The original documents are located in Box 4, folder "Arab Boycott - Charls E. Walker Correspondence" of the John Marsh Files at the Gerald R. Ford Presidential Library.

September 3, 1976

MEMORANDUM TO THE PRESIDENT

Last night I discussed the contents of the enclosed "game plan" on the Arabian boycott amendments to the Export Administration Act with John Marsh and John Connally. This morning I talked with Reg Jones, head of General Electric.

Jack Marsh has reservations about the "veto strategy" but as of last night Connally did not. However, he can speak for himself.

The business community has "stayed in the woods" with respect to the unacceptable Stevenson amendment to the Act (but which is not as bad as the Bingham amendment). However, I think it might work strongly and actively for rejection or amendment of Bingham on the House floor.

As you know, time is very short. The rule may be obtained next week with floor action shortly thereafter. If you were to accept our suggested strategy, we would recommend that, under your direction, Marsh and Friedersdorf be in complete charge of the effort, calling on departmental people as they see fit. I would attempt to coordinate the efforts in the business community (something that I've done successfully up to now, in working to "defang" the Ribicoff boycott amendment to the tax bill).

I shall be around all week -- in my office (785-9622), at home (232-7470), or at Burning Tree.

(Incidentally, we are working for Bechtel, Dresser, Fluor, and Pullman-Kellogg on this project, and our principal contact is George Shultz.)

As always, yours to count on.

Respectfully,

Alan

P. S. Please excuse the strong language of parts of the "game plan." I do not have time to revise it so as to tone it down.

cc: John O. Marsh, Jr.
Max Friedersdorf

Stevenson and Bingham Amendments to the Export Administration Act.

The principal significance of the 27-1 vote in favor of the Bingham amendment by the House International Relations Committee is that an alternative amendment is now the only hope to defeat this legislation or make it acceptable. The Bingham amendment amounts to a comprehensive counter boycott of Arab countries by the U. S. on behalf of Israel. There is simply no other way to describe it. What's more, it can be enforced by private citizens through lawsuits for treble damages which goes way beyond antitrust restrictions and which would affect foreign policy.

The legislative options are:

- Delay of the legislation at Rules Committee, consideration on the House floor and conference, all of which are almost certain to fail leaving the Administration with a veto decision at the end with inadequate groundwork laid to even prevent an override. Any debate on the bill must be shifted from moral issues to foreign policy ones if a veto is to be successful and still minimize the political damage. This can only be accomplished through a floor fight in the House over an alternative that aggressively supports the moral issues; or

- Ultimate acceptance of dangerous and unacceptable legislation. This leaves the Administration in a position of opposition to something "morally right," leaves the next President with an impossible and dangerous foreign policy situation and still leaves the Administration with all the negative political consequences of a veto and in addition gives the appearance of a weak position on foreign policy taken under pressure of the election campaign. This appears to be a "no win" position.

- Veto. There are actually two options here. A veto based on the current Administration position or a veto based on rejection of a "morally right" but less risky alternative to the current bills. This last option appears better since some public support could be gained through a carefully planned floor fight and, the adverse political consequences would be minimized. Also, it holds at least a small prospect of being successful. The members must have a "morally right" alternative to vote for. They cannot and will not vote against the current legislation at this point. If not successful on the House floor, the ultimate veto could most probably be sustained if an acceptable alternative could not then be worked out in conference. A veto based on the current Administration probably could not be sustained and the Administration would be castigated for placing dollars and foreign policy over human values -- a definite campaign issue. The veto from the "alternative" position is at least a defensible campaign issue and risks alienating the smallest number of voters.

The case to be made is basically that the Administration is absolutely opposed to discrimination on the basis of race, religion or national origin and supports legislation to prevent it. The Administration is opposed to the application of the boycott against U. S. companies and any interference by a foreign power in our internal affairs and relationships. The only relevant difference of opinion is how best to eliminate those aspects of the boycott which are agreed by all to be objectionable? The proponents of the current amendments may be right and the Arab states will terminate those aspects of the boycott which are being applied to U. S. citizens and companies simply to keep access to U. S. goods and services. They also may not react adversely in a way that worsens our energy problems, inflation and weakens our foreign policy position of peacemaker in the Middle East. They may be right but all indications are they are wrong. If they are wrong are you each willing to accept responsibility for the adverse and possibly severe consequences, particularly when the basic moral values of this country and its people can be protected and enforced without substantial risk of other adverse consequences? The "Administration alternative" allows us to protect and enforce our moral values, and gradually terminate objectionable aspects of the boycott not related to those moral issues with minimum risk of adverse consequences as a result of this legislation.

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MEMORANDUM re: Bingham and Stevenson Amendments to Export Administration Act

A. Assessment of Current Situation.

The 27-1 vote on the Bingham amendment clearly points out the problem on this legislation. The Bingham amendment amounts to a counter boycott against the Arab States which boycott Israel. It, for all intents and purposes, bars any U.S. trade with Arab States unless they terminate virtually all aspects of the boycott. Yet, there was hardly a voice raised in protest about the unreasonableness of the specific language.

Moreover, the prohibitions could be enforced in effect, by private citizens, through lawsuits for treble damages. Even if such suits have no merit the mere threat would be sufficient in many instances to convince a company not to do business in any Arab country. Given the current U.S. dependence on oil from the Middle East and the economic and social consequences of substantial reductions in supply or increases in price, the immediate loss of business and jobs in the U.S. seems minor in comparison. Other consequences relate to balance of payments, dollar value in world markets and a greatly impaired ability to be able to stop another major war in the Middle East - much less negotiate a peaceful settlement.

The Bingham amendment was available to most members of the Committee on Friday, August 27. When the Committee met on Tuesday, August 31, these issues were hardly even raised, much less discussed. The particular effect of the specific language was not discussed at all. The discussion - no debate - centered on the moral issue. Only a few Members even alluded to the risks generally involved in legislation of this type. No alternatives were offered and every member present, but one, made it clear they would not vote against legislation of this type. Some would have voted "yes" on a more moderate alternative, so long as it prohibited discrimination on the basis of race, religion and national origin, and did not acquiesce in the interference and coercion by a foreign power in the business relationships between U.S. companies and with any other country.

This is a committee, the members of which are accustomed to discussing sensitive issues of foreign policy, which type of discussion was very evident the following day on other amendments. It therefore appears that the only approaches to oppose such extreme and sensitive legislation is through delays which avoid debate and voting on the record or through moderate legislative alternatives that also meet the moral issues involved, i.e. that meet the same objectives with less risk of confrontation and adverse consequences.

The conclusion, therefore, is that if this legislation cannot be delayed until the existing law expires and Congress adjourns, then a single legislative alternative must be proposed on the floor of the House that contrasts with the Bingham and Stevenson amendments only with regard to reduction of the risk of confrontation and adverse foreign policy consequences. It must be one which can be shown to support the same basic objectives of prohibiting discrimination on the basis of race, religion and national origin as well as ending the application of the boycott by and against U.S. companies through foreign coercion.

The only question raised for debate should be the best way to end the application of certain aspects of the boycott against U.S. companies. No Congressman can responsibly support a position which opposes passing any legislation at this point and virtually none will do so. Yet this is the stated position of the Administration at this time. Thus it is clear that the Administration position will be overwhelmingly defeated if it is not altered.

Otherwise, if the Administration maintains its current position of no legislation, it must clearly and unequivocably be prepared to veto any bill coming out of conference, and try to prevent an override to succeed. It is extremely doubtful that it could prevent an override from its current position. The moral issues will be characterized as outweighing the risks and therefore the risks and adverse consequences must be accepted. What is "right" must be done even if it hurts. What's more, the Administration will be characterized as valuing dollars over human rights and thus as immoral. Not only is that a "no win" position, it is futile and an unnecessary result.

If the only choice is an unsuccessful veto characterized as immoral, or acceptance of extremely dangerous and irresponsible legislation from a foreign policy standpoint, that is no choice.

If, ultimately, irresponsible legislation can only be prevented by a veto, then the veto must clearly be demonstrated to be on moral and responsible grounds. A compromise cannot be negotiated on the House floor if the International Relations Committee members would not even discuss the specific problems with parts of the amendment.

Conclusion: Present an alternative on the floor that clearly and decisively supports the moral issues raised but avoids the most dangerous risks of the Bingham and Stevenson amendments. It must center the debate on the best way to end the boycott while preventing interference by a foreign power in the internal affairs of the U.S. It must be presented as a total package, a plan, a total course of action.

The force and power of the argument itself may succeed, particularly if it is understood by most Members as supportive of Jews and Israel. Thus it should be a simple alternative requiring only minor amendments. It must be drafted from the Bingham or Stevenson amendments (preferably the latter) using their language as much as possible. It could be presented as an amendment or a substitute depending on the nature of the alternative. This point needs careful consideration but a substitute seems preferable if the support of the moral issues is to be decisively and clearly presented. How will a motion to strike the section on private right of action be perceived, for example. It seems to be better to have one vote up or down on an alternative that contains the identical language on discrimination as the Stevenson or Bingham amendments.

Take the best of both or draft from the Stevenson amendment since it takes less alteration. Bingham will say it does nothing about secondary aspects, only tertiary, but that can be amended and made workable through exceptions relating to respect for the laws of a foreign sovereign, etc. (It may also be possible to take language from the Ribicoff amendment to the tax bill since it will probably be finished by the time of the House debate on the Export Administration Act and very well could be acceptable to the Administration.)

The advantage is a floor debate in the House where everyone can agree on and support the moral issues. It not only lays groundwork to prevent override of a veto if necessary, it can be decisive to gain the necessary public support or at least avoid massive adverse public reaction even in the Jewish community. Even if the vote on the alternative fails it will force the issue in contention on to the foreign policy issues, not the moral ones. The conference report compromising between Stevenson and Bingham could at least then be vetoed with the minimum possible adverse public impact.

If it might become a campaign issue, which it well could with George Meany strongly supporting the Ribicoff amendment, then the impact on the campaign could also be minimized. Depending on luck and skill it might

Timing of the veto should be considered in this regard. A good rule of thumb is if the veto proves necessary, then the sooner the better.

