The original documents are located in Box 1, folder "Arab Boycott - General (1)" of the Loen and Leppert Files at the Gerald R. Ford Presidential Library.

FILE

Stevenson and Koch Anti-Boycott Bills
S. 953 and H.R. 11463

The provisions of these bills would: A) mandate disclosure of required reports to the Commerce Department of responses by U.S. firms to boycott-related requests; B) duplicate laws or regulations already in effect which bar discrimination in export transactions based on race, religion or national origin and C) prohibit refusals to deal among U.S. firms pursuant to foreign boycott requirements or requests.

Bingham Anti-Boycott Bill
H.R. 4967

The provisions of this bill would prohibit U.S. firms engaged in exporting from taking any action, including furnishing information or signing agreements, which has the effect of furthering or supporting foreign boycotts of friendly countries.

Why the Administration Strongly Opposes New Legislation At This Time

1. FACTS:

-- The United States alone among industrialized countries has a clearly established policy and program of opposition to foreign boycotts of friendly countries, including the boycott of Israel.

-- We have taken appropriate actions (reporting requirements on U.S. firms, information campaign requesting and encouraging U.S. firms not to act in furtherance of such boycotts, Justice Department prosecution under antitrust laws, curtailment of U.S. trade promotion activities where programs might have the effect of condoning boycott practices) to lessen the impact of boycott practices on U.S. firms.

-- Present U.S. policy and anti-boycott measures already place a heavy burden on U.S. firms, creating uncertainties as to whether or not they can or should do business in the Arab countries.

-- In 1975, our exports to Arab countries which adhere to the boycott of Israel exceeded $4.4 billion, accounting for some 200,000 - 300,000 American jobs.

-- A number of Arab governments are now negotiating or considering contracts with boycotted U.S. firms--notwithstanding the public commitment of these firms to maintain investment, licensing or other special economic relationships with Israel.

-- Other U.S. firms are making some progress in working boycott conditions and clauses out of the various stages of their transactions (e.g., contracts, letters of credit, shipping instructions). Although the pattern is not uniform as to company, transaction, or country, this reflects a gradual easing of enforcement practices over the past six months.

-- The United States has played and seeks to continue to play an important role in promoting a settlement of the Arab-Israeli dispute through peaceful negotiations.

2. ASSESSMENT:

-- New Legislation could harm overall U.S. economic and political interests in the Middle East, including our overriding concern for promoting progress toward a peaceful Arab-Israeli settlement.

-- A frontal attack on the boycott through new legislation could trigger stronger enforcement of boycott regulations, just as U.S. legislation attempting to increase the outflow of Soviet Jewish emigrants resulted in the opposite effect.

-- Any new legislation against the boycott, even if it did not go beyond existing regulations, would be read in Arab countries as a direct attack on them in response to Israeli pressures.

-- Arab countries see the boycott of Israel as an exercise of sovereignty (deciding with which countries and firms each will deal directly or via third countries or firms).

-- Confrontation would aid those forces among and within the Arab countries which oppose an expansion of U.S.-Arab country economic and political relations and which oppose a negotiated settlement which would give recognition to Israel's sovereignty and territorial integrity.

-- Passage of either anti-boycott bill would impose a significantly greater burden on U.S. firms seeking to do business in the Middle East.

-- The response of key Arab states to new legislation could be a shift to third country suppliers for a wide range of goods and services now supplied by U.S. firms--either as a means of assuring reliable supply or as retaliation.

-- Nor will passage necessarily result in any increased business with Israel by U.S. firms. Most firms either directly or through intermediaries currently are willing to take advantage of opportunities afforded by the Israeli market.

-- Adequate and effective steps have been taken by the President and the respective agencies to bar discrimination in export transactions based on race, religion, or national origin. Acts of discrimination do not characterize the application of boycott practices to U.S. firms.

-- Realistically, the Arab states will not end their primary or secondary boycott except in the context of negotiating an Arab-Israeli settlement. Meanwhile, continued encouragement to U.S. firms to work out case-by-case elimination of boycott conditions and language from their transactions offers the best chance for lessening the impact of the boycott on U.S. commerce.

3. NEGATIVE ASPECTS OF PROPOSED LEGISLATION

A. Refusals to Deal (Stevenson and Koch Bills)

-- The U.S. antitrust laws prohibit agreements or conspiracies to engage in anti-competitive boycott activities. The refusal-to-deal provisions of S. 953 and H.R. 11463 would go beyond the scope of the antitrust laws by, among other things, prohibiting boycott activities which are not connected with an agreement or conspiracy, and refusals to deal in connection with undefined "restrictive practices." If put into force, such legislation could deal a very serious blow to direct U.S. business with the Arab world.

-- Even if U.S. firms were able to meet the new legal requirements by sales and shipments via parties in third countries (e.g., to avoid refusing to use blacklisted ships or blacklisted insurance companies), this would make U.S. goods less competitive in terms of both cost and delivery times.

-- These provisions could have the unintended and undesirable effect of encouraging some firms to make general use of non-boycotted suppliers in their worldwide trade, since making general use of boycotted firms except for projects in boycotting countries might be considered prima facie evidence of refusal to deal.

-- Responsible enforcement would require extensive staffing and funding resources which Congress heretofore has been reluctant to provide even for the enforcement of existing Export Administration Act provisions directly related to national security interests.

B. Disclosure (Stevenson and Koch Bills)

-- Making public Commerce Department information about U.S. firms' compliance with boycott requests (as provided in S. 953 and H.R. 11463) will also make available information concerning non-compliance. This disclosure could give boycott officials an enforcement tool and make it more difficult for Arab business partners to tolerate de facto non-compliance by U.S. businesses.

C. Prohibiting All Boycott Compliance (Bingham Bill)

-- H.R. 4967 leads directly to confrontation with Arab administration of the boycott. Although Arab countries have made exceptions to boycott rules in the past and are likely to continue to do so in the future, this type of restriction on U.S. firms almost certainly will lead to major losses of business as Arab countries and Arab businessmen favor procurement from third country suppliers who are willing to supply routine (and often meaningless) documentation which U.S. firms will be prohibited from supplying.

Clearances: NEA - Mr. Sober
NEA/RA - Mr. Cheek
L/NEA - Mr. Small
EB - Mr. Watson
EB/CSB - Mr. Nesvig
H - Mr. Nelson
Com/CAGNE - Mr. Hale
Com/ GC - Mr. Knowles
Justice - Mr. Farmer

Drafted by:
NEA/RA:DTMorrison:jr
(revised 5/26/76) 20267

Notes on S. 953 and H.R. 11463 as to Aspects of Refusal-to-Deal Provisions Beyond the Scope of United States Antitrust Law

1. An antitrust violation involving refusals to deal requires evidence of conspiracy or agreement between two or more persons. The proposed bills might not require evidence of conspiratorial conduct.

2. The bills would appear to seek to regulate conduct by American firms or their subsidiaries which would have no impact on U.S. commerce (e.g., an agreement by one overseas U.S. subsidiary to refuse to do business with an overseas subsidiary of yet another U.S. firm as to an overseas transaction).

3. The bills might be read to nullify possible "act of state" or "foreign compulsion" defenses of the type which might be asserted in antitrust litigation.

4. Under antitrust law, some restrictive trade practices such as enforcement of patents may be legal. They might not be legal under the proposed legislation.

U.S. DEPARTMENT OF COMMERCE
DEPUTY DIRECTOR, OFFICE OF CONGRESSIONAL RELATIONS

November 26, 1975

To : Charlie Leppert

From: Robert N. Reintsema

As we promised earlier today, I am enclosing a copy of Congressman John Moss' reply to Secretary Morton's letter, a copy of which was sent to you, concerning the Arab-Israel boycott issue. The penciled corrections on the letter are the result of a telephone call from the Subcommittee after the letter had been delivered here to Commerce. I'm also including a copy for Vern Loen and would be most appreciative if you could pass it along to him.

TRANSMITTAL FORM CD-82A (10-67)
PRESCRIBED BY DAO 214-2

USCOMM-DC 338-P74

ROOM 2323
RAYBURN HOUSE OFFICE BUI
PHONE (202) 225-4441

MICHAEL R. LEMOV
CHIEF COUNSEL
J. THOMAS GREENE
COUNSEL TO THE CHAIRMA

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

November 26, 1975

Honorable Rogers C. B. Morton
Secretary of Commerce
Department of Commerce
Washington, D. C. 20230

Dear Mr. Secretary:

I too deeply regret that it finally became necessary to move in the Subcommittee to enforce the subpoena duces tecum issued on July 28, 1975. Though your decision to refuse to comply with the duly issued subpoena of this Subcommittee was made only after seeking the advice of your own counsel and the Attorney General, I can only regret that this issue is joined between former colleagues.

Mr. Secretary, as a former Member of the House of Representatives, I know that you can appreciate the fact that there are stages of committee action which effectively preclude reconsideration on the part of a Chairman. That point has been reached by the Subcommittee on Oversight and Investigations. The matter now is on the agenda of the full Interstate and Foreign Commerce Committee, and I am under instruction to call it up for a vote.

