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EFFECTIVENESS OF FEDERAL AGENCIES' ENFORCEMENT OF LAWS AND POLICIES AGAINST COMPLIANCE, BY BANKS AND OTHER U.S. FIRMS, WITH THE ARAB BOYCOTT

(Part 2—Department of Commerce Boycott Disclosure Program)

GOVERNMENT

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HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON

GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

OCTOBER 20, 1976

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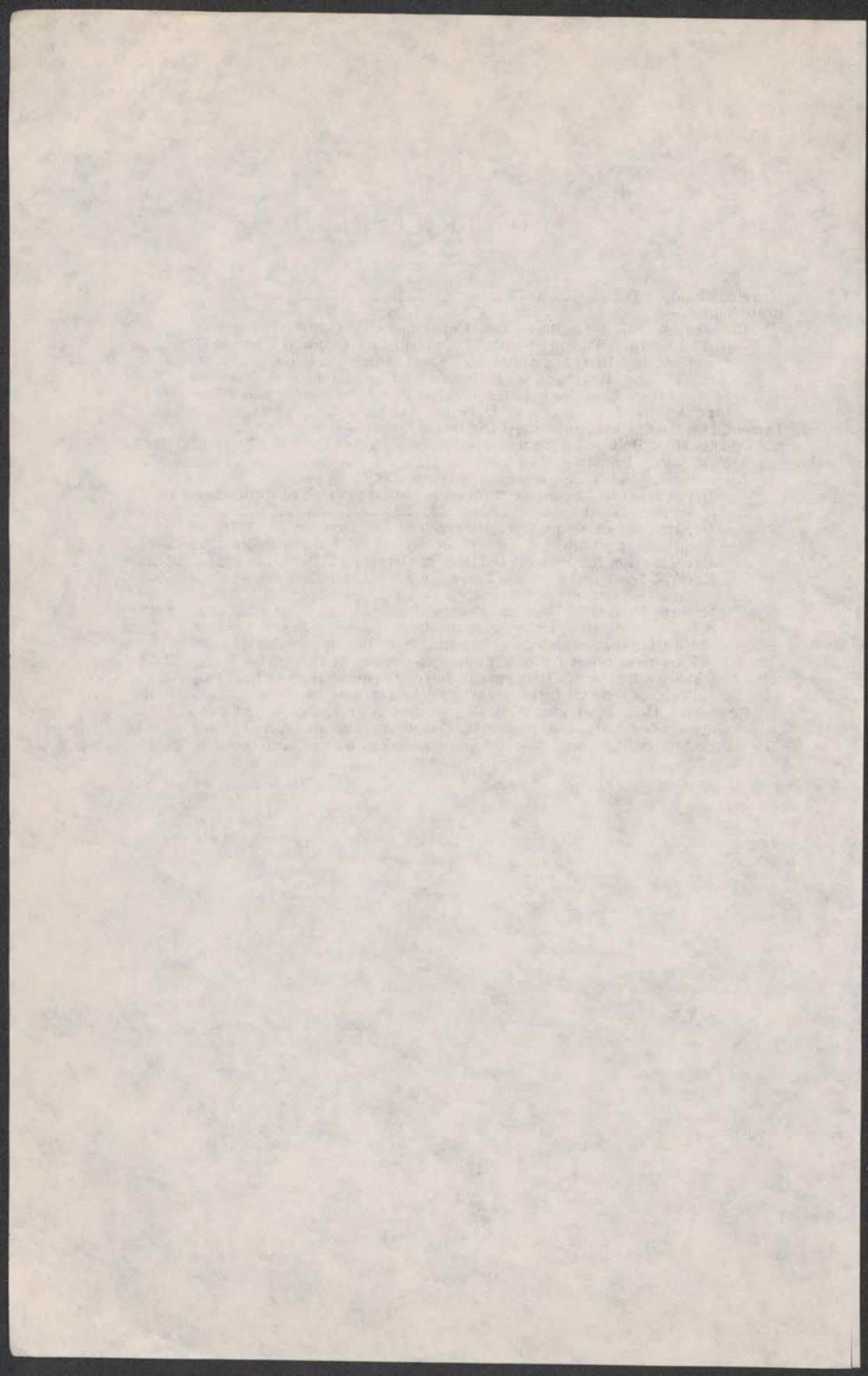
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EFFECTIVENESS OF FEDERAL AGENCIES' ENFORCEMENT OF LAWS AND POLICIES AGAINST COMPLIANCE, BY BANKS AND OTHER U.S. FIRMS, WITH THE ARAB BOYCOTT

(Part 2—Department of Commerce Boycott Disclosure Program)

WEDNESDAY, OCTOBER 20, 1976

HOUSE OF REPRESENTATIVES,
COMMERCE, CONSUMER,
AND MONETARY AFFAIRS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:40 a.m., in room 2154, Rayburn House Office Building, Hon. Benjamin S. Rosenthal (chairman of the subcommittee) presiding.

Present: Representatives Benjamin S. Rosenthal and Robert F. Drinan.

Also present: Peter S. Barash, staff director; Ronald A. Klempner, counsel; Doris Faye Taylor, clerk; and Henry C. Ruempler, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN ROSENTHAL

Mr. ROSENTHAL. Today's hearing by the Commerce, Consumer, and Monetary Affairs Subcommittee has been called (1) to examine the adequacy and effectiveness of the Commerce Department's recent program of publicly disclosing the names of U.S. firms participating in the Arab boycott; and (2) to determine whether the Commerce Department is properly enforcing official U.S. Government policy against the economic boycott of U.S. firms doing business or seeking to do business with Israel.

The Arab boycott has been directed against American business since 1952. But it took on extreme moral and practical significance in early 1974 as a result of the dramatic rise in the price of oil and the resulting increase in U.S. trade with Arab nations.

Notwithstanding the significance of the boycott since that time, it has been the policy of the Commerce Department not to disclose to the public or even to Congress the names of U.S. firms participating in the boycott. Boycott reports were reluctantly furnished to a House committee after a subpoena was issued and contempt proceedings threatened.

Now the Commerce Department has begun a program of partial disclosure to the public of boycott reports received after October 7, 1976. This program, in its first day, has already been criticized by businessmen who feel that they have been improperly placed on the boycott list for only narrow, technical compliance with the boycott. That criticism may indeed be justified.

My own view is that if the administration had allowed the Congress to work its will on the boycott issue the confusion, misunderstanding, and incompleteness associated with the Department's disclosure program, would not have taken place. We will, of course, explore the Department's program at today's hearing.

On September 23 of this year this subcommittee, and subsequently the full Government Operations Committee, issued a report which found that the Commerce Department "has consciously undermined the Government's policy" to discourage U.S. firms from complying with Arab boycott restrictions of an economic nature. This report followed closely after another House subcommittee report which concluded that:

Through a variety of practices, the Commerce Department actively served to encourage boycott practices, implicitly by condoning activity declared against national policy or simply by looking the other way while these practices grow.

Accordingly, this hearing will also examine the Commerce Department's commitment to enforcing declared U.S. policy against the boycott. We will be asking what steps have been taken to assure the American people that all employees of the Department will scrupulously observe U.S. policy and what specific arrangements the Department has made with other Federal agencies so that their activities will not be inconsistent with U.S. policy on the boycott.

We will also pursue the very timely and pertinent question of whether the Federal Government is cooperating with and aiding law enforcement officials in States like Illinois, California, Massachusetts, Colorado, Maryland, and New York, that have already enacted strong antiboycott laws with significant penalties against those who participate in the boycott.

We are very pleased this morning that our witness is the Honorable Elliot Richardson, Secretary of the Department of Commerce. He is here with a number of his associates and colleagues.

Mr. Secretary, we are pleased that your busy schedule has permitted you an opportunity to testify on a matter that we both know is very important to the Congress and to the administration and to the American people.

STATEMENT OF ELLIOT L. RICHARDSON, SECRETARY, DEPARTMENT OF COMMERCE; ACCOMPANIED BY JOHN THOMAS SMITH II, GENERAL COUNSEL; AND EDWARD H. STROH, ACTING DIRECTOR, OFFICE OF EXPORT ADMINISTRATION

Mr. RICHARDSON. Thank you very much, Mr. Chairman.

May I ask that the record show that I am accompanied by two associates?

On my right is Mr. John Thomas Smith II, General Counsel of the Department of Commerce, and on my left is Mr. Edward H. Stroh, Acting Director of the Office of Export Administration.

I welcome this opportunity, Mr. Chairman, to appear before you to outline the program of public disclosure of boycott-related reports which the Department of Commerce is undertaking at President Ford's request.

I share this subcommittee's concerns regarding the effect of the Arab boycott of Israel upon the Nation of Israel and upon the economic and social fabric of the United States. I believe that public disclosure of boycott-related reports can significantly strengthen our declared national policy of opposing boycotts against friendly nations such as Israel, for it will allow a concerned American public to monitor the conduct of American companies in light of this policy.

At the same time, such disclosure can contribute importantly to a process of public education and debate regarding the true nature and impact of the Arab boycott of Israel.

You have invited me to discuss four related questions or topics. It is appropriate at the outset to address the third of your questions—your request for a description of the "circumstances and factors" which caused the Department of Commerce to alter its opinion regarding the national interest consequences of the disclosure of boycott reports.

When President Ford nominated me to serve as Secretary of Commerce in November of 1975, there existed substantial public debate regarding disclosure of boycott reports. As you are aware, the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, chaired by Congressman Moss, was seeking copies of past boycott reports filed with the Department of Commerce.

Secretary of Commerce Morton decided that he could not give these reports to the Moss subcommittee unless the subcommittee could assure him that these past reports, submitted to the Government on a confidential basis, would be accorded confidentiality pursuant to section 7(c) of the Export Administration Act. When such an assurance was given, in early December 1975, the past reports were turned over to the subcommittee by Secretary Morton.

I have recited this brief history because it is important in two respects.

First, many have lost sight of the fact that the controversy between Congressman Moss and Secretary Morton focused chiefly upon the treatment of past reports and the degree of protection to be given them against retroactive disclosure which would violate assurances given by the Department of Commerce to businesses filing such reports.

Second, this controversy, occurring as it did at the time of my nomination and confirmation as Secretary of Commerce, contributed to my decision to give Arab boycott issues a high priority.

In fact, during my confirmation hearings, I promised the Senate Commerce Committee that I would review and reassess departmental policy toward disclosure of boycott reports. I also agreed to consider public disclosure of charging letters issued to companies which we had probable cause to believe had failed to comply with boycott reporting requirements.

As a result of this review, on April 29, 1976, I directed that, henceforth, charging letters relating to the boycott regulations would be made public. I did so after satisfying myself that such letters would only be issued based upon a prima facie case.

At approximately the same time, I concluded that disclosure of boycott reports on a prospective basis might be an appropriate step to strengthen execution of the Nation's policy against boycotts and to encourage greater public understanding of the Arab boycott.

While authority existed under section 7(c) of the Export Administration Act, whereby I could affirmatively find such prospective disclosure to be in the national interest, I concluded that I should not act unilaterally on such an important change in policy. I thought it should be done, if feasible, by amendment to the Export Administration Act.

It is appropriate, at this point in my testimony, to review, briefly, the administration's position on such legislation.

The boycott provisions debated by the 94th Congress had three principal elements in common:

First, they prescribed discrimination against American citizens or firms on the basis of race, color, religion, national origin, or sex which might arise from foreign boycott practices.

Second, they prohibited so-called refusals to deal whereby one American firm refuses to do business with another American firm on the basis of an Arab boycott requirement.

Third, they required that reports of boycott requests be made to the Department of Commerce and that these reports be publicly disclosed on a prospective basis.

In November of 1975, President Ford announced his strong opposition to the boycott and ordered that steps be taken to insure that American citizens and firms would be fully protected from any discriminatory action that might result from the boycott. Pursuant to a Presidential directive, the Department of Commerce's regulations were amended to forbid compliance with any boycott request which might have such a discriminatory effect.

In January of 1976, the Department of Justice brought an antitrust suit against Bechtel Corp., alleging that Bechtel's compliance with the Arab boycott had resulted in a concerted refusal to deal with other U.S. companies in violation of the Sherman Act.

In light of these actions, and in light of the fact that boycott requests were already required to be reported to the Department of Commerce, the administration determined that additional comprehensive antiboycott legislation was not necessary. Further, the administration was concerned that such legislation could be detrimental to our diplomatic and foreign policy goals in the Middle East.

As the legislative session was drawing to a close, Congress, in the context of extension of the Export Administration Act, had expressed its opinion that some additional antiboycott legislation was desirable.

President Ford, at that point, indicated to Members of Congress his willingness to support a constructive compromise that would provide for an extension of the act that included provisions for a prospective public disclosure of boycott reports and for certain prohibitions against American companies refusing to deal with other American companies in order to comply with the boycott of a nation friendly to the United States.

Though an extension of the Export Administration Act did not pass, President Ford determined that it would be appropriate to implement his support for prospective disclosure of boycott reports by

administrative action. Thus, on October 7, the President directed the Commerce Department to permit, prospectively, the public inspection and copyright of boycott-related reports filed with the Department.

It is appropriate at this point to address your questions about the specific policies and practices which the Department of Commerce will follow in executing its new disclosure policy.

Procedures which the Department proposes to follow have been set forth fully in two Federal Register notices. I have appended these notices to this testimony for the convenience of the subcommittee. I will summarize these procedures briefly.

Mr. ROSENTHAL. Without objection, the material you refer to will be included in the record at this point.

[The material referred to follows:]

Title 15--Commerce and Foreign Trade

CHAPTER III--DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION
DEPARTMENT OF COMMERCE

Subchapter B - Export Administration Regulations

Part 369--Restrictive Trade Practices or Boycotts

Reporting Requirements -
Boycott-Related Requests

Section 369.4 of the Export Administration Regulations was recently amended to provide for public inspection and copying of reports submitted to the Department of Commerce with regard to requests received on or after October 7, 1976, to comply with restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States (Federal Register of October 13, 1976 (41 FR 44861)). This publication further amends §369.4, and revises the related reporting forms. These revisions are in further implementation of the President's directive to the Secretary of Commerce dated October 7, 1976, which was published as a part of the October 13th Federal Register notice.

One principal change effected hereby is the elimination of multiple transaction reports for restrictive trade practice and boycott-related requests, as described in Section 369.3. The receipt of all such requests must now be reported, in accordance with the requirements of Section 369.4 as now revised, on a single transaction

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basis. Accordingly, quarterly reporting has been eliminated. These requests are now required to be reported within fifteen calendar (not business) days after the end of the month in which the request or action became reportable. These changes will simplify in a number of ways the processing of information submitted to this Department, including the elimination of the large volume of reports shortly after the end of a quarter. Enforcement will also be simplified.

For example, a boycott-related request as described in Section 369.3 which is received by a firm in October must be reported to this Department, in accordance with the revised Section 369.4, and postmarked on or before November 15th. Similarly, such requests received during the month of November must be reported and postmarked on or before December 15th. For this quarter, reports no longer can be filed on a multiple transaction basis in January. While reports may be accumulated and filed monthly, it is urged that reports instead be made of each request soon after it is received. Your cooperation will further assist processing by this Department.

A further major change is the revision of the reporting forms to clarify ambiguities and to permit easier data processing, in part to respond to suggestions reflected in reports recently issued by the House Committee on Government Operations and the House Committee on Interstate and Foreign

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Commerce. In addition, the revised Section 369.4 and reporting forms provide specific guidance as to how the reporting entity may request this Department to protect business proprietary information from public inspection and copying pursuant to applicable sections of the Freedom of Information Act, as amended (5 U.S.C. §552). Other than the first printing, the revised reporting forms will have a tear-off section which will simplify handling and separation of this material by this Department.

All reports made after the date of this notice must utilize the new forms DIB-621P (Rev. 10-76) or DIB-630P (Rev. 10-76), as appropriate, accompanied by the required supporting documentation. Further, each boycott-related request or action must be reported on a separate form. Reports filed on older versions of these forms will be returned for refileing within a stated period of time. The Department presently has a stock of the revised forms, which will be available at Departmental field offices within a few days. The Department will in the near future mail an Export Administration Bulletin to all subscribers to the Export Administration Regulations. A separate mailing of an interim supply of revised reporting forms will also be made within a few days to all persons and firms which have previously reported the receipt of a boycott-related request to the Department of Commerce.

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A separate procedure will remain in effect for reports of requests which, on their face, could have the effect of discriminating against American citizens or firms, as described in Section 369.2. Reports of this type of request must be filed on a separate form DIB-630P (Rev. 10-76), within fifteen calendar (not business) days after receipt.

The reporting requirements have also been revised to state more clearly that a person or firm which takes an action in reliance upon a guidebook or similar publication, or in anticipation of the receipt of a boycott-related request, must report that action in timely fashion. A further clarification states that the receipt of a boycott-related request in bid or proposal documents, or in a trade opportunity, must be reported in a timely fashion, whether or not any response is made to the bid invitation, proposal or trade opportunity.

