THE FAIR TREATMENT OF PERSONAL INFORMATION.
-- FURTHERMORE, HE BELIEVED CONFLICTING SYSTEMS OF DATA PROTECTION POSED A CENTRAL PROBLEM FOR INTERNATIONAL DATA FLOWS. "IF DATA PROTECTION IS TAKEN SERIOUSLY, THEN SYSTEMIC LEGAL CONFLICTS SHOULD CAUSE DISRUPTION OF INTERNATIONAL DATA FLOWS."
-- REGARDING THE UNITED STATES, "EUROPE HAS JUSTIFICATION TO RESTRICT PROCESSING OF PERSONAL INFORMATION ON THE BASIS OF THE NARROW, BUT RARE AMERICAN LEGAL RIGHTS AND U.S. RELIANCE ON SELF-REGULATION THAT HAS PROVEN ITSELF INEFFECTIVE."
-- THUS, THE CURRENT INTERNATIONAL ENVIRONMENT SUGGESTS A CRUCIAL STAGE FOR PRIVACY PROTECTION AND INTERNATIONAL DATA FLOWS. OECD AND THE COUNCIL OF EUROPE ARE ALREADY INVOLVED IN PROMOTING INTERNATIONAL COOPERATION AND CONSENSUS. NEW ENTRANTS TO INTERNATIONAL DATA PROTECTION POLICY INCLUDE THE WTO, WIPO, AS WELL AS NUMEROUS TECHNICAL STANDARDS BODIES (E.G., W3C, INTERNET SOCIETY, IANA, INTERNET ENGINEERING TASK FORCE).

B) INSTRUMENTS FOR INTERNATIONAL COOPERATION; REIDENBERG PROPOSED THE FOLLOWING THREE INSTRUMENTS AS POSSIBLE VENUES TO ENHANCE INTERNATIONAL CO-EXISTENCE, IF NOT HARMONIZATION, OF DATA PROTECTION STANDARDS.
-- GENERAL AGREEMENT ON INFORMATION PRIVACY: REIDENBERG SUGGESTED THE 1947 GATT AS A MODEL FOR EFFECTIVE INTERNATIONAL COOPERATION WHICH COULD FACILITATE CO-EXISTENCE OF DIFFERING REGIMES AND PROMOTE HARMONIZATION OF STANDARDS OVER THE LONGER TERM.
-- TECHNICAL CODES OF CONDUCT ('PRIVATE INDUSTRY SOLUTIONS'): REIDENBERG SAID STANDARDS DECISIONS ARE EFFECTIVELY A MIX OF TECHNICAL ISSUES AND POLICY CHOICES AND MUST THEREFORE BE TREATED LIKE CODES OF CONDUCT BY DATA PROTECTION AUTHORITIES. REIDENBERG FURTHER STATED ARTICLE 29 OF THE EU DIRECTIVE INCLUDED PROCEDURES FOR THE APPROVAL OF SUCH CODES OF CONDUCT.
-- MULTI-INTEREST PRIVACY SUMMITS: GIVEN THE RAPID DEVELOPMENT OF THE ON-LINE ENVIRONMENT, REIDENBERG BELIEVED NATIONAL GOVERNMENTS SHOULD MEET REGULARLY WITH INDUSTRY, PRIVACY ADVOCATES AND INDEPENDENT EXPERTS. HE CITED THE FEBRUARY 1998 OECD PRIVACY WORKSHOP AND JUNE 1998 WHITE HOUSE PRIVACY CONFERENCE AS EXAMPLES.

C) STRATEGIES AND PARTNERS FOR INTERNATIONAL COOPERATION; REIDENBERG SAID THERE WAS A NEED TO PURSUE BOTH 'EMISSARY' AND 'ADVOCACY' STRATEGIES TO SUCCESSFULLY DEVELOP AND COORDINATE INTERNATIONAL PRIVACY STANDARDS.
-- EMISSARY ROLE: SHARE FIELD EXPERIENCE (LIKE THIS MEETING); INCREASE PARTICIPATION IN INTERNATIONAL ORGANIZATIONS
-- ADVOCACY ROLE: INVOLVES THE ACTIVE PROMOTION OF SPECIFIC PRIVACY STANDARDS; MORE CONFRONTATIONAL ROLE; REQUIRES MORE CONCERTED EFFORT IN DIVIDING RESPONSIBILITIES BECAUSE NO ONE

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DP AGENCY CAN FOCUS ON ALL OF THESE PRIORITIES: NEED FOR COLLECTIVE PRESS RELEASES

25. SWITZERLAND: SWISS DP DIRECTOR JEAN PHILIPPE WALTER SAID ARTICLE 12 OF THE EU DIRECTIVE REGULATED TRANSBORDER DATA TRANSFER, PROHIBITING IT IF THERE WERE INSUFFICIENT PROTECTION. HE NOTED TWO EXCEPTIONS: UNDER CERTAIN CONDITIONS, DATA TRANSFER IS PERMISSIBLE IF NATIONAL LEGISLATION HAS SPECIFIC COVERAGE FOR SPECIFIC INFORMATION (ART. 12.3), AND IF THE COUNTRY HAS DEMONSTRATED IT HAS SUFFICIENT PRIVACY PROTECTION CONTROLS. WALTER RECOMMENDED THE FOLLOWING STEPS BE TAKEN INTERNATIONALLY: THE DIRECTIVE WORKING GROUPS SHOULD CONTINUE THEIR EFFORTS TO RESOLVE DIFFERING VIEWS; REGULATION IN THE POLICE AND MEDICAL SECTORS NEEDED TO BE REINFORCED; AND THE COUNCIL OF EUROPE

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ROLE SHOULD BE ENHANCED, ESPECIALLY WITH RESPECT TO DEVELOPING TIES WITH THIRD COUNTRIES.

26. PORTUGAL: JOAQUIM DE SEABRA LOPES WAS PLEASED TO HEAR THE USG WAS WORKING WITH THE EU ON DEVELOPING SUFFICIENT PRIVACY PROTECTION FOR INTERNATIONAL DATA FLOWS. HE QUOTED FROM VP GORE'S ELECTRONIC BILL OF RIGHTS AND SAID, IF IT WERE TRUE, THEN IT WAS A BIG STEP FORWARD.

27. UK: THE UK DP REPRESENTATIVE SAID THE IDEA OF AN INTERNATIONAL AGREEMENT ON INFORMATION TRANSFERS HAD BEEN RAISED IN THE PAST AS A POSSIBLE AVENUE OF PROGRESS. HE ASKED WHAT WAS THE PROPER FORUM AND HOW COULD IT BE STARTED? EU CONSULTANT REIDENBERG SUGGESTED THE GATT AS A MODEL, WITH THE CAUTION THAT USING THE GATT MODEL WOULD BE "RISKY" SINCE IT IS A TRADE FORUM (I.E., COMMERCE, NOT PRIVACY-FOCUSED), BUT THE WTO HAS INCREASINGLY BEEN LOOKING AT STANDARDS AND OTHER ISSUES THAT AFFECT TRADE. ALSO, COUNTRY DELEGATIONS AND A FRAMEWORK ARE ALREADY IN PLACE THERE, ALTHOUGH MEMBER COUNTRIES' DP AUTHORITIES ARE NOT CURRENTLY REPRESENTED. UK DP AGENCY HEAD ELIZABETH FRANCE SAID THE UK IS ALSO WARY OF ESTABLISHING OVERLY STRICT REQUIREMENTS. SHE SAID THE UK HAS ADOPTED AN APPROACH THAT MAY BE A POSSIBLE WAY FORWARD. SPECIFICALLY, BRITISH STANDARD 77/99 HAS BEEN ESTABLISHED AS A CERTIFICATION PROCESS, INCLUDING THE CREATION OF A CERTIFICATION BODY, TO PROVIDE ADEQUATE PRIVACY PROTECTION. IN PRACTICE, AUDITS WILL BE ABLE TO BE PERFORMED AGAINST THIS STANDARD. SHE NOTED THOUGH THIS STANDARD COULD BE FOUND TO BE BURDENSOME BY SMALL AND MEDIUM COMPANIES.

WTO

28. SPAIN: DEPUTY DP DIRECTOR MAR MARTINEZ SAID THE RECENT HACKER BREAK-IN TO U.S. DOD COMPUTER NETWORKS WAS AN INDICATION OF A GROWING TREND AND UNDERSCORED THE URGENT NEED TO ESTABLISH ADEQUATE DATA PROTECTION. MARTINEZ REVIEWED SPAIN'S RELATIVELY DETAILED APPLICABLE LAW, INCLUDING THE DIFFERENT DATA PROTECTION REQUIREMENTS WHICH CORRESPONDED TO VARYING LEVELS OF PRIVACY PROTECTION.

COMMENT

29. ALTHOUGH CONFERENCE PARTICIPANTS GENERALLY AGREED DIALOGUE SHOULD CONTINUE, MOST RECOGNIZED THE POSSIBILITY THERE MAY NOT BE A RAPID SOLUTION WITH RESPECT TO THE DIVERGENT U.S. AND EU POSITIONS. EU REPRESENTATIVES ACKNOWLEDGED THE ONGOING HIGH-LEVEL CONSULTATIONS BETWEEN WASHINGTON AND BRUSSELS WOULD CONTINUE WITH THE OBJECTIVE OF REACHING COMMON GROUND. POST WOULD BE INTERESTED IN KNOWING WASHINGTON'S POSITION VIS-A-VIS THIS PROPOSAL FOR A WTO-LIKE "GENERAL AGREEMENT ON INFORMATION PRIVACY."

30. THIS REPORTING CABLE HAS BEEN CLEARED BY U.S.

CLINTON LIBRARY PHOTOCOPY

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DELEGATION.

ROMERO

CLINTON LIBRARY PHOTOCOPY

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ACTION CIP-00

INFO	LOG-00	INLB-01	AID-00	AMAD-01	CIAE-00	INL-01	SRPP-00
	DS-00	EB-00	EUR-01	OIGO-01	UTED-00	FBO-01	FCC-01
	IMMC-01	TEDE-00	INR-00	L-01	ADS-00	NSAE-00	SS-00
	STR-00	USIE-00	ASDS-01	DSCC-00	DRL-04	G-00	NFAT-00
	SAS-00	/014W					

----------555887 171207Z /38

P 171205Z JUL 98
FM AMEMBASSY BONN
TO SECSTATE WASHDC PRIORITY 6511
INFO USDOC WASHDC PRIORITY
DOJ WASHDC
ALL EUROPEAN UNION POST COLLECTIVE
FRG COLLECTIVE

UNCLAS BONN 006916

USEU BRUSSELS FOR CHELMER
FCC FOR INTERNATIONAL BUREAU (CORNELL/HAAN)
STATE PLEASE PASS TO USTR (CORBETT)
STATE EB/TPP/BTA/DCT (O'BRIEN)
STATE FOR EB/CIP (FINTON)
STATE FOR EUR/AGS
DOJ COMPUTER CRIME DIVISION FOR BSHAVE
USDOC FOR NTIA/SHAW
USDOC 6320/TD/SE/OT/DENNY-BROWN
USDOC FOR 4212/MAC/GERMANY DESK
E.O. 12958: N/A
TAGS: ECPS, EINT, KCRM, KJUS, EUN, GM
SUBJECT: GERMAN WIRETAPPING PROPOSAL SHELVED

REF: BONN 06494

WIRETAPPING PROPOSAL COLLAPSES UNDER INDUSTRY PRESSURE

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1. UNDER OVERWHELMING PRESSURE FROM INDUSTRY, THE ECONOMICS MINISTRY CANCELLED A HEARING PLANNED FOR MID JULY ON THE PROPOSED WIRETAPPING ORDINANCE TO THE 1996 TELECOMS LAW (REFTEL) AND SHELVED THE ISSUE UNTIL AFTER THE SEPTEMBER ELECTIONS. MINISTRY CONTACTS TOLD EMBOFFS THERE WAS NO LONGER NEED FOR A HEARING, AS INDUSTRY HAD ALREADY VOCIFEROUSLY REGISTERED ITS OBJECTIONS. HORST EHRENSPERGER, ASSISTANT SECRETARY FOR TELECOMMUNICATIONS AND POST AT THE ECONOMICS MINISTRY, COMMENTED THAT THE TELECOMMUNICATIONS ACT OF 1996, WHICH OUTLINES REQUIRED ORDINANCES, MIGHT NEED TO BE AMENDED. INDUSTRY CONTACTS, HOWEVER, ARE FEARFUL THAT OPENING DEBATE ON AMENDING THE ACT MIGHT LEAD, UNDER A NEW GOVERNMENT, TO FURTHER AMENDMENTS THAT COULD CRIPPLE A LAW WIDELY REGARDED AS THE WORLD'S MOST LIBERAL TELECOMMUNICATIONS ACT.

COMMENT

---

2. (SBU) EHRENSPERGER TOLD EMBOFFS THAT HE GOT A WICKED TONGUE-LASHING FROM MINISTER REXRODT OVER THE ORDINANCE AND THE BAD PRESS IT GENERATED FOR THE MINISTRY. THIS DEBACLE MIGHT BE A LESSON TO THE MINISTRY TO KEEP ITS EAR CLOSER TO THE GROUND. END COMMENT.

KORNBLUM

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Printed By: Jeffery E. Zinsmeister

ACTION EB-00

INFO LOG-00 CIAE-00 CIP-00 SRPP-00 EAP-01 EUR-01 UTED-00
FCC-01 IMMC-01 TEDE-00 INR-00 ADS-00 NSAE-00 SSO-00
SS-00 STR-00 USIE-00 SAS-00 /004W
----------55CF74 191237Z /49

O 191012Z JUL 98
FM USEU BRUSSELS
TO SECSTATE WASHDC IMMEDIATE
INFO USDOC WASHDC IMMEDIATE
WHITE HOUSE WASHDC
ALL EUROPEAN UNION POST COLLECTIVE
AMEMBASSY TOKYO

UNCLAS SECTION 01 OF 02 BRUSSELS 004519

SENSITIVE

STATE PASS USTR FOR ABELSON
STATE FOR EB/CIP, EB/TPP/O'BRIEN AND EUR/ERA
USDOC FOR NTIA - BURR
USDOC FOR ITA - WELLBERY
WHITE HOUSE FOR MAGAZINER

E.O. 12958: N/A
TAGS: EINT, ECPS, EUN
SUBJECT: ELECTRONIC COMMERCE: EU COMMISSION FRUSTRATED WITH US APPROACH TO THE GLOBAL BUSINESS DIALOGUE (GBD)

REF: BRUSSELS 4174

UNCLASSIFIED

BRUSSELS 01 OF 02 4519

1. (U) SENSITIVE BUT UNCLASSIFIED - PROTECT ACCORDINGLY. PLEASE DO NOT DISTRIBUTE OVER THE INTERNET OR IN OTHER PUBLIC CHANNELS.

2. (SBU) SUMMARY: ACCORDING TO A WELL-PLACED COMMISSION OFFICIAL, THE COMMISSION WILL NO LONGER ACTIVELY SEEK US SUPPORT FOR THE GLOBAL BUSINESS DIALOGUE (FORMERLY THE INTERNATIONAL CHARTER), BUT WILL LEAVE IT UP TO THE PRIVATE SECTOR TO CONVINCE THE USG TO SIGN ON. THE COMMISSION APPLAUDS THE SUBSTANCE OF THE NEW "US-JAPAN BUSINESS COUNCIL" INITIATIVE ON E-COMMERCE, BUT IS INCENSED THAT IT DID NOT TAKE ACCOUNT OF THE GBD. THE COMMISSION RECOGNIZES THAT IN ORDER FOR THE GBD TO BE A SUCCESS, IT HAS TO BE AN OPEN, DEMOCRATIC PROCESS. SOME US FIRMS, HOWEVER, CONTINUE TO COMPLAIN THAT MANAGEMENT OF THE GBD IS A CLOSED SHOP. END SUMMARY.

3. (SBU) ACCORDING TO DETLEF ECKERT, SENIOR ADVISER TO THE DIRECTOR GENERAL OF COMMISSION DG XIII (TELECOMS & INFO TECH), COMMISSIONER BANGEMANN AND OTHER SENIOR COMMISSION OFFICIALS HAVE CONCLUDED THAT THERE IS NO USE IN THEIR ACTIVELY SEEKING US GOVERNMENT SUPPORT FOR THE GLOBAL BUSINESS DIALOGUE (GBD)(FORMERLY THE INTERNATIONAL COMMUNICATIONS CHARTER). ECKERT SAID THAT BANGEMANN IS STILL FRUSTRATED ABOUT HIS JUNE 22 MEETING WITH US COMMERCE SECRETARY DALEY, IN WHICH HE WAS UNABLE TO CONVINCE THE SECRETARY OF THE VALUE OF THE CHARTER.

4. (SBU) ECKERT SAID COMMISSION OFFICIALS HAVE CONCLUDED THAT THERE ARE SUCH FUNDAMENTAL DIFFERENCES BETWEEN THE EU AND THE US APPROACHES TO A GLOBAL STRATEGY FOR E-COMMERCE THAT COMMUNICATION BETWEEN THEM IS IMPOSSIBLE.

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CONSEQUENTLY, THE COMMISSION WILL HELP THE GBD TO MOVE FORWARD AND WILL SEE WHAT HAPPENS. IF IT PROVES TO HAVE VALUE, THEN INDUSTRY AND OTHER PARTIES WILL SIGN ON, AND THE PRIVATE SECTOR WILL THEN CONVINCE THE USG TO JOIN UP. HE SAID THE COMMISSION RECOGNIZES THAT THE US GOVERNMENT WILL ONLY SUPPORT THE GBD IF US INDUSTRY REQUESTS USG SUPPORT.

5. (SBU) ECKERT REPORTED THAT COMMISSION OFFICIALS WERE INCENSED BY A RECENT E-COMMERCE INITIATIVE BY THE "US-JAPAN BUSINESS COUNCIL." HE SAID COMMISSION OFFICIALS APPLAUDED THE SUBSTANCE OF THE INITIATIVE, AND THE WAY IT WAS ORGANIZED, BUT WERE INDIGNANT THAT IT DID NOT ONCE MENTION THE GLOBAL BUSINESS DIALOGUE. ECKERT ASSERTED THAT THE US-JAPANESE INITIATIVE WAS EXACTLY WHAT THE COMMISSION AND EUROPEAN INDUSTRY HAD BEEN WORKING TO DEVELOP, FIRST WITH THE CHARTER INITIATIVE, THEN WITH THE GBD. COMMISSION OFFICIALS WONDER WHY THE EUROPEAN EFFORTS COULD NOT HAVE RECEIVED SOME RECOGNITION. HE SAID THE COMMISSION HAD COMPLAINED TO JAPAN ABOUT THIS, AND WILL RAISE IT WITH US OFFICIALS AS WELL.

6. (SBU) ECKERT ACKNOWLEDGED THAT THE STEERING COMMITTEE AND OTHER MANAGEMENT MECHANISMS FOR THE GBD NEED TO BE MORE DEMOCRATIC, OPEN AND TRANSPARENT. HE SPECULATED THAT IT MIGHT MAKE SENSE TO HAVE THE INITIAL STEERING COMMITTEE BE AN INTERIM BODY, WITH A BINDING AGREEMENT THAT ITS MEMBERS WOULD STEP DOWN AFTER THE GBD MEETING THAT WILL BE HELD IN THE FIRST HALF OF 1999. HE QUICKLY ADDED, HOWEVER, THAT THIS WAS A MATTER FOR THE FIRMS INVOLVED IN SETTING UP THE STEERING COMMITTEE. HE INDICATED THAT THE FIRST FORMAL MEETING OF THE STEERING COMMITTEE, AT WHICH IT WILL ANNOUNCE ITS PLANS FOR THE 1999 GBD MEETING, WILL BE HELD IN NEW YORK IN SEPTEMBER.

7. (SBU) COMMENT: ECKERT'S REMARKS PROBABLY REFLECT A GOOD DEAL OF PERSONAL FRUSTRATION, GIVEN HIS CLOSE INVOLVEMENT WITH THE CHARTER AND THE GBD. NEVERTHELESS, SIMILAR POINTS MAY BE RAISED BY COMMISSION OFFICIALS DURING NEXT WEEK'S INFORMATION SOCIETY DIALOGUE. POST CONTINUES TO HEAR COMPLAINTS FROM SOME US FIRMS -- INCLUDING SOME WHICH PARTICIPATED IN THE JUNE 29 LAUNCH OF THE GBD -- ABOUT THE LACK OF TRANSPARENCY AND OPENNESS IN THE GBD AND ITS STEERING COMMITTEE. US FIRMS ARE MAKING THEIR VIEWS KNOWN TO THE COMMISSION AND, WE UNDERSTAND, TO THE GERMAN FIRM BERTELSMANN, WHICH IS RUNNING THE STEERING COMMITTEE, BUT SO FAR THERE ARE NO INDICATIONS THAT THEIR COMPLAINTS ARE HAVING ANY EFFECT. (DRAFTED:ECON:CHELMER)

BRUSSELS 02 OF 02 4519

KURSCH

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax	To Ira Magaziner from Richard Mills re: U.S. - Irish Communique (2 pages)	07/31/98	P5
002. fax	To Ira Magaziner from Richard Mills re: U.S. - Irish Communique (1 page)	07/22/98	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13122

FOLDER TITLE:
U.S. - Ireland E-Commerce Agreement

Rhonda Wilson

rw127

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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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POLITICAL ECONOMIC OFFICE

EMBASSY OF THE UNITED STATES OF AMERICA
42 ELGIN ROAD
BALLSBRIDGE
DUBLIN 4
IRELAND
Telephone Number: 353-1-668-8054

FAX COVER SHEET

TO:	FROM:
Ira Magaziner	Richard M. Mills
The White House	Pol/Econ Officer
total pgs: 2	
Fax: 202-456-5581	Fax: 353-1-667-0056

Date: July 31, 1998

Ira: Latest on U.S.-Irish Communiqué.

We still have two outstanding issues with the Irish:

1. *On the "customs duties moratorium" language, A/S Brendan Touhy met with Minister of Finance today to try and get Finance to accept our language on the moratorium. No result was reached; the Finance Minister promised to get back to Touhy by Tuesday morning (Monday is an Irish holiday). Touhy's readout is that Finance is still opposed; Touhy is willing to take the issue to higher level (the PM); I told him that was an Irish call but that we needed a response ASAP; Touhy understands that this is a crucial component of the communiqué to us.*

2. *On the content language the Irish proposed, I met with Irish Department of Justice today. Justice remains committed to including a statement on illegal content – a focus of the Irish government over the last several months. Irish are proposing the following sentence in an effort to meet our criticism that the earlier language was vague and implied government had lead in patrolling the Internet for illegal content which raises free speech concerns for*

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us. The new language: "Industry, through self-regulation, should establish effective measures to counter the proliferation of illegal content on the Internet"

Does this language meet your concerns? Let me know.

I will call you Tuesday afternoon on the moratorium issue.

Rick Mills

Number of Pages Including this Cover Sheet:

CLINTON LIBRARY PHOTOCOPY

POLITICAL ECONOMIC OFFICE

EMBASSY OF THE UNITED STATES OF AMERICA
42 ELGIN ROAD
BALLSBRIDGE
DUBLIN 4
IRELAND
Telephone Number: 353-1-668-8054

FAX COVER SHEET

TO:	FROM:
Mr. Ira Magaziner	Richard M. Mills
	Economic Officer
Fax: 456-5581	Fax: 353-1-667-0056

Date: July 22, 1998

Ira:

I spoke with A/S Brendan Touhy late today about the status of the Irish review of our latest version of draft communique. Irish trade ministry lawyers are balking at the word "will" in the phrase "the current practice of not imposing customs duties....will continue." Lawyers here interpret will to mean "shall" and (illogically) fear Ireland will "violate" the communique if the WTO decides not to continue the moratorium. Went back and forth. Can we live with substituting "shall" for "will" in this sentence, which seems to calm the lawyers' feurs?

Irish also still want to find language that allows them to keep in the sentence "Governments should encourage self-regulation of industry and the establishment of effective measures to counter the proliferation of illegal content on the internet." I explained our concerns about the vagueness of "illegal" and free speech issue. They took on board and will tell me tomorrow if they will let issue drop or try again. I urged need to resolve this quickly. Other Irish concerns we were able to resolve without changes to the text.

Irish concur in using POTUS visit to announce communique and will work with us to find a good, high-profile venue for an announcement. Rick

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From USEU Brussels, re: U.S. - EU Agenda - C (2 pages)	11/06/97	P1/b(1)
002. cable	From FBIS re: Economy Minister Opposes US Regulations on Electronic Trade (2 pages)	11/11/97	P1/b(1)
003. cable	From AIT Taipei re: Taiwan and Sectoral Liberalization (2 pages)	11/11/97	P5
004. cable	From FBIS re: Internet Rules Must Suit Social Background (2 pages)	11/04/97	P1/b(1)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13123

FOLDER TITLE:
Australia [1]

Rhonda Wilson

rw48

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]
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EEC Taiwan

/LAN: 11/11/97 9:07 PM

TAIWAN AND SECTORAL LIBERALIZATION
440

UNCLASSIFIED

PAGE 01 AIT TA 05282 00 OF 02 111115Z
ACTION STR-00

INFO LOG-00 ACDA-08 ACDE-00 AID-00 AIT-03 AMAD-01
CIAE-00 CTME-00 OASY-00 DODE-00 ITCE-00 EAP-01
EB-00 EXME-00 E-00 UTED-00 FRB-00 H-01 TEDE-00
INR-00 IO-00 ITC-01 JUSE-00 ADS-00 NSAE-00 OIC-02
OMB-01 OPIC-01 CIO-00 SP-00 SSO-00 SS-00
TRSE-00 USIE-00 DRL-04 G-00 /023W
----------F9834B 111116Z /38 P 111115Z NOV 97
FM AIT TAIPEI
TO SECSTATE WASHDC PRIORITY 5465
INFO ASIAN PACIFIC ECONOMIC COOPERATION
DEPT OF AGRICULTURE WASHDC
USDOC WASHDC
USMISSION GENEVA

UNCLAS TAIPEI 005282

DEPT PASS TO AIT/W AND USTR

DEPT FOR EAP/RSP/TC AND EAP/EP

USTR FOR AUSTR PHILLIPS

GENEVA FOR USTR

USDOC FOR 3132/USFCS/OIO/EAP/ADAVENPORT
USDOC FOR 4420/ITA/IEP/AP/OCEA/DFORREST
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PAGE 02 AIT TA 05282 00 OF 02 111115Z

USDA FOR FAS/ITP/SHEIKH/CURTIS

SENSITIVE

E.O. 12958: N/A
TAGS: APECO, ETRD, EAGR, WTRO, OVIP, TW
SUBJECT: TAIWAN AND SECTORAL LIBERALIZATION

REF: A. STATE 211787, B. STATE 197941, C. TAIPEI 4747

1. (U) SENSITIVE BUT UNCLASSIFIED. PLEASE HANDLE ACCORDINGLY.

2. (SBU) SUMMARY: OF THE DOZEN SECTORS IDENTIFIED REF A, TAIWAN UNCONDITIONALLY SUPPORTS TWO (ENVIRONMENTAL EQUIPMENT/SERVICES AND GEMS/JEWELRY); SUPPORTS ONE IN PRINCIPLE (TELECOMMS MRA); PARTIALLY OR CONDITIONALLY SUPPORTS FIVE (ENERGY, CHEMICALS, FOREST PRODUCTS, OILSEEDS, AND TOYS), AND DOES NOT SUPPORT FOUR (MEDICAL EQUIPMENT, AUTOS, FOOD, FISH). TAIWAN STRONGLY SUPPORTS IN PRINCIPLE THE U.S. PROPOSALS ON ELECTRONIC COMMERCE AND BIOTECH, BUT WANTS TIME TO STUDY HOW THESE NEW INDUSTRIES SHOULD BE HANDLED. TAIWAN'S MINISTER OF ECONOMIC AFFAIRS REQUESTS A BILATERAL MEETING WITH USTR AMBASSADOR BARSHEFSKY IN VANCOUVER TO DISCUSS APEC ISSUES. END SUMMARY.

3. (U) IN RESPONSE TO REF A, ECON CHIEF AND ECON OFFICER MET ON NOVEMBER 10 WITH STEVE CHEN, DIRECTOR GENERAL OF TAIWAN'S BOARD OF FOREIGN TRADE (BOFT), AND BOFT STAFF TO
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UNCLASSIFIED

PAGE 03 AIT TA 05282 00 OF 02 111115Z
DISCUSS TAIWAN'S POSITION ON THE VARIOUS SECTORS PROPOSED FOR EARLY VOLUNTARY SECTORAL LIBERALIZATION (EVSL). A RUNDOWN FOLLOWS BELOW IN PARA 5.

SORRY, BUT EVSL HAS TO WAIT FOR WTO ACCESSION...

4. (SBU) IN A DINNER MEETING WITH LOCAL REPS FROM APEC MEMBER ECONOMIES ON NOVEMBER 5, CHEN PROVIDED A THUMBNAIL SKETCH OF TAIWAN'S CURRENT POSITION ON VARIOUS EARLY SECTORAL VOLUNTARY LIBERALIZATION PROPOSALS. AT THAT TIME, HE REITERATED A COMMON REFRAIN: THAT TAIWAN'S ABILITY TO PURSUE EVSL IN APEC IS "HANDICAPPED" BY THE FACT THAT IT IS STILL NEGOTIATING TO ACCEDE TO THE WTO. IT WAS DIFFICULT, SAID CHEN, TO ACCELERATE ITS WTO COMMITMENTS OR MAKE NEW ONES UNDER APEC INITIATIVES UNTIL IT WAS ASSURED OF ENTRY INTO THE WTO. HE SAID THAT BECAUSE OF THIS, TAIWAN WAS NOT SATISFIED WITH ITS OWN POSITION ON EVSL. LOOKING AROUND THE TABLE, HE SAID THAT TAIWAN'S OFFER WAS NONETHELESS "AMONG THE BEST" COMPARED TO OTHER APEC MEMBERS.

