The original documents are located in Box 4, folder “Arab Boycott - Moss Committee Report (2)” of the John Marsh Files at the Gerald R. Ford Presidential Library.

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THE WHITE HOUSE
WASHINGTON
September 13, 1976

MEMORANDUM FOR: JACK MARSH
THRU: MAX FRIEDERSDORF
FROM: CHARLES LEPPERT, JR.
SUBJECT: Arab Boycott

Bernie Wonder, Minority Counsel to the House Interstate and Foreign Commerce Subcommittee on Oversight and Investigations, called to state that much of the material being used on the Arab boycott issue is coming from the attached Moss Committee Report.

Wonder recommends that the Administration take a good hard look at the minority views of Rep. James Collins (R. - Tex.) on this issue.
THE ARAB BOYCOTT AND AMERICAN BUSINESS

REPORT

BY THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

An inquiry into the nature and scope of the Arab trade boycott, its impact on domestic commerce, the applicability of Federal laws to foreign-imposed boycott practices and the potential need for new law, with particular attention to the administration by the Department of Commerce of provisions in the Export Administration Act related to foreign-imposed restrictive trade practices

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WASHINGTON : 1976

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By _SD_ NARA, Date 9/14/2014
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SUMMARY

The boycott of Israel by the Arab countries raises basic and often conflicting local, economic, and political issues for the United States. This brought into question the availability of a variety of U.S. laws, especially antitrust and civil rights laws, laws affecting the banking industry, and securities laws affecting corporate behavior and disclosure. It has also raised the question of whether there is need for new law.

The Arab boycott is an aspect of the larger Arab-Israeli conflict in which U.S. foreign policy interests are involved. The boycott has had a significant impact within the United States and raises fundamental issues concerning our commitment as a people to principles of free trade and freedom from religious discrimination. (See pages —).

Although the Arab economic boycott against Israel and its supporters has formally been in existence for 25 years, its impact throughout the world began to increase dramatically in late 1974 following the fourfold petroleum price increase brought on by the Arab oil embargo. Accordingly, an investigation into the domestic effects of the boycott was commenced in March 1975 by the Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce.

In July 1975, the subcommittee received from the Department of Commerce copies of "Boycott reports" filed with the Department over the past 5 years. Pursuant to the Export Administration Act, 50 U.S.C. App. 2403(b), U.S. exporters receiving reports to participate in foreign-imposed restrictive trade practices or boycotts are required to report to the Commerce Department the facts surrounding those reports. (See pages —).

When the then Secretary of Commerce, Rogers C. B. Morton, refused to voluntarily provide the reports, the subcommittee, on July 28, 1975, issued a subpoena duces tecum. On September 25, 1975, pursuant to the subpoena, Secretary Morton appeared before the subcommittee to explain his refusal to furnish the documents.

Secretary Morton testified that section 7(c) of the Export Administration Act prohibited him from disclosing the reports to Congress. Subcommittee Chairman John E. Moss pointed out to Secretary...
Morton that the statute does not refer to Congress and that no statute can preclude Congress from obtaining documents needed to carry out its oversight duties under article I of the Constitution unless it does so expressly, not as the Secretary argued, by silence or implication. Secretary Morton again refused to comply.

The subcommittee examined the issues raised by the Secretary and found them legally untenable. On November 11, 1975, it approved a resolution by a vote of 10 to 5 finding the Secretary in contempt of Congress and referring the matter to the Committee on Interstate and Foreign Commerce for appropriate action.

On December 8, 1975, 1 day before the contempt matter was to be brought before the full committee, the Secretary agreed to provide the subpoenaed documents. The subcommittee received them in executive session pursuant to rule XI (k) (7) of the Rules of the House of Representatives.

Examination of the reports furnished by Secretary Morton was a necessary first step in evaluating the impact of the boycott on domestic commerce because the reports provided the only comprehensive data base on restrictive trade practices imposed by foreign concerns on American business. The Export Administration Act is the only federal law dealing directly with these practices. As part of this review, subcommittee staff examined at least 30,000 subpoenaed report documents.

The pattern of Commerce Department activities studied by the subcommittee indicates that the Department, at best, did a bare minimum to carry out the mandate of the foreign boycott provisions of the Export Administration Act. By action 55% as distributing to U.S. businesses "trade opportunities" containing boycott clauses, the Commerce Department actually furthered the boycott by implicitly condoning activity declared against national policy by Congress 11 years ago. Administration of the act's boycott reporting provisions was so poor that the executive and Congress have been effectively deprived of data necessary to fully deal with foreign imposed boycott practices. (See pages—)

The subcommittee found that the reporting practices and policies of the Commerce Department often served to obscure the scope and the impact of the Arab boycott. The subcommittee also found that the impact on U.S. business has been substantially greater than Congress had been led to believe by the Commerce Department. Thus, while boycott activities thrived, the Department generally looked the other way, except when pressed to act by Congress and by public opinion. (See pages—)

**CONCLUSIONS**

The Subcommittee finds:

1. The practices and policies of the Department of Commerce have served to thwart full implementation of the antiboycott provisions of the Export Administration Act. The Department has taken action reluctantly and only after Congress urged it to act more decisively. (See pages—)

2. Based on the boycott reports filed with the Department, the subcommittee estimates that at least 20% of all U.S. exports were sold to Arab countries in 1974 and 1975 pursuant to boycott terms. The most common requirements were for certificates by U.S. exporters that the goods shipped were manufactured in the United States and "not of Israeli origin"; that the ship transporting the goods was not blacklisted by Arabs and would not stop at an Israeli port on route to Arab countries; U.S. businesses were also required to a lesser extent—about 15 percent of all tabulated reports—to certify that they were not blacklisted by Arab countries. Only a few reports were found supposing that firms were not boycotted; instead they were revoked to deal with blacklisted companies. There were 15 reports filed with the Department of Commerce in 1974 and 1975 which contained clauses of a religious or ethnical nature. These included requests by Arab importers that U.S. exporters certify that there are no persons employed in senior management who are of the Jewish faith. Zionist or persons who have purchased Israeli bonds, contributed to the United Jewish Appeal, or members of organizations supporting Israel. (See pages—)
TORY: 

[8] The subcommittee estimates that exporters complied with at least 80 percent of all "boycott requests"—contained in boycott affected sales documents—reported to the Department during the last 2 years. It was necessary to estimate compliance because prior to October 1, 1975, firms were not required to report what action they had taken in response to boycott related requests. However, this does not mean that all companies actually boycotted Israel or altered their corporate practices in response to the boycott at times. (See pages—

[8] The reporting forms and regulations used by the Department were insufficient to obtain complete data concerning the exact nature of the boycott requests being imposed on U.S. business by foreign governments. The forms were replete with ambiguities that made it difficult for the exporters to accurately complete the forms. For example, 10.7 percent of all reporting firms listed the country initiating the boycott as the country also being boycotted. Second, the space available for firms to detail the types of boycott requests received was so limited—two typed lines—that most companies were forced to either quote only one of several boycott clauses, attach the entire document containing the clauses to the report form, or simply describe the clauses generally—that is, "typical boycott of Israeli terms." (See pages—)

[8] The data reported to Congress was generally meaningless and almost always inadequate. The Commerce Department, for example, tabulated the impact of the boycott in terms of "transactions" and not dollars. A "transaction" could be one box of nails or a shipload of wheat. The boycott clauses cited by the Commerce Department in its reports to Congress, for example, included clauses related to blacklisting of firms and religious discrimination. Furthermore, when the clauses in the report and the boycott documents attached to the report were compared with the coding marks of Commerce Department clerks purporting stating the types of clauses contained in the reports, it was found that at least half of the coding was in error, usually because it omitted clauses contained in the report. (See pages—)

[8] Commerce Department reporting regulations contained numerous loopholes that allowed domestic business concerns to evade the reporting mandate of the act. The following examples:

Despite the fact that the Export Administration Act requires the President or his designee to "require all domestic concerns" to report the facts surrounding the receipt of a request to participate in a foreign imposed restrictive trade practice or boycott, the Commerce Department regulations for 11 years required only exporters to file the reports. It was not until December 1976 that the Department changed its regulations to also require reports from the so-called "domestic concerns." In any boycott regulations, reports were filed by a "domestic concern" to file the reports. Therefore, some American based multinational corporations took the view with at least tacit approval of Commerce Department officials, that a foreign company is not expected to report a boycott request when the request is received by one of the company's domestic subsidiaries, without the actual knowledge of the parent company. Some company officials took the position that they could establish trade relations with Arab countries to facilitate trade with Arab countries and thus avoid the reporting requirement of the Commerce Department regulations. (See pages—)

Commerce Department regulations, ostensibly to avoid paperwork for reporting firms, require only reporting the first document received as part of a given transaction. An undetermined number of firms have reported boycott requests related to trade opportunities without reporting that it resulted in a sale. Firms have apparently failed to report the receipt of boycott requests arising from efforts of companies to remove themselves from the Arab boycott list or to renew patents and trademarks in Arab states since such action would not relate to a "transaction" (see pages—)

[8] Drafts of the Commerce Department reporting forms were submitted to industry lobbyists representing the Machinery and Allied Products Institute and the World Trade Department Automobile
Manufacturers Association, Inc. prior to being issued to the public. Files at the Office of Management and Budget on the history of the reporting form show no input from persons outside of Government except for lobbyists for these groups. The suggestions of these lobbyists—purportedly to reduce paperwork—were adopted by the Department. However, the Department's reporting regulations reduced the value and quantity of data, without necessarily reducing the burden on those who must fill the reports. (See pages—.)

(8) Federal antitrust, securities, and civil rights laws are useful tools to combat some domestic aspects of the Arab boycott. A more vigorous Commerce Department program for obtaining and analyzing data from businesses on boycott activities would considerably enhance the effectiveness of antitrust, securities, and civil rights laws by providing the Federal Government and the investing public with more complete information about Arab boycott practices and the responses of American firms to those tactics. Moreover, amendments to the Export Administration Act to allow public access to boycott data and to define impermissible boycott related activities are needed. (See pages—.)

(9) The United States has a competitive advantage over other industrial nations in its export of agricultural products and a large variety of manufactured goods. Accordingly, a shift in spending Arab petrodollars with other countries as the result of stronger antiboycott measures by the United States would be less costly. However, there still remains a need for increased diplomatic activity in order to minimize the impact of the foreign-imposed restrictive trade practices on international commerce. (See pages—.)

(10) For over 10 years, the Commerce Department has opposed the enactment of measures against foreign-imposed boycotts. Since Congress added antiboycott provisions to the Export Administration Act in 1965, the Commerce Department has consistently opposed amendments to the act to strengthen it. The subcommittee finds that vigorous congressional oversight by those committees having jurisdiction over the Export Administration Act enforcement of the act is therefore necessary to have adequate enforcement of boycott related laws. (See pages—.)

RECOMMENDATIONS

The subcommittee recommends:

(1) The Export Administration Act should be amended to prohibit U.S. businesses from providing information directly or indirectly to any foreign concern about any foreign concern about race, national origin, sex, religion or political beliefs, and, however, the furnishing of the information knows or should know that the information is for the purpose of discriminating against or boycotting any person or concern.

1 Pursuant to the Export Administration Act, and at the direction of President Ford, the Commerce Department issued a notice on December 19, 1973 prohibiting any entity from using the Export Administration Act to conduct any activity relating to the origin of goods manufactured or produced in the United States. The notice was issued to prevent the use of foreign entities to circumvent the spirit of the Export Administration Act.

(2) The Export Administration Act should be amended to prohibit persons from providing information directly or indirectly to any foreign concerns as to whether that firm or any of its subsidiaries or subcontractors is "blacklisted" or boycotted by any foreign concern.

(3) The Export Administration Act should be amended to allow domestic businesses to provide importers or agents for importers only affirmative fact of information relating to the origin of goods manufactured or produced, the name of the manufacturer, the name of the insurer of the goods, the name of the vessel transporting the goods and the owner or charterer of the vessel. This information could be provided on business documents in the following fashion:

Treasury Dept. - Reference - U.S. Customs

Shipping Dept. - Reference - U.S. Customs

Trading - Reference - U.S. Customs

Indirectly funded with Cuban...
The products are exclusively of U.S. origin.

The producer or manufacturer of the products is ____________________________

The name of the vessel is ____________ and it is owned or chartered by ________________

(4) The Commerce Department should immediately begin to improve the quality of its information collection, assimilation, and retrieval system. Toward that end, the Department should improve the quality of its reporting form to make the instructions easier for businesses to follow.

(5) The Export Administration Act should be amended to provide for public access to like reports, accord for the description of the commodities shipped and their use as to adequately protect proprietary information. Public disclosure would aid compliance with the reporting requirements of the act and help prevent U.S. business from being used as a tool of the economic warfare of foreign nations, consistent with the policy set forth in the Export Administration Act.

(6) The President should increase the level of diplomatic efforts in order to minimize the impact of foreign-imposed restrictive trade practices on American companies. These efforts should include forming alliances with other industrialized nations for the purpose of establishing basic international business ethics and standards.

(7) Given the Commerce Department's poor record in carrying out the statutory policy against foreign-imposed boycotts, the subcommittee recommends increased congressional oversight of the Commerce Department by committees having jurisdiction over the Export Administration Act.

[Handwritten notes:]
- Congress did not require me
- 166/164a
- The year is 1966
The boycott of Israel by the Arab countries raises fundamental and frequently conflicting legal, economic, and political issues for the United States. It has brought into question the applicability of U.S. antitrust and civil rights law, laws affecting the banking industry, and securities law affecting corporate behavior and disclosure. It has also raised the question of whether there is need for new law. The Arab boycott is part of the larger Arab-Israeli conflict in which U.S. foreign policy interests are involved and it has had a significant impact within the United States. The boycott also raises fundamental issues concerning our commitment as a people to basic principles of free trade and freedom from religious discrimination.

The Arab boycott against Israel, although involving a wide variety of practices, takes three basic forms. The primary boycott is a refusal by the Arab states to deal commercially with the State of Israel or its nationals. An extension of this, the secondary boycott, is the refusal to deal with non-Israeli supporters of Israel.

In addition, the Arab boycott involves a tertiary boycott, also known as an extended secondary boycott, in which the Arab States refuse to do business with firms or individuals which are not themselves supporters of Israel but do business with others who are considered to be supporters of Israel. In other words, the Arab tertiary boycott implicitly or explicitly involves requesting a neutral person "A" not to do business with "B" because "B" does business with or otherwise supports Israel. For these purposes, the Arab League countries maintain blacklists of firms which are considered pro-Israeli. The latter two elements of the boycott structure, the secondary and tertiary boycotts, carry with them an implied conflict with U.S. antitrust law.

The unique nature of the target of the boycott, Isreal, presents a somewhat novel problem in the history of boycotts, one which raises the possibility of conflict with U.S. domestic civil rights law. This can occur when a U.S. corporation, official, or individual refuses to do business with a firm or individual which is not a supporter of Israel but does business with others who are considered to be supporters of Israel.

The issue of domestic civil rights law is complicated by the fact that, in the United States, there are laws which prohibit discrimination in the conduct of business activities. These laws have been interpreted to mean that a corporation or individual cannot discriminate on the basis of race, religion, national origin, or other protected characteristics. However, the issue of whether a boycott of Israel is a form of discrimination is not clear.

In a letter to the New York office of the National Association of Jewish Students Issued, Inc., the Commissioner-General for the United States stated that "the boycott authorities do not discriminate among persons on the basis of their religion or nationality, they rather discriminate on the basis of their particular political choice to support the Arab boycott. The boycott does not discriminate against a corporation or individual, it discriminates against the corporation or individual's relationship with those who support the boycott." In another letter to the National Association of Jewish Students Issued, Inc., the Under Secretary of Commerce James Moen stated, "in present the administration's position regarding boycott policy, no corporation or individual who is not associated with Israel or the Arab States' supporters of Israel which are considered pro-Israeli are not discriminated against by the boycott in the manner in which the U.S. government interprets the civil rights laws."
view that new measures to reduce the impact of the boycott could jeopardize its role as a mediator and other related foreign policy interests. Indeed, the United States has long regarded both Arabs

and Israelis as friends and has sought to promote the economic growth of their countries.

Another important concern, inextricably tied to U.S. foreign policy, has been the U.S. Government's desire to foster exports to the Middle East in order to recoup some of the dollars the Arabs have accumulated as a result of the four-fold rise in the price of oil. Such exports have a favorable impact on U.S. balance of payments and on domestic employment. In this regard, American business finds itself in the difficult position of being urged to increase exports to the Middle East and at the same time being encouraged not to comply with the Arab boycott. The trade issue becomes even more complicated in light of the U.S. Government's position with regard to trade restrictions. Historically, the United States has been a leading proponent of free and unrestricted world trade. Opposition to the Arab boycott is consistent with longstanding U.S. commercial policy incorporated by Congress into the Export Administration Act and recently restated by President Ford. However, the United States has also been the architect of

*On Nov. 29, 1975, President Ford, in his sixth press conference, set forth the administration's policy as follows:

"There have been reports in recent weeks of attempts to the international banking community to obstruct deals with certain individuals or institutions on religious or political grounds. U.S. policy should be no fault about the position of this administration and the United States. Such discrimination is totally contrary to the American tradition and represents an affront to American principles. It has no place in the free practice of commerce as it has for years been practiced in the United States and abroad to many nations and businessmen. A variety of international trade restrictions, largely directed against various Communist nations. Having U.S. trade restrictions and the antiboycott policy both implemented by the Commerce Department exacerbates the policy dilemma.

PURPOSE OF SUBCOMMITTEE INVESTIGATION

In March 1975, the subcommittee commenced an investigation into the domestic implications of the Arab boycott. The inquiry was requested by many persons, particularly Representative James H. Scheuer of New York. Although the Arab boycott against Israel and its supporters has been in existence for 25 years, Congressman Scheuer pointed out that its impact on American commercial practices has apparently increased dramatically following the 400 percent petroleum price increase after the recent Arab oil embargo.

The investigation was begun to determine the nature and scope of the boycott and similar restrictive trade practices imposed on the United States by foreign governments, corporations or citizens, to ascertain how pervasive these practices are, to evaluate the boycott's economic impact on American business, and to find out whether Federal laws related to these practices have been effective and fully enforced, as well as to make judgments on the need for new law.

THE SUBCOMMITTEE'S JURISDICTION

The subcommittee's jurisdiction arises under the legislative powers of Congress specified in Article I of the Constitution and the Rules of the House of Representatives. Rule X establishes the Committee on Interstate and Foreign Commerce and gives it jurisdiction over the following:

- Interstate and foreign commerce generally.
- Consumer affairs and consumer protection.
- Security and exchanges.
Included within the committee's jurisdiction are statutes administered by the Federal Trade Commission and the Securities and Exchange Commission. Section 8 of the Federal Trade Commission Act provides:

Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are hereby declared unlawful.

Section 10(b) of the Securities Exchange Act of 1934 provides that any "manipulative or deceptive device or contrivance" relating to the sale or purchase of securities is unlawful. In addition, under the regulations of the Securities and Exchange Commission (17 CFR 240.14a-3), public corporations are required to afford stockholders the opportunity to have proxy materials included in the proxy statement sent to stockholders apparently including such matter relating to the practices of a corporation regarding a proposed boycott request.

Furthermore, under the Securities Acts Amendments of 1975—Public Law 94-29—the Commission has authority to apply to Federal courts to enjoin violation of the rules of any industry self-regulatory organization. The National Association of Securities Dealers' rules of fair practice require that its members observe just and equitable principles of trade in the conduct of the securities business.

The subcommittee is the oversight arm of the Committee on Interstate and Foreign Commerce with jurisdiction concurrent with that of the full committee. The subcommittee's oversight responsibilities are set forth in rule X of the Rules of the House of Representatives as follows:

Each standing committee (other than the Committee on Appropriations and the Committee on the Budget) shall review and study, on a continuing basis, the application, administration, execution, and effectiveness of those laws or parts of laws, the subject matter of which is within the jurisdiction of that committee, and the organization and operation of the Federal agencies and entities having responsibilities in or for the administration and execution thereof, in order to determine whether such laws and programs thereunder are being implemented and carried out in accordance with the intent of the Congress and whether such programs should be continued, curtailed, or eliminated.

In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee (whether or not any bill or resolution has been introduced with respect thereto), and shall on a continuing basis undertake future research and forecasting on matters within the jurisdiction of that committee.

In the course of this investigation, the subcommittee sought and received information from persons in State and Federal Government, various foreign embassies, the academic community, business, and others from the private sector. Sources in the Federal Government included persons at the Department of the Treasury, Department of Justice, Department of Commerce, the Federal Reserve System, and the Securities and Exchange Commission.

It became apparent, however, that the basic data needed for any systematic and comprehensive examination of this subject was contained in reports required to be compiled by the Department of Commerce pursuant to the Export Administration Act.

The act requires that all American business concerns report to the Commerce Department facts surrounding requests they have received to provide information or take action as part of a restrictive trade practice imposed by one country friendly to the United States against another country friendly to the United States.

CONTEMPT PROCEEDINGS

The subcommittee requested copies of these reports on July 10, 1975, from the Commerce Department. On July 24, 1975, then Secretary of Commerce Rogers C. B. Morton, wrote to Chairman John E. Moss stating that he would not provide the documents because to do so would expose "firms to possible economic retaliation by certain private groups merely because they reported a boycott request, whether or not they complied with the request." He added: "Such a conclusion
Secretary Morton asserted that he could not provide these reports to the subcommittee because to do so would violate section 7(c), the confidentiality provision of the act. Subcommittee Chairman Moss pointed out to Secretary Morton that, "section 7(c) does not in any way refer to the Congress and that no reasonable interpretation of the section could support the notion that Congress by implication had surrendered its legislative authority under article I" of the Constitution. Chairman Moss said that if Congress were to give up its powers in a statute it would have to do so expressly, not by silence or by implication.

The Secretary requested and obtained an opinion from Attorney General Edward Levi to support his position. The subcommittee received opinions from four constitutional law scholars refuting Secretary Morton's view and that of the Attorney General. All four have written on "executive privilege" and constitutional problems in obtaining information from the Executive. They included Prof. Raoul Berger, Charles Warren, senior fellow in American legal history at Harvard University; Prof. Philip Kurland, who teaches constitutional law at the University of Chicago; Prof. Norman Dorson, who teaches constitutional law at New York University and is general counsel to the American Civil Liberties Union; and Prof. Burke Marshall, former general counsel of the IBM Corp., who teaches Federal jurisdiction and constitutional law at Yale University.

All agreed that the subcommittee is authorized to compel release of the boycott reports by Secretary Morton, and that section 7(c) of the Export Administration Act is not a lawful bar to the subcommittee's subpoena. For example, Professor Berger concluded:

In my opinion, section 7(c) of the Export Act is not applicable to a congressional demand for confidential information; it does not absolve the Secretary of Commerce from compliance with the subpoena of your subcommittee.