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1. Delay the bill in Rules Committee. This may be possible but a repeat of the International Relations Committee vote is more probable. The major Jewish organizations will most likely blitz the Members who will also have no alternative to support. What's more, if a permanent delay until adjournment is not won, then the veto comes later rather than sooner and after more and more members are locked in. Even if successful, the public and Jewish reaction will be virtually identical to a veto based on the current Administration position on "no legislation." It would become a major campaign issue in either case and cost more Jewish votes than the "alternative approach."

2. Delay floor consideration until adjournment. This appears to be only theoretical since there is no apparent way to accomplish it unless the Speaker simply refuses to place it on the Calendar. He could be easily overridden by the Democratic caucus. Likewise, many Republicans in tough races won't support such an approach. This approach would put many Members not only in an impossible position, but also jeopardize their campaigns for reelection. The President can ill afford the loss of support of these Members it seems if an alternative is available.

3. Delay the bill in conference until adjournment. This approach has only slightly more of a chance to succeed. A majority of conferees on both sides would have to support it, and merely reviewing possible conferees makes such an approach appear futile. The Administration will still be faced with a veto of a bill somewhere between Stevenson and Bingham. This puts the veto in the same light as the "no legislation" position outlined above.

4. Defeat the Conference Report. Not worth considering.

5. Veto. The odds have to be that a veto will be the ultimate decision. If nothing more is done than has been done to date by the Administration, there then is a high likelihood of a successful override--the worst of all worlds. The basic question seems not to be whether to veto but what to veto.

The alternative is accepting unacceptable and dangerous legislation. The only chance to avoid a veto appears to be adoption of an acceptable alternative on the House floor. At least if that approach fails, which is more likely than not, the political effect of a veto would be minimized and more acceptable than any other alternative except signing a Stevenson/Bingham compromise out of conference. The problem with that is that the next President will have to live with the consequences in the Middle East as a result. Only the President can determine if those consequences will be acceptable.

6. One additional option is to wait until conference to offer an alternative. This simply does not appear to be feasible. If there is no fight on the House floor, then a conference can only result in an unacceptable compromise between Stevenson and Bingham since Stevenson is the best that could be obtained, and it is itself unacceptable (unlikely could even get that under these circumstances). Further, the Administration will still be characterized as in opposition and insensitive to the moral issues. A veto would still be necessary and most likely overridden--again the worst of all worlds. The only way to get a

acceptable bill out of conference is to pass a more moderate alternative than the Stevenson amendment on the House floor. A modified Stevenson alternative approved on the House floor, if aggressively pushed, could stand a good chance of coming out of conference in acceptable form. At least if it does not, a veto is, again, less damaging.

The Senate conferees would probably be Stevenson, Proxmire, Williams, McIntyre, Cranson, Biden, Tower, Helms and Garn. The mix on the House side is uncertain, but would be at least 2-1. Bingham, who is twelfth in line, would have to be included and it would certainly be in the Administration's interest to assure that Hamilton (tenth) is also included on the Democratic side. If the split were roughly 10-5, at least Derwinski, Findley, and Buchanan would be on the conference.

7. There is a possible seventh option with a jurisdictional conflict with the Joint Committee on Atomic Energy, but that jurisdictional question would appear to have been resolved, and this strategy negated as an option by the action of the Committee to introduce a clean bill to be reported out by the House International Relations Committee rather than H. R. 7665 (which is the simple extension with amendments. Speaker Albert indicated on Wednesday, September 1, that in the latter case when the amendment on nuclear proliferation comes up, he would rule that it had to be co-referred to the Joint Committee. On the other hand, the clean bill, H. R. 15377, incorporating all amendments will be referred solely to International Relations.

Two final notes on a veto strategy: (a) A much stronger case for a veto could obviously be made on the Bingham amendment than the Stevenson amendment. The Bingham amendment can be clearly shown to establish a counter-boycott on behalf of Israel since it is so extreme. It is highly vulnerable to a moderate "alternative" which also prohibits the most objectionable forms of discrimination. It can also be accurately characterized as almost certainly confrontations, and dangerous in the extreme. If the alternative loses on the floor, the Bingham language is much easier to veto than Stevenson. If the alternative is aggressively presented on the floor there is a slight chance even of getting it adopted in conference. That depends on the floor debate. The most effective Members from both sides of the aisle who do not have the right races in districts with a high percentage of Jewish voters will have to be encouraged to make the case for the alternative. Strong conservatives with safe seats and no Jewish voters are not going to be too credible or effective.

(b) It is absolutely critical to any strategy that it be agreed to and fully supported from the outset by the President and with the full support and cooperation of State, Treasury, Commerce, NSC, White House Congressional Relations, and the Campaign Committee. We could volunteer to coordinate strategy with Counsel Marsh. It is critical because the Congressmen making this fight must know and be able to say that they have full, unqualified support of the President. The veto threat must be stated in no uncertain terms at the time of the House floor fight on the House International Relations Committee bill.

C. The Basic Case

1. We are absolutely opposed to discrimination against U. S. citizens on the basis of race, religion or national origin. Such discrimination is morally repugnant to the values we hold in this nation. (The alternative proposal should adopt the relevant language of Stevenson or Bingham amendments. The problem with the Administration legislation is that it contains a private right of action authorization which can result in private lawsuits adversely affecting foreign policy.)

2. We are absolutely opposed to the boycott and are committed to do everything to end its application to U. S. citizens and companies. The only relevant question is how to best achieve that goal.

The proponents of the current amendments may be right. The Arabs may drop the boycott in order to obtain U. S. goods and services without any retaliation or adverse consequences to our energy problems and foreign policy to promote peace in the Mideast. But we don't think the Arabs will drop the boycott. We think also that they may react adversely. Can we eliminate discrimination against U. S. citizens on the basis of race, religion and national origin and the application of objectionable aspects of the boycott to U. S. companies without the risk of these adverse effects? Yes, at least we can do so and greatly minimize those risks.

If these amendments are passed in their current form and their proponents prove to be wrong about the Arabs dropping those aspects of the boycott that relate to U. S. companies, are you willing to accept the adverse consequences? Particularly when we can achieve the identical goals without those risks? Are you willing to accept responsibility for those consequences when the same goals can be achieved without substantial risk of precipitating those consequences? More is involved than just some business for U. S. companies and the jobs that go with that business. There is no certainty that we could limit the adverse consequences to those alone. If you prove to be wrong, are you willing to take the more difficult and dangerous steps to resolve those consequences? Particularly when we can achieve the same goals without such confrontation?

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1. We are absolutely opposed to discrimination against U. S. citizens on the basis of race, religion or national origin. Such discrimination is morally repugnant to the values we hold in this nation. (The alternative proposal should adopt the relevant language of Stevenson or Bingham amendments. The problem with the Administration legislation is that it contains a private right of action authorization which can result in private lawsuits adversely affecting foreign policy.)

2. We are absolutely opposed to the boycott and are committed to do everything to end its application to U. S. citizens and companies. The only relevant question is how to best achieve that goal.

The proponents of the current amendments may be right. The Arabs may drop the boycott in order to obtain U. S. goods and services without any retaliation or adverse consequences to our energy problems and foreign policy to promote peace in the Mideast. But we don't think the Arabs will drop the boycott. We think also that they may react adversely. Can we eliminate discrimination against U. S. citizens on the basis of race, religion and national origin and the application of objectionable aspects of the boycott to U. S. companies without the risk of these adverse effects? Yes, at least we can do so and greatly minimize those risks.

If these amendments are passed in their current form and their proponents prove to be wrong about the Arabs dropping those aspects of the boycott that relate to U. S. companies, are you willing to accept the adverse consequences? Particularly when we can achieve the identical goals without those risks? Are you willing to accept responsibility for those consequences when the same goals can be achieved without substantial risk of precipitating those consequences? More is involved than just some business for U. S. companies and the jobs that go with that business. There is no certainty that we could limit the adverse consequences to those alone. If you prove to be wrong, are you willing to take the more difficult and dangerous steps to resolve those consequences? Particularly when we can achieve the same goals without such confrontation?

cc: Mr. John Marsh

PERSONAL & ~~CONFIDENTIAL~~

Date September 8, 1976

From the desk of **Charls E. Walker**

To: Congressman James H. Quillen

Our study of the foreign boycott provisions of H. R. 15377, the extension of the Export Administration Act, indicates some very severe problems that would arise from enactment. Since this bill is to be considered by the Rules Committee tomorrow, September 9, I thought you might be interested in the attached material.

Identical note sent to:

John B. Anderson
Delbert L. Latta
John Young
Trent Lott
Del Clawson
Richard Bolling

September 8, 1976

SUMMARY AND ANALYSIS OF THE BINGHAM AMENDMENT
TO THE EXTENSION OF THE EXPORT ADMINISTRATION ACT
AS REPORTED BY HOUSE INTERNATIONAL RELATIONS COMMITTEE (H.R. 15377)

This legislation amends sections 3 and 4 of the Export Administration Act of 1969 (50 U.S.C. 2401, et.seq.) to change the policy of the United States regarding opposition to economic boycotts imposed by other countries against countries friendly to the United States.

It would first amend section 3(5)(B) [50 U.S.C. 2402 (5)(B)] by changing the current statement of policy which is to "encourage and request" U.S. companies engaged in export to refuse to take any action, including "the furnishing of information or the signing of agreements," which has the effect of furthering or supporting boycotts against countries friendly to the United States to a statement of policy which "requires" U.S. companies engaged in export to refuse to take any action, including, "furnishing information or entering into or implementing agreements," which has the effect of furthering or supporting such boycotts.

The effect of the amendment to this section is to make it the policy of the U.S. not only to oppose such boycotts but also to strictly prohibit U.S. firms from directly complying or doing anything which might be construed as supporting the boycott rather than to discourage compliance. The only effective way for the government to "require" U.S. firms to "refuse" to do anything to support the boycott is to strictly prohibit any compliance.

The current policy also relates only to directly furnishing information or executing specific agreements which would discriminate against a U.S. citizen on the basis of race, religion, or national origin or to refuse to deal with certain U.S. companies because they have Jews in their management or on their board of directors or to refuse to deal with other U.S. companies solely because they do business in Israel.

There is no argument, difference of opinion, or otherwise that U.S. firms doing business in Arab countries should not agree to take such actions against U.S. citizens or other U.S. firms on behalf of or at the specific request of a foreign country. Furthermore, requests for such actions would be required to be reported to the Secretary of Commerce and are subject to penalties under the law.

