

**The original documents are located in Box 62, folder “1976/09/17 - Frank Zarb and Mobil Oil Officials” of the James M. Cannon Files at the Gerald R. Ford Presidential Library.**

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UP HAS  
ASKED YOU  
ME TO SEE  
OK w!  
WARNER FAVOURABLES  
Set  
Juni

Good

Morning

June!

MEMORANDUM

OFFICE OF THE VICE PRESIDENT  
WASHINGTON

*g Am*

September 14, 1976

MEMORANDUM FOR: Jim Cannon

FROM: Susan Herter

For the reasons discussed on the phone, the Vice President feels it would be better if you and Frank saw them.

The request came to me through Ed Hennelly, Mobil, whose telephone number is 212/883-3828 or 3827.

Attachment



*09506*

OFFICE OF THE VICE PRESIDENT  
WASHINGTON

September 13, 1976

The Vice President

Re: Mobil Oil

The Chairman of the Board of Mobil Oil (Rawleigh Warner) and the President of Mobil (William P. Tavoulareas) are extremely anxious to see you in connection with their recent conversations with Arab leaders and their concern about the impact of a boycott on the U. S. economy.

They called me because of Chris's former association with Mobil. I checked with Captain Howe who thinks it is a domestic matter. I checked with Jim Cannon who thinks you should see them if they feel they have something important to say to the Vice President.

If you do see them, Jim feels that he and Zarb should sit in on the meeting.

Okay to set up \_\_\_\_\_

Not interested \_\_\_\_\_

Susan



## RIBICOFF AMENDMENT

Sections 1061-1067 of the Tax Reform Act of 1976, as passed by the House and the Senate (the "Ribicoff amendment"), would deny foreign tax credits and impose other tax penalties on any American company which "participates in" or "cooperates with" an international boycott.

1. Purpose of Provisions Seems to be to Stop U.S. Companies from Doing Business with Arab Countries - not to Protect U.S. Persons from Religious Discrimination

Although drafted in general terms, it is clear that the Ribicoff amendment's intended effect is to penalize and harass U.S. companies trading with Arab countries.

Some supporters of this legislation claim that their aim is to protect U.S. persons and companies from religious discrimination that prevents them from participating in international business. The amendment goes much further than this, however, and may severely penalize American companies doing business in the Arab world, and will be seen by the Arab countries and their friends as a U.S. embargo of the Arab world.

2. Prohibited Conduct Broadly Stated

The Ribicoff amendment defines what constitutes "participation in" or "cooperation" with a boycott in extremely

broad terms. A person is subject to the tax penalties if he agrees:\*

- (A) To refrain from doing business with a boycotted country, its companies or nationals;
- (B) To refrain from doing business with a U.S. person which does business with a boycotted country, its companies or nationals;
- (C) To refrain from doing business with any company (whether U.S. or foreign) whose ownership or management includes persons of a particular nationality, race or religion;
- (D) To refrain from employing persons of a particular nationality, race, or religion; or
- (E) To refrain from shipping goods on carriers owned, or leased, or operated by persons who do not participate in or cooperate with the boycott.

3. Ribicoff Provisions - Even as Amended by the Conference - Will Hurt U.S. Companies Doing Business in the Arab Countries

The Conference Committee appears to have intended to revise the original Ribicoff proposal to permit U.S. taxpayers to continue to carry on business with Arab countries in a manner required by the laws and administrative practices

\*Statutory language in summary form.

of those countries. Unfortunately, the Conference added a Catch 22. It seems that taxpayers may freely obey the sovereign laws of an Arab country so long as they do not "agree" to obey those laws. Unfortunately, the Conference report states that a taxpayer does not have to "agree" knowingly to be in trouble. The taxpayer may be held to have "agreed" to participate in a boycott if he adopts a course of action from which an "agreement" can be inferred. Obeying local law in a manner sanctioned in one sentence of the Conference report can (incredible as it may seem) be treated as evidence of a prohibited agreement under another sentence of the report. Thus, it is not clear under the statute whether a taxpayer will be penalized if he consistently fails to ship goods into an Arab country on vessels that are legally prohibited from entering the waters of that Arab country. It is not clear whether a taxpayer will be penalized for consistently failing to import goods purchased from a company whose goods cannot be legally imported into a country. It is not clear whether a taxpayer will be penalized if he consistently fails to use the services of a company in an Arab country where the company cannot legally perform services.

Unless the taxpayer is confident that he can sustain the proposition that his lawful course of action does not



constitute an unwritten implied agreement to obey the law, he will find it difficult, if not impossible, to undertake operations in Arab countries because he will not know what tax penalties he may incur.