As was reflected in the above-referenced October 13 Federal Register notice, information in reports of boycott-related requests which were received by a reporting person or firm on or after October 7, 1976, will be made available by the Department for public inspection and copying. The exception will be business proprietary information (such as quantity, value, commodity and foreign consignee), which will be withheld by the Department under applicable provisions of the Freedom of Information Act, as amended (5 U.S.C. §552). The material to be made

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available will be located in the DIBA Freedom of Information Facility, Room 3100, 14th and Constitution Avenue, N.W., Washington, D. C. 20230.

Part 369 of the Export Administration Regulations is presently under review by the Department of Commerce. Written comments regarding Part 369, including this revision of Section 369.4, are solicited on a continuing basis. Interested parties and government agencies are encouraged to submit relevant written comments, views, or data to the United States Department of Commerce, Office of Export Administration, P.O. Box 7138, Ben Franklin Station, Washington, D. C. 20044.

Use of Revised Forms

1. Reporting forms DIB-621P (Rev. 10-76) and 630P (Rev. 10-76) have been redesigned from a single copy form to a triplicate carbonless paper form. The original and first copy of the forms are to be submitted to the Office of Export Administration; the second copy is for use by the reporting person or firm. All entries on the forms must be completed, but the reporting person or firm may by checking the appropriate box(es) on the forms request that information such as the commodity or technical data, value, quantity, and the foreign consignee be withheld from public disclosure if such disclosure would place reporting entities at a competitive disadvantage. When such request is made, the Office of Export Administration will remove from the first copy, that portion of the form containing this information before making the copy available for public inspection and copying.

Additionally, two copies of the document in which the restrictive trade practice or boycott request appears (e.g., letter of credit, purchase order, etc.) must accompany the report. One copy of the document should be complete and unaltered; the other copy should be edited by the reporting person or firm to delete or obliterate the proprietary information requested to be withheld from public disclosure. This copy should be clearly marked

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"proprietary information deleted," and will be made available for public inspection and copying.

2. Form DIB-621P (Rev. 10-76) has been further revised to delete a previous Action Item that read: "The decision will be made by another party involved in the export transaction. . . ." The Department determined that this entry was extraneous inasmuch as all persons or firms that are required to report the receipt of a restrictive trade practice or boycott request must reach a decision as to whether or not they will take an action with respect thereto. Action Items 11 a, b and c of the old Form DIB-621P have been revised to clarify the role of service organizations, which will be required to indicate whether they will or will not process the documents containing the request being reported.

Section 369.4 of the Export Administration Regulations (15 CFR Part 369.4) is amended to read as follows:

§369.4

REPORTING REQUIREMENTS

Any U.S. exporter which receives or is informed of a request for an action, including the furnishing of information or the signing of an agreement, which could have the effect of furthering or supporting a restrictive trade practice or boycott as described in §§369.2 or 369.3 above, shall file a report with the Office of Export Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, in accordance with the requirements of this section. Any related service organization (including, but not limited to, banks, insurers, freight forwarders, and shipping companies) which handles any phase of the transaction for the U.S. exporter and which receives or is informed of a boycott-related request as described above, also shall file a report with the Office of Export Administration in accordance with the requirements of this section.

The receipt of notices of laws or edicts contained in exporters' guidebooks or similar publications, or the receipt of general directives of a foreign principal that are to apply to future orders for goods or services, do not need to be reported. However, where a U.S. exporter or related service organization in reliance on such material

takes an action which could have the effect of furthering or supporting a restrictive trade practice or boycott as described in §369.2 or §369.3 above, that action must be reported together with a copy of the document that evidences the action taken. Thus, for purposes of this Part 369, the term "request" will be deemed to include the taking of action as described above or in anticipation of the receipt of a boycott-related request (whether or not such request is eventually received), as well as actual boycott-related requests.

All reports shall be submitted in accordance with the requirements of this section 369.4; paragraph (b) governs requests described in §369.2, and paragraph (c) governs requests described in §369.3. If more than one document, such as an invitation to bid, purchase order, or letter of credit containing the same boycott-related request is received as part of the same export transaction by a person or firm required to report by this section, only the first request relating to the same goods or services need be reported by each such person or firm. Individual shipments against the same purchase order or letter of credit should not be treated as separate transactions. However, each different boycott-related request associated with a given export transaction must be reported, regardless of when or how the

request is received. For example, if a report of a request is submitted following receipt of a bid invitation and the bid ultimately results in an order with new and different boycott-related requests, each new request must be reported. Also, if a person or firm, in bidding on a contract, is required to answer a questionnaire and subsequently is required to place restrictive trade practice certifications (e.g., that the vessel on which the commodities are to be shipped is not blacklisted) on its commercial documents covering shipments called for in the contract, the questionnaire and the certification requirement must be reported separately. Further, a request received in bid or proposal documents must be reported in accordance with this section whether or not any action is taken in response to the bid invitation, proposal or trade opportunity.

(a) Disclosure of Information. Forms DIB-630P (Rev. 10-76) and DIB-621P (Rev. 10-76) and attached documentation, reporting a boycott-related request which was received or an action which was taken by the reporting U.S. exporter or related service organization on or after October 7, 1976, will be made available to the public for inspection and copying, except that business proprietary information (e.g., relating to quantity, value, commodity and the identity of the foreign consignee), may be withheld from public disclosure pursuant to applicable provisions of the Freedom

of Information Act, as amended (5 U.S.C. §552), if the reporting person or firm so requests on the basis that disclosure of this information could place a reporting entity at a competitive disadvantage. The report form and attached documents which will be available to the public for inspection and copying will be located in the DIBA Freedom of Information Records Inspection Facility, Room 3100, Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

(b) Reporting Requests Covered by §369.2. Each report of a request as described in §369.2 must be filed separately with the Office of Export Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, and postmarked within 15 calendar days of receipt of the request. Reports required by this §369.4(b) must be submitted on the new Form DIB-630P (Rev. 1076). Earlier versions of Form 630P will not be accepted.

The original and the first copy of the form are to be submitted to the Office of Export Administration. The second copy is for use by the reporting person or firm. All entries on the form must be completed, including that information which the reporting person or firm may identify as business proprietary information requested

to be withheld from public inspection and copying. Two copies of the document in which the §369.2 request appears (e.g., letter of credit, purchase order, etc.) must accompany the report.

When requested by appropriate notation in item 9, item 10 of the first copy of Form DIB-630P (Rev. 10-76) will be detached by the Office of Export Administration prior to making this copy available for public inspection and copying. Additionally, one of the two copies of the document in which the §369.2 request appears will also be made available for public inspection and copying. One copy should therefore be submitted complete and unaltered, and one copy should be properly edited by the reporting person or firm to delete the proprietary information reflected in item 10 which is requested to be withheld from public inspection and copying. This copy should be clearly marked "proprietary information deleted".

(c) Reporting Requests Covered By §369.3. Each report of a request as described in §369.3 must be filed separately with the Office of Export Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, and postmarked within 15 calendar days of the end of the calendar month in which the request was received or action taken. Reports required by this §369.4(c) must

be submitted on the new Form DIB-621P (Rev. 10-75). Earlier versions of Form IA-1014, DIB-621, or DIB-621P will not be accepted.

The original and the first copy of the form are to be submitted to the Office of Export Administration. The second copy is for use by the reporting person or firm. All entries on the form must be completed, including that information which the reporting person or firm may identify as business proprietary information requested to be withheld from public inspection and copying. Two copies of the document in which the §369.3 request or action appears (e.g., letter of credit, purchase order, etc.) must accompany the report.

When requested by appropriate notation in item 10, item 11 of the first copy of Form DIB-621P (Rev. 10-76) will be detached by the Office of Export Administration prior to making this copy available for public inspection and copying. Additionally, one of the two copies of the document in which the §369.3 request or action appears will also be made available for public inspection and copying. One copy should therefore be submitted complete and unaltered, and one copy should be properly edited by the reporting person or firm to delete the proprietary information reflected in item 11 which is requested to be withheld from public inspection and copying. This copy should be clearly marked "proprietary information deleted".

Notice and public procedure in the formulation of this regulation are impracticable, unnecessary, and contrary to the public interest. In order to make the amended reporting requirements and forms available to persons and firms required to report and to make the information available to the public at the earliest possible date, this regulation is effective October 18, 1976.

(Sec. 2, E.O. 11940, September 30, 1976, 41 FR 43707.)

Effective date of action: October 18, 1976.

Lawrence J. Brady
Acting Director, Office
of Export Administration

Mr. RICHARDSON. The Department of Commerce has already begun to make available, for public inspection and copying, all reports filed with the Department of boycott-related requests received by a reporting firm on or after October 7, 1976.

The following specific information is being made available: The name of the reporting entity; the name of the country initiating the boycott-related request; the name of the country against which the request is directed; the specific nature of the request and the document in which it appears; and the indication by the reporting firm of whether or not it intends to comply with the request.

We are making publicly available reports of firms which indicate they do not intend to comply with boycott requests as well as reports indicating compliance.

Reports will be disclosed as quickly as feasible after their receipt. We expect no substantial delay in their handling. Already, the first reports have been placed in the freedom of information room at the Domestic and International Business Administration and are available for public inspection and copying.

Inasmuch as you have requested relevant information for all companies which have reported since October 7, 1976, I have brought with me today copies of boycott reports filed since that date regarding boycott requests received on or after October 7. These reports are complete through Monday, October 18, and are public records.

You have asked me to discuss the precise nature of all limitations on our disclosure policy. First, as has been made clear in the President's directive to me of October 7, 1976, we are engaging in a program of prospective disclosure. We are not going to break our promise to firms who, in the past, took certain actions and reported them pursuant to an assurance that their reports would be confidential.

Retroactive disclosure could, moreover, have a counterproductive effect. Firms which in the past have comported with boycott requests may, under prospective disclosure, choose to resist such requests. If we disclose retroactively, we may stigmatize certain firms which will then decide, due to the stigma they will already be carrying, that they will continue past practices. We would thus create a disincentive to adherence to national policy.

Both Houses of Congress apparently recognized this logic, inasmuch as both the House and Senate bills passed in the 94th Congress called for prospective and not retroactive disclosure.

Second, we do plan to give confidentiality, upon request of a reporting firm, to business proprietary information, which, if disclosed, could do competitive harm to a reporting firm. Such proprietary information may include quantity, value, description of goods, and the identity of the consignees. In no case would we consider the basic information regarding the request, the requesting country, and the reporting firm's compliance intentions, to be covered by this exception to disclosure.

We believe that the exception we propose for proprietary information accords with congressional intent, in that such an exception was provided in the Senate-passed bill. Further, it is consistent with the applicable terms of the Freedom of Information Act.

As is reflected in the Federal Register notice appended to this testimony, we have substantially revised our report forms and our reporting procedures.

Mr. ROSENTHAL. Without objection, the Federal Register notice to which you refer will be included in the record at this point.
[The material referred to follows:]

[From the Federal Register, Vol. 41, No. 199, Wednesday, Oct. 13, 1976]

TITLE 15—COMMERCE AND FOREIGN TRADE

CHAPTER III—DOMESTIC AND INTERNATIONAL BUSINESS
ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER B—EXPORT ADMINISTRATION REGULATIONS

PART 369—RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

BOYCOTT RELATED PRODUCTS, AVAILABILITY

Pursuant to a Presidential Directive dated October 7, 1976, a copy of which is appended hereto, the Department of Commerce will commence public disclosure of reports regarding boycott-related requests received by American companies on or after October 7, 1976.

Only business proprietary information regarding the quantity, value, commodity and the identity of the consignee, the release of which could place reporting firms at a competitive disadvantage, will not be made publicly available, when confidential treatment is requested by the reporting firm, pursuant to applicable provisions of the Freedom of Information Act, as amended (5 U.S.C. 552).

Boycott request reporting forms DIB-630P (Rev. 2-76) and DIB-621P (Rev. 2-76) and § 369.4 of the Export Administration Regulations are presently under review and will be revised in the near future other than changes made or announced herein. In the interim, reporting firms requesting confidential treatment for proprietary information must submit duplicate report forms DIB-630P (Rev. 2-76) or DIB-621P (Rev. 2-76) as appropriate. One report form must contain all the information required on the form except information on the quantity, value, commodity and the identity of the consignee for which confidential treatment is requested. The second boycott report form covering the same boycott-related request should contain the name of the reporting firm and the information excluded from the first form.

Forms amended:

That part of section "C" of forms DIB-630P (Rev. 2-76) and DIB-621P (Rev. 2-76) which reads, "CONFIDENTIAL. Information furnished herewith is deemed confidential and will not be published or disclosed except as specified in Section 7(c) of the Export Administration Act of 1969 as amended (50 U.S.C. App. 2406(c))" is deleted.

Section 369.4 of the Export Administration Regulations (15 CFR 369.4) is amended as follows:

1. The fourth sentence which reads "The information contained in these reports is subject to the provisions of Section 7(c) of the Export Administration Act of 1969 regarding confidentiality" is deleted.

2. A new § 369.4(c) is added as follows:

§ 369.4 *Reporting requirements.*

* * * * *

(c) *Disclosure of Information.*—Forms DIB-630P (Rev. 2-76) and DIB-621P (Rev. 2-76) reporting the receipt of a restrictive trade practice request which was received by the reporting firm on or after October 7, 1976, shall be made available to the public for inspection and copying, except that information relating to quantity, value, commodity and the identity of the consignee, will be withheld pursuant to applicable provisions of the Freedom of Information Act, as amended (5 U.S.C. § 552), if the reporting firm so requests on the basis that disclosure of this information could place reporting firms at a competitive disadvantage. Reporting firms requesting confidential treatment for proprietary information must submit report forms DIB-630P (Rev. 2-76) or DIB-621P (Rev. 2-76) as appropriate. One report form must contain all the information required on the form except information on the quantity, value, commodity and the identity of the consignee for which confidential treatment is requested. The second

boycott report form covering the same boycott-related requests should contain the name of the reporting firm and the information excluded from the first form. The boycott report form which excludes information for which confidential treatment is requested will be available for public inspection and copying in the DIBA Freedom of Information Record Inspection Facility, Room 3100, Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Notice and public procedure in the formulation of this regulation are impracticable, unnecessary, and contrary to the public interest. In order to make the information available to the public at the earliest possible date, this regulation is effective October 7, 1976.

Since reporting firms have 15 days after receipt of a boycott-related request to file a single transaction report with the Department of Commerce, boycott reports are not expected to be available for inspection before October 25.

(Sec. 2, E.O. 11940, September 30, 1976, 41 FR 43707.)

Effective date of action : October 7, 1976.

RAUER H. MEYER,
Director, Office of Export Administration.

THE WHITE HOUSE,
Washington, October 7, 1976.

MEMORANDUM FOR THE SECRETARY OF COMMERCE

Would you please assure that the Department of Commerce takes steps to permit the public inspection and copying of boycott-related reports to be filed in the future with the Department of Commerce. Only business proprietary information regarding such things as quantity and type of goods exported, the release of which could place reporting firms at a competitive disadvantage should not be made available to the public.

During the past year, there has been a growing interest in and awareness of the impact of the Arab Boycott on American business. Disclosure of boycott-related reports will enable the American public to assess for itself the nature and impact of the Arab Boycott and to monitor the conduct of American companies.

I have concluded that this public disclosure will strengthen existing policy against the Arab Boycott of Israel without jeopardizing our vital interests in the Middle East. The action I am directing today should serve as a reaffirmation of our national policy of opposition to boycott actions against nations friendly to us.

GERALD R. FORD.