I believe, however, that more important than the parliamentary situation is the fact that the Congress cannot accept the opinion of the Attorney General, who in this instance is acting as an advocate of the position which had its origin with your departmental solicitor, Karl Bakke. If you will refer to the testimony of Philip Kurland, he sets forth with great precision the chronology of the development of the legal position which was urged upon you and finally adopted as yours in your appearance before the Subcommittee.

153496

You may recall, Mr. Secretary, that following your first appearance and your first refusal to comply, out of an abundance of caution, I engaged the services of a distinguished constitituional scholar, Professor Raoul Berger, Warren Professor of American Legal History at Harvard Law School, as consultant and adviser to the Subcommittee on this question.

Additionally, I requested the testimony of Philip Kurland, another distinguished constitutional scholar at the University of Chicago and a consultant to the Senate Committee which instituted the orginal Watergate investigations. The Subcommittee then sought from Professor Norman Dorsen of New York University, a recognized expert in the field of constitutional law and its common law antecedents, his best advice and judgment. The record is quite clear that in every instance these distinguished scholars found (1) that the confidentiality provision of Section 7(c) of the Export Administration Act could not through any normal construction of law apply to the Congress of the United States or either House thereof; (2) that the action of the Subcommittee in requiring production of the material by subpoena was appropriate and consistent with the powers and precedents of the House of Representatives and the tradition which we inherit from common law and the British Parliament; and (3) each agreed that this was an issue the House could not permit the Executive to prevail on unless it was willing to cede to the Executive branch its essential powers to exercise necessary oversight of the laws enacted by it.

We have explored at your suggestion the two alternatives proposed by you, and it is with the very deepest of regret that I must inform you that neither is appropriate or acceptable. While I appreciate your desire to seek court review of this matter, the most expeditious and, in my view, exclusive vehicle for bringing this issue to the courts is contempt. That process has begun. Within days of the action of the Interstate and Foreign Commerce Committee, a justiciable controversy will exist which may be considered by the courts either in a habeas corpus action or in an action under 2 U.S.C. § 192. Though we might wish for another way of addressing this question, the law is clear.

As to your second proposal, it is unacceptable. On the practical level, restriction of these documents to the Members of the Subcommittee and its staff would raise the most serious issues of congressional responsibility. I have noted in our discussions that the boycott may very well involve violations of the Federal Trade Commission Act and the Securities Exchange Act. Acceptance of your condition would preclude this Subcommittee from releasing this data to Federal prosecutors if violations of law were discovered. Such an ~~incongrous~~ incongruous result cannot be squared with the constitutional duties of the Congress.

Further, your condition would place unconstitutional limits on the authority of the Congress to discharge its legislative and oversight responsibilities. It may become necessary in the discharge of our constitutional duties to hold public hearings on the issues raised by these materials. As you know, the House of Representatives has always been characterized as the people's house and the ~~grant~~ inquest of the nation. To subordinate our legislative and investigative authority to such terms and conditions as the executive may determine is to cede to the executive a paramount role not envisioned by the Constitution. This I cannot do.

I am deeply mindful, Mr. Secretary, of the responsibilities which I assumed upon taking my oath of office, an oath which you also took when a Member of this House. As you know, its demands are emphatic: that we "uphold and defend the Constitution"... In the documents which you have already reviewed, Professor Kurland states:

> To the extent that Congress has acceded to Executive branch denials on the withholding of information it has failed to enforce its authority and has vacated its power to inquire...
>
> I urge this subcommittee not to contribute to the continued destruction of congressional authority. The constitutional plan of checks and balances, an essential safeguard for American liberties, is constantly endangered by failure of Congress to assert its authority vis-a-vis the Executive. I trust that this case will not prove another instance of such surrender; the rights at stake are not those of individual Congressmen, they are the rights of the American people whose representatives you are.

I believe that the sobering experiences of the previous Administration require all of us to be mindful of our Constitutional system and the particular need for the Congress to be free to exercise fully its powers and discharge its responsibilities to the American electorate. In this period in which the highest executive officials of our government are appointed, not elected, it is critical that the elected representatives of the people prevail, however distasteful the stage-by-stage procedure is to both of us.

While I most emphatically submit that it is not in the national interest for the Congress to make any pledge to the executive as to how it will use the material, I must also state that our handling of this material will be nothing less than responsible. That assurance I give you. But, we must remain free to initiate open public hearings should a review of the material indicate to me and the Members of the Subcommittee that such hearings are necessary or desirable to secure full compliance with the laws and policies of the United States. I must remind you that as recently as November 20th, President Gerald R. Ford publicly addressed the grave dangers of conforming to a pattern of acceptance of boycotts instituted by forces outside of this country. My concern is no less.

Accordingly, I will seek the earliest possible consideration in the full Committee of the motion to recommend to the House that you be found in contempt of the House of Representatives. After consideration of this question in full Committee, I assure you that I will exercise the high privilege accorded such a motion so that it will be considered on the floor promptly.

I reiterate these steps which I will take, will be taken with no intent to embarrass or harm you or with any sense of diminished respect for you as an individual. I take them because I must, in order to preserve the rights of the people's representatives to inquire and to exercise their unfettered judgment.

Sincerely,

John E. Moss
Chairman
Oversight and
Investigations Subcommittee

JEM:tgg

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
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Sincerely,

John E. Moss
Chairman
Oversight and
Investigations Subcommittee

JEM:tgg

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

File

November 28, 1975

MEMORANDUM FOR Honorable Max L. Friedersdorf

FROM: Robert A. Reintsema
Acting Assistant to the Secretary
for Congressional Affairs

J.M. Schenk for

SUBJECT: Arab Boycott Issue

This past week and a half has been very active as far as the Arab boycott situation is concerned. In terms of background, let me list these events for you.

On Thursday of last week, it was rumored that the full Committee on Interstate and Foreign Commerce might take up the Morton contempt question. However, the Committee called off its scheduled executive session, so the possibility of this never came to pass. They then scheduled a series of markup sessions for the week when Congress returns -- December 2, 3 and 4, to be precise. The contempt citation is one of seven issues on the agenda that can be taken up at that time.

Also on Thursday of last week, Congressman John Moss, Chairman of the Subcommittee on Oversight and Investigations of the Interstate and Foreign Commerce Committee, sent a "Dear Colleague" letter to his fellow House Members asking them to join him in cosigning a letter to Senator Warren Magnuson, Chairman of the Senate Committee on Commerce, requesting that when the Committee holds the confirmation hearings on Ambassador Richardson, scheduled for December 4, that they secure from Mr. Richardson a commitment to reverse the position of Secretary Morton relative to the release of the Arab boycott information (a copy of this correspondence is attached). On November 27, Chairman Moss sent the letter to Senator Magnuson, along with 24 cosigners (a copy of that letter and release are also attached).

On Monday of this week, to offset this letter, a "Dear Colleague" letter was put together by Bernie Wunder, minority counsel of the Subcommittee on Oversight and Investigations, and was circulated by Congressmen Samuel Devine and Jim Collins, reaffirming the Secretary's position on the Arab boycott question (a copy of that letter is also attached).

Also on Monday, in a spirit of compromise, Secretary Morton wrote to Chairman Moss offering two options the Committee could accept short of taking action on the contempt citation. The first of these, and the best solution as far as the Department is concerned, would be to put this matter in the courts by seeking a declaratory judgment. The second option would be to release the information sought by the Subcommittee, granted a pledge would be provided to the Department that this information would be maintained in a confidential manner (a copy of this correspondence is also attached).

Prior to advancing this proposal, the minority Members of the Subcommittee on Oversight and Investigations were contacted at their respective District offices in an effort to gain their concurrence to this approach. The consensus was that, given the impending nature of the Richardson hearing and the desire to resolve the question as expeditiously as possible, these proposals represented the best means to that end. It was further felt that if they were rejected by Chairman Moss, they, nevertheless, would have considerable impact on the ultimate vote of the full Committee and that we just might defeat a contempt citation motion in that body. Since Monday, the Secretary has been attempting to contact a number of the majority and minority Members of the Committee to let them know of his efforts to compromise and to express to them his willingness to appear before the full Committee to further expand on the reasons for his actions to date.

On Wednesday, he formally requested in writing to Chairman Harley Staggers that he be permitted to appear before the full Committee prior to the Committee's final deliberations on the contempt issue. He has yet to receive a response to this request.

Also on Wednesday, Chairman Moss wrote to the Secretary rejecting his proposals (copy of letter also attached).

Today, in a further effort to diffuse this issue, the Secretary has announced that the Department will henceforth cease circulating any tenders to private enterprise that we as a Department receive from Arab nations that in any way refer to boycott policies and practices (a copy of our release is attached). Our Office of Congressional Affairs has hand delivered this information to the appropriate Committee Members on the Hill concerned with this issue.

One sidelight to the contempt citation per se -- on Wednesday, the Secretary received an invitation from Congressman Jonathan Bingham to appear before the Subcommittee on International Trade and Commerce of the House Committee on International Relations on Thursday, December 11, to testify on the boycott question (a copy of that invitation is also attached). While the Department has not formally responded to Chairman Bingham as yet, the Secretary does have a long-standing commitment on December 11 and will be unable to testify. We will offer the Subcommittee a Departmental spokesman or try to work out another date that would be convenient.

