The original documents are located in Box C30, folder "Presidential Handwriting, 11/3/1975 (3)" of the Presidential Handwriting File at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

November 3, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: PHILIP BUCHEN

FROM: JAMES E. CONNOR

SUBJECT: Arab Boycott and Related Religious and Ethnic Discrimination

The President reviewed your memorandum of October 28 on the above subject and made the following decisions:

#1 - Employment Discrimination

Presidential Directive approved and signed.

Recommendation that Secretary Dunlop amend the Labor Department's March 10, 1975 Secretarial Memorandum to the Heads of All Agencies to require that Federal contractors and subcontractors, which have job applicants or present employees applying for overseas assignments, inform the State Department of any visa rejections based on the exclusionary policies of a host country. --- Approved.

#2 - Coercion to Discriminate

Recommendation that the Administration introduce legislation to add to prohibitions against discrimination on the basis of race, religion, sex or national origin.
--- Approved.

#3 - Action to Prohibit U.S. Exporters' Compliance with Arab Boycott Requests of a Religious or Ethnic Discriminatory Nature

Recommendation that President exercise discretionary authority under the Export Administration Act to direct the Secretary of Commerce to issue amended regulations to:

(1) prohibit U.S. exporters and related service organizations from answering or complying in any way with boycott requests that would cause discrimination against U.S. citizens or firms on that basis of race, color, religion, sex, or national origin; and

(2) require related service organizations that become involved in any boycott request to report such involvement directly to the Department. --- Approved.

#4 - Disclosure of Reports Filed Pursuant to Export Administration Act Regulations

Recommendation to direct the Secretary of Commerce to amend the regulations of the Export Administration Act to require prospective disclosure of boycott request reports (including reports on ethnic and religious discrimination).

--- Disapproved

#5 - Commercial Banks and Savings & Loan Associations

Recommendation to inform the FDIC that the President support the policy stated in the Comptroller's Banking Bulletin and that he encourages the FDIC to issue a similar policy statement to the banks within its jurisdiction, urging them to recognize that compliance with discriminatory conditions directed against any customer, employee, stockholder, officer or director of a bank on the basis of religion or national origin is incompatible with the public service function of banking institutions in this country. --- Approved

Recommendation that same action be taken with respect to the Federal Reserve Board and the Federal Home Loan Bank Board.

--- Approved

Recommendation that the Administration announce again its support for legislation which would amend the Equal Credit Opportunity Act to include prohibition against any creditor discriminating against any credit applicant on the basis of race, color, religion or national origin with respect to any aspect of a credit transaction. The Administration would not indicate support for prohibitions against the other categories listed in the bills mentioned. --- Approved.

#6 - Investment Banking Industry

Recommendation that:

(1) the U.S. investment banking community be praised for resisting the pressure of certain Arab investment bankers to force the exclusion from financing syndicates of Jewish-named firms;

(2) the SEC and NASD be praised for initiating a program to monitor practices in the securities industry within their jurisdiction in order to determine whether such discriminatory practices have occurred or will occur in the future; and

(3) urge the SEC and NASD to take whatever action they deem necessary to insure that discriminatory exclusion is not tolerated and that non-discriminatory participation is adhered to.

--- Approved

#7 - Possible Antitrust Violations

Recommendation that the Administration announce that the Department of Justice is vigorously engaged in a detailed investigation of possible antitrust violations involving U.S. businesses cooperating with the Arab boycott and that Justice has concluded that the boycotting of an American firm by another American firm raises serious antitrust questions.

--- Approved.

#8- Impact of Boycott of U.S. Firms Upon U.S. Government Activities

Recommendation - no new policy decision of general application at this time:

- Agree -

#9 - Strategy for Implementing Decisions

Recommendation to meet with Secretary Kissinger, Attorney General Levi, Secretary Morton, Bobbie Kilberg, Rod Hills, Brent Scowcroft, Bob Oakley, Bob Goldwin to agree upon when and how to communicate the decisions taken to the appropriate agencies, to the Congress, to the public, and to the key Arab governments and Israel. --- Approved

Please follow-up with appropriate action.

cc: Don Rumsfeld
Jerry Jones

THE PRESIDENT HAS SEEN...

THE WHITE HOUSE

WASHINGTON

October 28, 1975

MEMORANDUM FOR: THE PRESIDENT

THROUGH: RODERICK M. HILLS RH

FROM: BOBBIE GREENE KILBERG BGK

SUBJECT: Arab Boycott and Related Religious and Ethnic Discrimination

I. Introduction

On March 4, 1975, you asked each of the appropriate Cabinet members to do his or her utmost to insure that, in relation to the Arab boycott, all allegations of attempted discrimination against institutions or individuals on religious or ethnic grounds be fully investigated and that appropriate action be taken in the event that the investigations should uncover discriminatory acts in violation of the laws of the United States.

Based upon the replies received from the Departments to your March 4 request, the Counsel's Office coordinated a study leading to recommendations for action to deal with various aspects of the Arab boycott and related discrimination on the basis of religion or national origin. The study has included foreign policy and economic implications as well as legal considerations and the attitude of Congress and Jewish organizations. The recommendations which emerged from the study are set forth in detail in a second section of this memorandum. They have been approved by the Counsel's Office, Bob Goldwin, Bill Seidman, OMB, the NSC Staff and the Under Secretaries Committee1/, except where specifically noted.

Those approving the recommendations believe that they constitute a reasonable balance between a number of important, and sometimes

---

1/ State, Defense, Joint Chiefs of Staff, Central Intelligence Agency, Treasury, Justice, Agriculture, Commerce, Labor, Export-Import Bank, Civil Service Commission, Agency for International Development, Overseas Private Investment Corporation, and Council on International Economic Policy.

conflicting, domestic and foreign policy considerations. The overall package, taken together with already existing laws and regulations and a possible later decision in the area of Arab trade opportunity "tender" distribution, is believed by the NSC Staff to constitute a policy which should obviate the need for additional major action by either the Executive or Congress for at least several years to come, during which the success or shortcomings of the policy can be properly evaluated.

The Defense Department strongly recommended that the entire issue be presented at a meeting of the National Security Council before any Presidential decisions were made. However, Defense did not object to the specific recommendations in the memorandum, except where noted. The Counsel's Office and the NSC Staff take the position that the issues and recommendations presented in the memorandum have been thoroughly analyzed and reviewed by all the relevant Departments and offices, both in the foreign and domestic areas, and that a formal meeting of the NSC is unnecessary. Instead, the Counsel's Office and NSC Staff recommend in Section 9 of the memorandum that you meet with Secretary Kissinger, Attorney General Levi, Secretary Morton and Brent Scowcroft, as well as with domestic White House staff, prior to any announcement of your decisions in order to coordinate a clear strategy for the timing and manner of implementation which will be consistent with both our domestic and foreign concerns.

The recommendations in this memorandum focus on three areas for Administration action:

(1) religious and ethnic discrimination;

(2) impact of the boycott on direct U.S. Government activity and on projects in or transactions with Arab countries facilitated and/or financed by the U.S. Government; and

(3) boycott agreements that constitute a contract, combination or conspiracy to refuse to deal for anticompetitive reasons in violation of the Sherman Act's antitrust provisions.

Background on Arab Boycott

The Arab boycott against Israel dates from 1946 when the Arab League Council applied a primary boycott to prevent the entry of certain products

into Arab countries from territory now part of Israel. The secondary boycott designed to inhibit third parties from assisting in Israel's development was introduced in 1951. The boycott is reflected in a lengthy and complex set of "Principles" adopted over the years by the Arab League Council, which focus primarily upon various business activities which the Arab governments view as supporting Israel. These activities include the establishment of a plant in Israel, the supply of a significant portion of the components for products assembled in Israel, maintenance of general agents or head offices for the Middle East in Israel, grants of manufacturing licenses or the right to use a company's name, entry into partnership with Israeli companies, supply of advice or technical expertise to Israeli manufacturing plants, action as agents for Israeli companies or principal supporters of Israeli products, refusal to answer questions posed by Arab governments within a specified period. These prohibitions are subject in practice to numerous exceptions and are not meant to cover routine trading relationships with Israel in non-military items.

