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THE WHITE HOUSE
WASHINGTON

Date

9-14-76

TO:

Jack Marsh

FROM: Max L. Friedersdorf

For Your Information ✓

Please Handle _____

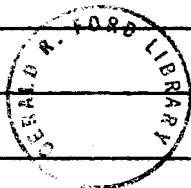
Please See Me _____

Comments, Please _____

Other

Per your request,

sure is final.
version of Ribicoff
Amendment.



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(12 pages)

UNITED STATES SENATE
OFFICE OF THE LEGISLATIVE COUNSEL

September 11, 1976
5:25 p.m.

AMT/PA

PART VI--DENIAL OF CERTAIN TAX BENEFITS FOR COOPERATION
WITH OR PARTICIPATION IN INTERNATIONAL BOYCOTTS AND
IN CONNECTION WITH THE PAYMENT OF CERTAIN BRIBES

17410
Capd

728 (SEC. 1061. DENIAL OF FOREIGN TAX CREDIT.

(a) In General.--Subpart A of part III of subchapter N
(relating to income from sources without the United States)
is amended by adding at the end thereof the following new
section:

728 ("SEC. 908. REDUCTION OF CREDIT FOR PARTICIPATION IN OR
COOPERATION WITH AN INTERNATIONAL BOYCOTT.

"(a) In General.--If a taxpayer, or a member of a controlled
group (within the meaning of section 993 (a)(3)) which includes
the taxpayer, participates in or cooperates with an international
boycott during the taxable year (within the meaning of section
999 (b)), the amount of the credit allowable for the taxable
year under section 901 shall be reduced by an amount equal to
the product of--

"(1) the amount of the credit which, but
for this section, would be allowed under section
901 for the taxable year, multiplied by

"(2) the international boycott factor (determined
under section 999).



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-2-

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"(b) Application with Section 275(a)(4).--Section 275 (a)(4) shall not apply to any amount of taxes denied credit under subsection (a)."

(b) Clerical Amendment.--The table of sections for such subpart is amended by adding at the end thereof the following new item:

14 "Sec. 908. Reduction of credit for participation in or cooperation with an international boycott." 8/11

171 SEC. 1062. DENIAL OF DEFERRAL OF INTERNATIONAL BOYCOTT AMOUNTS.

(a) Denial of Deferral.--Section 952 (a) (relating to general definition of subpart F income) is amended--

- (1) by striking out "and" at the end of paragraph (1),
- (2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof a comma, and the word "and", and by adding at the end thereof the following

new paragraph:

¶ "(3) an amount equal to the product of--

14 "(A) the income of such corporation other than income which--

"(1) is attributable to earnings and profits of the foreign corporation included in the gross income of a United States person under section 951 (other than by reason of this paragraph), or

"(11) is described in subsection (b),



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4 multiplied by

"(B) the international boycott factor (as determined under section 999)."

1700 SEC. 1063. DENIAL OF DISC BENEFITS.

(a) International Boycott Activity.--Subparagraph (D) of section 995 (b) (1) (relating to distributions in qualified years) is amended to read as follows:

4 "(D) the sum of--

4 "(i) one-half of the excess of the taxable income of the DISC for the taxable year, before reduction for any distributions during the year, over the sum of the amounts deemed distributed for the taxable year under subparagraphs (A), (B), and (C), and



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"(ii) an amount equal to the amount determined under clause (i) multiplied by the international boycott factor determined under section 999, and"

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SEC. 1064. DETERMINATIONS AS TO PARTICIPATION IN OR COOPERATION WITH AN INTERNATIONAL BOYCOTT.

(a) In General.--Subchapter N of chapter 1 (relating to tax based on income from sources within or without the United States) is amended by adding at the end thereof the following new part:

"Part V--International Boycott Determinations)

17410 CAPS
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(4) "Sec. 999. Reports by taxpayers; determinations."

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1768

"SEC. 999. REPORTS BY TAXPAYERS; DETERMINATIONS.

"(a) International Boycott Reports by Taxpayers.--

"(1) Report required.--If any taxpayer, or a member of a controlled group (within the meaning of section 993 (a) (3)) which includes the taxpayer, has operations in or related to--

"(A) a country (or with the government, a company, or a national of a country) which is on the list maintained by the Secretary under ^{paragraph} ~~subsection~~ (3), or

"(B) any other country (or with the government, a company, or a national of that country) in which



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the taxpayer (or such member) had operations during the taxable year if the taxpayer or member knows or has reason to know that participation in or cooperation with an international boycott is required as a condition of doing business within such country or with such government, company, or national,

the taxpayer shall report such operations to the Secretary at such time and in such manner as the Secretary prescribes.

Participation and cooperation; requests therefor
"(2) ~~§ 6032(a)~~ - A taxpayer shall ~~also~~ report whether he or any member of a controlled group includes which/the taxpayer ~~§ 6032(a)~~ has participated in or cooperated with an international boycott at any time during the taxable year, or has been requested to participate ⁱⁿ /or cooperate ^{with} ~~in~~ /such a boycott, and, if so, the nature of any operation ^{connection with} in/which he participated in or cooperated with such boycott (or was requested to participate or cooperate).



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"(3) List to be maintained.--The Secretary shall maintain and publish not less frequently than quarterly a current list of countries which require or may require participation in or cooperation with an international boycott (within the meaning of subsection (b) ~~(2)(3)~~ (3)):

"(b) Participation In or Cooperation with an International Boycott.--

"(1) General rule.--If the taxpayer ~~does such~~ participates in or cooperates with an international boycott in the taxable year, all operations of the taxpayer or such group in that country and ⁱⁿ any other country which requires participation in or cooperation with the boycott as a condition of doing business within that country, or with the government, a company, or a national of that country, shall be treated as operations in connection with which such participation or cooperation occurred, except to the extent that the taxpayer can clearly demonstrate that a particular operation is a clearly separate and identifiable operation in connection with which he did not participate in or cooperate with an international boycott.

or a member of a controlled group (within the meaning of section 993 (a)(3)) which includes the taxpayer



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~~"(2) Special rule.--~~

~~"(A) Non-boycott operations.--A clearly separate and-~~

① ② "(2) Special rule.--

③ "(A) Non-boycott operations.--A clearly separate and identifiable operation of a person, or of a member of the controlled group (within the meaning of section 993 (a)(3)) which includes than person, in or related to any country within the group of countries referred to in paragraph (1) shall not be treated as an operation in or related to a group of countries associated in carrying out an international boycott if the person can clearly demonstrate that he, or that such member, did not ~~xxxxxxxx~~ participate in or cooperate with the international boycott in connection with that operation.

"(B) Separate and identifiable operations.--
A taxpayer may show that different operations within the same country, or operations in different countries, are clearly separate and identifiable operations.



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Insert 7 (EO 12)

① "(3) Definition of boycott participation and cooperation.--For purposes of this section, a person participates in or cooperates with an international boycott if he agrees--

④ "(A) as a condition of doing business directly or indirectly within a country or with the government, a company, or a national of a country--

① "(i) to refrain from doing business with or in which is the object of the boycott a country / or with the government, companies, or nationals of that country;

"(ii) to refrain from doing business with any United States person engaged in trade in a country which is the object of the boycott which / or with the government, companies, or nationals of that country;

"(iii) to refrain from doing business with any company whose ownership or management is made up, all or in part, of individuals of a particular nationality, race, or religion, or to remove (or refrain from selecting) corporate directors who are individuals of a particular nationality, race, or religion; or

"(iv) to refrain from employing individuals of a particular nationality, race, or religion; or



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"(B) as a condition of the sale of a product to the government, a company, or a national of a country, to refrain from shipping or insuring ^{that} ~~such~~ product on a carrier owned, leased, or operated by a person who does not participate in or cooperate with an international boycott (within the meaning of subparagraph (A)).

5
"(4) Compliance with certain laws.--This section shall not apply to any agreement by a taxpayer (or such member)--

6
"(A) to meet requirements imposed by a foreign country with respect to an international boycott if United States law or regulations, or an Executive Order, sanctions participation in, or cooperation with, that international boycott,

7
"(B) to comply with a prohibition on the importation of goods produced in whole or in part in any country which is the object of an international boycott ~~(other than the United States)~~, or

8
"(C) to comply with a prohibition imposed by a country on the exportation of products obtained in such country to any country which is the object of an international boycott ~~(other than the United States)~~.