This pretty well brings us up to the present regarding this issue. Should you have any questions concerning any of this information or material contained herein, please give me a call.

Attachments:
"Dear Colleague" letter from Chairman Moss
Letter to Senator Magnuson from Congressman Moss and 24 cosigners
Press release concerning letter to Magnuson
"Dear Colleague" letter from Congressmen Devine and Collins with attachment
Secretary Morton's letter to Chairman Moss
Chairman Moss' reply to Secretary Morton
Department of Commerce news release of 11/28/75 and Secretary's Circular #21 dated 11/26/75
Letter from Congressman Jonathan Bingham

cc: Mr. Vernon Loen (Attachments)
Mr. William Kendall (Attachments)
Mr. Charles Leppert, Jr. (Attachments)

Congress of the United States

House of Representatives

Washington, D.C. 20515

November 20, 1975

Dear Colleague:

We are deeply concerned about the actions of outgoing Commerce Secretary Morton in apparent support of the Arab boycott and related discriminatory practices and most importantly his noncompliance with a congressional subpoena, thereby obstructing the legislative and oversight duties of Congress provided by Article I of the Constitution. Accordingly, we would like to make certain his successor does not continue such policies.

We intend to send the attached letter to Senator Warren G. Magnuson, chairman of the Senate Commerce Committee, which will be holding confirmation hearings on the nomination of Elliot Richardson. As a condition of his confirmation, Mr. Richardson should be required to commit himself to cooperating with the Congress in opposing the boycott.

Several Congressional committees have been conducting investigations into various aspects of the Commerce Department's role in enforcing the Export Administration Act and opposing the boycott. They have encountered a serious lack of cooperation to the point where one subcommittee has declared Secretary Morton to be in contempt of Congress. We would like to assure greater cooperation and responsibility from the next Secretary of Commerce.

If you would like to sign this letter, please call Gail Armstrong at x52601 by noon, Tuesday, November 25, 1975.

Sincerely,

JOHN E. MOSS

BENJAMIN S. ROSENTHAL

HENRY A. WAXMAN

Congress of the United States
House of Representatives
Washington, D.C. 20515

November 27, 1975

Honorable Warren G. Magnuson
Chairman
Senate Commerce Committee
Washington, D.C. 20510

Dear Mr. Chairman:

President Ford has nominated Elliot Richardson to be the Secretary of Commerce, which requires the advice and consent of the Senate. While we believe Mr. Richardson to be an able and distinguished public servant, there is one serious question in our minds regarding this nomination.

We are gravely concerned about the Commerce Department's policies regarding the Arab boycott and related discriminatory trade practices. On November 11, 1975, the House Commerce Subcommittee on Oversight and Investigations found Commerce Secretary Rogers Morton in contempt for his refusal to comply with a subpoena for documents concerning boycott requests made by foreign countries to American firms. Several other Congressional Committees have been frustrated by Department evasion and unresponsiveness in their requests for other information regarding the cooperation of the Department of Commerce and U.S. industry with Arab boycott demands.

The documents and information the subcommittees have requested are essential if the Congress is to determine whether the statutes on restrictive trade practices have been violated and whether new legislation is required. They are also needed to determine the extent to which the civil rights of U.S. citizens are being abridged. By denying the Congress crucial information regarding the execution of the law, Secretary Morton has jeopardized our constitutional mandate to oversee and legislate.

The 1965 Export Administration Act, which the Commerce Department is mandated to enforce, states that the United States opposes boycotts imposed by foreign countries against nations friendly to the U.S. and will actively discourage American companies from furthering or supporting them. Nevertheless, the Department has circulated among American firms trade offerings from Arab League nations which contain boycott demands. Department practice under Secretary Morton has been to recite -- not enforce -- the law to companies and then assure them it would not be illegal to comply with the boycott. Rather than work to abolish the boycott and related practices, the Department has reinforced them by seeking to help U.S. firms get around or comply with them.

Notwithstanding our Nation's formal opposition to the boycott, the practical effect of the Commerce Department's policies in promoting trade in this manner is both to further the effectiveness of the boycott and to undermine our ability to impede it.

With the nomination of Ambassador Richardson as Secretary of Commerce the opportunity is at hand to reverse these disturbing policies within the Department. We respectfully request that the Senate Commerce Committee secure from Mr. Richardson during his confirmation hearings commitments to:

(more)

(1) comply with all Congressional Committee requests for the information requested from Secretary Morton and the Department in order that Congress may perform its constitutional function,

(2) end the circulation of trade offerings which contain boycott demands,

(3) bar all acts of discrimination by the Department of Commerce and U.S. industry against U.S. citizens,

(4) encourage higher ethics in international trade by U.S. firms,

(5) bar all acts of discrimination against U.S. businesses which may be Jewish owned or operated, or may employ Jews,

(6) refer to the Department of Justice for criminal prosecution all cases of U.S. companies and individuals who comply with the Arab boycott in apparent violation of antitrust, securities and other U.S. laws,

(7) revoke or recommend revocation of subsidies and grants to U.S. companies and entities which comply with the Arab boycott.

We respectfully urge that, should these commitments not be forthcoming, the Senate Commerce Committee reject Mr. Richardson's nomination.

We very much hope the Committee and Mr. Richardson will be responsive to the concerns we raise. We would be pleased to supply the Committee with further information for the record on this matter.

Sincerely,

Jerome Ambro, Jr., M.C.
William M. Brodhead, M.C.
George E. Brown, Jr., M.C.
Yvonne B. Burke, M.C.
Charles J. Carney, M.C.
Robert F. Drinan, M.C.
Dante B. Fascell, M.C.
Hamilton Fish, Jr., M.C.
Donald M. Fraser, M.C.
Michael Harrington, M.C.
Edward I. Koch, M.C.

Clarence D. Long, M.C.
Matthew F. McHugh, M.C.
Toby Moffett, M.C.
John E. Moss, M.C.
Richard L. Ottinger, M.C.
Thomas M. Rees, M.C.
Benjamin S. Rosenthal, M.C.
James Scheuer, M.C.
Stephen J. Solarz, M.C.
Morris K. Udall, M.C.
Henry A. Waxman, M.C.

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NEWS RELEASE

RELEASE: AMs, Thurs., Nov. 27, 1975 CONTACT: Doug Bloomfield 225-2601
Bruce Wolpe 225-3976

LAWMAKERS URGE RICHARDSON MAKE ANTI-BOYCOTT VOW OR BE REJECTED

WASHINGTON, Nov. 27 -- Twenty-one Members of Congress today urged the Senate Commerce Committee to reject the nomination of Elliot Richardson to be Secretary of Commerce unless he specifically commits himself to cooperating with the Congress in opposing the Arab boycott and related discriminatory trade practices.

The present secretary, Rogers Morton, has been cited for contempt of Congress by a House subcommittee for his refusal to comply with a subpoena for documents concerning boycott requests made by foreign countries to American firms.

"Several other Congressional Committees have been frustrated by Department evasion and unresponsiveness in their requests for other information regarding the cooperation of the Department of Commerce and U.S. industry with Arab boycott demands," the representatives said in a letter to Commerce Chairman Senator Warren G. Magnuson. His committee is scheduled to begin confirmation hearings December 4.

President Ford's recent executive orders regarding foreign discrimination against U.S. citizens underscore the need for new legislation to combat this problem and emphasize the importance of the Congress having the information it has requested. The President's actions are very narrow in scope and, the White House concedes, do not deal directly with the Arab boycott.

The requested material is "essential if the Congress is to determine whether the statutes on restrictive trade practices" and the civil rights of U.S. citizens are being violated and whether new legislation is required, the Congressmen contend. "By denying the Congress crucial information regarding the execution of the law, Secretary Morton has jeopardized our constitutional mandate to oversee and legislate," they declare.

The 1965 Export Administration Act declares U.S. opposition to boycotts imposed by certain foreign countries against others friendly to the United States.

(more)

"Nevertheless," the letter charges, "the Commerce Department has circulated among American firms trade offerings from Arab League nations which contain boycott demands. Department practice under Secretary Morton has been to recite -- not enforce -- the law to companies and then assure them it would not be illegal to comply with the boycott. Rather than work to abolish the boycott and related practices, the Department has reinforced them by seeking to help U.S. firms get around or comply with them."

The House Commerce Subcommittee on Oversight and Investigations recently found Secretary Morton in contempt after he repeatedly refused to provide subpoenaed information concerning boycott requests made by foreign countries to American firms. The full Commerce Committee is expected to approve the contempt citation December 2 and send the matter to the full House.

