

The original documents are located in Box 1, folder “Arab Boycott - Morton Contempt Citation” of the Loen and Leppert Files at the Gerald R. Ford Presidential Library.

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RED TAG

THE WHITE HOUSE

WASHINGTON

November 19, 1975

MEMORANDUM FOR: JACK MARSH

THRU: MAX L. FRIEDERSDORF
VERN LOEN

FROM: CHARLES LEPPERT, JR. *CLJ.*

SUBJECT: Contempt citation against Rogers
C. B. Morton - Secretary of Commerce

Enclosed is a copy of the wording of the resolution issued by the Subcommittee on Oversight and Investigations against Rogers C. B. Morton.

In checking with Lew Berry, minority counsel on the Committee on Interstate and Foreign Commerce, he advises that most of the House of Representatives are planning on leaving tonight at close of business for the Thanksgiving recess. Tomorrow's session is just pro forma.

Full Committee meetings are scheduled for December 2, 3 and 4 including the contempt citation. Although it is listed second on the list, that does not necessarily mean that it will be called in that order. However, the contempt citation is expected to be heard one of those three days.

Attachment



Resolution issued by the Subcommittee on Oversight and Investigations
against Rogers C. B. Morton, Secretary of Commerce -November 11,
1975

RESOLVED, that the Subcommittee finds that Rogers C. B. Morton
Secretary of the United States Department of Commerce in contempt
for failure to comply with the subpoena ordered by the Subcommittee
and dated July 28, 1975, and that the facts of this failure be reported
by the Chairman of the Subcommittee on Oversight and Investigations to
the Committee on Interstate and Foreign Commerce for such actions
that Committee deems appropriate.

Chairman - Rep. John E. Moss (D-Calif.)

THE WHITE HOUSE
WASHINGTON

November 24, 1975

MEMORANDUM FOR: MAX L. FRIEDERSDORF
THRU: VERN LOEN *VL*
FROM: CHARLES LEPPERT, JR. *CLJ.*
SUBJECT: Contempt Citation of Secretary
Rogers C. B. Morton

Last week Jack Marsh asked me to give him a report on the House Interstate and Foreign Commerce Committee action on the Morton contempt citation. I spoke with Rep. Jim Collins who indicated that Rep. John Moss wanted to bring the matter to the Full Committee but that it would not come up until after the Thanksgiving day recess.

Collins said the vote in Subcommittee was 10 - 5 with the GOP Members voting "Nay" including Devine. Collins says Rep. Staggers wants to be helpful but has his problems with Moss pushing it.

Collins said it will be difficult to win in Full Committee because of 29 Democrats versus 14 Republicans. If the GOP Members hold together and voted "nay" they would still need eight (8) Democrats to vote with the Republicans. Our best prospects among the Democrats are:

Rep. John Murphy
Rep. Richardson Preyer
Rep. David E. Satterfield
Rep. Goodloe Byron
Rep. Bill Stuckey
Rep. Jim Symington.

*max - I am sending you a follow-up
memo on this.*
VL





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

FILE

November 26, 1975

Mr. Charles Leppert, Jr.
Special Assistant for
Legislative Affairs
The White House
Washington, D. C. 20500

Dear Charlie:

Pursuant to our conversation, I am enclosing a copy of the letter that Secretary Morton sent to Congressman John Moss.

Unfortunately, contrary to earlier indications, the reply from Chairman Moss to Secretary Morton is not yet available. A copy of that will also be sent to you just as soon as it is received here in our office.

Sincerely,

Bob

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

Enclosure





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.

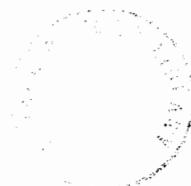
I am prepared to make the national interest determination required under Section 7(c) of the Export Administration Act and deliver copies of all the reports which you have requested, if you give me adequate written assurances on behalf of your Subcommittee that access to these documents and the information 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,


Secretary of Commerce



THE WHITE HOUSE
WASHINGTON

Re: 11-28-75

Remind me to
call Len Berry
on this Mon 12-1-75
per Mac's request.

Alan.



*copy for
Charlie*

THE WHITE HOUSE
WASHINGTON

November 26, 1975

MEMORANDUM FOR:

MAX L. FRIEDERSDORF

THRU:

VERN LOEN *VL*

FROM:

CHARLES LEPPERT, JR. *CLJ*

SUBJECT:

Contempt citation of Secretary
Rogers C. B. Morton

Bob Reintsema called last evening to state that Secretary Morton had talked to Rep. John Moss and Moss stated he would reject Secretary Morton's offer to compromise the contempt citation by (1) going to court and seeking a declaratory judgment and (2) to give the Subcommittee access to the information on adequate written assurances that the names of the reporting Companies not be disclosed and that the Subcommittee take measures to assure the confidentiality of the information.

Reintsema also stated that Moss' L/A conducted a briefing for the staffs of the members of the Full Committee to explain Moss' *position* and to advise them that Moss would press for a vote on this issue before the full Interstate and Foreign Commerce Committee on December 2, 3, or 4th.

Reintsema also stated that there was an internal Committee memo by the Committee's majority counsel raising the question of the legality of the subpoena and subsequent citation because of defects in the issuance of the subpoena. Allegedly the subpoena was issued by the Subcommittee Chairman (Moss) when the Rules of the House require the subpoena to be issued by the Chairman of the Full Committee.

For your information, Rule XI, Clause 2(m)1) of the House Rules provides that for the purpose of carrying out any of its functions...any Committee or any subcommittee thereof is authorized...to require, by subpoena...documents it deems necessary.

However, Rule XI, Clause 2 (m)(2)(A) provides that "A subpoena may be issued by a committee or a subcommittee in the conduct of any investigation or activity or series of investigations or activities only when authorized by a majority of the Members of the committee, and authorized subpoenas shall be signed by the Chairman of the Committee or by any member designated by the Committee.



The House on January 14, 1975 amended the rules of the House to require authorized subpoenas to be signed by the Chairman of the Full Committee or any member designated by the committee.

Do you think we should follow up on the requirement that Chairman sign the subpoena and see if this is a defect? I recommend that we talk to Lew Berry about it.





December 1, 1975

MEMORANDUM FOR Max Friedersdorf

From: Bob Reintsema *BR*

For your further information, enclosed is the most recent correspondence sent by Secretary Morton to the House Interstate and Foreign Commerce Committee concerning his possible contempt citation.

Attachments

Copies to:
Mr. Loen
Mr. Leppert
Mr. Kendall





THE SECRETARY OF COMMERCE
Washington, D.C. 20230

December 1, 1975

Honorable Harley O. Staggers
Chairman, Committee on Interstate
and Foreign Commerce
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

The purpose of this letter is to set forth the basis for my declining to disclose the documents subpoenaed by your Subcommittee on Oversight and Investigations.

As you know, these documents are reports filed by United States exporters who have received requests for information originating in Arab Nations which participate in the secondary boycott of the State of Israel. These documents contain considerable details of individual commercial transactions, some of which have not yet been consummated, and for this reason are deemed confidential under Section 7(c) of the Export Administration Act of 1969. The issue of disclosure of information deemed confidential under Section 7(c) has nothing to do with the secondary boycott of the League of Arab Nations against the State of Israel and this controversy could just as easily have arisen over the disclosure of any other export information collected under the Act, such as for example, the proprietary data submitted by an exporter in export license applications, pursuant to the licensing requirements imposed under the Act on grounds of national security, foreign policy or short supply. Yet, because of my refusal to violate the mandate of Congress contained in Section 7(c), I have been charged by certain members of the Congress and representatives of the Press as supporting the secondary boycott of Israel and your committee is scheduled to meet tomorrow to consider referring to the House a citation for contempt of Congress voted by the Subcommittee on Oversight and Investigations.

Although the boycott has nothing to do with my declining to comply with the Subcommittee's subpoena, I would first like to set the record straight as to my position regarding this boycott.



