FOREIGN INVESTMENT AND ARAB BOYCOTT LEGISLATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL FINANCE

OF THE

COMMITTEE ON

BANKING, HOUSING AND URBAN AFFAIRS

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. 425, Amendment No. 24 Thereto; S. 953, S. 995, and S. 1303

LEGISLATION CONCERNING FOREIGN INVESTMENT AND THE ARAB BOYCOTT

JULY 22 AND 23, 1975

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

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S241-47

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FOREIGN INVESTMENT AND ARAB BOYCOTT LEGISLATION

TUESDAY, JULY 22, 1975

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

The subcommittee met at 10:08 a.m. in room 1224 of the Dirksen Senate Office Building; Senator Adlai Stevenson, chairman of the subcommittee, presiding.

The chairman announced that Mr. Packwood was necessarily absent because he was attending a meeting of the Senate Finance Committee.

Senator STEVENSON. The meeting of the Subcommittee on International Finance will now come to order.

This morning we continue our hearings on foreign investment and Arab boycott legislation.

These hearings began more than a year ago. No legislation has been reported.

Since the hearings first began, there have been a number of changes. OPEC monetary surpluses have accumulated. Evidence of Arab boycott pressures has mounted.

In 1974 the monetary surpluses of the oil producing states rose to $60 billion. The dimensions of those surpluses this year and next are in doubt. But another oil price increase is probable in the near future.

This mounting wealth in Arab States brings with it, of course, a vast increase in power.

For 1974 as a whole, U.S. firms reported 785 transactions involving $9.9 million of exports which they had asked to apply with Arab boycott request. But for the first half of 1975—this is just the first half—the number of such transactions had climbed to 1,996 involving well over $200 million in U.S. exports as opposed to 9.9 million for all of 1974.

The purpose of these hearings is to address this challenge to U.S. interests and U.S. principles.

The U.S. commitment to an open door policy assumes that others will do likewise. When they do not, it is time to reexamine our policy.

Our purpose is to encourage the free flow of goods and services in world commerce, and to discourage such restrictive practices as the Arab boycott.

Our first witness this morning is Mr. John Tabor, the Under Secretary of Commerce.

Mr. Tabor, you are welcome to either read this statement or, if you prefer to summarize it, in which case I would be glad to enter the full statement in the record.

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STATEMENT OF JOHN K. TABOR, UNDER SECRETARY OF COMMERCE

Mr. TABOR. Mr. Chairman, first of all, it is a pleasure to be here before you. I hope you will forgive a froggy throat, but I will attempt to communicate clearly with you.

Substantially, I would like to read the statement as is and I certainly want to make myself very fully available on questions to the Chair and the members of the committee.

At the outset, Mr. Chairman, I would like to state that the Department of Commerce opposes, as does the U.S. Government, the Arab boycott and the Department of Commerce fully supports the declarations of policy which are well expressed in the existing Export Administration Act covering this and other boycotts.

I would also like to state at the outset, Mr. Chairman, Commerce's wholehearted support of the President's statement in February that commercial discrimination based on religion or race has no place in the United States and that U.S. Government instruments will not be used to aid or abet such a rationale or religious discrimination.

But, recognizing, as we do, these broad and very sound principles, we want very much to comment on the particular pieces of legislation which your committee now has under review.

If I may, I would like to comment first on S. 953 and Senator Williams' amendment to S. 425, as both would impact on the Arab boycott situation.

I will then turn to the broader issues of foreign investment addressed in S. 425, S. 995 and S. 1303.

Speaking first, Mr. Chairman, about S. 953, this bill contemplates four changes in the Export Administration Act of 1969.

First, sections 3(5)(A) and 3(5)(B) of the act declares that the policy of the United States is:

> (A) to oppose restrictive practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, and (B) to encourage and request domestic concerns * * * to refuse to take any action * * * which has the effect of furthering or supporting * * * (such restrictive practices or boycotts).

S. 953 would extend the scope of the above declarations of policy to include restrictive practices or boycotts against U.S. concerns as well as "other countries friendly to the United States."

Second, S. 953 would amend section 4(b)(1) of the act that requires:

> * * * that all domestic concerns receiving requests for the furnishing of information or the signing of agreements as specified in * * * (section 3(5) of the act) * * * must report this fact to the Secretary of Commerce for such action as he may deem appropriate to carry out the purposes of that section.

That is the present language.

S. 953 would amend the act to read "* * * for such action as the President may deem appropriate * * *" thereby transferring the authority from the Secretary of Commerce to the President, who could then delegate it as he saw fit.

The third amendment contemplated by the bill would require U.S. concerns, when reporting on boycott requests such as those described in the declarations of policy, to include:

Any other information which the Secretary (of Commerce) may require regarding such request and intended compliance therewith * * *

This provision makes somewhat more specific the discretionary authority currently assigned to the Secretary of Commerce.

Finally, and this is the focus of the major interest we have, S. 953 would amend section 4(b)(1) of the act to provide that boycott requests received by domestic concerns should be reported:

* * * for such action as the President may deem appropriate to carry out the purposes of that section, including the curtailment by any United States concern of exports to, investments in, or any other economic transactions with countries which impose boycotts or engage in restrictive trade practices as presently in effect.

As presently drafted, section 4(b)(1) does not specify or illustrate the kind of action which the President might take to deal with a boycott.

Mr. Chairman, it is our view that under the foreign policy provisions of the Export Administration Act the President currently has the authority to curtail exports from the United States to cope with a boycott.

Accordingly, the proposed reference to curtailment of exports is merely illustrative of present authority and in our opinion is unnecessary.

The specific reference to other measures such as curtailment of investments in, or any economic transactions with, countries imposing boycotts gives us in the Department of Commerce particular difficulty.

As you know, such authority exists under section 5(b) of the act of October 6, 1917, and was in fact exercised in 1968 to restrict U.S. investments abroad on balance-of-payments grounds when President Johnson established by Executive order the foreign direct investment program that has been terminated as of the beginning of January of 1974.

We question the wisdom of enlarging the scope of the Export Administration Act to provide authority going beyond the regulation of exports.

The amendments contemplated by S. 953 are obviously aimed at the secondary boycott imposed by the Arab nations against firms in third countries undertaking activities which the Arabs consider as contributing to the economic and defense capabilities of the State of Israel.

Even though, under the language of the bill, the authorities provided by the four amendments are discretionary, we have reservations about the effect of their enactment.

In addition to the reasons noted above, enactment of this bill could place the United States in an undesirable posture in relation to the Arabs at this moment when we are making strong efforts to achieve a peaceful solution to the Middle East situation.

Mr. Chairman, we believe, S. 953 is unnecessary as to control of exports for foreign policy reasons and unwise as to control of investment or other economic actions.

We have grave doubts as to the timing of the action proposed because of the negotiations now proceeding.

There is also a Presidential review underway. We expect it to result in recommendations and actions and we believe it wiser to await the

results of this Presidential study, before undertaking new legislative initiatives.

Let me turn to the boycott amendment to S. 425.

The proposed amendment would, in effect, and with specified extensions and exceptions, prohibit the acquisition of substantial equity interest in U.S. companies—or, alternatively, could lead to divestiture of such interest or the voting rights of such investors—on the part of foreign investors who, within 1 year, have taken actions to discriminate against any U.S. company, or person, because of the latter's dealings with the government or a resident of any country with whose government the United States had diplomatic relations.

The basic principle underlying U.S. investment policy has always been an open door to and national treatment of, foreign investment.

This amendment would represent a very fundamental departure from that liberal policy, based solely on our disapproval of certain foreign government policies. This is something we have never done before.

The effect of enacting this amendment would be potentially to exclude virtually all equity investment in the United States by Arab countries.

At a time when the Arab countries are receiving vast inflows of capital which their economies cannot absorb, the adverse effects of such legislation on the recycling of such transfers could be serious.

The language of the proposed amendment is designed to protect the interests of governments and residents of friendly countries.

It may be appropriate here to recount briefly the operation of the Arab boycott.

As you know, the boycott has its origins in the long-standing Arab-Israeli dispute resulting from the creation of the state of Israel in 1948.

The boycott has worldwide application and is, by no means, directed only at U.S. interests. It operates both as a primary boycott aimed at preventing direct economic relations between Arab States and Israel, and as a secondary boycott by seeking to influence firms in third countries not to establish certain types of relationships with Israel.

In that context, it generally is applied to firms undertaking activities which the Arabs consider as contributing to the consolidation of the economic and defense capabilities of Israel, with which the Arab nations are in a state of conflict.

Thus, it is possible for firms to trade with the state of Israel and with Arab countries as long as the involvement with Israel does not reach a level which the Arabs consider to be beyond normal commercial activities.

This is illustrated by the types of questions generally contained in most Arab boycott questionnaires sent to firms with which the Arabs contemplated doing business.

Such questionnaires typically inquire:

1. Do you have main or branch factories, assembly plants, or joint ventures in Israel?

2. Do you hold shares in Israeli companies?

3. Do you provide technical assistance or consultative services to Israel?

4. Do you maintain general agencies or main offices in Israel for Middle East operations?

5. Do you license technology to Israel?

6. Are you prospecting for natural resources in Israel?

7. Are you acting as the principal importer or agency for Israeli goods?

The enactment of the amendment would be interpreted by the Arab countries as a shift in U.S. foreign policy and could jeopardize ongoing efforts at achieving a peaceful settlement of the Middle East situation.

We continue to believe very strongly that the only viable means of completely ending the Arab boycott lie in the conclusion of the state of conflict which prevails in the Middle East and a settlement of the underlying issues which prompted it.

Chances for such a settlement could be jeopardized by the enactment of this amendment.

Enactment of this amendment, moreover, would not put an end to the economic sanctions against the state of Israel. There is every likelihood that the Arabs would, and could, find other uses for their capital, if they were deprived of investment opportunities in the United States.

It should be noted that no other country in the world has enacted any legislation opposing the Arab boycott of Israel. The Arabs could, therefore, be expected to invest in other capital markets.

As to S. 425, S. 995 and S. 1303, the Department has previously testified on S. 425 before the Banking Committee's Subcommittee on Securities on March 4, 1975, and on S. 995 and S. 1303 before the Commerce Committee's Subcommittee on Foreign Commerce and Tourism, and our views respecting these bills remain unchanged.

S. 425 would amend the Securities Exchange Act to require residence, nationality and other additional information on beneficial owners after acquisition of over 5 percent of the shares of a publicly traded corporation.

It would also require advance filing by foreign investors acquiring 5 percent or more of the equity of a U.S. company with assets exceeding $1 million.

Such acquisitions would be subject to Presidential review and disapproval, if found adverse to the U.S. domestic economy, foreign policy, or national security.

There are provisions for nullification of acquisitions, freezing of voting rights and divestiture.

S. 995 also proposes an investment review procedure, in this case to be carried out by the Secretary of Commerce, and limited to foreign government investments.

In the case of investments amounting to 1 percent of the equity or debt obligations of U.S. firms with assets over $100 million, or real estate investments of $4 million, the Secretary would make a national interest determination within 9 months, the criteria being the fulfillment of developmental capital needs or employment expansion.

There would be a 60-day waiting period after approval. The Secretary would make a determination within 60 days in the case of investments in smaller firms or lesser real estate investments.

Foreign government investments would be barred in communications and defense industries.

The Department of Commerce opposes enactment of S. 425 and S. 995 because they represent a substantial departure from our traditional open door policy on foreign investment which has brought great benefits to the United States.

I believe Assistant Secretary Parsky will develop that point in considerable depth.

I fully appreciate the concern expressed through the proposed legislation over the effects of recent and anticipated foreign direct investments on our national security and on our national economy.

On the basis of data currently available, we have no reason to believe they represent a threat to our security or that there is any movement toward foreign control of our economy.

Unwarranted restrictions on foreign investments invite retaliation against our sixfold larger investments abroad. They interfere with the most efficient exchange of the world's economic resources. They inject governmental judgments into private enterprise operations. They create vast and expensive bureaucracies.

The imposition of investment controls here would militate against our continued leadership in international efforts to liberalize trade, investment, and financial flows.

Restrictions will deter beneficial foreign investments here that could contribute importantly to domestic economic growth and employment and provide new technology and new, better and cheaper products for the American public.

I observed earlier, Mr. Chairman, that the urgency of the need for the type of action proposed by these bills has not been demonstrated.

Before commenting further on the issue, I would like to summarize the provisions of S. 1303.

It establishes a Foreign Investment Administration in the Department of Commerce to collect and analyze information on foreign investments in the United States.

It requires the reporting of any foreign investments in companies where shares are publicly traded which result in 5 percent or more direct or indirect ownership by the foreign investor.

Moreover, it requires reporting of investments in companies whose stocks are not publicly traded and have assets of $3 million or more which result in 10 percent foreign ownership and in real estate exceeding $50,000 in value.

Additionally, investments in U.S. Government securities exceeding $1 million must be reported.

These reports, which are to contain details on the investment and the name and nationality of the investor, are also required, respecting investments in the form of loans, long-term contracts, or ownership of property which provide or could provide a foreign investor predominant influence in company management or operations or property ownership valued at over $1 million.

The Secretary of Commerce would publish quarterly reports, including information on aggregate foreign investment trends, and a list of transactions.

He would make an annual report which would contain a detailed analysis of the previous year's investments, together with policy recommendations.

When the Department of Commerce testified on S. 1303, we stated that there was much in the proposed legislation which was appealing, because it sought to fill an information gap while withholding judgment that there is a need for a case-by-case review by the Government of proposed investment transactions.

We recognized there was a broad consensus that the American people and the Congress need to be informed both of general developments respecting foreign investments in the United States and of major specific investment activities involving national security or national interest considerations.

Information on foreign investments in the United States is needed by the Congress in the formulation of legislative proposals in the investment field; and also by the executive branch which has similar needs to fulfill its policy formulation and program implementation requirements.

Balanced against these needs are the basic principles of minimum governmental interference with private business activity and of protection of business from revelation of confidential information essential to legitimate business activity.

Added to these considerations are the administrative costs of any extensive data-gathering, analysis, and reporting program and the corresponding cost to business of complying with such a program.

If there were a clear and demonstrable present danger to our national security or our national interest, we could understand the need for establishing a rigorous and costly investment monitoring regime such as the amendment purposes.

However, we do not believe that the magnitude of current and near-term foreign investment represents a threat which warrants that response.

There is no question that our information gathering efforts need to be improved; but there is little reason to believe at this time that major transactions of national significance have been or will be consummated without our notice.

I base that, Mr. Chairman, on two major efforts underway to improve our store of information, to analyze such information, and to improve our data-gathering mechanisms.

First, we are well advanced in our studies of all aspects of foreign direct investment in the United States called for by Public Law 93-479, the Foreign Investment Study Act of 1974.

We shall be supplying an interim report to the Congress in late October and a final report at the end of April 1976.

The Treasury Department is preparing a parallel study on portfolio investments.

In addition to our statistics survey based on mandatory responses to thousands of questionnaires mailed out early this year by our Bureau of the Census, we shall have a qualitative analysis respecting the motivations for foreign investments in the United States, their techniques, their economic effects, and the comparative policy and legal climate affecting inward foreign direct investments in this country and other host countries.

I should like to point out that the thrust of the study is not simply factual—not merely a recital of what has happened in the past—but, rather, it looks into the future.

The real concern at this time is not so much with investment increases reflecting general commercial considerations as with those that have occurred or are likely to occur in connection with the recycling of petrodollars, the impact of the quantum jump in energy costs, and the interest in greater access to and use of our national resources by foreign-controlled companies here.

In addition to the study which Congress mandated to May 7 of this year, the President issued Executive Order 11858 establishing a high-level Interagency Committee on Foreign Investment in the United States to survey investment developments to ascertain their potential impact on our national interest, and to take appropriate actions consistent with our policies and laws where specific investment plans indicate reason for concern.

A central element of the program is government-to-government consultations to insure that government investments from abroad are not adverse to our national security interests.

The Executive order also requires the Secretary of Commerce, through an office which is established to collect and analyze data on foreign investment in the United States; to improve procedures for the collection and dissemination of such data; to observe closely foreign investments here; to prepare reports and analyses of trends and developments; to evaluate significant investment transactions; and finally to submit reports, analyses and recommendations to the committee created by the Executive order.

Pursuant to this Executive order a special "Office of Foreign Investment in the United States" has been established, and its staffing and program planning are well underway in the Department of Commerce.

Its first order of business has been to work jointly with a management consulting firm to develop procedures to rationalize the data-gathering efforts of the Federal agencies on foreign investments in this country and to develop a system for prompt delivery of useful data to the Office.

We in Commerce are confident that the programs which I have just outlined will provide the Congress and the executive branch with adequate information on which to make national policy decisions in the foreign investment field.

On this basis we are opposed to the enactment of S. 1303 as being not only unnecessary but undesirable.

Mr. Chairman, I thank you, and I stand ready to answer any questions you or the members of the committee may have.

Senator STEVENSON. Thank you, Mr. Tabor.

I think we ought to start by clarifying the intention of S. 425. It is not clear from the present drafting, but as I understand it, the author of that legislation was attempting to address the secondary boycott situation in which the foreign government prevents a U.S. concern from doing business in the foreign country if it does business with another U.S. concern.

The intention of S. 425, I am told by its author, was to address the secondary boycott situation. That is not clear from the language.

The Arab government, for example, which says to IBM you can't do business in our country if you do business with some other U.S. concern.

Now, with that understanding of the intent, which I grant you requires clarification in the language, would your views remain the same?

Mr. TABOR. Well, Mr. Chairman, as I understand S. 425, and also the secondary boycott doctrine here involved, the secondary boycott operates when a company in this country has dealings or activities which substantially strengthen the military or economic capacity and viability of the State of Israel.

I think the primary boycott is aimed at restricting commercial activities between the Arab nations and the State of Israel. The secondary boycott is directed at U.S. firms, European firms, or Asiatic firms who are neither allies of the Arabs nor Israeli, but which have engaged in commercial relations which the Arabs believe contribute to the economic or defense capabilities of the State of Israel . . . it is an attempt to make firms in third countries such as the United States, not involved in that war directly, observe so that they cease from giving the kind of economic assistance which would strengthen the State of Israel.

That is what I understand the secondary boycott to be.

I had not heard or read or seen any evidence of the description that you have given. I surely have not heard of the Arabs attempting to prevent one U.S. firm (call it X) from purchasing any and all goods or services from another U.S. firm (call it Y) which is blacklisted. I have heard of the Arabs attempting to prevent our U.S. firm (X) from selling goods to the Arabs which X manufactured using goods or services purchased from Y which is blacklisted.

Senator STEVENSON. Page 2, starting at line 2.

Mr. TABOR. This is of 425?

Senator STEVENSON. This is the amendment to 425. It says the President shall prohibit any investment if he determines—I am paraphrasing—that the foreign investors has caused or attempted to cause any U.S. company with respect to its business in any country not to do business with any person.

Then it expressly excepts a country with which such foreign investors does not have diplomatic relations.

It is very confusingly drafted, to say the least. I am having a little trouble myself.

Mr. TABOR. Naturally I agree, perhaps it could be cleaned up.

Senator STEVENSON. But assuming that you get the language straightened out and that it applies only to a foreign country which boycotts, not countries, but a U.S. company because it does business with some other U.S. company which in turn does business in Israel, would your views remain the same about this amendment?

Mr. TABOR. As I said earlier, Mr. Chairman, I don't read the act as doing that.

Senator STEVENSON. No; but this is something that the act does which I am told is the intention of its author.

Mr. TABOR. We also have not seen any evidence of inquiries, for example, in all of the information which is required under the present law to be filed.

There has not been that kind of request either for information or for action by the Arab countries.

So that it is something that we just haven't seen in action and I am not sure that we ought to be legislating for problems for which we don't have current evidence to the best of my knowledge.

Senator STEVENSON. Mr. Tabor, you alluded in your testimony to what I think you said were typical Arab questionnaires.

Mr. TABOR. Yes.

Senator STEVENSON. Does the Arab boycott have standard questionnaires or are there a variety of different questionnaires depending on the country that is involved or other factors?

Mr. TABOR. I will ask Mr. Hull, the assistant general counsel, to supplement, and Mr. Hale also, to supplement my answer on this for the chair.

It is my understanding that one of the things that does occur is that either by law or regulation in some of the Arab countries they require certain things to be determined by private companies operating in those countries when they deal in the attempt to enforce the secondary boycott with companies in third countries such as ours.

Is there a standard list of questions? Mr. Hale, who is the director of the Commerce Action Group, Near East, so-called CAGNE. Mr. Hale.

Mr. HALE. I would believe the seven questions in the testimony could be viewed as standard. Many of the various Arab countries supplement these or take some of them off under various circumstances. But to the best of our knowledge the standard questionnaire would include questions of this type.

In a transaction where a couple of these questions might be totally irrelevant, say questioning a firm that is obviously purely just an export manager, they won't get into the investment questions since the firm would not have any reason to have any investment.

But generally speaking this would be the standard form as requested by the boycott office in Damascus requesting the member countries of the Arab League to raise these questions.

Senator STEVENSON. I ask that question because a company in Illinois, Belvedere Products, Inc., sent me a copy of the questionnaire which it had received, and I raise it now because it is relevant to the question we were discussing earlier about the relationship between U.S. companies and the restrictive practices of foreign governments with respect to companies that do business with other U.S. companies.

These gentlemen have indicated that they are willing to have this correspondence, including the questions, made public.

So, without objection, I will enter this letter to me from Mr. Ted Cowen of Belvedere Products in the record along with the questionnaire which he received dated March 27, 1975, from the League of Arab States, Secretariat General, Damascus.

This company, I should say at the outset, was sold by Revlon. And Revlon apparently is a company on the boycott list.

This company which was sold by Revlon was trying to get off the boycott list.

In response to its efforts to get off the boycott list, it was asked, among other things, to supply the following information: a document showing the names and nationalities of the company's shareholders; a statement showing the names and nationalities of the company's board of directors; a document showing whether the company con-

tinues to have any dealings with Revlon; a declaration showing whether the company participates or owns shares in Israeli firms or businesses outside or inside Israel; a declaration showing whether the company represents any Israeli firm or business in Israel or abroad.

Mr. TABOR. Could you read that again, Mr. Chairman, a declaration?

Senator STEVENSON. The last one, a declaration showing whether the company represents any Israeli firm or business in Israel or abroad.

They don't make it clear what they mean by Israeli firm outside or inside Israel, with business in Israel or abroad.

This goes beyond the kind of information that you were alluding to earlier.

Is this a special kind of situation? It is slightly different from the context we were discussing earlier.

In this case the company is trying to get off the list. It was on because it had been a subsidiary of Revlon.

Mr. TABOR. Mr. Chairman, I am delighted to have that called to our attention. I do have a couple of comments. I would distinguish between requests concerning nationality and those concerning national origin. I think it is repugnant that they should inquire about the national ethnic origin of any board member, any stockholder, anybody. This would discriminate between Americans on the basis of their ancestry or their place of birth. I think we are all in this country totally opposed to that. We must also distinguish between questions regarding "Israeli" ownership or control of a firm and questions that would inquire about "Jewish" ownership or control.

I would like to just note, Mr. Chairman, that when we learn about that kind of repugnant inquiry which involves the national origin or the religion or the race of individuals as opposed to inquiries designed to determine whether a company is owned or controlled by Israeli nationals, or is heavily involved in contributing to the economic development of Israel, we report such inquiry to the Departments of State and Justice.

Recently, Mr. Chairman, we had just such a report from a company. We took it through diplomatic channels to the very high levels of the government involved and the result of that was that there was a clear determination and a statement by the Arab country involved that this was not consistent with that country's policy and that it was not condoned and not approved and that they would do what they could to cure the situation in the future.

I do think our experience is that such ethnic or religious inquiries are isolated actions by overzealous Arab individuals other than representative of Arab policy in administering the secondary boycott.

Obviously, this was, as I understand it, Revlon was on the blacklist. Here is a company that was attempting to get off the blacklist or get away from that company which was blacklisted for whatever reason.

Senator STEVENSON. Well, we will certainly refer this particular matter to you.

We do have evidence of other similar situations.

I have a telegram from another company located in Chicago which indicates that a subcontractor's contract with a manufacturer supplying bus seats for General Motors buses to be sold to Saudi Arabia was canceled after General Motors raised the question of whether the subcontractor was blacklisted.

Apparently that was a question raised by General Motors of the seat manufacturer in response to what concerns or pressures we don't know.

The contract with the subcontractor was canceled by G.M.'s supplier, evidence again of an effective secondary boycott against U.S. firms.

Mr. TABOR. Secondary boycott and action between firms within the United States.

Senator STEVENSON. Yes. It may not be clear, but that is one of the concerns of S. 425. What law is there to discourage such practices and protect such companies? Should we do nothing? Should we just rely on case-by-case action by Commerce and the State Department?

It sounds like on the basis of the evidence we have these situations are not isolated or unusual. We do have others, as I mentioned.

Mr. TABOR. Well, I think, Mr. Chairman, the question raised by S. 425 is what action does one take. Clearly the action of involving national origin and race is repugnant and we will do what we have done in the past as soon as those are brought to our attention. And I think we are having success.

In terms of the issue before us in S. 425, the question is whether we should expressly either mandate or make permissive the power of the Department of Commerce to impose export controls in that situation.

The burden of our testimony is that in terms of authority, if this is a foreign policy question, and I believe that it is, that authority already exists for the Department of Commerce to exercise that authority should it determine that that is the appropriate thing to do.

So that the need for S. 425 is not really there. The authority already exists.

Now, when you come on to the next question as to whether the executive branch through Commerce—and we obviously act in these foreign policy areas in consultation with State as well as other interested Departments—whether we ought at this point to interject export controls to deal with that aspect of the embargo or boycott, this is a very sensitive question at this particular time.

It is our best judgment that it is not advisable at this particular time either through Executive decision or through a congressional grant of authority or through a congressional mandate of a duty to require that action or take that action at this time.

Senator STEVENSON. Well, what would your opinion be about legislation to simply make such discriminatory practices as we have referred to by one U.S. company against another illegal?

Mr. TABOR. Well, that is something that I would certainly want to give some careful thought to, to determine the extent of that kind of activity. As I stated earlier, we have no evidence that the Arabs are seeking to have one American company boycott another, other than in the contact of the purchase by the Arabs of goods and or services from that particular company.

Senator STEVENSON. Wouldn't it help these companies withstand such pressures if it were a U.S. crime to accede to them?

Mr. TABOR. Well, I think there are a number of factors to weigh there that might help them withstand it.

It might cause the loss of that particular economic opportunity with the jobs involved as well.

There is no necessity, when there is a refusal to comply with these requests, for the Arab purchaser to purchase from this country. And I think that is one of the aspects that we have to bear in mind. And enacting legislation to prohibit such a practice does not mean that the Arab conduct ceases. It just means that we may be excluding ourselves from that particular market. In other words, the Arabs will purchase elsewhere.

Senator STEVENSON. Well, I understand that, but it seems to me that with little or no action, we simply encourage continuation of such restrictive trade practices.

There are analogies in our laws internally, laws such as the Robinson-Patman Act, which prohibit certain discriminatory forms of economic behavior. So to a degree there is precedent in the United States.

There is the pragmatic concern; the consequence might be to discourage such pressures on the one hand; on the other hand there is the concern you mentioned, that it might simply lead to loss of business that gets placed elsewhere.

My own way of thinking is that in such ambiguous circumstances we ought to side with principle and take some chances and in this case attempt to discourage such commercial practices instead of doing little or nothing, and apparently encouraging such pressures upon our own companies. And they are mounting, at least on the basis of the evidence that is available to us, most of it from your Department.

Mr. TABOR. I would like to comment on that, Mr. Chairman, because at the very outset of your comments you noted that increased reported dollar volume that is subject to the reporting requirement or has been reported, and also the increased number of reports that have come in.

I think it is basically that increase that is the result of a much more vigorous enforcement by the Department of Commerce in the year 1975 than in the year 1974 of the reporting law.

As you perhaps are aware, I think we have tried to keep you and your staff informed; beginning in early 1975 we sent out over 30,000 notices to all exporters listed in the American International Trader's Index, reminding them of this law which they are required to comply with.

We also undertook to go back against people who had previously been warned once of not complying with the law, and we found five violators.

We brought charges against those. And that has all been in the newspapers. And I think it does stimulate compliance with the law and the increased reporting for those five.

Four of those five, incidentally, have consented to the maximum fine and the fifth one is in contest with us.

But I think that those increased dollar volumes that you mentioned earlier do not necessarily reflect an increase in the intensity of the Arab effort. I think that they clearly reflect an increase in the intensity of enforcement by the Department of Commerce and the much greater volume of reports that we are now getting on the Arab boycott.

Senator STEVENSON. What do you do in cases of reported compliance?

Mr. TABOR. Reported?

Senator STEVENSON. Compliance with the Arab boycott.

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Mr. HALE. At this point, Mr. Chairman, there is no legal duty on the Department of Commerce to do anything. At this point it is not illegal in this country to comply with the Arab boycott request.

It is illegal for a company not to report that request to enable the Congress and the executive branch to know the state of the boycott strength.

Senator STEVENS. It is not illegal, but it is contrary to the policy of the United States to participate in restrictive trade practices. It is U.S. policy to oppose such practices, and such policy is expressly stated in the Export Administration Act.

Mr. TABOR. That is correct. And, Mr. Chairman, in the literature which we have sent out, the notices, we not only reflect the Export Administration Act policy, which is to discourage compliance, but the Secretary personally in the notice which goes out to the reporting firm, expressly states that he encourages and requests individuals and firms receiving such requests to refuse to comply with them.

Senator STEVENSON. And he also reminds the company that they are not prohibited from complying and that completion of the information in this item would be helpful to the U.S. Government, but is not mandatory.

Mr. TABOR. I think that is on item 10 of the reporting form.

Senator STEVENSON. That is item 10.

Mr. TABOR. All other aspects of this form are mandatory. And the provision which expressly states that the companies are not legally prohibited from complying is an accurate statement of the law. And it is preceded and followed by a request and encouragement not to comply.

Senator STEVENSON. Item 10 is the part which questions compliance. We have not, will not comply, and so on.

Mr. TABOR. Yes.

Senator STEVENSON. Why shouldn't that part, item 10, which reports compliance or noncompliance, be made mandatory?

Mr. TABOR. Well, I think it is conceivable that it could be made. I think the fact certainly can be in some cases that there may not be knowledge at the time that the request for compliance is received. There may not be a decision made by the company that it will or won't.

I am sure some companies can make that decision very quickly and decisively. I think some others probably have a very difficult decision to make on exactly what the economic impact on them is going to be, and they may not know the answer at the time of reporting.

Senator STEVENSON. Well, they could, at the time of reporting, then say we have not decided.

Mr. TABOR. Many do. That is a very frequent response that we receive.

Senator STEVENSON. My question is twofold. First, why should these companies be reminded that this is not mandatory. And, second, more importantly, why shouldn't the reporting of such information as I have proposed be made mandatory?

Mr. TABOR. I would answer that, Mr. Chairman, by saying that the law encourages noncompliance, but does not forbid compliance.

The present law does not prohibit compliance and there is nothing illegal in the United States with complying with——

Senator STEVENSON. We make the laws, and we are examining the adequacy of the law. That is not the issue. It is not what the law is now. It is what it should be.

I am asking whether we shouldn't at the very least mandate the supply of this kind of information about compliance or noncompliance.

We were discussing earlier this question of how you discourage such practices. It doesn't seem to me this is a very effective means of discouraging compliance with the boycott when the companies are not required to furnish the information on the forms.

Mr. TABOR. They are required, of course, to supply everything but their intended action.

Mr. Chairman, you posed the question with the revised law which would prohibit compliance.

Senator STEVENSON. That was one question. Prohibiting compliance. And, two, short of prohibiting compliance, to require reporting of compliance intentions.

I will come to a third question in a moment.

Mr. TABOR. Why should we not prohibit compliance?

Senator STEVENSON. We have already discussed that one. At least mandate reports of compliance and noncompliance. Or other decisions.

Mr. TABOR. Well, we do have the authority under the present law to prohibit, should we deem that to be in the national interest. In determining the national interest we must also consider foreign policy and economic consequences.

The Congress has three time, I think three times, declined to take the step of prohibiting firms from complying with boycott requests.

Senator STEVENSON. You take the position that you have the authority now under the Export Administration Act, to do what? To prohibit?

Mr. TABOR. To prohibit compliance. It is within the broad powers of the Secretary under the Export Administration Act.

Senator STEVENSON. To prohibit exports in compliance with——

Mr. TABOR. To prohibit compliance with the boycott request.

Senator STEVENSON. Have you ever taken any such action?

Mr. TABOR. No; we have not. Based on two things. No. 1, the decision of the Congress which carefully considered this issue I think on two, perhaps three occasions and decided that it would not make the prohibition mandatory. And also based on discussions within the executive branch involving State and the other affected departments of Government, we concluded on foreign policy and economic grounds that it was not appropriate to mandate noncompliance, although we do encourage and request firms not to comply.

Senator STEVENSON. Do you have the authority in the bus seat case that I mentioned to prohibit the cancellation of the contract with a supplier for bus seats as the result of pressure from some foreign government?

Mr. TABOR. We certainly don't on a single case basis, Mr. Chairman. We have no regulations which establish that. That would be absolutely at this point without due process and fair notice.

Senator STEVENSON. That is the point. I don't think you do have that power.

Mr. TABOR. I will ask General Counsel here for the Domestic and International Business Administration to comment on the scope of the authority we now have. Mr. Richard Hull.

Mr. HULL. Mr. Chairman, the legislative history of the amendments to the act in 1965, which lead to the so-called Arab boycott amendments, indicate that Congress initially wanted to make this prohibition mandatory. And in view of the objections raised by the administration, Congress agreed to provide us with discretionary authority.

They did this by making several amendments to the act. So that we would be able to prohibit a firm from complying with a boycott request when that request led to an export.

That would not give us authority to interfere with decisions and contracting between companies which did not result in an exportation.

But we are empowered to prohibit the firm from answering a questionnaire and sending it back to an Arab country.

There was a specific amendment made to prohibit the exportation of information. And the legislative history indicates it was so we could prohibit a firm from answering the questionnaire, filling out an application.

Moreover, the President has the authority on foreign policy grounds, as the Under Secretary stated, to curtail exports. I think the legislative history bears out fully, that we were given discretionary authority.

Now, I don't know whether in the particular situation which you described, it would be possible to prohibit a cancellation of a contract.

Obviously there is an evidence problem, too. It would have to be shown that this cancellation of the contract was based on an Arab boycott request. But, more fundamentally, it would have to be linked in some way to an exportation.

Senator STEVENSON. Well, my bus situation, you could indicate, I suppose, that action might be taken against the export of the buses if the exporter implied that he had canceled the contract of the supplier in order to carry out the boycott.

Mr. HULL. If we had exercised that authority and issued the regulations and again if the evidentiary problem could be overcome, yes, we could act.

Senator STEVENSON. But to date no such action has been taken in any of these situations?

Mr. HULL. That is correct. This is being done because of the foreign policy considerations and the economic considerations of what the prohibition against compliance of boycott requests would do.

The trade volume with the Arab countries has grown substantially as has, for that matter, been the trade with Israel. And it was felt that because the Arabs can purchase almost everything they purchase from us from other countries which have no restrictions on the Arab boycott that if they found themselves unable to obtain the assurances they seek in trading with American companies, they would just take their business elsewhere and purchase from other countries.

Senator STEVENSON. The legislative response we have mentioned would mandate that reports include information from companies on their intention with respect to compliance or noncompliance and go one step farther and make them public.

Now, what is the position of the Commerce Department on that proposal, to make these public?

Mr. TABOR. Our view on that is, Mr. Chairman, so long as there is nothing prohibited concerning compliance and where there is so much

confusion in the public mind as to the fact that this law only requires reporting that to get all that data on a mandatory basis runs risks of exposures which could indeed be very unfair and inequitable if data were made available in violation of the limitations of section 7(c) of the Export Administration Act.

If I could just explain that, if there were statements here required to be made and there were showings that certain companies did comply with the boycott request which under present law is a legal thing to do, although you and I may have different personal views concerning that, and if that information that they had complied with the request were made public through leakage, through whatever manner, they would, I think, run the risk of suffering the confusion in the public mind that they had done something illegal when in fact they had complied with existing law.

It is that balance which caused the Department of Commerce to say that, so long as there is no mandatory prohibition and so long as compliance with boycott requests is still legal as determined by Congress and the executive branch, then the answer to Item 10 should be optional and none of the information reported by the exporters should be disclosed.

Senator STEVENSON. That strikes me as another way of saying that the public just can't be trusted to be very intelligent with such information. And therefore, we better keep the public in the dark. That is a hard proposition for me to accept.

Mr. TABOR. Mr. Chairman——

Senator STEVENSON. In fact, why isn't it subject to disclosure now under the Freedom of Information Act?

Mr. TABOR. Well, it is the opinion of our General Counsel, and I believe the Attorney General, although I can't state that authoritatively, that the Freedom of Information Act exempts from disclosure information such as section 7(c) information which is expressly made confidential by a statute. I believe this exemption is referred to as exemption (b)(3) of the Freedom of Information Act.

In terms of your earlier comment, Mr. Chairman, I would like to say that I do think that the problem is to get the facts accurately to the public. We do provide the public with aggregate statistics on the Arab boycott requests reported to us. Area statistics indicate the types of requests and the countries from which they originated.

I have no question that the public, when they get the facts accurately, make very sound judgments. However, this is a very confidential issue and if the companies receiving the requests were identified, these could be subjected to certain consumer boycotts, when they have not done anything illegal.

These are highly emotional areas, obviously. There can be distortions of the facts. And the question is the risk that one is going to have of emotional reactions by certain domestic groups as opposed to one where the facts are put forward in relatively unemotional discussions such as we are having here.

Senator STEVENSON. Mr. Tabor, you indicated that you thought that the reported increases in requests to participate in restrictive practices was due very largely to improved administration of this law by the Commerce Department. Is that the full explanation?

Mr. TABOR. No. I think there are many factors. I think that publicity was one obvious factor in bringing more reports in than we ever had in recent months. It is very hard to identify the degree to which an increase in trade and commerce with that part of the world also contributes to an increased number of requests, but I am sure that is a factor.

The exports in that area will probably reach about $5 billion this year, and it is a very lively area of export to the Arab countries, to Iran and to Israel.

So I am sure there is more trade, there are more reports.

Senator STEVENSON. Are you aware of any situations in which an Arab investment in the United States was made conditional on a refusal to deal with Jewish persons or concerns?

Mr. TABOR. I am not personally aware of any such matter. I don't recall any such matter having surfaced to date in the Office of Foreign Investment, which is in the process of establishment.

I do recall the contrary situation out in California when there was an attempt by some Arab investors to purchase the majority shares or the full shares of a bank, and they were not able to do that.

Mr. Parsky might be able to shed a little more light on that investment side than I, but I personally have no knowledge of an Arab investment in this country, certainly in a direct investment situation, being conditioned upon the nationality or the race of the officers or stockholders in the company.

Senator STEVENSON. Has the Department of Commerce made any effort to investigate and determine whether there is substance to the reports and rumors that such conditions are being imposed?

Mr. TABOR. Well, the Office of Investment which is in the process of establishment, about which I testified, will have a number of questions to keep alert to.

I am not personally aware that that is one of the questions. But I can certainly note it.

Senator STEVENSON. I think that does it, Mr. Tabor. We will refer these particular cases to you. And I hope that you might give further thought to the response to the question of whether under certain circumstances it should be made a crime to discriminate against U.S. concerns as a result of pressures from foreign governments.

Mr. TABOR. That is in your General Motors bus seat situation is what you are citing there?

Senator STEVENSON. Yes. I think you indicated some indecision when I raised that question earlier. And if you have any further thoughts on that subject as a means of helping the countries to withstand such pressures, they would be of interest to us.

Mr. TABOR. Very well, we will consider that one and if we have any further thoughts on it, Mr. Chairman, we will be back to you. I would be happy to do that.

Senator STEVENSON. Thank you, Mr. Tabor.

Mr. TABOR. I should like to take advantage of the opportunity which you have given me, Mr. Chairman, to make a statement concerning the so-called bus seat question. Let us distinguish two different situations.

First, there is the possible situation where the Arabs would attempt to prohibit American companies from buying any goods or services

from a blacklisted company. This would be most repugnant. We have no information that the boycott is attempting to do this.

The second situation is the attempt by the Arabs under the boycott to prevent those U.S. firms who sell goods or services to the Arabs from including in those goods or services any goods or services produced by a blacklisted company. Obviously, this is an attempt by the Arabs to prevent blacklisted companies from selling to the Arabs indirectly what the Arabs would not buy from them directly.

The bus seat example falls within this latter category.

This latter category, in our opinion, raises the same questions as the direct boycott of a blacklisted company. While there are some jurisdictional differences, we think the direct and the indirect cases raise identical policy considerations—no more no less.

You ask whether we should prohibit the "bus seat" or indirect boycott.

Our answer is: That question involves a number of judgments. There is first the moral judgment which you mention and in which we concur. There is second an economic or commercial judgment, raised by the fact that we will find that the Arabs in most cases will turn to alternate foreign sources, if compliance with their boycott is prohibited in the United States. In your example, they could and probably would purchase their buses elsewhere. This, in turn, poses the question of how many jobs we can afford to lose in America and what loss of exports we can afford as the price of our moral convictions.

The third consideration is foreign policy: To what extent would prohibition of compliance with the boycott be perceived by the Arabs as a shift in U.S. Near East policy? How would this affect U.S. ability to bring about a Near East settlement? Obviously, the overriding object in the boycott situation is to end. Ending the war will accomplish this; prohibiting compliance with the boycott will not.

A sound answer to these various questions requires inputs from various agencies of the Government. As you know, in March of this year, President Ford directed an interagency review of the Arab boycott issue and its implications on this Nation. He requested that the agencies concerned submit recommendations as to what measures should be taken to deal with this issue.

We anticipate that these recommendations will be submitted to the President in the very near future.

I believe it would be premature for the Congress to legislate a prohibition against compliance with a direct or indirect boycott request, until the interagency review has been completed, the President has considered the interagency recommendations, and he has acted thereon.

Senator STEVENSON. Thank you, Mr. Tabor.

[The complete statement of Mr. Tabor, copies of the bills being considered, a report from the State Department, and some letters submitted for the record from the office of Senator Stevenson follow:]

STATEMENT OF JOHN K. TABOR, UNDER SECRETARY OF COMMERCE

Mr. Chairman, members of the subcommittee, I am pleased to be here today to present the Department's views on legislation impacting on two vital issues, the Arab boycott and foreign investment.

If I may, I would like to comment first on S. 953 and Senator Williams' amendment to S. 425, as both would impact on the Arab boycott situation. I will then turn to the broader issues of foreign investment addressed in S. 425, S. 995, and S. 1303.

S. 953 AMENDMENTS TO THE EXPORT ADMINISTRATION ACT

S. 953 would make four changes in the Export Administration Act of 1969.

First, Sections 3(5)(A) and 3(5)(B) of the Act declares that the policy of the United States is "(A) to oppose restrictive practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, and (B) to encourage and request domestic concerns . . . to refuse to take any action . . . which has the effect of furthering or supporting . . . (such restrictive practices or boycotts)." S. 953 would extend the scope of the above declarations of policy to include restrictive practices or boycotts against *United States concerns* as well as "other countries friendly to the United States."

Second, Section 4(B)(1) of the Act requires ". . . that all domestic concerns receiving requests for the furnishing of information or the signing of agreements as specified in . . . (Section 3(5) of the Act) . . . must report this fact to the Secretary of Commerce for such action as he may deem appropriate to carry out the purposes of that section." S. 953 would amend the Act to read " . . for such action as the President may deem appropriate . . ." thereby transferring the authority from the Secretary of Commerce to the President, who could then delegate it as he saw fit.

Third, the Bill would require United States concerns, when reporting on boycott requests such as those described in the declarations of policy, to include "any other information which the Secretary (of Commerce) may require regarding such request and intended compliance therewith . . ." This provision makes somewhat more specific, the discretionary authority already assigned to the Secretary of Commerce.

Fourth, S. 953 would amend Section 4(b)(1) of the Act to provide that boycott requests received by domestic concerns should be reported ". . . for such action as the President may deem appropriate to carry out the purposes of that section, including the curtailment by any United States concern of exports to, investments in, or any other economic transactions with countries which impose boycotts or engage in restrictive trade practices as presently in effect."

As presently drafted, Section 4(b)(1) does not illustrate the kind of action which the President might take to deal with a boycott. Under the foreign policy provisions of the Export Administration Act, the President currently has the authority to curtail exports from the United States.

Accordingly, the proposed reference to curtailment of exports is merely illustrative of present authority and therefore unnecessary. The specific reference to other measures such as curtailment of investments in, or any economic transactions with countries imposing boycotts gives us particular difficulty. As you know, such authority exists under Section 5(b) of the Act of October 6, 1917, and was in fact exercised in 1968, to restrict U.S. investments abroad on balance-of-payments grounds, when President Johnson established by Executive Order the Foreign Direct Investment Program which was terminated in 1974. We question the wisdom of enlarging the scope of the Export Administration Act to provide authority going beyond the regulation of exports.

The amendments contemplated by S. 953 are obviously aimed at the secondary boycott imposed by the Arab nations against firms in third countries undertaking activities which the Arabs consider as contributing to the economic and defense capabilities of Israel. Even though, under the language of the Bill, the authorities provided by the four amendments are discretionary, we have reservations about the effect of its enactment. In addition to the reasons noted above, enactment of this Bill could place the United States in an undesirable posture in relation to the Arabs at a time when we are making strong efforts to achieve a peaceful solution to the Middle East situation.

"BOYCOTT" AMENDMENT TO S. 425

The proposed amendment would, in effect, and with specified extensions and exceptions prohibit the acquisition of substantial equity interest in United States companies (or, alternatively, could lead to divestiture of such interest) on the part of foreign investors who, within one year, have taken actions to discriminate against any United States company (or person) because of the latter's dealings

with the government or a resident of any country with whose government the United States had diplomatic relations.

The basic principle underlying U.S. investment policy has always been an "open door" to and "national treatment" of, foreign investment. This amendment would represent a fundamental departure from that liberal policy based solely on our disapproval of certain foreign government policies.

The effect of enacting this Amendment would be potentially to exclude virtually all equity investment in the United States by Arab countries. At a time when the Arab countries are receiving vast inflows of capital which their economies can not absorb, the adverse effects of such legislation on the recycling of such transfers could be serious.

The language of the proposed amendment is designed to protect the interests of governments and residents of friendly countries. It may be appropriate here to recount briefly the operation of the Arab boycott.

As you know, the boycott has its origins in the longstanding Arab-Israeli dispute resulting from the creation of the State of Israel in 1948. It has worldwide application and is, by no means, directed only at U.S. interests. It operates both as a primary boycott aimed at preventing direct economic relations between Arab States and Israel and as a secondary boycott by seeking to influence firms in third countries not to establish certain types of relationships with Israel. In that context, it generally is applied to firms undertaking activities which the Arabs consider as contributing to the consolidation of the economic and defense capabilities of Israel, with which the Arab Nations are in a state of conflict.

Thus, it is possible for firms to trade with the State of Israel and with Arab countries, as long as the involvement with Israel does not reach a level which the Arabs consider to be beyond normal commercial activities. This is illustrated by the types of questions generally contained in most Arab boycott questionnaires sent to firms with which the Arabs contemplated doing business. Such questionnaries typically inquire:

1. Do you have main or branch factories, assembly plants, or joint ventures in Israel?
2. Do you hold shares in Israeli companies?
3. Do you provide technical assistance or consultative services to Israel?
4. Do you maintain general agencies or main offices in Israel for Middle East operations?
5. Do you license technology to Israel?
6. Are you prospecting for natural resources in Israel?
7. Are you acting as the principal importer or agency for Israeli goods?

The enactment of the Amendment would be interpreted by the Arab countries as a shift in U.S. foreign policy and might well jeopardize ongoing efforts at achieving a peaceful settlement of the Middle East situation. We continue to believe that the only viable means of completely ending the Arab boycott lie in the conclusion of the state of conflict which prevails in the Middle East, and a settlement of the underlying issues which prompted it. Changes for such a settlement could be jeopardized by the enactment of this Amendment.

Enactment of this Amendment would not put an end to the economic sanctions against the State of Israel. There is every likelihood that the Arabs would, and could, find other uses for their capital if they were deprived of investment opportunities in the U.S. It should be noted that no other country in the world has enacted any legislation opposing the Arab boycott of Israel. The Arabs could, therefore, be expected to invest in other capital markets.

S. 425, S. 995 and S. 1303

The Department of Commerce testified on S. 425 before the Banking Committee's Subcommittee on Securities on March 4, 1975, and on S. 995 and S. 1303 before the Commerce Committee's Subcommittee on Foreign Commerce and Tourism, and our views respecting these bills remain unchanged.

S. 425 would amend the Securities Exchange Act to require residence, nationality and other additional information on beneficial owners after acquisition of over 5 percent of the shares of a publicly-traded corporation. It would also require advance filing by foreign investors acquiring 5 percent or more of the equity of a U.S. company with assets exceeding $1 million. Such acquisitions would be subject to Presidential review and disapproval if found adverse to the U.S. domestic economy, foreign policy, or national security. There are provisions for nullification of acquisitions, freezing of voting rights and divestiture.

S. 995 also proposes an investment review procedure, in this case to be carried out by the Secretary of Commerce, and limited to foreign government investments. In the case of investments amounting to 1 percent of the equity or debt obligations of U.S. firms with assets over $100 million, or real estate investments of $4 million, the Secretary would make a national interest determination within 9 months, the criteria being the fulfillment of developmental capital needs or employment expansion. There would be a 60-day waiting period after approval. The Secretary would make a determination within 60 days in the case of investments in smaller firms or lesser real estate investments. Foreign government investments would be barred in communications and defense industries.

The Department of Commerce opposes enactment of S. 425 and S. 995 because they represent a substantial departure from our traditional open door policy on foreign investment which has brought great benefits to the United States.

I fully appreciate the concern expressed through the proposed legislation over the effects of recent and anticipated foreign direct investments on our national security and on our national economy. On the basis of data currently available, we have no reason to believe they represent a threat to our security or that there is any movement toward foreign control of our economy. Unwarranted restrictions on foreign investments here invite retaliation against our six-fold larger investments abroad. They interfere with the most efficient exchange of the world's economic resources. They inject governmental judgments into private enterprise operations. They create vast and expensive bureaucracies. The imposition of investment controls here would militate against our continued leadership in international efforts to liberalize trade, investment, and financial flows. Restrictions will deter beneficial foreign investments here that could contribute importantly to domestic economic growth and employment and provide new technology and new, better and cheaper products to the American public.

I observed earlier that the urgency of the need for the type of action proposed by these bills has not been demonstrated. Before commenting further on the issue, I would like first to summarize the provisions of S. 1303.

S. 1303 establishes a Foreign Investment Administration in the Department of Commerce to collect and analyze information on foreign investments in the United States. It requires the reporting of any foreign investments in companies where shares are publicly traded which result in 5 percent or more direct or indirect ownership by the foreign investor. Moreover, it requires reporting of investments in companies whose stocks are not publicly traded and have assets of $3 million or more which result in 10 percent foreign ownership and in real estate exceeding $50 thousand in value.. Additionally, investments in U.S. Government securities exceeding $1 million must be reported. These reports, which are to contain details on the investment and the name and nationality of the investor, are also required respecting investments in the form of loans, longterm contracts, or ownership of property which provide or could provide a foreign investor predominant influence in company management or operations or property ownership valued at over $1 million. The Secretary of Commerce would publish quarterly reports, including information on aggregate foreign investment trends, and a list of transactions. He would also make an annual report which would contain a detailed analysis of the previous year's investiments, together with policy recommendations.

When the Department of Commerce testified on S. 1303, we stated that there was much in the proposed legislation which was appealing because it sought to fill an information gap while withholding judgment that there is a need for a case-by-case review by the Government of proposed investment transactions. We also recognized there is a broad consensus that the American people and the Congress need to be informed both of general developments respecting foreign investments in the United States and of major specific investment activities which involve national security or national interest considerations.

Information on foreign investments in the United States is needed by the Congress in the formulation of legislative proposals in the investment field; and the Executive Branch has similar needs to fulfill its policy formulation and program implementation requirements. Balanced against these needs are the basic principles of minimum governmental interference with private business activity and of protection of business from revelation of confidential information essential to legitimate business activity. Added to these considerations are the administrative costs of any extensive data-gathering, analysis, and reporting program and the corresponding cost to the business community of complying with such a program.

If there were a clear and demonstrable present danger to our national security or our national interest, we could well understand the need for establishing a rigorous and costly investment monitoring regime. However, we do not believe that the magnitude of current and near-term foreign investment represents a threat which warrants that response. There is no question that our information gathering efforts need to be improved; but there is little reason to believe at this time that major transactions of national significance have been or will be consummated without our notice.

We are making major efforts to improve our store of information, to analyze such information, and to improve our data-gathering mechanisms.

First, we are well advanced in our studies of all aspects of foreign direct investment in the United States called for by Public Law 93-479, the Foreign Investment Study Act of 1974, and shall be supplying an interim report to the Congress in late October and a final report at the end of April 1976. The Treasury Department is preparing a parallel study on portfolio investments.

In addition to our statistical survey based on mandatory responses to thousands of questionnaires mailed out early this year, we shall have a qualitative analysis respecting the motivations for foreign investments in the United States, their techniques, their economic effects, and the comparative policy and legal climate affecting inward foreign direct investments in this country and other host countries.

I should like to point out that the thrust of the study is not simply factual—not merely a recital of what has happened in the past—but rather it looks into the future. The real concern at this time is not so much with investment increases reflecting general commercial considerations as with those that have occurred or are likely to occur in connection with the recycling of petrodollars, the impact of the quantum jump in energy costs, and the interest in greater access to and use of our national resources by foreign-controlled companies here.

On May 7 of this year, the President issued Executive Order 11858 establishing a high-level Interagency Committee of Foreign Investment in the United States to survey investment developments to ascertain their potential impact on our national interest, and to take appropriate actions consistent with our policies and laws where specific investment plans indicate reason for concern. A central element of the program is government-to-government consultations to insure that government investments from abroad are not adverse to our national security interests.

The Executive Order also requires the Secretary of Commerce to collect and analyze data on foreign investment in the United States; to improve procedures for the collection and dissemination of such data; to observe closely foreign investments here; to prepare reports and analyses of trends and developments; to evaluate significant investment transactions; and to submit reports, analyses and recommendations to the Committee.

Pursuant to this Executive Order a special Office of Foreign Investment in the United States has been established, and its staffing and program planning are well underway. Its first order of business has been to work jointly with a management consulting firm to develop procedures to rationalize the data-gathering efforts of the federal agencies on foreign investments here and to develop a system for prompt delivery of useful data to the Office.

I am confident that the programs which I have just outlined will provide the Congress and the Executive Branch with adequate information on which to make national policy decisions in the foreign investment field. On this basis we are opposed to the enactment of S. 1303 as being not only unnecessary but undesirable.

Mr. Chairman, this completes my testimony. I would be pleased to answer any questions from the Committee on the views which I have expressed.

94TH CONGRESS
1ST SESSION

S. 425

IN THE SENATE OF THE UNITED STATES

JANUARY 27, 1975

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

A BILL

To amend the Securities Exchange Act of 1934 to require notification by foreign investors of proposed acquisitions of equity securities of United States companies, to authorize the President to prohibit any such acquisition as appropriate for the national security, to further the foreign policy, or to protect the domestic economy of the United States, to require issuers of registered securities to maintain and file with the Securities and Exchange Commission a list of the names and nationalities of the beneficial owners of their equity securities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Foreign Investment
4 Act of 1975".

II

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1 SEC. 2. Subsection (a) of section 3 of the Securities
2 Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended as
3 follows:
4 (a) Paragraph (9) thereof is amended to read as
5 follows:
6 "(9) The term 'person' means a natural person, com-
7 pany, government, or political subdivision, agency, or in-
8 strumentality of a government.".
9 (b) Paragraph (19) thereof is amended to read as
10 follows:
11 "(19) The terms 'investment company', 'affiliated per-
12 son', 'insurance company', 'separate account', and 'company'
13 have the same meanings as in the Investment Company Act
14 of 1940.".
15 (c) The subsection is further amended by adding at the
16 end thereof the following new paragraphs:
17 "(22) The term 'United States company' means any
18 corporation, limited partnership, or business trust organized
19 in one of the United States, the Canal Zone, the District of
20 Columbia, Guam, Puerto Rico, the Virgin Islands, or any
21 other possession of the United States (hereinafter in this title
22 collectively referred to as the 'United States') or any other
23 company with its principal place of business in the United
24 States.
25 "(23) The term 'foreign investor' means—

"(1) a natural person resident outside the United States;

"(2) a company other than a United States company;

"(3) a government of a country other than the United States or a subdivision, agency, or instrumentality of such a government (hereinafter in this title collectively referred to as a 'foreign government');

"(4) a United States company controlled by a person described in paragraph (1), (2), or (3) of this subsection; or

"(5) two or more persons acting in concert for the purpose of acquiring, holding, voting, or disposing of securities, at least one of whom is a person described in paragraph (1), (2), (3), or (4) of this subsection.".

SEC. 3. Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended as follows:

(a) Paragraph (1) of subsection (d) thereof is amended to read as follows:

"(d) (1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 12 of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g) (2) (G) of this title,

1 or any equity security issued by a closed-end investment
2 company registered under the Investment Company Act of
3 1940, is directly or indirectly the beneficial owner of more
4 than 5 per centum of such class shall, within ten days after
5 such acquisition, send to the issuer of the security at its prin-
6 cipal executive office, by registered or certified mail, send to
7 each exchange where the security is traded, and file with the
8 Commission, a statement containing such of the following in-
9 formation, and such additional information, as the Commis-
10 sion, by rule, may prescribe as necessary or appropriate in
11 the public interest or for the protection of investors—

12 "(A) the background, identity, residence, and na-
13 tionality of such person and all other persons by whom
14 or on whose behalf the purchases have been or are to be
15 effected;

16 "(B) financial statements (which must be certified
17 if required by the Commission) of such person;

18 "(C) the source and amount of the funds or other
19 consideration used or to be used in making the purchases,
20 and if any part of the purchase price or proposed pur-
21 chase price is represented or is to be represented by funds
22 or other consideration borrowed or otherwise obtained
23 for the purpose of acquiring, holding, or trading such
24 security, a description of the transaction and the names of
25 the parties thereto, except that where a source of funds is

1 a loan made in the ordinary course of business by a bank,
2 as defined in section 3 (a) (6) of this title, if the person
3 filing such statement so requests, the name of the bank
4 shall not be made available to the public;

5 "(D) if the purpose of the purchases or prospective
6 purchases is to acquire control of the business of the
7 issuer of the securities, any plans or proposals which such
8 persons may have to liquidate such issuer, to sell its
9 assets to or merge it with any other persons, or to make
10 any other major change in its business or corporate
11 structure;

12 "(E) the number of shares of such security which
13 are beneficially owned, and the number of shares con-
14 cerning which there is a right to acquire, directly or
15 indirectly, by (i) such person, and (ii) by each associate
16 of such person, giving the background, identity, resi-
17 dence, and nationality of each such associate;

18 "(F) the number of shares of such security with
19 respect to which any person (other than the beneficial
20 owner) possesses sole or shared authority to exercise
21 the voting rights evidenced by such securities and the
22 background, identity, residence, and nationality of any
23 such person; and

24 "(G) information as to any contracts, arrange-
25 ments, or understandings with any person with respect

1 SEC. 2. Section 4(b) (1) of the Act is further amended
2 by striking out the next to the last sentence thereof and
3 inserting in lieu thereof the following: "Such rules and regu-
4 lations shall implement the provisions of section 3(5) of
5 this Act, and require that any domestic concern which re-
6 ceives any request for information, for participation in agree-
7 ments, or for the taking of any other action as specified in
8 that section report the same to the Secretary of Commerce,
9 together with any other information which the Secretary
10 may require regarding such request and intended compliance
11 therewith, for such action as the President may deem appro-
12 priate to carry out the policy of that section, including the
13 curtailment by any United States concern of exports to, in-
14 vestments in, or any other economic transactions with coun-
15 tries which impose boycotts or engage in restrictive trade
16 practices as specified in that section.".

1 for the account of the United States company (or a sub-
2 sidiary that may not vote the securities) shall be disregarded
3 in determining the percentage of beneficial ownership.
4 "(B) Promptly after the filing of a statement pursuant
5 to this paragraph, the Commission shall transmit a copy of
6 the statement to the President. Notwithstanding the provi-
7 sions of section 24 of this title or any other provision of law,
8 such statement shall not be disclosed to the public.
9 "(C) In exercising its authority under this paragraph,
10 the Commission shall consult and cooperate with the Presi-
11 dent to assure that its actions are in accordance with the
12 President's powers and responsibilities with respect to the
13 activities of foreign investors in the United States.
14 "(2) At any time within thirty days of the date of the
15 filing of a statement pursuant to paragraph (1) of this sub-
16 section, the President is authorized, by order, as he deems
17 appropriate for the national security of the United States,
18 to further the foreign policy of the United States, or to
19 protect the domestic economy of the United States, to pro-
20 hibit the acquisition to which the statement relates. The
21 President, by rule or regulation, shall prescribe the proce-
22 dure applicable to any exercise of the authority vested in
23 him by the preceding sentence. Such rules or regulations
24 shall, as a minimum, provide that prompt notice shall be
25 given of any exercise of such authority and that such notice

1 shall be accompanied by written reasons. The functions
2 exercised by the President under this subsection are excluded
3 from the operation of subchapter II of chapter 5 of title 5,
4 United States Code."

5 SEC. 4. Section 14 of the Securities Exchange Act of
6 1934 (15 U.S.C. 78n) is amended by adding at the end
7 thereof the following new subsection:

8 "(g) (1) (A) Every holder of record of any security of
9 a class described in section 13 (d) (1) of this title holding
10 such security for the account of another person shall file
11 reports with the issuer of such securities in such form, at
12 such times, and containing such information with respect
13 to the identity, residence, and nationality of the beneficial
14 owner of such securities and any person (other than the
15 beneficial owner) possessing sole or shared authority to
16 exercise the voting rights evidenced by such securities, as
17 the Commission, by rule, may prescribe.

18 "(B) Every person for whom a second person is hold-
19 ing any security of a class described in section 13 (d) (1) of
20 this title who, in turn, is holding such securities for the
21 account of a third person shall file reports with such second
22 person in such form, at such times, and containing such
23 information with respect to the identity, residence, and na-
24 tionality of the beneficial owner of such securities and any
25 person (other than the beneficial owner) possessing sole or

1 shared authority to exercise the voting rights evidenced by
2 such securities, as the Commission, by rule, may prescribe.
3 "(2) Every issuer of a security of a class described
4 in section 13(d)(1) of this file shall maintain in such form
5 as the Commission, by rule, may prescribe a reasonably cur-
6 rent list of the identity, residence, and nationality of the
7 beneficial owners of the securities of each such class and the
8 persons (other than the beneficial owners) possessing sole
9 or shared authority to exercise the voting rights evidence
10 by such securities. Every such issuer shall file such list, or
11 any specified part thereof, with the Commission at such times
12 as the Commission, by rule, may prescribe, but in no event
13 shall such list or specified part thereof be filed less frequently
14 than annually or more frequently than quarterly.
15 "(3) In exercising its authority under this subsection,
16 the Commission shall determine (and so state) that its ac-
17 tion is necessary or appropriate in the public interest or for
18 the protection of investors.".
19 SEC. 5. Section 21 of the Securities Exchange Act of
20 1934 (15 U.S.C. 78u) is amended by adding at the end
21 thereof the following new subsections:
22 "(g)(1) The Commission, the Attorney General, a
23 United States company in which a foreign investor has ac-
24 quired or proposes to acquire any equity security, or a holder
25 of record of any equity security of such a United States

1 company, may bring an action in a district court of the
2 United States (or a court of general jurisdiction, however
3 designated, in any place, other than a State, under the juris-
4 diction of the United States) to enjoin such foreign investor
5 from violating, or to enforce compliance by such foreign in-
6 vestor with, the provisions of section 13 (f) of this title and
7 the rules and regulations thereunder. On a showing that the
8 foreign investor has engaged, is engaged, or is about to
9 engage in acts or practices constituting such a violation the
10 court shall grant appropriate relief in the form of temporary
11 or permanent restraining orders and injunctions and orders
12 enforcing compliance. Without limiting the generality of the
13 foregoing, the court, on such terms and subject to such con-
14 ditions as it considers proper, may order (A) the revocation
15 or suspension, or any period specified in the order, of the
16 voting rights evidence by securities of the United States
17 company acquired by the foreign investor in violation of
18 such provisions, and (B) the sale of any securities so
19 acquired.

20 "(2) If any foreign investor against whom an order or
21 injunction entered pursuant to paragraph (1) of this sub-
22 section fails, within such reasonable time as is fixed by the
23 court, to comply with the order or injunction, the court may,
24 by order, vest any securities acquired by such foreign investor

1 in violation of the provisions of section 13 (f) of this title
2 in a trustee named by it who may thereupon, notwithstanding
3 any other provision of law, do all such things and execute
4 all such documents as are necessary to give effect to the
5 order or injunction of the court, and any proceeds of any sale
6 of such securities received by him shall first be applied to
7 payment of his fees and expenses in acting as trustee and
8 thereafter any balance remaining shall be paid by him to such
9 person as would, but for the order vesting such securities in
10 him, have been entitled to receive the same.

11 "(h) For purposes of subsection (e), (f), and (g) of
12 this section, it is unlawful for any person to cause, command,
13 induce, procure, or give substantial assistance to the com-
14 mission of an act or practice constituting a violation of any
15 provision of this title or the rules or regulations thereunder.".

16 SEC. 6. Section 32 of the Securities Exchange Act of
17 1934 (15 U.S.C. 78ff(b)) is amended by inserting im-
18 mediately following the first sentence thereof the following
19 new sentence: "Any foreign investor which fails to file a
20 statement required to be filed under subsection (f) of section
21 13 of this title or any rule or regulation thereunder, shall
22 forfeit to the United States the sum of $1,000 for each an
23 every day such failure to file shall continue.".

94TH CONGRESS
1ST SESSION

S. 425

IN THE SENATE OF THE UNITED STATES

MARCH 3 (legislative day, FEBRUARY 21), 1975

Referred to the Committee on Banking, Housing and Urban Affairs and ordered to be printed

AMENDMENTS

Intended to be proposed by Mr. WILLIAMS (for himself and Mr. BROOKE) to S. 425, a bill to amend the Securities Exchange Act of 1934 to require notification by foreign investors of proposed acquisitions of equity securities of United States companies, to authorize the President to prohibit any such acquisition as appropriate for the national security, to further the foreign policy, or to protect the domestic economy of the United States, to require issuers of registered securities to maintain and file with the Securities and Exchange Commission a list of the names and nationalities of the beneficial owners of their equity securities, and for other purposes, viz:

1 On page 7, line 20, after the period insert the following:
2 "The President shall prohibit any such acquisition, if he
3 determines that any foreign investor on whose behalf such
4 acquisition is to be made or any person controlling any such

Amdt. No. 24

1 foreign investor has, directly or indirectly, within one year
2 of the date of filing such statement, caused or attempted or
3 conspired to cause—

4 "(A) any person (other than a person resident or
5 organized in the country of which such foreign investor
6 is the government or a subdivision, agency, or instru-
7 mentality of the government or in which such foreign
8 investor or a person controlling such foreign investor is
9 resident or organized) not to do business with, to subject
10 to economic loss or injury, or otherwise to discriminate
11 against any United States company, because such United
12 States company or an officer, director, employee, stock-
13 holder, or creditor thereof is or has been, or in order
14 to deter such United States company or any officer,
15 director, employee, stockholder, or creditor thereof from,
16 directly or indirectly, supporting or dealing with (i) any
17 foreign government with which the United States has
18 diplomatic relations, or (ii) any person resident or
19 operating in, or dealing with, any country with whose
20 government the United States has diplomatic relations;
21 or

22 "(B) any United States company with respect to its
23 business in any country (other than a country with
24 which such foreign investor, if such foreign investor is
25 a foreign government, or person controlling such foreign

1 investor, if such person is a foreign government, does
2 not have diplomatic relations) not to do business with,
3 to subject to economic loss or injury, or otherwise to
4 discriminate against any person (other than a person
5 which is, or is controlled by, a foreign government with
6 which such foreign investor, if such foreign investor is
7 a foreign government, or person controlling such foreign
8 investor, if such person is a foreign government, does
9 not have diplomatic relations), because such person or
10 an officer, director, employee, stockholder, or creditor
11 thereof is or has been, or in order to deter such person
12 or any officer, director, employee, stockholder, or credi-
13 tor thereof from, directly or indirectly, supporting or
14 dealing with (i) any foreign government with which
15 the United States has diplomatic relations or (ii) any
16 person resident or operating in, or dealing with, any
17 country with whose government the United States has
18 diplomatic relations.".

19 On page 7, line 23, strike the phrase "the preceding
20 sentence" and insert in lieu thereof the phrase "this para-
21 graph".

22 On page 10, between lines 19 and 20, insert the follow-
23 ing:

24 "(3) If any foreign investor, directly or indirectly,
25 having the beneficial ownership of more than 5 per centum

1 of any class of equity securities of a United States company
2 causes such United States company to engage in any act
3 by reason of which it would be prohibited pursuant to section
4 13 (f) of this title from acquiring, directly or indirectly,
5 the beneficial ownership of more than 5 per centum of any
6 class of equity securities of any other United States company,
7 the Commission, the Attorney General the holder of record
8 of any equity security of such United States company,
9 or any person aggrieved by such act, may bring an action
10 in a district court of the United States (or a court of general
11 jurisdiction, however designated, in any place, other than a
12 State, under the jurisdiction of the United States) to divest
13 the foreign investor of beneficial ownership of equity securi-
14 ties of such United States company. On a showing that the
15 foreign investor has engaged in any such act, the court, by
16 order, shall revoke or suspend, for any period specified in
17 the order, the voting rights evidenced by equity securities
18 of such United States company beneficially owned by such
19 foreign investor and order the sale of all such securities.".
20 On page 10, line 20, strike "(2)" and insert in lieu
21 thereof "(3)".
22 On page 10, line 21, insert after "(1)" the phrase "or
23 (2)".
24 On page 11, following line 1, insert the following:
25 "or the sale of which was ordered pursuant to paragraph
26 (2) of this subsection".

94TH CONGRESS
1ST SESSION

S. 953

IN THE SENATE OF THE UNITED STATES

MARCH 5, 1975

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

A BILL

To amend the Export Administration Act of 1969 to clarify and strengthen the authority of the Secretary of Commerce to take action in the case of restrictive trade practices or boycotts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 SECTION 1. (a) Section 3(5) (A) of the Export Ad-
4 ministration Act of 1969, as amended (the "Act"), is fur-
5 ther amended by inserting immediately after "against" the
6 following: "United States concerns and".
7 (b) Section 3(5) (B) of the Act is further amended
8 by inserting immediately after "against" the following:
9 "United States concerns and".

