

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 897

To provide for a nationally coordinated program of research, promotion, and consumer information regarding kiwifruit for the purpose of expanding domestic and foreign markets for kiwifruit.

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## IN THE SENATE OF THE UNITED STATES

JUNE 8 (legislative day, JUNE 5), 1995

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To provide for a nationally coordinated program of research, promotion, and consumer information regarding kiwifruit for the purpose of expanding domestic and foreign markets for kiwifruit.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “National Kiwifruit Research, Promotion, and Consumer  
6 Information Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for  
8 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.
- Sec. 4. Issuance of Kiwifruit Research, Promotion, and Consumer Information Order.
- Sec. 5. National Kiwifruit Board.
- Sec. 6. Required terms in order.
- Sec. 7. Permissive terms in order.
- Sec. 8. Incorporation of petition and review, enforcement, and investigation provisions by reference.
- Sec. 9. Referenda.
- Sec. 10. Suspension and termination of order by Secretary.
- Sec. 11. Authorization of appropriations.
- Sec. 12. Regulations.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds that—

3 (1) domestically produced kiwifruit are grown  
4 by many individual producers;

5 (2) virtually all domestically produced kiwifruit  
6 are grown in the State of California, although there  
7 is potential for production in many other areas of  
8 the United States;

9 (3) kiwifruit move in interstate and foreign  
10 commerce, and kiwifruit that do not move in such  
11 channels of commerce directly burden or affect inter-  
12 state commerce;

13 (4) in recent years, large quantities of kiwifruit  
14 have been imported into the United States;

15 (5) the maintenance and expansion of existing  
16 domestic and foreign markets for kiwifruit, and the  
17 development of additional and improved markets for  
18 kiwifruit, are vital to the welfare of kiwifruit produc-

1       ers and other persons concerned with producing,  
2       marketing, and processing kiwifruit;

3           (6) a coordinated program of research, pro-  
4       motion, and consumer information regarding  
5       kiwifruit is necessary for the maintenance and devel-  
6       opment of such markets; and

7           (7) kiwifruit producers, handlers, and importers  
8       are unable to implement and finance such a program  
9       without cooperative action.

10       (b) PURPOSES.—The purposes of this Act are—

11           (1) to authorize the establishment of an orderly  
12       procedure for the development and financing  
13       (through an assessment) of an effective and coordi-  
14       nated program of research, promotion, and  
15       consumer information regarding kiwifruit;

16           (2) to use such program to strengthen the posi-  
17       tion of the kiwifruit industry in domestic and foreign  
18       markets and maintain, develop, and expand markets  
19       for kiwifruit; and

20           (3) to treat domestically produced kiwifruit and  
21       imported kiwifruit equitably.

22       **SEC. 3. DEFINITIONS.**

23       As used in this Act:

1           (1) BOARD.—The term “Board” means the Na-  
2           tional Kiwifruit Board, as provided for under section  
3           5.

4           (2) CONSUMER INFORMATION.—The term  
5           “consumer information” means any action taken to  
6           provide information to, and broaden the understand-  
7           ing of, the general public regarding the consumption,  
8           use, nutritional attributes, and care of kiwifruit.

9           (3) EXPORTER.—The term “exporter” means  
10          any person from outside the United States who ex-  
11          ports kiwifruit into the United States.

12          (4) HANDLER.—The term “handler” means  
13          any person, excluding a common carrier, engaged in  
14          the business of buying and selling, packing, market-  
15          ing, or distributing kiwifruit as specified in the  
16          order.

17          (5) IMPORTER.—The term “importer” means  
18          any person who imports kiwifruit into the United  
19          States.

20          (6) KIWIFRUIT.—The term “kiwifruit” means  
21          all varieties of fresh kiwifruit grown or imported in  
22          the United States.

23          (7) MARKETING.—The term “marketing”  
24          means the sale or other disposition of kiwifruit into  
25          interstate, foreign, or intrastate commerce by buy-

1 ing, marketing, distribution or otherwise placing  
2 kiwifruit into commerce.

3 (8) ORDER.—The term “order” means a  
4 kiwifruit research, promotion, and consumer infor-  
5 mation order issued by the Secretary under section  
6 4.