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10 (c) International Boycott Factor.--

(1) International boycott factor.--For purposes of sections 908 (a), 952 (a) (3), and 995 (b) (3), the international boycott factor is a fraction, determined under regulations prescribed by the Secretary, the numerator of which reflects the world-wide operations of a person (or, ^{(within the meaning of section 943(a)(3))} in the case of a controlled group ~~of corporations~~ ^{which includes that person,} ~~of the group~~ of the group) which are operations in or related to a group of countries associated in carrying out an international boycott in or with which that person or a member of that controlled group has participated or cooperated in the taxable year, and the denominator of which reflects the world-wide operations

of that person or group. For purposes of this subsection, the term 'world-wide operations' means operations in or related to countries other than the United States and its territories and possessions.



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"(2) Specifically attributable taxes and income.--If the taxpayer clearly demonstrates that the foreign taxes paid and income earned by the taxpayer for the taxable year with respect to his worldwide operations are attributable to specific operations, then, in lieu of applying the international boycott factor for such taxable year, the amount of the credit disallowed under section 908 (a), the addition to subpart F income under section 952 (a) (3), and the amount of deemed distribution under section 995 (b) (1) (D) (ii) for the taxable year, if any, shall be the amounts specifically attributable to the operations in which the taxpayer participated in or cooperated with an international boycott under section 999 (b) (1).

"(3) World-wide operations.--For purposes of this subsection, the term 'world-wide operations' means operations in or related to countries other than the United States.



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"(d) Determinations With Respect to Particular Operations.---
 Upon a request made by the taxpayer, the Secretary shall
 issue a determination with respect to whether a particular
 operation of the taxpayer, or of a member of a controlled
 group ^{which includes the taxpayer,} ~~of corporations of which he is a member,~~ constitutes
 participation in or cooperation with an international boycott.
 The Secretary may issue such a determination in advance of
 such operation in ~~some~~ ^{which} cases ~~as~~ are of such a nature that an
 advance determination is possible and appropriate under the
 circumstances. If the request is made before the operation
 is commenced, or before the end of a taxable year in which
 the operation is carried out, the Secretary may decline to
 issue ~~such a determination before~~ ^{such a determination before} the operation is ended or the close of
 the taxable year, whichever first occurs.

"(e) Special Definition of Controlled Group.---For
 purposes of sections 908 (a), 952 (a) (3), 995 (b) (3),
 and this section, a non-corporate entity (including an individual)
 may be treated as a member of a controlled group of corporations
 if that entity would be treated as a member of such group,
 on the basis of stock ownership (including constructive
 ownership within the rules of section 267 (c)) or otherwise,
 if it were a corporation.



"(e) Participation or Cooperation by Related Persons.---

If two or more corporations which are members of the same controlled group (within the meaning of section 993 (a)(3)) are controlled by ~~5~~x five or fewer persons--

"(1) participation in or ~~cooperation~~ cooperation with an international boycott by such a corporation shall be considered to be such participation ~~or~~ or cooperation by each of those persons, and

"(2) participation in or cooperation with such a boycott by such a person shall be considered to be ~~part~~ such participation or cooperation by those corporations.



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"(f) Willful Failure to Report.--Any person (within the meaning of section 5671 (b)) required to report under this section who willfully fails to make such report shall, in addition to other penalties provided by law, be fined not more than \$25,000, imprisoned for not more than one year, or both."

(b) Clerical Amendment.--The table of parts for such subchapter is amended by adding at the end thereof the following new item:

(4) "Part V. International boycott determinations."

(Spt check)

SEC. 1065 FOREIGN BRIBES.

(a) Denial of Deferral.--

(1) Controlled foreign corporations.--Section 952

(a) (relating to general definition of subpart F income) is amended--

(A) by striking out "and" at the end of paragraph (2),

(B) by striking out the period at the end of paragraph (3) and inserting in lieu thereof a comma and the word "and", and

(C) by adding at the end thereof the following new paragraph:



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"(4) the sum of the amounts of any illegal bribes, kickbacks, or other payments (within the meaning of section 162 (c)) paid by or on behalf of the corporation during the taxable year of the corporation directly or indirectly to an official, employee, or agent in fact of a government."

(2) DISC:--Subparagraph (D) of section 995 (b) (1)

(relating to distributions in qualified years) is amended--

(A) by striking out "and" at the end of clause (i),

(B) by adding at the end thereof the following

new clause:

"(iii) any illegal bribe, kickback, or other payment (within the meaning of section 162 (c)) paid by or on behalf of the DISC directly or indirectly to an official, employee, or agent in fact of a government, and"

(b) Bribes Not to Reduce Foreign Earnings and Profits.--

Section 964 (a) (relating to earnings and profits of foreign corporations) is amended by adding at the end thereof the

following sentence: "In determining such earnings and profits, or the deficit in such earnings and profits, the amount of any illegal bribe, kickback, or other payment (within the meaning of

section 162 (c)) ~~shall not be taken into account to decrease such earnings and profits or to increase such deficit.~~ shall not be taken into account to decrease such earnings and profits or to increase such deficit."



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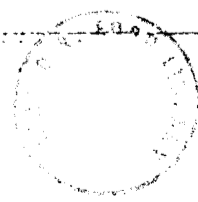
SEC. 1066. EFFECTIVE DATES.

(a) International Boycotts.--

(1) General rule.--The amendments made by this part (other than by section 1066) apply to participation in or cooperation with an international boycott more than 30 days after the date of enactment of this Act. (5)

(2) Existing contracts.--In the case of operations which constitute participation in or cooperation with an international boycott and which are carried out in accordance with the terms of a binding contract entered into before September 2, 1976, the amendments made by this part (other than by section 1066) apply to such participation or cooperation after December 31, 1977. (5)

5) (b) Foreign Bribes.--The amendments made by section 1066 apply to payments described in section 162 (c) of the Internal Revenue Code of 1954 made more than 30 days after the date of enactment of this Act.



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SEC. 1067. REPORTS BY SECRETARY.) 7/4

(a) Reports To The Congress.--As soon after the close of each calendar year as the data become available, the Secretary shall transmit a report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate setting forth, for that calendar year--

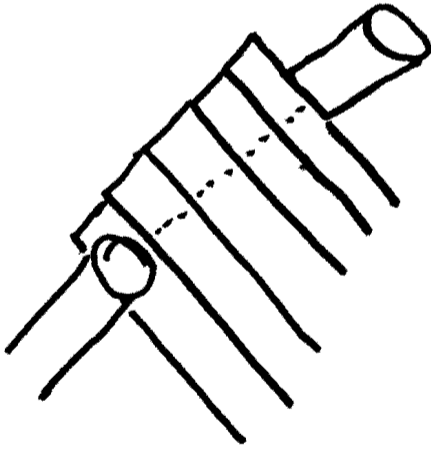
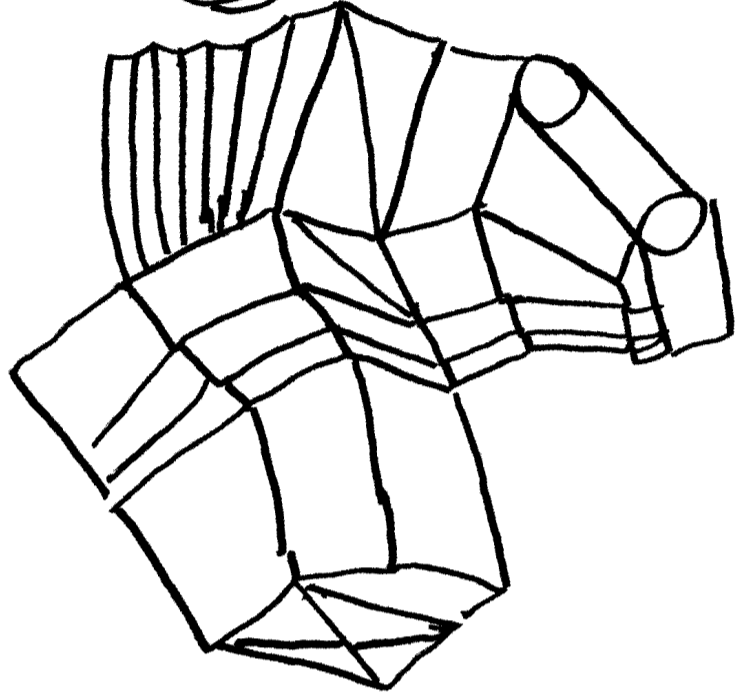
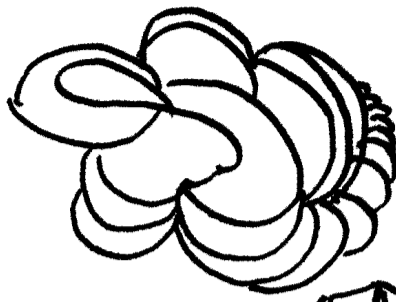
(1) the number of reports filed under section 999(a) of the Internal Revenue Code of 1954 for taxable years ending with or within such taxable year,

(2) the number of such reports on which the taxpayer indicated international boycott participation or cooperation (within the meaning of section 999(b) (2) of such Code), and

(3) a detailed description of the manner in which the provisions of such Code relating to international boycott activity have been administered during such calendar year.