FORM DIR-632P (REV. 10-30)		U.S. DEPARTMENT OF COMMERCE DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION OFFICE OF EXPORT ADMINISTRATION WASHINGTON, D.C. 20230		Report Serial No. (Leave blank)
REPORT OF RESTRICTIVE TRADE PRACTICE OR BOYCOTT REQUEST THAT DISCRIMINATES AGAINST U.S. CITIZENS OR FIRMS ON THE BASIS OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN (For reporting requests defined in §369.2 of the Export Administration Regulations)			Information on this form such as that relating to the quantity, value, commodity and the foreign consignee, the release of which could place reporting entities at a competitive disadvantage, will be withheld from public disclosure pursuant to applicable provisions of the Freedom of Information Act, as amended, (5 U.S.C. §552) when requested by the reporting entity.	
IMPORTANT: It is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States. All U.S. exporters of articles, materials, supplies, or information, and related export service organizations, (1) are prohibited from taking any action, including the furnishing of information or the signing of agreements, that would have the effect of discriminating against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin; and (2) are encouraged and requested to refuse to take any action, including the furnishing of information or the signing of agreements, that would have the effect of furthering or supporting other types of restrictive trade practices or boycotts against a country friendly to the United States.				
This report is required by law 50 U.S.C. App. §2403(6); P.L. 94-362; E.O. 11533, as amended by E.O. 11907; 50 U.S.C. App. 5(b); E.O. 11940; 15 C.F.R. §369.4. Failure to report can result in criminal penalties of fines or imprisonment, or both and/or administrative sanctions.				
1. Name and address of firm submitting this report: Name: _____ Address: _____ City, State & Zip: _____ Telephone: _____		2. Are you: (Check one) <input type="checkbox"/> Exporter <input type="checkbox"/> Insurer <input type="checkbox"/> Forwarder <input type="checkbox"/> Bank <input type="checkbox"/> Carrier <input type="checkbox"/> Other _____ If not exporter, give exporter's: Name: _____ Address: _____ City, State & Zip: _____		
3. To the extent known, give: Letter of credit no. _____ Customer order no. _____ Exporter's invoice no. _____ Other identifying marks or numbers _____		4. Name of country(ies) against which request is directed: _____		
5. (a) Name of country from which request originated: _____ (b) Name of country directing inclusion of request (if different from (a) above): _____		6. Date request was received by me/us: _____		
7. Specify type of document received and attach copy of document in which the request appears: <input type="checkbox"/> Questionnaire <input type="checkbox"/> Purchase order <input type="checkbox"/> Published import regulation <input type="checkbox"/> Invitation to bid <input type="checkbox"/> Contract <input type="checkbox"/> Cable or letter <input type="checkbox"/> Trade opportunity <input type="checkbox"/> Letter of credit <input type="checkbox"/> Consular request <input type="checkbox"/> Other (Specify) _____				
9. NOTE: Compliance with requests defined in §369.2 is prohibited. I certify that I/We have not complied with request reported herein, and that all statements and information contained in this report are true and correct to the best of my knowledge and belief. Sign here in ink _____ Type or print _____ Date _____ (Signature of person completing report) (Name & title of person whose signature appears on line to left)				
8. Give name of foreign consignee in 10(a) below and describe the commodities or technical data involved in 10(b) below. If appropriate, check the box(es) below: <input type="checkbox"/> The information shown in 10(a) below contains business proprietary information. <input type="checkbox"/> The information shown in 10(b) below contains business proprietary information. <input type="checkbox"/> Because disclosure to the public of the information identified by the box(es) checked above would place reporting entities at a competitive disadvantage, I request that it not be made available to the public. <input type="checkbox"/> The information shown in _____ above contains business proprietary information.				
10. (a) Foreign Consignee: Address: _____ City and Country: _____		10. (b) Technical data/commodities: Quantity: _____ Value: _____		

FORM DIB-671P (11-76)		U.S. DEPARTMENT OF COMMERCE DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION OFFICE OF EXPORT ADMINISTRATION WASHINGTON, D.C. 20530		Report Serial No. (Leave Blank)
REPORT OF RESTRICTIVE TRADE PRACTICE OR BOYCOTT REQUEST (For reporting requests defined in § 369.3 of the Export Administration Regulations)			Information on this form such as that relating to the quantity, value, consistency and the foreign consignee, the release of which could place reporting entities at a competitive disadvantage, will be withheld from public disclosure pursuant to applicable provisions of the Freedom of Information Act, as amended, (5 U.S.C. 1 552) when requested by the reporting entity.	
<p>IMPORTANT. It is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States. All U.S. exporters of articles, materials, supplies, or information, and related export service organizations, (1) are prohibited from taking any action, including the furnishing of information or the signing of agreements, that would have the effect of discriminating against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin; and (2) are encouraged and requested to refuse to take any action, including the furnishing of information or the signing of agreements, that would have the effect of furthering or supporting other types of restrictive trade practices or boycotts against a country friendly to the United States.</p>				
<p>"This report is required by law 50 U.S.C. App. 240 M(b), P.L. 94-362, E.O. 11533, as amended by E.O. 11907, 50 U.S.C. App. 5(b); E.O. 11940; 15 C.F.R. § 369.4. Failure to report can result in criminal penalties of fines or imprisonment, or both and/or administrative sanctions."</p>				
1. Name and address of firm submitting this report: Name: Address: City, State & Zip: Telephone:		2. Are You: <input type="checkbox"/> Exporter <input type="checkbox"/> Bank <input type="checkbox"/> Insurer <input type="checkbox"/> Carrier <input type="checkbox"/> Forwarder <input type="checkbox"/> Other _____ If not exporter, give exporter's:		
3. To the extent known, give: Letter of credit no. _____ Customer order no. _____ Exporter's invoice no. _____ Other identifying marks or numbers _____		Name: Address: City, State & Zip:		
5(a) Name of country from which request originated: 5(b) Name of country directing inclusion of request (if different from (a) above):		4. Name of country(ies) against which request is directed: 6. Date request was received by me/us:		
7. Specify type of document received and attach copy of document in which the request appears: a. <input type="checkbox"/> Questionnaire d. <input type="checkbox"/> Purchase order g. <input type="checkbox"/> Published import regulation b. <input type="checkbox"/> Invitation to bid e. <input type="checkbox"/> Contract h. <input type="checkbox"/> Cable or letter c. <input type="checkbox"/> Trade opportunity f. <input type="checkbox"/> Letter of Credit i. <input type="checkbox"/> Consular request j. <input type="checkbox"/> Other (Specify) _____				
8. Action: a. <input type="checkbox"/> I/We have not complied and will not comply with this request. (This statement with respect to related service organizations, particularly banks, should be interpreted, "I/We have not processed and will not process the documents containing this request.") b. <input type="checkbox"/> I/We have complied with, or will comply with this request. (This statement with respect to related service organizations, particularly banks, should be interpreted, "I/We have processed, or will process the documents containing this request.") c. <input type="checkbox"/> I/We have not decided whether I/We will comply with (or process document) containing this request and I/We will inform the Office of Export Administration of my/our decision within 10 calendar days of making a decision.				
9. I certify that all statements and information contained in this report are true and correct to the best of my knowledge and belief. Sign here in ink _____ Type or print _____ Date _____ (Signature of person completing report) (Name and title of person whose signature appears on line to left)				
10. Give name of foreign consignee in 11(a) below and describe the commodities or technical data involved in 11(b) below. If appropriate, check the boxes below: <input type="checkbox"/> The information shown in 11(a) below contains business proprietary information. <input type="checkbox"/> The information shown in 11(b) below contains business proprietary information. <input type="checkbox"/> Because disclosure to the public of the information identified by the box(es) checked above would place reporting entities at a competitive disadvantage, I request that it not be made available to the public. <input type="checkbox"/> The information shown in _____ above contains business proprietary information.				
11. (a) Foreign Consignee: Address: City and Country:		11. (b) Technical Data/Commodities: Quantity: Value:		

Mr. RICHARDSON. First, we have redesigned the form to facilitate the separation of business-confidential information and information appropriately placed in the public record.

Second, we have attempted to improve and clarify the form in response to a number of the suggestions made in the report of the Moss subcommittee.

Third, we have changed our reporting procedures to eliminate the option of quarterly reporting in letter form. Previously, a reporting entity could choose to report on a transaction-by-transaction basis or a quarterly basis. We will now require that reports be made of each transaction although a firm may cumulate such transaction-by-transaction reports and submit them on a monthly basis.

This change will significantly simplify the processing and analysis of information submitted and will simplify enforcement. Further, it will eliminate any incentive for firms to delay reporting in light of the new disclosure policy.

A separate procedure will remain in effect for reports of requests which, on their face, could have the effect of discriminating against American citizens or firms on the basis of race, religion, color, sex, or national origin. Reports of such requests must be filed on a separate form within 15 days of receipt. As the Moss report affirms, such requests are quite rare.

Finally, I would like to return to a point I made at the beginning of my testimony. Public disclosure of boycott reports should, if treated responsibly by all concerned parties, enable a process of public education regarding the nature of the Arab boycott. For, as the Moss report points out, "compliance" with the boycott can mean a wide range of things, including the furnishing of information in circumstances where a firm in no way alters its business practices so as to actively boycott Israel.

Considerable confusion has already occurred as a result of the public disclosure of reports and the press' handling of them. For this reason the Department yesterday issued a clarifying statement regarding the varying qualitative implications of reports. A copy of this statement is appended to this testimony.

In addition, while the public believes that the boycott is, in significant measure, motivated by discriminatory animus against members of the Jewish faith, this simply does not appear to be the case.

Mr. ROSENTHAL. Without objection, the statement you referred to a moment ago will be included in the record at this point.

[The information referred to follows:]

UNITED STATES DEPARTMENT OF
COMMERCE
NEWS
WASHINGTON, D.C. 20230

OFFICE
OF THE
SECRETARY

(202/377-3263)

FOR RELEASE: TUESDAY, OCTOBER 19, 1976

DEPARTMENT OF COMMERCE STATEMENT ON FILING OF REPORTS ON
BOYCOTT-RELATED REQUESTS

Press accounts of yesterday's release by the Department of Commerce on reports of American companies with regard to Arab boycott requests have led to questions and confusion about the "listing" of companies complying with the Arab boycott and about what constitutes "compliance" itself. This release is intended to clarify certain of these points.

Contrary to press reports, the Department of Commerce has not nor will it publish any simple "list" of companies that have "complied" with the boycott. To do so lumps unfairly companies that have in no way changed their course of conduct in response to the boycott with those that may have taken affirmative steps to boycott Israel. The Department has simply made available for public inspection and copying companies' reports of boycott-related requests and responses to these requests--and it will continue to do so as these reports become available.

As was made clear by the Report of the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, the "Moss Report," the term "compliance" covers a range of things. Many firms reporting "compliance" with Arab boycott requests have in no way altered their business practices in order to gain Arab trade.

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Under the law, compliance includes -- and typically involves -- the furnishing of information or certification to an Arab country. For example, an Arab country may request that an American supplier certify that it has no subsidiary company located in Israel. Whether or not the American company response is simply a statement of historical fact, uninfluenced by the boycott, its responding to the request for certification constitutes "compliance with a boycott request" within the meaning of existing law. Therefore, compliance with boycott requests may, in some cases, involve something far different from an affirmative act boycotting the State of Israel.

The Department of Commerce remains committed to the United States' policy to encourage and request American firms not to respond to any boycott-related request. At the same time, the Department feels that, as a matter of fairness, it is necessary to make clear that boycott requests which must be reported under law range widely in their qualitative implications.

This point was explicitly recognized in the "Moss Report" which stated:

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

Mr. RICHARDSON. Mr. Chairman, during my tenure as Secretary of Commerce, I have been, and will remain, committed to the United States policy to oppose the Arab boycott and to encourage and request American business concerns not to comply with it in any fashion. I believe that the public disclosure of boycott reports can make a significant contribution to the continued execution of this policy.

That concludes my prepared statement. I will be very glad to proceed to the subcommittee's questions.

Mr. ROSENTHAL. Thank you very much, Mr. Secretary, for a very thoughtful, incisive, and inclusive statement.

I do want the record to be clear so that we all know what the policy was, what the policy is, and, if there was a change of policy, what elements went into making the decision to change that policy.

At the conclusion of your statement, I think you fundamentally stated what the policy is at the moment when you stated, "I believe that the public disclosure of boycott reports can make a significant contribution to the continued execution of this policy."

On June 11, 1976, you testified before the House International Relations Committee—of which I am also a member—and said:

It is the administration's judgment that even the Stevenson approach, including disclosure of boycott reports, could be counterproductive. Finally, questions have been raised regarding the desirability of compelling public disclosure of boycott request reports. While it is difficult to assess the impact of such disclosure, it is possible that disclosure would have an adverse impact on the development of business relationships in the Middle East. For instance, one can speculate that disclosure would generate adverse domestic reaction that could almost substantially affect firms manufacturing consumers' goods, and those pressures in turn would deter Middle East business.

As I understand the statement of June 11, it was your position—and I assume it was the administration's position—that you were opposed to public disclosure of boycott reports.

Is that correct?

Mr. RICHARDSON. That was the administration's position. Mr. Chairman. As I testified in my statement this morning, I had concluded earlier that public disclosure of boycott reports would be an appropriate step to strengthen execution of the Nation's policy against boycotts, but that was a conclusion that had not been arrived at by the administration itself at that stage. The conclusion that, on balance, it would be in the public interest to make the disclosures was arrived at at a later date, as I have testified.

Mr. ROSENTHAL. What elements went into this presumed change of position, and who were the parties involved in this change of position?

Mr. RICHARDSON. It was a matter, partly, of the continuing process of interaction between the administration and the Congress in the course of the progress of legislation through the House and Senate.

It was a result arrived at, partly, in the course of communication with various individuals and organizations representative of the American Jewish community.

And, like many such evolutionary developments, it eventually came to the result that, on balance, it would be desirable to take the step which would have been taken if legislation had gone through.

Mr. ROSENTHAL. At any rate, to put it in simple terms, you no longer think that public disclosure would be counter-productive?

Mr. RICHARDSON. That is correct.

As I say, it was my own view from last spring that it would not be.

Mr. ROSENTHAL. Mr. Secretary, two recent congressional reports have charged the Commerce Department with consciously undermining U.S. policy to encourage and request U.S. firms not to comply with the Arab boycott restrictions of an economic nature.

This subcommittee heard testimony, for example, that Mr. Charles Swanson, the Director of Operations of the Office of Export Administration, attended a chamber of commerce meeting in New York in December 1975 and at that meeting advised two major New York banks that they did not have to comply with U.S. policy against a boycott.

My question is: Can you, Mr. Secretary, provide the subcommittee with copies of any internal memorandums or instructions from you, if you have issued such instructions, to Department employees directing them to comply with what we now understand to be present policy against firms taking a position in support of the Arab boycott?

Mr. RICHARDSON. I would be glad to furnish, Mr. Chairman, the minutes of a staff meeting at which I emphatically restated the policy of the administration and the Department in carrying out the anti-boycott provisions of the Export Administration Act.

I did this orally at the staff meeting and then asked that the substance of my statement be reflected in the minutes and that the minutes be circulated, as they ordinarily would be, to the top staff of the Department.

Mr. ROSENTHAL. You will furnish for the subcommittee and for the record a copy of those minutes?

Mr. RICHARDSON. Yes.

Mr. ROSENTHAL. Without objection, that material will become a part of the record at this point.

[The material referred to follows:]

EXCERPT FROM POLICY COUNCIL MEETING HELD APRIL 13, 1976, AT 3:30 P.M.,
DEPARTMENT OF COMMERCE

The second topic discussed was that of Departmental policy toward treatment of Arab boycott-related inquiries. The Secretary explained that the Department is charged with the administration of the Export Administration Act. This commits the Department to discourage adherence to boycott requests aimed at friendly nations. J. T. Smith stated that the Department is essentially caught in the middle of the issue because it is not illegal to comply with Arab boycott requests which are not discriminatory on the basis of race, religion, or other noneconomic grounds. However, the Department is mandated by law to encourage and request noncompliance with all such requests—economic or discriminatory.

All Departmental personnel receiving inquiries, however informal regarding the Arab boycott, should remember to stress the Nation's *policy* against compliance with such requests. We are accused too often of letting our desire to promote commerce get in the way of our duty to discourage compliance. Most of the burden of this policy directive falls on the Office of Export Administration.

Mr. ROSENTHAL. Are there any other memorandums or directives from you or any of your colleagues and associates consistent with what you have just told the subcommittee?

Mr. RICHARDSON. Well, I think that we could probably find notes or memorandums that involved followup of particular situations where it was charged that some Department of Commerce employee had not behaved in full accord with this policy.

I remember in one instance where such a charge had been made, the individual, who allegedly had so acted, was not in fact an employee of the Department at all.

But actions like that, that is inquiries within the Department to followup on such charges, would have had an additional impact in making clear that my policy in the administration of the Department was to oppose any act of encouragement of the boycott.

Mr. ROSENTHAL. Mr. Secretary, is the Commerce Department the Federal Government's lead agency in enforcing U.S. laws and policies in opposition to the boycott?

Mr. RICHARDSON. Yes.

We administer the Export Administration Act which, of course, until its expiration, was the legislation directed against compliance with the boycott.

The Department of Justice has additional ancillary responsibilities under the Sherman Act, as the Bechtel Corp. suit indicates.

But I would agree that we have the lead.

Mr. ROSENTHAL. I don't think that there is any question that you have the lead-agency role.

As the lead agency, I assume that you have a responsibility to take all reasonable steps to assure that the policies and activities of other Federal agencies are consistent with U.S. Government policy, as enunciated by the President and yourself.

Mr. RICHARDSON. Yes.

We have been, and are, in continuing contact with other agencies, for example, the Department of State which has followed up through in diplomatic action in instances where there appeared on the face of a boycott report the possibility of some discriminatory action.