The change in language from "signing agreements" to "entering into or implementing agreements" would appear to extend the prohibition to any course of conduct which might appear to support the boycott. This language appears to be so broad that a violation could easily be alleged even though the conduct in fact was related to normal and prudent business judgments, not to any boycott considerations. The firm charged with such a violation would then be placed in the position of proving a negative. Such a course of conduct might relate, for instance, only to compliance with the customs laws of an Arab country that bar the importation of certain goods or services, which bar is imposed for reasons other than the boycott. This places the U.S. government, firms and individuals in the position of trying to determine the motivations behind the sovereign acts of a foreign country. A U.S. firm may be then placed in the position of having to prove such a bar to imports of certain goods was not motivated by boycott considerations but something else which could well prove impossible.

The uncertainties involved because of the breadth and lack of clarity, coupled with severe penalties, will probably result in most U.S. companies refusing to seek or do business in Arab countries, which for all intents and purposes amounts to a counter-boycott.

That this amendment is intended as an absolute prohibition of any conduct or discrimination on the basis of race, religion or national origin, is clearly apparent from the new language added to section 4. Moreover, such prohibitions, besides being enforced by the government, and attended with all the problems of proving a negative required of any person charged with a violation, could be enforced through private lawsuits by private citizens for treble damages, court costs and attorney's fees under amendments proposed by new subsection (6)(g). The potential for abuse by such actions is great and could materially interfere in the conduct of foreign policy. Such a threat, in addition, would further discourage companies from doing any business in the Mideast - again, it would institute a counter-boycott.

The amendments to section 4, adding a new subsection (j)(2), are the crux of the problem posed by this legislation.

Paragraph (A) requires that no person "shall take any action with intent to comply with or to further or support any trade boycott fostered or imposed by any foreign country against a country which is friendly to the United States." It does provide that the mere absence of any business with Israel does not indicate intent. The company would still have to prove that the absence of business in Israel was not connected to any desire to do business with an Arab country if any question is raised about that company's conduct in an Arab country or with another U.S. firm.

The language "intent to comply with or to further or support" is all encompassing, impossible to prove in the negative and would inject great uncertainty into any business venture. That uncertainty will most likely be so great as to prevent most firms from doing any business in an Arab country that supports the boycott. Almost any course of conduct in negotiating a contract, obediance to laws of a host country or otherwise conducting a business transaction that selects one firm over another could be alleged to be a boycott related action or to be intent to comply with the boycott. This would be the case even if the action represented normal, prudent business judgment. But the company involved would have to then somehow prove to the satisfaction of the Secretary, or to a judge or jury if a private right of action is brought, that it did not take such action with intent to comply - that is, prove a negative.

Subsection (B) specifies particular acts that are prohibited when coupled with the required intent to comply with the boycott. These are listed for the purpose of the Secretary of Commerce enforcing the prohibition in (A). Neither the Secretary nor a private person would be limited to proving the transactions set out in (B) if intent to comply is otherwise shown.

Paragraph (B) prohibits discrimination on the basis of or furnishing information about any U.S. person related to race, color, religion, sex, nationality or national origin. It also prohibits any U.S. firm or person from boycotting or refraining to do business with Israel; with any business firm, national or resident of Israel; or with any firm or person which has done, does, or proposes to do business with or in Israel. No firm could furnish information about any past, present or proposed business relationship with or in Israel or with any other U.S. firm, or whether such other U.S. firm has done, does or proposes to do any business with or in Israel.

Under these restrictions a firm could not even certify that goods were not of Israeli origin, which fact relates only to the primary boycott. Intent in virtually all instances is subjective and must be shown by proving a pattern or course of conduct. It would have to be shown by circumstances, such as consistently not dealing with a particular U.S. firm. Such conduct, however, could be the result of normal business judgments based on quality of or ability to deliver a product on time, inability to produce goods or services of sufficient quantity, etc. The problems raised are formidable and have not been examined to any degree. The language of this amendment amounts to a total and absolute prohibition against any compliance with the boycott, even innocuous provisions. Such an absolute prohibition amounts to a counter-boycott of Arab States by the U.S. which is not desirable. This was pointed out in the Senate Banking Committee report on S. 3084, at page 21 as follows:

> As noted, the Committee was urged by some to ban any and all forms of compliance with the boycott. It concluded, however, that such a ban would be unfair to many U.S. firms, would be of little benefit to the United States, and would deprive the President of desirable flexibility in the conduct of U.S. foreign policy.
>
> As absolute prohibition against compliance with foreign boycotts would be tantamount to a counter-boycott. For example, if one country conditions U.S. business relations with it on a refusal to do business with another, U.S. firms could not lawfully comply with those terms. If a firm did do business with the boycotting country but not with the other, it would run the risk of apparent compliance with the boycott, regardless of the reasons why it had no business relations with the boycotted country.
>
> A firm may simply have no business opportunities or interest in that country. Yet on its face, its behavior would be indistinguishable from compliance with the boycott. Rather than risk being charged with compliance, many would undoubtedly choose to terminate business relations with the boycotting country or refrain from developing them in the first place. The result would be a counter-boycott.
>
> In the present context, such a policy would deprive U.S. businesses which have no opportunities or interest in Israel of legitimate business opportunities in the Arab states. Others might simply source their sales to the Arab states from foreign subsidiaries in order to circumvent U.S. law. In any event, U.S. trade relations would be severely impaired without any corresponding benefit to the United States. The termination of U.S. business relations with the Arab states is a weak reed for attempting to end the long-standing boycott against Israel. Other avenues, including progress toward an overall settlement of the Middle East question, offer more promise.
>
> For these reasons, the Committee has focused its efforts on creating public accountability and an environment for resisting boycott demands while recommending specific prohibitions only on attempts to interfere with relations among U.S. citizens and other repugnant dimensions of foreign boycotts.

Furthermore, the House-Senate conference on the tax bill is currently considering the Ribicoff amendment to the tax reform bill which also deals with the Arab boycott. The conference should complete that bill in just a few days. It is not certain just how those provisions are to be administered but they should be reviewed in order to eliminate overlapping and conflicting jurisdiction and enforcement if at all possible.

THE WHITE HOUSE

WASHINGTON

September 7, 1976

MEMORANDUM FOR: RUSS ROURKE

FROM: JACK MARSH Jack

I want you to set up a meeting this morning with Charls Walker, Brent Scowcroft, Bill Hyland, Max, Seidman or Gorog, Ed Schmults and Jim Cavanaugh. I want that group to meet together without Walker first and then set up the meeting with Walker for around 10:00 or 10:30.

Many thanks.

September 3, 1976

MEMORANDUM TO THE PRESIDENT

Last night I discussed the contents of the enclosed "game plan" on the Arabian boycott amendments to the Export Administration Act with John Marsh and John Connally. This morning I talked with Reg Jones, head of General Electric.

Jack Marsh has reservations about the "veto strategy" but as of last night Connally did not. However, he can speak for himsel

The business community has "stayed in the woods" with respect to the unacceptable Stevenson amendment to the Act (but which is not as bad as the Bingham amendment). However, I think it might work strongly and actively for rejection or amendment of Bingham on the House floor.

As you know, time is very short. The rule may be obtained next week with floor action shortly thereafter. If you were to accept our suggested strategy, we would recommend that, under your direction, Marsh and Friedersdorf be in complete charge of the effort, calling on departmental people as they see fit. I would attempt to coordinate the efforts in the business community (something that I've done successfully up to now, in working to "defang" the Ribicoff boycott amendment to the tax bill).

I shall be around all week -- in my office (785-9622), at home (232-7470), or at Burning Tree.

(Incidentally, we are working for Bechtel, Dresser, Fluor, and Pullman-Kellogg on this project, and our principal contact is George Shultz.)

As always, yours to count on.

Respectfully,

Alex

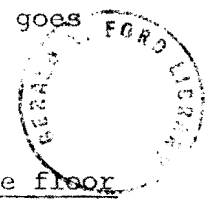
P. S. Please excuse the strong language of parts of the "game plan." I do not have time to revise it so as to tone it down.

cc: John O. Marsh, Jr.
Max Friedersdorf

SUMMARY OF MEMORANDUM ON ANTI-BOYCOTT LEGISLATION

Stevenson and Bingham Amendments to the Export Administration Act.

The principal significance of the 27-1 vote in favor of the Bingham amendment by the House International Relations Committee is that an alternative amendment is now the only hope to defeat this legislation or make it acceptable. The Bingham amendment amounts to a comprehensive counter boycott of Arab countries by the U. S. on behalf of Israel. There is simply no other way to describe it. What's more, it can be enforced by private citizens through lawsuits for treble damages which goes way beyond antitrust restrictions and which would affect foreign policy.



The legislative options are:

- Delay of the legislation at Rules Committee, consideration on the House floor and conference, all of which are almost certain to fail leaving the Administration with a veto decision at the end with inadequate groundwork laid to even prevent an override. Any debate on the bill must be shifted from moral issues to foreign policy ones if a veto is to be successful and still minimize the political damage. This can only be accomplished through a floor fight in the House over an alternative that aggressively supports the moral issues; or

- Ultimate acceptance of dangerous and unacceptable legislation. This leaves the Administration in a position of opposition to something "morally right," leaves the next President with an impossible and dangerous foreign policy situation and still leaves the Administration with all the negative political consequences of a veto and in addition gives the appearance of a weak position on foreign policy taken under pressure of the election campaign. This appears to be a "no win" position.

- Veto. There are actually two options here. A veto based on the current Administration position or a veto based on rejection of a "morally right" but less risky alternative to the current bills. This last option appears better since some public support could be gained through a carefully planned floor fight and, the adverse political consequences would be minimized. Also, it holds at least a small prospect of being successful. The members must have a "morally right" alternative to vote for. They cannot and will not vote against the current legislation at this point. If not successful on the House floor, the ultimate veto could most probably be sustained if an acceptable alternative could not then be worked out in conference. A veto based on the current Administration probably could not be sustained and the Administration would be castigated for placing dollars and foreign policy over human values -- a definite campaign issue. The veto from the "alternative" position is at least a defensible campaign issue and risks alienating the smallest number of voters.