Professor Kurland commented:

"...I am of the opinion that, as a matter of law (the Secretary and the Attorney General) are wrong in their claim for executive immunity from congressional oversight in this matter."

I urge this subcommittee not to contribute to the continued destruction of congressional authority. The constitutional plan of checks and balances, an essential safeguard for American liberties, is constantly endangered by failure of Congress to assert its authority vis-a-vis the Executive. I trust that this case will not prove another instance of such surrender: the rights at stake are not those of individual Congressmen, they are the rights of the American people whose representatives you are."

These opinions were obtained in addition to a memorandum from the American Law Division of the Library of Congress on September 10 and from subcommittee legal staff on September 5. Both found the Secretary's position incorrect. With six legal opinions in hand, the subcommittee thoroughly examined the Secretary's position through cross examination of constitutional experts and 4 days of hearings—including 2 days when the Secretary was present.

After considering Mr. Morton's defense, the subcommittee found him in contempt of Congress on November 11, 1975, by a vote of 10 to 5 and referred the facts and circumstances surrounding that finding to the full committee for appropriate action. "It was the first time in history that a member of the President's Cabinet had been found in contempt of Congress, according to legal historians at the Library of Congress."

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These opinions were obtained in addition to a memorandum from the American Law Division of the Library of Congress on September 10 and from subcommittee legal staff on September 5. Both found the Secretary's position incorrect. With six legal opinions in hand, the subcommittee thoroughly examined the Secretary's position through cross examination of constitutional experts and 4 days of hearings—including 2 days when the Secretary was present.

After considering Mr. Morton's defense, the subcommittee found him in contempt of Congress on November 11, 1975, by a vote of 10 to 5 and referred the facts and circumstances surrounding that finding to the full committee for appropriate action. It was the first time in history that a member of the President's Cabinet had been found in contempt of Congress, according to legal historians at the Library of Congress.
On December 8, 1976, 1 day before the full committee was prepared to vote on sending to the floor of the House a resolution to hold the Secretary of Commerce in contempt of Congress (resulting in his arrest and detention until the documents were provided), Secretary Morton agreed to provide the subcommittee with the subpoenaed documents. Secretary Morton’s decision to surrender the documents came after the chairman of the subcommittee said he would receive them in executive session in accordance with rule XI(k) (7) of the Rules of the House of Representatives. Thus, the contempt proceedings against the Commerce Secretary became moot and the subcommittee received approximately 12,000 Export Administration Act reports needed to conduct its investigation.

THE SUBPOENAED REPORTS

The documents’ value to the subcommittee’s investigation was summarized by Chairman Moss during the subcommittee’s September 22, 1976, hearing. He said:

To find out what the effect of the boycott on our country has been, the subcommittee and ultimately the Congress needs answers to such questions as: (1) the nature, scope, and impact of the boycott(s); (2) the nature and extent of participation by American firms; (3) the effectiveness of the Commerce Department’s administration of the boycott provisions of the Export Administration Act; (4) the utility of existing laws; and (5) the need, if any, for new law. Relevant questions to be answered included: (1) How many U.S. firms received boycott requests? What proportion of U.S. foreign trade was subject to boycott requests? What was the dollar value of trade conducted under Arab boycott regulations? What commodities and industries were involved? What kinds of actions were American companies asked to take or refrain from taking? What did these companies actually do? How widespread was the problem of religious discrimination? Were there antitrust implications to any of the actions of American companies? Were any companies placed at a competitive disadvantage by refusing to comply with a boycott request of be being “blacklisted”? Did any company lose business as a result of the operation of the boycott? Many more questions arose as the study proceeded; some questions remain unanswered.

IDENTITY OF FIRMS

There have been a substantial number of requests to the subcommittee for a Commerce Department list of firms who boycott Israel. These requests, and the reference to a list, apparently stem from the description in news accounts of the Export Administration Act reports filed with the Commerce Department by U.S. exporters and suppressed by the subcommittee from the Department. These reports, however, do not constitute a list, and the Commerce Department has never compiled a list of firms complying with boycott requests. The Commerce Department reports obtained by the subcommittee comprised at least four volumes. Publishing them would require several large volumes.

While it was generally possible to determine the rate of compliance with requests received, it was impossible to determine to what extent U.S. firms boycotted Israel on the basis of the reports alone. Deficiencies in the Commerce Department’s administration of the statutory reporting requirement are largely responsible for not being able to make that determination with complete certainty.
The subcommittee observes that knowing how a particular company responded to a boycott-related request meant little unless it is examined in the context of what the firm was asked to do. Usually there were several request classes cited in a single report. And most reporting firms met minimum reports in a given year. A company's answer to a boycott request often varied from one request to another. Thus, reporting that each of more than 600 companies did individually over a 2-year period could be misleading and unfair to particular firms.

Efforts by the subcommittee to compile a list on compliance were made considerably more difficult since firms were not required to report to the Department what action they took in response to the boycott request. The Commerce Department did not make answers to the compliance question mandatory until October 1, 1975. Accordingly, the information the subcommittee had is incomplete.

Some reporting made a distinction between receive compliance, particularly revealing factually accurate information such as the certificates of origin, and active compliance—directly participating in the boycott of Israel. Some examples will help to make this distinction clearer. Many companies signed statements declaring that they do not have a subsidiary in Israel on their report. Some, however, explained that while this statement was factually accurate, it did not involve any change in their corporate structures or corporate policies. Some companies indicated that they provided a certificate of origin indicating that the exported goods were wholly of U.S. manufacture or did not contain any Israeli components but indicated this was a statement of fact and did not involve any change in their suppliers. The same was also true of companies who signed statements that they were not blacklisted. Indeed, some companies indicated that although they signed certificates that they were not blacklisted, they had not been a source of the blacklist and therefore, really did not know whether or not they were blacklisted. Nevertheless, the typical payment firms annually certified that they were not blacklisted.

To the extent that certain of firms could be examined from the Commerce Department documents, it has been described in this report in generic terms. At this time, the subcommittee believes that composite figures are sufficient to perform due diligence. There are, however, several bills pending in Congress to make Export Administration Act reports public on demand with the exception of specific proprietary information. The subcommittee supports this proposed legislation. In the meantime, the subcommittee will retain its copies of the suspended reports to use for its ongoing investigation.
CHAPTER II.—THE ARAB BOYCOTT: AN HISTORICAL PERSPECTIVE

INTERNATIONAL CONTEXT

The Arab boycott is not entirely unique in relations among sovereign states. The practice of one state boycotting another is one of a number of traditional techniques of exerting economic pressure to achieve desired, mostly political, ends. Other techniques include export and import embargoes, licensing systems, blacklisting, prohibitions on re-exportation, preemptive buying, controls on shipping, foreign exchange controls, and the blocking, freezing, or vesting of assets. Techniques of economic warfare were used with increasing sophistication during the two World Wars and are generally considered to be legitimate exercises of sovereignty, not contrary to international law.

During World War II, the U.S. Government maintained extensive domestic and international economic controls. By the time the Export Control Act was passed in 1949, foreign policy, not war, became the prime reason for trade restrictions. This Act and its successor, the Export Administration Act, established a peacetime system of export licensing to prevent the Soviet Union and other Communist countries from obtaining strategic commodities. The system has also been used to control the export of commodities in short supply on the U.S. market. In addition, the Trading With the Enemy Act of 1917 was used by the Treasury Department to issue regulations embargoing imports from certain Communist countries as well as controlling the export of strategic materials by the foreign affiliates and subsidiaries of U.S. firms, including the assembly abroad and re-export of U.S. components. The extraterritorial application of Treasury Department regulations created substantial difficulties with U.S. allies.

Through use of a third law, the Mutual Defense Assistance Control Act of 1951—commonly known as the Battle Act—the United States sought to press its objectives on recipients of U.S. foreign assistance by requiring the suspension of all military, economic, and financial aid to countries shipping armaments, nuclear materials, and other strategic materials to nations threatening the security of the United States. The Battle Act also provides current authority for U.S. participation in a multilateral mechanism for control of strategic exports to the Sino-Soviet area operating through a Coordinating Committee (COCOM) composed of all NATO members except Iceland but including Japan. The list of strategic commodities subject to Battle Act restrictions and foreign aid sanctions is developed unilaterally by the United States. The COCOM international lists are unanimously ratified by the United States and its COCOM allies.

Finally, the Federal Maritime Administration maintains a list of vessels, currently numbering 303, calling at Cuban and Vietnamese ports to deny them the right to carry U.S.-financed cargo and, up until late 1975, to refuel at U.S. ports. The boycott of vessels doing
business with Cuba, for example, began in the early 1960's for the purpose of discouraging trade with Cuba. Ships which have recently

called or will shortly call at a port in North Korea, Vietnam, or Cambodia were also denied petroleum bunkering at U.S. ports.

This sampling of U.S. controls depicts substantial, U.S. nonmechanical international trade controls, including measures through foreign banks. The system includes the use of certificates or credits, blacklists, and shipping controls—techniques used by the Arab boycott as well. However, at no time in modern history has any country or group of countries sought to impose or enforce secondhand or tertiary boycotts on a scale so massive as the Arab boycott against Israel. The United

States, for example, has not required other countries to boycott Cuba as a condition for being able to do business with the United States.

EVOLUTION OF THE ARAB BOYCOTT

Emergence of the Zionist movement, triggered by renewed anti-Jewish sentiment in Europe during the late 19th century, was accompanied by a resurgence of Jewish emigration to Palestine. From that time until establishment of the State of Israel, the Palestinian Arabs and Jews informally boycotted each other. Throughout the 1930's and the 1940's, the dispute between the Palestinian Arabs and the Palestinian Jews over the question of Jewish statehood became increasingly polarized, and the Arab boycott began to broaden.  

In October 1945, only a few months after its founding, the Arab League formalized the existing boycott by Palestinian Arabs against goods produced by Palestinian Jews and enlisted the participation of all Arab States. In April 1950, after prolonged discussion of feasibility, the boycott was extended further to include the boycott of supporters of Israel. That is, the secondhand or tertiary boycott. Finally, in March 1951, the Arab League established a boycott office to coordinate the boycott actions of League members. The formalized Arab boycott has been in effect ever since.  

Regarding the rationale for the boycott, an April 1960 Library of Congress report states:

The Armistice of February 24, 1949, resulted only in the suspending of organised military operations; it did not, nor did it purport to establish peace. In effect, it only changed the character of hostilities from direct military action to the application, particularly by the Arab States, of other kinds of pressure, namely economic, Egyptian authorities, in particular, presumably had an intention either at the time of the armistice or since, of entering into negotiations for peace with Israel. The Israeli authorities, for their part, had no practical reason for this attitude. The Arabs believed with considerable reason that Israel had access to great amounts of foreign capital controlled by financiers of the Jewish faith in Europe and America. They had always insisted that among the Jewish immigrants to Palestine, wealth and influence were overwhelming in the history and culture of the Jewish people and in the overseas political and economic circles which around the Arab states to a large extent determine the economic life and commercial policy of the Arab states. They continued, therefore, that it was in the Arab states that a major economic boycott of Israel which would at once restrict the flow of raw materials to Israel and eliminate any market for Jewish goods in Arab States.  

The rationale for the boycott as an aspect of the ongoing state of belligerency and the consistency of Arab support for the boycott has apparently changed little.
The boycott's impact has, however, changed substantially in recent years. This change is a direct result of the fourfold rise in the price of oil which followed the Arab-Israeli war of October 1973. Due to the normal timetables in oil payments, massive accumulation of oil revenues did not begin until 1974. That year, the combined current account surplus of the OPEC nations, which includes several major non-Arab oil producing countries, was $652 billion. In 1975, this surplus is estimated to have dropped to approximately $39 billion. Despite lowered fuel consumption due to worldwide recession and mild winter weather, total oil revenues remained approximately the same because of higher OPEC government earnings per barrel. The drop in the financial surplus was produced largely by a substantial growth in imports of the OPEC nations. OPEC imports of goods rose by two-thirds from $38 billion in 1974 to an estimated $57 billion in 1975. Morgan Guaranty Trust Co. has estimated that, in 1976, OPEC imports will increase at a somewhat slower rate, to $104 billion.

The additional leverage which the Arab countries have obtained from their increased oil revenues has been accompanied by greater diligence in enforcing boycott restrictions. The recent concern in the United States over the boycott did not arise over its impact on trade. Rather it was first noted in the investment banking sector. One source suggests that the Arab boycott may have started to work in the financial community as far back as March 1974. Its impact, however, was not truly felt until nearly a year later.

In early February 1975, Lazard Freres, a leading French investment firm, protested to the French Government its exclusion by a nationalized French bank, Credit Lyonnais, from the underwriting of two major bond issues for state-owned corporations, including Air France. The exclusion was allegedly based on the firm's alliance with Israel. Seven days later, the Kuwait International Investment Co. attempted to restructure Morgan Guaranty, First National City, and Smith, Barney, Harris, Upham & Co. into excluding boycotting Jewish banks from participation in the underwriting of two loans sums in the United States—one for Venezuela, the other for the Government of Mexico. Merrill Lynch refused to cooperate, the Kuwait International Investment Co. withdrew as co-manager, and the bond issues went ahead.

CONGRESSIONAL CONCERNS

Congressional response to the ramifications of the Arab boycott began as far back as 1965. The issue was explored during hearings by the House Committee on Banking and Currency, Subcommittee on International Trade, to extend the Export Control Act. An examination of the committee hearings and the related House and Senate reports suggests that there has been little change in the arguments raised by the various participants in the controversy in the nearly 11 years since those hearings.

Testimony by Irving Jay Fain at these hearings, representing the American-Israel Public Affairs Committee, offered a concise statement of the reasons for opposing the boycott. In addition to outlining the objectionable nature and impact of Arab questions concerning the religious affiliation of owners and employees of American business, Mr. Fain detailed other effects of the boycott on American business as follows:

"The boycott was designed by the Arab states to help in their war..."
20—TORY—LINO

1. The U.S. businessmam is involved in the Arab dispute with Israel even though he may not wish to be involved, or even though he may oppose such boycott activities.

2. The U.S. businessman is being put in the position of being blackmailed to give up his Israeli business under fear of losing his business with Arab countries.

3. The U.S. businessman is required to supply affidavits which have no pertinence to the business aspects of the transactions.

4. The shipping lines are required to run double routes to the Middle East.

Mr. Fin concluded:

The United States cannot avoid involvement. Inaction by the United States becomce an act of omission, which permits the boycott activities to continue, thus becomes positive involvement in support of the boycott. This is a case where silence gives assent. The United States must make a decision. The United States must decide whether it will protect its businessmen from the boycott or leave them exposed.

Mr. Wright, p. 106.

Failure to address the boycott problem was viewed by Mr. Fin and other witnesses as acceptance of the boycott with all its undesirable domestic and international ramifications.

Assistant Secretary Douglas MacArthur II, representing the Department of State, told the House Banking and Currency Committee in 1965 that some bills under consideration prohibiting the furnishing of information and the signing of agreements in compliance with Arab boycott terms would have the following effects:

1. Prevent American firms, some of which trade with both Israeli and Arab companies, from trading with the Arabs.

2. Seriously harm our sizable commercial relations with Kuwait and Saudi Arabia, with adverse effect on our already negative balance of international transactions.

3. End cooperation with the United States by several Arab States which have recently been very cooperative on boycot actions.

4. Prohibit actions which we ourselves must practice in enforcing U.S. legislation regarding trade with Cuba by other countries. Our vulnerability to hostile propaganda would be increased thereby.

5. Testimony of George W. Ball, House Hearings, p. 61.

For this and other reasons, the Department of Commerce also opposed passage of the legislation. Robert E. Giles, general Counsel for the Department of Commerce at the same House subcommittee hearings, testified:

It seems to us that the administration of the basic policy objectives of the Export Control Act could be adversely affected by the enactment of the bill, that the bill would not be useful in bringing to an end the boycott, and that it would have undesirable side effects for American business.

The Commerce Department also feared that if American business were forbidden to answer boycott questionnaires, the Arabs would resort to using information which was garnered from substantially less reliable sources. Moreover, in the words of Mr. Gibbs:

It has been suggested that American businessmen would be happy to have legislation such as this enacted to bolster them in their resistance to the boycott. However, while proponents of this legislation indicate that there are over 3,000 firms listed on the Arab blacklist, we are not aware of any strong business demand for passage of this legislation.3

There undoubtedly existed, at the time, aspects of the boycott that were injurious, particularly to companies on the boycott list, as was claimed in James A. Gallagher's prepared statement delivered at the 1965 hearings on behalf of Merritt-Chapman & Scott Corp., a company which lost business in the Arab world because of its ties to an Israeli firm.4 But despite such cases there was only limited support by the business community for the then pending legislation.

3. Ibid.

At the root of this drive for antiboycott legislation were concerns about religious discrimination and U.S. support for Israel. This conclusion is suggested by the repeated emphasis during the hearings on the offensiveness of questions concerning religious affiliation contained in Arab boycott questionnaires as well as by the "Supplemental Views" contained in the report of the House Committee on Banking and Currency which characterize an "intolerable" situation in which:

An American employer or an American firm is prohibited by law from asking what one's religion is, what his race is, what his place of origin may be or that of his ancestors. Despite such prohibitions in existing law, the practices of the State Department and the Commerce Department give permission, if not direction, to Americans to answer to foreignness the very questions which they are prohibited from asking of or answering to other Americans.5


Despite the saliency of the religious issues, there was no testimony by representatives of the Justice Department on the civil rights issue. Antitrust implications were not discussed either. Other points cited in the "Supplemental Views" in support of a statutory ban on the provision of information in "response to the boycott included recognition that the Departments of State and Commerce were reluctant to carry out the intent of such an antiboycott amendment, and that a prohibition would help smaller firms, which have less leverage to deal more effectively with the boycott. The "Supplemental Views" to the House report signed by 17 members of the committee, a majority.6 The report

6. The 17 members signing the "Supplemental Views" were: Abraham J. ColITott, Democrat, New York; William D. Harman, Democrat, Pennsylvania; Harry B. Swee, Republican, Wisconsin; Joseph D. Gurney, Democrat, Delaware; Edward L. Gurney, Democrat, Delaware; Paul T. Horn, Republican, Wisconsin; Graham M. Kean, Democrat, New Jersey; Joshua L. Swislocki, Democrat, New York; Eberhard G. Rober, Republican, New Jersey; Elwood W. Kramer, Democrat, Ohio; Richard B. Huddleston, Republican, Tennessee; Robert J. Rarley, Democrat, Ohio; Ralph H. Delano, Republican, Ohio; Robert W. Miller, Republican, South Carolina; Albert W. Johnson, Republican, Tennessee; and J. William Staats, Republican, Ohio.

of the House Committee on Banking and Currency recognized the complexity of the issues raised by the boycott:

A sharp conflict of the competing policy considerations confronted your committee with one of its most delicate assignments in recent memory. After painstaking deliberation, your committee reached what it believes to be a sound and workable resolution, and urges its thoughtful consideration and ultimate adoption by the House.7


Those on either side of this controversy should be mindful that considerably less palatable alternative exist than that which your committee hereby reports and earnestly recommends.8

8. Ibid., p. 3.

The committee stated that it was the policy of the United States to oppose restrictive trade practices and boycotts against nations friendly to the United States. The House rejected an amendment offered from the floor, which would have flatly prohibited American business from furnishing information or signing agreements in furtherance of a boy-
I. At the following exchange:

This may clearly on the Export Administration's efforts to implement the antiboycott provisions of the Export Administration Act. It was an opportunity for Secretary Morton and subcommittee members to exchange views, and to learn what has or has not been done by the Commerce Department to fully implement the spirit and letter of the antiboycott laws.
Mr. WAXMAN. Mr. Secretary, you say that trading with the Arab countries and conforming to their requirements of providing information and perhaps refusing to deal with another American company doing business with Israel is legal. It may or may not be legal under our antitrust laws, but assuming it is legal, isn't it contrary to the clear public policy of the United States? Isn't it contrary to the policies of our State Department and the Commerce Department that American concerns not engage in the Arab boycott? If it is clearly contrary to your instructions to them and to Presidential policy, State Department policy, isn't the policy of the Congress, that if they insist on flagrantly violating the declared public policy of this country even though it may be legal to do so why not so that they embark in a span of audit in making the choice to cove into the boycott threats and fulfill our national policy? Under present law they have the right to make that choice, perhaps, but why don't their stockholders have a right to know of their choice? Why don't their customers have the right to know this? Why don't the consumers of America have the right to know of that choice and why doesn't the Congress of the United States have a right to know of that choice?

Mr. MOFFETT. In answer to the Congressman's question, I think there is a lot of confusion about the extent to which these reports reflect cooperation and participation in a boycott. Various sources have labeled these reports as a list of firms boycotting Israel, firms capitulating or surrendering to commercial blackmail, and I think these labels are for the most part inaccurate, as I note in my statement.

The fact that a firm reports the receipt of a boycott request or even resolves to it does not necessarily indicate cooperation with the actual boycott. The fact that market conditions in Israel, foreign competition, and other things may dictate that the firm's market is in the Arab countries and not in Israel, or firms may be trading with both Israel and Arab countries since the boycott does not preclude routine bilateral trade with Israel. I do not believe that such a U.S. firm should be subjected to the risk of domestic sanctions for obeying the law and reporting boycott requests, particularly since it is lawful to trade with the Arab countries where such requests are involved.

Representative Schueller has cited the declaration appearing at the top of each reporting form used by the Department and said that it was ineffective in detering boycott practices. The legend on the form stated:

Important: It is the policy of the United States to oppose restrictive trade practices imposed by foreign countries against Israel and other countries friendly to the United States. All U.S. exporters of articles, materials, supplies or services are encouraged and requested to refrain from making, and are not legally prohibited from making, any action, including the furnishing of information in the signing of agreements, that has the effect of furthering or supporting such restrictive trade practices or boycotts. [Emphasis added.]

Representative Schueller said it was inconsistent with the public policy to tell firms that they are "not legally prohibited" when such practices may be prohibited by antitrust and other laws. "When you tell them your request isn't legally binding, isn't that sort of winking at them, and signaling them that you don't really mean it?" The Secretary changed Department regulations to remove the "not legally prohibited" language from its reporting form on October 1, 1975.

Department distributes boycott invitations

Representative Toby Moffett raised the issue of the Department's circulation to American businesses of trade opportunities that contain boycott clauses. Trade opportunities are offers to do business from foreign concerns who are, for example, building a factory and are looking for a contractor to do the work according to specifications. The Department circulates the trade opportunities in this country in order to stimulate exports. But the point raised by Representative Moffett and other subcommittee members was that distributing trade opportunities with boycott clauses serves to further boycotts. "I think the issue of our Government assisting in this boycott is really wrong," stated Representative Moffett. Representative Henry Waxman made the same point.