(b) Initial List.-- The Secretary of the Treasury shall publish an initial list of those countries which may require participation in or cooperation with an international boycott as a condition of doing business within such country, or with the government, a company, or a national of such country, (within the meaning of section 999 (b) of the Internal Revenue Code of 1954) within 30 days after the enactment of this Act.





SEP 15 1976

THE WHITE HOUSE
WASHINGTON

Date: 9-15-76

TO:

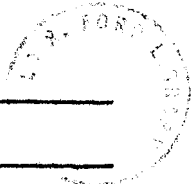
Jack

FROM: Robert K Wolthuis

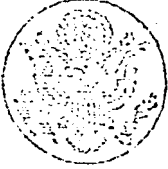
For your information X

Please handle _____

Other



I think you will be interested in Hamilton views regarding the possibility of offering Stevenson as a substitute to Bingham-Rosenthal
Bob



DEPARTMENT OF STATE

Washington, D.C. 20520

~~CONFIDENTIAL~~

September 14, 1976

MEMORANDUM FOR: Mr. Robert Walthus
The White House

Subject: Export Administration Act -
Lee Hamilton's Views

Hamilton told me at 3:30 that, in his judgment, any effort on the floor of the House would be counter-productive. He said, should you stimulate a substitute amendment along the lines of the Stevenson amendment, you would be badly embarrassed in the vote. He said I recommend that you concentrate on the conference.

He confirmed my impression that most of the HIRC members who voted for Bingham in fact have reservations about its scope and would be inclined toward the Senate Stevenson position in conference. He said the selection of conferees will be critical. My advice to you, Lee said, is to go to Doc Morgan and indicate your concern. He normally, Lee continued, has chosen conferees on a basis of strict seniority. In this instance, that method would be highly favorable to your objectives since it would exclude Rosenthal and Bingham. He said the conferees would then be Morgan, Zablocki, Fawcett and Fountain, Broomfield and Derwinski. With that lineup, it should be possible to assure the conferees will choose Stevenson rather than Bingham.

Jenkins

Kempton B. Jenkins
Acting Assistant Secretary
for Congressional Relations



~~CONFIDENTIAL~~

Determined to be Administrative Marking

Date 12/3/85 By DBD

THE WHITE HOUSE

WASHINGTON

September 15, 1976

MEMORANDUM FOR: THE PRESIDENT
FROM: JACK MARSH

As Floor action nears, pressures are increasing as to the Administration's position on the Export legislation particularly the Stevenson-Bingham Amendments. Some of these pressures are coming from American industry who are indicating the possibility that they can live with the Stevenson Amendment.

A group of your advisers met last evening including representatives of NSC, EPB, Counsel's Office and Legislative Affairs. It is our view that there are five possible approaches to this matter which are:

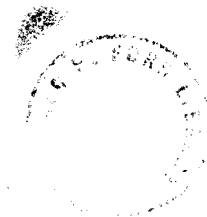
1. Active Administration support for a modified Ribicoff Amendment. (There is some question as to whether such an amendment can be drafted but it should be considered as a possibility.)
2. Non-opposition and quiet support of the Administration of a modified Ribicoff Amendment introduced by Congressional leaders.
3. Active Administration support for a modified Stevenson Amendment (there is drafted language for such an amendment).
4. Non-opposition and quiet support for a modified Stevenson amendment introduced by others.
5. No action by the Administration to actively or quietly support any amendment but maintain a position of opposition until the Conference.

As you are aware, the foreign policy implications of active support are significant and there are risks



involved for non-opposition and quiet support insofar as foreign policy questions are concerned.

It was the consensus of the group that at least through Wednesday, until we can see how the situation develops on the Hill and the action in the Rules Committee, that we should take no steps for either active or quiet support but maintain the current posture against all amendments. However, the view was expressed that we should not totally abandon the possibilities of approach, which is non-opposition to the modified Stevenson Amendment. The manner in which the Tax Bill was handled and the discussions involving the Ribicoff Amendment could influence ultimately any decision that you might wish to make.



September 15, 1976

*Arab
Boycott*

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Arab

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as foreign policy questions are concerned. *Boyer*

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JOM/dl



THE WHITE HOUSE

WASHINGTON

September 15, 1976

MEMORANDUM FOR: DICK CHENEY

FROM: JACK MARSH

You should be aware that the House Rules Committee this afternoon granted a rule on the Export Administration Bill by a vote of 9-6.

Also, the Rules Committee voted against granting a rule on the Strip Mining Bill by a vote of 9-5 with one not voting.



FINAL

SEP 15 1976

You should know

The New York Times, on Tuesday, in an editorial entitled "The Arab Boycott," addressed itself to legislation now being considered by the U.S. Congress, which in effect would either penalize American companies or prohibit them from doing business with and/or in Arab countries. We applaud The Times for examining the implications of this legislation; moreover, there are portions of the editorial with which we fully agree.

We agree, for example, that a boycott whose motivation is solely religious discrimination is repugnant and unacceptable to the American way of life. [The Arab nations insist the boycott is not based on religion.] Indeed, there is already a body of U.S. law which makes such discrimination illegal, and we support those laws.

We think The Times has made a contribution in speaking out on this issue, and in beginning an examination of what sort of legislation, if any, is appropriate. The purpose of this message is twofold: first, to join in the debate and second, to present more fully the consequences to the American people and the American economy if pending legislation becomes law.

First, some relevant facts:

Fact No. 1. America imports roughly 40% of the oil it uses.

Fact No. 2. About one-third of this imported oil comes from Arab countries, and this proportion is growing every day.

Fact No. 3. Even if this country develops and implements policies that will permit fuller development of our energy resources, America will still become increasingly reliant on Arab oil, particularly in the next decade. There is simply no way around that fact of life. American economic growth, American jobs, the American lifestyle—all will depend to a growing degree on energy from the Arab nations.

Against this background, the Senate has already passed, and the House is now considering, amendments to the Export Administration Act. We have studied the proposed legislation. And we have major questions as to its impact. For example:

- Could the legislation make it impossible for American companies to import Arab oil into the United States? We think so.
- Could the legislation make it impossible for American manufacturers to sell goods to Arab countries? We think so.
- Could the legislation make it impossible for American banks to finance trade between the U.S. and Arab countries? We think so.

- Could the legislation make it impossible for American ships to call at Arab ports? We think so.
- Could the legislation lead to inadvertent violations of criminal law by individuals in U.S. companies? We think so.

In our view, the end result of this sweeping legislation could be to jeopardize America's ability to acquire vital Arab oil.

It could foreclose to the U.S. economy all opportunity to participate in the vast recycling of petrodollars, which now total some tens of billions of dollars annually—a sum that is constantly growing.

The legislation could, by foreclosing American business (oil or others) from Arab markets, be the most gigantic subsidy for foreign business ever enacted by Congress—a Marshall Plan for America's competitors abroad.

Finally, we don't believe it practical to try to enact punitive legislation in an area in which you have little or no leverage, and at this juncture and for the foreseeable future, the United States needs Arab oil more than the Arabs need U.S. goods and know-how.

America, we fear, might be reduced to a second-rate economic power; our citizens, to a second-rate standard of living. That's why we think this issue is so important and why we welcome The New York Times' suggestion of more time for discussion.

We believe that this issue has such vast foreign policy and security implications that legislation should only be enacted after the fullest debate and only after adequate reflection on the implications and consequences of what is best for the United States.

More than that, we want your voice heard. If you would like a copy of this legislation, write to Box B, Mobil Oil Corporation, 150 East 42nd Street, New York, N.Y. 10017. Read it. Then ask your Congressman what he thinks. We'd even like to hear his views, after he relays them back to you.

This may be among our more unpopular messages. But it is better to focus on consequences now, rather than try later to salvage something out of economic chaos. Please don't think that we are blind or insensitive to the emotions involved on all sides of these issues. What we are pleading for is that the issues be fully debated. To enact legislation as amendments to export-control or tax laws, particularly in an election year, and with less than adequate debate and reflection as to consequences, will not be in America's best interests.

Mobil



Mobil

1100 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036

The Honorable John Mars
The White House
Washington, D. C.

Executive Office Building Mailroom
Entrance on 17th St., near Pennsylvania Ave.