We have had occasion, also, to follow up with AID in a situation where it was not clear that they were acting with full consistency in administration policy.

Mr. ROSENTHAL. In other words, in the rhetoric of the street, are you whipping them into line?

Mr. RICHARDSON. I would say, yes; and I don't think there really is any doubt at all within the administration as to the consistency of the President's policies in this area, especially with respect to anything involving discrimination, since his Executive order of November 1975.

Of course, the new directive, with regard to disclosure, now creates a new basis on which information will be available to other agencies as well.

Mr. ROSENTHAL. The new Executive order, in a sense, supplanted the Export Administration Act that was not continued; that is, in terms of the policy content of that act.

Mr. RICHARDSON. That is true.

As you know, Mr. Chairman, we are now, with respect to all aspects of the administration of export controls, operating under an Executive order executed pursuant to the Trading With the Enemy Act of 1917.

This has been done, I understand, on an interim basis before, in other situations, where the Export Administration Act has expired.

Mr. ROSENTHAL. Have any of your lawyers, or those of the Department of Justice, rendered an opinion to you or the President as to the constitutionality of using the Trading With the Enemy Act and the Executive order for continuing the content of this policy?

Mr. RICHARDSON. We do have an opinion of Antonin Scalia, the Assistant Attorney General, who heads the Office of Legal Counsel of the Department of Justice.

That opinion is consistent, I understand, with earlier opinions on the same question which have been rendered on other occasions when there was an interval following expiration of the Export Administration Act.

Mr. ROSENTHAL. Would you make available to the subcommittee, for the record, a copy of that opinion?

Mr. RICHARDSON. I would be glad to do that, Mr. Chairman.

Mr. ROSENTHAL. Without objection, that will be made a part of the record at this point.

[The material referred to follows:]

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington, D.C. 20530

SEP 29 1976

J. T. Smith, Esq.
General Counsel
Department of Commerce
Washington, D.C. 20230

Dear Mr. Smith:

This is in response to your letter of August 31, 1976, relating to the current anti-boycott regulations of the Commerce Department, 15 CFR Part 369. These regulations have been issued under the authority of the Export Administration Act ("the Act"). You ask whether the regulations can be continued should the Act lapse on September 30. For the reasons set forth below, it is my opinion that authority to continue the regulations is provided by Section 5(b) of the Act of October 6, 1917, 50 U.S.C. App. § 5(b), sometimes known as the Trading with the Enemy Act.

As you note, Section 5(b) has been used for this purpose on three previous occasions. On August 1, 1972, President Nixon issued Executive Order 11677, Continuing the Regulation of Exports, on the expiration of the Export Administration Act of 1969. At that time this Office provided a letter to the President approving the order as to form and legality and an opinion to then General Counsel Letson of your Department, dated July 31, 1972, discussing Section 5(b) and the proposed order in some detail. That order was revoked subsequently on August 29, 1972, by Executive Order 11683, when the original export control authority was extended by statute.

A similar sequence occurred twice in 1974. First, as a result of the expiration of the Act, Executive Order 11796, relying on Section 5(b), continued regulations promulgated under the Act from July 30, 1974 until August 14. On the latter date, the Act was again extended and the order revoked. E.O. 11798 of August 14, 1974. Again in 1974, Section 5(b) was used to fill a gap in the power conferred by the Act from September 30 to November 5, 1974. See E.O. 11810, revoked by E.O. 11818.

These Executive orders maintained in full force and effect "all rules and regulations issued by the Secretary



of Commerce, published in Title 15, Chapter 3, Subchapter B, of the Code of Federal Regulations, Parts 368 to 399 inclusive" Part 369 contained the regulations regarding foreign boycotts and thus fell within the scope of all three executive orders. ^{1/} Your letter states that these regulations seem to be within the scope of our 1972 opinion and that they have been treated as so included, but that the opinion does not specifically discuss whether the authority of Section 5(b) can be used "to continue the administration of these regulations" in particular, which "do not deal with controls on exports."

The authority of Section 5(b) regarding foreign commerce is set forth in the broadest possible terms:

(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise --

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, . . . and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest

^{1/} The regulations were revised in 1975, principally to prohibit United States exporters and related service organizations from taking any action that has the effect of supporting a restrictive trade practice discriminating against United States citizens. 40 Fed. Reg. 54769 (1975). For the reasons discussed below, this revision does not alter our 1972 conclusion.

It further provides that

. . . such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in the subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision,

As a result of continuing interplay between the Executive and the Congress, Section 5(b) has been the statutory foundation for control of domestic as well as international financial transactions and is not restricted to "trading with the enemy." See "Emergency Power under § 5(b) of the Trading with the Enemy Act" in S. Rep. 93-549, p. 184 (1973).

Section 5(b) was originally enacted in 1917 to give the President authority to control commerce with countries with which the United States was then at war. It was in amended form also the statutory basis for Executive action freezing the assets of nationals of enemy and enemy-occupied countries during World War II. Regulations issued by the Secretary of the Treasury, pursuant to a general delegation of presidential authority under Section 5(b) made in 1942, continue to serve as the basis for blocking trade and financial transactions with North Korea, North Vietnam, Cuba, and other Communist countries. Section 5(b) has also been used to provide authority for the establishment of the Foreign Direct Investment Program by Executive Order No. 11387 (January 1, 1968). 42 Op. A.G. No. 35. It has been upheld as the legal basis for the President's 1971 import duty surcharge. United States v. Yoshida International, 526 F. 2d 560 (C.C.P.A., 1975). And, as noted, it was used in 1972 and 1974 for the purpose now contemplated.

The prohibitions of § 369.2, the precatory provisions of § 369.3 and the reporting requirements of § 369.4 -- which constitute all of the distinctive substantive portions of Part 369 2/ -- are directed primarily towards transactions (or negotiations leading towards transactions) which involve export sales to foreign countries and foreign nationals or the granting or withholding of business by foreign countries or foreign nationals. There is in our view no doubt that such activities can appropriately be covered within the authority provided by Section 5(b). Even to the extent that the regulations would have application to transactions in which a foreign country or foreign national is not the immediate party to a contemplated transaction, it is likely that such application would be supported by Section 5(b), in

2/ § 369.1 is merely a recitation of the statutorily declared policy of the Act with respect to boycotts. § 369.5 makes the provisions of the Export Administration Regulations, including Parts 387 and 388, which deal with enforcement and procedure, applicable to the prohibitions and the reporting requirements set forth in Part 369. The penalties available under the Trading with the Enemy Act differ from those under the Act, in that only the latter include civil penalties and fines which exceed \$10,000. 50 U.S.C. App. 2405. In the past, the Executive orders instituting export controls under Section 5(b) have taken these differences into account, specifying that the maximum fine shall be \$10,000 and that there will be no civil fines; we assume this practice would be continued. The record-keeping requirements incorporated by § 369.5 are supported by the language in Section 5(b) which provides that "The President shall * * * require any person to keep a full record of" transactions covered by the Act. Similarly, the broad powers spelled out in Section 5(b) to investigate, regulate, to obtain information and documents and to "perform any and all acts incident to the accomplishment or furtherance of these purposes" clearly encompass the power to conduct necessary proceedings. Cf. Boesche v. Udall, 373 U.S. 472 (1963). An opinion of Assistant Attorney General Wozencraft to the Director, Office of Foreign Direct Investments, Department of Commerce, Jan. 8, 1969, discussed the availability of administrative remedies under Section 5(b) in connection with the Foreign Direct Investment Program.

light of the extremely broad interpretation which has been given to its phrase "property in which any foreign country or a national thereof has any interest," see United States v. Quong, 303 F.2d 499, 503 (6th Cir. 1962), cert. denied, 371 U.S. 863 (1962); Heaton v. United States, 353 F.2d 288, 291-92 (9th Cir., 1965); United States v. Broverman, 180 F. Supp. 631, 636 (S.D.N.Y. 1959), and in light of its alternate basis for jurisdiction which covers "any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution." To the extent that any transaction properly covered by the regulation in reliance on the authority of the Export Administration Act might escape coverage under the jurisdiction conferred by the Trading with the Enemy Act, such transaction would assuredly not be one of the sort to which the regulation was principally directed; and it is in our view clear that the validity of the regulation as a whole would be unaffected.

It may be noted that the use of Section 5(b) on three previous occasions, as described above, was well publicized, the necessary action having been taken by Executive order in each case. During the 1974 debate on extension of the Act, at a time when Section 5(b) was being used as authority for export controls, Congress was clearly aware that Section 5(b) could be used in this manner. See 120 Cong. Rec. H 10367 (daily ed., October 10, 1974) (remarks of Representatives Ashley and Frenzel). Similarly, in considering the recently enacted National Emergencies Act, Pub. L. 94-412, which deals with emergency legislation including Section 5(b), Congress displayed an awareness that Section 5(b) had been used as a substitute authority during lapses of the Act. See 120 Cong. Rec. S 18362 (daily ed., Oct. 7, 1974); S. Rep. No. 93-549, p. 191. We know of no indication of Congressional disagreement with the legality of this practice or criticism of it. Cf. 42 Op. A.G. No. 45, p. 6, and cases cited.

The use of Section 5(b) depends on the existence of a war or "any other period of national emergency." 3/ There are now two declared national emergencies in effect. On August 15, 1971, President Nixon declared a national emergency in issuing Proclamation 4074, imposing a supplemental duty on imports for balance of payment purposes. Although the provisions of Proclamation 4074 imposing the additional duty were later revoked by Proclamation 4098 of December 22, 1971, the latter "did not terminate the declared emergency." See United States v. Yoshida International, supra, 526 F.2d at 582, note 33. The continuance of this emergency, which calls for the strengthening of the international economic position of the United States, has been reaffirmed in the three Executive orders continuing the regulation of exports issued in 1972 and 1974.

In addition, President Truman's declaration of a national emergency in Proclamation 2914 of December 16, 1950, referring to the hostilities in Korea and the world menace of the forces of Communist aggression, has never been

3/ A recent decision of the Court of Customs and Patent Appeals upheld the import surcharge under Section 5(b) and found that the action taken bears a reasonable relation to the power delegated and "to the emergency giving rise to the action." United States v. Yoshida International, supra, 526 F.2d at 578-580. We do not believe this statement should be taken as indicating a judicial readiness to inquire into the relationship between the declared emergency and the Presidential action taken. The plain language of Section 5(b) makes its powers available during "any . . . period of national emergency," and the cases accept the view that in this regard the words mean all they say. Pike v. United States, 340 F.2d 487 (9th Cir., 1965), disapproving United States v. Briddle, 212 F. Supp. 584 (S.D. Cal. 1962); Nielsen v. Secretary of Treasury, 424 F.2d 833, 837 (D.C. Cir., 1970); Teague v. Regional Commissioner of Customs, 404 F.2d 441, 444 (2d Cir. 1968), cert. denied, 394 U.S. 977 (1969); Sardino v. Federal Reserve Bank, 361 F.2d 106, 109-10 (2d Cir. 1966), cert. denied, 385 U.S. 898 (1966); Veterans and Reservists for Peace in Vietnam v. Regional Commissioner of Customs, 459 F.2d 676, 678 (3d Cir., 1972), cert. denied, 409 U.S. 933 (1972); Welch v. Kennedy, 319 F.S. 945, 947-48 (D.D.C., 1970).

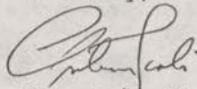
-7-

revoked, and has been reaffirmed on a number of occasions since 1950, including reaffirmation in the 1972 and 1974 orders on exports. It is our view that that emergency continues. See e.g., Nielsen v. Secretary of Treasury, 424 F.2d 833, 837 (D.C. Cir., 1970).

In passing the National Emergencies Act both Houses of Congress recently recognized that both the 1950 and 1971 declarations of emergency are in effect. See H. Rep. No. 94-238, p. 2 (1975); 121 Cong. Rec. H 8327-31, (daily ed., Sept. 4, 1975); 122 Cong. Rec. S 14841-42 (daily ed., Aug. 27, 1976). That act does not prevent the use of Section 5(b). Indeed it confirms its availability during the present emergencies. Under Section 101 of the act no emergency powers will be terminated until two years from the date of enactment. Moreover, Section 502(a)(1) of the Act exempts Section 5(b) from its restrictions.

For the foregoing reasons, we are of the view that the anti-boycott regulations of the Commerce Department, 15 CFR Part 369, can be continued under authority of the Trading with the Enemy Act.

Sincerely,



Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

Mr. ROSENTHAL. Pursuing the question of the lead-agency role, which I think is fundamental to your mission, there were two agencies that you did not mention. I assume it is merely an oversight.

One is Overseas Private Investment Corporation, and the other is the Export-Import Bank.

What concerns the subcommittee, for example, is that two of the firms just listed by your agency as participating in the boycott have sizable foreign investments insured by Overseas Private Investment Corporation.

The Bank of America, which is on the list, has \$20 million of OPIC-insured investments. The parent company of Kayser Roth International—Gulf + Western—also on your list, has \$10 million of insured investments through OPIC.

Additionally, a number of major U.S. banks, previously identified by this subcommittee as participating in the boycott, such as City Bank of New York, Morgan Guaranty, Security Pacific of California, and Continental-Illinois, have OPIC-insured investments totaling somewhere around \$23 million.

The Export-Import Bank has provided, additionally, financial assistance of one kind or another to at least 19 of the 38 firms found on your list. For fiscal year 1976, commercial banks on your list received \$666.7 million of Ex-Im assistance and companies \$4.9 million.

Now, I would assume that continuation of these types of financial assistance and support are in violation of policy.

I would like to know what specific action you have taken, or will take, to make sure that OPIC and Eximbank are on the same policy line with the Department of Commerce in terms of this boycott issue.

Mr. RICHARDSON. Your question, Mr. Chairman, leads to a point that I do have under active consideration. That is the question of whether or not we ought to seek one additional element of information in the reports submitted to us—whether or not a firm has in any manner altered its conduct or manner of doing business pursuant to a boycott request.

As our press release yesterday pointed out, the fact that a firm, in response to a boycott request, states that there are no Israeli-made components in the product does not in itself indicate that the firm has taken any action that it would not have otherwise taken in compliance with the boycott.

Similarly, with respect, for example, to the report that it does not have an Israeli subsidiary—relatively few companies do have Israeli subsidiaries or are contemplating them.

So, the fact that there may be OPIC-insured investments would not in itself mean that there had been any affirmative action taken by a company.

Mr. ROSENTHAL. At any rate, so that we can be precise for the record, you will advise, on behalf of the Department of Commerce and in your role as the lead officer of the Federal Government, all Federal agencies what the policy is and how compliance with the policy should be met?

Mr. RICHARDSON. Yes; I think clearly we have a responsibility to do that.

Mr. ROSENTHAL. Pursuing the lead-agency and the responsibility theme, one of the things that concerns all of us is the problem that

States, such as New York, California, Colorado, Illinois, Maryland, and Massachusetts, have in enforcing State antiboycott laws and the problem of uncensored boycott reports being available to them for enforcement purposes. Let me read to you a couple of telegrams that came in prior to this hearing this morning.

They are addressed to the subcommittee.

This will indicate my support of your request that the Commerce Department release not only the names of those companies participating in or complying with the Arab boycott, but also information relating to the type and quantity of commodity or service involved, the value involved in each transaction and the identity of the purchaser of the commodity or service. It is my opinion that such information would be useful in determining possible violations of our State antitrust and civil rights laws. Sincerely, J. D. MacFarlane, Attorney General, State of Colorado, Denver, Colorado.

Additionally, I have a telegram, also addressed to the subcommittee, which reads as follows:

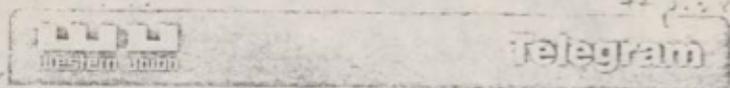
It is our understanding that the committee is conducting a hearing on October 20, 1976. It is felt by this office that it would be beneficial in the enforcement of the Illinois antitrust law and other laws preventing or relating to discrimination in connection with boycotts for the State of Illinois to have access to any information relative to such matters that may be in the possession of the Department of Commerce pertaining to corporations, individuals or others which are trading or engaged in transactions with the Arab nations. In this regard it would be particularly helpful to have the identification of such corporations, individuals or others, the nature of the commodities involved, the quantities, the value and the consignee.

It is signed, "William J. Scott, Attorney General of Illinois."

And there are others of a similar kind.

Without objection, these will be made a part of the record at this point.