The case to be made is basically that the Administration is absolutely opposed to discrimination on the basis of race, religion or national origin and supports legislation to prevent it. The Administration is opposed to the application of the boycott against U. S. companies and any interference by a foreign power in our internal affairs and relationships. The only relevant difference of opinion is how best to eliminate those aspects of the boycott which are agreed by all to be objectionable? The proponents of the current amendments may be right and the Arab states will terminate those aspects of the boycott which are being applied to U. S. citizens and companies simply to keep access to U. S. goods and services. They also may not react adversely in a way that worsens our energy problems, inflation and weakens our foreign policy position of peacemaker in the Middle East. They may be right but all indications are they are wrong. If they are wrong are you each willing to accept responsibility for the adverse and possibly severe consequences, particularly when the basic moral values of this country and its people can be protected and enforced without substantial risk of other adverse consequences? The "Administration alternative" allows us to protect and enforce our moral values, and gradually terminate objectionable aspects of the boycott not related to those moral issues with minimum risk of adverse consequences as a result of this legislation.

September 3, 1976

MEMORANDUM re: Bingham and Stevenson Amendments to Export Administration Act

A. Assessment of Current Situation.

The 27-1 vote on the Bingham amendment clearly points out the problem on this legislation. The Bingham amendment amounts to a counter boycott against the Arab States which boycott Israel. It, for all intents and purposes, bars any U.S. trade with Arab States unless they terminate virtually all aspects of the boycott. Yet, there was hardly a voice raised in protest about the unreasonableness of the specific language.

Moreover, the prohibitions could be enforced in effect, by private citizens, through lawsuits for treble damages. Even if such suits have no merit the mere threat would be sufficient in many instances to convince a company not to do business in any Arab country. Given the current U.S. dependence on oil from the Middle East and the economic and social consequences of substantial reductions in supply or increases in price, the immediate loss of business and jobs in the U.S. seems minor in comparison. Other consequences relate to balance of payments, dollar value in world markets and a greatly impaired ability to be able to stop another major war in the Middle East - much less negotiate a peaceful settlement.

The Bingham amendment was available to most members of the Committee on Friday, August 27. When the Committee met on Tuesday, August 31, these issues were hardly even raised, much less discussed. The particular effect of the specific language was not discussed at all. The discussion - no debate - centered on the moral issue. Only a few Members even alluded to the risks generally involved in legislation of this type. No alternatives were offered and every member present, but one, made it clear they would not vote against legislation of this type. Some would have voted "yes" on a more moderate alternative, so long as it prohibited discrimination on the basis of race, religion and national origin, and did not acquiesce in the interference and coercion by a foreign power in the business relationships between U.S. companies and with any other country.

This is a committee, the members of which are accustomed to discussing sensitive issues of foreign policy, which type of discussion was very evident the following day on other amendments. It therefore appears that the only approaches to oppose such extreme and sensitive legislation is through delays which avoid debate and voting on the record or through moderate legislative alternatives that also meet the moral issues involved, i.e. that meet the same objectives with less risk of confrontation and adverse consequences.

The conclusion, therefore, is that if this legislation cannot be delayed until the existing law expires and Congress adjourns, then a single legislative alternative must be proposed on the floor of the House that contrasts with the Bingham and Stevenson amendments only with regard to reduction of the risk of confrontation and adverse foreign policy consequences. It must be one which can be shown to support the same basic objectives of prohibiting discrimination on the basis of race, religion and national origin as well as ending the application of the boycott by and against U.S. companies through foreign coercion.

The only question raised for debate should be the best way to end the application of certain aspects of the boycott against U.S. companies. No Congressman can responsibly support a position which opposes passing any legislation at this point and virtually none will do so. Yet this is the stated position of the Administration at this time. Thus it is clear that the Administration position will be overwhelmingly defeated if it is not altered.

Otherwise, if the Administration maintains its current position of no legislation, it must clearly and unequivocably be prepared to veto any bill coming out of conference, and try to prevent an override to succeed. It is extremely doubtful that it could prevent an override from its current position. The moral issues will be characterized as outweighing the risks and therefore the risks and adverse consequences must be accepted. What is "right" must be done even if it hurts. What's more, the Administration will be characterized as valuing dollars over human rights and thus as immoral. Not only is that a "no win" position, it is futile and an unnecessary result.

If the only choice is an unsuccessful veto characterized as immoral, or acceptance of extremely dangerous and irresponsible legislation from a foreign policy standpoint, that is no choice.

If, ultimately, irresponsible legislation can only be prevented by a veto, then the veto must clearly be demonstrated to be on moral and responsible grounds. A compromise cannot be negotiated on the House floor if the International Relations Committee members would not even discuss the specific problems with parts of the amendment.

Conclusion: Present an alternative on the floor that clearly and decisively supports the moral issues raised but avoids the most dangerous risks of the Bingham and Stevenson amendments. It must center the debate on the best way to end the boycott while preventing interference by a foreign power in the internal affairs of the U.S. It must be presented as a total package, a plan, a total course of action.

The force and power of the argument itself may succeed, particularly if it is understood by most Members as supportive of Jews and Israel. Thus it should be a simple alternative requiring only minor amendments. It must be drafted from the Bingham or Stevenson amendments (preferably the latter) using their language as much as possible. It could be presented as an amendment or a substitute depending on the nature of the alternative. This point needs careful consideration but a substitute seems preferable if the support of the moral issues is to be decisively and clearly presented. How will a motion to strike the section on private right of action be perceived, for example. It seems to be better to have one vote up or down on an alternative that contains the identical language on discrimination as the Stevenson or Bingham amendments.

Take the best of both or draft from the Stevenson amendment since it takes less alteration. Bingham will say it does nothing about secondary aspects, only tertiary, but that can be amended and made workable through exceptions relating to respect for the laws of a foreign sovereign, etc. (It may also be possible to take language from the Ribicoff amendment to the tax bill since it will probably be finished by the time of the House debate on the Export Administration Act and very well could be acceptable to the Administration.)

The advantage is a floor debate in the House where everyone can agree on and support the moral issues. It not only lays groundwork to prevent override of a veto if necessary, it can be decisive to gain the necessary public support or at least avoid massive adverse public reaction even in the Jewish community. Even if the vote on the alternative fails it will force the issue in contention on to the foreign policy issues, not the moral ones. The conference report compromising between Stevenson and Bingham could at least then be vetoed with the minimum possible adverse public impact.

If it might become a campaign issue, which it well could with George Meany strongly supporting the Ribicoff amendment, then the impact on the campaign could also be minimized. Regarding [illegible]

Timing of the veto should be considered in this regard. A good rule of thumb is if the veto proves necessary, then the sooner the better.

B. Options

1. Delay the bill in Rules Committee. This may be possible but a repeat of the International Relations Committee vote is more probable. The major Jewish organizations will most likely blitz the Members who will also have no alternative to support. What's more, if a permanent delay until adjournment is not won, then the veto comes later rather than sooner and after more and more members are locked in. Even if successful, the public and Jewish reaction will be virtually identical to a veto based on the current Administration position on "no legislation." It would become a major campaign issue in either case and cost more Jewish votes than the "alternative approach."

2. Delay floor consideration until adjournment. This appears to be only theoretical since there is no apparent way to accomplish it unless the Speaker simply refuses to place it on the Calendar. He could be easily overridden by the Democratic caucus. Likewise, many Republicans in tough races won't support such an approach. This approach would put many Members not only in an impossible position, but also jeopardize their campaigns for reelection. The President can ill afford the loss of support of these Members it seems if an alternative is available.

3. Delay the bill in conference until adjournment. This approach has only slightly more of a chance to succeed. A majority of conferees on both sides would have to support it, and merely reviewing possible conferees makes such an approach appear futile. The Administration will still be faced with a veto of a bill somewhere between Stevenson and Bingham. This puts the veto in the same light as the "no legislation" position outlined above.

4. Defeat the Conference Report. Not worth considering.

5. Veto. The odds have to be that a veto will be the ultimate decision. If nothing more is done than has been done to date by the Administration, there then is a high likelihood of a successful override--the worst of all worlds. The basic question seems not to be whether to veto but what to veto.

The alternative is accepting unacceptable and dangerous legislation. The only chance to avoid a veto appears to be adoption of an acceptable alternative on the House floor. At least if that approach fails, which is more likely than not, the political effect of a veto would be minimized and more acceptable than any other alternative except signing a Stevenson/Bingham compromise out of conference. The problem with that is that the next President will have to live with the consequences in the Middle East as a result. Only the President can determine if those consequences will be acceptable.

6. One additional option is to wait until conference to offer an alternative. This simply does not appear to be feasible. If there is no fight on the House floor, then a conference can only result in an unacceptable compromise between Stevenson and Bingham since Stevenson is the best that could be obtained, and it is itself unacceptable (unlikely could even get that under these circumstances). Further, the Administration will still be characterized as in opposition and insensitive to the moral issues. A veto would still be necessary and most likely overridden--again the worst of all worlds. The only way to get an

acceptable bill out of conference is to pass a more moderate alternative than the Stevenson amendment on the House floor. A modified Stevenson alternative approved on the House floor, if aggressively pushed, could stand a good chance of coming out of conference in acceptable form. At least if it does not, a veto is, again, less damaging.

The Senate conferees would probably be Stevenson, Proxmire, Williams, McIntyre, Cranson, Biden, Tower, Helms and Garn. The mix on the House side is uncertain, but would be at least 2-1. Bingham, who is twelfth in line, would have to be included and it would certainly be in the Administration's interest to assure that Hamilton (tenth) is also included on the Democratic side. If the split were roughly 10-5, at least Derwinski, Findley, and Buchanan would be on the conference.

7. There is a possible seventh option with a jurisdictional conflict with the Joint Committee on Atomic Energy, but that jurisdictional question would appear to have been resolved, and this strategy negated as an option by the action of the Committee to introduce a clean bill to be reported out by the House International Relations Committee rather than H. R. 7665 (which is the simple extension) with amendments. Speaker Albert indicated on Wednesday, September 1, that in the latter case when the amendment on nuclear proliferation comes up, he would rule that it had to be co-referred to the Joint Committee. On the other hand, the clean bill, H. R. 15377, incorporating all amendments will be referred solely to International Relations.

