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ARAB BOYCOTT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL FINANCE

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

S. 69

TO AMEND AND EXTEND THE EXPORT ADMINISTRATION ACT

AND

S. 92

TO AMEND AND EXTEND THE EXPORT ADMINISTRATION ACT OF 1969 TO IMPROVE THE ADMINISTRATION OF EXPORT CONTROLS PURSUANT TO SUCH ACT, TO STRENGTHEN THE ANTIBOYCOTT PROVISIONS OF SUCH ACT, AND FOR OTHER PURPOSES

FEBRUARY 21, 22, AND 28; AND MARCH 15; 1977

Printed for the use of the
Committee on Banking, Housing, and Urban Affairs



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ARAB BOYCOTT

MONDAY, FEBRUARY 21, 1977

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL FINANCE,
Washington, D.C.

The subcommittee met at 10:05 a.m. in room 5302, Dirksen Senate Office Building, Senator Adlai E. Stevenson, chairman of the subcommittee, presiding.

Present: Senators Proxmire, Williams, Stevenson, and Sarbanes.

OPENING STATEMENT OF SENATOR STEVENSON

Senator STEVENSON. Today we begin hearings on legislation to amend the Export Administration Act. This is the basic export control authority of the United States. Under this act, exports of high technology to unfriendly countries are controlled. Food exports are controlled. All exports are controlled under the authority of this act for short supply or inflationary reasons. It is an authority which should be, and is, carefully circumscribed by the act.

The act expired last year when legislation to extend it was blocked by opponents of its antiboycott provisions.

There are two bills before the subcommittee: S. 69 and S. 92.

[The text of bills may be found beginning at p. 5.]

S. 69 is identical to the compromise reached by a House-Senate conference at the close of the last Congress. S. 92 is identical to S. 69 in all material respects, but it contains limited, possibly significant differences. We will examine those differences in these hearings.

Since the provisions of these bills have been the subject of hearings and action by both Houses in the past, I expect the testimony to focus on its controversial antiboycott provisions. The controversial nuclear proliferation provisions should, I believe, be stricken from the bills, pending formulation of administration policy on that subject.

The Arab boycott intrudes upon American sovereignty. It interferes with basic human rights and religious freedom. It impedes free competition in the marketplace and systematically enlists American citizens against their will in a war with Israel. It excludes other Americans from economic opportunities.

Such behavior cannot be tolerated.

Legislation to deal with foreign boycotts was introduced by me early in the last Congress. Since then it has generated such pressure and emotion as could warp our vision and end up inflicting unintended harm upon the Nation and the cause of peace in the Middle East.

While we seek to protect American sovereignty, we must recognize the sovereignty of others. Not all nations agree with America's foreign policy objectives. Others are jealous, too, of a right to pursue their objectives. All nations, as we do, defend their sovereignty.

The origin of the Arab boycott is an old and bitter political struggle. No act of Congress will wipe out that struggle or end the boycott. The boycott will not end until peace comes to the Middle East. So, let us not signal ill will to friends or take any action to end the boycott which will perpetuate it or retard the feeble movement toward peace in the Middle East. Our intention is to defend American sovereignty.

Last year, the Senate, by a large margin, passed the antiboycott bill which I authored. The legislation before the subcommittee today is the product of that effort, an effort to which I remain deeply committed. I am confident that the Congress will act soon and am hopeful it will act wisely.

Senator Proxmire.

OPENING STATEMENT OF SENATOR PROXMIRE

Senator PROXMIRE. Thank you, Mr. Chairman.

Today we begin hearings on legislation to end the most pernicious aspects of the Arab boycott of Israel.

The Congress considered such legislation last year. We were prepared to pass a bill. Unfortunately, in the closing days of the session, the prior administration killed the kind of strong, forthright antiboycott legislation we needed.

A good deal has changed since the closing days of the last Congress. For one thing, and perhaps most importantly, we have a new administration and the new President has spoken out forcefully against the unreasonable and discriminatory restraints of trade which the Arab boycott forces on American firms. For another thing, the public is becoming keenly aware of the potential time bomb placed in our midst by the Arab boycott when it forces American firms to discriminate against other American firms. As a result, State legislators are being moved to action.

The more than fourfold increase in the price of oil since the 1973 embargo has given the Arab oil producing states tremendous economic clout. Arab purchasers of American products have increased significantly. Furthermore, the Arab cash flow is so enormous that their economies cannot absorb all the goods their money can buy. As a result, they are awash with liquidity. This further intensifies their power.

The Arabs have not hesitated to use their clout to conduct an economic war against Israel. In the prevailing circumstances in the Middle East, I do not question the authority of the Arab nations to refuse to do business with Israel, even though I believe that business relationships over time might help to defuse the situation.

But I do object to the Arab nations using their power to dictate the terms of trade to American firms. Ours is a pluralistic society. We believe that quality and price should be the ultimate arbiter in the marketplace both in our domestic and foreign commerce. The Arab boycott is fundamentally destructive of these basic tenets.

American firms have been required to discriminate against other American firms because they are owned or managed by persons of the

Jewish faith. American firms have been required to refrain from doing business with other American and foreign firms because they have been blacklisted by the Arabs. American firms are discouraged from doing business with Israel, though she is a staunch ally and espouses our democratic beliefs.

This situation is untenable. We have the largest economy in the world. The competitiveness of our products, our technology, and of our world position gives us clout certainly as great as that of the Arab nations. We should not use the authority our own economic clout gives us for destructive purposes. But I am convinced that one of the most constructive things we can do as a nation is to bring basic economic sense to the Middle East. We cannot sit back and let the Arabs dictate a fragmentation of our own economic relations to serve their own selfish and destructive purposes.

The principles espoused in the boycott bill which I cosponsored are timeless—they are the right ones for now and for the future. In my view, instead of being fearful of Arab retribution, we should use all of our persuasive powers to see to it that all of our trade is conducted in accordance with free market principles.

We will all be better off—including both the Arabs and the Israelis—if we pass this legislation and thereby prevent a discriminatory mentality from dictating the terms of our trade.

Senator STEVENSON. Senator Williams.

OPENING STATEMENT OF SENATOR WILLIAMS

Senator WILLIAMS. Thank you. I appreciate the call to hearings which continue the endeavors of the Congress to provide an effectively responsible American position in the face of the serious legal, political, and economic moral questions raised by the Arab boycott.

It's now common knowledge that the 1973 oil embargo provided members of the Arab league with enormous petropower and leverage to enlarge and enforce their boycott of Israel. The reach and scope of the Arab boycott have been extended far beyond the Middle East. It is no longer a direct and primary boycott of Israel. It is now an unfocused and transnational assault on fundamental American freedoms, and longstanding precepts of unimpeded international commerce.

Specifically, the boycott is now directed against the American citizens, and businesses and toward altering American policies in the Middle East.

American firms doing business with Israel and even with Jewish Americans in the United States become targets of Arab blacklisting, religious discrimination and economic reprisals.

Even worse, our Government, our business, and our financial institutions have become enforcers of pernicious and illegitimate practices against a close ally, Israel, and against fellow Americans.

Against this background, new and effective antiboycott legislation must be enacted in order to accomplish several objectives. First, the basic Export Administration Act must be strengthened to make it illegal for American firms to engage in secondary or tertiary boycotts.

Hereafter, the threat of reprisal by the Arabs cannot be accepted as a basis for permitting American firms to submit to odious terms that violate the rights, interests of other Americans, or abridge this Nation's sovereign powers.

Second, the range of permissible and impermissible conduct allowable under our laws must be clearly spelled out for American business. This is in sharp contrast to the current confusion, as to the actual meaning of compliance with the foreign boycott.

In turn, U.S. business must be protected from the pressures of foreign boycott requests.

Third, American businessmen must have freedom of choice as to their commercial relationships any place in the world, and certainly at home.

The notorious Arab blacklist should no longer determine which supplier, subcontractor, customer or officer an American firm can have or use.

The two bills before the subcommittee this morning would accomplish these objectives, although in somewhat different ways. And they will do it without infringing on the sovereign rights and prerogatives of other countries to conduct boycotts that conform to given principles of international law.

There can be no question that Congress is primed to act quickly and favorably on effective antiboycott legislations. Already the bill that Senator Proxmire and I have introduced has attracted 11 cosponsors, Senators Heinz, Church, Bayh, Jackson, Moynihan, Riegel, Leahy, Pell, Childs, Sarbanes, and Packwood.

An identical bill in the House of Representatives has many, many sponsors. Moreover, the preelection statements of President Carter and more recently statements of key Cabinet members, I would judge, make the enactment of legislation near certain.

During the last Congress, extensive consideration was given to legislative solutions of the issues raised by the Arab boycott. Remedial legislation was passed by the House and the problems we faced have been described by the chairman of the full committee, Senator Proxmire.

Unfortunately, we did face pressures at the end of the session, but we are in a different situation now and I feel personally confident that with the commencement of our hearing, the issue of the American response to the Arab boycott will be expeditiously resolved with the enactment of affirmative, effective, and workable legislation.

Thank you very much.

[Copies of the bills being considered follow:]

95TH CONGRESS
1ST SESSION

S. 69

IN THE SENATE OF THE UNITED STATES

JANUARY 10, 1977

Mr. STEVENSON (for himself and Mr. MOYNIHAN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend and extend the Export Administration Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Export Administration Amendments of 1977".

TITLE I—EXPORT ADMINISTRATION IMPROVEMENTS AND EXTENSION

EXTENSION OF EXPORT ADMINISTRATION ACT

SEC. 101. Section 14 of the Export Administration Act of 1969 is amended by striking out "September 30, 1976" and inserting in lieu thereof "September 30, 1978".

AUTHORIZATION OF APPROPRIATIONS

SEC. 102. The Export Administration Act of 1969 is amended by inserting after section 12 the following new section 13 and redesignating existing sections 13 and 14 as sections 14 and 15, respectively:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 13. Notwithstanding any other provision of law, no appropriation shall be made under any law to the Department of Commerce for expenses to carry out the purposes of this Act for any fiscal year commencing on or after October 1, 1977, unless previously and specifically authorized by legislation enacted after the enactment of this section.".

CONTROL OF EXPORTS FOR NATIONAL SECURITY PURPOSES; FOREIGN AVAILABILITY

SEC. 103. (a) Section 4(b) of the Export Administration Act of 1969 is amended—

(1) by striking out the third sentence of paragraph (1);

(2) by striking out paragraphs (2) through (4); and

(3) by inserting the following new paragraph (2):

"(2) (A) In administering export controls for national security purposes as prescribed in section 3(2) (C) of this Act, United States policy toward individual countries shall not be determined exclusively on the basis of a country's

Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control retransfers of United States exports in accordance with United States policy, and such other factors as the President may deem appropriate. The President shall periodically review United States policy toward individual countries to determine whether such policy is appropriate in light of the factors specified in the preceding sentence. The results of such review, together with the justification for United States policy in light of such factors, shall be included in the semiannual report of the Secretary of Commerce required by section 10 of this Act for the first half of 1977 and in every second such report thereafter.

"(B) Rules and regulations under this subsection may provide for denial of any request or application for authority to export articles, materials, or supplies, including technical data, or any other information, from the United States, its territories, and possessions, to any nation or combination of nations threatening the national security of the United States if the President determines that their export would prove detrimental to the national security of the United States. The President shall not impose export controls for

national security purposes on the export from the United States of articles, materials, or supplies, including technical data or other information, which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States, unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the national security of the United States. The nature of such evidence shall be included in the semiannual report required by section 10 of this Act. Where, in accordance with this paragraph, export controls are imposed for national security purposes notwithstanding foreign availability, the President shall take steps to initiate negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability.".

(b) (1) Section 4 (h) of the Export Administration Act of 1969 is amended by striking out "controlled country" in the first sentence of paragraph (1) and in the second sentence of paragraph (2) and inserting in lieu thereof "country to which exports are restricted for national security purposes".

(2) Section 4 (h) (2) (A) of such Act is amended by striking out "controlled" and inserting in lieu thereof "such".

(3) Section 4 (h) (4) of such Act is amended—

(A) by inserting "and" at the end of subparagraph (A); and

(B) by striking out the semicolon at the end of subparagraph (B) thereof and all that follows the semicolon and inserting in lieu thereof a period.

(4) The amendments made by this subsection shall become effective upon the expiration of 90 days after the receipt by the Congress of the semiannual report of the Secretary of Commerce required by section 10 of such Act for the first half of 1977.

(c) Section 4(h) of such Act is amended—

(1) in paragraph (1)—

(A) in the first sentence by striking out "significantly increase the military capability of such country" and inserting in lieu thereof "make a significant contribution to the military potential of such country"; and

(B) in the second sentence by striking out "significantly increase the military capability of such country" and inserting in lieu thereof "make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country"; and

(2) in paragraph (2)(A), by striking out "significantly increase the military capability of such coun-

try" and inserting in lieu thereof "make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country".

(d) Section 6(b) of such Act is amended by striking out "Communist-dominated nation" and inserting in lieu thereof "country to which exports are restricted for national security or foreign policy purposes".

EXEMPTION FOR CERTAIN AGRICULTURAL COMMODITIES FROM CERTAIN EXPORT LIMITATIONS

SEC. 104. Section 4(f) of the Export Administration Act of 1969 is amended—

(1) by redesignating such section as section 4(f)(1); and

(2) by adding at the end thereof the following new paragraph:

"(2) Upon approval of the Secretary of Commerce, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed pursuant to section 3(2)(A) of this Act subsequent to such approval. The Secretary of Commerce may not grant approval hereunder unless he receives adequate assurance and, in conjunction with the Secretary of Agri-

culture, finds that such commodities will eventually be exported, that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary of Commerce is authorized to issue such rules and regulations as may be necessary to implement this paragraph.".

CONGRESSIONAL REVIEW OF EXPORT CONTROLS ON AGRICULTURAL COMMODITIES

SEC. 105. Section 4(f) of the Export Administration Act of 1969, as amended by section 104 of this Act, is further amended by adding at the end thereof the following new paragraph:

"(3) If the authority conferred by this section is exercised to prohibit or curtail the exportation of any agricultural commodity in order to effectuate the policies set forth in clause (B) of paragraph (2) of section 3 of this Act, the President shall immediately report such prohibition or curtailment to the Congress, setting forth the reasons therefor in detail. If the Congress, within 30 days after the date of its receipt of such report, adopts a concurrent resolution disap-

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proving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective with the adoption of such resolution. In the computation of such 30-day period, there shall be excluded the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.".

PERIOD FOR ACTION ON EXPORT LICENSE APPLICATIONS

SEC. 106. Section 4(g) of the Export Administration Act of 1969 is amended to read as follows:

"(g) (1) It is the intent of Congress that any export license application required under this Act shall be approved or disapproved within 90 days of its receipt. Upon the expiration of the 90-day period beginning on the date of its receipt, any export license application required under this Act which has not been approved or disapproved shall be deemed to be approved and the license shall be issued unless the Secretary of Commerce or other official exercising authority under this Act finds that additional time is required and notifies the applicant in writing of the specific circumstances requiring such additional time and the estimated date when the decision will be made.

"(2) (A) With respect to any export license application not finally approved or disapproved within 90 days of its receipt as provided in paragraph (1) of this subsection,

the applicant shall, to the maximum extent consistent with the national security of the United States, be specifically informed in writing of questions raised and negative considerations or recommendations made by any agency or department of the Government with respect to such license application, and shall be accorded an opportunity to respond to such questions, considerations, or recommendations in writing prior to final approval or disapproval by the Secretary of Commerce or other official exercising authority under this Act. In making such final approval or disapproval, the Secretary of Commerce or other official exercising authority under this Act shall take fully into account the applicant's response.

"(B) Whenever the Secretary determines that it is necessary to refer an export license application to any multilateral review process for approval, he shall first, if the applicant so requests, provide the applicant with an opportunity to review any documentation to be submitted to such process for the purpose of describing the export in question, in order to determine whether such documentation accurately describes the proposed export.

"(3) In any denial of an export license application, the applicant shall be informed in writing of the specific statutory basis for such denial.".

EXPORTS OF TECHNICAL INFORMATION

SEC. 107. Section 4 of the Export Administration Act of 1969 is amended by adding at the end thereof the following new subsection (j):

"(j) (1) Any person (including any college, university, or other educational institution) who enters into any contract, protocol, agreement, or other understanding for, or which may result in, the transfer from the United States of technical data or other information to any country to which exports are restricted for national security or foreign policy purposes shall furnish to the Secretary of Commerce such documents and information with respect to such agreement as the Secretary shall by regulation require in order to enable him to monitor the effects of such transfers on the national security and foreign policy of the United States.

"(2) The Secretary of Commerce shall conduct a study of the problem of the export, by publications or any other means of public dissemination, of technical data or other information from the United States, the export of which might prove detrimental to the national security of foreign policy of the United States. Not later than 6 months after the enactment of this subsection, the Secretary shall report to the Congress his assessment of the impact of the export of such technical data or other information by such means on the national security and foreign policy of the United

States and his recommendations for monitoring such exports without impairing freedom of speech, freedom of press, or the freedom of scientific exchange. Such report may be included in the semiannual report required by section 10 of this Act.".

CERTAIN PETROLEUM EXPORTS

SEC. 108. Section 4 of the Export Administration Act of 1969, as amended by section 107 of this Act, is further amended by adding at the end thereof the following new subsection (k):

"(k) Petroleum products refined in United States Foreign-Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed pursuant to section 3(2)(A) of this Act, except that, if the Secretary of Commerce finds that a product is in short supply, the Secretary of Commerce may issue such rules and regulations as may be necessary to limit exports.".

EXPORT OF HORSES

SEC. 109. Section 4 of the Export Administration Act of 1969, as amended by sections 107 and 108 of this Act, is further amended by adding at the end thereof the following new subsection (l):

"(l)(1) Notwithstanding any other provision of this Act, no horse may be exported by sea from the United States, its territories and possessions, unless such horse is

part of a consignment of horses with respect to which a waiver has been granted under paragraph (2) of this subsection.

"(2) The Secretary of Commerce, in consultation with the Secretary of Agriculture, may issue rules and regulations providing for the granting of waivers permitting the export by sea of a specified consignment of horses, if the Secretary of Commerce, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter.".

TECHNICAL ADVISORY COMMITTEES

SEC. 110. (a) Section 5(c)(1) of the Export Administration Act of 1969 is amended by striking out "two" in the last sentence thereof and inserting in lieu thereof "four".

(b) The second sentence of section 5(c)(2) of such Act is amended to read as follows: "Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any articles, materials, and supplies, including technical data or other information, and (D) exports subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.".

(c) Section 5(c)(2) of such Act is further amended by striking out the third sentence and inserting in lieu thereof the following: "The Secretary shall include in each semi-annual report required by section 10 of this Act an accounting of the consultations undertaken pursuant to this paragraph, the use made of the advice rendered by the technical advisory committees pursuant to this paragraph, and the contributions of the technical advisory committees to carrying out the policies of this Act.".

PENALTIES FOR VIOLATIONS

SEC. 111. (a) Section 6(a) of the Export Administration Act of 1969 is amended—

(1) in the first sentence, by striking out "$10,000" and inserting in lieu thereof "$25,000"; and

(2) in the second sentence, by striking out "$20,000" and inserting in lieu thereof "$50,000".

(b) Section 6(b) of such Act is amended by striking out "$20,000" and inserting in lieu thereof "$50,000".

(c) Section 6(c) of such Act is amended by striking out "$1,000" and inserting in lieu thereof "$10,000".

(d) Section 6(d) of such Act is amended by adding at the end thereof the following new sentence: "In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which

may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.".

AVAILABILITY OF INFORMATION TO CONGRESS

SEC. 112. (a) Section 7 (c) of the Export Administration Act of 1969 is amended by adding at the end thereof the following new sentence: "Nothing in this Act shall be construed as authorizing the withholding of information from Congress, and any information obtained under this Act, including any report or license application required under section 4 (b) and any document or information required under section 4 (j) (1), shall be made available upon request to any committee of Congress or any subcommittee thereof.".

(b) Section 4 (c) (1) of such Act is amended by inserting immediately before the period at the end of the last sentence thereof "and in the last sentence of section 7 (c) of this Act".

SIMPLIFICATION OF EXPORT REGULATIONS AND LISTS

SEC. 113. Section 7 of the Export Administration Act of 1969 is amended by adding at the end thereof the following new subsection (e):

"(e) The Secretary of Commerce, in consultation with appropriate United States Government departments and

agencies and with appropriate technical advisory committees established under section 5(c), shall review the rules and regulations issued under this Act and the lists of articles, materials, and supplies which are subject to export controls in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such rules and regulations, by simplifying or clarifying such lists, or by any other means. Not later than 1 year after the enactment of this subsection, the Secretary of Commerce shall report to Congress on the actions taken on the basis of such review to simplify such rules and regulations. Such report may be included in the semiannual report required by section 10 of this Act.".

TERRORISM

SEC. 114. Section 3 of the Export Administration Act of 1969 is amended by adding at the end thereof the following:

"(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territory or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make every reasonable effort to secure the removal or reduction of such assistance to international terrorists through inter-

national cooperation and agreement before resorting to the imposition of export controls.".

SEMIANNUAL REPORTS

SEC. 115. (a) Section 10 of the Export Administration Act of 1969 is amended by adding at the end thereof the following new subsection (c):

"(c) Each semiannual report shall include an accounting of—

"(1) any organizational and procedural changes instituted, any reviews undertaken, and any means used to keep the business sector of the Nation informed, pursuant to section 4(a) of this Act;

"(2) any changes in the exercise of the authorities of section 4(b) of this Act;

"(3) any delegations of authroity under section 4(e) of this Act;

"(4) the disposition of export license applications pursuant to sections 4 (g) and (h) of this Act;

"(5) the effects on the national security and foreign policy of the United States of transfers from the United States of technical data or other information which are reported to the Secretary of Commerce pursuant to section 4(j) of this Act;

"(6) consultations undertaken with technical advisory committees pursuant to section 5(c) of this Act;

"(7) violations of the provisions of this Act and penalties imposed pursuant to section 6 of this Act; and

"(8) a description of actions taken by the President and the Secretary of Commerce to effect the policies set forth in section 3(5) of this Act.".

(b)(1) The section heading of such section 10 is amended by striking out "QUARTERLY".

(2) Subsection (b) of such section is amended—

(A) by striking out "quarterly" each time it appears; and

(B) by striking out "second" in the first sentence of paragraph (1).

SPECIAL REPORT ON MULTILATERAL EXPORT CONTROLS

SEC. 116. Not later than 12 months after the enactment of this section, the President shall submit to the Congress a special report on multilateral export controls in which the United States participates pursuant to the Export Administration Act of 1969 and pursuant to the Mutual Defense Assistance Control Act of 1951. The purpose of such special report shall be to assess the effectiveness of such multilateral export controls and to formulate specific proposals for increasing the effectiveness of such controls. That special report shall include—

(1) the current list of commodities controlled for

export by agreement of the group known as the Coordinating Committee of the Consultative Group (hereafter in this section referred to as the "Committee") and an analysis of the process of reviewing such list and of the changes which result from such review;

(2) data on and analysis of requests for exceptions to such list;

(3) a description and an analysis of the process by which decisions are made by the Committee on whether or not to grant such requests;

(4) an analysis of the uniformity of interpretation and enforcement by the participating countries of the export controls agreed to by the Committee (including controls over the reexport of such commodities from countries not participating in the Committee), and information on each case where such participating countries have acted contrary to the United States interpretation of the policy of the Committee, including United States representations to such countries and the response of such countries;

(5) an analysis of the problem of exports of advanced technology by countries not participating in the Committee, including such exports by subsidiaries or affiliates of United States businesses in such countries;

(6) an analysis of the effectiveness of any pro-

cedures employed in cases in which an exception for a listed commodity is granted by the Committee, to determine whether there has been compliance with any conditions on the use of the excepted commodity which were a basis for the exception; and

(7) detailed recommendations for improving, through formalization or other means, the effectiveness of multilateral export controls, including specific recommendations for the development of more precise criteria and procedures for collective export decisions and for the development of more detailed and formal enforcement mechanisms to assure more uniform interpretation of and compliance with such criteria, procedures and decisions by all countries participating in such multilateral export controls.

REVIEW OF UNILATERAL AND MULTILATERAL EXPORT CONTROL LISTS

SEC. 117. The Secretary of Commerce, in cooperation with appropriate United States Government departments and agencies and the appropriate technical advisory committees established pursuant to the Export Administration Act of 1969, shall undertake an investigation to determine whether United States unilateral controls or multilateral controls in which the United States participates should be removed, modified, or added with respect to particular articles,

materials, and supplies, including technical data and other information, in order to protect the national security of the United States. Such investigation shall take into account such factors as the availability of such articles, materials, and supplies from other nations and the degree to which the availability of the same from the United States or from any country with which the United States participates in multilateral controls would make a significant contribution to the military potential of any country threatening or potentially threatening the national security of the United States. The results of such investigation shall be reported to the Congress not later than 12 months after enactment of this Act.

SUNSHINE IN GOVERNMENT

SEC. 118. (a) Each officer or employee of the Department of Commerce who—

(1) performs any function or duty under this Act or the Export Administration Act of 1969; and

(2) has any known financial interest in any person subject to such Acts, or in any person who obtains any license, enters into any agreement, or otherwise receives any benefit under such Acts;

shall, beginning on February 1, 1977, annually file with the Secretary of Commerce a written statement concerning all such interests held by such officer or employee during the

preceding calendar year. Such statement shall be available to the public.

(b) The Secretary of Commerce shall—

(1) within 90 days after the date of enactment of this Act—

(A) define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) In the rules prescribed under subsection (b) of this section, the Secretary may identify specific positions within the Department of Commerce which are of a nonregulatory or nonpolicymaking nature and provide that of-

ficers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Any officer or employee who is subject to, and knowingly violates, this section or any regulation issued hereunder, shall be fined not more than $2,500 or imprisoned not more than 1 year, or both.

TITLE II—FOREIGN BOYCOTTS

PROHIBITION ON COMPLIANCE WITH FOREIGN BOYCOTTS

SEC. 201. (a) The Export Administration Act of 1969 is amended by redesignating section 4A as section 4B and by inserting after section 4 the following new section:

"FOREIGN BOYCOTTS

"SEC. 4A. (a) (1) For the purpose of implementing the policies set forth in section 3(5) (A) and (B), the President shall issue rules and regulations prohibiting any United States person from taking any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of embargo by the United States:

"(A) Refraining from doing business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, or with any national or resident of the boycotted country, pursuant to an agreement with, a requirement of, or a

request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country, with any business concern organized under the laws of the boycotted country, or with any national or resident of the boycotted country, does not indicate the existence of the intent required to establish a violation of rules and regulations issued to carry out this subparagraph.

"(B) Refraining from doing business with any person (other than the boycotted country, any business concern organized under the laws of the boycotted country, or any national or resident of the boycotted country). The mere absence of a business relationship with a person does not indicate the presence of the intent required to establish a violation of rules and regulations issued to carry out this subparagraph.

"(C) Refraining from employing or otherwise discriminating against any United States person on the basis of race, religion, nationality, or national origin.

"(D) Furnishing information with respect to the race, religion, nationality, or national origin of any other United States person.

"(E) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale,

purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country.

"(2) Rules and regulations issued pursuant to paragraph (1) shall provide exceptions for—

"(A) compliance with requirements (i) prohibiting the import of goods from the boycotted country or of goods produced by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotting country on a carrier of the boycotted country or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

"(B) compliance with import and shipping document requirements with respect to country of origin, the name of the carrier and route of shipment, and the name of the supplier of the shipment;

"(C) compliance with export requirements of the boycotting country relating to transshipments of ex-

ported goods to the boycotted country, to any business concern organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

"(D) compliance by an individual with the immigration or passport requirements of any country; or

"(E) the refusal of a United States person to pay, honor, advise, confirm, process, or otherwise implement a letter of credit in the event of the failure of the beneficiary of the letter to comply with the conditions or requirements of the letter, other than conditions or requirements compliance with which is prohibited by rules and regulations issued pursuant to paragraph (1) which conditions or requirements shall be null and void.

"(3) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust laws of the United States.

"(4) Rules and regulations pursuant to this subsection and section 11(2) shall be issued and become effective not later than 90 days after the date of enactment of this section, except that rules and regulations issued pursuant to this subsection shall apply to actions taken pursuant to contracts or other agreements in effect on such date of enactment only after the expiration of 90 days following the date such rules and regulations become effective.

"(b) (1) In addition to the rules and regulations issued pursuant to subsection (a) of this section, rules and regulations issued under section 4(b) of this Act shall implement the policies set forth in section 3(5).

"(2) Such rules and regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Secretary of Commerce, together with such other information concerning such request as the Secretary may require for such action as he may deem appropriate for carrying out the policies of that section. Such person shall also report to the Secretary of Commerce whether he intends to comply and whether he has complied with such request. Any report filed pursuant to this paragraph after the date of enactment of this section shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any articles, materials, and supplies, including technical data and other information, to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary of Commerce shall periodically transmit summaries of the information contained in such reports to the

Secretary of State for such action as the Secretary of State, in consultation with the Secretary of Commerce, may deem appropriate for carrying out the policies set forth in section 3 (5) of this Act.".

(b) Section 4 (b) (1) of such Act is amended by striking out the next to the last sentence.

(c) Section 7 (c) of such Act is amended by striking out "No" and inserting in lieu thereof "Except as otherwise provided by the third sentence of section 4A (b) (2) and by section 6 (c) (2) (C) of this Act, no".

STATEMENT OF POLICY

SEC. 202. (a) Section 3 (5) (A) of the Export Administration Act of 1969 is amended by inserting immediately after "United States" the following: "or against any United States person".

(b) Section 3 (5) (B) of such Act is amended to read as follows: "(B) to encourage and, in specified cases, to require United States persons engaged in the export of articles, materials, supplies, or information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person,".

ENFORCEMENT

SEC. 203. (a) Section 6(c) of the Export Administration Act of 1969 is amended—

(A) by redesignating such section as section 6(c)(1); and

(B) by adding at the end thereof the following new paragraph:

"(2)(A) The authority of this Act to suspend or revoke the authority of any United States person to export articles, materials, supplies, or technical data or other information, from the United States, its territories or possessions, may be used with respect to any violation of the rules and regulations issued pursuant to section 4A(a) of this Act.

"(B) Any sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the rules and regulations issued pursuant to section 4A(a) of this Act may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

"(C) Any charging letter or other document initiating proceedings for the imposition of sanctions for violations of

the rules and regulations issued pursuant to section 4A (a) of this Act shall be made available for public inspection and copying.".

(b) Section 8 of such Act is amended by striking out "The" and inserting in lieu thereof "Except as provided in section 6 (c) (2), the".

DEFINITIONS

SEC. 204. Section 11 of the Export Administration Act of 1969 is amended to read as follows:

"DEFINITIONS

"SEC. 11. As used in this Act—

"(1) the term 'person' includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof; and

"(2) the term 'United States person' includes any United States resident or national, any domestic concern (including any subsidiary or affiliate of any foreign concern with respect to its activities in the United States), and any foreign subsidiary or affiliate of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.".

TITLE III—EXPORTS OF NUCLEAR MATERIAL AND TECHNOLOGY

NUCLEAR EXPORTS

SEC. 301. The Export Administration Act of 1969 is amended by adding at the end thereof the following new section:

"NUCLEAR EXPORTS

"SEC. 16. (a) (1) The Congress finds that the export by the United States of nuclear material, equipment, and devices, if not properly regulated, could allow countries to come unacceptably close to a nuclear weapon capability, thereby adversely affecting international stability, the foreign policy objectives of the United States, and undermining the principle of nuclear nonproliferation agreed to by the United States as a signatory to the Treaty on the Non-Proliferation of Nuclear Weapons.

"(2) The Congress finds that nuclear export activities which enable countries to possess strategically significant quantities of unirradiated, readily fissionable material are inherently unsafe.

"(3) It is, therefore, the purpose of this section to implement the policies stated in paragraphs (1) and (2) of section 3 of this Act by regulating the export of nuclear material, equipment, and devices which could prove detri-

mental to United States national security and foreign policy objectives.

"(b) (1) No agreement for cooperation providing for the export of any nuclear material, equipment, or devices for civil uses may be entered into with any foreign country, group of countries, or international organization, and no amendment to or renewal of any such agreement may be agreed to, unless—

"(A) the provisions of the agreement concerning the reprocessing of special nuclear material supplied by the United States will apply equally to all special nuclear material produced through the use of any nuclear reactor transferred under such agreement; and

"(B) the recipient country, group of countries, or international organization, has agreed to permit the International Atomic Energy Agency to report to the United States, upon a request by the United States, on the status of all inventories of plutonium, uranium 233, and highly enriched uranium possessed by that country, group of countries, or international organization and subject to International Atomic Energy Agency safeguards.

"(2) (A) The Secretary of State shall undertake consultations with all parties to agreements for cooperation

existing on the date of enactment of this section in order to seek inclusion in such agreements of the provisions described in paragraph (1)(A) and (1)(B) of this subsection.

"(B) The Secretary of State shall seek to acquire, from any party to an agreement for cooperation who is not a nuclear-weapons State (as defined in article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons), periodic reports on the status of all inventories of plutonium, U–233, and highly enriched uranium possessed by that party which are not subject to International Atomic Energy Agency safeguards.

"(3)(A) No license may be issued for the export of any nuclear material, equipment, or devices pursuant to an agreement for cooperation unless the recipient country, group of countries, or international organization, has agreed that the material, equipment, and devices subject to that agreement will not be used for any nuclear explosive device, regardless of how the device itself is intended to be used.

"(B) Subparagraph (A) of this paragraph shall take effect at the end of the 1-year period beginning on the date of enactment of this section.

"(4) In any case in which a party to any agreement for cooperation seeks to reprocess special nuclear material produced through the use of any nuclear material, equipment,

or devices supplied by the United States, the Secretary of State may only determine that safeguards can be applied effectively to such reprocessing if he finds that the reliable detection of any diversion and the timely warning to the United States of such diversion will occur well in advance of the time at which that party could transform strategic quantities of diverted nuclear material into explosive nuclear devices.".

INTERNATIONAL AGREEMENT ON NUCLEAR EXPORTS

SEC. 302. (a) It is the sense of the Congress that the President should actively seek, and by the earliest possible date secure, an agreement or other arrangement under which—

(A) nuclear exporting nations will not transfer to any other nation any equipment, material, or technology designed or prepared for, or which would materially assist the establishment of, national uranium enrichment, nuclear fuels reprocessing, or heavy water production facilities until and while alternatives to such national facilities are explored and pursued;

(B) nuclear exporting nations will not transfer any nuclear equipment, material, or technology to any other nation that has not agreed to implement safeguards promulgated by the International Atomic Energy Agency;

(C) minimum physical security standards are

established to prevent the unauthorized diversion of nuclear equipment, materials, and technology;

(D) arrangements are established for effective and prompt responses in the event of violations of any international agreement to control the use of nuclear materials and technology;

(E) nuclear exporting nations, in cooperation with nuclear importing nations, pursue the concept of multinational facilities for the purpose of meeting the world's nuclear fuel needs while reducing the risks associated with the spread of national facilities for fuel reprocessing, fabrication, and enrichment; and

(F) nuclear exporting nations establish arrangements for appropriate response, including the suspension of transfers of nuclear equipment, material, or technology, to any non-nuclear weapons country which has detonated a nuclear explosive device or which has clearly demonstrated the intention to embark upon a nuclear weapons program.

Within 1 year after the date of enactment of this Act, the President shall report to the Congress on the progress made toward the achievement of international agreement or other arrangements on the matters specified in this section.

(b) For purposes of this section, the term "nuclear exporting nations" means the United States, the United Kingdom, France, the Federal Republic of Germany, Canada, Japan, the Union of Soviet Socialist Republics, and such other countries as the President may determine.

EXPORTS OF NUCLEAR TECHNOLOGY

SEC. 303. Section 4(j) of the Export Administration Act of 1969, as added by section 107 of this Act, is amended by adding at the end thereof the following new paragraph:

"(3) The President shall conduct an in-depth study of whether, or the extent to which, the education and training of foreign nationals within the United States in nuclear engineering and related fields contributes to the proliferation of explosive nuclear devices or the development of a capability of producing explosive nuclear devices. Not later than the end of the 6-month period beginning on the date of enactment of this paragraph, the President shall submit to the Congress a detailed report containing the findings and conclusions of such study. Such report shall analyze the direct and indirect contribution of such education and training to nuclear proliferation.".

NUCLEAR POWERPLANTS

SEC. 304. None of the funds authorized by the Foreign Assistance Act of 1961 may be used to finance the construction of, the operation or maintenance of, or the supply of

fuel for, any nuclear powerplant under an agreement for cooperation between the United States and any other country.

95TH CONGRESS
1ST SESSION

S. 92

IN THE SENATE OF THE UNITED STATES

JANUARY 10, 1977

Mr. WILLIAMS (for himself and Mr. PROXMIRE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend and extend the Export Administration Act of 1969 to improve the administration of export controls pursuant to such Act, to strengthen the antiboycott provisions of such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Export Administration and Foreign Boycott Amendments Act of 1977".

TITLE I—EXPORT ADMINISTRATION IMPROVEMENTS AND EXTENSION

EXTENSION OF EXPORT ADMINISTRATION ACT

SEC. 101. Section 14 of the Export Administration Act of 1969 is amended by striking out "September 30, 1976" and inserting in lieu thereof "September 30, 1978".

AUTHORIZATION OF APPROPRIATIONS

SEC. 102. The Export Administration Act of 1969 is amended by inserting after section 12 the following new section 13 and redesignating existing sections 13 and 14 as sections 14 and 15, respectively:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 13. Notwithstanding any other provision of law, no appropriation shall be made under any law to the Department of Commerce for expenses to carry out the purposes of this Act for any fiscal year commencing on or after October 1, 1977, unless previously and specifically authorized by legislation enacted after the enactment of this section.".

CONTROL OF EXPORTS FOR NATIONAL SECURITY PURPOSES; FOREIGN AVAILABILITY

SEC. 103. (a) Section 4(b) of the Export Administration Act of 1969 is amended—

(1) by striking out the third sentence of paragraph (1);

(2) by striking out paragraphs (2) through (4); and

(3) by inserting the following new paragraph (2):

"(2) (A) In administering export controls for national security purposes as prescribed in section 3 (2) (C) of this Act, United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control retransfers of United States exports in accordance with United States policy, and such other factors as the President may deem appropriate. The President shall periodically review United States policy toward individual countries to determine whether such policy is appropriate in light of the factors specified in the preceding sentence. The results of such review, together with the justification for United States policy in light of such factors, shall be included in the semiannual report of the Secretary of Commerce required by section 10 of this Act for the first half of 1977 and in every second such report thereafter.

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"(B) Rules and regulations under this subsection may provide for denial of any request or application for authority to export articles, materials, or supplies, including technical data, or any other information, from the United States, its territories and possessions, to any nation or combination of nations threatening the national security of the United States if the President determines that their export would prove detrimental to the national security of the United States. The President shall not impose export controls for national security purposes on the export from the United States of articles, materials, or supplies, including technical data or other information, which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States, unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the national security of the United States. The nature of such evidence shall be included in the semiannual report required by section 10 of this Act. Where, in accordance with this paragraph, export controls are imposed for national security purposes notwithstanding foreign availability, the President shall take steps to initiate negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability."

(b) (1) Section 4(h) of the Export Administration Act of 1969 is amended by striking out "controlled country" in the first sentence of paragraph (1) and in the second sentence of paragraph (2) and inserting in lieu thereof "country to which exports are restricted for national security purposes".

(2) Section 4(h) (2) (A) of such Act is amended by striking out "controlled" and inserting in lieu thereof "such".

(3) Section 4(h) (4) of such Act is amended—

(A) by inserting "and" at the end of subparagraph (A); and

(B) by striking out the semicolon at the end of subparagraph (B) thereof and all that follows the semicolon and inserting in lieu thereof a period.

(4) The amendments made by this subsection shall become effective upon the expiration of ninety days after the receipt by the Congress of the semiannual report of the Secretary of Commerce required by section 10 of such Act for the first half of 1977.

(c) Section 4(h) of such Act is amended—

(1) in paragraph (1)—

(A) in the first sentence by striking out "significantly increase the military capability of such country" and inserting in lieu thereof "make a sig-

nificant contribution to the military potential of such country"; and

(B) in the second sentence by striking out "significantly increase the military capability of such country" and inserting in lieu thereof "make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country"; and

(2) in paragraph (2) (A), by striking out "significantly increase the military capability of such country" and inserting in lieu thereof "make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country".

(d) Section 6(b) of such Act is amended by striking out "Communist-dominated nation" and inserting in lieu thereof "country to which exports are restricted for national security or foreign policy purposes".

EXEMPTION FOR CERTAIN AGRICULTURAL COMMODITIES FROM CERTAIN EXPORT LIMITATIONS

SEC. 104. Section 4(f) of the Export Administration Act of 1969 is amended—

(1) by redesignating such section as section 4(f)(1); and

(2) by adding at the end thereof the following new paragraph:

"(2) Upon approval of the Secretary of Commerce, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed pursuant to section 3(2)(A) of this Act subsequent to such approval. The Secretary of Commerce may not grant approval hereunder unless he receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds that such commodities will eventually be exported, that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary of Commerce is authorized to issue such rules and regulations as may be necessary to implement this paragraph.".

CONGRESSIONAL REVIEW OF EXPORT CONTROLS ON AGRICULTURAL COMMODITIES

SEC. 105. Section 4(f) of the Export Administration Act of 1969, as amended by section 104 of this Act, is further amended by adding at the end thereof the following new paragraph:

"(3) If the authority conferred by this section is exercised to prohibit or curtail the exportation of any agricultural commodity in order to effectuate the policies set forth in clause (B) of paragraph (2) of section 3 of this Act, the President shall immediately report such prohibition or curtailment to the Congress, setting forth the reasons therefor in detail. If the Congress, within 30 days after the date of its receipt of such report, adopts a concurrent resolution disapproving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective with the adoption of such resolution. In the computation of such 30-day period, there shall be excluded the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.".

PERIOD FOR ACTION ON EXPORT LICENSE APPLICATIONS

SEC. 106. Section 4(g) of the Export Administration Act of 1969 is amended to read as follows:

"(g) (1) It is the intent of Congress that any export license application required under this Act shall be approved or disapproved within 90 days of its receipt. Upon the expiration of the 90-day period beginning on the date of its receipt, any export license application required under this Act which has not been approved or disapproved shall be deemed to be approved and the license shall be issued

unless the Secretary of Commerce or other official exercising authority under this Act finds that additional time is required and notifies the applicant in writing of the specific circumstances requiring such additional time and the estimated date when the decision will be made.

"(2) (A) With respect to any export license application not finally approved or disapproved within 90 days of its receipt as provided in paragraph (1) of this subsection, the applicant shall, to the maximum extent consistent with the national security of the United States, be specifically informed in writing of questions raised and negative considerations or recommendations made by any agency or department of the Government with respect to such license application, and shall be accorded an oportunity to respond to such questions, considerations, or recommendations in writing prior to final approval or disapproval by the Secretary of Commerce or other official exercising authority under this Act. In making such final approval or disapproval, the Secretary of Commerce or other official exercising authority under this Act shall take fully into account the applicant's response.

"(B) Whenever the Secretary determines that it is necessary to refer an export license application to any multilateral review process for approval, he shall first, if the applicant so requests, provide the applicant with an opportunity to review any documentation to be submitted to such process

for the purpose of describing the export in question, in order to determine whether such documentation accurately describes the proposed export.

"(3) In any denial of an export license application, the applicant shall be informed in writing of the specific statutory basis for such denial.".

EXPORTS OF TECHNICAL INFORMATION

SEC. 107. Section 4 of the Export Administration Act of 1969 is amended by adding at the end thereof the following new subsection (j):

"(j) (1) Any person (including any college, university, or other educational institution) who enters into any contract, protocol, agreement, or other understanding for, or which may result in, the transfer from the United States of technical data or other information to any country to which exports are restricted for national security or foreign policy purposes shall furnish to the Secretary of Commerce such documents and information with respect to such agreement as the Secretary shall by regulation require in order to enable him to monitor the effects of such transfers on the national security and foreign policy of the United States.

"(2) The Secretary of Commerce shall conduct a study of the problem of the export, by publications or any other means of public dissemination, of technical data or other

information from the United States, the export of which might prove detrimental to the national security or foreign policy of the United States. Not later than 6 months after the enactment of this subsection, the Secretary shall report to the Congress his assessment of the impact of the export of such technical data or other information by such means on the national security and foreign policy of the United States and his recommendations for monitoring such exports without impairing freedom of speech, freedom of press, or the freedom of scientific exchange. Such report may be included in the semiannual report required by section 10 of this Act.".

CERTAIN PETROLEUM EXPORTS

SEC. 108. Section 4 of the Export Administration Act of 1969, as amended by section 107 of this Act, is further amended by adding at the end thereof the following new subsection (k):

"(k) Petroleum products refined in United States Foreign-Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed pursuant to section 3(2)(A) of this Act, except that, if the Secretary of Commerce finds that a product is in short supply, the Secretary of Commerce may issue such rules and regulations as may be necessary to limit exports.".

EXPORT OF HORSES

SEC. 109. Section 4 of the Export Administration Act of 1969, as amended by sections 107 and 108 of this Act, is further amended by adding at the end thereof the following new subsection (l):

"(l) (1) Notwithstanding any other provision of this Act, no horse may be exported by sea from the United States, its territories and possessions, unless such horse is part of a consignment of horses with repect to which a waiver has been granted under paragraph (2) of this subsection.

"(2) The Secretary of Commerce, in consultation with the Secretary of Agriculture, may issue rules and regulations providing for the granting of waivers permitting the export by sea of a specified consignment of horses, if the Secretary of Commerce, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter.".

TECHNICAL ADVISORY COMMITTEES

SEC. 110. (a) Section 5(c)(1) of the Export Administration Act of 1969 is amended by striking out "two" in the last sentence thereof and inserting in lieu thereof "four".

(b) The second sentence of section 5(c)(2) of such Act is amended to read as follows: "Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B)

worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any articles, materials, and supplies, including technical data or other information, and (D) exports subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.".

(c) Section 5(c)(2) of such Act is further amended by striking out the third sentence and inserting in lieu thereof the following: "The Secretary shall include in each semiannual report required by section 10 of this Act an accounting of the consultations undertaken pursuant to this paragraph, the use made of the advice rendered by the technical advisory committees pursuant to this paragraph, and the contributions of the technical advisory committtees to carrying out the policies of this Act.".

PENALTIES FOR VIOLATIONS

SEC. 111. (a) Section 6(a) of the Export Administration Act of 1969 is amended—

(1) in the first sentence, by striking out "$10,000" and inserting in lieu thereof "$25,000"; and

(2) in the second sentence, by striking out "$20,000" and inserting in lieu thereof "$50,000".

(b) Section 6(b) of such Act is amended by striking out "$20,000" and inserting in lieu thereof "$50,000".

(c) Section 6(c) of such Act is amended by striking out "$1,000" and inserting in lieu thereof "$10,000".

(d) Section 6(d) of such Act is amended by adding at the end thereof the following new sentence: "In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.".

AVAILABILITY OF INFORMATION TO CONGRESS

SEC. 112. (a) Section 7(c) of the Export Administration Act of 1969 is amended by adding at the end thereof the following new sentence: "Nothing in this Act shall be construed as authorizing the withholding of information from Congress, and any documents or information obtained under this Act, including any report or license application required under section 4(b) and any information required under section 4(j)(1), shall be made available upon request to any committee of Congress or any subcommittee thereof.".

(b) Section 4(c)(1) of such Act is amended by inserting immediately before the period at the end of the last sentence thereof "and in the last sentence of section 7(c) of this Act".

SIMPLIFICATION OF EXPORT REGULATIONS AND LISTS

SEC. 113. Section 7 of the Export Administration Act of 1969 is amended by adding at the end thereof the following new subsection (e):

"(e) The Secretary of Commerce, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(c), shall review the rules and regulations issued under this Act and the lists of articles, materials, and supplies which are subject to export controls in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such rules and regulations, by simplifying or clarifying such lists, or by any other means. Not later than one year after the enactment of this subsection, the Secretary of Commerce shall report to Congress on the actions taken on the basis of such review to simplify such rules and regulations. Such report may be included in the semiannual report required by section 10 of this Act.".

TERRORISM

SEC. 114. Section 3 of the Export Administration Act of 1969 is amended by adding at the end thereof the following:

"(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps

to prevent the use of their territory or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make every reasonable effort to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before resorting to the imposition of export controls.".

SEMIANNUAL REPORTS

SEC. 115. (a) Section 10 of the Export Administration Act of 1969 is amended by adding at the end thereof the following new subsection (c):

"(c) Each semiannual report shall include an accounting of—

"(1) any organizational and procedural changes instituted, any reviews undertaken, and any means used to keep the business sector of the Nation informed, pursuant to section 4(a) of this Act;

"(2) any changes in the exercise of the authorities of section 4(b) of this Act;

"(3) any delegations of authority under section 4(e) of this Act;

"(4) the disposition of export license applications pursuant to sections 4 (g) and (h) of this Act;

"(5) the effects on the national security and for-

eign policy of the United States of transfers from the United States of technical data or other information which are reported to the Secretary of Commerce pursuant to section 4(j) of this Act;

"(6) consultations undertaken with technical advisory committees pursuant to section 5(c) of this Act;

"(7) violations of the provisions of this Act and penalties imposed pursuant to section 6 of this Act; and

"(8) a description of actions taken by the President and the Secretary of Commerce to effect the policies set forth in section 3(5) of this Act.".

(b)(1) The section heading of such section 10 is amended by striking out "QUARTERLY".

(2) Subsection (b) of such section is amended—

(A) by striking out "quarterly" each time it appears; and

(B) by striking out "second" in the first sentence of paragraph (1).

SPECIAL REPORT ON MULTILATERAL EXPORT CONTROLS

SEC. 116. Not later than 12 months after the enactment of this section, the President shall submit to the Congress a special report on multilateral export controls in which the United States participates pursuant to the Export Administration Act of 1969 and pursuant to the Mutual Defense

Assistance Control Act of 1951. The purpose of such special report shall be to assess the effectiveness of such multilateral export controls and to formulate specific proposals for increasing the effectiveness of such controls. That special report shall include—

(1) the current list of commodities controlled for export by agreement of the group known as the Coordinating Committee of the Consultative Group (hereafter in this section referred to as the "Committee") and an analysis of the process of reviewing such list and of the changes which result from such review;

(2) data on and analysis of requests for exceptions to such list;

(3) a description and an analysis of the process by which decisions are made by the Committee on whether or not to grant such requests;

(4) an analysis of the uniformity of interpretation and enforcement by the participating countries of the export controls agreed to by the Committee (including controls over the re-export of such commodities from countries not participating in the Committee), and information on each case where such participating countries have acted contrary to the United States in-

terpretation of the policy of the Committee, including United States representations to such countries and the response of such countries;

(5) an analysis of the problem of exports of advanced technology by countries not participating in the Committee, including such exports by subsidiaries or affiliates of United States businesses in such countries;

(6) an analysis of the effectiveness of any procedures employed, in cases in which an exception for a listed commodity is granted by the Committee, to determine whether there has been compliance with any conditions on the use of the excepted commodity which were a basis for the exception; and

(7) detailed recommendations for improving, through formalization or other means, the effectiveness of multilateral export controls, including specific recommendations for the development of more precise criteria and procedures for collective export decisions and for the development of more detailed and formal enforcement mechanisms to assure more uniform interpretation of and compliance with such criteria, procedures, and decisions by all countries participating in such multilateral export controls.

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REVIEW OF UNILATERAL AND MULTILATERAL EXPORT CONTROL LISTS

SEC. 117. The Secretary of Commerce, in cooperation with appropriate United States Government departments and agencies and the appropriate technical advisory committees established pursuant to the Export Administration Act of 1969, shall undertake an investigation to determine whether United States unilateral controls or multilateral controls in which the United States participates should be removed, modified, or added with respect to particular articles, materials, and supplies, including technical data and other information, in order to protect the national security of the United States. Such investigation shall take into account such factors as the availability of such articles, materials, and supplies from other nations and the degree to which the availability of the same from the United States or from any country with which the United States participates in multilateral controls would make a significant contribution to the military potential of any country threatening or potentially threatening the national security of the United States. The results of such investigation shall be reported to the Congress not later than twelve months after enactment of this Act.

SUNSHINE IN GOVERNMENT

SEC. 118. (a) Each officer or employee of the Department of Commerce who—

(1) performs any function or duty under this Act or the Export Administration Act of 1969; and

(2) has any known financial interest in any person subject to such Acts, or in any person who obtains any license, enters into any agreement, or otherwise receives any benefit under such Acts;

shall, beginning on February 1, 1977, annually file with the Secretary of Commerce a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) The Secretary of Commerce shall—

(1) within ninety days after the date of enactment of this Act—

(A) define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) report to the Congress on June 1 of each calen-

dar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) In the rules prescribed under subsection (b) of this section, the Secretary may identify specific positions within the Department of Commerce which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Any officer or employee who is subject to, and knowingly violates, this section or any regulation issued hereunder, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

TITLE II—FOREIGN BOYCOTTS

PROHIBITION ON COMPLIANCE WITH FOREIGN BOYCOTTS

SEC. 201. (a) The Export Administration Act of 1969 is amended by redesignating section 4A as section 4B and by inserting after section 4 the following new section:

"FOREIGN BOYCOTTS

"SEC. 4A. (a) (1) For the purpose of implementing the policies set forth in section 3(5) (A) and (B), the President shall issue rules and regulations prohibiting any United States person from taking or agreeing to take any of the following actions to comply with, further, or support any boycott fostered or imposed by a foreign country against a

country which is friendly to the United States and which is not itself the object of any form of embargo by the United States:

"(A) Refraining from doing business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, or with any national or resident of the boycotted country, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The absence of a business relationship with or in the boycotted country, with any business concern organized under the laws of the boycotted country, or with any national or resident of the boycotted country, does not alone establish a violation of rules and regulations issued to carry out this subparagraph.

"(B) Refraining from doing business with any person (other than the boycotted country, any business concern organized under the laws of the boycotted country, or any national or resident of the boycotted country). The absence of a business relationship with a person does not alone establish a violation of rules and regulations issued to carry out this subparagraph.

"(C) Refraining from employing or otherwise discriminating against any United States person on the basis of race, religion, nationality, or national origin.

"(D) Furnishing information with respect to the race, religion, nationality, or national origin of any other United States person.

"(E) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country.

"(2) Rules and regulations issued pursuant to paragraph (1) shall provide exceptions for—

"(A) compliance with requirements (i) prohibiting the import of goods from the boycotted country or of goods produced by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotting country on a carrier of the boycotted country or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

"(B) compliance with import and shipping document requirements with respect to a positive designation of country of origin, the name of the carrier and route of shipment, and the name of the supplier of the shipment;

"(C) compliance with export requirements of the boycotting country relating to transshipments of exported goods to the boycotted country, to any business concern organized under the laws of the boycotted country, or to any national or resident of the boycotted country; or

"(D) the refusal of a United States person to pay, honor, advise, confirm, process, or otherwise implement a letter of credit in the event of the failure of the beneficiary of the letter to comply with the conditions or requirements of the letter, other than conditions or requirements compliance with which is prohibited by rules and regulations issued pursuant to paragraph (1) which conditions or requirements shall be null and void.

"(3) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust laws of the United States.

"(4) Rules and regulations pursuant to this subsection and section 11(2) shall be issued and become effective not

except that rules and regulations issued pursuant to this subsection shall apply to actions taken pursuant to contracts or other agreements in effect on such date of enactment only after the expiration of 90 days following the date such rules and regulations become effective.

"(b) (1) In addition to the rules and regulations issued pursuant to subsection (a) of this section, rules and regulations issued under section 4(b) of this Act shall implement the policies set forth in section 3(5).

"(2) Such rules and regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Secretary of Commerce, together with such other information concerning such request as the Secretary may require for such action as he may deem appropriate for carrying out the policies of that section. Such person shall also report to the Secretary of Commerce whether he intends to comply and whether he has complied with such request. Any report filed pursuant to this paragraph after the date of enactment of this section shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any articles, materials, and supplies, including technical data and other information, to

which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary of Commerce shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary of Commerce, may deem appropriate for carrying out the policies set forth in section 3 (5) of this Act.".

(b) Section 4 (b) (1) of such Act is amended by striking out the next to the last sentence.

(c) Section 7 (c) of such Act is amended by striking out "No" and inserting in lieu thereof "Except as otherwise provided by the third sentence of section 4A (b) (2) and by section 6 (c) (2) (C) of this Act, no".

STATEMENT OF POLICY

SEC. 202. (a) Section 3 (5) (A) of the Export Administration Act of 1969 is amended by inserting immediately after "United States" the following: "or against any United States person".

(b) Section 3 (5) (B) of such Act is amended to read as follows:

"(B) to encourage and, in specified cases, to require United States persons engaged in the export of articles, materials, supplies, or information to refuse to

take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person,".

ENFORCEMENT

SEC. 203. (a) Section 6(c) of the Export Administration Act of 1969 is amended—

(A) by redesignating such section as section 6(c)(1); and

(B) by adding at the end thereof the following new paragraph:

"(2)(A) The authority of this Act to suspend or revoke the authority of any United States person to export articles, materials, supplies, or technical data or other information, from the United States, its territories or possessions, may be used with respect to any violation of the rules and regulations issued pursuant to section 4A(a) of this Act.

"(B) Any sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the rules and regulations issued pursuant to section 4A(a) of this Act may be imposed only after notice and opportunity for an agency hearing on

the record in accordance with sections 554 through 557 of title 5, United States Code.

"(C) Any charging letter or other document initiating proceedings for the imposition of sanctions for violations of the rules and regulations issued pursuant to section 4A (a) of this Act shall be made available for public inspection and copying.".

(b) Section 8 of such Act is amended by striking out "The" and inserting in lieu thereof "Except as provided in section 6 (c) (2), the".

DEFINITIONS

SEC. 204. Section 11 of the Export Administration Act of 1969 is amended to read as follows:

"DEFINITIONS

"SEC. 11. As used in this Act—

"(1) the term 'person' includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof; and

"(2) the term 'United States person' includes any United States resident or national, any domestic concern (including any subsidiary or affiliate of any foreign concern with respect to its activities in the United States), and any foreign subsidiary or affiliate of any

domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.".

TITLE III—EXPORTS OF NUCLEAR MATERIAL AND TECHNOLOGY

NUCLEAR EXPORTS

SEC. 301. The Export Administration Act of 1969 is amended by adding at the end thereof the following new section:

"NUCLEAR EXPORTS

"SEC. 16. (a) (1) The Congress finds that the export by the United States of nuclear material, equipment, and devices, if not properly regulated, could allow countries to come unacceptably close to a nuclear weapon capability, thereby adversely affecting international stability, the foreign policy objectives of the United States, and undermining the principle of nuclear nonproliferation agreed to by the United States as a signatory to the Treaty on the Non-Proliferation of Nuclear Weapons.

"(2) The Congress finds that nuclear export activities which enable countries to possess strategically significant quantities of unirradiated, readily fissionable material are inherently unsafe.

"(3) It is, therefore, the purpose of this section to implement the policies stated in paragraphs (1) and (2)

of section 3 of this Act by regulating the export of nuclear material, equipment, and devices which could prove detrimental to United States national security and foreign policy objectives.

"(b) (1) No agreement for cooperation providing for the export of any nuclear material, equipment, or devices for civil uses may be entered into with any foreign country, group of countries, or international organization, and no amendment to or renewal of any such agreement may be agreed to, unless—

"(A) the provisions of the agreement concerning the reprocessing of special nuclear material supplied by the United States will apply equally to all special nuclear material produced through the use of any nuclear reactor transferred under such agreement; and

"(B) the recipient country, group of countries, or international organization, has agreed to permit the International Atomic Energy Agency to report to the United States, upon a request by the United States, on the status of all inventories of plutonium, uranium 233, and highly enriched uranium possessed by that country, group of countries, or international organization and subject to International Atomic Energy Agency safeguards.

"(2) (A) The Secretary of State shall undertake consultations with all parties to agreements for cooperation

existing on the date of enactment of this section in order to seek inclusion in such agreements of the provisions described in paragraph (1) (A) and (1) (B) of this subsection.

"(B) The Secretary of State shall seek to acquire, from any party to an agreement for cooperation who is not a nuclear-weapons State (as defined in article IX (3) of the Treaty on the Non-Proliferation of Nuclear Weapons), periodic reports on the status of all inventories of plutonium, U–233, and highly enriched uranium possessed by that party which are not subject to International Atomic Energy Agency safeguards.

"(3) (A) No license may be issued for the export of any nuclear material, equipment, or devices pursuant to an agreement for cooperation unless the recipient country, group of countries, or international organization, has agreed that the material, equipment, and devices subject to that agreement will not be used for any nuclear explosive device, regardless of how the device itself is intended to be used.

"(B) Subparagraph (A) of this paragraph shall take effect at the end of the one-year period beginning on the date of enactment of this section.

"(4) In any case in which a party to any agreement for cooperation seeks to reprocess special nuclear material produced through the use of any nuclear material, equipment, or devices supplied by the United States, the Secretary of

State may only determine that safeguards can be applied effectively to such reprocessing if he finds that the reliable detection of any diversion and the timely warning to the United States of such diversion will occur well in advance of the time at which that party could transform strategic quantities of diverted nuclear material into explosive nuclear devices.".

INTERNATIONAL AGREEMENT ON NUCLEAR EXPORTS

SEC. 302. (a) It is the sense of the Congress that the President should actively seek, and by the earliest possible date secure, an agreement or other arrangement under which—

(A) nuclear exporting nations will not transfer to any other nation any equipment, material, or technology designed or prepared for, or which would materially assist the establishment of, national uranium enrichment, nuclear fuels reprocessing, or heavy water production facilities until and while alternatives to such national facilities are explored and pursued;

(B) nuclear exporting nations will not transfer any nuclear equipment, material, or technology to any other nation that has not agreed to implement safeguards promulgated by the International Atomic Energy Agency;

(C) minimum physical security standards are estab-

lished to prevent the unauthorized diversion of nuclear equipment, materials, and technology;

(D) arrangements are established for effective and prompt responses in the event of violations of any international agreement to control the use of nuclear materials and technology;

(E) nuclear exporting nations, in cooperation with nuclear importing nations, pursue the concept of multinational facilities for the purpose of meeting the world's nuclear fuel needs while reducing the risks associated with the spread of national facilities for fuel reprocessing, fabrication, and enrichment; and

(F) nuclear exporting nations establish arrangements for appropriate response, including the suspension of transfers of nuclear equipment, material, or technology, to any nonnuclear weapons country, which has detonated a nuclear explosive device or which has clearly demonstrated the intention to embark upon a nuclear weapons program.

Within one year after the date of enactment of this Act, the President shall report to the Congress on the progress made toward the achievement of international agreement or other arrangements on the matters specified in this section.

(b) For purposes of this section, the term "nuclear exporting nations" means the United States, the United

Kingdom, France, the Federal Republic of Germany, Canada, Japan, the Union of Soviet Socialist Republics, and such other countries as the President may determine.

EXPORTS OF NUCLEAR TECHNOLOGY

SEC. 303. Section 4(j) of the Export Administration Act of 1969, as added by section 107 of this Act, is amended by adding at the end thereof the following new paragraph:

"(3) The President shall conduct an in-depth study of whether, or the extent to which, the education and training of foreign nationals within the United States in nuclear engineering and related fields contributes to the proliferation of explosive nuclear devices or the development of a capability of producing explosive nuclear devices. Not later than the end of the 6-month period beginning on the date of enactment of this paragraph, the President shall submit to the Congress a detailed report containing the findings and conclusions of such study. Such report shall analyze the direct and indirect contribution of such education and training to nuclear proliferation.".

NUCLEAR POWERPLANTS

SEC. 304. None of the funds authorized by the Foreign Assistance Act of 1961 may be used to finance the construction of, the operation or maintenance of, or the supply of fuel for, any nuclear powerplant under an agreement for cooperation between the United States and any other country.

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Senator STEVENSON. In the interest of saving time, we will organize the witnesses in panels in this hearing at least where it's possible to do so.

Our first witnesses will comprise a panel. They are W. R. Needham of the American Consulting Engineers Council; George A. Helland, president, Petroleum Equipment Suppliers Association; Charles W. Stewart, president of the Machinery and Allied Products Institute; and John S. Withers, of the Associated General Contractors of America.

Gentlemen, I will be asking all the witnesses to please, if you can, to summarize your statements. The full statements will be entered into the record. If you keep the summaries down to about 5 minutes, it would be a great help to us.

I would appreciate it if you could do that.

Our first witness is Mr. Needham.

STATEMENTS OF W. R. NEEDHAM, BLACK & VEATCH INTERNATIONAL, INC., KANSAS CITY, MO.; GEORGE A. HELLAND, PETROLEUM SUPPLIERS ASSOCIATION; CHARLES W. STEWART, PRESIDENT, MACHINERY AND ALLIED PRODUCTS INSTITUTE, ACCOMPANIED BY PAUL PRATT; AND JOHN S. WITHERS, ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Mr. NEEDHAM. Good morning, Mr. Chairman. My name is William R. Needham, vice president of Black & Veatch International. Black & Veatch is a firm of international consultants engaged in engineering, architecture, management, and planning.

Rather than take the committee's time to discuss details of the work of individual firms in the Middle East, I would ask that those written materials provided to the committee be included in the record of the proceeding.

[The complete statement and an additional letter follow:]

A Statement by

William R. Needham
Vice President, Black & Veatch International, Inc.

Mr. Chairman, my name is William R. Needham. I am Vice President of Black & Veatch International of Kansas City, Missouri, a large firm of international consultants engaged in engineering, architecture, management and planning. Rather than take the Committee's time discussing details of the work of individual firms in the Middle East, I would ask that those written materials provided to the Committee be included in the record of these proceedings.

Black & Veatch International, along with other members of the International Engineering Committee of the American Consulting Engineers Council, shares Congressional and public concern over the impact of foreign boycotts on U.S. citizens and firms. My purpose here this morning is to convey to you my personal concern over the impact of the proposed anti-boycott legislation on the ability of the American businessman to continue to work in the Arab states while at the same time adhering to America's traditional concern for individual human rights.

The engineering profession views the protection of all American citizens against discrimination on the basis of race, religion, color, sex or national origin as of paramount importance. However, we also recognize that the Arab boycott against the State of Israel is based on accepted international practices and as such is not different from policies pursued from time to time by the United States of America.

Of greater concern to the engineering profession is the overall need for a political settlement in the Middle East. It is only through a negotiated political settlement that the interests of the United States, the State of Israel and the individual Arab States will be protected.

The anti-boycott proposal now before this Committee addresses but a small part of the overall problem that has confronted peace makers since Palestine was established following the end of World War I. To interject new confrontational legislation at this time would only exacerbate the already dificult task now confronting President Carter and his new Administration. The anti-boycott provisions will be perceived by the Arab leaders as another indication of the imbalance of American foreign policy in the Middle East.

Senator Ribicoff stated that the United States is the only country that can supply the Arab nations with what they need, implying that legislative action by the United States Congress can force the Arab states to change their policy toward Israel. As a professional engineer, I assure you that this is not a correct assumption. The services and materials which are being provided through American engineering and manufacturing firms can also be acquired from Western Europe, Japan and the Communist Bloc nations. The fact that some of the Middle Eastern nations prefer American technology and products does not mean that they would continue to do so if the Congress enacts legislation which the Arabs view as interference with their own sovereignty.

INTERNATIONAL CONSTRUCTION WEEK

February 14, 1977

SPECIAL REPORT

American firms gird for tougher competition abroad due to their government's regulations

American firms will be working harder to land new construction business abroad in 1977. Success will come much harder. Not because they haven't competitive knowhow, or can't deliver on schedule. The American government has put severe restraints on their competitive capability in the international market, raising their operating costs through tougher taxation, and by regulations aimed at defeating the Arabs' economic boycott of Israel. It risks shutting off much of the biggest single export market for America's construction industry. And tougher anti-Arab Boycott rules are now before the Congress, which opens three days of hearings in Washington, DC, next week.

Even without any further tightening of opportunities abroad, many American engineers and construction men will be leaving jobs abroad because their companies, to remain cost competitive, must replace them with local personnel. And many American firms plan to set up new offices abroad, in effect reducing jobs in the USA. Thus, the structure of the American overseas construction industry will be undergoing major changes. These changes will be amplified if the anti-Arab Boycott regulations are made more stringent by Washington or by the individual states.

In a survey of the international business expectations of the American construction industry, Engineering News-Record will report this week that companies remain convinced they must stay active abroad, where the Arab oil countries are keys to offsetting slack construction business at home, and trade partners the USA needs to avoid big international trade deficits. Nine out of ten of 167 leading engineer-constructor, contractor, A/E, consulting engineer, equipment and building materials manufacturers tell ENR's survey they will seek new business abroad in 1977, despite the handicaps of lost tax benefits and the Arab Boycott regulations. Three out of four will seek it in Arab countries. The proportion looking for Arab gold is highest among contractors (87%), dipping to 79% of the A/E's and down to 64% of consulting engineers. More of their work will be handled abroad. Three out of 10 firms report plans to set up new enterprises abroad this year to handle overseas projects. This is the result of unfavorable tax law changes, plus the Arab Boycott. Nearly half of the 26 large engineer-constructor companies plan to add at least one new enterprise abroad this year--four out of five already had at least one enterprise operating abroad last year. The engineer-constructors favor establishing a permanent joint venture with a local contractor as partner. Only two plan to set up wholly-owned subsidiaries. Six of the 23 large general contractors also plan to set up a new enterprise abroad. They favor wholly-owned subsidiaries. So do manufacturers, with four of 11 planning new subsidiaries (two would also set up a permanent joint venture with a local firm). Design firms, 25% of which plan to set up new enterprises abroad this year, favor a joint venture with a local firm; A/E and consulting engineer firms look mainly to the Mideast, where 17 plan to set up joint ventures this year, and Latin America, objective of 8 firms. Most of the contractors had at least one office abroad and most of those offices are expected to expand their activity in 1977.

Engineer-constructors and contractors are less buoyant than design firms over their outlook for business abroad. One-third see revenues dropping; only 25% see a rise. Among design firms, 38% see revenues on the rise and only 17% look for a drop, others predicting no change from 1976. None of the 11 manufacturers sees a drop in revenues, but only a few see any gain.

Americans have no monopoly abroad these days. They are deeply concerned about competing effectively against the ever-increasing number of foreign firms. Much of their concern grows out of the loss of tax benefits written into the Tax Reform Act of 1976. Probably its hardest blow was to sharply increase income taxes on expatriates serving abroad at least 18 months, and to make the increase retroactive to January 1, 1976.

To keep expatriates abroad, many contracting and design firms will have to make up for the extra taxes, including the retroactive bite for all 1976 (very costly since it can amount to several thousand dollars per expatriate employee). Seven out of ten of the engineer-constructors and four out of ten general contractors expect to help their American expatriates pay the heavy extra tax for 1976 due now. About one-third of the design firms in the survey will also help their expatriates, as will 5 of the 11 manufacturers. About 10% will pay all the extra tax due from expatriate employees, and 20% of the engineer-constructors will pay the whole bill.

Operating costs of American firms will rise not only because they have to pay expatriates more to stay abroad, but they'll lose productivity by having to hire more foreign nationals to replace American expatriates, and will pay more income tax at home. This will drain competitive strength from American contracting and design firms at a time when their foreign counterparts in industrialized countries receive more aid then ever from governments anxious to expand export earnings. The impact of higher costs will be great enough to eliminate American firms as competitors for some types of work in some countries. That's the opinion of 17 major engineer-constructors and general contractors, as well as 31 leading design firms. One out of four contractors surveyed is concerned that existing U.S. legislation will either prevent or at least make it difficult for his company to continue to develop the Mideast market. Contractors are much more worried over prospective amendments to the Export Administration Act covering the Arab Boycott. Half of them believe that these additional restrictions would certainly prohibit sales growth, perhaps force them out of the Arab market. Design firms have similar fears, though their concern is less widespread. About 30% of the A/E and consulting engineer firms are fearful of the results of the proposed new amendments. Their exposure to potential loss of business due to the anti-Arab Boycott regulations has been less than that of contractors, but still nothing to shake off lightly.

Contractors are more conservative than are design firms in appraising the outlook for new business abroad in 1977, probably because Arab Boycott regulations have affected contractors more frequently than designers. Nearly one-third of the engineer-constructors and about one-quarter of the general contractors report they lost out in the competition for new work in Arab countries during the past year due to the problems arising from the Arab Boycott of Israel. When one job is lost in the Mideast, it usually means the loss of tens of millions if not hundreds of millions of contract dollars. Moreover, such work in the Mideast isn't lost to other Americans, it's usually lost to contractors from Japan, Korea, W. Germany, Yugoslavia, or some other country than the USA. In the past year, 22% of the 107 design firms reporting say they lost out in obtaining prospective contracts due to the boycott problem. As in the case of construction contracts, design commissions are large in the Arab states, since most of the projects are large-scale, basic infrastructure, such as ports, other transportation, powerplants, hospitals and universities.

The Arab Boycott raises a big problem for manufacturers -- and others when they want to obtain financing. That's because American banks won't accept a bank letter of credit which mentions the Arab Boycott. This can be a tough problem facing small manufacturers wanting to enter the export market. "It's becoming extremely difficult to export construction equipment," says the international sales manager for a large manufacturer of road paving machinery, "If it gets any worse, they'll shut us out completely. In the Mideast, you don't see American construction equipment predominating. Instead, it's European or Japanese equipment that's common." With an export market of over $300 million annually to the 14 Arab states (10% of American construction equipment exports) the construction machinery industry is highly vulnerable to the anti-Arab boycott problem.

Americans abroad will likely be replaced in large numbers this year, as contractors and design firms turn to local people to hold labor costs down. Over one-half of the engineer-constructors and general contractors will cut back on American expatriates -- cutbacks that will run from 20% to 75%. About 20% of the A/E firms and 42% of the consulting engineers will cut back on American expatriates, the slashes running from 10% to 100%. On the other hand there will be large increases in hiring of foreign personnel. A few engineers and contractors say they will cut back staffs in the USA, as a result of the Tax Reform Act's impact on their business.

LOUIS BERGER INTERNATIONAL, INC.

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N°. 3029/February 2, 1977

Senator Harrison A. Williams, Jr.
United States Senate
Russell Building, Room 352
Washington, D. C. 20510

Dear Senator Williams:

Boycott Regulations

I wish to thank you on behalf of Dr. Louis Berger, our President, for your letter of January 27, 1977, responding to his letter of January 15, 1977, on the subject of the effect of the Tax Reform Act of 1976 on American firms working overseas. I would now address you on another subject of great concern to American consultants working in the international field, that of the impending new legislation relating to foreign Boycotts, namely the bill to amend the Export Administration Act, Title II--Foreign Boycotts.

United States Consulting Engineers have carved out a small niche in the overseas market with great difficulty, competing with foreign consultants who are frequently subsidized by their governments. The United States consultants have carried the American flag into the developing countries, generating goodwill and bringing trade back to the United States in the specifying of American technology and equipment. This is particularly true of the Arab world where development has been accelerating at a phenomenal rate during the past few years.

Our firm, which is based in New Jersey, is presently working in six Arab countries. During the past two years, it has specified the use of $10 million worth of U.S. equipment in one country alone, and is likely to specify the use of some $50 million worth of equipment on all its present contracts. These contracts also involve the employment of more than 40 Americans--highly skilled engineers, economists, planners, etc.--overseas with a supporting staff of some 30 persons in New Jersey.

We feel that the Arab Boycott of Israel can only be withdrawn through negotiations at diplomatic levels and not by the proposed new legislation. It should be clear that to prohibit U.S. firms from agreeing to participate or cooperate with the Arab Boycott, where this is a condition of a contract, will not result in the Arabs being coerced into accepting U.S. firms non-compliance with boycott requests, rather it will result in work which would have been awarded to U.S. firms being awarded to European firms with equal qualifications who

are not legally prohibited from such compliance. The effect of enacting the present statute may go beyond that to unforseen impacts. At the present time, U.S. firms operating in the Arab world frequently are not compelled to agree to comply with or participate in boycotts as part of their contract agreements. In fact, our firm has just signed a contract in an Arab country which does not require us to participate in or cooperate with the Arab boycott of Israel. Should the new statute be enacted, it is possible that the reaction in the Arab world will be strong and may have a backlash effect resulting in all consultants working in the Arab world being made to sign such clauses or be rejected. Thus, where we are now frequently able to avoid agreeing to any anti-boycott clause through negotiations, that alternative may be foreclosed in the future. In addition, the positive political and diplomatic relations that are developing and have developed due to the influence of U.S. firms and political influence in the Middle East appear to have permitted U.S. negotiators to play a positive role in the projected settlement of the Middle East problem. To enact this legislation may have a negative impact on any proposed settlement and the U.S. role therein.

Present statutes already provide penalties to firms such as ours in terms of tax disadvantages with regard to DISC benefits and foreign tax credits as reflected in the Tax Reform Act of 1976. In addition, they provide for public disclosure of requests to participate or cooperate with boycott activities and the firms projected action in response thereto, providing a deterrent by means of public pressure not to comply with such requests. Yet even with the penalties of the present statutes, it should be clear that the firms doing business with the Arab countries should not be penalized to a greater extent than they are now since the boycott issue is a political one.

Punitive action against U.S. firms doing business in this area by attempting to coerce the Arab countries to stop the boycott, would only have the effect of denying U.S. firms business opportunities, exports, etc. in the Arab world, which would be taken by other foreign firms and would have the negative effect of reducing U.S. employment (jobs overseas and administrative support in the U.S. including New Jersey) reducing the export of U.S. goods and services overseas; and reduce the taxes payable by such firms to the states in the U.S. in which they are incorporated and pay taxes.

LOUIS BERGER INTERNATIONAL, INC.

We trust that you and your fellow members of the Subcommittee on International Finance will bear the foregoing points in mind during the hearings on S.69 and S.92.

Very sincerely yours,

LOUIS BERGER INTERNATIONAL, INC.

Stanley E. Jewkes
Senior Vice President

SEJ:mdv

MIDDLE EAST BUSINESS INVOLVEMENT

BLACK & VEATCH
CONSULTING ENGINEERS

Black & Veatch, Consulting Engineers of Kansas City, Missouri, is a partnership that has been registered in Missouri for more than sixty (60) years. Based on its annual volume of business in recent years it has been ranked consistently by the Engineering News Record as one of the top ten engineering firms in the United States. As of February 1, 1977, the firm employed over 2,500 persons, more than 2,300 of whom live and work in the Greater Kansas City Area, either in Missouri or Kansas.

In 1961 Black & Veatch (B&V) formed Black & Veatch International (BVI), a wholly-owned subsidiary corporation, to develop and manage work performed for clients outside the United States. Since that time BVI has furnished engineering services to the public and private sector in 26 countries. Business handled by BVI has grown to the point that today its fees represent approximately 25 percent of the total Black & Veatch volume. Of this, the largest segment comes from work being conducted for clients in Saudi Arabia, Egypt, Jordan and Iran.

By far the biggest client of BVI has been the Government of Saudi Arabia. Under a contract with the ARAMCO Services Company of Houston, Texas, BVI has been involved since late 1974 in preparing studies and designing facilities for a large electric power system in the Eastern Provinces of Saudi Arabia. Among the assignments given to BVI to date have been the preparation of the complete design of:

Nine (9) electric generation units (72MW each) for two (2) power plants;
Twelve (12) new 230 kV and two (2) 115 kV substations;
Additions to three (3) 115 kV and three (3) 69 kV substations;
325 miles of 230 kV transmission lines;
15 miles of 115 kV transmission lines and
8 miles of 69 kV transmission lines.
(See photo of initial stages of construction)

To meet the study and design requirements BVI formed a new group, the ARAMCO Services Division. Today, over 225 persons are employed full-time in the

firm's Kansas City offices on this work. (See photos showing some of the personnel and portions of the over 35,000 square feet of office space currently devoted to this work.) The total billings from this contract through December 31, 1976, were $12,535,000.

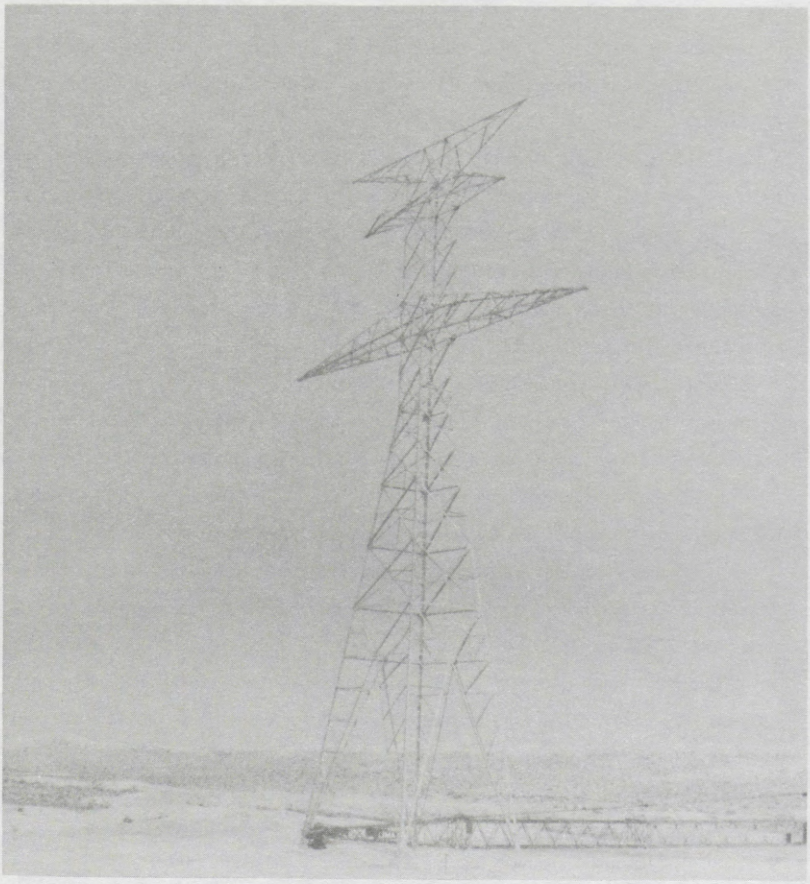
The Special Projects Division of Black & Veatch which handles all work the firm does for U.S. Government Agencies, has a contract with the Middle East Division of the U.S. Army Corps of Engineers for design and construction program technical reviews for numerous facilities for the Royal Saudi Department of Defense. To date this has netted approximately $2,011,000 in fees for some 714 man/months of labor by the Kansas City staff. (See Project List.)

Black & Veatch International is currently engaged in two major studies for the Government of Iran. The first is an environmental impact study requiring 175 man/months of effort with a fee of approximately one million dollars. The second is a preliminary study which will be prepared for $75,000. Subsequent, more valuable, work is expected to stem from the initial study.

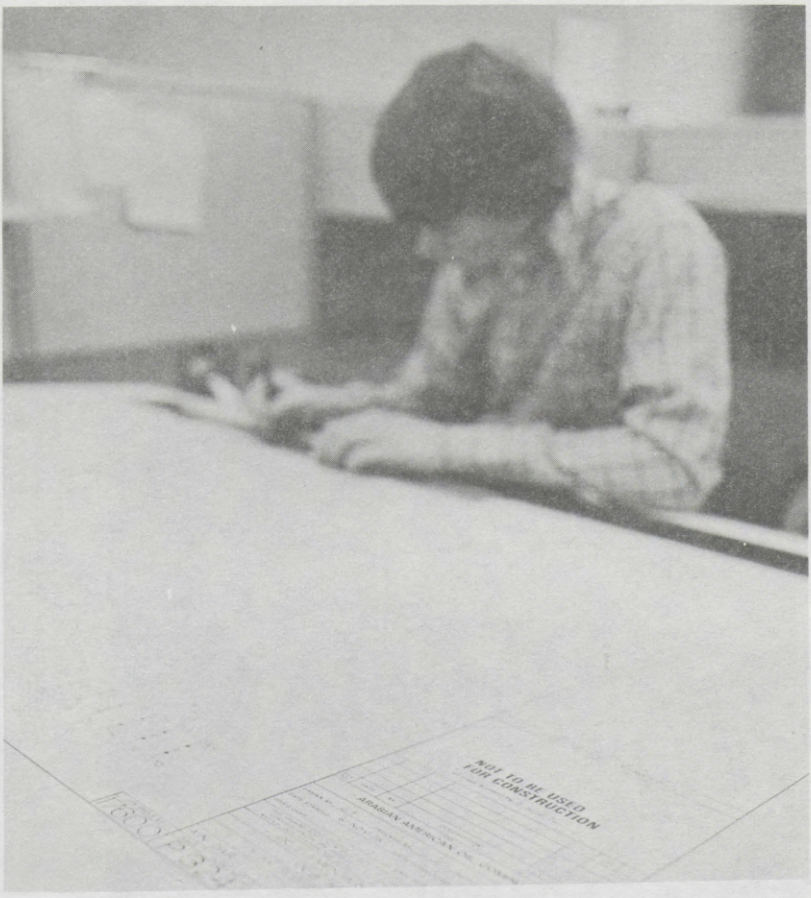
Another newly signed contract calls for 98 man/months and approximately $800,000 in fees to prepare a master plan on grains, tallows, oils and fats for the Government of Egypt.

In summary, some 640 of the over 2,500 persons employed by Black & Veatch in Kansas City during 1976 were supported by fees for work being done on projects related to Middle East countries. This represented a payroll of $5,705,000. Taxes on these salaries were as follows:

Federal Income Tax	$1,426,000
Missouri & Kansas Income Tax	250,000
School Taxes	125,000
Sales Taxes	75,000
Total	$1,876,000



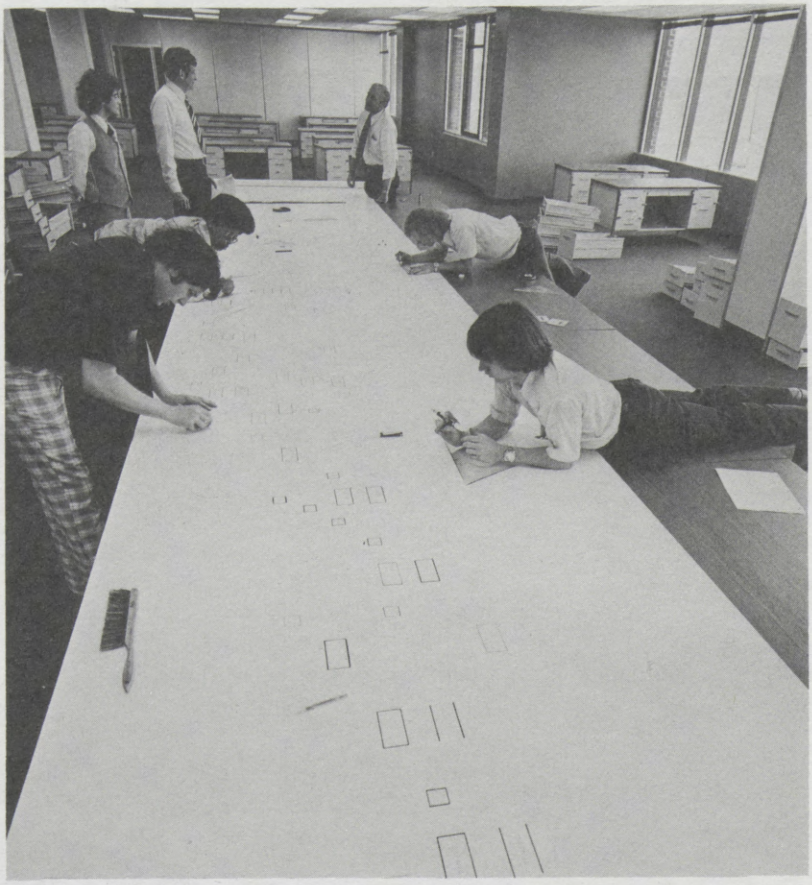
View of 230 kV transmission tower designed by Black & Veatch engineers in Kansas City and erected in the vicinity of Uthmaniyah, Eastern Provinces, Saudi Arabia.



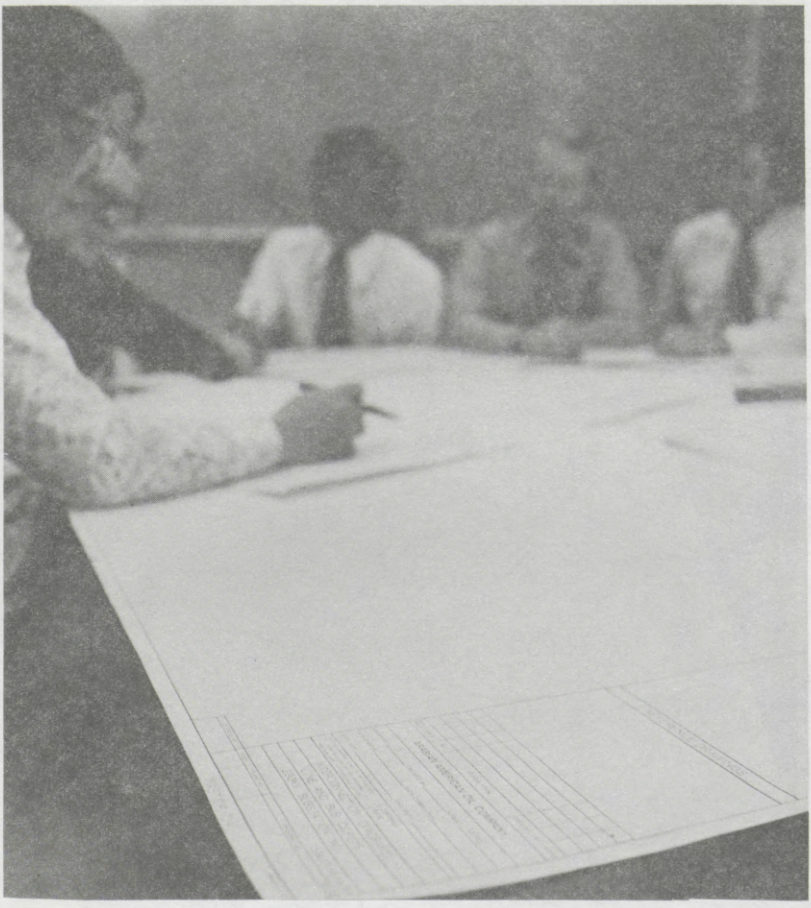
A young engineer whose future rests on not only what he is doing today but also on whether there will be work for him in the months to come.



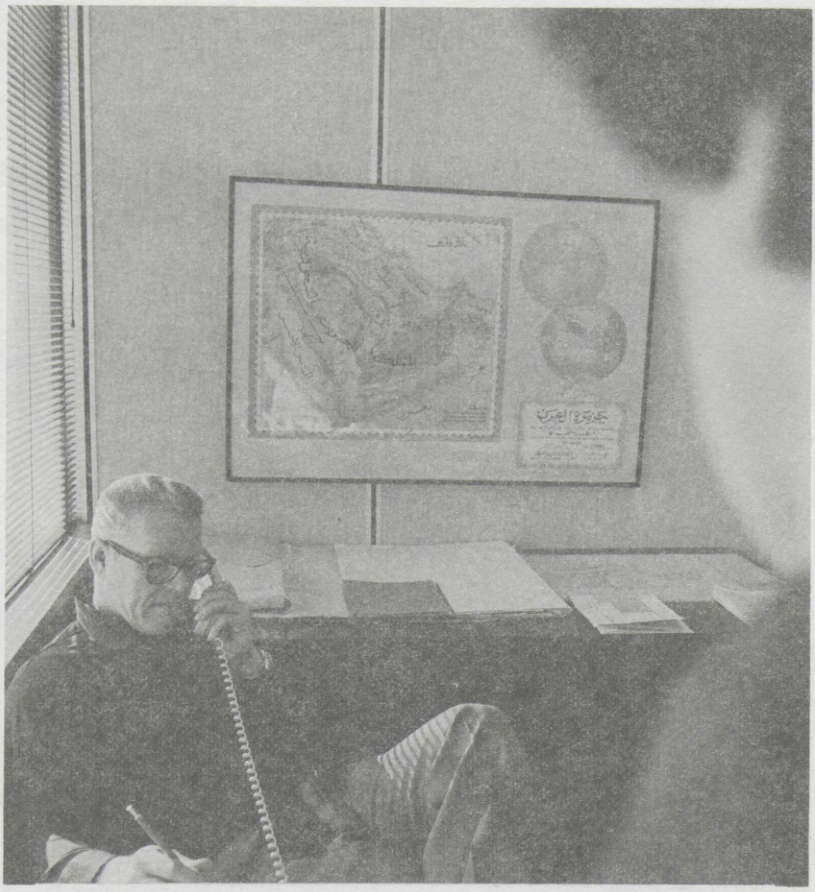
A typical drafting team's working area in the Aramco Services Division area. The total Aramco Services Division space is over 35,000 sq. ft.



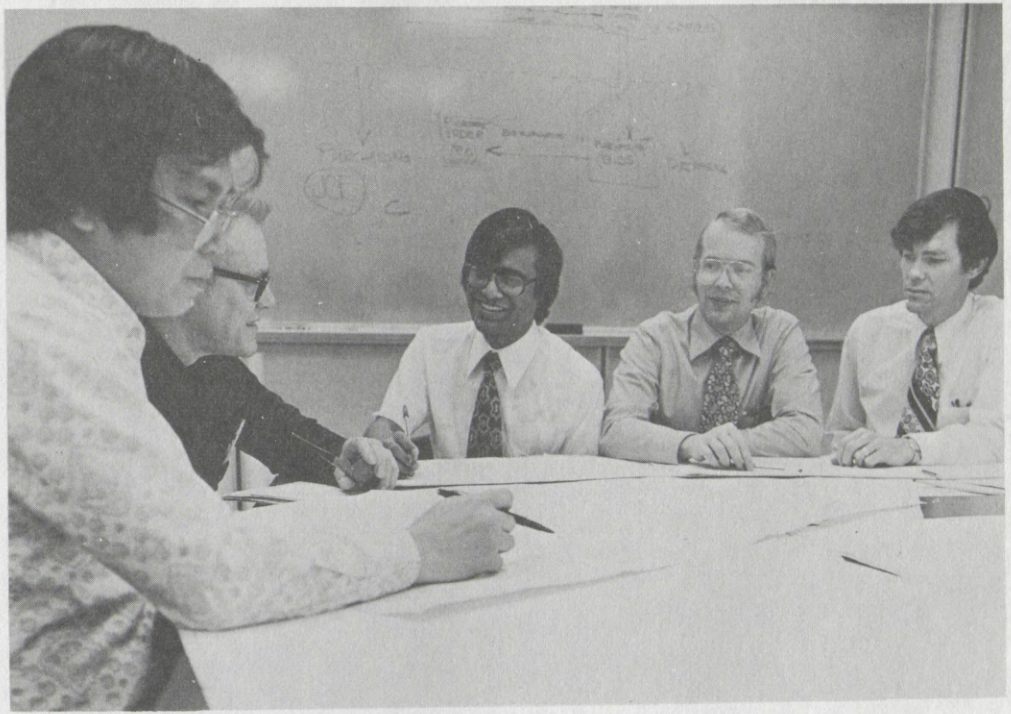
The magnitude of the Aramco Services Division task is so great even a layout of the system being designed is too large for the ordinary drafting board.



Interconnection diagrams - parts of hundreds prepared for the design of the 325 miles of 230 kV transmission lines.



A Project Manager of the Aramco Services Division, Black & Veatch International. His association with Saudi Arabia goes back to 1959 when he worked there for another company.



A Project Team of the Aramco Services Division is briefed by the Project Manager on a new task.

EXPERIENCE IN SAUDI ARABIA

Black & Veatch International was engaged by Aramco Services Company in November, 1974 to provide engineering services for a series of power generation, transmission and distribution projects described at the end of this section.

Black & Veatch Special Projects Division, working through the Middle East Division of the U.S. Corps of Engineers is currently conducting design and construction program technical reviews of work in progress in Saudi Arabia. The following is a partial listing of work underway:

Saudi Naval Expansion Program Federal Specifications – AE Instructions for Raw Data Input Form

Tabuk Armor School Air Conditioning – Final Review

Mobilization Camp, Jubail, COP 7 – Estimate Review

VIP Lounge, Jubail, COP 6 – Estimating Assistance

Mobilization Camp Expansion, Jeddah – Estimating Assistance

King Abdulaziz Military Academy Family Housing, Site Development and Mobilization Camp Housing – Concept Review

King Abdulazia Military Academy Training Range Center at Riyadh – Concept Review

King Abdulaziz Military Academy Support/Service Zone at Riyadh – Concept Review

Ministerial Residence at Tabuk Prefinal Review

Tabuk Power, Review

Firing Ranges Phase II, Khashm-Al-an, Estimating Assistance

Area Commanders Headquarters, Tabuk & Khamis Mushayt, Estimating Assistance and HVAC Review

Field Artillery Center-School, Khamis Mushayt Master Plan

King Khalid Military City Construction Schedule

Library and Museum, Riyadh, Standardization List

Armor School Heating & Air Conditioning at Tabuk – Prefinal Review

Four Bedroom Executive Villa at Tabuk – Final Review

MODA Medical Center at Al Kharj – Concept Review

Taif General Hospital at Taif – Concept Review

Airborne & Physical Training School at Tabuk – Prefinal Review

Tabuk Airborne Training School – Review

Engineering Assistance – Riyadh Officer's Club

Engineering Assistance – Tabuk Power Plant Expansion

Computerized Saudi Oriented Guide Specifications

Computerized Saudi Estimating Program

Saudi Naval Bases at Jubial, Jeddah & Riyadh Headquarters – Review

Tabuk V.I.P. Housing and Gate House – Review

Value Engineering Study for Saudi Naval Base at Jubail.

In conjunction with all projects underway in Saudi Arabia Black & Veatch personnel regularly participate in country with the client, contractor, supplier and other members of the construction team.

HOUSING COMPLEXES

Black & Veatch has been engaged in the development and design of housing facilities since 1950, principally military and dependent housing for the U.S. Department of Defense. Most recently Black & Veatch has been engaged by the Middle East Division of the U.S. Corps of Engineering to perform design and construction program technical reviews for Family housing as well as other facilities in Saudi Arabia. A listing of housing complexes and related facilities recently undertaken follows:

Facility	Location	Activity
Mobilization Camp	Jubail	Estimate Review
VIP Lounge	Jubail	Estimating
Mobilization Camp	Jeddah	Estimating
King Abdulaziz Military Academy Family Housing	Riyadh	Concept Review
Executive Villa	Tabuk	Final Review
Medical Center	Al Khary	Concept Review
General Hospital	Taif	Concept Review
VIP Housing Complex	Tabuk	Technical Review
King Abdulaziz Military Academy Community Support Facility	Riyadh	Concept Review
Standard Workers Community	Various Location	Preliminary Review
Ministerial Residence	Tabuk	Prefinal Review

SAUDI ARABIA

In November 1974, Black & Veatch International was requested by Aramco Services Company to undertake a series of studies in connection with the expansion of the electric power grid for the Eastern Province of Saudi Arabia.

By the end of May 1975, BVI had completed four projects for ASC, including an economic analysis of distribution voltages for use in Saudi Arabia; a report on siting and arrangement of three combustion turbine generating units; and two reports on the design of ten electric transmission substations and approximately 280 miles of 230 kV transmission lines. Subsequently, the firm began the detailed design of the facilities covered in these reports and the preparation of the materials requisitions for the equipment required.

In August 1975, Black & Veatch International signed a contract with ASC to take complete responsibility for developing all of the generating requirements in the Eastern Province through 1980. In addition to the original three units under design, the program included about 33 simple cycle combustion turbines with provisions for converting these units to combines cycle units by adding steam turbines. Providing approximately 2,500 MW of electric power, these units will be installed at seven different sites.

The firm's responsibilities in these projects ultimately will include preparation of reports on siting and arrangement of plants, requisition and purchasing of all equipment, complete design of the facilities, and management of construction and start-up.

ASC set up an office in Black & Veatch's Kansas City office to remain throughout the engineering phase of the projects. ASC engineers review Black & Veatch reports, supervise the purchasing, and coordinate the firm's activities with the ASC home office. A separate office was also established in Kansas City for the B&V personnel assigned to ASC projects. In Saudi Arabia, a new company, Black & Veatch Arabia (B&VA), is being formed to manage the in-country work.



The map above illustrates Saudi Arabia's general location and pinpoints the country's main areas of construction. The new power grid to be designed by B&V will be in the eastern section bordering the Arabian Gulf. (Reproduced from the April 24, 1975 issue of ENR)

The double-circuit 230. kV transmission lines will cover a distance of 370 miles along the Arabian Gulf. In addition to more conventional types of terrain, the transmission lines will pass through desert sand dune areas, rock outcroppings, and coastal salt flats.

GRAIN STORAGE

THE NATIONAL PLANNING COUNCIL
HASHEMITE KINGDOM OF JORDAN

Black & Veatch International

In August, 1975, the National Planning Council of the Hashemite Kingdom of Jordan engaged Black & Veatch International to conduct a technical and economic feasibility study of a proposed grain handling and storage facility at the Port of Aqaba.

The scope of work included investigation of facilities and methods presently used to unload and store grain at Aqaba and transport it to inland storage or milling facilities, annual projections of grain inputs for next ten years, and determination of additional storage facilities required to handle future imports at Aqaba and/or inland distribution centers. The project also included a study to determine the most appropriate location for storage facilities in the port area and recommend equipment required to unload grain from ships, convey to storage and outload to inland carriers, including bagging and weighing equipment. Preliminary layout plans and design drawings for all recommended facilities were prepared, specifications for required equipment were outlined, and preliminary cost estimates were made. A financial study demonstrated the economic feasibility of the proposed facilities. Environmental impact of the proposed project on the surrounding area was investigated and included in the report.

WINZLER & KELLY
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February 16, 1977

The Honorable Alan Cranston
United States Senate
452 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Cranston:

We want to take this opportunity to express our strong concerns over pending legislation relating to the Arab Boycott, which may effectively bar us and many other companies throughout California, from doing business in the Middle East.

In June, 1976, we had the opportunity to testify before the House International Relations Committee, on behalf of the International Engineering Committee of the American Consulting Engineers Council, in opposition to the incorporation of more restrictive antiboycott provisions in the extension of the Export Administration Act.

At that time, we pointed out that there were compelling economic, foreign policy, and national security interests to be weighed; that there was a great deal of misinformation circulating about the boycott; that its negative impacts on American business enterprises and citizens had been grossly exaggerated; and that in light of this background, additional legislation on this matter was unnecessary, ill-advised, untimely and quite possibly, counterproductive.

In many respects, our message to you today remains unchanged. At a time when our domestic economy remains shaky and unstable and, in fact, the promise of continued progress toward recovery has been temporarily set back by the economic dislocations of the current weather/energy "crunch", we submit that the job-producing potential of American business involvement in the Middle East is critically important to the U.S. domestic economy.

We are well aware of the arguments made in some circles that in pursuing overseas business opportunities, American business enterprise is taking jobs away from Americans to the detriment of our domestic economy. On the contrary, our firms are pursuing work in the Middle East and elsewhere in the developing world precisely because the climate for development-oriented activities in the United States has become so unfavorable.

Without singling out any one group, we would attribute this unfavorable environment to a combination of factors, including environmental constraints, higher labor and materials costs, energy shortages and the like. In other words, it is not a matter of choice between pursuing opportunities in the United States and internationally. We depend on development-oriented activities and we must pursue them where we can find them. To fail to do so would not only prevent our businesses from growing to provide new jobs, but it would mean significant cutbacks in our existing workforces.

WINZLER & KELLY
CONSULTING ENGINEERS

The job-producing potential of the engineering professional must be viewed, however, in an even broader context. General background on the important role the engineering professional plays in the process of job-creation through overseas involvement was provided in our June testimony to the House International Relations Committee and we have enclosed a copy of that testimony for your review. We can summarize briefly, however, by saying that the American consulting engineer overseas (1) creates domestic employment opportunities for engineers and related professionals, in that the greatest portion of actual design work is brought back to the United States for completion; (2) creates jobs in the American construction industry since our construction contractors are most familiar with the design practices of American engineers and are in a favorable competitive position when bidding on American-designed projects; and (3) creates jobs in the domestic capital-goods manufacturing sector, since American engineers are most familiar with the specifications and performance capabilities of American products and tend to design around these products.

As you will note from the second attachment to our statement, we have also provided some specific data on the numbers of actual jobs, the job potentials, and the dollar volumes of work in which American consulting engineers are now involved in the Middle East. This data, gathered in a recent survey of selected firms now working in the Middle East, is, however, by no means complete, and we are now requesting other firms not originally surveyed to develop such data and make the information available to Members of Congress. It is fair to say that we would expect these figures to be increased substantially when our data-gathering efforts are complete, yet even as they stand, they are signifcant in light of current economic conditions.

In a related view, we continue to believe, as we stated last June, that our growing trade relationship with the Middle Eastern community is continuing to provide added leverage to ongoing political and diplomatic efforts to bring about a peaceful and lasting settlement in the Middle East.

While our message remains essentially unchanged, however, a number of events which bear directly or indirectly on this matter have occurred since last year and, as a result, we believe the arguments against passage of additional legislation are even more compelling at this time.

As you are well aware, the Tax Reform Act of 1976 contains provisions restricting the use of certain tax benefits, where compliance or participation in boycott activities is determined. In practice, these provisions force those American companies who make a decision to comply or participate in boycott activities to treat such compliance or participation as an added cost of doing business. While we strongly disagreed with this legislation on the basis that any additional legislation or regulations gives the boycott's existence and application a "larger-than-life" status as a public policy issue than is warranted, there is a virtue in this approach in that the freedom to make decisions, i.e. to pursue business and/or to comply or participate in boycott activities, lies with the individual business enterprise. Presumably, taking this approach, a firm choosing to comply or participate in boycott activities as a condition to doing business will either pass this cost of lost tax benefits on to his client, or seek to have such provisions modified or waived so as to be in compliance with the law or avoid the boycott issue entirely. In any case, the business enterprise is free to make its own choices, yet is effectively deterred from serving as an agent/instrument in a foreign boycott.

We believe that this approach will have the desired effect, and that after these provisions have been in effect for a reasonable period of time, a comprehensive oversight review will show that the stated objective of eliminating the negative impact of the boycott in the relatively small number of instances where American citizens and/or business enterprises have been directly affected, has been achieved.

The importance of taking a reasonable and responsible approach is all the more important in light of the need to provide as much flexibility as possible to the new Administration and Congress. This is particularly important in these early days, when leaders of Middle Eastern and other nations are seeking to open a dialogue with the new leadership and, conversely, at a time when the Administration and Congress are attempting to move quickly and cooperatively down the road to solid and sustained economic recovery.

The problem we see with the approach taken in the measure now before you for consideration is that it is unconditional and inflexible. It would effectively bar American professional engineers and virtually all American companies from pursuing business opportunities in the Middle East, leading to economic dislocation, greater unemployment, further deterioration in the U.S. balance-of-trades position, and a reduction in U.S. ability to positively leverage and influence continued progress toward peace in the Middle East.

At the same time, we recognize the critical importance of extending the Export Administration Act. Accordingly, we would ask you to consider the following course of action: (1) extend the Export Administration Act, retaining boycott-related provisions in the form in which they exist in the previous Act; (2) undertake both a detailed analysis and oversight review of the applicability and effectiveness of existing Export Administration regulations and Treasury Department regulations implementing the antiboycott provisions of the Tax Reform Act of 1976, and a thorough assessment of the impacts these regulations and any proposed alternatives are having or would have on U.S. domestic, economic and foreign policy objectives, all in conjunction with the Senate Finance Committee, officials of the Treasury and Commerce Departments and representatives of business and professional organizations directly involved in the Middle East.

In our judgment, taking such an approach would give the Administration and the Congress the time required to make a more accurate assessment of the situation, to fairly evaluate the operation of existing antiboycott laws and regulations, some of which are too new to properly evaluate at this time, and then, to reach a clear determination as to the need for new and different laws and/or regulations in this area.

We hope you can concur with our view of the situation.

WINZLER & KELLY

William J. Birkhofer
Director of Business Development

WJB:gab
enclosures

cc: Congressman Don H. Clausen

Senator STEVENSON. Thank you.

Mr. Helland.

Mr. HELLAND. Thank you, Mr. Chairman. My name is George A. Helland. I am appearing in my capacity as president of the Petroleum Equipment Supplies Association. I am executive vice president of Cameron Iron Works, Inc., of Houston, Tex.

The association represents 174 companies which manufacture equipment and provide services and supplies to the petroleum industry. We believe the legislation before you bears real risks of damaging American interests.

The dilemma facing the Congress is that two groups friendly to the United States are long-time enemies. As one aspect of their battle, since 1951, the Arab League states have engaged in an economic boycott.

Most of the Arab countries required, by law, some certification that is related to the Arab boycott of Israel. Most of these take the form of a certificate that the goods are not of Israeli origin or that the goods are not going to be carried on an Israeli ship, or on a ship that not be allowed to call at the Arab customer port. This legislation would prevent us from signing almost any boycott-related certificates.

To the extent the Arab boycott has the effect of discriminating against U.S. citizens or firms on the grounds of race, color, religion, sex, or national origin, we should take a hard line. These are fundamental principles that we should not compromise. To the extent the Arab boycott is a political action, we must consider whether this legislation will disrupt our political, diplomatic, and commercial relations.

No one can condone an economic boycott between countries friendly to the United States. The only answer lies in peace in the Middle East. Both the Arab countries and Israelis are looking for the United States to help to mediate the search for peace. A bill which the Arabs would interpret as an affront to their own sovereignty can only make the search for peace more difficult.

The proposed legislation goes far beyond attacking discrimination against U.S. citizens and firms and would virtually prevent U.S. companies from engaging in trade with Arab nations. The effect of this is virtual counterboycott of the Arab countries.

There has been some testimony before the Congress that trade will not be substantially reduced, because American goods are prized by Arab countries. In other words, the Arabs will modify their boycott to adhere to U.S. law and policy.

The truth is that the Arab countries can do without American technology and goods even though the goods supplied by our industry are considered among the most needed and are imported in volume. Virtually everything supplied by our industry can be supplied by other countries, including the Warsaw Pact nations.

We believe that American companies and American workers which do not discriminate should not be foreclosed from the opportunity to sell to countries friendly to the United States. Yet that would be the effect of the proposed legislation. In just the metalworking segment of our industry we anticipate the loss of over 110,000 jobs per year over the coming 5 years and the loss of $1.2 billion in potential wages.

The Warsaw Pact countries and other developed countries would move into these markets more strongly. The United States will also lose substantial foreign exchange earnings in the Middle East.

The absence of our industry from the Arab markets would have serious economic effects on the United States, but would result in no loss of crude oil production in any of the Arab producing countries. And the legislation here is likely to reduce the Arab countries' inhibitions on price restraint.

Since the Congress has taken up this issue, Arab boycott requests, which were in the past treated casually by many Arab countries and often omitted, are less often omitted and are occasionally more strident. In other cases, we have heard that certain Arab countries have already diverted business from U.S. firms.

The legislation before you attempts to govern the conduct of foreign firms which are owned or controlled by U.S. stockholders. This type of extention of U.S. sovereignty is subject to increasing criticism. Many of the countries in which U.S. firms have foreign subsidiaries have not adopted the U.S. policy, vis-a-vis the Arab boycott, and to the extent this legislation attempts to graft U.S. laws and objectives onto activities within these countries, they are likely to be resentful.

The issue of the Arab/Israeli boycott and how to deal with it is a highly emotional issue. A number of U.S. States have seized on the issue and passed antiboycott legislation of varying stringency. All of these laws are so new that exporters are not sure of the requirements, nor even of the constitutionality of the State laws. For these reasons, we believe it is imperative for the Congress to make clear the supremacy of the Federal Government in foreign trade by preempting State laws in this area.

Mr. Chairman, we request that the legislation be amended to clearly restate the U.S. policy to promote and expand trade with all countries in the Middle East. Some confusion about that policy is clearly evident after all of the debate over this legislation.

Similarly, the bill should recognize the sovereignty of each nation to import or export the goods and services it wishes from the countries and parties with which it wishes to do business. Any bill should avoid unnecessary interference with the sovereignty of foreign nations through the intrusion of U.S. law.

We would ask the Congress to amend the proposed legislation to make sure that prohibited antiboycott activity would be limited to persons or firms agreeing to undertake prohibited activities, rather than an intent to comply. Intent is usually inferred from a collection of circumstances. Often these are ambiguous, and the lack of clarity here could cause serious problems with compliance.

Again, we believe it is imperative for any bill to preempt State action dealing with foreign boycotts.

I have attached, as an appendix, data on the potential impact on jobs and exports of this proposed legislation. I ask that my testimony and the appendix be admitted into the record.

I appreciate appearing before you and I will be happy to answer any question.

Senator STEVENSON. Without objection, it will be put in the record. If there are no objections from my colleagues, we will continue with all of the testimony and come back.

[The complete statement follows:]

TESTIMONY OF GEORGE A. HELLAND

PRESIDENT

PETROLEUM EQUIPMENT SUPPLIERS ASSOCIATION

Mr. Chairman, Members of Congress, Ladies and Gentlemen:

My name is George A. Helland. I am appearing in my capacity as President of the Petroleum Equipment Suppliers Association. Privately, I am Executive Vice President-Operations, Cameron Ironworks, Inc.

The Association represents 174 companies which manufacture petroleum equipment, provide services and supplies to the exploration, drilling and producing segments of the petroleum industry. Members of this organization sell about 40% of their products and services overseas, and a substantial portion of this goes to the Middle East.

We believe the legislation before you bears real risks of damaging American interests. The dilemma facing the Congress is that two groups friendly to the United States have been quarreling with each other for a generation. At times, this quarreling has turned to outright war. As one aspect of it, since 1951 the Arab League States have engaged in an economic boycott.

To the extent the Arab boycott has the effect of discriminating against U.S. citizens or firms on the grounds of race, color, religion, sex or national origin, we can and should take a hard line. These are fundamental principles that we should not compromise. On the other hand, to the extent the Arab boycott is a political action of the Arab States, we must consider whether this legislation, without amendment, will disrupt our political, diplomatic and commercial relations with the Arab countries and with others.

The proposed legislation goes far beyond attacking discrimination against U.S. citizens and firms, and would virtually prevent U.S. companies, as well as their subsidiaries in foreign countries, from engaging in trade with Arab nations. The effect of this is virtual counterboycott of the Arab countries.

Most of the Arab countries require by their own laws some certificate from their suppliers and contractors that is related to the Arab boycott of Israel. Most of these take the form of a certificate that the goods are not of Israeli origin or that the goods are not going to be carried on an Israeli ship, or on a ship that will not be allowed to call at the Arab customer port. This legislation would prevent us and our subsidiaries from signing almost any boycott-related certificates.

There has been some testimony on this issue before the Congress that U.S. trade will not be substantially reduced, because American goods are so prized by Arab countries that they will change their own political decisions and practices in response to this legislation. In other words that the Arabs will modify their boycott to adhere to U.S. law and policy.

The simple answer is, the Arab countries can do without American technology and goods which we supply even though the goods supplied by our industry are considered among the most needed and are imported in volume. Virtually everything supplied by our industry can be supplied by other countries, including the Warsaw Pact nations.

How would the Arab countries react to a U.S. policy which virtually amounts to a counterboycott? I can only ask, how would we react in the same situation?

We have noted that since the Congress has taken up this issue, Arab boycott requests, which were in the past treated casually by many Arab countries and often omitted, are less often omitted and are occasionally more strident. In other cases we have heard, but have no direct knowledge, that certain Arab countries have already diverted business from U.S. firms without even giving them the opportunity to quote.

We believe that American companies and American workers which do not discriminate should not be foreclosed from the opportunity to sell goods and services to countries friendly to the United States. Yet that would be the effect of the proposed legislation. American firms and their foreign subsidiaries must abide by host country laws in dealing with the Arab countries. If U.S. companies or their foreign subsidiaries are placed in a position of violating either U.S. law or Arab law, as they would be by this legislation, we would expect a large diversion of Arab country business. Our industry consists of firms engaged in metalworking and firms engaged in service activities. In just the metalworking segment of our industry and related energy equipment manufacturers we anticipate the loss of 110,550 jobs per year over the coming 5 years due to this legislation, and the loss of over $1.3 billion in potential wages.

The Warsaw Pact countries and other developed countries would seize the opportunity to move into these markets more strongly and provide whatever equipment is necessary. The U.S. will also lose substantial foreign exchange earnings. I need not remind you of the burdens on the U.S. economy of the negative balance of payments between the U.S. and the oil producing countries of the Middle East.

The absence of our industry from Arab markets would have serious economic effects on the United States, but would result in no loss of crude oil production in any of the Arab producing countries.

No one can condone an economic boycott between countries friendly to the United States. The only true answer, of course, lies in peace in the Middle East. Both the Arab countries and the Israelis are looking for the U.S. to use its good offices to mediate the search for peace. A bill which the Arabs would interpret as an affront to their own sovereignty can only make the search for peace more difficult.

What action might the Arab countries take in response to this legislation? They have demonstrated that they are quite willing to use the "oil weapon". While it is not likely that the Arab countries would cut off oil shipments to the U.S., or even reduce the supplies (although they might be reluctant to increase shipments to the U.S.), the legislation here is likely to reduce the Arab countries' inhibitions on price restraint.

Virtually no country stands to be damaged more by price increase in oil than Israel. Israel is almost totally dependent on imports, a large portion of which comes from Iran. Iran, of course, is recognized as a leader in urging price increases among OPEC states and is certain to follow any price increase among the OPEC members. Israel is already in a critical balance of payments position. Its economy is in serious straits with 38% inflation last year alone. A further oil import burden would be a serious blow.

The legislation before you attempts to govern the conduct of foreign firms which are owned or controlled by U.S. stockholders. As I am sure the Congress is aware, this type of extension of U.S. sovereignty is being subject to increasing criticism among both the developed and undeveloped countries. Canada, for example, has recently acted to curb this trend through establishment of its Foreign Investment Review Agency and by changes in its Combines Investigation Act, specifically prohibiting the effects of certain foreign judgments in Canada. Many of the countries in which U.S. firms have foreign subsidiaries and affiliates have not adopted the U.S. policy, vis-a-vis the Arab boycott, and to the extent this legislation attempts to graft U.S. laws and objectives onto activities within these countries, they are likely to be resentful.

The issue of the Arab/Israeli boycott and how to deal with it is a highly emotional issue, and what the Arab boycott does and does not do seems widely misunderstood. A number of U. S. states, however, have siezed on the issue and passed anti-boycott legislation of varying stringency. Some deal only with the discrimination aspects; others are as broad or broader than the legislation under consideration. The effects on American trade is very troublesome. All of these laws are so new that exporters are not sure of the requirements, nor even of the constitutionality of the state laws. Already there has been some significant shift in purchases, sales and shipments from states with these laws to other states. For these reasons, we believe it is imperative for the Congress to make clear the supremacy of the federal government in foreign trade by preempting state laws in this area.

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We would ask the Congress to amend the proposed legislation to make sure that prohibited anti-boycott activity should be limited to persons or firms agreeing to undertake prohibited activities, rather than an intent to comply. Intent is usually inferred from a collection of circumstances. Often, these are ambiguous, and the lack of clarity here could cause serious problems with compliance. Secondly, we believe any bill should avoid unnecessary interference with the sovereignty of foreign nations through the intrusion of U.S. law.

Similarly, the bill should recognize the sovereignty of each nation to import or export the goods and services it wishes from the countries and parties with which it wishes to do business.

Again, we believe it is imperative for any bill to preempt state action dealing with foreign boycotts.

Lastly, American business is being buried under an avalanche of federal paperwork. The proposed legislation would continue the reporting requirements to the Department of Commerce, which are duplicated by the reporting requirements under the Ribicoff Amendment of the Tax Reform Act of 1976. We suggest deleting the reporting requirement under the proposed legislation, or in the alternative, urging your colleagues to undertake to eliminate the reporting requirement under the Ribicoff Amendment.

Finally, Mr. Chairman, and most importantly, the legislation should be amended to clearly restate the U.S. policy to promote and expand trade with all countries in the Middle East. Some confusion about that policy is clearly evident after all of the debate over this legislation.

I have attached as an appendix, data on the potential impact on jobs and exports of this proposed legislation. I ask that my testimony and the appendix be admitted into the record. I appreciate appearing before you and I will be happy to answer any questions.

APPENDIX TO

TESTIMONY OF GEORGE A. HELLAND, PRESIDENT

PETROLEUM EQUIPMENT SUPPLIERS ASSOCIATION

BEFORE

SUBCOMMITTEE ON INTERNATIONAL FINANCE

OF THE SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE

FEBRUARY 21, 1977

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POTENTIAL IMPACT OF ARAB BOYCOTT

ON PETROLEUM EQUIPMENT RELATED METAL WORKING INDUSTRY

Expenditures of 14 Boycott Nations 1977 - 1981
(In Billions)

Drilling and Producting Equipment	$ 1.8
Refinery Equipment	5.0
Natural Gas Processing Equipment	5.5
Petrochemical Plant Equipment	1.6
Pipe Line Equipment	8.2
	$ 22.1

Effect on Metal Working Industry Employment

Total Employment (work years)	552,500
Employment Annualized over 5 years	110,500
Average Annual loss in wages In Metal Working Industry	$1,326,000

Summary of Trends In Export Sales
Of Petroleum Equipment

The threat of the proposed Arab Boycott legislation on producers of petroleum equipment and service is serious because of the unusually high percentage of industry sales to the international markets.

Unlike most other industry in the United States, petroleum equipment manufacturers have developed export sales to a level where they account for 40% of their annual volume. In 1955, exports of petroleum equipment totaled $129.6 million. The market has expanded to $1.58 billion in 1975.

This growth is due to a number of factors which must be understood in order to measure the total impact of any loss of international markets. Beginning in 1959 when U.S. domestic activity began to decline, equipment manufacturers increased efforts to develop international markets. From less than 10% of annual sales, these markets now account for more than 40%.

The continuing product research and growth in manufacturing technology has made U.S. petroleum equipment the standard of the world. However, it is not enough to make the best tools available to keep market position in petroleum equipment sales, a strong field sales and service organization is necessary. It is the follow up after the sale which makes future growth opportunities possible.

Exports of petroleum equipment to the 14 countries accounted for $195.9 million in foreign exchange earnings in 1975. About 4900 metal working jobs were involved.

To get a proper perspective on this it is necessary to see the effect over a five year period in which substantial growth is expected. In the years 1977 thru 1981 it is reasonable to expect that the market for U.S. made petroleum equipment will be $1.8 billion in the 14 countries enforcing the Arab Boycott.

In addition equipment for refineries natural gas processing plants, petrochemical plants and pipelines will total $20.3 billion in the same time frame. Most of this equipment could be provided by United States companies and plants.

To achieve $22.9 billion in sales would require almost 495 thousand employees' jobs in the general classification of metal working. Broken down into one year segments, this is 110,500 metal working jobs per year. The annual payroll would be in the range of $1.32 billion. There are also some 1,200 jobs of U. S. Citizens working for oil equipment and service companies in the 14 Arab countries which would be lost.

Not included in the lost wages figures presented are the jobs lost from design and engineering firms, petroleum industry service companies (geophysical, drilling, logging, drilling fluids, well completions, cementing and stimulation) and consulting firms. Also, the loss of jobs in the banking, freight forwarding, insurance, port operations and shipping are not included.

SUMMARY OF EXPORT SHIPMENTS

(Amounts Shown in Millions of Dollars)

Year	Rotary (1) Drilling Bits	Rotary (2) Drilling Rigs	Other (3) Drilling Equipment	Total (4) Drilling-Producing Equipment Shipments
1955	$ 24.3	$ 16.1	$ 47.6	$ 129.6
1965	20.7	28.8	71.8	185.2
1970	38.2	48.6	150.3	329.2
1973	52.4	51.1	389.3	639.3
1974	79.2	77.5	640.8	924.4
1975	110.8	181.1	1,057.7	1,580.0

(1) Schedule B 6952465

(2) Schedule B 7184261, 7193148 and 7320330

(3) Schedule B 7184264

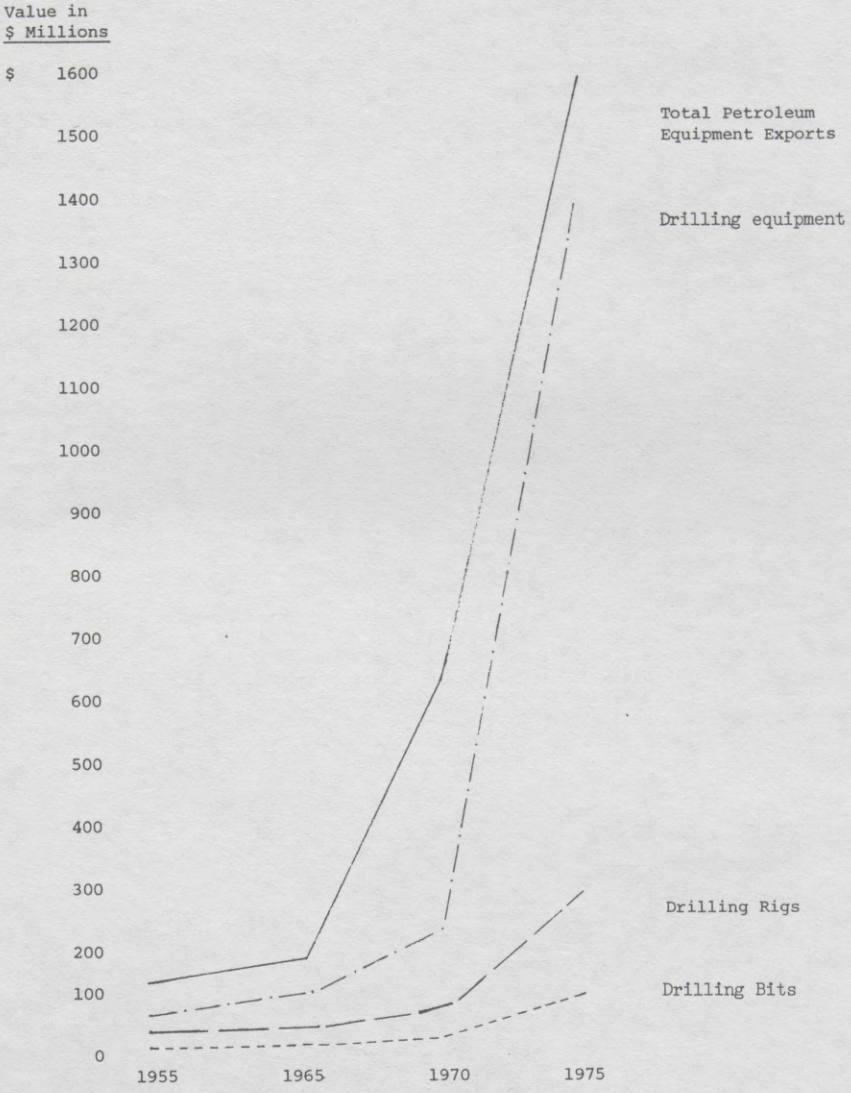
(4) Includes 1, 2 & 3 above plus:

Schedule B 6952450 - Drill & core bits & reamers containing diamonds
Schedule B 6952470 - Parts NEC for core bits, drill bits, etc.
Schedule B 7192162 - Oilwell and field pumps, liquid.
Schedule B 7192310 - Oil, gas separating equipment and parts.
Schedule B 7193147 - Field rod lifting equipment.
Schedule B 7193150 - Oilfield equipment, NEC.
Schedule B 7198062 - Oil and gas field wire line, etc., and accessories, NEC.