RECEIVED AND SECURITY UNIT
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WASHINGTON

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SEP 16 1976

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THE WHITE HOUSE

WASHINGTON

September 15, 1976

MEMORANDUM FOR:

JACK MARSH
BRENT SCOWCROFT
MAX FRIEDERSDORF

FROM:

ED SCHULTS

SUBJECT:

Consequences of a Possible
Expiration of the Export
Administration Act

I am advised by Commerce that no problems of any consequence will occur if the Export Administration Act is permitted to expire. Commerce believes that all of the authorities under the Act may be exercised under the Trading with the Enemy Act. In fact, the Export Administration Act has expired three times during the recent past for periods up to a month with no problems occurring.

The Commerce view is confirmed by Jack Goldklang, Office of Legal Counsel at Justice, who is knowledgeable in this area.

The only possible problem that anyone sees is the possibility that a person upon whom a sanction might be levied might assert that the authority to levy such a sanction is ambiguous under the Trading with the Enemy Act.



No American Boycott

THE ARABS' DECISION to establish an Arab boycott of Israel is their business. But their attempt to establish an American boycott of Israel is something very different. It runs against American interests, American values and the American grain. That is the elementary distinction made by the Congress in writing anti-secondary-boycott provisions into the tax reform bill. Whether a tax bill should be the vehicle for a measure related to foreign policy is an interesting question for the lawyers. The rest of us can take satisfaction that legislative teeth are being put into the diplomatic jawbone wielded quietly by the administration in the last few years. It is precisely in those last few years, of course, that the Arabs' practice of a secondary boycott, one directed at American firms that trade with Israel or that have Jewish or "Zionist" officers, has spread to encompass business deals measured in the hundreds of millions of dollars. Seldom has the inadequacy of diplomacy and the necessity for legislation been so overwhelmingly demonstrated.

Opponents of the new legislation argue, in effect, that Arab nations are so determined to compel Americans to support their boycott of Israel that, if flouted, they will take their billions in business elsewhere and perhaps even diminish the flow of their oil. No one would be surprised if some Arab-American deals are junked in conspicuous and symbolic protest. But it is demonstrably false that gaining American support of their boycott is so important to the Arabs that, to that end, they will jeopardize the thick economic and political ties they have built up so carefully with the United States in recent years. Arabs are spending billions on arms produced by the very manufacturers who sell to Israel, for instance. They are doing so presumably because they see more ad-

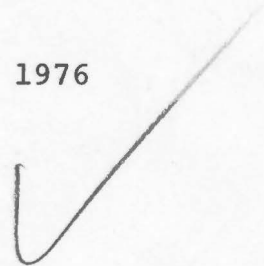
vantage to themselves in ignoring the boycott than in enforcing it. In the past, American companies had little incentive to help bring the Arabs to this sensible view of their own self-interest. Now the American companies have an incentive. Now, too, an American company declining to participate in the Arab boycott will not face the same risk of paying a financial penalty for honoring the United States' longstanding anti-secondary-boycott policy.

One needs to step back a pace. We think it entirely healthy and useful that the boycott issue has come to the fore. It goes to the basic framework in which the United States and the Arab world are trying to expand and deepen a relationship that has been, until relatively recently, narrow and formal and sometimes even antagonistic. That there is potential for great mutual advantage in the relationship is evident to everyone. That is all the more reason to try to move it forward on the basis of mutual respect. It makes no more sense for Arabs to demand that Americans now boycott Israel than for Americans to demand that Arabs now trade with Israel. We would not contend that, for all Arabs, it is easy to accept the ways of the open international system they are trying to join. Arab states have made impressive progress, however, in halting discrimination against American (or other foreign) firms and individuals on strictly religious or ethnic grounds. The administration's diplomacy, by the way, has been quite effective in this regard. It will be harder for Arabs to accept that they cannot force Americans to discriminate in trade against a third country. But it denigrates their intelligence, and it underestimates their general passion for modernization, to say that they must stick fast in their traditional ways. Certainly Americans should not be encouraging them to do so.


SEP 21 1976

THE WHITE HOUSE
WASHINGTON

September 20, 1976



MEMORANDUM FOR: JACK MARSH
BRENT SCOWCROFT
MAX FRIEDERSDORF

FROM: ED SCHMULTS 

SUBJECT: Consequences of a Possible
Expiration of the Export
Administration Act

Regarding my earlier memorandum, dated September 15, 1976 (copy attached), you should note that the Congressional Research Service has expressed the view that the boycott regulations promulgated under the Export Administration Act may not be supportable under the Trading with the Enemy Act. Justice and Commerce disagree with this conclusion and I believe they have by far the better end of the argument.

I mention the Congressional Research Service view because it might provide the basis of a political attack on the President if he permits the Export Administration Act to expire. This would be a double barrel attack, i.e., not only has the President blocked strong anti-boycott legislation, but his own action in November 1975 to prohibit discriminatory practices in this country has also terminated.

Attachment



September 15, 1976

MEMORANDUM FOR:

JACK MARSH
BRENT SCOWCROFT
MAX FRIDERSDORF

FROM:

ED SCHMULTS

SUBJECT:

Consequences of a Possible
Expiration of the Export
Administration Act

I am advised by Commerce that no problems of any consequence will occur if the Export Administration Act is permitted to expire. Commerce believes that all of the authorities under the Act may be exercised under the Trading with the Enemy Act. In fact, the Export Administration Act has expired three times during the recent past for periods up to a month with no problems occurring.

The Commerce view is confirmed by Jack Goldklang, Office of Legal Counsel at Justice, who is knowledgeable in this area.

The only possible problem that anyone sees is the possibility that a person upon whom a sanction might be levied might assert that the authority to levy such a sanction is ambiguous under the Trading with the Enemy Act.



Sent to Brent

done 9/21/02



MEMORANDUM FROM

SEP 20 1976

CHARLS E. WALKER

DATE 9/20/76

To Jack Marsh:

Some new
strategy.

Law

(I'll be at home
tonite & in office tomorrow.)

September 20, 1976

Memorandum re: Bingham Amendment to Export Administration Act/Strategy

1. H. R. 15377 is at the top of the list of legislation to be considered on the House floor Wednesday and Thursday of this week. (Monday and Tuesday are reserved for Suspension Calendar). The principal objective should be to get this legislation placed at the bottom of the list for this week since there are two or three pieces of major legislation which would probably take up the balance of the legislative time available this week. NAM, Chamber of Commerce, ECAT, and individual companies should focus their attention on the House Leadership and sympathetic congressmen to the effect that Bingham is a counter-boycott and goes way beyond what is necessary to protect the rights of U. S. citizens and could have serious and unnecessary repercussions on U. S. business and U. S. foreign policy. We can live without the Export Administration Act if we have to for a few months. Efforts should be directed at congressmen, particularly Democrats, who have some Jewish influence in their districts as well as industry involved in export to the Middle East. The objective should be to encourage these congressmen to indicate to the Leadership that they are getting intense pressure from both sides and don't really want to vote on this issue before the elections. Delay is the only way out for everyone; i.e., coming back with a short-term extension of six months to one year of the Export Administration Act in the last days of the session.

2. Assuming that this strategy will not be wholly successful, there are three approaches that can be taken on the floor:

- a. Simply let the Bingham Amendment go through without any opposition except statements of the Administration spokesmen that the legislation is "unacceptable." The proponents of this legislation will most probably push for a record vote at some stage, in any event, and without an alternative, very few Congressmen will actually vote "no" on Bingham.
- b. Convince someone like Jim Collins of Texas who wrote the Minority views to the House Commerce Committee report to move to strike or move to recommit. This will surely evoke a response from the proponents and result in a very large vote in the House, locking the House conferees in on the Bingham amendment. (The strategy here would be to create a deadlock in conference by getting the Senate conferees to go no further than Stevenson.) Again, the Administration only states that this legislation is "unacceptable" including Stevenson.
- c. Let Bingham go through but have several sympathetic Congressmen from safe districts raise questions on the floor about the great risks involved and state that Bingham goes too far by instituting a counter-boycott. This would not stop the legislation, but would at least publicly state some arguments that could later be used to support a veto.



3. The next major objective should be to try to keep any conference from starting prior to Monday, September 27. Stan Marcus and Gil Bray, Senate staff, should be encouraged to hold tight to Stevenson and not work with the House staff over the weekend on compromise language. Once the bill gets to conference, Senator Tower should be encouraged by the business community, but not directly by the President, to go no further than Stevenson. The Senate conferees will likely be the Subcommittee, and with enough work from the business community it would be possible that a majority of the Senate conferees could be convinced to hold tight for their language with absolutely no changes. The major risk here is that such a move would be successful, and that the House would, at the urging of the Jewish organizations, recede completely to the Stevenson language. Such a bill would be much harder to veto. While Morgan, Zablocki, Taylor, and Hamilton might be satisfied to ultimately see a deadlock on this issue, it would be very difficult to involve them in any intricate strategy to produce the same. They probably would vote to recede to the Senate language. This would probably be true also of any Republican House conferees. Even this procedure might, however, use up enough time so that the President could then pocket veto the legislation.