"* * * to say that you are not sympathetic to the boycott is all fine and good, but the effect of all this is to say we are going to wink at those who want to have a boycott, we don't like it but what can we do, we cannot change the world."
Let me just tell you, Mr. Secretary, that what we are going to have is a clear signal to escalate a boycott not just against Israeli-made goods or services or against businesses that have some affiliation with Jews, but we are going to find it being applied to Catholics and others. We are going to find it applied to other minorities later because there is no way to draw the line then unless we draw it at the very beginning.\(^a\)

\(^a\) Ibid., p. 34.

Representative Richard Ottinger raised similar objections:

The policy the administration is pursuing which is also the policy which the previous administrations have pursued clearly implicates the U.S. Government in the boycott. It seems to me if our policy is needed to oppose such practices as it to completely within the purview of the Department of Commerce to refuse to circulate any document that contains boycott instructions in it.\(^b\)

\(^b\) Ibid., p. 49.

Associate General Counsel for the Department, Richard Hull, responded to Representative Ottinger with the Department's rationales for this practice. Mr. Hull said:

If we were to play either, so to speak, and turn the other way and refuse to accept these trade opportunities and let the firm try to get trade opportunities through sources from abroad, we would be in a situation where we would in many instances effectively prevent the firm from trading with Arab countries, although the firm is not prohibited from trading with these countries.\(^c\)

\(^c\) Ibid.

Secretary Morton said that the Department, in response to similar criticism, was placing rubber stamps on its trade invitation documents to state that it was against U.S. policy to comply with foreign-imposed restrictive trade practices. According to internal Department memoranda,\(^d\) the procedure of stamping the boycott document with the U.S. policy statement was established not because it was perceived as wrong or as a contradiction with U.S. policy but was done in order "to defuse the situation [the criticism]."\(^e\) Following the subcommittee's hearing the Department changed its policy on December 1, 1975 to provide that neither the Commerce Department nor the State Department will circulate trade opportunities containing boycott clauses.

**Compliance Question Ignored**

A third issue raised at the hearing concerned the Department's failure to require companies to answer the question concerning what action the company took in response to the boycott request. For 10 years, the Department stated on its exporters' report form that a response "would be helpful to the U.S. Government but is not mandatory.\(^f\)\)

\(^f\) Subcommittee hearings, p. 41.

Accordingly, most companies chose not to answer that question which is critical to determining the impact of the boycott practices.

Representative Schaefer told Secretary Morton: "At it is an "abuse of your discretion not to ask companies \(*\) \(*\) whether they intend to comply with the boycott?\(^g\)" Secretary Morton replied, "There is some legal question as to whether we have the authority to require an answer to the compliance question.\(^h\)" But 3 days later, the Secretary wrote to Chairman Moos, stating that as the result of the points raised at the hearing, he had given the subject further thought and decided to make answers to that question mandatory.\(^i\) The regulation making this question mandatory became effective on October 1, 1975.

\(^g\) Ibid.

\(^h\) See subcommittee hearings, Secretary Morton's letter at p. 150.

\(^i\) Subcommittee hearings, p. 41.
CHAPTER III.—SCOPE AND METHODOLOGY OF THE INVESTIGATION

The subcommittee sought and received information from Federal and State government officials, foreign embassies, the academic community, and the private sector. However, the reports filed with the Department of Commerce by U.S. exporters under the Export Administration Act were the primary source of information for this study.

On December 8, 1975, the subcommittee received approximately 12,000 Export Administration Act reports covering a filing period of just over 6 years, from July 1, 1970, to December 3, 1975. An additional set of approximately 9,000 reports was later received to complete the month of December 1975. To determine the rate of corporate compliance with boycott requests and the amount of trade pursuant to Arab boycott regulations, the subcommittee calculated data from reports filed in 1974 and 1975.

The subcommittee staff reviewed all reports filed during the six-year period. Approximately two dozen items of data from each report were computerized for reports filed throughout 1974 and up to December 1975. The volume of reports filed in December was too great to permit

1 Information from the reports was transcribed onto outline sheets and then entered into a computer storage bank. Computation facilitated analysis and retrieval of the data extracting all of the data available on each form within the time available. The large number of reports filed in December 1975 can be attributed to increased publicity about the Arab trade boycott, congressional concern about the boycott, and the subcommittee's contempt proceedings against Secretary Morton, as well as a Commerce Department regulation which went into effect December 1, 1975, requiring that boycott requests be filed by banks, insurance companies, and freight forwarders. Previously, only exporters had been required to report the receipt of boycott requests.

In view of the large number of documents filed in December 1975, the subcommittee staff used a randomly selected 60 percent sample to make extrapolations on the rate of compliance and the amount of sales subject to boycott requests for that month. To allow for a consistent com

2 See app. II at p. — for a copy of the reporting form.

3 See app. III at p. — for a copy of the reporting form.

4 See app. III at page — for a copy of the reporting form.

5 The form contains 11 items of information concerning the request received by the exporter to participate in a foreign-imposed boycott. Each item of information was processed by the subcommittee. Each report described one or more sales. When a report showed more than one requesting country, more than one commodity, or more than one dollar value, it was necessary to make separate computer entries to describe the multiple transactions.

The commodities exported were recorded using a standard commodity three-digit index code. A table was developed to correlate the commodity categories with industry classifications. This second table provided a guide as to the types of U.S. industries subjected to boycott requests.

Another data classification was used for the type of industry engaged in by the foreign importers. This identification originated from data describing the commodity and the name of the importer. For ex-
ample, for a report showing that the ABC Oil Co. bought oil drilling equipment it was assumed that the importer was engaged in the petroleum production industry. This classification system was used as a guide to economic data.

The classification was as follows: (1) Social services, education, and health; (2) petroleum production; (3) manufacturing or construction; (4) consumer goods and services; (5) public utilities, including electricity, water, sanitation, transportation, and communications; and (6) industries not covered above or not easily ascertainable.

In all other cases, the information on the reports, such as the name of the exporter, boycotted country, and requester, was recorded exactly as indicated on the report itself or in the attachments which were submitted with the report by some of the exporters. One of the items on the form asked exporters to specify the type of "request" received. Actually, the items specified in this space were not requests, but types of documents used to convey requests. In analyzing the data, the Commerce Department breakdown was consolidated into four categories. These categories were as follows:

S—any type of sales document, purchase order, certificate of origin, certificate of manufacture;
T—trade opportunity, bid specification, or request for quotation;
Q—questionnaire;
C—correspondence other than Q, T, or S above, or documents not readily identifiable by analyst.

A sales document can be either a letter of credit, purchase order, invoice, certificate of origin, certificate of manufacture, or contract. It relates to one sale or set of sales. A trade opportunity is, in effect, an offer to do business where, for example, a railroad company in Saudi Arabia advertises its interest in purchasing railroad cars meeting certain construction specifications and from a manufacturer willing to sell pursuant to certain contractual terms. Several exporters or contractors can receive and respond to the same trade opportunity, while only one can actually receive the sale or contract.

Questionnaires are sent by foreign concerns to American companies which may or may not be doing business with the requester. Most questionnaires originate from the Arab League’s boycott office and include questions designed to determine the relationship of the exporters to Israel or business interests in Israel, or in some instances, whether the exporting companies have "ties or interests with "recent tendencies" on the corporate board of directors or as corporate officers. Questionnaires were almost always received in the context of one of two situations: (1) In response to a firm's effort to discover why it was blacklisted or how it could get off the list, or (2) as an apparent premonition to renewing patents or trademarks in certain Arab countries.

The actual boycott requests were clauses contained in the trade documents. A space was provided on the reporting form for firms to write in the language of the actual request. Often there were several clauses contained in a given trade document. Many companies filed copies of the documents containing the boycott clauses with the report. For purposes of analysis, the various clauses were categorized into seven groups. Each group is discussed in detail in chapter IV, at page —.
ANTI-BOYCOTT PROVISIONS OF EXPORT ADMINISTRATION ACT

Chapter IV.—Findings and Analysis

The Export Administration Act reports provide the only comprehensive data base on restrictive trade practices imposed by foreign concerns on American business. The act is the only Federal law created in direct response to these practices. Therefore, the subcommittee examined the Commerce Department’s administration of the act in the process of considering whether new law is needed to protect American business from foreign imposed restrictive trade practices and to ensure that investors have the information about these practices they need for making investment decisions.

The antiboycott provisions of the Export Administration Act have three basic elements. First, they provide a statement that it is U.S. policy to oppose having foreign concerns use American business as a tool of economic warfare against a country friendly to the United States and to encourage domestic concerns to refuse to take any action in furthering those practices, including the furnishing of information or the signing of agreements. Second, the act states that the President or his designee “shall require that all domestic concerns receiving requests for the furnishing of information or the signing of agreements related to the furtherance of restrictive trade practices imposed by foreign concerns “must report this fact to the Secretary of Commerce for such action as he may deem appropriate to carry out the purposes” of the antiboycott provisions of the act. Third, certain powers and duties to “prohibit or curtail” exports are granted to the President under the act in order to “effectuate the policies set forth” in the act.

ALL DOMESTIC CONCERNS DID NOT REPORT

Contrary to the clear mandate of the Export Administration Act to require all domestic concerns to file boycott reports, the Department of Commerce promulgated very narrow reporting requirements that covered only U.S. “exporters” up to December 1, 1975. On that date, the Department issued new regulations to require freight forwarders, banks, and insurance companies to also file reports. Freight forwarders are often retained to handle the work of actually exporting the goods produced by the exporter—that is, to procure the transporter and file the necessary documents needed for insurance and local importing regulations. Thus, freight forwarders frequently have received and processed certifications needed for exporting goods to Arab countries in accordance with the Arab boycott rules without the exporter having actual knowledge that the freight forwarders had received the boycott requests. Likewise, letters of credit are often processed in a similar fashion by banks on behalf of an exporter. Commerce Department personnel knew or should have known that previous boycott reporting regulations would exclude a large number of boycott requests by virtue of being directed solely at exporters.

APPARENT LOophOLES

Other apparent loopholes written into reporting requirements have had the effect of reducing the number of boycott requests reported. Numerous business concerns may have exploited the Department’s loosely worded regulations. In fact, a conference in March 1976 was...
The Commerce Department representative expressed the view that "the regulations say only that the U.S. exporter must report receipt of a boycott request," according to a memorandum about the conference which was prepared by the sponsoring corporation. The exporters were advised that if a U.S. company's foreign affiliate received a boycott request without the actual knowledge of the parent company, then the U.S. parent is not expected to report the request to the Commerce Department. The memorandum goes on to advise:

Theoretically, this means that U.S. companies trading with Arab nations could set up Middle Eastern trading companies (in Europe, for example) that do not report boycott requests back to the parent. However, the Commerce Department representative also pointed out that this would be close to evasion, if not avoidance, of the intent of the Export Administration Act. It might also prompt legislative action from Congress.

During the corporate interchange, several companies noted that a distinction should be made between compliance with boycott requests and the boycott itself. In many instances, a company can ignore certain sections of the regulations without evading the primary purpose of the boycott. In other instances, companies might avoid questioning and making reports entirely. Revealing such practices, many companies feel, could expose them to action by anti-boycott groups like the AJC (American Jewish Congress). One of the primary concerns about the reporting requirements expressed by exporters at the conference concerned the definition of "compliance" with the boycott—the term usually applied to a company's response to the importers' boycott request. The memorandum states:

Does merely answering the boycott request—no matter what the answer—constitute compliance? Commerce Department representatives at the conference indicated they did not believe this to be so. Thus, in reporting a boycott request, companies should be careful to distinguish between merely answering a boycott request and actively complying with a boycott request. This is easy to do, since the regulations allow companies to report by letter instead of the standard reporting form if they so desire.

Companies are in fact permitted to ignore the reporting form and write their report on any piece of paper. This procedure makes it all the more important for the Department to employ any kind of efficient system for collecting, analyzing, and retrieving useful data obtained from the reports. A more effective way to resolve the concerns expressed by exporters would be for the Commerce Department to provide a reporting form and corresponding regulations that are unambiguous.

AMBIGUOUS REPORTING REQUIREMENTS

The Commerce Department's failure to fully administer the reporting mandate of the act was largely a failure to explain unambiguously what information was to be reported, to effect a more effective way to resolve the concerns expressed by exporters would be for the Commerce Department to provide a reporting form and corresponding regulations that are unambiguous. Some of these problems are examined here.

18 See app. G.
Although the Commerce Department's regulations and its corresponding reporting forms asked exporters to report "as a request to take any action, including the furnishing of information or the signing of an agreement, that would further or support a restrictive trade practice or boycott fostered or imposed by a foreign country," the term "request" was not defined further. 4 This ambiguity, as previously indicated, caused business persons to be concerned about how their conduct was going to be viewed. Did the company actively comply with the Arab boycott by refusing to trade with Israel? Or, did the firm comply by responding to a request to provide factual information, as many exporters contend they did without altering the company's relations with Israel?

There is some understandable confusion as to what it means for a firm to state that it complied with a questionnaire received from an Arab country without stating how they answered it. This ambiguity is illustrated by those cases where firms provided copies of the questionnaires with their reports to the Commerce Department. Several of these firms answered factual questions, such as describing what business interests they did or did not have in Israel. Some of the same firms also indicated to the foreign concerns that they could not, for reasons of corporate policy, answer questions concerning the national origin or religious affiliation of its employees or whether they had made contributions to Israel. However, the Commerce Department's regulations do not make distinctions between an exporter answering to a questionnaire, and merely seeking to find out whether the firm did or did not return it to the foreign concern.

Confusion also arises from the fact that in many of the cases reported to the Department, there was no actual "request" in the sense of a specific act of asking for something to be given or done. To discover import laws, exporters often consult Dun & Bradstreet's Exporter's Encyclopedia or Brandon's Shipper and Forwarder, which list the customs requirements of most importing countries. These customs laws would, for Arab League countries, include "boycott" requirements such as certificates of origin. Some firms, less than a dozen, indicated that they learned of boycott requirements through such sources. But since these sources are routinely used by exporters, it would appear that a substantial number of firms are not reporting their compliance with these rules because they arbitrarily are not "requests." Commerce Department regulations could be issued to resolve this problem.

MORT DATA NOT USED

The Commerce Department also failed to make full use, and in many instances, the data collected from exporters. The Department, for example, made no attempt to regularly calculate the economic impact of the boycott on American commerce. In fact, the Department tabulated the dollar values of transactions on only one occasion. That was in July 1975. 5 Even then, the data were hurriedly gathered in a crude fashion that substantially understated the dollar value of boycott affected transactions.

The understatement occurred because most of the boycott affected transactions for 1974 took place in the last part of the year. In terms of dollar values, most reports were filed by the exporters in December, 1974, but apparently were not received or processed by the Commerce Department until the first part of 1975. The Department grouped the reports according to the year in which they were received. This method resulted in double counting, in the dollar value of boycott affected transactions, reported by the Department in that July 1975 report.

Computerization permitted sorting data according to the dates in which the boycott requests were received by the firms or by the dates cited by exporters as when they filed the reports with the Commerce Department.
When the first version of the form was submitted to Congress over an 11-year period the number of boycott affected “transactions.” This proved to be all but meaningless. Although “transactions” were officially defined by the Department as shipments, the subcommittee learned from exporters as well as Commerce Department personnel that “transactions” meant whatever an exporter meant it to be. Different exporters defined the term differently. But assuming that “transactions” was defined by all exporters as shipments, it would still be of little value, since a shipment may involve a sale of pencils or a shipload of wheat.

**DATA OFTEN INACCURATE**

One area of confusion on the form was in determining whether the Department was asking for the name of the country being boycotted or the country from which the boycott request was initiated. The form provided one space for the name of the country being boycotted and another space for the boycotting country. But the language used on the Commerce Department’s reporting form was unclear and confusing.

As a result 10.7 percent of all reporting firms examined reported the improbable situation of the boycotting country as being the same as the boycotted country; that is, Iraq boycotting Iraq.

When companies volunteered the actual boycott document in addition to stating the type of request on the form, it was found that firms reported only one of several requests and reported the least onerous of the several clauses received. Firms were not required to file the actual sales document containing the boycott requests with the reporting form. There were 15 cases of clauses of an ethnic or religious nature in the Commerce Department reports and in all 15 cases, they were found on the attachments—not reported on the form.

The Department issued a new reporting form in December 1975 eliminating the space used to describe the boycott request, and instead asked firms to attach the actual document to the report form. Although this reduces the chance of companies inaccurately describing the boycott request, it will make tabulating the data by the Department more difficult. As is, the Department’s calculations of the number and type of boycott clauses are grossly inaccurate. The subcommittee examined the coding marks made on reporting forms by Department clerks to denote the type of clauses reported on each form. The subcommittee found that more than half of the forms sampled were inaccurately coded, usually because they failed to cite all of the clauses contained in the documents or on the attachments. This situation should be corrected immediately.

**REASONS FOR POOR ADMINISTRATION**

Reasons for the wholly inadequate effort by the Commerce Department at implementing the congressionally mandated reporting requirement cannot be provided with certainty. However, the Department opposed enactment of the antiboycott measures 11 years ago and has consistently opposed efforts to strengthen them ever since. Paralleling Commerce Department opposition has been equally strong opposition from major domestic business interests. The Office of Management and Budget file on the development of the Department’s reporting form reveals special input from industry lobbyists. They were given the chance to privately review the form. There is no record in the OMB file of any other group or individuals being contacted for advice or voluntarily providing advice as to how the form should be designed. When the first version of the form was submitted to OMB, one Com—
The Commerce Department official wrote that it was "very mild" compared to the data that could be required of business concerns.

Commerce Department actions or failures to act often served to undermine and circumvent the prescribed policy of the United States against furthering restrictive trade practices imposed by foreign concerns. For at least 11 years, the Department distributed trade opportunities to American businesses that contained Arab boycott clauses. This practice ended only in December 1975—after strong opposition, particularly from members of this subcommittee. Vigorous congressional oversight should prevent such gross abuse of administrative discretion in the future.

**NATURE, SCOPE, AND IMPACT OF THE ARAB BOYCOTT**

All reports filed under the anti-boycott provisions of the Export Administration Act during the period January 1, 1974, through December 5, 1975, were systematically analyzed by the subcommittee. The statistics which are presented in this section are derived from that computerized file. During that period, 3,720 reports were filed by 637 reporting companies. At least 218 of these companies, or 34.2 percent, were listed on either the New York Stock Exchange or the American Stock Exchange or were affiliated with listed firms.

**BOYCOTT TRADE**

The total value of goods and services involved in all reported boycott requests during this nearly 2-year period was $2.7 billion. Another $1.55 billion worth of boycott requests were reported in December of 1975 to raise the full year figure to $4.55 billion. However, by footnote 21, supra. A scientifically designed random sample was used for virtually all boycott reports filed by exporters in December 1975, which had a dollar value of less than $50,000 or less. December 1975 reports before a dollar value of $50,000 or more were excluded from the December sample as was any boycott report filed by a company after December 5, 1975. The small sample was calculated to have less than 0.3 percent due to sampling error. The sampling procedures used to ensure accuracy are described in app. D at p. 342.

342 reports, or 12.24 percent, of all reports were filed without providing a dollar figure for transactions completed or sales proposed pursuant to boycott requests. Therefore, the actual value of boycott-related activities was probably higher than the reported values. Boycott-governed trade is also likely to be much higher because of a series of loopholes in Commerce Department reporting regulations which have been used by exporters with at least tacit approval by the Commerce Department to avoid reporting the receipt of boycott requests.

**NOTES**

1. These figures are discussed throughout pp. 10-11.

2. The figures developed from the boycott reports by the subcommittee differ substantially from figures provided to a Senate committee in June 1975 by the Commerce Department. The differences can be attributed to a rushed audit by the Department, the first and only time it had tabulated the value of boycott-affected trade which excluded a large number of multimillion dollar transactions filed in December 1974, but not received or processed by the Department until January 1975. Accordingly, the 1974 figure of $9.9 million for "boycott-affected transactions" beginning on the Commerce Department's books understate the true value by 10 times the figure for the same period.


For all types of boycott documents, the dollar values for the period January 1, 1974, to December 5, 1975, were as follows:
### The Meaning of "Compliance"

It was difficult to determine from most reports whether the fact that a firm said it had complied with a given request actually meant that it was boycotting Israel or otherwise altering its business practices in order to gain Arab trade. For example, some companies voluntarily stated in their reports that although they had provided the requested documentation, they were doing business with Israel. Some of the reporting firms are in fact exporting to both Israel and to Arab States. Actions of this type would appear to be qualitatively different from a company which incorporates boycott clauses in purchase orders to its American suppliers or which changes suppliers in order to retain Arab business.

This situation is illustrated by a New York grain dealer who reported to the Department of Commerce that its firm had exported $3 million worth of wheat with a certificate of origin that declares that the goods, the wheat, is wholly of U.S. origin and was not manufactured in part or in whole in Israel. The certificate of origin was required even though the product obviously contained no component parts from Israel.

#### Table: Compliance and Noncompliance

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<thead>
<tr>
<th></th>
<th>Amount (millions)</th>
<th>Percentage of amount</th>
<th>Percentage of record entries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did not comply</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Complied</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Noncomplied</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Many countries in addition to Arab countries require certificates of origin. However, the certificates used by countries with significant diversified import trading, are of an affirmative variety, that is, for example, a statement that the goods shipped are "wholly of U.S. origin." Certificates used by Arab countries are usually of a negative variety, that is, a statement that the goods are "not of Israeli origin." Certificates of origin are used in order to further the trade and political policies of persons or groups in a variety of countries.

The subcommittee finds that there are some practices imposed by foreign concerns which may serve legitimate interests of a foreign country and which do not necessarily involve using American firms as instruments of economic warfare. It may well be necessary for an Arab country to require exporters not to use Israeli ships or stop at Israeli ports on route to the Arab country for reasons of security. The same may be true for goods going to Israel, Pakistan, and India.

It is difficult in some instances for American exporters to determine what the rationale is behind a particular practice. Some practices, however, are clearly offensive to American business ethics and in several situations can be contrary to U.S. law. These would include such practices as asking American business firms whether they have Jews or Zionists on their boards of directors or whether top management have made contributions to organizations supporting Israel.

Given the present state of political relations within the Middle East, it appears unlikely that the Arab States will terminate their boycott in the near future. Therefore, the need remains to spell out for the benefit of the American business community what guidelines on termination and nonperemptory activities since the current inapplicable guidelines will continue to cause anxiety and be disruptive to the general flow of normal international commerce. The subcommittee believes that the recommendations outlined in this report will provide necessary guidelines needed for American business.