Source: U. S. Department of Commerce

PETROLEUM EQUIPMENT EXPORTS

1955 - 1975



Source: U. S. Dept. of Commerce Petroleum Equipment Suppliers Assoc.

EXPORTS OF PETROLEUM EQUIPMENT 1975 - BY EQUIPMENT GROUPS
Dollars in Thousands - (000 Omitted)

	Total Exports	Exports to Boycott Countries	Exports to Boycott Countries As Percentage Of Exports
Drill & core bits & reamers containing diamonds	$ 10,019.2	978.3	9.7%
Drill bits, core bits & reamers	110,770.5	14,809.6	13.4%
Parts for drill bits, core bits and reamers	19,740.5	739.9	3.7%
Oilwell drilling machinery-Rotary	38,262.9	5,220.1	13.0%
Well drilling machinery-& Parts	1,057,713.4	120,159.7	11.4%
Oilwell & field pumps-liquid	37,615.5	3,420.4	9.1%
Oil, gas, separating equipment and parts	28,562.9	11,379.1	40.0%
Field rod lifting equipt.	13,662.9	187.9	1.4%
Oilfield Derricks & parts, NEC	75,863.5	7,556.9	9.9%
Oilfield equipment, NEC	28,676.6	1,094.0	3.8%
Oil & gas field wire line, equipment	95,819.9	17,698.7	18.5%
Truck mounted drilling equipt.	67,017.0	12, 691.2	18.8%
TOTAL	$1,583,724.8	$195,935.8	12.3%

Source: U. S. Department of Commerce - FT410-1975

PETROLEUM EQUIPMENT EXPORTS 1975
DOLLAR VALUE OF EXPORTS TO 14 ARAB COUNTRIES
(Thousands of Dollars - 000 Omitted)

		Value	Percent
Arab Emirates	$	49,307.6	25.3%
Bahrain		12,702.6	6.5%
Egypt		19,666.3	10.1%
Iraq		46,735.3	23.9%
Jordan			A
Kuwait		6,283.9	3.2%
Lebanon		448.6	A
Libya		15,809.0	8.1%
Oman		2,313.8	1.2%
Peoples Democratic Republic of Yemen			A
Qatar		3,678.2	1.8%
Saudi Arabia		36,340.8	18.6%
Syria		2,553.4	1.3%
Yemen			A
TOTAL	$	195,935.8	100.0%

A-Less than 0.5%

POTENTIAL DOLLAR VALUE OF EXPORTS TO 14 ARAB COUNTRIES
1977-1981
(Millions of Dollars)

	Value
Arab Emirates	$ 455
Bahrain	126
Egypt	182
Iraq	432
Jordan	A
Kuwait	57
Lebanon	3
Libya	146
Oman	22
Peoples Democratic Republic of Yemen	A
Qatar	32
Saudi Arabia	336
Syria	23
Yemen	A
TOTAL	$ 1,824

A - Less than 0.5%

REFINERY EXPANSION - 14 ARAB COUNTRIES
19 Projects* - 1.8 Million Barrels/Day Capacity
$5 Billion In Capital Equipment

CATEGORY	$ MILLION
Columns, tray or packed	$ 208
Pressure vessels	177
Reactors (hydrocracking)	142
Process pipe & fittings	481
Heat exchangers (all types)	394
Electrical power & lighting	281
Fired heaters & boilers	263
Valves	284
Compressors & blowers	257
Instrumentation	168
Pumps	149
Steel structures, platforms, supports	108
Insulation (pipe, vessels, columns, exchangers)	119
Storage tanks (process)	169
Special equipment (filters, mufflers, etc.)	110
Cooling towers	39
Ecology, pollution	61
Storage (tank farm)	750
Loading rack, docks, etc.	300
Utilities piping, storage piping	350
Rigging, cranes	65
Firefighting equipment	160
Total	$ 5035

* Oil and Gas Journal - October 4, 1976

NATURAL-GAS PROCESSING PLANTS 1977-1981 - 14 ARAB COUNTRIES

4 Projects* - $10 Billion

$5.468 Billion In Capital Equipment

CATEGORY	$ MILLION
Columns	$ 704
Pressure vessels	314
Pipe & fittings	510
Heat exchangers	510
Electrical power	350
Fired heaters & boilers	351
Valves	350
Compressors & blowers	349
Instrumentation	180
Pumps	249
Structural Steel	125
Insulation	125
Special & Misc. (filters, mufflers, etc.)	125
Cooling towers	63
Ecology, pollution	63
Storage Tanks	485
Loading rack	210
Inventory	125
Firefighting equipment	125
Total	$ 5468

* Oil and Gas Journal - October 4, 1976

PETROCHEMICAL PROJECTS 1977-1981 - 14 ARAB COUNTRIES

41 Projects*

$1.578 Billion In Capital Equipment

CATEGORY	$ MILLION
Columns, tray or packed	$ 80
Pressure vessels	60
Reactors	86
Pipe & fittings	196
Utilities & storage, piping, fittings	130
Heat exchanges	135
Electrical power	97
Fired heaters & boilers	90
Valves	86
Compressors & blowers	91
Instrumentations	58
Pumps	53
Structural steel	38
Insulation	40
Storage tanks	40
Special equip.(filters, mufflers, mixers, etc.)	38
Cooling towers	21
Extrusion & handling equip.	185
Pollution control equip.	55
Total	$ 1579

* Oil and Gas Journal - October 4, 1976

PIPELINE PROJECTS 1977-1981 - 14 ARAB COUNTRIES

16 Projects* - $9.5 Billion

$8.22 Billion in Capital Equipment

CATEGORY	$ MILLION
Line pipe	3904
Pipeline fittings and valves	572
Prime movers, compressors, pumps	1,258
Other station facilities - Valves - Meters	1,001
Coating	301
Communications	114
Pipe line construction equipment	1,072
TOTAL	8,222

* Oil and Gas Journal - October 4, 1976

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Sources of Data and Methods Used
To Forecast Future Markets

Historical data on Petroleum Equipment Exports supplied by the U. S. Department of Commerce - F. T.-410.

Future petroleum equipment export projections based on past sales, plus estimated market expansion for planned and projected programs of oilfield activity.

The shipments to these countries over the past three years have jumped from $57 million to $195 million. It is not reasonable to expect these sales to almost triple in the next three years and then triple again by 1981. A more reasonable projection would be at the following rate:

Year	Shipments ($Million)
1973 (Actual)	$ 57
1974 "	105
1975 "	195
1976 (Estimate on 10 mos. actual)	219
1977 Estimate	261
1978 "	307
1979 "	360
1980 "	426
1981 "	470
Total - 1977 to 1981	$ 1,824

Refinery Expansion: Projects-Oil and Gas Journal-World Wide Construction October 4, 1976 page 112 f.f.

Natural Gas Processing Plants: Projects-Oil and Gas Journal-World Wide Construction - October 4, 1976 page 162 f.f.

Petrochemical Plants: Projects - Oil and Gas Journal-World Wide Construction-October 4, 1976 page 128 f.f.

Pipeline Projects: Projects-Oil and Gas Journal-World Wide Construction - October 4, 1976 page 126 f.f.

Cost factors for equipment needed for the 89 projects were taken from "Market Data 76" published by the Petroleum Publishing Company, Tulsa, Oklahoma. The figures for refinery construction were reduced because

(continued)

the type of refineries to be built in the subject countries will not be as elaborate as units built in more advanced consuming countries.

Annual loss in wages were computed by the formula:

$$\frac{\$}{A\ S/W} \times \frac{1\ Yr.}{5\ Yrs} \times \frac{AMS}{} = AWL$$

$ = Total Sales ($19.8 Billion)
A S/W = Average Sales Per Worker ($40,000)
1 yr = One Year
5 Yr = Period covered by projection
AMS = Average Wages ($12,000)
AWL = Annual Wages lost

Mr. STEWART. First I want to express my appreciation, to the committee and Mr. Marcuss for the opportunity to appear. I am accompanied by Paul Pratt, who works with our international councils and therefore has expertise in the international area.

I assume our complete statement is a part of the record.

It is unfortunate, I think, but thoroughly understandable, that we are not in a position to address an administration position on this particular issue. We understand that Secretary Vance will present such a position on the 28th.

I share the views expressed by other witnesses, in connection with a concern about a confrontation at this stage affecting international negotiations with Israel and the Arab States. Indeed, it is more than a coincidence that the new administration is now returning its Secretary of State from the Middle East after having conferred with the parties, to what is really a war; no peace has yet been achieved.

We feel that in their present form the antiboycott bills do represent a confrontation, which is unnecessary, particularly under the current circumstances and the morning Washington Post has an article to the effect that this issue was raised with Secretary Vance, I believe in Saudi Arabia.

I want to make it clear we do not appear here in support of the boycott. Indeed, American business would like nothing better than to get rid of it, but we are convinced, as I think you are, that it will be necessary for a peace settlement to be arrived at before the Arabs rescind the boycott entirely.

I would like to say two affirmative things, before suggesting some negative ones. First, of all, we support the national security provisions of title I of S. 69 and S. 92.

On a related matter, but not as to a bill which is before this committee, we commend Senator Stevenson for introducing S. 710. I am very familiar with the misuse by Government of the Trading-With-the-Enemy Act, which, during President Johnson's administration, was used by a large strain of legal reasoning, to justify foreign direct investment controls.

Now, to the bills before the subcommittee. I think there is a distinct possibility that the administration may give serious consideration to going another route with the approval, of course, of the Congress, as distinguished from the bills before the committee. That would involve stepping up the pressure on companies to negotiate boycott-related clauses out of deals with the Arab countries, where this can be done, and we understand it has been done in some cases. Then back that up with powerful negotiations and diplomacy, as distinguished from what I will describe as confrontation bills.

With due respect to the subcommittee's opening remarks, there are certain comments that were made which I won't take the time within the 5-minute period to address, that I believe reflect some misunder-

standings. We published not too long ago a piece called "Myths and Unrealities of the Arab Boycott of Israel." Those myths should really be dealt with before any conclusions are reached, in our judgment. We ask that this MAPI publication be admitted for the record.

Senator STEVENSON. It shall be part of the record (see p. 187).

Mr. STEWART. Now, trying to stay within the 5-minute period, I want to tick off a few things that are in our written statement. First, the United States already has taken far more action against foreign boycotts that any other nation. That is a fact.

At the same time, to some degree we are being hypocritical as a nation, if we conclude that the Arab boycott is bad, but that the boycotts or similar actions, which we employ as a country are all right. I won't go into the details of what has been done thus far, but we will furnish it for the record, in the interest of time. We share the suggestion that the Arabs do have options with regard to purchase of equipment, which they want. Based on what we are told by foreign companies which do supply the Arabs they would choose that route, at least in some cases.

The prohibitions regarding certifications, and compliance with them, are very difficult. They place a tremendous burden on American industry, because about all that a company that is asked to sign a certification can say is really speculation on certain facts which are not available to the company. I am sure the gentleman on the committee are aware that the boycott list is not a public document and it is what has been called in terms of our Constitution, it is a moving document. It is moved around by Arab nations who attempt to use it, in connection with relations with U.S. companies. We see really very little to be gained by the passage of this legislation, and we see much to be lost in terms of the present state of negotiations. One bill would prohibit negative certifications.

I used to have a law professor, who used the term, "a distinction without a difference."

I really think a negative versus a positive certification is a "distinction," although you can make a technical distinction. The refusal-to-deal provisions are very difficult to observe for some of the reasons that I have mentioned, and they may be very difficult to enforce.

The word "intent" was referred to, once again, difficult to prove, and also difficult to comply with.

We believe, therefore, in conclusion that it would be detrimental for U.S. interests to attempt to legislate against the Arab boycott beyond the present law and measures we have endorsed. To the extent there are other problems with adverse effect on the United States, we believe those matters should be handled through diplomacy. At least the new administration should be given an opportunity to do so.

[Complete statement of Mr. Stewart follows:]

Statement of the
Machinery and Allied Products Institute
to the
Subcommittee on International Finance
of the
Senate Committee on Banking, Housing and Urban Affairs
on
S. 69 and S. 92, Bills To Amend the
Export Administration Act
February 21, 1977

Introduction

I appear today in behalf of the Machinery and Allied Products Institute (MAPI) which is the national research organization and spokesman for the capital goods and allied equipment manufacturers of the United States. Our testimony deals with the antiboycott provisions of S. 69 and S. 92.

Our membership has a vast stake in foreign trade, including substantial trade with the growing markets in the Middle East. In 1975, U.S. exports of machinery and related equipment totaled $28.5 billion. Of this total, $1.5 billion were exports to Arab League markets and $300 million were exports to Israel.

The U.S. National Interest

We believe that enactment of strong antiboycott legislation, such as that contained in S. 69 and S. 92 (referred to hereafter as "the bills"), would not be in the U.S. national interest in the coming months and would be particularly detrimental in terms of the long-range interests of the United States, Israel, and the Arab boycotting nations. The United States now has a new Administration, including a new Secretary of State, and political conditions in the Middle East are, in the opinion of most knowledgeable people in government and outside, better than they have been for many years for the beginning of meaningful negotiations toward a permanent peace settlement. Passage of strong antiboycott legislation, in addition to that already on the statute books, at this time undoubtedly would be interpreted by the Arabs as a hostile gesture and could jeopardize the key role of the United States as a mediator in the forthcoming negotiations.

Apart from this major foreign policy consideration, we believe the bills' prohibitions, which would forbid U.S. companies and their foreign affiliates from providing most forms of boycott-related documentation, pose great risks in terms of possible substantial diversion of Arab business to other industrial countries and diminution of the important economic role the United States now enjoys in the Middle East. Further, the benefits to be gained by enacting such legislation are not clear. Indeed, it

appears to us that the bills' provisions could well result in more difficulties for U.S. persons and firms in terms of doing business in the Middle East than exist at present.

Before setting forth our objections to the measures, we want to make clear that the Institute's membership, and U.S. business generally, would prefer that the boycott of Israel be rescinded. Implementation of the boycott runs counter to the thrust of the U.S. Government and other leading trading nations to remove restrictive practices which distort trade and investment flows. The boycott also adds to the complexity and paperwork associated with business abroad and, as a result of the discussion in recent months of company "compliance" with the Arab boycott based on a misunderstanding of Department of Commerce reports, has resulted in embarrassment for some companies and concern that they might be the subject of domestic economic retaliation as a result of such "compliance." However, in the opinion of most businesses and other observers of the Middle East, the boycott will not be withdrawn until there is a permanent peace settlement in the area.

Some General Observations

In its deliberations concerning additional antiboycott legislation, we believe the Congress should consider the following:

1. Just a few months ago the Congress, in an unprecedented addition to the Internal Revenue Code, enacted antiboycott amendments to the Tax Reform Act. Those extremely complex provisions require that specified tax benefits be denied to U.S. taxpayers who agree, as a condition of doing business in an Arab boycotting country, to refrain from:

   -- Doing business with or in a boycotted country or with the government, companies, or nationals of that country;

   -- Doing business with any U.S. person engaged in trade in a country which is the object of the boycott;

   -- Doing business with any company whose ownership or management includes individuals of a particular nationality, race, or religion or to remove (or refrain from selecting) corporate directors who are individuals of a particular nationality, race, or religion;

   -- Employing individuals of a particular nationality, race, or religion.

In addition, tax benefits would be lost if the taxpayer agrees, as a condition of the sale of a product to a boycotted country, to refrain from shipping or insuring that product on a carrier owned, leased or operated by a person who does not participate in or cooperate with an international boycott (i.e., a carrier which has been blacklisted for violating boycott rules).

2. The U.S. Government has taken action in a number of areas to assure that the Arab boycott does not discriminate against U.S. citizens on the basis of race, religion, or national origin. Administrative actions include: (a) amendments to the Export Administration Regulations which prohibit U.S. exporters and related service organizations from taking any action in response to a boycott-related request when that request discriminates, or has the effect of discriminating, against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin; (b) an amendment to the Secretary of Labor's March 10, 1975 memorandum on the obligations of federal contractors and subcontractors with respect to employment abroad; and (c) statements from several federal regulatory agencies (including the Federal Reserve Board, the Comptroller of the Currency, the Securities and Exchange Commission, and the Federal Home Loan Board) to the institutions under their jurisdictions against discriminatory practices. New laws include: (a) anti-discrimination provisions of the International Security Assistance and Arms Export Control Act governing employment practices in connection with the furnishing of military assistance and the Foreign Military Sales (FMS) program; and (b) the Equal Credit Opportunity Act which prohibits any creditor from discriminating against any credit applicant on the basis of race, color, religion, national origin, sex, marital status, or age.

3. Still other U.S. Government actions directed against the Arab boycott include: (a) the cessation by the Department of Commerce of the distribution of trade opportunities known to contain boycott-related conditions; (b) public disclosure of reports (except for confidential commercial information) submitted by companies to the Department of Commerce concerning boycott-related requests which they have received; (c) withholding of Export-Import Bank and Overseas Private Investment Corporation (OPIC) support for transactions which include boycott-related conditions; and (d) a civil antitrust suit against Bechtel Corporation and four of its subsidiaries for activities related to the Arab boycott.

4. Since no foreign country has taken any action which would have significant adverse impact on implementation of the boycott, products representing comparable technology to U.S. products or systems are available to the Arab boycotting nations from other countries, including communist countries./1

5. The Arabs are, of course, aware that the United States exercises controls--in short, boycotts--directly or indirectly against several communist and other countries. Although there are important differences between the restrictive trade practices employed by the Arabs and those employed by the United States in terms of both targets and techniques, neither enjoys any special legitimacy under international law. The U.S. indirect controls, particularly those exercised by the Treasury under the Trading With the Enemy Act, have important extraterritorial aspects. Whatever these restrictions exercised extraterritorially by the United States are called (extended primary boycotts, secondary boycotts, or other), their manner of implementation is so similar to that of the Arab boycott that they would be effectively proscribed if foreign countries adopted antiboycott legislation along the lines of that proposed by S. 69 and S. 92.

6. Although it has been stated in the Congress and elsewhere that many U.S. businesses are in favor of strong antiboycott legislation--indeed that they seek such legislation in order to be protected from the boycott--we are not aware of significant business support for additional antiboycott legislation, even among those companies blacklisted. Because of the present uneven enforcement of certain aspects of the boycott, we understand that some blacklisted companies are doing substantial business in a few of the Arab countries. In other cases, blacklisted companies which might be concerned that they are losing business in Arab boycotting countries probably do not believe that strong U.S. antiboycott legislation will improve their prospects in those countries. While blacklisted and other companies might be reluctant to adopt a public position in favor of strong antiboycott legislation because of concern over future prospects for sales in the Arab boycotting nations, it is our understanding that the Executive Branch has not received significant informal business support for such measures.

1/ This point is developed more fully in Attachment A, "Availability to Arabs of Arms and Other Products From Other Industrial Nations."

7. The United States experienced a merchandise trade deficit of $9.6 billion in 1976 and all the forecasts we have seen indicate that it probably will be much higher this year. An estimate by a leading New York bank is that the deficit may be in the $15-$18 billion range. While U.S. exports to the Arab boycotting nations still do not constitute a major portion of U.S. exports, they are substantial. Perhaps more importantly, they have provided an important lift to total U.S. exports of goods and services during the last two to three years when most of our major overseas markets have been in a recession. As we noted at the outset, we believe the bills' prohibitions could adversely affect in a substantial way U.S. participation in this large and growing market.

8. In the opinion of most observers of the Middle East, the boycott will not be withdrawn until there is a permanent peace settlement in the area. As noted earlier, it also is the opinion of most observers, including the Executive Branch of the United States Government, that for a number of reasons 1977 offers the best opportunity for the negotiation of a peace settlement that has existed for many years. The United States is expected to play a major role as mediator in those negotiations. Adoption of strong antiboycott legislation, which the Arab nations undoubtedly would interpret as an anti-Arab action, could jeopardize the U.S. role in those negotiations.

As the above points indicate, the United States already has taken greater action than any other country to oppose the Arab boycott. From the viewpoint of the Arab nations (and probably others) the distinctions between the Arab boycott and U.S. boycotts and restrictive trade practices are not significant. Enactment of strong antiboycott legislation by the United States could not only adversely affect U.S. exports very substantially but also could compromise the U.S. role as an "honest broker" in the coming negotiations toward a permanent peace settlement in the region.

Impact of the Bills in Terms of the Arab Boycott of Israel

Impact of the Prohibitions on U.S. Exporters /1

According to data compiled by the Department of Commerce during the period April-September 1976, the most recent period for which data are

1/ The bills' prohibitions are described briefly in Attachment B, "The Antiboycott Prohibitions of S. 69 and S. 92 in Brief."

available, the most numerous boycott-related requests received by U.S. exporters /1 were the following:

Restrictive Trade Requests	Number Received
Carrier or airline is not blacklisted	16,966
Insurance company is not blacklisted	2,254
Goods to be exported are not of Israeli origin and do not contain materials of Israeli origin	29,828
Supplier, vendor, manufacturer or beneficiary is not blacklisted nor sister or mother company of a firm that is blacklisted	5,866
Other	2,776
TOTAL	57,690

With respect to the above boycott-related requests received by U.S. exporters from Arab boycotting nations, it appears to us that the bills:

1. Would prohibit certification by U.S. firms that (a) a blacklisted carrier will not be used for a shipment to an Arab boycotting country and (b) a blacklisted marine insurer has not been engaged to insure the shipment.

   If such a prohibition were enacted, the principal effect likely would be orders lost by U.S. firms who would be prohibited by law from meeting Arab documentation requirements. At the same time, no benefits would be gained by the United States since a blacklisted ship will not be permitted to call at an Arab port and the owner would not offer the ship for such a voyage. Presumably the same situation would be true with respect to marine insurers.

   To the extent that the Arab boycotting nations should choose to continue purchases from U.S. exporters, they could select both the carrier and

1/ In addition to the 57,690 boycott-related requests reported by exporters, other export-related firms (banks, carriers, etc.) submitted an additional 60,937 reports. Thus, during the April-September 1976 period, the Department of Commerce received over 118,000 reports.

the insurer and they might select foreign firms rather than blacklisted or even non-blacklisted firms. We understand that the experience of the marine insurance industry in New York and Maryland, which have enacted antiboycott laws, has been that those laws have resulted in the transfer of boycott-related insurance requests to foreign-based insurance firms as well as to firms in other states.

Thus it would appear that this prohibition poses substantial risks in terms of loss of business for both carriers and marine insurers, as well as exporters.

2. Would prohibit certifications that goods or components thereof were not produced by blacklisted vendors.

Arab requests for certification that the exporter's vendors are not blacklisted are, in our view, the only ones which, in any meaningful way, have the potential for disrupting established exporter-vendor relationships. It is our understanding that Arab enforcement of the requirement that products purchased not include materials from blacklisted vendors generally has been lax. Since the blacklist is not a public document and only a few U.S. firms are widely known to be blacklisted, U.S. companies generally have been able to attest that, to the best of their knowledge, materials were not purchased from blacklisted vendors. We are concerned that a U.S. legislative challenge to the boycott could result in more strict enforcement. Until the boycott is withdrawn, it seem unlikely that the Arab boycotting nations would--except in cases of extreme need--engage in transactions where they are aware that blacklisted firms are involved. In those cases where the Arab nations felt that they needed to purchase U.S. products and there were two or more potential suppliers, they could ask potential suppliers to list their principal vendors before placing the order.

3. Would prohibit U.S. firms from answering questionnaires and other inquiries from Arab boycotting countries concerning their business relationships with Israel.

It is our understanding that this type of inquiry may be sent to a firm by an Arab government or company (a) prior to establishing business relationships with

that firm or (b) in connection with an investigation of an allegation that the firm is engaging in activities in Israel which could result in its being blacklisted.

With respect to "a," a U.S. prohibition against furnishing information could prevent U.S. firms which, for good commercial reasons, do not engage in boycott-proscribed activities in Israel (which is the case for the overwhelming majority of U.S. companies) from qualifying for business with the Arab boycotting nations. As to "b" above, the failure of a company to respond to a questionnaire is, under boycott rules, an offense that can result in blacklisting of the company. Thus, a prohibition on responses to such inquiries could prevent a company from using the only means available to defend itself against unfounded allegations--perhaps by a competitor--that it has engaged in proscribed activities in Israel.

4. Probably would prohibit certifications that the products to be exported are not of Israeli origin and do not contain materials of Israeli origin./1

As we understand it, the import regulations of a number of Arab countries forbid the importation of products of Israeli origin or products containing materials of Israeli origin and they require certifications to this effect. While this type of "negative" certification is unusual, it is not unusual in international trade for importers in various countries to request--and for exporters to provide--information concerning the origin of goods for the purpose of duty assessments in particular. So far as we know, little or no use is made of Israeli components or materials in U.S. manufacturing but, from the standpoint of the Arabs in their worldwide implementation of the boycott, their prohibitions might have meaning with respect to prospective purchases from other countries which might be importing such items from Israel. We cannot see that the prohibition proposed in S. 92 could change anything even if the Arabs were willing to accept a positive certification of origin (i.e., a certification that the goods are of U.S. and/or other [including Israeli] origin) in lieu of a negative certification. In our view, it is important that the exporter know the importer's rules so that the products are accepted when

1/ As we read the bills, S. 69 might prohibit such certifications and S. 92 presumably would prohibit them.

they reach the Arab country. Admittedly the Arabs could accomplish this purpose in other ways--a notice to the exporter, for example, instead of a request for a negative certification--but the result would be the same--products of Israeli origin would not be admitted.

Impact of Extending the Prohibitions to U.S.-Controlled Firms Abroad

The extension of the prohibitions and reporting requirements to foreign firms "controlled" by U.S. firms would:

1. Almost certainly lead to conflicts with foreign governments (and foreign shareholders and/or co-owners) as a result of a further intrusion of U.S. law into matters affecting local business and foreign policy. Since no other major foreign country has taken any significant action against the boycott, such a U.S. law undoubtedly would be challenged by foreign governments when its prohibitions prevented local U.S.-controlled firms from accepting orders with substantial economic and/or foreign policy implications for the host country;

2. Increase the already complex problems of company compliance with U.S. antiboycott laws and regulations (including, among others, the antiboycott amendments to the Tax Reform Act which extend to U.S. affiliates abroad); and

3. Increase substantially the reporting burden for U.S. firms (and their foreign affiliates).

Our Views Concerning the Bills

We repeat our conviction that the proposed legislation is not in the U.S. national interest. As we indicated at the outset and believe that our discussion has documented, most of the prohibitions in the bills probably would result in more adverse effects on U.S. businesses than exist at present.

Anti-Discrimination Provisions

The reports concerning receipt of boycott-related requests submitted by companies to the Department of Commerce show little evidence of racial or religious motivation in implementation of the boycott and the United States has taken a number of actions to ensure that the boycott does not result in discrimination on the basis of race, religion, nationality, etc. However, it may be desirable to put the anti-discrimination provisions

of the Export Administration Regulations on a firmer statutory basis. Thus we endorse the two prohibitions in S. 69 and S. 92 which relate to discrimintion against U.S. persons on the basis of race, religion, nationality, or national origin.

"Refusal To Deal" Provisions

We believe the prohibitions with respect to refraining from doing business (1) with or in a boycotted country and (2) with other persons, if retained at all, should be modified. With respect to the former, the boycott rules do not forbid companies to engage in normal export trade with Israel. Further, unless the Arab boycotting nations rescind the boycott, enactment of this legislation will not dissuade most companies interested in sales to Arab markets from refraining from investing or engaging in other boycott-proscribed activities in Israel. With respect to "other persons," extensive hearings held in the Congress over the past two years have produced scant evidence that the boycott rules are having any significant adverse antitrust or other impact on U.S. manufacturer-vendor relationships. As drafted, these "refusal to deal" prohibitions in the bills could result in numerous allegations which would be difficult to prove and, because of the possibility of such allegations, might deter some companies from accepting business with Arab boycotting nations. In addition, if such prohibitions were enacted, as former Secretary of the Treasury Simon has pointed out, some companies might make general use of non-blacklisted firms (vendors, insurers, carriers, etc.) in connection with all their overseas operations in order to avoid allegations of refusals to deal when a transaction with an Arab boycotting country is involved. Thus, these "refusal to deal" provisions would not only be difficult, if not impossible, to enforce but also could result in further damage to blacklisted firms./1 If prohibitions with respect to refraining from doing business with a boycotted country and with other persons are retained, to avoid the difficulties just described they should be narrowed so that they apply only to agreements to refrain from such activities.

Prohibitions Against Furnishing Information

The Export Administration Regulations now prevent U.S. persons from furnishing information in response to a boycott-related request when that request discriminates, or has the effect of discriminating, against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin.

As our statement has explained, further restrictions on furnishing information would result in (1) preventing firms which, for purely commercial reasons, have no business relationships with Israel from qualifying for business with Arab boycotting nations and (2) making it more

1/ The difficulties of "refusal to deal" provisions are discussed in more detail in Attachment C, "The Problems With Prohibiting All 'Compliance' With Foreign Boycotts and With 'Refusal to Deal' Provisions."

difficult for firms to defend themselves against unfounded allegations that they have engaged in activities in Israel which could result in their being blacklisted.

Matters Which Should Be Included in Amendments to the Export Administration Act

Amendments to the Export Administration Act should include:

-- Provisions for the federal preemption of state laws directed against foreign boycotts. Over the past year, several states--including the important industrial states of California, Illinois, New York, and Ohio--have enacted laws directed against the Arab boycott of Israel. The provisions of these laws vary greatly and in some cases go well beyond federal law and regulations in preventing "compliance" with the Arab boycott. If the American response to the boycott is not to result in geographic discrimination among U.S. businesses, amendments to the Export Administration Act must clearly preempt state law in this area. The existence of these varying state laws also adds to the already heavy legal burden of compliance with federal tax regulations and the Export Administration Regulations.

-- Statutory guidance which would reduce substantially present reporting requirements under the Export Administration Act. During the six-month period, April-September 1976, the Department of Commerce received over 118,000 reports, an annual rate of almost 240,000, and has committed substantial resources to administration of the reporting system. The reporting system is generating paperwork for industry and government out of all proportion to its benefits to government. In our view the reporting requirements should include only boycott-related requests which involve (1) possible discrimination against a U.S. person on the basis of race, religion, nationality, etc., (2) agreements by companies to refrain from doing business with or in a boycotted country, and (3) agreements by exporters to the effect that blacklisted suppliers will not be used.

Conclusion

We believe it would be detrimental for U.S. interests to attempt to legislate against the Arab boycott beyond present law and measures we

have endorsed. To the extent that there are other aspects of the boycott which the Congress believes are having realistically avoidable adverse effects on the United States, in our view those matters should be handled through diplomacy. The United States will have substantial equity in its role as mediator in Middle East negotiations and it should be possible to work out modifications of certain aspects of boycott implementation which would not impair the Arabs' primary objective of boycotting Israel.

In addressing the Arab boycott issues the Congress must, in our view, give more searching examination than has been given to date concerning (1) those features of the Arab boycott which might have significant adverse impact in the United States and (2) the limits on the United States ability to effectively change boycott practices. Much of the debate about the boycott appears to involve form rather than substance, and if some of these questions are indeed important to the United States perhaps changes could be negotiated with respect to boycott implementation to accommodate the objections. For example, to enforce their prohibition against blacklisted vessels calling at Arab ports, the Arabs do not need to receive a certification that a blacklisted carrier will not be engaged for a particular transaction. Whether a certification is requested or not, one may assume that the cargo will not be placed on a blacklisted vessel because the Arab boycotting nations' prohibition against blacklisted vessels is well known. Similarly, a certification that the marine insurer is not blacklisted also would not be needed, but one may presume the Arabs would refuse to have cargos insured by blacklisted marine insurers.

We hope that these hearings and others to be held in this session of Congress will help to "clear the air" with respect to participation by U.S. businesses in Middle East trade. We are concerned that, for reasons set forth below, some companies, particularly smaller companies, may be deterred from participating in Arab markets:

-- In December 1975 the Department of Commerce stopped distributing within the American business community trade opportunities known to contain boycott-related conditions. While it can be argued on theoretical grounds that it is not appropriate for the U.S. Government to disseminate such documents, in our view the most likely practical effect is to deny information concerning trade opportunities in Arab boycotting countries to smaller U.S. companies, the companies least likely to "comply" with the Arab boycott rules against investment, etc., in Israel because they would not have the wherewithal for such activities in the first place. Large U.S. and foreign companies are more likely to have direct sales representation in the Arab states or other means to learn of the trade opportunities.

-- There is widespread public misunderstanding of the meaning of the company reports concerning receipt of boycott-related requests which are disclosed by the Department of Commerce. It appears to be widely believed, erroneously, that all reporting companies have "complied" with the boycott in the sense of taking some affirmative action detrimental to Israel or other U.S. companies./1 There also have been suits between private parties on boycott-related issues and numerous shareholder resolutions which involve boycott-related matters have been offered. While it is certainly the right of U.S. citizens to oppose trade with any foreign country or group of countries, these actions suggest that companies engaging in trade with Arab boycotting nations may encounter unusual difficulties in addition to those posed by the U.S. Government.

-- A plethora of complex regulations have been issued under the Export Administration Act and the Tax Reform Act, the interpretation of which is beyond the internal resources of many companies.

-- Extensive and overlapping reporting requirements under both the Export Administration Act and the antiboycott provisions of the Tax Reform Act pose additional burdens for companies doing business in Arab boycotting countries.

* * *

We greatly appreciate the opportunity to appear before this distinguished Subcommittee and offer our services if we can be of further help.

1/ See Attachment D, "'Compliance' With Boycott-Related Requests."

Attachment A

Availability to Arabs of Arms and Other Products From Other Major Trading Nations

During House consideration of antiboycott amendments to the Export Administration Act, remarks were made in the course of both committee consideration of the amendments and during floor debate which implied that other countries, particularly in Europe, were taking more forceful action than the United States to oppose implementation in those countries of the Arab boycott against Israel. Proponents of strong antiboycott legislation also argue that the Arabs are so dependent upon (and prefer) U.S. arms, industrial products, and technology that such legislation would be unlikely to have a significant adverse effect either on U.S. business with the Middle East or on U.S. foreign policy.

Action being taken by other countries, particularly the major trading nations, is of course an important factor to be considered in drafting U.S. legislation. The Ford Executive Branch and private observers have emphasized that forceful antiboycott measures by the United States probably would have little or no effect on the boycott but could--and probably would--result in substantial diversion of Arab business to other industrial countries. The Executive Branch also has emphasized that such a "confrontational" approach could have adverse effects not only on our efforts to broaden commercial ties with the Arab states, but also on U.S. efforts to assist in arranging a permanent peace in the Middle East.

No one can estimate with any certainty what the effects of strong antiboycott legislation would be. While some of the Arab states may prefer to purchase military goods from the free world, they could purchase arms from noncommunist nations other than the United States and, if necessary, from communist countries. As for industrial products and technology, while the Arabs may prefer in many cases to purchase from the United States, the market is highly competitive and there are very few lines where comparable technology is not available from abroad.

One can say with a good deal of certainty that no major foreign country has taken any action which would have significant adverse impact on the implementation of the boycott. Neither the Department of State nor the Department of Commerce is aware of such actions. Further, U.S. companies which have manufacturing and sales operations in numerous foreign countries have reported that they are not aware of any significant antiboycott measures imposed by those countries.

The matter of foreign actions against the boycott and the "dependence" of Arab countries on U.S. products and technology have been addressed by senior U.S. Government officials in recent months and excerpts from their statements are reproduced below. The Saudi Arabian Foreign Minister also recently addressed this "dependence" question and he too is quoted below.

Comments of U.S. Government Officials

During testimony last June before the House Committee on International Relations, senior U.S. Government officials made the following comments concerning antiboycott action by other countries and the dependence of Arab states on the United States./1

-- Secretary of the Treasury William E. Simon, June 8, 1976.

> The argument is made that the Arab world when faced with such a choice [to eliminate the boycott entirely, irrespective of a settlement in the Middle East, or cease doing business with American firms] will recognize the importance of continued access to U.S. goods and services and therefore eliminate what they consider one of their principal weapons in the political struggle against the State of Israel. Unfortunately, this argument fails to reflect several basic facts.
>
> The U.S. alone among industrial countries has a clearly established policy and program of opposition to foreign boycotts of friendly countries, including the boycott of Israel. [Emphasis supplied.] Other countries already supply a full 80 percent of the goods and services imported by the Arab world. There is no evidence that these nations are prepared to lose that $50 billion a year market or to jeopardize their stake in the rapidly expanding economies of the Arab nations. Further, there is precious little that the U.S. presently supplies to Arab nations that is not available from sources in other countries and they are eager to take our place. The major Arab states have the funds and the will to incur any costs such a switch might entail. They see

1/ Since the testimony cited here, the Canadian Government has adopted a policy of withholding government support in connection with boycott-related requests which would require a Canadian firm to: (1) engage in discrimination based on the race, national or ethnic origin or religion of any Canadian or other individual; (2) refuse to purchase from or sell to any other Canadian firm; (3) refuse to sell Canadian goods to any country; or (4) refrain from purchases from any country. Canadian firms may agree to such provisions but, when they do so, they may not avail themselves of Canadian Government support, such as assistance with respect to contact with foreign officials, market information and Canadian government financing. See Statement on Motions by the Secretary of State for External Affairs on Boycott Policy, House of Commons, October 21, 1976.

that the U.S. has frequently engaged in economic boycotts for political purposes, for example in Cuba, Rhodesia, North Korea, and Vietnam, so they cannot accept the argument that they are not entitled to do the same.

Mr. Chairman, I believe that we must face an essential and widely recognized fact. The Arab boycott has its roots in the broad Israeli-Arab conflict and will best be resolved by dealing with the underlying conditions of that conflict./1

-- Assistant Secretary of State Joseph A. Greenwald, June 8, 1976.

. . . We are the only country (other than Israel) to take a strong position in opposing the boycott of Israel. . . ./2

Comments of Suadi Arabian Foreign Minister

In a recent address, Prince Saud Al-Faisal, Minister of Foreign Affairs, Kingdom of Saudi Arabia, made the following pertinent comments:

In the concerted assault upon the Arab boycott in the United States, one of the aims is to confuse the issue. The second aim is to create a complacent attitude in business and economic circles in this country by propagating various simplistic views. The most common is the assertion that the Arab countries cannot do without American know-how and products.

Such an assumption is erroneous and has dangerous consequences. The truth of the matter is, and this can be verified by any visitor to the Arab world, competition for Arab business is truly fierce.

. . . The Arabs cannot and will not forego the boycott because it is essential to their security; and it is of the upmost importance that this fact be

1/ See statement of William E. Simon, Secretary of the Treasury, Extension of the Export Administration Act of 1969: Hearings Before the Committee on International Relations, House of Representatives, Ninety-Fourth Congress, Second Session, Part 1, June 8, 9, 10, 11, 15 and 16 and August 10 and 24, 1976, pp. 49-50.

2/ See statement of Joseph A. Greenwald, Assistant Secretary of State for Economic and Business Affairs, Ibid, p. 11.

recognized and not ignored or belittled. It is much more difficult to rectify a mistake after it has been made than to prevent it./1

1/ Address by Prince Saud Al-Faisal, Minister of Foreign Affairs, Kingdom of Saudi Arabia, in Houston, Texas, on September 23, 1976.

Attachment B

The Antiboycott Prohibitions of S. 69 and S. 92 in Brief

Stated very briefly, the bills would prohibit any U.S. person from taking the following actions with the intent to comply with or support a foreign boycott against a country which is friendly to the United States and is not the object of any U.S. embargo:

-- Refraining from doing business with a boycotted country, its firms, etc., pursuant to an agreement with, or a request from, a boycotting country.

-- Refraining from doing business with any other person.

-- Discriminating against any U.S. person on the basis of race, religion, nationality or national origin or furnishing information with respect to race, religion, etc.

-- Furnishing information about past, present and future business relationships of any person with a boycotted country or with any person known to be restricted from having any relationship with a boycotting country.

Exceptions to those prohibitions permit:

-- Compliance with the import rules of a boycotting country which (a) prohibit imports from a boycotted country, (b) prohibit shipment of goods on a carrier of the boycotted country, and (c) specify the route of the carrier.

-- Compliance with import requirements of the boycotting country with request to (a) country of origin of the goods (S. 92 would limit this exception to "positive" certifications of origin), (b) the name and route of the carrier, and (c) the name of the supplier.

-- Compliance with destination control requirements of boycotting nations with respect to exports from those nations.

-- Compliance by an individual with the immigration or passport requirements of the boycotting countries.

While the language of the bills refers to "any [foreign] boycott . . . against a country which is friendly to the United States and which is not itself the object of any form of embargo by the United States," the measures are of course aimed principally at the Arab boycott of Israel.

Attachment C

The Problems With Prohibiting All "Compliance" With Foreign Boycotts and With "Refusal To Deal" Provisions

Problems With Prohibiting All "Compliance"

The first temptation for those opposed to implementation of the Arab boycott in the United States is to propose that all "compliance" with the boycott be prohibited; that is, companies should be prohibited from responding to any Arab request for information. However, "compliance" may consist of no more than a certification that the company does not have a plant in Israel, the product does not contain any components of Israeli origin, or the goods to be exported will not be shipped on an Israeli vessel. Since the overwhelming majority of U.S. firms have no commercial reason to have a plant in Israel or to use Israeli components, it is generally recognized that a blanket prohibition against compliance--in addition to its probable adverse effects on U.S.-Arab relations--would serve no useful purpose but could deprive very many U.S. companies who are not in any real sense participating in the Arab boycott of the opportunity to do business in Arab countries.

Moreover, even the more limited approach to "compliance" of prohibiting the furnishing of specified kinds of information poses substantial problems. As drafted, this provision in S. 69 and S. 92 (and H.R. 1561) would prohibit, among other actions, companies from responding to Arab inquiries with respect to such matters as whether they have an investment in Israel. Since failure to respond to such an inquiry (which may have been prompted by a false allegation) is, under boycott rules, an offense that could result in blacklisting, U.S. firms and their foreign affiliates could be blacklisted even though they do not have, for purely commercial reasons, an investment in Israel.

Problems With "Refusal to Deal" Provisions

Determining "intent" and possible undesirable side effects.--As a result of the problems discussed above, proponents of strong antiboycott legislation have concentrated for the most part on provisions which would prohibit U.S. firms from "refusing to deal" with other U.S. firms as a result of the Arab boycott. In brief, these proposals (and S. 69 includes such a provision) would prohibit U.S. firms from refusing to deal with other firms (i.e., blacklisted firms) when the intent is to comply with, further, etc., the Arab boycott against Israel. In practical terms, this presumably would mean that a U.S. firm could not agree, nor could it provide certifications to the effect, that it will not use a blacklisted carrier, insurer or vendor, if the "intent" were to comply with, further,

etc., the Arab boycott. The problems in determining "intent" would of course be formidable. Further, as Secretary of Commerce Richardson stated in testimony on antiboycott legislation last June: "Allegations of prohibited refusals to deal would be many. Actual proof of such refusals would be difficult."/1

In addition, a provision of this kind could have the following undesirable effect. In order to avoid a possible legal challenge by refusing to deal with a blacklisted carrier, marine insurer or vendor, when an order from an Arab country was involved, a company might make general use of non-blacklisted firms in all of its overseas operations. This could occur because of concern that if blacklisted firms were used except for projects in Arab boycotting countries, this could be considered prima facie evidence of a refusal to deal./2 Thus enactment of such a provision could produce results more damaging to blacklisted firms than the existing situation.

Other aspects of "refusal to deal" provisions.--Aside from the enforcement problems, the approach of prohibiting refusals to deal should be examined from another viewpoint. An agreement or a certification by an exporter to the effect that a blacklisted carrier will not be used is hardly meaningful when, as a practical matter: (1) a blacklisted carrier would not be permitted to unload at an Arab port; and (2) the owner of the carrier is not likely to offer the vessel for such a voyage. The situation is only slightly different with respect to nonuse of blacklisted marine insurers and vendors. Presumably, the Arabs, faced with the prospect of dealing with such firms, probably would not enter into the transaction.

If a prohibition against certifications with respect to blacklisted carriers and blacklisted marine insurers were enacted, in those cases where the Arabs wished to obtain U.S. products the prohibition could be avoided by their placing the order on a f.o.b. plant or f.a.s. port basis and by their selecting the carrier and insurer. Since in such an eventuality the Arabs might well select non-U.S. carriers and marine insurers, the interests of both the U.S. transportation and marine insurance industries

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1/ See Statement of Elliott L. Richardson, Extension of the Export Administration Act of 1969: Hearings Before the Committee on International Relations, House of Representatives, Ninety-Fourth Congress, Second Session, Part I, June 8, 9, 10, 11, 15 and 16, and August 10 and 24, 1976, pp. 273-95.

2/ This point, among others, was made by Secretary of the Treasury Simon in testimony last June on proposed antiboycott legislation. See Statement of William E. Simon, Secretary of the Treasury, Extension of the Export Administration Act of 1969, Ibid, pp. 48-53.

could be adversely affected. It is significant that a statement last summer by the American Institute of Marine Underwriters, whose membership includes some 120 marine insurance companies, recommended that the problem of "discriminatory practices" be dealt with "on a federal level preferably through diplomatic channels."/1 This statement was concerned principally with the impact on the marine insurance industry of antiboycott laws enacted in New York and other states. It notes "a substantial shift of boycott-related insurance requests away from insurers in New York, and more recently Maryland, to foreign based insurance concerns or concerns whose interests lie primarily in other jurisdictions." [Emphasis supplied.]/2 Thus, in New York and Maryland where antiboycott laws have been enacted, marine insurance business is being diverted not only to other states but also to foreign countries./3 Certainly this suggests that enactment of a federal antiboycott law along the lines of S. 69 and S. 92 (and H.R. 1561) would not improve the position of U.S. marine insurers but would, when the Arabs choose to continue purchases in the United States, simply result in the transfer of such business to foreign firms.

1/ See "Statement of the American Institute of Marine Underwriters," Extension of the Export Administration Act of 1969, op. cit., p. 658.

2/ The statement also urges that, should diplomatic efforts fail or if Congress should determine that legislation is required, federal legislation should contain language preempting state antiboycott law so that regional or state differences will not result in geographic discrimination among U.S. businessmen.

3/ There also have been allegations that New York City's decline in volume of oceangoing traffic is due in substantial part to the state antiboycott law, but apparently "proof" is not available.

Attachment D

"Compliance" With Boycott-Related Requests

In October 1976 the Department of Commerce began making available to the public copies of reports received from U.S. companies concerning boycott-related requests as defined in the Export Administration Regulations. For a few weeks some newspapers published daily lists of companies which had "complied with the Arab boycott of Israel," and those press reports implied that the companies had actually taken action detrimental to Israel. This misunderstanding arose in part because of a feature of the reporting form which required that reporters indicate whether they "have complied with" or "have not complied with" a boycott-related request for information or action./1

Department of Commerce Release re "Compliance"

Following the decision to make public the reports, on October 19 the Department of Commerce issued a release to deal with questions and confusion which had resulted from the media reports concerning the identification of companies "complying" with the Arab boycott. The release noted that the Department has not and does not intend to publish any "list" of companies which have "complied" with the Arab boycott. It adds in explanation: "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 release also observed that under the Export Administration Act "compliance" includes--and typically involves--furnishing information or certification to an Arab country. For example, an Arab purchaser may request a certification from an American supplier that it has no subsidiary company in Israel. According to the release, "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 release also included the following quotation from a recent congressional report which deals with the qualitative implications of "compliance" in terms of the Department's reporting requirements:

1/ In early January 1977 the Department of Commerce adopted changes in the reporting form which drop use of the word "comply" and permit companies to indicate whether they "have taken" or "have not taken" the action requested.

> 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./1

Other Considerations

In addition to the example cited of a company certifying that it does not have a subsidiary in Israel, equally innocuous for nearly all U.S. firms would be a certificate that the product being shipped does not contain Israeli components. (However, it should be recognized that the Arab requirement for these types of certifications could act as a deterrent--and it undoubtedly is so intended--to future investments in Israel or use of Israeli-origin components.) It might also be asked if a company is in fact supporting the Arab boycott--or injuring another American firm--when it provides a certification that a blacklisted carrier will not be used. Such a carrier would not be permitted to unload in an Arab port in any case and probably would not be offered for such a voyage by its owner. Even compliance with pro forma boycott-related requests as to the non-blacklisted status of vendors--when, as is normally the case, the exporter does not know which companies are blacklisted and does not change its normal sourcing practice--typically would not constitute any affirmative action adversely affecting Israel.

1/ The Arab Boycott and American Business: Report by the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce With Additional and Minority Views, House of Representatives, Ninety-Fourth Congress, Second Session, September 1976, p. 31.

Senator STEVENSON. Mr. Withers.

Mr. WITHERS. Mr. Chairman, I am John Withers, president of Grove International Corp., a construction company doing business throughout the world and for the last 11 years in the Middle East. I am also chairman of the International Construction Committee, Associated General Contractors of America, in whose behalf I appear before you today.

The Associated General Contractors of America is a national trade organization representing approximately 8,200 general contractors. In addition, AGC has associate membership of 20,000 subcontractors, suppliers, and other firms closely related to general contracting. Our member firms perform about 60 percent of the annual construction volume in the United States and roughly a third of the construction volume performed by American contractors overseas.

AGC is firmly opposed to discrimination of any type, based on religious or ethnic factors. In this regard, we are in total agreement with the intent of the antiboycott legislation now being considered. AGC has long advocated equal opportunity with regard to both hiring and training of all employees, regardless of race, color, creed, national origin, or sex. We firmly believe discrimination against individuals or firms on this basis should not be tolerated. However, AGC is opposed to the antiboycott legislation as now proposed, and further on in my statement we will make recommendations regarding this legislation to which we ask that you give serious consideration. AGC believes the legislation currently being considered in both Houses of Congress will have a seriously detrimental effect on the future role of the American businessman in the vast and rapidly developing Middle East market.

This, in turn, will adversely affect the total American economy. It will as well adversely affect the efforts which are presently being made to settle the conflicts between Israel and the Arab nations. Legislation, unless carefully designed, could prevent American construction companies from working abroad in certain countries. This would have a serious affect on the domestic employment situation for U.S. suppliers and construction companies which are now experiencing the highest unemployment rate of any industry in this Nation.

In addition, in our opinion, it will not accomplish its objective: negation of the Arab boycott. And in all probability it will bring on more stringent enforcement of the boycott. The denial to U.S. industry of the opportunity to participate in the oil-rich market area would have no stabilizing benefits to the prospects of peace in the Middle East.

In point of fact, AGC believes that a reduction in the participation of U.S. industry in the Middle East will make an equitable settlement of the Middle East conflict much more difficult. The boycott and its related effects are complex issues, swayed by emotional consideration.

We would not overreact and adopt legislation that is clearly not in the best interest of our Nation, and all of its people.

AGC believes that the boycott problem is not one to be solved by the American businessman, nor by legislation.

It is one that should be approached as a foreign policy problem and resolved through normal diplomatic channels. To this you may

respond, "We have tried that method and failed. And, accordingly, we must now try other means."

In our opinion, more pressure should be brought by you on the State, Commerce, and Treasury Departments to end the Arab boycott by diplomatic means, instead of passing legislation that is so stringent that it may force the American businessman out of the Middle East market.

We strongly endorse the concept of international trade between American businessmen and all countries friendly to the United States. We strongly oppose the use of U.S. industry as an agent in support of any international boycott.

However, we also firmly believe that the sovereign rights of all countries to control the import and export of goods and services into their countries have been and must continue to be acknowledged. In this connection, we would like to make several recommendations for your consideration, if Congress believes that more stringent anti-boycott provisions must be added to the Export Administration Act.

One. We recognize that the two principles, support of the sovereign rights of the country and prohibition of the use of American businessmen as agents in support of international boycotts, are in conflict. Accordingly, we strongly recommend that legislation be designed to achieve, to the maximum extent possible, the moral principles involved without preventing the participation of U.S. industry in the Middle East market. We believe that this can be done.

(2) We recommend that legislation passed at that time exempt from its provisions contracts that were in existence prior to the date on which the legislation becomes effective.

(3) We further recommend that the legislation passed preempt State and other local laws in order to effect a uniform policy throughout the United States.

In conclusion, in the opinion of AGC, the risks involved with the proposed legislation are great. And the benefits to be gained therefrom are minimal. Americans stand to lose much, if not all of their share of the growing Mideast market. Many of the more than 2,000 American firms presently doing business in the Arab world may be forced to cease that business.

Further, it appears that America's role in future Mideast peace talks will be greatly reduced as a result of such legislation, which is clearly confrontational in nature.

In addition, it is not believed that the proposed legislation related to any of the firms presently prohibited from working in the Arab world. The risks are great, the benefits to be earned are uncertain, and I urge you to consider the risks in this definition before taking definite action. Thank you, Mr. Chairman.

[Complete statement follows:]

STATEMENT OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

The Associated General Contractors of America is opposed to anti-boycott legislation now before Congress. So, too, are we opposed to any discrimination based on religious or ethnic factors. AGC has long advocated equal opportunity with regard to both hiring and training of all employees regardless of race, creed, national origin or sex. Discrimination against individuals or firms on this basis should not and will not be tolerated. Concurrently, AGC fully supports all U.S.

laws, Executive Orders and Administrative Regulations which prohibit such discrimination. AGC sincerely feels that the punitive sanctions of the anti-boycott amendments in proposed legislation to extend the Export Administration Act of 1969 are not in the best interests of the United States, the American businessman or Israel.

THE ARAB BOYCOTT

The Arab Boycott is not a boycott based on religious or ethnic background. The Arab League nations, technically still at war with the State of Israel, employ the boycott as an economic measure against the State of Israel. While boycotts are odious, they are permissible under international laws. The United States has frequently made use of such boycotts for maintaining and preserving its own security and interests.

In application, there are three kinds of boycotts: primary, secondary and tertiary. The primary boycott is the refusal of the Arab nations to trade with Israel. It prohibits the entry of Israeli origin products into Arab territory, whether directly or through third parties, and the transshipment of Arab products into Israel. The secondary boycott is the refusal of the Arab nations to do business with firms or individuals who contribute to Israel's economic and military strength by providing capital and technology through investments, joint ventures, licensing agreements, et al. Generally, it does not apply to firms merely selling non-military products to Israel. Finally, the tertiary boycott is the refusal of the Arab nations to permit the importation of goods and services into their countries from companies (both U.S. and foreign) that are deemed to have contributed to the economic and military strength of Israel.

The boycott applies to all countries, not just the U.S. Further, there are U.S. companies owned or controlled by jews presently working in the Arab world, while some Christian and Moslem firms which have actively supported Israel are boycotted. There is no single, official boycott list (or "Blacklist"), since authority to boycott rests with individual sovereign states of the Arab League. "Blacklists" are not made public, but it is generally accepted that there are about 1,500 firms from all over the world on this list (not including subsidiaries or affiliates of primary concerns), and approximately 600 firms, or 40% of the total list, are thought to be American. Most of these are publicly-held companies, many of which are large firms with thousands of shareholders, and not considered as being of a religious or ethnic persuasion.

A question frequently raised is whether or not the boycott impugnes the sovereignty of the U.S. or the rights of its citizens. We believe that it does not. It is illegal for American companies to discriminate on the basis of race or religion and the penalties for civil rights infractions are severe. It should be pointed out, however, that American firms doing work in the Middle East are rarely asked, as a condition of doing business, to discriminate against others (including American firms and individuals) on the basis of religious or ethnic factors.

No American individual or firm is forced to do business with the Arab nations nor forced to cease from doing business with Israel, but in some cases a company cannot do both. The Arab nations do not tell an American businessman that he cannot buy the products or services of any firm for use anywhere else in the world, but they do say that, in some cases, those products or services cannot be used in the Arab world.

In 1976 a Congressional Subcommittee reviewed over 30,000 incidents of boycott compliance and found fewer than 15 incidents involving discrimination based on religious or ethnic factors. These incidents were traced to minor Arab officials who were acting outside of the authority of the Arab Boycott Office. Clearly, it is not the intent of the Arab Boycott of Israel to discriminate against individuals of certain religious or ethnic backgrounds.

THE EFFECTS OF ANTI-BOYCOTT LEGISLATION

Some individuals and groups feel that such legislation will cause the Arab nations to change their boycott demands and that they cannot possibly complete their ambitious development programs ($140 billion over the next five years in Saudi Arabia alone) without U. S. products, services and assistance. Most businessmen who have visited the Middle East and have worked in the Arab world will testify that nothing is further from the truth. There is very little that the Arab nations are presently getting from the U. S. that they cannot get and will not get from Western European, Korean and Japanese firms, and this includes all of their construction needs. This legislation, if enacted, would not open the way for any of the 600 boycotted U. S. firms to participate in the Arab

market. Instead, it could result in foreclosing these markets to many of the thousands of companies now doing business (or those companies having the potential for future business) in the Middle East. The U. S. share of the Mideast construction market is expected in the next five years to be some $30 billion (of a total projected market of $200 billion). This can be extrapolated into some 600,000 to 800,000 jobs in the construction industry and related fields.

The effect of losing the Mideast business on the American economy can best be demonstrated by looking at examples of individual companies. Company A has a total construction volume of Mideast work of $240 million, of which $130–$140 million was processed from the middle of 1974 to the end of 1976 (30 months). A total of 10 jobs in the Middle East are included in these figures. Of the $140 million, nearly $52 million was allocated for the purchases of U. S. goods and services. Specific purchase amounts ranged from $20 million in one state to $1,200 in another. Companies in a total of 37 states received contracts for this one Mideast job. In addition, another $6.5 million represents salaries paid in the U. S. for Saudi-based employees. In other words, 42 percent of the total dollar value of the contract for these 30 months was regenerated in the U. S.

Another general contractor has a single job in Abu Dhabi totaling some $52 million, who then contracted with an Alabama firm for its products totaling $23,350,000. In addition, other materials were purchased in the U. S. in the amount of $91,000. Construction equipment (all American) was purchased in the amount of $1,790,000; small tools and supplies amounted for another $331,000. The contractor himself is employing 27 Americans on the job in this country and 17 at the project site. As is readily observed, many jobs are represented by the purchases made by American firms with contracts in the Middle East. Similar data from other companies are available from the AGC headquarters.

THE AGC POSITION

AGC opposes anti-boycott legislation because we feel that it would have a seriously detrimental effect on the future role of the American businessmen in the vast and rapidly developing Middle East market. This, in turn, would adversely affect the total American economy. Such legislation would result in losses in business and jobs in the U. S. If this legislation is passed by Congress, the U. S. Government will be discriminating against all U. S. firms presently working in the Middle East. No American will benefit from such legislation, nor will Israel benefit. The benefits, instead, will accrue to the Western Europeans, the Koreans, and the Japanese who will absorb the nearly 15 percent of the Middle East market now being handled by American firms. The order of 1000 trucks won't go to Chevrolet—instead it will go to Mercedes Benz or Datsun.

A DILEMMA

Large U. S. construction companies doing work in the Middle East often have an opportunity to have primary choices made by their Middle East customer. For example, a large construction company hiring the services of various subcontractors would probably submit the names of several subcontracting firms to their client's representative with the responsibility for the selection resting with that client representative. Hence the decision to use or not to use the services of any single American firm would be made by the Middle East owner and not the American businessmen.

However the situation is different in the case of a U. S. general contractor who might have a building contract in the Middle East. In the conduct of this job, the contractor will have to procure hundreds of items ranging from materials such as steel and cement to door knobs and windows. Generally the contractor will request bids from suppliers and the lowest qualified bidder will usually get the job. At that point the general contractor will have to get the product as well as all of the other hundreds of items for use in the job approved by the Middle East country's consulate or embassy. In the event that the supplier selected by the general contractor is on that country's blacklist (because of its contribution to the economic and military development of Israel) the general contractor will be told he cannot use that firm's products.

At that point the general contractor has three choices. He can buy that firm's products only to have entrance to the Middle East country denied when the ship arrives. This is clearly a futile approach. He can buy another firm's products, but then be subjected to penalties for "cooperating in an international boycott". Legislation should direct itself to this, the only, effective solution to the dilemma.

The general contractor's only other choice would be to abandon the job thus losing 5 percent of the contract price which represents a performance guarantee, as well as risking having all other asests on the job confiscated by the Mideast country, clearly another futile approach.

American contractors do not want to refuse to use the products or services of other American firms. However, in recognizing the sovereign rights of all countries to control and import and export of goods and services, it appears in the best interest of U.S. economic policy as well as U.S. foreign policy that the Middle East market remain open to American businessmen. This can be done if legislation is designed to achieve to the maximum extent possible the moral principles involved without directly confronting the sovereign rights of other countries. We hope your committee can help us out of this dilemma.

RECOMMENDATIONS TO CONGRESS

AGC strongly endorses the concept of international trade between American businessmen and all countries friendly to the United States. We strongly oppose the use of U.S. industry as an agent in support of any international boycott. However, we also firmly believe the sovereign rights of all countries to control the import and export of goods and services into their own country must be acknowledged.

In this connection we would like to make several recommendations for your consideration if Congress believes that more stringent anti-boycott provisions must be added to the Export Administration Act: (1) We recognize that these two principles—the support of the sovereign rights of a country and prohibition of the use of American businessmen as agents in support of international boycotts are in conflict to some extent and we sincerely request that legislation be designed to achieve, to the maximum extent possible, the moral principles involved without preventing the participation of U.S. industry in the Middle East market. We believe that this can be done. (2) We recommend that legislation passed exempt from its provisions contracts that were in existence prior to the date on which the legislation becomes effective. (3) We further recommend that the legislation passed preempt state and other local laws to effect a uniform policy throughout the United States.

In conclusion, the risks involved with the proposed legislation as it is being interpreted by some are great. Americans stand to lose much, if not all, of their share of the growing Mideast market. Many of the more than 2000 American firms presently doing business in the Arab world will be forced to cease that business. Further, it appears that America's role in future Mideast peace talks will be greatly reduced as a result of such legislation which is clearly confrontational in nature. In addition, it is not expected that the proposed legislation will aid any of the firms presently prohibited from working in the Arab world.

The risks are great. The benefits to be gained are uncertain. AGC urges your careful consideration of the risks and benefits of this legislation before taking definite action.

Senator STEVENSON. Thank you, Mr. Withers.

As I mentioned earlier, this subject has generated as much emotion and pressure as I have seen generated by any issue since I came to the Congress. The House, in righteous indignation last year, passed legislation that would have prevented the importation of oil from the Middle East, except Iranian oil. It is difficult to be reasonable about this subject without appearing unreasonable to both sides.

Now, I agree with at least a part of what almost all of you have said or implied. This situation could provide a loss of trade in the Middle East. In my way of thinking, that loss would not damage the United States if it is to implement the principle of American sovereignty, but if it is a result of American hypocrisy, then we will sustain damage and rightly so.

Mr. Stewart, you referred to myths and realities and said you didn't have time within that 5-minute limit to get into it. I want to give you an opportunity to expand on the myths and realities, and also in connection with the charge of hypocrisy, ask you to elaborate on your point about American boycotts. I am not familiar with any U.S. boycotts that

are similar to the Arab boycott. The Cuban boycott, for example, is not, I believe, a secondary boycott.

Would you be specific on that point?

Mr. STEWART. First, to go to some of the myths, and the use of that term is not intended to demean anyone who doesn't agree with me, I just feel that they are myths.

For example, one myth: The Arab boycott is intended to discriminate against U.S. firms that have Jewish owners, directors, or managers. We see no evidence of that to the extent of our knowledge.

Another myth: The Arab boycott is intended to prevent United States and other foreign firms from "doing business" with Israel. That is absolutely inaccurate. There is nothing to prevent an American firm from exporting to Israel, and many do at the same time the boycott is in effect.

To be entirely fair and candid, the Arabs frown upon U.S. investment in Israel, which position I do not approve of, but as to exporting from the United States to Israel, there is nothing in the boycott that precludes it. To the best of our knowledge, companies doing business with the Arab nations have not been asked to agree to any such prohibition.

There was a problem, but that to some extent has been cleared up by a change in the reporting to the Department of Commerce.

Senator STEVENSON. If I could interrupt at that point, Mr. Stewart. If all this legislation does is prohibit compliance with a boycott on account of race or religion, why should anybody be opposed to it? If all it does is prohibit compliance with a request to boycott the State of Israel, and that is not one of the intentions of the so-called boycott, why should you be opposed to it?

Mr. STEWART. We are not opposed to your statement as far as you have gone, but we are opposed to, for example, the "refusal-to-deal" provision, which I referred to in my judgment as being both wrong and unenforceable.

Senator STEVENSON. You referred earlier to intent. Only one of these bills requires intent to comply. One of them, to become an offense under the bill, requires an intent to comply. The other makes a mere action, however unintentional—a clerk's mistake—an offense against the law.

Mr. STEWART. I am aware of that distinction and I should have recognized it when I referred to it. I was speaking of the unfortunate use of the words "compliance with Arab-related boycott requests." That is being cleared up by a change in the regulations of the Department of Commerce.

I also want to point out that it is a myth to believe that other industrial countries do not have technological ability to deal with the Arabs, to fill the gaps which would be substantial, if companies and project managers, et cetera, in the United States are precluded, as a practical matter from doing business with the Arabs.

It should also be pointed out that the administration of the boycott is uneven, and some companies have been successful in doing what I think Government very properly expects them to do; that is, to try to negotiate out any provisions that are invidious either to the company or the U.S. Government. But that clout does not rest with every company.

I think those are illustrative, at least, of some of the things that I referred to as myths.

Now, you have posed another question.

Mr. PRATT. Maybe I can fill in on the question about the United States——

Senator STEVENSON. Why don't you use the microphone so everyone can hear you.

Mr. PRATT. You asked the question about the U.S. controls that might be similar to the Arab boycott.

Actually, the United States through the Trading with the Enemy Act covers operations overseas by U.S.-controlled affiliates, and prohibits them, in effect, from dealing directly or indirectly with several Communist countries, as well as Rhodesia. There are those controls, in addition to the treatment of Cuba, or of ships that visit Cuba or that will be going to Cuba.

Mr. STEWART. We are not inferring, Mr. Chairman, that we approve necessarily of those boycotts as a matter of principle.

I don't think the U.S. Government walks through this subject with clean hands if you deal with the philosophical and principle aspects of what is equivalent or similar to a boycott.

Senator STEVENSON. I still don't think I have an answer to my question. You suggested earlier the Arab boycott was similar to American boycotts and implied, at least, that this legislation was hypocritical. I am asking for the similarity. I don't see it.

Whether it's Trading With the Enemy Act or under the reexport prohibition that takes place under the Export Administration Act or whether it is Cuba where we don't boycott persons or firms doing business with Cuba, where is the similarity?

Mr. PRATT. The similarity is that controls, whatever they are called, primary or secondary boycotts, this type of controls extended abroad, have extraterritorial effects.

For example, an American-owned or American-controlled company in France and the United Kingdom can have no dealings with Vietnam, Korea, Cuba, without Treasury licenses, and so forth, purchase or sale.

Mr. STEWART. We don't say they are necessarily identical, but they do involve an exercise of sovereignty with extra territorial effects.

Senator STEVENSON. Every nation will resort to any power within it means including the power to boycott, but I am not aware of any comparable attempt by the United States to boycott firms and countries which do business with others. I don't think we are a party to any secondary boycotts.

Mr. STEWART. We would be glad to spell that out with supplemental memorandums. We do feel those controls which the United States exercises, and presumably for good reason, are comparable, at least in terms of principle, to the boycott of the type the Arabs employ. That does not make the Arab boycott right.

We will submit a more detailed comment on that point.

Senator PROXMIRE. As I understand the testimony so far, it appears that you gentlemen don't really have much objection to the bill as I see it. We just seem to be passing each other. You don't seem to disagree with the provisions in the bill which prohibit secondary or tertiary boycott, as far as exporting is concerned, at least.

You say there is some concern on your part with investment actions by the Arab countries to prevent investment in Israel, but as far as exporting goods are concerned, you don't see these is anything—in

the first place, that they are acting against such export in any way; and in the second place, if they are, you think it is perfectly proper for us to pass legislation that will prevent it.

Is that correct? Do all of you agree with it?

Mr. WITHERS. May I make a statement?

Senator PROXMIRE. Yes, sir.

Mr. WITHERS. In respect to the secondary and tertiary boycott, the problem as we see it is, we go out—which is, I believe, our practice of an American construction company—we go out and we get five or six quotations, based on firms that we know, and manufacture the goods that are required. Speaking for my firm, we don't attempt to find out whether any of those firms are on the boycott list or not. We solicit those quotations and normally we decide to buy on the basis of the lowest price.

At that time we must take the commercial invoices, and so forth, to the council and get them certified. The council may say, "No, we will not certify this firm because it's on the blacklist." At that time, if you have passed your legislation which says we cannot refuse to do business with anyone, we are going to have about three alternatives:

One is to, of course, refuse to do business, go back to the company and say, "We are sorry, we can't buy from you. If we do that, it appears we would be in conflict with the bill as you intend to pass it."

Our other alternative would be to buy from the company regardless of the fact they are on the blacklist; and in that event, we can't get it into the country.

Senator PROXMIRE. What you are talking about is a tertiary boycott, and you are indicating that you think it would be wrong or imprudent, at least, for us to pass legislation that would prohibit a tertiary boycott because we would lose business.

Is that right

Mr. WITHERS. I am trying to make the distinction. We will try to abide—try not to abide by the tertiary boycott, but we are in the position if we cannot get goods into that country, then what are we going to do? We can't fulfill the contract we have undertaken to take.

Senator PROXMIRE. That is the purpose of this.

Mr. WITHERS. That may put us out of business.

Senator PROXMIRE. It may or may not.

Mr. WITHERS. I agree, it may or may not.

Senator PROXMIRE. We want to make it economically unacceptable to the Arab countries that they will not pursue this tertiary boycott policy of telling American firms what American firms they can deal or not deal with.

Let me get into something elese. You say a congressional subcommittee reviewed over 30,000 incidents of boycott compliance and found fewer than 15 incidents involving discrimination based on religious or ethnic factors. Frankly, I find that citation grossly misleading. What the report stated was 15 instances of discrimination were found in 4,000 reports reviewed, but the significant numbers of such incidences may not have been reported because of loopholes in the Commerce Department's reporting regulations.

As a matter of fact, in May of 1976, the Commerce Department held a conference with businessmen to discuss ways, and I quote, to escape the reporting mandate contained in the Export Administration Act.

My question is this: I take it from your statement that the number of cases is so diminimished you would, at least, favor the provisions of this bill preventing supplying of any Arab nations that consider——

Mr. WITHERS. Yes. I have a little difficulty, Senator, understanding how a company can have a religion. Now, there are companies on the blacklist, many of them——

Senator PROXMIRE. What's that?

Mr. WITHERS. I say, companies are on the blacklist, but I don't believe they are put on there because of their religion, because I don't believe a company has a religion.

Senator PROXMIRE. Nobody says the company has a religion. We are talking about blacklisting of American firms owned by people who are Jewish Americans or with chief executive officers who are Jewish Americans. If you are saying that isn't the policy, then you should have no objection to the bill.

Mr. WITHERS. I am not saying that. I don't believe that is the primary reason for firms being on the blacklist. We believe the primary purpose is because the Arab governments——

Senator PROXMIRE. I think that's right. I think most of the cases have been because these companies have been dealing with Israel and they want to stop it, but there has been another element, that we think good documentation has been involved in, where American firms run by Jewish Americans or owned by Jewish Americans have been blacklisted.

If you say that is not important or not significant, or that you would support legislation trying to get at that problem, that's fine. We agree we have no problem here, as far as that is concerned.

Mr. STEWART. Before you go on, Senator, may I comment?

Senator PROXMIRE. Yes, sir.

Mr. STEWART. Does the committee have access to the blacklist?

Senator PROXMIRE. The staff tells me we have as complete and comprehensive a list as we can get. It is not always up to date. We have access to it.

Mr. STEWART. May I pursue for a moment, by asking how many are on that list?

Senator PROXMIRE. I understand about 1,500 firms are on that list.

Mr. STEWART. I would be very surprised if there were 1,500. Also, I am sure you are aware that being on the blacklist, in some instances, does not mean it is enforced in every case.

Senator PROXMIRE. This is public; we are happy to make it available to you, to the press, or anybody else. We can give you the list any time you want it.

Mr. STEWART. I think we would like to have it.

Thank you, sir.

Senator PROXMIRE. I would like to ask you, further, Mr. Withers, you cite instances where American firms give up their management prerogatives under terms dictated by the Arabs. You cite substantial volumes of U.S. businesses under the control of the Arabs. You are fearful that the boycott legislation will pass and the Arabs will pull out and take all their business elsewhere.

That is a practical consideration. But I don't think we are as helpless as you made us out to be and I disagree with your notion that we just should ignore the moral elements. The fact that this is interference with American sovereignty and American firms and, in my

view, the importance of providing assistance to a country which we should support, Israel.

Don't you really think our Government should use all its authority to prevent the Arabs from enforcing their attitude toward Israel on us? You don't condone restraints of trade, do you?

Mr. WITHERS. No; I agree with you, Senator. In fact, I think in my oral statement, I recognize that, and then I said, accordingly, we strongly recommend that legislation be designed to achieve, to the maximum extent possible, the moral principles involved without preventing the participation of U.S. industry in the Middle East market.

What I am asking you to do, in simple language, is to achieve our objective, which is a common objective, but don't put us out of business.

Senator PROXMIRE. When you say, "Don't put us out of business," there is no gain without pain, as Senator Stevenson's father used to say, if we are going to make any kind of progress in this world we have to take risks. It isn't painless. I realize we are perhaps losing some commercial advantage, maybe losing some profits, maybe losing some jobs by following legislation which is moral and right, but maybe it is going to be very painful for individual firms.

It seems to me, if this is the right course, and we should not permit other countries to interfere with our own sovereignty and the right of our American firms to deal with whomever they wish, then I think we should make that sacrifice.

Mr. WITHERS. Mr. Proxmire, nobody forces any American firm to go to the Arab countries and do business. You go there and you examine the various conditions of contract, as you would in any country, no matter whether there is a boycott involved or not, and you read those conditions of contract, then determine whether or not you can live with them.

Senator PROXMIRE. Mr. Helland, you indicated that these bills would be interpreted by the Arabs as an affront to their sovereignty. What about the affront to our own sovereignty, both foreign and domestic, which the Arab boycott forces on us? Shouldn't we take a stand on the principles of free trade for our own companies?

Mr. HELLAND. I will speak from my own background and what I have been subjected to by the Arab countries or by other countries. It is common when a buyer wants to fill a contract, and there are various subcontractors involved, assuming a case of a U.S. customer and a U.S. contractor, that the U.S. customer will say "I want you to choose my valves from one of these three manufacturers and not a fourth one." If you go down to buy a suit, you might want to get a Hart Schaffner and Marx but not a Hickey Freeman. I think that is your right.

We have had less specification by Arab customers in that regard than we have by U.S. customers.

There has been a lot of discussion about the blacklist this morning.

I frankly find myself somewhat at a loss to discuss the blacklist, because as far as our experience as a company, and as far as the experience of our member companies that I have heard about, the blacklist of various firms has not been an issue, other that the selection of a carrier——

Senator PROXMIRE. Other than what?

Mr. HELLAND. Selection of a carrier. If you propose to ship goods to an Arab port, you would not under any normal circumstance select a blacklisted carrier, if you knew he would not be allowed to discharge the goods in the port. To the extent that they ask you to certify you are not using a blacklisted carrier, or a carrier of Israeli origin, there has been some interference on sovereignty, but I don't think that is really as much an interference in sovereignty as an exercise in judgment.

Senator PROXMIRE. My time is up. Thank you, Mr. Chairman.

Senator STEVENSON. If the Senator would yield on his time, which is expired, the bill, either bill, prohibits compliance with that aspect of the boycott. You are still free to ship or not to ship on blacklisted carriers, on Israeli carriers, that is.

Mr. HELLAND. The question was about our sovereignty to make decisions. I was saying that that was the only possible imposition of controls over our sovereignty of decisionmaking.

Senator STEVENSON. I am saying that is not an imposition——

Mr. HELLAND. I answered what I interpreted to be the Senator's question.

Senator STEVENSON. Mr. Williams?

Senator WILLIAMS. It is clear, you all come from highly competitive business areas. You are certainly not in a situation where you are presently the sole source in your business activity, in the Middle Eastern countries. Is that right?

You are in an international competition for business.

Mr. STEWART. I would agree with that.

Senator WILLIAMS. All of you. What country—what companies and from what countries, not the name of the companies, but what countries do you have business competition that you find most intense?

Mr. HELLAND. Senator, may I choose to answer that question, then the others may want to comment.

I choose to answer it because there has been a lot of discussion about the clear-cut superiority of the American suppliers of petroleum equipment.

In fact, it has been said in general discussions that they can't do without us.

Senator WILLIAMS. You have already said you are not a sole source. You are in intense competition. From what countries?

Mr. HELLAND. There are many suppliers capable of delivering equipment competitive with U.S. manufacturers of petroleum equipment—Argentine, Australian, Austrian, Brazilian, Canadian, English, French, German, Italian Japanese, and, as stated in my written testimony, Warsaw Pact nations—particularly Romanians and the Soviet Union. These are those from whom the Cameron Iron Works has felt competitive pressure. Across our product lines, we have received more serious competition from the Austrians, Germans, Italians, Japanese, and Romanians.

Senator WILLIAMS. You had three Common Market countries, Germany, France, and Great Britain. How do they handle this boycott?

Mr. HELLAND. I have seen no limitation upon their companies to do business with the Arab nations.

Senator WILLIAMS. Say that again.

Mr. HELLAND. I have not seen personally, or do I know of any restrictions they place upon their suppliers.

Senator WILLIAMS. If you are wrong on that, your case would be weakened, wouldn't it?

If Germany, for example, had a clear policy directed to their nationals against being drawn into an enforcer of this Arab boycott, your case would be weakened, wouldn't it?

Mr. HELLAND. My case would be weakened. I think we would have to analyze the perception of the Arabs toward dealing with the German suppliers, as well as the practical limitations that are put upon the German supplier.

Senator WILLIAMS. It would be equally true if Great Britain had a clear national policy directed to their companies not to be drawn into an enforcer of the Arab boycott. Am I right?

Mr. HELLAND. Yes, sir. To the extent it was enforced to the same degree that any proposed policy of this country would be.

Senator WILLIAMS. To the same degree. Well, Mr. Stewart suggested he would like to submit some supplementary material on another phase of this. I would like the opportunity later, Mr. Chairman, to submit some documentation of some of these countries that I have just mentioned. Two of them that do have a national policy directed to their nationals, companies within their countries against this boycott.

Mr. STEWART. Sir, you would have to check another point as to whether or not any such national policy is enforced by the government involved. To the best of our knowledge, most if not all competitor nations do not come even close to the kind of legislation which is under consideration here.

Senator WILLIAMS. It is my information that Great Britain and Germany do.

Again, we are not going to bring this to the floor tomorrow, so there will be time.

I wanted to ask two other things, if I could, Mr. Chairman.

Mr. HELLAND. Excuse me, Mr. Williams, since we are trying to get to the facts of this situation, my company does have operations in the UK and in Germany. May we also submit what we are told by the governments there?

[The following was received for the record:]

Our French counsel has advised us concerning the application of the Arab boycott provisions by our French company. Other than refusing to sell to a boycotted party, i.e., Israel, or failure to hire due to religion, he has indicated no restrictions on compliance with the boycott as a practical matter. There is some very unclear legislation pending in the French National Assembly that might alter his instructions. It appears, however, that this is worded in such a way that it would not hamper operations.

In the United Kingdom, we are told that there is no existing or proposed legislation which would make it a criminal offense for an English company (including a foreign company doing business in England) to enter into an agreement with another party containing restrictions on the part of the English company against trading with Israeli concerns or other concerns which have been blacklisted by the Arab boycott offices. Under the Race Relations Act of 1976 (which has not yet been brought into force by the Government) there are restrictions against discriminating against an individual but neither of these will apply if the discrimination was in the supply of product for export.

There is no German or Italian law or regulation, nor, to our knowledge, any pending legislation in either of those countries, which aims specifically at the prohibition of cooperation with Arab boycott measures against Israeli companies and/or citizens. There are, however, various general provisions and principles of law which may be applied to cooperation with Arab boycott meas-

ures, although we have no knowledge of any situation in which they have actually been applied to such cooperation. Provisions with potential impact on cooperation with Arab boycott measures are, for example, contained in German and Italian unfair competition laws and in general tort principles and, in the case of Germany, in antitrust law.

There is no existing or pending Belgian or Dutch law or regulation which prohibits cooperation with the Arab boycott or would impose penalties in connection with such cooperation.

While in Belgium there seems to have been little concern about the problem, in the Netherlands there seems to have been strong negative feelings about the practices involved and sentiment that measures should be taken against them. The Dutch government appears to share these views but has not made any official statement about the problem.

Senator WILLIAMS. Certainly. Fine. Do any of you feel the impact of State law against the Arab boycott?

There are five States, I believe, that have to some degree, a State law directed to companies that are exposed to the Arab boycott. Any of you had any experience with State law?

Mr. HELLAND. Not yet.

Mr. STEWART. We are aware of the problem that you indicated, and we believe that the State laws should be preempted.

Senator WILLIAMS. Whatever we do should be preempted. While you, as companies—I believe New York is one, California is coming on——

Mr. STEWART. Excuse me, sir. You are aware, of course, that certain Jewish businessmen who traditionally have been heavy in, I believe, freight forwarding, have moved out of the State of New York or transferred business, because of the New York law.

Senator WILLIAMS. I wasn't familiar with that.

Coming now to this myth and reality, Mr. Stewart, I believe you said that the Arab states will not deal with American firms because they have Jewish owners. The reality is business firms have been told they can't do business because they within their operations, or within associated organizations, did have Jewish owners. You are familiar with the famous situation of Merrill Lynch, underwriting could not include Lazard Freres. Are you familiar with it?

Mr. STEWART. No.

Senator WILLIAMS. Merrill Lynch said, "No Lazard Freres, you can't have them in the underwriting." What did they do? They withdrew from the underwriting.

There is another brokerage house that went the other way on this. This is not myth. It is a reality.

Mr. STEWART. In terms of degree it is a myth.

Senator WILLIAMS. Like the Constitution and like the Arab boycott, you got a moving document. I can't buy that. The hypocrisy, I think the hypocrisy runs the other way.

You, in supplemental views are going to tell us where we, as a nation, are involved in boycotting that comes close to this Arab boycott.

No boycotting of any country undertaken by this Nation gets anywhere into that second and third degree.

Mr. PRATT. We would like to submit that for the record. (see p. 207).

Senator WILLIAMS. I would like to have one example of secondary or tertiary boycotts by Americans.

Mr. PRATT. An American-controlled company in France cannot engage in any financial transaction with Vietnam.

Senator WILLIAMS. Now, American control, certainly as Chairman Stevenson said, this is within our sovereign reach, within the circle of or sovereignty, American controlled.

Mr. PRATT. I'm not sure that the French Government would accept that.

Senator WILLIAMS. We don't accept everything they do, either. We certainly know our sovereignty and our sovereign reach, it's American companies, American companies controlling activities, are within our sovereign region.

I would appreciate the opportunity to review how you feel we, as a nation, are in a hypocritical position. I think we are more hypocritical if we don't do something on this Arab boycott, knowing that it's all about, as we do so properly, and, I can use the word "aggressively," but it's not aggressive. But clearly state our national principles, directed to the denial of human rights in controlled societies within nations of Eastern Europe.

If we address ourselves to those the internal wrongs of the Soviet Union and don't address ourselves against something we can control here in discrimination, I think would be hypocritical.

Mr. STEWART. Our efforts toward achieving our concept of human rights as you referred to may abort. You will recall the incident with Hungary. U.S. officials said a lot of words, but the Russian tanks rolled in. We can't be the policemen of the world in a military sense or in a moral sense.

Senator WILLIAMS. Where we do control activity, we do control the activities of our nationals. When they are involved in a denial of human rights, we can get involved.

Senator STEVENSON. Senator Sarbanes.

Senator SARBANES. Thank you. There is something I want to try to be clear about. You seem on the one hand to argue that the boycott did not really apply that broadly and does not have that much of an economic impact. The list is much smaller than was suggested to us in the figures given by the chairman. Then, when it served your argument, you seemed to move completely to the other side and argue that the economic consequences of this would be enormous, that there is a tremendous amount of trade and jobs and everything else involved.

Now, which is it?

Mr. STEWART. Sir, there isn't any inconsistency between those two propositions because what we are talking about is the status quo as far as our administrative regulations are concerned, which are considerable in this area and also our state of law.

You have to look at what the bill would be, as distinguished from what has already been done. This you do not reach. You do not come around full circle. The figures are interesting; they are contained in our statement, regarding the economic stake that American business has in the Middle East.

Yet, on the other hand, it's interesting to note that I believe roughly 80 percent of the imports by the Arabs come from other than the United States.

Senator SARBANES. Is it your position that the boycott now imposed does reach in a significant way or does not reach in a significant way?

Mr. STEWART. In some situations it reaches. Some it does not.

Senator SARBANES. Taking in some situations it reaches, in some it doesn't, the question I asked was for you to sum that up and tell me whether in your opinion it reaches significantly or does not.

Mr. PRATT. Actually, during the 6-month period, April to September of 1976, the totals on trade affected by boycott-related requests I think was something on the order of $1.7 billion. That's one measure.

Now, what effect it's having now I don't think anybody can say. I think what we are concerned about is what effect this kind of legislation might have.

Senator SARBANES. I understand that's your concern. I want to know whether you regard the boycott as having a significant reach, as far as economic impact on American business is concerned here.

Mr. PRATT. Beyond the figures that have been submitted, I don't think anyone, I don't believe anyone knows.

Mr. STEWART. As of now.

Senator SARBANES. Do you think this legislation is more needed or less needed depending upon the reach of significance?

Mr. STEWART. I don't think it's just a question of need. I think it's a question of wisdom, that it would be unwise for the Congress to act in this way at this juncture. I want to make sure that the committee recognizes that we are not only concerned about the business aspect of this matter.

As citizens, we are genuinely concerned about avoiding—in its Government decision—the passage of legislation which will be considered by the Arabs as a confrontation at a time when we are trying to negotiate a peace settlement.

I don't know what the present administration position is, but the Ford administration all too late, in my judgment, came to the Congress with that conclusion, and it just seems to me that the record ought to be clear, we are not just being selfish businessmen here.

Senator SARBANES. I don't think any questions I have asked you so far, and I'm still trying to get answers to them, has gone down that path.

Mr. STEWART. I agree with that, sir.

Senator SARBANES. I want to try to get an answer to the question as to whether the reach of the boycott is regarded by you as being economically significant.

Mr. STEWART. In a total sense as of now, with some exceptions, I would say no. But, in a total sense in the event this legislation is enacted in its proposed form or with a minor variation, I would say the impact would be very severe.

Senator SARBANES. You can't really judge that.

Let me ask you this: In Mr. Helland's statement in the beginning it says: "To the extent the Arab boycott has the effect of discriminating against U.S. citizens or firms on the grounds of race, color, religion, sex, or national origin we can and should take a hard line. These are fundamental principles we should not compromise.

"On the other hand, to the extent the Arab boycott," you then go on to, in effect, compromise those principles. Let me come back to the first statement, which runs to the question of the tertiary boycott. Have any of your gentlemen made a case for another country being able to impose a tertiary boycott, telling company X, an American company, that it should not do any business with another American

company Y, because it has either directors or management or loaners, certain people have a certain religious faith.

Mr. STEWART. We don't subscribe to that.

Senator SARBANES. Do you support legislation that prohibited company X from doing that under any circumstances?

Mr. STEWART. On the grounds that you stated, yes. But on the other hand, if you will put the businessman's hat on in terms of complying with the refusal to deal provisions in the bills, and ask how you would comply with those, you would find yourself in very, very deep water in a hurry.

There is also a question as to whether they can be enforced.

Senator SARBANES. I take it you agree with that, but.

Then you set out a number of buts, is that correct?

Mr. STEWART. Not on the discrimination point you describe.

Senator SARBANES. Let me ask another question.

Should company X, an American company, be able to refuse to deal with company Y, an American company, because company Y trades with a particular nation, in which other nations are applying the boycott? Should an American company be able to in effect enforce the foreign nations' boycott through its refusal to have economic relationships with another American company?

Mr. PRATT. To start off with the question, companies quite often get a request to provide a certificate that a blacklisted carrier will not be used. This comes up frequently. A blacklisted carrier will not under any circumstances be permitted to visit an Arab port.

The dilemma for the American company is, as we read this legislation, this kind of certification would be prohibited.

Senator SARBANES. The chairman earlier talked about the carriers.

Let's move on from the carriers and talk about companies other than carriers.

Mr. WITHERS. Mr. Sarbanes, I don't think any American company wishes to do business because of any reasons you gave or other reasons attributed to the company being put on the blacklist. And we don't refuse to do business, but what can we do when we can't get that equipment or material into the country?

Senator SARBANES. Then you wouldn't be able to enter into the contract, just like now. The law says you can't do business with the Government if you discriminate against people on racial grounds. There used to be no such requirement like that. No such requirement. Now there is such a requirement. If you do it, you can't get the contract.

Mr. WITHERS. Most of the contracts I know of—there are exceptions—but, at least in my personal experience, require us only to agree to abide by the rules and regulations of the country involved. Somewhere along the line we may try to buy something that is manufactured by a company on the blacklist. Having done that, we have refused the entry of that material into the country.

Now, we are not refusing to do business as an American company with another company but we can't get material or equipment into that country. Now, where are we?

Senator SARBANES. You are implementing the policy of the foreign country that runs counter to our own policies. You are being the instrument of implementation. Isn't that the case?

Mr. STEWART. No, sir.

Mr. WITHERS. No, sir. I don't believe so.

Senator SARBANES. You become the enforcer.

Mr. WITHERS. I am not refusing. I will buy it and put it on the ship, but I can't get it off the ship into the port.

Mr. STEWART. He's not an enforcer. He's doing precisely what you want him to do, which is to deal without discrimination with suppliers. Some blacklisted, most not, sometimes you don't know. In many cases you don't know. What he's saying is, and I share the view, the company that is buying from a supplier is not enforcing the boycott, he's saying——

Senator SARBANES. Are you suggesting no company should buy from suppliers that are on the blacklist? Avoid suppliers on the blacklist? You are not saying that?

Mr. STEWART. No.

Senator SARBANES. Then they are engaged in a selection amongst suppliers which has the effect of implementing boycott, are they not, if they do that?

Mr. STEWART. What the gentleman was saying is that he's not avoiding the suppliers about whom you are concerned. He goes to his normal suppliers, or he may find a new supplier, that supplier may or may not be on the blacklist, he buys the goods, an act of nondiscrimination, but he can't get it into the Arab country if the Arabs challenge it, because the other company is on the blacklist. That's what the gentleman is saying.

He is not in the position of an enforcer.

Senator SARBANES. I repeat my question. Are you telling me there are no American companies that refuse to deal with people that are on the blacklist, and, in effect, apply the blacklist?

Mr. STEWART. For one thing, I don't believe the average U.S. company knows who is on the blacklist. The second point, I'm in no position to say there are no companies that would be considered by Government to be discriminating against certain suppliers.

Senator SARBANES. Do you think a company should be able to do that? Or do you think they should follow the policy which you suggested, namely, not being able to select amongst their suppliers on the basis of whether they are or are not on the blacklist? Do you think that's the policy a company should follow?

Mr. STEWART. I think that's a proper policy.

Senator SARBANES. Then why don't we have this legislation that will make sure that's the case?

My time is up, Mr. Chairman. Thank you.

Senator STEVENSON. Mr. Helland, I believe you said you were losing business to other countries now. I believe you mentioned Germany and some other countries. You said this legislation will cause you to lose a lot more business.

What are you doing now that this legislation would prevent you from doing, that would cost you so much business?

Mr. HELLAND. We are currently complying with U.S. laws and regulations, and we are obtaining business based on price and quality and so forth. The reporting requirements, or some of the proposed wording about some of the things we might not accept——

Senator STEVENSON. What?

Mr. HELLAND. The wording that we might or might not accept under the proposed legislation. We are told by our Arab customers—we had

an instance within the last week, I happened to see a Telex sent by one of our plant managers to one of our salesmen in the Middle East, and I have had requests to quote—that we have to certify a number of things that would be contrary to this legislation——

Senator STEVENSON. What are they?

Mr. HELLAND. That the goods would not be of Israeli origin——

Senator STEVENSON. Let's stop there.

If one of the bills permits the negative statement, does it make much difference?

I think Mr. Stewart indicated earlier it didn't make much difference.

Mr. HELLAND. It would to the Arab countries involved.

Senator STEVENSON. Why can't you require a positive statement that identifies non-Israeli firms?

Mr. HELLAND. They can't. We talked earlier, I think you mentioned this is a highly emotional issue and we are dealing with sovereignty.

I went back and looked at a number of purchase orders we received from Saudi Arabia. There was no language on those purchase orders that had anything to do with boycott legislation.

It has now been reinstated. We are told it has been—excuse me——

Senator STEVENSON. Isn't Saudi Arabia changing its requirements, it doesn't now require this?

Mr. HELLAND. They didn't; but it is now reappearing.

Senator STEVENSON. It has been changed. It happened a week ago. I am talking about now. I am trying to find out, what in this legislation is going to cost you so much business. So far you referred to certificates of origin, including negative certificates of origin, but two of the countries don't even require them.

Mr. HELLAND. They are now doing it. They may have required it by law, but they have not as a matter of practice required negative statements of origin.

We have been told by both the Syrians and the Saudis they will no longer accept positive statements.

Senator STEVENSON. What else in this legislation is going to cost you all that business?

Mr. HELLAND. That would be one of the major problems.

Senator STEVENSON. Both bills permit positive statements of origin and one permits negative statements.

Mr. HELLAND. The one permitting negative certificates of origin would be far more desirable. That one would permit us in many ways to keep on doing business.

Senator STEVENSON. Let's say both are committed, what would be left in the bill that would put you all out of business?

Mr. HELLAND. The statement Senator Sarbanes referred to. When we supply a product, it must be fit for the service: It must meet the temperature requirements, material requirements, and it must obviously be something that can be imported into the country requiring it.

I think a prudent engineer will select not only something that is strong enough and of the right material, but also something that can pass through the port.

If one of the reasons it cannot pass through the port is that it was made by a certain manufacturer, I don't think a prudent engineer would ever select that piece of equipment.

[A supplementary statement received from Mr. Helland follows:]

In December 1976, and January 1977, I was in the United Kingdom and surveyed our files regarding boycott clauses. I observed that although our customers had not in the recent past requested the use of boycott wording, they were beginning to do so anew.

Senator Stevenson commented that the wording on the boycott legislation had been changed to positive statements of origin rather than negative statements of origin. I had not yet heard this although over the weekend of 26–27 February, Cameron salesmen and agents in Iraq, the Oman, Abu Dhabi, Saudi Arabia, Dubai, Kuwait, Iran, Egypt, Libya and Syria made inquiries in the host countries concerning such legislation. As of this reading, only Iraq still requires negative statements of origin. We were unable to get any confirmation in Saudi Arabia, although Aramco services in the United States has verified that positive statements of origin will be acceptable. All the other countries have stated that positive statements of origin were now acceptable, although they still have the negative language requirements concerning ownership and blacklisting of vessels. I think these concessions on the part of the Arabs need to be considered in determining which concessions we might make in our pending legislation.

Senator STEVENSON. Are you suggesting only blacklisted companies—that a prudent engineer is going to——

Mr. HELLAND. I beg your pardon. I can't hear your question.

Senator STEVENSON. Maybe I don't understand your statement, but you are saying a prudent engineer would systematically not buy from blacklisted firms?

Mr. HELLAND. I am saying a prudent selector of equipment for export into an Arab country would not choose goods that would not be importable into that Arab country, whether it was because those goods were of Israeli origin or manufactured by a blacklisted firm.

Senator STEVENSON. What other provisions of this legislation are going to put you out of business?

We discussed the carrier provision. You can ship by any route by any carrier, except blacklisted carriers, but you are not required to ship by Israeli carriers.

Mr. STEWART. If I can intervene, beginning our statement we refer to certain prohibitions that are contained in the statute. Prohibitions; for example, against a certification that goods or components thereof were not produced by blacklisted vendors.

There are a good number of lawyers in the United States who would advise corporate clients that that creates serious problems, as do the other prohibitions that are referred to in our following language. This whole refusal-to-deal section is one of the most objectionable ones.

Senator STEVENSON. I thought I understood you to say earlier, Mr. Stewart, you would have no objection to a law which prevented you from discriminating against other American companies.

Mr. STEWART. Discriminating on grounds of race or religion——

Senator STEVENSON. Right. But for a political purpose, it is all right. I didn't get that distinction earlier.

Mr. STEWART. I think we have to keep one thing in mind above everything else. Sure, we are speculating. So is the committee speculating what this bill would do in terms of reaction—I won't use the stronger word "reprisal"—as far as the Arab countries are concerned.

Senator STEVENSON. That is one of the problems. The Congress frequently, especially in moments of haste and emotional moments, enact laws that have unintended and somewhat perverse consequences.

Do you think we are enacting into law a counterboycott of the Arab states? A counterboycott?

Mr. STEWART. I don't think so.

Senator STEVENSON. That suggestion was made by someone earlier. The purpose is really to counter the boycott.

Mr. HELLAND. I think that would be the practical effect of the legislation.

Senator STEVENSON. Why wouldn't an American company, as a result of this legislation, refuse to explore business opportunities in Israel? That might be an unintended consequence of this legislation, the absence of business dealings with Israel could create evidence of refusal to deal with Israel.

The best way to avoid any such evidence would simply be to refrain from exploring business opportunities in Israel, would it not?

Presumably, you wouldn't have offers of business to reject. Wouldn't it result in adverse consequences for Israel?

Mr. HELLAND. I know of a number of companies including my own that are engaged in trade with Israel.

Senator STEVENSON. That is not my question.

The question is, under the legislation, might Israel be adversely affected? Do you agree with that or not? Wouldn't many American companies refuse to explore business opportunities in Israel?

Mr. STEWART. I don't get your leap.

Senator STEVENSON. You can't be accused of refusing to deal if you have no opportunity to deal, so to avoid any evidence of a refusal to deal you avoid any offers, any business opportunities in Israel.

Mr. STEWART. Not only in Israel but you may be compelled to avoid opportunities elsewhere.

Mr. HELLAND. I don't think that is a practical possibility when you receive a letter in the mail that says, "We are interested in purchasing a certain number of items described in this manner. Will you please send us a quotation?"

Senator STEVENSON. What is the implication of that? That Israel acquires control over American policy because all it has to do is send such letters in the mail, if you reject them, then you are guilty of engaging in a boycott?

Mr. HELLAND. It is like Mr. Stewart said, you said we wouldn't explore for opportunities in Israel. We explore in Arab countries or anywhere else, not only by salesmen knocking on their door; they also make a positive inquiry.

When they ask a question, "What is the price of such and such an item?" You give them an offer.

Senator STEVENSON. You are making a good case for this legislation.

Let me ask you about one particular provision, then I will quit. One of these measures prohibits compliance with the visa requirements of foreign countries. All countries have visa requirements. How would that provision affect your conduct of business in foreign countries, including Arab States and Israel? Are you familiar with the provisions?

Mr. WITHERS. Yes, I am, Senator.

Also I am looking at what I believe was a statement by you, "These prohibitions would not apply to the following compliance by individuals with immigration requirements of the boycotting country."

Senator STEVENSON. One of the bills permits compliance with visa requirements. The others do not.

85-654 O - 77 - 12

I am asking you about the bill that does not permit compliance with visa requirements.

Mr. WITHERS. If it is part of the law——

Senator STEVENSON. Saudi Arabia doesn't permit women to work. Doesn't that raise a question in your mind about the effect of this legislation? Have you thought it through? What happens if you try to go or somebody makes an attempt to go to work in Israel with a former occupant or resident of one of the occupied territories and they won't let them back in? Have none of you thought through the consequences of that provision in that bill on the conduct of American business abroad if you can't comply with the visa requirements of the foreign country?

I am giving you an opportunity to say something that is pretty obvious.

Mr. HELLAND. Senator, as we talk about sovereign rights of countries, I would think that it was within the rights of a country—be it an Arab country, or Israel, or the United States—to regulate who was allowed in their country.

Senator STEVENSON. What happens if this bill goes into effect in Saudi Arabia?

Mr. HELLAND. I am not familiar with that particular part of the——

Senator STEVENSON. That is evident.

[It was requested that the following appear in the record:]

Petroleum Equipment Suppliers Association

1703 First City National Bank Building
Houston, Texas 77002
713/223-4909

March 10, 1977

The Honorable Adlai E. Stevenson III
Chairman, Subcommittee on International
Finance of the
Senate Committee on Banking, Housing,
and Urban Affairs
5300 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Stevenson:

During my February 21, 1977, testimony for the Petroleum Equipment Suppliers Association on the subject of the Export Administration Act, you requested that I furnish you additional comments concerning the serious questions raised by certain visa prohibitions contained in S. 92. This letter, which I would like to have made part of the record, contains my comments on that subject.

There are two provisions in S. 69 which relate to visa requirements of foreign countries, one of which does not appear in S. 92. At page 23, lines 20 through 22, Section 4A(a)(1)(D) prohibits the furnishing of information with respect to the race, religion, nationality or national origin of any other U.S. person. This subsection is identical in both bills. However, S. 92 in the preceding language in Section 4A(a)(1) prohibits "any United States person from taking or agreeing to take any of the following actions to comply with, further, or support any boycott..." S. 69 reads in relevant part "any United States person from taking any of the following actions with intent to comply with, further, or support any boycott..." The differences are underlined for emphasis. On page 25, lines 5 and 6, Section 4A(a)(2)(D), S. 69 provides an exception for compliance by an individual with the immigration or passport requirements of any country. This language does not appear in S. 92.

It appears that the intent of these sections of S. 69, within the context of Title II, would permit an individual person to comply with specific visa requirements of a foreign country when seeking such a visa to perform work in that foreign country as an employee of a U.S. firm. The U.S. firm could not make representations with regard to such employee's race, religion, nationality or national origin, but the individual employee would not be prohibited from doing so. Obviously, the U.S. cannot control through its own laws the sovereign right of any foreign country to control people crossing

over its borders or foreign nationals doing work in that country. One notable attempt to do so in trade legislation passed by the last Congress did not meet with success but, in fact, had the opposite effect desired. This is true even when the policies and principles of this country regarding discrimination toward individuals are in conflict with such requirements of foreign governments.

If U.S. business firms are to conduct business abroad and use U.S. employees, thereby promoting U.S. employment as opposed to the employment of foreign residents, the U.S. employees must be able to obtain visas where required.

A representative sample of visa forms for various Arab countries is attached, which forms contain requirements to specify the religion of the applicant. While such information might be useful in the event of death or serious injury and for other purposes, it might also be used to practice discrimination against individuals of certain faiths. We note with satisfaction that certain Arab governments have again officially made clear to the U.S. that the boycott of Israel is not based upon religious grounds, nor is its objective to discriminate against persons of the Jewish faith.

It seems proper that a U.S. firm should be able to go forward with a business project or commercial transaction in a foreign country even if some of its employees or prospective employees cannot secure a visa and even if that visa were denied on the basis of that person's religion. The provisions of S. 92 would appear to prohibit a U.S. firm from going forward with the project. The provisions of S. 69 would appear to permit a U.S. firm to go forward with the project.

We believe it is unreasonable for the policy of the United States to strongly encourage U.S. firms to do business in foreign countries under principles of free and open trade but, on the other hand, to prohibit a company from going forward with a project once commenced if any single employee is denied a visa. While such denial could be for other reasons, it would be assumed it would be for purposes of racial or religious discrimination. Further, the mere refusal of an individual to provide that information on the application could result, in and of itself, in the denial of the visa and the termination of the project under the provisions of S. 92. No prudent U.S. firm could undertake any project in such a country and face the risk of breaching the contract by terminating the project or proceed under threat of criminal prosecution in the United States under those requirements. The effect, therefore, for all intents and purposes, of passage of S. 92 would be to prohibit U.S. firms from

doing any further substantial business in any country which requests information on a person's religion, race, nationality or national origin on these applications. We seriously question that this was the intent of the drafters.

Thank you for your consideration.

Very truly yours,

George A. Helland

George A. Helland, President
Petroleum Equipment Suppliers Association

GAH:mm

Attachments

AMBASSADE
OU
CONSULAT
D' ALGERIE

à Washington, D.C.

n° du visa _____

REPUBLIQUE ALGERIENNE DEMOCRATIQUE ET POPULAIRE

MINISTERE DES AFFAIRES ETRANGERES

DEMANDE DE VISA

NOM _____
Name

PRENOMS _____
Christian name

DATE ET LIEU DE NAISSANCE _____
Date and Place of Birth

PASSEPORT N° _____ DELIVRE LE _____ PAR _____
Passeport n° Issued on by

A _____ VALABLE JUSQU'AU _____
In Expires on

NATIONALITE ACTUELLE _____ D'ORIGINE _____ RELIGION _____
Nationality of Birth Religion

PROFESSION ACTUELLE _____
Profession

DOMICILE HABITUEL _____
Adress

ETAT CIVIL _____ NOMBRE D'ENFANTS _____
Married, single, divorced. Number of children

MOTIF DU VOYAGE _____
State your reasons for undertaking the travel

ADRESSE DU SEJOUR EN ALGERIE _____
Where will you stay in Algéria

DUREE DU SEJOUR _____ NOMBRE D'ENTREES _____
How long will you stay Number of entries

REFERENCES EN ALGERIE _____
References in the ALGERIA

COMMENT SONT ASSURES LES FRAIS DE SEJOUR EN ALGERIE? _____
Will you be self sufficient during your stay?

PRENOMS DES ENFANTS VOUS ACCOMPAGNANT _____
Christian name of children travelling with you

DATES DE NAISSANCE _____
Dates of Birth

AVEZ-VOUS SEJOURNE EN ALGERIE? QUAND ET OU? _____
Have you been already to Algeria? When and Where?

N.B: *Le visa accordé n'entraine nullement l'autorisation pour le bénéficiaire d'occuper un emploi salarié ou non en Algérie.*

Ma signature engage ma responsabilité et m'expose, en sus des poursuites prevues par la loi en cas de fausse declaration, au REFUS DE TOUT VISA A L'AVENIR.

_____ *le* _____
Signature

EMBASSY OF INDIA
IRAQI INTERESTS SECTION
WASHINGTON, D.C.

السفارة الهندية
شعبة رعاية مصالح الجمهورية العراقية
واشنطن

APPLICATION FOR VISA

تصريح بطلب السمة

Name in full _____ الاسم والشهرة _____

Place & date of birth _____ محل وتاريخ الولادة _____

Occupation _____ المهنة _____

Permanent residence &address _____ محل الاقامة _____

_____ _____

Nationality _____ الجنسية _____

Religion _____ الديانة _____

Number of paasport, date & place of issue _____ رقم الجواز مع محل وتاريخ الاصدار _____

_____ _____

Purpose oj journey _____ الغاية من السفر _____

Approximate duration of stay in Iraq _____ مدة الاقامة على وجه التقريب في _____

_____ _____

Approximate date of arrival in Iraq _____ تاريخ الوصول الى العراق على وجه التقريب _____

Passing through frontier at _____ نقطة اجتياز الحدود _____

_____ _____

Full address in country you are visiting _____ العنوان الكامل للمحل المقصود _____

_____ _____

Reference in Iraq _____ اسماء الاشخاص المستشهد بهم في العراق _____

_____ _____

_____ _____

_____ _____

_____ _____

Signature _____ الامضاء _____

Photograph

No photograph required for Transit Visa

_____ رقم التأشير

_____ نوع ومدة وتاريخ التأشير

_____

Embassy - Consulate of the State of Kuwait

PHOTOGRAPH

VISA APPLICATION FORM

(Two Copies of application Required)

Name in Full ..... Sex .....

(Please use block letter)

Present Nationality ..... Previous Nationality .....

Profession ..... Religion .....

Place of birth ..... Date of birth .....

Passport No. ..... Place of issue .....

Date of issue ..... Valid till .....

Present address .....

Address in Kuwait .....

Required Visa — Entry/Transit .....

Reasons for travelling to Kuwait .....

Authority which recommends granting the required visa (or N.O.C. No.) .....

Duration of proposed visit .....

Duration of previous residence and address when last in Kuwait .....

.....

References and their addresses in Kuwait .....

.....

.....

.....

Name of family (wife & children if indorsed in The Same Passport) accompanying applicant .....

.....

.....

Date of arrival .....

Name and address of sponsor in Kuwait .....

.....

I hereby declare that the details and information given in this application true and correct.

Place..... Date..... Signature .....

EMBASSY OF THE LIBYAN
ARAB REPUBLIC
WASHINGTON, D.C.

(Consular Section)

سفارة الجمهورية العربية الليبية
بواشنطن
(القسم القنصلي)

طلب تأشيرة الى ليبيا
APPLICATION FOR VISA TO LIBYA

FOR OFFICIAL USE ONLY

للاستعمال الرسمي فقط

رقم التأشيرة _____ نوع التأشيرة _____
مدة الصلاحية _____ مدة الاقامة _____
الرسوم المحصلة _____ تاريخ منح التاشيرة _____

رئيس القسم القنصلي _____

Name ..... الاسم

Nationality ..... الجنسية

Place & Date of Birth ..... مكان وتاريخ الولادة

Religion ..... الديانة

Profession ..... المهنة

Purpose of Journey ..... الغرض من الزيارة

Have you been to Libya before? ..... هل زرت ليبيا من قبل ؟

How Many Times? ..... كم عدد المرات ؟

What was the purpose ..... ما نوع الزيارة ؟

Home Address ..... العنوان الدائم

Address in Libya ..... العنوان في ليبيا

Approximate Date of Arrival ..... تاريخ الوصول الى ليبيا

Intended Means of Travel ..... الوسيلة المزمع السفر بها

References in Libya ..... المعارف في ليبيا

Passport No. ..... رقم جواز السفر

Place of Issue ..... مكان الاصدار

Date of Issue ..... تاريخ الاصدار

Validity of Passport ..... صلاحية الجواز

الصورة
Photograph

..... توقيع صاحب الطلب

Signature of Applicant

Date ..... التاريخ

سفارة المملكة العربية السعودية في واشنطن

ROYAL EMBASSY OF SAUDI ARABIA, WASHINGTON, D. C., 20036

الرسم
Photograph

Name in full ..... الاسم الكامل :

Place and date of birth ..... محل وتاريخ الولادة :

Nationality ..... الجنسية :

Religion ..... الدين :

Occupation ..... المهنة :

Passport No. ..... رقم الجواز :

Place and date of issue ..... محل وتاريخ الاصدار :

Permanent address ..... العنوان الدائم :

.....

الرقم : .....

نوع السمة .....

التاريخ : .....

الرسوم : .....

مدة السمة : .....

Object of visit ..... الغاية من السفر :

Port of entry ..... ميناء الدخول :

Length of stay in S.A. ..... مدة الاقامة في المملكة :

References in S.A. ..... المرجع في المملكة :

Expected arrival date ..... تاريخ الوصول للمملكة :

Date of application ..... تاريخ الطلب

Signature of applicant ..... توقيع طالب السمة :

Senator STEVENSON. Are there any other questions?

Senator PROXMIRE. I have no questions.

I would like to make sure Mr. Stewart will give us the list of Jewish firms doing business with the Arabs that have moved out of New York State.

You indicated——

Mr. STEWART. I can't give you that list.

Senator PROXMIRE. You don't have any specifics?

Is it a rumor?

Mr. STEWART. It is pretty common knowledge there has been a move. I think with the committee's resources you can get that information, and I think you may even have some testimony in the record before these hearings are over.

Senator PROXMIRE. If you can document that in any way, shape, or form, I think that is a damaging point, if it is true. If it is not true, if it can't be documented, I think we ought to know that.

The only other point I would make, on the basis of the testimony of these witnesses, and they do represent the private firms that are most concerned; the machinery, allied products, petroleum equipment suppliers, associated general contractors, consulting engineers, and I haven't heard any documentation at all as to the damage this would do. Any documentation concern, but no documentation as to what the damage would be to our business.

No estimates of the amounts. No statistics indicating how much you do that might be lost.

No indication how many jobs, if any, might be lost. None of that. And no contravening of the very emphatic point, made by the other three Senators today, that we should have control over the sovereignty of our own firms.

That we should not permit our own firms to be used as agents of foreign countries to enforce the boycott.

You gentlemen didn't challenge that, in my view, effectively at all.

Mr. STEWART. The implication of the law, if it is passed in its present form, would require American companies to follow certain procedures and if that is accompanied by reaction from the Arab states, which we believe it would be, there would be substantial loss of business.

Now, we can't quantify that, because we don't know what the Arabs are going to do.

But we think we know what they are going to do, and I think Secretary Vance will testify on this point, based on his recent trips.

The Arabs have already anticipated the possibility of this legislation passing, and if the press report is correct, the Secretary has been——

Senator PROXMIRE. The Secretary of State is going to testify before the committee next week, but you are the expert on the effect this is going to have on our economy, if any. You are the first that do business. You know far more about it than any Government official, because you represent the private firms that are doing business right now.

We don't have anything on the record here indicating we are going to have any documented economic loss, if we follow this legislation which I think can be—should be supported overwhelmingly on principle.

Mr. HELLAND. Senator Proxmire, if I may call your attention to the appendix of my remarks submitted in advance. This does support a calculation showing the assumption that would average out 110,500

lost U.S. jobs per year over the next 5 years. To bring it home more personally to the company. I work for in Houston, Tex., where we had a very difficult time due to economic circumstances, just laying off 500, I can guarantee you the estimate of 850 that we would have to lay off were this legislation implemented and were the reaction of Arab states as we are fully sure it will be, will prove to be a very painful thing, resulting in severe economic hardship to a number of our employees' families, as well as to a number of other people in similar positions in Houston.

Senator PROXMIRE. That is the kind of specific claim we want to have available, so we can have it challenged by the witnesses, so we can consider it.

Mr. WITHERS. The AGC written statement also contains statistics on this matter. I won't bother to try to read them now, but they are in the written statement that is attached, and we feel that this bill could make a very substantial loss to U.S. business and the statistics are given in here.

Now, when I say we think they could, nobody knows how this thing is going to work. You got a provision now that says do not deal with somebody. Now, it is hard to look in a crystal ball and see just what is going to happen, but it can be very severe from the statistics we have.

Mr. NEEDHAM. Mr. Chairman, if I might just add to these other comments. Again, we have provided some statistics for the record. Our firm has about 2,600 employees in Kansas City, and over 600 of those were supported by business we generated in Middle Eastern countries. So we are talking about an impact of 20 to 25 percent in our firm.

Beyond that we ordered materials for a client last year in the range of $500 million. Now, those were materials bought by—bought from American manufacturers in California and the other 49 States of the United States—that could have been bought in Europe

Senator STEVENSON. Well, gentlemen, the provisions you have spent most of the time discussing aren't going to do you much harm, in my opinion.

There are provisions that you haven't addressed that could do you some harm.

Senator WILLIAMS. Just one question, Mr. Chairman. This is a question directed to the practical operations with respect to the boycott on your day-to-day business methods really.

Mr. Helland, you were talking about, you wouldn't get—you wouldn't go to a supplier that was on the blacklist because the product could get on the ship, but couldn't make it off the ship in the Middle East Arab port.

That suggests to me that you must have the list, the blacklist, and consult it before going to suppliers for invitation to bid on your deal.

Mr. HELLAND. Senator Williams, I believe in one of my earlier comments I said that when we talked about a blacklist there was some conjecture, because to my personal knowledge, either at the Cameron Iron Works or our member companies, the issue of blacklisted companies has not been raised, with the exception of the carrier.

Senator WILLIAMS. You, it seems to me, you are all jumping at shadows and not substance here. The way you put it a little while ago, you say it would be foolhardy for any of your companies to use

a supplier who is on the blacklist. You haven't seen a blacklist, you say.

Mr. HELLAND. That is true. I haven't. In the absence of seeing one, I am going to assume no one I deal with is on there.

Senator WILLIAMS. When you get to the port, you got your fingers crossed.

Mr. HELLAND. No, sir.

Senator STEVENSON. It may go by a different name, but the boycott list has been open and notorious for years, hasn't it?

Mr. HELLAND. I know of no supplier of the type of equipment that either the Cameron Iron Works or other member companies use that is a blacklisted company.

Senator STEVENSON. The list exists. If you haven't seen it, I will show it to you.

Mr. HELLAND. I have made a note to write and ask for a copy of that list, because I have been unable to find it in the past.

Senator WILLIAMS. I am still mystified and have a feeling that you rugged men of business are just jumping at shadows. You are telling us you are supplying things that you don't know, according to Arab determination, whether it will be accepted or not.

Mr. STEWART. We are not jumping at shadows. We are giving you the best opinion we can as to what effect we think this bill will have, as to the degree to which our country is risking reprisal, and at the very minimum disturbing, beyond the business considerations, a hope that the new administration can bring about a settlement.

Senator WILLIAMS. Let's come at this another way. Do you give to the country that you are going to supply a product a list of your suppliers that go into your end product?

Mr. HELLAND. No, sir.

Mr. STEWART. Some of them are identifiable.

Mr. HELLAND. If you have a nameplate on it, "manufactured by the ABC Manufacturing Co.," it is obviously identifiable.

If the ABC Co. were on the blacklist, the presumption under which we have operated is that we would know that or would be told that. We have not received a copy of the blacklist. I have asked in various Middle Eastern countries, Abu Dhabi, Saudi Arabia, if such a list were available and was told, no. It is available in Damascus——

Senator WILLIAMS. When you are bidding a contract for one of the Arab boycott countries, when you are bidding a contract for another country, what differences are there in this way you put your contract together in terms of suppliers and getting ready to bid?

Mr. HELLAND. The major contracts that we fill are such that there would be no difference. I think possibly the contractors might have another answer.

Mr. WITHERS. We put out bids. We get quotations on materials just as we would later on. We don't check on origin or anything.

This says "refrain from doing business with any person." That is what worries me.

If we sign a contract that requires us to abide by the laws and regulations of Saudi Arabia, it is possible that we will come in conflict with this provision. At that time, we will be prevented from fulfilling our contract at a severe penalty to ourselves or be in violation of this provision.

Senator WILLIAMS. Speculation. Speculation. That is what I call shadows——

Mr. WITHERS. It may be speculation, but a businessman must make that decision. He may make the decision not to enter into the contract, thus losing the volume of business that he might otherwise do and never be in violation of that provision.

Mr. HELLAND. Mr. Chairman, you asked earlier about questions concerning visa requirements. May I submit written testimony on that?

Senator STEVENSON. Yes. I wish you would. I think that provision in one of these bills raises serious questions.

Most all Arab States have visa requirements.

Gentlemen. We will keep the record open long enough for you to give us your comments on the administration's position after we have received that, which we expect on February 28, as well as other comments.

Mr. STEWART. Before you close, I want to be sure that the committee understands that American business does not endorse the boycott. We don't like it at all. Not at all. It has been said by some that there is an attitude of acceptance or accommodation to the boycott. Hopefully, without legislation companies can accomplish more thorough negotiations with their Arab customers, and, at the same time, we feel that that should be accompanied by a stay, shall we say, on legislation of this type.

There is one other point that ought to be in the record, if I may take a second.

That is, the supplying of military equipment via the Department of Defense, to both Israel and to Arab States as well. Now, that equipment goes through a special section of DOD, and the United States is furnishing military hardware, with the approval of this Government, to both sides and it is not small potatoes.

Senator WILLIAMS. I missed the point there. The Arabs should not accept that military equipment because we are also doing business with Israel under their principle?

Mr. STEWART. No. I am merely suggesting that for the record and for informational purposes, the flow of military goods out of the United States into both the Arab countries and to Israel is going forward, and it goes forward without any particular encumbrances, because it is going through the Department of Defense.

My point is, that we are—as a country—trying to achieve a balance between one group of countries and Israel in connection with furnishing them military hardware. And we are doing so to the Israelis, as well as to the Arab countries. Also, to the best of my knowledge, no effort has been made by the Arabs to stop supplying military goods to Israel.

Senator WILLIAMS. I think that is central to what we are attempting here, to open up in another area, private commerce, and have American business have equal opportunity, whether it is an Arab State or Israel.

Mr. STEWART. I made the point earlier that the Arabs have never urged upon, pressed, or taken any action to preclude the United States from exporting to Israel.

Senator STEVENSON. I think that makes the point that this legislation, if it becomes law, would not interfere with your business, unless you intend to boycott Israel.

And you say there is no intention to boycott anyway.

Mr. STEWART. That is correct. I just wanted to be sure the record was clear on that point.

Senator STEVENSON. One other aspect which I will raise, then we must move on.

Rarely is any mention given to the implications of this legislation for the United States and its interests in all parts of the world, in the controversial conflict between Taiwan and the People's Republic of China or between Greece and Turkey. What happens if black nations boycott Rhodesia, for example. Are American companies prevented from joining that effort? Are they required then to do business with Rhodesia?

Thank you.

You have been very helpful and, as I have mentioned earlier, the record will remain open.

Mr. STEWART. We appreciate the opportunity.

[Additional material received for the record from the Machinery and Allied Products Institute follows:]

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MEMORANDUM

FT-72

January 26, 1977

MYTHS AND REALITIES OF THE ARAB BOYCOTT OF ISRAEL

Although the Arab boycott of Israel and federal and state legislation in reaction to it have been under intense discussion for well over a year, certain issues posed by the boycott do not appear to be well understood by the media, the public, and some members of the Congress. Since the nature of the United States response to the Arab boycott can have an important effect not only on U.S. commercial relations with the Arab states but also on political relations and, perhaps, the prospects for a permanent peace settlement in the Middle East, the issues should be more fully developed so that any action the United States may take can be grounded on a full understanding of them.

This memorandum deals with five aspects of the Arab boycott on which, based on our review of media treatment of these matters and congressional documents, there still exists considerable misunderstanding. Following a brief summary, each issue is developed more fully in the body of the memorandum.

In the preparation and publication of this memorandum and its companion, FT-71, a strong effort has been made to treat the issues in an objective manner. Where possible, every effort is made at documentation. It is fully recognized that the various issues related to the Arab boycott are highly controversial and we have proceeded on the assumption that differing views on the matters discussed in these documents are conscientiously held.

MACHINERY & ALLIED PRODUCTS INSTITUTE AND ITS AFFILIATED ORGANIZATION, COUNCIL FOR TECHNOLOGICAL ADVANCEMENT, ARE ENGAGED IN RESEARCH IN THE ECONOMICS OF CAPITAL GOODS, (THE FACILITIES OF PRODUCTION, DISTRIBUTION, TRANSPORTATION COMMUNICATION AND COMMERCE), IN ADVANCING THE TECHNOLOGY AND FURTHERING THE ECONOMIC PROGRESS OF THE UNITED STATES

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Summary

During the course of debate and discussion of the Arab boycott, a number of myths have gained currency. These myths and the corresponding factual situations are as follows:

1. Myth: The Arab boycott is intended to discriminate against U.S. firms that have Jewish owners, directors, or managers.

   This allegation is not supported by the evidence available from the tens of thousands of company reports concerning boycott-related requests received by the Department of Commerce. Further, three senior U.S. Government officials and several Arab officials have made statements to the effect that the boycott is not intended to discriminate against persons on the basis of race, religion, or national origin.

2. Myth: The Arab boycott is intended to prevent U.S. and other foreign firms from "doing business" with Israel.

   While activities of U.S. firms in Israel such as an investment or licensing agreement could result in the firms being blacklisted, the boycott rules do not prohibit U.S. firms from exporting nonmilitary goods to Israel, and many companies export to both Israel and Arab countries.

3. Myth: Companies reporting to the Department of Commerce that they have "complied" with Arab boycott-related requests are actively participating in the Arab boycott against Israel.

   Because of the design of the reporting form, companies which provide the Arabs with requested information or certifications were, until recently, required to check a block on the form indicating whether they have or have not "complied" with the request for information, etc. As the Department of Commerce explained in a press release, the fact that a company reported to the Department that it had complied with a given request (e.g., for a certification that the firm has no investments in Israel or that the product contains no Israeli components) does not necessarily mean that it has changed its course of conduct in response to the boycott or has taken any affirmative steps to boycott Israel. Consistent with this view, in January 1977 the Department of Commerce adopted changes in the reporting form which drop use of the word "comply" on that form.

4. Myth: Other industrial countries are taking more forceful action than the United States against the boycott, and the Arabs need U.S. arms, industrial products and technology so badly that they would not be likely to switch a substantial amount of purchases to other countries if strong antiboycott legislation were adopted by the United States.

The Departments of Commerce and State are not aware of any significant action by other industrial countries to oppose implementation of the boycott. It is a fact that the United States supplies no more than 20 percent of the Arab nations' imports of goods and services. While no one can estimate to what extent the Arabs would switch purchases to other countries as a result of more forceful U.S. action against the boycott, there are very few products, including arms, which the Arab nations could not import from other industrial nations and communist countries.

5. Myth: Although the Arabs' primary boycott enjoys legitimacy under international law, its secondary and tertiary aspects do not. The United States does not engage in secondary boycotts (except for certain measures against foreign ships that call at Cuba), but does engage in "legitimate" primary boycotts against certain countries.

Actually, neither the boycotts applied by the Arabs nor those applied by the United States are clearly sanctioned by international law. The United States does engage in economic coercion activities with secondary boycott aspects by prohibiting foreign firms controlled by U.S. firms (or managed by U.S. citizens) from engaging in transactions with North Vietnam, South Vietnam, Cambodia, North Korea, Cuba, and Southern Rhodesia. The United States also restricts foreign firms controlled by U.S. firms from engaging in transactions involving strategic products with the Soviet Union, the People's Republic of China, and other communist countries. In addition, the controls exercised by the United States on exports of U.S.-origin technical data and products also have some significant secondary boycott aspects. Whatever the restrictions exercised extraterritorially by the Untied States are called, their manner of implementation is so similar to that of the Arab boycott that they would be effectively proscribed if foreign countries adopted antiboycott legislation along the lines

of that proposed by S. 69 and H.R. 1561/1 introduced earlier this month in the new Congress.

As the above summary indicates, there is considerable misunderstanding concerning several aspects of the Arab boycott--from the comparatively minor issue of the "legitimacy" of the U.S. vs. Arab boycotts to major matters such as the alleged discriminatory motivation of the boycott and the role of other major trading nations. Certainly all of these matters should be fully explored and weighed in determining what the appropriate U.S. response to the boycott should be.

In our view, the full development of the above issues, as well as those posed by legislative proposals discussed in a companion MAPI memorandum,/2 raise serious questions as to whether the Arab boycott is a matter which can be addressed effectively--taking into account U.S. foreign policy and commercial interests--by legislation.

"Discriminatory" Aspects of the Boycott

Allegations are frequently made that the Arab boycott is racially motivated and that, in its implementation, it is directed against companies which are Jewish-owned or have Jews active in their management. The evidence available to the U.S. Government does not support these allegations, and both U.S. Government and Arab officials have issued public statements to the effect that the boycott is not intended under its governing principles to discriminate against individuals or firms on the basis of race or religion. Even if this were the case, the U.S. Government has adopted an array of administrative and legislative measures to minimize the possibility of discriminatory actions on the basis of race, religion, color, sex, and national origin.

