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ADMINISTRATION OF THE OIL IMPORT PROGRAM

GOVERNMENT

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HEARING

BEFORE THE

COMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

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ADMINISTRATION OF THE OIL IMPORT PROGRAM BY THE OEP

Friday, March 20, 1970

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATIVE PRACTICES AND
PROCEDURE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2228, New Senate Office Building, Senator Edward M. Kennedy (chairman of the subcommittee) presiding.

Present: Senators Kennedy and Thurmond.

James Flug, majority counsel, Joseph Onek, assistant counsel, and Michael A. Pulliam, minority counsel.

Senator KENNEDY. The subcommittee will come to order.

Today the Senate Subcommittee on Administrative Practices and Procedure will begin an examination of the administrative procedures of the Office of Emergency Preparedness in the implementation of the oil import program.

The Office of Emergency Preparedness has played a crucial role in the history of the oil import program. In 1955 Congress enacted a "national security" clause to the Trade Expansion Act. Under this clause, the Director of the OEP could recommend and the President could order that the imports of any commodity be restricted if it was being imported "in such quantities or under such circumstances as to threaten to impair the national security." Four years later restrictions were imposed by Presidential proclamation on the importation of oil and oil products. This was, and remains, the only import restriction imposed under the national security provision of the Trade Expansion Act.

The 1959 Presidential proclamation envisaged that the Director of the OEP would perform an important function in the implementation of the oil import program. The Director was required to maintain surveillance over oil imports and in the event the price of crude oil or its products increased he was to determine whether such increases were "necessary to accomplish the national security objectives" of the program.

One of the first issues we will explore today is the extent to which the OEP has, in fact, maintained effective surveillance over the import program.

The Cabinet Task Force on Oil Import Control, which recently completed a comprehensive study of the program, recommended that the OEP play an even larger role. President Nixon agreed. On February 20, 1970, he announced that he was establishing "a new management system to set policy for the oil import program." "The policy

direction, coordination and surveillance of the program," the President said, "will be provided by the Director of the Office of Emergency Preparedness, acting with the advice of the Permanent Oil Policy Committee."

Those of us who have long been concerned with the oil import question now hoped that the program would be administered in a fairer and more open manner and that the present restrictions, which are costing the American consumer some \$5 billion a year, would soon be eased. We were in for a rude surprise. The OEP's initial action upon taking over the management of the oil import program was absolutely astounding. For the first time in history, restrictions were imposed on the importation of Canadian oil.

The reason why Canadian oil has never been restricted in the past is obvious. Canadian oil is as militarily and politically secure as our own and thus there can be no national security justification for limiting its importation. Indeed the Department of Defense has suggested that Canadian oil delivered overland is even more militarily secure than our own gulf coast oil shipped to the east coast because there is no danger of interdiction by hostile submarines.

Neither the OEP nor the President gave an adequate explanation for this startling departure from past U.S. policy. The OEP did not issue a report demonstrating why the new restrictions were necessary to protect the national security, even though such a report is expressly required by the Trade Expansion Act. Instead, we were treated to a press conference and to several misleading pronouncements about the current state of Canada's reserve capacity.

The procedure employed by the OEP were equally disappointing. No hearings were held concerning this, the most important change in the oil import program since its inception. The Administrative Procedure Act was ignored and interested parties were given only 10 days in which to comment on the proposed rulemaking. Once again, the OEP did not explain why the traditional 30-day comment period was rejected.

The decision to restrict Canadian oil came as a shock to all of us who wanted the President to lead the fight against inflation by easing the oil import program and thereby reducing oil prices. Coming on the heels of the President's refusal to adopt the recommendations of his own Cabinet task force, the Canadian decision is a tremendous blow to the consumers of the Midwest who have benefited substantially from the importation of Canadian oil. Therefore, I have asked Senator William Proxmire of Wisconsin and Senator Walter Mondale of Minnesota to assess the impact of the new restrictions on consumers in their States.

The subcommittee will then hear from Gen. George Lincoln, the Director of the Office of Emergency Preparedness and explore with him the role that the OEP has performed and is planning to perform in the surveillance, policy supervision and coordination of the oil import program.

I want to first of all express our very warm welcome to the distinguished Senator from Wisconsin for his appearance here. There is nobody who has been keeping more of a careful eye on the whole question of oil importation.

STATEMENT OF HON. WILLIAM PROXMIRE, A U.S. SENATOR FROM
THE STATE OF WISCONSIN

Senator PROXMIRE. Thank you very much, Mr. Chairman.

Mr. Chairman, I am delighted that this subcommittee has decided to determine whether proper procedure was followed in imposing quotas on the importation of Canadian oil.

I would like to make four points very quickly because I must leave to chair the District of Columbia Appropriations hearings

1. No finding was made as required by law that Canadian oil imports were impairing our national security before quotas were imposed. That is the only legal basis for restricting Canadian oil imports.

The Task Force on Oil Import Control stated clearly and unequivocally that Canadian oil was secure. Both the majority and the minority report agreed on that point. The task force recommended limiting Canadian oil only to ease the transition to a tariff method of controlling oil imports. Thus, unless we are in the process of adopting tariffs rather than quotas as means of controlling oil imports, there is no justification for imposing quotas or restrictions on Canadian oil imports. This conclusion is amply borne out by the statement of the man in charge of making sure our Armed Forces have enough oil.

Barry Shillito, Assistant Secretary of Defense for Installations and Logistics, appointed by President Nixon, told the House Mines and Mining Subcommittee:

We firmly believe that oil import controls can be gradually relaxed to permit increased oil imports, with the limits planned, without adversely affecting national security.

2. The real purpose for imposing these quotas on Canadian oil, as pointed out by Assistant Secretary of State Trezise in his press conference of March 10, 1970, was to give us a club when we bargain with Canada about establishing a common energy policy. Stated in its bluntest form, what he was saying is that we are using our oil import program to force Canada to change its own internal policy.

This is illegal and immoral. The only basis for restricting oil is national security. That was the clear legislative intent when Congress passed section 232 of the Trade Expansion Act which is the legal basis for restricting oil imports. We ought not to intrude in any nation's internal politics, particularly in the case of Canada which has been such a fast friend of the United States.

If I may divert, this morning's Wall Street Journal carried a brief article which is highly relevant and I would like to read briefly from it:

Secret Crisis with Canada Gravely Concerns Top U.S. Officials.

National sentiment north of the border became inflamed most recently by Nixon's cutback on oil imports from Canada. Feeling the political heat, Prime Minister Trudeau is on the verge of proclaiming exclusive Canadian control of all waters up through the Arctic Archipelago, perhaps right to the North Pole.

U.S. diplomats tried desperately to dissuade him. They fear if Canada asserts sovereignty it would next ban future use of the Northwest Passage to U.S. tankers hauling Alaskan oil to east coast consumers; pollution perils would be cited. Even Arctic Ocean patrols by Polaris submarines might be in question.

Canada's action could nip two U.S. diplomatic drives. One aims at global liberalization of navigation rights through narrow straits. The other strives to induce all Arctic powers not to push national claims toward the Pole.

3. American consumers, particularly in the Midwest will now have to pay about 1 to 1½ cents a gallon more for gasoline than they did before President Nixon imposed quotas on Canadian oil. Canadian oil costs 50-60 cents less a barrel than domestic oil. This means that, unless one argues that there is no competition in the domestic oil industry, the consumer is going to have to pay more for the finished product.

This action is, therefore, highly inflationary in Wisconsin, Minnesota, Illinois, Michigan, and so forth.

Finally, my fourth point: The only ones who benefit from this action are the big oil companies who have just been handed a gift of \$85 million worth of import tickets. Since Canadian oil was lumped into the 12.2 percent limitation on oil imports, every barrel of Canadian oil that was imported subtracted one barrel of oil that could come in from outside the United States. This meant one less barrel of oil worth \$1.50 to the holders of import tickets. It is simple arithmetic to multiply the \$1.50 times 365 days times the 150,000-barrel-a-day cutback to get \$85 million which was just handed to the big oil companies by the President's unfortunate action.

Thank you.

Senator KENNEDY. Thank you very much, Senator Proxmire, for that statement. It is very succinct and I think catches the essence of the whole problem. We hope that we will have your continued interest in this problem. I know how active you have been in the past and I want to thank you for coming this morning. Thank you, very much.

Senator Mondale?

STATEMENT OF HON. WALTER F. MONDALE, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator MONDALE. Thank you very much, Mr. Chairman. May I say how much those of us in the Midwest appreciate your holding these hearings and holding them so promptly. I think there are few issues that require prompt attention than this. We are most grateful to you for these hearings. I am pleased to appear before your subcommittee this morning to discuss some serious problems which are posed by the President's recent proclamation placing mandatory controls on the import of Canadian crude oil.

A number of Senators, from States whose consumers have a strong interest in oil policy, have agreed to send a letter to President Nixon requesting that he reconsider the proclamation of March 10. I do not think it would be appropriate to release the text of the letter at this time. However, I should like to mention some of the points which will be discussed and request that the letter be included in the hearing record after it has been transmitted to the President.

Senator KENNEDY. It will be so included.

(The letter referred to follows:)

MARCH 25, 1970.

HON. RICHARD M. NIXON,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: AS Senators from northern states, whose consumers have a strong interest in oil policy, we were all heartened by your statement on February 20, 1970, in which you referred to the "unique degree of security (which) can be afforded by moving toward an integrated North American energy market."

We were gratified by your directive to the Department of State "to continue to examine with Canada measures looking toward a freer exchange of petroleum, natural gas and other energy resources between the two countries."

Understandably, we were quite disturbed by your announcement, only 18 days later, of the establishment of mandatory controls on Canadian oil imports. This seems to be a backward step and an affront to Canada.

We believe that these controls will result in increased costs and, in some cases, fuel shortages and curtailed operations. In the face of inflationary pressures, we feel that only the most compelling reasons could justify an action which will raise prices.

At the same time, the Proclamation has caused dismay—if not resentment—on the part of our Canadian friends and neighbors. After all, Canada is a natural source of supply for the northern United States.

We know there was a substantial increase in imports in January, when Chicago began to draw oil from the Interprovincial Pipeline. We also are aware of the pattern of imports in excess of the voluntary control program. It was these factors which led to your conclusion to establish a mandatory control program. However, we cannot agree that the 395,000 average barrels per day limit will be "adequate to meet the needs of the U.S. refineries and consumers", as stated in the White House announcement of March 10.

We also have some doubt as to the statutory authority for this action. As you know, the authority to restrict imports which "threaten to impair the national security" has been used only in the case of the Oil Import Control program established in 1959. This control program has specifically exempted Canadian oil.

The fact that the authority has been used but once underscores the narrow interpretation that you and your three predecessors have previously put upon this provision. Clearly, the test of a threat to the national security is, and was intended to be a difficult one to meet.

We do not find in the report of your Cabinet Task Force on Oil Import Control, or elsewhere, any logical case that even substantially increased imports of Canadian oil would adversely affect our national security interests. Indeed, we note that the Task Force concluded, on page 94 of its report, that "the risk of political instability or animosity is generally conceded to be very low in Canada. The risk of physical interruption or diversion of Canadian oil to other export markets in an emergency is also minimal * * *."

The Task Force discussion of Canada's policy on importing oil for its eastern provinces seems entirely irrelevant to the amount of exports from the western provinces to the U.S. As you know, Canada's western oil is not transported to the eastern provinces. Even in an emergency situation, there would be no practical means for diverting such oil to eastern Canada. With respect to the risk of depletion of Canadian oil reserves, we note that such depletion would be offset by preservation of U.S. reserves.

The Proclamation issued by President Eisenhower in 1959 expressly relied on the statutory criterion that crude oil and related products were being imported "in such quantities and under such circumstances as to threaten to impair the national security". In contrast, your Proclamation of March 10 concludes that the existing exemption of Canadian oil imports "does not effectively serve our national security interests" and that the control program is necessary "for the accomplishment of the national security purposes of Proclamation 3279". In order to justify such a significant new action as this, we think an explicit finding of a threat to the national security must be made.

We recognize that the United States has some significant interests in what are, in the final analysis, Canada's own policies regarding oil and related matters. But we do not believe that either a voluntary control program, or a mandatory program, is an appropriate vehicle for asserting those interests. Accordingly, we strongly urge that you direct representatives of the Department of State to enter into immediate negotiations with Canada looking toward the prompt establish-

ment of a "freer exchange of petroleum * * *" In the meantime, we believe the best interests of both countries would be served by deferring the effective date of the March 10th Proclamation, pending a determination as to whether suitable agreements can be worked out.

Inasmuch as the effects of this new order are already being felt by our consumers and refineries, we would appreciate your early response.

Sincerely,

Jacob Javits; Claiborne Pell; Abe Ribicoff; Eugene McCarthy; Thomas McIntyre; Lee Metcalf; Thomas J. Dodd; Quentin Burdick; Charles H. Percy; Charlie Goodell; Vance Hartke; Stephen Young; Philip Hart; Walter F. Mondale; George McGovern; Gaylord Nelson; Edward Kennedy; Edward W. Brooke; Edmund Muskie; Hugh Scott; John O. Pastore; Bill Proxmire; Mike Mansfield; Harrison Williams; Birch Bayh.

Senator MONDALE. Basically, the establishment of controls on Canadian oil imports flies in the face of the fact that Canada is a strong ally and a natural source of oil for the Northern States. It makes little sense to build modern pipelines to transport oil across the United States when there are ample supplies available just across the border.

We also believe that no logical case has been made that there is any national security interest in the volume of Canadian exports to the United States. First, the crude oil produced in Canada's western provinces is not now shipped to its eastern provinces for there are no pipelines and no overland transportation system. Even in a national emergency, there would be no practical method for diverting such oil to meet the needs of Canada's eastern provinces.

At present, the eastern provinces are supplied with significant quantities of crude oil imported from abroad. No matter what Canada's policy is with respect to such imports, the fact remains that the upper Midwest is a natural customer for Canada's crude oil.

In these circumstances, the imposition of controls on Canadian oil is a backward step. It is an unfriendly and unwarranted action. It is inconsistent with the President's own statement of February 20, 1970, that "a unique degree of security can be afforded by moving toward an integrated North American energy market."

The imposition of mandatory controls on Canadian imports is a subject of great concern to all of the States in the upper Midwest. It will increase costs, when we are faced with continuing inflationary pressures.

Mr. Chairman, I would like to have included in the record at this point an editorial appearing in the Thursday, March 19, Minneapolis Tribune entitled "A Southwest Strategy on Oil," which recounts the dangerous implications of the Canadian import restrictions on the upper Midwest and the implications for the consumers of this country of the Presidential rejection of the task force recommendations.

Senator KENNEDY. It will be so included.

(The editorial referred to follows:)

[Minneapolis Tribune, March 19, 1970]

A "SOUTHWEST STRATEGY" ON OIL?

President Nixon seems to have bowed to the major oil companies and oil-producing states in two recent decisions on oil-import quotas.

The President last week imposed a ceiling on crude oil imports from Canada, which previously were outside the nation's formal quota system. This ceiling reduces Canadian imports west of the Rocky mountains by about 25 percent, and probably will mean higher prices for oil products in the Midwest, where most of the imported Canadian product is marketed.

