The original documents are located in Box 36, folder "Oil (2)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

For Dudley —
Review —
I don't know
what else

THE WHITE HOUSE

WASHINGTON

October 7, 1974

MEMORANDUM FOR: PHILIP BUCHEN

FROM: Glenn Schleede

SUBJECT: Navy Assistant Secretary Bowers' letter concerning a contract for the sale of natural gas to Barrow (Alaska) Utilities, Inc.

As far as I know, the law governing contracts for the sale of resources from the Naval Petroleum Reserves doesn't contemplate the kind of situation described in the attached letters.

Secretary Bowers' staff has kept the Armed Services Committees informed - as well as Senators Gravel and Stevens and Congressman Young. They haven't brought the matter to the attention of Justice since they don't have a new contract to submit for approval.

GAO has looked into the situation at Senator Gravel's request and apparently concluded that the price should be 76¢ per MCF -- rather than 77¢.

Bowers' staff indicates that they believe that Barrow Utilities will sign a contract soon. Navy isn't expecting a response to this letter. Unless you believe further action is necessary, I assume this can be filed without action and that we merely await the new contract for approval.

cc: Mike Duval

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20350

SEP 1974

The President
The White House
Washington, D. C. 20501

Dear Mr. President:

In order to comply with the statutory requirements regarding the disposition of any products from the Naval Petroleum Reserves (10 U.S.C. 7430), I am advising you that I intend to extend for a period of sixty (60) days the present contract with Barrow Utilities, Inc. (Contract No. NOd-9918) which expires on October 1, 1974. This contract provides for the sale of natural gas for the use of the natives of the Village of Barrow, Alaska, as provided in 10 U.S.C. 7422(c).

The reason for this extraordinary emergency action is that Barrow Utilities, Inc. (BUI), in spite of their formal bid, has so far refused to execute a new contract because they are protesting an increase in the base price per MCF of gas as set by the Navy. The contract that expires on October 1, 1974 provides for $.50 per MCF and the new contract would provide for $.77 per MCF. On May 25, 1974, the Navy formally requested proposals for a new contract for the sale of the gas with the increased base price. On June 27, 1974, BUI submitted the only bid received in response thereto. Although Navy accepted BUI's bid on July 10, 1974, the new contract cannot become effective until it is executed by the parties, consultation with the House and Senate Armed Services Committees has been accomplished, and you have approved it.

This temporary extension will permit exploration of such equities as may be relevant to BUI's protests and completion of the required formalities in the accomplishment of the new contract. The extension of the old contract is being made on the condition that the new contract will be effective on October 1, 1974, and will be retroactively applied to that date.

This expedient will also avoid the obviously undesirable consequences of denying gas to the community of Barrow during this interim period.

For your information with respect to the position of Navy in this matter, I am enclosing a copy of my last letter to BUI dated August 25, 1974. Since that time, we have conferred with officials from BUI at the request of Senator Stevens and Congressman Young of Alaska and we are reasonably certain that a satisfactory agreement will be concluded in the immediate future.

In accordance with the statutory requirements of 10 U.S.C. 7431, I have consulted with the House and Senate Armed Services Committees in this regard. The Attorney General of the United States approved the terms of the contract now being extended by his opinion of September 16, 1969.

The new formal contract will be submitted for your approval when all necessary preliminary steps have been accomplished.

Sincerely,

Jack L. Bowers

JACK L. BOWERS
Acting Secretary of the Navy
For Naval Petroleum and Oil Shale Reserves

Encl:
(1) Acting SECNAV ltr of August 29, 1974

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20350

29 AUG 1974

Mr. Nelson Ahvakana, President
Barrow Utilities, Inc.
P.O. Box 444
Barrow, Alaska, 99723

Dear Mr. Ahvakana:

This will acknowledge your letter of August 12, 1974, regarding the contract for the purchase of natural gas from the South Barrow Gas Field of Naval Petroleum Reserve No. 4.

As you know from information previously supplied to you by members of my staff at the Office of Naval Petroleum and Oil Shale Reserves, the Navy was required to increase the price of the gas from $.50 per MCF to $.77 per MCF so as to reimburse the Government for expenditures in making the gas available. Any other course of action would require funds from the Congress to subsidize this activity for which there is no budget precedent. The amortization schedule furnished to you showed the development and operational costs for the South Barrow Gas Field beginning with fiscal year 1964, the year that Barrow Utilities, Inc., began to buy gas from the field. This schedule also showed that the cost to the federal government of development and operation of the field during the five-year period of FY 1970-FY 1974 averaged $.77 per MCF, and that this figure did not include any charge for the value of the natural resource itself. The $.77 per MCF average unit cost was computed by dividing the total operating and amortized development costs by the total gas produced during this period. A copy of the amortization schedule is enclosed for your ready reference.

The increase in price appears to be fair and equitable both to the people of Barrow and to the government. In 1962, when the law was changed to permit the Navy to sell gas to the People of Barrow, fuel oil was being shipped into Barrow and sold at an average price of $.60 per gallon. It was estimated at that time that using gas would reduce native fuel costs by two-thirds. Presently, the price of fuel oil at Barrow is about $1.00 per gallon. On a BTU heat equivalent basis, $1.00 per gallon fuel oil equates to about $7.00 per MCF of natural gas. It should also be noted that the Barrow Village Council in Resolution 12, dated May 23, 1962, expressed its assurance that the natives would use the natural gas even if priced at $1.50 to $2.00 per MCF.

Federal statutes do not authorize, much less require, sale of this natural gas to Barrow Utilities, Inc., on an exclusive basis. I am required by law, i.e. Section 7430 of Title 10, United States Code, to sell products from the Reserve by public sale to the highest qualified bidder at the time. While it is a correct statement of legal principle that if, in response to an invitation for bids, a single bid only is received, the United States is required to negotiate to assure that the bid offers the best terms to the Government. This general principle does not require or permit negotiation at large, and would require rejection of the bid if it does not offer, in the case of a sale, the minimum acceptable price as well as other terms considered essential by the vendor government. Negotiations, therefore, are not required or permitted if they reasonably could not be expected to result in more favorable terms to the Government.

I read with interest your letter of June 27, 1974, in which you forwarded your bid proposal, and on July 10, 1974, I accepted your proposal and forwarded triplicate original copies of the sales contract to you for execution on behalf of your corporation. If the contract is not properly signed by Barrow Utilities, Inc., and returned to the Navy, then it appears we have no choice but to declare the bid bond forfeited and, on expiration of the existing contract on October 1, 1974, to stop delivery of gas to Barrow Utilities, Inc. I have no authority under existing statutes controlling my responsibilities for the Naval Petroleum Reserves to dispose of products from the Reserves in any manner other than that prescribed by such statutes and which I have set forth herein.

I trust this matter will be resolved to our mutual satisfaction.