The United States policy in opposition to this boycott contained in Section 3(5) of the Act, was enacted in 1965. Upon becoming Secretary of Commerce seven months ago, I went on record as fully endorsing this policy. In view of my personal concerns about the manner in which the Department of Commerce was complying with the spirit and intent of the Act, and in light of requests by the Congress that the Department review its position, the following steps were taken:

- o The Department instituted the most massive publicity campaign since 1965, to inform U.S. exporters of the United States policy enounced by the Congress, to request and encourage exporters not to comply with boycott-related requests for information, and to remind them of the reporting requirements under our Export Administration Regulations. As part of this campaign, copies of the pertinent parts of our regulations were mailed out to some 30,500 firms listed in the American International Traders' Index and several articles were published in Commerce Today.
- o Coupled with this publicity campaign, all violations of the reporting requirements have been investigated and, as a result thereof, 212 firms have been warned, civil penalties have been imposed against four firms, and charges are pending against two additional firms.
- o Simultaneously, I instituted a policy of referring to the Departments of State and Justice for appropriate action any boycott-related request for information which involved discrimination against Americans on religious or ethnic grounds.
- o In September, I amended the reporting requirements under our regulations to require reporting firms to indicate whether or not they had complied, or intended to comply, with the reported boycott-related requests for information. Since

1965, the answer to that question in the Department's reporting form had remained optional, and had not been answered by many reporting firms. A copy of Export Administration Bulletin No. 146 of September 25, which implements this decision, is enclosed for your information.

- o On November 20, acting on my recommendation, the President directed that the regulations be amended to prohibit exporters from complying with any boycott-related requests which involved discrimination on the basis of race, color, religion, national origin or sex, and also to require related service organizations such as banks, insurers, freight forwarders, and shipping companies to report the receipt of any boycott-related requests directly to the Department. A copy of Export Administration Bulletin No. 149 of November 20, which implements this directive, is also enclosed.
- o On November 28, I announced that effective December 1, the Department would cease to disseminate trade opportunities known to contain restrictive trade clauses or boycott-related provisions against another country friendly to the United States. I am enclosing a copy of Circular No. 21 of November 26, which sets out this new policy.

Mr. Chairman, I believe that these actions speak for themselves, and I will not dignify with any further comment, the allegations of those who would have the Congress and the American people believe that I am covertly supporting the boycott.

I would now like to turn to the issue at hand, that is my inability to make the national interest determination required under Section 7(c) of the Act to allow the unrestricted disclosure of the reports filed by U.S. citizens under an express pledge of confidentiality.

Section 7(c) which was first enacted in 1949, is clear on its face. In effect, it prohibits me from publishing or disclosing to anyone, information obtained under the Act, which is deemed confidential or submitted in confidence, unless I can determine in good faith that the withholding thereof would be contrary to the national interest. I did not write this law, nor can I change it for the sake of avoiding a political confrontation. If the Congress, after twenty-five years, believes the law should be changed, then it should do so by legislative amendment and not by citing me for contempt of Congress in discharging my responsibilities under a law passed by the Congress. There is a disagreement between the Attorney General of the United States and three law professors selected by the Subcommittee on Oversight and Investigations, as to whether or not the confidentiality provisions of Section 7(c) are intended to apply to requests by Congressional Committees. The views of these three professors were submitted to the Attorney General. After careful consideration of the issues raised, on November 11, the Attorney General reiterated to Chairman Moss his initial opinion that Section 7(c) applied to requests by the Congress. This is not a question of executive privilege but of statutory construction. It is a purely legal issue and should therefore be determined by the courts. I have repeatedly stated that I would abide by a court decision, but until such time as a court decides otherwise, I must rely on the advice of the Attorney General of the United States.

Mr. Chairman, as a former member of the House, I have the utmost respect for that body and I fully recognize its right to access to the information which it requires to perform its legislative functions. From the day when the Subcommittee on Oversight and Investigations first requested the documents which it has subpoenaed, I sought to cooperate with the Subcommittee to the fullest extent permissible under Section 7(c) of the Act. I promptly transmitted to the Subcommittee complete statistical summaries of the information contained in these reports. Upon being advised by Chairman Moss that this information was inadequate, I offered to provide the Subcommittee with copies of all the reports, after deleting the names of the reporting firms and details of the individual transactions. All of the requests from the Subcommittee

for information and documents not involving the confidentiality provisions of Section 7(c) have been promptly complied with. On November 24, in a last effort to settle amicably this controversy with Chairman Moss, I wrote him urging that he seriously consider two avenues which would avoid a settlement of the issue in a political forum. First, I requested him to reconsider the suggestion made by a member of his Subcommittee on September 22 -- which he had then rejected out-of-hand -- to seek a judicial determination of whether or not the confidentiality provisions of Section 7(c) apply to requests by Committees of the Congress. Second, I offered to make the national interest determination required under Section 7(c) of the Act, to provide the Subcommittee on a confidential basis with copies of all the reports which it had requested. I am enclosing a copy of this letter for your information.

On November 26, I received the Chairman's response, a copy of which is also enclosed. In this letter, he rejects my first suggestion on the grounds that judicial review may be obtained more promptly through a writ of habeas corpus following my arrest, or in the course of a criminal prosecution to be instituted against me under 2 USC 192.

Mr. Chairman, I respectfully submit that prompt judicial review of this issue can, and should, be obtained with the consent of the Committee. This judicial review would not delay in any way the Subcommittee's access to the information which it has requested, since I stand ready and willing to provide today on a confidential basis all the reports which the Subcommittee has requested. If the court were to conclude that Section 7(c) does not apply to the Congress, the Committee would then be free to disclose or publish these as it sees fit. On the other hand, if the court upholds the Attorney General's interpretation of that statutory provision, then it would be up to the Congress to amend the law, if it considers such an amendment to be in the national interest.



However, Chairman Moss has also rejected my offer to provide these documents on a confidential basis. He cites several reasons for his rejection.

His first reason is that it would preclude the Subcommittee from releasing this data to Federal prosecutors, if violations of law were discovered. On August 6, 1975, I made the national interest determination required under Section 7(c) to authorize representatives of the Department of Justice to have access on a confidential basis to all the reports of boycott-related requests filed with the Department, in connection with their investigation of possible civil rights and antitrust violations. On October 15, I made a second national interest determination to provide members of the Office of the U.S. Attorney for the Southern District of New York, access to these documents on the same basis. Thus, although federal prosecutors have already reviewed all the documents which Chairman Moss has requested, I would have no difficulty in stipulating in my national interest determination to Chairman Moss, that the Subcommittee could transmit any of those documents to the Department of Justice for whatever additional investigations it saw fit to request.

The second reason given by Chairman Moss is that a pledge of confidentiality would place unconstitutional limits on the authority of the Congress to discharge its legislative and oversight responsibilities. Frankly, Mr. Chairman, I find this argument difficult to comprehend when previous and current Chairmen of Committees of the Congress have found no difficulty in providing such assurances of confidential treatment over the last 25 years, thereby recognizing the sensitivity of information which is deemed confidential or submitted in confidence pursuant to the Export Administration Act and its predecessor statute.

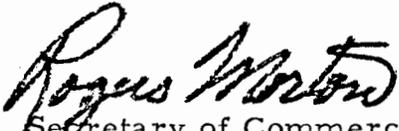
To give but a few examples, this restriction on the use of the information did not raise constitutional difficulties when Congressman Oren Harris, then Chairman of the House Special Subcommittee on Legislative Oversight, requested access to files of this Department relating to International Expeditors Inc.; nor did it concern Congressman Benjamin Rosenthal in August of last year, when he requested on behalf of the House Subcommittee on Europe, certain confidential

material pertaining to commodities licensed for export to the Soviet Union. On the Senate side, it did not bother Senator Henry Jackson in April of last year, when he requested, on behalf of the Senate Subcommittee on Permanent Investigations, access to applications for licenses issued to export materials and technology to the Soviet Union and Eastern Europe; nor did it raise difficulties with Senator Frank Church, in July of last year, when he requested, on behalf of the Senate Subcommittee on Multinational Corporations, access to export licensing documents required by the Subcommittee in connection with its study on East-West Trade. I am enclosing copies of the letters sent to the Department by these four Chairmen, and the Department's responses thereto. There are other examples available, Mr. Chairman, which I will be most happy to provide, if you wish.

Would any one seriously believe that those Committee Chairmen are men capable of abdicating the constitutional prerogatives of the Congress? I submit, that in providing the Department with the necessary assurances of confidentiality, they acted as responsible officials who are sworn to uphold the laws of the United States, including the confidentiality provisions contained in Section 7(c) of the Export Administration Act.