**TYPES OF BOYCOTT CLAUSES FOUND**

A major area of analytical difficulty involved determining the nature of the action with which the exporter was asked to comply or the type of information requested. For analytical purposes, it was found that the types of boycott action reported could be classified into seven types reflecting clauses in boycott-related documents, each containing several subcategories as follows:

1. **Origin-of-goods clause**
   - This includes any request for information referring to the country of origin of a product or its ingredients or components, such as: (a) certificate of origin; (b) statement that the goods or any ingredients or component parts are not of Israeli origin; (c) request to list the country or origin of any components; and (d) statement that the product is wholly of U.S. origin.
   - The typical phrase of this type reads:
     1. (an officer for the exporting firm) certify and affirm that the goods shipped are not of Israeli origin or are wholly of U.S. origin.
   - Clauses relating to origin were among the most common found.

2. **Israeli clause**
   - This clause encompasses requests for information regarding the existence of an ongoing contractual relationship with Israel, actually doing business in Israel, or generally contributing to the Israeli economy, including: (a) having main or branch factories in Israel; (b) having an assembly plant in Israel or having an agent assembling a company's product in Israel; (c) maintaining agencies or headquarters for Middle East operations in Israel; (d) holding shares in Israeli companies or factories; (e) giving consultative services or technical assistance to an Israeli factory; (f) having managers or directors who...
are members of a joint foreign-Israeli Chamber of Commerce: (g) acting as agents for Israeli companies or principal importers of Israeli products outside Israel: and (h) prospecting for natural resources, for example, petroleum, within Israel.

The typical clause of this type is one that asks the exporter to certify that it does not have any subsidiaries or branches located in Israel. Detailed questions along these lines were common for questionnaires, one of the four types of documents classified for this study.\footnote*{For more information on questionnaire, see p. .}

3. Shipping clause

This clause deals only with international freight carriers. It is a request for certification that a company is not using an airline or steamship line that is blacklisted or that it does not ship its goods on a vessel which on a particular voyage has a specific port of call, usually Israeli, but in a few instances, Indian or Pakistani in the case of the Indian/Pakistani boycott against each other.

4. Insurance clause

This clause is a request that a company not use a blacklisted insurance company to insure the goods being exported, or in most cases, to certify that the insurance company is not blacklisted.

5. Blacklisted companies clause

This is an attempt to determine the relationship of the exporter to the blacklist and to any blacklisted companies. It includes: (a) Statement that the company is not blacklisted; (b) statement that the company is not a parent, subsidiary, an affiliate of or otherwise related to a blacklisted firm; and (c) a statement that the company does not or will not do business with a blacklisted company. The typical clause of this type related to certifying that the goods being exported were not manufactured in whole or in part by a blacklisted firm.

6. Religious/ethnic clause

This is intended to elicit information regarding American Jews and support not to deal to Israeli nationals. It encompasses any request for information or action regarding the following: (a) The religious affiliation of the personnel of any U.S. company, including not only the company receiving the request but also companies with which it does business; (b) any statements or actions involving hiring or assigning or other personnel practices; (c) any statement about membership in or donations to Jewish organizations, such as the United Jewish Appeal; (d) any references to individual beliefs in Zionism, such as "Zionist tendencies.

The typical clause of this type asks whether the "nationality" of the firm's senior personnel is Jewish. Clauses of this type were found in 10 out of the over 1,000 reports examined. As discussed in another section of this report, a significantly greater number of requests of this type may well have been received by U.S. business concerns but not reported due to numerous loopholes in the Commerce Department's reporting regulations.

7. General clause

This is a general catchall clause which often followed the clauses which are listed above. It typgcially required exporters to certify that they will "observe the rules of the Arab boycott" or "otherwise comply with the boycott."

There was a wide variation in the reporting of the types of action which the reporting firms were asked to take. The requested activity frequently was reported on the standard form and not in the attachments and vice versa. To deal with this problem, the subcommittee separately analyzed the companies' statements on the standard form, the letter reports which covered multiple transactions, as well as the attachments. For all types of documents discussed in the methodology section at page 1, the occurrence of seven types of clauses was as follows:
The percentages used here relate to the dollar value of documents contained in each of these classes. Each column adds up to more than 100 percent because some documents contained 2 or more clauses. Thus, the dollar value of documents affected is more than that which had only one clause or religious type clause was 12 percent of the total.

For sales documents alone, these percentages were as follows:

<table>
<thead>
<tr>
<th>Religious/White clause</th>
<th>Percentage of dollar value of documents</th>
<th>Percentage of dollar value of documents containing more than 1 clause</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.6%</td>
<td>80%</td>
<td></td>
</tr>
</tbody>
</table>

Over 90 percent of the origin-of-goods, blacklisted companies, shipping and insurance clauses were concentrated within reports indicating sales. As indicated in the charts above, the most prevalent clauses were the “origin-of-goods clause and the shipping clause.” Under the Commerce Department regulations, a shipping clause does not have to be reported if it is the only clause present in a document.

Boycott reports containing a religious/ethnic clause were found only in boycott documents affecting 2 or more reports. In none of these reports did the reporting company indicate that it had refused to comply with the boycott request. In nine reports, the companies gave no response to the compliance question; included were seven cases in which the company was alleged to belong to the company. The terms were not a Jewish firm, owned or controlled by members of the Jewish faith, and two cases in which company officials were alleged to make statements regarding membership in or donations to Jewish organizations.

Four reports, in which the companies indicated that they had made no decision regarding their response to the boycott request, involved questions concerning employee membership in or donations to Jewish organizations. Two of these reports were filed by a firm which indicated that a company official had visited the Middle East to explain that company policy prohibited disclosure of private charitable donations by corporate officials. The result of this action was not indicated.

The subcommittee found discriminatory clauses in attachments to reports by two firms whose answer to the compliance question on the standard report form indicated that they had complied. Of these two reports, one involved donations to or membership in Zionist or pro-Israeli organizations. The second involved a proposed agreement to “employ only such personnel as are nationals of this country and are not Jews.”

These incidents of apparent discrimination were referred to the Commerce Department. The Department of Justice, the Commerce Department made a search of their files for reports indicating requests of religious nature after receiving complaints from private citizens. As of the date of publication, the Justice Department has not announced any action regarding these incidents.
The most frequently boycotted country was Israel, which was cited alone in 84.5 percent of all boycott reports, in combination with other countries, such as South Africa and Rhodesia, 13.5 percent of the time. The remainder was spread among a variety of countries, mostly Arab. These errors probably represent a misunderstanding on the part of the reporting companies, particularly in light of the number of cases in which the boycotting country and the boycotted country was reported as being the same country.24

The Arab League countries were most frequently cited as boycotters, being cited in 88.8 percent of all boycott-affected reports, and accounting for 88.7 percent of reported boycott dollar value. Nine Arab countries each accounted for more than 1 percent of the total value of all boycott-related activities. These countries and their percent of the total dollar value were: Saudi Arabia, 33.3 percent; United Arab Emirates, 29.5 percent; Kuwait, 15.4 percent; Libya, 6.1 percent; Egypt, 5.7 percent; Iraq, 4.8 percent; Syria, 3.2 percent; Lebanon, 1.8 percent; and Oman, 1.2 percent.

**ECONOMIC ANALYSIS OF TRADE DATA**

In the 23-month period from January 1, 1974 to December 5, 1975, reported boycott-related sales amounted to 0.4 percent of total U.S. exports worldwide. Of the total value of boycott-related sales, 93.6 percent involved Arab league countries as the stated boycott requester, accounting for $140.2 million or 8.0 percent of total U.S. exports to Arab league countries during the 23-month period. As mentioned earlier, various loopholes in Commerce Department regulations such as the requirement that only the initial stage of a boycott contact be reported resulted in underreporting of boycott-governed sales. It is to be believed, the vast majority of sales to the Arab league countries would provide no base for percent estimations. On the other hand, there may have been a substantial failure to report all sales and other activities related to boycott requests.

Of the 175 commodity and service categories which were used by the subcommittee for purposes of trade analysis, 125 of them were identified at least once as a boycott-affected commodity or service. Of these 125 categories, only 14 individually accounted for more than 1 percent of boycott-related trade, and only 5 of these categories exceeded 1.5 percent of U.S. trade with the Arab league nations during this period. These leading five commodity categories were with the Arab league nations during this period. These five categories were:

<table>
<thead>
<tr>
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</tr>
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<tbody>
<tr>
<td>703</td>
<td>Engines and parts, except reciprocating and submarine engines</td>
<td>4.01</td>
</tr>
<tr>
<td>719</td>
<td>Wires and cables</td>
<td>2.51</td>
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<tr>
<td>721</td>
<td>Textiles</td>
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<td>747</td>
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These five categories accounted for 57.1 percent of boycott-related trade—the equivalent of 5.4 percent of U.S. exports to the Arab League countries. The top 14 commodity categories which individually totaled more than 1 percent of boycott sales accounted for 87.9 percent of boycott-related trade during the 23-month period, but only 8.9 percent of U.S. exports to the Arab League countries during the same period. Thus, the pattern of concentration of boycott impact among commodity groups is narrow.

Moreover, the pattern of concentration of boycott-affected trade does not reflect the distribution of exports among commodity groups to Arab countries, according to published trade data. The following categories accounted for 81.4 percent of the boycott-affected trade, but only 64.3 percent of total U.S. exports to the Arab League coun-

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24.1 percent of all voluntary forms made this error, apparently because of ambiguous instructions on the Commerce Department reporting form. See "Ambiguous Reporting Requirements" at pp. 9-10 in Chapter IV.

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tries during the 33-month period: cereal and cereal preparations, machinery (except electric), electrical machinery, apparatus and appliances, and transport equipment.

Engines and turbines, the largest category, accounting for 27.1 percent of boycott-affected trade, tended to show the distribution pattern among boycott-affected categories. This comparison indicates that the impact of the Arab boycott on U.S. exports to the Arab League countries varies from the overall pattern of U.S. exports to these countries.

The Commerce Department failed to develop and utilize such information.

HOW THE BOYCOTT WORKS

The Arab League's boycott is administered by the Central Office for the Boycott of Israel. Its chief executive is the Secretary General, Mohammed Mahmoud Mahzoub. The central office conducts meetings twice a year where representatives from the various Arab States meet as a council to determine which firms should be added to, or removed from, what they call the boycott "blacklist." The list contains the names of firms now about 1,200, who the central office believes have contributed to the economic growth of Israel either directly by doing business in or with Israel, or by having an affiliation with a "blacklisted" firm.

The Central Office for the Boycott of Israel has long been reluctant to make public its blacklist or the names of firms who are added to, or removed from, the list when representatives to the boycott office meet twice a year. The situation is further complicated by the fact that each of 35 Arab countries publishes its own list and entrepreneurs in various Arab countries sell copies of their own versions of the list complete with paid advertisements.

One of the first copies of an Arab blacklist made public in this country was published in February 1975 by a Senate committee. To the boycotted companies, action by the Arab League Boycott Office often seems illogical. In testimony before a House committee, Representative Benjamin S. Rosenthal of New York summarized the reactions of boycotted companies:

A spokesman for the Xerox system, which has licensed auto-rental outlets in both Israel and Egypt, declared: "We are pleased to be considered Israeli. From time to time we get applications from parties in Arab lands for licenses." The chairman of Lord & Taylor department store chain said that he first learned of the boycott in 1971 when a shipment of goods was impounded in Saudi Arabia. "We know we are on the list," he said. "But we do not actively seek having been told." A Distillation Industries spokesman noted: "We do business with both Israel and the Arab world. For more business in the Arab world, we do business with both Israel and the Arab world." He did not know why Xerox was excluded from the list "although we have neither investments or interests in the Middle East." American Electric Power Co. spokesmen were similarly bewildered as to their company's appearance on the list.

Testimony of Representative Rosenthal before the Committee on International Relations on June 9, 1976.

One of the blacklisted firms almost totally excluded from trade with Arab League countries is the Xerox Corp. William C. Miller, international counsel for Xerox, says that the company was placed on the boycott list 10 years ago when it sponsored a television series on countries who are members of the United Nations. One of these docu-

mentaries, about Israel, was entitled "Let My People Go." Miller said Arab countries felt the program was "pro-Zionist" and have blacklisted the firm ever since.

Fortune magazine, in a July 1975 article, provided a succinct summary of how and why some firms are blacklisted while others are not:

Many American companies in the defense industry—McDonnell Douglas, United Aircraft, General Electric, Hughes Aircraft, Textron—are doing or have done war equipment to Israel. Of course, each of them should be on the list in that line type for rendering such "materiel" help to the enemy. But they are all omitted for the overriding reason that the Arabs want the choice of the best weaponry without inhibitions about boycotts. The Arabs use as a convenient rationale the fact that the contract to purchase is made with the Department of Defense.
A review of Export Administration Act reports confirms that some firms listed on the Arab blacklist are still able to do business with Arab countries. Apparently, they are subject to the same practices that nonlisted companies are subject to, such as signing certificates of origin.

The selectivity or inconsistency of the impact of the Arab boycott is frequently cited as an indication that the Arabs are not serious about their boycott of Israel. However, this may represent a misunderstanding of the nature of an economic boycott as an instrument of economic warfare. According to political economist Klaus Knorr:

The rational objective of economic warfare, pursued by economic measures, is not, of course, or should not be, simply to cause maximum harm to the adversary’s economic capability. The logic of this type of economic warfare is that the enemy suffer a maximum reduction of his economic power relative to one’s own. Simply severing his foreign trade is unlikely to bring this result about. After all, his exports absorb a part of his productive capacity, and their interruption may engender production bottlenecks in one’s own economy or that of allies. The appropriate strategy would interfere with his commerce selectively in order to cause maximum net impairment to his economy. Clearly, one’s own costs must be taken into account. As mentioned, a complete boycott of the enemy’s goods may harm one’s own side more than him.”


GETTING OFF THE BLACKLIST

Getting off the blacklist is difficult, frequently awkward and sometimes costly. The experience of the Bulova Watch Co. is a case in point. In the mid-1960s, Bulova had only limited sales in the Middle East when it found itself on the blacklist. Corporate official for Bulova who approached by a Syrian lawyer who said he was in an excellent position to aid Bulova and other U.S. companies in being removed from the blacklist. Bulova officials said the Syrian lawyer, a fee for his future efforts, and assumed that negotiations were going well until they got word that he had been executed after being charged by the Government with spying.

Bulova made no other efforts to remove itself from the blacklist until July 1975 when Ms. Taoera Marinyo assigned counsel for the Bulova Co. in New York, wrote to the Commissioner General, Central Office for the Boycott of Israel. The Commissioner General, Mr. Mohammed Mahmoud Mahgoub, replied on September 29, 1975.

The information is based on a subcommittee staff interview. A copy of the letter to Bulova Watch Co. is printed as app. B at p. 52.

that in order to be removed, the Boycott Office would need satisfactory answers concerning the relationship between the Bulova Watch Co. and the Bulova Foundation as well as questions concerning whether any owners or members of the board of directors are members of any organizations, committees or societies working for the interests of Israel or Zionism.

In addition, the Bulova Watch Co. was also asked to provide:

A document to the effect that your company, the Bulova Foundation, any of their subsidiary companies, their owners or the members of the Board of Directors of all of the said companies are not joining any organizations, committees or societies working for the interests of Israel or Zionism whether they are affiliated inside or outside Israel; as well as the undertaking that the above entities and persons will never in the future join such organizations, committees or societies or give or collect donations to any of them.

Ms. Marinyo said that the Bulova Foundation is a separate legal entity from the watch company. She concluded that the demands in Mr. Mahgoub’s letter are onerous and unreasonable. Neither she nor any other representatives of her firm have responded to the letter.
The International Telephone & Telegraph Corp. apparently had some success in removing boycott clauses from proposed Arab contracts, according to a March 11, 1970, Commerce Department memorandum.1 The memo describes a meeting between officials of the Commerce Department and of ITT concerning the company's refusal to respond to a Saudi Arabian telephone maintenance contract offer.

An ITT official, according to the memo, said that the firm declined to submit a bid on the multimillion-dollar proposal because it contained a boycott clause that would allow that country to cancel the contract any time it proved that Western companies were having business with Israel.2 The ITT official said that it then had 27 contracts throughout the Arab world and that none of them contained boycott clauses. He said that this had been possible because an agent for the company "had successfully approached the (Arab) countries on omitting this clause in prior contracts," according to the memo.3

Subcommittee staff interviewed both company staff and Commerce Department personnel who were present at the meeting, including the Department official who wrote the memo. Those interviewed could recall the meeting in only general terms and could not remember any statements about the company being able to have boycott clauses removed from proposed Arab contracts.4

Chairman Moss wrote to chairman of the Board of Directors of ITT, Mr. Harold Genesen, to seek more information on this matter. On June 18, 1976, Mr. Harret A. Stecher, Jr., associate general counsel for ITT, responded to the chairman's letter. On the basis of conversations with ITT employees, subcommittee staff was "able to confirm only one recent instance in which ITT negotiators were able to have a boycott clause removed from a contract."5

Information concerning bribes related to implementation of the boycott has emerged as the result of the Securities and Exchange Commission's voluntary disclosure program for questionable corporate payments. The General Tire and Rubber Co. acknowledged in the SEC that it paid various fees to be removed from the blacklist.6 On May 10, 1976, General Tire and Rubber Co. representatives signed a consent decree confirming that the company had made "improper payments to officials and employees of Government, including . . . in connection with General Tire's successful attempt to obtain removal from the Arab Boycott list."7 The company also said it would establish "a special review committee" to further investigate this and other improper payments.

The consent decree, however, provided fewer details about the incident than were provided by a news story published earlier. According to a March 26, 1976 Associated Press wire story, General Tire and Rubber Co. paid $100,000 to a Lebanese firm to get off an Arab Boycott blacklist:

[Mr.] Tress Pittenger, General Tire vice president and general counsel, said "that General Tire paid the sum to a subsidiary of Triad Financial Establishment of Lebanon for Triad's aid in removing General Tire from the list of firms being boycotted for dealing with Israel." The "local requirements" were not specified in

2 SEC File No. 3-46175.
the statement. The company stated it does not believe it violated U.S. laws with reference to those practices. However, the company stated that if Congress were to enact new legislation precluding compliance with such local laws, their business in the Arab world would be adversely affected. 

Manufacturers of all the goods to be shipped. Companies officials did not find it necessary or believe it would further the Arab boycott against Israel. Accordingly, the shipping invoice stated that the firm was.

The Hospital Corporation of America disclosed in a registration statement that an employment discrimination suit was brought against the firm in proceedings before the Equal Employment Opportunities Commission in 1975. The suit alleges that the company discriminated on the basis of religion in seeking to employ persons for work in a Saudi Arabian hospital that the company manages. The Commerce Department has not specifically required disclosure of a firm's effort to remove itself from the Arab blacklist or otherwise submit to boycott demands. Accordingly, it has been difficult to learn about firms' efforts to remove themselves from the blacklist. However, Chairman Rodrick Hills of the Securities and Exchange Commission, provided insight into some of these activities in recent congressional testimony. Chairman Hills testified that a $3040 million American company interested in increasing its receipt of Arab investments terminated its sizeable account with an American investment banking firm because of the latter's close relations with Israel. He disclosed that two American investment banking firms were disciplined by the National Association of Security Dealers for violating its rules of fair practice in substituting nonblacklisted affiliates for blacklisted firms in underwritings with Arab investors.

On January 19, 1976, the Justice Department filed a suit against the Bechtel Corp. for violating the Sherman Antitrust Act for refusing to deal with blacklisted American subcontractors and as the suit contends, requiring American subcontractors to refuse to do business with blacklisted persons or entities. A recent Senate committee report stated that a U.S. bus manufacturer had its contract to sell buses to an Arab State terminated when it learned that seats were to be made by an American company on the blacklist. Examples such as these illustrate that the impact of the boycott goes more deeply than suggested by the overall boycott trade data.

Impact on Domestic Firms

Of businesses sustaining losses due to boycott practices, the Radiation Corporation of America is a leading example. An RCA executive told the subcommittee that prior to being placed on the "blacklist", RCA did approximately $10 million worth of business annually with Arab countries. RCA, the subcommittee was told, had every reason to believe that its sales to these countries would increase above the $10 million figure. Since being blacklisted, its annual sales to the same countries have dropped to less than $9 million, a direct loss of over $1 million annually.

Large multinational corporations are not the only firms who have suffered losses as the result of the boycott. McKe-Kee-Pedersen Instruments in Danville, Calif. is a small firm which manufactures scientific instruments used largely by schools and universities. It has had only two sales to the Middle East both to Kuwait University involving the shipment of electronic instruments used for chemistry experiments.

The first sale—in December of 1974—went very smoothly, according to Dr. Richard G. McKe, vice president of the company. But the second shipment in August 1975 encountered considerable difficulties. On that occasion, the firm was instructed to provide the name of the manufacturer of all the goods to be shipped. Company officials did not find it necessary or believe it would further the Arab boycott against Israel. Accordingly, the shipping invoice stated that...
McKee-Pedersen Instruments manufactured the products and that the manufacturer of the spare parts were: General Electric, Motorola, Quarglopen Gesellschap, and National Semiconductor. Both shipments required a certificate of origin to be signed by the United States-Arab Chamber of Commerce (Pacific), Inc. in San Francisco, Calif. This requirement was to be fulfilled by the Anamford International Corp., the firm's freight forwarder.

The air freight forwarder reported to McKee-Pedersen that it was unable to get the required certification for the second shipment. The United States-Arab Chamber of Commerce refused to sign the certificate because the shipping invoice said that Motorola was the manufacturer of some of the spare parts in the shipment. Actually, the Motorola parts accounted for only $33.88 worth of the $4,489.80 shipment.  

The role of United States-Arab Chambers of Commerce located in New York, Houston, Chicago, and San Francisco, raise unique issues regarding the Arab boycott and its impact on U.S. laws and business practices. Incorporated separately with separate sets of board of directors, they are generally known to serve two principal functions: (1) To promote trade between the United States and Arab countries, and (2) "legalize" or notarize the certification of various boycott clauses in shipping documents.
CORPORATE DISCLOSURE

In order to gain more information about the impact of the Arab boycott on American business, the American Jewish Congress began a corporate disclosure campaign last December. Under this program, stockholders of major U.S. companies sought information concerning the participation of these firms in the Arab boycott, pursuant to various Federal securities laws.

Disclosure requirements are found in the Securities Act of 1933.
1933 act and sections 13 and 13 of the 1934 act provide disclosure of information is material and "necessary or appropriate for the proper protection of investors." The Supreme Court has stated that material facts are those which "a reasonable investor might have considered *** important in the making of this decision" to invest or not to invest.