Earlier, Mr. Nixon had declined to accept the recommendations of a Cabinet-level task force to phase out the nation's 10-year-old system of quotas that tightly control oil imports. The task force did not go so far as to ask a free market based on competition. Rather, it said that a tariff on foreign oil should be substituted for quotas; that this would not endanger U.S. military or economic strength (an important consideration); that the tariff level should be low enough to force down the price of domestic crude oil by about 10 percent.

It is easy to oversimplify the complex political and security questions surrounding the quota system. But clearly the system provides immense benefits to the industry and to the big oil-producing states of the South and West (six of the seven top oil-producing states went Republican in the 1968 presidential election) at the expense of consumers, mostly in the North. The task force said that the quota system costs consumers \$5 billion a year now, and that this will rise to \$8.4 billion by 1980.

This seems an extravagant price to pay for a secure oil supply, particularly when the task force found that such security could be achieved much more cheaply through tariffs. The administration's position on oil is difficult to reconcile with its professed inflation-fighting zeal. That \$5-billion cost dwarfs, for example, the \$300 million which the President shaved from health, education and welfare spending through a veto, and even the \$2.5 billion he wants to save by eliminating 57 programs "perpetuated by special-interest groups."

Senator MONDALE. The proclamation has an especially significant, and potentially far reaching, impact on the State of Minnesota. We have three refineries in my State whose principal source of supply is Canadian crude.

North Dakota and Montana are the only sources of domestic crude available to them. Our two independent refineries take all of the crude oil which is offered by these States. A cutback in Canadian imports, therefore, means a cutback in refinery operations. In the face of declining output of North Dakota crude, the potential impact of limitation on Canadian crude for these refineries is serious enough to threaten them with extinction. The resulting increased costs and supply shortages would be intolerable.

The supplies of North Dakota crude have been declining very rapidly. In 1966, almost 28 million barrels were produced, whereas less than 21 million barrels were produced in 1969. If this trend continues, it can be seen that the economic viability of these independent refineries would be challenged—unless Canadian imports could make up the difference.

Let me say just a few words about the situation Minnesota was in before these independent refineries entered the market. Minnesota was, literally, at the end of the pipelines which served the major oil companies in the area. When supplies were short, they were delivered to users much closer to the point of origin. As a result, deliveries to Minnesota were uncertain and of variable cost. In the winter months, outright shortages of fuel were common. In the construction season, there was insufficient asphalt which cannot practically be shipped over long distances.

Then, Mr. Chairman, along came the independent refineries because of the availability of Canadian crude. The entry of these refineries in the State of Minnesota has stabilized supplies, eliminated shortages and kept costs at reasonable levels, although they remain high relative to those in other parts of the country.

These Minnesota refiners will have their operations reduced by some 2 million barrels during 1970, an unnecessary hardship and a pointless inequity for these companies and their many customers throughout my State and the upper Midwest.

As you know, the President recently released the report of his Cabinet Task Force on Oil Import Control. A number of Senators made strong representations to that task force so that it would be fully informed about the special needs of consumers in their States. We were modestly successful in that connection.

The task force report made frequent mention of the special problems of Canadian imports. And a number of references were made to the so-called northern tier refiners. Despite that recognition, however, the task force proposed an unsatisfactory transition toward the complete decontrol of Canadian imports. The formula devised for the transition period was such that these independent refineries would probably have been forced out of business before the transition was over. To be sure, had they survived, they would have been better off under the proposed long-term plan for unrestricted entry of Canadian oil.

Now we find that the President has issued a proclamation which is inconsistent with some of the wiser recommendations, insofar as they relate to the northern tier refiners. On page 103 of the task force report, it is recommended that the northern tier refiners be permitted "to import the same amount of Canadian oil as at present." That is the recommendation of the task force.

But the President's proclamation, and the formula on which it is based, will have the effect of cutting back imports of Canadian crude for these refineries below the average monthly levels calculated on the basis of imports in February—the month in which the report was released.

The Subcommittee on Administrative Practices and Procedures is especially interested in the procedural arrangements with respect to the administration of the oil import control program. It is in that light that I would like to comment on the harm that has been done to the consumers and refineries in my State, without benefit of notice or hearing.

As I indicated earlier, representations were made to the Cabinet task force on behalf of my State and other States with similar interests. But no open hearings were held. No opportunity was given to anyone to comment on the task force analysis or recommendations, which were, of course, privileged until they were released by the White House. At that time, it was essentially too late for any formal comments. And the President's determination not to modify the basic oil import control program, which could be of great benefit to U.S. consumers, was not subject to any public hearing.

Now we have a proclamation which adversely affects the interests of my State and a number of other States. There was no notice or hearing afforded to interested parties with respect to that proclamation. After months of contradictory rumors, it was issued on March 10 and made retroactive to March 1. What opportunity was there for anyone to point out the weaknesses in the task force's report and the mistaken premises and conclusions on which the President's proclamation was based?

A recent decision by the ICC to approve increased freight rates on shipments of lettuce was made only after extensive opportunity for comment and after open hearings. And this is true for a regulatory agency which does not have the reputation of a paragon of consumer protection. But when it comes to an issue affecting the interests of millions of consumers in the United States, and the interests of our

Canadian friends and neighbors, the decision is based entirely on private deliberations within the executive branch. I think there is something fundamentally wrong with that approach.

The flaws in the President's proclamation clearly indicate, I think, the weakness of secret analysis and recommendations. Our system of government is based upon open debate and decisionmaking. What kind of laws would the Congress enact if it did not consider them in open hearings and receive the views of all interested parties? Why should the President be empowered to make such a sweeping decision without any opportunity for public discussion and hearings?

I am glad that your subcommittee has determined to review this serious situation. I think the statutory authority under which this proclamation was issued needs to be carefully examined. I suspect that because the statute deals with "national security" matters, it was not deemed appropriate to write in a variety of procedural safeguards, which we have learned are essential in other programs.

But, Mr. Chairman, if we have arrived at the point where our relations with Canada are such that an order can be promulgated that implies that reliance on Canadian crude oil impairs that Nation's national security, it is time to look at this basic definition as well. Coming from a State which borders on Canada, I know how terribly important our relations are with that wonderful nation. Since there have even been suggestions that the administration may believe that Canada might attack some day, I think those suggestions ought to be thoroughly reviewed, as well as the executive actions that imply that there is danger of such kinds of mischief. Let us get that matter clarified and try to restore relations with our best ally, and our best friend and closest neighbor and protect them from these kinds of embarrassing and unnecessary intrusions in the future.

A number of experts have challenged the validity of the national security criterion in respect to the entire oil import control program which was established in 1959. As you know, Canadian imports were expressly exempted from the scope of the 1959 program. Surely, if the authority can be stretched to cover the Canadian oil import question, it could be used for a whole host of other import controls.

I think it is time for the Congress to consider a number of limitations and safeguards which must be placed on the use of this authority, if it is permitted to remain law.

I appreciate very much the opportunity to explore these matters with the subcommittee.

Senator KENNEDY. I want to thank you, Senator Mondale, for a very comprehensive statement and a very helpful review of the impact of these changes on your State and on that region of the country from which you come.

As you mention so accurately, Canadian oil has been excluded from the import restrictions from 1959 to the present time. I therefore wrote the Director of the OEP a few days ago asking what was the sudden national security justification for the new restriction. I received an answer this morning. As I understand their position, and we will develop it in some detail in the course of the hearings this morning, there really does not have to be any new finding in terms of national security because the OEP is relying on the original 1959 finding. If you place this in the context of how we have treated Canadian oil since 1959, it would seem that they are stretching the statute pretty extensively. I would like to hear your views on this.

Senator MONDALE. I think this underscores the ludicrous nature of the legal basis for the proclamation. Administration spokesmen do not want to state directly what must be stated to justify the import controls on Canadian oil because the only legal basis is that we need to restrict it to protect our Nation's security. They know that is patently absurd and yet they want to control the oil. So they say, the restriction is authorized by a determination made some years ago—in 1959—or imply a national security threat in some way without saying it directly. And I think this very circuitous and obscure kind of reasoning underscores the bizarre character of the application of the national security law to control importation of oil from our best friends and closest neighbors.

Senator KENNEDY. We have estimated that the average family of four in New England, because of the oil import program presently in effect, paid \$140 a year more than necessary for gasoline and home heating oil.

I suppose the consumers of the Midwest are as concerned as the consumers in New England.

Senator MONDALE. There is no question about it as this editorial from the Minneapolis Tribune which I submit for the record discloses, there is great concern about the tremendous cost to the American consumer of the present import program. That is a national problem but, in addition to that, we are gravely concerned about these new explicit restrictions on the importation of Canadian crude because in some parts of the upper Midwest we depend almost exclusively on Canadian oil.

Before we had the small independent refineries which exist in Minnesota today, we had all kinds of problems—uncertain supplies of oil, skyrocketing oil costs, and shortages of fuel during some of the extremely cold weeks of the winter. It was a terribly unsatisfactory situation and we found that the major oil companies who had pipelines directed to the upper Midwest would serve their closer and more preferred customers first, and if they had to choose, we usually lost.

Now, for the first time, at least we are in a better position with our own refineries and only because we can rely on Canadian crude.

The Presidential order, I think, completely ignores that fact. It is going to drive up fuel oil and gasoline costs above that which the Minnesota consumer already pays as its share of the overload because of a national import quota program on oil. As found by the Presidential task force, this overload may run to \$5 to \$6 billion.

So we feel we are being doubly harmed. In addition, we are all very concerned about whether this is the proper way to deal with our neighbors.

Senator KENNEDY. Well, as I understand, the consumers of Minnesota pay 1½-cents-a-gallon less for oil than the consumers of Boston. But I think pretty soon you will be right up there with us.

Senator MONDALE. Did you say more or less?

Senator KENNEDY. I believe you pay 1½ cents less than we do at the present time but I think you will be right up with us very shortly.

Senator MONDALE. Well, we are sturdier people. [Laughter.] Or something like that.

Senator KENNEDY. Well, I want to thank you very much for your helpful comments here.

Just on a final point, one of the things that we are very interested in obviously is what remedies are available to parties which are adversely affected by the decisions of the OEP. We know that under the Administrative Procedure Act there are remedies available to parties injured by decisions that are made by various administrative agencies. But there are virtually no appellate procedures which are available to parties injured by OEP decisions. I know you have not had a chance perhaps to think about this in great detail, but one of the things that I believe we ought to at least consider is the possibility of providing some kind of device so that interested parties—individuals, cities, States—could go into a court of law and to adjudicate their interests. I would be interested in what general reaction you have to this.

Senator MONDALE. I think it makes a great deal of sense. There is strong reason to suggest that there is no legal basis for finding that Canadian imports affect this Nation's national security. Indeed, the Presidential task force said as much about a month and a half earlier and the President personally made a statement about how there should be a common North American oil policy.

Then along comes the order which says, in effect, that the Nation's security required for the first time formal restrictions on the importation of oil from Canada.

I think there is a very grave question of legality of that order. We should be able—my point is—we could have a right to appeal that and have a judicial determination. I think it would be very valuable.

I think when you give an administrative agency this kind of unappealable, unrestricted power, there is a tendency for it to deal loosely with it. Any judge or person who is a clerk in a supreme court, as I once was, finds that, many times, he wants to write a decision and, as we say, "It will not write" when you finally get down to doing it. I think this decision to restrict Canadian crude was one that could not be written. But they wrote it anyway and that is the way it reads.

It is an unwritable position because it simply does not have any legal basis. We should have a right to go into an appellate court and make that case and, if we are right, then they would have to proceed on whatever legal grounds, if any, were remaining to them. But I also think there ought to be a notice and hearing before some kind of final proclamation is issued.

For example, if this were issued as a proposed regulation and there could be hearings on it, and then a final order, and then a right to appeal, it seems to me there would be far more public protection than we have today. Indeed, we do not have any protection today. This is why the upper Midwest is being exposed to the possible destruction of these refineries and all they mean to us. And the consumers of this country are paying \$5 to \$6 billion in extra costs.

Senator KENNEDY. And I suppose we can really expect with the increased use of oil in our society the consumer is going to be paying even additional costs.

Senator MONDALE. You see, the President's task force says the consumers are paying \$5 billion a year. This is without the Canadian restrictions, and because of increased consumer uses, will be paying \$8.4 billion a year in extra costs by 1980.

Senator KENNEDY. Well, I want to thank you very much, Senator. I appreciate your very helpful comments.

Senator MONDALE. Thank you very much.

Senator KENNEDY. We are happy to welcome Gen. George Lincoln, the Director of the Office of Emergency Preparedness.

General Lincoln is a graduate of West Point, attended Oxford on a Rhodes scholarship. He served with General Marshall's staff in World War II and later as chairman of the department of social sciences at West Point.

He became Director of the OEP in February 1969.

I want to welcome General Lincoln and express our appreciation for his appearance this morning.

General, I know you have Philip Trezise here, Assistant Secretary of State for Economic Affairs, and other members of your staff. We want to extend a welcome to them, too.

STATEMENT OF HON. GEORGE A. LINCOLN, DIRECTOR OF THE OFFICE OF EMERGENCY PREPAREDNESS; ACCOMPANIED BY: PHILIP TREZISE, ASSISTANT SECRETARY OF STATE FOR ECONOMIC AFFAIRS; CHARLES KENDALL, GENERAL COUNSEL, OEP, DUDLEY CHAPMAN, SPECIAL ASSISTANT TO THE DIRECTOR OF OEP; AND MRS. MARY PEARL WILLIAMS, ASSISTANT TO MR. KENDALL

Mr. LINCOLN. Mr. Chairman, members of the subcommittee, I am George A. Lincoln, Director of the Office of Emergency Preparedness, and I am, by the way, from Michigan with a lot of native neighbors in my boyhood.

I am accompanied by Assistant Secretary Philip H. Trezise of the Department of State. My efforts and those of the Oil Policy Committee are carefully related to the consultations of the Department of State with other countries, as directed by the President.

I also have brought my General Counsel, Charles Kendall, and his assistant, Mrs. Mary Pearl Williams, and my special assistant, Dudley Chapman, who is on loan from the Justice Department and who worked for the Cabinet Task Force on Oil Import Control. These are the most competent of the people with whom I am associated on administrative practice and procedure in the oil import program, because I understand we are going to talk about administrative practices and procedure.

I have not brought with me any technicians, technical people in the oil business.

I am honored, Mr. Chairman, to be asked to appear before this committee this morning. I consider the meeting is in part in pursuance of President Nixon's statement of February 20 that he expected much valuable information to result from congressional hearings and directed the Oil Policy Committee to carefully review all such information.

As you know, the President did in his statement direct the Director of the Office of Emergency Preparedness to chair an interdepartmental panel, the Oil Policy Committee, and to undertake policy direction, coordination, and surveillance of the oil import program acting with the advice of that committee.

I should say the Office of Emergency Preparedness has prior to this statement shown some responsibility for what is called surveillance in the narrow national security area and you, Mr. Chairman, and I have had some exchange of correspondence on this matter and I noted, by the way, in a report on my desk yesterday, I think, that the price of gasoline which we have been writing to each other about is now lower today than it was at any time during 1969, said the report, which interests me.

Senator KENNEDY. Where is that? I mean, is that nationwide? Is that an overall average?