TAIWAN'S EVSL SCORECARD

5. (SBU) A QUICK RUNDOWN OF THE TAIWAN POSITION ON THE 12 SECTORS DISCUSSED REF A FOLLOWS BELOW:

-- ENVIRONMENTAL GOODS AND SERVICES: UNQUALIFIED SUPPORT;
UNCLASSIFIED

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PAGE 04 AIT TA 05282 00 OF 02 111115Z
TAIWAN IS A CO-SPONSOR.

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-- MEDICAL EQUIPMENT: DOES NOT SUPPORT.

-- MRA ON TELECOMMUNICATIONS: SUPPORTS IN PRINCIPLE.

-- ENERGY: CONDITIONAL/PARTIAL SUPPORT. IN PRIMARY ENERGY, TAIWAN SUPPORTS EARLY LIBERALIZATION OF COAL, URANIUM, PROPANE, BUTANES, AND ETHYLENE. IT DOES NOT SUPPORT LIBERALIZATION OF ENERGY EQUIPMENT.

-- CHEMICALS: CONDITIONAL/PARTIAL SUPPORT. EXCEPT FOR PHOSPHORIC ACID AND POLYPHOSPHORIC ACID, TAIWAN SUPPORTS GRADUAL TARIFF REDUCTIONS OVER SIX YEARS BEGINNING ON JANUARY 1, 1999.

-- AUTOS: DOES NOT SUPPORT.

-- FISH: DOES NOT SUPPORT.

-- FOREST PRODUCTS: CONDITIONAL/PARTIAL SUPPORT. TAIWAN SUPPORTS LIBERALIZATION OF HS CHAPTER 44, WITH THE EXCEPTION OF PLYWOOD, WITH TARIFFS TO BE ELIMINATED BY JANUARY 1, 2004. IT DOES NOT SUPPORT LIBERALIZATION OF HS CHAPTERS 46-49 OR 94.

-- OILSEEDS: CONDITIONAL/PARTIAL SUPPORT. TAIWAN SUPPORTS EVSL FOR OILSEEDS BUT NOT FOR OILSEED PRODUCTS.

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-- FOOD: DOES NOT SUPPORT BEYOND OILSEEDS ABOVE.

-- TOYS: CONDITIONAL/PARTIAL SUPPORT. TAIWAN SUPPORTS LIBERALIZATION BY 2005.

-- GEMS/JEWELRY: UNCONDITIONAL SUPPORT. TAIWAN IS A CO-SPONSOR.

E-COMMERCE AND BIOTECH

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6. (SBU) WHEN ASKED ABOUT THE U.S. PROPOSAL ON E-COMMERCE, STEVE CHEN REITERATED TAIWAN'S STANCE AS CONVEYED DURING THE VISIT TO TAIPEI BY AUSTR DON PHILLIPS (REF C). IN ESSENCE, TAIWAN IS STRONGLY SUPPORTIVE IN PRINCIPLE OF THE U.S. E-COMMERCE PROPOSAL, BUT BECAUSE IT IS A "NEW SUBJECT", TAIWAN "NEEDS TIME TO REFLECT" AND IS THEREFORE SUPPORTIVE OF THE AUSTRALIAN PROPOSAL TO SET UP A TASK FORCE TO STUDY THE IMPLICATIONS OF THE U.S. PLAN. CHEN SAID THE ONLY REAL CONCERNS TAIWAN HAD WAS OVER THE SECURITY OF ELECTRONIC TRANSACTIONS AND IN THIS LIGHT, SAID U.S. EXPORT CONTROLS ON ENCRYPTION TECHNOLOGY MIGHT BE A PROBLEM.

7. (SBU) CHEN ALSO SAID TAIWAN IN PRINCIPLE SUPPORTED THE U.S. APPROACH ON BIOTECHNOLOGY, SAYING PROMOTION OF THIS SECTOR WAS VITAL TO FUTURE FOOD SECURITY. HE CAVEATED THIS SUPPORT, HOWEVER, BY SAYING TAIWAN'S COUNCIL OF AGRICULTURE BELIEVED IT MIGHT BE NECESSARY TO HAVE LABELING REQUIREMENTS FOR FOODS CONTAINING BIOTECH

UNCLASSIFIED

PRODUCTS. CHEN REITERATED THAT BIOTECH WAS ALSO A NEW INDUSTRY AND THEREFORE REQUIRED FURTHER STUDY.

REQUEST FOR BILATERAL WITH AMBASSADOR BARSHEFSKY

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8. (SBU) DURING THE MEETING, CHEN REITERATED A REQUEST MADE IN EARLY OCTOBER BY MINISTER OF ECONOMIC AFFAIRS WANG CHIH-KANG DURING THE VISIT OF AUSTR DON PHILLIPS (REF C) TO MEET BILATERALLY WITH USTR AMBASSADOR BARSHEFSKY DURING THE UPCOMING LEADERS MEETING IN VANCOUVER. MINISTER WANG IS SEPARATELY SEEKING A MEETING WITH AMBASSADOR BARSHEFSKY IN EARLY DECEMBER IN WASHINGTON TO DISCUSS WTO ISSUES (SEPTEL); THE MEETING IN VANCOUVER, CHEN SAID, WOULD BE LIMITED TO APEC MATTERS.
MORIARTY

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cover sheet	Re: meeting (partial) (1 page)	09/30/97	P3/b(3)
002. cable	From SecState to USEU Brussels re: Country Clearance Request (1 page)	09/10/97	P1/b(1)
003. cable	From SecState to USEU Brussels re: Country Clearance Request (1 page)	09/10/97	P1/b(1)
004. cable	From AmEmbassy Brussels re: Electronic Commerce: Building Support in Belgium (partial) (1 page)	03/06/98	P5
005. cable	From AmEmbassy Brussels re: Electronic Commerce: Belgian Questions (partial) (1 page)	03/06/98	P5
006. cable	From AmEmbassy Brussels re: Belgium and Electronic Commerce (3 pages)	02/13/98	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13123

FOLDER TITLE:
Belgium

Rhonda Wilson

rw49

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]
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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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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PRIVATE SECTOR/PRESS

7. (SBU) GIVEN THE BELGIAN GOVERNMENT'S GENERAL TENDENCY TO CONTROL AND REGULATE AND THE SKEPTICISM AND EVEN SUSPICION ABOUT USG POSITIONS ON ECOMMERCE WHICH EXISTS (IN PART AS A RESULT, WE ARE TOLD, OF HOW THE COMMISSION MANAGED THE NEGOTIATION OF THE DECEMBER 1997 US-EU STATEMENT OF PRINCIPLES ON ECOMMERCE), TO DEVELOP SUPPORT FOR THE USG APPROACH WE NEED TO BUILD A STRONG CONSTITUENCY IN THE BELGIAN BUSINESS SECTOR AND ENCOURAGE ITS ACTIVE ENGAGEMENT WITH THE GOVERNMENT. WE ALSO NEED TO EDUCATE THE PRESS, SO THAT IT MORE ACCURATELY REFLECTS US IDEAS. WHILE WE WILL CONTINUE OUR BILATERAL APPROACHES TO TAKE THE MESSAGE TO THE GOVERNMENT, OUR PRIVATE SECTOR CONTACTS HERE TELL US THAT THE GOVERNMENT WILL BE MORE OPEN TO THE MESSAGE IF IT IS REINFORCED BY BELGIAN SOURCES.

8. (U) TO MAKE THE MOST OF MR. MAGAZINER'S PRESENCE HERE FOR TMAB, THE EMBASSY PROPOSES THE FOLLOWING POSSIBLE ADDITIONAL ACTIVITIES:

O SYMPOSIUM WITH EU OFFICIALS/BUSINESS REPS: TMAB AND THE RELATED INTERNET APPLICATIONS FAIR WILL ATTRACT 20,000 VISITORS, AND THE OPENING CEREMONY WILL BE ATTENDED BY SENIOR BELGIAN AND EU POLICYMAKERS (INCLUDING THE BELGIAN PRIME MINISTER, WHO GAVE THE KEY NOTE ADDRESS LAST YEAR, AND SENIOR COMMISSION OFFICIALS). TO TAKE ADVANTAGE OF THE PRESENCE OF MR. MAGAZINER AND SENIOR EU OFFICIALS AND EU AND US BUSINESS REPS FOR TMAB, FABIT ALSO HAS OFFERED TO ARRANGE A SYMPOSIUM ON MAY 26. AN EXCHANGE OF VIEWS WITH SENIOR EU OFFICIALS AND BUSINESS REPS WOULD OFFER THE OPPORTUNITY TO RESPOND TO THE EU CHARTER PROPOSAL (ON WHICH WE HAVE FOUND VIEWS HERE TO BE ILL-FORMED AS YET).

O LUNCHEON AND OR/ROUNDTABLE DISCUSSION WITH REPRESENTATIVES OF KEY INDUSTRY GROUPS WHICH REPRESENT THE BROAD RANGE OF IT INDUSTRIES IN BELGIUM. (THESE INCLUDE BELTUG, THE ORGANIZATION OF BELGIAN TELECOM USERS AND A STAUCH DEFENDER OF FREE MARKETS AND COMPETITION; ICT, BESIG AND INSEA, REPRESENTING SMALL AND MEDIUM IT TELECOMS AND SOFTWARE MANUFACTURERS.) THE PURPOSE WOULD BE TO UNDERSCORE THE BENEFITS OF THE USG APPROACH TO BUSINESS AND ENCOURAGE THE BUSINESS SECTOR TO TAKE ITS VIEWS TO GOVERNMENT.

O THE EMBASSY WOULD ARRANGE AN EXCLUSIVE, IN-DEPTH INTERVIEW WITH THE LEADING BELGIAN BUSINESS PRESS AND/OR MAJOR WEEKLIES, WHICH WOULD ALLOW US AN OPPORTUNITY TO UNDERSCORE THE BENEFITS OF THE USG APPROACH TO THE PUBLIC JUST AS THE GOVERNMENT IS LAUNCHING ITS SERIES OF NATIONWIDE COLLOQUIA ON THE INFORMATION SOCIETY.

O GIVEN BRUSSELS' STATUS AS A CENTER FOR BUSINESS OPERATIONS IN EUROPE, AMCHAM INCLUDES BROAD EUROPEAN REPRESENTATION. THE MESSAGE DELIVERED IN AN ADDRESS OR

BRUSSELS 03 OF 03 1379

EUROPEAN COMMISSION/BELGIAN GOVERNMENT CONTACTS

9. (SBU) USEU PROPOSES THAT WHILE IN BRUSSELS, MR. MAGAZINER COULD ALSO PURSUE DISCUSSIONS ON ECOMMERCE ISSUES WITH EU COMMISSION OFFICIALS. WHILE IT IS DIFFICULT TO JUDGE PRECISELY WHERE WE WILL BE ON SPECIFIC ISSUES AT THAT TIME, THE LATE MAY TIMEFRAME MAY BE A GOOD PERIOD TO DISCUSS ELECTRONIC AUTHENTICATION, AS THE UK PRESIDENCY HOPES TO REACH AGREEMENT WITHIN THE EU ON A POSSIBLE DIRECTIVE ON THIS

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7. (SBU) AFTER THE SESSION WITH MS. BURR, DE CROMBRUGGHE CALLED THE EMBASSY TO EXPRESS THANKS FOR THE MEETING AND TO PROVIDE HIS ASSESSMENT OF THE DISCUSSION. THE MEETING HAD BEEN SUCCESSFUL IN "PLACATING TO SOME EXTENT AND BLUNTING THE SHARPEST EDGES OF BELGIAN OFFICIALS' CONCERNS" WITH USG POSITIONS, HE SAID. IT ALSO ILLUSTRATED, HE BELIEVED, THAT "YOU (AMERICANS) MAY PUT THE EMPHASIS ON LETTING THINGS GO (TO THE PRIVATE SECTOR), BUT EXACTLY THE SAME CONCERNS AND EXACTLY THE SAME INCLINATION TO INTERVENE EXIST." THE USG POSITION IS NOT AS LIBERAL AS IT SEEMS; THE USG, FOR EXAMPLE, HAS PROPOSED A HIGHLY "INTRUSIVE" MANDATORY USE OF SOFTWARE BY ALL MERCHANTS WHICH WOULD AUTOMATICALLY INFORM A PURCHASER'S STATE OF RESIDENCE OF HIS PURCHASE AND THE TAX HIS STATE WAS DUE ON IT. THERE IS A LOT THAT GOVERNMENTS HAVE TO DO TO ADAPT THEIR POLICIES TO THE NEW REALITIES OF E-COMMERCE, DE CROMBRUGGHE MAINTAINED. WHEREAS THE USG STATES THAT "GOVERNMENT SHOULD NOT INTERVENE, WE BELIEVE THAT GOVERNMENTS SHOULD INTERVENE AND cIANGE THEIR WAYS -- REMOVE THE BARRIERS IN THE EXISTING LEGAL FRAMEWORK THAT IMPEDE GROWTH OF E-COMMERCE. OUR PURPOSE IS TO REMOVE THEM AND TO REMOVE THEM YOU NEED GOVERNMENT ACTION -- TO ENCOURAGE LEGISLATIVE CHANGES, FOR EXAMPLE."

8. (SBU) ON THE OTHER HAND, DE CROMBRUGGHE CONTINUED, CONSUMERS HAVE JUSTIFIABLE CONCERNS WHEN THEIR PERSONAL DATA ARE BEING SENT "ALL AROUND THE WORLD," OR IF GOODS PURCHASED ON THE INTERNET DO NOT MEET THE STANDARDS ADVERTISED. "CONSUMERS NEED RECOURSE, AND YOU NEED GOVERNMENT ACTION FOR THIS, IT WON'T COME BY ITSELF," DE CROMBRUGGHE MAINTAINED.

COMMENT
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9. (SBU) WE HAVE REPORTED THE QUESTIONS RAISED AT THE ABOVE DISCUSSION AT SOME LENGTH BECAUSE WE THINK THEY ROVIDE A REVEALING PERSPECTIVE ON HOW KEY PARTS F BELGIUM'S BUREAUCRACY ARE APPROACHING THE CHALENGES AND POTENTIAL OF E-COMMERCE. IN THIS GROUP DOMINATED BY JUSTICE AND FINANCE OFFICIALS, NOTONCE IN THE TWO-HOUR DISCUSSION DID ANYONE OFFERA POSITIVE COMMENT ABOUT THE POTENTIAL BENEFITS OFTHE NEW INTERNET TECHNOLOGY AND ITS USE BY THE PIVATE SECTOR. INSTEAD, THE CONVERSATION REPEATEDLY RETURNED TO THE POTENTIAL FOR FRAUD, ABUSE AND HE LOSS OF GOVERNMENT CONTROL. AS LONG AS E-COMERCE POLICY IN COUNTRIES SUCH AS BELGIUM IS DRIVN BY SUCH BUREAUCRATIC CAUTION, THE PROSPECTS FO A POSITIVE RESPONSE TO THE USG APPROACH TO E-COMMERCE ARE UNCLAS SECTION 04 OF 04 BRUSSELS 001423

SENSITIVE

STATE FOR EB/CIP, EB/TPP/BTA/DCT AND EUR/ERA

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ACTION EUR-01

INFO	LOG-00	ACDA-08	ACDE-00	AID-00	CEA-01	CIAE-00	CIP-00
	CTME-00	DODE-00	SRPP-00	EB-00	E-00	UTED-00	FCC-01
	FRB-00	H-01	IM-01	TEDE-00	INR-00	ITC-01	L-01
	ADS-00	NSAE-00	NSCE-00	OMB-01	OPIC-01	CIO-00	SP-00
	SSO-00	SS-00	STR-00	TRSE-00	USIE-00	SGHD-00	DRL-04
	G-00	SAS-00	/021W				

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TO SECSTATE WASHDC IMMEDIATE 7114
USDOC WASHDC
INFO ALL EUROPEAN UNION POST COLLECTIVE

UNCLAS SECTION 01 OF 02 BRUSSELS 000927

SENSITIVE

NOFORN

USDOC PLEASE PASS NTIA FOR J. BECKWITH BURR

STATE PLEASE PASS USTR FOR DON ABELSON

EB FOR HARRY SULLIVAN

EUR/UBI FOR MARILYN ERESHEFSKY

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BRUSSELS 01 OF 02 927

E.O. 12958: N/A
TAGS: ECPS, ETRD, EINV, BE
SUBJECT: BELGIUM AND ELECTRONIC COMMERCE: CONTINUED DOUBTS

THIS CABLE IS SENSITIVE BUT UNCLASSIFIED. PLEASE HANDLE ACCORDINGLY.

1. THIS IS AN ACTION MESSAGE (SEE PARA 9).

2. (SBU) SUMMARY: KEY BELGIAN OFFICIALS INVOLVED IN BELGIUM'S ELEVENTH-HOUR OBJECTIONS TO THE US-EU JOINT STATEMENT ON ELECTRONIC COMMERCE (REPORTEDLY INCLUDING THE TRADE AND FINANCE MINISTER) STILL CONSIDER MANY OF THE USG'S ARGUMENTS IN NEGOTIATING THAT DOCUMENT AS "NON-TRANSPARENT AND SUSPECT." THEY ARE, HOWEVER, INTERESTED IN DIALOGUE TO BETTER UNDERSTAND THE RATIONALE FOR OUR POSITION. WE BELIEVE THAT WE NEED TO ADDRESS BELGIAN CONCERNS, OR WE CAN ANTICIPATE CONTINUED RESISTANCE TO NEXT STEPS ON E COMMERCE. SEE ACTION REQUESTED IN PARA 9 BELOW. END SUMMARY

3. (SBU) IN LIGHT OF BELGIUM'S UNEXPECTED RECALCITRANCE ON THE JOINT STATEMENT ON E-COMMERCE FINALIZED AT THE DECEMBER 1997 US-EU SUMMIT, WE HAVE TRIED TO GET A BETTER FIX ON WHAT PROVOKED ELEVENTH-HOUR BELGIAN OBJECTIONS. ECONCOUNS ON FEBRUARY 11 RAISED THE MATTER WITH BERTRAND DE CROMBRUGGHE, ADVISOR ON INTERNATIONAL TRADE AT BELGIUM'S PERMANENT REPRESENTATION TO THE EUROPEAN COMMISSION AND A KEY PLAYER IN FORMULATING THE BELGIAN GOVERNMENT'S POSITION. DE CROMBRUGGHE'S PERSPECTIVE ON THE MATTER WAS IMMEDIATELY CLEAR: WHEN ECOUNCOUNS ANNOUNCED THE SUBJECT OF THE CALL, HE REPLIED SUCCINCTLY, "OH, HELL."

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4. (SBU) DE CROMRUGGHE STATED FLATLY THAT HE FOUND THE USG POSITION ON E-COMMERCE "SUSPECT." THE USG RATIONALE FOR THE WORDING IT SOUGHT ON CERTAIN POINTS IN THE JOINT STATEMENT WAS "NOT TRANSPARENT...WE DO NOT UNDDERSTAND YOUR MOTIVATIONS." WHY, HE ASKED, DID THE USG OBJECT SO STRENUOUSLY TO INCLUDING THE WORDS "SERVICES TRADED INTERNATIONALLY?" IT IS APPARENT, HE ARGUED, THAT COMMERCE ON THE INTERNET IS INDEED A SERVICE. NO GOODS ARE SUPPLIED ON THE INTERNET, ONLY ORDERS. THEREFORE, ELECTRONIC COMMERCE IS COVERED BY THE GATS, WHICH GOVERNS CROSS BORDER TRADE IN SERVICES.

5. (SBU) DE CROMBRUGGHE SAID HE AND HIS BELGIAN COLLEAGUES WERE PERPLEXED BY USTR BARSHEFKY'S COMMENTS AFTER THE SUMMIT, WHICH SEEMED TO SUGGEST THAT THE USG SEES INTERNET COMMERCE AS COMPOSED NEITHER OF GOODS, AND HENCE GOVERNED BY THE GATT, NOR OF SERVICES, AND GOVERNED BY THE GATS, BUT RATHER, AS "A NEW CATEGORY OF GOOD, A 'VIRTUAL GOOD' IN A TOALLY DIFFERNT FRAMEWORK." THIS "ATTEMPT TO CREATE SOMETHING NEW" WAS "VERY DISAPPOINTING." HE SAID THAT HE WOULD WELCOME ANY EXPLANATION WASHINGTON COULD PROVIDE.

6. (SBU) THE DISCUSSION OF A TARIFF-FREE ENVIRONMENT ON THE INTERNET ALSO IS IRRELEVANT, HE ARGUED. NO TARIFFS ARE CHARGED ON THE PROVISION OF SERVICES. MUSIC, FOR EXAMPLE, IS EXPORTED BY SENDING ONE MASTER DISK IN THE MAIL -- AS MANY CD-ROMS AS ARE NEEDED ARE REPLICATED IN THE TARGET MARKET, AND NO TARIFF IS CHARGED. MOREOVER, DISTRACTED BY THE "NON-ISSUE" OF TARIFFS, THE USG CONTINUES TO REFUSE TO DISCUSS SERIOUSLY ENCRYPTION, OF CENTRAL IMPORTANCE TO THE EU WITH RESPECT TO ITS PRIVACY CONCERNS, AND "THE RIGHT ISSUES -- SECURITY OF PAYMENTS, ELECTRONIC CONTRACTS, DATA PROTECTION, IPR -- ARE NOT BEING ADDRESSED."

7. (SBU) DE CROMBRUGGHE SAID THAT THERE WAS ALSO A GREAT DEAL OF "INSTITUTIONAL DISSATISFACTION" IN THE BELGIAN GOVERNMENT WITH THE PROCESS BY WHICH THE STATEMENT WAS NEGOTIATED. THE BELGIAN GOVERNMENT, INCLUDING TRADE AND FINANCE MINISTER MAYSTADT, THOUGHT THAT IT WAS TOO EARLY TO MAKE JOINT PRONOUNCEMENTS ON ELECTRONIC COMMERCE, UNTIL IMPORTANT ISSUES HAD BEEN FURTHER STUDIED. MAYSTADT THOUGHT THE ISSUE "HAD BEEN SHELVED." THEN THE USG AND THE COMMISSION HAD INSISTED THAT A STATEMENT BE PRODUCED FOR THE SUMMIT. THE BELGIAN GOVERNMENT WAS NOT HAPPY THAT A STATEMENT HAD BEEN FINALIZED (IN ITS VIEW, PREMATURELY), NOR WITH THE TEXT OF THE FINAL DOCUMENT.

8. (SBU) COMMENT: DE CROMBRUGGHE CAN BE ACERBIC AND MAKES NO SECRET OF HIS DISLIKE FOR WHAT HE CONSIDERS UNDUE US ARROGANCE ON MANY TRADE MATTERS. HIS COLLEAGUES IN THE TRADE AND FOREIGN AFFAIRS CABINETS AND MINISTRIES RECOGNIZE HIM, HOWEVER, AS A VERY SHARP AND CENTRAL PLAYER ON BELGIAN TRADE POLICY, AND IT IS CLEAR THAT HE WILL CONTINUE TO HAVE AN IMPACT ON BELGIUM'S POSITION ON ELECTRONIC COMMERCE. AT THE

BRUSSELS 02 OF 02 927

E.O. 12958: N/A
TAGS: ECPS, ETRD, EINV, BE
SUBJECT: BELGIUM AND ELECTRONIC COMMERCE: CONTINUED DOUBTS

SAME TIME, HE IS NOT THE ONLY BELGIAN PLAYER WHO IS DISSATISIED WITH DECEMBER'S OUTCOME; SEPTELS WILL REPORT OUR DISCUSSIONS WITH OTHER TRADE AND FINANCE CONTACTS.

9. (SBU) ACTION REQUESTED: WE BELIEVE IT IS NECESSARY TO TACKLE BELGIAN OBJECTIONS IN AN ENHANCED DIALOGUE ON E-COMMERCE, OR WE CAN COUNT ON FURTHER RESISTANCE AS WE ATTEMPT

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TO PURSUE ANY INITIATIVES TO FOLLOW UP ON THE DECEMBER STATEMENT. DE CROMBRUGGHE INDICATED NOT ONLY WILLINGNESS BUT CONSIDERABLE INTEREST IN EXCHANGES WHICH WILL CLARIFY USG VIEWS. WE WOULD WELCOME BACKGROUND ON THE POINTS HE RAISED TO PASS ON TO HIM. IN ADDITION, WE UNDERSTAND THAT NTIA'S BECKY BURR WILL VISIT BRUSSELS NEXT WEEK FOR DISCUSSION WITH THE COMMISSION ON DOMAIN NAMES; WE PROPOSE (IN COORDINATION WITH USEU) THAT SHE MEET WITH DE CROMBRUGGHE AND OTHER BELGIAN OFFICIALS ON WEDNESDAY, FEBRUARY 18 AT 2 P.M. TO DISCUSS E-COMMERCE GENERALLY. PLEASE ADVISE.

BLINKEN

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From AmEmbassy Brussels re: Electronic Commerce: Belgian Thoughts on Duty-Free Cyberspace, European Perspectives, U.S. - EU Dialogue (5 pages)	04/06/98	P5
002. cable	From Taipei re: Taiwan: Internet '98 Highlights Electromagnetic Commerce, Liberalization (4 pages)	04/03/98	P1/b(1)
003. cable	From SecState to AmEmbassy Canberra re: Magaziner to Visit Australia (2 pages)	04/03/98	P1/b(1)
004. cable	From AmEmbassy Brussels re: Electronic Commerce: Belgian Thoughts on Duty-Free Cyberspace, European Perspectives, U.S. - EU Dialogue (7 pages)	04/06/98	P5
005. cable	From AmEmbassy Brussels re: Electronic Commerce: Commission Proposal to Treat Electronic Transmissions as Services? (4 pages)	03/18/98	P1/b(1)
006. cable	From AmEmbassy Brussels re: March 9 Ecofin Council - C (4 pages)	03/13/98	P1/b(1)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13123

FOLDER TITLE:
Brussels

Rhonda Wilson

rw50

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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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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ACTION CIP-00

INFO	LOG-00	ACDA-08	ACDE-00	INLB-01	AGRE-00	AID-00	CEA-01
	CIAE-00	CTME-00	INL-01	DINT-00	DODE-00	ITCE-00	DOTE-00
	SRPP-00	EB-00	EXME-00	EUR-01	E-00	FAAE-00	UTED-00
	FCC-01	FRB-00	H-01	IM-01	TEDE-00	INR-00	IO-00
	ITC-01	LAB-01	LOC-01	L-01	ADS-00	NSAE-00	OIC-02
	OMB-01	OPIC-01	PA-00	PRS-00	CIO-00	SP-00	SSO-00
	SS-00	STR-00	TRSE-00	USIE-00	SNRO-00	DRL-04	G-00
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UNCLAS SECTION 01 OF 04 BRUSSELS 002210

SENSITIVE

STATE FOR EB/CIP - WEINSCHENCK, EB/TPP/BTA/DCT - O'BRIEN
AND EUR/ERA - WINSHIP

STATE PASS USTR FOR DON ABELSON

USDOC FOR OSEC - HOFFMAN, NTIA - BURR, AND ITA - WELLBERY

WHITE HOUSE FOR MAGAZINER

E.O. 12958: N/A
TAGS: ECPS, ETRD, KIPR, EUN, BE
SUBJECT: ELECTRONIC COMMERCE: BELGIAN THOUGHTS ON DUTY-FREE CYBERSPACE, EUROPEAN PERSPECTIVES, U.S.-EU DIALOGUE

REF: (A) BRUSSELS 0926, (B) BRUSSELS 1379,
(C) BRUSSELS 1423, (D) BRUSSELS 1716

BRUSSELS 01 OF 04 2210

THIS MESSAGE IS SENSITIVE BUT UNCLASSIFIED. NOT FOR INTERNET DISTRIBUTION.

1. (SBU) SUMMARY: DURING AN APRIL 1 MEETING WITH USTR CHIEF NEGOTIATOR FOR COMMUNICATIONS AND INFORMATION DONALD ABELSON, SENIOR BELGIAN TRADE OFFICIALS EXPRESSED CAUTIOUS SUPPORT FOR THE PRINCIPLE OF DUTY-FREE E-COMMERCE; CITED EUROPEAN SKEPTICISM ABOUT SELF-REGULATION; ASKED ABOUT FOLLOW-UP TO THE U.S.-EU JOINT STATEMENT; DEBATED WHETHER E-COMMERCE SHOULD BE CONSIDERED A SERVICE IN THE GATT/WTO SENSE; AND DISCUSSED MATTERS RELATING TO LEGAL JURISDICTION OVER ELECTRONIC TRANSACTIONS. ABELSON'S VISIT PROVIDED OUR FIRST OPPORTUNITY TO DISCUSS E-COMMERCE IN DETAIL WITH THE MFA'S ECONOMIC UNDER SECRETARY EQUIVALENT, AND WAS A STEP FORWARD IN OUR EFFORTS TO EDUCATE SENIOR BELGIAN POLICYMAKERS ON USG CONCERNS. WE HAVE RECOMMENDED A MAY 26 VISIT TO BRUSSELS BY WHITE HOUSE ADVISER IRA MAGAZINER TO DEEPEN THAT DIALOGUE AND EXTEND IT TO THE BELGIAN PRIVATE SECTOR (REF B). END SUMMARY.

2. (U) USTR CHIEF NEGOTIATOR ABELSON, ACCOMPANIED BY DCM AND ECONOMIC OFFICER, CALLED ON BELGIAN MFA DIRECTOR GENERAL FOR ECONOMIC AND BILATERAL RELATIONS JAN GRAULS ON APRIL 1 TO DISCUSS PROPOSALS FOR A DUTY-FREE CYBERSPACE AND RELATED ELECTRONIC COMMERCE ISSUES. ALSO PARTICIPATING WERE BENOIT RYELANDT, HEAD OF THE MFA TRADE POLICY OFFICE, AND BERTRAND

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DE CROMBRUGGHE, FIRST SECRETARY RESPONSIBLE FOR WTO AND OECD ISSUES AT THE BELGIAN PERMANENT REPRESENTATION TO THE EU.