The "Principles" are the basis for the lengthy blacklist maintained by the Arab League's Central Boycott Office and updated at semi-annual meetings of all League members. It currently lists approximately 1500 U.S. firms. The strength of enforcement of the blacklist and the "Principles" varies widely among the Arab states and is based on subjective judgments, as well as objective information. This means that, in practice, there are numerous exceptions to the application as well as the compilation of the boycott blacklist.

The "Principles" extend beyond normal commercial relationships to provide for the boycotting of films, recordings, and for the blacklisting of actors, artists, and companies managed by persons who are judged to have aided Israel or to have engaged in "Zionist activities." In theory, various criteria are prescribed for making these determinations but much discretion is left with each Arab country, and blacklisting often does not seem to follow logical guidelines.

The "Principles" contain no provisions recommending discrimination against firms because of the religious or ethnic affiliation of their management, shareholders, or employees, and Arab spokespersons frequently stress the point that the boycott is not of a racial or religious nature. Some Jewish managed or owned firms do, in fact, participate in projects and transactions in the Arab world, but there

are also some documented instances and many allegations of acts of ethnic and religious discrimination by Arab officials both pursuant to the boycott and related but somewhat separate from it.

There are differences of view as to the actual economic impact on Israel of the Arab boycott, as applied in practice. The Government of Israel maintains that the past damage is not as important as the current and increasing potential for damage, as the growing wealth of the Arab oil producers makes them increasingly lucrative customers. The Israelis fear that U.S. and other Western businesses will become more and more reluctant to jeopardize their potential Arab opportunities by risking boycott. According to the NSC, this has led the Government of Israel to intensify greatly during recent months its direct and indirect campaign to obtain a stronger anti-boycott stand by the U.S. Government. On the other hand, the Director of Central Intelligence has stated that "until now the Arab boycott of Israel has been virtually ineffective in causing economic problems or hardship for Israel." The CIA estimates, moreover, that "the chances of the boycott becoming more effective in the future are minimal." There have been some slight signs of a further loosening of the observance of the boycott in practice by some Arab governments, but the significance of this trend cannot yet be measured and there is no slackening of adherence to the principle of the boycott.

Impact of Arab Boycott and Related Religious and Ethnic Discrimination in the United States

There is growing concern in Congress about both the short-term and long-term implications of Arab economic boycott and trade policy on equal opportunity in American business and employment life. Much of the concern is based on an incomplete understanding of the facts, particularly the prevalent misconception that the Arab boycott and Arab visa policies are aimed at Jewish persons and businesses *per se* across-the-board. The fact that the concerns are exaggerated or, in some cases, erroneous does not make them less real.

The following are examples of the types of concerns that have arisen, followed by a brief statement of facts, as best as they can be ascertained.

(1) Concern: Possible loss of employment and promotion opportunities for American Jewish individuals with firms or U.S.

Governmental entities that do business with Arab firms or governments or that have official representation in Arab states. This could be due either to religious discrimination by the employer who does not want to "offend" the Arab businessperson or official with whom that employer is dealing or to the inability of the employee to gain entrance to the Arab country where the employer is doing business.

Fact: Saudi Arabia is the only country in which religion has been an effective formal bar to entry to most (although not all) Jewish persons. Elsewhere in the Arab world, some American firms may well be reluctant to risk possible complications by hiring Jews for assignment in or travel to Arab countries, although the Governments of these countries do not have visa regulations which result in an effective ban on the entry of Jewish persons.

(2) Concern: Some Arab companies may ask that American Jewish lawyers be excluded by their law firms or corporate employers from participating in certain negotiations involving Arab firms and governments.

Fact: There is no clear or systematic pattern of such discrimination, but there is evidence that it does occur on occasion. On the positive side, Saudi Arabia, for example, does business with a number of Jewish-owned or operated firms and Jewish businesspersons.

(3) Concern: Contract forms presented to U.S. exporters have, on occasion, required the signing of declarations that the U.S. company is "not Jewish nor controlled by Jews or Zionists".

Fact: Such cases are very unusual. When the Commerce Department uncovers such a declaration, it is referred to both Justice and State for appropriate action.

(4) Concern: Fears expressed in the American Jewish community that the infusion of Arab money into American banks and businesses may be expressly or indirectly conditioned on discrimination against Jewish depositors and lenders, employees, and members of boards of directors.

Fact: We are unaware of any provable incident of discrimination of this sort, although it is a possibility.

(5) Concern: Discrimination in the formation of syndicates by investment banking firms.

Fact: As noted later in the memorandum, this was attempted in a few cases where firms were on the Arab blacklist, but there has been strong resistance by the American investment banking community.

(6) Concern: Possibility of the following types of formal and informal agreements by American firms in relations to other American firms blacklisted by the Arabs:

(a) agreement by an American firm, in order to obtain Arab business, not to engage in particular business relations with Israel in the future;

(b) agreement by an American firm, in order to obtain an Arab contract, not to subcontract to another American firm or not to use products or components from another American firm to fill the contract with the Arabs; and

(c) agreement among several American firms to refrain from doing business with another American firm, or to exclude another American firm from participation with them in a joint venture, in order to obtain Arab business.

Fact: As noted later in the memorandum, Justice is conducting an investigation into such alleged practices. At present, the practice does not appear to be widespread.

(7) Concern: American businesspersons interested in obtaining Arab business are concerned at times about whether or not to contract or subcontract with any American firm that is owned by Jewish individuals, simply because of their religion and regardless of whether that firm is or is not on the Arab boycott blacklist.

Fact: There is little hard evidence of such practices. They may exist, but the problem does not appear to be widespread.

(8) Concern: Effect of the boycott of U.S. firms on projects in or transactions with Arab countries facilitated and/or financed by the U.S. Government, including projects or transactions funded and administered by the Agency for International Development, insured by OPIC, financed by the Export-Import Bank, administered by the Department of Defense (Defense Security Assistance Agency or Corps of Engineers) or other agency (such as Treasury under the U.S.-Saudi Arabia Joint Commission or Agriculture under P.L. 480), promoted by the Department of Commerce or licensed by the Office of Munitions Control.

Fact: U.S. Government agencies have endeavored to avoid actions which would connote explicit approval of the boycott, although there is a controversial issue at present over Commerce's circulation of Arab commercial opportunities which themselves contain boycott clauses or which are based on documents which contain boycott clauses.

Economic and Foreign Policy Implications

The Arab boycott presents a dilemna from the viewpoint of major U.S. economic and political interests in the Middle East. The United States has an obvious interest in participating in the extraordinary economic opportunities available in growing Arab markets, and a closer economic relationship constitutes an important component of the Administration's strategy to improve our overall relationships with the Arab states. Consistent with the established U.S. Government policy of opposition to the Arab boycott, the Administration has had to make delicate choices in balancing the merits of encouraging an increase in trade with the Arabs, as against the pressures for more stringent action in opposition to the boycott.

U.S. exports to Arab nations will total approximately $5.2 billion in 1975 and are expected to increase rapidly in the years ahead. With well over $400 billion in planned Arab expenditures and investments in the next five years, the potential benefit to the U.S. economy is substantial, particularly since the United States is the preferred Arab trading partner. The potential loss of this business also would be substantial, as would any anti-U.S. reaction by Arab oil producers in the energy field.

Both Israelis and Arabs tend to view Congressional action vis-a-vis the boycott as reflecting official U.S. attitudes towards them. The Israelis are now more concerned than ever before that the Arab boycott will hurt Israel because of the increased attractiveness of trade with the Arabs. The Israelis would like the Government (both Congress and the Executive) to toughen up the application of our anti-boycott policy, while the Arabs, for their part, are sensitive to any U.S. Government action which could be interpreted as running counter to our established policy for improving Arab-American relations.