Mr. LINCOLN. Just a note on my desk and I will have to look at it again to let you know probably about New England.

Senator KENNEDY. Do you have anybody here who knows the New England figures?

Mr. LINCOLN. The surveillance function does include the prices not only of crude but—

Senator KENNEDY. I only know about Massachusetts and we have not seen any prices down.

Mr. LINCOLN. Maybe you are swept up in a national average on that.

To be precise, there are the weekly average prices of major brand regular gasoline at the pump, tax excluded, as reported by the Oil and Gas Journal. For the week ending March 10, 1970, the overall average price was 22.37 cents a gallon. This is lower than the price for any week during 1969 except for that ending February 11, 1969, which was 22.01 cents a gallon. Otherwise, the lowest price for that year up to the week of February 11 was 22.71 cents a gallon, and the high was 23.28 cents a gallon. After February 11, the 1969 low was 23.59 cents a gallon and the high was 24.13 cents a gallon.

Senator KENNEDY. Maybe down in the Southwest it is going down.

Mr. LINCOLN. Yes; it may be going down there. Or even in the Northwest with increased imports of Canadian oil in our Northwest.

The day-to-day administrative functions will continue to be performed by the Oil Import Administration in the Department of the Interior. And with your permission I ask if I can submit the President's statement for the record made on February 20 to complete the record.

(The document referred to follows:)

STATEMENT BY THE PRESIDENT UPON RECEIVING THE REPORT OF THE CABINET TASK FORCE ON OIL IMPORT CONTROL. FEBRUARY 20, 1970

In March of last year I created a Cabinet Task Force, headed by the Secretary of Labor and including the Secretaries of State, Treasury, Defense, Interior, and Commerce, and the Director of the Office of Emergency Preparedness, to study the Federal Government's oil import policy. The Task Force Report—the first Cabinet-level study of the oil import quota system since its inception in 1959—was submitted to me by Chairman Shultz on February 9th.

Reasonable men can and will differ about the information, premises, and conclusions contained in the report. None, however, can fail to be impressed by the depth and breadth of this study. The wide response from the oil industry and other interested parties, running to 10,000 pages of testimony, is evidenced of the broad interest in this endeavor, I compliment all members of the Task Force and the staff for their devoted and discerning effort. Their report substantially increases our understanding of this complex problem.

It is not surprising that the members of the Task Force did not reach unanimous agreement on a set of recommendations. The conclusions reached by the Secretary of Commerce and the Secretary of Interior differ sharply from those

reached by the remaining five members of the Task Force. Among the majority there is also a divergence of views with the Secretaries of State and Defense expressing particular concern over the implications of the report's conclusion for the Nation's security and our international relations.

There are, however, areas of agreement concerning actions that can be taken immediately. All Task Force members agree on the need for a new management system to set policy for the oil import program. After considering the views set forth in the report, I am directing the Director of the Office of Emergency Preparedness to chair an interdepartmental panel which will initially include the Secretaries of State, Treasury, Defense, Interior, and Commerce, the Attorney General, and the Chairman of the Economic Advisers. While most day-to-day administrative functions will continue to be performed by the Oil Import Administration of the Department of Interior, the policy direction, coordination, and surveillance of the program will be provided by the Director of the Office of Emergency Preparedness, acting with the advice of this permanent Oil Policy Committee.

All members also agree that a unique degree of security can be afforded by moving toward an integrated North American energy market. I have directed the Department of State to continue to examine with Canada measures looking toward a freer exchange of petroleum, natural gas, and other energy resources between the two countries.

The State Department has already discussed informally with Mexico the possibility of entering into arrangements with that country on energy exchange and I am instructing the State Department to explore more fully the possibility of reaching an agreement with Mexico to this end.

While generally agreeing with the recommendations of the majority of the Task Force, the Secretary of State indicates a concern that changes in the oil import program might provoke adverse international reactions which could have a bearing on national security. He therefore conditions his agreement on consultations with other governments before any final decisions are reached.

The Secretary of Defense also recommends that the security implications of the program proposed by the majority be brought to the attention of our allies and affected nations at the earliest possible moment.

Accordingly, I direct the Secretary of State to continue our consultations on petroleum matters with Venezuela and our other Latin American suppliers, who have proven to be secure and dependable sources of oil during the crises we have experienced since the Second World War.

The State Department will also review with producing nations of the Eastern Hemisphere and with our NATO allies and Japan the findings and recommendations of the report. I further direct the Secretary of Defense to join in these discussions when they include our NATO allies and Japan.

The Congress properly has a vital interest in this program which affects every area of our country and many facets of our economy. Committees of both the House of Representatives and the Senate have indicated interest in holding hearings on the oil import program and any recommended changes in it. I expect that much additional valuable information will result from these Congressional hearings, and I direct the Oil Policy Committee to carefully review all such information.

I expect the Oil Policy Committee to consider both interim and long-term adjustments that will increase the effectiveness and enhance the equity of the oil import program. While major long-term adjustments must necessarily await the outcome of discussions with Canada, Mexico, Venezuela, and other allies and affected nations, as well as the information developed in the proposed Congressional hearings, I will direct the new Committee to begin its work immediately. An Executive order for this purpose will be issued shortly.

Mr. LINCOLN. The need for a satisfactory arrangement with Canada was recognized by the Cabinet task force—which recommended volumetric controls as a necessary transitional measure—

Senator KENNEDY. Just on that point, as I understand the report, it was to be a transitional measure, and it also assumed that the tariff adjustments would go into effect in July 1970. I understood that transitional restrictions on Canadian oil were part of an overall tariff system; is that not true?

NOTE: The report is entitled "The Oil Import Question; A Report on the Relationship of Oil Imports to the National Security" (Government Printing Office; 339 pp.).

Mr. LINCOLN. I should say here that while I did subscribe to the main thrust of the report, I certainly did not commit myself to all the details, I did subscribe to the main thrust of it as being the best way, or the least worst way, to handle the problem that we have. My understanding, however, was that our analysis showed that regardless of what we did, we needed to institute a system of formal import controls so far as Canada is concerned. As all of us here know, we have had a system of import controls in cooperation with Canada on a voluntary system, but for the record, just so we may know what the report says, I have in front of me what it does say in about six paragraphs.

In paragraph 304, it does suggest a qualified preference for Canada.

In paragraph 314(d), it does call specifically for allocation of the nominally exempt quota for Canada.

In 314(c) it calls for a separate Canadian allocation and licensing system. In paragraph 335(c) it suggests unilateral adoption of volumetric restrictions as a transitional measure. In paragraph 343(b) it calls for allocation of auction of Canadian quota licenses during transition.

In 427(a) it says that after a reasonable transitional period, such Canadian preferences should not be limited except on security grounds. And this perhaps refers to the matter of imports into eastern Canada.

In paragraph 427(b) it recommends that after an appropriate transition, Canadian and Mexican imports be exempt from the program if common energy accords can be arranged with those governments.

And in 433(b) it states the quantitatively limited volume of imports from Canada and Mexico should be initially exempt, from its increased tariffs, and I point out that it says quantitatively limited volume of imports.

Senator KENNEDY. Well, obviously I would want a chance to study those specific provisions that you mentioned.

Just on 304 which you mentioned here, it says:

Obviously it makes no sense—

Reading directly from the paragraph you mentioned—

it makes no sense to prefer sea shipment from Mexico over Great Lakes shipments from Canada. Caribbean shipments are as secure from transport interference as Gulf Coast shipments and possibly less vulnerable to submarine interdiction than movement by sea from Alaska or the Canadian islands. On the other hand there may be reason to consider Canada more reliable than any other foreign supplier.

It goes on.

Mr. LINCOLN. I could not agree with you more, having been born on the shore of Lake Huron. It is a safer place over which to carry oil than from across the Gulf of Mexico.

Senator KENNEDY. The point I would like to stress is that the whole thrust of this report is that there should be a tariff system. Where in this report do you get the authority to reduce Canadian imports without inaugurating a tariff plan? I think that would be the question that I would hope you would be able to address.

Mr. LINCOLN. We are not yet reducing—

Senator KENNEDY. Pardon?

Mr. LINCOLN. We are not yet reducing the Canadian importation.

Senator KENNEDY. Well, could you explain that or develop that?

Mr. LINCOLN. I would like to complete my statement, and then we can come back to this point.

Senator KENNEDY. All right, sir.

Mr. LINCOLN. We did have an upsurge of Canadian oil imports above the level set by the voluntary control system at the beginning of the year.

Senator KENNEDY. Now, just on the voluntary control and then I will let you continue. I know it is difficult to develop lines of thought if there is interruption, but just on the voluntary control system. It has never worked. It never has been given the full support of the respective administrations. I would certainly hope that you would not rely on that voluntary control system because I think it is clear that it has never been treated seriously and it is not legal binding.

Mr. LINCOLN. Well, the voluntary control system was an invention of the previous administration. I do not know a great deal about it but as a one-time economist, I will just state my views that, in general, voluntary control systems are unworkable. They break down under pressure.

But if I may go forward, sir.

Senator KENNEDY. Please.

Mr. LINCOLN. I stated that the upsurge of Canadian oil imports above the level set for voluntary controls, and as I recall, the statistics show that while they have not been completely adhered to, they have been approximately adhered to, did pose an immediate task for the new management system.

This new management system directed by the President, by the way, will in addition to the definition in his statement be defined in an Executive order which is now being processed in the executive branch. It will be sometime before our practices and procedures are worked out in detail because this is a complicated operation and we propose to move step by step in order to assure we are right.

I do know the purpose and responsibilities of this committee concerns administrative procedures I have noted the Senate resolution concerning the study of the Administrative Procedures Act. Mr. Chairman, you have told me that you are interested in my action and that of the new Oil Policy Committee in connection with the issuance of the proclamation formally establishing import controls on Canadian oil.

I will say in summary that the procedure was that I have known as generally usual in the executive branch in providing a proposed course of action to the President with completed staff work taking into account the laws and regulations by which we are bound.

As chairman, I did convene the Oil Policy Committee. The members, by the way, were quite familiar with the Canadian situation from the work of the Cabinet task force, a gruelling 10 months of effort, which I shared with Secretary Trezise and others. There was cognizance of the analysis and proposals of the task force report concerning Canadian oil. The committee did reach an agreement, which is reflected in the proclamation, on the course of action which was believed necessary. My office, State and Interior, having been primarily concerned, took the leadership in drafting the proclamation and press explanation for submission to the President through the Bureau of the Budget, which is the procedure in the case of proclamations and proclamation changes, requiring I think 10 copies to the Bureau of the Budget or maybe it is seven.

The draft proclamation was cleared by all members of the Oil Policy Committee. In fact, it was cleared twice since I understand in seeking to complete the staff work, my staff took counsel informally from all members before processing the paper for the Bureau of the Budget which then circulated the paper formally to the same agencies. I forwarded the draft proclamation and press statement through the Bureau of the Budget with a letter to the President recommending signature of the proclamation to impose a temporary formal limitation on crude imports from Canada. My reasons are given in the press statement which I also ask that I may submit for the record. But I will restate those reasons briefly here.

(The document referred to for inclusion in the record follows:)

[From the Office of the White House Press Secretary]

THE WHITE HOUSE

March 10, 1970.

The President has today issued a proclamation, effective March 1, 1970, establishing a temporary, formal limitation on imports of crude oil and unfinished oil from Canada into Districts I-IV. The formal limitation to 395,000 barrels per day for the remainder of 1970 permits a substantially higher level of imports from Canada than the 332,000 barrels per day during 1970 previously agreed upon between the two governments. The Canadian Government has been consulted about the need for formal limitation, which is necessary because the voluntary control arrangements have proved unworkable.

The Cabinet Task Force on Oil Import Control recommended and the President on February 20 directed that efforts be made to develop a freer exchange of petroleum, natural gas and other energy resources between the United States and Canada. Although it is now necessary to impose formal controls on the level of imports, it is expected that discussions will continue with Canada looking toward the conclusion of an agreement permitting freer exchange of energy resources between the two countries.

The institution of formal controls and an increase in imports were recommended by the Director of the Office of Emergency Preparedness after consultation with the Oil Policy Committee announced by the President on February 20, 1970, consisting of representatives of the Departments of State, Treasury, Defense, Interior, Commerce, and Justice, and the Council of Economic Advisors.

Under the understanding on oil reached in 1967, the Canadian authorities undertook to seek by voluntary arrangements with industry to limit the volume of Canadian oil exports to the United States to levels of 306,000 barrels per day in 1969, and 332,000 barrels per day in 1970. The flow of oil from Canada, however, has recently risen to levels much higher than anticipated under the agreement.

It has become clear that the voluntary controls are not workable. The breakdown of voluntary controls is impairing the management of the present import control program and the orderly development of future oil import policies. The Director of the Office of Emergency Preparedness, after consultation with the other members of the Oil Policy Committee, has therefore concluded that the existing method of restricting imports from Canada does not serve our National Security interests effectively, and leads to inequities within the U.S. He recommends that pending the establishment of alternative arrangements, volumetric restriction on Canadian imports should be employed as a means of interim control during the period of transition to such arrangements.

Proposed regulations covering the apportionment of quantities of the imports from Canada will be published within a few days for public comment by March 20, 1970. The regulations will be issued by the Secretary of the Interior, with the concurrence of the Director of the Office of Emergency Preparedness in time to take effect on March 30, 1970. Although actual licensing will not begin until March 30, the allocation system will take account of imports from the beginning of March, so that no advantage will accrue to any importer by reason of imports during March prior to the institution of the licensing system. The import levels established by today's proclamation should be adequate to meet the needs of the U.S. refineries and consumers who have clearly depended upon supplies from Canada.

Another additional provision in the proclamation is the substitution of a Department of Justice member for the Department of Defense member on the Oil Import Appeals Board. This was also recommended by the Cabinet Task Force on Oil Import Control.

Mr. LINCOLN. The Canadian Government's voluntary arrangements with industry have broken down and imports are greatly exceeding the levels anticipated. The breakdown of voluntary controls is impairing the present import control program and the orderly development of future oil import policy. The existing method of restricting imports from Canada does not serve our national security interests effectively and it leads to inequities within the United States.

The action proposed to be taken by the proclamation is concurred in by all members of the Oil Policy Committee. The action follows recommendations of the Cabinet Task Force on Oil Import Controls which will be found in paragraph 335(c) of the minority report of that task force which will be found on page 359, paragraph 4(a).

The purpose of this action is not restrictive.

By the way, going back to the minority report, I did not sense any support for a tariff in my colleagues who submitted that minority report yet they recommended controls.

The purpose of our action toward Canada is not restrictive but to permit an orderly growth in Canadian imports consistent with our overall system of control. It will increase the level of imports from Canada by approximately 20 percent over that anticipated under the voluntary control system and will increase overall U.S. imports for some months.

The Oil Policy Committee did also advise me to take the opportunity to execute the generally agreed change of membership on the Oil Import Appeals Board from Defense to Justice, and you will note that that change is included in the proclamation.

Coinciding with the preparation of the proclamation, the Oil Policy Committee asked an ad hoc working group with staff representatives of each member to consider the matter of regulations with a view to having these available at the same time as the issuance of the proclamation. The general approach to the regulations was worked out in an ad hoc working group and the draft was prepared by the Oil Import Administration working with members of the OEP staff.