USG APPROACH TO E-COMMERCE

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3. (U) ABELSON BEGAN BY DESCRIBING THE GROWING IMPORTANCE OF E-COMMERCE TO THE ECONOMY AND ITS POTENTIAL BENEFITS TO SOCIETY, STRESSING THE USG BELIEF THAT THE PRIVATE SECTOR SHOULD TAKE THE LEAD IN DEVELOPING THIS ELECTRONIC NETWORK. HE NOTED THAT THE U.S. SEES A ROLE FOR GOVERNMENTS IN FOUR KEY AREAS:

-- TAXES: THE OECD FISCAL COMMITTEE IS THE APPROPRIATE FORUM FOR INTERNATIONAL DISCUSSIONS OF TAXATION OF E-COMMERCE; THESE DISCUSSIONS COULD LEAD TO DELIVERABLES FOR THE OTTAWA OECD MINISTERIAL CONFERENCE IN OCTOBER. DOMESTICALLY, THE U.S. IS DISCUSSING A MORATORIUM ON NEW TAXES.

-- TARIFFS: THE U.S. DOES NOT CONSIDER ELECTRONIC TRANSMISSIONS TO BE IMPORTS FROM A CUSTOMS PERSPECTIVE, AND THEREFORE BELIEVES THEY SHOULD REMAIN DUTY-FREE (SEE PARA 4).

-- ENCRYPTION: (MENTIONED, BUT NOT DISCUSSED FURTHER).

-- INTELLECTUAL PROPERTY RULES: THE WIPO TREATIES ON COPYRIGHT AND ON PERFORMANCES AND PHONOGRAMS SHOULD BE RATIFIED AND IMPLEMENTED PROMPTLY.

ABELSON ADDED THAT ON OTHER FUNDAMENTAL ISSUES OF POTENTIAL GOVERNMENT CONCERN -- SUCH AS PRIVACY PROTECTION, HARMFUL OR ILLEGAL CONTENT (E.G., GUN RUNNING, CHILD PORNOGRAPHY, HATE SPEECH), INTEROPERABILITY, COMPETITION, AND AUTHENTICATION -- THE PRIVATE SECTOR COULD PLAY A CENTRAL ROLE IN DEVELOPING SOLUTIONS.

DUTY-FREE CYBERSPACE

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4. (SBU) ABELSON OUTLINED THE RATIONALE FOR THE USG'S FEBRUARY 19 PROPOSAL FOR A WTO AGREEMENT ON A DUTY-FREE CYBERSPACE. A MULTILATERAL POLICY FRAMEWORK FOR E-COMMERCE NEEDS TO BE DEVELOPED. A GOOD STARTING POINT WOULD BE AN AFFIRMATION THAT THERE SHOULD BE NO TARIFFS ON ELECTRONIC TRANSMISSIONS. THIS IS AN ISSUE ON WHICH NO ONE HAS TO GIVE UP ANYTHING, AND ON WHICH ALL NATIONS ALREADY SEEM TO AGREE IN PRACTICE. ABELSON SAID THAT, AT OECD MEETINGS IN PARIS THE PREVIOUS DAY, THERE HAD BEEN NO NEGATIVE COMMENTS ON THE U.S. PROPOSAL AND AN INCREASING NUMBER OF COUNTRIES WERE

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RESPONDING POSITIVELY; BUT HE ALSO MADE NOTE OF OPPOSITION EXPRESSED BY SOME DEVELOPING COUNTRY REPRESENTATIVES IN GENEVA. IT WOULD BE DESIRABLE IF SECRETARY GENERAL RUGGIERO, RATHER THAN THE U.S. OR ANY OTHER COUNTRY OR GROUP OF COUNTRIES, COULD PRESENT THE INITIATIVE FOR ADOPTION AT THE WTO MINISTERIAL MEETING IN MAY.

5. (SBU) GRAULS RESPONDED FAVORABLY, BUT CAUTIOUSLY. "BROADLY SPEAKING, WE CAN AGREE WITH REGARD TO CUSTOMS DUTIES AND TAXES." AS TO THE USG PROPOSAL FOR A WTO AFFIRMATION OF A DUTY-FREE CYBERSPACE, GRAULS SAID HECOULD "SEE THE INTELLECTUAL MERIT" IN THIS APPROACH, BUT HE WONDERED WHERE THIS WOULD LEAD AND WHAT THE NEXT STEPS WOULD BE. HE ALSO ASKED ABOUT THE CONSEQUENCES OF HAVING E-COMMERCE ISSUES

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BEING HANDLED BY TWO ORGANIZATIONS -- WTO AND OECD -- AT THE SAME TIME. DE CROMBRUGGHE LATER ADDED THAT, BY GOING TO THE WTO, ONE RISKS "ENTERING INTO THE LOGIC OF TRADE NEGOTIATIONS" WHERE EACH SIDE (INDUSTRIALIZED AND DEVELOPING COUNTRIES, RESPECTIVELY) MAKES CONCESSIONS; ONLY IN THE CASE OF E-COMMERCE THERE ARE NO CONCESSIONS TO MAKE.

6. (SBU) GRAULS ECHOED ABELSON'S EARLIER POINTS ABOUT RAPID GROWTH AND CHANGE IN E-COMMERCE -- AN APPARENT NOD TO OUR VIEW THAT SUCH RAPID DEVELOPMENT MADE A HEAVY GOVERNMENTAL REGULATORY ROLE UNFEASIBLE. HE NOTED THAT "THIS (E-COMMERCE) IS THE FUTURE," ADDING THAT "WE SHOULDN'T START TAXES" IN APPARENT CONCURRENCE WITH OUR DISINCLINATION TO ALLOW NEW TAXES TO HAMPER DEVELOPMENT OF THIS EMERGING SECTOR. (COMMENT: THIS VIEW IS NOT SHARED BY THE BELGIAN MINISTRIES OF FINANCE AND TELECOMS/ECONOMIC AFFAIRS. END COMMENT.)

EUROPEAN PERSPECTIVE

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7. (SBU) IN SUBSEQUENT COMMENTS, GRAULS STRESSED THAT EUROPEANS HAD AN OUTLOOK AND SET OF CONCERNS ABOUT E-COMMERCE THAT DIFFERED FROM THOSE IN THE U.S. HE MENTIONED A STRONGER EUROPEAN PREFERENCE FOR USING EXISTING FRAMEWORKS AND INSTITUTIONS, AND A DIFFERENT APPROACH ON THE ROLE OF GOVERNMENTS. "YOU ARE MORE IN FAVOR OF DEREGULATION; WE ARE MORE CAUTIOUS." HE ADDED THAT, FROM THE EUROPEAN PERSPECTIVE, "THERE IS AN URGENT NEED FOR SOME REGULATION," CITING PROTECTION OF CHILDREN AS A PRIORITY. (COMMENT: THIS ISSUE IS PARTICULARLY SENSITIVE IN BELGIUM AGAINST THE BACKGROUND OF THE DUTROUX PEDOPHILIA CASE. AT LEAST ONE ARREST HAS ALREADY BEEN MADE IN BELGIUM OF AN INDIVIDUAL TRAFFICKING IN CHILD PORNOGRAPHY OVER THE INTERNET. END COMMENT.)

8. (SBU) GRAULS NOTED THAT DIFFERENCES IN ATTITUDES AND PERCEPTIONS BETWEEN THE U.S. AND EUROPE ALREADY HAD GIVEN RISE TO TRADE DISPUTES. ABELSON NOTED THAT THERE IS A ROLE FOR CONSUMER PREFERENCES AND THERE NEEDS TO BE SOME FLEXIBILITY IN CITIZEN PROTECTION MEASURES. BUT HE ADDED THAT THESE CONCERNS NEED TO BE BALANCED AGAINST THE POTENTIAL OF E-COMMERCE AS A CREATOR OF WEALTH AND JOBS.

FURTHER U.S.-EU DIALOGUE

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9. (SBU) GRAULS BROUGHT UP THE DECEMBER 1997 JOINT U.S.-EU STATEMENT ON E-COMMERCE. NOTING THAT THE STATEMENT REFERS EXPLICITLY TO "CONTINUING FURTHER BILATERAL DISCUSSIONS AT EXPERTS LEVEL," HE ASKED HOW THIS PROCESS WOULD CONTINUE. OR WAS THIS APPROACH NOW ALREADY OVERTAKEN BY EVENTS? ABELSON RESPONDED THAT A LOT DEPENDED ON EU REACTION TO THE NEW TRANSATLANTIC MARKETPLACE INITIATIVE, WHICH IN SIR LEON'S DRAFT INCLUDES AN EXPLICIT REFERENCE TO E-COMMERCE. ABELSON ALSO TOOK THE OPPORTUNITY TO ACKNOWLEDGE DIFFICULTIES IN THE NEGOTIATIONS LEADING UP TO THE JOINT STATEMENT (WHICH THE BELGIANS TOGETHER WITH THE FRENCH HAD OPPOSED) -- DIFFICULTIES HE ATTRIBUTED TO MIXED COMMISSION/MEMBER STATE COMPETENCY AND TO THE LACK OF SUFFICIENT CONSULTATION BETWEEN THESE TWO ENTITIES.

IS E-COMMERCE A SERVICE?

BRUSSELS 03 OF 04 2210

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10. (SBU) GRAULS RAISED THE ISSUE OF WHETHER ELECTRONIC TRANSMISSIONS SHOULD BE CONSIDERED A SERVICE (WITH ALL THAT IMPLIES WITH RESPECT TO GATS OBLIGATIONS AND EXCEPTIONS), OR AS A GOOD, OR AS SOMETHING TOTALLY NEW (WHICH HE TOOK TO BE THE U.S. VIEW). A LENGTHY AND INCONCLUSIVE DISCUSSION ENSUED. ABELSON SAID THERE WAS NO EASY ANSWER, BUT CITED SOME OF THE CONCEPTS THAT EMERGED FROM A RECENTLY COMPLETED WTO STUDY. HE NOTED THAT PERHAPS THE CONCEPTUAL FRAMEWORK FROM THE PAST DOESN'T WORK. FOR INSTANCE, E-COMMERCE SEEMS TO MERGE ALL FOUR MODES OF DELIVERING SERVICES THAT WERE DISCUSSED IN THE GATS CONTEXT.

11. (SBU) DE CROMBRUGGHE SEIZED WITH THE "IS IT A SERVICE?" QUESTION, PURSUED THE MATTER INSISTENTLY. HE ALSO TOOK A STRONGER POSITION IN FAVOR OF DUTY-FREE CYBERSPACE THAN HIS CONSIDERABLY MORE SENIOR COLLEAGUE, GRAULS. DE CROMBRUGGHE SPOKE OF A LONG-STANDING EUROPEAN TRADITION OF TREATING ALL ELECTRONIC TRANSACTIONS AS SERVICES. "NO ONE IN THE EU WANTS TO PUT DUTIES ON SERVICES. YOU REFUSED TO CALL THEM SERVICES." IT SEEMED INCOMPREHENSIBLE TO HIM, HE SAID, THAT THE USG DID NOT SEE THE OBVIOUS LOGIC OF THE EUROPEAN POINT OF VIEW. "TO US (EUROPEANS) IT APPEARED THAT THERE WAS A HIDDEN AGENDA" ON THE U.S. SIDE. ABELSON ASSURED HIM THAT THERE WAS NO SUCH HIDDEN AGENDA, AND THAT, IN FACT, U.S. EXPERTS AT ONE TIME HAD THEIR DOUBTS ABOUT EUROPEAN MOTIVATIONS FOR INSISTING ON THEIR OWN PARTICULAR POINT OF VIEW. DE CROMBRUGGHE WONDERED ALOUD IF IT WOULD TAKE A DISPUTE SETTLEMENT PANEL TO EVENTUALLY DECIDE THIS QUESTION. ABELSON COMMENTED THAT THIS WOULD BE A SLOW, TIME-CONSUMING WAY TO SETTLE THE QUESTION, AND A VERY PASSIVE APPROACH FOR GOVERNMENTS TO TAKE.

JURISDICTION
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12. (SBU) THE ISSUE OF JURISDICTION -- WHOSE LAW APPLIES TO AN INTERNATIONAL ELECTRONIC TRANSMISSION -- ALSO WAS DISCUSSED. ABELSON NOTED THAT THIS WILL BE A MAJOR ISSUE. HE CITED THE EXAMPLE OF A GERMAN DENTIST CREATING HIS OWN HOME PAGE. UNDER GERMAN LAW, THIS INDIVIDUAL WOULD BE VIOLATING LAWS BANNING ADVERTISING BY MEDICAL AND OTHER PROFESSIONALS. EARLIER, ABELSON HAD RAISED THE ISSUE OF "HATE SPEECH" -- TRANSMISSIONS OF NEO-NAZI VIEWS WHICH ARE OUTLAWED IN GERMANY, BUT WHICH WOULD BE TOLERATED AND PROTECTED UNDER THE LAWS OF OTHER COUNTRIES. ANOTHER LOOMING PROBLEM RAISED WAS THAT OF A FRAUDULENT SECURITIES DEALER DOING BUSINESS OVER THE INTERNET. ABELSON POINTED TO THE EU'S "HOME COUNTRY" RULE AS A WAY OF APPROACHING QUESTIONS OF JURISDICTION, BUT NOTED THAT THERE HAD BEEN RECENT EXCEPTIONS REGARDING VAT ON CALL-BACK SERVICES. DE CROMBRUGGHE COMMENTED THAT "GOVERNMENTS HAVE A RESPONSIBILITY TO BE ACTIVE" ON ISSUES SUCH AS JURISDICTION. TO DO OTHERWISE WAS "AN ABDICATION OF GOVERNMENTAL RESPONSIBILITY." ABELSON AGREED THAT GOVERNMENTS INDEED HAD A ROLE, BUT WHAT WAS THE APPROPRIATE ROLE, AND COULD THERE BE FLEXIBILITY?

COMMENT
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13. (SBU) ABELSON'S MEETING WITH THREE KEY BELGIAN POLICYMAKERS, WHICH FOLLOWED AN FEBRUARY 18 VISIT BY NTIA'S BECKY BURR (REF C) AND A MARCH 6 DIGITAL VIDEO CONFERENCE WITH IRA MAGAZINER, WAS ANOTHER STEP FORWARD IN DEVELOPING A SUBSTANTIVE DIALOGUE WITH BELGIUM ON E-COMMERCE. THE FACT

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THAT WE WERE ABLE TO ENGAGE THE MFA'S SENIOR-MOST ECONOMIC OFFICIAL (UNDER SECRETARY EQUIVALENT) MAY HELP FOCUS BELGIAN ATTENTION ON E-COMMERCE ISSUES THAT HITHERTO HAVE BEEN TREATED IN A PIECEMEAL, AD-HOC FASHION, AND MAY SET THE STAGE FOR A MORE COHERENT APPROACH TO BELGIAN POLICY FORMULATION INTO WHICH WE CAN BETTER FEED OUR IDEAS AND CONCERNS; GRAULS HOPES TO WIN AGREEMENT THAT THE MFA WILL LEAD AN EVENTUAL BELGIAN GOVERNMENT INTERAGENCY GROUP ON E-COMMERCE. ALREADY, WE ARE GETTING MORE KNOWLEDGEABLE AND MORE POSITIVE RESPONSES FROM GRAULS THAN WE RECEIVED WHEN MS. BURR MET WITH MORE JUNIOR FINANCE OFFICIALS IN FEBRUARY. WE HOPE TO EXPAND THE

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DIALOGUE WITH BELGIUM BY INCREASING OUR OUTREACH TO THE PRIVATE SECTOR. THE PARTICIPATION OF IRA MAGAZINER AS KEYNOTE SPEAKER IN A MAJOR TELECOMMUNICATIONS TRADE FAIR ON MAY 26 (WHICH WE HAVE RECOMMENDED IN REF B) WOULD BE ANOTHER IMPORTANT STEP FORWARD. END COMMENT.

14. (U) USTR NEGOTIATOR ABELSON CLEARED THIS CABLE.

BLINKEN

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PAGE 01 OF 07
PRT: MAGAZINER
SIT: NSC

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UNCLAS SECTION 01 OF 04 BRUSSELS 002210

SENSITIVE

STATE FOR EB/CIP - WEINSCHENCK, EB/TPP/BTA/DCT - O'BRIEN
AND EUR/ERA - WINSHIP

STATE PASS USTR FOR DON ABELSON

USDOC FOR OSEC - HOFFMAN, NTIA - BURR, AND ITA - WELLBERY

WHITE HOUSE FOR MAGAZINER

E.O. 12958: N/A
TAGS: ECPS, ETRD, KIPR, EUN, BE
SUBJECT: ELECTRONIC COMMERCE: BELGIAN THOUGHTS ON DUTY-FREE CYBERSPACE, EUROPEAN PERSPECTIVES, U.S.-EU DIALOGUE

REF: (A) BRUSSELS 0926, (B) BRUSSELS 1379,
(C) BRUSSELS 1423, (D) BRUSSELS 1716

THIS MESSAGE IS SENSITIVE BUT UNCLASSIFIED. NOT FOR INTERNET DISTRIBUTION.

1. (SBU) SUMMARY: DURING AN APRIL 1 MEETING WITH USTR CHIEF NEGOTIATOR FOR COMMUNICATIONS AND INFORMATION DONALD ABELSON, SENIOR BELGIAN TRADE OFFICIALS EXPRESSED CAUTIOUS SUPPORT FOR THE PRINCIPLE OF DUTY-FREE E-COMMERCE; CITED EUROPEAN SKEPTICISM ABOUT SELF-REGULATION; ASKED ABOUT FOLLOW-UP TO THE U.S.-EU JOINT STATEMENT; DEBATED WHETHER E-COMMERCE SHOULD BE CONSIDERED A SERVICE IN THE GATT/WTO SENSE; AND DISCUSSED MATTERS RELATING TO LEGAL JURISDICTION OVER ELECTRONIC TRANSACTIONS. ABELSON'S VISIT PROVIDED OUR FIRST OPPORTUNITY TO DISCUSS E-COMMERCE IN DETAIL WITH THE MFA'S ECONOMIC UNDER SECRETARY EQUIVALENT, AND WAS A STEP FORWARD IN OUR EFFORTS TO EDUCATE SENIOR BELGIAN POLICYMAKERS ON USG CONCERNS. WE HAVE RECOMMENDED A MAY 26 VISIT TO BRUSSELS BY WHITE HOUSE ADVISER IRA MAGAZINER TO DEEPEN THAT DIALOGUE AND EXTEND IT TO THE BELGIAN PRIVATE SECTOR (REF B). END SUMMARY.

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2. (U) USTR CHIEF NEGOTIATOR ABELSON, ACCOMPANIED BY DCM AND ECONOMIC OFFICER, CALLED ON BELGIAN MFA DIRECTOR GENERAL FOR ECONOMIC AND BILATERAL RELATIONS JAN GRAULS ON APRIL 1 TO DISCUSS PROPOSALS FOR A DUTY-FREE CYBERSPACE AND RELATED ELECTRONIC COMMERCE ISSUES. ALSO PARTICIPATING WERE BENOIT RYELANDT, HEAD OF THE MFA TRADE POLICY OFFICE, AND BERTRAND DE CROMBRUGGHE, FIRST SECRETARY RESPONSIBLE FOR WTO AND OECD ISSUES AT THE BELGIAN PERMANENT REPRESENTATION TO THE EU.

USG APPROACH TO E-COMMERCE
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3. (U) ABELSON BEGAN BY DESCR1MING THE GROWING IMPORTANCE OF E-COMMERCE TO THE ECONOMY AND ITS POTENTIAL BENEFITS TO SOCIETY, STRESSING THE USG BELIEF THAT THE PRIVATE SECTOR SHOULD TAKE THE LEAD IN DEVELOPING THIS ELECTRONIC NETWORK. HE NOTED THAT THE U.S. SEES A ROLE FOR GOVERNMENTS IN FOUR KEY AREAS:

-- TAXES: THE OECD FISCAL COMMITTEE IS THE APPROPRIATE FORUM FOR INTERNATIONAL DISCUSSIONS OF TAXATION OF E-COMMERCE; THESE DISCUSSIONS COULD LEAD TO DELIVERABLES FOR THE OTTAWA OECD MINISTERIAL CONFERENCE IN OCTOBER. DOMESTICALLY, THE U.S. IS DISCUSSING A MORATORIUM ON NEW TAXES.

-- TARIFFS: THE U.S. DOES NOT CONSIDER ELECTRONIC TRANSMISSIONS TO BE IMPORTS FROM A CUSTOMS PERSPECTIVE, AND THEREFORE BELIEVES THEY SHOULD REMAIN DUTY-FREE (SEE PARA 4).

-- ENCRYPTION: (MENTIONED, BUT NOT DISCUSSED FURTHER).

-- INTELLECTUAL PROPERTY RULES: THE WIPO TREATIES ON COPYRIGHT AND ON PERFORMANCES AND PHONOGRAMS SHOULD BE RATIFIED AND IMPLEMENTED PROMPTLY.

ABELSON ADDED THAT ON OTHER FUNDAMENTAL ISSUES OF POTENTIAL GOVERNMENT CONCERN -- SUCH AS PRIVACY PROTECTION, HARMFUL OR ILLEGAL CONTENT (E.G., GUN RUNNING, CHILD PORNOGRAPHY, HATE SPEECH), INTEROPERABILITY, COMPETITION, AND AUTHENTICATION -- THE PRIVATE SECTOR COULD PLAY A CENTRAL ROLE IN DEVELOPING SOLUTIONS.

DUTY-FREE CYBERSPACE
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4. (SBU) ABELSON OUTLINED THE RATIONALE FOR THE USG'S FEBRUARY 19 PROPOSAL FOR A WTO AGREEMENT ON A DUTY-FREE CYBERSPACE. A MULTILATERAL POLICY FRAMEWORK FOR E-COMMERCE NEEDS TO BE DEVELOPED. A GOOD STARTING POINT WOULD BE AN

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AFFIRMATION THAT THERE SHOULD BE NO TARIFFS ON ELECTRONIC TRANSMISSIONS. THIS IS AN ISSUE ON WHICH aO ONE HAS TO GIVE UP ANYTHING, AND ON WHICH ALL NATIONS ALREADY SEEM TO AGREE IN PRACTICE. ABELSON SAID THAT, AT OECD MEETINGS IN PARIS THE PREVIOUS DAY, THERE HAD BEEN NO NEGATIVE COMMENTS ON THE U.S. PROPOSAL AND AN INCREASING NUMBER OF COUNTRIES WERE
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SENSITIVE

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USDOC FOR OSEC - HOFFMAN, NTIA - BURR, AND ITA - WELLBERY

WHITE HOUSE FOR MAGAZINER

E.O. 12958: N/A
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REF: (A) BRUSSELS 0926, (B) BRUSSELS 1379,
RESPONDING POSITIVELY; BUT HE ALSO MADE NOTE OF OPPOSITION EXPRESSED BY SOME DEVELOPING COUNTRY REPRESENTATIVES IN GENEVA. IT WOULD BE DESIRABLE IF SECRETARY GENERAL RUGGIERO, RATHER THAN THE U.S. OR ANY OTHER COUNTRY OR GROUP OF COUNTRIES, COULD PRESENT THE INITIATIVE FOR ADOPTION AT THE WTO MINISTERIAL MEETING IN MAY.

5. (SBU) GRAULS RESPONDED FAVORABLY, BUT CAUTIOUSLY. "BROADLY SPEAKING, WE CAN AGREE WITH REGARD TO CUSTOMS DUTIES AND TAXES." AS TO THE USG PROPOSAL FOR A WTO AFFIRMATION OF A DUTY-FREE CYBERSPACE, GRAULS SAID HECOULD "SEE THE INTELLECTUAL MERIT" IN THIS APPROACH, BUT HE WONDERED WHERE THIS WOULD LEAD AND WHAT THE NEXT STEPS WOULD BE. HE ALSO ASKED ABOUT THE CONSEQUENCES OF HAVING E-COMMERCE ISSUES BEING HANDLED BY TWO ORGANIZATIONS -- WTO AND OECD -- AT THE SAME TIME. DE CROMBRUGGHE LATER ADDED THAT, BY GOING TO THE WTO, ONE RISKS "ENTERING INTO THE LOGIC OF TRADE NEGOTIATIONS" WHERE EACH SIDE (INDUSTRIALIZED AND DEVELOPING COUNTRIES, RESPECTIVELY) MAKES CONCESSIONS; ONLY IN THE CASE OF E-COMMERCE THERE ARE NO CONCESSIONS TO MAKE.

6. (SBU) GRAULS ECHOED ABELSON'S EARLIER POINTS ABOUT RAPID GROWTH AND CHANGE IN E-COMMERCE -- AN APPARENT NOD TO OUR VIEW THAT SUCH RAPID DEVELOPMENT MADE A HEAVY GOVERNMENTAL REGULATORY ROLE UNFEASIBLE. HE NOTD THAT "THIS (E-COMMERCE) IS THE FUTURE," ADDING THAT "WE SHOULDN'T START TAXES" IN APPARENT CONCURRENCE WITH OUR DISINCLINATION TO ALLOW NEW

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TAXES TO HAMPER DEVELOPMENT OF THIS EMERGING SECTOR. (COMMENT: THIS VIEW IS NOT SHARED BY THE BELGIAN MINISTRIES OF FINANCE AND TELECOMS/ECONOMIC AFFAIRS. END COMMENT.)

EUROPEAN PERSPECTIVE

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7. (SBU) IN SUBSEQUENT COMMENTS, GRAULS STRESSED THAT EUROPEANS HAD AN OUTLOOK AND SET OF CONCERNS ABOUT E-COMMERCE THAT DIFFERED FROM THOSE IN THE U.S. HE MENTIONED A STRONGER EUROPEAN PREFERENCE FOR USING EXISTING FRAMEWORKS AND INSTITUTIONS, AND A DIFFERENT APPROACH ON THE ROLE OF GOVERNMENTS. "YOU ARE MORE IN FAVOR OF DEREGULATION; WE ARE MORE CAUTIOUS." HE ADDED THAT, FROM THE EUROPEAN PERSPECTIVE, "THERE IS AN URGENT NEED FOR SOME REGULATION," CITING PROTECTION OF CHILDREN AS A PRIORITY. (COMMENT: THIS ISSUE IS PARTICULARLY SENSITIVE IN BELGIUM AGAINST THE BACKGROUND OF THE DUTROUX PEDOPHILIA CASE. AT LEAST ONE ARREST HAS ALREADY BEEN MADE IN BELGIUM OF AN INDIVIDUAL TRAFFICKING IN CHILD PORNOGRAPHY OVER THE INTERNET. END COMMENT.)

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FURTHER U.S.-EU DIALOGUE

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IS E-COMMERCE A SERVICE?

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UNCLAS SECTION 03 OF 04 BRUSSELS 002210

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AND EUR/ERA - WINSHIP

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JURISDICTION
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COMMENT
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UNCLAS SECTION 04 OF 04 BRUSSELS 002210

SENSITIVE

STATE FOR EB/CIP - WEINSCHENCK, EB/TPP/BTA/DCT - O'BRIEN AND EUR/ERA - WINSHIP

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. message	Re: [internet issues] (1 page)	11/14/97	P5
002. message	Re: [internet issues] (copy of doc. 001) (1 page)	11/14/97	P5
003. cable	From FBIS re: EU Proposes to Amend Copyright Regulations (6 pages)	12/12/97	P1/b(1)

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13123

FOLDER TITLE:

EU [European Union] [4]

Rhonda Wilson

rw84

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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

CLINTON LIBRARY PHOTOCOPY

11/14/97

MESSAGE_.TXT

Hope the email is working, but I don't trust this to an open line and I don't have time to draft a cable.

I just had a long conversation with Patrick Vittet-Philippe, a special adviser on e-commerce/internet to Verrue in DG XII. He said the line up among the member states on the statement is 12 in favor, Greece, Portugal and France opposed. The first two are just plain suspicious of the internet because they don't use it. They can be rolled. France is the real problem. They have placed a "reserve" on the whole idea of a statement. It will take some real arm twisting to get them to come along, but the Luxembourgers, the Brits and the Commission are pressing forward. P V-P suggested, however, that they may not be able to produce a fully-approved text until after the November 24 Council. He appealed for us to give the Commission as much input on their draft as possible, even though they don't have member country approval at this time, so we can get something done for the Summit. That said, he agreed it would be better to have no statement than a poor statement.

In our negotiations, P V-P suggested that we draw on Bonn Statement language whenever possible. He observered that no one in the EU could argue with this.

P V-P also commented on the Wilkinson matter. He said that if he were in the U.S. shoes, he would complain as well. He said that Wilkinson took on a task that no one else in the Commission wanted -- domain names -- but now this issue has evolved into a matter affecting internet governance, and he should not be playing the role he has taken on in IPOC.

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Package Subject: E-Commerce

Item Title: Message Body

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Sure hope this gets to you. Please confirm receipt.

CLINTON LIBRARY PHOTOCOPY

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	From Drew Quinn to Ira Magaziner and Greg Chang re: E-commerce/Japan (4 pages)	03/03/98	P5

COLLECTION:

Domestic Policy Council
Magaziner, Ira (Electronic Commerce)
OA/Box Number: 13124

FOLDER TITLE:

Nikkie Symposium March 10 [1]

Rhonda Wilson

rw63

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]
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C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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TO: White House -- Ira Magaziner and Greg Chang
(c/o Drew Weinschenk)

FROM: Tokyo -- Drew Quinn

SUBJECT: E-commerce/Japan: March 3 status report

[Drew: Please get this to Greg. Thanks. -DQ]

Nikkei symposium (for Greg)

1. The Washington-Chicago leg of Ira's outbound trip offers only First and Economy class seats, and Ira is automatically upgraded as a bonus for buying a Business Class transpacific flight. The ticket will read "First Class" for Washington Chicago, because Business Class is not available on that flight. Is that okay, or would Ira feel better with an Economy seat for that (90 minute or so) flight?