There are presently 14 bills and 2 Congressional resolutions in Congress, plus assorted amendments, that relate either directly or peripherally to the Arab boycott and/or discrimination. These bills take a meat-axe approach to dealing with the problem, including a proposed total prohibition on American business from complying with any aspect, no matter how legitimate, of the Arab economic boycott. Such a prohibition would have an adverse impact on American balance-of-trade according to Commerce and Treasury analyses. NSC, State and Commerce believe that it is highly doubtful that the Arabs would give up the boycott in order to continue doing business with American firms and Governmental entities, despite the benefits of American technology and quality. Furthermore, passage of these bills or amendments would provoke a very negative Arab reaction against the United States. This is particularly true with respect to Saudi Arabia. Such an Arab reaction could significantly impair our ability to serve as a continuing negotiator for peace in the Middle East.

The Arab boycott legislative proposals are uniformly opposed by NSC, State, Treasury, Commerce and Justice, but it is the opinion of the White House and Departmental Congressional relations staffs that an emotional outlook is prevailing on the Hill and that there is a good possibility one or more of the pieces of legislation may pass both houses of Congress either this session or next. Action by the White House now against the most discriminatory forms of the boycott could help defuse the present Congressional sentiment for the passage of any such legislation. The Administration would be drawing a necessary distinction between Arab actions which constitute or reflect discrimination on religious or ethnic grounds and Arab action which opposes economic activities beneficial to Israel. The Arabs

profess to make a clear distinction themselves between these two points and it is the belief of NSC and State that the Arab governments can accept strong U. S. Governmental actions against discrimination but that they will take a very hostile attitude toward U.S. Governmental measures which could be viewed as aimed against the economic boycott itself. 2/ Further, based on a series of discussions with some Jewish leaders, there is reason to believe that positive Administration action would be viewed by Jewish organizations as a favorable response to their concerns. That does not mean that there will not be criticism, as feeling is running high in the Jewish community for a total prohibition on compliance with the Arab economic boycott of Israel.

2/ Exception is Saudi Arabia where some progress through negotiation has been made in easing religious-based entry restrictions but where State and NSC have been clearly told by Saudi leaders that direct U. S. Governmental actions, which affect their sovereign right to decide who should receive visas, will be met with forceful countermeasures.

II. Recommendations

1. Employment Discrimination

Discrimination in employment on the basis of religion or national origin is illegal under Title VII of the 1964 Civil Rights Act. In addition, Federal contractors are specifically covered in the discrimination area by Executive Order 11246, and the Federal Government is covered by Executive Order 11478. If an American employer should deny employment or promotion in a job within the United States to a Jewish individual, because of his or her religion, that employer would be in violation of U.S. law. Arab compulsion or pressure would be no defense.

The more difficult case arises when an American employer is hiring in the United States for work to be performed in an Arab country which has visa restrictions against the entry of Jews, i.e., Saudi Arabia. Under E.O. 11246, the Department of Labor has taken the position in a March 10, 1975 Secretarial Memorandum to the Heads of All Agencies that Federal contractors and subcontractors who hire U.S. citizens or resident aliens within the United States for work to be performed outside of the United States pursuant to a contract with a foreign government or company may not refuse to employ any person because of religion or national origin, regardless of the exclusionary policies in the country where the work is to be performed or for whom the work is to be performed.

The courts have not been asked to rule on this issue in relation to private employers under Title VII, but three cases raising different levels of this issue have been filed with the EEOC against companies within the past few months by the Anti-Defamation League of B'nai B'rith. In one of these cases, the prospective employer, a U.S. nonprofit educational corporation, allegedly requested in an oral job order that no one be referred to it who was an American Jew, had Jewish ancestors, or a Jewish surname. The employer was seeking to fill vacancies in a school it operated in the Arab emigrate state of Dubai. The other two cases involve American firms that directly employ individuals in their operations in Saudi Arabia. The application form of one company contains a clause which reads as follows: "I understand that employment by this Company is contingent upon my ability to obtain a visa from the Saudi Arabian Government or from the government of any other country to which I am required to travel in the course of employment, and also upon my ability to secure admission to such country or countries." B'nai B'rith alleges that this company

further requests applicants to submit a baptismal record or other proof that they are not Jewish. The application form of the second company asks for the religion of the applicant, and it is the allegation of B'nai B'rith that Jewish applications are immediately excluded. 3/

In the area of Federal contractors, a very difficult question can arise under the factual circumstances in which an American company that is a Federal contractor contracts with an Arab company or government to perform a certain service in the Arab country. Pursuant to the requirements of U.S. employment law, the American company hires employees for the project in the Arab country solely on the basis of merit. One or more of the individuals so hired is Jewish. The company does not make the employment contingent upon the individuals' ability to obtain visas from the Arab country, and the company affirmatively assists them in their efforts to obtain those visas, including requesting the State Department to intervene on their behalf. The State Department does so, but the Arab country will not admit the Jewish individuals. The American company then substitutes non-Jewish employees for the project. Will the company be in violation of E.O. 11246 and thus face a hearing on debarment from receiving Federal contracts or can a defense be found in the inability of the company to control the discriminatory practices of a foreign nation?

In the case of Federal Government employment, a number of difficult questions can arise. For example, up until your statement in February of 1975, the Defense Department did not send Jewish personnel, either civilian or military, to Saudi Arabia. In March, Secretary Schlesinger announced that Defense Department policy from that date forth would permit assignment to posts only on the basis of merit and that no individual would be preselected out of a job position in any country because of religion or national origin. The Corps of Engineers has large scale projects in Saudi Arabia which are staffed in two ways: (1) military personnel and civilian Corps employees; and (2) employees of subcontractors. If after an assertive effort by both the Defense Department and the State Department, the Corps is not able to obtain a visa for a Jewish civilian or military officer or for a Jewish subcontractor

---

3/ Another fact situation that may arise in the near future involves denial of a promotion opportunity to a Jewish employee because he or she has not had the experience of working in an Arab country, and Arab business was an important part of the company's work.

employee, must the Corps terminate its business in Saudi Arabia in order to be in compliance with the non-discrimination requirements of law as applied to the Federal Government under E. O. 11478? How can this be reconciled with the Administration's determination that it is good foreign policy to expand the operations of the Corps of Engineers in Saudi Arabia at the request of the Saudi Government?

It is the opinion of the Attorney General that it is no violation of United States employment and civil rights law for a Federal agency or a private employer to cancel the assignment of a Jewish employee to an Arab country because the employee has been unable to obtain a visa. He is of the view, however, that it is lawful and appropriate to impose upon the employer the obligation to seek State Department assistance in obtaining such visa where it has evidently been denied for discriminatory reasons; and that, as a matter of policy, it is essential to impose such an obligation upon Federal agencies.

It is the opinion of State and NSC that negotiation rather than confrontation is the most productive approach to dealing with the visa problem. They point to a recent oral agreement with Saudi Arabia in which the Saudis have assented to the U. S. Government having sole responsibility for the selection of American technicians to be sent to Saudi Arabia for long-term assignments, i. e., more than one year, under a Joint Commission technical assistance program. State and NSC support the Attorney General's position on referrals of visa rejections to the State Department.

A Presidential Directive to the Heads of All Agencies has been prepared which states:

> (1) that E. O. 11478 and other relevant statutes forbid any Federal agency from preselecting out any applicant or employee from an overseas assignment because of the exclusionary policies of a host country that are based on race, color, religion, national origin, sex or age;
>
> (2) that Federal agencies are required to inform the State Department of visa rejections based on exclusionary policies; and
>
> (3) that the State Department will take appropriate action through diplomatic channels to attempt to gain entry for the affected individuals.

It is the recommendation of the Counsel's Office, Bob Goldwin, Bill Seidman, OMB, NSC, State, Justice and the Under Secretaries Committee that you sign the Presidential Directive which is attached at Tab A.