Sincerely,

Jack L. Bowers

Jack L. Bowers
Acting Secretary of the Navy
For Naval Petroleum and Oil Shale Reserves

Encl:
(1) Schedule of Natural Gas Costs

Copy to: w/encls
Senator Stevens
Senator Gravel
Congressman Young

THE WHITE HOUSE

WASHINGTON

Date 3/4/75

TO: Phil Buchen

FROM: DUDLEY CHAPMAN

These documents are from the study that Phil Areeda & I worked on in 1969-70. They were deposited with instructions as to which are releasable & which not. Those withheld should clearly fall within the exemption for internal memos & drafts.

THE WHITE HOUSE

WASHINGTON

March 4, 1975

MEMORANDUM FOR: JIM CONNOR

THROUGH: PHIL BUCHEN P.W.B.

FROM: DUDLEY CHAPMAN DC

SUBJECT: Request under Freedom of Information Act for records etc. of President's Cabinet Task Force on Oil Import Control

Attached is a reply for your signature in response to the Freedom of Information Act request of Robert E. Jordan, III.

THE WHITE HOUSE

WASHINGTON

March 4, 1975

Dear Mr. Jordan:

This is in response to your Freedom of Information request of February 28, 1975, for documents of the President's Cabinet Task Force on Oil Import Control.

I am informed by White House Counsel that all of those documents are within the custody of the National Archives, and that your request should, therefore, be directed to the Archivist.

Sincerely,

James E. Connor
Secretary to the Cabinet

Mr. Robert E. Jordan, III
Steptoe & Johnson
1250 Connecticut Avenue
Washington, D.C. 20036

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 3, 1975

MEMORANDUM TO: PHIL BUCHEN

FROM: JIM CONNOR

SUBJECT: Request under Freedom of Information Act for records etc. of President's Cabinet Task Force on Oil Import Control

Attached is a letter from Mr. Robert E. Jordan, III, of Steptoe & Johnson requesting certain materials under the Freedom of Information Act. I would appreciate advice from the Counsel's office as to how to proceed and preparation of a draft interim reply, if appropriate, acknowledging receipt of the request.

Encl.

3/3/

STEPTOE & JOHNSON

ATTORNEYS AT LAW

1250 CONNECTICUT AVENUE
WASHINGTON, D.C. 20036
(202) 223-4800
TELEX: 89-2503

February 28, 1975

Mr. James E. Connor
Secretary to the Cabinet
The White House Office
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Connor:

Pursuant to the provision of the Freedom of Information Act, Pub. L. No. 93-502 (Nov. 21, 1974), amending 5 U.S.C. § 552 (1970), we hereby request copies of all documents reflecting the document retention/destruction systems of the President's Cabinet Task Force on Oil Import Control which systems have been promulgated pursuant to 44 U.S.C. ch. 29, 31, 33 (1970), C.F.R., Subpart 101-11.4-Disposition of Federal Records, and any internal regulations or policies of the President's Cabinet Task Force on Oil Import Control relating to the document retention/destruction systems. Such documents should include:

(1) All General Record Schedules promulgated by the Administrator of the General Services Administration which govern the retention/destruction of all documents generated by, or in the control and/or possession of the President's Cabinet Task Force on Oil Import Control.

(2) All Record Control Schedules promulgated by the President's Cabinet Task Force on Oil Import Control which govern the retention/destruction of all documents generated by, or in the control and/or possession of the President's Cabinet Task Force on Oil Import Control.

(3) Any and all other documents including memoranda, correspondence, and policy statements, which reflect the document retention/destruction systems affecting all documents generated by or in the control and/or possession of the President's Cabinet Task Force on Oil Import Control.

We would appreciate your prompt attention to this request. In the event that all the requested materials are not immediately available, we request that you immediately furnish what materials are available and advise us as to when the remaining materials will be furnished. We expect all responses to this request to be within the time limitations of the newly-amended Freedom of Information Act and requested materials to be made "promptly available" in accordance with the terms of the Act.

We are prepared to pay any fees which may be reasonably required for the production of this information and which are in accordance with the provisions of the Freedom of Information Act. Whenever you have material to provide pursuant to this request, if you will advise me of the fee involved, I will see that our check is tendered promptly.

If there are any questions concerning this request, please feel free to call me. Thank you for your assistance with this matter.

Very truly yours,

Robert E. Jordan

Robert E. Jordan, III

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

MAR 03 1975

MEMORANDUM FOR: Frank G. Zarb
Administrator

FROM: Robert E. Montgomery, Jr. REM
General Counsel

SUBJECT: Proposed Modification in Oil Import Fee

I. Deferral of Fee Increases

Attached is a proposed amendment to the Proclamation which would defer the increases in the supplemental fee scheduled for March and April. No set time has been established in the amendment but the deferral could be for 60 or 90 days, depending on how much time you feel is appropriate. The net effect would be to leave in place the fees imposed February 1.

You should note that although importers of products would not pay any supplemental fees, they would pay the 63¢ fee imposed under the old program to the extent that they are not exempted plus applicable tariffs. The tariff may be offset against the fee, but since most historical importers do not pay the 63¢ fee, the tariff will be a burden which such importers did not bear before February 1. In general the tariffs are small except for motor fuel. (See Table 1)

There is some question whether the President, acting pursuant to section 232, can eliminate a congressional tariff and then substitute a fee. Since the tariff schedule with its special weight on fuel is in general consonant with overall FEA policy, we would prefer to avoid this problem and not change the tariff. The proposed Proclamation change would allow the Administrator to provide that when duties exceed the amount of fees payable within a month, the excess amount may be carried forward and applied against fees in subsequent months. This should reduce the burden of the tariffs.

II. Other Possible Amendments

There are two other items which should be treated in any Proclamation change and to the extent possible we would like to incorporate them in any amendment. These are:

(1) Changing the treatment of fees collected on imports into Puerto Rico on the basis of your discussions with the Governor, and

(2) Adjusting the treatment of crude oil imported into foreign trade zones so that such refiners may pay the fees on their crude imports rather than on their products. This change is necessary to take care of the problem of HIRI in Hawaii.

Other changes which we may wish to make in the near future, e.g., treatment of asphalt, would not require an amendment of the Proclamation.