2. Ticketing arrangements are complicated but manageable. The drawback is that only Ira -- not you, or Nikkei staff in DC -- can pick the ticket up from United. He could either do that at the United office at 16th and K Streets, or at the airport just prior to departure. Let me know his preference so American Express knows where to (electronically) send the ticket.

3. Interpreter -- the Ambassador will provide his (Mrs. Gregg) for Ira's use Monday so that this is a no-expense trip. Obviously the Nikkei provides interpretation at the symposium and their dinner on the 10th.

4. Vice President's videotape. I've already told the Nikkei that because of the VP's busy schedule, it looks highly unlikely that he'll get to prepare a videotaped message. Can I convey that to them officially? They have programs to print, etc, and I'd like to give them sufficient lead time to delete any references that might embarrass them.

Bilats with GOJ (for Ira)

5. Some in MITI still think you might opt to bring some USG people along for a fuller discussion next Monday. I haven't heard any reference to an accompanying delegation, and assume plans to have Don Abelson or Andy Pincus come along fell through when it became clear we wouldn't be aiming to wrap this up by March 10. If that's true, can I tell the GOJ? I think MITI might be rushing their counter-draft through the clearance process so you can receive it Friday and decide who to bring with you on Saturday (that's how they'd operate). I'd rather be candid with them if it looks like you'llbe coming alone no matter what -- though I'll of course still stress the benefit of getting their draft to you in time for you to discuss it with various inter-agency players before leaving Washington.

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6. Timing of announcement. You saw (I hope) the cable we sent in on our meeting (Econ Minister Larry Greenwood and

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me) with Kondo last week, in which he expressed doubt about reaching agreement on a joint statement until the summer. That, and an indirect reference we picked up second-hand later in the week, raised concerns I mentioned to Greg Friday that MOFA was not pushing this very aggressively. That was what led me to suggest that you might consider calling in the Japanese Embassy Econ Minister to express interest in moving forward rapidly on this (without putting Kondo in a difficult position by referring directly to his comments), as well as to emphasize what a bilateral "win" this could be.

Now it appears that our concern might have been unwarranted (or, more likely, Kondo's inter-agency colleagues are leaning on him to pick up the pace). Larry was in a meeting with MITI's Nakagawa yesterday, who said it would be ideal to reach an agreement in March. When Larry referred vaguelly to the notion of consulting with ASEAN countries, Nakagawa basically dismissed that. Today I spoke with Okada at MITI and he said there was inter-agency agreement that this must occur at the latest by the Birmingham G-8 summit, or sooner if there was an appropriate occasion. Okada and his boss MITI DirGen Hirose spoke about e-commerce last week to the Chief Cabinet Councillor for Internal Affairs Takeshima (the senior official in the Prime Minister's Office coordinating the study group's efforts), and he was reportedly excited about the issue and particularly about reaching agreement on a joint statement by May.

If your schedule permits, there would be no harm in contacting the Japanese Econ Minister in Washington to update him on the joint statement and our preferred timing for releasing it; but it seems the urgency has gone out of it. On your way out here, you might want to give some thought to what events between next week and the G-8 summit on May 15 might be appropriate target dates for announcement of the joint statement (Okada dismissed the Quad meeting, and wondered aloud about the OECD Ministerial).

7. GOJ counterdraft. MOFA has basically delegated to MITI the coordination of an inter-agency position on this, and Okada let me look at the (Japanese language) draft he's currently negotiating with other agencies (please don't repeat that). It seems the major sticking point is tariffs: the Customs Division has rejected MITI's language and come back with a sentence saying, as I recall "The US and Japan believe economies should continue, in the case of software on a carrier medium transmitted electronically, to respect the WTO customs valuation decision." Legally correct, I guess, but hardly inspirational.

On other issues:

-- taxation: MOF has basically told MITI that it will handle the issue of taxation directly with Treasury (I understand Treasury is briefing you on these discussions);

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-- authentication/electronic signatures (for the first time, the GOJ said it prefers the broader term of "electronic" rather than "digital" signatures): the GOJ has deleted references to an international convention. They (MOJ and MPT) have also put in a sentence about "respecting each country's system" which is intended to refer to MOJ's desire to develop its business register system into a government-created but not mandated or exclusive certifying authority.

-- privacy: seems to be mostly the same, but only half of MPT has blessed the MITI language.

From my cursory glimpse at the text, it seemed that the other issues were largely the same or amended as you agreed to in Tokyo, e.g., adding a reference to trademarks to the IPR sentence, adding a few references to APEC, combining the "agreed actions" and "guidelines" sections of the statement. The Japanese have also added a sentence to the end of the section on contents which I couldn't make out, but Okada said it didn't materially change the thrust of the reference.

MITI's goal is to get their re-draft to you by Thursday or Friday, but that might be over-optimistic. I'll let you know as the situation evolves.

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	From Thomas A. Marten to John X. Medeiros, et al re: E-Commerce meeting in Washington (2 pages)	05/06/98	P5

COLLECTION:

Domestic Policy Council
Magaziner, Ira (Electronic Commerce)
OA/Box Number: 13124

FOLDER TITLE:

Meeting with French Officials5/27/98

Rhonda Wilson

rw67

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]
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C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

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To: John X Medeiros@ECON@PARIS_EMBA
Deborah A McCarthy@ECON@PARIS_EMBA
Peter F Secor@ECON@PARIS_EMBA
Richard A Albright@ECON@PARIS_EMBA
Stuart A Dwyer@ECON@PARIS_EMBA
Michael J Adler@EXEC@PARIS_EMBA
Michael E Parmly@POL@PARIS_EMBA
Bcc: VSMail@Mail@Gateway[(ANDREW-J WEINSCHENK) {1.4061.789.1462}]
VSMail@Mail@Gateway[(JAMES WOITASIEWICZ) {1.4101.1176.1636}]
VSMail@Mail@Gateway[(HARRY R SULLIVAN) {1.4060.689.806}]
Colin S. Helmer@ECE@BRUSS_EMBC
Thomas H Goldberger@FIN@PARIS_EMBA
Thomas H Goldberger@FIN@PARIS_EMBB
Thomas A Marten@ECON@PARIS_EMBA
From:
Subject: e-commerce meeting in washington
Date: Wednesday, May 6, 1998 13:59:43 LOC
Attach:
Certify: N
Forwarded by:

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john,

i'm not sure how much of this came through on the voice mail i left you from washington monday night.

just in case the message was garbled, here's a summary of the u.s.-france e-commerce meeting monday 5/4 at the white house. the meeting ran from 9 am to 12 noon and was followed by lunch hosted by magaziner at the hay adams hotel.

u.s. side: ira magaziner, andy pincus (general counsel, commerce), jennifer conovitz (commerce lawyer), don abelson (ustr), mike moynihan (treasury, special assistant to larry summers), ed malloy (state, eb/cip), me.

french side: francis lorentz, gilles bauche (tresor), emmanuel glimet (dree), jean-francois boittin (french embassy in washington, econ m/c), bruno jactel (french embassy, econ counselor)

on substance:

-- both sides tabled draft declarations; the french text was very short and general, the u.s. text was lengthy and addressed all the substantive issues. we worked through the two texts and agreed on the following:

-- the declaration will include two sections; one section on "social" issues, such as internet and education; internet and developing countries; internet and research; the second section will focus on electronic commerce.

-- the electronic commerce section will include general shared principles (i.e. development of e comm should be industry led; government regulation should be highly focused and minimal)

-- this section will also focus on the following specific issues:

1) fiscal issues (both import duties and domestic taxes);
2) content (both illegal/objectionable content and "cultural content" to include an endorsement of promoting cultural diversity on the web);
3) digital signatures and authentification of electronic contracts;
4) intellectual property rights, and
5) consumer protection.

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-- notably missing from this list (but included in the original u.s. draft) are privacy, cyber cash/electronic payments, and domain names. the privacy issue may resurface; see below.

in terms of process:

-- the french (lorentz) will prepare a third draft, based on the two papers tabled in washington, and reflecting our discussion, and pass to us no later than next monday 5/11. there will probably be considerable toing and froing over the next three weeks on iterations of the paper.

-- we will host a second and final round of talks here in paris in early june to finalize the joint statement. probably june 6-7, but exact dates tbd.

-- in the interim, the french will send two "technical" teams to washington. the first will be a delegation of french lawyers (probably isabelle falque pierrotin) to meet with commerce lawyers and discuss the "mutual recognition approach," i.e. how to create an interface between the u.s. industry self regulation paradigm and the french/european government regulation paradigm in such areas as privacy, consumer protection, digital signatures, etc.

-- the second "technical" team will consist of jospin's into tech advisor noel bronc who will travel to the u.s. with dominique strauss kahn in late may; when strauss kahn goes to silicon valley for his private visit bronc will head to washington and meet with magaziner and a delegation to include department of education, white house office of science and technology policy (ostp) and state/aid to discuss the "social issues" section of the declaration. tentative date for this meeting is may 27-28.

on atmospherics:

-- the meeting got off to a rocky start; lorentz's opening position was that jospin could only address "general principles" in a joint statement, discussing specific issues would be below his pay grade. the u.s. side was frustrated with this; but lorentz quickly fell off of this position; after this awkward beginning the meeting was very business like. we juggled a couple loaded issues, particularly the "cultural content" issue. the u.s. position was supportive of efforts to promote diverisity (to include subsidies for content industries), but hard against protectionism. i thinke we'll end up with just the first half of that position in the final declaration. the lunch was very warm and fuzzy; it included all the french delegates plus just magaziner and me from the u.s. side.

in a couple asides, lorentz said that strauss-kahn would announce implementation of lorentz report e-commerce recommendations today (5/6) to include formally naming lorentz the e-commerce czar. i'll check the press tomorrow. he also said the u.s. non-paper on authentification and digital signatures (passed last week by david aaron to lorentz and christian pierret) appeared to contradict the upcoming eu directive on digital signatures, at least with respect to certificate authorities. there was a lot of toing and froing on this issue in the meeting; commerce argued that the eu commission was okay with the u.s. non paper and offered to come up with new language that both sides could clearly support. (the substantive issue here is similar to the "mutual recognition" issue -- although commerce does not/not want to use that phrase in this context. the europeans would presumably have clear government licensing regimes for certificate authorities, whereas the u.s. side wants a market driven approach.)

that's all.
tom

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From AmEmbassy London re: Internet Issues (2 pages)	07/14/98	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13124

FOLDER TITLE:
CFR [Council on Foreign Relations] Chatham House Conf. June 22

Rhonda Wilson

rw131

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]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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Printed By: Jeffery E. Zinsmeister

ACTION EUR-01

INFO	LOG-00	AID-00	AMAD-01	CIAE-00	CIP-00	CTME-00	DODE-00
	ANHR-01	EB-00	E-00	TEDE-00	INR-00	ITC-01	JUSE-00
	ADS-00	NSAE-00	OMB-01	OPIC-01	SSO-00	STR-00	TRSE-00
	DRL-04	G-00	NFAT-00	SAS-00	/010W		

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INFO ALL EUROPEAN UNION POST COLLECTIVE
USDOC WASHDC
WHITEHOUSE WASHDC

UNCLAS E F T O SECTION 01 OF 02 LONDON 007155

USDOC FOR NTIA/LIRVING/BBURR
USDOC FOR 6300/ITA/TD/RLAYTON
WH FOR POLICY/MAGAZINER
PARIS ALSO FOR USOECD

SENSITIVE

NOFORN

E.O. 12958: N/A
TAGS: EINT, ECPS, ETRD, EUN, UK
SUBJECT: INTERNET ISSUES

UNCLASSIFIED

LONDON 01 OF 02 7155

REF: LONDON 6361

1. (U) SENSITIVE BUT UNCLASSIFIED; NOT FOR DISTRIBUTION OVER THE INTERNET.

2. (U) DURING A ONE-DAY STOP TO SPEAK AT A JUNE 23 CONFERENCE ON ELECTRONIC COMMERCE IN LONDON, SENIOR WHITE HOUSE ADVISOR IRA MAGAZINER CONSULTED ON INTERNET POLICY WITH DTI COMMUNICATIONS AND INFORMATION INDUSTRY DIRECTOR BILL MACINTYRE. IN A CONVERSATION WHICH COVERED THE BANGEMANN "CHARTER," THE USG INTERNET DOMAIN NAME SYSTEM PROPOSAL, DATA PRIVACY AND ELECTRONIC SIGNATURES, DTI STAFF HIGHLIGHTED THE FACT THAT THE EUROPEAN COMMISSION WILL SUBJECT THE PRIVATIZED INTERNET DOMAIN NAME SYSTEM TO ANTI-TRUST REVIEW, ONCE IT IS ESTABLISHED.

KEEPING BANGEMANN'S "CHARTER" AIMED AT CONCRETE ISSUES

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3. (SBU) MACINTYRE CONFIRMED (SEE REFTEL) THAT HMG IS STILL RATHER "IN THE DARK" REGARDING THE PROPOSAL -- OR EVEN WHAT WILL BE DISCUSSED AT THE SPRING 1999 CONFERENCE IN VIENNA. HE CALLED THE "CHARTER" DESIGNATION "UNFORTUNATE" SINCE IT HAS NONE OF THE FEATURES OF A CHARTER (TO HIS RELIEF). MOSTLY, HMG HAS BEEN TRYING TO KEEP THE COMMISSION CLEAR OF MAJOR PITFALLS, SUCH AS THE MORE PRESCRIPTIVE DIRECTION THE FRENCH WERE ADVOCATING AT ONE POINT. HIS MAIN WORRY, HE SAID, IS THAT RESOURCES WILL GET DIVERTED FROM THE CONCRETE ISSUES AT HAND (E.G., TAXATION, INTELLECTUAL PROPERTY RIGHTS ETC.). SENIOR ADVISOR MAGAZINER RELATED THAT HE HAD TOLD BANGEMANN THAT A ROADMAP APPROACH WOULD BE ACCEPTABLE, THOUGH THE POTENTIAL IMPLICATION THAT NOTHING COULD HAPPEN WITHOUT GOVERNMENT AUTHORIZATION IS TROUBLING. ALTHOUGH HE SAID U.S.

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PARTICIPATION HADN'T BEEN RULED OUT, THE USG DOES NOT ATTACH A GREAT DEAL OF IMPORTANCE TO THE CHARTER.

DG-IV WILL MAKE ANTITRUST DETERMINATION ON DNS CORPORATION

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4. (SBU) MACINTYRE THANKED THE USG FOR ALL THAT IT HAD DONE TO ADDRESS EU CONCERNS REGARDING THE DOMAIN NAME SYSTEM (DNS) PROPOSAL. INTERNATIONAL POLICY CHIEF NEIL FEINSON POINTED OUT THAT THE INTERNATIONAL NON-PROFIT CORPORATION SET UP TO ADMINISTER THE DNS WOULD BE SUBJECTED TO EX POST FACTO SCRUTINY BY DG-IV (COMPETITION POLICY) OF THE EUROPEAN COMMISSION. FEINSON EXPLAINED THAT ONCE THE COMPANY WAS ESTABLISHED IT WOULD NEED TO FILE A "NOTIFICATION" WITH DG-IV. THE COMMISSION CAN THEN EITHER GRANT APPROVAL/CONSENT OR, IF IT DETERMINES THAT THE CORPORATION FALLS OUTSIDE THE BOUNDS OF ARTICLE 85 OF THE TREATY OF ROME, DECLARE IT EXEMPT. MAGAZINER RESPONDED THAT THE JUSTICE DEPARTMENT IS ALREADY CONSULTING WITH DG-IV. HE ADDED THAT WHILE A REVIEW OF THE CORPORATION IN TERMS OF ITS STRUCTURE IS ALTOGETHER APPROPRIATE, THE USG WOULD HAVE A MAJOR OBJECTION IF THE DG-IV REVIEW BECAME POLITICIZED.

DATA PRIVACY

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5. (SBU) MAGAZINER BRIEFED MACINTYRE ON USG EFFORTS TO MEET THE PRIVACY OBJECTIVES SET OUT IN THE JULY 1997 FRAMEWORK FOR GLOBAL ELECTRONIC COMMERCE. HE NOTED THAT COMPANIES REPRESENTING OVER 80 PERCENT OF ONLINE ACTIVITY HAD JUST ANNOUNCED AN ALLIANCE TO INSTITUTE BETTER PRIVACY PROTECTIONS. HE EXPLAINED THAT, FOLLOWING THE JUNE 22 USDOC PRIVACY "SUMMIT" WITH THE PRIVATE SECTOR, THE USG OBJECTIVE IS TO HAVE A SYSTEM OF ONLINE PRIVACY PROTECTION IN PLACE BY AUGUST. THE FTC MAY SUBSEQUENTLY BE GIVEN AUTHORITY TO ENFORCE OECD PRIVACY GUIDELINES, POSSIBLY WITH A PRESUMED EXEMPTION FOR ONLINE PRIVACY ALLIANCE MEMBERS. IN RESPONSE TO FEINSON'S INQUIRY AS TO WHAT SANCTIONS MIGHT BACK UP THE PROTECTIONS, MAGAZINER STATED THAT THE "SEAL" WOULD BE REVOKED, AND IN THE SECOND INSTANCE, THE FTC COULD INVOKE EXISTING ANTI-FRAUD MEASURES.

ELECTRONIC TRANSACTIONS

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6. (U) MAGAZINER ASKED FOR THE UK'S LATEST THINKING ON THE U.S. CONVENTION PROPOSAL FOR ELECTRONIC TRANSACTIONS AND

LONDON 02 OF 02 7155

REF: LONDON 6361

EXPRESSED CONCERN THAT SYSTEMS LINKED TOO CLOSELY TO A PARTICULAR TECHNOLOGY WOULD BECOME DE FACTO MANDATORY BEFORE WE HAVE SUFFICIENT EXPERIENCE TO JUDGE WHAT WORKS BEST. HE STRESSED THAT WHAT THE U.S. WANTS IS MUTUAL RECOGNITION OF ELECTRONIC SIGNATURE SYSTEMS. DTI SECURITY SYSTEMS CHIEF NIGEL HICKSON SAID THAT THE UK WOULD SUPPORT THE U.S. CONVENTION PROPOSAL BUT ADMITTED THAT THE EU IS LEANING TOWARDS GIVING PRESUMPTION OF VALIDITY TO DIGITAL SIGNATURES. MACINTYRE SAID HE IS OPEN TO REEVALUATING THAT POSITION.

LADER

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From AmEmbassy Paris re: OECD: Ottawa Ministerial (5 pages)	06/10/98	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13124

FOLDER TITLE:
OECD [Organization for Economic Cooperation and Development] Sec. General June 29, 1998

Rhonda Wilson

rw132

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]
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ACTION CIP-00

INFO LOG-00 ACDA-08 ACDE-00 AID-00 CEA-01 CIAE-00 CIME-00
DODE-00 SRPP-00 EB-00 EUR-01 E-00 UTED-00 FRB-00
FTC-01 H-01 TEDE-00 INR-00 IO-00 ITC-01 LAB-01
L-01 ADS-00 NSAE-00 NSCE-00 OES-01 OMB-01 OPIC-01
CIO-00 SP-00 SSO-00 STR-00 USIE-00 DRL-04 G-00
NFAT-00 SAS-00 /022W
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R 100929Z JUN 98
FM AMEMBASSY PARIS
TO SECSTATE WASHDC 6577
USDOC WASHDC
AMEMBASSY OTTAWA
DEPARTMENT OF TREASURY WASHDC
DEPARTMENT OF JUSTICE WASHDC
USEU BRUSSELS
FCC WASHDC
OECD POSTS COLLECTIVE

UNCLAS SECTION 01 OF 04 PARIS 012835

FROM USOECD

TREASURY FOR DO/XLI/GUTTENTAG
STATE FOR CIP/BEAIRD/MCCABE, EUR/ERA
STATE PASS USTR FOR PAOLETTA
STATE PASS FTC FOR DMEDINE AND JROTHSCHILD
USDOC FOR NTIA/'BURR AND NTIA/SSETTLE
USDOC FOR 6330/ITA/TD/TAI/BWELLBERY AND DPRIESTLY
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USDOC FOR 4122/IEP/OMA/MORGAN/SEVER
USDOC FOR 3133/USFCS/OIO/BUCHER
PASS TO FCC FOR ARBOGAST

SENSITIVE

NOFORN

E.O. 1298: N/A
TAGS: ETRD, ECPS, KSCA, OECD
SUBJECT: OECD: OTTAWA MINISTERIAL - THE "BRETTON WOODS OF E-COMMERCE?"; A DELEGATION REPORT

PARIS 01 OF 04 12835

1. (U) BEGIN SUMMARY. ON MAY 20, THE OECD HELD ITS FIRST STEERING COMMITTEE (SC) MEETING FOR THE OCTOBER 7-9, 1998 E-COMMERCE MINISTERIAL. THE SC AGREED TO STREAMLINE THE DOCUMENTS FOR THE MINISTERIAL AND IDENTIFIED OECD-DEVELOPED "HARD" DELIVERABLES IN THE FOLLOWING AREAS: TAXATION FRAMEWORK CONDITIONS, A STATEMENT REAFFIRMING THE OECD PRIVACY GUIDELINES, CONSUMER PROTECTION GUIDELINES, AND AN AUTHENTICATION DECLARATION. IN ADDITION, THE SC WILL REVIEW AN ACTION PLAN OR "ROADMAP"--DRAFTED BY THE OECD SECRETARIAT, INTERNATIONAL ORGANIZATIONS AND PRIVATE INDUSTRY--THAT WILL HIGHLIGHT CURRENT AND PLANNED E-COMMERCE ACTIVITIES BY GOVERNMENT, INDUSTRY AND INTERNATIONAL ORGANIZATIONS. BUSINESS REPRESENTATIVES MADE A VERY STRONG PITCH TO PARTICIPATE IN THE PREPARATIONS OF THESE DELIVERABLES AND IN THE MINISTERIAL ITSELF. THE CANADIANS ARE KEEN TO MAKE THE OTTAWA MINISTERIAL A "MILESTONE" IN E-COMMERCE ACTIVITIES, AND INDEED THE CANADIAN SECRETARY GENERAL OF THE OECD HAS REPORTEDLY REFERRED TO THE MINISTERIAL AS THE "BRETTON WOODS OF E-COMMERCE." END SUMMARY

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2. (U) ON MAY 20, 1998, THE OECD DEPUTY DIRECTOR OF THE SCIENCE & TECHNOLOGY BRANCH, MICHAEL OBORNE, OPENED THE FIRST MEETING OF THE STEERING COMMITTEE AND INTRODUCED DEPUTY SECRETARY GENERAL (D/SG) JOANNA SHELTON. THE USG DELEGATION SOUGHT CLARIFICATION FROM THE D/SG REGARDING THE MANDATE OF THE SC, INCLUDING ITS RIGHT TO PROVIDE INPUT AND APPROVE PROCEDURES AND DOCUMENTS BEING PREPARED FOR OTTAWA. D/SG SHELTON RESPONDED THAT THIS WAS THE FIRST TIME A SC OF THIS KIND HAD BEEN FORMED SO THAT "WE ARE ALL LEARNING AS WE GO." SHE COMMENTED THAT THE SC WAS TO ENSURE A COHESIVE APPROACH TO THE MINISTERIAL. WITH REGARD TO THE DELIVERABLES, THE D/SG CLARIFIED THAT THE INDIVIDUAL SECRETARIAT COMMITTEES WILL CONTINUE TO BE RESPONSIBLE FOR FINALIZING THEIR REPORTS (DELIVERABLES) FOR THE MINISTERIAL AND THAT THE SC WOULD BE RESPONSIBLE FOR APPROVING THE ACTION PLAN/ROADMAP. THE D/SG SAID THAT THE SC WILL BE KEY TO WORKING WITH THE SECRETARIAT, MEMBER COUNTRIES AND PRIVATE SECTOR ON THE AGENDA, COMMUNIQUE AND ACTION PLAN/ROAD MAP.

3. (U) MICHELLE D'AURAY, EXECUTIVE DIRECTOR OF THE CANADIAN GOVERNMENT'S E-COMMERCE TASK FORCE, WAS ELECTED TO THE CHAIR OF THE STEERING COMMITTEE (SC). SHE WAS THE ONLY CANDIDATE.

STREAMLINED DOCUMENTATION

4. (U) IN RESPONSE TO NUMEROUS INTERVENTIONS, THE SC AGREED THAT THE SECRETARIAT WILL STREAMLINE THE NUMBER OF DOCUMENTS FOR THE MINISTERIAL AND REVISE THE TEXTS SO THAT THEY ARE CONSISTENT WITH THE THEMES IN THE "CANADIAN BLUEPRINT" DOCUMENT. THE "BLUEPRINT," WHICH WAS ORIGINALLY A ROOM DOCUMENT, WAS APPROVED BY THE SC AND CONTAINS 3 THEMES:

-- "BUILDING TRUST FOR USERS AND CONSUMERS"
-- "ESTABLISHING GROUND RULES FOR THE DIGITAL MARKETPLACE"
-- "ENHANCING THE INFORMATION INFRASTRUCTURE FOR ELECTRONIC COMMERCE"

OECD SECRETARIAT DELIVERABLES

5. (U) THERE WILL BE FOUR "VERTICAL" DELIVERABLES PREPARED BY THE OECD SECRETARIAT:

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-- TAXATION FRAMEWORK CONDITIONS: DAFFE-FA IS RESPONSIBLE FOR THIS DELIVERABLE WHICH WILL BE PREPARED BY THE COMMITTEE ON FISCAL AFFAIRS AFTER CONSULTATION WITH PRIVATE SECTOR REPRESENTATIVES.

-- PRIVACY: THERE WILL BE A STATEMENT REAFFIRMING THE PRINCIPLES AND THE APPLICABILITY OF THE 1980 OECD GUIDELINES ON PRIVACY, WHICH OECD SECRETARIAT STAFF (JOHN DRYDEN /ICCP) SAID SOME CONSIDER TO BE A "FLAGSHIP OF THE OECD." USG DELEGATION CO-CHAIR BARBARA WELLBERY IS ON THE AD HOC COMMITTEE RESPONSIBLE FOR DRAFTING THIS STATEMENT. DURING THEIR 5/18-19 MEETING, THE GROUP OF EXPERTS ON INFORMATION SECURITY AND PRIVACY DECIDED AGAINST DRAFTING A "SUPPLEMENTAL" TO THE GUIDELINES, CONCLUDING THAT IT COULD UNDERMINE THE 1980 GUIDELINES WHICH THE EXPERTS CONCLUDED WERE STILL VALID.

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-- CONSUMER PROTECTION GUIDELINES WHICH WILL TAKE INTO CONSIDERATION THE ROLE OF GOVERNMENT, THE PRIVATE SECTOR, AND CONSUMER ORGANIZATIONS.

-- AUTHENTICATION FOR ELECTRONIC COMMERCE: A "DECLARATION" TO ENCOURAGE AND PROMOTE SECURE ELECTRONIC COMMERCE, INCLUDING TRANSBORDER ELECTRONIC COMMERCE, BY THE REMOVAL OF CERTAIN REGULATORY AND LEGAL BARRIERS.

STEERING COMMITTEE DELIVERABLES

6. (U) THERE WILL BE TWO, AND POSSIBLY THREE, "HORIZONTAL" DELIVERABLES WHICH THE SECRETARIAT , CANADA--AS HOST, INTERNATIONAL ORGANIZATIONS AND PRIVATE INDUSTRY WILL DRAFT. THE STEERING COMMITTEE WILL THEN REVIEW THESE DELIVERABLES BEFORE FORWARDING THEM ON TO COUNCIL.

-- THE AGENDA FOR THE MINISTERIAL;

-- AN "ACTION PLAN/ROADMAP" OF THE CURRENT WORK UNDERWAY TO "DISMANTLE SOME OF THE BARRIERS CONFRONTING E-COMMERCE AS WELL AS AREAS FOR FUTURE WORK." THIS WILL BE A THREE PART DOCUMENT. THE FIRST PART WILL FOCUS ON ACTIVITIES WITHIN THE COMPETENCY OF THE OECD AND BE MORE PRESCRIPTIVE; THE SECOND PART WILL BE AN INVENTORY ONLY OF ONGOING ACTIVITIES OUTSIDE THE OECD AND BE LESS DIRECTIVE; AND THE LAST PART WILL FOCUS ON INDUSTRY ACTIVITIES.

-- A COMMUNIQUE OR STATEMENT;

PARTICIPATION IN THE MINISTERIAL:

7. (U) INTERNATIONAL ORGANIZATIONS WILL BE INVITED INCLUDING WIPO, UNCITRAL, WTO, ITU, UNCTAD AND WORLD CUSTOMS UNION WHO, ACCORDING TO THE CANADIAN DELEGATION TO THE OECD, "WILL PLAY A MAJOR ROLE ON THE PANELS AND WILL BE RESPONSIBLE FOR DRAFTING THE SECTION OF THE ACTION PLAN ADDRESSING "INTERNATIONAL ACTIVITIES AND INITIATIVES."

