The original documents are located in Box 14, folder "Oil Cargo Preference Legislation" of the Robert T. Hartmann Files at the Gerald R. Ford Presidential Library.

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COUNCIL ON INTERNATIONAL ECONOMIC POLICY
WASHINGTON, D.C. 20500

DEC 6 1974

MEMORANDUM FOR

THE PRESIDENT

SUBJECT: OIL CARGO PREFERENCE LEGISLATION

The so-called "waiver provision" contained in the Conference Report on H.R. 8193 provides as follows:

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

Interpretation of Waiver Provision: With the exception of a statement made on the floor of the House of Representatives during consideration of the Conference Report, there is no legislative history clarifying whether a waiver of the cargo preference requirements may be invoked solely for national security reasons, or additionally for economic or foreign policy reasons.

Those factors suggesting that the waiver can only be invoked for national security reasons are:

(1) Section 901(b)(1) of the Merchant Marine Act provides for a waiver by Congress or the President or the Secretary of Defense with respect to cargo preference on government impelled cargos upon declaration that "an emergency exists justifying a temporary waiver...." The legislative history in connection with this language clearly indicates that the "emergency" must relate to national security. The above language of Section 901(b)(1) is similar to the

language found in the Conference Report on the present Cargo Preference bill. Such similarity means that one could make a strong argument that the legislative history in connection with waiver for government impelled cargos should also apply in the present case.

(2) In your recent message to Congress you indicated that the legislative history with respect to the waiver provision was not explicit and implied some doubt as to whether you could waive the cargo preference requirements for economic as well as foreign affairs and national security reasons.

The factors suggesting that the waiver can be invoked for economic or foreign policy reasons as well as national security reasons are:

(1) A statement by Representative Grover interpreting the Conference Report on the floor of the House. In responding to allegations that the bill would increase the price of gasoline, Representative Grover indicated that, "The President is authorized in this conference report--has absolute discretion--to waive completely every requirement of the legislation in the national interest.... While it is clear that the utilization of this waiver authority by the President must be based upon a specific emergency of a temporary nature, the adoption of the phrase 'in the national interest' is intended to vest in the President broad discretion with respect to the nature of the emergency which might justify invoking this authority." (Emphasis added.)

(2) The waiver provision in the Conference Report noted above would appear in a separate subsection of the Merchant Marine Act than the language of existing Section 901(b)(1). Thus the legislative history in connection with Section 901(b)(1) does not necessarily apply to the language of the waiver section in the Conference Report.

Invocation of Waiver Provision: Because of economic commitments which will probably be made subsequent to the signing of this legislation, it is highly desirable that the waiver provision be invoked soon after the bill is signed into law. If there is a substantial delay in exercising the waiver, investments and commitments will be made in expectation of receiving the benefits of the Act. After such actions are taken, it would be extremely difficult from a political and economic view to invoke the waiver.

Secondly, you should recognize the probability of litigation initiated by labor and supported by the shipbuilders challenging the validity of a waiver based on economic or foreign policy grounds, as opposed to one based on national security grounds. It is not clear what the result of such litigation would be.

Arguments Favoring Use of Waiver for National Security Reasons:

(1) Lack of U.S. capacity. We presently have the capacity to handle only 15% of the oil tonnage transported, whereas the bill initially requires that 20% of the oil tonnage be carried on U.S. vessels. In meeting the 20% requirement, vessels presently used for domestic shipping would be transferred for international use.

(2) With 20% initially, and eventually 30% of U.S. capacity designated for oil transportation use, the Department of Defense would encounter difficulty in finding sufficient capacity to handle their transshipment requirements.

(3) The flow of oil to the United States might be interrupted if suppliers refused to ship on U.S. flag vessels rather than on other fleets of their choice.

Arguments Favoring Use of Waiver for Economic or Foreign Policy Reasons:

(1) Application of the legislation will result in a substantial inflationary impact on the price of petroleum and petroleum products, electricity, heat, transportation, manufactured and processed goods, and also on ship construction costs.

(2) The costs of shipping petroleum will increase from $300 to $600 million per year, depending on the volume of import and the shipping rates for foreign flag ships.

(3) The legislation would violate U.S. treaties of Friendship, Commerce and Navigation with over 20 countries. Additionally, such U.S. legislation might invite retaliation by foreign countries.

(4) The inflationary impact of the legislation may reduce the competitiveness of U.S. exports of petroleum-based products because of higher prices, resulting in an adverse balance of payments impact.

WDE

W. D. Eberle
Executive Director

bcc: Secretary Simon, Secretary Dent, Messrs Hartmann, Seidman and Marsh