The letter to Senator Magnuson asks the Commerce Committee to secure from Richardson commitments to:

(1) comply with all Congressional Committee requests for the information requested from Secretary Morton and the Department in order that Congress may perform its constitutional function,

(2) end the circulation of trade offerings which contain boycott demands,

(3) bar all acts of discrimination by the Department of Commerce and U.S. industry against U.S. citizens,

(4) encourage higher ethics in international trade by U.S. firms,

(5) bar all acts of discrimination against U.S. businesses which may be Jewish owned or operated, or may employ Jews,

(6) refer to the Department of Justice for criminal prosecution all cases of U.S. companies and individuals who comply with the Arab boycott in apparent violation of antitrust, securities and other U.S. law,

(7) revoke or recommend revocation of subsidies and grants to U.S. companies and entities which comply with the Arab boycott.

Signing the letter are:

Jerome Ambro, Jr. (D-N.Y.)
William M. Brodhead (D-Mich)
George E. Brown, Jr. (D-Calif)
Yvonne B. Burke (D-Calif)
Charles J. Carney (D-Ohio)
Robert F. Drinan (D-Mass)
Dante B. Fascell (D-Fla)
Hamilton Fish, Jr. (R-N.Y.)
Michael Harrington (D-Mass)
Edward I. Koch (D-N.Y.)
Clarence D. Long (D-Md)
Matthew F. McHugh (D-N.Y.)
Toby Moffett (D-Conn)
John E. Moss (D-Calif)
Richard L. Ottinger (D-N.Y.)
Thomas M. Rees (D-Calif)
Benjamin S. Rosenthal (D-N.Y.)
James Scheuer (D-N.Y.)
Stephen J. Solarz (D-N.Y.)
Morris K. Udall (D-Ariz)
Henry A. Waxman (D-Calif)
Donald M. Fraser (D-Minn)
Robert Nix (D-PA)
Sidney Yates (D-Ill)
Charles Vanik (D-Ohio)

A copy of the letter is attached:

(more)

Congress of the United States

House of Representatives

Washington, D.C. 20515

November 24, 1975

Dear Colleague:

Recently, you received a letter from the Honorable John E. Moss, Benjamin S. Rosenthal and Henry A. Waxman dated November 20, 1975 concerning Commerce Secretary Rogers C. B. Morton and the Arab Boycott. This letter indicates that Secretary Morton's actions are in apparent support of the Arab Boycott. This is not the case, and Secretary Morton in his September 22, 1975, statement before the Subcommittee on Oversight and Investigations stressed that his declining to provide to this Subcommittee the requested documents should not be construed as indicating even tacit support of the Arab Boycott against Israel. The Secretary further stated that he and the Administration are clearly on record in fully supporting the 1965 declaration of policy by the Congress opposing boycotts by any nation against another country friendly to the United States.

The Congressional subpoena referred to in this letter calls for the Secretary to turn over to the Subcommittee "exporter reports" dealing with so called Arab "boycott requests." On the advice of the Attorney General and the General Counsel's office in the Department of Commerce, the Secretary has declined to supply these reports. The advice given to the Secretary is to the effect that Section 7 (c) of the Export Administration Act of 1969 provides that these reports are confidential and shall not be "published or disclosed" by the Secretary unless he determines that the withholding of this information is contrary to the national interest. The Secretary is further advised by his Attorneys that this confidentiality section is applicable to Congress. The Secretary has determined that withholding of this information is not contrary to the national interest.

The Subcommittee's legal opinion is that this confidentiality section is not applicable to Congress. We thus, have a legal dispute over the interpretation of a statute. This issue should be decided by a court of law, and Secretary Morton testified on September 22, 1975 that he would comply with a court's determination of the meaning of this statute.

Secretary Morton has not been held in contempt of Congress, but by a 10-5 vote the Subcommittee passed a procedural resolution finding in their judgement alone the Secretary to be in contempt. This matter has yet to go to the full Committee on Interstate and Foreign Commerce.

We intend to send the attached letter to Senator Warren G. Magnuson on this issue. If you would like to sign our letter, contact Sally Albertazzie at 5-5357 by noon, Monday, December 1, 1975.

Sincerely,

Samuel L. Devine

SAMUEL L. DEVINE

James M. Collins

JAMES M. COLLINS

Attachment

Congress of the United States

House of Representatives

Washington, D.C. 20515

November 24, 1975

Honorable Warren G. Magnuson
Chairman
Senate Commerce Committee
Washington, D.C. 20510

Dear Mr. Chairman:

At the behest of the Honorable John E. Moss, Benjamin S. Rosenthal and Henry A. Waxman, a letter has been forwarded to you from various members of the House of Representatives concerning the nomination of Elliot Richardson to be Secretary of Commerce and more specifically relating to the question of the Arab Boycott. This letter as you know deals with the Department of Commerce's policies regarding this boycott.

As you are aware, the President issued a statement on November 20, 1975, which directly relates to many of the concerns expressed in this letter. The President in his statement indicated that he was exercising his authority under the Export Administration Act to direct the Secretary of Commerce to issue amended regulations to:

> "(1) Prohibit U. S. exporters and related service organizations from answering or complying in any way with boycott requests that would cause discrimination against U. S. citizens or firms on the basis of race, color, religion, sex or national origin;
>
> (2) Require related service organizations that become involved in any boycott request to report such involvement directly to the Department of Commerce."

Neither the Secretary of Commerce nor the Administration have been in even apparent support of the Arab Boycott. Secretary Morton stressed this point in his statement before the Subcommittee on Oversight and Investigations of the Interstate and Foreign Commerce Committee on September 22, 1975.

With respect to the issue of complying with demands by Congressional Committees for "exporter reports" dealing with the Arab Boycott, we have a difference of legal opinion over whether or not the Secretary can legally turn this material over to Congress. The Secretary has been advised by the Attorney General and Department Counsel that he should not relinquish these documents unless he in sole discretion determines that withholding is contrary to the national interest. The Oversight and Investigations Subcommittee has a different legal opinion which holds that the confidentiality statute (Section 7(c) of the Export Administration Act of 1969) cited by the Secretary is not applicable to Congress. This difference of legal opinion manifested itself in a 10-5 vote by the Subcommittee finding the Secretary in contempt for his failure to turn over the requested reports. We believe that this issue of statutory interpretation should be decided by a court of law.

As you may not be aware, the issue of contempt with regard to Secretary Morton has yet to be considered by the full Committee on Interstate and Foreign Commerce nor the House of Representatives.

Sincerely,

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

November 24, 1975

Honorable John E. Moss
Chairman
Subcommittee on Oversight &
Investigations
Committee on Interstate and
Foreign Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I deeply regret the vote by your Subcommittee to refer to the House Committee on Interstate and Foreign Commerce a citation for contempt based on my declining to disclose copies of the reports which you have subpoenaed. I have stated from the very outset, that I was not relying on a claim of executive privilege in declining to comply with your subpoena, but on the statutory mandate contained in Section 7(c) of the Export Administration Act. There is apparently an honest disagreement between the Attorney General of the United States and your witnesses as to the correct legal interpretation of the scope of the confidentiality provisions of Section 7(c).

Mr. Chairman, I believe that this disagreement cannot, and should not, be resolved in a political forum. Both of us are dedicated to upholding the laws of the United States, and should therefore deplore a resolution of this issue on a political basis. This disagreement is strictly a legal issue, and as such, should be decided by the courts. As you know, I have publicly stated that I would fully abide by a decision of the courts and I am sincerely puzzled by your rejection of this avenue. I would like to ask that you reconsider your decision in this regard.

I feel that there is also another way for us to avert a political confrontation. On September 22, during my appearance before your Subcommittee, a member thereof raised the possibility that such documents might be submitted to the Subcommittee on a confidential basis. During his testimony before your Subcommittee,

Professor Kurland, one of the three witnesses whom you selected, stated that, in all fairness to the reporting companies who have submitted sensitive commercial information under an express pledge of confidentiality, the Subcommittee should not disclose the information contained in these reports.

I am prepared to make the national interest determination required under Section 7(c) of the Export Administration Act and deliver copies of all the reports which you have requested, if you give me adequate written assurances on behalf of your Subcommittee that access to these documents and the information contained therein (including the names of the reporting companies) will not be disclosed to anyone other than the members of the Subcommittee and its staff, and that the Subcommittee will take adequate measures to assure that the confidentiality of this information will be safeguarded by those persons having access thereto.

I would ask you to give serious consideration to this approach, which would provide the Subcommittee with all the information it has requested, as well as honor the pledge of confidentiality under which the information was obtained from its citizens by the United States Government.

In closing, let me assure you of my sincere desire to find a way in which we can settle this issue to our mutual satisfaction. I hope that you will consider the two avenues which I have suggested as a means of avoiding a political confrontation, in the same spirit in which I have proposed them. It is, I believe, extremely important to the welfare of our Government and of the Nation that differences which arise between the legislative and executive branches be resolved in a fair and amicable manner and I will appreciate hearing from you at your earliest convenience.

Sincerely,

s/ Rog Morton

Secretary of Commerce

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

MICHAEL P. LEMOV
CHIEF COUNSEL

J. THOMAS GREENE
COUNSEL TO THE CHAIRMAN

November 26, 1975

Honorable Rogers C. B. Morton
Secretary of Commerce
Department of Commerce
Washington, D. C. 20230

Dear Mr. Secretary:

I too deeply regret that it finally became necessary to move in the Subcommittee to enforce the subpoena duces tecum issued on July 28, 1975. Though your decision to refuse to comply with the duly issued subpoena of this Subcommittee was made only after seeking the advice of your own counsel and the Attorney General, I can only regret that this issue is joined between former colleagues.