1 SEC. 2. Section 4 (b) (1) of the Act is further amended
2 by striking out the next to the last sentence thereof and
3 inserting in lieu thereof the following: "Such rules and regu-
4 lations shall implement the provisions of section 3 (5) of
5 this Act, and require that any domestic concern which re-
6 ceives any request for information, for participation in agree-
7 ments, or for the taking of any other action as specified in
8 that section report the same to the Secretary of Commerce,
9 together with any other information which the Secretary
10 may require regarding such request and intended compliance
11 therewith, for such action as the President may deem appro-
12 priate to carry out the policy of that section, including the
13 curtailment by any United States concern of exports to, in-
14 vestments in, or any other economic transactions with coun-
15 tries which impose boycotts or engage in restrictive trade
16 practices as specified in that section.".

94TH CONGRESS
1ST SESSION

S. 995

IN THE SENATE OF THE UNITED STATES

MARCH 6, 1975

Mr. ROTH introduced the following bill; which was read twice and referred to the Committees on Banking, Housing and Urban Affairs, and Commerce

A BILL

To regulate investment by foreign governments and foreign government enterprises in certain United States business enterprises.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. That Act may be cited as the "Foreign
5 Government Investment Control Act of 1975".

6 DEFINITIONS

7 SEC. 2. As used in this Act, the term—
8 (1) "Secretary" means the Secretary of Commerce;
9 (2) "enterprise" means any corporation, partner-
10 ship, trust, joint venture, or other association of entity;

1 (3) "American enterprise" means any enterprise
2 located wholly or substantially in the United States or
3 which is owned or controlled wholly or substantially by
4 individuals who are residents of the United States or by
5 any person owned or controlled by such individuals;
6 (4) "foreign government" means any government
7 of a foreign country or any international agency or other
8 association whose members are governments of a foreign
9 country or any foreign official institution such as foreign
10 central banks or development banks as defined by the
11 Secretary, or any individual acting on behalf of or as an
12 agent for such government; and
13 (5) "foreign government enterprise" means any
14 enterprise or instrumentality which, in the judgment of
15 the Secretary, is wholly or substantially controlled by a
16 foreign government or combination of foreign govern-
17 ments, or any individual acting on behalf of or as an
18 agent for such enterprise.
19 FOREIGN GOVERNMENT INVESTMENT CONTROLS
20 SEC. 3. (a) (1) A foreign government or foreign gov-
21 ernment enterprise may invest in an American enterprise
22 only upon the expiration of sixty days after the Secretary
23 approves such investment pursuant to an application if—
24 (A) (i) the investment involves the purchase of any
25 equity or debt obligation of an American enterprise

whose total consolidated assets are worth more than $100,000,000 and (ii) the acquisition of such equity or debt obligation would result in that foreign government or foreign government enterprise owning more than 1 per centum of the equity or debt obligations of such enterprise, or result in the aggregate ownership by all foreign governments and foreign government enterprises of more than 3 per centum of the equity or debt obligations of such enterprise;

(B) the investment involves the acquisition or control, directly or indirectly, of an American enterprise whose total consolidated assets have a value of more than $10,000,000; or

(C) the investment involves a real estate or property having a fair market value of $4,000,000 or more.

(2) Upon receipt of an application for investment in an American enterprise by a foreign government or foreign government enterprise under paragraph (1), the Secretary shall conduct an inquiry to determine whether the proposed investment is beneficial to the national interests of the United States. In making his determination, the Secretary shall consider as beneficial to the national interests of the United States, investment which provides capital needed for the economic expansion of the United States or net additional employment in the United States but which does not result

1 in control of an American enterprise by a foreign govern-
2 ment or foreign government enterprise or have other con-
3 sequences which the Secretary deems prejudicial to the
4 national interests of the United States. In the course of his
5 inquiry, the Secretary shall seek the opinion of the Secretary
6 of Labor with regard to the impact of the proposed invest-
7 ment on conditions of employment, labor, and equal oppor-
8 tunity in the United States, the opinion of the Secretary of
9 Defense with regard to the impact of the proposed investment
10 upon the national security of the United States, the Secretary
11 of the Treasury with regard to the impact of the proposed
12 investment upon the balance of payments of the United
13 States, and the opinion of the Secretary of State regarding
14 the impact of the investment on the foreign relations of the
15 United States. The Secretary shall also seek the advice of
16 the Governor of the State within which the proposed invest-
17 ment is to take place regarding opinion within that State on
18 the investment. The Secretary shall make such determination
19 prior to the expiration of two hundred and seventy days after
20 the application is submitted. If the Secretary determines that
21 the investment is in the national interests of the United States,
22 he shall immediately transmit a copy of his determination to
23 approve the proposed investment to the Congress.
24 (b) A foreign government or foreign government en-
25 terprise may invest in an American enterprise only upon

1 the expiration of sixty days after it notifies the Secretary of
2 its intention to make such investment if the investment
3 involves—

4 (1) the acquisition of any equity or debt obligation
5 of an American enterprise whose total consolidated assets
6 are worth $100,000,000 or less and the acquisition of
7 such investment would result in that foreign government
8 or foreign government enterprise owning more than 1
9 per centum of the equity or debt obligation of such
10 American enterprise, or result in the aggregate owner-
11 ship by all foreign governments and foreign government
12 enterprises of more than 3 per centum of the equity or
13 debt obligations of such enterprise;

14 (2) the acquisition of ownership or control, directly
15 or indirectly, an American enterprise whose total con-
16 solidated assets have a value of $10,000,000 or less; or

17 (3) the acquisition of real estate or property having
18 a fair market value between $1,000,000 and $4,000,-
19 000;

20 it shall notify the Secretary of its intention to make such
21 investment. The investment may not take place prior to the
22 expiration of sixty days after such notification, during which
23 time the Secretary may review the investment. If the Sec-
24 retary determines that the proposed investment is contrary
25 to the national interests of the United States, he shall trans-

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1 mit a copy of his findings to the Congress and shall inform
2 the foreign government or foreign government enterprise
3 and any American enterprise or other person involved that
4 the investment has been prohibited.

5 (c) No foreign government or foreign government
6 enterprise may hereafter invest in any American enterprise
7 which (1) manufactures sophisticated defense articles for the
8 United States, (2) possesses confidential national defense
9 information of the United States, (3) operates a radio or
10 television station in the United States, (4) publishes a
11 newspaper for sale to the public in the United States, or
12 (5) operates an interstate telephone or telegraph network
13 in the United States.

14 IMPLEMENTATION

15 SEC. 4. The Secretary shall establish such procedures
16 as may be necessary to enforce this Act, and to insure the
17 confidentiality of all matters concerning any investment
18 whi[illegible]ld not otherwise be made available to other parties
19 under law.

20 LIST OF FOREIGN GOVERNMENTS AND FOREIGN
21 GOVERNMENT ENTERPRISES

22 SEC. 5. The Secretary shall make and keep current a
23 list of all foreign governments and foreign government enter-
24 prises which he determines are subject to this Act.

1 PENALTIES

2 SEC. 6. Whoever willfully violates any provision of this
3 Act or fails to comply with any regulation issued under this
4 Act shall be fined not to exceed $10,000.

5 PROHIBITION

6 SEC. 7. It shall be unlawful for any foreign government
7 or foreign government enterprise to exercise any right or
8 interest acquired in violation of or without compliance with
9 any provision of this Act.

10 EXPIRATION

11 SEC. 8. This Act shall expire on June 30, 1980.

DEPARTMENT OF STATE,
Washington, D.C., May 29, 1975.

Hon. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate.

DEAR MR. CHAIRMAN: Pursuant to your request of March 12 for the comments of the Department of State concerning S. 995, the Foreign Government Control Act of 1975, I am enclosing a copy of a statement relating to this bill (as well as to several others) presented to the Senate Subcommittee on Foreign Commerce and Tourism on May 7 by Assistant Secretary of State for Economic and Business Affairs Thomas O. Enders.

I hope that you will call on me if you believe that I can be of further assistance.

Sincerely,

ROBERT J. MCCLOSKEY,
Assistant Secretary
for Congressional Relations.

STATEMENT OF THOMAS O. ENDERS, ASSISTANT SECRETARY OF STATE FOR ECONOMIC AND BUSINESS AFFAIRS BEFORE THE SENATE SUBCOMMITTEE ON FOREIGN COMMERCE

FOREIGN INVESTMENT IN THE UNITED STATES

Mr. Chairman, I appreciate this opportunity to present to your committee the Administration's views on S. 1305, S. 995, and S. 329 relating to foreign investment in the United States. You and the other members of this committee have made an important contribution to the development of U.S. policy in this area. We in the Administration were pleased to be able to work with you toward the enactment of the Foreign Investment Study Act last fall. We expect that our consideration of this new legislation will proceed in the same constructive and cooperative manner.

Since other Administration witnesses are addressing themselves to the technical and domestic economic policy issues raised by these three bills, I will direct my comments primarily to the foreign policy issues which they raise.

It has long been the policy of the United States Government generally to welcome foreign investment in recognition of the benefits which it brings to our economy. At the same time, both the legislative and executive branches of the U.S. Government are aware of the necessity to take whatever measures in the investment field are necessary to protect our national interests, recognizing, however, that such measures may involve costs in terms of our other objectives. Thus, in the past, we have instituted restrictions on foreign investment only in those areas of the economy where it was determined that the national interest required them.

As you know, Mr. Chairman, the Executive Branch recently conducted an extensive review of U.S. policy on inward investment in which we examined the adequacy of existing safeguards in light of, inter alia, the rapid accumulation in the hands of a few oil producing governments of funds available for investment abroad. As was explained by Administration witnesses before the Senate Subcommittee on Securities on March 4, the basic conclusion of our review was to reaffirm the traditional commitment of the U.S. Government to "national treatment" (i.e., treatment no less favorable than that which it accords to its own citizens in like circumstances) for foreign investors. In addition, however, we concluded that we should take the following administrative actions to guard against the potential problems of foreign investment in the United States: (1) establish a new high-level inter-agency body to serve as a focal point within the Executive Branch for insuring that foreign investments in the United States are consistent with our national interests; (2) create a new office to gather, consolidate, and report on information on foreign investment in the United States which is collected by the various agencies of the U.S. Government; and (3) seek assurances from those foreign governments that are capable of making very substantial investments that they will consult with the U.S. Government before making major investments in the United States.

We have now made significant progress in the implementation of this new program. An interagency Committee on Foreign Investment in the United States and an Office of Foreign Investment in the United States are presently being organized. In addition, we have already discussed the inward investment issue with the principal oil producer governments. We have found that they are

understanding of our concerns in this area, and now expect that they will consult with us in advance of any major investments in the United States. Our consultations with Iran concerning its prospective investment in Pan Am will set a useful precedent for these discussions.

I would like to review several advantages of this Administration program. First, it does not represent a departure from traditional policy on inward investment, and hence is unlikely to have the negative effects upon U.S. foreign policy that new legislative restrictions on inward investment might produce. The United States remains a leader in international economic relations. Other nations look to us to prevent a return to the divisive economic nationalism of the 1930s. In the past, the United States has fulfilled this role in part by seeking acceptance of the principle of non-restrictive treatment of foreign investment through an extensive network of bilateral Friendship, Commerce and Navigation (FCN) treaties. In addition, the United States has played a key role in winning international support for the principles of the Code of Liberalization of Capital Movements of the Organization for Economic Cooperation and Development.

This Code and the FCN treaties have contributed to the achievement of a regime of relatively unrestricted movements of capital among the developed nations of the world, a regime under which American investors have made investments in foreign countries totalling more than $100 billion in book value. Today, as we consider new safeguards for our own economy, we must remember that the commitment of other nations to liberalized treatment of foreign investment, in some cases not as strong as our own commitment, may well prove to be all too easily reversible should the United States abandon its role of leadership in this area.

A second advantage of the Administration program is that it provides us with an effective central authority for the formulation and implementation of a coherent investment policy. Particularly important in this regard, the new machinery will act as a vehicle for the compilation and analysis of data on inward investment currently collected by a number of U.S. Government agencies. We anticipate that in performing these functions, the new Office and Committee will be able to correct many of the shortcomings of current data collection programs revealed in the recent CIEP–OMB report. On the other hand, should any significant deficiencies prove intractable using existing powers, the Committee would make recommendations for new administrative or legislative action to deal with them.

Given the advantages which we see in this new Administration program, we would like to give it an opportunity to prove its worth before reaching conclusions concerning the need for new legislation. Therefore, although we share most of the concerns of the sponsors of S. 1303, S. 995, and S. 329, the Department of State cannot support the passage of these bills, at least until we have had the opportunity to assess the effectiveness of the Administration program.

In giving the Department's views of these bills, I will address myself first to S. 995 and then, since they are in many respects quite similar, to S. 1303 and S. 329 together.

S. 995, the Foreign Government Investment Control Act, would impose broad new restrictions upon investment in the United States by foreign governments and government enterprises. It aims to achieve by legislation part of what we are seeking to accomplish through the Administration program. There are two major reasons for our preference for the administrative approach.

First, a mandatory screening requirement of the kind proposed in S. 995 would tend to call into question our commitment to a policy of national treatment for foreign investors. By avoiding mandatory screening in favor of a more flexible approach, we are indicating that although we have concerns about inward investment and are acting upon them, we nevertheless will seek to preserve our overall adherence to the national treatment principle. We believe that the Administration program will provide a satisfactory balance between our need to protect our national interests and our desire to minimize the burdens which we impose on foreign investors.

In addition, it will permit us to welcome acceptable investments by governments in a manner consistent with the spirit of cooperation upon which we are seeking to base our overall relations with those countries.

A second problem of S. 995, related to the first, concerns our treaties of Friendship, Commerce and Navigation. A number of these treaties assure nationals of each of the parties to the treaty of non-discriminatory treatment with respect to the establishment or acquisition of interests in enterprises in the territory of the other party. Nothing in these treaties indicates an intention to treat government investment differently from private investment.

BEST COPY AVAILABLE

S. 995 would derogate from this national treatment principle by subjecting foreign governments to special restrictions not applied to domestic investors or to other, non-governmental foreign investors. The Administration program is designed to maintain the integrity of these treaties, which are of importance to the actions of American investors and businessmen abroad.

In addition to the two general problems just mentioned, I would also mention that the Department of State questions the need for Section 3(c) of S. 995 which identifies areas of the economy in which foreign government investments are to be prohibited. It is not clear why these particular areas were chosen, especially since we already have restrictions on foreign investment from all sources in a number of these sectors.

I will now present the views of the Department of State concerning S. 1303 and S. 329. Since these two bills are primarily designed to restructure and extend existing procedures for gathering data on inward investment, their foreign policy implications are relatively minor and I will make my remarks very brief.

First, the Department of State is concerned that S. 1303 and S. 329 would impose additional reporting requirements where we may in fact already have the information which we need or are capable of getting it under existing reporting requirements. For example, based in part upon the findings of the CIEP-OMB study, we are encouraged by the potential for obtaining information on most foreign investment in the United States through improvement in the Securities and Exchange Commission reporting system. It was for this reason that the Administration last month indicated a desire to examine more closely those provisions of S. 425, the proposed "Foreign Investment Act of 1975," designed to obtain increased disclosure of beneficial ownership, more effective sanctions to ensure such disclosure, and identification of the national origin of foreign shareholders.

Reliance upon the SEC for the collection of data would also have the advantage of avoiding the appearance of discrimination against foreign investors since the SEC collects needed information from both foreign and domestic investors on a non-discriminatory basis. From a foreign policy point of view, we find this approach preferable to that of placing special reporting burdens on foreign investors only.

Under the new Administration program, an Office of Foreign Investment in the United States will be assigned the task of gathering data on inward investment being collected under existing programs. This effort, to be carried out in conjunction with the second stage of the CIEP/OMB study, should pinpoint any serious gaps in the data available to us. Since excessive reporting requirements are costly and may themselves serve as a deterrent to investment, we recommend that new ones not be imposed until the existing ones have been fully evaluated.

My second point relates to Section 5(7) of S. 1303 under which the proposed Administration is called upon to make policy recommendations directly to the Congress, and to Section 7 under which the Secretary of Commerce is authorized to issue guidelines and policy statements with respect to foreign investments.

In view of the fact that the inward investment issue is a broad one involving concerns of many agencies, we feel that responsibility for formulating and making recommendations concerning inward investment policy should not be given to any one Department. Such responsibility would better be lodged with the Commtitee on Foreign Investment in the United States, comprising representatives of the State, Treasury, Defense, and Commerce Departments, and of the Assistant to the President for Economic Affairs (with other agencies participating as appropriate), currently being established under the new Administration program.

Mr. Chairman, although the Administration cannot support passage of this legislation at this time, our opposition is founded less on substantive disagreement with the bills than on a desire to avoid overreacting to an issue which we are hopeful can be handled with the resources already at our disposal. It is reassuring to find that the sponsors of S. 995, S. 1303 and S. 329 all share our commitment to the principle of freedom of international capital movements. In conclusion, I would urge that we seek together to pursue a course of action that will not endanger that commitment.

94TH CONGRESS
1ST SESSION

S. 1303

IN THE SENATE OF THE UNITED STATES

MARCH 21 (legislative day, MARCH 12), 1975

Mr. INOUYE (for himself, Mr. ALLEN, Mr. BAYH, Mr. HUDDLESTON, Mr. METCALF, Mr. PEARSON, and Mr. STONE) introduced the following bill; which was read twice and, by unanimous consent, referred to the Committee on Commerce and, if and when reported, then to the Committee on Banking, Housing and Urban Affairs

A BILL

To regulate the foreign commerce of the United States by providing means to assure full disclosure of significant foreign investment in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Investment Disclosure Act of 1975".

DECLARATION OF POLICY

SEC. 2. (a) The Congress finds and declares that—

(1) Foreign investment in the United States has increased in recent years.

1 (2) Such investment could significantly affect the
2 economy of the United States.
3 (3) Large monetary reserves and capital accumula-
4 tions exist in many oil exporting nations and other for-
5 eign countries and these reserves and accumulations may
6 be invested in this Nation.
7 (4) The potential consequences of foreign invest-
8 ment, particularly on a massive scale, cannot be calcu-
9 lated because the Federal Government lacks sufficient
10 information on foreign investment and its actual or pos-
11 sible effect on the national security, commerce, employ-
12 ment, inflation, and the general welfare.
13 (5) Federal agencies responsible for the collection
14 of data on foreign investment do not maintain adequate
15 programs for the gathering and analysis of sufficient de-
16 tailed data and information on such foreign investment
17 and planned investment and lack sufficient authority to
18 collect information sufficient to enable the Congress to
19 formulate and enact a reasoned and comprehensive pol-
20 icy with respect to such investment.
21 (b) It is therefore the purpose of the Congress in this
22 Act to—
23 (1) require foreign investors and their agents to
24 make public disclosure of their identities and the identi-
25 ties of their principals;

1 (2) discover and disclose the nature and scope of all
2 significant foreign investment in the United States; and
3 (3) direct the Secretary of Commerce to analyze
4 such investments and planned investments and make
5 recommendations with respect to foreign investment
6 policy.
7 (c) Nothing in this Act is intended to restrain or deter
8 foreign investment in the United States or to discriminate
9 against any particular foreign investors.
10 DEFINITIONS
11 SEC. 3. As used in this Act, the term—
12 (1) "Administration" means the Foreign Invest-
13 ment Administration, established by this Act;
14 (2) "foreign investment" means the ownership or
15 control, by ownership of stock or other securities, by con-
16 tractual commitments or otherwise, by any foreign in-
17 vestor, of all or part of a United States company or prop-
18 erty which is located wholly or substantially in the
19 United States;
20 (3) "foreign investor" means—
21 (A) a foreign government, agency, or instru-
22 mentality thereof;
23 (B) an international agency or organization, as
24 defined by the Secretary;

1 (C) a natural person who is not a citizen of the
2 United States;
3 (D) a company other than a United States
4 company;
5 (E) any person who, directly or indirectly, is
6 owned or controlled by or acting as agent or trustee,
7 for one or more such government, agencies, orga-
8 nizations, or persons; or
9 (F) two or more persons acting in concert for
10 the purpose of acquiring, holding, voting, or dispos-
11 ing of securities or for the purpose of acquiring, hold-
12 ing, or disposing of property, at least one of whom
13 is a person described in any of the preceding sub-
14 paragraphs of this paragraph;
15 (4) "person" includes any government or agency
16 or instrumentality thereof;
17 (5) "property" means any real or personal prop-
18 erty and any other thing of value, including the right
19 to acquire or control any real or personal property;
20 (6) "Secretary" means the Secretary of Com-
21 merce, or his delegate;
22 (7) "United States company" means any corpo-
23 ration, syndicate, partnership or other business unit
24 organized in one of the United States, the Canal Zone,

1 the District of Columbia, Guam, Puerto Rico, the Vir-
2 gin Islands, or any other possession of the United States.

3 FOREIGN INVESTMENT ADMINISTRATION

4 SEC. 4. (a) There is established in the Department of
5 Commerce an agency to be known as the Foreign Invest-
6 ment Administration. The Secretary shall carry out the
7 provisions of this Act through the Foreign Investment Ad-
8 ministration and shall supervise the Director of such Ad-
9 ministration.

10 (b) The agency shall be administered and supervised
11 by a Director, who shall be appointed by the President, by
12 and with the advice and consent of the Senate. The Director
13 shall receive compensation at the rate now and hereafter
14 prescribed for offices and positions at level V of the Execu-
15 tive Schedule (5 U.S.C. 5316).

16 (c) The Director shall appoint a Deputy Director who
17 shall serve as Acting Director during any period of absence
18 or incapacity of the Director and who shall carry out any
19 duties delegated or assigned to him by the Director. The
20 Deputy Director shall receive compensation at a rate now
21 and hereafter prescribed for offices and positions at level of
22 GS-18 on the General Schedule (5 U.S.C. 5332).

23 (d) The Director may procure the temporary or inter-
24 mittent services of experts and consultants in accordance
25 with the provisions of section 3109 of title 5, United States

1 Code. Persons so employed shall receive compensation at a
2 rate to be fixed by the agency, but not in excess of the maxi-
3 mum amount payable under such section. While away from
4 his home or regular place of business and engaged in the
5 performance of services for the Administration, any such per-
6 son may be allowed travel expenses, including per diem in
7 lieu of subsistence, as authorized by section 5703 (b) of title
8 5, United States Code, for persons in the Government serv-
9 ices employed intermittently.

10 (e) The Secretary is authorized, after investigation, to
11 transfer the whole or part of the functions of any office sub-
12 ject to his jurisdiction to the Administration, upon the prepa-
13 ration of a reorganization plan for the making of the reorga-
14 nization as to which he has made findings and which he in-
15 cludes in the plan, and upon the submission of such plan to
16 Congress together with a declaration that such reorganiza-
17 tion is necessary or appropriate to further the purpose of this
18 Act: *Provided,* That such reorganization plan shall not be-
19 come effective if either House of Congress within sixty days
20 after the date of transmittal passes a resolution stating in sub-
21 stance that such House does not favor the reorganization
22 plan.

23 ADMINISTRATIVE POWERS

24 SEC. 5. The Administration is authorized—

25 (1) to issue such rules and regulations, in accord-

1 ance with section 553 of title 5, United States Code, as
2 it deems necessary and appropriate to carry out the pro-
3 visions of this Act;
4 (2) to the extent necessary or appropriate to the
5 policy of this Act, to acquire and maintain property
6 (real, personal, or mixed, tangible, or intangible, or any
7 interest herein) by purchase, lease, condemnation, or in
8 any other lawful manner to sell, lease, or otherwise dis-
9 pose of such property in any manner; and to construct,
10 operate, lease, and maintain buildings, facilities, or other
11 improvements on such property;
12 (3) to accept gifts or donations or services, money,
13 or property in any form;
14 (4) to enter into contracts or other arrangements
15 or modifications thereof, with any person, any depart-
16 ment or agency of the United States, and any State gov-
17 ernment or political subdivision thereof;
18 (5) to make advance, progress, or other payments
19 which the Director deems necessary or appropriate to
20 further the policy of this Act;
21 (6) to hold such hearings and to conduct investiga-
22 tions at such times and places as the Director determines
23 to be appropriate;
24 (7) to propose, in the discretion of the Director,
25 additional programs in furtherance of the policy of this

1 Act to the Committee on Commerce of the Senate and
2 the Committee on Interstate and Foreign Commerce of
3 the House of Representatives without prior submission,
4 review, or clearance of any other agency or officer of
5 the United States; and
6 (8) to take such other action as may be necessary
7 to carry out the provisions of this Act.

8 FOREIGN INVESTMENT DISCLOSURE

9 SEC. 6. (a) The Secretary may require any person sub-
10 ject to the jurisdiction of the United States to maintain a full
11 and accurate record of any information (including journals
12 or other books of original entry, minute books, stock transfer
13 records, list of shareholders, or financial statements) germane
14 to the purpose of this Act, and to furnish under oath, in the
15 form of a report or otherwise, such information as the Secre-
16 tary may determine may be necessary to enable him to carry
17 out his responsibilities under this Act. The information which
18 may be required shall not be limited to holdings or transac-
19 tion but shall include any information necessary to the Sec-
20 retary's functions under this Act in the possession of such
21 person, from whatever source derived, concerning foreign
22 direct investment and foreign portfolio investment by any
23 person whatsoever.
24 (b) (1) The Secretary shall, by regulation, order, or
25 otherwise, establish procedures which require the mainte-

1 nance of records and the submission of reports by foreign
2 investors, and by such other persons as he determines to be
3 appropriate with respect to—

4 (A) any foreign investment in a United States com-
5 pany whose equity security is publicly traded on a na-
6 tional securities exchange or otherwise in the United
7 States if, after such investment, the foreign investor owns
8 or controls, directly or indirectly as the beneficial owner,
9 5 per centum or more of the equity securities of such
10 company, except that the Secretary may by regulation
11 establish a lower percentage of ownership requirement
12 consistent with the purposes of this Act—

13 (i) if he has reason to believe that two or more
14 foreign investors have acted in concert, or may act
15 in concert in the future, to acquire an aggregate of 5
16 per centum or more of such companies; or

17 (ii) in other circumstances where the impor-
18 tance of an industry, or the highly dispersed owner-
19 ship of a given industry or company makes it ad-
20 visable to establish a lower percentage requirement
21 in order to fulfill the objectives of this Act.

22 (B) any foreign investment in the United States
23 company whose stock is not publicly traded on a na-
24 tional securities exchange or otherwise in the United
25 States, if—

1 (i) after such investment 10 per centum or
2 more of the equity securities of such company is
3 owned or controlled, directly or indirectly as the
4 beneficial owner, by the foreign investor; and
5 (ii) at the time of such investment the total
6 assets of such company have a value of $3,000,000
7 or more.
8 (C) any foreign investment in the United States,
9 including but not limited to loans, long-term contracts,
10 and the ownership of property or interests in property
11 which the Secretary determines, on the basis of objective
12 economic and other criteria, shall be subject to the rec-
13 ordkeeping and reporting requirements under this sub-
14 section, if the substantial effect of such investment is—
15 (i) to give or could be to give the foreign in-
16 vestor a predominant influence on the management
17 or operation of a United States company described
18 in paragraph (A) or (B) of this subsection; or
19 (ii) to result in the ownership or control by
20 a foreign investor of more than $1,000,000 in
21 property in the United States except that the Secre-
22 tary may establish a lower figure if he determines
23 that a lower figure is necessary to identify significant
24 foreign investments in the United States.
25 (D) any foreign investment in the United States in

1 real property with a fair market value in excess of
2 $50,000, except that the Secretary may waive this
3 requirement if, after review, he determines that such
4 property is intended solely for personal use and contains
5 no exploitable natural resources and if such investment
6 does not exceed $250,000;
7 (E) any foreign investment in United States Gov-
8 ernment or agency securities, notes, certificates of de-
9 posit, or other marketable instruments exceeding
10 $1,000,000 per issue.
11 (2) The records and reports required under this section
12 shall include but not be limited to—
13 (A) the name or names of the foreign investors
14 involved;
15 (B) the nationality or citizenship and residence
16 of the foreign investor or investors;
17 (C) the country or countries with which any agency
18 or other organization which is a foreign investor is
19 affiliated or organized;
20 (D) the extent of the ownership or control which
21 is exercisable by such foreign investor, including—
22 (i) the details of any loan agreement, long-
23 term contract, or sale of assets; and
24 (ii) the number of shares beneficially owned,
25 including the number of shares to which there is a

1 right to acquire, directly or indirectly, by such for-
2 eign investor and by each member of the group
3 of such investors;
4 (3) Any report required under this section with respect
5 to an acquisition made after enactment of this Act shall be
6 submitted not later than ten days following the date of the
7 acquisition. Reports required under this section with respect
8 to existing foreign investments in the United States shall
9 be submitted to the Administration not later than ninety
10 days following enactment of this Act.
11 (c) The Secretary is further authorized to issue such
12 rules and regulations as he deems appropriate in accordance
13 with the purpose of this Act to require any United States
14 company which knows or has reason to know of a foreign
15 investor in that company qualifying under subsection (b)
16 of this section to report such investment to the
17 Administration.
18 (d) The Secretary shall publish a quarterly report on
19 the nature and scope of foreign investment in the United
20 States during the quarter covered by the report. Such re-
21 port shall include, but not be limited to, a listing of trans-
22 actions whose disclosure is required by this Act, the names
23 of United States companies in which foreign investments
24 covered by this Act have been made and the extent of such
25 investments, the Secretary's assessment of any significant

1 trends, on an industry-by-industry basis and in the aggre-
2 gate, of foreign investment in the United States during such
3 quarter, and such other information he deems appropriate,
4 but it shall not include any information whose disclosure
5 would cause competitive injury to the foreign investor or
6 the United States company. The first report shall be due
7 ninety days after enactment of this Act and shall be issued
8 quarterly thereafter.

9 (e) The Secretary shall issue an annual report to the
10 Congress no later than ninety days after the end of each
11 year on foreign investment in the United States. Such re-
12 port shall include, but not be limited to, the nature and
13 scope of foreign investment in the United States during
14 the previous year; the industries and economic sectors in
15 which significant foreign investment occurred; a list of
16 major United States companies in which significant foreign
17 investment occurred; an identification of the geographical
18 regions, to the extent practicable, where significant foreign
19 investment was made; an analysis of the economic impact
20 of foreign investment in the United States during the pre-
21 vious year, including the effects of such investment on the
22 United States balance of payments, balance of trade, em-
23 ployment, and economic competitiveness; a summary of
24 significant actions taken by the United States Government
25 to improve and consolidate programs, rules, and regula-

1 tions relating to foreign investment in the United States; a
2 list of policy changes or recommendations issued by the
3 Secretary; and such other factors as the Secretary deems
4 relevant and appropriate.

5 GUIDELINES

6 SEC. 7. The Secretary is authorized, after such hear-
7 ings and consultations with other agencies and individuals
8 as he deems necessary and appropriate, to issue periodically
9 statements pertaining to United States policies on foreign
10 investments in the United States companies and property.
11 Such statements shall contain recommendations and guide-
12 lines on foreign investments in United States companies or
13 industries which are determined to be important for reasons
14 of national security, foreign policy, or economic security.
15 Such statements shall be printed in the Federal Register
16 and be made available for distribution through the
17 Administration.

18 USE OF INFORMATION

19 SEC. 8. (a). The Administration may secure from any
20 agency of the United States any information relating to for-
21 eign investment in the United States necessary to enable it
22 to carry out its duties under this Act. Upon request of the
23 Director, each such department or agency is authorized to
24 furnish such information to the Administration on a reimburs-
25 able basis or otherwise. The Administration may also supply

1 information obtained under this section to other Federal
2 agencies and to foreign governments as deemed appropriate
3 by the Director except as otherwise provided in this Act.
4 (b) The provisions of section 1905 of title 18, United
5 States Code, shall apply to the Administration, its officers
6 and employees, with respect to information obtained under
7 this section or in any other manner. The Administration shall
8 not release, without written permission of the person to whom
9 it relates, any information described in section 552 (b) of
10 title 5, United States Code. In addition to the Secretary, the
11 only individuals who may have access to information ob-
12 tained under this Act but not required to be published are
13 those sworn employees, including consultants, of the Depart-
14 ment of Commerce designated by the Secretary.
15 (c) Except for a proceeding under section 9 (b) of this
16 Act, no report or constituent part thereof may be produced
17 for any Federal judicial or administrative proceeding. No
18 agency of the United States or employee thereof may compel
19 the Secretary or the Director or any person which maintained
20 or furnished any report under section 6 (a) or 6 (b) to submit
21 any such report or constituent part thereof to that agency
22 or any other agency of the United States.
23 (d) Nothing in this Act shall be construed to require
24 or to authorize the Secretary to publish or make available
25 to any other person or organization in any manner except

1 as herein authorized information which, if disclosed, would
2 encourage speculation or cause competitive injury to the for-
3 eign investor or United States company.

4 ENFORCEMENT

5 SEC. 9. (a) Whoever willfully fails to furnish any
6 information required pursuant to the authority of this Act,
7 whether required to be furnished in the form of a report or
8 otherwise, or to comply with any rule, regulation, order, or
9 instruction promulgated pursuant to the authority of this
10 Act may be assessed a civil penalty not exceeding $10,000
11 for each infraction on a proceeding brought under subsection
12 (b) of this section.

13 (b) Whenever it appears to the Secretary that any
14 person has failed to furnish any information required pur-
15 suant to the provisions of this Act, whether required to be
16 furnished in the form of a report or otherwise, or has failed
17 to comply with any rule, regulation, order, or instruction
18 promulgated pursuant to the authority of this Act, he may
19 in his discretion bring an action, in the proper district court
20 of the United States or the proper United States court of
21 any territory or other place subject to the jurisdiction of the
22 United States, seeking a mandatory injunction commanding
23 such person to comply with such rule, regulation, order, or
24 instruction, and upon a proper showing a permanent or
25 temporary injunction or restraining order shall be granted

1 without bond, and such person shall also be subject to the
2 civil penalty provided in subsection (a) of this section.
3 (c) In any case in which the Secretary determines that
4 any foreign investor has made an investment subject to the
5 requirements of section 6 (b) and that such person has failed
6 to comply with the provisions of such section, after such
7 notice and opportunity for hearing as he determines to be
8 appropriate, he may bring an action in the proper United
9 States district court seeking the suspension of any and all
10 voting rights of the securities until such time as the foreign
11 investor or his agent complies with the provisions of this
12 Act or such securities are sold. If the court determines that
13 the company's financial condition requires the exercise of
14 voting rights, it may authorize the Secretary to exercise
15 such rights. In the case of loan or long-term contractual
16 agreements, the Secretary may bring an action in the proper
17 United States district court to prohibit the exercise of any
18 provision of such loan agreement or contract with respect
19 to management or operational rights until the foreign in-
20 vestor or his agent complies with the provisions of this Act
21 or until such loan or contract agreement terminates.
22 (d) Whoever willfully fails to submit any information
23 required pursuant to this Act, whether required to be fur-
24 nished in the form of a report or otherwise, or willfully
25 violates any rule, regulation, order, or instruction promul-

1 gated pursuant to the authority of this Act shall, upon
2 conviction be fined not more than $10,000 or, if a natural
3 person, may be imprisoned for not more than one year or
4 both, and any officer, director, or agent of any corporation
5 who knowingly participates in such violation may be pun-
6 ished by a like fine, imprisonment, or both.

7 (e) The Secretary or his duly authorized agent shall
8 have authority, for any purpose related to this Act, to sign
9 and issue subpenas for the attendance and testimony of wit-
10 nesses and the production of relevant books, papers, and
11 other documents, and to administer oaths. Witnesses sum-
12 moned under the provisions of this section shall be paid the
13 same fees and mileage as are paid to witnesses in the courts
14 of the United States. In case of refusal to obey a subpena
15 served upon any person under the provisions of this section,
16 the Secretary or his delegate, may request the Attorney
17 General to seek the aid of the United States district court for
18 any district in which such person is found to compel that
19 person, after notice, to appear and give testimony, or to
20 appear and produce the documents before the agency.

21 AUTHORIZATION FOR APPROPRIATION

22 SEC. 10. There is authorized to be appropriated sums
23 as may be necessary to carry out the provisions of this Act.

BELVEDERE PRODUCTS, INC.,
Belvidere, Ill., April 15, 1975.

Senator ADLAI E. STEVENSON,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR STEVENSON: Attached is a letter which I received from the League of Arab States. Recently we discovered that we were on a list boycotting Belvedere Products from doing business with Arab countries and, of course, there is no current reason. Originally we had been a subsidiary of Revlon and so, sort of to find out what the problem was, I wrote and asked how we got off. I thought you would be interested in reading the seven points, and particularly the last point, indicating that they need 25 copies translated to Arabic.

I think this is real ridiculous and I hope you do also. Is there another government body, a local one to see, or whatever that might make this much simpler?

I would appreciate your recommendation.

Yours very truly,

TED COWEN, *President.*

LEAGUE OF ARAB STATES,
Damascus, S. A. R., March 21, 1975.

BELVEDERE PRODUCTS, INC.,
725 Columbia Avenue, Belvidere, Ill.

GENTLEMEN: We have the honour to acknowledge receipt of your letter dated March 10, 1975 whereby you inquire about the reason for putting the name of your company on the list of firms banned in the Arab countries and wish to thank you for your communication.

In this regard, we should advise that dealings with your company in the Arab countries were banned since 1966 because it is a subsidiary of the American company Revlon, Inc. which is banned in all countries of the Arab world. However, in the light of your statement that Revlon is no longer participating to the ownership of your company which became independent from Revlon after its purchase by a group of employees, the Arab Boycott Authorities will be pleased to consider removing the ban imposed on your company and giving it the chance to resume its business relations with the vast market of the Arab countries, if you will arrange to present the following documents:

1. An official copy of the Articles of Association of your company and any amendments made thereto.
2. A document extracted from the records of your company showing the total number of its share capital at the present time and the names and nationalities of natural and/or corporate persons owning the said shares now.
3. A copy of the Agreement/s under which the Revlon, Inc. sold your company Belvedere Products, Inc. to the purchasers.
4. Bankers' documentation evidencing that Revlon actually received the consideration for selling Belvedere Products.
5. A statement showing the names and nationalities of the members of your company's Board of Directors prior to its sale by Revlon as well as after the sale. You will also give the names of the parties represented by the present members of the Board.
6. A document showing whether your company has any agreement with Revlon for manufacturing certain products of Revlon's products, for using any names or trademarks of Revlon or any of its subsidiaries or for acquiring technical consultation or know-how from any of the Revlon companies.
7. A declaration showing the nature of your relations and those of your subsidiary companies with Israel in the light of the following questions:

Do you or any of your subsidiaries:

(*a*) Have now or ever had main or branch factories or assembly plants in Israel?

(*b*) Have or ever had in Israel general offices for regional or international operations?

(*c*) Grant or ever granted the right of using your names, trademarks, manufacturing licenses, patents rights etc., to Israeli persons or firms?

(*d*) Participate or own shares, now or in the past, in Israeli firms or businesses outside or inside Israel?

(*e*) Render or ever rendered any technological assistance to any Israeli firm or business?

(*f*) Represent or ever represented any Israeli firm or business in Israel or abroad?

(*g*) Please give the names and nationalities of all companies into which you own shares or with which you are associated as well as the proportion of your shareholding in each of them.

We should draw your kind attention to the fact that all the above requested documents should be duly certified by your chamber of commerce or industry, or executed before a notary public and then authenticated by the closest consulate or diplomatic mission of any Arab country. Moreover, the English legalised originals of such documents should be accompanied by 25 copies of the Arabic translation of each of them.

We remain,

Very truly yours,

MOHAMMED MAHMOUD MAHGOUB,
Commissioner General.

Senator STEVENSON. The next witness is Gerald L. Parsky, Assistant Secretary of Treasury for Trade, Energy, and Financial Resources Policy Coordination.

Thank you, Mr. Parsky, for joining us this morning.

As I indicated to Mr. Tabor, you will be welcome to condense and I will enter into the record if you prefer.

STATEMENT OF GERALD L. PARSKY, ASSISTANT SECRETARY, TRADE, ENERGY, AND FINANCIAL RESOURCES POLICY COORDINATION, DEPARTMENT OF TREASURY

Mr. PARSKY. Mr. Chairman, I would like to do that if I could. I noted you have asked a number of questions already of Mr. Tabor, and he has been able to express the administration position on a number of issues.

I would like to go through certain points in my testimony, but I would appreciate it if you would submit it in full for the record.

Senator STEVENSON. The full statement will be entered into the record.

Mr. PARSKY. Let me begin, if I could, Mr. Chairman, by offering some general observations about the policy, I think, that we should be pursuing with respect to foreign investment in this country, the Arab boycott and the items of legislature.

First, we believe this Government should maintain its commitment to free and open international capital markets, imposing limitations only in narrowly defined circumstances where essential national interests are involved.

Second, we do not believe the fact or the amount of the recent accumulations of wealth in certain oil-producing countries warrants a deviation from this policy.

Third, we do not believe that the answer to the Arab economic boycott lies in additional legislation authorizing a response in kind by this Government.

And, fourth, with regard to foreign investment in the United States, we believe existing laws are adequate to combat discrimination against U.S. nationals on religious, ethnic or other grounds. We are, however, reviewing the scope of present authority in this area and will recommend new, reinforcing legislation if this is necessary.

I have divided the testimony into two parts, the first to discuss issues related to foreign investment, and then the second to treat

the Arab boycott question, specifically in the context of the proposed legislation.

Our policy with respect to foreign investment is based on the belief that free market forces will direct worldwide capital flows in the most productive way and that such an open policy toward foreign investment will result in direct benefits to our economy.

I go through a number of these benefits in my text, Mr. Chairman.

First, maintenance of our open policy toward foreign capital flows gives the U.S. firm maximum flexibility in seeking needed capital funds.

Second, foreign direct investors have contributed substantially to the competitiveness and efficiency of our national economy.

Third, as this subcommittee is particularly aware, we are by far the largest foreign investor in the world. The book value of our direct investments alone is well over $100 billion; some six times greater than direct investments in this country.

Finally, a fourth, more subtle reason for caution is the leadership role we play in the world economic picture. We need only recall the experience of the 1930's, when the willingness of the United States to adopt restrictive trade practices resulted in retaliatory conduct by other nations and helped turn a recession into a full-fledged world depression.

As I mentioned, Mr. Chairman, each of those points I raised are enumerated in some detail in the text of the testimony.

This leadership role may have been a factor in the decisions of other industrialized countries to refuse to respond to OPEC accumulations with investment restrictions.

In many of these countries, there were fears about the possible harmful effects of substantial investments by the oil-producer countries. These countries have much smaller economies and financial markets than the United States and thus have less capacity to absorb sizable foreign investments. Nevertheless, there is general agreement that the industrialized countries should maintain the current degree of freedom for international capital movements.

It is important to recognize that while the existing foreign investment policies of the industrialized countries range from the very liberal to the quite restrictive, I think it is noteworthy that a general move toward new restrictions has not taken place.

Since the sharp rise in the price of oil, no industrialized nation has indicated an intention to apply discriminatory treatment to foreign direct investment from the oil-producing states.

And no country plans to give special incentives to such direct investments, recognizing that if this were to become the policy of some countries, it could lead to distortions in capital flows and undesirable competition between the industrialized countries for OPEC funds to the net detriment of all.

I firmly believe that this policy, consistently applied throughout the world, will best serve the cause of international economic and political well-being. And, after careful review, we can state that there is nothing in the conduct of the OPEC investors which should lead us to deviate from such a policy.

Contrary to some popular expectations, there has not been a massive influx of money, nor has there been increased takeover activity by

investors from the oil-producer nations. Instead, the United States has been receiving a relatively modest share of the investable funds accumulated by these countries. In 1974, less than $1 billion of the oil producers' $60 billion investable surplus was invested in corporate securities, real estate and other private sector investments. Even when passive investments in U.S. Government securities and commercial bank deposits are included, our share of the worldwide total was less than 20 percent.

Flows this year have slowed substantially, which has been the result of smaller surpluses being accumulated by the producers, and there has been a significant reduction of the proportion of these funds being placed in the United States.

Through the first half of the year, investments in the United States by the oil-producing nations totaled about $2¼ billion, only about 9 percent of the estimated $24 billion surplus accumulated by the oil producers during this period.

This 9 percent, as I said, is in contrast to the approximately 20 percent we received last year.

An increasing proportion of these funds is being placed in longer term investments, including bank time deposits, government bonds, and corporate bonds and equities. This reflects the increasing economic sophistication of the oil producers and their recognition that their long-term interests are, in a large part, dependent on the economic strength of the industrialized world.

It, of course, also reflects the recent improvements in the relative yield of long-term investments as compared to short term.

Despite this longer term interest, I would be very surprised if as much as $3 billion of OPEC funds were to be invested in what we call long-term instruments in the private, corporate and real estate sectors in 1975.

This figure, which includes investments in a broad variety of assets, is less than 2 percent of the 1973 transaction volume on the New York Stock Exchange alone. It would represent barely 23 percent of the foreign purchases of U.S. securities in 1973, which were nearly $13 billion. Our economy certainly is not being overwhelmed by OPEC funds.

A highly significant development is the decline in OPEC surpluses as a whole. This year we anticipate the total OPEC surplus will be on the order of $45 billion, a 25-percent reduction from last year. This sharp reduction is due in large part to a reduction in the demand for OPEC oil; 30 percent of OPEC available capacity has been closed down to maintain current oil price levels.

Another important factor reducing the surplus is the strong growth in OPEC imports of goods and services. The OPEC countries may increase their import volumes some 30 to 35 percent this year on top of nearly a 40-percent increase in 1974.

We now expect the cumulative surplus to peak somewhere in the range of $175 billion to $250 billion in 1974 dollars far below the scare figures of early this year.

While it is impossible to predict accurately what portion of future surpluses will be channeled into direct investments in U.S. industry, it is reasonable to expect that the proportion will be small. The producers

will continue to place the majority of their funds in portfolio investments and various government-to-government transactions.

Even if we agree that the amount of funds OPEC will have available for investment does not warrant a change in policy, it is still important, we feel, to consider the policies these countries are pursuing with respect to the funds that are available.

Although the approaches to investment differ among the OPEC countries, each emphasizes return on investment. These countries have neither the desire to control nor the manpower to manage companies in the United States. Instead, we can expect them to act like our domestic institutions, widely diversifying their portfolios in a manner designed to yield the best long-term return.

As a practical matter, only Kuwait, the Gulf States, and Saudi Arabia will accumulate far more in revenues than they can hope to put to use domestically. The Kuwaitis are particularly sophisticated in the field of foreign investment, and they are exploring the entire spectrum of profitable long-term investment opportunities. They will be seeking to acquire assets that are at least no less valuable, in their view, than oil in the ground. They have told me that they do want to participate in our equity markets, because they believe they provide opportunity for long-term growth.

They have little interest, however, in obtaining controlling interests in existing firms. The other Gulf States are likely to follow investment policies quite similar to those of Kuwait.

In my discussions with the financial leaders in Abu Dhabi, they expressed an interest in real estate as well. They indicated that they would invest up to 15 percent of available funds in the real estate sector.

I would point out with respect to Abu Dhabi, they don't anticipate any surplus funds being available in 1975, as a result of substantial aid commitments but, again, the desire is for safe, long-term investment and not control.

Saudi Arabia, the country that will have the largest surpluses, has developed an investment strategy which emphasizes stability as reflected in requiring a steady pattern of dividend payments—growth—as reflected in requiring a steady pattern of earnings increases and diversification. They have been most conservative in their investment policy in the past and I believe they will continue to be. They too are beginning to look more to equity investment, but I would be surprised based on my discussions to see the Saudi Arabian Government invest more than 5 percent in any particular company.

Iran's foreign investment policies are strongly influenced by its internal development needs. Because of their capacity to develop their own country, Iran will not have a significant amount of surplus funds available for long-term investments abroad. In fact, Iran will most likely be a net borrower of funds within a year. The long term investments it does make will be concentrated in companies which can help Iran expand its domestic industrial base by providing it with access to foreign products, increased technology, manpower skills, and resources of a portfolio nature. I do not believe Iran will be interested in investing in real estate or highly speculative ventures.

The remaining OPEC countries are likely to concentrate on liquid, short-term investments. Few long term direct foreign investments by these countries are likely.

All of these countries realize that the investment decisions they make now are their insurance for the future. Thus, they will seek secure, sound investment opportunities. A recent example of such an investment is the purchase by Saudi Arabia of a $100 million note of American Telephone and Telegraph Co., which will not result in control of, or any voice in A.T. & T. activities.

Further, it's interesting to note that the company chosen for the investment is subject to extensive State and Federal regulation. To me this provides a good illustration of a responsible investment based on long-term financial objectives. It's the kind of approach that I believe will dominate the investments of these countries in the months ahead.

Despite the fact that we see no prospect that the major OPEC investors will seek to obtain control over sectors of our economy, it is still important to make sure that existing laws and regulations provide adequate safeguards against undesirable activity by foreign investors The administration undertook such a review earlier this year. We concluded that there was no need for further legislation in this area because safeguards in existing law are adequate to meet forseeable potential problems.

I believe, Mr. Chairman, that in my statement I outlined a number of the laws that are currently in effect and that we feel do adequately provide safeguards. They are broken down into various categories, those which restrict investment in certain sectors, those which prevent abuse, and I also mentioned the fact that every foreign investment is subject to the same laws and regulatory constraints which control U.S. business. I think it is important to focus on these. I will leave them for the record in terms of all of the laws mentioned.

I also might mention that I have prepared and would like to submit for the record a detailed report on all U.S. laws and regulations which are of particular relevance to foreign investment in the United States and, if you will permit, I would submit that for the record.

Senator STEVENSON. It will be entered into the record.

Mr. PARSKY. Along with confirming the adequacy of existing safeguards, the administration's review reaffirmed the traditional foreign investment policy of our Government and concluded that no additional limitations on investment were warranted. At the same time, however, we did decide that it would be desirable to take several administrative actions to supplement present arrangements.

First, the President has established a continuing, high level, interagency Committee on Foreign Investment in the United States to serve as the focal point within the executive branch for coordinating foreign investment policy and to address specific foreign investment issues.

Second, the Department of Commerce has created a new office of Foreign Investment, which will centralize and improve the gathering of available information on foreign investment and its dissemination.

Third, we have advised all foreign governments that the United States will expect any foreign government contemplating a major direct investment in the United States to seek advance consultations with us on the prospective investment.

I personally have discussed this policy with the major potential governmental investors in the Middle East and found a broad acceptance of the concept as long as it applied to all governments on a nondiscriminatory basis. The response by these governments was varying, some being willing to have a much more formalized government-to-government mechanism than others; but, on general, I w[illegible] say there was broad acceptance of the concept.

To some extent such consultations had already been t[illegible]ng place. Iran, for instance, did discuss their potential purchase of an interest in Pan American. Recently, we learned of a potential joint venture by the Government of Romania and the Island Creek Coal Co. in a coal mine. We have contacted the Romanian Government and they will be consulting with us on this potential investment.

This process of consultations is, we believe far preferable to the legislative proposals for formal screening or prenotification mechanisms, such as the ones contained in S. 425. Our approach will be much more selective, involving only those few major direct investments that may raise important public policy issues. The important thing to emphasize is that our interest is not to raise any new barriers to foreign investments but to provide a mechanism by which a foreign government can learn of the U.S. Government's views on a prospective major direct investment before it is undertaken. Therefore, the process will minimize the possibility of misunderstandings or future investment disputes. Such consultations will thus prove beneficial to the prospective investors as well as to the United States.

With respect to the other investment aspects of S. 425, I would like to reiterate the views that former Under Secretary Jack F. Bennett presented to the Subcommittee on Securities in March. Our overall conclusion was that new legislation directed to foreign investment reporting and control would not provide any significant additional safeguards, but would in practice be likely to deter a substantial amount of beneficial investment in the United States. Moreover, these provisions would, if broadly implemented, violate a number of existing Treaties of Friendship, Commerce, and Navigation and other international agreements.

Insofar as S. 425 is designed to improve disclosure of beneficial ownership of U.S. corporations, the administration generally supports this objective. However, I will say that we would oppose any provision which discriminates in this regard against foreign investors. We have been working with the Securities and Exchange Commission (SEC) in this area, and I understand Chairman Garrett of the SEC will address this issue in considerable detail.

In our negotiations with foreign governments we have consistently asked that U.S. firms operating in their countries be accorded equal treatment. If the United States should now introduce discriminatory provisions, we can expect retaliation in the form of discriminatory restrictions on U.S. investments in foreign countries.

Let me now turn to S. 953 and the subject of the Arab boycott. S. 953 would amend the provisions of the Export Administration Act to broaden the reporting requirements of the act, authorize the Secetary of Commerce to require firms to supply additional information including intended compliance, and give the President express authority to order "the curtailment by any U.S. concern of exports to,

investments in, or any other economic transactions with countries which impose boycotts or engage in restrictive trade practices."

Mr. Chairman, you have made clear that this bill has been proposed primarily with the current Arab economic boycott of Israel in mind. The position of the Treasury Department on the Arab boycott and on religious and other discrimination against Americans has been expressed in detail in testimonies I and other Treasury officials have given before several Senate and House Committees. My testimony on March 13, 1975, before the Subcommittee on International Trade and Commerce of the House Committee on Foreign Affairs treats the subject in extension depth and I would like to submit a copy of that statement for the record.

Senator STEVENSON. That will be entered in the record. (See p.104.)

Mr. PARSKY. Stated most simply, we strongly oppose the boycott. We have, and will continue to carry out, in a manner consistent with laws and policies of the United States, the policy set forth in the Export Administration Act to oppose any restrictive trade practices or boycotts and encourage U.S. firms to refuse to act in furtherance or support of such restrictive trade practices or boycotts. The Department of Commerce has taken steps to insure enforcement of the reporting requirements of the Export Administration Act. It has sent a circular to U.S. firms engaged in export activities drawing their attention to the requirement of the Export Administration Act, and Secretary Tabor outlined a number of other activities Commerce has undertaken.

Perhaps more importantly, we are continuing our efforts to demonstrate to Arab countries the importance to their own development efforts of unfettered trade and economic relations with all U.S. firms. We believe this process will help create the conditions which will enable even more U.S. firms to maintain commercial ties with both Israel and the Arab world.

Further, with respect to discrimination against Americans based on religious, ethnic or other grounds, the President has declared in the strongest possible terms his determination to prevent such practices. We will not permit others to impose such discrimination upon our society. Department of Justice representatives have recently testified before the House Committee of the Judiciary on the broad range of actions which can be taken under current laws to prevent discrimination of this type and the Comptroller of the Currency has issued a directive to all national banks warning against discriminatory practices and noting that compliance will be assured by means of regular bank examinations.

In addition, the administration is in the process of reexamining our legal and other means in this area of religious, ethnic or other discrimination. An interdepartmental study is being conducted to determine the adequacy of existing U.S. laws and what additional steps, if any, should be taken by the Government in response.

Turning to the specific provisions of S. 953, the broader reporting requirements prescribed therein would present no problem to the Treasury Department, and we do not oppose them. The troublesome aspect of the bill in our mind is the provision for action against boycotting countries, which although stated in broad discretionary terms would specifically authorize our curtailment by any U.S. concern of

exports to or other types of economic transactions with countries imposing boycotts.

Although, as a technical matter, I realize that the discretionary authority need not be exercised by the President, I believe that this legislation raises important issues that must be addressed before we move in this direction. First of all, we believe that the retaliatory provisions of the bill would not alleviate the Arab boycott, but instead would risk aggravating it.

The policy of the Arab States will not be affected positively by the threat of action by the United States as proposed in S. 953. Rather, a possible action by the United States of curtailing exports or other transactions by American firms complying with the boycott would in most cases merely cause the Arab States to seek other sources of supply, thus adversely affecting our own economic interests. Such occurrence would damage U.S. interests, both here and in the whole Middle East area.

Moreover, the bill would inject an element of uncertainty into existing U.S. business relations with the Arab world, since the President could at any time act to prohibit exports and other economic transactions with any of the Arab countries.

For these reasons, it would place us at a competitive disadvantage potentially vis-a-vis the industrialized countries of Europe and Asia which actively compete with us for export sales and other transactions in the expanding Middle East market. At a time of gradual economic recovery and continuing high unemployment in the United States, it would not be advisable to take action which would fail to achieve its proclaimed objective and which could have adverse effects on our economy.

The broad authority given to the President to take action including curtailment by a U.S. concern of exports to, investments in, and other economic transactions with Arab countries also raises a number of issues affecting international trade and investment policies as a whole. We should be very cautious in taking action which would undermine our traditional policies of a free and open market for trade and investment, both in the United States and in foreign countries.

Finally, it should be underscored that the boycott arose out of the Arab-Israeli conflict, and continues to be viewed as part of that conflict. We believe it can best be resolved through a peaceful settlement in the Middle East, and not by imposing or threatening to impose restrictions on investment or on severing economic ties.

We strongly oppose the so-called "Boycott amendment" to S. 425 for many of the same reasons. Although I shall not discuss this aspect of S. 425 in detail—instead referring the subcommittee to testimony given before the Securities Subcommittee—I should point out that S. 425 may be far more dangerous and self-defeating than S. 954. By authorizing the President to prohibit direct investments in the United States by boycott participants, it virtually guarantees constant confrontations and potentially closes our economy to an important potential source of investment capital.

Contrary to such a potentially harmful and self-defeating aproach through coercive legislation, we believe we are in a real sense working to end the boycott of U.S. firms by promoting closer economic ties with all of the nations in the Middle East. These ties serve to demon-

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strate the potential contribution of U.S. firms to their economies. There is economic cost to the Arab countries involved in boycotting U.S. firms—the opportunity cost of foregoing U.S. technology, managerial talent, and capital—and this cost will become clearer as economic cooperation increases.

We believe this is an especially important consideration with regard to the non-oil-producing countries in the Middle East which are more readily inclined to the removal of impediments to their own economic growth. Thus, we have seen cases where companies have been permitted to do business in these non-oil-producing countries, although they continue their relationship with Israel.

These actions are part of a continuing initiative to make clear to Arab governments that we consider the boycott injurious to our bilateral relations and to their development efforts. These points are being made clear in our regular diplomatic contacts and in the context of the bilateral joint commissions we have with several Arab countries.

Finally, we are working to create an economic and political climate in which a lasting peace settlement in the Middle East is possible. Such a peace settlement is clearly the best way to bring a definitive end to the Arab boycott.

Ladies and gentlemen, it is not an overstatement to say that the questions facing this subcommittee today are of utmost importance to countries around the world. Clearly we could take actions to restrict investment or terminate economic relations with countries with whom we do not always agree. This would take us down the path of economic warfare. On the other hand, we also have the ability to seek solutions to the problems of the world by bringing parts of that world closer together and creating greater understanding. That is the path that I believe is essential to bringing about peace.

Mr. Chairman, we are opposed to the Arab boycott. Under Secretary Simon's leadership, we in the Treasury have taken an active role in working with both Israel and the Arab countries to fashion an economic climate in which both sides can achieve the economic development they rightfully seek. We will continue these efforts. We must avoid actions which would frustrate, if not terminate, these efforts and potentially damage the critical political negotiations as well.

Thus, I strongly urge the Congress not to yield to the temptations of retaliating through trade and investment curbs. We must recognize that economic warfare, or the threat of such warfare, will be counterproductive to everyone.

Thank you, Mr. Chairman. I would be glad to answer any questions.

[These documents follow in this order: 1. Statement of Assistant Secretary of the Treasury Gerald L. Parsky, of July 22, 1975; 2. Statement of Assistant Secretary of the Treasury Gerald L. Parsky, of March 13, 1975; and, 3. Document, "Summary of Federal Laws Bearing on Foreign Investment in the United States":]

Department of the TREASURY NEWS

FOR RELEASE UPON DELIVERY

STATEMENT BY THE HONORABLE GERALD L. PARSKY
ASSISTANT SECRETARY OF THE TREASURY
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL FINANCE
SENATE COMMITTEE ON BANKING, HOUSING AND
URBAN AFFAIRS
TUESDAY, JULY 22, 1975, AT 10:00 A.M.

Mr. Chairman, I am pleased to have the opportunity to discuss the Administration's policy with respect to foreign investment in this country, the Arab Boycott and the items of legislation now pending before this Subcommittee.

Let me begin by offering some general observations about the policy we should be pursuing in these important areas. First, we believe this government should maintain its commitment to free and open international capital markets, imposing limitations only in narrowly defined circumstances where essential national interests are involved. Second, we do not believe the fact or the amount of the recent accumulations of wealth in certain oil producing countries warrants a deviation from this policy. Third, we do not believe that the answer to the Arab economic boycott lies in additional legislation authorizing a response in kind by this government.

And, fourth, with regard to foreign investment in the U.S., we believe existing laws are adequate to combat discrimination against U.S. nationals on religious, ethnic or other grounds. We are, however, reviewing the scope of present authority and will recommend new, reinforcing legislation if this is necessary.

I would like first to discuss issues related to foreign investment in the U.S. and proposed legislation which would place additional restrictions on such investment, including S.425, S.995 and S.1303. Then, I will treat the Arab boycott question specifically in the context of proposed legislation, including S.953.

Advantages of Administration Policy on Foreign Investment

Our policy with respect to foreign investment is based on the belief that free market forces will direct worldwide capital flows in the most productive way and that such an open policy toward foreign investment will result in direct benefits to our economy:

First, maintenance of our open policy towards foreign capital flows gives the U.S. firm maximum flexibility in seeking needed capital funds. At a time when firms are facing difficult financing requirements, it would not be wise to raise new restrictions on the available sources of capital. Our open policy towards capital flows is conducive to a healthy growing U.S. economy and in this respect is beneficial to domestic capital formation.

Second, foreign direct investors have contributed substantially to the competitiveness and efficiency of our national economy. These contributions have come in the form of new products or processes and new management techniques and skills that, in many cases, have been diffused throughout our economy. The pharmaceutical industry is a good example of the introduction by foreign investors of important new technology.

Many people are not aware of the fact that some of our best-known companies are partially or totally-owned by foreign investors. Companies such as Shell, Lever Brothers, and Nestle Co., yield the U.S. economy the same benefits as their domestically-owned counterparts -- that is, employment opportunities, tax revenues, and competitively-priced goods and services. Foreign direct investments are often in U.S. industries that are relatively concentrated, and the entrance of foreign firms usually results in desirable increases in the level of competition in these industries, a development from which the whole economy benefits. Still others have played a major role in the development of a particular state or region. For example, in California, investments such as Paul Masson, Sony and Toyota mean more jobs and other important benefits to the state's economy.

More importantly, the behavior of these companies does not differ from domestically-owned companies. The ownership of these companies has not altered the way in which they function -- they still must abide by our laws, and they still must compete in our market place.

Third, as this Subcommittee is particularly aware, we are by far the largest foreign investor in the world. The book value of our direct investments alone is well over $100 billion; some six times greater than direct investments in this country. As we have invested around the world, we have negotiated numerous treaties of friendship, commerce and navigation under which investors from other nations are promised equal treatment with American citizens with respect to investments within the United States. As we consider changes in our policies, we must be cautious not to endanger these important commercial treaties.

Finally, a fourth, more subtle, reason for caution is the leadership role we play in the world economic picture. We need only recall the experience of the 1930's, when the willingness of the United States to adopt restrictive trade practices resulted in retaliatory conduct by other nations and helped turn a recession into a full-fledged world depression. If the United States, with our historical support of free capital movements, were to adopt investment restrictions, this action might influence other nations to take similar measures. At a time when the need for worldwide cooperation is at peak, the nations of the world, led by the United States, would be retreating into isolated economic shells.

Foreign Investment Policies of Other Countries

This leadership role may have been a factor in the decisions of other industrialized countries to refuse to respond to OPEC accumulations with investment restrictions.

In many of these countries, there were fears about the possible harmful effects of substantial investments by the oil producer countries. These countries have much smaller economies and financial markets than the United States and thus have less capacity to absorb sizeable foreign investments. Nevertheless, there is general agreement that the industrialized countries should maintain the current degree of freedom for international capital movements.

While the existing foreign investment policies of the industrialized countries range from the very liberal to the quite restrictive, I think it is noteworthy that a general move towards new restrictions has not taken place. Since the sharp rise in the price of oil, no industrialized nation has indicated an intention to apply discriminatory treatment to foreign direct investment from the oil producing states. And no country plans to give special incentives to such direct investments, recognizing that if this were to become the policy of some countries, it could lead to distortions in capital flows and undesirable competition between the industrialized countries for OPEC funds to the net detriment of all.

Germany is an instructive case. Germany has long followed liberal foreign investment policies similar to those of the United States. Over the past year, there have been several major investments by oil producers in important German companies -- Krupp by Iran, Daimler-Benz by Kuwait, for example -- and these transactions led to increased pressures for new restrictive policies. However, the German government has consistently opposed legislative restrictions, instead adopting the approach of seeking prior consultations on any major investments in German enterprises. They have such an agreement with Saudi Arabia and are seeking similar understandings with other oil producers.

I firmly believe that this policy, consistently applied throughout the world, will best serve the cause of international economic and political well-being. And, after careful review, we can state that there is nothing in the conduct of the OPEC investors which should lead us to deviate from such a policy.

Oil Producer Surpluses and Investments

Contrary to some popular expectations, there has not been a massive influx of money,nor has there been increased takeover activity by investors from the oil producer

nations. Instead, the United States has been receiving a relatively modest share of the investable funds accumulated by these countries. In 1974, less than $1 billion of the oil producers' $60 billion investable surplus was invested in corporate securities, real estate and other private sector investments. Even when passive investments in U.S. Government securities and commercial bank deposits are included, our share of the worldwide total was less than 20 percent.

Flows have slowed substantially this year, which have been the result of smaller surpluses being accumulated by the producers and there has been a significant reduction of the proportion of these funds being placed in the United States. Through the first half of the year, investments in the United States by the oil producing nations totaled about $2 1/4 billion, only about nine percent of the estimated $24 billion surplus accumulated by the oil producers during this period.

An increasing proportion of these funds is being placed in longer-term investments, including bank-time deposits, government bonds, and corporate bonds and equities. This reflects the increasing economic sophistication of the oil producers and their recognition that their long-term interests are, in a large part, dependent on the economic strength of the industrialized world.

It, of course, also reflects the recent improvements in the relative yield of long-term investments as compared to short term investments.

Despite this longer term interest, I would be very surprised if as much as $3 billion of OPEC funds were to be invested in long term instruments in the private, corporate and real estate sectors in 1975. This figure, which includes investments in a broad variety of assets, is less than two percent of the 1973 transaction volume on the New York Stock Exchange alone. It would represent barely 23 percent of the foreign purchases of U.S. securities in 1973, which were nearly $13 billion. Our economy certainly is not being overwhelmed by OPEC funds.

A highly significant development is the decline in OPEC surpluses as a whole. This year we anticipate the total OPEC surplus will be on the order of $45 billion, a 25 percent reduction in one year. This sharp reduction is due in large part to a reduction in the demand for OPEC oil: 30 percent of OPEC available capacity has been closed down to maintain current oil price levels.

Another important factor reducing the surplus is the strong growth in OPEC imports of goods and services. The OPEC countries may increase their import volumes some 30 to 35 percent this year on top of nearly a 40 percent increase in 1974.

We now expect the cumulative surplus to peak somewhere in the range of $175 billion to $250 billion in 1974 dollars, far below the scare figures of early this year. While it is impossible to predict accurately what portion of future surpluses will be channeled into direct investments in U.S. industry, it is reasonable to expect that the proportion will be small. The producers will continue to place the majority of their funds in portfolio investments and various government-to-government transactions.

Investment Policies of Producer Governments

Even if we agree that the amount of funds OPEC will have available for investment does not warrant a change in policy, it is still important to consider the policies these countries are pursuing with respect to the funds that are available. Although the approaches to investment differ among the OPEC countries, each emphasizes return on investment. These countries have neither the desire to control nor the manpower to manage companies in the United States. Instead, we can expect them to act like our domestic institutions, widely diversifying their portfolios in a manner designed to yield the best long term return.

As a practical matter, only Kuwait, the Gulf States, and Saudi Arabia will accumulate far more in revenues than

they can hope to put to use domestically. The Kuwaitis are particularly sophisticated in the field of foreign investment and they are exploring the entire spectrum of profitable long-term investment opportunities. They will be seeking to acquire assets that are at least no less valuable, in their view, than oil in the ground. They have told me that they do want to participate in our equity markets because they believe they provide opportunity for long-term growth. They have little interest, however, in obtaining controlling interests in existing firms. The other Gulf States are likely to follow investment policies quite similar to those of Kuwait. In my discussions with the financial leaders in Abu Dhabi, they expressed an interest in real estate as well. They indicated that they would invest up to 15 percent of available funds in the real estate sector. Again, the desire is for safe, long-term investment and not control.

Saudi Arabia, the country that will have the largest surpluses, has developed an investment strategy which emphasizes stability as reflected in requiring a steady pattern of dividend payments--growth--as reflected in requiring a steady pattern of earnings increases-and

diversification. They have been most conservative in their investment policy in the past and will continue to be. They too are beginning to look more to equity investment, but would be surprised to see the Saudi Arabian Government invest more than 5 percent in any particular company.

Iran's foreign investment policies are strongly influenced by its internal development needs. Because of their capacity to develop their own country, Iran will not have a significant amount of surplus funds available for long term investments abroad. In fact, Iran will most likely be a net borrower of funds

within a year. The long term investments it does make will be concentrated in companies which can help Iran expand its domestic industrial base by providing it with access to foreign products, increased technology, manpower skills, and resources of a portfolio nature. I do not believe Iran will be interested in investing in real estate or highly speculative ventures.

The remaining OPEC countries are likely to concentrate on liquid, short term investments. Few long term direct foreign investments by these countries are likely

All of these countries realize that the investment decisions they make now are their insurance for the future. Thus, they will seek secure, sound investment opportunities. A recent example of such an investment is the purchase by Saudi Arabia of a $100 million note of American Telephone and Telegraph Company, which will not result in control of, or any voice in AT&T activities. Further, it's interesting to note that the company chosen for the investment is subject to extensive state and federal regulation. To me this provides a good illustration of a responsible investment based on long-term financial objectives. It's the kind of approach that I believe will dominate the investments of these countries in the months ahead.

Existing Safeguards in U.S. Law

Despite the fact that we see no prospect that the major OPEC investors will seek to obtain control over sectors of our economy, it is still important to examine our laws and regulations to assure that they provide adequate safeguards against

undesirable activity by foreign investors. The Administration undertook such a review earlier this year. We concluded that there was no need for further legislation in this area because safeguards in existing law were adequate to meet foreseeable potential problems. I would

like to outline briefly some of these safeguards which may be of particular interest to this Subcommittee

First, there is a relatively short list of laws which prohibit or limit foreign investments in certain sectors for reasons of national security or to protect an essential national interest. These sectors include atomic energy, domestic airlines, shipping, federally-owned land, communications and media, and fishing.

Second, there are many laws which prevent abuses in specific sectors, for example, the defense area. The Defense Department may deny security clearances required to do classified work for the government to any firm under "foreign ownership, control or influence." Foreign ownership of producers of defense materials is not expressly prohibited; but it is effectively deterred by the prospect that such acquisition would likely cause the firm to lose its classified government business. Also exports of arms and of classified technology related to defense manufacture are effectively controlled.

Finally, every foreign investment is subject to the same laws and regulatory constraints which control U.S. business. These laws provide broad protection against the possibility that any owner, including a foreign investor, could use his position to inflict economic injury. Consider the protection the following laws provide:

(1) Our antitrust laws apply fully to foreign investors and prevent a foreign investor from monopolizing a specific sector, or engaging in various anti-competitive practices. They also prevent a foreign investor from making a purchase of, or engaging in a merger or joint venture with, a U.S. firm if the result would be to substantially lessen competition or tend to create a monopoly. These laws would also prevent such actions by a group of foreign investors acting in concert.