Attachment
Table 1
Proposed amendment

D R A F T

March 3, 1975

THE WHITE HOUSE

AMENDING PROCLAMATION NO. 3279, RELATING TO IMPORTS OF PETROLEUM AND PETROLEUM PRODUCTS

- - - - - - - - -

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS, I judge it necessary and consistent with the national security, taking into account the economic welfare of the Nation, that provision be made to defer scheduled increases in the fees applicable to imported petroleum and petroleum products for a period of _____ days.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution and the laws of the United States, including Section 232 of the Trade Expansion Act of 1962, as amended, do hereby proclaim that, effective as of March 1, 1975, Proclamation No. 3279, as amended, is hereby further amended as follows:

Section 1. Subparagraphs (iii), (iv), and (viii) of subparagraph (1) of paragraph (a) of section 3 are amended to read as follows:

(iii) with respect to imports of crude oil, natural gas products, unfinished oils, and all other finished products (except ethane, propane, butanes, and asphalt) entered into the customs territory of the United States on or after February 1, 1975, there shall be a supplemental fee per barrel of $1.00, rising to $2.00 on imports entered on or after MAY 1, and to $3.00 on imports entered on or after JUN 1;

(iv) with respect to the fees imposed pursuant to paragraphs 3(a)(1)(i)-(iii), the amount of such fees shall be reduced, on a monthly basis, by an amount equal to any applicable duties paid less any drawbacks received during the same period, except that where duty drawbacks exceed the duty paid during that period, the net differences shall be applied to subsequent periods; provided that when the duty less drawbacks exceeds the fee imposed, the Administrator may provide that any excess may be used to reduce fees payable in subsequent months;

(viii) with respect to licenses issued pursuant to paragraph 3(a)(1)(iii) for imports other than (A) crude oil as defined for purposes of the Old Oil Allocation Program which is imported for refining or (B) products refined in a refinery outside of the customs territory as to which crude oil runs to stills would qualify a refiner to receive entitlements under the Old Oil Allocation Program, the Administrator may by regulation reduce the fee payable by the following amounts, or by such other amounts as he may determine to be necessary to achieve the objectives of this Proclamation and the Emergency Petroleum Allocation Act of 1973:

- for imports entered into the United States customs territory during the months of February through ________, 1975, $1.00 per barrel;

- for imports entered during the month of _______, 1975, $1.40 per barrel;

- for imports entered during the month of _______, 1975, and thereafter, $1.80 per barrel.

TABLE 1

TARIFFS

Substances	Cents Per Barrel
Crude oil, distillate, and residual fuel oil (testing less than 25°)	5.25
Crude oil, distillate, and residual fuel oil (testing more than 25°)	10.5
Kerosene (except motor fuel)	10.5
Naphtha	10.5
Motor fuel (including No. 2 when used as fuel)	52.5

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

MAR 03 1975

MEMORANDUM FOR PHILLIP AREEDA
Counsel to the President

FROM: Robert E. Montgomery, Jr.
General Counsel

SUBJECT: Proposed Modification in Oil Import Fee

Attached per our conversation is a copy of the draft proclamation change, along with my cover memorandum to Frank Zarb.

Mr. Zarb does want to include the two additional changes regarding Puerto Rico and Hawaii in any proclamation amendment and we expect to have these further amendments prepared by c.o.b. today, at which time I will send them over.

Let me know if you would like to meet to discuss this.

Thanks.

Attachments

THE WHITE HOUSE

WASHINGTON

March 7, 1975

Mr. Buchen,

I checked with Dudley on the "Proposed Modification in Oil Import Fee" and he says a proclamation has been issued.

He and Mr. Areeda signed off on it.

Shirley

For filing
P

94TH CONGRESS
1ST SESSION

S. CON. RES. 54

IN THE SENATE OF THE UNITED STATES

JULY 19 (legislative day, JULY 10), 1975

Mr. MANSFIELD (for himself and Mr. HUGH SCOTT) submitted the following concurrent resolution; which was ordered held at the desk

JULY 21, 1975

Considered and agreed to

JULY 22 (legislative day, JULY 21), 1975

Reconsidered and agreed to by unanimous consent

CONCURRENT RESOLUTION

Providing for a conditional adjournment of the Congress from August 1, 1975, until September 3, 1975.

Resolved by the Senate (the House of Representatives concurring), That when the two Houses adjourn on Friday, August 1, 1975, they stand adjourned until 12 o'clock noon on Wednesday, September 3, 1975, or until 12 o'clock noon on the second day after their respective Members are notified to reassemble in accordance with section 2 of this resolution, whichever event first occurs.

SEC. 2. The Speaker of the House of Representatives and the President pro tempore of the Senate shall notify the Members of the House and the Senate, respectively, to reassemble whenever in their opinion the public interest shall

V

warrant it or whenever the majority leader of the House and the majority leader of the Senate, acting jointly, or the minority leader of the House and the minority leader of the Senate, acting jointly, file a written request with the Clerk of the House and the Secretary of the Senate that the Congress reassemble for the consideration of legislation.

SEC. 3. During the adjournment of both Houses of Congress as provided in section 1, the Secretary of the Senate and the Clerk of the House, respectively, be, and they hereby are, authorized to receive messages, including veto messages, from the President of the United States.

9/22/75
At Mr. Buchen's request, copy was given to Bobbie Kilberg

Oil

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington, D.C. 20530

August 8, 1975

MEMORANDUM FOR PHILLIP BUCHEN
Counsel to the President

Re: The effect of a Congressional vote to override Presidential veto of S. 1849

This is in response to your request for the opinion of this Office concerning the legal effect of a possible belated Congressional override should the President veto S. 1849, Title I of which extends the Emergency Petroleum Allocation Act, 15 U.S.C. 751-756 (the Act). Under Section 4(g)(1) of the Act, as amended, Pub. L. No. 93-511, 88 Stat. 1608, any regulation promulgated under section 4(a) of the Act is scheduled to terminate on August 31, 1975. 15 U.S.C. 753(g)(1). Section 102 of S. 1849, the extension of the Act passed by Congress on July 31, 1975, states simply,

> Section 4(g)(1) of the Emergency Petroleum Allocation Act of 1973 is amended by striking out "August 31, 1975," wherever it appears and inserting in lieu thereof "March 1, 1976."

Since Congress has recessed until September 3, 1975, the possibility has arisen that should the President veto the extension, the veto may be overridden subsequent to the Act's expiration on August 31, 1975.

For the reasons set forth in this memorandum, we conclude that, as a theoretical legal matter, most of the harm that could occur during a hiatus between a veto and veto override could be undone by subsequent retroactive revival of the Act and regulations issued thereunder. Penalties could not be assessed, however, for conduct occurring during such a hiatus and this absence of enforcement power during that period may serve as an incentive for some, particularly small suppliers and local retailers, to "make a killing." Moreover, the problems involved in retroactively restoring controls and enforcing such a restoration may be enormous. The resources do not exist in either FEA or this Department to seek out and undo each and every action taking advantage of temporary decontrol. Further, the nature of the products subject to regulation is such that sales consummated, shipments made or fuel actually used cannot be reallocated or redirected in all instances.

These practical problems cannot be avoided if a hiatus occurs. The hiatus can be avoided, of course, by signing the bill, under protest, or by congressional action prior to August 31, 1975. With respect to the latter course, Congress could be reconvened either at the call of the President or at the call of the Speaker and President pro tempore pursuant to the terms of the adjournment resolution of July 19, 1975, a copy of which is attached.

REVIVAL

Should an override occur after August 31, it is our view that S. 1849, which would then become law, would revive the Act and the regulatory authority thereunder. As stated in Kersten v. United States, 161 F.2d 337 (10th Cir. 1947), which dealt with revival of the Emergency Price Control Act of 1942,

> Congress may revive or extend an Act by any form of words which makes clear its intention so to do.