PRIVATE INDUSTRY:

8. (U) THE BUSINESS INDUSTRY ADVISORY COMMITTEE (BIAC) MADE A VERY STRONG PRESENTATION TO THE SC, ENDORSING THE CONCEPT OF THE OTTAWA MINISTERIAL BEING THE "BRETTON WOODS" OF E-COMMERCE. REFERENCING THE D/SG'S INVITATION TO INDUSTRY TO PLAY A "PRODUCTIVE ROLE," BIAC PROPOSED THAT INDUSTRY PARTICIPATE IN JOINT TASK FORCES OR

WORKING GROUPS IN THE FOUR DELIVERABLES AND ACTION PLAN AREAS. THE BIAC REP SAID THAT THIS WOULD ENABLE INDUSTRY TO "STOP MAKING THE SAME PITCH" TO NUMEROUS INTERNATIONAL TRADE ORGANIZATIONS AROUND THE WORLD AND TO INCREASE THE CHANCES OF A "GLOBAL BUY IN" BY INDUSTRY. (COMMENT: IN FOLLOW-UP DISCUSSIONS WITH BIAC, USG DELEGATION CO-CHAIR LEARNED THAT BIAC'S SUGGESTIONS HAD NOT BEEN TAKEN AND THAT BIAC IS NOT PLEASED. WELLBERY ADVISED USOECD THAT SHE IS WORKING TO HAVE INDUSTRY PLAY A STRONGER ROLE IN THE MINISTERIAL PREPARATIONS. END COMMENT)

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OECD NON-MEMBERS:

9. (U) DURING THE MAY 14 COUNCIL MEETING THE SECRETARY GENERAL ASKED THE OTTAWA SC TO COMMENT FROM A "TECHNICAL POINT OF VIEW" ON THE PROPOSED INVITATIONS FROM THE FOLLOWING OECD NON-MEMBER COUNTRIES: ARGENTINA, BRAZIL, CHILE, CHINA, HONG KONG, CHINA, INDIA, ISRAEL, MALAYSIA, THE RUSSIAN FEDERATION, SINGAPORE, THE SLOVAK REPUBLIC, SOUTH AFRICA AND CHINESE TAPEI. THE COUNCIL ALSO ASKED THE COMMITTEE ON NON-MEMBER COOPERATION (CCN) TO REPORT ON THE "POLITICAL" CONSIDERATIONS. THE SC'S 5/20 DISCUSSION OF THE NON-MEMBER INVITATIONS WAS SOMEWHAT DISJOINTED BUT ULTIMATELY RESULTED IN THE FOLLOWING RECOMMENDATION: "NON-MEMBERS WILL BE PERMITTED TO ASK Q'S AND A'S, BUT CANNOT MAKE STATEMENTS NOR PARTICIPATE IN THE DRAFTING OR APPROVAL OF ANY FINAL OECD STATEMENT."

10. (U) DURING THE DISCUSSION, THE USG DELEGATION REITERATED THE USG POSITION THAT IT WAS BEST TO HAVE A SENSE OF THE STRUCTURE AND SUBSTANCE OF THE MINISTERIAL AS WELL AS THE ROLE OF THE NON-MEMBER REPRESENTATIVES BEFORE DECIDING WHICH COUNTRIES TO INVITE. WE ADDED THAT THE AGENDA WAS STILL UNDERGOING CHANGES AS A RESULT OF THE SC DISCUSSIONS THAT DAY. WE ALSO NOTED THAT THE COMMITTEE ON COOPERATION WITH NON-MEMBERS (CCN) WOULD NOT BE MEETING UNTIL JUNE 15. NO SPECIFIC DECISIONS WERE MADE ON WHICH COUNTRIES TO INVITE, BUT A FEW DELEGATES DID INTERVENE TO SUPPORT THE INVITATION OF INDIVIDUAL COUNTRIES/REGIONS SUCH AS THE BALTICS.

11. (SBU) COMMENT: JUST AFTER THE APPROVAL OF THE ABOVE RECOMMENDATION, USOECD COMMERCIAL ADVISOR TALKED WITH THE SECRETARIAT STAFF WHO COMMENTED THAT WITH THIS VERY LIMITED ROLE, IT WOULD NOT EXPECT NON-MEMBER COUNTRIES TO SEND THEIR MINISTERS. FURTHER, THE SECRETARIAT SAID THAT THE COUNCIL WOULD LATER DECIDE ON THIS AND THE CCN RECOMMENDATIONS FROM ITS JUNE 15 MEETING. A CANADIAN OECD OFFICIAL LATER COMMENTED THAT SHE WAS PLEASED BY THE FINAL SC RECOMMENDATION. WE DO NOT BELIEVE THAT THE CANADIAN GOVERNMENT REALIZES HOW LIMITED THE ROLE OF THE NON-MEMBER REPRESENTATIVES WOULD BE. END COMMENT

12. (U) PROCEDURALLY, GABRIEL DRILHON WILL NOW DRAFT A REPORT FOR AMBASSADORS TO REVIEW AT THE JUNE 23 COUNCIL MEETING. THE NON-MEMBER COMMITTEE WILL HAVE THE OPPORTUNITY TO REVIEW THE STEERING COMMITTEE'S REPORT PRIOR TO THE PLANNED JUNE 15 MEETING AND ALSO SUBMIT A REPORT TO THE JUNE 23 MEETING.

13. (SBU) COMMENT: THE CANADIANS ARE VERY KEEN TO MAKE THE OTTAWA MINISTERIAL A "MILESTONE" IN E-COMMERCE --AND MORE THAN JUST AN "OECD SECTORAL MINSTERIAL." WHILE IT MAY JUST BE ORGANIZATIONAL ENTHUSIASM, THERE ARE SIGNS THAT THE CANADIANS MAY HAVE TAKEN ON A

(text missing)

14. (SBU) NTIA AND ITA/USDOC REPORTED THAT THEY LEARNED

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IN WASHINGTON, DC--PRIOR TO THE 5/20 STEERING COMMITTEE MEETING--THAT THE CANADIAN DELEGATION WAS UNDER THE IMPRESSION THAT AS THE HOST OF THE MINISTERIAL AND LEADING CANDIDATE TO CHAIR THE SC, ITS GOVERNMENT HAD THE AUTHORITY TO VETO ANY DECISIONS MADE BY THE SC. THE USG REQUEST FOR CLARIFICATION AT THE OUTSET OF THE STEERING COMMITTEE WAS A GOOD TACTICAL MOVE TO LIMIT THE

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ROLE OF THE CHAIR AND HIGHLIGHT FOR ALL SC DELEGATES THE ACTUAL SCOPE OF THE STEERING COMMITTEE'S MANDATE.

15. (SBU) DURING THE SC, THE CANADIAN CHAIR MOVED--PERHAPS TOO QUICKLY--TO ANNOUNCE THAT THERE WAS A CONSENSUS REGARDING THE ACTION PLAN. SPECIFICALLY, THE CHAIR INDICATED THAT THE STEERING COMMITTEE WOULD REVIEW THE DRAFT ACTION PLAN WHICH WOULD COVER ALL CURRENT AND FUTURE E-COMMERCE ACTIVITIES. THIS STATEMENT WAS SOMEWHAT SWEEPING IN THAT IT DID NOT DIFFERENTIATE BETWEN WHICH ACTIVITIES FALL WITHIN AND OUTSIDE THE OECD'S COMPETENCY.

16. (SBU) THE USG DELEGATION CONSULTED WITH THE AUSTRALIAN, BRITISH AND JAPANESE DELEGATIONS. FOLLOWING A WORKING LUNCH, THE CHAIR "CLARIFIED" THAT THE STEERING COMMITTEE WAS TO PREPARE A THREE PART DOCUMENT WITH THE FIRST PART TO FOCUS ON ACTIVITIES WITHIN THE OECD'S COMPETENCY, WHILE PARTS TWO AND THREE WOULD FOCUS ON ACTIVITIES UNDERWAY IN OTHER INTERNATIONAL ORGANIZATIONS AND THE PRIVATE SECTOR. THESE ARE IMPORTANT DISTINCTIONS SINCE PART ONE CAN BE PRESCRIPTIVE ABOUT WHERE THE OECD IS GOING IN E-COMMERCE ACTIVITES. IN CONTRAST, BECAUSE INTERNATIONAL ORGANIZATIONS AND PRIVATE INDUSTRY FALL OUTSIDE THE SCOPE OF THE OECD, PARTS TWO AND THREE OF THE ACTION PLAN WILL MOST LIKELY BE "INVENTORIES" OF ONGOING ACTIVITIES.

17. (SBU) THE ACTION PLAN HAS THE POTENTIAL TO BE A VALUABLE DOCUMENT, AND ONE THAT COULD SET THE OTTAWA MINISTERIAL APART FROM ROUTINE OECD SECTOR MINISTERIALS, AS WELL AS OTHER E-COMMERCE MEETINGS. THE OECD SECRETARIAT HAS INDICATED THAT THEIR INSTRUCTIONS FROM SENIOR MANAGEMENT--BOTH THE SECRETARY GENERAL AND THE DEPUTY SECRETARY GENERAL--ARE TO MAKE THE MINISTERIAL A "MILESTONE." INDEED THE SECRETARY GENERAL OF THE OECD, WHO IS ALSO CANADIAN, HAS REPORTEDLY REFERRED TO THE MINISTERIAL AS THE "BRETTON WOODS OF E-COMMERCE."

BONDURANT

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From AmEmbassy Manila re: Philippines - Preliminary Reaction to U.S. E-Commerce Proposal (2 pages)	03/03/98	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13125

FOLDER TITLE:
Philippines

Rhonda Wilson

rw122

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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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GENEVA FOR USTR/TAGLIANI

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STATE ALSO PASS USTR FOR ABELSON/ROHDE

STATE ALSO FOR EB/CIP - WEINSCHENK

USDOC FOR 4430/IEP/EAP/OPB/KELLY

USDOC ALSO FOR NTIA

E.O. 12958: N/A
TAGS: ETRD, ECPS, WTRO, RP
SUBJECT: PHILIPPINES -- PRELIMINARY REACTION TO U.S. E-COMMERCE PROPOSAL

REF: (A)98 STATE 34344; (B)98 STATE 34869; (C) 98 MANILA 0315

MANILA 01 OF 02 2659

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Summary
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1. (SBU) Department of Trade and Industry Undersecretary Jose Juliano, who coordinates a newly-created GOP interagency/private-sector advisory committee charged with developing GOP E-commerce policy, told us March 2 he personally fully supports the U.S. initiative for a duty-free cyberspace. He says the GOP is still reviewing the U.S. proposal, which will be among topics discussed at the E-commerce advisory committee's first meeting, March 9. The head for information technology policy at the National Computer Center also indicated her support for the proposal. A formal GOP position, however, will also depend on discussion within the interagency Trade Related Matters committee. Juliano was not familiar with the details of the European Commission paper (ref b) on a global internet charter. End summary.

Some Support for U.S. Proposal
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2. (SBU) On March 2, econoff discussed the U.S. proposal

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for duty-free cyberspace with DTI Undersecretary Jose Juliano and National Computer Center Director for Information Policy Lorna Sales. Embassy had faxed to both Juliano and Sales on February 24 copies of the U.S. proposal and the statement made by Ambassador Hayes at the WTO General Council. Juliano coordinates the "Electronic Commerce Promotion Council," created by Executive Order 468 on February 23. The Council is a GOP/private-sector advisory committee charged with developing and recommending policies to promote E-commerce in the Philippines (ref c).

3. (SBU) Juliano said the GOP has yet to define an official position on the U.S. proposal, but stated he personally fully supports the U.S. proposal to make cyberspace formally duty-free. He commented "it would be ridiculous to even try to collect customs duties on downloaded software." Juliano explained that the issue would be among those discussed when Electronic Commerce Promotion Council holds its first meeting, scheduled for March 9. The National Computer Center's Sales said she also supports the concept of a tariff-free internet. She was less sanguine that the committee would discuss policy issues at its first meeting, speculating the first meeting might just be organizational. On March 3, Econoff discussed the U.S. proposal with Juliano's Executive Assistant, Roberto Silerio, who confirmed that the proposal and the APEC workplan on E-commerce would be included on the agenda for the March 9 meeting.

Possible Hurdle

4. (SBU) Econoff also discussed the proposal with Margarita Songco, Director for Trade at the National Economic Development Authority. Songco said the issue would have to be scheduled for discussion within the GOP interagency Trade Related Matters (TRM) committee, "to examine the implications." Econoff noted that it would seem hard to identify any "implications," since no duties were being applied at present, and it would be virtually impossible to charge duties in any case. Songco took the point, but declined to be drawn into further discussion on specific concerns that might be raised in the TRM.

Not Familiar with Bangemann/Brittan Charter

5. (SBU) Since neither Juliano nor Sales were familiar with the European Commission paper on administration of the internet (the "Bangemann/Brittan Charter"), we did

Comment

6. (SBU) Juliano's sympathetic response is important, since trade policy is also within his bailiwick at DTI, but does not guarantee formal GOP support for the U.S. proposal. As Songco's comment suggests, the ultimate decision may be left to the TRM, which includes other agencies that are at times less progressive on certain trade issues, such as the Department of Foreign Affairs.

HUBBARD

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From AmEmbassy Luxembourg re: Lux EU Presidency/Magaziner Meetings - C (5 pages)	10/07/97	P1/b(1)
002. cable	From AmEmbassy Bonn re: Crypto: Econ Ministry's Concerns (3 pages)	10/07/97	P5

COLLECTION:

Domestic Policy Council
Magaziner, Ira (Electronic Commerce)
OA/Box Number: 13125

FOLDER TITLE:

Luxembourg

Rhonda Wilson

rw70

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]
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RUCNFRG/FRG COLLECTIVE
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UNCLAS SECTION 01 OF 02 BONN 012639

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USDOC FOR 3133/USFCS/OIO/EUR/JWILSON
FCC INTERNATIONAL DIVISION FOR DCORNELL AND BHAAN
CIA FOR HAVER, FORT MEADE FOR MANNING

E.O. 12958: N/A
TAGS: AORC, OTR, KSCA, OECD, ECPS, ETRD, EUN, GM
SUBJECT: CRYPTO: ECON MINISTRY'S CONCERNS

REF: PARIS 22181

--- SENSITIVE BUT UNCLASSIFIED ENTIRE TEXT - PROTECT ACCORDINGLY --

1. SUMMARY: IN RESPONSE TO REFTEL CONCERNING RECENT MEDIA REPORTING OF POSSIBLE EU, SPECIFICALLY GERMAN, MISCONCEPTIONS REGARDING USG ENCRYPTION POLICY, WE

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REPORT THE FOLLOWING RECENT ECONOMICS MINISTRY COMMENTS ON THIS TOPIC. ECONOMICS MINISTER REXRODT NOTED TO AMBASSADOR GERMAN DISAGREEMENT WITH THE USG ON CRYPTOGRAPHY ISSUES. WE POINTED OUT THE INTENSE LEVEL OF CONSULTATIONS TAKING PLACE BETWEEN THE USG AND GERMANY ON CRYPTOGRAPHY, WHICH ARE SERVING TO AIR AND CLARIFY MISUNDERSTANDINGS OF USG TRUSTED THIRD PARTY PROPOSALS, AS WELL AS GERMAN CONCERNS ABOUT PRIVACY PROTECTION THAT MAY UNDERLIE THEIR CURRENT POSITION. END SUMMARY.

2. DURING AMBASSADOR KORNBLUM'S INTRODUCTORY COURTESY CALL ON ECONOMICS MINISTER REXRODT ON OCTOBER 2, REXRODT RAISED THE ISSUE OF CRYPTOGRAPHY, NOTING THAT IT WAS AN AREA OF DISAGREEMENT BETWEEN THE USG AND GERMANY. WE POINTED OUT TO REXRODT THE INTENSE LEVEL OF CONSULTATIONS TAKING PLACE BETWEEN THE USG AND GERMANY ON THE ISSUE. WE NOTED RECENT MEETINGS HELD BY THE WORKING LEVEL CRYPTOGRAPHY GROUP FROM THE NSC, NSA AND DOC/BXA ON SEPTEMBER 25 WITH OFFICIALS OF THE SCIENCE MINISTRY, ECON MINISTRY AND CHANCELLERY. IN ADDITION, WE POINTED OUT AMB. AARON'S INVITATION TO BERND SCHMIDBAUER TO ATTEND A MEETING OF SENIOR ENCRYPTION POLICY OFFICIALS IN PARIS, AND CONFIRMATION THAT WOLFRAM BERGER OF THE ECON MINISTRY WILL ATTEND THE MEETING ON OCTOBER 14. A/EMIN POINTED OUT TO MINISTER REXRODT THAT THE MOST FREQUENT AND POTENTIALLY SERIOUS MISUNDERSTANDING IN CRYPTOGRAPHY WAS THE NOTION THAT THE TRUSTED THIRD PARTY COULD ONLY BE IN THE U.S., AND THAT IN FACT THE USG PROPOSES ALLOWING FOREIGN ENTITIES IN EUROPE TO SERVE AS THEIR OWN KEY RECOVERY AGENTS. REXRODT RESPONDED THAT GERMANY WOULD HAVE GREAT DIFFICULTY WITH TRUSTED THIRD PARTIES.

3. BOTH DURING AND AFTER THE SEPTEMBER 25 WORKING LEVEL CRYPTOGRAPHY GROUP'S MEETING WITH WOLFRAM BERGER AT THE ECON MINISTRY, ULRICH SANDL, WHO WAS QUOTED ON THE CRYPTOGRAPHIC KEY ISSUE IN COMMUNICATIONS WEEK INTERNATIONAL, STRESSED THE IMPORTANCE OF REGULAR CONTACT WITH THE EMBASSY ON CRYPTOGRAPHY/PRIVACY ISSUES TO "AVOID ANY FURTHER MISUNDERSTANDINGS." HE APPEARED TO BE ADMITTING THAT HE GOT IT WRONG ON THE TRUSTED THIRD PARTY ISSUE, AND WARMLY WELCOMED EVERY OPPORTUNITY, SUCH AS THE WORKING LEVEL GROUP'S VISIT, BOTH TO BE BRIEFED ON THE ISSUE AND TO SHARE THE GERMAN GOVERNMENT'S PRIVACY ISSUE CONCERNS.

4. COMMENT: THE FRG, AND PARTICULARLY THE ECON MINISTRY, HAS CONSISTENTLY CHOSEN TO MISUNDERSTAND OUR POSITION ON TTP. REXRODT'S DIRECT REACTION TO OUR CLARIFICATION, NOTING CONTINUING FRG DIFFICULTIES WITH

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THE POINT, SUGGESTS FUNDAMENTAL PROBLEMS WITH OUR PROPOSAL, PROBABLY DRIVEN BY GERMANY'S RIGID APPROACH TO PRIVACY PROTECTION (DATENSCHUTZ). IN ADVANCE OF THE OCTOBER 27/28 ADD TALKS HERE, WE WILL PROVIDE FURTHER INSIGHTS AND REPORTING ON THIS ASPECT OF THE FRG CRYPTO POLICY.
UNCLAS SECTION 02 OF 02 BONN 012639

STATE FOR EB/CIP (VMCCANN, EMALLOY AND TFINTON)
STATE FOR EUR/AGS (EKROPF)
STATE FOR EUR/ERA, PM
STATE FOR EB/TPP/BTA/DCT (RO'BRIEN)
STATE FOR USOECD
STATE PASS USTR FOR DABELSON
STATE PASS OMB/MCCONNELL
STATE PASS NSC KNEPPER
WHITEHOUSE FOR MAGAZINER
JUSTICE FOR SCHARNEY, GOLDSTONE, VATIS, B-ESHAVE
USDOC FOR 520/BXA/EA/JLEWIS/PSEFCIK
USDOC FOR NTIA/IRVING/SHAW/BURR
USDOC FOR OGC/VWELLBERRY
USDOC FOR 6320/TD/SE/OT/DENNY-BROWN
USDOC FOR 4212/MAC/EUR/GERMANY DESK
USDOC FOR 3133/USFCS/OIO/EUR/JWILSON
FCC INTERNATIONAL DIVISION FOR DCORNELL AND BHAAN
CIA FOR HAVER, FORT MEADE FOR MANNING

E.O. 12958: N/A
TAGS: AORC, OTR, KSCA, OECD, ECPS, ETRD, EUN, GM
SUBJECT: CRYPTO: ECON MINISTRY'S CONCERNS

KORNBLUM
<^SECT>SECTION: 01 OF 02
<^SSN>2639
<^TOR>971007120439 M2965584
<^SECT>SECTION: 02 OF 02
<^SSN>2639
<MSGID> M2965584

CLINTON LIBRARY PHOTOCOPY

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. cable	From AmEmbassy Kuala Lumpur - C (12 pages)	02/12/97	P1/b(1)
002. cable	From AmEmbassy Kuala Lumpur - C (6 pages)	06/18/97	P1/b(1)
003. cable	From AmEmbassy Kuala Lumpur re: E-Commerce in APEC (4 pages)	04/08/98	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13125

FOLDER TITLE:
Netherlands/[Malaysia]

Rhonda Wilson

rw72

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

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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ACTION EAP-01

INFO LOG-00 AMAD-01 CIP-00 EB-00 UTED-00 IM-01 TEDE-00
ADS-00 NSCE-00 STR-00 SAS-00 /003W
----------30DDA1 080816Z /38

P 080658Z APR 98
FM AMEMBASSY KUALA LUMPUR
TO SECSTATE WASHDC PRIORITY 0876
USDOC WASHDC
USIA WASHDC 1671
INFO APEC COLLECTIVE PRIORITY

UNCLAS SECTION 01 OF 03 KUALA LUMPUR 001267

SENSITIVE

USDOC FOR ARLENE MAYEDA

WHITE HOUSE FOR IRA MAGAZINER

USIA FOR EA, I/TES

STATE PASS USTR FOR DON ABELSON AND BILL CORBETT

E.O. 12958: N/A
TAGS: MY, ECPS, APEC, BEXP
SUBJECT: E-COMMERCE IN APEC: SUSPICIONS OF U.S. MOTIVES AND TURF BATTLES COMPLICATE GOM POSITION

UNCLASSIFIED

KUALA LUMP 01 OF 03 1267

REF: SECSTATE 34344

1. (U) THIS MESSAGE IS UNCLASSIFIED BUT CONTAINS SENSITIVE INFORMATION WHICH SHOULD NOT BE RELEASED OUTSIDE THE U.S. GOVERNMENT. PLEASE SEE ACTION REQUESTS PARA 14. THIS MESSAGE ALSO PROVIDES A PRELIMINARY RESPONSE TO QUESTIONS POSED REFTEL. SEE PARA 8.

2. (SBU) SUMMARY. ECONCOUNS AND ECON ASSISTANT CALLED ON MINISTRY OF ENERGY, TELECOMMUNICATIONS AND POSTS (MINETP) DEPUTY SECRETARY GENERAL SHAIK SOEKARNO ON MARCH 20 TO DISCUSS THE GOM'S POSITION ON CREATING A DOMESTIC ENVIRONMENT TO PROMOTE E-COMMERCE, ON PROMOTING E-COMMERCE WITHIN APEC, AND ON U.S. BUSINESS' PROBLEMS SECURING TYPE APPROVALS FOR TECHNOLOGICALLY SOPHISTICATED TELCOM PRODUCTS. THE CONVERSATION REVEALED STRONG SUSPICIONS OF U.S. MOTIVES IN PROMOTING E-COMMERCE WITHIN THE MINISTRY AND AMONG OTHER ASEAN STATES. SOEKARNO ALSO VIEWED DARKLY THE APEC E-COMMERCE TASK FORCE, BELIEVING THAT APEC'S WORK ON THE ISSUE SHOULD REMAIN WITHIN THE TELECOMMUNICATIONS WORKING GROUP. WE BELIEVE WE MADE SOME PROGRESS IN DISABUSING SOEKARNO OF SOME OF HIS DEEPEST SUSPICIONS ABOUT U.S. INTENTIONS, BUT HE TENDS TOWARDS SUCH ATTITUDES AND HIS SIGNIFICANT ROLE IN DETERMINING GOM POLICIES, AND HIS READING OF THE STANCE OF OTHER GOM AGENCIES AND APEC ECONOMIES, SUGGEST A CHALLENGING PATH IN ADVANCING U.S. GOALS ON E-COMMERCE.

3. (U) SOEKARNO AND HIS DEPUTY WERE VERY ATTENTIVE WHEN U.S. BUSINESS' PROBLEMS SECURING TYPE APPROVALS WERE DESCRIBED AND UNDERTOOK TO LOOK IN TO THE SITUATION. WHILE WARY OF THE U.S. E-COMMERCE AGENDA, SOEKARNO MADE TWO REQUESTS FOR USG ASSISTANCE: HE WANTED TO KNOW WHETHER THERE MIGHT BE ANY INTEREST AMONG U.S. COMPANIES

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IN SETTING UP A INTERNET ACCESS POINT IN MALAYSIA; AND HE WANTED USG ASSISTANCE IN SETTING UP A TRAINING PROGRAM, DRAWING ON U.S. ACADEMIC EXPERTS, FOR GOM OFFICIALS ON E-COMMERCE. WE ARE EXPLORING WITH USIS THE POSSIBILITY OF BRINIGN AN ACADEMIC EXPERT HERE FOR WORK IN THIS AREA. ACTION REQUESTED: EMBASSY WOULD APPRECIATE RESPONSES SOONEST FROM WASHINGTON AGENCIES TO THE ISSUES POSED IN PREVIOUS SENTENCE. END SUMMARY.

4. (U) SOEKARNO WAS JOINED IN THE MEETING BY YEOH BENG KEAT, PRINCIPAL ASSISTANT SECRETARY. SOEKARNO EXPLAINED THE GOM'S STRUCTURE FOR DEVELOPING NATIONAL POSITIONS ON E-COMMERCE: THE MULTIMEDIA DEVELOPMENT CORPORATTION (MDC), THE AGENCY RESPONSIBLE FOR THE DEVELOPMENT OF THE MULTIMEDIA SUPER CORRIDTOR (MSC), CHAIRS THE INTERAGENCY EFFORT. UNDER IT, ONE COMMITTEE, CHAIRED BY MITI, FOCUSES ON THE INTERNATIONAL TRADE ASPECTS OF E-COMMERCE, THE OTHER, CHAIRED BY MINETP, DEALS WITH INFRATRUCTURE ISSUES.

5. (U) SOEKARNO EXPRESSED CONCERNS ABOUT THE NEW APEC TASK-FORCE ON E-COMMERCE, ARGUING THAT THE BUSINESS FACILITATION STEERING GROUP (BFSG) OF THE TEL WG HAD ALREADY UNDERTAKEN RELEVANT INITIATIVES AND HAS PROGRESSED QUITE FAR. NOW WE HAVE THE APEC TASK FORCE, WHICH WILL RESULT IN SOME OVERLAP. HE THOUGHT THAT THE APEC TASK FORCE MUST HAVE CLEAR TERMS OF REFERENCE AND BE OF SHORT DURATION. ECONCOUNS EXPLAINED THAT THE AUSTRALIAN AND SINGAPORE CO-CHAIRS OF THE TASK FORCE HAD ESTABLISHED A WORK PROGRAM WHICH FOCUSED FIRST, ON MUTUAL EDUCATION, AND SECONDLY ON FINDING JOINT AGREEMENT ON PRINCIPLES, AND THUS SHOULD NOT CONFLICT WITH THE TEL WG'S WORK. AT THE SAME TIME, SOEKARNO COMPLAINED THAT THE TEL WG WAS BEING DRAWN AWAY FROM ITS PRIMARY AND RIGHTFUL FOCUS ON THE TECHNICAL ISSUES OF TELECOMMUNICATIONS. HE THOUGHT THAT THE U.S. SHARED THIS CONCERN TO SOME EXTENT.

6. (U) ASKED ABOUT MALAYSIA'S ROLE AS APEC CHAIR IN PROMOTING ACCEPTANCE OF AN APPROACH TO E-COMMERCE AMONG OTHER APEC MEMBERS, SOEKARNO SAID THAT THE GOM HAD BEEN CONSULTING CLOSELY WITH OTHER ASEAN COUNTRIES, AND HAD DETECTED CONSIDERABLE SUSPICION ABOUT U.S. MOTIVES IN PROMOTING AN E-COMMERCE AGENDA, THAT THE USG HAS PUT FORWARD ITS OWN APPROACH AND JUST WANTS EVERYONE ELSE TO SIGN UP, WITHOUT ADITIONAL INPUT. HE SAID THAT MANY COUNTRIES HAVE COME TO THE GOM URGING CAUTION ABOUT PROCEEDING ON E-COMMERCE. MALAYSIA HAS BEEN "WARNED" TO

KUALA LUMP 02 OF 03 1267

REF: SECSTATE 34344

BE CAUTIOUS ABOUT THE POSSIBLE LOSS OF SOVEREIGNTY WHICH MIGHT RESULT FROM HASTY ACCEPTANCE OF THE USG'S IDEAS.

7. (U) SOME COUNTRIES (VIETNAM?) QUESTIONED THE USG POSITIONS AS "CAPITALIST" BECAUSE OF THEIR EMPHASIS ON MINIMAL GOVERNMENT INVOLVEMENT. IN GENERAL, COUNTRIES WERE EXTREMELY CONCERNED BECAUSE THEY DID NOT UNDERSTAND THE IMPLICATIONS OF E-COMMERCE. IN PARTICULAR, MANY POORER COUNTRIES ARE CONCERNED ABOUT THE USG PRINCIPLES RELATING TO NO TAXATION OR TARIFFS, BECAUSE SUCH COUNTRIES BADLY NEED THE REVENUES, AND SOME ARE STILL VERY DEPENDENT ON TARIFFS AS A REVENUE SOURCE. COUNTRIES WERE ALSO VERY CONCERNED ABOUT THE IMPACT ON THEIR OWN COMPANIES OF A NEW TECHNOLOGY WHICH MIGHT PLACE THEM IN CLOSER COMPETITION WITH U.S. AND OTHER DEVELOPED COUNTRY

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GIANTS. SOEKARNO CONVEYED THE IMPRESSION THAT SOME WITHIN THE MALAYSIAN BUREAUCRACY SHARED SOME OF THESE CONCERNS, IN PARTICULAR ABOUT THE ABILITY OF MALAYSIAN FIRMS TO COMPETE WITH THE U.S. "GIANTS" LIKE MICROSOFT. COUNTRIES ARE ALSO CONCERNED ABOUT HOW E-COMMERCE WILL AFFECT PAYMENTS ARRANGEMENTS AND MONETARY POLICY GENERALLY.