(2) Our export control authority provides protection against the export of any product or resource if national security is threatened, if there is an excessive drain of scarce materials and a serious inflationary impact from foreign demand, or if controls are needed to further U.S. foreign policy. Special, more detailed, rules apply to exports of armaments and energy materials.

(3) The securities laws require disclosure of significant foreign ownership and prevent harmful activities with respect to tender offers, stock price manipulation and preservation of an orderly market.

(4) Our labor laws require all firms operating in the United States to refrain from unfair labor practices and to assure all workers safe and healthful working conditions.

(5) Our broad emergency powers, including the Trading with the Enemy Act, authorize the President, during national

emergency, to control completely any property in the U.S. in which any foreign country or national thereof has any interest; to condemn any property within our jurisdiction; and to order the priority performance of defense related contracts, to allocate materials and facilities necessary for national defense, and to place priority orders for a particular product and take possession of the facility if they are not fulfilled.

I have prepared, and would like to submit for the record, a detailed report on U.S. laws and regulations which are of particular relevance to foreign investments in the United States.

General Policy and Administrative Actions

Along with confirming the adequacy of existing safeguards, the Administration's review re-affirmed the traditional foreign investment policy of our Government and concluded that no additional limitations on investment were warranted. At the same time, however, we did decide that it would be desirable to take several administrative actions to supplement present arrangements.

First, the President has established a continuing, high level, inter-agency Committee on Foreign Investment in the United States to serve as the focal point within the Executive Branch for coordinating foreign investment policy and to address specific foreign investment issues that may arise.

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Second, the Department of Commerce has created a new office of Foreign Investment in the United States, which will centralize and improve the gathering of available information on foreign investment and its dissemination to appropriate parts of the Government.

Third, we have advised all foreign governments that the U.S. will expect any foreign government contemplating a major direct investment in the United States to seek advance consultations with the United States Government on the prospective investment.

I personally have discussed this policy with the major potential governmental investors in the Middle East and found a broad acceptance of the concept as long as it applied to all governments on a nondiscriminatory basis. To some extent, such consultations had already been taking place. Iran, for instance, did discuss their potential purchase of an interest in Pan American. Recently, we learned of a potential joint venture by the Government of Romania and the Island Creek Coal Co. in a coal mine. We have contacted the Romanian Government and they will be consulting with us.

This process of consultations is, we believe far preferable to the legislative proposals for formal screening or prenotification mechanisms, such as the

ones contained in S. 425. Our approach will be much more selective, involving only those few major direct investments that may raise important public policy issues. Our interest is not to raise any new barriers to foreign investments but to provide a mechanism by which a foreign government can learn of the U.S. Government's views on a prospective major direct investment before it is undertaken. Therefore, the process will minimize the possibility of misunderstandings or future investment disputes. Such consultations will thus prove beneficial to the prospective investors as well as to the United States.

Proposed Legislation and the Arab Boycott

S.425. With respect to the investment aspects of S.425, I would like to reiterate the views that former Under Secretary Jack F. Bennett presented to the Subcommittee on Securities in March. Our overall conclusion was that new legislation directed to foreign investment reporting and control would not provide any significant additional safeguards but would in practice be likely to deter a substantial amount of beneficial investment in the United States. Moreover, these provisions would, if broadly implemented, violate a number of existing Treaties of Friendship, Commerce, and Navigation and other international agreements.

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Insofar, as S.425 is designed to improve disclosure of beneficial ownership of U.S. corporations, the Administration generally supports this objective. However, I will say that we would oppose any provision which discriminates against foreign investors in this regard. We have been working with the Securities and Exchange Commission (SEC) in this area, and I understand Chairman Garrett of the SEC will address this issue in considerable detail.

In our negotiations with foreign governments we have consistently asked that U.S. firms operating in their countries be accorded equal treatment. If the U S. should now introduce discriminatory provisions, we can expect retaliation in the form of discriminatory restrictions on U.S. investments in foreign countries.

S.953. Let me now turn to S.953 and the subject of the Arab Boycott. S. 953 would amend the provisions of the Export Administration Act of 1969 to broaden the reporting requirements of the Act, authorize the Secretary of Commerce to require firms to supply additional information including intended compliance, and give the President express authority to order "the curtailment by any U.S. concern of exports to, investments in, or any other

economic transactions with countries which impose boycotts or engage in restrictive trade practices as specified in Section [(3)(5)] of the Act."

Mr. Chairman, you have made clear that this bill has been proposed primarily with the current Arab economic boycott of Israel in mind. The position of the Treasury Department on the Arab boycott and on religious and other discrimination against Americans has been expressed in detail in testimonies I and other Treasury officials have given before several Senate and House Committees. My testimony on March 13, 1975 before the Subcommittee on International Trade and Commerce of the House Committee on International Relations treats the subject in depth and I would like to submit a copy of that statement for the record.

Stated most simply, we strongly oppose the boycott. We have, and will continue to carry out, in a manner consistent with laws and policies of the United States, the policy set forth in the Export Administration Act to oppose any restrictive trade practices or boycotts and encourage U.S. firms to refuse to act in furtherance or support of such restrictive trade practices or boycotts. The Department of Commerce has taken steps to ensure enforcement of the reporting requirements of the Export Administration Act. It has sent a circular to U.S. firms engaged in export activities drawing their

attention to the requirement of the Export Administration Act that U.S. exporters notify the Commerce Department when they receive requests for information that would further the Arab boycott. Commerce is actively investigating individual company compliance with the Act and has announced penalties against several firms.

Perhaps more importantly, we are continuing our efforts to demonstrate to Arab countries the importance to their own development efforts of unfettered trade and economic relations with all U.S. firms. We believe this process will help create the conditions which will enable even more U.S. firms to maintain commercial ties with both Israel and the Arab world.

Further, with respect to discrimination against Americans based on religious, ethnic or other grounds, the President has declared in the strongest possible terms his determination to prevent such practices. We will not permit others to impose such discrimination upon our society. Department of Justice representatives have recently testified before the House Committee of the Judiciary on the broad range of actions which can be taken under current laws to prevent discrimination of this type

and the Comptroller of the Currency has issued a directive to all national banks warning against discriminatory practices and noting that compliance will be assured by means of regular bank examinations.

In addition, the Administration is in the process of reexamining our legal and other means in this area. An interdepartmental study is being conducted to determine the adequacy of existing U.S. laws and what additional steps, if any, should be taken by the Government in response.

Turning to the specific provisions of S. 953, the broader reporting requirements prescribed therein would present no problem to the Treasury Department, and we do not oppose them. The troublesome aspect of the bill is the provision for action against boycotting countries, which although stated in broad discretionary terms would specifically authorize our curtailment by any U.S. concern of exports to or other types of economic transactions with countries imposing boycotts.

Although, as a technical matter, I realize that the discretionary authority need not be exercised by the President, I believe that this legislation raises important issues that must be addressed. First of all, we believe that the retaliatory provisions of the bill would not alleviate the Arab boycott, but instead would risk aggravating it.

The policy of the Arab states will not be affected positively by the threat of action by the United States as proposed in S.953. Rather, a possible action by the U.S. of curtailing exports or other transactions by American firms complying with the boycott would in most cases merely cause the Arab states to seek other sources of supply, thus adversely affecting our own economic interests. Such an occurrence would damage United States interests, both here and in the whole Middle East area.

Moreover, the bill would inject an element of uncertainty into existing U.S. business relations with the Arab world, since the President could at any time act to prohibit exports and other economic transactions with any of the Arab countries.

For these reasons, it would place us at a competitive disadvantage vis-a-vis the industrialized countries of Europe and Asia which actively compete with us for export sales and other transactions in the expanding Middle East market. At a time of gradual economic recovery and continuing high unemployment in the United States, it would not be advisable to take action which would fail to achieve its proclaimed objective and which would have adverse effects on our economy.

The broad authority given to the President to take action including curtailment by a U.S. concern of exports to, investments in, and other economic transactions with Arab countries also raises a number of issues affecting international trade and investment policies. We should be very cautious in taking action which would undermine our traditional policies of a free and open market for trade and investment, both in the United States and in foreign countries.

Finally, it should be underscored that the boycott arose out of the Arab-Israeli conflict, and continues to be viewed as a part of that conflict. We believe it can best be resolved through a peaceful settlement in the Middle East.

Amendments to S.425. We strongly oppose the so-called "Boycott amendment" to S.425 for many of the same reasons. Although I shall not discuss this aspect of S.425 in detail -- instead referring the Subcommittee to testimony given before the Securities Subcommittee -- I should point out that S.425 may be far more dangerous and self-defeating than S.953. By authorizing the President to prohibit direct investments in the U.S. by boycott participants, it virtually guarantees constant confrontations and closes our economy to an important potential source of investment capital.

Positive Steps Being Taken

Contrary to such a potentially harmful and self-defeating approach through coercive legislation, we believe we are in a real sense working to end the boycott of U.S. firms by promoting closer economic ties with all the nations in the Middle East. These ties serve to demonstrate the potential contribution of U.S. firms to their economies. There is economic cost to the Arab countries involved in boycotting U.S. firms -- the opportunity cost of foregoing U.S. technology, managerial talent, and capital -- and this cost will become clearer as economic cooperation increases. We believe this is an especially important consideration with regard to the non-oil producing countries in the Middle East which are more readily inclined to the removal of impediments to their economic growth. Thus, we have seen cases where companies have been permitted to do business in these countries, although they continue their relationship with Israel.

These actions are part of a continuing initiative to make clear to Arab governments that we consider the boycott injurious to our bilateral relations and to their development efforts. These points are being made clear in our regular diplomatic contacts and in the context of the bilateral Joint Commissions we have with several Arab countries.

Finally, we are working to create an economic and political climate in which a lasting peace settlement in the Middle East is possible. Such a peace settlement is clearly the best way to bring a definitive end to the Arab boycott.

Ladies and Gentlemen, it is not an overstatement to say that the questions facing this Subcommittee today are of utmost importance to countries around the world. Clearly we could take actions to restrict investment or terminate economic relations with countries with whom we do not always agree. This would take us down the path of economic warfare. On the other hand, we also have the ability to seek solutions to the problems of the world by bringing parts of that world closer together and creating greater understanding. That is the path that I believe is essential to bringing about peace.

Mr. Chairman, we are opposed to the Arab boycott. Under Secretary Simon's leadership, we in the Treasury have taken an active role in working with both Israel and the Arab countries to fashion an economic climate in which both sides can achieve the economic development they seek. We will continue these efforts. We must avoid actions which would frustrate, if not terminate, these efforts and potentially damage the critical political negotiations as well.

Thus, I strongly urge the Congress not to yield to the temptations of retaliating through trade and investment curbs. We must recognize that economic warfare, or the threat of such warfare, will be counterproductive to everyone.

Department of the TREASURY NEWS
WASHINGTON, D.C. 20220 TELEPHONE WO4-2041

FOR RELEASE UPON DELIVERY

STATEMENT BY THE HONORABLE GERALD L. PARSKY
ASSISTANT SECRETARY OF THE TREASURY
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE AND COMMERCE
HOUSE COMMITTEE ON FOREIGN AFFAIRS
THURSDAY, MARCH 13, 1975, AT 2:00 P.M.

Mr. Chairman, I am pleased to be here this afternoon as the representative of the Treasury Department to speak on matters concerning the Arab economic boycott of Israel.

It is the policy of the United States to encourage trade and economic cooperation with all countries with which we have diplomatic relations. Pursuant to that policy, and in the belief that closer economic ties with nations in the Mid-East could further political as well as economic stability, the U.S. Government has undertaken to establish closer economic cooperation with countries in the Middle East. These efforts have been informal, as in the case of Kuwait and the Emirates, and formal, through bilateral economic commissions with Egypt, Israel, Iran, and Saudi Arabia, among others. At the heart of our approach to these economic relationships is the belief that peace and economic progress are interrelated. Without peace, economic progress will be short-lived. However, through

economic progress, we can assist our efforts to achieve peace. I have participated actively in all of these relationships and, in particular, in our Joint Commissions, which I found to be a sound vehicle for dealing with the wide range of economic issues confronting us. Each commission has had to face its own set of problems because the countries vary considerably in their policies. The U.S.-Saudi Arabian Joint Commission on Economic Cooperation, established by Secretary Kissinger and the Second Deputy Prime Minister of Saudi Arabia, is headed on the U.S. side by the Secretary of the Treasury. Its stated purposes are to promote programs of industrialization, trade, manpower training, agriculture, and science and technology. The Secretary of the Treasury is also U.S. Chairman of the U.S.-Israel Joint Committee for Trade and Investment which has been dealing with ways to enhance collaboration in the areas of investment, trade, raw materials supply and scientific cooperation.

Recently, questions have arisen as to whether it is appropriate for the United States Government to pursue these policies in light of the Arab boycott. In answering these questions, I think it is important to begin with the clearest possible understanding of the nature of the Arab practices. In particular, I would like to distinguish between the Arab economic boycott of Israel, on the one hand, and discriminatory activities based on religious or

ethnic grounds on the other.

The Arab boycott of Israel has been in operation since the late 1940's. It is both a primary boycott in that Arab countries do not do business with Israel, and a secondary boycott in that it operates to prevent certain businesses from doing business in Arab countries or entering into joint business undertakings with Arab firms if they have especially close economic ties with Israel, or if they contribute to the Israeli defense capability. Although the existence of the boycott machinery may have in the past resulted in some instances of religious discrimination, the best information available to us indicates that the boycott has been based primarily on these economic factors. To our knowledge, questionnaires distributed by the boycott office focus on the economic relations of businesses to Israel; they generally do not request religious or racial information.

I believe that any country has the right to determine with whom they will do business. I also believe, however, that there is no place in our society for discrimination based on religious or ethnic grounds, and no one should be allowed to impose such discrimination on us. The U.S. Government has consistently opposed the boycott, and we shall continue to oppose it. The Department of State has repeatedly made known our disapproval of the boycott through diplomatic channels and has on numerous occasions

offered assistance to affected U.S. firms. Treasury Department officials have made clear to Arab representatives to Joint Commissions that we oppose the boycott and consider it injurious to our bilateral relations and to their development efforts.

Furthermore, we believe we are, in a real sense, working to end the boycott of U.S. firms by promoting closer economic ties with all the nations in the Mid-East. These ties serve to demonstrate the potential contribution of U.S. firms to their economies. There is an economic cost to the Arab countries involved in boycotting U.S. firms -- the opportunity cost of foregoing U.S. technology, managerial talent, and capital -- and this cost will become clearer as economic cooperation increases. We believe this is an especially important consideration with regard to the non-oil producing countries in the Middle East which are more readily inclined to the removal of impediments to their economic growth. Thus we have seen cases where companies have been permitted to do business in these countries, although they continue their relationship with Israel.

More importantly, we are attempting to create an economic and political climate in which a lasting peace settlement in the Mid-East is possible. The boycott arose as part of the continuing conflict between the Arab countries and Israel, and it will most effectively be dealt with in that context. A peace settlement is the best way to bring a definitive end to the Arab boycott.

We must, however, recognize that the increased economic power of the Arab oil-exporting countries has substantially enhanced the potential effect of the boycott. Being boycotted by the Arab league is a much more serious situation for most American firms in 1975 than it was in 1955. And in recognition of this, I think it is altogether appropriate that we re-examine our legal and other means to effectively counter the effects of the boycott. As you are aware, President Ford has ordered an inter-departmental study which is presently being conducted to determine what U.S. laws may be brought to bear on this problem and also what additional steps, if any, should be taken by the Government in response.

I do not believe, however, that the answer to the boycott issue lies in increased confrontation, nor is it properly addressed by altering our traditional policies of a free and open market for trade and investment. The Congress, as well as the Executive Branch, is reviewing United States policy in this area. As we do so, I would urge that we keep in mind that foreign investment, and the policies we adopt with respect to such investment, has a significant impact on other matters. It will have an overall effect on the domestic economy; it will have an impact on capital formation in the U.S. and on our ability to satisfy the capital requirements of our businesses; and it will have consequences with respect to our foreign policy. We have had

a long-standing commitment to achieve an environment for international investment in which capital flows are responsive to market forces unencumbered by governmental influence and we have urged other countries to help create such an environment. We feel strongly that this policy helps maximize long-term economic growth and productivity, and we should be very cautious before altering it. Our recent economic efforts have resulted in several Arab governments agreeing to consult with us prior to undertaking significant investments in order to assure that such investments are consistent with our national policies and objectives. This, to me, is a positive development and we are hopeful that all foreign investors will follow this policy.

In conclusion, recognizing the interdependence of the world's economies, we believe that an atmosphere of respect and understanding, friendship and cooperation can help to temper the extremity of political disputes, can solidify political understandings and can help resolve the critical economic problems facing us.

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Department
of the Treasury
June 1975

Summary of Federal Laws bearing on foreign investment *in the United States*

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

The Department of the Treasury has an important responsibility with respect to economic relations with the other nations of the world. In this regard, we have taken a keen interest in insuring that the United States continues to provide an open climate for investment from abroad. A fundamental aspect of such an effort must be a candid and thorough understanding of the laws and regulations applicable to investment in this country. The accompanying memorandum, which has been prepared by the Treasury Department, is designed to serve that objective. Part I of the summary details specific provisions of Federal law which restrict participation by aliens, foreign corporations, foreign governments and foreign-controlled enterprises in United States economic activity. Part II of the summary covers laws of general applicability such as the antitrust laws, Federal and state securities laws, and the tax laws.

With a few exceptions to assure national security and to protect vital national interests, the United States does not impose special restrictions on foreign investment in this country. However, because some of the most relevant legal provisions are designed primarily to regulate our domestic business community, foreign investors may be unfamiliar with our procedures and may therefore find compliance to be complex. Accordingly, I strongly urge that any investor obtain the advice of competent legal counsel in this country. Such a precautionary step will do much to prevent confusion and misunderstandings at a later time.

Again I wish to reiterate our sincere interest in maintaining a continuing volume of investment flows to this country through preservation of a free market. Such flows are good for our domestic economy, good for the investors and in the interest of increased worldwide economic cooperation. The facilities of the Treasury Department will be available to anyone who desires further explanation as to our laws and our policies.

Gerald L. Parsky

GERALD L. PARSKY
Assistant Secretary

June 1975

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PART I. Specific Federal Restrictions on Participation of Foreign-Controlled Enterprises or Foreign Nationals in United States Economic Activity

I. Communications

1. *Radio and Television Licensing.* The Federal Communications Act prohibits aliens, representatives of aliens, foreign governments or their representatives, or foreign-registered, foreign-owned, or foreign-controlled corporations from receiving a license from the FCC to operate an instrument for the transmission of communications. A corporation is considered *foreign-owned* if any director or officer is an alien, or if *more than 20 percent* of its capital stock is owned by aliens, by a foreign government, or by a corporation organized under the laws of a foreign country. A corporation is considered *foreign-controlled* if any officer or more than one-fourth of the directors are aliens or if it is directly or indirectly *controlled by a corporation. 25 percent of the capital stock of which is owned by foreign interests.* Certain exceptions can be made if the FCC determines that the grant of a license would be in the public interest (*e.g.* broadcasting operations ancillary to another business of a foreign-controlled corporation). 47 U.S.C. § 310(a).

2. *Telegraph Operations.* The FCC is prohibited from approving a merger among telegraph carriers which would result in more than *20 percent* of the capital stock of the carrier being owned, controlled, or voted by an alien, a foreign corporation, a foreign government entity or a corporation of which any officer or director is an alien or of which more than 20 percent of the capital stock is owned or controlled. 47 U.S.C. § 222(d).

3. *Radio and Television Operators.* Foreign citizens may not be licensed by the FCC as operators in radio or television stations. Waiver of the citizenship requirement is permitted for certain licensed aircraft pilots. 47 U.S.C. § 303(l).

4. *Communications Satellite Corporation.* Not more than an aggregate of 20 percent of the shares of stock of Comsat which are offered to the general public may be held by aliens, foreign governments, or foreign-owned, registered or controlled corporations. 47 U.S.C. § 734(d).

5. *Foreign Investment in U.S. Magazines and Newspapers.* There are currently no prohibitions against foreign investment in U.S. newspapers. However, the Foreign Agents Registration Act (22 U.S.C. § 611) applies to any U.S. corporation (*e.g.* a newspaper or magazine) which is controlled or financed by a foreign entity if it carries on any activity in the United States intended to influence U.S. domestic or foreign policy, or to promote

the interests of a foreign government. The scope of the law is broad and requires registration with the Attorney General and filing and disclosure with respect to a wide range of political propaganda disseminated in the United States on behalf of foreign interests. However, if the registration requirement is satisfied and the publication is properly labeled as propaganda, the Act does not permit the Government to control content. Exemptions are permitted for (1) diplomats, (2) nations deemed vital to our national defense, and (3) various nonpolitical activities.

II. Energy and Natural Resources

1. *Atomic Energy.* The Atomic Energy Act prohibits the issuance of licenses for the operation of atomic energy utilization or production facilities to aliens, foreign governments, foreign corporations, or corporations owned, controlled, or dominated by such foreign interests. In defining foreign ownership or control, there is no threshold test of percentage ownership or other rule of thumb. Determinations are made on a case by case basis. 42 U.S.C. §§ 2133, 2134.

2. *Pipelines and Mineral Leasing on Federal Lands.* Under the Mineral Leasing Act of 1920, aliens or foreign-controlled enterprises may not acquire rights of way for oil pipelines, or acquire any interest therein, or acquire leases or interests therein for mining coal, oil, or certain other minerals, on federal lands other than the outer continental shelf. However, a foreign-controlled corporation may hold such an interest if its home country grants reciprocal rights to United States corporations. 30 U.S.C. §§ 22, 24, 71, 181, 185, 352; 42 CFR 3102.1-1; see generally 43 CFR Chapter II (Bureau of Land Management). However, a foreign-controlled corporation may hold and exploit a lease on the outer continental shelf under the Outer Continental Shelf Act and Department of Interior regulations (43 U.S.C. § 331-43; CFR 3300.1). Foreign ownership up to 100% is permitted.

Under the Geothermal Steam Act, (30 U.S.C. §§ 1001-1025), leases for the development of geothermal steam and associated resources may be issued only to United States citizens and corporations organized under the laws of the United States or of any State. 30 U.S.C. § 1015. However, a domestically incorporated enterprise may be foreign owned or controlled.

3. *Land.* Federally-owned land may be transferred or leased only to (i) U.S. citizens or persons having declared their intention to become U.S. citizens; (ii) partnerships or associations, each of the members of which is a U.S. citizen; (iii) corporations organized within the United States and permitted to do business in the state in which the land is located; and (iv) States, municipalities or other political subdivisions. 43 U.S.C. § 682c. There is no limit upon the percentage of foreign ownership that a domestically-incorporated firm may have, provided that the country whose citizens own shares of the U.S. firm grants reciprocal privileges to U.S. citizens. Where there is no such reciprocity, an American corporation purchasing public land must be majority owned by United States citizens. In addition, there are restrictions on alien land ownership in territories of the United States; however, these have little contemporary relevance to

foreign investment in view of the small portion of United States land remaining in a territorial status. 48 U.S.C. §§ 1501-1508.

4. *Fishing.* Foreign vessels may not fish in the territorial waters or fishing zone of the United States or land fish caught on the high seas in the United States 16 U.S.C. §§ 1081 et. seq., 1091 et. seq. The restrictions apply to foreign-controlled fishing companies unless certain management restrictions are met (the president or chief executive officer of a domestic corporation must be a United States citizen; foreign citizens serving as directors cannot be more than a minority of the number necessary to constitute a quorum.)

III. Transportation and Trade

1. *Aviation.* A foreign-controlled enterprise (*e.g.* a foreign air carrier) may not acquire control of a company engaged in any phase of aeronautics unless approval is granted by the Civil Aeronautics Board. Under the Federal Aviation Act, ownership of 10 percent or more of the voting securities gives rise to presumption of control. In addition, aggregate foreign equity holdings are limited to 25 percent. 49 U.S.C. §§ 1301 (1) and (13); 1378(f).

A foreign-controlled enterprise may not be issued a permit for intra-United States air commerce or navigation (cabotage). 49 U.S.C. §§ 1371, 1401(b), 1508. Domestic air transit (with limited exceptions based on reciprocity by the carrier's home country) is limited to domestically registered aircraft. Eligibility to register aircraft in the United States is limited to

1. individual United States citizens;
2. partnerships in which all partners are United States citizens;
3. corporations formed in the United States in which the president and at least two-thirds of the directors and other managing officers are United States citizens *and* at least 75 percent of the voting stock is owned by United States citizens. 49 U.S.C. §§ 1371 and 1401.

2. *Shipping.*

a. *Coastwise Shipping.* Under the Jones Act of 1920, coastal and fresh water shipping, including towage, of freight or passengers between points in the United States or its territories must be done in vessels which were built and are registered in the United States and which are owned by United States citizens. As in the case of aviation, for a corporation to register a ship in the United States, the corporation's principal officer must be a United States citizen and 75 percent of the stock must be owned by United States citizens. 46 U.S.C. §§ 802, 883, 888. Certain exceptions are permitted to this general rule, for example, shipping incidental to the principal business of a foreign-controlled United States manufacturing or mining company. 46 U.S.C. § 883-1. There is also an exception for intercoastal transportation of empty items such as cargo vans, containers, tanks, etc. where the country of the vessel's registry grants reciprocal privileges to United States vessels. 46 U.S.C. § 883.

b. *Transfer of Shipping Facilities during War or National Emergency.* During time of war or national emergency proclaimed by the President, a foreign-controlled enterprise may not acquire or charter, without the approval of the Secretary of Commerce, United States flag vessels, vessels owned by a United States citizen, or shipyard facilities, or acquire a controlling interest in corporations owning such vessels or facilities. 46 U.S.C. § 835.

c. *Salvage.* To engage in dredging or salvage operations in United States waters, a foreign-controlled enterprise must satisfy certain management restrictions. To register a vessel to engage in these activities, the president or chief executive officer of a domestic corporation, and the chairman of its board, must be United States citizens, and foreign citizens serving as directors cannot be more than a minority of the number necessary to constitute a quorum. 46 U.S.C. §§ 316(d), 11.

d. *Transportation of Government Financed Commodities.* A foreign-controlled enterprise must meet certain management restrictions (see c. above) to transport certain commodities procured or financed for export by the United States Government or an instrumentality thereof. 15 U.S.C. § 616a; 46 U.S.C. § 1241

e. *Officers of Vessels.* Foreign citizens may not act as officers of or serve in certain other positions on certain vessels. 46 U.S.C. § 221.

3. *Customs House Brokers.* For a foreign-controlled firm to obtain a license to operate as a customs house broker, at least two of the officers must be United States citizens. 19 U.S.C. § 1641.

IV. Government Procurement and Benefits

1. *Procurement.* At least two federal statutes require that, with certain exceptions, government agencies purchase only items produced in the United States. However, neither statute restricts procurement from a foreign-controlled U.S. corporation which is producing domestically. The Buy American Act 41 U.S.C. § 10a. - d. requires that government agencies acquire for public use only materials produced or manufactured in the United States. These provisions do not apply where the agency head determines that they would be "inconsistent with the public interest", or that the cost of the domestic articles is unreasonable (generally 6-12 percent above the foreign bid price, 41 CFR 1-6.104-4); nor do they apply to items purchased for use outside the United States, or to items not produced in the United States "in sufficient and reasonably available commercial quantities and of a satisfactory quality."

A second restriction on federal procurement is the "Barry Amendment" to the Defense Appropriations Act (Section 724) (86 Stat. 1200), which restricts the Department of Defense from procuring articles of food, clothing, cotton, silk, synthetic fabric or specialty metals which are not produced in the United States.

2. *Subsidies, Insurance, and Other Government Benefits.* Foreign-controlled enterprises operating in the United States, whether in branch or subsidiary form, may not:

(a) obtain special government loans for the financing or refinincing of the cost of purchasing, constructing or operating commercial fishing vessels or gear. 16 U.S.C. § 742(c) (7).

(b) sell obsolete vessels to the Secretary of Commerce in exchange for credit towards new vessels. 46 U.S.C. § 1160.

(c) receive a preferred ship mortgage. 46 U.S.C. § 922.

(d) obtain construction-differential or operating-differential subsidies for vessel construction or operation. 46 U.S.C. §§ 1151 et seq., 1171 et seq., 802.

(e) purchase vessels converted by the government for commercial use or surplus war-built vessels at a special statutory sale price. 50 U.S.C. App. §§ 1737, 1745.

(f) obtain certain types of vessel insurance unless the management restrictions applicable to companies operating vessels in salvage are satisfied. 46 U.S.C. §§ 1281 et. seq.

(g) obtain war-risk insurance for aircraft. 49 U.S.C. §§ 1531, 1533.

(h) purchase Overseas Private Investment Corporation insurance or guarantees. However, foreign corporations, partnerships or other associations, wholly owned by one or more United States citizens, corporations, partnerships, or other associations are eligible (up to 5 percent of the shares may be held by foreigners if required by law without affecting "wholly owned" status.) 22 U.S.C. § 2198(c).

(i) obtain special government emergency loans for agricultural purposes after a natural disaster (7 U.S.C. § 1961) or government loans to individual farmers or ranchers to purchase and operate family farms. 7 U.S.C. §§ 1922, 1941.

V. Banking

1. *National Banks.* Under the National Bank Act, as amended, every director of a national bank must, during his whole term of service, be a citizen of the United States. 12 U.S.C. § 72. Although there are no restrictions on the degree of foreign ownership of national banks, such ownership is inhibited by the citizenship requirements for directors.

2. *Edge Act Corporations.* An Edge Act Corporation may be organized for the purpose of engaging in international or foreign banking or other international or foreign financial operations. A majority of the shares of the capital stock of an Edge Act Corporation must at all times be held and owned by citizens of the United States, by corporations the controlling interest in which is owned by citizens of the United States, chartered under the laws of the United States or of a State of the United States, or by firms or companies the controlling interest in which is owned by citizens of the United States. 12 U.S.C. § 619. Moreover all of the directors must be United States citizens.

3. *Bank Holding Company Act.* At present, the Bank Holding Company Act contains no specific restrictions on foreign banks. However, under the general provisions of the Act, which apply equally to domestic banks, any foreign company establishing a United States banking subsidiary or ac-

quiring control of an existing domestic bank must be approved by the Board of Governors of the Federal Reserve Board. (Acquisition of a 25 percent interest creates a conclusive presumption of control. In addition, lesser ownership amounts—down to 5 percent—are likely to be found to constitute control. There have been a number of recently established foreign subsidiaries approved by the Board under the Act (*e.g.*, Sanwa Bank of California, Mitsubishi Bank of California, Banco di Roma of Chicago).

4. *Federal Reserve Membership and FDIC Coverage.* A foreign banking operation in the United States may take the form of a branch, agency, subsidiary, or representative office. Of these, only subsidiaries incorporated under State or Federal law may become members of the Federal Reserve System and/or the Federal Deposit Insurance Corporation 12 U.S.C. §§ 321, 1814-16. Thus, at present, neither branches nor agencies of foreign banks are members of or subject to regulation by the Federal Reserve.

NOTE: *Pending Foreign Bank Legislation* (*the "Foreign Bank Act* of 1975"). S. 958, the "Foreign Bank Act of 1975" has been introduced in the 94th Congress at the request of the Federal Reserve Board. The bill would place foreign bank operations in the United States under effective Federal control. It would bring United States branches and agencies of foreign banks within the purview of the Bank Holding Company Act. That Act's restrictions on multistate branching and nonbank activities would then apply to such foreign bank operations. All subsidiaries, branches, and agencies of foreign banks having worldwide assets of $500 million or more would be required to become members of the Federal Reserve System. In addition, all foreign banks covered by the bill would be required to carry coverage of the Federal Deposit Insurance Corporation.

The bill would require a foreign bank to obtain a Federal banking license from the Comptroller of the Currency as a pre-condition of obtaining a state charter. Licenses would be issued only with the approval of the Secretary of the Treasury after consultation with the Secretary of State and the Federal Reserve Board. The bill also would provide for chartering by the Comptroller of the Currency of a branch of a foreign bank as a "Federal branch", permitted to conduct a banking business on the same basis as a national bank in its state of operation.

The bill would make it possible for foreign banks to establish national banks and Edge Corporations. It would amend the National Bank Act to allow up to half of the directors of a national bank to be noncitizens. With respect to Edge Corporations, the bill would permit the Federal Reserve Board to waive the requirements of majority ownership by United States citizens and the citizenship requirement applicable to directors.

The Administration has not taken a position on many of the specific provisions of the legislation. It is likely that in the course of the legislative process, substantial changes in the proposal will be introduced. Neither the timing nor the substance of Congressional action can be predicted at this time.

VI. Defense

1. *Industrial Security Program.* The Executive Orders and Department of Defense regulations which constitute the Industrial Security Program

(Executive Orders 10450, 10865, and 11652: DoD 5220.22-R, Section II, part 2) make it very difficult for foreign-controlled corporations, except possibly subsidiaries of Canadian or U.K. parents, to obtain the security clearances necessary to carry out a classified contract. Both a "facility" clearance and individual clearances for key management personnel and others who may have access to classified information are required.

Generally, facilities which are "under foreign ownership, control or influence" are ineligible for facility clearances, and foreign nationals are ineligible for individual clearances. There are certain limited exceptions for facilities owned or controlled by foreigners, and a foreign-controlled U.S. subsidiary might obtain clearances by forming a "voting trust," in which it gave up management rights but retained rights to profits.

2. *Priority Performance Statutes.* While not aimed specifically at foreign investors, the priority performance statutes bear on the operation of a United States business by foreign investors.

a. *Defense Production Act.* Under Title I of the Defense Production Act of 1950, the President possesses the authority to require that performance under defense contracts take priority over other contracts. The Act also authorizes the President to require acceptance and performance of such contracts by any person he finds capable in preference to other orders or contracts and further authorizes him to allocate materials and facilities in such manner and under such conditions as he deems necessary to promote the national defense. 50 U.S.C. App. § 2071. Any willful failure to perform any act required by the Act is punishable by fine of $10,000 or one year in prison. 50 U.S.C. App. § 2073.

b. *Selective Service Act.* Under Section 18 of the Selective Service Act (50 U.S.C. App. § 468), the President, whenever he determines that it is in the interest of national security, may place an order for articles or materials, the procurement of which has been authorized by Congress exclusively for the use of the armed forces of the United States, with any person capable of producing them. Under this authority, the President may assign such contracts as "rated orders" which take priority over any unrated order. Procurements for military assistance programs are included.

PART II. General Laws Affecting The Conduct of Business in the United States By Foreign Investors *

I. Antitrust Legislation

The antitrust laws are applied equally to both U.S. and foreign corporations in order to preserve competitive market structures and to forbid specific anti-competitive practices. By maintaining a competitive market, the antitrust laws do not discourage foreign investment in the U.S. but, generally, make the U.S. more attractive for the international investor. However, while acquisition of a U.S. company may be the easiest form of entry into the U.S., the antitrust laws may prevent the particular acquisition by either domestic or foreign investors because of its effect on actual or potential competition. Such restrictions would, in such a case, either prevent foreign investment or direct it to *de novo* entry.

Section 7 of the Clayton Act is the principal statute which provides safeguards against further industrial concentrations in the United States. Section 7 prohibits any merger or acquisition which may tend substantially to lessen competition or to create a monopoly in any line of commerce in any section of the United States. Under this statute, foreign direct investment is subject to antitrust scrutiny when such investment involves a purchase of or merger with an existing American firm, or a joint venture with a U.S. or foreign firm to operate an enterprise.

The antitrust laws are applicable in the following situations: the merger of actual competitors in the United States market; the merger of potential competitors in the United States market; joint ventures between actual competitors in the United States market; and joint ventures between potential competitors in the United States market. Relevant competition includes not only competition between firms where production facilities are located within the United States but also competition between such firms and firms where production facilities are located abroad, that is, among exporters to the United States. A merger between an important exporter to the United States and a significant United States producer will be treated much in the same way as would the merger of two United States producers with corresponding market shares.

In the context of foreign commerce, the importance of the concept of potential competition is somewhat greater than in the purely domestic

* Excerpted and adapted from a summary prepared by the Council on International Economic Policy Interagency Working Group on Foreign Investment in the United States. *Hearings on Foreign Investment in the United States before the Subcom. on Foreign Economic Policy* of the *House Comm. on Foreign Affairs*, 93d Con., 2d Sess. 231 (1974).

context. Factors such as tariff rates, governmental import and export barriers and exchange rates may have an effect in determining whether a particular foreign firm can compete in the United States market.

In proposed mergers between United States companies and foreign firms, the factual determination of whether the two companies are substantial, actual or potential competitors in the United States market depends on various criteria—*e.g.* whether there is objective evidence that the foreign company would have entered the United States market by *de novo* investment in new facilities or acquiring another firm or partner; how soon such entry might reasonably be expected; whether the market position of a large American company may be further entrenched by the acquisition.

In addition to mergers involving actual or potential horizontal competitors, mergers involving firms in a buyer-seller relationship, so-called vertical acquisitions, may raise antitrust objections. An example is purchase of a United States manufacturer by a foreign supplier of raw materials. The possible hazard to competition of such an arrangement is that other domestic companies may lose a source of raw materials. Section 7 also applies to such mergers.

The basic factors affecting the legality of joint ventures are the same as those affecting the legality of mergers. Joint ventures with domestic firms may sometimes provide the only means for foreign firms to enter markets in the United States. However, joint ventures can have an adverse effect on American domestic markets. For example, joint ventures in which the foreign firm is removed as a potential competitor may present substantial antitrust concerns.[1]

A recent case in the foreign direct investment and joint venture area will show how the above-described policy is put into effect. In the 1969 BP-Sohio merger case,[2] BP, already a major petroleum marketer on the East Coast, acquired Sohio which had about 30 percent of the Ohio market. The Department of Justice objected to the merger on the grounds that BP was a potential entrant into Ohio, Sohio's primary market and the merger would foreclose an independent entry into that market. The case was settled by a consent decree under which the merger was allowed to proceed provided that Sohio divested, by sale or exchange for stations in other parts of the country, stations handling a total of 400 million gallons of fuel per year in the Ohio market. This case indicates the Department of Justice will challenge an acquisition when a major foreign firm, an actual or potential competitor in the United States market, merges or enters into a joint venture with a major United States firm in a concentrated United States market and the effect is to foreclose independent entry or expansion of the foreign firm.

With respect to the second objective of the antitrust laws, prohibiting anticompetitive practices, foreign firms which invest in the U.S. (whether *de novo* investment in new facilities or purchase of existing facilities from other firms) are also subject to U.S. standards concerning monopolization under Section 2 of the Sherman Act and concerning price

[1] *See, e.g., United States* v. *Penn-Olin Chemical*, 378 U.S. 158 (1964), a case involving domestic firms only, but which describes the anticompetitve effects of such arrangements.

[2] *United States* v. *British Petroleum Co.*, Civ. No. 69-954 (N.D. Ohio 1969) settled by consent decree, 1970 Trade Cases Par. 72, 988.

fixing, group boycotts, market allocation and the like under Section 1 of the Act.

Should a foreign firm alone control a sufficiently high percentage of the U.S. market, or should a foreign firm engage in conduct with its competitors which amounts to express collusion on prices, division of markets, or group boycotts, then the Sherman Act provisions would be applied with equal impact on the foreign and domestically owned companies involved.

Foreign firms which contemplate an investment in the United States by purchase or merger of an existing firm may wish to consider using the Business Review Procedure of the Antitrust Division (28 CFR 50.6) whereby the Division will state its present enforcement intentions as to proposed business conduct, such as a merger or purchase of an American firm. Under this procedure, businessmen may inform the Division of proposed domestic or foreign activities, alone or jointly with other firms and receive a statement of the Division's enforcement intentions with respect to their specific proposal. Firms may, of course, if they wish, make any purchase agreement or major outflow of funds dependent on receiving information via the Business Review Procedure from the Division on its present enforcement intentions, based upon the material submitted by the firms seeking review.

II. Securities Laws and Regulations

Our securities laws and practices are generally more rigorous than those in many foreign countries and foreigners in certain cases may consider our system burdensome. U.S. securities laws and practices apply equally to U.S. and foreign investors or issuers. However, in applying the securities laws the SEC has tended to accomodate foreign investors through exemptions from and modification of certain provisions of the laws. Our high standards of disclosure and fair practice may be important factors in attracting foreign capital.

1. *Federal Securities Laws.* If a foreign direct investment project is partly dependent on U.S. sources of financing, the foreign issuer-investor may be subject to the provisions of the U.S. securities laws. Certain types of transactions (commercial bank loans and private placements) may be exempt from the laws; however, if the investor wishes to raise funds from an offering of securities to the public, the issue in most cases must be registered under the Securities Act of 1933. Upon completion of a public offering, the issuer would be subject to the reporting requirements of the Securities Exchange Act of 1934.

In addition, Section 13(d) of the Securities Exchange Act of 1934 requires an investor acquiring more than 5% of the beneficial ownership of a class of securities registered under Section 12 (which applies to most public companies) to file with the Securities and Exchange Commission the name and occupation of the purchaser, the source of funds employed, the purpose of the transaction and other pertinent data. Section 14 requires an investor intending to make a tender offer or take-over bid for more than 5% of the shares of a company to file the information

called for on Schedule 13D with the SEC prior to commencing the tender offer.

Section 16 of the 1934 Act calls for investors owning beneficially more than 10% of a public company and "insiders" (*e.g.* directors or officers) to file with the SEC a statement of the amount of securities owned and to file an updated statement each time the amount of shares owned changes. Furthermore, with very limited exceptions, 10% owners and insiders of a company are liable to turn over to the company any profit realized on certain purchases and sales of the company's securities which take place within a six month period.

The U.S. securities laws often call for more disclosure than foreigners are accustomed to providing. Furthermore, the form and content of the financial statements, as well as the requirement for independent audits, can present foreign issuers with difficult problems. The Commission has proved willing in the past to accomodate foreign issuers as to the nature of information disclosed and to permit reconciliation, rather than reconstruction, of accounting data. The U.S. laws apply even if a substantial portion of the offering is sold to foreigners.

2. *Membership on the New York and American Stock Exchanges.* The rules of the New York and American Stock Exchanges do not permit membership by foreigners. Since the SEC has not disapproved of these rules, they are, in a sense, an extension of the federal securities laws. Foreigners may establish a U.S. based brokerage or investment banking business, which can become a member of the National Association of Securities Dealers, Inc. (NASD) and participate in underwritings and in brokerage transactions off the New York and American exchanges. However, such a dealer generally must work through a member should it seek to execute brokerage transactions on either exchange and pay a commission to the member firm.

3. *State and Local Securities Laws.* Although registration laws vary from state to state, a model act has been adopted by many states which presents few problems to established companies. Furthermore, offerings by companies with securities listed on major national securities exchanges in the U.S. are generally exempted from qualification under most state laws. However, this exemption does not eliminate the issuer's potential liability for any violation of the laws of states in which the offering is made.

Many state securities laws are disclosure statutes similar to the Securities Act of 1933. However, a number of states attempt to evaluate securities and prohibit offerings which are considered too speculative or the terms of which are deemed "unfair". Some of these laws vest considerable discretion in the state administration as to whether an issue may be registered, offered, and sold.

Registration is only required in the states in which the securities are offered. Small offerings can usually be made in a relatively small number of states, allowing the issuer to avoid the more burdensome problems of having the issue approved in many states or throughout the country.

Broker-dealers and their individual registered representatives must be registered in the states in which they wish to conduct business, as well as with the NASD. There are no specific restrictions on foreign controlled firms at the state level so long as they comply with the laws applicable to U.S. owned broker-dealers.

4. *Institutional Disclosure.* Legislation requiring large institutional investors to report holdings and transactions above a certain size has recently been enacted. Foreign institutions would presumably be covered by this legislation, which would add to their record keeping and reporting obligations.

III. Taxation

U.S. Taxation of foreign individuals and foreign legal entities ("corporations") on their U.S. direct or portfolio investment depends upon the relationship of the foreign taxpayer to the U.S. and the geographic source and nature of his income.

1. *Source of Income.* The Internal Revenue Code (IRC) divides income into two classes: U.S. source income and foreign source income. If income is partially from within the U.S. and partially from without, it must be allocated between the two sources. Generally, U.S. source income includes: (1) income from personal services performed in the U.S.; (2) interest paid by a U.S. citizen, resident, corporation, state or local public entity and a pro rata portion of interest paid by certain foreign corporations which derive a substantial portion of their gross income from U.S. sources; and (3) dividends paid by U.S. corporations and a pro rata portion of dividends paid by those foreign corporations which have substantial U.S. source business income.

2. *Nature of Income.* Treatment of income also varies according to its nature:

A. Passive investment income, *e.g.*, dividends, interest, rents, and royalties, is subject to a withholding tax at source of 30% (or lower treaty rate) on gross income; and

B. Business income "effectively connected with the conduct of a trade or business in the U.S." (including income described in paragraph 1) is taxed at progressive rates on taxable income. The "effectively connected" concept was added to the Code in 1966 to segregate business income taxed at progressive rates from investment income taxed at the 30% withholding rate. Among the factors considered are whether the income is derived from assets used in the trade or business, whether the activities of the trade or business were a material factor in the realization of the outcome and whether the asset or the income was financially accounted for through the trade or business.

3. *Summary of Current Treatment.* Putting these variables together, U.S. income taxation of foreign individuals and corporations can be roughly summarized as follows:

(1) Resident alien individuals are taxed at progressive rates both on their U.S. and foreign source taxable income, just as are U.S. citizens.

(2) Non-resident alien individuals are taxed at 30% (or lower treaty rate) on gross U.S. source investment income and taxed at progressive rates on U.S. and foreign source taxable income effectively connected with a trade or business conducted in the U.S. In addition, if a non-resident alien is physically present in the U.S. for more than 183 days during a taxable period, his net capital gains from U.S. sources not

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"effectively connected" are taxed at 30% (or lower treaty rate). Such individuals are not taxed on foreign source investment income, nor on foreign source income not effectively connected with the conduct of a trade or business in the U.S.

(3) Foreign corporations engaged in trade or business in the U.S. are taxed in the same manner as U.S. corporations on their U.S. source income that is effectively connected with such trade or business, as well as upon certain categories of foreign source income effectively connected with the U.S. trade or business. Non-effectively connected U.S. investment income is taxed as described in para. 4.

(4) Foreign corporations not engaged in trade or business in the U.S. are taxed at 30% (or lower treaty rate) on gross U.S. source investment income. Since the corporation has no U.S. trade or business, by definition it will not have any U.S. source business income or effectively connected foreign source income. Such corporations are not taxed by the U.S. on their foreign source investment income.

4. *Gift Tax.* U.S. gift tax is paid by resident aliens in the same manner as U.S. citizens. Gifts of intangible property by non-resident aliens are exempt from the tax. Corporations are not subject to the gift tax provisions.

5. *Foreign Investors Tax Act of 1966.* The present status of U.S. treatment of foreign investors is largely the product of past attempts to remove restraints on such investment. The Revenue Act of 1936 liberalized U.S. taxation of capital gains realized in the U.S. by certain foreign individuals and corporations. In 1963 President Kennedy appointed a task force to examine means of encouraging increased foreign investment in the U.S. and increased foreign financing by U.S. corporations operating abroad. A report ("Fowler Report") was issued by this task force in 1964 containing thirty nine recommendations on how to accomplish those objectives.

Legislation incorporating these recommendations, introduced in March, 1965, underwent extensive modification by the Ways and Means Committee in which the focus changed from encouraging foreign investment to providing equitable treatment of such investment. The resulting "Foreign Investors Tax Act of 1966" (FITA) enacted all the recommendations contained in the Fowler Report except complete exemption from U.S. estate tax of all intangible personal property of non-resident alien decedents located in the U.S. Instead, FITA substantially reduced the tax rates applicable to foreign decedents and increased the available exemption from $2,000 to $30,000. In addition, FITA extended U.S. taxation for the first time to certain classes of foreign source income of non-resident aliens and foreign corporations if that income is effectively connected with the conduct of a trade or business in the U.S.

6. *Tax Treaties.* In addition to legislation, treaties have a major impact on the tax treatment of foreign investment in the U.S. The tendency of recent treaties negotiated by the U.S. has been to incorporate the statutory changes effected by FITA and to provide for a mutual reduction of withholding rates.

7. *Estate Taxes.* Estates of resident aliens are taxed on all property wherever located, just as are estates of U.S. citizens. Estates of non-resi-

dent alien individuals are taxed only on property deemed situated in the U.S. Stock and debt obligations issued or made by a U.S. person or entity are deemed situated in the U.S. regardless of the physical location of the certificate or the note or the non-resident alien at death. After January 1, 1977, deposits with U.S. banks or domestic branches of foreign banks will be deemed situated in the U.S.

8. *Capital Gains.* In general no capital gains tax is imposed on a foreign investor not engaged in a trade or business in the United States. However, if the foreign individual is physically present in the United States for more than 183 days during a taxable period he is liable for the tax.

9. *State Taxes.* State taxes, including corporate income and franchise taxes, personal income taxes, excise taxes, and property taxes may influence the size, type and location of foreign investment. Since state tax rates are substantially less than federal rates, they probably do not constitute a major overall deterrent. However, bilateral tax treaties do not reduce or eliminate these taxes.

State taxes have little effect on the portfolio investments of nonresident alien individuals or foreign corporations since such taxes usually would not apply to dividends or interest paid to those foreign investors or to any gains realized upon final disposition of the securities.

The situation confronting direct investors is more complicated. In addition to the tax rates themselves, investors must consider the basis on which a state premises its taxing jurisdiction and the manner in which it determines the amount of income subject to tax.

IV. Visa Requirements

1. *Nonimmigrants.* Any nonimmigrant alien in the United States may, unless precluded from doing so because of restrictions in the foreign exchange area or because of actions or policies of his government, invest in any lawful venture. However, he may not, in the absence of official permission granted by the Immigration and Naturalization Service, engage in gainful employment or remain beyond the period of time authorized by that Service.

Of the several nonimmigrant visa classifications, four authorize foreigners to work for remuneration here, pursuant to bilateral agreement on reciprocity for U.S. citizens. These are: treaty trader, treaty investor, temporary workers, and intra-company transferee. The first two mentioned classifications were designed specifically to provide for those aliens desirous of investing here, or to otherwise engage in substantial business ventures. The latter are relatively new, having been established by legislation in 1970. So long as aliens in any of these four classifications maintain status with approval of the Immigration and Naturalization Service, there is no prescribed limit on the total length of time they may remain in the United States.

There is one other nonimmigrant classification that is available to the foreign businessman who wishes to invest in the United States: temporary visitor for business. Foreign businessmen admitted in this

classification may not engage in gainful employment, however, nor may they remain longer than six months in the absence of Immigration and Naturalization Serice authorized extensions to stay.

2. *Immigrants.* A foreign businessman who intends to reside in the United States for an indefinite period or permanently in connection with his investment and who cannot qualify for any of the non-immigrant classifications described must obtain an immigrant visa. In applying for an immigrant visa, he must meet the labor certification requirement of the Immigration and Naturalization Act by establishing that he ". . . is seeking to enter the United States for the purpose of engaging in a commercial or agricultural enterprise in which he has invested, or is actively in the process of investing, capital totalling at least $10,000, and establishes that he has had at least one year's experience or training qualifying him to engage in such enterprise." Also, a labor certification will usually be granted by the Department of Labor on an intracompany transfer basis for key personnel who have been employed by the firm abroad for a continuous period of more than one year. Once this requirement has been met, the foreign businessman will then complete the normal procedural requirements and, if a visa number is available for his use, will receive an immigrant visa without delay.

There are limitations imposed by law on the number of immigrant visas which may be issued each year—170,000 to persons born in the Eastern Hemisphere; 120,000 to persons born in independent countries of the Western Hemisphere (North and South America). Because the demand for immigrant visas is variable, there may be a waiting period before an immigrant visa number will become available for a qualified applicant. A foreign businessman intending to immigrate to the United States in connection with his investment in this country must consult the nearest American Embassy or Consulate for precise details of the process of applying for, and obtaining, an immigrant visa and for information concerning the waiting period, if any, which he may face before a visa number can be made available for his use.

GPO 890-514

Senator STEVENSON. Thank you, Mr. Parsky. At several points in your statement, you indicated it is best to leave trade and investment decisions alone in a free and open market. But we are here this morning because it is not a free and open market. And because we are considering means of making it free or less restrictive. So to that extent at least, I don't think there is any disagreement with what you have said. Our purpose is not to engage in restrictive investment trade policies practiced by others. And how you do that by acquiescing in such restrictive practices as the Arab boycott, some of us find a little difficult to understand. I don't think that is much of an overstatement.

We pay the price. It is a one-way street over and over again. I will give you a chance to comment. But you said that the laws on investment were adequate. But then you went on to refer to the interdepartmental study which you said was reviewing the adequacy of the law. Aren't you prejudging the case on investment?

Mr. PARSKY. Well, Mr. Chairman, if I might. First of all, I do understand that your purpose is to maintain a free and open market. But the issue that we have to face is the means by which we will do that. We can seek to maintain that freedom by assuming a leadership role with respect to the policies we employ or we can somehow feel we can create greater freedom by imposing or threatening to impose restrictions on that market. That is the basic issue I think we have to face. It is my position, the position of the administration, that a reaction in kind to the Arab boycott or other restrictive practices not only won't alleviate the boycott, but it will not achieve the objective of maintaining freedom in the marketplace.

Now, with respect to the review of the laws that I referred to, perhaps I wasn't as clear as I should have been. I tried to differentiate between the approach that we must take with respect to a resolution of the Arab boycott problem and what we must do with respect to any discrimination that exists in this country on the basis of religious, ethnic, or other grounds. I draw that distinction in addressing this issue because it is a distinction that is stated as part of the policy of the boycott. I have spoken to the leaders in the Arab countries about this issue. And they have stated to me it is the policy of the boycott they will not do business with Israel and they will not do business with entities that provide the economic support with Israel.

It is not based on religious grounds. For the moment we must examine whether in practice that is the way in which it works. I think that is important. I don't draw the distinction in order to support one practice and object to the other. We are opposed to both, the boycott and the separable issue, if you will, of religious or ethnic discrimination. But the question we have to address is what is the best way to go about eliminating both. And it is my feeling that with respect to the first, the boycott, restrictions on investment or severing economic relations will not adequately address the boycott.

Reaching the conclusion, I would say no additional legislation is needed with respect to addressing the issue of the boycott as so defined. With respect to religious or ethnic discrimination, I think there may be additional legislation that would be called for. It is in that area that we have a review underway now. And it is in that area that I don't believe in my testimony that I have closed off recommendations coming forward. So I think that the U.S. Government also can do a great

deal in terms of the potential for any religious or ethnic discrimination in existence.

We in the Treasury Department do not have an extensive role with respect to the overall relationships with these countries. But we have a major role in the economic area. We have joint commissions with a number of these countries. There has been some concern expressed as to what our policy would be with respect to the assignment of personnel to these countries.

I have discussed this issue very frankly and openly. And I have told the countries that I have spoken to that there will be a number of people visiting their country providing expertise as part of these commission activities. They will be selected on the basis of their ability, not on the basis of their religion. And there will be many people of various religious beliefs that go to these countries and I would expect they would be accepted. And the response has been that they will be. And I have no indication that that policy won't be adhered to.

Pursuing avenues like that, I think, can assist the process. Adopting legislation of a restrictive nature or potentially restrictive nature on investment won't address the boycott and potentially could hurt us.

Senator STEVENSON. Your study then is confined to discrimination on religious or ethnic grounds as opposed to political?

Mr. PARSKY. The current review underway is aimed at that, yes, sir.

Senator STEVENSON. How about my bus situation. Is that a situation that should be excluded from any consideration either in your study or by the Congress with respect to the possibility of making such discriminatory behavior illegal?

Mr. PARSKY. Well, I think that there are a number of provisions. And I don't profess to be an expert as far as the antitrust laws are concerned. But I know that there are a number of provisions at the Justice Department's disposal that would in fact prevent any company for refusing to deal with another company for numerous reasons. I would refer the issue to the Justice Department as to whether or not it is needed. My point is that the kind of legislation that we are talking about here which potentially would aim at imposing some form of restrictive action on investment by countries or potentially would impose some sort of impediments to formal trade practices is not the way in which to address the problem.

If a U.S. corporation is succumbing to pressure to not deal, there are a number of avenues that are open where disciplinary action could be taken.

Senator STEVENSON. Like what?

Mr. PARSKY. Well, let's take, for example, the instances that received a lot of publicity that had to do with the investment banking community. I would yield on the details of this to Ray Garrett, who will testify after me. I am not aware of any instance in which a U.S. investment banking firm has refused to participate with another firm because of pressures being exerted upon them on religious or ethnic grounds.

There was an instance that received a lot of publicity in which a firm in fact refused to do that and didn't succumb. My feeling, and I have discussed this with the Securities and Exchange Commission, is that the NASD and SEC have authority to take disciplinary action in an instance where a U.S. firm does refuse to transact business with a company in a situation like that. They have the authority to act. And it is my understanding that they will.

Senator STEVENSON. Mr. Parsky, you rely heavily in your testimony on advance consultation with respect to the foreign investment issue. How can you be assured of an opportunity for advance consultation unless you are assured of advance notice?

Mr. PARSKY. We have not sought a rigid screening process because we felt that this could be detrimental to the normal investment flows. I personally have discussed the issue with all of the major investors, and a notification as to this policy has gone to all governments. All of the countries I have talked to have expressed a willingness to discuss significant investments with us in advance before the transaction is consummated. But this policy is not aimed at seeking consultations on normal portfolio investments.

Senator STEVENSON. That would apply then just to investments by foreign governments?

Mr. PARSKY. That's correct.

Senator STEVENSON. Of course, some proposals that are before us would apply across the board, to governmental as well as private foreign investment. And without some such proposal, you have no assurance of advance notice. You may through committee get advance notice of government investment. Could we obtain for our record copies of the notification given to other governments with some summary of the responses of those other governments?

Mr. PARSKY. Sure, I would be glad to provide that.

Senator STEVENSON. And we have a rollcall now. I want to let you off if I can before I have to recess the hearing. A final question. At the present time as you know, companies are required to make periodic reports under the Export Administration Act. And the forms include provision for information about requests to comply with restrictive trade practices. The supply of that information is not mandatory.

Mr. PARSKY. I understand.

Senator STEVENSON. The first question is should provision of such information be made mandatory in order to give ourselves a better data base.

Mr. PARSKY. Well, as I have indicated, I certainly think we should have as much information on the whole question of foreign investment and the boycott as we can have. I think that the Commerce Department who has experience in this area has testified with respect to the policy decision as to whether or not it should or shouldn't be made mandatory and I would support that approach. The Congress has looked at the issue, the Congress in the past has decided it should not be mandatory by law. The Commerce Department has looked at the issue and decided by administrative action it should not be mandatory and I would support their experience.

Senator STEVENSON. Would Treasury oppose a proposal to make it mandatory and public? You are not supporting it. Are you opposing it?

Mr. PARSKY. We wouldn't oppose that. But again I would yield to the Commerce Department in terms of voicing the administration's position. They are the ones responsible.

Senator STEVENSON. Thank you, Mr. Parsky. I have to run to catch that vote. The committee is recessed for about 10 minutes.

[The following letter with enclosures was received for the record from Mr. Parsky:]

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

AUG 4 1975

Dear Mr. Chairman:

At the time of my appearance before your subcommittee, you asked what assurance we had that advance consultations with prospective major governmental investors would actually take place.

I am enclosing a State Department cable of May 23, 1975, setting forth the U.S. Government's administrative actions concerning foreign investment in the United States. The cable, sent to all diplomatic posts abroad, reviews the policy considerations behind the measures and states that "we expect foreign governments that are contemplating major investments in the U.S. to consult with us on such investments." The cable gives the rationale for advance consultation and instructs the posts to provide the host governments with copies of the Executive Order of May 7, which provided for the establishment of advance consultation procedures.

We have made clear to all foreign governments that advance consultations on major investments in the United States are an essential feature of our policy toward foreign investment, and, as indicated in the enclosed cable, we expect all foreign governments to abide by this policy in their dealings in the United States.

You asked for a summary of other governments' responses to the procedure of advance consultations. We have not requested governments to respond formally to the announcement of this new feature in our policy toward foreign investment. We have seen that foreign governments are complying with this new requirement, however, and we have no reason to expect all governments will not respect our concern in this matter. No government has refused to consult.

As I emphasized in my statement to your subcommittee, I have had numerous personal contacts with officials of the major oil exporting countries and have found that these countries recognize our legitimate concerns regarding the potential for major investments in U.S. firms. Their response to the concept of advance consultations has been generally favorable as long as it applies to all governments on a nondiscriminatory basis.

Sincerely yours,

Gerald L. Parsky

The Honorable
Adlai E. Stevenson, III
Chairman, Subcommittee on International Finance,
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Attachment

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INFORM CONSULS

E.O. 11652: NA
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SUBJECT: NEW ADMINISTRATIVE PROCEDURES ON FOREIGN INVESTMENT IN THE UNITED STATES
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1. ON MAY 7, PRESIDENT FORD SIGNED EXECUTIVE ORDER 11858 TO IMPLEMENT NEW ADMINISTRATIVE ARRANGEMENTS RELATING TO FOREIGN INVESTMENT IN THE U.S. PURSUANT TO EXECUTIVE ORDER, THE FOLLOWING ARE BEING ESTABLISHED:

A. COMMITTEE ON FOREIGN INVESTMENT IN U.S., TO BE COMPOSED OF REPRESENTATIVES (NOT BELOW LEVEL OF ASSISTANT SECRETARY) OF SECRETARIES OF STATE, TREASURY, DEFENSE, AND COMMERCE AND OF ASSISTANT TO PRESIDENT FOR ECONOMIC AFFAIRS AND CIEP EXECUTIVE DIRECTOR. REPRESENTATIVE OF TREASURY SECRETARY IS TO BE COMMITTEE CHAIRMAN, AND UNDER SECRETARY FOR MONETARY AFFAIRS JACK BENNETT HAS BEEN DESIGNATED. COMMITTEE WILL ASSESS GENERAL TRENDS AND SIGNIFICANT DEVELOPMENTS IN FOREIGN INVESTMENT AND REVIEW INVESTMENTS IN THE U.S. WHICH, IN COMMITTEE'S JUDGMENT, MIGHT HAVE MAJOR IMPLICATIONS FOR U.S. NATIONAL INTERESTS. COMMITTEE WILL ALSO OVERSEE ARRANGEMENTS ON ADVANCE CONSULTATIONS WITH FOREIGN GOVERNMENTS ON SPECIFIC MAJOR PROSPECTIVE

INVESTMENTS BY SUCH GOVERNMENTS. IT WILL BE RESPONSIBLE FOR CONSIDERING PROPOSALS FOR NEW LEGISLATION OR ADDITIONAL ADMINISTRATIVE ACTIONS. AS NEED ARISES, THE COMMITTEE WILL MAKE RECOMMENDATIONS TO THE NSC AND THE EPB.

B. OFFICE OF FOREIGN INVESTMENT IN THE UNITED STATES, IN THE DEPARTMENT OF COMMERCE TO OBTAIN, CONSOLIDATE, AND ANALYZE INFORMATION ON FOREIGN INVESTMENT IN THIS COUNTRY AND ALSO SUBMIT TO COMMITTEE REPORTS, ANALYSES, DATA, AND RECOMMENDATIONS RELATING TO FOREIGN INVESTMENT IN THE UNITED STATES, INCLUDING RECOMMENDATIONS AS TO HOW INFORMATION ON SUCH INVESTMENT CAN BE KEPT CURRENT.

2. EXECUTIVE ORDER WAS PROMULGATED TO GIVE EFFECT TO STATEMENTS BY ADMINISTRATION WITNESSES IN HEARINGS MARCH 4 BEFORE SENATE SUBCOMMITTEE ON SECURITIES THAT ADMINISTRATION HAD MADE INTENSIVE REVIEW OF USG POLICY ON INWARD FOREIGN INVESTMENT AND CONSIDERED NEW LEGISLATION UNNECESSARY AT THIS TIME. (SEE REFTEL.) AS INDICATED

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AT THAT TIME, HOWEVER, WE HAVE CONCLUDED THAT INVESTMENTS BY GOVERNMENTS MAY INVOLVE SPECIAL CONSIDERATIONS AND, THEREFORE, WE EXPECT FOREIGN GOVERNMENTS THAT ARE CONTEMPLATING MAJOR INVESTMENTS IN THE U.S. TO CONSULT WITH US ON SUCH INVESTMENTS.

3. WE WANT TO AVOID GIVING THE IMPRESSION THAT USG PLANS A GENERALIZED SCREENING PROCEDURE. WE EXPECT COMMITTEE TO CONCERN ITSELF ONLY WITH A FEW EXCEPTIONAL CASES AND THUS DO NOT REGARD OUR NEW PROCEDURES AS A DEPARTURE FROM OUR TRADITIONAL OPEN-DOOR POLICY TOWARD FOREIGN INVESTMENT IN THIS COUNTRY.

4. CONSULTATION PROCEDURE WILL GIVE USG OPPORTUNITY TO COMMENT ON INDIVIDUAL INVESTMENTS BY FOREIGN GOVERNMENTS WHICH, IF CONSUMMATED, MIGHT HAVE MAJOR IMPLICATIONS FOR THE NATIONAL INTEREST OR RAISE IMPORTANT PUBLIC POLICY ISSUES. USG VIEWS SUCH CONSULTATIONS AS BENEFICIAL TO PROSPECTIVE INVESTOR GOVERNMENTS AS WELL AS TO THE USG IN THAT THEY WILL REDUCE THE POSSIBILITIES FOR MISUNDERSTANDINGS.

5. CONSULTATIONS WILL BE LIMITED TO SPECIFIC, PROSPECTIVE INVESTMENT TRANSACTIONS, AND WE ARE SEEKING TO AVOID PRECISE OR RESTRICTIVE GUIDELINES AS TO KINDS OF INVESTMENTS OF WHICH USG SHOULD BE NOTIFIED. CONSULTATION PROCEDURES WILL BE FLEXIBLE, AND EACH INVESTMENT THAT

COMES BEFORE THE COMMITTEE WILL BE CONSIDERED ON ITS MERITS. ADVANCE CONSULTATIONS WILL NOT BE EXPECTED IN CASE OF DIVERSIFIED PORTFOLIO INVESTMENTS IN U.S. CORPORATE SECURITIES EVEN THOUGH AGGREGATE AMOUNT BY A FOREIGN GOVERNMENTAL INVESTOR MAY BE SUBSTANTIAL. NOR DO FOREIGN GOVERNMENTAL INVESTMENTS IN U.S. GOVERNMENT SECURITIES FALL WITHIN THESE TERMS OF REFERENCE. USG HAS NO WISH OR INTENT TO INTRUDE UNNECESSARILY UPON RELATIONSHIP BETWEEN FOREIGN GOVERNMENTAL INVESTORS AND THEIR INVESTMENT COUNSELORS.

6. ADDRESSEES ARE REQUESTED TO PROVIDE HOST GOVERNMENTS WITH COPIES OF EXECUTIVE ORDER AND PRESS RELEASE ISSUED

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Senator STEVENSON. The meeting will come back to order.

The next witness is Mr. Ray Garrett of the Securities and Exchange Commission.

Mr. Garrett, I apologize for the long delay and thank you for your patience. You have testified on these subjects before. The Securities Subcommittee of the Banking Committee has transferred some of the legislation which it has considered on this subject to the subcommittee that I am chairman of for purposes of further hearings.

I hope that from these hearings we will be able to report out comprehensive legislation dealing with the subject.

You are welcome, as I indicated to the other witnesses, to either read the full statement, otherwise, I will be glad to enter it into the record.

STATEMENT OF RAY GARRETT, JR., CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION, ACCOMPANIED BY ALAN B. LEVENSON, DIRECTOR, DIVISION OF CORPORATION FINANCE, AND CARL T. BODOLUS, CHIEF, OFFICE OF INTERNATIONAL CORPORATE FINANCE, DIVISION OF CORPORATION FINANCE

Mr. GARRETT. Mr. Chairman, I appreciate the opportunity to be here. I thank you for your consideration of our time, and I shall reciprocate by summarizing, rather than reading, my prepared statement.

Senator STEVENSON. The full statement will be entered into the record.

Mr. GARRETT. Thank you very much.

I would like first to introduce two members of the Commisssion's staff who are with me. On my right is Alan B. Levenson, director of the Commission's Division of Corporation Finance, and on my left is Carl T. Bodolus, chief of the Office of International Corporate Finance of that Division.

The major concerns of the Securities and Exchange Commission with respect to the legislation that you are now considering relate to S. 425, rather than the other bills, since only S. 425 directly involves the jurisdiction of the Commission. Our concerns are, I suppose, somewhat tangential to the primary concern of these hearings, which is, I understand, the desirability of establishing a process to screen foreign investments, in the sense of permitting them to occur or forbidding them to occur. On this issue, the SEC takes no position. We are not invested with any official expertise, and we have no special insight in this area.

There are, however, some important aspects of S. 425 that do cut rather deeply into an area of considerable concern to us. I am referring, of course, to the provisions of S. 425 relating to the disclosure of beneficial ownership of securities.

Under section 13 of the Securities Exchange Act of 1934, any person who becomes, directly or indirectly, the beneficial owner of more than 5 percent of any equity security, of what I will loosely call a class of publicly held securities, must report that fact to the SEC, to each exchange where the security is traded, and to the issuing corporation. For purposes of this provision, a class of publicly held securities includes any class of securities registered pursuant to section 12 of the Exchange Act, issued by registered, closed-end investment companies, or issued by certain insurance companies otherwise exempt from registration under section 12.

S. 425 would add to these provisions. In addition to requiring a "notice of intent" and so-called screening through the Office of the President, S. 425 would require disclosure of the nationality of the 5-percent beneficial owners of such securities, as well as certain financial statements relating to the owners.

We expect shortly to release for public comment proposed amendments to the Commission's rules under section 13 of the Securities Exchange Act, which would define beneficial ownership to include the power to direct the vote or disposition of shares, and the power to receive or direct the receipt of dividends or proceeds from the sale of shares, plus certain family holdings. This proposed definition will get closer to concerns about the influence of shareholders upon corporate control than do the concepts of beneficial ownership accepted today, which rely more on economic interest. We also will include provision for disclosure of the nationality of 5 percent beneficial owners.

We have some question as to whether we think it is justifiable to require financial statements, particularly of individuals or privately held companies, where the only fact being reported is the existence of the more than 5-percent beneficial ownership and where there is no active intent to proceed to acquire control.

We also are considering requiring companies to disclose, in periodic reports, the top 30 holders of record of their equity securities, in line with the recommendations of an intergovernmetal committee that was established last year to attempt to achieve some uniformity among the different agencies that require reporting of stock ownership. Reporting of the 30 largest holders of record will not be very illuminating as to foreign ownership, even if we require—and this would be a further step—disclosure of the record holders' residence or nationality. I say this only because of the various means by which beneficial ownership is obscured through street-name holdings or other use of record holders.