Mr. Secretary, as a former Member of the House of Representatives, I know that you can appreciate the fact that there are stages of committee action which effectively preclude reconsideration on the part of a Chairman. That point has been reached by the Subcommittee on Oversight and Investigations. The matter now is on the agenda of the full Interstate and Foreign Commerce Committee, and I am under instruction to call it up for a vote.

I believe, however, that more important than the parliamentary situation is the fact that the Congress cannot accept the opinion of the Attorney General, who in this instance is acting as an advocate of the position which had its origin with your departmental solicitor, Karl Bakke. If you will refer to the testimony of Philip Kurland, he sets forth with great precision the chronology of the development of the legal position which was urged upon you and finally adopted as yours in your appearance before the Subcommittee.

You may recall, Mr. Secretary, that following your first appearance and your first refusal to comply, out of an abundance of caution, I engaged the services of a distinguished constitituional scholar, Professor Raoul Berger, Warren Professor of American Legal History at Harvard Law School, as consultant and adviser to the Subcommittee on this question.

Additionally, I requested the testimony of Philip Kurland, another distinguished constitutional scholar at the University of Chicago and a consultant to the Senate Committee which instituted the orginal Watergate investigations. The Subcommittee then sought from Professor Norman Dorsen of New York University, a recognized expert in the field of constitutional law and its common law antecedents, his best advice and judgment. The record is quite clear that in every instance these distinguished scholars found (1) that the confidentiality provision of Section 7(c) of the Export Administration Act could not through any normal construction of law apply to the Congress of the United States or either House thereof; (2) that the action of the Subcommittee in requiring production of the material by subpoena was appropriate and consistent with the powers and precedents of the House of Representatives and the tradition which we inherit from common law and the British Parliament; and (3) each agreed that this was an issue the House could not permit the Executive to prevail on unless it was willing to cede to the Executive branch its essential powers to exercise necessary oversight of the laws enacted by it.

We have explored at your suggestion the two alternatives proposed by you, and it is with the very deepest of regret that I must inform you that neither is appropriate or acceptable. While I appreciate your desire to seek court review of this matter, the most expeditious and, in my view, exclusive vehicle for bringing this issue to the courts is contempt. That process has begun. Within days of the action of the Interstate and Foreign Commerce Committee, a justiciable controversy will exist which may be considered by the courts either in a habeas corpus action or in an action under 2 U.S.C. § 192. Though we might wish for another way of addressing this question, the law is clear.

As to your second proposal, it is unacceptable. On the practical level, restriction of these documents to the Members of the Subcommittee and its staff would raise the most serious issues of congressional responsibility. I have noted in our discussions that the boycott may very well involve violations of the Federal Trade Commission Act and the Securities Exchange Act. Acceptance of your condition would preclude this Subcommittee from releasing this data to Federal prosecutors if violations of law were discovered. Such an ~~incongrous~~ result cannot be squared incongruous with the constitutional duties of the Congress.

Further, your condition would place unconstitutional limits on the authority of the Congress to discharge its legislative and oversight responsibilities. It may become necessary in the discharge of our constitutional duties to hold public hearings on the issues raised by these materials. As you know, the House of Representatives has always been characterized as the people's house and the ~~grant~~ inquest grand of the nation. To subordinate our legislative and investigative authority to such terms and conditions as the executive may determine is to cede to the executive a paramount role not envisioned by the Constitution. This I cannot do.

I am deeply mindful, Mr. Secretary, of the responsibilities which I assumed upon taking my oath of office, an oath which you also took when a Member of this House. As you know, its demands are emphatic: that we "uphold and defend the Constitution"... In the documents which you have already reviewed, Professor Kurland states:

> To the extent that Congress has acceded to Executive branch denials on the withholding of information it has failed to enforce its authority and has vacated its power to inquire...
>
> I urge this subcommittee not to contribute to the continued destruction of congressional authority. The constitutional plan of checks and balances, an essential safeguard for American liberties, is constantly endangered by failure of Congress to assert its authority vis-a-vis the Executive. I trust that this case will not prove another instance of such surrender; the rights at stake are not those of individual Congressmen, they are the rights of the American people whose representatives you are.

I believe that the sobering experiences of the previous Administration require all of us to be mindful of our Constitutional system and the particular need for the Congress to be free to exercise fully its powers and discharge its responsibilities to the American electorate. In this period in which the highest executive officials of our government are appointed, not elected, it is critical that the elected representatives of the people prevail, however distasteful the stage-by-stage procedure is to both of us.

While I most emphatically submit that it is not in the national interest for the Congress to make any pledge to the executive as to how it will use the material, I must also state that our handling of this material will be nothing less than responsible. That assurance I give you. But, we must remain free to initiate open public hearings should a review of the material indicate to me and the Members of the Subcommittee that such hearings are necessary or desirable to secure full compliance with the laws and policies of the United States. I must remind you that as recently as November 20th, President Gerald R. Ford publicly addressed the grave dangers of conforming to a pattern of acceptance of boycotts instituted by forces outside of this country. My concern is no less.

Accordingly, I will seek the earliest possible consideration in the full Committee of the motion to recommend to the House that you be found in contempt of the House of Representatives. After consideration of this question in full Committee, I assure you that I will exercise the high privilege accorded such a motion so that it will be considered on the floor promptly.

I reiterate these steps which I will take, will be taken with no intent to embarrass or harm you or with any sense of diminished respect for you as an individual. I take them because I must, in order to preserve the rights of the people's representatives to inquire and to exercise their unfettered judgment.

Sincerely,

John E. Moss
Chairman
Oversight and
Investigations Subcommittee

JEM:tgg

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

SECRETARY'S CIRCULAR #21

TO : Secretarial Officers
Heads of Operating Units

DATE: November 26, 1975

SUBJECT: Dissemination of Trade Opportunities which Foster or Impose Restrictive Trade Practices or Boycotts Against Another Country Friendly to the United States.

The purpose of this Circular is to prescribe the policy to be followed by all units of the Department of Commerce with respect to international trade opportunities which foster or impose restrictive trade practices or boycotts against a country friendly to the United States.

Section 3(5) of the Export Administration Act of 1969 provides in pertinent part that, "It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, and (B) to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States . . . ."

To further the intent of this Statement of United States policy, effective December 1, 1975, the United States Department of Commerce will not disseminate or make available for inspection any documents or any information on trade opportunities obtained from documents or other materials which are known to contain boycott conditions that seek to impose or foster a restrictive trade practice or boycott against another country friendly to the United States. Any such current documents or reports of information on trade opportunities which are in the custody of, or any such thereafter received by, the Department of Commerce shall be promptly destroyed.

To assist the Department of Commerce in the implementation of this policy, the Department of State has informed us that it is instructing all Foreign Service Posts henceforth not to forward any documents or any information on trade opportunities obtained from documents or other materials which are known to contain boycott provisions of the type mentioned above.

All Secretarial Officers and Heads of Operating Units having any responsibilities for the receipt, custody, or dissemination of information respecting trade opportunities, will issue appropriate directives to assure full compliance with this policy by December 1, 1975. The Assistant Secretary for Domestic and International Business is directed to establish the administrative procedures by which further cooperation between the Departments of State and Commerce can be implemented, to the end that the United States Government will not be disseminating any documents or information on trade opportunities obtained from documents or other materials known to contain boycott provisions.

Rogers Morton

Secretary of Commerce

Congress of the United States
Committee on International Relations
House of Representatives
Washington, D.C. 20515

November 25, 1975

Honorable Rogers C. B. Morton
Secretary of Commerce
Department of Commerce
Washington, D.C. 20230

Dear Mr. Secretary:

The Subcommittee on International Trade and Commerce plans to reopen hearings it began in March on H.R. 4967 and related legislation that would amend the Export Administration Act to prohibit American firms from cooperating with the Arab boycott.

In testimony before this Subcommittee on March 13, Deputy Assistant Secretary Charles Hostler testified on behalf of the Commerce Department against such legislation. The recent statement by President Ford, however, that the Administration favors prohibiting American exporters from "answering or complying in any way with boycott requests that would cause discrimination against United States citizens or firms" appears to constitute at least a partial reversal in the Administration's policy.

The Subcommittee respectfully requests that you appear before it to discuss the Administration's current posture and any legislative requests or recommendations you may now have. The testimony should include a detailed description of the Administration's new proposals, including suggested legislative language, and a review of developments and evidence that has led to these recommendations. For this purpose we have scheduled a hearing for Thursday, December 11, at

2:00 p.m. in room 2255 Rayburn House Office Building. We look forward to your appearance.

