

WHITE HOUSE CONFERENCE ON
SMALL BUSINESS
AUGUST 21, 1986, 10:30 A.M.

PRODUCT LIABILITY AND TORT REFORM
IN THE SENATE

- O THE MOST SERIOUS AND IMMEDIATE
PROBLEMS BEING FACED BY SMALL
BUSINESSES TODAY AND THE PROBLEM
THAT GOVERNMENT CAN AND MUST
CORRECT ARE PRODUCT LIABILITY AND
TORT REFORM.

O THE COST AND AVAILABILITY OF
INSURANCE, ALONG WITH THE COSTS OF
LITIGATION AND JUDGEMENTS, ARE
DRIVING HUNDREDS AND NOW EVEN
THOUSANDS OF BUSINESSES OUT OF
BUSINESS. FORTUNATELY,
LEGISLATION FROM BOTH THE FEDERAL
AND STATE LEVELS CAN CORRECT THIS
PROBLEM.

O WE MUST VIEW THE MATTER IN TWO
PARTS -- PRODUCT LIABILITY ON ONE
HAND AND TORT REFORM ON THE OTHER.

PRODUCT LIABILITY

O DUE TO THE EXPANSION IN THE
JUDICIAL BRANCH'S INTERPRETATION
OF THE INTERSTATE COMMERCE CLAUSE,
THE CONGRESS MUST ACT TO SET

UNIFORM STATUTES OF LIMITATIONS,
ESTABLISH REASONABLE LIMITS ON
DAMAGE AWARDS AND CONTINGENCY
FEES, PENALIZE ATTORNEYS FOUND
GUILTY OF FILING FRIVOLOUS SUITS,
RESTRICT THE USE OF JOINT AND
SEVERAL LIABILITY, AND GRANT SOME
PROTECTION TO THOSE BUSINESSES
WHICH HAVE RECEIVED APPROVAL FROM
THE FEDERAL GOVERNMENT TO MARKET A
PRODUCT.

○ THE SENATE COMMERCE COMMITTEE HAS
REPORTED A BILL --S.2760, CALLED
THE "PRODUCT LIABILITY REFORM ACT
-- WHICH CONTAINS MOST OF THESE
ITEMS. IN ADDITION, SENATOR
MCCONNELL HAS A MORE FAR REACHING
PROPOSAL AND THE ADMINISTRATION
HAS OFFERED SOME SUGGESTIONS WHICH
ALSO GO BEYOND THE REPORTED BILL.

○ I HAVE EVERY INTENTION OF
SCHEDULING THE MATTER FOR
CONSIDERATION BY THE SENATE PRIOR
TO OUR ADJOURNMENT IN OCTOBER, AND
URGE ALL STATE LEGISLATURES TO
REVIEW THE STATE STATUTES AT THE
EARLIEST POSSIBLE DATE, OR FACE
HAVING THE CONGRESS SWEEP DOWN ON
THEIR JURISDICTION WITH A
PREEMPTIVE STRIKE.

TORT REFORM

O TORT REFORM HAS TRADITIONALLY BEEN
LEFT TO THE STATES. SOME STATES
HAVE ACTED TO LIMIT DAMAGES,
OTHERS HAVE COURT PRECEDENTS THAT
ARE SO EXTREME THAT THEY PRESENT
GRAVE THREATS TO MANUFACTURERS AND
SMALL BUSINESSES. THE SENATE
COMMERCE COMMITTEE BILL WOULD

PREEMPT ALL STATE LAWS IN AREAS
COVERED BY THE BILL, EVEN IF THE
STATE LAW IS PREFERABLE. THE
PROVISION SHOULD BE DRAWN MORE
NARROWLY SO AS TO PREEMPT ONLY
THOSE LAWS WHICH DO NOT MEET
REASONABLE FEDERAL LIMITATIONS.

O FURTHER, I SEE NO JUSTIFICATION
UNDER THE COMMERCE CLAUSE FOR
IMPOSING UPON A STATE, FEDERAL
TORT LIABILITY DOCTRINES THAT
PLACE A GREATER BURDEN UPON
INTERSTATE COMMERCE THAN THE
PREVAILING LAW OF THAT STATE. THE
COMMERCE COMMITTEE BILL GOES
BEYOND THIS POSITION QUITE
UNNECESSARILY.