4. The next point of delay would be to have a few Senators filibuster the Conference Report on the Senate floor. To make such a strategy successful, ideally, the bill should not reach the floor of the Senate before Thursday, September 30, and even that may be cutting it too close to avoid a cloture vote. The key here is probably Byrd of West Virginia who has been most instrumental in the past in organizing cloture votes. Mansfield apparently won't be available before October 2. The foreign policy risks might be appealing to Byrd who could somewhat control the Senate scheduling.

5. The overall objective would be to delay final Congressional consideration of the Conference Report until the session expires on October 2. If a deadlock holds or a filibuster appears on October 1 or 2, there might be a chance to report out only a simple extension and the issue would never reach the President's desk. However, given the course of this legislation to date, it is highly unlikely that this strategy will succeed, and it must be assumed throughout that the President is going to be faced with a veto decision. Hopefully, that would come in the context of a pocket veto, but in any event, should be maneuvered so that a vote on override and suspension will not come up until after the elections if the Congress does not adjourn sine die on October 2.

We must also assume that, in the final analysis, the proponents of this legislation might prefer to have some legislation enacted--even if only Stevenson--prior to adjournment or recess on October 2. Thus, there will be pressure on the Administration to come up with an "acceptable compromise" that the conferees can adopt, or to simply "take" Stevenson as it is, as the "most nearly acceptable" with "clarifying" report language.

If a pure Stevenson amendment is reported from conference with the support of the Jewish organizations and labor, the case will be made to the Administration that this is the most moderate legislation Congress could pass (softened by report language); the President himself said some legislation might be necessary; it goes no further than

Ribicoff and a veto by the President would show that he didn't really mean what he said to B'nai B'rith and other Jewish leaders recently. The proponents will allege this will cost Ford the support of the Jewish voters. This may be an empty threat since the liberals in the Jewish community and labor won't support Ford in any event, and those in these groups that now support Ford do so for other reasons than support of Israel and are, in the whole, unlikely to be swayed solely by this issue from that support.

The strategy should be based on a decision between two apparently mutually exclusive objectives:

- (a) Further legislation of any kind on this issue must be blocked or vetoed in order to prevent any negative reaction on the part of the Arab states. The Administration must not "shift" position and this has the ultimate priority over domestic politics. In this case, the President should have the worst possible amendment to veto (Bingham) and cannot afford to get "trapped" with Stevenson or anything close to it;
- (b) A modified Stevenson might be acceptable and explainable to the Arabs if it does not infringe on their sovereignty and, if not obtained, anything else could be vetoed with a minimum of adverse, domestic political effect. Again, care must be taken to not get trapped with a "pure" Stevenson.

The only sure way to achieve (b) is with an Administration "substitute" on a take-it-or-leave-it basis (consistent with Ribicoff compromise and B'nai B'rith speech). Preferably, this should be made on the floor of the House to get maximum exposure, but in any event, clearly stated in conference. At least the outcome is certain--a modified Stevenson or no legislation because of a veto. The latter is the more probable result given the course of this legislation to date and the strength of the proponents.

The result has a high degree of certainty as to outcome in (b) and the strategy is not intricate, subtle or difficult to carry out. Either the conferees and Jewish groups pushing Stevenson and Bingham totally cave in to get "some" legislation or they overreact and the Senate recedes to the House in large degree since even Stevenson is "unacceptable" and they cannot modify it further. The veto is then easier and political losses are minimized domestically.

The strategy under (a) is more intricate and less controllable. The proponents can throw a curve by receding to the Senate language, particularly if there is not a clear veto threat but only "spokesmen" saying it (pure Stevenson) is unacceptable. Proponents can allege that they caved; a pure Stevenson is no more than the President outlined in his speech to B'nai B'rith; and he thus has broken his word to the Jewish communities, etc. There just is no sure way under (a) to conduct the strategy so as to end up with a "Bingham" amendment out of conference and a "good" veto certainty lies with a strategy based on (b). Strategy based on (a) is doable but unpredictable without an "insider" of considerable influence among both the House and Senate conferees, particularly, the House and that has to be a Democrat.

The unknown in (b) is whether the Arabs will perceive and understand the gambit.

Committee on International Relations

Democrats

Thomas E. Morgan (Pa.), Chairman
Clement J. Zablocki (Wis.)
L. H. Fountain (N. C.)
Dante B. Fascell (Fla.)
Charles C. Diggs, Jr. (Mich.)
Robert N. C. Nix (Pa.)
Donald M. Fraser (Minn.)
Benjamin S. Rosenthal (N.Y.)
Lee H. Hamilton (Ind.)
Lester L. Wolff (N. Y.)
Jonathan B. Bingham (N.Y.)
Gus Yatron (Pa.)
Roy A. Taylor (N. C.)
Michael Harrington (Mass.)
Leo J. Ryan (Calif.)
Donald W. Riegle, Jr. (Mich.)
Cardiss Collins (Ill.)
Stephen J. Solarz (N.Y.)
Helen S. Meyner (N.J.)
Don Bonker (Wash.)
Gerry E. Studds (Mass.)

(4 vacancies)

Republicans

William S. Broomfield (Mich.)
Edward J. Derwinski (Ill.)
Paul Findley (Ill.)
John H. Buchanan, Jr. (Ala.)
J. Herbert Burke (Fla.)
Pierre S. (Pete) duPont (Del.)
Charles W. Whalen, Jr. (Ohio)
Edward G. Biester, Jr. (Pa.)
Larry Winn, Jr. (Kans)
Benjamin A. Gilman (N. Y.)
Tennyson Guyer (Ohio)
Robert J. Lagomarsino (Calif.)

Subcommittee on International Trade and Commerce

Democrats

Jonathan B. Bingham, Chairman
Donald M. Fraser
Roy A. Taylor
Don Bonker
Gerry E. Studds

Republicans

Edward G. Biester, Jr.
Charles W. Whalen, Jr.



Committee on Banking, Housing and Urban Affairs

Democrats

William Proxmire (Wis.), Chairman
John Sparkman (Ala.)
Harrison A. Williams, Jr. (N. J.)
Thomas J. McIntyre (N. H.)
Alan Cranston (Calif.)
Adlai E. Stevenson (Ill.)
Joseph R. Biden (Del.)
Robert Morgan (N. C.)

Republicans

John Tower (Tex.)
Edward W. Brooke (Mass.)
Bob Packwood (Ore.)
Jesse Helms (N. C.)
Jake Garn (Utah)

Subcommittee on International Finance

Democrats

Adlai E. Stevenson, Chairman
William Proxmire
Harrison A. Williams
Thomas J. McIntyre
Alan Cranston
Joseph R. Biden

Republicans

Bob Packwood
John Tower
Jesse Helms
Jake Garn



For your information

DONALD E. SMILEY

Manager-Washington Office

EXON CORPORATION
Suite 1014
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036
(202) 833-8100

September 21, 1976

*Arrol
Boycott*

Dear Don:

Just a short note to thank you for your recent note together with the copy of the mailgram to Members of the House of Representatives in reference to the Export Administration Act.

With kindest personal regards, I am

Sincerely,

John O. Marsh, Jr.
Counsellor to the President

Mr. Donald E. Smiley
Manager-Washington Office
Exxon Corporation
Suite 1014
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

dl



SEP 10 1976

The International Relations Committee recently voted to attach an antiboycott amendment to the Export Administration Act, H.R. 7665. We are greatly concerned by the implications of this action.

The prohibitions of the amendment are so far reaching that economic relations between this country and Arab nations could be effectively precluded. The reason is that the amendment would in effect outlaw compliance with the laws of Arab countries which regulate the origin of imports into their territory and the destination of exports therefrom, including the export of crude oil. This would apply whether a U.S. company or its affiliate were to operate in, or solely purchase oil from, an Arab country. Currently the U.S. depends on these countries for more than forty per cent of its crude oil imports. Moreover, last year the U.S. exported more than five billion dollars worth of goods and services to Arab countries.

The proposed legislation while prohibiting discrimination for reasons of race, religion or national origin, is so sweeping that it goes far beyond this objective which Exxon has long supported. In any case such unlawful discrimination is already dealt with by existing legislation.

For the foregoing reasons we urge you to oppose this and other related pending legislation which could only do damage to U.S. interests and relations without effectively combating the Arab boycott. Indeed such legislation could very well result in a stricter enforcement of Arab boycott practices and jeopardize our ^{country's} ~~country's~~ ability to meet its ever-increasing needs for oil imports.