8. (U) SOEKARNO EXPRESSED PARTICULAR ANNOYANCE THAT THE USG HAD TABLED ITS PAPER ON CUSTOMS TREATMENT OF E-COMMERCE AT THE BRUNEI TELGROUP MEETING. FOR ONE THING, THE TEL GROUP DID NOT DEAL WITH CUSTOMS ISSUES. WAS THE USG UP TO SOMETHING? HE THOUGHT IT BEST TO CREATE THE (PRESUMABLY TECHNICAL) CONDITIONS FOR THE DEVELOPMENT OF E-COMMERCE AND TO "LET THE CUSTOMS ISSUE BE" AND DEAL LATER WITH CUSTOMS ISSUES. HE REFERRED TO DEVELOPING COUNTRY CONCERNS ABOUT FOREGOING POSSIBLE SOURCES OF INCOME AND SAID OUR POSITION IS INCONSISTENT WITH THE VIEWS OF THE REST OF APEC. HE EXPRESSED CONCERN ABOUT THE U.S. EFFORT TO PUT THE ISSUE ON THE WTO AGENDA. EMBASSY WILL CONTINUE TO PRESS THE POINTS REFTEL TO OTHER GOM AGENCIES BUT EXPECT MORE TIME AND EDUCATION WILL BE REQUIRED TO BRING THE GOM ON BOARD.

9. (U) ECONCOUNS RESPONDED WITH A DEFENSE AND EXPLANATION OF U.S. POLICIES AND GOALS ON E-COMMERCE. SHE EXPLAINED THAT THE QUESTIONS POSED TO GOVERNMENT POLICY MAKERS AND REGULATORS HAD COME TO THE USG'S ATTENTION EARLY ON BECAUSE OF OUR OWN DIVISION OF POWER BETWEEN THE NATIONAL AND STATE GOVERNMENTS AND THAT THE PRESIDENT'S INITIATIVE WAS A RESPONSE TO AN OBVIOUS NEED. SHE EXPLAINED THAT THE USG PROPOSAL FOR A CUSTOMS-FREE E-COMMERCE ENVIRONMENT WOULD NOT DEPRIVE POOR COUNTRIES OF TRADITIONAL SOURCES OF REVENUES LEVIED ON PHYSICAL GOODS TRANSACTIONS. SHE SAID WE RECOGNIZED THAT OTHER COUNTRIES, SUCH AS AUSTRALIA AND THE EU, ALSO HAD THEIR OWN IDEAS, AND WE HAD COME TO A MUTUAL UNDERSTANDING WITH THE EU. ALSO, WE ARE QUITE PLEASED THAT AUSTRALIA AND SINGAPORE AGREED TO CO-CHAIR THE APEC TASK FORCE.

10. SHE EXPLAINED THE SCOPE OF WORK FOR THE TASK FORCE AS DEFINED BY ITS CO-CHAIRS, WHICH WOULD FOCUS FIRST ON MUTUAL EDUCATION ON THE KINDS OF ISSUES WHICH SOEKARNO HAD RAISED AND THEN TURN TO DEFINING AN AGREED SET OF PRINCIPLES. THE WORK OF THE TASK FORCE THUS SHOULD NOT CONFLICT WITH THAT OF THE TEL WG. SHE ALSO EXPLAINED THAT THE COMPANIES WHICH ARE BENEFITING THE MOST FROM THE DEVELOPMENT OF E-COMMERCE ARE SMALL AND MEDIUM-SIZED COMPANIES, AND THAT WE SEE THAT E-COMMERCE WILL PROVIDE THE SAME OPPORTUNITIES FOR SMES ON A GLOBAL SCALE, PARTICULARLY WHEN ACCOMPANIED BY, FOR EXAMPLE, APEC-WIDE MEASURES TO CREATE AN ENABLING ENVIRONMENT FOR EXPRESS PACKAGE DELIVERY.

11. (U) APPEARING SOMEWHAT REASSURED BY THE EMBASSY'S EXPLANATIONS, SOEKARNO ASKED IF THERE WAS ANY POSSIBILITY THAT THE USG COULD FACILITATE THE ESTABLISHMENT OF SOME KIND OF TRAINING PROGRAM IN E-COMMERCE ISSUES TO BE CONDUCTED BY EXPERTS FROM U.S. UNIVERSITIES. THE GOM WOULD BE IN A POSITION TO DISCUSS FUNDING FOR SUCH A PROGRAM. WE WILL FOLLOW UP ON THIS REQUEST BY SOLICITING ASSISTANCE THROUGH USIA'S I-BUREAU. SOEKARNO ALSO ASKED IF THE EMBASSY COULD HELP FOSTER U.S. INDUSTRY INTEREST IN ESTABLISHING ADDITIONAL INTERNET ACCESS POINTS IN MALAYSIA. BEGINNING IN JUNE, THE GOM WILL OPEN UP

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REF: SECSTATE 34344

INTERNET SERVICE TO ALL INTERESTED PROVIDERS IN MALAYSIA, RATHER THAN THE TWO THUS FAR GIVEN CONTROL OF THE LOCAL MARKET. HOWEVER, ALL PROVIDERS WOULD STILL REMAIN DEPENDENT ON COSTLY ACCESS TO THE U.S. UNLESS AN ACCESS POINT WERE ESTABLISHED IN MALAYSIA.

12. (SBU) ECONCOUNS THEN TURNED THE DISCUSSION TO THE SEVERE PROBLEMS REPORTED TO US BY ONE LARGE U.S. TELCOM COMPANY IN OBTAINING TYPE APPROVALS FOR ITS STATE OF THE ART NETWROKING PRODUCTS. AT THE COMPANY'S REQUEST, WE RAISED THE PROBLEM ONLY IN GENERAL TERMS, INFORMING SOEKARNO THAT APPROVALS IN MALAYSIA CAN TAKE 3-5 MONTHS COMPARED TO 1-2 MONTHS ELSEWHERE, THAT THE HEAVY REGULATORY BURDEN REQUIRED TO OBTAIN THE APPROVAL IMPOSES SEVERE COSTS ON EXPORTING COMPANIES, AND THAT MALAYSIA SUFFERED REPEATED TECHNOLOGY LAGS AS A RESULT. BOTH SOEKARNO AND YEOH APPEARED SHOCKED AT THE DESCRIPTION OF THE TYPE APPROVAL PROCESS AND UNDERTOOK TO INQUIRE INTO THE SITUATION.

13. COMMENT. (SBU) DEPUTY SECRETARY GENERAL SOEKARNO IS A HIGH-RANKING MEMBER OF THE GOM'S INTERAGENCY GROUP TO ESTABLISH THE GOM'S OWN NORMS FOR PROMOTING AND REGULATING E-COMMERCE. HIS DOWNBEAT ASSESSMENT IS IN PART A REFLECTION OF HIS OWN GENERAL DEMEANOR BUT ALSO APPEARS TO REFLECT FAIRLY WIDESPREAD ATTITUDES WITHIN THE MALAYSIAN BUREAUCRACY AND OTHER ASIAN COUNTRIES. MOREOVER, WE HAVE HEARD ELSEWHERE THAT THE GOM'S PROCESS OF DETERMINING POSITIONS ON E-COMMERCE ISSUES IS BEING COMPLICATED BY TURF BATTLES. NONETHELESS, THE GOM AT THE HIGHEST LEVELS HAS ESTABLISHED A PRIORITY TO DEVELOP E-COMMERCE, AND HAS MADE E-COMMERCE A PRIORITY FOR ITS APEC CHAIRMANSHIP YEAR, SO THE NAY-SAYERS WITHIN MALAYSIA WILL HAVE TO BE ACCOUNTABLE FOR ANY FAILURE TO ACHIEVE PROGRESS. WE CAN BEST HELP MOVE THE PROCESS FORWARD BY RESPONDING TO THE GOM'S REPEATED REQUESTS FOR ASSISTANCE IN "BRIEFING UP" ON THE ISSUES. EMBASSY HOPES THAT PRESIDENTIAL SENIOR ADVISOR WILL BE ABLE TO TRAVEL TO MALAYSIA IN JUNE TO BRIEF APEC SENIOR OFFICIALS AND OTHERS IN KUCHING. IN ADDITION, EMBASSY HOPES WASHINGTON AGENCIES WILL RESPOND ASAP TO THE ACTION REQUESTS IN FOLLOWING PARAGRAPH. END COMMENT.

14. ACTION REQUESTS. EMBASSY REQUESTS WASHINGTON AGENCY ASSISTANCE IN ADVISING ON A RESPONSE TO THE GOM REQUEST DESCRIBED PARA 11 FOR FACILITATION OF A TRAINING PROGRAM ON E-COMMERCE ISSUES TO BE CONDUCTED BY U.S. ACADEMIC EXPERTS. EMBASSY ALSO REQUESTS GUIDANCE ON HOW TO RESPOND TO PARA 11 REQUEST FOR ELICITING U.S. INDUSTRY INTEREST IN ESTABLISHING AN INTERNET ACCESS POINT IN MALAYSIA. WE ADMIT TO IGNORANCE ABOUT THE TEHNICALITIES OR REASONABLENESS OF SOEKARNO'S REQUEST BUT WOULD APPRECIATE ANY EDUCATION FROM WASHINGTON SHOULD WE NEED TO GO BACK TO HIM FOR MORE INFORMATION. END ACTION REQUESTS.

MALOTT

UNCLASSIFIED 5

CLINTON LIBRARY PHOTOCOPY

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	From Drew Quinn to Ira Magaziner re: Japan - language on content (2 pages)	04/16/98	P5

COLLECTION:

Domestic Policy Council
Magaziner, Ira (Electronic Commerce)
OA/Box Number: 13125

FOLDER TITLE:

Japan [2]

Rhonda Wilson

rw74

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)]

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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

CLINTON LIBRARY PHOTOCOPY

April 16, 1998

TO: Ira Magaziner

FROM: Drew Quinn DQ

SUBJ: Japan -- language on content (five pages)

I met with the National Police Agency today to seek confirmation on a few aspects of their content law as requested by DC agencies.

On objectionable (not illegal) content, the NPA provided the assurances we want: the restrictions will consist solely of a registration requirement and an age verification requirement that are the precise analog of restrictions on retailers of porn. (Note: the restrictions don't apply to content flows generally, just to businesses that make money by selling the stuff). No liability will attach to on-line service providers -- whether Japanese, US-owned in Japan (like AOL/Japan), or US-based (AOL) -- for enforcing this; the responsibility falls on the web-site. And NPA confirmed these restrictions would apply only to domestic websites, not to websites outside Japan.

On illegal content, the situation isn't quite as clear. NPA agrees osp's shouldn't be expected to review or screen everything going over their system. They agree osp's' responsibility to block illegal content begins only when that content is brought to their attention. And they agree that the key issue is "reasonable efforts" by osp's -- if the source of illegal content keeps moving from one site to another, an osp can't be expected to block it completely as long as the osp seems to be making efforts to take it down whenever an offending website is brought to its attention. The language in the law itself is pretty vague: when obscene material is found on their transmission facilities, osp's shall "make efforts to take necessary measures in order to prevent the transmission." And the NPA says there are no criminal penalties, just "guidance" or a "warning" (!) from the NPA.

So far, so good. However, there are a couple of problems. One is on safeguards against frivolous or onerous application. NPA seemed to agree with the concept of "economic and technical feasibility" for takedown. I also noted the USG believes that since this is a matter of law (regarding content), the notice to the osp should be delivered by a law enforcement authority -- following review of a complaint filed by a consumer. The NPA did not argue with that logic, but said that their law envisioned osp's having to respond to complaints filed by consumers. This isn't written in the law -- it's just how they envisioned it operating.

The broader problem, as I see it, is that what I had assumed were Japanese cultural norms regarding content are actually legal restrictions. The Japanese courts have essentially found that any representation of sex organs constitutes obscenity. Taken to its extreme, (a safe assumption if the notice/takedown obligation is triggered by bluenosed consumers

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rather than resource-poor law enforcement authorities), this could mean that every osp operating in Japan will be expected to block access to the thousands -- millions? -- of websites from the US, Europe and other societies that take a less restrictive approach of what is (illegally) obscene. Clearly this will be unworkable -- I'm scheduled to meet with MITI to ask what they think about it (my role here is to serve as a conduit between MITI and NPA). I will also call AOL/Japan, PSINet Japan and ATT/Jens (AT&T's osp in Japan) tomorrow to see how they perceive this.

With respect to the joint statement, I am inclined to try to set aside the whole issue of illegal content/osp liability/notice and takedown system for the time being, if you think it desirable and politically viable -- after all, we included nothing on this subject in our original draft. The purpose of the joint statement is to outline agreed-upon general principles and guidelines; but at this point our discussion of osp liability is down in the weeds about what is the proper threshold of economic and technical feasibility -- a discussion that might be rendered obsolete by emerging technologies anyway. Moreover, one of the original purposes of the entire Framework effort was to shift the discussion of the Internet away from pornography or bomb-making, but already the section on content has grown to be the longest in the draft statement. The NPA law will create a mess (and an international embarrassment for Japan) if they try to implement it as they have described. As with most Japanese laws, the law is written in a vague way, so I assume NPA will ultimately find a more workable way to satisfy what it views as its legal and moral obligations. In the interim, what if we just set that issue aside (assuming I discover tomorrow that US osps in Japan aren't up in arms about this)?.

In a very noncommittal way, I noted today to the NPA the irony that what was intended as a statement on general principles on e-commerce had evolved into such a very specific discussion of legislation issues, and they agreed. I am hopeful that we could persuade NPA to set aside the issue of osp liability (and I believe we'd receive support from elsewhere in the GOJ to do so), assuming we reached agreement on an otherwise mutually acceptable "content" text that addressed rating/filtering systems and the new GOJ law on access to legal porn.

In that vein, then, I offer the following redraft, which is intended basically to frame what the GOJ intends to do anyway (with its proposed law) in the least objectionable way possible. The third paragraph could be a fallback position if the NPA insisted on having some mention of liability for illegal content; and the final clause (in brackets) could be a further fallback if they wanted to include reference to the notice and takedown concept. I also combined the second and third sentences in the GOJ draft in a way that makes the point they want on cultural diversity without making is seem like that can be justification for erecting barriers to the free flow of content (as the GOJ draft does).

Let me know what you think. We're an hour behind you in Tokyo -- I can be reached from 8 to 11 (Tokyo time) tomorrow at the office -- 81-3-3224-5034 -- and over the weekend at home (81-3-3224-6866.)

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	Re: Drew Quinn background paper (3 pages)	12/12/97	P5
002. list	Ministry of Foreign Affairs (partial) (4 pages)	12/12/97	P6/b(6)
003. memo	From Drew Quinn to Ira Magaziner re: Japan - language on content (2 pages)	04/16/98	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13125

FOLDER TITLE:
Japan [3]

Rhonda Wilson

rw75

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]
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C. Closed in accordance with restrictions contained in donor's deed of gift.
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RR. Document will be reviewed upon request.

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Drew:

Here are some thoughts just to give you and others some idea of who's coming to Washington next week, and what one might expect. Please circulate as appropriate.

Actually, there's not much going on out here in Tokyo on e-commerce, at least not at the governmental level. Everyone out here welcomed the Framework for Global E-Comm in July; commended Ira for putting the issue on the international agenda; and said this would force the GOJ to take a proactive approach to the issue as well. The GOJ even formed a study group to report to the Prime Minister on the issue: the E-Commerce Study Group of the "Prime Minister's Advanced Information Society Promotion Headquarters." But as the months have passed, and the issue has receded (in Japan), territorial battles between ministries have continued, and parochial interests have re-asserted themselves. There is no strong leadership on this issue, and the Prime Minister's study group is perceived as a talk shop with no authority to bang bureaucratic heads together. As a result, the lack of coordination among ministries is becoming the biggest stumbling block to meaningful GOJ policy initiatives in the e-commerce area.

MITI is probably the most forwarding-looking GOJ agency on this issue. MITI officials want to see a global framework for e-commerce established because believe that's what's necessary for e-commerce to grow, and they see the growth of e-commerce as a way to re-energize Japan's electronics industry. Actually, for the people in the Machinery and Information Industries Bureau, e-commerce is one of -- if not the -- most important issues for them this year, because they think (1) e-commerce brings together all the different types of information technology, and (2) it does so in a way that is by definition demand-driven. MITI feels that in the post-bubble era, the Japanese electronics producers have pursued a lot of dead ends (HDTV, wide-screen tv, etc) because their engineers were coming up with sophisticated new products for which there was limited demand. MITI is confident that potential demand isn't a problem -- is almost limitless -- for e-commerce. Should MITI's strong interest worry us? I don't necessarily think so. I can't think of a Framework issue where MITI would be expected to have a position opposed to ours. The one possible exception that springs to mind is standards, but I think even there, many in MITI have learned that Japan-only standards (NEC p.c.s, etc) do Japan more harm than good in the long term; nowadays most of the standards problems we see in the high tech area are in telecoms, not in the information technologies handled by MITI.

MPT's role in e-commerce policy is much less clear. It's hard to escape the feeling that they're in this just to maintain a say in what gets transmitted over the telecommunications networks they regulate (and not cede any territory on telecoms-related issues to MITI). Obviously over the past few months MPT's primary concern has been the ministry's survival, and fighting (successfully) the plans to merge its telecoms bureau into MITI. No one in U.S.

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industry here has a particularly high regard for MPT's efforts or views on e-commerce. On standards, however, MPT is a key player, because its client NTT is one of the few players with the market power to enforce a proprietary standard. People are already beginning to hear that NTT is developing a proprietary e-money standard. I realize that standards isn't one of the priority issues that will be discussed next week, but it might be useful to continue to stress the desirability of global standards.

MOF is pretty unenthusiastic about all this. When it comes to e-money and electronic transaction settlement, the feeling in Tokyo is that MOF is dragging its feet on funding/approving new projects because it doesn't want its client banks -- which are already in dire straits -- to have to face new competition. Which is probably why most of the interesting trial projects here are from credit card companies (which are regulated by MITI). On taxation, MOF isn't sure how it would tax electronic commerce but is loath, in the current climate of fiscal consolidation and proposed corporate tax cuts, to rule out any potential source of revenue. In fact, it was MOF's objections that were behind Japanese resistance to a stronger APEC statement on e-commerce. Add to MOF's reluctance to move forward on these issues the Ministry's general disdain for discussing its issues in front of other GOJ colleagues, and you see why MOF is probably the least willing participant in this process. On tariffs, though, MOF's Customs and Tariff Bureau seems to made its peace with the notion of tariff-free cyberspace, either on the basis of principle or because it thinks tariffs on e-commerce are too impractical to bother fighting for.

I've had limited dealings with the Ministry of Justice. Some people think they could be a wild card in this process because they're studying Framework issues like content, privacy and digital certification, and don't necessarily approach them from the same perspective we do (nor feel compelled to pretend they do, like MITI and MPT). We hear the National Police Agency has formed a study group on content control, which is hardly encouraging given their track record. I checked with MOFA which said that NPA would not be sending a delegate to these talks but would be preparing talking points on its efforts for the MOJ rep to deliver. On the positive side, major U.S. electronics firms are in fairly close contact with MOJ and the Police Agency and promise to let us know if they sense the internal deliberations there are unfolding in a way counter to the goals of the Framework.

MOFA will head the delegation, and claims this role because it is historically assigned the lead on international issues

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that cut across GOJ agencies. But it's not a particularly useful leader -- relatively powerless compared to the vested interests at MOF, MITI and MPT, pretty uninformed, understaffed, fairly junior. In one respect, MOFA's position is a little unhelpful to us: it's much more sensitive to the supposed "global consensus" than the rest of the GOJ, and for now, anyway, is exhibiting considerably greater reluctance than the other ministries (particularly MITI) to the notion of the U.S. and Japan getting out in front and leading the rest of the world on e-commerce policy. In some circles MOFA has the reputation for being the U.S.' fixer (or would-be fixer) behind the scenes, but on this issue that's just not the case, maybe because the MOFA people in charge of and staffing this issue are not America hands but multilateral types in the Economic Affairs Bureau. That said, no one here has had extensive dealings with Kondo, who was very upbeat and positive about the talks in Washington in his good discussion with our Econ Minister Larry Greenwood earlier this week.

So those are the major players. Again, a lot of different interests and clients, and without any overarching structure or policy (the US has a Framework paper; the Japanese have different papers from MITI, MPT, MOF) there is nothing to prevent different GOJ ministries from going off and addressing the issues under their purview on their own. Which I don't think helps us: absent any leverage other than moral suasion, the best way we can help sway a -- for example -- a recalcitrant MOJ, or MOF, would be to create an inter-agency process whereby ministries more sympathetic to our approach would be entitled to have a some input (albeit limited) into the final decision.

If the GOJ won't be able to summon up the will or interest to enunciate its own unified policy, maybe the best thing to do would be engage them in some sort of joint US-Japan declaration on e-commerce, which would then supersede individual ministries prerogatives. In sending over the EU-US Joint Statement, I reiterated Ira's suggestion that after getting a better sense next week of where we agree and disagree, Ira would be prepared to come over in January or February to try to work on the disagreements with a goal of a similar joint statement. It might be useful to repeat that offer/threat next week. In general, I think the best thing to do next week -- apart from having a good substantive discussion of these topics -- is to generate some sense of urgency among the Japanese: we're serious about this issue, we're talking with other countries; and if Japan doesn't get its (policy) act together, it risks being left behind.

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April 16, 1998

TO: Ira Magaziner

FROM: Drew Quinn DQ

SUBJ: Japan -- language on content (five pages)

I met with the National Police Agency today to seek confirmation on a few aspects of their content law as requested by DC agencies.

On objectionable (not illegal) content, the NPA provided the assurances we want: the restrictions will consist solely of a registration requirement and an age verification requirement that are the precise analog of restrictions on retailers of porn. (Note: the restrictions don't apply to content flows generally, just to businesses that make money by selling the stuff). No liability will attach to on-line service providers -- whether Japanese, US-owned in Japan (like AOL/Japan), or US-based (AOL) -- for enforcing this; the responsibility falls on the web-site. And NPA confirmed these restrictions would apply only to domestic websites, not to websites outside Japan.

On illegal content, the situation isn't quite as clear. NPA agrees osp's shouldn't be expected to review or screen everything going over their system. They agree osp's' responsibility to block illegal content begins only when that content is brought to their attention. And they agree that the key issue is "reasonable efforts" by osp's -- if the source of illegal content keeps moving from one site to another, an osp can't be expected to block it completely as long as the osp seems to be making efforts to take it down whenever an offending website is brought to its attention. The language in the law itself is pretty vague: when obscene material is found on their transmission facilities, osp's shall "make efforts to take necessary measures in order to prevent the transmission." And the NPA says there are no criminal penalties, just "guidance" or a "warning" (!) from the NPA.

So far, so good. However, there are a couple of problems. One is on safeguards against frivolous or onerous application. NPA seemed to agree with the concept of "economic and technical feasibility" for takedown. I also noted the USG believes that since this is a matter of law (regarding content), the notice to the osp should be delivered by a law enforcement authority -- following review of a complaint filed by a consumer. The NPA did not argue with that logic, but said that their law envisioned osp's having to respond to complaints filed by consumers. This isn't written in the law -- it's just how they envisioned it operating.

The broader problem, as I see it, is that what I had assumed were Japanese cultural norms regarding content are actually legal restrictions. The Japanese courts have essentially found that any representation of sex organs constitutes obscenity. Taken to its extreme, (a safe assumption if the notice/takedown obligation is triggered by bluenosed consumers

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rather than resource-poor law enforcement authorities), this could mean that every osp operating in Japan will be expected to block access to the thousands -- millions? -- of websites from the US, Europe and other societies that take a less restrictive approach of what is (illegally) obscene. Clearly this will be unworkable -- I'm scheduled to meet with MITI to ask what they think about it (my role here is to serve as a conduit between MITI and NPA). I will also call AOL/Japan, PSINet Japan and ATT/Jens (AT&T's osp in Japan) tomorrow to see how they perceive this.

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Let me know what you think. We're an hour behind you in Tokyo -- I can be reached from 8 to 11 (Tokyo time) tomorrow at the office -- 81-3-3224-5034 -- and over the weekend at home (81-3-3224-6866.)

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	From Drew Quinn to Ira Magaziner and Greg Chang re: E-Commerce/Japan: March 3 Status Report (3 pages)		P5
002. cable	From AmEmbassy Tokyo re: E-Commerce: MOFA's Kondo Previews March 9 Session and Discusses GOJ Views on Joint Statement - C (4 pages)	03/06/98	P1/b(1)
003. cable	From AmEmbassy Tokyo re: E-Commerce: Following up on Proposed Joint Statement with MOFA's Kondo - C (4 pages)	02/26/98	P1/b(1)
004. cable	From AmEmbassy Tokyo re: E-Commerce: Police Agency Explains Proposed Law Regulating Objectionable Content - C (6 pages)	03/12/98	P1/b(1)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13125

FOLDER TITLE:
Japan [6]

Rhonda Wilson

rw76

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]
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C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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6. Timing of announcement. You saw (I hope) the cable we sent in on our meeting (Econ Minister Larry Greenwood and

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me) with Kondo last week, in which he expressed doubt about reaching agreement on a joint statement until the summer. That, and an indirect reference we picked up second-hand later in the week, raised concerns I mentioned to Greg Friday that MOFA was not pushing this very aggressively. That was what led me to suggest that you might consider calling in the Japanese Embassy Econ Minister to express interest in moving forward rapidly on this (without putting Kondo in a difficult position by referring directly to his comments), as well as to emphasize what a bilateral "win" this could be.

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7. GOJ counterdraft. MOFA has basically delegated to MITI the coordination of an inter-agency position on this, and Okada let me look at the (Japanese language) draft he's currently negotiating with other agencies (please don't repeat that). It seems the major sticking point is tariffs: the Customs Division has rejected MITI's language and come back with a sentence saying, as I recall "The US and Japan believe economies should continue, in the case of software on a carrier medium transmitted electronically, to respect the WTO customs valuation decision." Legally correct, I guess, but hardly inspirational.
On other issues:
-- taxation: MOF has basically told MITI that it will handle the issue of taxation directly with Treasury (I understand Treasury is briefing you on these discussions);

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-- authentication/electronic signatures (for the first time, the GOJ said it prefers the broader term of "electronic" rather than "digital" signatures): the GOJ has deleted references to an international convention. They (MOJ and MPT) have also put in a sentence about "respecting each country's system" which is intended to refer to MOJ's desire to develop its business register system into a government-created but not mandated or exclusive certifying authority.

-- privacy: seems to be mostly the same, but only half of MPT has blessed the MITI language.

From my cursory glimpse at the text, it seemed that the other issues were largely the same or amended as you agreed to in Tokyo, e.g., adding a reference to trademarks to the IPR sentence, adding a few references to APEC, combining the "agreed actions" and "guidelines" sections of the statement. The Japanese have also added a sentence to the end of the section on contents which I couldn't make out, but Okada said it didn't materially change the thrust of the reference.

MITI's goal is to get their re-draft to you by Thursday or Friday, but that might be over-optimistic. I'll let you know as the situation evolves.

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To Ira Magaziner and Greg Chang from Drew Quinn re: E-Commerce/Japan: March 3 Status Report (4 pages)	03/03/98	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13125

FOLDER TITLE:
Japan [7]

Rhonda Wilson

rw123

RESTRICTION CODES

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TO: White House -- Ira Magaziner and Greg Chang
(c/o Drew Weinschenk)

FROM: Tokyo -- Drew Quinn

SUBJECT: E-commerce/Japan: March 3 status report

[Drew: Please get this to Greg. Thanks. -DQ]

Nikkei symposium (for Greg)

1. The Washington-Chicago leg of Ira's outbound trip offers only First and Economy class seats, and Ira is automatically upgraded as a bonus for buying a Business Class transpacific flight. The ticket will read "First Class" for Washington Chicago, because Business Class is not available on that flight. Is that okay, or would Ira feel better with an Economy seat for that (90 minute or so) flight?

2. Ticketing arrangements are complicated but manageable. The drawback is that only Ira -- not you, or Nikkei staff in DC -- can pick the ticket up from United. He could either do that at the United office at 16th and K Streets, or at the airport just prior to departure. Let me know his preference so American Express knows where to (electronically) send the ticket.

3. Interpreter -- the Ambassador will provide his (Mrs. Gregg) for Ira's use Monday so that this is a no-expense trip. Obviously the Nikkei provides interpretation at the symposium and their dinner on the 10th.

4. Vice President's videotape. I've already told the Nikkei that because of the VP's busy schedule, it looks highly unlikely that he'll get to prepare a videotaped message. Can I convey that to them officially? They have programs to print, etc, and I'd like to give them sufficient lead time to delete any references that might embarrass them.

Bilats with GOJ (for Ira)

5. Some in MITI still think you might opt to bring some USG people along for a fuller discussion next Monday. I haven't heard any reference to an accompanying delegation, and assume plans to have Don Abelson or Andy Pincus come along fell through when it became clear we wouldn't be aiming to wrap this up by March 10. If that's true, can I tell the GOJ? I think MITI might be rushing their counter-draft through the clearance process so you can receive it Friday and decide who to bring with you on Saturday (that's how they'd operate). I'd rather be candid with them if it looks like you'llbe coming alone no matter what -- though I'll of course still stress the benefit of getting their draft to you in time for you to discuss it with various inter-agency players before leaving Washington.

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-- taxation: MOF has basically told MITI that it will handle the issue of taxation directly with Treasury (I understand Treasury is briefing you on these discussions);

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-- authentication/electronic signatures (for the first time, the GOJ said it prefers the broader term of "electronic" rather than "digital" signatures): the GOJ has deleted references to an international convention. They (MOJ and MPT) have also put in a sentence about "respecting each country's system" which is intended to refer to MOJ's desire to develop its business register system into a government-created but not mandated or exclusive certifying authority.

-- privacy: seems to be mostly the same, but only half of MPT has blessed the MITI language.

From my cursory glimpse at the text, it seemed that the other issues were largely the same or amended as you agreed to in Tokyo, e.g., adding a reference to trademarks to the IPR sentence, adding a few references to APEC, combining the "agreed actions" and "guidelines" sections of the statement. The Japanese have also added a sentence to the end of the section on contents which I couldn't make out, but Okada said it didn't materially change the thrust of the reference.

MITI's goal is to get their re-draft to you by Thursday or Friday, but that might be over-optimistic. I'll let you know as the situation evolves.