I want to stress that these operations, thus far anyhow, have been well staffed operations, cooperative efforts whether people happen to be happy about the outcome or not.

As soon as the President signed the proclamation, the draft regulations were released to the Federal Register, over the signature of the Oil Import Administrator, with my approval, for publication requesting comment. I do offer here, for the record, with your permission, the insertion in the Federal Register of Wednesday, February 11. This notice contained an indication concerning applications for allocations. I also offer for the record a later insertion giving notice for applications for allocations, inserted by the Administrator of the Oil Import Administration with my concurrence on March 18.

These insertions in the Register invited public written comment through March 20 on the proposed amendment to the regulations. Applications should be presented by March 25, and the regulations would come into effect March 30. Both the Department of the Interior and

my office, who were those principally concerned with the regulations under the new management, did recognize that the time allowed for comment was undesirably short. We were also aware that under the existing circumstances in which the action includes both foreign affairs considerations and a definite element of urgency, the draft publication and normal period prescribed by the Administrative Procedures Act need not be provided, and this is so written in the Administrative Procedures Act.

But, on the other hand, to be fair, we should give interested parties notice and all the time we could. We of the new management, directed by President Nixon, intend to provide, as much as is possible, an opportunity to receive the views of the interested public, I assure you gentlemen I call to your attention the fact that the proposed amendment to the regulations extends only until July 1, leaving room for possible changes after that time.

Gentlemen, for all practical purposes, the total operation of the oil import program has been the responsibility of the Secretary of the Interior until very recently. It is a complicated and difficult program to operate. There are many administrative aspects of it that I do not pretend to be yet completely familiar with. But I will say I am working hard in my job on this. I assure you that insofar as I have responsibility, I will make every effort to see that the public interest is fully considered and reflected in the management of the oil import program.

Now, with the support of my staff members here present, gentlemen, I will attempt to respond to questions. Assistant Secretary Trezise of the State Department has worked closely with me in the recent actions concerning Canadian imports and in other aspects of the oil import program. Some of your questions will probably fall within his particular area of responsibility.

Senator KENNEDY. I want to thank you for your statement, General.

Senator Thurmond has some questions and he has other responsibilities, so I will let him begin if he will be kind enough to.

Senator THURMOND. Thank you, Mr. Chairman.

General Lincoln, we are glad to have you with us. I first would like to make a little statement and then propound some questions to you.

Mr. Chairman, President Richard M. Nixon on February 9 received the task force report on oil import control from Secretary George Shultz whom he appointed last March as the chairman of the seven-Cabinet member task force. As you know, this task force was the first study on the subject since its inception in 1959.

The report was not unanimously agreed to by the seven members and no one expected such an agreement. I quote from the President's message of February 20, 1970:

Reasonable men can and will differ about the information, premises and conclusions contained in this report. None, however, can fail to be impressed by the depth and breadth of this study.

It is not surprising that the members of the task force did not reach unanimous agreement on the set of recommendations. The conclusions reached by the Secretary of Commerce and the Secretary of Interior differ sharply from those reached by the remaining five members of the task force. There was one point however, on which there was unanimous agreement, to wit, that a management system be established to provide the direction, coordination and surveillance of our oil imports and for the development of any new policies regarding oil import limitations.

The task force recommended that this management system be vested in the hands of an Oil Policy Committee to be headed by the Director of the Office of Emergency Preparedness. In addition, the task force unanimously recommended that this country confer with our neighbors in the North American Continent and make an effort to create a common policy.

The President responded immediately to the areas of agreement. He ordered the Director of Emergency Preparedness to Chair an inter-departmental panel which includes the Secretaries of State, Treasury, Defense, Interior, and Commerce, the Attorney General and the Chairman of the Economic Advisers.

I read with interest the press release from the White House dated February 20, 1970, and entitled "Summary Guide to Task Force Report on Oil Import Control."

I quote from the report as follows: "Since 1959 oil imports have been subject to mandatory quota restrictions under a statute authorizing the President to limit imports that threaten to impair the national security. The principal results have been these:

"(a) The delivered price of domestic crude oil within the United States is higher than the delivered price of foreign crude;

"(b) Long-term domestic exploration and production are forecast to be higher than they would be at world market prices; and

"(c) To that extent the United States is less dependent on foreign oil than it might otherwise be."

This last sentence saying that the United States is less dependent on foreign oil than it might otherwise be speaks for itself. The Oil Policy Committee of which General Lincoln is chairman has yet to be in existence for 1 month. The chairman has probably not yet had sufficient time to fully formulate a system of practice and procedure of which will hereafter be followed.

However, I am sure that General Lincoln will be able to give this committee valuable insight into the procedures the Oil Policy Committee has used since its inception and those that he plans to implement for the future.

Now, General Lincoln, what criteria will be used to determine what is or is not in the national defense?

Mr. LINCOLN. I think I should refer to our task force report which has conclusions, one of which is to the effect that an oil import control system continues necessary for our national security. This conclusion being reached, the problem is one of a level—of how much restriction is necessary. This is the one that the task force struggles with.

There is in the Trade Expansion Act of 1962 a section that describes how this determination will be made, how the determination was made in 1959, and I suggest it might be useful for the record—I will not read it now—to include it. It is sections of the Trade Expansion Act of 1962, sections 232 (b), (c), and (d).

Senator THURMOND. Mr. Chairman, is it understood that will be included in the record now?

Mr. LINCOLN. If I may, I will ask my General Counsel, Mr. Kendall, if he has a further comment on this.

Mr. KENDALL. Senator Thurmond, the Congress did provide to the President and the Director a definition of national security in the act

itself. I thought you might be interested in that fact. You asked what standards would be used and section (c), subsection (c), reads:

For the purposes of this section the Director and the President shall in the light of requirements of national security and without excluding other relevant factors give consideration to domestic production needed for projected national defense requirements,

and so on.

It is a fairly full statement of the standards to be used under the act.

Senator THURMOND. Is there any portion that you would like to be included in the record in toto or did you cover all you feel—

Mr. KENDALL. I think the entire section might well be in the record.

Mr. LINCOLN. I suggest that sections (b), (c), and (d) be included for clarification.

Senator THURMOND. Mr. Chairman, I move that be done.

Senator KENNEDY. So ordered.

(The material referred to for inclusion in the record at this point follows:)

INVESTIGATIONS BY DIRECTOR OF OFFICE OF EMERGENCY PLANNING TO DETERMINE EFFECTS ON NATIONAL SECURITY OF IMPORTS OF ARTICLES; ADJUSTMENT OF IMPORTS

(b) Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Director of the Office of Emergency Planning (hereinafter in this section referred to as the "Director") shall immediately make an appropriate investigation, in the course of which he shall seek information and advice from other appropriate departments and agencies, to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion. If, as a result of such investigation, the Director is of the opinion that the said article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall promptly so advise the President, and, unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security as set forth in this section, he shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not so threaten to impair the national security.

DOMESTIC PRODUCTION FOR NATIONAL DEFENSE; IMPACT OF FOREIGN COMPETITION ON ECONOMIC WELFARE OF DOMESTIC INDUSTRIES

(c) For the purposes of this section, the Director and the President shall, in the light of the requirements of national security and without excluding other relevant factors, give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense, the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth, and the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements. In the administration of this section, the Director and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security.

(d) A report shall be made and published upon the disposition of each request, application, or motion under subsection (b) of this section. The Director shall publish procedural regulations to give effect to the authority conferred on him by subsection (b) of this section. Pub. L. 87-794, Title II, § 232, Oct. 11, 1962, 76 Stat. 877.

Mr. LINCOLN. There does seem to be some confusion with which I sympathize as to what is required by the law, one element being that a separate and new report is not required in connection with this proclamation. That I am reliably informed is not required by the law.

Senator THURMOND. General Lincoln, in reaching a decision, does your office give consideration to requests or suggestions from the various departments and agencies?

Mr. LINCOLN. Complete consideration; in fact, as I outlined in my statement, the proclamation and press statement, were cleared with the members of the agencies who are members of the Oil Policy Committee and whom I believe you can say are the agencies of Government primarily concerned with this problem.

Senator THURMOND. So interested parties do have the opportunity to make known their feelings on this question?

Mr. LINCOLN. Certainly in this case within Government agencies we had had 10 months of study of the oil task force prior to the action—the study included 10,000 pages of input by interested parties, we have a great deal of knowledge of what people thought about oil problems.

Senator KENNEDY. Will the Senator yield on that point? I would think that “interested parties” include consumers and I would be interested in what voice consumers had in your decision in the Canadian oil restriction, what opportunity they had to present their views to your agency prior to the time that you made the decision.

Mr. LINCOLN. We asked for comment during the task force discussion from anybody interested.

Senator KENNEDY. But I am not talking about the task force report. We are talking here about the particular decision which you made for Canadian oil restrictions. I would be interested in not only the consultations you had with other governmental agencies but what opportunity you had to hear consumers who would be affected by your decision.

Mr. LINCOLN. We may be hearing from them in connection with the invitation for a comment on regulations. But I come back to the point that, in the proposed action, we did not propose to restrict Canadian imports from the situation where they would have been under the voluntary controls. Rather we proposed significant expansion.

Senator KENNEDY. Well, I will come back to this.

Go ahead.

Senator THURMOND. General Lincoln, I presume before consulting with our neighbors in the North American Continent that this brand-new agency will decide to get all the information it can from whatever source it feels would be helpful to our national security, to the best interests of consumers, and in the end, of course, to formulate the best policy for the people of this country.

Mr. LINCOLN. Certainly. As a matter of fact, this is a primary concern of Secretary Trezise and I should ask him to comment on your question. But I should underline that before taking this action, we did inform and consult with the Canadian Government. I believe they

are cognizant of the fact that, in order to operate an oil import program, you have to have a sum total system rather than two-thirds of a system. When a voluntary portion of it breaks down, you have no recourse but to go to a formal system. But I should ask Secretary Trezise if he has a comment.

Mr. TREZISE. Well, General Lincoln has said, Senator Thurmond, that we have had close consultation with the Canadian authorities throughout the period leading up to the imposition of controls, going back indeed to the early part of 1969. We have been in very frequent communication with representatives of Canada.

Senator THURMOND. Since your committee has not been formed very long, General, I am wondering if you were sufficiently organized when this decision on Canadian oil was rendered.

Mr. LINCOLN. I definitely think so, sir. It was a new committee on paper. In fact, we had been meeting for 10 months. Our staffs had been working together for 10 months, for all practical purposes they are the same agencies, except Secretary Shultz is not on the new committee.

People knew each other well. They are tangling with the same problems. When the committee convened I had a little of the feeling that the same fellows were there except the cross had been lifted from Secretary Shultz' shoulders and I was sitting at the head of the table.

Senator THURMOND. I want to ask for the record this question. Did you follow the provisions of the Administrative Practices and Procedures Act in reaching a decision on Canadian oil?

Mr. LINCOLN. The answer is "Yes," but I will ask if my General Counsel will comment on this in more detail.

Mr. KENDALL. Yes, Senator. We followed the requirements of the act. Administrative procedure, of course, is to government like breathing is to the human body. You have administrative procedure whether you like it or not in order to carry out the laws that Congress passes. The question is, How good is the administrative procedures? Certain standards are set by the law and those standards were observed.

It should be noted, of course, that the proclamation was a Presidential action which does not—for which there is no required hearing. The regulations themselves, however, were published with as much time as was available for comment.

Senator KENNEDY. Just on that point now, I am surprised, Mr. Counsel, that you would suggest that there was full compliance with the Procedure Act. In fact, you utilized exceptions to the Procedure Act. But it is very clear that the Procedure Act suggests a 30-day period, and you used a 10-day period.

Mr. KENDALL. That is right.

Senator KENNEDY. So you took advantage of the exceptions to the act. I would certainly hope in response to the Senator's questions that you would give a full and complete answer on this and say that you took advantage of the various exceptions which are available under the Administrative Procedure Act. I think otherwise there is a distortion, a misrepresentation.

Mr. KENDALL. Two things, Senator. I consider exception as part of the law.

Senator THURMOND. Mr. Chairman, I have to go to another committee right now and I will come back later, but I think the strong words you just used about being a distortion and misrepresentation—

I do not happen to know this gentleman, but he is in the employ of the Government and I imagine if he is that kind of a man he would have been gotten rid of long before now.

Mr. KENDALL. Thank you.

Senator THURMOND. I would like to give him an opportunity just to answer the question, I think.

Senator KENNEDY. I think if the Senator could remain with us, we can develop this. But he is welcome to make any kind of comment.

Senator THURMOND. I will be back.

Mr. KENDALL. Two comments were called for. One is the exceptions are a part of the act, so when I say the act has been complied with I—

Senator KENNEDY. The exceptions have been complied with.

Mr. KENDALL (continuing). I am not saying something more than the act is being complied with.

Second, I did comment to Senator Thurmond in answer to his question that as much time as could be allowed was granted indicating, of course, there was a shortened time because we did not have more than that.

Senator KENNEDY. You did not have a lot of time?

Mr. KENDALL. That is correct.

Senator KENNEDY. So you availed yourself of the exception, did you not?

Mr. KENDALL. That is correct.

Senator KENNEDY. And under the act, aren't you required to publish the reasons for using such exceptions?

Mr. KENDALL. Yes, I believe the Oil Imports Administration did state them.

Senator KENNEDY. What were the seasons? For what reasons?

Mr. KENDALL. I have the publication here, sir.

Mr. LINCOLN. This is already in the record.

Mr. KENDALL (reading):

The regulations must be issued and the allocations and licenses issued thereunder by March 30, 1970. This necessitates the short period for commenting.

Senator KENNEDY. In other words, the reason that you circumvented the 30-day period was because you were in such a hurry, because you set a March 30 deadline. Isn't that correct?

Mr. LINCOLN. Mr. Chairman, if we were to do this at all, it seems obvious that we had to move on about this time schedule.

Senator KENNEDY. Excuse me?

Mr. LINCOLN. If we were to do this at all, it seems apparent that we had to move on about this time schedule.

Senator KENNEDY. Well, can you tell me what possible reason there was for the hurry? We have had this policy now in effect for a number of years. Why could you not follow the procedures under the Administration Procedure Act—a 30-day period, without the exceptions.

Mr. LINCOLN. With definite exceptions.

Senator KENNEDY. What possible reason? I think this is certainly a justifiable question, when those of us in New England are trying to get the OEP to move to increase imports of home heating oil we see delay after delay after delay, and yet when it comes to restricting imports we see how quickly OEP can move and how they can take advantage of the exceptions in the Procedure Act and how they are so ready to just say, well, we were in a hurry. We were in a hurry. And

yet when we ask for the reasons for such a hurry, we just do not find them forthcoming. If you want to give us your reasons or develop them, we would be glad to hear them.

Mr. LINCOLN. I regret, Mr. Chairman, you did not find my statement responsive. But there is an element of history in this and the individual who knows something of the previous practice is Mr. Chapman. Might I ask him to speak to this matter.

Mr. CHAPMAN. Senator, first I should point out that we have under this statute an unusual situation in that changes of the kind that are involved here have been made typically by changes in the Presidential proclamation which are not themselves subject to the Administrative Procedure Act.