The Evidence From Reports Filed By U.S. Companies With the Department of Commerce

In December 1975 Under Secretary of Commerce James A. Baker, III testified that during the first ten years of the reporting program over 50,000 transactions involving boycott-related requests were received by the Department and, of these, only twenty-five instances were reported where the request apparently involved discrimination on religious or ethnic grounds./3

1/ The details of S. 69 are discussed in a companion MAPI memorandum, "An Analysis of Key Antiboycott Provisions of S. 69," FT-71.

2/ Ibid.

3/ See statement of Under Secretary of Commerce James A. Baker, III, Discriminatory Arab Pressure on U.S. Business; Hearings Before the Subcommittee on International Trade and Commerce of the Committee on International Relations, House of Representatives, Ninety-Fourth Congress, First Session, March 6, 12, 13, and December 11, 1975, pp. 114-121.

According to the Department of Commerce's analysis of reports received in more recent months:

-- During the period October 1975-March 1976, U.S. companies reported receiving four "Discriminatory questionnaires" (i.e., questionnaires that included requests for information or action which, as defined in the Department's regulations, discriminate, or have the effect of discriminating, against U.S. citizens or firms on the basis of race, color, religion, sex or national origin) and four "Other discriminatory requests."/1

-- During the period April-June 1976, U.S. companies reported receiving one "Discriminatory questionnaire" and two "Other discriminatory requests."

As noted below (see statement of Assistant Secretary of State Joseph Greenwald), as a general rule the Arab governments have provided assurances that such discriminatory requests are unauthorized exceptions to their policy of not discriminating on the basis of race or religion.

Official Statements Concerning the Non-discriminatory Nature of the Boycott

Both U.S. Government and Arab officials have repeatedly stated that the boycott is not intended to discriminate against persons or firms on grounds of race, religion, etc.

-- Secretary of the Treasury William E. Simon, June 9, 1976.

> . . . According to its governing principles, the Arab boycott of Israel is not based on discrimination against U.S. firms or citizens on ethnic or religious grounds. . ./2

1/ Since December 1, 1975 U.S. firms have been prohibited by the Department of Commerce's Export Administration Regulations from complying with such discriminatory questionnaires or requests.

2/ See statement of William E. Simon, Secretary of the Treasury, Extension of the Export Administration Act of 1969: Hearings Before the Committee on International Relations, House of Representatives, Ninety-Fourth Congress, Second Session, Part 1, June 8, 9, 10, 11, 15 and 16 and August 10 and 24, 1976, p. 48.

-- Secretary of Commerce Elliott L. Richardson, June 11, 1976.

> . . . The evidence thus far supports the view that the boycott is symptomatic of the Mideast conflict and that, in its current manifestations, it is not based on religious or ethnic criteria./1

-- Assistant Secretary of State Joseph A. Greenwald, June 8, 1976.

> . . . There have been only a handful of discriminatory requests, mainly involving private practices, out of more than 50,000 boycott requests to U.S. firms reported to the Department of Commerce from 1970 through November 1975. As a general rule, we have received assurances that these are unauthorized exceptions and that it is not the policy of the governments applying the boycott of Israel to discriminate in business transactions on the basis of race or religion. High-ranking Arab government representatives have emphasized this with both public and private assurances that religion or creed bears no relationship to the Arab boycott./2

-- Prince Saud Al-Faisal, Minister of Foreign Affairs, Saudi Arabia, September 23, 1976.

> The boycott involves no religious or racial discrimination. It applies equally to Muslims, Christians, Jews and anyone else who would strengthen Israel's ability to wage war on Arab countries and peoples. It is therefore an economic device for assuring the security of the Arab state./3

-- Mohammed Mahmoud Mahgoub, Commissioner General, Central Office for the Boycott of Israel, League of Arab States, August 31, 1975.

> The Boycott Principles are also very far from racial or religious influences; [they are] practiced

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1/ See statement of Elliott L. Richardson, Secretary of Commerce, Ibid, p. 268.

2/ See statement of Joseph A. Greenwald, Assistant Secretary of State for Economic and Business Affairs, Ibid, pp. 11-12.

3/ From an address by Prince Saud Al-Faisal in Houston, Texas, on September 23, 1976, p. 4.

> with all persons--natural or moral--notwithstanding their nationality or religion, as long as they support the economy of Israel and its war effort. In this respect, the Boycott Authorities do not discriminate among persons on the basis of religion or nationality, they rather do so on the basis of their partiality or impartiality to Israel and Zionism. . . ./1

Actions Taken by the U.S. Government To Ensure That the Arab Boycott Does Not Discriminate Against U.S. Citizens on Ethnic or Religious Grounds

The Executive Branch has taken several actions to ensure that the boycott does not discriminate against U.S. citizens on the basis of race, color, religion, sex, or national origin. These include the following:

-- Amended the Export Administration Regulations to prohibit U.S. exporters and related service organizations from taking any action with respect to a boycott-related request when that request discriminates, or has the effect of discriminating, against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin.

-- Amended the Secretary of Labor's March 10, 1975 memorandum on the obligations of federal contractors and subcontractors to require that (1) any contractor who is unable to acquire a visa for any employee or potential employee to a country with which it is doing business, and who believes that the visa refusal is based on the race, religion, sex, or national origin of an employee or potential employee must immediately notify the Department of State, and (2) the Department of State is to take appropriate action through diplomatic channels to attempt to gain entry for the individual.

-- Proposed H.R. 11488 in the 94th Congress which would prohibit economic coercion based on race, color, religion, national origin, or sex.

1/ Excerpted from a memorandum, "Nature of the Boycott of Israel" enclosed with an August 31, 1975 letter from Commissioner General Mahgoub to District Committee No. 12, National Association of Securities Dealers, Inc., New York, New York. The letter and accompanying memorandum were included in The Arab Boycott and American Business: Report by the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce With Additional and Minority Views, House of Representatives, Ninety-Fourth Congress, Second Session, September 1976, p. 86.

Laws enacted within the past year directed, at least in part, against possible discriminatory practices which might arise as a result of the Arab boycott include:

-- The Equal Credit Opportunity Act, enacted in March 1976, which amended the Consumer Credit Protection Act to prohibit any creditor from discriminating against any applicant with respect to a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age.

-- Anti-discrimination provisions in the International Security Assistance and Arms Export Control Act, enacted last June, which require that any contract entered into by a federal agency in connection with the furnishing of military assistance or the Foreign Military Sales (FMS) program, shall include a provision to the effect that, in employing or assigning personnel to participate in the activity, the firm will not take into account the exclusionary policies or practices of any foreign government which are based on race, religion, national origin or sex.

-- Antiboycott provisions of the Tax Reform Act which deny certain tax benefits to U.S. taxpayers who agree, as a condition of doing business in an Arab boycotting country, to refrain from (1) doing business with any company whose ownership or management includes individuals of a particular nationality, race, or religion or (2) employing individuals of a particular nationality, race, or religion. (These and other boycott-related actions which may jeopardize U.S. taxpayers' tax benefits are described in MAPI Memorandum FT-69. Treasury's implementation of these provisions was reported in MAPI Bulletins 5506 and 5510.)

Finally, a number of government regulatory agencies (including the Federal Reserve Board, the Comptroller of the Currency, the Securities and Exchange Commission, and the Federal Home Loan Board) have issued statements to the institutions under their jurisdictions against discriminatory practices.

Arab Boycott Rules With Respect to "Doing Business" With Israel

Much of the media treatment of the Arab boycott, and even remarks by some members of Congress, reflect the view that the Arab boycott rules prohibit U.S. and other foreign firms from having any form of commercial relations with Israel. Some statements of Arab policy are indeed so general

in nature as to suggest that this may be the case./1 However, the "General Principles for the Arab Boycott of Israel Relating to Manufacturing and Trading Companies,"/2 in defining activities which are deemed to be "in support of the economy of Israel," do not include routine sales of non-military equipment to Israel so long as the exporter does not have a general agent or head office for the Middle East located in Israel. Many U.S. firms export both to Israel and Arab states. On the other hand, activities in Israel beyond export sales--e.g., an investment or an agreement providing for the use of the firm's technology or name--clearly are activities which could result in blacklisting.

Increase in U.S. Exports to Israel

U.S. trade statistics suggest that the boycott is not having any significant impact on exports to Israel. According to data submitted to the House Committee on International Relations by the Department of State,/3 U.S. exports to Israel increased from $557 million in 1972 to $1.20 billion in 1974 and to $1.55 billion in 1975. (Even allowing for extraordinarily large military exports in 1974 and 1975 [$377 million and $529 million, respectively], the increase in commercial exports appears substantial.)

The data submitted by the Department of State also show that total Israeli imports from all destinations have increased substantially during the same period from a level of $2.47 billion in 1972 to $5.77 billion in 1975.

1/ For example, the Commissioner General, Central Office for the Boycott of Israel, League of Arab States, has stated that a firm could be blacklisted if it "carries out any action in Israel which might support its economy, develop its industry or increase the efficiency of its military effort." See the memorandum accompanying the letter from Commissioner General Mahgoub to the National Association of Securities Dealers which is contained in The Arab Boycott and American Business, op. cit., p. 86. This broad language could be interpreted to cover almost any kind of activity in Israel. However, in another part of the same memorandum, Mr. Mahgoub states that if a firm's relations with Israel "do not go beyond pure ordinary business relations," it will not be blacklisted.

2/ This document, which was excerpted from "General Principles for the Boycott of Israel" published by the Central Office for the Boycott of Israel, was provided to the Senate Subcommittee on Multinational Corporations by the Department of State during hearings in 1975. It was included with MAPI Memorandum FT-63.

3/ Letter dated June 21, 1976 from Assistant Secretary of State for Congressional Relations Robert J. McCloskey to House International Relations Committee Chairman Thomas E. Morgan, Extension of the Export Administration Act of 1969, op. cit., p. 30.

"Compliance" With Boycott-Related Requests

In October 1976 the Department of Commerce began making available to the public copies of reports received from U.S. companies concerning boycott-related requests as defined in the Export Administration Regulations. For a few weeks some newspapers published daily lists of companies which had "complied with the Arab boycott of Israel," and those press reports implied that the companies had actually taken action detrimental to Israel. This misunderstanding arose in part because of a feature of the reporting form which required that reporters indicate whether they "have complied with" or "have not complied with" a boycott-related request for information or action./1

Department of Commerce
Release re "Compliance"

Following the decision to make public the reports, on October 19 the Department of Commerce issued a release to deal with questions and confusion which had resulted from the media reports concerning the identification of companies "complying" with the Arab boycott. The release noted that the Department has not and does not intend to publish any "list" of companies which have "complied" with the Arab boycott. It adds in explanation: "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 release also observed that under the Export Administration Act "compliance" includes--and typically involves--furnishing information or certification to an Arab country. For example, an Arab purchaser may request a certification from an American supplier that it has no subsidiary company in Israel. According to the release, "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 release also included the following quotation from a recent congressional report which deals with the qualitative implications of "compliance" in terms of the Department's reporting requirements:

> 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

1/ In early January 1977 the Department of Commerce adopted changes in the reporting form which drop use of the word "comply" and permit companies to indicate whether they "have taken" or "have not taken" the action requested. See MAPI Bulletin 5537.

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./1

Other Considerations

In addition to the example cited of a company certifying that it does not have a subsidiary in Israel, equally innocuous for nearly all U.S. firms would be a certificate that the product being shipped does not contain Israeli components. (However, it should be recognized that the Arab requirement for these types of certifications could act as a deterrent--and it undoubtedly is so intended--to future investments in Israel or use of Israeli-origin components.) It might also be asked if a company is in fact supporting the Arab boycott--or injuring another American firm--when it provides a certification that a blacklisted carrier will not be used. Such a carrier would not be permitted to unload in an Arab port in any case and probably would not be offered for such a voyage by its owner. Even compliance with pro forma boycott-related requests as to the non-blacklisted status of vendors--when, as is normally the case, the exporter does not know which companies are blacklisted and does not change its normal sourcing practice--typically would not constitute any affirmative action adversely affecting Israel.

Availability to Arabs of Arms and Other Products From Other Major Trading Nations

During House consideration of antiboycott amendments to the Export Administration Act, remarks were made in the course of both committee consideration of the amendments and during floor debate which implied that other countries, particularly in Europe, were taking more forceful action than the United States to oppose implementation in those countries of the Arab boycott against Israel. Proponents of strong antiboycott legislation also argue that the Arabs are so dependent upon (and prefer) U.S. arms, industrial products, and technology that such legislation would be unlikely to have a significant adverse effect either on U.S. business with the Middle East or on U.S. foreign policy.

Action being taken by other countries, particularly the major trading nations, is of course an important factor to be considered in

1/ The Arab Boycott and American Business, op. cit., p. 31.

drafting U.S. legislation. The Ford Executive Branch/1 and private observers have emphasized that forceful antiboycott measures by the United States probably would have little or no effect on the boycott but could--and probably would--result in substantial diversion of Arab business to other industrial countries. The Executive Branch also has emphasized that such a "confrontational" approach could have adverse effects not only on our efforts to broaden commercial ties with the Arab states, but also on U.S. efforts to assist in arranging a permanent peace in the Middle East.

No one can estimate with any certainty what the effects of strong antiboycott legislation would be. While some of the Arab states may prefer to purchase military goods from the free world, they could purchase arms from noncommunist nations other than the United States and, if necessary, from communist countries. As for industrial products and technology, while the Arabs may prefer in many cases to purchase from the United States, the market is highly competitive and there are very few lines where comparable technology is not available from abroad.

One can say with a good deal of certainty that no major foreign country has taken any action which would have significant adverse impact on the implementation of the boycott. Neither the Department of State nor the Department of Commerce is aware of such actions. Further, U.S. companies which have manufacturing and sales operations in numerous foreign countries have reported that they are not aware of any significant antiboycott measures imposed by those countries.

The matter of foreign actions against the boycott and the "dependence" of Arab countries on U.S. products and technology have been addressed by senior U.S. Government officials in recent months and excerpts from their statements are reproduced below. The Saudi Arabian Foreign Minister also recently addressed this "dependence" question and he too is quoted below.

Comments of U.S. Government Officials

During testimony last June before the House Committee on International Relations, senior U.S. Government officials made the following comments concerning antiboycott action by other countries and the dependence of Arab states on the United States.

-- Secretary of the Treasury William E. Simon, June 8, 1976.

> The argument is made that the Arab world when faced with such a choice [to eliminate the boycott

1/ It should be recognized that the various policy issues related to the Arab boycott of Israel will of course be reexamined by the Carter Administration.

entirely, irrespective of a settlement in the Middle East, or cease doing business with American firms] will recognize the importance of continued access to U.S. goods and services and therefore eliminate what they consider one of their principal weapons in the political struggle against the State of Israel. Unfortunately, this argument fails to reflect several basic facts.

The U.S. alone among industrial countries has a clearly established policy and program of opposition to foreign boycotts of friendly countries, including the boycott of Israel. [Emphasis supplied.] Other countries already supply a full 80 percent of the goods and services imported by the Arab world. There is no evidence that these nations are prepared to lose that $50 billion a year market or to jeopardize their stake in the rapidly expanding economies of the Arab nations. Further, there is precious little that the U.S. presently supplies to Arab nations that is not available from sources in other countries and they are eager to take our place. The major Arab states have the funds and the will to incur any costs such a switch might entail. They see that the U.S. has frequently engaged in economic boycotts for political purposes, for example in Cuba, Rhodesia, North Korea and Vietnam, so they cannot accept the argument that they are not entitled to do the same.

Mr. Chairman, I believe that we must face an essential and widely recognized fact. The Arab boycott has its roots in the broad Israeli-Arab conflict and will best be resolved by dealing with the underlying conditions of that conflict./1

-- Assistant Secretary of State Joseph A. Greenwald, June 8, 1976.

. . . We are the only country (other than Israel) to take a strong position in opposing the boycott of Israel. . . ./2

1/ See statement of William E. Simon, Secretary of the Treasury, Extension of the Export Administration Act of 1969, op. cit., pp. 49-50.
2/ See statement of Joseph A. Greenwald, Assistant Secretary of State for Economic and Business Affairs, Ibid, p. 11.

Comments of Saudi Arabian Foreign Minister

In a recent address, Prince Saud Al-Faisal, Minister of Foreign Affairs, Kingdom of Saudi Arabia, made the following pertinent comments:

> In the concerted assault upon the Arab boycott in the United States, one of the aims is to confuse the issue. The second aim is to create a complacent attitude in business and economic circles in this country by propagating various simplistic views. The most common is the assertion that the Arab countries cannot do without American know-how and products.
>
> Such an assumption is erroneous and has dangerous consequences. The truth of the matter is, and this can be verified by any visitor to the Arab world, competition for Arab business is truly fierce.
>
> . . . The Arabs cannot and will not forego the boycott because it is essential to their security; and it is of the utmost importance that this fact be recognized and not ignored or belittled. It is much more difficult to rectify a mistake after it has been made than to prevent it./1

Boycotts--Ours and Theirs

Congressional and public discussion of the Arab boycott has included some mention of the fact that the United States also engages in boycotts, but the discussion almost always has been to the effect that the United States, with one exception involving Cuba,/2 does not--like the Arabs--engage in secondary boycotts. Much of the discussion also suggests that while the Arabs' primary boycott against Israel (i.e., the Arabs' refusal to have direct dealings with Israel) is sanctioned by international law, its secondary aspects (i.e., its attempts to interfere with economic relations between the United States [and other countries] and Israel) and its tertiary aspects (i.e., its attempts to interfere with relations among U.S. persons and firms) are not sanctioned by international law.

1/ Address by Prince Saud Al-Faisal, Minister of Foreign Affairs, Kingdom of Saudi Arabia, in Houston, Texas, on September 23, 1976.

2/ The U.S. Government maintains a list of ships which have called at Cuban ports so that it can deny those ships the right to carry U.S.-financed cargo and, until late 1975, to refuel at U.S. ports. In addition, third-country vessels and aircraft cannot obtain bunkers from U.S. ports, without Department of Commerce approval, if the carrier is destined for North Korea, North Vietnam, South Vietnam, or Cambodia, or had recently called at one of those destinations.

The discussion which follows concerning U.S. "boycotts" and Arab boycotts is intended to point up the extent to which U.S. export and transaction controls have extraterritorial (or secondary boycott) aspects and the fact that in the views of others--Arab countries and other nations--U.S. controls do not enjoy any special legitimacy./1 Admittedly, from the U.S. point of view, there are qualitative differences between the target of the Arab countries (Israel, a country friendly to the United States) and our own principal targets--North Korea, North Vietnam, South Vietnam, Cambodia, Cuba, and Southern Rhodesia. There are also important differences in the manner and extent to which U.S. enforcement intrudes into the economy of foreign countries as compared to the Arabs' enforcement of their boycott. However, as the discussion which follows shows, the manner of implementation of Arab and United States economic coercion is so similar that, if foreign countries adopted antiboycott legislation along the lines proposed in the current Congress, the effectiveness of U.S. export and transaction controls could be seriously impaired.

"Legitimacy" Under International Law of United States and Arab Boycotts and Restrictive Trade Practices

A paper presented recently to the American Bar Association by a representative of the Department of State's Office of Legal Adviser suggests that international law does not clearly sanction--or prohibit--any form of economic coercion. Citing a 1970 United Nations General Assembly Resolution approving a "Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States," the paper notes that one provision of the Declaration "seems to mean" that two types of coercion are prohibited: that which attempts to coerce a state not to exercise its legal rights and that which attempts to extort advantages./2 The defenders of the Arab boycott against Israel consider it a legitimate measure of self-defense, rather than an effort to secure advantages, and it is our understanding that the U.S. position is that U.S. restrictive trade practices do not fall within those prohibitions.

1/ In a speech in Houston, Texas on September 23, 1976, the Saudi Arabian Minister of Foreign Affairs observed: "The United States has frequently made use of them [boycotts] for maintaining and preserving its own security. Indeed, this country [the United States] has total trading restrictions in effect at present against various countries in widely scattered parts of the world; and it has sought over the years to enforce its boycotts both directly and indirectly. The only difference between our boycott and yours is the target."

2/ See "Remarks Delivered by David H. Small, Assistant Legal Adviser for Near Eastern and South Asian Affairs, Department of State, to the American Bar Association National Institute on Current Legal Aspects of Doing Business in the Middle East," November 12, 1976, p. 6.

The paper also observes that ". . . the mere fact that certain measures of economic coercion are not illegal under international law does not mean that they are desirable, merited, or that they may not be lawfully resisted. On the contrary, our efforts to prevent the intrusion of the Arab boycott or any other boycott into our society and into our economy are well within our rights under international law. . . ."/1

The Similarities and Differences in U.S. and Arab Restrictive Trade Practices

Both the Arabs and the United States apply so-called primary boycotts against target countries. That is, the Arab nations generally prohibit any commercial relations between their countries and Israel. Similarly, the United States Government generally prohibits any commercial relations between the United States and North Vietnam, South Vietnam, Cambodia, North Korea, Cuba, and Southern Rhodesia.

The Arabs extend their boycott to other countries by withholding purchases from parties in third countries which are blacklisted or which will not provide requested information or certifications.

The United States extends its embargoes and other restrictive trade practices to other countries through various regulations administered by the Treasury/2 and portions of the Department of Commerce's Export Administration Regulations. These various regulations have the following effects on transactions by firms in foreign countries with the countries which are the U.S. targets:

-- Foreign firms "controlled" by U.S. companies may not sell to, or purchase from, North Vietnam, South Vietnam, Cambodia, or North Korea without a Treasury license and such a license probably will not be granted. In other words, a U.S.-controlled firm incorporated in the United Kingdom, France, Japan or any other country may not conduct any financial transaction with the four communist countries without a Treasury license. These regulations also prohibit a U.S.-controlled foreign firm from selling--without a Treasury license--to another local firm if it has knowledge that the item will be sold to (or will be

1/ Ibid, p. 7.

2/ Treasury's controls are administered through: the Foreign Assets Control Regulations (North Vietnam, South Vietnam, Cambodia, and North Korea); the Cuban Assets Control Regulations; and Rhodesian Sanctions Regulations. In addition, the Transaction Control Regulations prohibit unlicensed transactions involving strategic products between foreign firms "controlled" by U.S. companies and the Soviet Union, the People's Republic of China, and other communist countries except Yugoslavia.

incorporated in a product which will be sold to) one of the above communist countries./1

-- Foreign firms controlled by U.S. companies may not sell to or purchase from Cuba without a Treasury license. Since October 1975 U.S. policy has been to grant a license for exports when the transaction does not involve military equipment or other strategic products. Prior to October 1975 it was Treasury's policy to deny all applications to export to Cuba.

-- U.S. citizens who are active as managers, directors, etc., in foreign firms must obtain a Treasury license to enable those foreign firms to carry out any transactions involving Rhodesia and such a license probably will not be granted.

-- Foreign firms, whether or not they are controlled by U.S. firms or have U.S. citizens active in their management, and U.S. firms may suffer at least loss of U.S. export privileges if they ship U.S.-origin products or technical data to unauthorized destinations as indicated on the Destination Control Statement which must accompany U.S. exports. The list of U.S. and foreign firms which have violated the regulations and have lost U.S. export privileges or are on probation (i.e., the U.S. "blacklist") is contained in Supplement No. 1 to Part 388 of the Export Administration Regulations.

-- Foreign importers of U.S.-origin unpublished technical data (i.e., proprietary design and manufacturing data) related to a broad range of products must provide the U.S. exporter with written assurances that the technical data will not be reexported to communist countries (except Yugoslavia) and that the product made locally with the data will not be exported by the foreign firm to specified communist countries. When such assurances cannot be obtained by the U.S. exporter, a validated export license must be obtained.

The Export Administration Regulations also include other techniques (e.g., "end-use statements" from potential purchasers) which, although intended to allow sales to be consummated by minimizing the possibility of diversion to unauthorized destinations, nevertheless have extraterritorial implications by restricting the right of the foreign firm to resell the product to destinations prohibited by U.S. regulations.

1/ This "tertiary boycott" aspect also applies to Treasury regulations governing transactions with Cuba and Southern Rhodesia and to its regulations restricting certain transactions by foreign firms controlled by U.S. firms with other communist countries.

Although the Treasury regulations in particular represent a rather substantial assertion of extraterritorial application of U.S. law, they are not broadly opposed by foreign jurisdictions (probably because the business with the U.S. target countries normally goes to other locally owned firms). However, the Canadian Government has objected on a number of occasions to the U.S.-imposed restrictions on Canadian companies, and difficulties also have arisen with other countries (e.g., Argentina, with respect to automotive sales to Cuba) from time to time when transactions with important local economic or foreign policy implications were involved.

Effect on U.S. "Boycotts" and Other Restrictions if Foreign Countries Adopted Laws Similar to Proposed U.S. Antiboycott Legislation

Although the U.S. and Arab economic warfare techniques are different in some respects, it is interesting to note what the effect would be on U.S. "boycotts" if foreign nations adopted legislation along the lines of the antiboycott provisions of S. 69 and H.R. 1561/1 introduced in the Congress earlier this month. Let us assume that, say, France enacted such a law. Based on our interpretation of S. 69 and H.R. 1561, such action by the French Government would have the effects described below on U.S. export and transaction controls.

-- S. 69 and H.R. 1561 would prohibit any U.S. person (including U.S. foreign subsidiaries) where the intent is to comply with, further, etc., a boycott from refraining from doing business with a boycotted country. If France enacted such a provision, French firms, including U.S.-controlled firms in France and French-controlled firms in the United States (and elsewhere) could not comply with U.S. law prohibiting trade with Vietnam, Cambodia, North Korea, Cuba, and Southern Rhodesia. Firms in France and French-controlled firms in the United States (and elsewhere) could not comply with U.S. destination control regulations to prevent diversion of U.S.-origin products and technical data to the above communist countries and Southern Rhodesia.

-- The bills would prohibit the furnishing by any U.S. person of information to a boycotting country about whether any person has, has had, or proposes to have any business relationship with a boycotted country. If France enacted such a law, it probably would prohibit French firms (in France and elsewhere) from complying with U.S. Export Administration Regulations' provisions regarding transfers of U.S.-origin

1/ These proposals are discussed in detail in a companion MAPI memorandum, "An Analysis of Key Antiboycott Provisions of S. 69," FT-71.

technical data which require written assurances from the foreign importers that, without U.S. Government permission, the data will not be reexported to any communist country (except Yugoslavia) and that the product made with the data will not be exported to specified communist countries. Such a French law also would presumably prohibit French firms (and their foreign affiliates) from providing end-use certificates since such an action probably would be considered as furthering a U.S. boycott or restrictive trade practice.

It is not likely that foreign countries would accept without challenge a U.S. law which purported to deny to local firms (even though U.S.-owned) the opportunity to participate in the growing Arab markets. Such a U.S. law almost certainly would increase the problems of U.S. investors abroad by causing conflicts with local shareholders and local governments and would undoubtedly lead to diplomatic difficulties between the U.S. Government and local governments. Beyond the immediate issues of the right of foreign governments to establish trade policy with the Arab states and possible increased hostility to U.S. direct investment, a further intrusion of U.S. law into foreign economies could result in the long-range impairment of U.S. foreign trade controls, the primary objective of which is to protect U.S. national security. While it is unlikely that foreign countries would enact laws against all aspects of U.S. extraterritorial controls applicable to U.S.-origin products and technical data since such action could result in the denial of certain advanced U.S. technology to their economies, the freedom of U.S.-controlled affiliates in those countries to comply with Treasury regulations might be abridged. It is in this area that U.S. foreign trade controls have most frequently run counter to trade practices and diplomatic policies of foreign countries.

Conclusion

As was noted at the outset, since the stakes involved in the U.S. response to the Arab boycott are high, any action taken must be grounded on a full understanding of the issues involved.

In our view the full development of the above issues, as well as others posed by antiboycott legislation before the Congress, suggest that the boycott is not a matter which can be addressed effectively by further legislation. Our position, set forth in a statement last summer to the House Committee on International Relations, is that:

-- Action has been taken by the Executive Branch in a number of areas to assure that the boycott does not discriminate against U.S. citizens on the basis of race, religion, or national origin;

-- Progress is being achieved through the efforts of individual firms and through diplomatic channels to lessen the impact of the boycott on U.S. firms;

-- Enactment of stronger antiboycott legislation at this time probably would be considered as "confrontational" by the Arabs and could lead to a hardening of Arab attitudes with respect to boycott enforcement;

-- Since no other industrial country has a policy and program of opposition to foreign boycotts and there are few items which the United States supplies to Arab nations which could not be provided by other countries, a likely effect of tougher antiboycott legislation could be the divergence of business to non-U.S. sources, including communist countries; and

-- The boycott will end only when there is permanent peace in the Middle East. The United States' ability to assist negotiations in that region depends on our maintaining close economic and political relations with all the countries involved.

MACHINERY AND ALLIED PRODUCTS INSTITUTE

SUPPLEMENTS

to the Written Statement and
Oral Comments of the
Machinery and Allied Products Institute
to the
Subcommittee on International Finance
of the
Senate Committee on Banking, Housing and Urban Affairs
on
S. 69 and S. 92, Bills To Amend the
Export Administration Act

February 21, 1977

During the question and answer period of hearings of the Subcommittee on International Finance of the Senate Committee on Banking, Housing and Urban Affairs on February 21, 1977, certain amplification of points made by the Institute in our written and oral remarks was requested by Chairman Stevenson and Senator Proxmire. The following material is furnished in response to these requests. In addition, in this supplemental material, we cover briefly certain points which are prompted by a review of the preliminary transcript of the portion of the hearing in which MAPI was represented and by the statement to the Subcommittee by Secretary of State Cyrus R. Vance on February 28. Witnesses on February 21 were encouraged by the Subcommittee Chairman to make any further material available which is relevant to antiboycott issues, and we have tried to do so.

Secondary Aspects of U.S. Boycotts
and Restrictive Trade Practices

The Subcommittee Chairman asked that we elaborate on our comments that the United States conducts boycotts and restrictive trade practices with secondary boycott aspects. Our supplementary remarks here will be directed at those extraterritorial aspects of various Treasury regulations administered under the authority of the Trading With the Enemy Act and other statutes, and of Department of Commerce regulations administered under the authority of the Export Administration Act. Your Subcommittee is, I believe, aware of U.S. sanctions which are applied to third country vessels which are destined to, or have recently called at, ports in Cuba, North Korea, North Vietnam, South Vietnam or Cambodia. It also is relevant that, while we have not had an opportunity to research the matter, it is our understanding that during World War II the United States used a "blacklist" to restrict dealings between U.S. firms and foreign firms which assisted the Axis Powers. The Arab boycotting nations consider that a similar state of belligerency exists with respect to Israel.

It should be noted at the outset that international law does not clearly sanction--or prohibit--any form of economic coercion. (See "Remarks Delivered by David H. Small, Assistant Legal Adviser for Near Eastern and South Asian Affairs, Department of State, to the American Bar Association National Institute on Current Legal Aspects of Doing Business in the Middle East," November 12, 1976.) That is, U.S. boycotts and restrictive trade practices enjoy no more legitimacy under international law than Arab practices. As to techniques employed, it may be presumed that nations will select the economic weapons which will inflict the maximum amount of damage upon the enemy with the minimum damage to themselves.

Both the Arabs and the United States apply so-called primary boycotts against target countries. That is, the Arab nations generally prohibit any commercial relations between their countries and Israel. Similarly, the U.S. Government generally prohibits any commercial relations between the United States and North Vietnam, South Vietnam, Cambodia, North Korea, Cuba and Southern Rhodesia. Because of the size of the United States market and the diversity of its exports, many of which are technologically advanced, U.S. denial of exports and imports can have significant impact, particularly in the initial stages of an embargo against a country such as Cuba which has been historically dependent on the United States for a wide variety of imports and as an export market.

The Arabs, having a limited capacity to affect Israel directly through denial of the region's major export product (oil) or through import prohibitions, extend their boycott to third countries by withholding purchases from parties in third countries which are blacklisted for assisting Israel in specified ways or which will not provide requested information or certifications.

The United States, which has much more foreign direct investment than the Arab states, extends its embargoes and other restrictive trade practices to U.S.-controlled firms in other countries through various regulations administered by the Treasury and portions of the Department of Commerce's Export Administration Regulations. In general, the regulations administered by Treasury prohibit U.S.-controlled firms abroad from engaging in <u>any</u> transaction (sales or purchases) with a target country without a Treasury license. While it may be argued that those controls constitute an "extended primary boycott" to prevent U.S. firms from carrying out actions abroad which they may not carry out in the United States, the controls extend to <u>all</u> activities abroad and not just to activities related to the U.S. firms' business in the United States.

These various U.S. regulations have the following effects on transactions <u>by firms in foreign countries</u> with the countries which are the U.S. targets:

-- Foreign firms "controlled" by U.S. companies may not sell to, or purchase from, North Vietnam, South Vietnam, Cambodia, or North Korea without a Treasury license and such a license probably will not be granted. In other words, a U.S.-controlled firm incorporated in the United Kingdom, France, Japan or any other country may not conduct any financial transaction with the four communist countries without a Treasury license. These regulations also prohibit a U.S.-controlled foreign firm from selling --without a Treasury license--to another local firm if it has knowledge that the item will be sold to (or will be incorporated in a product which will be sold to) one of the above communist countries.

-- Foreign firms controlled by U.S. companies may not sell to or purchase from Cuba without a Treasury license. Since October 1975 U.S. policy has been to grant a license for exports when the transaction does not involve military equipment or other strategic products. Prior to October 1975 it was Treasury's policy to deny all applications to export to Cuba.

-- U.S. citizens who are active as managers, directors, etc., in foreign firms must obtain a Treasury license to enable those foreign firms to carry out any transactions involving Rhodesia and such a license probably will not be granted.

-- Foreign firms, whether or not they are controlled by U.S. firms or have U.S. citizens active in their management, and U.S. firms may suffer at least loss of U.S. export privileges if they ship U.S.-origin products or technical data to unauthorized destinations as indicated on the Destination Control Statement which must accompany U.S. exports. The list of U.S. and foreign firms which have violated the regulations and have lost U.S. export privileges or are on probation (i.e., the U.S. "blacklist") is contained in Supplement No. 1 to Part 388 of the Export Administration Regulations.

-- Foreign importers of U.S.-origin unpublished technical data (i.e., proprietary design and manufacturing data) related to a broad range of products must provide the U.S. exporter with written assurances that the technical data will not be reexported to communist countries (except Yugoslavia) and that the product made locally with the data will not be exported by the foreign firm to specified communist countries. When such assurances cannot be obtained by the U.S. exporter, a validated export license must be obtained.

The Export Administration Regulations also include other techniques (e.g., "end-use statements" from potential purchasers) which, although intended to allow sales to be consummated by minimizing the possibility of diversion to unauthorized destinations, nevertheless have extraterritorial implications by restricting the right of the foreign firm to resell the product to destinations prohibited by U.S. regulations.

Although the Treasury regulations in particular represent a rather substantial assertion of extraterritorial application of U.S. law, they are not broadly opposed by foreign jurisdictions (probably because the business with the U.S. target countries normally goes to other locally owned firms). However, the Canadian Government has objected on a number of occasions to the U.S.-imposed restrictions on Canadian companies, and difficulties also have arisen with other countries (e.g., Argentina, with respect to automotive sales to Cuba) from time to time when transactions with important local economic or foreign policy implications were involved.

It is interesting to note that, whatever the U.S. restrictions exercised extraterritorially are called (extended primary boycott, secondary boycott, or other), their manner of implementation is so similar to that of the Arab boycott that they would be effectively proscribed if foreign countries adopted antiboycott legislation along the lines of S. 69 and S. 92.

It is not likely that foreign countries would accept without challenge a U.S. law which purported to deny to local firms (even though U.S.-owned) the opportunity to participate in the growing Arab markets. Such a U.S. law almost certainly would increase the problems of U.S. investors abroad by causing conflicts with local shareholders and local governments and would undoubtedly lead to diplomatic difficulties between the U.S. Government and local governments. Beyond the immediate issues of the right of foreign governments to establish trade policy with the Arab states and possible increased hostility to U.S. direct investment, a further intrusion of U.S. law into foreign economies could result in the long-range impairment of U.S. foreign trade controls, the primary objective of which is to protect U.S. national security. While it is unlikely that foreign countries would enact laws against all aspects of U.S. extraterritorial controls applicable to U.S.-origin products and technical data since such action could result in the denial of certain advanced U.S. technology to their economies, the freedom of U.S.-controlled affiliates in those countries to comply with Treasury regulations might be abridged. It is in this area that U.S. foreign trade controls have most frequently run counter to trade practices and diplomatic policies of foreign countries.

Transfer of Freight Forwarding Business From New York City to Other Ports

Members of the Subcommittee asked that I substantiate my remark during the discussion period that it was our understanding that some Jewish-owned freight forwarding firms in New York City have been moving to other locations because of the enactment of New York State's antiboycott law. While the subject of traffic diversion from New York was addressed in testimony by subsequent witnesses, I want to include some documentation on which my remark was based. I also am including a summary of relevant testimony by subsequent witnesses.

Our files include two articles from newspapers in February 1976 which describe the reaction in New York to enactment of that State's antiboycott law (the "Lisa Law"). The text of those articles from The Journal of Commerce and the New York Times is enclosed. In brief these articles indicate that:

-- Several New York-based companies and freight forwarders were seriously considering leaving the state because they believed that they could not comply with the new law and still carry on business with the Arab world.

-- Enactment of the Lisa Law was, at the least, accelerating the loss by New York City of ocean freight to other East Coast ports. The New York Times article of February 6, 1976, includes an estimate by the President of the New York Shipping Association that the port probably was losing a minimum of two million tons per year.

-- Freight forwarding business has been diverted to other ports. The New York Times article quotes the President of Behring International, identified in the article as one of New York's largest freight forwarders, as stating that volume at his firm has dropped 10 to 20 percent. The article also reported that Behring International already had moved a 40-person department that served Aramco from New York City to Houston. Further, it was noted that in the opinion of officials of the New York Chamber of Commerce and the National Customs Brokers and Forwarders Association the main reason for the move was enactment of the Lisa Law.

Beyond these newspaper articles, our impression that the Lisa Law has resulted in substantial diversion of business from New York to other

ports also was supported by statements of New York-based organizations submitted last year to the House Committee on International Relations during its hearings on amendments to the Export Administration Act:

-- The statement of the New York Shipping Association, Inc., says that "The mere existence of this statute [the Lisa Law], however, has had a tremendous impact on the movement of trade through the Port of New York and has encouraged the diversion of such trade to other ports on the Atlantic and Gulf Coasts of the United States . . . [I]t has resulted in millions of tons of cargo being diverted from this Port and being moved elsewhere." (See Extension of the Export Administration Act of 1969: Hearings Before the Committee on International Relations, House of Representatives, Ninety-Fourth Congress, Second Session, Part I, pp. 227-233.)

-- The statement of the American Institute of Marine Underwriters which says that, as a result of state antiboycott legislation, "The Institute has witnessed. . . a substantial shift of boycott related insurance requests away from insurers in New York, and more recently Maryland, to foreign based insurance concerns or concerns whose interests lie primarily in other jurisdictions." (See Extension of the Export Administration Act, p. 658.) Please note that the statement asserts that the state laws have resulted in the transfer of insurance to foreign-based concerns as well as concerns in other states.

The question of the diversion of business (including freight forwarding business) from New York City as a result of the Lisa Law also was addressed by later witnesses during your Subcommittee's hearings on February 21 and February 22:

-- Mr. Philip Baum of the American Jewish Congress testified on February 21 that his organization had prepared a fairly detailed report analyzing activities in the Port of New York and found that there was no substantial or significant diversion of trade as a result of the Lisa Law. He also stated that the only changes in operations of which he was aware were those associated with Aramco. Finally, he observed that, to the knowledge of his organization, neither New York nor any other jurisdiction has had any substantial loss of trade within the state because of the existence of state antiboycott laws.

-- Mr. Gilbert M. Weinstein of the New York Chamber of Commerce and Industry cited estimates based on Bureau of Census data concerning waterborne exports to the Arab Middle East for the first 10 months of 1976 which indicate that there has been very substantial diversion from New York/New Jersey ports of ocean-going traffic to that area. According to these data, during 1976 those ports experienced a loss of 10,248 long tons (a decrease of 5.3 percent) in traffic to the Arab Middle East, while traffic from the other ports cited (Baltimore, Hampton Roads, Mobile, and New Orleans) increased 450,914 tons. The increases in tonnage destined to the Arab Middle East from those ports ranged from 93.1 percent for Mobile to 127.6 percent for Baltimore. Mr. Weinstein's testimony indicates that his organization believes that the Lisa Law has been a major factor in this substantial shift in shipments from New York/New Jersey ports to other ports.

-- Mr. Gerald Ullman of the National Customs Brokers and Forwarders' Association of America testified that freight forwarders in New York City, as a result of the Lisa Law, are being requested by exporters to divert shipments from New York to other ports. While this has not yet resulted in the exodus of freight forwarding companies from New York, it has resulted in increased activity in the offices of those freight forwarder companies in Baltimore and other ports. Mr. Ullman's testimony reflected little doubt that the Lisa Law was the principal factor in this divergence of traffic destined for the Middle East from New York to other ports.

As distinguished from the comments of Mr. Philip Baum, we find the testimony of Mr. Weinstein and Mr. Ullman persuasive. While it is surprising that such a substantial shift in traffic has not resulted in the exodus of freight forwarder companies from New York, it seems clear that the divergence of cargo to other ports has resulted in the transfer of jobs in the freight forwarding business from New York. My reference to Jewish ownership of freight forwarding companies was based on my impression, which I am not able to substantiate, that significant numbers of freight forwarding and marine insurance firms in New York are Jewish owned.

Other Supplementary Comments

Testimony of Secretary of State Vance.--Since our appearance before your Subcommittee, Secretary of State Vance presented the Executive Branch's position on antiboycott legislation. The Secretary pointed out very effectively the potential detrimental effects of strong antiboycott legislation on U.S. diplomatic efforts in the Middle East and on U.S. trade and financial relations with the area. The Secretary's statement

also recognized the great difficulty in drafting effective legislation in the "refusal to deal" area from the standpoint of enforcement, the need to provide companies with clear guidelines on how to conduct trade in boycott-related conditions, and the difficult problems which would be posed for firms by the proposed legislation in terms of complying with certain of the import documentation requirements of the Arab boycotting nations.

As we indicated in our February 21 statement, the benefits to be gained by S. 69 and S. 92 are not at all clear. Indeed, we believe that certain of the bills' provisions (including the refusal to deal provisions) could well result in more difficulties for U.S. persons and firms, including blacklisted persons and firms, in terms of doing business in the Middle East than exist at present. Further, to repeat, the effect of such bills on negotiations for a peace settlement might be serious.

U.S. antiboycott actions already taken.--We believe the hearings have not given sufficient attention to the fact that the United States already has taken a number of actions against foreign boycotts and that these actions go far beyond what has been done by any other country. In addition to actions which have been taken administratively (with resepct to discriminatory boycott-related requests, public disclosure of company reports, withholding of government assistance for transactions containing boycott-related conditions), the Congress has enacted--without public hearings or opportunity for public comment--novel and complex additions to the Internal Revenue Code through the antiboycott amendments to the Tax Reform Act.

These provisions, which deny certain tax benefits to taxpayers who participate in or cooperate with a boycott in ways specified in the Act, provide an inducement for companies to attempt to negotiate for the removal of offending boycott-related conditions. In his testimony before the Subcommittee on February 28, Secretary of State Vance mentioned that diplomatic efforts and the efforts of the U.S. business community have brought about some encouraging changes in Arab requirements for negative certifications. As was suggested in our testimony, the route of negotiation--through U.S. diplomatic channels and by firms in individual transactions--offer a more promising, and certainly less costly, means of minimizing the impact of the Arab boycott than the sweeping prohibitions of S. 69 and S. 92.

Availability of blacklist information.--During my testimony I inquired of the Subcommittee as to whether it had access to the blacklist. The response was in the affirmative, that it is a public document, and that it is available to us through the Subcommittee. After our appearance, we called the Subcommittee office to obtain blacklist information. We were referred to the 1975 hearings by the Senate Foreign Relations Committee's Subcommittee on Multinational Corporations. Those hearings, already in our possession, contain a 1970 blacklist of Saudi Arabia. This hardly is complete or current information.

Moreover, it is our understanding that in addition to a blacklist maintained by the Central Office of the Boycott in Damascus, each of the Arab nations participating in the boycott maintains its own national list. It is also our understanding that none of these lists are generally available to the public and certainly are not available to U.S. firms which are exporting to the Arab nations. In a nutshell, the Subcommittee and its staff obviously do not have up-to-date information on Arab blacklists, nor does the business community.

Degree of action by foreign governments against the Arab boycott.--In our oral comments on February 21 and in our written statement, we made the point that, to the best of our knowledge and that of the Executive Branch, no foreign government (other than Israel) has taken any action which would have any significant impact on implementation of the boycott. We are confident that Senator Williams will find little if any evidence that the United Kingdom, Germany, or any other country takes strong action, as a government, against the Arab boycott. Even if there have been some statements of policy in opposition to foreign boycotts, one should bear in mind that a policy is sometimes announced by a foreign government but not enforced.

The very substantial U.S. commitment and assistance to Israel.--In oral remarks, I referred to the fact that, in supplying military hardware, the United States has given very substantial support to both Israel and the Arab nations, and is continuing to do so. In amplification of that point, since 1965 U.S. military assistance to Israel has totaled over $6 billion and a further $1 billion is programmed for fiscal year 1977. In addition, substantial economic assistance has been given to Israel. Thus, Israel has been given very substantial assistance of all types, public and private. Legislation of the type now before the Subcommittee intended to help Israel could be a costly--and, in all likelihood, ineffective--way of attempting to expand our already substantial assistance.

Newspaper Articles Dealing With
Impact of New York State's Antiboycott Law

Following is an article by Peter T. Leach, Journal of Commerce Staff, from The Journal of Commerce, February 6, 1976.

"Hearings Open on Arab Boycott: N.Y.-Based Firms Weigh Leaving State."

Several New York State-based companies and freight forwarders are seriously considering leaving the state because of the "Draconian" provisions of a new law aimed at preventing discrimination by the Arab boycott of Israel.

Sources close to these companies told The Journal of Commerce that the companies and forwarders have decided that they cannot comply with the provisions of the so-called Lisa law and still carry on business with the Arab world. Because the Arab states are drawing an increasing volume of exports from these companies, they may quit the state rather than lose this export business.

These sentiments were expressed at hearings by the state Assembly's subcommittee on human rights, which opened here Thursday, on the Arab boycott of individuals and companies doing business with Israel.

The hearings, under the chairmanship of Assemblyman Joseph F. Lisa, D-Queens, were convened to assess the workings of the new New York State law prohibiting religious discrimination by means of a blacklist or boycott.

New York State Human Rights Commissioner Werner H. Kramarsky indicated that some of the provisions of the new law may not be enforceable. He said that it is probably not unlawful to require a certification that goods shipped to an Arab country are not being shipped on a vessel owned by a country unfriendly to the importing country.

Mr. Kramarsky said his department has had no experience with international trade and banking, and consequently lacks the expertise to enforce the New York State law.

Urges Federal Law.--Mr. Kramarsky urged the passage of federal legislation to enforce provisions against discrimination on a national level.

Assembly Speaker Stanley Steingut accused the United States Government of being "an all-too-willing partner of the Arabs."

"In certain instances they have not allowed American Jews to work in Arab countries and they have refused to subcontract to American companies who were on the boycott list." Mr. Steingut said that President Gerald Ford's commitment to end the boycott had been followed by a "go-easy" policy by the Commerce Department, and by what appears to be a reversal of the tough stand initially taken by the Federal Reserve System.

Mr. Steingut indicated that New York banks have played a principal role in the enforcement of the boycott. "Their refusal to accept invoices without certification that the companies had complied with the Arab boycott rules set them up as the focal point of the entire procedure," he said.

Banks to Testify.--Chase Manhattan Bank, First National City Bank and Chemical Bank are all scheduled to testify on their role in shipping certification in today's hearings at the Carnegie International Endowment Center.

In Thursday's hearings, international executive of CBS, Inc. and RCA Corp. explained the reasons why both companies have been boycotted by the League of Arab States.

Charles R. Denny, RCA's retired vice president of international operations, said RCA was blacklisted in 1966 because it had a licensing agreement with a distributor in Israel, allowing him to press records using the RCA label.

Arab boycott officials have told Mr. Denny that RCA could be delisted if RCA severed relations with its Israel licensee, but Mr. Denny said RCA would not terminate that arrangement.

Sales Drop.--Because of the Arab boycott, he said, RCA's sales to Arab countries had dropped from a $10 million volume in 1966 to $1 million last year.

Leonard Spinrad, vice president of corporate information for CBS, Inc., said CBS learned in 1969 that it had been boycotted as a result of establishing a record-pressing subsidiary in Israel, CBS Records Israel, Ltd. Mr Spinrad said CBS has decided to continue operations in Israel and has made no effort to get off the boycott list.

A manufacturer of men's outerwear for use in aircraft maintenance work, Gerald Spiwak, told the subcommittee that Northrop Aviation had declined to buy clothing from his

firm because it was Jewish-owned. He said a Northrop buyer had told his Los Angeles sales representative that the company could not buy from anyone who was Jewish because Northrop does a substantial amount of business in Saudi Arabia.

Confusion Created.--The New York State law against the Arab boycott, which was sponsored by Assemblyman Lisa last year, has created a good deal of confusion in the minds of companies doing business in the Arab world. The law has not yet been tested in the courts, and General Electric Corp., which was summoned to testify in today's hearings, has decided to test the law by refusing to appear.

State Assemblymen on the subcommittee appeared to be holding the hearings as a means of pressuring the Federal Government into passing stiffer anti-boycott legislation of its own. But doubts have been raised as to the constitutionality of certain povisions of the New York State law.

Following is an article by Richard Phalon from The New York Times, February 6, 1976.

"Anti-Boycott Law Trims Port's Mideast Traffic: Port Here is Losing Mideast Business."

Exporters, apparently worried about breaching a new state law that makes aiding the Arab boycott of Israel a misdemeanor, are diverting cargo destined for the Middle East from New York City to other ports.

The law, an amendment to the State's Human Rights Act, became effective Jan. 1. According to James J. Dickman, president of the New York Shipping Association, it is too early to tell exactly how hard the port has been hit so far.

"We just know we're losing an awful lot of freight," he said in an interview. "We're probably losing a minimum of two million tons a year."

That figure would represent about 9.5 percent of the total 21 million tons of general cargo the port of New York handled last year.

The port, partly because of its comparatively high operating costs, has been losing freight to Montreal, Baltimore and other East Coast ports for years.

The "Lisa law"--Assemblyman Joseph F. Lisa, Democrat of Queens, sponsored the statute--is apparently accelerating that trend.

According to Gerald H. Ullman, general counsel for the New York Freight Forwarders Association, and Gilbert Weinstein, vice president of international affairs for the New York Chamber of Commerce, the economic pressure has already begun to eddy from the long-shore labor on the docks to packing houses and freight forwarders.

Mr. Lisa could not be reached for comment. In the past he has contended that such commentary is on shaky factual ground.

But a spot check of freight forwarders (whose function is to arrange the details of a shipment from the exporter's factory to the point of consignment) suggests that business is indeed being funneled elsewhere.

Steve Palumbo, a vice president of Behring International Inc., one of New York's biggest freight forwarders, says that volume at his firm has dropped "10 to 20 percent" since the Lisa law went into effect.

Behring, in fact, has written its clients and told them it could no longer handle out of its New York office shipments certified as not being of Israeli manufacture.

Saudi Arabia, Bahrain, Syria and other Arab nations almost invariably require such a certification before they will accept delivery of purchases made here.

Exporters and freight forwarders are also required, as part of the Arab boycott of Israel, to certify--among other things--that the ship on which the goods are being moved does not call at Israeli ports and is not on the Arab blacklist.

Conditions Noted.--In the letter to clients, Behring said its New York office "at the present time" would not be able "to ship freight to any country which takes part in restrictive trade practices or boycotts."

The letter also went on to note, however, that "all other B.I.I. offices will be operating under normal conditions."

"Our customers have told us they don't want any problems," Mr. Palumbo said in an interview. "They don't want to come to New York because of the Lisa law."

Thus far the law, which rolled through the Legislature with no opposition, has not been enforced. Werner H. Kramarsky, State Human Rights Commissioner, could not be reached for comment, but he has testified that he has neither the staff nor the budget to administer the law.

Though Mr. Ullman and other lawyers have broadly construed the law forbidding any "aiding and abetting" of the Arab boycott, the Human Rights Commission has not issued any guidelines or regulations under the statute.

According to one freight forwarder who said he did not want his name disclosed, the result is that "I'm not sure whether I'm breaking the law or not."

This forwarder has taken the precaution of setting up a New Jersey corporation and opening a small office in Linden, N.J., to which he intends to shift his business if the law is enforced.

"It would either mean staying in New York City and firing 40 percent of the 35 people in the office, or moving out of the city entirely," he said.

Behring has already moved the 40-person purchasing department that used to serve the Arabian American Oil Company from New York City to Houston. Mr. Palumbo said the moved was prompted by the need for "better controls" rather than the Lisa law.

Both Mr. Weinstein of the New York Chamber of Commerce and Mr. Ullman of the Freight Forwarders Association insist, however, they have been told that the new statute was the main reason for the relocation.

That's 40 jobs the city can ill afford to lose," Mr. Weinstein declared. "Aramco alone moved millions of tons through the port--a tremendous amount, enough to keep one small port busy all on its own."

The Chamber of Commerce official said he could not put a number on how many jobs had been affected here, but he added, "You have to think of the packing companies and others who make their living out of foreign trade.

Moral Issue Seen.--The Lisa law has the backing of the American Jewish Congress, which contends that the Arab boycott is a moral issue rather than an economic issue. It takes the position that American business "complicity" in the boycott is a form of "economic warfare."

Mr. Ullman says he thinks the Lisa law could be amended in a way that "the port and everybody else could live with," although he says he sees no movement in that direction.

We've been getting a lot of tea and sympathy in Albany," he said, "but not much of anything else."

Senator STEVENSON. The next witnesses will also comprise a panel: Maxwell E. Greenberg, chairman of the National Executive Committee of the Anti-Defamation League; and Mr. C. L. Whitehill, vice president and general counsel of General Mills, Inc.

Gentlemen, I will repeat my earlier request: If you will be good enough to condense your statements, we will enter the full statements in the record.

Mr. Greenberg, can we proceed with you first?

STATEMENT OF MAXWELL E. GREENBERG, CHAIRMAN OF THE NATIONAL EXECUTIVE COMMITTEE, ANTI-DEFAMATION LEAGUE, ACCOMPANIED BY ALFRED MOSES, CHAIRMAN OF THE DOMESTIC AFFAIRS COMMISSION, AMERICAN JEWISH COMMITTEE; PHILIP BAUM OF THE AMERICAN JEWISH CONGRESS; AND C. L. WHITEHILL, VICE PRESIDENT AND GENERAL COUNSEL, GENERAL MILLS, INC.

Mr. GREENBERG. Thank you, Mr. Chairman.

In response to the Chair's admonition, I shall not attempt to read to you that which you may read for yourselves, but summarize the key portions of the statement prepared.

Senator STEVENSON. Without objection, the full statement will be entered in the record.

[The complete statement follows:]

STATEMENT OF MAXWELL E. GREENBERG, CHAIRMAN OF THE NATIONAL EXECUTIVE COMMITTEE OF THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH

Mr. Chairman, members of the committee, my name is Maxwell Greenberg and I am Chairman of the National Executive Committee of the Anti-Defamation League of B'nai B'rith. I have the honor of appearing—not only for the Anti-Defamation League—but also for the American Jewish Committee and the American Jewish Congress and the other six national and 101 local constituent agencies of the National Jewish Community Relations Advisory Council whose names are appended. I am accompanied today by Mr. Alfred Moses, American Jewish Committee, and Mr. Philip Baum, American Jewish Congress.

We appreciate this opportunity to present our views on the anti-boycott provisions of S. 69 (Stevenson Bill) and S. 92 (Williams-Proxmire Bill). Mr. Chairman, we appeared before this Subcommittee in July, 1975, and before several other committees of the 94th Congress which were then considering amendments to the Export Administration Act of 1969, and we presented our views in support of effective anti-boycott legislation.

The need for such federal legislation is as clear and imperative today as it was then, and as it has been in the years before.

The invidious and divisive character of the Arab boycott operation in the United States, I submit, has been amply documented by this time by countless disturbing examples. The published record of the hearings held by this Committee on July 22 and 23, 1975, detail the history of the boycott since 1946, its harmful impact on American citizens and companies, its distressing use of blacklists and even its obnoxious anti-Jewish practices. To this day, the Arab boycott, directly or indirectly, seeks to coerce responsible American firms to refuse under threat of withholding of Arab business to deal with other American firms, or to avoid normal commercial relations with Israel, a country friendly to the United States.

Some American firms, otherwise thoroughly qualified, have been denied or threatened with denial of contracts simply because of their trade relationships with Israel, or because of their relationships with other American companies who trade with Israel. The Arab boycott has pitted American firms against other American firms to further the economic warfare of the Arab states against an ally of the United States. Equally sinister, although perhaps more subtle, the

Arab boycott apparatus, headquartered in Damascus, has compelled American firms to police and enforce its boycott.

In an effort to terminate certain of these pernicious practices, imposed upon the American business community, the Senate in late August, 1976, passed with some modifications, a bill sponsored by you, Mr. Chairman, aimed principally at prohibiting the tertiary boycott. In the House, a bill covering secondary as well as tertiary boycotts was adopted. Despite the overwhelming support for anti-boycott legislation in both houses of Congress, legislative enactment failed because a parliamentary tactic in the closing days of the 94th Congress fatally delayed the appointment of Senate-House conferees.

Notwithstanding that parliamentary obstruction, an informal conference committee was appointed and it agreed upon proposed legislation which you, Mr. Chairman, have now introduced, with certain modifications, as Senate Bill 69. A summary of that "Conference Committee" bill was inserted by you in the Congressional Record of September 30, 1976, on page S. 17462, and with your permission I would like to offer that summary as part of my testimony.

S. 92, introduced on January 10, 1977, by Senators Williams and Proxmire, has most of the features of your bill, S. 69, but with some differences and additions which I will address here today.

Mr. Chairman, both S. 69 and S. 92 are strong yet reasoned responses to the boycott's demonstrably harmful intrusion upon America's commercial life. Both bills prohibit secondary and tertiary boycotts and require public disclosure of boycott requests and compliance.

Both bills will promote international commerce and world peace, because any boycotting nation will be told that American business and industry cannot be made unwitting tools of warfare against our friends and allies. Both bills will promote domestic harmony—by preventing artificial restraint of trade and precluding the potential segregation of American businesses into two groups: Those who refuse to have others dictate with whom they may do business, and those who accept foreign domination.

Both bills do provide certain exceptions which have been included to eliminate unreasonable burdens on the interstate and foreign commerce of the U.S. To illustrate, the legislation permits American oil companies to certify they will not transship oil which they have purchased from Saudi Arabia (or other Arab states) to Israel, a boycotted country. The bills would not preclude compliance with anti-confiscation clauses, often imposed by one belligerent nation against another. For example, the legislation would allow prohibition of the shipment of goods on a carrier of a boycotted country or via a route designated by the boycotting country.

To begin with, members of the Committee, we believe that the following principles, at least, must be the basis for any anti-boycott legislation that is to be regarded as worthwhile, effective and capable of dealing with the harmful aspects of the Arab boycott operations in the United States.

No U.S. person may discriminate against a U.S. individual on the basis of that individual's race, religion, sex, ethnic or national origin, to comply with, further or support a foreign boycott.

No U.S. person may furnish information with regard to, or reflective of, a U.S. individual's race, religion, sex, ethnic, national origin or business relationships with a boycotted country, to or for the use of a foreign country, its nationals, or residents to comply with, further or support a foreign boycott.

No U.S. person may refrain from doing business with or in a foreign country, its nationals or residents pursuant to an agreement with a foreign country, its nationals or residents thereof, to comply with, further or support a foreign boycott.

No U.S. person may refrain from doing business with any other U.S. person pursuant to an agreement with a foreign country, its nationals or residents to comply with, further or support a foreign boycott.

Agreements or conduct which have the prohibited effect on U.S. persons would be violations of applicable law irrespective of where such agreements are entered into. "Agreements" should be defined to include compliance with a request from, a requirement of or on behalf of a boycotting country.

The legislation should apply to U.S. nationals and residents and to domestic corporations or corporations domiciled in the United States, and to foreign corporations owned and controlled in fact by U.S. nationals, as to their activities within or outside of the United States. It should also apply to U.S. companies wherever located but should not apply to foreign corporations in which an Ameri-

can company may have an ownership interest, but which it does not in fact control. No U.S. person should utilize any foreign person, whether or not affiliated with such U.S. person, to evade the application of the legislation.

The legislation should provide that the American public, as well as the legislature and concerned agencies of the U.S. Government, be informed as to requests affecting the freedom of choice of U.S. persons and compliance with such requests.

I now address, Mr. Chairman, the chief area wherein your bill, S. 69, and S. 92 differ—the issue of so-called "negative certificates of origin." We submit that the difference is significant.

S. 69 excepts negative certificates of origin from the boycott practices prohibited by the proposed legislation. As you know, negative certificates of origin require American exporters, banks, freight forwarders and others who trade with Arab countries, to certify that the products being exported to an Arab country were not made in whole or in part in Israel.

In contradistinction, S. 92 prohibits the use of negative certificates of origin but would allow the use of positive certificates of origin, that is, affirmative statements regarding the country of origin or manufacture, as, for example, an affirmative certification that the goods were "made in the United States." We support the latter, that is, the formulation in S. 92. The use of positive certificates of origin, a common practice in international trade, is not flawed with the objectionable features of the negative certificates.

Mr. Chairman, why do we emphasize the issue of negative certificates of origin as a major distinction between your bill and S. 92? Simply stated, the negative certificate is a cornerstone on which the Arab boycott is today structured and enforced. Unlike the positive certificate, there is no justification in commercial practice, or in the application of duties and import taxes, for negative certificates. The negative certificate singles out for invidious discrimination, a country friendly to the United States—Israel. Further, it creates a chilling effect upon otherwise healthy American-Israel trade relations by discouraging American firms from developing and maintaining mutually advantageous commerce with the State of Israel. Moreover, when an American firm furnishes boycott information to the Arabs by way of certifying a negative certificate of origin it aids and abets a boycott contrary to U.S.-declared national policy.

Mr. J. T. Smith, then General Counsel of the Department of Commerce cogently underscored this point in his November 5, 1976 memorandum on the subject of the Arab boycott. Mr. Smith declared:

"We are obligated to encourage and request American business concerns to refuse to take any action that would further or support the boycott. Firms which supply information regarding origin of goods, nature of business relationships with Israel, etc., do help the Arab nations to operate their boycott system. This system fundamentally depends upon the availability of such information."

We concur with Mr. Smith that when an American firm supplies negative information with respect to the origin of goods, it affirmatively assists the Arab boycott operation. I would like to have entered into the record the complete text of Mr. J. T. Smith's memorandum.

The extensive use of negative certificates by the boycotters is amply documented and points up the need to prohibit its use. An analysis by the Anti-Defamation League, the American Jewish Committee and the American Jewish Congress of the first 836 boycott reports which had been made public by the Department of Commerce, following President Ford's disclosure order of October 7, 1976, revealed that the negative certificate of origin was, by far, the most frequently demanded boycott condition. Indeed, that demand was made in 614 out of 836 cases studied—nearly 75 percent. With your permission, I would like to have that study entered into the record. Mr. Chairman, to permit the continued employment of the negative certificate of origin would legitimize a principal weapon employed by the Arab-boycott operation which compels American firms to police and enforce its boycott against Israel, and for which there is no justification in normal international trade practices.

Any concern that Arab boycotting countries will curtail trade rather than forego negative certificates is dispelled by the recent announcement of the New York Chamber of Commerce and Industry that the Arab Boycott Office in Jeddah will no longer insist upon negative certificates, but will recommend instead accepting positive assurances of U.S. manufacture. The Chamber reports that several Arab consultates have acknowledged and indicated agreement to this change.

The decision is gratifying confirmation of the view that negative certificates are not genuinely necessary or relevant to trade. It is imperative, however, that

this be supplemented by a U.S. statutory prohibition that will act upon these tentative indications to insure that there will be no change in the current practice of a few Arab countries and to make certain that this practice becomes uniform and universal among the others.

I would like to turn Mr. Chairman to another important distinction between S. 69 and S. 92: Section 4 A. (a) (1) of S. 69 states: ". . . the President shall issue rules and regulations prohibiting any United States person from taking any of the following actions *with intent* to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States . . .". (italic supplied) S. 92 differs by eliminating the words "with intent". We submit, that the inclusion of these words in S. 69 unduly limits the likelihood of successful enforcement of the civil sanctions of the statute.

In a civil proceeding, a prima facie case should be made by proving that a person has engaged in any of the prohibited activities; to require a private plaintiff or regulatory agency to prove the mental state of the defendant imposes a difficult burden of proof. Moreover, the prohibition of S. 92 by its terms (See 4A (a) (1), lines 23–25 on Page 22 of the Bill) applies only to "actions to comply with, further or support" any foreign boycott against a friendly country. "Wrongful" intent is an appropriate element of the prosecution case, if a criminal action were instituted under the statute. In the event, therefore, that a person were charged criminally for a violation, the requirement of mens rea, criminal intent, would be operative as in virtually all other penal statutes.

Mr. Chairman, statements in opposition to comprehensive boycott legislation have been heard before this and other Congressional Committees; they have appeared in newspaper ads and in news releases, and in communications to stockholders, etc. The time has long passed for endless rejoinders to these objections—most of which are specious in content, fear-mongering in intent, and in some instances simply designed to curry favor with Arab business clients, present or potential. This country has made it plain it will not set aside moral concerns or excuse business from conducting its affairs within moral parameters, even when it can be persuasively argued that such concerns entail a competitive cost. Thus this country demands that American businessmen refrain from bribing officials abroad in order to win favorable treatment—even though this may be acceptable abroad and indeed may be the common practice of competing business firms from other countries. We are simply not willing to purchase American contracts at the expense of American morality. And we believe these same considerations should be involved in assessing the propriety of Arab boycott practices in the U.S.

Opponents of effective anti-boycott legislation have argued that its enactment would cause American businesses substantial losses of international trade. We disagree. A perusal of the boycott regulations and their implementation establishes that the Arabs apply their blacklist opportunistically. As the New York Times commented in April, 1976.

"The experts note that in business deals the Arabs have become highly sophisticated, examining comparative prices, quality and delivery terms more than the foreign policy of the supplier nations . . . even in their blacklist of concerns that have installations in Israel, the Arabs have recently taken a more flexible approach, in keeping with their needs to do business at the best terms. Both Egypt and Syria, Arab sources report, have brought forward proposals that companies could be removed from the blacklist if they contribute to the economic development of the Arab world to a greater degree than their involvement in Israel."

The same article noted that even though France has cooperated with the boycott, its trade with the Arab nations nevertheless has fallen behind Italy, Sweden, the United States, The Netherlands, and even West Germany which generally does not cooperate with the Arab boycott.

We sincerely believe, and experience bears out, that Arab boycotting countries will buy the best available product for the cheapest possible price in the shortest delivery time offered. They are, first and foremost, businessmen. They will trade with any nation on the face of the earth, except perhaps Israel itself. American know-how, technical genius and product superiority are the controlling criteria and since the beginning, have been the major factors in Arab trade with the United States. If and when the American business establishment loses these special characteristics and qualities, the Arabs will go elsewhere—whether or not our businessmen have knuckled under to the boycott. Experience shows that the Arabs will not turn their backs on American enterprise—even in the face of

an effective anti-boycott law—if we remain competitive in forms of quality service and price.

Furthermore, while opponents of anti-boycott legislation deplore the possible loss of business for some American firms they fail to manifest any concern for those American firms who may lose business for standing up to the boycott.

In the absence of federal legislation, the paradoxical result is that those firms that adhere to the national policy of this country and resist boycott demands are made to suffer serious penalty. They pay a price by forfeiting Arab trade while those businesses that defy national policy and participate in the boycott become the beneficiaries of Arab commerce. This can be corrected only by a federal law which will proscribe participation by any American firm and thus insure that those businessmen who act upon principle and support our national policy will be protected from unfair and unsupportable disadvantage.

Similarly, as we have noted, Arab states allow themselves wide discretion and leeway as to the stringency with which they will enforce the boycott in particular cases. Where an American firm is large enough and powerful enough, the Arab states characteristically relax boycott requirements and allow business to be conducted on normal terms. This means that small and medium size firms, those without means and power to resist, will continue to suffer serious competitive disadvantage until they are given the protection of a federal law which will uniformly prescribe compliance by all firms alike and thus place all American business on equal footing in confronting the boycott and in soliciting Arab trade.

Mr. Chairman, a recent Louis Harris Poll reveals that an overwhelming majority of Americans opposes the Arab boycott. The American people perceive the Arab boycott as a moral issue. President Carter has described compliance and business cooperation with the boycott as a "disgrace". Our Secretary of Commerce has stated her views in identical terms to the Senate Commerce Committee. We respectfully submit that the American Congress bears an obligation to express the will of the majority of the American people, and to implement, by law, the moral indignation of most American businessmen.

Key leadership of American business now recognizes that elimination of the Arab boycott requires in this country immediate legislative action and cannot await the ultimate resolution of the Middle East conflict. Nor are the two really related. Boycott in the United States victimizes us regardless of peace, war or ceasefire in the Middle East.

Worthy of special note, Mr. Chairman, is the turnabout by the Unitd States Chamber of Commerce on the efficacy of boycott legislation. In a recently issued "Policy Statement On Foreign Boycotts", the Chamber throws its support in favor of ". . . legislation which would eliminate or reduce any restrictive trade practices impeding the freest flow of international trade." The statement calls for, among other things, a statutory ban on secondary and tertiary boycotts. Although we take issue with some of the specifics proposed by the U.S. Chamber of Commerce, we welcome it to the ranks of those supporting anti-boycott legislation.

Simply stated, the question is whether this great Nation will acquiesce in improper foreign demands which generate practices clearly in conflict with American principles and interests. The Export Administration Act of 1969, which expired several months ago, articulated this principle in unambiguous language, declaring it to be official American policy to oppose foreign boycotts and restrictive trade practices against nations friendly to the United States. That same policy, as we said, "encouraged and requested" Americans to refuse to take any action or support such restrictive trade practices or boycotts.

The bills already introduced in this 95th Congress, the nearly successful passage of boycott legislation in the 94th Congress further attest to the ever-mounting support for legislation to strengthen and give force to the Export Administration Act's policy declaration. As I mentioned earlier, the President of the United States has on several occasions declared publicly his unalterable opposition to the boycott and his support for comprehensive legislation against it.

Mr. Chairman, it should be pointed out that six States have already enacted anti-boycott statutes, while several others have bills pending. The States have acted first, because, they view foreign boycott intrusions in their jurisdictions as immoral and as discriminatory against their citizens. Second, the States are adopting legislation because effective Federal legislation has not been enacted into law. An examination of the already enacted State laws discloses differences among them in scope, form and enforcement. Consequently, some businessmen and banks in these States complain they are unfairly restricted because there are other States without such statutes. They express fear that their States will be deprived of Middle East trade which will be diverted to States which have no

law. I might add, parenthetically, that we have seen no responsibility study reflecting that any State with an antiboycott law has, because of it, lost, any but insignificant, Middle East trade. We have, however, seen studies that indicate there have been no losses sustained as a result of such State legislation.

Mr. Chairman, the United States needs a clear, comprehensive and strong national anti-boycott law. We need it because the American experience shows that our existing antiboycott policy, without sanctions, has failed to impede harmful Arab-boycott operations in the United States. Based on recent Commerce Department statistics, the evidence confirms that the demands of the Arab boycotters on American firms have increased inordinately. Moreover, the study of the recently released reports, which we have entered into the record, attests that only 4 percent of all those reporting, flatly indicated noncompliance with the boycott demands.

As an accompaniment of this legislation we urge the Congress to advise the President and the other members of the Executive Department of the constructive purposes that would be served by using the influence and standing of our country abroad, to help induce our friends to adopt similar legislation and to enact prohibitions—thus to make it certain and clear the Arab boycott will never be allowed to operate as a disturbing and distorting factor in international trade.

Mr. Chairman, the United States of America cannot permit foreign powers to use economic blackmail to dictate how Americans shall conduct business here among themselves or overseas with nations friendly to the United States. Congress must legislate now to shield all Americans and our business community from divisive foreign economic pressures, threats, intimidation and religious discrimination. We urge, therefore, the swift enactment of S. 92 which we believe will allow the American community to conduct its trade and commerce based upon declared U. S. policies and ethical principles.

NATIONAL JEWISH COMMUNITY RELATIONS ADVISORY COUNCIL

CONSTITUENT ORGANIZATIONS

NATIONAL AGENCIES

American Jewish Committee; American Jewish Congress; B'nai B'rith—Anti-Defamation League; Jewish Labor Committee; Jewish War Veterans of the U.S.A.; National Council of Jewish Women; Union of American Hebrew Congregations; Union of Orthodox Jewish Congregations of America; and United Synagogue of America.

LOCAL, STATE, AND COUNTY AGENCIES

Alabama: Jewish Community Council, Birmingham.

Arizona: Anti-Defamation—Community Relations Committee, Tucson Jewish Community Council.

California: Jewish Community Relations Council for Alameda and Contra Costa Counties; Jewish Community Federation, Long Beach; Community Relations Committee of the Jewish Federation-Council, Los Angeles; Sacramento Jewish Community Relations Council; Community Relations Committee of the United Jewish Federation, San Diego; Jewish Community Relations Council, San Francisco; Jewish Community Relations Council, Greater San Jose.

Connecticut: United Jewish Council, Bridgeport; Community Relations Commitee, Hartford Jewish Federation; Connecticut Jewish Community Relations Council; Jewish Federation, New Britain; New Haven Jewish Community Council; Jewish Community Council, Greater New London, Inc.; Jewish Community Council, Norwalk; United Jewish Federation, Stamford; Jewish Federation, Waterbury.

Delaware: Jewish Federation of Delaware.

District of Columbia: Jewish Community Council of Greater Washington.

Florida: Jewish Federation of Greater Fort Lauderdale; Jewish Federation of So. Broward; Jewish Community Council, Jacksonville; Central Florida Jewish Community Council; Greater Miami Jewish Federation; Jewish Federation of Palm Beach County.

Georgia: Atlanta Jewish Welfare Federation; Savannah Jewish Council.

Illinois: Public Affairs Committee, Jewish United Fund of Metropolitan Chicago; Jewish Community Council, Peoria; Springfield Jewish Federation.

Indiana: Indiana Jewish Community Relations Council; Indianapolis Jewish Community Relations Council; Jewish Community Council of St. Joseph County.

Iowa: Jewish Welfare Federation, Des Moines.

Kansas: (Kansas City—see Missouri).

Kentucky: Jewish Community Federation, Louisville.

Louisiana: Jewish Welfare Federation, New Orleans.

Maine: Jewish Federation-Community Council of Southern Maine.

Maryland: Baltimore Jewish Council; (Suburban Washington—see D.C.).

Massachusetts: Jewish Community Council of Metropolitan Boston; Jewish Federation of the North Shore, Inc.; Jewish Federation of Greater New Bedford; Springfield Jewish Federation; Worcester Jewish Federation.

Michigan: Jewish Community Council of Metropolitan Detroit; Jewish Community Council, Flint.

Virginia: Jewish Federation of Newport News-Hampton, Inc.; United Jewish Federation of Norfolk and Virginia Beach; Richmond Jewish Community Council; (Northern Virginia—see D.C.).

Minnesota: Jewish Community Relations Council—Anti-Defamation League of Minnesota and the Dakotas.

Missouri: Jewish Community Relations Bureau of Greater Kansas City; Jewish Community Relations Council, St. Louis.

Nebraska: Jewish Community Relations Committee, Jewish Federation of Omaha.

New Jersey: Federation of Jewish Agencies of Atlantic County; Jewish Community Relations Council, Jewish Federation of Community Services, Bergen County; Community Relations Council of the Jewish Federation of southern N.J.; Jewish Community Federation of Metropolitan N.J.; Jewish Federation of Northern Middlesex County; Jewish Federation of Raritan Valley; Jewish Federation of North Jersey; Jewish Federation of Greater Trenton; Jewish Federation of Central New Jersey.

New York: Jewish Community Council, Albany; Jewish Federation of Broome County; Brooklyn Jewish Community Council; United Jewish Federation, Buffalo; Jewish Community Council, Kingston; Jewish Community Relations Council of New York; Jewish Community Federation, Rochester; Jewish Community Council, Schenectady; Syracuse Jewish Welfare Federation; Jewish Community Council, Utica.

Ohio: Akron Jewish Community Federation; Jewish Community Federation, Canton; Jewish Community Relations Council, Cincinnati; Jewish Community Federation, Cleveland; Community Relations Committee, Columbus Jewish Federation; Community Relations Committee, Jewish Community Council, Dayton; Community Relations Committee, Jewish Welfare Federation, Toledo; Jewish Community Relations Council, Jewish Federation of Youngstown.

Oklahoma: Tulsa Jewish Community Council.

Oregon: Jewish Welfare Federation, Portland.

Pennsylvania: Community Relations Council, Jewish Federation of Allentown; Jewish Community Council of Easton and Vicinity; Jewish Community Council, Erie; Jewish Community Relations Council of Greater Philadelphia; Community Relations Committee, United Jewish Federation of Pittsburgh; Scranton-Lackawanna Jewish Council; Jewish Federation of Greater Wilkes-Barre.

Rhode Island: Community Relations Council, Jewish Federation of Rhode Island.

South Carolina: Jewish Community Relations Committee, Charleston.

Tennessee: Jewish Community Relations Council, Memphis; Jewish Federation of Nashville and Middle Tennessee.

Texas: Jewish Welfare Federation, Dallas; Jewish Community Relations Committee, El Paso; Jewish Federation, Fort Worth; Jewish Community Council of Metropolitan Houston; Community Relations Council, Jewish Social Service Federation, San Antonio.

Washington: Jewish Federation of Greater Seattle.

Wisconsin: Madison Jewish Community Council; Milwaukee Jewish Council.

Mr. GREENBERG. My name is Maxwell Greenberg and I am chairman of the National Executive Committee of the Anti-Defamation League of B'nai B'rith.

I have the honor of appearing before you not only for the Anti-Defamation League, but also for the American Jewish Committee, the

American Jewish Congress and more than 100 national and local constituent agencies of an umbrella group known as the National Jewish Relations Community Advisory Council. The names of those community agencies are appended to our formal statement.

I am accompanied here today by Mr. Alfred Moses, representing the American Jewish Committee and Mr. Philip Baum, presiding the American Jewish Congress.

We greatly appreciate this opportunity to present our views on the antiboycott provisions of S. 69, introduced by the chairman; and S. 92, introduced by Senators Proxmire and Williams; and I believe I heard in Senator Proxmire's statement that Senator Sarbanes had joined as a sponsor of that bill.

Mr. Chairman, we appeared before this subcommittee in July 1975, and before several other committees of the 94th Congress, which were then considering amendments to the Export Administration Act of 1969; and we then presented our views in support of effective anti-boycott legislation.

The need for such Federal legislation is as clear and imperative today as it was then, and as it has been in the years before.

The invidious and divisive character of the Arab boycott operation in the United States has been amply documented by this time. The public record of the hearings held by this committee on July 22 and 23 in 1975, detail the history of the boycott since 1946. Its harmful impact, on American citizens and companies, its distressing use of blacklists, and even it obnoxious anti-Jewish practices.

To this day, the Arab boycott directly or indirectly, seeks to coerce responsible American firms to refuse, under the threat of withholding Arab business, to deal with other American firms or to avoid normal commercial relations with Israel, a country friendly to the United States.

Some American firms, otherwise thoroughly qualified, have been denied or threatened with denial of contracts, simply because of their trade relationships with Israel, or because of their relationships with other American companies who trade with Israel. The Arab boycott has pitted American firms against other American firms, to further the economic warfare of the Arab States against an ally of the United States.

Equally sinister, although perhaps more subtle, the Arab boycott apparatus has compelled American firms to police and enforce its boycott. Of course, the principal example of that is in the area of letters of credit in which American banking firms of good repute, international in operation, serve as en enforcer of Arab boycott practices.

Now, in an effort to terminate certain of these pernicious practices, which have been imposed upon the American business community, the Senate in late August 1976, passed with some modifications, a bill sponsored by you, Mr. Chairman, aimed principally at prohibiting the tertiary boycotts.

In the House a bill covering secondary, as well as tertiary, boycotts was adopted.

Despite overwhelming support for antiboycott legislation in both houses of Congress, legislative enactment failed, or the adoption of the legislative enactments failed, because parliamentary tactics in the

closing days of the 94th Congress fatally delayed the appointment of Senate and House conferees.

Notwithstanding that, an informal conference committee was appointed and it agreed upon proposed legislation, which you, Senator Stevenson, have now introduced with certain modifications as S. 69.

A summary of that conference committee bill so-called was inserted by you in the Congressional Record of September 30, 1976, on page S17462, and with your permission I would like to offer that summary as part of my testimony.

Senator STEVENSON. It will be inserted in the record.

[The information follows:]

[From the Congressional Record, Sept. 30, 1976]

THE EXPORT ADMINISTRATION ACT

Mr. STEVENSON. Mr. President, time has about run out on one of the most important items of unfinished business before this Congress—legislation amending and extending the Export Administration Act.

This legislation deals with a number of critical questions, including foreign boycotts, nuclear proliferation, grain embargoes, controls on the export of strategic materials, and East-West trade.

These are difficult and delicate questions which have been dealt with responsibly by the legislative branch—and irresponsibly by the administration.

These are matters which require the exercise of statesmanship. But instead of statesmanship, the President of the United States is engaging in political gamesmanship.

It is a dangerous game.

Mr. President, legislation amending and extending the Export Administration Act has been passed by large majorities in both chambers. Conferees from both bodies have met informally and have resolved the differences in the measures passed by the Senate and the House. But the will of the Congress is now being frustrated by a parlimentary ploy aimed at keeping this legislation from being brought to a vote in the Senate. That effort is supported by the administration.

If it succeeds, this important legislation will have been sacrificed to political expediency. Once again, the President will have opposed in the Congress efforts which, in his campaign for reelection, he professes to support.

Mr. President, this bill contains realistic and workable provisions to strengthen the U.S. position on foreign boycotts. The legislation agreed to informally by the conferees blends the House and Senate measures and improves upon both. It would protect the rights of American citizens and the sovereignty of all nations—the United States, Israel, and the Arab States alike. It would prevent American companies from conspiring to boycott Israel while protecting the right of American businesses to engage in all legitimate trade with Arab States. It would prevent those States from enlisting American companies in their boycott of Israel without interfering with other nations' right to control their own economic relations with Israel.

This bill recognizes that the Congress cannot dictate Arab policy toward Israel. It reflects also a determination that the Arab States will not dictate American policy toward Israel.

Mr. President, this legislation deals with other important issues.

It deals realistically and forcefully with one of the greatest threats to mankind—the proliferation of nuclear weapons. It calls for action by the United States alone and by the United States in concert with the other nuclear powers to halt the spread of nuclear weapons-making capability. It is the first major legislation to be acted on by Congress in many years to deal with nuclear proliferation.

The bill contains a measure to protect American farmers and grain exporters from arbitrarily-imposed embargoes by permitting the Congress to override Presidential embargoes on agricultural sales abroad. It also permits agricultural commodities, once purchased for shipment abroad, to be stored in the United States without fear of embargoes against their shipment. Both measures are of importance to American farmers and the American economy.

The bill also contains measures to expand U.S. trade with Eastern Europe and the Soviet Union while at the same time improving our ability to prevent

transfers of strategic materials to adversaries. In the ebb and flow of détente this is of crucial importance to improved relations with the Soviet Union, to the expansion of our economy, and to the protection of our national security.

Mr. President, the decision to block this legislation not only deprives the President of tools to deal with these sensitive and vital issues, it means that the Export Administration Act itself will expire. This will mean an end to the authority under the act to control sales of strategic materials to the Soviet Union and other nations. It will mean an end to the President's ability to protect the American economy from shortages of vital commodities. And it will even mean an end to the only law which declares it to be U.S. policy to oppose foreign boycotts and gives the President the power to deal with boycotts.

Once again the will of the Congress has been blocked. Not by veto, as has often been the case in the past, but by a parliamentary stratagem aimed at keeping important legislation from even being put to a vote. This disregard for the will of an overwhelming majority of the House and the Senate reflects a fundamental insensitivity to issues of vital importance to the United States.

Mr. President, in order that the Members may better understand the provisions of this legislation, I ask unanimous consent that a summary be printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF EXPORT ADMINISTRATION LEGISLATION TITLE I

The bill extends the Export Administration Act to provide for a two-year extension of the Act, through September 30, 1978.

EXPORT CONTROLS FOR NATIONAL SECURITY PURPOSES

Factors to be considered

The bill amends Section 4(b)(1) of the Act to provide that in administering export controls for national security purposes, United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control retransfers of United States exports in accordance with United States policy, and such other factors as the President may deem appropriate.

Review of national security controls

The bill requires that the President periodically review United States policy toward individual countries to determine whether such policy is appropriate in light of the factors mentioned above.

Reports to Congress

The bill provides that the results of the review mentioned above, together with the justification for United States policy in light of such factors, be included in the semi-annual report of the Secretary of Commerce required by this Act, beginning with the report for the first half of 1977 and every second report thereafter.

Review by the Secretary of Defense

The bill provides for review by the Secretary of Defense of exports to any nation to which exports are restricted for national security purposes if the export will make a significant military contribution to the military potential of such nation. The Secretary of Defense is authorized to recommend to the President disapproval of any export to any country to which exports are controlled for national security purposes if the export will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such nation.

COMMODITY CONTROL LISTS

Review of unilateral and multilateral controls

The bill provides for a detailed review of both unilateral and multilateral export controls and for a report to be submitted to Congress within 12 months of enactment.

Foreign availability

The bill amends Section 4(b) of the Act to make it clear that the policy that goods freely available elsewhere are not to be controlled for national security purposes unless it is demonstrated that the absence of controls would prove detrimental to U.S. national security. The nature of such evidence is to be included in the semi-annual report to Congress. Where controls are imposed for national security purposes notwithstanding foreign availability, the President is to initiate negotiations with foreign countries for the purpose of eliminating such availability.

SIMPLIFICATION OF EXPORT CONTROLS

The bill provides for a review of export control lists and regulations aimed at seeking ways to simplify and clarify both export control lists and export regulations and rules. The report is to be submitted to Congress with 12 months.

EXPORT OF TECHNICAL INFORMATION

Reporting and monitoring technical agreements

The bill provides that any person (including an educational institution) entering into a contract, protocol, or other understanding, involving the transfer from the United States of technical information to any country to which exports are controlled for national security or foreign policy purposes shall furnish such documents and information as the Secretary of Commerce shall require to enable him to monitor the effects of such export on the national security and foreign policy of the United States.

Study of exports of technical data

The bill amends Section 4 of the Act by adding a new subsection (j)(2) that requires a specific study of the problem of the export, by publication or other means of public dissemination, of technical data which may prove detrimental to the national security or foreign policy of the United States. A report is required within 6 months on the impact of such exports; the report shall include recommendations for monitoring such exports.

ACTION ON EXPORT LICENSE APPLICATIONS

Period for approval

The bill strengthens the language in Section 4(g) to confirm the intent of Congress that any export license application required under the Act be approved or disapproved within 90 days of receipt. If it is not acted upon, it shall be deemed approved and the license issued unless the applicant is notified in writing of the specific circumstances requiring additional time and the estimated date of decision.

Opportunity to respond

The bill amends Section 4(g) to provide that whenever an export license application is to be referred to any multilateral review process, the applicant shall be given an opportunity to review any documentation to be submitted for the purpose of describing the export in order to determine whether such description is accurate.

The bill further provides that if any export license application is not acted upon within 90 days, the applicant shall, to the maximum extent consistent with U.S. national security, be specifically informed in writing of questions raised and negative considerations or recommendations made by any Government agency and shall be given an opportunity to respond thereto.

Reasons for denial of license

The bill requires that an applicant whose export license is denied must be informed in writing of the specific statutory basis for the denial.

TECHNICAL ADVISORY COMMITTEES

Term of industry representatives

The bill amends Section 5(c)(1) of the Act by lengthening the term of industry representatives on the technical advisory committees from 2 to 4 years.

Role of technical advisory committees

The bill makes it clear that technical advisory committees are to be consulted, when they have expertise, with respect to technical matters, worldwide availability, licensing procedures, and multilateral controls.

Use of recommendations

The bill requires that each semi-annual report include an accounting of the consultations undertaken with technical advisory committees, the use made of their advice, and their contributions to carrying out the policies of the Act.

EXCLUSION OF CERTAIN PETROLEUM PRODUCTS FROM EXPORT LIMITATIONS

The bill contains a provision exempting petroleum products refined in either U.S. foreign trade zones or Guam from short supply export controls unless the Secretary of Commerce finds that such products are in short supply.

PENALTIES FOR VIOLATION

The bill amends Section 6(b), providing for penalties for exporting to a Communist-dominated nation in violation of the Act, by replacing "Communist-dominated nation" with "country to which exports are restricted for national security or foreign policy purposes."

INTERNATIONAL TERRORISM

The bill amends Section 3 of the Act by adding a new paragraph (8) stating that it is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territory or resources to aid those persons involved in acts of international terrorism. To achieve this objective, the President is directed to make every reasonable effort to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before resorting to the imposition of export controls.

EXPORT OF HORSES FOR SLAUGHTER

The bill amends Section 4 of the Act to add a new subsection (k) to prohibit the exportation by sea from the United States of horses for the purposes of slaughter.

CONGRESSIONAL VETO OF EXPORT CONTROLS ON AGRICULTURAL EXPORTS

The bill amends Section 4(f) of the Act to provide that if export controls are imposed on any agricultural commodity for foreign policy purposes, they shall cease if the Congress within 30 days passes a concurrent resolution of disapproval.

NUCLEAR POWERPLANTS

The bill prohibits the use of foreign assistance funds to finance any nuclear power plant under an agreement for cooperation.

TRAINING OF FOREIGN NATIONALS

The bill contains an amendment to Section 4(j) of the Act requiring a Presidential study of the training of foreign nationals within the U.S. in nuclear engineering and related fields to determine where this contributes to nuclear proliferation. A report is required within 6 months of enactment.

AUTHORIZATION FOR APPROPRIATION

The bill adds a new Section 13 to the Act to provide that, beginning with fiscal year 1978, no appropriation may be made for export administration expenses unless previously and specifically authorized.

AVAILABILITY OF INFORMATION TO CONGRESS

The bill amends Section 7(e) of the Act to provide that the confidentiality provisions of the Export Administration Act do not authorize the withholding of information from a Congressional committee or subcommittee.

SEMIANNUAL REPORT

The bill amends Section 10 of the Act by adding a new subsection (c) specifying the kinds and types of information which is to be included in each semiannual report to the Congress.

SUNSHINE IN GOVERNMENT

The bill adds a new section to the Act which requires annual disclosure statements by each Commerce Department employee who has policy making responsibilities relating to export administration and who has any known financial interest in any person subject to, licensed under, or otherwise receiving benefits under the Export Administration Act. Criminal penalties are required for knowing violations. Annual reports to Congress are required from the Secretary of Commerce.

NUCLEAR PROLIFERATION

The sections on nuclear proliferation are in two parts, one dealing with the international effort to control the spread of reprocessing, enrichment, and heavy water technology and the other with unilateral controls over United States nuclear agreements and licenses with the objective of limiting the ability of non-weapons states to possess strategic quantities of readily fissionable material.

The bill calls upon the President to seek agreement among nuclear exporting nations:

(a) to terminate exports of enrichment, reprocessing, or heavy water production facilities while alternatives to national facilities are being pursued;

(b) to refuse to export nuclear materials and technology to countries which do not accept international safeguards;

(c) to establish minimum physical security standards;

(d) to establish arrangements for sanctions in the event of violations of any international agreement to control the use of nuclear materials and technology;

(e) to pursue the concept of multilateral fuel facilities; and

(f) to establish arrangements for appropriate response, including the suspension of transfers of nuclear equipment, material, or technology, to any nonnuclear weapons country which has detonated a nuclear explosive device or which has embarked upon a nuclear weapons program.

The President is to report progress to Congress within one year of enactment.

Additionally, the bill permits agreements for nuclear cooperation or amendments to or renewals thereof, only if:

(a) provisions of the agreement apply to all weapons-grade nuclear material produced by a reactor transferred under such an agreement, and

(b) the recipient country agrees to permit the IAEA to report to the United States on the status of all inventories of weapons-grade nuclear material under IAEA safeguards possessed by that country.

The Secretary of State is to seek to amend existing agreements accordingly and to obtain from recipient countries reports on weapons-grade nuclear material not under IAEA safeguards. No license is to be issued in the absence of a pledge against use for any explosive nuclear device.

Finally, permission to a party to an agreement for nuclear cooperation to reprocess special nuclear material through the use of U.S.-supplied material or equipment, can only be given upon determination by the Secretary of State that detection and timely warning of diversions will occur well in advance of the time at which that party could transform strategic quantities of diverted nuclear material into explosive nuclear devices.

TITLE II

A. Prohibitions

Subject to rules and regulations issued by the Department of Commerce it would be a violation of the Export Administration Act to do any of the following with intent to comply with, further, or support a foreign boycott or restrictive trade practice against a country which is friendly to the United States and is not the object of any U.S. embargo:

1. Refrain from doing business with any U.S. person or person doing business in the United States.
2. Refrain from employing or otherwise discriminating against persons of a particular race, religion, or national origin.
3. Furnish information regarding a person's race, religion, or national origin.
4. Refrain from doing business with any person other than the boycotted country or its nationals.
5. Refrain from doing business with the boycotted country or its nationals pursuant to an agreement with, requirement of, or request from or on behalf of any boycotting country. The mere absence of a business relationship with or in the boycotted country or its nationals would not constitute a violation of the above.
6. Furnish information about whether the person does, has done, or proposes to do business with the boycotted country or its nationals or with any other boycotted person.

B. Exceptions to prohibitions

The above general prohibitions would not apply to:
1. Compliance with import rules prohibiting import of goods from boycotted country or its nationals or shipment of such goods on carrier or boycotted country or via route prescribed by boycotting country.
2. Compliance with import and shipping document requirements with respect to name and route of carrier and identity of supplier and country of origin of the goods.
3. Compliance with export requirements of boycotting country with respect to transshipment.
4. Compliance by individuals with immigration requirements of boycotting country.
5. Refusing to honor letters of credit where beneficiary fails to comply with requirements thereof, except where such compliance would be a violation of the law.

C. Scope of coverage

Above prohibitions and reporting requirements would apply to (1) U.S. persons (defined as individuals plus corporations organized under U.S. law); (2) U.S. controlled subsidiaries and affiliates; and (3) persons doing business in the United States with respect to their business in the United States.

The test of control would be control in fact: Does the parent in the ordinary course of business control the activities or determine the policies of the subsidiary?

D. Enforcement

Enforcement would be by Commerce Department administrative process in accordance with the APA. Rules and regulations to be effective within 3 months of enactment. Existing agreements must be brought into compliance 3 months after effective date of regulations.

E. Disclosure

Exempted from public disclosure would be information regarding the quantity, description and value of any goods to which the boycott report relates if the Secretary of Commerce determines that disclosure thereof would place the person reporting at a competitive disadvantage.

Charging letters or other documents initiating enforcement proceedings would be made pubilc.

Mr. GREENBERG. Senate bill 92, introduced by Senators Williams and Proxmire, has most of the features of your bill, S. 69, but with some differences and additions, which I will address here today.

Mr. Chairman and members of the committee, both Senate bill 69 and Senate bill 92 are strong but reasoned responses, to the boycotts demonstrably harmful intrusion on America's commercial life. Both bills prohibit secondary and tertiary boycotts and require public disclosure of boycott requests and compliance. Both bills will promote international commerce and world peace, because any boycotting nation will be told that American business and industry cannot be made unwitting tools of warfare against our friends and allies. Both

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bills will promote domestic harmony by preventing artificial restraints of trade and precluding the potential segregation of American business into two groups: Those who refuse to have others dictate with whom they may do business, and those who accept foreign domination.

Both bills provide certain exceptions which have been included to eliminate unreasonable burdens on the commerce of the United States. To illustrate, the legislation permits American oil companies to certify they will not transship oil which they have purchased from Saudi Arabia or another Arab country to Israel. The bills would preclude compliance with anticonfiscation clauses, often imposed by one belligerent nation against another. For example, the legislation would allow prohibition of the shipment of goods on a carrier of a boycotted country, or via a route designated by the boycotting country.

To begin with, in terms of this basic legislation, we believe the following principles, at least, these principles must be the basis for any antiboycott legislation that is to be regarded as worthwhile, effective, and capable of dealing with the harmful aspect of the Arab boycott operations in the United States.

First, that no U.S. person may discriminate against a U.S. individual on the basis of that individual's race, religion, sex, ethnic or national origin, to comply with, further, or support foreign boycotts.

Second, that no U.S. person may furnish information with regard to or reflective of a U.S. individual's race, religion, sex, ethnic or national origin, or his business relationships with a boycotted country, to or for the use of a foreign country, its nationals or residents to comply with, further, or support a foreign boycott.

Third, no U.S. person may refrain from doing business with or in a foreign country, its nationals or residents, pursuant to an agreement with the foreign country, its nationals or residents, in order to comply with, further, or support a foreign boycott.

And fourth, the fourth basic principle here: No U.S. person may refrain from doing business with any other U.S. person pursuant to an agreement with a foreign country, its nationals or residents, to comply with, further, or support a foreign boycott.

Agreements or conduct which have the prohibited effect on U.S. persons would be violations of applicable law irrespective of where such agreements are entered into. The concept of agreement should be defined to include compliance with a request from a requirement of, or on behalf of a boycotting country.

The legislation should apply to U.S. nationals and residents and to domestic corporations, and to foreign corporations owned and controlled, in fact, by U.S. nationals, as to their activities within or outside the United States. It should also apply to U.S. companies wherever located, but it need not apply and should not apply to foreign corporations, in which an American company may have an ownership interest but which it does not, in fact, control. On the other hand, no U.S. person should utilize any foreign person, whether or not affiliated with such U.S. person, to evade the application of the legislation.

Finally, the legislation should provide that the American public, as well as Congress and concerned agencies of the U.S. Government, should be informed as to requests affecting the freedom of choice of U.S. persons and compliance with such requests.

I now address, Mr. Chairman, those areas, major areas in which your bill, Senate bill 69, and Senate bill 92 differ. There is on particular area of concern to us. It is the issue of the so-called "negative certificates of origin." We believe the difference between the two bills to be significant.

Senate bill 69 excepts negative certificates of origin from its coverage. Many boycott practices are prohibited by the proposed legislation but as an exception to that, negative certificates of origin are permitted. As you all know, negative certificates of origin require American exporters or banks, freight forwarders, others who trade with an Arab country to certify regarding goods going to an Arab country, that the goods were not made in whole or in part in the State of Israel.

Senate bill 92 prohibits the use of negative certificates of origin but would allow the use of so-called positive ones, that is affirmative statements regarding the country of manufacture. For example, a certification that the goods were made in the United States. We support this in Senate bill 92. This is not flawed with the objectionable features of the negative certificates.

Parenthetically, I should state we believe the certificates of origin in general are undesirable but we understand the possible commercial need for positive certificates of origin under some circumstances.

Why do we emphasize this issue? Simply stated, the negative, certificate is the cornerstone on which the boycott is today structured and enforced. Unlike the positive certificate, there is no justification in commercial practice or in the application of duties and import taxes. The negative certificate singles out for invidious discrimination a country friendly to the United States. It creates a chilling effect on American-Israeli trade relations by discouraging American firms from developing and maintaining mutual advantageous commerce with the State of Israel.

Moreover, when an American firm furnishes boycott information to the Arabs by way of certifying a negative certificate of origin, it aids and abets a boycotting country contrary to U.S. declared national policy.

The extensive use of negative certificates by the boycotters is amply documented and points up the need to prohibit its use. An analysis by the Anti-Defamation League, the American Jewish Committee and the American Jewish Congress of the reports made public by the Department of Commerce following Mr. Ford's disclosure orders of October 1976 revealed the negative certificate of origin was by far the most outstanding example, 75 percent of the cases.

I would like that study entered in the record, Mr. Chairman.

Senator STEVENSON. Without objection.

[The document follows:]

January, 1977

Analysis: 836 Arab Boycott Request Reports Filed With The U.S. Commerce Department Since October 7, 1976

Summary of Findings

1. The 836 boycott request reports studied indicated compliance by U.S. firms in about 87% of the cases and non-compliance in 4%. In about 9% of the reports, decision as to compliance was being made by "another party" or had not yet been made; the compliance pattern therefore could be as high as 96%.

2. The most frequent boycott requests reported were for "Negative Certificates of Origin" and for declarations that the carrier transporting the goods was not on the blacklist.

3. Saudi Arabia, Kuwait and the United Arab Emirates were the countries of destination for goods involved in 65% of the 836 boycott reports analyzed, Iraq, Libya and Bahrain in another 20%, and Jordan, Egypt, Oman-Muscat and Qatar in another 11%. A number of Arab League states, such as Algeria, Morocco and Sudan, were not involved in any of the boycott requests.

4. Freight forwarding firms filed approximately 45% of the 836 reports, banks filed almost 30% of the documents, and in another 21%, the exporting firm itself filed. Of 247 reports filed by banks, subsidiaries of one bank filed 134, or almost 55%. The bank's New York subsidiary filed 111 of the 134 reports.

5. In cases where freight forwarders or banks filed the boycott request report the name of the exporter was always blacked out by the Commerce Department.

(Recent Commerce Department regulations, dated October 18, 1976, explicitly require each party to a transaction receiving a boycott request -- i.e., exporter, bank or freight forwarder -- to file a report with the Department of Commerce. All the reports analyzed in this memorandum were filed before the operative date of the new regulations. Presumably under the new regulations, the identity of the exporter will be a matter of public record.)

6. American-Arab trade promotion groups, such as the U.S.-Arab Chamber of Commerce and the American-Arab Chamber of Commerce, played a noticeable role in the boycott process by validating boycott-tainted documents or by initiating boycott requests in almost 30% of the 836 boycott reports studied.

7. Local Chambers of Commerce in the United States validated documents containing boycott requests in more than 10% of the cases reported.

Analysis: 836 Arab Boycott Request Reports Filed
With the U.S. Commerce Department Since Oct. 7, 1976

Compliance (Table 1)

Analysis of 836 boycott request reports filed with the U.S. Commerce Department since October 7, 1976 -- made public by the Department pursuant to an order of that date by President Ford -- indicates widespread compliance with the boycott by the reporting U.S. firms.

In the 836 reports examined, non-compliance or intent of non-compliance was reported in 34 cases -- about 4%. Compliance, or intention to comply, was reported in almost 87% of the reports -- 725 of the 836 analyzed.

In the remaining 77 reports, moreover, there was the possibility of compliance in every case. In 72 of the 77, firms reporting said that the decision with respect to compliance was being made by "another party" and in five cases, it was reported that no decision concerning compliance had been made. Were the decisions in all these cases to be in favor of compliance, a pattern of 96% compliance would emerge from the 836 reports studied. In any case, the 836 reports indicate more than 86% compliance.

The 34 reports that were filed indicating non-compliance with boycott requests were filed by 20 companies while the five reports indicating that a decision with respect to compliance had not yet been made were filed by four companies.

Of the 34 reports indicating non-compliance, more than half -- 18 -- were filed by five companies in California. Whether or not this pattern stems from that state's stringent anti-boycott law could not be determined.

Finally, 25 firms filed the 72 reports indicating that the decision with respect to compliance or non-compliance was being made by another party involved in the transaction. The types of companies filing these reports were as follows:

Banks -- 13

Forwarders -- 9

Exporters -- 2

Export Agent -- 1

Of the 72 such reports,

Banks filed -- 45

Forwarders -- 24

Exporters -- 2

Export Agent -- 1

Kinds of Boycott Requests and Compliance (Tables 2, 8 and 9)

By far the most frequent type of boycott request reported was for a "Negative Certificate of Origin" indicating that the merchandise involved in a transaction was not of Israeli origin and that it contained no components of Israeli origin. Such requests were reported in 614, or more than 70% of the reports filed. (See Table 2.)

In 203 of the 836 reports -- 24.3% -- a negative certificate of origin was the only boycott request reported. Compliance was indicated in 187 of these 203 reports, or 92.1%. (See Table 8.) There is a noticeable difference -- 3.3% -- in compliance between cases in which only a negative certificate of origin was required and cases where there was at least one other boycott request along with the request for a negative certificate -- 88.8%.

In more than half the reports, firms indicated they had received requests for a declaration that the shipper or carrier transporting the merchandise was not blacklisted, while in one-third of the cases, a declaration was requested that the manufacturer or exporter in the transaction was not on the blacklist. In just over 20% of the reports, there were requests for a declaration that the carrier -- the ship or the plane -- did not call at Israeli ports.

A declaration that the insurer was not blacklisted was required in more than 8% of the 836 reports, while in almost 4%, reporting firms indicated receipt of a request for a declaration that the bank negotiating the credit was not on the Arab blacklist.

Requests for declarations that goods involved in a transaction had not passed, or would not pass, through "Palestine" made up a minor percentage (1.2%) as did requests to German firms for a declaration that funds from the transaction would not be used for reparations to Israel; such requests appeared in less than one per cent of the 836 reports analyzed. (See Table 2.)

In the most frequent types of boycott requests -- Negative Certificates, shipper or carrier not blacklisted, manufacturer or exporter not blacklisted, carrier doesn't call at Israeli ports, and insurer not on blacklist -- compliance ranged from 84.2% to 91.4%. In the less frequent categories, compliance ranged from 71.9% to 100%, the variation probably being attributable to the smaller size of the "samples" involved.

Of the 836 reports analyzed, 600, or 71.8%, contained at least one blacklisting requirement -- a declaration that the vessel carrying the goods, the manufacturer or exporter of the goods, the insurance company, or the bank negotiating credit for the transaction was not on the Arab blacklist. Compliance was indicated in 531 of these 600 reports -- 88.5%. (See Table 9.)

The most blatant and obviously-worded boycott requests were significantly rare. There were only 10 cases, for example, in which reporting firms were asked to declare that they did not do business with any firm that has a business relationship with Israel or an Israeli national. Compliance was reported in 9 of the 10 cases. There were four cases in which American firms were required to declare that they had no business relationships with Israel or an Israeli citizen. Compliance was reported in two.

There were two cases in which the boycott requirement was a declaration that neither the exporter nor its subsidiaries had any investments in Israel. In each case, this boycott requirement was contained in a contract between individual Arab boycotters and American firms -- the only two cases of the 836 analyzed in which the document specifying the boycott request was a contract and the only two, likewise, in which the requirement called for a declaration that the exporter, or its subsidiaries, had no investments in Israel.

One of the two contracts required that the exporter also declare that it did not allow the right to use its name in Israel. This was the only case in which this requirement was noted in the 836 boycott request reports examined.

There was one case in which a declaration was required that the shipper does not carry Israeli goods. There were no cases reported in which reporting firms were asked to declare that neither the exporters, its affiliates or its subsidiaries had stockholders, owners, officers or employees who were Israeli citizens. (Table 2.)

The scarcity of boycott requests concerning American firms' dealings with Israel and Israeli citizens suggests that Arab boycotters determine the answers to these questions at an earlier stage in the boycott process, so that by the time business transactions are entered into, there is no need for such boycott requests to be included. Such questions have been included in letters and questionnaires sent to American firms by the Arab Boycott Office as part of the blacklisting process in past years. In any case, it would appear that the Arabs are not currently requiring such declarations as part of individual transactions with U.S. firms.

Arab Countries of Destination (Table 3)

Three countries -- Saudi Arabia, Kuwait and the United Arab Emirates -- were the countries of destination for merchandise involved in 65% of the 836

boycott request reports analyzed. Iraq, Libya and Bahrain were countries of destination in some 20%, while Egypt, Jordan, Oman-Muscat and Qatar were involved in about 11%. Syria, Lebanon, Yemen, the Yemen Peoples Republic and Tunisia comprised a little more than 2%, and in the remaining 1% of the reports, necessary information was missing, illegible or obviously incorrect.

It is interesting to note that a number of Arab League member states, among them Algeria, Sudan and Morocco, were not involved in any of the 836 boycott reports analyzed.

Kinds of Companies Filing the Reports (Table 4)

Freight forwarding firms filed 379 of the 836 reports studied -- 45.3% -- while banks filed 247 of the reports, or 29.5% -- a combined total of 626 reports and 74.8% of all reports filed. Exporting companies filed 178, or 21.3%, of the reports studied.

As noted in the Summary of Findings, of the 247 reports submitted by banks, 134 -- almost 55% -- were filed by various subsidiaries of one bank. Of these 134 reports, 111 were filed by the bank's New York subsidiary.

A group of 21 reports, representing 2.5% of the 836 studied, were filed by one forwarding firm which specifically stated that it was acting as "agent" for an "ocean carrier" -- a shipping line.

In a little more than one percent of the forms the filing firms listed themselves as steamship agents (in 3 cases), manufacturing (in 2 cases), steamship company, export agent, carrier and middleman.

Non-Arab Parties Making Boycott Requests (Table 5)

In 79 reports, or 9.5% of the total, reporting firms indicated that the request for boycott originated with a non-Arab party.

Of these 79 cases, the American-Arab Chamber of Commerce in Houston was identified as the organization making the boycott request in 55 reports, while the U.S.-Arab Chamber of Commerce in New York was named in three.

French banks were named in 11 of the 79 cases, English firms in three cases and a Belgian bank was identified as originating the boycott request in one report.

One U.S. freight forwarding firm reported that in six cases the party making the request was the exporter. The identity of the exporter is unknown since on each form the name and address of the exporter was blacked out except where the exporting firm filed the report. (The form requires that the name and address of the exporter be supplied, if the reporting firm is not the exporter.)

Role of U.S.-Arab Chambers of Commerce (Tables 6 and 10)

It has been apparent for some time that Arab-American chambers of commerce located in key cities in the U.S. play a role in the Arab boycott operation, and this is confirmed by analysis of the 836 reports which formed the raw material for this memorandum. The organizations involved include the U.S.-Arab Chamber of Commerce, Inc. with offices in New York and San Francisco (and a Mid-Atlantic branch in Baltimore, Md.), and the American-Arab Chamber of Commerce in Houston's World Trade Center.

Of the 836 boycott request reports examined, 238, or 28.5%, contained requests for negative certification as to the origin of the goods and other boycott conditions by the U.S.-Arab Chamber of Commerce or the American-Arab Chamber of Commerce. Compliance was reported in 218 of the 238 cases -- 91.6% of such requests. The 238 reports include the 58 mentioned above in which the American-Arab Chamber of Commerce in Houston or the U.S.-Arab Chamber of Commerce in New York was named as originating the boycott request.

An analysis of the role played by Arab-American chambers of commerce in the 238 cases mentioned is shown in Table 10. Perhaps most significant and revealing are six cases in which documents submitted to these units in Houston and New York for validation were rejected by these Arab-American trade organizations because they lacked required boycott clauses.

The Arab-American Chamber of Commerce in Houston rejected four such documents; the U.S.-Arab Chamber of Commerce, Inc. in New York rejected the other two. In all six cases, the companies that submitted the documents for validation indicated compliance -- rectification of the emissions and insertion of the necessary boycott clauses -- when the documents were returned to them. These six cases are included in the 58 mentioned in which the Arab-American chambers were identified as the parties making the boycott request of the companies filing. The Arab-American Chamber of Commerce in Houston initiated 55 and the U.S.-Arab Chamber in New York initiated the other three.

There were 13 reports in which an Arab-American chamber validated a combination positive and negative certificate of origin and other boycott requests (e.g., that the vessel carrying the goods to their Arab destination was not blacklisted) along with a disclaimer stating: "Certification...limited to country of origin. This chamber disclaims responsibility for any other statement..." In 17 other such cases, the Arab-American chamber validated the positive and negative certificates of origin and other boycott requests -- but without a disclaimer of the kind quoted above.

In one case, the Mid-Atlantic U.S.-Arab Chamber of Commerce, Baltimore, Md., validated a boycott clause declaring that the vessel carrying the goods was not blacklisted.

In addition to the foregoing 89 cases, there were 149 reports filed in which the company reporting indicated that it had been requested to obtain certification from an Arab-American chamber. There is no documentary evidence that such certification actually took place in these cases since the company filing the report is required only to indicate that it received a request for such validation -- for example, via a letter of credit containing such a requirement.

Participation by Local American Chambers of Commerce (Tables 7, 7a and 11)

Prior to the establishment of the U.S.-Arab Chamber of Commerce, Inc., in 1967, local units of the U.S. Chamber of Commerce were identified from time to time as participating in the Arab boycott by certifying documents involved in U.S. export shipments to Arab countries. Some of them continue to play such a role.

In 97 boycott request reports of the 836 analyzed -- 11.6% -- a local chamber of commerce was involved in the boycott process. In 92 of the 97 cases, a local chamber validated documents certifying the non-Israeli origin of the merchandise in the transaction or other boycott restrictions. More than four-fifths of the 92 certifications -- 75 -- were provided by three such local chambers -- the Humble (Texas) Chamber of Commerce near Houston, the Des Plaines (Illinois) Chamber of Commerce, and the South Houston (Texas) Chamber of Commerce. The two units near Houston validated 52 reports filed by one freight forwarder and the Des Plaines unit validated 23 reports filed by another freight forwarder.

In five reports, local chambers of commerce distributed documents that included boycott provisions and required validation by an Arab-American chamber.

Table 7a provides a geographical breakdown of the 97 reports in which local chambers of commerce were involved.

Discrimination

Boycott requests involving religious discrimination were rare -- appearing on three of the 836 reports, or less than one-half of 1%.

In each of the three cases, which originated in Saudi Arabia, the discrimination took the form of a boycott-related request that a hexagonal or six-pointed star not appear on the goods or packages to be shipped to the Saudi importer.

Although compliance with such requests is barred by U.S. regulations promulgated by the Commerce Department under the Export Administration Act, (and recently continued by Executive Order of the President), compliance with the discriminatory boycott request was indicated in each of the three reports mentioned above.

It is interesting to note that several other requests originally did have discriminatory language, such as the following: "Invoices must show that the goods are not bearing the hexagonal star brand." In some cases this language was crossed out (by the Arab boycotter -- Saudi Arabian in every case); in the remaining cases instructions were issued that the discriminatory clause be deleted and other restrictive language be inserted, such as the following:

> "Invoices must show that the goods are not bearing the Israeli flag or any other symbol specifically signifying Israeli origin."

None of the reports examined contained requests for information concerning ownership or control of the exporting firm by persons of the Jewish faith, the presence of Jews on its board of directors. None of the reports, likewise, inquired whether the reporting firm used the goods and/or services of a Jewish subcontractor, and there were no reports involving requests that a firm not send persons of a particular religion to the Arab country where services were to be performed.

TABLE 1

Analysis: 836 Boycott Request Reports Filed With U.S. Commerce Dept. And Released Since October 7, 1976

Intention Concerning Compliance

1)	Intention to Comply	725	86.7%
2)	Intention Not to Comply	34	41%
3)	Decision on Compliance to be Made by Another Party	72	8.6%
4)	Decision Not Made	5	0.6%

TABLE 2

Analysis: Kinds of Boycott Requests Contained in 836 Boycott Reports and Compliances Indicated for Each Kind

Kind of Boycott Request	No. of Requests	% of Requests	Compliance Indicated	% Compliance of Requests
1) Negative Certificates of Origin	614	73.4%	545	88.8%
2) Declaration that shipper or carrier is not blacklisted	438	52.4%	388	88.6%
3) Declaration that manufacturer or exporter is not on blacklist	278	33.3%	234	84.2%
4) Declaration that carrier (ship or plane) does not call at Israeli ports	163	19.5%	149	91.4%
5) Declaration that insurer is not on the blacklist	69	8.3%	63	91.3%
6) Declaration that bank negotiating credit is not on the blacklist	32	3.8%	23	71.9%
7) Declaration responding to query whether goods have passed, or will pass, through "Palestine"	10	1.2%	8	80%
8) Declaration as to whether funds from the transaction will be used as reparations to Israel (asked of German firms)	7	0.84%	7	100%
Declaration that exporter does not do business with any firm that has a business relationship with Israel or an Israeli national	10	1.2%	9	90%

Kind of Boycott Request	No. of Requests	% of Requests	Compliance Indicated	% Compliance of Requests
10) Declaration that exporter, or affiliate or subsidiary, does not have stockholders, owners, officers or employees who are Israeli citizens		N O N E		
11) Declaration that exporter does not have, and does not intend to have, any business relations with Israel or an Israeli citizen	4	0.48%	2	50%
12) Declaration that exporter, or subsidiaries, has no investments in Israel	2	0.24%	1	50%
13) Declaration that shipper does not carry Israeli goods	1	0.12%	0	
14) Declaration that exporter does not allow use of its name in Israel	1	0.12%	0	

TABLE 3

Analysis: Arab Countries Of Destination

In 836 Boycott Reports

Country	No. of Reports	% of Reports
Saudi Arabia	237	28.3%
Kuwait	173	20.7%
United Arab Emirates	131	15.7%
Iraq	64	7.7%
Libya	57	6.8%
Bahrain	50	6%
Jordan	26	3.1%
Egypt	26	3.1%
Oman-Muscat	23	2.8%
Qatar	21	2.5%
Syria	12	1.4%
Lebanon	2	0.24%
Yemen Arab Republic	2	0.24%
Yemen Peoples Democratic Republic	2	0.24%
Tunisia	1	0.12%
Necessary Information Missing	8	0.96%

TABLE 4

Analysis: 836 Boycott Reports

Types Of Firms Reporting

Forwarders	379	45.3%
Banks	247	29.5%
Exporters	178	21.3%
Forwarder (as agent for "Ocean Carrier")	21	2.5%
Steamship Agents	3	0.36%
Manufacturers	2	0.24%
Carrier	1	0.12%
Steamship Company	1	0.12%
Export Agent	1	0.12%
Middleman	1	0.12%
Unreadable, Not Reported	2	0.24%

TABLE 5

Analysis: 836 Boycott Reports --

Boycott Requests Not Originating

In An Arab Country

American-Arab Chamber of Commerce, Houston, Texas	55	6.6%
U.S.-Arab Chamber of Commerce, Inc., New York	3	0.36%
French Banks	11	1.3%
English Firms	3	0.36%
Belgian Bank	1	0.12%
Exporters (As Reported By A Freight Forwarder)	6	.72%
	79	9.5%

TABLE 6

Participation By U.S.-Arab Chambers

Of Commerce Or American-Arab Chambers

Of Commerce In 836 Boycott Reports

Number of Reports	% of Total Reports	Compliance Indicated	% Compliance
238	28.5%	218	91.6%

* As indicated in Table 5, in 58 of these reports, participation by the American-Arab Chamber of Commerce, or a similar unit, consisted of making the boycott request to the reporting firm.

TABLE 7

Participation Through Boycott Certification by U.S. Chambers of Commerce Contained in 836 Boycott Reports

No. of Reports	% of Total Reports	Compliance Indicated	% Compliance
97	11.6%	96	99%

TABLE 7A

Participation in Boycott Certifications U.S. Chambers of Commerce

Humble (Texas) Chamber of Commerce	34
Des Plaines (Ill.) Chamber of Commerce	23
South Houston (Texas) Chamber of Commerce	18
Richfield (Minn.) Chamber of Commerce	5
Peoria (Ill.) Area Chamber of Commerce	4
Maritime Chamber of Commerce (N.Y.)	4
New Orleans Chamber of Commerce	2
New York Chamber of Commerce and Industry	2
Delaware County (Pa.) Chamber of Commerce	1
Greater Omaha (Neb.) Chamber of Commerce	1
Dallas (Texas) Chamber of Commerce	1
Lakewood (O.) Chamber of Commerce	1
Hampton Roads (Va.) Chamber of Commerce	1

TABLE 8

Analysis: 836 Reports

Request for Negative Certificate of Origin Only

No. of Requests	% of Requests	Compliance Indicated	% Compliance
203	24.3%	187	92.1%

TABLE 9

Analysis: 836 Reports

Requests With At Least One Blacklisting Requirement

No. of Requests	% of Requests	Compliance Indicated	% Compliance
600	71.8%	531	88.5%

TABLE 10
Analysis: 836 Reports
Arab Chamber of Commerce Participation

1) Certification of positive and negative certificate of origin (and other boycott clauses) + disclaimer: "Certification...limited only to country of origin. This Chamber disclaims responsibility for any other statements..

No. of Reports	% of Requests
13	1.6%

2) Certification of positive and negative certificate of origin (and other boycott clauses). No disclaimer.

No. of Reports	% of Requests
17	2%

3) Validation that vessel is not blacklisted.

No. of Reports	% of Requests
1	0.12%

4) Documents rejected by the Arab Chamber of Commerce for lack of anti-Israel boycott clauses.

No. of Reports	% of Requests
6	0.72%

5) Requests initiated by units of the Arab Chamber of Commerce.

No. of Reports	% of Requests
58*	6.9%

6) Requests where certification by the Arab Chamber of Commerce is needed (no documentary evidence of such certification).

No. of Reports	% of Requests
149	17.8%
Total 238	28.5%

* Includes the 6 rejected for lack of boycott clauses.

TABLE 11

Analysis: 836 Reports

U.S. Chambers of Commerce Participation

1) Certification of positive and negative Certificate of Origin (and other boycott clauses).

No. of Reports	% of Requests
92	11%

2) Distribution of documents including boycott provisions and requiring Arab Chamber of Commerce participation.

No. of Reports	% of Requests
5	0.6%
Total: 97	11.6%

Mr. GREENBERG. Mr. Chairman, to permit the continued employment of the negative certificate of origin would legitimize a principal weapon employed by the Arab-boycott operation which compels American firms to police and enforce its boycott against Israel, for which there is no justification in normal international trade practices.

The concern that Arab boycotting countries will curtail trade rather than forgo negative certificates of origin is dispelled, indeed, substantially mitigated, by the recent announcement of the New York Chamber of Commerce and Industry, that the Arab Boycott Office in Jeddah will no longer insist upon negative certificates, but will recommend instead accepting positive assurances of U.S. manufacture. The chamber reports that several Arab consulates have acknowledged and indicated agreement to this change.

We have here the bulletin, named World Trade of the New York Chamber of Commerce and Industry, which reports this change in policy requiring certification. We would like to introduce it for the record.

This reports that:

> The following consulates have advised by telephone that the clause is no longer required: Iraq, Kuwait, Libya, and Saudi Arabia. Shippers need only show country of origin on the invoices and certificate of origin.

Now, this decision by the Arab boycotting nations is gratifying confirmation of the view that these certificates are not necessary for trade. It is imperative, however, that this policy decision should be supplemented by the U.S. statutory prohibition that will act upon these tentative indications to insure that there will be no future change in the current practice of a few Arab countries and to make certain that this practice becomes uniform and universal among the others.

I would like to turn, Mr. Chairman to another important distinction between Senate bill 69 and Senate bill 92: Section 4 A. (a)(1) of Senate bill 69 states:

> . . . the President shall issue rules and regulations prohibiting any United States person from taking any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States. . . .

Senate bill 92 differs by eliminating the words "with intent." We submit, that the inclusion of these words in S. 69 unduly limits the likelihood of successful enforcement of the civil sanctions of the statute.

In a civil proceeding, a prima facie case should be made by proving that a person has engaged in any of the prohibited activities; to require a private plaintiff or regulatory agency to prove the mental state of the defendant imposes a difficult burden of proof. Moreover, the prohibition of S. 92 by its terms applies only to "actions taken to comply with, further or support" any foreign boycott against a friendly country.

Now, "wrongful" intent is or may be an appropriate element of the prosecution case, if a criminal action were instituted under the statute. In the event, therefore, that a person were charged criminally for a violation, the requirement of mens rea, criminal intent, would be operative as in virtually all other penal statutes.

This country has made it very plain, that it will not set aside moral concerns or excuse businesses from conducting its affairs within appro-

priate moral parameters, even when it can be persuasively argued that appropriate behavior entails possible competitive costs. Thus, this country demands that American businessmen refrain from bribing officials abroad in order to win favorable treatment, even though this behavior may be acceptable abroad and, indeed, may be the common practice of competing business firms from other countries. We are simply not willing to purchase American contracts at the expense of American morality. We believe the same considerations should be involved in assessing the propriety of Arab boycotting practices in the United States.

Opponents of the legislation have argued that this would cause American businesses considerable losses of international trade.

We sincerely believe, and experience bears out, that Arab boycotting countries will buy the best available product for the cheapest possible price in the shortest delivery time offered. They are, first and foremost, businessmen. They will trade with any nation on the face of the earth, except perhaps Israel itself. American know-how, technical genius, and product superiority are the controlling criteria and since the beginning, have been the major factors in Arab trade with the United States. If and when the American business establishment loses these special qualities, the Arabs will go elsewhere, whether or not our businessmen have knuckled under to the boycott. Experience shows they will not turn their backs on us if we remain competitive in terms of quality, service, and price.

In the absence of Federal legislation, the paradoxical result is, those firms that adhere to the national policy of this country and resist the boycott demands are made to suffer serious penalty or may be opening themselves to serious penalties. They pay a price by forfeiting Arab trade, while those businesses that defy national policy and participate in the boycott become beneficiaries of Arab commerce. This can be corrected only by a Federal law which will proscribe participation by any American firm and thus insure that these businessmen who act upon principle and support our national policy will be protected from unfair and unsupportable disadvantage.

Mr. Chairman, a recent Louis Harris poll reveals that an overwhelming majority of Americans opposes the Arab boycott. The American people perceive the Arab boycott as a moral issue. President Carter has described compliance and business cooperation with the boycott as a "disgrace." Our Secretary of Commerce has stated her views in identical terms to the Senate Commerce Committee at her confirmation. We respectfully submit that the American Congress bears an obligation to express the will of the majority of the American people, and to implement, by law, the moral indignation of most American businessmen.

To buttress our view, not only by the Louis Harris poll referred to, but by editorial comment in newspapers around the country, we would like to introduce 16 editorials from various leading newspapers across the country, which have appeared from January 1976 to October 1976, supporting the legislation being considered today.

Senator STEVENSON. Without objection.

[The documents reference follow:]

[From the Chicago Daily News, Oct. 23, 1976]

THE BOYCOTT LIST THAT ISN'T

The Commerce Department has stirred up more confusion than understanding in disclosing the names of U.S. companies that have become associated with the Arab boycott of Israel. In light of the misinterpretation of the list of names released so far, President Ford's campaign-trail order for disclosure was poorly thought out and needs revision. The boycott should be resisted, but this method offers no solution.

The "boycott list" is nothing of the kind in the first place. It is simply a list of U.S. companies that, as required by federal law, informed the Commerce Department that they have been asked by Arab customers about their products—such as whether the products sold to Arab states were made in Israel or shipped on blacklisted vessels.