7 (9) PERSON.—The term “person” means any  
8 individual, group of individuals, partnership, cor-  
9 poration, association, cooperative, or other legal en-  
10 tity.

11 (10) PROCESSING.—The term “processing”  
12 means canning, fermenting, distilling, extracting,  
13 preserving, grinding, crushing, or in any manner  
14 changing the form of kiwifruit for the purposes of  
15 preparing it for market or marketing the kiwifruit.

16 (11) PRODUCER.—The term “producer” means  
17 any person who grows kiwifruit in the United States  
18 for sale in commerce.

19 (12) PROMOTION.—The term “promotion”  
20 means any action taken under this Act (including  
21 paid advertising) to present a favorable image for  
22 kiwifruit to the general public for the purpose of im-  
23 proving the competitive position of kiwifruit and  
24 stimulating the sale of kiwifruit.

1           (13) RESEARCH.—The term “research” means  
2 any type of research relating to the use, nutritional  
3 value, and marketing of kiwifruit conducted for the  
4 purpose of advancing the image, desirability, mar-  
5 ketability, or quality of kiwifruit.

6           (14) SECRETARY.—The term “Secretary”  
7 means the Secretary of Agriculture.

8           (15) UNITED STATES.—The term “United  
9 States” means the 50 States of the United States,  
10 the District of Columbia, and the Commonwealth of  
11 Puerto Rico. (7 U.S.C. 6202.)

12 **SEC. 4. ISSUANCE OF KIWIFRUIT RESEARCH, PROMOTION,**  
13 **AND CONSUMER INFORMATION ORDER.**

14           (a) ISSUANCE.—To effectuate the declared purposes  
15 of this Act, the Secretary shall issue an order applicable  
16 to producers, handlers, and importers of kiwifruit. Any  
17 such order shall be national in scope. Not more than one  
18 order shall be in effect under this Act at any one time.

19           (b) PROCEDURE.—

20           (1) PROPOSAL FOR ISSUANCE OF ORDER.—Any  
21 person that will be affected by this Act may request  
22 the issuance of, and submit a proposal for, an order  
23 under this Act.

24           (2) PROPOSED ORDER.—Not later than 90 days  
25 after the receipt of a request and proposal for an

1 order, the Secretary shall publish a proposed order  
2 and give due notice and opportunity for public com-  
3 ment on the proposed order.

4 (3) ISSUANCE OF ORDER.—After notice and op-  
5 portunity for public comment are given, as provided  
6 in paragraph (2), the Secretary shall issue an order,  
7 taking into consideration the comments received and  
8 including in the order provisions necessary to ensure  
9 that the order is in conformity with the require-  
10 ments of this Act.

11 (c) AMENDMENTS.—The Secretary may amend any  
12 order issued under this section. The provisions of this Act  
13 applicable to orders shall be applicable to amendments to  
14 orders.

15 **SEC. 5. NATIONAL KIWIFRUIT BOARD.**

16 (a) MEMBERSHIP.—An order issued by the Secretary  
17 under section 4 shall provide for the establishment of a  
18 National Kiwifruit Board, to consist of 11 members as  
19 follows:

20 (1) Six members who are producers (or their  
21 representatives) and who are not exempt from an as-  
22 sessment under section 6(b).

23 (2) Four members who are importers (or their  
24 representatives) and who are not exempt from an as-

1        assessment under section 6(b) or are exporters (or  
2        their representatives).

3            (3) One member appointed from the general  
4        public.

5        (b) ADJUSTMENT OF MEMBERSHIP.—Subject to the  
6        11-member limit, the Secretary may adjust membership  
7        on the Board to accommodate changes in production and  
8        import levels of kiwifruit, so long as producers comprise  
9        not less than 51 percent of the membership of the Board.

10        (c) APPOINTMENT AND NOMINATION.—

11            (1) APPOINTMENT.—The Secretary shall ap-  
12        point the members of the Board from nominations  
13        submitted in accordance with this subsection.

14            (2) PRODUCERS.—The members referred to in  
15        subsection (a)(1) shall be appointed from individuals  
16        nominated by producers.