In concluding, Mr. Chairman, I would urge your Committee not to be swayed by emotion or political expediency and to recognize that the issue before you is not one of contempt, but rather of the scope of Congress' own statute. I sincerely believe that it is vital to the welfare of our government and of our Nation, that differences which arise between the legislative and executive branches be resolved in a fair and responsible manner. I would hope that the solutions suggested in my letter of November 24 to Chairman Moss would be considered by the full Committee as the fair and responsible way to resolve this matter.

Sincerely,


Secretary of Commerce

Enclosures





Export Administration Bulletin

Supplement to
**Export
Administration
Regulations**

NUMBER 146
September 25, 1975

**U.S. DEPARTMENT OF COMMERCE / Domestic and International Business Administration
BUREAU OF EAST WEST TRADE / OFFICE OF EXPORT ADMINISTRATION**

**SUBJECT: Revision of Requirement to Report Restrictive Trade Practices
or Boycott Requests**

It is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States. In accordance with this policy, all exporters are required to report such requests to the Office of Export Administration, and are encouraged to refuse to take any action that has the effect of furthering or supporting such restrictive trade practices or boycotts. In submitting these reports, exporters have not been required to indicate whether or not they would comply with the requests.

In order to provide more complete information with which to analyze the effects of boycott activity on U.S. trade, the Export Administration Regulations are being revised to require that in all reports submitted on or after October 1, 1975, exporters include a statement as to whether or not the exporter intends to comply with the requests. Form DIB-621P is being revised to reflect this new reporting requirement by making the response to Item 10 mandatory. Earlier versions of Form DIB-621P may still be used, provided the exporter completes Item 10. Letters submitted to report multiple requests must now indicate whether or not the requests will be complied with.

Accordingly, §369.2 of the Export Administration Regulations (15 C.F.R. §369.2) is amended as follows:

1. by adding to the end of subparagraph 369.2(b)(1) the following:

* * * All items on the form must be completed, including Item 10. If the exporter uses a version of the reporting form that indicates completion of Item 10 is optional, Item 10 must nevertheless be completed. If the exporter has not decided what his action will be, he must inform the Office of Export Administration within five business days of making a decision.

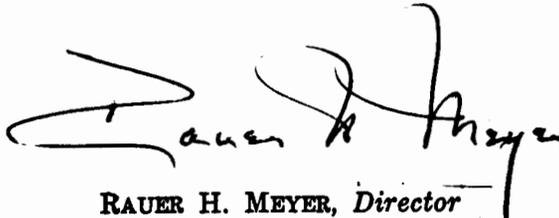
U.S. DEPARTMENT OF COMMERCE • Rogers Morton, Secretary
Travis E. Reed, Assistant Secretary for Domestic and International Business
Arthur T. Downey, Deputy Assistant Secretary for East-West Trade
Rauer H. Meyer, Director, Office of Export Administration



2. by revising subparagraph 369.2(b)(2)(viii) to read as follows:

(viii) The number of requests the exporter has complied with or intends to comply with. If the exporter is undecided, he is required to submit a further report within five (5) business days of making a decision on each such request.

EFFECTIVE DATE OF ACTION: October 1, 1975



RAUER H. MEYER, *Director*
Office of Export Administration



PLACE THIS BULLETIN IN THE BACK OF YOUR EXPORT ADMINISTRATION REGULATIONS

Export Administration Bulletins, issued by the Office of Export Administration, U.S. Department of Commerce, for the guidance of all concerned with export regulations and interpretations, are supplements to the *Export Administration Regulations*. Subscription may be placed with the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; or with any District Office of the U.S. Department of Commerce. The rate for the *Export Administration Regulations* dated June 1, 1975, and all *Export Administration Bulletins* issued until the next edition of the Regulations, is \$35.00 to a domestic address; \$43.75 to a foreign address. A special air mail service to domestic addresses only, is available for an additional \$14.60. (Only the *Export Administration Bulletins* will be sent air mail.) All orders for the service should indicate that the remittance is for this purpose, and should specify S.O.D. No. C42.11:975.

Individual copies of *Bulletins* only may be purchased for 50 cents from the U.S. Department of Commerce District Offices and in Room 1605 of the U.S. Department of Commerce Building, 14th and "E" Streets, N.W., Washington, D.C.

Remittances should be made in cash, money order, or coupons issued by the Superintendent of Documents, U.S. Government Printing Office.



Export Administration Bulletin

Supplement to
**Export
Administration
Regulations**

NUMBER 149
November 20, 1975

**U.S. DEPARTMENT OF COMMERCE / Domestic and International Business Administration
BUREAU OF EAST WEST TRADE / OFFICE OF EXPORT ADMINISTRATION**

**SUBJECT: Revision of Regulations Relating to Restrictive
Trade Practices or Boycotts**

The Export Administration Regulations concerning restrictive trade practices or boycotts have been revised in several important respects.

The regulations have been revised to prohibit U.S. exporters and related service organizations from taking any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting a restrictive trade practice that discriminates against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin. Reports of receipt of such requests must be filed with the Office of Export Administration within 15 business days of receipt of each request. A new Form DIB-630P is to be used for reporting such requests.

The regulations have also been revised to require reports from all service organizations (such as banks, insurers, freight forwarders, and shipping companies) that become in any way involved in a restrictive trade practice request related to an export from the United States of commodities, services, technical data, or other information. Previously, service organizations were required to report such requests to the U.S. exporter, who was then required to report to the Office of Export Administration. Now, both the exporter and the service organization must report the receipt of such requests to the Office of Export Administration. Form DIB-621P has been revised to reflect this change in the reporting requirement. Copies of the revised Form DIB-621P and the new Form DIB-630P are included in this Bulletin.

EFFECTIVE DATE OF ACTION: December 1, 1975

U.S. DEPARTMENT OF COMMERCE • Rogers Morton, Secretary
Travis E. Reed, Assistant Secretary for Domestic and International Business
Arthur T. Downey, Deputy Assistant Secretary for East-West Trade
Rauer H. Meyer, Director, Office of Export Administration

Accordingly, Part 369 of the Export Administration Regulations (15 CFR Part 369) is revised to read as follows:

§369.1
GENERAL POLICY

Section 3(5) of the Export Administration Act of 1969, as amended, declares that it is the policy of the United States "to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States." The portion of Section 4(b)(1) of the Act implementing this policy provides that "all domestic concerns receiving requests for the furnishing of information or the signing of agreements as specified in... [Section 3(5)] must report this fact to the Secretary of Commerce for such action as he may deem appropriate to carry out the purposes of that Section."

§369.2
DISCRIMINATION ON THE BASIS OF RACE, COLOR,
RELIGION, SEX, OR NATIONAL ORIGIN

(a) Prohibition of Compliance with Requests

All exporters and related service organizations (including, but not limited to, banks, insurers, freight forwarders, and shipping companies) engaged or involved in the export or negotiations leading towards the export from the United States of commodities, services, or information, including technical data (whether directly or through distributors, dealers, or agents), are prohibited from taking any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting a restrictive trade practice fostered or imposed by foreign countries against other countries friendly to the United States, which practice discriminates, or has the effect of discriminating, against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin.

(b) Examples of Requests

To be subject to the requirements of this §369.2, the discrimination sought to be effectuated by the request must be directed at a particular race, color, religion, sex, or national origin. There are many words or phrases that could place a request in this category. Examples are inquiries as to the place of birth or the nationality of parents of employees, stockholders, or directors, or inquiries as to whether they are "Jewish," "negro," "female," etc. Further examples are inquiries using any code words to further or support discrimination on the basis of race, color, religion, sex, or national origin.

The following are examples of types of documents in which such requests might originate, but should not be interpreted as comprehensive.

(i) A questionnaire asking whether a U.S. firm is owned or controlled by persons of the Jewish faith, or whether it has **Jews on its** board of directors, or inquiring as to the national origin of a U.S. firm's stockholders or directors. This type of inquiry may also take the form of a required certification. (Similar questions aimed at determining whether a U.S. firm is owned or controlled by Israeli nationals would not fall in this category, but would be covered by §369.3.)

(ii) A contractual clause that would prohibit using the goods or services of a Jewish subcontractor.

(iii) A requirement that a U.S. firm not send persons of a particular religion to a country where it performs services. (A general requirement that a U.S. firm performing services in a country comply with all laws and administrative practices of the country is not deemed per se to constitute a restrictive trade practice for purposes of this §369.2. However, agreeing to such a requirement does not authorize the firm to cooperate with a country's discriminatory visa restrictions by failing to submit visa applications for any of its qualified employees of a particular religion. Such action would constitute a prohibited act of discrimination.)