As you may have noticed in the task force report, this problem was addressed and it was suggested that one way of avoiding that problem in the future would be to defer as many decisions as possible to the regulations which are subject to the act rather than by proclamation. And consequently, you may notice that the proclamation that was issued in this case did not itself prescribe the system of allocations.

Now, the reason for the hurry on this short period of 10 days in the regulations was that we had to get an effective licensing system operating simply as a mechanical measure. It was not intended to fix anyone's rights deliberately or definitely by this very short period of notice. This was just to get the thing out and working.

What we have done is in effect to use a two-step procedure. After this licensing system goes into effect at the end of March, there will be another set of proposed regulations which are intended to be published with full opportunity for public comment in compliance with the full time span. This was contemplated in the proclamation itself which in paragraph (b) of the revised section made the statement that—

The regulations which are going to be effective through June 30 shall be subject to adjustment based on revised allocations for the period March 1, 1970, through December 31, 1970, which shall be issued no later than June 30, 1970.

So the short answer to your question, Senator, is that what we were really doing was trying to go as far as we could in giving an opportunity for public comment although recognizing the need to get our licensing system into effect very rapidly. We have given the public an opportunity to comment very briefly and without prejudice to their opportunity for a full period of comments when we have a chance.

Senator KENNEDY. But I think the basic question is why the proclamation had to go into effect by March 30. I mean, I can understand that if the proclamation is in effect you have to take immediate steps to get the licenses out, but what was the hurry to have the proclamation by March 30.

Mr. LINCOLN. This turns on whether the necessity we felt for exercising some controls on the import of Canadian oil in order to have an orderly system of control overall.

Senator KENNEDY. Couldn't that wait until April 30? I mean everything you have said, sir, is true, given the fact that the proclamation went into effect on March 30. The basic question is why that had to take place, what the hurry was.

Mr. CHAPMAN. One of the things which is behind this, which is in the task force report, is the purpose for which the task force recom-

mended that volumetric controls be instituted and an allocation system and the reason is that under the voluntary agreements, regardless of their effectiveness in limiting the overall ceiling on imports from Canada, they have been very effective in affecting the distribution of Canadian imports within the United States.

That is to say that the system of control has been very informal. It has been based on a kind of informal cajolery by the Canadian Government dealing with companies over there, based on historical imports, and the significance of this is that you get one refiner who is importing from Canada at an early time before this agreement went into effect, and he continues to have access to Canadian oil. Somebody who did not have this history does not have access to Canadian oil.

Everyone felt that this was a situation that was unjustifiable and the sooner we can put an end to that the better.

These are the inequities that are referred to in the Presidential proclamation and this is why we are in a hurry to get at them.

Senator KENNEDY. And that is why it had to be done in such a way as I think to make virtually impossible the kind of consumer participation which was certainly envisioned by the standard 30 days comment period. You felt it was such an emergency measure, that you had to restrict the period to 10 days rather than the usual 30 days.

Mr. CHAPMAN. That, Senator, is why we made provision in these regulations that all of these allocations will be readjusted retroactively after we have had an opportunity for full public comment. No rights are being given or foreclosed by the decisions that will be taken.

Senator KENNEDY. Why can't you do that before? I mean why couldn't you have taken the consumer's interest into consideration prior to doing that?

Mr. LINCOLN. That raises a question along the line that the consumer's interest here is being reasonably taken care of because going back to the statistics here which I do happen to have, the voluntary import level was set at 332,000 barrels for districts I and IV and we have established a level of 395,000 barrels which is a 20-percent increase and certainly should not have an adverse impact on—should alleviate any adverse impact on price. May I add a couple of other figures.

The task force report did include that Canadian oil imports should be limited to 615,000 barrels during this transition period. I believe the Department of the Interior estimates that the rate in district V, west of the Rockies, is going to be of the order of 230,000 barrels this year. So the 395,000 plus 230,000 is a bit above the 615,000 that the task force considered would be reasonable and keep matters in balance.

Senator KENNEDY. Of course, that envisioned a transition to a tariff system. When you refer to the task force report and justification, they envisioned going to a tariff system after a period of transition, but I do not see what you are "transisting" into.

Mr. LINCOLN. Certainly I envisaged that something of this nature was going to be necessary whether we went to a tariff system or not. Now, I certainly was not discussed at length and in great depth.

I might ask Secretary Trezise if he would comment on this.

Mr. TREZISE. Well, Senator, the transition intended in the task force report and indeed intended under this action is a transition to what is known in the task force report as an integrated common energy policy with Canada. There would be under the task force proposal no tariff on Canadian oil and presumably unrestricted quotas.

Mr. LINCOLN. My understanding was that we had concluded that it would be necessary to go to a formal quota system in connection with arranging a common energy arrangement with Canada and in transition to either a tariff or an improved quota. And I might ask Mr. Chapman's view on that because he has had considerable to do with the drafting.

Mr. CHAPMAN. The Task Force made no distinction in terms of its preference for the quota and allocation method if there are going to be restrictions on Canadian imports, so that even if there were to be a continued quota system, as long as there were going to be any kind of restriction, the recommendation was that we impose a quota and use a fair allocation system so that we could get away from this very unfair historical basis we have had in the past.

Senator KENNEDY. There has been some suggestion this morning that actually the action taken by OEP is going to increase the oil imports into this country. What are the figures now, the number of barrels which are being imported today into the United States from Canada, or at least prior to the time that this restriction goes into effect? Do you have those figures? As I understand, they are 550,000 barrels a day.

Mr. LINCOLN. I do not have the statistics with me.

Senator KENNEDY. Does that sound right?

Mr. LINCOLN. We can provide a statement on this. The voluntary agreement was for 332,000 barrels. The proposed quota regulations, draft regulations, as I recall proposed one and five hundredths times the importation of these refineries during the period from September 1968 to September 1969. And hence it seems very likely that they will get, under the current proposed regulations, the same amount, approximately the amount of crude they were using in that period or more.

Senator KENNEDY. Well, it is my understanding that there were 550,000 barrels a day being imported and that the OEP cut will bring this down to 395,000 barrels.

So this is a cut of almost 200,000 barrels. I mean it really is disingenuous to suggest that the action of the OEP is going to increase the oil that is going to be imported from Canada. In fact, oil is going to be scarcer and correspondingly the price is going to be higher.

Mr. LINCOLN. Mr. Chairman, as you gather, I do not think that the statistics would bear out what you say, but I do not have with me experts on this particular subject because procedure is what I thought we were going to talk about. And I point out that we do have in our procedure, in operation, in the comments that we are going to receive on the draft regulations, a way of getting the basic data for analysis of this matter.

I will also go on and say there are a limited number of refineries which are involved in Canadian oil. They are well informed about the problem. We are in contact with them. Department of the Interior more than ourselves are in contact with them, including those which Senator Mondale was talking about and we expect to hear from them as to whether they feel they are in a bad position or not.

Senator KENNEDY. The only thing I would suggest, General, is that this is really the basic question. It has been written up in newspaper stories and editorials that the present import figure is 550,000 barrels and that the OEP decision is going to cut this back to 395,000.

This is a significant cutback and to suggest that it is in any way an increase is, I think—

Mr. LINCOLN. I am assuming for purposes of the record, since I believe some Canadian friends are in the audience, that they are carrying out the fact of the voluntary agreement.

Senator KENNEDY. You can assume with Canadian friends in the audience or not. The facts remain and the facts are easily attainable. I mean it was not difficult for our office to learn the facts and certainly you and your attorneys here, they should certainly be able to learn the quantity of oil that is coming in. I mean these are basic kinds of facts which any policy has to be drawn from. And I hope we are not basing a policy on an agreement which I do not believe exists. We ought to be calling a spade a spade on this and admit that the amount that is coming into this country is well above the voluntary agreement. I know it and I am sure your OEP knows it and I think we have just got to face up to that fact because if we start off by suggesting and believing that the voluntary agreements are in effect and therefore we are moving from there, I wonder how enlightened our policy could be.

Mr. LINCOLN. Mr. Chairman, I might ask Mr. Trezise to comment but first I would rather like to state a philosophical principle of my own, that one should start from the agreed system. It certainly was not the voluntary restrictions. I mean that is not a legal system. Does your attorney suggest that is a legal system which is enforceable in courts of law? It certainly is a system that has worked to some extent.

Senator KENNEDY. Is that enforceable in a court of law? Let us start off with that.

Mr. KENDALL. It is not enforceable. If you are asking me the question, I do not think that is enforceable but that does not make it illegal.

Senator KENNEDY. It does not make it illegal but it is not enforceable, so it is not what is happening now. It is nonenforceable.

Mr. LINCOLN. I do not think we should lean entirely on arrangements with our Canadian neighbors which are enforceable in a court of law, but this is absolutely out of my province.

Senator KENNEDY. We can make all kinds of agreements, but we should not distort the factual situation and use that distortion as a springboard for future policy.

Have the Canadians complained that the agreement is being violated?

Mr. LINCOLN. I think perhaps Secretary Trezise could discuss this point.

Senator KENNEDY. Have they ever complained about that?

Mr. TREZISE. Senator, the Canadians have not complained about the agreement. As a matter of fact, we have had discussions with the Canadians. We had them as I say throughout 1969 about how the agreement was working and it was not working very well as you know. And there is no intent on my part to suggest or place blame on anybody. It was a voluntary agreement which did not include formal physical control on flow of oil and it broke down.

Now, as to the numbers, I think the only fair comparison is the average per day from Canada in 1969 with the average per day from Canada in 1970. In 1969 the average per day for the whole year was

351,000 barrels a day. For this year it will be 420,000 barrels a day. The 2 months, the first 2 months, of course, are the high months in those northern States for the use of oil.

Senator KENNEDY. Even using your figures there is now a reduction, is there not?

Mr. TREZISE. That will be a 70,000-barrel-a-day increase over last year for this area where the Canadian oil flows. As I say, the first 2 months are the high months. Those months are not counted in the 395,000. When I say 420,000, that is the average for the year. So we are over the peak periods and therefore the cutback, though there is a cutback, I recognize, is not—

Senator KENNEDY. There is a cutback, then?

Mr. TREZISE. Oh, yes, from current levels.

Senator KENNEDY. Well, you concede that there is a cutback?

Mr. TREZISE. Current limits. If current levels were continued through the year, which they would not be, obviously there would be a cutback. But there will be a decline in imports of oil under normal circumstances anyway as the weather warms up.

OEP AND PRICE SURVEILLANCE

Senator KENNEDY. Could I move into another area? Could you tell me, General, what the OEP has been doing in terms of surveillance of prices during the period of the last 10 years? I know obviously you are new to this and there is enough blame for all administrations. But I would like to learn what you see as your role and what you see the OEP doing and what you would hope to do in terms of reviewing price increases.

Mr. LINCOLN. I think it would be well to make sure that that statement from the proclamation is in the record, and may I ask that it be put in the record. May I ask if my general counsel will read that statement because it is somewhat inverted language.

Mr. KENDALL. The section reads:

The Director of the Office of Emergency Preparedness shall maintain a constant surveillance of imports of petroleum and its primary derivatives in respect of the national security and after consultation with the Secretaries of State, Defense, Treasury, Interior, Commerce and Labor, he shall inform the President of any circumstances which in the Director's opinion might indicate the need for further Presidential action under section 2 of the Act of July 1, 1954, as amended. In the event prices of crude oil or other products or derivatives should be increased after the effective date of this proclamation, such surveillance shall include a determination as to whether such increase or increases are necessary to accomplish the national security objectives of the Act of July 1, 1954, as amended, and of this proclamation.

Mr. LINCOLN. Now, as some people here are aware, we receive letters now and then asking us such questions as: If the price of oil has gone up a quarter of a cent, is such required for the national security?

Obviously only God can give an answer to that, yes or no. One can keep oil under surveillance but one cannot know whether the national security is helped or impaired by a small price change.

If I may, on this subject, I would like to read from a memorandum on surveillance which I have prepared, knowing the interest of some of those here. This is a general statement as to how we have been conducting this surveillance.

Following the trade press is one component of surveillance. Daily, weekly, and monthly publications are read for information relating to the oil import control program and its objectives. The continuing review also identifies significant publications which are requested. There is a similar review of statistical materials, Government as well as private. Some of the data are regularly compiled in special tabulations in our office. Professional contacts are maintained with the research community so as to be aware of forthcoming results. Our office sees, at least, three significant publications, I am told, a year while they are in draft—information ahead of time. Recently these have included an overall analysis of the American petroleum industry, special study relating to crude oil prices, to discovery of reserves. The most current draft, on competitive feasibility of synthetic liquid fuel from coal or shale.

Participation in the preparation and review of proposed regulations has been part of my office's job. Also Presidential proclamations, recognizing that the responsibilities have rested with the Department of the Interior. This function enables us to keep in the forefront of developments within Government as a result of the special knowledge concerning such matters as petrochemicals, exports, air pollution, and competition.

We struggle, on an interagency basis, to improve the body of information available concerning petroleum. On this score the Department of the Interior has worked closely with us. The interagency effort has improved statistics. We have done some work with the census on this matter. There has been concern over revenue and cost statistics and I will say that progress has lagged in this area. Unfortunately the interagency statistical efforts have weakened in the past 2 years according to my staff.

The Cabinet task force recommended that there be a major effort made in the area of information system. I have considered that, with the charge given me by the President, I am required to take leadership in doing something about improving the information system. Hence my office, at this time, is putting in a major effort to improve the data base we have for making judgments on oil. One aspect of that is that we have asked the Bureau of the Budget for, and the Bureau of the Budget has approved, an amendment to our fiscal 1971 budget for \$500,000 to improve the data base in the oil import area.

Senator KENNEDY. I think there is reasonable ground for many of us in the Congress to believe that OEP ought to be stronger in its review and surveillance of increased prices. We realize that in terms of the American price it has increased from \$3.01 to \$3.30 since 1958. Therefore, you could say it has been a relatively small increase. But the fact remains that the world price today is approximately \$1.30, while in 1958 it was \$2.08. And we could have been enjoying the benefit of this reduction if not for the import program. The economists who have reviewed the program estimate that it is now costing consumers approximately \$5 billion a year, and estimate that it will go up to some \$8 billion a year by 1975. And I think it is not unreasonable to suggest or expect that the OEP consider these statistics and report to Congress, to the President, and to the American people what the real impact of this program is.

Mr. LINCOLN. I am certainly aware of the points you raise, Mr. Chairman, which were studied, wrestled with, in connection with our task force. There is some argument about the \$5 billion. My office and I subscribe to that estimate with a clear understanding that what we are talking about, of course, is a combination of transfer payments and of uneconomic use of resources, somewhat esoteric economic analysis to some of my friends not trained in economics.

Senator KENNEDY. Well, I think that the burden is significant. Our Antitrust Committee suggests that the figure is higher than 5 billion and we have economists who suggest it is somewhat lower. But in any event it is a very heavy and significant burden and with the increased demand, we can estimate that the consumers will be paying additional billion of dollars in future years. Therefore I would certainly hope, and I think that this is the feeling of many of my colleagues here, that when the OEP discharges its responsibility in terms of the surveillance of prices it give a hard look to these figures.

Mr. LINCOLN. I certainly agree with you and certainly the figures we are talking about underline that, while apparently we do need an oil import control system, it must be operated in the most effective and most equitable way possible.