Two final notes on a veto strategy: (a) A much stronger case for a veto could obviously be made on the Bingham amendment than the Stevenson amendment. The Bingham amendment can be clearly shown to establish a counter-boycott on behalf of Israel since it is so extreme. It is highly vulnerable to a moderate "alternative" which also prohibits the most objectionable forms of discrimination. It can also be accurately characterized as almost certainly confrontations, and dangerous in the extreme. If the alternative loses on the floor, the Bingham language is much easier to veto than Stevenson. If the alternative is aggressively presented on the floor there is a slight chance even of getting it adopted in conference. That depends on the floor debate. The most effective Members from both sides of the aisle who do not have the right races in districts with a high percentage of Jewish voters will have to be encouraged to make the case for the alternative. Strong conservatives with safe seats and no Jewish voters are not going to be too credible or effective.

(b) It is absolutely critical to any strategy that it be agreed to and fully supported from the outset by the President and with the full support and cooperation of State, Treasury, Commerce, NSC, White House Congressional Relations, and the Campaign Committee. We could volunteer to coordinate strategy with Counsel Marsh. It is critical because the Congressmen making this fight must know and be able to say that they have full, unqualified support of the President. The veto threat must be stated in no uncertain terms at the time of the House floor fight on the House International Relations Committee bill.

C. The Basic Case

1. We are absolutely opposed to discrimination against U. S. citizens on the basis of race, religion or national origin. Such discrimination is morally repugnant to the values we hold in this nation. (The alternative proposal should adopt the relevant language of Stevenson or Bingham amendments. The problem with the Administration legislation is that it contains a private right of action authorization which can result in private lawsuits adversely affecting foreign policy.)

2. We are absolutely opposed to the boycott and are committed to do everything to end its application to U. S. citizens and companies. The only relevant question is how to best achieve that goal.

The proponents of the current amendments may be right. The Arabs may drop the boycott in order to obtain U. S. goods and services without any retaliation or adverse consequences to our energy problems and foreign policy to promote peace in the Mideast. But we don't think the Arabs will drop the boycott. We think also that they may react adversely. Can we eliminate discrimination against U. S. citizens on the basis of race, religion and national origin and the application of objectionable aspects of the boycott to U. S. companies without the risk of these adverse effects? Yes, at least we can do so and greatly minimize those risks.

If these amendments are passed in their current form and their proponents prove to be wrong about the Arabs dropping those aspects of the boycott that relate to U. S. companies, are you willing to accept the adverse consequences? Particularly when we can achieve the identical goals without those risks? Are you willing to accept responsibility for those consequences when the same goals can be achieved without substantial risk of precipitating those consequences? More is involved than just some business for U. S. companies and the jobs that go with that business. There is no certainty that we could limit the adverse consequences to those alone. If you prove to be wrong, are you willing to take the more difficult and dangerous steps to resolve those consequences? Particularly when we can achieve the same goals without such confrontation?

Ribicoff amendment
IRS
Treasury
"it's OK to obey the laws, but you can't agree to obey the laws of a foreign power" —

API
Construction Industry
BE
etc. etc.

10:30 – Thursday – taken up ______.

Contacts are being made w/ Rules Committee

arguments: overkill... we have it in the tax bill etc. —

Carter – "going to stop boycott, foreign bribery etc." – Needs someone to speak w/ Andy Young —

Even if we lost it in Rules – get an open rule – Walker has all kinds of colloquys on burden created by Arab boycott – fuel crisis – etc – need people w/o Jewish constituencies to promote this —

"Peace in the Middle East" is the biggest issue – Walker has a proposed substitute amendment —

Walker is promoting at least a sustainable veto position through the press (Kraft, Will etc.)

Who can float substitute language

1. Broomfield

Treasury says your can't enter into an agreement to obey the laws of another land — then comes the problem of "course of conduct one way or the other".

ADL out now is against Stevenson amendment (they want the lor against Bingham)

Should have Stevenson amendment wrapped up tomorrow — (Conable says this subject is a major foreign policy issue and they "should have the call on this subject")

(Conable out of town - gets back tonight)

Rules Committee - will probably permit Conable to appear -

(Both in regard to this proposal and strip mining, we need the return of certain members to D.C. - some of our favorable people are out of town).

"No one is against the boycott" says the Jewish community...????)

Restons, Krafts, Brokers etc. should be incited to write in favor of this —

+ This strategy is intended to create an atmosphere that gives us enough votes to sustain and also a favorable press atmosphere.

cc: Mr. John Marsh

PERSONAL & ~~CONFIDENTIAL~~

Date September 8, 1976

From the desk of **Charls E. Walker**

To: Congressman James H. Quillen

Our study of the foreign boycott provisions of H. R. 15377, the extension of the Export Administration Act, indicates some very severe problems that would arise from enactment. Since this bill is to be considered by the Rules Committee tomorrow, September 9, I thought you might be interested in the attached material.

Identical note sent to:

John B. Anderson
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September 8, 1976

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AS REPORTED BY HOUSE INTERNATIONAL RELATIONS COMMITTEE (H.R. 15377)

This legislation amends sections 3 and 4 of the Export Administration Act of 1969 (50 U.S.C. 2401, et.seq.) to change the policy of the United States regarding opposition to economic boycotts imposed by other countries against countries friendly to the United States.

It would first amend section 3(5)(B) [50 U.S.C. 2402 (5)(B)] by changing the current statement of policy which is to "encourage and request" U.S. companies engaged in export to refuse to take any action, including "the furnishing of information or the signing of agreements," which has the effect of furthering or supporting boycotts against countries friendly to the United States to a statement of policy which "requires" U.S. companies engaged in export to refuse to take any action, including, "furnishing information or entering into or implementing agreements," which has the effect of furthering or supporting such boycotts.

The effect of the amendment to this section is to make it the policy of the U.S. not only to oppose such boycotts but also to strictly prohibit U.S. firms from directly complying or doing anything which might be construed as supporting the boycott rather than to discourage compliance. The only effective way for the government to "require" U.S. firms to "refuse" to do anything to support the boycott is to strictly prohibit any compliance.

The current policy also relates only to directly furnishing information or executing specific agreements which would discriminate against a U.S. citizen on the basis of race, religion, or national origin or to refuse to deal with certain U.S. companies because they have Jews in their management or on their board of directors or to refuse to deal with other U.S. companies solely because they do business in Israel.

There is no argument, difference of opinion, or otherwise that U.S. firms doing business in Arab countries should not agree to take such actions against U.S. citizens or other U.S. firms on behalf of or at the specific request of a foreign country. Furthermore, requests for such actions would be required to be reported to the Secretary of Commerce and are subject to penalties under the law.

The change in language from "signing agreements" to "entering into or implementing agreements" would appear to extend the prohibition to any course of conduct which might appear to support the boycott. This language appears to be so broad that a violation could easily be alleged even though the conduct in fact was related to normal and prudent business judgments, not to any boycott considerations. The firm charged with such a violation would then be placed in the position of proving a negative. Such a course of conduct might relate, for instance, only to compliance with the customs laws of an Arab country that bar the importation of certain goods or services, which bar is imposed for reasons other than the boycott. This places the U.S. government, firms and individuals in the position of trying to determine the motivations behind the sovereign acts of a foreign country. A U.S. firm may be then placed in the position of having to prove such a bar to imports of certain goods was not motivated by boycott considerations but something else which could well prove impossible.

Under these restrictions a firm could not even certify that goods were not of Israeli origin, which fact relates only to the primary boycott. Intent in virtually all instances is subjective and must be shown by proving a pattern or course of conduct. It would have to be shown by circumstances, such as consistently not dealing with a particular U.S. firm. Such conduct, however, could be the result of normal business judgments based on quality of or ability to deliver a product on time, inability to produce goods or services of sufficient quantity, etc. The problems raised are formidable and have not been examined to any degree. The language of this amendment amounts to a total and absolute prohibition against any compliance with the boycott, even innocuous provisions. Such an absolute prohibition amounts to a counter-boycott of Arab States by the U.S. which is not desirable. This was pointed out in the Senate Banking Committee report on S. 3084, at page 21 as follows:

> As noted, the Committee was urged by some to ban any and all forms of compliance with the boycott. It concluded, however, that such a ban would be unfair to many U.S. firms, would be of little benefit to the United States, and would deprive the President of desirable flexibility in the conduct of U.S. foreign policy.
>
> As absolute prohibition against compliance with foreign boycotts would be tantamount to a counter-boycott. For example, if one country conditions U.S. business relations with it on a refusal to do business with another, U.S. firms could not lawfully comply with those terms. If a firm did do business with the boycotting country but not with the other, it would run the risk of apparent compliance with the boycott, regardless of the reasons why it had no business relations with the boycotted country.
>
> A firm may simply have no business opportunities or interest in that country. Yet on its face, its behavior would be indistinguishable from compliance with the boycott. Rather than risk being charged with compliance, many would undoubtedly choose to terminate business relations with the boycotting country or refrain from developing them in the first place. The result would be a counter-boycott.
>
> In the present context, such a policy would deprive U.S. businesses which have no opportunities or interest in Israel of legitimate business opportunities in the Arab states. Others might simply source their sales to the Arab states from foreign subsidiaries in order to circumvent U.S. law. In any event, U.S. trade relations would be severely impaired without any corresponding benefit to the United States. The termination of U.S. business relations with the Arab states is a weak reed for attempting to end the long-standing boycott against Israel. Other avenues, including progress toward an overall settlement of the Middle East question, offer more promise.
>
> For these reasons, the Committee has focused its efforts on creating public accountability and an environment for resisting boycott demands while recommending specific prohibitions only on attempts to interfere with relations among U.S. citizens and other repugnant dimensions of foreign boycotts.

Furthermore, the House-Senate conference on the tax bill is currently considering the Ribicoff amendment to the tax reform bill which also deals with the Arab boycott. The conference should complete that bill in just a few days. It is not certain just how those provisions are to be administered but they should be reviewed in order to eliminate overlapping and conflicting jurisdiction and enforcement if at all possible.

The uncertainties involved because of the breadth and lack of clarity, coupled with severe penalties, will probably result in most U.S. companies refusing to seek or do business in Arab countries, which for all intents and purposes amounts to a counter-boycott.

That this amendment is intended as an absolute prohibition of any conduct or discrimination on the basis of race, religion or national origin, is clearly apparent from the new language added to section 4. Moreover, such prohibitions, besides being enforced by the government, and attended with all the problems of proving a negative required of any person charged with a violation, could be enforced through private lawsuits by private citizens for treble damages, court costs and attorney's fees under amendments proposed by new subsection (6)(g). The potential for abuse by such actions is great and could materially interfere in the conduct of foreign policy. Such a threat, in addition, would further discourage companies from doing any business in the Mideast - again, it would institute a counter-boycott.