§369.3

OTHER RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

(a) Policy Concerning Compliance with Requests

All exporters and related service organizations engaged or involved in the export or negotiations leading to the export from the United States of commodities, services, or information, including technical data, (whether directly or through distributors, dealers, or agents), are encouraged and requested to refuse to take any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting other restrictive trade practices or boycotts fostered or imposed by foreign countries against any country not included in Country Groups S, W, Y, or Z. It should be noted that the boycotting of a U.S. firm by another U.S. firm in order to comply with a restrictive trade practice by foreign countries against other countries friendly to the United States may constitute a violation of United States antitrust laws.

(b) Examples of Requests

Basically, this Section covers restrictive trade practice requests to implement economic sanctions applied by one country against another country friendly to the United States. These are aimed at restricting certain types of business relationships that U.S. firms might otherwise undertake. The requests may be aimed at a particular country, nationals of that country, or firms or organizations that may be involved in commercial or other activity with a particular country. They may take the form of a

request for a certification as to the "nationality" of individuals (e.g. "Israeli" or "South African," as opposed to national origin or ethnic background), the country of origin of the goods, or the absence of a firm from the "blacklist" of a country or group of countries. The following are other examples of requests in this category, but should not be interpreted as being comprehensive.

(i) A request for information as to whether the U.S. exporter or any subsidiary or affiliate of the U.S. exporter has, or intends to have, any stockholders, owners, employees, or officers who are nationals of a boycotted country.

(ii) A request for information as to whether the U.S. exporter or any subsidiary or affiliate of the U.S. exporter has, or intends to have, any business relationship with a boycotted country or a national of a boycotted country. These business relationships include, but are not limited to, trade in commodities or technical know-how, licensing arrangements, advertising or promotion of sale of goods originating in a boycotted country, or use of such goods as components in a manufacturing process.

(iii) A request for information as to whether the U.S. exporter or any subsidiary or affiliate of the U.S. exporter does any business, or intends to do any business, with any firm that has a business relationship with a boycotted country or a national of a boycotted country.

(iv) A request for information as to whether the U.S. exporter or any subsidiary or affiliate of the U.S. exporter has any investments, including branches, subsidiaries, affiliates, or holdings, or any commercial or legal representation in a boycotted country, or a business firm located in, or doing business in, a boycotted country.

(v) A restriction prohibiting the U.S. exporter or any subsidiary or affiliate of the U.S. exporter from using shipping or transportation facilities that are "blacklisted" by the importing country. (However, a request or restriction solely precluding the export of commodities to the importing country on (a) shipping or transportation facilities owned, controlled, operated, or chartered by a country or a national of a country friendly to the United States but not friendly to the importing country, or (b) a carrier that stops at a port in a country friendly to the United States but not friendly to the importing country prior to stopping at the port of unloading, is not deemed a restrictive practice within the meaning of Section 3(5) of the Export Administration Act, but rather a precautionary measure to avoid any risk of confiscation of the commodities. Accordingly, these two types of shipping restrictions are exempted from the reporting requirement of this section.)

§369.4

REPORTING REQUIREMENTS

Any U.S. exporter receiving or informed of a request for an action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting a restrictive trade practice or boycott, as described in §§369.2 or 369.3 above, shall report the request to the Office of Export Administration, Room 1617M, U.S. Department of Commerce, Washington, D. C. 20230. Where such request is received by any person or firm other than the exporter, handling any phase of the transaction for the exporter, that person or firm (forwarding agent, shipping company, bank, insurer, etc.) must also report the request to the Office of Export Administration. The report shall be submitted in accordance with the procedure set forth in paragraph (a) of this section for requests described in §369.2, and in paragraph (b) of this section for requests described in §369.3. The information contained in these reports is subject to the provisions of Section 7(c) of the Export Administration Act of 1969 regarding confidentiality. If more than one document, such as an invitation to bid, purchase order, or letter of credit containing the same restrictive trade practice request is received as part of the same export transaction, only the first such request relating to the same goods or services need be reported. Individual shipments against the same purchase order or letter of credit should not be treated as separate transactions. However, each different restrictive trade practice request associated with a given transaction must be reported, regardless of when or how the request is received. For example, if a report of a request is submitted following receipt of a bid invitation and the bid ultimately results in an order with new and different restrictive trade practice requests, each such new request must be reported. Also, if a firm, in bidding on a contract, is required to answer a questionnaire and subsequently is required to place restrictive trade practice certifications (e.g., that the vessel on which the commodities are to be shipped is not blacklisted) on its commercial documents covering shipments called for in the contract, the questionnaire and the certification requirement must be reported separately. Notices of laws or edicts contained in exporters' guidebooks or similar publications, and general directives furnished by a foreign principal that are to apply uniformly to future specific orders for goods or services, need not be reported unless such a blanket notice or directive is to be applied to a particular purchase order or similar instruction to furnish goods or services.

(a) Reporting Requests Covered By §369.2

Each request to take any action that would further or support a restrictive trade practice or boycott in a way that would discriminate, or have the effect of discriminating, against U.S. citizens or firms on the basis of race, color, religion,

sex, or national origin as defined in §369.2, must be reported individually to the Office of Export Administration, U.S. Department of Commerce, Washington, D. C. 20230, within 15 business days of receipt. Reports required by this §369.4(a) must be submitted on Form DIB-630P, Report of Restrictive Trade Practice or Boycott Request that Discriminates Against U.S. Citizens or Firms on the Basis of Race, Color, Religion, Sex, or National Origin. Answers to all questions contained therein are mandatory. A copy of the document or other communication containing the restrictive request must be attached to the reporting form.

(b) Reporting Requests Covered By § 369.3

Requests to take action that would further or support a restrictive trade practice or boycott as defined in §369.3 may be reported either individually or quarterly.

(1) Single transaction report. If the report covers only a single transaction it shall be submitted to the Office of Export Administration within 15 business days from the date of receiving the request. This report shall be made on Report of Restrictive Trade Practice or Boycott Request, Form DIB-621P, revised November 1975 (earlier versions of Form IA-1014, DIB-621, or DIB-621P will not be accepted). Answers to all questions on the form are mandatory.

(2) Multiple transactions report. Instead of submitting a report for each transaction regarding which a request is received, a multiple report may be submitted covering all transactions (other than those described in §369.2, which must be reported individually) regarding which requests are received from persons or firms in a single country during a single calendar quarter. This report shall be made by letter to the Office of Export Administration no later than the 15th day of the first month following the calendar quarter covered by the report. If requests are received from persons or firms of more than one foreign country, a separate report shall be submitted for each country. Each letter shall include all of the following information:

- (i) Name and address of U.S. person or firm submitting report;
- (ii) Indicate whether the reporter is the exporter or a related service organization and, if the latter, specify role in the transactions;
- (iii) Calendar quarter covered by report;
- (iv) Name of country(ies) against which the request is directed;
- (v) Country where request originated;
- (vi) Number of transactions to which restrictions were applicable;
- (vii) The customer order number, exporter's invoice number, and letter of credit number for each transaction, if known;

November 20, 1975

- (viii) Type of request received. Attach a copy of each requesting document or other form of request, or a pertinent extract thereof;
- (ix) A general description of the types of commodities or technical data covered and the total dollar value, if known;
- (x) The number of requests the reporter has complied with or intends to comply with. If the reporter is undecided, he is required to submit a further report within 5 business days of making a decision. If the decision is to be made by another party involved in the export transaction, that party should be identified;
- (xi) Each letter submitted by a related service organization shall also include the name and address of each U.S. exporter named in connection with any requests received during the quarter. Following each name, affix the identifying numbers required in (vii) above, insofar as they are known. If this information is included in the copies of documents required by (viii) above, the separate listing may be omitted; and
- (xii) Each letter must include a signed certification that all statements therein are true and correct to the best of the signer's knowledge and belief and indicate the name and title of the person who has signed the report.

§369.5

EFFECT OF OTHER PROVISIONS

Insofar as consistent with the provisions of this Part, all of the provisions of the Export Administration Regulations, including Parts 387 and 388, apply equally to the prohibitions and the reporting requirements set forth in this Part. Attention is called particularly to the provisions of §387.11 under which pertinent records must be kept and made available for inspection for a two-year period, and to the administrative and criminal sanctions spelled out in §387.1 for failure to comply.