17            (3) IMPORTERS AND EXPORTERS.—The mem-  
18        bers referred to in subsection (a)(2) shall be ap-  
19        pointed from individuals nominated by importers or  
20        exporters.

21            (4) PUBLIC REPRESENTATIVE.—The public rep-  
22        resentative shall be appointed from nominations sub-  
23        mitted by other members of the Board.

24            (5) FAILURE TO NOMINATE.—If producers, im-  
25        porters, and exporters fail to nominate individuals

1 for appointment, the Secretary may appoint mem-  
2 bers on a basis provided for in the order. If the  
3 Board fails to nominate a public representative, such  
4 member may be appointed by the Secretary without  
5 a nomination.

6 (d) ALTERNATES.—The Secretary shall appoint an  
7 alternate for each member of the Board. An alternate  
8 shall—

9 (1) be appointed in the same manner as the  
10 member for whom such individual is an alternate;  
11 and

12 (2) serve on the Board if such member is ab-  
13 sent from a meeting or is disqualified under sub-  
14 section (f).

15 (e) TERMS.—Members of the Board shall be ap-  
16 pointed for a term of three years. No member may serve  
17 more than two consecutive three-year terms. However, of  
18 the members first appointed—

19 (1) five members shall be appointed for a term  
20 of two years; and

21 (2) six members shall be appointed for a term  
22 of three years.

23 (f) REPLACEMENT.—If a member or alternate of the  
24 Board who was appointed as a producer, importer, ex-  
25 porter, or public representative member ceases to belong

1 to the group for which such member was appointed, such  
2 member or alternate shall be disqualified from serving on  
3 the Board.

4 (g) COMPENSATION.—Members and alternates of the  
5 Board shall serve without pay.

6 (h) GENERAL POWERS AND DUTIES.—The Board  
7 shall—

8 (1) administer orders issued by the Secretary  
9 under section 4, and amendments to such orders, in  
10 accordance with their terms and provisions and con-  
11 sistent with this Act;

12 (2) prescribe rules and regulations to effectuate  
13 the terms and provisions of such orders;

14 (3) meet, organize, and select from among  
15 members of the Board a chairperson, other officers,  
16 and committees and subcommittees, as the Board  
17 determines appropriate;

18 (4) receive, investigate, and report to the Sec-  
19 retary accounts of violations of such orders;

20 (5) make recommendations to the Secretary  
21 with respect to amendments that should be made to  
22 such orders; and

23 (6) employ or contract with a manager and  
24 staff to assist in administering such orders, except  
25 that, in order to reduce administrative costs and in-

1       crease efficiency, the Board shall seek, to the extent  
2       possible, to employ or contract with personnel who  
3       are already associated with State chartered organi-  
4       zations involved in promoting kiwifruit.

5       **SEC. 6. REQUIRED TERMS IN ORDER.**

6       (a) BUDGETS AND PLANS.—An order issued under  
7       section 4 shall provide for periodic budgets and plans as  
8       follows:

9               (1) BUDGETS.—The Board shall prepare and  
10       submit to the Secretary a budget prior to the begin-  
11       ning of the fiscal year of the anticipated expenses  
12       and disbursements of the Board in the administra-  
13       tion of the order, including probable costs of re-  
14       search, promotion, and consumer information. A  
15       budget shall take effect upon a two-thirds vote of a  
16       quorum of the Board and approval by the Secretary.

17              (2) PLANS.—Each budget shall include a plan  
18       for research, promotion, and consumer information  
19       regarding kiwifruit. A plan under this paragraph  
20       shall take effect upon approval by the Secretary.  
21       The Board may enter into contracts and agree-  
22       ments, upon approval by the Secretary, for—

23                   (A) the development and carrying out of  
24       such plan; and

1 (B) the payment of the cost of such plan,  
2 with funds collected pursuant to this Act.

3 (b) ASSESSMENTS.—Such order shall provide for the  
4 imposition and collection of assessments with regard to the  
5 production and importation of kiwifruit as follows:

6 (1) RATE.—The assessment rate shall be rec-  
7 ommended by a two-thirds vote of a quorum of the  
8 Board, approved by the Secretary, but shall not ex-  
9 ceed \$0.10 per seven pound tray of kiwifruit or  
10 equivalent.