161 F.2d at 338. See also, Woods v. Cobleigh, 75 F. Supp. 125 (D. N.H. 1947). Congress' language in this case and its passage of the bill prior to the date of expiration of the Act render unmistakeable its intent to continue the Act's effectiveness until March of 1976. 1/ It appears equally clear that the regulation in effect on August 31, 1975, was intended to continue. Thus both the Act and its regulations would be revived by operation of the Congressional override.

RETROACTIVITY

From the nature of the extension provision (amendment

1/ Section 1 of the Price Control Extension Act of 1946 discussed in Kersten, supra, the section effecting revival, was in exactly the same form as the provision here at issue.

of the termination date which was still in the future at the time the Act was passed) and from the legislative history concerning the intended interpretation of the Act should a late override be necessary, see 121 Cong. Rec. H. 7953-H. 7958 (daily ed.), it is evident that Congress intended no hiatus in regulatory authority. Continuity, in the case of a post expiration override, would require retroactivity. Thus the following colloquy occurred on the floor of the House on July 31, 1975:

> Mr. Dingell. Mr. Speaker, I have a question I would like to direct to the Chairman of the Committee in light of the comments I have raised.
>
> There is a possibility of a veto of this extension. If a veto of this legislation does occur, there is a possibility that there would be a hiatus or a brief period during which there would be no authority to enforce the allocation and price control regulations relating to petroleum products, to supply relationships, to allocations and to entitlements.
>
> Mr. Speaker I am satisfied on the basis of reading the language of S. 1849 that it is the intent of the Congress that the extension of the allocation Act included in S. 1849 take effect immediately and retroactively in the event of a veto and an override of that veto and that there be no hiatus or gap during which violations of these regulations would not be subject to civil sanctions. Am I correct?
>
> Mr. Staggers. Mr. Speaker, the gentleman is correct.

121 Cong. Rec. H. 7954. (daily ed.) 2/

2/ Manifestations of legislative intent at the time of the override, of course, may have a significant bearing on this question.

EX POST FACTO CLAUSE

In our opinion the courts will endeavor to implement the Congressional intent that the extension be retroactive to the extent that such intent can be carried out without repugnancy to the Constitution. Irrespective of the intent of Congress, full retroactivity is not constitutionally possible. Since Article I, section 9, Clause 3 prohibits passage of _ex post facto_ laws, criminal sanctions subsequently imposed for conduct occurring within the hiatus would be barred. _Calder_ v. _Bull_, 3 U.S. 386 (1798). Furthermore despite express congressional intent to the contrary, see 121 Cong. Rec. H. 7984 (daily ed. July 31, 1975) (remarks of Mr. Dingell), H. 7955 (remarks of Mr. Eckhardt), imposition of civil penalties would also be barred. _Ex parte Garland_, 71 U.S. 333, 373 (1966); _Burgess_ v. _Salmon_, 97 U.S. 381 (1878) _Cummings_ v. _Missouri_, 71 U.S. 277, 320 (1866); _Hiss_ v. _Hampton_, 338 F. Supp. 1141 (D.D.C. 1972). 3/ In our view, the private treble damage action provided in Section 210(b) of the Economic Stabilization Act of 1970, _as amended_, 12 U.S.C. 1904, note (incorporated by 15 U.S.C. 754) would not be available.

The _ex post facto_ clause, however, is limited in its application to retroactive imposition of punishment, see _Calder_ v. _Bull_, _supra_, and retroactive regulatory legislation is controlled by the substantially more flexible standard of the due process clause of the fifth amendment. Retroactive regulatory legislation controlled by the fifth amendment may take two forms:

3/ Congress may impose disabilities for prior conduct if "the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession." _De Veau_ v. _Braisted_, 363 U.S. 144, 160 (1960). Thus if the disability has a future regulatory effect its imposition for prior conduct excapes _ex post facto_ clause condemnation. However there can be no future regulatory effect inherent in the imposition of treble damages for conduct occurring in a unique situation such as the potential hiatus under discussion. Retroactive punishment, civil or otherwise, for conduct occurring during the hiatus has no reasonable bearing upon regulation of conduct once the regulatory scheme has been reestablished.

(1) Attachment of new legal rights, duties or non-penal, civil liabilities to already completed transactions and

(2) Prospective redefinition of preexisting obligations, e.g., declaration that prior contracts are henceforth unenforceable.

See Hochman, "The Supreme Court and the Constitutionality of Retroactive Legislation," 73 Harv. L. Rev. 692 (1960). 4/

IMPAIRMENT OF CONTRACTS

There is now little question concerning Congressional power to abrogate or redefine contractual obligations entered into prior to the passage of the legislation. As stated in Norman v. B&O R.R., 294 U.S. 240, 307-10 (1935)

> Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them. *** The principle is not limited to the incidential effect of the exercise by the Congress of its constitutional authority. There is no constitutional ground for denying to the Congress the power expressly to prohibit and invalidate contracts although previously made, and valid when made, when they interfere with the carrying out of the policy it is free to adopt. Id. at 307-310. 5/

4/ The specific constitutional prohibition against impairment of contract rights, Art. I, Section 10, applies only to the states, not the federal government.

5/ In reaching this decision, however, the Court recognized that "[t]he Government's own contracts -- the obligations of the United States -- are in a distinct category and demand separate consideration." Id. at 306. See Lynch v. United States, 292 U.S. 571 (1934).

The Supreme Court has on numerous occasions upheld the authority of the government to enact legislation affecting previously acquired contract rights of individuals. Thus, in Louisville & N.R.R. v. Mottley, 219 U.S. 467 (1911), the Court held that a lifetime pass for transportation issued in settlement of a tort claim was no longer valid in light of subsequent legislation which prohibited the furnishing of railroad transportation for other than the regular rate paid in cash. The Court reasoned:

> The agreement between the railroad company and the Mottleys must necessarily be regarded as having been made subject to the possibility that, at some future time, Congress might so exert its whole constitutional power in regulating interstate commerce as to render that agreement unenforceable or to impair its value. That the exercise of such power may be hampered or restricted to any extent by contracts previously made between individuals or corporations, is inconceivable. The framers of the Constitution never intended any such state of things to exist. [219 U.S. at 482.]

In Fleming v. Rhodes, 331 U.S. 100 (1947), the Court upheld a post revival injunction against enforcement of eviction orders secured in state courts after the expiration of the Emergency Price Control Act of 1942 and prior to the Price Control Extension Act of 1946, stating:

> Federal regulation of future action based upon rights previously acquired by the person regulated is not prohibited by the Constitution. So long as the Constitution authorizes the subsequently enacted legislation, the fact that its provisions limit or interfere with previously acquired rights does not condemn it. Immunity from federal regulation is not gained through forehanded contracts. Were it otherwise the paramount powers of Congress could be nullified by "prophetic discernment." [331 U.S. at 107.]