#### Examples

A taxpayer could be penalized for importing into Arab countries goods purchased from non-blacklisted U.S. companies because the taxpayer failed to purchase goods from blacklisted U.S. companies or certified that the goods he imported were not manufactured by blacklisted firms.

A taxpayer could be penalized for importing goods into Arab countries on U.S. vessels that were not blacklisted because he failed to import goods into Arab countries on vessels that were blacklisted.

A taxpayer could be penalized for providing services in an Arab country with personnel who could get visas to work in the Arab country because he failed to employ personnel in the Arab country who could not get visas to work in that country.

Some people believe that the Ribicoff amendment as reported out by the Conference Committee reflects the Committee's efforts to permit American companies to continue to do

business in boycotting countries without prejudice to their tax position so long as they did not become active supporters of the boycott. However, the language of the amendment, particularly when taken together with the Committee report, leaves American companies in a position where even if they do not affirmatively support the boycott by agreeing to collaborate with it, they must operate at their peril because of the risk that they will be held to have made an agreement simply by obeying the local law in conducting their operations.

4. Penalties are Inequitable Because They Operate Unevenly.

The very nature of the approach taken in the Ribicoff amendment will inevitably mean that different taxpayers will pay vastly different penalties ranging from zero to millions of dollars for the same act. For example, an American exporter/importer that willingly agrees to comply with the secondary and tertiary aspects of an Arab boycott, but who sells material on a delivered basis and pays no tax in Saudi Arabia, manufactures no goods that qualify for DISC benefits and has no foreign subsidiaries (and therefore no deferral) will incur no penalty from seeking out and actively participating in a boycott, whereas another American company that has profitable foreign operations or

manufactures American goods for export and sincerely seeks to comply with this ambiguous legislation could lose millions. Foreign companies, of course, will lose nothing; only American companies.

The penalties imposed by the Ribicoff amendment are capricious and can have no relation to the offense involved. A single act in a single Arab country that is held to be a boycott participation can result in tax penalties on all the business of a taxpayer in all Arab countries unless the taxpayer can "clearly separate and identify" the different operations of his business both within and without the boycotting country and clearly demonstrate non-participation in the boycott. This burden of proof may be impossible to meet regardless of the taxpayer's innocence.

5. Reporting Requirements are Excessive

The reporting requirements of the Ribicoff amendment place a tremendous burden, both legal and administrative, on the taxpayer. Under the amendment, a taxpayer is required to file a report if it or an affiliate (domestic or foreign) has operations (profitable or unprofitable) in or with any country (or its nationals) which appears on the Treasury's boycott countries list OR in any country not on the list (or with its nationals) which the taxpayer

has reason to know imposes a boycott. Thus, a company with worldwide operations may well have to file reports detailing its operations throughout the Arab world. The statute might even be interpreted as requiring reports on the dealings of a company or any of its affiliates with individual nationals of a boycotting country who were located inside or outside that country. The taxpayer may be required to conduct an annual worldwide review of, and report on, the business transactions of its affiliates, including transactions that were carried out for business reasons that could not possibly be related to any boycott.

6. Amendment is Retroactive in that Tax Penalties Apply to Business Done Before its Effective Date.

The penalties contained in the Amendment go far beyond anything which has previously been contained in U.S. law. It is possible that taxpayers will lose millions of dollars related to past activities which were legal and required by the laws of the foreign country in which the activity occurred and also legal under U.S. law simply because the taxpayer is determined to have "agreed" to engage in certain prohibited activities after enactment of the law. An "agreement" in November 1976 can generate penalties in respect of operations conducted in January 1976.

Sept. 17, 1976

September 16, 1976

PENDING BOYCOTT LEGISLATION

Amendments to Export Administration Act

The Export Administration Act expires September 30, 1976. It covers many U.S. export matters other than the boycott subject.

The Senate Bill (S.3084) to extend that Act contains the Stevenson boycott amendment, and has been passed by the Senate. The House Bill (H.R.15377) to extend the Act contains the Bingham-Rosenthal boycott amendment, and was granted a rule September 15 by the Rules Committee, sending it to the House floor.

The correct action is to preserve the existing law. Regulations of the Commerce Department under the Export Administration Act already provide that U.S. exporters cannot take "any action" that supports a boycott if it "discriminates" against U.S. citizens or firms on the basis of race, religion or national origin.