In response to inquiries to score of companies and various efforts to place resolutions against boycott participation in company proxy statements or before annual shareholders meetings, the American Jewish Congress has received statements from numerous firms concerning their activities and policies regarding the Arab boycott. On March 16, 1976, the American Jewish Congress issued a press release stating, "In part, the following companies have given written assurance that they would not comply with discriminatory or restrictive trade practices: American Brands, Beatrice Foods, Biscuits-E. B. Continental Cves. & Pan National Div., General Foods, General Motors, Georgia-Pacific, Greyhound, Remington Arms, McDaniel-Douglas, Oaken, United States, RCA, Xerox, Scott Paper, G. D. Searle, Simmons, Texaco, Texto, U.S. Steel, and Warner Communications.

Subcommittee staff explained the statements submitted by these firms to the American Jewish Congress. Some of the statements were as short as one page, others as long as seven pages. Many offered only generalized, sometimes vague, discriptions of their past trading practices regarding the boycott. Several firms, for example, did not define what was meant by "discriminatory or restrictive trade practices," the activities they said they did not engage in. Representatives of many of these firms said they had and would continue to sign certificates of origin and state the name of their shipper and insurance companies in compliance with Arab importing requirements, but said that having done so did not involve altering corporate policies on their trade policies with Israel.

Furthermore, these firms generally stated that they would not refrain from doing business with a boycotted firm as the result of the boycott or would not discriminate against any person on the basis of religion, race, sex, or creed. The longest, most detailed statement submitted was that of the General Motors Corp. However, the corporate practices and policies detailed were representative of statements submitted by the other firms. Accordingly, the GM statement is printed as appendix K at page -- to illustrate the type of disclosure that has been obtained under this program.

This type of disclosure process is costly and usually results in only a generic account of a firm's practices and policies regarding foreign-imposed boycotts. Although the companies are unable to invest in intelligence that can influence their financial decisions, its application is limited largely because it is difficult to determine what information is important and accordingly must be disclosed to investors. Amending the Export Administration Act to provide for public disclosure upon request, with the exception of information about the type of commodities and cost for a given transaction, would aid investors in obtaining information about public corporations needed for making financial decisions. This change in the act would also enhance enforcement of the Export Administration Act.

**POTENTIAL INTERNATIONAL IMPLICATIONS**

It is difficult to estimate with certainty how Arab countries would perceive congressional action to protect American businesses from being used to further the boycott against another country friendly to the United States. There have been several news stories cautioning Arab officials to the threat that enactment of new legislation by Congress would result in a loss to the United States of as much as $50 billion in export sales over the next 5 years. Past trading practices, however, suggest that a switch away from the United States would not necessarily result.
Arab trade with the Netherlands and West Germany over the past 2 years has not declined despite reportedly strong anti-Arab boycott positions taken by those countries, and countries which have taken a more supportive position in response to the boycott have not enjoyed correspondingly greater trade with the Arabs. For example, an Associated Press story published in the Washington Post on March 4 of this year:

France's dreams of billions of extra dollars in trade revenue resulting from its pro-Arab foreign policy have been badly shattered. Figures of the Organization for Economic Cooperation and Development (OECD) show that countries criticized as being pro-Israel, such as Holland, West Germany and Sweden, actually have improved their nonmilitary trade with the Middle East more than the French.

According to OECD figures, France improved its monthly trade with the Middle East, excluding Israel but including Iran, 49.9 percent in 1974 over 1973. At the same time, the U.S. average monthly trade was up 109.1 percent, West Germany was up 100 percent, Holland up 88 percent, and Sweden increased those sales by 90 percent. OECD figures for 1975 support the same trend.

These trends apparently reflect Arab business judgments based on the quality and price of the goods sold by the mass of exporters. The United States has a major competitive advantage in agricultural products and a wide variety of manufactured goods. It is not as vulnerable as other nations who have relied on oil and have been caught unprepared for the impact of legislation prohibiting compliance with boycott requests will be on United States trade with Arab nations.
CHAPTER V.—LEGAL ASPECTS OF THE ARAB BOYCOTT

INTRODUCTION

The legal issues raised by the Arab boycott involve U.S. antitrust law, the Export Administration Act, corporate disclosure laws, and civil rights laws. The applicability of U.S. civil rights law is raised, for example, by an American firm’s decision to comply with the boycott practice of requiring certification that the U.S. firm currently employs no members of the Jewish faith and will not do so as long as the firm continues to do business with the requesting country, that no member of the firm’s board of directors is Jewish, or that the firm contracting to do business in an Arab League country agrees not to send persons of the Jewish faith into the requested country. These requirements raise questions not only about the applicability of existing civil rights laws but whether new law is needed to cover these practices.

Whether the U.S. securities laws should be amended to require increased disclosure of a firm’s boycott-related activities, on the part of publicly owned and traded firms, has also been the subject of recent legislative proposals. There have also been proposals to amend the Export Administration Act of 1969 so as to prohibit specified types of participation by U.S. firms in activities designed to further boycotts against countries friendly to the United States, as well as to strengthen the act’s reporting requirements.

Action by banks in forwarding letters of credit or handling other commercial documents containing clauses to the effect that certain boycott practices have been or will be complied with has been the subject of recent State legislation designed to prohibit such participation.

One of these statutes states that "no financial institution shall accept any letter of credit or any other document which evidences the transfer of funds or credit which contains any provision which discriminates against or applies to discriminates against any person on the basis of race, color, creed, national ancestry, or sex or all ethnic or religious groups, or of any combination between the former as not any other entity. There is currently a New York statute that prohibits discriminatory practices based on "race, creed, color, national origin, or sex" in housing, selling, or trading, both on the part of individuals directly or to such actions and those who "do any act which enables any . . . person to take such action." 2

The applicability of Federal laws to activities within this country carried out in furtherance of the Arab boycott and the necessity of additional legislation will constitute the major portion of this section. It is worth reemphasizing that the primary boycott—the refusal of the Arab League countries to do business with Israel or to sanction importation of Israeli goods or components—is a sovereign act that is generally thought to be beyond the scope of U.S. laws. What we are concerned with is the tertiary (or extended secondary) boycott by which boycotters, Arab League countries cause U.S. companies not to deal with other U.S. companies who are included in their compilation of "blacklisted" firms, firms with whom the boycotters will not deal directly. If two or more U.S. firms were to combine for the purpose either of not dealing with some other firm(s), or of preventing some neutral third party firms from dealing with the object of the U.S.
boycotters' activities, the combination could be termed a tru e "boycott" in the sense that that term has traditionally been employed in antitrust law.


In Fashion Originators Guild of America v. F.T.C., the U.S. Court of Appeals for the Second Circuit said, "A combined refusal to deal with anyone as a means of preventing him from dealing with a third person, against whom the combined action is directed, is a boycott, and a boycott is prima facie unlawful. Moreover, it has been held that a boycott produced by peaceful persuasion is as much within the [Sherman] Act's prohibitions as one where coercion of third parties is present.


Horizontal boycotts (those involving the combination of firms at the same level of production, and generally in competition with each other but for the combination) are generally considered so pernicious that they constitute per se antitrust offenses. The same thing is not generally true of vertical boycotts (those involving restraints imposed by a firm at one level in the marketing chain upon the dealings of one or more firms at a lower level in the chain). But since the formulation of antitrust rules concern distribution restrictions, the legality of vertical restraints on trade (usually on the distribution of goods) has to be determined within the context of the entire transaction. The nature of a vertical conspiracy will be further addressed below, in the context of the complaint filed by the Department of Justice against the Bechtel Corp. (See infra, note—and accompanying text).


A leading case in United States v. Arnold C. Brodax & Co., 256 U.S. 424 (1921), in which the court set forth certain criteria for the determination of the legality of vertical restraints on trade (usu ally on the distribution of goods), is not without relevance. There, the Supreme Court held that the legality of other restrictions is absolute (feeling of restraints on trade), as the Rule of Reason, the legality of other restrictions in absolute (freedom of restraints on trade). The ruling in United States v. Arnold C. Brodax & Co., supra, is still good law, but some aspects of the Colgate doctrine have been circumscribed by later cases. For example, it has been held that repeated refusals to deal may constitute a course of dealing that violates section 5 of the Federal Trade Commission Act as an "unfair method of competition." and that an antitrust violation will be found.


unlawful if the size and market power of the refusing firm are such that its monopoly power is likely to ensure compliance with its conditions for dealing. 28


"POLICY OF ANTITRUST LAW"

As recently as 1973, the Ninth Circuit commented that "it is not the primary purpose of the Sherman Act to protect deserving private persons but to vindicate the public interest in a free market. 29 That statement is particularly relevant to an examination of the applicability of U.S. antitrust laws to business refusals to deal with "blacklisted" firms precisely because the refusal have had some adverse impact on individual U.S. businesses. 30 The language used by the Ninth Circuit does not reflect a new approach to the policy behind enforcement of the antitrust laws but rather reiterates what has been stated many times before. For example, the Supreme Court in 1947 said that the purpose of the Sherman Act was "to sweep away all appreciable obstructions so that the statutory policy of free trade might be effectively achieved. 31 Lower courts have emphasized the fact that the antitrust laws are to be used to prevent unreasonable restraint of trade and to maintain competition, and that in the absence of a purposefully antithetical offense a court must resort to a reasonable standard to determine "whether the exchange or activity involves a permissible exercise of freedom of contract."

The observation of another court that the protection of the Sherman Act is available not only to "those in direct competition" with a defendant but to "those who have direct dealings" with a defendant must be read in the context of the holding that only where there is injury to competition, as distinct from injury to competitors, is the perpetrator liable under the antitrust laws.

In seeking to determine whether a and under what conditions the antitrust laws should be made applicable to business refusals to deal, the distinction should be made between refusals based on the desire to attain or maintain a monopoly position and those in which the refusing party merely substitutes one firm for another in his decision to do business with only one of them. As Professor Carl Folsom has observed, paraphrasing the language in Arc e 32 the absence of an attempt to achieve or maintain a monopoly "the Colgate right of customer selection gives a businessman the legal right to change trade partners "averting all of any hardship for the [disfavored] party" and even in the absence of any plausible justification. 33 The anticompetitive and often morally offensive overtones of Arab boycott-related conduct or the existence of all economic detriment in some individuals do not necessarily mean that basic U.S. antitrust relief is able to properly deal with the impact of the boycott on U.S. business. Professor Leonid Kusenkamp has stated:

19 753 F.2d 721 (10th Cir. 1985).
22 Id.
23 "The Arab boycott" evokes by its terms the expectation that the antitrust laws will be limited to their competition objectives. For as we have been told by the Supreme Court, "group boycotts, or concerted refusals by traders to deal with other traders, have long been held to be in the forbidden category of per se violations of the Sherman Act. This antitrust rubric means that boycotts are "conclusively proved to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the tortious excuse for their use." The presumption, being erroneous and irrefutable, has been held not avoided by claims of reasonableness or laudable purpose. Accordingly, boycotts have been condemned when the stated goal was in prevent acts which were tortious under state law, or in other cases, to raise funds for promoting conventions in Portland, Oregon. If a laudable purpose is no excuse, then a purpose contrary to public policy ought to be bad a fortiori. And to complete this line of reasoning,
the Arab boycott has been formally declared to be responsive to U.S. policy (citing 50 U.S.C. App. 2023(6), Section 3(1) of the Export Administration Act of 1968; and Export Administration Regulations, 15 C.F.R. §§ 306.3, 306.5). [Other Footnotes, which detail the case law to support the foregoing statements, have been omitted.]

*Kestenbaum, "Antitrust Implications of the Arab Boycott..." at 11.*

While the general term "antitrust laws" has been used throughout this section, the pertinent antitrust statute is the Sherman Act, particularly section 1 and 2. They prohibit contracts, combinations, or conspiracies in restraint of trade or commerce, and monopolization or attempts to monopolize. The language of those sections has generally been construed, to mean unreasonable restraints on trade. But there is a history of case law standing for the proposition that any concerted refusal to deal is per se unlawful.

See note 141, supra, and accompanying text.

**Footnotes**


2. The pertinent paragraphs of the complaint, the defendants and their corporate subsidiaries. United States v. Bechtel Corporation, alleging violations of section 1 of the Sherman Act and accusing the companies of conspiring to restrain trade in this country by reason of agreement(s) not to do business with people and firms (potential Bechtel subcontractors), that have been "blacklisted" by the Arab League countries. The Bechtel complaint charges a combination and conspiracy to boycott in unreasonable restraint of trade and commerce. To analyze the complaint, Professor Kestenbaum asks, then answers; three questions: "What conspiracy?... What boycott?... What commerce?"

In paragraphs 7 and 20 of the complaint, the defendants and certain unnamed conspirators are alleged to have participated in the combination and conspiracy which resulted in an unreasonable restraint of... interstate and foreign trade and commerce in violation of section 1 of the Sherman Act. It is Kestenbaum's theory that the unnamed conspirators are the probably unreachable Arab nationals: While "it is novel" to apply the principle that one joining an existing horizontal combination of persons or entities who are "beyond the reach of jurisdiction because of foreign governmental action" is hin-
self liable as an antitrust violator to this type of situation, there are
analogous cases to the effect that restrictive agreements made by
combinations statutorily exempt from much of the substance of the
antitrust laws (for example, agricultural cooperatives, labor unions). 1


A sample of applicable case law is compiled in note 28 of Kestenbaum's paper.

That explanation of the "conspiracy" in the Bechtel complaint is
but one of three "horizontal conspiracies" advanced. 9 Another is that

9 Actually, Kestenbaum advances four theories of the alleged conspiracy: but one of
these—that a vertical conspiracy existed between Bechtel and its said allies—although
not impossible to sustain under state law ("The fact that these restrictions occur in a setting
characteristic of a vertically integrated enterprise does not necessarily obscure the
antitrust significance of the perniciousness of any group's behavior." Kestenbaum, supra.
notes 27-28)—was not enjoyable in the market power of the

"involving the perniciousness of any group's behavior." Kestenbaum, supra.

9 The complaint, para. 3 (h), (of, charges that defendants have required their con-

tractors "to refuse to deal with blacklisted persons" and have furthered this scheme by
specifically identifying those on the blacklist.

Whether a boycott may be justified by its noncommercial purposes and
lack of anticompetitive intent is sufficient to immunize a horizontal
boycott from per se illegality has been settled in the negative by the
Supreme Court. 10 However, it is still being debated by lower Federal

10 See supra note 149, supra.

courts. 11 The critical factor in determining the antitrust significance

11 See supra note 147, supra, and accompanying text.

United States, as "basically the result of political conflict," are im-

mune from antitrust attack, is not supportable if the requisite adverse

covetative effect is found to be present. In that context, it is likely
to be the market power of the boycotting group that determines its
susceptibility to a Sherman Act charge. The Department of Justice
apparently plans to adduce sufficient evidence of adverse competitive
effect occurring as the result of the alleged conspiracy. 12

12 The complaint as drafted specifically allows late bids, that "Subcontractors have
been given free and open access to dealing with prime contractors in connection with
major construction projects in Arab League countries (par. 21)" and that "competi-
tively determined rates, prices, quantities, and time schedules have been
imposed on subcontractors in connection with the Bechtel boycott of firms from
Arab League countries (par. 22)."

Although the per se prohibition against horizontal boycotts is
predicated on the pecuniaryness of any group's ability to "foreclose
access to the market or to coerce compliance," the market power of
the boycotting group is still important but nondeterminative. Nev-
evertheless, in paragraphs 8 and 10 of the Bechtel complaint, the defend-

13 Testimony of Jiri Bechtel, Jr., cited supra note 9, and accompanying text.


In the context of major construction projects in the United States, it is likely that
the market power of the boycotting group is still important but nondeterminative. Nev-
evertheless, in paragraphs 8 and 10 of the Bechtel complaint, the defend-

...
50—TORY—LINO

ing contracts awarded in the Arab countries in 1974, the defendant—
together with 12 other prime contractors—shared all but a small per-
centage of that amount.

The commerce alleged to have been affected in this country is, as
set forth in paragraph 58 of the complaint, that concerning materials
and systems unable to be supplied by "blacklisted persons located in
the United States." In connection with major construction proj-
ec t s in Arab League countries. Since the commerce allegedly affected
is within this country and since actions taken outside the United
States jurisdiction have affects within the country that may create
liability under U.S. law the act of state doctrine would not normally
deter U.S. judicial action."

"See, for example, United States v. Alumnum Co. of America, 148 F. 2d 415 (2d Cir.
1945), deciding that an agreement, entered into outside the United States, concerning
the importation into the United States of aluminum coal was actionable under Section
1 of the Sherman Act, even though not an agreement under state law. Judge Learned
Hand concluded that despite the fact that "We should not impute to Con-
gress an intent to punish all whom it could, for conduct which has no conse-
quence within the United States..." it is settled law... that any state may
impose liabilities even upon persons not within its jurisdiction, provided that the
conduct outside the United States has consequences within the state..." United
States v. Alumnum Co., 148 F. 2d 418, 419 (2d Cir. 1945)."

There appear to be sufficient allegations present in the Recktel
complaint as to the type of "conspiracy," the kind of "boycott," and the
kind of "commerce" necessary to sustain an antitrust action for viola-
tion of section 1 of the Sherman Act. Invoking the rationale under-
lying Recktel, in similar situations should render other participants
similarly liable.

ANTITRUST LAW TO DEAL WITH BOYCOTT

The subcommittee's search of the suspended Export Administra-
tion Act reports revealed few cases of concerted refusal to deal
involving the requisite facts to warrant antitrust sanctions. If this
"See supra—supra—data accurately reflect the complete picture of boycott activities, they
suggest that the Sherman Act may be able to resolve only a few of the types of activities potentially damaging to small businesses.
Even in instances where antitrust prosecution might be legally support-
table, there are those such as Professor Kestenbaum who argue that
the use of antitrust statutes might not be as desirable, from a
policy viewpoint, as "legislation or... executive action under
the laws applicable to foreign trade.""

* Kestenbaum, "Antitrust Implication of the Arab Boycott: "* "*" at 27.
APPENDIX A

CONTEST PROCEEDINGS AGAINST SECRETARY OF COMMERCE, ROGER C. B. MORTON 1

1 This summary was prepared for use by subcommittee staff in further contest proceedings against Secretary of Commerce Morton, Dec. 8, 1975.

SUMMARY

(Submitted by John E. Moss, Chairman, Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce)

INTRODUCTION

On November 11, 1975, the Subcommittee on Oversight and Investigations, by a vote of 10 to 5, approved the following resolution:

"Resolved, That the Subcommittee finds Roger C. B. Morton, Secretary, United States Department of Commerce, in contempt for failure to comply with the subpoena ordered by the Subcommittee and dated July 26, 1975, and that the facts of this failure be reported by the Chairman of the Subcommittee on Oversight and Investigations to the Committee on Interstate and Foreign Commerce for such action as the Committee deems appropriate."

This action was taken because Secretary Morton has repeatedly refused to comply with a Subcommittee subpoena for Arab boycott reports in the possession of Secretary Morton. These reports are needed by the Subcommittee in order to determine the nature and scope of the Arab trade boycott.

The Subcommittee's first request to the Commerce Department was on July 10, 1975. Secretary Morton wrote to the Subcommittee on July 24, 1975, refusing to furnish the requested information. On July 28, the Subcommittee issued a subpoena for those reports. On August 22, Secretary Morton wrote to the Subcommittee stating that he would not comply with the subpoena. The Subcommittee wrote Secretary Morton on September 1 to remind him of the Subcommittee's jurisdiction and need for the information and to advise him that he would be called upon to appear before the Subcommittee with the documents.

The Secretary's explanation for his noncompliance on those occasions and since is that he believes Section 7(c) of the Export Administration Act—the same act that requires the reports to be filed—also requires the Secretary not to disclose them to Congress.

On September 2 and on numerous occasions since, the Subcommittee explained to the Secretary why his interpretation is at variance with the terms of the statute and also inconsistent with the legislative and oversight duties granted to Congress under Article I of the Constitution. Secretary Morton sought, and on September 4 received, an opinion from the Attorney General supporting his position for not complying with the Subcommittee's subpoena.

Secretary Morton appeared before the Subcommittee on September 22 pursuant to the July 26 subpoena. Secretary Morton acknowledged the Subcommittee's need and jurisdiction for its inquiry into the impact of the boycott. Asked if he had brought the subpoenaed documents with him, Secretary Morton answered that he had not brought the documents and again asserted that the confidentiality section in the reporting Act precluded him from compliance with the Subcommittee's subpoena.

The Subcommittee carefully considered Secretary Morton's position during four days of open hearings. Secretary Morton was present on September 22 and on November 1. On October 21 and 22, the Subcommittee heard from three leading constitutional law scholars who discussed Secretary Morton's obligations.

The Subcommittee considered alternatives to contempt proceedings. On September 22, Congressman Rhodes suggested at a Subcommittee hearing that the Subcommittee bring the controversy before the courts by seeking a declaratory judgment. The Chairman answered that such relief was not possible, under existing law. The Chairman sought, and on September 29 received, a memorandum from the American Law Division of the Library of Congress which carefully analyzed that question and concluded on the basis of Supreme Court cases involving similar controversies that the Court would not find it justiciable. On another occasion, the Subcommittee considered an open hearing a compromise condition of obtaining the information with a promise that it would not be made public. However, it is the position of a majority of the Subcommittee that it would not be responsible for the Subcommittee to make a decision on what to do with the reports until after it has carefully reviewed them. Further, allowing the Secretary to tell Congress what information it can have or under what conditions, would (absent a clear waiver of congressional authority) do violence to the doctrine of separation of powers and the oath of office.

Thus, since July 10, 1975, the Subcommittee has been denied information that it needs for its investigation.
Although the Arab trade boycott has been in existence for at least 50 years, its impact has recently intensified as the result of increased wealth in the Arab world and forays in large part gained from the pockets of American consumers. Generally what one country chooses to do with another to its business, but the problem with the Arab boycott is its apparently unique secondary aspect that seeks to impose its practices on citizens and businesses in this country.

**Nature of the Boycott**

The Arab trade boycott against Israel in effect takes two forms. First, Arab nations refuse from doing business with Israel. Second, Arab nations require other countries to join their boycott as a condition from doing business with Arabs. The secondary boycott involves the coercion of U.S. companies to engage in anti-competitive and discriminatory practices, a matter of central importance to Congress.

American firms are being required (1) to refrain from doing business with Israel, (2) with other American firms who do business with Israel, or (3) with firms which have United States citizens of the Arab faith, or (4) with firms which have Arab countries of their boards of directors or with controlling stock interests. For example, one Arab country required compliance with the following statement in order to do business: “And we solemnly declare that no officer or employee of this corporation, not Jewish, nor controlled by Jews.”

Not all of the boycott cases are blatant in expressing their other religious biases. Many of the boycott clauses examined by the Subcommittee state: “...and the officer or employee agrees to comply with the boycott.”