Another line of cases, upholding the renegotiation of excessive profits under war contracts and sub-contracts, is also apposite here. In Lichter v. United States, 334 U.S. 742 (1948), the Supreme Court held that Congress could apply the renegotiation process to private contracts between a government contractor and its sub-contractors that had been entered into prior to the passage of the legislation. In many lower court cases, subsequent to that decision, the right of Congress to recover excessive profits on the government's own contracts was also upheld as to pre-existing contracts against claims that such retroactive application was a deprivation of due process under the Fifth Amendment. See Blanchard Machine Co. v. Reconstruction Finance Corporation, 177 F. 2d 727, 729 (D.C. Cir. 1949); Ring Construction Corp. v. Secretary of War, 178 F. 2d 714, 716 (D.C. Cir. 1949), cert denied, 339 U.S. 943. The Sixth Circuit, in arriving at this conclusion stated, "It is settled law that the retroactive reach of a statute may constitutionally cover property rights that have vested *** and also may cover payments already received." Howell Electric Motors Co. v. United States, 172 F. 2d 953, 954 (6th Cir. 1949).

LEGAL LIABILITY FOR PRE-OVERRIDE CONDUCT

Completed preenactment transactions can also be constitutionally reordered. Cf. Howell Electric Motor Co., supra. While each case must be judged on its own facts to determine whether retroactive liability for previously uncontrolled conduct would be so harsh and oppressive as to transgress the constitutional limitation, preenactment notice of the intended retroactive effect of pending legislation has been held to be an important factor. See First National Bank in Dallas v. United States, 420 F.2d 725 (Ct. Cl. 1970). As there stated, widespread and effective notice is not the "stuff of which denial of due process cases are made." In the legislative history cited above, Congress has made clear its intention that there should be no hiatus in regulatory enforcement of the Emergency Petroleum Allocation Act and that should a late override be necessary it is the intent of the Congress that the revived statute be retroactively applied. Notice could be heightened by inclusion in the President's veto message of his understanding that should an override occur the Act would be revived retroactively and of his intention to act under it to undo any improper transactions occurring in the hiatus. A similar statement by the Federal Energy Administration would have a comparable effect.

Furthermore, retroactivity of S. 1849, far from being a mere unreasonable embellishment, is necessary in the Congressional scheme for the same reasons which motivated retroactivity of the interest equalization tax in First National Bank, supra, i.e., were the bill to become law without retroactive effect, a premium would be placed upon consummation of "covered" transactions during the hiatus. See First National Bank, supra, 420 F.2d at 730-31. In light of the factual circumstances which would surround enactment of retroactive controls by means of a late Congressional override and if adequate notice of retroactivity is on the public record prior to enactment, it would appear that unfairness to and surprise of private parties in this case would be at a minimum and that Congress' constitutional power would consequently be maximized.

PRACTICAL DIFFICULTIES POSED BY A HIATUS

The regulations under the Emergency Petroleum Allocation Act constitute a complex of allocation, pricing, and equalization mechanisms designed simultaneously to hold down economy-wide inflation, increase production, and ensure equitable individual allocation and pricing. See attached affidavit. Examples of major potential distortions which could arise as the result of interim decontrol include disposal of supplies at uncontrolled prices leaving no supplies remaining to be allocated when controls resume, (it is not a violation of the regulations not to have a product to allocate), quick sales at greatly inflated prices, particularly of products such as propane where increased price will not have a great effect on demand, and the forming of new supply relationships.

While it may be in the perceived interest of the larger oil companies to refrain from egregious practices which, if reported, could influence congressional override votes, it is unlikely that such pressures will influence small independents. Furthermore, the situation is complicated for all companies by the possibility of stockholder derivative suits should the companies fail to legally maximize profits.6/

Given (1) the broad constitutional power of Congress both to impair contracts and to regulate present conduct and obligations on the basis of prior conduct (sales or receipts) discussed above, (2) the context in which enactment of S. 1849 would occur, indicating congressional intent to make the President's regulatory power retroactive to the full extent of its power and, (3) the extremely broad regulatory authority which has been given to the President by the Act, it is our view, based on our research in the time available, that, in theory, the Act if revived would probably provide power largely equal to the prior

6/ Certain existing contractual arrangements may call for changes to be triggered by decontrol.

mischief which it would confront, i.e., wrongs occurring during the hiatus could, on a theoretical level at least, probably be set right. To the extent that new supply relationships have been acquired by contract, those contracts could be abrogated and pre-hiatus relationships could be restored by regulations. To the extent that completed transactions during the hiatus resulted in misallocations, and to the extent that these misallocations were traceable, it appears that the FEA either has present authority or could by new regulation be given authority to order the recipient to become a supplier of those who were supposed to receive the allocations. Alternatively, in theory, supplies otherwise to be allocated to the recipient of the misallocation might be able to be diverted to those to whom the original oil should have gone, future intake by the improper recipient might be restricted, or an adjustment in the inventory of the seller might be ordered. With regard to pricing violations, under the theory advanced in First National Bank, supra, and Howell Electric Motor Co., supra, the private cause of action otherwise available under the Act might retroactively become available for compensation for excessive charges during the hiatus. Alternatively a refund apparently could be ordered or a reduced price to the harmed customer could be ordered until the excessive charge is returned.

Such theoretical legal power, however, is by no means the same thing as the ability to apply that power in the myriad of complex and discrete transactions which potentially could take place during the hiatus. In fact, many transactions may not be able to be traced; marginal service stations could be irreparably injured; oil could be transferred and burned. While FEA could endeavor to resolve ad hoc individual situations, the magnitude of the problem will be simply overwhelming. Furthermore, even if every interim transaction were traced and solutions were found which fit the transaction involved, there is some danger that compliance would be litigated every step of the way. In sum, for any individual case it appears to us a solution could in time be found, but in light of the magnitude of the problem which will arise and the time lag which will be involved in remedying it, it appears that FEA will simply not be equal to the task and that by and large harm done in the hiatus will go largely unremedied.

Mary C. Lawton

Mary C. Lawton
Acting Assistant Attorney General
Office of Legal Counsel

AUG 04 1975

MEMORANDUM FOR ANTONIN SCALIA

(Signed) Robert E. Montgomery, Jr.

FROM: ROBERT E. MONTGOMERY, JR.

SUBJECT: REQUEST FOR OPINION REGARDING THE EFFECT OF A CONGRESSIONAL VOTE TO OVERRIDE A PRESIDENTIAL VETO OF S. 1849

BACKGROUND

As you know, before leaving on its August recess, the Congress passed S. 1849, a copy of which is attached. Title I of this bill would extend the Emergency Petroleum Allocation Act of 1973 (Public Law 93-159) until March 1, 1976. This statute is presently scheduled to expire August 31, 1975,* and the President has already indicated that he would veto such an extension. Probably in order to avoid the possibility of a pocket veto during its recess, Congress has apparently decided not to send the enrolled bill extending the Act to the President until shortly before it reconvenes on September 3, 1975. The fact that the Act may expire before the President acts on the enrolled bill and the virtual certainty that it will have expired by the time Congress returns to consider the question of overriding the President's veto raise three important questions as to which I would appreciate your opinion.