The public's impression is that the pending Bills are similarly addressed to preventing discrimination. But they are in fact written to accomplish many other surprising results. If enacted, the Bills could accomplish a fundamental change in this nation's foreign relations and economic policies

-- a potential result little noticed to date but one which would be dramatic indeed if it should occur. That development would be destructive of basic interests of the United States for several reasons.

For example:

- The sponsors would have us believe their purpose is to prevent exclusion of any U.S. company from the rapidly developing opportunities for export trade with Arab nations. The Bills, however, could very well end all such trade -- so that not only the U.S. firms sought to be protected but all others as well would be pre-empted by foreign competitors.
- The sponsors claim the U.S. has no jurisdiction over actions by other sovereign nations to boycott a foreign country -- "a legitimate type of economic warfare under international law and practice" (in the words of the House Committee report). Yet the Bills plainly take sides on that issue, disabling U.S. companies from doing business in Arab countries because of the boycott.
- The sponsors claim the U.S. has no jurisdiction over actions by other nations to boycott foreign companies. Yet the House Bill would make it illegal for U.S. companies not to do business with any foreign company by reason of

the boycott -- even though religious or other discrimination was not involved and even though the U.S. company could not in any case have used the products of such foreign company.

- The Bills are a radical departure from a fundamental U.S. business/legal principle -- that any company is free to select those with whom it does business (except for anti-competitive agreements not to deal or refusals based on religious or other discrimination). Under the Bills, a company involved in Arab-nation business would have a public-utility type obligation not to refuse any business offer if that offer cannot be accepted by reason of the Arab countries' boycott requirements (and even though such an acceptance would be a futile gesture).
- The Bills thus would make it a crime under U.S. law not to do what certain Arab countries make it impossible to do -- e.g., import prohibited goods into those countries, use prohibited vessels for imports to and exports from those countries, and send crude oil from those countries to restricted destinations. The only alternative would be for U.S. companies to cease doing business with the Arab countries.
- For these reasons, the Bills could cast doubt on the

ability of U.S. manufacturers to fulfill U.S. Government commitments for the sale of arms and spare parts to Arab nations.

- The Bills represent, in the final analysis, a clear effort to impair the developing economic interdependence and other ties between the U.S. and the Arab nations. If this step were ever to be taken, it should be consciously decided after thorough and open debate on that issue -- not accomplished overnight by bills featured as "anti-discrimination" legislation.
- The Bills assume retaliation by Arab nations is unlikely -- but to enable U.S. companies legally to deliver technology and goods, they would drop the boycott. In view of the substantial U.S. dependence on Arab oil, this would be an enormous gamble where the stakes include the continued functioning of the U.S. economy and the well-being of its people. In fact, the Arab nations could easily utilize the technology and goods of non-U.S. firms in lieu of eliminating the boycott restrictions.
- Even the ability of foreign subsidiaries of U.S. companies to continue in business would be jeopardized. The House Bill (and perhaps regulations under the Senate Bill) would cover such affiliates, so that U.S. criminal penalties would attach to actions taken by U.S. affiliated foreign



companies even though those actions are required by the laws of the sovereign nations where they do business.

Under those circumstances, it follows that the Arab nations would require local affiliates of U.S. companies to obtain necessary equipment and supplies from local national companies or from foreign competitors -- and in complying with that requirement the foreign affiliate might well be claimed under the Bills to have violated U.S. criminal law.

- All the foregoing comments pertain to the Bills without regard to any act of discrimination whether on the basis of race, religion or national origin. Indeed, the true nature of the legislation is highlighted by the fact that the Senate Bill does not even prohibit such discriminatory actions as such.

These and other consequences of the legislation are shown more clearly on the attached summary, which cites the precise language of the Bills.

## Prohibited Actions

## Remarks

Senate BillHouse Bill

-

"any action with intent to comply with or to further or support" a boycott

- Any action to comply with boycott restrictions is prohibited by the Bill (even without regulations). For example, compliance with Arab restrictions on import of goods or use of vessels.
- Compliance with Arab crude destination restrictions could be said to be prohibited. Hence, if American companies import Arab crude solely to the U.S., they could be said to be in violation.
- Commerce Dept. must issue regulations defining prohibited actions "including" (but not necessarily limited to) those specified in the House Bill (listed below). (House Committee Report says specific prohibitions are only "illustrative".)
- On imports to Arab countries, it could be a violation not to purchase goods from blacklisted U.S. companies or to certify that goods were not manufactured by blacklisted firms -- even though failure to purchase from them is not based on religious discrimination and even though such goods if purchased could not be imported into the Arab country. (Therefore, it could be illegal to import goods purchased from non-blacklisted companies.)
- Could not use non-blacklisted vessels on Arab imports or exports since this involves not using blacklisted U.S. vessels. Thus, there might be no way to ship crude to the U.S. or goods to Arab countries.
- Could apply to crude destination restrictions, since oil company must say "no" to U.S. company who seeks crude for direct shipment to Israel.