11 (2) COLLECTION BY FIRST HANDLERS.—Except  
12 as provided in paragraph (4), the first handler of  
13 kiwifruit shall—

14 (A) be responsible for the collection from  
15 the producer, and payment to the Board, of as-  
16 sessments under this subsection; and

17 (B) maintain a separate record of the  
18 kiwifruit of each producer whose kiwifruit are  
19 so handled, including the kiwifruit owned by the  
20 handler.

21 (3) IMPORTERS.—The assessment on imported  
22 kiwifruit shall be paid by the importer to the United  
23 States Customs Service at the time of entry into the  
24 United States and shall be remitted to the Board.

1 (4) EXEMPTION FROM ASSESSMENT.—The fol-  
2 lowing persons or activities are exempt from an as-  
3 sessment under this subsection:

4 (A) A producer who produces less than  
5 500 pounds of kiwifruit per year.

6 (B) An importer who imports less than  
7 10,000 pounds of kiwifruit per year.

8 (C) Sales of kiwifruit made directly from  
9 the producer to a consumer for a purpose other  
10 than resale.

11 (D) The production or importation of  
12 kiwifruit for processing.

13 (5) CLAIM OF EXEMPTION.—To claim an ex-  
14 emption under paragraph (4) for a particular year,  
15 a person shall—

16 (A) submit an application to the Board  
17 stating the basis for the exemption and certify-  
18 ing that the person will not exceed any pound-  
19 age limitation required for the exemption in  
20 such year; or

21 (B) be on a list of approved processors de-  
22 veloped by the Board.

23 (c) USE OF ASSESSMENTS.

1           (1) AUTHORIZED USES.—Such order shall pro-  
2           vide that funds paid to the Board as assessments  
3           under subsection (b) may be used by the Board—

4                   (A) to pay for research, promotion, and  
5                   consumer information described in the budget  
6                   of the Board under subsection (a) and for other  
7                   expenses incurred by the Board in the adminis-  
8                   tration of an order;

9                   (B) to pay such other expenses for the ad-  
10                  ministration, maintenance, and functioning of  
11                  the Board, including any enforcement efforts  
12                  for the collection of assessments as may be au-  
13                  thorized by the Secretary, including interest  
14                  and penalties for late payments; and

15                  (C) to fund a reserve established under  
16                  section 7(d).

17           (2) REQUIRED USES.—Such order shall provide  
18           that funds paid to the Board as assessments under  
19           subsection (b) shall be used by the Board—

20                   (A) to pay the expenses incurred by the  
21                   Secretary, including salaries and expenses of  
22                   Government employees, in implementing and  
23                   administering the order; and

1 (B) to reimburse the Secretary for any ex-  
2 penses incurred by the Secretary in conducting  
3 referenda under this Act.

4 (3) LIMITATION ON USE OF ASSESSMENTS.—  
5 Except for the first year of operation of the Board,  
6 expenses for the administration, maintenance, and  
7 functioning of the Board may not exceed 30 percent  
8 of the budget.

9 (d) FALSE CLAIMS.—Such order shall provide that  
10 any promotion funded with assessments collected under  
11 subsection (b) may not make—

12 (1) any false claims on behalf of kiwifruit; and

13 (2) any false statements with respect to the at-  
14 tributes or use of any product that competes with  
15 kiwifruit for sale in commerce.

16 (e) PROHIBITION ON USE OF FUNDS.—Such order  
17 shall provide that funds collected by the Board under this  
18 Act through assessments may not, in any manner, be used  
19 for the purpose of influencing legislation or governmental  
20 policy or action, except for making recommendations to  
21 the Secretary as provided for in this Act.

22 (f) BOOKS, RECORDS, AND REPORTS.—

23 (1) BY THE BOARD.—Such order shall require  
24 the Board—

1 (A) to maintain books and records with re-  
2 spect to the receipt and disbursement of funds  
3 received by the Board;

4 (B) to submit to the Secretary from time  
5 to time such reports as the Secretary may re-  
6 quire for appropriate accounting; and

7 (C) to submit to the Secretary at the end  
8 of each fiscal year a complete audit report by  
9 an independent auditor regarding the activities  
10 of the Board during such fiscal year.