H. C. Kauffmann
President
Exxon Corporation
1025 Connecticut Avenue, N. W.
Suite 1014
Washington, D. C. 20036

1025 CONNECTICUT AVENUE, N. W.
SUITE 1014
WASHINGTON, D. C. 20036

Mr. John Marsh
The White House
Washington, D. C.

RECEIVED
THE WHITE HOUSE
WASHINGTON
SECURITY UNIT

1976 SEP 10 AM 11 06

• THE WHITE HOUSE
WASHINGTON

Date Sept. 21, 1976

TO: JACK MARSH

FROM: CHARLES LEPPERT

Please Handle _____

For Your Information _____

Per Our Conversation _____

Other:



Sept. 21, 1976

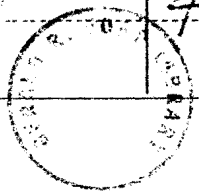
Question: Will you oppose the Export Administration bill, H.R. 15377 if it contains the Rosenthal/Bingham anti-boycott language?

Western and Plains (Talcott)				
	Yes	No	Und.	N/R
California				
Bell	/			
Burgener	/			
Clausen			/	
Clawson			/	
Goldwater			/	
Gusner				
Ketchum			/	
Lagomarsino (ARW)			/	
McCloskey			/	
Moorhead			/	
Rousselot			/	
Talcott <i>Janney MD</i>			/	
Wiggins			/	
Wilson			/	
Pettis			/	
Alaska				
Young	/			
Arizona				
Conlan	/			
Rhodes	/			
Steiger			/	
Colorado				
Armstrong (ARW)			/	
Johnson			/	
Idaho				
Hansen	/			
Symms	/			
New Mexico				
Lujan			/	
Washington				
Pritchard			/	
Kansas				
Sebelius			/	
Shriver			/	
Skubitz			/	
Winn	/			
Nebraska				
McCollister <i>o/t</i>			/	
Smith			/	
Thone (ARW)			/	
North Dakota				
Andrews			/	
Oklahoma				
Jarman			/	
South Dakota				
Abdnor			/	
Pressler			/	
Total	5	5	10	15
Total pages 1 and 2	30	33	44	37

Midwestern States (Myers)				
	Yes	No	Und.	N/R
Indiana				
Hillis	/			
Myers	/			
Iowa				
Grassley	/			
Michigan				
Broomfield		/		
Brown		/		
Cederberg		/		
Esch <i>o/t</i>			/	
Hutchinson	/			
Ruppe <i>o/t</i>			/	
Vander Jagt		/		
Minnesota				
Frenzel (ARW)		/		
Hagedorn	/			
Quie	/			
Wisconsin				
Kasten			/	
Steiger			/	
Ohio				
Ashbrook			/	
Brown (ARW)	/			
Clancy			/	
Devine			/	
Gradison <i>o/t</i>			/	
Guyer			/	
Harsha			/	
Kindness			/	
Latta			/	
Miller	/			
Mosher		/		
Regula		/		
Stanton	/			
Whalen		/		
Wylie			/	
Illinois				
Anderson			/	
Crane			/	
Derwinski			/	
Erlenborn			/	
Findley (ARW)	/			
Hyde			/	
Madigan			/	
McClory	/			
Michel	/			
O'Brien			/	
Railsback			/	
Total	10	6	16	9

Question: *H.R. 15377*

Border and Southern (Young)					New England and Mid-Atlantic (McDade)				
	Yes	No	Und.	N/R		Yes	No	Und.	N/R
<i>Maryland</i>					<i>Connecticut</i>				
Gude.....	/				McKinney.....			/	
Holt.....	/				Sarasin.....			/	
Bauman.....	/				<i>Delaware</i>				
<i>Missouri</i>					duPont.....			/	
Taylor (ARW).....	/				<i>Maine</i>				
<i>Kentucky</i>					Cohen.....			/	
Carter.....	/				Emery.....			/	
Snyder.....	/				<i>Massachusetts</i>				
<i>Tennessee</i>					Conte (ARW).....			/	
Beard.....	/				Heckler.....			/	
Duncan.....	/				<i>New Hampshire</i>				
Quillen.....	/				Cleveland.....			/	
<i>Florida</i>					<i>New Jersey</i>				
Bafalis.....	/				Fenwick.....			/	
Burke.....	/				Forsythe.....			/	
Frey.....	/				Rinaldo.....			/	
Kelly <i>leaning</i>	/				<i>Vermont</i>				
Young.....	/				Jeffords.....	/			
<i>North Carolina</i>					<i>New York</i>				
Broyhill.....	/				Conable.....			/	
Martin.....	/				Fish.....			/	
<i>South Carolina</i>					Gilman.....			/	
Spence.....	/				McDade			/	
<i>Virginia</i>					Horton.....			/	
Butler.....	/				Kemp.....			/	
Daniel.....	/				Lent.....			/	
Robinson.....	/				McEwen.....			/	
Wampler.....	/				Mitchell (ARW).....			/	
Whitehurst (ARW) <i>leaning</i>	/				Peyser.....			/	
<i>Alabama</i>					Walsh.....			/	
Buchanan.....	/				Wydler.....			/	
Dickinson.....	/				<i>Pennsylvania</i>				
Edwards.....	/				Biester.....			/	
<i>Arkansas</i>					Coughlin.....			/	
Hammerschmidt.....	/				Eshleman.....			/	
<i>Louisiana</i>					Goodling.....			/	
Moore.....	/				Heinz.....			/	
Treen.....	/				Johnson (ARW).....			/	
<i>Mississippi</i>					McDade <i>leaning</i>			/	
Cochran.....	/				Myers.....			/	
Lott.....	/				Schneebeli.....			/	
<i>Texas</i>					Schulze.....			/	
Archer <i>leaning</i>	/				Shuster.....			/	
Collins.....	/								
Stelman <i>maybe O/T</i>	/								
Paul.....	/								
Total.....	11	7	8	8	Total.....	4	15	10	5



September 22, 1976

MEMORANDUM FOR: MAX FRIEDERSDORF
FROM: JACK MARSH

We should anticipate that sometime this afternoon the President may wish to consider the Arab Boycott matter insofar as guidance to the conferees is concerned.

Depending on what happens in the House, there are several likely alternatives:

1. Support a compromise amendment in Conference.
2. Oppose any modification in preparation for a veto.
3. Accept, passively, action of the Conference.

I suggest that you take steps to ascertain as quickly as possible current views and attitudes on the Hill as to the status of things on the Hill.

Also, your views on what might be done to get favorable conferees.

JOM/d1



September 23, 1976

MEMORANDUM FOR:

JIM CANNON
ALAN GREENSPAN
BRENT SCOWCROFT
BILL SEIDMAN
FRANK ZARB

FROM:

JACK MARSH

It appear quite likely the House and Senate conferees on the Export Bill will agree to a very restrictive boycott amendment.

If this does occur, we should begin efforts to study the impact of such legislation, particularly in the economic and energy perspective. These inputs will be essential for the President when he addresses the bill after it comes down from the Hill.

The nuclear amendment should also not be overlooked and the information on its impact should be made available to the President.

cc: Dick Cheney
Jim Cavanaugh
Max Friedersdorf
Bill Gorog

JOM/dl



September 25, 1976

Boycott

MEMORANDUM FOR: ED SCHMULTS
FROM: JACK MARSH

I think it would be helpful if you would simply touch base with J. T. Smith or Elliot Richardson just for the purpose of maintaining communications and contact.

Elliot gave me a call just before he left for a trip on Thursday and indicated his desire, which I believe I mentioned to you, about having Commerce people go up to the Hill to see what kind of a deal they could get with the conferees.

Elliot went out of town and I did not get back to him and, therefore, I think it might be helpful for communication purposes if you would touch base with J.T. Smith, who Elliot designated to be his representative in this regard.

My guess is that if this thing becomes troublesome, we will have a lot of people second guessing us by saying that we would have taken the Stevenson Amendment early on and gotten out of this whole thing. I am already getting this view and I suspect that ~~that~~ probably has some merit, but the problem is that we did not do it six weeks or several months ago for reasons which you know and we have to play the ball from where it is.

I would like to minimize internal kibitzing of what we did or did not do.

JOM/d1



THE WHITE HOUSE
WASHINGTON

September 27, 1976

FOR: JACK MARSH

FROM: BRENT SCOWCROFT

Attachment



1:10 p. m. , Monday, September 27, 1976

Press Release Issued by the Saudi Arabian Embassy in New York

The Foreign Minister of Saudi Arabia categorically denies the Washington Post story this morning that Saudi Arabia has indicated that it would stop its rapidly growing oil shipments to the United States if developments hypothetically raised in the story occur.