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	From Drew Quinn to Ira Magaziner re: GOJ position on encryption (1 page)	07/28/97	P5
002. cable	From AmEmbassy Kuala Lumpur re: That Was Then and This is Now: Mahathir Switches from America Roasting to America Toasting to Promote his Multimedia Super Corridor - C (6 pages)	01/29/97	P1/b(1)
003. memo	From Stephanie Young to Mia re: Yoshio Utsumi's appointment with Mr. Magaziner (partial) (1 page)	10/06/97	P6/b(6)

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13125

FOLDER TITLE:

Japan [9]

Rhonda Wilson

rw77

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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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July 28, 1997

TO: Washington -- Ira Magaziner

FROM: Embassy Tokyo -- Drew Quinn Drew

SUBJECT: GOJ position on encryption

Ira: I tried to reach you by phone Friday, but to no avail, so I'll send this along via fax.

Mid last week I received a call from Ambassador Aaron's staff in Paris. They were concerned, based on your statements in your trip de-brief to Amb. Aaron, that Japanese support for our approach on encryption is wavering. Specifically, they understood you to say that MITI officials you met with in Tokyo (Kawano and perhaps others) indicated something to the effect that Japan can no longer support the US encryption proposal. This worried Aaron, and he had his staff call me to review the notes of the meetings and find out precisely what the MITI officials said.

Later that day, after I had had a chance to look at the notes from July 15, Aaron's staff called back and asked me to read (verbatim) the references to encryption from the MITI meetings. I read the only reference to encrytion I found: Nakagawa saying "There might be some differences to be tackled in encryption ... there are special sensitivities here (in Japan) -- telephone interception is illegal." Aaron's staff didn't think those remarks indicated a change of position. I added that I had missed the first five minutes of the meeting with Nakagawa, and had been seated at the opposite end of the table from you during the MITI lunch, so it was possible the issue had been discussed further when I was out of earshot. In addition, you had met with MITI and other GOJ officials in Europe prior to coming to Japan, so it was possible the issue had been raised then. Aaron's staff said Aaron might call MITI directly to see if the GOJ position is changing. They asked my recommendation on appropriate point of contact; I suggested that since we had no new paper or initiative to raise with ViceMin Nakagawa, and since Aaron hasn't yet met DirGen Hirose, the best (and probably most straightforward) person to speak to on this would be Kawano.

Apparently Aaron called Kawano late last week, and was reassured that the Japanese position on encryption has not changed. Aaron's staff noted that the apparent discrepancy in perceptions of the Japanese position was puzzling, and mentioned that Aaron would be seeing you in Washington this week. I don't know whether he intends to raise this, but I thought you'd want to know the background should it come up.

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	From Thomas Marten to Ira Magaziner re: follow up with Lorentz and Boujnah 4/6/98 (3 pages)	04/06/98	P5
002. cable	From AmEmbassy Paris re: Electronic Commerce: France Proposes Joint Statement During Jospin Visit to Washington - C (7 pages)	04/07/98	P1/b(1)
003. cable	From EmEmbassy Paris re: Electronic Commerce: Ira Magaziner Hears Further French Views on Domain Name Management and Privacy (8 pages)	04/07/98	P5
004. memo	From Thomas Marten to Ira Magaziner re: follow up with Lorentz and Boujnah (copy of doc. 001) (3 pages)	04/06/98	P5
005. cable	From AmEmbassy Paris re: Electronic Commerce: France Proposes Joint Statement During Jospin Visit to Washington - C (6 pages)	03/27/98	P1/b(1)
006. cable	From AmEmbassy Paris re: Electronic Commerce: Ira Magaziner Hears Further French Views on Domain Name Management and Privacy (7 pages)	03/31/98	P5

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13125

FOLDER TITLE:

France [4]

Rhonda Wilson

rw87

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]
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Thomas Marten <marten @ club-internet.fr>
04/06/98 05:53:51 PM

Please respond to marten@club-internet.fr

Record Type: Record

To: Ira C. Magaziner/OPD/EOP

cc:
Subject: follow up with lorentz and boujnah 4/6/98

---

mr. magaziner,

i met with francis lorentz and stephane boujnah today (4/6/98) to follow up on your meeting two weeks ago with dominique strauss-kahn (dsk). here is the gist of the two meetings:

lorentz said the gof was ready to proceed with preparation of a joint declaration for the jospin visit. the french side will need 10-15 days to get organized. lorentz will see dsk next week and will be formally named e-commerce czar through 1999. he would lead bilaterals. he proposes a first round of full-del face to face talks in washington may 4-5 (he will be there anyway attending an economic strategy institute roundtable discussion on the 50th anniversary of the gatt on 5/5); and a second round in paris in early june. he said he can get his team working on a draft statement soon after his meeting with dsk; he agreed it would be valuable if each side had drafts ready for the may meeting.

on the substantive issues, he agreed with our list (digital signatures, consumer protection, privacy, fiscal issues) and approach (identify areas of agreement/disagreement; define a road map for resolving differences and/or enacting global agreements in appropriate international fora); he offered the following comments on each issue

-- fiscal issues: big problem on the import duty/wto side is culture; french view transmissions as services; this is a "minefield" in france. on domestic taxes (vat, sales tax), it should be easy to agree on principles (neutrality), implementation will be a "technical" problem. he asked if we had any more ideas about using financial/e-comm intermediaries to collect taxes. services/culture will also be a problem for domestic taxes.

-- digital signatures: any bilateral statement would be in competition with an eu directive which is nearing completion; it would be fortuitous if the eu directive could serve as a basis for bilateral agreement. isabelle falque pierrotin, administrative law judge at the conseil d'état (and author of an internet report under the previous center/right juppe government) is the lead person in gof on this issue. she will be in the states for two weeks over easter.

-- privacy: this is the most troublesome issue because it is the one the eu commission is most engaged on. we could agree on applicability of oecd principles; problem is implementation. the eu program is clear (i.e. state-run privacy boards); it might be useful if

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the u.s. could present its proposal for implementation/industry self-regulation; such a presentation could perhaps form the basis for mutual recognition arrangement/contract.

-- consumer protection: we could agree on the principle of which party's law applied (in his view, it would be the buyer's laws). he noted oecd was working on this but thought wto might be a better forum.

-- other issues: joint statement should definitely be opened up to "social" issues, such as education, development, or culture. that said, he thought finding a suitable statement about cooperation with respect to third world development could be problematic, and culture probably belonged in the preambulatory paragraphs on what's at stake with the internet and e-commerce (e.g. "internet is an important factor for global promoting cultural diversity and uniting peoples who share a common language"); he wondered if it wasn't too soon to talk about infrastructure development (intenet II, backbone); on domain names, he noted that this would probably be a done deal by june (at least in terms of u.s. regs), which would send a bad signal about the "universality"of the internet; he liked tronc's idea of organizing an "international conference" before the fall and establishment of the "new corporation," perhaps linked to election of regional representatives.

final note: lorentz said it was important that the joint declaration not just identify areas of agreement where we can work things out; it should also identify areas where we have substantive differences due to differing historical traditions; areas where we agree to disagree.

atmospherics: meeting was one-on-one, very relaxed and interactive. lorentz was curious about u.s. bureaucratics: how much longer you'd be working the issue (my sense is he wants to work with you), what was david aaron's role (whom he met in washington), which agencies/officials had lead on various issues.

boujnah meeting, on the other hand, was relaxed but somewhat formal. boujnah read from prepared notes which he said reflected and "interagency cleared" position. a colleague from the DREE (ustr-equivalent, another part of dsk's empire) took notes. he had clearly coordinated with lorentz, probably including a read-out on our meeting as i made my way by subway to Bercy. (whereas lorentz asked me what our views were on content of a joint statement and reacted thereto, boujnah laid out a cleared version of what the gof thought should be in the statement.)

using almost the same language as lorentz, boujnah said the gof wanted to follow up with joint declaration for jospin visit; but gof actions must take into account the eu process; he too stressed the need for discretion and confidentiality to avoid mention in the press of a bilateral "working group." instead, he proposed that we speak of intensified, informal consultations aimed at identifying areas of convergence and divergence of views on substantive issues. (on a personal note, he said that as the french deepened their analysis of e-commerce issues through the lorentz report and the policy memorandum, more and more areas of convergence appeared),

our objective should be a two page joint declaration on information technology which would include 4-5 paragraphs on electronic commerce (this sounds one page longer than previously envisioned by the french, i guess to take into account "matigon" issues, i.e. social issues). e-commerce paragraphs would include the following::

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-- para one: outline what's at stake in terms of economic growth and jobs; language could be borrowed from the bonn declaration, the us-eu summit statement, or the french policy memorandum. (note: lorentz had cautioned against too much emphasis on rosy numbers and recommended more of a focus on social issues and/or culture in this section)

-- para two: enumerate common principles

-- para three: identify areas of policy convergence/shared interests, such as fiscal issues (he meant domestic taxes, not tariffs), electronic contracts, consumer protection, network security, illicit content, and digital signatures (he also noted the timetable problem related to the eu directive)

-- para four: identify areas of divergence, where "we agree to disagree:" privacy (u.s. self-regulation approach and european state led approach), cultural aspects, customs duties.

-- para five: lay out a road map for progress on issues: including mention of the eu process and the oecd ministerial in ottawa; we should seek oecd endorsement of principles that we agree on in ottawa.

in terms of timing, boujnah said that within the next ten days the gof would announce concrete policy measures to implement recommendations in the lorentz report (the famous "12 recommendations") and would also name lorentz formally as e-commerce czar. he too suggested a meeting in early may in washington and early june in paris to finalize the text of the joint declaration.

that's all . we ran out of time so i wasn't able to cross-examine boujnah on some of the new wrinkles in their proposal, such as what commong principles he meant in para two (it wouldn't be hard to guess), and the reference to cultural issues in para four. we agreed to get back together again after i heard from you as to whether washington wanted to work on a joint statement for the jospin visit or not. he seemed very optimistic; he noted that dsk's trip to silicon valley in late may is official.

a couple personal impressions: it took me a while to get in to see lorentz and boujnah. my sense is that dsk was "free lancing" when he discussed the jospin visit with you; i think the quai (foreign ministry) was particularly miffed because they had not been fully briefed by either matignon or bercy before their breakfast with you. now there is clearly an interagency consensus and they're ready to move. lorentz was very thoughtful about the issues and seemed intent on finding concrete solutions; but i think when he referred to "minefields" and problem areas he was being very candid.
the list of areas of convergence and divergence from boujnah was basically an interagency-produced list of issues the bureaucracies are prepared to deal on. at one point boujnah even said we should harness the dsk-magaziner momentum to accomplish more. having lorentz in the driver seat may make that possible. he's very smart and very respected and good at generating consensus here with the french elites.

that's all.
regards,
tom

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WHITE HOUSE SITUATION ROOM

PRT: MAGAZINER
SIT: BOONE KYLE LEE
SIT: NSC

<PREC> PRIORITY <CLAS> UNCLASSIFIED <DTG> 071806Z APR 98

FM AMEMBASSY PARIS

TO RUEHC/SECSTATE WASHDC PRIORITY 4942
INFO RHEHAAA/WHITE HOUSE WASHDC PRIORITY
RUCPDOC/USDOC WASHDC
RHDIFCC/FCC WASHDC
RUEHXQ/ALL EUROPEAN UNION POST COLLECTIVE
UNCLAS SECTION 01 OF 04 PARIS 007906

STATE ALSO FOR EB/CIP WEINSCHENK AND EUR/WE
STATE PLEASE PASSTSTR FOR DON ABELSON
WHITE HOUSE ALSO FOR MAGAZINER
USDOC FOR NTIA - BECKY BURR
USDOC ALSO FOR 1000/ITA/UNDERSECRETARY AARON
USDOC ALSO FOR 4212/ITA/MAC/EUR/MDORSETT
FCC FOR INTERNATIONAL/BRETT HAAN AND TECHNOLOGY POLICY/MIKE NELSON
BRUSSELS FOR COLIN HELMER

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E.O. 12958: N/A
TAGS: ECPS, EINT, ETRD, EUN, FR
SUBJECT: ELECTRONIC COMMERCE: IRA MAGAZINER HEARS FURTHER FRENCH VIEWS ON DOMAIN NAME MANAGEMENT AND PRIVACY

REF: A) PARIS 5846 B) STATE 34000 C) PARIS 3938 D) PARIS 1082

1. (U) SUMMARY. DURING TWO DAYS OF MEETINGS IN PARIS (MARCH 19-20), SENIOR WHITE HOUSE ADVISOR FOR POLICY IRA MAGAZINER DEFENDED THE USG'S PROPOSAL FOR REFORMING INTERNET DOMAIN NAME SYSTEM (DNS) MANAGEMENT. HE ACKNOWLEDGED LEGITIMATE FRENCH CONCERNS WITH RESPECT TO THE COMPOSITION OF THE BOARD OF DIRECTORS OF THE PROPOSED "NEW CORPORATION" WHICH WOULD BE CREATED TO MANAGE THE NEW DNS, AND WITH U.S. LEGAL JURISDICTION OVER TRADEMARK DISPUTES RELATED TO DOMAIN NAMES. MAGAZINER STRESSED, HOWEVER, THAT THE USG COULD NOT/NOT COMPROMISE ON THE PRINCIPLE THAT THE NEW CORPORATION WOULD BE U.S.-BASED. GOF OFFICIALS AGREED TO HELP TONE DOWN THE NEGATIVE RHETORIC IN OFFICIAL REACTIONS TO THE U.S. PROPOSAL. THEY PRESSED FOR INTERNATIONAL, POLITICAL LEVEL TALKS IN ADVANCE OF FORMAL LAUNCHING OF THE NEW CORPORATION IN THE FALL. ON THE PRIVACY ISSUE, GOF OFFICIALS ACKNOWLEDGED GENERAL AGREEMENT WITH THE U.S. ON DATA PROTECTION PRINCIPLES AND SOUGHT PRACTICAL SOLUTIONS TO DEAL WITH DIFFERING U.S. AND EUROPEAN ENFORCEMENT MECHANISMS. THEY SAID THAT FRANCE WOULD SEEK TO REFORM FRENCH AND EUROPEAN APPROACHES TO DATA PRIVACY IN THE COMING MONTHS. END SUMMARY.

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2. (U) SENIOR WHITE HOUSE ADVISOR FOR POLICY IRA MAGAZINER MET WITH GOF OFFICIALS MARCH 19 AND 20 TO DISCUSS THE USG'S PROPOSAL FOR REFORMING INTERNET DOMAIN NAME SYSTEM (DNS) MANAGEMENT AND INTERNET PRIVACY ISSUES. MAGAZINER MET PRIME MINISTER JOSPIN'S INFO-TECH ADVISOR JEAN-NOEL TRONC (AND MATIGNON LEGAL ADVISOR ROBERT GELLI); FOREIGN MINISTRY U/S-EQUIVALENT FOR ECONOMIC AND EUROPEAN AFFAIRS CLAUDE MARTIN (ACCOMPANIED BY FOREIGN MINISTRY OFFICIALS YVES CHARPENTIER, MICHEL FILHOL, AND AURELIE LAPIDUS); FRENCH E-COMMERCE CZAR FRANCIS LORENTZ (AND INFO-TECH ADVISOR GILLES BAUCHE); AND FRENCH INTERNET SOCIETY (ISOC) PRESIDENT BRUNO OUDET. MAGAZINER ALSO EXCHANGED VIEWS ON ELECTRONIC COMMERCE WITH THE U.S. BUSINESS COMMUNITY (AMCHAM) AND HELD A PRESS CONFERENCE WITH FRENCH JOURNALISTS. EMBASSY TELECOMS OFFICER ACCOMPANIED MAGAZINER TO ALL MEETINGS; MINISTER COUNSELOR FOR ECONOMIC AFFAIRS JOHN MEDEIROS AND SCIENCE COUNSELOR BUD ROCK JOINED MAGAZINER FOR RELEVANT CALLS. MAGAZINER'S MEETING WITH FINANCE MINISTER DOMINIQUE STRAUSS-KAHN FOCUSED ON THE UPCOMING VISIT TO WASHINGTON BY FRENCH PRIME MINISTER JOSPIN AND IS REPORTED SEPTEL.

PRIME MINISTER'S OFFICE SEEKS POLITICAL LEVEL TALKS ON DOMAIN NAMES

3. (U) PRIME MINISTER JOSPIN'S INFO-TECH ADVISOR JEAN-NOEL TRONC FOCUSED ON TWO ISSUES DURING HIS MARCH 19 DISCUSSION WITH MAGAZINER: REFORM OF THE INTERNET DOMAIN NAME SYSTEM (DNS), AND PRIVACY. TRONC NOTED THAT HE HAD CONSULTED WIDELY ON THESE ISSUES, INCLUDING A FEBRUARY MEETING WITH NTIA/BECKY BURR IN PARIS (REF C) AND A MARCH 18 MEETING WITH EU COMMISSIONER BANGEMANN IN BRUSSELS. ON DNS REFORM, TRONC TICKED OFF FAMILIAR FRENCH OBJECTIONS TO THE U.S. "GREEN PAPER:"

-- NO REFERENCE TO THE INTERNATIONAL TELECOMMUNICATIONS UNION (ITU) MEMORANDUM OF UNDERSTANDING (ALTHOUGH TRONC SAID HE UNDERSTOOD U.S. RELUCTANCE TO ENTRUST DNS MANAGEMENT TO THE ITU);

-- NO MENTION OF DISCUSSIONS IN THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) AND A POTENTIALLY SERIOUS LACK OF ADEQUATE TRADEMARK PROTECTION, PARTICULARLY FOR NON-U.S. TRADEMARK HOLDERS; TRONC NOTED THE CURRENT SYSTEM FAILED TO PROVIDE ADEQUATE PROTECTIONS AND ASKED IF EXISTING "VIOLATIONS" OF TRADEMARKS WOULD BE CORRECTED OR "GRANDFATHERED" INTO THE NEW DNS MANAGEMENT SYSTEM;

-- CONCERN ABOUT THE STATUS OF FUTURE PRIVATE, COMPETITIVE REGISTRARS AND REGISTRIES WHICH WOULD SUCCEED THE CURRENT MONOPOLIES MANAGED BY THE INTERNET ASSIGNED NUMBERS AUTHORITY (IANA) AND NETWORK SOLUTIONS INCORPORATED (NSI); TRONC WONDERED IF TURNING OVER MANAGEMENT OF DOMAIN NAME DATA BASES TO A STILL NON-EXISTENT ORGANIZATION WOULD DESTABILIZE THE INTERNET; HE SUGGESTED THAT NON-PROFIT REGISTRIES MIGHT PROVIDE BETTER COORDINATION OF DNS ISSUES;

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-- MAINTENANCE OF NATIONAL CONTROL OVER COUNTRY-CODE TOP LEVEL DOMAINS (E.G., .FR).

4. (SBU) TRONC ACKNOWLEDGED THAT PRACTICAL SOLUTIONS COULD BE FOUND TO ADDRESS ALL THE ABOVE "TECHNICAL" ISSUES. HE NOTED, HOWEVER, THAT INTERNET WAS A VICTIM OF ITS OWN SUCCESS, AND HAD BECOME A GLOBAL PHENOMENON OF STRATEGIC INTEREST TO FRANCE, THE UNCLAS SECTION 02 OF 04 PARIS 007906

STATE ALSO FOR EB/CIP WEINSCHENK AND EUR/WE
STATE PLEASE PASS USTR FOR DON ABELSON
WHITE HOUSE ALSO FOR MAGAZINER
USDOC FOR NTIA - BECKY BURR
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FCC FOR INTERNATIONAL/BRETT HAAN AND TECHNOLOGY POLICY/MIKE NELSON
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U.S. AND THE WORLD. TRONC IMPLICITLY ACCEPTED THE MID-APRIL DEADLINE FOR FINALIZING OF THE U.S. PAPER, BUT URGED THAT THE U.S. CONSIDER "FORMAL, POLITICAL-LEVEL TALKS" DURING THE SUMMER OF 1998, PRIOR TO FORMAL ESTABLISHMENT OF THE NEW CORPORATION. HE SAID THAT HOLDING SUCH TALKS WOULD MAKE IT EASIER FOR FRANCE AND EUROPE TO ACCEPT A U.S.-BASED ENTITY SUBJECT TO U.S. LAWS WITH RESPONSIBILITY FOR MANAGING THE GLOBAL INTERNET DOMAIN NAME SYSTEM.

5. (U) IN A SEPARATE MEETING MARCH 19, FRENCH E-COMMERCE CZAR FRANCIS LORENTZ PRESSED MAGAZINER HARD ON THE GEOGRAPHICAL LOCATION OF THE NEW CORPORATION'S HEADQUARTERS. HE NOTED THAT WITH THE RAPID GROWTH OF DATA TRANSMISSIONS VIA THE INTERNET, THE NEW CORPORATION WOULD QUICKLY ECLIPSE THE GENEVA-BASED ITU AS THE LEAD INTERNATIONAL TELECOMMUNICATIONS BODY. HE URGED MAGAZINER TO CONSIDER HOLDING BOARD MEETINGS OF THE NEW CORPORATION IN GENEVA, REGARDLESS OF THE LOCATION OF ITS TECHNICAL OPERATIONS, IN ORDER TO MEET EUROPEAN DEMANDS FOR A TRULY INTERNATIONAL DNS MANAGEMENT BODY.

6. (SBU) IN A SEPARATE MEETING MARCH 20, FRENCH INTERNET SOCIETY PRESIDENT BRUNO OUDET STRESSED THE PRACTICAL PROBLEMS CREATED BY POOR MANAGEMENT OF THE ".COM" REGISTRY BY NSI, PARTICULARLY WITH RESPECT TO FRENCH TRADEMARKS AND "CYBER-SQUATTING." HE SAID IT TYPICALLY COST FRENCH CORPORATIONS UP TO USD 40 THOUSAND IN LEGAL FEES (IN THE U.S.) TO RECOVER DOMAIN NAME TRADE MARKS LOST TO U.S.

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CYBER-SQUATTERS. HE URGED THE USG TO TAKE A MORE "INTERNATIONALIST" APPROACH TO FORMULATING DNS REFORM POLICY, ARGUING THAT THE CURRENT U.S. APPROACH ONLY REINFORCED EUROPEAN CONCERNS ABOUT U.S. HEGEMONY OVER THE INTERNET. HE ADVOCATED A MORE CENTRAL ROLE FOR THE INTERNET SOCIETY (ISOC) IN INTERNET MANAGEMENT, NOTING THAT ISOC WAS COMPLETELY MARGINALIZED IN THE CURRENT U.S. PLAN. (COMMENT: IN REPLY, MAGAZINER NOTED THAT IN THE U.S., ISOC WAS NOT VIEWED AS BROADLY REPRESENTATIVE OF ALL INTERNET USERS, PARTICULARLY BY COMMERCIAL AND INDUSTRIAL USERS. END COMMENT.) OUDET ALSO RECOMMENDED THAT THE NEW CORPORATION BE LOCATED OUTSIDE THE U.S., OR, AS AN ALTERNATIVE, THAT IT MAINTAIN SHADOW ROOT SERVER SYSTEMS -- WITH ALL NECESSARY HARDuARE AND SOFTWARE -- IN BOTH EUROPE AND ASIA. HE ALSO CALLED FOR U.S. ENDORSEMENT OF NEW REGIONAL TLD'S FOR EUROPE AND ASIA (E.G., .EU FOR EUROPE). OUDET SAID THAT ALL EUROPEAN CHAPTERS OF ISOC WOULD MEET IN BRUSSELS APRIL 21 AND WOULD SURELY FOCUS ON THE DNS REFORM PROPOSAL.

7. (U) IN REPLY, MAGAZINER SAID THAT MANY OF THE FRENCH COMMENTS ON THE GREEN PAPER REFLECTED LEGITIMATE CONCERNS; THE U.S. COULD BE FLEXIBLE ON MOST OF THEM BUT COULD NOT/NOT CONCEDE ON THE ISSUE OF ESTABLISHING THE NEW CORPORATION OUTSIDE THE U.S. HE CLARIFIED THE U.S. POSITION AS FOLLOWS:

-- THE USG'S TOP PRIORITIES IN DNS REFORM ARE MAINTAINING STABILITY OF THE INTERNET AND PRIVATIZATION; USG AUTHORITIES AND RESPONSIBILITIES FOR DNS MANAGEMENT WOULD BE HANDED OVER TO THE NEW CORPORATION IN A MANNER CONSISTENT WITH STABILITY OF THE INTERNET.

-- THESE RESPONSIBILITIES WOULD INCLUDE MANY OF THE FUNCTIONS CURRENTLY CARRIED OUT UNDER CONTRACT FOR THE USG BY NSI AND IANA, INCLUDING MANAGING TLD DATA BASES (I.E., .COM, .NET, .ORG); MANAGING THE INTERNET ROOT SERVER SYSTEM; REGISTERING INTERNET PROTOCOLS; ALLOCATING NUMBER BLOCKS TO REGIONAL NUMBERING AUTHORITIES IN NORTH AMERICA (ARIN), ASIA (APNIC) AND EUROPE (RIPE); AND SETTING TLD POLICY (E.G., CREATION OF NEW TLD'S). MAGAZINER SAID THE USG WAS LEANING TOWARD NOT/NOT CREATING ANY NEW TLD'S BEFORE ESTABLISHMENT OF THE NEW CORPORATION.

-- THE NEW CORPORATION WOULD BE MANAGED BY A TRULY INTERNATIONAL BOARD OF DIRECTORS WHOSE MEMBERS WOULD REPRESENT INTERNET STAKE-HOLDERS, INCLUDING 7 REPRESENTATIVES OF USER GROUPS (BOTH COMMERCIAL AND NON-PROFIT, WHO COULD BE NOMINATED ON A REGIONAL BASIS), AND 7 REPRESENTATIVES OF THE INTERNATIONAL TECHNICAL COMMUNITY (INTERNET ARCHITECTURE BOARD, INTERNET ENGINEERING TASK FORCE) AND REGIONAL NUMBERING AUTHORITIES. HE NOTED THAT AS DEVELOPING COUNTRIES JOINED THE GLOBAL INTERNET COMMUNITY, BOARD MEMBERSHIP COULD BE ADJUSTED TO INCLUDE REPRESENTATIVES OF AFRICA AND LATIN AMERICA.

-- U.S. LAWS GOVERNING NON-PROFIT ORGANIZATIONS ARE SUFFICIENTLY FLEXIBLE TO PERMIT THE NEW CORPORATION'S BY-LAWS TO CONFORM WITH

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EUROPEAN ANTI-TRUST AND TRADEMARK LEGISLATION.
UNCLAS SECTION 03 OF 04 PARIS 007906

STATE ALSO FOR EB/CIP WEINSCHENK AND EUR/WE
STATE PLEASE PASS USTR FOR DON ABELSON
WHITE HOUSE ALSO FOR MAGAZINER
USDOC FOR NTIA - BECKY BURR
USDOC ALSO FOR 1000/ITA/UNDERSECRETARY AARON
USDOC ALSO FOR 4212/ITA/MAC/EUR/MDORSETT
FCC FOR INTERNATIONAL/BRETT HAAN AND TECHNOLOGY POLICY/MIKE NELSON
BRUSSELS FOR COLIN HELMER

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E.O. 12958: N/A
TAGS: ECPS, EINT, ETRD, EUN, FR
SUBJECT: ELECTRONIC COMMERCE: IRA MAGAZINER HEARS FURTHER FRENCH VIEWS ON DOMAIN NAME MANAGEMENT AND PRIVACY

REF: A) PARIS 5846 B) STATE 34000 C) PARIS 3938 D) PARIS 1082

-- ENFORCEMENT OF TRADEMARK PROTECTION WOULD BE IN CONFORMANCE WITH WIPO PRINCIPLES AND PRACTICE: TRADEMARK HOLDERS WOULD BE ABLE TO BRING SUIT AGAINST INFRINGERS IN THEIR OWN NATIONAL COURTS; THEY WOULD NOT/NOT BE FORCED TO BRING SUIT IN U.S. COURTS. THE USG WOULD PROPOSE A WIPO STUDY OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS. THE NEW CORPORATION COULD DECIDE HOW TO HANDLE CURRENT CASES OF TRADEMARK INFRINGEMENT WHEN IT ASSUMED RESPONSIBILITY FOR DNS MANAGEMENT.

-- NEW DOMAIN NAME REGISTRIES WOULD BE REQUIRED TO PROVIDE ADEQUATE TRADEMARK PROTECTION AND ALTERNATIVE DISPUTE RESOLUTION MECHANISMS, ENSURE TRANSPARENCY IN ISSUING DOMAIN NAMES, AND TAKE APPROPRIATE STEPS TO PROHIBIT "CYBER-SQUATTING." THE USG FAVORED FOR-PROFIT REGISTRIES IN ORDER TO STIMULATE INNOVATION AND EFFICIENCY, BUT RECOGNIZED ADVANTAGES OF NON-PROFIT REGISTRIES AS WELL.

8. (SBU) MAGAZINER PRESSED HIS INTERLOCUTORS TO "TONE DOWN THE RHETORIC" OF OFFICIAL RESPONSES TO THE U.S. GREEN PAPER, NOTING THE UNNECESSARILY HARSH TONE OF THE INITIAL DRAFT EU RESPONSE, AND RECENT AD HOMINEM ATTACKS IN THE FRENCH PRESS. THE U.S SOUGHT BROAD AGREEMENT WITH FRANCE AND EUROPE ON DNS REFORM, NOT CONFRONTATION, HE SAID. ALL MAGAZINER'S INTERLOCUTORS CONCURRED WITH THIS APPROACH; TRONC UNDERTOOK TO ENSURE THAT THE FORMAL EU REPLY TO THE U.S. PAPER REFLECTED A MORE MEASURED TONE. (NOTE: THE FINAL EU REPLY WAS ISSUED TWO DAYS LATER AND DID INDEED REFLECT A MORE MEASURED TONE.)