What the list is *not* is a roster of companies that refuse to deal with Israel in order to maintain trade with Arab nations.

A trade boycott between any two nations often is as dangerous as it is foolish because the mutual animosity it fosters can poison chances for peaceful reconciliation. The Arab boycott is doubly reprehensible because it seeks to coerce other nations into participating in an unfair and totally repungant act of discrimination.

But many of the companies whose names were disclosed by the Commerce Department do far more business with Israel than with Arab states. And further, the highest executives of many companies are themselves Jews and they make no attempt to hide their financial support of Israel.

The information provided by the companies amounted to stating historical facts that are readily available in public financial records.

Obviously the "boycott list" is a sham maintained by Arab states as a sop to their pretension of solidarity against Israel.

But it is a list full of mischief. Many of the companies named already have been harmed financially by Israel sympathizers who see it as a certified list of companies that are boycotting Israel to curry favor with the Arabs.

Congress has a duty in this situation to divise legislation forbidding U.S. companies from complying with the Arabs' requests for boycott information. It would create a legal defense for the companies to cite in refusing to supply the information in which the Arabs profess such interest.

But we suspect the Arabs are more interested in buying American made goods than keeping lists they don't pay attention to anyway.

[From the Chicago Sun-Times, Nov. 20, 1976]

BAN ANTI-ISRAEL BOYCOTTS

The Commerce Department has released the names of 38 U.S. companies that have acceded to the Arab anti-Israel boycott. As a result, confusion reigns. Some of the companies on the list claim they do business with Israel as well as with Arab nations.

Apparently the companies listed by Commerce need have done little more than report they had received requests for information about their trade practices to end up on the list. It is also possible that some of the companies acceded fully to Arab demands.

Either way, it is unconscionable that U.S. executives should be giving out any kind of information on whether they do business with Israel or other companies that trade with the Israelis. The fact that they are even supplying the information makes them susceptible to anti-Israel pressures.

Obviously the U.S. companies themselves are in no position to thumb their noses at the Arab countries. At the same time they would be doing that, the Arabs, with the endorsement of the U.S. government, are buying huge quantities of arms from the United States. It is U.S. policy that this nation continue to import huge quantities of Mideast oil. How can U.S. companies create bad relations with Arabs when the administration is working at cross purposes?

There is a way out: the adoption of an easy-to-understand law prohibiting U.S. companies from giving to foreign governments or executives any information about the race, religion or national origin of its employes or from pledging not to do business with any other company or foreign nation.

If such a ban had the force of law, a U.S. company would be able to tell the Arabs it could not legally comply with any boycott demands. Given the superiority of U.S. goods and services, the Arabs would have to buy anyhow, just as they are buying arms now even though this country supplies Israel as well. Such a law died in the closing days of Congress, in large part because President Ford threatened a veto.

It should be reintroduced, passed and signed. Here's one way to show that U.S. foreign policy does have some morality.

[From the Greensboro Daily News, Oct. 13, 1976]

BOYCOTTING ISRAEL

In last week's televised debate, President Ford excoriated Congress for failing to prohibit cooperation by American companies in the Arab economic boycott against Israel. "Because Congress failed to act," the President said, "I am going to announce tomorrow that the Department of Commerce will disclose those companies that participated in the Arab boycott.

Sure enough, the next day the President issued a directive requiring disclosure by the Commerce Department, but only of "future" reports filed by cooperating companies and excluding information which might put a company at a "competitive disadvantage" in exploiting the Arab trade. What this means is hard to say. Probably nothing.

In his passionate advocacy of the cause of Israel, the President also took a few liberties with the facts. The administration, as well as the Congress, was a party to the lapse this year of the Export Administration Act which declared against "restrictive trade practices and boycotts fostered or imposed by foreign countries against other countries friendly to the United States." In its stead, President Ford issued an executive order which imposed criminal penalties of fines up to $10,000—not much of a deterrent for multinational corporations.

Last year, the President also issued regulations prohibiting discrimination by American companies against U.S. citizens, such as Jews and supporters of Israel, at the behest of the Arabs. The Commerce Department ordered American companies doing business with the Arabs to disclose their responses to the Arab demands to boycott Israel and discriminate in employment against Jewish-Americans. Of the 25,000 companies reporting 90 per cent complied with the demands. Secretary of Commerce Elliot Richardson has released the names of a handful.

The Arab states imposed their economic boycott on Israel in the early 1950s. They have attempted not only to impose this boycott policy on American companies directly, but to put pressure on companies not to do business with other companies dealing with Israel, not to employ Jews, and not to deal with Jewish-owned firms.

In its efforts to pursue an "even-handed" policy in the Middle East, the United States has acted cautiously on this issue. The fact is, however, that while the Arabs may exercise their sovereign rights and boycott Israel, they have no authority to require American companies to do the same. The United States should not allow itself to become a passive partner in an economic boycott which is not the policy of its government. In particular, it cannot allow foreign governments to mandate the violation of the constitutional rights of its citizens.

Strong legislation is required to bring the practice of American firms into line with the policy of our Department of State. A price may have to be paid in ill will from the Arab countries. So be it. These nations will have to learn that their sovereignty stops at their own watersedge.

[From the Baltimore Sun, Oct. 7, 1976]

THE SECOND PRESIDENTIAL DEBATE

Last night's presidential debate was an encounter in which an adept challenger could score points by focusing on what he considers the mishandling of certain incidents or developments of the last few years as evidence of foreign policy

failures. This Governor Carter did. He could pounce with telling effect on the Ford and Nixon administration's support of the tyrannical regime in Chile. He could cite the lack of progress on SALT negotiations without reference to obstructive or delaying actions on the Soviet side. He could exploit American failures elsewhere without precisely telling how he would have dealt with implacable enemies in these trouble spots. He could do all this because he possessed—and used—the advantages of the non-incumbent in matters of foreign affairs.

The common pre-debate wisdom gave President Ford the advantage because, as incumbent, he would have access to all the information and rationale underlying foreign policy. But this common wisdom overlooked one key aspect of the Kennedy-Nixon debates of 1960. In these debates, John Kennedy often held the initiative because he could grieve over alleged American weaknesses found at the end of an era in which Richard Nixon served as vice president. And he could envisage a world in which the United States would be stronger, more respected and more widely admired.

Confronted with the Carter version of the Kennedy attack, President Ford tried strongly at first, then more feebly as he went along, to defend the accomplishments of his administration. He emphasized repeatedly that the nation is at peace, that American diplomacy is currently triumphant in the Middle East and increasingly effective in southern Africa. But having made these points, he failed to elaborate them with the vision of hope voters crave.

The President's performance also contained obvious flaws that seemed far greater than any Governor Carter committed. He put forward the thoroughly unbelievable theory that Poland and Romania are not under the domination of the Soviet Union. He may have meant that the people of these countries remain indomitable in spirit. But he did not say that. He made an even worse mistake later when he bragged that he had just signed a tax bill penalizing corporations that engage in the Arab boycott. In actuality the Ford administration opposed this unwise use of tax authority while the Republican leadership allowed a wiser approach to die.

Mr. Carter's major weakness on first impression seemed to be in a lack of generosity in acknowledging certain American strengths he will be happy to use if he is President. He ignored recent accomplishments, or suggested they are failures, and when challenged on whether he did not think America the strongest nation in the world he retreated into some of his favorite moralistic homilies. These may have been intended to cover over his tendency—perhaps his correct tendency—to take as tough a position on certain world trouble spots as the President. But it did not work. Mr. Carter's penchant for ambiguity shown through again.

GIVING IN TO THE BOYCOTT

The disgraceful failure of Congress to enact a judicious law protecting American business from the Arab boycott of Israel has penalized those states such as New York and Maryland which have done right in enacting their own laws. As a result, pressure will increase on Attorney General Francis B. Burch, whose office is drafting regulations for the enforcement of the Maryland law, to keep the teeth out. The temptation will grow for ports in states lacking anti-boycott laws to solicit business away from the ports of New York and Baltimore with the most sordid of sales pitches.

The Maryland law is carefully drawn with modest scope, to prohibit Marylanders from discriminatnig against other Marylands as a condition for doing business. No one can object to it. No one need fear it. Alarms that it would divert Baltimore business to Norfolk are unsubstantiated but could become self-fulfilling. There should be no going back because of Congress' failure to pre-empt the field with solid legislation of its own. Mr. Burch should make the law as effective as he can and challenge the rest of the nation to follow suit. And Maryland port promoters should be ready to publicize any business solicitations by rival ports suggesting a welcome for Arab secondary and tertiary boycotts that turn Americans against Americans. A more vigorous effort by Maryland port promoters to get better legislation out of the next Congress is also very much in order.

Both the House and the Senate passed sensible amendments to the Export Administration Act that would have publicized any compliance with the boycott and forbidden discrimination against Americans as a condition of doing business. In the frantic last days of the session the conference committee failed to reconcile the differences in the bills because the Republican leadership failed to appoint conferees. This was in furtherance of administration opposition to the bill, based on unpersuasive arguments that civil rights or anti-trust laws are sufficient and on evident fear of offending Arab states.

A less desirable anti-boycott measure did pass. The tax reform bill would deny export earnings tax credits to firms complying with the boycott. This is a distraction from the cause of tax reform itself, using tax policy as a tool for other purposes.

This nation can get growing business from the Arab world without being dictated to politically or compromising its beliefs if it stands united. If the Arab governments and businessmen are shown that American firms will not be bullied, and under law cannot be bullied, the demands that American firms boycott Israel and boycott persons that do not boycott Israel, will fall off. The craven failure to show this only invites more unwelcome Arab dictation of domestic American business practice.

[From the Kansas City Star, Sept. 25, 1976]

ARAB BOYCOTT PITS PROFIT AGAINST PRINCIPLE

Both houses of the U.S. Congress, by substantial majorities, have now passed legislation to discourage participation by American firms in the Arab boycott of Israel. The Senate version is considerably less restrictive than the one voted Wednesday by the House. Conferees expect to have a compromise bill ready for consideration next week.

The argument over antiboycott legislation has pitted principle against economic interest. Opponents charge that a tough bill could cost U.S. business $7 billion or more a year in lost sales to Arab countries and result in additional domestic unemployment. Supporters do not deny that there would be some economic impact but maintain that resisting the boycott is a moral requirement for this country.

The administration has consistently opposed efforts to inhibit the boycott by law, preferring to rely on persuasion and adverse publicity to restrain companies from yielding to the Arabs' anti-Israel and anti-Jewish trade conditions. Various administration spokesmen have cited the effectiveness of that approach, but the facts tell a different story. Boycott compliance is widespread among U.S. exporting, contracting and engineering firms and financial institutions. That explains the vigor of their opposition to real restraints.

No one has suggested that the stand of principle on this question would be without certain cost. The question is how great that cost really will be and, more to the point, how enduring. Arab commercial sanctions have weight so long as they can be selectively applied. But with U.S. business presenting a solid front of noncompliance, the Arab regimes will face a hard weighing of their own interests. There is at least a reasonable expectation that they will buckle, in practice if not publicly.

If they do not, it will not be the first time that American business has been asked to pay a price in dollars for behaving responsibly. As the scandal of international corporate payoffs has demonstrated, there is more involved in foreign commercial relations than simply the numbers on the bottom line. Decency and larger policy objectives also enter into the calculation.

[From the New York Times, Sept. 14, 1976]

THE ARAB BOYCOTT

The Arab boycott against Israel raises difficult political, economic, legal and moral issues for the United States. The boycott is repugnant. It violates American principles and laws when it requires American companies, as a condition for doing business with Arab countries, to discriminate against American citizens because of their religion. It unfairly imposes secondary boycotts against American companies that hire Jewish employees or directors, or trade with Israel.

Efforts to prevent American companies from acceding to boycott rules imposed upon them by a foreign power are unfortunately complicated by the fact that the United States has itself engaged in secondary boycotts against other countries—for example, for trading with Cuba. Such extraterritoriality is a threat to liberal trade and investment, to the rights of innocent people in other countries, to the sovereignty of other nations, and to peace itself.

All of this makes more difficult, but no less relevant, the question whether the United States can effectively prevent its own businesses from yielding to Arab

pressures that abridge the rights of other American citizens and companies. The route taken by Senator Ribicoff in amending the pending omnibus tax bill with a requirement to impose tax penalties on companies that participate in secondary or tertiary boycotts seems to us the wrong solution. Using the tax code as a punitive device establishes a dangerous precedent. The tax laws are not intended to be part of the law-enforcement system; their purpose is to provide revenues and to improve the economy's stability and growth.

Although certain types of activities are encouraged by the tax laws (as through the investment tax credit), stretching that principle into a new system to punish corporations or individuals for alleged misdeeds is a questionable course. Under the Ribicoff amendment, moreover, determination of guilt would be made by the Secretary of the Treasury "or his delegate." Such powers, if granted to an agency administrator, might be employed arbitrarily, especially in dealing with such complex questions as whether a firm did or did not participate in a secondary or tertiary boycott.

Unfortunately, the Ribicoff amendment has now been embedded in the tax bill adopted by the House-Senate conference committee, and the President may have no choice but to accept it or risk killing the tax bill and endangering the economic recovery. Over the coming months, however, Congress and the President should develop a more effective and legally sound attack on the boycott.

The antitrust laws, the civil rights laws and the banking and security laws give the United States Government the means of curbing conspiracies and discriminatory practices by American companies that cooperate with the Arab boycott. Enforcement of those laws would do much to stiffen the resistance of American firms to foreign economic blackmail. The Government has recently stepped up its actions to penalize firms that violate American laws in response to the Arab boycott. This may signal a welcome change from past attitudes when, as a report by the House Subcommittee on Oversight and Investigations shows, the U.S. Commerce Department actually helped and encouraged American firms to uphold the Arab boycott and winked at violations of the disclosure requirements of the Export Administration Act, intended by Congress to fight the boycott. Secretary Elliot Richardson insists that under his administration such conduct has ceased.

Congress nevertheless should strengthen the Export Administration Act by making it illegal for American firms to engage in secondary or tertiary boycotts. The threat of economic reprisal by the Arabs cannot be accepted as a basis for permitting American firms to submit to odious terms that violate the rights and interests of other Americans, or abridge this nation's sovereign powers.

[From the Philadelphia Inquirer, Sept. 29, 1976]

U.S. Should Not Succumb to Arab Boycott Demands

That report that Saudi Arabia was threatening to impose a new oil embargo against the U.S. seems to have been exaggerated. It came from Egypt's official Middle East News Agency, an unreliable source. Saudi Arabia's foreign minister, Prince Saudi bin Faisal, as well as officials of the U.S. State and Treasury departments, have categorically denied it. Official denials are not all that reliable either, but in this instance there is no evidence to refute them.

Saudi Arabia, however, is not above putting pressure on the U.S. in other ways. It is particularly concerned about two proposals now on the congressional agenda.

One is the Ford Administration's proposed sale of 650 air-to-surface Maverick missiles to Saudi Arabia. Last Friday, in a surprise move, the Senate Foreign Relations Committee voted 8–6 to block the sale. The Saudis say they need the weaponry to defend themselves against, among others, Iran, which the U.S. is also even more amply providing with weaponry.

Sen. Clifford Case, who introduced the resolution barring the sale, believes that Saudi Arabia's possession of so many and such sophisticated weapons would be "a disturbing and potentially destabilizing factor" in the Middle East balance of power. We share the New Jersey Republican's concern, but the real destabilizing factor is the massive and unrestrained shipments of arms to such countries as Iran and Saudi Arabia.

That issue has to be reconsidered by the next administration. Meanwhile, though we are unenthusiastic about the sale, it amounts to only $30 million,

scaled in half from the administration's original proposal. If, by inaction, Congress lets it go through, we do not think it will do that much harm.

The other issue, the Arab boycott against Israel, involves a matter of American principle. If the Arabs insist on conducting economic warfare against Israel, America's most reliable friend in the Mideast, there may be no way of preventing them. But the U.S. is not obliged, nor should it oblige itself and the Arabs, to cooperate with them.

Saudi Arabia and the oil companies with interests there have been warning that anti-boycott legislation would cause the U.S. to lose billions of dollars. Somehow, we doubt that the Saudis, who can get quite realistic when their own profits are involved, would cut off their nose to spite their face. We certainly doubt, for instance, that they would refuse to buy those Maverick missiles if the makers also do business with Israel or have "Zionists" on their board of directors.

Beyond that, though, the argument that profits come before principle is repugnant to us as we think it is to most Americans, who have a long tradition of refusing to pay tribute. This is a matter of self-interest as well as principle, for once the word gets around that a person or a nation will submit to blackmail, the blackmailers will only step up their demands.

[From the Philadelphia Inquirer, Sept. 5, 1976]

U.S. Policy and Pride Are at Stake in Boycott Claims

The Export Administration Act of 1969 declares it to be U.S. policy to oppose and to encourage U.S. firms to refuse to cooperate with "restrictive trade practices or boycotts fostered or imposed by any foreign country, against another country friendly to the United States."

Last November, President Ford issued a directive designed further to protect American business and citizens from discrimination as a result of the Arab economic war against a friendly country, Israel. Now, in Congress, legislation is being proposed to clarify and enforce the official policy of the United States.

The House International Relations Committee has voted, 27–1, to make it illegal for U.S. firms to cooperate with the Arab boycott. Senate-House tax bill conferees are also giving favorable consideration to a Senate provision which would deny tax advantages, such as foreign tax credits, deferral of taxation on foreign earnings, and tax benefits for exports, to firms that comply with the Arab boycott.

The Ford Administration is uncompromisingly opposed to these measures. In this, it is at least consistent. Secretary of State Henry Kissinger has always opposed what he considers to be congressional interference in his conduct of foreing affairs.

The administration argues that the problem can only be cured through diplomacy and that in any case legislation wouldn't work. The trouble is that diplomacy hasn't worked very well, either. Legislation, obviously, could not break the Arab boycott, but that is not the prime purpose. Its purpose is to carry out our own national policy, to protect our own national interests, and to protect our own citizens from being discriminated against.

Nor is it at all certain that legislation would deprive U.S. firms of profits in the Arab market. The Arabs do need and want American technology and capital. Intransigent as they have been about the boycott in their rhetoric, in practice they have done business with anyone when it suits their convenience.

Beyond that, though, there is a moral question. It is not a matter of Congress' telling American firms whom to do business with. The question is why the law should actually provide tax advantages, which everyone has to pay for, to firms which flout official policy.

And there is also the matter of national pride, a term we are not at all ashamed to use. If Arabs do not wish to do business with Americans because we will not be subservient to their policy, that is their affair. But why should we be subservient? Why should the U.S. yield its principles and its interests to help the Arabs hurt our citizens and our allies?

"We will not allow anyone to dictate to us how we shall conduct our affairs."

So stated one Arab spokesman in warning the U.S. against "interference" with the Arab boycott.

Well, the U.S. is not trying to dictate to the Arabs, but neither should we supinely allow them to dictate to us.

[From the St. Louis Globe Democrat, July 15, 1976]

DON'T BOW TO ARAB BLACKLISTING

There is no way that this country can stop Arab countries from conducting economic war against Israel by blacklisting firms and individuals that have dealings with Israelis.

But the United States should not condone the practice of a good many American firms of bowing to this heavy economic pressure.

It was reported recently in The Wall Street Journal that representatives of the Arab League that run the boycott are meeting with considerable success in forcing U.S. companies to stop trade with Israel.

At the boycott office in Damascus, Syria, it was claimed that the number of American companies on a list of 1500 blacklisted firms has dropped to 40 per cent of total. A few years ago the United States companies had comprised 60 percent or a much larger list.

How did so many American firms get off the list? They apparently stopped their trade or other major help to Israel. Once they had convinced the Arab blackslisters that they had broken off dealings with Israel, the U.S. companies were eligible to participate in trade and other ventures in the oil-rich Arab nations.

Obviously the Arabs are going to continue their vendetta against Israel. But Congress shouldn't permit companies to consent to this kind of blackmail in order to do business with Arab countries.

The idea of a group of nations telling American companies they can't trade with a certain nation—in this case Israel—is repugnant and unacceptable. The trade with Arab countries is important but it isn't worth selling the integrity of American businesses to get it.

[From the Kansas City Times, June 15, 1976]

TWO VIEWS OF A BOYCOTT

William E. Simon, treasury secretary, recently told a House committee that the Arab economic boycott against Israel is easing and that proposed legislation to inhibit compliance by U.S. firms is unnecessary and might even make matters worse.

Only the day before, however, the director of a bureau of the Department of Commerce testified before another House panel, that, just in the last calendar quarter, 119 U.S. banks, reported complying with 4,071 specific boycott requests. Several banks had to be fined for failing to report the transactions as required.

One of these witnesses is wrong and one is right. And since Secretary Simon was talking in generalities while the man from Commerce had hard figures in hand, it seems clear enough which one of them had done some homework. The 4,071 banking compliances—which projects to more than 16,000 a year and in just *one industry*—hardly sounds to us like a picture of improvement. Or if it is, the boycott has infiltrated American economic life more pervasively than we ever dreamed.

In his testimony, Simon noted that the U.S. in the past had boycotted Cuba, Rhodesia, North Korea and North Vietnam and that the Arabs cannot understand why they are not entitled "to do the same." There is, of course, a crucial difference: The U.S. did not impose secondary sanctions against firms in other countries which, for policy reasons of their own, continued to trade with the proscribed regimes.

That is the special offense of the Arab boycott. If the Arabs choose not to trade with Israel, that is wholly their own business. But is is quite another thing to try to make other nations unwilling parties to the economic warfare.

Secretary Simon seems to suggest that the best way to deal with this outrage is to tut-tut reproachfully but take not tangible countermeasures in the hope that the boycott will presently go away. That is silly. If the figures from the banking community are any indication, it is not going to go away—not voluntarily in any case.

Antiboycott legislation is needed. And if it means a few lost orders or cancelled contracts, that will not be the first time Americans have been called upon to pay some small price for principle. Nor should it be the last.

[From the Charlotte Observer, June 14, 1976]

ARAB INTRUSION

JONES'S ADVICE IS WRONG

Neither common decency nor the best interests of the United States are served by the practices acknowledged by Edwin L. Jones Jr. of Charlotte in his testimony Thursday to a House committee. Mr. Jones, president of J. A. Jones Construction Co., said his company in some instances has gone along with demands by Arab countries to boycott Israel.

Why? Not to create jobs for Americans, but to make money. The company does a substantial business in Saudi Arabia.

Mr. Jones's testimony showed that while the company is responsive to the Arab countries' foreign policy requirements it is ignoring American policy. We think the company has no business acting, for whatever reason, in a matter that is against the policy of the United States.

Arab pressures of various kinds have been brought to bear upon American companies. Many firms have been blacklisted because they had Jewish ownership or high-level Jewish executives; some of the biggest corporations in America have been blacklisted for other reasons, chief among which, apparently, is that they do business with Israel.

In other words, some of the Arab countries not only have told American companies they cannot do business with both Israel and Arab nations; they also have brought subtle pressures to bear which might persuade some companies to violate American law by discriminatory practices within. Congress has declared the first part of this to be against American policy; the second part is against the law.

As we said some time ago, this is a reprehensible and unacceptable intrusion in American affairs. No American company should accept such interference.

In his testimony before the House International Relations Committee, Mr. Jones not only acknowledged that his company has yielded to the boycott-Israel pressure but also urged Congress not to enact proposed legislation which would make this a punishable violation of law rather than simply an expression of disregard for American policy.

He should have been on the opposite side, as are many American business executives. They know that the best way to counter the Arab government's pressures is to have a law on the books which requires them not to yield. Then they could simply tell Arab governments: We have no choice but to comply with American law.

Would that put them out of business in the Arab world? It is conceivable, though unlikely, that in a few cases it would. But it is virtually inconceivable that those developing countries would choose to do without American technology, American scientific development and American management know-how. Such a law, in our view, overnight would break the back of this impudent intrusion in American life.

The larger question, however, is one of morality. The Arab boycott and blacklisting of firms has been aimed not only at Israel but also against American Jews. If an Arab nation wants to do business with an American firm, it can abide by this country's rules of decency and fair play—or go elsewhere. We doubt that those countries, which are being developed largely by American enterprise, would go elsewhere.

Congress should make American policy—not a bunch if oil kings and sheiks.

[From the Washington Post, June 12, 1976]

ARAB BOYCOTT VICTIMS: AMERICANS

The specific dimensions of the Arab boycott—in fact, a boycott of American firms that deal with or in Israel or whose officers are identified as "Zionists" or simply as Jews—are becoming known for the first time. One House subcommittee has established that in 1974–75, 637 American exporters sold at least $352 million and perhaps as much as $781 million in goods and services under boycott conditions. Another subcommittee found that in the four months running from last December, one bank alone received and executed 824 Arab letters of credit, worth $41 million, containing boycott clauses. In one of a number of such

cases, General Tire has been accused (by the SEC) of paying a $150,000 commission to get off the boycott list. Although the Justice Department has filed an antitrust suit against Bechtel Corporation for boycotting another American firm in order to fulfill a boycott requirement, Bechtel is said to be notifying subcontractors that Israeli goods or materials shipped on blacklisted vessels cannot be used in a $20 billion Saudi seaport project.

So the Arab boycott is real. It is immense, though sometimes capricious. It seems to be growing as business prospects grow.

What should be done? The administration believes its own current quiet policies suffice. Further legislation would be "counter-productive," Treasury Secretary William Simon argued the other day. But it is precisely during the last two-year period of discreet administration policy that boycott practices have spread to the point where hundreds of millions of dollars of business a year are affected and where Americans are forced to trample on their own laws and values and each other as they pursue Arab business. It is difficult to imagine a policy that has been more discredited.

The Arabs' *primary* boycott of Israel is their own affair. The need is overwhelming, however, for legislation addressing the *secondary* boycott, by which Arabs to try to make American companies their instruments in boycotting Israel; and against the *tertiary* boycott, by which Arabs try to make American firms boycott other American firms that deal with Israel or that have Zionist/Jewish officers. Will the Arabs take their business elsewhere? No doubt some will. But since Arabs want American business ties not just for the goods and services but for the broad political ties that come with them, we are confident that most Arabs will decide otherwise. They are not so blind to their own self-interests as apologists for the boycott tend to claim.

The antiboycott principle has been embodied in American law for 11 years. "It is the policy of the United States," says the Export Administration Act, to "oppose" boycotts imposed against friendly countries, and to "encourage and request" American firms not to take part. What is now involved is to turn that eminently sound principle into actual practice. The State Department has had other—political—matters foremost in mind. The Treasury Department thinks first of dollars. But an increasing number of companies favor legislation that would make it illegal to participate in a practice that—even the critics of the legislative approach agree—is fundamentally offensive and un-American. Federal Reserve Board Chairman Arthur Burns stated the other day that it is no longer enough merely to "encourage and request" noncompliance with boycott requests. "It is unjust," he said, "to expect some banks to suffer competitive penalties for responding affirmatively to the spirit of U.S. policy, while others profit by ignoring this policy." He urged Congress to "act decisively." It should.

[From the Washington Post, Sept. 20, 1976]

No American Boycott

The Arabs' decision to establish an Arab boycott of Israel is their business. But their attempt to establish an American boycott of Israel is something very different. It runs against American interests, American values and the American grain. That is the elementary distinction made by the Congress in writing anti-secondary-boycott provisions into the tax reform bill. Whether a tax bill should be the vehicle for a measure related to foreign policy is an interesting question for the lawyers. The rest of us can take satisfaction that legislative teeth are being put into the diplomatic jawbone wielded quietly by the administration in the last few years. It is precisely in those last few years, of course, that the Arabs' practice of a secondary boycott, one directed at American firms that trade with Israel or that have Jewish or "Zionist" officers, has spread to encompass business deals measured in the hundreds of millions of dollars. Seldom has the inadequacy of diplomacy and the necessity for legislation been so overwhelmingly demonstrated.

Opponents of the new legislation argue, in effect, that Arab nations are so determined to compel Americans to support their boycott of sIrael that, if flouted, they will take their billions in business elsewhere and perhaps even diminish the flow of their oil. No one would be surprised if some Arab-American deals are junked in conspicuous and symbolic protest. But it is demonstrably false that gaining American support of their boycott is so important to the Arabs

that, to that end, they will jeopardize the thick economic and political ties they have built up so carefully with the United States in recent years. Arabs are spending billions on arms produced by the very manufacturers who sell to Israel, for instance. They are doing so presumably because they see more advantage to themselves in ignoring the boycott than in enforcing it. In the past, American companies had little incentive to help bring the Arabs to this sensible view of their own self-interest. Now the American companies have an incentive. Now, too, an American company declining to participate in the Arab boycott will not face the same risk of paying a financial penalty for honoring the United States' longstanding anti-secondary-boycott policy.

One needs to step back a pace. We think it entirely healthy and useful that the boycott issue has come to the fore. It goes to the basic framework in which the United States and the Arab world are trying to expand and deepen a relationship that has been, until relatively recent, narrow and formal and sometimes even antagonistic. That there is potential for great mutual advantage in the relationship is evident to everyone. That is all the more reason to try to move it forward on the basis of mutual respect. It makes no more sense for Arabs to demand that Americans now boycott Israel than for Americans to demand that Arabs now trade with Israel. We would not contend that, for all Arabs, it is easy to accept the ways of the open international system they are trying to join. Arab states have made impressive progress, however, in halting discrimination against American (or other foreign) firms and individuals on strictly religious or ethnic grounds. The administration's diplomacy, by the way, has been quite effective in this regard. It will be harder for Arabs to accept that they cannot force Americans to discriminate in trade against a third country. But it denigrates their intelligence, and it underestimates their general passion for modernization, to say that they must stick fast in their traditional ways. Certainly Americans should not be encouraging them to do so.

[From the Washington Post, Jan. 26, 1976]

The Boycott Issue

A major battle of principle and policy has been joined by the Justice Department's civil suit charging the San Francisco-based Bechtel Corporation with supporting the Arab boycott of Israel. Justice's contention is that the huge heavy-construction firm, by refusing to deal with blacklisted subcontractors and by requiring subcontractors in general to refuse to deal with blacklisted companies, is in violation of American antitrust law. The State Department tried unsuccessfully to block the suit, privately but urgently protesting that even its filing risked alienating the diplomatic favor of, in particular, Saudi Arabia. Saudi Arabia is at once the bulwark of the boycott and a country whose cooperation is considered vital to American diplomacy, not to speak of American oil supplies. In the Treasury and Commerce Departments, moreover, and in the business constituencies they represent, fear was and is rampant that the suit will cost American companies billions of dollars worth of potential business throughout the Arab world.

We find it undeniable, nonetheless, that Justice was right to go ahead and file the suit. Nothing in the anti-trust law reserves its application to situations which don't make foreign waves. In the Export Administration Act of 1969, moreover, it was declared to be "the policy of the United States to oppose restrictive trade practices fostered or imposed by foreign countries against other countries friendly to the United States." Whether Bechtel is in fact guilty of anti-trust violations, we leave, of course, to the courts. But it is noteworthy that Bechtel responded to the suit not by denying the charges but by contending—evidently in reference to certain procedures of the Commerce Department—that "federal regulations and printed forms and statements . . . have expressly stated that compliance with (the boycott) is not illegal under American law." The corporation added that its Arab business is conducted "in areas and in ways compatible with U.S. foreign policy goals."

We sense here the development, within the U.S. government and within the larger political community, of another of those difficult issues that have made the conduct of American public life so bitter in recent years. The difference in this case lies in the fact that the challenge to the administration's economic habit and foreign policy comes from its own Justice Department, supported, to be sure, by a probable majority in Congress.

This puts a special burden on the State Department—a burden so far inadequately appreciated. For the Department's emphasis has been to complain that Justice and Congress were complicating the making of foreign policy. What the Department should be doing, however, is telling the United State's Arab friends that a deepening longterm relationship is only possible on the basis of mutual respect. That Arab league states conduct their own trade boycott against Israel is their business— regrettable to Americans but something that the United States, which has conducted its own politically motivated boycotts, is in a poor position to protest. That Arab states should expect to enlist American firms to support the Arab boycott is, however, very different. The issue is that simple.

The court proceeding is likely to be long and drawn out. This may provide the time and the extra pressure needed for the boycott issue to be worked out on a political basis between the United States and the various Arab governments. We hope so. The suit, if so used by American diplomats, could help Arab officials understand that they cannot properly expect to entangle American business in their fight with Israel. And it could bring an end to a situation—American participation in the boycott—which is a standing reproof to the values of the United States.

[From the Oregonian, June 12, 1976]

SIMON SIMPLY WRONG

Treasury Secretary William Simon was wrong in principle and perhaps in fact when he testified June 9 before the House International Relations Committee against legislation that would curtail conditions under which U.S. companies could legally acquiesce in Arab trade boycotts against Israel.

The Treasury boss stated that Arab nations have eased their anti-Israel boycott and that tough U.S. legislation "could alter these favorable developments regarding enforcement practices."

Simon appears to be correct that Arab nations have begun to ignore their own blacklist of more than 1,500 U.S. corporations if failure to deal with specific companies for particular products patently is not in their self-interest. In such instances, examples abound to show that the temptation to make a deal overwhelms ideological allergies.

However, that is only a small part of the story. The Cabinet member failed to mention that tabulations released last month by a House Commerce subcommittee indicate that more than half of the 637 firms asked to comply with the boycott between January, 1974, and December, 1975, have confirmed that they did so. These companies transacted $352.9 million of business, 54.45 per cent of that conducted by all the firms with Arab countries during the two-year period.

As to Simon's contention that the boycott is easing, the Commerce subcommittee reported that in the last three months of 1975 more than 90 per cent of U.S. companies doing business with the Arabs acquiesced in requests to boycott Israel.

The Treasury secretary also has been trapped far off base on principles which apply to the boycott issue. Arab states, of course, are entitled to refuse to trade with their enemies. They should not be entitled, in effect, to shape both U.S. foreign and domestic affairs by dictating that companies that deal with them cannot deal with blacklisted companies—firms owned by or employing Jews or trading with Israel.

Simon said the Arab nations consider their economic boycott against Israel no different from past U.S. boycotts against Cuba, Rhodesia, North Korea and Vietnam "so they cannot accept the argument that they are not entitled to do the same." As the secretary should know, there is a profound difference, which, incidentally, is also strongly articulated in U.S. labor law. It is the principle that parties secondary to a dispute should not be held hostage to the antagonists' differences. Thus, secondary strikes are illegal domestically, and U.S. boycotts on the international scene have adhered to comparable standards.

The Arab demands on U.S. companies violate our standards because they amount not only to secondary boycotts but also to tertiary boycotts. Legislation that finally is produced by the Congress should make it national policy to oppose such economic arm-twisting rather than leave the burden on a discretionary basis to companies, which, as the House Commerce subcommittee's study suggests, are unwilling or unable to resist without an infusion of legal muscle.

[From the Atlanta Journal, June 11, 1976]

ANTI-ISRAELI BOYCOTT

A preliminary congressional investigation of secret Commerce Department documents recently revealed the widespread impact of anti-Israel boycott demands aimed at U.S. exporters doing business with Arab interests.

The report, covering a three-month period last year when federal law required notification of boycott pressures received by American exporters, indicated that 91 per cent reporting went along with the boycott demands.

This provides substantial documentation for the need to review the U.S. position in its trading relationships with Arab interests.

Rep. John Moss, chairman of the House foreign commerce subcommittee on investigations, obtained the data through subpoena after former Commerce Secretary Rogers Morton declined to voluntarily turn over the material. The findings have now been released to the House Foreign Affairs Committee which is considering legislation to ban compliance by American companies faced with anti-Israel boycotts.

A review of the Commerce Department files by Rep. Moss revealed the seriousness of Arab-backed attempts to undermine the Israeli economy. American firms seeking to do business with the Arab world were asked to certify that their goods were not of Israeli origin; that they were not transported on Israeli ships or on vessels stopping in Israeli ports; that they are not dealing with firms blacklisted by the Arab League boycott office; that they were not insured by blacklisted insurance companies; and, in some cases, to certify that their senior officers were not Jews.

It is time for the White House and Congress to begin serious consideration of appropriate economic and political remedies.

There can be little hope for peace in the Middle East if this pattern of caving in to pressures for economic warfare against Israel is allowed to continue.

The practice also makes a mockery of any claims by Arab groups that they have abandoned plans to wipe out their Israeli neighbors.

Mr. GREENBERG. The key leadership of American business now recognizes that elimination of the Arab boycott requires immediate legislative action in this country and cannot await the ultimate resolution of the Middle East conflict; nor are the two really related. Boycott in the United States is an American problem and it victimizes us regardless of peace, war, or ceasefire in the Middle East.

Simply stated, the question is whether this great Nation will acquiesce to improper foreign demands which generate practices clearly in conflict with American interests. The Export Administration Act of 1969, which expired several months ago, articulated this principle in unambiguous language, declaring it to be official American policy to oppose foreign boycotts and restrictive trade practices against nations friendly to the United States. That same policy, "encouraged and requested," Americans to refuse to take any action or support such restrictive trade practices or boycotts.

The bills already introduced in this 95th Congress; and the nearly successful passage of boycott legislation in the 94th Congress, give support to the administration's policy declaration. As I mentioned earlier, the President of the United States has on several occasions declared publicly his unalterable opposition to the boycott. These statements were not mere campaign rhetoric. We believe the President meant what he said.

In your earlier discussion, Mr. Chairman, your pointed out, I believe, or Senator Williams pointed out, that there are already six States that have enacted antiboycott statutes, while several others have similar bills pending. Why did the States act first? Because they view

foreign boycott intrusions in their jurdictions as immoral and discriminatory against their citizens. Second, the States are adopting legislation because effective Federal legislation has not been enacted into law. Now, an examination of the already enacted State laws discloses differences among them in terms of their scope, their form, their enforcement. Consequently, some businessmen and banking institutions in the States that have adopted such laws, complain that they are unfairly restricted because there are other States without such statutes. They express fear that their States will be deprived of Middle East trade which would be diverted to States which have no law. I might add, parenthetically, that we have seen no responsible study reflecting any State with an antiboycott law has lost anything but insignificant amounts of Middle East trade. We have seen studies that have indicated no losses as a result of such State legislation.

Mr. Chairman, the United States needs a clear, comprehensive, and strong national antiboycott law. We need it because the American experience shows our existing antiboycott policy, without sanctions, has no standing, has failed to impede harmful Arab boycott operations in the United States. Based on recent Commerce Department statistics, the evidence confirms that the demands of the Arab boycotters on American firms have increased inordinately. Moreover, the study of the recently released reports, which we have entered into the record, attest that only 4 percent of all those reporting, flatly indicated noncompliance with the boycott demand.

As an accompaniment of this legislation, we urge the Congress to advise the President and other members of the executive department of the constructive purposes that would be served by using the influence and standing of our country abroad, to help induce our friends abroad to adopt similar legislation and to enact similar prohibitions, thus to make it certain and clear, the Arab boycott will never be allowed to operate as a disturbing and distorting factor in international trade.

Mr. Chairman and members of the committee, the United States of America cannot permit foreign powers to use economic blackmail to dictate how Americans shall conduct business among themselves or overseas with nations friendly to the United States. Congress must legislate now to shield all Americans in our business community from divisive foreign economic pressures, threats, intimidation, and religious discrimination. We oppose any effort to delay the adoption of this legislation. We urge, therefore, the swift enactment of Senate bill 92 which, we believe, will allow the American community to conduct its trade and commerce based upon declared U.S. policies and ethical principles.

Senator STEVENSON. Thank you.

Mr. Whitehill?

Mr. WHITEHILL. Mr. Chairman and Senators. My name is Cliff Whitehill, vice president, General Mills.

I am here to support Senate bill 69 as introduced by Stevenson and Moynihan. I have delivered a written statement, and I ask that such be admitted to the record.

Senator STEVENSON. Without objection.

[Complete statement follows:]

STATEMENT OF GENERAL MILLS, INC. PRESENTED BY CLIFFORD WHITEHILL
VICE PRESIDENT AND GENERAL COUNSEL

Mr. Chairman, General Mills appreciates the opportunity to comment on proposed legislation dealing with the Arab boycott. General Mills reaffirms support for anti-boycott legislation. We agree that the compromise worked out between you and your counterparts in the House is workable, provided the implementing regulations clarify several points. It would seem preferable, however, that the language in the legislation be specific and with such we would endorse its passage by the 95th Congress.

As background to more specific wording in the proposed bill, our company is a manufacturer and exporter of food products, largely wheat-based, to the Arab countries and of chemical products to Israel. The principal product is bakery flour milled from U.S. wheat which represents a significant number of bushels grown by U.S. farmers. This business is done primarily on letters of credit, which although varying somewhat by countries, generally require certification that:

(*a*) The product or any of its components does not originate in Israel;

(*b*) The carrying vessel is not Israeli and will not call at Israeli ports;

(*c*) The carrying vessel is not on the Arab boycott list.

These certifications (or similar words) must accompany the letter of credit when presented to the bank for payment, and without them the money cannot be released by the bank. So, it's either forego the business or furnish the certifications. We have been doing the latter, as such action is merely reporting the facts as we know them and is not discriminating against either Israel or any U.S. company or U.S. citizen.

We are exporting U.S. products and have no facilities for exporting Israeli products. Hence, the certification that the product or any component does not originate in Israel is nondiscriminatory if such product or component is not commercially available from Israel.

Likewise, we understand that it is recognized, under international law, that an importing country may exercise discretion over the flag and routing of the carrying vessel. Hence, the only vessels available to us in the steamship market are those which its owners or agents know will be permitted in Arab ports. It is only those which are permitted which offer service to us.

In reality then, a certification which would say "The carrying vessel is permitted to discharge cargo at Arab ports" would be the same as one which says "The vessel is not on the Arab boycott list." The only difference is that the latter might be interpreted as an illegal certification under the compromise legislation and hence deny the exporter and the U.S. of that export business.

I would like to add that as exporters we do not have access to the boycott list, and therefore we simply transmit the vessel information as given to us by the vessel owner or agent.

We would urge that the present language be carefully reviewed and either revised to make it clear that the above-mentioned certifications may continue, or provide the clarification in the legislative history which would then guide the drafting of the regulations.

We also suggest that you examine the possibility that the federal enactment pre-empt various state laws dealing with the Arab boycott which are now causing considerable confusion into an already murky area of public policy.

As businessmen, we are understandably concerned that our business opportunities are not unnecessarily restricted. But as citizens we are even more concerned that a fair, even-handed and totally nondiscriminatory public policy be set forth in this delicate area.

Mr. WHITEHILL. General Mills supported congressional legislation since April 1976, and we have not reduced our support of responsible legislation since that time. We support responsible legislation as a matter of principle, as General Mills engages in business transactions, both in Arab countries, as well as Israel.

We are a company that is not on any blacklist, and we are a company that is not owned, controlled, or managed by Jewish Americans.

In our opinion, Senate bill 69 is on the whole both balanced and effective in this delicate area of international politics and business.

There are a few minor drafting changes which I feel might better clarify the intent of this legislation. In this respect I call your attention to paragraph 2-A, subparagraph ii. As I pointed out in my written statement delivered today, exporters are generally not aware of what vessels may be on a boycott list. We only know that vessels offering services will be able to discharge their cargoes. Accordingly, I would suggest deletion of after the word "carrier," the words, "of the boycotted country." Instead, insert, "which will be denied discharge of cargo at the ports of the boycotting country."

Also, since the boycotting country does not technically prescribe routes, the addition of the words, "or limited," after the words "rescribe," in the second part of that sentence, would be helpful.

Lastly, I strongly recommend that appropriate texts be added to preempt any State or local laws to the contrary, as this legislation is correctly and truly a matter of national decision.

Thank you.

Senator STEVENSON. Thank you.

Mr. Greenberg, I would like to go back to those two points of difference which you raised earlier. As you have, I believe, indicated, countries at war engage in primary boycotts. It is not our intention to attempt a prohibition against compliance with a primary boycott; is there?

Mr. GREENBERG. We do not believe the law could reach that boycott, and we do not suggest any legislation in that area.

Senator STEVENSON. To enforce a primary boycott, it is not uncommon for a country to require negative certificates of origin. The purpose is to prevent trading with the enemy. That is the means by which the primary boycott is enforced. I think you referrred to the Arab requirements of a negative certificate of origin as improper, and at the least, implied that they were immoral. Am I wrong?

Mr. GREENBERG. I believe that the requirement of certificates of origin stems out of differential tariffs and duties imposed by various countries, as, for example, the United States imposed differentials and tariffs, and so forth, based on the country from which the goods are shipped.

Indeed, there is real commercial justification for knowing what countries the goods originated from, but in the negative form, it is a tool of economic war. It has no justification in the normal practices of international trade——

Senator STEVENSON. You are not answering my question. My question, or suggestion that I ask you to differ with, if you do, is whether or not the negative certificate of origin isn't simply a means of implementing a primary boycott. It is to prevent trading with the other parties, is it not?

Identify yourself, please.

Mr. BAUM. Phillip Baum, associate director of the American Jewish Congress.

Mr. Chairman, you made the point earlier yourself, a country can accomplish what we all concede to be its right, that is engage in boycotts against countries with whom it has a belligerent relationship. The legitimate interests of an Arab country in knowing that the goods they are purchasing in the United States did not originate in Israel can be accomplished by the certification by American exporters that these goods originate in this country.

The only purpose for requiring a negative certificate, the only conceivable purpose and the only goal it achieves is to single out the State of Israel as an enemy of the Arab State and to make the American firm certify accordingly and thereby become an accomplice in that effort.

We object to not a primary boycott engaged in by the Arab country, but to their attempt to engage Americans in carrying out that boycott.

Senator STEVENSON. I object to that, too, but you still have not answered my question. Any boycott singles out a country. In this case, it is Israel.

My question is, if they can accomplish that objective with a positive certificate requirement, what difference does it make if the law permits a negative certificate?

Mr. BAUM. Because it requires American firms to join with them——

Senator STEVENSON. But there is no objection to joining if it is a positive certificate.

Mr. BAUM. But the positive certificate doesn't single out Israel. It does not enlist American firms in an attack on Israel.

Senator STEVENSON. You mentioned a moment ago that the Israelis could do it just as easily by use of the negative certificates. Is the Israeli negative certificate innocuous? They, of course, boycott their enemy.

Mr. BAUM. I would assume no American firm should join in providing negative certificates or origin required by any foreign countries, and the same policy should apply no matter whether it is Israel or the Arabs.

Senator STEVENSON. Some now are refusing to comply with the negative certificate requirements.

Mr. BAUM. If they are, we welcome it.

Senator STEVENSON. You think it is immoral or improper?

Mr. BAUM. Yes. I am suggesting that no American firm should be made a party to an attempt of a foreign country to engage in a boycott of another country. The American firm has no place in that fight. That is the business of sovereign states with which he is not involved.

American firms should not thus be drawn into a matter in which they have no legitimate interest.

Senator STEVENSON. You indicated, Mr. Greenberg, that many of the Arab States are only requiring positive certificates or origin. Will Israel do likewise?

Mr. MOSES. I am not in a position to speak for them, but I join in Mr. Baum's statement, the negative certificate of origin has a pernicious effect with respect to the reaction of American business to the boycott. It tends to enlist their assistance in the boycott. Absent any reason for a negative certificate, recognizing as we do its pernicious effect, we suggest it would be appropriate for the negative certificate to be prohibited by statute.

As to what Israelis do, we do not speak for them.

Senator STEVENSON. I don't see offhand much difference, but apparently countries at war do, including the State of Israel.

You have indicated you have no intention of interfering with their attempt through negative certificates to support the boycott.

Mr. MOSES. If S. 92 were passed, no American business concern could subscribed to any Israeli request for a negative certificate of origin. We support that.

Senator STEVENSON. The point I was trying to make, and I think you agreed, is that primary boycotts are common incidents of warfare. There is no way we are going to stop them.

To me, offhand, it doesn't seem to make much difference whether they enforce by negative or positive certificates of origin. In fact, the Arab States are moving to do it through positive certificates of origin.

Mr. GREENBERG. Mr. Chairman, you have already demonstrated your comprehensive knowledge of the background of this legislation. I, for one, in my own investigations of the facts that underlie the need for this legislation, have not had revealed to me that the Israelis, as a common matter, insist upon negative certificates of origin.

We would all join in subscribing to the concept that this legislation, particularly S. 92, insofar as it would outlaw negative certificates of origin, should be applied to any nation in the world which would insist on a negative certificate or origin applicable to an ally of the United States. That would include the Arab States.

We all join in supporting the provisions of S. 92, even if it is applied to Israel.

Senator STEVENSON. On the question of intent, it is certainly not novel in Anglo-Saxon jurisprudence to require intent. The effect of eliminating any requirement of intent could be to sweep up all sorts of innocent business relationships between American firms and Arab firms, affected perhaps by the error of a clerk, with the result that those that don't have business relationships in Israel, or if a clerk makes an innocent mistake, are going to be punished, that with some of the severe economic consequences that were alluded to by the earlier witnesses.

I trust that that, too, is not your intent, to punish American businesses for routine commercial transactions in Arab States.

At least it's never been my intent—I am the original author of antiboycott legislation—to bring about a counterboycott. Would you, in response to those observations about my intent, elaborate on your earlier remarks about intent?

Mr. MOSES. Yes, Mr. Chairman. We share your concern, but we feel the word "intent" in 4–A should be stricken.

We believe that the provisions of the statute which would only reach, taken pursuant to an agreement with, requirement of, requests from or on behalf of the boycotting country, would preclude the kind of innocent implication that you refer to in your remarks.

It would still be necessary to show that the action was taken not innocently, but pursuant to an agreement, was taken pursuant to a requirement, was taken pursuant to a request, or taken on behalf of the boycotting country.

One of those four requirements must be present before a violation can be found. We don't believe intent which is a subjective criterion should be applied to these circumstances, given the difficulty of proving intent.

We have numerous acts on the book, including the Sherman Act, which prohibit this or prohibit that, without finding an element of intent.

Senator STEVENSON. I will ask you to take another look at the bill, because I think your remarks are addressed to the earlier legislation.

Mr. MOSES. I certainly will take a look at it. I thought I was reading from S. 69. Let me confer with my colleagues.

Mr. GREENBERG. Mr. Chairman, may I very briefly respond to an inquiry you made which Mr. Moses commented upon. I go at it a slightly different way. I look at Senate bill 92 and ask whether this can be violated in any substantial way by inadvertent action, by ministerial action by some clerk, and I find at various points in Senate bill 92, the language of the kind referred to by Mr. Moses takes over to describe the prohibited behavior. So that even without making the case of the regulatory agencies extremely difficult by inserting a mental state as part of the element of proof, it still requires that the prosecuting agency demonstrate that the U.S. person has taken or agreed to take actions to comply with, further, or support any boycott, fostered or imposed by a foreign country. That, it seems to me, comes very close to building in the concept of intent, but the utilization of those words is avoided.

Senator STEVENSON. I can't prolong this. It is not unusual or difficult to prove intent. Prohibited activities can be used as evidence of intent.

Senator Proxmire?

Senator PROXMIRE. I want to commend both Mr. Greenberg and Mr. Whitehill for your statements. They are most welcome. You, Mr. Greenberg, are supporting legislation that Senator Williams and I introduced. I am delighted to see that.

I think it is necessary legislation. But there is a challenge as whether or not there is a need for it. I understand the reports filed with the Commerce Department indicate there is a large and growing number of requests to U.S. business firms to comply with the boycott and that an overwhelming portion of those requests are complied with, but the Commerce Department data doesn't break down compliance by type of request, so we don't know, for example, how many requests refuse dealings with the blacklisted firms are complied with.

The data shows that during the 6 months ending September 30 of last year, some 14,000 requests were received to certify or indicate the supplier, vendor or manufacturer or beneficiary is not blacklisted or that the firm is not a parent or subsidiary of a firm that is blacklisted.

What is the strongest available evidence that the Arab boycott is, in fact, causing discrimination against U.S. citizens? You have this data to which I have alluded, but we have the testimony, as I say, from responsible business people that this isn't doing much now. Why do we have to be concerned about its effect on American business.

How about it?

Mr. GREENBERG. One of the items offered for the record is a study which was conducted by the human relations agencies represented here today, the American Jewish Committee, American Jewish Congress and ADL, and it breaks down the kind of boycotts requested and compliances indicated for each boycott report.

It is true that the requirement of negative certificates of origin are present within 73 percent of the total number of requests.

But, for example, a declaration that a manufacturer or exporter is not on the blacklist is present in 33.3 percent of the requests and the compliance with those requests is 84.2 percent, so if you take 84 percent of 33 percent you find that approximately 25 or 26 percent of the persons responding have offered a declaration that the particular manufacturer or exporter they dealt with is not on the Arab blacklist.

Can I demonstrate there was discrimination by the fact that the manufacturer or exporter is not on the blacklist? No, but it is a handy tool for those who wish to comply.

It indicates they are aware of the blacklist and they are willing to certify they didn't deal with a company on the blacklist.

Senator PROXMIRE. I think that is a helpful response, but I am still reaching to try and find out what the effect of this really has been. Maybe we can look at it from the effect on Israel. Is there any indication there of what it's done to their opportunity to deal with American firms?

Mr. MOSES. Senator, I do not know who decides not to invest in Israel because of the Arab boycott. We do know that figures with respect to foreign investment generally in Israel. Since 1973, investment by foreign interests in Israel has decreased from $263 million in the year 1973 to $113 million in the year 1975.

Senator PROXMIRE. Any indication of how much that decrease was a decrease in American investment?

Mr. MOSES. I don't have those figures but I know the difficulty of attracting U.S. industry to invest in Israel, as one of the gentlemen who testified earlier stated, to his knowledge, and to ours also, if an American company does invest in Israel, that perforce will result in that company being placed on the blacklist, with exceptions, depending upon what the Arab nations determine to be convenient for their own needs.

Hotel corporations, defense manufacturers seem to be excepted from compliance with what is applicable to other companies investing in Israel.

Senator PROXMIRE. As you know, gentlemen, we are all very much aware of our increasing dependence on the OPEC countries for oil, including the Arab countries particularly. Saudi Arabia has been cooperative in the last decision on oil pricing.

What adverse effect, if any, would you feel that we might suffer from passing either of these bills?

Mr. GREENBERG. That involves me in speculating about Saudi Arabian policy, in a very large universe of foreign policy and international contact. I, in my own view, do not believe that any major change in Saudi Arabian policy will result from the adoption of this statute other than a realization that the U.S. Congress is not going to let Israel be beaten down by economic warfare in the coming few years, and that Congress is unwilling to permit American business to be a part of that economic warfare against Israel.

I believe that will result in a greater move toward discussions of long-range peace in the Middle East.

Mr. MOSES. Senator, if I may add a comment, I too am not prepared to speculate. I concede it is speculation. Whether there will be a loss of

800 jobs in Houston or Kansas City I don't know. We certainly hope there will not be. But we do call to your attention the fact that this legislation by any rational standard is less repugnant to the Arab nations than our continued support of Israel militarily.

No one has suggested that a 5-percent increase in oil rather than 10-percent increase is worth our abandoning our national principles. When they come forward as prophets of doom and suggest that American industry will lose 110,000 jobs. That hopefully will not be a self-fulfilling prediction.

The focus of the legislation does not run to Arab dealings with Israel, but to constrain Arab dealings with respect to U.S. domestic concerns.

When foreign countries seek to dictate to U.S. businesses with regard to where they can sell—where they can invest and in the case of one company, Xerox, what is a permissible subject for a TV film—it's on the blacklist because it made a TV film of one of the member nations of the United Nations, namely Israel. This becomes a legitimate U.S. concern. It seems to me, the Congress of the United States has a right to legislate in that area, particularly when directed by what it considers to be right—not the relative cultural prohibitions sought to be imposed by foreign nations on U.S. industry and citizens.

Senator PROXMIRE. That's very helpful. As you may recall, a spokesman for Saudi Arabia did, as I recall, indicate that one of the reasons or a major reason for their differing from their OPEC brethren in coming in with a softer position that was very helpful to us, was because of the political implications and indicated they thought this would help; but you feel that would be more directed toward American military assistance for Israel, something as direct as that, rather than any boycotting legislation?

Mr. GREENBERG. I would think so.

Senator PROXMIRE. Let me ask you, how about the effect on achieving peace in the Middle East? Our moving in this area? We have been—we have tried very hard—Dr. Kissinger has, Secreteary Vance has. I'm sure President Carter is anxious to do all he can to achieve peace in the Middle East. In your view, do you think this legislation could prejudice that goal?

Mr. GREENBERG. If any of us believed it would prejudice the potential for peace in the Middle East, we would not support your legislation. We are dedicated to the concept of achieving peace among the nations in the Middle East. Manifestly, we believe part of that peace has to be a recognition of Israel's right to exist. Part of that right to exist is a right to engage in normal international business commerce. Until the Arab nations are willing to, in effect, permit Israel to join the family of nations in the Mideast, and the sooner they come to realize that an interchange between Israel and the Arab nations will be helpful and that the utilization of Israel's technology and advanced industrial capability would be helpful to the Arab nations in improving their economic standards, the sooner we will have real peace in the Mideast.

Senator PROXMIRE. Why do we need new legislation to stop racial or religious discrimination when only eight of 51,000 boycott requests received by American firms involved discriminatory requests? It's almost an insignificant number.

Mr. BAUM. Mr. Chairman, the nature of the boycott itself is somewhat problematic. It's difficult to tell what goes into the decision of the Arab boycott authority in determining whether to place an individual or firm on that list.

People who are on the list are unable themselves to account for their presence on that list.

We do know on the basis of statements made by Arab boycott officers, that the list is comprised from a variety of sources; newspapers, UJA publications, et cetera, and they select from these materials names——

Senator PROXMIRE. They don't use this request route in order to develop the names?

Mr. BAUM. No; it's from secondary sources.

Senator PROXMIRE. One other question I would like to ask you gentlemen.

It's been reported that the Anti-Defamation League has been working with various business groups to try to work out compromise legislation. Can you tell us anything about any progress you have made?

Mr. GREENBERG. The report as you stated it is incorrect.

We don't work out compromise legislation. The Congress——

Senator PROXMIRE. Of course we do. But you would be helpful if you could bring yourselves and the business community along on that.

Mr. GREENBERG. The Anti-Defamation League has been involved in discussions with a group of American business leaders who have constituted themselves informally in a group called "the Business Round Table." Those discussions have been of the principles underlying the legislation proposed here today and the objectives of the Anti-Defamation League have been to reach agreement on those basic principles; we believe there is among the vast majority of American businessmen, including those we are dealing with, agreement on the basic principles, so as to obtain the broadest possible basis of support in the American community for this legislation.

We are hopeful that, even as to some specifics which may find their way into regulation issued after your legislation is adopted that we can reach agreement on these principles so that there will be, very, very broad support in the United States for legislation of this kind.

Senator PROXMIRE. My time is up, but it would be so helpful if you could come forth with any kind of recommendation before we mark up the bill. We would certainly like to hear it. Do you think there is any prospect that can be done within the next few weeks?

Mr. GREENBERG. We have been meeting on a very accelerated basis and trying as hard as possible to understand where each of us stands on this matter. We are committed to support Senate bills 69 and 92, and as you have heard, we believe in the manner in which they differ, we would support Senate bill 92. We do not encourage any delay in the adoption of that legislation, but to the extent that our joint understanding of the underlying principles of legislation bears upon the legislative enactments we will try to bring those to you as promptly as possible.

Senator WILLIAMS. Gentlemen, four witnesses here this morning have either regretted or abhorred these Arab boycotts. The difference is, what can we do about it?

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The first panel suggest that diplomatic discussions could lead us to the end of the Arab boycott.

You feel legislation is needed.

I am trying to figure out which way we should go. How long has there been within the Arab world, this approach, of economic boycott, their responses, their differences with Israel? How long has there been an Arab boycott?

Mr. MOSES. Almost since the inception of the State of Israel.

Senator WILLIAMS. That is almost 30 years.

Mr. MOSES. Yes; sir, it is going forward on an accelerated basis due to increased exports. We are now dealing with approximately $5 billion of trade, so that——

Senator PROXMIRE. Five billion?

Mr. MOSES. Yes. More industry is affected by the boycott than ever before. That will accelerate to the extent the Arab nations are able to use their liquidity for purchase purposes abroad.

I would suggest, in view of the fact diplomacy has not been successful in the past, now is not the time for legislation. It seems to me, the legitimate question is when.

Diplomatic efforts heretofore have not been successful, there are still restrictions with respect to Jewish Americans visiting Arab nations solely because they are of the Jewish faith. We have been unsuccessful in ameliorating that condition.

One of the spokesmen here today stated it should be left to industry to try to persuade Arab countries to soften their boycott position, but I failed to hear, and I listened carefully, any testimony by any of the gentlemen with respect to any efforts any of their companies had taken in that regard or intended to take, so I would suggest to you that now is the time for legislation, that if not now, when?

I suggest the answer to that is now.

Mr. BRODY. You will recall Senator Williams when you introduced the legislation in 1965, and when you subsequently held oversight hearings in 1967 and 1969, at that time spokesmen for the Department of State and Commerce said legislation is not the way. The way to deal with this problem is through quiet diplomacy.

I think what we have seen in the intervening 10 or 11 years is that quiet diplomacy simply has not worked. We need a little vocal diplomacy in the form of legislation.

Also about 20 years ago we had a sense of the Senate resolution adopted unanimously, deploring the Saudi Arabia anti-Jewish activities—their refusal even to admit Jewish servicemen into Saudi Arabia. The sense of the Senate resolution urged the State Department to take the principle that there should be no religious distinctions between Americans in dealings with foreign countries into consideration in negotiating contracts with foreign countries.

That was ignored.

I think we have reached the point where legislation of the kind that you and Senator Proxmire and Senator Stevenson have introduced, we have reached the point where the adoption of that legislation is necessary and it is the only way to deal with the problem.

Mr. GREENBERG. May I also introduce two other gentlemen at the table with me, Senator?

Your question or some of the prior questions might well have been better answered by them.

I would like at this time to introduce Arnold Forster, general counsel of the Anti-Defamation League; and Mr. Bookbinder, and Washington representative of the American Jewish Committee.

Mr. WHITEHILL. Senator Williams, in response to the question whether this should be left to some type of private diplomacy on the part of corporations, it was that very question that was raised and the reason we announced support for legislation, national legislation, well over a year ago.

The problem that faces a corporation is, No. 1, it does have difficulty in attempting to quietly negotiate changes in these types of certification and these boycotts, where its competitors may not be doing so. We would find it almost an asset to many American businesses to put the policy, as we wish to have it established, nationally, well-known, equal, and on a fair basis to all corporations.

It was the uneven and sometimes random transactions and actions of many American companies that were competitors to other American companies that causes a number of the companies to seek out ways of getting this legislation established.

Of course, we think that Senate bill 69 does it on the most rational and even basis.

I would like to add one additional comment. We have had some discussions on this negative and positive certification question. I may probably differ a little from my colleagues on the panel here.

What we have been able to discover is that it is the negative certification which uses the name of the country, which is being boycotted, which is really the factor which is distasteful, but on primary boycotts, of course, it is a country that is picked out for a particular boycott, and I would see the distinction being one of, that it isn't relevant as far as primary boycotts are concerned. It is relevant in the sense that it does identify with precision and preciseness the country against which the boycott is directed.

Mr. FORSTER. Mr. Chairman, on that subject, I think the suggestion has been made that we can not, for sovereignty reasons, legislate against primary boycotts. That doesn't mean we like primary boycotts. We don't want to, but we must permit the targeting by way of primary boycott, upon nations friendly to the United States.

Now, the fact is that some Arab nations, as Mr. Greenberg indicated, are now prepared to give up the right of the use of the negative certificate of origin. Obviously, they see a distinction because we have heard nothing from the Arab nations about giving up the right of primary boycott.

Are they giving up the right of primary boycott, when four of these nations say now that they will allow abandonment of negative certificates of origin?

Of course not. Because while they see it may be an extension of the primary boycott, they also see a very substantial distinction between the two. Which is the reason Mr. Greenberg argues for the incorporation of an outlawing of the negative certificate.

I would just briefly address myself to Mr. Proxmire's question about the damage to Israel that is being done by the Arab boycott. I would agree with Mr. Moses that it is incalcuable or at least immeasurable, when no one knows what American countries have refrained from doing business with Israel, because of the boycott.

We can name on the fingers of perhaps two hands, the major, the giant, the very large American companies that are in both countries.

The reason we are limited to two hands is because there are not too many of the hundreds of major American companies you can name—for us an honor roll—Raytheon, Sheraton, Hilton, National Cash Register, Westinghouse, IBM, General Electric, Texas Instrument, after which you begin to run out of very large companies.

The fact is there are a small number. As I recall it, the last time I was in Israel I heard Israeli newspaper reporters talking about the inability of the Israeli Government to get a large industrial firm to build a chemical plant on the Dead Sea.

That may be an indication of the damage done by the Arab boycott.

Mr. BOOKBINDER. I think Senator Proxmire asked a couple of questions earlier that might warrant a few comments. Mr. Moses and Mr. Greenberg did answer. The questions are not so much about the substance and the merit of the boycott. It is very, very difficult to get people, as you say earlier this morning with all respect, it is very difficult for witnesses to make a good case against the legislation.

Rather, as Senator Proxmire asks about the question that everybody is rasing, will it hurt American business and hurt the prospects for peace in the Middle East?

If we thought for one moment it would interfere slightly with the prospects for peace, we would have second thoughts. That question really warrants a very, very frank comment here. Almost anything you do in this area, any trade, any tariff considerations, always had a potential threat that there may be some dire consequences you can't be sure about in advance, but America has made a very basic judgment about our relations in that part of the world, our relations with Israel. Our basic support for Israel is premised on the notion that it isn't only Israel being out of favor when we support it, but it is an American interest. If there is any instance of that similarity of interest between Israel and America, it is in this area.

As you have said, Senator Proxmire, and each of you have had on various occasions, this issue of antiboycott legislation is primarily an American problem.

We serve ourselves if we say to the world we will not permit you to do this kind of thing. Especially when you do it to one of our best allies, best friends.

So we ought to understand what we are doing. We are saying we do not think there is any risk that is so great, not great at all, that we shouldn't do the honorable thing here. If we are willing in support of Israel to make very generous contributions of economic and military assistance, if we participate actively in the diplomatic world to advance this American interest, surely in the area of economic warfare now being conducted against Israel, it would be a violation of everything we have done, it would be a contradiction if we did make our little American contribution, to stopping this blackmail and economic warfare against Israel, at the same time we advance American interests.

Senator SARBANES. First, I am interested in your position on the preemption question.

I know it was testified to by Mr. Whitehill, but I don't think you gentlemen did.

Mr. BAUM. Some of us are interested in the various State enactments, some of us have helped promote interest in State antiboycott bills.

It is hard to have an opinion on preemption. I think all of us prefer antiboycott legislation across the country that apply equally to all American firms no matter where located.

If Federal legislation before this Congress would be comprehensive and clear, and broadly applicable, I think we all would endorse preemption. That would allow the States to protect their interests under the rubric of Federal legislation, but if legislation finally inacted is not comprehensive, and not broad, I think we would say we would want to reserve for the rights of the States, the opportunity to enact their own legislation to protect their residents in a way they deem most appropriate and effective.

It is difficult now to prognosticate about the utility of preemptions until we know the nature of the Federal law.

Mr. MOSES. I join in Mr. Baum's statement, with a footnote. Traditionally States have interests with respect to discrimination against its citizens, and I can foresee preemption reaching the purely economic business relationships, but leaving to the States the right, as they see fit to prohibit various discriminatory acts that affect their citizens based on ther citizens' race, religion, and so on.

Maryland, your State, being, of course, one of those States.

Mr. GREENBERG. One other footnote-type comment, California probably has the most comprehensive antiboycott legislation adopted by any State.

I happen to be a Californian. It is part of what we describe as the Cartwright Act, our State antitrust legislation.

Now, manifestly, there is Federal antitrust legislation and yet the States have antitrust legislation applicable to commerce conducted within the State of California.

We see no essential inconsistency between the Cartwright Act, the State antitrust legislation, and the existing Sherman Act and its sister legislation.

So that it is possible that one could have a uniform and universal applicable rule under Federal legislation, but with supplemental State legislation whcih would fit into the area of the Federal legislation and make it a total enforcement program.

Mr. BAUM. One comment about State legislation. My agency has followed the operation of the New York State antiboycott law fairly closely. We have attempted to assess whether, in fact, there has been any substantial diversion of trade away from New York because of the existence of that law. We have prepared a fairly detailed report analyzing the activities within the port of New York.

I must say that we found, contrary to all the fearful prophecies that have been uttered, that there was no substantial or significant diversion of trade. I was astounded to hear the comment by one of the witnesses this morning that some Jewish freight forwarders have moved from the State of New York because of the State law. I know of no such case.

The only change in place of operation I know about has to do with satellite operations of Aramco. There have been perhaps one or two others associated with Aramco that moved out of New York, but other than that, I know of no change because of the existence of the State antiboycott law.

To say that the Jewish faiths, if you will, are moving from New York because of the law is misleading. I have had an oppor-

tunity to discuss recently this very matter with the general counsel of the New York Freight Forwarders Association. I am told he will appear before the committee. You can question him yourself.

As far as we can tell, neither New York nor any other jurisdiction that we know about has had any substantial loss of trade within the State because of the existence of the State antiboycott laws.

Senator SARBANES. How has the business community responded to the boycott and what role is it called upon to play?

Mr. MOSES. I have had the opportunity to speak to groups of general counsels. One such group in Pittsburgh and one such group in northern New Jersey. At both sessions there were representatives from large American companies. What I heard—not the very words spoken; my position on the matter was very clear—but what I heard was that they don't like the boycott and that they are not opposed to legislation that Mr. Whitehill referred to, to place all U.S. companies in the same position in dealing with the boycott.

They don't want to have to curry favor or gain competitive advantage by taking action that would be contrary to the stated principles in the Export Administration Act, which principles up to now have not had the force of law.

I cannot speak for American industry, but what I sense is that, the legislation would not be abhorrent to many major U.S. companies and, indeed, might even be welcomed for the reasons stated.

Mr. BAUM. My organization has engaged what we call "a shareholder's project," within which we have attempted to introduce proxie statements on most of the major corporations in most of the United States on antiboycott legislation.

We have had conversations with the general counsels, presidents, and chief executive officers of most of those corporations. In almost every case they are perfectly willing and eager to abide by the laws of this country.

They have said they are unwilling to introduce the resolutions, because it requires them to take steps beyond the scope of existing legislation. They would be substantially aided and supported if they had legislation that would mandate them to take the action which we request of them, which their shareholders request.

I believe, and Mr. Moses believes, there is a great reservoir of support within American industry, within the business community for this kind of legislation. It affords them kind of a defense against demands by the American boycott authors. It enables them to say, we would be willing to comply with the terms of the contract you demand, but we can't because of the policy, the laws of our country prevent us from doing so. It gives them an opportunity to invoke that statutory defense and to escape reprisal on the ground that the policy and the laws of the United States prevent them from taking action demanded of them by foreign customers.

Senator SARBANES. The statute would insure that the entire community would not be brought down to the level of the lowest common denominator, in the sense that those few companies, or however many companies there may be, which did not share these concerns and were prepared to engage in whatever practices they thought were necessary, to get business. At the moment, there is no protection against that legally.

Is that right?

Mr. MOSES. That's correct.

Senator SARBANES. I take it that the meetings—I want to be very clear on this—between the Business Roundtable and the Anti-Deformation League are for the purposes of reaching an understanding of the principles to be embodied in legislation, a broadening of the considerations involved, and not directed toward the notion that voluntary action can substitute for statutory prescription?

Mr. GREENBERG. Your perception as stated is absolutely correct.

Mr. WHITEHILL. That is correct, Senator. General Mills is a member of the Roundtable. That is where the efforts have been directed.

Going back to the issue of preemption and State laws, I think, is really a very simple question. We all know this issue arises out of international politics and we know where the proper forum is to deal with those questions.

Senator SARBANES. Thank you, Mr. Chairman.

Senator STEVENSON. Gentlemen, I want to thank you for your calm and reasoned testimony. It attempts to recognize the American interests that this legislation is intended to protect. It was introduced originally for that purpose, to defend American sovereignty and American principles. I remain committed to it for that reason.

I want to end up with what may seem like a small question, but a question that is large in my mind. Your testimony has been refreshing, because it recognizes American interests. It hasn't always. We haven't today discussed American interest in any other part of the world except for the Middle East.

What American interest is served by preventing an American company from certifying to Tanzania that chrome and trucks sold in Tanzania did not come from Rhodesia?

Mr. GREENBERG. If I may try to repeat your question, you asked what American interest is served by preventing Tanzania from requiring a negative certificate of origin regarding the source of goods in Rhodesia. I believe that the legislation which we support would allow Tanzania to ascertain the specific origin of the chrome in your hypothetical question. So that it could satisfy itself that the chrome came—I am not sure of other sources of chrome in the world, but I assume the Soviet Union is a possible source—that they could obtain a certificate that the chrome had, indeed, come from the Union of Soviet Socialist Republics.

We see no purpose in permitting the negative certificate of origin. We think the question is cast in the wrong direction. We see no reason for American business to be part of the economic warfare between those two countries, so that Rhodesia is the only country that the chrome can't come from.

We assume the boycotting countries want to know the country of origin and to know it's not Rhodesian in origin, but we feel that purpose can be served by permitting the positive certificate of origin.

Mr. MOSES. There is no implication, I'm sure, in Mr. Greenberg's remarks that we would support Rhodesian exports to Tanzania contrary to the wishes of the importing country. We are merely suggesting that the legislation which the committee is considering should be neutral in its application. If it should be determined that U.S. interests are served by taking a position with regard to any controversy between Rhodesia and Tanzania, that can be addressed in specific legislation

or executive order, but legislation which deals with the broad principle and which addresses itself to boycotts directed against nations friendly to the United States should, as a point of departure, not permit the singling out of a single nation for invidious treatment by American industry by permitting compliance with negative certificates of origin.

Senator STEVENSON. I think you know what you are saying. I hope this audience doesn't misunderstand what you are saying. What you are saying is before a company can comply with a boycott of Rhodesia, by offering or declining to comply with the negative certificate requirement, that a law has to be passed.

Mr. MOSES. Yes.

Senator STEVENSON. I disagree with you on that. It's never been a take a moral position, it has to be supported by law.

take a moral position that it has to be supported by law to do so.

Mr. MOSES. No; I am saying the legislation should start with a neutral blotter. If it were the position of the United States that we should in fact be discouraging trade with any given country, that can be handled. Additionally, what moral decision might be made by a U.S. company that is a unilateral decision which a U.S. company is always free to make.

Senator STEVENSON. Not under this legislation in this case.

Mr. BAUM. This preserves for American firms——

Senator STEVENSON. My legislation does; yes.

Mr. BAUM. We understand it to mean that American firms are indeed free to make their own decisions. If they decide on moral grounds they want to boycott another country they may do so. If they decide.

Senator STEVENSON. Not pursuant to a request for a negative certificate.

Mr. BOOKBINDER. As the only nonlawyer at the table and maybe in the room, may I suggest, I would hope it's not antilegal, but I just feel that there has got to be a distinction made somehow in law, and Executive orders are something, a distinction made between what the United States does and what the U.S. Congress wants and decides to do, in actions that will affect a trusted ally and friend of ours. We have not taken any anti-Israel position as a nation. In fact, we are a pro-Israel nation. Therefore, what might be considered appropriate, in the case when we have joined with other nations in saying that there are some problems with Rhodesia, that thing should not automatically apply to our relations with Israel.

Senator STEVENSON. You better not go too far or you will fall in the trap that is waiting for you. We're not asking for a dual standard. This legislation isn't going to legislate as to which country is friendly and not friendly. I don't think there is any implication or ever been a suggestion that Rhodesia is not a friendly country.

Senator SARBBANES. Mr. Chairman, can I follow up on that question?

Senator STEVENSON. By all means. I use this as an example. I mentioned other examples earlier, that could be explored.

Senator Sarbanes.

Senator SARBANES. I understand your emphasis on neutrality to be within the context of dealing with nations, all of whom were perceived as being friendly.

Mr. MOSES. That's correct.

Senator SARBANES. And the principle of neutrality obviously will be put aside when you start dealing with nations about whom we do not have that perception. The extent of that difference may vary. There may be belligerent warfare, they may be a nation where we made a decision in the United Nations that an economic boycott should be imposed on them by all the countries of the world, in which we are going to participate, or we may recognize some other policy in terms of our dealings and we then get into difficult questions.

I didn't understand your emphasis on the sort of neutral aspect of this, to go beyond the category of countries with whom we are trying to maintain friendly relations and reaching into that other host of relationships that might be involved, is that correct?

Mr. MOSES. That's correct.

Mr. BRODY. The legislation has an exception for a country which itself may be the object of any form of embargo by the United States.

Senator STEVENSON. You are right. But we are not attempting in this legislation to legislate a determination as to whether Turkey is friendly or Taiwan is friendly, or Japan is friendly. It makes an exception for my example. Rhodesia. Are there any further questions?

Gentlemen, thank you.

[Whereupon, at 1:50 p.m., the hearing was recessed to reconvene the 28th of April.]

ARAB BOYCOTT

TUESDAY, FEBRUARY 22, 1977

UNITED STATES SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL FINANCE,
Washington, D.C.

The subcommittee met at 10:05 a.m. in room 5302, Dirksen Senate Office Building, Senator William Proxmire presiding.

Present: Senators Proxmire, Williams, Stevenson, and Sarbanes.

Senator PROXMIRE. The subcommittee will come to order.

Today we resume hearings on the antiboycott legislation pending before the subcommittee. Yesterday we heard testimony from business groups who contend that enactment of any boycott legislation would seriously affect U.S. jobs and exports. We also heard testimony from supporters of such legislation who contend that whatever the economic impact, it is a price worth paying for the defense of basic American principles.

Senator Stevenson, Senator Williams, and Senator Sarbanes and I, together with others, believe that we must take forceful antiboycott measures, that we must not permit American sovereignty and principles to be violated by the dictates of foreign governments. The purpose of these hearings is to help us fashion a firm, workable, and responsible to a highly sensitive and emotional issue.

I apologize for the fact that we weren't able to start the hearings at 10 o'clock and get them through at a more reasonable hour but we had a previous meeting scheduled of the committee at 9:30 and that had to be canceled and it was too late to move the hearings up.

I'm going to ask with the tolerance of the other witnesses that Mr. Francis Burch, the attorney general of Maryland, testify first. He has an urgent commitment that he has to meet and then we will proceed with the other witnesses. Mr. Burch, go right ahead, sir.

STATEMENT OF FRANCIS B. BURCH, ATTORNEY GENERAL OF MARYLAND

Mr. BURCH. My purpose in appearing before you today is to urge the launching of a resolute and uniform congressional attack upon the secondary level of the Arab boycott of Israel. By "resolute" I mean a statute which employs the full force and effect of the power residing in Congress to regulate foreign commerce. By "uniform", I mean the inclusion within such a statute of a provision which explicitly preempts the States from legislating in this area.

As you know, Maryland is one of only six States which has legislatively responded to this very serious problem. Although the approaches taken by these six States have been far from uniform, they have necessarily been geared toward the protection of civil rights rather than

the regulation of foreign commerce. Consequently, State regulation in this area of international concern is, although laudatory, an insufficient substitute for Federal legislation based squarely on the congressional power to regulate foreign commerce.

In 1976, the State of Maryland enacted a Foreign Discriminatory Boycotts Act. The purpose behind this legislation was to purge from all commercial transactions occurring in our State the foreign imposition of terms and conditions which discriminate against our citizens because of their national origin, race, religion, or sex. As attorney general of Maryland, I have been charged with the responsibility of enforcing our statute, both civilly and criminally, and granted the authority to promulgate regulations governing that enforcement. In order that you may better understand the constitutional limitations which a State faces in this area, I have made available copies of the regulations which I have promulgated and adopted. I am confident that a careful analysis of these regulations, and the Maryland statute which they interpret, will reveal that the full constitutional powers available to the State have been employed without unduly burdening foreign or interstate commerce.

My position on the question of preemption is really quite simple to state; I favor its inclusion in a Federal statute which is stronger than the Maryland act, and oppose its inclusion in a statute which is weaker. This position is based upon a firm belief in the fundamental concepts of federalism and comity. Those powers which reside in the Federal Government do so because of the need for uniformity in their application. This need arises when, and only when, Congress determines that a specific problem is of sufficient national concern to warrant the exercise of constitutional power in excess of that available to the States. Only then should the States remove themselves from the arena.

Unquestionably, the secondary aspects of the Arab boycott of Israel constitute a matter of grave, national concern. Consequently, federalism demands that Congress accept the responsibility appurtenant to the power granted by the commerce clause, and act in a manner which accomplishes uniformity by preemption.

Without close attention to the philosophy of federalism, one might incorrectly conclude that the proponents of Federal preemption in antiboycott legislation necessarily place in jeopardy or undermine those powers still available to the States. The fallacy of such a conclusion becomes apparent when one recognizes that much opposition to preemption in this area emanates from those States which have not seen fit to accept the responsibility which adheres to those powers. States such as Maryland, which have recognized their power and accepted their parallel responsibility, do not act in derogation of those powers by expecting Congress to do the same.

It is my belief that the position which I urge today reflects the views of the majority of Maryland's citizens. At a public hearing held on December 20, 1976, I stated the position which I have restated here, and asked for comment on it. In essence, the response was that Federal preemption would be appropriate if, and only if, it were included in strong, effective legislation.

Unfortunately, the enactment of any regulation, State or Federal, inevitably requires the imposition of an additional layer of bureaucracy. It is not unreasonable to expect that foreign countries and businesses will perfer to use the ports of those States where only one regulatory scheme needs to be satisfied. It would be both ironic and manifestly unfair for Congress, through the enactment of weak and nonpreemptive legislation, to foster discrimination against those States which have had the fortitude to protect their citizens from it.

Maryland and the five other States which have enacted antiboycott legislation have placed human rights above economic interests. They have accepted the responsibility that goes with power. It is your duty to do the same.

Thank you for the opportunity to testify on this most important matter.

[Attachment to Mr. Burch's statement follows:]

ADOPTION

Title 02— STATE LAW DEPARTMENT

ANTITRUST DIVISION

Authority: Commercial Law Article, §11-2A13, Annotated Code of Maryland

Notice is given that on January 8, 1977, regulations under COMAR 02.04.01 Maryland Foreign Discriminatory Boycotts Act Regulations were adopted by the State Law Department, Francis B. Burch, Attorney General.

These regulations, which were proposed for adoption in 3:24 Md. R. 1394-99 (November 24, 1976), have been adopted with the changes shown below and become effective coincident with the issue date of this publication.

[[*.01 Effective Date.*

The Maryland Foreign Discriminatory Boycotts Act Regulations shall be effective on January 1, 1977 and thereafter as amended or promulgated.]]

[[*.02*]] *.01 Definitions.*

The following words as used in the Maryland Foreign Discriminatory Boycotts Act, Commercial Law Article, §11-2A01 et seq., Annotated Code of Maryland, and COMAR 02.04.01 shall be defined as follows.

A. Document.

(1) As used in Commercial Law Article, §§11-2A02(E) and 11-2A12, Annotated Code of Maryland, "Document" means any writing in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, certificate of origin, letter of credit, or any other negotiable or non-negotiable writing authorized or required by the parties to an agreement, understanding or contractual arrangement to be made by a third party and which is prima facie evidence of its own authenticity and genuineness.

(2) As used in Commercial Law Article, §§11-2A04 and 11-2A05, Annotated Code of Maryland, "Document" means any tangible recordation, notation, or other evidence which directly or indirectly relates to an event described by the Attorney General in his demand and which is reasonably calculated to lead to the discovery of admissible evidence of the event.

B. "Goods" means all tangible things other than the money in which the price is to be paid and investment securities.

C. "Bill of Lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill.

D. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

E. International and Not Intrastate Transit.

(1) With respect to export transactions, "International and Not Intrastate Transit" means that portion of the transportation of goods which occurs, without interruption, after:

(a) The issuance of a bill of lading for the goods at the shipping point; or

(b) The loading of goods not covered by a bill of lading, or for which a bill of lading will be issued at the destination point, on board the railroad car, truck, airplane, vessel or other vehicle which moves the goods beyond the United States border.

(2) With respect to import transactions, "International and Not Intrastate Transit" means that portion of the transportation of goods which occurs, without interruption, before the arrival of the goods at the ultimate destination point specified by the shipper.

F. As used in Commercial Law Article, §§11-2A03(a), Annotated Code of Maryland, "Participate" means the entering into or carrying out of any provision, express or implied,

(1) Which:

(a) Is part of an agreement, understanding, or contractual arrangement for economic benefit between the parties thereto, at least one of which is a foreign government, foreign person, or international organization; and [[*which*]]

(b) Is required or imposed directly or indirectly, overtly or covertly, by the foreign government, foreign person or international organization; and [[*which*]]

(c) Has as one of its purposes the restricting, conditioning or prohibiting of, or the interfering with, an existing or potential business relationship in the State between a person and a domestic individual because of the race, color, creed, religion, sex or national origin of the domestic individual; [[*but*]] *and*

(2) Which is not:

(a) Specifically authorized by the law of the United States; or

(b) Limited to the manner in which goods are to be handled or shipped in international and not intrastate transit.

G. As used in Commercial Law Article, §11-2A03(b), Annotated Code of Maryland, "Aid or Assist" means the taking of any overt act in furtherance or observance of a provision outlined in §F, above, by a person not a party to the agreement, understanding or contractual arrangement of which the provision is part.

[[*.03*]] *.02 Applicability of Commercial Law Article, §11-2A03, Annotated Code of Maryland.*

In determining whether the Maryland Foreign Discriminatory Boycotts Act has been violated by knowing participation in, or knowing aid or assistance given to one participating in, a discriminatory boycott, the Attorney General shall be guided by the principles set forth in the examples in §B, below.

A. Any indication contained in the examples set forth in §B, below, that a transaction does not violate the Maryland Foreign Discriminatory Boycotts Act should not be construed as saying or implying that the transaction does not violate other State or federal laws.

B. Examples.

(1) Assume: Ajax, a Delaware corporation with a plant in Maryland, agrees to sell widgets manufactured in its Maryland plant to a Saudi Arabian company. The only discriminatory provision of the sales agreement demanded by the Saudi Arabian company requires that the widgets be shipped by an ocean vessel which employs no Jews.

Payment is to be made by a letter of credit issued by a Saudi Arabian bank (the "issuer") with advice of the credit being given to Ajax (the "beneficiary") by a Maryland bank (the "advising bank"). The advice states that Ajax must present the Maryland bank with a certificate issued by the Maryland-Saudi Arabian chamber of commerce stating that the ocean vessel used to ship the widgets employs no Jews.

RESULT: Ajax has not participated in a discriminatory boycott because the only discriminatory provision of its sales agreement pertained to the handling or shipping of goods in international transit. For the same reason, neither the Maryland bank nor the owner of the ocean vessel has participated in a discriminatory boycott.

(2) Assume: The facts are the same as §B(1), above, except that the sales agreement also contains a second discriminatory provision demanded by the Saudi Arabian company. This second provision is that Ajax will employ no Jew in the widget manufacturing process. Additionally, the owner of the ocean vessel who is subject to Maryland jurisdiction knows of this second provision and agrees to be bound by the first provision, that is, he agrees to employ no Jew on his vessel.

RESULT: Ajax has agreed for economic benefit to a foreign person's demand the purpose of which is to prohibit a business relationship between Ajax and another domestic individual because of the religion of that individual. Thus, Ajax and the Saudi Arabian company have knowingly participated in a discriminatory boycott. The Maryland bank has not violated the Maryland Foreign Discriminatory Boycotts Act because it has neither knowingly participated in the discriminatory boycott nor knowingly aided or assisted the participation of Ajax or the Saudi Arabian company. The bank's activity has been limited to (a) entering into a non-proscribed agreement with the Saudi Arabian bank, and (b) the execution and delivery of a document pertaining to the handling or shipping of widgets in international transit, neither of which activity may constitute a discriminatory boycott.

As the statutory definition of discriminatory boycott is confied to the offending provisions of an agreement, as opposed to the entire agreement which contains those provisions, the Maryland bank has not violated subsection (b) of Commercial Law Article, §11-2A03, Annotated Code of Maryland. This is so because the bank's agreement to obtain the certificate did not aid or assist the boycotting parties in accomplishing the discriminatory boycott, that is, the provision requiring that no Jews be hired in the widget manufacturing process.

The owner of the ocean vessel has not participated in a discriminatory boycott, even though he has agreed with Ajax to employ no Jews, for two reasons, either of which is sufficient: One, Ajax is not a foreign person, and two, his agreement was with respect to the handling or shipping of widgets in international transit. Nor has he violated subsection (b) of Commercial Law Article, §11-2A03, Annotated Code of Maryland, by knowingly aiding or assisting Ajax or the Saudi Arabian company in their participation in a discriminatory boycott. Although he knows of the discriminatory boycott, namely the provision not to hire Jews in the manufacture of the widgets, and by agreeing to hire no Jews for his vessel does more than merely handle or ship the widgets, nevertheless his activity aids the participants only in their first, non-proscribed, discriminatory provision, namely that no Jew will be employed on the vessel.

(3) Assume: The facts are the same as §B(1), above. Additionally, the Saudi Arabian company contracts directly with the owner of the vessel, a Maryland resident, for the international shipment of the widgets and requires that he employ no Jew on his vessel.

RESULT: The owner of the vessel has knowingly agreed to a provision of a contract, for economic benefit, imposed by a foreign person (the Saudi Arabian company) which provision prohibits the establishment of a business relationship by a domestic individual because of his religion. The vessel owner has not participated, however, in a discriminatory boycott because the discriminatory provision was with respect to the handling and shipping of goods in international transit. By definition, such a provision may not constitute a discriminatory boycott.

(4) Assume: The facts are the same as §B(2), above, except that the Saudi Arabian bank requires the Maryland bank to obtain from the Maryland-Saudi Arabian chamber of commerce, before paying Ajax, a certificate of Ajax's compliance with both discriminatory provisions.

RESULT: The Maryland bank violates subsections (a) and (b) of Commercial Law Article, §11-2A03, Annotated Code of Maryland. Subsection (a) is violated because the Maryland bank has knowingly agreed, for economic benefit, to the Saudi Arabian bank's demand concerning the certification of non-employment of Jews by Ajax. This demand is not with respect to the handling or shipping of widgets in international transit and its purpose is to prohibit a business relationship between Ajax and another domestic individaal because of the religion of that individual. Subsection (b) is also violated because the Maryland bank knowingly and overtly aids or assists the participation of Ajax and the Saudi Arabian company in the proscribed provision not to employ Jews in the manufacture of widgets (the discriminatory boycott) by agreeing to police it.

Assuming that the Maryland-Saudi Arabian chamber of commerce is controlled by a foreign person and, due to that control, agrees with Ajax to certify to the proscribed provision (the discriminatory boycott), it also violates subsections (a) and (b) of Commercial Law Article, §11-2A03, Annotated Code of Maryland. If however, the chamber knows of the second, proscribed provision but agrees to certify to only the first, non-proscribed provision, namely the provision not to employ Jews on the ocean vessel, it violates neither subsection (a) nor (b). This is so because its aid or assistance went only to the non-proscribed, albeit discriminatory, provision.

(5) Assume: The facts are the same as in §B(4) above. Additionally, the widgets are to be painted by a third party located in Maryland before they go into international transit. Ajax explains to XYZ Trucking Company all the provisions of the Ajax-Saudi Arabian company sales agreement before requesting XYZ to transport the widgets to the Maryland painter. XYZ agrees to so transport the widgets.

RESULT: XYZ has not violated the Act because the trucking company has merely handled or shipped the goods of Ajax. The fact that the widgets were in intrastate and not international transit is immaterial because the proviso to Commercial Law Article, §11-2A03, Annotated Code of Maryland, is not so limited.

(6) Assume: The facts are the same as in §B(5), above. Additionally, a third requirement imposed by the Saudi Arabian company on Ajax is that no Jew shall be employed in any aspect of the transportation of the widgets. XYZ

knows of this third requirement and agrees with Ajax to employ no Jews in transporting the widgets to the Maryland painter.

RESULT: As the third requirement is not limited to international transit, it is a discriminatory boycott and XYZ violates subsection (b) of Commercial Law Article, §11-2A03, Annotated Code of Maryland, by knowingly aiding or assisting Ajax's participation therein. Because XYZ complied with the illegal provision, it did more than merely handle or ship the widgets and thus lost the protection of the proviso to Commercial Law Article, §11-2A03, Annotated Code of Maryland.

(7) Assume: Ajax, located in Maryland, desires to sell widgets to Baker Novelty Company, also a Maryland based business. Baker demands that Ajax employ no black in the widget manufacturing process, and Ajax so agrees.

RESULT: Neither Ajax nor Baker has participated in a discriminatory boycott because the party requiring the discriminatory provision is not a foreign person.

(8) Assume: The facts are the same as in §B(7), above. Additionally, Baker has, as a corporate director, a resident of Rhodesia.

RESULT: Baker is a foreign person because its Rhodesian director has the power to influence the management or policies of Baker. It is not apparent, however, that either Ajax or Baker has participated in a discriminatory boycott because there has been no showing that the influence of the foreign director of Baker proximately caused the discriminatory demand. But, upon a showing that the foreign director had exercised any degree of influence in causing Baker to make its demand, both Ajax and Baker would violate Commercial Law Article, §11-2A03(a), Annotated Code of Maryland.

(9) Assume: The facts are the same as given in §B(8), above, except that the discriminatory demand is made by Ajax instead of Baker.

RESULT: The agreement does not violate the Maryland Foreign Discriminatory Boycotts Act because the person making the discriminatory demand is not a foreign person.

(10) Assume: The facts are the same as given in §B(1), above, except that the Ajax-Saudi Arabian company sales agreement contains an additional provision not normally found in a commercial transaction. The provision requires that Ajax shall employ no Zionist sympathizer.

RESULT: The determination of whether such a provision constitutes a discriminatory boycott depends on whether the phrase "Zionist sympathizer" has been used euphemistically for the word "Jew". The Attorney General would investigate the circumstances surrounding the requirement in order to make such a determination.

(11) Assume: The facts are the same as given in §B(2), above, that is, that the two discriminatory provisions of the Ajax-Saudi Arabian company sales agreement prohibit (1) the employment by Ajax of any Jews in the widget manufacturing process, and (2) the employment of any Jews in the shipment of the widgets. Additionally, the nature of the widget is such that during transit it may be necessary to apply a chemical spray at the direction of the freight forwarder. Ajax requests that, should such spraying become necessary, the Baltimore freight forwarder agree that no Jew be employed in the spraying process. The freight forwarder, having knowledge of both discriminatory provisions in the sales agreement, agrees to the Ajax request to apply or arrange to have applied the chemical spray on the carrier, dock or vessel.

RESULT: The freight forwarder has not participated in a discriminatory boycott because Ajax is not a foreign person, and because the agreement between the freight forwarder and Ajax was with respect to the handling or shipping of goods in international and not intrastate transit. Nor has the freight forwarder violated subsection (b) of Commercial Law Article, §11-2A03, Annotated Code of Maryland. Although he has lost the protection of the proviso to Commercial Law Article, §11-2A03, Annotated Code of Maryland, because his agreement to hire no Jew exceeds the mere handling or shipping of goods, he has not aided or assisted Ajax's participation in its discriminatory boycott, specifically the provision of the Ajax-Saudi Arabian sales agreement which prohibited the employment of Jews in the widget manufacturing process.

(12) Assume: Universal Widget, Inc., a New York corporation located in Ohio, enters into a sales agreement with a Saudi Arabian company. The foreign party requires that the sales agreement contain a provision which prohibits the employment by Universal of any Jew in the manufacture of the widgets to be identified to the contract. Mr. Smith, a resident of Maryland at the time Universal executed its sales agreement, travels to Ohio in search of employment by Universal. Mr. Smith is refused employment by Universal because he is Jewish and his employment would violate the discriminatory provision of the Universal-Saudi Arabian company sales agreement.

RESULT: Universal has not participated in a discriminatory boycott because even absent the discriminatory provision, the business relationship (Smith's employment by Universal) would not have taken place in Maryland.

(13) Assume: The facts are the same as given in §B(12), above. Additionally, the sales agreement requires that the widgets are to be shipped through the port of Baltimore and a freight forwarder located in Baltimore is to provide the Maryland-Saudi Arabian chamber of commerce with certificates stating (1) that the insurer of the widgets while in transit is not on the blacklist established by the Arab League Boycott Office, (2) that the ship transporting the widgets is not an Israeli vessel and is not scheduled to call at any Israeli port during the voyage, and (3) that the widgets are not of Israeli origin and do not contain Israeli materials. The Baltimore freight forwarder agrees to supply the Maryland-Saudi Arabian chamber of commerce with these certificates.

RESULT: By agreeing to provide the first two certificates pertaining to the choice of insurer and vessel, the Baltimore freight forwarder has aided or assisted Universal only in the implementation of the provisions regarding the shipment of widgets in international transit. Consequently, the freight forwarder has not thereby violated Commercial Law Article, §11-2A03, Annotated Code of Maryland.

By agreeing to provide the certificate of the non-Israeli origin of the widgets and the materials contained therein, the Baltimore freight forwarder has not aided or assisted

SYMBOLOGY: *Italics* indicate new matter. [Single brackets] indicate matter stricken from existing rule. [[Double brackets]] indicate matter stricken from proposed rule-making. Underlining indicates amendments to proposed rule-making.

Universal in its participation in a discriminatory boycott because the certificate does not evidence any intent to discriminate against a domestic individual.

[.01] .03 *Applicability of Commercial Law Article, §11-2A12, Annotated Code of Maryland.*

In determining whether any provision of any contract or other document or other agreement is null and void, the Attorney General shall be guided by the principles set forth in the examples in §B, below.

A. Any indication contained in the examples set forth in §B, below, that a transaction does not violate the Maryland Foreign Discriminatory Boycotts Act should not be construed as saying or implying that the transaction does not violate other State or federal laws.

B. Examples.

(1) Assume: Ajax, a corporation located in Maryland, contracts to sell widgets to a Rhodesian company. As part of the sales agreement the Rhodesian company requires that no black employed by Ajax may perform any work on the widgets to be identified to the contract. The widgets are to be paid for by a letter of credit issued by a Rhodesian bank (the "issuer") with confirmation of the credit being given to Ajax (the "beneficiary") by a Maryland bank (the "confirming bank"). The Rhodesian bank instructs the Maryland bank to pay Ajax only when presented with an affidavit stating that no black employed by Ajax has performed any work on the widgets sold to the Rhodesian company. Ajax can present no such affidavit because it has in fact employed a black in breach of its contract. Ajax has complied, however, with all other terms of its sales agreement and presented all necessary documents, other than the affidavit, to the Maryland bank. The Maryland bank refuses Ajax's demand for payment solely because the affidavit is missing.

RESULT: That portion of the Maryland bank—Rhodesian bank agreement which is imposed by the foreign bank and requires the affidavit constitutes a discriminatory boycott. By entering into that provision the Maryland bank violates subsection (a) of Commercial Law Article, §11-2A03, Annotated Code of Maryland. Consequently, the provision is, without regard to observance by the person intended to be bound, null and void due to the operation of Commercial Law Article, §11-2A12, Annotated Code of Maryland. Ajax has complied with all the lawful conditions imposed upon it as a "beneficiary" and is entitled to have its demand for payment honored.

(2) Assume: The facts are the same as given in §B(1), above, except that the "issuer" is located in New York instead of Rhodesia.

RESULT: As there is no showing that the New York bank imposing the discriminatory provision is a foreign person, the provision is not a discriminatory boycott. Thus, the Maryland bank does not violate Commercial Law Article, §11-2A03, Annotated Code of Maryland, merely by its agreement. If, however, the provision were observed by the person intended to be bound (the Maryland bank), subsection (b) of Commercial Law Article, §11-2A03, Annotated Code of Maryland, would be violated through the aid or assistance thereby given to participants in a discriminatory boycott (the discriminatory provision of the Ajax-Rhodesian company sales agreement). Consequently, the discriminatory provision of the Maryland bank—New York bank agreement is null and void due to the operation of Commercial Law Article, §11-2A12, Annotated Code of Maryland. Ajax has complied with all the lawful conditions imposed upon it as a "beneficiary" and is entitled to have its demand for payment honored.

[.05] .01 *Suspected Violations to Be Reported to Attorney General.*

A. Definitions. The following words as used in Commercial Law Article, §11-2A04, Annotated Code of Maryland, or in these regulations shall be defined as follows:

(1) "Promptly" means within 15 days of the event or occurrence.

(2) "Political Subdivision" means each of the counties, the City of Baltimore, and each incorporated city or town.

(3) "Organizational Unit" means any agency, department, board, commission, bureau, division, office, unit, or other entity of any political subdivision or of the Executive Branch of State government.

(4) "Chief Administrative Officer" means that individual having immediate responsibility for the performance of the duties or affairs of any organizational unit.

(5) "Officer" means any non-clerical employee of any organizational unit who, in the normal course of employment, reports directly to a chief administrative officer.

(6) "Private Person" means any individual, partnership, joint venture, unincorporated organization, charity, labor union, international labor organization, chamber of commerce, mutual company, joint-stock company, educational institution, trust, corporation (other than a political subdivision or organizational unit), or other entity recognized at law or in equity in Maryland.

B. Reports by Officers or Chief Administrative Officers. Commercial Law Article, §11-2A04, Annotated Code of Maryland, requires officers and chief administrative officers to report apparent violations of the Maryland Foreign Discriminatory Boycotts Act to the Attorney General.

(1) Report Contents. Every report shall be written, submitted under oath, dated, and shall contain the following:

(a) The name, address, telephone number, and governmental organizational unit or other identification of the reporting officer or chief administrative officer;

(b) A full, complete statement of the facts constituting the apparent violation of the Maryland Foreign Discriminatory Boycotts Act, Commercial Law Article, §11-2A01 et seq., Annotated Code of Maryland, listing the section or sections believed to be violated;

(c) Copies of all relevant documents; and

(d) The signature of the reporting officer or chief administrative officer.

(2) Promptly Filed. Every apparent violation of the Maryland Foreign Discriminatory Boycotts Act, Commercial Law Article, §11-2A01 et seq., Annotated Code of Maryland, shall be reported in the form outlined above to the Attorney General or the Assistant Attorney General and Chief, Antitrust Division, within 15 days of receipt of knowledge by an officer or chief administrative officer of this information.

(3) Additional Obligation. The reporting officer or chief administrative officer shall provide the Attorney General upon written request with any additional information or documents that the Attorney General may deem relevant.

C. Reporting Compliance by Chief Administrative Officer.

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(1) Duty of Chief Administrative Officer to Secure Reporting Compliance. Each chief administrative officer shall have the duty to see that his organizational unit has complied with its reporting obligations, and [[he]] is urged to seek from those private persons with whom his organizational unit normally comes in contact information relevant to apparent violations of the Maryland Foreign Discriminatory Boycotts Act, Commercial Law Article, §11-2A01 et seq., Annotated Code of Maryland.

(2) Annual Affidavit Concerning Compliance.

(a) On or before the first day of September of each year, the Attorney General, by written notice, may require any chief administrative officer to file on [[his]] behalf of his organizational unit an Affidavit concerning compliance setting forth the chief administrative officer's continuing diligence in seeing that his organizational unit has complied with the reporting obligations imposed by the Maryland Foreign Discriminatory Boycotts Act, Commercial Law Article, §11-2A01 et seq., Annotated Code of Maryland, and these regulations.

(b) When Filed. Each chief administrative officer so notified shall file his Affidavit concerning compliance on or before the last day of October of the year of notification.

(c) Where Filed. The Affidavit shall be filed with the Assistant Attorney General and Chief, Antitrust Division, One South Calvert Street, 11th Floor, Baltimore, Maryland 21202.

(d) Forms of Affidavit.

(i) The Affidavit shall be directed to the Attorney general:

(ii) The Affidavit shall describe the steps taken by the chief administrative officer and his agents and employees to obtain and report information relevant to apparent violations of the Maryland Foreign Discriminatory Boycotts Act, Commercial Law Article, §11-2A01 et seq., Annotated Code of Maryland; and

(iii) The Affidavit shall state either: [[of the following:]]

(aa) "To the best of my knowledge, information and belief, the (insert name of organizational unit) has during the 12 months immediately preceding notification fully complied in all respects with its obligations to promptly and thoroughly report to the Attorney General all information regarding any apparent violations of the Maryland Foreign Discriminatory Boycotts Act, Commercial Law Article, §11-2A01 et seq., Annotated Code of Maryland, and under COMAR 02.04.01.05B," or

(bb) the full and complete reasons why he is unable to make an affidavit in the form set out in §[[C.2.(c)(1)]] C.2.(d)(iii)(aa), above.

D. Reports by Private Persons.

(1) The Attorney General encourages and will consider for investigation all reports by private persons of potential or suspected violations of the Maryland Foreign Discriminatory Boycotts Act, Commercial Law Article, §11-2A01 et seq., Annotated Code of Maryland.

(2) Report Contents. Every report by a private person must be written, submitted under oath, dated, and contain all of the following:

(a) The name, address, and telephone number of the person making the report;

(b) A full, complete statement of the facts, patterns of activity, or other information thought to constitute the potential violation;

(c) Copies of all relevant documents should be attached to the report; and

(d) The signature of the person making the report.

(3) Filing. A report by a private person should be sent to the Assistant Attorney General and Chief, Antitrust Division. Reports received later than 6 months after the act or occurrence believed to constitute a violation will not normally be investigated.

[[.06]] .05 Business Review Procedure.

[[A.]] The Attorney General is not authorized to give advisory opinions to private parties. The Attorney General will, however, respond to inquiries from private parties with respect to proposed business conduct under the circumstances and procedures set forth in these regulations.

[[B.]] A. Request. A request for a business review letter must be submitted in writing to the Assistant Attorney General and Chief, Antitrust Division.

[[C.]] B. Proposed Business Conduct. The Attorney General will consider only requests with respect to proposed business conduct. Hypothetical problems will not be considered for review.

[[D.]] C. Applicability. A business review letter may not have any application to any party which does not join in the request therefor.

[[E.]] D. Obligation of Requesting Party. The requesting parties are under an affirmative obligation to make full and true disclosure with respect to the business conduct for which review is requested. All parties requesting the review letter must provide the Attorney General with whatever additional information or documents the Attorney General may thereafter request in order to review the matter. This additional information, if furnished orally, shall be promptly confirmed in writing. In connection with any request for review the Attorney General will also conduct whatever independent investigation he believes is appropriate.

[[F.]] E. Content of Request. Each request shall be accompanied by:

(1) All relevant data including background information; and

(2) Complete copies of all operative documents and detailed statements of all collateral oral understandings, if any.

[[G.]] F. Oral Clearance Not Binding. No oral clearance, release, or other statement purporting to bind the enforcement discretion of the Attorney General may be given. The requesting party may rely upon a written business review letter signed by the Attorney General, Deputy Attorney General, or Assistant Attorney General and Chief of the Antitrust Division.

[[H.]] G. Response by Attorney General. After review of a request submitted hereunder the Attorney General may do the following:

(1) State his present enforcement intention with respect to the proposed business conduct;

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(2) Decline to pass on the request; or

(3) Take another position or action that he considers appropriate.

[[I.]] H. Commitment of Attorney General. A business review letter shall recite the facts upon which it is issued, and shall state only the enforcement intention of the Attorney General with respect to the facts as recited. The Attorney General remains completely free to bring whatever action or proceeding he subsequently comes to believe is required by the public interest as the result of a change in the law or a variance from the facts upon which the letter was based.

[[J.]] I. Request May Be Withdrawn at Anytime. Any requesting party may withdraw a request for review at any time. The Attorney General remains free, however, to submit such comments to the requesting party as he deems appropriate. Failure to take action after receipt of documents or information whether submitted pursuant to this procedure or otherwise, does not in any way limit or estop the Attorney General from taking any action at any time thereafter that he deems appropriate.

[[K.]] J. Documents Retained. The Attorney General reserves the right to retain documents submitted to him under this procedure or otherwise and to use them for all purposes of enforcement of the Maryland Foreign Discriminatory Boycotts Act.

[[.07]]. 06 Annual Report to General Assembly.

A. The Attorney General shall report annually to the General Assembly on his enforcement of the Maryland Foreign Discriminatory Boycotts Act.

B. When Filed. The report shall be filed on or before the last day of December of each calendar year after January 1, 1977.

C. Contents of Report. The Attorney General's Annual Report shall summarize his enforcement actions during the preceding calendar year, including all of the following:

(1) A statistical summary of complaints received, actions instituted, and other dispositions taken;

(2) A listing of all actions instituted;

(3) A listing of the substance of all Business Review Letters issued; and

(4) A listing of the substance of all complaints received for which a determination of no-action has been made.

D. Matters Not Reported. The Attorney General will not report upon complaints currently under investigation or upon which appropriate action has not been determined.

FRANCIS B. BURCH
Attorney General
State Law Department

[Md. R. Doc. No. 77-100. Filed January 12, 1977.]

SYMBOLOGY: *Italics* indicate new matter. [Single brackets] indicate matter stricken from existing rule.
[[Double brackets]] indicate matter stricken from proposed rule-making.
Underlining indicates amendments to proposed rule-making.

Mr. BURCH. I would point out, however, that I do believe—and this is not in my prepared statement—I do believe that subparagraph 2(a)(i) of the mandatory exemptions from regulation contained in your act must be clarified. The exemption granted for the importation of boycotted goods clearly should only apply where those goods are to be reshipped by the U.S. person to the boycotting country. As presently drafted, however, the exemption would seem to swallow up a substantial portion of the proposed law and I'm sure that this is not your intention.

Senator PROXMIRE. Well, thank you very much. What specific evidence is there, sir, first to support the argument that cargo traffic has been diverted to ports and States which do not have any boycott statutes? For example, what evidence is there that California port traffic has declined since the California boycott statute—or not only California, but Baltimore and New York and Boston or Chicago—on the basis of the information you have of these ports having lost business to ports in States which do not have boycott statutes?

Mr. BURCH. Senator, I would say that I believe you will have Mr. Halpin, of the Maryland Port Authority, who will be testifying later today, but I would say that on the basis of the suggestions that we have had with not only the custom brokers and shippers and the port authority representatives, that when the Maryland act was first enacted did not take effect until January 1 of this year, following regulations which we were directed to promulgate under the statute, there was according to the Maryland Port Authority and the chamber of commerce and other shipping interests that there has been a significant dropoff in the amount of traffic because of the fear that's the interpretation that would be placed upon the Maryland act.

We think we have clarified it somewhat by the regulations that we have promulgated. However, of course, I believe that although the Port of Baltimore has been hurt somewhat, the clarification of the regulations have alleviated some of the fears that existed, but we believe there has to be a uniform act throughout the United States and we think, as I said earlier, we are interested in human rights even more so than economic rights, and those human rights know no State borders. It doesn't make any difference whether it's Maryland or California or New York or Louisiana. The human rights should be given the same consideration throughout the United States.

Senator PROXMIRE. How about the possibility that private enforcement might raise a danger of unwarranted accusations, possibly politically motivated? Does the Maryland statute have a private right of action provision?

Mr. BURCH. Yes; they do. There is a private right of action provision.

Senator PROXMIRE. What's been the experience under that?

Mr. BURCH. Well, we have had no experience because the act just took effect on January 1 of this year. So we don't have any indications of violations. But we have promulgated regulations which provide for a very comprehensive reporting system, not only with respect to various agencies throughout the State government but also we encourage those who have been the victim of the boycott to report those incidences to our office.

Senator PROXMIRE. How about in drafting this legislation or your observations of the debate when the legislation was drafted, was there

any discussion, any concern with the possibility that private enforcement might raise a danger of unwarranted accusation?

Mr. BURCH. Quite frankly, we had 2 days of hearings on this subject and we had all segments of the industry, whether you talk about the Arab Chamber of Commerce, shipping industries, the custom brokers, the banks, and so on and so forth, and we really saw no real fear insofar as the private enforcement rights were concerned.

Senator PROXMIRE. Does that mean there was no opposition by business groups?

Mr. BURCH. I can't recall any. It wasn't even mentioned. We thought it was rather interesting. But the important thing is that what all parties were looking for was some clarification as to exactly how the law——

Senator PROXMIRE. You said this was a good representative sweep of business representatives?

Mr. BURCH. I would say it was 100 percent representation. I would say the two hearings that we had, we probably had something like 75 people. We had groups representing I would say——

Senator PROXMIRE. Of course, when a State acts in this way there would be particular concern. We had opposition yesterday by some business groups who were concerned that we might lose jobs and business and profits, but of course the effect on a State which decided to go the route that Maryland has would be more serious than it would be on the business people throughout the country if we have a national provision. And yet you say in your State the business community did not indicate that concern?

Mr. BURCH. They did not, sir. I would say your law is stronger than the Maryland law in what it purports to do, but I don't know whether the representatives of the State of New York will be testifying as to exemption, but I think the general concensus is certainly as to the six States that have the antidiscriminatory boycott rights that they believe rightfully so that the preemption and as strong a bill as possible is the thing that really must be enacted by the Congress in order to have uniformity throughout the country.

Senator PROXMIRE. Some of those who favor the preemption favor it only if the Federal statute is stronger than the State statute. In your judgment is S. 69 stronger than existing State statutes?

Mr. BURCH. I think it would except insofar as the right of enforcement of private rights.

Senator PROXMIRE. In what specific way?

Mr. BURCH. I don't know that the Federal act would preempt the State statute. So far as the right of the private person who's been harmed to institute an appropriate action because of a discriminatory boycott, but that would be a question we would have to study after we see the final legislation that was passed by the Congress.

Senator PROXMIRE. But are there specific ways in which the Federal statute would be stronger?

Mr. BURCH. Well, as I mentioned earlier, the question with respect insofar as the import permits and what not, the Congress of the United States would have the power to do that which the State of Maryland would not have because of the interstate law.

Senator PROXMIRE. That's enforcement we're talking about, the substance of the coverage of the bill.

Mr. BURCH. We think that the basic bill as introduced, subject to the exemption exception that I mentioned earlier which I think should be looked at very carefully because I think it will cut out a good bit of the substance of the bill if the exemption is permitted to stand as set forward in the bills.

Senator PROXMIRE. The Maryland statute as I understand provides two particular provisions—No. 1, violation of the law to knowingly participate in a discriminatory boycott; and No. 2, to knowingly assist another to participate in the discriminatory boycott. I'm advised that's stronger than either S. 69 or S. 92.

Mr. BURCH. I think insofar as it provides for the nonaid or assisting the boycott, it would be somewhat stronger than S. 69 or S. 92. I also, in reviewing the two bills, noted there's a difference in the language. One of them is a provision that if they form a particular act with intention——

Senator PROXMIRE. Would you like to see the Federal law modified to provide this stronger Maryland language?

Mr. BURCH. Yes, I would, because, again, I think then we have the question as to how far the Federal statute goes with respect to the whole question of aiding and assisting which in effect would mean that maybe the Maryland statute would not be 100 percent exempted. I think the only way is to have a uniform statute throughout the United States and a strong statute.

Senator PROXMIRE. Very good. Thank you, Mr. Burch, for excellent testimony. And I want to apologize for Senator Sarbanes. As you know, he's very interested in this legislation. He's a cosponsor of the Williams bill, which I am too, and he was here yesterday and I'm sure he would like to be here to welcome you but couldn't be, and we will tell him you were here and did a fine job. Thank you very much.

Our next witnesses are a panel consisting of Mr. Robert McNeill, Emergency Committee for American Trade, executive vice chairman; Mr. Cecil J. Olmstead, Chamber of Commerce of the United States, Mr. L. A. Fox, National Association of Manufacturers; and Jack Carlson, I should say my old friend—it's good to have you.

I understand, gentlemen, that you have been made aware of the fact that we would appreciate it very, very much if you could condense your remarks to 5 minutes. We will be happy to accept your full statement for the record. That will give Senator Williams and me an opportunity to question you.

First, Mr. McNeill.

STATEMENT OF ROBERT L. McNEILL, EXECUTIVE VICE CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE, WASHINGTON, D.C., ACCOMPANIED BY RAYMOND GARCIA

Mr. MCNEILL. Thank you, Senator Proxmire. I have with me today Mr. Raymond Garcia who is ECAT's vice president. We are delighted to be here to testify on the legislation before this committee, S. 69 and S. 92. We are strongly supportive of that part of the bill extending the President's export control authority. We think it's necessary and desirable and that it would be of assistance to U.S. exporters.

We'd like to spend most of our time this morning discussing the foreign boycott provisions of S. 69 and S. 92. We believe that the time has come to establish a consistent national policy on foreign boycotts.

The enactment of the international boycott amendment to the tax code last year, the rising number of differing State statutes seeking to regulate antiboycott activities, the various U.S. Department of Commerce regulations for filing antiboycott reports, the proposed Justice Department consent decree in the *Bechtel* case, and the introduction in the Congress of several antiboycott bills have created uncertainty as to what is or is not prohibited in our international trade.

In legislating a national policy on foreign boycotts, we recommend that antiboycott legislation deal with foreign boycotts as they are and not as some describe them to be. The Arab boycott of Israel is popularly perceived as involving religious and racial discrimination. In fact, its purpose is essentially political and economic as is borne out in a study published last month by the Anti-Defamation League of B'nai B'rith. That study of ADL shows that there was basically no racial, religious or ethnic discrimination involved in the initial reports made available by the Department of Commerce. Nonetheless, discrimination in any instance is abhorrent to us. We, therefore, strongly support those provisions in both S. 69 and S. 92 prohibiting discrimination or the furnishing of information of a discriminatory nature.

We also urge the Congress to take fully into account the timing of action on antiboycott legislation. The Middle East situation appears to be at a delicate point when the hopes for peace are high. This objective of peace seems to call for caution and consultation with American negotiators concerning the pace of the legislative process.

We further urge the Congress to consider the facts—all too well known to business—of the fierce competition in the world for markets. In 1975, the Arab States boycotting Israel bought $25.5 billion of goods from foreign sources. The United States supplied $4.4 billion, or 17.3 percent of that total. Germany, France, the United Kingdom, Italy, and Japan were our most aggressive competitors. The United States has a huge stake in large-scale construction projects in the boycotting Arab States. They started about $8 billion in such projects in 1975, of which an estimated $1.4 billion will go to the United States. These figures are expected to grow substantially in the coming years, and could provide vital jobs for American workers, earnings for American firms, and foreign exchange to finance our imports. We should seek to accomplish the purpose of boycott legislation without sacrificing segments of this business to foreign competitors.

Our dependence on imports of Arab oil is great and is growing. In the first 9 months of 1976. U.S. crude oil imports climbed nearly 30 percent to 5.2 million barrels a day. Arab oil made up 46 percent of this total, compared with 31 percent in 1975. Arab oil imports equaled 14 percent of total U.S. oil demand for the first 9 months of 1976. Estimates are that Arab oil will represent approximately 55 percent of U.S. oil imports in 1980 and about 60 percent in 1985, which would represent 30 percent or more of total oil demand. Continued access to this Arab oil is vital to our economy. Again, we should seek to accomplish our purposes without adding to uncertainties about the supply and cost of oil.

I will now comment on provisions of the two bills before the committee, S. 69 and S. 92. Both contain essentially identical provisions. However, S. 92 differs from S. 69 in three major respects.

First, the intent language in section 4A(a)(1) has been omitted in S. 92.

Second, negative certificates of origin are prohibited in S. 92.

And, third, allowance for compliance by an individual with the immigration or passport requirements of the boycotting country has been deleted in S. 92.

In general, we prefer the provisions of S. 69 over those of S. 92, and would like to offer the following recommendations for revising S. 69:

1. Section 4A(a)(1) should be revised by deleting the reference to taking actions and retaining in lieu thereof the agreeing to take language of S. 92. Thus, section 4A(a)(1) would real in part: ". . . the President shall issue rules and regulations prohibiting any United States person from agreeing to take any of the following actions . . ."

This modification would bring the act into conformity and consistency with the proscriptions and penalties of the antitrust laws and the Tax Reform Act of 1976, which prohibit or provide penalties for agreements or contracts, combinations, and conspiracies to further the boycott.

2. In general, we agree with the prohibitions spelled out in section 4A(a)(1) (A) and (B) concerning refusals to deal. We recommend below a modification in the exceptions affecting these provisions.

We also agree with the prohibition in section 4A(a)(1)(C) involving discrimination.

I would like to interrupt here, Senator, to indicate that the following paragraph in my statement on page 5, beginning, "We prefer, however," is inaccurate and I would appreciate it if that would be deleted from the record.

We also strongly recommend that the word "other" be inserted between the words "any" and "person" in section 4A(a)(1)(E). Individuals should be permitted to furnish factual information on their own business activities. To deny them this freedom appears unjust. We support, however, prohibitions on any U.S. person from furnishing business information about any other U.S. person.

3. The refusals to deal exceptions in both bills fail to take full account of the inability of private persons to export goods or services to or export them from any sovereign country in a manner contrary to that country's laws and requirements. An American tractor exporter, for example, should be permitted to equip the tractor with a tire acceptable to the purchaser. We quite concur, however, that the company should no be permitted to agree to refuse to do business with the tire company in other transactions. The U.S. company's failure to assure the boycotting country that it is no providing goods or services

prohibited entry by that country will most likely result in the boycotting country's refusing to accept the whole shipment or confiscating it. In such a case, nobody benefits. The United States, however, loses jobs and exports. We strongly urge the committee to make appropriate modifications in the exceptions to take account of this problem and we would be glad to recommend language to the committee.

4. We recommend that the committee reconsider the definition of U.S. person, deleting the references to foreign subsidiaries and affiliates. Limiting the reach of the bill to domestic concerns as was provided for in S. 3084, which was overwhelmingly passed by the Senate last year, in our judgment, is the preferable approach. It would avoid the possibility of putting overseas U.S. subsidiaries and affiliates in conflict with foreign laws or policies when they differ from those of the United States.

5. We also recommend that Federal legislation provide for specific preemption of State statutes that regulate involvement in foreign boycotts.

6. U.S. Department of Commerce boycott reporting requirement should be eliminated or reduced. They were initiated in 1965 to help the Government in assessing the impact that foreign boycotts had on the U.S. national interest and at a time when involvement in foreign boycotts was not prohibited. Now that certain kinds of involvement are prohibited, the reports should be discontinued. Doing so would not deprive the Government of information on boycott activities. The tax code has been amended to require taxpayers to report all such activities annually with their tax returns. The filing of separate reports, containing essentially similar information to two different agencies is redundant and costly. It could lead to higher prices or lower earnings, or both, with no compensating increase in benefits to the Goverment.

7. Both S. 69 and S. 92 provide the effective date of the act and regulations thereunder is to be no later than 90 days after enactment or in some cases 90 days after the rules and regulations become effective. We recommend that this provision be modified, so that the effective date of application of the act to existing contracts would be January 1, 1978. This revision would bring the act into conformity with the International Boycott provisions (section 105(a)(2)) of the Tax Reform Act of 1976.

Mr. Chairman, I thank you very much for having me here.

Senator PROXMIRE. Thank you, Mr. McNeill.

[The complete statement follows:]

TESTIMONY OF ROBERT L. McNEILL, ON BEHALF OF
THE EMERGENCY COMMITTEE FOR AMERICAN TRADE
BEFORE THE INTERNATIONAL FINANCE SUBCOMMITTEE
OF THE SENATE COMMITTEE ON BANKING, HOUSING AND
URBAN AFFAIRS ON S. 69 and S. 92

February 22, 1977

Mr. Chairman, I am delighted to be here to testify on behalf of the Emergency Committee for American Trade. ECAT, as our committee is called, is composed of the leaders of 64 of the country's largest firms and banks engaged in worldwide trade and investment. We thank you for giving us the opportunity to state our views on bills to renew the President's authority to control U.S. exports and to expand his power to take action against foreign boycotts.

We support renewing the President's export control authority. The changes proposed in the bills before this committee for administering the export control system appear wise and should be helpful to U.S. exporters.

We should like to devote the balance of our testimony to discussing the foreign boycott provisions. They touch on vital matters. ECAT members have carefully studied the provisions and have agreed on a statement of policy on antiboycott legislation, which is appended to our testimony.

ECAT believes the time has come to establish a consistent national policy on foreign boycotts. The enactment of the international boycott amendment to the tax code last year, the rising number of differing state statutes seeking to regulate antiboycott activities, the various U.S. Department of Commerce regulations for filing antiboycott reports, the proposed Justice Department consent decree in the Bechtel case, and the introduction

in the Congress of several antiboycott bills have created uncertainty as to what is or is not prohibited in our international trade.

In legislating a national policy on foreign boycotts, we recommend that antiboycott legislation deal with foreign boycotts as they are and not as some describe them to be. The Arab boycott of Israel is popularly perceived as involving religious and racial discrimination. In fact, its purpose is essentially political and economic as is borne out in a study published last month by the Anti-Defamation League of B'nai B'rith. ADL's study analyzed 836 Arab boycott request reports filed with the U.S. Commerce Department and found that:

> "Boycott requests involving religious discrimination were rare -- appearing on three of 836 reports, or less than one-half of 1 percent."
>
> "In each of the three cases, which originated in Saudi Arabia, the discrimination took the form of a boycott-related request that a hexagonal or six-pointed star not appear on the goods or packages to be shipped to the Saudi importer."

The study adds:

> "None of the reports examined contained requests for information concerning ownership or control of the exporting firm by persons of the Jewish faith, the presence of Jews on its board of directors. None of the reports, likewise, inquired whether the reporting firm used the goods and/or services of a Jewish sub-contractor, and there were no reports involving requests that a firm not send persons of a particular religion to the Arab country where services were to be performed."

Nonetheless, discrimination in any instance is abhorrent to us. We, therefore, strongly support those provisions in both S. 69 and S. 92 prohibiting discrimination or the furnishing of information of a discriminatory

nature.

We should, however, be clear as to what can and cannot be accomplished by legislation. In introducing S. 69 on January 10, you noted, Senator Stevenson, that the Arab boycott of Israel "will be ended only when there is permanent peace in the Middle East," and that "just as we seek to protect American sovereignty, we should also avoid interference with the sovereignty of others." We agree and hope that these thoughts will be kept in mind as the Congress considers the bills before it.

We also urge the Congress to take fully into account the timing of action on antiboycott legislation. The Middle East situation appears to be at a delicate point when the hopes for peace are high. This objective of peace seems to call for caution and consultation with American negotiators concerning the pace of the legislative process.

We further urge the Congress to consider the facts -- all too well known to business -- of the fierce competition in the world for markets. In 1975, the Arab states boycotting Israel bought $25.5 billion of goods from foreign sources. The United States supplied $4.4 billion, or 17.3 percent of that total. Germany, France, the United Kingdom, Italy and Japan were our most aggressive competitors. The U.S. has a huge stake in large-scale construction projects in the boycotting Arab states. They started about $8 billion in such projects in 1975, of which an estimated $1.4 billion will go to the United States. These figures are expected to grow substantially in the coming years, and could provide vital jobs for American workers, earnings for American firms, and foreign exchange to finance our imports. We should seek to accomplish the purpose of boycott

legislation without sacrificing segments of this business to foreign competitors.

Our dependence on imports of Arab oil is great and is growing. In the first nine months of 1976, U.S. crude oil imports climbed nearly 30 percent to 5.2 million barrels a day. Arab oil made up 46 percent of this total, compared with 31 percent in 1975. Arab oil imports equalled 14 percent of total U.S. oil demand for the first nine months of 1976. Estimates are that Arab oil will represent approximately 55 percent of U.S. oil imports in 1980 and about 60 percent in 1985, which would represent 30 percent or more of total oil demand. Continued access to this Arab oil is vital to our economy. Again, we should seek to accomplish our purposes without adding to uncertainties about the supply and cost of oil.