If I may go on, by the way, to indicate the great difficulty one has in getting accurate data on which to base judgments. With some trepidation I mention the subject of No. 2 heating oil.

Senator KENNEDY. I am familiar with that.

Mr. LINCOLN. I know that the Department of the Interior is struggling with this problem and obviously now we are beginning to have an interest and responsibility for it.

One of the more puzzling aspects of it, to me, along in January, was that there were a great many complaints about shortage of No. 2 heating oil in New England, yet the inventory allegedly of No. 2 heating oil in New England was 15 percent, as I recall, above the average of the previous few years.

You run into statistical situations like that and scratch your head and say is it a true shortage or is it a problem of distribution. I mention it as an example. I pass no judgment.

Senator KENNEDY. There is a consumer shortage up in New England in terms of the oil and it is something that all of us are and have been distressed by. We had great expectations the task force report would bring us relief, but I am not sure that those hopes are going to be realized.

But let me get into another area. As I understand, the Trade Expansion Act requires a finding that the restricted import threatens to impair the national security. Have you made such a finding?

Mr. LINCOLN. I have not made such a finding and such a finding is in this case not indicated or necessary, as I understand, by the law. I believe I should ask my general counsel to state this situation in more legal language than I can use.

Mr. KENDALL. I will try to give an understanding even if it is legal. If the Director is making an investigation into an allegation, or on his own motion making an investigation, concerning the imports of an article to determine whether or not it threatens to impair national security and if he concludes it does, he is required to give that opinion

to the President. The President, unless he disagrees with that opinion, then is authorized to take such action and for such time as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not so threaten to impair the national security.

At no time does the President have to make a new finding that there is a present threat from the flow of imports to the national security. He takes such action as he deems necessary to adjust imports so that there will not be such a threat.

Speaking of the legal requirements, the following, such a finding is not required again after the first opinion of the Director of OEP.

Senator KENNEDY. As I understand, then, you are relying on a 1959—

Mr. LINCOLN. As I understand, we rely on a 1959 finding which is reinforced to some extent in the task force report which certain national security findings. And if I may, I will just read those for the record.

Senator KENNEDY. Whereabouts are you?

Mr. LINCOLN. They are paragraphs 421 to 424.

The present import control program is not adequately responsive to present and future security considerations.

Mr. CHAPMAN. Those are 441—

Mr. LINCOLN. I apologize for giving paragraphs. Page 128. A second finding is that "Liberalization of import controls over a suitable time period would not seriously weaken the national economy." A third finding is, "That total abandonment of all import controls might on present evidence be deemed to threaten security of supply." And a fourth finding, "That relaxation of import controls over time coupled with appropriate Western Hemisphere preferences and a security adjustment to prevent undue Eastern Hemisphere imports, would, if adequately monitored by systematic management surveillance, satisfactorily protect security of supply."

And I will comment on that last finding which is quite a long sentence with quite a few provisos in it. I note the proviso of relaxation of imports controls over time—underlining over time—coupled with appropriate Western Hemisphere preferences.

I should ask, if I may, if Secretary Trezise has anything to add on this important subject.

Mr. TREZISE. No, I do not think so.

Senator KENNEDY. Well, I have something to add on that, and that is the paragraph 131 that talks about the procedural posture. It says:

After ten years it is obvious that a contemporary judgment is required. It is also true that there is no recent meaningful import history against which to gauge the likely effects of restricted trade.

Then it says:

For this reason the statutory certification of the Director of OEP, both that made in 1959 and any that might be made now as to whether an article is being imported in a way that threatens the security cannot now control the decision.

As I understand, in 1959 OEP said that overland imports are not a threat. President Eisenhower agreed. And have you become convinced—

Mr. LINCOLN. I will comment that it started out as a—with, as I recall, restriction on Canada but may I ask Mr. Chapman to comment on the points you made since he I believe had something to do with this draft.

Mr. CHAPMAN. The paragraph to which you refer in terms of the procedural posture simply means that we have an old finding on which the program itself was based and the only significance of that finding is that it was the legal predicate to establishing the system of controls and the reservation that it indicated about this time is that since we have had this system of control, that we are not now in a position to say whether we can at this point say that imports threaten the national security.

Senator KENNEDY. You can or cannot?

Mr. CHAPMAN. Cannot, because we have had the system of control. And the report then goes on to examine the various contingencies that are involved and suggests a program whereby with relaxation of a gradual sort over time we may get new data on which a finding could be based.

Now, the second point is just a matter of precision. The finding was never made that overland imports had no security relevance. All of these imports have been included within the category of restricted imports. The Canadian imports that enter overland are estimated each year and deducted from the total amount of imports permitted from all over the world. One of the consequences of this has been that as Canadian imports have risen, they have reduced the amount of quota available to Venezuela and other countries.

Another implication or consequence of these findings has been that since the so-called exemption which is really only an exemption from licensing, not from control, has been limited to overland shipments, shipments from Canada over water such as the Great Lakes have been controlled from the beginning.

Senator KENNEDY. Well, does this mean that based upon the 1959 finding you can, in effect, cut off all Canadian oil without any other new finding by the OEP?

Mr. CHAPMAN. The effect of the statutory finding is that once the Director has made a finding that imports of an article are threatening or might threaten to impair the national security, then the President is given the discretion to adjust imports as he deems necessary.

Senator KENNEDY. You mean you believe that you have now the power, based on the 1959 decision, to prevent all Canadian oil from coming into this country without a new finding?

Mr. CHAPMAN. The President has the power but he could not do that unless he found it necessary for purposes of the national security to do so.

Senator KENNEDY. Well, he has to make a finding.

Mr. CHAPMAN. That is right. It is the second finding which is separate and distinct from the finding made by the Director.

Senator KENNEDY. And he has made such a finding in terms of these cutbacks that we now have?

Mr. CHAPMAN. No, sir. What he does—

Senator KENNEDY. Let me get this clear then. He would have to make a finding if he is going to cut out all Canadian imports but does not have to make a finding if he just cut them only by half?

Mr. CHAPMAN. The finding the President makes is how the system of control should be established and operated and that is an overall system of control.

Mr. LINCOLN. Let us ask Mr. Kendall if he will comment on that because he has been with the program a long while.

Mr. KENDALL. The second finding, Mr. Chairman, is a finding that the President deems it necessary to adjust an import in order to prevent the impairment of the national security. And the President recites in the proclamation issued this month:

I deem it necessary in the interests of the national security objective of the proclamation to establish an orderly limitation on the imports into Districts I through IV of Canadian crude and unfinished oil.

So he did deem it necessary to make that adjustment.

Senator KENNEDY. What was the basis for that, his making that comment?

Mr. KENDALL. Well, among other things the recommendations—what we have been talking about, the recommendation of the task force, the situation in the United States with respect to the imports of Canadian oil, the entire discussion of today concerning Canadian oil.

Senator KENNEDY. Yes, but what elements, what national security elements, were now threatened that were not threatened in 1959, from which the President could reach that conclusion?

Mr. KENDALL. I do not feel I should speak for the President.

Senator KENNEDY. Well, no, you should not, but here we are just shifting the buck back and forth on this. Obviously you have made a recommendation to the President, did you not, in terms of this?

Mr. KENDALL. The Director—

Mr. LINCOLN. I made a recommendation to the President.

Senator KENNEDY. What was the basis of your recommendation to the President?

Mr. LINCOLN. Our policy committee and I did in my prepared statement give the basis for my recommendation. It is also in the press statement. I will state this again as briefly as I can.

The recommendation was based on the judgment that the previously existing method of adjusting imports from Canada by a system that combined an overland exception with an informal and voluntary system was unworkable.

Senator KENNEDY. What has that got to do with national security?

Mr. LINCOLN. This condition impairs our system of import controls as a whole and we had to find a better way to handle this situation.

Mr. CHAPMAN. The essence, Senator, what we are addressing ourselves to is not a new concept or a new need for restriction but a new order of restriction. We had a method of restriction that did not work equitably or effectively and it is the method we are concerned to change.

Senator KENNEDY. But you see, Mr. Counsel, you are talking about how the whole system was not really working, therefore you had to take some kind of action, and you stretch the words national security to a point that you are able to take the action which you did. But the statute states that imports of an article can be restricted only if the said article is being imported into the United States in such quantities as to threaten to impair the national security. The article in question here is Canadian oil. And how do imports of Canadian oil impair the national security?

Mr. CHAPMAN. That was not the issue before us. That was a decision made back in 1959. The question before us is what action the President takes in the adjustment of the imports.

Senator KENNEDY. But the decision in 1959 did not put any limitation on the Canadians.

Mr. CHAPMAN. Oh, no, it simply found as a predicate—
 Senator KENNEDY. And you are using that as a justification for putting the restriction on now.

Mr. CHAPMAN. That has been restricted since 1959.

Senator KENNEDY. Canadian?

Mr. CHAPMAN. Yes, subject to the system of control, it has been deducted from the quota as it has been virtually from the start. The overland exemption is only an exemption from licensing, not an exemption from control, and the voluntary agreement has been a method which until now has served more or less effectively to control the overall level although never effectively to distribute it equitably coming to the United States. So this is nothing new.

Senator KENNEDY. But it is new in terms certainly of the licensing. It is my understanding that in 1959 the decision was made that overland importation was not a threat.

Mr. CHAPMAN. No, all that it says was you did not have to have a license and because all of the overland oil was deducted from the total amount permitted to be brought in from abroad, this in effect brought the Canadian oil within the amount that was restricted.

Senator KENNEDY. Well, when did the deduction start?

Mr. CHAPMAN. 1962.

Senator KENNEDY. Well, it was not in effect then in 1959, was it?

I mean importation from Canada was unlimited in 1959, then, wasn't it, because there was not a deduction. You say you are using the 1959 justification, but now you are relying on the 1962 expansion.

Mr. CHAPMAN. No. The 1962 action was restrictive.

Senator KENNEDY. I meant the import restrictions were expanding. The point is that your rationale is shifting.

Mr. CHAPMAN. What appears to shift—

Senator KENNEDY. You say the 1959 decision is the justification, the triggering device for the action that you are taking now in 1970. And then we find out that in 1959 that we were not including the Canadian oil in the import program, so you begin to rely on a 1962 decision.

Mr. CHAPMAN. The 1959 finding was addressed not in terms of geography but in terms of an article, oil, and was not limited geographically. That was the only finding made and the question of whether you make differences in terms of geography is something that was left for the President's discretion in adjusting imports.

Senator KENNEDY. Didn't the overland refer to Canada? Wasn't that really the—

Mr. CHAPMAN. Yes.

Senator KENNEDY. It did not certainly refer to the Middle East.

Mr. LINCOLN. Also Mexico.

Senator KENNEDY. So it referred to Canada and I think the record in terms of the overland exception to the 1959 decision is quite clear. I think going back, trying to stretch those earlier decisions to justify the recent action is—

Mr. CHAPMAN. The finding was not based on overland. That was a second administrative level decision. The OEP finding was just oil and made no distinction in terms of overland.

Senator KENNEDY. Do you think it would be useful, General, to return to the question I asked Senator Mondale earlier, to try to establish at least some kind of procedures by which decisions affecting

individuals, consumers, communities, States, could be tested in a court of law? Do you see any reason why we should not think about this?

Mr. LINCOLN. Could I come back to this, Mr. Chairman, because I am concerned that the historical record has gotten a little mixed concerning the Canadian market and I think Mr. Trezise is much more expert.

Senator KENNEDY. Let us hold that question.

Mr. TREZISE. Just briefly to put the record straight, in 1959 when the program was begun and the overland exception was called for by the President, Canadian oil was a very, very small part of our total consumption. By 1962, it had grown substantially and in that year we had a review of the program and it was decided to include Canadian imports within the 12.2 percent of total imports which of course served to restrict imports from other sources. Thereafter, Mr. Chapman has said we had each year a discussion with the Canadians as to how much oil would come in that year. This was the so-called system of annual estimates. And that was the device frankly for fitting the Canadian oil within the total.

By 1967 the annual estimates were being—by 1966—were being exceeded substantially and in 1967 we entered into the so-called voluntary agreement which limited Canadian oil in 1968 to 280,000 barrels a day. The voluntary program worked through 1968 but in 1969 progressively became less effective and in 1970 we have substituted for it a formal limitation. But there has been as you see since 1963 a system of control on Canadian oil.

I merely cite this for the historical record.

Senator KENNEDY. Thank you.

Mr. LINCOLN. Mr. Chairman, going back to your question, I think that from the mail that I see, and I am sure other members of the Oil Policy Committee see, that the consumer has been very significantly represented throughout the discussions of this oil problem and I include in the representation the letters and the data from Members of the Congress. I will say that they are usually well received items.

In addition, we do hear from elected representatives at the State and local level; on both sides of this oil question, by the way.

Last week I spent 4 hours before a committee of the other House, where the direction of questioning was somewhat different from here. We hear a great deal from governors, for instance.

Senator KENNEDY. From whom?

Mr. LINCOLN. From Governors, for instance. We are glad to hear in connection with our business, from consumer organizations of any sort. Insofar as we have staff we are glad to meet them personally. In fact, I have been sensitive that, with the recent discussion of the Cabinet task force report, we may have been hearing more urgently from the oil industry than from consumers.

(Discussion off the record.)

Senator KENNEDY. All I will say is that, having seen how that OEP can operate so expeditiously, I am hopeful that we can get similar kind of action with regard to some of our New England problems as well. You fellows show that you can act quickly.

Mr. LINCOLN. Well, you are representing the consumers.

Senator KENNEDY. That is right.

Mr. LINCOLN. And are in a position where certainly one needs to pay close attention to the representation.

If I may, I will ask Mr. Chapman who has been in a study group situation if he has a comment on consumers.

Mr. CHAPMAN. Certainly there was extensive representation in the submissions we have had to the task force and I think in response to the question you posed somewhat earlier, this input was certainly there and in the minds I am sure of all members of the Oil Policy Committee in what was in effect simply a continuation of their study and decision-making process during the task force period, and that of course is all in the public record.

Senator KENNEDY. If the consumers were really being considered in terms of this Canadian decision, was there any announcement that the Oil Policy Committee was going to meet on the Canadian oil problem?

Mr. LINCOLN. I would say the answer is no. The Oil Policy Committee in my mind is a working committee bound to be working continuously on more than one problem. I would not consider it useful to make a public announcement that we were going to consider a particular problem.

Senator KENNEDY. I think in response to an earlier question, you mentioned the input that comes from Defense, State Department, Interior, and others. The people that I want to insure also have an input are the consumers and those would be very significantly affected by your actions, and it seems to me it is extremely difficult for them to have this voice if there is not any kind of an announcement, or time, for any kind of a hearing.

Mr. LINCOLN. If I may interrupt, sir; on the record the Department of Justice is supposed to represent the consumers' interests. I would say that, in meetings I have been in, they represent the consumers' interests eloquently quite often.

Senator KENNEDY. Well, I am sure that the consumers would probably like to have a little voice of their own on some of these issues rather than just rely on the Attorney General. I suppose that they would like to be able to express their own views. We are all supposed—on the Hill—to be the people's representatives but I always find that they like to speak on these questions rather than just hear us describe their interests. I think that this is something you should give some consideration to. I am sure you do, but I want to emphasize and stress it.