There have of course been other multilateral trade boycotts. The Arab boycott is unique in its secondary aspect. For example, when the United States boycotted Cuba, it did not require other countries to join the boycott against Cuba as a condition for doing business in the United States. Further, a boycott on the basis of religious preference is a violation of federal law raising serious questions under both antitrust and civil rights statutes.

**Domestic Laws and the Boycott**

The boycott is clearly contrary to American principles of free trade and freedom from religious discrimination. It also appears violative of antitrust and other federal laws within the jurisdiction of the Committee on Interstate and Foreign Commerce.

The Federal Trade Commission and Securities Exchange Acts are within the jurisdiction of the Interstate and Foreign Commerce Committee. The Federal Trade Commission Act prohibits "unfair or deceptive acts or practices in commerce" and "unfair methods of competition." Similarly, the Committee has jurisdiction over the Securities Exchange Act which provides that any "manipulative or deceptive device or contrivance" relating to the sale of securities is unlawful. Under the regulations of the Securities and Exchange Commission, American corporations are required to afford shareholders "full disclosure" of information material to a company's financial situation, a duty which would include disclosure of a corporation's response to a boycott request.

**Other Aspects of Subcommittee Inquiry**

The Subcommittee has obtained information that some domestic corporations have lost substantial export business as a result of having been placed on the Arab boycott list. For example, the RCA Corporation reports that they did about $10 million worth of export business annually with Arab countries prior to being placed on the boycott "blacklist." RCA states it had every reason to believe its export sales to the Arab world would be above the $10 million level. However, since being placed on the boycott list, RCA's business with Arab countries has dropped to less than $1 million for a loss in sales of at least $9 million annually.

In the course of investigation, which began in April, the Subcommittee has come into possession of documents evidencing efforts by foreign firms and American firms to raise other American firms or individuals to agree to boycott provisions. The Subcommittee has also obtained copies of offers to do business from Arab countries that were channeled to this country by the Department of Commerce despite the fact that these offers had boycott clauses and despite the fact that such a boycott be violative of the policy expressed in the Export Administration Act (50 U.S.C. App. 1313).

On November 30, 1974, Secretary Morton advised that the Commerce Department will no longer endorse traders, bids, or offers containing boycott requests. The need for Congress to determine if the Commerce Department is now fully carrying out statutory policy opposing trade boycotts remains.

The Commerce Department has also, since the Subcommittee's action finding Secretary Morton in contempt, revised its regulations to prohibit exporters from taking action that has the effect of furthering restrictive trade practices which discriminate against United States citizens or firms on the basis of race, color, religion, sex, or national origin. However, the Department has failed to amend its regulations to deal with the most prevalent type of discriminatory practice, the secondary boycott of American citizens or firms which do business with the State of Israel or who "are otherwise on the boycott list." Thus, restraint of trade practices in this form which are contrary to the Congressional mandate of the Export Administration Act, as well as implied forms of anti-Semitism, will remain untouched by the new regulations.
The information disclosed from Secretary Morton are reports about the Arab boycott against Israel which are sealed by American firms pursuant to the Export Administration Act. These reports must be sealed by an American firm under penalty of law every time it receives a request to participate in the boycott.

The Subcommitte needs this information in order to determine whether Federal laws related to the Arab boycott activities are effective as well as whether new legislation is needed. With the President's recent announcement of changes in Federal regulation and possible legislation to address the boycott issue, the need for this information is even more critical. For clearly there is no way the American public or the U.S. Congress can determine whether the President's new directive (made pursuant to the Export Administration Act) is being complied with as long as the Commerce Department continues to limit Congressional access plans.

SECRETARY MORTON'S DENIAL

In deciding not to comply with the Subcommitte's subpoena, Secretary Morton cited Section 7(c) of the Export Administration Act as his reason for not complying with a subpoena issued to him by the Subcommitte for the Arab boycott reports. Section 7(c) of the Act provides:

"No department, agency, or official exercising any function 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."

Secretary Morton argues that he would violate Section 7(c) if he complied with the Subcommitte's subpoena, and he has received an opinion from the Attorney General confirming his view.

However, the Subcommitte has repeatedly indicated to Secretary Morton that Section 7(c) does not in any way refer to the Congress and that no reasonable interpretation of that Section could support the position that Congress by implication had surrendered its legislative and oversight authority under Article I of the Constitution. If Congress were to surrender its powers in a statute, it would have to do so expressly and not, as Secretary Morton argues, by implication. The Subcommitte has received the opinions of four constitutional law scholars who say that the Secretary's view is legally untenable.

IMPLICATIONS OF SECRETARY MORTON'S NONCOMPLIANCE

If Secretary Morton's argument for not complying with a valid Congressional subpoena is allowed to remain unchallenged, it will establish a dangerous precedent which would be more paralyzing than the doctrine of executive privilege. According to a recent Treasury Department report, if Secretary Morton's position is adopted, Congress may be precluded from access to information compelled pursuant to more than a hundred statutes similar to the statute cited by Secretary Morton. These statutes affect 15 cabinet departments and at least 14 other agencies, involving a wide spectrum of acts. The Congressional powers of oversight and investigations would be seriously crippled.

CONGRESSIONAL POWER TO INVESTIGATE

Congress has a duty to ascertain whether laws are being enforced. It considers amending those laws or enacting new laws. This power, having antecedents in the history of the British Parliament, has been upheld by the United States Supreme Court from 1781 to 1929. The Court has stated:

"The power of Congress to conduct investigations is inherent in the legislative power. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or potential enactments. It includes surveys of defects in our social, economic, or national system for the purpose of enabling the Congress to remedy them. It encompasses probes into department of the Federal Government to expose corruption, inefficiency or waste." Watkins v. United States, 354 U.S. 148, 157 (1957).

To oversee the administration of federal laws and to investigate matters which may need legislation, Congress has the power to use compulsory process; i.e., issue subpoenas for documents, compel testimony (except when it would be self-incriminating), and have such testimony provided pursuant to laws providing for prosecution of perjury. The rationale for compulsory process is summarized by the Supreme Court in McGrain v. Daugherity, 273 U.S. 135, 175 (1927):

"Experience has taught that mere requests for information often are unsatisfactory, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed ..."
The Supreme Court has upheld Congressional contempt powers because "here, we are concerned, not with an extension of Constitutional privileges, but with the limitation of established and essential privileges of requiring the production of evidence. For this purpose, the power to punish for contempt is an appropriate means."  

**Disclosure of Documents**

It is impossible to make a wise decision concerning the issue of whether or not to release the reports to third parties until after the Subcommittee has received the reports and examined them carefully. The Subcommittee has not made any decision to release or not release the unclassified documents. Accordingly, it would not be responsible, Chairman Mags has said, for the Subcommittee to agree to a condition imposed by the Secretary without studying the documents. The Subcommittee has obtained by subpoena thousands of documents concerning natural gas producer reporting practices—documents of a highly sensitive nature. None has been disclosed. No Subcommittee subpoenaed document has ever been improperly disclosed.

**Separation of Powers**

The Supreme Court in May of this year said that Congressional investigations, once shown to be in the sphere of legislation, "shall not be questioned in any other place." (Randolph v. United States, 339 U.S. 581.) The Court said that the Constitution’s Speech, or Debate Clause is an absolute bar to interference. The rationale for that decision is rooted in the notion of a separation of powers. As a Federal court (in Plasker v. McElroy), 117 F. Supp. 543 (D.D.C. 1953) (per curiam) explained:

"It is entirely clear . . . that neither this nor any other court may preside over the subjects of Congressional investigation. Were a court empowered to limit the subject of Congressional investigations, violence would be done to the principle of separate and equal powers upon which our entire political system is based." (at 546)

* * *

"The legislature cannot be compelled to submit to the prior approval and censorship of the judiciary before it may ask questions or inspect documents through the investigating subcommittees, or even before it enacts legislation."

* (at 540)

Just as the judiciary is barred from impeding duly authorized Congressional inquiries, so is the Executive barred from doing the same. For Article I clearly vests the power of legislation and related investigations in the Congress. A Post Office would be irregular to return to the originator any information containing any worthy hints, details, or religious dissertations with the message that such invitations would not be accepted by the Post and would not be published by the Department of Commerce.

The issue was raised again in January, 1964, when Commerce proposed the same procedure, but also proposed to attach a brief statement of U.S. policy on the boycott to each set of specifications having boycott clauses sent to U.S. firms, stating at that time was approval to attach the statement. Apparently the issue was finally settled shortly after passage of the anti-boycott amendment in 1965, letters from the Director, Near East-South Asia Division, to Cairo and Beirut in December 1965 stated the above procedure as being in effect without the requirement that Embassy fox boycott clauses. Also in that time frame a statement of U.S. policy was developed and printed to accompany specifications sent to recipients. We do not know how long that statement remained in use but apparently it fell by the wayside somewhere. We have checked with ROC and MEPO, which forwarded specifications on bid opportunities, and they have no recent memory of such a statement being used. The same applies for CAGNE. This is probably not an issue where the TOPS Program is concerned, since the irreversible trade opportunity format would not contain boycott references, and since TOPS sends bid specifications to ESO or MEPO for handling.

The issue is not with us, that it appears. The Foreign Minister of the Israel Embassy, Zvi Shar, raised it at a meeting with Assistant Secretary of State for Near East-South Asia, Sheer presented Sheer with a copy of a set of specifications for a Middle East housing project containing a boycott clause which had been sent to a U.S. firm. From the brief description we got, we are reasonably certain that the specifications were prepared by CAGNE. We do not feel any vulnerability about this since it is in accord with past policy and is a reasonable response to the legitimate needs of the business community. Nevertheless, Sheer made an issue of whether it was appropriate for a U.S. Government agency to be disseminating boycott information.

Perhaps it would be useful to have another or two within the Department, and then the State, and a restatement of policy on the handling of trade opportunities from Arab countries containing boycott clauses. There are apparently two issues in such a review:

1. Is the policy of making nonreference to boycott requirements in the initial dissemination of the trade opportunity, but providing the full details to a firm requesting specifications, an appropriate one? CAGNE believes that it is, since there is no harm in providing a firm complying with boycott requests.

2. Should we review the practice of attaching a statement of U.S. boycott policy when specifications containing boycott references are made available to firms requesting them? CAGNE believes that from a policy standpoint, such a statement might be a useful device for helping to define the current situation.
In advising State on August 11 that we were continuing with the policy for effect since 1965 pending a possible policy review and restatement, I learned that State is rather seriously disturbed by the implications of the U.S. Government's discontinuing any documents containing boycott requests in view of the consideration being given in Congress to more restrictive legislation against the boycott. At least the regional affairs people in NEA appear to be developing the conclusion that such action is inconsistent with the U.S. policy of opposition. It seems likely that State may press for some change in our practice (e.g., the deletion of the boycott clause from specifications given to business firms) as a further effort to head off damaging legislation.

The above suggests that early attention to the issue is desirable. I believe that it would be appropriate to convene the Department's boycott Task Force to develop a Departmental position and try to get an agreement with State in the event that the trend should come up in the context of the general review of policy options now going on in the White House.
APPENDIX B

THE SECRETARY OF COMMERCE,

Hon. John E. Moss,
Chairman, Subcommittee on Oversight and Investigations; Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

Dear Mr. Chairman: I refer to your letter of November 26, 1976, and subsequent discussions wherein you stated that the Subcommittee's handling of the reports which are the subject of your Subcommittee's subpoena would be nothing less than responsible. I appreciate your assurance of this fact and believe that your assurance offers a possible means of resolving this dispute.

I will deliver the reports in question to the Subcommittee promptly upon receipt of your assurance that the Subcommittee will take adequate measures to insure that the confidentiality of the materials will be safeguarded.

Sincerely,

ROGER C. B. MORTON

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,

Hon. Roger C. B. Morton,
Secretary of Commerce,
Washington, D.C.

Dear Mr. Secretary: I have received your letter of December 8, 1975, and noted your continued reservations concerning the confidential handling of the materials which are the subject of our subpoena of July 28, 1975. Because of the duty that you feel is imposed upon you by Section 7(c) of the Export Administration Act, the materials will be received in executive session and the Committee's handling of the materials will be fully responsible and will be in consonance with their asserted confidentiality.

Sincerely,

JOHN E. MOSS,
Chairman, Oversight and Investigations Subcommittee.
CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C.

RESOLUTION OF THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

Resolved, That pursuant to Rule XI(k), the Committee determines that the testimony required by subpoena due from the Secretary of Commerce falls within the purview of this Section of the Rules and authorizes the acceptance by the Chairman of the subpoenaed documents as though received in executive session, and be it further

Resolved, That the documents will remain subject to Rule XI(k).
APPENDIX C

AUGUST 11, 1976

Memorandum for: Richard E. Hull, Assistant General Counsel/ERA.
From: Peter B. Hahn, Director, Commerce Action Group for the Near East/CAGNE.
Subject: Department policy on dissemination of trade opportunities containing references to Arab boycott requirements.

A question has arisen as to the appropriateness (and legality) of the U.S. Government disseminating to U.S. firms bid invitations from Arab countries which contain references to the Arab boycott of Israel.

The issue of Commerce dissemination of trade opportunities and bid specifications containing boycott references considerably pre-dates passage of the anti-boycott amendment to the Export Control Act in 1969. In 1961, Commerce and State arrived at a common position on the issue, but States Congressional Relations people killed it before it went into effect out of concern that it might endanger passage of the trade bill. The key elements of that position were:

1. Posta would continue to forward Commerce trade opportunities or bid invitations containing boycott references, but the boycott references would be specifically flagged in the transmission.

2. Commerce would notify such opportunities in International Commerce, but with no reference at this point to the boycott requirement. It was not deemed proper to deny U.S. exporters access to trade opportunities merely because they had such a clause.

When U.S. firms asked for bid specifications or other information as a result of publication of the opportunity, Commerce would supply the complete information, including the boycott references. Again, the rationale was that we would not properly serve the interests of U.S. business by denying it the complete conditions of the bid invitation.

3. Posta would be instructed to return to the originating any invitation containing any wording implying racial or religious discrimination with the provision that such invitations would not be accepted by the post and would not be published by the Department of Commerce.

The issue was raised again in January, 1964. Commerce proposed the same procedure, but also proposed to attach a brief statement of U.S. policy on the boycott to each set of specifications having boycott clauses sent to U.S. firms. State at that time was opposed to attaching the statement.

Apparently the issue was settled shortly after passage of the anti-boycott amendment in 1969. Letters from the Director, Near East/South Asia Division, to Cairo and Beirut in December 1969 stated the above procedure as being in effect (but without the requirement that specifications flag boycott clauses). Also in that time frame a statement of U.S. policy was developed and printed to accompany specifications sent to requesters. We do not know how long the statement remained in use but apparently is still by the wayside somewhere. We have checked with BDC and MEFD, which forward specifications on bid opportunities, and they have no recent memory of such a statement being used.

The only apologies for CAGNE. This is probably not an issue where the TOPS Program is concerned, since the telegraphic trade opportunity format would not contain boycott references and since TOPS sends bid specifications to EDC or MEFD for handling.

The issue is with us again, it appears. The Economic Minister of the Israeli Embassy, Sven Sliers, raised it at a meeting on August 7 with Deputy Assistant Secretary of State for NEA Sidney Sloet. Sivers presented Sloet with a copy of a set of specifications for an Israeli housing project containing a boycott clause which had been sent to a U.S. firm. From the brief description we got, we are reasonably sure that the specifications were provided by CAGNE. We do not feel any vulnerability about this, since it is in accord with past policy and is a reasonable response to the legitimate needs of the business community. Nevertheless, Sivers made an issue of whether it was appropriate for a U.S. Government agency to be disseminating boycott information.

Perhaps it would be useful to have another review within the Department and then with State, and a restatement of policy on the handling of trade opportunities from Arab countries containing boycott clauses. There are essentially two issues in such a review:

1. Is the policy of making nonreference to boycott requirements in the initial dissemination of the trade opportunity, but providing the full details to a firm requesting specifications, an appropriate cue? CAGNE believes that it is, since there is no U.S. legal prohibition on a firm complying with boycott requests.

2. Should we restate the practice of attaching a statement of U.S. boycott policy when specifications containing boycott references are made available to firms requesting specifications, an appropriate cue? CAGNE believes that it is, since there is no U.S. legal prohibition on a firm complying with boycott requests.
least the regional affairs people in NEA appear to be developing the conclusion that such action is inconsistent with the U.S. policy of opposition. It seems likely that State may press for some change in our practice (e.g., the deletion of the boycott clause from specifications given to business firms) as a further effort to head off damaging legislation.

The above suggests that early attention to the issue is desirable. I believe that it would be appropriate to convene the Department's boycott Task Force to develop a Departmental position and try to get an agreement with State in the event that the issue should come up in the context of the general review of policy options now going on in the White House.
The following constitutes a summary of the dollar values of transactions reported to the Department of Commerce by exporters at having involved requests for restrictive trade practices during the period January 1, 1974 to December 31, 1975. Copies of the report forms were obtained by the Subcommittee under subpoena for the period of January 1, 1974 to December 31, 1975 from the Department of Commerce. Subsequently, the Department of Commerce sent the report forms for the period of December 5, 1975 to December 31, 1975 to the Subcommittee without need of a subpoena. The report forms were analyzed and tabulated by the Subcommittee staff. This analysis assumed that the size of report forms supplied by the Department of Commerce and processed by the Subcommittee contains all of the reports filed and that there were no duplicates. The Subcommittee utilized numerical procedures to eliminate duplicates and insure the correct coding of the reports.

The Department of Commerce submitted these reports in two groups (1) reports filed with the Department of Commerce in the period January 1, 1974 to December 5, 1975—hereafter called period one—were submitted to the Subcommittee in December; (2) reports filed with the Department of Commerce during the period December 6, 1975 and December 31, 1975—hereafter called period two—were submitted to the Subcommittee in February.

The reports filed during period two were filed pursuant to the revised regulations which took effect on December 1, 1975. Consequently, these forms were filed by “service organizations,” including banks, freight forwarders and insurance companies, as well as exporters. Furthermore, the volume of reports filed in that period (a total of approximately 14,000 documents) made the Subcommittee’s tabulation of every report impractical.

In response to a request from the Subcommittee, the Congressional Research Service devised a probability sampling scheme for the use of the Subcommittee staff which would allow accurate estimation of the correct dollar amounts represented by various classes of report forms received by exporters. Dr. Benjamin Topping (then chief of the U.S. Bureau of the Census Research Center for Measurement Methods) advised the staff and the Subcommittee on the correct estimation methods to use for calculating dollar values based on the samples drawn.

For the purposes of this analysis, the period two forms were processed in the following way:

The forms were sorted into three categories: (a) those which were not filed by exporters (these were not included in the analysis); (b) those which had entries valued at $50,000 or greater; and (c) those which had entries valued at less than $50,000 (a probability sample of these entries was drawn). The report forms were then subsampled in order to arrive at the following dollar values:

1. Dollar values of those reports filed prior to December 6, 1975; these values are based on a total tabulation performed by the Subcommittee.

2. Dollar values of those reports submitted after December 5, 1975) with entries valued at $50,000 or over; these values are based on a total tabulation performed by staff of the Subcommittee.

3. Dollar values of those reports with entries valued at less than $50,000; these values are based on a probability sample of the entries valued at less than $50,000. The sample was selected by the Subcommittee according to a sampling design constructed by the Congressional Research Service.
An examination of the results (as detailed in Table I) indicates the following:

All entries in our three groups of reports were valued at a total of over $4.8 billion.

Of these, entries reporting transactions pursuant to a sales document were valued at $2.5 billion.

Transactions in which trade opportunities were reported were valued at over $2.4 billion.

A total of over $1.8 billion worth of transactions reported in the period December 8, 1975 to December 31, 1975 were reported as having “complied” with the request for a restrictive trade practice, compared with only $274 million worth of transactions reported as having “complied” in the period January 1, 1974 to December 8, 1975. This difference is likely due to the fact that the regulations were changed on October 1, 1974 to make reporting of compliance mandatory. In the period before December 8, 1975, $1.8 billion worth of transactions were reported without indication of whether the firm would comply with the request.

In the period prior to December 8, 1975 over 323 million dollars worth of sales transactions were reported to have involved compliance with the request for a restrictive trade practice, compared with over 466 million dollars worth of sales transactions which were reported in compliance with the request in the period after December 8, 1975.

For both periods one and two, 43.4 percent of the total dollars estimated were reported for transactions where exporters indicated they were “complying” with requests for restrictive trade practices. For the individual periods, the percentage of the total dollar estimates involving transactions where exporters reported “complying” with requests for restrictive trade were the following: (1) Period one (January 1, 1974 to December 8, 1975): 27.8 percent of the total dollar value estimated for that period involved transactions where “compliance” was reported, and (2) Period two (December 8, 1975 to December 31, 1975): 77.3 percent of the total dollar estimates for this period involved transactions where “compliance” was reported.
<table>
<thead>
<tr>
<th>Category of Transaction</th>
<th>Dollar value from samples</th>
<th>Percent of dollar values</th>
<th>Sampling error in dollars</th>
<th>Period 1 - dollar values for transactions between $50,000 and over</th>
<th>Period 2 - dollar values for transactions below $50,000 and over</th>
<th>Total dollar values for period 1 and 2</th>
<th>Low total dollar values due to reporting error</th>
<th>High total dollar values due to sampling error</th>
<th>Low total dollar values due to sampling error</th>
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<td>Trade opportunities</td>
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<td>542</td>
<td>3,014</td>
<td>3,014</td>
<td>2,629</td>
<td>5,246</td>
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<td>Unreported</td>
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<td>1,850</td>
<td>542</td>
<td>3,014</td>
<td>3,014</td>
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<td>3,014</td>
<td>2,629</td>
<td>5,246</td>
</tr>
</tbody>
</table>

1 Sampling error for 1 standard error, 95 percent confidence interval.
2 Value in col. 7 minus value in col. 6, 95 percent confidence interval.
3 Sampling error for 2 standard error, 99 percent confidence interval.
4 Sum of values from cols. 1, 5 and 6.
The volume of reports given to the Subcommittee for period two, December 5, 1975 to December 31, 1975, made impractical tabulation of every report by the Subcommittee. Census computed a total of approximately 14,000 reports for this period. The reports for period two were divided into two groups: transactions $30,000 or over, and transactions less than $30,000. A sample was selected from entries reported during period two only for transactions less than $30,000. The sampling procedure selected was a stratified probability sample. Entries were grouped into strata with 10 entries. Each entry within each stratum was assigned a number between 1 and 10. Those entries were then chosen randomly from each stratum using a table of random numbers and an NPSRM (equal probability sampling within each element) selection procedure without replacement.