I now will comment on provisions of the two bills before the committee, S. 69 and S. 92. Both contain essentially identical provisions. However, S. 92 differs from S. 69 in three major respects.

First, the "intent" language in Section 4A. (a)(1) has been omitted in S. 92.

Second, negative certificates of origin are prohibited in S. 92.

And, third, allowance for compliance by an individual with the immigration or passport requirements of the boycotting country has been deleted in S. 92.

In general, we prefer the provisions of S. 69 over those of S. 92, and would like to offer the following recommendations for revising S. 69:

1. Section 4A. (a)(1) should be revised by deleting the reference to

"taking" actions and retaining in lieu thereof the "agreeing to take" language of S. 92. Thus, Section 4A. (a)(1) would read in part:

> "...the President shall issue rules and regulations prohibiting any United States person from agreeing to take any of the following actions..."

This modification would bring the Act into conformity and consistency with the proscriptions and penalties of the antitrust laws and the Tax Reform Act of 1976, which prohibit or provide penalties for agreements or contracts, combinations and conspiracies to further the boycott.

2. In general, we agree with the prohibitions spelled out in Section 4A. (a)(1)(A) and (B) concerning "refusals to deal." We recommend below a modification in the exceptions affecting these provisions.

We also agree with the prohibition in Section 4A. (a)(1)(C) involving discrimination.

We prefer, however, the language in Section 4A. (a)(1)(D) of S. 92 over the comparable provision in S. 69. S. 92 would permit individuals to furnish information on their own race, religion, nationality, or national origin if they chose to do so, say in applying for a visa, but prohibit the furnishing of such information for any other U.S. person.

We also strongly recommend that the word "other" be inserted between the words "any" and "person" in Section 4A. (a)(1)(E). Individuals should be permitted to furnish factual information on their own business activities. To deny them this freedom appears unjust. We support, however, prohibitions on any U.S. person from furnishing business information about any other U.S. person.

3. The "refusals to deal" exceptions in both bills fail to take full account of the inability of private persons to export goods or services to or export them from any sovereign country in a manner contrary to that country's laws and requirements. An American tractor exporter, for example, should be permitted to equip the tractor with a tire acceptable to the purchaser. We quite concur, however, that the company should not be permitted to agree to refuse to do business with the tire company in other transactions. The U.S. company's failure to assure the boycotting country that it is not providing goods or services prohibited entry by that country will most likely result in the boycotting country's refusing to accept the whole shipment or confiscating it. In such a case, nobody benefits. The U.S., however, loses jobs and exports. We strongly urge the committee to make appropriate modifications in the exceptions to take account of this problem and we would be glad to recommend language to the committee.

4. We recommend that the committee reconsider the definition of "United States person," deleting the references to foreign subsidiaries and affiliates. Limiting the reach of the bill to "domestic concerns" as was provided for in S.3084, which was overwhelmingly passed by the Senate last year, in our judgment, is the preferable approach. It would avoid the possibility of putting overseas United States subsidiaries and affiliates in conflict with foreign laws or policies when they differ from those of the United States.

5. We also recommend that federal legislation provide for specific preemption of state statutes that regulate involvement in foreign boycotts.

At least six states -- California, Illinois, Maryland, Massachusetts, New York, and Ohio -- have recently enacted legislation prohibiting certain kinds of boycott-related activity. Other states are considering similar legislation. The power to control foreign commerce and international relations is a federal responsibility and the United States must speak with one voice in such matters.

6. U.S. Department of Commerce boycott reporting requirements should be eliminated or reduced. They were initiated in 1965 to help the government in assessing the impact that foreign boycotts had on the U.S. national interest and at a time when involvement in foreign boycotts was not prohibited. Now that certain kinds of involvement are prohibited, the reports should be discontinued. Doing so would not deprive the government of information on boycott activities. The tax code has been amended to require taxpayers to report all such activities annually with their tax returns. The filing of separate reports, containing essentially similar information, to two different agencies is redundant and costly. It could lead to higher prices or lower earnings, or both, with no compensating increase in benefits to the government.

7. Both S. 69 and S. 92 provide that the effective date of the Act and regulations thereunder is to be no later than 90 days after enactment or in some cases 90 days after the rules and regulations become effective. We recommend that this provision be modified, so that the effective date of application of the Act to existing contracts would be January 1, 1978. This revision would bring the Act into conformity with the International Boycott provisions (Section 105 (a)(2))of the Tax Reform Act of 1976.

Mr. Chairman and members of the committee, thank you for having me here. I welcome any questions.

APPENDIX

Emergency Committee for American Trade 1211 Connecticut Ave Washington DC 20036 (202)659-5147/730 Fifth Ave NYC 10019 (212)541-4040

ECAT STATEMENT OF POLICY ON ANTI-BOYCOTT LEGISLATION

Introduction

Since 1965, the United States has declared a policy of opposition to restrictive trade practices or boycotts fostered by foreign countries against other countries friendly to the United States. The Export Administration Act of 1969 (as amended) and its predecessor, the Export Control Act, which articulates this policy, encourages and requests domestic exporters to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting foreign boycotts or restrictive trade practices.

The policy has been implemented by U. S. Department of Commerce regulations. They prohibit U. S. exporters from discriminating against U. S. citizens on the basis of race, color, religion, sex, or national origin, pursuant to boycott requests. They also require exporters to report receipt of boycott-related requests to the Department of Commerce and to state whether and how they have responded to such requests. Since October 6, 1976, parts of the reports have been made available to the public.

The 94th Congress further strengthened United States action against foreign boycotts. It enacted an international boycott amendment to the Tax Reform Act of 1976 that deprives U. S. taxpayers of foreign tax credits, tax "deferral" and DISC benefits, if they agree to "participate in or cooperate with" an international boycott. The amendment also requires U. S. taxpayers to report compliance actions to the Internal Revenue Service and provides criminal sanctions for willful failure to report.

In addition to federal legislation, at least six states--California, Illinois, Maryland, Massachusetts, New York, and Ohio--have recently enacted legislation prohibiting certain kinds of boycott-related activity. Other states are considering similar legislation.

Some segments of the American public and their elected representatives are of the opinion that the current array of laws and regulations to protect Americans against involvement in foreign boycotts are not fully effective. Others believe that the U. S. response deals sufficiently with the problem. The fundamental question of this debate is to what extent the administration of Arab economic laws will be permitted to affect the traditional freedom of American citizens and enterprises to choose without compulsion the persons with whom and the localities where they do business. The 95th Congress will seek an answer to this question when it considers the renewal of the Export Administration Act. The following is a statement of the position of the Emergency Committee for American Trade on this issue.

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Statement of ECAT Policy

ECAT firmly believes that all segments of our society tend to benefit from a policy of the freest international exchange of goods, services and capital. Boycotts and restrictive trade practices distort economic growth and inhibit employment. ECAT, therefore, supports legislation that serves to promote and expand U. S. international commerce and domestic employment opportunities and opposes legislation that does otherwise.

ECAT recognizes, however, that all nations, including our own, do not necessarily always accept or pursue these objectives and that they possess the right and the power to control the import and export of goods and services to and from their territories in their national interests. Any legislation to be effective must recognize the fundamental principle of international law that each sovereign nation may regulate its trade with other nations and determine who may do business within its territory.

ECAT believes the time has come to establish a consistent national policy towards foreign boycotts. The enactment of the international boycott amendment to the tax code, the rising number of differing state statutes seeking to regulate anti-boycott activities, the new U. S. Department of Commerce regulations for filing anti-boycott reports, and the introduction in the Congress of various bills to tighten anti-boycott statutes are compounding a confused situation over what is or is not prohibited in international trade. Interpretations of the meaning of these statutes and regulations are being contested. Valuable business and employment opportunities for American firms and workers are in danger of being lost until a consistent anti-boycott policy is set. ECAT believes that this policy should include the following elements:

1. It should be illegal for a U. S. person (individual, firm, or corporation) to enter into any agreement that stipulates, as a condition for doing business with or in a foreign country, to:

   (a) discriminate against any U. S. individual on the basis of race, religion, creed, color or national origin;

   (b) furnish information on any U. S. individual's race, religion, creed, color or national origin;

   (c) furnish information on another U. S. person's business relationships;

   (d) refuse to do business with any U. S. person; and

   (e) refuse to do business with or in any other foreign country.

2. Recognition should be given to the sovereign rights of a country to:

   - refuse to deal with other nations;

   - control its imports and exports of goods and services from and to any source;

- regulate the admission of people into its territory; and

- admit or exclude any ships intending to call at its ports.

As a consequence, U. S. persons should be allowed to abide by the laws and regulations of foreign countries with respect to business transactions in or with those countries; provided, however, that the sovereign right of countries to regulate entry and exit of goods, services, capital and people should not in any way be permitted to dictate or even influence what U. S. persons do in any other circumstance or with respect to any other transaction. U. S. traders should be permitted to provide appropriate documentation required by foreign countries to control their imports and exports, including certifications regarding the origin, destination, shipment and insurance of goods and services.

3. There should be no extra-territoriality, i. e. U. S. policy should not attempt to regulate the actions of foreign firms owned or controlled by U. S. companies. This avoids the possibility of putting overseas U. S. subsidiaries and affiliates in conflict with foreign laws or policies when they differ from those of the United States.

4. Federal policy should provide for specific preemption of state statutes that regulate involvement in foreign boycotts. The power to control foreign commerce and international relations is a federal responsibility and the United States must speak with one voice in such matters.

5. U. S. Department of Commerce boycott reporting requirements should be eliminated or reduced. They were initiated in 1965 to help the government in assessing the impact that foreign boycotts had on the U. S. national interest and at a time when involvement in foreign boycotts was not prohibited. Now that certain kinds of involvement are prohibited, the reports should be discontinued. Doing so would not deprive the government of information on boycott activities. The tax code has been amended to require taxpayers to report all such activities annually with their tax returns. The filing of separate reports, containing essentially similar information, to two different agencies is redundant and costly. It could lead to higher prices or lower earnings, or both, with no compensating increase in benefits to the government.

In calling for a consistent U. S. policy on foreign boycotts, ECAT urges our government to consider the facts--all too well known to business--of the fierce competition in the world for foreign markets and of how limited is the power of withholding American goods in forcing nations to come to terms with American wishes. We strongly recommend against hasty action. The surest way to end boycotts is to bring peace among the belligerents. We urge the Congress, in considering renewal of the Export Administration Act, to take fully into account the impact that unduly harsh foreign boycotts legislation might have on that objective and, particularly, on achieving a satisfactory solution to the situation in the Middle East.

February 1977

Senator PROXMIRE. Our next witness is Mr. Jack Carlson of the Chamber of Commerce.

STATEMENT OF JACK CARLSON, CHAMBER OF COMMERCE OF THE UNITED STATES, ACCOMPANIED BY JOHN BREWER

Mr. CARLSON. Senator Proxmire and Senator Williams, it's a pleasure to be here. I'm pleased to have with me John Brewer, the Chamber's Associate Director for Near East and South Asian Affairs.

[Complete statement follows:]

STATEMENT
on
EXPORT ADMINISTRATION ACT EXTENSION (S. 69 & S. 92)
before the
SUBCOMMITTEE ON INTERNATIONAL FINANCE
of the
SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
Jack Carlson

I am Jack Carlson, vice president and chief economist of the Chamber of Commerce of the United States on whose behalf I am appearing today. Accompanying me is John V.E. Brewer, the Chamber's Associate Director for Near East and South Asian Affairs.

We appreciate this opportunity to discuss issues relating to extension of the Export Administration Act of 1969 (as amended) as embodied in S. 69 and S. 92. While we, on balance, oppose those bills in current form, they nonetheless have several important and valuable provisions worthy of serious consideration.

The challenges facing the Chamber's varied membership of over 60,000 business firms, 2,600 local, regional and state chambers of commerce, 1,100 trade associations and 41 American chambers of commerce abroad, have made it acutely aware of the need for better understanding of, and policy planning in relation to, the interdependency of nations. Clearly, a nation's export policy, including the use of export controls, is an important part of that policy development process.

The policies which we develop in response to domestic supply shortages, foreign relations issues and in connection with foreign boycotts have obvious international implications. Events of the past two years relating to petroleum price increases and threats of cartelization in other basic commodities have lent urgency to the need for an enlightened and flexible attitude on the part of Western governments. Restrictive unilateral policies aimed at gaining short-term political or economic advantages will be self-defeating in the long run. Thus, it is important to frame the appropriate approaches to such difficult issues in as cooperative and enlightened a manner as possible. In this spirit, we submit the following comments on extension of the Export Administration Act and related issues.

ADMINISTRATION OF EXPORT CONTROLS

Lack of Policy Direction

A recent GAO study* criticized the implementation of export control policy as a "continuous series of ad hoc decisions and fragmented considerations." The GAO noted:

> "...an absence of agreement on criteria and standards for determining which goods and technology should be controlled and whether foreign policy, commercial, or defense considerations should dominate export control policy. (The GAO) concluded that lack of agreement reflects fundamental interagency and international differences regarding licensing standards and procedures to be followed in controlling exports."

It is understandable that there should be differences of opinion in the administration of export controls as to what the correct policy posture should be, especially in relation to trade with communist countries. Those administering the export control program work under a law, the Export Administration Act, which both restricts and encourages the export of American goods. They are also confronted with those provisions of the Trade Act of 1974 which place additional restrictions on our trade relations with communist countries.

This lack of policy direction is not unique to the export control process. Generally, the government is inadequately organized to conduct a coherent international economic policy. The problems inherent in the export control process are those more largely reflected in the conduct of U.S. international economic policy: poor interdepartmental coordination and lack of clear focus on objectives, resulting often in tentative and ineffective implementation. Although restructuring the government's approach to international economic policy is beyond the scope of this Committee's consideration of the Export Administration Act, it is, nonetheless, important to understand that difficulties stemming from unclear policy guidelines in the export control area are symptomatic of a larger, more serious problem.

Short of addressing that overall problem, the Committee should consider particularly the issue of delays in obtaining export licences.

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*The Government's Role in East-West Trade - Problems and Issues, General Accounting Office, Washington, D.C., (February 4, 1976).

The most common complaint of National Chamber members about the export control process is the delay in issuing export licenses, especially on high technology products for export to communist countries. The delays have continued to increase over the past five years and represent a critical problem for American international business. When it is unclear how long it will take to receive an export license, businesses, especially smaller companies, have serious planning and motivational problems relating to their sales force, their production people and their customers -- not to mention penalties for late deliveries and cancellation of orders. U.S. firms are at a definite disadvantage in comparison to their competitors in Western Europe and Japan who are able to obtain licensing decisions in a more timely and effective manner. In a number of high technology areas, buyers do not even consider U.S. products because of the uncertainties of our licensing process.

When the Congress last extended the Export Administration Act in 1974, the Act was amended so that all applicants whose license applications took longer than 90 days to process would be informed of the reason for delay and when a decision might be reached. The unfortunate result has been the collection, by many of our members, of what have come to be known as "90-day notices."

In early 1976, the Commerce Department initiated special steps to reduce the frequent and lengthy delays in the processing of export license applications. Although we applaud these efforts, there will still be indecision and tentative implementation unless strong policy assertion comes from the Congress.

In this connection, Section 106 of S. 69 and S. 92 make several desirable improvements in the legislative basis for this process. For example, any license not acted on in the 90-day period would be presumed approved unless the applicant were notified in writing that additional time was required and the reason why such additional time would be necessary. If negative considerations had been raised in regard to the license, the applicant would have an opportunity to respond to them prior to final action by the Secretary of Commerce. Such requirements could create a greater degree of responsiveness and responsibility than has been apparent heretofore in the export license process.

Section 106 would also amend Section 4(g) of the Export Administration Act to provide that an applicant for an export license be informed in writing of the specific statutory basis for the denial of any application. However, as presently phrased, it could result in having the Commerce Department merely identify which of the basic criteria under the Export Administration Act was being used to control the export in question. The criterion, more likely than not, would be the national security consideration. Such an amendment would be of much greater use if it were phrased to require an explanation of the reason, rather than the statutory basis, for a license denial.

FOREIGN BOYCOTTS

Statement of the Issue

The state of hostilities which has existed between Israel and various Arab countries since 1948 has extended to the implementation, by both opposing parties, of policies designed to injure their enemy economically. The principal policies adopted by the Arab countries to wage economic warfare are known as the "Arab Boycott."

The development of more extensive U.S. commercial relations with the Arab world has caused increasing concern about the effect of the "Arab Boycott" on American citizens and companies. While the means and implementation of this boycott have varied over time and among the participants, it is, nonetheless, clear that Arab countries, by law and regulation, have forbidden their own nationals and persons within their territories from trading with Israel. The Arab countries, in addition, have established "blacklists" of foreign companies which are either controlled by Israelis or are perceived as aiding Israel. While the criteria applied and the grounds for inclusion of a firm on those lists are uncertain, such decisions represent, in any case, implementation of the policies and regulations which individual Arab countries, in the exercise of their national sovereignty, apply to imports of products and services into their territories. In this connection, they have generally prohibited the import of Israel-sourced goods and services as well as those of most blacklisted firms.

Additionally, there have been reports that the Arab countries have sought to cause firms which desire to sell goods and services there to agree, as a condition of sale, not to do business outside those countries with firms on the blacklist. Apart from the fact that behavior resulting in cutting

off any business firm from groups of suppliers or customers would be against that firm's interests, it would be against both U.S. law and American business practice to acquiesce in demands, domestic or foreign, to discriminate generally against other U.S. firms or against any particular group of U.S. citizens.

The fundamental question of the boycott debate is how to protect U.S. citizens and companies from discrimination without compelling American firms to violate the laws and regulations of certain Arab countries respecting the movement of goods and services to and from those countries.

Policy Issues and Chamber Positions

The National Chamber supports the freest international movement of goods, services, and capital. We oppose boycotts, domestic or foreign, because they impede normal commercial trade based upon economic considerations. To that end, the Chamber supports legislation which would eliminate or reduce any restrictive trade practices impeding the freest flow of international trade. Experience shows, however, that such legislation is effective in the international context only if it recognizes that other nations have the right and possess the power to apply their policy and law with respect to persons and conduct within their jurisdictions, including the prescribing of regulations on the import and export of goods and services to and from their territories.

In this context, we note that the two major bills under consideration, S. 69 and S. 92, if enacted, could be either potentially ineffective or harmful because, in some respects, they do not fully recognize the rights and power of other nations.

The National Chamber has carefully considered the various issues arising from the effects of the boycott on United States citizens and companies. (It is clear that full resolution of this issue depends on the elimination of its basis: the Arab-Israeli conflict. Such a resolution, of course, would most probably result from diplomatic and other considerations which are beyond the scope and effect of this legislation.) Nonetheless, the Chamber has developed a set of principles against which the behavior of U.S. citizens and companies should be judged. These principles define objectives which should be embodied in any U.S. law on this subject. It is our impression that most, if not all, of these objectives can be achieved through existing law and regulation.

(1) U.S. persons should not discriminate against other U.S. persons on the basis of race, color, religion, sex, or national origin, pursuant to a boycott-related request. This policy, already embodied in civil rights legislation, is applicable to discrimination resulting from a boycott-related request where the conduct resulting in such discrimination is subject to U.S. jurisdiction. Both S. 69 and S. 92 would prohibit American firms from refraining to employ a person on the basis of race, religion, nationality, or national origin. While such a prohibition is desirable and generally embodied in current law, it should not infringe on the right of a corporation to require that an applicant for employment fulfill certain requirements--including being able to meet the immigration or other requirements of a country where the employment opportunity exists.

(2) U.S. persons should not furnish information regarding another U.S. persons's race, color, religion, sex, or national origin, pursuant to a boycott-related request. Adequate statutory authority exists to enforce this policy and Commerce Department regulations respecting foreign boycotts prohibit the furnishing of this kind of information.

(3) U.S. persons should not agree to refrain from doing business with or in the boycotted country as a condition of doing business in a boycotting country. Any attempt by a boycotting country to compel persons outside its jurisdiction to modify their conduct in regard to a boycotted country should be opposed. U.S. persons should be free to trade with the boycotted country, as they wish, outside the territory of the boycotting country. In this connection, the fact that a company has not found profitable business opportunities in the boycotted country, however, should not lead to the conclusion that the company is participating in the boycott. Thus, the absence of a business relationship between a U.S. company and the boycotted country should not be taken to imply participation in the boycott.

(4) U.S. persons should not agree to refrain from doing business generally with other U.S. persons as a condition of doing business in a boycotting-country. An established principle of both U.S. law and business practice is for firms not to discriminate against any potential group of employees, customers, or suppliers. Such discrimination is not at issue here. However, Section 201(a) of S. 69 and S. 92 would amend Section 4(a) of the Export Administration Act to prohibit American firms from "refraining to do business with any person."

The approach taken by these two bills presents a practical difficulty in defining "refraining to do business." While both bills note that the absence of a business relationship would not, in itself, constitute violation of the law, they are not appreciably more specific than that in defining a refusal-to-deal. S. 69, for example, implies that the absence of a business relationship, if it were caused by intent to further or comply with a boycott of a country friendly to the United States, would violate Section 201(a). S. 92 is even less explicit, raising a possibility that a firm could be in violation of the law merely because of an alleged pattern of its supply or sales arrangements -- arrangements totally unrelated to boycott matters. For this reason, if there is to be additional law in this area, it should concentrate on "agreements" to refrain from doing business. In this manner, the law would take on a meaning and dimension that is not present in either S. 69 or S. 92.

(5) Commerce Department Reporting Requirements: Exporters and related service organizations are required to report the receipt of requests for actions, including the furnishing of information or the signing of an agreement, which has the effect of furthering or supporting a boycott or restrictive trade practice and whether and how they have responded to such a request. If this reporting system is continued, the reports should give the reporting firm full opportunity to state the nature of its conduct. These reports should be made public only when the company is charged with violation of the regulations. In no cases, should proprietary or business confidential information be made public.

(6) Federal Preemption of State Law: The increasing tendency of State governments to pass differing statutes is disturbing. At least five states have passed such laws, and two other states have them under active consideration. Under the Constitution, the regulation of foreign commerce is expressly the responsiblity of the Federal Government. This should be made clear to the states.

(7) Territorial Application of the Law: Both S. 69 and S. 92 would apply to subsidiaries and affiliates of American companies, even though they were incorporated under foreign law. Such subsidiaries or affiliates would often have to make a choice between violating the law of the country where it is based and does business--or violating the law of the country where its parent company is based. It is neither practical nor good policy to legislate

such a situation. Rather, United States law and regulation respecting foreign boycotts should apply to conduct within the United States.

(8) Recognition of Sovereign Power of Foreign Coutnries Within Their Jurisdictions: United States law and regulation respecting foreign boycotts should take into account that it cannot affect the right of other countries (a) to refuse to deal with another nation; (b) to accept or exclude goods and services from any source; (c) to regulate admission of people into its territory; and (d) to admit or exclude any ships intending to call at its ports.

NUCLEAR EXPORTS

The proliferation of nuclear weapons represents one of the greatest dangers facing mankind. The development of nuclear power sources has great potential for supplying the United States and other countries with reliable and economic energy. The trade-off between these two issues is a subtle and delicate one. Title III of S. 69 (and Title III of S. 92) appear to offer two differing approaches: Section 301 sets out certain elements which would be required in nuclear export agreements. Section 302 urges an international agreement in this area.

As the United States is not the only major exporter of nuclear material, unilateral enactment of the conditions for agreement at the same time an international agreement is being sought does not appear to be the most productive or conciliatory approach internationally. We are not even convinced that this subject is one that should be considered in the context of the Export Administration Act. However, should the Congress decide such consideration is desirable, we urge that the approach suggested in Section 302--mandating the President to seek an international agreement--be given more emphasis than the approach described in Section 301.

Mr. CARLSON. I might just add, Mr. Chairman, that Senator Stevenson indicated that the consideration of nuclear exports should be eliminated from these bills. At this time we concur in his judgment on that. We think that appropriately this issue should be relegated to diplomatic initiatives.

Thank you, Mr. Chairman.

Senator PROXMIRE. Thank you very much.

Our next witness is Mr. Fox.

STATEMENT OF L. A. FOX, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. Fox. Thank you, Senator Proxmire and Senator Williams.

I'm Lawrence A. Fox, vice president for International Economic Affairs in the National Association of Manufacturers. I'm presenting the testimony this morning for Mr. William Wearly, chairman and chief executive officer of the Ingersoll-Rand Co. and chairman of NAM's International Economic Affairs Committee. Company business has unavoidably made it impossible for Mr. Wearly to be here this morning. Mr. Wearly has asked me specifically to tell you that he would be happy to appear before the committee at some other time should you wish him to do so.

With your permission, Mr. Chairman, I will not read Mr. Wearly's statement but will simply summarize its major points. I would ask, however, that the full statement be printed in the record.

Senator PROXMIRE. Without objection, that will be done.

[The complete statement follows:]

Testimony of the
National Association of Manufacturers
before the
Subcommittee on International Finance
of the
Senate Committee on Banking, Housing and Urban Affairs
on S. 69 and S. 92
Bills to Amend and Extend the Export Administration Act
February 22, 1977

Mr. Chairman and Members of the Subcommittee, I am William L. Wearly, Chairman and Chief Executive Officer of the Ingersoll-Rand Company. I am testifying today on behalf of the National Association of Manufacturers as Chairman of NAM's International Economic Affairs Committee.

The National Association of Manufacturers is a voluntary, non-profit organization of over 13,000 companies, large and small, located in every state of the Union. As the representative of firms which account for nearly 85% of American manufactured goods and the employment of approximately 15 million persons, the NAM is concerned that a proper balance be struck which maintains adequate export control authority to meet national security and other emergency public policy needs, while assuring American industry equitable conditions in competing for sales in the world market. Accordingly, we support the extension of the Export Administration Act of 1969 to continue current export control authority. We believe that proposed changes to the Act concerning foreign boycotts are largely unnecessary and could prove counter-productive to negotiation of a longer-term diplomatic solution of the Middle East political conflict. Therefore, we oppose the provisions of Title II of the bills under consideration. If changes are to be made in the Act's foreign boycott section, we would urge modification on the basis of a statement of principles as outlined in this testimony.

Export Administration Act: Background

The Export Administration Act of 1969 expired on September 30, 1976, although its principal programs have been continued since that time by Executive Order.

This statute authorized the President to curtail or prohibit exports from the United States of any articles, materials or supplies on national security grounds, for foreign policy reasons, or because of conditions of domestic short supply. Under the Act, as amended and extended by the Equal Opportunity Act of 1972 and the Export Administration Amendments of 1974, export controls have from time to time been instituted for all three of these reasons. Controls have been placed on militarily sensitive products and technology, goods traded with unfriendly countries, and to a limited extent on commodities in which there was a domestic shortage. S. 69 and S. 92 would extend this basic control authority until September 30, 1978.

General Comments

The NAM recognizes the necessity for controls instituted by the government on clear national security grounds. Recognizing the dynamic character and magnitude of threats to U.S. security, these controls should be continually reassessed to assure their effectiveness, while also seeking to minimize non-essential controls that preclude normal market transactions. It is NAM's position that U.S. controls should be as consistent as possible, within essential national security considerations, with the international control standards established by the Coordinating Committee (COCOM) of allied countries. Continuing efforts in this regard and improved processing procedures will help minimize any competitive disadvantage placed upon U.S. firms. There is a role for government-industry consultation in establishing technical specifications and standards respecting high technology equipment as well as technology transfers having security significance. Improved administrative procedures could also be helpful in avoiding excessive delays which can hamper or even cause the loss of a commercially competitive sale.

NAM is concerned with the potential for greater government utilization of export controls for foreign policy reasons, and urges that such action be avoided

except where there are clearly overriding national policy considerations, or where the nation cooperates and negotiates with other governments to achieve common goals and standards of conduct.

In the area of export controls on commodities in short domestic supply, we would urge the government to be cautious and circumspect in instituting such trade restraints. The existence of some authority in this area is proper to allow an effective response to unusual supply shortages which could seriously disrupt the national economy. However, international cooperation must play an important role, and in general the needs of foreign customers dependent on the U.S. for supplies should be given appropriate weight in any short supply actions the U.S. might consider.

While no easy formula can be specified in advance for the proper use of these controls, this country's increasing involvement in the world economy demands that both short-term and longer-run interests be weighed on a case-by-case basis where short supply conditions threaten market disruption. Only a well-administered program operating under appropriate statutory authority can safeguard U.S. producer and consumer interests in an interdependent global economy. Government consultation with producers and consumer groups in utilizing short supply controls should be encouraged, perhaps through an advisory board mechanism.

Foreign Boycotts

Mr. Chairman, we recognize that the purpose of these hearings is to solicit testimony on the proposed amendments to Title II of the Export Administration Act concerning foreign boycotts. Therefore, we will devote the remainder of the testimony to this subject.

Since 1965 it has been the declared policy of the United States as contained in the Export Administration Act to oppose foreign boycotts against countries friendly to the U.S. Domestic exporters have been encouraged to refuse to take action which has the effect of furthering such boycotts and reports are made by

companies to the Commerce Department when requests for boycott compliance are received. Implementing regulations also now require that these reports, including the response made to the boycott request, be made public. Furthermore, a specific prohibition exists regarding any boycott-related action which would discriminate against U.S. citizens on the basis of race, color, religion, sex or national origin.

The 94th Congress passed an amendment to the Tax Reform Act of 1976 which deprives U.S. taxpayers of certain tax privileges if they "agree to participate in or cooperate with" an international boycott. Additionally, six states have already enacted legislation to prohibit various boycott-related activities while similar action is under consideration in other states.

With this brief synopsis of current U.S. law and regulation regarding foreign boycotts, we can turn to the specific proposals advanced in S. 69 and S. 92, whose provisions and relevant differences will be summarized below.

Summary Comparison: S. 69 and S. 92

Prohibitions: Both bills would amend the Export Administration Act of 1969 to prohibit certain actions by any U.S. person that comply with, further, or support a foreign boycott or restrictive trade practice against a country which is friendly to the United States and which is not the object of any U.S. embargo. Under rules and regulations issued pursuant to the new Act, it would be a violation:

(1) to refrain from doing business with the boycotted country or its residents pursuant to an agreement with, requirement of, or a request from or on behalf of any boycotting country;

(2) to refrain from doing business with any person (other than the boycotted country, its nationals or residents, or any company organized under its laws);

(3) to refrain from employing or otherwise to discriminate against any person on the basis of race, religion, nationality or national origin;

(4) to furnish information regarding any U.S. person's race, religion, nationality or national origin; and

(5) to furnish information about whether any person does, has done, or proposes to do business with the boycotted country or its nationals or with any person known or believed to be boycotted.

One difference between the two bills is the absence of a requirement of "intent" to establish a violation of these prohibitions in S. 92. There must be a showing of "intent to comply with, further, or support any boycott fostered or imposed by a foreign country" in order to establish a violation of any of the five enumerated prohibited acts in S. 69. The significance of this difference is demonstrated in the first two enumerated prohibitions, which state that the mere absence of a business relationship is not prima facie evidence of a prohibited refraining from doing business. While S. 69 states that such absence of a business relationship "does not indicate the presence of the intent required to establish a violation," S. 92 provides that absence of a business relationship "does not alone establish a violation." The former appears to require a higher burden of proof to establish the existence of a violation.

Permitted Exceptions: Both bills contain specific exceptions from the prohibitions added to the Export Administration Act. Rules and regulations issued pursuant to that Act must provide exceptions for:

(1) compliance with (a) the boycotting country's rules prohibiting the import of goods from the boycotted country or (b) the shipment of such goods on a carrier of the boycotted country or by a route other than that prescribed by the boycotting country or recipient of the shipment;

(2) compliance with import and shipping requirements concerning country of origin, name and route of the carrier, and name of the supplier of the shipment;

(3) compliance with the boycotting country's export requirements concerning shipment or transhipment of its exported goods to the boycotted country;

(4) compliance by an individual with the immigration or passport requirements of any country; or

(5) compliance with the lawful terms of a letter of credit by refusing to honor it in the event the beneficiary fails to satisfy the lawful conditions or requirements of the letter.

Two differences between S. 69 and S. 92 appear in these exceptions. First, S. 92 would limit the exception for compliance with import document requirements to "a positive designation of country of origin," while S. 69 contains no such limitation. The language in S. 69 is more in keeping with a recognition of the sovereign right of any nation to establish the terms and conditions of imports into its territory that is implicit in this statutory exception. Second, S. 92 deletes the entire exception in S. 69 for "compliance by an individual with the immigration or passport requirements of any country."

Enforcement: Both bills would amend Section 6 of the Export Administration Act to expand the enforcement authority of the Department of Commerce over violations of the rules and regulations issued pursuant to the boycott provisions of the Act. Violators of boycott regulations would then be subject to suspension or revocation of their export licenses (the bills do not limit this penalty to licenses for boycott-related transactions). Any penalty imposed for violations of boycott regulations could be levied only after notice and opportunity for an agency hearing on the record in accordance with the Administrative Procedures Act (which would establish the basis for immediate judicial review). Finally, any charging letter or other document initiating proceedings for violations of boycott regulations will be made available for public inspection and copying.

Disclosure: Both bills codify existing Commerce Department regulations on the reporting of boycott requests and the public availability of information in those reports other than confidential business information.

Scope: Both bills apply the new law on boycotts to individuals and concerns in the United States and to "any foreign subsidiary or affiliate of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President."

Context

In order to assess the need for and possible effects of these proposed changes in Export Administration Act authority, it is advisable to evaluate them within the specific context of the Arab boycott, which is obviously the major impelling force behind their consideration. The essential nature of this problem stems directly from the state of hostilities which has existed between Israel and a number of Arab nations for nearly three decades. The conflict is a political confrontation in which both military and economic dimensions have been employed as tools by both sides in pursuing their respective objectives. These hostilities represent a grave threat to the peace and security of the world community, involving as they do the expressed interests of many other nations, including those of the United States. It is an area which merits the highest diplomatic priority which can be accorded in terms of seeking an assured peaceful and long-term solution to the controversy. In this connection, the efforts undertaken by the U.S. Government to foster such a settlement deserve wide public support. I would hope in particular that the new initiatives of the Carter Administration in the Middle East can progress in tandem with the recognized concern of this Congress in promoting an end to hostilities in that area of the world.

The context of the Israeli-Arab political confrontation is raised only to point out the obvious, though often underemphasized point, that action taken by the U.S. in regard to the Arab boycott can have direct and indirect impact on the on-going sensitive negotiations in that region. Furthermore, it is unlikely that any measures directed solely at the boycott will prove adequate to remove objectionable economic consequences without a longer-term resolution of the political conflict underlying the boycott's existence. As you pointed out, Mr. Chairman, in

your remarks on the Senate floor when you introduced S. 69, the boycott cannot be ended by legislation in this country; "it will be ended only when there is permanent peace in the Middle East."

The use of a primary economic boycott by a nation engaged in hostilities against another unfriendly country is a device generally recognized in international law and practice. Indeed, sections of the Export Administration Act provide authority for the United States itself to carry out boycott activities against unfriendly foreign countries, as is currently done in the instance of restrictions on commerce with several nations. Therefore, the issues which should be addressed by the legislation before this Subcommittee concern limiting the effects of a foreign boycott where they may improperly extend into secondary or even tertiary areas that threaten to cause discrimination or unfair trade practices against U.S. persons.

NAM Position

NAM has supported U.S. policy to seek elimination of international boycotts which serve to distort market-oriented trade and investment flows. We believe that a diplomatic negotiated approach remains the most appropriate and useful method of dealing with such boycotts in the international framework, particularly when they rest on non-economic bases requiring solution of the underlying political problems as a requisite to solution of the boycott itself. The NAM believes that current U.S. laws and regulations and continuing diplomatic initiatives provide the best avenues to further U.S. national interests.

In evaluating the legislative proposals before this Subcommittee, we have proceeded on the basis of a statement of principles which we believe constitutes a balanced and realistic approach to this admittedly complex issue. These principles state that:

(1) U.S. policy against discrimination on the basis of race, color, religion, sex, or national origin should prohibit any boycott-related or other agreement to practice such discrimination respecting U.S. persons.

(2) No agreement should be made to fulfill a boycott request for information regarding a U.S. person's race, color, religion, sex or national origin.

(3) U.S. persons should not agree as a condition of doing business in a boycotting country to refuse to do business with any U.S. persons, or with or in a boycotted country.

(4) In accordance with recognized international law and practice, the right of a nation to institute a primary economic boycott should be respected in terms of accepting or excluding from its territory any goods, services or capital; regulating the admission of people; and controlling entry of ships to its ports. U.S. persons should not be penalized under U.S. law for agreeing to abide by a foreign nation's laws and regulations relative to these rights as concerns business transactions in or with that country.

(5) Respect for a foreign nation's recognized primary boycott rights as outlined in number 4 does not include permitting that country to influence unrelated U.S. corporate transactions or justify actions in direct business dealings which constitute a violation of the anti-discrimination or refusal to deal principles. U.S. legal requirements placed on companies should, however, recognize the practical limits of a firm's ability to act when directly subject to foreign legal jurisdiction.

(6) U.S. law relating to boycott policy should not be extended extra-territorially, in order to avoid placing U.S.-owned affiliates operating under foreign jurisdiction in conflict with local law and customs. The U.S. Government should consider undertaking discussions with other governments looking toward minimizing areas for such potential conflicts.

(7) State statutes relating to foreign boycotts should be preempted by federal authority over foreign commerce and foreign relations to provide for a uniform and consistently applied national policy.

Examination of the foreign boycott provisions in S. 69 and S. 92 in light of these principles leads us to express several specific concerns - both regarding what is in the bills and what is not - which we would call to your attention. First, we believe the prohibition against domestic discrimination is already covered by either statutory provisions of the 1964 Civil Rights Act or recently changed administrative export control regulations. However, we would support the restatement of this principle in the Export Administration Act's extension and in

particular the provision of a specific statutory basis to the current regulations prohibiting the provision of discriminatory information in response to a boycott request.

The refusal to deal principle is partly covered under U.S. antitrust law, but its direct definition in relation to a boycott request would help clarify its application under complex and often ambiguous conditions. The full elaboration of this principle in the proposed legislation would be a beneficial move toward implementation of stated U.S. policy in important areas of potential secondary and tertiary boycott effects. However, we would encourage the Subcommittee to delineate with greater caution and precision this particular area because of the obvious potential conflicts which could exist between specific applications of this principle and the sovereign right of a nation to control goods and services coming into its country. A serious effort should be made to avoid placing U.S. companies in untenable positions where they are asked to somehow introduce prohibited goods and services into a boycotting country. A practical solution must be found which seeks to avoid secondary boycott effects within the U.S. without attempting to override foreign governmental control of imports in areas far beyond U.S. jurisdiction. We would be happy to work with Subcommittee staff following these hearings to explore possible ways in which the legislative provisions could properly recognize these areas of potential conflict.

A corollary point to this discussion concerns the bills' provisions which would attempt to apply the boycott regulations extraterritorially in other countries where they may conflict with local law and customs. Past experience with limited application of U.S. antitrust and export control regulations have demonstrated the serious foreign relations problems such procedures can cause with even the most friendly and neighborly countries (viz Canada). We believe that this legislation

should be limited to territorial enforcement while the U.S. Government undertakes discussions with other nations to minimize areas of potential conflict in policy positions and application.

Two further areas deserve special comment. Although legislation is usually not the proper place to spell out complex administrative procedures to implement the statutory objectives, it would be extremely useful if some recognition could be given to certain process problems either directly in the legislative provisions or in specific references of Congressional intent. Two examples of such concerns are the bases for decisions regarding whether a firm has violated an anti-boycott prohibition and the diverse reporting requirements now placed on companies. While the details are again more appropriate for extended discussion at a staff level rather than in hearings under tight time constraints, we would point out as examples of important process distinctions the absence in S. 92 of a standard of "intent" to comply with a foreign boycott which is, we believe, properly present in S. 69. Additionally, the drafting differences between the two bills regarding the implications of an absence of a business relationship with a boycotted country point up the importance of clear and fair standards for evaluating compliance with the Act's provisions. We feel that the fairest and most practical standard would revolve around agreements to act as a condition of doing business with the boycotting country.

The other process concern which I would cite is the confused and conflicting reporting requirements placed on companies from first Commerce Department regulations and now Treasury Department requirements in response to the boycott-related amendment to last year's tax bill. These reports will be partly duplicative and partly conflictive in terms of disparate concepts and definitions of boycott activities. As a minimum the conflicts should be resolved and the duplicative reporting burden on companies reduced. Should this current legislation be adopted,

it would be incumbent upon the Congress, which has increasingly recognized the excessive reporting and regulatory burdens placed on companies in many areas, to assure that unnecessary or duplicative reporting requirements are eliminated.

Finally, we would like to register our support for the federal pre-emption of authority in this area of foreign boycott regulation and urge the Subcommittee to add such a provision into the bills before it. The several diverse state statutes already in existence on this subject have vastly complicated normal business dealings and added new degrees of uncertainty and confusion. This situation will only be exacerbated if other states continue to pass their own particular statutes on this issue. Clearly, U.S. policy on foreign boycotts is an important matter falling under federal authority to regulate international commerce and foreign relations, requiring a uniform and consistently applied national policy.

Conclusion

The NAM believes a simple extension of the Export Administration Act provides sufficient latitude to the Executive Branch to administer an export control program necessary to safeguard important national interests. We believe that caution should be exercised in using the authority granted under this Act so as to avoid undue distortion of the interplay of market forces. Deliberations on the several proposed changes to the Act's foreign boycott provisions should proceed only in full recognition of their potential impact on the current diplomatic efforts which offer the only real, viable solution to the Arab boycott. Short of a diplomatic solution, any new boycott provisions in U.S. law should embody the principles outlined above.

Mr. Fox. Thank you.

Mr. Chairman, NAM supports the extension of the Export Administration Act of 1969 to continue current export control authority. However, we recognize that the major purpose of these hearings is to solicit testimony on the proposed amendments to the act contained in title II of S. 69 and S. 92 concerning foreign boycotts so I will confine my oral comments at this time to this issue.

In order to assess the need for and possible effects of the proposed boycott authority changes, it is advisable to evaluate them with specific reference to the Arab boycott, which is obviously the major impelling force behind this legislation.

The Arab boycott stems directly from the state of hostilities which has existed between Israel and a number of Arab nations for nearly three decades in which both sides have employed both military and economic tools in pursuing their respective objectives. These hostilities, which involve the interests of many other nations, including the United States, deserve the highest diplomatic priority in terms of seeking an assured peaceful and long-term solution to the conflict. Efforts undertaken by the U.S. Government to foster such a settlement deserve wide public support. I would hope in particular that the new initiatives of the Carter administration in the Middle East can progress in tandem with the recognized concern of this Congress in promoting an end to hostilities in that area of the world.

I raise the context of an Israeli-Arab political confrontation only to point out the obvious, though often underemphasized point, that actions taken by the United States in regard to the Arab boycott have direct and indirect impact on the ongoing sensitive negotiations in that region. Furthermore, it is unlikely that any measures directed solely at the boycott will prove adequate to remove objectionable economic consequences without a longer term resolution of a political conflict underlying the boycott's existence.

As Senator Stevenson pointed out in his remarks on the Senate floor when he introduced S. 69, the boycott cannot be ended by legislation in this country: "It will be ended only when there is permanent peace in the Middle East."

The use of a primary economic boycott by a nation engaged in hostilities against another unfriendly country is a device generally recognized in international law and practice and is indeed currently used by the United States in several instances. Therefore, the issues mainly to be addressed by the legislation before this subcommittee seem to concern limiting the effects of a foreign boycott where they may improperly extend to secondary or even tertiary areas that threaten to cause discrimination or unfair trade practices against U.S. persons.

The National Association of Manufacturers has supported U.S. policy to seek elimination of international boycotts which serve to distort market-oriented trade and investment flows. We believe that a diplomatic negotiated approach remains the most appropriate and useful method of dealing with such boycotts in the international framework, particularly when they rest on noneconomic bases requiring solution of the underlying political problems as a requisite to the solution of the boycott itself.

The NAM believes that current U.S. laws and regulations and continuing diplomatic initiatives provide the best avenues to further U.S. national interests.

In evaluating the legislative proposals before this subcommittte, we have proceeded on the basis of a statement of principles which we believe constitutes a balanced and realistic approach to this admittedly complex issue. These seven principles are stated in full in the printed copies of our testimony (see p. 335).

Examination of the foreign boycott provisions in S. 69 and S. 92 in light of these principles leads us to express several specific concerns, both regarding what is in the bills and what is not, which we would call to your attention.

First, we believe the prohibition against domestic discrimination is already covered by either statutory provisions of the 1964 Civil Rights Act or recently changed Commerce Department export control regulations. However, we would support the restatement of this principle in the extension of the Export Administration Act extension and in particular the provision of a specific statutory basis for the current regulations prohibiting the provision of discriminatory information in response to a boycott request.

The refusal-to-deal principle is partly covered under U.S. antitrust law at this time, but its direct definition in relation to a boycott request could help clarify its application under the often complex and ambiguous conditions in which the matter must be dealt with at this time.

A corollary point concerns the bills' provisions which would attempt to apply the boycott regulations extraterritorially in other countries where they may conflict with local law and custom. Past experience with limited application of U.S. antitrust and export control regulations have demonstrated the serious foreign relations problems such procedures can cause with even the most friendly and neighborly countries such as Canada. We believe that this legislation should be limited to U.S. territorial enforcement while the U.S. Government undertakes discussions with other nations to minimize areas of potential policy conflict.

Two further areas which deserve special comment are the bases for decisions regarding whether a firm has violated antiboycott prohibitions and the diverse reporting requirements now placed on a company. We would point out as examples of important process distinctions the absence in S. 92 of a standard of intent to comply with a foreign boycott, which is, we believe, properly present in S. 69. Such differences point up the importance of clear and objective standards for evaluating compliance with the act's provisions. We feel that the fairest and most practical standard would revolve around agreements to act as a condition of doing business with the boycotting country.

I would also cite the confused and conflicting requirements placed on companies by differing Commerce and Treasury Department reporting regulations. These reports are duplicative and conflicting in terms of disparate concepts and definitions of boycott activities. Should this current legislation be adopted, it would be incumbent upon Congress, which has increasingly recognized the excessive reporting and regulatory burdens placed on companies in many areas, to assure that unnecessary or duplicative reporting requirements are eliminated.

Finally, we would like to register our support for the Federal preemption of authority in this area of foreign boycott regulation and urge the subcommittee to add such a provision to the bills before it. The several diverse State statutes already in existence on this subject have

vastly complicated normal business dealings and added new degrees of uncertainty and confusion. Clearly, U.S. policy on foreign boycotts is an important matter under Federal authority to regulate international commerce and foreign relations requiring a uniform and consistently applied national policy.

In conclusion, NAM believes a simple extension of the Export Administration Act provides sufficient latitude to the executive branch to administer an export control program necessary to safeguard important national interests. We believe that caution should be exercised in using the authority granted under this act so as to avoid undue distortion of the interplay of market forces. Deliberations on the several proposed changes to the act's foreign boycott provisions should proceed only in full recognition of their potential impact on the current diplomatic efforts which offer the only real, viable solution to the Arab boycott. Short of a diplomatic solution, any new boycott provisions in U.S. law should embody the principles we have suggested in our full NAM statement. Thank you.

Senator PROXMIRE. Thank all of you gentlemen for your statements, but I must say that I'm kind of puzzled by the position that you take. You seem to agree that the principles embodied in S. 69 and S. 92 are fine. You support that. You think that we should not, as I think Mr. Carlson said so well—any attempt by a boycotting country to compel persons outside its jurisdiction and modify their conduct in regard to a boycotted country should be opposed. U.S. persons should be free to trade with the boycotted country as they wish outside the territory of the boycotting country and so forth. All you gentlemen seem to agree with that and yet it's like the old—I don't know whether it was a poem, but it was something years ago—when a young lady asked her mother whether she could go swimming, her mother said, "Yes, my darling daughter. Hang your clothes on a hickory bush, but don't go near the water."

In other words, you're taking the position that what the Arab countries have done is wrong. We ought to act with great firmness to stop it, but we shouldn't pass any legislation which is the only way we can. It seems to me to be contradictory to believe in these principles, to believe in protecting our own sovereignty and preventing other countries from interfering and dictating to American firms on how to conduct business or you don't. What astonishes me is we just heard from the attorney general of Maryland who told us that there was overwhelming, across-the-board business approval—I asked him that specifically for a stronger antiboycott legislation than either S. 69 or S. 92, no opposition, and yet these two great business organizations representing the Chamber of Commerce and the National Association of Manufacturers come in and take a completely contrary position.

How do you explain that, Mr. Carlson?

Mr. CARLSON. Well, I think that we all oppose discrimination based upon religion, and you will find everybody at this table, including myself, will be strongly opposed to that. We also recognize the fact that countries have control over their jurisdiction and can dictate products that may come in, including the tire that may be on a tractor, and we have to take that into account.

Also, you have to weigh whether your legislation really has leverage effect and when you consider our rather modest share of the im-

ports of the boycotting countries, remembering that they can find substitutes in other industrialized countries, it's very doubtful whether this is going to have any leverage effect at all.

So it's perhaps a statement of principle. Let's have a statement of principle, but let's recognize what the situation is and the limitation as to the leverage you might have. As far as the principle is concerned, let it be very clear we are opposed to discrimination based on religion.

Senator PROXMIRE. Well, the trouble is, of course, that you have a situation without legislation in which businesses that do not want to comply find their competitors do comply and that they are therefore in a position where it's much harder for them, absent legislation, to comply with these principles.

One of the purposes of this legislation is to provide that kind of community of action so that all American businesses can act alike and together. Without it, they can't. The Arab countries can just put pressure on. Of course, you say it's gone on for many years, but it's only in the last couple years that the Arab countries have developed this fantastic clout, since 1973, with the enormous income they have earned by the price of oil and the great increase in imports of oil by this country and other countries from the Middle East have given them muscle they haven't had before. So it's an entirely new ballgame.

Mr. CARLSON. As far as citizens within the United States, we feel we have adequate antidiscrimination laws and this can be taken care of. So we don't think that there is a need for additional legislation per se. However, if you felt that our laws on the discrimination among Americans based on religion were not sufficient we certainly would not oppose such legislation.

Senator PROXMIRE. We only have laws against discrimination for employment and for a few other very limited areas. We certainly don't have them that apply here.

Let me ask you, Mr. McNeill. You recommend what I would construe as a considerably weaker bill than either S. 69 or S. 92 and six States have already passed antiboycott legislation. Inasmuch as the proposals you have would apply only to agreements to comply, they would not apply to foreign subsidiaries. They would permit an American company to exclude goods made by blacklisted companies. Then you recommend that you would pass Federal legislation, this weak legislation, and then have it supersede the legislation in the States which is stronger inasmuch as California and New York and some of these other States are very big States in which a great deal of exporting is done.

What you're proposing would in effect greatly weaken what we already have in effect. It would be a feebler response rather than a stronger response by this country.

Mr. MCNEILL. Mr. Chairman, I don't know the provisions of State law for the States that have these antiboycott statutes.

With respect to S. 69 and S. 92, our disagreement is not as strong as you have just indicated. There are five general prohibitions provided in both bills and we are in full agreement with three of them. In the other two areas of prohibition, B and E, we are suggesting modifications to take account, in the case of B, of the sovereign right of other countries to legislate and administer their customs with respect to products they will allow entry.

We do not believe our recommended modifications amount to a substantial weakening. We do, however, differ with both bills with respect to their extraterritorial application.

So it's agreeing to take, not the action itself that you would prescribe?

Mr. McNeill. Yes.

Senator Proxmire. As I point out, it's easy to avoid the law by just not making any agreement, by just taking the action instead of making the agreement, if you have proper counsel.

Mr. McNeill. But what follows, Senator, after this in the bill itself is that if you agree to do something or if you act in response to a requirement of a boycotting country there are other factors in the act itself that appropriately have to do with action. If you look at the bill itself, you will find that after this phrase with respect to the President you will find under 4A that there are other——

Senator Proxmire. Then you do agree that we should prohibit taking action; is that right; taking action with respect to——

Mr. McNeill. Pursuant to an agreement or requirement; yes.

Senator Proxmire. Pursuant to an agreement, but if they haven't made an agreement they can take whatever action they wish. That's where you slip away.

All right. My time is up.

Senator Williams. Well, first of all, one, I'm encouraged with the broad agreement here in terms of the principles that prompted the legislation.

Now there are differences in how we implement principle, here, but there's enough of a foundation of common though that I believe we, as legislators, can build on in discussion with you gentlemen with whom we share broad general principles.

This area of refraining from doing business and whether the nature of the agreement ultimately comes down to how you show whether it was taken in response to an agreement or a request—burden of proof. There have been suggestions, one, by the Anti-Defamation League yesterday, that was directed to a clarification here and their testimony suggested that the term should be defined to include compliances with a request from a requirement of or on behalf of a boycotting country. Now that suggests that there has to be something positive to be shown, some request made that the exporting country do certain things. I don't know whether you followed the testimony yesterday, the group from the Anti-Defamation League, but it seemed to give some degree of certainty that might be lacking in what we have in either bill.

Do you have any observations on that?

Mr. McNeil. Senator Williams, if I might, the bill itself includes the language that you have just used that was referred to yesterday by the ADL and that was what I had in mind in our discussion about agreement and action. The bill itself says pursuant to an agreement with or requirement of or a request from or on behalf of the boycotting countries, and that is in section 4A, the section that we agree with.

Senator Williams. They thought that that was adequate for this business of proving whether it was done in response to a request.

Mr. Carlson. I think, Senator, intent is very important, and language to this effect is included in S. 69 which is not in S. 92. To fol-

low up with the philosophy you're pushing, you need to have some sort of specific agreement to refer to. Just because a person has a trade pattern that didn't end up with a tire made from one particular company shouldn't, by itself alone, be the basis of prosecution under this law, and there's a chance that it could be the way it's written now.

I think it is important to have first the intent and also some sort of agreement, and the agreement doesn't have to be an overly formalized contractual relationship. It can be some other kind of agreement, but at least reference to an agreement.

Senator WILLIAMS. Doesn't it suggest something positive has to be coming from the boycotting countries, something of specific nature that you refrain from this, that or the other action would be prohibited here?

Mr. CARLSON. Obviously, that would be source of that kind of an agreement.

Senator WILLIAMS. Again, here we are in agreement on principle, that you do support the proposition that the action prohibited should be prohibited if it can be positively shown, to be following a request and entered into as some kind of agreement that the prohibited action will be agreed to.

Senator PROXMIRE. Let me just interrupt. Would you apply this to actions as well as agreements? Would you apply this to foreign subsidiaries, apply legislation?

Mr. MCNEILL. No. We would prefer not to apply it to foreign subsidiaries.

Senator PROXMIRE. Well, would you apply this to actions as well as agreements or just to agreements?

Mr. MCNEILL. I'm sorry, sir, I don't understand your question.

Senator PROXMIRE. Actions to comply with the boycott, would you apply this or just to agreements?

Mr. MCNEILL. Yes.

Senator PROXMIRE. Just to agreements?

Mr. MCNEILL. To actions that would implement the boycott, yes, both.

Senator PROXMIRE. You would apply it to actions?

Mr. MCNEILL. Yes.

Senator PROXMIRE. Well, that's good to hear. I didn't get that from your testimony.

Mr. MCNEILL. Actions pursuant to agreements, but we differ, as I said, unless modified, with two of the prohibitions and the extraterritorial aspects of both bills.

Senator PROXMIRE. Why would you prefer to have legislation penalize agreements to take action to comply with the boycott rather than taking that action itself? Why do we want to penalize agreements to take certain actions but not the acts? Wouldn't that just be a trap for the unwary? Anyone who's familiar with the law would take care not to agree in the first instance and therefore it would appear that the only ones that might be caught in a prohibition to take action would be those unfamiliar with the law and those that can afford counsel to avoid making prescribed agreements where some one inadvertently agrees and draws back—why does that make any sense?

Mr. FOX. I think the law ought to be clear in its application and certainly it would not be our purpose to suggest that entrapment of the unwary be the purpose of that change that we suggest. Our purpose

is to make it precise what actions are possible under the law or not permitted under the law.

In this context, actions taken pursuant to an agreement with a boycotting country would be an explicit and understandable course of action undertaken voluntarily by a company and the application of the principles of law would be quite clear. But there are many reasons why companies might act in a certain way which would have no bearing on the implementation of the boycott.

Senator PROXMIRE. Let me ask what precisely would constitute an agreement for these purposes? For example, assume a company signs a contract to sell goods to a boycotting country. The contract contains no boycott clause nor does it require the company to comply with the laws or the regulations of the boycott. The company then refrains from buying goods from or otherwise dealing with blacklisted companies fulfilling their contract.

Would that be a violation of the law under your formulation? If not, why not?

Mr. FOX. Well, of course, you have asked a difficult hypothetical question. In our view, American firms should not be required by any foreign government to deal or not to deal with particular American companies. American companies should be free to deal with American companies as they wish. That's one of the principles which we state in the text of our full presentation.

Senator PROXMIRE. Therefore, it should be a violation of law if they don't exercise that privilege. Is that right?

Mr. FOX. No; I'm saying that this is a matter that requires careful delineation. One of the points that we made in my summary is that this subject is susceptible of differing interpretations and precision is required in defining the terms. Certainly there's quite a difference between a company agreeing to act and being penalized for that reason from a situation in which a company may act for any number of reasons, but it would be presumed under the law that it acted in compliance with the boycott which might not be the circumstance at all.

Senator PROXMIRE. Let me get back to Mr. McNeill. I think I let you off the hook. You say in your statement, and I quote: "Section 4A(a)(1) should be revised by deleting the reference to 'taking' actions and retaining in lieu thereof the 'agreeing to take' language of S. 92." Thus, section 4A(a)(1) would read in part: "* * * the President shall issue rules and regulations prohibiting any U.S. person from agreeing to take any of the following actions * * *."

Mr. CARLSON. Among U.S. citizens, yes; but we do feel we have adequate law to carry that forward. Unfortunately, and this is lamentable, other countries have the right to specify the import of goods or services into their country and thereby they can carry out political or other kinds of boycotts with their own soverign jurisdiction.

Let me make another point that's related to this. We are not proposing a weaker bill. We're saying that existing law is adequate, with the addition of a few provisions such as the preemption of State law, but we do ask for a clearer bill, and we hope you will remove the American imperialism written into this bill, where in fact you would have the authority of the United States being transferred to corporations that are actually incorporated under the laws of other countries. So

there are some really bad features which, in other forms, you gentlemen would oppose.

Senator WILLIAMS. On that latter point, you suggest that extending this law to companies that are incorporated in another country but are controlled here?

Mr. CARLSON. No; I'm opposed to that particular provision in your bill that would in fact extend our authority in such a way.

Senator WILLIAMS. The rub you see is you might find a situation where our requirements would be on a collision course with the law in that country where the corporation is controlled here but organized there was acting.

Mr. CARLSON. The independent sovereignty of other countries becomes a problem at times.

Senator WILLIAMS. Do you have an example to make that real? I read it and understand what you're saying, but I would like to know what the reality is, what kind of situation you're talking about.

Mr. FOX. I'll give an example, Senator Williams. Take an American firm that has a subsidiary producing a machine in France. It's the policy of France to maximize its exports in order to meet the balance of payments problems, et cetera, that France has. It's also French policy to sell its equipment to whoever it can sell the equipment to. Under the principle of the law here, the American firm would be told to direct its subsidiary in France to apply American law rather than apply French law and French policy with respect to the receipt of certain orders of goods.

Senator WILLIAMS. You're saying there the subsidiary organized in France would be violating French law if it didn't comply with the boycott?

Mr. FOX. Well, it would be violating, under certain circumstances, French policy and, under certain circumstances, French law. I'm sorry I can't tell you what would be French law in this instance, but I think French policy is fairly clear in this regard.

Senator WILLIAMS. I don't find too much trouble with our law reaching that particular situation when the conflict is one where a country that promotes an acquiescence in the boycott.

Mr. FOX. Well, Senator, without trying to appear contentious, there are companies organized in the United States which are subsidiaries of multinationals of other countries, including France. I don't think we would regard it as appropriate for French law to determine the actions of those subsidiaries in the United States in all respects, including some of the points that we're discussing here today.

Senator WILLIAMS. We could reach into other areas to see that principle you're suggesting.

Mr. FOX. I might say one more word on that. This is an inherent poblem we have in the modern world where more than one country asserts jurisdiction over the activities of certain private individuals or corporations and it seems to me it's incumbent on the U.S. Government to do what it can to minimize those inherent conflicting obligations consistent with good policy.

Now one of the suggestions that we have made in this regard is that we seek agreements with foreign governments to eliminate such conflicts wherever possible and the example given in my summary was with Canada, a neighbor with whom we have had a dong history of contentious application of U.S. law extraterritorially with respect to

their exports. Canada faces many of the same, problems in regard to the boycott that we do, including the important principle in Canada to protect religious freedom and religious rights and minority rights.

We urge that rather than exercise our jurisdiction outside the United States willy-nilly we attempt to reach agreements where possible to harmonize the application of U.S. law extraterritorially rather than simply preempt the field and establish—I would not like to use Jack Carlson's term of American imperialism loosely—I think that's a dramatic phrase, but certainly the view of the application of U.S. law extraterritorially is interpreted that way in certain countries.

Senator WILLIAMS. Well, I could think of some examples. One would be American law dealing with corporate bribery in an American-owned but foreign-organized company in a land that has not reached the prohibition on corporate bribery. Wouldn't you suggest that our law should follow that American ownership wherever the company was organized?

Mr. Fox. Well, I would look forward to testifying before this committee or some other on the subject of bribery, but I would say, in general, the approach that I would take to that subject is that it's the responsibility of the American company to control its operations worldwide in accordance with appropriate company policies, and I'm not aware that it is a policy that is approved by any American company to engage in bribery abroad.

I think the problem doesn't arise in quite the same way because I think company policy would be such as to preclude the use of bribery as a business-gaining technique by American companies at this time.

Senator WILLIAMS. Thank you. We're about to go here. Mr. Trudeau from Canada I understand is coming up with a tough antiboycott law. Maybe we'll hear about that.

Senator PROXMIRE. Senator Sarbanes.

Senator SARBANES. Thank you, Mr. Chairman. I'll be very brief. I apologize for not being here earlier.

Senator PROXMIRE. Take your time as far as I'm concerned. I'm not going to hear Mr. Trudeau on this day.

Senator SARBANES. I have read the principles and they sound pretty good. Let me just ask this question. Do you follow from those principles that you're prepared to see them implemented in the law?

Mr. CARLSON. We said earlier in our opening statements that we are opposed to discrimination on religious grounds and among American citizens the law should be carried out and we have adequate law to make sure that that does not occur.

Senator SARBANES. Well, I mean, most of the statements enunciated about a half a dozen principles which you're prepared to subscribe to and I want to know whether you favor or support having legislation to implement those half a dozen principles.

Mr. MCNEILL. I can only speak for my organization, Senator. We would suport legislation incorporating the principles we have testified to with the modifications that we have suggested.

Senator SARBANES. Could the other members of the panel respond to that question?

Mr. Fox. I would certainly state precisely the same thing.

Mr. CARLSON. Our point earlier was that except for a few provisions, we didn't feel that S. 69 or S. 92 would be necessary other than an

extension of the Export Administration law that expired September 30, because we felt discrimination on religious grounds was covered by domestic law among U.S. citizens. But if you felt that it's necessary to strengthen that——

Senator SARBANES. No. I'm trying to find out what you feel.

Mr. CARLSON. Then we would not be opposed to legislation to do that.

Senator SARBANES. I want to find out what you think and whether your response to that question is yes or no.

Mr. CARLSON. We support the principle of not discriminating on the basis of religion.

Senator SARBANES. Is that the only principle you put forth? Maybe I misread the statement. I thought you also enunciated a broader set of principles.

Mr. CARLSON. We did.

Senator SARBANES. A half a dozen.

Mr. CARLSON. Do you have a particular one that seems to be in controversy that you would like to refer to?

Senator SARBANES. No. I'm interested and refer to the whole package which I take it was set out in your statement.

Mr. CARLSON. Yes. That's correct.

Senator SARBANES. Do you believe we should have legislation to implement those principles?

Mr. CARLSON. We feel that it's not entirely necessary to have legislation to implement those principles because existing law has implemented those principles, but if you feel, which is more important, that they need to be strengthened among U.S. citizens we would support that.

Senator SARBANES. Is it your position that existing legislation implements all of the principles that you have set out?

Mr. CARLSON. Except for preemption of State law, generally existing law handles the situation.

Senator SARBANES. Would you furnish us with the legislation that you think does that?

Mr. CARLSON. I think that it was brought out in somebody else's testimony that if you took the existing law, the Export Administration Act that just passed from enforcement September 30, and extended that with the Federal preemption of State law and a few minor changes, perhaps eliminating the duplication of reporting now required by the Tax Reform Act of 1976 and the Export Administration Act—made some changes there—that could be an extension of the principles and adequate protection internationally.

Senator SARBANES. Well, this is a new perception. It's the first one I've heard that contends that the principles that you have set out, which sound fine, are all fully covered by existing law. No other party that's come before us has taken that position. They either have not been prepared to put out the principles or if they put them out they are not willing to see them implemented by law and seek other means to attain them. They state them as a goal but do not contend that it is legislatively implemented and I find this a sort of novel position.

Let me ask the other gentlemen, what is it in this legislation that goes beyond the implementation of the principles that you have set out as being desirable?

Mr. McNeill. Senator Sarbanes, there are five general prohibitions in both bills. We agree with all five of the prohibitions but recommend modifications in two of them. One prohibition is that you cannot refuse to deal with Israel or its nationals. We are in full agreement with that. The second prohibition is that you cannot refuse to deal with any person. We agree with that generally but we would recommend an exception. The exception would be that if an importing country has a law that will not permit importation of a particular product, then an American person in not providing that product should not be subject to criminal or other penalties of the law. If, however, an importing country requested the American exporter not to deal with another company on a general basis, we would find that reprehensible and we support that part of the prohibition. We agree with prohibitions three and four in the bill which have to do with discrimination in employment and having to do with the prohibition against furnishing information about another person's religion or ethnic background.

We agree with the last of the five prohibitions, but object to the prohibition in both bills that would not allow an American company to respond to a question as to whether it has business dealings in Israel. We think that an American business firm should be able to answer that factual question with a factual answer, but we do not feel that an American person should be allowed to answer that question about any other American person.

So we would recommend, as we have in our testimony, that we should not be permitted to provide information about any other person except about ourselves. That is how we in ECAT perceive the prohibitions of the bill.

Senator Sarbanes. Do the reservations of the association go further than that?

Mr. Fox. Actually, Senator Sarbanes, I think the position of NAM is very much the same as that expressed by Mr. McNeill for ECAT. I would elaborate on one point that Mr. Carlson referred to for the purpose of clarification, and he said that extension of the Export Administration Act which expired on September 30 with a Federal preemption of State law would cover all of the principles that concern him. That wouldn't quite be the case with respect to me because the Export Administration Act has for many years operated with an extraterritorial impact and it's had an effect on our foreign relations with neighboring countries such as Canada as well as business relations with other countries, and I would seek some delimitation, some further delimitation of the extraterritorial application of U.S. law.

Now I recognize that that is a very complex subject, that U.S. law has applied extraterritorially for reasons of national security and foreign relations, and it's not a simple matter to take the Export Administration Act as it now exists and excise certain features of that law so that it would apply one way with respect to the boycott provisions and other ways with respect to national security; but with that qualification I would like you to understand that my position is both similar to Mr. McNeill's and supportive of Mr. Carlson's statement.

Senator Sarbanes. Well, that's difficult for me to see because I don't see their positions as being consistent with one another. The requirement that American owned companies abroad are subsidiaries and

behave in a certain manner, is that the extraterritoriality that you're referring to?

Mr. Fox. Speaking for myself, it is. One normally expects a country's law to apply within the territory of that country.

Senator SARBANES. Within the territory of that country with respect to that country's nationals?

Mr. Fox. Correct.

Senator SARBANES. Now suppose that country seeks to impose a behavior pattern on companies as they deal elsewhere in the world and at the same time that's a company owned by another country which seeks to impose a different standard. I agree with you that you have a tough problem, but I think in your balancing your statement is perhaps overstated. I might have one reaction which perceives that a foreign country's subsidiary in this country as it dealt with Americans had to follow American law and vice versa, but saw an entirely different perspective when the foreign country sought to regulate the subsidiaries not within its own country but as it dealt elsewhere with the world.

Mr. Fox. That's the nature of the problem and referring to an authority considerably more expert than myself in this regard I would refer you to an article by Professor Ray Vernon of the Harvard Business School in Foreign Affairs of a couple months back. He cites this problem as the number one commercial problem arising from the integration of the world economy and the impact that it has had on American owned multinational corporations and the multinational corporations of other countries. They are simply subject to conflicting commands from different sovereign jurisdictions and I think, with all the best intent in the world, which I certainly accept to be the case here, what we are trying to do and what the committee is trying to do, we are placing American companies in the untenable position in some instances by the proposed legislation of following U.S. law but not following the law of the country in which they have operations and have legal responsibilities.

Senator SARBANES. I recognize that. What I'm trying to draw is a distinction between following the law within that country and following its laws when that country seeks to apply it to commercial dealings elsewhere in the world at which point the argument runs up against an equally strong argument that they ought to pursue the law of the home country which in effect controls and owns the corporation.

Mr. Fox. Let me just finish. I think the tough cases in law are where there are two rights and there are two rights in this instance and there are sovereign powers of different governments with different policies to be pursued. To the extent that the United States pursues its policies in its sovereign territory and with respect to its own nationals, so long as it does not require its nationals to violate the laws and policies of other countries, we are OK.

The difficulty arises when conflicting commands are given to American persons and American corporations and that's really the intellectual problem that we will be dealing with, not just on this issue but in other multinational corporation issues, for the next several decades.

Senator SARBANES. There's a picture on the front of the "Conflicts of Law" case book that's used in law school which shows a picture of a courthouse in Tobago and the thrust of the picture is that through

application of conflicts of law, the courthouse on the island of Tobago can in effect set the commercial law for the entire world. So I appreciate the problem, but I think there's an important distinction to be made along the lines that I suggested to you.

Senator WILLIAMS. You cited a reference.

Mr. FOX. Ray Vernon. He is a professor at the Business School at Harvard, in an article in Foreign Affairs of January of this year on this subject in which he cites this problem of the conflict of laws as applied internationally to multinational corporations.

Senator WILLIAMS. Did he in any way deal with a specific law dealing with the specific subjects as we're dealing with here, such as the Arab boycott, whether that American law, if it were to be an American law, were in conflict with any specific law dealing with the Arab boycott in other lands?

Mr. FOX. I'm sorry, Senator Williams. I don't really recall whether the articles dealt specifically with that.

Senator WILLIAMS. You cited here the conflict of this legislation, if it were law, with a general principle of promoting trade in France. This isn't a direct conflict. One is trade promotion. The other is specific prohibition of specific action.

Mr. FOX. Senator, what I referred to was policy and law and I stated specifically I didn't know what the law of France is. The generalization that I was making was really meant to be only a generalization and not to have meaning beyond whatever quality one might associate with that.

Senator SARBANES. In this connection—if it's a real problem—if you could cite specific situations it would be helpful.

Mr. MCNEILL. Just recently with Prime Minister Trudeau we had a very serious problem that fell under our Trading With the Enemy Act, which raises the same extraterritorial problem we're discussing here. About 3 years ago the Government of Cuba placed an order with a Canadian subsidiary of an American automotive firm for, I believe, locomotives. At about the same time Cuba placed an order for automotive products with a subsidiary of another American firm in Argentina. Both the Canadian Government and the Government of Argentina insisted it was their sovereign right to see that that contract offered by Cuba was fulfilled, and they were insisting that the American subsidiaries in their respective countries fulfill the order placed with them by Cuba.

It caused great political and economic problems with those two countries. The administration made an accommodation to the problem whereby it authorized the subsidiary in Argentina and that in Canada to fill the Cuban order in order to avoid the exacerbation of what was then a very major political problem between the United States and those two countries.

Passage of the proposed antiboycott legislation with extraterritorial application poses the same problem, as was illustrated by Mr. Fox in the case of France. Extraterritorial application of United States law not only poses very great political problems for the U.S. Government but also for American companies who, thereby, are placed in the middle.

I think we're all under a misunderstanding when we assume that because an American company invests in a foreign country and may

have 10 percent of control of that company, which in terms of our Internal Revenue Code I believe is the measure that constitutes control of a foreign subsidiary—that that constitutes effective control. If you control 10 percent of a foreign company and somebody else controls 90 percent of that same company, and American law directs that corporation to do or not to do something with respect to our boycott legislation, then you have a real problem. The American parent quite often does not have effective control. The management of the American company and the management of the foreign country are then in opposition. You cannot serve two masters.

Senator WILLIAMS. It's a good example. Coming down to what control is, I think control under this is different than IRS 10 percent ownership as indicative of control. Here we're talking about control in fact. So it would probably under regulations come out considerably differently than the IRS but it's a good example.

Mr. MCNEILL. But even, sir, the 50 percent control, somebody else does own the other half, and the problem is that we are extending our jurisdiction, our legal jurisdiction, into that of another nation and directing what its corporations shall or shall not do. That is what troubles us.

This bill as conceived a year ago was designed to prevent the application of foreign law; that is, foreign boycotting countries' laws and regulations, against American citizens. The bill was designed to protect American citizens from being harassed unjustifiably by a foreign government. We think that is a legitimate purpose and it's that part of the bill that we strongly support. But when you apply it to persons that are abroad and are corporate citizens of other countries—just as Hoffman LaRoche in New Jersey is subject to the laws of that State and this country—you create unnecessary problems. It would be very difficult for us to accept the Swiss Government directing Hoffman LaRoche as to what it can or cannot do. Certainly if it directs that corporation in New Jersey to take a position different from that of the U.S. Government, we here would find that objectionable.

Extraterritoriality is very difficult here and abroad. We'd like to see it eliminated from S. 69 and S. 92.

Senator STEVENSON. Mr. Chairman, I apologize for not being here earlier. I had to attend a meeting of the Intelligence Committee and I thank Senator Proxmire for chairing in my absence.

I have just a few questions. One of the bills permits negative certificates of origin. The other does not. Have you addressed yourselves to that issue and, if not, will you?

Mr. MCNEILL. Senator Stevenson, in the case of ECAT, the group I'm representing here, I think we would not like to see S. 92 requirements that a negative certificate not be allowed if the result of that would be to put us in direct confrontation with those countries whose law it is to require negative certificates.

We understand that some of the Arab League countries are changing their requirements and that they are willing to accept the positive certificate.

As far as we're concerned, we just don't want to see American companies put in between two political sovereignties. If a positive certificate is acceptable to the boycotting countries, then it's certainly acceptable to us. But we would hate to see a law passed that would put

American companies in between two different legal and political requirements where both cannot be satisfied at the same time.

Senator STEVENSON. Does that answer satisfy all of you?

Mr. FOX. Speaking for the NAM, Senator Stevenson, we would prefer the language of your bill, S. 69.

Senator STEVENSON. And the other question was about the effect of provisions in S. 92 with respect to the visa requirements of foreign countries. Have you analyzed those provisions and, if so, what would be the effect of them on the business relationship between a U.S. company and a foreign country if that foreign country denied a visa to one of its employees for racial, religious, or boycott related reasons?

Mr. MCNEILL. Senator Stevenson, again, the visa issue is certainly part and parcel of the whole problem of boycotts that we're talking about, but the visa problem has been a problem for about 200 years. Saudi Arabia for at least that period of time has required visas for its own political purposes. We prefer that part of S. 69 that recognizes that there is a visa problem and that allows that problem to be accommodated. That was in the agreement reached between the Senate-House conferences last fall and we support it.

Without that accommodation, I can conceive of American construction companies, particularly, or companies with service contracts in Arab lands, being put in extremely difficult positions. It may be that the prospective Arab customer may not want to go through all the harassment of the visa problem that would be involved and simply switch the contract to another country or not even bother to talk with the prospective American business concern at all. We strongly support the visa provisions of your bill.

Mr. FOX. Senator Stevenson, NAM also prefers the position of your bill, S. 69, in that respect.

Mr. CARLSON. The chamber feels the same way.

Senator STEVENSON. Any further questions?

Senator PROXMIRE. I just would like to take a minute. I realize we have other witnesses and the hour is very late. It's 12:30, but I would like to just point out, in the first place, Mr. McNeill, I think we can clarify our difference of opinion by pointing out that you and I kind of missed each other's point a little bit by taking different sections of the bill. I'm talking about S. 69. You're right that that refers to a particularly boycotted country, but where it affects the boycott of a particular concern that's where S. 69 reaches the action. It doesn't have to be pursuant to an agreement and it's there that it seemed to us, at least to me, that your position would permit an avoidance of an effective law. Do you see my point?

Mr. MCNEILL. I see your point but I don't agree with it.

Senator PROXMIRE. Well, that's direct.

Then the other point with respect to the discussion we have had about American controlled firms located abroad, No. 1, if we don't apply this to American firms abroad we're going to lose jobs. What's going to happen I suppose is the economic effect is going to be that the job done by American firms located abroad will be done with foreign labor and with a great deal of benefit for foreign economies and with a loss on the part of the American economy. It would have that practical effect.

No. 2, it seems to me a very practical resolution of this is that if an American controlled firm is located in France, for instance, if it refuses to buy from an American blacklisted firm, then our law should apply. On the other hand, if an American controlled firm located in France refuses to buy from a blacklisted French firm, then I could understand why French law would apply. I think that would be a practical solution.

Mr. McNeill. I think that there is a practical solution possible that may incorporate some of what you just said, but there are also ways to accommodate the difference. If the fear is that by not having an extraterritorial provision in the bill Americans will circumvent the intent of U.S. law, then there are ways around that. Both statutory language and legislative history could make it clear that if an American firm purposefully and with intent to avoid domestic law switched, for example, an export order placed with it by an Arab customer to an overseas subsidiary, then that would clearly be a circumvention of U.S. law and would be prohibited.

On the other hand, if an Arab customer places an order directly with a French corporation in which there happens to be U.S. capital, I don't see why U.S. law should prevent that transaction from being consummated. So I think there is room for accommodation.

Senator Proxmire. I have a number of other questions, Mr. Chairman, I'd like to submit to this panel. It's a good panel and I'd like to get their reactions.

Senator Stevenson. Very well. The questions will be submitted and the answers will be entered in our record.

Mr. Fox. If I might respond to Senator Proxmire, I think that concern of the committee as you expressed them, with respect to the effect on employment in the United States, is certainly a very important one and we'd be happy to explore any alternative, the purpose of which was to make sure that the objectives of the principles which we have stated in our testimony with respect to nondiscrimination, could be carried out in such a way as to eliminate or at least minimize any adverse effect on employment in the United States. It's our desire to maximize employment in the United States, and I think there have been expressed by others legitimate concerns, that the application of either one of the two proposals before the committee today might have the effect of adversely affecting employment in the United States.

I think it's very important to try to avoid that.

Senator Stevenson. You might also give us your views about the extent to which, if any, this legislation would adversely and unintentionally affect the business activities of American-based firms in parts of the world outside of the Middle East. Leave aside the extraterritorial question you were discussing. How would it affect activities of American firms in Africa or Turkey or Taiwan or other places where I don't think it's intended to have an effect, but might unintentionally now or, as far as you can tell, in the very near future.

Mr. Fox. Senator Stevenson, I think that's a very important question. I'd like to make this observation. We're talking about an extension of the Export Administration Act. I think a fair reading of the history of the application of that act extraterritorially could not lead one to the conclusion other than that it has had the effect of causing certain other countries to build up their industries because they could not rely on the United States as a source of supply.

I offer this as a personal opinion, not as a position of the National Association of Manufacturers. I personally have no doubt that the building of the computer industry in France was a direct response to the denial of computer equipment for export from the United States to France in the periods in which the application of U.S. export controls had as a strategic objective certain points of protection of U.S. strategic interests involving the use of computers. So there isn't any question that countries——

Senator STEVENSON. But you're answering your own question. My question is about the antiboycott provisions of this legislation which have not become law as yet and the extent to which, if any, they will adversely affect the American business activities in other parts of the world. Don't give us the answer now unless you've got a quick answer to that. I think it deserves some more thought. But if you have an answer and with some specificity can tell us about unintentional effects in such regions as I have already mentioned or elsewhere, that would be of interest to the committee.

Any further comments or questions? If not, thank you, gentlemen.

[The following information was received for the record. Replies to questions concerning testimony of the National Association of Manufacturers were received for the record and may be found at page 599 of this volume.]

ADVANCING VOLUNTARY LEADERSHIP IN A CHANGING WORLD

Chamber of Commerce of the United States

JACK CARLSON
VICE PRESIDENT, CHIEF ECONOMIST

1615 H STREET, N.W.
WASHINGTON, D.C. 20062

202-659-6150

March 21, 1977

COPY

Senator William Proxmire
Chairman
Banking, Housing and Urban Affairs
Committee
Room 5304
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

At the conclusion of my testimony before Senator Stevenson's subcommittee on international finance on February 22, presenting the National Chamber's views on the Export Administration Act extension, you indicated that you would appreciate answers to specific questions about the antiboycott provisions of S. 69 and S. 92.

Some of the questions solicit information which is not available to our association, and can only be answered by businessmen. Others ask us to anticipate the reactions of our members to specific legislation proposals, and our answers could only be based on speculation. In general, we have answered all the questions to the best of our ability, and I hope that our responses will be helpful to you and the members of your committee in your consideration of this important issue.

Sincerely,

Jack Carlson

Jack Carlson

Enclosure

cc: Committee members

Chamber of Commerce of the United States of America

Washington

REPLIES TO QUESTIONS FROM SENATOR PROXMIRE

CONCERNING U.S. CHAMBER OF COMMERCE TESTIMONY

on

EXPORT ADMINISTRATION ACT EXTENSION (S. 69, S. 92)

Question 1

Why would you prefer to have the legislation penalize agreements to take action to comply with the boycott rather than the taking of that action itself? Why is it good public policy to penalize agreements to take certain actions but not the acts themselves? Wouldn't that just be a trap for the unwary? Anyone who is familiar with the law would take care not to agree in the first instance. It would, therefore, appear that the only ones who might be caught by a prohibition solely on agreements are those who are unfamiliar with the law, those who can afford counsel to help them avoid making the proscribed agreements, or someone who by inadvertance "agrees" and then draws back. Why does that make any sense?

What precisely would constitute an "agreement" for these purposes? For example, assume a company signs a contract to sell goods to a boycotting country. The contract contains no boycott clause, nor does it require the company to comply with the laws or regulations of the boycotting country. The company then refrains from buying goods from or otherwise dealing with blacklisted companies in fulfilling the contract. Would that be a violation of the law under your formulation? If not, why not?

Reply: The Chamber of Commerce of the United States believes that U.S. persons should not agree to refrain from doing business generally with any other U.S. person as a condition of doing business in a boycotting country. The language contained in the bills currently being considered by the Senate is ambiguous in this respect. While both S. 69 and S. 92 note that the absence of a business relationship would not in itself be considered a violation of the law, S. 92 raises the possibility that a firm could be in violation of Section 201(a) merely because of a pattern of its supply or sales arrangements--arrangements totally unrelated to boycott matters--which was alleged to be the result of compliance with the proscriptions of the boycotting country. The language of S. 69 is slightly more specific, since it implies that the absence of a business relationship, if it were caused by intent to further or comply with a boycott of a country friendly to the United States, would be a violation of Section 201(a). In either case, however, the legislative language is sufficiently vague that an American firm might find itself in the position of unwittingly violating U.S. law in the course of operations unrelated to the provisions of any boycott of a country friendly to the United States.

The statement of principles prepared by the Anti-Defamation League of B'nai B'rith and the Business Roundtable includes the principle that "No U.S. person may refrain from doing business with any other U.S. person pursuant to an agreement with a foreign country, its nationals or residents in order to comply with, further or support a foreign boycott." This language, clearly consistent with the National Chamber's stated principle, supports the view that the legislation should penalize actions taken pursuant to an agreement. Such actions clearly would involve intent to comply with a boycott requirement, and should be proscribed. Actions taken without reference to a boycott requirement, and decisions made according to clearly recognized and legitimate commercial considerations, should not be proscribed whether or not they are consistent with boycott requirements, since the intent to comply is not present.

Secretary of State Vance, in his testimony before the subcommittee on February 28, said that

> "Refusals by American firms to deal with any friendly foreign country, demonstrably related to a foreign boycott, should be prohibited. So, in general, should refusals to deal with other U.S. firms."

He went on to say that the principle raised difficult questions about enforcement, since such enforcement would depend on interpretations of a company's intent when it does not do business with a friendly foreign country or with an American company. For this reason, it is necessary that the prohibition apply to acts taken pursuant to an agreement to further or to support a foreign boycott. The secretary added that it would be necessary to provide American companies with "clear and realistic guidance in boycott-related situations." We believe that a prohibition on "acts taken pursuant to an agreement to comply with, further or support any boycott" would constitute clear and realistic guidance.

The definition of what would constitute an agreement for the purposes of the Act is a difficult one, but any such definition must take into account, as noted in our testimony, that

> "United States law and regulation...cannot affect the right of other countries to accept or exclude goods or services from any source."

Secretary Vance observed that

> "states do exercise their sovereign rights to regulate their commerce, and...have the right to control the source of their imports as well as the destination of their exports."

Legislation which does not respect that right will have the effect of preventing American companies from complying with the import regulations of other countries, with no clear benefit to any of the parties involved and at the risk of eliminating exports to those countries.

In the example cited in the question, the American firm should not be subject to the risk of prosecution for having respected the legal requirements of the importing country. If, however, the firm refrains from doing business with blacklisted companies in other transactions unrelated to fulfillment of the order destined for the boycotting country, it would violate the Act.

Question 2

What is your position on the exception contained in S. 69 but not S. 92 for compliance with the passport or immigration requirements of the boycotting country. By implication S. 69 would permit a company whose employees cannot secure a visa nonetheless to go forward with a project in a boycotting country. Do you support that approach or do you feel that a company should be required to refuse the business?

Reply: Our statement noted that corporations should be able "to require that an applicant for employment fulfill certain requirements--including being able to meet the immigration or other requirements of a country where the opportunity exists." During the hearings on February 22, 1977, Dr. Jack Carlson, testifying for the Chamber, noted that we found the provisions in S. 69 relating to passport and immigration regulations preferable to the comparable provisions in S. 92.

Question 3

Some contend that anti-boycott legislation should permit a U.S. company to comply with a requirement that its shipments not contain goods or components produced by blacklisted firms. But such an exception would virtually nullify the refusal to deal provisions of the legislation. Why should an American company be permitted to exclude goods manufactured by blacklisted companies in order to gain trade opportunities in a boycotting country? Why shouldn't American companies doing business in the Arab states be required to provide equal access to all companies who can meet required commercial standards?

Reply: If the legislation does not permit American exporters to provide negative certification where required by the import regulations of an importing country, the likely result will be the loss of such trade opportunities with no apparent benefit. If the law contains a prohibition on providing such documentation, the successful efforts of the business community and the Department of State to secure voluntary changes in such documentary requirements by foreign governments will be undermined. Furthermore, such a prohibition would not take into account the fundamental distinction between refusing to use the products of a blacklisted company in fulfillment of an export order destined for a boycotting country, and refraining from doing business generally with a boycotted company as a condition of doing business with the boycotting country. The latter should be clearly proscribed, but the former simply respects the sovereign rights of foreign countries to regulate their foreign trade.

Question 4.a.

Some recommend the exclusion of foreign subsidiaries and affiliates from the reach of the law. But wouldn't doing so open up an enormous loophole by permitting U.S. companies to source their Arab country transactions through their foreign subsidiaries and thus avoid U.S. law altogether?

b. If the bill were to exempt from the reach of the legislation the business dealings of U.S. foreign subsidiaries outside the U.S. (not their dealings with U.S. companies), what do you think the reaction of U.S. companies would be? Would they source their transactions with the Arab states wholly outside the United States? In other words would the economic benefits which otherwise would have come to the U.S. be diverted elsewhere?

Reply: The Export Administration Act should not seek to assert jurisdiction over foreign entities, which would place the subsidiaries and affiliates of American firms in the position of possible conflict with the laws or policies of the foreign government. The use of foreign subsidiaries in a manner intended to circumvent the law should, however, be prohibited.

Question 5

S. 69 would permit issuance of negative certificates of origin; S. 92 would not. I don't believe any of you addressed this issue in your testimony, at least explicitly. What is your position on negative certificates of origin? Should they be banned?

Reply: Since the use of negative certificates of origin typically relates to the enforcement of a primary boycott--which advocates of the pending legislation explicitly exempt from the coverage of the Act--the National Chamber believes that the language contained in S. 69 permitting the issuance of negative certificates of origin is preferable to the comparable provisions of S. 92 prohibiting the use of such negative certificates.

Question 6

In testimony before the Committee a number of business representatives contended that enactment of the pending legislation would result in a substantial loss of exports and jobs. At least one of them contended that the legislation would close them down. What is your assessment of the impact? Have you studied the question? If you conclude that there would be an adverse impact, please be specific as to how and why? What boycott compliance actions do your member firms now take that they would be barred from taking under the proposed legislation?

Reply: The National Chamber believes that the pending legislation, since it would prohibit American firms from complying with the import requirements of boycotting countries, would effectively create a counter-embargo. This would result in considerable loss of exports and jobs. Although the National Chamber has not made an effort to quantify the extent of this adverse impact, other witnesses presented well-documented examples of the effect such legislation would have on specific industries. Based on such findings, the National Chamber believes that the legislation could have a severe adverse impact on American exports and domestic employment.

Question 7

What is the most common form of boycott compliance among the companies you represent? Certificates of origin? Certification that your shipments contain no goods or components manufactured by blacklisted firms or that the transaction in question did not involve a blacklisted company? Which?

Reply: We do not have this data, but several congressional committees, together with private organizations, have analyzed the data collected and released by the Department of Commerce, and these analyses are in the public record.

Question 8

If the pending legislation were enacted, how are the companies which you represent most likely to respond? What, if any, changes in their practices or operations are likely to ensue? Would they foreign-source their sales in an attempt to escape the law?

What would they do with respect to trade or investment in Israel? Would the prohibition on refusals to do business with Israel have a chilling effect on their willingness to explore business opportunities there? Would U.S. companies which otherwise might have explored business opportunities in Israel be reluctant to do so for fear that if they decided not to go forward after making initial exploration they might be accused of an illegal refusal to do business?

Reply: The information requested in this question can only be authoritatively provided by the companies involved, since the National Chamber has not conducted a survey of its membership addressing this question. Given the ambiguities contained in the legislation, however, it is reasonable to suggest that American firms which otherwise might explore business opportunities in Israel would refrain from doing so, since they could be considered to be in violation of the prohibition against refusing to deal with countries friendly to the U.S. if no relationship were to result from the initial exploration.

Question 9

What effect would the prohibition against furnishing information about whether you have or propose to have business relations with blacklisted firms or with the boycotted country have on your operations? Would you still supply lists of potential subcontractors to clients in the boycotting country? It's quite possible that such action would be illegal because such information in fact discloses whether you have or propose to have business relations with blacklisted firms or a boycotted country. Is this a real problem or merely hypothetical? Are there frequent occasions where U.S. firms supply lists of subcontractors or vendors for legitimate business reasons, reasons wholly unrelated to the boycott? It so, please describe. Have you thought about ways to modify this prohibition so as to avoid having it reach legitimate information exchange situations? Please describe all non-boycott related information exchange situations which might be reached by the proposed prohibition.

Reply: This question can only be addressed to companies themselves, or by other groups more familiar with the practices of specific industries.

Question 10

What effect would the pending legislation have on U.S. companies actually located in the boycotting country? The bills contain no exceptions for compliance with local laws for companies situated in a boycotting country. Can that problem be dealt with without opening up an invitation for evasion?

Reply: The legislation, as currently drafted, would place the subsidiaries of American firms resident in boycotting countries in a clearly untenable position, since business could not be conducted without violating the law of the host country or of the United States. Since the subsidiary is organized under the laws of the host country and is expected to behave as a national of that country, and because the host country has a clearly greater interest in the behavior of foreign residents within its borders than the foreign country would have, the foreign resident should not be prohibited from complying with local law.

Question 11

The principles which you espouse are virtually identical to those contained in the pending legislation--no discrimination on the basis of race, religion, or national origin and no refusals to deal with blacklisted American companies. Where there appears to be disagreement is on how those principles can be guaranteed and to whom the legislation should apply. But there seems to be agreement on the basic principles. The major differences seem to be (a) whether the law should apply to agreements to boycott rather than actions in support of the boycott; (b) whether the law should apply to foreign subsidiaries and affiliates; (c) whether the law should permit American companies to exclude the goods or components of blacklisted firms from shipments to the boycotting country; and (d) whether the law should permit an exception for compliance with visa or immigration requirements. There are other differences, but these seem to be the main ones. Do you agree?

Reply: The points summarized in the question are correctly identified as the central issues in the debate, and the National Chamber's position on these and related issues is as follows:

--to establish a violation, the law should require proof of an agreement to comply with, further, or support a boycott;
--U.S. firms should be able to respect and comply with the passport and immigration regulations of the countries in which they do business;
--U.S. firms should be protected from legal liability as a consequence of compliance with the import and export regulations and requirements of foreign countries;
--the law should apply to foreign subsidiaries only to the extent that it would prohibit the use of subsidiaries to circumvent the provisions of the law;

--reporting requirements should be simplified and consolidated; and
--the identity of the reporting person should be kept confidential except in cases where violations of the law take place.

Question 12

On page 6 of your testimony, you state as a principle that "U.S. persons should not agree to refrain from doing business with or in the boycotted country as a condition of doing business in a boycotting country." You go on to say that "U.S. persons should not agree to refrain from doing business generally with other U.S. persons as a condition of doing business in a boycotting country." (Emphasis added.)

You seem to be placing heavy emphasis on agreeing to refrain from doing business. But you also state on page 6 that "any attempt by a boycotting country to compel persons outside its jurisdiction to modify their conduct in regard to a boycotted country should be opposed." (Emphasis added.) You also say on page 6 that it is an established principle of U.S. law and practice for U.S. firms not to discriminate against any potential group of employees, customers, or suppliers.

If, as you say, we should oppose "any" attempts to coerce U.S. firms to modify their behavior and if it is against U.S. principle to discriminate, why do you want the law to be confined to agreements to boycott or discriminate? Aren't you being inconsistent?

Reply: The law must penalize actions taken pursuant to an agreement to comply with, further, or support a boycott in order to ensure that an act which takes place without reference to the requirements of a boycotting country, but which could be construed as consistent with a pattern of behavior complying with boycott requirements, would not be a violation of the law.

Question 13

On page 7 of your testimony, you state that if the law applies to foreign subsidiaries and affiliates, "such subsidiaries or affiliates would often have to make a choice between violating the law of the country where it is based and does business or violate the law of the parent company where it is located." What do you mean by that? We are aware of no foreign country outside the Arab League which makes it a violation of the law not to comply with the Arab boycott. So how would foreign subsidiaries which obey U.S. law against compliance with certain aspects of the boycott violate the law of a foreign country?

Reply: Many foreign countries have adopted formal policies which require the subsidiaries of foreign firms operating in their countries to behave as if they were nationals of the host country. If coverage of the Export Administration Act were extended to the foreign subsidiaries and affiliates of American companies, those subsidiaries and affiliates would be subject to the sovereign power of the United States and could not behave as nationals of the host country.

Question 14

On page 6 of your testimony, you state that existing civil rights laws already generally prohibit discrimination against persons on the basis of race, color, religion, sex, or national origin pursuant to a boycott related request. But that is not quite right. The civil rights laws do prohibit employment discrimination, but as the Justice Department pointed out in testimony before this Subcommittee in 1975, "with limited exceptions, none of which have significant application to the present problem, Federal civil rights laws do not prohibit private discrimination in the selection of contractors or the treatment of customers." (Emphasis added.) Do you agree?

Reply: Boycott-related requests rarely, if ever, ask for information about the religious or racial composition of a corporation's management or board of directors, and several Arab countries have stated that the boycott is not directed against any particular religious or racial group, but against Israel. Hence, such discrimination is not at issue.

Question 15

On page 7 of your testimony, you state that the boycott reports should be made public only if a company is charged with a violation of the regulations. Why shouldn't the public have full information about the nature and extent of boycott demands and compliance by U.S. companies? Why should we perpetuate secrecy in this area?

Reply: Disclosure of the identity of firms filing boycott reports with the Commerce Department creates the incorrect impression that such firms are complying with boycott demands when, in fact, they are complying with U.S. law. The National Chamber believes that disclosure of reports which delete the name of the reporting firm would provide full information to the public. In the cases where a violation of the law has taken place, the identity of the reporting firm should be disclosed.

Question 16

On page 7 of your testimony, you appear to rest your argument in favor of Federal pre-emption on grounds that the regulation of foreign commerce is the responsibility of the Federal government. But with limited exceptions, most of the state statutes are based on civil rights or anti-trust notions, not the regulation of foreign commerce. And there is ample precedent for state civil rights and anti-trust laws being sustained against Constitutional challenge. Are there better arguments for pre-emption? What about the diversion of business from states which do have boycott statutes to those which do not? Is there any evidence of that?

Reply: Although the various state and municipal laws dealing with foreign boycotts are based on civil rights or antitrust principles, they purport to affect the foreign commerce of the United States. Since that is the case, they should be clearly preempted by federal legislation. While business may have been diverted from states which have enacted antiboycott statutes to those which have not, the best argument supporting federal preemption rests on the federal responsibility to regulate foreign commerce.

Senator STEVENSON. The next witnesses are Gerald Ullman, National Customs Brokers & Forwarders Association of America, Inc., general counsel; W. Gregory Halpin, deputy port administator of the Maryland Port Administration, representing the American Association of Port Authorities; and Gilbert M. Weinstein, vice president for international affairs, New York Chamber of Commerce and Industry.

Gentlemen, I would hope that you could summarize your statements in which case the full statements will be entered in the record. May we proceed with you, Mr. Ullman.

STATEMENT OF GERALD ULLMAN, GENERAL COUNSEL, NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC.

Mr. ULLMAN. My name is Gerald H. Ullman. I'm general counsel of the National Customs Brokers & Forwarders Association of America, Inc., One World Trade Center, city of New York. The association is composed of approximately 400 licensed ocean freight forwarders and customs brokers. Affiliated with our group are 21 local forwarder-broker associations in our major ports. The combined membership of the national and local associations is responsible for handling the vast bulk of general cargo exported from the United States.

One of the forwarder's principal roles is to advise his exporter which port is best suited for the dispatch of his merchandise. In rendering such advice in the past, the forwarder concerned himself with such matters as inland freight costs to the pier, vessel service at the port, congestion and other factors that would determine the most efficient port for the movement. Within the last year, however, the forwarder has been required to advise his exporter with respect to a new area; namely, the requirements of State antiboycott laws which in varying degrees limit the ability of exporters to move cargo through certain ports. At the present time there are six States that have such laws: New York, Illinois, California, Massachusetts, Ohio, and Maryland. It is reasonable to expect other States to follow.

The serious problem faced by U.S. exporters with respect to these State laws can best be illustrated by a specific example. Let us suppose that an American supplier has a contract with an Arab purchaser for a large sized project movement. such as roadbuilding equipment or a hospital. Let us further suppose that the shipments will move from an Illinois plant through the ports of Baltimore and New York. The exporter, and probably his lawyer, and the forwarder must become intimately familiar with the boycott laws of Illinois, Maryland, and New York, with the regulations issued thereunder and with the administrative interpretations and decisions by the State regulatory agencies and courts. This is a most onerous burden for the exporter to bear and when it is kept in mind that he must also be familiar with and comply with a Federal antiboycott law and its detailed regulations, it is clear that an American exporter will be enveloped in a mass of Federal and State regulations which hinder and obstruct his ability to sell his product overseas. Our foreign competitors suffer no such impediment.

If I can interpolate for just a second on that, one certification that is usually required in every shipment to Arab consignees is by the vessel. That is, the vessel certifies that it is not under any Arab blacklist.

That's a standard certification. Well, that certification is probably unlawful in the State of New York. It would probably be permitted in the State of Maryland. I don't know, Senator Stevenson, what it would be in Illinois. Under our Federal law, it would be considered a restrictive trade practice which is reportable, not prohibited but reportable, and it would have to be reported by not only the exporter but the forwarder, the ocean carrier and the bank that's maybe handled the letters of credit. So you have four different agencies reporting that same transaction.

The sale of our merchandise to foreigners involves the movement of goods in our interstate and foreign commerce and our relationships with other nations. We believe this to be a matter of Federal concern exclusively and not an area for nonuniform State regulation. A single, national policy to be applied uniformly to all citizens of the United States is obviously required. We recommend strongly, therefore, that any Federal enactment should include a preemption clause which would make inapplicable any State law or regulation on boycotts.

Thank you very much.

Senator STEVENSON. Thank you, sir.

Mr. Halpin.

STATEMENT OF W. GREGORY HALPIN, DEPUTY PORT ADMINISTRATOR OF THE MARYLAND PORT ADMINISTRATION, REPRESENTING THE AMERICAN ASSOCIATION OF PORT AUTHORITIES

Mr. HALPIN. Mr. Chairman, gentlemen, my name is W. Gregory Halpin. I'm the deputy port administrator of the Maryland Port Administration but appear before you this morning in my capacity as chairman of the Committee XI of the American Association of Port Authorities.

You have our statement and I will simply highlight it, first, by saying that the American Association of Port Authorities is an organization comprised of port authorities both public and private of the Western Hemisphere. On matters affecting U.S. legislation, only American members of the association vote. And in line with that, the association has passed a resolution which we call Resolution F–22 which was passed to deal with the matter of boycotts and which strongly endorses antidiscrimination legislation; it also strongly endorses Federal preemption of State laws dealing with restrictive trade policies and practices. Of course you're well aware of the number of States that have introduced legislation, including my own State of Maryland.

I might add, and we have given some examples in our testimony to some of the problems which we feel we'll be faced unless Federal legislation preempts State legislation in this area, we reemphasize again our strong support of the Federal legislation.

Questions which the association addressed to itself as its convention when Resolution E–22 was passed, were for instance: What effect has the law of Ohio had on foreign discriminatory boycotts other than to make shippers apprehensive about using the Port of Cleveland to ship goods to a nation espousing such a boycott, even though that shipper may not have agreed to do one discriminatory activity? Why should shippers in a large State with many excellent ports, such as

California, divert the cargoes to ports thousands of miles away for no other reason than uncertainty over a State antiboycott law being challenged in Federal court for its constitutionality and not even being enforced by State officials? How many shippers or steamship lines have been charged for violating the State antiboycott laws?

The questions could go on, Mr. Chairman, and understandably shippers are uneasy knowing that they could be fined $50,000 under the Maryland boycott law for doing an act which has no fine under the Massachusetts law or for which there is no law in Virginia. I could go on with this litany of conflicting legislation, but let it suffice to say that no two State boycott laws are identical in their scope or penalty.

The AAPA wants all ports to be on an equal footing in this matter; moreover, I am told that there is a constitutional obligation on the Congress to insure nonpreference to any port as a result of a congressional action—a situation which can only be preventive in this case. in my opinion, by preempting existing State laws on this subject. The States which have passed boycott laws should be commended for protecting their citizens prior to congressional action on this matter, but they should also be aware of the fact that the Congress has a duty to preempt State statutes when they are in conflict with the absolute powers of the Federal Government or contribute very little to the problem to be solved. Recent examples of congressional preemption of State law are the Federal Election Campaign Act of 1971 and the Employee Retirement Income Security Act of 1974. As a personal note, I might add that I am proud to state that the attorney general of my own State of Maryland testified earlier today on this matter of preemption which he strongly favors. Although Resolution E–22 was unanimously passed by the AAPA in convention assembled, I will be very frank with the committee and tell you that my appearance before you today is over the opposition of certain members of Committee XI. These few dissenting members are from States not having boycott laws and who are incidentally doing a large volume of business with the Middle East. These dissenting positions do not weaken the AAPA position, but rather I feel exemplifies the need for preemption.

I am pleased to tell the committee that the AAPA's position on preemption has received the endorsement of the Maritime Administration and we were most gratified to note the comments of the President of the United States, who on February 9, 1977 stated at the Department of Commerce his concern over these conflicting State boycott laws:

> . . . we also need to have as a last thing (in any Federal boycott law) uniformity among the different States of the Nation in dealing with the (boycott).

Therefore I would urge the committee to recognize a responsibility to insure effective but equal application of the bill reported to the Senate and see that the ports of the Nation having antiboycott laws are not burdened by enactment of a Federal law lacking clear preemption language. We therefore sincerely request the committee to adopt the following amendment:

> The provisions of this Act, and of rules prescribed under this Act, supersedes and preempts any provision of state law with respect to restrictive international trading practices and discriminatory boycotts.

We appreciate the attention that you have given to us today. Thank you.

Senator STEVENSON. Thank you, sir.

[The complete statement follows:]

STATEMENT OF W. GREGORY HALPIN, CHAIRMAN, COMMITTEE XI OF THE AMERICAN ASSOCIATION OF PORT AUTHORITIES, INC. ON S.69 AND S.92 BEFORE THE INTERNATIONAL FINANCE SUBCOMMITTEE OF THE SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE
FEBRUARY 22, 1977

Good morning. My name is W. Gregory Halpin. I am Deputy Administrator of the Maryland Port Administration (MPA) but appear before you this morning in my capacity as Chairman of Committee XI of the American Association of Port Authorities (AAPA).

I sincerely appreciate this opportunity to testify before the Committee on behalf of Committee XI of the APPA on these two important bills. I am accompanied this morning by Mr. Richard L. Schultz, Executive Director and Treasurer of the AAPA.

Our testimony this morning will be confined to Titles II of both bills, which in amending the Export Administration Act establish prohibitions on compliance with foreign boycotts --- a matter of great concern to our Association.

The AAPA is an organization comprised of Port Authorities, both public and private, of the Western Hemisphere with a predominant American membership. Since our founding in 1912, the Association has attempted to forge bonds of friendship between members, exchange mutually beneficial information regarding innovative Port technology, and also increase public awareness of our organization.

As a national body we can frankly and objectively address those issues of concern to all Ports, without regard to regional interests. As a vital entity of AAPA, Committee XI is charged by the By-Laws as follows:

> Shall undertake activities appropriate in the expansion of foreign trade and the movement of export and import commerce, in legislative matters designed to promote international trade and shall cooperate with other organizations and with federal departments, and shall collect data relating to the promotion of international trade, advise members in regard thereto, and when so authorized shall take appropriate action in respect to legislative and administrative matters in this field of activity.

The membership of Committee XI is composed of Port Authority officials from the East and West Coast, the Gulf and the Great Lakes.

On January 1, 1976, a law went into effect in New York State, popularly called the anti-boycott act or the Lisa Law, which attempted to protect the citizens of New York from discriminatory trading practices imposed on American corporations by foreign governments. This law was premised on the belief that secondary and tertiary boycotts were being imposed upon Americans as a condition for doing business with these foreign governments --- particularly those of the Middle East who consider themselves in a state of war with Israel. The New York law purported to have jurisdiction over any business transaction which resulted in discrimination based on race, religion

or sex. Within a few months, the legislatures of other States became aware of this law and proceeded to pass similar bills. The Congress was not idle; during the course of hearings last year on bills before this Committee and in the House, a keen awareness of the existence and concern for ending these patently unfair trading devices was evidenced. The Department of Commerce reporting requirements for participation in these boycotts was revealed as both inadequate and easily misunderstood by the public; yet, by the time the Senate and the House passed different anti-boycott bills, procedural difficulties caused the Session to end without action on this serious problem.

During 1976, four States enacted anti-boycott laws --- Maryland, California, Ohio and Massachusetts (Illinois has had a law dealing with this general area in effect since 1965). Even if one accepts the authority of these States to legislate in this area --- a proposition which has severe constitutional questions --- other questions are easily raised. The AAPA recognized these problems at its annual convention and clearly saw such a proliferation of State laws would bring about confusion and fear to the shipper using Ports in a State with an anti-boycott law, as well as disrupt established competitive Port relationships. These other questions troubled the convention:

What effect has the law of Ohio had on foreign discriminatory boycotts other than to make shippers apprehensive about using the Port of Cleveland to ship goods to a nation espousing such a boycott, even though that shipper may not have agreed to do one discriminatory activity?

Why should shippers in a large State with many excellent Ports, such as California, divert the cargoes to Ports thousands of miles away for no other reason than uncertainty over a State anti-boycott law being challenged in Federal Court for its constitutionality and not even being enforced by State officials?

How many shippers or steamship lines have been charged for violating the State anti-boycott laws?

The questions could go on Mr. Chairman, and understandably shippers are uneasy knowing that they could be fined $50,000 under the Maryland Boycott law for doing an act which has no fine under the Massachusetts law or even no law in Virginia. I could go on with this litany of conflicting legislation, but let it suffice to say that no two State boycott laws are identical in their scope or penalty.

With the above in mind, the AAPA unanimously passed Resolution E-22 (attached) which endorses federal preemption of State laws dealing with restrictive trade practices and boycotts. The AAPA clearly recognizes that unless strong anti-boycott legislation such as S.69 or S.92 contains language preempting these State laws, those

States having such laws will ironically become "discriminated against" because of their existence. The AAPA wants all Ports to be on an equal footing in this matter; moreover, I am told that there is a constitutional obligation on the Congress to ensure non-preference to any Port as a result of a Congressional action (Article I, Section 9, Clause 6) --- a situation which can only be prevented in this case, in my opinion, by preempting existing State laws on this subject. The States which have passed boycott laws should be commended for protecting their citizens prior to Congressional action on this matter, but they should also be aware of the fact that the Congress has a duty to preempt State statutes when they are in conflict with the absolute powers of the Federal Government or contribute very little to the problem to be solved. Recent examples of Congressional preemption of State law are the Federal Election Campaign Act of 1971, the Magnuson-Moss Warranty Act, and Employee Retirement Income Security Act of 1974. As a personal note I might add that I am proud to state that the Attorney General of my own State of Maryland will testify before this Committee on behalf of preemption. Although Resolution E-22 was unanimously passed by the APPA in Convention assembled, I will be very frank with the Committee and tell you that my appearance

before you today is over the opposition of certain members of Committee XI. These few dissenting members are from States not having boycott laws and who are incidentally doing a large volume of business with the Middle East. These dissenting positions do not weaken the AAPA position, but rather I feel exemplifies the need for preemption.

I am pleased to tell the Committee that the AAPA's position on preemption has received the endorsement of the Maritime Administration and we were most gratified to note the comments of the President of the United States, who on February 9, 1977 stated at the Department of Commerce his concern over these conflicting State boycott laws: "... we also need to have as a last thing (in any federal boycott law) uniformity among the different States of the Nation in dealing with the (boycott)."

Therefore, I would urge the Committee to recognize a responsibility to insure effective but equal application of the of the bill reported to the Senate and see that the Ports of this Nation having anti-boycott laws are not burdened by enactment of a federal law lacking clear preemption language. We therefore sincerely request the Committee to adopt the following amendment:

"The provisions of this Act, and of rules prescribed under this Act, supersedes and preempts any provision of State law with respect to restrictive international trading practices and discriminatory boycotts."

Thank you and I will be glad to answer any questions you might have.

THE AMERICAN ASSOCIATION OF PORT AUTHORITIES, INC.

(Unanimously passed)

NO. E-22

ENDORSING FEDERAL PREEMPTION OF STATE LEGISLATION DEALING WITH RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

WHEREAS, there has been a proliferation of State legislation dealing with compliance with foreign restrictive trade practices and boycotts; and

WHEREAS, the existence of such State legislation has caused disruption of established competitive port relationships with concomitant adverse economic effects on those port regions experiencing trade dislocations; and

WHEREAS, it has been declared U.S. policy to oppose restrictive trade practices or boycotts imposed by foreign countries against other countries friendly to the U.S.; and

WHEREAS, State legislation in this field conflicts with Federal constitutional powers to regulate U.S. international commerce;

NOW, THEREFORE, BE IT RESOLVED that The American Association of Port Authorities urges the enactment of a United States statute establishing a single, uniform national policy dealing with restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the U.S. or against any domestic concern or person and reaffirming Federal preemption of State regulation in this area; and

BE IT FURTHER RESOLVED that the Executive Director and Committee XI, Port Commerce, are hereby authorized to take such action as may be necessary to accomplish the objectives of this Resolution.

STATEMENT OF J. L. STANTON, MARYLAND PORT ADMINISTRATOR
AT THE HEARINGS ON S.69 AND S.92 BEFORE THE INTERNATIONAL
FINANCE SUBCOMMITTEE OF THE SENATE, BANKING, HOUSING AND
URBAN AFFAIRS COMMITTEE
FEBRUARY 22, 1977

Thank you Mr. Chairman. I am J. L. Stanton, the Port Administrator of the Maryland Port Administration (MPA) and I sincerely appreciate this opportunity to testify in support of S.69 and S.92, particularly Title II of both bills.

The Maryland Port Administration, a division of the Maryland Department of Transportation, is a state agency charged with the responsibility for developing facilities for the movement of export and import traffic through the Port of Baltimore and elsewhere within the waters of the state. In carrying out these responsibilities, the Administration owns or leases five of the ten major international cargo terminals located in the Baltimore Harbor. Cargo enters and leaves the Administration's terminals and facilities via four railroads, approximately one hundred fifty truck lines, and eighty-three steamship lines. The MPA has six national and international field offices to solicit cargo and facilitate the flow of commerce through our Port.

The MPA has made a substantial investment in port development, maintenance and modernization representing in excess of $150,000,000 in public tax and bond monies for the years 1956 - 1975 and $54,000,000 in projected expenditures for the years 1976 - 1981. The Administration is authorized to participate in proceedings before Federal and State Regulatory Agencies.

We are pleased to have this opportunity to present our views to this Committee which is addressing itself to a most serious problem. Since 1973, the imposition of secondary and tertiary boycotts and other restrictive trading practices by certain nations doing business in the United States has caused serious concern to all those involved in international commerce. As an agency in daily contact with vessels, goods, and peoples of all nations, we have attempted, and I believe succeeded, in according them equal treatment, courtesy and respect. We were therefore repelled by the knowledge that these odious and discriminatory conditions were being imposed by certain foreign entities as a condition for doing business. At the time these practices began to increase in both number and scope, there existed as a remedy only the Regulations issued by the Department of Commerce pursuant to authority granted in the Export Administration Act of 1969. These Regulations merely represented an

an after-the-fact reporting of compliance with restrictive trading practices.

Therefore, more than a year ago a growing determination and concern for the protection of Americans' civil rights and American corporations' business rights began to manifest itself. It was apparent to many that a federal solution was necessary to cure those instances of discrimination surrounding this international trade; yet, the Congress properly proceeded cautiously and in the final analysis was unable to resolve their legislative differences.

However, state legislatures began to act in order to protect their citizens. Most state bodies recognized that federal action was necessary in view of the U.S. Constitution and federal law,[1/] but legislatures of many states, including Maryland, passed anti-boycott bills, of which six are now in effect. Two other state laws appear to be on the verge of being passed and going into effect. When the Maryland anit-boycott law was before our legislature, the MPA opposed its enactment. The reason for this

1/Article I, Section 1, Section 8, Article IV, Section 1, the XIVth Amendment; Section 19 of the Merchant Marine Act, 1920, (46 USC 876).

opposition was based not against the laudable ends of the bill which we recognized and enthusiastically supported, but rather the means. It was and remains our belief and fear that a state-by-state piecemeal approach to this serious national problem will not be effective and will serve to discriminate against the ports of those states with laws when large amounts of cargo are being diverted to adjoining states without such statutes. It is no secret, Mr. Chairman, that we are talking about trade with the nations of the Middle East --- trade which represents the newest and largest business opportunity in many years. The cargoes moving in this trade are very high value both in port economic impact and labor-intensive usage.

The Port of Baltimore has been handling a large amount of cargo to the Middle East nations and possesses the best regularly scheduled direct ocean service to those countries of all U.S. Ports. Simply stated, we do not want the Ports of Baltimore, New York, Boston, Cleveland, Chicago, San Francisco, Oakland, Los Angeles and other smaller ones to suffer the aftereffect of state laws enacted with the best of intentions. Therefore, you can be assured that our support for strong anti-boycott bills such as S.69 and S.92 is echoed by many other segments of the port industry --- labor, management, public agencies and financial institutions.

Although we support S.69 or S.92 as introduced and believe that the provisions of Title II thereof will be an adequate and effective weapon in fighting foreign discriminatory trading practices, there is one essential element of the bill that appears to be missing. This missing element is a preemption clause for the existing state anti-boycott laws I have just mentioned. This fact was recognized and discussed by you Mr. Chairman, and other Senators on the floor of the Senate last fall, while debating S.3084. Why, one might ask, would we appear in support of such an amendment when we have stated we are proud and satisfied that Maryland has an anti-boycott law on the books? Our position is based on our belief --- a belief shared incidentally by the Attorney General of Maryland --- that with six state laws in existence, the time has come for a single strong federal solution to this problem and we believe either of the bills before you satisfy this problem. Instead of six solutions to this problem, we have in effect six conflicting approaches attempting to reach the same goal. In the final analysis, we have Mr. Chairman, six laws, no two of which are the same, and a shipper using the business resources and ports of these states is confronted with six very confusing statutes varying in their purported scope and regulations

with fines ranging from $500 to $50,000. To illustrate this dilemma, I would like to submit to the Committee (attached, Appendix A) a copy of each of these laws. The Maryland legislature recognizes the need for a national bill by its current consideration of a Joint Resolution on this subject (attached, Appendix B) and various national port organizations of which the MPA is a member --- such as the American Association of Port Authorities and the North Atlantic Ports Association --- have passed Resolutions urging a national remedy for this serious problem (attached, Appendix C).

Recognizing these facts, I would urge this Committee to insert in S.69 or S.92 an amendment along the lines of the one we have prepared (attached, Appendix D). I believe this would bring about a strong unified approach to this problem and ensure that the citizens, the business interests and the ports of those states which have had the courage to act in this area, do not ironically become the victims of confusion and trading discrimination once S.69, S.92 or another bill is enacted.

Thank you for your attention. I will be glad to answer any questions.

APPENDIX A

CALIFORNIA

Assembly Bill No. 3080

CHAPTER 1247

An act to add Sections 16721 and 16721.5 to the Business and Professions Code, relating to discriminatory trusts and restraints of trade.

[Approved by Governor September 27, 1976. Filed with Secretary of State September 27, 1976.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3080, Berman. Trusts; restraints of trade.

Existing law does each of the following:

(a) Prohibits the disqualification of a person from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin.

(b) Declares all persons to be free and equal, irrespective of sex, race, color, religion, ancestry, or national origin, and entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments.

(c) Prohibits discrimination because of race, color, religion, national origin, or ancestry in housing accommodations, or in the terms, conditions, or privileges of any publicly assisted housing accommodations.

(d) Declares that the opportunity to seek, obtain, and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, or sex is a civil right and prohibits employers generally from refusing to hire, employ, or train persons because of race, religious creed, color, national origin, ancestry, or sex.

(e) Prohibits discrimination in the employment of persons upon public works because of race, color, national origin or ancestry, or religion.

(f) Guarantees equal protection of the law in respect to state action.

This bill, in addition, would make it an unlawful trust and an unlawful restraint of trade for any person, business, or governmental agency to grant or accept any letter of credit, or to enter into any contract for the exchange of goods or services, which contains any provision requiring discrimination on the basis of sex, race, color, religion, ancestry, or national origin, or on the basis of a person's lawful business associations; or to refuse to grant or accept any letter of credit, or to refuse to enter into any contract for the exchange of goods or services, on the ground that it does not contain such a discriminatory provision.

The bill would also prohibit, as an unlawful conspiracy against trade, the exclusion of any person from a business transaction on the

basis of a policy expressed in any document or writing and imposed by a third party where such policy requires discrimination against that person on the basis of the person's sex, race, color, religion, ancestry or national origin or on the basis that the person conducts or has conducted business in a particular location.

A violation of such provisions would constitute a crime.

This bill would provide that no appropriation is made for reimbursement of local agencies for costs incurred by them pursuant thereto because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local government entities and school districts which, in the aggregate, do not result in significant identifiable cost changes.

The people of the State of California do enact as follows:

SECTION 1. Section 16721 is added to the Business and Professions Code, to read:

16721. Recognizing that the California Constitution prohibits a person from being disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin, and guarantees the free exercise and enjoyment of religion without discrimination or preference; and recognizing that these and other basic, fundamental constitutional principles are directly affected and denigrated by certain on-going practices in the business and commercial world, it is necessary that provisions protecting and enhancing a person's right to enter or pursue business and to freely exercise and enjoy religion, consistent with law, be established.

(a) No person within the jurisdiction of this state shall be excluded from a business transaction on the basis of a policy expressed in any document or writing and imposed by a third party where such policy requires discrimination against that person on the basis of the person's sex, race, color, religion, ancestry or national origin or on the basis that the person conducts or has conducted business in a particular location.

(b) No person within the jurisdiction of this state shall require another person to be excluded, or be required to exclude another person, from a business transaction on the basis of a policy expressed in any document or writing which requires discrimination against such other person on the basis of that person's sex, race, color, religion, ancestry or national origin or on the basis that the person conducts or has conducted business in a particular location.

(c) Any violation of any provision of this section is a conspiracy against trade.

(d) Nothing in this section shall be construed to prohibit any person, on this basis of his or her individual ideology or preferences, from doing business or refusing to do business with any other person

consistent with law.

SEC. 2. Section 16721.5 is added to the Business and Professions Code, to read:

16721.5. It is an unlawful trust and an unlawful restraint of trade for any person to do the following:

(a) Grant or accept any letter of credit, or other document which evidences the transfer of funds or credit, or enter into any contract for the exchange of goods or services, where the letter of credit, contract, or other document contains any provision which requires any person to discriminate against or to certify that he, she, or it has not dealt with any other person on the basis of sex, race, color, religion, ancestry, or national origin, or on the basis of a person's lawful business associations.

(b) To refuse to grant or accept any letter of credit, or other document which evidences the transfer of funds or credit, or to refuse to enter into any contract for the exchange of goods or services, on the ground that it does not contain such a discriminatory provision or certification.

The provisions of this section shall not apply to any letter of credit, contract, or other document which contains any provision pertaining to a labor dispute or an unfair labor practice if the other provisions of such letter of credit, contract, or other document do not otherwise violate the provisions of this section.

For the purposes of this section, the prohibition against discrimination on the basis of a person's business associations shall be deemed not to include the requiring of association with particular employment or a particular group as a prerequisite to obtaining group rates or discounts on insurance, recreational activities, or other similar benefits.

For purposes of this section, "person" shall include, but not be limited to, individuals, firms, partnerships, associations, corporations, and governmental agencies.

SEC. 2. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local government entities which, in the aggregate, do not result in significant identifiable cost changes.

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STATE OF ILLINOIS

AERIAL EXHIBITIONS

AN ACT relating to safety devices for protection of aerial exhibitors. Approved Aug. 28, 1963. L.1963, p. 3453.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

50—1. Necessity of safety net or other safety device.] § 1. No person shall participate in a public performance or exhibition, or in a private exercise preparatory thereto, on a trapeze, tightrope, wire, rings, ropes, poles, or other aerial apparatus which requires skill, timing or balance and which creates a substantial risk to himself or others of serious injury by a fall from a height in excess of 20 feet, unless a safety net or other safety device of similar purpose and construction is placed between such person and the ground in such manner as to arrest or cushion his fall and minimize the risk of such injury.

50—2. Authorization or permission to participate without net—Prohibition.] § 2. No owner, agent, lessee or other person in control of operations of a circus, carnival, fair or other public place of assembly or amusement shall authorize or permit participation in an aerial performance, exhibition or private exercise in violation of Section 1 of this Act.[1]

[1] Section 50—1 of this chapter.

50—3. § 3. Sentence.) Violation of this Act is a Class A misdemeanor.
Amended by P.A. 77—2651, § 1, eff. Jan. 1, 1973.

CONTAINERS

Act of Aug. 3, 1965

Sec.
50—31. Sale of products in obliterated containers —Prohibition—Exception.
50—32. Utilization of used containers—requisites.
50—33. Sentence.
50—34. Construction.

AN ACT in relation to the use of containers and the labeling thereon. Approved Aug. 3, 1965. L. 1965, p. 2469.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

50—31. Sale of products in obliterated containers—Prohibition—Exception.] § 1. No person shall sell or offer for sale any product, article or substance in a container on which any statement of weight, quantity, quality, grade, ingredients or identification of the manufacturer, supplier or processor is obliterated by any other labeling unless such other labeling correctly restates any such obliterated statement.

This Section does not apply to any obliteration which is done in order to comply with Section 2 of this Act.[1]

[1] Section 50—32 of this chapter.

50—32. Utilization of used containers—Requisites.] § 2. No person shall utilize any used container for the purpose of sale of any product, article or substance unless the original marks of identification, weight, grade, quality and quantity have first been obliterated.

50—33. § 3. Sentence.) Violation of any provision of this Act is a business offense for which a fine shall be imposed not to exceed $1,000.
Amended by P.A. 77—2652, § 1, eff. Jan. 1, 1973.

50—34. Construction.] § 4. This Act shall not be construed as permitting the use of any containers or labels in a manner prohibited by any other law.

SOLICITATION, CONSPIRACY AND ATTEMPT

ANTITRUST ACT

Act of July 21, 1965

Sec.
60—1. Short title.
60—2. Purpose.
60—3. Violations—Enumeration.
60—4. Definitions.
60—5. Exceptions.
60—6. Violations — Punishments — Prosecutions.
60—7. Civil actions and remedies.
60—7.1 Personal service.
60—7.2 Investigation by Attorney General.
60—7.3 Service of subpoena.
60—7.4 Examination of witnesses.
60—7.5 Fees and mileage.
60—7.6 Failure or refusal to obey subpoena.
60—7.7 Incriminating testimony.
60—7.8 Action by state, counties, municipalities, etc. for damages.
60—7.9 Action not barred as affecting or involving interstate or foreign commerce.
60—8. Judgment or decree as prima facie evidence in action for damages.
60—9. Violation as conspiracy at common law.
60—10. Savings clause.
60—11. Construction of federal anti-trust law.

AN ACT to prohibit certain contracts, combinations, monopolies and conspiracies in restraint of trade or commerce; to exempt certain activities from the provisions of the Act; to provide criminal penalties and civil remedies for violations of the Act; and to repeal certain Acts therein named. Approved July 21, 1965. L.1965, p. 1943.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

60—1. Short title.] § 1. This Act shall be known and may be cited as the Illinois Antitrust Act.

60—2. Purpose.] § 2. The purpose of this Act is to promote the unhampered growth of commerce and industry throughout the State by prohibiting restraints of trade which are secured through monopolistic or oligarchic practices and which act or tend to act to decrease competition be-

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tween and among persons engaged in commerce and trade, whether in manufacturing, distribution, financing, and service industries or in related for-profit pursuits.