Lawrence J. Brady
 Lawrence J. Brady, Acting Director
 Office of Export Administration

PLACE THIS BULLETIN IN THE BACK OF YOUR EXPORT ADMINISTRATION REGULATIONS

Export Administration Bulletins, issued by the Office of Export Administration, U.S. Department of Commerce, for the guidance of all concerned with export regulations and interpretations, are supplements to the *Export Administration Regulations*. Subscription may be placed with the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; or with any District Office of the U.S. Department of Commerce. The rate for the *Export Administration Regulations* dated June 1, 1975, and all *Export Administration Bulletins* issued until the next edition of the Regulations, is \$35.00 to a domestic address; \$43.75 to a foreign address. A special air mail service to domestic addresses only, is available for an additional \$14.60. (Only the *Export Administration Bulletins* will be sent air mail.) All orders for the service should indicate that the remittance is for this purpose, and should specify S.O.D. No. C42.11:975.

Individual copies of *Bulletins* only may be purchased for 50 cents from the U.S. Department of Commerce District Offices and Room 1605 of the U.S. Department of Commerce Building, 14th and "E" Streets, N.W., Washington, D.C.
 Remittances should be made in cash, money order, or coupons issued by the Superintendent of Documents, U.S. Government Printing Office.

REPORT OF RESTRICTIVE TRADE PRACTICE OR BOYCOTT REQUEST
(For reporting requests defined in § 369.3 of the Export Administration Regulations.)

A. IMPORTANT. It is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States. All U.S. exporters of articles, materials, supplies, or information, and related export service organizations, (1) are prohibited from taking any action, including the furnishing of information or the signing of agreements, that would have the effect of discriminating against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin; and (2) are encouraged and requested to refuse to take any action, including the furnishing of information or the signing of agreements, that would have the effect of furthering or supporting other types of restrictive trade practices or boycotts against a country friendly to the United States.

Regina Martin
Secretary of Commerce

B. Reporting is MANDATORY. See detailed instructions on back of form.

C. CONFIDENTIAL. Information furnished here-with is deemed confidential and will not be published or disclosed except as specified in Section 7(c) of the Export Administration Act of 1969 as amended (50 USC app. 2406(c)).

1. Name and Address of U.S. Firm submitting this report:

Name: _____

Address: _____

City, State, & Zip: _____

Telephone: _____

2. Are You: Exporter Bank
(Check one) Insurer Shipper
 Forwarder
 Other _____

If not exporter, give exporter's:

Name: _____

Address: _____

City, State, Zip: _____

3. To the extent known, give:

Letter of credit no. _____

Customer order no. _____

Exporter's invoice no. _____

Other identifying marks or numbers _____

4. Name of country(ies) against which request is directed: _____

5. Name of country initiating request: _____

6. Date request was received by me/us: _____

7. The party making the request is: _____

Address _____ City & Country _____

8. Specify type of request received and attach copy of document in which it appears:

- a. Questionnaire
- b. Invitation to bid
- c. Trade opportunity
- d. Purchase order
- e. Contract
- f. Letter of Credit
- g. Published import regulation
- h. Cable or letter
- i. Consular request
- j. Other (Specify) _____

9. If the request relates to a specific transaction, describe the commodities or technical data involved. (The description of the commodity or technical data may conform to the description on the order or to usual commercial terminology, and may, but need not be, in terms of the Commodity Control List or Schedule B.)

Quantity	Description	Value
----------	-------------	-------

10. Additional Remarks: _____

11. Action:

- a. I/We have not complied and will not comply with the request for information or action described above.
- b. I/We have complied with, or will comply with, the request for information or action described above.
- c. I/We have not decided whether I/We shall comply with the request for information or action described above and I/We will inform the Office of Export Administration of my/our decision within 5 business days of making a decision.
- d. The decision will be made by another party involved in the export transaction. The name of that party is: _____

12. I certify that all statements and information contained in this report are true and correct to the best of my knowledge and belief.

Sign here in ink _____ Type or print _____ Date _____
(Signature of person completing report) (Name and title of person whose signature appears on line to left)

INSTRUCTIONS

1. Each U.S. exporter or related service organization receiving a request to take any action, including the furnishing of information or the signing of an agreement, that has the effect of furthering or supporting a restrictive trade practice or boycott fostered or imposed by a foreign country not included in Country Group S, W, Y, or Z (see list below), is required to report the request to the Department of Commerce, and to transmit a copy of the document in which the request appears.
2. Reporting is mandatory (50 USC App. 2403(b)). Failure to comply subjects the recipient of a request to the penalties prescribed in Section (6) of the Export Administration Act of 1969, as amended (50 USC 2405).
3. This form must be submitted to the Office of Export Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, within fifteen (15) business days of receipt of a request.
4. See §369.4(b) (2) for instructions on submission of optional quarterly reports.
5. If a request would have the effect of discriminating against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin, as defined in §369.2 of the Export Administration Regulations, it may not be reported quarterly but must be reported individually on Form DIB-630P, in accordance with §369.4(a) of the Export Administration Regulations. Do **not** use this form for reporting such requests.
6. Complete regulations, instructions, and examples of reportable requests are included in Part 369 of the Export Administration Regulations (15 C.F.R. Part 369). Reprints of Part 369 and additional supplies of this form are available without charge from the Office of Export Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, and from Department of Commerce District Offices.

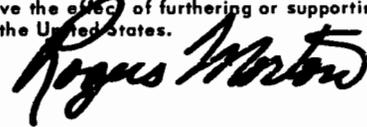
Destinations in the Country Groups referred to above are:

Group S Southern Rhodesia
Group W Poland
Group Y Albania, Bulgaria, Czechoslovakia, East Germany (German Democratic Republic and Soviet section of Berlin), Estonia, Hungary, Latvia, Lithuania, Outer Mongolia, the People's Republic of China, and the U.S.S.R.
Group Z North Korea, North Vietnam, South Vietnam, Cambodia, and Cuba.

**REPORT OF RESTRICTIVE TRADE PRACTICE OR BOYCOTT REQUEST THAT
DISCRIMINATES AGAINST U.S. CITIZENS OR FIRMS ON THE BASIS OF RACE,
COLOR, RELIGION, SEX, OR NATIONAL ORIGIN**

(For reporting requests defined in § 369.2 of the Export Administration Regulations)

A. IMPORTANT. It is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States. All U.S. exporters of articles, materials, supplies, or information, and related export service organizations, (1) are prohibited from taking any action, including the furnishing of information or the signing of agreements, that would have the effect of discriminating against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin; and (2) are encouraged and requested to refuse to take any action, including the furnishing of information or the signing of agreements, that would have the effect of furthering or supporting other types of restrictive trade practices or boycotts against a country friendly to the United States.



Rogers Morton
Secretary of Commerce

B. Reporting is MANDATORY. See detailed instructions on back of form.

C. CONFIDENTIAL. Information furnished herewith is deemed confidential and will not be published or disclosed except as specified in Section 7(c) of the Export Administration Act of 1969 as amended (50 USC app. 2406(c)).

1. Name and Address of U.S. Firm submitting this report:

Name:
Address:
City, State & Zip:
Telephone:

2. Are You: Exporter Bank
 Insurer Shipper
 Forwarder

Other _____

If not exporter, give exporter's:

Name:

Address:

City, State, Zip:

3. Date request was received by me/us:

4. Specify type of request received and attach copy of document in which it appears:

- a. Questionnaire
- b. Invitation to bid
- c. Trade opportunity
- d. Purchase order
- e. Contract
- f. Letter of Credit
- g. Published import regulation
- h. Cable or letter
- i. Consular request
- j. Other (Specify) _____

5. If the request relates to a specific transaction, describe the commodities or technical data involved. (The description of the commodity or technical data may conform to the description on the order or to usual commercial terminology, and may, but need not be, in terms of the Commodity Control List or Schedule B.)

Quantity	Description	Value
----------	-------------	-------

6. Name of country initiating request:

7. The party making the request is:

Name:
Address:
City & Country:

8. To the extent known, give:

Letter of credit no. _____
Customer order no. _____
Exporter's invoice no. _____
Other identifying marks or numbers _____

9. Additional Remarks:

10. I certify that all statements and information contained in this report are true and correct to the best of my knowledge and belief.