Of more concern to us than the proposed amendments relating to disclosure of nationality is the proposal to add a new section 14(g) to the Securities Exchange Act, which would require all record holders of shares of publicly owned companies, who hold for the benefit of someone else, to report the identity of that someone else to the issuing corporation, and would require the corporation to collect and keep a list of this information, filing with us so much of it as we might require. We think this proposal would overdestroy the target, since it would require, in effect, a virtually complete list of beneficial owners of all shares of all publicly owned companies, reaching down theoretically to the owner of one or two shares. While some corporate secretaries might like to have such a list, for direct mailing purposes, we think, overall, that the burden upon the various persons involved in complying with such a multitiered reporting system, and the invasion of privacy of the individuals involved, would not be justified by any benefit to the public or to investors. While we would oppose requiring this type of disclosure about owners of small amounts of securities we are considering—and this would require legislation—a provision that would lower the threshold for reporting of beneficial ownership to below 5 percent. The most obvious place to stop would be 2 percent, which has an analogy in the present Exchange Act, or possibly even 1 percent.

I should point out, and the committee should be aware, that the difference in quantity of disclosure would be spectacular. Based on infor-

mation available to us, it appears that it would be common for a corporation with 50,000 shareholders to have only one or possibly five or six persons beneficial owners of 1 percent or more of any class of its equity securities, and corporations would have no beneficial owner at all of 2 percent or more of any class of their equity securities. Nevertheless, we think such a lower threshold point perhaps would be a reasonable compromise, in light of the various considerations involved, including costs and other burdens, reasons for privacy and the interests of investors and other persons in knowing who controls companies.

There is another aspect of S. 425, which is of great interest to us, and that relates to the problems of enforcing disclosure. S. 425 proposes, as a means of enforcing what I will loosely call the "screening" provision that is, the requirement that advance notice be filed and permission granted or not denied before the acquisition of 5 percent or more of a class of equity securities—judicil disenfranchisement of the securities held and, where appropriate, court-ordered divestiture of ownership of the securities involved with the proceeds held and remitted net, of course, to the foreign shareholder.

We have had a great deal of difficulty enforcing any disclosure requirements with respect to persons who are not residents of the United States and who hold through foreign fiduciaries, particularly in countries that have so-called bank secrecy laws. Our efforts to pierce the veil, so to speak, of the Swiss bank secrecy laws is of long standing, and we are still way behind. Although a treaty was negotiated with Switzerland, involving only criminal matters, we don't yet even have that treaty in force.

The idea of judicial disenfranchisement or divestiture offers promise as a means of compelling disclosure by foreign fiduciaries. We are concerned here with fairness among the various classes of fiduciaries, domestic and foreign, that is, how much secrecy they can provide to their customers, where their customers want that.

We are developing legislative proposals which would provide a court with similar powers with respect to the enforcement of the reporting provisions of section 13(d) of the Securities Exchange Act.

We have not yet drafted the details of our proposals, but we think these enforcement ideas offer promise. The power to impound dividends might be added to these. We have been informed informally, by persons familiar with investors abroad, that denying foreign investors the opportunity to vote their stock might not attract much attention, since stockholders in European corporations apparently don't vote very much anyway, but impounding dividends would attract attention, as would, of course, divestiture.

These are the matters of concern to us, Mr. Chairman.

I also would like to discuss briefly the Arab boycott, and the extent to which the Commission has jurisdiction to act in the limited area of underwriting syndications, previously alluded to by Mr. Parsky. He correctly described our position and our view of the situation.

We do have a peculiar involvement where a boycott affects investment bankers and their underwriting activities. American investment bankers generally are members of the National Association of Securities Dealers, which has a special quasi-official status under section 15(A) of the Securities Exchange Act. The NASD has rules requiring the observance of just and equitable principles of trade, and it has

legal authority to enforce those rules. And, the NASD has informed us that, in its opinion, compliance with the so-called Arab boycott would be a violation of those rules and that it would propose to take action, if it came upon a case in which action appeared necessary. Further, under the amendments to the Securities Exchange Act that were enacted last June, the Commission has authority to enforce NASD rules directly. While we have no reason to believe it would be necessary to do so, the Commission could move directly under that authority, if it did become necessary.

We and the NASD have been monitoring the situation from time to time. We are not aware at the moment of any problem that is not being adequately handled by the members of the investment banking industry. No one has come to us complaining or requesting assistance or protection. We do study syndicates, as they are published, from time to time, but of course, one cannot always tell just from looking at a list of names how it came about. But, I do believe that if there were problems of any serious dimensions, somebody very directly affected would have come to us. So, I am fairly confident in saying we are not aware of any serious problems in this particular area.

I must observe, however, that unlike industry in general in this country, it would be quasi-unlawful, at least under the NASD's rules, for our investment banking firms to comply with requests to honor the so-called Arab boycott.

We are prepared to respond to questions.

Senator STEVENSON. Would you repeat that again? It would be quasi-unlawful under what?

Mr. GARRETT. I used quasi-unlawful because it would be a violation of the NASD rules, and there are penalties that could be assessed for violation of those rules.

Senator STEVENSON. If what happened?

Mr. GARRETT. If a member of the NASD violates just and equitable principles of trade. Therefore, if a member of the NASD, which includes virtually all of our American investment banking firms, were to comply with a demand for a boycott of another American firm in an underwriting situation on grounds of race, ethnic background or support of Israel, the NASD is of the opinion it could proceed against that firm. And we share that opinion.

Senator STEVENSON. And what would the sanction be?

Mr. GARRETT. The possible sanctions include expulsion from the NASD, suspension of membership in the NASD, fines, censure, or a combination thereof. The appropriate sanction would be a matter of judgment, based on the particular facts and circumstances of each case.

Senator STEVENSON. When do you expect the regulations to issue which will require disclosure of nationality?

Mr. GARRETT. Our target is before Labor Day.

Senator STEVENSON. And the point you are making, one of the points, as I understand it, is that you will require disclosure of the nationality of the beneficial owners, but it is pretty hard to go beyond that to identify the real beneficiaries if they seek to conceal their ownership.

Mr. GARRETT. What I alluded to was the situation where a beneficial owner sets up one or more Swiss bank accounts, which in turn have accounts with broker-dealers here. In other words, where you

have a series of nominees between the holder of record and the beneficial owner. I think it is probably correct to say that a routine type of reporting procedure will probably never guarantee disclosure of every person who wants to hide his ownership. We do think we can draft legislation which, by making the potential penalties significant, can greatly increase the chances of obtaining information about the true beneficial owner.

Senator STEVENSON. Are you preparing such legislation recommendations now?

Mr. GARRETT. Yes, we are.

Senator STEVENSON. And when do you expect those to be ready?

Mr. GARRETT. By Labor Day. We hope to submit proposed legislation to Congress at the same time we publish our proposed rules. We had hoped to have had this done long before now, but the critical persons involved have been absorbed in other matters.

Senator STEVENSON. Don't you have situations in which the laws of foreign countries protect the confidentiality of beneficial owners? For example—maybe I shouldn't make this hypothetical—doesn't Switzerland have a law that prohibits disclosure of beneficial ownership? And if so, how could the owner of record comply with the U.S. law if it meant violation of Swiss law? Are there such situations?

Mr. GARRETT. Oh, yes, indeed, there are. I understand that it is a crime under Swiss law for a Swiss bank to disclose the name of the person for whose account they hold securities, without such person's permission. And there is no way we can change that directive.

The suggestion which I draw from S. 425, and from some enforcement cases that we have had in this country, based on violations of our reporting requirements by 5 percent holders, is to deny the right of those shares to vote, unless there is disclosure of the person who is directing the vote.

Now; in my earlier remarks, I alluded to the fact that I have been told that providing for a loss of voting rights might not attract much attention. Investors may not care whether or not they can vote, although, of course, if they are interested in exercising control, then they would want to vote.

The other device suggested by S. 425, and I want to make it clear that we would suggest this in a somewhat different context than is contemplated by S. 425, would permit a court to order the sale of the stock for consistent refusal to disclose. While we wouldn't impose an obligation on the Swiss bank, we could make it unattractive to individuals to hold substantial blocks of stocks in American corporations through Swiss bank accounts, without granting the banks permission to disclose who they are. That is the objective.

Senator STEVENSON. Will these regulations and such legislative proposals afford advance notice or will it be after the fact?

Mr. GARRETT. This would be after the fact. We don't contemplate changing the law in this regard. The present law requires reporting after the fact, if a person acquires more than 5 percent. It is not very long after the fact, 10 days, but it is after the fact.

If the 5-percent or more is intended to be acquired through a tender offer, there is concurrent filing. If control is to be acquired through other devices, such as a merger that would require solicitation of

proxies, or through an exchange of securities, then there is advance notice.

Senator STEVENSON. How do you feel about proposals to require advance notice in the second class of cases? Leave aside the threshold question at the moment? Is it unreasonable to require advance notice?

Mr. GARRETT. I think of these in terms of the Williams Act, because the relevant provisions in the Securities Exchange Act came into our law a few years ago in amendments sponsored by Senator Williams. The threshold began at 10 percent, incidentally, and was shortly amended down to more than 5 percent.

I think both originally, and at the time of the amendment, there was considerable debate on the question whether there should be advance filing or not, in public tender offer situations. We were thinking of it, of course, not in terms of foreign persons, but in other terms.

Alan Levenson reminded me some persons wanted 7 or 10-day advance filing at the SEC, while others objected to it. The legislation finally enacted requires concurrent filing.

The problems that were most on people's minds at the time the Williams Act was adopted, were whether the SEC should have an opportunity to review tender offer material in advance, on the one hand, and whether or not there might be a leak of inside information on the other. The object was to prevent information which is not yet available to the public from being used unfairly and improperly.

I imagine the same kind of considerations will come up again.

Alan, you may have further thoughts on this.

Senator STEVENSON. Excuse me, if I could add this question at this point. Wouldn't that be a concern of yours about S. 425?

Mr. GARRETT. Yes, I should have mentioned that. It is in our written statement. We are nervous about sitting for 30 days on a report of a proposed acquisition that is not made public, particularly if it should happen to come at a time when we are also working on a registration statement of that company or a proxy statement or something else. We have suggested that we at least be authorized to make the fact of the proposed acquisition public as necessary in order to avoid that conflict.

Senator STEVENSON. Thank you.

I am sorry, Mr. Levenson.

Mr. LEVENSON. Just to supplement Chairman Garrett's remarks, the SEC in the 1968 hearings before Senator Williams did recommend strongly a 5 and 10-day pre-filing for a proposed tender offer. This did not apply to an acquisition statement, that is, for an ordinary open-market purchase.

At that time, the interest and purpose behind the 5 or 10-day period was not to screen the merits of the investment. It was merely designed to assure full and fair disclosure to the security holders who would be the recipients of the tender. Congress decided at that time that, in order not to tip the scales between incumbent management or the bidding company, the filing should be contemporaneous.

Mr. GARRETT. One can imagine, in terms of advance acquisition statements for open-market purchases, the objections that would be raised on the part of anybody who let it be known he is going into the market to acquire substantial amount of stock, particularly the fear that he would be murdered in the market place.

Senator STEVENSON. In this instance, the sort of screening that we are talking about would require more than 5 or 10 days, I would think.

Mr. GARRETT. S. 425 would provide a 30-day period.

Senator STEVENSON. I think the Williams bill contemplates 30 days.

Mr. GARRETT. I would expect any substantive proceedings on the merits of an acquisition would require about 30 days.

Senator STEVENSON. Can you generalize about the procedures in other countries, Canada, for example? Aren't there procedures that effectively screen foreign investment in Canada and other countries?

Mr. GARRETT. I don't know them in great detail, but Canada, Japan, and other countries have had such screening laws for some time. Some of them are simply flat prohibitions.

Senator STEVENSON. Do they have such screening procedures as are proposed by Senator Williams in S. 425? If so, have there been any adverse effects upon investors of the kind that you were mentioning?

Mr. GARRETT. I can't answer in any detail, Mr. Chairman.

Are you familiar with any, Carl?

Mr. BODOLUS. We have heard of no problems. Canada certainly has the 5-percent limitation. They are going on strictly an economic and nationalistic basis in their law. It is not aimed at any particular foreign investors, but all foreign investors. Nationalism is the backbone of their particular foreign investment screen.

Senator STEVENSON. Is that advance notice confidential?

Mr. BODOLUS. As far as I know, yes, sir.

Senator STEVENSON. Maybe that confidentiality obviates concern for the investors.

Mr. GARRETT. Yes, I think it does require a resolution of the conflict that we have pointed out. One way you could free us from it would be to have the document filed some place else. But as far as public investors are concerned, there would still be a 30-day period in which they would be ignorant of the proposal.

Senator STEVENSON. Thank you, Mr. Garrett. I don't believe I have any further questions. It was a helpful statement.

Thank you, gentlemen.

[The complete statement of Mr. Garrett follows:]

STATEMENT OF RAY GARRETT, JR., C[illegible]MAN, SECURITIES AND EXCHANGE CO[illegible]N

Mr. Chairman, members of the Subcommittee: I am pleased to appear before this Subcommittee today to present the Commission's views on S. 425, "the Foreign Investment Act of 1975." With me this morning is Alan B. Levenson, Director of the Commission's Division of Corporation Finance, and Carl T. Bodolus, Chief of that Division's International Finance Office.

Although the Subcommittee will also be considering S. 953, S. 995 and S. 1303, which would grant the Secretary of Commerce certain powers with regard to foreign investment, I will generally restrict my comments today to S. 425, since only that bill relates directly to the jurisdiction of the Commission.

S. 425 was introduced in January of this year, by Senator Williams, and hearings on it were held last March, before the Subcommittee on Securities. S. 425 would, among other things require increased disclosures about owners of more than five percent of the securities of publicly-owned corporations, and disclosure of all the beneficial owners of equity securities of a public-held company. Last March, when I testified on behalf of the Commission, I expressed our general support for the provisions of S. 425 that are aimed at improving the disclosure of equity ownership. We were—and still are—particularly troubled, however, with the provisions of S. 425 requiring disclosure of *all* the beneficial equity

owners of publicly-held companies and the burdens such a requirement likely would impose, without any commensurate benefit to investors.

Rather than repeat that testimony in full today, I request that a copy of my earlier testimony be included in the record of these hearings, along with a copy of the Commission's detailed written comments that were submitted to the Subcommittee on Securities in connection with its hearings.

When I last testified on S. 425, I stated that the Commission's staff was working on developing disclosure rules that would, if adopted, effect disclosure of some of the information that would be required by S. 425. I understand that the Subcommittee would like me to describe in more detail the status and nature of the rules our staff is considering, and highlight my earlier testimony briefly.

As you know, Section 13(d) of the Securities Exchange Act requires certain disclosures by persons who acquire the beneficial ownership of more than five percent of the equity securities of large, publicly-held American companies. S. 425 would amend Section 13(d) to require, subject to our rulemaking powers, that such a person also disclose his residence, nationality, and financial condition; the background, identity, residence and nationality of any associated persons who own equity securities of that issuer; and the background, identity residence and nationality of any other persons sharing or having exclusively the authority to exercise the voting rights of those securities.

While we have supported this provision of S. 425, it should be borne in mind that Section 13(d) of the Securities Exchange Act presently requires the disclosure of not only the information therein specified, but also "such additional information . . . as the Commission may by rules and regulations prescribe. . . ."

This rulemaking authority is quite broad and open-ended, and could be used to promulgate rules requiring disclosure of the same information sought to be required by S. 425.

In fact, we are presently developing proposed rules under this existing authority. In this connection, last fall we held a Public Fact-Finding Investigation in the Matter of Beneficial Ownership, Take-overs and Acquisitions by Foreign and Domestic Persons. Our staff has generally concluded its review of the extensive record compiled during that public investigatory proceeding, at least with regard to certain questions relating to the disclosure of beneficial ownership.

As a result of that review, last May, the Commission received tentative and general staff recommendations concerning the appropriate use of our rulemaking authority, and these were, with some modifications, conditionally approved. Our staff is now in the process of developing detailed proposals for rule and form changes, and these proposals should be on active docket by the end of August.

Subject to the time expenditures required by the Administrative Procedure Act's notice and comment provisions, and a review of the anticipated extensive and detailed public comments, these proposals are being given high priority, and their adoption, subject to whatever views we might receive, should be effected as expeditiously as possible, assuming that any proposals we publish are not preempted by legislation.

Among other things, we are considering proposing a rule defining the term "beneficial owner," for purposes of Sections 13(d) and 14(d). That definition would focus particularly on the power to direct the vote of securities, to direct the disposition of those securities, and would also include persons with the right to receive certain economic benefits from the securities. In addition, we are considering rules making it clear that beneficial ownership could result from, among other things, certain family relationships.

Similarly, our staff is working on proposals which would require more disclosure of the nature of the beneficial ownership in Schedule 13D—the form we require to be filed with us pursuant to Section 13(d). For example, disclosures might be required concerning the power of the person filing the statement to direct how such securities should be voted or, if such power, is lacking, disclosures might be required of the situs of such power, as well as the nationality of the persons filing the form.

The definition of the term "beneficial ownership" under consideration is fairly broad. Presumably, it would encompass a number of financial institutions as well as individuals. For example, certain bank trust departments that serve as trustees, and certain broker-dealers who manage discretionary accounts, might be considered to be the beneficial owners of the securities held in the trusts or the accounts, respectively.

Rather than exclude such institutions from the definition of "beneficial owner," which might result in a definition that was too narrowly drawn, we are consider-

ing ways of alleviating some of the burdens that surely would devolve upon these institutions if our broad definition required them to file unnecessarily extensive disclosure reports. Section 13(d)(5) of the Act authorizes the Commission to promulgate a short form notice of acquisition, where the acquisition is in the ordinary course of business and is not made for the purpose, and does not have the effect, of changing or influencing corporate control. A short form notice could be used by certain financial institutions to report their holdings, and we are considering rules to that effect.

These rules, if adopted in any form similar to what I have discussed, would in part accomplish the objectives contained in certain of the proposed amendments to Section 13(d). Perhaps the most significant rule, and the one most difficult to formulate, is one defining the term "beneficial owner" for purposes of Section 13(d). Whether or not S. 425 is adopted, there will still be a need for such a rule, since S. 425 does not presently contain such a definition. We are not contemplating proposing any rules, however, which would require all 5 percent owners of equity securities to file personal financial statements with the Commission, as S. 425 would require. When I testified before the Subcommittee on Securities I did not express our concern with this provision. Having considered it further, we do not believe it is necessary for the protection of investors when the acquiring person is not seeking control of the issuer. The public benefits would be too remote in such cases, the burdens of compliance too heavy, and the invasion of privacy unwarranted.

In addition to amending Section 13(d) of the Exchange Act to increase disclosure about owners of more than five percent of a class of equity securities, S. 425 also would add a new Section 14(g) to the Securities Exchange Act, creating a multi-tiered reporting procedure by record holders to issuers, so that American companies with a registered class of equity securities could obtain information to compile a list of the names, residences and nationalities of all the beneficial owners of such securities, as well as information with respect to the locus of authority to exercist the voting rights of the securities held of record by other persons.

Disclosure of beneficial ownership when separate from record ownership, however, is another matter. Under the present law there is no general requirement for such disclosure below the 5 percent level, nor is there any adequate means of enforcement against fiduciaries. We generally favor increased statutory authority in this direction.

As to creating a multi-tiered reporting procedure by holders of record, we agree with the objective of this provision, but believe that its scope and extent are not necessary for the protection of investors. The burden on nominees would appear to be excessive and the benefits to the public too remote.

However, we are considering a rule proposal that would require the issuer to disclosure in its annual report filed with us, as well as in certain registration statements, the 30 largest holders of record of any class of voting security and the extent of their voting authority, if known to he issuer. If such proposal is made, it probably would exempt disclosures of very small holdings. Our staff is, in developing this proposal, taking into careful consideration the recommendations of an Interagency Steering Committee on Uniform Corporate Reporting, which, in cooperation with Senator Metcalf's staff, has developed a form of Model Corporate Disclosure Regulations (January 1975).

There comes a point, of course, at which disclosure of ownership, when balanced against the need for such disclosure, becomes too burdensome, and constitutes an unreasonable and unnecessary invasion of personal privacy. In that regard, we have several problems with the solution proposed by S. 425.

We are concerned, for one thing, about the substantial costs that this proposed amendment would impose on brokerage firms, banks, trust companies and especially transfer agents, as well as the issuing companies, if the precise provisions of S. 425 were enacted, since the bill would apply to all beneficial owners, even the owner of one share of common stock. It is not unusual for a large company to have over 100,000 record holders of its common stock. AT & T has millions. So much data is too expensive to provide and more than anyone can effectively and properly use.

If the intention of this section of the bill is to elicit significant information regarding beneficial owners, the Congress should consider less burdensome, alternative means of accomplishing this goal. At the very least, the disclosure in filings should be limited, perhaps, to the 20 or 30 largest holders, or any holder of more than some percentage, such as 2 percent or 1 percent. This Subcommittee

should be aware that many large companies with 50,000 or more record shareholders may have no more than three or four who own beneficially as much as one percent of the company's shares.

The problems in obtaining meaningful disclosure of stock ownership has always been the holding of record by fiduciaries who feel constrained, by law or custom or good business practice, from their point of view, to decline to disclose the identities of the persons for whom they hold the stock, except in response to legal process. Foreign fiduciaries, in many cases, will not even recognize our legal process for this purpose. Most fiduciaries will disclose the extent to which they hold shares for others but possess sole or joint voting power, but not the the identity of the beneficial owner or of any other person who holds the power solely or jointly with the fiduciary.

The idea of requiring fiduciaries to disclose their beneficiaries, or at least those beneficiaries with voting power, on a regular basis for public filings raises other considerations that must be carefully weighed. One is the longe-standing tradition and policy in our law of protecting the privacy of private trusts. Compelling the public disclosure of the portfolios of private trusts—even if only to the extent that they hold equity securities of publicly-owned U.S. companies for which the beneficiaries hold the voting power—is a fundamental departure from our settled norms. Of course, we have long since made this departure where the beneficiary is a reporting person under Section 16 of the Securities Exchange Act or it is otherwise a control person, or affiliate, of the portfolio company, or one who has acquired five percent and becomes subject to Section 13(a). But the proposed Section 14(g) is a far-reaching departure.

One approach to the problems raised might be to require such disclosure only when the shares constitute more than a specified percentage of the outstanding shares, but making the percentage much lower than 10 percent or even 5 percent. One and two percent have been suggested with appropriate rulemaking power vested in the Commission. The theory, then, would be that an investor can preserve privacy through a personal trust and yet retain voting power so long as he keeps his positions in publicly-owned companies insignificant in terms of voting strength. Above that, public policy favoring disclosure will prevail over that favoring the privacy of personal investments.

Another consideration is one of competitive fairness among fiduciaries—broker-dealers and trust companies and U.S. and foreign banks. The foreign part of the problem is not just one of even application of the law as written, but also as enforced. We have been engaged in long, and so far futile, efforts to compel disclosure of bank customers in some countries, even for purposes of criminal investigation. Here, S. 425 offers a device that might do the job, namely the judicial disenfranchisement or divestiture of the stock. S. 425, as presently drafted, would employ this device only for violations of the screening provisions. We suggest that it be expanded to cover violations of the disclosure provisions, both foreign and domestic. Consideration should also be given to the impounding of dividends for non-compliance.

It is true companies have complained that they are sometimes unable to determine who actually owns their securities and thus cannot communicate effectively. We do not believe that the solution to this problem need be as all-encompassing as that proposed in S. 425. Pursuant to our new legislative mandates, our staff is considering ways to encourage or require that brokers who hold securties for their customers make sure that their customers receive issuer communications. We believe that this, in conjunction with a rule requiring issuers to provide sufficient quantities of material to brokers and others for their customers, will enable companies to communicate effectively with their shareholders.

S. 425 also would add a new Section 13(f) to the Securities Exchange Act, to require any foreign person, company or government to file with the Commission a confidential statement, containing certain specified information, thirty days in advance of any acquisition by which that foreign investor would own more than five percent of any class of equity securities of any United States company with more than one million dollars in assets.

The Commission would be required to transmit the preacquisition statement to the President, who would be authorized to prohibit the acquisition if he finds it necessary to do so in order to protect the national security, foreign policy of the domestic economy of the United States. An amendment to S. 425 has been proposed by Senators Williams and Javits which would require the President to prohibit such an acquisition in certain instances, principally dealing with discriminatory conduct.

In my testimony last March, I voiced our concern that this proposed section might engender conflicts of interest within the Commission, with respect to our duties to require full disclosure, if we should receive nonpublic information pursuant to these provisions. For example, under this bill, the Commission could receive secret, but material, information regarding a proposed acquisition of equity securities of an issuer by a foreign investor while the Commission's staff is reviewing the adequacy of disclosures in a filing relating to a public offering of that issuer's securities or relating to corporate actions to be adopted by a vote of that issuer's security holders.

Accordingly, the Commission requests that, if the screening provisions of the bill are enacted, and the Commission is designated as the repository for the pre-acquisition filings, the Commission be authorized to require the publication of those reports if we find it necessary in the interests of investors.

Beyond, with respect to the substance of Section 13(f), as it would be amended by S. 425, and the other bills that you are considering here today with provisions for screening or otherwise controlling foreign investment in American companies we do not think it appropriate for the Commission to state a position.

Other than our interest in preserving the integrity and success of our capital markets, the Commission is not in any position to, and does not have any special expertise for, comment on the desirability of the screening process that would be established by S. 425, or on the powers relating to foreign investors that would be granted to the Secretary of Commerce pursuant to the other bills mentioned.

The Subcommittee no doubt recognizes, however, that any deterrent to foreign investments in the United States could have an adverse impact on the future ability of public companies to raise capital in the United States, and could impair the future depth and liquidity of trading markets in the securities of United States companies. Similarly, legislation of this nature could lead to the enactment of still more protectionist legislation by other countries which may impair the ability of United States companies to raise or invest capital abroad.

The Commission supported the enactment of the Foreign Investment Study Act of 1974. Presently, the Departments of Treasury and Commerce are conducting an extensive study of foreign investments in the United States pursuant to that Act. An interim report from those Departments to the Congress is due on or about November 1, 1975, and a final report is due sometime around May 1, 1976.

In addition, by Executive Order of May 7, 1975, the President has established a Committee on Foreign Investment and directed the Commerce Department to obtain and analyze information on foreign investment in the United States. The Commission's staff is working closely with Commerce to increase the availability of information on foreign investment, and we expect the amendments to our rules which I discussed earlier to facilitate this effort.

If Congress determines that time permits, it may be appropriate to review the findings of the Commerce and Treasury prior to the enactment of any screening legislation in this area.

That concludes my prepared remarks. Messrs. Levenson, Bodolus and I would be happy to respond to any questions you may have.

STATEMENT OF RAY GARRETT, JR., CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION, BEFORE THE SUBCOMMITTEE ON SECURITIES, MARCH 5, 1975

Mr. Chairman, members of the Subcommittee: I am pleased to appear today before this Subcommittee to testify on S. 425, "the Foreign Investment Act of 1975." With me this morning is Alan B. Levenson, Director of the Commission's Division of Corporation Finance.

S. 425 apparently is intended to serve two primary purposes. First, this bill would, if enacted, enable the Commission to elicit more information regarding persons making acquisitions of the equity securities of American companies. It would also make more effective any monitoring of foreign investments in the equity securities of most large, publicly-owned, American companies.

Second, S. 425 would impose a screening process for significant foreign investments in American companies. It would authorize the President, in his discretion, to prohibit any foreign person from acquiring more than five percent of any class of equity securities of any large United States company, if the President determines that such an acquisition is not in the national interest.

The need for accurate and current information concerning the record and beneficial ownership of equity securities issued by American companies is well

established. This Subcommittee, and particularly its Chairman have been instrumental in proposing and facilitating the enactment of legislation to require improved disclosures by certain holders of equity securities and by persons contemplating acquiring such securities, And, in response to the growing importance of institutional investors in our capital markets, this Subcommittee has endorsed legislation requiring increased and uniform disclosure of institutional portfolio holdings and significant transactions.

The Commission supports the efforts by the Subcommittee to improve the disclosures required under the Securities Exchange Act. Pending the passage of any new legislation, we have continued to appraise the effectiveness of the disclosures we presently require under our existing authority and the need for further disclosures of the identity and background of shareholders. As part of this appraisal, last fall the Commission ordered a Public Fast-Finding Investigation in the Matter of Beneficial Ownership, Takeovers and Acquisitions by Foreign and Domestic Persons, in order to determine whether we should exercise our rulemaking authority under the Securities Exchange Act, or recommend legislative changes, to require additional disclosures.

Our staff is still reviewing the record compiled during that public investigatory proceeding—consisting, as of this date, of 1,667 pages of transcripts; 25 prepared oral statements; 36 exhibits; and 78 letters of comments from interested persons. We are hopeful that, during May or June of this year, we can publish for comment some new disclosure rule proposals, assuming, of course, that new legislation, making our proposals unnecessary or superfluous, has not already been enacted.

Although we believe we presently have significant rulemaking authority to require the new disclosures proposed in S. 425 for five percent equity shareholders or persons proposing to acquire five percent of the equity shares of a company, we generally support the bill's proposal to improve these disclosures by statute.

Similarly, the Commission is generally in favor of improved disclosure of the identity of the persons with the power to vote the equity securities of large American companies who would not otherwise be required to file reports under Section 13(d) of the Securities Exchange Act, although we are troubled by the specific approach to obtain this information embodied in S. 425. The Commission also concurs in the assumption underlying S. 425—that improved disclosures demand explicit legislative recognition of new enforcement remedies—although we have not had serious difficulty persuading the federal courts to fashion effective equitable remedies under existing laws. We are, however, troubled by the decision to limit these new remedies only to violations involving foreign investors, and, even then, only to violation of the new screening provisions that would be added to the Act.

Finally, while we have some comments on the mechanics of the screening provisions of S. 425, the Commission has no comment on the desirability of these provisions of the Act. As made clear by proposed new Section 13(f)(2), at page 7 of S. 425, the need for, and use of, screening powers raises questions of "national security" and "foreign policy"; these are matters beyond the responsibility of this Commission.

I should like briefly to summarize the provisions of S. 425 that are of most importance to us. The Commission's detailed, written, comments on S. 425 have already been furnished to the Subcommittee and its staff, and will, I assume, be made a part of the Subcommittee's record of hearings on this bill.

IMPROVED DISCLOSURES BY 5-PERCENT SHAREHOLDERS OF EQUITY SECURITIES

S. 425 proposes to amend Section 13(d) of the Securities Exchange Act to require, in addition to existing provisions of law, that persons who have acquired, or who propose to acquire, five percent of the equity shares of large American companies must, subject to our rulemaking powers, disclose the residence, identity and financial statements of the beneficial owner of those securities; the background, identity, residence and nationality of any associated persons who participated or are expected to participate in the acquisition; and a detailed description of any other persons sharing or having exclusively the authority to exercise the voting of rights of those securities.

Since Section 13(d) of the Securities Exchange Act presently requires the disclosure not only of the information there specified, but also "such additional information . . . as the Commission may by rules and regulations prescribe . . ," there is no strict need for the additional disclosures S. 425 proposes to add. Nevertheless, we fully support this provision of S. 425.

Since S. 425 proposes to amend Section 13(d) and, therefore, reports required to be filed pursuant to Section 14(d) of the Securities Exchange Act, the Subcommittee may wish to consider proposing comparable amendments for reports required to be filed with the Commission by directors, officers and principal stockholders pursuant to Section 16(a) of that Act.

DISCLOSURE OF BENEFICIAL OWNERSHIP

S. 425 would also add a new Section 14(g) to the Securities Exchange Act, creating a multi-tiered reporting procedure so that American companies with a registered class of equity securities could compile an accurate list of the names, residences and nationalities of the beneficial owners of such securities, as well as information with respect to the locus of authority to exercise the voting rights of the securities held of record by other persons. The Commission would be granted rulemaking authority with respect to an issuer's obligation to compile such a list of beneficial owners and to file such a list, or a portion thereof, with the Commission, presumably as a public document.

The Commission has previously supported the desirability of requiring the disclosure of the situs of significant voting power, particularly when that power is partically or completely vested in persons other than the record owner of the shares. We support such disclosures, however, for both foreign *and* American investors. While we have some authority to, and are still exploring whether we should, propose appropriate disclosure rules in this regard, legislation governing this subject matter appears preferable, since it would resolve any doubts about the existence, extent, scope and effectiveness of our authority to compel such disclosures.

S. 425, however, may not accomplish its goals. As presently drafted, the bill fails to accomplish its avowed purpose of providing a comprehensive list of the names, residences and nationalities of beneficial owners. For example, an investor owning less than five percent of the equity securities in a large, publicly-owned United States company may easily arrange to have the certificates evidencing such securities registered in his name and have all dividend, annual reports and proxy statements sent to a mailing address in the United States. Since the record holder is the beneficial owner and is not holding on behalf of another person, these provisions of S. 425 would be inoperative. It should be noted that, in such a case, the public company's list of stockholders would only contain the investor's name, his United States mailing address and the number of shares owned. Thus, the public company would not know the nationality or residence of such a foreign investor.

More importantly, we are concerned about the substantial costs that would be imposed on brokerage firms, banks, trust companies and, especially, transfer agents, as well as the issuing companies, if the precise provisions of S. 425 were enacted, since the bill would apply to all beneficial owners, even the owner of one share of common stock. The burden of receiving so much material would also be severe on the Commission. Computer print-outs of stock records of widely-held companies can easily fill a large file drawer, and there are some 9,000 companies presently registered under the Exchange Act. It is not unusual for a large company to have over 100,000 record holders of its common stock. AT&T has millions. So much data is too expensive to collect and more than anyone can effectively and properly use.

If the intent of this section of the bill is to elicit significant information regarding beneficial owners, the Congress should consider less burdensome, alternative means of accomplishing this goal. At the very least, the disclosure in filings should be limited, perhaps to the 20 or 30 largest holders, or any holder of more than some percentage such as 2 percent or 1 percent.

The problem in obtaining meaningful disclosure of stock ownership has always been record ownership by fiduciaries who feel constrained by law or custom or good business practice, from their point of view, to decline to disclose the identities of the persons for whom they hold the stock, except in response to legal process. Foreign fiduciaries, in many cases, will not even recognize our legal process for this purpose. Most fiduciaries will disclose the extent to which they have the power to vote shares held in their name or the names of their nominees, but not the identity of any other person who holds the power solely or jointly with the fiduciary.

The idea of requiring fiduciaries to disclose their beneficiaries, or at least those beneficiaries with voting power, on a regular basis for public filings raises other

considerations that must be carefully weighed. One is the long-standing tradition and policy in our law of protecting the privacy of private trusts. Compelling the public disclosure of the portfolios of private trusts—even if only to the extent that they hold equity securities of publicly-owned U.S. companies for which the beneficiaries hold the voting power—is a fundamental departure from our settled norms. Of course, we have long since made this departure where the beneficiary is a reporting person under Section 16 of the Securities Exchange Act or is otherwise a control person, or affiliate, of the portfolio company, or one who has acquired five percent and becomes subject to Section 13(a). But we are now considering a more drastic and far-reaching departure.

One approach might be to require such disclosure only when the shares constitute more than a specified percentage of the outstanding shares, but making the percentage much lower than 10 percent or even 5 percent. One and two percent have been suggested. The theory, then, would be that an investor can preserve privacy through a personal trust and yet retain voting power so long as he keeps his positions in publicly-owned companies insignificant in terms of voting strength. Above that, public policy favoring disclosure will prevail over that favoring the privacy of personal investments.

Another consideration is one of competitive fairness among fiduciaries—broker-dealers and trust companies and U.S. and foreign banks. The foreign part of the problem is not just one of even application of the law as written, but also as enforced. This Subcommittee is familiar with our long, and so far futile, efforts to compel disclosure of bank customers in some countries, even for purposes of criminal investigation. Here, S. 425 offers a device that might do the job, namely, the disenfranchisement of the stock. S. 425, as presently drafted, would employ this device only for violations of the screening provisions, but it might also be used to obtain disclosure, both foreign and domestic.

As I have stated, these proposals, although well-motivated, appear to be too all-encompassing for any reasonable use, and therefore should be revised. We are not yet prepared to recommend specific legislation to do this, although we hope to be soon, after we have reviewed our voluminous hearing record.

SCREENING OF FOREIGN INVESTORS

S. 425 also would add a new Section 13(f) to the Securities Exchange Act to require any foreign person, company or government to file with the Commission a confidential statement, containing certain specified information, 30 days in advance of of any acquisition by which that foreign investor would own more than five percent of any class of equity securities of any United States company with more than $1 million in assets. The Commission would be required to transmit the pre-acquisition statement to the President, who would be authorized to prohibit the acquisition if he finds it necessary to protect the national security, foreign policy or the domestic economy of the United States.

These proposed screening provisions involve significant national policy matters which can only be decided by the Congress. The Subcommittee no doubt recognizes that any deterrent to foreign investments in the United States could have an adverse impact on the future ability of public companies to raise capital in the United States and could impair the future depth and liquidity of trading markets in the securities of United States companies. Mr. Bennett, Undersecretary of the Treasury, gave some statistics in his testimony yesterday which would indicate that at least in the recent past the impact of the deterrent, while adverse, would have been small. The future possible impact, while difficult to estimate, is what must be considered.

Similarly, legislation of this nature could lead to the enactment of still more protectionist legislation by other countries which may impair the ability of United States companies to raise or invest capital abroad.

In the past, the Commission has supported the enactment of the Foreign Investment Study Act of 1974. Presently the Departments of Treasury and Commerce are conducting an extensive study of foreign investments in the United States pursuant to that Act. An interim report from the Departments of Treasury and Commerce to the Congress is due on or about November 1, 1975, and a final report is due sometime around May 1, 1976. If congress determines that time permits, it may be appropriate to review the findings of the Commerce-Treasury report prior to the enactment of any screening legislation in this area.

Nevertheless, if the Congress should deem it appropriate to adopt some type of screening legislation at this time, we are troubled by the provisions prescribing our involvement in the filing and consideration of pre-acquisition statements.

First, proposed Section 13(f)(1)(C), on page 7 of S. 425, would require that, "in exercising its authority . . . , the Commission shall consult and cooperate with the President to assure that its actions are in accordance with the President's powers and responsibilities with respect to the activities of foreign investors in the United States." While we acknowledge that we are one logical repository for pre-acquisition reports, if required, we are troubled by the requirement that we "consult" with the President in carrying out our functions. This requirement would thrust us into an area—the establishment of national foreign policy—in which we have no expertise. If reports are to be required, and if we are to receive them, we prefer not to have any nonsecurities policy-making functions vested in us.

Second, the Commission might become enmeshed in significant conflicts of interest if we are the repository for these pre-acquisition reports and the present provisions of the bill, relating to the confidentiality of these reports, are maintained. For example, under this bill, the Commission could receive secret, but material, information regarding a proposed acquisition of equity securities of an issuer by a foreign investor while the Commission's staff is simultaneously reviewing the adequacy of disclosures in a filing relating to a public offering of that issuer's securities or relating to corporate actions to be adopted by a vote of that issuer's security holders.

Accordingly, the Commission requests that, if the screening provisions of the bill are enacted, and the Commission is designated as the repository for the pre-acquisition filings, the Commission be authorized to require the publication of those reports if we find it necessary in the interests of investors.

ENFORCEMENT POWERS

S. 425 proposes to amend Section 21 of the Securities Exchange Act by adding explicit sanctions—loss of voting powers or forcing the sale of any securities acquired—against foreigners who fail to file a pre-acquisition report with the Commission. These sanctions would be enforceable not only by the Commission, but by the Attorney General and any record holder of the equity securities of the company whose shares are involved. The bill also proposes to make the aiding and abetting of any violation of the Securities Exchange Act a specific statutory violation, as the federal courts repeatedly have held over the last ten or more years.

As I noted earlier, we have been successful in obtaining a variety of equitable sanctions for violations of the provisions of the laws we administer. The specific remedies proposed for violations of the screening provisions would, however, be effective deterrents to such violations. But, if the Congress intends to provide explicitly for such remedies, we urge that the Subcommittee extend these remedies to all other provisions of the Act to which they may be relevant, to avoid any confusion about the broad equity powers of the courts under the federal securities laws. Naturally, if such a change were made, it would be inappropriate, we believe, to extend civil enforcement powers to any entity or person other than the Commission and, in appropriate instances, such as cases involving violations of the proposed beneficial ownership reporting requirements, the issuing company might be given explicit standing to sue.

Finally, we strongly endorse the provisions of S. 425 making the aiding and abetting of a violation of the Securities Exchange Act an explicit violation of that Act, although, as I have noted, under the cases construing the Act, aiding and abetting has always been deemed to be a violation of the Securities Exchange Act.

MEMORANDUM OF THE SECURITIES AND EXCHANGE COMMISSION, MARCH 5, 1975

INTRODUCTION

As stated in the purposes clause of the bill, S. 425 would amend the Securities Exchange Act of 1934 ("Exchange Act") [1] to require notification by foreign investors of proposed acquisitions of equity securities of United States companies; to provide notice to the President so that he may take action to prohibit any such acquisition, as appropriate, in the national interest; and to provide a system by which issuers of securities registered under the Exchange Act

[1] 15 U.S.C. 78a, *et seq.*

can maintain a list, to be filed with the Securities and Exchange Commission (the "Commission"), stating the names and nationalities of the beneficial owners of their equity securities.

ANALYSIS OF THE BILL

The bill would amend and expand existing Section 13(d) of the Exchange Act to require, explicitly, that statements of beneficial ownership of equity securities (Section 13(d) statements) must include information with respect to the beneficial owner's residence, nationality and financial status. Also, the Section 13(d) statement would be expanded to require information as to the background, identity, residence, and nationality of any person, other than the beneficial owner who files the report, who possesses sole or shared authority to exercise the voting rights evidenced by the securities being acquired.

As a means of obtaining information with respect to acquisitions of equity securities of "United States companies" by "foreign investors," as those terms are defined in Section 2 of the bill, S. 425 also would require that a Section 13(d)-type statement be filed confidentially with the Commission 30 days in advance of any proposed transaction pursuant to which a foreign investor would acquire beneficial ownership of more than 5 percent of a class of any equity security of a United States company with more than $1 million of assets. This provision would apply regardless of whether the United States company has securities registered under the Exchange Act. Once a foreign investor has filed a statement with the Commission, the bill states that the Commission shall transmit the statement to the President for appropriate action. S.425 also would vest authority in the President to prohibit acquisitions by foreign investors as he deems appropriate to protect the national security, foreign policy or domestic economy of the United States.

The bill also creates a reporting structure pursuant to which certain issuers of securities can compile lists of their beneficial owners. Thus, the bill imposes an obligation on every holder of record, for another person, of any security described in Section 13(d) to file certain reports with the issuer. The content of these reports would be subject to the Commission's rulemaking authority and would contain information such as the identity, residence and nationality of the beneficial owner of such securities and any person, other than the beneficial owner, possessing sole or shared authority to exercise the voting rights of the securities. To provide necessary information by which the record holder may compile the above statement, S. 425 would also impose a series of obligations on each other person who stands as an intermediary holder between a record holder and the beneficial owner. Each intermediary holder would be required to furnish information to the person who holds for his account, and the information, subject to the Commission's rulemaking authority, would describe the identity, residence, and nationality of the beneficial owner and any other person possessing sole or shared voting authority with respect to such securities. Subject to the Commission's rulemaking authority, the issuer would be required periodically to file with the Commission a list of the beneficial owners of its equity securities.

With respect to the advance notice requirement for acquisitions by foreign investors of equity securities of a United States company, S. 425 specifies sanctions and remedies for violations; the Commission, the Attorney General, a United States company in which a foreign investor has acquired or proposes to acquire an equity security or a holder of record of any equity security of such a United States company may bring actions in Federal district court to enjoin violations or enforce compliance by the foriegn investor. The bill also states that the court may order appropriate relief, including the revocation or suspension of voting rights of securities acquired by foreign investors in violation of new Section 13(f) and the sale of any securities so acquired.

The bill defines the terms "United States company" and "foreign investor" and makes certain other revisions in the Exchange Act definitions of the terms "person" and "company."

DESCRIPTION OF THE PRESENT LAWS CONCERNING ACQUISITIONS

Under Section 13(d) as it presently exists, any person, directly or indirectly, becoming the beneficial owner of more than five percent of any class of equity securities registered with the Commission pursuant to Section 12 of the Exchange Act, or any equity security issued by a closed-end investment company, or of certain equity securities of insurance companies, must file with the Commission

and send to the issuer and each exchange where the security is traded, a statement containing information specified in the subsection, *as well as any additional information the Commission by rule may prescribe*. The Commission has adopted a form for this purpose—Schedule 13D[2]—to specify the information required to be filed. Schedule 13D must be filed within ten days from the date of the acquisition.[3] The Schedule 13D is required to be amended promptly if any material change occurs in the facts set forth in earlier filings.

Under Section 12(i) of the Exchange Act, certain banks and savings and loan associations satisfy certain filing requirements under the Exchange Act, including the requirements arising pursuant to Section 13(d), by filing specified forms with and pursuant to regulations of the Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board. And, pursuant to Public Law 93–495, those agencies are generally required to issue regulations substantially similar to those promulgated by the Commission pursuant to Section 13(d) and other sections of the Securities Exchange Act.

New Terms Defined in S. 425

"United States company"

Section 2 of S. 425 defines the term "United States company" to mean any corporation, limited partnership or business trust organized in one of the United States, its territories or possessions, as well as any other "company" with its principal place of business in the United States. Thus, the provisions of the bill applicable to United States companies would apply to any corporation, limited partnership or business trust organized under the laws of a state, territory or possession of the United States, even though the entity's principal place of business is elsewhere. Any other "company" will be subject to the provisions of the bill if its principal place of business is in the United States.

The definition of "United States company" might be revised, however, to clarify that a business organized or chartered under the laws of the United States (as distinguished from "one of the United States") is within the definition.

"Foreign investor"

The bill also adds a new provision to the Exchange Act to define the term "foreign investor" as meaning any of the following:

a natural person resident outside the United States;

a company other than a United States company;

a foreign government, as described in the bill;

a United States company that is controlled by any person described above; or

two or more persons acting in concert for the purpose of acquiring, holding, voting, or disposing of securities, at least one of whom is a "foreign" person as described above.

To clarify that a "foreign investor" includes a United States company which, through several tiers, is controlled by a foreign company, it is suggested that proposed Section 3(a)(23)(4) be revised as follows:

"(4) a United States company controlled *directly or indirectly* by a person described in paragraph (1), (2), or (3) of this subsection; or".

Amendment to Section 13(d)

Section 3 of S. 425 adds several new disclosure requirements for statements regarding equity securities acquisitions subject to Section 13(d).[4] One of the new provisions would require the Schedule 13D to disclose the "residence and nationality" of the person acquiring the beneficial ownership. The purpose of this new disclosure is to elicit publicly-filed information to identify whether foreign interests are involved in the Section 13(d) acquisition, or the Section 14(d) tender offer. S. 425 would also amend Section 13(d) to require that the Section

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[2] 17 CFR 240.13d-101; the Schedule 13D report is also required to be filed in connection with cash tender offers subject to Section 14(d) and Rule 14d–1.

[3] The Commission's staff is considering rulemaking to clarify the Schedule 13D filing requirements applicable to groups. *Compare* Bath Industries Inc. v. Blot, 426 F. 2d 97 (C.A. 7, 1970) *with* GAF Corp. v. Milstein, 453 F. 2d 709 (C.A. 2, 1971).

[4] The information requirements proposed to be added to Section 13(d) would apply both to acquisitions subject to Section 13(d) and cash tender offers subject to Section 14(d).

13(d) or 14(d) statement include "financial statements (which must be so certified if required by the Commission) of such person."

Although the Commission believes it already has the authority to require such disclosure under present law, we support the inclusion of these provisions in the statute, recognizing that the Act vests discretion in the Commission to exclude the reporting of such information in appropriate cases.

S. 425 also would add a new disclosure item to Section 13(d)(1) to require the Section 13(d) and 14(d) statements to disclose information as to the voting authority for the securities acquired. New Section 13(d)(1)(F) would require information as to:

"(F) the number of shares of such security with respect to which any person (other than the beneficial owner) possesses sole or shared authority to exercise the voting rights evidenced by such securities and the background, identity, residence, and nationality of any such person."

The Commission recommends two changes to clarify the above provision. First, it is recognized that Schedule 13D presently requires information as to all securities beneficially owned by the person filing the report—not just as to the securities acquired in the specific transaction which caused the five percent threshold to be exceeded. This requirement is reflected in Item 5 of Schedule 13D.[5]

Second, a revision of the parenthetical phrase, "other than the beneficial owner," might be included to clarify that the subject of the parenthetical is intended to be the person filing the statement.

To implement these two recommendations, we suggest the provision be revised as follows:

"(F) as to the class of security acquired, the total number of shares of that class beneficially owned by the person filing the statement; if any other persons possess sole or shared voting rights evidenced by such securities, the background, identity, residence and nationality of such other persons.[6]

New Section 13(f)

The bill would add a new Section 13(f) to the Exchange Act to require a statement to be filed with the Commission 30 days prior to an acquisition by a foreign investor of beneficial ownership of more than five percent of any equity security of a United States company which had total assets exceeding $1 million on the last day of its most recent whole, fiscal year. The proposed new Section 13(f)(1)(A) would apply to proposed acquisitions of equity securities of any United States company meeting the $1 million assets test and is not limited to issuers with securities registered under Section 12 of the Exchange Act.

The required statement would have to contain the name of the United States company, the address of its principal executive officers, and such of the information specified in Section 13(d) and such additional information as the Commission by rule may specify as necessary or appropriate in the public interest or for the protection of investors. In calculating the percentage of beneficial ownership, proposed new Section 13(f) states that securities held by or for the account of the United States company, or a subsidiary that may not vote the securities, shall be disregarded. Section 13(f)(1)(B) would require the Commission to transmit a copy of the Section 13(f) statement to the President promptly after filing and specifies that the statement shall not be disclosed to the public. Proposed Section 13(f)(1)(C) would instruct the Commission to consult and cooperate with the President to assure that its actions are in accordance with the President's powers and responsibilities with respect to the activities of foreign investors in the United States.

Section 13(f)(2) would authorize the President, by order, within the 30-day period, to prohibit the proposed acquisition if he deems it appropriate for the national security, to further the foreign policy, or to protect the domestic economy of the United States. The section would require that the President's actions be taken pursuant to rules and regulations prescribed by him, to include a prompt no-

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[5] Item 5 requires a statement of the number of shares of the security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such persons, and (ii) each associate of such person. Also, information is required as to all transactions in the subject class of security during the past 60 days by the person filing the statement and by its subsidiaries and their officers, directors and affiliated persons.

[6] Since beneficial ownership would encompass voting rights, including shared voting rights, this provision might require reports by more than one person with respect to the same securities.

tice of any exercise of such authority accompanied by a written statement of the reasons for his actions.

New Section 13(f) is intended to give the President notice of situations in which foreign investors propose to acquire more than 5 percent of any equity securities of certain United States companies. These notice provisions would not apply if a foreign investor were acquiring all or a portion of the assets of the specified United States company, nor if a foreign investor were acquiring a debt interest in such company. In both of these situations, the foreign investor may be acquiring control of the business of a United States company, yet the transaction would be outside the reporting requirements of proposed Section 13(f)(1)(A) and the Presidential authority of proposed Section 13(f)(2).

Proposed Section 13(f) also would apply to situations in which a United States company undertakes directly to sell more than 5 percent of its equity securities to a foreign investor. Viewed in this light, the provision may serve as a depressant on the ability of United States companies to raise needed capital through sales of securities.

While the Commission recognizes that the above issues on Section 13(f) involve policy questions to be resolved by Congress, we are concerned that our responsibilities under Section 13(f) may interfere with, and in some instances be contrary to our obligations under other provisions of the Federal securities laws. For example, having a Section 13(f) statement filed with the Commission but not disclosed to the public could create difficulties in situations in which, for example, the Commission is considering a request for acceleration of a registration statement under the Securities Act of 1933 for the issuer involved.[7] Also, Section 13(f) specifies that the Commission shall require that the Section 13(f) statement contain information "necessary or appropriate in the public interest or for the protection of investors" but the Commission is also responsible to the President to consult and cooperate to assure that Commission actions are "in accordance with the President's powers and responsibilities with respect to the activities of *foreign* investors in the United States" (emphasis added). These standards are not parallel and in certain situations may contradict one another.

As to more technical comments on Section 13(f), we note the following points:

(1) Since the section applies to all United States companies meeting the assets test, consideration might be given to the inclusion of a provision relating the scope of Section 13(f) to the interstate commerce clause and other jurisdictional means specified in Section 12 of the Exchange Act;

(2) It is not clear whether the term "acquire" is intended to apply to passive or involuntary acquisitions such as exchanges of securities in mergers, inheritances, stock dividends, conversions of securities, and rights offerings.

(3) It is unclear why a foreign investor should file a statement containing the "name of United States company *and the address of its principal executive officers*", unless the term "offices" is intended in lieu of "officers."

(4) The imposition of the requirement of this subsection and the remainder of this section on non-resident citizens who are defined as "foreign investors" would appear to make this provision vulnerable to attack under the due process clause of the Fifth Amendment, especially in the absence of a clearly indicated and defined purpose for the discrimination premised on the national interest.

(5) This subsection implies that if the President does not act within the 30-day period, the proposed acquisition would be deemed approved. If such is the case, perhaps a sentence to that effect should be included in the statute.

The Commission requests that, if the screening provisions of the bill are enacted, and the Commission is designated as the repository for the pre-acquisition filings, the Commission be authorized to require the publication of those reports if we find it necessary in the interests of investors.

New Section 14(g)

The bill adds a new Section 14(g) to the Exchange Act to establish a system by which beneficial ownership of an issuer's securities may be determined. Under Section 14(g)(1)(A), every record holder of any security of a class described

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[7] Under Section 8 of the Securities Act, the Commission may accelerate the effective date of a registration statement:

> having due regard to the adequacy of information respecting the issuer theretofore available to the public, to the facility with which the nature of the securities to be registered, their relationship to the capital structure of the issuer and the rights of holders thereof can be understood, and to the public interest and the protection of investors.

in Section 13(d)(1) is required to file reports with the issuer reflecting information as to the identity, residence and nationality of the beneficial owner of such securities, and any person (other than the beneficial owner) possessing sole or shared authority to exercise the voting rights evidenced by the securities. When beneficial ownership is several steps or more removed from the record holder, Section 14(g)(1)(B) requires every person for whom a second person is holding any such security who, in turn, is holding such securities for the account of a third person, to file reports with such second person containing essentially the same information described above. The bill gives the Commission rulemaking authority to specify the precise information to be furnished to the issuer and to intermediate holders. The bill requires the issuer to file a list of its beneficial owners with the Commission in such form and at such times as the Commission by rule may prescribe, but in no event shall the list be held less frequently than annually or more frequently than quarterly. Section 14(g) applies to any security of a class described in Section 15(d)(1), which includes:

> any equity security of a class which is registered pursuant to Section 12 of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in Section 12(g)(2)(G) of this title, or any equity security issued by a closed-end investment company . . .

As presently drafted, proposed Section 14(g) on its face may result in a disclosure hiatus as to persons who are both record *and* beneficial owners. All substantive provisions of Section 14(g) which impose disclosure obligations on record holders apply only when the record holder is holding the security "for the account of another person" or when he is an intermediary hlding the securities "for the account of a third person." If a person holding less than five percent of the securities in issue is both a record holder and beneficial owner of those securities, Section 14(g) imposes no disclosure obligation on him to so advise the issuer. In this respect, the provision is workable as drafted only if the issuer may assume in the preparation of its report to be filed with the Commission, that each record holder is the beneficial owner, unless the issuer receives a report from the record holder to the contrary. However, even on that assumption, there would be no provision for disclosure of the nationality or residence of the record/beneficial owner.

More importantly, we are concerned about the substantial costs that would be imposed on brokerage firms, banks, trust companies and, especially, transfer agents, as well as the issuing companies, if the precise provisions of S. 425 were enacted, since the bill would apply to all beneficial owners even the owner of one share of common stck. The burden of receiving so much material would also be severe on the Commission. Computer print-outs of stock records of widely-held companies can easily fill a large file drawer. It is not unusual for a large company to have over 100,000 record holders of its common stock. AT&T has millions. So much data is too expensive to collect and is more information than anyone can effectively and properly use.

If the intention of this section of the bill is to elicit significant information regarding beneficial owners, the Congress should consider less burdensome, alternative means of accomplishing this goal. At the very least, the disclosure in filings should be limited, perhaps to the 20 or 30 largest holders, or any holder of more than some percentage such as 2 percent or 1 percent.

The problem in obtaining meaningful disclosure of stock ownership has always been record ownership by fiduciaries who feel constrained by law or custom or good business practice, from their point of view, to decline to disclose the identities of the persons for whom they hold the stock, except in response to legal process. Foreign fiduciaries, in many cases, will not even recognize our legal process for this purpose. Most fiduciaries will disclose the extent to which they have the power to vote shares held in their name or the names of their nominees, but not the identity of any other person who holds the power solely or jointly with the fiduciary.

The idea of requiring fiduciaries to disclose their beneficiaries, or at least those beneficiaries with voting power, on a regular basis for public filings raises other considerations that must be carefully weighed. One is the long-standing tradition and policy in our law of protecting the privacy of private trusts. Compelling the public disclosure of the portfolios of private trusts—even if only to the extent that they hold equity securities of publicly-owned U.S. companies for which the beneficiaries hold the voting power—is a fundamental departure from our settled norms. Of course, we have long since made this departure where the

beneficiary is a reporting person under Section 16 of the Securities Exchange Act or is otherwise a control person, or affiliate, of the portfolio company, but we are now considering a more drastic and far-reaching departure.

One approach might be to require such disclosure only when the shares constitute more than a specified percentage of the outstanding shares, but making the percentage much lower than 10 percent or even 5 percent. One and two percent have been suggested. The theory, then, would be that an investor can preserve privacy through a personal trust and yet retain voting power so long as he keeps his positions in publicly owned companies insignificant in terms of voting strength. Above that, public policy favoring disclosure will prevail over that favoring the privacy of personal investments.

Another consideration is one of competitive fairness among fiduciaries—broker-dealers and trust companies and U.S. and foreign banks. The foreign part of the problem is not just one of even application of the law as written, but also as enforced. This Subcommittee is familiar with our long, and so far futile, efforts to compel disclosure of bank customers in some countries, even for purposes of criminal investigation. Here, S. 425 offers a device that might do the job, namely, the disenfranchisement of the stock. S. 425, as presently drafted, would employ this device only for violations of the screening provisions, but it might also be used to obtain disclosure, both foreign and domestic.

These proposals, although well-motivated, appear to be too all-encompassing for any reasonable use, and therefore should be revised. We are not yet prepared to recommend specific legislation to do this, although we hope to be soon, after we have reviewed our voluminous hearing record.

Remedies and Enforcement Provisions

Section 5 of S. 425 amends Section 21 of the Exchange Act to state that the Commission, the Attorney General, a United States company in which a foreign investor has acquired or proposes to acquire an equity security, or a holder of record of any equity security of such a United States company, may bring an action in a district court of the United States to enjoin a foreign investor from violating or to enforce compliance by such foreign investor with the provisions of Section 13(f). In lieu of United States district courts, action may also be brought in a court of general jurisdiction, however, designated, in any place, other than a State, under the jurisdiction of the United States. On proper showings, the court shall grant appropriate relief in the form of restraining orders and injunctions and orders to enforce compliance. Also, the bill states that the court may order the revocation or suspension for any specified period of the voting rights evidenced by the securities acquired by the foreign investor in violation of Section 13(f), and the sale of any securities so acquired. The bill would also add a new Section 21(h) to state that it is unlawful, for purposes of Sections 21(e), (f) and (g), for any person to cause, command, induce, procure or give substantial assistance to the commission of an act or practice constituting a violation of the Exchange Act.

Section 6 of S. 425 adds a provision to Section 32 of the Exchange Act to specify a penalty of $1,000 per day against any foreign investor who fails to file a statement required under Section 13(f).

We have been successful in obtaining a variety of equitable sanctions for violations of the provisions of the laws we administer. The specific remedies proposed for violations of the screening provisions would, however, be effective deterrents to such violations. But, if the Congress intends to provide explicitly for such remedies, we urge that the Subcommittee extend these remedies to all other provisions of the Act to which they may be relevant, to avoid any confusion about the broad equity powers of the courts under the federal securities laws. Naturally, if such a change were made, it would be inappropriate, we believe, to extend civil enforcement powers to any entity or person other than the Commission, and, in appropriate instances, such as cases involving violations of the proposed beneficial ownership reporting requirements, the issuing company might be given explicit standing to sue.

Finally, we strongly endorse the provisions of S. 425 making the aiding and abetting of a violation of the Exchange Act an explicit violation of that Act, although under the cases construing the Act, aiding and abetting has always been deemed to be a violation.

Senator STEVENSON. We have one more witness. Our next witness, I am told, is not here yet. He is about to arrive. We will have to recess temporarily.

[Whereupon, a short recess was taken.]

Senator STEVENSON. The meeting of the subcommittee will come back to order.

Our final witness is Mr. Antonin Scalia, Assistant Attorney General, Office of Legal Counsel, Department of Justice.

Mr. Scalia, you are welcome to either read, or if you prefer in the interest of saving time, to condense this statement. I would be glad to enter it into the record.

STATEMENT OF ANTONIN SCALIA, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE, ACCOMPANIED BY DAVID MARBLESTONE, STAFF ATTORNEY

Mr. SCALIA. That's fine.

Senator, I have with me David Marblestone. He is a staff attorney in the Office of Legal Counsel.

I want to apologize for not being here when the last witness finished, but I kept in touch with your staff, and I was told that 1 o'clock would be the time.

Senator STEVENSON. I am grateful for your presence.

Mr. SCALIA. If you are agreeable, I will skip over that portion of my testimony which deals with the existing state of the law with respect to civil rights and the antitrust. That is testimony that I have given in other hearings. And I will leave that to you and your subcommittee members to read.

Senator STEVENSON. Fine. The full statement will be entered into the record.

Mr. SCALIA. I would like to move directly, then, to an analysis of the two pieces of legislation which the committee asked the Justice Department to comment upon. First of all, amendment No. 24 to S. 425.

Although my purpose in this testimony is not to discuss the bill in its entirety, I think I have to lay a little bit of background so that the amendment can be understood. S. 425 would amend the Securities and Exchange Act of 1934. Section 3(a) of the bill would add to section 13 of the act a requirement that any person who, after acquiring—registered—equity securities of a U.S. company, owns more than 5 percent of any class of such securities must file with the Securities and Exchange Commission a statement setting forth, inter alia, the person's nationality. Under section 3(b) of the bill, it would be unlawful for any foreign investor to acquire equity securities of a U.S. company if, after the acquisition, the investor would own more than 5 percent of any class, unless the investor notifies the SEC of the proposed acquisition at least 30 days in advance. The bill further provides that, within 30 days of such notice, the President is authorized to prohibit the proposed acquisition for reasons of national security, foreign policy or protection of the U.S. economy.

Turning now to amendment No. 24: This would add to the bill a provision stating that the President shall prohibit the acquisition if he determines that within 1 year of the filing of the notice, the foreign investor seeking the acquisition has engaged in any of the following types of conduct:

(A) Causing, or attempting to cause, any person—other than a person of the investor's country—not to do business with, or otherwise to discriminate against, any U.S. company because of the latter's sup-

port for a dealings with (i) any foreign government with which the United States hase diplomatic relations or (ii) any person resident in or dealing with any country with whose government the United States has diplomatic relations.

(B) Causing, or attempting to cause, any U.S. company with respect to its business in any country—with limited exceptions—not to do business with, or otherwise discriminate against, any person—with limited exceptions—because of such person's support for or dealings with (i) any foreign government with which the United States has diplomatic relations or (ii) any person resident in or dealing with any country with whose government the United States has diplomatic relations.

The amendment importantly would also add a provision authorizing the SEC, the Attorney General or any aggrieved person to bring a divestiture action against a foreign investor, owning more than 5 percent of any class of equity securities of a U.S. company, which causes the company to engage in the type of conduct described above.

Let me note at the outset that the Department of Justice is opposed to amendment No. 24. Our opposition goes to the basic concept of the amendment, as well as to its language or technical aspects.

I presume, to begin with, that the amendment would not mandate Presidential denial of an acquisition in any case. For although it states that the President "shall prohibit," this prescription applies only "if he determines" that certain facts exist; and there is no requirement that such a determination be made in any circumstance. It is up to the President, apparently, to decide when suspicion of such prohibited activities is sufficient to warrant further investigation, and whether, such investigation having been completed, the requisite determination, for factual or policy reasons, ought not to be made. If, at least, it is the intent of the drafters of this provision to mandate Presidential action, different language should be used. We would opopse such a change, since in our view any matter such as this, involving significant foreign policy ramifications, should not be treated on a categorical, inflexible basis, but should enable consideration of the innumerable relevant factors, in the exercise of Presidential discretion. This is the approach taken by the other provisions of S. 425, and we think it no less valid here. For purposes of the prohibitions which the amendment imposes, it is simply unrealistic to treat all nations with whom we happen to have diplomatic relations—or with whom the boycotting country has diplomatic relations—as equivalent, and all situations in which the boycotting practice may arise as alike.

Of course, the reasons just recited against rendering the Presidential action portion of the amendment mandatory argue for opposing entirely that portion of the amendment which gives a cause of action to private citizens or to the Commission—which, with respect to such action, would apparently not be subject to the direction of the President—to require divestiture. Once again, it makes no sense to treat all foreign countries which we recognize and all economic pressures of this sort as invariably the same. In the light of our overall foreign policy and the many subtle considerations affecting our diplomatic interests, it must be left to the President—if any restrictions of this sort are desirable—to apply them selectively where necessary.

A major problem with the present proposal is the vagueness and complexity of the provisions of the amendment. This can be illustrated

by describing, through direct quotes from the amendment, one type of proscribed conduct: Acquisition by a foreign investor could be prevented if, within the pertinent period—

> Any person controlling * * * such foreign investor has, directly or indirectly * * * attempted * * * to cause * * * any United States company with respect to its business in any country * * * to subject to economic loss * * * any person * * * in order to deter such person * * * from, directly or indirectly, supporting * * * any person resident or operating in * * * any country with whose government the United States has diplomatic relations.

Comprehending such a statute would be difficult even for the persons responsible for enforcing it, not to mention the foreign investors who would be bound by it. The problem is not, I think, merely imprecision or inexactitude of language, which could be remedied. Rather, the very relationships, motives and effects that are sought to be addressed are so subtle, so variable, so easily confused with or mistaken for other phenomena, that any attempt to reach them and only them by legislative language seems doomed to failure. It is not a practically—much less a theoretically—satisfactory answer to say that the Government would only choose to invoke the vague provisions in those cases which do exemplify the evils we seek to avoid. The matter is not within the control of the Government alone, since divestiture actions by private parties would be authorized. It is entirely predictable that unavoidably broad language would lead to a considerable volume of vexatious litigation.

Related to the problem of vagueness is the matter of overbreadth. I will explain shortly why we do not consider the amendment to be an appropriate response to the Arab boycott. However, the broad terms of the amendment go far beyond the Arab boycott.

For example, paragraph (A) relating to discrimination against a U.S. company would encompass the following hypothetical situation:

> A Greek company advises a Canadian subsidiary not to do business with a U.S. firm because the U.S. firm is selling arms to the Government of Turkey.

The issue here is not whether such conduct on the part of the Greek company is desirable. The issue is whether such conduct should make it impossible for the Greek company to make any substantial investment in the securities of U.S. companies. We see no proper basis for categorically imposing such a sanction, a sanction that in most cases would be completely unrelated to the underlying conduct—in the hypothetical, the advice of the Canadian subsidiary. That is, I think, the principal point: The punishment does not fit the crime. In the context of the Arab boycott, it may seem plausible that a company which has acted in this fashion once will do so repeatedly. That is simply not the case, however, with respect to most of the situations which the provision will cover so that the sanction of possible prevention of investment and of mandatory divestiture is vastly disproportionate, if indeed any sanction is desirable at all.

The same kind of problem is presented by paragraph (B), which pertains to a foreign investor which has caused a U.S. company to discriminate. This provision would apply, for example, to the following situation:

> A Swiss manufacturer of watches seeks to prevent a U.S. wholesaler from dealing with a Mexican retailer because the retailer

sells watches manufactured by a Mexican firm. The reason for the action of the Swiss company is that the Mexican manufacturer has improperly used the trademark of the Swiss company.

The point which I wish to make here is that the amendment's sanctions would apply even though the basis for the discrimination was immoral or even illegal conduct on the part of the ultimate object of the discrimination.

Of course, it should be apparent that this legislation would impose upon foreign investors restrictions which we do not place upon our own citizens. Such differentiation is not always inappropriate, but one wonders whether in this instance the results can be supported.

Consider, for example, the following hypothetical situation:

A Canadian investor owns more than 5 percent of the shares of a U.S. corporation that manufactures photographic equipment. A group of American shareholders opposed to the racial policies of the Government of South Africa, seeks to terminate the corporation's dealings with a South African firm which provides substantial support to the Government of South Africa. This action on the part of the American shareholders is entirely permissible. But should the Canadian investor join the effort, he would be vulnerable to a divestiture suit, whether or not the effort succeeds.

Beyond being inconsistent with our domestic treatment of our own investors, the present proposal is inconsistent with the standard of behavior which we have set for American investors abroad. Not only do we permit American investors abroad to engage in conduct which, if performed by foreigners in this country, would violate this bill; but some circumstances we positively require it. The Foreign Assets Control Regulations, 31 CFR 500.101–500.800, issued by the Treasury Department under the Trading with the Enemy Act restrict transactions with certain countries by American-controlled foreign firms. The nature of these restrictions is such that if foreign investors were to observe within the United States similar restrictions imposed by their governments (with respect to countries with whose governments we have diplomatic relations) they would be in violation of paragraph (B) of the present bill. It is surely strange to prohibit on the part of foreign investors in the United States action which we not only permit, but requires on the part of American investors abroad. Which suggests a further point: before we put forward the provisions of the present bill as a new standard of behavior for foreign investment, we had best consider carefully whether that new standard if generally adopted would hurt anyone more than ourselves. I suspect it would not.

While producing all these untoward side effects, the proposed bill will in fact not reach the most effective manifestations of the Arab boycott. By reason of the parenthetical exceptions in both paragraph (A) and paragraph (B) of the additions to section 13(f), the following would not be included within the category of prohibited activity: Arab Government direct pressure (through stock ownership or otherwise) upon U.S. companies to cease doing business in Israel: Arab Government and Arab business pressure upon businesses in Arab countries not to trade with American companies that support Israel.

Frankly, however, what concerns me more than the fact that the

present bill would not reach all significant manifestations of the Arab boycott is the fact that we have no real assurance of what its effect will be with respect to those boycott activities it does reach. It seems to me unwise to enact legislation of this sort without such assurance. Sometimes, to be sure, we find certain activities so inherently repugnant that we may be willing to move against them with minimal regard for the practical consequences. This is the case, for example, with respect to certain racial or religious discrimination which is alleged to have accompanied the Arab boycott. But the sort of discrimination which this bill addresses is not within that inherently repugnant category as is sufficiently indicated by the fact that our laws not only permit, but sometimes require our own citizens to engage in similar activities abroad.

The test of the desirability of the present legislation, therefore, must be its desirable practical consequences. Though I will leave more intensive discussion of that issue to those agencies such as Department of Commerce which have special expertise in the field, I may simply note that we are unaware of any careful examination which would demonstrate that these provisions will result in a relaxation of the Arab boycott rather than the mere withdrawal of Arab investment from the United States economy.