60—3. Violations—Enumeration.] § 3. Every person shall be deemed to have committed a violation of this Act who shall:

(1) Make any contract with, or engage in any combination or conspiracy with, any other person who is, or but for a prior agreement would be, a competitor of such person:

a. for the purpose or with the effect of fixing, controlling, or maintaining the price or rate charged for any commodity sold or bought by the parties thereto, or the fee charged or paid for any service performed or received by the parties thereto;

b. fixing, controlling, maintaining, limiting, or discontinuing the production, manufacture, mining, sale or supply of any commodity, or the sale or supply of any service, for the purpose or with the effect stated in paragraph a. of subsection (1);

c. allocating or dividing customers, territories, supplies, sales, or markets, functional or geographical, for any commodity or service; or

(2) By contract, combination, or conspiracy with one or more other persons unreasonably restrain trade or commerce; or

(3) Establish, maintain, use, or attempt to acquire monopoly power over any substantial part of trade or commerce of this State for the purpose of excluding competition or of controlling, fixing, or maintaining prices in such trade or commerce; or

(4) Lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, or services, whether patented or unpatented, for use, consumption, enjoyment, or resale, or fix a price charged thereof, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity or service of a competitor or competitors of the lessor or seller, where the effect of such lease, sale or contract for such sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce; or

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(5) Being an employee, officer or agent of any foreign government, or an employee, officer or agent of a corporation or other entity which does business with or seeks to do business with any foreign government or instrumentality thereof; enforce, attempt to enforce, agree to or take action to forward the aims of, any discriminatory practice by the foreign government which is based on race, color, creed, national ancestry or sex or on ethnic or religious grounds, where such conduct, course of conduct, or agreement takes place in whole or in part within the United States and affects business in this State.

Amended by P.A. 79-965, § 1, eff. Oct. 1, 1975.

60—4. Definitions.] § 4. As used in this Act, unless the context otherwise requires:

"Trade or commerce" includes all economic activity involving or relating to any commodity or service.

"Commodity" shall mean any kind of real or personal property.

"Service" shall mean any activity, not covered by the definition of "commodity," which is performed in whole or in part for the purpose of financial gain.

"Service" shall not be deemed to include labor which is performed by natural persons as employees of others.

"Person" shall mean any natural person, or any corporation, partnership, or association of persons.

60—5. Exceptions.] § 5. No provisions of this Act shall be construed to make illegal:

(1) the activities of any labor organization or of individual members thereof which are directed solely to labor objectives which are legitimate under the laws of either the State of Illinois or the United States;

(2) the activities of any agricultural or horticultural cooperative organization, whether incorporated or unincorporated, or of individual members thereof, which are directed solely to objectives of such cooperative organizations which are legitimate under the laws of either the State of Illinois or the United States;

(3) the activities of any public utility as defined in Section 10.3 of the Public Utilities Act [1] to the extent that such activities are subject to the jurisdiction of the Illinois Commerce Commission, or to the activities of telephone mutual concerns referred to in Section 10.3 of the Public Utilities Act to the extent such activities relate to the providing and maintenance of telephone service to owners and customers;

(4) the activities (including, but not limited to, the making of or participating in joint underwriting or joint reinsurance arrangement) of any insurer, insurance agent, insurance broker, independent insurance adjuster or rating organization to the extent that such activities are subject to regulation by the Director of Insurance of this State under, or are permitted or are authorized by, the Insurance Code or any other law of this State;

(5) the religious and charitable activities of any not-for-profit corporation, trust or organization established exclusively for religious or charitable purposes, or for both purposes;

(6) the activities of any not-for-profit corporation organized to provide telephone service on a mutual or co-operative basis or electrification on a co-operative basis, to the extent such activities relate to the marketing and distribution of telephone or electrical service to owners and customers;

(7) the activities engaged in by securities dealers who are (i) licensed by the State of Illinois or (ii) members of the National Association of Securities Dealers or (iii) members of any National Securities Exchange registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended,[2] in the course of their business of offering, selling, buying and selling, or otherwise trading in or underwriting securities, as agent, broker, or principal, and activities of any National Securities Exchange so registered, including the establishment of commission rates and schedules of charges;

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(8) the activities of any board of trade designated as a "contract market" by the Secretary of Agriculture of the United States pursuant to Section 5 of the Commodity Exchange Act, as amended;[3]

(9) the activities of any motor carrier of property as defined in "The Illinois Motor Carrier of Property Act", as heretofore or hereafter amended,[4] to the extent that such activities are permitted or authorized by the Act or are subject to regulation by the Illinois Commerce Commission;

(10) the activities of any state or national bank to the extent that such activities are regulated or supervised by officers of the state or federal government under the banking laws of this State or the United States;

(11) the activities of any state or federal savings and loan association to the extent that such activities are regulated or supervised by officers of the state or federal government under the savings and loan laws of this State or the United States; or

(12) the activities of any bona fide not-for-profit association, society or board, of attorneys, practitioners of medicine, architects, engineers, land surveyors or real estate brokers licensed and regulated by an agency of the State of Illinois, in recommending schedules of suggested fees, rates or commissions for use solely as guidelines in determining charges for professional and technical services.

[3] Chapter 111⅔, § 10.3.
[4] Title 15 U.S.C.A. § 71a et seq.
[5] Title 7 U.S.C.A. § 7.
[6] Chapter 95½, § 282.1 et seq.

60—6. Violations—Punishments—Prosecutions.] § 6. Every person who shall wilfully do any of the acts prohibited by subsections (1) and (4) of Section 3 of this Act [1] commits a Class 4 felony and a fine shall be imposed not to exceed $50,000.

(1) The Attorney General, with such assistance as he may from time to time require of the State's Attorneys in the several counties shall investigate suspected criminal violations of this Act and shall commence and try all prosecutions under this Act. Prosecutions under this Act may be commenced by complaint, information, or indictment. With respect to the commencement and trial of such prosecutions, the Attorney General shall have all of the powers and duties vested by law in State's Attorneys with respect to criminal prosecutions generally.

(2) A prosecution for any offense in violation of Section 6 of this Act [2] must be commenced within 4 years after the commission thereof.

(3) The Attorney General shall not commence prosecutions under this Act against any defendant who, at the time, is a defendant with regard to any current pending complaint, information or indictment filed by the United States for violation, or alleged violation, of the Federal Anti-Trust Statutes (including but not being limited, Act of July 2, 1890, Ch. 647, 26 U.S.Stat. 209, 15 U.S.C.A., Secs. 1–7; Act of Oct. 15, 1914, Ch. 323, 38 U.S.Stat. 730, 15 U.S.C.A. Secs. 12–27, 44; Act of August 17, 1937, Ch. 690, Title VIII, 50 U.S.Stat. 693, 15 U.S.C.A. Sec. 1; Act of July 7, 1955, Ch. 281, 69 U.S.Stat. 282, 15 U.S.C.A. Secs. 1–3; Act of May 26, 1938, Ch. 283, 52 U.S.Stat. 446, 15 U.S.C.A. Sec. 13–C; and any similar Acts passed in the future) involving substantially the same subject matter.

Amended by P.A. 77–2639, § 1, eff. Jan. 1, 1973; P.A. 78–863, § 1, eff. Sept. 15, 1973.

[1] Chapter 38, § 60-3.
[2] This section.

60—7. Civil actions and remedies.] § 7. The following civil actions and remedies are authorized under this Act:

(1) The Attorney General, with such assistance as he may from time to time require of the State's Attorneys in the several counties, shall bring suit in the Circuit Court to prevent and restrain violations of Section 3 of this Act.[1] In such a proceeding, the court shall determine whether a violation has been committed, and shall enter such judgment or decree as it considers necessary to remove the effects of any violation which it finds, and to prevent such violation from continuing or from being renewed in the future. The court, in its discretion, may exercise all equitable powers necessary for this purpose including, but not limited to, injunction, divestiture of property, divorcement of business units, dissolution of domestic corporations or associations, and suspension or termination of the right of foreign corporations or associations to do business in the State of Illinois.

(2) Any person who has been injured in his business or property, or is threatened with such injury, by a violation of Section 3 of this Act may maintain an action in the Circuit Court for damages, or for an injunction, or both, against any person who has committed such violation. If, in an action for an injunction, the court issues an injunction, the plaintiff shall be awarded costs and reasonable attorney's fees. In an action for damages, if injury is found to be due to a violation of subsections (1) and (4) of Section 3 of this Act, the person injured shall be awarded 3 times the amount of actual damages resulting from that violation, together with costs and reasonable attorney's fees. If injury is found to be due to a violation of subsections (2) or (3) of Section 3 of this Act, the person injured shall recover the actual damages caused by the violation, together with costs and reasonable attorney's fees, and if it is shown that such violation was willful, the court may, in its discretion, increase the amount recovered as damages up to a total of 3 times the amount of actual damages. This State, counties, municipalities, townships and any political subdivision organized under the authority of this State, and the United States, are considered a person having standing to bring an action under this subsection. The Attorney General may bring an action on behalf of this State, counties, municipalities, townships and other political subdivisions organized under the authority of this State to recover the damages under this subsection or by any comparable Federal law.

Beginning January 1, 1970, a file setting out the names of all special assistant attorneys general retained to prosecute antitrust matters and containing all terms and conditions of any arrangement or agreement regarding fees or compensation made between any such special assistant attorney general and the office of the Attorney General shall be maintained in the office of the Attorney General, open during all business hours to public inspection.

Any action for damages under this subsection is forever barred unless commenced within 4 years after the cause of action accrued, except that,

whenever any action is brought by the Attorney General for a violation of this Act, the running of the foregoing statute of limitations, with respect to every private right of action for damages under the subsection which is based in whole or in part on any matter complained of in the action by the Attorney General, shall be suspended during the pendency thereof, and for one year thereafter. No cause of action barred under existing law on July 21, 1965 shall be revived by this Act.

(3) Upon a finding that any domestic or foreign corporation organized or operating under the laws of this State has been engaged in conduct prohibited by Section 3 of this Act, or the terms of any injunction issued under this Act, a court of competent jurisdiction may, upon petition of the Attorney General, order the revocation, forfeiture or suspension of the charter, franchise, certificate of authority or privileges of any corporation operating under the laws of this State, or the dissolution of any such corporation.

PENALTY

(4) In lieu of any penalty otherwise prescribed for a violation of this Act, and in addition to an action under Section 7(1) of this Act,[2] the Attorney General may bring an action in the name and on behalf of the people of the State against any person, trustee, director, manager or other officer or agent of a corporation, or against a corporation, domestic or foreign, to recover a penalty not to exceed $50,000 for the doing in this State of any act herein declared illegal. The action must be brought within 4 years after the commission of the act upon which it is based.

Amended by P.A. 77-1675, § 1, eff. July 1, 1972

[1] Chapter 38, § 60-3.
[2] Chapter 38, § 60-7 (this section).

60—7.1 Personal service.] § 7.1 Personal service of any process in an action under this Act may be made upon any person outside the state if such person has engaged in conduct in violation of this Act in this State. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of this section.

Added by P.A. 76-208, § 1, eff. July 1, 1969.

60—7.2 Investigation by Attorney General.] § 7.2 Whenever it appears to the Attorney General that any person has engaged in, is engaging in, or is about to engage in any act or practice prohibited by this Act, or that any person has assisted or participated in any agreement or combination of the nature described herein, he may, in his discretion, conduct an investigation as he deems necessary in connection with the matter and has the authority prior to the commencement of any civil or criminal action as provided for in the Act to subpoena witnesses, compel their attendance, examine them under oath, or require the production of any books, documents, records, writings or tangible things hereafter referred to as "documentary material" which the Attorney General deems relevant or material to his investigation, for inspection, reproducing or copying under such terms and conditions as hereafter set forth. Any subpoena issued by the Attorney General shall contain the following information:

(a) The statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation.

(b) The date and place at which time the person is required to appear or produce documentary material in his possession, custody or control: in the office of the Attorney General located in Springfield or Chicago. Said date shall not be less than 10 days from date of service of the subpoena.

(c) Where documentary material is required to be produced, the same shall be described by class so as to clearly indicate the material demanded.

The Attorney General is hereby authorized, and may so elect, to require the production, pursuant to this section, of documentary material prior to the taking of any testimony of the person subpoenaed, in which event, said documentary material shall be made available for inspection and copying during normal business hours at the principal place of business of the person served, or at such other time and place, as may be agreed upon by the person served and the Attorney General. When documentary material is demanded by subpoena, said subpoena shall not:

(i) Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this State; or

(ii) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this State.

Added by P.A. 76-208, § 1, eff. July 1, 1969.

60—7.3 Service of subpoena.] § 7.3 Service of a subpoena of the Attorney General as provided herein may be made by (a) Delivery of a duly executed copy thereof to the person served, or if a person is not a natural person, to the principal place of business of the person to be served, or (b) Mailing by certified mail, return receipt requested, a duly executed copy thereof addressed to the person to be served at his principal place of business in this State, or, if said person has no place of business in the State, to his principal office.

Added by P.A. 76-208, § 1, eff. July 1, 1969.

60—7.4 Examination of witnesses.] § 7.4 The examination of all witnesses under this section shall be conducted by the Attorney General or by an assistant attorney general designated by him before an officer authorized to administer oaths in this State. The testimony shall be taken stenographically or by a sound recording device and shall be transcribed.

Added by P.A. 76-208, § 1, eff. July 1, 1969.

60—7.5 Fees and mileage.] § 7.5 All persons served with a subpoena by the Attorney General under this Act shall be paid the same fees and mileage as paid witnesses in the courts of this State.

Added by P.A. 76-208, § 1, eff. July 1, 1969.

60—7.6 Failure or refusal to obey subpoena.] § 7.6 In the event a witness served with a subpoena by the Attorney General under this Act fails or refuses to obey same or produce documentary material as provided herein, or to give testimony, relevant or material, to the investigation being conducted, the Attorney General may petition the Circuit Court of Sangamon or Cook County, or the county wherein the witness resides for an order requiring said witness to attend and testify or produce the documentary material demanded; there-

STATE OF ILLINOIS

after, any failure or refusal on the part of the witness to obey such order of court may be punishable by the court as a contempt thereof.
Added by P.A. 76-208, § 1, eff. July 1, 1969.

60—7.7 Incriminating testimony.] § 7.7 In any investigation brought by the Attorney General pursuant to this Act, no individual shall be excused from attending, testifying or producing documentary material, objects or tangible things in obedience to a subpoena or under order of the court on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to any penalty. No individual shall be criminally prosecuted or subjected to any criminal penalty under this Act for or on account of any testimony given by him in any investigation brought by the Attorney General pursuant to this Act; provided no individual so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.
Added by P.A. 76-208, § 1, eff. July 1, 1969.

60—7.8 Action by state, counties, municipalities, etc. for damages.] § 7.8 The Attorney General may bring an action on behalf of this State, counties, municipalities, townships and other political subdivisions organized under the authority of this State in Federal Court to recover damages provided for under any comparable provision of Federal law; provided, however, this shall not impair the authority of any such county, municipality, township or political subdivision to bring such action on its own behalf nor impair its authority to engage its own counsel in connection therewith.
Added by P.A. 76-208, § 1, eff. July 1, 1969.

60—7.9 Action not barred as affecting or involving interstate or foreign commerce.] § 7.9 No action under this Act shall be barred on the grounds that the activities or conduct complained of in any way affects or involves interstate or foreign commerce.
Added by P.A. 76-208, § 1, eff. July 1, 1969.

60—8. Judgment or decree as prima facie evidence in action for damages.] § 8. A final judgment or decree rendered in any civil or criminal proceeding brought by the Attorney General under this Act to the effect that a defendant has violated this Act shall be prima facie evidence against such defendant in any action for damages brought by any other party against such defendant under subsection (2) of Section 7 of this Act,[1] as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: Provided, that this Section shall not apply to civil consent judgments or decrees entered before any testimony has been taken.

[1] Section 60—7 of this chapter.

60—9. Violation as conspiracy at common law.] § 9. No contract, combination, conspiracy, or other act which violates this Act shall constitute or be deemed a conspiracy at common law.

60—10. Savings clause.] § 10. Nothing in this Act shall be deemed to amend, modify, or repeal in whole or in part the provisions of "An Act to protect trademark owners, distributors, and the public against injurious and uneconomic practices in the distribution of articles of standard quality under a trademark, brand or name", approved July 8, 1935, as amended.[1]

[1] Chapter 121½ § 188 et seq.

60—11. Construction of federal anti-trust law.] § 11. When the language of this Act is the same or similar to the language of a Federal Anti-trust Law, the courts of this state in construing this Act shall follow the construction given to the Federal Law by the Federal Courts.

[§ 12. Repealer.]

[§ 13. Appropriation.]

SENATE OF MARYLAND

No. 937

By: Senators Hoyer, Levitan, Emanuel, Blount, Dorman, Crawford, Steinberg, Curran, Connell, Broadwater, Abrams, Schweinhaut, Welcome, [[Ward]] Cade, Steers, Conroy, Douglass and Hutchinson
Introduced and read first time: February 26, 1976
Assigned to: Economic Affairs

Committee Report: Favorable with amendments
Senate Action: Adopted
Read second time: April 4, 1976

APPROVED
BY THE GOVERNOR

CHAPTER 613 MAY 17 1976

AN ACT concerning

Foreign Discriminatory Boycotts

FOR the purpose of prohibiting certain persons from furthering or participating in certain discriminatory boycotts against other persons on the basis of race, color, creed, religion, sex or national origin ; and providing for the regulation and administration of this prohibition, and for its enforcement by civil or criminal proceedings and penalties, and generally relating to foreign discriminatory boycotts.

BY adding to

Article - Commercial Law
Section 11-2A01 through 11-2A15, inclusive, to be under the new subtitle "Subtitle 2A. Foreign Discriminatory Boycotts"
Annotated Code of Maryland
(1975 Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Sections 11-2A01 through 11-2A15, inclusive, to be under the new subtitle "Subtitle 2A. Foreign Discriminatory Boycotts" be and it is hereby added to Article - Commercial Law, of the Annotated Code of Maryland (1975 Volume and 1975 Supplement) to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to the bill.
[[Double brackets]] enclose matter stricken out of bill.
Numerals at right identify computer lines of text.

2 SENATE BILL No. 937

Article - Commercial Law

SUBTITLE 2A. FOREIGN DISCRIMINATORY BOYCOTTS

11-2A01. DECLARATION OF POLICY; ADMINISTRATION OF SUBTITLE; CONSTRUCTION.

IT IS THE POLICY OF THE STATE OF MARYLAND TO OPPOSE RESTRAINTS OF TRADE AND UNFAIR TRADE PRACTICES IN THE FORM OF FOREIGN DISCRIMINATORY BOYCOTTS NOT SPECIFICALLY AUTHORIZED BY THE LAW OF THE UNITED STATES WHICH ARE FOSTERED OR IMPOSED BY FOREIGN PERSONS, FOREIGN GOVERNMENTS OR INTERNATIONAL ORGANIZATIONS AGAINST ANY [[PERSON]] DOMESTIC INDIVIDUAL ON THE BASIS OF RACE, COLOR, CREED, RELIGION, SEX OR NATIONAL ORIGIN. IT IS ALSO THE POLICY OF THE STATE OF MARYLAND TO OPPOSE THOSE ACTIONS, INCLUDING THE FORMATION OF AGREEMENTS, UNDERSTANDINGS OR CONTRACTUAL ARRANGEMENTS, EXPRESSED OR IMPLIED, WHICH HAVE THE EFFECT OF FURTHERING OR SUPPORTING [[SUCH]] THESE DISCRIMINATORY BOYCOTTS, IN ORDER THAT THE PEACE, HEALTH, SAFETY, PROSPERITY AND GENERAL WELFARE OF ALL THE INHABITANTS OF THE STATE MAY BE PROTECTED AND ENSURED. IT IS THE FURTHER POLICY OF THE STATE OF MARYLAND NOT TO IMPEDE DOMESTIC OR FOREIGN COMMERCE, THE FREE FLOW OF GOODS IN COMMERCE, OR ACTIONS REASONABLY NECESSARY TO PROTECT GOODS MOVING IN COMMERCE. THE STATE OF MARYLAND RECOGNIZES THE RIGHT OF MARYLAND FIRMS TO DECIDE WHETHER TO ENTER INTO COMMERCIAL AGREEMENTS WITH FOREIGN FIRMS, PROVIDED THE AGREEMENT DOES NOT CONTRAVENE U.S. FOREIGN POLICY OR ANY FEDERAL OR MARYLAND LAWS AND THE AGREEMENT DOES NOT DISCRIMINATE AGAINST DOMESTIC INDIVIDUALS ENTITLED TO THE BENEFIT OF THE LAWS OF MARYLAND ON THE BASIS OF RACE, COLOR, CREED, RELIGION, SEX OR NATIONAL ORIGIN, AND THE RIGHT OF MARYLAND FIRMS TO DECIDE WHETHER TO ENTER INTO A COMMERCIAL AGREEMENT WITH A FOREIGN FIRM THAT WOULD ADVANCE THE POLITICAL AND ECONOMIC INTERESTS OF A FOREIGN COUNTRY PROVIDED THAT AGREEMENT DOES NOT CONTRAVENE U.S. FOREIGN POLICY OR FEDERAL OR MARYLAND LAWS AND DOES NOT DISCRIMINATE AGAINST DOMESTIC INDIVIDUALS ENTITLED TO THE BENEFITS OF THE LAWS OF MARYLAND ON THE BASIS OF RACE, COLOR, CREED, RELIGION, SEX, OR NATIONAL ORIGIN. THIS SUBTITLE SHALL BE DEEMED AN EXERCISE OF THE POLICE POWER OF THE STATE OF MARYLAND FOR THE PROTECTION OF THE PEOPLE OF THIS STATE, AND SHALL BE ADMINISTERED AND PRINCIPALLY ENFORCED BY THE ATTORNEY GENERAL OF THE STATE OF MARYLAND. THE PROVISIONS OF THIS SUBTITLE SHALL BE CONSTRUED LIBERALLY SO AS TO EFFECTUATE THIS DECLARATION OF POLICY AND THE LAWS AND CONSTITUTION OF THE UNITED STATES, BUT NOTHING IN THIS SUBTITLE SHALL BE CONSTRUED TO INFRINGE UPON THE RIGHT OF THE UNITED STATES GOVERNMENT TO REGULATE INTERSTATE AND FOREIGN COMMERCE.

11-2A02. DEFINITIONS.

(A) IN THIS SUBTITLE, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "BUSINESS RELATIONSHIP" MEANS ANY ASPECT OF BUSINESS:

(1) DEALING WITH THE SALE, PURCHASE, LICENSING OR PROVISION OF GOODS, SERVICES OR INFORMATION; OR

(2) AFFECTING THE OWNERSHIP, MANAGEMENT, EMPLOYEES, HIRING PRACTICES, CUSTOMERS, CLIENTS, SUPPLIERS, CONTRACTORS, SUBCONTRACTORS OR OTHER BUSINESS ASSOCIATES OF ANY PERSON ENGAGED IN COMMERCE.

(C) "ATTORNEY GENERAL" MEANS THE ATTORNEY GENERAL OF THE STATE OF MARYLAND.

(D) "CONTROL" MEANS THE POWER TO EXERCISE A CONTROLLING INFLUENCE OVER THE MANAGEMENT POLICIES OF AN ENTITY, TO INFLUENCE THAT MANAGEMENT OR POLICIES OR PLAY A SIGNIFICANT ROLE IN THE IMPLEMENTATION OF THEM.

[[(E) "DISCRIMINATORY BOYCOTT" MEANS THE ENTERING INTO OR CARRYING OUT OF ANY AGREEMENT, UNDERSTANDING OR CONTRACTUAL ARRANGEMENT, EXPRESS OR IMPLIED, FOR ECONOMIC BENEFIT BETWEEN ANY PERSON AND ANY FOREIGN GOVERNMENT, FOREIGN PERSON OR INTERNATIONAL ORGANIZATION, WHICH IS NOT SPECIFICALLY AUTHORIZED BY THE LAW OF THE UNITED STATES AND WHICH IS REQUIRED OR IMPOSED, EITHER DIRECTLY OR INDIRECTLY, OVERTLY OR COVERTLY, BY THE FOREIGN GOVERNMENT, FOREIGN PERSON OR INTERNATIONAL ORGANIZATION IN ORDER TO RESTRICT, CONDITION, PROHIBIT OR INTERFERE WITH ANY BUSINESS RELATIONSHIP ON THE BASIS OF RACE, COLOR, CREED, RELIGION, SEX OR NATIONAL ORIGIN.]]

(E) "DISCRIMINATORY BOYCOTT" MEANS THE ENTERING INTO OR CARRYING OUT OF ANY PROVISION, EXPRESS OR IMPLIED, OF ANY AGREEMENT, UNDERSTANDING OR CONTRACTUAL ARRANGEMENT FOR ECONOMIC BENEFIT BETWEEN ANY PERSON AND ANY FOREIGN GOVERNMENT, FOREIGN PERSON, OR INTERNATIONAL ORGANIZATION, WHICH IS NOT SPECIFICALLY AUTHORIZED BY THE LAW OF THE UNITED STATES AND WHICH IS REQUIRED OR IMPOSED, EITHER DIRECTLY OR INDIRECTLY, OVERTLY OR COVERTLY, BY THE FOREIGN GOVERNMENT, FOREIGN PERSON, OR INTERNATIONAL ORGANIZATION IN ORDER TO RESTRICT, CONDITION, PROHIBIT, OR INTERFERE WITH ANY BUSINESS RELATIONSHIP ON THE BASIS OF A DOMESTIC INDIVIDUAL'S RACE, COLOR, CREED, RELIGION, SEX OR NATIONAL ORIGIN. EXCEPT, THAT ENTERING INTO AN AGREEMENT, UNDERSTANDING OR CONTRACTUAL ARRANGEMENT WITH RESPECT TO THE HANDLING OR SHIPPING OF GOODS WHILE IN INTERNATIONAL AND NOT INTRASTATE TRANSIT OR EXECUTING AND DELIVERING ANY OTHER DOCUMENT WITH RESPECT TO THE HANDLING OR SHIPPING OF GOODS WHILE IN INTERNATIONAL AND NOT INTRASTATE TRANSIT

OR CARRYING OUT OR COMPLYING WITH ANY PROVISION WITH RESPECT TO THE CHOICE OF CARRIER IN INTERNATIONAL AND NOT INTRASTATE TRANSIT OR THE INTERNATIONAL ROUTING OF GOODS WHILE IN INTERNATIONAL AND NOT INTRASTATE TRANSIT CONTAINED IN ANY SUCH AGREEMENT, UNDERSTANDING, CONTRACTUAL ARRANGEMENT OR OTHER DOCUMENT MAY NOT CONSTITUTE A DISCRIMINATORY BOYCOTT WITHIN THE MEANING OF THIS SUBTITLE.

(F) "DOMESTIC INDIVIDUAL" MEANS ANY INDIVIDUAL WHOSE RESIDENCE, DOMICILE, OR PRINCIPAL PLACE OF BUSINESS IS IN THE UNITED STATES AND WHO IS SUBJECT TO THE PROTECTION OF THE LAWS OF THE STATE OF MARYLAND.

[[(F)]] (G) "FOREIGN GOVERNMENT" INCLUDES ALL GOVERNMENTS AND POLITICAL SUBDIVISIONS AND THE INSTRUMENTALITIES THEREOF, EXCEPTING THE GOVERNMENTS, POLITICAL SUBDIVISIONS, AND INSTRUMENTALITIES OF THE UNITED STATES AND THE STATES, COMMONWEALTHS, TERRITORIES AND POSSESSIONS OF THE UNITED STATES, AND THE DISTRICT OF COLUMBIA.

[[(G)]] (H) "FOREIGN PERSONS" MEANS ANY PERSON WHOSE PRINCIPAL PLACE OF RESIDENCE, BUSINESS OR DOMICILE IS OUTSIDE THE UNITED STATES, OR ANY PERSON CONTROLLED DIRECTLY OR INDIRECTLY BY ANY OTHER PERSON WHOSE PRINCIPAL PLACE OF RESIDENCE, BUSINESS OR DOMICILE IS OUTSIDE THE UNITED STATES.

[[(H)]] (I) "INTERNATIONAL ORGANIZATION" MEANS ANY ASSOCIATION OR ORGANIZATION, OF WHICH A SUBSTANTIAL PORTION OF THE MEMBERSHIP INCLUDES FOREIGN PERSONS OR FOREIGN GOVERNMENTS, BUT DOES NOT INCLUDE AN INTERNATIONAL LABOR ORGANIZATION.

[[(I)]] (J) "PERSON" INCLUDES ONE OR MORE OF THE FOLLOWING AND THEIR AGENTS, EMPLOYEES, SERVANTS, REPRESENTATIVES, DIRECTORS, OFFICERS, PARTNERS, MEMBERS, MANAGERS AND SUPERINTENDENTS: INDIVIDUALS, THE STATE OF MARYLAND, CORPORATIONS, PARTNERSHIPS, JOINT VENTURES, ASSOCIATIONS, LABOR ORGANIZATIONS, BUT NOT INCLUDING INTERNATIONAL LABOR ORGANIZATIONS, EDUCATIONAL INSTITUTIONS, LEGAL REPRESENTATIVES, MUTUAL COMPANIES, JOINT-STOCK COMPANIES, TRUSTS, UNINCORPORATED ORGANIZATIONS, TRUSTEES, TRUSTEES IN BANKRUPTCY, RECEIVERS, FIDUCIARIES AND ALL OTHER ENTITIES RECOGNIZED AT LAW OR IN EQUITY BY THIS STATE.

[[(J)]] (K) "STATE OF MARYLAND" MEANS THE STATE AND ITS POLITICAL SUBDIVISIONS AND EACH OF THE INSTRUMENTALITIES OF THE STATE AND THE POLITICAL SUBDIVISION.

11-2A03. UNLAWFUL DISCRIMINATORY BOYCOTTS.

IT IS UNLAWFUL FOR A PERSON TO:

(A) KNOWINGLY PARTICIPATE IN A DISCRIMINATORY BOYCOTT; OR

(B) KNOWINGLY AID OR ASSIST ANY OTHER PERSON IN PARTICIPATING IN A DISCRIMINATORY BOYCOTT. HOWEVER, NOTHING IN THIS SUBTITLE SHALL MAKE IT UNLAWFUL FOR ANY PERSON WHO DOES NOT OTHERWISE PARTICIPATE OR AGREE TO PARTICIPATE IN A "DISCRIMINATORY BOYCOTT" MERELY TO HANDLE, OR SHIP THE GOODS OF A PERSON WHO MAY BE IN VIOLATION OF THIS SUBTITLE.

11-2A04. AGENCIES' RESPONSIBILITY TO REPORT VIOLATIONS.

IF ANY VIOLATION OR POSSIBLE VIOLATION OF THIS SUBTITLE COMES TO THE ATTENTION OF ANY OFFICER OR ANY DEPARTMENT, BOARD, COMMISSION, BUREAU, DIVISION, OFFICE OR OTHER AGENCY OF THE EXECUTIVE BRANCH OF THE STATE GOVERNMENT OR OF ANY POLITICAL SUBDIVISION OF THE STATE, THAT OFFICER OR THE CHIEF ADMINISTRATIVE OFFICER OF THE DEPARTMENT, BOARD, COMMISSION, BUREAU, DIVISION, OFFICE OR OTHER AGENCY, AS THE CASE MAY BE, SHALL SUBMIT PROMPTLY A WRITTEN REPORT OF THE VIOLATION OR POSSIBLE VIOLATION TO THE ATTORNEY GENERAL. THE REPORT SHALL CONTAIN A FULL STATEMENT OF THE FACTS AND CIRCUMSTANCES REGARDING THE VIOLATION OR POSSIBLE VIOLATION, INCLUDING THE NAMES AND ADDRESSES OF ALL PERSONS WHO HAVE OR MAY HAVE KNOWLEDGE OR INFORMATION WITH RESPECT TO IT, AND SHALL BE ACCOMPANIED BY COPIES OF ANY DOCUMENTS PERTINENT TO THE VIOLATION OR POSSIBLE VIOLATION THAT ARE IN THE POSSESSION OR CONTROL OF THE PERSON MAKING THE REPORT.

11-2A05. PRODUCTION OF DOCUMENTS FOR INSPECTION BY ATTORNEY GENERAL.

EXCEPT FOR PURPOSES OF A CRIMINAL PROSECUTION, IF THE ATTORNEY GENERAL BELIEVES THAT A PERSON IS IN POSSESSION, CUSTODY OR CONTROL OF ANY DOCUMENTS RELEVANT TO THE SUBJECT MATTER OF AN INVESTIGATION OF A POSSIBLE VIOLATION OF THIS SUBTITLE, HE MAY DEMAND AND OBTAIN THE PRODUCTION OF THESE DOCUMENTS IN THE MANNER PROVIDED FOR BY SECTION 11-205 OF THIS ARTICLE.

11-2A06. ASSURANCE OF DISCONTINUANCE OF PROHIBITED ACT.

(A) IN ENFORCING THIS SUBTITLE, THE ATTORNEY GENERAL MAY ACCEPT AN ASSURANCE OF DISCONTINUANCE OF AN ACT OR PRACTICE CONSIDERED IN VIOLATION OF THIS SUBTITLE FROM ANY PERSON ENGAGED IN THE ACT OR PRACTICE.

(B) THE ASSURANCE OF DISCONTINUANCE SHALL BE IN WRITING AND FILED WITH AND SUBJECT TO THE APPROVAL OF THE COURT OF THE COUNTY WHERE THE ALLEGED VIOLATOR RESIDES OR HAS HIS PRINCIPAL PLACE OF BUSINESS.

(C) THE ASSURANCE OF DISCONTINUANCE MAY NOT BE CONSIDERED FOR ANY PURPOSE AS AN ADMISSION OF A VIOLATION. HOWEVER, PROOF OF FAILURE TO COMPLY WITH THE ASSURANCE OF DISCONTINUANCE IS PRIMA FACIE EVIDENCE OF A VIOLATION OF THIS SUBTITLE.

11-2A07. CRIMINAL PROCEEDINGS.

(A) THE ATTORNEY GENERAL SHALL INVESTIGATE SUSPECTED CRIMINAL VIOLATIONS OF THIS SUBTITLE AND MAY REQUIRE ASSISTANCE FROM ANY STATE'S ATTORNEY FOR THAT PURPOSE.

(B) THE ATTORNEY GENERAL SHALL COMMENCE AND TRY ALL PROSECUTIONS UNDER THIS SUBTITLE WITH THE STATE'S ATTORNEY FOR THE COUNTY WHERE THE PROSECUTION IS BROUGHT.

(C) WITH RESPECT TO THE COMMENCEMENT AND TRIAL OF THE PROSECUTION, THE ATTORNEY GENERAL HAS ALL THE POWERS AND DUTIES VESTED BY LAW IN STATE'S ATTORNEYS WITH RESPECT TO CRIMINAL PROSECUTIONS.

(D) A PROSECUTION FOR ANY OFFENSE IN VIOLATION OF THIS SUBTITLE SHALL BE COMMENCED WITHIN FOUR YEARS AFTER THE OFFENSE IS COMMITTED.

11-2A08. COOPERATION WITH FEDERAL GOVERNMENT AND OTHER STATES.

THE ATTORNEY GENERAL MAY COOPERATE WITH THE FEDERAL GOVERNMENT AND OTHER STATES IN ENFORCEMENT OF THIS SUBTITLE.

11-2A09. CIVIL ACTIONS.

(A) (1) THE ATTORNEY GENERAL SHALL INSTITUTE PROCEEDINGS IN EQUITY TO PREVENT OR RESTRAIN VIOLATIONS OF SECTION 11-2A03 AND MAY REQUIRE ASSISTANCE FROM ANY STATE'S ATTORNEY FOR THAT PURPOSE.

(2) IN A PROCEEDING UNDER THIS SECTION, THE COURT SHALL DETERMINE WHETHER A VIOLATION HAS BEEN COMMITTED AND ENTER ANY JUDGMENT OR DECREE NECESSARY TO:

(I) REMOVE THE EFFECTS OF ANY VIOLATION IT FINDS; AND

(II) PREVENT CONTINUATION OR RENEWAL OF THE VIOLATION IN THE FUTURE.

(B) (1) THE UNITED STATES, THE STATE, AND ANY POLITICAL SUBDIVISION ORGANIZED UNDER THE AUTHORITY OF THE STATE IS A PERSON HAVING STANDING TO BRING AN ACTION UNDER THIS SUBSECTION.

(2) A PERSON INJURED BY A VIOLATION OF SECTION 11-2A03 MAY MAINTAIN AN ACTION FOR DAMAGES OR FOR AN INJUNCTION OR BOTH AGAINST ANY PERSON WHO HAS COMMITTED THE VIOLATION.

(3) IF AN INJUNCTION IS ISSUED, THE COMPLAINANT SHALL BE AWARDED COSTS AND REASONABLE ATTORNEY'S FEES.

(4) IN AN ACTION FOR DAMAGES, IF AN INJURY DUE TO A VIOLATION OF SECTION 2A03 IS FOUND, THE PERSON INJURED SHALL BE AWARDED THREE TIMES THE AMOUNT OF ACTUAL DAMAGES WHICH RESULTS FROM THE VIOLATION, WITH COSTS AND REASONABLE ATTORNEY'S FEES.

(5) THE ATTORNEY GENERAL MAY BRING AN ACTION ON BEHALF OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS TO RECOVER THE DAMAGES PROVIDED FOR BY THIS SUBSECTION OR ANY COMPARABLE PROVISION OF FEDERAL LAW.

(C) (1) AN ACTION BROUGHT TO ENFORCE THIS SUBTITLE SHALL BE COMMENCED WITHIN FOUR YEARS AFTER THE CAUSE OF ACTION ACCRUES.

(2) FOR THE PURPOSES OF THIS SUBSECTION, A CAUSE OF ACTION FOR A CONTINUING VIOLATION ACCRUES AT THE TIME OF THE LATEST VIOLATION.

11-2A10. CUMULATIVE REMEDIES.

THE REMEDIES PROVIDED IN THIS SUBTITLE ARE CUMULATIVE.

11-2A11. PENALTIES.

ANY PERSON WHO WILFULLY VIOLATES ANY OF THE PROVISIONS OF SECTION 11-2A03 OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $50,000 OR IMPRISONMENT NOT EXCEEDING SIX MONTHS OR BOTH.

11-2A12. [[CONTRACTS]] CONTRACT PROVISION DECLARED VOID.

ANY PROVISION OF ANY CONTRACT OR OTHER DOCUMENT OR OTHER AGREEMENT WHICH VIOLATES, OR WHICH, IF OBSERVED BY THE PERSON INTENDED TO BE BOUND BY THE PROVISION, WOULD CAUSE A VIOLATION OF SECTION 11-2A03 OF THIS SUBTITLE SHALL BE NULL AND VOID AS BEING AGAINST THE PUBLIC POLICY OF THE STATE OF MARYLAND.

11-2A13. PROMULGATION OF RULES AND REGULATIONS.

[[THE ATTORNEY GENERAL, THE PUBLIC SERVICE COMMISSION, THE STATE INSURANCE COMMISSIONER, THE SECURITIES COMMISSIONER, THE BANK COMMISSIONER, THE

SAVINGS AND LOAN COMMISSIONER, THE SECRETARY OF TRANSPORTATION AND THE SECRETARY OF ECONOMIC AND COMMUNITY DEVELOPMENT MAY]] THE ATTORNEY GENERAL MAY PROMULGATE RULES AND REGULATIONS FOR THE PURPOSE OF IMPLEMENTING AND ENFORCING THE PROVISIONS OF THIS SUBTITLE WITH RESPECT TO THE PERSONS SUBJECT TO THEIR RESPECTIVE JURISDICTIONS AND HAVE THE DUTY, AND ALL POWERS NECESSARY, TO ENFORCE ANY RULES AND REGULATIONS SO PROMULGATED.

11-2A14. APPLICABILITY OF ANTITRUST LAWS.

THIS SUBTITLE MAY NOT BE DEEMED TO SUPERSEDE, RESTRICT OR OTHERWISE LIMIT THE CONTINUING APPLICABILITY OF THE ANTITRUST LAWS OF THE STATE OF MARYLAND.

11-2A15. SHORT TITLE.

THIS SUBTITLE MAY BE CITED AS THE MARYLAND FOREIGN DISCRIMINATORY BOYCOTTS ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this Act which can be given effect without the invalid provisions or application, and to this end all the provisions of this Act are declared to be severable.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect [[July 1, 1976]] January 1, 1977.

Approved:

_____
Governor.

_____
President of the Senate.

_____
Speaker of the House of Delegates.

Sealed with the Great Seal and Presented to the Governor, for his approval this 17th day of MAY 1976

at _____ o'clock _____

_____

President.

BY THE HOUSE OF DELEGATES

_____ 1976

Read third time and passed by _____ Yeas and _____ Nays.

By order,

Chief Clerk.

BY THE SENATE

_____ 1976

House of Delegates amendment concurred in and bill passed by Yeas and Nays as amended.

By order,

Secretary.

Read and Examined by Proofreaders:

_____
Proofreader.

_____
Proofreader.

BY THE SENATE

_____ 1976

Read the third time and passed by yeas and nays.
By order,

Secretary.

BY THE HOUSE OF DELEGATES

_____ 1976

Read the first time and referred to _____
By order,

Chief Clerk.

REPORT OF COMMITTEE

_____ Chairman.

BY THE HOUSE OF DELEGATES

_____ 1976

Reported favorably from the _____
and read the second time.
By order,

Chief Clerk.

BY THE HOUSE OF DELEGATES

_____ 1976

Reported favorably from the _____
with amendment; amendment adopted, read the second time.

By order,

Chief Clerk.

Chapter 297.

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Seventy-six

AN ACT PROHIBITING CERTAIN DISCRIMINATION BY BUSINESSES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 151D the following chapter:-

CHAPTER 151E.

PROHIBITION OF CERTAIN DISCRIMINATION BY BUSINESSES.

Section 1. The following words and phrases as used in this chapter shall have the following meaning unless the context clearly requires otherwise:-

"Business", the manufacture, processing, sale, purchase, licensing, distribution, provision, or advertising of goods or services, or extension of credit, or issuance of letters of credit, or any other aspect of business.

"Foreign government", all governments and political subdivisions and the instrumentalities thereof, excepting the government, political subdivisions, and instrumentalities of the United States and the states, commonwealths, territories and possessions of the United States, and the District of Columbia;

"Foreign person", any person whose principal place of residence, business or domicile is outside the United States, or any person controlled directly or indirectly by such person or persons; provided however that no person shall be deemed a foreign person if after reasonable inquiry and due diligence it cannot be determined that any such person has a principal place of residence, business, or domicile outside the United States or is controlled by such person.

"Foreign trade relationships", the dealing with or in any foreign country of any person, or being listed on a boycott list or compilation of unacceptable persons maintained by a foreign government, foreign person, or international organization.

"International organization", any association or organization, with the exception of labor associations, or organizations of which more than a majority of the membership consists of foreign persons or foreign governments; and

"Persons", one or more of the following or their agents, employees, servants, representatives, directors, officers, partners, members, managers, superintendents, and legal representatives: individuals, corporations, partnerships, joint ventures, associations, labor organizations, educational institutions, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries, and all other entities recognized at law by this commonwealth.

Section 2. It shall be unlawful for any person doing business in the commonwealth:

(i) to enter into any agreement, contract, arrangement, combination, or understanding with any foreign government, foreign person, or international organization, which requires such person to refuse, fail, or cease to do business in the commonwealth with any other person who is domiciled or has a usual place of business in the commonwealth, based upon such other person's race, color, creed, religion, sex, national origin or foreign trade relationships;

(ii) to execute in the commonwealth any contract with any foreign government, foreign person, or international organization which requires such person to refuse, fail or cease to do business with another person based upon such other person's race, color, creed, religion, sex, national origin, or foreign trade relationships;

(iii) to refuse, fail or cease to do business in the commonwealth with any other person who is domiciled or has a usual place of business in the commonwealth when such refusal, failure, or cessation results directly or indirectly from an agreement, contract, arrangement, combination, or understanding between the person who refuses, fails or ceases to do business and any foreign government, foreign person, or international organization, and is based upon such other person's race, color, creed, religion, sex, national origin or foreign trade relationships;

(iv) to discharge or to fail, refuse or cease to hire, promote or appoint in the commonwealth any other person who is domiciled in the commonwealth to any position of employment or employment responsibility

when such refusal, failure or cessation results from an agreement, contract, arrangement, combination, or understanding with any foreign government, foreign person, or international organization and is based upon such other person's race, color, creed, religion, sex, national origin, or foreign trade relationships;

(v) to wilfully and knowingly aid or abet any other person to engage in conduct which is prohibited by this chapter.

It shall not be unlawful under this chapter:

(i) to engage in conduct required by or expressly authorized by acts of the United States Congress, a United States treaty, a United States Regulation, or a United States Executive Order;

(ii) to enter into any agreement with a foreign government or foreign person which requires that a preference or priority be given to the citizens or products of a particular country;

(iii) to enter into any agreement with an international organization entirely composed of member governments or their contracting representatives which requires that a preference or priority be given to the citizens or products of one or more of such member governments;

(iv) to enter into any agreement with respect to the insuring, handling or shipping of goods, or choice of carrier while in international transit.

Section 3. The attorney general may institute a civil action to prevent or restrain violations of section two.

A person injured by a violation of section two may maintain an action for damages or for an injunction or both against any person who has committed the violation.

In a proceeding under this section, the court shall determine whether a violation has been committed and enter any judgment or decree necessary to remove the effects of any violation it finds and to prevent continuation or renewal of the violation in the future.

If an application for an injunction is granted, after due notice to all parties, a hearing thereon, and as a disposition on the merits of such application, the complainant may be awarded costs and reasonable attorney's fees.

In an action for damages, if there is a wilful violation of section two, the person injured may be awarded up to three times the amount of actual damages which results from the violation, with costs and reasonable attorney's fees.

An action brought to enforce this section shall be commenced within four years after the cause of action accrues.

For the purpose of this paragraph, a cause of action for a continuing violation accrues at the time of the latest violation.

Section 4. The remedies provided in this chapter are cumulative.

Section 5. Any provision of any contract or other document or other agreement which violates section two or which, if complied with by the person intended to be bound by the provision, would cause a violation of section two shall be null and void as being against the public policy of the commonwealth.

Section 6. This chapter shall not be deemed to supersede, restrict or otherwise limit the continuing applicability of the anti-trust or anti-discrimination laws of the commonwealth.

SECTION 2. The provisions of chapter one hundred and fifty-one E of the General Laws, inserted by section one of this act, shall take effect on January first, nineteen hundred and seventy-seven, and shall not apply to conduct pursuant to contracts entered into prior to January first, nineteen hundred and seventy-seven.

House of Representatives, August 16, 1976.

Passed to be enacted, William G. Flynn Jr. Acting Speaker.

In Senate, August 16, 1976.

Passed to be enacted, Kevin B. Harrington President.

August 18, 1976.

Approved,

Michael Dukakis Governor.

MARYLAND DEPARTMENT OF TRANSPORTATION
NOV 3 1976
DIRECTOR'S OFFICE

basic rights, as well as the right to have their grievances redressed, this legislation is highly responsive to the needs of this group of citizens. I commend the Moreland Commission and the sponsors of these bills for their work, which goes far in assuring that elderly and disabled New Yorkers who must look to nursing homes when they can no longer take care of themselves can find there the quality of care they seek and deserve.

The bills are approved.

Hugh L. Carey

HUMAN RIGHTS—DISCRIMINATION—BOYCOTTS, REFUSAL TO DEAL, ETC.

On approving L.1975, c. 662, the Governor stated:

August 4, 1975

This bill prohibits commercial boycotts and blacklisting.

It also provides that the prohibitions of the Human Rights Law will apply to discriminatory acts committed against New York residents and domestic corporations, when such acts are committed outside the State.

New York invites and welcomes the commercial trade and business of all persons and nations throughout the world, so that they may contribute to, and benefit from, our commerce.

New York—the commercial center of the United States and the world—will not tolerate the subversion of our nation's fundamental tenet—"which gives to bigotry no sanction, to persecution no assistance."

We affirm by this Act that no nation or person is welcome to do business in this state, if that business is accompanied by religious or racial bigotry.

The bill is approved.

Hugh L. Carey

INDUSTRIAL DEVELOPMENT AGENCY ACT

On approving Ls.1975, cs. 671 to 678, the Governor stated:

August 6, 1975

The New York State Industrial Development Agency Act (the "Act"), Title I of Article 18-A of the General Municipal Law,[1] empowers the Legislature to establish an industrial development agency by special act for a "municipality" which is defined by the Act to mean any county, city, village, town or Indian reservation in the State. The Act authorizes the creation of industrial development agencies to give municipalities of the State a means by which they could induce industry to locate or to remain in such municipalities in order to promote economically sound commerce, as well as to prevent unemployment and economic deterioration.

The Act grants such industrial development agencies specific power to finance projects as defined therein, which are suitable for "manufacturing, warehousing, research, commercial or industrial purposes and which may include or mean an industrial pollution control facility or a winter recreation facility." This inducement to industry has been recognized as having a valid public purpose. Because of their public purpose and benefit the obligations and property of the industrial development agencies are exempt from Federal and State taxation.

Human Rights—Discrimination—Boycotts, Refusal to Deal, Etc.

Memorandum relating to this chapter, see page 1765

CHAPTER 662

An Act to amend the executive law, in relation to boycotts and refusals to deal because of race, creed, color, national origin or sex and in relation to extending the human rights law to apply to certain acts committed outside the state.

Approved Aug. 6, 1975, effective Jan. 1, 1976.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section two hundred ninety-six of the executive law is hereby amended by adding at the end thereof, a new subdivision, to be subdivision thirteen, to read as follows:

13. It shall be an unlawful discriminatory practice (i) for any person to discriminate against, boycott or blacklist, or to refuse to buy from, sell to or trade with, any person, because of the race, creed, color, national origin or sex of such person, or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person wilfully to do any act or refrain from doing any act which enables any such person to take such action. This subdivision shall not apply to:

(a) Boycotts connected with labor disputes; or

(b) Boycotts to protest unlawful discriminatory practices.

§ 2. Such law is hereby amended by adding thereto a new section, to be section two hundred ninety-eight-a, to read as follows:

§ 298-a. Application of article to certain acts committed outside the state of New York

1. The provisions of this article shall apply as hereinafter provided to an act committed outside this state against a resident of this state or against a corporation organized under the laws of this state or authorized to do business in this state, if such act would constitute an unlawful discriminatory practice if committed within this state.

2. If a resident person or domestic corporation violates any provision of this article by virtue of the provisions of this section, this article shall apply to such person or corporation in the same manner and to the same extent as such provisions would have applied had such act been committed within this state except that the penal provisions of such article shall not be applicable.

3. If a non-resident person or foreign corporation violates any provision of this article by virtue of the provisions of this section, such person or corporation shall be prohibited from transacting any business within this state. Except as otherwise provided in this subdivision, the provisions of section two hundred ninety-seven of this chapter governing the procedure for determining and processing unlawful discriminatory practices shall apply to violations defined by this subdivision insofar as such provisions are or can be made applicable. If the division of

human rights has reason to believe that a non-resident person or foreign corporation has committed or is about to commit outside of this state an act which if committed within this state would constitute an unlawful discriminatory practice and that such act is in violation of any provision of this article by virtue of the provisions of this section, it shall serve a copy of the complaint upon such person or corporation by personal service either within or without the state or by registered mail, return receipt requested, directed to such person or corporation at his or its last known place of residence or business, together with a notice requiring such person or corporation to appear at a hearing, specifying the time and place thereof, and to show cause why a cease and desist order should not be issued against such person or corporation. If such person or corporation shall fail to appear at such hearing or does not show sufficient cause why such order should not be issued, the division shall cause to be issued and served upon such person or corporation an order to cease or desist from the act or acts complained of. Failure to comply with any such order shall be followed by the issuance by the division of an order prohibiting such person or corporation from transacting any business within this state. A person or corporation who or which transacts business in this state in violation of any such order is guilty of a class A misdemeanor. Any order issued pursuant to this subdivision may be vacated by the division upon satisfactory proof of compliance with such order. All orders issued pursuant to this subdivision shall be subject to judicial review in the manner prescribed by article seventy-eight of the civil practice law and rules.[1]

[1] CPLR § 7801 et seq.

→ 1 YEAR AND/OR $5,000 FINE

§ 3. If any clause, sentence, paragraph, section or part of subdivision thirteen of section two hundred ninety-six of the executive law or of section two hundred ninety-eight-a of the executive law, as added by this act or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction, to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, or the application thereof to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof, or the person or circumstances directly involved in the controversy in which such judgment shall have been rendered.

§ 4. This act shall take effect on the first day of January, nineteen hundred seventy-six.

Education—Student Financial Aid—Eligibility Requirements

CHAPTER 663

AN ACT to amend the education law, in relation to eligibility requirements for student financial aid under the New York state higher education services corporation.

Approved Aug. 6, 1975, effective July 1, 1975.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision three of section six hundred sixty-one of the education law, as added by chapter nine hundred forty-two of the

WERTZ, YEVOLI, ZIMMER—read once and referred to the Committee on Governmental Operations—reported from said committee with amendments, ordered reprinted as amended and placed on the order of second reading—passed by Assembly and delivered to the Senate, recalled from Senate, vote reconsidered, bill amended, ordered reprinted and restored to third reading

AN ACT

to amend the executive law, in relation to boycotts and refusals to deal because of race, creed, color, national origin or sex and in relation to extending the human rights law to apply to certain acts committed outside the state

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section two hundred ninety-six of the executive law is hereby amended by adding at the end thereof, a new subdivision, to be subdivision thirteen, to read as follows:

13. It shall be an unlawful discriminatory practice (i) for any person to discriminate against, boycott or blacklist, or to refuse to buy from, sell to or trade with, any person, because of the race, creed, color, national origin or sex of such person, or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person wilfully to do any act or refrain from doing any act which enables any such person to take such action. This subdivision shall not apply to:

(a) Boycotts connected with labor disputes; or

(b) Boycotts to protest unlawful discriminatory practices.

§ 2. Such law is hereby amended by adding thereto a new section, to be section two hundred ninety-eight-a, to read as follows:

§ 298-a. Application of article to certain acts committed outside the state of New York. 1. The provisions of this article shall apply as hereinafter provided to an act committed outside this state against a resident of this state or against a corporation organized under the laws of this state or authorized to do business in this state, if such act would constitute an unlawful discriminatory practice if committed within this state.

2. If a resident person or domestic corporation violates any provision of this article by virtue of the provisions of this section, this article shall apply to such person or corporation in the same manner and to the same extent as such provisions would have applied had such act been committed within this state except that the penal provisions of such article shall not be applicable.

3. If a non-resident person or foreign corporation violates any provision of this article by virtue of the provisions of this section, such person or corporation shall be prohibited from transacting any business within this state. Except as otherwise provided in this subdivision, the provisions of section two hundred ninety-seven of this chapter governing the procedure for determining and processing unlawful discriminatory practices shall apply to violations defined by this subdivision insofar as such provisions are or can be made applicable. If the division of human rights has reason to believe that a non-resident person or foreign corporation has committed or is about to commit outside of this state an act which if committed within this state would constitute an unlawful discriminatory practice and that such act is in violation of any provision of this article by virtue of the provisions of this section, it shall serve a copy of the complaint upon such person or corporation by personal service either within or without the state or by registered mail, return receipt requested, directed to such person or corporation at his or its last known place of residence or business, together with a notice requiring such person or corporation to appear at a hearing, specifying the time and place thereof, and to show cause why a cease and desist order should not be issued against such person or corporation. If such person or corporation shall fail to appear at such hearing or does not show sufficient cause why such order should not be issued, the division shall cause to be issued and served upon such person or corporation an order to cease or desist from the act or acts complained of. Failure to comply with any such order shall be followed by the issuance by the division of an order prohibiting such person or corporation from transacting any business within this state. A person or corporation who or which transacts business in this state in violation of any such order is guilty of a class A misdemeanor. Any order issued pursuant to this subdivision may be

vacated by the division upon satisfactory proof of compliance with such order. All orders issued pursuant to this subdivision shall be subject to judicial review in the manner prescribed by article seventy-eight of the civil practice law and rules.

§ 3. If any clause, sentence, paragraph, section or part of subdivision thirteen of section two hundred ninety-six of the executive law or of section two hundred ninety-eight-a of the executive law, as added by this act or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction, to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, or the application thereof to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof, or the person or circumstances directly involved in the controversy in which such judgment shall have been rendered.

§ 4. This act shall take effect on the first day of January, nineteen hundred seventy-six.

(Substitute House Bill No. 1358)

AN ACT

To amend sections 1331.01, 1331.02, 1331.03, 1331.08, 1331.10, 1331.11, 1331.99, 1707.44, and 2307.382, and to enact sections 1129.11 and 1153.05 of the Revised Code to prohibit discriminatory refusals to deal in commercial transactions and provide remedies in relation thereto.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1331.01, 1331.02, 1331.03, 1331.08, 1331.10, 1331.11, 1331.99, 1707.44, and 2307.382 be amended, and sections 1129.11 and 1153.05 of the Revised Code be enacted to read as follows:

Sec. 1129.11. NO BANK, IN A TRANSACTION AS PRINCIPAL, FIDUCIARY, OR AGENT, SHALL REFUSE TO BUY FROM, SELL TO, OR TRADE WITH ANY PERSON BECAUSE SUCH PERSON APPEARS ON A BLACKLIST ISSUED BY, OR IS BEING BOYCOTTED BY, ANY FOREIGN CORPORATE OR GOVERNMENTAL ENTITY.

Sec. 1153.05. NO BUILDING AND LOAN ASSOCIATION SHALL REFUSE TO BUY FROM, SELL TO, OR TRADE WITH ANY PERSON BECAUSE SUCH PERSON APPEARS ON A BLACKLIST ISSUED BY, OR IS BEING BOYCOTTED BY, ANY FOREIGN CORPORATE OR GOVERNMENTAL ENTITY.

Sec. 1331.01. As used in sections 1331.01 to 1331.14 of the Revised Code:

(A) "Person" includes corporations, partnerships, and associations existing under or authorized by any state or territory of the United States or, AND SOLELY FOR THE PURPOSE OF THE DEFINITION OF DIVISION (B) OF THIS SECTION, a foreign country GOVERNMENTAL ENTITY.

(B) "Trust" is a combination of capital, skill, or acts by two or more persons for any of the following purposes:

(1) To create or carry out restrictions in trade or commerce;

(2) To limit or reduce the production, or increase or reduce the price of merchandise or a commodity;

(3) To prevent competition in manufacturing, making, transportation, sale, or purchase of merchandise, produce, or a commodity;

(4) To fix at a standard or figure, whereby its price to the public or consumer is in any manner controlled or established, an article or commodity of merchandise, produce, or commerce intended for sale, barter, use, or consumption in this state;

(5) To make, enter into, execute, or carry out contracts, obligations, or agreements of any kind by which they bind or have bound themselves not to sell, dispose of, or transport an article or commodity, or an article of trade, use, merchandise, commerce, or consumption below a common standard figure or fixed value, or by which they agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of an article, commodity, or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, purchasers, or consumers in the sale or transportation of such article or commodity, or by which they agree to pool, combine, or directly or indirectly unite any interests which they have connected with the sale or transportation of such article or commodity, that its price might in any manner be affected;

(6) TO REFUSE TO BUY FROM, SELL TO, OR TRADE WITH ANY PERSON BECAUSE SUCH PERSON APPEARS ON A BLACKLIST ISSUED BY, OR IS BEING BOYCOTTED BY, ANY FOREIGN CORPORATE OR GOVERNMENTAL ENTITY.

"Trust," as defined in this section, does not include bargaining by a labor organization in negotiating or effecting contracts with an employer or employer group with reference to minimum payment to any member of the labor organization for any motor vehicles owned, driven, and used exclusively by such member in the performance of his duties of employment pursuant to a collective bargaining agreement between the labor organization and the employer or employer group.

A trust as defined in division (B) of this section is unlawful and void.

Sec. 1331.02. No person shall issue or own trust certificates, and no person shall enter into a combination, contract, or agreement, the purpose and effect of which is to place the management or control of such combination, or the manufactured product OR SERVICE thereof, in the hands of a trustee with the intent to limit or fix the price or lessen the production and OR sale of an article OR SERVICE of commerce, use, or consumption, or to prevent, restrict, or diminish the manufacture or output of such

article OR SERVICE, OR REFUSE TO BUY FROM, SELL TO, OR TRADE WITH ANY PERSON BECAUSE SUCH PERSON APPEARS ON A BLACKLIST ISSUED BY, OR IS BEING BOYCOTTED BY, ANY FOREIGN CORPORATE OR GOVERNMENTAL ENTITY.

Sec. 1331.03. Whoever violates sections 1331.01 to 1331.14 , inclusive, of the Revised Code, shall forfeit to the state, for the use of the general revenue fund, fifty FIVE HUNDRED dollars for each day that such violation is committed or continued after due notice is given by the attorney general or a prosecuting attorney. Such sum may be recovered in the name of the state in any county where the offense is committed or where any of the offenders reside. The attorney general, or the prosecuting attorney of any county upon the order of the attorney general, shall prosecute for the recovery thereof. When such action is prosecuted by the attorney general he may begin the same in the court of common pleas of Franklin county or of any OTHER county in which the defendant resides or does business THERE IS PROPER VENUE.

Sec. 1331.08. In addition to the civil and criminal penalties provided in sections 1331.01 to 1331.14 , inclusive, of the Revised Code, the person injured in his business or property by another person by reason of anything forbidden or declared to be unlawful in such sections, may sue therefor in any court having jurisdiction AND VENUE thereof in the county where the defendant or his agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and recover fowfold the damages sustained by him and his costs of suit. When it appears to the court, before which a proceeding under such sections is pending, that the ends of justice require other parties to be brought before such court, the court may cause them to be made parties defendant and summoned, whether or not they reside in the county where such action is pending.

Sec. 1331.10. In prosecutions under sections 1331.01 to 1331.14 , inclusive, of the Revised Code, it is sufficient to prove that a trust or combination exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it, or proving or producing an article of agreement, or a written instrument on which it may have been based; or that it was evidenced by a written instrument.

Sec. 1331.11. Courts of common pleas are invested with jurisdiction to restrain and enjoin violators of sections 1331.01 to 1331.14 , inclusive, of the Revised Code. For a violation of such sections by a corporation or association mentioned herein, the attorney general, or the prosecuting attorney of the proper county, shall institute proper proceedings in a court of competent jurisdiction in any county in the state where such corporation or association exists, does business, or has a domicile WHICH THERE IS PROPER VENUE.

When such suit is instituted by the attorney general in quo warranto, he may begin the same in the supreme court of the state, or the court of appeals of Franklin county. When such suit is instituted by the attorney general to restrain and enjoin a violation of sections 1331.01 to 1331.14 , inclusive, of the Revised Code, he may begin the same in the court of common pleas of Franklin county. Such proceedings to restrain and enjoin such violation shall be by way of petition COMPLAINT setting forth the case, and praying that such violation be enjoined or otherwise prohibited.

Upon the filing of such petition COMPLAINT, and before final decree, the court may make such temporary restraining order or prohibition as is just in the premises. In any action or proceeding in quo warranto by the attorney general or a prosecuting attorney against a corporation, the court in which such action or proceeding is pending may, ancillary to such action or proceeding, restrain or enjoin the corporation and its officers and agents from continuing or committing during the pendency of the action the alleged act by reason of which the action is brought.

When, in a proceeding in quo warranto by the attorney general or any prosecuting attorney, any Ohio corporation is, on final hearing, found guilty of violating such sections, the court may declare a forfeiture of all its rights, privileges, and franchises to the state and may order the corporation dissolved and appoint a trustee to wind up its affairs, as is provided in other cases in quo warranto.

Sec. 1331.99. (A) Whoever violates section 1331.02 or 1331.04 1331.05 of the Revised Code shall be fined not less than fifty nor more than five thousand dollars or imprisoned not less than six months nor more than one year, or both IS GUILTY OF A FELONY OF THE FOURTH DEGREE.

(B) Whoever violates section 1331.05 1331.04 of the Revised Code shall be fined not less than five hundred dollars and imprisoned not less than one nor more than five years IS GUILTY OF A MISDEMEANOR OF THE FIRST DEGREE.

(C) Whoever violates section 1331.15 of the Revised Code shall be fined not more than five hundred dollars or imprisoned not more than six months IS GUILTY OF A MISDEMEANOR OF THE SECOND DEGREE.

Sec. 1707.44. (A) No person shall engage in the business of acting as broker for others in the purchase or sale of securities, sell securities, cause them to be sold, offer them for sale, cause them to be offered for sale, or engage in the business of buying, selling, or dealing in securities otherwise than in transactions through or with a licensed dealer, unless the securities are of a kind specified in division (G) or (I) of section 1707.02 of the Revised Code, the transactions are of a kind specified in divisions (B) to (L), inclusive, and (O) to (Q), inclusive, of section 1707.03 of the Revised Code, or in section 1707.04 or 1707.06 of the Revised

Code, or the transactions are exempt under section 1707.34 of the Revised Code, without being licensed by the division of securities.

(B) No person shall knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for any of the following purposes:

(1) Complying with sections 1707.01 to 1707.45, inclusive, of the Revised Code, in regard to registering securities by description;

(2) Securing the qualification of any securities under such sections;

(3) Procuring the licensing of any dealer or salesman under such sections;

(4) Selling any securities in this state.

(C) No person shall knowingly and intentionally sell, cause to be sold, offer for sale, or cause to be offered for sale, any security which comes under any of the following descriptions:

(1) Is not exempt under section 1707.02 of the Revised Code, nor the subject matter of one of the transactions exempted in sections 1707.03, 1707.04, and 1707.34 of the Revised Code, has not been registered by description or qualified, and is not the subject matter of a transaction that has been registered by description;

(2) The prescribed fees for registering by description or for qualification have not been paid in respect to such security;

(3) Such person has been notified by the division, or has knowledge of such notice, that the right to buy, sell, or deal in such security has been suspended or revoked, or that the registration by description or by qualification under which it may be sold has been suspended or revoked;

(4) The offer or sale is accompanied by a statement that the security offered or sold has been or is to be in any manner indorsed by the division.

(D) No person who is an officer, director, or trustee of, or a dealer for, any issuer, and who knows such issuer to be insolvent in that the liabilities of such issuer exceed its assets, shall sell any securities of or for any such issuer, without disclosing the fact of such insolvency to the purchaser.

(E) No person with intent to aid in the sale of any securities on behalf of the issuer, and who knowingly make any representation not authorized by such issuer or at material variance with statements and documents filed with the division by such issuer.

(F) No person, with intent to deceive, shall sell, cause to be sold, offer for sale, or cause to be offered for sale, any securities of an insolvent issuer, with knowledge that such issuer is insolvent in that the liabilities of such issuer exceed its assets, taken at their fair market value.

(G) No person in selling securities shall knowingly engage in any act or practice which is, in sections 1707.01 to 1707.45, inclusive, of the Revised Code, declared illegal, defined as fraudulent, or prohibited.

(H) NO LICENSED DEALER SHALL REFUSE TO BUY FROM, SELL TO, OR TRADE WITH ANY PERSON BECAUSE SUCH PERSON APPEARS ON A BLACKLIST ISSUED BY, OR IS BEING BOYCOTTED BY, ANY FOREIGN CORPORATE OR GOVERNMENTAL ENTITY, NOR SELL ANY SECURITIES OF OR FOR ANY ISSUER WHO IS KNOWN IN RELATION TO THE ISSUANCE OR SALE OF SUCH SECURITIES TO HAVE ENGAGED IN SUCH PRACTICES.

Sec. 2307.382. (A) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person's:

(1) Transacting any business in this state;

(2) Contracting to supply services or goods in this state;

(3) Causing tortious injury by an act or omission in this state;

(4) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(5) Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when he might reasonably have expected such person to use, consume, or be affected by the goods in this state, provided that he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(6) CAUSING TORTIOUS INJURY IN THIS STATE TO ANY PERSON BY AN ACT OUTSIDE THIS STATE COMMITTED WITH THE PURPOSE OF INJURING PERSONS, WHEN HE MIGHT REASONABLY HAVE EXPECTED THAT SOME PERSON WOULD BE INJURED THEREBY IN THIS STATE;

(7) CAUSING TORTIOUS INJURY TO ANY PERSON BY A CRIMINAL ACT, ANY ELEMENT OF WHICH TAKES PLACE IN THIS STATE, WHICH HE COMMITS OR IN THE COMMISSION OF WHICH HE IS GUILTY OF COMPLICITY.

(8) Having an interest in, using, or possessing real property in this state;

~~(7)~~ (9) Contracting to insure any person, property, or risk located within this state at the time of contracting.

(B) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him.

Sub. H. B. No. 1358

7

SECTION 2. That existing sections 1331.01, 1331.02, 1331.03, 1331.08, 1331.10, 1331.11, 1331.99, 1707.44, and 2307.382 of the Revised Code are hereby repealed.

Vernal G. Riffe Jr.

Speaker _____ *of the House of Representatives.*

Richard F. Celeste

President _____ *of the Senate.*

Passed June 11, 1976

Approved July 2, 1976

James A. Rhodes

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

David A. Johnston

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 2nd day of July, A. D. 1976,

Ted W. Brown

Secretary of State.

File No. 414. Effective Date October 1, 1976.

APPENDIX B

HOUSE JOINT RESOLUTION No. 31

By: Delegates McCoy, Murphy, Hergenroeder, Harrison, Dypski, Weisengoff, Rutkowski, Curran and Avara
Introduced and read first time: January 19, 1977
Assigned to: Economic Matters

Committee Report: Favorable
House Action: Adopted
Read second time: February 11, 1977

RESOLUTION NO. _____

HOUSE JOINT RESOLUTION

A House Joint Resolution concerning

Discriminatory Boycotts

FOR the purpose of urging Congress to swiftly enact legislation which would make discriminatory boycotts unlawful.

WHEREAS, The citizens of the United States are or may become subjected to discriminatory boycotts based upon race, color, creed, religion, sex or national origin; and

WHEREAS, The United States of America is founded upon principles of political, social and economic equality which by definition cannot co-exist such discriminatory boycotts; and

WHEREAS, The Congress of the United States presently has under consideration certain legislation which would make discriminatory boycotts unlawful and would further prohibit compliance with such boycotts by individuals afforded freedom, and the protection of the Constitution and laws of the United States; now, therefore, be it

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Congress of the United States is urged to swiftly enact the antidiscrimination legislation under consideration; and be it further

RESOLVED, That copies of this Resolution be sent to the Honorable Walter F. Mondale, Vice President of the United States and President of the Senate, Senate Office Building, Washington, D. C. 20510; the Honorable Thomas P. O'Neill, Speaker of the House of Representatives, House Office Building, Washington, D. C. 20515; and to the Maryland Congressional Delegation: Senators Charles McC. Mathias, Jr. and Paul S. Sarbanes, Senate Office Building, Washington, D. C. 20510; and Representatives Robert E. Bauman, Clarence D. Long, Barbara A. Mikulski, Marjorie S. Holt, Gladys N. Spellman, Goodloe E. Byron, Parren J. Mitchell, and Newton I. Steers, Jr., House Office Building, Washington, D. C. 20515.

APPENDIX C

NORTH ATLANTIC PORTS ASSOCIATION, INC.

RESOLUTION

WHEREAS: there has been a proliferation of State Legislation dealing with compliance with foreign restrictive trade practices and boycotts; and

WHEREAS: the existence of such State Legislation has caused disruption of established competitive port relationships with concomitant adverse economic effects on those port regions experiencing trade dislocations; and

WHEREAS: it has been declared U. S. policy to oppose restrictive trade practices or boycotts imposed by foreign countries against other countries friendly to the U. S.; and

WHEREAS: State Legislation in this field conflicts with Federal constitutional powers to regulate U. S. international commerce,

NOW THEREFORE BE IT RESOLVED: that the North Atlantic Ports Association urges the enactment of a United States statute establishing a single, uniform national policy dealing with restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the U. S. or against any domestic concern or person and reaffirming Federal preemption of State regulation in this area;

AND BE IT FURTHER RESOLVED: that the Executive Director and the Committee on Federal Legislation and Government Traffic are hereby authorized to take such action as may be necessary to accomplish the objectives of this Resolution.

ADOPTED: December 1, 1976, at Washington, D.C.

APPENDIX D

S.69 AMENDMENT

On page 29, line 7, insert the following:

"Sec. 204 - When the rules, regulations and provisions of this Title are in effect, any State law, rule or regulation or law, rule, or regulation of a political subdivision thereof, with regard to foreign discriminatory boycotts and other restrictive trading practices against any U.S. person of that State or subdivision, is hereby superseded and preempted."

On page 29, line 8, strike "204." and insert in lieu thereof "205.".

S.92 AMENDMENT

On page 29, line 11, insert the following:

"Sec. 204 - When the rules, regulations and provisions of this Title are in effect, any State law, rule or regulation or law, rule, or regulation of a political subdivision thereof, with regard to foreign discriminatory boycotts and other restrictive trading practices against any U.S. person of that State or subdivision, is hereby superseded and preempted."

On page 29, line 12, strike "204." and insert in lieu thereof "205.".

Senator STEVENSON. Mr. Weinstein.

STATEMENT OF GILBERT M. WEINSTEIN, VICE PRESIDENT, INTERNATIONAL AFFAIRS, NEW YORK CHAMBER OF COMMERCE AND INDUSTRY

Mr. WEINSTEIN. My name is Gilbert Weinstein.

[The complete statement follows:]

STATEMENT OF THE NEW YORK CHAMBER OF COMMERCE AND INDUSTRY

My name is Gilbert M. Weinstein. I am vice president of international affairs for the New York Chamber of Commerce and Industry. We welcome this opportunity to present our views on what we consider to be a critical aspect of the proposed legislation on international boycotts.

For the record, the New York Chamber of Commerce and Industry is the oldest Chamber in the United States, having been founded in 1768. It is composed of about 2,000 members engaged in business or the professions, the majority of whom work and reside in the New York Metropolitan area. Its membership is broadly representative of the commerce and industry of New York City and the New York Metropolitan area and it includes banking, finance, trade, insurance, shipping, transportation, construction, and public utilities, among others and all the ancillary services and professions which support the operations of the nation's and the world's leading business community. In addition, our membership contains a large group of firms involved in international trade.

First, let me say that we feel it is essential that this country should have a law concerning international boycotts, not just a policy. The law should be clear, consistent and uniformly applicable to any international boycott situation. Ambiguities, uncertainties and inconsistencies are impossible conditions for business firms engaged in foreign trade. Therefore, the passage of legislation that will end these ambiguities and provide an effective law to counter international boycotts is welcomed by the Chamber.

We would like to address ourselves at this time to one specific issue in connection with boycott legislation, the State laws concerning boycotts.

Since January 1, 1976, the effective date of New York State's law prohibiting all compliance with international boycotts, there has been a proliferation of other state laws on the subject—no two of them alike, and in fact, no one of them clear enough to be totally effective. This lack of uniformity in approach and application has led to virtual chaos among U.S. exporters, who, faced with various laws in different states, often opt to ship through ports in states with either a weak law, or no law at all.

It is inconceivable that an exporter can now ship to a Middle Eastern market, comply with federal law, and to avoid violating the law in New York State, can ship through Hampton Roads, Virginia which has none; or through Baltimore, Maryland, which has a law which is not as inclusive as New York's.

The result of the various state laws has therefore been, not broad compliance with many state laws, but rather a shift in shipping patterns. The increases in cargo shipments to Arab countries in 1976 have been immense from those ports having no state law or a law weaker than New York's. (See following table).

This situation is not in the best interests of either the business community or those states which have enacted laws. New York's Governor Carey stated at a Chamber meeting in April 1976, that the New York Boycott Law was ineffective, counter-productive, and resulted in a loss of cargo and jobs.

Since constitutionally we believe this subject is the responsibility of the Federal Government, because of the severe distortions of normal trade patterns, and because of the confusion that currently exists with many State laws which will only be increased in number if there is no pre-emption, we urge that this Committee specifically include pre-emption in the language of the anti-boycott legislation being considered as part of the Export Administration Act.

WATERBORNE EXPORTS TO ARAB MIDEAST [1] FROM SELECTED U.S. PORTS (LINER SERVICE ONLY)

U.S. port	1975 (long tons)	1976 [2] (long tons)	Tonnage change 1976/75	Percent change 1976/75
New York/New Jersey	193, 348	183, 100	−10, 248	−5. 3
Baltimore	81, 384	185, 250	+103, 866	+127. 6
Hampton Roads	52, 180	120, 500	+68, 320	+130. 9
Mobile	74, 750	144, 400	+69, 650	+93. 1
New Orleans	203, 422	412, 500	+209, 078	+102. 8
Total, United States	942, 199	1, 330, 100	+387, 901	+41. 2

[1] Includes: Syria, Iraq, Jordan Kuwait, Saudi Arabia, United Arab Emirates, Oman, Bahrain, Libya, and Egypt.
[2] Estimated on basis of 10 mo actual data.

Source: Bureau of the Census data.

Senator STEVENSON. Thank you, gentlemen.

You have stated your position clearly and convincingly. It's a position on pre-emption that I agree with so I have no questions.

Are there questions, Senator Proxmire?

Senator PROXMIRE. I think you have made a very strong case, too. I want to ask particularly Mr. Ullman and Mr. Weinstein. Yesterday Mr. Stewart, president of the Machinery and Allied Products Institute, said the Jewish freight forwarders have moved out of New York in response to New York State law on the boycott.

Now that testimony was contested by the witnesses from the Anti-Defamation League. I wonder if you could shed any light on whether or not that is a fact, whether you know anything about it, whether you would be in a position to know if that were a fact.

Mr. ULLMAN. The question is whether Jewish freight forwarders have moved out of New York as a result of the New York State law?

Senator PROXMIRE. That's right.

Mr. ULLMAN. To the best of my—and I think I would know this—I know of no Jewish freight forwarder that has moved out of New York by reason of the New York State law.

Senator PROXMIRE. How about other freight forwarders?

Mr. ULLMAN. They haven't moved out. What's happened, Senator Proxmire, is that the freight forwarders in New York have been forced to divert the shipments from the Port of New York to other ports. When I say forced, it's because they act as agents only for the exporters and the exporters who are mostly located inland have made a determination not to use the Port of New York for fear of being prosecuted as they can be as nonresident corporations.

Senator PROXMIRE. Do you have actual personal knowledge that this has taken place?

Mr. ULLMAN. Well, for example, many of my clients have offices not only in New York but Baltimore and the other outports as well. What we have seen is the complete virtual elimination of Arab shipments through the Port of New York and these same exporters moving their goods through Baltimore at the same forwarder's office but in Baltimore.

Senator PROXMIRE. But Baltimore has legislation, too.

Mr. ULLMAN. Yes; they do, but——

Senator PROXMIRE. Mr. Halpin just testified they have very strong legislation.

Mr. ULLMAN. They do, but their legislation contains certain exceptions to it which comfort our American exporters. The usual cer-

tifications which are required are unlawful under New York laws, as I mentioned, but probably lawful under the Maryland law, so it causes no real concern.

Senator PROXMIRE. Well, let me ask all of you if you can specify what ways you or members of your organizations have altered your operations in response to State boycott laws.

Mr. ULLMAN. I can give you another illustration. For example, one very large oil company had a freight forwarder in New York that employed 40 people in its division handling the account of this one oil company. On January 1, Senator, when the New York State law became effective, January 1, 1976, that oil company said to its freight forwarder in New York, "You close down your division in New York and reestablish it or obtain new employees in Houston, Tex."

Senator PROXMIRE. What oil company was that?

Mr. ULLMAN. Aramco. "We're no longer going to use the Port of New York," and they have not been using the Port of New York.

Senator PROXMIRE. If we passed either one of these bills—and they are similar in many ways—in your view, would this have any economic effect on American jobs? You say it has that effect on jobs in New York.

Mr. ULLMAN. Well, I'm here to testify, Senator, about the preemption clause and I'm not too familiar with the other aspects of the bill as to whether it would have any effect on American jobs depends upon the substance of the bills before this committee and frankly I'm not that expert in the impact of your legislation in that regard. There is always that threat that it will have an affect upon American jobs. I'm not so sure it will.

Senator PROXMIRE. Under your New York antiboycott law, what enforcement actions have been brought, how many, and how many persons have been convicted of violating State law?

Mr. ULLMAN. We have had one test case and it's sent tremors up and down the spines of every bank, forwarder, exporter, and ocean carrier in the United States. That is a test case involving two very prominent New York banks who were called in before the State human rights division for alleged violations of our New York law and the alleged violations of what I have been telling you about is the certifications that are required and the human rights division on January 6, 1977, a little over a month ago, held that when banks processed these letters of credit containing these certifications there is "probable cause" to believe that the banks are in violation of our New York State law.

Now what that means is if the banks are in violation, so were the ocean carriers; so are the freight forwarders; so are the exporters; and so are the insurers who have to give a certification that they are not on any blacklist. What that does, of course, is just terrorize the people who are using the Port of New York and diverting cargo, despite the fact that New York is a great cargo port, we have the best service, the best facilities. Our American shippers are being deprived of the use of those facilities because of this New York State law.

That includes, Senator Williams, our great facilities in New Jersey as well, as you well know, and when I say New York I mean the Port of New York and New Jersey.

Senator WILLIAMS. I notice the port is properly described here as New York-New Jersey.

Mr. ULLMAN. Yes, sir. I'm talking about the impact——

Senator PROXMIRE. Could you include Wisconsin in that somehow? [Laughter.]

Senator STEVENSON. Don't forget Chicago.

Senator PROXMIRE. One of the witnesses that just preceded you, Mr. McNeill, also favored preemption, but he indicated that he favored a bill which, in my view, would be considerably weaker than the laws that you have on your books in New York or we have in Maryland or California or elsewhere. So the preemption would have the effect of enfeebling rather than strengthening the antiboycott law. Do you have any feeling, therefore, about the substance of the laws that we have passed, the preempting law that we're going to enact? Are you familiar with S. 69 or S. 92?

Mr. ULLMAN. Yes; I'm familiar generally with the bills and I might say, Senator Proxmire—and I heard Attorney General Burch testify along those lines as well—he said that Maryland would have no objection if the Federal law was a stronger law than the law of the State of Maryland. I think you have an impossible job trying to determine whether there should be a preemption clause based upon whether the Federal law is stronger or weaker than any State law. It could, for example, be stronger than Maryland but weaker than New York. It could be weaker than Illinois but stronger than California. So I don't see how you can make that determination.

Senator PROXMIRE. I realize the determination is hard to make. It's a judgment call. What we have done on other legislation is to provide that the preemptions would take place unless the State law were stronger. We have done that with respect to consumer protection laws where those more vigorous consumer protection laws on the books would not be preempted.

Mr. ULLMAN. Well, I think you can probably match up one State law with one Federal law, but when you try to match State laws with one Federal to determine which is stronger and which is weaker, you'd have your hands full. All in all, as far as these two Federal bills are concerned, I think they are strong laws. I think that they would do the job, in my own judgment. This is just my personal view. They would do the job of preventing what we consider improper boycotting practices, and that's all we really look for in a Federal law, but once that's passed and that's the law of the land we hope no State laws would be in conflict with it.

Mr. WEINSTEIN. I think, also, there's a problem not only as to which State law is the strongest, but New York, for example, which has had the State law the longest still has not issued any guidelines or regulations with respect to the law. So in fact, the same questions that arose in the minds of exporters in the State in August of 1975 when the law was first signed still exists now because there are still no guidelines or regulations, and the fact is the diversions started in January of 1976 when the law went into effect before anyone even knew what the implications of the law were or how it would be enforced. Those diversions started and they still continue simply because the whole area of the State law on the boycott subject is still an area of confusion. And so we look forward to a Federal law that is clear, concise, and spells out the law so that the exporters in the country can follow the same set of regulations.

Senator PROXMIRE. That's the thrust of the testimony of all three of you gentlemen and it's very welcome and I agree with it wholeheartedly.

There's just one remaining problem. Even if we passed preempting antiboycott legislation, we have tax reform legislation that provides for another kind of treatment to avoid the boycott issue and the boycott question. That act contains different standards and procedures and prohibitions and so forth than those proposed in the pending legislation. How do you feel about that? Do you think it would be desirable for us to try to act on that legislation, too? Would it be necessary to change it?

Mr. ULLMAN. Well, my own view, Senator——

Senator PROXMIRE. How burdensome would it be with those two conflicting laws on the books?

Mr. ULLMAN. Well, we have a very difficult time as it is to compete with foreign suppliers. If we make it more complicated and more onerous for our American exporters to have to comply with the antiboycott provisions of the tax law and the antiboycott restrictions in your legislation, it just discourages the smaller fellow from exporting and that does not help our foreign commerce. If he's worried about being prosecuted, he says, it isn't worth it all; we'll just not do it.

Senator PROXMIRE. So you're arguing that if we pass this legislation we should try to act to persuade our colleagues to consider ending the antiboycott provisions in the Tax Reform Act?

Mr. ULLMAN. Almost the same argument we made to you about preempting the State laws. We think there should be one law on the whole question.

Senator PROXMIRE. Thank you, Mr. Chairman.

Senator STEVENSON. Senator Williams.

Senator WILLIAMS. Just one or two, Mr. Chairman.

Do you have the comparative analysis of the six-State antiboycott laws?

Mr. ULLMAN. No, sir. I do not have a comparative analysis. If it were helpful to you, Senator Williams, I would try to get it out. I'm familiar with the New York law and to some extent the Maryland law.

Senator WILLIAMS. Well, I think that we should have this from some source.

Mr. HALPIN. We have done such an analysis and I think it's already been supplied to the committee (see p. 377).

Senator WILLIAMS. Fine. Now the attorney general from Maryland said that he strongly suggests—in fact, I think his acceptance of the Federal law is based in part on preemption. The Federal statute should be stronger than the Maryland act. Evidently the Maryland act is far less demanding than the New York act. When I look at this tonnage shipped, Maryland has been a big gainer in tonnage to shipments to the Arab Mideast.

Mr. ULLMAN. That's correct, and we attribute that to the New York law prohibiting an exporter from furnishing the usual certifications that are required, whereas apparently the Maryland law doesn't do that.

Senator PROXMIRE. Would the Senator yield?

Senator WILLIAMS. Yes, sir.

Senator PROXMIRE. Isn't it a matter of timing on that? Isn't it true that the Maryland law only went into effect January of this year?

Mr. ULLMAN. Yes; but there's language, Senator Proxmire, in the Maryland law which excludes, for example, shipping documents from the thrust of the law and these certifications are shipping documents so I think that exporters derive much——

Senator PROXMIRE. You're just saying the numbers you have here don't reflect the Maryland law's effect; it may be that, but these numbers don't reflect that?

Mr. ULLMAN. No; they do not. The numbers reflect the fact that the American exporter public has become terrified with the New York law.

Mr. HALPIN. Speaking as a deputy port administrator, Senator, we also think the services in our port had something to do with this.

Mr. WEINSTEIN. But in fact it shows how easily an exporter can divert cargo from one port to another and that's really an unhealthy situation. We can compete on fairly equal grounds we hope with respect to service and sailings and what have you, but when it becomes a situation where you compete on the basis of which State has the stronger law, then it seems to be unfair.

Mr. ULLMAN. I might give you an illustration of that, Senator, with all due deference to Baltimore. The Pacific Far East Line, for example, initiated a service from the North Atlantic ports to the Arabian countries. Any time a major line initiates that kind of service it always includes a call at the Port of New York. It's unheard of to do otherwise. Yet when Pacific Far East Line, PFEL, came to start its service and scheduled the call at the Port of New York, it found out that it could not pick up any cargo at the Port of New York. For the first time in the history of steamship service in years there was no cargo from New York, but all the cargo in the world from Baltimore, Mobile, and these other ports.

Senator WILLIAMS. At any rate, it should be a total preemption; is that what you're suggesting, without loopholes for various State actions?

Mr. ULLMAN. It should be very clear, Senator Williams. Otherwise, the courts tend to sustain State laws. I think Mr. Marcuss is familiar with the *General Electric* case.

Senator WILLIAMS. Thank you very much.

Senator STEVENSON. Any further questions or comments?

Thank you, gentlemen.

The subcommittee will reconvene on February 28 at 10 o'clock to hear from the State Department.

[Whereupon, at 1:10 p.m., the hearing was adjourned.]

ARAB BOYCOTT

MONDAY, FEBRUARY 28, 1977

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL FINANCE,
Washington, D.C.

The subcommittee met at 10:05 a.m. in room 5302, Dirksen Senate Office Building, Senator Adlai E. Stevenson, chairman, presiding.

Present: Senators Proxmire, Stevenson, Sarbanes, Heinz, and Schmitt.

Senator STEVENSON. This morning the subcommittee resumes its consideration of legislation to extend the Export Administration Act. That act is the basic export control authority of the United States. The authority of that act controls exports technology, of food, of nuclear exports, exports of all commodities for purposes of maintaining domestic supplies against excessive foreign demand with inflationary consequences or shortages in the United States.

The antiboycott provisions of this legislation have attracted the most public attention and generated a good deal of pressure upon the Congress.

Our witness this morning is the Secretary of State who has recently returned from a trip to the Middle East. Your views, Mr. Secretary, on the effect of this legislation on U.S. interests in the Middle East and throughout the world would be welcome, especially your views as to the effect it might have on oil prices or the prospects for a settlement in the Middle East.

I think we all realize that no act of the Congress will end the boycott. It will only be ended as part of an overall settlement in the Middle East. So we welcome you, Mr. Secretary, and look forward to hearing your views.

STATEMENT OF CYRUS R. VANCE, SECRETARY OF STATE

Secretary VANCE. Mr. Chairman, I am pleased to have this opportunity to address the boycott issue and the administration's position concerning proposed new antiboycott legislation.

We favor renewal of the Export Administration Act of 1969, in order to provide specific legislative authority for the Secretary of Commerce to control exports for reasons of national security, foreign policy, and short supply. A number of agencies will be submitting to your committee reports on title I and title III of the bills to renew the Export Administration Act.

Let me turn to the question of boycotts.

As the first representative of the new administration to address this issue before the Congress, let me say that we want to work closely with you on the problems that foreign boycotts present to American commerce and American firms, especially as they involve conduct that is contrary to commonly accepted American principles and standards. The President has often made clear his concern, and I share his deep feelings on this issue. We deplore discrimination on the basis of race religion, and national origin. We also oppose boycott practices requiring American firms not to deal with friendly countries or other American firms.

Let me summarize the principles on which we believe an approach to these problems should be based:

1. Any foreign boycott-motivated discrimination against U.S. persons on the basis of religion, race, or national origin should be explicitly outlawed. Firms should be prohibited from responding to boycott-related requests for information on religion race, or national origin.

2. Refusals by American firms to deal with any friendly foreign country, demonstrably related to a foreign boycott, should be prohibited. So, in general, should refusal to deal with other U.S. firms. We believe that decisions as to what commerce U.S. firms may or may not have with other countries or with other U.S. firms should be made, consonant with American policy, by Americans and only Americans. This principle raises difficult questions about enforcement—turning on judgments about a company's intent when it does not do business with a friendly country or another company. We need to examine, both within the executive branch and in consultation with the Congress, how this principle can most effectively be expressed in legislation. We need to provide our companies with clear and realistic guidance on how to conduct trade in boycott-related situations. We must consider for example, such difficult problems as whether an American company might be required to ship goods to a foreign country when it knew that these goods would be turned back or confiscated at the port of entry.

3. The prohibitions affecting U.S. firms should not, in general, apply to transactions of foreign subsidiaries of U.S. firms which involve the commerce of a foreign country and not U.S. exports. But they should apply in cases in which any U.S. firm seeks to use foreign subsidiaries in a manner intended to circumvent the law.

4. The new law should preempt provisions of State laws dealing with foreign boycotts. This should be done in the interests of uniformity and to remove elements of confusion and uncertainty from the conduct of our foreign commerce.

5. To enable an orderly transition to be made to the new legislative requirements, some kind of grandfather clause or grace period should be provided with regard to transactions under existing commitments.

6. The new law should substantially cut back the reporting requirements on U.S. firms. Many of the reports now required would not be needed in enforcing a new law. The benefits of maintaining such information-gathering requirements would be disproportionate to the burden on individual firms.

7. All boycott reports submitted to Commerce should be publicly released. Only proprietary business information should be protected.

We recognize that this issue stems, at this time, primarily from concerns about the Arab boycott of Israel. We believe that, in coopera-

tion with Congress, we can make progress on these issues without seriously impairing opportunities for foreign trade, or inhibiting our diplomacy in the Middle East. And we commit ourselves to cooperating with Congress to achieve this result.

We are strongly opposed to foreign boycotts directed against friendly countries. But we understand that states do exercise their sovereign rights to regulate their commerce, and to decide, if they wish, to refuse to deal with other nations or the firms of other nations. They have the right to control the source of their imports as well as the destination of their exports.

We view as a different matter, however, efforts by any foreign countries to influence decisions and activities of American firms in connection with any primary boycott of another country. Thus, secondary boycott practices of other countries can intrude seriously into the business practices of American firms engaged in U.S. commerce and can have the effect of using U.S. commerce to harm third countries with whom we are friends. I believe we will all agree that U.S. firms should not be required, by the decision of a foreign nation, to avoid commercial relations with other friendly countries or with other U.S. firms.

One specific problem arising from foreign boycott practices has been the requirement for use of negative certifications, for example, certifications that goods do not originate in a given country, or are not produced by a firm blacklisted by another country or are not shipped on a blacklisted vessel. The members of this committee should be aware that diplomatic efforts and the efforts of the U.S. business community over many months have brought about some encouraging changes in this area of concern. I am happy to report that during my visit to Saudi Arabia, its leaders informed us that Saudi Arabia will accept positive certifications of origin. We are continuing our efforts to bring about further voluntary changes by foreign governments in this and other areas of intrusive boycott practices.

We agree, Mr. Chairman, on the need to prohibit by law in absolute terms any discriminatory actions arising from foreign boycotts, based on race, religion, or national origin. Forthright diplomacy is another way to pursue our efforts, and we have found a forthcoming response. The Government of Saudi Arabia has very recently informed us again that its boycott "has no connection with or basis in matters of race or creed." When specific instances of discriminatory requests have been reported in isolated instances, we have approached foreign governments and received assurances that discrimination was contrary to the policy of the government in question. We appreciate the responsiveness of the boycotting countries to our concern in seeking to remedy and avoid recurrence of any such discrimination, which all of us abhor. We will remain vigilant on this point.

My appearance here follows closely on my return from the Middle East. I believe it would be appropriate to talk for a moment about our Middle East policy as a whole, and about our hopes and our efforts for a peace settlement in the area.

President Carter asked me to travel to the Middle East, in my first mission abroad as Secretary of State, because he believes that the Middle East situation must be given very high and early priority.

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My trip had several purposes:

To demonstrate the importance the President and I attach to the achievement of a just and durable peace in the Middle East, and to the maintenance of close ties between the United States and the nations I visited.

To meet the leaders of those nations and establish the personal relationships that are so important to a diplomacy of confidence and trust.

And to learn from them their views, so we might define more clearly areas of both agreement and disagreement, and establish a base for our own diplomacy in pursuit of peace.

I am satisfied that these purposes were met. We face a long and difficult process, with no assurance of success. But this has been a good beginning, and we are determined to proceed.

I was encouraged to find a number of areas of general agreement among the leaders I met:

There is a common commitment to working for peace, so that they may turn the energies of their governments to bringing the economic and social benefits of peace to their peoples.

There is a consensus on the desirability of reconvening the Geneva Conference sometime during the second half of 1977.

Each agreed to attend such a conference without preconditions, assuming the resolution of disagreements on procedural questions.

They would like to see the United States play an active role in facilitating the search for a settlement.

And each leader accepted an invitation to meet with President Carter during the next 3 months.

This is a base on which we can build. But there are complex procedural and substantive issues that will require imagination and flexibility from us all.

While there was general agreement on what the core issues of a settlement must be, there are strongly differing views on how these issues should be resolved. These core issues are the nature of peaceful relations between Israel and her neighbors; the boundaries of peace, and the future of the Palestinians.

In addition there are sharp disagreements over whether and how the PLO should be involved in a Geneva Conference.

No one can promise success. But we are committed to a serious effort at helping the nations of the Middle East find a just and lasting solution to the conflicts and tensions that have plagued them and threatened the world for nearly three decades.

Given the inherent difficulty of this challenge, and the very high stakes we have in meeting it successfully, we believe we are bound to do what we can to enhance the chances of success by our handling of related issues.

I must also report that I did find concern in Arab capitals about the effects of legislation on commercial relations between the United States and those countries.

They also attach importance to good bilateral relations with the United States. Our shared economic and commercial interests are an important part of these relations. The magnitude of these interests is reflected in the latest statistics on economic relations between the United States and Middle Eastern countries. Over the past 4 years, the

Middle East market for U.S. exports has doubled in importance—from about 5 percent of total U.S. exports to nearly 10 percent of this total. During this period, our exports to the Arab countries have nearly quadrupled, to a present level of $7 billion a year. Our current exports to Israel and the Arab countries of the Middle East now total some $8.5 billion. U.S. oil imports from Arab countries now account for more than a third of total U.S. imports and more than 15 percent of total U.S. oil consumption. Reflows to the United States of petrodollars in the form of investment from the Arab States are running some $10 billion a year.

I believe that a forthright but carefully considered policy emphasizing that U.S. legislation deals—as is entirely appropriate—with U.S. commerce and the activities of U.S. persons, will be understood by Arab leaders.

We have weighed carefully the risks to our important political and economic interests in the Middle East which attend further legislation directed at activities of U.S. firms related to foreign boycotts. We believe that carefully directed legislation combined with diplomatic action can protect our interests. I want to emphasize our intention to maintain close and friendly relations with the countries of the Middle East.

There is much common ground between the principles of the administration which I have enunciated and the objectives of the current congressional proposals for new legislation.

This administration wants to work out with the Congress language for antiboycott legislation on which we can both agree.

I also hope it will be possible, as these hearings proceed, for the various business and other groups to reconcile their views on the provisions of some new legislation. In this respect I have received encouraging reports that the meetings between the Anti-Defamation League and the Business Roundtable have been constructive. A substantial meeting of minds by these representative groups on a set of principles on which legislation might be based will be a great help to us in our deliberations.

The other Cabinet members concerned and I would be happy to make available our experts to work with your committee staff to formulate new legislative language on which we can agree. As issues are developed for decision, I will also be happy personally to consult further with the members of this committee.

That completes my statement. I will be happy to answer any questions, Mr. Chairman.

Senator STEVENSON. Thank you, Mr. Secretary. You're off to a fine start as Secretary of State and I think that's a very good statement of principles, but as a lawyer with a distinguished career you're well aware that it's easier to enunciate principles than it is to articulate them into law.

At the very end of your statement, Mr. Secretary, you said that you and your staff were available to work with us to formulate the new legislative language, which would imply you're not happy with the present legislative language. Could you address yourself to some of the provisions of the bills that are in front of us that give you a problem?

Secretary VANCE. Yes; I'd be happy to in general terms, Mr. Chairman.

Our focus on this question is primarily aimed at the secondary boycott practices as they relate to actions by U.S. firms involving U.S. commerce. Some of the existing bills seek in part to confront the question of primary boycott practices and other boycott related practices which do not involve U.S. commerce. This is one area where I think we see problems that we would like to iron out with this committee.

In the refraining from dealing provisions of some of the bills which have been currently introduced, the prohibition is ambiguous and may be so broad as to interefere with transactions in which U.S. firms themselves do not decide to exclude any other supplier or subcontractor on boycott grounds.

As I have indicated, we also have some question about the limits which the bills would set on the supply of commercial information by U.S. firms. Also, we think that the reporting requirements can be cut back to those necessary for enforcement, in order to cut down on some of the excessive information which is required at the present time.

There are other issues, such as the treatment of nationality, as a new basis for finding discrimination, which need to be explored. We believe very strongly, as I indicated, that any information requested with respect to national origin is of fundamental importance but a question concerning nationality is a different matter because that comes back to the question of the primary boycott.

These are the kinds of issues that we think ought to be discussed in detail. They are very complex matters and I'm sure when we sit down and begin to work with the staff of this committee and the other committees involved we ought to be able to find a common ground.

I would also say I hope that the work which has been done by the Antidefamation League and the Business Roundtable, which I think will be forthcoming some time this week, will be helpful and constructive to all of us in moving forward. My general understanding of the areas of agreement are such that they would fall within the general principles which I have enunciated this morning.

Senator STEVENSON. Mr. Secretary, conflicts between foreign nations that are not unfriendly to the United States are not unusual. Have you given any thought to the consequences of such legislation as this in other parts of the world? I cite a few examples: the conflict between Turkey and Greece, between Taiwan and the Peoples Republic of China, between Subsahara black Africa and the Rhodesian Government and the Government of the Union of South Africa. Isn't it possible that enactment of legislation along the lines of either of these two bills could have some unintended consequences for American industry and for the United States in other regions of the world? Have you addressed yourself to that?

Secretary VANCE. Yes; I have. We have given a great deal of thought to that question. Insofar as Greece and Turkey are concerned, there are no boycott provisions operating at the present time.

With respect to Rhodesia, there we have a different kind of a situation. There we have a boycott which is a primary boycott which was arrived at by virtue of a resolution adopted in the United Nations to which the United States is a party. Also, since that is a primary boycott, I think the situation is different from what I was addressing

myself to today which was primarily the secondary and tertiary boycott.

Insofar as the Cuban situation is concerned, the United States maintains a primary boycott which again is different from the Arab boycott of some U.S. firms.

Insofar as North Korea and Vietnam are our concerned, again those are really primary boycott situations except for the U.S. limitations on bunkering facilities for ships of third countries which would be delivering materials into those two countries. Also, some provisions of the AID legislation have secondary boycott aspects. These do present issues which have to be considered very carefully in the drafting of any ultimate legislation which comes out of this committee.

Senator STEVENSON. Would you advise us to separate provisions on the nuclear proliferation and hold them back in the committee pending the formulation of an administration position and policy on nuclear proliferation?

Secretary VANCE. I believe this would be helpful, Mr. Chairman. As you correctly noted, we have been involved in an intensive study within the administration on the development of our policy with respect to nuclear proliferation. Our study is well along but it will probably take us through the end of March before it is completed and a decision is reached within the executive branch. I believe it would be helpful before final legislation is drafted that you have the benefit of the ultimate position of this administration.

Senator STEVENSON. Senator Heinz.

Senator HEINZ. Thank you, Mr. Chairman.

Mr. Secretary, from your last remarks, I gather that you feel that not only would it be a good idea to delay action on either of the bills before this committee, S. 69 or S. 92, until you have been able to reach some positive recommendations to the committee on nuclear proliferation, but obviously you also seem to be arguing for a delay on either of these bills simply because the administration has not got legislative language which it would be satisfied with. Is that correct?

Secretary VANCE. That is certainly the case with respect to the proliferation issue. With respect to the other issues, we are prepared to sit down at any time with the staff of your committee to talk about proposed language on the boycott issues. I have tried to enunciate the framework within which I think those discussions should go forward. We do have some draft language but we know that this is the kind of thing which has so many complexities that it has to be discussed in the most minute detail with the members of your staff.

Senator HEINZ. There are, of course, two specific proposals before the committee, S. 69 and S. 92. You're saying that in their present form neither of those bills is acceptable to the administration?

Secretary VANCE. Yes, I pointed out the problems that I think are presented in those and I would think it would be preferable to see if we couldn't work out a clean piece of legislation which was the combined effort of both the Congress and the administration.

Senator HEINZ. Within what kind of time frame?

Secretary VANCE. We are prepared to sit down starting tomorrow.

Senator HEINZ. If the committee were to say to you, "Mr. Secretary, we'd like to have your specific proposals, your amendments to either S. 69 or S. 92 within a week," would that be an acceptable time frame?

Secretary VANCE. We can do that; yes. We can meet that. But again, I would urge that it would be preferable to try and work out a combined new piece of legislation rather than to try and mark up the existing pieces of legislation.

Senator HEINZ. Mr. Secretary, I don't mean to be contentious, but my problem is that you have given us some general principles and they sound good. Then you at the same time say, well, there are specifies in the legislation which you don't think you agree with. I'd like to know what they are.

Secretary VANCE. I have indicated to you earlier what some of those problems were and we are prepared to give you more specifics by the end of the week or the beginning of next week.

Senator HEINZ. Well, I think having the actual specifics and your thinking on them would be a help. I commend you on your principles. I think they are fine, but I think the details are what we need to get down to cases here.

Secretary VANCE. I quite agree with that and I think we will also be helped if agreement can be finally reached on antiboycott principles by the ADL and the Business Roundtable. I hope this might come out this week.

Senator HEINZ. I'm glad to hear that. Thank you, Mr. Secretary.

Senator STEVENSON. Senator Proxmire.

Senator PROXMIRE. Well, I join Chairman Stevenson in commending you on your statement. I'm delighted to see it and delighted also to see your support for the principles of both S. 69 and S. 92.

In your responses to Senator Heinz I take it that you will be able to provide language and the kind of proposals, specific changes, you'd like to see in new legislation by March 17. March 17 is the markup date that's been set only 2½ weeks from now, and I take it you can do it by that time.

Secretary VANCE. We'll be prepared to meet that date.

Senator PROXMIRE. Let me just see if I can get a little closer understanding of your specific position. You stress the fact that antiboycott legislation should be where I think it is in these two bills; that is, to prohibit intereference with American sovereignty but not just the right of American firms to deal wherever they wish but also the duty of American firms not to serve as an enforcer of the boycott. Is that correct?

Secretary VANCE. In terms of a secondary or tertiary boycott, yes. With respect to a primary boycott, that's a different situation.

Senator PROXMIRE. As you know, there's a sharp difference between the bills. Perhaps one of the principal differences between the bills is whether there should be a negative certification permitted. The S. 69 bill permits that. S. 92 does not. I wonder if you could give us a clearer understanding of the position that the State Department and Administration has.

Secretary VANCE. Our position is very clear in that. We support use of positive certifications and that is something which I think is feasible. As I mentioned in my prepared statement, the Saudi Arabian Government informed me during my trip to Saudi Arabia last week or the week before that they were prepared to accept positive certifications.

Senator PROXMIRE. And, of course, that is provided in S. 92.

Secretary VANCE. Yes.

Senator PROXMIRE. S. 69 permits negative certification. Now what discussions did you have with the Arabian leadership about antiboycott legislation during your trip. Did you bring the matter up or did they?

Secretary VANCE. I brought it up in the early stages and they talked to it at length in our longer discussions.

Senator PROXMIRE. Did you get the impression this was a matter of great concern to the Arabs?

Secretary VANCE. I did, sir.

Senator PROXMIRE. How do they react to the antiboycott legislation we already have in this country and, as you know, six States have antiboycott legislation—New York, California, and four others. Was that a matter of concern?

Secretary VANCE. The principal concern of the Arab nations is the concern that the United States not seek to dictate to them how they should draft their laws. As I indicated, they understand the U.S. concern over the secondary boycott and the clear differences between primary and secondary boycotts. Therefore, if we can come out with legislation which takes care of the secondary boycott situation it is my view that, although the Arab nations will not be happy with the legislation, this will not damage our foreign relations.

I think we have many common interests, as I have tried to indicate, as in the search for peace and in our bilateral relations with the Middle East nations. We should be able to accomplish our antiboycott purpose which I think is a shared purpose between the Congress and ourselves, while at the same time being sensitive to these foreign relations aspects of the situation.

Senator PROXMIRE. Do they understand that there's no attempt in the legislation to legislate with respect to primary boycotts, that the legislation is entirely directed and our attention is directed both in the Congress and the administration at protecting the rights of American citizens to deal with this issue?

Secretary VANCE. I do not think they have understood that.

Senator PROXMIRE. And do you think they were perhaps able to get a better understanding as a result of your trip?

Secretary VANCE. Yes, sir, and I think what happens here in dealing with this legislation is going to be the most important fact when they see what the legislation actually is.

Senator PROXMIRE. What about the Israeli attitude toward boycott legislation? What, if any, discussion did you have with Israel on the issue?

Secretary VANCE. Some discussion, not at any great length.

Senator PROXMIRE. Did they seem to be concerned about it?

Secretary VANCE. They did not raise it as a major issue, although I'm sure that they are deeply concerned about the question.

Senator PROXMIRE. Is there any evidence what the effect of the boycott has had on Israel?

Secretary VANCE. Just general discussion. It does not appear to have had a major impact on Israel.

Senator PROXMIRE. Well, we had testimony in previous hearings that it had sharply reduced by a factor of 50 percent American investment in Israel.

Secretary VANCE. It is true that——

Senator PROXMIRE. Or at least that had happened since the boycott had been pressed so hard and since the Arabs had developed this great economic power.

Secretary VANCE. It is true that foreign investment in Israel has decreased since 1972. It has decreased very substantially. I think it was down to something like $89 million in 1975 and $80 million in 1976. But as to whether the nexus is the nexus that you suggest, I think that that is not clear.

Senator PROXMIRE. Did you get the impression in your discussion with the Saudis that their principal concern as to the thrust and the effect of this legislation would be with respect to commercial relations with the United States. In other words, would it have any effect on peace, in your view, in the Middle East? Was it one you think confined largely to the economic siutation or might it extend farther than that?

Secretary VANCE. They did not specifically raise it insofar as it related to peace, but I think it could not help but affect the climate of the search for peace.

Senator PROXMIRE. In what way?

Secretary VANCE. The search for peace is going to have to be a cooperative effort. There's going to have to be flexibility on all sides and I think that one of the things that would affect that climate will be the manner in which the Congress deals with this kind of legislation. Again, I make the point that I think we can accomplish the objective that we all seek in legislation without taking action which would jeopardize our foreign policy interests.

Senator PROXMIRE. You say at the conclusion of your trip that there was a greater degree of accommodation and flexibility on both sides you felt. Was that correct?

Secretary VANCE. I said that I thought there were many deep and difficult problems dividing the countries but that there was some flexibility. I was encouraged by the fact that we had established some common ground and I indicated what that common ground was and did again this morning. I had the feeling that if we can work with the parties there is a chance that we can begin to bridge some of these differences. It's a long and very difficult road to travel but I don't despair that it may be traveled and that is one of the——

Senator PROXMIRE. The reason I'm pursuing this, I wonder if you find this accommodation on both sides, No. 1; and No. 2, if it could be or would be jeopardized by passage of legislation of the kind we're discussing here.

Secretary VANCE. One finds a spirit of willingness to consider all proposals that the other side puts on the table. It depends upon the particular issues you're talking about, however. On certain issues parties are more deeply divided and their positions are much more rigid than on others, but I think the mere fact that we have established the proposition that all parties are prepared to go to a Geneva conference and that they are prepared to discuss an overall peace settlement is a change of sorts from the past. I see this as a sincere statement on the part of each one of them that they simply must find a way to achieve a peaceful solution if they are going to lift the crushing burden of arms purchases which is channeling resources from the economic and social needs of these countries to military purposes.

Senator PROXMIRE. Do you feel in view of the very, very powerful economic position that the Arab States now enjoy the likelihood that that's going to increase rather than decrease and it's something that's going to go on for a long, long time, for that reason it's particularly important that we pass legislation of this kind, antiboycott legislation, if we're going to do our best to protect American firms from interference with their sovereign right to trade wherever they wish?

Secretary VANCE. I believe it is important that we pass antiboycott legislation within the general framework of the principles which I have enunciated and I feel at the same time that it's important that we maintain close relationships with all of these countries both in our bilateral relationships and in our joint efforts to search for peace.

Senator PROXMIRE. Thank you, Mr. Chairman.

Senator STEVENSON. Senator Schmitt.

Senator SCHMITT. Thank you, Mr. Chairman.

Mr. Secretary, I appreciate your testimony and lucid statement of principles. I particularly am appreciative of your concern about determining intent, that in any legislation where intent is a factor it's always very difficult and I will be looking forward to any recommendations that you may have and I'm sure my colleagues will on just how do you determine intent. The export of technology and the products of technology certainly along with agriculture will be one of our major future foundations to the economy of this country and also hopefully to the problem of developing friendships with nations like those in the Middle East and elsewhere in the world where there are many nations that are desperately in need of entering the 20th century.

In that regard, and specifically with respect to the Middle East, did you get a feeling in your travel that the Arab nations are willing to answer what I think is the central question of the Middle East and that is the recognition of Israel as a state? It always seems to me that the answers to many of our problems there, as well as those having to do with the specific legislation before us, come from the absence of that recognition. Do you think it's possible to aim now with some hope of success toward recognition of Israel as a state?

Secretary VANCE. As a result of my discussions with the leaders of the countries which I visited, I would answer "Yes."

Senator SCHMITT. That's very exciting news. Do you think then, that with that, can follow some regional cooperation and economic development in the Middle East as a whole?

Secretary VANCE. I think that at the end of the road, whenever that may be, there must be regional cooperation. For example, take the situation of Israel and Jordan. In my judgment it would be very much in the interest of both countries if the economies could be more closely integrated.

Senator SCHMITT. Do you see this primarily as a relationship in the future where the technological arm of Middle East cooperation largely rests with the Israelis and the resource development with the nations surrounding Israel?

Secretary VANCE. Yes. I think that the Israeli technology and know-how are very important and could be very useful in cooperative efforts with the other nations.

Senator SCHMITT. Do you see any specific ways in which legislation of the type that's before us can encourage regional economic cooperation?

Secretary VANCE. I quite honestly have not addressed it from that standpoint, Senator Schmitt. I'd be glad to give some further thought to it.

[The following was received from the Department of State for the record:]

Fundamentally, eventual cooperation among the parties in the region could flow from successful political negotiations leading to an Arab-Israeli settlement.

Senator SCHMITT. I'd appreciate it if you would.

Also, do you see—let me ask it a different way. What do you visualize as the advantages or disadvantages in the balance between the two—of arms sales to Middle Eastern countries—and I'm particularly concerned about the Arab countries. I understand the advantages to sell to the Israelis.

Secretary VANCE. We have indicated to all of the countries involved during my recent trip that we believe it would be in the interest of all of them to reduce the arms that flow into their respective countries. All of them agreed to that, but their question is how can they do that in the absence of peace. That is one of the fundamental reasons why I think they all believe that we must find a peaceful solution to the Middle Eastern problem.

Insofar as our supply of arms in the Middle East is concerned, we have tried to handle it under certain guiding principles which we have enunciated a number of times. In essence, they are, first, that we will not supply the arms unless they are definitely needed for the security of the country involved. Second, that they must not upset the critical balance which exists in the Middle East; and third, that they will not adversely affect the search for peace which we and they are seeking.

Senator SCHMITT. Do you see that the spirit of cooperation between us and a specific Middle Eastern country increases with the increasing amount of arms sales that may be occurring between the two countries?

Secretary VANCE. Not necessarily, but the withholding of arms which may be essential to their security could in their view affect these relationships. It's a very difficult and delicate kind of balance throughout.

Senator SCHMITT. The more detailed question you're discussing in your testimony, that question of prohibition of responding to boycott related requests that deal with religion, race, or national origin, what if that information is already in the public domain? Would you see that that should be included in that prohibition?

Secretary VANCE. To me the prohibition with respect to race, religion, or national origin is fundamental and must be prohibited in any legislation no matter what may be in the public domain.

Senator SCHMITT. I agree. I just want to be sure we're talking about that.

Secretary VANCE. No question.

Senator SCHMITT. And finally, are you willing to discuss with us some of the ideas that are kicking around about slowing the rate of the transfer of nuclear technology and materials throughout the world?

Secretary VANCE. I really think it's a bit premature to go into that at any depth at this point. Once we have completed our studies I would be very happy to come back and testify at length along with my colleagues on that question.

Senator SCHMITT. Thank you, Mr. Secretary.

Thank you, Mr. Chairman.

Senator STEVENSON. Senator Sarbanes.

Senator SARBANES. Thank you, Mr. Chairman.

Mr. Secretary, first, I want to thank you for an extremely thoughtful statement. I was concerned during the last Congress when we considered this legislation that the administration opposed it. They characterized it with one sweeping brush and said this is going to be very harmful in dealing with these countries and, of course, if we say that's the case the countries can hardly say less. In that regard, I particularly welcome the distinctions you make in your statement between the primary boycott, which this legislation does not reach, and the secondary and tertiary boycotts which it does reach. You later say that this distinction properly presented in terms of what we perceive to be in instrusion into our own commercial relationships in this country with respect to the activities of our firms and citizens would be understood by the Arab nations and I wonder if you could develop that for us.

Secretary VANCE. Yes, I would be happy to, Senator. In my discussions with the Arabs on this question, they indicated very strongly that their concern was with legislation which might interfere with their drafting and their construction of their own laws as to the primary boycott. They understood our sensitivity over their secondary boycott practices and our right to regulate, through our laws, the activities of our citizens; they clearly understood the distinction we make between the primary and the secondary boycott. That's why I said in my statement that I think that this distinction will be understood and that we can draft legislation which will meet our objectives and, at the same time, not unduly disrupt the foreign relations between our respective countries.

Senator SARBANES. Do they understand that our citizens and our firms ought not to be and cannot be put into the position of being enforcers of the policy which they seek to carry forward?

Secretary VANCE. They understand our position on this. As to what their reaction deep down is, it would be mere speculation on my part.

Senator SARBANES. Would you say that the portrayal generally in the past with respect to this legislation, which was treated by the previous administration, in its opposition to it, as being entirely harmful instead of trying to make these distinctions, has impeded an effort to develop an understanding of what we're trying to do?

Secretary VANCE. I think it's of fundamental importance that we make the distinction.

Senator SARBANES. Thank you, Mr. Chairman.

Senator STEVENSON. Mr. Secretary, neither of these bills is intended to interfere with the primary boycott. One of them, as you know, permits negative certifications because negative certifications are a method of enforcing primary boycotts. So I have some difficulty at the moment figuring out in my own mind what it is in the language of these bills that is objectionable when one apparently goes even further toward permitting a primary boycott than you're prepared to go. At least if I understood you correctly, you oppose legislation which would permit compliance—that would permit negative certificates. Is that right?

Secretary VANCE. Could you repeat your question?

Senator STEVENSON. You oppose legislation which would permit negative certificates or, to put it a little more clearly, you would support a prohibition against negative certificates?

Secretary VANCE. That's right.

Senator STEVENSON. Well, I sense that others share some of the difficulties I have. I would like very much to work together with you to articulate in a sensible piece of legislation the principles which you have lucidly stated today with an open mind. I admonish you, however, that this legislation has a pretty good head of steam at the moment and it's not going to wait very long. In fact, I just asked the chairman and he said that a markup is scheduled for March 17 in this committee on this legislation. I would just explore one subject a little further, partly to assure that we have whatever time is necessary.

I'd like to follow up on a question raised by the chairman. Would enactment of either of these bills adversely affect prospects for a settlement in the Middle East?

Secretary VANCE. As presently drafted, I think they would not be helpful.

Senator STEVENSON. They would not be helpful?

Secretary VANCE. And indeed, would be unhelpful.

Senator STEVENSON. And do you agree that no act of the Congress will end the boycott?

Secretary VANCE. I think that there should be legislation.

Senator STEVENSON. That's not the question, Mr. Secretary.

Secretary VANCE. I'm sorry. I misunderstood you.

Senator STEVENSON. The question is, could any act by the Congress, any antiboycott legislation, end the boycott?

Secretary VANCE. No; it can't end the boycott. Of course not.

Senator STEVENSON. That requires a settlement?

Secretary VANCE. That's right.

Senator STEVENSON. And any antiboycott legislation which prolongs a settlement prolongs the boycott?

Secretary VANCE. That's correct.

Senator STEVENSON. That's the point I'm trying to make.

Secretary VANCE. The question is the settlement of the Middle East problem.

Senator STEVENSON. In addition to the overriding question of achieving settlement in the Middle East which in turn could have as part of it an end to the boycott, what would the effect of enactment of these bills, either of them, be on oil prices?

Secretary VANCE. With respect to oil prices, the Saudi Arabians have said that their decision was taken on the basis of their concern for the inflationary repercussions of the increasing oil prices which we have already seen and which are affected by each additional increase. They expressed particular concern about the effect upon the developing countries. They made this position very clear to us during discussions when I was there and I saw this position repeated again in the paper this morning.

On the other hand, no one can predict for the future as to how the climate will be affected by boycott legislation and what might happen if legislation should come out in a way which was considered by Arab countries as intrusive upon the manner in which they conduct their own internal affairs.

Senator STEVENSON. Well, I was trying to get from you an opinion as to whether enactment of either of these bills would have an adverse effect on oil prices. Would the answer be the same? In other words, it would not be helpful?

Secretary VANCE. Yes.

Senator STEVENSON. And what about the effect of enactment of either of these bills on Arab investment in the major oil consuming countries, including this one? Might enactment of either have an adverse effect on investment of surplus dollars?

Secretary VANCE. Yes.

Senator STEVENSON. Well, I think your statement, Mr. Secretary, and your answers to these questions ought to caution all of us to move carefully and prudently and in cooperation with the Department of State in order not to hinder your efforts to achieve an overall settlement and with it, an end to the boycott. The goal of the legislation is to resist interferences by foreign powers in our internal affairs. I would hope that we could draw that line.

Secretary VANCE. I appreciate that.

Senator STEVENSON. Now are there any other questions or comments?

Senator PROXMIRE. Yes; but I'll yield to Senator Heinz.

Senator HEINZ. I have no further questions.

Senator PROXMIRE. I'd like to follow up on what Senator Stevenson has so well pursued, but I'd like to ask you to take the next step. Why is this legislation not helpful? You have indicated to us that you agree with the principles of the legislation. You indicate that it's beneficial for it to preempt state law, which I'm sure we can do, and put that in. You indicate that the legislation is aimed at secondary and tertiary boycott, not primary boycotts.

Secretary VANCE. No; I disagree there. As we look at the bills, they in part confront the situation of primary boycotts as well.

Senator PROXMIRE. In what part?

Secretary VANCE. I don't have the bill in front of me to go into specifics.

Senator PROXMIRE. The one area Senator Stevenson has pressed this point very emphatically and very well with all the witnesses that there is an element on negative certification which might be used to prevent the enforcement of a primary boycott. I argue—I'm one of those who agree with you that we should prohibit negative certification because it would make our firms enforcers in effect and is also understandably anathema to the Israelis and it seems all except Iraq of the Arab countries have agreed that they will rely on positive certification, but that's the only element I can see in here that relates to the primary boycott. What else is there in the legislation?

Secretary VANCE. Well, I have another problem with the extraterritorial effect under some of these bills.

Senator PROXMIRE. The extraterritorial effect?

Secretary VANCE. Yes, where we on the one hand——

Senator PROXMIRE. That's not a primary boycott problem.

Secretary VANCE. No; but it is another important aspect of the legislative proposals. We're saying on the one hand we don't want other people to interfere with U.S. Commerce—with the way companies in the United States do business with other countries of the

world. Yet at the same time, some of these bills would also apply to the non-U.S. commerce of foreign subsidiaries. We have indicated that if the foreign subsidiary of a U.S. firm is being used as a device for avoiding what is basically U.S. trade, then obviously the bills ought to apply. But to try and extend the reach of the bills to third countries——

Senator PROXMIRE. I understand. I see that, and I'm concerned about that, too. How about applying the principles laid down in the *Bechtel* decision? In other words, if you have an American-controlled company operating, say in France, then it would be proper to apply, if we can work out this language—it would be proper to apply the language of the bill with respect to that American-controlled company in France buying from American companies in America, but not with respect to French companies.

Secretary VANCE. Yes; I think that's generally a sound proposition.

Senator PROXMIRE. Well, it seems to me that's a detail we can work out.

Secretary VANCE. Yes. I think a lot of these things we can work out, Senator. A lot of these differences we may have on the face of the bills arethings which we can work out between us and that's why I say that we welcome the opportunity to sit down at the earliest possible moment with your staff to start to try and work on some of these general problems.

Senator PROXMIRE. I feel there's something here that's missing because somehow you indicate that this would not be helpful and that's about as strong language as a very sage and prudent Secretary of State ever takes with respect to legislation like this, and I'm trying to find out what it is and I don't see it. You talked about the extraterritoriality point and I think that's an important matter but hardly fundamental, and I think we can handle that.

Is there anything else you would like at least at this point to tell us that we can work on, think about?

Secretary VANCE. I think nothing specific at this point; beyond what I have said. I'd like to pick it up later.

Senator PROXMIRE. Now at the time the Arab countries made their announcement with respect to oil prices, the Saudis indicated that they expected the United States would show its appreciation of the fact that they went up 5 percent instead of 15 percent. Do you think that could be affected in any way—their future policy would be affected in any way by antiboycott legislation?

Secretary VANCE. As I indicated to Senator Stevenson, I thought it might affect the climate.

Senator PROXMIRE. Did they indicate any linkage at all in your discussion with them?

Secretary VANCE. They did not.

Senator PROXMIRE. Why do you think it might affect the price of oil?

Secretary VANCE. I think that it might because of human nature and the way people react, not specifically because they're Arabs but because they're human beings.

Senator PROXMIRE. Doesn't that affect any legislation, no matter what it is? It's just a matter of human nature. There's no specific indication on their part that any action the Congress takes in this field, including the action the State Department is ready to support, might be viewed in this way?

Secretary VANCE. No. I think if the thrust and spirit of the bill are along the lines that I have suggested it would be such as to be understood and accepted by them.

Senator PROXMIRE. Well, I certainly don't see any difference in the thrust and spirit of the legislation. I think certainly our colloquy this morning and your testimony, the position that Senator Stevenson has taken, your support of the principles in both bills indicates there's no difference in thrust or spirit. Therefore, it's hard for me to see how we can modify this in a way that would change that perception on the part of the Arabs.

Secretary VANCE. I'm not saying that it's impossible to modify it. We could I'm sure reach modifications. I'm just suggesting that I think it perhaps might be better to take a look and see whether a fresh draft could be done which would be better.

Senator PROXMIRE. Now some of the business groups who appeared before us indicated that there might be a loss of hundreds of thousands of jobs and billions of dollars in trade as a result of the legislation of this kind. Has the administration made any assessment of this kind? Do you have any judgment in that area?

Secretary VANCE. I do not have an answer to that. A lot of work was done on this during my absence in the Middle East. Some of that may include such assessments. I do not specifically know whether it does or not.

Senator STEVENSON. Would you make that available to us for the record?

Secretary VANCE. Yes, I will indeed.

[The following statement was received from the Department of State for the record:]

Clearly the Arab countries will not like any new legislation, but I would expect their reaction to depend upon the precise character of our law.

To the extent that legislation impairs existing contracts or interferes with normal business transactions (i.e., where no refusals to deal are involved), Arab country reaction will be worsened and our interests will be affected to a greater degree.

I have referred in my statement to the dramatic increase in U.S. exports to Arab states in recent years. The Commerce Department has estimated that our $7 billion in 1976 exports may account for as many as 400,000 U.S. jobs.

There has been a correspondingly large increase in U.S. construction contracts in Arab countries involving billions of dollars during this same period. These contracts typically involve bid bonds of 5–10 percent of the contract value callable at will by Arab governments for non-performance.

Thus the answer to this question resides primarily in the way new legislation is handled. Potential damage will be minimized if legislation avoids unnecessary prohibitions and allows time for U.S. and Arab parties to adjust to legislative restrictions, and if the Arabs see the legislation as dealing with the activities of American firms rather than confronting their own policies and laws.

Senator PROXMIRE. One other question. You talked about reliance on the Anti-Defamation League and the Business Roundtable and I think that's very welcome. Certainly if these groups can get together, it would be very helpful to all of us. Has the administration been aware of their informal activities? Do you know, for example, when they have met and what they seem to be working toward? Do you have any direct communication with them?

Secretary VANCE. The answer is yes.