FRANCE WILL REVISE PRIVACY RULES, SEEK EU CONSENSUS
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9. (U) ON PRIVACY, TRONC NOTED THE IMPORTANCE OF THE EU PRIVACY

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DIRECTIVE WHICH, HE SAID, MUST BE TAKEN INTO ACCOUNT AS WE SEEK PRAGMATIC SOLUTIONS. FRENCH LAW IS NOT THE PROBLEM, HE SAID, THE EU DIRECTIVE IS THE PROBLEM. TRONC SAID HE HAD DISCUSSED THE PRIVACY ISSUE MARCH 18 WITH EU COMMISSIONER BANGEMANN, INCLUDING A MUTUAL RECOGNITION APPROACH (MRA) AS A POSSIBLE MEANS TO RECONCILE DIFFERING U.S. AND EUROPEAN APPROACHES TO DATA PROTECTION. FRANCE'S APPROACH TO DATA PROTECTION WAS STILL EVOLVING, TRONC SAID. PRIME MINISTER JOSPIN WOULD PROPOSE A REVISION OF THE 1978 LAW GOVERNING FRENCH DATA PROTECTION BY THE END OF THE SUMMER, BASED ON THE REPORT ON "PERSONAL DATA AND THE INFORMATION SOCIETY" RECENTLY COMPLETED BY ADMINISTRATIVE LAW JUDGE (CONSEILLER D'ETAT) GUY BRAIBANT. (NOTE: LORENTZ ALSO RAISED THE ISSUE OF A DATA PROTECTION MRA AND ASKED FOR U.S. VIEWS ON HOW SUCH AN APPROACH WOULD BE APPLIED IN PRACTICE.)

10. (SBU) TRONC SAID THAT FRANCE'S APPROACH TO DATA PROTECTION WOULD EVOLVE TOWARD AN EX-POST REGULATORY REGIME FROM THE CURRENT (CUMBERSOME, SEE REF D) EX-ANTE REGIME ADMINISTERED BY THE STATE PRIVACY BOARD (CNIL). TRONC SAID THAT FRANCE WOULD SEEK TO LAUNCH INTRA-EU DISCUSSIONS THIS SUMMER AIMED AT FINDING NEW APPROACHES TO DATA PROTECTION, BASED ON THE BRAIBANT REPORT. OTE: THE BRAIBANT REPORT WAS COMPLETED MARCH 3, IT HAS NOT YET BEEN RELEASED TO THE PUBLIC. GENERAL INFORMATION ON THE REPORT CAN BE FOUND AT WWW.PREMIER-MINISTRE.GOUV.FR. THE PRIME MINISTER'S INSTRUCTIONS TO BRAIBANT CALLED FOR BALANCING THE NEEDS OF PROTECTIN' PERSONAL PRIVACY WITH TECHNOLOGICAL ADVANCES AND PROMOTION OF ECONOMIC GROWTH.)

11. (U) MAGAZINER REPLIED THAT THE U.S. AND FRANCE AGREED ON THE SUBSTANCE OF THE PRIVACY ISSUE, INCLUDING THE APPLICABILITY OF OECD PRIVACY PRINCIPLES. OUR APPROACHES DIFFERED MAINLY IN TERMS OF ENFORCEMENT, WITH THE U.S. FAVORING AN INDUSTRY-LED APPROACH AND FRANCE (AND EUROPE) FAVORING STATE-LED ENFORCEMENT. HE SAID HE HAD HAD GOOD TALKS ON THE PRIVACY ISSUE WITH THE EU COMMISSION, AND PRESSED FOR A RESOLUTION OF THE ISSUE BY JUNE 1998.

FOREIGN MINISTRY OFFICIALS FOCUSED ON PROCEDURAL ISSUES
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12. (U) MAGAZINER'S DIUSSION WITH FOREIGN MINISTRY U/S CLAUDE MARTIN FOCUSEON THE AREAS OF COMPETENCY OF RELEVANT INTERNATIONAL ORGANIZATIONS FOR ELECTRONIC COMMERCE ISSUES. MARTIN SAID HE HAD MET WITH WTO CHAIRMAN RUGGIERO MARCH 18 AND SENSED THAT THE WTO WAS ANXIOUS TO ENGAGE FULLY ON E-COMMERCE ISSUES; HE WONDERED IF THERE WAS GROWING COMPETITION BETWEEN MULTILATERAL BODIES IN THIS AREA. ON FISCAL ISSUES, HE NOTED THE DIFFICULTY OF CLASSIFYING ELECTRONIC TRANSACTIONS AS GOODS OR SERVICES. MARTIN RAISED THE UPCOMING OECD
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MINISTERIAL IN OTTAWA (OCTOBER 1998) AND ASKED WHAT WERE U.S. OBJECTIVES FOR THE CONFERENCE. MARTIN STRESSED THE IMPORTANCE OF INCLUDING CHINA AND DEVELOPING COUNTRIES IN MULTILATERAL DISCUSSIONS OF ELECTRONIC COMMERCE AND INTERNET ISSUES.

13. (SBU) IN REPLY, MAGAZINER OUTLINED THE GENERAL DIVISION OF LABOR BETWEEN INTERNATIONAL ORGANIZATIONS ON ELECTRONIC COMMERCE ISSUES, INCLUDING THE WTO (IMPORT DUTIES/TARIFFS), THE OECD (DOMESTIC TAXES, PRIVACY), AND THE WIPO (TRADEMARKS, IPR). HE NOTED THAT DEVELOPING COUNTRIES COULD BE EASILY ASSOCIATED WITH OECD DISCUSSIONS. ON THE OTTAWA CONFERENCE, HE SAID THE USG WOULD SEEK TO FOCUS DISCUSSION ON TAXATION (INCLUDING AN ENDORSEMENT OF COMMON PRINCIPLES), ANALYSIS (OF THE SOCIO-ECONOMIC IMPACT OF ELECTRONIC COMMERCE), AND PRIVACY (TO INCLUDE PRIVATE SECTOR PARTICIPATION).

14. (SBU) COMMENT. MAGAZINER MET ALL THE KEY PLAYERS ON FRENCH E-COMMERCE POLICY DURING HIS VISIT TO PARIS; IN TERMS OF INFLUENCE ON THE SUBSTANTIVE ISSUES HE COULD NOT HAVE BEEN RECEIVED AT A HIGHER LEVEL. THE FRENCH CLEARLY SEE A CONVERGENCE OF VIEWS AND INTERESTS ON MANY ELECTRONIC COMMERCE ISSUES, INCLUDING PRIVACY. THEY HAVE COMPLETED THE NECESSARY CONCEPTUAL SPADEWORK (E.G., THE LOCNTZ REPORT ON E-COMMERCE AND THE BRAIBANT REPORT ON DATA PROTECTION) AND ARE NOW PREPARED TO MOVE FORWARD IN INTERNATIONAL DISCUSSIONS. JUNE MAY BE AN OPPORTUNE TIME FRAME FOR REACHING AGREEMENT ON COMMON PRINCIPLES WHICH COULD PAVE THE WAY FOR BROADER AGREEMENT WITH BRUSSELS.

15. (SBU) COMMENT CONTINUED. ON THE NARROWER DOMAIN NAME ISSUE, THE FRENCH HAVE TWO CLEAR OBJECTIONS TO OUR PROPOSAL. ON PROCESS, THEY OBJECT TO OUR "UNILATERAL" APPROACH; THEY ARGUE THAT CONSULTATIONS DO NOT EQUAL NEGOTIATIONS. IN THE FINAL ANALYSIS, THAT CONFLICT IS PROBABLY UNAVOIDABLE BUT NOT INSURMOUNTABLE. SOME OF THOSE CONCERNS MAY BE MET BY ORGANIZING BROADER POLITICAL LEVEL DISCUSSIONS PRIOR TO FORMAL ESTABLISHMENT OF THE NEW CORPORATION, PERHAPS LINKED TO ELECTIONS OF BOARD MEMBERS BY CONSTITUENT STAKEHOLDER GROUPS. ON THE SUBSTANTIVE ISSUE OF U.S. LEGAL

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JURISDICTION OVER THE NEW CORPORATION, PRIVATE-SECTOR REGISTRIES, AND INEVITABLE TRADEMARK DISPUTES, IT WILL BE IMPORTANT TO FIND PRACTICAL SOLUTIONS, SUCH AS ALTERNATIVE DISPUTE RESOLUTION MECHANISMS (PERHAPS LINKED TO WIPO AGREEMENTS). THE KEY ISSUE FOR THE FRENCH WILL BE DETERMINING WHAT COURT SYSTEM HAS JURISDICTION OVER A DISPUTE BETWEEN A U.S. NATIONAL AND A FOREIGN (E.G., FRENCH) TRADEMARK HOLDER.

16. (U) THIS CABLE WAS CLEARED BY IRA MAGAZINER.
ROHATYN
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<^SSN>7906
<^TOR>980407141115 M3234268
<^SECT>SECTION: 02 OF 04
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<^TOR>980407141245 M3234273
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Subject: follow up with lorentz and boujnah 4/6/98
Date: Mon, 06 Apr 1998 23:53:51 +0200
From: Thomas Marten <marten@club-internet.fr>
To: Ira Magaziner <Ira_C._Magaziner@oa.eop.gov>

mr. magaziner,

i met with francis lorentz and stephane boujnah today (4/6/98) to follow up on your meeting two weeks ago with dominique strauss-kahn (dsk). here is the gist of the two meetings:

lorentz said the gof was ready to proceed with preparation of a joint declaration for the jospin visit. the french side will need 10-15 days to get organized. lorentz will see dsk next week and will be formally named e-commerce czar through 1999. he would lead bilaterals. he proposes a first round of full-del face to face talks in washington may 4-5 (he will be there anyway attending an economic strategy institute roundtable discussion on the 50th anniversary of the gatt on 5/5); and a second round in paris in early june. he said he can get his team working on a draft statement soon after his meeting with dsk; he agreed it would be valuable if each side had drafts ready for the may meeting.

on the substantive issues, he agreed with our list (digital signatures, consumer protection, privacy, fiscal issues) and approach (identify areas of agreement/disagreement; define a road map for resolving differences and/or enacting global agreements in appropriate international fora); he offered the following comments on each issue

-- fiscal issues: big problem on the import duty/wto side is culture; french view transmissions as services; this is a "minefield" in france. on domestic taxes (vat, sales tax), it should be easy to agree on principles (neutrality), implementation will be a "technical" problem. he asked if we had any more ideas about using financial/e-comm intermediaries to collect taxes. services/culture will also be a problem for domestic taxes.

-- digital signatures: any bilateral statement would be in competition with an eu directive which is nearing completion; it would be fortuitous if the eu directive could serve as a basis for bilateral agreement. isabelle falque pierrotin, administrative law judge at the conseil d'état (and author of an internet report under the previous center/right juppe government) is the lead person in gof on this issue. she will be in the states for two weeks over easter.

-- privacy: this is the most troublesome issue because it is the one the eu commission is most engaged on. we could agree on applicability of oecd principles; problem is implementation. the eu program is clear (i.e. state-run privacy boards); it might be useful if the u.s. could present its proposal for implementation/industry self-regulation; such a presentation could perhaps form the basis for mutual recognition arrangement/contract.

-- consumer protection: we could agree on the principle of which party's law applied (in his view, it would be the buyer's laws). he noted oecd was working on this but thought wto might be a better forum.

-- other issues: joint statement should definitely be opened up to "social" issues, such as education, development, or culture. that said, he thought finding a suitable statement about cooperation with respect to third world development could be problematic, and culture probably belonged in the preambulatory paragraphs on what's at stake with the

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internet and e-commerce (e.g. "internet is an important factor for global promoting cultural diversity and uniting peoples who share a common language"); he wondered if it wasn't too soon to talk about infrastructure development (intenet II, backbone); on domain names, he noted that this would probably be a done deal by june (at least in terms of u.s. regs), which would send a bad signal about the "universality"of the internet; he liked tronc's idea of organizing an "international conference" before the fall and establishment of the "new corporation," perhaps linked to election of regional representatives.

final note: lorentz said it was important that the joint declaration not just identify areas of agreement where we can work things out; it should also identify areas where we have substantive differences due to differing historical traditions; areas where we agree to disagree.

atmospherics: meeting was one-on-one, very relaxed and interactive. lorentz was curious about u.s. bureaucratics: how much longer you'd be working the issue (my sense is he wants to work with you), what was david aaron's role (whom he met in washington), which agencies/officials had lead on various issues.

boujnah meeting, on the other hand, was relaxed but somewhat formal. boujnah read from prepared notes which he said reflected and "interagency cleared" position. a colleague from the DREE (ustr-equivalent, another part of dsk's empire) took notes. he had clearly coordinated with lorentz, probably including a read-out on our meeting as i made my way by subway to Bercy. (whereas lorentz asked me what our views were on content of a joint statement and reacted thereto, boujnah laid out a cleared version of what the gof thought should be in the statement.)

using almost the same language as lorentz, boujnah said the gof wanted to follow up with joint declaration for jospin visit; but gof actions must take into account the eu process; he too stressed the need for discretion and confidentiality to avoid mention in the press of a bilateral "working group." instead, he proposed that we speak of intensified, informal consultations aimed at identifying areas of convergence and divergence of views on substantive issues. (on a personal note, he said that as the french deepened their analysis of e-commerce issues through the lorentz report and the policy memorandum, more and more areas of convergence appeared),

our objective should be a two page joint declaration on information technology which would include 4-5 paragraphs on electronic commerce (this sounds one page longer than previously envisioned by the french, i guess to take into account "matigon" issues, i.e. social issues). e-commerce paragraphs would include the following::

-- para one: outline what's at stake in terms of economic growth and jobs; language could be borrowed from the bonn declaration, the us-eu summit statement, or the french policy memorandum. (note: lorentz had cautioned against too much emphasis on rosy numbers and recommended more of a focus on social issues and/or culture in this section)

-- para two: enumerate common principles

-- para three: identify areas of policy convergence/shared interests, such as fiscal issues (he meant domestic taxes, not tariffs), electronic contracts, consumer protection, network security, illicit content, and digital signatures (he also noted the timetable problem related to the eu directive)

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-- para four: identify areas of divergence, where "we agree to disagree:" privacy (u.s. self-regulation approach and european state led approach), cultural aspects, customs duties.

-- para five: lay out a road map for progress on issues: including mention of the eu process and the oecd ministerial in ottawa; we should seek oecd endorsement of principles that we agree on in ottawa.

in terms of timing, boujnah said that within the next ten days the gof would announce concrete policy measures to implement recommendations in the lorentz report (the famous "12 recommendations") and would also name lorentz formally as e-commerce czar. he too suggested a meeting in early may in washington and early june in paris to finalize the text of the joint declaration.

that's all . we ran out of time so i wasn't able to cross examine boujnah on some of the new wrinkles in their proposal, such as what commong principles he meant in para two (it wouldn't be hard to guess), and the reference to cultural issues in para four. we agreed to get back together again after i heard from you as to whether washington wanted to work on a joint statement for the jospin visit or not. he seemed very optimistic; he noted that dsk's trip to silicon valley in late may is official.

a couple personal impressions: it took me a while to get in to see lorentz and boujnah. my sense is that dsk was "free lancing" when he discussed the jospin visit with you; i think the quai (foreign ministry) was particularly miffed because they had not been fully briefed by either matignon or bercy before their breakfast with you. now there is clearly an interagency consensus and they're ready to move. lorentz was very thoughtful about the issues and seemed intent on finding concrete solutions; but i think when he referred to "minefields" and problem areas he was being very candid.
the list of areas of convergence and divergence from boujnah was basically an interagency-produced list of issues the bureaucracies are prepared to deal on. at one point boujnah even said we should harness the dsk-magaziner momentum to accomplish more. having lorentz in the driver seat may make that possible. he's very smart and very respected and good at generating consensus here with the french elites.

that's all.
regards,
tom

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emin:jmedeiros
econ:tamarten
econ:dmccarthy; sci:brock
ecnx

AMEMBASSY PARIS
secstate washdc, priority
INFO white house washdc, priority
usdoc washdc
fcc washdc
all european union post collective

state also for eb/cip weinschenk and eur/we
state please pass ustr for don abelson
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usdoc also for 4212/ita/mac/eur/mdorsett
fcc for international/brett haan and technology policy/mike nelson
brussels for colin helmer

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E.O. 12958: N/A
TAGS: ecps, eint, etrd, eun, fr
SUBJECT: electronic commerce: ira magaziner hears further french views on domain name management and privacy

REF: a) paris 5846 b) state 34000 c) paris 3938 d) paris 1082

1. (u) summary. during two days of meetings in paris (march 19-20), senior white house advisor for policy ira magaziner defended the usg's proposal for reforming internet domain name system (dns) management. he acknowledged legitimate french concerns with respect to the composition of the board of directors of the proposed "new corporation" which would be created to manage the new dns, and with u.s. legal jurisdiction over trademark disputes related to domain names. magaziner stressed, however, that the usg could not/not compromise on the principle that the new corporation would be u.s.-based. gof officials agreed to help tone down the negative rhetoric in official reactions to the u.s. proposal. they pressed for international, political level talks in advance of formal launching of the new corporation in the fall. on the privacy issue, gof officials acknowledged general agreement with the U.S. on data protection principles and sought practical solutions to deal with differing u.s. and european enforcement mechanisms. they said that france would seek to reform french and european approaches to data privacy in the coming months. end

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summary.

2. (u) senior white house advisor for policy ira magaziner met with gof officials march 19 and 20 to discuss the usg's proposal for reforming internet domain name system (dns) management and internet privacy issues. magaziner met prime minister jospin's info-tech advisor jean-noel tronc (and matignon legal advisor Robert Gelli); foreign ministry u/s-equivalent for economic and european affairs claude martin (accompanied by foreign ministry officials yves charpentier, michel filhol, and aurelie lapidus); french e-commerce czar francis lorentz (and info-tech advisor gilles bauche); and french internet society (isoc) president bruno oudet. magaziner also exchanged views on electronic commerce with the u.s. business community (amcham) and held a press conference with french journalists. embassy telecoms officer accompanied magaziner to all meetings; minister counselor for economic affairs john medeiros and science counselor bud rock joined magaziner for relevant calls. magaziner's meeting with finance minister dominique strauss-kahn focused on the upcoming visit to washington by french prime minister jospin and is reported septel.

Prime Minister's office seeks political level talks on domain names

3. (u) prime minister jospin's info-tech advisor jean-noel tronc focused on two issues during his march 19 discussion with magaziner: reform of the internet domain name system (dns), and privacy. tronc noted that he had consulted widely on these issues, including a february meeting with ntia/becky burr in paris (ref c) and a march 18 meeting with EU commissioner bangemann in brussels. on dns reform, tronc ticked off familiar french objections to the u.s. "green paper:"

-- no reference to the international telecommunications union (itu) memorandum of understanding (although tronc said he understood u.s. reluctance to entrust dns management to the itu);

-- no mention of discussions in the world intellectual property organization (wipo) and a potentially serious lack of adequate trademark protection, particularly for non-u.s. trademark holders; tronc noted the current system failed to provide adequate protections and asked if existing "violations" of trademarks would be corrected or "grandfathered" into the new dns management system;

-- concern about the status of future private, competitive registrars and registries which would succeed the current

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monopolies managed by the internet assigned numbers authority (iana) and network solutions incorporated (nsi); tronc wondered if turning over management of domain name data bases to a still non-existent organization would destabilize the internet; he suggested that non-profit registries might provide better coordination of dns issues;

-- maintenance of national control over country-code top level domains (e.g., .fr).

4. (sbu) tronc acknowledged that practical solutions could be found to address all the above "technical" issues. he noted, however, that internet was a victim of its own success, and had become a global phenomenon of strategic interest to france, the u.s. and the world. tronc implicitly accepted the mid-april deadline for finalizing of the u.s. paper, but urged that the u.s. consider "formal, political-level talks" during the summer of 1998, prior to formal establishment of the new corporation. he said that holding such talks would make it easier for france and europe to accept a u.s.-based entity subject to u.s. laws with responsibility for managing the global internet domain name system.

5. (u) in a separate meeting march 19, french e-commerce czar francis lorentz pressed magaziner hard on the geographical location of the new corporation's headquarters. he noted that with the rapid growth of data transmissions via the internet, the new corporation would quickly eclipse the geneva-based itu as the lead international telecommunications body. he urged magaziner to consider holding board meetings of the new corporation in geneva, regardless of the location of its technical operations, in order to meet european demands for a truly international dns management body.

6. (sbu) in a separate meeting march 20, french internet society president bruno oudet stressed the practical problems created by poor management of the ".com" registry by nsi, particularly with respect to french trademarks and "cyber-squatting." he said it typically cost french corporations up to usd 40 thousand in legal fees (in the u.s.) to recover domain name trade marks lost to u.s. cyber-squatters. he urged the usg to take a more "internationalist" approach to formulating dns reform policy, arguing that the current u.s. approach only reinforced european concerns about u.s. hegemony over the internet. he advocated a more central role for the internet society (isoc) in internet management, noting that isoc was completely marginalized in the current u.s. plan. (comment: in reply, magaziner noted that in

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the u.s., isoc was not viewed as broadly representative of all internet users, particularly by commercial and industrial users. end comment.) oudet also recommended that the new corporation be located outside the u.s., or, as an alternative, that it maintain shadow root server systems -- with all necessary hardware and software -- in both europe and asia. he also called for u.s. endorsement of new regional tld's for europe and asia (e.g., .eu for europe). oudet said that all european chapters of isoc would meet in brussels april 21 and would surely focus on the dns reform proposal.

7. (u) in reply, magaziner said that many of the french comments on the green paper reflected legitimate concerns; the u.s. could be flexible on most of them but could not/not concede on the issue of establishing the new corporation outside the u.s. he clarified the u.s. position as follows:

-- the usg's top priorities in dns reform are maintaining stability of the internet and privatization; usg authorities and responsibilities for dns management would be handed over to the new corporation in a manner consistent with stability of the internet.

-- these responsibilities would include many of the functions currently carried out under contract for the usg by nsi and iana, including managing tld data bases (i.e., .com, .net, .org); managing the internet root server system; registering internet protocols; allocating number blocks to regional numbering authorities in North America (arin), Asia (apnic) and Europe (ripe); and setting tld policy (e.g., creation of new tld's). Magaziner said the usg was leaning toward not/not creating any new tld's before establishment of the new corporation.

-- the new corporation would be managed by a truly international board of directors whose members would represent internet stakeholders, including 7 representatives of user groups (both commercial and non-profit, who could be nominated on a regional basis), and 7 representatives of the international technical community (internet architecture board, internet engineering task force) and regional numbering authorities. he noted that as developing countries joined the global internet community, board membership could be adjusted to include representatives of africa and latin america.

-- u.s. laws governing non-profit organizations are sufficiently flexible to permit the new corporation's by-laws to conform with european anti-trust and trademark legislation.

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-- Enforcement of trademark protection would be in conformance with WIPO principles and practice: trademark holders would be able to bring suit against infringers in their own national courts; they would not/not be forced to bring suit in u.s. courts. the usg would propose a wipo study of alternative dispute resolution mechanisms. the new corporation could decide how to handle current cases of trademark infringement when it assumed responsibility for dns management.

-- new domain name registries would be required to provide adequate trademark protection and alternative dispute resolution mechanisms, ensure transparency in issuing domain names, and take appropriate steps to prohibit "cyber-squatting." the usg favored for-profit registries in order to stimulate innovation and efficiency, but recognized advantages of non-profit registries as well.

8. (sbu) magaziner pressed his interlocutors to "tone down the rhetoric" of official responses to the u.s. green paper, noting the unnecessarily harsh tone of the initial draft eu response, and recent ad hominem attacks in the french press. the u.s sought broad agreement with france and europe on dns reform, not confrontation, he said. all magaziner's interlocutors concurred with this approach; tronc undertook to ensure that the formal eu reply to the u.s. paper reflected a more measured tone. (note: the final eu reply was issued two days later and did indeed reflect a more measured tone.)

France will revise privacy rules, seek eu consensus
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9. (u) on privacy, tronc noted the importance of the eu privacy directive which, he said, must be taken into account as we seek pragmatic solutions. french law is not the problem, he said, the eu directive is the problem. tronc said he had discussed the privacy issue march 18 with eu commissioner bangemann, including a mutual recognition approach (mra) as a possible means to reconcile differing u.s. and european approaches to data protection. france's approach to data protection was still evolving, tronc said. prime minister jospin would propose a revision of the 1978 law governing french data protection by the end of the summer, based on the report on "personal data and the information society" recently completed by administrative law judge (conseiller d'etat) guy braibant. (note: lorentz also raised the issue of a data protection mra and asked for u.s. views on how such an approach would be applied in practice.)

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10. (sbu) tronc said that france's approach to data protection would evolve toward an ex-post regulatory regime from the current (cumbersome, see ref d) ex-ante regime administered by the state privacy board (cnil). tronc said that france would seek to launch intra-eu discussions this summer aimed at finding new approaches to data protection, based on the braibant report. (note: the braibant report was completed march 3, it has not yet been released to the public. general information on the report can be found at www.premier-ministre.gouv.fr. the prime minister's instructions to braibant called for balancing the needs of protecting personal privacy with technological advances and promotion of economic growth.)

11. (u) magaziner replied that the u.s. and france agreed on the substance of the privacy issue, including the applicability of oecd privacy principles. our approaches differed mainly in terms of enforcement, with the u.s. favoring an industry-led approach and france (and europe) favoring state-led enforcement. he said he had had good talks on the privacy issue with the eu commission, and pressed for a resolution of the issue by june 1998.

foreign ministry officials focused on procedural issues
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12. (u) magaziner's discussion with foreign ministry u/s claude martin focused on the areas of competency of relevant international organizations for electronic commerce issues. martin said he had met with wto chairman ruggiero march 18 and sensed that the wto was anxious to engage fully on e-commerce issues; he wondered if there was growing competition between multilateral bodies in this area. on fiscal issues, he noted the difficulty of classifying electronic transactions as goods or services. martin raised the upcoming oecd ministerial in ottawa (october 1998) and asked what were u.s. objectives for the conference. martin stressed the importance of including china and developing countries in multilateral discussions of electronic commerce and internet issues.

13. (sbu) in reply, magaziner outlined the general division of labor between international organizations on electronic commerce issues, including the wto (import duties/tariffs), the oecd (domestic taxes, privacy), and the wipo (trademarks, ipr). he noted that developing countries could be easily associated with oecd discussions. on the ottawa conference, he said the usg would seek to focus discussion on taxation (including an endorsement of common principles), analysis (of the socio-economic impact of electronic commerce), and privacy (to include private sector

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participation).

14. (sbu) comment. magaziner met all the key players on french e-commerce policy during his visit to paris; in terms of influence on the substantive issues he could not have been received at a higher level. the french clearly see a convergence of views and interests on many electronic commerce issues, including privacy. they have completed the necessary conceptual spadework (e.g., the lorentz report on e-commerce and the braibant report on data protection) and are now prepared to move forward in international discussions. june may be an opportune time frame for reaching agreement on common principles which could pave the way for broader agreement with brussels.

15. (sbu) comment continued. on the narrower domain name issue, the french have two clear objections to our proposal. on process, they object to our "unilateral" approach; they argue that consultations do not equal negotiations. in the final analysis, that conflict is probably unavoidable but not insurmountable. some of those concerns may be met by organizing broader political level discussions prior to formal establishment of the new corporation, perhaps linked to elections of board members by constituent stakeholder groups. on the substantive issue of u.s. legal jurisdiction over the new corporation, private-sector registries, and inevitable trademark disputes, it will be important to find practical solutions, such as alternative dispute resolution mechanisms (perhaps linked to wipo agreements). the key issue for the french will be determining what court system has jurisdiction over a dispute between a u.s. national and a foreign (e.g., french) trademark holder.
ROHATYN

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To Tom Kalil from Justyna Burr re: WIPO (2 pages)	12/03/96	P5

COLLECTION:

Domestic Policy Council
Ira Magaziner (Electronic Commerce)
OA/Box Number: 13119

FOLDER TITLE:

NEC [National Economic Council] Process on Copyrights [1]

Rhonda Wilson

rw93

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.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

03-Dec-1996 09:02am

TO: (See Below)

FROM: Justyna B. Burr

SUBJECT: WIPO

Message Creation Date was at 3-DEC-1996 08:56:00

Tom, as best as I can figure:

1. The C175 on the Database Treaty was signed by Spero on Wednesday of last week. I haven't seen it, but it apparently instructs the delegation to "negotiate" but not sign a database treaty. Isn't this inconsistent with Dan's summary of deputies position last week (talk, don't negotiate text, don't conclude treaty). Similarly, the NYTimes yesterday indicated that the United States will offer a proposal regarding database protection, and characterized Clinton Administration as a "strong supporter" of database proposal.

2. As you know, OMB proposed language for an explanatory note on Article 7 of the literary & artistic works treaty. This language was rejected by PTO and USTR. In a telephone conversation with Keith C. yesterday, I suggested the following alternative language:

"The Berne Protocal and the New Instrument, as presently drafted, are structured in a manner that authorizes exemptions permitting certain ephemeral reproductions that are made while browsing the Internet and transmitting copyrighted works from point to point."

This language was drafted by PTO. Keith agreed to take it to Bruce Lehman and get back to me, but has not done so.

3. The deputies agreed that the delegation would be instructed to seek an interpretive note with respect to Article 12 that reads "In particular, the provisions of the Article 12 should be understood to permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention."

According to State Dept. note, PTO has asked to DELETE this instruction from the C175 on artistic and literary works. WHAT'S GOING ON????

4. Nobody in DC knows what is going on with the C175s. Dianne Markovitz (State Dept., C175 drafter) is in Geneva. Richard Hinson (at State) believes that NEC is coordinating and YOU are running the "home team." At any rate, nobody at State is keeping track of what's going on in Geneva.

5. According to Keith C., there is a real possibility that the interpretive notes as we know them will be scrapped with respect to all three treaties

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altogether. I don't think that the deputies contemplated this outcome when evaluating the treaties.

6. What is the status of the Admin statement you drafted last week?

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