Approve _____

Disapprove _____

Comment _____

It is the further recommendation of the Counsel's Office, Justice, OMB, NSC, State and Labor that you instruct Secretary Dunlop to amend the Labor Department's March 10, 1975 Secretarial Memorandum to the Heads of All Agencies to require that Federal contractors and subcontractors, which have job applicants or present employees applying for overseas assignments, inform the State Department of any visa rejections based on the exclusionary policies of a host country. The State Department will attempt, through diplomatic channels, to gain entry for those individuals. Though we did not seek the opinions of each of the Agencies listed under the Under Secretaries Committee for the purpose of this recommendation, the recommendation is consistent with that immediately preceding it.

Approve _____

Disapprove _____

Comment _____

2. Coercion to Discriminate

It is the recommendation of the Counsel's Office, Goldwin, Seidman, NSC, and the Under Secretaries Committee that the Administration introduce legislation to add to prohibitions against discrimination on the basis of race, religion, sex or national origin, which already exist with respect to certain areas of economic activity (most notably employment and housing), prohibitions against coercion to discriminate unlawfully against U. S. persons or companies in all fields of economic activity. This would have specific application to any attempts by Arab companies or governments to force an American business concern or individual to discriminate on the basis of religion or national origin

against another American business concern or individual in order to secure Arab business. This would not prohibit coercion to discriminate against foreigners, as for example in the case of a Black American firm that wished to place pressure on American firms that had contracts with South Africa.

OMB questions the potential effectiveness of such legislation in regard to the Arab boycott problem.

Approve _____

Disapprove _____

Comment _____

3. Action to Prohibit U.S. Exporters' Compliance with Arab Boycott Requests of a Religious or Ethnic Discriminatory Nature

The Export Administration Act of 1969 provides that the policy of the United States is: (a) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries (i.e., Arab countries) against other countries friendly to the United States (i.e., Israel); and (b) to encourage and request U.S. domestic concerns engaged in export to refuse to take any action or sign any agreement that would further such practices. However, the Act does not itself prohibit compliance with a foreign boycott of U.S. firms, although it contains discretionary Presidential authority to so prohibit by regulation, which authority the President delegated to the Secretary of Commerce by Executive Order, retaining residual authority to issue specific directives to the Secretary.

The Act and the implementing Export Administration regulations require exporters to report receipt of requests for information or action that would further the boycott efforts of the requesting country. In addition to the mandatory information concerning the boycott request itself, the Commerce Department's reporting form had heretofore asked the exporter on a voluntary basis to respond to a question whether he intended to comply, or had complied, with the request. Since response to that question was optional, it was left unanswered by most reporting exporters. On September 25, Secretary Morton announced that a mandatory answer would be required effective October 1 to the question of intent to comply with the economic aspects of the boycott. This change was in response both to Commerce's need

for more accurate statistical information on the impact of the boycott and to Congressional pressure for action by Commerce.

The Commerce Department has evidence that Arab boycott requests on a few occasions have required a U.S. exporter or related service organization to give information about the religious or ethnic composition of its company and to sign contractual clauses in various documents that read along the lines of the following example:

> And we hereby solemnly declare that we, or this company, are not Jewish nor controlled by Jews or Zionists . . .

It is the recommendation of the Counsel's Office, Bob Goldwin, Bill Seidman, NSC, OMB, and the Under Secretaries Committee that you exercise your discretionary authority under the Export Administration Act to direct the Secretary of Commerce to issue amended regulations to:

> (1) prohibit U.S. exporters and related service organizations from answering or complying in any way with boycott requests that would cause discrimination against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin; and
>
> (2) require related service organizations that become involved in any boycott request to report such involvement directly to the Department.

Related service organizations are defined to include banks, insurers, freight forwarders, and shipping companies that become involved in any way in a boycott request related to an export transaction from the U.S. Specific concerns have been raised about bank letters of credit and actions taken by shippers. Both would be covered by the amended regulations.

The Defense Department neither concurs in nor opposes this recommendation but requested that you be made aware of a possible effect, i.e., the denial of export privileges for a period of time to a manufacturer, freight forwarder or shipper. Because denial of export privileges has a severe economic impact on an exporter, this penalty is viewed by the Commerce Department as its most severe administrative penalty and thus is only invoked in situations considered to be serious violations.

Approve GRF

Disapprove _____

Comment _____

4. Disclosure of Reports Filed Pursuant to Export Administration Act Regulations

The issue of disclosure to Congress and/or the public of the boycott request reports that Commerce requires U.S. exporters to submit to its Office of Export Administration has become a very sensitive matter. Secretary Morton has refused to comply with a subpoena from the Interstate and Foreign Commerce Committee of the House directing him to produce the reports on the basis that the request is in conflict with his responsibility under Section 7(c) of the Export Administration Act of 1969, as amended, to maintain the confidentiality of those reports unless he determines that "the withholding thereof is contrary to the national interest."4/ In determining that withholding would not be contrary to the national interest, the Secretary noted: (1) that the reports contain details of specific transactions and the reporting firms could be injured if their competitors gained access to such proprietary information; and (2) that disclosure of the identity of such firms might expose them to economic pressures and counter boycotts by certain domestic consumer groups.

On September 22, Secretary Morton appeared before the House Committee's Subcommittee on Oversight and Investigations, chaired by

---

4/ Section 7(c) reads as follows:

> (c) No department, agency, or official exercising any functions under this Act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the head of such department or agency determines that the withholding thereof is contrary to the national interest.

Congressman Moss (D. Cal.), to explain in person his reason for declining to comply with the subpoena. The Committee argued that, since the Freedom of Information Act exemptions from disclosure do not apply to Congressional requests, the Secretary was required to comply. 5/

Commerce received from the Attorney General a legal opinion which holds that statutory restrictions upon Executive agency disclosure of information contained in Section 7(c) are binding even with respect to requests of Congressional committees, unless there is an explicit exception for Congressional requests. When, as in Section 7(c), there is no express exception for requests of Congress, none is presumably intended. Secretary Morton thus is required by the statute not to release the reports to Congress unless he makes a determination that withholding them from the Subcommittee would be contrary to the national interest. He had earlier provided the Subcommittee with a summary of exporter reports through June 30, 1975 and at the Subcommittee hearing reiterated an offer he had made in an earlier letter to make available to the Subcommittee copies of the requested reports from which are deleted the identity of the firms and the details of the commerical transactions involved but which Commerce felt were sufficient to provide the statistical data necessary for Congress to perform its legislative and oversight functions.

Republicans Lent (N. Y.), Madigan (Ill.), Rinaldo (N. J.), Heinz (Pa.) and Broyhill (N. C.) on the Subcommittee have introduced a bill, H. R. 9932, which would amend Section 7(c) to expressly require disclosure to the Congress. A major intent in introducing this legislation was to defuse the confrontation between Secretary Morton and Congressman Moss and to support the Attorney General's opinion that the Committee did not have a legal right to the reports under the present law. At present, passage of this bill is unlikely, but the situation could change at a later date.

While the Administration has taken a firm stance on retroactive disclosure of information given under an explicit understanding of confidentiality, the question of prospective disclosure remains open for

---

5/ On the question of disclosure to the public, information provided to a Federal Department pursuant to a statute which contains an explicit confidentiality provision is exempt from disclosure under the Freedom of Information Act.

decision. The arguments in favor of prospective disclosure are as follows:

(1) It would substantially help to defuse the present confrontation between the Administration and Congress over the reports;

(2) It would reduce the impetus for possible Congressional repeal of the Section 7(c) confidentiality provision which also safeguards much more sensitive business information required in connection with export restrictions on grounds of national security, foreign policy and short supply;

(3) It would be consistent with the spirit of Section 3(5) of the Export Administration Act that declares the policy of the United States is: (a) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States; and (b) to encourage and request domestic concerns engaged in export to refuse to take any action or sign any agreement that would further such practices; and

(4) It might put pressure on U.S. businesspersons to try to negotiate out boycott clauses from Arab contracts.