Senator PROXMIRE. You expect them to report to you, you say, within the next week or so or at least to make available to Congress and the administration those thoughts

Secretary VANCE. I expect their governing bodies will take action with respect to the work of their working groups within the next week.

Senator PROXMIRE. Are you attempting to influence that action in any way? After all, it's a matter of great importance, as you indicated here, and I think they in turn would be interested in your viewpoint as I'm trying to elicit it here this morning on the kind of legislation that would be helpful in achieving peace and all the other goals we have.

Secretary VANCE. I understand at the working level they have been made aware of our general concerns and that we do support new legislation; yet at the same time that we would like to see legislation which would be nondetrimental to our foreign policy interests. That's been the general thrust of our discussion.

Senator PROXMIRE. Do you think they are working in that direction?

Secretary VANCE. I do, sir.

Senator PROXMIRE. Thank you, Mr. Chairman.

Senator STEVENSON. Senator Schmitt.

Senator SCHMITT. A couple followup questions, Mr. Secretary. I think you sense that we are all having a little bit of a problem in getting hold of why the legislation would be detrimental to your efforts in foreign policy. Is it because any legislation that aims at loosening the noose of a primary boycott through striking at secondary and tertiary actions or activities is going to potentially antagonize those nations trying to enforce a primary boycott? Isn't that it? Really, aren't we at a point if any legislation passes at all that treats the secondary and tertiary questions it is potentially antagonistic, not necessarily but potentially?

Secretary VANCE. That is correct, but I think the way in which the secondary aspects of it are addressed in specific language of the bill is important.

Senator SCHMITT. Are there other actions that could be taken that would soften any possible blow here, other positive actions? This tends to be a negative action as viewed by a country trying to enforce a boycott, right or wrong. Are there any positive steps we could take simultaneously that would ease the impact of a bill such as this?

Secretary VANCE. We are in close touch diplomatically with each of these nations. I think this is a positive step and that we must continue to do this.

Senator SCHMITT. One final question having to do with the transfer of technology or other goods or goods that will affect our national security. Do you have any new thoughts on this question?

Secretary VANCE. On the question of technology transfer?

Senator SCHMITT. Technology transfer to foreign governments both in terms of hurting our economic advantages, our export advantages, but also directly related to our national security. Do you have any new thoughts on how we can still use technology as a primary export item but not give away so much that we hurt ourselves?

Secretary VANCE. At this point I have no radical new ideas that I think need to be or should be discussed here. This is something which we are going to have to address at the UNCTAD meeting which is coming up in March. We are working on it at the present time and I have nothing that I think would be startling or new at this point.

Senator SCHMITT. Do you feel that maybe we are overexporting our technological base?

Secretary VANCE. No, I don't, at this point.

Senator SCHMITT. You like the balance that's been struck?

Secretary VANCE. I think it's a reasonable balance.

Senator SCHMITT. Thank you, Senator Stevenson.

Senator STEVENSON. Senator Sarbanes.

Senator SARBANES. I just wanted to add one comment, Mr. Chairman, and that is that I very much welcome the process of consultation with the Secretary as suggested here this morning. It has been my deep concern that in its opposition to this legislation generally the prior administration unfairly portrayed and characterized what it would do and if our own Government takes such view it's bound to be misunderstood by other governments. It seems to me this process of consultation will make it clear what elements of the boycott we are directing our attention to and it will also make it clear I think to citizens with very strong feelings in this country that we're moving with legislation of this sort. I hope one of the things that would come out of this consultation process are those important distinctions which I think have been completely obliterated by the opposition of the prior administration in every respect to the antiboycott measure.

Therefore, I welcome the Secretary's proffer of working together with us and I assume the committee will cooperate with them.

Secretary VANCE. Thank you.

Senator STEVENSON. Mr. Secretary, I think we are together on principles and have some differences on details. My only question now is who do we work with? In the past the State Department has been a little bit more forthcoming than some of the other Departments, but, as you know, Commerce and Treasury are also involved. We have attempted in the past to be cooperative and want to be in the future. How do we proceed from here? Is it with the State Department or the Treasury Department or Commerce, or who?

Secretary VANCE. I would suggest that you proceed through the State Department. We have an interagency working group and there will be elements of all the other interested departments who will be on the working group, so that we will have everybody involved in the process in the executive branch who can work directly with your staff and the State Department.

Senator STEVENSON. Good. Thank you, sir.

Senator PROXMIRE. Could I ask, Mr. Secretary, before you leave, if you will permit me, Mr. Chairman—I want to make sure I understand what you're proposing with respect to how we work this out. After all, as you know, and I'm sure you're very familiar with the jealousy with which Congress guards its prerogative to draft legislation. This legislation has been worked out with the House and certainly amendments are welcome and proposed amendments are very welcome indeed, but I want to make sure that you're not suggesting that we have a fresh draft drafted by the State Department and other bureaucrats that is sent up here as something that we should pass if we are going to expect to have administration support. Amendments are welcome, but I just wonder what you have in mind here.

Secretary VANCE. We had in mind the possibility of a fresh draft, but if that is not possible, then we will work out the necessary amendatory language.

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Senator PROXMIRE. Why do you argue for a fresh draft? Why do you feel you have to start all over again?

Secretary VANCE. There are a number of different points which we feel need to be reconsidered and as a result of that we thought it might be desirable to start with a fresh draft. But as I said, if this is not possible, then we are prepared to discuss amendatory language.

Senator PROXMIRE. Thank you, Mr. Chairman.

Senator HEINZ. Mr. Chairman, if I may, Mr. Secretary, let me commend you for your recent efforts in the Middle East and on your testimony. I echo the sentiments of the other members of the committee when I say that we do look forward to working with you; but in that regard, there is something I feel very strongly about and that is that whether it's a question of a new bill or whether it's a question of amendments that the State Department or the interagency working group wish to have considered by the committee, I would ask, particularly in view of the fact that we failed today to come to grips with some of the specifics, that these be submitted publicly.

The reason I emphasize that is that I went through some embarrassing periods in the last 5 years as a Member of the House where you could never quite tell whose amendment an administration amendment might be. I would hope, both as a good solid way of doing business and by way of protecting the rights of individual members of the committee, that the administration will be totally aboveboard in sending any amendment up here. I have no reason, let me also add, to expect you won't be. I'm sure that you deserve and have earned that presumption, but nonetheless, let me put it on the record and ask for your response.

Secretary VANCE. My response is that we have no pride of authorship. We will put everything up on the table. We have no problem with that.

Senator HEINZ. Thank you, Mr. Chairman.

Senator STEVENSON. Thank you, Mr. Secretary.

The meeting is adjourned.

[Whereupon, at 11:20 a.m., the hearing was adjourned.]

ARAB BOYCOTT

TUESDAY, MARCH 15, 1977

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL FINANCE,
Washington, D.C.

The subcommittee met at 10:05 a.m., in room 5302, Dirksen Senate Office Building, Senator Adlai Stevenson (chairman of the subcommittee) presiding.

Present: Senators Stevenson, Sarbanes, Brooke, Heinz, and Schmitt.

Senator STEVENSON. The subcommittee will come to order.

This morning we hold our last hearing on legislation to extend the Export Administration Act including provisions of S. 69 and S. 92 dealing with foreign boycotts. In these hearings witnesses from the administration and elsewhere have given general support to some general principles and I hope that in this final hearing today we can move beyond general principles to deal with some of the knotty secondary questions such as exceptions for visa requirements, shipping on blacklisted carriers, negative certificates, and other such questions upon which there's more controversy than there is over general principles.

Our first witness this morning is the Honorable Juanita M. Kreps, Secretary of Commerce. This is your first appearance before the subcommittee. I'm not sure if it is your first before the full committee. In any event, I'm sure on behalf of all of my colleagues I can give you a very warm welcome. We are grateful to you for coming here this morning, Mrs. Kreps, and I'm sure that your testimony on this subject will be of great help to the subcommittee and its parent, the Banking Committee of the Senate.

Are there any statements? Senator Heinz?

Senator HEINZ. Yes, Mr. Chairman. I'd like to join you in welcoming Mrs. Kreps to the committee. It's a great pleasure to have you here today. I would also like to strongly support Senator Stevenson's comments about our need to get down to specifics. The markup of the two bills before us, S. 69 and S. 92, is scheduled to start the day after tomorrow, Thursday, and I would anticipate that this committee would act very promptly and very expeditiously.

Indeed, S. 69 is quite similar, if not identical, to legislation which passed the Senate last year. As a result, I think all of us will be asking you, Madam Secretary, for some very specific answers to some quite tough questions, and we hope, of course, that you will be able to help us as much as possible.

I also think that one other role we are playing here today is to raise people's consciousness about the intricacies of the issues involved in the legislation so that people—regardless of the interest they may have in this legislation—will understand better its subtleties and will be

better able to give you and us the benefit of their thinking. I think the understanding of the Congress and the understanding of the executive branch has come a long way since last September when legislation such as this failed to get enacted, and I think perhaps we are all the wiser, some perhaps a little sadder, some perhaps a little gladder than others, but certainly all the wiser for it, and I do appreciate your being here today.

Thank you, Mr. Chairman.

Senator STEVENSON. Senator Brooke?

Senator BROOKE. Thank you, Mr. Chairman. I don't have a statement. I'd just like to associate myself with the statement made by you and Senator Heinz and, unfortunately, I have to go to an Appropriations markup but I look forward to the statement made by Mrs. Kreps and Mr. Shapiro and Mr. Joseph. I thank you for coming. I have looked over Mrs. Kreps' statement, and I think it's an excellent statement and I look forward to her responses to our questions.

Senator STEVENSON. Senator Schmitt?

Senator SCHMITT. Thank you, Mr. Chairman.

I also will be in and out this morning. I do have a question for the record asking some correlation between the discussion of unencumbered free trade relative to the two bills that are being considered by the subcommittee and a relationship between that and the discussion of the embargo of Rhodesian chrome. Although I won't put you on the spot personally today, I would like to, for the record, see that discussed, Mrs. Kreps. It seems to me that where we are on the one hand asking for an embargo and on the other hand where we are arguing against embargoes, and I think it's important that we realize we are being extraordinarily inconsistent in these two discussions. So I will submit that to you for the record.

Thank you, Mr. Chairman.

Senator STEVENSON. You can be thankful for small favors. That's one question that won't be put to you today, one spot you won't be put on today.

Please proceed, Mrs. Kreps.

STATEMENT OF JUANITA M. KREPS, SECRETARY, DEPARTMENT OF COMMERCE, ACCOMPANIED BY HOMER MOYER, ACTING GENERAL COUNSEL, AND C. L. HASLAM, GENERAL COUNSEL-DESIGNATE

Secretary KREPS. Thank you. I'm grateful for such favors. It did occur to me in looking at the morning paper that this just might be one of the things you would want to talk about and I'm grateful that we can postpone that.

Senator SCHMITT. Well, feel free to comment.

Senator STEVENSON. I perhaps shouldn't have said that because Senator Schmitt speaks only for himself and that goes for me.

Secretary KREPS. If I may, Mr. Chairman, I will proceed to my formal statement, although I realize that it is a statement that I have made before and you may have already seen it.

I welcome the opportunity to appear before this committee to discuss what I believe is necessary legislation to prohibit foreign boycott practices that go beyond accepted commercial dealings and intrude into

the lives and business decisions of U.S. citizens. As you know, both I personally and the administration support enactment of legislation to strengthen our ability to prevent such intrusions. We appreciate the extensive work that has been done to date by this committee and others in the Congress.

In his recent appearance before this committee, Secretary Vance stated the general principles which we believe should guide the United States in antiboycott legislation. Since then, in cooperation with your staff, we have been able to make progress on a number of items. I should like to take note of the constructive discussion which has taken place among leaders of Jewish organizations and the business community under the auspices of the Anti-Defamation League and the Business Roundtable. These discussions have resulted in a Joint Statement of Principles which should prove most helpful as a framework within which to advance our mutual efforts toward the enactment of sound legislation.

We are in full accord on prohibitions against all foreign boycott practices which could cause discrimination against U.S. citizens on the basis of race, color, religion, sex, or national origin—criteria which are well established in our civil rights law. While the Department's Export Administration Regulations already prohibit the taking of most such actions, and while we recognize that foreign boycott practices, with rare exceptions, have not sought to require discrimination against Americans of a particular religion or ethnic origin, it is essential that all such discriminatory practices against U.S. citizens which arise out of foreign boycotts be specifically prohibited by statute. We would continue to prohibit the furnishing of any information concerning the religion or ethnic origin of Americans.

Second, we are in full accord that the law should prohibit U.S. persons from generally refusing to do business with a boycotted country friendly to the United States, or the nationals of that country, in order to comply with a foreign boycott. For example, U.S. persons should not be permitted to refuse a licensing agreement or other general arrangement to do business with a friendly nation or its nationals on the basis of boycott considerations.

And third, we are in full agreement that no U.S. person should be permitted generally to refuse to do business with another U.S. person in order to comply with foreign boycott requirements. We should not permit foreign boycotts to cause American firms to boycott other American firms. The Joint Statement of Principles would prohibit such refusals to do business if such actions are taken pursuant to an agreement and we feel this standard merits serious consideration.

In addition, new antiboycott legislation should to be fully effective, supplement the "refusal to deal" provisions by prohibiting the furnishing of certain types of information by U.S. persons in compliance with a foreign boycott. On the other hand, we believe that a company should be able to furnish normal business information in a commercial context.

The law should also reach the transactions of foreign subsidiaries of U.S. concerns to the extent that they participate in the foreign commerce of the United States. While we should not attempt to dictate by U.S. domestic law the terms of transactions which involve only the commerce of the country in which a foreign subsidiary resides,

we can and should reach transactions involving foreign subsidiaries of U.S. concerns (a) where the transaction is designed to circumvent our antiboycott law, or (b) to the extent the foreign commerce of the United States is involved. However, as the joint statement of principles recognizes, a U.S. person should not be required to contravene the laws, regulations or official policy of a foreign country with respect to such person's activities within such country.

To put teeth into these provisions, we have suggested that both the civil and criminal penalties under the Export Administration Act be increased—the maximum civil penalty should increase from the present $1,000 to $10,000 per violation, and the maximum criminal penalty should rise to $50,000 per violation. The Department of Commerce will continue to work closely with the Department of Justice, through the Export Administration Act mechanisms and with Commerce Department administrative and regulatory support, to establish and maintain a strong and effective enforcement capability.

I believe that the antiboycott legislation must be clear, simple and precise so that the U.S. businessman and his foreign customers—as well as all other persons—can understand exactly what they may and may not do.

To further this objective, the ambiguities present in the section 3(5) policy statement should be eliminated. The act now declares certain types of business practices to be contrary to U.S. policy, but stops short of prohibiting such practices. The result is an ambivalent standard. Section 3(5) should simply state that it is the policy of the United States to oppose unsanctioned foreign boycotts, and this policy should be implemented by clear prohibitions. We have had fruitful discussions with committee staff on this point.

The administration also believes that the present extensive reporting requirements under the Export Administration Act should be curtailed. They exceed what is necessary for effective enforcement of the legislation as well as requirements for information. We therefore might, for example, limit reporting to requests for prohibited information or action. This change would relieve both the businessman and the Government of a heavy reporting burden (now approximately 11,000 reports per month). By reducing this enormous and unnecessary paper flow, the Department would be able to concentrate its limited manpower and other resources on the more important matter of enforcement. The Secretary should have authority to increase reporting requirements, as appropriate.

Boycott reports that are required would continue to be made public, except for limited proprietary information. The suggestion in the joint statement of principles that the names of reporting firms not be generally disclosed merits our serious consideration.

The legislation should expressly preempt State laws insofar as they apply to foreign boycotts. The growing proliferation of State and other antiboycott laws places on U.S. firms the unfair burden of having to comply with an ever-increasing number of overlapping, and sometimes conflicting, sets of requirements. It is difficult, as well, for customers in other countries who wish to accommodate to our requirements. Preemption would establish a single clear and uniform standard for the United States.

All of the foregoing points are, of course, premised on two foundation blocks. The first is the Export Administration Act, which should be extended as soon as possible. The act is the basic authority necessary

to carry out these antiboycott amendments. The second is the continued authority of the Secretary of Commerce to promulgate regulations concerning unsanctioned foreign boycotts. I propose to promulgate new antiboycott regulations with as much clarity and specificity as possible. Since it is not possible to anticipate every problem or every changing circumstance, the flexibility, as well as the detail, of regulations is necessary. I intend to provide full opportunity for public comment if adequate time for such comment is provided in the act.

Finally, let me mention briefly some of the limits that we believe new legislation should respect.

First, as Secretary Vance pointed out, we must take into account that states do exercise their sovereign rights to regulate their commerce, and to decide, if they wish, to refuse to deal with other nations or the firms of other nations. They have the right to control the source of the imports as well as the destination of their exports.

We are in agreement with the Joint Statement of Principles that the legislation should not prevent a U.S. person from, among other things, complying or agreeing to comply with the laws or regulations of a foreign country prohibiting import of goods or services from, or produced by a national or resident of, another country; meeting certain shipping requirements, shipping and import document requirements, export shipment or transshipment requirements; or, complying with a unilateral selection by a foreign country, or any national or resident (including a U.S. person) thereof, of participants in a particular transaction.

We agree further with the Anti-Defamation League and the Business Roundtable that, without violating the intent of the basic prohibitions, the law should protect a U.S. person from prosecution "as a result of such person's observance of the laws and regulations of a foreign country with respect to such person's activity directed to or within such country or a unilateral and specific selection of a supplier of goods or services." For example, an American firm which is a resident of a foreign country should be permitted to select suppliers of goods and services for importation into that country in a manner which is consistent with the laws and regulations of the country in which it resides. Similarly, an American firm should be permitted to honor the unilateral selection of insurers or carriers of a transaction by a foreign country, its nationals or residents.

Such legislation must, however, meet our goals of protecting our citizens from discrimination and economic compulsion.

While this framework must be translated into specific statutory language, I believe that the provisions I have urged today will sharply strengthen the position of the United States against the most intrusive aspects of foreign boycotts, while not interfering unduly with our important economic and political interest in other countries or jeopardizing the ability of the United States to work toward a lasting settlement in the Middle East.

Mr. Chairman, I should like to introduce to the members of the committee Mr. C. L. Haslam, General Counsel Designate of the Department of Commerce, and Mr. Homer Moyer, the Acting General Counsel for the Department. If there's no objection, I should like to request that these gentlemen be permitted to assist me in the questions.

Senator STEVENSON. Well, there's no objection. By all means, we would like to have them with us too. Thank you, Mrs. Kreps.

I was especially pleased by your support for Federal preemption and also your answer to the question about shipping requirements, but you have left some of the questions unanswered. Should negative certificates of origin be prohibited? Before you answer, would it be wise for us not to prohibit negative certificates by statute but give the Commerce Department such authority?

Secretary KREPS. I think either is a possibility. There are several things to note here just in passing. The negative certificates of origin are, of course, used to enforce the primary boycott, and we do not challenge the right of foreign countries to a primary boycott. Nonetheless, the administration would not oppose a prohibition against negative certificates of origin. If the Congress should determine that negative certificates of origin should be prohibited, the Department would request that there be a 1-year period before the prohibition action takes effect.

Finally, of course, we are aware that Saudi Arabia has shifted voluntarily to positive certificates of origin and we would hope that this trend might continue, irrespective of what we do with the legislation

The third alternative is, of course, to permit the Secretary to address the issue in the regulations. This would give us some flexibility.

Senator STEVENSON. Are you concerned, as frankly I am, that a statutory prohibition in negative certificates by an act of Congress would invite many countries to require negative certificates, some of which at the moment—you mentioned only one—do not now require negative certificates? Is that something that we should be concerned about, the possibility that by acting decisively and unequivocably to prohibit negative certificates we might invite more negative certificate requirements?

Secretary KREPS. It's difficult to estimate the degree to which this development might ensue from the legislation. I think there's some possibility that that might occur which might suggest that regulations would be a better route to go. I have evidence as to what would be forthcoming as a result of such a statutory provision.

Senator STEVENSON. Well, the authority by regulation would give the administration the means by which to impose such a requirement but without running risk of inviting retaliation—or if not retaliation, a response to what is regarded as an unfriendly act. As you point out, the act isn't aimed at the primary boycott and I don't believe it's anyone's intention to interfere with the right of every sovereign to impose a primary boycott against its enemies.

Secretary KREPS. I think further, Mr. Chairman, we should do everything we can to encourage positive certificates and it might be that the absence of legislation on that point would promote that possibility.

Senator STEVENSON. You say that the law should prohibit refusals to do business with other U.S. persons. Do you intend by that to permit refusals to deal with foreign companies?

Secretary KREPS. I'm sorry, I missed the last word.

Senator STEVENSON. You said the law should prohibit refusals by American companies to do business with U.S. persons as part of a boycott. By that, do you mean to suggest that they should be permitted

to boycott non-U.S. persons, foreign companies, blacklisted Canadian companies, for example?

Mr. MOYER. If I might answer that, Senator, the definition of U.S. person that we have proposed would reach foreign subsidiaries of American firms. Under certain circumstances, to the extent that your question would be decided by the definition of U.S. persons, it would certainly reach those corporate entities.

Senator STEVENSON. Well, now, you're coming to a future question about extraterritoriality and my question has nothing to do yet with foreign subsidiaries, but whether companies should be permitted—American companies—permitted to boycott non-American companies. You say, no, they should not be permitted to boycott American companies, and by implication it seems to me you're saying that they should be permitted to boycott non-American companies. Is that what you intend?

Mr. HASLAM. We have sought to restrict our proposals to U.S. commerce, Senator, and we thought the legislation should address those intrusions of foreign boycotts into U.S. commerce, including where U.S. foreign commerce is involved.

As proposed, we would not extend the legislation to persons other than U.S. persons.

Senator STEVENSON. All right. Now on the foreign subsidiaries question, you state that the law should reach the transactions of foreign subsidiaries to the extent that they participate in the foreign commerce of the United States. Could you explain what you mean by "to the extent they participate in the foreign commerce of the United States"? By one construction, every subsidiary of a U.S. company participates in foreign commerce. You say to the extent they participate in foreign commerce, and I don't know from that statement quite what you mean. Could you give us some examples of actions which fall on both sides of the prohibition?

Mr. MOYER. Yes, sir. What we contemplate by that definition would be U.S. foreign commerce which would be involved, for example, where an order was directed to the U.S. parent, referred to a foreign subsidiary and filled by the foreign subsidiary. U.S. commerce would be involved, as we construe it, in that situation.

U.S. commerce would likewise be involved where a component is manufactured in the United States and shipped to a boycotting country through a foreign subsidiary.

Under our formulation, the prohibitions would not extend to an order that is sent directly to a foreign subsidiary, filled directly by the foreign subsidiary, and sent to a boycotting country where there's no other involvement of the U.S. parent.

Senator STEVENSON. Are you intending to reach conduct that is calculated to avoid the prohibitions of U.S. law by the use of foreign subsidiaries? Is that the thrust of that position?

Secretary KREPS. It was our intent, Senator, to include in the prohibition both the instances in which when U.S. commerce is involved and also instances in which there seem to be evidence that the subsidiary was used as a conduit to avoid the boycott, and we would be very careful to be sensitive to the latter as well as the former.

Senator STEVENSON. Thank you. Senator Heinz.

Senator HEINZ. Thank you, Mr. Chairman.

Madam Secretary, yesterday and today you endorsed the principles in the ADL and Business Roundtable agreement of March 4, but I'm sure you are aware of the Business Roundtable letter of March 10, stating that the Anti-Defamation League had misconstrued several points of that agreement.

I'd like to touch on several of those points. One question I would ask regards the term "agreement or agreeing to take," and my question is should the term either "agreements or agreeing to take", when used in the bill, be restricted only to written agreements? Can a pattern of conduct imply an agreement or must it be explicit?

Secretary KREPS. We would interpret "agreement" to extend not only to a written or formal agreement but also to an agreement that could be inferred from a course of action. The administration believes that the requirement of intent is implicit in the bill. The addition of specific language such as "with intent to further or support the boycott" would, we think, add clarity.

Senator HEINZ. But you're saying the question of intent could be determined by a pattern of conduct?

Secretary KREPS. Yes.

Senator HEINZ. With reference to the unilateral selection issue, should American firms be permitted to honor a designation of one firm by the Arabs as supplier of a particular component? I think you agree with that.

Secretary KREPS. Yes.

Senator HEINZ. Suppose that a company in a boycotting country or the government of a boycotting country supplied a list of what they would consider to be acceptable firms, a list of six subcontractors for example. Would the acceptance of such a list by a U.S. person or subsidiary company and its compliance with that list be considered a prohibited act? Would it be an act that you would seek to ban or would you permit it?

Secretary KREPS. That's a very difficult question and this is one of the fine points that the chairman urged us to get down to I realize. We have been reading unilateral selection to mean selection of a particular firm on the part of the importer. We will be interested to see the interpretation in the ensuing testimony from the Business Roundtable and the ADL on this point, but our interpretation of unilateral selection means selection of a firm.

Senator HEINZ. Of a single firm?

Secretary KREPS. Yes.

Senator HEINZ. In other words, if an Arab company came back and said, "Here are two suppliers, not one, that you could use," the American firm that received a list of two would have to say, "I'm sorry. We can't take that list. That's really a prohibited act. Please just take that list back and give us one firm."

Secretary KREPS. Well, I think you're pressing too hard, if I may say so. I think that there are probably several different options that we could agree to here, but our basic position is one of accepting an importer's selection as opposed to simply searching out those firms that would be on an acceptable list. Whether that's one for two is different from whether it's simply a blanket endorsement nonblacklisted firms.

Mr. HASLAM. Senator, I might add that the precise answer to that question may well turn on other facts and information that may relate to the question of intent. I don't think we mean to say that it would ever be permissible for there to be anything other than a single unilateral specific designation. However, if there are indications that the firm would have reason to know that firms excluded were excluded on the basis of the blacklist, then such a selection from a list of group of firms may well constitute a form of blacklist and we would not favor the use either of a blacklist or a whitelist. I don't think that we can speak with such precision as to eliminate any transaction in which there's more than one option, but if that option were put together on the basis of a whitelist or blacklist, then we think that would come close to the intent of actions which this bill seeks to prohibit.

Senator HEINZ. Well, I think it probably goes without saying that when a boycotting country gives you a list of either one or several companies, you can reasonably infer that it has something to do with a boycott. So I don't understand how the question of intent could ever be optional consideration here. The intent has to be assumed in every instance.

Mr. HASLAM. Well, we would clearly favor provision for unilateral selection of one firm. I was seeking not to foreclose as part of this legislation other patterns of transactions that arise. The difference in the two examples is active participation by the American firm in a selection.

Senator HEINZ. Let me ask you a different kind of question if I may, Madam Secretary. Suppose a boycotting country or firm asked a U.S. firm to provide a list of suppliers or subcontractors and the U.S. firm did so and on that list were firms, some of whom were blacklisted by the Arab country and some of whom weren't. Would that be or should that be a prohibited act?

Mr. MOYER. If I might answer that, sir, that would not necessarily be a prohibited act provided there is unilateral selection by the customer.

Senator HEINZ. Eventual unilateral selection?

Mr. MOYER. That's right.

Senator HEINZ. We're not quite sure a unilateral selection is going to turn out—and I don't mean to seem hardhearted—but you're going to have to draft regulations to the extent we don't answer these questions in the legislation.

I'd like to turn for a moment back to the question raised by Senator Stevenson about refusals to deal. Would the Department of Commerce in promulgating regulations under the act as presently drafted draw a distinction between generally refusing to deal, which is the language that I believe you used, Madam Secretary, in your testimony—with another U.S. firm pursuant to a blacklist or agreement, and not doing business with a U.S. firm on a specific transaction where there's concrete knowledge that a component past produced by a particular company is unacceptable to the purchaser?

The example that I'm referring to is a tractor with the famous tires that might be made by a company that was blacklisted or might not be.

Secretary KREPS. May I ask you now to repeat the question?

Senator HEINZ. Yes. Would the Department of Commerce in promulgating its regulations under the act draw a distinction between generally refusing to deal with another U.S. firm pursuant to a blacklist or agreement or, on the other hand, not doing business with a U.S. firm on a specific transaction where there is concrete knowledge that a component part produced by a particular company is unacceptable to the purchaser; that is to say, it's produced by a blacklisted company.

Secretary KREPS. The administration believes that unilateral selection by a foreign nation or resident of a foreign country provides one of the ways by which we could respect the import laws of other countries. We believe this is an appropriate manner, although we would not like to foreclose other possibilities. There may be other approaches that would allow us more freedom to trade and I do not wish to foreclose those here.

The example, the unilateral selection example was the one with which we found the most complete agreement. I do think that is one of the options that's endorsed by the Business Roundtable.

What we would do here in writing the regulations would be to follow from the legislation, as you see fit to draft it, and I think we really don't know what that legislation will be. I shall be again very much interested to see where the Roundtable and ADL come out in their interpretation of this specific question you raised.

Senator HEINZ. Thank you, Madam Secretary.

Senator STEVENSON. Senator Brooke.

Senator BROOKE. Thank you, Mr. Chairman.

I will be brief. Mr. Chairman, as I recall the facts, at the conclusion of the last session of the Congress, though we didn't have a conference, we did meet as tentative conferees both the House and the Senate, and we were not able to come out with a bill, but the bill which I think you have been the primary drafter, Mr. Chairman, S. 69, more or less includes the agreements, which were arrived at in this informal conference held between the House and the Senate as I recall. I served as a member of that informal conference.

Now as I look at S. 69 and look at the proposals by the administration, obviously the administration has not attempted to address itself to some of the more difficult issues. Isn't that correct, Mrs. Kreps? I mean by that, there are several things, obviously, that you do cover, but you really don't get down to the very difficult and complex issues that are involved, and I think in your response to Senator Heinz you said you did not want to address those issues at this time, and Secretary Vance when he came before us was very general in his proposals to the Congress. So I take it, Madam Kreps, what you're really going to do is leave it up to the Congress to draft this legislation without guidelines and suggestions from the administration on some of the more difficult issues. Is that correct?

Secretary KREPS. No, sir, not altogether. We have a list of specific changes that we would like to see made in the legislation. I should be glad to go through those. You may want to designate those as unimportant aspects of the legislation. We do not think they are unimportant.

With respect to whether the administration leaves to the Congress the writing of legislation—and I thought that was——

Senator BROOKE. Our job?

Secretary KREPS. Our general agreement under the Constitution.

Senator BROOKE. But the administration doesn't believe in that very often. I notice they are very eager in many instances to propose legislation to the Congress which the Congress works on.

I won't call them unimportant, Madam Kreps, and I don't want to be facetious. Let's call them major and minor. You do not address yourself to some of the major issues involved in this legislation; is that correct?

Secretary KREPS. On the contrary, I think unilateral selection is quite a major part of the legislation. That is one proposal that we are offering. It is not the only one. It is not the only way to go. We use it as something to which we can subscribe. You may see fit to expand that or restrict it.

Senator BROOKE. But I don't know that you actually give us a definition for unilateral, do you? You don't give us any definition as to what you mean.

Secretary KREPS. I thought the use of the term was fairly clear, but we would be glad to work on a definition if that would be helpful.

Senator BROOKE. Well, I think that's exactly what Senator Heinz was pointing out, that you didn't define it, didn't go into it.

Well, let's back up a moment, if we may, Madam Secretary. We are now operating under an Executive order. The legislation has expired. It's before the Congress to be extended. If we extend it, we are still faced with basically the same problems. Admittedly, this is a very complex piece of legislation. It's a very emotional and very complex subject, an international boycott, but I wanted to know whether now that we have had both the Secretary of State and the Secretary of Commerce before us, is it going to be the administration's position that this is all that we can expect from you, and that no further guidance or direction on some of the political issues that are obviously involved in this will be sent to us in the form of recommendations for legislation?

Secretary KREPS. We have submitted a number of what you might refer to as minor suggestions for changes in the legislation. We would like to be able to submit others if that's allowable.

Basically, on the points on which you and Senator Heinz seem to think the matter rests, I think we have stated our position with as much openness as we can, and we have obviously left to you the drafting of the final legislation and we will be glad to work with you at the staff level in writing that language.

Senator BROOKE. Well, there's no question that we will draft legislation and that legislation will be passed, and I'm sure we will eventually get a conference with the House and some bill will come out. So we are not trying to shirk our responsibilities by any means——

Senator HEINZ. Would the Senator yield?

Senator BROOKE. I just wanted to say that we would like to know if we're going to get any guidance from the administration, and you have said we've got all the guidance that we can expect, and that you will be pleased to work with us on any matters at the staff level. That's your response and I accept that response.

Yes, I would be very pleased to yield.

Senator HEINZ. Madam Secretary, you may or may not be familiar with all the discussion we had with Secretary Vance when he was here before the committee. Secretary Vance was asked, I think by Senator Stevenson, whether he favored enactment of either S. 69 or S. 92, and

he said that while he agreed with the principles of the legislation, that they generally conformed with the principles that he had espoused and that you had espoused, he said the enactment of either one of those bills would not be helpful and he urged us on the committee to wait for specific legislative language from the Executive branch.

Now we're hearing that what we see is what we get.

Secretary KREPS. Mr. Chairman, may I respond by indicating some of the points on which we would like to have the legislation changed? Is that acceptable now. It seems to me to be responsive to the line of questioning.

Senator STEVENSON. Senator Brooke has the floor.

Senator BROOKE. Yes. Unfortunately, I have to go to the Appropriations Committee, and I just wanted the Secretary to clearly understand my position. I just wanted to know what we can expect from the administration in this, and you're quite right that this is our responsibiliy and, as I said, we will accept our responsibility, but we had believed that we would get some guidance from the administration. I take it now that you will go over your recommendations letting us know where we could expect your guidance and those areas where you will leave it entirely up to the Congress to make its own decisions relative to this very complex legislation.

Senator STEVENSON. Would the Senator yield for an observation by the chair?

Senator BROOKE. Yes.

Senator STEVENSON. The Secretary of State when he first testified offered to send up a bill. He offered to draft legislation but the committee was not sympathetic to that suggestion and so he withdrew it, recognizing as you put it, a certain pride of authorship within the committee. So it was suggested that to the extent possible staff get together and try to come to some understanding on all of these issues, including the secondary issues. Such conversations have been under way. We have I think in this hearing this morning made a good deal of progress on many of the specifics. We have already covered preemption, shipping, foreign subsidiaries, negative certificates, and other such questions. And the Secretary has, I believe, just indicated that the administration is ready to go farther with still more suggestions for specific changes or provisions in this legislation, and if there's any reluctance on the part of the administration to come forward with legislative language it may in part be because an earlier offer to do so was not accepted by this committee.

Senator HEINZ. Mr. Chairman, since I believe you're referring to a colloquy that I had with Secretary Vance right at the end of our discussion with the Secretary, I'd like to clarify the record if I may, if the chairman would yield.

Senator STEVENSON. By all means.

Senator HEINZ. You will recall that Secretary Vance said that he felt our legislation as presently drafted would be, and I quote, "unhelpful."

Senator STEVENSON. I thought that was part of the colloquy that I had with the Secretary.

Senator HEINZ. That was. You're quite correct. That was on page 233 of our transcript of proceedings. Then on page 246 and following I asked Secretary Vance in view of the fact that we hadn't got down to specifics would he please come across with specifics and do it publicly

and not with an informal, under the table, behind the scenes, in the smoke-filled room, on the back of envelope kind of procedure that occasionally had been used by previous administrations. And he said, yes, in effect he would agree to come up with his positions stated publicly and in detail. That is not what we have seen from the administration and I must respectfully indicate, Mr. Chairman, that this committee, at least insofar as this member is concerned, did not refuse the assistance of the adimnistration. I think we are long past the point of having pride of authorship. What we are trying to do is serve the public interest, not any of our own private authorship interests and that very much was the intent of our colloquy. Indeed Secretary Vance said that he would put everything up on the table and that he would have no problem with the administration sending to us their proposals publicly and in writing.

So if the chairman feels that at some point we have rejected the specific help of the administration, I would be delighted to be corrected.

Senator STEVENSON. On the contrary. If the Senator will yield, as the Senators know, the purpose of this hearing was primarily to hear specifics from the administration. Now if all the Senators would yield to the administration, perhaps we would hear some more specifics and be able to get on with the primary purpose of this hearing.

Senator BROOKE. Mr. Chairman, before all of us yield to the Secretary, first of all, the committee, as I recall, Mr. Chairman, did not reject any offer on the part of the administration to submit a bill. I think Senator Proxmire may have said that, but he speaks for himself and not for the committee.

No. 2. Mr. Chairman, you know this is certainly not a policy matter with me at all. It's just that I had expected that after the Secretary of State had been here and had not taken a position on what I believe to be the major parts of this bill, in all due respect—and you know it's very difficult when we get into major or minor, Madam Secretary. Obviously, everything is of great importance, but there are some matters, particularly under S. 69, section A, "refrain from doing business with a boycotted country or its nationals pursuant to an agreement with requirements," et cetera—no position is taken by the administration on some of the difficult issues raised by this language. Section B, "refrain from doing business with any U.S. person or person doing business in the United States or any other person," again the administration does not take a position on some of the difficult issues in this section.

Now if you're going to take a position on either one of these, fine. I'd be very pleased to know what they are. If you're not, then say so. That's the administration's position, and you're going to leave it up to the Congress and say that as well. But I think we ought to be clear as to what we can and cannot expect from the administration in all fairness.

Secretary KREPS. Am I allowed to respond now?

Senator STEVENSON. The Senators yield to you, Madam Secretary.

Secretary KREPS. I do think it's important that Senator Heinz know that I am not here to clear the record for previous administrations.

Second, it is quite clear that the administration is not submitting its own legislation in this instance.

Third, with respect to the specifics, I should like to go through a list of things that we would like to have you consider as possible changes in the legislation.

We would recommend that section 4A(a)(1)(B) be changed to add the phrase "pursuant to an agreement" as suggested by the ADL-Business Roundtable Joint Statement.

Senator HEINZ. Are you using both bills?

Secretary KREPS. Yes. This is S. 69 and S. 92 which are on these points the same. Shall I continue?

Senator STEVENSON. If I might add, they are not quite the same. One of those bills requires an intent to comply with the boycott before it becomes a prohibited act, and the other does not require intent, and you're now suggesting that before the action becomes prohibited there must be agreement. That is more restrictive than both of the bills.

Mr. MOYER. Mr. Chairman, inasmuch as criminal sanctions are involved here, we read both bills to require intent, explicit in your bill, implicit in Mr. Proxmire's bill. The recommendations that the Secretary has begun to make would impact the same on both bills. We don't mean to imply we don't understand the differences between S. 69 and S. 92.

Secretary KREPS. The second change we recommend is in section 4(A)(a)(2) which should be qualified to make clear that the act does not prohibit the furnishing of general information about a firm's experience and the resources in doing business abroad where such information is requested in the normal commercial setting.

Three, we recommend the preemption provision that should be added to section 4A(a)(3) providing preemption of State antiboycott laws.

Four, section 4A(b)(1) should be amended to require that subject to the Secretary's discretion reporting requirements should be extended only to requests for prohibited information or action.

Five, the policy statement of the act, section 3(5)(B) should be amended along the lines suggested in my testimony.

Six, the bill should be amended perhaps in section 4A(a)(4) to provide some grace period for contracts already in existence but not yet completed.

Seven, section 11(2) should be clarified to indicate that the bill's prohibitions extend to all foreign subsidiaries where U.S. commerce is involved.

Now, this is not an exhaustive list, but it does give you some indication of the kinds of changes that we think are important to make.

Mr. MOYER. Mr. Chairman, if I might, in response to Senator Heinz' concern, I would like to amplify briefly, simply note that during the past week to 10 days there have been several meetings with staff during which specific legislative language was discussed and submitted to the committee staff. During those discussions Senator Heinz' concern that these discussions be open was specifically raised and we were asked whether we would have any objection to our draft legislative language being circulated, to which we responded we would have no objection whatever.

I think those discussions have indeed been completely open and candid and we would look forward to further such discussions and would look forward to furnishing the committee and the committee

staff with additional specific legislative language following these hearings.

Senator STEVENSON. Thank you. We are making progress. In addition to the specifics you have just mentioned, Madam Secretary, you have also addressed yourself to other specifics this morning, including the question of shipping. There are one or two additional ones that I would like to raise before I get back to Senator Heinz, and also a general observation.

The first of the specifics is with respect to visa requirements. Should a U.S. company be permitted to proceed with a project in a boycotting country if certain of its employees are denied a visa for boycott reasons? S. 69 permits compliance with the visa requirements of foreign countries and the other bill is, I believe, silent on the subject, leaving at least a possibility that if an employee of an American company were denied a visa for boycott-related reasons it might be prohibited from going ahead with a transaction in the boycotting country.

Do you have any advice for us on the visa question?

Secretary KREPS. We would concur with compliance with visa requirements. I will ask Mr. Haslam if he wants to elaborate on that.

Mr. HASLAM. Well, I don't think much elaboration need to be made. I think an American firm could not select employees on the basis of anticipated visa or immigration requirements, but if an employee were denied entrance to a country that should not affect the ability of the firm to complete the project and we would generally support S. 69 on this point.

Senator STEVENSON. My general problem is with the cumulative effect of all of the exceptions to the general prohibition. In general, it would be unlawful for an American company to agree to discriminate against another American company or U.S. person. Then, of course, we get into exceptions. One of the exceptions says in effect, that the boycotting country can designate subcontractors to the American company. Now, if you permit that, which in effect says that the company can discriminate against American subcontractors if required by a foreign boycotting country to do so by selecting one subcontractor as opposed to another, what's left of our antidiscrimination, antiboycott bill?

Secretary KREPS. I think that is a very good and perhaps the central question and our response to that is simply that the designation of the subcontractor by the purchaser is such a widespread commercial practice having to do with nonboycott situations as well as boycotted ones, that we did not feel that we could separate out those two cases.

I realize that your point is well taken, that if you allow the foreign company to specify the precise firm that will do the subcontracting, that allows that foreign buyer to exercise in one sense its boycott. However, it does put the American firm in the position of not having to seek out firms that are acceptable but simply to follow the instructions of the importer.

I do agree with your basic worry about that, but I see no other way to solve that.

Senator STEVENSON. It's a large worry for me because the exception permits compliance with a tertiary boycott. The tractor case is the famous case now, but I'm familiar with a situation in my own State

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of Illinois in which an American bus manufacturer was required to discriminate against suppliers of seats and for boycott reasons. These were not normal commercial selections by a foreign country of a subcontractor. That prime contractor had to boycott American subcontractors who were perfectly capable of supplying seats for buses.

Now couldn't we at least carve out an exception to the exception so that in those situations where clearly the intent exists or you have an agreement to discriminate against the subcontractor for boycott-related reasons such compliance with the boycott would be prohibited?

Secretary KREPS. We have not, as an administrative position, made that exception and we had thought it unwise to try to do so. I respect your view on this. It is not the view that we hold at this point.

Senator STEVENSON. Senator Heinz.

Senator HEINZ. Thank you, Mr. Chairman.

Madam Secretary, in the first change that you propose to the legislation in section 4A(a)(1), you use the term "U.S. commerce." That is an interesting term inasmuch as the Export Administration has jurisdiction, as I understand it, only over U.S. export transactions.

U.S. foreign trade, a term not used here, or U.S. commerce appears to have a broader meaning. Could you comment on that?

Mr. MOYER. If I might respond, Senator Heinz, you are quite correct, that to that extent the antiboycott prohibition would be broadened to include interstate commerce as well as U.S. foreign commerce.

Senator HEINZ. It is for the term "U.S. foreign commerce" that I would appreciate having as clear a definition as possible.

Mr. MOYER. It would encompass the types of exports which are otherwise covered by the Export Administration Act.

Senator HEINZ. So it is for all intents and purposes the same as U.S. export transactions?

Mr. MOYER. It is at least that broad, that is correct.

Senator HEINZ. Can you think of anything beyond U.S. export transactions that would make it broader?

Mr. MOYER. I think we could quibble about whether U.S. export transactions would include foreign subsidiaries, a point raised earlier. As we mentioned, we intend to cover that.

Senator HEINZ. I am not trying to quibble, I am just trying to understand the meaning of the term.

Mr. MOYER. I understand. There might arguably be a difference between those two terms. Our formulation of commerce would include foreign subsidiaries.

Senator HEINZ. I think we have made the record clear on that point, and that is fine.

You also suggested that with respect to section 4A(a)(4) that where contracts have been entered into there should be a grace period.

My understanding is that where such contracts are now in existence, you would like to have a 5-year grace period on those existing contracts, if the contracts run that long.

It is my further understanding that if they should terminate before the 5-year grace period is over, they would be subject to the provisions of the act. Is that correct?

Secretary KREPS. That is correct.

Senator HEINZ. Could you give us any rationale for the 5-year period?

Mr. HASLAM. There is no magic in the 5-year period, Senator. Our concern is with influencing contracts in midstream. And certain accommodations would be required by Arab countries under this legislation, certain new requirements and prohibitions would be imposed upon companies, and we feel that certainly some reasonable period is needed, a grace period for contracts in effect. Some construction projects may take many years.

We would, however, not like to extend that indefinitely as a grandfathering clause to all contracts. Five years was a period we picked, one which we felt to be reasonable.

Senator HEINZ. You also indicated that in the event that positive certificates were mandated by the act, that you would like to have a grace period of up to 1 year, presumably for you and the State Department to try to get the boycotting countries to see the obvious reasonableness of our point of view, if that in fact was the will of the Congress.

Are you in effect asking for a waiver, giving authority to the President to waive for up to 1 year after the 90-day periods that I am sure would be included in the legislation, that requirement? Is that what you are asking for?

Secretary KREPS. I would think that would be the best way to handle it, yes.

Senator HEINZ. All right. That may answer the following question, because as you know Secretary Vance and yourself, having endorsed the prohibition on negative certificates of origin, because of the publicly announced decision of several Arab States to no longer request such certificates, received a minor setback last week when the United Arab Emirates apparently indicated to an American company, at least according to my staff, that they would only accept negative certifications on the origin of goods.

There appears to be some communication problem between us and the Arab States on that point.

Mr. HASLAM. If I may comment, Senator, we have indicated that we would not oppose a prohibition of negative certificates of origin.

However, we would like to consider, as Senator Stevenson suggested this morning, the possibility of leaving this authority to the Secretary, so that accommodations and judgments could be made on the basis of diplomatic success.

Senator HEINZ. Well, I think we are all probably interested in promoting the kind of understanding, the kind of relationship, including trade relationships, among all countries in the Middle East, as the best policy for insuring a peaceful Middle East.

Would you generally agree with the principle that we should try and make that our policy, namely, to expand as much as possible trade and commerce with all of the countries in the Middle East?

Secretary KREPS. I shouldn't think that would need affirmation.

Senator HEINZ. No; but it is helpful to get it on the record so that when people ask you why you are writing regulations that you are able to say that part of our colloquy today talked about some of the broader issues, and I do think, Madam Secretary, that we want people to know

that we don't want to compartmentalize our view of the world. Indeed I know you don't hold that view at all.

Let me ask you a more difficult and more general question. Let's assume that we make some or most of the corrections that you have suggested in the legislation, and that we have an act that is signed into law by the President.

Do you feel that you are in a position at this point to give us some idea of what impact such legislation could have on jobs here in this country, specifically with respect to our exports to Arab countries?

Secretary KREPS. I think it is very difficult to give you hard numbers on that, because they would be estimates.

As you know, our exports to the Arab countries now are running—well, this year we expect about $10 billion. They were $7.5 billion last year. That indicates the rate at which they have been increasing.

In terms of jobs, again our rough estimate would translate each billion dollars of trade into say 50,000 jobs. So if we wanted to put a job estimate on our total exports to the Arab countries now it would run in the neighborhood of half a million jobs.

I do think we have to worry a great deal about any action that we take that might cut back on trade and cut substantially into the jobs thus created.

The question of what impact on that trade a specific piece of legislation will have reduces itself, of course, to the question of what response the Arab countries would make, whether they would shift their demand for goods and services to other countries where there is no boycott legislation.

As you know, Senator, the competition among the nations of the world for the booming trade with the Arab countries is quite fierce. United States presently supplies well under 20 percent of those countries' total imports. It would seem to me that in the absence of any clear evidence, we can only guess as to cutbacks, but we should keep clearly in mind that the alternative sources of goods and services, alternative to those of the United States, are quite close and quite easy for the Arab countries to avail themselves of.

Senator HEINZ. If the Chairman would permit me, since my time has expired, one follow-up question.

If we enacted the legislation and incorporated in it the administration amendments, do you think the effect on our trade, on jobs, would be zero, negligible, minimal, substantial but small, substantial but somewhat larger than small? Any or all of the above, none of the above?

Secretary KREPS. Would you like to give me another choice?

Well, I have only a personal guess on this. We have not attempted to estimate it, because there is no way we could do an actual estimate.

Senator HEINZ. Obviously I am not asking you for a dollar estimate, I am just trying to get an idea of which direction and generally how much in that direction.

Secretary KREPS. Well, I would think it inevitable that in the short run at least there would be some reduction in American exports to the Arab countries.

I would find it difficult to put even a rough estimate on that. We are faced with an upswing in total trade to them, and the question is, of course, how much would that growth pattern be interrupted.

We might not see any actual downturn, but there would surely be some effect, I think.

Senator HEINZ. Thank you very much.

Senator STEVENSON. Senator Sarbanes?

Senator SARBANES. No questions, Mr. Chairman.

Senator STEVENSON. Madam Secretary, it is certainly my hope that if this legislation is properly drawn in defense of American interests and the diplomacy is appropriate, it would not have any adverse effect on American commercial interests. That certainly is our purpose.

I have just one last question having to do with a specific. In your testimony you state that the law should prohibit the furnishing of "certain types of information in order to comply with the boycott."

Should a U.S. person be permitted to answer a questionnaire about whether he deals with blacklisted firms or with Israel, or about his investments in Israel?

What types of information do you have in mind?

Secretary KREPS. We seem to have some disagreement among ourselves, so I will let the legal department answer that.

Mr. MOYER. Senator, I might indicate simply that that raises quite a difficult issue. There are strong arguments on both sides as to that particular question.

On balance, we come down favoring prohibiting responses to those types of questions, but we recognize that that is a difficult issue.

Senator STEVENSON. Any other questions?

Senator HEINZ. Just one, Mr. Chairman.

Madam Secretary, you are quite right that we do have a series of amendments from your staff. If the committee were to incorporate all of those amendments into one or the other of the two bills before us, would the administration support the enactment of the legislation?

Secretary KREPS. I can't answer with finality, but I would think, yes, I would think that we would be in favor of the legislation as drafted, subject to these changes that we have suggested.

The difficult problem that you indicated earlier would then be left to a large extent to the drafting of the regulations. And so I would urge that the legislation be drawn as specifically as possible, so that one does not pass over to the regulations all of the difficult questions that you and I have been going back and forth on.

The legislation is fairly generally drawn, as you know.

Senator HEINZ. Do you anticipate that there will be any other possible amendments that could be coming up to us either before or during markup? Any other possible suggested changes?

Secretary KREPS. I am assured that that might be a possibility. I don't think of one myself at the moment.

Senator HEINZ. All right, Madam Secretary, I would like to thank you for your excellent testimony, and I assure you, you have been tremendously helpful to me and to my colleagues on the committee with your candor and you have been, I think, extremely explicit. I think we are all grateful to you.

Senator STEVENSON. Madam Secretary, I agree with Senator Heinz, your testimony has been helpful, we have made good progress this morning.

You have addressed yourself to most of the secondary questions that have been troubling the members of the committee. That testi-

mony is helpful, and the record will remain open—I think the Chairman proposes a markup for March 17. In any event, time is short. If you do have any further suggestions, including suggestions that have legislative language attached to them, they would be welcome, too.

In the colloquy referred to earlier with Secretary Vance, Senator Proxmire did say that he would welcome amendments from the administration. So we would welcome any amendments or further suggestions you might care to make.

But your testimony has been extremely helpful, and I hope that with your testimony and the testimony of the Secretary of State and others, we will be able to proceed quickly to reporting out a bill that does protect the sovereignty of the country and its commercial interests without undermining the prospects for a settlement in the Middle East.

Only with a settlement will the boycott or potential for a larger war be ended. Thank you, Madam Secretary.

Secretary KREPS. Thank you, sir.

Senator STEVENSON. I will enter in the record without objection a letter that I received from Irving S. Shapiro on behalf of the Business Roundtable.

[The letter follows:]

THE BUSINESS ROUNDTABLE,
Washington, D.C., March 10, 1977.

Hon. ADLAI E. STEVENSON III,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR STEVENSON: Because of your concern with the potential impact of foreign boycott practices upon U.S. individuals and enterprises, we sent you last Friday, March 4, the text of a Joint Statement of Principles Re Foreign Boycott Legislation developed by a task force composed of representatives from the Anti-Defamation League of B'nai B'rith and the Business Roundtable.

With this letter, I, as one of the Co-chairmen of that task force and as Chairman of the Business Roundtable, hope to remove certain doubts which may have arisen as a result of recent testimony before the House Committee on International Relations which included references to, and interpretations of, three of the many points covered by the Joint Statement. The testimony to which I refer was given on March 8, by a panel representing Jewish service organizations and which included two of the three task force negotiators who had represented the Anti-Defamation League. The principal spokesman for the panel was Mr. Alfred Moses, who was not, however, one of the task force negotiators.

Since the testimony of that panel is now a matter of official record, I am taking the liberty of expressing to you the views of the Business Roundtable negotiators on these points so that the thoughts of al involved may be represented.

The three points involved and the views of the Business Roundtable negotiators with respect thereto are as follows:

1. In describing the term "agreements" which would be prohibited under the proposed legislation, Mr. Moses, a member of the witness panel, said on page 4 of his prepared statement that "'Agreements' need not be in writing or express but may be inferred from actions taken. Such actions would include compliance with a boycott-related request from, or a requirement of, or action on behalf of, a foreign country such as furnishing information with respect to boycott requests." The implication of that comment is that compliance with a requirement of a foreign country could constitute a proscribed agreement within the purview of the proposed legislation. The negotiations leading to the Joint Statement make clear that such a provision was unacceptable to the Business Roundtable and the ADL finally agreed to the deletion from the Joint Statement of a provision proposed by the ADL in near identical language to that quoted above.

The Joint Statement expressly states that the principles are intended to protect a U.S. person against prosecution under the proposed legislation as a result of such person's observance of the laws and regulations of a foreign country with respect to such person's activity directed to or within such country. In order for

U.S. companies to continue to do business in or with a foreign country and its nationals or residents, these companies must be able to comply with the laws and regulations of such country applicable to their activities directed to or within such country. If U.S. companies are unable to do this without risk of violating the laws of the United States, their only alternative is, in effect, to withdraw from the foreign countries or to stop doing business with these countries.

For example, a person should not be in violation of the legislation by the simple act of observing a known prohibition of a foreign country against, for example, the importation of tires manufactured by the "XYZ" company. If a U.S. exporter of trucks knows that if his trucks are equipped with "XYZ" tires they will not be allowed into a country, then that exporter should not be subject to the risk of prosecution for having failed to engage in the pointless act of shipping a truck that will not pass customs. If, however, that exporter systematically refrains from using "XYZ" tires on his trucks elsewhere in the world, then a violation might occur.

2. The March 8 testimony also referred to the provision in the Joint Statement which states that any proposed legislation should not prevent a U.S. person from "complying with a unilateral selection by a foreign country, or any national or resident (including a U.S. person) thereof of one or more specific persons to be involved in one or more distinct aspects of a transaction. . . ." This interpretation restricted the scope of this provision to compliance with a selection of a single supplier by a foreign government only. It was stated, moreover, that this would mean that American companies would not be permitted to make a final designation from among a list of potentially acceptable candidates submitted by a foreign corporation, nor would they be permitted to prepare a list from which a foreign corporation would make such a selection.

This narrow interpretation is not reflective of the language of the Joint Statement and was not the intended meaning of this provision as understood by the Business Roundtable negotiators. It is essential that a U.S. person engaged in business in, and operating through residents of, a foreign country have the freedom to select suppliers and contractors in connection with the procurement of goods and services for importation into such country in a manner which conforms with such country's laws, regulations and official policies.

Thus, to adopt an example which was discussed during the March 8 testimony, it would be permissible for a U.S. exporter to honor the selection by a national or resident of a foreign country of specific manufacturers of components (e.g., tires by A, batteries by B, etc.) to be included in, for example, a tractor to be supplied by that exporter.

3. Recognizing that exchange of information regarding commercial relationships is both customary and useful in international trade, the Joint Statement does not purport to prohibit the furnishing of such information except to the extent that the same can be construed to be given "with regard to or reflective of a U.S. individual's race, religion, sex, ethnic or national origin, or presence or absence on a blacklist."

I trust you will appreciate that my intent in making the foregoing comments is not to detract from the overall common understandings we reached through our difficult but fruitful discussions of mutual problems in this complex area of concern, but rather to address three specific points which might, in light of the March 8 testimony, be misunderstood.

Respectfully yours,

IRVING S. SHAPIRO.

Senator STEVENSON. Our next and final witnesses who will appear together are Irving S. Shapiro, chairman, the Business Roundtable, and Burton M. Joseph, national chairman, Anti-Defamation League of B'nai B'rith.

STATEMENTS OF IRVING S. SHAPIRO, CHAIRMAN, THE BUSINESS ROUNDTABLE, AND BURTON M. JOSEPH, NATIONAL CHAIRMAN, ANTIDEFAMATION LEAGUE OF B'NAI B'RITH

Senator STEVENSON. Gentlemen, you are welcome to proceed in any way you would like. If you prefer to summarize your statements, I would be happy to enter them in the record. It is up to you.

Do you want to proceed first, Mr. Shapiro?

Mr. SHAPIRO. Senator, let me say just a couple of things and I will let Mr. Joseph speak for himself. Given the lateness of the hour, we can perhaps be more useful to you if we don't read a statement that you can read for yourself.

I would make a couple of preliminary points and then turn to Mr. Joseph, and when he finishes, perhaps we could address questions.

Senator STEVENSON. Without objection, the joint statement will be entered into the record (see p. —).

Mr. SHAPIRO. Senator Stevenson, the Roundtable got into this question of boycott legislation on the premise that from time to time in American history friends of the United States will have economic disputes, neither is an enemy, both are friends, but nevertheless we need a national policy that relates to how we conduct our affairs opposite our friends.

It was in that spirit that we proposed to the Anti-Defamation League that we might put our heads together and try to find some common ground and make recommedations both to the administration and to the Congress.

We followed that procedure. I have to say that our operations were enhanced by the fact that some of the leading Arab nations found it convenient at about the same time to walk away from a requirement of negative certifications.

That added an element of cooperation and good faith to the whole endeavor, which helped us.

As we come here today, I speak for the Business Roundtable, which has 170 members, and the action that we have recommended was endorsed by the Policy Committee, which consists of 42 chief executives of major American companies, and 39 of the 42 associated themselves with the recommendation that is before you.

We deliberately did not attempt to draft legislation. We don't see that as our particular skill. We thought that if we could evolve principles that legislators could consider, their staffs could reduce the principles to precise legislation. It is on that basis that we have offered to you a statement of principles rather than a draft of a bill.

However, our staff people have taken your bill, Senator, and have marked it up to reflect what we think is in this joint statement of principles, and we would be glad to make it available to your staff if you so wish.

Senator STEVENSON. We would be glad to have it.

Mr. SHAPIRO. With that. I will turn to Mr. Joseph.

Mr. JOSEPH. Mr. Stevenson, we have always considered from the beginning that what we were discussing here in this issue between the Roundtable and the Anti-Defamation League is not Israel, not the Arabs, but strictly Americanism, that which is right and ethical for Americans, American business, would be, we thought, right for the American Jewish and American business communities.

We have always processed and fashioned our work along those lines.

I would like to highlight just a few of the items that I had within the statement. I think it would be very helpful to set the climate or posture under which we worked. I will do this rather quickly.

It became readily apparent to us that one of the first legislative tasks to be undertaken by the new administration and the new Congress would be the continuation of the effort to adopt and deal effectively with the issues posed by the international boycott.

Recognizing this fact, as Mr. Shapiro indicated, we came together early in January and we sat down to explore the feasibility of exchanging these views.

Our tentative discussions in our first meeting in January led us to agree that we had a wide enough area of understanding, potential agreement, that we should proceed further.

So we established a committee of six, three from each team, to go to work and see if we could prepare recommendations for you and for the administration.

This committee of six was joined by Mr. Shapiro and myself, and we came together many times, worked very deliberately and at length to put together what we hoped would be a set of principles which would be acceptable to our constituencies.

The negotiators worked, as I have indicated, and brought back their work to the policy committees of our two groups. The policy committees reviewed this material and came together on their own and agreed that we were in essential understanding and that we could put together a joint statement.

We believe that our joint effort is in itself a unique achievement. We are not aware of any previous successful attempt of this kind in the private sector. Here we are, two groups with differing views, coming together for the purpose of finding mutuality of principle upon which Federal legislation might be adopted, then finding it and offering the results to the legislative and executive branches of the Federal Government. We did this while retaining the substantial support of our respective constituencies—and this is terribly important—and on our part this includes the help and contribution of the American Jewish Committee, the American Jewish Congress, and over one hundred local agencies represented by the National Jewish Community Relations Advisory Council.

It must be emphasized that the statement of principles upon which the two groups have agreed is not intended to be a definitive draft of a proposed bill. We have only tried to create parameters that would be broad enough to incorporate essential legislative concepts.

Let me add a final and personal note. I am a businessman engaged in international trade, familiar with the concepts embodied in the joint statement. I am not a specialist in the drafting of legislation.

However, it is my belief that the principles that we have adopted are workable, enforceable, and equitable framework for this legislation.

Thank you very much.

[The joint statement of Mr. Shapiro and Mr. Joseph follows:]

JOINT STATEMENT OF
MESSRS. IRVING S. SHAPIRO AND BURTON M. JOSEPH
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL FINANCE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE, MARCH 15, 1977

[Mr. Shapiro]

Mr. Chairman and members of the Committee,

I am Irving S. Shapiro, Chairman of the Business Roundtable and Chairman of E.I. Dupont de Nemours and Company, and with me today is Mr. Burton M. Joseph, the National Chairman of the Anti-Defamation League of B'nai B'rith and a man of broad international business experience in his capacity as President of I.S. Joseph Company, one of the nation's foremost grain by-product exporters. We appreciate the opportunity to appear before you today to discuss the background and objectives of the collective effort by the Anti-Defamation League and the Business Roundtable in developing the Joint Statement Re Foreign Boycott Legislation, copies of which were delivered to you approximately ten days ago.

As I believe you are aware, during the past six weeks Mr. Joseph and I acted as the co-chairmen of a special task force of Anti-Defamation League and Business Roundtable representatives, formed to explore the possibility of developing a set of principles of mutual acceptability which might provide assistance in considering federal legislation to deal with the complex issues presented by international boycotts.

At this point, I will turn the microphone over to Mr. Joseph who will explain some of the background of the organization and work of the task force, and the objectives we sought to achieve.

[Mr. Joseph]

Mr. Chairman and members of the Committee, it is with great pleasure that I appear before you. I would like to review the background leading to the formulation of the Joint Anti-Defamation League and Business Roundtable Statement of Principles.

As you all know, at the close of the last session of Congress, both houses had actually addressed the complex and highly emotional subject of federal legislation to deal with issues raised by international boycotts. Bills were introduced, passed by the respective houses, and were ready to go to conference committee. At the same time, national attention was focused on the issue by the second of the debates between the presidential candidates. Nonetheless, as the congressional session came to a close, no final bill was passed and accordingly the Export Administration Act lapsed by its own provisions. The President, relying on executive powers vested in him by the Trading with the Enemy Act, issued an Executive Order, continuing in effect the Commerce Department Regulations, issued under the Export Administration Act, setting forth both prohibitions and reporting requirements relating to international boycotts.

It became readily apparent that one of the first legislative tasks to be undertaken by the new administration and the new Congress would be a continuation of efforts to deal effectively and realistically with the issues posed by such international boycotts. Recognizing this fact, I was approached early in January by Mr. Shapiro, one of this nation's business leaders and the Chairman of the Business Roundtable, to explore the feasibility of exchanging views between the ADL, speaking for an important segment of the Jewish community, on the one hand, and the Business Roundtable, speaking for an important segment of the business community, on the other.

Our very tentative discussions led me to conclude that there were definite areas of agreement and, while there were other areas of difference, reasonable accommodations might be possible. Accordingly, on January 28 of this year, leading representatives of the ADL and the Business Roundtable met to explore further this approach to the troublesome problem of international boycotts. At the conclusion of an extensive conference at which the views of both groups were exchanged candidly, a committee of eight was constituted of which Mr. Shapiro and I were the co-chairmen, and which had three additional representatives each from the ADL and the Roundtable, to carry out the actual work of defining the issues, negotiating and formulating the Joint Statement.

The basic assignment was to begin discussions promptly and attempt among themselves to resolve any differences of view in a reasonable and realistic fashion. If impasses were reached, they were to be submitted to Mr. Shapiro and me, as co-chairmen for ultimate resolution.

Within these parameters the negotiators immediately set to work, and within a remarkably short period of time, found substantial areas of common ground. Naturally, issues also arose where their respective views differed and Mr. Shapiro and I participated in several sessions where those questions were explored and resolved. Through all these sessions, the negotiators from the ADL and the Business Roundtable approached the subject matter first and foremost as U.S. citizens having the traditional freedoms and interests of this nation in mind. It remained the negotiators' principal objective to find bases for agreement and for understanding and dealing with the legitimate concerns of those whose views they most directly represented. About two weeks ago, the negotiators completed their work which is represented by the Joint Statement which you have previously seen.

We believe our joint effort is itself a unique achievement. We are not aware of any previous successful effort of this kind in the private sector. Here we are, two groups with differing views, coming together for the purpose of finding mutuality of principle upon which federal legislation might

be adopted, then finding it and offering the result to the legislative and executive branches of our federal government. We did this while retaining the substantial support of our respective constituencies.

It must be emphasized that the Statement of Principles upon which the two groups have agreed is not intended to be a definitive draft of a proposed bill. We have only tried to create parameters that would be broad enough to incorporate essential legislative concepts.

Let me add a personal note. I am a businessman engaged in international trade and familiar with the concepts embodied in the Joint Statement. However, I am not a specialist in the drafting of legislation.

I would now like to turn the microphone back to Mr. Shapiro to elaborate somewhat further the concepts which underlie the Joint Statement.

[Mr. Shapiro]

In developing the Joint Statement, the negotiators were charged with the task of achieving a delicate balance between proper control of the effects of international boycotts within the U.S., and improper intrusion into the jurisdictional and legislative affairs of foreign countries. In other words, the task was one of giving appropriate recognition to the fundamental principles of international law that a country may regulate and restrict its trade and access with other

countries for political and economic reasons and may determine how business is to be conducted within its territories in its own national interest. At the same time, it was necessary to give full recognition to the fundamental right of the United States not to cooperate in restrictions which are inimical to its ethical principles or its national interest.

Rather than repeating verbatim the propositions in the Joint Statement, or reciting a series of technical applications or interpretations, I think it would be helpful to outline the manner in which some of the more difficult issues were approached.

There were certain obvious fundamental issues on which, as you might anticipate, there was no dispute at all. The obligation of Americans to refrain from discriminating against other Americans on the basis of race, religion, sex or ethnic or national origin is not debatable. These were the first and easiest points with which to deal.

Further, there were difficult, more legalistic, formulations required. For example, a balance has to be struck, on the one hand, between U.S. antitrust concepts prohibiting Americans from restricting by agreement their freedom to deal with other Americans, and, on the other hand, recognizing the rights of foreign countries to control their trade and access.

There were other areas, where, candidly, tradeoffs were negotiated. For example, the Business Roundtable strongly urged that legislation should not extend outside the limits of the U.S. and therefore should not cover foreign subsidiaries or affiliates of U.S. companies. The ADL representatives felt strongly to the contrary. As a compromise, we agreed that a pragmatic solution might be for the legislation to apply to foreign corporations 50% or more owned by American corporations, but only to the extent of their activities having a demonstrable impact upon the foreign trade of the United States.

Mr. Chairman and members of the Committee, we believe that our discussions have resulted in an enhanced understanding of these complex issues. The exchange of mutual concerns on the effects of international boycotts within this country has been productive, as reflected in the Joint Statement of Principles. We realize, of course, that some of the points contained in the Joint Statement should more appropriately be the subject of regulations prepared by the Department of Commerce.

Additionally, we would like to stress that, as representatives of the ADL and the Business Roundtable, we have no unique monopoly on ideas to deal with this difficult

matter. We know that other groups have wrestled with approaches to the complex problems involved. Nevertheless, we wish to assure you that we have given the matter our best efforts and believe the Joint Statement represents a sound approach toward an effective and viable law.

We are able to address ourselves competently to the need for diverse elements in the American community to come together in support of proposed legislation that would be good for our country, and we hope we have done so in this case. Within that context, we hope too that our efforts will be helpful in the Committee's difficult task of preparing good, effective, constructive and purposeful anti-boycott legislation.

We thank you for the valuable opportunity of speaking here today.

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JOINT
STATEMENT OF PRINCIPLES
RE
FOREIGN BOYCOTT LEGISLATION

Introduction

Increasing concern has been developing as to the extent to which Arab Boycott policies are affecting the traditional freedom of American citizens, residents and enterprises to determine, without external compulsion, the persons with which, and the localities where, they do business.

A number of federal and state laws currently exist to protect American citizens and residents in their freedom to make business decisions. These laws, however, vary in their application and effectiveness and only deal in part with the specific problem. For this reason we feel it appropriate that there be uniformity of applicable law to deal with the complex issues inherent in international boycotts which are fostered by foreign governments. In addition to protecting American citizens and residents from discrimination and economic compulsion, any such laws, to be effective, must also recognize the fundamental principle of international law that a foreign country may regulate and restrict its trade and access with other countries for political and economic reasons and may determine how business is to be conducted within its territories in its own national interest. Similarly, there is no principle requiring the United States or any other country to

cooperate or assist in regulations or restrictions which are inimical to its fundamental ethical principles or deemed contrary to its national interest.

Principles

We believe that the following principles should guide any legislation in this area:

(1) No U.S. person may discriminate against a U.S. individual on the basis of that individual's race, religion, sex, or ethnic or national origin in order to comply with, further or support a foreign boycott.

(2) No U.S. person may furnish information with regard to or reflective of a U.S. individual's race, religion, sex, ethnic or national origin, or presence or absence on a blacklist for the use of a foreign country, its nationals, or residents in order to comply with, further or support a foreign boycott.

(3) No U.S. person may refrain from doing business with or in a foreign country, or with its nationals or residents pursuant to an agreement with another foreign country, its nationals or residents in order to comply with, further or support a foreign boycott.

(4) No U.S. person may refrain from doing business with any other U.S. person pursuant to an agreement with a foreign country, its nationals or residents in order to comply with, further or support a foreign boycott.

For purposes of (3) and (4) above, an agreement need not be in writing and may be implied by a course of conduct.

Agreements which have the prohibited effect on a U.S. person, would be violations of applicable law irrespective of where such agreements are entered into.

Any such legislation should not, however, prevent a U.S. person from: (a) complying or agreeing to comply with the laws or regulations of a foreign country (i) prohibiting import of goods from, or produced by a national or resident of, another country, (ii) prohibiting shipment of goods by a carrier of another foreign country or by a route other than as specified by such country or its nationals or residents, (iii) dealing with import and shipping document requirements of such country regarding country of origin, name of carrier, route of shipment and name of supplier except that no information furnished in response to such requirements should be stated in negative, blacklisting or similar exclusionary terms, (iv) dealing with export requirements of such country relating to shipment or transshipment of goods from such country to any other country, its nationals or residents; (b) dealing with immigration or passport requirements of such country provided that information furnished in response to such requirements

should not be furnished in a manner which is in conflict with principles (1) and (2) of this statement; or (c) complying with a unilateral selection by a foreign country, or any national or resident (including a U.S. person) thereof of one or more specific persons to be involved in one or more distinct aspects of a transaction, including a seller, manufacturer, subcontractor, insurer, carrier, financial institution or freight forwarder. In order to ensure the continued efficacy of international commercial letters of credit, such legislation should not provide a legal right for any person to demand and enforce payment under a commercial letter of credit other than on the basis of compliance with its terms.

The provisions of the foregoing paragraph are not designed to violate the intent of the principles set forth in paragraphs (1) through (4) of this statement, but they are intended to protect a U.S. person against prosecution under the legislation as a result of such person's observance of the laws and regulations of a foreign country with respect to such person's activity directed to or within such country or a unilateral and specific selection of a supplier of goods or services. Such provisions should not, however, be formulated so as to permit a U.S. person, if a bank, insurance carrier, freight agent or other export service organization, to act as a conduit for information which would not be permissible if furnished directly.

Subject to the foregoing, any legislation should apply to U.S.

nationals and residents and to domestic corporations. Legislation should also apply to foreign corporations to the extent of their activities within the U.S. and to any foreign subsidiary of any domestic company which is 50% or more owned by such domestic company with respect to its activities which affect the foreign trade of the U.S. The legislation should not apply, however, so as to require any U.S. person to contravene the laws, regulations or official policy of a foreign country with respect to such person's activities within such country. In no event should a U.S. person utilize any foreign person, whether or not affiliated with such U.S. person, to evade the application of the legislation to the import or export of goods or services into or from the U.S.

It is appropriate that the American public, as well as the Congress and concerned agencies of the U.S. Government, be informed as to requests affecting the freedom of choice of U.S. persons, provided the identity of reporting persons is not publicly disclosed except where there is a violation of the law. Therefore, reporting of boycott requests should be required, but only to the extent necessary for effective enforcement of legislation and to inform our government of the actions of foreign governments affecting U.S. persons.

The legislation, in order to establish uniform rules relating to foreign commerce, should preempt state laws concerning the acts or transactions governed by the legislation.

The legislation should provide a reasonable period of transition to allow for adjustment of existing practices.

Anti-Defamation League of B'Nai B'rith

Business Roundtable

Dated As Of March 2, 1977

Senator STEVENSON. Thank you, gentlemen.

The Business Roundtable has already made a major contribution to the deliberations of the Congress and the administration, for which we are grateful.

I think you can make still more contributions in this last hearing on the subject.

Mr. Shapiro, would you explain the principles of the joint statement as they would apply to sales to a country that has imposed a boycott?

Mr. SHAPIRO. Let me take a stab at it this way, Senator. I think everyone agrees that every nation has a right to a primary boycott. It has a right to control what happens within the four corners of its own territory.

If you start from that premise, you have a different set of rules in a sense for trade with that nation than you do for trade elsewhere.

Let me just take a couple of the specific cases to illustrate what I have in mind, and to distinguish it from the trade that would be affected in other parts of the world.

Let me be quite precise. Suppose that Saudi Arabia, of its own volition, said we want to buy trucks, but we do not want DuPont tires on trucks that come into Saudi Arabia.

Under the principles that we have proposed, there would be no legal liability for an American shipper in respecting that request.

On the other hand, if, because of this request by the Saudis, the American shipper changed his line of suppliers, and stopped putting DuPont tires on trucks going elsewhere, then one would have a right to infer that he had associated himself with the boycott, and a jury might very well conclude that there was an implicit agreement in violation of the law.

Now that principle, it seems to me, takes us to two other situations. I dealt first with the case where there is a specific naming of the product by the boycotting country.

Second, you have the case of an American resident in the boycotting country, suppose an engineer, who knows of the practice of that country, knows that no matter what you do, DuPont tires will not be admitted. So when he places a requisition for material in the United States, he says don't put DuPont tires on the vehicles.

We think that is the same as the first case, because otherwise you are asking the resident American simply to go through a useless formality of going to the Government and saying "Put it to me in writing, so I won't have any trouble with the law."

The third case is the case of the American supplier resident in this country. Let me illustrate it this way: He makes a shipment of trucks say to Saudi Arabia, and they are turned back at the border because the trucks contained DuPont tires. He does it a second time, and he has the same experience. He does it a third time and has the same experience.

At some point it seems to us he ought to be able to say "It is clear I can't get DuPont tires in, so I will put a different tire on the vehicle." Again, we would say as long as he limits himself to the specific shipment going to the boycotting country, criminal liability ought not to attach.

On the other hand, as I said before, if this leads him to refuse to put DuPont tires on vehicles for other sales, then we think he is

engaging in a course of conduct that might very well attract criminal liability.

Senator STEVENSON. Mr. Joseph, could you respond to those propositions and in particular the suggestion that an American company should be permitted to comply with a tertiary boycott.

If I understand the proposition correctly, what the Roundtable and ADL are saying is that a company should not be permitted to agree to discriminate against other U.S. persons and companies. But if it receives a direction from a contractor to accept tires from a certain company, and not from companies that are on the blacklist, American companies, that it can comply with such a direction, even though in this case the reasons are boycott related.

Does the ADL accept that proposition?

Mr. JOSEPH. No; not at all. If the reasons are boycott related that is rejected, and our statement of principles covers that very clearly.

We have provided in those instances in certain circumstances where there is a unilateral selection requirement or a single source, that is agreeable.

But anything that has a pattern of boycott and comes out very clearly in that context, that is out.

Senator STEVENSON. So you have a further qualification to the single selection, unilateral selection exception. It is all right for a foreign country to designate certain subcontractors, unless the designation of the supplier of tires, the subcontractor, is boycott related.

Is that what you are suggesting?

Mr. JOSEPH. If it is boycott related, we stand by and it is in the statement of principles, that this is not acceptable.

Senator STEVENSON. The principles go all over the lot and get in the way of each other. They keep bumping into each other. That is what I am getting at. You say there can't be any agreement to discriminate against American companies for boycott-related reasons, yet the principles, as I understand them, say yes, you can accept the designation of a contractor, even though that designation is boycott related.

Mr. SHAPIRO. Senator, might I interject one thought?

Senator STEVENSON. By all means.

Mr. SHAPIRO. The limitation is narrow, it applies only to the boycotting country.

Senator STEVENSON. Well, I understand that. But that hasn't been the proposition that I have come up with. That is to say I am not familiar, if I understand you, with a situation in which the boycotting country says to an American company that you can't sell automobiles to us if you deal with companies in other parts of the world.

The Arab boycotters have not attempted to run the boycott that far. Your example sounds like a red herring, frankly, to me.

We are not faced with that situation. We are faced with the situation where the boycotter says we won't accept automobiles or tractors with tires that are supplied by a blacklisted company, or they say the tractors have to have tires from some other company which is not blacklisted. That you say should be permitted.

What I am trying to suggest is that that is permitting compliance with a tertiary boycott. The boycott of other American companies. And Mr. Joseph is saying that should not be permitted.

I think you are saying it should be permitted.

Mr. SHAPIRO. What I am really saying is that when it comes to the four corners of the boycotting country's territory, they have absolute control of what comes in. And if American businesses want to do business with that country, we ought not to attach criminal liability because they simply respond to that purchase order.

If they do it in other countries, in other markets, then the right to a primary boycott has no application and liability does attach.

Senator STEVENSON. Well, if compliance with the tertiary boycott is prohibited, the seller, the prime contractor, simply doesn't make the sale.

I think that is what Mr. Joseph is saying we should do.

Mr. JOSEPH. Mr. Stevenson, I am suggesting, in fact it is a pretty firm statement, that having been and continuing to be in international trade, and in circumstances of ordering goods, we order our goods by name, by brand. That is a regular accepted and consistent way of doing business.

Under that this is an agreeable form of ordering goods under the statement of principles. If it is clear that over a period of time a list has been developed, either white or black, that develops a pattern of discrimination, this pattern will emerge and certain determinations I am sure will be made because of that pattern.

We are not fearful that there be any violations or major violations of this unilateral selection clause.

Senator STEVENSON. Mr. Joseph, if I understand you correctly, you do not approve of unilateral selections when they are for boycott-related reasons?

Mr. JOSEPH. Exactly.

Senator STEVENSON. Negative certificates. The ADL–Business Roundtable principles I believe support a prohibition against negative certificates, though the Secretary said negative certificates are a way of avoiding primary boycotts. I could add to that that the same effect can be accomplished with positive certificates.

You support a prohibition against negative certificates. How would you feel about, as an alternative to a statutory prohibition, authority in the Department of Commerce by regulation to prohibit negative certificates of origin in order to offset any risk of unfortunate economic or commercial and political consequences in the Middle East?

If I may, I am going to address my questions to both of you and leave it to you to decide which one should answer.

Mr. SHAPIRO. Let's both take a crack at it. Let me say our joint statement explicitly says that negative certificates ought to be prohibited. And we came to that conclusion because we couldn't think of any sensible case to be made for negative certificates, and we know that as a matter of fact, the object of a negative certificate finds it a humiliating experience.

Nevertheless, there has been a history of these things. The major Arab countries have now abandoned them.

Senator STEVENSON. Israel has not as far as I know yet. That is not generally known, but Israel requires negative certificates or origin, at least in some transactions.

Mr. SHAPIRO. We started out with the idea that there was nothing wrong with a flat prohibition in the legislation.

On the other hand, there are some sensitivities in this area. Conditions change from time to time, and I must say that from my standpoint I would have no difficulty with leaving to the Secretary of Commerce a judgment as to when regulations are needed in this area. So long as the major trading nations do not actually engage in the practice, perhaps there isn't any need to aggravate a very sensitive situation.

Mr. JOSEPH. It would be our preference to have it in the legislation, we think it belongs there, we think it is really part of the total statement. I don't think this is a matter which is going to create much problem for us if it does appear in the regulations, however.

Senator STEVENSON. Well, if I understand you, you are saying you are not supporting that, but you wouldn't object to it?

Mr. JOSEPH. I stated my preference.

Senator STEVENSON. On the question of agreement, the joint principles require an agreement to refuse in order for there to be a violation.

What if a U.S. firm, knowing that certain firms are blacklisted, structures its transactions with the boycotting countries so as to insure that no blacklisted firms are involved in transactions with that country, the tractor example, you just don't obtain your tires from DuPont or whatever the blacklisted company is.

There is no agreement in that case, but there may be an intent. Why should we excuse compliance in that case simply because there isn't an agreement?

Mr. SHAPIRO. Well, I think there can be agreement, Senator, from a course of conduct. The only exception I would make is that I would recognize the right of the boycotting country to specify what comes into its own country.

If one goes beyond that it seems to me a course of conduct is the normal basis for inferring an agreement.

What we are really dealing with here, it seems to me, is the law of conspiracy. We know from long experience that conspirators normally do not write agreements, the conspiracy is established by a course of conduct.

Senator STEVENSON. And intent can be implied from a course of conduct, too.

Mr. SHAPIRO. Exactly.

Senator STEVENSON. Would you agree, Mr. Joseph?

Mr. JOSEPH. I have no problem with that. It is the pattern and conspiritorial effect that troubles us.

Mr. SHAPIRO. Senator, I see the case of the boycotting country as a different situation, the ground we covered earlier.

As long as they specify the product they want to come to their country, one ought not to attach any inference of joining a conspiracy because you simply respond to that specification.

Senator STEVENSON. What is the rationale for permitting American firms to respond to questionnaires about their business dealing with Israel, as apparently they are permitted to do under the joint principles?

Won't that just encourage them to shun dealings with the boycotting country, so as to permit them to give a direct answer?

Mr. SHAPIRO. We divided the problem into two pieces. We say with respect to any statement with respect to past facts of ordinary com-

mercial value, a company ought to have the right to disclose those facts without any liability.

With respect to any question that goes to its future intent or expected practices, we think it ought not to have that right.

In other words, we are saying let's not try to make criminal disloosing facts that aren't secret to start with. Future intentions are secret.

Mr. JOSEPH. We think under the current provisions there have been some hardships. We tried to escape that, if possible, and ask only for disclosure in case of violation.

Senator STEVENSON. What would you think of a requirement in the law that compelled American firms to keep records of all boycott requests, instead of full reporting requirements? If they were required to maintain records, if at some point it becomes necessary, the Government could obtain information about the effect of the boycott and the behavior of American firms.

Mr. SHAPIRO. I would endorse that idea. The required records doctrine has a firm place in our law. Everyone knows that if it is a Government-required record, it can be made available at the instance of the Government.

On the other hand, it would save all of us from the problem of forwarding bales of paper to Washington, and then having our names listed in the newspapers because we sent in a report that detailed an absolutely innocent fact. The innocence of the facts never appear in the press, just the fact that we sent in our report.

So I think the idea of a required records approach would be a very constructive step forward.

Senator STEVENSON. Mr. Joseph?

Mr. JOSEPH. No problem. We would agree with that.

Senator STEVENSON. Under the joint principles no U.S. person may furnish information with regard to or reflective of a U.S. individual's race, religion, sex, ethnic or national origin or presence or absence on a blacklist.

Do you really mean to restrict this provision to individuals? If so, why exclude firms?

Mr. JOSEPH. I think this is meant to include firms. We use the words "individual's race, religion, sex, ethnic or national origin," but it should certainly include information that is requested of corporations, associations, individual companies. We would have no problem with changing that word "individual" to something else to broaden it.

Senator STEVENSON. Turning to extraterritoriality and the problem of foreign subsidiaries, the joint principles apply only to any domestic company which is 50 percent or more owned by such company, and only with respect to their activities which affect the foreign trade of the United States.

The administration's position, I believe, would extend it to all foreign subsidiaries with respect to activities in U.S. interstate or foreign commerce.

As you heard the Secretary earlier, she indicated, I believe, that the intention was really to reach evasions of antiboycott legislation through the use of foreign subsidiaries.

Is your position different from the administration's? Would you support a prohibition which reached all foreign subsidiaries, that is to say, corporations effectively controlled by U.S. firms, assuming that

the law can be drafted—and I am not certain of that—in such a way as to make the prohibitions come down in cases in which the transaction is part of an effort to evade prohibitions aimed at American firms?

Mr. SHAPIRO. I didn't think, Senator, and I may be mistaken, that the Secretary's position was different from that in our joint statement.

We see two kinds of situations. First, with respect to acts of evasion, obviously liability attaches no matter what the situation may be abroad.

On the other hand, we thought for practical administration, we needed some kind of a ground rule that defined when the act was going to apply to a foreign sub. And we agreed on the 50 percent or more stockholding as the most practical way of dealing with this subject.

Otherwise, one gets into just horrendous factual problems in determining if and when the law applies.

There are many kinds of foreign subsidiaries in which American companies have minority interests. There are others in which the ownership may be equal, but a foreign management really actively operates the company.

So we have tried to get some kind of a line here that everybody could understand, and not leave the question of what is control up in the air.

Senator STEVENSON. Mr. Joseph?

Mr. JOSEPH. This question, Mr. Senator, probably created as much of a problem for us as anything we tackled. It is a tough one, as we all recognized. And we spent more time on it than anything. We debated the issue and frankly there was some give and take, as there was give and take in some of the other issues we decided, and the use of the 50-percent rule is satisfactory to the Anti-Defamation League and those constituencies that joined with us in this effort.

Senator STEVENSON. Would leaving the question of control to the regulations be satisfactory to you both?

Mr. SHAPIRO. Certainly.

Mr. JOSEPH. We would like to see the regulation, of course. I presume we would be very specific on it, and if so, we could be happy with it.

Mr. SHAPIRO. Let me say it a different way. I gave you a fast "certainly." I am assuming a regulation that would be consistent with the joint statement of principles. And the question of whether that test appears in a statute or in the Secretary's regulations seems to me not material.

Senator STEVENSON. Turning now to compliance with visa requirements, the joint principles contain an exception for visa requirements, but only so long as compliance does not conflict with the antidiscrimination and information furnishing prohibitions in the joint principles.

I don't know what that means. What if an American company doing business in an Arab State, has a Jewish employee or a woman that is denied a visa because the Saudis, for example, don't—I think they don't—permit women to work in Saudi Arabia. Conceivably you could have such cases in Israel, the case of a Palestinean being denied a visa; it is theoretically possible anyway.

In such situations, though the visa is denied to the employee for reasons which are discriminatory, should that company be prohibited from transacting business?

Mr. SHAPIRO. Let me deal with two cases. I think that we had this in mind first, that the fact that a potential customer in a boycotting country would not permit a certain person to enter ought not to be a justification for an American company to refuse to hire that person.

On the other hand, once the person is employed, it is his responsibility or her responsibility to have a visa, and if, for reasons that are within the control of the boycotting country, a visa does not issue, it seems to us that criminal liability ought not to attach to the employer. He has done everything he could do. We would not try to relieve him, if he said I won't hire anybody that the boycotting country doesn't like. But as long as his hiring policies are consistent with American standards, the fact that a given employee can't get a visa ought not to make him a criminal.

Mr. JOSEPH. We understand the right of the country to set up its own visa regulations and we have no problem with this.

Senator STEVENSON. After identifying a number of exceptions, the joint principles state that the exceptions are—

> * * * intended to protect the U.S. person against prosecution under the legislation as a result of such person's observance of the laws and regulations of a foreign country with respect to such person's activity directed to or within such country or a unilateral and specific selection of a supplier of goods or services.

It has been suggested that rather than being a clarification of the purpose of the exceptions, this is a separate principle in itself, that is, compliance with the laws of the foreign country would be a defense to any charge of wrongdoing.

Is that so?

Mr. SHAPIRO. We had two thoughts in mind, again. With respect to a boycotting country, our thought was that if an American supplier does nothing more than obey the law of the country into which he is shipping his goods, he has not by that simple fact become a party to a conspiracy to boycott.

If we don't mean that, then we are really saying he can't do business there at all.

The other case that we had concern about was a foreign subsidiary located in a country that is not a boycotting country, but which has established a law of its own that may be incompatible with American law. In that case, we were anxious to not put the subsidiary in the posture where it must choose whether it is going to be in violation of the local law or the American law.

Again, we suggested there that criminal liability ought not to attach if it is responding to the law in the country in which it exists and does business.

Senator STEVENSON. Even though the law complied with is a boycott requirement or discrimination?

Mr. SHAPIRO. Yes; I think that is inherent in the proposition, so long as we are not dealing with an evasion situation. Otherwise what we are saying is that when we have an American subsidiary doing business abroad, the American law follows it, and displaces the law of the country in which that subsidiary is doing business, which is a troublesome proposition in terms simply of the functioning of the business.

Mr. JOSEPH. This is a very difficult one, and one which would probably be better left to our people who have worked on it, and the Business Roundtable people who have worked on it, and are available to you on this question. And we would like very much to have them participate in trying to work a way around it.

Our stated position is that if we again see a pattern, a course of action, conspiritorial process, we will recognize it soon enough and quick enough and we will very quickly claim a boycott action is underway.

As to the specifics of a single instance, it would be very difficult for me at this time to further comment.

Mr. SHAPIRO. Let me add, Senator, that the question of American law following the foreign sub is a general one, it has nothing to do with boycotts. It is a problem we face all of the time in doing business internationally.

Senator STEVENSON. In his testimony before the House International Relations Committee, Alfred Moses of the Anti-Defamation League stated: "We endorse wholeheartedly the antiboycott provisions of H.R. 1561," which is identical to S. 92.

That was after the ADL and Roundtable announced their joint principles. That statement by Mr. Moses seems inconsistent with some of the joint principles that you have ennunciated.

Do you have any comment to make about Mr. Moses' statement? He supports S. 92 and you obviously do not support all of the provisions of S. 92.

Mr. SHAPIRO. Senator, I have to say that Mr. Moses was not a party to the discussions between the representatives of the Business Roundtable and the ADL. He attempted to put a gloss on our joint understanding. He expressed a personal point of view. I don't think he could speak for the negotiators and that is the reason that Mr. Joseph and I are here today.

We were involved in these negotiations. If there is a gloss to be put on our joint statement, we think we are the ones to do it, not someone who is a stranger to the situation.

Senator STEVENSON. I don't know about you, Mr. Shapiro, but you, Mr. Joseph, are the National Chairman of the ADL.

Who was Mr. Moses speaking for, himself or the ADL?

Mr. JOSEPH. Mr. Moses was speaking on behalf of the Anti-Defamation League, the American Jewish Committee, whom he represents, and the American Jewish Congress, and the additional 100 local organizations that I indicated before.

And I didn't find, frankly, in his testimony, which I went over rather carefully, any divergence from the statement of principles. I don't necessarily concur with the statement as made.

Mr. SHAPIRO. I would like the record to be clear, Senator. Can we agree, at least, that Mr. Moses was not a party to our discussions or negotiations or deliberations?

Mr. JOSEPH. We can agree.

Senator STEVENSON. If you both agree on that, it leaves me with some uncertainty about the position of the ADL. The joint principles permit compliance with the boycotting country's selection of a subcontractor. The legislation which Mr. Moses supported does not.

And I could cite other such differences between the joint principles and the legislation. S. 92, which he supports.

Mr. JOSEPH. Mr. Moses I think made clear in his statement that he understood and supported the joint principles The fact that the joint principles have somewhat broader parameters than S. 92 or the other legislation doesn't create any problem for us.

We are going to be helpful to you in establishing some of the principles contained in the legislation.

Senator STEVENSON. What I am going to take from all of this is the understanding that the ADL, as well as the Business Roundtable, supports the joint principles, including those which are in conflict with the provisions of S. 92.

Mr. JOSEPH. Speaking for the ADL, we are in support of the principles. If there is an area of conflict, I am not aware of it. But we will have to review that with you.

Senator STEVENSON. Well, do you want me to give you more examples right now?

Mr. SHAPIRO. Senator, let me say for the record before we go on, that we stand on the document that was submitted, every word, every comma, and every dotted "i" in it.

We are not asking for any departure from the words that we wrote.

Senator STEVENSON. Very well. My final word, Mr. Joseph, is if you become aware of anything that causes my understanding to be a misunderstanding, then you better let us know about it in a hurry.

Mr. JOSEPH. We will indeed, sir.

Senator STEVENSON. Gentlemen, it has been very helpful. It has been a long hard haul for many of us, and you know how difficult it has been because you have been involved in this process.

It is nearing completion now, thanks in part to your help.

As I said earlier, I am optimistic now that we can act, act quickly, act wisely, act in a way that protects our sovereignty, our commercial interests, without doing any injury to the prospects for settlement in the Middle East, as well as opportunities for commerce in the Middle East.

Thank you very much.

Mr. SHAPIRO. Thank you. We are grateful to you for giving us all this time. Thank you.

Senator STEVESON. The subcommittee is adjourned.

[Thereupon, at 12:25 p.m. the hearings were concluded.]

APPENDIX

STATEMENT OF THE AGRICULTURAL TRADE COUNCIL TO THE INTERNATIONAL FINANCE SUBCOMMITTEE AND COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS, UNITED STATES SENATE

February 28, 1977

The Agricultural Trade Council (ATC) is a non-profit trade association representing the exporting interests of the agribusiness, food, and related industries.

One of our principal roles is to insure that the $30 Billion agricultural exporting community receives the attention it deserves when policy is formulated, especially in Washington. Historically, this has not been the case, nor is it so in respect to Title II of S.69 and S.92.

The ATC supports the freest flow of goods in the international market. It is a basic tenet that in our republic, founded on free enterprise principles, the American businessman should be able to compete equitably with his overseas counterparts. Any infringement upon this right by our government must be fully justified as being essential to the interest of the United States, for otherwise it is acting contrary to one of the most fundamental reasons behind our democratic system.

This right has been under ever-increasing assault of late. Quotas, boycotts, most-favored-nation status, and a seemingly

endless stream of other federal regulations and red tape have succeeded in hampering the activities of U.S. exporters in what is supposed to be a free marketplace. More and more, the federal government is using the private business sector as a tool, and scapegoat, for public initiatives.

With the proposed anti-boycott amendments, Congress again is not acting in the best interests of the U.S. or its financial sector. Who shall benefit if the laws are enacted? Clearly not the principals involved -- Israel, the Arab League, or the United States. Rather, it is our financial competitors who will gain by garnering a larger share of the growing (both in amount and importance) Middle East market.

At present, the American share in Middle East trade is about 17%. The Arab countries can do without American technology and goods which we supply even though the goods are considered among the most needed there. European, Japanese and Warsaw Pact countries can supply virtually everything supplied by our industry. This legislation, if enacted, would not open the way for the boycotted U.S. firms to deal with the Arab world. Instead, it may prohibit those firms that are allowed to do business in that region from continuing in such enterprises. In effect, then, what this legislation will do is provide for across the board discrimination against United

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States exporting concerns.

We recognize the dilemma facing Congress. Commercial dealings on an international scale do not take place in a political vacuum. Involved in the proposed bills are complex matters of international law, national sovereignty, and the self-interest of the United States and its allies. Hence, let us turn our attention to the politics of the Middle East and the American interest therein.

The longevity of the Arab-Israeli hostility is unprecedented in the history of mankind. Besides resulting in four wars over the last 29 years, this antagonism has led both sides to use the means available to them to damage each other's economies. The Arab League nations, technically still at war with the State of Israel, employ a primary and secondary boycott as an economic measure against Israel. If the United States maintains a policy against secondary boycotts, it applies to everyone but ourselves. We enforce an embargo against ships calling at Cuban ports and have a list of 203 non-American vessels on its blacklist. It is not a boycott based on religious or ethnic background. The Anti-Defamation League of B'nai B'rith, in a study published last month, said "Boycott requests involving religious discrimination were rare -- appearing on three of 836 reports (filed with the U.S. Commerce Department), or less than one-half of one percent."

There are now indications that these deep-seated differences can be resolved on the diplomatic front. The United States and Israel are staunch allies, and the U.S. wields considerable influence on Israeli thinking and policies. The Arab states have realized the necessity for a lasting peace in order to attend to the needs of their people, and look towards the U.S. to act as a mediating force. The Geneva Conference will likely convene within the next few months and America will no doubt play a leading role in those Arab-Israeli talks.

This is the political context in which S.69 and S.92 lay. The Arab boycott issue is a part, a small part, of a much greater problem needing resolution. The effect these impending bills may have on the continuing attempts to resolve Middle East problems may be a disastrous one.

Senator Stevenson himself has admitted that the only true solution to the Arab boycott lies in an overall peace settlement. Some movement is clearly being made toward that end. However, these pieces of legislation, which are overreactions to an emotional issue, once again cast the Arabs in the role of adversary. The Arabs have gone to great lengths to emphasize their willingness to cooperate with the United States in seeking peace in the Middle East. Yet, with such fragmentary, short-sighted amendments, we shall be signalling to the nations of

the Arab world that the U.S. itself is hostile toward them, and we shall ourselves have created another obstacle for the U.S. and all parties to overcome on the road toward peace.

Our stake in such peace should not be downplayed. Zeroing in on Saudi Arabia alone, we find that U.S. corporations have development contracts with the Saudis totaling $16 Billion. U.S. civilian exports approach $4 Billion annually. U.S. defense activities involve $5 Billion in hardware, and $4 Billion in services and construction. If $1 Billion in sales supports the jobs of 70,000 Americans, well over half a million American jobs are at stake as a direct result of these dealings with Saudi Arabia -- just one of the Middle East nations with whom we are, and should be, attempting to expand exports at this economically critical time.

Keep in mind this is vis-avis Saudi Arabia alone. It does not include other Arab states. These other Arab states also have extensive dealings with members of our United States business community and plan massive development programs, for which they look to us for help. These programs will continue as planned, regardless of our direct participation, but legislation such as you are considering will severly prejudice our continued, responsive access to the Arab marketplace.

Our dependence on the Arab world for oil, we would hope needs no underlining. At present, one-fourth of our petroleum imports come from that region. By 1980, this proportion will rise to one-half. The importance of our continued access to this energy resource, both to our economy and to our defense capabilities, makes this an essential element of our national security. Our stake in the whole Middle East is great indeed. As our present national course is tied to Israel, reality shows it is no less tied to the other nations of the Middle East.

If the intent of these bills is to bring an end to the Arab boycott, we suggest that the leverage our country should properly use in this effort lies in the trade between the American and Arab governments. Private business should not be involved in such a quarrel.

To this end, we would partially boycott their oil. The by-products of this type of action would be: (1) the equalizing of the American-Arab trade imbalance, dollar for dollar, and (2) we would not be giving them the dollars with which to buy goods from our competitors.

The ATC does not really favor these responses to the boycott problem. The Arabs could become our best ally in that part

of the world if we would stop insulting them. We feel the only solution lies in a comprehensive peace settlement.

The proposed legislation seems inclined to gloss over these considerations because it maintains that they pale in the face of the moral question involved. We, first of all, do not agree that this moral issue, the matter of discrimination, is involved at all. We cite the Anti-Defamation League's study, as well as the ongoing historical precedent that every nation has the sovereign right to apply laws regulating the origin of goods passing through its ports.

We would like to inject an actual moral factor that we believe does play a part in this discussion. Senator Proxmire has stated that compliance with the provisions of S. 69 and S.92 will entail "sacrifices" on the part of American businesses. He has said that American firms will likely incur some "pain" because of the new restrictions.

Our affiliates, members of the agricultural exporting community, are both large and small in size. Many have dealings with Middle East nations. While some of the large firms are probably big enough and stable enough to suffer the "pain" to which the Senator refers, we know in speaking to our membership that many of the smaller firms are not. To them, this "pain"

will not cause hardship. To them, this legislation could spell the death of their enterprises.

We stand against bills such as these. The "moral issue" elucidated by the proponents of this legislation is nebulous, the benefits are negligible. The practical issues we have cited are tangible ones, and ones whose effects can and will be measured negatively. We hope this Committee will give full consideration to all sides of these critical questions.

Thank you.

ACEC File #601

american consulting engineers council
1155 FIFTEENTH STREET, NORTHWEST, WASHINGTON, D.C. 20005 ☐ AREA CODE (202) 296-1780
FIDIC UNITED STATES MEMBER

March 3, 1977

Mr. Stanley Marcuss
Majority Counsel
Subcommittee on International Finance
Room 456
Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Marcuss:

On February 21, during the International Finance Subcommittee's hearings on the boycott provisions of S. 69 and S. 92, reference was made to the similarites between the Arab League's boycott of Israel and the economic boycotts imposed by the United States upon Cuba, Vietnam, North Korea, etc. During the exchange between the Subcommittee members and the business panel, the business panelists were challenged to cite "a single example" of a secondary boycott imposed upon foreign nationals or firms by the United States.

In this regard, we wish to draw the Subcommittee's attention to the language contained in Section 102 of Title I of the Agricultural Trade Development and Assistance Act of 1954 (P.L. 480), which in our opinion, is in explicit example of a secondary boycott written into U.S. legislation. Section 102 of Title I states:

> "For the purpose of carrying out agreements concluded under this Act the Commodity Credit Corporation is authorized to finance the sale and exportation of agricultural commodities whether from private stocks or from stocks of the Commodity Credit Corporation: Provided, That the Commodity Credit Corporation shall not finance the sale and export of agricultural commodities under this Act for any exporter which is engaging in, or in the six months immediately preceding the application for such financing has engaged in, any sales, trade, or commerce with North Vietnam, or with any resident thereof, or which owns or controls any company which is

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> engaging in, or in such period has engaged in, any such sales, trade, or commerce, or which is owned or controlled by any company or person which is engaging in, or which in such period has engaged in, any such sales, trade, or commerce either directly or through any branch, subsidiary, affiliate, or associated company: Provided further, That such application for financing must be accompanied by a statement in which are listed by name, address, and chief executive officers all branches, affiliates, subsidiaries and associated companies, foreign and domestic, in which the applicant has a controlling interest and similar information for all companies which either directly or through subsidiaries or otherwise have a controlling interest in the applicant company."

The language of Section 102 is broadly formulated and from the information we've received from various private industry sources and the Departments of Agriculture and State, this section could be (and in fact has been) interpreted to apply to the operations of foreign corporations having U.S. subsidiaries. For example, if a foreign corporation's U.S. subsidiary is an exporter of P.L. 480 agricultural cmmodities, the foreign parent corporation could not, under the terms of Section 102, trade with Vietnam, Conversely, if the foreign corporation has business dealings with Vietnam, its U.S. subsidiary is prohibited from receiving export commodity financing.

We would also remind the Subcommittee of official measures enacted during World War II which resulted in the United States blacklisting foreign firms dealing with citizens, firms, corporations and governments of the Axis Powers. This blacklist included firms from such countries as Argentina, Chile, Columbia, Portugal, Spain, Sweden and Switzerland.

To argue that these measures were justified because the United States was at war is to overlook the fact that a continuing state of belligerency exists between the Arab League nations and the State of Israel.

We would suggest, therefore, that before the United States Congress attempts to pass legislation regarding the secondary aspects of the Arab boycott, it would do well to first consider the extraterritorial and secondary boycott aspects of P.L. 480.

We request that a copy of this letter be made a part of the hearing transcript.

Respectfully,

Bruce C. Roberts
Staff Director
International Engineering Committee

BCR/bm

American Farm Bureau Federation

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CABLE ADDRESS: AMFARMBUR

February 15, 1977

Honorable Adlai E. Stevenson, III, Chairman
International Finance Subcommittee
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

We understand that your Subcommittee will hold hearings on S.69 and S.92, bills extending and revising the Export Administration Act, on February 21, 22, and 28.

On January 12, 1977, at the annual convention of the American Farm Bureau Federation in Honolulu, Hawaii, the official voting delegates of the member State Farm Bureaus adopted the following policies concerning the application of export controls to U.S. agricultural commodities:

Access to Markets

"If not restricted by government controls, American farmers will continue to meet the food needs of the nation and a large portion of the world. Embargoes and moratoriums on agricultural exports will only inhibit food production and antagonize foreign customers. Such controls will contribute to a U.S. balance-of-payments deficit, foster inflation, and reduce our ability to purchase needed products, such as petroleum, which are in short supply here.

"We vigorously oppose all governmental restrictions on the sale of agricultural products in world markets. (Emphasis added). Agricultural exports must not be held hostage in the name of political expediency or foreign policy. Decisions affecting agricultural exports should be made with full participation by farmers and the Secretary of Agriculture. Such decisions must not be made by labor leaders or government agencies, such as the Department of State, which are primarily interested in foreign policy considerations."

* * * * *

Agricultural Exports

"During the past few years, the government on several occasions imposed embargoes or restrictions on agricultural exports. In some cases

decisions in agricultural export policies have shifted from the U.S. Department of Agriculture to the U.S. Department of State and to organized labor. Farmers deeply resent the actions taken by their government restricting export markets. These actions have:

"(1) Damaged farmers' confidence in their government.

"(2) Seriously tarnished the reliability of the United States as a supplier of food and fiber in foreign markets and raised questions of how committed the United States is to a policy of freer trade.

"(3) Forced foreign buyers to secure from other suppliers products which could have been purchased from the United States if expanded controls had not been in effect.

"(4) Made agricultural exports a pawn in the game of international diplomacy and subject to manipulation by organized labor. When agricultural exports are used in this way, it can be costly to producers and consumers.

"We will:

"(1) Oppose any proposal to limit or control exports of U.S. agricultural commodities except where national security clearly requires such action. (Emphasis added).

"(2) Develop a plan of action, including legal action if deemed necessary, to strongly oppose restraints and controls on agricultural exports and seek assurances from the Administration and legislation from the Congress that agricultural exports will not be restricted....

"(6) Emphasize that American grain is the private property of farmers or the grain trade until sold and not public property to be used by government or labor to advance their particular interests or causes...."

* * * * *

Balance of Payments

"The continuation of a high level of agricultural exports is essential to avoid balance of payments problems.

"Increased commercial sales of U.S. agricultural commodities in world markets have shifted our national trade balance from a deficit to a surplus. A large surplus in our agricultural balance of trade has more than offset the negative balance of trade in the industrial sector, including the greatly increased cost of imported oil.

"Any effort to restrict agricultural exports will endanger the economic health of our country..." (Emphasis added).

The long run result of government interference with agricultural exports will be a loss of hard won markets. Foreign buyers confronted by broken sales contracts have lost faith in the dependability of the United States as a source of supplies. This loss of confidence in the U.S. market has stimulated investments in other countries to develop alternative sources of supply. For example, Japanese investments since the 1973 embargo have stimulated soybean production in Brazil.

Export controls involve the compulsory allocation of supplies by government. Government cannot regulate prices or the distribution of supplies as well as the marketplace. Government imposed export controls are an instrument for politicizing foreign trade policies. Such trade policies make it impossible for our country and others to gain the full benefits inherent in mutually advantageous trade conducted with a minimum of market interference.

Farmers and ranchers cannot be expected to maintain full production of any commodity in the absence of free access to the world market for that commodity. It is, therefore, imperative that the government give farmers and ranchers concrete assurance prior to planting time that export controls, embargoes, or moratoriums will not be applied during the crop year.

In conclusion, we would like to submit the following comments on two amendments which have been included in S.69 and S.92:

(1) We support the apparent objective of the amendment to exempt foreign-owned products from export controls; however, we do not think it represents a desirable approach. Our main concern is that this amendment implicitly assumes that we are going to have export controls on agricultural commodities, and we are opposed to any such controls that are not clearly required by national security.

(2) We also support the apparent objective of the amendment which would (a) require the President to immediately report the prohibition or curtailment of agricultural exports to the Congress, setting forth his reasons in detail for such actions, and (b) allow Congress to disapprove such prohibition or curtailment within thirty days of receipt of the report by means of a concurrent resolution; but, here again, we would prefer a different approach. We are concerned because this amendment indicates that the curtailment of agricultural exports may be acceptable in some instances where such action is not clearly required by national security.

(3) We do not believe that these amendments provide adequate assurance to importing nations to restore their confidence in our reliability as a supplier of agricultural products. We, therefore, urge the Senate Committee on Banking, Housing and Urban Affairs to delete all provisions

of the Export Administration Act that have been, or could be, used as authority for imposing export controls on agricultural commodities, except where national security clearly requires such action.

We would appreciate your making this letter a part of the record.

Sincerely,

John Datt

John C. Datt, Director
Washington Office

cc: Members of Committee

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

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March 1, 1977

Honorable Adlai E. Stevenson, III,
Chairman
Subcommittee on International Finance
Senate Banking Committee
Washington, D.C. 20510

Dear Mr. Chairman:

In 1976 the AFL-CIO supported legislation extending the 1969 Export Administration Act which contained provisions designed to prohibit U.S. businessmen from complying with boycotts or blacklisting by Arab nations against American firms doing business with Israel.

The AFL-CIO Executive Council in a statement issued July 19, 1976 on the Arab Boycott labeled it an attempt to "... impose upon the American people practices of racial and religious bigotry which violate American belief and law, and to make American firms the agents of hostile acts against a friendly nation."

The AFL-CIO continues its firm support of legislation forbidding American firms from engaging in illicit, unethical business tactics in exchange for Arab business contracts.

Presently your subcommittee is holding hearings on legislation addressing this matter. I would therefore request that this correspondence and the attached AFL-CIO Executive Council statement entitled "The Arab Boycott" be included in the hearing record of your subcommittee on this issue.

Your assistance in this matter is greatly appreciated.

Sincerely yours,

Andrew J. Biemiller

Andrew J. Biemiller, Director
DEPARTMENT OF LEGISLATION

Enclosure

Statement by the AFL-CIO Executive Council

on

The Arab Boycott

July 19, 1976
Washington, D.C.

The Arab boycott raises issues which go far beyond those of Israel's rights as a free nation. By imposing secondary and tertiary boycotts, the Arabs have put at issue America's willingness to defend its own principles and sovereignty. Not only do the Arab nations refuse to deal commercially with Israel, they also demand that American firms which wish to do business with them refrain from transactions with Israel. They demand that American firms practice religious discrimination in hiring, promotion, job assignment, selection of corporate officers and in dealing with other American firms.

The boycott attempts to impose upon the American people practices of racial and religious bigotry which violate American belief and law, and to make American firms the agents of hostile acts against a friendly nation. This constitutes a repugnant intrusion into American domestic life, and an unacceptable effort to coerce American foreign policy. The American people will not tolerate this dictation.

The Executive Council believes that the imposition of this boycott on Americans, American-owned businesses, or on any transactions occurring on American territory must end now. We call upon the Congress and the Administration to move swiftly to enact legislation and to take such other measures as necessary to achieve this goal.

THE AMERICAN JEWISH COMMITTEE
Philadelphia Chapter
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Executive Assistant
ANN BICK

*deceased

February 28, 1977

The Honorable Adlai Stevenson, III
456 Old Senate Office Building
Washington, D. C. 20510
Attention: Mr. Stanley Marcus

Dear Senator Stevenson:

In lieu of oral testimony before the Senate Subcommittee on Banking, Housing and Urban Affairs, the following joint written testimony in support of the Export Administration Amendments of 1977 is submitted by the Philadelphia District Council International Longshoremen's Association, Delaware River Port Authority, Philadelphia Port Corporation, Philadelphia Marine Trade Association, Port of Philadelphia Marine Terminal Association and Philadelphia Chapter American Jewish Committee. We ask that it be entered into the record of today's hearings:

It is our belief that legislation, such as that embodied in the Export Administration Amendments of 1977 proposed by Senators Harrison Williams and William Proxmire (S. 92, H.R. 1561), will protect the autonomy of American business and foreign policy interests from the threat of discrimination imposed from abroad, particularly from secondary and tertiary discrimination against American companies and citizens arising from foreign boycotts. Americans who have demonstrated the courage and foresight to refuse to submit to such boycotts and to live up to both the letter and spirit of American laws and traditions deserve the plaudits and protection of our federal government.

Further, we believe uniform federal legislation and enforcement is a better solution than individual state laws seeking to close gaps in federal export administration law, attempts which have sometimes created divisive interstate and regional conflicts over fears of diverted cargoes, lost revenues and jobs, or runaway shops. For this we turn to Washington.

The weight of evidence, including that extracted from the records of the U. S. Department of Commerce, is now clear. Simply reporting boycott compliance requests from foreign customers has been inadequate; even disclosing corporate decisions of compliance has not curtailed

Cont'd...

February 28, 1977

the willingness of some to capitalize on the patriotism and moral posture of others. President Carter, during the campaign debates, accurately described the present state of anti-boycott enforcement as a "national disgrace". Congress should move quickly now to give him an opportunity to demonstrate the depth of his convictions.

Respectfully,

Abraham E. Freedman
I.L.A. District Counsel

James R. Kelly
Director
Delaware River Port Authority

Irvin J. Good
President
Philadelphia Port Corporation

Alfred Corry
President
Phila. Marine Trade Assn.

A. J. Castignola
President
Port of Philadelphia Marine Terminal Assn.

Paul S. Weinberg
President
Philadelphia Chapter
American Jewish Committee

h
cc: The Hon. James E. Carter
The President
The White House
Washington, D.C. 20500

The Hon. Richard S. Schweiker
The Hon. H. John Heinz, III
The Hon. Harrison A. Williams, Jr.
The Hon. Clifford P. Case
The Hon. Joseph R. Biden, Jr.
The Hon. William V. Roth, Jr.
U. S. Senate
Washington, D.C. 20510

The Hon. Joshua Eilberg
The Hon. Michael Myers
The Hon. Thomas M. Evans, Jr.
The Hon. Robert N. C. Nix
The Hon. Peter H. Kostmayer
The Hon. Richard T. Schulze
The Hon. Robert W. Edgar
The Hon. James J. Florio
The Hon. Raymond F. Lederer
The Hon. Edwin B. Forsythe
The Hon. Lawrence Coughlin
House of Representatives
Washington, D.C. 20515

E. L. Shafer
Senior Vice President

Continental Oil Company
High Ridge Park
Stamford, Connecticut 06904
(203) 359-3500

February 25, 1977

The Honorable Adlai E. Stevenson
Chairman
Subcommittee on International Finance
Banking, Finance and Urban Affairs Committee
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

I am writing to you on behalf of Continental Oil Company to urge your committee to consider carefully some views on problems which appear in S.69 and S.92. Serious implications may result from the present language of these bills if passed into law.

As you and your committee are no doubt aware, U. S. companies are now subject to the terms of the Ribicoff Amendment to the Tax Reform Act of 1976. This amendment is currently requiring an intensive review of existing contractual and operational relationships with Arab countries in order to avoid the possible loss of foreign tax credits. Absent such tax credits, many U. S. companies in the petroleum industry could find continued foreign production operations economically unattractive. Changes in existing agreements and operations will likely be required because of such legislation. Such changes will be almost impossible for Arab governments to accept since the United States, by the Ribicoff Amendment, is dictating how U. S. companies are to operate within the boundaries of foreign countries, in some cases at variance with the requirements of their local law.

This factor is and will continue to be a source of intense discord in our relations with these Arab countries which are nations now friendly to the United States. Whether efforts to make any required changes will be successful is a matter still open to doubt in certain key Arab states which play an increasing role in the supply of crude oil to this country and Western Europe. Such changes, in accord with the provisions of the Ribicoff Amendment, must be completed by the end of this year. Some U. S. companies may find their only alternative to be withdrawal from these countries.

Given this situation, we will compound the problem if we introduce yet another set of requirements with which U. S. companies must comply in order to continue operations within Arab countries. The legislation now before your committee appears to require changes in existing agreements in addition to those required by the Ribicoff Amendment. Such legislation poses at least two important questions: How is this further intrusion into the process by which friendly Arab nations determine their own values and goals to be explained to these nations? The Ribicoff Amendment having been enacted, why must another blow be dealt to these countries?

Continental Oil Company supports legislation which protects U. S. individuals and companies from discrimination by a boycott based on or relating to color, creed, sex, religion, or national origin. But the proposed legislation before you seems to go further than that, and as previously noted would in some respects go even further than Ribicoff. I would suggest that it raises issues which this committee must seriously consider before recommending additional boycott legislation:

First, is it not time for the Congress to ensure that all legislation regarding boycotts be limited to those boycott practices which affect U. S. citizens, the blacklisting of U. S. companies and individuals who deal with a boycotted country and the blacklisting of U. S. companies and individuals who deal with such blacklisted firms or individuals? In this respect, both this proposed legislation and the Ribicoff Amendment are defective, and perhaps the latter in an even greater respect. Both S.69 and S.92 speak of "Refraining from doing business with any person". Should it not read "any United States person?" Both S.69 and S.92 forbid agreements prohibiting business with non-U.S. companies of a boycotted country. Should not this read: "United States companies doing business in a boycotted country." We must ask ourselves, "What U. S. interests are we trying to protect?"

Second, given that the Ribicoff Amendment is now a part of our law, would it not be desirable to attempt to conform the legislation now before you, at least procedurally, to the Ribicoff Amendment. It is difficult to see how the Congress can reasonably expect U. S. companies to operate within Arab nations, abiding by two different sets of rules. By way of example, I cite the fact that the Ribicoff Amendment is not effective as to agreements existing as of its effective date until the end of this year; yet legislation before your committee would be effective within 90 days of passage.

Further, are guidelines and regulations under this legislation and the Ribicoff Amendment to be different? Has Congress satisfied itself that implementation at the administrative level will be the same for both the Ribicoff Amendment and this legislation, or are U. S. companies to be subject to two differing sets of rules and regulations?

The ultimate solution to the boycott problem is permanent peace in the Middle East. It is my view that conditions are now better than ever to permit negotiation of a peace settlement. However, the passage of further provocative anti-boycott legislation will impair peace prospects.

I would appreciate your making this letter a part of the record of your recent hearings on S.69 and S.92.

Sincerely yours,

E. L. Shafer

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Statement By

Professor Irwin Cotler

Chairman

Commission on Economic Coercion and Discrimination

February 21, 1977

My name is Irwin Cotler. I am presently a member of the Faculty of Law at McGill University, specializing in the areas of constitutional law and civil liberties, and serve on the Board of Directors of several national human rights groups. I am Chairman of the Commission on Economic Coercion and Discrimination, a citizens' commission of inquiry into the Arab boycott in Canada, and Director of the Centre for Law and Public Policy, an independent, non-profit public interest law group of volunteer lawyers and law students which has served as the investigative arm of the Commission.

The Commission itself is comprised of a group of distinguished Canadians as follows: Professor Leo Barry of Memorial University, formerly Minister of Mines and Energy in Newfoundland; Professor Yves Caron, law reform specialist at McGill University; Professor Harry Crowe, former Dean of Atkinson College at York University; Maître Yves Fortier, President of the Quebec Section of the Canadian Bar Association; the Honourable Herb Gray, Liberal Member of Parliament for Windsor West; the Honourable Emmett Hall, former Justice of the Supreme Court of Canada;

the Honourable Judy LaMarsh, former Secretary of State and now Chairperson of the Commission on Violence in the Media; and Mr. David Lewis, former Federal Leader of the New Democratic Party.

I appreciate the opportunity to make this statement to your Senate subcommittee, and to summarize for you the nature, extent, and impact of the Arab boycott in Canada. It appears to me that the Canadian experience - as set forth in the Commission's Report made available to your subcommittee - only serves to buttress and confirm much of the observations and testimony made in the House before this subcommittee in the 94th Congress and in the Report issued by the Committee itself. Indeed, our own work has benefited both conceptually and otherwise from the proceedings of Hearings conducted, and Reports published, by both House and Senate Committees and Subcommittees.

Last month our citizens' Commission released its Report of Findings and Recommendations on the Arab Boycott in Canada. The Report found "a pattern of compliance and complicity with the Arab boycott in both the public and private sectors." In particular, the investigation undertaken by the Centre for Law and Public Policy revealed the presence of seven types of boycott related demands in all the forms of documentation giving effect to the Arab boycott in Canada, including incidences of religious

discrimination. What I propose to do, for reasons of brevity, is to summarize the essence of the Report, though I am prepared to elaborate upon any matter referred to in this statement or our Commission's Report itself, in oral testimony before the subcommittee or otherwise.

It might be useful, however, in discussing the nature and effect of the Arab boycott in Canada to organize the presentation around a series of questions: First, how and why did it (the Boycott, Commission inquiry et al) begin? Second, what do we mean when we speak of the Arab boycott in Canada? Third, what have been some of the principal findings of the Commission? Fourth, and this does not appear in the Report itself, what are some of the implications of the Arab boycott in Canada? Fifth, what is the essence of Canadian government policy as set forth in the first government policy statement ever made on this question (Statement of October 21, 1976) and what validity is there to a common approach to anti-boycott legislation?

I. THE ARAB BOYCOTT IN CANADA: HOW IT ALL BEGAN

For some thirty years the Arab boycott of Israel, while admittedly of nuisance value, was not deemed to be of material consequence or concern to Canada or the Canadian people. The blacklist of Canadian firms was as ineffectual as it was inconsistent; while Canadian trade with the Middle East was negligible, if not irrelevant, to Canadian economic policy. Indeed, there was some question as to whether there was any Canadian foreign policy regarding the Middle East at all, while the Middle East had yet to discover Canada.

Why, then, this emergent concern with the Arab boycott? Why did it suddenly become a subject of protracted Cabinet discussion and the object of the first public policy ever declared on the Arab boycott (October 21st, 1976)? Is it simply a question of the exigencies of domestic policies or are there implications for Canada, Canadian sovereignty and citizenship, civil liberties, and the economy? What inferences and lessons may be drawn from our inquiry of relevance to United States efforts? Why, and how, did the whole thing begin?

Two factors combined to give the Arab boycott its implied leverage in Canada, factors not unlike the American experience. The first involved the quintupling of oil prices generating a revolutionary transfer of power and wealth to the Arab countries and creating a petrodollar

surplus available for both investment and trade. The second factor, somewhat less well known but no less significant, was the dramatic, though almost imperceptible, movement of Canada from being a net exporter of oil to becoming a net importer of oil intent on recycling the petrodollars and gaining acess to Middle East markets. The asymmetry between a capital-hungry and petro-dependent Canada and an oil rich and capital-surplus Middle East was now established. It was not long before the Arab boycott began to take effect.

Canadians first became aware of the growing imposition of the Arab boycott in Canada when the Honourable Herb Gray, M.P., learned that a federal Crown Corporation, the Export Development Corporation, had been insuring export transactions containing boycott clauses. Shortly thereafter, the Prime Minister, on May 8th, 1975, commenting on the application of the Arab boycott in Canada, remarked that "The boycott is alien to everything the government stands for and indeed to what Canadian ethics stand for," and it appeared that the government was about to undertake the necessary steps to combat it.

However, although parliamentarians, civil libertarians and the Centre for Law and Public Policy made further disclosures in the ensuing year and called upon the government to take appropriate action, no response was forthcoming.

A number of groups concerned about the application of the boycott and aware of the work that had been done on this question by the Centre for Law and Public Policy approached it to undertake an inquiry. Accordingly, after discussion to this effect - principally between Professor Harry Crowe of York University, the Honourable Herb Gray, M.P. and myself, it was decided that an independent commission of inquiry - a "citizens' commission" would be the best approach in this regard, with the Centre acting as the resource arm of the Commission.

Ironically enough, as this Commission was about to be formed, the Toronto Globe and Mail of August 6th headlined excerpts of a secret Memorandum to Cabinet on the Arab boycott. The Memorandum alleged, inter alia, that "the effect of the Arab boycott in Canada has been exaggerated" and that "there does not appear to be any incidence of religious discrimination in the boycott."

Shortly therefter the media revealed samples of the boycott - some of which had been unearthed by the Centre - suggesting that its existence may be more widespread than the Memorandum had indicated. The most

serious example referred to the practice of the Canadian High Commission in London authenticating certificates of religious origin of Canadian non-Jews permitting them to travel and work in Saudi Arabia, thus making Canada a party to a discriminatory practice and creating invidious distinctions between Canadian citizens of different religious origin. Happily, after disclosure by the Centre of this practice and its uniform condemnation by the Canadian public, the practice itself was discontinued.

In the next few weeks the composition of the Commission was finalized. On September 29th a formal announcement was made. The terms of reference were described as follows:

1. To inquire into the nature, scope and effect of the Arab boycott in Canada with a view to determining the manner in which this boycott restricts free commerce between Canada and a friendly country or between Canadian citizens within Canada, and to assess the extent to which the boycott creates a discriminatory impact on Canadian citizens.

   The Commissioners were mindful, as stated above, of the excerpts of the Memorandum to Cabinet published in the Globe and Mail and of the assumptions therein that the Arab boycott is of little or no consequence to Canada. The inquiry was designed to test the validity of these assumptions.

2. To inquire into Canadian law and policy to determine the remedial steps of both a legislative and administrative character that may be required to combat foreign imposed economic coercion and discrimination

against Canada. Accordingly, the Commission duly noted and indeed was encouraged by the first government declaration of public policy against the boycott announced by External Affairs Minister Donald Jamieson on October 21st, 1976. (A discussion of this policy is set forth below in part V of this statement.)

3. To recommend measures that are consistent with the independence and integrity of Canadian public policy, that accord with the Canadian national interest and basic values and ideals of this country, and that are protective of the basic civil liberties of Canadian citizens.

   The Commission was not opposed to, and indeed wished to encourage, increased Canada-Middle East trade; and our position was indistinguishable from the position we would take (and that some of our Commissioners had elsewhere taken) against any foreign boycott that threatened to usurp Canadian sovereignty and undermine the integrity and independence of our public policy.

The Commission associated in its work with the Centre for Law and Public Policy which was assisted by volunteer groups of lawyers, academics, students and business leaders. These volunteer groups engaged in fact-finding, legal research, and policy analysis and the results were forwarded by the Centre to the Commission and appeared as Findings in the Commission's Report, released publicly on January 13th, 1977. So much for "how it all began".