The amendments to section 4, adding a new subsection (j)(2), are the crux of the problem posed by this legislation.

Paragraph (A) requires that no person "shall take any action with intent to comply with or to further or support any trade boycott fostered or imposed by any foreign country against a country which is friendly to the United States." It does provide that the mere absence of any business with Israel does not indicate intent. The company would still have to prove that the absence of business in Israel was not connected to any desire to do business with an Arab country if any question is raised about that company's conduct in an Arab country or with another U.S. firm.

The language "intent to comply with or to further or support" is all encompassing, impossible to prove in the negative and would inject great uncertainty into any business venture. That uncertainty will most likely be so great as to prevent most firms from doing any business in an Arab country that supports the boycott. Almost any course of conduct in negotiating a contract, obediance to laws of a host country or otherwise conducting a business transaction that selects one firm over another could be alleged to be a boycott related action or to be intent to comply with the boycott. This would be the case even if the action represented normal, prudent business judgment. But the company involved would have to then somehow prove to the satisfaction of the Secretary, or to a judge or jury if a private right of action is brought, that it did not take such action with intent to comply - that is, prove a negative.

Subsection (B) specifies particular acts that are prohibited when coupled with the required intent to comply with the boycott. These are listed for the purpose of the Secretary of Commerce enforcing the prohibition in (A). Neither the Secretary nor a private person would be limited to proving the transactions set out in (B) if intent to comply is otherwise shown.

Paragraph (B) prohibits discrimination on the basis of or furnishing information about any U.S. person related to race, color, religion, sex, nationality or national origin. It also prohibits any U.S. firm or person from boycotting or refraining to do business with Israel; with any business firm, national or resident of Israel; or with any firm or person which has done, does, or proposes to do business with or in Israel. No firm could furnish information about any past, present or proposed business relationship with or in Israel or with any other U.S. firm, or whether such other U.S. firm has done, does or proposes to do any business with or in Israel.

MEMORANDUM FROM

CHARLS E. WALKER

DATE 9/3/76

MR. PRESIDENT

WE HAVE A SET OF ALTERNATIVE AMENDMENTS IN RE ATTACHED.

CW

September 3, 1976

MEMORANDUM TO THE PRESIDENT

Last night I discussed the contents of the enclosed "game plan" on the Arabian boycott amendments to the Export Administration Act with John Marsh and John Connally. This morning I talked with Reg Jones, head of General Electric.

Jack Marsh has reservations about the "veto strategy" but as of last night Connally did not. However, he can speak for himself.

The business community has "stayed in the woods" with respect to the unacceptable Stevenson amendment to the Act (but which is not as bad as the Bingham amendment). However, I think it might work strongly and actively for rejection or amendment of Bingham on the House floor.

As you know, time is very short. The rule may be obtained next week with floor action shortly thereafter. If you were to accept our suggested strategy, we would recommend that, under your direction, Marsh and Friedersdorf be in complete charge of the effort, calling on departmental people as they see fit. I would attempt to coordinate the efforts in the business community (something that I've done successfully up to now, in working to "defang" the Ribicoff boycott amendment to the tax bill).

I shall be around all week -- in my office (785-9622), at home (232-7470), or at Burning Tree.

(Incidentally, we are working for Bechtel, Dresser, Fluor, and Pullman-Kellogg on this project, and our principal contact is George Shultz.)

As always, yours to count on.

Respectfully,

Chas

P. S. Please excuse the strong language of parts of the "game plan." I do not have time to revise it so as to tone it down.

cc: John O. Marsh, Jr.
Max Friedersdorf

SUMMARY OF MEMORANDUM ON ANTI-BOYCOTT LEGISLATION

Stevenson and Bingham Amendments to the Export Administration Act.

The principal significance of the 27-1 vote in favor of the Bingham amendment by the House International Relations Committee is that an alternative amendment is now the only hope to defeat this legislation or make it acceptable. The Bingham amendment amounts to a comprehensive counter boycott of Arab countries by the U. S. on behalf of Israel. There is simply no other way to describe it. What's more, it can be enforced by private citizens through lawsuits for treble damages which goes way beyond antitrust restrictions and which would affect foreign policy.

The legislative options are:

- Delay of the legislation at Rules Committee, consideration on the House floor and conference, all of which are almost certain to fail leaving the Administration with a veto decision at the end with inadequate groundwork laid to even prevent an override. Any debate on the bill must be shifted from moral issues to foreign policy ones if a veto is to be successful and still minimize the political damage. This can only be accomplished through a floor fight in the House over an alternative that aggressively supports the moral issues; or

- Ultimate acceptance of dangerous and unacceptable legislation. This leaves the Administration in a position of opposition to something "morally right," leaves the next President with an impossible and dangerous foreign policy situation and still leaves the Administration with all the negative political consequences of a veto and in addition gives the appearance of a weak position on foreign policy taken under pressure of the election campaign. This appears to be a "no win" position.

- Veto. There are actually two options here. A veto based on the current Administration position or a veto based on rejection of a "morally right" but less risky alternative to the current bills. This last option appears better since some public support could be gained through a carefully planned floor fight and, the adverse political consequences would be minimized. Also, it holds at least a small prospect of being successful. The members must have a "morally right" alternative to vote for. They cannot and will not vote against the current legislation at this point. If not successful on the House floor, the ultimate veto could most probably be sustained if an acceptable alternative could not then be worked out in conference. A veto based on the current Administration probably could not be sustained and the Administration would be castigated for placing dollars and foreign policy over human values -- a definite campaign issue. The veto from the "alternative" position is at least a defensible campaign issue and risks alienating the smallest number of voters.

The case to be made is basically that the Administration is absolutely opposed to discrimination on the basis of race, religion or national origin and supports legislation to prevent it. The Administration is opposed to the application of the boycott against U. S. companies and any interference by a foreign power in our internal affairs and relationships. The only relevant difference of opinion is how best to eliminate those aspects of the boycott which are agreed by all to be objectionable? The proponents of the current amendments may be right and the Arab states will terminate those aspects of the boycott which are being applied to U. S. citizens and companies simply to keep access to U. S. goods and services. They also may not react adversely in a way that worsens our energy problems, inflation and weakens our foreign policy position of peacemaker in the Middle East. They may be right but all indications are they are wrong. If they are wrong are you each willing to accept responsibility for the adverse and possibly severe consequences, particularly when the basic moral values of this country and its people can be protected and enforced without substantial risk of other adverse consequences? The "Administration alternative" allows us to protect and enforce our moral values, and gradually terminate objectionable aspects of the boycott not related to those moral issues with minimum risk of adverse consequences as a result of this legislation.

September 3, 1976

September 3, 1976

MEMORANDUM re: Bingham and Stevenson Amendments to Export Administration Act

A. Assessment of Current Situation.

The 27-1 vote on the Bingham amendment clearly points out the problem on this legislation. The Bingham amendment amounts to a counter boycott against the Arab States which boycott Israel. It, for all intents and purposes, bars any U.S. trade with Arab States unless they terminate virtually all aspects of the boycott. Yet, there was hardly a voice raised in protest about the unreasonableness of the specific language.

Moreover, the prohibitions could be enforced in effect, by private citizens, through lawsuits for treble damages. Even if such suits have no merit the mere threat would be sufficient in many instances to convince a company not to do business in any Arab country. Given the current U.S. dependence on oil from the Middle East and the economic and social consequences of substantial reductions in supply or increases in price, the immediate loss of business and jobs in the U.S. seems minor in comparison. Other consequences relate to balance of payments, dollar value in world markets and a greatly impaired ability to be able to stop another major war in the Middle East - much less negotiate a peaceful settlement.

The Bingham amendment was available to most members of the Committee on Friday, August 27. When the Committee met on Tuesday, August 31, these issues were hardly even raised, much less discussed. The particular effect of the specific language was not discussed at all. The discussion - no debate - centered on the moral issue. Only a few Members even alluded to the risks generally involved in legislation of this type. No alternatives were offered and every member present, but one, made it clear they would not vote against legislation of this type. Some would have voted "yes" on a more moderate alternative, so long as it prohibited discrimination on the basis of race, religion and national origin, and did not acquiesce in the interference and coercion by a foreign power in the business relationships between U.S. companies and with any other country.

This is a committee, the members of which are accustomed to discussing sensitive issues of foreign policy, which type of discussion was very evident the following day on other amendments. It therefore appears that the only approaches to oppose such extreme and sensitive legislation is through delays which avoid debate and voting on the record or through moderate legislative alternatives that also meet the moral issues involved, i.e. that meet the same objectives with less risk of confrontation and adverse consequences.

The conclusion, therefore, is that if this legislation cannot be delayed until the existing law expires and Congress adjourns, then a single legislative alternative must be proposed on the floor of the House that contrasts with the Bingham and Stevenson amendments only with regard to reduction of the risk of confrontation and adverse foreign policy consequences. It must be one which can be shown to support the same basic objectives of prohibiting discrimination on the basis of race, religion and national origin as well as ending the application of the boycott by and against U.S. companies through foreign coercion.

The only question raised for debate should be the best way to end the application of certain aspects of the boycott against U.S. companies. No Congressman can responsibly support a position which opposes passing any legislation at this point and virtually none will do so. Yet this is the stated position of the Administration at this time. Thus it is clear that the Administration position will be overwhelmingly defeated if it is not altered.

Otherwise, if the Administration maintains its current position of no legislation, it must clearly and unequivocably be prepared to veto any bill coming out of conference, and try to prevent an override to succeed. It is extremely doubtful that it could prevent an override from its current position. The moral issues will be characterized as outweighing the risks and therefore the risks and adverse consequences must be accepted. What is "right" must be done even if it hurts. What's more, the Administration will be characterized as valuing dollars over human rights and thus as immoral. Not only is that a "no win" position, it is futile and an unnecessary result.

If the only choice is an unsuccessful veto characterized as immoral, or acceptance of extremely dangerous and irresponsible legislation from a foreign policy standpoint, that is no choice.

If, ultimately, irresponsible legislation can only be prevented by a veto, then the veto must clearly be demonstrated to be on moral and responsible grounds. A compromise cannot be negotiated on the House floor if the International Relations Committee members would not even discuss the specific problems with parts of the amendment.