O ONE MAJOR PROBLEM HAS TO DO WITH
THE PRINCIPLE OF DIVERSITY
JURISDICTION OF THE FEDERAL
COURTS, OR FORUM SHOPPING AS IT
HAS BECOME KNOWN. ENTERPRISING
PLAINTIFF'S LAWYERS NOW HAVE A
CHOICE WHETHER TO PROCEED IN STATE
OR FEDERAL COURT TO BRING MOST
TORT AND PRODUCT LIABILITY
ACTIONS. IN FEDERAL COURT, THE

JUDGE IS OBLIGED TO FOLLOW STATE
LAW IN DIVERSITY CASES. THESE
CASES NOW ACCOUNT FOR ABOUT A
QUARTER OF ALL CIVIL ACTIONS. IT
SEEMS TO ME THAT THIS IS A PRIME
AREA WHERE FEDERAL LEGISLATION
COULD CURTAIL OR LIMIT THIS
OVERLAPPING, PARTICULARLY IF
FEDERAL MINIMUMS ARE APPLICABLE TO
STATE ACTIONS.

THE ECONOMY AND SMALL BUSINESS

O WE USED TO THINK OF SMALL
BUSINESS' MAINLY AS AN ELEMENT OF
OUR LOCAL ECONOMIES: TOWNS AND
CITIES AND COUNTIES. THE LOCAL
GROCER AND RETAILER, WHOLESALER,
LOCAL FRANCHISES, AND THE LIKE.
BUT THAT'S NOT THE WHOLE PICTURE
ANY MORE . . . IT'S ONLY ONE PART,
ALTHOUGH A VERY IMPORTANT ONE.

WE HAVE TO THINK OF THE SMALL
BUSINESS ROLE IN THE NATIONAL
ECONOMY . . . AND THE WORLD
ECONOMY AS WELL.

O LIKE EVERYONE ELSE WHO IS IN
BUSINESS THESE DAYS, I KNOW YOU
ARE CONCERNED ABOUT THE COURSE OF
OUR ECONOMY . . . AND YOU WANT TO
KNOW HOW ACTIONS HERE IN

WASHINGTON WILL AFFECT YOUR OWN
BUSINESS OPPORTUNITIES. AFTER ALL
-- THAT'S WHAT THE JOBS AND
INCOMES OF SO MANY AMERICANS
DEPEND ON.

O NOW, TO A LARGE EXTENT THE ECONOMY
WILL FOLLOW ITS OWN COURSE
REGARDLESS OF WHAT GOVERNMENT
DOES. THE GOVERNMENT CAN'T REPEAL

THE LAWS OF ECONOMICS, OR WIPE OUT
THE BUSINESS CYCLE. BUT AT THE
SAME TIME, THE GOVERNMENT HAS A
BIG ROLE . . . PARTICULARLY WHEN
IT COMES TO TAXES, BUDGETS, AND
TRADE.

O IN MY VIEW, OUR FIRST
RESPONSIBILITY AS PUBLIC SERVANTS
IS TO KEEP GOVERNMENT OUT OF THE

WAY. EACH AND EVERY ONE OF YOU
KNOWS HOW TO RUN A BUSINESS,
WITHOUT INTERFERENCE FROM
WASHINGTON. THAT'S WHY, ON JUNE
12, I FIRST CALLED FOR LOWER
INTEREST RATES. I AM CONVINCED
THAT INTEREST RATES ARE BEING KEPT
ARTIFICIALLY HIGH, GIVEN THE STATE
OF INFLATION AND GNP GROWTH . . .
AND THAT IS A MAJOR BLOCK TO

ECONOMIC GROWTH THAT GOVERNMENT,
PARTICULARLY THE FEDERAL RESERVE,
CAN REMOVE.

O THAT SUGGESTION MAY HAVE BEEN
CONTROVERSIAL JUNE 12, BUT IT
ISN'T TODAY. THE FED CUT IT'S
DISCOUNT RATE IN EARLY JULY, BUT
BY ONLY HALF A POINT, AND JUST
YESTERDAY THE FED MADE ANOTHER

HALF-POINT CUT. CHAIRMAN VOLCKER
HAS HINTED THAT FURTHER CUTS MAY
BE FORTHCOMING . . . AND THEY
SHOULD BE. GIVEN THE SLOW GROWTH
IN THE SECOND QUARTER . . . 0.6% .
. . . OMB DIRECTOR MILLER HAS CALLED
FOR LOWER RATES, AS HAS PETE
DOMENICI, CHAIRMAN OF OUR BUDGET
COMMITTEE. THERE IS AN

ACROSS-THE-BOARD CONCERN THAT
INTEREST RATES STILL NEED TO COME
DOWN SIGNIFICANTLY.

O WHEN YOU CONSIDER THE TAX REFORM
REVOLUTION UNDERWAY . . . THE NEED
FOR SUSTAINED ACTION TO REDUCE THE
DEFICIT . . . AND THE PRESSURES TO
ERECT NEW BARRIERS TO FREE WORLD
TRADE . . . THE CASE FOR LOWER

INTEREST RATES BECOMES ABSOLUTELY
OVERWHELMING. ON ALL THREE
FRONTS, BUSINESSMEN AND WOMEN ARE
HAVING TO RETHINK THE WAY THEY DO
BUSINESS, SOMETIMES IN VERY
FUNDAMENTAL WAYS. THE LAST THING
WE NEED IS A BARRIER OF HIGH
INTEREST RATES THAT INHIBITS THE
KIND OF FLEXIBILITY IN

DECISION-MAKING THAT YOU MUST HAVE
IN THESE DAYS OF RAPID ECONOMIC
CHANGE.