I move now to consideration of S. 953. This bill would amend the Export Administration Act of 1969, as amended, in several respects.

1. At present, subsection 3(5) of the act's policy section, 50 U.S.C.A. App. 2402(5), provides as follows:

> (5) It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, (B) to encourage and request domestic concerns engaged in . . . [exporting] to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting . . . [such] restrictive trade practices or boycotts . . . , and (C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

Section 1 of the present bill would amend the foregoing provision so that it would refer to restrictive trade practices and boycotts imposed against "United States concerns and other countries friendly to the United States." Addition of the reference to "United States concerns" seems unobjectionable, but it obviously adds nothing to the powers which can be applied against the Arab boycott which, in all its aspects, is avowedly directed against Israel.

2. The present section 4(b)(1) of the act provides that to effectuate the policies set forth in section 3 of the act, the President may prohibit or curtail exports from the United States, except under rules and regulations prescribed by the President. This paragraph further provides that the rules and regulations shall require that all domestic concerns receiving requests for the furnishing of information or the signing of an agreement of the type specified in section 3(5) must report the requests to the Secretary of Commerce "for such action as he may deem appropriate to carry out the purposes of . . . [section 3(5)]." By section 2 of the present bill, that provision would be amended to direct that the regulations require any domestic concern receiving

a request for boycott information, et cetera, to report to the Secretary of Commerce the fact of the request and in addition "any other information which the Secretary may require regarding such request and intended compliance therewith." Further, the bill would substitute for the present language concerning post-report action by the Secretary the following:

> For such action as the President may deem appropriate to carry out the policy of . . . [section 3(5)], including the curtailment by any United States concern of exports to, investments in, or any other economic transactions with countries which impose boycotts or engage in restrictive trade practices as specified in . . . [section 3(5)].

The Department of Justice opposes section 2 of the bill on the ground that it is unnecessary.

As noted above, one effect of the bill would be to describe in more detail the kind of information which the Secretary of Commerce could require. If our understanding of the bill is correct, however, it would not mandate that the Secretary require information on intended compliance with a request for information, but would merely give him express authority to require it.

The current regulation of the Secretary of Commerce does not require the U.S. exporter to state whether it intends to comply with the request for boycott information. But it is in our view clear that the present statute authorizes the Secretary to make the furnishing of such information mandatory. Whether or not it should be required is within the discretion of the Secretary, and the existence of such discretion would not be altered by S. 953.

In that respect, therefore, I do not see that the bill makes any change.

The other main aspect of section 2 of the bill relates to the kind of action which may be taken by the executive branch upon learning of a request for boycott-type information. Here also, it does not appear that the bill would expand existing authority. The Export Administration Act itself already grants the President authority to effectuate the policies of the act by prohibiting or curtailing exports. The power to curtail investments by U.S. concerns in foreign countries or other economic transactions with foreign countries is provided by the Trading with the Enemy Act. In view of the foregoing provisions, there would seem to be no need to add to the Export Administration Act the more detailed language regarding steps which may be taken by the President.

As you must be aware, serious foreign policy costs will attend any legislative action with respect to the Arab boycott. Perhaps the most important of them is the danger that the United States will be regarded as adopting an anti-Arab international policy at a time when we are trying to mediate a lasting peace in the Middle East. It is hardly worthwhile to undergo this risk for the purpose of enacting a piece of legislation which is fact has no significant practical effect. For this reason, the Department of Justice cannot support adoption of S. 953.

Mr. Chairman, that concludes my statement. I would be glad to respond to any questions you may have.

[The complete statement of Mr. Scalia and an additional letter subsequently received for the record follow:]

TESTIMONY OF ANTONIN SCALIA, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL

Mr. Chairman and Members of the Subcommittee: I am pleased to present the views of the Departent of Justice regarding two of the measures which are the subject of these hearings, Amendment No. 24 to S. 425, and S. 953. In accord with your request, I will begin with a discussion of Federal civil rights and antitrust laws which may bear upon the matters which prompt these proposals—that is, Arab sanctions against persons thought to be associated, in various ways, with Israel.

CIVIL RIGHTS LAWS

For purposes of this discussion, civil rights problems which may result from the "Arab boycott" can be divided into three categories: discrimination in employment discrimination in the selection of suppliers or contractors, and discrimination in the treatment of customers.

Discrimination in employment.—The Federal Government is prohibited from discriminating in employment on the basis of race, religion or sex by the Constitution itself. In furtherance of this constitutional principle, Executive Order 11478 explicitly prohibits discrimination in the employment practices of Federal agencies and charges the Civil Service Commission with responsibility for enforcement of the prohibition. In 1972, discrimination in employment practices of Federal agencies was made unlawful by statute through the addition of § 717 to Title VII of the Civil Rights Act of 1964. Enforcement of § 717 rests with each agency, with respect to its own employees, with oversight responsibility in the Civil Service Commission. It should be noted that both Executive Order 11478 and § 717 of Title VII specify that they are not applicable to "aliens employed outside the limits of the United States." The implication of this is that they do apply to United States citizens employed throughout the world.

With respect to discrimination in employment by private companies and individuals, Title VII of the 1964 Civil Rights Act, as amended, prohibits a broad range of "unlawful employment practices" by any private employer "engaged in an industry affecting commerce who has fifteen or more employees." The prohibited practices include refusal to hire an individual, or any discrimination regarding the terms or conditions of his employment, based on race, color, religion, sex or national origin. Once again the statue contains an exemption "with respect to the employment of aliens outside any State," which implies that it is applicable to the employment of United States citizens by covered employers anywhere in the world. Prior to March 1974, the Department of Justice had civil enforcement responsibility with respect to this legislation, but it is now lodged in the Equal Employment Opportunity Commission.

In addition to Title VII, there are special restrictions upon discrimination in the employment practices of persons who hold contracts with the Federal Government or perform federally assisted construction. Executive Order 11246 forbids such employers to discriminate on the basis of race, color, religion, sex, or national origin. Responsibility for securing compliance with the Executive order belongs to the various contracting agencies, subject to the overall authority of the Secretary of Labor. Sanctions include the bringing of lawsuits by the Department of Justice, upon referral by the agency, to enforce the nondiscrimination requirements. It should be noted that the order permits the Secretary of Labor to exempt classes of contracts which involve "work . . . to be . . . performed outside the United States and no recruitment of workers within the limits of the United States." The clear implication is that, in general, contracts to be performed abroad are covered.

While Title VII and Eexecutive Order 11246 contain the principal Federal restrictions upon discrimination in private employment, some agencies have issued regulations, based upon their particular statutes, concerning employment practices of federally regulated or assisted entities See, for example, the regulation of the Federal Communications Commission, 47 CFR § 21.307.

Discrimination in selection of contractors.—Title VII and the Executive order discussed above relate only to "employment." They do not prohibit discrimination in the selection of suppliers or subcontracts; nor does any other generally applicable Federal statute or Executive order.[1] With respect to the procure-

[1] 42 U.S.C. 1981 has been held by the Supreme Court to prohibit racial discrimination in private employment. *Johnson v. Railway Express Agency, Inc.*, 43 Law Weew 4623 (May 19, 1975), and is logically extendible to racial discrimination in other areas of contract. See, e.g., *McCrary v. Runyon*, No. 73-2348, 4th Cir. (Apr. 15, 1975) (private school).

ment practices of Federal agencies, the Constitution would presumably prohibit any discrimination, even as between contractors, on the basis of race, color, religion or national origin. With respect to the contracting pratices of private firms, however, the Federal civil rights laws impose no constraints which would be applicable to the present situation.

Discrimination in the treatment of customers.—There are no generally applicable Federal civil rights laws which prohibit discriminatory refusal to deal with a particular customer.[2] The closest approach to a broad Federal proscription is Title VI of the 1964 Civil Rights Act, which prohibits the recipients of Federal grants from discriminating against the intended beneficiaries of federally assisted programs on the ground of race, color or national origin—for example, such discrimination by private hospitals which receive Federal money. Some civil rights stautes do impose restrictions, unconnected with the receipt of Federal money, upon particular areas of commerce—for example, Title II of the 1964 Civil Rights Act, relating to public accommodations, and Title VIII of the 1968 Civil Rights Act, relating to housing. There are, however, numerous State laws which impose more general restrictions.

To summarize: The matter of employment discrimination on the part of private individuals or companies is the subject of a broad Federal statute and also of an Executive order with wide applications. Responsibility for overseeing enforcement of these laws rests with agencies other than the Department of Justice. 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.

FEDERAL ANTITRUST LAWS

The only Federal antitrust statute having significant application to the subject we are discussing is the Sherman Act, which makes illegal "every contract, combination . . . or conspiracy in restraint of trade or commerce among the several States, or with foreign nations." Judicial interpretation has read "restraint of trade" to mean "unreasonable restraint of trade," with reasonableness to be determined on the basis of common law principles and subsequent court elaboration.

The primary boycott of Israel by the Arab countries is not a matter which directly affects United States commerce or is cognizable under our antitrust laws. It is the secondary boycott we are here concerned with, that is, the boycott by the Arab countries of United States businesses which provide certain economic advantages to Israel. Let me discuss first what I might call the "core boycott"—namely, the agreement among the Arab nations and (let us assume) independent Arab businesses to refrain from dealing with certain United States companies.

An agreement between commercial firms doing business in the United States to boycott another firm in this country would constitute a traditional form of resraint of trade, and ordinarily would fall within the category of conduct illegal per se under the Sherman Act. There are, however, some special features about the present case. Perhaps most important is the distinctive purpose of the boycott, which is not the usual one of acquiring commercial advantage. The boycott is essentially a phenomenon of international politics, and that fact is relevant in determining its "reasonableness" under the Sherman Act. Second, there is a question whether the impact upon United States trade of a boycott of this sort, which in effect requires an American company to choose between certain types of business relations with Israel or dealings with the Arab countries, is so certain or severe as to justify application of the per se rule of illegality applied domestically.

There are some special legal considerations raised by the governmental character and the nationality of the boycotting parties. In general, as a matter of international law and practice, a sovereign state cannot be made a defendant in the courts of another sovereign. This doctrine only applied with respect to the "public or political" acts of a state and not with respect to its "private or commercial" acts; but there is at least some question as to which category the Arab boycott occupies. Another principle of international law is the so-called "act of state doctrine," which holds that our courts will not examine the validity of acts of a foreign sovereign performed within its own territory. If applied to the present problem, it would insulate from our antitrust laws many of the boycott activities undertaken by the Arab states themselves. Finally, the doctrine of foreign governmental compulsion provides that a defendant (whether a sovereign or a

[2] See Footnote 1, *supra*.

private individual or corporation) will not ordinarily be subject to sanction in one jurisdiction for acts performed in another jurisdiction under pain of sanction by the latter. Application of this principle could exclude from liability even non-governmental Arab entities which participate in the boycott outside this country by direction of their own governments.

None of the above-described distinguishing considerations makes it theoretically impossible to apply the Sherman Act to the "core boycott" in the present case. Cumulatively, however, they create substantial doubt that the courts would interpret that flexible statute to require such application—a least absent evidence of major economic impact upon United States exports. It has, in any event, never been held that a foreign, politically motivated boycott of this sort violates the Act.

Let me turn now from the "core boycott"—that is, the agreement among the Arab Governments and companies themselves—to other agreements affecting U.S. commerce which may accompany or flow from the "core boycott." It will be difficult to find a Sherman Act violation in the mere unilateral decision of an American company to refrain from trading with Israel because it knows that such trade will result in loss of Arab business. Violation of the Act requires a "contract, combination or conspiracy," and while unilateral refusal to deal may in some circumstances be pursuasive evidence of concerted action, it is not itself a violation. More likely to contravene the Sherman Act is an agreement between an American company and an Arab company that the latter will give the former its business in exchange for a commitment by the former not to trade with Israel. Even more suspect would be an agreement by the American company not only to refrain from doing business with Israel but to refrain from doing business with certain American companies as well. Where there is an agreement that violates the Act, it will not suffice as a defense that the agreement was entered into under the duress of threatened loss of business, or even in order to avoid becoming an object of the boycott.

ANALYSIS OF AMENDMENT NO. 24 TO S. 425

Although my purpose in this testimony is not to discuss S. 425 in its entirety, but only Amendment No. 24 to that bill, nonetheless a brief description of the full bill is necessary as background. S. 425, entitled the "Foreign Investment Act of 1975," would amend the Securities and Exchange Act of 1934. Section 3(a) of the bill would add to § 13 of the Act a requirement that any person who, after acquiring (registered) equity securities of a U.S. company, owns more than five percent of any class of such securities must file with the Securities and Exchange Commission a statement setting forth, inter alia, the person's nationality. Under § 3(b) of the bill, it would be unlawful for any foreign investor to acquire equity securities of a U.S. company if, after the acquisition, the investor would own more than five percent of any class of such securities, unless the investor notifies the SEC of the proposed acquisition at least 30 days in advance. The bill further provides that, within 30 days of such notice, the President is authorized to prohibit the proposed acquisition for reasons of national security, foreign policy or protection of the U.S. economy.

Turning now to Amendment No. 24: This would add to the bill a provision stating that the President shall prohibit the acquisition if he determines that, within one year of the filing of the notice, the foreign investor seeking the acquisition has engaged in any of the following types of conduct:

(A) Causing, or attempting to cause, any person (other than a person of the investor's country) not to do business with, or otherwise to discriminate against, any U.S. company because of the latter's support for or dealings with (i) any foreign government with which the U.S. has diplomatic relations or (ii) any person resident in or dealing with any country with whose government the U.S. has diplomatic relations.

(B) Causing, or attempting to cause, any U.S. company with respect to its business in any country (with limited exceptions[3]) not to do business with, or otherwise discriminate against, any person (with limited exceptions[4]) because of such person's support for or dealings with (i) any foreign

[3] E.g., if the foreign investor is a government, this provision would be inapplicable to the business of a U.S. company in a country with which the foreign investor-government does not have diplomatic relations.

[4] E.g., if the foreign investor is a government, this provision would be inapplicable to discrimination against another foreign government with which the foreign investor-government does not have diplomatic relations.

government with which the U.S. has diplomatic relations or (ii) any person resident in or dealing with any country with whose government the U.S. has diplomatic relations.

The amendment would also add a provision authorizing the SEC, the Attorney General or any aggrieved person to bring a divestiture action against a foreign investor, owning more than five percent of any class of equity securities of a U.S. company, which causes the company to engage in the type of conduct described above.

Let me note at the outset that the Department of Justice is opposed to Amendment No. 24. Our opposition goes to the basic concept of the amendment, as well as to its language or technical aspects.

I presume, to begin with, that the amendment would not mandate Presidential denial of an acquisition in any case. For although it states that the President "shall prohibit," this prescription applies only "if he determines" that certain facts exist; and there is no requirement that such a determination be made in any circumstance. It is up to the President, apparently, to decide when suspicion of such prohibited activities is sufficient to warrant further investigation, and whether, such investigation having been completed, the requisite determination, for factual or policy reasons, ought not to be made. If, at least, it is the intent of the drafters of this provision to mandate Presidential action, different language should be used. We would oppose such a change, since in our view any matter such as this, involving signficant foreign policy ramifications, should not be treated on a categorical, inflexible basis, but should enable consideration of the innumerable relevant factors, in the exercise of Presidential discretion. This is the approach taken by the other provisions of S. 425, and we think it no less valid here. For purposes of the prohibitions which the amendment imposes, it is simply unrealistic to treat all nations with whom we happen to have diplomatic relations (or with whom the boycotting country has diplomatic relations) as equivalent, and all situations in which the boycotting practice may arise as alike.

Of course the reasons just recited against rendering the Presidential action portion of the amendment mandatory, argue for opposing entirely that portion of the amendment which gives a cause of action to private citizens, or to the Commission (which, with respect to such action, would apparently not be subject to the direction of the President) to require divestiture. Once again it makes no sense to treat all foreign countries which we recognize, and all economic pressures of this sort as invariably the same. In the light of our overall foreign policy and the many subtle considerations affecting our diplomatic interests, it must be left to the President—if any restrictions of this sort are ever desirable—to apply them selectively where necessary.

A major problem is the vagueness and complexity of the provisions of the amendment. This can be illutrated by describing, through direct quotes from the amendment, one type of proscribed conduct: Acquisition by a foreign investor could be prevented if, within the pertinent period, "any person controlling . . . such foreign investor has, directly or indirectly . . . attempted . . to cause . . . any United States company with respect to its business in any country . . . to subject to economic loss . . . any person . . . in order to deter such person . . . from, directly or indirectly, supporting . . . any person resident or operating in . . . any country with whose government the United States has diplomatic relations." Comprehending such a statute would be difficult even for the persons responsible for enforcing it, not to mention the foreign investors who would be bound by it. The problem is not, I think merely imprecision or inexactitude of language—which could be remedied. Rather, the very relationships, motives and effects that are sought to be addressed are so subtle, so variable, so easily confused with or mistaken for other phenomena, that any attempt to reach them—and only them—by legislative language seems doomed to failure. It is not a practically (much less a theoretically) satisfactory answer to say that the Government would only choose to invoke the vague provisions in those cases which do exemplify the evils we seek to avoid. The matter is not within the control of the Government alone, since divestiture actions by private parties would be authorized. It is entirely predictable that unavoidably broad language would lead to a considerable volume of vexatious litigation.

Related to the problem of vagueness is the matter of overbreadth. I will explain shortly why we do not consider the amendment to be an appropriate response to the Arab boycott. However, the broad terms of the amendment go far beyond the Arab boycott. For example, paragraph (A), relating to discrimination against a U.S. company, would encompass the following hypothetical situation:

> A Greek company advises a Canadian subsidiary not to do business with a U.S. firm because the U.S. firm is selling arms to the government of Turkey.

The issue here is not whether such conduct on the part of the Greek company is desirable. The issue is whether such conduct should make it impossible for the Greek company to make any substantial investment in the securities of U.S. companies. We see no proper basis for categorically imposing such a sanction—a sanction that in most cases would be completely unrelated to the underlying conduct (in the hypothetical, the advice to the Canadian subsidiary). That is, I think, the principal point: The punishment does not fit the crime. In the context of the Arab boycott, it may seem plausible that a company which has acted in this fashion once will do so repeatedly. That is simply not the case, however, with respect to most of the situations which the provision will cover—so that the sanction of possible prevention of investment and of mandatory divestiture is vastly disproportionate, if indeed any sanction is desirable at all.

The same kind of problem is presented by paragraph (B), which pertains to a foreign investor which has caused a U.S. company to discriminate. This provision would apply, for example, to the folowing situation:

> A Swiss manufacturer of watches seeks to prevent a U.S. wholesaler from dealing with a Mexican retailer, because the retailer sells watches manufactured by a Mexican firm. The reason for the action of the Swiss company is that the Mexican manufacturer has improperly used the trademark of the Swiss company.

The point which I wish to make here is that the amendment's sanctions would apply even though the basis for the "discrimination" was immoral or even illegal conduct on the part of the ultimate object of the discrimination.

Of course it should be apparent that this legislation would impose upon foreign investors restrictions which we do not place upon our own citizens. Such differentiation is not always inappropriate—but one wonders whether in this instance the results can be supported. Consider, for example, the following hypothetical situation:

> A Canadian investor owns more than five percent of the shares of a U.S. corporation that manufactures photographic equipment. A group of American shareholders, opposed to the racial policies of the government of South Africa, seeks to terminate the corporation's dealings with a South African firm which provides substantial support to the government of South Africa. This action on the part of the American shareholders is entirely permissible. But should the Canadian investor join the effort, he would be vulnerable to a divestiture suit—whether or not the effort succeeds.

Beyond being inconsistent with our domestic treatment of our own investors, the present proposal is inconsistent with the standard of behavior which we have set for American investors abroad. Not only do we permit American investors abroad to engage in conduct which, if performed by foreigners in this country, would violate this bill; but in some circumstances we positively require it. The Foreign Assets Control Regulations, 31 CFR 500.101–500.800, issued by the Treasury Department under the Trading With the Enemy Act, 50 U.S.C. App. 1 et seq., restrict transactions with certain countries (the People's Republic of China, North Korea, North Viet Nam, Cuba, South Viet Nam and Cambodia) by American-controlled foreign firms. The nature of these restrictions is such that, if foreign investors were to observe, within the United States, similar restrictions imposed by their governments (with respect to countries with whose governments we have diplomatic relations), they would be in violation of paragraph (B) of the present bill. It is surely strange to prohibit on the part of foreign investors in the United States action which we not only permit but require on the part of American investors abroad. Which suggests a further point: Before we put forward the provisions of the present bill as a new standard of behavior for foreign investment we had best consider carefully whether that new standard, if generally adopted, would hurt anyone more than ourselves. I suspect it would not.

While producing all these untoward side effects, the proposed bill will in fact not reach the most effective manifestations of the Arab boycott. By reason of the parenthetical exceptions in both paragraph (A) and paragraph (B) of the additions to section 13(f), the following would not be included within the category of prohibited activity: Arab government direct pressure (through stock ownership or otherwise) upon United States companies to cease doing business in Israel;

Arab government and Arab business pressure upon businesses in Arab countries not to trade with American companies that support Israel.

Frankly, however, what concerns me more than the fact that the present bill would not reach all significant manifestations of the Arab boycott is the fact that we have no real assurance of what its effect will be with respect to those boycott activities it does reach. It seems to me unwise to enact legislation of this sort without such assurance. Sometimes, to be sure, we find certain activities so inherently repugnant that we may be willing to move against them with minimal regard for the practical consequences. This is the case, for example, with respect to certain racial or religious discrimination which is alleged to have accompanied the Arab boycott. But the sort of "discrimination" which this bill addresses is not within that inherently repugnant category—as is sufficiently indicated by the fact that our laws not only permit, but sometimes require our own citizens to engage in similar activities abroad.

The test of the desirability of the present legislation, therefore, must be its desirable practical effects. Though I will leave more intensive discussion of that issue to those agencies, such as Department of Commerce, which have special expertise in the field, I may simply note that we are unaware of any careful examination which would demonstate that these provisions will result in a relaxation of the Arab boycott rather than the mere withdrawal of Arab investment from the United States economy.

ANALYSIS OF S. 953

This bill would amend the Export Administration Act of 1969, as amended, in several respects.

1. At present, subsection 3(5) of the Act's policy section, 50 U.S.C.A. App. 2402(5), provides as follows:

> (5) It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, (B) to encourage and request domestic concerns in * * * [exporting] to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting * * * [such] restrictive trade practices or boycotts * * *, and (C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

Section 1 of the bill would amend the foregoing provision so that it would refer to restrictive trade practices and boycotts imposed against "*United States concerns and* other countries friendly to the United States." (Emphasis supplied.) Addition of the reference to "United States concerns" seems unobjectionable,[5] but it obviously adds nothing to the powers which can be applied against the Arab boycott, which, in all its aspects, is avowedly directed against Israel.

2. The present § 4(b)(1) of the Act, 50 U.S.C.A. App. 2403(b)(1), provides that, to effectuate the policies set forth in § 3 of the Act, the President may prohibit or curtail exports from the United States, except under rules and regulations prescribed by the President.[6] This paragraph further provides that the rules and regulations shall require that all domestic concerns receiving requests for the furnishing of information or the signing of an agreement of the type specified in § 3(5) (e.g., information to be used to further a boycott) must report the requests to the Secretary of Commerce "for such action as he may deem appropriate to carry out the purposes of * * * [§ 3(5)]." By § 2 of the bill, § 4(b)(1) of the Act would be amended to direct that the regulations require any domestic concern receiving a request for boycott information, etc., to report to the Secretary of Commerce the fact of the request and in addition "any other information which the Secretary may require regarding such request and intended compliance therewith." Further, the bill would substitute for the present language concerning post-report action by the Secretary the following:

> for such action as the President may deem appropriate to carry out the policy of . . . [§ 3(5)], including the curtailment by any United States

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[5] For purposes of clarity, it might be preferable to use the conjunction "or," rather than "and." This change would make clear that the policy continues to cover boycotts aimed exclusively at foreign countries friendly to the United States.

[6] By Executive Order 11533 (1970), the President delegated his functions under the Act to the Secretary of Commerce. Export regulations issued by the Department of Commerce, pursuant to the act, are contained in 15 CFR parts 368–371.

concern of exports to, investments in, or any other economic transactions with countries which impose boycotts or engage in restrictive trade practices as specified in . . . [§ 3(5)].

The Department of Justice opposes Section 2 of the bill on the ground that it is unnecessary.

As noted above, one effect of the bill would be to describe in more detail the kind of information which the Secretary of Commerce could require. If our understanding of the bill is correct, it would not mandate that the Secretary require information on intended compliance with a request for information, but would merely give him express authority to require it.

The current regulation of the Secretary of Commerce does not require the U.S. exporter to state whether it intends to comply with the request for boycott information. See 15 C.F.R. § 369.2(b)(2)(viii). However, it is in our view clear that the present statute authorizes the Secretary to make the furnishing of such information mandatory. Whether or not it should be required is within the discretion of the Secretary, and the existence of such discretion would not be altered by S. 953.

The other main aspect of Section 2 of the bill relates to the kind of action which may be taken by the Executive Branch upon learning of a request for boycott-type information. Here also it does not appear that the bill would expand existing authority. The Export Administration Act itself already grants the President authority to effectuate the policies of the Act by prohibiting or curtailing exports. See § 4(b)(1). The power to curtail investments by U.S. concerns in foreign countries or other economic transaction with foreign countries is provided by the Trading With the Enemy Act, 50 U.S.C. App. 5(b). In view of the foregoing provisions, there would seem to be no need to add to the Export Administration Act the more detailed language regarding steps which may be taken by the President.

As you must be aware, serious foreign policy costs will attend any legislative action with respect to the Arab boycott. Perhaps the most important of them is the danger that the United States will be regarded as adopting an anti-Arab international policy at a time when we are trying to mediate a lasting peace in the Middle East. It is hardly worthwhile to undergo this risk for the purpose of enacting a piece of legislation which in fact has no significant practical effect. For this reason, we cannot support adoption of S. 953.

Senator STEVENSON. Thank you, Mr. Scalia. That is a very solid piece of work, and it raises some impressive paradoxes for us.

Is participation in the Arab boycott by U.S. firms now illegal in any way? And by that, I mean that if as a result of Arab pressure, U.S. businesses refuse to either conduct business in Israel or with U.S. firms, are there any possible violations of U.S. law now as a result of participation by U.S. companies in boycott?

Mr. SCALIA. Leaving aside more specialized pieces of legislation covering regulated industries—such as the Federal Communications Commission's legislation or the SEC's legislation which would allow special controls—the two general pieces of legislation which would be most likely to prohibit at least some practices associated with the boycott are the civil rights laws, which would prohibit certain practices relating to discrimination on the basis of religion—allegations of that type have been made——

Senator STEVENSON. That would be over discrimination on the basis of race or religion: but how discrimination for political purposes?

Mr. SCALIA. If it is political, then the other general area of law would be the antitrust laws. And it may well be that certain types of cooperation with the Arab boycott by American companies would be violative of the antitrust laws. I discussed that at some length in the part of my statement which I didn't read. I doubt whether any of the antitrust laws—the Sherman Act is the antitrust law that is most in point—would be considered to be violated by the Arab countries or Arab businesses themselves agreeing with one another not to do business with certain American firms.

But when you get away from that, what I call the "core boycott" involving just the Arabs, and move into agreements between them and certain American firms not to do business with other American firms, then you get into an area where there is a possibility of violation of the antitrust laws. Our Antitrust Division is currently actively investigating a number of allegations concerning possible violations.

Senator STEVENSON. Now, would a law mandating disclosure by companies of their participation in a boycott—in other words, behavior which violated the Sherman Act—violate a fifth amendment right?

Mr. SCALIA. It would with respect to any individuals that have to acknowledge their own violation. With respect to companies, as companies, it would not.

Senator STEVENSON. But the companies have agents.

Mr. SCALIA. That is correct.

Senator STEVENSON. And it is a personal liability problem. Typically, don't you have personal as well as corporate responsibility for compliance with the laws, including the Sherman Act?

Mr. SCALIA. Yes; that is right. But the fifth amendment protections have been held not to apply to corporations as such. You run into a problem only when an individual who is personally responsible for filing a report is implicated in some degree with a possible violation.

Senator STEVENSON. Does the Justice Department review the reports on file at the Commerce Department for evidence of antitrust violations or other violations of the law?

Mr. SCALIA. I don't know, Mr. Chairman. It is, I presume, the Antitrust Division that would be most likely to do that. And I don't know whether they do. I don't believe they do—or at least they have not done so as a regular practice until recent concern over the Arab boycott has developed.

Senator STEVENSON. Has the Justice Department taken any action under the antitrust laws against U.S. participants in the boycott yet?

Mr. SCALIA. As I have indicated, a number of alleged violations are under active investigation. And by "active," I mean they have reached the stage where civil investigative demands have been issued against certain companies by the Antitrust Division.

I had better go back to your previous question. I doubt very much whether the Justice Department has looked into the Commerce reports because, if my recollection is correct, those reports are confidential. And I believe that a commitment is made on the part of Commerce not to distribute them at the time they are sought. At least that is true with respect to the portion which would be most likely to show a violation, that is, the portion asking what action is likely to be taken in response to the boycott request.

Senator STEVENSON. The Commerce Department indicates that the information will be treated as confidential. But I hadn't realized that by labeling it classified, nobody gets to look at it. There is not much point in requiring information if it is so confidential that not even the U.S. Government can examine it.

Who does examine it? By that, do they mean just we and the Commerce Department will have access to it?

Mr. SCALIA. The purpose of the report, as I understand it, is to enable the Commerce Department to get a feel for what is going on

and thus to determine whether any additional administrative or legislative action is necessary. Its purpose is not to establish any criminal violations.

I would suppose that in the course of a criminal investigation which is otherwise commenced, a criminal investigatory agency might be given access to such documents. But it doesn't seem to me unreasonab' to tell a businessman, when you are asking him to provide informatio voluntarily, that this is for the use of this Department only, and we don't intend to ship the whole bulk of what you send us over to the Antitrust Division of the Justice Department. That tends to discourage full reporting by the businesses, to put it mildly.

Senator STEVENSON. Well, I agree. I can see how it might. Therefore, I think we probably ought to mandate compliance with the request for this information. Apparently the Export Administration Act does say that while the information is confidential, it is confidential unless the Secretary determines that the withholding thereof is contrary to the national interest.

I would have thought that you might reasonably conclude that the withholding of evidence of crime was contrary to the national interest.

Mr. SCALIA. As I indicated, in the case where there is a criminal investigation already underway and the criminal investigatory agency wants to look at a particular report I could understand that provision's being used. But if that proviso is interpreted to mean that, as a matter of general policy, the Secretary is going to determine that what he says is confidential should not be confidential, then it is a very deceptive report, indeed.

I don't think that is the way the Government ought to represent itself. I gather what you were saying is that the Secretary ought to make a generalized determination that these reports ought always to be available to any government official that wants to look at them.

Senator STEVENSON. If to maintain the confidentiality would be contrary to the national interest, that is what the law says.

Mr. SCALIA. You are saying that it would always be contrary to the national interest?

Senator STEVENSON. No. I am not saying that in this context. In this particular context we are talking about enforcement of the law. And I think the Export Administration Act makes it pretty clear that if these reports were to include evidence of crime, notwithstanding the impact it might have on future disclosure by corporations, the Secretary is under no duty to suppress the evidence, to cover up as we say nowadays.

I think he is under some duty, if not a statutory obligation to disclose any such possible evidence to the Justice Department.

Mr. SCALIA. I don't disagree with that where a violation appears. But I draw a line between that and simply saying that since there may be a violation shown in all of these reports, we are going to turn them over wholesale to the Antitrust Division or the Civil Rights Divison, or whomever else, in order that they may sift through them to see if they can find any violations. I think there is a distinction that can be drawn.

Senator STEVENSON. That distinction could be made. But short of turning it all over to the Justice Department, he might routinely go through those reports to determine if there is evidence of possible

crime and if so, turn them over to the Justice Department. I don't think that happens.

Perhaps it is a suggestion which is best made to the Department of Commerce. And if a suspect concern is expressed about voluntary cooperation in the future, then there would be all the more reason to mandate that cooperation in the future. Then, you would have your fifth amendment problems in the case of individuals.

Mr. SCALIA. Senator, I keep having the awful feeling in the course of this discussion that I really don't know what I am talking about, because it may well be that the Antitrust Division at least since the Arab boycott has become a cause of major national concern, has indeed examined at least some of those reports. I think that I better provide you a written clarification of that situation.

Senator STEVENSON. Could you do that on that point?

Mr. SCALIA. Yes, I will.

DEPARTMENT OF JUSTICE,
Washington, D.C. September 15, 1975.

HON. ADLAI E. STEVENSON,
Chairman, Subcommittee on International Finance,
Committee on Banking, Housing and Urban Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: At the July 22, 1975 hearing of the Subcommittee on International Finance, I undertook to determine and to advise you whether the Department of Justice reviews "boycott request" reports filed under the Export Administration Act with the Department of Commerce. I find—as I indicated in my testimony I believed to be the case—that it does not review such reports as a matter of course, but has done so in connection with investigations conducted by the Antitrust and Civil Rights Divisions relating to the Arab boycott.

I wish also to respond further to your inquiry regarding self-incrimination issues which might be raised by a law requiring exporters to disclose participation in a boycott, assuming such participation was contrary to law. As I stated at the hearing, the Fifth Amendment privilege against self-incrimination is a personal prvilege and is not available to corporations. See, e.g., *Bellis* v. *United States*, 417 U.S. 85 (1974). Moreover, it is well established "that an individual cannot rely upon the privilege to avoid producing the records of a collective entity which are in his possession in a representative capacity, even if these records might incriminate him personally." *Bellis* v. *United States*, *supra*, 417 U.S. at 88.

In the circumstances you posit, the operator of a sole proprietorship might be able to claim the privilege against self-incrimination. The enforceability of a reporting requirement against such a person would depend upon its nature and purpose. The more directly it is designed to enable discovery and prosecution of violations of law, the more likely it will be subject to a Fifth Amendment defense. Cf. *California* v. *Byers*, 402 U.S. 424 (1971).

I hope that this information will be of assistance.

Sincerely,

ANTONIN SCALIA,
Assistant Attorney General,
Office of Legal Counsel.

Senator STEVENSON. Thank you. That will be interesting.

Do the screening provisions of S. 425 pose any due process problems?

Mr. SCALIA. What do you mean by the "screening provisions"? I am afraid your committee has developed a jargon on this which I have not steeped myself in.

Senator STEVENSON. This is the provision in S. 425 which requires advance notice of proposed foreign investments. And it then goes on to state that anytime within 30 days of the notice, the President is authorized, by order, as he deems appropriate for the national security of the United States, to further the foreign policy of the United

States, or to protect the domestic economy of the United States, to prohibit the acquisition to which the notice relates.

It is a broad authority to prohibit——

Mr. SCALIA. Yes, it is.

Senator STEVENSON [continuing]. Foreign investment.

Mr. SCALIA. Frankly, I have not carefully studied the provisions of S. 425 as such, but have focused just on amendment 24. Of course, I had to examine the rest of the bill to some extent in order to understand what the amendment meant.

I think it is doubtless fairly broad authority, but no broader than, as I indicated, some other authority that the President has been given, particularly in the foreign affairs field. I think the courts have been willing to accord much more discretion to the President than this bill would allow, and I would doubt whether that screening provision would be considered a violation.

Senator STEVENSON. It includes those words to protect the national security, foreign policy, and domestic economy. It covers the waterfront with no guidelines, no standards.

Mr. SCALIA. Yes, sir, it is broad discretion. But whenever the President acts in the foreign affairs field, I think all of those areas are taken into account.

Senator STEVENSON. But here the import is on domestic companies and investors.

Mr. SCALIA. Yes, sir. I think it can affect an American company, to be sure, but the bill is directed at the foreign investor. And that is not just a technicality. I think the whole thrust of the bill is to protect our domestic economy against foreign activities

Senator STEVENSON. That's right.

Thank you very much, Mr. Scalia. That is an extremely competent job and very helpful. And we will look forward to hearing from you further.

Mr. SCALIA. Thank you, sir.

Senator STEVENSON. The subcommittee will recess until 10 o'clock tomorrow in this room.

[Whereupon, at 1:35 p.m., the hearing recessed, to reconvene at 10 a.m. on Wednesday, July 23, 1975.]

FOREIGN INVESTMENT AND ARAB BOYCOTT LEGISLATION

WEDNESDAY, JULY 23, 1975

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

The subcommittee met at 10 a.m., in room 1224, Dirksen Senate Office Building, Senator Adlai E. Stevenson (chairman of the subcommittee) presiding.

The chairman announced that Mr. Packwood was necessarily absent because he was attending a meeting of the Senate Finance Committee.

Senator STEVENSON. The meeting of the Subcommittee on International Finance will come to order.

This morning we will continue our hearings on foreign investment and boycott legislation.

Our first witness is Mr. Seymour Graubard, national chairman, Antidefamation League.

STATEMENT OF DAVID BRODY, DIRECTOR, WASHINGTON OFFICE, ANTIDEFAMATION LEAGUE, ACCOMPANIED BY MEYER EISENBERG, MEMBER, ADL NATIONAL COMMISSION, AND JUSTIN FINGER, ASSOCIATE DIRECTOR, CIVIL RIGHTS DIVISION, ANTIDEFAMATION LEAGUE

Mr. BRODY. Mr. Chairman, my name is David Brody, and I am the director of the Washington office of the Antidefamation League. Mr. Graubard was scheduled to testify this morning. Unfortunately, a close business associate of his died yesterday and he will be attending his funeral this morning, and consequently is unable to be here. He has asked me to express his regrets at his inability to be here.

I am accompanied this morning by Mr. Meyer Eisenberg, a member of the ADL's National Commission, which is the national governing body of the Antidefamation League, and Mr. Justin Finger, the associate director of our civil rights division.

I would like at this point to present for the record Mr. Graubard's prepared statement, and in the interest of saving time I will merely refer to some of the highlights of that statement, and when I am through, Mr. Eisenberg will have some additional remarks.

Senator STEVENSON. Very well. The full statement will be entered in the record.

Mr. BRODY. As I have indicated, I am David Brody, the director of the Washington office of the AntiDefamation League.

We appreciate, Mr. Chairman, your invitation to appear before this subcommittee to present our views on the legislation before it, and the reasons which have prompted the introduction of these measures.

Our organization has been dedicated for the 62 years of its existence to the preservation of our American constitutional principles and traditions. We support the legislation before this subcommittee because it is designed to defend the American principles of equal rights and opportunities against their debasement by foreign investors.

That we need such legislation is glaringly obvious. The Arab oil producing countries last year amassed a surplus of about $60 billion and the most conservative estimate is that the surplus will reach a quarter of a trillion dollars by 1980. These countries have made it plain that they would like to invest these vast sums of money in the United States, as well as to step up trade and business with American firms.

We, in the AntiDefamation League, are not opposed to either Arab-American trade or to Arab investment here. Indeed, we favor it as a means of balancing international payments. What we oppose—and what indeed American law and principle oppose—is the denial of individual rights and the outright religious discrimination that have been part and parcel of Arab business policy.

I am not speaking merely of the economic boycott of Israel, which in itself is repugnant to declared American policy, but more so of the blacklisting of persons of the Jewish faith, a practice which has already resulted in numerous violations by American business firms and Government agencies of the Nation's civil rights laws and of the Constitution itself.

The mixing of economic objectives with political objectives and religious bias is clearly an Arab technique. They have distorted the competitive rules of the marketplace by imposing a boycott on over 1,800 Jewish companies because of their ownership by Jews or business relationships—in many cases tenuous or almost non-existent, with Israel, or with other companies doing business in or with Israel.

Contrary to what Treasury and Commerce Department officials have said, the dichotomy between the boycott directed against companies doing business with Israel and companies because of their ownership by Jews is not as clearcut as Treasury and Department of Commerce officials would make it out to be.

As the Wall Street Journal observed in an editorial on February 14.

> The blacklisting of these firms appears less to be an attempt to undermine Israel than an attempt to inject antisemitism into Western business practice.

The Journal continued:

> The Arabs have had trouble distinguishing these two purposes throughout their 30-year-old economic boycott of businesses with ties to Israel.

In view of this currently increasing Arab pressure on American business, we believe that more than a mere statement by Treasury officials is necessary to assure Americans that the huge petrodollar resources at the command of Arab nations will not be used to undermine the premises of U.S. business, to turn American companies into political weapons aimed at Israel (or any other country), or to curb the rights of American citizens through sheer bigotry.

We must take steps to outlaw these discriminatory practices which President Ford recently characterized as "repugnant to American principles," before they became commonplace in the business life of our community. As the President also stated.

Foreign businessmen and investors are most welcome in the United States when they are willing to conform to the principles of our society.

I submit, Mr. Chairman, that ought to be the guiding principle which our country should subscribe to.

Various American firms, exporters, and banks, have told the Anti-Defamation League privately that they would welcome legislation enabling them to stand up against Arab demands. They feel, for example, that the declaration of American trade policy regarding boycott in the Export Administration Act of 1969 is an ineffective weapon because it is without teeth, without compulsion. American firms are being forced, for lack of effective sanctions, to comply with and to ask compliance of others in a boycott which is contrary to our Nation's declared policy.

In your remarks accompanying the introduction of your bill, Mr. Chairman, S. 953, to strengthen the Export Administration Act, you pointed out that the Arab boycott actions—

Raised grave implications for an open international trading system, a nondiscriminatory U.S. economic system and the conduct of U.S. foreign policy.

These words point perceptively to what are indeed "grave implications" arising from Arab activities—boycott, discrimination, intimidation, and strings attached to everything financial or commercal.

I would like to mention a few recent cases of discrimination by American firms under the impetus of Arab business which underscore these grave implications.

You cited one yesterday, Mr. Chairman, the case of Belvedere Products in Chicago. But here we have Allied Van Lines International of Chicago, surely one of the largest transporters of personal property in the world, which recently distributed a brochure entitled "Customs Information." Under the heading, "Arabian Countries," which it lists as Lebanon, Egypt, Iraq, Jordan, Syria, Saudi Arabia, Kuwait, and the United Arab Emirates, the brochure states:

Shipper must check with the consulate for approval of items to be brought into country. Items produced in Israel or by Jewish firms or associates throughout the world are blacklisted.

I emphasize: "Jewish firms or asssociates throughout the world." This is bigotry, not business, not politics

I would like to submit for the record a copy of the brochure which Allied Van Lines is distributing.

Senator STEVENSON. It will be entered into the record.

[The brochure follows:]

CUSTOMS INFORMATION—ALLIED VAN LINES INTERNATIONAL CORP.

ALGERIA

Shipper must obtain from the Algerian Consulate prior to his departure the following documents pertaining to his shipment. These documents should remain in the shipper's possession and be submitted to our overseas representative at time of customs clearance. Your office should obtain copies as proof of possession.

Certificate of Change of Residence
Validated Inventory (translated into French)

ARABIAN COUNTRIES—LEBANON, EGYPT, IRAQ, JORDAN, SYRIA, SAUDI ARABIA, KUWAIT, UNITED ARAB EMIRATES

Shipper must check with the Consulate for approval of items to be brought into country. *Items produced in Israel or by Jewish firms or associates throughout the world are blacklisted.*

Itemized Inventory (stating "Used Personal & Household effects have been used by owner and are for personal use.")

Note: Several of these countries also require the inventory to be validated. Please check with the individual Consulate for further information.

ARGENTINA

Due to strict government regulations, Allied's rate *DOES NOT* includes the following charges:

(1) Customs Brokers Fees
(2) Taxes and/or Duties
(3) Port Expenses

These charges will be billed directly to the shipper by the AVLIC's destination representative.

BRAZIL

Shipper must obtain from the Brazilian Consulate prior to his departure the following document pertaining to his shipment. This document should remain in the shipper's possession and be submitted to our overseas representative at time of customs clearance Your office should obtain copy as proof of possession.

Validated Inventory (translated into Portuguese)

Due to strict government regulations, Allied's rate *DOES NOT* include the following charges:

(1) Customs Brokers Fees
(2) Taxes and/or Duties
(3) Port Expenses

These charges will be billed directly to the shipper by the AVLIC's destination representative.

Mr. BRODY. Another case, the American Bureau of Shipping Technical Services, which is soliciting American personnel for its operations in Iraq and Bahrein, has turned down applicants because they are Jewish and has openly told them that this is the reason.

In one case it was because the applicant had a Jewish relative, and surely this painfully reminiscent of Hitler's Nurembery laws. A few days ago the Anti-Defamation League filed a complaint against this company before the EEOC, citing violations of title VII of the Civil Rights Act of 1964. This is not an isolated case; the league has filed similar complaints against five other American companies, firms which run the gamut of overseas vocational opportunities, charging them with dicriminating against Jews to accommodate Arab discriminatory policies.

Among a number of other examples of boycott pressures which the league has learned about is a letter sent to an American firm by the University of Petroleum and Minerals in Dhahran, Saudia Arabia, asking for quotation and specifications on a number of products offered for sale.

This letter states, in part: "Please do not quote on goods manufactured by companies who are included in the Arab boycott list, that is, blacklist." This means do not quote on items made by any one of at least 1,800 American firms that are on the boycott list.

I would like to insert in the record at this point a copy of that letter.

Senator STEVENSON. It will be entered into the record.

[The letter follows:]

UNIVERSITY OF PETROLEUM AND MINERALS,
Dhahran, Saudi Arabia, June 9, 1975.

APPLIED CONTROLS CO. INC.,
1275-T Bloomfield Avenue,
Fairfield N.J. U.S.A.

Gentlemen: Will you kindly send, via AIR MAIL, a quotation valid for a minimum of 90 days on the items listed below:

As per specification sheet and technical drawings attached

Please send details of the circuit breakers offered by your Company which will include information on the tripping current and their degree of adjustment etc.

Your quotation or 'no bid' in reply should reach our office within four weeks from date of receipt by you. In the event that you submit a firm quotation please use our self addressed label (which is attached) on your envelope. Kindly state our reference number given above when replying to our request.

Please do not quote on goods manufactured by companies who are included in the Arab Boycott List, i. e., (BLACKLIST).

The following information should be included in your quotation.

(a) Delivery date.
(b) Discount offered to educational institutions.
(c) Brand name and country of origin of goods offered.
(d) All related costs such as legalized documents, etc.
(e) Preferred method of payment, i.e., Letter of Credit or Sight Draft.

Kindly note, it is contrary to our business procedure to open a *confirmed* Letter of Credit. Prices should be C & F Dhahran, via air freight; and C & F Dammam, via ocean freight.

Your early reply will be appreciated.

Thank you

Very truly yours

NAMAN S. EL ALAMI,
Director of Purchasing.

Mr. BRODY. Recently the Commissioner General of the Arab League's Boycott Office has said of the blacklist that it includes "companies when it is proved by definite evidence that they, their proprietors or controllers have Zionist inclinations."

Fortune magazine, in quoting this statement in its issue of July 1975, comments that such "sweeping, convenient, and highly dubious" terms give the Arabs "freedom to blacklist almost at will".

Mr. Chairman, we believe that it is obvious that practices such as these can only increase as the Arabs' accumulation of petrodollars increases, so long as our Government allows this. What Arab petrodollars have done in regard to illegal employment recruitment in the United States, violation of Government policy with respect to boycotts against friendly nations, and exclusion of certain firms from business contracts is only a preamble to what will occur as the Arabs use their dollars invested in American business to control and direct the activities of such dominated corporations.

Contrary to what officials of the executive branch testified to yesterday, existing legislative safeguards are not sufficient to present discriminatory practices by foreign investors, let alone end present discrimination by American institutions that comply with the Arab boycott.

Nor is a government request for voluntary restraint sufficient. We have already seen how the declared policy against boycott has been dishonored without shame by thousands of U.S. corporations. We are dealing with foreign nationals who have a different and often opposing foreign policy from ours; whose economic interests and objectives are at variance from ours; and whose concept of legitimate government

action includes, for example, actively supporting terrorists who use indiscriminate murder as a weapon of everday policy. It would be foolhardy to believe that we can rely on their sense of ethics to comply with our laws, whether or not these laws contain sanctions.

Therefore we commend you, Mr. Chariman, for introducing amendments to the Export Administration Act which will remedy some of its deficiencies, particularly in regard to requiring domestic concerns that report boycott requests also to notify the Department of Commerce whether or not they intend to comply with such requests.

When Mr. Scalia testified yesterday he said under the existing law the Department of Commerce had the authority to require exporters to indicate whether or not they intend to comply with such requests.

Your bill, S. 953, is also valuable in that it authorizes the President to take action in carrying out U.S. policy against boycotts, action which could include curtailing economic transactions with countries which impose boycotts. We would, however, like to see added to it a provision that reports of boycotts requests to the Department not be deemed confidential, as is the Department's present policy.

We have been trying without success to have the Department of Commerce make available to us under the Freedom of Information Act the reports of boycott requests which are filed by exporters. We have even been denied access to the charging and warning letters sent by the Department to exporters who have failed to comply with the requirement of the law that they report the receipt of such requests. This attitude of the Department makes almost a mockery of a statement which Assistant Attorney General Scalia made when he testified just 2 weeks ago today before a subcommittee of the House Judiciary Committee, when he suggested as one effective way in dealing with the boycott the following, and I quote:

> For example it occurs to one immediately that the mere light of publicity might be sufficient to prevent the major abuses.

The one thing the Department of Commerce does is to use section 7(c) of the Export Administration Act to provide a sanctuary not merely for those who do report the receipt of boycott requests, but for those who are actually violating the law by failing to report the receipt of such boycott requests.

I might add at this point, Mr. Chairman, that you find yourself in a position with your bill S. 5953 of "heads they win, tails you, lose."

Yesterday we had Mr. Scalia testify, as well as Under Secretary Tabor, that under existing law, section 4(b) (1), we didn't need this legislation, that the President already has the power to curtail exports.

But when Mr. Parsky testified, he opposed the legislation not because the President already has the authority, but because he felt that giving the President the authority to prohibit exports would inject an element of uncertainty into existing U.S. business relations with the Arab world, since the President could at any time act to prohibit exports and other economic transactions with any of the Arab countries.

Senator Williams has been making herioc efforts as the Chairman of the Securities Subcommittee to obtain information from the Department of Commerce. He has met with not quite the same obstacles we have; the Department recently released some information to him, still

incomplete, and what that information disclosed is I submit profoundly disturbing.

It includes the fact that there has been an astounding increase in the dollar value of U.S. exports involved in the Arab boycott—from $10 million in 1974 to a 1975 figure now approaching $204 million—and that many of the largest U.S. corporations are involved.

These facts point, we believe, to the dire need for legislation to prohibit compliance by U.S. firms with boycott requests.

The history of the last 20 years shows that mere exhortation by Congress has been ineffective in dealing with these boycott tactics.

In fact, what we have seen is executive nullification of congressional action, where all that is involved is legislation of a precatory type. If anything, as we have indicated, the boycott has intensified in recent months. The anti-boycott provision of the Export Administration Act, first enacted in 1965, as you have pointed out, Mr. Chairman, has not curbed the boycott, notwithstanding the clear and unequivocal statement of U.S. policy condemning the boycott.

As originally introduced by Senator Williams and 30 other members of the Senate, and it is an interesting historical sidelight that Senator Beall, the late Senator Beall was one of the cosponsors of that resolution and his son, Senator Beall, has been sponsoring legislation designed to curb the Arab boycott today.

As originally introduced, the legislation would have prohibited compliance with boycott requests, but the Department of State and Commerce prevailed upon Congress to modify the bill to provide "flexibility" in countering the boycott.

One of the problems Act is that the Department of Commerce never welcomed the legislation, whether it is in the form of a mandatory ban on complying with boycott requests or whether it is the hortatory type now on the books, because when Secretary Connor testified in 1965 in legislation to extend and amend the Export Control Act of 1949 he said, speaking of both types of legislation: "We still think that either one of these proposals is undersirable from the point of view of the foreign relations of the United States, and also from the point of view of its effect on many U.S. manufacturers and other trading organizations."

And then he added: "However, if it is the wish of the Congress that there be some such expression of policy, then we would prefer the House bill," which is the precatory hortatory type, rather than S. 948, which was the bill introduced by Senator Williams and which would have banned compliance with the boycott.

I submit that that negative attitude prevailed in 1965 when the legislation was enacted has persuaded the enforcement and implementation of the existing law to this very day.

Just 19 years ago this month, Mr. Chairman, the Senate in responding to the Saudi-Arabian discrimination against American Jews, unanimously adopted a resolution condemning efforts by foreign countries to draw distinction among American citizens on the basis of religion and urging the executive branch to keep this principle uppermost in mind when conducting negotiations with foreign countries. But these same discriminatory practices are still with us today and command the attention of this committee.

The only lesson to be drawn from this history is that if we are seri about putting an end to these practices, Congress must place an (right ban on them.

The other aspect of the overall problem, the need to monitor fore investments, we have already testified in support of the Williams l S. 425, before the Subcommittee on Securities, and I won't repeat t testimony here.

I would like to conclude my remarks before having Mr. Eisenb make his remarks by citing some sobering facts and forecasts ab Arab financial power.

A recent study by Mr. Walter J. Levy, a renowned expert in matters, estimates that the oil-producing nations will have a $7-mil investment income—that is, apart from oil income—this year, a fig higher than the total oil revenue in 1970, and that by 1980 their e ings on reinvestment of surplus alone is likely to reach $30 billion. $250 to $300 billion surplus that these countries can be expected amass by that time is two to three times the holdings of the West nations at the end of 1974.

This vast amount of money available for investment inevit bears great potential for economic and political power over Amer This power is already beginning to make itself felt.

We believe, therefore, that it is not too soon to enact legislatio protect American business and American citizens from intimida and the other abuses this power carries with it.

[The complete prepared statement of Mr. Graubard and additi material received for the record follows:]

Statement By

Seymour Graubard

National Chairman

Anti-Defamation League of B'nai B'rith

My name is Seymour Graubard and I am National Chairman of the Anti-Defamation League of B'nai B'rith. I appreciate, Mr. Chairman, your invitation to appear before this subcommittee to present our views on the legislation presently before it and on the dangers inherent in the situations which have prompted the introduction of these measures.

Our organization has been dedicated for some sixty-two years to the preservation of our American constitutional principles and traditions. We support the legislation before this subcommittee which is designed to defend the American principles of equal rights and opportunities against debasement by foreign investors. By turning the spotlight on massive foreign investment, the proposed legislation will enable government agencies to coordinate their efforts to prevent subversion of American public policy.

That our nation needs such legislation is obvious. The Arab oil producing countries ammassed a surplus of about $60 billion last year, and the most conservative estimate is that the surplus will reach a quarter of a trillion dollars by 1980. These countries have made it plain that they would like to invest vast sums of this money in the United States, as well as to step up trade and business with American firms.

The Anti-Defamation League, Mr. Chairman, is not opposed either to Arab-American trade or to Arab investment here. Indeed, we favor

it as a means of balancing international payments. What we oppose -- what indeed American law and principle oppose -- is the denial of individual rights and the outright religious discrimination that have been part and parcel of Arab business policy. I am not speaking of the economic boycott of Israel alone -- which in itself is repugnant to declared American policy -- but more so of a vicious blacklisting of persons of the Jewish faith, a practice which has already resulted in numerous violations by American business firms and government agencies of the nation's civil rights laws, and of the Constitution itself.

The mixing of economic objectives with political objectives and religious bias is clearly an Arab technique. They have distorted the competitive rules of the marketplace by imposing a boycott on over 1,800 U.S. companies because of their ownership by Jews or business relationship (in many cases tenuous or almost non-existent) with Israel or with other companies doing business in or with Israel. Arab discriminatory tactics have also been used against so-called "Jewish connected" investment banking houses such as Lazard Freres in New York and Paris, and N.M. Rothschild and S. G. Warburg of London.

The Wall Street Journal observed on February 14: "The blacklisting of these firms appears less to be an attempt to undermine Israel than an attempt to inject anti-Semitism into Western business practice." The Journal continued: "The Arabs have had trouble distinguishing these two purposes throughout their 30-year old economic boycott of businesses with ties to Israel." In view of this currently increasing

Arab pressure on American business, we believe that more than a mere statement by Treasury officials is necessary to assure Americans that the huge petrodollar resources at the command of Arab nations will not be used to undermine the premises of U.S. business, to turn American companies into political weapons aimed at Israel (or any other country), or to curb the rights of American citizens through sheer bigotry. The outrageous worldwide Arab boycott and the fostering of religious discrimination against Americans by other Americans are, as President Ford stated on February 26th, "repugnant to American principles." We certainly must make certain that repugnant practices are not introduced into our national life.

Various American firms -- exporters and banks -- have told the Anti-Defamation League privately that they would welcome legislation enabling them to stand up against Arab demands. They feel, for example, that the declaration of American trade policy regarding boycotts in the Export Administration Act of 1969 is an ineffective weapon because it is without teeth, without compulsion. American firms are being forced, for lack of effective sanctions, to comply with and to ask compliance of others in a boycott which is contrary to our nation's declared policy. On this point, Mr. Chairman, we commend your bill, S.953, amending and strengthening the Export Administration Act. I would like to quote a portion of the remarks you made in introducing it. You stated:

> Boycotts and restrictive trade practices designed to support Arab policy are apparently being perpetrated with impunity against U.S. companies which have dealings with Israel. Thousands of U.S. firms appear on Arab boycott lists. There are also increasing reports of discrimination against U. S. financial and investment institutions with Jewish interests.

A number of investment banking houses have apparently been excluded from financings involving Arab investment funds. Reports indicate that last year more than half of all U.S. firms which had been asked to comply with Arab restrictive trade practices or boycotts directed against Israel had complied. The U.S. Government, too, has apparently bowed to Arab demands by agreeing to exclude Jewish personnel from Army Corps of Engineers projects in Saudi Arabia. Such actions raise grave implications for an open international trading system, a non-discriminatory U.S. economic system and the conduct of U.S. foreign policy.

(Congressional Record, March 5, 1975)
S.3064 - 3065

Those words pointed perceptively to what are indeed "grave implications" arising from Arab activities -- boycott, discrimination, intimidation, and strings attached to everything financial or commercial.

I would like to mention a few recent cases of discrimination by American firms under the impetus of Arab business which underscore these grave implications.

Allied Van Lines International of Chicago, surely one of the largest transporters of personal property in the world, recently distributed a brochure entitled "Customs Information." Under the heading, "Arabian Countries," which it lists as Lebanon, Egypt, Iraq, Jordan, Syria, Saudi Arabia, Kuwait, and the United Arab Emirates, the brochure states: "Shipper must check with the Consulate for approval of items

to be brought into country. Items produced in Israel or by Jewish firms or associates throughout the world are blacklisted." I emphasize: "Jewish firms or associates throughout the world." This is bigotry, not politics.

A firm named the American Bureau of Shipping Technical Services, which is soliciting American personnel for its operations in Iraq and Bahrein, has turned down applicants because they are Jewish and has openly told them that this is the reason. In one case it was because the applicant had a Jewish relative -- and surely this is painfully reminiscent of Hitler's Nuremberg Laws. A few days ago the Anti-Defamation League filed a complaint against this company before the EEOC, citing violations of the Civil Rights Act of 1964. This is not an isolated case; the League has filed similar complaints against five other American companies -- firms which run the gamut of overseas vocational opportunities -- charging them with discriminating against Jews to accord with Arab policies.

Among a number of other examples of boycott pressures which the League has learned about is a letter sent to an American firm by the University of Petroleum and Minerals in Dhahran, Saudi Arabia, asking for quotations and specifications on a number of products offered for sale. The letter states, in part: "Please do not quote on goods manufactured by companies who are included in the Arab boycott list, i.e., (BLACKLIST)." This means, do not quote on items made by any one of at least eighteen hundred American firms.

Mohammed Mahgoub, Commissioner General of the Arab League's Boycott Office, has said of the Blacklist that it includes "companie when it is proved by definite evidence that they, their proprietors (controllers have Zionist inclinations." Fortune magazine, in quoti this statement by Mahgoub in its issue of July, 1975, comments that such "sweeping, convenient, and highly dubious" terms give the Arabs "freedom to blacklist almost at will."

Mr. Chairman, we believe that it is obvious that practices such these can only increase as the Arabs' accumulation of petrodollars i creases, so long as our government allows this. What Arab petrodoll have done in regard to illegal employment recruitment in the United States, violation of government policy with respect to boycotts agai friendly nations, and exclusion of certain firms from business contr is only a preamble to what will occur as the Arabs use their dollar invested in American business to control and direct the activities such dominated corporations.

As Senator Williams recently said: "Petrodollars can be used - and the boycott demonstrates that they will be used -- to advance ob tives which may well be counter to our fundamental national commitme

Existing legislative safeguards are clearly insufficient to for stall discriminatory practices by foreign investors, let alone en present discrimination by American institutions that comply with th Arab boycott.

Nor is a government request for voluntary restraint sufficient. We have already seen how the declared public policy against boycott been dishonored without shame by thousands of U. S. corporations. W

are dealing with foreign nationals who have a different and often opposing foreign policy from ours; whose economic interests and objectives are at variance from ours; and whose concept of legitimate government action includes, for example, actively supporting terrorists who use indiscriminate murder as a weapon of every-day policy. It would be foodhardy to believe that we can rely on their sense of ethics to compl with our laws, whether or not these laws contain sanctions.

Therefore we commend you, Mr. Chairman, for introducing amendments to the Export Administration Act which will remedy some of its deficiencies, particularly in regard to requiring domestic concerns that report boycott requests also to notify the Department of Commerce whether or not they intend to comply with such requests. Your bill, S.953, is also valuable in that it authorizes the President to take action in carrying out U.S. policy against boycotts, action which could include curtailing economic transactions with countries which impose boycotts. We would, however, like to see added to it a provision that reports of boycott requests to the Department of Commerce not be deemed confidential -- as is the Department's present policy.

The Anti-Defamation League has requested, under the Freedom of Information Act, that undeleted reports of boycott requests be released to the League, but the Department has formally refused. We have even been denied access to the charging and warning letters sent by the Department to exporters who have failed to comply with the requirement of the law that they report receipt of such requests. In the meantime, just the other day Senator Williams announced that as a

result of efforts on his part he has received from the Department previously undisclosed (but still incomplete) information regarding such reports.

The information which the Senator received is profoundly disturbing. It includes the fact that there has been an astounding increase in the dollar-value of U.S. exports involved in the Arab boycott -- from $10 million in 1974 to a 1975 figure now approaching $204 million -- and that many of the largest U.S. corporations are involved. These facts point, we believe, to the dire need for legislation in addition to that which is being considered today -- namely, legislation to prohibit compliance by U.S. firms with boycott requests. The hirtory of the last 20 years shows that mere exhortation by Congress has been ineffective in dealing with these boycott tactics. If anything, as we have indicated, the boycott has intensified in recent months. The anti boycott provision of the Export Administration Act, first enacted in 1965, as you have pointed out, Mr. Chairman, has not curbed the boycott notwithstanding the clear and unequivocal statement of U.S. policy condemning the boycott. In that Act as originally introduced, the legislation would have prohibited compliance with boycott requests, but the Departments of State and Commerce prevailed upon Congress to modify the bill to provide "flexibility" in countering the boycott.

And just 19 years ago this month, the Senate, in responding to th Saudi-Arabian discrimination against American Jews, unanimously adopted a Resolution condemning efforts by foreign countries to draw distinctic among American citizens on the basis of religion and urging the Executi branch to keep this principle uppermost in mind when conducting negotia

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tions with foreign countries. But these same discriminatory practices are still with us today and command the attention of this committee. The only lesson to be drawn from this history is that, if we are serious about putting an end to these practices, Congress must place an outright ban on them.

The other aspect of the overall problem -- the need to monitor foreign investments -- is addressed by the Williams Bill, S.425, and the other bills being considered today. We commend in particular the Williams Bill, which, as an amendment to our securities laws is within their spirit of disclosure and a natural extension of the reporting requirements for the acquisition of shares in public companies. We commend it for empowering the President to block foreign investments in U.S. companies prior to acquisition, if he finds it necessary to protect the national security, further the foreign policy, or protect the domestic economy of the United States. Commendable also is the amendment to the bill offered by Senator Williams, which requires the President to prohibit any such acquisition if the foreign investor has attempted to coerce American firms into boycott compliance. The Williams Bill also contains what we consider to be useful and effective enforcement provisions.

The Stevens Amendment No. 393 to the Inouye Bill, S.1303, is to be supported for its inclusion of domestic businesses other than public companies as well as for foreign investors who acquire real or personal property. It does, however, lodge the power to control acquisitions in the Secretary of Commerce rather than the President, and past experience shows that the Secretary may be in need of clear legislative guidelines.

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The Roth Bill, S.995, would reach only investments by foreign governments or agents thereof.

The Inouye Bill itself, S.1303, would create a monitoring administration to collect information on foreign investments. It contains, however, no provision for regulating such investments or for prohibiting investments which are contrary to the national interest.

Mr. Chairman, I will conclude by citing sobering facts and forecasts about Arab financial power. A recent study by Mr. Walter J. Levy, a renowned expert in oil matters, estimates that the oil-producing nations will have a $7 billion investment income -- that is, apart from oil income -- this year, a figure higher than the total oil revenue in 1970, and that by 1980 their earnings on reinvestment of surplus alone is likely to reach $30 billion. The 250 to 300-billion-dollar surplus that these countries can be expected to amass by that time is two to three times the holdings of the Western nations at the end of 1974.

This vast amount of money available for investment inevitably bears great potential for economic and political power over America. This power is already beginning to make itself felt. We believe, therefore, that it is not too soon to enact legislation to protect American business and American citizens from intimidation and the other abuses this power carries with it.

MANDATORY DISCLOSURE OF

BOYCOTT COMPLIANCE AND SELF-INCRIMINATION

QUERY: Does mandated disclosure of intended illegal activity run afoul of constitutional protections against self-incrimination?

Proponents of the strengthening of the Export Administration Act provisions regarding boycotts of friendly nations have supported mandatory disclosure of intention to comply with boycott requests, even though compliance with such requests may be illegal under present or proposed United States laws.

A review of pertinent decisions appears to indicate that such mandatory disclosure would, indeed, violate the rights of a natural individual illegally complying with the boycott. However, the vast majority of United States companies, being corporations or other entitites, do not have such a privilege.

In 1968, the U.S. Supreme Court, overrruling a previous case, held that statutory obligations requiring bookmakers to register and pay an occupational tax under federal wagering tax statutes violated such individuals' Fifth Amendment privilege against self-incrimination because compliance with the statutory disclosure requirements would confront them with "substantial hazards of self-incrimination." (Marchetti v. U.S., 88 S.Ct. 697 [1968]; Grosso v. U.S., 88 S. Ct. 709 [1968]. See also Haynes v. U.S., 88 S.Ct. 722 [1968].)

In other cases, the Court has distinguished a general requirement to report information in "an essentially noncriminal and regulatory area of inquiry" (California v. Byers, 91 S.Ct. 1535 [1971], upholding a California State requirement that motorists involved in accidents leave their identification). Mandating the reporting of intention to comply with an illegal boycott request would appear closer to the former than the latter category.

While individuals acceding to boycott requests would, therefore, be constitutionally protected from the necessity to report their wrongdoing, a long line of cases make it clear that the constitutional privilege against self-incrimination cannot be utilized by or in behalf of a corporation or other organization. (Hale v. Henkel, 26 S.Ct. 370 [1906], and later cases. See especially George Campbell Painting Corp. v. Reid, 88 S.Ct. 1978 [1968]; California Bankers Association v. Shultz, 94 S.Ct. 1494 [1974]). In United States v. White, 64 S.Ct. 1248 [1944], the Court held that an officer of an unincorporated labor union has no privilege against self-incrimination in his official capacity, stating that individuals, "when acting as representatives of a collective group, cannot be said to be exercising their personal rights and duties in order to be entitled to their purely personal privileges ... The constitutional privilege against self-incrimination is essentially a personal one, applying only to natural individuals."

Clearly, the vast majority of American businesses would not be entitled to such a privilege. The requirement of disclosure will therefore be a valuable tool to combat the Boycott. The requirement can be waived for the occasional individual for whom it would be constitutionally defective.

S.953 AND PRESIDENTIAL POWERS

S. 953, introduced by Senator Stevenson, amending the Export Administration Act of 1969, contains the following proposed language with respect to the implementation of the section concerning foreign requests for American firms to participate in a boycott:

> "... For such action as the President may deem appropriate to carry out the policy of that section, including the curtailment by any U.S. concern of exports to, and investments in, or any other economic transactions with countries which impose boycotts or engage in restricted trade practices as specified in that section."

It has been suggested that the proposed amendment is unnecessary, as the President already has such powers under existing law.

It would appear upon examination of the present language of the Act, and its legislative history, that the statute indeed now gives the President some, but not all of the discretionary powers the proposed amendment would confer..

The Act, 50 App. § 2401 et seq., contains in Section 2402, various declarations by Congress of foreign policy of the United States, including a policy opposing boycotts of friendly nations. Section 2403, (b)(1) states:

> "To effectuate the policies set forth in Section 3 of this Act [Section 2402 of this Appendix] the President may prohibit or curtail the exportation from the United States, its territories and possessions, of any articles, materials or supplies including technical data, or any other information, except under such rules and regulations as he shall prescribe ... "

This language appears on its face to endow the President with power to control exports in furtherance of our foreign policy, including opposition to boycotts. An examination of the legislative history shows Congress' intentions. The Congressional Record of February 17, 1949, pages 1367 et seq., contains a transcript of the discussion in the House of Representatives on the adoption of the Export Control Act of 1949, one of the present law's predecessors. Mr. Sabath, who introduced the bill, remarked as follows, "... the bill is relative to the control of the exportation of products that are vital to the nation's internal economy as well as to its external security. It provides for the continuation of the President's authority to control this vital link in the chain of the nation's welfare." (Page 1367, column 3).

The Export Control Act of 1949 was extended in 1965 and amended. (The section declaring that it is U.S. Policy to oppose boycotts was added at this time). The 1965 Senate report describes the purposes of the bill as follows:

> "The enactment of the proposed legislation would serve three principal purposes ... third, it will furnish the administration with clear legal authority to protect American business firms from competitive pressures to become involved in foreign trade conspiracies in countries friendly to the United States." (U.S. Congressional and Administrative News, 1965, page 1826.)

Mr. Stevenson's proposed amendment, however, would give additional powers to the President, namely, to curtail investments in, or any other economic transactions with countries which impose boycotts or engage in restricted trade practices. Such Presidential powers are found in the Trading with the Enemy Act, 50 App, 5 (b)(1) although under the latter act, they may only be used

during a time of war or national emergency.

The proposed language of Senator Stevenson, would clarify and expand the options available to the President to take firm and effective action to carry out, in his discretion, the announced Congressional policy against boycotts. Its passage would underscore the Congressional intent that American citizens be protected in this regard.

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ANTI-DEFAMATION LEAGUE
Of B'nai B'rith
1640 Rhode Island Avenue, N.W. • Washington, D. C. 20036 • [202] 393-5284

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DAVID A. BRODY
Director

August 13, 1975

Stanley J. Marcuss, Esq.
Counsel, Subcommittee on International
Finance
Washington, D. C. 20510

Dear Stan:

I thought you would like to see a copy of the letter we sent to Secretary Morton earlier this week charging the Commerce Department with cooperating and assisting in the Arab boycott by disseminating foreign tenders which include boycott provisions against Israel.