His Royal Highness Prince Saud Al-Faisal, Saudi Arabia's Foreign Minister, today said in New York:

"Saudi Arabia believes strongly in cooperation, not confrontation. It seeks to work out its relations with America and all other nations of the Free World constructively and with moderation.

"As Saudi Arabia's Foreign Minister, I have had constructive discussions during my current visit, with the President of the United States and a number of Senators and Congressmen; and there has been absolutely no intimation of anything except the desire of our country and indeed all the Arab World for a strongly and mutually beneficial relationship with America.

"As for the three-decade old Arab boycott of Israel currently in the news, Arab officials have made clear again and again over the years that it is an economic tool as legitimate as similar American boycotts in effect now and in the past. It involves no religious or racial discrimination and applies to all groups. As long as the state of belligerency between Israel and the Arab countries remains, the boycott will continue. In truth, we do not understand how a boycott by the Arabs against Israel can be a basis for action in the United States.

~~2664~~
TRP



"As has been explained to us by many Americans, pending legislation would, however, affect trade between the United States and Arab countries in that it would penalize American workers and businesses trading with the Arab World. But all that is a matter for Americans to resolve among themselves and requires no Arab response. If commerce is cut off between the Arab countries and the United States, that would be the result not of anything done by the Arabs but the consequence of action taken here against Americans trading with the Arab countries.

"America and Saudi Arabia and, indeed, the entire Arab World have had a long and constructive relationship. It is broader and deeper now than ever before. I am confident that the United States and the Arab World will continue to have a mutually useful and rapidly growing relationship of the most fundamental kind."

(Dictated by Miss Judy Noonan -- 212/421-4520)



DL

White House
Washington

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1976 SEP 27 PM 7 31

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PMS PRESIDENT GERALD FORD

WHITE HOUSE DC

THE ORGANIZED JEWISH COMMUNITY URGENTLY REQUESTS YOUR ADMINISTRATION TO TAKE ALL POSSIBLE MEASURES TO ASSURE THE FINAL ADOPTION OF THE ANTI BOYCOTT LEGISLATION NOW BEFORE CONGRESS. ECONOMIC BLACKMAIL MUST BE RESISTED; AMERICA CANNOT SELL ITS MORAL PRINCIPLES FOR OIL OIL MONEY. IT MUST NOT BECOME THE INSTRUMENT FOR FURTHERING THE FOREIGN POLICY AIMS OF NATIONS WHOSE PURPOSES ARE INIMICAL TO OURS. THE CONFERENCE OF PRESIDENTS OF MAJOR AMERICAN JEWISH ORGANIZATIONS ASK YOUR PERSONAL INTERVENTION TO THAT END

RABBI ALEXANDER M SCHINDLER, CHAIRMAN

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PMS PRESIDENT GERALD FORD

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THE WHITE HOUSE
WASHINGTON

September 27, 1976

MEMORANDUM FOR: JACK MARSH
FROM: JIM CANNON *Jimi*
SUBJECT: Boycott Amendment

New York State does have a Boycott Amendment that restricts trade from the port of New York.

According to an authoritative Port Authority Source, there are no figures to show that it has hurt trade through the port. Shipments out of this port have been about the same since the Boycott Amendment became effective. Trade sources believe that there would have been increases in shipments without the boycott, but there is no proof of it.



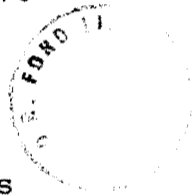
Jimi,
Can't we get some
comparative figures on
exports, or imports?
Jack

9:44

THE WHITE HOUSE
WASHINGTON

September 29, 1976

For: Jack Marsh
From: Ed Schmults



CURRENT LAW

STEVENSON AMENDMENT
(SENATE BILL)

BINGHAM-ROSENTHAL
(HOUSE BILL)

PROPOSED CONFERENCE
SUBSTITUTE

NONDISCRIMINATION

Current Department of Commerce regulations forbid the furnishing of information pursuant to a boycott-related request which would have a discriminatory effect.

Essentially the same as current law.

Forbids discriminatory acts as well as furnishing information which would have a discriminatory effect.

Same as Bingham-Rosenthal

DISCLOSURE OF
BOYCOTT REPORTS

Reports filed with the Department of Commerce regarding receipt of Arab boycott requests and compliance intentions of exporters are kept confidential. (Under the "Sunshine Act" signed into law by the President, names of companies filing such reports may have to be disclosed under the Freedom of Information Act).

Reports filed after date of enactment are to be made available for public inspection except for certain information regarding quantity and value of goods if the Secretary of Commerce determines that a competitive disadvantage to the reporting firm would result.

Reports publicly available -- no explicit exemption for business proprietary information.

Same as Stevenson.

REFUSALS TO DEAL

Subject not treated under the Export Administration Act. However, concerted refusals to deal can constitute a violation of Section 1 of the Sherman Act. The Department of Justice has charged Bechtel Corporation with violation of the Sherman Act due to Arab boycott compliance. Current law in no way covers refusals to deal with an foreign nation such as Israel (a so-called "secondary boycott") and has not been applied to cover refusals to deal with foreign companies or persons.

Requires the Secretary of Commerce to adopt regulations prohibiting American firms from "refusing to do business with any other domestic concern or person pursuant to an agreement with, requirement of, or a request from, or on behalf of, any foreign country, national, or agent thereof made or imposed for the purpose of enforcing or implementing a restrictive trade practice or boycott against a country friendly to the United States or against any domestic concern or person."

Requires the Secretary of Commerce to adopt regulations prohibiting any "U.S. person" from refraining to do business with any other U.S. person, business concern, Israel or any Israeli person or business concern -- with intent to comply with or to further or support the Arab boycott against Israel. Bingham-Rosenthal thus covers secondary as well as tertiary boycotts.

Essentially the same as Bingham-Rosenthal -- covers secondary as well as tertiary boycotts, subject to certain limited and technical exceptions.



(cont'd next page)

CURRENT LAW

STEVENSON AMENDMENT
(SENATE BILL)

BINGHAM-ROSENTHAL
(HOUSE BILL)

PROPOSED CONFERENCE
SUBSTITUTE

REFUSALS TO DEAL
(cont'd)

A specific exception is made for banks refusing to process letters of credit for the benefit of U.S. exporters where the exporter fails to comply with the requirements thereof, except where such compliance would be a violation of law. As is the case with current law, Stevenson does not cover refusals to deal with "secondary boycotts." Rather, Stevenson aims at prohibiting "tertiary boycotts," i.e., requests that U.S. concerns not deal with other U.S. concerns.

FURNISHING OF
INFORMATION

Allows U.S. exporters to furnish boycott-related information -- except such information as would have the effect of discriminating against American citizens.

Same as current law.

In addition to forbidding the furnishing of information which would have a discriminatory effect, forbids the furnishing of information about "any past, present, or proposed business relationship," etc. with any United States individual, business concern, Israel, national or resident of Israel, etc. -- with intent to comply with or support the boycott against Israel.

Prohibits furnishing information with intent to further the boycott, "about whether the person does, has done, or proposes to do business with (Israel), or (an Israeli national) or with any other boycotted person." (The great preponderance of boycott requests seek information about U.S. exporters' business relationships with Israel. A provision of law which forbids the furnishing of such information could have sweeping impact.)



	<u>CURRENT LAW</u>	<u>STEVENSON AMENDMENT (SENATE BILL)</u>	<u>BINGHAM-ROSENTHAL (HOUSE BILL)</u>	<u>PROPOSED CONFERENCE SUBSTITUTE</u>
PERSONS COVERED	<p>Current law is deemed to apply to U.S. firms engaged in export transactions and not to the actions of U.S.-controlled business entities not engaged in exporting from the United States. This construction is consistent with the enforcement of an <u>Export Administration Act</u>. It has been declared that the Arab boycott-related regulations would apply to the actions of a foreign subsidiary of a U.S. firm if that subsidiary were being used simply as a conduit for U.S.-manufactured goods on their way to Mid-East countries.</p>	<p>Same as current law.</p>	<p>Does not appear to require nexus to export transaction and would cover conduct of "U.S. persons" wherever undertaken for whether or not pursuant to an export transaction.</p>	<p>Prohibitions and reporting requirements apply to U.S. citizens, corporations organized under U.S. law, controlled foreign subsidiaries of U.S. corporations and persons doing business in the United States "with respect to their business in the United States." Both the Conference Substitute and the Bingham-Rosenthal bill thus cover conduct regardless of whether an export transaction is involved.</p>
ENFORCEMENT AND SANCTIONS	<p>Boycott-related regulations under the Export Administration Act are enforced under the general enforcement provisions of the Act -- usually by a civil fine. (Compliance action under the Export Administration Act are specifically exempted from the requirements of the Administrative Procedures Act (APA)).</p>	<p>Generally the same as current law -- except civil fines are increased. Increases comport to Administration proposal. Civil penalties for refusals to deal can be levied only after defendant is given an adjudicatory hearing pursuant to the APA.</p>	<p>Adds provision for private treble damage suits by persons "aggrieved" by violations of the Act. This provision supplements the normal range of sanctions provided by current law.</p>	<p>Deletes the Bingham-Rosenthal treble damage provision but provides that all enforcement will be pursuant to APA procedures.</p>



SEP 30 1976

THE WHITE HOUSE
WASHINGTON

September 30, 1976



MEMORANDUM FOR: JACK MARSH
BRENT SCOWCROFT
MAX FRIEDERSDORF

FROM: EDWARD SCHMULTS

Attached is a draft of a proposed "Statement of Managers" that might be used to describe the proposal on the Arab Boycott reviewed with Senator Tower yesterday.