Mr. LINCOLN. We certainly are going to do this as much as we can and I stated in the other House and will state here that we are going to make every effort to let the public, who are interested, speak their views. As you undoubtedly know, we have had considerable complaints that our oil studies over the past year were conducted in a way that did not allow the industry to speak its views on a face-to-face basis.

Senator KENNEDY. That is funny. They seem to be pretty well represented in this general oil question.

Mr. LINCOLN. I am in favor of giving equal time in my office—

Senator KENNEDY. That is right.

Mr. LINCOLN. To consumers and to the industry.

Senator KENNEDY. I do not think any consumer interests ever had any hesitation about appearing in any forum with those that represent a particular industry. But I think too often in the past they have not had the chance to express themselves, and I think there are probably those who feel that way about this decision.

We should also try and come up with suggestions in terms of amending the procedures to provide some kind of judicial review on some of these questions. Obviously we have to be aware that national security considerations are fully taken into account, but there is a tendency to make a catchword of national security in all part of our Government. Therefore we have to have some way of insuring that the national security interest really justify the actions taken.

Let me just in conclusion ask this. I am still somewhat puzzled about what a threat to the national security is created by the importation of this Canadian oil and why you believe that the national security interests are better served by an import reduction of close-to 200,000 barrels.

Mr. LINCOLN. This certainly in my view has to be considered in the context of being a portion of the sum total of the program and is related to the long-term economic effects.

Now, while I was looking through this stack of papers I have in front of me it crossed my mind that a colleague of mine in testimony in the other House, Secretary Shillito setting forth the Department of Defense views on the national security problem. If you will notice that the Secretary of Defense did generally go along with the majority report. He did stress that there is an essential security aspect to oil. When we have a situation where about 40 percent of our energy consumption is crude-oil based and about 4 percent is from natural gas liquids, you begin to think in terms of moving to a situation where perhaps half of that oil might be imported. When you are using oil for energy, you need an assured supply of it. You need it for the power. You need it for other purposes.

It behooves the leadership of the country to be very conservative indeed in taking chances, any chances, with this particular asset.

Senator KENNEDY. What possible chance are we taking with the Canadian oil? That House testimony I think Mr. Shillito said that the Canadian oil was secure. They felt that there was not a security problem.

Mr. LINCOLN. Taken in isolation certainly the Canadian oil is secure, but security of Canadian oil does not give us security of oil for the United States as a whole.

Senator KENNEDY. I would think—

Mr. LINCOLN. And it has to be fitted into the system for the United States as a whole.

Senator KENNEDY. Well, it would seem to me that the more Canadian oil we got in, the more secure our oil is going to be in this country.

Mr. LINCOLN. Let me ask Mr. Trezise to make a comment on this. I will just make a comment that, as I understand our task force study, we still do not see complete security through depending on Canadian oil and United States oil alone. One has to have some more. But let us ask Mr. Trezise to make a comment.

Mr. TREZISE. Senator, as General Lincoln has said, I think a total import system as we have and as we have had for nearly a dozen years implies that you know pretty well what you are getting from every source, otherwise the system clearly does not work very equitably or very well. But the Canadian situation does offer some special circumstances which are I think relevant.

Canada imports all of its oil for consumption east of the Ottawa Valley and that means about half of the Canadian requirements for oil are imported.

The rest of the Canadian oil which is produced in the prairie provinces is sold about one-half in the United States and about one-half in Canada west of the Ottawa Valley. So that in practice we have a situation in which if eastern Canada for any reason were to lose access to its imported oil, there would be a question of how Montreal and the eastern Canadian cities would be supplied. This has—

Senator KENNEDY. It cannot be supplied by western oil, can it?

Mr. TREZISE. It cannot.

Mr. LINCOLN. Not currently. New pipelines could do the job.

Senator KENNEDY. But the pipeline is not in effect today?

Mr. TREZISE. No.

Senator KENNEDY. And it would take a number of years to put it into effect.

Mr. TREZISE. Presumably we would have to find some way of sharing supplies with Canada. We are bound together in this.

Senator KENNEDY. So what is the problem?

Mr. TREZISE. We have both recognized the problem and talked about it.

Senator KENNEDY. What is it?

Mr. TREZISE. We do not have an answer but when we talk about an integrated policy; obviously this problem will have to be—an answer to this problem will have to be found.

Senator KENNEDY. What is the problem?

Mr. TREZISE. The problem is that eastern Canada depends entirely on imports for its oil. If in the event that oil were cut off in part or whole, the problem would be how does eastern Canada get a supply.

Senator KENNEDY. What has that got to do with western exports into the United States? Eastern Canada is dependent on supplies that come from outside or across the seas. But if you accept the fact, which you have represented and which I understand to be true, that western Canada cannot send oil into eastern Canada, that no pipeline exists, then what possible reason is there for restricting oil from coming in to these United States from western Canada?

Mr. TREZISE. One immediate reason would be that the Canadians would be under heavy pressure to extend the pipeline to Montreal.

Senator KENNEDY. Are we interfering, are we trying to pressure Canada, therefore, to go ahead and take those steps internally for a pipeline?

Mr. TREZISE. Well, I do not think we are trying to pressure Canada to do anything. I do not think that is a practical possibility. I think we do need to talk to the Canadians about how this would work in a situation of unrestricted trade in oil between the two countries.

Senator KENNEDY. No one is questioning that we ought to be talking with Canada about joint security interests and the preservation of resources. But that is a far cry from taking an arbitrary and unilateral decision to restrict importation of Canadian oil into this country.

Mr. TREZISE. I think the issues are related and I think the Canadians recognize they are related.

Senator KENNEDY. Does this mean that the real reason for the new limitations is to force Canada into changing her own import policy or forcing her to grant us certain concessions with respect to certain trans-Canadian pipelines?

Mr. TREZISE. There is no way that we can force Canada to do anything and I do not think it crosses anybody's mind that this action has any possibility, that there is in our Government a desire to force Canada to do anything. We have a situation here in which we have problems in common as long as we are trading in petroleum in the quantity that we are now doing.

Senator KENNEDY. Isn't really one reason for this action by the United States to get Canada to work out a common energy policy?

Mr. TREZISE. Well, I would not say that was the reason. The reason as General Lincoln has said was to make a national security program work more effectively.

Mr. LINCOLN. And equitably.

Senator KENNEDY. We are trying to look beyond these magical words "national security." We have not been able to develop that national security question this morning except in the broadest kind of generalities. I still do not know how we are more secure today with a limitation on Canadian oil than we were before.

General, I am sorry.

Mr. LINCOLN. I appreciate your clarification of the problem that we have. We have moved quite a ways from talking about procedure and practice. I might as well, as we come to the end of this, make a couple of comments on the national security aspect.

One is that as the task force study looked down the road it did not see as of 1980 adequate oil for both Canada and the United States from Canada and the United States alone. Therefore, one had to look at this oil situation on a global basis.

Another aspect of the problem is that we have friends and allies in Europe who are critically dependent on Middle Eastern oil and there was a grave question in the minds of the task force as to just how you handle the situation if there was an embargo or cutoff of Middle Eastern oil to these friends of ours in Western Europe, where I recall nearly 50 percent of the oil comes from the Middle East, over 30 percent comes from North Africa and nearly 9 percent comes from Eastern Europe, and over 55 percent of the energy is oil driven.

Senator KENNEDY. Could I ask just on that point. Did any of these European countries make any representations to the task force for a cutback in Canadian oil? I mean, obviously they—

Mr. LINCOLN. Certainly not.

Senator KENNEDY (continuing). They are pursuing their vital national interests.

I was just wondering in terms of if we got any kind of input from them.

Mr. LINCOLN. We tend to be the people to do the thinking in this. There could arise a situation down the road where we might be asked to supply eastern Canada oil if the Canadians do not get their affairs better organized.

Senator KENNEDY. As I mentioned earlier, I have difficulty in seeing, with the greatest respect, why that should affect our importation of western Canada oil unless you are just trying to force them to build

a pipeline, of course, and we are hitting them over the head with this.

Mr. LINCOLN. I do not think that we are in a position even to think of hitting Canadians over the head.

Senator KENNEDY. Well, they probably believe so.

Mr. LINCOLN. After all, they are making a pretty good thing out of this with importing half their oil at low price from abroad and selling half of their production at a high price to the United States.

Senator KENNEDY. And there are hundreds of thousands of American and Canadian consumers who are paying a lower price because of it and I just wish that that outrageous condition occurred up in New England.

Mr. TREZISE. Consumers of Canadian oil, the end product, do not get their product any cheaper than consumers in New England or elsewhere. The oil prices determined by the Gulf price and to say Canadian oil is cheaper, that is not reflected in consumer price.

Senator KENNEDY. If consumers do not get a cheaper price then we ought to identify how much we are subsidizing the refiners. Let us get this out in the open, if we are subsidizing the refiners. We ought to know this. I think that consumers would like to know about this. They are interested in this.

Mike Pulliam?

Mr. PULLIAM. I just want to ask one question.

General Lincoln, to your knowledge and to the best of your ability, is your organization following the provisions of the Administrative Practice and Procedure Act in handing down these decisions and in your policymaking?

Mr. LINCOLN. Certainly. We are just getting underway on this new management. We started from February 20. We have had operational requirements that are going to make us take a little time to get to following the provisions on a routine basis. We should be able, under normal circumstances, to give the full period of 30 days for our regulation actions.

Mr. PULLIAM. And you have no knowledge of circumventing any provision of the act or any exception to the act?

Mr. LINCOLN. We are careful to make sure that we would not be. In other words, first, the answer is I have no knowledge, and secondly, I take positive action to ascertain that we are not doing it.

Mr. PULLIAM. Thank you very much.

Senator KENNEDY. In closing, I want to express my personal high regard and respect for you, General Lincoln. I know that you were thrust last year into one of the most complex and difficult responsibilities in the Federal Government and I know that it has taken me my entire period of 8 years in the Senate to begin to understand the workings not only of the oil import system but all the interlocking arrangements which allow the oil industry to do very well and the consumer of oil products to do rather poorly.

And the way we have done this is perhaps worse than what we have done. I sense an institutional benign neglect here that refuses to make findings or allows findings to be made without facts and without public inputs, that purport to follow the law by invoking its exceptions and invoking those exceptions on the basis of self-imposed deadlines; and that imposes these deadlines based on the very findings which are at issue.

But it is a puzzling, wriggling, slippery circle which is very hard to get a hold on.

But the basic fact seems to be that a secret sudden decision was made within the halls of Government that now fixes a strict upper limit on Canadian oil. We are told that the executive branch needed no new findings to make that decision.

I doubt that claim is true. I believe a finding of some new national security factor is required by the law and by the 1959 proclamation. But if the executive branch conclusion is to the contrary, that you can take such drastic steps without new findings and without new legislation, that is going to be a shock and a surprise to interested Members of Congress and we are going to have to do something about it.

What is more, even though we are told the public will have a chance to comment, there will be nothing really to comment on—the upper limit has been set and fixed. That is the key decision. That is the decision which the public should have been asked to comment on.

It seems to me, in short, that what we have done here is to engage our closest neighbor and friend, compromise our efforts to limit inflationary pressures, reduce the efficient flow of an important commodity to a large portion of the Nation, all at the expense of our consumers, and all in the interests of an industry which makes more profits and pays less Federal taxes than perhaps any other industry.

I am not satisfied that we have the answers and we will have to see whether this can be solved administratively or whether we need some congressional guidance.

I want to thank you, gentlemen. You have been extremely kind and thoughtful and generous in your appearance here. I want to thank your staff as well. I want to indicate to your counsel here that my earlier response to a question that he made was in no way meant to reflect upon him individually but what I thought was an answer which needed some elaboration.

I want to thank all of you gentlemen for your appearance here and for the helpful record that we have made.

The subcommittee stands in recess.

The subcommittee will reconvene very briefly.

General Lincoln would like to make some response to my summation. I think in all fairness and equity he ought to be entitled to that opportunity. So if we could have a period of time for that response, we will be delighted to—

Mr. LINCOLN. I thank you, Mr. Chairman, for the opportunity and I will be very brief because, of course, I have had no staff preparing such a summary.

Senator KENNEDY. Now, General, you have a staff here. And if you want to submit a summary statement for the record that is fine. My remarks were made in reference to the hearing this morning and if you want to either submit a statement that you can release later on or make a statement now that is fine. Whatever way—we are up here operating out in the open. We are not in any kind of closed room, not hearing any kind of special interests. We are all out in the open on this and if you want to put a comment out, a statement out, you are welcome to do it. If you would like to make a comment here I am glad to hear you.

Mr. LINCOLN. I am only asking to make a comment here in order to say that I do disagree with a great deal of what you have said is a summary.

I feel that the oil import program has in fact rightly been under criticism, and that the situation which caused this criticism arose through the years of the sixties increasingly.

President Nixon is making every effort to find a way to work forward to a more effective and equitable program. I will recognize that, in starting off with a new management system. We are certainly going to be far from perfect in the way we do it. I do ask you to recognize that we are making every effort indeed to be fair and equitable and certainly to observe the letter and the intent of the law.

Within the framework of these words, I again repeat that we are not going to be perfect.

As a second point, as I think we both realize, there is a good deal of controversy about this program, hence, probably across the great span of the United States, the best one can hope for is equal dissatisfaction, rather than acclaim, from the observers. But again I hope that you will understand that we are moving forward with complete integrity in what we are trying to do here.

I will go on and add that we should, under less urgent circumstances, have given people more time to comment. But I think if you will look into the period before 1969, you will find cases of regulation changes without an opportunity for comment. We have moved forward a ways in giving 10 days.

Senator KENNEDY. Well, General, as I said in the early part of my conclusion, I know that this has been a new responsibility for you. I realize as well that you are a man of great integrity. You have extraordinary background, experience. We welcome the opportunity to work with you. But the views that I have expressed this morning, General, with the greatest respect, apply to the period of the last 8 years or 9 years or 10 years, when the OEP has been, I think, harsh and unfair in its treatment of New England in particular. My criticisms are not directed just to you or your administration. I apply them to the past administrations and have done so on many other occasions. And I believe my views are fairly uniformly held by people up in New England and other parts of our country, and I regret if you felt that they were in any way directed to you personally, which they were not.

If you do feel that way, then I hope that you dispel any such feelings. But I would certainly hope as well that you would understand the sincerity of our criticisms of oil import policy. Time and time again our friends and colleagues in New England have expressed the same sentiments, and if you are struck by the harshness of our views, General, it is something which unfortunately we feel is justified. I can only hope that after you have an opportunity to provide the leadership which I am confident you are capable of, that we will be able to look at your agency as one which achieved the goal you described earlier today, and that is a really evenhanded policy.

I do not believe that such a policy has been the case in the past. I am hopeful it will be the case in the future and as I said sincerely before, I believe that you are a man that can provide the leadership for change.

Mr. LINCOLN. I think we now understand each other better.

Senator KENNEDY. Very good.

Mr. LINCOLN. I realize that New England's problem is a difficult one and also hope you will realize that I have some difficult problems.

Senator KENNEDY. Are there any other comments before we conclude the hearing?

(No response.)

Senator KENNEDY. Thank you, gentlemen.

The committee is now adjourned.

