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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

*original returned
to B Scowcroft*CONFIDENTIAL

September 4, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: BRENT SCOWCROFT *BS*

SUBJECT: Arab Boycott Legislation

We are faced with two probable pieces of anti-Arab boycott legislation in the Tax Bill and in the Export Administration Act. Administration officials (mainly Treasury and State) have maintained strong opposition to such legislation as directed by you in May, but there appears to be strong Congressional sentiment in favor of quite restrictive provisions.

We have reached a point where you may wish to review available options. Briefly, these are:

- Maintain a position of strong opposition, and express no interest in associating the Administration with a compromise. In this option, whatever emerges from the Congress would then be reviewed by you in the context of your decisions on the overall Tax Reform Bill and the Export Administration Act Extension Bill.
- Signal the Administration's willingness to examine legislation being proposed, and authorize Administration officials to try to promote compromise. This would probably mean that we would have to actively associate ourselves with one version against another more stringent version, to minimize the damage. This would be a major change in policy with its attendant consequences in moderate Arab states.
- A middle ground: Possibly a posture of passive acquiescence on some pieces of legislation (e. g. a modified version of the Tax Bill provision) while maintaining strong opposition to the most damaging bills (e. g., the Rosenthal amendment to the Export Act.)

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E.O. 12356, Sec. 3.4

MR 94-8, # 34 NSC H. 5/3/94

By 163H NARA Date 6/27/94

A discussion of pending legislation follows and possible courses of action follow:

1. Tax Bill -- Ribicoff Amendment: The Senate Finance Committee overwhelmingly adopted a Ribicoff amendment to the Tax Bill designed to penalize U. S. firms complying with, or participating in, the Arab boycott of Israel. The penalty for broadly defined boycott-related activities by U. S. firms would be denial of substantial tax benefits: DISC, foreign tax credits, denial of deferral and foreign earned income exemption.

Last week, we continued to oppose this provision. Chairmen Long and Ullman were inclined toward some compromise; in the absence of an Administration proposal they went along with a compromise worked out that was adopted in only a "conceptual" form this week (September 1). While details are lacking, the initial assessments of this "compromise" indicate it is preferable to the original Ribicoff Amendment (it limits tax sanctions to specific transactions). There are indications since then that Senator Long might still be interested in an Administration proposal. The conference reconvenes Wednesday, September 8 and could complete action at this time.

2. Export Administration Act Extension Amendments: The Senate passed this legislation on August 27 (65 to 11) with a Stevenson anti-boycott amendment. The provisions would require public disclosure of reports by U. S. firms (to the Commerce Department) of the receipt of, and degree of compliance with, boycott-related requests and prohibit boycott-related refusals-to-deal among U. S. firms.

The House bill, reported but not yet passed, contains a far more restrictive Rosenthal/Bingham amendment regarding the boycott. This provision would prohibit any compliance with boycott-related requests by U. S. firms (the Stevenson bill would only require public disclosure of the degree of compliance). While the Senate bill would prohibit one U. S. firm from refusing to deal with another U. S. firm, the House version would prohibit refusals-to-deal with a boycotted country, a business or national of a boycotted country or any concern which has, does or intends to do business with a boycotted country.

Our original intention was to seek delay of the House bill in committee long enough to preclude passage of anything but a simple extension of the EAA authority (which expire September 30). Chairman Morgan initially concurred in this strategy, but he was forced to proceed with mark-up, at which time the Bingham-Rosenthal amendment was adopted by a vote of 27 to 1. The bill was ordered reported on September 1.

A last-ditch effort to have the bill sequentially referred to the JCAE due to the nuclear export provisions is still possible. But full House action could occur next week with a conference shortly thereafter.

OPTIONS

1. Continued opposition:

Pros

-- Such a position would have the virtue of consistency and demonstrate the integrity of our arguments that legislation is unnecessary, and highly adverse to our foreign policy interests.

-- In particular with respect to the tax bill, it maintains our position that such boycott legislation is an inappropriate use of our tax law for non-tax purposes -- a point on which Secretary Simon feels especially strong.

-- It would demonstrate our reliability to Arab states; from a foreign policy point of view, State has argued that it is preferable for the Administration to remain firm despite the consequences, than to be seen as "caving in".

-- Treasury and State believe that nothing will be gained at this point by offering to compromise, because legislation, most likely in unacceptable form, is inevitable.

Cons

-- We may be faced with the worst-case legislation in both the Tax Bill and EAA.

-- A compromise might be successful in diluting the worst aspects of proposed legislation.

-- Refusal to compromise risks simplistic criticism that the Administration condones boycott practices.

2. Signal an interest in compromise on both the Tax Bill and the Export Administration Act. This would involve authorizing direct Administration contact with Long to ascertain whether further compromise on the tax bill is still possible; if so, we need to have an acceptable proposal which has not been developed. One possibility would involve endorsement of the Stevenson version in the EAA, and working on the new version of Ribicoff.

Pros

-- We are in a position where some boycott legislation is inevitable; thus the effort to compromise could minimize the longer-term effects on our ability to do business in the Arab world.

Cons

-- We sacrifice a strongly held past position and appear inconsistent in the face of pressure.

-- An acceptable compromise is dubious.

-- If we stand firm and lose, the Arabs will take note of the strong position we took. If we compromise and still lose, the Arabs will take note of both our failure to stick with our position and the resulting objectionable legislation.

If a compromise effort seems desirable, we have the following possibilities:

1. Respond to Senator Long's desire for an Administration Proposal on the Tax Bill, but resist the provisions of the Export Administration Act, and be prepared for a veto.

-- We might obtain further modifications of the Ribicoff amendment, achieving something we could live with.

-- Moreover, there is still a chance that House passage or the conference on the EAA could still be delayed, and if not, the restrictions on nuclear exports may warrant consideration of a veto.

2. Alternatively, let matters run their course in respect to the Tax Bill; but offer subtle or open endorsement of the Stevenson approach in the EAA.

-- Since conferees have already tentatively adopted a compromise formulation in the tax bill, it may be too late to make an impact on this position but an endorsement of the Stevenson amendment may be the only means of assuring that this version rather than the harsher Bingham-Rosenthal version prevails in conference.

Department Positions

As of now Secretaries Simon and Kissinger advocate opposing any anti-boycott provisions. Secretary Richardson favors the Stevenson Amendment as the least damaging.