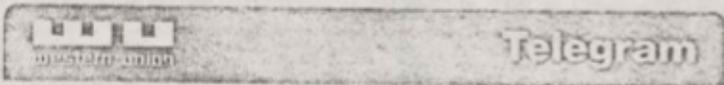
[The material referred to follows:]



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 ICS IPMBNGZ CSP
 3038923611 TDBN DENVER CO 87 10-19 0657P EST OCT 20 1976
 PMS BENJAMIN ROSENTHAL, REPORT DELIVERY BY MAILGRAM, DLR
 COMMERCE, CONSUMER AND MONETARY AFFAIRS SUBCOMMITTEE SEN. JACOB M.C.
 RAYBURN HOUSE OFFICE BLDG
 WASHINGTON DC

DEAR SIR: THIS WILL INDICATE MY SUPPORT OF YOUR REQUEST THAT THE
 COMMERCE DEPARTMENT RELEASE NOT ONLY THE NAMES OF THOSE COMPANIES
 PARTICIPATING IN OR COMPLYING WITH THE ARAB BOYCOTT, BUT ALSO
 INFORMATION RELATING TO THE TYPE AND QUANTITY OF COMMODITY OR
 SERVICE INVOLVED; THE VALUE INVOLVED IN EACH TRANSACTION AND THE
 IDENTITY OF THE PURCHASER OF THE COMMODITY OR SERVICE. IT IS MY
 OPINION THAT SUCH INFORMATION WOULD BE USEFUL IN DETERMINING
 POSSIBLE VIOLATIONS OF OUR STATE ANTI-TRUST AND CIVIL RIGHTS LAWS.
 SINCERELY,

87-081 (20-60)



J. D. MACFARLANE ATTORNEY GENERAL STATE OF COLORADO (1575)
 SHERMAN ST DENVER CO 80203
 NNNV

ATTORNEY GENERAL JC
500 SOUTH 2 ST
SPRINGFIELD IL 62706

MAILGRAM
western union



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2177821090 MGH TDRN SPRINGFIELD IL 147 10-19 0346P EST

HONORABLE BENJAMIN ROSENTHAL
CHAIRMAN COMMERCE CONSUMER AND MONETARY
AFFAIRS SUBCOMMITTEE
ROOM B 350 RAYBURN HOUSE OFFICE BLDG
WASHINGTON DC 20515

IT IS OUR UNDERSTANDING THAT THE COMMITTEE IS CONDUCTING A HEARING ON
OCTOBER 20 1976. IT IS FELT BY THIS OFFICE THAT IT WOULD BE BENEFICIAL
IN THE ENFORCEMENT OF THE ILLINOIS ANTI-TRUST LAW AND OTHER LAWS
PREVENTING OR RELATING TO DISCRIMINATION IN CONNECTION WITH BOYCOTTS
FOR THE STATE OF ILLINOIS TO HAVE ACCESS TO ANY INFORMATION RELATIVE TO
SUCH MATTERS THAT MAY BE IN THE POSSESSION OF THE DEPARTMENT OF
COMMERCE PERTAINING TO CORPORATIONS, INDIVIDUALS OR OTHERS WHICH ARE
TRADING OR ENGAGED IN TRANSACTIONS WITH THE ARAB NATIONS. IN THIS
REGARD IT WOULD BE PARTICULARLY HELPFUL TO HAVE THE IDENTIFICATION OF
SUCH CORPORATIONS, INDIVIDUALS OR OTHERS, THE NATURE OF THE COMMODITIES
INVOLVED, THE QUANTITIES, THE VALUE AND THE CONSIGNEE.

WILLIAM J SCOTT
ATTORNEY GENERAL OF ILLINOIS

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RECEIVED

OCT 20 1976

COMMERCIAL EDUCATION AND
POLITICAL AFFAIRS DEPARTMENT

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645

western union Mailgram



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OCT 20 1976

CONGRESSMAN BENJAMIN ROSENTHAL Benjamin S. Rosenthal, M.C.
ROOM 2372 RAYBURN BLDG
WASHINGTON DC 20515

RESTRICTIONS IMPOSED ON THE RELEASE OF INFORMATION BY THE COMMERCE DEPARTMENT WILL MAKE IT INCREASINGLY DIFFICULT TO TRACK DOWN COMPANIES VIOLATING NEW YORK STATE LAW. WE SEE LITTLE ADVANTAGE TO BE GAINED, AND LITTLE HARM TO COME FROM FULL DISCLOSURE OF THE NATURE OF COMPLIANCE OR THE VALUE OF PRODUCTS COVERED. IF THE THEORY IS THAT PUBLIC DISCLOSURE WILL DISCOURAGE COMPLIANCE THAN FULL DISCLOSURE SHOULD ENCOURAGE FULL COMPLIANCE, I.E. COMPLIANCE WITH NEW YORK STATE LAW.

STANLEY STEINGUT, SPEAKER
NEW YORK STATE ASSEMBLY

15:18 EST

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Mr. ROSENTHAL. How can we respond and deal with the problems and concerns of these respective attorneys general?

Mr. RICHARDSON. I would be very glad to inform these attorneys general that the information reported to the Department is available to them to the extent that it is needed to carry out any enforcement responsibilities under their laws.

This would, of course, include the information that is otherwise made public in any event.

Now, as to the matter of the identification of the commodities involved, the quantities, the value, and the consignee, we are dealing there with the types of information which we have said would be maintained as confidential in order not to impose any competitive disadvantage through the disclosure of proprietary information.

An appropriate showing, however, by an attorney general that such information was genuinely relevant to the enforcement of their State law—

Mr. ROSENTHAL. I assume a telegram is prima facie evidence of its relevance.

Mr. RICHARDSON. I am not sure that I agree with that, Mr. Chairman. Where discrimination, for example, is concerned, it is not apparent what bearing information as to the type of commodity involved in the transaction could have.

What I am saying, in any event, is that—No. 1, we will make available, certainly to the attorneys general, the information contained in the reports to us.

Mr. ROSENTHAL. Will they get a censored version or an uncensored version? I mean the attorneys general.

Mr. RICHARDSON. It would not include the proprietary information, except on the basis of their explaining to us why it was necessary for them to have it.

Mr. ROSENTHAL. Obviously, they think it is necessary for prosecution of one sort or another.

Mr. RICHARDSON. I don't think it is obvious at this stage, Mr. Chairman.

Having been an attorney general of a State—

Mr. ROSENTHAL. Do you think they want it because they are curious?

Mr. RICHARDSON. Excuse me?

Mr. ROSENTHAL. Do you think they want it because they are curious?

Mr. RICHARDSON. I am not sure that they have focused at this stage on the fact that there could be competitive disadvantage to a firm that discloses this or that information.

I know the attorney general of Illinois quite well. I would be glad to talk to him and find out why he needs that information. I am not sure that he has focused on that particular question.

Mr. ROSENTHAL. In other words, until you are convinced that they need it for a relevant public purpose, rather than mere curiosity, you do not intend to provide it to the attorneys general, who request it, of the five States which have laws on this subject?

Mr. RICHARDSON. That is how I would treat any request for proprietary information, Mr. Chairman, from whatever source.

Having been a State attorney general, I think I understand the nature of their responsibilities, and I would undertake, certainly, to cooperate fully with them; but I would assume that they would, also,

cooperate with any legitimate policies of the Department of Commerce that do not impair their ability to do their jobs.

Mr. ROSENTHAL. How do the attorneys general—or as a matter of fact, anybody—get copies of these reports?

Mr. RICHARDSON. They can come to the Freedom of Information Room of the Department of Commerce and look at them and copy them.

Mr. ROSENTHAL. The attorney general of Colorado sends somebody here?

Mr. RICHARDSON. That would be, I would think, the most efficient way to do it.

Mr. ROSENTHAL. As I understand it, you have 43 field offices around the country.

Is there any way that copies of these could be made available to the 43 field offices?

Mr. RICHARDSON. I suppose that, as a matter of accommodation, we might agree to sift through the reports and pick out ones that involve Colorado corporations. That, I think, is a matter to be worked out with the attorneys general at a balance of mutual cost and convenience.

Mr. ROSENTHAL. Mr. Secretary, you made a very important statement in your prepared testimony.

You said, "President Ford at that point indicated to Members of Congress his willingness to support a constructive compromise that would provide for an extension of the act"—meaning the Export Administration Act. And you go on to say what the compromise would be.

I was a member of that purported conference committee that could never be appointed because of the objection of Senator Tower of Texas. I don't ever recall hearing, knowing, or being made aware of any President Ford compromise.

To whom and when was the compromise conveyed?

Mr. RICHARDSON. It was conveyed by Counsel to the President, John Marsh, and the President's congressional relations assistant Max Friedersdorf, on the Tuesday before the expiration of the Congress.

Mr. ROSENTHAL. Your colleague, Mr. Smith, just said, "Wednesday." This is a very pertinent point.

Was it Wednesday, in fact?

Mr. SMITH. This was handled by the President's own staff. I don't think the Secretary or I know with precision whether it was Tuesday or Wednesday.

Mr. ROSENTHAL. My general instincts as a lawyer suggest to me that the Secretary ought to be extraordinarily cautious in making these statements unless he has personal knowledge of it because the things I speak of are from direct, personal knowledge in this particular area.

I don't mean that to be contentious, but I do mean that we should be extraordinarily prudent and cautious.

Mr. RICHARDSON. My understanding, Mr. Chairman, is that the willingness to compromise along these lines was communicated on Tuesday or Wednesday. It was discussed with representatives of various Jewish groups and with members of the staff of Senator Stevenson on the Senate side. It was through them, as I have been informed, at least known to other members of the concerned subcommittees.

Mr. ROSENTHAL. Let me say this for your information.

Senators Proxmire, Stevenson, Congressman Bingham, and I held a press conference the day after the Presidential debate in which each

of us, respectively, asserted that we had no knowledge of a compromise and had not received any communication about a compromise; and had received no written or oral communication from anybody about a compromise.

What did, in fact, happen—subsequently we found out—is that a piece of paper, presumably made public, and which I now hold in my hand, by minority counsel to the Stevenson subcommittee did have some language that purports to be a compromise. But none of the principals of the conference committee knew anything about it, including Senator Brooke of Massachusetts who voted for a preliminary agreement between the House and the Senate bill.

Additionally, this purported compromise legislation is, in fact, weaker in its terms than the bill that passed either the Senate or the House, and under the parliamentary rules governing conferences, could not even be considered by the conferees.

The point I am trying to make—and I think it is unfair to burden you with all of this legislative history—is that I do hope that the record will be precisely clear as to the roles of the prospective parties, that is the congressional conferees and the President.

It is, I think, unfair and inappropriate to say that the President “indicated to Members of Congress his willingness to support a constructive compromise.”

I, myself, know of no Member of Congress of either body who had any information at any time prior to adjournment on October 2 about any kind of administration compromise.

Mr. RICHARDSON. I can only add, Mr. Chairman, that I agree with you that I am not the best witness on this subject.

But, I have been informed that the President’s willingness to seek a compromise along these lines was communicated to Senator Tower, to Congressman Broomfield, and to Congressman Findley.

Mr. ROSENTHAL. Senator Tower was the Member of the U.S. Senate who, three times on Monday and twice on that Tuesday of that week, objected to the appointment of conferees.

At any rate, I hope that the record is clear. I do want you to understand what the facts were concerning the legislative history.

Congressman Drinan?

Mr. DRINAN. Thank you, Mr. Chairman.

Welcome, Mr. Secretary. Welcome doubly, inasmuch as you are one of my constituents from the fine town of Brookline, Mass.

Let me put this in focus just a bit, Mr. Secretary, because prior to your time as Secretary up until December 1, 1975, the Commerce Department was actively involved in distributing tender offers containing boycott provisions to American businesses from the Arab nations.

In November 1975, I and several other Members of Congress filed suit to enjoin the Department from continuing that policy. I am happy to say that 4 days after the suit was filed the Department of Commerce stopped disseminating the tender offers from the Arab nations.

A second problem, involving the disclosure of boycott compliance, was not resolved at that same time. On August 26, 1975, Commerce Secretary Morton wrote to Chairman Rosenthal, “I feel that such disclosure of the information from American corporations would cause particular damage to the exporting companies now gaining a toehold in this highly competitive region.”

You, yourself, stated that you felt differently. You said that you concluded, "I could affirmatively find such prospective disclosure to be in the national interest," and for reasons that I cannot understand you concluded, "I should not act unilaterally on such an important change in policy."

You concluded this, I take it, in April, and yet you went on testifying for the administration against any change in the policy.

Is your own personal conviction contrary to that of the administration?

Mr. RICHARDSON. As a matter of judgment, yes; but it is a situation in which there were legitimate interests and points of view represented by others in the administration, including the Department of State.

Mr. DRINAN. Well, it remains a mystery to me why the change came so abruptly.

Let me read exactly the President's words taken from the New York Times in the debate:

Last week when we were trying to get the Export Administration Act through the Congress—necessary legislation—my administration went to Capitol Hill and tried to convince the House and the Senate that we should have an amendment on that legislation which would take strong and effective action against those who participate or cooperate with the Arab Boycott.

Is there anything in that sentence that is true?

Mr. RICHARDSON. I think that the President was referring to the effort made in the last week which the chairman and I were just discussing.

The administration had filed legislation in January that would have provided specifically for criminal sanctions and civil sanctions against economic coercion based upon race, color, religion, national origin, or sex as a—

Mr. DRINAN. I am familiar with that, Mr. Secretary.

But, as I read this, there is nothing true in that paragraph except this alleged "going to somebody," whom the chairman can't name and about which Senators Proxmire and Stevenson say they know nothing.

In any event, what persuaded the President to offer this compromise when persistently he had been opposed? And you had testified, and Mr. William Simon had testified, against any alteration.

Why on October 6, did the President abruptly change the administration's position?

Mr. RICHARDSON. There had been a lot of discussion, Congressman Drinan, beginning last winter or early spring, on the question of the administration's posture toward the pending legislation and toward what might eventually emerge. A good deal of this discussion was essentially tactical with respect to whether or not it would be possible to get legislation along the lines that were contained in this proposed compromise.

There was presented, in the course of this discussion, the view that to take that position at an early date would result, essentially, in legislation that went significantly beyond those basic elements; and the result, therefore, was the conclusion that, if this was to be done at all, it would be done at a late stage in the legislative process.

Mr. DRINAN. Well, did the administration really change its opinion? Senator Tower stated to the press that he objected at least five times

to the appointment of conferees at the request of the Ford administration.

I assume that is a correct statement.

Is the administration, therefore, telling us that secretly or off the record they went to some of the conferees—at least on the minority side—and that they were proposing some compromise while simultaneously Senator Tower was telling us that he was the spokesman in killing the bill at the request—at the command of the administration?

Mr. RICHARDSON. I can't speak with firsthand knowledge.

Mr. DRINAN. Mr. Secretary, during those days, did you speak with the President about this matter?

Mr. RICHARDSON. I spoke to him once about it. I sent him memorandums about it.

Mr. DRINAN. If I may ask, about what time was that?

Mr. RICHARDSON. I had earlier sent—I sent a memorandum in September about it. I thought I sent a followup memorandum.

Mr. DRINAN. Would that be early or mid-September?

Mr. RICHARDSON. I talked to his Associate Counsel during the week before the end of Congress. And my General Counsel, Mr. Smith, was in continuing communication with members of the President's staff during that period.

Mr. DRINAN. Mr. Secretary, could we have that memo for the record?

Mr. RICHARDSON. I don't think that it is appropriate for me to furnish a memorandum to the President—

Mr. DRINAN. What did the memo say?

Mr. RICHARDSON. The memorandum said, in substance, that I believed that a policy of disclosure was consistent with the national interest and that this would be an affirmative response to the pending legislation that would, I thought, receive the support of the most interested groups and organizations; and that it would be a way of dealing with this issue which could avoid potential legislation that contained more far-reaching provisions that we believed—and I still believe—would be counterproductive.

Mr. DRINAN. Assuming that Senator Tower spoke and acted on behalf of the administration, can we conclude that the administration rejected the substance of your recommendation?

Mr. RICHARDSON. It certainly rejected it when I originally made it in the spring. It was rejected in terms of the handling of the situation as of early September. And it only eventually became administration policy in the last week of the session.

Mr. DRINAN. Did John Marsh propose the substance of your recommendation on Tuesday or Wednesday prior to October 1?

Mr. RICHARDSON. My understanding is that he did.

Mr. DRINAN. Who instructed Senator Tower to move contrarywise?

Mr. RICHARDSON. I don't know.

Mr. DRINAN. In the memo, Mr. Secretary, did you recommend to the President that the participation in the boycott be made illegal or just that certain parts of the forms submitted by American corporations be disclosed?

Mr. RICHARDSON. My recommendation was essentially along the lines of the proposed compromise that is summarized on page 6 of my testimony.

It would not have contained a provision specifically making compliance with the boycott illegal.

Mr. DRINAN. Mr. Secretary, how is that a compromise when both the House and the Senate have passed bills that made it illegal to participate in the Arab boycott?

It is not a compromise when you don't accept the essence of the legislation that had cleared both Houses.

Mr. RICHARDSON. The Senate bill did not so provide. It did not make participation illegal.