If it's not too late, you may want to include the letter in the record of the Subcommittee hearings.

Sincerely,

David A. Brody

DAB:ebo
encl.

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ANTI-DEFAMATION LEAGUE
of Bnai Brith

NATIONAL CHAIRMAN
SEYMOUR GRAUBARD
315 LEXINGTON AVENUE
NEW YORK, N. Y. 10016

August 11, 1975

Hon. Rogers Morton
Secretary
Department of Commerce
Washington, D.C. 20230

Dear Sir:

This letter is to protest the cooperation and assistance of your Department in the Arab boycott operations against the State of Israel.

Enclosed is a xerox of a nationally disseminated letter from the Department's Office of Business Research and Analysis to which the Department attached a June 1975 communication from Iraq. You will note that the Iraqi communication is a tender to purchase 3,550 pre-cast (pre-fabricated) buildings, the terms and conditions of which include a boycott provision against Israel. Paragraph No. 13 reads as follows:

> "Country of Origin: The tenderer should not incorporate (sic) this tender any material that has been manufactured in Israel or by companies boycotted officially by Iraqi Government." (Emphasis ours)

When the matter came to our attention, we telephoned the Commerce Department desk which circulated this national mailing. Mr. Charles Pitcher, the writer of the circular letter, advised us that it is routine practice to disseminate such tenders as they arrive from foreign lands. In some cases, we were told, the Commerce Department "writes them up"; in other cases, the distribution is arranged by computer. We were informed, too, that these tenders are received by Commerce from the U. S. State Department. The letter itself states that Commerce received the tender from a "U. S. Foreign Service Post".

With the foregoing in hand, we assigned one of our representatives to visit your Department of Domestic and International Business-Trade Operation Office, and examine tenders that have been distributed by it from about June 1974 to the present. Our search only spot-checked tenders from Iraq, Saudi Arabia, Libya, Syria, Qatar, Egypt, Lebanon, Jordan and The United Arab Emirates. We found at least one other instance in which your Department distributed a tender containing Arab boycott provisions. In the Department's Iraqi folder, there is a bid received March 4, 1975 inviting tenders for a supply of industrial locomotives for the Samawah

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Cement Public Company, P.O. Box 5, Samawah, Iraq. Attached to the standard telegraphed form from the Trade Opportunities Officer, is a listing of "General Terms and Conditions." It states in Section 13: (titled Certificate of Origin)

> "Tenderer must submit certificate of origin specifying that the goods are not of Israeli origin, not the company having a branch in Israel, and that they will not be shipped on Israeli or blacklisted vessels. This certificate must be legalized by the Iraqi or any Arab consulate or representative and in the case of their non-existence, legalization by Chamber of Commerce or Industry in the Country of Origin or port of shipment will suffice."

In addition to this latter instance, our search at the Department turned up other questionable informational requirements in tenders circulated by Commerce; questionable, because if complied with, these provisions would enable the Arab country to take the next step of rejecting bids that violate their boycott rules. For example:

1. Egypt: bidders must submit offers through Egyptian commercial companies or through an Egyptian agent (which may limit freedom of trade by having to go through such contacts).

2. Qatar: in a bid for tenders received September 24, 1974 re Communication Pipes, "Tenders should include product's country of origin and name of producers..."

3. Libya: bid for tenders received August 16, 1974, requires bidding through Libyan agent. Further, this bid request for x-ray diagnostic units for eight Libyan hospitals states "Restricted Tender Board can reject any tender without explanation."

Because your Department advised us, as indicated above, that the tenders it disseminates are received from the U. S. State Department, we communicated with that office. There, we talked by telephone with Nicholas Lakas, the Director of the Office of Commercial Affairs, who promised to look into the matter. Because the subject is so important, we are writing to you, copy to the U. S. Secretary of State, pending the results of his inquiry.

It is ironic that your Department distributes warnings to American companies to remind them that the provisions of the Export Administration Act require a report to the Department of any request for boycott compliance -- while your Department itself is disseminating proposed purchases which include such requests for Arab boycott. We wonder how many companies

receiving these mailings have reported, as required under the Act, that the Commerce Department itself is guilty of violating the publicly announced policy of our government.

We ask that the Commerce Department comply with American public policy as set forth in the Export Administration Act, which opposes submission to boycott demands of friendly countries by other foreign powers.

Very truly yours,

Seymour Graubard
National Chairman

SG:nk
Enc.

cc: Hon. Henry A. Kissinger
Secretary of State
Department of State
Washington, D.C.

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Domestic and International Business
Washington, D.C. 20230

Mr. Seymour Graubard
National Chairman
Anti-Defamation League of B'nai B'rith
1640 Rhode Island Avenue, N.W.
Washington, D. C. 20036

Dear Mr. Graubard:

This is in response to your letter of August 11, 1975, to Secretary Morton in which you advise that it has come to your attention that this Department recently disseminated to interested American firms a bid tender for the purchase of pre-cast buildings by the Government of Iraq which contained a provision excluding the use of materials of Israeli origin or materials manufactured by firms boycotted by the Government of Iraq.

We were quite distrubed to learn that, contrary to longstanding Departmental policy, copies of this tender and other trade opportunity documents were disseminated without attaching thereto a statement of United States policy opposing such restrictive trade practices and requesting the American firms concerned not to comply with them. Secretary Morton appreciates your bringing this matter to his personal attention. In order to avoid this occurring again, we have instructed appropriate officials in the Domestic and International Business Administration that henceforth a statement should be stamped on any documents containing such restrictive trade clauses which are disseminated by this Department. Such statement will direct the reader's attention to the particular restrictive clause and advise him of U.S. policy in opposition thereto.

Although the issue of discrimination because of race, color, religion, sex or national origin does not arise in the case you have cited and, in fact, very seldom arises in connection with an Arab boycott request, I want to assure you that tenders and other trade opportunity documents which would have the effect of discriminating against certain U.S. citizens on such grounds will not be, and to our knowledge have not been, disseminated by the Department of Commerce.

This Administration is fundamentally opposed to the premises upon which the Arab boycott is based and the Department of Commerce has made every effort to acquaint the business community with the declaration of United States policy currently contained in Section 3(5) of the Export Administration Act. The Department form on which exporters report receiving Arab boycott requests includes a statement of that policy, prominently displayed at the top of the form. Reprints of this form and of the pertinent provisions of the Export Administration Regulations were recently mailed to approximately 30,500 U.S. firms which are listed in the American International Traders' Index. A copy of this document is enclosed for your information. In addition, the Department has issued several press releases over the past few months concerning our policy towards the Arab boycott and actions taken to enforce our reporting requirements.

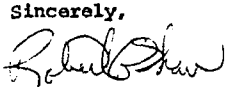
We do not believe that any useful purpose would be served if the Department of Commerce refused to disseminate bid invitations subject to restrictive clauses, thereby denying U.S. firms prompt access to business opportunities in the Arab markets which they are lawfully permitted to pursue. Our firms might to some extent compensate for loss of this source of information by attempting to obtain the opportunities directly from Arab sources or through private trade channels. Forcing them to do so, however, would put them at a competitive disadvantage with foreign competitors having prompt access to such opportunities through their own governments. The approach which we have chosen to use in handling these trade opportunity documents affords us the means of reminding American firms of the U.S. policy of opposition to such restrictive trade practices, before such firms have decided in the exercise of their business judgment, whether or not to comply with the particular Arab boycott request.

In conclusion, a refusal by the Department to disseminate such opportunities could have an adverse impact on our balance-of-trade, and increase unemployment in the United States without having any impact on the worldwide application by the Arab countries of their boycott against firms engaging

58-527 O - 75 - 14

in extensive commercial relations with the State of Israel. We firmly believe that the only means of ending this boycott rests in the successful settlement of the Middle East conflict and the issues underlying it. I am sure that you share our hope that such a settlement will be achieved in the very near future.

Sincerely,



for Charles W. Hostler
Deputy Assistant Secretary
for International Commerce

Enclosure

U.S. DEPARTMENT OF COMMERCE
Domestic and International Business Administration
Washington, D.C. 20230

Gentlemen:

The following trade opportunities have been submitted to the Department of Commerce by U. S. Foreign Service Posts overseas.

If you are interested in any of these opportunities, please contact directly the person listed on the enclosed telegrams.

Sincerely,

Charles B. Pitcher
Construction and Building
Materials Program
Office of Business Research
and Analysis

Enclosure

X 3601

LOT COPY AVAILABLE

MINISTRY OF [illegible]
STATE ORGANIZATION FOR [illegible] INDUSTRIES
HOUSING SERVICES [illegible]

TENDER NO. 6/75

3550 PRECAST HOUSES

TECHNICAL SPECIFICATIONS

1. Scope of the tender: 3550 houses precast concrete to be established in the following areas:-

1300 houses in Baghdad located as follows:

700 houses in Waziriyah
500 " " Abu Ghraib
100 " " Al-Taji

1000 houses in Iskandariyah
400 " " Diyala
100 " " Kut
150 " " Nassiriyah
600 " " Basrah

2. Precasted concrete buildings are preferred to precasted concrete houses.

3. In case of buildings, they will be of three floors only with 36-48 apartments in each building.

4. Individual houses to be of about 80 square meters each with a garden of 70 square meters, suitable for five persons to live in and consists of:

2 Bedrooms 1 living room 1 Hall
1 Kitchen 1 bathroom with shower and 1 W.C. of oriental type to be separated from the bathroom.

5. In case of individual houses, the roof will be level to enable inhabitants to use it as a sleeping place in summer nights and there should be inside staircase for this purpose.

6. Each house in Basrah area should be equipped with airconditioning unit and in case of buildings, the building should be centrally airconditioned. As for houses/buildings in other areas, they should be equipped with ducting system for desert coolers.

7. Each house should be equipped with oil heater for hot water.

8. All rooms should be equipped with electrical points for ceiling fans.

9. Offers should include all utilities for housing schemes in each group of houses, i.e. primary school, market, social centre, medical centre etc.

10. Any other suitable alternative will be taken into consideration.

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MINISTRY OF INDUSTRY & METALS
STATE ORGANIZATION FOR ENGINEERING INDUSTRIES
HOUSING SCHEME COMMITTEE

TENDER NO. 6/75

3000 PRECAST HOUSES

GENERAL TERMS & CONDITIONS

1. Offers should be based on CIF site or Baghdad taking into consideration that insurance to be effected locally at the supplier's cost.

2. Full specifications, type and make of the material offered should be given as well as country of origin.

3. Materials supplied by the tenderer should comply with the agreed upon specifications and conditions as in concluded contract.

4. Offers in three copies to be submitted in sealed envelope and addressed to State Organization for Engineering Industries with the name and number of the tender written clearly on the envelope.

5. Offers should be submitted to above latest 12.00 hours of the closing date of the tender and any offer received after that date will be neglected.

8/25/75

6. If tenders sent by post, they should be registered but the tenderer must make sure that offers are delivered to the said office within the limited time.

7. The tenderer must submit a preliminary deposit with the tender as a security of his financial standing and as a guarantee to perform his obligations under the contract conditions in a form of Bank guarantee issued by Rafidain Bank, amount of which should not be less than 5% of the total value of the tender and it should be valid for two months after the closing date.

No

8. In case of the successful tenderer, the bank guarantee will be retained until the tender has been definitely accepted. Thereafter deposits shall be returned to the unsuccessful tenderers.

9. After the award of the tender to the successful tenderer, the above bank guarantee will be released and replaced by a performance Bank Guarantee amounting to 5% of the contract tender for a period ending with one month after the Final Acceptance Certificate date.

10. The contractor will be responsible of the maintenance of the houses and all other utilities for one calendar year effecting the date of the Final Acceptance Certificate and for that purpose a bank guarantee of 5% of the contract value should be submitted from that date until the end of the maintenance period.

11. Payment: Payment shall be effected by establishing a letter of credit in the name of the supplier to the value of 100% of the total tender value payable in installments related with the progress of the shipping and erection progress.

12. Penalty: If the tenderer fails to deliver the material in accordance with conditions agreed upon the SOEI shall cash the Bank Guarantee submitted by him and shall deduct the amount that shall be calculated on the basis of damage caused to this Organization as a result of unsatisfactory quality.

13. Country of Origin: The tenderer should not incorporate this tender any material that has been manufactured in Israel or by companies boycotted officially by Iraqi Government.

14. Validity: Offers should be firm and valid for 60 days after the closing date of the tender.

SAMAWAH CEMENT PUBLIC COMPANY
P.O. BOX NO. 5 - SAMAWAH IRAQ (2) 55

GENERAL TERMS & CONDITIONS

1) Technical Specifications:

The tender documents submitted by the Tenderer shall include the following:-
a-Full description and detailed specification of offered goods.
b-Other pertaining information such as Catalogues, pamphlets Analysis, Samples if requested, Standards etc.

2) Weights & prices:

Tenders should be itemized as far as possible giving nett and gross weights. Itemized FOB prices should be given.
Estimated freight charges and total C&F prices to Basrah and Baghdad should also be stated.
Currency should be of that of Country of Origin of goods.
Type of packing: Suitable for export, details should clearly be stated.

3) Validity:

The validity period of the tender submitted should be not less than 3 month from closing date of submission of tender, confirming firm rate.

4) Terms of payment: Insurance & Letter of Credit

Both letters of Credit & Insurance shall be effected by Samawah Cement Public Company.

5) Neutral Tests:

Offers are to include an acceptance statement to the effect that Samawah Cement Public Company, may appoint a competent Neutral party at its expense to inspect material on order and issue relevant test certificate to the effect that the material being shipped conform in all respects with the agreed upon specifications. Bankers effected payment willonly do so upon receiving a copy of such certificate which have been approved by Samawah Cement Public Company.

6) A complete set of documents issued with each tender may be Purchased by any person desiring to participate in the confidential tender, against payment of an amount fixed by the Company for each tender.
This amount is not refundable under any circumstances.

7) The closing date of submission of tender will be not latter than closing office hours on 31/3/75
Tenders received after this time and date shall not be accepted.

8) The Company does not bind itself to accept the lowest tender.

9) Tenders not complying with our specifications and terms shall be neglected.

10) Tenders should be submitted in six copies.

11) Tenders are to be submitted in sealed envelopes, clearly indicating subject of tender, Samples if required should be sent under separate cover marked clearly with the reference number and subject of tender.

2) Tenders are to be accompanied by a preliminary bank deposit in favour of and payable to the Samawah Cement Public Company. for the sum of 5% of the FOB value of offer as a guarantee of good faith.
The deposit will be returned to unsuccessful. Tenderer after 6 Calender months from closing date of tender.

3) Certificate of Origin

Tenderer must submit:

a) Certificate of origin specifying that the goods are not of Israeli Origin not the Company having a branch in Israel and that they will not be shipped on Israeli or Black listed Vessels. This Certificate must be legalized by the Iraqi or any Arab Consulate or representative and in case of their non-existance, legalization by Chamber of Commerce or Industry in the Country of Origin or port of Shipment will suffice.

b) Country of origin and port of shipment of goods.

c) Delivery period.

NOTES:

on acceptance of an offer, Samawah Cement Public Company will require the following:-

a) Bank Gurantee.

Such a guarantee is requested by Samawah Cement Public Company its amount will not exceed 5 percent of FOB value of offer and should be valid six months after the date of last shipment.

b) Proforma Invoice

Confirmation of order is to be accompanied with 10 copies of proforma Invoice.

c) Validity of L/C

Due to the regulations of the Central Bank of Iraq, L/C can not be opened for more than a period of 5 months, however in case of the delivery period being greater than eight months the L/C will be extendable prior to expiry date to cover the full period delivery time.

d) Shipping Marks

Shipping marks to be mentioned on shipping documents as follows:-

SAMAWAH CEMENT PUBLIC COMPANY.
SAMAWAH WORKS
ORDER NO.

e) If the Tenderer fail to deliver the material in accordance with the conditions, The Samawah Cement Public Company shall cash the bank guarantee submitted by the Tenderer.

Cable Address: ANTIDEFAME

ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH
315 LEXINGTON AVENUE, NEW YORK, N.Y. 10016, TEL. 689-7400

NATIONAL COMMISSION
SEYMOUR GRANGARD
National Chairman
DORE SCHARY
HENRY E. SCHULTZ
Honorary Chairmen
DAVID A. ROSE
Chairman, National Executive Committee
LEONARD L. ABESS
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JACOB E. JAVITS
PHILIP M. KLUTZNICK
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ROBERT H. MATHAN
ABRAHAM A. RISKOFF
MATTHEW H. ROSENBAUMS
CHESTER H. ROTH
WILLIAM SACKS
PAUL H. SAMPLINER
MELVIN M. SCHLESINGER
THEODORE H. SILBERT
Honorary Vice-Chairmen
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HERMAN J. SCHLOSSMAN
Vice-Chairmen
MAXWELL E. GREENBERG
Vice-Chairman, National Executive Committee
BENJAMIN GREENBERG
RICHARD M. LEDERER, JR.
Honorary Treasurer
MORTON M. JOSEPH
Treasurer
THOMAS R. MARTEL
Assistant Treasurer
JOHN L. GOLDWATER
Secretary
BENJAMIN R. EPSTEIN
National Director
•
DAVID M. BERNBERG
President, B'nai B'rith
RABBI BENJAMIN M. KAHN
Executive Vice-President, B'nai B'rith
MRS. MILTON T. SMITH
President, B'nai B'rith Women
•
ARNOLD FORSTER
Associate National Director and General Counsel
•
NATHAN PERLMUTTER
Assistant National Director
Development, Planning
STAFF DIRECTORS
OSCAR COHEN
Program
ABRAHAM H. FOXMAN
Leadership
THEODORE FREEDMAN
Community Service
LYDIA IANNIELLO
Public Relations
J. HAROLD SAKS
Administration

August 13, 1975

Hon. Adlai Stevenson
Chairman of the Subcommittee on International Finance,
Committee on Banking, Housing and Urban Affairs
5230 DSOB - Room 5310
Washington, D. C. 20510

Attn: Mr. Edward C. Dicks

Dear Senator Stevenson:

Complying with the request made of us when we testified before your subcommittee on July 23, 1975, we are enclosing documentation concerning the Arab boycott of Israeli-connected firms and American Jewish firms. Also enclosed are copies of charges filed by the Anti-Defamation League of B'nai B'rith against some American firms alleging that they discriminate against Jews in overseas employment.

We trust that this will be helpful to you.

Sincerely yours,

Justin J. Finger

Justin J. Finger
Assistant Director
Civil Rights Division

JJF/mac

BEST COPY AVAILABLE

PREAMBLE

WHEREAS, in the beginning of 1974 C.ITOH and CVRD submitted to the Organization a proposal dated 28 January 1974 for the establishment of a plant for the production of sponge iron at Alexandria (Subject to the availability of natural gas on site) on the basis of a capacity of 1,5 Million Tons/year (hereinafter called the "PLANT") and

WHEREAS, C.ITOH, KIH and ITABIRA further propose to participate, on a joint venture basis, in a joint stock Egyptian company to be formed for the PLANT under law N°43 for the year 1974 concerning the Investment of Arab and Foreign Funds and Free Zones, and,

WHEREAS, it is intended that the said company will have as equity shareholders, The Organization, C.ITOH, KIH and ITABIRA, and,

WHEREAS, the Organization signed on 16 April 1974 a protocol with C.ITOH by which C.ITOH and CVRD were authorised to have carried out a prefeasibility study for the PLANT by a specialized consultant.

WHEREAS, the prefeasibility study has already been carried out by the Consultant on the basis of a capacity of 1,6 million tons per year and,

WHEREAS, the parties find it necessary to have a detailed feasibility study carried out as a prerequisite for taking a final decision on the establishment of the PLANT and Company on the basis of a capacity 1,6 million tons per year as a first stage and 2,4 millions tons per year as a second stage,

WHEREAS, the parties have concluded an Agreement between themselves to carry out this feasibility study

WHEREAS, the Consultant accepts to carry out the required feasibility study in accordance with the provisions hereinafter stated,

Now therefore, it is hereby agreed and declared by and between the two parties as follows:

BEST AVAILABLE COPY

Article 1

OBJECT OF THE CONTRACT

The Owners hereby appoint the Consultant for the carrying out of the feasibility study as specified in this Contract and the Consultant accepts the appointment on the terms and conditions set forth in this Contract.

Article 2

SCOPE OF WORK AND COORDINATION

2.1 The Consultant shall carry out the said feasibility study within 100 days of the signing of this Contract or on October 31st 1974 whichever is the later.

2.2 The scope of work, the contents, details, and time schedule for the said feasibility study are specified in Annexe No. I to this Contract. The activities of each party have also been included so that the required data will be made available, as scheduled, to the Consultant. Delays in the receipt of data so scheduled will be absorbed into the schedule to the extent possible.

2.3 C.ITOH shall be the representative of the Owners towards the Consultant only for coordination of all activities set out in Annexe No. I, provided however that in no circumstances shall C.ITOH be liable for the consequences of default by any other party in performing the duties assigned to it in said Annexe No. 1.

Article 3

PREPARATION AND DELIVERY OF THE FEASIBILITY STUDY

3.1 The feasibility study including all the data and documents prepared by the Consultant shall be written in the English language and established in the metric system.

3.2 The Consultant shall prepare and deliver the feasibility study and all pertinent documents to the Owners

Article 18.

LIABILITY OF CONSULTANT

The Consultant shall perform its services as an independent contractor in accordance with its own methods, this Contract, and applicable laws and regulations.

The Consultant agrees to correct any deficiencies resulting from its negligent performance of its services which are discovered and reported to the Consultant within one year from the date of completion of its services hereunder.

The Consultant shall only be liable to Owners for any loss or damage arising out of, or in connection with Consultant's negligent performance of the Contract, such liability not to exceed the compensation received by Consultant hereunder.
Under no circumstances shall Consultant and its subcontractors be liable to Owners for any consequential damages.

Article 19.

NON-TRANSACTIONS WITH ISRAEL

19.1 The Consultant hereby declares that he does not possess any plant, firm or branch in Israel, that he does not participate in any firm or company established in Israel and that he has not any supply manufacturing assembling licence or technical assistance contract with any firm, company or person established or resident in Israel.

19.2 The Consultant further undertakes not to have either by himself or through an intermediary any such activity with Israel and not to contribute in any way to consolidate the economy or military efforts in Israel.

19.3 Should the Organization discover after signing this contract that the Consultant is breaking his obligations stated above the Organization shall be entitled

to cancel the contract by a simple notice sent to the Consultant under registered cover without prejudice to the Organization's right to claim for indemnification and to any other right to which the Organization is entitled.

Article 20.

CONTRACT COMING INTO FORCE

This Contract is subject to the approval of all the competent authorities in A.R.E. The Organization shall notify the other parties in writing when it has obtained all such approvals.

The date of this contract coming into force shall be within 30 days from its signature, during which period the following conditions shall be fulfilled:

1. Approval of the contract by all the competent authorities in A.R.E.
2. Submittal of the Consultant's performance guarantee mentioned in Article 11.
3. Opening of the letters of Credit as per Article 7.

Article 21.

COPIES OF THE CONTRACT

The present Contract is drawn up in English in five originals one signed original for each member of the Owners and one signed original for the Consultant.

FOR THE CONSULTANT	FOR THE ORGANIZATION	FOR C. ITOH
	FOR KIM	FOR ITABIRA

BEST AVAILABLE COPY

BANKERS TRUST COMPANY
16 WALL STREET · NEW YORK, N. Y. 10015

DECEMBER 18,

ADVICE OF CONFIRMED
IRREVOCABLE STRAIGHT CREDIT

We are instructed by CENTRAL BANK OF LIBYA, TRIPOLI, LIBYA

to inform you that they have opened their irrevocable credit in your favor for account of UNIVERSITY OF TRIPOL
FACULTY OF SCIENCE TRIPOLI, LIBYA
for a sum or sums in U. S. dollars not exceeding a total of TWO THOUSAND FOUR HUNDRED NINETEEN AI
00/100 **$2,419.--**
available by your drafts on us, at SIGHT
to be accompanied by:

ORIGINAL COMMERCIAL INVOICE IN 7 COPIES ALL DULY SIGNED IN THE N/
THE BUYER INDICATING GOODS OF USA ORIGIN COVERING CHEMICALS AS PE
QUOTATION DATED NOVEMBER 4,1974 TERMS C & F TRIPOLI, LIBYA.

CHAMBER OF COMMERCE CERTIFICATE OF ORIGIN AUTHENTICATED BY THE LI
CONSULATE OR EMBASSY.

A DECLARATION DULY SIGNED BY THE EXPORTER OR THE SUPPLIER STATING
THE COMPANY WHICH PRODUCED THE COMMODITY TO BE EXPORTED RO SUPPLI
BY HIM IS NOT AN AFFILIATE TO OR A MOTHER OF COMPANIES ON THE ISR
BOYCOTT LIST AND STATING ALSO THAT THE (THE EXPORTER OR THE SUPPL
HAS NO DIRECT OR INDIRECT CONNECTION WHATSOEVER WITH ISRAEL AND V
ACT ON THE GROUND AND REGULATIONS OF THE ARAB BOYCOTT OF ISRAEL.

AIRWAY BILLS SHOWING THE GOODS CONSIGNED TO UNIVERSITY OF TRIPOL
FACULTY OF SCIENCE TRIPOLI, LIBYA.

SHIPMENT TO BE MADE FROM USA TO TRIPOLI,LIBYA BETWEEN DECEMBER
AND JANUARY 31,1975 BOTH DATES INCLUSIVE.

PARTIAL SHIPMENTS NOT PERMITTED. TRANSHIPMENTS IS PERMIT

All drafts so drawn must be marked "Drawn under Bankers Trust Company Advice No. V77943"
This credit is subject to the Uniform Customs and Practice for Documentary Credits (1962 Revision), International Ch
Commerce Brochure No. 222.

-SEE PAGE TWO-

The above mentioned correspondent engages with you that all drafts drawn under and in compliance with the terms of thi
will be duly honored on delivery of documents as specified, if duly presented at this office on or before JANURY 31, 19

WE CONFIRM THE CREDIT AND THEREBY UNDERTAKE THAT ALL DRAFTS DRAWN AN
PRESENTED AS ABOVE SPECIFIED WILL BE DULY HONORED BY US.

Very truly yours,

Benjamin Duke

ACS/CV

P. 2439
ABC 7-65
(7-66)

PROT COPY MISSILE

Bechtel Incorporated

INVOICING INSTRUCTIONS

1. PLEASE FORWARD PROMPTLY. Invoicing and packing list may be a combined document, but must show all of the following information. (Furnish sufficient copies for handling as separate documents).
2. Name and address of shipper; name and address of consignee; as shown on face of the purchase order; date of shipment.
3. Purchase Order item number, quantity, unit and COMPLETE description.
4. Net unit prices and extensions.
5. Marks, numbers, quantity and kind of outside packages.
6. Gross, tare and net weight in pounds and kilos, and the three dimensions of each package.
7. Invoices bearing transportation charges must be supported by carrier's original receipted freight bills.
8. Invoices must cover only items or portions thereof actually shipped. Any additional duties, penalties or fines resulting from incorrect invoicing will be for the account of the supplier.
9. Invoices must bear the following certifications:

"We hereby certify that the goods enumerated in this invoice are not of Israeli origin nor do they contain any Israeli materials nor were they shipped on vessels boycotted by the Israeli Boycott Office nor were they designated to visit an Israeli port nor were they exported from Israel."

"We hereby certify that the goods enumerated in this invoice are of U.S.A. origin. All prices are true and correct."

Signature-Title _____ Date _____

No taxes are applicable to this order. Purchaser will furnish proof of export when requested. We hold Form 637 Registration No. A469078.

Purchaser will not pay any cartage or packing expenses unless arranged for before execution of the Purchase Order.

PREPARE INVOICE

Sold To: Eastern Bechtel Corporation
c/o Bechtel Incorporated
P. O. Box 3965
San Francisco, CA 94119

INVOICING. Forward documents as follows

Send: INVOICE - Original and 3 copies
INLAND BILL OF LADING - 2 copies
or Dock Receipt - (Original Signed plus 1 copy)
PACKING LIST - 3 copies

To: Eastern Bechtel Corporation
c/o Bechtel Incorporated
P. O. Box 3965
San Francisco, CA 94119
Attn: Accounting Dept.

Original signed copy of Bill of Lading or Dock Receipt be included with invoice and packing lists. Failure to comply will delay payment.

Send: INVOICE - 9 copies
PACKING LIST - 9 copies
INLAND BILL OF LADING - 1 copy

To: FREIGHT FORWARDER
(as indicated on attached Shipping Instructions (Form P-2).

The above documents are urgently needed to arrange for steamer space and export clearance.

Send: INVOICE - 2 copies
PACKING LIST - 2 copies
INLAND BILL OF LADING - 1 copy

To: Eastern Bechtel Corporation
c/o Bechtel Incorporated
P. O. Box 3965
San Francisco, CA 94119
Attn: Export Shipping

Cash discount period begins with the date of receipt of invoice, provided it is correct and in the form prescribed above.

BEST AVAILABLE COPY

PEABODY'S, INC.

[illegible]

January [illegible] 75

Tender No. 87/1974 - Closing Date February 20, 1975

Kleerpak-Conco Mfg. Co.
13053 Saticoy Street
North Hollywood, CAL

Gentlemen:

Peabody's, Inc., acting as Agent for the Government of Iraq, earnestly solicits your written proposal to furnish 300,000 Metres long Plastic Film width 11" used for wrapping soft cheese in accordance with the enclosed Specifications and General Terms and Conditions.

We would appreciate receiving this written proposal not later than February 15, 1975, if possible. Telegraphic modifications may be accepted until February 16, 1975.

For the purpose of preparing your proposal, you may disregard the Bank Guarantee required under the General Terms and Conditions. If you are the successful bidder, the Bank Guarantee would be required prior to entering an order.

Please acknowledge receipt of this proposal request and advise if you will be able to quote. If you are unable to quote, please advise us of possible sources of supply. Also please advise if you are interested in quoting our future requirements.

Thank you for your assistance.

Very truly yours,

Knox R. Purchett

Enclosure

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TENDER NO. 87/1974 - CLOSING DATE 20/2/1975

FOR THE SUPPLY OF 300,000 METRES LONG PLASTIC FILM WIDTH 11" USED FOR WRAPPING SOFT CHEESE

QUANTITY REQUIRED: 300,000 Metres Long Plastic Film width 11"

SPECIFICATIONS:

1) Special plastic film reels to be used for wrapping soft cheese blocks of ½ kg. The films shall be similar to the attached sample which is a Cryovac "S" film.

2) The film width shall be 11 inches, with 100 gauge thickness.

3) The film shall be printed in two colours, the design of printing will be supplied by this Administration to the successful bidder.

4) The reel dimensions shall be approximately as follows:

Outer diameter	30 cm
Inside core diameter	15 cm
Weight of each reel	20 kg.

PACKING : Each reel in one carton box and each 20 cartons in a strong seaworthy wooden case (warranted professionally packed)

SAMPLES : are to be forwarded along with offer for ~~xxxx~~ trials.

DELIVERY TERMS : The 300,000 metres Long Plastic Film are to be delivered in 2 equal consignments. The first consignment should arrive Bag at the beginning of July, 1975 and the second consignment should arrive Bagdad at the beginning of September, 1975 or earlier.

BEST COPY AVAILABLE

earlier.

GENERAL TERMS AND CONDITIONS

A. Both local agents and firms bidding locally are required to comply with the following terms and conditions:

1) Price for each of the items in this Tender should be indicated clearly for our cost calculations.

2) Prices shall be quoted FOB, CANDF Baghdad Via Beirut and Via Latakia, and CandF Baghdad via Aqaba.

3) A fixed date of delivery FOB and an estimated date of delivery CandF should be indicated.

4) Offers shall be submitted in three copies of signed proforma invoice.

5) Insurance will be handled locally and paid for by the Dairy Administration.

B. BANK GUARANTEE

The bidder will deposit with the Dairy Administration an unconditional bank guarantee for the amount of 5% of the CandF cost of the goods for one year. The deposit will be returned to the unsuccessful tenderer within three calendar months from the closing date of the Tender. The Dairy Administration will hold the Bank Guarantee of the successful bidder until the goods are received and found to correspond in specifications, quantity, packing and date of delivery to the contract order. The Bank Guarantee should be issued by an Iraqi bank only.

C. (Not applicable)

D. MEDICAL CERTS:

Offers are to include an acceptance statement to the effect that The Dairy Administration may select a competent neutral party at its expense to inspect material on order to issue relevant test certificate to the effect that the material being shipped conform in all respects with the agreed upon specifications. Bankers effected payment will only be made receiving a copy of each certificate which is found approved by The Dairy Administration

E. Offers which do not comply with all the terms and conditions indicated will not be considered.

F. (not applicable)

G. Offers submitted are taken to indicate that all the terms and conditions of this tender are accepted by the bidder.

H. Tenderers must submit their Tenders in sealed envelopes marked "Tender No. 67--------).

I. 1) All offers must be received not later than
2) Foreign bidders should submit their offers by registered airmail.

accept part or all the items

BEST AVAILABLE COPY

General Terms and Conditions (Continued)

L. All taxes and fees imposed by Syrian Authorities on goods passing through Syrian Territory are for suppliers account, unless indicated clearly in the proforma invoice.

M. PERIOD DURING WHICH TENDER IS IRREVOCABLE

Tenders shall be irrevocable for a period of sixty (60) days from the closing date of this Tender subject to extension when necessary. If the Tenderer withdraws his Tender before the expiration of the sixty (60) days period, his provisional deposit will be thereby forfeited to The Dairy Administration. The Dairy Administration reserves the right to accept any Tender or any part thereof at any time during the period of the validity of the Tender, and the date of acceptance shall be the date of expedition of the official notification of the firm acceptance to the address given in the Tender.

N. The Tenderer shall not incorporate in this Tender any equipment or material that have been manufactured in Israel or by companies sharing Israeli capital or boycotted officially by the Iraqi Government or any plant or materials of which any component parts have been manufactured in Israel or by companies boycotted officially, as the import into Iraq of any such equipment or materials or components is officially banned.

O. CONTRACT TO BE ACTED IN I CONTRACT

The Iraqi Courts shall have exclusive jurisdiction to hear and determine all actions and proceedings arising out of the Contract.

P. LANGUAGE

All documents, instructions, booklets and drawings shall be drawn up in English.

Q. SHIPPING MARKS: ALLAN - ORDER NO. _____

BEST COPY AVAILABLE

BEST AVAILABLE COPY

PEABODY'S, INC.

Port [illegible] Virginia 23458 (804) 428-20

January 27, 1975

Tender No. 87/1974 - Closing Date February [illegible] 1975

Kleerpak-Conco Mfg. Co.
13053 Saticoy Street
North Hollywood, CAL

Gentlemen:

Peabody's, Inc., acting as Agent for the Government of Iraq, earnestly solicits your written proposal to furnish 300,000 Metres long Plastic Film width 11" used for wrapping soft cheese in accordance with the enclosed Specifications and General Terms and Conditions.

We would appreciate receiving this written proposal not later than February 15, 1975, if possible. Telegraphic modifications may be accepted until February 16, 1975.

For the purpose of preparing your proposal, you may disregard the Bank Guarantee required under the General Terms and Conditions. If you are the successful bidder, the Bank Guarantee would be required prior to entering an order.

Please acknowledge receipt of this proposal request and advise if you will be able to quote. If you are unable to quote, please advise us of possible sources of supply. Also please advise if you are interested in quoting our future requirements.

Thank you for your assistance.

Very truly yours,

Knox R. Burchett

Enclosure

BEST COPY [illegible]

TENDER NO. 87/1974 - CLOSING DATE 20/2/1975

FOR THE SUPPLY OF 300,000 METRES LONG PLASTIC FILM WIDTH 11" USED FOR WRAPPING SOFT CHEESE

QUANTITY REQUIRED: 300,000 Metres Long Plastic Film width 11"

SPECIFICATIONS:

1) Special plastic film reels to be used for wrapping soft cheese blocks of ½ kg. The films shall be similar to the attached sample which is a Cryovac "S" film.

2) The film width shall be 11 inches, with 100 gauge thickness.

3) The film shall be printed in two colours, the design of printing will be supplied by this Administration to the successful bidder.

4) The reel dimensions shall be approximately as follows:

Outer diameter	30 cm
Inside core diameter	15 cm
Weight of each reel	20 kg.

PACKING : Each reel in one carton box and each 20 cartons in a strong seaworthy wooden case (warranted professionally packed)

SAMPLES : are to be forwarded along with offer for ~~xxxx~~ trials.

DELIVERY TERMS : The 300,000 metres Long Plastic Film are to be delivered in 2 equal consignments. The first consignment should arrive Baghdad at the beginning of July, 1975 and the second consignment should arrive Baghdad at the beginning of September, 1975 or earlier.

A. Both local agents and firms bidding directly are required to comply with the following terms and conditions:

1) Price for each of the items in this Tender should be indicated clearly for our cost calculations.

2) Prices shall be quoted FOB, CANDF Baghdad Via Beirut and via Lattakia, and CandF Baghdad via Basrah.

3) A fixed date of delivery FOB and an estimated date of delivery CandF should be indicated.

4) Offers shall be submitted in three copies of signed proforma invoice.

5) Insurance will be handled locally and paid for by the Dairy Administration.

B. BANK GUARANTEE

The bidder will deposit with the Dairy Administration an unconditional Bank Guarantee for the amount of 5% of the CandF cost of the goods for one year. The deposit will be returned to the unsuccessful Tenderer within three calender months from the closing date of the Tender. The Dairy Administration will hold the Bank Guarantee of the successful bidder until the goods are received and found to correspond in specifications, quantity, packing and date of delivery to the original offer. The Bank Guarantee should be issued by an Iraqi Bank Only.

C. (Not applicable)

D. NEUTRAL TESTS:

Offers are to include an acceptance statement to the effect that The Dairy Administration may appoint a competent neutral party at its expense to inspect material on order to issue relevant test certificate to the effect that the material being shipped conform in all respects with the agreed upon specifications. Bankers effected payment will only do so upon receiving a copy of each certificate which have been approved by The Dairy Administration

E. Offers which do not comply with all the terms and conditions indicated will not be considered.

F. (not applicable)

G. Offers submitted are taken to indicate that all the terms and conditions of this tender are accepted by the bidder.

H. Tenderers must submit their Tenders in sealed envelopes marked "Tender No. 67-------).

I. 1) All offers must be received not later than
2) Foreign bidders should submit their offers by registered airmail.

J. The Dairy Administration may accept part or all the items of the Tender offered by the bidder.

K. This Administration shall not accept any claim for extra freight charges other than those indicated in the bidders offer

General Terms and Conditions (Continued)

L. All taxes and fees imposed by Syrian Authorities on goods passing through Syrian Territory are for suppliers account, unless indicated clearly in the proforma invoice.

M. PERIOD DURING WHICH TENDER IS IRREVOCABLE

Tenders shall be irrevocable for a period of sixty (60) days from the closing date of this Tender subject to extension when necessary. If the Tenderer withdraws his Tender before the expiration of the sixty (60) days period, his provisional deposit will be thereby forfeited to The Dairy Administration. The Dairy Administration reserves the right to accept any Tender or any part thereof at any time during the period of the validity of the Tender, and the date of acceptance shall be the date of expedition of the official notification of the said acceptance to the address given in the Tender.

N. The Tenderer shall not incorporate in this Tender any equipme or material that have been manufactured in Israel or by companies sharing Israeli capital or boycotted officially by the Iraqi Government or any plant or materials of which any component parts have been manufactured in Israel or by companies boycotted officially, as the import into Iraq of any such equipment or materials or components is officially banned.

O. CONTRACT TO BE AN IRAQI CONTRACT

The Iraqi Courts shall have exclusive jurisdiction to hear and determine all actions and proceedings arising out of the Contract.

P. LANGUAGE

All documents, instructions, booklets and drawings shall be drawn up in English.

Q. SHIPPING MARKS: ALBAN - ORDER NO. _____

BANKERS TRUST COMPANY
16 WALL STREET - NEW YORK, N. Y., 10015

DECEMBER 18, 19

ADVICE OF CONFIRMED
IRREVOCABLE STRAIGHT CREDIT

We are instructed by CENTRAL BANK OF LIBYA, TRIPOLI, LIBYA

to inform you that they have opened their irrevocable credit in your favor for account of UNIVERSITY OF TRIPOLI FACULTY OF SCIENCE TRIPOLI, LIBYA

for a sum or sums in U. S. dollars not exceeding a total of TWO THOUSAND FOUR HUNDRED NINETEEN AND 00/100 **$2,419.--**

available by your drafts on us, at SIGHT

to be accompanied by:

1- ORIGINAL COMMERCIAL INVOICE IN 7 COPIES ALL DULY SIGNED IN THE NAI THE BUYER INDICATING GOODS OF USA ORIGIN COVERING CHEMICALS AS PE QUOTATION DATED NOVEMBER 4,1974 TERMS C & F TRIPOLI, LIBYA.

2- CHAMBER OF COMMERCE CERTIFICATE OF ORIGIN AUTHENTICATED BY THE LI CONSULATE OR EMBASSY.

3- A DECLARATION DULY SIGNED BY THE EXPORTER OR THE SUPPLIER STATING THE COMPANY WHICH PRODUCED THE COMMODITY TO BE EXPORTED RO SUPPLI BY HIM IS NOT AN AFFILIATE TO OR A MOTHER OF COMPANIES ON THE ISR BOYCOTT LIST AND STATING ALSO THAT THE (THE EXPORTER OR THE SUPPL HAS NO DIRECT OR INDIRECT CONNECTION WHATSOEVER WITH ISRAEL AND W ACT ON THE GROUND AND REGULATIONS OF THE ARAB BOYCOTT OF ISRAEL.

4- AIRWAY BILLS SHOWING THE GOODS CONSIGNED TO UNIVERSITY OF TRIPOL FACULTY OF SCIENCE TRIPOLI, LIBYA.

SHIPMENT TO BE MADE FROM USA TO TRIPOLI,LIBYA BETWEEN DECEMBER 5 AND JANUARY 31,1975 BOTH DATES INCLUSIVE.

PARTIAL SHIPMENTS NOT PERMITTED. TRANSHIPMENTS IS PERMITT

All drafts so drawn must be marked "Drawn under Bankers Trust Company Advice No. V77943 ."
This credit is subject to the Uniform Customs and Practice for Documentary Credits (1962 Revision), International Cha Commerce Brochure No. 222.

-SEE PAGE TWO-

The above mentioned correspondent engages with you that all drafts drawn under and in compliance with the terms of this will be duly honored on delivery of documents as specified, if duly presented at this office on or before JANURY 31,19

WE CONFIRM THE CREDIT AND THEREBY UNDERTAKE THAT ALL DRAFTS DRAWN AN PRESENTED AS ABOVE SPECIFIED WILL BE DULY HONORED BY US.

Very truly yours,

Benjamin Austin

ACS/CV

BEST AVAILABLE COPY

Getty Oil Company

EXPORT PURCHASE ORDER SHIPPING AND INVOICING INSTRUCTIONS

1. The Acknowledgment copy of Purchase Order must be returned promptly.

2. The following instructions must be followed to insure proper handling of the order.

[illegible]

a. Partial shipments shall not be made without prior authorization from Getty Oil Company, Purchasing Department.

b. In the event that your indicated shipping schedule cannot be made, notify Getty Oil Company, Purchasing Department, immediately.

c. All packing to be standard domestic pack, unless otherwise advised.

d. Priced copy of packing list must be enclosed in one package of each shipment.

e. One copy of packing list must be securely fastened to outside of the [illegible] package.

f. Purchase order and requisition number must be plainly marked on outside of each package.

g. [illegible] on your Bill of Lading as follows.

[illegible] TO:

[illegible]

[illegible]

Proof of export will be on file in the Getty Oil Company Purchasing Department, Houston, Texas and will be available for inspection if required.

Do not charge Sales Tax, Use Tax, or Excise Tax. This order for [illegible].

[illegible] to be [illegible], showing:

[illegible] Purchase Order and Requisition number.

b. Unit cost and discount.

c. Total per item (net).

d. Total per order (net).

e. F. O. B. point.

f. Cash terms.

g. Number of packages.

h. Gross shipping weight.

i. Net weight.

j. Dimension of package (cubic feet).

k. Schedule "B" number should be furnished, if known.

l. Name of manufacturer and location.

4. The following certification is required on the invoice:

"WE CERTIFY THAT THE GOODS LISTED ARE NOT OF [illegible] ORIGIN NOR DO THEY CONTAIN ANY ISRAELI MAT[illegible]

5. Original and nine copies of invoice, plus two copies of [illegible] must be mailed to:

GETTY OIL COMPANY
TREASURY SECTION, DEPT. #3
P. O. BOX 1404
HOUSTON, TEXAS 77001

If any additional information is required, please contact:

GETTY OIL COMPANY
PURCHASING DEPARTMENT
P. O. BOX 1404
HOUSTON, TEXAS 77001
PHONE: (713) 228-9361

Purchase order of Jan 1975

BEST AVAILABLE COPY

EXPORT PURCHASE ORDER SHIPPING AND INVOICING INSTRUCTIONS

The acknowledgment copy of Purchase Order must be returned promptly.

The following instructions must be followed to insure proper handling of the order.

[illegible]

Partial shipments shall not be made without prior authorization from Getty Oil Company, Purchasing Department.

In the event that your indicated shipping schedule cannot be made, notify Getty Oil Company, Purchasing Department, immediately.

All packing to be standard domestic pack, unless otherwise advised.

Packing copy of packing list must be enclosed in one package of each shipment.

One copy of packing list must be securely fastened to outside of the ship package.

Purchase order and requisition number must be plainly marked on outside of each package.

Invoice copies on your Bill of Lading as follows:

TO:

[illegible]

[illegible] of export will be on file in the Getty Oil Company Purchasing Department, Houston, Texas and will be available for inspection if needed.

[illegible] charge Sales Tax, Use Tax, or Excise Tax. This order for [illegible] purposes.

[illegible] of the following, showing:

[illegible] and Requisition number.

b. Unit cost and discount.

c. Total per item (net).

d. Total per order (net).

e. F. O. B. point.

f. Cash terms.

g. Number of packages.

h. Gross shipping weight.

i. Net weight.

j. Dimension of package (cubic feet).

k. Schedule "B" number should be furnished, if known.

l. Name of manufacturer and location.

4. The following certification is required on the invoice:

"WE CERTIFY THAT THE GOODS LISTED ARE NOT OF ISRAELI ORIGIN NOR DO THEY CONTAIN ANY ISRAELI MATERIALS."

5. Original and nine copies of invoice, plus two copies of packing list must be mailed to:

GETTY OIL COMPANY
TREASURY SECTION, DESK #3
P. O. BOX 1404
HOUSTON, TEXAS 77001

If any additional information is required, please contact:

GETTY OIL COMPANY
PURCHASING DEPARTMENT
P. O. BOX 1404
HOUSTON, TEXAS 77001
PHONE: (713) 228-9361

Purchase order
of Jan 1975

BEST COPY AVAILABLE

PR 2 (7 73) 22?

APPLICATION FOR IRREVOCABLE LETTER OF CREDIT

BY AIRMAIL / CABLE

Credit No. .....

Opened on .....

TO

UNITED COMMERCIAL BANK
HONG KONG

L/C TO BE ESTABLISHED IN NAME OF:-
SPACETIME ELECTRONIC MANUFACTURERS

DEAR SIRS,

PLEASE ESTABLISH AN IRREVOCABLE WITHOUT RECOURSE TO DRAWER CREDIT THROUGH YOUR OFFICE/AGENTS AT NEW YORK *BY AIR MAIL/CABLE IN FAVOUR OF M/S JANA-LOR CORPORATION 105 West, 28th Street, New York, N.Y. 10001.

US$2018.75 TO THE EXTENT OF .....
(SAY) .....

DRAFTS TO BE DRAWN AT SIGHT/ XXXXX DAYS SIGHT ON US FOR FULL 95% PER CENT OF INVOICE VALUE OF MERCHANDISE TO BE DESCRIBED IN INVOICE AS Item No.4406R. Ladies watch Bangles with Rhine stone settings. to fit. Movement size 6¾x8 . 300 pcs. yellow gilt and 200 pcs. silver colours plated. Size: ONE, Prices : US$4.25 per pc.

SHIPPED FROM NEW YORK TO HONG KONG.

IN ONE ~~/~~ SHIPMENT/S. TRANSHIPMENT BEING ~~/~~ NOT ALLOWED AND ACCOMPANIED BY THE FOLLOWING DOCUMENTS COVERING THE ABOVE-MENTIONED MERCHANDISE.

SIGNED DETAILED INVOICES IN TRIPLICATE CERTIFYING THAT THE GOODS ARE OF ORIGIN U.S.A.

~~FULL SET OF CLEAN "SHIPPED" ON BOARD~~ Airway Bill Respective Airw
MARKED "FREIGHT PREPAID / FREIGHT TO COLLECT" UNTO ORDER OF THE UNITED COMMERCIAL BANK LTD. ~~BY~~ ~~"TO ORDER" DRAFT AND~~ ADDRESSED TO THE BANK COVERING CONSIGNMENT AS ABOVE

~~INSURANCE POLICY OR CERTIFICATE IN TRIPLICATE ASSUMING ASSUMING ALL RISKS INCLUDING WAR RISKS AND STRIKES WAREHOUSE TO WAREHOUSE CLAUSE FOR 110% OF INVOICE VALUE.~~

OR

*MARINE AND WAR RISK INSURANCE HAS BEEN COVERED ON THIS SIDE AND THE COVER DEPOSITED WITH THE BANK.

OTHER DOCUMENTS REQUIRED: (PLEASE MARK CROSS WHERE NECESSARY)

- [ ] CERTIFICATE OF QUALITY AND QUANTITY ISSUED BY .....
- [ ] CERTIFICATE OF ORIGIN ISSUED BY American Chamber of Commerce certifying the
- [ ] Goods are 100% of U.S.A. ORIGIN, Giving Names and Addresses of Manufacturers.

~~Airway Bill~~ ~~BILL OF LADING~~ MUST BE DATED NOT LATER THAN 15/4/75

BILLS OF EXCHANGE MUST BE DATED AND NEGOTIATED NOT LATER THAN 20/4/75

~~FOREIGN CORRESPONDENTS TO SEND ONE ORIGINAL DOCUMENTS ALONGWITH~~ AND REMAINING DOCUMENTS ~~BY NEXT AVAILABLE~~ By next Air Mail.

SPECIAL INSTRUCTIONS: (THESE SHALL PREVAIL OVER ALL PRINTED TERMS IN CASE OF ANY APPARENT CONFLICT)

Packing List required in Triplicate giving Weight, Measurement & full details of contains in each package.

Airway Bill issued by Air Market Express Ltd, 161-15 Rock Away. Blvd. Suite 205 Jamaica. N.Y. 11434. is Only Acceptable.

Air Freight:- Beneficiaries are allowed to Draw in excess of L/C amount the actual amount of Air Freight paid to Air Market Express Ltd. by attaching Receipt of Freight paid to them.

Tel: 212 995-6970

EXCEPT AS OTHERWISE EXPRESSLY STATED, THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1962 REVISION), INTERNATIONAL CHAMBER OF COMMERCE BROCHURE NO. 222.

*Strike out whichever is inapplicable.

Yours faithfully,

DATE 5/3/75

Authorised Signature.

BEST COPY AVAILABLE

1. Invoice to certify that :-

(a) Goods are supplied in all respects - style, size & colour as per sample submitted by beneficiaries.

(b) Names & addresses of Manufacturers supplying any parts of goods.

(c) The goods supplied are not of Israeli Origin neither no they contain any Israeli materials.

(d) Neither beneficiaries nor any of the Manufacturers whose name are given invoice, are in no way under bycott of any Arab Bycott office.

(e) Invoices are to be certified by Chamber issuing Certificate of Origin.

WAFA WA AMAL SOCIETY
P.O. Box 120 CAIRO EGYPT.

Cairo, February 10, 1975

Gentlemen,

This is to enquire of your interest in being considered for appointment as Architect-Engineers for the Wafa Wa Amal Hospital and Rehabilitation Center in Cairo, Egypt. It comes to you, and a small number of other firms, on our understanding of your experience in design of medical facilities. If you are interested in being considered, we request that you submit the qualifications of your firm and other information required by the enclosed terms of reference.

This information, which will constitute a proposal for professional services should be in the hands of the Society by 2 P.M March 20, 1975. Your proposal should be addressed to:

General, Dr. Hassan Hosni,
Medical Director,
Wafa Wa Amal Center,
P. O. Box 120,
Cairo, Egypt.

By the act of submitting a proposal, the proposer declares that he does not possess any plant, firm or branch in Israel, that he does not participate in any firm or company established in Israel, and he has not any supply, manufacturing, assembling, license or technical assistance agreement with any firm, company or person established or resident in Israel.

The proposer further undertakes not to have either by himself or through an intermediary any such activity in Israel and not to contribute in any to consolidate the economy or military efforts of Israel.

The proposal should be in English.

From information submitted by invited firms, three or four firms will be selected for interview. On the basis of the total information available to the Society, one of the interviewed firms will be appointed as Architect-Engineer.

All correspondence concerning the project should be addressed to the Board of the Wafa Wa Amal Society through General, Dr. Hassan Hosni.

Very truly yours,

For the Board.
General, Dr. Hassan Hosni

HOUSTON NEW ORLEANS GALVESTON

Lykes Bros. Steamship Co. Inc.

SERVICES TO
FAR EAST
MEDITERRANEAN
UNITED KINGDOM
CONTINENTAL EUROPE
SOUTH AND EAST AFRICA
WEST INDIES
NORTH COAST OF SOUTH AMERICA

OWNERS OPERATORS AND AGENTS

Lykes Bros Lines

CABLE LYKES
17 BATTERY PLACE
NEW YORK N.Y. 10004

BRANCH OFFICES

TO WHOM IT MAY CONCERN:

We hereby certify that above named vessel is not of Israeli origin and will not call at any Israeli ports of call and nor is it to the best of our knowledge black listed by the ARAB Boycott Bureau of Israeli.

Very truly yours.

M. Laterza

BEST COPY AVAILABLE

HAYPERMAN STEAMSHIP CORPORATION

120 WALL STREET

NEW YORK, NEW YORK 10005

The following information concerning this vessel is true

This vessel is enrolled under the United States Flag.

It will not call at any Israeli port prior to calling at the port of discharge named in this bill of lading.

It is not blacklisted by the Arab League.

It is not blacklisted by the Government of Jordan.

This shipment is based on Liner Terms and no demurrage or despatch has been incurred at port of loading, or will be incurred at discharge port.

This vessel has not called at any port in Cuba since January 1, 1961.

The vessel owner or operator certifies that the vessel which will perform under this contract is not a vessel which has been banned by AID for transporting AID financed goods. The vessel owner or operator further certifies that they assume full responsibility for any claims filed by AID/WASHINGTON or any other authority in case of violation of the requirement.

Very truly yours,
HAYPERMAN STEAMSHIP CORPORATION

Robert A. Hayperman

BEST AVAILABLE COPY

BL 27-1016-R1-3-67-M

Telephone
WHitehall 4-6000

Boise-Griffin Steamship Co., Inc.
90 Broad Street
New York 10004

Cable Address "BOIGRIF"
New Bee Code
Bee Code

DATE _____

REF. M/S _____ VOY. _____

_____ / _____ B/L _____

TO WHOM IT MAY CONCERN:

To attest that the above captioned vessel is not owned by Israel or an Israeli citizen and to the best of our knowledge does not appear in the black list of the Office of Boycott of Israel deposited with the diplomatic and consular missions of Arab countries abroad. Further, this vessel will not call at any Israeli port on this voyage.

BOISE-GRIFFIN STEAMSHIP CO., INC.
General Agents for Concordia Line

By _____

BEST COPY AVAILABLE

CROSSOCEAN SHIPPING COMPANY, INC.

17 BATTERY PLACE NEW YORK NEW YORK 10004

DATE:_____

TO WHOM IT MAY CONCERN:

REFERENCE:_____

RE:_____

GENTLEMEN:

WE WISH TO CONFIRM THE ABOVE MENTIONED CARRYING VESSEL HAS NOT BEEN BLACKLISTED BY THE ARAB COUNTRIES ABROAD AND IS NOT SCHEDULED TO CALL AT ANY ISRAEL PORTS OR NAVIGATE IN ISRAELI WATERS PRIOR TO ITS ARRIVAL AT THE ABOVE MENTIONED PORT.

VERY TRULY YOURS,

CROSSOCEAN SHIPPING COMPANY. INC. AS AGENTS FOR:

MUHAMMADI STEAMSHIP COMPANY LTD.

L. SPENCER

LINE MANAGER

TELEPHONE HA 5-6100
TELEX 23 5400
WESTERN UNION 92828
62040
TELETYPE 212-571-0900

F. W. HARTMANN AND COMPANY, INC.
21 WEST STREET
NEW YORK, N. Y. 10006

DATE_____

VESSEL_____

B/L#_____

TO WHOM IT MAY CONCERN:

WE HEREBY CERTIFY THAT TO THE BEST OF OUR KNOWLEDGE THE ABOVE MENTIONED VESSEL IS NOT INCLUDED ON THE ARAB BOYCOTT OR ISRAELI BLACK LIST. NOR IS THE VESSEL SCHEDULED TO CALL ON ANY ISRAELI PORT DURING HER VOYAGE.

VERY TRULY YOURS,

F.W. HARTMANN & CO. INC. AS AGENTS
FOR HANSA LINE

K. CROSSON
FREIGHT CASHIER

58-527 485

NEDLLOYD LINES INC.
30 CHURCH STREET
NEW YORK, N. Y. 10007

TELEPHONE (212) 233-2751
CABLE ADDRESS NEDLLOYD

NON-ISRAELI CERTIFICATE

To whom it may concern:

Vessel:

Flag (Dutch,Norwegian,German)

Port of Discharge:

Bill of Lading No:

This is to certify that the above named vessel is not an Israeli vessel nor is she scheduled to call at any Israeli portsnor will she transit any Israeli waters during her present voyage.

NEDLLOYD LINES INC.
General Agents

John Sallevelt, Mgr. H/L Dept.

PERALTA
SHIPPING CORPORATION

TORM LINES

PERALTA LINE
HARRISON LINE

Date: _____

RE: _____

_____

_____

_____

TO WHOM IT MAY CONCERN:

WE, THE UNDERSIGNED, CERTIFY THAT THE VESSEL ON THE BILL OF LADING IS NOT THE PROPERTY OF ISRAEL OR AN ISRAELI SUBJECT AND IS NOT A BLACK LISTED SHIP. IN ADDITION, THIS VESSEL, EVEN IF NOT BELONGING TO ISRAEL OR TO AN ISRAELI SUBJECT, IS NOT SCHEDULED TO CALL AT AN ISRAELI PORT BEFORE THE DISCHARGE OF THE MERCHANDISE AT THE PORT OF _____.

TORM LINES
PERALTA SHIPPING CORPORATION
General Agents

H. Damino
Billof Lading Manager

HP:ra

25 BROADWAY, NEW YORK, N.Y. 10004 • CODE 212, 943-4466 • CABLE TORMLINE/CORPERALTA • TWX 710-581-2835

BEST COPY AVAILABLE

PERALTA
SHIPPING CORPORATION

TORM LINES

PERALTA LINE
HARRISON LINE

DATE: _____

RE:

TO WHOM IT MAY CONCERN:

WE, THE UNDERSIGNED, CERTIFY THAT THE VESSEL NAMED ON THE BILL OF LADING IS NOT THE PROPERTY OF ISRAEL OR AN ISRAELI SUBJECT AND IS NOT A BLACK LISTED SHIP. IN ADDITION, THE VESSEL, EVEN IF NOT BELONGING TO ISRAEL OR TO ISRAELI SUBJECT, IS NOT SCHEDULED TO CALL AT AN ISRAELI PORT BEFORE THE DISCHARGE OF THE MERCHANDISE AT THE PORT OF _____.

TORM LINES
PERALTA SHIPPING CORPORATION
General Agents

H. Paramino
Bill of Lading Manager

85 BROAD STREET, NEW YORK, N.Y. 10004 • CODE 212, 943-4466 • CABLE: TORMLINE/CORPERALTA • TWX 710-581-2835

BEST AVAILABLE COPY

Kerr Steamship Company, Inc.

29 Broadway
New York, N.Y. 10006

STEAMSHIP AGENTS
TANKER OPERATORS
CABLE ADDRESS: "KERRLINE"
TELEPHONE WHITEHALL 4-4450

OFFICES:
U. S.: NEW YORK, CHICAGO, CLEVELAND, DETROIT, MILWAUKEE, SAN FRANCISCO, LONG BEACH, LOS ANGELES, PORTLAND, SEATTLE, ALASKAN PORTS, MEMPHIS, NEW ORLEANS, HOUSTON, DALLAS, GALVESTON
CANADA: MONTREAL, P.Q., HALIFAX, N.S., ST. JOHN, N.B., TORONTO, ONT., CHURCHILL, MAN.

TO WHOM IT MAY CONCERN:

VESSEL: _____ VOYAGE# _____

PORT: _____

BILL OF LADING NUMBER: _____

"THIS IS TO CERTIFY THAT THE ABOVE VESSEL IS NOT AN AN ISRAELI SHIP. NOR IS IT SCHEDULED TO CALL AT ANY ISRAELI PORT, OR WILL SHE TRAVERSE ISRAELI WATERS DURING HER VOYAGE, AND ALSO THAT SHE IS NOT TO OUR BEST KNOWLEDGE AND BELIEF, BOYCOTTED BY THE ARAB LEAGUE OR BLACKLISTED BY ANY ARABIAN GOVERNMENT."

VERY TRULY YOURS,

KERR STEAMSHIP COMPANY, INC.
GENERAL AGENTS

T. Churchill

BEST COPY AVAILABLE

BEST AVAILABLE COPY

HELLENIC LINES LIMITED

PIRAEUS-GREECE

London Agents
THE FENTON STEAMSHIP CO., Ltd.
Bevis Marks House
Bevis Marks
London, E.C.3

Agents At All Ports in the World

39 BROADWAY
NEW YORK, N. Y., 10006

Cables "ELLINIKI-New York"
Code: The New Boe Code

Telephone Digby 4-3384

TO WHOM IT MAY CONCERN: DATE: _____

M/S _____ VOY. # _____

GENTLEMEN:

THE FOLLOWING INFORMATION CONCERNING THIS VESSEL IS TRUE AND CORRECT.

FLAG: 1. THIS VESSEL IS REGISTERED UNDER THE GREEK FLAG.

ISRAELI CLAUSE: 2. IT WILL NOT CALL AT ANY ISRAELI PORT PRIOR TO CALLING AT THE PORT OF DISCHARGE NAMED IN THE BILL OF LADING.

ARAB LEAGUE: 3. IT IS NOT BLACKLISTED BY THE ARAB LEAGUE.

JORDAN: 4. IT IS NOT BLACKLISTED BY THE GOVERNMENT OF JORDAN.

CUBAN CLAUSE: 5. THIS VESSEL HAS NOT CALLED AT ANY PORT IN CUBA SINCE JANUARY 1, 1963.

AID BAN: 6. THE VESSEL OWNER OR OPERATOR CERTIFIES THAT THE VESSEL WHICH WILL PERFORM UNDER THIS CONTRACT IS NOT A VESSEL WHICH HAS BEEN BANNED BY AID FOR TRANSPORTING AND FINANCED GOODS. THE VESSEL OPERATOR FURTHER CERTIFIES THAT HE ASSUMES FULL RESPONSIBILITY FOR ANY CLAIM FILED BY AID WASHINGTON OR ANY OTHER AUTHORITY IN CASE OF VIOLATION OF THE REQUIREMENT.

7. THIS VESSEL IS A LINER WITHIN THE MEANING OF THE INSTITUTE CLASSIFICATION CLAUSE.

Very Truly Yours,
HELLENIC LINES LIMITED

F. Vivona

F. Vivona
MANAGER (Bill of Lading Dept.)

BARBER STEAMSHIP LINES, INC., Agents
17 BATTERY PLACE, NEW YORK, N. Y. 10004

TELEPHONE 212 - 944 - 1300
TELEX Domestic: 710 - 581 - 3820 ... Foreign: 222373 / 420087 / 62739
ABLE ADDRESS BARBERUSA

DATE _____

VESSEL NEW YORK: _____

VOYAGE NUMBER _____

BILL OF LADING NUMBER _____

FROM NEW YORK TO _____

TO WHOM IT MAY CONCERN:

WITH REFERENCE TO THE VESSEL UNDER CAPTION, WE HEREBY CERTIFY TO THE FOLLOWING:

THE VESSEL NOT OWNED BY ISRAEL

THE VESSEL IS NOT OWNED BY AN ISRAELI CITIZEN.

TO THE BEST OF OUR KNOWLEDGE THE VESSEL DOES NOT APPEAR IN THE BLACK LIST OF THE OFFICE BOYCOTT OF ISRAEL, DEPOSITED WITH THE DIPLOMATIC AND CONSULAR MISSIONS OF ARAB COUNTRIES ABROAD.

THE VESSEL IS NOT SCHEDULED TO CALL AT ANY ISRAELI PORT DURING HER VOYAGE.

BARBER STEAMSHIP LINES, INC., AGTS

MANAGER, BILL OF LADING DEPT.

BEST COPY AVAILABLE

CABLE ADDRESS STATMARINE
DIGBY 4 8840

States Marine-Isthmian
Agency, Inc.
90 BROAD STREET, NEW YORK, N.Y. 10004

TO WHOM IT MAY CONCERN:

Gentlemen:

S.S.

The following information concerning this vessel is true and correct.

FLAG: 1. This vessel is enrolled under the United States Flag.

ISRAEL CLAUSE: 2. It will not call at any Israeli port prior to calling at the port of discharge named in this Bill of Lading.

ARAB LEAGUE: 3. It is not blacklisted by the Arab League.

JORDAN 4. It is not on the Black List of the Government of Jordan.

LINER: 5. This shipment is based on Liner Terms and no Demurrage or despatch has been incurred at port of loading, nor will be incurred at discharge port.

CUBAN CLAUSE: 6. This vessel has not called at any port in Cuba, since January 1, 1963.

AID BAN: 7. The vessel owner or operator, certifies that the vessel which will perform under this contract in not a vessel which has been banned by AID for transporting AID financed goods. The vessel owner or operator further certifies that they assume full responsibility for any claim filed by AID/Washington or any other Authority in case of violation of the requirement.

Very truly yours,
STATES MARINE ISTHMIAN AGENCY, INC.

A.C. Kelty
A.C. Kelty
MGR. B/L DEPT.

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TO WHOM IT MAY CONCERN

NORWEGIAN MOTOR SHIP . . . . . .

SAILING DATE . . . . . .

BILL OF LADING NO. . . . . .

WE WISH TO ADVISE THAT THIS VESSEL IS NOT AN ISRAELI FLAG VESSEL AND FURTHER THAT IT WILL NOT CALL AT ANY ISRAELI PORTS AND IS NOT BLACKLISTED BY THE SAUDI ARABIAN GOVERNMENT.

BARBER STEAMSHIP LINES, INC.
AS AGENTS

Kenn W Shields

BEST COPY AVAILABLE

CENTRAL GULF STEAMSHIP CORPORATION
ONE WHITEHALL STREET
NEW YORK, NEW YORK

RE: S/S _____

B/L _____

To Whom It May Concern:

This is to certify that the above vessel is not scheduled to call at any Israeli Ports, nor is this vessel of Israeli registry.

Yours very truly,

CENTRAL GULF STEAMSHIP CORPORATION

William G. Mack
Manager, Bill of Lading Department

WGM/glz

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DATE_____

TO WHOM THIS MAY CONCERN:

VESSEL_____ FLAG_____ VOYAGE_____

THIS IS TO CERTIFY THAT THE ABOVE MENTIONED VESSEL IS NOT BLACKLISTED BY ANY ARABIAN COUNTRY AND WILL NOT CALL AT ANY ISRAELI PORTS.

CONSTELLATION LINE
CONSTELLATION NAVIGATION INC.,
(AS AGENTS)

D.J. NETHAWAY
TRAFFIC DEPARTMENT

BEST COPY AVAILABLE

AMERICAN EXPORT ISBRANDTSEN LINES INC.

26 BROADWAY,
NEW YORK, N.Y. 10004

CABLE ADDRESS: EXPOSHIP
TELEPHONE (212) 797 3000

To whom it may concern:

Re:

Shipment was not effected by an Israeli means of transportation.

This vessel is not to call at any Israeli port and will not pass through the territorial waters of Israeli, prior to unloading in Lebanon, unless the ship is in distress or subject to force Majeure. No transhipment is allowed unless the vessel is unable to proceed to destination because it is in distress or subject to force majeure.

We hereby certify that to the best of our knowledge the vessel carrying the above mentioned goods is not included on the ARAB BOYCOTT BLACKLIST.

Very truly yours,

AMERICAN EXPORT ISBRANDTSEN LINES, INC.

J. Reyes-Montblanc
Manager
Outward Documentation & Rates

JRM-F004/72

SHIP AMERICAN ★ TRAVEL AMERICAN

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FROM: JAN C. UITERWYK COMPANY, INC.
80 Broad Street
New York, N.Y. 10004

CABLES: UITERWYK CO.
PHONES: 212-344-8870
T.W.X.: 710-581-3097

STEAMER-
SAILING DATE-
BILL OF LADING #

THIS IS TO CERTIFY THAT THE ABOVE VESSEL IS A CLASSIFIED VESSEL PLYING IN THE REGULAR LINER SERVICE OF SOUTH SHIPPING LINES (IRAN LINE) WHICH IS A MEMBER OF THE REGIONAL COOPERATIVE DEVELOPMENT SERVICE (R.C.D.). AN AGREEMENT BETWEEN TURKEY, IRAN, & PAKISTAN.

JAN C. UITERWYK CO., INC.

(PLEASE PRINT OR TYPE)

CHARGE OF DISCRIMINATION	EEOC CHARGE NO.	FEPA CHARGE NO. 124-R0001

INSTRUCTIONS

[illegible] (Attach extra sheets of paper if more space is needed.)

CAUSE OF DISCRIMINATION

- [ ] RACE OR COLOR
- [ ] SEX
- [X] RELIGION
- [ ] NATIONAL ORIGIN

NAME (Indicate Mr. or Mrs.) Anti-Defamation League of B'nai B'rith	DATE OF BIRTH
STREET ADDRESS 315 Lexington Avenue / COUNTY New York	SOCIAL SECURITY NO.
CITY, STATE, AND ZIP CODE New York, N.Y. 10016	TELEPHONE NO. (Include area code)

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME (Indicate Mr. or Mrs.) Mr. Arnold Forster, Mr. Justin Finger, Mr. Edward Leavy	TELEPHONE NO. (Include area code) (212) 689-7400
STREET ADDRESS 315 Lexington Avenue	CITY, STATE, AND ZIP CODE New York, N.Y. 10016

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU (If more than one, list all)

NAME American Bureau of Shipping Technical Services Owned by: American Bureau of Shipping	TELEPHONE NO. (Include area code)
STREET ADDRESS 16 Broad Street	CITY, STATE, AND ZIP CODE New York, N.Y.