* It should be noted that strictly speaking the entire Allocation Act does not expire by its own terms on August 31, 1975. Rather, the President's authority to promulgate, amend or enforce the regulation mandated by the Act expires on that date pursuant to Section 4(g)(1). However, inasmuch as these authorities are the only regulatory provisions of the Act, their expiration is tantamount to expiration of the entire Act. This point is reflected in the fact that S. 1849 is entitled the "Emergency Petroleum Allocation Extension Act of 1975."

ISSUES

I. In the event that the President disapproves S. 1849, and the Congress subsequently overrides his veto sometime after August 31, 1975, what would be the legal effect of that Congressional action?

(a) Would it be a nullity, on the ground that a statute which has already expired cannot be revivified in this manner; or,

(b) Would the override have the effect of reinstituting the Allocation Act in one of the following ways:

- By continuing the Act in full effect as though it had never expired, to include its retroactive application to the interim period since August 31, 1975;

- By reinstituting the Act as of the date of the override with the same prospective effect as though it had never expired, but with no retroactive application to the interim period;

- By re-enacting the statute afresh as of the date of the override, just as though it had been first enacted on that date.

II. Assuming that a Congressional override of the President's veto would have the effect of reinstituting the Allocation Act as of the date that Congress acted, what would be the status of FEA regulations promulgated pursuant to the Act prior to August 31, 1975?

III. Would the timing of the Presidential veto--either before or after August 31, 1975--have any impact on the conclusion with regard to the above questions?

My staff is currently preparing an analysis of these issues, which I will forward to you immediately upon its completion; however, in view of the need to resolve this matter expeditiously, I am sending this request on to you now to afford the maximum time for your review. Phil Buchen and I would like to meet with you to discuss your conclusions at your earliest convenience. Thanks!

Attachment

Or/

THE WHITE HOUSE

WASHINGTON

August 22, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: PHIL BUCHEN P.W.B.

SUBJECT: Approval of Contract for Sale of Crude Oil from Naval Petroleum Reserve

Your approval is required by 10 U.S.C. 7431, subparagraph (3) for any contract to sell crude oil from the Naval Petroleum Reserve. The statute also requires consultation with the Committees on Armed Services of the Senate and House of Representatives. The enclosures document that this consultation has occurred and that the Attorney General has approved the contract.

I, therefore, concur in the recommendation of the Acting Secretary of the Navy that you approve the attached contract by signing at the places indicated.

5⅞

THE WHITE HOUSE

WASHINGTON

August 15, 1975

MEMORANDUM FOR PHIL BUCHEN

FROM: JUDY JOHNSTON

John Ratchford requested that I send the attached Naval contract to you for action.

cc: Glenn Schleede

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20350

8 AUG 1975

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

This letter transmits a proposed contract for the sale of crude oil from Naval Petroleum Reserve No. 1 for your consideration and approval pursuant to 10 U.S.C. 7431.

Award of Contract NOd-10067 between the United States of America and Beacon Oil Company was made after public sale held in compliance with 10 U.S.C. 7430. The contract price for the crude oil under the contract is "crude base price" (as defined in Article 5 of the contract) plus 25.25 cents a barrel. "Crude base price" is substantially equivalent to the average of prices posted for similar crude oil in a number of fields in the vicinity of Naval Petroleum Reserve No. 1.

The term of the contract is for a period of one year effective on the date when approved by the President of the United States and renewable for a period of one year upon agreement of the parties.

The crude oil sold under Contract NOd-10067 will necessarily be produced for the purposes of protection, conservation, maintenance, and testing of Naval Petroleum Reserve No. 1. Under these circumstances, it is considered to be in the best interests of the United States to produce and sell the oil. Should Congress enact legislation authorizing production from Naval Petroleum Reserve No. 1 and specifying how the production is to be sold, such direction can be complied with without violating this contract.

The contract was approved as to legality by the Attorney General, and the consultations required by 10 U.S.C. 7430 with the Armed Services Committees of the Congress have been completed. That approval and the completion of consultations are evidenced by enclosures (2), (3), and (4).

My execution of this contract on behalf of the United States was based on the conclusion that it is in the public interest. All necessary steps preliminary to your approval have been accomplished.

Accordingly, it is recommended that you sign each copy of enclosure (1) and return them to the Navy Department. Enclosures (2) through (4) may be retained for the White House files should these be desired.

Respectfully yours,

Jack L. Bowers

JACK L. BOWERS
Acting Secretary of the Navy
For Naval Petroleum and Oil Shale Reserves

Enclosures:
(1) Three executed originals of Contract No. NOd-10067
(2) Photocopy of Attorney General opinion of July 7, 1975
(3) Photocopy of ltr from Chairman, SASC of July 18, 1975
(4) Photocopy of ltr from Chairman, HASC of July 23, 1975

THE WHITE HOUSE

WASHINGTON

August 26, 1975

Dear Bruce:

Many thanks for your letter of August 19, concerning the proposal for exchange of American grain for Soviet oil. The concept is an extremely interesting one, and should be explored at length.

I've turned this information over to Mike Dunn, Acting Executive Director of our Council of International Economic Policy here at the White House. CIEP has the responsibility for coordinating matters such as these with the various agencies affected, including State, the Federal Energy Administration, and the Commerce Department.

I will be back to you with comments after we've had a chance to review Mr. Lindh's concept.

Sincerely,

Phil

Philip W. Buchen
Counsel to the President

Mr. Bruce G. Sundlun
Sundlun, Tirana & Scher
Watergate 600 Building
Washington, D. C. 20037

Sundlun, Tirana & Scher
Watergate 600 Building

BRUCE G. SUNDLUN
GERALD SCHER
BARDYL RIFAT TIRANA
NORMAN H. SINGER

Washington, D.C. 20037
202 337-6800
Telex: 89-2567 Stands

August 18, 1975

Mr. Philip W. Buchen
Counsellor to the President
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Phil:

Following up on our telephone conversation concerning the possibility of exchanging American grains for Soviet oil, there is enclosed a copy of a letter from David E.P.Lindh, a personal friend, that sets out the argument in detail. Mr. Lindh is an expert in metals and ores, and was one of those considered by the administration for appointment to the new Commodity Board.

For your information, at the COMSAT Director's Dinner last week, the subject came up for discussion among Leo Welch, former Chairman of Standard Oil of New Jersey, Rudy Petersen, form President of The Bank of America, George Meany, and John Place, Chairman of Anaconda, and <u>all of them</u> acknowledged the usefulness, simplicity, and practical effect of exchanging grains for oil under present conditions.

I trust that after you have had a chance to review Mr. Lindh's letter, you will see to it that it gets referred to someone in the administration who is in a position to directly evaluate the idea.

Best personal wishes.