An argument that has been utilized both in favor of prospective disclosure and in opposition to it notes that firms reporting cooperation with the boycott to preserve a foreign market might be subject to retaliation in the form of domestic counter boycotts. While this would be viewed by the general business community as a harmful occurrence, it would be viewed by Jewish groups in particular as a completely legitimate expression of consumer disapproval that is consistent with the policy of the Export Administration Act. If prospective disclosure is coupled with the requirement, in effect since October 1, that all firms must answer the question on intent to comply with the boycott, the Jewish groups further argue that prospective disclosure would not subject firms indiscriminately to domestic counter boycotts, whether they intended to comply with the boycott request or not, because the reports would all contain an answer to the question of compliance and thus the consumer could reward firms that have refused to comply by patronizing them and take action against firms that intend to comply by declining to patronize them. The counter argument to this analysis

is that the public would not differentiate between the complying and non-complying firms and would take action against all those firms whose reports were released. Moreover, although firms are now required to report their intent, many will choose to report that they are undecided until they actually act in compliance.

The arguments in opposition to prospective disclosure are as follows:

(1) Disclosure would provide the competitors of the reporting firms with valuable commercial intelligence as to the firms' business transactions and trade opportunities. The reports contain considerable detail on the proposed transactions with the Arab countries.

(2) To the extent that U.S. firms are deterred from export trade with the Arabs to avoid counter boycotts by domestic consumers, there could be an adverse impact on our balance-of-trade with the Arab countries and on employment. It should be noted in this regard that at the present time some U.S. firms continue to do business with Israel as well as with Arab countries. This is due both to the boycott requirements which come into operation only at a certain level and kind of trade with Israel and to successful evasion on the part of some U.S. exporters.

(3) State believes that disclosure which could diminish commerce between the U.S. and the Middle East also would have an adverse effect on our broader network of relations with countries in that region, which relations are important to our long-range efforts to promote a lasting peace in the Middle East.

(4) The accuracy of our monitoring of the impact of the secondary boycott on U.S. trade would be impaired because some firms would violate the reporting requirements, preferring the risk of penalties for failure to report to the domestic economic sanctions that could result from public disclosure of their reports, particularly since boycott requests could be made in such a manner as to be extremely difficult to detect (i.e., representations made by a company representative in the Arab country which would not appear in the regular commercial documents).

(5) A change of policy with respect to confidentiality could present a vexing precedent with respect to later demands for other individual business information collected under the Export Administration Act.

(6) Prospective disclosure would necessitate reversal of Secretary Morton's public position on what is and is not contrary to the national interest.

Prospective disclosure probably would be viewed by the Jewish community as a positive step on the part of the Administration to respond to their deep concerns. However, it would not eliminate criticism or pressure for additional action, since the majority view in the Jewish community seems to be strongly in support of a clear prohibition against U.S. firms complying in any way with Arab boycott requests.

It is the recommendation of the Counsel's Office that you direct the Secretary of Commerce to amend the regulations of the Export Administration Act to require prospective disclosure of boycott request reports (including reports on ethnic and religious discrimination). This recommendation is supported by Goldwin, AID and Labor. It is also supported by OMB, with the proviso that certain procedural safeguards are afforded to firms which submit reports, including the opportunity for a firm to submit a statement to accompany disclosure and to challenge a report's accuracy. The Counsel's Office concurs in these safeguards. This recommendation is opposed by Seidman, Commerce, NSC, State, Defense, CIEP and OPIC.

Approve _____

Disapprove _____

Comment _____

5. Commercial Banks and Savings & Loan Associations

In order to deal with allegations of religious and ethnic discrimination in the banking community, the Comptroller of the Currency issued a strong Banking Bulletin to its member National Banks on February 24, 1975. The Bulletin was prompted by allegations that some national banks had been offered large deposits and loans by agents of foreign investors, one of the conditions for which was that no member of the

Jewish faith sit on the bank's board of directors or control any significant amount of the bank's outstanding stock. The Bulletin makes it clear that the Comptroller will not tolerate any practices or policies "that are based upon considerations of the race, or religious belief of any customer, stockholder, officer or director of the bank" and that any such practices or policies are "incompatible with the public service function of a banking institution in this country."

In issuing this Bulletin, the Comptroller relied on the authority of his office to regulate national banks for the purpose of preventing unsafe and unsound banking practices. 12 U.S.C. § 1818(b) et seq. The Comptroller holds that the discriminatory practices described in its Banking Bulletin may expose a bank to serious loss and thus constitute unsound and unsafe banking practices which may be subject to cease and desist proceedings. The Comptroller's jurisdiction under these provisions, however, extends only to national banks. In order to reach State member insured banks and State non-member insured banks, the authority, respectively, of the Federal Reserve Board and the Federal Deposit Insurance Corporation (FDIC) must be invoked under 12 U.S.C. § 1818(b) et seq.

In order to apply cease and desist proceedings to Federal savings and loan associations, the authority of the Federal Home Loan Bank Board under 12 U.S.C. § 1464 must be invoked. Chairman Wille of FDIC is responsive to the issuance of a FDIC policy statement along the lines of the Comptroller's Banking Bulletin but is less confident than the Comptroller's office that such a statement would be enforced by the courts on the basis of the unsafe and unsound banking practice provisions of 12 U.S.C. § 1818(b) et seq. Justice and the General Counsel of the Federal Reserve Board share Chairman Wille's uncertainty about the legal enforceability. However, Chairman Wille notes that banks within FDIC's jurisdiction almost always comply with FDIC's policy statements and that the informal aspects of encouragement through the regulatory process work quite well. Chairman Wille would like a formal Presidential statement on which to base the issuance of a FDIC policy statement.

It is the recommendation of the Counsel's Office, Bob Goldwin, Bill Seidman, OMB, NSC and the Under Secretaries Committee that you inform the FDIC that you support the policy stated in the Comptroller's Banking Bulletin and that you encourage the FDIC to issue a similar policy statement to the banks within its jurisdiction, urging them to

recognize that compliance with discriminatory conditions directed against any customer, employee, stockholder, officer or director of a bank on the basis of religion or national origin is incompatible with the public service function of banking institutions in this country. Justice does not object to this recommendation.

Approve MRF

Disapprove _____

Comment _____

It is the recommendation of the above-listed offices and agencies that you take the same action with respect to the Federal Reserve Board and the Federal Home Loan Bank Board.

Approve MRF

Disapprove _____

Comment _____

Additional protection to banking customers would be provided by legislative enactment of a prohibition against discrimination based on religion or national origin for all credit transactions. There presently are three bills in Congress to amend the Equal Credit Opportunity Act, which deals with sex and marital status, to include prohibitions against discrimination in credit transactions on a number of bases, including race, color, religion, national origin, age, political affiliation and receipt of public assistance benefits. Each of the bills contain a different combination of prohibited categories. Justice has testified in support only of prohibiting discrimination based on race, color, religion, and national origin, in addition to sex, and has raised problems with the other categories. In specific reference to religious and national origin discrimination, Justice has noted that their inclusion within the Equal Credit Opportunity Act would make it illegal for a U.S. bank to refuse to make loans to Jewish businessmen because of pressure from an Arab government or company with large deposits in the bank. The FDIC and Treasury also support extension of the Act to prohibit discrimination based on race, color, religion, or national origin. The Board of Governors of the Federal Reserve System, which has the responsibility for prescribing the Act's regulations, recommended a delay in enactment of the bills until such time as experience was available to assess the impact of the new sex and marital status

provisions. However, the Board did not give its position on a bill which would limit extension to race, color, religion and national origin.