Sign here in ink _____ (Signature of person completing report)	Type or print _____ (Name and title of person whose signature appears on line to left)	Date _____
--	--	------------

INSTRUCTIONS

1. Each U.S. exporter or related service organization receiving a request to take any action, including the furnishing of information or the signing of an agreement, that would further or support a restrictive trade practice or boycott fostered or imposed by a foreign country against another country friendly to the United States that has the effect of discriminating against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin is prohibited from complying with such request and is required to report the request to the Department of Commerce. A copy of the document in which the request appears must accompany the report.
2. Reporting is mandatory (50 USC App. 2403(b)). Failure to report subjects the recipient of a request to the penalties prescribed in Section (6) of the Export Administration Act of 1969, as amended (50 USC 2405).
3. This form must be submitted to the Office of Export Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, within fifteen (15) business days of receipt of a request.
4. If a request would further or support a restrictive trade practice or boycott fostered or imposed by a foreign country against another country friendly to the United States, but would not have the effect of discriminating against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin, it must be reported on Form DIB-621P in accordance with § 369.4(b) of the Export Administration Regulations. Do not use this form for reporting such requests.
5. Complete regulations, instructions, and examples of reportable requests are included in Part 369 of the Export Administration Regulations (15 C.F.R. Part 369). Reprints of Part 369 and additional supplies of this form are available without charge from the Office of Export Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, and from Department of Commerce District Offices.



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.


Secretary of Commerce



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,

(signed) Rogers Morton

Secretary of Commerce

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CHIEF COUNSEL
J. THOMAS GREENE
COUNSEL TO THE CHAIRMAN

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.

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Honorable Rogers C. B. Morton
November 26, 1975
Page Two

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 constitutional 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 original Water-gate 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.

Honorable Rogers C. B. Morton
November 26, 1975
Page Three

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 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 grand 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.

Honorable Rogers C. B. Morton
November 26, 1975
Page Four

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

C O P Y

CONGRESS OF THE UNITED STATES
House of Representatives
Special Subcommittee on Legislative Oversight
of the
Committee on Interstate and Foreign Commerce
House Office Building
315 George Washington Inn
Washington, D.C.

September 9, 1960

Mr. F. Bourne Upham
Deputy General Counsel
Department of Commerce
Room 5868, Commerce Building
Washington 25, D. C.

Dear Mr. Upham:

In connection with a study this Subcommittee is making pursuant to its statutory authority, it is requested that the files of the Department relating to International Expeditors, Inc. be made available for examination by the staff of the Subcommittee.

Sincerely yours,

(Signed)

Oren Harris, M. C.
Chairman



U.S. DEPARTMENT OF COMMERCE
Washington, D. C.

COPY

Sep 14 1960

Honorable Oren Harris
Chairman, Special Subcommittee on
Legislative Oversight of the Committee
on Interstate and Foreign Commerce
House of Representatives
Washington, D. C.

Dear Mr. Harris:

This is in reply to your request of September 9 to have certain files of this Department relating to International Expeditors, Inc., made available for examination by a member of the staff of your committee.

The information contained in these files was obtained in confidence under the provisions of Section 6(c) of the Export Control Act of 1949, which reads as follows:

"No department, agency, or official exercising any functions under this Act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information unless the head of such department or agency determines that the withholding thereof is contrary to the national interest."

In view thereof, I shall authorize the information contained in these files to be made available with the express understanding that its source and substance will remain confidential with your committee, and that it will not be disclosed in any manner. The files will be made available for examination at the Department at a mutually agreed upon time.

If you will have a member of your staff call our Deputy General Counsel, Mr. Upham, he will have appropriate arrangements made for the examination of this material.

Sincerely yours,

(signed) Frederick H. Mueller

Secretary of Commerce

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MARIAN A. CZARNECKI
CHIEF OF STAFF

Congress of the United States

Committee on Foreign Affairs

House of Representatives
Washington, D.C. 20515

July 8, 1974

Honorable Frederick B. Dent
Secretary of Commerce
Washington, D.C.

Dear Mr. Secretary:

Because of the interest of the Subcommittee on Europe in recent decisions restricting the export of certain U.S. commodities to the Soviet Union, we plan to undertake a review of the basis and implementation of export control over these commodities. To carry out this assignment it will be necessary to examine certain documents in the Department of Commerce which we understand are considered confidential information and subject to Section 7(C) of the Export Administration Act.

We understand from your staff that a determination by you of national interest is necessary before these documents can be made available. We hereby request that such documents be made available and assure you that we will preserve the confidential nature of the information with the express understanding that such documents and the information contained therein will be given confidential treatment and not be disclosed to anyone other than subcommittee members and their staffs.

This request confirms my oral request for this information made on June 26 to Messrs. Lewis Bowden and Rauer H. Meyer during their testimony before the subcommittee.

Sincerely,

Benjamin S. Rosenthal
Chairman
Subcommittee on Europe

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U.S. DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY
EXECUTIVE SECRETARIAT



C
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August 23, 1974

Honorable Benjamin S. Rosenthal
Chairman, Subcommittee on Europe
Committee on Foreign Affairs
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in reply to your letter of July 8 in which you requested that the Subcommittee on Europe, which is reviewing export controls over certain commodities destined for the Soviet Union and the East European communist countries, be provided access to confidential material acquired by the Department in the course of its administration of the Export Administration Act. This information is subject to Section 7(c) of the Export Administration Act.

I understand that your request is specifically for the details of those transactions, including the names of the companies and products involved, respecting which Department of Defense objection to approval was either sustained or overruled. In view of your express undertaking to preserve the confidential nature of the information and not to disclose it to anyone other than the Subcommittee members and their staff, I hereby determine, in accordance with Section 7(c) of the Export Administration Act of 1969 (50 U.S.C. App. 2406(c)) and Executive Order 11933 of June 4, 1970, that it would be contrary to the national interest to withhold from the Subcommittee on Europe this specific information.

Pursuant to such determination, I am transmitting herewith the desired information.

Sincerely,

(signed) Frederick B. Dent
Secretary of Commerce

Enclosure

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SAM J. ERVIN, JR., N.Y. CHAIRMAN
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HOWARD J. FELDMAN
 CHIEF COUNSEL
 STUART M. STATLER
 CHIEF COUNSEL TO THE MINORITY

United States Senate

COMMITTEE ON
 GOVERNMENT OPERATIONS
 SENATE PERMANENT SUBCOMMITTEE
 ON INVESTIGATIONS
 (PURSUANT TO SEC. 4, S. RES. 241, 93D CONGRESS)
 WASHINGTON, D.C. 20510

April 24, 1974

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U.S. DEPARTMENT OF COMMERCE
 OFFICE OF THE SECRETARY
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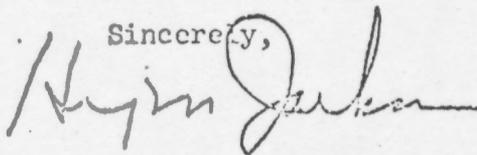
My dear Mr. Secretary:

The Senate Permanent Subcommittee on Investigations is conducting a preliminary investigation into certain aspects of the transfer of technology to the Soviet bloc. We are particularly interested in the transfer of advanced technology, as embodied in materials, methods, plans and training, which would contribute to the military capability of the Soviet Union and its allies.

It would facilitate our investigation if you could supply all the information you hold about applications for licenses and licensees granted to firms to export materials and naked technology to the Soviet Union and Eastern Europe in the areas of computers and associated peripherals and software; semi-conductors including all techniques which bear on the manufacture and design of integrated circuits; aeronautical technology, avionics components and systems, aircraft components and systems, e.g. (hydraulics, composite materials, fasteners and adhesives), aircraft manufacturing technology. We are here requesting both the information that has been submitted to you and the contractual agreements that the companies have signed with the Communist countries. If you will designate which items and part of items are proprietary, we will make sure that no unauthorized persons have access to them.

We would very much appreciate an expeditious response to this request.