II. WHAT DO WE MEAN WHEN WE SPEAK OF THE "ARAB BOYCOTT"

Many of the misunderstandings and misinformation regarding the Arab boycott result from the confusion about

the different manifestations of the Arab boycott; indeed, in some instances the confusion is traceable to the fact that one may not realize that there are different kinds of boycott. Accordingly, any analysis of the Arab boycott must begin by distinguishing between the different kinds of boycott as follows:

1. There is the direct Arab boycott of Israel, otherwise known as the primary boycott. Here the Arab League states refuse to deal with Israel or any Israeli company or national. This, it is submitted, should not be the subject of our concern. If the Arabs want to boycott Israel as part of their economic warfare against Israel, that is their business. It may be regarded by some as of dubious validity in international law but it is not an uncommon practice in the international arena. The United States boycotts Cuba and North Vietnam. India boycotts Pakistan, etc. The Arabs have no less a right than anyone else to engage in direct boycotts of this kind.

Our concern is with the strictly Canadian dimension of the boycott. There are in this regard, four other kinds of boycott that are of consequence to us as Canadians, and which have, I understand, their counterparts in the United States.

2. Canadian firms, as a condition of doing business with an Arab League government, company, or national must agree to refrain from doing business with Israel or any Israeli company or national, otherwise known as the secondary boycott. This, in effect, compels a Canadian boycott of a country with whom Canada has friendly relations and against whom Canada has not itself authorized a boycott.

3. Canadian firms, as a condition of doing business with any Arab League government, company, or national must agree to refrain from doing business with any other Canadian firms that do business with Israel, otherwise known as the tertiary boycott. This compels a restrictive trade practice with Canada and between Canadian firms.

4. Canadian firms, as a condition of doing business with an Arab League government, company or national must supply information as to the religious affiliation of the ownership and management of the firm, or not do business with another Canadian firm that may have been blacklisted for these reasons. It should be noted that such discriminatory conditions may also be attached to direct investment and loan financing in Canada by Arab League states.

5. Canadian firms, as a condition of doing business, must agree to ship their products only on carriers which are not on the Arab boycott list, while banks agree to honour letters of credit requiring evidence that boycott restrictions have been met.

In effect, the Arab boycott in Canada is a misnomer. What we are witnessing, as the Findings below substantiate in detail - is the attempt to compel Canadians to become a party to a foreign boycott against a friendly country, and become a party to a boycott against their fellow Canadians. Canadians, in each of the types of boycott clauses above, are being asked to administer, implement and enforce a foreign boycott in Canada; and the "Canadian connection" is widespread.

III. THE COMMISSION REPORT: SUMMARY OF FINDINGS

General Finding

Our inquiry suggests a pattern of compliance and complicity with the Arab boycott in both the public and private sectors. More particularly the investigation undertaken by the Centre for Law and Public Policy revealed the presence of boycott-related demands in all forms of documentation giving effect to the Arab boycott in Canada, e.g. sales transactions, tender offers, and questionnaires. Such documentation has also been found to include every type of boycott clause as follows:

- negative certificate of origin
- shipping clause
- non-trade with Israel clause
- "omnibus" clause
- blacklist clause
- insurance clause
- religious-ethnic clause
- "political conviction" clause

Finding II

The major chartered banks in this country regularly process letters of credit containing boycott clauses as a matter of "ordinary commercial practice". More particularly, the investigation revealed that as a condition of

making payment, the Bank of Montreal, the Royal Bank of Canada, the Toronto-Dominion Bank, the Bank of Nova Scotia and the Canadian Imperial Bank of Commerce - the largest chartered banks in the country - require proof of compliance by Canadian exporters with the boycott clauses specified in the letter of credit. These boycott clauses include not only "secondary" but also "tertiary" boycott provisions as well as a clause tantamount to involving religious discrimination. (See Section II of the Report for further elaboration.)

Finding III

A number of incidences of boycott demands have involved religious discrimination. In fact, our investigation has found the presence of such discriminatory clauses in all the categories of boycott-related documentation, e.g. sales documents, trade opportunities and tender offers and questionnaires. Such religious discrimination has included:

(a) requests to provincial governments to drop Jewish underwriters in loan financing of provincial agencies and projects;

(b) request to a Canadian Crown corporation to supply information as to the religious affiliation of its Board of Directors;

(c) request to a Canadian firm to declare that the firm is "not controlled by Jews";

the whole as appears more fully in Section III of the Report itself and in the Appendices.

Since the issuance of our Report several other instances of this character have come to our attention.

(a) A branch of a Canadian service organization, the Canadian Institute for the Blind, was asked to furnish information that there were no Jews on its Board of Directors before a Kuwaiti agency would avail itself of the services of the Canadian organization.

(b) A Canadian company specializing in urban planning and negotiating a contract for manpower training with Kuwait had the offer rescinded when it was discovered that one of the Canadian principals was Jewish. An affidavit to this effect will be forthcoming shortly.

Finding IV

A majority of Canadian export transactions to the Arab League countries appear to involve boycott compliance, and much of the dollar value of all export transactions involves boycott-releated provisions. This appears to confirm the findings of the Moss Subcommittee Report which disclosed that 94% of United States exporters to the Middle East are complying with the boycott and has recommended legislation prohibiting compliance. (See Section IV of the Report for further elaboration.)

Finding V

Our investigation - through informants, letters and interviews - has been able to document the receipt of requests for compliance and actual compliance by major Canadian corporations. The documentation substantiating

the requests and compliance can be found in Section V of the Commission's Report, while copies of the boycott clauses are annexed as appendices to the Report. (See pages 37-50) The character of this corporate compliance should be noted: for it involves compliance in the major sectors of the Canadian economy - aviation, communications, automotive, construction, steel, heavy equipment and the like.

Finding VI

Tender offers received by the major consulting engineering and architectural firms in Canada generally require boycott compliance for the submission of bids. This is becoming a prime target for boycott request and compliance.

Finding VII

Canadian export transactions to the Middle East generally contain requests for boycott compliance by shipping companies, and letters of credit processed by Canadian banks invariably contain this requirement.

Finding VIII

Boards of Trade in major Canadian cities have certified documents containing boycott clauses.

Finding IX

A Federal Crown agency, the Export Development Corporation, has acquiesced in, and facilitated, the application of the Arab boycott in Canada. (See Section VIII for further elaboration)

Finding X

The Canadian government has circulated information regarding trade opportunities in the Middle East containing boycott related provisions.

Finding XI

Canadian facilities have been used to provide information and offer advice regarding compliance with the Arab boycott.

Finding XII

Implementation of the Canada-Saudi Arabia Memorandum of Understanding may result in, however inadvertently, acquiescence by the Canadian government in boycott-related transactions, including practices of a discriminatory nature, against Canadian citizens.

Finding XIII

Non-Arab League countries - particularly "Third World" states - are becoming increasingly involved in the application of the Arab boycott. Boycott-related provisions may not only be found in Canadian export transactions to the Middle East but may be conveyed in sales transactions to European and Third World countries as well. (See Section V, page 48)

Finding XIV

The Blacklist of Canadian firms appears to be predicated as much upon religious discrimination as upon any other ground. (See Section XII)

Finding XV

The Arab boycott is beginning to have a "chilling" effect on Canadian firms that do business - or are contemplating doing business - with Israel, or even doing business with other Canadian firms doing or contemplatinf doing business with Israel.

Finding XVI

There does not as yet exist in Canada any legislation or statury instruments requiring reports of requests received for compliance, and actual compliance with the boycott.

Accordingly, any inquiry into the Arab boycott in Canada is likely to be "stonewalled". Secrecy in both the public and private sector appears to be both policy and practice. (See Section XIV)

IV. WHAT ARE THE IMPLICATIONS FOR CANADA AND THE CANADIAN PEOPLE?

The Arab boycott raises important questions of a political, moral, economic and juridical character, with implications for Canadian sovereignty, trade practices, foreign policy, civil liberties and the like. For reasons of brevity, these implications will be outlined. It should be noted that the concerns raised by the Arab boycott would appear to have implications for innocent third parties anywhere, be it Canada, the United States or Europe.

1. The Arab boycott, in its essence, represents the compulsory and extra-territorial application of foreign law to Canada purporting to dictate not only the terms of trade between Canada and a friendly country, but between Canadian firms within Canada. It has the effect of usurping Canadian sovereignty, in its substitution of foreign law and practice for our own.

2. As a corollary, the boycott represents an unwarranted intrusion in our domestic affairs, undermining the independence and integrity of our domestic and foreign policy. Indeed, it not only undermines our policy; it is inimical to it, and has properly been characterized by Canadian Government policy as "repugnant and unacceptable".

3. The boycott amounts to a classic imposition of a restrictive trade practice, both with respect to Canada's international trade as well as regarding domestic commerce.

4. The boycott creates a discriminatory impact upon Canadian citizens, undermining the quality of Canadian citizenship, and creating an invidious distinction between Canadian citizens of different religious origin. If Canadian firms, as a condition of trade, must disclose the religious origins of the ownership or management of the firm; or foreign investment in Canada from Arab League States is made conditional upon the absence of "Zionist sympathies"; or Arab loan financing of provincial governments' bond issues requires exclusion of Jewish underwriters; or Canadian taxpayers of Jewish origin can be excluded from economic benefits of Canadian-Saudi Arabian joint ventures; or the Canadian Government, through its agencies, provides - however inadvertently - insurance financing for transactions which may authorize the exclusion of Jewish personnel, then the factors of equality before the law and equal protection of the laws become empty slogans.

5. The boycott requires Canada to violate its own principle of non-discrimination in international trade, and to undermine international agreements - such as GATT - to which it is a signatory. Indeed, in accession to some of the agreements Canada has not only undertaken not to violate them, but has even recorded its opposition to the Arab boycott pursuant to these undertakings.

6. The boycott not only requires Canada to become a party to a foreign imposed boycott against a friendly nation, but it seeks to engage Canada as an agent or enforcer of Arab economic warfare against Israel. It demands of Canada to forego its policy of "balance and objectivity" in the Arab-Israeli dispute, and to put our resources at the disposal of one of the belligerents to the conflict. It is sometimes

said that opposition to the boycott means we are pro-Israel or anti-Arab; but this misses the point, which is exactly the reverse. Compliance with the boycott is taking sides against Israel, and in opposition to our stated foreign policy. Non-compliance is the refusal to take sides - and to maintain, in this sense - an "even-handed" approach. The issue is not one of pro-Israel or pro-Arab but pro-fairness, and what is in the interests of Canada and the Canadian people.

7. The Arab boycott has a corrupting effect on business ethics and practices; for the boycott is a classic case of "economic coercion" and in effect amounts to a form of corporate bribery. "Coercion" in this context amounts to a promise of more profit, or that of less profit, depending on whether or not the firm complies with a foreign imposed boycott requirement. Indeed, a recent study by Business International disclosed actual instances of economic coercion as corporate bribery per se, in its classic form. The organization found that payments were being made by companies to have their names removed from the Arab blacklist. In a time of concern with corporate corruption and accountability, and where support is being sought for an international agreement to cope with business corruption, such acquiescence to "economic coercion" runs counter both to the Canadian national interest and to the interests of fairness in business practices.

8. Compliance with the Arab boycott will be harmful to the Canadian economy; for compliance, as a condition of trade, will contact the available market for Canadians, impede freedom of commerce, and invite monopolistic practices and prices. It will result in the anomalous, if not absurd situation, where Canadian companies complying with the boycott stand to enjoy a competitive advantage over companies refusing to comply - at the same time that government policy characterizes the boycott as "repugnant and unacceptable".

9. The Arab boycott invites - indeed impels Canadians to contravene government policy and to act in a manner inimical to the received values, traditions and ideals of this country. It will divide Canadians against each other, while creating two kinds of corporate citizens in Canada: those that flout government policy and are rewarded for it; and those that respect government policy and are penalized for it.

10. The Arab boycott will encourage a state of belligerency between the parties, and impede the prospects for peace. It will, in fact, provide a reqard for belligerency and an incentive for its continuance. Unfortunately, the implications may not be confined to the Arab boycott or even the Middle East conflict; rather they may undermine the credibility of Canadian commitments and impugn the integrity - and effectiveness - of our policy.

V. CANADIAN GOVERNMENT POLICY AND THE ARAB BOYCOTT: THE POLICY STATEMENT OF OCTOBER 21, 1976

On October 21, 1976 the Canadian Government announced its first policy ever with regard to the Arab boycott. According to the statement made by External Affairs Minister Jamieson in the House of Commons, the government "will take measures to deny its support or facilities for various kinds of trade transactions .... the types of transactions against which the government will take action are those which would, in connection with the provisions of any boycott, require a Canadian firm to: engage in discrimination based on the race, national or ethnic origin or religion of any Canadian or other individual; refuse to purchase from or sell to any other Canadian goods to

any country; or refrain from purchases from any country."

The "measures" were two-fold: first, the government "will deny its support or facilities .... in the case of any transaction involving boycott undertaking of the type described above"; and second, "all Canadian firms, whether they accept boycott clauses or not, will be required to report all instances of their complying with boycott provisions. Information obtained from such reports will be made available to the public."

Our Commission was, as we put it, "heartened and encouraged" by this policy declaration, which we regarded as an important first step. It gave expression in a declaration of government policy to the government's judgement - which we shared - that the boycott was indeed repugnant and unacceptable; and that "denial of such support will be an effective deterrent to cooperation with discriminatory provisions of an international boycott."

The reality, however, as set forth in the Commission's Report is not encouraging. What emerges is a simple truth: That unless this policy is buttressed by legislation prohibiting compliance and by statutory instruments and administrative directives of a specific character, the governments own policy stands to be undermined. Indeed, even the implementation of this policy directive of October 21st

itself - leaving aside the question of supporting legislation prohibiting compliance - appears stalemated.

There remains a still harsher truth; Canadian companies complying with the boycott will enjoy a competitive advantage over companies which refuse to comply. We are in danger, then, of creating two kinds of corporate citizens in Canada - those that flout government policy and are rewarded for it and those that respect government policy and are penalized for it. The validity of anti-boycott legislation would be that it would place all companies in an equally competitive position and provide them with the means to resist boycott compliance. Canadian firms would be able to say that refusing to comply is not a matter of personal choice but an obligation imposed on them by Canadian law. In fact, a number of corporate officials - including representatives of firms herein indentified as complying with the boycott - have advised us that they would welcome anti-boycott legislation.

Indeed, what is so necessary now is not only legislation <u>within</u> Canada that would put all Canadian firms on an equally competitive basis, and enjoying equal protection of the laws; but a <u>common front between</u> countries that would put <u>all countries</u> - and firms within them - on the same competitive basis, and enjoying a similar protective shield.

In other words, it is important that Canadian firms who refuse to comply with the boycott not only be protected from competitive disadvantage as against other Canadian firms, but from being disadvantaged as against firms in other countries.

Foreign governments, companies, and nationals must be put on notice that they can only deal with third parties on an open, honest and mutually respectful basis. We would be turning our backs on our own received values and ideals - and would in effect be somewhat dishonest in our dealing with the Arabs if not disrespectful to them - if we permitted them to dictate to us the terms of our international or domestic commerce; and foreign governments, Arabs or otherwise, are being contemptuous of us if they require that we abandon our principles and policies in order to do business with them.

There are, admittedly, powerful voices both within and without the government, perhaps in your country as well as mine, that say: "Yes, we are committed to free trade and freedom from religious discrimination but we don't want to lose any petrodollar business." Such a statement, as the testimony in hearings before the Moss Subcommittee pointed out, is unacceptable. First, the notion that non-compliance will result in loss of trade is itself wholly speculative and at variance with the

facts. Second, such statements invite us to abandon our principles, forsake our policies and indulge in unacceptable discriminatory practices against our own citizens. No one disputes the desirability of petrodollar trade; but if the price of that trade is violation of principle and policy that price is one that no nation should pay.

Mr. Chairman, I have very much appreciated the opportunity to make this statement to your Subcommittee on a matter of common concern and interest. I trust that our experience in Canada may be of some use to you in your work, as yours has been to us. If nothing else, the Canadian experience has demonstrated that the Arab boycott is no longer - if it ever was - simply an issue of the Arab-Israeli conflict. It is, in its essence, an attempt to compel innocent third parties - in Canada, the United States or elsewhere - to become a party to a foreign imposed boycott against a friendly country, and to become a party to a foreign imposed boycott against their own fellow citiznes, while creating an invidious distinction between citizens of different religious origin or political conviction. Acquiescence by innocent third parties to such "economic coercion" will have the effect of undermining sovereignty, restricting free trade, corrupting business practices, and abusing civil liberties.

May I conclude my remarks by referring to the closing words of our Report. I suspect that while their context is Canadian, they may have relevance for policy-making in the United States as well.

"The issue at this point goes beyond the question of the protection of Canadian sovereignty, the affirmation of free trade and the protection of the civil liberties of our citizens - though this alone would be enough. The issue, in effect, goes beyond the question of the boycott. What is at stake now is the credibility of our commitments and the integrity of our policies. At some point we must say - the sovereignty of this country is not for sale. In defining our policy on the Arab boycott we are really making a statement about ourselves as a people."

GENERAL MOTORS OF CANADA LIMITED
OSHAWA, ONT.

OFFICE OF
PRESIDENT AND GENERAL MANAGER

February 14, 1977.

Professor Irwin Cotler,
Chairman,
Commission on Economic Coercion
and Discrimination,
1310 Avenue Greene,
Suite 700,
Montreal, Quebec.
H3Z 2B2

Dear Professor Cotler:

This has reference to your letter of January 12, 1977 and the visit to your office in Montreal on February 8 by our Messrs. Jenkins and Noun.

In your letter you asked us to comment on the application of the Arab boycott in Canada. I am happy to share with you General Motors of Canada's policies and experiences in Middle East Trade.

Worldwide Trade Policy

It is the policy of General Motors to do business, where commercially feasible, on a worldwide basis, provided that the transaction of such business is in compliance with applicable laws and our own standards of ethical business conduct. It is our belief that international trade and investment greatly facilitate a continuing dialogue among citizens and officials of all countries, and thus can contribute importantly to improved understanding among people of all nations, religions and political persuasions.

We share your strong disagreement with the principle underlying any boycott or similar restrictive trade practice which poses barriers to the free exchange of goods among nations.

Employment Policy

Especially basic to the conduct of General Motors business is its long-standing worldwide policy against discrimination of any kind in employment practices. We extend employment

opportunities to qualified applicants and employees on an equal basis regardless of age, race, colour, sex, religion, political persuasion or national origin. The Arab boycott has not affected this policy in any way.

Business or Trade Agreements
with Arab Countries or Israel

Consistent with the above policies, General Motors sells its products to distributors, dealers and other customers in Israel and in Arab countries. The nature of General Motors business is such that it is not usual for us to purchase goods or materials either from Israel or from Arab countries.

Arab Country Demands or Requests
on General Motors of Canada

On one occasion, General Motors of Canada was requested by the Egyptian Republic Railways to include in a proposed purchase contract certifications that GM of Canada:

> Does not have a branch in Israel.
>
> Does not have assembly plants in Israel.
>
> Has not invested any capital in commercial or industrial enterprises in Israel.
>
> Does not give patent trade marks or copy rights to any Israeli companies.
>
> Does not have any shares in Israeli companies or factories nor do they offer any financial or technical assistance to Industrial Institutions in Israel.
>
> Does not have dealings with foreign companies which are proved to dispose in Israeli products outside of Israel or assist in the disposal thereof.
>
> Does not participate in work tending to consolidate Israel economy or to supply to Israel any materials of utility to its warlike activity.
>
> And that its agents are also forbidden from putting together Israeli productions.

GM of Canada did not agree to include these certifications. However, the following paragraphs were included in the final contract:

> "The Seller declares that his company is not owned by Israeli subjects, he must not be residing in Israel nor having the Israeli Nationality. Furthermore, no Israeli subject can be allowed to enter the A.R.E."
>
> "The Seller must also declare that no part of the equipment included in the contract is manufactured or assembled in Israel."

We were subsequently requested by the Egyptian Republic Railways to include similar certifications in another proposal. In response, our proposal included with respect to the boycott only wording in accordance with the above wording which had been included in the earlier contract.

On another occasion, General Motors of Canada was requested in connection with a proposal for the sale of locomotives to the Iraqi Republic Railways to specify the source and origin of the supply and submit a certificate confirming that the goods in full or in part are neither manufactured, supplied or transported by Israeli companies or those who have trading relationships with Israel. In its proposal, General Motors of Canada included instead the following statements reflecting the actual situation that would exist if the order were received:

> "Locomotives will be manufactured by Diesel Division, General Motors of Canada Limited and will be sourced in Canada and the United States of America. Spare parts and tools will be either manufactured or supplied through Diesel Division and will be sourced in Canada and the United States of America. They will be neither manufactured, supplied nor transported by Israeli companies."

I appreciate the opportunity to explain General Motors of Canada's position in this sensitive area. Should you or the Commission need additional information, please feel free to contact me.

Sincerely,

D.H. McPherson

The Greater San Francisco Chamber of Commerce

February 23, 1977

Senator Adlai E. Stevenson
Chairman
Subcommittee on International Finance
Senate Committee on Banking, Housing and Urban Affairs
United States Senate Office Building
Washington, D. C.

Dear Senator Stevenson:

The members of the San Francisco World Trade Association and the Greater San Francisco Chamber of Commerce respectfully request your consideration of the following statement of policy regarding the anti-boycott provisions of Senate Bills S.69 and S.92 as part of the International Finance Subcommittee's study of those bills. As indicated, this statement of policy has been adopted by the Boards of Directors of the Chamber of Commerce and the World Trade Association, which together represent more than 1500 business organizations in the Northern California area.

The San Francisco Chamber of Commerce, which has been in continuous operation for 127 years, is made up of business enterprises active in all fields of industrial and commercial endeavour and includes among its members many of the largest business organizations in California. The members of the World Trade Association are among the most active trading firms in California and are responsible for a very substantial portion of West Coast-based international commerce. As a result, we believe that this statement of policy accurately reflects the views of the San Francisco Bar Area business community.

Anti-Boycott Legislation

A Statement of Policy
by
The San Francisco World Trade Association
and
The San Francisco Chamber of Commerce
As Adopted by Their Respective Boards of Directors

1. Background

The emergence of the Arab oil-producing states

as major economic powers and large-scale trading partners with the United States has given a new dimension to the Arabs' long-standing policy of applying economic pressure against Israel. At the same time, various Arab boycott regulations, which require discrimination against American citizens on the basis of religious beliefs, race, national origin or ethnic background, offend some of the most deeply held articles of faith of our national ideology. As a result, for the most laudable of reasons, (i.e., to reaffirm our opposition to racial, religious, and ethnic discrimination) legislators and government officials, at both the state and federal levels have responded vigorously to discourage, to penalize, and to probibit compliance by American citizens and by American business with Arab boycott requests.

2. State Anti-Boycott Legislation

Although at the federal level a variety of laws and administrative regulations, including the Internal Revenue Code, the Sherman Antitrust Act, the 1964 Civil Rights Act, and the Export Administration Regulations, affect or apply to some forms of boycott-related conduct, our principal concern is with recent state anti-boycott legislation. At present, the legislatures of six states, California, Illinois, Maryland, Massachusetts, New York, and Ohio, have enacted some kind of anti-boycott law. Although it is clear that the anti-boycott law of each of these states is directed at American participation in the Arab boycott of Israel, each state's statute is unique, both with respect to its jurisdictional scope and its substantive standard of conduct. In many respects, California's anti-boycott legislation, the Berman Act, is the broadest of these state statutes, both with respect to its jurisdictional reach and with respect to its substantive prohibitions.

3. Statement of Policy

The World Trade Association and the Chamber of Commerce applaud the efforts of public officials to protect American citizens against discriminatory policies fostered or imposed by foreign powers, and to reaffirm the American commitment to free commercial intercourse throughout the world. We believe that discrimination against any American based on race, religion, ethnic background, or national origin cannot and must not be tolerated. Further, we believe that international trade is to be encouraged and that artificial barriers to that trade are to be opposed, and we are pleased to see that this attitude is shared by our legislators. We think, however, that serious questions must be raised as to the wisdom of responding to what is essentially a national problem at the state level.

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Unlike California, most states have taken no legislative action in response to the Arab boycott of Israel. As a result, some businesses may be able to avoid state anti-boycott laws simply by relocating their operations. Even if, in fact, relocation is not feasible for trading firms located in the six states that have anti-boycott laws, it is unlikely that the existence (and, indeed, vigorous enforcement) of state laws will have much effect on either Arab boycott policy or American compliance with boycott regulations. What does seem likely is that the Arabs will cease to do business with California firms, and will, instead, trade with firms located in states, like Pennsylvania, Michigan, and Texas, which have not enacted anti-boycott laws. The end result may only be an adverse effect on the California economy, and no effect on Arab boycott laws or policies. While we recognize that economic sacrifices may be necessary in order to achieve the goals of non-discrimination and unrestricted trade, we do not understand why such financial burdens are borne only by firms located in California and five other states, especially when such a policy is not likely to evoke any positive response from the Arabs. Our concern here is not, therefore, with the substantive details of the anti-boycott statute of California or of any other state. Rather we are concerned about efficacy of attempting to regulate boycott-related conduct at the state level, and with the dangers posed by subjecting multi-state businesses to inconsistent and perhaps conflicting standards of conduct.

4. Recommendation

The San Francisco Chamber of Commerce and its International Division, the San Francisco World Trade Association, therefore, believe that it is imperative that Congress take prompt action to supersede current state statutes with federal law that establishes a uniform national anti-boycott policy. This is not the place to attempt to outline in detail a series of substantive standards that should be incorporated into a federal anti-boycott law. The Chamber and the World Trade Association, believe, however, that any federal law that is designed to regulate American compliance with the Arab boycott should:

(1) clearly prohibit restrictive trade practices that involve discrimination against American individuals and firms on the basis of race, religion, national origin or ethnic background; and

(2) clearly state that it is the intention of Congress to preempt the entire field of regulation of boycott-related conduct.

It is impossible to over-emphasize the need for such a preemptive law. We believe that every reasonable effort should be made to prevent religious and racial discrimination and to bring down the barriers to international trade, but we also believe that the legislative effort to bring about these desirable goals should be made in a way that is reasonable calculated to achieve positive results. Without a uniform national standard, there is likely to be little change in the Arab boycott or in American compliance with that boycott. The only significant impact of a non-uniform boycott policy will be to put businesses in California, New York, and the other anti-boycott states at a substantial competitive disadvantage. In contrast, if all American firms are subject to single national standard, firms in states that have no state anti-boycott legislation will no longer be able to profit from boycott compliance. More importantly, a single uniform trade policy in the United States might bring about certain (albeit probably minor) changes in Arab boycott policy, in that Arab countries could no longer require their trading partners to engage in discriminatory practices without being denied direct access to American capital, goods and services.

Please include this statement in the official record of the proceedings.

Sincerely yours,

Donald Flynn
Chairman
Trade Policy & Legislation
Committee

DF:JFM:v

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THE ANTI ARAB BOYCOTT LEGISLATION

A LESSON IN DISHONESTY

Anti Arab boycott legislation is sweeping the United States. The effects will prove to be a disaster to the American economy.

The process whereby anti Arab Boycott legislation is passed is invariably the same. First, the national and local press mount a strong propaganda campaign defining the Arab Boycott against Israel as anti Semitic, in violation of the non discriminatory provisions of the U.S. Constitution and anti Jewish. Thereafter, the proposed legislation is rammed through with little debate or discussion. After all, who wants to be publicly labelled as anti Semitic?

The truth behind the Arab boycott or the U.S. legislation is never given. In fact, any effort to give a balanced picture of the facts is greeted by the media with silent hostility or name calling. It is the opinion of this author that the unfair coverage of the Middle East that has come to characterize American journalism and politics will directly result in the loss of billions of dollars and jobs to the American economy; jeopardy of sources of oil to the American people; and finally, a substantial revival of anti Semitism in the United States.

Here are the facts:

1. The Arab nations are in a state of war against Israel. Consequently, the Arab boycott against Israel is an economic tool available to them to defend themselves and their people from the territorial conquests and ambitions of Israel. (For these aggressions the U.N. has condemned Israel many times.)

2. The boycott involves no religious or racial discrimination. The boycott applies equally to Muslims, Christians and Jews or anyone else who would strengthen Israel's ability to wage war on Arab countries and peoples. It is therefore an economic device for assuring the security of the Arab states. The

Arab boycott against Israel is based upon long recognized precepts of international law.

A well coordinated campaign of distortion has been sponsored to confuse the public opinion about the basis of the Arab boycott against Israel. To further this endeavor, the campaigners coined misleading terms such as "Jewish firms or companies" and "Jewish capital," to create a conditioned reflex for labelling the boycott as racially or religiously discriminatory. Such a policy, if it were true, would be in clear violation of the United State Constitution. And such a policy, if it were true, would be immediately and vigorously condemned by this author as a Black American.

The fact is that the Arab boycott list does not discriminate on the basis of race or religion. Muslim companies in Turkey, like Artif Basyazghan, Esref Onyedioglu, Halil Yazicioglu, Husnu Bilgin, Izzet Penoy, Kemal Muderrisoglu, Otosan Otomobil Sanayi A.S., Suha Ali Bolton, T. Guleryuz Muessesi; and Muslim Iranian companies like Assil Co. Ltd. Kamal, S. Margalit and Iran Kala Co.; are on the blacklist.

At the same time so-called "Jewish" companies such as Hill Samuel (Britain), Profilo Sanayii Ve Ticaret A.S. (Turkey), Camy Watch (Switzerland), Enzo Watch S.A. (Switzerland), Twainco Ltd. (Britain), Dona Export Co. (Britain) and Gee and Harnhan (Britain) enjoy flourishing business in the Middle East.

In addition, there are many American Jewish firms who do business in the Middle East but prefer not to publicize their activities because of social and economic reprisals they might suffer at the hands of the Zionist community in the United States.

More importantly, the Undersecretary of Commerce, James A. Baker, recently revealed a study that the Department made of 50,000 cases of Arab boycott situations involving American companies between 1965 and 1975. He concluded that 26 cases of discrimination were uncovered; most of these cases, however, were traced to unofficial acts of minor bureacrats and did not speak for the boycott office policy. September of 1976, Congressman John Moss' subcommittee on Operations and Investigations released its report related to the same subject matter. This subcommittee listed its review of 4,000 cases. Of that number 15 involved possible discrimination.

A final determination of these 15 could not be made without further investigation.

Finally, there is nowhere in the language of the rules and regulations of the Arab boycott against Israel where discrimination based upon race or religion is expressed.

3. The Arab states, like the United States, make no distinction between primary, secondary, and tiertary boycotts. Consequently, sovereign Arab nations are at a loss to understand how the United States executes direct or indirect economic sanctions against foreign nations and nationals when it deems such to be in its national interest; but condemns the Arabs as racists, immoral and devisive when they do the same thing. I have been frequently called upon by leading families in both the public and private sectors in Saudi Arabia to explain this paradox; and I must confess that the behavior of our government has all the trappings of inconsistent double standards and international unfairness. At both the national and state level where anti Arab boycott laws have been passed or are pending, there is invariably a distinction made. The argument goes something like this:

   a. Since the U.S. has engaged in primary boycotts against foreign nations; there will be no legislative attempt to outlaw the primary aspects of the Arab boycott against Israel.

   b. Secondary boycotts are different and are directed against persons and not nations. Therefore, they are immoral and not in the interest of American citizens and business. Central to this argument is the belief that the United States has never nor would ever engage in secondary boycotts.

Again, the facts prove otherwise! The United States has historically used primary and secondary boycotts against unfriendly nations in time of war. For instance, during the Second World War "neutral" Switzerland was but one of a blacklist of 5,000 that the U.S. maintained in respect to Germany. More recently, the United States instituted a secondary boycott against Cuba. According to the Federal Maritime Administration, this agency currently blacklists 203 foreign vessels because they call on Cuban ports. These blacklisted ships cannot carry U.S. financed cargo anywhere. (Emphasis added)

Is this not puzzling in view of the fact that the U.S. is not even at war with Cuba?

It should be remembered that the Arabs do not make anyone trade with them; they only set forth the requirements for trade; namely, observing the Arab boycott against Israel.

4. Any national legislation passed on the Arab boycott against Israel should preempt states from acting in this area. Foreign commerce and affairs is constitutionally preserved for the Federal government and is not a proper subject for state activity. This is especially true where the foreign commerce is intricately related to the U.S. foreign policy. The U.S. Secretary of State cannot properly explain all the interferring acts of individual states in the American foreign policy in respect to the Arab boycott against Israel. At present there are more than 8 states that have passed "Anti Arab Boycott Laws."

It is interesting that a Black law firm has made the only challenge to these unconstitutional laws in all America. (Warden v. Younger, Federal District #C76-2851, San Francisco Superior Court #718 153) Moreover, the law firm of Holmes and Warden and Concerned Black Americans In Support of Africa and the Middle East stand ready to challenge the constitutionality of the proposed bill standing before the Senate International Subcommittee. We feel the bill is arbitrary and unreasonable and as such is a violation of constitutional due process. In addition, we believe the law abrogates the sacred property rights of American businessmen to pursue business contracts (property rights) without arbitrary and unreasonable interferrence. For some American firms the law represents a "taking" of property without just compensation.

Finally, it is regrettable that the list of speakers that are scheduled to appear before the Senate International Finance Subcommittee do not represent a balanced picture. For instance, our firm is actively engaged in the Middle East; and intimately acquainted with the views and feelings of the people and government of Saudi Arabia. Yet we were not invited to testify. In addition, responsible groups like the National Association of Arab Americans were ignored. I notice, however, that groups whose objectivity in this matter can certainly be questioned; like the Anti Defamation League and the American Jewish Congress were invited to speak and were kept abreast of all developments.

Donald Warden

Donald Warden
for
Holmes and Warden
and Concerned Black Americans in
Support of Africa and the Middle East

santa fe international corporation 505 South Main Street · Post Office Box 1401 · Orange, California 92668

E. L. Shannon, Jr., President

February 24, 1977

The Honorable Adlai E. Stevenson, III
Chairman
International Finance Subcommittee of the
Senate Committee on Banking, Housing and
Urban Affairs
456 Russell Building
Washington, D.C. 20510

Re: Proposed Bill to Extend the Export Adminsistration Act of 1969

Dear Senator Stevenson:

I am President of Santa Fe International Corporation, a New York Stock Exchange listed company, with approximately $650,000,000 in assets, $240,000,000 in shareholder equity and $430,000,000 in annual revenues. We are engaged primarily in heavy construction, contract well drilling and oil and gas exploration internationally, and provide goods and services in the Middle East to Saudi Arabia, Kuwait, Qatar, United Arab Emirates, Bahrain, Egypt, Libya, Iraq and Iran. We have approximately 7,450 employees of which 6,350 are foreign and 1,100 are domestic. Our principal corporate office is in Orange, California, but we have other U.S. offices in Texas and Louisiana.

I had hoped to have the opportunity to testify personally on the above referenced legislation, but was advised that no openings were available; in lieu of such testimony, I wish to submit the following statement for your consideration and for inclusion in the hearing record. Copies are being mailed to all Committee members. We hope that our views will assist the Committee in considering the serious economic and foreign policy issues raised by the legislation.

We wish to make it clear that we are fully in accord with what we believe to be the American system of fair play and fully concur in the prohibition of discrimination against any person on the basis of race, religion, sex or national origin; however, the proposed legislative scheme is additive to other measures already proscribing such discrimination,

is based on a mistaken premise (that Arab boycott laws require religious discrimination), and would impose new and severe regulations which would have far reaching economic effects adverse to this country's interest for reasons primarily related to issues of foreign policy, (economic relations with the State of Israel), not job or customer bias.

The Arab states have been involved in a state of hostility with Israel for over 30 years and it is natural that they would not want their economic resources to provide support for Israel. Their boycott laws are directed at the State of Israel, not persons of Jewish faith, and in substance prohibit the following:

a) The registration of Israeli business or the Israeli government to do business in the Arab States in which the boycott is enforced;

b) The registration of a company with a special relationship to Israel (a branch in Israel) to do business in the Arab State;

c) The importation of Israeli goods and services;

d) The export of Arab goods to Israel; and

e) In some of the states, the importation of goods and services of companies which have a special relationship with Israel (a branch in Israel).

The Arab boycott laws do not require:

a) That companies doing business in an Arab State discriminate against persons of Jewish faith;

b) That companies doing business in an Arab state refuse to hire or assign to a project in an Arab state persons of Jewish faith;

c) That companies doing business in an Arab state refuse to purchase goods from companies owned or managed by persons of Jewish faith or that companies with substantial stockholders or high management

officials of Jewish faith be prohibited from doing business in Arab States;

d) That a company refuse to do business with a blacklisted company;

e) That companies refuse to do business with Israel, (although some smaller Arab States have requested that a company not establish a branch office in Israel during the term of a proposed contract).

Proponents of the anti-boycott legislation argue that the limited application of the specific boycott laws is illusory and de facto religious discrimination is required. Some instances of such discrimination, may have been required, but this company's experience has been to the contrary. In our twenty-five years of extensive involvement in the Arab countries, we have never been requested directly or implicitly to discriminate against persons of Jewish faith or companies in which persons of Jewish faith have substantial influence.

The oil producing Arab states are currently enjoying a great influx of wealth due to the high price of oil. Much of this comes from the United States and has a large negative impact on our balance of payments. A large portion of the Arab wealth is being spent on development projects to upgrade the infrastructure and amenities in their countries. It has been this Company's good fortune to participate in that market, in addition to our ongoing work of drilling oil and gas wells and building petroleum facilities in those countries. We are a relatively small firm, yet our gross revenues from the Arab countries alone in 1976 were approximately $143,387,000. We purchased and shipped U.S. goods worth $31,879,484.00 to our operations in the Arab countries. We employed 229 Americans on projects in the Arab countries and our direct salary costs for expatriates there, most of which went to Americans, were $10,590,000. Obviously, a large part of our administrative efforts in the United States were attributable to supporting our Middle East operations; an estimated 238 Americans in California and Texas. For 1977 we expect larger numbers in all those catagories, including gross revenues of $340,000,000 in Arab countries if we are not hampered or prohibited by legislation. The totals for all U.S. businesses engaged in commerce in the Middle East are staggering numbers and the economic consequences to the United States of losing such business would be severe.

No one should labor under the misapprehension that U.S. technical know-how is essential to the Arabs. American industry can be replaced almost overnight in the Arab market by European, Japanese and Korean concerns which are already commercially active in the area, which have the technology and resources to perform adequately, and which enjoy governmental policies encouraging and aiding their participation in overseas markets. A recent example is the loss by Westinghouse Corporation of a contract for a proposed water desalinization project for one billion dollars to a Japanese company.

Further, the United States now imports somewhere between forty and fifty percent of its oil, a large portion of it from Arab nations. Should Arab oil be withheld from the United States because of the reaction to our legislation, the effect on the U.S. economy would be catastrophic. There is simply no alternative source of oil in sufficient quantity.

We recognize that the foregoing are all economic matters and not addressed to the moral issue. We believe that the only truly "moral" issue is possible discrimination by one American against another on the basis of race, religion, creed or national origin. Although the Arab boycott laws don't require such discrimination, we have no objection to such legislation, if it is necessary to reassure the American public that American business will not be permitted to engage in such discrimination, either on its own initiative or under foreign compulsion. That kind of legislation would have no impact on us or on similarly situated companies.

The portions of the proposed legislation which have the most severe impact on American companies (prohibitions of: refusal to do business in Israel, providing information on status of commercial relations with Israel, and negative certificates of origin) are, we believe, related to issues of foreign policy, not morality; those provisions seek to use American commerce to force the Arabs to discontinue the boycott of Israel. While some Americans feel that it is our moral duty to support Israel against the Arab states and feel that our investment in Israel requires U.S. efforts to break the boycott, a succession of U.S. Presidents have stated that our Middle East policy is an even-handed one

which favors neither the Arabs nor Israel. The Arab countries, especially Saudi Arabia where the largest oil reserves lie, have been friends and allies with the U.S. before Israel existed. In addition, because of foreign competition for Arab commerce, we do not believe such an effort would be effective and we believe the economic interests of our own country have priority over our economic support of Israel.

We believe that the proposed legislation should be drafted to correct the current confusing scheme of anti-boycott laws and provide clear guidelines for business. As it presently stands, U.S. anti-boycott policy is articulated by numerous executives in hundreds of companies seeking to respond to a variety of state and federal mandates. Each executive has his own ideas about what contract clauses and what conduct is required and presents a confusing and sometimes inappropriate picture of American policy in this area to the Arab nations. At a time when both the Arabs and the Israelis appear publicly to be in a more conciliatory mood, and when current political factors make the opportunity for settlement more pregnant, a measure that may be viewed as repressive, which adds to the confusion, and which continues to vest communication of our policy in a multiplicity of persons in the American business community seems unwise.

We feel that the following factors are essential to any legislation in this area, if we are to retain our posture of even-handedness and our economic opportunities in the Middle East:

a) The legislation should supercede all other federal regulation of the area and should preempt all state laws impacting this area; tax laws are poor vehicles for regulation since they apply unevenly to similar conduct by different kinds of businesses; foreign policy is a national, not a local, concern;

b) The legislation should permit Americans to agree to comply with the local laws in connection with the performance of a contract in the foreign country, and should allow Americans residing in foreign countries to obey local laws while present in those countries;

c) The legislation should permit Americans to supply documentary evidence of origin, carrier, route of shipment and supplier of goods as are necessary to satisfy local commercial concerns so long as such documents do not require any statements concerning race, religion, creed or color;

d) The legislation should permit Americans to decide whether or not they will choose to do business in or with the State of Israel, and as a corollary, should allow provision of information concerning the status of business relationships with Israel;

e) The legislation should not force a company to purchase goods for a particular contract which can not be imported into the country where the contract is to be performed;

f) The legislation should not impose criminal liability without a requisite intent to engage in the prohibited activity; and

g) The legislation should recognize a nation's right to control the type and origin of goods which cross its borders on whatever grounds and its right to determine the manner in which goods are shipped so as to protect them from confiscation from an unfriendly nation; as a corollary, the legislation should recognize a country's right to regulate its exports and to determine the ultimate user of its exported goods.

We thank you for this opportunity to present our views. If we may be of assistance, or you require further or more definitive information, please feel free to contact us.

Very truly yours,

SANTA FE INTERNATIONAL CORPORATION

E. L. Shannon, Jr.
President

ELS/gcs

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March 4, 1977

The Honorable Adlai Stevenson, III
Chairman, Subcommittee on
International Relations
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Stevenson:

The American Horse Council (AHC) appreciates the opportunity to comment on one section of S. 92, which amends the Export Administration Act of 1969. We ask that this comment be made a part of the hearing record on this bill. The AHC is a national organization, which includes over 100 equine associations representing over 2,500,000 individuals. The AHC's purpose is to protect and promote the American horse and horsemen. For this reason we support Section 109 of the bill, which prohibits the exportation of horses by sea.

As you know, a similar bill was passed by the Senate during last Congress and referred to the House International Relations Committee. Unfortunately the House did not act on the bill. The AHC supported this legislation during the last Congress and continues to support it.

Anyone familiar with the horse industry is aware of the unfortunate treatment of horses shipped abroad by sea for slaughter. Many such horses arrive dead, sick or injured. While the USDA routinely inspects the horses and conditions on board ship at loading, the problem generally arises once the horses are out of the harbor. There is no

effective way of monitoring the unfortunate existence of the animals after the ship leaves the dock. In fact, many persons experienced in the handling and transport of horses contend that there is simply no humane way to ship large consignments of horses over long distances by sea.

In late 1975 the Department of Agriculture proposed a study of this problem. Soon thereafter, the Department's ~~National Horse~~ Industry Advisory Committee recommended "that horses not be exported by water for slaughter in other countries." The AHC does not believe a study is necessary. An outright prohibition on exporting large numbers of horses for slaughter by sea is the only practical means of preventing this continuing problem. Nonetheless, the AHC believes that it is possible to ship small consignments of horses humanely. The proposed legislation authorizes the Secretary of Agriculture to study and permit the exportation of small consignments, provided the horses are not intended for slaughter and the shipments satisfy regulations he will propose in this regard. The AHC considers this a reasonable and practical way of dealing with this situation.

Very truly yours,

SMATHERS, SYMINGTON & HERLONG

by George A. Smathers

GAS/ct

cc: The Honorable William Proxmire

MORGAN EQUIPMENT CO.
SAN FRANCISCO

HAROLD MORGAN
PRESIDENT

March 11, 1977

Dear Mr. Marcus:

After examining the prepared statements and testimony aired before your Committee, during the first two weeks of March, I feel the necessity of clarification of a few areas not specifically addressed. The two areas of specific testimony which I felt needed clarification were with respect to the "Grandfathering Clause" and "Extrateritoriality". I believe my prepared statement presents my position in these areas.

I respectfully request of the Committee that the attached prepared statement be introduced into the record. In addition, I would like to submit for the record, an example of the United States Department of Commerce, Maritime Administration Report No. 128, wherein, the U.S. is engaged in a secondary boycott of 203 foreign flag ships.

I would like to thank yourself, and the Committee for the opportunity to present my views on this most important legislation.

Sincerely,

Harold Morgan

Stanley Marcus, Counsel
Senate Banking, Housing,
Urban Affairs Committee
Room 456 - Russell Building
WASHINGTON, D.C.

PREPARED STATEMENT OF HAROLD MORGAN, PRESIDENT OF MORGAN EQUIPMENT CO., SAN FRANCISCO, TO BE PRESENTED TO THE COMMITTEE ON INTERNATIONAL RELATIONS, UNITED STATES HOUSE OF REPRESENTATIVES, ON MARCH 9, 1977

Mr. Chairman, Members of the Committee:

My name is Harold Morgan; I am the President and principal shareholder of Morgan Equipment Co., a distributor of U.S.-manufactured construction and mining equipment based in San Francisco. More than 80% of what my Company sells is exported to foreign countries. For the last two years an increasingly large portion of our sales has been to customers within the Middle East, especially the many U.S. construction contracting firms that are active in Saudi Arabia. Morgan Equipment is also a participant in a joint venture established in Saudi Arabia to distribute and service U.S. manufactured construction equipment. Thus my financial stake in this legislation is clear and undenied.

I do not wish to dwell on the often-made point that the U.S. construction industry has a large stake in Middle East projects but I request that the report of a survey on this subject prepared for my Company by Stanford Research Institute be introduced into the record and considered by the Committee when evaluating the proposed legislation. I do not want to suggest that simply because there is a large dollar amount of construction and equipment business at stake that American firms

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should be permitted to discriminate against other American firms or against firms which do business in a country friendly to the United States. However, I do not believe that the pursuit of business in the Arab nations is either sinister or immoral.

Although I support additional legislation, I have sincere and substantial reservations about several provisions in the pending bill. I am concerned about the appearance of power among Israeli supporters to provide an ever increasing pressure on the Arab countries to relax their boycott of Israel without providing any corresponding pressure on the Israelis to offer any similar concession for the furtherance of peace in the Middle East. I know of nothing which has occurred since passage of the Tax Reform Act's foreign boycott provisions which would justify the U.S. toughening its policy with respect to foreign boycotts. To the contrary my Company has seen a noticeable relaxation by Saudi Arabia, among others, of certain aspects of the boycott such as elimination of the required negative certification of origin. Additional legislation at this time might be interpreted by the Arab countries as an attempt to break their boycott of Israel at the very time that they are moderating their practices to meet the objections of countries such as the United States. In my opinion this can cause the additional legislation to be counter-productive.

For some years now the publicly stated foreign policy of the United States with respect to the countries within the Middle East has been one of evenhandness. I would like to think that such policy continues to prevail. While I well recognize the firm bond between our country and Israel, a friendship I support and respect, I also recognize that we have had long and traditional friendships in the Arab world.

Saudi Arabia has been a close ally of this country. It has been a stabilizing force in the Middle East and has contributed substantially to the Middle East peace effort. In their efforts to limit oil price increases Saudi Arabia has been not only a good friend of our country, but of all the oil importing countries in the world.

My company currently operates in Australia, Papua New Guinea, and Singapore; and those operations account for the majority of my business.

Most of my Company's business in the Middle East has been in Saudi Arabia. At no time in my business dealings with Saudi Arabia have I been asked to discriminate against any U.S. citizen because of race, religion or national origin; nor have I been prohibited from exporting any of the lines of U.S. machinery I represent.

I believe that our country should have an aggressive policy in promoting U.S. trade. Unfortunately, we seem to do just the opposite with the result that we are becoming more noncompetitive with other industrial countries. We no longer have a "lock" on technology. Where ten or fifteen years ago we had markets to ourselves, we now find competition from all sides. I believe that you are all aware that last month's trade deficit was the largest in the history of the United States - almost 1.7 billion dollars. This country is desperately in need of a policy that will stimulate, not retard, the exports of U.S. goods and services.

As an exporter, I work very directly with the construction industry. In 1975, the 400 largest U.S. contractors obtained a total of $21.8 billion in new foreign contracts of which $7.5 billion represented contracts with the Middle East nations. This has a very direct effect on our own U.S. economy. Not only are jobs created here and our balance of payments aided, but we also penetrate new markets with our products and technology. These projects strengthen the economic and political ties which I believe lead to greater international stability. In my opinion major U.S. contracting concerns serve as very effective and sincere ambassadors of America's principles.

I believe that the United States will be making a great error if it adopts legislation which attempts to force the Arab countries to relax their economic boycott against Israel in order to maintain the friendship of the United States or to engage in business with American firms. The legislation should do no more than prevent Americans from being forced to boycott Israel or to discriminate against other Americans. I have talked with a variety of Saudi Arabian businessmen and I am convinced that the Saudi's believe that their boycott of Israel is a legitimate weapon in their existing state of war with Israel and is not intended to be anti-Jewish. Since the United States has itself used economic boycotts as instruments of foreign policy, including the secondary boycott, it would be hypocritical to pressure a country friendly to the United States, such as Saudi Arabia, to cease enforcing its boycott within its own borders.

Both the proponents of, and the opponents of, the pending legislation seem to agree on the basic principles which Americans must live up to at home and abroad. I am here today to ask that these principles be expressed with precision and clarity in a manner which will not inhibit American businessmen, because of uncertainty and careless drafting, from doing business with the countries of the Middle East. These are important principles which are worth clear statement so

that all Americans can be guided by them and so that all nations will understand this country's unambiguous opposition to any boycott which discriminates upon the basis of personal characteristics such as race or religion.

RECOMMENDATIONS

In your deliberations on the pending legislation I request that this Committee consider several areas where the pending bills must be, or can be, substantially improved without any loss of the national objective which this Committee is attempting to promote.

FEDERAL PREEMPTION

First, U.S. policy on foreign boycotts involves foreign relations and foreign and interstate commerce. The federal government is, according to the constitution, exclusively responsible for such matters. Furthermore, this problem requires a uniform and consistently applied national policy.

The present set of federal and state laws covering foreign boycotts is checkered, complex, confusing and conflicting. The many state laws encourage American firms and others to play one state against another by diversion of business from those states which have strong boycott laws. There is absolutely no justification for an American to be able to do one thing in

Minnesota with respect to a foreign boycott and be restricted from doing the same thing in New York. Nor any reason why a California corporation should be fined $1,000,000, pay treble damages, and lose its corporate powers, while a New York corporation is only found guilty of a misdemeanor and a Texas corporation is not now punished -- all for the same boycott related act.

Already there is a difference in opinion on the appropriateness of the pending legislation between the port authorities in states which have local laws regulating foreign boycotts and those which do not. State officials are now doing exactly what the proponents of the bill believe is most offensive -- setting American against American for personal or local profit.

Morgan Equipment, being headquartered in San Francisco, is subject to the recently effective California anti-boycott law -- The Berman Act. That law is so vague and confusing that the State's Attorney General issued an opinion in an attempt to spell out its meaning and to avoid unconstitutional applications which conflict with federal law. In doing so, he had to virtually ignore the words of the statute, and we cannot be sure that the first judge to be presented with the statute will not reach different conclusions about its meaning. Other state laws are equally incomprehensible and a Company, such

as ours, which conducts business in several states may be subject to more than one state law in the same transaction. The resulting confusion and uncertainty discourages lawful business.

I strongly urge that the bill be amended to preempt the present tangle of state policies which are certain to damage the U.S. without any corresponding benefit, moral or otherwise. These conflicting state policies make the American position appear to be unclear, unequal, and vascillating. The United States must have a strong, uniform, and consistent national policy.

Furthermore, I urge the Congress to repeal the provisions of Section 999 of the Internal Revenue Code dealing with foreign boycotts. There will be little, if any justification, for Section 999 after appropriate legislation on the subject is adopted in the extension of the Export Administration Act. Retaining the tax provisions will merely provide a cumulative penalty for the same agreements or acts. And, the duplicative reporting requirements for American business which the tax statute and this legislation will foster are an unnecessary burden on American businesses already drowning under required Federal, State and local paperwork.

EXTRATERRITORAL APPLICATION

Second, the Congress should limit the applicability of the U.S. policy to domestic concerns, U.S. residents and

foreign base companies which are established by U.S. persons with the intent of avoiding the application of the U.S. policy. Of particular concern to me is the possibility that the subsidiaries of U.S. companies established in Arab countries will be forced to report to the Commerce Department on their activities within their own country and to otherwise comply with U.S. law which is at odds with the law of their own country. Certainly we should not expect a Kuwaiti subsidiary to comply with U.S. law if that violates Kuwaiti law. If the bill passes in its present form I suggest that no American will be able to control a company within any of the Arab countries without risk that the American will be violating either U.S. law or the law of the host nation. Nor do I believe that the exceptions for primary boycott import limitations and shipping document requirements provided in H.R.1561 sufficiently meet this problem. In legislating to prohibit foreign nations from requiring Americans to break our own policies against discrimination and unfair economic competition, we must be careful not to require foreign residents including those owned by Americans to break the laws of those places. International comity requires no less.

Further, I am convinced that the Arab countries will not stand for Arab concerns reporting to the U.S. Department of Commerce on their activities within their own country. It is

one thing to establish a strong U.S. policy against boycotts; it is quite another thing to force this policy upon concerns and nationals of foreign countries within their own countries simply because the host country has permitted American control.

RETROACTIVE EFFECT

Third, Congress should exempt from the application of the bill all existing contracts and agreements. The provisions of H.R.1561 making the bill applicable to existing contracts and agreements is particularly troublesome. Why, I would like to ask, should Americans be penalized now for having entered into contracts and other agreements which were completely lawful at the time they were made. The fact is that the existing U.S. policy merely discourages certain kinds of compliance with the Arab boycott of Israel but does not prohibit it. Those who have complied with the law have the right to place reliance on the fact that their actions will not later be made punishable violations of law.

The bill does not make it clear whether the violative clauses in existing contracts and other agreements are declared void or whether they must be removed by agreement of the contracting parties. To make a clause in an existing contract void would create chaos, especially if one or more of the contracting parties is not subject to U.S jurisdiction. And,

to require that existing contracts be changed by agreement assumes that the U.S. person has some leverage to force the change on a non-U.S. person. The financial consequences of this retroactivity are incalculable. Several American construction contracting firms have advised me that they have posted substantial performance bonds and these could be called upon if they fail to live up to the terms of their binding agreements and are unable to get the non-U.S. person to acceed to the new legislation. If U.S. companies are forced to walk away from existing contracts to avoid being subject to criminal prosecution, this will bankrupt a number of U.S. companies doing business in the Middle East.

The pending legislation proposes a new, strong U.S. policy on foreign boycotts. Our new policy will not be made better or any more clear to the world if we make it apply to agreements already in existence which are not proscribed by present law. To the contrary I submit that our moral standing within the world business community will be greatly harmed by providing ex-post facto criminal penalties for prior acts which were previously lawful.

NEGATIVE CERTIFICATES OF ORIGIN

Although the issue may have been rendered moot by a recent announcement that most Arab countries will no longer

require negative certificates of origin, I believe that the provisions contained in the bill which outlaw negative certificates should be removed. No one has suggested that we should impose our will on the Arab countries to cease their primary boycott of Israel. Nor has anyone provided any meaningful distinction as to the difference between a positive and a negative certificate when such certificate is required for the sole purpose of excluding goods from a boycotted country. It is no secret that a state of war exists between Israel and the Arab countries and if the Arab countries want to insist that exporters of goods to them acknowledge this state of war, I believe that we should not try to interfere. This is an area where we are truly permitting form to take precedence over substance.

INTENT TO SUPPORT OR FURTHER A BOYCOTT

Finally, I suggest that language should be added to the bill to establish "intent to support or further a boycott" as the criteria for violation of this law. Under H.R. 1561 it is possible to violate the law simply by agreeing to comply with the laws of a country which has imposed boycott provisions on its citizens and business concerns. I can foresee inadvertent agreement to what can be construed as boycott language in form contracts containing boilerplate clauses. Employees of mine might, for example, accept a purchase order

without realizing the significance of some of the fine print which the purchaser may have included. The issue of actual compliance with the boycott will not arise because we will ship the goods ordered. However, the language in the contract would place us in at least technical violation of the law.

An example on this very subject occurred within the last month. A bank which we do business with sent to us a draft agreement for a loan which we are seeking. In the draft we were required to affirmatively cause each of our subsidiaries, specifically including our Saudi Arabian subsidiary, to comply with all of the laws and regulations of any governmental authority having jurisdiction over such subsidiary. My attorneys advised, I believe facetiously, that this might be a reportable boycott request since the laws of Saudi Arabia include the boycott laws. Whether or not their advice on reporting the incident was facetious, they insisted that the offending clause be changed.

CONCLUSION

In closing I would like to thank the Committee for the opportunity to present my views on this most important measure. I believe that what my Company does is good for the U.S. ecomony and I see great harm if we act in such a way as to force Americans to cease doing business in Arab countries. I hope that you will find my testimony and experience of some use in your efforts to draft legislation to deal with this subject.

UNITED STATES DEPARTMENT OF COMMERCE
Maritime Administration
Washington, D.C. 20230

REPORT NO. 128

List of Free World and Polish Flag Vessels
Arriving in Cuba Since January 1, 1963

Section 1. The Maritime Administration is making available to the appropriate Departments the following list of vessels which have arrived in Cuba since January 1, 1963, based on information received through July 31, 1975, exclusive of those vessels that called at Cuba on United States Government approved noncommercial voyages and those listed in Section 2. Pursuant to established United States Government policy, the listed vessels are ineligible to carry United States Government-financed cargoes from the United States.

Flag of Registry Name of Ship	Gross Tonnage
Total - (All Flags - 203 Ships)	1,593,916
Cypriot: (81 Ships)	706,607
AEGIS BANNER	9,025
AEGIS ETERNITY	8,814
AEGIS FAME	9,241
AEGIS FORCE	8,957
AEGIS HOPE - (Previous trips to Cuba as the HUNTSMORE - British)	5,678
AEGIS MIGHT	8,160
AEGIS STORM	21,700
AEGIS THUNDER	21,704
AFTADELFOS	8,136
AGHIA THALASSINI	8,120
AGHIOS GEORGIOS	8,377
AKROTIRI - (Previous trips to Cuba as the ANEMONE)	7,168
AKTIS	8,746
ALAMAR	12,299
ALEXANDROS SKOUTARIS	8,280
ALIARTOS	6,020
ALMA	9,097
ALPA	9,159
#ANDRIANA I - (Previous trips to Cuba as the ROWANMORE - British)	8,274

Flag of Registry Name of Ship	Gross Tonnage
Cypriot: (Continued)	
ANTIGONI	3,174
ANTONIOS	8,202
ARETI	8,560
ARIS - (Previous trips to Cuba as the ARIS II)	9,561
ARMAR	9,559
AROSA	10,250
ATHENIAN DEMOCRACY - (Tanker)	8,675
*AURELIA	6,021
BARACOA	9,242
BEGONIA	6,576
CAMELIA	8,111
CASTALIA	7,641
DEGEDO	9,079
*DORA PAPALIOS	9,072
E.D. PAPALIOS	9,431
EFTYHIA - (Previous trips to Cuba - Greek)	10,347
ELPIDA	8,382
ENARXIS	9,212
FELICIE	9,030
FULVIA	10,360
GEORGE N. PAPALIOS	9,071
GEORGIOS C. - (Previous trips to Cuba as the HUNTSFIELD - British & Cypriot)	9,483
*GOOD NAVIGATOR	8,805
HYMETTUS - (Tanker)	12,037
IOKASTI	5,496
#IRENE'S PRIDE - (Ex-KIKA, Panama - Previous trips to Cuba as the SANTA LUCIA - Italian)	9,278
IRIS	8,479
ISMINI	7,141
*KEFALONIA SPIRIT	8,247
KIKI - (Previous trips to Cuba as the GARDENIA)	9,723
LEFTERIS	8,640
MAGNOLIA	7,249
MARGARET H.	8,482
#MIESTO - (Ex-URDAZURI II - Previous trips to Cuba as the MEIKE - Netherlands)	500
MIMIS N. PAPALIOS	9,069
MIMOSA	8,782
MISS PAPALIOS	9,241
MITERA ASSIMINA	7,731
NEA HELLAS	9,241
NIKE	9,689
NORTHERN ICE	4,100
PANACHRANTOS	6,307
PANTAZIS CAIAS	9,618
PETUNIA	7,843
PROTOAPOSTOLOS	8,130
PROTOMACHOS	9,218

Flag of Registry Name of Ship	Gross Tonnage
Cypriot: (Continued)	
RAVENS	8,039
REIFENS	8,070
ROTHENS	8,106
SALVIA	8,671
SEAFARER	8,116
SKIPPER	8,786
*SKYTON	9,997
TAKIS ALEXAKOS	9,249
*THEANO	8,677
THEOSKEPASTI	6,618
TORENIA	8,077
TURBINIA	10,494
*VALLE DE PICADURA	9,973
VENTURER	9,070
VIOLETTA	8,510
ZINNIA	7,114
Somali: (34 Ships)	288,258
#ARCTIC OCEAN	8,701
AGATE ISLANDS	8,737
AMBER	7,337
AMBER ISLANDS	8,947
CORAL ISLANDS - (Previous trips to Cuba - British)	8,932
DAWN GRANDEUR	8,877
DELIMA	7,870
EASTGLORY - (Previous trips to Cuba - British)	8,898
FEIHANG	8,684
FEITA	8,661
#FORTUNE ENTERPRISE - (Previous trips to Cuba - British	7,696
#GOLDEN BRIDGE - (Previous trips to Cuba - British)	7,897
HEMISPHERE - (Previous trips to Cuba - British)	8,748
IVORY ISLANDS	9,718
JADE ISLANDS	10,250
#JOLLITY - (Previous trips to Cuba - British)	8,626
MINDANAO SEA	8,871
MINFUNG	5,980
MINGWEI	8,280
MOLUCCA SEA	8,871
NEBULA - (Previous trips to Cuba - British)	8,773
#NEW EAST SEA - (Previous trips to Cuba - British)	9,384
ONYX ISLANDS	8,486
OPAL ISLANDS	9,063
PALM ISLANDS	9,650
PATRICIA	8,871
#SEASAGE - (Previous trips to Cuba - British)	3,794
*SOOCHOW	5,156

NOTE: The MARBLE ISLANDS has been removed from Somali flag registry since it has been transferred to Cuba.

Flag of Ship . Name of Ship	Gross Tonnage
Somali: (Continued)	
STAR	9,135
STEED	8,989
*TAI SHAN	9,609
TOPAZ ISLANDS	8,998
ULLANG	9,265
#VENICE - (Previous trips to Cuba - British)	8,504
Greek: (13 Ships)	120,601
ANDROMACHI - (Previous trips to Cuba as the PENELOPE - Greek)	6,712
*ARGOLICOS GULF	9,938
*ARISTIDIS	10,348
DEMIS - (Previous trips to Cuba as the ANNUNCIATION DAY - Cypriot)	7,831
#DESPINA A II - (Ex. GOODLUCK - Previous trips to Cuba - Cypriot)	6,906
*EFTYCHIA	11,891
*EPTANISOS	8,931
*GOOD FRIEND	9,954
*GOOD HELMSMAN	11,307
*IOANNIS A.	8,665
#KAVO GROSSOS - (Ex. TRIAENA - Previous trips to Cuba as the LAMBROS M. FATSIS and the LA HORTENSIA - British)	9,486
MAREANTES	8,497
*MARIA CHRISTINA	10,135
Polish: (12 Ships)	85,579
BYTOM	5,967
CHOPIN	9,231
CHORZOW	7,239
ENERGETYK	10,654
GRODZIEC	3,487
HUTA ZGODA	6,860
HUTNIK	10,632
KOPALNIA SIEMIANOWICE	7,262
KOPALNIA WUJEK	7,033
PIAST	3,184
REJOWIEC	3,401
TRANSPORTOWIEC	10,629

NOTE: Five vessels have been removed from Somali flag registry since they have been transferred to the People's Republic of China.

Ex. ATLANTIC OCEAN now, LUCHON
BER SEA
~~Ex. FLORES SEA now, NANPING~~
KINROSS
YUNGLUTATON

Flag of Registry Name of Ship	Gross Tonnage
Yugoslav: (9 Ships)	66,905
AGRUM	2,449
BAR	8,699
CETINJE	8,120
*KOLASIN	9,917
NIKSIC	9,916
PIVA	7,441
PLOD	4,707
TARA	7,441
ULCINJ	8,215
Netherlands: (8 Ships)	9,590
ANTARCTIC	1,384
COOLHAVEN	1,500
*FRIO EXPRESS	1,296
LEO POLARIS	1,528
MARKAB II	790
MEGREZ - (Previous trips to Cuba as the GERDA)	1,190
ROCHAB	787
TEMPO	1,115
Panamanian: (8 Ships)	67,575
#ASSOCIATED GRAIN	8,959
*ELMONA	12,230
#COLDEN FALCON - (Previous trips to Cuba as the KITSA - Cypriot)	9,519
HOLSTENKAMP	4,199
HOLSTENLAND	4,118
*LEAGE	8,760
*MARITSA III	10,596
*MERSINIDI	9,194
Argentine: (6 Ships)	49,372
ENTRE RIOS	7,381
FLETERO	7,607
*NAVIERO	7,610
PAMPA ARGENTINA	9,495
PATAGONIA ARGENTINA	9,645
RIO ATUEL	7,634
French: (6 Ships)	48,053
BERTRAND DELMAS	10,080
CIRCE	2,874
CORREZE	11,740
DINA	10,407
EMMANUEL DELMAS	10,078
NELEE	2,874

Flag of Registry Name of Ship	Gross Tonnage
British: (3 Ships)	23,[illegible]
CHEUNG CHAU	8,[illegible]
MYSTIC	6,[illegible]
SEA MOON	9,[illegible]
Italian: (3 Ships)	36,[illegible]
ALDERMINE - (Tanker)	12,[illegible]
ELIA - (Tanker)	11,[illegible]
SAN NICOLA - (Tanker)	12,[illegible]
Singapore: (3 Ships)	18,[illegible]
CILAOS	2,[illegible]
#HWA CHU - (Previous trips to Cuba - British)	9,[illegible]
TONG HOE	6,520
Spanish: (3 Ships)	16,[illegible]
*ACUARIO	5,779
*COROMOTO	5,[illegible]
*GEMINIS	5,779
Finnish: (2 Ships)	4,570
*DEGERO	2,285
*ECKERO	2,285
Lebanese: (2 Ships)	7,111
ANTONIS	6,259
#CEDAR FREEZE - (Ex. DRAME OUMAR - Trip to Cuba as the NEVE - French)	852
Moroccan: (2 Ships)	4,739
EL MANSOUR BI LLAH	1,525
MARRAKECH	3,214
Danish: (1 Ship)	500
ANNE MAC - (Tanker)	500
Guatemalan: (1 Ship)	2,239
#PETEN - (Previous trips to Cuba as the MAGISTER - British)	2,239
Ivory Coast: (1 Ship)	7,422
TABOU	7,422
Japanese: (1 Ship)	9,910
*KANEOKA MARU	9,910

Flag of Registry Name of Ship	Gross Tonnage
Malaysian: (1 Ship)	6,791
*BUNGA KENANGA	6,791
Pakistani: (1 Ship)	8,708
#MAULABAKSH - (Previous trips to Cuba as the PHOENICIAN DAWN and the EAST BREEZE - British)	8,708
Philippine: (1 Ship)	1,232
#DONA VICENTA - (Ex. CAPTAIN KERMADEC, Ex. CAPITAINE NEMO, Ex. ATLANTA. Previous trips to Cuba as the ENEE - French)	1,232
Saudi Arabian: (1 Ship)	2,967
#BLUE OCEAN - (Previous trips to Cuba as the DANAE - French)	2,967

Ships appearing on the list which have made no trips to Cuba under their present registry.

* Added to Report No. 127 appearing in the Federal Register issue of April 7, 1975.

Section 2. In accordance with approved procedures, the following vessels listed in this section which called at Cuba after January 1, 1963, have reacquired eligibility to carry United States Government-financed cargoes from the United States by virtue of the persons who control the vessels having given satisfactory certification and assurance:

(a) that such vessels will not, thenceforth, be employed in the Cuban trade so long as it remains the policy of the United States Government to discourage such trade; and

(b) that no other vessels under their control will thenceforth be employed in the Cuban trade, except as provided in paragraph (c) and

(c) that vessels under their control which are covered by contractual obligations, including charters, entered into prior to December 16, 1963, requiring their employment in the Cuban trade shall be withdrawn from such trade at the earliest opportunity consistent with such contractual obligations.

Flag of Registry Name of Ship	Gross Tonnage
a. Since Last Report	
SEA PIONEER (Somali)	9,532

b. Previous Reports

Flag of Registry	Number of Ships	Flag of Registry	Number of Ships
British	49	Kuwaiti	1
Cypriot	13	Lebanese	9
Danish	1	Liberian	1
Finnish	4	Moroccan	2
French	4	Norwegian	5
German (West)	1	Singapore	1
Greek	31	Somali	2
Israeli	1	Spanish	6
Italian	15	Swedish	1
Japanese	1	Yugoslav	2

Total 150

Section 3. The following vessels have been removed from this list since they have been broken up, sunk or wrecked.

a. Since Last Report	Gross Tonnage
AEGIS LEGEND (Greek)	8,814
AEGIS LOYAL (Cypriot)	11,035
BYRON (Cypriot)	8,720
CHARALAMBOS (Cypriot)	10,315
CHUNG THAI (Panama)	7,915
GEORGIOS T. (Cypriot)	9,646

b. Previous Reports

Flag of Registry	Broken up, Sunk or Wrecked	Flag of Registry	Broken up, Sunk or Wrecked
British	38	Monaco	1
Cypriot	104	Moroccan	1
Finnish	6	Norwegian	1
French	1	Pakistani	1
Greek	22	Panamanian	9
Italian	5	Singapore	1
Japanese	1	Somali	4
Lebanese	37	South African	2
Maltese	3	Swedish	1
Polish	9	Yugoslav	7

Total 254

Section 4. The ships listed in Section 1 and 2 have made the following number of trips to Cuba since January 1, 1963, based on information received through July 31, 1975. (See table below)

Flag of Registry	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975 Jan. May	Total
Cypriot	-	1	17	27	42	68	115	199	173	86	96	147	52	1,023
British	133	180	126	101	78	62	45	53	18	10	6	6	-	818
Lebanese	64	91	58	25	16	16	4	1	-	-	-	-	-	275
Greek	99	27	23	27	29	7	-	-	1	1	-	3	8	225
Italian	16	20	24	11	11	10	15	13	9	-	-	-	-	129
Yugoslav	12	11	15	10	14	9	6	7	9	5	9	9	7	123
Somali	-	-	-	-	2	11	7	4	6	6	23	25	11	95
French	8	9	9	10	10	4	2	5	2	2	1	7	-	69
Netherlands	-	4	2	-	-	-	-	-	-	8	17	26	7	64
Finnish	1	4	5	11	12	8	2	1	-	-	-	-	4	48
Spanish	9	17	-	-	-	-	-	-	-	-	-	-	4	30
Moroccan	9	13	1	-	-	-	-	-	-	1	-	1	-	25
Maltese	-	2	6	1	4	8	1	2	-	-	-	-	-	24
Norwegian	14	10	-	-	-	-	-	-	-	-	-	-	-	24
Panamanian	-	-	-	-	-	-	-	-	-	-	-	5	7	12
Argentine	-	-	-	-	-	-	-	-	-	-	-	7	2	9
Singapore	-	-	-	-	-	-	-	-	1	-	-	4	3	8
Swedish	3	3	-	-	-	-	-	-	-	-	-	-	-	6
Danish	1	-	-	-	-	-	-	-	-	-	-	1	1	3
Japanese	1	-	-	-	-	1	-	-	-	-	-	-	1	3
Kuwaiti	-	2	1	-	-	-	-	-	-	-	-	-	-	3
Israeli	-	-	2	-	-	-	-	-	-	-	-	-	-	2
German (West)	1	-	-	-	-	-	-	-	-	-	-	-	-	1
Haitian	-	-	1	-	-	-	-	-	-	-	-	-	-	1
Ivory Coast	-	-	-	-	-	-	-	-	-	-	-	1	-	1
Malaysian	-	-	-	-	-	-	-	-	-	-	-	-	1	1
Monaco	-	-	-	1	-	-	-	-	-	-	-	-	-	1
Sub-Total	371	394	290	224	218	204	197	285	219	119	152	242	108	3,023
Polish	18	16	12	10	11	7	2	3	4	-	-	-	-	83
Grand Total	389	410	302	234	229	211	199	288	223	119	152	242	108	3,106

NOTE: Trip totals in Section 4 exceed ship totals in Section 1 and 2 because some of the ships made more than one trip to Cuba. Monthly totals subject to revision as additional data becomes available.

THE AMERICAN INSTITUTE OF ARCHITECTS

John M. McGinty, FAIA
President

March 9, 1977

The Honorable Adlai E. Stevenson
Chairman, Subcommittee on International Finance
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing on behalf of the American Institute of Architects, the national society for the architectural profession, to express our thoughts and concerns on legislation directed at foreign boycotts, specifically the Arab boycott of Israel.

First, let me state that the Institute strongly supports and endorses legislation to prohibit discrimination by or against U.S. firms or individuals. We are deeply concerned about various unconfirmed allegations of possible discrimination within the profession supposedly being instigated by the Arab boycott. The Institute therefore supports and endorses your bill on this issue, S.69, with certain concerns as to areas in need of clarification.

Our concern centers on the new Section 4A(a)(1)(E) that would be added to the Export Administration Act by Sec.201(a) of S.69. This provision essentially prohibits the furnishing of information (in furtherance of a boycott) about past, present or planned business dealings with a boycotted entity. Unlike sellers of goods, products or commodities, professional service firms market their services on the very basis of their past experience and capabilities. They must be able to describe their demonstrated expertise and past accomplishments in order even to be considered for a commission. Yet this provision of S.69 may be construed by negative implication to prohibit furnishing such information to a prospective client. In other words, we are concerned that an American architect could be found to be furnishing prohibited information in response to a boycott by simply submitting a firm brochure, since such a document could indicate a lack of business dealings with Israel or other boycotted entity. Our reservation

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with S.69 is that Congress, in attempting to stymie the secondary aspect of the Arab boycott by denying information on which to base a blacklist, may well prohibit professional service firms from supplying the very information by which they market services -- their business history.

To avoid this problem, we would propose a clarifying clause be added to Sec.4 (a)(1)(E) similar to the one in Sec 4(a)(1)(A). Specifically, we suggest that Subsection (E) be amended by adding at the end thereof, the following sentence:

> In the case of a United States person providing personal services or other business activity in which such person's business history, experience or capabilities would be commercially relevant if a boycott did not exist, mere furnishing of a general description of a person's overall business history, experience or capabilities shall not constitute a violation of the above.

We believe the addition of this clarifying sentence will satisfy the Congress' purposes and still allow American firms to solicit Mid-east commissions. Secretary Vance suggested in testimony before the House that the provision of services needed special treatment, although I believe he was speaking in terms of their inclusion in the subsection (2) exemption. However it is accomplished, we urge you to consider modifying the legislation with a view toward the needs of our service industries.

I ask that this letter be included in the legislative record. Please feel free to get in touch with the Institute should you wish any additional information.

Sincerely,

John M. McGinty, FAIA
President

National Association of Wheat Growers

SUITE 1030
1030 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005
(202) 466-8630

March 16, 1977

Honorable Adlai E. Stevenson, Chairman
Subcommittee on International Finance
Committee on Banking, Housing and Urban Affairs
5302 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Chairman Stevenson:

I am writing with reference to S. 69 and S. 92, bills to amend and extend the Export Administration Act, which presently are under consideration by your subcommittee.

Export sales of agricultural commodities are vital to this nation's economy. Agricultural exports are a major positive factor in this nation's balance of payments, and the existence of reliable foreign markets enables U.S. farmers to produce at maximum efficiency, resulting in benefits for American consumers. Wheat, in particular, is a vital export commodity, with approximately sixty percent of annual production being available for export.

The importance of export markets for agricultural commodities is recognized in Section 4 (f) of the Export Administration Act of 1969. That section generally prohibits the imposition of export controls under the Act on agricultural commodities. Limited exceptions are set forth in Section 4 (f) to permit controls in times of actual short supply or when necessary to fulfill international responsibilities or to protect the national security of the United States. These exceptions permit export restrictions only when serious overriding considerations of state exist. Section 4 (f) makes clear that, in the absence of such unique circumstances, agricultural exports are to be free of quotas and other limitations.

Notwithstanding the clearly stated will of Congress as set forth in the Export Administration Act, the Executive Branch, on several occasions in recent years, has restricted exports of U.S. grain through the use of "voluntary" export restrictions when the requirements for controls under the Export Administration Act were not met. These restrictions included the prior approval requirement for grain exports implemented by the Department of Agriculture in the fall of 1974, the moratorium on grain sales to the Soviet Union in the summer of 1975, and the five-year grain agreement with the USSR signed by the Executive Branch in October, 1975. These various restrictions had a severe detrimental effect on farmers, causing depressed market prices for current sales and increased carry-over stocks of grain, which affected market prices in following periods as well. The U.S. balance of payments also suffered, since, to the extent foreign buyers were precluded by the restrictions from purchasing grain in the United States, they turned to alternate suppliers,

giving other countries the benefit of the sales. Moreover, the various Executive Branch interventions in the grain export market gave rise to great undertainty on the part of foreign customers, causing them to question the reliability of the United States as a traditional supplier of grain.

The "voluntary" export restrictions on grain sales were imposed by the Executive Branch outside the scope of the Export Administration Act, purportedly on the basis of the President's "foreign affairs" authority. However, the Constitution grants to the Congress the power to regulate commerce, and we believe that the Executive Branch restrictions on grain sales, which constituted a regulation of commerce, were beyond the President's authority.

During consideration of extension of the Export Administration Act by the last Congress, a number of Senators and Congressmen expressed concern over the "voluntary" restrictions on grain exports imposed by the Executive Branch in 1974 and 1975. This concern prompted the introduction of various amendments intended to prevent future circumventions of the Act. As a result, there was broad support for an amendment to the Act providing for Congressional review of any export controls that are imposed on agricultural products for foreign policy reasons.

We are pleased to note that this amendment has been included in both S. 69 and S. 92. Section 105 of both bills would add the following paragraph to Section 4 (f) of the Act:

> (3) If the authority conferred by this section is exercised to prohibit or curtail the exportation of any agricultural commodity in order to effectuate the policies set forth in clause (B) of paragraph (2) of section 3 of this Act, the President shall immediately report such prohibition or curtailment to the Congress, setting forth the reasons therefor in detail. If the Congress, within 30 days after the date of its receipt of such report, adopts a concurrent resolution disapproving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective with the adoption of such resolution. In the computation of such 30-day period, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days to a day certain or because of an adjournment of the Congress sine die.

The National Association of Wheat Growers endorses this amendment and urges that it be enacted into law. We believe that this amendment emphasizes the basic concept implicit in the Export Administration Act that limitations on agricultural exports can be imposed only when the specific requirements of the Act are met. The amendment further provides a control on the use of export restrictions on agricultural products by giving to Congress the opportunity to disapprove such restrictions if Congress feels they are unwarranted.

We have noted your comments in the Congressional Record for February 10, 1977 (S. 2528-2529) concerning the Trading With Enemy Act. We very much agree with those comments and with your conclusion that use of the Trading With Enemy Act to control exports when no real national emergency exists is of doubtful legality. Your comments point out that recent use of the Trading With Enemy Act "raises

serious questions about the ability of the Congress to control executive branch discretion. And its invocation undermines the right of the Congress to prescribe U.S. export policy and to insist on conformity with the law." These points are applicable to the recent Executive Branch use of "voluntary" restraints, as well. We believe that the legislative history surrounding amendment and extension of the Export Administration Act, and the clear language of the Act itself, should leave no doubt that export controls may not be based on "voluntary" restraints or use of inapplicable emergency legislation, but may be imposed only when authorized under the Export Administration Act.

S. 69 and S. 92 also include the commodity storage provision included in the Export Administration Act amendment bill developed by the last Congress. This provision, set forth in Section 104 of the present bills, will enable foreign purchasers to store agricultural commodities in the United States with assurance that they will not be subject to subsequently adopted export quotas. While such an amendment can provide some supply assurance to our customers, what is most important is that this country maintain a consistent and predictable policy toward agricultural exports, free from embargoes and other disruptive export controls.

We appreciate this opportunity to comment on S. 69 and S. 92. We respectfully request that this letter be made part of the Committee's hearing record on these bills.

Sincerely yours,

Don Howe
President
National Association of Wheat Growers

jlc

Statement of Max Ratner, National Chairman, American-Israel Chamber of Commerce and Industry, Inc.

The American-Israel Chamber of Commerce and Industry Inc. is a non-sectarian, non-political trade association of American firms interested in economic relations between the United States and Israel. It was incorporated in 1953 as a non-profit organization and has chapters in a number of American cities. The Chamber recently received the E Award of the President of the United States for its successful efforts in the expansion of American exports. We represent a business approach, of United States firms devoid of sectarian character.

This organization has hundreds of corporate members with a variety of interests and activities (see Yearbook 1976 attached). This testimony is being presented under the authority of the Chairman of the Chamber and its views derive from the general mandate of our membership. This mandate is to maintain and develop trade and economic relations between the United States and Israel within a framework of peace and cooperation in the Middle East and in the world. One of our goals is to encourage economic and technological cooperation between Israel and the other countries of the Middle East under American guidance and with American support. We believe that such peaceful economic measures will result in friendly relations and that a secondary boycott is a major impediment in the furthering of this goal.

Our organization is, as a result of a foreign secondary boycott of American firms, an injured party. A document, entitled Information on the Arab League Boycott of Israel, supplied by the Subcommittee on Multinational Corporations of the U.S. Senate Foreign Relations Committee on February 25, 1975, featured an original memorandum of the Arab League stating that affiliation with a joint Israeli-foreign chamber of commerce will be a cause for investigation with a view toward banning firms which enhance the Israeli economy by trading with that country. U.S.

firms, which want to trade with foreign countries suddenly wealthy as a result of increased world oil prices, will under the terms of the boycott refrain from doing business with Israel. This will restrict our membership and more importantly restrict the growing trade between this country and Israel. If American firms forego business with Israel, then this Chamber, an American trade association with a distinguished record praised by the President of the United States, will be severely restricted in its activity to further promote trade and good will. Under the current cirsumstances, members of our Chamber are in a relative disadvantage versus other American companies when they want to trade with the Arab world.

We welcome and support the proposed Bills before this Subcommittee, that would amend the Export Administration Act with regard to foreign boycotts - S.69 (Stevenson-Moynihan) and S.92 (Williams-Proxmire). The Senators who have sponsored these Bills have done a great service to the American people. We are also encouraged by the readiness of the Secretary of State Cyrus Vance to outlaw secondary boycotts in the United States.

There has been extensive testimony supporting these Bills. That testimony has described the importance of the proposed legislation and given examples of why the proposals are necessary. Rather than restate these points we would like to comment on four provisions of the Bills.

The proposed Section 4A (a) (2) (D) of the Export Administration Act as amended by S.69 would permit an American company to obey a boycotting country requirement to state where goods have not been produced. S.92 would prohibit such a negative designation and only permit a positive designation of the origin of the goods. We support S.92.

We consider the formulation with respect to Section 4A (a) (2) (D) in S.92 to be superior to that in S.69. Both Bills allow an American company to comply with a requirement of a certificate of origin; S.92 however requires that the certificate be one of "positive designation of country of origin".

There is a vast difference in the letter and spirit of the two provisions. The result of S.69 will be to brand into the memory of American business executives, time and again, at the filling out of each and every certificate of origin, that doing business with the boycotted country (in our case Israel) is a matter which could affect their relationship with the boycotting country. That psychological pressure will be enough to make such executives hesitate to undertake business contacts with the boycotted country.

A positive designation of the origin of the goods (as permitted by S.92) has historically been a requirement in international trade.

It has been brought to our attention by the New York Chamber of Commerce that a number of countries, long known for their attempting to enforce secondary boycott, have recently changed their requirements with respect to certificates of origin. Presently, those countries only require a positive designation of the origin of the goods featured in those certificates. This could be a step toward peace and cooperation among nations. S.92 will encourage such an attitude, while the formulation in S.69 could encourage the opposite attitude - return to previous requirements of negative designation of origin and to active secondary boycott.

The proposed Section II (2) of the Export Administration Act as amended under S.69 and S.92 would make the foreign boycott law applicable to foreign subsidiaries of American concerns and to American subsidiaries of foreign concerns. We offer a solution to the problems created by the extra-territoriality of American subsidiaries overseas.

Section II (2) identically worded in both Bills S.69 and S.92 has been criticized in some of the testimony before this Subcommittee. We believe that Section II (2) could be redrafted without affecting the efficacy of its provisions.

We recognize that a part of Section II (2), which would apply to American subsidiaries, could raise problems of extra-territoriality enforcement as well as questions of interference with the affairs of other countries where subsidiaries of American firms are located. This is particularly true in regard to "third" countries, that is foreign countries which are neither boycotting nor boycotted. However, the elimination of this specific provision without replacement by an appropriate alternative could open an enormous loophole in the implementation of this legislation. It could open the way for some American companies to transfer orders to their foreign subsidiaries or affiliates. Such transfers will not only frustrate the goals of this legislation but it will also reduce American exports to some countries and increase such exports from third countries. This result will fulfill the darkest hopes of the adversaries of this anti-boycott legislation.

Other legislative solutions can be found, and we would like to suggest some possible ways of approaching the matter.

Our first suggestion deals with the case in which an American firm with a foreign subsidiary produces specific products only in the United States. The law could prohibit United States firms from re-routing products to be shipped to a boycotting country through subsidiaries in "third" countries.

Our second suggestion concerns the case in which identical products are manufactured by an American concern in its plants within the United States and in its subsidiary overseas. If the product to be exported to a boycotting country is manufactured in the United States, the corporation would have to comply with the proposed legislation. If however the corporation transfers the order to its foreign subsidiary, we propose that the corporation report such a step to the United States Department of Commerce, and the Department make the report public.

That will stop short of compelling foreign subsidiaries of United States firms to comply with this legislation, but will nevertheless give the American public an opportunity to scrutinize the activities of American companies.

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The proposed Section 4 (A) (a) (2) (D) of the Export Administration Act as amended by S.69, relating to compliance with foreign immigration or passport requirements, encourages discrimination.

Section 4 (A) (a) (2) (D) of S.69 exempts from the prohibition of the anti-boycott legislation individuals which comply with immigration or passport requirements of any country. If a foreign country had a requirement that all business travelers entering the country from the United States disclose whether the American principals of their firms are of a given ethnic origin or did business with a boycotted country, S.69 would permit and sanction disclosure of such information by United States citizens to the boycotting country.

From members of this country's business community and from the press we have learned that some of the boycotting countries are or were enforcing entry requirements similar to those described. Such restrictions and discrimination if practiced in this country would be a clear violation of our Constitution as well as of the basic principles of this country concerning equality of all citizens without regard to their ethnic origin, race, nationality or sex. These requirements have made it impossible for certain Americans because of their ethnic background to work on projects undertaken by American firms in boycotting countries.

In some instances American institutions have succeeded in overcoming the restrictions and have conveyed to certain foreign countries the message that discrimination is abhorrent to the American public. As a result some members of the minorities discriminated against by the boycotting countries have been authorized to enter those countries and fulfill the constructive mission given to them by American institutions.

This indicates that a law prohibiting cooperation and disclosure of discriminatory information to foreign countries on passports and immigration forms will restrain the boycotting countries.

To give a stamp of approval to foreign bigotry is alien to the American law; it will only encourage discrimination against certain American citizens by the boycotting countries. For this reason we believe that this provision has to be eliminated in S.69 as it is in S.92.

The proposed Section 4 A (a) (2) A (i) of the Export Administration Act as amended by S.69 and S.92 permits an American corporation to comply with a foreign request not to import into the United States any goods from a boycotted country even if the goods are for American consumption. This provision should be modified.

We believe that Section 4 A (a) (2) A (i) of both Bills is unclear and if improperly interpreted could nullify the major provisions of the proposed legislation. The problem of this subdivision is probably one of drafting.

As the Section presently reads, it could be interpreted to enable corporations to obey boycott prohibitions against importing (for American consumption) goods from a boycotted country. Thus an American company could accept boycott requests and cease to import Israeli goods into the U.S.A. for the general use of the American public. We believe that the intention of the legislators was to permit the boycotting country to forbid imports from a boycotted country into the boycotting country via the United States. That could come about by the use of imported parts and components in American-made products or by simple trans-shipment or repackaging.

The legislators' intent should be made clear by using the same phrase construction as in paragraph (ii) of that very article. The revised paragraph (i) will read then as follows: (Exemptions are provided for (A) compliance with requirements) "(i) prohibiting the import of goods to the boycotting country from the boycotted country..." (Changes underlined).

If this provision is not changed it would amount to a licence to engage in secondary boycott with regard to imports to the United States from boycotted countries.

MR:np

END

CBEMA

March 11, 1977

The Honorable Adlai E. Stevenson, III
456 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Stevenson:

Attached is written testimony submitted to the Subcommittee on International Finance by the Joint High Technology Industries Group on Title I of S.69 and S.92 to extend the Export Administration Act of 1969, as amended. As spokesman for the Joint High Technology Industries Group, I take pleasure in submitting our joint views.

We urge the Committee to adopt the recommendations contained herein and pass Title I of S.69 and S.92 as soon as possible.

Representatives of the Joint Group welcome the opportunity to discuss these proposed improvements to Title I of the bill with you or your staff. I should be pleased to arrange a meeting at a mutually convenient time.

Sincerely,

Peter F. McCloskey
President

PFM/mld

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Computer and Business Equipment Manufacturers Association 1828 L Street, N.W., Washington, D.C. 20036 (202) 466-2288

WRITTEN TESTIMONY OF THE JOINT HIGH TECHNOLOGY
INDUSTRIES GROUP ON S.69 AND S.92 TO EXTEND THE
EXPORT ADMINISTRATION ACT OF 1969 BEFORE
THE SUBCOMMITTEE ON INTERNATIONAL FINANCE OF
THE SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

MARCH 4, 1977

The Joint High Technology Industries Group urges the Congress to pass Title I of S.69 or S.92 to extend the Export Administration Act of 1969 as amended. Comprising the Joint High Technology Industries Group are the Computer and Business Equipment Manufacturers Association, the Electronic Industries Association, and the National Machine Tool Builders Association, whose member companies have been and continue to be affected significantly by national security export controls. We thus have a strong common interest in efforts to make them more efficient, equitable and effective. We address ourselves to those provisions in the bill affecting these controls.

In the 1976 hearings, the Joint Group, as well as its member organizations, presented recommendations for improving the administration of export controls. We commend this distinguished Subcommittee for its efforts and understanding in bringing about several badly needed amendments to the Act, and endorse most of those amendments embodied in Title I. We were all hopeful that these changes would be passed by Congress and signed into law last year. Each day that goes by without passage of these amendments affects the export business of our member companies, the GNP, and jobs. If the Subcommittee finds that impediments exist to immediate passage of Title I of S.69 and S.92, the Group believes the Subcommittee should separate Title I from the other titles, and each title should be considered on its own merits.

We endorse the provisions of Title I of the bills subject to the following qualifications, and we urge the Subcommittee to incorporate the following recommendations which will improve the legislation to the benefit of all concerned.

First, in last year's testimony the Joint Group, in the context of recommending a more open licensing process, recommended that an exporter be allowed to review the documentation as it proceeded through the licensing process to make certain it accurately describes the goods or technology for which a license is sought. This recommendation was accepted in Section 106 of S.69 and S.92 which permits review prior to the submission of the documentation to CoCom.

Since last year's hearings, a number of our member companies have reported apparent government misinterpretation of their export license applications at still an earlier stage of the licensing process: specifically, before the license application is submitted to the Interagency Operating Committee (OC) for review. We believe that the purpose of the section, i.e., accuracy of the license application, can be even more effectively served if the exporter is allowed the opportunity, if he so requests, to review the documentation before interagency review.

When a license application is received by the Department of Commerce, it is reviewed and analyzed by the Office of Export Administration (OEA) staff which is responsible for describing and presenting the application for interagency review. The application then goes to the Interagency Operating Committee for the final U.S. decision.

It is only fair, just and equitable that the exporter be able to verify the correctness of the documentation before this final decision

is considered. Thus, the Joint Group urges that the Subcommittee adopt an amendment to provide the exporter the opportunity to verify the correctness of documentation before its submission to the OC and before its submission to the multilateral review process. We are joined in this recommendation by WEMA.

The second area of concern where an amendment is essential deals with the Technical Advisory Committees' (TAC) role in improving the administration and effectiveness of national security export controls. Our concern in this area comes from firsthand knowledge, inasmuch as individuals of our member companies comprise the private sector membership of each of the seven presently authorized Technical Advisory Committees created under the provisions of the Export Administration Act of 1969.

Consisting of public and private sector technical experts, the TACs were authorized by Congress to advise the Government on technical considerations relative to export control policy. All too often the Government policymakers ignore or do not consider the TACs' positions when formulating export control policies even though the Government's own technical members have participated in and concurred in the recommendations.

S.69 and S.92, as they relate to national security export controls, provide for only general and indirect feedback every six months through the semiannual report required by Section 110. While we agree this method of review of the TACs is important for the Congressional oversight function, it still falls short of the objectives sought when we recommended legislation in this area.

A provision for direct feedback to the TACs is important for the efficient and constructive use of the only expert advisory bodies available to all agencies of government in this area where their expertise is clearly recognized. We are speaking of industry and government experts with security clearances who devote their time and energy to improve the administration and effectiveness of U.S. export controls. As this consultation process currently operates, these participants operate without knowing what happens to their recommendations and without guidance as to what tasks remain to be addressed. Being in the dark is obviously frustrating and inefficient. Lack of feedback also seriously affects the government's ability to recruit top quality individuals from government and industry, and unless changed, will undermine the effectiveness of this critical function.

S.3084 which was adopted by the Senate last year by a nearly unanimous vote, included a provision to require direct feedback to the TACs from those government agencies which employ their expertise as to whether their recommendations were accepted or rejected and the reasons therefor. Unfortunately, this provision was dropped during the informal conference with the House of Representatives. The Joint High Technology Industries Group, its members and individual companies testified strongly last year in support of direct feedback, and again recommends that the Senate adhere to its last year's position in favor of more effective TAC participation.

The drafters of the Trade Act of 1974 foresaw this problem, and incorporated a direct feedback provision in that Act (P.L. 93-618, 88 Stat. 1998, Section 135(i)(2)). This provision has worked well. The Joint Group strongly recommends that the Government provide both direct feedback to the

TACs and semiannually provide indirect feedback through the Congress. As a result, the TACs' functioning will be greatly improved, as will Congress' oversight capability. We are also joined in this urging by WEMA.

The third major area of concern for the Joint Group is the provision in the first paragraph of Section 107 to add a new subsection to the Act regarding monitoring and reporting of transfer of technology.

Members of the Joint Group are deeply concerned that the Subcommittee appears to have placed much credence in reports that some U.S. firms and academic institutions, and perhaps even some of our member firms, have transferred technology to foreign countries to the detriment of our national security. The members of the Joint Group have not discovered evidence of such leakage of technology. We recognize, however, that the report of the Comptroller General of the United States on the "Government's Role in East-West Trade", among others, indicates that some problems may exist in some areas. We understand Section 107 was written because of the alleged transfer of technology highlighted in these reports. In our view, however, Section 107 does not correctly or effectively address the Subcommittee's concerns.

As we see Section 107, it imposes an enormous reporting burden not only on the U.S. international business community, but also on the U.S. academic community. It will also place a burden on the resources of the Department of Commerce and on the U.S. taxpayer. This burden would be imposed despite the fact that exports of technology (products and technical information) of significance to the national security are already controlled by regulations developed by all of the Departments and agencies involved in administering U.S. export controls for national security purposes.

As drafted, Section 107 would require any U.S. person to report any agreement, or any understanding for a possible agreement to transfer any information to any country to which exports are controlled for national security purposes. This requirement is clearly all-inclusive. The reporting of transfers of strategic technology would be redundant, and for non-strategic technology, unnecessary and excessive.

We also believe that Section 107 runs contrary to the intent of Congress as reflected in the Act. Since 1969 the Congressional policy has been to encourage trade with the "controlled" countries, and not to impose any impediments to trade other than those necessary to protect the national security and foreign policy of the U.S.

Before any impediments to trade, such as those contained in Section 107, are imposed on the U.S. business and academic communities, our considered judgment is that there must be a clear showing of past, current, and/or potential unauthorized and detrimental transfers of technology. Such a showing can only be made by a careful and indepth investigation by the President, with the assistance of a competent group composed of individuals from government and industry with the policy and technical expertise necessary to examine the problem.

The proposed study must have as its primary target the identification of those key technologies which are to be protected for purposes of national security. In this connection, we should like to draw the Subcommittee's attention to a report issued by the Defense Science Board entitled: "An Analysis of Export Control of U.S. Technology--A D.O.D. Perspective". This study, conducted by a group of technically qualified personnel from both government and industry, investigated

the feasibility of identifying those technologies and transfer mechanisms which are vital to our national defense.

Our considered judgment, therefore, is that concrete and documented evidence must first be produced showing unauthorized and detrimental transfers of technology occur or are likely to occur. Only then should Congress determine the appropriateness of such reporting requirements, particularly as they apply to academic institutions. Only at this point should Congress require comprehensive reporting requirements and/or other restrictions on the U.S. public that would result in the creation of yet another blizzard of paperwork.

To impose the reporting requirements contained in Section 107 in advance of the Presidential study and determination we have recommended is to put the cart before the horse. Therefore, in lieu of Section 107 as drafted, we recommend that the Subcommittee draft language to require the President to undertake such a study.

Member companies of our trade associations have been and continue to be significantly affected by national security export controls. We commend this Subcommittee for its past efforts to understand and translate many of our recommendations into substantive amendments to improve the administration of export controls. These amendments will not only improve the ability of the U.S. to efficiently and effectively administer necessary controls, but will also produce a consequent improvement in the U.S. balance of payments, GNP, U.S. employment, and in the ability of our member firms to compete in the international marketplace.

We would be willing and pleased to work with your Subcommittee and staff on any of the above recommended improvements to the current bill and on any questions on the general improvement of the administration of export controls for national security purposes.

WILLIAM PROXMIRE, WIS., CHAIRMAN
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United States Senate
COMMITTEE ON BANKING, HOUSING AND UREAN AFFAIRS
WASHINGTON, D.C. 20510

February 23, 1977

Mr. Robert L. McNeill, Executive Vice
President
Emergency Committee for American Trade
1211 Connecticut Avenue
Washington, D.C. 20036

Dear Mr. McNeill:

I want to thank you for appearing before the International Finance Subcommittee to testify on pending boycott legislation. Your testimony aided our understanding of the issues, and we are appreciative of your help.

As indicated at the close of the hearings, we have a number of additional questions to which we would appreciate your submitting a response for the record. The questions are enclosed. If you have any questions, please contact Stanley J. Marcuss, Counsel to the Subcommittee at 224-8813.

With best wishes,

Sincerely,

Adlai Stevenson

Enclosure

Similar letters were sent also to the National Association of Manufacturers (answers at page 609), and the Chamber of Commerce of the United States (answers at page 356).

Emergency Committee for American Trade 1211 Connecticut Ave Washington DC 20036 (202)659-5147/730 Fifth Ave NYC 10019 (212)541-4040

April 27, 1977

Honorable Adlai E. Stevenson
Chairman
International Finance Subcommittee
of the
Senate Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Stevenson:

Enclosed are our answers to the additional questions you sent to me following my appearance before the International Finance Subcommittee to testify on pending boycott legislation.

Some of the questions seek information that we do not have and could only obtain by costly surveys of our members. Nonetheless, we have tried to answer them all, to the best of our ability, even where we have had to speculate as to the likely impact proposed actions would have on our members.

I hope we have been helpful to you and the other members of the committee.

Best regards.

Sincerely,

Robert L. McNeill

Robert L. McNeill
Executive Vice Chairman

Emergency Committee for American Trade 1211 Connecticut Ave Washington DC 20036 (202)659-5147/730 Fifth Ave NYC 10019 (212)541-4040

REPLIES TO QUESTIONS CONCERNING
EMERGENCY COMMITTEE FOR AMERICAN TRADE TESTIMONY
on
EXPORT ADMINISTRATION ACT AMENDMENTS (S. 69, S. 92)

Question 1

Why would you prefer to have the legislation penalize agreements to take action to comply with the boycott rather than the taking of that action itself? Why is it good public policy to penalize agreements to take certain actions but not the acts themselves? Wouldn't that just be a trap for the unwary? Anyone who is familiar with the law would take care not to agree in the first instance. It would, therefore, appear that the only ones who might be caught by a prohibition solely on agreements are those who are unfamiliar with the law, those who can afford counsel to help them avoid making the proscribed agreements, or someone who by inadvertence "agrees" and then draws back. Why does that make any sense?

What precisely would constitute an "agreement" for these purposes? For example, assume a company signs a contract to sell goods to a boycotting country. The contract contains no boycott clause, nor does it require the company to comply with the laws or regulations of the boycotting country. The company then refrains from buying goods from or otherwise dealing with blacklisted companies in fulfilling the contract. Would that be a violation of the law under your formulation? If not, why not?

Reply

The "ECAT Statement of Policy on Anti-Boycott Legislation" appended to our written testimony clearly expresses our belief that:

"1. It should be illegal for a U. S. person (individual, firm, or corporation) to enter into any agreement (underline added) that stipulates, as a condition for doing business with or in a foreign country, to:
   (a) discriminate against any U. S. individual on the basis of race, religion, creed, color or national origin;
   (b) furnish information on any U. S. individual's race, religion, creed, color or national origin;
   (c) furnish information on another U. S. person's business relationships;
   (d) refuse to do business with any U. S. person; and

(e) refuse to do business with or in any other foreign country."

We prefer a statute that penalizes agreements to undertake any of the above-mentioned actions rather than the taking of the actions themselves, because this is a more precise and fair formulation. It clarifies that an action must be related to an agreement to further, support or comply with a foreign boycott. To require otherwise might penalize innocent actions entirely unrelated to boycott requests. We reject the notion that this formulation would be a "trap" for the unwary. Ignorance of the law should be no excuse against being prosecuted. However, even if a person agreed to take any of the offending actions, there should be a showing that there was "intent" to comply with the boycott. Thus anyone "agreeing" inadvertently and then "drawing back", should not be prosecuted.

We believe that an "agreement" need not be only in writing, but could be inferred from a course of conduct. Whether or not the example cited in the question would constitute a violation of the law would depend on the company's course of conduct concerning its dealings with the blacklisted company. We emphatically believe that no American company should be held in violation of U. S. law, if it refrains from shipping products to foreign countries whose laws prohibit entry of those products. To undertake such shipments, only risks their loss through confiscation or incurring the cost of their return to the United States--either of which is senseless. However, it should be unlawful for an American company to refuse to do business generally with another American company as a condition of doing business with or in the boycotting country.

Question 2

What is your position on the exception contained in S. 69 but not S. 92 for compliance with the passport or immigration requirements of the boycotting country. By implication S. 69 would permit a company whose employees cannot secure a visa nonetheless to go forward with a project in a boycotting country. Do you support that approach or do you feel that a company should be required to refuse the business?

Reply

ECAT supports the exception in S. 69 for compliance with a boycotting country's passport or immigration requirements. This position is consistent with the "ECAT Statement of Policy on Anti-Boycott Legislation," which recommends that "Recognition should be given to the sovereign rights of a country to ... regulate the admission of people into its territory." We believe that it would be unfair to American firms and economically harmful to the United States to require a U. S. company to refuse business with or in foreign countries, when one or more of its employees cannot secure a visa.

Question 3

Some contend that anti-boycott legislation should permit a U. S. company to comply with a requirement that its shipments not contain goods or components produced by blacklisted firms. But such an exception would virtually nullify the refusal to deal provisions of the legislation. Why should an American company be permitted to exclude goods manufactured by blacklisted companies in order to gain trade opportunities in a boycotting country? Why shouldn't American companies doing business in the Arab states be required to provide equal access to all companies who can meet required commercial standards?

Reply

ECAT believes that U. S. companies should be permitted to comply with foreign requirements aimed at preventing entry of products that are prohibited from importation by the foreign country's law. This recognizes the fundamental principle of international law that each sovereign nation may regulate its trade with other nations and determine who may do business within its territory. To require otherwise would represent an effort on the part of the United States to attempt overriding foreign laws with its own laws and to use U. S. companies as the instruments for this attempt. In our judgment this would be harmful to the United States foreign relations as well as to the economy. Countries at which this attempt were aimed would view it as confrontational, and the companies involved would have to forego the business to prevent possible prosecution.

An exception permitting U. S. companies not to ship goods produced by firms prohibited from selling to boycotting countries would not nullify the refusal to deal provisions of the legislation. There is an essential distinction between agreeing to comply with the import restrictions of a boycotting country regarding specific products in a particular transaction and agreeing to refrain generally from dealing with blacklisted firms. The latter should be clearly proscribed, as stated in our reply to question 1, but the former simply respects the rights under international law of foreign countries to regulate their foreign trade.

Question 4. a. and 4. b.

a. Some recommend the exclusion of foreign subsidiaries and affiliates from the reach of the law. But wouldn't doing so open up an enormous loophole by permitting U. S. companies to source their Arab country transactions through their foreign subsidiaries and thus avoid U. S. law altogether?

b. If the bill were to exempt from the reach of the legislation the business dealings of U. S. foreign subsidiaries outside the U. S. (not their dealings with U. S. companies), what do you think the reaction of U. S. companies would be? Would they source their transactions with the Arab states wholly outside the United States? In other words would the economic benefits which otherwise would have come to the U. S. be diverted elsewhere?

Reply

ECAT opposes the extraterritorial reach of the Export Administration Act in this instance. U. S. anti-boycott policy should not attempt to regulate the actions of foreign firms owned or controlled by U. S. companies. This avoids the possibility of putting overseas U. S. subsidiaries in conflict with foreign laws or policies when they differ from those of the United States. We would not object to provisions that would prohibit U. S. firms from using their foreign subsidiaries or affiliates in a manner intended to circumvent the law. Thus, question 4. b. would become academic.

Question 5

S. 69 would permit issuance of negative certificates of origin; S. 92 would not. I don't believe any of you addressed this issue in your testimony, at least explicitly. What is your position on negative certificates of origin? Should they be banned?

Reply

ECAT believes that U. S. traders should be permitted to provide appropriate documentation required by foreign countries to control their imports and exports, including certifications--stated positively or negatively--regarding the origin and destination of goods and services. Accordingly, we favor the provisions of S. 69 over S. 92 in this regard. Negative certificates of origin are a means of enforcing primary boycotts, which are sanctioned under international law. Prohibitions against their use would constitute an interference in such boycotts, which proponents of antiboycott legislation say is not their intent.

Question 6

In testimony before the Committee a number of business representatives contended that enactment of the pending legislation would result in a substantial loss of exports and jobs. At least one of them contended that the legislation would close them down. What is your assessment of the impact? Have you studied the question? If you conclude that there would be an adverse impact, please be specific as to how and why? What boycott compliance actions do your member firms now take that they would be barred from taking under the proposed legislation?

Reply

We are unable to assess the impact of the legislation at this time. Much depends on the provisions finally adopted by the Congress and implemented by rules and regulations to be issued as well as the boycotting countries' reactions to them. If the provisions prohibit American companies from complying with the laws of boycotting countries that deny imports of specific goods and services, the legislation would be viewed as an attempt to mount a counter-boycott. Assuming that the boycotting countries refused to modify their import

laws to conform to the provisions of U. S. law, considerable U. S. exports and dependent employment would be lost. This would serve neither United States interests nor those of the boycotted countries and exacerbate relations with the boycotting nations. We have not surveyed our members to determine what boycott compliance actions they now take that they would be barred from taking under the proposed legislation. Such actions are a matter of public record pursuant to reporting and disclosure provisions of rules currently in effect and administered by the U. S. Department of Commerce.

Question 7

What is the most common form of boycott compliance among the companies you represent? Certificates of origin? Certification that your shipments contain no goods or components manufactured by blacklisted firms or that the transaction in question did not involve a blacklisted company? Which?

Reply

We have not surveyed our membership on these questions. The Department of Commerce, several committees of the Congress as well as private organizations have analyzed anti-boycott reports filed with Commerce and released their findings. These analyses provide general answers to the questions.

Question 8

If the pending legislation were enacted, how are the companies which you represent most likely to respond? What, if any, changes in their practices or operations is likely to ensue? Would they foreign-source their sales in an attempt to escape the law?

What would they do with respect to trade or investment in Israel? Would the prohibition on refusals to do business with Israel have a chilling effect on their willingness to explore business opportunities there? Would U. S. companies which otherwise might have explored business opportunities in Israel be reluctant to do so for fear that if they decided not to go forward after making initial exploration they might be accused of an illegal refusal to do business?

Reply

These questions can best be answered by the individual companies themselves. Each presumably would respond in a mannter appropriately suited to its own circumstances. We have not asked our members for their reactions. It is not unreasonable to assume, however, that given the ambiguities of the legislation, American companies that might otherwise have explored business opportunities in Israel would refrain from doing so, for fear of being accused of having agreed not to do business with a country friendly to the United States, if no relationship were established after the initial exploration.

Question 9

What effect would the prohibition against furnishing information about whether you have or propose to have business relations with blacklisted firms or with the boycotted country have on your operations? Would you still supply lists of potential subcontractors to clients in the boycotting country? It's quite possible that such action would be illegal because such information in fact discloses whether you have or propose to have business relations with blacklisted firms or a boycotted country. Is this a real problem or merely hypothetical? Are there frequent occasions where U. S. firms supply lists of subcontractors or vendors for legitimate business reasons, reasons wholly unrelated to the boycott? If so, please describe. Have you thought about ways to modify this prohibition so as to avoid having it reach legitimate information exchange situations? Please describe all non-boycott related information exchange situations which might be reached by the proposed prohibition.

Reply

Again, these are questions that appropriately should be addressed to the companies themselves, rather than a business association. ECAT's concern about the prohibition against furnishing information about business relationships is that it unfairly prevents firms on the blacklist from seeking to have their names removed. Cases have been cited where firms have been inadvertently placed on the blacklist. The prohibition would preclude efforts to clarify mistaken identities and other instances involving inadvertence. It could also lead to companies being placed on the blacklist for failure to respond to requests for factual and historical background information on their business relationships. The prohibition, although well meaning, on balance would result in the net negative and unintended effect of adding rather than removing American firms from the blacklist.

Question 10

What effect would the pending legislation have on U. S. companies actually located in the boycotting country? The bills contain no exceptions for compliance with local laws for companies situated in a boycotting country. Can that problem be dealt with without opening up an invitation for evasion?

Reply

Without a clear exception permitting U.S. companies situated in a boycotting country to comply with local laws, business could not be conducted without violating the U. S. law or the host country law. This would be tantamount to forcing such American companies to withdraw to the United States, resulting in great harm to U. S. assets abroad and damage to the U. S. economy. It is imperative that the legislation contain a clear exception in this regard. Evasion of the Act's provisions could be prevented by adoption of a suitable proscripting amendment.

Question 11

The principles which you espouse are virtually identical to those contained in the pending legislation--no discrimination on the basis of race, religion, or national origin and no refusals to deal with blacklisted American companies. Where there appears to be disagreement is on how those principles can be guaranteed and to whom the legislation should apply. But there seems to be agreement on the basic principles. The major differences seem to be (a) whether the law should apply to agreements to boycott rather than actions in support of the boycott; (b) whether the law should apply to foreign subsidiaries and affiliates; (c) whether the law should permit American companies to exclude the goods or components of blacklisted firms from shipments to the boycotting country; and (d) whether the law should permit an exception for compliance with visa or immigration requirements. There are other differences, but these seem to be the main ones. Do you agree?

Reply

ECAT agrees that these are the major issues to be decided. Our position on each of them is summarized below. ECAT believes that the law should:

(a) apply to agreements to boycott rather than actions in support of the boycott (as explained in our reply to question #1);
(b) not apply to U. S. foreign subsidiaries and affiliates except insofar as they are used in a manner intended to evade the provisions of this Act (as explained in our replies to questions #4. a. and 4. b.);
(c) permit American companies to exclude the goods or components of blacklisted firms from shipments to the boycotting country (as explained in our replies to questions #1 and #3); and
(d) permit an exception for compliance with visa or immigration requirements (as explained in our answer to question #2).

In addition, ECAT recommends that:

(e) the "intent" language in Section 4 A. (a)(1) be retained in S. 69;
(f) American traders be permitted to continue to provide negative certifications if required by the importing or exporting country (as explained in our reply to question #5);
(g) the furnishing of factual and historical information on past or present business relationships with the boycotted country or boycotted firms continue to be permitted (as explained in our reply to question #9);
(h) a clear exception be adopted permitting U. S. companies resident in boycotting countries to comply with local laws (as explained in our reply to question #10);
(i) state laws relating to international boycotts be explicitly preempted; and
(j) duplicative reporting of compliance with boycott requests be eliminated (as explained in our response to question #12).

Question 12

On page 7 of your testimony, you recommend that existing reporting requirements under the Export Administration Act be ended since, you say, the Tax Reform Act requires taxpayers to report their boycott activity annually to the Internal Revenue Service? But the reports required by the Internal Revenue Code and the Export Administration Act do not cover the same information. Internal Revenue Code reports relate to the far more narrow boycott prohibitions of the Tax Reform Act which prohibits only "agreements" to do certain things. So I cannot agree with your conclusion that the reports contain "essentially similar information" and are therefore redundant. Any comment?

Reply

In general, reports to both the U. S. Department of Commerce and the Treasury Department require U. S. persons to report actions they have taken to "comply" with requests involving compliance with, furthering or supporting foreign boycotts of countries friendly to the United States. We favor elimination of the Department of Commerce reports for the reasons stated in our testimony. Not only do these reports require most (not all) of the kinds of information required by Treasury, but the Commerce reports presumably would require the reporting of requests for action already prohibited under current regulations or to be prohibited under provisions of S. 69. The Treasury reports do not involve actions that are "prohibited." The Tax Reform Act "penalizes" compliance, it does not prohibit it.

REPLIES TO QUESTIONS CONCERNING TESTIMONY

OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

ON

EXTENSION OF THE EXPORT ADMINISTRATION ACT (S. 69, S. 92)

Question 1

Why would you prefer to have the legislation penalize agreements to take action to comply with the boycott rather than the taking of that action itself? Why is it good public policy to penalize agreements to take certain actions but not the acts themselves? Wouldn't that just be a trap for the unwary? Anyone who is familiar with the law would take care not to agree in the first instance. It would, therefore, appear that the only ones who might be caught by a prohibition solely on agreements are those who are unfamiliar with the law, those who can affort counsel to help them avoid making the proscribed agreements, or someone who by inadvertance "agrees" and then draws back, Why does that make any sense?

What precisely would constitute an "agreement" for these purposes? For example, assume a company signs a contract to sell goods to a boycotting country. The contract contains no boycott clause, nor does it require the company to comply with the laws or regulations of the boycotting country. The company then refrains from buying goods from or otherwise dealing with blacklisted companies in fulfilling the contract. Would that be a violation of the law under your formulation? If not, why not?

Answer The third paragraph in the statement of principles of the National Association of Manufacturers addresses the issue raised in this question:

> "(3) U.S. persons should not agree as a condition of doing business in a boycotting country to refuse to do business with any U.S. persons, or with or in a boycotted country."

The policy rationale underlying this principle was set out on page 11 of the prepared statement submitted at the February 22, 1977 hearing, which stressed the need for Congressional precision in defining" ... the bases for decisions regarding whether a firm has violated an anti-boycott prohibition" and suggested that "...the fairest and most practical standard would revolve around agreements to act as a condition of doing business with the boycotting country." This rationale was further developed by Mr. Lawrence A. Fox, the witness for the National Association of Manufacturers, in his response to a question from Senator Proxmire at the February 22, 1977 hearing:

"Mr. Fox. I think the law ought to be clear in its application and certainly it would not be our purpose to suggest that entrapment of the unwary be the purpose of that change that we suggest. Our purpose is to make it precise what actions are possible under the law or not permitted under the law.

"In this context actions taken pursuant to an agreement with a boycotting country would be an explicit and understandable course of action undertaken voluntarily by a company and the application of the principles of law would be quite clear. But there are many reasons why companies might act in a certain way which would have no bearing on the implementation of the boycott."

The second part of this question frames the crucial problem: How can an antiboycott statute be drafted that does not encompass innocent acts and does not require U.S. companies to prove their innocence? The question posed does not stipulate that the contracting company is aware that certain companies with whom it does not deal are "blacklisted". A solution is to require that the company enter into an agreement, in order to establish a violation, for the reasons stated by Mr. Fox in response to another question from Senator Proxmire:

"One of the points that we made in my summary is that this subject is susceptible of differing interpretations and precision is required defining the terms and certainly there's quite a difference between a company agreeing to act and being penalized for that reason and a situation in which a company may act for any number of reasons, but it would be presumed under the law that it acted in compliance with the boycott undertaken which might not be the circumstances at all."

Question 2.

What is your position on the exception contained in S. 69 but not S. 92 for compliance with the passport or immigration requirements of the boycotting country. By implication S. 69 would permit a company whose employees cannot secure a visa nonetheless to go forward with a project in a boycotting country. Do you support that approach or do you feel that a company should be required to refuse the business?

Answer This issue was dealt with in paragraph 4 of the statement of principles submitted in the prepared statement of the National Association of Manufacturers, which acknowledged the right of a nation to regulate the admission of people into its territory. The National Association of Manufacturers prefers the position of S. 69 over that of S. 92 regarding passport and immigration requirements.

Question 3.

Some contend that anti-boycott legislation should permit a U.S. company to comply with a requirement that its shipments not contain goods or components produced by blacklisted firms. But such an exception would virtually nullify the refusal to deal provisions of the legislation. Why should an American company be permitted to exclude goods manufactured by blacklisted companies in order to gain trade opportunities in a boycotting country? Why shouldn't American companies doing business in the Arab states be required to provide equal access to all companies who can meet required commercial standards?

Answer Both S. 69 and S. 92 allow "compliance with import and shipping document requirements with respect to...the name of the supplier of the shipment". Proposed Section 4A(a)(2)(B). Requiring U.S. companies to ship and identify goods and components that will be refused entry by the boycotting country would virtually nullify this exception. There is an essential distinction between agreeing not to deal with a blacklisted company in any way as a condition for doing business in or with the boycotting country and the act of complying with the import restrictions of a boycotting country in a particular transaction. The latter is an essential corollary to the exception quoted above.

Question 4.a.

Some recommend the exclusion of foreign subsidiaries and affiliates from the reach of the law. But wouldn't doing so open up an enormous loophole by permitting U.S. companies to source their Arab country transactions through their foreign subsidiaries and thus avoid U.S. law altogether?

Question 4.b.

If the bill were to exempt from the reach of the legislation the business dealings of U.S. foreign subsidiaries outside the U.S. (not their dealings with U.S. companies), what do you think the reaction of U.S. companies would be? Would they source their transactions with the Arab states wholly outside the United States? In other words would the economic benefits which otherwise would have come to the U.S. be diverted elsewhere?

Answer (4.a.) Extraterritorial application of U.S. boycott law is opposed by the National Association of Manufacturers, in paragraph 6 of its statement of principles:

> "(6) U.S. law relating to boycott policy should not be extended extraterritorially, in order to avoid placing U.S.-owned affiliates operating under foreign jurisdiction in conflict with local law and customs. The U.S. Government should consider undertaking discussions with other governments looking toward minimizing areas for such potential conflicts."

Secretary of State Vance made a very similar statement in his prepared testimony delivered to the Subcommittee on International Finance on February 28, 1977:

> "3. The prohibitions affecting U.S. firms should not, in general, apply to transactions of foreign subsidiaries of U.S. firms which involve the commerce of a foreign country and not U.S. exports." (Mimeo, page 5.)

Secretary Vance went on to suggest that U.S. boycott law "...should apply in cases in which any U.S. firm seeks to use foreign subsidiaries in a manner intended to circumvent the law." The question of possible "loopholes" in U.S. law as applied to trade with Arab countries originating say in Canada, France, or some other friendly country seems to suggest that, as a standard, the writ of U.S. law should run to plants subject to the territorial law and policy of other governments. We doubt that this concept is accepted in international law, nor do we accept the desirability of such a unilateral assertion as a matter of general U.S. policy. However, in the sense of practical accommodation, we would suggest that Secretary Vance's intentional circumvention concept could be considered, especially if discussions with affected foreign governments are held for the purpose of harmonizing policy and legal viewpoints.

Answer (4.b.) The second part of the question seems to assume that legislation on boycotts would totally or in major part preclude trade between companies within the United States and the Arab states. We do not think this is what Congress intends or desires in this legislation. The question cannot be addressed satisfactorily without further detailed information on (a) Congressional intent and (b) internal or proprietary information available only to individual companies concerning their alternative sources of supply, conditions in particular country markets at specific times, and similar commercial information. In general, we would assume that U.S. companies would continue to source in the U.S. whenever possible.

Question 5

S.69 would permit issuance of negative certificates of origin; S.92 would not. I don't believe any of you addressed this issue in your testimony, at least explicitly. What is your position on negative certificates of origin? Should they be banned?

Answer Use of negative certificates of origin allows a boycotting country to implement and enforce a primary boycott, which was explicitly covered in paragraph 4 of the statement of principles submitted by the National Association of Manufacturers:

> "(4) In accordance with recognized international law and practice, the right of a nation to institute a primary economic boycott should be respected in terms of accepting or excluding from its territory any goods, services or capital;..."

Proponents of pending antiboycott legislation disavow any intention to interfere with the primary boycott by the Arab countries. Accordingly, the National Association of Manufacturers prefers the language in S.69 over that in S.92. Finally, reported changes in boycott implementation by most Arab countries, allowing use of positive certificates of origin, appear to have rendered moot the language in S.92.

Question 6

In testimony before the Committee a number of business representatives contended that enactment of the pending legislation would result in a substantial loss of exports and jobs. At least one of them contended that the legislation would close them down. What is your assessment of the impact? Have you studied the question? If you conclude that there would be an adverse impact, please be specific as to how and why? What boycott compliance actions do your member firms now take that they would be barred from taking under the proposed legislation?

Answer The answer to these questions depends in the first instance on the nature and content of the antiboycott legislation ultimately enacted. In addition, each Arab country enforces the boycott differently. Thus, it is impossible to make any definitive quantitative assessment of the impact of antiboycott legislation now.

Questions

7. What is the most commom form of boycott compliance among the companies you represent? Certificates of origin? Certification that your shipments contain no goods or components manufactured by blacklisted firms or that the transaction in question did not involve a blacklisted company? Which?

8. If the pending legislation were enacted, how are the companies which you represent most likely to respond? What, if any, changes in their practices or operations is likely to ensue? Would they foreign-source their sales in an attempt to escape the law?

What would they do with respect to trade or investment in Israel? Would the prohibition on refusals to do business with Israel have a chilling effect on their willingness to explore business opportunities there? Would U.S. companies which otherwise might have explored business opportunities in Israel be reluctant to do so for fear that if they decided not to go forward after making initial exploration they might be accused of an illegal refusal to do business?

9. What effect would the prohibition against furnishing information about whether you have or propose to have business relations with blacklisted firms or with the boycotted country have on your operations? Would you still supply lists of potential subcontractors to clients in the boycotting country? It's quite possible that such action would be illegal because such information in fact discloses whether you have or propose to have business relations with blacklisted firms or a boycotted country. Is this a real problem or merely hypothetical? Are there frequent occasions where U.S. firms supply lists of subcontractors or vendors for legitimate business reasons, reasons wholly unrelated to the boycott? If so, please describe. Have you thought about ways to modify this prohibition so as to avoid having it reach legitimate information exchange situations? Please describe all non-boycott related information exchange situations which might be reached by the proposed prohibition.

Answer The information required to answer Questions 7, 8 and 9 is available from companies doing business with Arab countries, federal agencies like the Commerce Department, and reports by Congressional committees. The National Association of Manufacturers does not have the proprietary or internal company information that would be required.

Question 10

What effect would the pending legislation have on U.S. companies actually located in the boycotting country? The bills contain no exceptions for compliance with local laws for companies situated in a boycotting country. Can that problem be dealt with without opening up an invitation for evasion?

Answer Any attempt to enforce U.S. law that effectively precludes compliance with the law of the boycotting country against a U.S. foreign subsidiary or affiliate operating in the boycotting country places that company in a legally untenable position. Business could not be conducted without violating U.S. law or host country law. This problem has been addressed a proposed method for resolution suggested in Section 40 of the Restatement of Foreign Relations Law of the United States (see Exhibit A). This section should be cited and quoted in the legislative history of any antiboycott legislation enacted by the Congress.

Exhibit A

RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW
OF THE UNITED STATES

§ 40 Limitations on Exercise of Enforcement Jurisdiction

Where two states have jurisdiction to prescribe and enforce rules of law and the rules they may prescribe require inconsistent conduct upon the part of a person, each state is required by international law to consider, in good faith, moderating the exercise of its enforcement jurisdiction, in the light of such factors as:

a) vital national interests of each of the states,

b) the extent and the nature of the hardship that inconsistent enforcement actions would impose upon the person,

c) the extent to which the required conduct is to take place in the territory of the other state,

d) the nationality of the person, and

e) the extent to which enforcement by action of either state can reasonably be expected to achieve compliance with the rule prescribed by that state.

Question 11

The principles which you espouse are virtually identical to those contained in the pending legislation -- no discrimination on the basis of race, religion, or national origin and no refusals to deal with blacklisted American companies. Where there appears to be disagreement is on how those principles can be guaranteed and to whom the legislation should apply. But there seems to be agreement on the basic principles. The major differences seen to be (a)whether the law should apply to agreements to boycott rather than actions in support of the boycott; (b) whether the law should permit American companies to exclude the goods or components of blacklisted firms from shipments to the boycotting country; and (d) whether the law should permit an exception for compliance with visa or immigration requirements. There are other differences, but these seen to be the main ones. Do you agree?

Answer The National Association of Manufacturers agrees that the issues listed are major points in dispute. In summary, our positions on these issues are:

(a) U.S. antiboycott law should require proof of an agreement in order to establish a violation;

(b) U.S. antiboycott law should not be applied to foreign subsidiaries;

(c) U.S. antiboycott law should not attempt to force a U.S. company to introduce into a foreign country products which that nation has chosen to exclude through its import regulations; and

(d) U.S. antiboycott law should permit compliance with a foreign nation's passport or immigration requirements.

In addition, U.S. antiboycott law should -

(1) explicitly preempt state law relating to international boycotts;

(2) eliminate duplicative reporting (for example, pursuant to the Ribicoff Amendment to the Tax Reform Act of 1976); and

(3) consolidate Federal enforcement of antiboycott laws.

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