Conclusion: Present an alternative on the floor that clearly and decisively supports the moral issues raised but avoids the most dangerous risks of the Bingham and Stevenson amendments. It must center the debate on the best way to end the boycott while preventing interference by a foreign power in the internal affairs of the U.S. It must be presented as a total package, a plan, a total course of action.

The force and power of the argument itself may succeed, particularly if it is understood by most Members as supportive of Jews and Israel. Thus it should be a simple alternative requiring only minor amendments. It must be drafted from the Bingham or Stevenson amendments (preferably the latter) using their language as much as possible. It could be presented as an amendment or a substitute depending on the nature of the alternative. This point needs careful consideration but a substitute seems preferable if the support of the moral issues is to be decisively and clearly presented. How will a motion to strike the section on private right of action be perceived, for example. It seems to be better to have one vote up or down on an alternative that contains the identical language on discrimination as the Stevenson or Bingham amendments.

Take the best of both or draft from the Stevenson amendment since it takes less alteration. Bingham will say it does nothing about secondary aspects, only tertiary, but that can be amended and made workable through exceptions relating to respect for the laws of a foreign sovereign, etc. (It may also be possible to take language from the Ribicoff amendment to the tax bill since it will probably be finished by the time of the House debate on the Export Administration Act and very well could be acceptable to the Administration.)

The advantage is a floor debate in the House where everyone can agree on and support the moral issues. It not only lays groundwork to prevent override of a veto if necessary, it can be decisive to gain the necessary public support or at least avoid massive adverse public reaction even in the Jewish community. Even if the vote on the alternative fails it will force the issue in contention on to the foreign policy issues, not the moral ones. The conference report compromising between Stevenson and Bingham could at least then be vetoed with the minimum possible adverse public impact.

If it might become a campaign issue, which it well could with George Meany strongly supporting the Ribicoff amendment, then the impact on the campaign could also be minimized. Depending on luck and skill it might even be neutralized.

Timing of the veto should be considered in this regard. A good rule of thumb is if the veto proves necessary, then the sooner the better.

B. Options

1. Delay the bill in Rules Committee. This may be possible but a repeat of the International Relations Committee vote is more probable. The major Jewish organizations will most likely blitz the Members who will also have no alternative to support. What's more, if a permanent delay until adjournment is not won, then the veto comes later rather than sooner and after more and more members are locked in. Even if successful, the public and Jewish reaction will be virtually identical to a veto based on the current Administration position on "no legislation." It would become a major campaign issue in either case and cost more Jewish votes than the "alternative approach."

2. Delay floor consideration until adjournment. This appears to be only theoretical since there is no apparent way to accomplish it unless the Speaker simply refuses to place it on the Calendar. He could be easily overridden by the Democratic caucus. Likewise, many Republicans in tough races won't support such an approach. This approach would put many Members not only in an impossible position, but also jeopardize their campaigns for reelection. The President can ill afford the loss of support of these Members it seems if an alternative is available.

3. Delay the bill in conference until adjournment. This approach has only slightly more of a chance to succeed. A majority of conferees on both sides would have to support it, and merely reviewing possible conferees makes such an approach appear futile. The Administration will still be faced with a veto of a bill somewhere between Stevenson and Bingham. This puts the veto in the same light as the "no legislation" position outlined above.

4. Defeat the Conference Report. Not worth considering.

5. Veto. The odds have to be that a veto will be the ultimate decision. If nothing more is done than has been done to date by the Administration, there then is a high likelihood of a successful override--the worst of all worlds. The basic question seems not to be whether to veto but what to veto.

The alternative is accepting unacceptable and dangerous legislation. The only chance to avoid a veto appears to be adoption of an acceptable alternative on the House floor. At least if that approach fails, which is more likely than not, the political effect of a veto would be minimized and more acceptable than any other alternative except signing a Stevenson/Bingham compromise out of conference. The problem with that is that the next President will have to live with the consequences in the Middle East as a result. Only the President can determine if those consequences will be acceptable.

6. One additional option is to wait until conference to offer an alternative. This simply does not appear to be feasible. If there is no fight on the House floor, then a conference can only result in an unacceptable compromise between Stevenson and Bingham since Stevenson is the best that could be obtained, and it is itself unacceptable (unlikely could even get that under these circumstances). Further, the Administration will still be characterized as in opposition and insensitive to the moral issues. A veto would still be necessary and most likely overridden--again the worst of all worlds. The only way to get an

acceptable bill out of conference is to pass a more moderate alternative than the Stevenson amendment on the House floor. A modified Stevenson alternative approved on the House floor, if aggressively pushed, could stand a good chance of coming out of conference in acceptable form. At least if it does not, a veto is, again, less damaging.

The Senate conferees would probably be Stevenson, Proxmire, Williams, McIntyre, Cranson, Biden, Tower, Helms and Garn. The mix on the House side is uncertain, but would be at least 2-1. Bingham, who is twelfth in line, would have to be included and it would certainly be in the Administration's interest to assure that Hamilton (tenth) is also included on the Democratic side. If the split were roughly 10-5, at least Derwinski, Findley, and Buchanan would be on the conference.

7. There is a possible seventh option with a jurisdictional conflict with the Joint Committee on Atomic Energy, but that jurisdictional question would appear to have been resolved, and this strategy negated as an option by the action of the Committee to introduce a clean bill to be reported out by the House International Relations Committee rather than H. R. 7665 (which is the simple extension) with amendments. Speaker Albert indicated on Wednesday, September 1, that in the latter case when the amendment on nuclear proliferation comes up, he would rule that it had to be co-referred to the Joint Committee. On the other hand, the clean bill, H. R. 15377, incorporating all amendments will be referred solely to International Relations.

Two final notes on a veto strategy: (a) A much stronger case for a veto could obviously be made on the Bingham amendment than the Stevenson amendment. The Bingham amendment can be clearly shown to establish a counter-boycott on behalf of Israel since it is so extreme. It is highly vulnerable to a moderate "alternative" which also prohibits the most objectionable forms of discrimination. It can also be accurately characterized as almost certainly confrontations, and dangerous in the extreme. If the alternative loses on the floor, the Bingham language is much easier to veto than Stevenson. If the alternative is aggressively presented on the floor there is a slight chance even of getting it adopted in conference. That depends on the floor debate. The most effective Members from both sides of the aisle who do not have the right races in districts with a high percentage of Jewish voters will have to be encouraged to make the case for the alternative. Strong conservatives with safe seats and no Jewish voters are not going to be too credible or effective.

(b) It is absolutely critical to any strategy that it be agreed to and fully supported from the outset by the President and with the full support and cooperation of State, Treasury, Commerce, NSC, White House Congressional Relations, and the Campaign Committee. We could volunteer to coordinate strategy with Counselor Marsh. It is critical because the Congressmen making this fight must know and be able to say that they have full, unqualified support of the President. The veto threat must be stated in no uncertain terms at the time of the House floor fight on the House International Relations Committee bill.

C. The Basic Case

1. We are absolutely opposed to discrimination against U. S. citizens on the basis of race, religion or national origin. Such discrimination is morally repugnant to the values we hold in this nation. (The alternative proposal should adopt the relevant language of Stevenson or Bingham amendments. The problem with the Administration legislation is that it contains a private right of action authorization which can result in private lawsuits adversely affecting foreign policy.)

2. We are absolutely opposed to the boycott and are committed to do everything to end its application to U. S. citizens and companies. The only relevant question is how to best achieve that goal.

The proponents of the current amendments may be right. The Arabs may drop the boycott in order to obtain U. S. goods and services without any retaliation or adverse consequences to our energy problems and foreign policy to promote peace in the Mideast. But we don't think the Arabs will drop the boycott. We think also that they may react adversely. Can we eliminate discrimination against U. S. citizens on the basis of race, religion and national origin and the application of objectionable aspects of the boycott to U. S. companies without the risk of these adverse effects? Yes, at least we can do so and greatly minimize those risks.

If these amendments are passed in their current form and their proponents prove to be wrong about the Arabs dropping those aspects of the boycott that relate to U. S. companies, are you willing to accept the adverse consequences? Particularly when we can achieve the identical goals without those risks? Are you willing to accept responsibility for those consequences when the same goals can be achieved without substantial risk of precipitating those consequences? More is involved than just some business for U. S. companies and the jobs that go with that business. There is no certainty that we could limit the adverse consequences to those alone. If you prove to be wrong, are you willing to take the more difficult and dangerous steps to resolve those consequences? Particularly when we can achieve the same goals without such confrontation?

SEP 14 1976

MEMORANDUM FROM

CHARLS E. WALKER

DATE 9/14/76

MR. PRESIDENT:

Suggestions in three important areas.

Cap

September 14, 1976

MEMORANDUM FOR THE PRESIDENT

There seem to me to be at least three areas of considerable importance to the American people where you can take actions, or make legislative recommendations, which will serve both the public interest and your electoral interest.

Theyinvolve --

-- youth unemployment;

-- promotion and regulation of small businesses; and

-- fairness for the small taxpayer.

My suggestions are spelled out in the attached memorandum, which I am sending to several of your aides in the White House and the Ford Dole Committee. However, briefly stated:

Youth Unemployment: Propose legislation creating a "Bicentennial Program for Work and Education" (a 1976-model Civilian Conservation Corps, but with about half work, half study).

Small Business: Establish immediately an Office of Small Business Promotion in the White House. Through a small field staff, it would play a promotion and an "ombudsman" role. Legislation would be sought to grant the President power to suspend "oppressive" regulations. Also, create a Council on Small Business to be headed by the Director of OSBP.

Tax Fairness: Establish in the Office of the Secretary of the Treasury a "tax ombudsman" to whom would be funneled complaints from the field (not through the Internal Revenue Service) of unfair tax treatment.

As always, yours to count on.

Enclosure

Chuck

cc:
John O. Marsh, Jr.
Richard B. Cheney
L. William Seidman
Alan Greenspan
James M. Cannon
James A. Baker III

YOUTH UNEMPLOYMENT

The President should propose legislation creating a Bicentennial Program for Education and Work (a 1976-model Civilian Conservation Corps). Recruits would consist primarily of unemployed younger men and women lacking in education, work habits, and/or opportunity. On a half-study, half-work basis, they would be deployed in camps around the country. The education portion of the activity would be designed, after perhaps two years of training, to prepare them for productive employment. The work portion would be directed toward projects of high national priority: conservation, cleaning up streams, rebuilding the railroads, etc.