O BUT IF WE DO OUR JOB RIGHT HERE IN
WASHINGTON, I HOPE AND BELIEVE WE
CAN MAKE LIFE EASIER FOR YOU: BY,
AS PRESIDENT REAGAN HAS SAID,
"BREAKING DOWN ECONOMIC BARRIERS"

THAT TOO OFTEN PREVENT YOU FROM
GOING ABOUT YOUR BUSINESS IN THE
MOST EFFICIENT WAY POSSIBLE

TAX REFORM

○ OVER THREE-QUARTERS OF AMERICANS
WILL BE IN THE 15 PERCENT
BRACKET. THIS INCLUDES THE SMALL
BUSINESS MEN AND WOMEN WHO ARE NOT

INCORPORATED. AND WE KEEP A
PROGRESSIVE RATE STRUCTURE FOR
CORPORATIONS WHILE REDUCING THE
TOP RATE TO 34 PERCENT.

- THERE WAS A LOT OF INTEREST IN
KEEPING THE INVESTMENT CREDIT FOR
SMALL BUSINESS, OR INCREASING THE
AMOUNT OF EQUIPMENT THAT WOULD
QUALIFY FOR AN IMMEDIATE

WRITE-OFF. WE WERE UNABLE TO DO
EITHER OF THESE, BUT THE SENATE
DID PREVAIL IN KEEPING MOST
EQUIPMENT IN THE 5-YEAR CLASS AND
ACCELERATING THE RECOVERY METHOD
TO 200 PERCENT OF THE DECLINING
BALANCE. GIVEN THE POSITION OF
THE HOUSE CONFEREES, I THINK WE
DID BETTER THAN MANY OF US HAD
EXPECTED.

○ WE ALSO IMPROVED ON THE SENATE
BILL'S ACCOUNTING PROVISIONS FOR
SMALL BUSINESS. WE ADOPTED A
SIMPLIFIED DOLLAR VALUE LIFO
INVENTORY METHOD FOR SMALL
BUSINESS AND EXEMPTED RETAILERS
AND WHOLESALERS WITH GROSS
RECEIPTS OF \$10 MILLION OR LESS
FROM THE NEW RULES REQUIRING

CAPITALIZATION OF INVENTORY,
CONSTRUCTION, AND DEVELOPMENT
COSTS.

- WE FINALLY ADDRESSED THE
INEQUALITY IN TREATMENT OF
SELF-EMPLOYED AND OTHER TAXPAYERS
REGARDING THE TAXABILITY OF HEALTH
INSURANCE. IT HAS ALWAYS BEEN A
MYSTERY TO MANY SELF-EMPLOYED

INDIVIDUALS WHY THEY COULD NOT
DEDUCT ANY PART OF THEIR HEALTH
INSURANCE PREMIUMS WHEN
CORPORATIONS COULD DEDUCT THE COST
OF GROUP HEALTH INSURANCE AND THE
BENEFIT IS NOT TAXABLE TO THEIR
EMPLOYEES. WE DID NOT GO ALL THE
WAY IN THIS AREA, BUT WE SET A
PRECEDENT BY ALLOWING
SELF-EMPLOYED INDIVIDUALS TO

DEDUCT 25 PERCENT OF THEIR HEALTH
INSURANCE COSTS ON A 3-YEAR TRIAL
BASIS.

- FOR MANY SMALL BUSINESSES, ACTUAL
TAX LIABILITY IS LESS IMPORTANT
THAN HOW COMPLEX THE TAX RULES
ARE. THAT CONCERN LIES BEHIND
MANY OF THE CHANGES THAT WE MADE
IN CONFERENCE, ESPECIALLY IN THE

ACCOUNTING AREA. BUT, AS BUSINESS
GETS MORE COMPLICATED IN GENERAL,
THE TAX LAWS OFTEN DO INEVITABLY
GET MORE COMPLEX. IT IS DIFFICULT
TO REACH THE RIGHT BALANCE, BUT WE
HAVE AT LEAST RECOGNIZED THE
PROBLEM AND HAVE TRIED TO KEEP IT
IN MIND IN DRAFTING THIS HISTORIC
LEGISLATION.

