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THE WHITE HOUSE
WASHINGTON

September 28, 1974

MR. PRESIDENT:

Marsh, Timmons, Baroody and
Scowcroft agree with Cole that you
should have a meeting with the internal
staff to discuss this question.

Don



MR-9
see note inside.

THE PRESIDENT HAS SEEN *log*

THE WHITE HOUSE

WASHINGTON

ACTION

September 28, 1974

MEMORANDUM FOR THE PRESIDENT
FROM: KEN COLE
SUBJECT: CARGO PREFERENCE

Responding to your instructions, we have explored in detail possible areas of compromise between the positions taken by the Executive departments and agencies on this bill and the objectives of the bill's proponents.

At the request of the representative of Paul Hall, our discussions focused exclusively on the Presidential waiver provisions in the current bill. In this area, some progress was made. His representative has agreed to new waiver language which would significantly broaden your power of waiver over the House and Senate provisions. This new language is found at Tab A along with the other waiver provisions which the Conferees are considering.

We have no assurances that the Conferees will adopt the compromise waiver language but this is certainly a strong possibility if it continues to receive support by Paul Hall and his backers.

We have taken informal soundings among the departments and agencies most directly involved in this legislation, and it is clear that their very strong opposition to the cargo preference bill will continue even if the compromise waiver provision is adopted by Congress. The compromise position is still a long way away from the amendment introduced on the Senate floor by Senator Cotton which was easily defeated. The thrust of the Cotton amendment, which is contained in Tab B, was to give the President the power to institute cargo preference if it was in the national interest. The House and Senate waiver provisions and the compromise provision still invoke cargo preference and require a declaration of emergency by the President before it can be waived. Thus, the burden



is shifted to the President. Once cargo preference becomes law and the U.S. shipbuilding industry has had an opportunity to begin producing sufficient U.S. bottoms to haul this imported oil, it is unlikely that any President would invoke the waiver, except in the most dire circumstances, due to the obvious impact on the shipbuilding and operating industries. In short, unless you invoke the waiver soon after enactment of the legislation, thus forestalling economic investments based on this cargo preference bill, there will be very little flexibility in the future to use the waiver because of the enormous disruptions which would follow.

Paul Hall's representative also rejected the compromise waiver we earlier suggested to you. This would contain the maximum flexibility for you to waive selected portions of the legislation and avoid the "all or nothing" problem. Under such a waiver you could, for example, require a substantially reduced percentage (on the order of 5%) of imported oil to be carried on U.S. bottoms. (See Tab B)

According to our latest understanding, the Conferees have not taken out of the bill other objectionable provisions, such as requirement for double bottom hulls, the rebate of oil import fees, etc.

CONCLUSION

There does not appear to be any realistic chance that the bill which comes out of Conference will overcome the strong objections by Administration officials, based on its inflationary and foreign policy detrimental impacts. The waiver provision, although it may be broadened, will essentially require immediate Presidential waiver on a continuing basis. If the legislation is allowed to take effect, it will soon become very difficult to exercise the waiver because of the economic hardships which would result in the U.S. maritime industry.

Thus, even though we have tried several approaches to ameliorate the adverse impacts of cargo preference legislation, it is clear that there is no way to avoid the fundamental problems with such a bill. At best, we can get a waiver provision which would permit the President to prevent the provisions from taking effect at the outset.



ACTION

I recommend that you meet tomorrow or Monday with Marsh, Baroody, Timmons, Cole, Scowcroft and Duval to decide what signal should be given to the Conferees.

Agree _____ No _____

Expand meeting to include Kissinger, Simon, Dent, Ash, Eberle and Sawhill.

Yes _____ No _____

OR

No meeting.

Signal a veto unless the Administration's waiver proposal (such as those contained in Tab B) are accepted.

Yes _____ No _____

Signal that you will accept the Paul Hall compromise waiver and push hard for other changes (e.g., no rebates and double-bottoms).

Yes PR7 _____ No _____

If we don't get this or there, it is susceptible to veto.



A

WAIVER PROVISIONS

Senate Language:

"(7) The requirements of paragraph (1) may be waived by the President upon determining that an emergency exists justifying a temporary waiver of such requirements. Any such waiver shall not exceed 180 days unless authorized by law."

Comment: The floor debate on the Senate language does not qualify the definition of an emergency. Administration lawyers believe that a strong case could be made that the waiver would have to be tied to national security.

House Language:

"Provided, That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of section 901(b)(1) and so notifies the appropriate agency or agencies:"

Comment: The legislative history of the House language indicates that its intent is to allow a temporary waiver when there might be a national security emergency. The President might have difficulty justifying a waiver on grounds such as the generally adverse effect on our economy, the resulting competition between the Navy and merchant ship operators for scarce shipyard resources, or the strained relations which will develop with our trading partners.

Compromise Worked Out with Paul Hall's Representative:

(7) The requirements of paragraph (1) may be temporarily waived by the President upon determining that an emergency exists justifying such waiver in the national interest.

B

REJECTED ADMINISTRATION PROPOSED WAIVERS

The Cotton Amendment:

"Sec. 6. The provisions of this Act will become effective whenever and for such periods as the President determines that such provisions are necessary or desirable for our national interests. Such determination will be made in consultation with the Secretaries of Defense, State and Commerce, giving consideration to the impact on the economy, our foreign relations, and our national security."

Comment: Defeated on the Senate floor.

Flexible Waiver:

"Sec. 7. The provisions of the Act may be waived whenever the President makes a finding that the implementation of these provisions are contrary to our national interests. Such determination will give consideration to the impact of the provisions on the economy, our foreign relations and our national security.

In applying the waiver the President may: (a) reduce the percentage allocations required by Section 901(d)(1) (b) exclude particular petroleum products, and (c) allow participation in the carriage of reserved cargo by countries (i) with which the U.S. has treaties of Friendship, Commerce and Navigation; (ii) which provide reliable guarantees that their ships will be available during oil emergencies, or (iii) with which the U.S. has concluded emergency oil sharing agreements.

The waiver will terminate after a period of one year but may be renewed by the President after making a new finding in accordance with the provisions of this section."

THE WHITE HOUSE

WASHINGTON

September 30, 1974

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: KENNETH R. COLE, JR.
FROM: JERRY H. JONES
SUBJECT: Cargo Preference

Your memorandum to the President of September 28 on the above subject has been reviewed and the recommendation for no meeting, signal that you will accept the Paul Hall compromise waiver and push hard for other changes (e.g., no rebates and double-bottoms) was approved. The following notation was made:

-- If we don't get this or these, it is susceptible to veto.

Please follow-up with the appropriate action.

Thank you.

cc: Don Rumsfeld
Bill Timmons
Bill Baroody
Brent Scowcroft
Jack Marsh