Mr. DRINAN. At any time has the administration considered the policy of going forward and putting some sanctions on participation in the boycott?

Mr. RICHARDSON. It has been discussed at length, but the conclusion reached in the administration has been that it would not be appropriate for the same reason that the Senate so concluded.

Mr. DRINAN. Is there anything in the compromise that was worked out to which you would object?

I have here, from the Congressional Record, Congressman Bingham's submission on October 1 of the informal summary of the House and Senate conference on the antiboycott provisions.

I assume that if you are opposed to making it illegal, that you reject the very essence of this unapproved version of the conference report.

Mr. RICHARDSON. I don't have in front of me what you are referring to.

But if the question is, would I support the provision of the House bill specifically making compliance with the boycott subject to criminal penalties or civil penalties, then the answer is that I still believe that that would not be desirable.

It was considered in the Senate side also, and the Senate agreed with that conclusion. And, one of the things that the conferees would have had to iron out, if they met, was the question of whether or not the ultimate bill would have followed the lines of the Stevenson bill, passed by the Senate, or whether or not it would have contained the provisions along these lines of the Bingham-Rosenthal legislation.

We don't know what the outcome would have been. But I would have favored the Stevenson bill.

The only modifications of the Stevenson bill that I would have sought would have touched some of the provisions of the refusal to deal on part of that bill. That was really a matter of clarifying the impact of that legislation in the light of the fact that the Department of Justice already has authority under the Sherman Act to proceed against refusals to deal.

Mr. DRINAN. Mr. Secretary, your subordinate, Mr. Rauer Meyer, the Director of the Office of Export Administration, testified before this subcommittee on June 8, 1976, to this effect:

In the absence of legislation or regulations prohibiting boycott compliance, the vast majority of American banks and other firms will in fact continue to submit to the boycott and participate in the economic warfare of the Arabs against Israel.

You say that it would be unwise. All of the evidence that we have accumulated and all of the evidence that Congressman John Moss' subcommittee has accumulated indicate that 95 percent or more of all American corporations will continue to aid and abet the economic warfare against Israel that the Arabs have conducted for 30 years.

Why shouldn't we make it illegal if there is no other way to terminate it?

Mr. RICHARDSON. It should be reemphasized, Congressman Drinan, that this so-called compliance, in most instances, involves simply a declaration that a firm is not doing something that it never intended to do anyway and has not done in the past.

This means, therefore, that in the great majority of these instances there is no impact on the business dealings of the firm incidental to filling out a request for information. So, what is reported to us is what the response was, but these are not situations that result in actual economic impact on Israel.

Where there is such an economic impact in a refusal-to-deal situation, as the Bechtel Corp. case indicates, the Department of Justice does have legal authority to proceed.

And where, of course, there is any element of discrimination on grounds of race or religion, that is clearly subject to legal prohibition and would be the subject, in the first instance, of a charging letter by my Department.

The distinction between the cases in which a company simply records the facts that it is not doing something that it has never done and would not otherwise have done, is a distinction that is recognized explicitly in the tax bill provisions recently enacted which deal with the boycott.

That distinction is certainly fundamental to dealing with this problem, I think.

Beyond that, you get into real issues of judgment with respect to the efficacy of dealing with this problem quietly on a diplomatic basis. The very nature of the boycott requests which are contained in the forms, that is reflected in the forms we have, is indicative of some progress along these lines.

And, there is the further consideration, which has certainly concerned the Department of State, that the United States has gained a degree of influence with the Arab countries, relatively speaking, in the last several years.

I remember, as Under Secretary of State, frequent meetings with the then-Israeli Ambassador to the United States, Mr. Rabin, in which a very considerable part of our discussions centered on the influence exercised then by the Soviet Union in the Middle East and the problems this created for the achievement of any just and lasting peace.

The relative position of the Soviet Union has declined in the meanwhile, and the relative ability of the United States to encourage the negotiation of a just and lasting peace has correspondingly increased. We do need to maintain, from the standpoint of the interests of Israel as well as those of the United States, a sensitive regard to the preservation of that influence.

Mr. DRINAN. Mr. Secretary, I would suggest that the conversations with Mr. Rabin that you mentioned are ancient history now because, since the war which broke out 3 years ago this Monday and since the quintupling of the price of oil, this is an entirely new ball game.

Mr. RICHARDSON. I would be glad to insert for the record Prime Minister Rabin's report to the Knesset on June 15 in which he said that he noted with satisfaction that during the past 2 years relations between the United States and Israel have become closer and that:

Our Governments have arrived at a common approach regarding the desirable political direction on the road to peace and in the development of the processes of peace.

That is not ancient history. That is a statement by the Prime Minister to his own parliament on June 15 of this year.

Mr. DRINAN. Except that the Prime Minister, I am certain, follows the unanimous view of people in Israel and of Jewish people in America that a strong antiboycott law is highly desirable and imperative.

I am familiar with the various kinds of compliance. In the report of Congressman John Moss, he outlines them very well.

Nonetheless, Mr. Secretary, I feel I must press this point because if nothing is done and if there are no sanctions to make illegal compliance with the economic boycott, the fact is that old companies and new will continue to sell to the Arab nations and will not sell to Israel.

Although I recognize the necessity of diplomatic—

Mr. RICHARDSON. May I interrupt, Congressman Drinan?

Mr. DRINAN. Yes.

Mr. RICHARDSON. You referred to—you made the statement that they will not sell to Israel. Of course, the fact is that many, if not most companies, which do report compliance, do in fact sell to Israel. Several of the companies whose names were disclosed recently, have pointed this out.

The fact that a company reports that it has no Israeli subsidiary or that a product does not contain Israeli-made components, does not in itself prevent its selling to Israel; and, indeed, boycott requests seldom involve, as far as I know in the tabulations I have seen—in fact none involve directly the question of whether or not the company sells to Israel.

Mr. DRINAN. Mr. Secretary, we can be grateful that the enforcement of the Arab boycott is very poor, apparently on the part of the Arabs.

Mr. RICHARDSON. I think that this is a consideration which, in turn, highlights the importance of the manner in which this situation is dealt with, including the manner in which it is dealt with through diplomatic channels. I would not discount the impact of U.S. influence on the manner in which the boycott has been carried out.

Mr. DRINAN. I will now conclude because I want to yield back to the chairman. My time has expired.

I take it, Mr. Secretary, that you and the Ford administration oppose and will continue to oppose all legislation that would make illegal American firms complying with the Arab boycott?

Mr. RICHARDSON. Yes; and I can only say in conclusion that in my own discussions with Jewish organizations last spring, it was understood that legislation, along the lines of the Stevenson bill, would be adequate. Indeed, this helps explain why the Stevenson bill in the form it is in passed the Senate.

Mr. DRINAN. I thank you. I have further questions, but I will yield to the chairman.

Mr. ROSENTHAL. Mr. Secretary, I would like to discuss for a moment, briefly, the limitations on disclosure that you have outlined.

It seems to me that if we are going to contribute, as you said, to a process of public education and debate regarding the true nature

and impact of the Arab boycott of Israel and allow a concerned American public to monitor the conduct of American companies, then we have to give Americans the maximum amount of information about boycott transactions.

It seems to me that you are not giving the American public information regarding the quantity, the value, the types of goods, and the consignee of the boycott-related transaction. In some cases the release of some of this information may be a legitimate cause of concern for businesses that are involved in the boycott in a very minimal way.

The reason you cite for this information restriction on the release of information, is the Freedom of Information Act. You cite that for your authority.

The Freedom of Information Act emanated from this committee, and the act is designed to encourage release of information. The exemptions to that act are discretionary, not mandatory, on the affected Federal agency.

When a request is made for confidential treatment of this kind of information by a company, will you automatically grant confidentiality, or will you handle these requests on a case-by-case basis?

Mr. RICHARDSON. I would handle them, as I have indicated. If the requests come from someone with a legal responsibility in the matter, like a State attorney general, on occasion, I would handle those on a case-by-case basis.

But, in general, the volume of these things is such that it would be impractical to do so administratively.

I would like to point out, however, that the limitations on disclosure which we are now applying were expressly contemplated by the Senate bill, S. 3084. It provides for the disclosure, on a prospective basis, of the kind of information that we are disclosing. But it then went on to say that there would be excepted from disclosure quantity, description and value of any goods to which such report relates.

The Moss subcommittee report, of August 1976, stated that:

The Export Administration Act should be amended to provide for public access to filed reports, except for the name of the foreign buyer, the description of the commodity shipped, and their costs so as to adequately protect proprietary information.

We are, therefore, we believe, carrying out the policies reflected both in the Senate-passed bill and in the Moss subcommittee report.

Mr. ROSENTHAL. Do you think that you are complying with your own desire for education of the American public?

Mr. RICHARDSON. I would say as to that—

Mr. ROSENTHAL. In other words, the point I am trying to make is this. If somebody sells \$100 worth of goods as compared to \$100 million worth of goods, there is a difference; and I think the public is entitled to know that difference.

Mr. RICHARDSON. I think we could certainly make available this information in the aggregate with respect to types of commodities and business and so on.

Mr. ROSENTHAL. The public wants to know about Company A—are they in it up to their neck, or is it just a meaningless little aberration of the moment?

Mr. RICHARDSON. I can only say to that, Mr. Chairman, that I think what I have said about the value of public education is valid, and, to

the extent that it may prove that this is significant information, we have the opportunity to reexamine the matter.

But there are countervailing considerations. And I think they were obviously the considerations which had weight with your colleagues.

Mr. ROSENTHAL. I understand that we have all been developing a posture in these areas. As additional hearings go on and as more information is available, there is a changing, very fluid concept of how to deal with these issues.

Mr. RICHARDSON. I certainly don't want to sound as if we are dug in on this. I would be glad to be openminded on the matter, having in view the objective of public education and the formulation—

Mr. ROSENTHAL. My question is respectfully offered in that if Company A does \$25 worth of business in compliance with the boycott and Company B does \$25 million worth of business in compliance with the boycott, then am I correct in stating that you are not going to let the American public know the difference between these two companies in terms of the amount of business they do in compliance with the boycott?

Mr. RICHARDSON. I can only say to that, Mr. Chairman, that we are certainly prepared to make available information on a cumulative basis with respect to the kinds of business done. It may be that we can find a way of doing this with respect to individual companies that would not unduly prejudice their competitive situations.

Mr. ROSENTHAL. How would you do that?

Mr. RICHARDSON. I don't know.

Mr. ROSENTHAL. You will think about it?

Mr. RICHARDSON. We will think about it.

Related to this, of course, there is not only the question of the size of transactions in an absolute sense but the relative size of the transaction from the standpoint of the volume of business of the company generally—the size of the company. These would have to be considerations that we look at also.

Mr. ROSENTHAL. Mr. Secretary, a number of the U.S. firms, whose names appeared on your list of 38 companies complying with the boycott, have expressed anger at being included. That is from what I read in today's papers.

They claim that at the most they have participated in the boycott in an extremely narrow, technical way; and in fact they claim they do business with Israel and have not otherwise changed their business relationships with other American firms.

Yesterday the Commerce Department issued a statement attempting to differentiate the importance of the various forms of compliance with the boycott.

Is the situation still fluid? Are we now in a position where we have dealt with the concerns of companies which are alleging unfair treatment and are still meeting our responsibility for education of the public?

Do you want in any way to amplify the statement of yesterday?

Mr. RICHARDSON. Not beyond the extent to which I have already done so.

I think you have tabulations which array the types of boycott request reports filed earlier this year with the breakdown by types of requests. They show the great majority of them are requests for

information such as whether there are Israeli components in the products exported. These are the largest, in volume, by far. The next largest is the question whether or not the company is on the so-called blacklist.

[The information referred to follows:]

Table 1.—NUMBERS OF FIRMS REPORTING, TRANSACTIONS REPORTED, REQUESTS REPORTED AND TYPE OF ACTION TAKEN AS REPORTED UNDER PROVISIONS OF PART 369 OF THE EXPORT ADMINISTRATION REGULATIONS OCTOBER 1, 1975—MARCH 31, 1976

	A. ALL TRANSACTIONS							TOTAL
	EXPORTER	BANK	FREIGHT FORWARDER	INSURER	CARRIER	OTHER	TOTAL	
	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)
Number of firms reporting.....	894						21	38
Number of transactions reported.....	11,482	5,352	191	5	51	250	581	24,710
Number of requests reported ¹	21,360	10,784	17,469	52	876	542	1,063	51,063
Number and value where:								
Firm will comply.....	10,797	1,181,921	4,175	368,735	6,833	130,545	25	9,253
Firm will not comply.....	339	254,209	331	50,783	13	448	3	52
Firm has not decided action.....	58	33,675	3	235	0	415	0	0
Firm leaves action decision to another party.....	130	6,874	812	48,079	128	4,215	5	1,119
Action data is not available.....	158	118,235	31	297	28	880	0	0
Total.....	11,482	1,594,914	5,352	468,109	7,012	136,503	33	10,424
							581	7,483
							250	54,710

	B. DISCRIMINATORY TRANSACTIONS (INCLUDED IN TABLE "A" ABOVE)							TOTAL
	EXPORTER	BANK	FREIGHT FORWARDER	INSURER	CARRIER	OTHER	TOTAL	
	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)
Number and value where:								
Firm will comply.....	3	948	1	6	0	0	0	0
Firm will not comply.....	46	2,293	204	22,859	3	118	0	1
Firm has not decided action.....	2	33	0	1	0	0	0	0
Firm leaves action decision to another party.....	0	0	65	8,523	3	81	0	0
Action data is not available.....	1	14	0	0	0	0	0	0
Total.....	52	3,288	270	31,368	6	199	0	1
							581	3,100
							250	4,158

	C. DISCRIMINATORY TRANSACTIONS WHICH WERE AMENDED TO NON-DISCRIMINATORY TRANSACTIONS (INCLUDED IN TABLE "A" ABOVE)							TOTAL
	EXPORTER	BANK	FREIGHT FORWARDER	INSURER	CARRIER	OTHER	TOTAL	
	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)
Number and value where:								
Firm will comply.....	35	38,037	90	13,218	8	5,810	0	0
Firm will not comply.....	10	5,845	46	20,553	0	0	0	0
Firm has not decided action.....	0	0	0	0	0	0	0	0
Firm leaves action decision to another party.....	0	0	14	496,400	0	0	0	0
Action data is not available.....	0	0	0	0	0	0	0	0
Total.....	45	43,882	150	530,171	8	5,810	0	0
							581	530,171
							250	4,158

¹Totals, other than number of firms reporting, are enhanced to the extent an exporter and one or more service organization report on the same transaction.

²Two or more types of restrictive trade practice requests often are reported in connection with one transaction.

³Because of varying interpretations within the business community as to whether a "Star of David" type request was discriminatory or not discriminatory, the Department issued a clarifying interpretation to the effect that the request would be treated as discriminatory, but that this interpretation would be enforced prospectively. The notice (EAB No. 153) was issued February 10, 1976, and was published in the *Federal Register* on February 17, 1976, which became the effective enforcement date. Transactions involving compliance with the "Star of David" type request that were completed or underway prior to the enforcement date were reported to the Department as follows: exporters, 122 transactions valued at \$10,791,000; banks, 287 transactions valued at \$15,209,000; and freight forwarders, 40 transactions valued at \$13,470,000.

Table 2.—NUMBER AND TYPE OF REPORTED RESTRICTIVE TRADE REQUESTS, BY TYPE OF U.S. FIRM
OCTOBER 1, 1975—MARCH 31, 1976

RESTRICTIVE TRADE REQUESTS	EXPORTER	BANK	FREIGHT FORWARDER	INSURER	CARRIER	OTHER ¹	TOTAL ²
Carrier or airline is not blacklisted	8,329	3,651	5,730	15	521	172	18,418
Goods to be exported are not of Israeli origin and do not contain material of Israeli origin	8,852	2,608	6,362	13	318	92	18,245
Supplier, vendor, manufacturer or beneficiary is not blacklisted nor sister or mother company of a firm that is blacklisted	1,866	2,319	2,717	7	21	58	6,988
Insurance company is not blacklisted	1,331	787	2,526	17	10	103	4,774
Boycotted banks are prohibited	83	157	18	0	2	1	261
Goods do not bear Israeli flag or other Israeli symbol	254	611	45	0	0	102	1,012
West German reparations are not involved	366	88	20	0	2	5	481
Non-discriminatory questionnaires	41	2	1	0	1	4	49
Discriminatory questionnaires	3	0	0	0	0	1	4
Goods do not bear Star of David or hexagonal star	168	557	46	0	0	0	771
Other discriminatory requests	3	0	0	0	0	1	4
Other non-discriminatory requests	64	4	4	0	1	3	76
Total	21,360	10,784	17,469	52	876	542	51,083

¹ Includes, but is not limited to, law firms, consulting firms, and general contractors.