(One of the best informed men in this area is Curtis Tarr.* He served in the first Nixon Administration as Assistant Secretary of the Air Force for Manpower, Director of Selective Service, and Under Secretary of State. Tarr prepared a special paper related to this subject for a study on employment, never published, directed by Deputy Secretary of the Treasury Walker in 1971-72.)

SMALL BUSINESS

To attack the problem of reporting requirements and regulation, it is recommended that, by Executive Order, the President establish immediately an Office for Small Business Promotion in the White House, and that this office have an appropirate field staff in each Federal center (reporting directly to the White House OSBP).

OSBP would have two functions. The first, which could be implemented without legislation, would be an "ombudsman" function, with complaints screened by and channeled thorugh the regional offices for action at the White House level. Such complaints would include, but not be confined to, cases of alleged maltreatment of small businesses by Federal regulatory agencies and departments, and suggestions for legislative changes to promote small business. The head of the Office should have the rank of Assistant to the President and report directly to the President.

The second function of OSBP would require legislation. This legislation would authorize the President, on recommendation of OMSP, to overturn or suspend the applicability to small businesses of "excessive" regulatory or reporting requirements that unduly affect their growth and well being. The definition of "small business" for this purpose should be highly flexible.

Consideration should also be given to creation of a Council on Small Business to be headed by the Director of OSBP. The members of the Council could consist of the director of the Small Business Administration, the head of the Office of Minority Business Enterprise, and deputy secretaries of Treasury, Commerce, Labor, HEW, HUD, and representatives from bank regulatory agencies. The Congress might insist on confirmation of the Director of OSBP, but that should be accepted, since it would help raise the stature of the Office.

The function of the Council would be to "coordinate" all Executive Branch activities relating to small business.

AN INCOME TAX OMBUDSMAN

The President should establish an office, reporting directly to the Secretary of the Treasury and completely separate from the Internal Revenue Service, dedicated to protecting the small taxpayer (individual or business) from harassment and, if

* Now at Stanford, I think.

it has occurred, recommend corrective actions to the Secretary.

Needless to say, establishment of an Office of Tax Ombudsman in the Treasury would be a most welcome event for those taxpayers, and they are legion, who feel sorely put upon by the actions of IRS officials.

MEMORANDUM FROM

SEP 20 1976

CHARLS E. WALKER

DATE 9/20/76

To Jack Marsh:

Some new strategy.

Cy

(I'll be at home tonite & in office tomorrow.)

September 20, 1976

Memorandum re: Bingham Amendment to Export Administration Act/Strategy

1. H. R. 15377 is at the top of the list of legislation to be considered on the House floor Wednesday and Thursday of this week. (Monday and Tuesday are reserved for Suspension Calendar). The principal objective should be to get this legislation placed at the bottom of the list for this week since there are two or three pieces of major legislation which would probably take up the balance of the legislative time available this week. NAM, Chamber of Commerce, ECAT, and individual companies should focus their attention on the House Leadership and sympathetic congressmen to the effect that Bingham is a counter-boycott and goes way beyond what is necessary to protect the rights of U. S. citizens and could have serious and unnecessary repercussions on U. S. business and U. S. foreign policy. We can live without the Export Administration Act if we have to for a few months. Efforts should be directed at congressmen, particularly Democrats, who have some Jewish influence in their districts as well as industry involved in export to the Middle East. The objective should be to encourage these congressmen to indicate to the Leadership that they are getting intense pressure from both sides and don't really want to vote on this issue before the elections. Delay is the only way out for everyone; i.e., coming back with a short-term extension of six months to one year of the Export Administration Act in the last days of the session.

2. Assuming that this strategy will not be wholly successful, there are three approaches that can be taken on the floor:

a. Simply let the Bingham Amendment go through without any opposition except statements of the Administration spokesmen that the legislation is "unacceptable." The proponents of this legislation will most probably push for a record vote at some stage, in any event, and without an alternative, very few Congressmen will actually vote "no" on Bingham.

b. Convince someone like Jim Collins of Texas who wrote the Minority views to the House Commerce Committee report to move to strike or move to recommit. This will surely evoke a response from the proponents and result in a very large vote in the House, locking the House conferees in on the Bingham amendment. (The strategy here would be to create a deadlock in conference by getting the Senate conferees to go no further than Stevenson.) Again, the Administration only states that this legislation is "unacceptable" including Stevenson.

c. Let Bingham go through but have several sympathetic Congressmen from safe districts raise questions on the floor about the great risks involved and state that Bingham goes too far by instituting a counter-boycott. This would not stop the legislation, but would at least publicly state some arguments that could later be used to support a veto.

3. The next major objective should be to try to keep any conference from starting prior to Monday, September 27. Stan Marcus and Gil Bray, Senate staff, should be encouraged to hold tight to Stevenson and not work with the House staff over the weekend on compromise language. Once the bill gets to conference, Senator Tower should be encouraged by the business community, but not directly by the President, to go no further than Stevenson. The Senate conferees will likely be the Subcommittee, and with enough work from the business community it would be possible that a majority of the Senate conferees could be convinced to hold tight for their language with absolutely no changes. The major risk here is that such a move would be successful, and that the House would, at the urging of the Jewish organizations, recede completely to the Stevenson language. Such a bill would be much harder to veto. While Morgan, Zablocki, Taylor, and Hamilton might be satisfied to ultimately see a deadlock on this issue, it would be very difficult to involve them in any intricate strategy to produce the same. They probably would vote to recede to the Senate language. This would probably be true also of any Republican House conferees. Even this procedure might, however, use up enough time so that the President could then pocket veto the legislation.

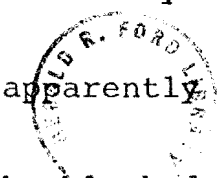
4. The next point of delay would be to have a few Senators filibuster the Conference Report on the Senate floor. To make such a strategy successful, ideally, the bill should not reach the floor of the Senate before Thursday, September 30, and even that may be cutting it too close to avoid a cloture vote. The key here is probably Byrd of West Virginia who has been most instrumental in the past in organizing cloture votes. Mansfield apparently won't be available before October 2. The foreign policy risks might be appealing to Byrd who could somewhat control the Senate scheduling.

5. The overall objective would be to delay final Congressional consideration of the Conference Report until the session expires on October 2. If a deadlock holds or a filibuster appears on October 1 or 2, there might be a chance to report out only a simple extension and the issue would never reach the President's desk. However, given the course of this legislation to date, it is highly unlikely that this strategy will succeed, and it must be assumed throughout that the President is going to be faced with a veto decision. Hopefully, that would come in the context of a pocket veto, but in any event, should be maneuvered so that a vote on override and suspension will not come up until after the elections if the Congress does not adjourn sine die on October 2.

We must also assume that, in the final analysis, the proponents of this legislation might prefer to have some legislation enacted--even if only Stevenson--prior to adjournment or recess on October 2. Thus, there will be pressure on the Administration to come up with an "acceptable compromise" that the conferees can adopt, or to simply "take" Stevenson as it is, as the "most nearly acceptable" with "clarifying" report language.

If a pure Stevenson amendment is reported from conference with the support of the Jewish organizations and labor, the case will be made to the Administration that this is the most moderate legislation Congress could pass (softened by report language); the President himself said some legislation might be necessary; it goes no further than

Ribicoff and a veto by the President would show that he didn't really mean what he said to B'nai B'rith and other Jewish leaders recently. The proponents will allege this will cost Ford the support of the Jewish voters. This may be an empty threat since the liberals in the Jewish community and labor won't support Ford in any event, and those in these groups that now support Ford do so for other reasons than support of Israel and are, in the whole, unlikely to be swayed solely by this issue from that support.



The strategy should be based on a decision between two apparently mutually exclusive objectives:

(a) Further legislation of any kind on this issue must be blocked or vetoed in order to prevent any negative reaction on the part of the Arab states. The Administration must not "shift" position and this has the ultimate priority over domestic politics. In this case, the President should have the worst possible amendment to veto (Bingham) and cannot afford to get "trapped" with Stevenson or anything close to it;

(b) A modified Stevenson might be acceptable and explainable to the Arabs if it does not infringe on their sovereignty and, if not obtained, anything else could be vetoed with a minimum of adverse, domestic political effect. Again, care must be taken to not get trapped with a "pure" Stevenson.

The only sure way to achieve (b) is with an Administration "substitute" on a take-it-or-leave-it basis (consistent with Ribicoff compromise and B'nai B'rith speech). Preferably, this should be made on the floor of the House to get maximum exposure, but in any event, clearly stated in conference. At least the outcome is certain--a modified Stevenson or no legislation because of a veto. The latter is the more probable result given the course of this legislation to date and the strength of the proponents.

The result has a high degree of certainty as to outcome in (b) and the strategy is not intricate, subtle or difficult to carry out. Either the conferees and Jewish groups pushing Stevenson and Bingham totally cave in to get "some" legislation or they overreact and the Senate recedes to the House in large degree since even Stevenson is "unacceptable" and they cannot modify it further. The veto is then easier and political losses are minimized domestically.

The strategy under (a) is more intricate and less controllable. The proponents can throw a curve by receding to the Senate language, particularly if there is not a clear veto threat but only "spokesmen" saying it (pure Stevenson) is unacceptable. Proponents can allege that they caved; a pure Stevenson is no more than the President outlined in his speech to B'nai B'rith; and he thus has broken his word to the Jewish communities, etc. There just is no sure way under (a) to conduct the strategy so as to end up with a "Bingham" amendment out of conference and a "good" veto certainty lies with a strategy based on (b). Strategy based on (a) is doable but unpredictable without an "insider" of considerable influence among both the House and Senate conferees, particularly, the House and that has to be a Democrat.

The unknown in (b) is whether the Arabs will perceive and understand the gambit.

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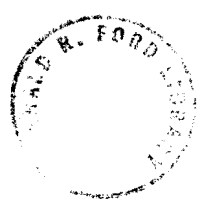

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[redacted]

THE WHITE HOUSE

WASHINGTON

September 29, 1976

MEMORANDUM TO: JACK MARSH

FROM: RUSS ROURKE

Jack, the following was called in by Charles Walker:

> "There are indications that the other side on the Arab Boycott are not even drafting a bill to reflect the decisions of the R. Conference. If so, that probably means that they will be giving up."