(Whereupon, at 12:15 p.m., the Senate Subcommittee on Administrative Practices and Procedures of the Committee on the Judiciary adjourned, to reconvene subject to the call of the Chair.)

Mr. Lincoln, I think we now understand each other better. Senator Kennedy, very good.

APPENDIX

I. CORRESPONDENCE RELATING TO IMPORT RESTRICTIONS ON CANADIAN OIL

MARCH 12, 1970.

HON. GEORGE A. LINCOLN,
*Director, Office of Emergency Preparedness,
Executive Office Building Annex, Washington, D.C.*

DEAR GENERAL LINCOLN: I am writing to request answers to several questions relating to the Proclamation issued March 10 by the President imposing import restrictions on Canadian oil.

First, is it your opinion that Canadian oil is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security? Have you made your opinion known to the President and in what form? Could you please send me a copy of any report you submitted to the President.

Second, under whose authority was the notice of proposed rulemaking, which appeared in the March 11 edition of the Federal Register (pp. 4335-6), issued? Was it under your authority or that of the Oil Import Administrator?

Third, under what authority and for what cause was Section 4(c) of the Administrative Procedure Act suspended and comment time on the proposed rulemaking limited to ten days?

Fourth, what is the justification for requiring applications for allocations under the proposed rule to be submitted by March 20, in view of the fact that the comment period ends on March 20?

Fifth, it is my understanding that since the inception of the Oil Import Program, public hearings have been held by the Department of the Interior on proposed regulations and policy involving significant changes in the Program. Included among these have been proposed allocations for refineries in Puerto Rico and the Virgin Islands, and for feedstocks for petro-chemical plants.

Do you consider the proposed restrictions on Canadian overland imports to be less important than the Puerto Rican, Virgin Islands and petro-chemical proposals?

Sixth, why have public hearings or opportunity for oral comment not been ordered on a matter of such importance?

Seventh, has the Executive Order establishing the Oil Policy Committee, outlining its powers and responsibilities, been signed?

I would appreciate your prompt response to these questions.

Sincerely,

EDWARD M. KENNEDY.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF EMERGENCY PREPAREDNESS,
Washington, D.C., March 19, 1970.

HON. EDWARD M. KENNEDY,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR KENNEDY: This replies to your letter of March 12, 1970, in which you raised a number of questions concerning the March 10 Proclamation on Oil Imports.

(1) An opinion that Canadian oil is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security was not requisite to the action taken. My advice (which was also the advice of the Oil Policy Committee) to the President which preceded the March 10 proclamation was not predicated upon a new security finding such as that on which the inception of the program was based. Rather, it was based on my judgment that the previously existing method of adjusting imports from Canada, by a system that combined an overland "exemption" with an informal and volun-

tary limitation, was unworkable. The attached copy of the press release sets forth the reasons for my recommendation.

(2) The notice of proposed rule-making announced in the March 11 edition of the Federal Register was issued under authority of the Secretary of the Interior, with my approval pursuant to the President's statement of February 20, 1970.

(3) I am advised that the provisions of the Administrative Procedure Act were not mandatory in connection with our proposed rule-making of March 11 because the proposed regulations are in implementation of the Presidential proclamation of March 10, 1970, which involves issues of foreign and defense policy. We did however afford as much time as possible for public comment because we believe in the policies of the Act. Whenever practical we want to honor these policies even when not bound by the letter of the law. We recognize that the 10 day period was quite short, but an adequate period for public comment will be provided before the allocations for the period March 1 to December 31, 1970, are made definitive. In the meantime, we judged that businessmen should have the allocations as soon as possible.

(4) We have required that comments be submitted by March 20 so that we may have the maximum time to receive and analyze them before the regulations are issued. Applications must be filed by March 25 (Federal Register of March 18). In this way, the licenses can be issued as soon as comments are evaluated and regulations adopted. The early application requirement will not in any way prejudice decision on the regulations.

(5) and (6) In the past, public hearings in connection with the program have been the exception rather than the rule. In no case, I am informed, has a proposed regulation been the subject of a public hearing. We do not exclude the use of hearings in any case where time permits and the nature of a proposal is such that hearings, in addition to written comments, appear likely to be useful.

(7) At the time of writing, the executive order describing functions of the Oil Policy Committee has not been signed.

Sincerely,

G. A. LINCOLN, *Director.*

Enclosure.

II. CORRESPONDENCE RELATING TO RESPONSIBILITY OF THE OFFICE OF EMERGENCY PREPAREDNESS TO MAINTAIN SURVEILLANCE OVER OIL PRICE INCREASES

SEPTEMBER 5, 1969.

Mr. GEORGE A. LINCOLN,
*Director, Office of Emergency Preparedness,
Executive Office Building,
Washington, D.C.*

DEAR MR. LINCOLN: On March 5, 1969 I wrote to President Nixon requesting him to inform me what measures his administration was taking with regard to the substantial increases in the price of gasoline and crude oil. I pointed out that "under Section 6a of Presidential Proclamation 3279, as amended, which established the oil import program, the Office of Emergency Planning (now Office of Emergency Preparedness) is required to maintain surveillance over the program and 'in the event prices of crude oil or its products or derivatives should be increased . . . such surveillance shall include a determination as to whether such increase or increases are necessary to accomplish the national security objectives' of the applicable statute and order." I specifically asked the President: "Has the OEP, in accordance with its duties under the law and proclamation, begun its determination as to whether the price rises are 'necessary' in the interests of national security? Has it reached a conclusion, and if so, what conclusion? What steps will be taken if the rises are found not to be 'necessary'?"

Mr. Bryce Harlow, Special Assistant to the President, replied on behalf of the Administration on March 19. He stated that the Director of the OEP was required to determine "whether increases in the price of crude oil, its products, and derivatives are necessary to achieve the national security objectives of the proclamation and the applicable statute. After consultation with the Secretaries of State, Defense, Treasury, Commerce, Labor and Interior, the Director is required to inform the President of circumstances which in his opinion indicate

the need for further Presidential action. The Director will meet his responsibility for advising the President with respect to the current gasoline and crude oil price situation after consulting with the Secretaries named above if, in his opinion, the facts so warrant. In addition, the Office of Emergency Preparedness will naturally take part in the announced over-all review of the Oil Import Program."

In short, Mr. Harlow made it clear that the OEP could not simply await the findings of the Cabinet Task Force on Mandatory Import Controls but must make an immediate investigation of the recent price rises. Accordingly, I am now writing to inquire what action your Office has taken to determine whether the recent increases were "necessary to accomplish the national security objectives" of Presidential Proclamation 3279. I would like to know what consultations have been made with the Cabinet officers concerned and what conclusions have been reached. In view of the time which has elapsed since my original inquiry, I would appreciate your response as soon as possible.

I thank you for your assistance.

Sincerely,

EDWARD M. KENNEDY.

(SEPTEMBER 17, 1969.

DEAR SENATOR KENNEDY: This is in response to your inquiry received September 5, regarding your March 5, 1969, letter to President Nixon concerning oil prices. Mr. Bryce N. Harlow's reply called attention to the comprehensive review of oil import controls and to the Office of Emergency Preparedness surveillance responsibility.

Many of the factors going into the overall study are also important for our surveillance. This relationship is especially significant because of the long period during which the oil import policy had not been subject to a basic review.

As of the beginning of September, available figures indicate that much of the gasoline price increases between January and March have been eliminated. According to Oil Daily, the wholesale price of regular gasoline went from 16.6¢ a gallon in January to 17.7¢ in March and to 17¢ in September. Platt's Oilgram reported 16.9¢ for January, 17.4¢ for March, and 16.8¢ for August. Its September information is not available as yet.

Average service station prices of regular gasoline, taxes excluded, had a similar pattern. The Oil and Gas Journal reported 23.1¢ for January, 23.9¢ for March, and 23.5¢ for September. Oil Daily had 22.9¢ for January, 24.4¢ for March, and 23.5¢ for September. Platt's Oilgram had 23.5¢ for January, 24.3¢ for March, and 23.5¢ for August.

The surveillance of the program is a continuing one, and this reply should not be regarded as indicating a curtailment of that effort. However, recent price changes have not been such as to support a finding on which a recommendation to the Cabinet officers could be developed.

Sincerely,

G. A. LINCOLN, *Director*.

SEPTEMBER 26, 1970.

Mr. G. A. LINCOLN,
*Director, Office of Emergency Preparedness, Executive Office Building Annex,
Washington, D.C.*

DEAR Mr. LINCOLN: Thank you for your response to my inquiry of September 5. I am delighted to learn that the OEP is maintaining surveillance of gasoline prices and that these prices have apparently declined since March 1969. However, your response made no mention of crude oil prices. Since my letter to President Nixon in March 1969 and my letter to you expressly referred to price increases in crude oil, I had expected you to deal with that matter.

It is my understanding that the substantial increases in March have not been rolled back. I therefore request that you provide me with the results of your surveillance of crude oil prices as soon as possible.

Sincerely,

EDWARD M. KENNEDY.

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EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF EMERGENCY PREPAREDNESS,
Washington, D.C., October 3, 1969.

HON. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: This is in response to your letter of September 26, 1969 concerning crude oil. Crude oil prices have not receded significantly from the increased level reached earlier this year. As seen in the attached table, the U.S. Bureau of Labor Statistics Wholesale Price Index (1957-59 equals 100) recorded crude oil in January 1969 at 99.7. Crude oil rose to 104.8 in April, and was 104.5 in August. The second column of the table lists the Wholesale Price Index for all industrial commodities. This indicator was 112.8 in August as compared with 110.9 in January 1969.

Looking at longer time frames, the August 1969 crude oil price index was 7.5 percent above the average for 1960, the first full year of the control program. In that period, the Wholesale Price Index for all industrial commodities increased 11.4 percent. Since 1966, the year before the most recent oil emergency, the crude oil price index increased 7.2 percent, and the price index for all industrial commodities increased 7.7 percent.

The current study by the Cabinet Task Force on Oil Import Control is the first general review of oil import policy undertaken in many years. I anticipate that in the course of this review there will be developed additional material useful to me in the performance of my responsibility for surveillance. Meanwhile, the price trends for gasoline and crude oil have not by themselves made possible an evaluation of their relationship to the national security.

I am mindful that the surveillance responsibility is a continuing one and assure you that it is given careful attention.

Sincerely,

G. A. LINCOLN, *Director.*

Attachment.

WHOLESALE PRICE INDEXES, U.S. BUREAU OF LABOR STATISTICS
[1957-59=100]

	Crude oil	All industrial commodities		Crude oil	All industrial commodities
1954	91.0	90.4	1966	97.5	104.7
1955	91.1	92.4	1967	98.6	106.3
1956	91.6	96.5	1968	99.4	109.0
1957	101.0	99.2	1969—		
1958	101.2	99.5	January	99.7	110.9
1959	97.8	101.3	February	99.9	111.4
1960	97.2	101.3	March	103.7	112.0
1961	97.5	100.8	April	104.8	112.1
1962	97.0	100.8	May	104.7	112.2
1963	97.3	100.7	June	104.5	112.2
1964	96.9	101.2	July	104.5	112.4
1965	96.8	102.5	August	104.5	112.8

JANUARY 13, 1970.

Mr. GEORGE A. LINCOLN,
Director, Office of Emergency Preparedness,
Executive Office Building Annex,
Washington, D.C.

DEAR MR. LINCOLN: I am writing to inquire what action the Office of Emergency Preparedness is taking with respect to the latest increases in the price of home heating oil.

In November 1969, the posted cargo price of No. 2 fuel oil in the Gulf Coast was raised from 9 cents a gallon to 9.25 cents a gallon. On January 8, 1970 the price was raised still further to 9.50 cents a gallon. Unquestionably these increases will soon be reflected in higher retail prices throughout New England. According to OEP's own figures, if the increases are totally passed on to the ultimate purchaser, New England consumers will have to pay an additional twenty-million dollars per year for heating oil.

As I wrote you last September, the OEP is required by Presidential Proclamation 3279 to maintain surveillance over the Oil Import Program and to determine

whether price increases such as those which have recently occurred are "necessary to accomplish the national security objectives" of the Program. I recognize that the entire Import Program is currently under review by the Cabinet Task Force and by the President. But, despite previous assurances, this review has not been completed before the onset of winter. Now, we in Massachusetts are facing a long winter with severe cold and higher heating oil prices. Thus, we cannot wait any longer for you to perform your surveillance responsibilities and we insist that you do so immediately.

Since time is of the essence, I would appreciate an immediate reply stating clearly whether or not you intend to undertake the required determinations, and, if so, your time schedule for completing them.

Sincerely,

EDWARD M. KENNEDY.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF EMERGENCY PREPAREDNESS,
Washington, D.C., January 26, 1970.

HON. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: This is in response to your letter of January 13, 1970, regarding the relationship of the price of home heating oil to my surveillance responsibility under Section 6(a) of the oil import control proclamation. Your specific references are to the November 1969 and January 8, 1970, 0.25¢ per gallon increases in the Gulf Coast wholesale price of No. 2 oil.

Platt's Oilgram Price Service of January 14, 1970, records that the No. 2 Gulf Coast price dropped back the second of the price increases to which you refer. Since then, the price has been reported as continuing at that level of 9.25¢ per gallon, with indications of price softness reported on January 15 and 16.

Your concern is the relationship of Gulf Coast wholesale prices to retail prices in New England. The marketing of No. 2 oil is complex, and the significance of the change in the Gulf Coast quotation is difficult to assess in relation to costs on the East Coast. It appears that there is little direct bearing of changes in the Gulf Coast quotation and wholesale prices on the East Coast. The Gulf Coast monthly average price changed five times during 1969, while wholesale prices were constant through the year in Boston, New York, and Baltimore. During this period the spot rate for tankers carrying No. 2 oil from the Gulf to the East Coast fluctuated. A simplistic computation would suggest that the wholesale price of No. 2 oil in Boston would have increased one cent per gallon between June and December 1969. The Gulf Coast price increased .25¢ per gallon, and the tanker rate increased .75¢ per gallon.

A review of the weekly distillate fuel oil stock statistics of the American Petroleum Institute does not indicate a tight supply situation on the East Coast. As of January 9, 1970, these were at 63.8 million barrels on the East Coast compared with 63.9 million barrels on January 10, 1969. The East and Gulf Coasts combined were 91.2 million barrels on January 9, 1970, as compared with 95.4 million barrels on January 10, 1969. These stocks were lower in earlier years: (a) East Coast 55.5 million barrels in 1968; 60.5 million barrels in 1967; 60.2 million barrels in 1966; and 63.1 million barrels in 1965; (b) East Coast plus Gulf Coast 76.4 million barrels in 1968; 82 million barrels in 1967; 84.4 million barrels in 1966; and 84.7 million barrels in 1965.

With respect to the most recent reported price of 9.25¢ per gallon on the Gulf Coast, it is noted that the comparable figure was frequently reported at or above that figure in numerous months since February 1967.

In view of the inconclusive nature of these figures and the pending report of the Cabinet Task Force on Oil Import Control, it is not feasible to undertake an investigation of the heating oil situation at this time.

Because of your interest in these matters, I am enclosing the various tables from which most of the cited figures are drawn. (Not included.)

Sincerely,

G. A. LINCOLN, Director.

Enclosures (6).

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