11 (2) BY OTHERS.—So that information and data  
12 will be available to the Board and the Secretary that  
13 is appropriate or necessary for the effectuation, ad-  
14 ministration, or enforcement of this Act (or any  
15 order or regulation issued under this Act), such  
16 order shall require handlers and importers who are  
17 responsible for the collection, payment, or remittance  
18 of assessments under subsection (b)—

19 (A) to maintain and make available for in-  
20 spection by the employees of the Board and the  
21 Secretary such books and records as may be re-  
22 quired by the order; and

23 (B) to file, at the times and in the manner  
24 and content prescribed by the order, reports re-

1           garding the collection, payment, or remittance  
2           of such assessments.

3           (g) CONFIDENTIALITY.—

4           (1) IN GENERAL.—Such order shall require  
5           that all information obtained pursuant to subsection  
6           (f)(2) be kept confidential by all officers and employ-  
7           ees of the Department and of the Board. Only such  
8           information as the Secretary considers relevant shall  
9           be disclosed to the public and only in a suit or ad-  
10          ministrative hearing, brought at the request of the  
11          Secretary or to which the Secretary or any officer of  
12          the United States is a party, involving the order  
13          with respect to which the information was furnished  
14          or acquired.

15          (2) LIMITATIONS.—Nothing in this subsection  
16          prohibits—

17                (A) issuance of general statements based  
18                on the reports of a number of handlers and im-  
19                porters subject to an order, if the statements do  
20                not identify the information furnished by any  
21                person; or

22                (B) the publication by direction of the Sec-  
23                retary of the name of any person violating an  
24                order issued under section 4(a), together with a

1 statement of the particular provisions of the  
2 order violated by such person.

3 (3) PENALTY.—Any person who willfully vio-  
4 lates the provisions of this subsection, upon convic-  
5 tion, shall be subject to a fine of not more than  
6 \$1,000, or to imprisonment for not more than one  
7 year, or both, and, if a member, officer, or agent of  
8 the board or an employee of the Department, shall  
9 be removed from office.

10 (h) WITHHOLDING INFORMATION.—Nothing in this  
11 Act shall be construed to authorize the withholding of in-  
12 formation from Congress.

13 **SEC. 7. PERMISSIVE TERMS IN ORDER.**

14 (a) PERMISSIVE TERMS.—On the recommendation of  
15 the Board, and with the approval of the Secretary, an  
16 order issued under section 4 may include the authorities  
17 specified in this section and such additional terms and  
18 conditions as the Secretary considers necessary to effec-  
19 tuate the other provisions of the order and are incidental  
20 to, and not inconsistent with, the terms and conditions  
21 required by this Act.

22 (b) ALTERNATIVE PAYMENT AND REPORTING  
23 SCHEDULES.—Such order may authorize the Board to  
24 designate different handler payment and reporting sched-

1 ules to recognize differences in marketing practices and  
2 procedures.

3 (c) WORKING GROUPS.—Such order may authorize  
4 the Board to convene working groups drawn from produc-  
5 ers, handlers, importers, exporters, or the general public  
6 and utilize the expertise of such groups to assist in the  
7 development of research and marketing programs for  
8 kiwifruit.

9 (d) RESERVE FUNDS.—Such order may authorize the  
10 Board to accumulate reserve funds from assessments col-  
11 lected pursuant to section 6(b) to permit an effective and  
12 continuous coordinated program of research, promotion,  
13 and consumer information in years in which production  
14 and assessment income may be reduced. However, any re-  
15 serve fund so established may not exceed the amount  
16 budgeted for operation of this Act for one year.

17 (e) PROMOTION ACTIVITIES OUTSIDE UNITED  
18 STATES.—Such order may authorize the Board to use,  
19 with the approval of the Secretary, funds collected under  
20 section 6(b) for the development and expansion of sales  
21 in foreign markets of kiwifruit produced in the United  
22 States.