OTHERS WHO DISCRIMINATED AGAINST YOU (If any)		
HAS CHARGE BEEN FILED WITH A STATE/LOCAL GOVT. AGENCY? [ ] YES [ ] NO	DATE FILED	WHERE CHARGE FILED (Name of agency and city, town or state)
NAME OF STATE OR LOCAL GOVT. AGENCY WHERE CHARGE WAS FILED		DATE OF DISCRIMINATION TOOK PLACE (Month, day, and year)

Section 1981 [illegible] Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

SEE ATTACHED;

I HAVE READ THE ABOVE CHARGE AND THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.		NOTARY (When required)	I SWEAR OR AFFIRM THAT I HAVE READ THE ABOVE CHARGE AND THAT IT IS TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, EXCEPT AS TO MATTERS THEREIN STATED ON INFORMATION AND BELIEF, AND AS TO THOSE MATTERS I BELIEVE IT TO BE TRUE. (Month, day, and year)
DATE	SIGNATURE OF PARTY (Signature)		
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. (Month, day, and year)			I WANT THIS CHARGE FILED WITH BOTH THE EEOC AND THE STATE OR LOCAL AGENCY, IF ANY. I WILL ADVISE THE AGENCIES IF I CHANGE MY ADDRESS OR TELEPHONE NUMBER AND COOPERATE FULLY WITH THEM IN THE PROCESSING OF MY CHARGE IN ACCORDANCE WITH THEIR PROCEDURES. (I understand that I may withdraw my charge if I choose to do so at a later date.)
DATE	SIGNATURE AND TITLE		

EEOC Form 5 (Rev. 7-77) PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE. GPO: 1978 O - 335-855

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B'nai B'rith, founded in 1843, is the oldest service organization whose membership is American Jews.

The ADL was organized in 1913 as a section of B'nai B'rith to advance good will and mutual understanding among Americans of all creeds and races, and specifically to combat anti-Semitism and anti-Jewish activities in the U.S.

The members of B'nai B'rith, as American Jews, are subject directly to economic injury by the anti-Jewish discriminatory practices of ABS Worldwide Technical Services.

ABS Worldwide Technical Services maintains offices at 45 Broad Street, New York, N.Y.

ABS Worldwide Technical Services is a division of the American Bureau of Shipping of the same address.

ABS Worldwide Technical Services is engaged in the business of soliciting Americans with technical knowledge for employment abroad.

ABS Worldwide Technical Services has operations in Bahrein and Iraq and is soliciting American personnel for employment at those operations.

ABS is aware that some Arab governments discriminate against Jews not only in employment but also in gaining admission to their countries. The ABS employment process attempts to screen out Jewish applicants who are immediately excluded.

Employment solicitation within the U.S. for American personnel to work abroad is covered by Title VII of the Civil Rights Act of 1964 as amended. Discrimination on the basis of religion is prohibited. Therefore, ABS Worldwide Technical Services is in violation of the Civil Rights Act.

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SUMMARY OF FACTS

Ms. Erica Wagner, an engineer, responded to an ad in the April 20 issue of The New York Times which called for a resume. Upon sending of such resume, Ms. Wagner was contacted by telephone by a woman who identified herself as a secretary to Mr. Theilheim of ABS Worldwide Technical Services. Ms. Wagner was then asked by the secretary whether she would be willing to accept employment in Iraq, whereupon Ms. Wagner informed the secretary that she would be willing but that she was Jewish. The secretary replied that there were no indications from either the resume or her name that she was Jewish, but since she was, she would not be qualified to go to Iraq.

Mr. Leonard Messer, an engineer, responded to a March advertisement in The New York Times, inserted by Search Consultants. Mr. Messer telephoned the agency and was informed by Mr. Abrew that the job would be in the Bahrein Island and that further inquiries would have to be made of his principal, ABS Worldwide Technical Services. Mr. Messer made an appointment with and was interviewed by Mr. Robert Theilheim of ABS Worldwide Technical Services. During the course of such interview, Mr. Messer was asked whether he or any of his relatives were Jewish, to which he responded in the negative. The reason given by Mr. Theilheim for these inquiries was because of an Iraqi visa requirement. At that point, Mr. Theilheim seemed anxious to hire Mr. Messer on the spot.

In a subsequent telephone conversation, Mr. Messer informed Mr. Theilheim that his wife was Jewish. Subsequently, Mr. Messer was again contacted by Mr. Abrew who inquired whether his wife would accompany him, to which Mr. Messer replied in the negative. Mr. Abrew at this point stated that he would attempt to secure the position for Mr. Messer but finally got back to him with word that ABS Worldwide Technical Services would not hire him because of the religion of his wife.

58-527 O - 75 - 17

RELIEF SOUGHT

ABS Worldwide Technical Services has violated and continues to violate Title VII of the Civil Rights Act of 1964 as amended, constituting a pattern and practice of illegal discrimination.

Wherefore, complainants respectfully request:

1. A finding of probable cause that ABS Worldwide Technical Services discriminated and continues to discriminate against Jews with respect to their hiring policies.

2. That, failing conciliation, an action be brought to enjoin the above discriminatory practices, to obtain damages of back pay to persons of the Jewish faith who were not employed because of these discriminatory practices, and to obtain such other relief as is necessary and proper under the circumstances.

3. That, in the alternative, a right to sue letter be granted.

Cable Address: ANTIDEFAME

ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH

315 LEXINGTON AVENUE, NEW YORK, N.Y. 10016, TEL. 689-7400

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Leadership
THEODORE FREEDMAN
Program, Community Service
LYNNE IANNIELLO
Public Relations
J. HAROLD SAKS
Administration

I Erika Wagner hereby authorize the Anti-Defamation League to represent me in all matters pertaining to ABS Worldwide Technical Services.

Erika Wagner
Erica Wagner

Sworn to before me this 26th day of June 1975.

Notary

[illegible] 20, 1977

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State of New York)
) SS:
County of New York)

ERIKA WAGNER, being duly sworn deposes and says that I reside at 150 East 61st Street, New York City. I hold a degree in structural engineering from the University of Budapest, Hungary.

On April 20, 1975 I answered an ad which appeared in the New York Times of that day. The ad required that a resume be sent to Box Z 2411 Times. On or about April 28 or 29, 1975, I received a telephone call from a female person who identified herself as being the secretary to Mr. Theilhelm of ABS Worldwide Technical Services. She then asked me if I would be interested in a job in Iraq. I answered her that I would but I told her that I was Jewish and I questioned whether I would be qualified. She then said "No you would not be qualified" and went on to explain that from my name and resume they did not assume that I was Jewish. We then ended the telephone conversation.

Erika Wagner

Erika Wagner

SWORN TO BEFORE ME
THIS 6th DAY OF June 1975.

BEST COPY AVAILABLE

State of New York)
) SS
County of New York)

I, LEONARD MESSER, being duly sworn, deposes and says that I reside at 51 Caroline Ave., Elmont, New York and that I am a duly licensed professional engineer.

On February 24, 1975, I had a telephone conversation with Mr. Abreu of Search Consultants, 10 Forest Ave., Paramus, N. J., in answer to an ad which appeared in the New York Times on the previous day advertising an opening in employment for an engineer. Mr. Abreu informed me that the work was to be performed in the Persian Gulf area and suggested that I send in my resume. On February 26, 1975, I received a phone call from Mr. Abreu who stated that he had not yet received my resume but that I should call and make an appointment with Mr. Robert Theilhelm of ABS Worldwide Technical Services, 45 Broad Street, New York, N. Y.

On Thursday, February 27, 1975, I had a personal interview with Mr. Robert Theilhelm at the offices of ABS Worldwide Technical Services at the address previously stated. During the discussion concerning my qualifications, salary requirements and other matters pertinent to employment, I was told that the employment would be on Bahrein Island. Mr. Theilhelm then asked me "You're not Jewish, are you?" I answered in the negative. He then said that the problem is you have to get an Iraqi visa - He said "You are a Christian, you're going to have to get an Iraqi visa!! He then asked, "There's nobody in your family who's Jewish is there?" I answered no. Mr. Theilhelm seemed quite anxious to hire me on the spot. The employment contract was to be for 9 months with 2 weeks back in U.S. every 2 months. I said I wanted to discuss it with my wife.

After leaving Mr. Theilhelm, I telephoned Mr. Abreu and informed him about the interview and about the Jewish problem. Abreu said that he didn't think there was a Jewish problem in Iran. (He seemed under the impression that employment was in Iran.) I told him that my wife is Jewish and then he said he didn't see it as a problem since my wife was not going with me. I then told him of Theilhelm's concern about anyone in my family being Jewish.

On March 3rd or 4th, 1975, I again spoke to Mr. Theilhelm and told him that the job offer was very attractive but that I had misled him - there is someone in the family who is Jewish and he agreed that that would disqualify me for the job. I said I would like to work for the company in some other country. He thanked me and said he would get in touch with me.

Later, Mr. Abreu contacted me and told me that he had tried to "sell" me to Theilhelm but he was told that they could not take anyone who has Jewish connections.

I. Leonard Messer

SWORN TO BEFORE ME THIS

Sixth day of June, 1975.

77

(PLEASE PRINT OR TYPE)

CHARGE OF DISCRIMINATION	EEOC CHARGE NO.	FORM APPROVED OMB NO. 124-R0001

INSTRUCTIONS

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE. *(Attach extra sheets of paper if necessary.)*

CAUSE OF DISCRIMINATION

- [ ] RACE OR COLOR
- [ ] SEX
- [x] RELIGIOUS CREED
- [ ] NATIONAL ORIGIN

NAME *(Indicate Mr. or Mrs.)* Anti-Defamation League of B'nai B'rith	DATE OF BIRTH
STREET ADDRESS 315 Lexington Avenue / COUNTY New York	SOCIAL SECURITY NO.
CITY, STATE, AND ZIP CODE New York, N.Y. 10016	TELEPHONE NO. *(Include area code)*

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME *(Indicate Mr. or Mrs.)* Arnold Forster, General Counsel / Gus Finger, Esq. Ed Leavy, Esq.	TELEPHONE NO. *(Include area code)* (212) 689-7400
STREET ADDRESS 315 Lexington Avenue	CITY, STATE, AND ZIP CODE New York, N.Y. 10016

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU *(If more than one, list all)*

NAME Bendix-Siyanco	TELEPHONE NO. *(Include area code)* 301-997-9177
STREET ADDRESS Route 108	CITY, STATE, AND ZIP CODE Columbia, Maryland

OTHERS WHO DISCRIMINATED AGAINST YOU *(If any)*	

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY	DATE FILED	AGENCY CHARGE FILED WITH *(Name and address)*
[ ] YES [ ] NO		

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST	DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE *(Month, day, and year)*

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

See attached.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE	CHARGING PARTY *(Signature)*

Subscribed and sworn to before this EEOC representative.

DATE	SIGNATURE AND TITLE

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE *(Day, month, and year)*

SIGNATURE *(If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)*

EEOC FORM JUN 72 5 Previous editions of this form may be used.

GPO : 1974 O - 535-864

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

MAR 10 1975

MEMORANDUM TO HEADS OF ALL AGENCIES

SUBJECT: Employment Discrimination Based on Religion or National Origin by Federal Contractors Engaged in Operations or Activities Outside the United States or for Foreign Governments or Companies Within the United States

Questions have arisen regarding the obligations of Federal contractors under E. O. 11246, as amended, when they are hiring United States citizens or resident aliens within the United States for performance of work outside of the United States or for work in the United States pursuant to a contract with a foreign Government or company.

E. O. 11246, as amended, and the guidelines issued pursuant thereto, 41 CFR, Part 60-50, prohibit Federal contractors from discriminating on the basis of religion or national origin (as well as race or sex) when hiring for work to be performed in the United States or abroad. Federal contractors are exempted from this obligation only when hiring persons outside of the United States for work to be performed outside of the United States, 41 CFR 60-1.5(a)(3). Thus, any Federal contractor or subcontractor hiring workers in the United States for Federal or nonfederally connected work would be in violation of Executive Order 11246, as amended, by refusing to employ any person because of religion or national origin regardless of exclusionary policies in the country where the work is to be performed or for whom the work will be performed.

All agencies are to insure that the equal employment principles reflected in this Memorandum are fully implemented.

Peter J. Brennan
Secretary of Labor

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ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH
315 LEXINGTON AVENUE, NEW YORK, N.Y. 10016, TEL 689-7400

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Assistant Secretary
BENJAMIN R. EPSTEIN
National Director
•
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President, B'nai B'rith
RABBI BENJAMIN M. KAMA
Executive Vice President, B'nai B'rith
HELEN G. SMITH
President, B'nai B'rith Women
•
ARNOLD FORSTER
Associate National Director and General Counsel
•
NATHAN PERLMUTTER
Assistant National Director Development Planning
STAFF DIRECTORS
ABRAHAM H. FOXMAN
Leadership
THEODORE FREEDMAN
Program, Community Service
LYNNE SANNELLO
Public Relations
J. HAROLD SABS
Administration

May 27, 1975

Mr. H. Minton Francis
Deputy Assistant Secretary of Defense
Manpower and Reserve Affairs (Equal Opportunity)
Office of the Assistant Secretary of Defense
Washington, D.C. 20301

Dear Mr. Francis:

Pursuant to Executive Order 11246 and Office of Federal Contract Compliance Guideline 60-50, the Anti-Defamation League of B'nai B'rith calls upon the Department of Defense to conduct a full-scale compliance review of Bendix-Siyanco, Columbia, Maryland. Bendix-Siyanco is a subsidiary of the Bendix Field Engineering Corporation which is a division of the Bendix Corporation of Michigan. As you know, the Bendix Corporation is a major defense contractor.

Bendix-Siyanco's principal operations are located in Saudi Arabia. As a direct consequence of that fact, the Bendix Corporation is discriminating against all Jews who apply for employment or who may be their employees by not assigning them to work in Saudi Arabia because of their religion. As further evidence of that fact, the Bendix-Siyanco Company has been soliciting religious identification information on its application for employment form.

In view of these facts and allegations, the Anti-Defamation League of B'nai B'rith urgently calls upon the Department of Defense to conduct a full-scale compliance review of the pattern and practice of discrimination against American Jews as it exists within the operations of the Bendix-Siyanco Company and its affiliates. We further call upon the Department of Defense to direct the Bendix Corporation to eliminate any and all discriminatory practices affecting American Jews and to immediately institute a program of affirmative action to correct and eliminate such vestiges of that discrimination as may continue to exist.

We await your early report.

Sincerely,

Arnold Forster
General Counsel

AF:le

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POWER OF ATTORNEY

I, Martin A. Watkins, of 214-C North Everhart St. West Chester, Pa.,19380, hereby authorize the Anti-Defamation League to represent me in all matters pertaining to the Bendix-Siyanco Company.

May 2, 1975

Date

Martin A. Watkins

MARTIN A. WATKINS

May 2-1975

Elizabeth H. Wiggins

ELIZABETH H. WIGGINS, Notary Public
West Chestor, Pa. Chester County
My Commission Expires September 10 1979.

STEINBERG, GENERES, LUERSSEN & VOGELSON
ATTORNEYS AND COUNSELORS
2200 FIDELITY UNION TOWER
DALLAS, TEXAS 75201

(214) 748-9312

May 14, 1975

Mr. Ira Gissen
ADL of B'nai B'rith
315 Lexington Avenue
New York, N.Y. 10006

Dear Ira,

Enclosed please find affidavit of Herman Eisenkraft in connection with his receipt of the employment application from Bendix-Siyanco. I had prepared an authorization for ADL to represent him in connection with allegations of discrimination,etc.; however, he pointed out to me that he felt that Bendix-Siyanco had not discriminated against him since he never completed the application form. He says that he has no objection to presenting the application blank to the proper government civil rights agency in the form of a complaint; provided, ADL believes that it is a violation of the law to ask religion on such application form.

Mr. Eisenkraft says that he subsequently received a follow-up letter from Bendix-Siyanco and he wrote on the letter that he received, an inquiry about the housing conditions. He has not heard from them since he returned their follow-up letter with such inquiry.

Mr. Eisenkraft is quite cooperative and if you have any further questions,etc., I believe it will be all right to telephone him. His office number is 214 651-2639 and his residence telephone is 241-1888.

If I can be of any further assistance, please let me know.

Sincerely,

Lawrence E. Steinberg

LES:hgt
encs.

A F F I D A V I T

STATE OF TEXAS)
COUNTY OF DALLAS) KNOW ALL MEN BY THESE PRESENTS

Before the undersigned authority appeared Herman Eisenkraft, who upon oath states as follows:

That I reside at 4220 High Summit Drive, Dallas, Texas 75234; that my telephone number is area 214 241-1888; that I am currently employed in purchasing by Sanger Harris Department store in Dallas, Texas.

That in approximately January or February, 1975, I noticed an advertisement in the Dallas Morning News advertising a position abroad with Bendix-Siyanco. I sent my resume, a copy of which is attached hereto as Exhibit A and received in reply the application attached hereto of Bendix Siyanco, as Exhibit B.

Signed this 14th day of May, 1975 in Dallas, Texas.

HERMAN EISENKRAFT

Subscribed and sworn to the undersigned notary public in and for Dallas County, Texas.

Notary Public

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RESUME'

PURCHASING - MERCHANDISING - ADMINISTRATION

HERMAN EISENKRAFT
4220 High Summit Drive
Dallas, Texas 75234

Telephone: (214) 241-1888

Age: 50
Married - 3 Children

Honorable Discharge Received from U.S. Air Force (1940-1945)

Schools:

Erasmus Hall-Brooklyn, N. Y.
N. Y. U. School of Retailing - New York, N. Y.
CCNY School of Business - New York, N. Y.

Attended several specialized courses sponsored by Headquarters Army and Air Force Exchange Service.

Employed by: HQ Army & Air Force Exchange Service
Dallas, Texas 75222

From 1951-1973 - Retired June 30, 1973
Last Position: Merchandise Group Manager
Please refer to attached for details of complete AAFES assignments.

Salary - To be negotiated.

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Summary of Employment

HQ Army & Air Force Exchange Service
Dallas, Texas 75222

June 1972 to Present
Merchandise Group Manager - HQ AAFES
Electronics & Retail Automotive - 12 people, 3 sections
Responsible for the procurement and related programs for home electronics, pre-recorded music (records and tapes) and all retail automotive products (TBA).

June 1968 - June 1972
Chief, Hardlines Branch - European Exchange System
Branch consisted of 87 people - 6 groups U.S. & local national - Branch responsible for purchases of approximately 80 million dollars (offshore & USA) per year - Merchandise included:

Home Electronics & Pre-Recorded Music
Photographic
Jewelry (Precious, Semi-Precious & Costume, Clocks and Watches
Housewares - (non-electric and electric - portable and major)
Hardware - Garden Supplies and Equipment
Furniture and Gifts
Toys, Sporting Goods, Hobbies and Luggage

July 1957 - July 1968
Senior Buyer, HQ AAFES - Supervised 15 people
Housewares - responsible for procurement of all major and portable electric appliances, all housewares, all home furnishings, hardware, garden, barbecue and picnic.

July 1955 - July 1957
Buyer, HQ AAFES - Supervised 6 people
Home Furnishings - responsible for the procurement of luggage, small leather goods, furniture, home furnishings, carpets, rugs, garden supplies, and hardware.

August 1953 - July 1955
Buyer, HQ AAFES - Supervised 4 people
Equipment not for resale-responsible for contacting sources, securing bids and negotiating purchases of office, factory, retail and restaurant equipment according to specifications furnished, including investigation and recommendation of new items.

March 1951 - August 1953
Assistant Buyer, HQ AAFES
Began in the Equipment Section, transferred to Sporting Goods and returned to Equipment as full buyer.

APPLICATION FOR EMPLOYMENT

Candidate To Affix Photograph Here

Personal Data

Please answer each question clearly and completely. Type or print in ink. A work resume, showing full work experience, must be attached to this form.

FULL NAME LAST	FIRST	MIDDLE	SEX Male ☐ Female ☐

PRESENT ADDRESS	NO. AND STREET	CITY	STATE	ZIP CODE	TELEPHONE NUMBER
PERMANENT ADDRESS	NO. AND STREET	CITY	STATE	ZIP CODE	TELEPHONE NUMBER

PRESENT CITIZENSHIP	CITIZENSHIP AT BIRTH	RELIGION	PLACE OF BIRTH	DATE OF BIRTH

MARITAL STATUS Single ☐ Married ☐ Widow(er) ☐ Divorced ☐ Separated ☐ Number of Children: ____

PASSPORT NUMBER	DATE PASSPORT EXPIRED	HEIGHT	WEIGHT	SOCIAL SECURITY NO.

PRESENT MILITARY SERVICE STATUS	BRANCH OF SERVICE	LENGTH OF SERVICE	RANK AT SEPARATION
SELECTIVE SERVICE CLASSIFICATION	WERE YOU EVER COURT MARTIALED? ____ DESCRIBE ____		TYPE OF SEPARATION

HAVE YOU EVER BEEN CONVICTED BY ANY CIVIL OR MILITARY COURT OR LAW ENFORCEMENT (Do not include minor traffic violations for which a fine of $25.00 or less was paid)? No____ Yes____
If yes, describe ____

DO YOU USE NARCOTICS OR INTOXICANTS HABITUALLY? No____ Yes____ Never____

DO YOU HAVE ANY PHYSICAL DEFECTS? ____ If Yes, describe ____

HAVE YOU HAD A MAJOR ILLNESS IN THE PAST FIVE YEARS? ____ If yes, describe ____

POSITION (S) APPLIED FOR ____ SALARY DESIRED $ ____

DO YOU ACCEPT ASSIGNMENT AT ANY PLACE IN SAUDI ARABIA? Yes ☐ No ☐

WHEN CAN YOU REPORT FOR WORK? ____

Education (circle highest school grade completed)

SCHOOLS	NAME AND PLACE	GRADES	Dates Attended From	To	SUBJECT STUDIED	DEGREES REC'D
Elementary		1 2 3 4 5 6				
Junior		7 8 9				
High		10 11 12				
College		13 14 15 16				
Others Including Military and Courses						

Languages (Also another mother tongue)	READ Excellent	Good	Fair	Slight	WRITE Excellent	Good	Fair	Slight	SPEAK Excellent	Good	Fair	Slight

LIST ANY OFFICE MACHINES AND AUTOMATIVE EQUIPMENT YOU ARE ABLE TO OPERATE:

DO YOU HOLD A VALID DRIVING LICENSE? Yes ☐ No ☐

16

FORM APPLICATION

BENDIX-SIYANCO

A
joint venture
of
BENDIX FIELD ENGINEERING CORPORATION
SAUDI MAINTENANCE COMPANY LTD

Mr. Herman Eisenkraft
4220 High Summit Drive
Dallas, Texas 75234

Dec 30, 74

Dear Mr. Eisenkraft:

This letter is to acknowledge receipt of your Resume, and to inform you that a preliminary evaluation reveals you may be qualified to fill a position in our Saudi Arabian Program.

Before we progress further, we wish to inform you of our Program and to determine your interest in working in Saudi Arabia.

Bendix-Siyanco is currently providing Management personnel, Instructors, and Technicians to the Saudi Arabian Ordnance Corps Program (SOCP). Enclosed are brochures which will provide some additional information on the program and Saudi Arabia. We offer a one-year contract to eligible applicants with a large number of our positions as bachelor assignments. Quarters and local business transportation are provided by the Company. Messing facilities are available at a reasonable fee; we also provide recreational facilities and programs, a desirable rest and recuperation program, vacation, sick leave, medical facilities, group insurance, and the like.

Most qualified employees elect to remain on extended contracts to take advantage of the eighteen (18) month tax free clause of the Internal Revenue Code.

In the event you wish to be considered further for a position in this dynamic program, please complete the enclosed application and pre-medical form. We would also appreciate your comment on accepting a bachelor assignment. We must have your reply no later than 30 days from receipt of this letter. In the event we do not receive your comments, your Resume will be removed from active status.

Additional Comments: Please submit a detailed Resume, per attached format.

Bendix Field Engineering Corporation
[illegible] Columbia, Maryland 21045
Telephone (301) 740-3200
Telex [illegible] Bendix Corp.
Cable Address: Bendix [illegible] Maryland

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OVERSEAS ASSIGNMENTS
IN
SAUDI ARABIA

Bendix-Siyanco Offers Excellent Opportunities to U. S. Army Ordnance Personnel with Experience in the Following Operations:

- Vehicular Maintenance
- Armament Maintenance
- Supply
- Data Processing
- Quality Assurance
- Post Engineering
- Training

Send Resume and Salary Desired to:

Bendix-Siyanco

9250 Rt. 108
Columbia, Md. 21045

58-527 O - 75 - 18

ENDIX-SIYANCO

PRECHECKING
MEDICAL INFORMATION

plicant: Please complete this side only, and answer all questions fully. Do not have a physical examination conducted unless specifically requested by Bendix.

Date _____

me _____ Marital Status _____

dress _____

e _____ Sex ___ Height (Actual-Without Shoes) _____ Weight (Actual-In Street Clothes) _____

NOTE: If your present weight exceeds the weight limitations on the reverse side of this form, it will require approval of our plant physician prior to extending an offer of employment.

case of emergency, notify:
Name _____ Phone _____
Address _____

Have you ever filed a claim for Workman's Compensation? Yes _____ No _____
If yes: Nature of Injury _____ Amt. of disability in % _____ Date _____
Name of Employer _____ Address _____
Have you ever been disabled while in the Gov't. Service? Yes _____ No _____
If yes: Nature of Disability _____ Amt. of disability in % _____ Date _____
If you have ever been found not qualified for military service (classified 4F or 1Y), state date and reason _____
List all other injuries and dates _____
List all operations and dates _____
List all hospitalizations including Armed Service or Gov't Hospitals:
_____ Date _____ Cause _____
_____ Date _____ Cause _____
Check if ever employed in: High Altitudes ____ Tropics ____ Arctic or Antarctic _____
Mine ____ Smelting ____ Quarry ____ Foundry ____ Chemical Processing ____ Glass Works ____
Sand Blasting ____

If you have ever had the following, indicate at what age and give details below:

Chest Conditions	Age ___	Mental Illness	Age ___	Varicose Veins	Age ___
Stomach Trouble	Age ___	Diabetes	Age ___	Rheumatism	Age ___
Heart Condition	Age ___	Throat Disease	Age ___	Arthritis	Age ___
Kidney Trouble	Age ___	Tuberculosis	Age ___	Fractures	Age ___
Rupture or Hernia	Age ___	Silicosis	Age ___	Dislocations	Age ___
Back Trouble	Age ___	Asthma	Age ___	Amputations	Age ___
Frequent Headaches	Age ___	Ulcers	Age ___	Indigestion	Age ___
Nervous Trouble	Age ___	Allergies	Age ___	Epilepsy or Fits	Age ___
High Blood Pressure	Age ___	Fainting Spells	Age ___	Skin Disease	Age ___
Venereal Disease	Age ___	Head Injury	Age ___	Hepatitis	Age ___
Cancer	Age ___	Liver Trouble	Age ___	Dermatitis	Age ___

Deformities or Scars _____
Details _____

List any other defects and/or disease of the following which you have had and at what age:

Hands	Age	Legs	Age	Back	Age	Eyes	Age
Arms	Age	Feet	Age	Ears	Age	Nose	Age
						Throat	Age

I certify that the above answers are true and complete and I am aware that any material falsifications or omission of facts may result in my immediate discharge.

FE 126 Rev 3/72

Applicant Signature _____

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BACKGROUND INFORMATION

BENDIX-SIYANCO, BASED IN RIYADH, SAUDI ARABIA SUPPLIES TECHNICAL EXPERTS TO ASSIST THE SAUDI ARABIAN ARMY (SAA) TO OPERATE A MODERN ORDNANCE CORPS. THE CORPS, AS PRESENTLY CONSTITUTED CLOSELY RESEMBLES, IN FUNCTIONS AND METHODS, THE U. S. ARMY ORDNANCE CORPS. SUPPLY (ORGANIZATIONAL, DIRECT AND GENERAL SUPPORT) IS CONTROLLED BY A CENTRAL INVENTORY CONTROL POINT UTILI ING ADPE. MAINTENANCE OPERATIONS ENCOMPASS CONTACT TEAMS, DIRECT SUPPORT, GENERAL SUPPORT AND DEPOT ORGANIZATIONS. THE EQUIPMENTS SUPPORTED INCLUDE WHEELED AND TRACKED VEHICLES AS WELL AS WEAPONS RANGING IN SIZE FROM EIGHT-INCH SELF PROPELLED HOWITZERS TO SMALL ARMS; THESE ARE MOSTLY OF U. S. ORIGIN. MISSILE AND AIRCRAFT MAINTENANCE AND SUPPLY ACTIVITIES ARE NOT INCLUDED IN THIS PROGRAM.

THE CONTRACT IS MONITORED BY THE U. S. CORPS OF ENGINEERS AND REQUIRES BENDIX TO PROVIDE PERSONNEL SUPPORT TO COMPANY EMPLOYEES. THIS SUPPORT INCLUDES ADMINISTRATION, FOOD, QUARTERS, PAYROLL AND RECREATION. AN ADMINISTRATIVE SUPPORT STAFF PROVIDED BY THE COMPANY OPERATES THESE ACTIVITIES.

LOCATIONS OF WORK

THE FOLLOWING IS A LIST OF THE LOCATIONS, AND TYPES OF SUPPORT FURNISHED BY BENDIX-SIYANCO PERSONNEL.

HEADQUARTERS	RIYADH
ORDNANCE SCHOOL	TAIF
DEPOT	AL KHARJ
GENERAL SUPPORT	AL KHARJ, TAIF, KHAMIS MUSHAYT AND TABUK
DIRECT SUPPORT	RIYADH, JIDDA AND DAMMAM
PORT	DAMMAM AND JIDDA

LIVING CONDITIONS

BENDIX-SIYANCO OPERATES AND MAINTAINS HOUSING FACILITIES FOR ALL CONTRACTOR PERSONNEL. LIVING FACILITES ARE AVAILABLE WITHIN THE CAMP SITES IN THE FORM OF PORT-A-CAMPS, BACHELOR OFFICER QUARTERS AND CAMPERS. MESSING, PROVIDED BY BENDIX-SIYANCO IS CAPABLE OF FURNISHING NOURISHING MEAL SERVICE UNDER SANITARY CONDITIONS FOR ALL CONTRACTOR PERSONNEL. RECREATION FACILITIES ARE AVAILABLE AT EACH CAMP SITE. FACILITIES INCLUDE MOVIE THEATERS, SWIMMING POOLS, LIBRARIES, ATHLETIC EQUIPMENT, PING PONG, POOL TABLES AND VARIOUS OTHER ENTERTAINMENT ITEMS. DISPENSARY FACILITIES AND FIRST AID EQUIPMENT ARE AVAILABLE AT EACH SITE. AT RIYADH A COMPLETE OUT-PATIENT AND NINE-BED FULLY EQUIPPED CLINIC, INCLUDING A CASULTY DEPARTMENT IS CAPABLE OF ACCOMMODATING EMERGENCY AND CHRONIC

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CASES. MAIL SERVICES ARE PROVIDED BY MEANS OF U. S. ARMY POSTAL SYSTEM OPERATED BY BENDIX-SIYANCO.

DEPENDENT RELOCATION IS DISCOURAGED BECAUSE OF LACK OF SUITABLE SCHOOLS AND HOUSING. THE DURATION OF THE ASSIGNMENT IS ONE YEAR AND CAN BE RENEWED. WE PAY TRAVEL AND EXPENSES TO AND FROM THE JOB LOCATION BOTH FOR VACATION TRAVEL AND RETURN TO POINT-OF-HIRE UPON COMPLETION OF ASSIGNMENT. ON-THE-JOB PERSONAL EXPENSES ARE LIMITED TO A NOMINAL FOOD DEDUCTION OF ABOUT $100 PER MONTH PLUS YOUR NEEDS FOR TOILET ARTICLES. EACH EMPLOYEE RECEIVES A 10 DAY R & R LEAVE WITH AIR FARE AT ABOUT THE MIDDLE OF HIS TOUR. TWENTY-ONE DAYS VACATION IS EARNED IN THE FIRST YEAR AND RETURN AIR FARE TO THE U. S. IS PROVIDED.

SKILLS REQUIRED

MOST PROGRAM POSITIONS REQUIRE A BACKGROUND OF EXPERIENCE AND EDUCATION COMPARABLE TO THAT POSSESSED BY SENIOR NCO'S (E7, E8, and E9), WARRANT OFFICERS AND COMMISSIONED OFFICERS UP TO AND INCLUDING SENIOR FIELD GRADE. SPECIFIC SKILL AREAS, ALL RELATED TO ORDNANCE INCLUDE:

MAINTENANCE	PERSONNEL
SUPPLY	DATA PROCESSING
INSTRUCTION	QUALITY ASSURANCE
FISCAL	PROCUREMENT

PERSONAL RESUME

DESIRED FORMAT

NAME: _____
DATE OF BIRTH: _____
PLACE OF BIRTH: _____
NATIONALITY: _____
MARITAL STATUS: _____
MILITARY STATUS: _____
CIVILIAN EDUCATION: _____
MILITARY COURSES: _____

EMPLOYMENT HISTORY: (STARTING WITH THE PRESENT ORGANIZATION FIRST, LIST POSITION TITLE, DESCRIPTION OF WORK PERFORMED, RESPONSIBILITIES HELD, NUMBER OF PERSONNEL SUPERVISED, ETC.)

FROM:
TO: (PRESENT)

FROM:
TO:

FROM:
TO:

NOTE: ALL APPLICANTS ARE REQUESTED TO SIGN AND DATE LAST PAGE OF RESUME

(USE ADDITIONAL SHEETS AS NECESSARY)

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506
March 17, 1975

IN REPLY REFER TO:

Senator Frank Church
Attn: Jeffery Shields
Sub-Committee on Multi-National Corp.
Senate Foreign Relations Committee
U.S. Senate
Washington, D.C. 20510

Dear Senator Church:

The following is in response to a telephone request from Mr. Jeffery Shields, March 14, 1975, concerning whether Title VII of the Civil Rights Act of 1964, as amended, was applicable to American companies operating overseas with respect to American employees of such overseas operations.

The Supreme Court has clearly stated that Congress has the power to enact legislation which has extraterritorial effect, see Blackner v. U.S., 284 U.S. 421, 52 S. Ct. 252 (1932). Whether a particular statute does operate extraterritorially depends on the intent of Congress in enacting the legislation. The language of Title VII indicates a Congressional intent to make the Title applicable to American citizens employed by American companies operating overseas.

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Section 703 provides that it is unlawful to discriminate against "any individual" with respect to his employment. The section, in defining what kinds of discrimination are prohibited, constantly uses the term "any individual." The only exception to "any individual" appears to be that contained in Section 702, i.e., aliens working outside the U.S. and to employees of certain religious and educational institutions.

Giving Section 702 its normal meaning would indicate a Congressional intent to exclude from the coverage of the statute aliens employed by covered employers working in the employers' operations outside of the United States.

The reason for such exclusions is obvious; employment conditions in foreign countries are beyond the control of Congress. The section does not similarly exempt from the provisions of the Act, U.S. Citizens employed abroad by U.S. employers. If Section 702 is to have any meaning at all, therefore, it is necessary to construe it as expressing a Congressional intent to extend the coverage of Title VII to include employment conditions of citizens in overseas operations of domestic corporations at the same time it excludes aliens of the domestic corporation from the operation of the statute.

This interpretation of Section 702 is consistent with the purpose of the Act, which is remedial, to remove the barriers that have operated in the past to favor certain classes of employees over others, Griggs v. Duke Power Co., 401 U.S. 424, 91 S Ct. 849 (1971).

LAW LIBRARY

Overseas employment practices of covered employers can have a very substantial impact on the employment opportunities in domestic corporations. Overseas assignment, for example, for a period of time may be very necessary for advancement in domestic operations. Thus, unless the Act is construed to cover employment conditions of American citizens working abroad for U.S. Corporations, employees in the corporation's domestic operations will not be afforded the protection that Title VII was intended to confer. Courts have traditionally construed laws to have extraterritorial effect when the failure to do so would have an adverse domestic impact.

If we can be of any further assistance please do not hesitate to contact us.

Sincerely,

William A. Carey

William A. Carey
General Counsel

cc: Congressional Affairs

Labor Law and Practice in the Kingdom of SAUDI ARABIA

El Fang

BLS REPORT 407

U.S. DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS

1972

For sale by the Superintendent of Documents,
U.S. Government Printing Office, Washington, D.C. 20402
Price: $1.25, domestic postpaid; $1.00, GPO Bookstore

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system, the Institute of Public Administration began to offer evening courses for civil servants around 1965. Oral learning has been emphasized because of the need of this group to communicate orally every day with foreign advisors and technicians. In the oil sector, English has been the main language of communication at most levels and is the language of instruction for technicians. (See the chapter on Education.) Aramco offers a 7-year English program through high school; Petromin workers are taught English at the Language Institute of the College of Petroleum and Minerals in Dhahran, and they may attend daily English classes after working hours; the Engineering College in Riyadh installed a language laboratory in 1968. The Saudi Arabian Ministry of Education also maintains an English Language Training Center in Riyadh.

Religion

Saudi Arabia is the center of Islam, and Mecca, the birthplace of the Prophet Mohammed, is the focus of annual pilgrimage for followers of Islam from all over the world. Religion is a social force. The *ulema*, the religious council, guards the traditions of the faith and may influence much social legislation. Islam is the only recognized religion and the people, 90 percent of whom are Sunni Moslem, form a homogeneous Moslem population. The vast majority of these Moslems are followers of Wahhabism, a puritanical revivalist movement originating in Central Arabia in the mid-18th Century. In the Eastern Province, at Qatif and al-Hasa, is a Shia'h Moslem minority. There are no indigenous non-Moslem minorities. Non-Moslems may be employed but are not permitted to become citizens or enter the holy cities of Mecca and Medina; Jews have not been permitted to enter Saudia Arabia since 1918.

Although Saudi Arabia is influenced by the Industrial West, until recently the Government and society have remained conservative. Today the trend toward secularism is growing.

The Saudi Government requires that foreign management honor and respect observances prescribed by Islam for its followers. The employer should be familiar with these precepts which influence the philosophy and attitudes of the Saudi work force. Although conformity is recognized, so are the needs of progress. Arabs and foreigners work well together, but each retains his own character; the labor force in the oil sector is highly productive. Change is reflected in many areas of work: Not long ago safety helmets were not worn because they have brims and the eyes may not be shaded from God; today, helmets are worn wherever needed.

During the month-long observance of Ramadan, the ninth month of the Moslem calendar, food and drink and tobacco are not consumed during daylight hours; after sunset substantial meals are eaten and people visit and take care of other social obligations until late into the night. Business activity slows considerably but observance is less than a decade ago. Two months after Ramadan, many workers leave their jobs to make the *hajj*; legal provisions are made for such leave.

During the *hajj*, the city of Jiddah which is close to Mecca and Medina is subject to the most change. For weeks before and after the *hajj*, pilgrims disrupt daily life and business travelers should avoid Jiddah. Many Saudis leave for Mecca; airports and hotels are crowded. In 1972, the Ministry of Communications hired nearly 10,000 workers to handle telecommunications and postal services. The Government has established an Airport Pilgrim City in Jiddah to care for pilgrims. The Saudi health service grew out of the need to care for the annual influx of pilgrims and to protect the health of the indigenous people.

Religious authorities have a voice in framing domestic and foreign policy; they enforce public morality, control women's education, and are consulted by the King. Religious police (*mutawai'in*) ensure conformity with the religious laws, especially in the capital. Foreigners are required to meet behavior and dress standards and action may be taken against those who do not conform. Drinking is forbidden, but smoking, also traditionally forbidden, is now common. Restrictions are enforced against foreign women.

LIBRARY

CHARGE OF DISCRIMINATION

EEOC CHARGE NO.

FORM APPROVED OMB NO. 124-R0001

INSTRUCTIONS

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THE RESPONSIBILITY OF YOU TO FILE YOUR CHARGE AS SOON AS POSSIBLE. *(Attach extra sheets of paper if necessary.)*

CAUSE OF DISCRIMINATION

- [ ] RACE OR COLOR
- [ ] SEX
- [x] RELIGIOUS CREED
- [ ] NATIONAL ORIGIN

NAME *(Indicate Mr. or Ms.)*: Anti-Defamation League of B'nai B'rith

DATE OF BIRTH:

STREET ADDRESS: 315 Lexington Avenue

COUNTY: New York

SOCIAL SECURITY NO.:

CITY, STATE, AND ZIP CODE: New York, N.Y. 10016

TELEPHONE NO. *(Include area code)*: 212-689-7400

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME *(Indicate Mr. or Ms.)*: Arnold Forster, General Counsel

TELEPHONE NO. *(Include area code)*: 212-689-7400

STREET ADDRESS: 315 Lexington Avenue

CITY, STATE, AND ZIP CODE: New York, N.Y. 10016

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU *(If more than one, list all)*

NAME: International Schools Services

TELEPHONE NO. *(Include area code)*:

STREET ADDRESS:

CITY, STATE, AND ZIP CODE: Princeton, New Jersey

OTHERS WHO DISCRIMINATED AGAINST YOU *(If any)*:

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY
- [ ] YES
- [ ] NO

DATE FILED:

AGENCY CHARGE FILED WITH *(Name and address)*:

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST:

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE *(Month, day, and year)*:

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

[illegible]

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE: [illegible]

CHARGING PARTY *(Signature)*: [illegible]

Subscribed and sworn to before this EEOC representative.

DATE: [illegible]

SIGNATURE AND TITLE: [illegible]

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE *(Day, month, and year)*:

SIGNATURE *(If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)*

EEOC FORM JUN 72 5 — Previous editions of this form may be used.

GPO : 1974 O - 536-[illegible]

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ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH
315 LEXINGTON AVENUE, NEW YORK, N.Y. 10016, TEL. 689-7400

NATIONAL COMMISSION
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National Chairman
JOSEE SCHADY
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Assistant Secretary
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DAVID B. BLUMBERG
President, B'nai B'rith
RABBI BENJAMIN M. KAHN
Executive Vice-President, B'nai B'rith
HELEN G. SMITH
President, B'nai B'rith Women
•
ARNOLD FORSTER
Associate National Director and General Counsel
•
NATHAN PERLMUTTER
Associate National Director
Development, Planning
STAFF DIRECTORS
ABRAHAM H. FOXMAN
Leadership
THEODORE FREEDMAN
Program, Community Service
LYNNE LAMBERSELD
Public Relations
J. HAROLD SAYS
Administration

May 27, 1976

Mr. Peter Holmes, Director
Office For Civil Rights
U.S. Department of Health,
Education and Welfare
Washington, D.C. 20202

Dear Mr. Holmes:

The Illinois Office of Education has verified to us that they have received discriminatory job orders from the International Schools Services, a non-profit educational corporation whose headquarters are located in Princeton, New Jersey. The discriminatory job orders received by and verified by the Illinois Office of Education contain language prohibiting the employment of any teacher who has "a Jewish surname or who is an American Jew or who has Jewish ancestors."

This recruitment was for a school operated by International Schools Services in the Arab emirate state of Dubai. Such a job order is clearly violative of Executive Order 11246 and Office of Federal Contract Compliance Guideline 60-50. It is our understanding that International Schools Services is a federal contractor and is under the cognizance, with respect to equal employment opportunity, of your Department.

The Anti-Defamation League of B'nai B'rith, therefore, calls upon the Department of Health, Education and Welfare to conduct a full-scale compliance review of International Schools Services' pattern and practice of discrimination against American Jews and further calls upon HEW to order such corrective action as is necessary to eliminate these discriminatory practices.

We await your report.

Sincerely,

Arnold Forster
General Counsel

AF/cms

(.4)

ILLINOIS OFFICE OF EDUCATION
STATE OF ILLINOIS
Springfield, Illinois 62706

JOSEPH M. CRONIN
State Superintendent
of Education

January 31, 1975

Dear Placement Director:

Our office was contacted yesterday by Mr. Hal Greeney, Director of the Educational Staffing Program, for International Schools Services in New Jersey. His organization is in need of three teachers for the fall semester and wanted to know if Illinois could help him on short notice.

All three vacancies are in the same school located in the country of Dubai in Arab territory near the Persian Gulf. The school is K-9 elementary with 350 students, mostly American, and are children of oil company employees there.

This is what he needs: [illegible] teacher, should be single (because of housing facilities [illegible]), but have 2 years of recent teaching experience. The salary will be $[illegible] a year. She would also charge of the total I.E. program in that school. He also needs a qualified [illegible] instructor, someone, with P.E., Parks and Recreation background, [illegible] experience in this kind of position, if possible. This individual [illegible] set up a program of recreation for all age levels in the community there. The salary range will be from $17,000 - $20,000 @ year. Mr. Greeney said they would consider, either a male or female for this position.

The third position is for an Education Psychologist. He wants someone with 4 years of experience as a school psychologist, preferably at the elementary level. At least one year of experience must be gained in a clinical setting. The salary for this position will range from $17,[illegible] to $20,000 also.

ISS will pay the round trip travel expense, including dependents for those employed. Housing will be furnished free. After 18 months overseas, all income is tax free.

Because of some of the problems in the Middle East presently, ISS cannot employ for these positions any teachers who are Jewish surnamed or who is an American Jew or who have Jewish ancestors. Please check on this before you refer anyone!

There is a sense of urgency also. One of the ISS recruiters will start interviewing for these positions in about 2 weeks. If you have any qualified people who are interested in an interview with ISS, Mr. Greeney would like to receive a call to that effect a month [illegible]. You may call him personally, collect, and tell him about those you are referring. Please do not encourage applicants to do this however. Mr. Greeney can be reached at 609/921-9110.

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At our last International Teaching Opportunities Conference in Chicago, Mr. Greeney spoke on the needs of his organization and we have kept in touch with his office since that time. I hope that somehow we can help him in filling these vacancies and I know it would be a feather in your cap to be able to place one of your people in any of these positions.

If you have any questions about anything I've said, please feel free to call me (217/782-6350). I would prefer that you make the calls to Mr. Greeney concerning any good applicants you may have, because you know them better than anyone else, however, I will be happy to assist if you want me to. Happy hunting!

Sincerely,

Darrell Eller

E. Darrell Eller
Assistant Director
Teacher Placement

EDE:mlf

Michael A. Berinzy
Assoc Prof Pub Management
2001 N Sheridan Road
492-3415

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ILLINOIS OFFICE OF EDUCATION
[redacted]

Springfield, Illinois 62706

February 5, 1975

[redacted]
JOSEPH M. CRONIN
State Superintendent
of Education

Mr. Harold F. Greeney
Director of the Educational
Staffing Program
International Schools Services
126 Alexander Street
Princeton, New Jersey 08540

Dear Mr. Greeney:

I have learned that you notified my office's Assistant Director of the Teacher Placement Unit, Mr. E. Darrell Elder, about vacancies in the Country of Dubai. I understand you personally telephoned him and requested his assistance in locating possible applicants.

In making your request for applicants, I understand you informed him that applicants of a certain ethnic background would not be considered and should not apply. Mr. Elder proceeded to publish your request in writing.

For whatever reason your association may wish to screen and consider applicants for foreign service placements, I wish you to understand that it is the policy of my office to report vacancy information in a manner that is totally non-discriminatory. This policy is totally consistent with the requirements of both Illinois and federal statutes. I understand the association of this office with the International Schools Services has been useful for locating foreign teaching positions for Illinois professional educators. That association will be immediately terminated if discriminatory qualifications, in violation of State and federal statutes, are placed on applicants.

Sincerely,

Joseph M. Cronin
State Superintendent of Education

JMC:SKB:dl
bc: Dr. Cronin
Jack Witkowsky
Allan S. Cohen
Susan K. Rents

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ILLINOIS OFFICE OF EDUCATION

Joseph M. Cronin
State Superintendent of Education

100 North First Street
Springfield, Illinois 62777

March 25, 1975

Mr. A. Abbott Rosen
Executive Director
Anti-Defamation League
222 West Adams Street
Chicago, Illinois 60606

Dear Mr. Rosen:

I have been asked by Dr. Allan Cohen, Executive Assistant to the State Superintendent of Education, to explain to you the circumstances surrounding my telephone conversation with Mr. Hal Greeney, Director of the Educational Staffing Program, for the International Schools Services in New Jersey.

On January 30, 1975, Mr. Greeney telephoned me in my office with a request that I assist him in locating three teachers for the fall semester to teach in the Country of Dubai. Mr. Greeney explained to me that because this was an Arab Country and the International Schools Services could not guarantee the safety of persons who were Jewish, the International Schools Services would not employ such persons for these positions.

In conversation with Mr. Greeney, he identified the safety factor for persons of Jewish background and encouraged me to make his concerns known as people requested consideration for these positions. I spoke with him regarding the need to make that information available and questioned whether or not he thought I should make that information available in identifying those vacant positions. He informed me that as persons of Jewish background would not be considered for those positions, that I make that information available to placement directors. He told me that the International Schools Services "cannot employ for these positions any teacher who has a Jewish surname or who is an American Jew or who has Jewish ancestors." He requested this be checked out before anyone was referred, because as he stated, "I would have to check out the ancestry on all those people." In stressing the

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time factor in locating these individuals, Mr. Greeney said that the restrictions would be necessary in order to get the kind of applicant they wanted quickly without going through large numbers of applications from people they could not use anyway.

I believe I acted in what I thought was an effort to identify the personal safety factor potentially involved in that Arab Country. While responding to the needs of the International Schools Services, I failed to consider the discriminatory impact this would have. I deeply regret that in attempting to respond to Mr. Greeney's needs, I thoughtlessly acted in response to his need.

Sincerely yours,

E. Darrell Elder

E. Darrell Elder
Assistant Director
Teacher Placement

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CHARGE OF DISCRIMINATION

[illegible]

CAUSE OF DISCRIMINATION

[illegible]

NAME (Indicate Mr., Mrs., Miss)
Anti-Defamation League of B'nai B'rith

DATE OF BIRTH

STREET ADDRESS: 315 Lexington Avenue
COUNTY: New York

SOCIAL SECURITY NO.

CITY, STATE, AND ZIP CODE: New York, New York 10016

TELEPHONE NO. (Include area code)

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME (Indicate Mr., or Mrs.): Justin Finger, Arnold Forster, Edward Leavy

TELEPHONE NO. (Include area code): (212) 689-7400

STREET ADDRESS: 315 Lexington Avenue

CITY, STATE, AND ZIP CODE: New York City, N.Y. 10016

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU (If more than one, list all)

NAME: Hospital Corporation of America

TELEPHONE NO. (Include area code): (615) 327-9551

STREET ADDRESS: One Park Plaza

CITY, STATE, AND ZIP CODE: Nashville, Tennessee

OTHERS WHO DISCRIMINATED AGAINST YOU (If any)

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY: ☐ YES ☐ NO

DATE FILED

AGENCY CHARGE FILED WITH (Name and address)

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, and year): continuing to present

Explain what unlawful act was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

See attached.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE: 6/4/75

CHARGING PARTY (Signature): S/ARNOLD FORSTER

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

NOTARY PUBLIC

SIGNATURE OF EEOC REPRESENTATIVE

DATE: 6/4/75

SIGNATURE AND TITLE: N/EDWARD N. LEAVY

(If it is difficult for you to get a Notary Public to sign this, sign your name and mail to the District Office. The Commission will notarize the charge for you at a later date.)

EEOC FORM 5 (Rev. 1-72)

Previous editions of this form may be used.

GPO: 1974 O-[illegible]

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B'nai B'rith, founded in 1843, is the oldest service organization of American Jews.

The Anti-Defamation League was organized in 1913 as a section of B'nai B'rith to advance good will and mutual understanding among Americans of all creeds and races, and specifically to combat anti-Semitism and anti-Jewish activities in the United States.

Among its many activities directed to these ends, the Anti-Defamation League has developed and implemented programs to protect the well-being and security of American citizens of the Jewish faith. The Anti-Defamation League of B'nai B'rith has undertaken an active role in protecting American Jews, as well as other minorities, from discrimination.

The members of ADL, as American Jews, are subject directly to economic injury by the anti-Jewish discriminatory practices of Hospital Corporation of America.

Hospital Corporation of America is a corporation with offices at One Park Plaza, Nashville, Tennessee. Among their other activities, they solicit persons for employment in the allied medical fields.

During the spring of 1974, Hospital Corporation of America advertised in the American Society of Hospital Pharmacist Job Placement Services circular that they were recruiting pharmacists for both stateside and overseas hospitals. (See affidavit of LYMAN GORDON CHAN annexed hereto.)

On information and belief, Hospital Corporation of America had a hospital under construction in Saudi Arabia and were seeking staff for that hospital. (See affidavit of LYMAN GORDON CHAN annexed hereto.)

In order to obtain employees for that hospital (King Faisal Specialist Hospital, Riyadh, Saudi Arabia), Hospital Corporation arranged interviews at their headquarters in Nashville, Tennessee.

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At least one prospective applicant, and on information and belief, all prospective applicants were informed that to obtain employment, they would have to produce a baptismal certificate or a statement of religion signed by a minister in order to show they were not Jewish. (See CHAN affidavit annexed hereto.)

Hospital Corporation of America was fully aware of the discriminatory practices in which they were involved. Indeed, on information and belief, Hospital Corporation of America was aware they received the contract to manage the hospital in Saudi Arabia because they had no Jewish members on their Board of Directors. (See Affidavit #2 of LYMAN GORDON CHAN annexed hereto.)

Relief Sought

HOSPITAL CORPORATION OF AMERICA VIOLATED AND CONTINUES TO VIOLATE TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AS AMENDED, CONSTITUTING A PATTERN AND PRACTICE OF ILLEGAL DISCRIMINATION.

The letter of WILLIAM A. CAREY, General Counsel of the EEOC, to SENATOR FRANK CHURCH annexed hereto is self-explanatory.

WHEREFORE, complainant respectfully requests:

1. A finding of probable cause that Hospital Corporation of America discriminated and continues to discriminate in its hiring policies against Jews.

2. A finding of probable cause that Hospital Corporation of America discriminated and continues to discriminate in its appointment to its Board of Directors.

3. That, failing conciliation, an action be brought to enjoin Hospital Corporation from continuing the above discriminatory practices, to obtain damages of back pay to persons of the Jewish faith who were not employed because of these discriminatory practices, and to obtain such other relief as is necessary and appropriate in the circumstances.

4. That, in the alternative, a Right to Sue letter be granted.

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A F F I D A V I T

My name is Lyman Gordon Chan. My address is 1741 Park Avenue, #26, Long Beach, California.

I hereby reaffirm all of the statements made in my Affidavit annexed hereto.

During the course of the interview on December 18, 1974 with Mr. Ronald Marston and Mr. Charles Ahlstrand I asked how it was that a Nashville corporation had been contracted by the Saudis to manage their hospital. I was told that the original contract was with a British corporation but one of the corporation's subsidiaries builds ships and had sold a submarine to the Israelis and as a result their contract was cancelled.

Because of the cancellation, the Saudis needed a management organization very quickly and approached Hospital Corporation of America because it is one of the largest corporations of its type in the United States.

In addition, I was told a factor taken into consideration by the Saudis was that Hospital Corporation of America had no Jewish members on its Board of Directors.

Signature Lyman G. Chan

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)SS

On Thursday, May 8, 1975 before me, the undersigned, a Notary Public in and for the said State, personally appeared Lyman Gordon Chan, known to me to be the person whose name is herein subscribed to the within instrument, and acknowledged that he executed the same.

Witness my hand and official seal. Gertrude J. Lambert

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A F F I D A V I T

My name is Lynne Gordon Chan. My address is 1741 Park Avenue, #24, Long Beach, California.

In the Spring of 1974 I saw in the American Society of Hospital Pharmacist Job Placement Services circular an ad placed by Hospital Corporation of America recruiting pharmacists for both stateside and overseas hospitals. I responded to this ad expressing an interest in their overseas hospitals and was subsequently advised that they had a hospital under construction in Saudi Arabia and would be contacting me at a later date.

I later received a letter dated September 4, 1974 from Mr. Ronald Marston providing more details about the position and an application form for me to fill out if I were interested. I completed the application and mailed it on October 11, 1974. I contacted them by telephone on December 10, 1974 to follow up on my application. During the course of this telephone conversation I was invited for an interview on, I believe, December 18, 1974 at the headquarters of Hospital Corporation of America, Nashville, Tennessee. The position for which I was to be interviewed was that of Assistant Chief Pharmacist, King Faisal Specialist Hospital, Riyadh, Saudi Arabia.

I was interviewed by Mr. Ronald Marston and by Mr. Charles Ahlstrand. During the course of the interview they explained to me that if I was offered the position it would be necessary for me to produce for them a baptismal certificate or a statement of religion signed by a minister. They told me that this was necessary in order to show that I was not Jewish.

Subsequent to this interview, I received a letter dated December 26, 1974 from Mr. Marston offering me the position and requesting, among other items, that I also provide them with either the baptismal certificate or a statement of religion.

I complied with all of the requirements, provided Hospital Corporation of America with everything they requested, and on January 27, 1975 was hired for the position.

- More -

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I left the United States on January 28, 1975 and arrived in Riyadh on the morning of January 30, 1975 and took up my position as Assistant Chief Pharmacist at the King Faisal Specialist Hospital.

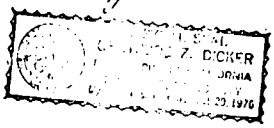
Lymon G. Chan

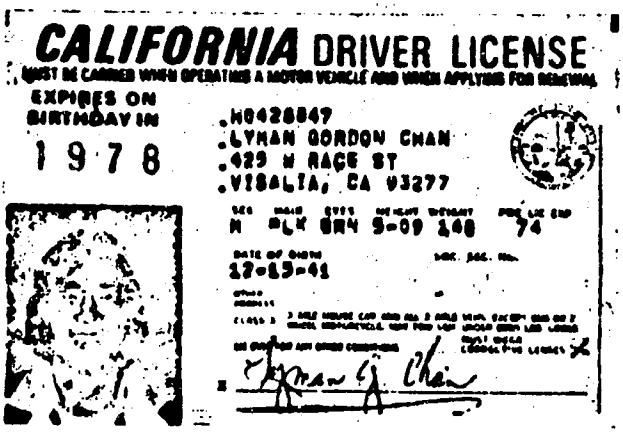
STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)ss

On Thursday, May 8, 1975 before me, the undersigned, a Notary Public in and for the said State, personally appeared Lymon Gordon Chan known to me to be the person whose name is herein subscribed to the within instrument, and acknowledged that he executed the same.

Witness my hand and official seal.

Gertrude G. Decker





CALIFORNIA DRIVER LICENSE

MUST BE CARRIED WHEN OPERATING A MOTOR VEHICLE AND WHEN APPLYING FOR RENEWAL

EXPIRES ON BIRTHDAY IN

1978

.H0428847
.LYMAN GORDON CHAN
.429 N RACE ST
.VISALIA, CA 93277

M BLK BRN 5-09 140 74

12-13-41

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Hospital Corporation International Ltd

Holiday Inn,
King Henry's Road,
Swiss Cottage,
London, N.W.3.

June 24, 1974

Mr. Lyman G. Chan,
130th General Hospital,
APO New York, N.Y. 09696,
U.S.A.

Dear Mr. Chan,

Thank you very much for your interest in Hospital Corporation of America and especially the King Faisal Specialist Hospital.

I am most impressed with your credentials and I do want to explore your interest further. It will be several months before definite plans are made regarding the exact date when the professional staff will be required to be on site. The hospital will open March 31, 1975 and we feel that the staff will be "on-board" approximately a month before the opening date.

As soon as information is available, I will forward it to you for your evaluation and benefit.

Please be assured that we do appreciate your interest and look forward to discussing these opportunities with you further.

Sincerely,

A L Coverly

Dictated by Ronald C. Marston
and signed in his absence.

RCM/ac

Middle East office
P.O. Box 7160
Beirut, Lebanon
Telex [illegible]

Directors
John C. Hoff, Thomas F. Frist Jr. MD
Robert P. Breech, George M. Mary
Thomas W. Todd

A subsidiary of
Hospital Corporation of America
Incorporated in the Cayman Islands
with Limited Liability

One Park Plaza
Nashville, Tennessee 37203 (615) 327-9551

September 4, 1974

Mr. Lyman G. Chan
130th General Hospital
APO New York, NY 09696

Dear Mr. Chan:

Thank you very much for your request for further information about the King Faisal Specialist Hospital. I must apologise for my delay in responding to your letter; however, due to my travel schedule and the delay in having the informational materials printed, I was unable to respond earlier.

The King Faisal Specialist Hospital is a 250-bed referral, research center that will open in April 1975. We feel that the opportunities at the Hospital will be exceptional and quite unique. The Hospital is described as the most modern hospital in the world.

Housing accommodations will be furnished by the Hospital for personnel who live on campus. These housing units are completely new, air-conditioned, modern apartments, having efficiency, one-bedroom and two-bedroom accommodations. On the compound will be a swimming pool with an amenities center. The amenities center will have facilities available for movies, a reading room and music room, a snack bar, a central lounge area, as well as a tennis court and squash court.

Transportation for new employees will be provided by the King Faisal Specialist Hospital from their point of origin to Riyadh, Saudi Arabia. Household goods will not be shipped at their expense since all single housing units will be completely furnished. Vacation for employees will be 30 days annual leave with return travel to the United States paid at the expense of the Hospital. Additional post leave will be available whereby the employee will be given seven days post leave after the first 120 days of employment and again after 240 days of employment. Naturally, the normal and routine medical care will be provided by the Hospital for all employees, free of charge.

Other benefits are also attractive and these will be supplied later provided you have a continuing interest. Emergency leave is also included due to the distance involved and the problems associated therewith.

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The contract for all expatriate employees will be a 25-month contract inclusive of vacation and post leave. Return travel after completion of the contract will also be at the expense of the Hospital.

The typical work schedule for the King Faisal Specialist Hospital will be a 6-day, 48-hour work week with rotational schedules for personnel. We feel with our liberal vacation and post leave policy, as well as the holidays that will be given, approximately ten days per year, that this rotational schedule and work week is appropriate.

If, after your review of this information, you have a continuing interest, I would appreciate your completing and forwarding to me the enclosed application indicating your first, second and third areas of preference, your salary expectations and your date of availability. As I mentioned, however, it will be perhaps March before individuals are brought on board for the Hospital, and then from March to September we will continue to bring staff on board. Therefore, there is ample time for individuals to make preparations for such a move.

As quickly as we have our salary schedule complete, I will also advise you of the beginning base rate. However, the salary is quite competitive with those paid in the United States.

We do have positions available for physicians, staff nurses, charge nurses, supervisors, inservice education instructors and many others. Licensing requirements for employment are the same as those of the United States.

We shall be recruiting a few pharmacists from the United States. Should your interest continue after your review, then I shall look forward to receiving your completed employment application.

Sincerely,

Ronald C. Marston
Director of International Recruitment

RCM:sf

Enclosures

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HOSPITAL
CORPORATION
of AMERICA
One Park Plaza;
Nashville, Tennessee 37203 (615) 327-9551

December 26, 1974

Mr. Lyman Gordon Chan
C/O Lowenberg
8175 Inverness Ridge Road
Potomac, Maryland 20854

Dear Mr. Chan:

This letter will confirm our verbal offer of employment to you with the King Faisal Specialist Hospital in Riyadh, Saudi Arabia, for 25 months. You have been selected for the position of Associate Chief Pharmacist and your reporting date will be on or about January 29, 1975. This offer is of course conditional upon the following:

Your ability to pass a complete medical examination

Your ability to obtain a visa to enter Saudi Arabia

Your obtaining certain vaccinations and inoculations specified by The King Faisal Specialist Hospital.

The confirmation of references and other data included in your application form

Documentation by photocopy of current licenses and educational diplomas, degrees and certificates.

The first three conditions set forth above are also applicable to your dependents who plan to reside with you in Saudi Arabia.

The attached form sets forth your compensation and basic deductions. It is understood that the converted values of the Saudi Riyal and U.S. Dollar are determined by the conversion rate shown on the form, which is subject to some fluctuations from time to time. In the event of major changes in currency values, the Hospital will review this compensation and may make certain adjustments to assure equity in salary payments.

You should complete the enclosed forms for you and each dependent traveling with you including: passports, visa cards, three photographs (passport size), also forwarding a vaccination certificate showing current smallpox and cholera immunization, and a statement of religion or baptismal record signed by your minister. Enclose also the completed enrollment card, the completed "blue form," as well as a

copy of your marriage certificate.

You will find enclosed medical questionnaires that you and your family should complete and give to the physician who will give your medical examination. I have enclosed Pre-Employment Medical Examination forms that you should give to the examining physician. In your case, I'm asking you to select a qualified physician to give the medical examination to your family and forward the results to me immediately with his evaluation. The cost of this routine medical examination will be paid by H.C.A.

I look forward to hearing from you. I suggest that you arrange the medical examinations during the week of December 30, 1974. Please indicate to us in a letter or by telephone the city in which your first flight will originate. Also, we will need to know if you plan to move to an alternate address before departing. As soon as we receive your passports and other pertinent data we will begin making your travel arrangements and your visa arrangements.

Sincerely,

Ronald C. Marston
Director of International Recruitment

RCM:pn

Enclosures

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Mr. Hal Wood,
Director of Community/Employee Relations

March 10, 1975

Charles E. Jackson, Director - Department of Pharmacy

Employment termination of Lynn G. Chan, Pharm.D.

I request that the contract of Lynn G. Chan be terminated and that he be returned to his point of origin as soon as possible.

His almost total dissatisfaction after six weeks in Riyadh, in my opinion, is irreversible. At this critical point in time a positive attitude is needed for organizational growth and not the negativism that Dr. Chan has thus far demonstrated.

Charles E. Jackson

Note: Dr. Chan's point of origin is Visalia, California and not Los Angeles. He should be reimbursed $25.00 each way.

cc: Dr. Lynn Chan
Mr. Jack Frayer
Mr. Alex Cavenahi

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(PLEASE PRINT OR TYPE) ARAMCO

CHARGE OF DISCRIMINATION

FORM APPROVED OMB NO. 124-R0001

INSTRUCTIONS

CAUSE OF DISCRIMINATION

[ ] RACE OR COLOR [ ] SEX
[X] RELIGION CREED
[ ] NATIONAL ORIGIN

NAME (Indicate Mr. or Ms.)
Anti-Defamation League of B'nai B'rith

DATE OF BIRTH

STREET ADDRESS
315 Lexington Avenue

COUNTY
New York

SOCIAL SECURITY NO.

CITY, STATE, AND ZIP CODE
New York, N.Y. 10016

TELEPHONE NO. (Include area code)

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME (Indicate Mr. or Ms.)
Justin Finger, Arnold Forster, Edward Leavy

TELEPHONE NO. (Include area code)
(212) 689-7400

STREET ADDRESS
315 Lexington Avenue

CITY, STATE, AND ZIP CODE
New York, N.Y. 10016

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU (If more than one, list all)

NAME
Aramco Services Company

TELEPHONE NO. (Include area code)
(713) 237-5515

STREET ADDRESS
1100 Milam

CITY, STATE, AND ZIP CODE
Houston, Texas 77002

OTHERS WHO DISCRIMINATED AGAINST YOU (If any).

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY
[ ] YES [ ] NO

DATE FILED

AGENCY CHARGE FILED WITH (Name and address)

APPROXIMATE NO. OF EMPLOYEES OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST

DATE(S) MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, and year)

Explain what unfavorable action was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

See attached.

I HAVE READ THE ABOVE CHARGE AND THE FACTS STATED IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION OR BELIEF.

DATE

CHARGING PARTY (Signature)

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

NOTARY PUBLIC

(If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)

DULY AUTHORIZED TO ACT IN THIS MATTER AS REPRESENTATIVE

DATE

SIGNATURE AND TITLE

EEOC FORM JUN 72 5 PREVIOUS EDITIONS OF THIS FORM MAY BE USED.

GPO 1974 O 525-841

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B'nai B'rith, founded in 1843, is the oldest service organization whose membership is composed of American Jews.

The Anti-Defamation League was organized in 1913 as a section of B'nai B'rith to advance good will and mutual understanding among Americans of all creeds and races, and specifically to combat anti-Semitism and anti-Jewish activities in the United States.

The members of ADL, as American Jews, are subject directly to economic injury by the anti-Jewish discriminatory practices of Aramco.

Aramco Services Company is one of "the biggest oil companies in the world." Aramco has offices at 1100 Milam, Houston, Texas 77002.

According to its own advertisement (annexed hereto), Aramco has been operating in Saudi Arabia since 1933.

On February 24, 1975, and again on March 10, 1975, Aramco advertised in the American Medical News for obstetrician-gynecologists to apply for employment in Saudi Arabia.

On information and belief these two advertisements are only a small fraction of Aramco's solicitation of American employees for employment in Saudi Arabia.

This agency can take judicial notice of the fact that persons of the Jewish faith have been denied visas and not permitted to enter Saudi Arabia since 1948.

On information and belief officials of Aramco have knowledge of this discriminatory restriction. Indeed, their employment application states:

"Federal Law Prohibits Discrimination Because of Sex" and "Federal Law Prohibits Discrimination Because of Age".

In no place does the Aramco employment application ("Qualification Record") indicate that "Federal Law Prohibits Discrimination Because of Religion." Indeed, the same application indicates:

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"This form is to be used only in connection with applicants for employment to be hired for work in Saudi Arabia and with applicants who are required during the course of their employment to travel to Saudi Arabia or any other country."

This qualification is added to the application form because on information and belief Aramco has knowledge that Jews have not been permitted to enter Saudi Arabia since 1948.

On information and belief Aramco requests applicants to submit a Baptismal Record or other proof that they are not Jewish.

RELIEF SOUGHT

ARAMCO HAS BEEN AND CONTINUES TO VIOLATE TITLE VII OF THE CIVIL RIGHTS LAW OF 1964 AS AMENDED, CONSTITUTING A PATTERN AND PRACTICE OF ILLEGAL DISCRIMINATION.

The letter annexed hereto from the General Counsel of EEOC to SENATOR FRANK CHURCH speaks for itself. It states that American companies employing American citizens for employment overseas are covered by Title VII.

WHEREFORE: The Anti-Defamation League respectfully requests:

1. A finding of probable cause that Aramco has been and still is discriminating against persons of the Jewish faith.

2. That, failing conciliation, an action be brought to enjoin these practices of discrimination, to obtain damages of back pay to Jews who were not employed because of these discriminatory practices, and to obtain all other necessary and appropriate relief deemed just and proper.

3. That, in the alternative, a Right to Sue letter be granted.

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OFFICE USE ONLY

ISSUED BY

DATE

with applicants for employment to be hired for work in Saudi Arabia and with applicants for employment who are required during the course of their employment to travel to Saudi Arabia or any other country

REQUISITION NO

ARAMCO SERVICES COMPANY

(A CORPORATION)

QUALIFICATION RECORD

POSITION DESIRED

FEDERAL LAW PROHIBITS DISCRIMINATION BECAUSE OF SEX

HAVE YOU PREVIOUSLY APPLIED FOR EMPLOYMENT WITH THIS COMPANY OR ITS WHOLLY OWNED

FEDERAL LAW PROHIBITS DISCRIMINATION BECAUSE OF AGE

NAME LAST FIRST MIDDLE SOCIAL SECURITY NO. BIRTH DATE

PERSONAL DATA

PERMANENT ADDRESS — INDICATE NO., STREET, CITY, ZONE & STATE TELEPHONE NO. TELEGRAPH & MAIL

TEMPORARY ADDRESS — INDICATE NO., STREET, CITY, ZONE & STATE TELEPHONE NO. TELEGRAPH & MAIL WILL RESIDE AT THIS ADDRESS FROM / / TO / /

HEIGHT WEIGHT LBS MARITAL STATUS DATE MAL DATE

☐ SINGLE ☐ MARRIED / / ☐ DIVORCED / / ☐ SEPARATED

NO. OF DEPENDENTS (FOR HOUSING REQUIREMENTS)

SELF ☐ SPOUSE ☐ LIST CHILDREN BY AGE

MALE FEMALE OTHER DEPENDENTS TOTAL

DO YOU OWN HOME ☐ RENT ☐ BOARD (OTHER THAN WITH PARENTS) ☐ RESIDE WITH PARENTS ☐

CITIZEN OF U.S.A.? ☐ YES ☐ NO. HAVE YOU EVER HAD A PASSPORT? STATE WHAT FOR, WHEN AND WHERE YOU GAVE

HAVE YOU EVER BEEN CONVICTED OF A FELONY OR MISDEMEANOR? STATE YES OR NO. IF YES, STATE CHARGE

IN CASE OF EMERGENCY NOTIFY (INDICATE NAME & ADDRESS) TELEPHONE NO.