Sincerely,



Henry M. Jackson
 Chairman

The Honorable Frederick B. Dent
 Secretary of Commerce
 Washington, D.C. 20230





THE SECRETARY OF COMMERCE
Washington, D.C. 20230

MAY 23 1974

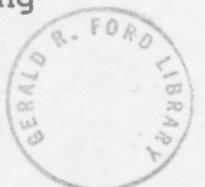
Honorable Henry M. Jackson
Chairman, Senate Permanent Subcommittee
on Investigations
Committee on Government Operations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in reply to your letter of April 24 in which you requested that the Senate Permanent Subcommittee on Investigations, which is investigating certain aspects of the transfer of technology to the Soviet bloc, be provided confidential material acquired by the Department in the course of its administration of the Export Administration Act.

Your request is couched in such broad terms as to involve practically our entire files on export control licensing of computers, semi-conductors, aerospace equipment, and technology related thereto. I wish to cooperate fully with the investigation conducted by your Subcommittee, but I do not believe that Section 7(c) of the Export Administration Act contemplated that the national interest determination required of the administrator of the Act would be so broadly conceived. I am prepared to act on your request by authorizing the release of a sample of licensing data sufficient in character and volume as to be representative of the material in our files. After examining such data, if you conclude that additional information is needed, I would be pleased to consider a further request for specific documents.

Accordingly, I hereby determine in accordance with Section 7(c) of the Export Administration Act of 1969 (50 U.S.C. App. 2406(c) and Executive Order 11933 of June 4, 1970, that it would be contrary to the national interest to withhold from the Senate Permanent Subcommittee on Investigations access to a representative sample of information relating





to applications for licenses and licenses granted respecting the commodity categories cited in your letter. I make this determination on the express condition that all such documents and the information contained therein will be given confidential treatment and not be disclosed to anyone other than the Subcommittee members and their staff.

Pursuant to such determination, I am hereby authorizing Mr. Rauer Meyer, Director of the Office of Export Administration, to release the appropriate documents to the Subcommittee upon request.

Sincerely,

(signed) Frederick B. Dent

Secretary of Commerce

Dear Mr. Chairman:

Your request is couched in such broad terms as to involve practically our entire files on export control licensing of computers, semi-conductors, aerospace equipment, and technology related thereto. I wish to cooperate fully with the investigation conducted by your Subcommittee, but I do not believe that Section 7(c) of the Export Administration Act contemplated that the national interest determination required of the administrator of the Act would be so broadly conceived. I am prepared to act on your request by authorizing the release of a sample of licensing data sufficient in character and volume as to be representative of the material in our files. After examining such data, if you conclude that additional information is needed, I would be pleased to consider a further request for specific documents.

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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, D.C. 20510

May 17, 1974

PAT M. HOLT, CHIEF OF STAFF
ARTHUR M. KUHL, CHIEF CLERK

1974 MAY 20 AM 10 59

U.S. DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY
EXECUTIVE SECRETARIAT

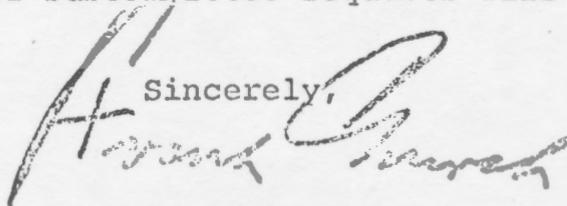
The Honorable
Frederick B. Dent
Secretary of Commerce
Washington, D. C. 20230

Dear Mr. Secretary:

As you already know, the Subcommittee on Multinational Corporations is doing a study of East-West trade and scheduling hearings on this subject in the near future. The principal areas of our interest are: export control, COCOM, the development of BEWT, Commerce input in the policy and operational side of matters relating to East-West trade and over-all discussion of the evolution of U.S. policy and its implications with respect to East-West trade as seen from the Department of Commerce.

Those Subcommittee staff members working on this subject are: Jerome Levinson, Counsel; Geoffrey Shields, Assistant Counsel, Rick Gilmore, Staff Associate, and Karin Lissakers, Staff Associate. I am requesting that the Department lend its full cooperation and assistance to the Subcommittee pursuant to its investigation in this regard. I hope that all Subcommittee requests will be handled promptly.

Sincerely,



Frank Church
Chairman, Subcommittee on
Multinational Corporations



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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, D.C. 20510

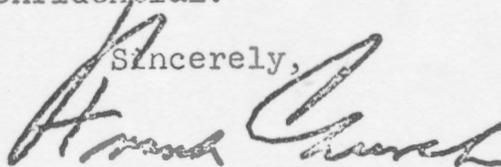
June 10, 1974

The Honorable
Frederick B. Dent
Department of Commerce
Washington, D. C. 20230

Dear Mr. Secretary:

In reference to Mr. Meyer's letter of May 28 and our earlier correspondence, I want to assure you that any Subcommittee requests for proprietary information will be held strictly confidential.

Sincerely,



Frank Church
Chairman, Subcommittee on
Multinational Corporations

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U.S. DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY
EXECUTIVE SECRETARIAT



JUL 5 1974

Honorable Frank Church
Chairman, Subcommittee on
Multinational Corporations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your letters of May 17, 1974, and June 10, 1974, in which you requested that the Senate Subcommittee on Multinational Corporations receive the Department's assistance and cooperation in the Subcommittee's study on East-West Trade. You have undertaken to hold strictly confidential any proprietary information we make available that was obtained by us pursuant to our administration of the Export Administration Act.

I understand that your area of interest insofar as export control information is concerned will not be couched in such broad terms as to involve our entire files on export control licensing, but rather will be specifically defined. Accordingly, I hereby determine, in accordance with Section 7(c) of the Export Administration Act of 1969 (50 USC, App. 2406(c)) and Executive Order 11933 of June 4, 1970, that it would be contrary to the national interest to withhold from the Senate Subcommittee on Multinational Corporations access to information relating to specific applications for licenses and licenses granted. I make this determination on the express condition that such documents and the information contained therein will be given confidential treatment and not be disclosed to anyone other than the Subcommittee members and their staff.

Pursuant to such determination, I am hereby authorizing Mr. Rauer H. Meyer, Director of the Office of Export Administration, to release the appropriate documents to the Subcommittee upon request.

Sincerely,

(Signed) Frederick B. Dent

Secretary of Commerce





THE SECRETARY OF COMMERCE
Washington, D.C. 20230

December 1, 1975

Honorable Harley O. Stagers
Chairman, Committee on Interstate
and Foreign Commerce
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

The purpose of this letter is to set forth the basis for my declining to disclose the documents subpoenaed by your Subcommittee on Oversight and Investigations.

As you know, these documents are reports filed by United States exporters who have received requests for information originating in Arab Nations which participate in the secondary boycott of the State of Israel. These documents contain considerable details of individual commercial transactions, some of which have not yet been consummated, and for this reason are deemed confidential under Section 7(c) of the Export Administration Act of 1969. The issue of disclosure of information deemed confidential under Section 7(c) has nothing to do with the secondary boycott of the League of Arab Nations against the State of Israel and this controversy could just as easily have arisen over the disclosure of any other export information collected under the Act, such as for example, the proprietary data submitted by an exporter in export license applications, pursuant to the licensing requirements imposed under the Act on grounds of national security, foreign policy or short supply. Yet, because of my refusal to violate the mandate of Congress contained in Section 7(c), I have been charged by certain members of the Congress and representatives of the Press as supporting the secondary boycott of Israel and your committee is scheduled to meet tomorrow to consider referring to the House a citation for contempt of Congress voted by the Subcommittee on Oversight and Investigations.

Although the boycott has nothing to do with my declining to comply with the Subcommittee's subpoena, I would first like to set the record straight as to my position regarding this boycott.



The United States policy in opposition to this boycott contained in Section 3(5) of the Act, was enacted in 1965. Upon becoming Secretary of Commerce seven months ago, I went on record as fully endorsing this policy. In view of my personal concerns about the manner in which the Department of Commerce was complying with the spirit and intent of the Act, and in light of requests by the Congress that the Department review its position, the following steps were taken:

- o The Department instituted the most massive publicity campaign since 1965, to inform U.S. exporters of the United States policy enounced by the Congress, to request and encourage exporters not to comply with boycott-related requests for information, and to remind them of the reporting requirements under our Export Administration Regulations. As part of this campaign, copies of the pertinent parts of our regulations were mailed out to some 30,500 firms listed in the American International Traders' Index and several articles were published in Commerce Today.
- o Coupled with this publicity campaign, all violations of the reporting requirements have been investigated and, as a result thereof, 212 firms have been warned, civil penalties have been imposed against four firms, and charges are pending against two additional firms.
- o Simultaneously, I instituted a policy of referring to the Departments of State and Justice for appropriate action any boycott-related request for information which involved discrimination against Americans on religious or ethnic grounds.
- o In September, I amended the reporting requirements under our regulations to require reporting firms to indicate whether or not they had complied, or intended to comply, with the reported boycott-related requests for information. Since

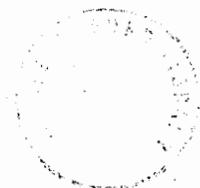


1965, the answer to that question in the Department's reporting form had remained optional, and had not been answered by many reporting firms. A copy of Export Administration Bulletin No. 146 of September 25, which implements this decision, is enclosed for your information.