² Totals are enhanced to the extent an exporter and one or more service organization report on the same transaction.

Table 3.—NUMBER AND TYPE OF RESTRICTIVE TRADE REQUESTS, BY COUNTRY¹
OCTOBER 1, 1975—MARCH 31, 1976

RESTRICTIVE TRADE REQUESTS	BAHRAIN	UAE ²	EGYPT	IRAQ	JORDAN	KUWAIT	LEBANON	LIBYA	QATAR	SAUDIA ARABIA	SYRIA	OTHER ³	TOTAL
Carrier or airline is not blacklisted	433	3,102	479	1,272	224	987	99	575	377	10,239	86	545	18,418
Goods to be exported are not of Israeli origin and do not contain material of Israeli origin	692	4,000	331	1,017	337	2,115	87	500	475	7,801	150	760	18,246
Supplier, vendor, manufacturer or beneficiary is not black listed nor sister or mother company of a firm that is blacklisted	150	2,487	60	1,009	120	1,652	11	236	43	1,005	57	158	6,888
Insurance company is not blacklisted	161	2,444	126	10	37	40	4	4	51	1,822	15	60	4,774
Boycotted banks are prohibited	15	88	0	0	0	0	0	1	12	137	0	8	261
Goods do not bear Israeli flag or other Israeli symbol	2	3	0	2	1	5	0	2	3	991	1	2	1,012
West German registrations are not involved	49	170	48	2	1	47	8	13	2	70	21	50	481
Non-discriminatory questionnaires	3	7	3	3	1	7	0	0	4	8	8	5	40
Discriminatory questionnaires	0	0	0	1	0	1	0	0	0	1	1	0	4
Goods do not bear Star of David or hexagonal star	0	0	0	0	0	8	0	0	0	763	0	0	771
Other discriminatory requests	0	0	0	0	0	1	0	0	0	0	3	0	4
Other non-discriminatory requests	10	24	7	0	0	7	1	4	3	9	4	7	76
Total	1,515	12,325	1,064	3,316	721	4,870	190	1,335	970	22,846	346	1,506	51,083

¹ All figures are enhanced to the extent an exporter and one or more service organization report on the same transaction.

² Includes Abu Dhabi, Dubai, Sharjah, Ajman, Umm al-Qaiwain, Ra's al-Khaimah, and Fujairah.

³ Includes Oman, People's Democratic Republic of Yemen and Yemen Arab Republic. Also includes restrictive requests directed at Israel which are transmitted through non-Arab countries.

Table 4.—TYPE OF DOCUMENT USED TO REQUEST RESTRICTIVE TRADE PRACTICES BY ARAB STATES AGAINST ISRAEL¹
OCTOBER 1, 1975—MARCH 31, 1976

DOCUMENT TYPE	BAHRAIN		UAE ²		EGYPT		IRAQ		JORDAN		KUWAIT		LEBANON		LIBYA		QATAR		SAUDIA ARABIA		SYRIA		OTHER ³		TOTAL	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
Letter of credit	404	44	1,137	25	278	45	1,298	72	332	67	1,975	66	63	48	279	35	248	38	6,601	58	123	51	301	32	13,039	51
Purchase order	93	10	229	5	9	1	170	9	17	3	262	9	5	4	22	3	47	7	286	2	7	3	105	11	1,232	5
Invitation to bid	6	1	44	1	19	3	63	4	1	0	69	2	0	0	7	1	9	1	86	1	22	9	3	0	329	1
Published import regulation	79	9	124	3	78	13	28	2	21	4	125	4	6	5	41	5	23	3	270	2	13	5	45	5	853	3
Consular request	117	13	223	5	16	3	65	4	48	10	129	4	6	5	119	15	80	12	2,648	23	44	18	53	6	3,548	14
Questionnaire	2	0	1	0	3	0	0	0	2	0	3	0	0	0	0	0	4	1	3	0	2	1	1	0	21	0
Other	211	23	2,806	61	219	35	167	9	78	16	413	14	50	38	325	41	250	38	1,531	13	32	13	429	46	6,511	26
Total ⁴	912	100	4,564	100	622	100	1,791	100	499	100	2,976	100	130	100	793	100	661	100	11,405	100	243	100	937	100	25,533	100

¹ All figures are enhanced to the extent an exporter and one or more service organization report on the same transaction.

² Includes Abu Dhabi, Dubai, Sharjah, Ajman, Umm al-Qaiwain, Ra's al-Khaimah, and Fujairah.

³ Includes Oman, People's Democratic Republic of Yemen and Yemen Arab Republic. Also includes documents containing restrictive requests directed at Israel which are transmitted through non-Arab countries.

⁴ The number of requesting documents for a given country may exceed the number of transactions for that country since requests corresponding to a particular transaction may be transmitted by more than one document. Percentages may not add due to rounding.

Table 5.—NUMBER OF RESTRICTIVE EXPORTER TRANSACTIONS WITH
CORRESPONDING VALUE, CLASSIFIED BY REQUESTING COUNTRY AND TYPE OF ACTION TAKEN¹
OCTOBER 1, 1975—MARCH 31, 1976

	A. ALL TRANSACTIONS																									
	BAHRAIN	UAE ²	EGYPT	IRAQ	JORDAN	KUWAIT	LEBANON	LIBYA	QATAR	SAUDI ARABIA	SYRIA	OTHER ³	TOTAL													
	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)												
Number and value where:																										
Firm will comply	465	11,295	1,070	65,960	262	24,183	517	177,409	167	13,964	74	8,404	435	16,989	342	4,434	5,585	779,756	119	26,329	606	11,592	10,787	1,181,921		
Firm will not comply	18	297	59	20,568	25	31,366	27	7,498	7	45	38	45,153	1	2	4	91	12	3,075	98	144,192	15	1,599	17	334	254,211	
Firm has not decided action	10	44	13	253	4	19,851	5	123	0	0	10	10,807	0	0	2	15	1	213	7	66	2	2,500	4	58	33,676	
Firm leaves action decision to another party	6	31	15	2,628	1	1,144	0	0	0	19	33	366	2	183	10	48	3	48	36	1,087	0	0	5	66	130	6,874
Action data is not available	25	194	6	292	26	378	37	5,089	2	22	11	90,110	0	0	9	89	0	0	35	21,612	2	430	5	20	158	118,235
Total	524	11,861	1,163	89,901	308	76,912	586	190,120	195	15,104	1,275	187,842	77	8,589	460	17,231	398	7,770	5,761	946,713	138	30,858	637	12,016	11,482	1,594,917
	B. DISCRIMINATORY TRANSACTIONS REPORTED BY EXPORTERS (INCLUDED IN TABLE "A" ABOVE)																									
	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)		
Number and value where:																										
Firm will comply	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Firm will not comply	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Firm has not decided action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Firm leaves action decision to another party	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Action data is not available	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
	C. DISCRIMINATORY EXPORTER TRANSACTIONS WHICH WERE AMENDED TO BE NON-DISCRIMINATORY (INCLUDED IN TABLE "A" ABOVE)																									
	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)		
Number and value where:																										
Firm will comply	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Firm will not comply	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Firm has not decided action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Firm leaves action decision to another party	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Action data is not available	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		

¹Transaction figures and dollar values include bids, tenders, and trade opportunities. Such figures may be duplicated and include dollar values for potential transactions that never resulted in a sale.

²Includes Abu Dhabi, Dubai, Sharjah, Ajman, Umm al-Qaiwain, Ra's al-Khaimah, and Fujairah.

³Includes Oman, People's Democratic Republic of Yemen and Yemen Arab Republic. Also includes transactions with restrictive requests directed at Israel which are transmitted through non-Arab countries.

⁴Because of varying interpretations within the business community as to whether a "Star of David" type request was discriminatory or not discriminatory, the Department issued a clarifying interpretation to the effect that the request would be treated as discriminatory, but that this interpretation would be enforced prospectively. The notice (EAB No. 153) was issued February 10, 1976, and was published in the *Federal Register* on February 12, 1976, which became the effective enforcement date. Exporter transactions involving compliance with the "Star of David" type request that were completed or underway prior to the enforcement date totalled 122 and were valued at \$10,791,000.

Mr. ROSENTHAL. There are some 21 blacklists, if I am correct. Am I correct in that assertion?

Mr. RICHARDSON. I don't know how many there are. I have heard references to "the blacklist" or "blacklists."

I expect that what is on the blacklist varies with the situation.

Mr. ROSENTHAL. What bothers me—and maybe I simply don't understand this situation—is that some companies and banks are doing millions of dollars of business or receiving millions of dollars of Government assistance on transactions that were in support of or in conformity with the Arab boycott.

And then there is a company which is listed which said that it sold \$8,000 worth of goods to the Arabs. It was whiskey. He is all exercised.

In other words, are we getting at the real culprits? That is what I want to know. Are the big names going to be put out?

Mr. RICHARDSON. We have certainly put out the names of those who report, that is, the big companies. Among the names we did report yesterday were a number of big companies—Deere, for instance.

Deere also put out a statement, I understand, to the effect that they, also, sell directly to Israel.

Mr. ROSENTHAL. Let me tell you what the problem is.

I think we probably—you and I—fundamentally, morally, spiritually agree that the boycott is a bad thing. It violates fundamental, traditional American principles. What happens in our country, as perhaps in every society, is that things sort of grow like topsy, and we learn to accept them.

If there were no boycott as of today and if the 21 Arab countries said, "We are going to tell American firms whom they can do business with," in a sense Israel is irrelevant to this discussion. Twenty-one nations and foreign nationals are going to tell American firms whom they are going to do business with.

You, as Secretary of Commerce, and Mr. Ford, as President of the United States, and this Congress would say, "No, you are not going to do that."

We would never allow anybody to begin anew to re-create this boycott. We tolerate it only because it has grown slowly.

And, as Mr. Drinan has said, only in the last 3 or 4 years, when oil prices have quadrupled and the amount of petrodollars has become increasingly relevant to our society, have we countenanced this heinous, cancerous growth in the American business community.

The Washington Post described it, not as a boycott of Israel but a boycott of American companies.

Mr. Secretary, I want to assure you—and I want to assure you publicly—that I have enormously high regard, not only for your professional competence but for your moral judgment. I base that on my service on the International Relations Committee when you were Under Secretary of State, on the period of time when you were Ambassador to the United Kingdom, on the period of time that you were Secretary of Health, Education, and Welfare, and on the period of time when you were attorney general of the State of Massachusetts.

I say this sincerely. I am not trying to be facetious.

You and I both agree that this is a bad thing.

Why don't we stop it? Why don't you take the next step, because you can do it by regulation under the Trading With the Enemy Act and other laws and Executive orders? You can outlaw compliance with the Arab boycott by simply issuing a regulation. Why don't you do that?

Mr. RICHARDSON. Let me first comment, Mr. Chairman, that I do believe that we should proceed against refusals to deal. I would have supported provisions of Federal legislation that strengthened or clarified the authority that already exists under the Sherman Act to handle that type of situation.

Now, on the further question as to whether we ought to take the next step and say that an American company may not do business with an Arab country in a situation where what it is asked to do is to say that it has no subsidiary in Israel, or whatever the routine type of request is, we run into, I think, a harder set of questions than your question seems to acknowledge. These are essentially the points that I touched on earlier in response to Congressman Drinan.

I think the interests that have to be looked at here are not alone those of the advantages to American business of trading with the Arab countries, although these do represent significant economic interests. But there are the further questions that involve our relationship to those countries.

I don't have any doubt whatever that the Arab countries mean it when they say that if we do enact prohibitions which actually bar American firms from doing business with Saudi Arabia or Kuwait or Egypt, that they would adhere—

Mr. ROSENTHAL. Not barred from doing business but from complying with the boycott requests.

If you would permit me an intervention and I do this with great respect—

Mr. RICHARDSON. Of course.

Mr. ROSENTHAL. I agree with you completely that the influence that the United States has in the Arab world is enormously important towards achieving a stable peace in the Middle East. I mean I am one member of the International Relations Committee who has voted for over \$1 billion of economic assistance to Egypt; \$75 million of economic assistance to Syria; and who believes, as you do, that the way for the United States to play a meaningful role in achieving peace is to have considerable influence, dialog, and good relations with the Arabs.

Let me tell you a factual situation. The Morgan Guaranty Bank testified before this subcommittee that they rejected 24 letters of credit because they contained boycott conditions in violation of New York and Federal laws. They would not process them; and the Morgan Guaranty didn't want to subject themselves to prosecution under New York law.

In other words, they said, "We will not process these letters of credit."

Twenty-three out of twenty-four of those deals went through because the letters of credit came back without the restrictive language.

In other words, isn't it possible that once and for all we could get everybody off the hook on the boycott, if we, for example, make it illegal—either through law or through regulation if it is available? Maybe everybody will be relieved.

I mean we take American companies off the hook. They don't know what they are doing now. They make themselves known for violating American policy when they file these reports. In five States of the Union they possibly make themselves subject to criminal prosecution by filing reports with you.

If my law is correct, corporations cannot be held—a self-incrimination defense is not available to corporations.

But we have a dilemma in that companies don't know whether to comply, not to comply, cooperate, or not to cooperate. We have the dilemma of some maritime trade organization saying, "Listen, I would rather not deal in Maryland or New York; we will take our business to Louisiana." So, we have the States in a dilemma.

Why can't we resolve this issue once and for all by a pronouncement that I think you have available under existing legislation? Why can't we say that we will not countenance a secondary boycott?

As for the primary boycott, if the Arabs want to boycott Israel, then that is their business. We do it to Cuba and North Vietnam—so be it.

The tertiary boycott, which is the Bechtel lawsuit, is outlawed under the Sherman Antitrust Act and would have been outlawed under any of the bills under consideration. So, the only area of dispute we have is the secondary boycott where a foreign national is telling an American company whom they can do business with.

Don't you think that we have arrived at a point where we ought to deal with that issue explicitly and clearly so that everybody understands where we are and so that American companies aren't gnawing at each other and so that we are not asking banks, through the issuance of letters of credit, to be the enforcers of a policy that does violence to American principles and is enunciated in the law to be against American principles?

Mr. RICHARDSON. I would say, Mr. Chairman, that the example you give may be a better illustration of the validity of the course that we are now following. That Morgan Guaranty Bank situation, when we looked into it, turned out to involve, in all 24 instances, a Star-of-David-type certification, that is certification that the product or its packaging does not contain—

Mr. ROSENTHAL. As nasty a certification as some of the others. More offensive to our sensibilities.

Mr. RICHARDSON. Well, we have ruled that that kind of request is discriminatory. So, when we so informed through diplomatic channels the Arab country involved, then the discriminatory aspect of the request was removed. Those are the 23 instances you are talking about.

Mr. ROSENTHAL. No; we are saving the same thing—that when we finally put our foot down, regardless of what the discriminatory aspect was, they came back and accepted the goods because, really, they wanted those goods.

Mr. RICHARDSON. Well, I think the question is a question of whether the "regardless" extends to other kinds of situations.

In this instance we did accomplish the elimination of the discriminatory request.

Mr. ROSENTHAL. I want to go back to Mr. Drinan for a moment.

Mr. DRINAN. Mr. Secretary, it is my understanding that on some of the requests which were released on Monday the offensive Star of

David provision was there, and I haven't heard of any action to be taken by the Commerce Department.

Mr. RICHARDSON. May I ask Mr. Smith to respond to that?

Mr. SMITH. It is my belief, Father Drinan, that two of the reports that we received and put in the public record were reports of requests that goods not be stamped with a hexagonal star.

Under an interpretive regulation which we put out last February, companies are directed not to comply with such requests. We deem them to be discriminatory.

The company reporting, obviously, had failed to read our regulation. Included in the copies of the reports we submitted to the staff of this committee last night is a copy of a letter which we sent them advising them that they were not in compliance and asking them to cease and desist from complying with requests to certify that goods would not have a hexagonal star on them.

Mr. DRINAN. Thank you, sir.

Mr. ROSENTHAL. Mr. Secretary, I just want to get back to the principal thrust of the question.

Last year there were close to 200,000 boycott requests. Don't you think the time has come when we should end compliance with the secondary boycott one way or the other?

Mr. RICHARDSON. Mr. Chairman, let me just say first that I don't know where that number comes from. We have reported 51,000 transactions from October to March.

But passing that and getting to the main point of your question, I would be repeating myself, really. The question essentially is one of how we can best bring about an end to the Arab boycott in a manner that recognizes a range of interests, including our ability to maintain a constructive role in the pursuit of peace in the Middle East.

The idea that we can, through a unilateral act, simply say that American companies are barred from even certifying that their goods "do not contain Israeli components" and so on, and thereby would bring about the abandonment of the boycott, I think is wrong.

I think the Arab countries mean it when they say that they intend to maintain the boycott in the manner that they have. I think that the result would be, not that they would back off, but we would be forcing them to dig themselves into a harder position. We would lose the influence we have been successful in exerting.