Attachment



STATEMENT OF MANAGERS

The boycott-related provision adopted by the House and Senate Conferees combines features of both the House and Senate proposals. At the same time, it accommodates strong concerns expressed by the Administration, that the legislation not be so broadly drafted as to jeopardize or undercut essential diplomatic efforts to achieve a lasting peace in the Middle East.

The legislation states unequivocally that this Nation will not tolerate any discrimination against individuals or business concerns as a result of restrictive trade practices or boycotts against countries friendly to the United States. To assure that the Arab boycott of Israel does not have discriminatory and therefore abhorrent and intolerable effects in the United States, the Conference provision would (i) forbid any action, including the furnishing of information which has a discriminatory effect; (ii) require public disclosure of boycott reports; and (iii) prohibit "refusals to deal" -- the so-called "tertiary" effect of the boycott.

Paragraph (a) strengthens existing policy provisions of the Export Administration Act to reflect the new prohibition against refusals to deal by making it clear that the United States opposes restrictive trade practices and boycotts against "any domestic concern or person" as well as against "other countries friendly to the United States."

Paragraph (b) states that domestic concerns are to be prohibited from taking any action in furtherance of restrictive trade practices or boycotts against any country friendly to the United States or against any domestic concern or person which would discriminate or have the effect of discriminating against any individual or firm on the basis of race, color, religion, sex, nationality or national origin.

Paragraph (c) amends Section 4 of the Export Administration Act to require that reports of requests for boycott compliance, made to the Secretary of Commerce,



be publicly disclosed, except for certain specific information regarding quantity, description, and value of goods if the Secretary of Commerce determines that the disclosure of this latter information would place a domestic concern or person at a competitive disadvantage.

Paragraph (c) further amends Section 4 of the Act to require the Secretary of Commerce to adopt rules and regulations implementing the Act's strong policy mandate against discrimination and refusals to deal. Such regulations are to prohibit domestic concerns or persons from:

- (i) discriminating against any United States person including company officers or shareholders, on the basis of race, color, religion, sex, nationality, or national origin.
- (ii) furnishing information with respect to race, color, religion, sex, nationality, or national origin of any individual.
- (iii) refusing to do business with any other domestic concern or person, pursuant to an agreement or understanding with any foreign country, national or agent thereof, for the purpose and with the intent of complying with a trade boycott against a country which is friendly to the United States or against any domestic concern or person.

Paragraph (c) also contains certain procedural and conforming provisions which state that this legislation neither substitutes for nor limits the antitrust laws of the United States and that no penalty for violation of the refusal to deal regulations can be imposed without an opportunity for an adjudicatory hearing on the record in accordance with the Administrative Procedures Act.

The Conferees believe that this legislation represents a strong step to strengthen the national resolve to oppose the Arab boycott of Israel and especially any discriminatory effects of that boycott on the U.S. economy. By requiring that future boycott requests filed by U.S. firms be made

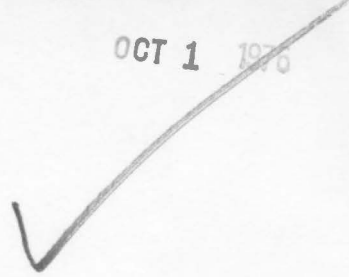


public, the legislation would give the public and the Congress an opportunity to monitor the behavior of U.S. business and the effectiveness of measures taken by the U.S. Government to implement our strong anti-boycott policy. It would, at the same time, interject an element of public accountability in the responses of U.S. firms to boycott demands. The American public and the Congress will have the opportunity to know the degree to which U.S. business relations are being bent to the interests of foreign governments. By proscribing refusals to deal, the legislation will eliminate one of the most objectionable features of the boycott -- its "tertiary" effect on freedom of choice within the U.S. economy.



OCT 1 1976

THE WHITE HOUSE
WASHINGTON



September 30, 1976

MEMORANDUM FOR: JACK MARSH
FROM: JIM CANNON *J. Cannon*
SUBJECT: Boycott Amendment

My authoritative source says there are no figures to prove that the New York State boycott has had an impact in either exports or imports.

Sony



[Oct. 1976?]

- 2 -

offered a compromise amendment (see attachment) and later offered to accept a boycott amendment similar to Senator Stevenson's with a minor modification. However, neither of these proposals was accepted and the Congress adjourned without passing an extension of the Export Administration Act. Each of the President's proposals indicated support for prospective public disclosure of boycott reports.



Foreign Boycotts

Sec. _____. (a) Section 3(5)(A) of the Export Administration Act of 1969 (hereinafter in this Section referred to as the "Act") is amended by inserting immediately after "United States" the following: "or against any domestic concern or person".

(b) Section 3(5)(B) of the Act is amended by inserting immediately after "United States" the following: "and to prohibit such domestic concerns from taking any action in furtherance of such restrictive trade practices or boycotts, which discriminates or has the effect of discriminating against any domestic concern or person on the basis of race, color, religion, sex, nationality or national origin".

(c) Section 4 of the Act is amended by redesignating paragraphs (2) through (4) and any cross references thereto as paragraphs (3) through (5) respectively, and inserting after paragraph (1) a new paragraph (2) as follows:

"(2)(A) Rules and regulations prescribed under subsection 4(b)(1) to implement the provisions of Section 3(5) of this Act, shall require that any domestic concern or person which receives a request to take any action referred to in Section 3(5)(B) of this Act to report that fact to the Secretary of Commerce together with such other information as the Secretary may require to enable him to carry out the requirements of Section 3(5).

"(B) Any report hereinafter filed pursuant to this paragraph shall be made available promptly for public inspection and copying: Provided, however, that information regarding the quantity, description, and value of any goods to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the domestic concern or person involved at a competitive disadvantage. The Secretary of Commerce shall transmit copies of such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary of Commerce, may deem appropriate for carrying out the purposes of Section 3(5) of this Act.

"(C) Rules and regulations implementing the provisions of Section 3(5) of this Act shall prohibit domestic concerns and persons from:



(i) Discriminating against any United States person, including any officer, employee, agent, director, or stockholder or other owner of any domestic concern on the basis of race, color, religion, sex, nationality or national origin.

(ii) Furnishing information with respect to the race, color, religion, sex, nationality, or national origin of any past, present, or proposed officer, employee, agent, director, or stockholder or other owner of any domestic concern.

(iii) Refusing to do business with any other domestic concern or person, pursuant to an agreement or understanding with any foreign country, national or agent thereof, for the purpose and with the intent of complying with a trade boycott against a country which is friendly to the United States or against any domestic concern or person.

"(D) Any civil penalty (including any suspension or revocation of the authority to export) imposed under this Act, for violation of rules and regulations issued under subparagraph (2)(C)(iii) of this paragraph may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of Title 5, United States Code. The provisions of subparagraph (2)(C)(iii) of this paragraph shall neither substitute for nor limit the antitrust laws of the United States. Further, the provisions of subparagraph (2)(C)(iii) of this subsection shall not apply to compliance with requirements pertaining to the identity of any carrier on which articles, materials, or supplies are to be shipped so long as such do not have as their purpose the enforcement or implementation of a restrictive trade practice or boycott against a country friendly to the United States or against any domestic concern or person."



THE WHITE HOUSE
WASHINGTON

October 7, 1976 5:10 p.m.

Mr. Marsh:

Charlie Leppert left the following message:

"I was called by Tom Martin who tells me that Senators Proxmire, Ribicoff and Williams are expected to hold a press conference attacking the validity of the President's statements last evening in the debate on the Arab boycott issue."

Donna

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