It is the recommendation of the Counsel's Office, Seidman, Goldwin, NSC and the Under Secretaries Committee that the Administration announce again its support for legislation which would amend the Equal Credit Opportunity Act to include prohibition against any creditor discriminating against any credit applicant on the basis of race, color, religion or national origin with respect to any aspect of a credit transaction. The Administration would not indicate support for prohibitions against the other categories listed in the bills mentioned above. OMB has reservations based on concern that the legislation could result in additional costs to citizens least able to bear them and may have other significant effects, unrelated to the boycott, which would be difficult to assess.

Approve MCF Disapprove _____ Comment _____

6. Investment Banking Industry

Earlier this year, it was reported in the media that some Arab investment bankers were attempting to condition their participation in underwriting syndicates on the exclusion of certain U.S. and European investment banking firms. The Arab move was directed at firms that were founded by Jewish individuals and in some instances -- but not all -- controlled by Jewish partners, and/or firms that had certain business dealings with Israel. The European or U.S. firms that were sought to be excluded were on the Arab boycott list, but the reasons for their listing were unclear. While it is true that not all Jewish investment banking firms are the subject of Arab exclusion, it is also true that the only firms which have been subject to the Arab exclusionary attempts have firm names that reflect Jewish origin.

In at least three reported foreign offerings, it appears that the underwriting managers caved in to Arab pressure and excluded certain firms. However, no such exclusion has taken place in financing syndicates managed by investment banking firms in the United States. 7/ For example, the Kuwaiti International Investment Co. reportedly demanded

7/ The SEC and NASD, however, will continue to monitor and investigate in this area. The National Association of Securities Dealers, Inc. (NASD) is the industry's self-regulatory association.

that the U.S. firm of Lazard Freres & Co. be ousted from an underwriting syndicate formed to sell $50 million in Mexican government bonds and $25 million in bonds to be offered by the Swedish car maker, Volvo. The syndicate manager, Merrill Lynch, Pierce, Fenner & Smith, refused to accede to the demand, and the Kuwaiti company withdrew as a co-manager from the syndicate.

The SEC has pervasive regulatory jurisdiction over the securities industry, and all five Commission members are prepared to authorize the issuance of a strong Commission Release on religious and ethnic discriminatory practices. A SEC Release serves as official notice to broker-dealers and investment banking firms regulated by the SEC of Commission policy and as a warning that the Commission may take action against firms which participate in such discriminatory activities. The substance of releases are normally taken very seriously within the securities industry.

The SEC Release will be issued the date after an Administration Statement on the discriminatory aspects of the Arab boycott. Its key operative sections will state as follows:

> . . . because the Commission strongly believes that any future attempts to implement a boycott or related discriminatory practices, in connection with the purchase or sale of securities, would be contrary to the public interest and the protection of investors, the Commission and the NASD will continue to monitor underwriting syndicates for any evidence of such practices. Participation by investment banking firms, or their affiliates, subject to regulation by the Commission, in syndicates formed to distribute securities in the United States or abroad, whose composition reflects such attempts, would be inconsistent with just and equitable principles of trade. Such activities could subject those involved to NASD disciplinary proceedings or appropriate action by the Commission.
>
> Accordingly, persons who seek capital from the investing public, as well as those engaged in the business of effecting any such undertaking -- including brokers or dealers, investment bankers and investment advisers -- should be aware that the Commission and the securities industry's self-regulatory organizations are prepared to exercise their full authority to proscribe participation in such discriminatory activities.

The Commission believes that this Release is sufficient at this time to counteract any participation by investment banking firms, subject to its jurisdiction, in underwriting syndicates which exclude firms on religious or ethnic grounds. If it is later determined that the Release is not a sufficient safeguard, or that discriminatory practices are evident in other areas of commerce subject to its jurisdiction, the Commission has a number of potential options available to it to counteract such practices. 6/ (See Tab B for discussion of options.)

It is the recommendation of the Counsel's Office, Bob Goldwin, Bill Seidman, OMB, NSC and the Under Secretaries Committee that:

> (1) the U.S. investment banking community be praised for resisting the pressure of certain Arab investment bankers to force the exclusion from financing syndicates of Jewish-named firms;
>
> (2) the SEC and NASD be praised for initiating a program to monitor practices in the securities industry within their jurisdiction in order to determine whether such discriminatory practices have occurred or will occur in the future; and
>
> (3) you urge the SEC and NASD to take whatever action they deem necessary to insure that discriminatory exclusion is not tolerated and that nondiscriminatory participation is adhered to.

Approve _____

Disapprove _____

Comment _____

7. Possible Antitrust Violations

The Antitrust Division at Justice is in the process of conducting an Arab boycott antitrust investigation which has reached the stage at

---

6/ It should be noted, however, that the adoption of one or more of these options would require a significant policy determination on the part of the commission and, in some instances, a substantial deviation from traditional Commission policy which likely would be pursued only in the face of most compelling circumstances. Lengthy rulemaking or interpretative proceedings might also be required.

which the particular conduct of certain firms is receiving close analysis. Emphasis is being placed on possible agreements of four kinds:

(1) agreement by an American company, in order to obtain Arab business, not to engage in particular business relations with Israel in the future;

(2) agreement by an American firm, in order to obtain an Arab contract, not to subcontract to another American firm or not to use products or components from another American firm to fill the contract with the Arabs;

(3) agreement among several American firms to refrain from doing business with another American firm, or to exclude another American firm from participation with them in a joint venture, in order to obtain Arab business; and

(4) issuance of letters of credit requiring a commitment by the payee U.S. exporter to warrant, as a condition of receiving payment enforced by a bank, that he will not subcontract with another American firm and/or will not use products or components from another American firm. Proof would be required that the bank was a knowing co-conspirator in a concerted refusal to deal rather than a routine collection agent performing a legitimate banking function.

The latter three cases come the closest, from a policy standpoint, to the line where the application of a foreign-imposed secondary boycitt within our own economy becomes unacceptable and at which our legitimate national interests outweigh any conceivable justification on the part of the boycotting foreign countries. The practical commercial consequences of taking a policy stand in this regard are very difficult to gauge.

It is well settled law that an agreement of one company with another to refrain from dealing with a customer or supplier for anticompetitive reasons is concerted refusal to deal constituting a per se violation of the Sherman Act's antitrust provisions. In the opinion of the Antitrust Division, it may be a violation even if the impetus comes from foreigners who are acting with the approval of their government. If the effect is anticompetitive, the majority legal position seems to be that non-commercial motive is irrelevant and not a defense. The

requirement that the conduct be the product of conspiratorial behavior might be met either by the agreement between the Arab customer and the U. S. contractor -- even if the customer is an Arab government which is itself immune from suit -- and/or possibly by the knowing acquiescence of a U. S. subcontractor in the terms of the boycott blacklist. On the other hand, a buyer usually has the legal right to specify the subcontractors he wishes to be employed.

It should be noted that "restraint of trade" in violation of the antitrust laws has been read by the courts to mean "unreasonable restraint of trade" and the purpose and context of a particular restraint of trade are relevant in determining its reasonableness. Such conduct specifically might be defended on the basis of one or more of the following legal theories: (1) foreign compulsion; (2) non-justiciability based on the act of state doctrine; or (3) agency relationship between American firm and its Arab customer principal. Each of these theories can be legally rebutted on particular fact situations, but the issues are complex and difficult.

It is the recommendation of the Counsel's Office, Goldwin, Justice, NSC and the Under Secretaries Committee that the Administration announce that the Department of Justice is vigorously engaged in a detailed investigation of possible antitrust violations involving U. S. businesses cooperating with the Arab boycott and that Justice has concluded that the boycotting of an American firm by another American firm raises serious antitrust questions. Seidman, OMB, CIEP and AID oppose an announcement but concur in Justice's investigation.