The estimation of the dollar value for reports of transactions less than $30,000 is necessary to consider the likelihood that the procedure introduced error into the estimates. While it is difficult to calculate estimates of the total error in a procedure such as this, the error due to sampling is calculable. Our estimates of the probable effect of sampling are contained in Table 1. These estimates do not account for errors which may result from other causes, e.g., the record, or the data, errors in transcription, or the lack of complete reporting. Thus, from Table 1, the estimated total dollar value of transactions less than $30,000 for period two is $2,587,658,000. The error due to the sampling procedure is given in column three and fifth row of Table 1. It indicates that, for repeated samples, 65 percent of the time, the actual value which would have been obtained by tabulating all reports less than $30,000 for period two, rather than sampling them, will fall between $19,681,000 and $22,156,000 (i.e., $30,000 plus or minus the sampling error for one standard error). In this case is 5794 (1). Similarly, 95 percent of the time, with repeated samples, the actual value which would have been obtained by tabulating all reports less than $30,000 for period two will fall between $14,767,000 and $27,963,000 (i.e., $20,375,000 plus or minus the sampling error for one standard error), which in this case is $794,000.

The following is the procedure used to calculate the sampling error as developed by Dr. Bingham Topping, retired Chief of the Research Center for Measurement Methods for the Census Bureau:

I. Estimation of totals

The estimation of any dollar value is the sum of three parts: (a) The dollar value reported in entries filed with the Department of Commerce for 1974 and the first three quarters of 1975; (b) The dollar value of the entries valued at $30,000 or more in the last quarter of 1975; and (c) The dollar value of entries valued at less than $30,000 in the last quarter of 1975.

If the estimates for part (a) are to be based on a sample of 9/16 of the reports entered, the estimated dollar value is the sum of the entries in the sample.

To obtain estimates for each stratum of entries, (e.g., sales, or compliance entries, or compliance sales, etc.), the estimates for part (c) are obtained in exactly the same way as above except that errors are substituted for the dollar values of entries that are not in the specified subclass.

II. Estimation of sampling error

Parts (a) and (b) are not subject to sampling error. For part (c), the estimated sampling variance of an estimated total dollar value will be given by the formula:

\[\sigma^2 = \left(\frac{1}{10W^2}\right) \sum_{i=1}^{N} \left[\frac{1}{n_i} \sum_{j=1}^{n_i} x_{ij}^2 - (\sum x_{ij})^2\right]\]

where \(n_i\) is the number of entries selected for the sample of stratum \(i\), and \(x_{ij}\) is the dollar value for the \(j\)th selected entry in stratum \(i\). The estimate of the standard error is given by:

\[SE = \sigma \sqrt{n}\]


The standard error of the estimated total is \(\sigma\), the square root of the estimated sampling variance. A 95 percent confidence interval is the interval whose lower and upper bounds are \(z\) and \(z + 2\sigma\), where \(z\) is the estimated dollar value. That is, the probability is approximately 95 percent that an interval constructed in this way will include the value of the total that is to be estimated. It should be noted that this takes account only of the variations that arise from sampling error, that is, because a sample rather than all of the records have been tabulated.\(^{1}\)

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\(^{1}\) Kish, op. cit., p. 23-24.
As noted by Dr. Tyepp, the values presented in Table I represent only the possible variation due to sampling error. Other possible sources of error such as duplication of report forms and/or errors in the initial computer entry are not included in the values which represent the sampling error. Various attempts were made to minimize the impact of other types of error and those efforts are outlined in Appendix B.

APPENDIX B—DESCRIPTION OF THE VERIFICATION PROCEDURES

The Subcommittee performed various verification procedures to eliminate any possible source of error in the material received. However, the Subcommittee made an attempt to validate any of the reports by providing for an independent check with the exporters to find out whether or not they had filled out the form in question. The following procedures were used to verify the received material and the analysis for period one:

1. Material was placed in folders by company name for each quarter.

2. Each form was assigned a unique number and each transaction within each form was assigned a letter. Any duplicates found were not numbered.

3. During the coding of the material, any duplicates encountered were discarded. However, a systematic attempt to eliminate duplicates was not made at this stage.

4. Coded material, based on the coding instructions of the Subcommittee, was entered into the computer from a terminal (online entry) with a prompting program. Due to the limitation of the resources available to the Subcommittee, manual procedures were used to check the validity of the data at the time of data entry in place of a computerized edit routine.

5. A complete listing performed by the computer, was made of the form numbers and a comparative list check was made for accuracy of entry. Coding was checked and any errors noted, to be corrected by the terminal operator at a later period.

6. A second listing was made and a check against the first listing was made. More duplication was eliminated.

7. Under the direction of C.R.S., a procedure was revised to rank order the dollar values, and duplicate dollar values were checked for transactions with very large dollar values. This made it possible to identify and eliminate some duplicates which might have had a considerable impact on the estimate used.

The following were the verification procedures used for material from period two:

1. As the material was sorted into three groups (entries not relating to exporters, those relating to exporters and valued at $50,000 or over, and those relating to exporters and valued at less than $50,000), any duplicate entries found were removed.

2. Entries relating to exporters and valued at $50,000 or over were entered directly into the computer and an independent double verification procedure was performed.

3. For entries relating to exporters and valued at less than $50,000 (those which had been sampled), an independent sampling replication was performed to check coding. Also an independent replication of the numbering scheme was performed. Any duplicate encountered in the process was eliminated.

The following may be considered possible sources of error in the material:

1. If, in period one, all freight forwarders were not eliminated, they would be included with the exporters.

2. If all duplicate copies in the original material provided by the Department of Commerce to the Subcommittee were not eliminated, the total dollar estimates would be inflated.
APPENDIX E

ORIGINAL ILLUSTRATION TO BE FURNISHED
APPENDIX F

BUSINESS INTERNATIONAL CORP.

To: Clients of Business International Executive Services.

From: Robert B. Wright, Vice President and General Manager, Western

Handsgone.

Subject: Conclusions of the Business International Roundtable on the Arab


The conclusions following were not formally discussed with the 50 client execu-
tives who attended this roundtable. Nevertheless, Business International be-
lieves they represent a fair consensus of the main formal points that emerged
from the roundtable, as well as the most salient practical suggestions that were
made.

Three issues are involved for U.S. companies: the primary boycott by Arab
countries, Arab companies and Arab individuals against all businesses with
U.S.; the secondary boycott by the Arab Central Boycott Committee and national
boycott committees in Arab countries (who interpret boycott regulations in
varying ways) against U.S. companies and individuals, whether U.S. or not, doing
business with Israel (Investment, Housing or selling); and the tertiary boycott
in which U.S. companies doing business in other U.S. companies or individuals
comply with boycott regulations. (This covers the Reficld case now in litigation
or such instances as banks denying membership in foreign syndicates to banks
that the Arab boycott authorities consider Jewish.)

While there are gray areas in each of these, the thrust of U.S. policy at present
(tot subject to legislative change, probably some time this year) is that the
primary boycott, while considered undesirable, is outside U.S. legal jurisdiction;
the secondary boycott would probably be illegal under U.S. law but is outside
U.S. jurisdiction except to the extent that the U.S. government regulates U.S.
company compliance with Arab boycott regulations, e.g. reporting and denomi-
nation provisions; the tertiary boycott is clearly illegal for U.S. companies, proba-
bly under the Sherman Act and certainly under the civil rights and equal oppor-
tunity statutes.

Incidentally, there is now considerable corporate confusion as to the applicability
of U.S. laws and regulations to international companies' response to the Arab
boycott. This confusion is partly due to the fact that none of the laws and regu-
lations were crafted specifically to deal with the boycott question and, appar-
tently, the fact that none of the legal standards are contradictory, leave major
grey areas and, in some cases, overlap, as to the relevant enforcement agencies.

Three major problem areas emerged: (1) The impact of U.S. antitrust law
and policy on the tertiary boycott involved, i.e. discriminatory action demanded
by Arab boycott authorities against other U.S. companies or persons; (2) The boy-
cott reporting requirements of the Export Administration Act; and (3) Visa prob-
lems in Arab countries and how these lap on U.S. civil rights laws.

1. In the antitrust area, the Justice Department representatives made it clear
that the Department believes the Sherman Act applies to cases where companies
comply with the boycott by refusing to deal with another U.S. company or by
consider other companies to do so. This is the heart of the Justice Department's
ontology against Reficld Corp., instituted in January 1978. However, the
Reficld complaint does not cover what specific acts the Justice Department be-

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the

brought a "compliance" under the Sherman Act to discriminate against
U.S. companies. Until the case comes to court or is settled out of court, this
remains a troublesome grey area for companies.

2. U.S. exporters receiving requests to participate in a boycott have been re-
quired to report such requests to the Commerce Department Office of Export
Administration since 1965. Since December 1975, companies have been required
to inform the Department as well whether they complied with the boycott request
or intend to comply. However, although both the Export Administration Act and
the regulations contain horitory language expressing the U.S. government's wish
that companies not comply with boycott requests, neither the law nor the regula-
tions forbid companies to comply—unless doing so would discriminate against
U.S. citizens or companies.

A key problem in this area is the definition of "compliance." Does merely
accepting the boycott request (no matter what the answer) constitute compli-
ance? Commerce Department representatives at the roundtable indicated they
did not believe this to be so. Thus, in reporting a boycott request, companies
should be careful to distinguish merely accepting a boycott request and actively
complying with a boycott request. This is easy to do, since the recogni-
tion allows companies to report by letter instead of the standard reporting form.

Another problem that arose in this area is: who does the U.S. government
consider a U.S. company to be? Does the Commerce Department representative expressed
the view that the definition may only extend to the U.S. exporter that must report receipt of a
boycott request. Thus, if a U.S. company's foreign affiliate receives a boycott re-
quest, it must report it to the U.S. Department of Commerce, even though it may
choose not to comply.

Another question that arose in this area is: what does the U.S. government
do in such cases as Reficld Corp., where the Department of Commerce staff
representing U.S. companies to the boycott authorities refused to do so?

While it is impossible to generalize from Reficld to other cases, it is
important to note that the Department of Commerce staff working for U.S.
companies may be able to take an independent role in these cases, especially
when the boycott authorities are acting too hastily.

Three issues were raised about the impact of Arab boycott regulations on
U.S. companies in Arab countries, and it is likely that the U.S. government
will take some action in this area:

1. The U.S. government may begin to enforce the Sherman Act against
Arab boycott authorities who require compliance. This may create prob-
lems for U.S. exporters in Arab countries who may not wish to be involved
in such a case. It is likely that the Commerce Department Office of Export
Administration, which has been handling such cases, will continue to do so.

2. The U.S. government may begin to enforce the antitrust laws against
Arab boycott authorities who discriminate against U.S. companies. This
may create problems for U.S. exporters in Arab countries who may not
wish to be involved in such a case. It is likely that the Commerce Department
Office of Export Administration, which has been handling such cases, will
continue to do so.

3. The U.S. government may begin to enforce the antitrust laws against
Arab boycott authorities who discriminate against U.S. companies. This
may create problems for U.S. exporters in Arab countries who may not
wish to be involved in such a case. It is likely that the Commerce Department
Office of Export Administration, which has been handling such cases, will
continue to do so.
Senator Stevenson feels responsible for getting the Treasury Department to be more active with Israel and the Arab world. He feels policy of not interactive visa referrals for U.S. citizens on discriminatory grounds of race, sex, color, religious or national origin. The governments concerned (including Saudi Arabia) have indicated they will cooperate with U.S. policy in this area. The Treasury Department said that no price has so far been refused to government or private-sector employees working in Saudi Arabia and the State Department representative encouraged companies that run into this problem to inform the Department of State, which will try to negotiate them out with the relevant embassies.

What is the outlook for Arabs? For one thing, it appears to be moving toward some sort of new legislation that deals with the boycott problem. A number of legislative initiatives exist, of varying degrees of extremity, but the most likely to pass is the relatively moderate Stevenson-Williams bill (S. 901), which would not prohibit companies from complying with boycott requests but would require public disclosure by the Commerce Department of companies’ response to boycott requests. Under S. 901, the Commerce Department would not be required to publish company responses but would have to send them to public senators on request.

In its present form, the Senate by the Banking Committee and will be voted on by the Senate in connection with the extension of the Export Administration Act, which will probably reach the Senate floor by June or July. There is a companion bill in the House, sponsored by Benjamin E.h. New (D., New York).

Companies’ main concern with S. 901 is its public disclosure requirement. Senator Stevenson feels that public disclosure would help companies deal with the boycott by making clear in the general public just how they have dealt with this situation, rather than hiding themselves from critical conjecture and speculations of improper actions.

On the international front, although there has been talk of negotiating an international code of conduct for companies dealing with boycott situations (either directly or as part of the current OECD exercise), the chances of action are slight since the U.S. government is so far virtually alone in its concern over companies’ compliance with the boycott.

During the corporate interchange, several companies noted that a distinction should be made between complying with a boycott prohibition and the boycott itself. In many instances, a company can answer certain questions or certify documents without running afoul of U.S. laws on discriminatory practices. In other instances, companies routinely answer questionnaires and certify documents in forms. Revealing such practices, major companies feel, would expose them to action by anti-boycott groups like the AEC.

In the absence of clear-cut federal regulations and/or a Middle East peace settlement, companies can explore the following techniques:

1. Transact business with Arab nations through subsidiaries abroad, since these subsidiaries are apparently not covered by Commerce Department filing requirements.

2. Sell to the Arab market through middlemen, e.g., trading houses.

3. Have products shipped from the United States licensed by an Arab insurance company. This can eliminate any requests to fill out questionnaires or certify documents.

4. Solicit the support of Arab purchasers to eliminate or reduce questions in the boycott documentation they require so that the answers comply with U.S. laws and regulations or do not have to be filed with the Commerce Department. (The State Department representative also suggested this as a possible procedure.)

5. Use a company’s face stockholder questions or suits filed by the American Jewish Committee and other organizations and can demonstrate that they do not reflect an Arab (or Israeli) viewpoint. (The American Jewish Committee is a member of the AIE and/or Israeli purchasers/suppliers can move such stockholder actions to be withdrawn and prevent potential counter-boycotts to which consumer product manufacturers are most vulnerable. Of course, a flat-out declaration that
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compliance with a boycott request—even if pro forma—is against company policy eliminates many problems. It may also, however, eliminate sales to Arab markets.

As for the controversial New York State law, expectations are that it will be eclipse by federal law. Even its backers recognize that it is constitutionally dubious and unenforceable, and many of its early advocates are now known to have second thoughts about its feasibility, especially since some goods destined for the Arab countries are being routed to other ports. It seems probable that once the federal government preempts the New York Port Authority over the Concrete issue, similar preemption will be carried over the New York law, as well as other actual (U.S.) or contemplated state laws (Cal., Md., Pa., Wis.).

The reason for the probability of Federal law preempts state law in this matter is that the Constitution reserves the regulation of foreign commerce to the federal domain.

Although the routine focused primarily on U.S. government laws, regulations and policies related to the Arab boycott, a number of companies present either were, or had been, on the boycott list. Some of these firms reported that they were making efforts to get off the list and at least two of these said that efforts to get off by making "counter-vailing" representations to Arab embassies had produced no results. Other companies on the list said that they were not making any effort to get off the list, either because they believed it dangerous for a U.S. public policy viewpoint to comply with the demands made of them to get off the list, or because they felt that being on the list did not deny them much business. The point was also made that companies had to weigh the advantages of complying with the boycott demands against the possible disadvantages such compliance might bring to the U.S. domestic market from groups opposed to the boycott.
APPENDIX G
The Library of Congress
Congressional Research Service

EVALUATION OF FORMS USED BY THE DEPARTMENT OF COMMERCE TO ADMINISTER ANTI-BOYCOTT PROVISIONS OF THE EXPORT ADMINISTRATION ACT OF 1969
(By Daniel Helvig, Analyst, American National Government, Government Division, July 28, 1970)

The following is an evaluation of the report forms used by the Department of Commerce in administering the provisions of the Export Administration Act of 1969 (20 U.S.C. App. 2401 et seq.) or 20 U.S.C. App. 2003(b) which require "all domestic concerns receiving requests for the furnishing of information for the signing of agreements as specified in section [2402] to report this fact to the Secretary of Commerce for such action as he may deem appropriate to carry out the purposes of section 2(11) Section 6(11) provides:

"(g) It is the policy of the United States (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 US exports but (C) to avoid exports to any foreign country against another country friendly to the United States." (Public Law 91-104, s 3, Dec. 30, 1969, 80 Stat. 841.)

The Department of Commerce currently uses two forms DIS-E1IP and DIS-E5IP to collect the information required by this act. Our evaluation of this form began with an examination of the record clearance established for the form by the Office of Management and Budget (OMB). The Federal Reports Act [44 U.S.C. a 3201-3211] provides that the Director of OMB must indicate that he does not disapprove the form before any executive branch agency can utilize a form which collects information from 50 or more members of the general public [44 U.S.C. a 3209]. In the process of clearing each form, it is assigned an OMB clearance number and a docket is established which can be used to establish the basis upon which decisions relating to the content of the form, and the instructions which accompany it were made. The OMB (formerly the Bureau of the Budget) clearance docket for OMB clearance No. 41-R2306 [known as DIS-E1IP] makes it possible to outline the following chronology of actions taken by Commerce, the Bureau of the Budget (BOB), and the OMB to the approval of this report form. [A copy of the docket is already transmitted to you.]

CHRONOLOGY OF ACTIONS
June 30, 1965: Provisions of the Report Administration Act requiring reporting of requests for restrictive trade practices to "all domestic concerns" are approved by the President and enacted into law.

The department is required to promulgate regulations within 90 days of enactment. [79 Stat. 210, Public Law 89-98.]

September 9, 1966: The Commerce Department files a request with the Bureau of the Budget for approval of a report to be filed by every exporter who receives a request for information to be sent to the Department of Commerce.

1. The number of requests received from a U.S. exporter has been mislabeled in that the exporter need report to the Department of Commerce the receipt of only the first request for action regarding an export transaction. This will greatly reduce the burden of the U.S. exporter in that it is common practice for a great number of requests to be made with regard to a single export transaction, e.g., initial application of a transaction, purchase order, certificate of origin, certificate of manufacture, letter of credit, consular invoice, etc.

2. There is no plan for tabulation other than for purposes of tabular use and such other reports as required by the Export Control Act. In addition, information will be reviewed and analyzed to determine appropriate action to be taken by the U.S. Government in the pursuit of the general policy to oppose restrictive trade practices and boycotts.

3. There is no intention to publish the detailed contents of the information supplied by the reporting requirement except as required under the terms of the Report Control Act.

September 11, The form and reporting procedure are approved by BOB. The BOB Clearance office makes the following note in the file:

"This new report is required by law (50 U.S.C. App. 2409). Given what Commerce might have required under the law, this requirement is mild. Especially helpful in this burden is the provision that information need be reported on only the first request for restrictive action received regarding that transaction. See the attached form for more paper for comments and changes in the form.

"After a copy of the form was sent to Pratt (MAPI), Berger (Commerce)

Machinery and Allied Products Institute.
called to say that Sec. Casper of Commerce did not want the proposed form made available to anyone outside the Government. Trust was asked not to discuss it before I called him, not to make it available to anyone else and to return the copy to me. I requested and received by telephone his comments on it.

"Needless to say, Casper's disposition toward secrecy on this form did not remove the efforts of the matter and at the same time escape the repetitious reporting of identical cases as is currently required."

March 9, 1966: Rance H. Meyer, Director, Office of Export Control writes to Mr. Curtis in the effect that "We, too, have been aware of this problem, and you will be glad to know that at the present time we are studying the possibility of revising the regulations to permit exporters of the periodic reports covering continuing transactions with the same consignee in lieu of filing separate forms IA-1044 (currently called IA-623P) for each order."

March 18, 1966: The Department of Commerce requests the Bureau of the Budget to allow a modification in the reporting procedure. It proposes, alternative method which "permits the exporter to submit a report covering all transactions which he receives during a calendar quarter from a single foreign person or firm. The quarterly report shall be submitted by letter and shall consist of a consolidated form containing the same information which would have been included on Forms IA-1044 together with an indication of the number of transactions to which the reporting restrictions were applicable."

March 25, 1966: BOB approves Commerce Department proposal.

April 4, 1966: Russell Schneider, Executive Secretary, Advisory Committee on Federal Reports telephones the BOB clearance officer and reports "that AMA was happy with the new quarterly report and felt it solved their problems."

September 16, 1966: BOB approves routine extension of clearance for the form. No changes are indicated.

December 20, 1966: Export Administration Act of 1968 becomes effective—no change in the reporting requirement.

October 14, 1971: OMB approves routine extension of clearance for the form.

No changes are indicated.

November 17, 1971: The quarterly reporting requirement is modified by in-lieu a rule change in the Federal Register. Jt now permits quarterly reports "covering all transactions which requests are received from persons or firms in a single country during a single calendar quarter." [36 F.R. 20911, November 15, 1971]. The OMB clearance's docket makes no mention of the change.

October 2, 1971: OMB explicitly extends the clearance of the form to September 1977. No mention of the rule changes made in 1971 included in the docket.

August 20, 1975: OMB approves Commerce Department proposal to require banks, insurers, shippers and forwarders, in addition to exporters, to report. It makes mandatory the requirement that compliance must be reported.

It also requires all transactions involving discrimination against U.S. citizen to be reported on a single transaction form and leaves a new form (DE-310-P) for this purpose.

The revised regulations specify that reports could be made on a quarterly basis but differ in several respects from the regulations issued in 1971 [36 F.R. 20911, November 15, 1971]. The 1971 regulations read in part:

(2) Multiple transaction report: Instead of submitting a report for each transaction regarding which a request is received from persons or firms in a single calendar quarter. This report shall be made by letter to the Office of Export Control no later than the 10th day of the first month following the calendar quarter covered by the report. If the exporter has received requests from persons or firms of more than one foreign country, a separate report shall be submitted for each country. Each letter shall include the following information:

(i) Name and address of U.S. exporter submitting report;
(ii) Calendar quarter covered by report; request is directed;
(iii) Name of country (ies) against which the request is directed;
(iv) Country of recipient;
(v) Number of transactions which restrictions were applicable;
(vi) Type(s) of request(s) received (enclose one copy of the written request or action requested);
(vii) Detailed description of the type of commodities or technical data covered and the total dollar value thereof; and
(viii) Whether or not the U.S. exporter intends to comply with the request(s). (Noncompliance of the information required by this subdivision would be helpful to the U.S. Government but is not mandatory.)