- o On November 20, acting on my recommendation, the President directed that the regulations be amended to prohibit exporters from complying with any boycott-related requests which involved discrimination on the basis of race, color, religion, national origin or sex, and also to require related service organizations such as banks, insurers, freight forwarders, and shipping companies to report the receipt of any boycott-related requests directly to the Department. A copy of Export Administration Bulletin No. 149 of November 20, which implements this directive, is also enclosed.
- o On November 28, I announced that effective December 1, the Department would cease to disseminate trade opportunities known to contain restrictive trade clauses or boycott-related provisions against another country friendly to the United States. I am enclosing a copy of Circular No. 21 of November 26, which sets out this new policy.

Mr. Chairman, I believe that these actions speak for themselves, and I will not dignify with any further comment, the allegations of those who would have the Congress and the American people believe that I am covertly supporting the boycott.

I would now like to turn to the issue at hand, that is my inability to make the national interest determination required under Section 7(c) of the Act to allow the unrestricted disclosure of the reports filed by U.S. citizens under an express pledge of confidentiality.



Section 7(c) which was first enacted in 1949, is clear on its face. In effect, it prohibits me from publishing or disclosing to anyone, information obtained under the Act, which is deemed confidential or submitted in confidence, unless I can determine in good faith that the withholding thereof would be contrary to the national interest. I did not write this law, nor can I change it for the sake of avoiding a political confrontation. If the Congress, after twenty-five years, believes the law should be changed, then it should do so by legislative amendment and not by citing me for contempt of Congress in discharging my responsibilities under a law passed by the Congress. There is a disagreement between the Attorney General of the United States and three law professors selected by the Subcommittee on Oversight and Investigations, as to whether or not the confidentiality provisions of Section 7(c) are intended to apply to requests by Congressional Committees. The views of these three professors were submitted to the Attorney General. After careful consideration of the issues raised, on November 11, the Attorney General reiterated to Chairman Moss his initial opinion that Section 7(c) applied to requests by the Congress. This is not a question of executive privilege but of statutory construction. It is a purely legal issue and should therefore be determined by the courts. I have repeatedly stated that I would abide by a court decision, but until such time as a court decides otherwise, I must rely on the advice of the Attorney General of the United States.

Mr. Chairman, as a former member of the House, I have the utmost respect for that body and I fully recognize its right to access to the information which it requires to perform its legislative functions. From the day when the Subcommittee on Oversight and Investigations first requested the documents which it has subpoenaed, I sought to cooperate with the Subcommittee to the fullest extent permissible under Section 7(c) of the Act. I promptly transmitted to the Subcommittee complete statistical summaries of the information contained in these reports. Upon being advised by Chairman Moss that this information was inadequate, I offered to provide the Subcommittee with copies of all the reports, after deleting the names of the reporting firms and details of the individual transactions. All of the requests from the Subcommittee

for information and documents not involving the confidentiality provisions of Section 7(c) have been promptly complied with. On November 24, in a last effort to settle amicably this controversy with Chairman Moss, I wrote him urging that he seriously consider two avenues which would avoid a settlement of the issue in a political forum. First, I requested him to reconsider the suggestion made by a member of his Subcommittee on September 22 --which he had then rejected out-of-hand -- to seek a judicial determination of whether or not the confidentiality provisions of Section 7(c) apply to requests by Committees of the Congress. Second, I offered to make the national interest determination required under Section 7(c) of the Act, to provide the Subcommittee on a confidential basis with copies of all the reports which it had requested. I am enclosing a copy of this letter for your information.

On November 26, I received the Chairman's response, a copy of which is also enclosed. In this letter, he rejects my first suggestion on the grounds that judicial review may be obtained more promptly through a writ of habeas corpus following my arrest, or in the course of a criminal prosecution to be instituted against me under 2 USC 192. Incredibly, Chairman Moss concludes his letter with the statement:

"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."

Mr. Chairman, I respectfully submit that prompt judicial review of this issue can, and should, be obtained with the consent of the Committee. This judicial review would not delay in any way the Subcommittee's access to the information which it has requested, since I stand ready and willing to provide today on a confidential basis all the reports which the Subcommittee has requested. If the court were to conclude that Section 7(c) does not apply to the Congress, the Committee would then be free to disclose or publish these as it sees fit. On the other hand, if the court upholds the Attorney General's interpretation of that statutory provision, then it would be up to the Congress to amend the law, if it considers such an amendment to be in the national interest.

However, Chairman Moss has also rejected my offer to provide these documents on a confidential basis. He cites several reasons for his rejection.

His first reason is that it would preclude the Subcommittee from releasing this data to Federal prosecutors, if violations of law were discovered. On August 6, 1975, I made the national interest determination required under Section 7(c) to authorize representatives of the Department of Justice to have access on a confidential basis to all the reports of boycott-related requests filed with the Department, in connection with their investigation of possible civil rights and antitrust violations. On October 15, I made a second national interest determination to provide members of the Office of the U.S. Attorney for the Southern District of New York, access to these documents on the same basis. Thus, although federal prosecutors have already reviewed all the documents which Chairman Moss has requested, I would have no difficulty in stipulating in my national interest determination to Chairman Moss, that the Subcommittee could transmit any of those documents to the Department of Justice for whatever additional investigations it saw fit to request.

The second reason given by Chairman Moss is that a pledge of confidentiality would place unconstitutional limits on the authority of the Congress to discharge its legislative and oversight responsibilities. Frankly, Mr. Chairman, I find this argument difficult to comprehend when previous and current Chairmen of Committees of the Congress have found no difficulty in providing such assurances of confidential treatment over the last 25 years, thereby recognizing the sensitivity of information which is deemed confidential or submitted in confidence pursuant to the Export Administration Act and its predecessor statute.

To give but a few examples, this restriction on the use of the information did not raise constitutional difficulties when Congressman Oren Harris, then Chairman of the House Special Subcommittee on Legislative Oversight, requested access to files of this Department relating to International Expeditors Inc.; nor did it concern Congressman Benjamin Rosenthal in August of last year, when he requested on behalf of the House Subcommittee on Europe, certain confidential

material pertaining to commodities licensed for export to the Soviet Union. On the Senate side, it did not bother Senator Henry Jackson in April of last year, when he requested, on behalf of the Senate Subcommittee on Permanent Investigations, access to applications for licenses issued to export material and technology to the Soviet Union and Eastern Europe; nor did it raise difficulties with Senator Frank Church, in July of last year, when he requested, on behalf of the Senate Subcommittee on Multinational Corporations, access to export licensing documents required by the Subcommittee in connection with its study on East-West Trade. I am enclosing copies of the letters sent to the Department by these four Chairmen, and the Department's responses thereto. There are other examples available, Mr. Chairman, which I will be most happy to provide, if you wish.

Would any one seriously believe that those Committee Chairmen are men capable of abdicating the constitutional prerogatives of the Congress? I submit, that in providing the Department with the necessary assurances of confidentiality, they acted as responsible officials who are sworn to uphold the laws of the United States, including the confidentiality provisions contained in Section 7(c) of the Export Administration Act.

In concluding, Mr. Chairman, I would urge your Committee not to be swayed by emotion or political expediency and to recognize that the issue before you is not one of contempt, but rather of the scope of Congress' own statute. I sincerely believe that it is vital to the welfare of our government and of our Nation, that differences which arise between the legislative and executive branches be resolved in a fair and responsible manner. I would hope that the solutions suggested in my letter of November 24 to Chairman Moss would be considered by the full Committee as the fair and responsible way to resolve this matter.

Sincerely,

Secretary of Commerce

Enclosures