Sincerely,

Jonathan Bingham

Jonathan B. Bingham
Chairman
Subcommittee on International
Trade and Commerce

JBB:rmsg

UNITED STATES DEPARTMENT OF
COMMERCE
NEWS
WASHINGTON, D.C. 20230

OFFICE
OF THE
SECRETARY

FOR RELEASE: FRIDAY, NOVEMBER 28, 1975

MORTON ORDERS END TO DISTRIBUTION OF BOYCOTT REQUESTS

Secretary of Commerce Rogers C. B. Morton has ordered that, effective December 1, the Department of Commerce will no longer disseminate foreign trade opportunities containing boycott provisions.

The Commerce Department will not disseminate tenders or trade opportunities which contain boycott conditions or are based on documents containing such provisions. Commercial documents originating from certain Arab nations usually contain restrictive clauses designed to carry out a secondary boycott against the State of Israel.

Secretary Morton ordered the Department's secretarial officers and heads of bureaus and offices handling such documents to issue appropriate directives to assure full compliance with this policy by December 1.

Morton said the ban is being undertaken with the cooperation and concurrence of the Department of State. He added, "The Department of State has informed us that it is instructing all Foreign Service Posts henceforth not to forward any documents or any information on trade opportunities obtained from documents or other materials which are known to contain boycott provisions."

"This action is still another clear demonstration of the Administration's opposition to restrictive trade practices and boycotts of countries friendly to the United States," the Secretary said.

Morton noted that on November 21, the Department's Export Administration Regulations were revised to prohibit U.S. exporters and related service organizations--such as banks, insurers, freight forwarders and

- OVER -

shipping firms--from taking action that has the effect of furthering restrictive trade practices which discriminate against U.S. citizens or companies on the basis of race, color, religion, sex or national origin. In addition, service organizations which previously were not required to report to the Department any boycott-related requests which they received, must now do so.

Morton said that prior to this action, 24 cases involving trade opportunities that discriminated on religious or ethnic grounds were referred to the Departments of State and Justice for appropriate action.

Morton also directed that current commercial documents now in the Commerce Department's custody that contain boycott conditions and any received in the future are to be promptly destroyed.

# # #

Advised 3/30/76

THE WHITE HOUSE
WASHINGTON

Charlie --

Frank Polk called to alert you to the article in Newsweek this week (attached). He said that Hudson introduced a bill seeking to prosecute the Arab boycott of U.S. firms. Next week they are to have hearings again.

Is the Admin. changing course in middle of things. He needs to know.

225 - 6906

Neta
3/24/76

Neta: I don't see the article in the attached pkg. Chas.

THE ADMIN IS NOT CHANGING COURSE. WE OPPOSE U.S. FIRMS

Boycotting of the U.S.
firms — But we don't
believe legislation
is required. We're
using anti-Trust rules.

Some items in this folder were not digitized because it contains copyrighted materials. Please contact the Gerald R. Ford Presidential Library for access to these materials.

THE 'LOST' LOCKHEED LOOT

Some of the money listed as overseas payoffs by Lockheed Aircraft Corp. may actually have been

MUSKIE'S 'SHORT FUSE'

Though often chosen as the Democratic Party's spokesman to rebut the Republican Administration, Maine's

James D. Wilson—Newsweek

THE SAUDIS GIVE AN INCH

After more than a year of negotiations, the U.S.

delighted to learn of your decision," said Ford, who recently banished the word "détente" from his vocabulary—also without discussing the decision with Secretary Kissinger.

religion.* The Ford Administration, in turn, has said it will not seek legislation against the Arab boycott of U.S. firms doing business with Israel.**

—JOHN A. CONWAY with bureau reports

*TRUE - BUT WE CAN'T ANNOUNCE IT.

**NOT TRUE: WE DIDN'T SEEK AND WILL OPPOSE ALL SUCH LEGISLATION.

STATEMENT BY THE HONORABLE WILLIAM E. SIMON
SECRETARY OF THE TREASURY, BEFORE THE HOUSE COMMITTEE
ON INTERNATIONAL RELATIONS
WEDNESDAY, JUNE 9, 1976, AT 10:00 A.M.

Mr. Chairman, I am pleased to have the opportunity to present the views of the Administration on H.R. 11463, proposed amendment to the Export Administration Act that deals with foreign boycotts of countries friendly to the United States, specifically the Arab boycott of Israel. I would also like to take this opportunity to review with you our concerns over other legislative proposals now pending before the Congress.

Mr. Chairman, let me begin by stating unequivocally the Administration's opposition to the boycott. We share the objectives of H.R. 11463 (the Koch Bill) and other proposed legislation. We believe, however, that the approach reflected in these proposals would be counterproductive to the attainment of our shared objectives. In my presentation, I would like to provide you with the Administration's reasons for believing that present U.S. legislation and regulations provide a forceful and balanced approach which best serves U.S. interests by meeting the challenge posed by the Arab boycott, while at the same time enabling us to progress toward a Middle East peace settlement.

In so doing, I am aware that some people believe our approach to the problem of the Arab boycott has not been forceful enough and that our belief in the need for measured restraint has not been based on the weight of evidence. In this regard, we clearly have a disagreement; for I believe that we have taken extensive steps in the past year to address the Arab boycott issue and that additional legislation now would be counterproductive to our shared desire to end the boycott.

In this regard, I believe it is important to understand that the policy that underlies the Arab boycott arose out of the state of beligerency that exists between Israel and the Arab nations. According to its governing principles, the Arab boycott of Israel is not based on discrimination against U.S. firms or citizens on ethnic or religious grounds. The primary boycott, which dates from 1946, involve the Arab countries' refusal to do business with Israel. It was designed to prevent entry of certain products into Arab countries from territory now part of Israel, The secondary boycott introduced in 1951, operates to prevent firms anywhere in the world from doing business in Arab countries or from entering into business undertakings with Arab firms if they have especially close economic ties with Israel, or if they contribute to the Israeli defense capability. It was designed to inhibit third parties from assisting in Israel's economic and military development. Both aspects of the boycott are considered by the Arab League States to be legitimate acts of economic warfare.

U.S. Action to Deal with Discrimination and The Arab Boycott

At the outset I would like to review some of the major steps that have been taken to deal both with respect to the boycott and with respect to discrimination.

In February 1975, President Ford issued a clear statement that the U.S. will not tolerate discriminatory acts based on race, religion or national origin.

The President followed this in November 1975 with an announcement of a series of specific measures on discrimination:

-- He directed the heads of all departments and agencies to forbid any Federal agency in making selections for overseas assignments to take into account exclusionary policies of foreign governments based on race, religion or national origin.

-- He instructed the Secretary of Labor to require Federal contractors and sub-contractors not to discriminate in hiring or assignments because of any exclusionary policies of a foreign country and to inform the Department of State of any visa rejections based on such exclusionary policies.

-- He instructed the Secretary of Commerce to issue regulations under the Export Administration Act to prohibit U.S. exporters and related service

organizations from answering or complying in any way with boycott requests that would cause discrimination against U.S. citizens or firms on the basis of race, color, religion, sex or national origin.

-- Also, in January 1976, the Administration submitted legislation to prohibit a business enterprise from using economic means to force any person or entity to discriminate against any other U.S. person or entity on the basis of race, color, religion, sex, age, or national origin.

-- The Comptroller of the Currency, the Securities and Exchange Commission and the Federal Deposit Insurance Corporation have all issued statements to the institutions under their jurisdiction against discriminatory practices.

In the recent months the Administration has also taken the following actions to make clear that it does not support boycotts of friendly countries.

1. In November 1975, the President instructed the Commerce Department to require U.S. firms to indicate whether or not they supply information on their dealings with Israel to Arab countries.

2. In December 1975, the Commerce Department announced that it would refuse to accept or circulate documents or information on trade opportunities obtained from materials known to contain boycott conditions.

3. The State Department instructed all Foreign Service posts not to forward any documents or information on trade opportunities obtained from documents or other materials which were known to contain such boycott provisions.

4. In December 1975 and January 1976, the Federal Reserve Board issued circulars to member banks warning them against discriminatory practices and reiterating the Board's opposition to adherence to the Arab boycott.

5. In January 1976, the Justice Department instituted the first civil action against a major U.S. firm for violation of anti-trust laws arising out of boycott restrictions by Arab countries. Other firms are under investigation.

This record indicates clearly that the Administration has not ignored the problem of the Arab boycott, but has taken vigorous action to address the issue. But equally importantly we have done so in a manner that would not be injurious to our broad, fundamental interests in the Middle East, nor counter-productive to our objective of bringing about the liberalization and ultimate termination of Arab boycott practices.

Despite our efforts there has been considerable pressure on the Administration to mount a confrontational attack on the Arab boycott. Each step we have taken has immediately been met with demands for additional action.

We have strongly opposed such confrontation and intend to continue to do so because we are convinced that such a course would fail to achieve its stated objectives. The ultimate effect of such an approach is to tell Arab nations that either they must eliminate the Arab boycott entirely, irrespective of a settlement in the Middle East, or cease doing business with American firms. We have seen no evidence that such a policy would result in elimination of the boycott. In fact we believe that the effect of such pressure would harden Arab attitudes and potentially destroy the progress we have already made.

The argument is made that the Arab world when faced with such a choice will recognize the importance of continued access to U.S. goods and services and therefore eliminate what they consider one of their principal weapons in the political struggle against the State of Israel. Unfortunately, this argument fails to reflect several basic facts.