Sincerely,

Bruce G. Sundlun

encl:

Gulf International Trading Company

METALS AND ORES

David E. P. Lindh
VICE PRESIDENT AND
GENERAL MANAGER

1290 Avenue of the Americas
New York, N. Y. 10019

August 15, 1975

Mr. Bruce G. Sundlun
Executive Jet Aviation, Inc.
P. O. Box 19707
Columbus, Ohio 43219

Dear Bruce:

In line with our brief chat on Sunday concerning the relationship between oil and grain, I checked a few figures. In August of 1972, wheat was selling at $1.80 per bushel; corn $1.27; soybeans $3.60. At the same time, Arabian oil was selling at, roughly, $2.50 per barrel and domestic at $3.00. Using these figures, you can see that two bushels of wheat would certainly have purchased one barrel of domestic crude; two bushels of corn, a barrel of Arabian crude; a bushel of beans would have purchased a barrel plus. Today, the prices on wheat, corn, and beans are as follows: wheat $4.06; corn $3.15; beans $6.00. On the other hand, the price of Arabian crude is over $10.50 and domestic crude $12.00.

It is my contention that the ratio between oil and the grains should not have changed as drastically as it has, particularly when oil is in surplus and the grains are in deficit. With this in mind, when one is selling the grains into the export market, particularly to the Soviet Union, I feel that a barter transaction should be arranged. My suggestion is that the barter be based on a ratio established, using pre-October prices, when, as you will recall, both grain and oil were in surplus.

To simplify the handling of this barter, it should be done on a government-to-government basis, meaning that the Soviet Union could enter the American market through private traders to buy grain; however, the payments for this grain would be made to the U.S. Government on the basis of the fixed ratio. At the same time, the Government would pay the grain dealer the dollar price at which the grain was actually purchased. The Government would then take the oil received in barter from the Soviet Union and sell it to public utilities at cost. The utilities would then either sell it to the oil companies at full market price or enter into tolling agreements with the oil companies to obtain refined products reflecting the lower priced feed stocks. This saving would then be passed on in lower costs for power, particularly to private consumers.

The beauty of this plan is that it would not lower grain prices and, therefore, incur the justified wrath of American agriculture. It would produce cheaper power and it would favorably affect our balance of payments. Finally, it could be easily administered by using the existing machinery of the Department of Agriculture and the Federal Energy Administration. As the profits from the transactions go to the small consumer, the program would not raise Congressional displeasure. As the domestic price of crude oil would remain high, the program would continue to encourage greater exploration and production efforts in this country.

I have enclosed a copy of an article in the Wall Street Journal outlining the Russian oil situation. If, as the article suggests, the Soviet is having trouble boosting its production, the above barter concept could be coupled with technical assistance protocols such as the ones that have recently been signed by Gulf. I think the outstanding point in this article is that the Soviet are selling over 880,000 B/D into the Western market and that the Russians depend on these sales to earn hard currency to buy Western technology and food. I don't feel that the U.S. should allow the OPEC nations to subsidize the Russian breadlines.

I know that you will think this over and if you find it has merit, see that it comes to the eyes of the appropriate parties.

Look forward to seeing you over the 23rd.

Best regards,

David

David E. P. Lindh

DEPL/C
Enclosure

THE WHITE HOUSE

WASHINGTON

January 14, 1976

MEMORANDUM FOR: JIM CONNOR

FROM: PHIL BUCHEN P.

SUBJECT: Frank G. Zarb memo 1/13/76 re: U. S. Government Oil Purchase Agreement

The last of the listed disadvantages is perhaps the most important. This would be a conspicuous, controversial action. If we cannot give a realistic explanation, the alternative rationales will look disingenuous.

An important disadvantage not listed is the major administrative problem created by resale of the oil. It presents the same problem that persisted for years in allocating oil import quotas. Auctioning was often proposed, but never proved politically acceptable. The politically inevitable preference for the smaller refiners would be a subsidy and a continuing source of controversy.

Another disadvantage is that this proposal is inconsistent with the President's policies for energy independence. The massive government intervention -- to obtain imports -- may be seriously resented by the domestic energy industry just at the time we are trying to encourage its expansion.

THE WHITE HOUSE

WASHINGTON

January 14, 1976

~~SECRET~~
EXCLUSIVELY EYES ONLY

MEMORANDUM FOR: PHILIP BUCHEN
JACK MARSH
BRENT SCOWCROFT
BILL SEIDMAN
JIM LYNN

FROM: JIM CONNOR

SUBJECT: U.S. Government Oil Purchase Agreement

Please refer to Frank Zarb's memorandum of January 13, 1976 on the above subject sent to you for comments last evening. For your information, Frank Zarb has requested that the concluding paragraph of his letter be changed to read as follows:

Conclusion:

State discounts the disadvantages outlined above and argues that the advantages far outweigh them. However, in view of the positions taken by Defense, CEA and FEA, State accepts their conclusion that a decision on the proposal should be deferred for further evaluation of the likely responses of the oil market and of the Congress.

~~SECRET~~ -- EXCLUSIVELY EYES ONLY
ACTION MEMORANDUM

THE WHITE HOUSE

WASHINGTON

LOG NO.:

Date: January 13, 1976

Time:

FOR ACTION:
Philip Buchen
Jack Marsh
Brent Scowcroft
Bill Seidman
James Lynn

cc (for information):

FROM THE STAFF SECRETARY

DUE: Date: January 15, 1976 Time: 3 P.M.

SUBJECT:

Frank G. Zarb memo 1/13/76
re: U.S. Government Oil Purchase Agreement

ACTION REQUESTED:

____ For Necessary Action

X For Your Recommendations

____ Prepare Agenda and Brief

____ Draft Reply

X For Your Comments

____ Draft Remarks

REMARKS:

We repeat this is: ~~SECRET~~ - EYES ONLY

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James E. Connor
For the President

~~SECRET~~ (State Derivative)

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

January 13, 1976

OFFICE OF THE ADMINISTRATOR

MEMORANDUM FOR THE PRESIDENT

FROM: Frank G. Zarb

SUBJECT: U.S. Government Oil Purchase Agreement

Proposal

The USG has the opportunity to negotiate with Iran an agreement for the purchase of 500 MB/D of crude oil for a period of five years, at prices below OPEC levels and with price adjustments tied to changes in the U.S. wholesale price index. The State Department proposes to negotiate for a firm discount of at least 50 cents per barrel with further savings anticipated on periodic price adjustments. Defense and FEA believe a firm discount of at least $1.00 per barrel is necessary to minimize the risk of short-term loss by the USG in reselling the oil. Iran's interest in the agreement reflects anticipated financing difficulties in meeting its development and military needs and the low level of demand for Iranian crude in the currently depressed market.

Mechanics

The USG would purchase the oil directly from Iran and resell it to U.S. companies for delivery to the U.S. The Technical Purchasing Authority (TPA) provision of the Energy Policy and Conservation Act (EPCA) would provide enabling legislation, although the required appropriations legislation would be enacted only after the Congress had the chance to review the proposal. (A more detailed paper developing the mechanics of the proposal is attached.)

Advantages and Disadvantages of Proposal

The principal advantages of the proposal identified by the interested agencies are essentially international and political.

DECLASSIFIED
E.O. 12958, Sec. 3.5
State Dept. Guidelines
By [signature], NARA, Date 5/8/00

~~SECRET~~ (State Derivative)

. The relationship between the U.S. and Iran would be strengthened, and a possible severe cutback in Iranian purchases of U.S. military equipment and industrial goods could be averted.