Approve _____

Disapprove _____

Comment _____

8. Impact of Boycott of U. S. Firms Upon U. S. Government Activities

The Arab boycott of U. S. firms may affect in numerous ways projects in or transactions with Arab countries facilitated by the U. S. Government. For example:

-- an Arab government or local contractor might seek to include an explicit boycott clause in a tender document or contract for

a project funded by AID. The clause would require a bidder or contractor to affirm past and future avoidance of prohibited relationships with Israel or blacklisted firms;

-- an Arab government or local contractor might eliminate blacklisted firms from the pre-qualification or bidding process and, after award of the contract which contained no boycott clause, approach EXIMBank to finance or OPIC to insure the transaction;

-- an Arab government might refuse to invite bids from or award contracts to otherwise qualified firms on a competitive basis or prevent a U.S. agency administering a reimburable assistance project from inviting bids from or awarding contracts to otherwise qualified firms on a competitive basis;

-- an Arab government might refuse to invite bids from or award contracts to otherwise qualified firms on a competitive basis for a project facilitated by reimbursable technical assistance from a U.S. Government agency;

-- if the above U.S. agency were managing the contractor selection process, the Arab government might seek to prevent it from selecting contractors or suppliers on a competitive basis;

-- the Office of Munitions Control or the Department of Commerce might license an export governed by a boycott clause.

The response of the affected U.S. Government agencies has reflected an effort to avoid actions connoting approval of the boycott while at the same time seeking to avoid terminating programs which promote substantial political and economic interests of the United States in the Middle East. The policies of the agencies vary depending upon their degree of involvement in the contracting process and their leverage with the country concerned. For example:

-- AID's policy is the most far reaching not only because the agency is more heavily involved than other agencies in all phases of projects it funds, but also because its expenditure of appropriated funds provides it with more leverage with an aid recipient. AID not only insists upon "clean" tender and

contract documents, but also upon the award of contracts on a completely competitive basis, e.g., to any qualified, low bidder. Agriculture follows the same stringent line in reviewing tender and contract documents for sales under P.L. 480.

-- Though the issue has never arisen, the Corps of Engineers or any U.S. agency facilitating a project in Saudi Arabia would be expected to resist any effort by the Saudi Government to apply the boycott to prevent the invitation of bids and award of contracts on a competitive basis. Whether the Corps or other agency could continue to administer or participate in a project under these circumstances would be a decision for the U.S. Government at the time, and if, the issue arose.

-- OPIC and EXIMBank, which are not generally involved in the contracting process, refuse to facilitate any project or transaction that is governed by a contract containing a boycott clause.

-- When the Office of Munitions Control (State) is requested to license an export of items on the munitions list, pursuant to a contract with a boycott clause, it informs the applicant of U.S. opposition to the boycott, but nevertheless issues the license.

The Departments of Commerce, State and Justice currently have under consideration the issue of whether or not Commerce and State should continue all or any part of their present program of disseminating to the American export community Arab project tender documents which contain boycott clauses, and of disseminating basic information about such projects, without the tender documents, even though the U.S. foreign service officer in the Arab country, who acquires the basic information, knows or suspects that the underlying documents do contain boycott provisions. This issue has important policy and legal implications and a separate memorandum will be presented to you at a later date requesting a Presidential decision.

Obviously, the above activities illustrate the tension between the U.S. policies of opposing the boycott and of pursuing significant economic

and political interests through increased commerce with the Arab world. Consequently, most remain highly vulnerable to domestic criticism that the U.S. Government is facilitating projects or transactions in which a condition for a firm's participation is avoidance of commercial ties with Israel or blacklisted American firms. Even the far reaching policies of AID provide no guarantee that the boycott will not find its way into procurement for a project somewhere in the subcontract chain. Given the above-noted tension and the widely varying activities of the various U.S. Government agencies, we believe this to be an area in which each problem can be resolved only as it arises rather than through a blanket policy decision. Accordingly, the Counsel's Office, State, NSC and Commerce do not recommend any new policy decision of general application at this time.

Comment Agree

9. Strategy for Implementing Decisions

If we are to accomplish our objective of enacting a balanced policy which will meet domestic concerns, be consistent with our traditions and laws against discrimination, and continue to protect our foreign policy and economic interests, it will be very important to have a clear strategy for the implementation of the decisions you take concerning the recommendations in this memorandum. For example, a decision will have to be made as to whether you should announce the package publicly in a speech, whether a Cabinet member should make the announcement, or whether the various actions should be taken routinely without a coordinated announcement. It also will be important to agree upon the best means of communicating NSC's concern that this package, plus a possible later decision in the tenders area, not be viewed by either the Congress or Jewish organizations as in any way implying Administration acceptance of additional actions which would be harmful to both our diplomatic and economic policies.

It is the recommendation of the Counsel's Office and the NSC Staff that you meet with Secretary Kissinger, Attorney General Levi, Secretary Morton, Bobbie Kilberg, Rod Hills, Brent Scowcroft and Bob Oakley, and Bob Goldwin, to agree upon when and how to

communicate the decisions taken to the appropriate agencies, to the Congress, to the public, and to the key Arab Governments and Israel. 8/ It would be desirable if this meeting could be held early next week so that the pros and cons of an announcement at the B'nai B'rith Anti-Defamation League National Commission meeting in New York City on November 6-10 could be part of the strategy discussion.

Approve HKM

Disapprove _____

Comment _____

8/ The timing of implementation can be important in terms of the status of the Middle East situation and should be preceded by instructions to our Embassies to explain in advance to key Arab governments what we intend to do and why.

THE WHITE HOUSE
WASHINGTON

November 4, 1975

Robert Linder -

The President signed the attached on Saturday, November 1, but it is not to be released until you receive further word. The hold in on release because a meeting has been requested and approved for sometime this week with the President to discuss this matter further.

Trudy Fry

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE HEADS OF

DEPARTMENTS AND AGENCIES

The purpose of this Memorandum is to underscore the applicability of Executive Order 11478, the Equal Employment Opportunity Act of 1972 (P.L. 92-261); the Age Discrimination in Employment Act of 1967 as amended by P.L. 92-269; and pursuant regulations to all Federal personnel actions, including those which involve overseas assignment of employees of Federal agencies to foreign countries which have adopted exclusionary policies based on a person's race, color, religion, national orgin, sex or age.

In making selections for overseas assignment, the possible exclusionary policies of the country to which an applicant or employee is to be assigned must not be a factor in any part of the selection process of a Federal agency. United States law must be observed and not the policy of the foreign nation. Individuals, therefore, must be considered and selected solely on the basis of merit factors without reference to race, color, religion, national origin, sex or age. Persons must not be "selected out" at any stage of the selection process because their race, color, religion, national origin, sex or age does not conform to any formal or informal requirements set by a foreign nation. No agency may list in its job description circulars that the host country has an exclusionary entrance policy or that a visa is required.

If a host country refuses, on the basis of exclusionary policies related to race, color, religion, national origin, sex or age, to grant a visa to an employee who has been selected by a Federal agency for an overseas assignment, the employing agency should advise the Department of State of this act. The Department will take appropriate action through diplomatic channels to attempt to gain entry for the individual.

The Civil Service Commission shall have the responsibility for insuring compliance with this Memorandum. In order to ensure that selections for overseas assignments are made in compliance with law, Executive Order, and merit system requirements, each agency having positions overseas must:

(1) review its process for selection of persons for overseas assignments to assure that it conforms in all respects with law, Executive Order, and merit system requirements; and

(2) within 60 days of the date of this Memorandum, issue appropriate internal policy guidance so that all selecting officials will understand clearly their legal obligation in this regard. The guidance must make clear that exclusionary policies of foreign countries based on race, color, religion, national origin, sex or age must not be considerations in the selection process for Federal positions. A copy of each agency's guidance in this regard should be sent to the Assistant Executive Director, U.S. Civil Service Commission, 1900 E Street, NW., Washington, D.C. 20415.