The U.S. alone among industrial countries has a clearly established policy and program of opposition to foreign boycotts of friendly countries, including the boycott of Israel. Other countries already supply a full 80 percent of the goods and services imported by the Arab world. There is no evidence that these nations are prepared to lose that $50 billion a year market or to jeopardize their stake in the rapidly expanding economies of

the Arab nations. Further, there is precious little that the U.S. presently supplies to Arab nations that is not available from sources in other countries and they are eager to take our place. The major Arab states have the funds and the will to incur any costs such a switch might entail. They see that the U.S. has frequently engaged in economic boycotts for political purposes, for example, in Cuba, Rhodesia, North Korea and Viet Nam, so they cannot accept the argument that they are not entitled to do the same.

Mr. Chairman, I believe that we must face an essential and widely recognized fact. The Arab boycott has its roots in the broad Israel-Arab conflict and will best be resolved by dealing with the underlying conditions of that conflict.

Problems With a Legislative Approach

For these and other reasons which I will mention, it is the position of the Administration that no additional legislation is necessary or desirable at this time and that in fact new legislation would be detrimental to the totality of U.S. interests both here and in the Middle East.

Present U.S. policy and anti-boycott measures already are quite effective. Further, a number of Arab governments are now negotiating or considering contracts with U.S. firms, notwithstanding the public commitment of these firms to maintain investment, licensing or other special economic

some progress in working boycott conditions clauses out of the various stages of their transactions, for example, contracts, letters of credit and shipping instructions. Although the pattern is not uniform as to company, transaction or country this reflects a gradual easing of enforcement practices over the past six months.

A number of firms do business with both Israel and the Arab countries. Recently, a prominent U.S. business leader informed me that he had successfully concluded a commercial contract with an Arab country even though he maintains extensive ties with Israel. The Arab countries, in fact, are considering the adoption of a standard policy of exempting from the boycott list any firms which make as significant a contribution to them as to Israel.

New legislation at this time could alter these favorable developments regarding enforcement practices. As you know boycott rules are not uniformly enforced throughout the Arab world. Each country has the right to maintain its own national boycott legislation and has exercised this right. Some countries have chosen not to follow stringent boycott practices. Other countries are continuously reviewing their policies to ensure that any actions they take with respect to the boycott do not conflict with their own national interests. I am concerned that new legislation could raise the issue to a higher political and emotional plane and

thereby become a major negative factor as these countries assess the advantages and disadvantages of applying a boycott as they review individual trade and investment proposals by U.S. firms.

Finally, legislation as evidenced by the several bills now pending, tends to involve an all or nothing approach, rather than to be a vehicle for addressing specific problems arising out of the boycott. This reflects the deep-seated nature of the problem, and, I would note, fails to take into account the fact that a broad range of measures to deal with specific aspects of the boycott have already been adopted during the last year and a half.

Opposition to Specific Legislation Before the Congress

Mr. Chairman, I would like to turn to the specific legislation that is now before the Congress. I would like to discuss first the anti-boycott amendments contained in the Koch bill (H.R. 11463) and its companion bill in the Senate (S. 3084).

The provisions of these bills would: (1) mandate disclosure of required reports by U.S. firms to the Commerce Department of their responses to boycott-related requests; (2) prohibit U.S. firms from furnishing, pursuant to a boycott request, any information regarding the race, religion, sex or national origin of their or other firms directors, officers, employees or shareholders; and (3) prohibit a refusal by a U.S. firm to deal with other U.S. firms pursuant to foreign boycott requirements or requests.

The Administration is concerned about each of these provisions.

With Respect to Disclosure of Reports of U. S. Firms, by publicizing information about their compliance with boycott requests, the disclosure provision will also make available information concerning non-compliance. This disclosure would give boycott officials an enforcement tool and make it more difficult for Arab business partners to tolerate de facto, non-compliance by U.S. businesses.

In addition, although a firm might disclose that it has indicated to Arab governments, for example, that it does not ship on Israeli vessels, or have other specified business dealings with Israel, such a disclosure would not and could not provide evidence as to whether this was result of Arab pressures or an antonomous, voluntary business decision. Firms wishing to avoid the risk of adverse domestic reaction to their disclosure might then decide it necessary to cease doing business in the Arab world, even though they would continue to have no business dealings with Israel.

With respect to the provision of these bills barring the furnishing of information on race, religion, sex or national origin, sought for boycott purposes, we believe that adequate and effective measures have been taken by the President and the respective agencies which make such a provision unnecessary.

With respect to the prohibition of refusal to deal among U.S. firms pursuant to foreign boycott requirements

or requests, U.S. anti-trust laws already prohibit agreements or conspiracies to engage in anti-competitive, boycott activities and the Justice Department has one suit pending in this area. It is not clear whether the refusal to deal provision in HR 11463 is intended to go beyond existing anti-trust laws. If the bill is intended to cover cases where a firm unilaterally -- without any agreement -- chose not to do business with another firm, it could in our view place the government and the courts in a very difficult situation of assessing the motives behind the choice of one's business associates or his other business decisions.

Even if the provisions could be altered to make them enforceable, other serious problems would remain. U.S. firms might well be able to meet the new legal requirements by sales and shipments via parties in third countries and thus avoid, for example, having to refuse use of ships or insurance companies which are on boycott lists. The provisions could also have the unintended and undesirable effect of encouraging some firms to make general use of non-boycotted suppliers in their worldwide trade, The reason for this would be a fear that if they used boycotted firms except for projects in boycotting countries, it might be considered prima facie evidence of refusal to deal. Finally, responsible enforcement would require extensive staffing and funding resources which Congress heretofore has been reluctant to

ovide even for the enforcement of existing Export Administration Act provisions directly related to national security interests.

Other Legislative Proposals

While the Stevenson-Williams and Koch bills do not prohibit the provision of information to Arab governments by U.S. firms on their business dealings with Israel, HR 4967, the Bingham Bill, does impose this requirement. The Administration continues to oppose this bill both because it is inequitable and could well be self-defeating. We do not believe that Arab governments will abandon their policy of not dealing with firms which may be assisting Israel in a significant economic and/or military way simply because of a requirement that prohibits such firms from indicating either the existence or the extent of their relationship with Israel. There are a variety of other sources which Arab governments could use to attempt to develop such information. Many of these sources would probably be unreliable and could thus erroneously place U.S. firms on the Arab boycott list. Moreover, even firms which for reasons that have nothing to do with the boycott, have no business or commercial connections with Israel would be prohibited from acknowledging this fact.

Former Under Secretary of Commerce, James Baker, outlined in great detail our opposition to this bill before your Subcommittee on International Trade and Commerce on December

11, 1975, and I want to reiterate our continued opposition to this bill.

Mr. Chairman, we must proceed in this entire area with great caution not only because existing legislative proposals place us in a confrontational stance with the Arab nations but also because in at least some instances, they could seriously distort major economic forces in this country and around the world. Proposals such as the Ribicoff bill (S. 3138) would go so far as to alter a number of major tax provisions. This bill would restrict use of the foreign tax credit, the DISC provisions and the earned income exclusion of the Internal Revenue Code and tax on a current basis the earnings of foreign subsidiaries of taxpayers who participate in the Arab boycott. Such changes in our tax laws would significantly impact U.S. companies, employees and investors alike, while imposing new and onerous burdens on the Revenue Service that would impair its capacity to fulfill its basic function as a collector of tax revenue by creating an administrative nightmare.

Complicated and delicate questions of foreign policy are not susceptible to rigid solutions which are prescribed through the Internal Revenue Code. Such actions are contrary to the resolution of the boycott problem, contrary to the efficient administration of the fair laws and contrary to sound principles of tax policy. For these

reasons Assistant Secretary Walker of the Treasury Department in a letter to Chairman Long of the Senate Finance Committee expanded at some length on the serious problems we have with this type of legislative approach. I would like to include a copy of that letter for the record.

Constructive Approach to the Boycott Question

Mr. Chairman, we are determined to solve this difficult and complex problem. Any approach inherently involves a certain degree of subjective judgement. We believe that peace in the Middle East is the only ultimate answer. In the Administration's view, heavy-handed measures which could result in direct confrontation with the Arab world will not work. A far more constructive approach, we believe, is to work through our growing economic and political relations with the Arab states as well as our close relations with Israel and the broad range of contacts which the Executive Branch and the regulatory agencies maintain with the U.S. business community to achieve progress on the boycott issue,

As Administration witnesses have indicated in testimony during the past year, all of the agencies concerned with the boycott and discrimination issues have kept these important questions under continuing review and are prepared to take whatever steps they consider necessary to deal with those problems, including proposals for new legislation.

Many of the Administration's actions have dealt with discrimination which, as the President said in a statement early last year, is totally contrary to the American tradition and repugnant to American principles. We have wanted to leave no misunderstanding here and abroad of our determination to eliminate discrimination on racial, religious and other grounds. At the same time, we have taken a number of steps as I have outlined to lessen the impact of boycott practices on American firms. In our contacts with the U.S. business community, we have also found that a number of firms are working on their own to eliminate boycott conditions from their commercial transactions or have announced that they will not comply with boycott requirements.