Mr. ROSENTHAL. Upon what do you base that? What is the position of the European community? What is the position of West Germany?

Mr. RICHARDSON. They all routinely comply with the same kinds of things.

Mr. ROSENTHAL. Do you know whether the European community has taken any positive action against the boycott?

Mr. RICHARDSON. My understanding to the contrary is that the European community would be eager to see the United States forced to—

Mr. ROSENTHAL. Do you know that, for example, in West Germany, by statute in many of the communities there, they won't even permit the notarization of a letter of credit with this onerous language in it and that the European community has taken positive, affirmative action that companies, such as Volkswagen and many others, have

said that they will not in any way comply with these boycott requests?

In other words, from what I know of this subject, their conduct has been far more exemplary than that of the United States.

Your view is that the pragmatics of the situation suggest that we continue to go about doing business in the way we are and maybe somewhere in the future they will take the monkey off of our back?

Mr. RICHARDSON. My understanding is that the European community may have done as we have done in taking action against compliance with any discriminatory requests, but where it comes to doing business with those countries, they are essentially in the same posture as our own country.

Mr. ROSENTHAL. Without belaboring the issue, I don't want to pursue it any further because I think you have stated your position and we have stated our position; and there is apparent disagreement.

You will make every effort to disseminate whatever information is available to the attorneys general and others in the five States and will make it as easy as possible for the public to make an assessment of the nature of compliance by companies with the boycott? I assume that you will do that?

Mr. RICHARDSON. Yes.

Mr. ROSENTHAL. You will also, hopefully, coordinate boycott policy with other relevant Federal agencies, and you will assume your rightful role as the lead agency in this area? I assume that you will do that?

Mr. RICHARDSON. Yes; I believe we have been doing that.

Mr. ROSENTHAL. Right.

And you will—I know you will—cooperate with the States attorneys general where they have the problem of enforcing a much stricter law in those five or six States that have already passed such laws?

Mr. RICHARDSON. Yes.

Mr. ROSENTHAL. And you will make sure that none of your employees, as has been alleged in testimony before our subcommittee, and people under your control will in any way undermine or undercut what we understand to be a clear policy of noncooperation with the Arab boycott?

Mr. RICHARDSON. We will continue to do that, Mr. Chairman.

Mr. ROSENTHAL. Congressman Drinan?

Mr. DRINAN. Mr. Secretary, the boycott is obviously hurting Israel. Just yesterday the Los Angeles Times had a long story from which I quote:

Israel faces troubles developing its oil resources because of the boycott. American oil companies, dependent on the Arab nations for a large share of their crude oil supplies, have observed the boycott scrupulously. Israel can't draw on the technological expertise of the oil companies for help in exploration or production.

Should we as a nation allow Israel to be continuously hurt in this area, among many others, because of the desire to have a constructive role with the Arab nations?

Mr. RICHARDSON. I think it is a matter which we should certainly be concerned about, and we should certainly continue to try to deal with it in a manner that reduces the economic detriment to Israel.

We have to recognize, on the other hand, that the United States is importing a continually increasing share of all of its petroleum requirements from the Arab oil-producing countries.

Mr. DRINAN. Mr. Secretary, the key question is this. The subcommittee, chaired by Mr. Rosenthal, issued a report just 4 weeks ago. It stated this: The Commerce Department "has consciously undermined the Government's policy" to discourage U.S. firms from complying with Arab boycott restrictions of an economic nature.

You can suggest—and you do it eloquently—that we want various interests to be protected, but the law is the law; and the policy in 1965 made it very clear that the Commerce Department simply must discourage.

Congressman Moss had a similar committee report. He concluded this about the Commerce Department:

Through a variety of practices the Commerce Department actively served to encourage boycott practices implicitly by condoning activity declared against national policy or simply by looking the other way while these practices grow.

Do you disagree, and, if so, why, with the conclusions of the two committees that have studied this matter over many, many months and that say that the Commerce Department, in the past and in the present, is consciously undermining the Congress and the Government's policy clearly set forth by the Congress 11 years ago?

Mr. RICHARDSON. I disagree with your reference to the present. I know of no instances of encouragement of noncompliance under my administration of the Commerce Department.

Mr. DRINAN. Mr. Secretary, are public funds used now to promote American corporations to do business with countries which demand boycott compliance?

Mr. RICHARDSON. There are undoubtedly actions taken in district offices of the Domestic and International Business Administration in responding to companies that are interested, in one way or the other, in exporting to Arab countries.

But we do not encourage compliance with the boycott, and we do not coach companies in means of avoiding compliance with the law.

Mr. DRINAN. But the Commerce Department still serves as an intermediary with nations that demand compliance with the boycott on the part of American corporations.

Mr. RICHARDSON. If we receive inquiries with respect to doing business with an Arab country, we respond to the inquiry.

Mr. DRINAN. Could the Department of Commerce restrict its promotion of trade to transactions in those nations where no boycott compliance is required?

Mr. RICHARDSON. Could it do so?

Mr. DRINAN. Is it not required to do so under the terms of the Export Administration Act of 1965?

It seems to me that the Export Administration Act of 1965 means at least that the Commerce Department should not be directly or indirectly encouraging businesses to which there is attached compliance with the boycott.

Mr. RICHARDSON. That depends on what you mean by "encouraging."

The law has never purported to prevent American companies from doing such business. The Senate bill would not have prohibited it. The Senate was obviously influenced by the same set of considerations that I have referred to here.

Those of you who represented the House in a conference with the Senate would have had to compose your differences on this score. I

don't know what the result would have been, but certainly it is not now the law that the Department of Commerce offices may not respond to inquiries about export sales to Arab countries.

Mr. DRINAN. Mr. Secretary, do you think that as a matter of public policy we should require the Commerce Department to say to nations that require this infamous boycott compliance that we are not going to help them to get American corporations to say to these Arab nations that they will aid those Arab nations in the Arab nations' economic warfare against our ally, Israel?

Do you think we should, as a matter of moral policy?

Mr. RICHARDSON. My position is well reflected in the Senate bill. I think that this is a wiser course for the United States and a wiser course for Israel.

On the part of the United States, there have, as far as I know, been no representations—none certainly directly to me—on behalf of any responsible representative, either of the Israeli Chamber of Commerce or of American-Israeli-interested organizations and certainly not from the Israeli Government, which would ask us to go that far.

Mr. DRINAN. Does the Commerce Department now conduct a mission or an office in Saudi Arabia in order to promote trade with that nation?

Mr. RICHARDSON. No; we don't.

Mr. DRINAN. Does the Commerce Department have missions throughout the Arab League nations?

Mr. RICHARDSON. No.

Mr. DRINAN. Coming back to the Senate version, was it your recommendation that the administration accept the Senate version, or did you think that the Senate could not prevail in the conference; and, therefore, Senator Tower was instructed to kill everything?

Mr. RICHARDSON. I originally advocated support for the Stevenson bill, sometime last spring.

Mr. DRINAN. But I take it that the administration rejected that recommendation?

Mr. RICHARDSON. That is correct.

Mr. DRINAN. So, this administration is on record saying they do not want to strengthen the Export Administration Act in any way?

Mr. RICHARDSON. The administration is now—has now modified the position that was taken in April and would have, but for the running out of time, accepted a bill that was substantially the Stevenson bill with some modifications of the clause that deals with the refusal to deal.

Mr. DRINAN. Mr. Secretary, we are grateful that the administration, on October 6, was "born again," and we welcome that initiative; but those of us, like Mr. Rosenthal and many others like myself who worked all through the year on this question, were disappointed that some acceptable legislation didn't pass.

After all, the House passed this bill overwhelmingly, and it came out of the House Committee on International Relations, 27 to 1.

Mr. RICHARDSON. I share your disappointment.

Mr. DRINAN. Excuse me?

Mr. RICHARDSON. I share your disappointment that the legislation—that reasonable legislation was not enacted.

That disappointment is tempered, however, by the fact that we are now operating under an Executive order which covers much of the same ground that would have been covered by legislation that would have seemed to me reasonable.

Mr. DRINAN. Mr. Secretary, would you endorse in principle a measure, either by executive action or by legislation, which would prohibit the Federal Government from doing business with any American corporation which complies with Arab boycott demands?

Mr. RICHARDSON. Legislation that would do what?

Mr. DRINAN. If General Motors, for example, or some other corporation does in fact do business with the Arab nations and refuses to do business with Israel, should not the Federal Government say to such a corporation, "We disapprove of your course of conduct, and you are not going to get any Federal contracts because you are discriminating against Israel"?

Mr. RICHARDSON. I think that the question of the situation where a company is required to refuse to do business with Israel is one where we certainly could consider the desirability of the attachment of sanctions more stringent than would be involved merely in the filing of the kind of information now contained in these reports.

Mr. DRINAN. Mr. Secretary, at least if we adopted such a policy, we would say we disapprove of such discrimination against Israel and such conduct cannot possibly be described as anything but discrimination against Israel; and it would assert the moral prestige and power of the Federal Government saying that we don't deal, we don't give Federal contracts to a company that defies the basic policy enunciated by the Congress 11 years ago.

Mr. RICHARDSON. I should add that instances in which, simply because a company sells to Israel, the boycott constraints are attached, they are, as far as I know, very limited.

Mr. DRINAN. I yield back to the chairman.

Mr. ROSENTHAL. Would you want to make any prognosis or prediction as to when the Arab boycott would be terminated voluntarily by the Arab nations? Would you want to make any prediction in that area?

Mr. RICHARDSON. The only sure means of bringing the Arab boycott to an end would be the achievement of a negotiated settlement in the Middle East. And that, of course, must be our paramount objective.

Mr. ROSENTHAL. That presumably would be a settlement satisfactory to those who were enforcing the boycott, I assume.

Mr. RICHARDSON. There would be no settlement, I am sure, otherwise.

Mr. ROSENTHAL. As long as we are dealing with pragmatics, let me conclude by first saying that I am enormously grateful and do thank you, Mr. Secretary, for joining us here this morning.

The pragmatics of the situation, I think, are quite clear. Those who were named as conferees for the Export Administration Act unanimously agreed on a conference report that was essentially very, very close to the bill that was passed by the House by 3 to 1. It was a public close to the bill that was passed by the House by 3 to 1. It was a public statement made by all of those involved in that conference that they would shortly, after the beginning of the new session of Congress, in

roduce what the conferees agreed upon as the proposed legislation.

My own pragmatic view is that that will zip through the next Congress pretty fast and, regardless of who is the President of the United States at that time, there will be more than sufficient votes to override a veto of even that.

So, I can only suggest to the American business community and the States attorneys general, all of whom seem to be in some dilemma, to hold tight for another 10 or 12 weeks and we will resolve the difficulty.

Mr. RICHARDSON. All I can say, Mr. Chairman, is that I hope I am working with you on the problem when that time comes.

[Laughter.]

Mr. ROSENTHAL. I hesitate to comment on that.

Mr. DRINAN. I have one last point, Mr. Chairman.

Mr. Secretary, I seem to see a discrepancy between your own regulations and what happened on Monday.

If I may, I want to read the new regulation. It says:

This information, reporting the receipt of a restrictive trade practice request, shall be made available to the public for inspection and copying, except that information relating to quantity, value of the commodity, and the identity of the consignee will be withheld if the reporting firm so requests on the basis that disclosure of this information could place reporting firms at a competitive disadvantage.

It is my understanding from the information released by your office that the reporting firm is not required to live up to this regulation and bear the burden of showing that the disclosure of this information, which is essential to evaluate boycott compliance, namely this information about the quantity, value of the commodity, and identity, would be harmful.

What kind of a burden do they have to bear to show that this would, in fact, place them at a competitive disadvantage if it were revealed?

Mr. RICHARDSON. I think in the first round of disclosures, Congressman Drinan, you are right that they were deemed to have made the request.

Mr. DRINAN. The regulation has already been violated?

Mr. RICHARDSON. I wouldn't say it was a violation.

Mr. DRINAN. You just said that I am right.

I said that the regulation has been violated, 3 days after it was made.

Mr. RICHARDSON. That is your opinion.

Mr. DRINAN. Mr. Secretary, would you tell us how, in the future, corporations will be required to bear the burden of showing that disclosure of this information would be deleterious to them?

Mr. RICHARDSON. We will ask them so to indicate in filing the report.

Mr. DRINAN. All right.

I want to thank you, Mr. Secretary, along with the chairman, for your comments.

Mr. ROSENTHAL. Without objection, the statement of Hon. Bella Abzug will be included in the record at this point.

[Ms. Abzug's prepared statement follows:]

PREPARED STATEMENT OF HON. BELLA S. ABZUG, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, as a result of the partial list released recently by the Commerce Department, the American people now are beginning to know the names of some of the major U.S. companies which participate in the Arab boycott against Israel.

But what the people may not know is that there is nothing in American law which would prevent these companies from complying with Arab boycott demands, and as a result, none of the companies on the list released have said that they would refuse the Arab demands.

Why is this the case? Why are major U.S. companies permitted to engage in a discriminatory boycott?

There is only one answer: because President Ford blocked legislation passed by both the House and the Senate which would have made it illegal for American individuals or corporations to participate in the boycott. The record is clear that the Ford Administration prevented the Export Administration Act -- which contained strong anti-boycott provisions -- from becoming law in the final days of the 94th Congress.

It was an outrageous deception for President Ford to claim credit in his second debate with Governor Carter for initiating and supporting anti-boycott legislation. I hope Americans will draw the lesson that it is the Administration's boycott of the principles of truth, morality and freedom from discrimination in our foreign policy which permits American companies to comply with the Arab boycott of Israel.

Up to now, Mr. Chairman, the Commerce Department's legal rationale for refusing to release the entire list of companies participating in the boycott

has been the provision of the Export Administration Act that permits them to withhold this information. But that act expired on September 30, thanks to the fact that the Ford Administration blocked its extension. Therefore, as of October 1, the withholding provision is no longer available to Secretary Richardson and, under the Freedom of Information Act, the material must be released.

I have consequently written to Secretary Richardson demanding release of all reports filed since 1969 on boycott requests of, and participation by American firms. A copy of my letter dated October 19, 1976 is attached. Under the Freedom of Information Act, he is required to release this material to me within ten days. I believe it necessary that retrospective as well as prospective names be released. This will aid the states (New York, California, Maryland, Illinois and Massachusetts) which presently have anti-boycott laws.

However, even if the entire list of companies participating in the boycott is released, it will not tell us the full story. This results from the fact that the Commerce Department reporting forms allow for enormous loopholes such as giving a company the option to report that it has not decided whether to comply with the boycott or that the decision will be made by another party. Also, the Department of Commerce has only 35 compliance officers to keep track of 40,000 boycott-request reports per month. And since the expiration of the Export Administration Act of 1969, adequate sanctions do not exist to strict enforcement.

I am deeply concerned about the effect which a foreign boycott may have upon our domestic policy and business. The Government Information and Individual Rights Subcommittee, which I chair, has heard testimony on discriminatory assignment policies overseas by Federal agencies. These hearings spurred the White House to issue in November 1975 a "Memorandum to the Heads of Executive Departments and

Agencies", stating that exclusionary policies of the country to which a potential assignment is being considered "must not be a factor in any part of the selection process of a Federal Agency." In my opinion, President Ford's directive does not go far enough, in that it does not flatly prohibit Federal employees from providing information on their race, religion, or national origin when traveling abroad on official business.

The point here, Mr. Chairman, is that if we are to restore justice in this area, the 95th Congress must make it its first order of business to enact tough anti boycott measures. With President Carter in the White House and a strong Democratic majority in Congress we will finally attain this long-overdue reform.

BELLA S. ABZUG, N.Y., CHAIRWOMAN
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COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
 WASHINGTON, D.C. 20515

October 19, 1976

Honorable Elliot L. Richardson
 Secretary of Commerce
 Department of Commerce
 Washington, D.C.

Dear Mr. Secretary:

Pursuant to the Freedom of Information Act (FOIA), I hereby request copies of all reports regarding boycott-related requests received by American firms filed with the Department of Commerce on or after December 30, 1969.

I note that the expiration of the Export Administration Act on September 30, 1976, means that the secrecy provision contained in section 7(c) of that act, 50 U.S.C.App. 2406(c), is not available to you as grounds for withholding under Exemption 3 of FOIA. Further, since the reporting in question is and has been required by law, no claim of confidentiality is available to you as grounds for withholding under Exemption 4 of FOIA.

The disclosure of this information will primarily benefit the general public, and I therefore request that no charge be made for document search and duplication.

I look forward to receiving these documents within ten days, as required under the Freedom of Information Act.

Sincerely,



Bella S. Abzug
 Chairwoman

Mr. ROSENTHAL. The subcommittee stands adjourned.

[Whereupon, at 12:25 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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