Gerald R. Ford

Additional SEC Options

(1) Adoption of a non-discrimination rule under the SEC's authority to require that brokers and dealers meet certain standards of training, experience, competence and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. Assuming the Commission could make the required findings, such a rule could require that, as a qualification for engaging in the investment banking business, registrants undertake to conduct their business without discrimination and that they not participate in underwriting syndicates with those who do discriminate.

(2) Disclosure:

(a) Under the Commission's reporting requirements for certain publicly held companies, including investment banking firms whose securities are publicly held, the Commission could require a disclosure to shareholders of information -- to the extent such information is material -- with respect to any discriminatory practices in the various monthly, quarterly, and annual disclosure documents required to be filed with the Commission and the proxy soliciting materials required to be sent annually to shareholders;

(b) For investment banking firms, which are subject to direct Commission regulation, the Commission could require the inclusion of information detailing discriminatory practices in reports currently required to be regularly filed and made publicly available. Further, the Commission could require delivery of copies of such reports to customers of the firm;

(c) The Commission also could amend the registration forms, required to be filed by companies and others seeking to engage in public offerings of securities, to require prospectus disclosure of boycott participation by an underwriter in such offerings or its affiliates. The Commission could further require summary boldface statements on the cover page of offering materials highlighting the discriminatory practices; and

(d) The Commission, under Section 8(b) of the Investment Company Act of 1940, could require disclosure of any policy of an

investment company which permits its advisers to exercise political, racial, or religious discrimination in the selection of investors for the investment company or in the selection of brokers to execute portfolio transactions for the investment company.

extra copy

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE HEADS OF

DEPARTMENTS AND AGENCIES

The purpose of this Memorandum is to underscore the applicability of Executive Order 11478, the Equal Employment Opportunity Act of 1972 (P.L. 92-261); the Age Discrimination in Employment Act of 1967 as amended by P.L. 92-269; and pursuant regulations to all Federal personnel actions, including those which involve overseas assignment of employees of Federal agencies to foreign countries which have adopted exclusionary policies based on a person's race, color, religion, national orgin, sex or age.

In making selections for overseas assignment, the possible exclusionary policies of the country to which an applicant or employee is to be assigned must not be a factor in any part of the selection process of a Federal agency. United States law must be observed and not the policy of the foreign nation. Individuals, therefore, must be considered and selected solely on the basis of merit factors without reference to race, color, religion, national origin, sex or age. Persons must not be "selected out" at any stage of the selection process because their race, color, religion, national origin, sex or age does not conform to any formal or informal requirements set by a foreign nation. No agency may list in its job description circulars that the host country has an exclusionary entrance policy or that a visa is required.

If a host country refuses, on the basis of exclusionary policies related to race, color, religion, national origin, sex or age, to grant a visa to an employee who has been selected by a Federal agency for an overseas assignment, the employing agency should advise the Department of State of this act. The Department will take appropriate action through diplomatic channels to attempt to gain entry for the individual.

The Civil Service Commission shall have the responsibility for insuring compliance with this Memorandum. In order to ensure that selections for overseas assignments are made in compliance with law, Executive Order, and merit system requirements, each agency having positions overseas must:

(1) review its process for selection of persons for overseas assignments to assure that it conforms in all respects with law, Executive Order, and merit system requirements; and

(2) within 60 days of the date of this Memorandum, issue appropriate internal policy guidance so that all selecting officials will understand clearly their legal obligation in this regard. The guidance must make clear that exclusionary policies of foreign countries based on race, color, religion, national origin, sex or age must not be considerations in the selection process for Federal positions. A copy of each agency's guidance in this regard should be sent to the Assistant Executive Director, U.S. Civil Service Commission, 1900 E Street, NW., Washington, D.C. 20415.

Gerald R. Ford

Jim -

Couple of questions:

I'm inclined on this one to adress memo - Buchen/~~Kilberg~~ Oniles

Agree?

Also plan to give the signed Directive to Bob Linder --- What is timing for release? Not until after the meeting? hold until after meeting

I also gave a copy of this to Jerry Jones because of the meeting approval.

Trudy

THE WHITE HOUSE

WASHINGTON

November 3, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: PHILIP BUCHEN

FROM: JAMES E. CONNOR

SUBJECT: Arab Boycott and Related Religious and Ethnic Discrimination

The President reviewed your memorandum of October 28 on the above subject and made the following decisions:

#1 - Employment Discrimination

Presidential Directive approved and signed.

Recommendation that Secretary Dunlop amend the Labor Department's March 10, 1975 Secretarial Memorandum to the Heads of All Agencies to require that Federal contractors and subcontractors, which have job applicants or present employees applying for overseas assignments, inform the State Department of any visa rejections based on the exclusionary policies of a host country. --- Approved.

#2 - Coercion to Discriminate

Recommendation that the Administration introduce legislation to add to prohibitions against discrimination on the basis of race, religion, sex or national origin.

--- Approved.

#3 - Action to Prohibit U.S. Exporters' Compliance with Arab Boycott Requests of a Religious or Ethnic Discriminatory Nature

Recommendation that President exercise discretionary authority under the Export Administration Act to direct the Secretary of Commerce to issue amended regulations to:

(1) prohibit U.S. exporters and related service organizations from answering or complying in any way with boycott requests that would cause discrimination against U.S. citizens or firms on that basis of race, color, religion, sex, or national origin; and

(2) require related service organizations that become involved in any boycott request to report such involvement directly to the Department. --- Approved.

#4 - Disclosure of Reports Filed Pursuant to Export Administration Act Regulations

Recommendation to direct the Secretary of Commerce to amend the regulations of the Export Administration Act to require prospective disclosure of boycott request reports (including reports on ethnic and religious discrimination).

--- Disapproved

#5 - Commercial Banks and Savings & Loan Associations

Recommendation to inform the FDIC that the President support the policy stated in the Comptroller's Banking Bulletin and that he encourages the FDIC to issue a similar policy statement to the banks within its jurisdiction, urging them to recognize that compliance with discriminatory conditions directed against any customer, employee, stockholder, officer or director of a bank on the basis of religion or national origin is incompatible with the public service function of banking institutions in this country. --- Approved

Recommendation that same action be taken with respect to the Federal Reserve Board and the Federal Home Loan Bank Board.

--- Approved

Recommendation that the Administration announce again its support for legislation which would amend the Equal Credit Opportunity Act to include prohibition against any creditor discriminating against any credit applicant on the basis of race, color, religion or national origin with respect to any aspect of a credit transaction. The Administration would not indicate support for prohibitions against the other categories listed in the bills mentioned. --- Approved.

#6 - Investment Banking Industry

Recommendation that:

(1) the U.S. investment banking community be praised for resisting the pressure of certain Arab investment bankers to force the exclusion from financing syndicates of Jewish-named firms;

(2) the SEC and NASD be praised for initiating a program to monitor practices in the securities industry within their jurisdiction in order to determine whether such discriminatory practices have occurred or will occur in the future; and

(3) urge the SEC and NASD to take whatever action they deem necessary to insure that discriminatory exclusion is not tolerated and that non-discriminatory participation is adhered to.

--- Approved

#7 - Possible Antitrust Violations

Recommendation that the Administration announce that the Department of Justice is vigorously engaged in a detailed investigation of possible antitrust violations involving U.S. businesses cooperating with the Arab boycott and that Justice has concluded that the boycotting of an American firm by another American firm raises serious antitrust questions.

--- Approved.

#8- Impact of Boycott of U.S. Firms Upon U.S. Government Activities

Recommendation - no new policy decision of general application at this time.

- Agree -

#9 - Strategy for Implementing Decisions

Recommendation to meet with Secretary Kissinger, Attorney General Levi, Secretary Morton, Bobbie Kilberg, Rod Hills, Brent Scowcroft, Bob Oakley, Bob Goldwin to agree upon when and how to communicate the decisions taken to the appropriate agencies, to the Congress, to the public, and to the key Arab governments and Israel. --- Approved

Please follow-up with appropriate action.

cc: Don Rumsfeld
Jerry Jones