We consider these to be healthy signs from our business community, and in my view we should encourage this kind of movement rather than rush into coercive legislation that would be disruptive and damaging to the business community, cause widespread uncertainty in our commercial relations with the Middle East, and have the other adverse effects I have described.

In addition to these developments, our approaches to the Arab governments have brought a greater awareness of the economic cost to them of the boycott and a better understanding of the obstacle it imposes in the path of better relations with the U.S.

I and my colleagues have had a number of conversations with the leaders of Arab Governments including Saudi Arabia, Kuwait, Egypt and Syria to make very clear to them our opposition to the boycott and all discriminatory practices. We have also emphasized that the boycott is a significant impediment to greater U.S. private sector participation in the economic development of these countries. From my own conversations and reports that have come to my attention, I believe that Arab Governments are beginning to recognize that this issue is prejudicial to their own economic interests.

The meeting of the U.S.-Saudi Arabian Joint Commission on Economic Cooperation last February provided an occasion for further discussion of these issues. I was able to make representations at the highest levels of the Saudi Arabian Government on the question of discrimination agains Americans on racial, religious and other grounds, and the Joint Communique issued on February 29 contains a public affirmation by the Saudi Arabian Government disavowing such discriminatio In fact, many Arab leaders have stated to us that it is against Islamic tenets to engage in such discrimination.

At the same time, Mr. Chairman, I would like to make clear that our opposition to legislation or other confrontation in dealing with the boycott problem in no way suggests a dimunition of our concern for Israel's welfare and our desire to help overcome obstacles to more rapid economic

development and prosperity in that country. We remain committed to a free and independent State of Israel. As you know, we have been, and will continue to be, generous in our aid to Israel. In addition, we have taken significant steps to assist Israel's economy in other ways. As Co-chairman of the U.S.-Israel Joint Committee for Investment and Trade, I have met on numerous occasions with Israel's economic leadership and have worked out practical means to meet Israeli needs and to cooperate on a wide range of economic and commercial matters.

The Joint Committee has also been instrumental in helping organize the Israel-U.S. Business Council which is now holding its inaugural joint session in Israel. We look to the Council to help develop closer relations between the two business communities and to make practical contributions to expansion of direct trade and investment ties. The activities of the Joint Committee and the Business Council are constructive efforts in our continued support of Israel and are part of our broader bilateral economic program to help deal with all of the economic problems of the Middle East.

In conclusion, Mr. Chairman, I would note that we have had talks with Arab and Israeli leaders and with leaders of the American Jewish community on boycott issues and on ways

to eliminate racial, religious and other discrimination. We have made the point that our basis goal must be to encourage progress toward peace. It is our considered judgement that confrontational policies will not work to remove the boycott and could undermine the delicate search for peace in that troubled region of the world, the Administration has sought and continues to seek effective ways to mitigate the impact of the boycott.

I can assure the Committee that we will continue these efforts as well as our strong policy of combating any form of racial, religious and other discrimination against and among Americans. The Congress and the Administration share the goals of a just Middle East peace and an end to boycotts and discriminatory practices. I hope we can agree that the legislative proposals now before the Congress are not the best measures to achieve these goals.

FOR IMMEDIATE RELEASE OCTOBER 7, 1976

Office of the White House Press Secretary
(Los Angeles, California)

THE WHITE HOUSE

MEMORANDUM FOR THE SECRETARY OF COMMERCE

Would you please assure that the Department of Commerce takes steps to permit the public inspection and copying of boycott-related reports to be filed in the future with the Department of Commerce. Only business proprietary information regarding such things as quantity and type of goods exported, the release of which could place reporting firms at a competitive disadvantage, should not be made available to the public.

During the past year, there has been a growing interest in and awareness of the impact of the Arab Boycott on American business. Disclosures of boycott-related reports will enable the American public to assess for itself the nature and impact of the Arab Boycott and to monitor the conduct of American companies.

I have concluded that this public disclosure will strengthen existing policy against the Arab Boycott of Israel without jeopardizing our vital interests in the Middle East. The action I am directing today should serve as a reaffirmation of our national policy of opposition to boycott actions against nations friendly to us.

GERALD R. FORD

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FOR IMMEDIATE RELEASE OCTOBER 7, 1976

Office of the White House Press Secretary
(Los Angeles, , California)

THE WHITE HOUSE

FACT SHEET

The President today directed the Secretary of Commerce to take appropriate steps to permit, prospectively, the public inspection and copying of boycott-related reports filed with the Department of Commerce. Only business proprietary information regarding such things as quantity and type of goods exported, the release of which could place reporting firms at a competitive disadvantage, will not be made publicly available.

During the past year there has been a growing interest in and awareness of the impact of the Arab boycott on American business. Disclosure of boycott-related reports will enable the American public to assess for itself the nature and impact of the Arab boycott and to monitor the conduct of American companies. The Department of Commerce will commence public disclosure of reports regarding boycott-related requests received by American companies on or after October 7, 1976.

Public disclosure of boycott reports will complement positive steps already taken by the Ford Administration to oppose the boycott and to insure that American citizens and firms will be fully protected from any discrimination on the basis of race, color, religion, national origin, or sex that might arise from foreign boycott practices. These steps have included the following:

1. In March, 1975, the President established a special White House task force under the direction of the Office of the White House Counsel to conduct a study and to make recommendations regarding actions which could be taken in connection with various aspects of the impact of foreign boycotts and related discrimination.

2. Effective October 1, 1975, the Department of Commerce made it mandatory rather than optional for United States firms to inform the Department whether or not they had complied with requests from foreign governments for information on boycott-related matters.

3. In November, 1975, President Ford announced the most far-reaching Executive Branch actions ever directed at foreign boycott practices. This action was the culmination of the study which the President had directed be undertaken earlier in the year. The President announced decisions and actions to insure that American citizens and firms will be fully protected from any discrimination on the basis of race, color, religion, national origin or sex that might arise from foreign boycott practices. The President further issued specific directives to implement his decisions.

(a) The President signed a Directive to the Heads of All Departments and Agencies which prohibited under Executive Order 11478 and relevant statutes, any Federal agency from taking into account in making selections for overseas assignments any exclusionary policies of a host country based upon race, color, religion, national origin, sex or age. Federal agencies were requested to inform the State Department of visa rejections based on exclusionary policies and the State Department would attempt through diplomatic channels to gain entry for those individuals.

(MORE)

(b) The President instructed the Secretary of Labor to require Federal contractors and subcontractors that have job applicants or present employees applying for overseas assignments to inform the Department of State of any visa rejections based on the exclusionary policies of a host country. The Department of State would then attempt, through diplomatic channels, to gain entry for those individuals.

(c) The President proposed the Economic Coercion Act of 1975 to prohibit a business enterprise from using economic means to coerce any person or entity to discriminate against any U.S. person or entity on the basis of race, color, religion, national origin, or sex.

(d) The President directed the Secretary of Commerce to amend the Export Administration Act's regulations to:

(1) prohibit compliance with any boycott request which would discriminate against U.S. citizens or firms on the basis of race, color, religion, sex or national origin.

(2) extend the reporting requirements to any person or firm other than the exporter handling any phase of the export transaction (such a banks, insurers, shipping companies, and frieght forwarders).

(e) The President state d that his Administration would not tolerate discrimninatory commercial banking practices or policies based upon the race or religious belief of any customer, stockholder, employee, officer or director of a bank and that such practices or policies are incompatible with the public service function of a banking institution in this country.

(f) The President supported legislation to amend the Equal Credit Opportunity Act, which covered sex and marital status, to include prohibition against any creditor discriminating on the basis of race, color, religion, or national origin against any credit applicant in any aspect of a credit transaction. This legislation passed the Congress and was signed by President Ford on March 23, 1976.

(g) The President urged the Securities and Exchange Commission and the National Association of Securities Dealers to take whatever action necessary to insure that discriminatory exclusion in the investment banking industry was not tolerated and that non-discriminatory participation was maintained.

4. On December 1, 1975, the Secretary of Commerce ceased Commerce Department dissemination of information on trade opportunities containing boycott requests.

5. On January 16, 1976, the Department of Justice filed a civil antitrust suit against an American company charging it with implementing an agreement to refuse to deal with U.S. subcontractors blacklisted by certain Arab countries and to require U.S. subcontractors to refuse to deal with blacklisted persons or entities.

(MORE)

6. On April 29, 1976, the Secretary of Commerce directed that all charging letters issued for violations of the Export Administration Act regulations relating to the boycott be made public.

7. On October 4, 1976, President Ford signed the Tax Reform Act under a provision of which foreign source income attributable to certain boycott-related activity will lose the tax benefits of the foreign tax credit, the Domestic International Sales Corporations (DISCs), and the deferral of United States tax on foreign source income.

These actions have put an effective end to foreign discrimination against American firms or citizens on the basis of religion, national origin, race, color, or sex. Public disclosure of boycott reports will further strengthen existing policy against the Arab boycott of Israel without jeopardizing our vital interests in the Middle East.

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