"refusing to do business with any other domestic concern" pursuant to boycott request or requirement

"boycotting or refraining from doing business with any U.S. person" with intent to comply with boycott

## Prohibited Actions

## Remarks

Senate BillHouse Bill

- "refraining from doing business with the boycotted country" with intent to comply with the boycott

- Expands far beyond sponsors' expressed intent to protect U.S. companies .
- Crude destination restrictions could be violation since compliance is action related to boycott limitations (including limits on crude to South Africa or, during embargo, to U.S.). Crude exports to U.S. would involve compliance with destination restrictions, hence such exports could be illegal.
- On Arab imports, certification of non-Israel origin or failure to purchase Israeli goods (which can't be imported) would be violation. Thus, no goods could be imported into Arab countries by U.S. firms.
- Possible violation if Israeli firm requests crude purchase for direct shipment to Israel and is denied.
- Possible violation on Arab imports if Israeli vendor is turned down, and maybe from mere certification of non-Israeli origin or that goods not manufactured by black-listed vendor.
- Again, goes beyond protection for U.S. companies.

- "refraining from doing business" with "any business concern" of boycotted country with intent to comply with the boycott

Prohibited Actions

Remarks

Senate Bill

House Bill

- "refraining from doing business" with any person who does business with boycotted country or with nationals of that country, with intent to comply with boycott requirements

- "Discriminating" against U.S. persons on basis of religion, nationality or national origin

"furnishing information" on any persons' race, religion or national origin if requested for boycott purpose

Similar, but only if information relates to employees, etc., of a U.S. company; includes information on "nationality"

- Furnishing information on any business relations with boycotted country or firms

- Goes beyond trying to protect U.S. companies. Apparently an effort to protect companies all over the world who might be blacklisted because of Israeli business involvement.

- "Religious" discrimination not a major problem; "nationality" could be. How can U.S. company refuse to comply with legal requirements that employment preference be given to local nationals, or that nationals of certain other countries be excluded?

- Potentially troublesome, especially if Arab country disallows Israeli citizens ("nationality").

- Would an individual visa applicant commit an illegal act by submitting information requested by the Government as to religion or nationality?

- Would prevent a blacklisted company from furnishing information on itself necessary to get off the blacklist.



Prohibited Actions		Remarks
<u>Senate Bill</u>	<u>House Bill</u>	
Persons subject to prohibitions are "domestic concerns."	Persons subject are any "U.S. person" which <u>includes</u> foreign subsidiaries.	<ul style="list-style-type: none"> <li>- Inclusion of foreign subs, especially in Arab countries, could be very difficult since they <u>must</u> comply with laws of sovereign nation where they operate.</li> </ul> <p>How can U.S. criminal penalties pertain to actions of a foreign-incorporated affiliate governed by local law?</p>
Does not apply to shipping restrictions <u>if</u> "purpose" is not to implement boycott.	Prohibitions noted above against refusing to do business bring in shipping restrictions.	<ul style="list-style-type: none"> <li>- Regulations under Senate Bill might also finally define "domestic concerns" to include foreign subs.</li> </ul>
Criminal penalties.	Criminal penalties.	<ul style="list-style-type: none"> <li>- U.S. companies might be unable to import to Arab nations at all since to do so requires non-use of Israeli and blacklisted vessels and shipping companies, and refraining from using those vessels could be illegal.</li> </ul>
-	Treble damages can be recovered by any U.S. person "aggrieved" by a prohibited action.	<ul style="list-style-type: none"> <li>- Already in the law (for taking boycott action which discriminates against U.S. persons on basis of religion or national origin).</li> <li>- The <u>wrong</u> way to enforce foreign policy. A field day for plaintiff's trial bar.</li> </ul>

Prohibited ActionsRemarksSenate BillHouse Bill

Reports of requests for boycott compliance, to Commerce Dept., must be public.

Same

- Presents difficulty since "how" requests are publicized cannot be controlled. Mere request for formalistic certification of non-Israeli origin on Arab imports would be characterized in media as "cooperation" with boycott. Would unnecessarily aggravate U.S./Arab relations.

MEET WITH FRANK ZARB  
Friday, September 17, 1976  
Re: Mobile Oil  
    Mr. Tavoulareas  
    James Riordan  
    J. E. Fowler  
3PM