1 **SEC. 8. INCORPORATION OF PETITION AND REVIEW, EN-**  
2 **FORCEMENT, AND INVESTIGATION PROVI-**  
3 **SIONS BY REFERENCE.**

4 The following provisions of the Lime Research, Pro-  
5 motion, and Consumer Information Act of 1990 (subtitle  
6 D of title XIX of Public Law 101–624) shall apply to this  
7 Act and any order or regulation issued under this Act:

8 (1) Section 1957 (7 U.S.C. 6206), relating to  
9 petitions filed by persons subject to an order issued  
10 under this Act and review of administrative rulings  
11 on such petitions.

12 (2) Section 1958 (7 U.S.C. 6207), relating to  
13 violations of any order or regulation issued under  
14 this Act.

15 (3) Section 1959 (7 U.S.C. 6208), relating to  
16 the authority of the Secretary to make investiga-  
17 tions, administer oaths and affirmations, and issue  
18 subpoenas in connection with inquiries under this  
19 Act.

20 **SEC. 9. REFERENDA.**

21 (a) INITIAL REFERENDUM.—

22 (1) REFERENDUM REQUIRED.—During the 60-  
23 day period immediately preceding the proposed effec-  
24 tive date of an order issued under section 4, the Sec-  
25 retary shall conduct a referendum among kiwifruit  
26 producers and importers who will be subject to as-

1        assessments under the order, to ascertain whether pro-  
2        ducers and importers approve of the implementation  
3        of the order.

4            (2) APPROVAL OF ORDER.—The order shall be-  
5        come effective, as provided in section 4, if the Sec-  
6        retary determines that the order has been approved  
7        by a majority of the producers and importers voting  
8        in the referendum and these producers and import-  
9        ers produce and import more than 50 percent of the  
10       total volume of kiwifruit produced and imported by  
11       persons voting in the referendum.

12        (b) SUBSEQUENT REFERENDA.—The Secretary may  
13       periodically conduct a referendum to determine if kiwifruit  
14       producers and importers favor the continuation, termi-  
15       nation, or suspension of any order issued under section  
16       4 and in effect at the time of the referendum.

17        (c) REQUIRED REFERENDA.—The Secretary shall  
18       hold a referendum under subsection (b)—

19            (1) at the end of the six-year period beginning  
20        on the effective date of the order and at the end of  
21        every six-year period thereafter;

22            (2) at the request of the Board; and

23            (3) if not less than 40 percent of the kiwifruit  
24        producers and importers subject to assessments

1 under the order submit a petition requesting such a  
2 referendum.

3 (d) VOTE.—Upon completion of a referendum under  
4 subsection (b), the Secretary shall suspend or terminate  
5 the order that was subject to the referendum at the end  
6 of the marketing year if—

7 (1) the suspension or termination of the order  
8 is favored by not less than a majority of the produc-  
9 ers and importers voting in the referendum; and

10 (2) these producers and importers produce and  
11 import more than 50 percent of the total volume of  
12 kiwifruit produced and imported by persons voting  
13 in the referendum.

14 (e) CONFIDENTIALITY.—The ballots and other infor-  
15 mation or reports that reveal, or tend to reveal, the vote  
16 of any person under this Act as well as the voting list  
17 shall be held strictly confidential and shall not be dis-  
18 closed.

19 **SEC. 10. SUSPENSION AND TERMINATION OF ORDER BY**  
20 **SECRETARY.**

21 (a) UPON FINDING.—If the Secretary finds that an  
22 order issued under section 4, or a provision of such an  
23 order, obstructs or does not tend to effectuate the pur-  
24 poses of this Act, the Secretary shall terminate or suspend  
25 the operation of such order or provision.

1 (b) LIMITATION.—The termination or suspension of  
2 any order, or any provision thereof, shall not be considered  
3 an order within the meaning of this Act.

4 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

5 There are authorized to be appropriated for each fis-  
6 cal year such funds as are necessary to carry out this Act.

7 **SEC. 12. REGULATIONS.**

8 The Secretary may issue such regulations as are nec-  
9 essary to carry out this Act.

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