COMPETITION WITH CHARITABLE

ORGANIZATIONS

- I KNOW THAT YOU HAVE A SERIOUS
CONCERN THAT CHARITABLE
ORGANIZATIONS ARE COMPETING MORE
AGGRESSIVELY IN MARKETS
TRADITIONALLY SERVED BY SMALL
BUSINESS. IT IS A REAL PROBLEM.
NONPROFIT ORGANIZATIONS ARE ALMOST

ALWAYS PRESSED FOR FUNDS AND ARE
TRYING HARDER TO FIND ALTERNATIVE
SOURCES OF REVENUE. THE
GOVERNMENT TRIES TO ENCOURAGE THE
ACTIVITIES OF NONPROFIT
ORGANIZATIONS, BUT WE NEED TO BE
MORE SENSITIVE TO THE IMPACT ON
SMALL BUSINESS.

O CONGRESS IS, IN FACT, BECOMING
MORE SENSITIVE TO THE COMPETITION
OF NONPROFIT AND FOR-PROFIT
ORGANIZATIONS. FOR EXAMPLE, THE
MEMBERS OF THE TAX REFORM
CONFERENCE JUST AGREED TO
PARTIALLY SUBJECT BLUE CROSS AND
BLUE SHIELD TO TAX, DESPITE A
TREMENDOUS MAIL CAMPAIGN AGAINST
IT. THE REASON THE CONFEREES DID

THIS WAS THAT BLUE CROSS AND BLUE
SHIELD WERE COMPETING DIRECTLY
WITH FOR-PROFIT INSURANCE
COMPANIES AND THE CONFEREES
THOUGHT THAT A TOTAL TAX EXEMPTION
GAVE BLUE CROSS AND BLUE SHIELD
TOO GREAT AN ADVANTAGE.

TRADE AND SMALL BUSINESS

O S. 1860 (SENATE OMNIBUS TRADE
BILL) MANDATES SWIFTER AND SURER

REMEDIES FOR:

O UNFAIR FOREIGN TRADE PRACTICES,
SUCH AS DUMPING AND SUBSIDIES

O SITUATIONS WHERE IMPORTS FLOOD
INTO THE U.S. AND INJURE U.S.
INDUSTRY, EVEN IF THEY ARE THE
RESULT OF FAIR TRADE PRACTICES

O ISSUES UNDER CONSIDERATION:

O RETROACTIVE PRIVATE REMEDIES
FOR DUMPING INJURIES, INCLUDING
TREBLE DAMAGES FOR HARM

SUSTAINED BY U.S. FIRMS, AND
INJUNCTIVE RELIEF AGAINST
FURTHER IMPORTS (SPECTER BILL,
S. 1855)

O MORE FLEXIBLE STANDARDS FOR
DETERMINING INJURY TO U.S.
INDUSTRY

O YET SMALL BUSINESS IS AT
DISADVANTAGE IN PETITIONING FOR
RELIEF: LEGAL FEES, CHRONIC
DELAYS, ULTIMATE UNCERTAINTY OF
OUTCOME

O TRADE AND TARIFF ACT OF 1984 MADE
A START:

O ESTABLISHED TRADE REMEDY

ASSISTANCE OFFICE AT

INTERNATIONAL TRADE COMMISSION

TO PROVIDE INFORMATION AND

TECHNICAL ASSISTANCE TO SMALL

BUSINESSES

O ACT ALSO ATTEMPTED TO SIMPLIFY

PROCEDURES FOR BRINGING A CASE

TO THE ITC

O BUT IT STILL TAKES A LOT OF TIME
AND MONEY TO PROSECUTE SUCH A CASE

CREDIT OPPORTUNITY

O SMALL BUSINESS AND
ENTREPRENEURSHIP ARE THE GREATEST
FORCE I KNOW OF FOR OPENING UP
ECONOMIC OPPORTUNITY. I THINK IT

IS VERY SIGNIFICANT THAT THE
PERCENTAGE OF WOMEN DELEGATES TO
THIS CONFERENCE HAS INCREASED 60%
SINCE 1981..

O THERE'S STILL A LOT OF EVIDENCE
THAT WOMEN ENTREPRENEURS SEEKING
COMMERCIAL CREDIT--A START-UP LOAN
FOR A NEW BUSINESS, FOR
EXAMPLE--HAVE AN EXTRA BURDEN OF

PROOF TO SURMOUNT. THAT'S WHY
I'VE INTRODUCED LEGISLATION TO PUT
ASPIRING WOMEN AND MINORITY
BUSINESSPEOPLE ON AN EQUAL FOOTING
IN SECURING LOANS. THESE
AMENDMENTS TO THE EQUAL CREDIT
OPPORTUNITY ACT WOULD ESTABLISH A
PRESUMPTION IN FAVOR OF EQUAL
TREATMENT FOR EVERYONE IN

GRANTING COMMERCIAL CREDIT. . .AND
THAT HAS TO BE GOOD FOR THE SMALL
BUSINESS COMMUNITY.