. A measure of instability would be introduced into the international oil market by Iran's violation of OPEC agreements, and the doubling of Iran's share of the U.S. market at the expense of other OPEC countries. These factors could weaken the OPEC cartel's ability to unilaterally establish prices and production levels.

. The U.S. would switch about 8 percent of its oil imports to a cheaper and a politically more secure (i.e., non-Arab) source. An estimated annual savings of $180 million--assuming an average $1.00 per barrel discount--versus a total import oil bill of over $28 billion would result.

The principal disadvantages of the proposal identified by Defense, CEA and FEA focus on the energy and economic aspects and the domestic political implications.

. Involving the USG in the business of buying and selling oil would encourage those proponents of greater governmental involvement in the oil industry generally and of nationalization of imports more specifically.

. The amount of savings to be gained is not significant and the benefits to consumers would not be identifiable.

. The 500 MB/D lifted from Iran would displace some liftings from Saudi Arabia, which probably would threaten the US/Saudi relationship.

. The size of the discount would not significantly undermine OPEC's strength, and the indexation feature would represent an unfortunate precedent, not only with respect to Iran, but also with respect to other oil producers and raw materials exporters in general.

. The market and revenue pressures on Iran that have caused Iran to seek a bilateral agreement with the U.S. represent precisely the OPEC vulnerability to market forces that consuming countries are trying to encourage.

. The nature of the advantages preclude their being discussed publicly with Congress, either because of the political sensitivity of the issue or because the economic advantage would not be deemed to be significant.

Consideration of a Possible Alternative

If it is decided not to pursue the proposal currently under consideration, the possibility of entering into a sizable oil purchase agreement to fill the strategic reserves mandated by the EPCA may warrant consideration. Since the USG, under such an arrangement could commit the oil to reserves and therefore obviate any market impact, a potential supplier might consider a deep enough discount, providing sufficient economic benefit, to override domestic political considerations. Such a proposal could be evaluated in the context of the Early Storage Program and the Strategic Storage Program presently being developed in the Federal Energy Administration.

Conclusion

State discounts some of the disadvantages outlined above, but joins Defense, CEA and FEA in concluding that a decision to proceed with the proposal should be deferred for further evaluation of the likely responses of the oil market and of the Congress.

DISCUSSION PAPER

MECHANICS OF OIL PURCHASE AGREEMENT

Basic Assumptions

The USG will purchase from Iran for a period of five years 500 MB/D of crude oil. The USG will resell the oil F.O.B. Persian Gulf, in the form of "rights to lift" to U.S. companies operating refineries in the U.S. or at offshore locations with the resultant product destined for the U.S.

Mechanics

A basic contract between the Governments of Iran and the United States would commit Iran to sell and the USG to buy 500 MB/D of crude oil (light and heavy) for a period of five years. On a monthly basis, or for longer periods if desired by the USG, rights to lift would be issued by Iran which would in turn be sold by the USG to American companies. The USG would not physically possess the oil at any time. Transfers to U.S. companies would be effected F.O.B. Persian Gulf. The USG would pay Iran on a monthly basis for the basic amount contracted. Special arrangements would be made for the "start-up" period.

The USG has two basic options in transferring the rights to lift to U.S. companies.

1. An auction could be held by the USG of the rights to lift at the prices contracted between Iran and the USG. Potential buyers would submit bids reflecting their determination of the value of the particular rights. An auction provides a market test and is the preferred option.

2. Tickets may be issued or sold to all U.S. refiners/importers in proportion to refinery runs or imports in the total amount of 500 MB/D. Tickets would entitle the holder to purchase the available crude at prices determined by the USG, either the full amount of the discount received from Iran, or some lesser

amount adequate to entice buyers to lift all the oil (i.e., "clear the market"). A ticket system could benefit the majors which may be politically unacceptable to the U.S., and would probably not be welcome by the Iranians who want liftings by companies other than the majors who are members of the consortium.

A "market" for rights to lift would be established in which tickets could be bought and sold or exchanged by holders not wishing to lift Iranian crude. In either of the two approaches mentioned above, a small refiner "set aside" could be arranged. In addition, length of contracts and quantities of rights to lift could be varied to meet market demands.

Legal Authority

There are two possible authorities for such purchases and resales:

1. Title III of the Defense Production Act; and

2. the Technical Purchase Authority of the Energy Policy and Conservation Act (EPCA).

Action under either would still require appropriations by Congress (and perhaps an authorization under the DPA if a revolving fund is used). Action under the Technical Purchase Authority would be subject to a one-House veto within 15 days of submission of the proposed regulations to the Congress.

If the Defense Production Act were used, the Government would have to relate the purchase to the relevant purposes of the DPA, and the necessary factual finding could be difficult to make and vulnerable in litigation. Congress has also indicated its general disfavor for an expanded use of the DPA. Findings under the Technical Purchase Authority would be considerably easier to make since the proposal is consistent with the intent of Congress in the EPCA.

Under the Technical Purchase Authority, it would be possible either to auction new oil or to allocate it on an input basis to all refiners as long as such allocation is done so as not to provide a "subsidy or preference to any importer, purchaser, or user." The DPA would require any oil to be resold at market prices, thus an auction or market sale would probably be required. The Technical Purchase Authority is the preferred option.

Purchasing Price

Under the terms of the proposal, the purchase price of oil sold by Iran to the USG would consist of two major elements:

1. A discount equivalent to normal credit terms available in the market. Since the USG would be paying for oil before the oil was resold, a price discount would be granted by Iran equivalent to 60 days credit (effective 75 days since normal contracts call for "60 days end of month"). The discount would be about 15 to 20 cents per barrel in today's market.

2. A negotiated discount of at least $1.00 per barrel, which would be fixed for the term of the contract.*

The Base Price, off which discounts would be granted, would be established at the beginning of the contract and relate to market price, not to the OPEC posted or buyback price. Price indexation related to U.S. wholesale index prices would be provided for. Under no circumstances would the Base Price be permitted to rise above market price. The discounts off Base Price, as adjusted, would remain firm.

USG Selling Price

Assuming the USG received a discount of $1.00 per barrel in addition to the credit discount, a determination of the amount necessary to clear the market must be made. It is assumed normal credit terms would be accorded U.S. companies by the USG. The USG would offer a discount in the range of 30 to 50 cents per barrel to companies in order to sell the oil. The U.S. market, excluding the majors, is sufficient to absorb 500 MB/D. If it is found that the market will not "clear" the oil, a deeper discount might be needed to entice majors into the

*State believes a firm discount above 50 cents is not negotiable.

marketplace. Majors would have economic and political problems with other producing countries if significant volumes were shifted from one country to another. It is, therefore, advisable to negotiate at least a $1.00 discount from Iran. This amount would also provide sufficient margin to cover USG administrative costs.

Length of contracts, individual credit terms and cargo lot sizes factors could all be accommodated within the marketplace through an auction system.