The 1975 version reads in part:

(2) Multiple transactions report: Instead of submitting a report for each transaction regarding which a request is received, a multiple report may be submitted covering all transactions (other than those described in item 1, which must be reported individually) regarding which requests are received from persons or firms in a single country during a single calendar quarter. This report shall be made by letter to the Office of Export Administration no later than the 15th day of the first month following the calendar quarter covered by the report.
If requests are received from persons or firms of more than one foreign country, a separate report shall be submitted for each country. Each letter shall include all of the following information:

1. Name and address of U.S. person or firm submitting report.
2. Indicate whether the report is in the form of a formal, formal, or specific organization and, if the latter, specify role in the transactions.
3. Calendar quarter covered by report.
4. Name of country (ies) against which the request is directed.
5. County of requestor.
6. Number of transactions to which restrictions were applicable.
7. The customer order number, customer's invoice number, and letter of credit number for each transaction, if known.
8. A general description of the type of commodity or technical data covered and the total dollar value, if known.
9. The number of requests the report complies with or intends to comply with. If the requestor undertakes, he is required to submit a further report for the following business day. If the decision is to be made by another party involved in the transaction, that party should be identified.
10. Each letter submitted by an export service organization shall also include the name and address of each U.S. exporter named in connection with requests received during the quarter. Following each name, after the identifying numbers required in (vii) above, transfer as they are known. If this information is included in the copies of documents required by (vii) above, the separate listing may be omitted.
11. Each letter shall include a signed certification that all appropriate attorneys are true and complete.
12. A request form which makes tabulation of data possible. An examination of the OMB docket and the report itself supports the following assertions regarding OMB 8210:
The form was designed to fulfill the minimum requirements of the law. The form was not designed to facilitate data collection or retrieval. The tabulation procedure was not accepted as a necessary part of the approval of the form. No provision was made for easy convertibility into machine readable format. The reporting requirement was progressively relaxed through changes in the regulations to accommodate the needs of firms required to file the form. On September 15, 1965, firms were required to file the report of the initial request regarding a transaction. On March 28, 1966, firms were permitted to file quarterly reports covering all requests received from a single firm. Subsequently, and apparently without OMB review, on November 11, 1971, they were allowed to file reports covering all requests received from firms in a single country. The date, no standardized form has been issued.

The docket it appears that OMB did not approve the changes in the quarterly letter reporting which were made by regulation on November 11, 1971. The OMB statistical Policy Division clearance officer confirms that OMB has no record of having approved the 1971 change in the regulations. If this is the case, it would imply that the Department of Commerce had not complied with the Federal Reports Act which requires OMB to indicate that it does not disapprove these changes. It is not apparent whether a copy of this notification was transmitted to OMB. If such a copy was not received, no reports were made to OMB. OMB's concurrence in the changes, if made, was not reflected in the reports and must be considered a separate action. The type of "request" referred to in Block 8 of the report form is a form of a type of document by which requests are transmitted. Consequently, information in this block cannot be used to classify transactions according to the nature of the request made, e.g., whether a request for discrimination against a U.S. citizen or firm was involved.

The report forms used December 1, 1975 did not allow adequate space for the exporter to give the specific information or action requested, using "direct quotations from the request." This item provides the specific information regarding what American companies are being asked to do by the Arab countries. Yet the space for answering this question allowed for two single-spaced typewritten lines. An examination of the reports submitted by the subcommittee shows that in most cases the companies were forced to complete the answer to this question elsewhere, on the back of the form, in the section provided for additional remarks, or on a separate sheet.

Changes made December 1, 1975 require responding firms to submit a copy of the request, along with the report form. While this procedure does avoid the space problem encountered earlier, it will undoubtedly make handling of the information by the Department of Commerce more cumbersome. If Commerce were to double the information to machine readable form, the attachment of copies of the requests would increase the time and expense involved in coding this important piece of information.
The report form and regulations lack a clear definition in the use of the term "request." Firms receiving boycott "requests" are required to report such requests. The confusion arises from the fact that in many cases there was no specific "request," that is, no specific act of asking for something to be given or done. **(1) The American College Dictionary, New York, Random House, 1967, p. 1038.**

The boycott-related activities were simply part of the import regulations to which the exporting firm had to comply in order to ship its goods. Frequently, the exporter appears to have been unaware of these requirements until the time of shipment. In some instances the reporting firm attached to their boycott report copies of pages from Don & Bradstreet's "Exporters' Encyclopedia" listing specific import regulations. There was confusion regarding the existence of a "request." It was received (10-19), and occasionally, the "requestor." Thus, the treatment of the concept of "request" appears to be inadequate. Raising undue suspicion and inconsistency in reporting. Clarification of this issue might require amendment of the Export Administration Act because the act uses the term "request."

The regulations resulting to the filing of the boycott reports allow the reporting firm to file a single transaction report or a multiple transactions report (Export Administration regulations June 1, 1914, 30 F.R. nos. 393,415). The regulations do not, however, specify what is meant by "transactions."

The design of the form prior to December 1, 1957 may have contributed to the executive confusion regarding the information called for in each block. For example, there was considerable confusion concerning the country that being boycotted and the country from which the boycotting country was trading, that is, the country being boycotted is to be entered in block 8: "Name of the country (or countries) against which the request is directed." In some of the countries doing the boycotting, it had to be entered in Item 5: "If we receive this request from: main address, city and country." In 88.5 percent of the cases, the reporting firm's company record entries, the reporting firm indicated that the boycotting country and the boycotting country were the same, an impossibility. This figure grew up to 167 percent when the number of reporting firms rather than the number of record entries is considered. In addition, a marginal 2 percent of record entries left boycotting country blank or filled in a question mark. Although the newly revised form (EIR-407-5, Nov. 11, 1957) makes the difference somewhat clearer, monitoring and possible correction of the problem may still be necessary.

Other blocks for which inadequate space was provided were "additional remarks" (Item 9), the listing of commodities involved in the reported transaction (item 11), and, frequently, in the event that a group of countries was to be listed, the listing of the boycotted countries (item 8).

In such cases of the firms used by the Department of Commerce to collect reports of restrictive trade practices appears to reflect Department decisions to avoid all tabulations of the data that activity required under the law. The regulations permitting the use of quarterly reports by letter appear to have been amended in 1973 without reference to the Office of Management and Budget. It is difficult to imagine how the Department of Commerce intended to check to see if exporters were filing reports as required, let alone performing accurate tabulations of the results.
APPENDIX II

LEAGUE OF ARAB STATES
CENTRAL OFFICE FOR THE BOYCOTTOF ISRAEL
August 31, 1972

DISTRICT COMMITTEE No. 82
National Association of External Dealers, Inc.
New York, N.Y., U.S.A.

Gentlemen: With reference to your letter of August 10, 1972, we have the honor to inform you of the following:

1. The list of companies boycotted by the Arab countries is quite changeable where names of companies are dropped from or added to it frequently. Therefore, you will appreciate that we are not in a position to supply you with the same.

2. The Arab boycott of Israel has been created by the early allies under a decision taken by the Council of the League of Arab States. It is carried out in accordance with certain rules and rules in force in the Arab countries. We send you enclosed herewith, a copy of a statement made by H.E. the Commissioner-General on the rule of objects and measures of the Boycott. We believe that the said statement contains answers to the questions you raised.

3. The Arab Boycott authorities is ready to supply you with the necessary information on the status of certain company in the light of the rules in force in the Arab countries. You should inquire about the status from the Regional Office for the Boycott of Israel in the Arab country with which the dealings will be made after supplying them with the full name and address of the company concerned.

We remain,
Very truly yours,

MOHAMMED MAHMOUD MAHMOUD,
Commissioner-General

NATURE OF THE ARAB BOYCOTT OF ISRAEL

(By H. E. Mohammed Mahmoud Mahmoud, Commissioner General of the Arab
Boycott of Israel)

The Arab boycott is both a preventive and a defensive measure. It is a preventive measure because its purpose is to protect the security of the Arab states from the danger of Zionist expansion; it is a defensive measure because its basic objective is to prevent the domination of Zionist capital over Arab national economies, and to prevent economic forces of the enemy, which is well studied and planned, from expanding at the expense of the interests of the Arabs.

The Arab Boycott is also of a tolerant nature. It is very careful to harm the interests of foreign companies and their shareholders. As soon as the Boycott Authorities get information that a certain company or companies have established relations with Israel, they make contacts with them to find out the truth and the nature of these relations. If it turns out that these relations do not go beyond ordinary business relations, the matter is over and dealings with such companies are not restricted. On the other hand, if it turns out that this relation is of the type which will support the economy of Israel or strengthen its war effort and thus serve its aggressive ambitions for expansion, the company will be told that this rejection is harmful to the interests of the Arab states which are still in a state of war with Israel, and according to the laws and regulations of these states they have to prevent any dealings with these companies if they maintain their relations with Israel. The company is then left free to decide whether to deal with the Arveys and then terminate its relations with Israel, or to stop dealing with the Arabs and continue its relations with Israel.

The Boycott Principles are also very far from racial or religious influences. It is practiced with all peoples—national or moral—notwithstanding their nationality or religion, as long as they support the economy of Israel or its war effort. In this respect, the Boycott Authorities do not discriminate among persons on the basis of their religion or nationality, they rather do so on the basis of their partisanship or impartiality to Israel and Zionism. Nothing can prove that more than the fact that Arab states deal with companies that are owned by Jews who are not based in Israel's favor and did nothing that support its economy or strengthen its military effort. While, on the other hand, Arab states have banned dealings with foreign companies and firms owned by Muslims orChristians, because such companies have done things which have supported the economy of Israel or its military efforts.

The Arab Boycott, in addition to what was said above, is of an international nature: It is based on two factors which were approved by legal experts, that they do not violate any of the provisions of international law. It is also legally established that official boycott is legal in the state of war. It is also considered legal in the state of peace if used for purposes that are not expected to disrupt the Arab states. In a state of war with Egypt, Crete, Libya, or countries of our kind and an Arab state's state of war with Egypt, Crete, Libya, or countries of our kind does not end a state of war. According to international law, the Arab states have the right to take measures that are necessary to protect their security and safety against their enemies, as long as a state of war still exists. A few legal experts say that the ambivalence between Israel and the Arab states cannot be
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Considered a state of war, but the majority of legal experts in International law consider boycotting as legal in the state of peace if it is used in response to an internationally illegal action. Boycott is a procedure which can be used by a state to face the harm that it suffered by illegal actions performed by some other state. The purpose is to make the violating state respect international law and thus stop the illegal action. In other words, to face illegality by "legal" means, Israel is still occupying Arab land, but it nevered the rights of its owners, dispersed them outside their homes, and seized their money and property in addition to the continuous aggression against Arab countries neighboring Palestine. No doubt that all these actions are considered illegal. This was the resolution of the Security Council in many of its meetings. Thus if we accept the opinion of those few legal experts, who say that the armistice puts an end to a state of war, the Arab Boycott will remain legal according to international law and in the opinion of the majority of legal experts, on the basis that this boycott is a punishment for an illegal action.

This is from the point of view of International law. As for the point of view of commercial law accepted by the world, the Arab boycott of Israel is built on well-known legal foundations; it is the rules: "benefited is the law of contracting parties", and each party has the right to put the terms which it feels are suitable to its business; the other party is also free to accept or refuse these terms. If it refuses then the contract is thus concluded, and if it refuses them the contract will not be concluded. The Arab countries make certain terms to establish commercial relations with foreign countries in order to ensure that their capital and economy do not go to Israel. This leads to guarantee its objective and protect its economy. Foreign countries are free to accept these terms or refuse them and this would not be considered interference in their affairs on the part of the Arab states.

Reasons which call for putting the name of a foreign company or firm on the black list.

These reasons could be briefly summarized as follows: When a foreign company or firm carries out any action in Israel which might support its economy, develop its industry or increase the efficiency of its military effort. No doubt that these things are clear enough and every such company or firm can know whether its action falls under the above mentioned factors.

Does untrue or inaccurate information result in banning dealing with a foreign company or firm?

I am sure that such a thing never happened in the past and will not take place in the present or the future, because banning will not be achieved except after proving that the foreign company or firm has committed the violation, and after contacting the company (when the information is not from an official source) and asking it to explain its attitude to the charges directed at it, or at least deny it.

In order to be sure that the company has received this question or warning, the Boycott Authorities should receive the smaller receipt of that warning signed by the said company as an acknowledgment of receipt.

Just in case when it turns out that certain companies have established relations with Israel in the manner mentioned above, dealing with such companies will not be banned--as long as the definite proof--after the company is informed and asked to prove such relations, if it feels that its interests require that; and then it should prove that it has done so.

In cases of this sort two things usually take place: The company may answer the letter of the Boycott Authorities admitting that it has committed the violation mentioned in the letter and is ready to settle the matter by reversing the violating action. In this case, the Boycott Authorities will give the company the time needed for the settlement and no action will be taken against the company, unless it proves that the company is trying to delay the settlement. In order to avoid exposing the company, may, on the other hand ignore the letter that it received and file it unanswered within the reasonable time. In that case the question will be put to the Conference of the Arab boycott in order to make the decision of banning dealings with the company.

I would like to say in this connection that this arrangement excludes foreign companies or firms when it is proved by definite evidence that they, their proprietors or controllers haveBoosted international solidarity: such as continuous contributions of large amounts to foreign and other Zionist organizations, as well as joining Zionist organizations or societies, or such as working openly against Arab interests and promoting the interests of Israel or Jewish boycott.

No relations will be established with such companies because it was actually proved by experience that such companies take advantage of those relations in order to damage Arab interests and promote world Zionism.

It is worth mentioning that in spite of the fact that hundreds of companies are put on the black list, the Boycott Authorities will challenge any claim that any company was so put under that it was based on a true basis and accurate facts. All through the history of the Arab Boycott not a single case was proved to be put on the black list on the basis of untrue or inaccurate information.

Is it possible to remove the name of a foreign company or firm from the black list?

Naturally it is possible to delete easily the name of any foreign company or firm from the black list.

The banned company can write to any of the Regional Boycott Offices in any Arab country or directly to the Central Office for the Boycott of Israel to inquire what documents are necessary in order to be excused from the ban and to become able to resume activities in the Arab countries. As soon as this letter reaches any of the offices, the question to the company in question will be sent the same day, stating the necessary documents to be submitted. If the company
produces the required documents fully and correctly and if the documents are clear and correct, then it is possible to remove that ban within three months, as from the date of presenting the documents. Three months is not a long time, because those documents should be studied by the concerned Office; then they should be sent to the Central Office for further study and at the same time, the opinions of other offices in the Arab countries should be taken on the matter of lifting the ban.

In the case of companies when the ban cannot be lifted except after a longer period of time, the reason for that is not due to the slowness or inefficiency of the Boycott Offices, but is always due to the delay on the part of the company concerned in submitting the necessary documents required by the Offices.

On the other hand, the Boycott Offices work with complete freedom and in compliance with the Boycott law and regulations. It is impossible to violate such laws at any circumstances or under any pressure from any source, regardless of the person exercising it. On the contrary, those Offices never allow such things to take place, and thank God they prove it.

Finally, I would like to add that companies which settle their status and have their names cleared from the blacklist and any record of boycott offices as many as those which bring them on the list.
Gentlemen: We are in receipt of your letter dated September 12, 1975 and are appreciating your request to know the documents you will have to present in order to enable the Arab Bureaus Authorities to consider removing the ban imposed by your company and its subsidiaries in the Arab world since 1967. In this regard, we wish to point out the following:

The relative information we have acquired, which led to banning transactions with your company, indicates that the Bulova Foundation, which is financed by your company, gave a complete machine factory to Israel as a present and refused to give a similar facility to the Arab country despite our request with it through our letter dated January 19, 1969. Therefore, the documents you will have to present are the following:

1. A declaration containing complete answers to the following questions:
   (a) Have you or ever had plants or branch factories or assembly plants in Israel?
   (b) Have you or ever had any offices in Israel for regional or international operations?
   (c) Grant or ever granted the right of using trade names, trademarks, manufacturing rights, patents, copyrights, etc., in Israel, persons or firms?
   (d) Participate or own stock, now or in the past, in Israeli firms or businesses?
   (e) Represent or ever represented any Israeli firm or businesses in Israel or abroad?
   (f) Render or ever rendered any technological assistance to any Israeli firm or businesses?
   (g) A statement showing the names and nationalities of all companies into which your company and the Bulova Foundation hold shares or with which they are associated, as well as the percentage of the shareholding or the total capital of each of them.
   (h) A copy of the Articles of Association of the Bulova Foundation.
   (i) A statement showing the exact and detailed nature of relationship between your company and the Bulova Foundation either materially or morally.
   (j) An official copy of the Articles of association of your company.
   (k) A detailed statement showing all donations or subsidies given by the Bulova Foundation to Israel, including their amount of watch or machine factory to Israel.
   (l) A document to the effect that your company, the Bulova Foundation, any of their subsidiaries, companies, their owners or the members of the Boards of Directors of all the said companies are not joining any organization, consultancy or societies working for the interests of Israel de facto or in fact, whether they are situated inside or outside Israel; as well as the undertaking that of the above organizations, consultancies or societies you give or collect donations to any of them.
   (m) An undertaking to the effect that the Bulova Foundation will perform, in regard to donations a similar action for the benefit of the Arab countries at least similar in volume and nature to what is presented to Israel.

We should draw your kind attention to the fact that all of the above stated documents should be duly certified by your chamber of commerce or industry, or presented before a notary public and then authenticated by the closest competent or diplomatic mission of any Arab country. Moreover, the legalized original of the said documents will have to be accompanied with an Arabic translation of each of them in 2 copies.

Very truly yours,

MOHAMMED MAHMOUD MADHUR,
Central Office for the Disposal of Israel.
APPENDIX J

ORIGINAL ILLUSTRATION TO BE FURNISHED
APPENDIX

To: Mr. Astoria, President, American Jewish Congress, 3620 Wilson Blvd., Arlington, Va.

From: Mr. A. Murphy, Chairperson.

Subject: Appointments of American Company Directors on Joint Ventures in Arab Countries.

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We are aware of no communication to General Motors or any of its officers or directors demanding or requesting that General Motors discriminate against any American corporation by virtue of its having Jewish directors, stockholders, officers, employees, etc. If there were any such demandly we request it would be against General Motors' policy to comply.

Occasionally General Motors has received inquiries as to its relationship with, or interest in, one of the Israeli distributors of an American boycotted company. We have regretted to respond by furnishing the required factual information in a reasonable effort to avoid being used as an Arab boycott list, either that we have refused to supply such information. Our business policies and practices have not been affected by these inquiries.

General Motors has received occasional requests from Arab countries that it agree to participate in future dealings with Israel or with Israeli companies. General Motors has made no such agreements and would not make any such agreements.

Just as any other American company doing business with Arab countries, General Motors also receives requests for certification as to the origin of products involved in a particular transaction; the boycott status of the producer; and the origin and boycott status of the freight transacting the goods. As you know, such requests are prerequisite to payment, certification of documents and/or importation of products in particular transactions and we have generally complied with them on a factual basis. We don't believe that these types of certification by General Motors further the Arab boycott. It has been brought to our attention, however, that our compliance with some of the above certification requirements is a source of concern to the A.J.C. We, therefore, writing to endeavor to substinate the following certifications: The products are exclusively of U.S. origin; the producer of the products is General Motors. 

Enclosure.

EMPLOYMENT PRACTICES

Especially basic to the conduct of General Motors' business is its long-standing worldwide policy against discrimination of any kind in employment practices. We extend employment opportunities to qualified applicants and employees on an equal basis regardless of race, color, sex, religion, political persuasion or national origin. In this connection, if a candidate selected for an overseas assignment were refused a visa on any basis, we would request the U.S. Department of State, through diplomatic channels, to seek inquiry by the candidate.

BUSINESS OR TRADE AGREEMENTS WITH ARAB COUNTRIES OR ISRAEL.

Consistent with the above policies, General Motors sells its products to distributors, dealers and other customers in Israel and in Arab countries and "we participate in a recently established joint venture in Saudi Arabia which contemplates the assembly and sale of vehicles in that country." It would be our intention to explore opportunities for ventures in other Middle Eastern countries, including Israel, and we are not limited, nor would we agree to be limited, in any way as to such exploration other than by the economics of the venture itself. The nature of General Motors' business is such that it is not unusual for us to purchase goods or materials either from Israel or from Arab countries.

ARAB COUNTRY DEMANDS OR REQUESTS AND GENERAL MOTORS' PRACTICE WITH RESPECT TO COMPLIANCE.

We are aware of no communication to General Motors or any of its officers or directors demanding or requesting that General Motors discriminate against any American corporation because of its having Jewish directors, stockholders, officers or employees. If there were any such demand or request it would be against General Motors' policy to comply.

Occasionally General Motors has received inquiries as to its relationship with, or interest in, one of the Israeli distributors of an American boycotted company. We have regretted to respond by furnishing the required factual information in a reasonable effort to avoid being used as an Arab boycott list, either that we have refused to supply such information. Our business policies and practices have not been affected by these inquiries.

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Motors Corporation, the producer of the products is, the name of
the vessel is, and it is owned or chartered by.

We, of course, no assurance that such changes would be acceptable to Arab
countries.

Another certification which some Arab countries have required the exporter to
furnish, when it is responsible for insuring the products being shipped, before
the shipping documents will be consularized is a certificate issued by the insur-
ance carrier stating that it is not on an Arab Boycott list. Consularization is a
prerequisite to payment for the products. General Motors has furnished such a
certificate issued by the company which has been its marine insurance carrier for
more than half a century. We have been advised, however, that the insurance
company will no longer issue such a certificate and we are endeavoring to have
this Arab country requirement eliminated.

GENERAL MOTORS CORPORATION

It is General Motors' policy to report to the Department of Commerce all re-
quests received by it from Arab countries for actions that might have the effect
of furthing or supporting a restrictive trade practice or boycott against Israel.
We do not, however, report requests received from Arab countries (or from Israel
as well) that products not be shipped on a vessel of Israeli (or Arab country)
nationality or on a vessel calling at an Israeli (or Arab country) port or route
to its destination. The USA Department of Commerce receives such requests as
being reasonable precautions in view of the risk of confiscation of the
products being shipped. In such cases, the Department does not consider the
requests to be restrictive practices which are required to be reported.

I appreciated the opportunity of talking to you and verifying views on this
sensitive and complex subject which affects and benefits so many. We in
General Motors believe our policies and practices have been, are, and still con-
tinue to be, proper and fair to all concerned.

I trust that my letter is responsive to the various items of information re-
quested in the AIC's proposal and look forward to an AIC letter withdrawing
the resolution. I know that you, as well as I, would much prefer to arrive at a
situation which would avoid the appearance of our being in an adversary position.
Such a position would likely happen, however, or be inferred, to be the case if the
AIC proposal were to be approved in our 1973 Proxy Statement and presented for
discussion and action at the Annual Meeting. I feel advised that you share with
me the conviction that this proposal, which in fact does not exist, would not serve our best corporate interests.

Sincerely,

T. A. MISLEY