EDUCATION

SCHOOLS (NAME AND LOCATION)	NO. OF YEARS	DATES ATTENDED FROM	TO	GRADUATE?	DEGREES RECEIVED	AVG GRADE	SUBJECTS OF SPECIALIZATION OR MAJOR AND MINOR
ELEMENTARY							
HIGH SCHOOL							
COLLEGE							
COLLEGE							
GRADUATE SCHOOL							
BUSINESS OR TRADE SCHOOL							
CORRESP. OR NIGHT SCHOOL							
SPECIAL ON JOB OR SIMILAR TYPE TRAINING							

SCHOLASTIC STANDING IN HIGH SCHOOL IN COLLEGE

PRINCIPAL SOURCES OF YOUR SPENDING MONEY WHILE IN H. S. AND COLLEGE

PART OF COLLEGE EXPENSES YOU EARNED ☐ NONE ☐ 0-25% ☐ 26-50% ☐ 51-75% ☐ MORE THAN 75%

WHAT ARE YOU PRESENTLY DOING TO ADVANCE YOUR EDUCATION?

WHAT FOREIGN LANGUAGES DO YOU SPEAK? INDICATE PROFICIENCY: FAIR, GOOD, EXCELLENT READ WRITE

1

2

3

ABC-4701 (8/74)

NOTE: COVER THE FULL DISPOSITION OF YOUR TIME SINCE LEAVING SCHOOL. LIST LAST JOB FIRST. SHOW NAMES OF ALL FIRMS OR IF IN BUSINESS FOR YOURSELF (INDICATE NAME AND WHY BUSINESS WAS DISCONTINUED.) ALSO ACCOUNT FOR MILITARY SERVICE.

EXPERIENCE

FROM / TO / NO. OF YEARS PRESENT/LAST EMPLOYER ADDRESS TYPE OF BUSINESS / SUPERVISOR'S NAME POSITION HELD / MONTHLY SALARY RECEIVED INITIALLY / LAST HOME ADDRESS WHILE EMPLOYED WITH THIS COMPANY	MAY WE CONTACT THIS EMPLOYER? YES NO BRIEF DESCRIPTION OF YOUR DUTIES AND RESPONSIBILITIES REASON FOR LEAVING INTERVIEWER'S COMMENTS
FROM / TO / NO. OF YEARS EMPLOYER ADDRESS TYPE OF BUSINESS / SUPERVISOR'S NAME POSITION HELD / MONTHLY SALARY RECEIVED INITIALLY / LAST HOME ADDRESS WHILE EMPLOYED WITH THIS COMPANY	BRIEF DESCRIPTION OF YOUR DUTIES AND RESPONSIBILITIES REASON FOR LEAVING INTERVIEWER'S COMMENTS
FROM / TO / NO. OF YEARS PRESENT/LAST EMPLOYER ADDRESS TYPE OF BUSINESS / SUPERVISOR'S NAME POSITION HELD / MONTHLY SALARY RECEIVED INITIALLY / LAST HOME ADDRESS WHILE EMPLOYED WITH THIS COMPANY	BRIEF DESCRIPTION OF YOUR DUTIES AND RESPONSIBILITIES REASON FOR LEAVING INTERVIEWER'S COMMENTS
FROM / TO / NO. OF YEARS EMPLOYER ADDRESS TYPE OF BUSINESS / SUPERVISOR'S NAME POSITION HELD / MONTHLY SALARY RECEIVED INITIALLY / LAST HOME ADDRESS WHILE EMPLOYED WITH THIS COMPANY	BRIEF DESCRIPTION OF YOUR DUTIES AND RESPONSIBILITIES REASON FOR LEAVING INTERVIEWER'S COMMENTS
FROM / TO / NO. OF YEARS PRESENT/LAST EMPLOYER ADDRESS TYPE OF BUSINESS / SUPERVISOR'S NAME POSITION HELD / MONTHLY SALARY RECEIVED INITIALLY / LAST HOME ADDRESS WHILE EMPLOYED WITH THIS COMPANY	BRIEF DESCRIPTION OF YOUR DUTIES AND RESPONSIBILITIES REASON FOR LEAVING INTERVIEWER'S COMMENTS

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EXPERIENCE

EMPLOYER

ADDRESS

TYPE OF BUSINESS | SUPERVISOR'S NAME

POSITION HELD | MONTHLY SALARY RECEIVED: INITIALLY | LAST

HOME ADDRESS WHILE EMPLOYED WITH THIS COMPANY

REASON FOR LEAVING

INTERVIEWER'S COMMENTS

FROM | TO | NO. OF YEARS

BRIEF DESCRIPTION OF YOUR DUTIES AND RESPONSIBILITIES

PRESENT/LAST EMPLOYER

ADDRESS

TYPE OF BUSINESS | SUPERVISOR'S NAME

POSITION HELD | MONTHLY SALARY RECEIVED: INITIALLY | LAST

HOME ADDRESS WHILE EMPLOYED WITH THIS COMPANY

REASON FOR LEAVING

INTERVIEWER'S COMMENTS

OTHER EXPERIENCE

IN ADDITION TO POSITION APPLIED FOR LIST ANY OTHER TYPE OF WORK YOU ARE QUALIFIED TO DO LIST IN ORDER OF ABILITY OR PREFERENCE

OTHER WORK	EXPERIENCE FROM	EXPERIENCE TO	REMARKS

CAN YOU READ BLUEPRINTS? | CAN YOU TYPE? | APPROXIMATE SPEED

CAN YOU TAKE SHORTHAND? | APPROXIMATE SPEED | METHOD

(CANDIDATES FOR STENOGRAPHIC POSITIONS MUST TAKE AND TRANSCRIBE SHORTHAND AT A MINIMUM RATE OF 100 WORDS PER MINUTE AND BE CAPABLE OF TYPING A MINIMUM OF 60 WORDS PER MINUTE.)

CAN YOU OPERATE A MOTOR VEHICLE? | DO YOU PRESENTLY HAVE AN OPERATOR'S LICENSE? | ISSUED BY WHICH STATE? | EXPIRATION DATE

STANDARD STICK SHIFT? | AUTOMATIC SHIFT?

ENGINEERING & PROFESSIONAL APPLICANTS SHOULD ALSO COMPLETE THE FOLLOWING

PLEASE SUMMARIZE SPECIFIC EXPERIENCE BELOW

SCOPE OF ADMINISTRATIVE RESPONSIBILITY IN LAST POSITION

RESPONSIBILITY FOR POLICY ADMINISTRATION

YEARS _____ WITH WHAT FIRMS? _____

WHAT KIND OF POLICIES? _____

RESPONSIBILITY FOR POLICY FORMULATION:

YEARS _____ WITH WHAT FIRMS? _____

WHAT KIND OF POLICIES? _____

RESPONSIBILITY FOR PROGRAM INITIATION OR DEVELOPMENT

YEARS _____ WITH WHAT FIRMS? _____

WHAT KIND OF PROGRAMS? _____

(TURN PAGE)

SPECIAL LICENSES

LIST ALL OTHER LICENSES (AIRCRAFT, MARINE, RADIO, ETC.)

LICENSE	CLASS	DATE ISSUED	EXPIRES	ISSUING AUTHORITY

HOBBIES

LIST HOBBIES, SPORT OR RECREATION IN ORDER OF PREFERENCE

REFERENCES

NAMES OF PERSONS OR RELATIVES IN THIS COMPANY WHOM YOU CAN GIVE AS REFERENCES

NAMES	POSITION	DEPARTMENT

NAMES OF OTHERS WHOM YOU CAN GIVE AS REFERENCES (DO NOT INCLUDE RELATIVES OR FORMER EMPLOYERS.)

NAME	ADDRESS	OCCUPATION

KINDLY ADD ANY INFORMATION YOU FEEL WILL ASSIST US IN EVALUATING YOUR QUALIFICATIONS.

IF ACCEPTED, HOW LONG WILL YOU REQUIRE BETWEEN ACCEPTANCE AND EMPLOYMENT?

I hereby apply for employment with this Company and authorize it to solicit all information desired in connection with this application, including matters of opinion, character, ability, reputation and past conduct, and I authorize and request each individual and organization named in this application to give such information.

I agree to present myself for physical examination by a Company physician or a Company designated physician upon request of the Company.

I understand and agree that if I fail to meet the Company's physical requirements, or if for any reason the Company determines that I am not qualified for employment, I may not be employed and the Company shall not be liable for loss or damages because of its failure or refusal to employ me.

If employed, I agree that in the case of injury or illness arising out of or in the course of my employment, while my assignment or duties are such that I am not covered by the Workmen's Compensation law of Texas, the Company agrees to pay and I agree to accept, in full satisfaction of any claims based on such injury or illness, an amount equal to the amounts which would otherwise have been payable under the Workmen's Compensation law of Texas. I understand it is the intent of this agreement to extend, by contract, the mutual benefits and limitations of the Workmen's Compensation law of Texas to employees who would not otherwise be covered, upon the same terms and conditions as if such employees had been covered, and the employee's contractual rights hereunder shall be substituted for, and exclusive of, all other causes of action he might otherwise have had, excepting only causes of action he would have retained as a covered employee under the Workmen's Compensation law of Texas. Any claim for compensation under this agreement shall be a ratification of this agreement as my exclusive basis for any right of recovery from the Company and a waiver of all other claims as provided herein.

Should I be given employment in the position now applied for, or in any other position, I hereby agree that such employment may be terminated by the Company at any time without liability to me other than for wages, salary or other compensation to which I have already become entitled for services rendered up to the date of termination.

I understand that employment by this Company is contingent upon my ability to obtain a visa from the Saudi Arabian Government or from the government of any other country ~~to which I am required to travel in the course of employment~~, and also upon my ability to secure admission ~~to such country or countries~~.

This agreement shall be governed by the law of Texas.

Application dated at _____

on this _____ day of _____ 19_____

Signature _____

IT IS UNDERSTOOD AND AGREED THAT ALL REPRESENTATIONS HEREIN GIVEN CONSTITUTE PART OF MY APPLICATION FOR EMPLOYMENT. ANY MISREPRESENTATIONS SHALL RELIEVE THE COMPANY OF ALL OBLIGATIONS UNDER OR IN CONNECTION WITH OUR EMPLOYMENT AGREEMENT.

PLEASE ANSWER EACH OF THE FOLLOWING QUESTIONS, GIVING DETAILS WHERE APPLICABLE:

DESCRIBE THE DISEASES YOU HAVE HAD IN THE PAST 10 YEARS BUT NOW YOU ARE NOT SUFFERING THEREFROM?

HAVE YOU HAD ANY SURGICAL OPERATIONS? IF "YES," WHEN, WHERE, AND WHAT TYPE OF OPERATION?

HAVE YOU HAD ANY FRACTURES, HEAD INJURIES, ATHLETIC INJURIES, AUTO ACCIDENTS, INDUSTRIAL INJURIES? IF "YES," WHAT, WHEN, RESULT AND DID IT REQUIRE HOSPITALIZATION?

HAVE YOU EVER SOUGHT COMPENSATION FROM AN EMPLOYER FOR INJURY OR ILLNESS?

HAVE YOU EVER SUFFERED FROM ASTHMA OR OTHER ALLERGIES? IF "YES," DISCUSS FREQUENCY AND SEVERITY OF ATTACKS:

HAVE YOU EVER HAD ANEMIA, OR BLOOD DISEASE?

HAVE YOU EVER HAD ANY CHRONIC SKIN DISEASE? IF "YES," DESCRIBE:

DO YOU HAVE GOOD VISION?	DO YOU WEAR GLASSES? IF "YES," WHEN WERE YOUR EYES LAST EXAMINED?		
HAVE YOU EVER HAD ANY EAR TROUBLES SUCH AS:	OTITIS MEDIA (DISCHARGE FROM EAR)	PERFORATED EAR DRUM	OTHER

DO YOU HAVE ANY DEGREE OF DEAFNESS? IF "YES," DESCRIBE FULLY:

HAVE YOU EVER HAD SINUSITIS? IF "YES," DESCRIBE FULLY:

HAVE YOU EVER HAD ANY OF THE FOLLOWING OR ANY OTHER SERIOUS ILLNESS?	RHEUMATIC FEVER	HEART TROUBLE	HIGH BLOOD PRESSURE

IF "YES" DESCRIBE:

COMPLETE REVERSE SIDE

VE YOU EVER HAD ANY TROUBLE WITH YOUR STOMACH, INTESTINES OR RECTUM (PAIN AT BUDDENAL OR GASTRIC ULCER, COLITIS, HEMORRHOIDS) IF "YES" DESCRIBE

VE YOU EVER HAD OR BEEN TREATED FOR TUBERCULOSIS? IF "YES" EXPLAIN

AVE YOU EVER HAD A HERNIA OR HERNIA OPERATION? IF "YES" DESCRIBE

AVE YOU EVER HAD ANY TROUBLE WITH YOUR KIDNEYS OR BLADDER? IF "YES" DESCRIBE

AS ALBUMEN EVER BEEN FOUND IN YOUR URINE?

AVE YOU EVER HAD AN INJURY TO YOUR BACK (SPRAIN, SACRO-ILIAC DISORDER, RUPTURED OR SLIPPED DISC, HYPERTROPHIC STRUCT IF "YES" DESCRIBE

AVE YOU EVER BEEN A DIABETIC?	HAS SUGAR EVER BEEN FOUND IN YOUR URINE?

IF "YES" DESCRIBE:

AVE YOU EVER HAD A BONE OR JOINT DISEASE SUCH AS ARTHRITIS? IF "YES" DESCRIBE

AVE YOU EVER HAD ANY NERVOUS DISORDERS OR BREAKDOWN? IF "YES" DESCRIBE

AVE YOU EVER HAD EPILEPSY, FAINTING SPELLS OR CONVULSIONS? IF "YES" DESCRIBE

EEN YOU EVER DISCHARGED FROM MILITARY SERVICE FOR MEDICAL REASONS?	WERE YOU EVER HOSPITALIZED ANYWHERE?

IF "YES" DESCRIBE:

AVE YOU EVER BEEN REJECTED FROM MILITARY SERVICE, INSURANCE, ETC. FOR PHYSICAL REASONS? IF "YES" EXPLAIN

DATED AT	DATE	SIGNATURE OF APPLICANT

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Senator STEVENSON. Thank you, Mr. Brody.

Mr. Eisenberg?

Mr. EISENBERG. Thank you, Mr. Chairman. There were two themes that the administration representatives stressed yesterday, one, that there is no threat, and, two, that these bills jeopardize the chances for peace in the Middle East.

I think the study that was referred to by Mr. Brody and the article by Mr. Rowan in the Washington Post of July 6, which discusses Mr. Levy's study and the study of the International Economic Policy Association as to the real scope of the threat of accumulating petrodollars. Both studies indicate that there is a real threat.

Mr. Rowan says in his report these studies are an effective rebuttal to an effort in some quarters to downgrade what OPEC pulled off by suggesting that the concern over OPEC's buildup has been exaggerated.

The real response to these observations as detailed in these reports is that OPEC has emerged particularly strong.

The OPEC members are expected to accumulate financial surpluses of at least $200 to $300 billion by 1980, bringing with it the potential for great economic power. And the article goes on to indicate the vast numbers that are really involved.

Perhaps to put it into perspective, when we talk of numbers like that, we ought to realize that the entire mutual fund industry in the United States, the net asset value of all of the portfolios of all mutual funds, is less than $45 billion.

So you are talking about accumulating surpluses in a matter of a year or two which vastly overshadow the value of all of those investments.

And yet the Assistant Secretary, Mr. Parsky, said yesterday in effect that there is no threat, and the thrust of the testimony of Mr. Tabor was that there is no threat.

These bills are really minimal bills. They are not bills that reach far out. S. 953 is, after all, a bill which the administration says gives it power which Mr. Parsky says it already has.

Well, if that is in fact true, that S. 953 does only give power to the administration that it already has, then certainly the effect of that bill cannot be, as Mr. Tabor indicated, that the bill would upset our efforts to make peace in the Middle East and achieve a peaceful solution to that situation.

At page 7 of his testimony Mr. Tabor indicates: "The enactment of the amendment"—this is S. 425 the Williams bill—"would be interpreted by the Arab countries as a shift in U.S. foreign policy and might jeopardize the ongoing efforts of achieving a peaceful settlement."

I don't think that argument holds water for several reasons. If minimal bills—essentially disclosure bills—are going to upset the ability of this country to achieve a settlement in the Middle East, then perhaps we ought to know about that now. The administration seems to be saying that a Mid-East settlement will only be achieved by the United States foregoing its basic antitrust policy and its basic antidiscrimination policy. I think that will be received by the world as the United States bending in very basic areas in order to achieve this "peace." It would seem that peace probably depends more on an

independent U.S. position, not a position which is brought about by Arab pressure or the perception that the United States bending to Arab pressure.

As I have noted, if these minimal bills cannot be passed because the administration says they are going to threaten the peaceful settlement, then I think we should know that now before we get involved in that kind of a situation, before there are guarantees or whatever the settlement that come up will entail.

These bills give the administration power necessary to deal with the situation really utilizing reporting and disclosure techniques widely used in the securities regulation area. The Williams bill, says you shall report and it tacks onto the existing 13(d) of the Securities and Exchange Act, reporting by people who acquire over 5 percent of public companies and gives to the administration the power to prescreen such acquisitions and then the President has the power to say yea or nay, based on certain standards such as national security.

If these bills are going to upset the possible peace in the Middle East, I think we should know it now. I think that is not a real argument. Neither does the argument of a threat hold water. I think the Levy study, and Mr. Rowan's report of the two studies in the Post indicate there is substantial threat.

And we are told by Mr. Parsky that the Kuwaitis are after all responsible investors; that they are only investing for return, they are not pushing their weight around.

I think it was the Kuwait's, if you recall, Mr. Chairman, that were the ones that tried to force Rothchild and Warberg out of a syndicate here and were successful in forcing them out of investment syndicates in Europe. You will recall that they attempted to force Merrill Lynch to accept a condition that would oust Lazard Freres from a syndicate the underwriting of which was led by Merrill Lynch. Fortunately Merrill Lynch opposed that pressure and the Kuwaitis were not successful.

But I think the incident, which received wide reportage in the general as well as the financial press and which was discussed previously at Senator Williams' hearing, indicates that the Kuwaitis are not really that docile, that they will push the boycott as far as they feel they can carry it.

When the pressure was met by Merill Lynch, they receded. I think that is a lesson also for this legislation. If the legislation is passed, and it is clear that certain practices which this country deems to be contrary to our policy are illegal and will not be tolerated, then there is a greater chance that there will be compliance.

I was really surprised at Mr. Scalia's testimony and his interpretation of the antitrust laws, which laws are pointed to as a bulwark against this kind of thing by some of the other administration witnesses.

Mr. Scalia said in his discussion of the antitrust laws:

> An agreement between commercial firms doing business in the United States to boycott another firm in this country would constitute a traditional form of restraint of trade and ordinarily would fall within the category of conduct illegal per se under the Sherman Act.

I think that is quite true.

> There are, however, some special features about the present case. First, and perhaps most important, is the fact that the ultimate purpose of the boycott is

not to injure any United States firm—nor is it even a commercial purpose in the usual sense. The boycott is ultimately a political rather than a commercial phenomenon.

Second, there is a question whether the impact upon United States trade of a boycott of this sort which in effect requires an American company to choose between certain types of business relations with Israel, or dealing with Arab countries is so severe as to justify application of the per se rule of illegality as applied domestically.

I have some familiarity with the antitrust laws, and it seems to me this is a new doctrine, that there is really no case I am aware of that supports that kind of a statement.

I have some familiarity with the antitrust laws, and it seems to me this is a new doctrine, that there is really no case I am aware of that supports that kind of a statement.

I think that the Supreme Court in *Klors and Silver* v. *NYSE* and in cases which have been cited in previous hearings indicated in the words of Senator Williams and Javits in their letter to the Attroney General of February 28—

In the absence of Government regulation, it is a crime pure and simple for businesses operating in this country to combine and dictate the terms upon which others in the industry may do business.

The antitrust laws are designed to protect both the right of entry into an industry and the rights of existing businesses to be free from combinations of firms acting to limit their freedom to compete. That the instigators are a foreign government is not a justification for the type of pressures exerted to force Lazard.

It was in this context that this was written—

Out of the Merrill Lynch syndicate. The laws recognize no such exemption. Any company joining such a boycott willingly or under economic duress joins in an illegal conspiracy.

I think the cases more support that view than Mr. Scalia's novel view of what the antitrust laws reach and do not reach.

If we are at the point where we are compromising basic antitrust policy, in order "not to endanger negotiations in the Middle East," then that is an additional reason, over and above the questions of discrimination, which have been brought up by Mr. Brody and by others, not to permit such conduct. We seem to be not only ready to compromise an antidiscrimination policy, we seem also ready to compromise antitrust policy. Now we will also seem to be compromising tariff policy. These positions of accommodation to the Arab boycott, which impinge on specific policies of our laws, are being forced on us by something which, according to Mr. Parsky, is really not much of a threat. We are asked to accept his evaluation because he has gone to the Middle East and has talked to all of these fellows and he thinks they are reasonable guys. He has not, however, produced much more than vague assurances.

If that is the assurance that this committee and the Senate is willing to take and rely on, I think it is a dangerous policy.

If we are going to hesitate to pass bills which are really minimal in their effect when balanced against the potential danger, which would indicate that the Government is willing to stand by its long-standing policies—the Williams bill, after all, is just an extension of an existing Securities and Exchange Act disclosure kind of provision—then we are in greater trouble than we thought. The amendment says if you get together with others and try to oust someone else from a

market or apply pressure on firms not to deal with another—this violation is a traditional antitrust—that is a group boycott or a concerted refusal to deal, that you can't do it, and that the President should not approve those kinds of over 5 percent acquisitions where the acquiring party has participated in such activities. If Mr. Parsky is right and the Saudis are not really going to acquire more than 5 percent of any company anyway, then the really shouldn't get very upset about this.

It will be too late for legislation after these investments are made. Now is the time to do something about it.

I will try to wind up quickly here. The problem is that the administration statements yesterday make the boycott seem rational when in fact the boycott is not rational. It includes individuals such as Marlon Brando and Elizabeth Taylor, in addition to various companies whose connections with Israel is remote at best. Arabs who talk about the boycott are often introduced as rational businessmen, who are merely conducting investment activities, like Mr. Khashoggi, who gave an interview to Gil Kaplan of the Institutional Investor. In a recent edition of that magazine he was asked: "Isn't there another aspect to this?" talking of the boycott.

> I mean the question that came to light about the Arab blacklisting of American firms, especially the investment bankers who were pressured to exclude some so-called Jewish firms from international underwritings. There seems to be considerable confusion about whether this is a "Jewish" question or a "Zionist" one. I know you are not a Government spokesman, but how do you respond from the viewpoint of someone who obviously knows what is going on?

And he talks about the differentiation between Jews and Zionists. Then he says:

> But Zionism is another matter. It's an ideology, like communism, like facism. It's a political organization.

Then Mr. Kaplan asks him:

> How do you really make such fine distinctions? As an example, there are some investment bankers who have Jewish people who are very active in raising money for Israel on their staffs and yet are not on the blacklist.

And Khashoggi answers:

> When you are at war, when you are in the middle of the battle, you don't see right, you don't see left. This is a confused period. And how can the boycott office in Damascus really decide who is what. As a matter of fact, we have gotten six companies off the list. We went and fought for them and presented their cases.

That is good advertisement for Mr. Khashoggi. But the point is the boycott is not a rational boycott, and for the Justice Department and the Commerce Department to come here and intimate that it is rational—that it is a legitimate political policy, that it is one that deserves deference under the antitrust laws, I think that that kind of an argument is disingenious at best. The boycott is irrational, it is a patently discriminatory policy and the administration's spokesmen are asking us, and asking the Nation to sit by and say, OK, we are going to let antitrust policy bend—in effect give them an exception from section 1 of the Sherman Act—and for what, for legitimate political reasons? No; for reasons which are discriminatory. If you want to conduct a religious or racially discriminatory boycott, there is no group that can't get together and find political reasons to justify it.

It seems to me the arguments made by the administration yesterday in terms of no threat, in terms of it will jeopardize the chances for peace in the Middle East, in terms of we ought to bend long-standing policy, just do not hold water.

I think the Williams bill (S. 425) and S. 953, are at least the kinds of bills that should be passed to show businessmen in the United States and the world that the United States is enforcing its antitrust and discrimination policies even handedly, to borrow a phrase. Peace depends on what is going on in the negotiations between Israel and Egypt, not on whether or not the Senate passes these bills. Rather the failure to pass these bills because of fear of Arab pressure could do more to undermine the U.S. position as an independent, strong, peacemaker, than the administration realizes.

Thank you.

Mr. BRODY. Mr. Chairman, if I may have a minute or two to supplement one or two things Mr. Eisenberg said, because I think this is a good example of where an ounce of history is worth a pound of logic.

If you read Mr. Tabor's on page 8, where he opposed the legislation, saying the chances for Middle East settlement could be jeopardized by the enactment of the anti-boycott amendment to S. 425, one would think he is talking about the admittedly delicate negotiations going on today. But this is really nothing more than a broken record. Because back in 1969, when the Senate was taking a look at how the 1965 amendment was working, a Commerce Department spokesman at that time opposing any change in the law said, and I quote:

> In addition, delicate foreign policy negotiations currently are underway to bring about a viable settlement of the fundamental dispute between Israel and the Arab states.

The State Department spokesman at that time also said:

> Mandatory legislation will be similarly regarded as one-sided, pro-Israel legislation at a time when we are trying to help bring about a settlement in the area.

On another point, we heard yesterday about the steps which the Department of Commerce is taking to notify exporters of the reporting requirements of the Export Administration Act.

But back in 1967 then Secretary Connor in a letter to Senator Javits said:

> The provisions of this amendment continue to be widely publicized. I am satisfied, and I underscore this, that generally the trading community is aware of the legal requirements to report boycott-type approaches, and is reporting such approaches under the existing regulations. The legal requirements established by the legislation therefore appear to be met and their administration is posing no special difficulties for us.

On the second score I would say I would agree with that latter statement, because I think any fair minded observer has to conclude there has been no administration of that section in the 10 years since its enactment.

I would just like to refer to an article which appeared in the Wall Street Journal, Friday, March 14, when the Wall Street Journal reporter succeeded in ferreting out some information from the Department with respect to the implications and extent of the boycott.

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An unnamed Commerce Department official is quoted as saying that they suspect many companies simply are ignoring the law and many others may be ignorant of the reporting requirement, although in 1967 as I have indicated the then Secretary was saying that the whole business community was well informed about the legal reporting requirements.

"We don't know who isn't reporting," said the official, and there isn't any way with our staff and budget that we can find out."

This is in March 1975, almost 10 years after the law was enacted.

Mr. FINGER. Mr. Chairman, I am associate director of the Civil Rights Division of ADL.

I would briefly like to cite an article that appeared in this morning's New York Times. The headline reads "Saudia Arabia seeks American Bids For $15 Billion Electrification Plant."

And it says in part and I quote: "Prince Mohamad Faisel said he met last week in Florida with representatives of leading equipment makers and outlined engineering details for the program."

I bring this to your attention because what could happen in this situation here in connection with the plans by Saudia Arabia is what happened in a contract in 1974 for a feasibility study for establishing a sponge iron complex at Alexandria, Egypt. A contract was entered into in Cairo on July 29, 1974, among, a number of organizations, an Egyptian organization, a Japanese organization, a German organization, a Brazilian organization, and the International Engineering Co., of San Francisco, Calif., which was the consultant on the job.

It is interesting that article 19 of the 1974 contract, the one that the International Engineering Co., signed reads:

> The consultant, International Engineering Company, hereby declares that he does not possess any plants, firms, or branches in Israel, he does not participate in any firm or company established in Israel, he has not had any supplier of manufacturing assemblies or technical assistance contract with any firm, company or person established or resident in Israel. The consultant further undertakes not to have either by himself or through an intermediary any such activity with Israel, and not to contribute in any way to consolidate the economy or military efforts in Israel.

I submit, Mr. Chairman, that this type of restrictive boycott activity is taking place today, as it was in July and August of 1974: and unless legislation such as that recommended and reviewed here this morning is adopted, we will see a continuation of activity which is repugnant to American law and in fact violates the stated policy of the Export Administration Act.

Thank you.

Senator STEVENSON. Thank you, gentlemen.

Mr. FINGER. If I may, Mr. Chairman, I would offer as an exhibit, the document, relating to the International Engineering Co., and similar cases of boycott activity.

Senator STEVENSON. The documents will be entered in the committee's records.

Mr. EISENBERG. Mr. Chairman, I have not yet heard a reason which would stand up as to why Members of the Senate did not receive the list held by the Department of Commerce, although that has been asked for by a number of Senators.

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Seantor STEVENSON. Gentlemen, we won't have any time for questions if we don't proceed now.

Mr. EISENBERG. I am sorry.

Senator STEVENSON. You have all supported mandatory disclosure of boycott requests and compliance therewith.

And you, Mr. Eisenberg, I believe you too, Mr. Finger, have expressed your own opinion that the compliance with certain boycott requests is violative of U.S. law now.

If disclosure of compliance with all such boycott requests were mandated, including illegal compliance with boycott requests, would not such mandated disclosure violate the fifth amendment right against self-incrimination?

Mr. EISENBERG. Mr. Chairman, officers of those companies, could take the fifth amendment and refuse to answer on the grounds of the fifth amendment. I am not sure that the privilege would run to corporations, because I don't believe, I think the courts have held——

Senator STEVENSON. No; not corporations.

Mr. EISENBERG. So the corporations would not be put in jeopardy.

Senator STEVENSON. But the individuals would. Then what is accomplished by mandatory disclosure, if disclosure is prevented by the fifth amendment?

Mr. EISENBERG. I think the company would be required to disclose, because I don't think they could take advantage of the privilege. But I think most companies——

Senator STEVENSON. But if the corporate disclosure effectively impinges on the fifth amendment rights of the agents of that corporation who comply with the request, offhand I would think such disclosure would not be permitted.

Mr. EISENBERG. That is not much different than what goes on in the securities area today, where you have general accounting disclosure of what the situation is with respect to a company's earnings and the SEC requires disclosure in perspectuses and proxy statements and if there is a false disclosure, that can be prosecuted.

The whole philosophy of the securities laws in terms of forcing company disclosures, forgetting boycotts or anything that has to do with this, is generally one which raises the same question, and the Congress and the courts have accepted disclosure as a way of inhibiting wrongdoing. And that is the philosophy which I think the Williams bill and S. 953 follow.

I don't think it is anything different than exists under the general securities laws today, 10(b)(5) and elsewhere.

Senator STEVENSON. We are not sure that that analogy to the securities law holds up. I am not sure that violations of the law are required to be disclosed there. And in fact the Export Administration Act protects any individuals who do disclose violations of the law from prosecution. That might very well be the effect of any mandated disclosure such as you have suggested, immunity for those who disclose their own illegal acts.

The question I am trying to raise with you is whether we aren't faced with a choice between disclosure and the prohibitions which you have supported.

If you have further thoughts on this or do further legal research on that general proposition, it would be very helpful.

Mr. EISENBERG. I think we would like to submit perhaps a memorandum on that to the committee. I think the securities law fraud analogy does hold up and I think perhaps we can, hopefully, persuade you that that is so.

Senator STEVENSON. I would hope so, too.

Mr. BRODY. I would make two additional comments. I think you referred to section 7(b) of the Export Administration Act, which says no person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act shall apply with respect to any individual who claims such privilege.

If Congress were to enact the kind of legislation which I think is called for, a mandatory ban on complying with the boycott, we would not have the problem.

Senator STEVENSON. Now I want to come to that alternative. It is possibly an alternative to disclosure. You said, Mr. Eisenberg, that this boycott was irrational, that is how you characterized it. Economic boycotts are routine in international politics. The United States is a party right now to economic boycotts. Every country that has the power to enforce a boycott against its adversary does so routinely. The United States is a party to at least one boycott as a result of international law.

Now we can't prohibit compliance with economic boycotts in one case without doing so in all cases.

I don't know whether Israel attempts to enforce boycotts against any of its adversaries or what the relationship is in that respect between North and South Korea, for example. But I can certainly conceive of circumstances in which nations in the future will, as the Arabs have in this case, enforce boycotts against their adversaries.

One such possible circumstance was mentioned yesterday, Turkey. What if Turkey seeks to impose a boycott against Greece? The effect is to give U.S. companies a choice of doing business in Turkey or in Greece.

Your proposal in such circumstances would say you can't do business in Turkey. And the result then is a counterboycott, a boycott against Turkey.

Now what I am getting at is shouldn't we really try, because of circumstances which now exist to try to identify the kinds of boycotts that are most repugnant to U.S. policy and principle and not attempt the impossible; namely, action against boycotts which are not only consistent with our own principles, but are in fact being imposed by the United States right now?

One such form of boycott is the boycott which forces a U.S. company to discriminate against another U.S. company for either religious or political reasons. I don't know whether you were all here yesterday, but Mr. Brody will remember one of the cases I cited, the bus company case. This case may already violate U.S. law depending on the antitrust questions that we were raising earlier. That, it seems to me, is the kind of a boycott that is clearly repugnant, clearly a form of discriminatory commercial behavior that could be dealt with under the laws of the United States, if it isn't already dealt with.

I don't know if it is true. The allegation is that General Motors had to terminate a contract with its supplier of bus seats because that supplier was on the blacklist.

Isn't that really the kind of behavior that we ought to be trying to identify and to prohibit?

I am not ruling out disclosure. But I am trying to suggest there may be a choice between disclosure and prohibition, except in certain cases, such as the one I just mentioned, where it seems to me we probably could effectively prohibit the compliance with the boycott request.

That is a long question and it may be a bit unclear, but I invite comments on that dissertation.

Mr. EISENBERG. Mr. Chairman, I think it is a thoughtful comment and I think I would agree with most of it. I don't really think that the legislation that is before the committee departs from that very much, because the legislation here does not say that an Arab government can't boycott Israel or even an American company that deals with Israel, that the individual Arab governments can do what they want, they can pass their laws and enforce their laws in their countries. What this says is that they cannot coerce or pressure or procure compliance by an American company to cut out other American companies, which is I think what you were talking about.

Senator STEVENSON. Doesn't it really say that if the Arab nations boycott Israel, you have to boycott Egypt, you have to boycott the Arab States? Isn't that really the effect of it?

Mr. EISENBERG. I don't think so, Senator. I think that what we are saying, and I think what the amendment to the Williams bill says—that is what we are really talking about because the other things are disclosure provisions, really.

But where you talk about the boycott, you are saying the effect in the United States and I think you are quite correct when you say that is what we ought to get at.

It is when companies under pressure to obtain compliance with the boycott get together and pressure other American companies and say if you do business with Israel or with Jewish related businesses or companies, then we are not going to give you business. A company cannot join with others to exclude someone from a market, they cannot say to an American company thou shalt not get from supplier X what he would normally supply to you, or you shall not do other business with Israel.

Senator STEVENSON. They are saying if you do business with us, you can't do business with Israel.

The effect is to force a choice.

Mr. BRODY. Mr. Chairman, there is a difference between what we in the United States do when we restrict trade with Cuba and China, for example, and what the Arab countries are doing.

The Arab countries are free to tell their nationals not to do business with Israel, and tell their nationals not to do business with companies anywhere around the world which may do business with Israel.

That is all we do, we tell our U.S. citizens you can't do business with Cuba or China. And I think Senator Williams put this very aptly in 1965 in connection with his S. 948, when he said:

> Nor do we ask the kind of question which the Arab boycott office seeks to elicit from American businessmen and which the Javits-Williams bill would forbid.

Now we had an experience in both Argentina and in Canada within the last few years where we, in keeping with our policy of no trade

with Cuba, tried to compel subsidiaries, Canadian and Argentine subsidiaries of American corporations not to do business with Cuba. And we were forced to back down when Canada said to use that by our telling a Canadian subsidiary of an American corporation not to do business with Cuba we were infringing Canada's sovereignty. I think that same argument holds equally true with respect to the Arab countries, Arab businessmen coming into the United States and telling American firms, which are not even subsidiaries of the Arab companies not to do business with Israel.

Mr. EISENBERG. And an Arab company, I do not think, could say to an American company don't hire blacks or don't hire Jews. That would be an invasion of their policy. They have the privilege of not giving them that business, but they cannot require as a condition of giving a contract that kind of thing which offends our public policy.

I say neither can they do this. I would agree with your basic general statement which introduced this line of questioning, that essentially they cannot force American companies to do things which violate our public policy.

Senator STEVENSON. In the United States that's true, but they can, they certainly do, say that as a condition of doing business in their countries they cannot do business with Israel.

Mr. EISENBERG. Yes.

Senator STEVENSON. That is different from putting economic pressure on a U.S. company to say you cannot do business in the United States with another U.S. company. That latter case it seems to me is much more repugnant, more clearly violative of our principles and a greater invasion of our sovereignty than the other case.

Mr. EISENBERG. Clearly more blatant, yes. But there is a point where cases have held, where you can't get together outside of the United States through subsidiaries and do things outside, which you could not do inside.

So there is a boundary beyond which this philosophy goes. In order to be effective, where you have some extraterritorial reach.

Senator STEVENSON. There is no question that the U.S. exercises extraterritorial control over its corporations, including their foreign subsidiaries, in the Cuban situation.

I think you have covered most of the questions that we had. You anticipated most of them in your testimony.

I think you mentioned, Mr. Eisenberg, the Department of Commerce took the position that it had the authority under the Export Administration Act now to prohibit compliance with boycott requests, an authority which they conceded had never been exercised. But it does exist.

Another witness indicated that the administration did not have any such authority and didn't want it.

If you are doing a little legal research for us, you might include that question.

Under the Export Administration Act, with which I am very familiar, the President does have some very general authority to carry out the foreign policy of objectives of the United States through export controls. I offhand am hard put to recall any clear-cut authority under that law for prohibiting participation in boycotts with the possible exception of controls on exports.

Of course participation takes many forms, and I am not sure that even if that limited authority exists, what the sanctions would be.

But anyway that is something you might want to give some further thought to and we would welcome some further advice on it.

I have passed over the forms which the boycott takes, because we have a pretty strong record on that. But if you have additional evidence of U.S. companies who discriminate against other U.S. companies in the United States, for either religious or political purposes, that evidence would be of value to us.

Do you have anything you would like to add on that now?

Mr. FINGER. I think some of the documents I have offered this morning indicate there is discrimination perhaps not against a specifically identified firm, but against a whole class of firms and that would be the approximately 1,800 firms who are on the boycott blacklist.

In other words by not doing business with them, by not getting their supplies from them, in order to carry out the business venture with the Arab country those firms are being injured.

Senator STEVENSON. If you have specific instances in which U.S. companies have been forced to cut off, for example, U.S. suppliers, in order to do business in an Arab State, it would help us to build the record for the kind of legislation that you support.

Do you have any such evidence?

Mr. FINGER. I will review what we have on that and turn it over to the committee.

Senator STEVENSON. Either religious or political.

Mr. EISENBERG. Some of this material has already been made public, some has not. I think we will not only review what we have, but we are in the process of looking into material that has been filed with the SEC in terms of material contracts, which may afford us new material in this connection.

We will certainly make that available to the subcommittee at the earliest possible time.

Senator STEVENSON. Thank you very much, gentlemen. We will keep the record open for that.

The next witness is Mr. Joseph W. Leimert, National Association of Manufacturers.

STATEMENT OF JOSEPH W. LEIMERT, CHAIRMAN, TASK FORCE ON INTERNATIONAL FINANCIAL AFFAIRS, NATIONAL ASSOCIATION OF MANUFACTURERS, ACCOMPANIED BY JOHN KLINE, DIRECTOR OF INTERNATIONAL PROGRAM DEVELOPMENT, AND JOHN FINCH, ASSISTANT GENERAL COUNSEL OF INTERNATIONAL AFFAIRS

Mr. LEIMERT. If it is satisfactory, Senator, I have prepared a summary of the testimony and I would like to read that.

Senator STEVENSON. The full statement will be entered into the record.

Mr. LEIMERT. Thank you.

I have with me John Kline, director of International Program Development for the National Association of Manufacturers. On my left, Mr. John Finch, assistant general counsel of International Affairs for NAM.

I am Joseph Leimert, vice president, special operations and services, of CPC International, Inc. Today, though, I am testifying on behalf of the National Association of Manufacturers as chairman of an NAM Task Force on International Financial Affairs.

We very much appreciate this opportunity to appear before this subcommittee to comment on proposed regulation of foreign investment in the United States. Our comments will be largely confined to three of the bills under consideration by your subcommittee, S. 425, S. 1303, and S. 995, bills which would alter current regulations and reporting requirements affecting investment inflow to this country. In view of the important role new investment plays in the vital process of capital formation and economic expansion, NAM has a strong interest in these and related bills presently before the Congress.

The National Association of Manufacturers firmly supports the principle of the freest possible flow of international investment, consistent with national economic and security interests. This traditional U.S. policy has helped American business to compete in and serve foreign markets, and has been important in promoting the overall process of capital formation and economic expansion.

Historically, foreign investment in the United States has contributed to the development of this Nation's economy. Even before World War I, foreign equity holdings in U.S. business exceeded $1.3 billion. Today many foreign-owned producers are welcome and respected corporate citizens of this country, who add to this Nation's productive capacity, and employ hundreds of thousands of American workers.

Public concern over foreign investment in the United States arose initially about 3 years ago and was rekindled in 1974 by the possibility of massive investments in the United States by oil-producing nations. In some quarters the fear has been expressed that growing foreign investment may threaten the sovereignty or economic structure of the United States.

NAM believes these fears have been misguided and highly exaggerated. Such concerns are often based on overstatements as to the actual extent of foreign investment in the United States and the accumulation of oil revenue abroad available for foreign investment.

Statistics for 1974 indicate that less than $1 billion has actually been invested in U.S. private long-term investments by OPEC countries, mainly portfolio investments. It is ironic that those investment figures are so low, compared to earlier estimates, at a time when the U.S. economy is facing a serious capital shortage. In most cases, investments from abroad are encouraged by domestic concerns, and many States and municipalities actively seek foreign investors. This attitude stems from a clear recognition of numerous benefits which arise from new investment including: increased competition, a wider selection of goods for consumers, and more jobs for American workers.

In our view, the crucial economic benefit which stems from new investment is capital formation. The U.S. economy presently needs new sources of capital in order to stimulate production and achieve job-creating, noninflationary growth. Statistics released by the Treasury Department show that the United States devotes the lowest proportion of real national output to invesment of all major industrialized countries. This shortage of capital must be viewed in the context of the international economic changes which have been emerging since

the late 1960's. The key factor from the U.S. perspective is that this country is now fully tied into a highly interdependent international economic system.

Low and falling rates of investment must be reversed to lead us out of the current recession and to increase employment. For these sound economic reasons, NAM believes it would be unwise to impose or even to appear to impose restrictions and disincentives on investments from abroad. Legislation which has this effect would foster uncertainty among foreign investors. Uncertainty itself would be an effective barrier to investment. It would also expose U.S. economic interests abroad to a potentially harsher nivestment climate where they may face new governmental restrictions brought on by a trend toward retaliatory economic nationalism, especially during this uncertain economic period.

It is, therefore, the policy of the NAM to support the traditionally unrestricted flow of capital into the United States, consistent with essential considerations such as national security. NAM recognizes the need for proper safeguards to assure that foreign investment in the United States is not contrary to the national interest. Monitoring and regulatory devices, if necessary, should not create unneeded inhibitions on foreign capital inflows. This type of fair and equitable treatment of foreign investment in the United States should also encourage renewed efforts to secure similar treatment of American investment abroad.

Based on the general policy position outlined above, NAM presents the following brief comments on three bills under consideration by this subcommittee.

S. 425—Foreign Investment Disclosure Act of 1975.

NAM regards proposals contained in this legislation as unnecessary. As indicated above, large increases in the level of foreign investment in the United States have not occurred as predicted, and NAM believes there has been no proven need for new reporting requirements proposed in this bill.

Additionally, we believe it is important to distinguish (1) the gathering of new information to determine the extent and trends of foreign investment in this country from (2) the type of information called for in this bill, which would be obtained on a prior notification.

The latter carries with it the injection of government into proposed business transactions during the process of negotiation and could be viewed as the first step toward greater control. This type of prior notification requirement with its screening mechanism should carry clear burden of proof as to its necessity in order to justify increased federal involvement in private economic decisionmaking. We do not believe that this burden of proof has been satisfied in this case.

Further, bill provisions dealing with the granting of authority to the President to prohibit foreign investment in the United States are either duplicative or unnecessary.

Administration witnesses have testified in opposition to this additional grant of authority, stating that they feel there is clearly sufficient power to deal with conceivable difficulties in this area.

On the subject of disclosure of beneficial ownership of securities, we would note only two considerations. First, this matter is apparently

under consideration by the Securities and Exchange Commission and the SEC may possess sufficient rulemaking authority to make any necessary improvements on beneficial ownership disclosure. There are reports that the SEC may publish such suggested changes, perhaps as early as next month.

While we are certainly not in a position to either endorse or object to changes which are not yet published, we would in general prefer that changes be made through currently existing authority wherever possible.

Second, the NAM strongly supports the nondiscriminatory principle of "national treatment" and we believe that any new disclosure requirements should apply to both U.S. and foreign investors. Therefore, any legislation on disclosure of beneficial ownership should be considered separately from legislation on foreign investment in the United States.

We will make only brief comments upon the proposed amendment concerning new legislative steps to counter boycott action, which will also explain why we must decline to comment upon another bill, S. 953, which would amend the Export Administration Act of 1969.

First, there is no official NAM policy on this issue. Second, in general terms, it would appear that international economic boycotts are normally the result of an underlying political conflict. We therefore believe that congressional consideration of a proper response to this boycott issue may be dealt with better in separate hearings and should not be tied to decisions on regulation of foreign investment in this country.

S. 1303—Foreign Investment Disclosure Act of 1975.

We believe the need to create a complete new monitoring agency has not been demonstrated. Nor is the need apparent for new reporting requirements as proposed in this bill.

In addition, NAM believes recent actions initiated by the administration, as outlined in Executive Order 11858, issued on May 7, 1975, represent a constructive response to concerns raised by the sponsors of S. 1303 and other members of Congress.

Administration efforts to secure the cooperation of major potential foreign investors by assuring consultations prior to large investments also provide a concrete response to these issues.

S. 995—Foreign Government Investment Control Act of 1975.

NAM believes that provisions of S. 995, if enacted, may act as disincentives to beneficial capital inflows into the United States. While recognizing the concern that may arise at the prospect of investments in this country by foreign government agencies, NAM feels it should be recognized that certain potential foreign investors operate within different economic systems where international economic transactions of all kinds are carried out directly by the state government or its agents.

A related concern is that of definition. Legislation like that proposed in S. 995 requires clear distinctions between Government and private sector investors, which are in practice quite difficult to determine. The process of applying these distinctions would involve complex political problems which would likely complicate legitimate economic transactions.

It is our conclusion that present reporting requirements, regulations and laws which govern the process of foreign investment in the United States are adequate.

Passage of new legislation in this area would create uncertainty on the part of foreign investors and thereby discourage the investment inflow from abroad that could help to meet the primary need of capital formation in this country. Resolution of the domestic capital shortage problem is the key to creating new jobs and achieving sustained, noninflationary economic growth. Unnecessary actions that would tend to exclude new capital sources could prove detrimental to the national interest.

We recommend, accordingly, that the measures proposed in pending legislation before this subcommittee not be adopted. First, because there is no clear need for such actions. Second, because adoption of the proposed measures would create uncertainty in the minds of foreign investors at a time when we need foreign investment.

In closing, I would like to make a short additional comment. While we have suggested that no new legislation should be passed that would increase restrictions on foreign investment in the United States, we believe that this decision not to act can and should be turned into positive initiatives, both to encourage needed investment into this country, and to press for greater multilateral agreement on free capital flows.

The maintenance of traditional U.S. positions in support of free capital movement and the "national treatment" principle should encourage renewed efforts to secure similar treatment of American investment abroad.

The U.S. Government should take a positive step forward by strongly urging renewed implementation of principles contained in bilateral treaties or multilateral agreements, such as the OECD Code on Liberalization of Capital Movements.

At the very least, the reassertion of these principles should reinforce the U.S. position in current OECD deliberations on agreements concerning "national treatment" for foreign enterprises.

That concludes my remarks, Mr. Chairman. I thank you and am willing to answer any questions you may have.

[The complete statement and an additional letter follow:]

TESTIMONY OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. Chairman and members of the Subcommittee, I am Joseph Leimert, Vice President, Special Operations and Services, of CPC International, Inc. I am testifying today on behalf of the National Association of Manufacturers as Chairman of an NAM Task Force on International Financial Affairs. The National Association of Manufacturers (NAM) is a voluntary, non-profit association of over 13,000 American companies, large and small, located in every state and representing the producers of over seventy-five percent of our nation's manufactured output. In addition, NAM's membership employs approximately fifteen million people. We appreciate this opportunity to appear before this Subcommittee to comment on proposed regulation of foreign investment in the U.S. Our comments will be largely confined to three of the bills under consideration by your Subcommittee, S. 425, S. 1303 and S. 995, bills which would alter current regulations and reporting requirements affecting investment inflow to this country. In view of the important role new investment plays in the vital process of capital formation and economic expansion, NAM has a strong interest in these and related bills presently before the Congress.

Recognizing the growing public concern over increased foreign investment in the U.S., the NAM last year supported in the Senate a bill, S. 2840, which called for a full study of foreign investment in this country. In October, 1974, this bill became law: The Foreign Investment Study Act of 1974 (P.L. 93-479).

This Act mandated the study of current investment levels—both portfolio and direct—which is now being conducted jointly by the Departments of Treasury and Commerce. NAM regards this information-gathering effort as a constructive step toward developing sound information on which to base policy decisions related to foreign investment inflows.

Since this study was initiated, NAM has also been examining some of the policy aspects related to foreign investment in the U.S. The International Financial Affairs Task Force considered this matter and suggested NAM should adopt new policy language to address this issue. At NAM's Spring Conference in April, the International Economic Affairs Committee heard representatives from the Congress, the Administration, the business sector and the academic community present different viewpoints on the topic. The Committee then drafted new policy language, which was passed by NAM's Board of Directors in May, 1975. From the studied examination which accompanied these activities, NAM has drawn three major conclusions:

1. United States' interests would appear to be best served by a continuation of traditional policy in favor of largely unrestricted international investment flows. We believe this evaluation to hold true under any set of economic circumstances, and especially in the context of the current economic situation—recession accompanied by persistent inflationary pressures.

2. Statistics indicate that predicted large and sudden increases in the inflow of capital from abroad have not occurred, and are not likely to occur. Thus, increased regulation of incoming foreign investments does not appear warranted.

3. Recent Administration actions aimed at improving policy formulation on foreign investment in the U.S. have taken into account most of the recommendations contained in legislation pending before the Congress, and should result in better analyses of available information which can be reviewed by government policymakers.

POSITION OF THE NAM ON FOREIGN INVESTMENT IN THE UNITED STATES

The National Association of Manufacturers firmly supports the principle of the freest possible flow of international investment, consistent with national economic and security interests. This traditional U.S. policy has helped American business to compete in and serve foreign markets, and has been important in promoting the overall process of capital formation and economic expansion.

Historically, foreign investment in the U.S. has contributed to the development of this nation's economy. Foreign portfolio investment was a key factor in the development of America's railroad system when this country was industrializing and expanding westward. Even before World War I, foreign equity holdings in U.S. business exceeded $1.3 billion. Today many foreign-owned producers are welcome and respected corporate citizens of this country, who add to this nation's productive capacity and employ hundreds of thousands of American workers.

Public concern over foreign investment in the U.S. is a relatively recent development. This concern arose initially about three years ago and was rekindled in 1974 by the possibility of massive investments in the U.S. by oil-producing nations, where large financial reserves have accumulated as a result of quadrupled oil prices. In some quarters the fear has been expressed that growing foreign investment may threaten the sovereignty or economic structure of the United States.

NAM believes these fears have been misguided and highly exaggerated. Such concerns are often based on overstatements as to the actual extent of foreign investment in the U.S., and the accumulation of oil revenue abroad available for foreign investment. Government statistics indicate direct foreign investment in this country represents only sixteen percent of American direct investment holdings abroad: at the end of 1973, long-term investments held by the U.S. private sector in foreign countries totaled $132 billion ($107 billion in direct investment and $25 billion in portfolio); at the same time, long-term foreign investment in the U.S. private sector totaled only $55 billion ($18 billion in direct investment and $37 billion in portfolio). In addition, the prospect of a massive influx of investment from Arab oil producers had failed to materialize. A year ago, predictions were made that oil-producing nations would have as much as

$60 billion available for investment in 1974. Statistics for 1974 indicate that less than $1 billion has actually been invested in the U.S., mainly in portfolio investments. It is ironic that those investment figures are so low, compared to earlier estimates, at a time when the U.S. economy is facing a serious capital shortage. In most cases, investments from abroad are encouraged by domestic concerns, and many states and municipalities actively seek foreign investors. This attitude stems from a clear recognition of numerous benefits which arise from new investment, including: increased competition, a wider selection of goods for consumers, and more jobs for American workers.

In our view, the crucial economic benefit which stems from new investment is capital formation. The U.S. economy presently needs new sources of capital in order to stimulate production and achieve job-creating, non-inflationary growth. Statistics released by the Treasury Department show that the U.S. devotes the lowest proportion of real national output to investment of all major industrialized countries. This shortage of capital must be viewed in the context of the international economic changes which have been emerging since the late 1960's. The key factor from the U.S. perspective is that this country is now fully tied into a highly interdependent international economic system. Low and falling rates of investment must be reversed to lead us out of the current recession and to increase employment. For these sound economic reasons, NAM believes it would be unwise to impose or even to appear to impose restrictions and disincentives on investments from abroad. Legislation which has this effect would foster uncertainty among foreign investors. Uncertainty itself would be an effective barrier to investment. It would also expose U.S. economic interests abroad to a potentially harsher investment climate where they may face new governmental restrictions brought on by a trend toward retaliatory economic nationalism, especially during this uncertain economic period.

It is, therefore, the policy of the NAM to support the traditionally unrestricted flow of capital into the United States, consistent with essential considerations such as national security. NAM recognizes the need for proper safeguards to assure that foreign investment in the U.S. is not contrary to the natural interest. Monitoring and regulatory devices, if necessary, should not create unneeded inhibitions on foreign capital inflows. This type of fair and equitable treatment of foreign investment in the U.S. should also encourage renewed efforts to secure similar treatment of American investment abroad.

NAM POSITION ON BILLS UNDER CONSIDERATION

Based on the general policy position outlined above, NAM presents the following brief comments on three bills under consideration by this Subcommittee.

S. 425 (Foreign Investment Disclosure Act of 1975)

The bill would amend the Securities Exchange Act of 1934 in the following manner: (1) foreign investors must give 30 days notice before purchasing 5 percent or more of the shares in U.S. companies; (2) the President shall be able to prohibit such acquisitions as appropriate for national security, to further foreign policy, or to protect the domestic economy of the U.S.; and (3) issuers of registered securities must file with the Securities and Exchange Commission the names and nationalities of the beneficial owners of their securities.

NAM regards proposals contained in this legislation as unnecessary. As indicated above, large increases in the level of foreign investment in the U.S. have not occurred as predicted, and NAM believes there has been no proven need for new reporting requirements proposed in this bill. Congress should refrain from enacting such measures unless the more detailed information on the nature and extent of current investment in the U.S., ascertained from the government study presently in progress, reveals the need for such action. Additionally, we believe it is important to distinguish (1) the gathering of new information to determine the extent and trends of foreign investment in this country from (2) the type of information called for in this bill, which would be obtained on a prior notification basis. The latter carries with it the injection of government into proposed business transactions during the process of negotiation and could be viewed as the first step toward greater control. This type of prior notification requirement with its screening mechanism should carry a clear burden of proof as to its necessity in oder to justify increased federal involvement in private economic decision-making. We do not believe that this burden of proof has been satisfied in this case.

Bill provisions dealing with the granting of authority to the President to grant of authority, stating that they feel there is clearly sufficient power to deal States, to further the foreign policy of the United States, or to protect the domestic economy of the United States" are also either duplicative or unnecessary. Administration withnesses have testified in opposition to this additional grant of authority, stating that they feel there is clearly sufficient power to deal with conceivable difficulties in tnis area. The passage by Congress of new legislation, even if it did nothing more than to reaffirm the same powers already available to the President, would in practice create uncertainty in the minds of foreign investors and leave an undesirable appearance of movement away from this nation's traditionally open door to investment.

On the subject of disclosure of beneficial ownership of securities, we would note only to considerations. First, this matter is apparently under consideration by the Securities and Exchange Commission and the SEC may possess sufficient rule-making authority to make any necessary improvements on beneficial ownership disclosure. There are reports that the SEC may publish such suggested changes, perhaps as early as next month. While we are certainly not in a position to either endorse or object to changes which are not yet published, we would in general prefer that changes be made through currently existing authority wherever possible. This consideration again pertains to the parctical effect on the perceived investment climate should new legislation be passed adding seemingly additional reporting requirements on foreign investment in the U.S. Second, the NAM strongly supports the non-discriminatory principle of "national treatment" and we believe that any new disclosure requirements should apply to both U.S. and foreign investors. Therefore, any legislation on disclosure of beneficial ownership should be considered separately from legislation on foreign investment in the U.S.

An additional amendment to S. 425 has been proposed that would absolutely plohibit any foreign investor who had engaged in an international economic boycott from acquiring an interest of more than 5 percent in any U.S. company. In addition, if any foreign investor who had previously purchased an interest of more than 5 percent in a U.S. company caused that company to participate in such a boycott, his voting rights could be frozen and his interest in the U.S. company sold.

We will make only brief comments upon the proposed amendment concerning new legislative steps to counter boycott action, which will also explain why we must decline to comment upon another bill, S. 953, which would amend the Export Administration Act of 1969. First, there is no official NAM policy on this issue. Second, in general terms, it would appear that international economic boycotts are normally the result of an underlying political conflict. We therefore believe that congressional consideration of a proper response to this boycott issue may be dealt with better in separate hearings and should not be tied to decisions on regulation of foreign investment in this country.

S. 1303 (Foreign Investment Disclosure Act of 1975)

> The main provisions of this bill would establish a Foreign Investment Administration in the Department of Commerce to monitor foreign investment after it is made and to issue quarterly and annual reports on such investment. Types of investments that would be reported include five percent or more of the shares of publicly traded companies; ten percent or more of the total shares of certain non-public companies; real estate worth more than $50,000 and more than $1 million worth of any issue of U.S. government securities.

NAM regards proposals contained in this legislation as unnecessary. We believe the need to create a complete new monitoring agency has not been demonstrated. Nor is the need apparent for new reporting requirements as proposed in this bill. Congress should refrain from enacting such measures until more detailed information is available from the current government study, due in an interim report this October, with the full study to be completed in April, 1976.

In addition, NAM believes recent actions initiated by the Administration, as outlined in Executive Order 11858, issued on May 7, 1975, represent a constructive response to concerns raised by the sponsors of S. 1030 and other members of Congress. The formation of a high-level, inter-agency Committee on Foreign Investment to monitor and analyze the impact of foreign capital inflows and provide policy guidance addresses the rationales underlying a number of proposals before Congress which seek to create a new monitoring agency. At the

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same time, it is unlikely that this Committee's operations will become the type of "screening mechanism" which could in practice deter beneficial foreign investment in the U.S.

Under the same Executive Order, data collection activities already in place will be modified so as to permit proper analyses of capital inflows into this country. Information-gathering efforts will be centralized within the Department of Commerce, and reports of trends and developments in foreign investment flows will be prepared on a regular basis. Administration efforts to secure the cooperation of major potential foreign investors by assuring consultations prior to large investments also provide a concrete response to these issues.

S. 995 (Foreign Government Investment Control Act of 1795)

This bill makes an explicit point to distinguish between private investment and investment by governmental agencies, and seeks to control the governmental investment. It establishes categories of investment which are to be treated separately:

1. Foreign government purchases in sensitive sectors (media/communications/defense) are prohibited.
2. The Secretary of Commerce must make a national interest determination or approve applications for purchases over one percent of the equity or debt obligations of corporations with $100 million or more in assets; acquisition or control of companies with $10 million or more in assets; or purchase of $4 million or more in real estate.

NAM believes that provisions of S. 995, if enacted, may act as disincentives to beneficial capital inflows into the U.S. While recognizing the concern that may arise at the prospect of investments in this country by foreign government agencies, NAM feels it should be recognized that certain potential foreign investors operate within different economic systems where international economic transactions of all kinds are carried out directly by the state government or its agents. A related concern is that of definition. Legislation like that proposed in S. 995 requires clear distinctions between government and private sector investors, which are in practice quite difficult to determine. The process of applying these distinctions would involve complex political problems which would likely complicate legitimate economic transactions.

As is the case with S. 425 and S. 1303, NAM maintains that the need for requirements proposed in S. 995 has not been demonstrated, and suggests a further assessment of this aspect of foreign investment might be made when the results of the Treasury and Commerce Department studies are available.

CONCLUSIONS

It is our conclusion that present reporting requirements, regulations and laws which govern the process of foreign investment in the U.S. are adequate.

Passage of new legislation in this area would create uncertainty on the part of foreign investors and thereby discourage the investment inflow from abroad that could help to meet the primary need of capital formation in this country. Resolution of the domestic capital shortage problem is the key to creating new jobs and achieving sustained, non-inflationary economic growth. Unnecessary actions that would tend to exclude new capital sources could prove detrimental to the national interest.

We recommend, accordingly, that the measures proposed in pending legislation before this Subcommittee not be adopted. First, because there is no clear need for such actions. Second, because adoption of the proposed measures would create uncertainty in the minds of foreign investors at a time when we need foreign investment.

In closing, I would like to make a short comment. While we have suggested that no new legislation should be passed that would increase restrictions on foreign investment in the U.S., we believe that this decision not to act can and should be turned into positive initiatives, both to encourage needed investment into this country, and to press for greater multilateral agreement on free capital flows. The maintenance of traditional U.S. positions in support of free capital movement and the "national treatment" principle should encourage renewed efforts to secure similar treatment of American investment abroad. The U.S. government should put a positive foot forward by strongly urging renewed implementation of principles contained in bilateral treaties or multilateral agreements, such as the OECD Code on Liberalization of Capital Movements.

At the very least, the reassertion of these principles should reinforce the U.S. position in current OECD deliberations on agreements concerning "national treatment" for foreign enterprises.

NATIONAL ASSOCIATION OF MANUFACTURERS,
Washington, D.C., July 31, 1975.

HON. ADLAI E. STEVENSON,
Chairman, Subcommittee on International Finance, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request made during hearings before your subcommittee on July 23, 1975, for further advice from the National Association of Manufacturers on the boycott issue.

As we stated at that time—and advised your staff prior to the hearings—NAM has no specific policy on the Arab boycott and is thus precluded from commenting on legislative proposals dealing with that specific subject. We are happy, however, to reply to your request for our further views on boycotts in general.

Our comments will deal with three aspects of the boycott issue: discriminatory practices, restrictive trade practices, and the parties best qualified to resolve political issues underlying international economic boycotts.

First, with respect to discriminatory practices based on religion or ethnic heritage, NAM supports President Ford's statement on February 26 that such practices have "no place in the free practice of commerce as it has flourished in this country and in the world in the last 30 years." NAM's official policy calls for "equal treatment in the administration of all personnel matters, including hiring, advancement, compensation, training, transfers, layoffs, and employee privileges without regard for race, color, religion, national origin, sex or age. . . " NAM also supports "positive and responsible efforts of government" for the implementation of these equal opportunity goals. We believe that current U.S. laws are adequate to deal with the discriminatory aspects of the boycott issue and support President Ford's statement on February 26 that "any allegations of discrimination will be fully investigated and appropriate action taken under the laws of the United States." We oppose on principle any attempt or action by a foreign country or person to force U.S. citizens or companies to act in violation of U.S. law. Finally, we note that this aspect of the boycott issue is presently under intense examination by the House Judiciary Committee, which appears to be an appropriate forum; and which will undoubtedly recommend new legislation if current law is found inadequate.

Second, with respect to the restrictive trade aspects of international boycotts, NAM generally opposes any boycotts because they necessarily distort trade flow that would otherwise be determined by free market forces. We do recognize that considerations such as national security may at times lead to boycotts, in accordance with national and international law. The trade embargo imposed on Cuba by the United States and the Organization of American States is an example of such exceptional circumstances. We enclose for your consideration a statement on this issue submitted by NAM on July 28, 1975, to Subcommittees of the House International Relations Committee. As a representative of American companies, however, the NAM is certainly not in a position of American companies, however, the NAM is certainly not in a position to comment on the justification for boycotts imposed by other nations. This position does not imply lack of concern on our part. We oppose such boycotts because they distort international trade flows, but the central questions are what can be done to remove these foreign imposed distortions and by whom? These questions necessarily involve complex political and diplomatic considerations focusing on the reasons for the foreign boycott imposition, and how best to resolve the underlying political disputes which are normally the motivating cause.

This question leads us to our third comment. NAM does not disclaim the right to criticize political distortions of trade. However, we do not feel that we are in a position to advise the U.S. government on the diplomatic actions which should be taken to counter a politically-inspired foreign boycott. Indeed, as pointed out in the Association's statement on the U.S. embargo of Cuba, we are not in a position to judge the current appropriations of U.S. national security considerations in evaluating whether to lift that embargo, or exactly how and what diplomatic actions should be taken to attempt to resolve this trade distor-

tion. We believe that the resolution of international economic boycotts can be accomplished best by diplomatic settlement of the political dispute that brought about the boycott. Rather than prejudice the often delicate diplomatic negotiations seeking an end of this political dispute, we feel it proper for the Association to remain silent on this aspect of the issue.

We hope you find this responsive to your request.

Sincerely,

J. W. LEIMERT,
Vice President, CPC International, Inc.,
Chairman, NAM Task Force on
International Finance Affairs.

Senator STEVENSON. Thank you, Mr. Leimert.

At the beginning of your statement, you referred to the investment of $1 billion of the OPEC oil surplus in the United States. Doesn't that understate OPEC's total investment in the United States? Isn't it in fact closer to $12 billion when investments in Government securities and commercial bank deposits are included?

Mr. LEIMERT. I relied on staff for my authority on that remark. I think the figure given me was $750 million, and this is in private long-term investments, mainly portfolio-type. I don't know; we can examine the $12 billion, but that is counter to any information I have.

Mr. KLINE. The figure we were drawing from, Mr. Chairman, came initially from the hearings before the Williams subcommittee, and I believe were reiterated yesterday by Mr. Parsky. The higher figure which he cited included all investment; the less than $1 billion figure we cited is in the private sector in long-term investments, not on simply deposits in banks.

Senator STEVENSON. Well, my figure is from Mr. Parsky. And I raise it because I don't understand why you excluded all investments in Government securities and commercial bank deposits. When included, the United States has received about 20 percent of the total OPEC investment of about $60 billion.

Mr. LEIMERT. We are talking here, Senator, about capital formation, that kind of investment in the United States which perhaps could influence or seek to control the management or policies of U.S. companies.

Senator STEVENSON. What are you talking about, control or capital formation? Because capital formation is influenced by short- and long-term deposits?

Mr. LEIMERT. Sure, but it is indirect and would not have the direct effect of—if an Arab nation takes out a certificate of deposit of $2 billion or $3 billion in some bank, this does not give it any management control over any of the activities of American companies.

Senator STEVENSON. Well, it is $12 billion for capital formation. You reiterated the support of the NAM for as free as possible flow of goods, services, particularly investment. And I support as free as possible a flow of investment, too. That is why we are here today because the flow is not free. We are here because of restrictions which have been imposed on investment and on trade by other nations.

Now you reiterated your support for the traditional U.S. open door policy, at least with respect to investment. I support the open door policy, too. But how does the open door policy of an obsequious American Government—I don't know how else to characterize our Government—encourage other governments to eliminate their restrictions on U.S. investment in their nations. In fact, hasn't the open

door policy of this obsequious government been accompanied by growing restrictions on U.S. investment abroad? How does the open door policy achieve the result which we both are seeking?

Mr. LEIMERT. Well, we——

Senator STEVENSON. Canada was one of the most recent cases, of course.

Mr. LEIMERT. I certainly agree with you that this gives us a problem. Again referring to—putting on my other hat for a second—I am an officer of a major company involved in international business, and we are currently experiencing and learning to live with some of these restrictions. So far, we have not found any of them too onerous to enable us to deal profitably in these countries, because we have found that by being good citizens of those countries and by observing their rules and regulations as closely as possible, and by providing good service and products, that we don't have to be too much concerned.

But it is a trend, and that trend is not being matched by the United States. I would reiterate it would be a mistake in my mind for the United States to do this, because if there is any hope at all of our getting relaxation, for instance, of some of the restrictions against foreign investment in Japan, I think it will not come by having such restrictions or the fear of them, the creation of an uncertain feeling on the part of potential foreign investors that such restrictions might be imposed; we won't gain anything toward the relaxation of those restrictions in these other countries through that medium. I think we must keep our open door policy if we are ever going to achieve our goals outside the United States, and just keep patiently trying to do it, both through governmental and private negotiations.

Senator STEVENSON. Aren't U.S. corporations concerned about pressures to comply with the policy of foreign nations which prevents them from doing business with certain companies, and with certain countries, and with other U.S. companies?

Mr. LEIMERT. Yes, sir, I think the corporation would be concerned. I think our point here is——

Senator STEVENSON. That is not the question. Aren't they concerned?

Mr. LEIMERT. Yes, sir, I think they are.

Senator STEVENSON. You are not disputing the existence of the Arab boycott?

Mr. LEIMERT. No, sir.

Senator STEVENSON. Aren't they concerned?

Mr. LEIMERT. We are concerned. We have not in our own case found it any problem. Nor would we submit to such a thing. But I think the point that we would like to make, the point we are trying to make this morning is that any action which the Congress or the administration might take with respect to such problems as the boycott should be taken separately from the issue of foreign investment, so that we do not create and mix up what are economic matters with what I believe to be essentially political matters.

Senator STEVENSON. You say we would not submit to such a thing. Would you elaborate on that statement? Who is "we"?

Mr. LEIMERT. In that case, I was referring to my own company.

Senator STEVENSON. You aren't suggesting that U.S. corporations do not——

Mr. LEIMERT. No, sir, I have no direct knowledge of any that have, but I have heard all of the testimony; I have read it, and I have seen statements that such things have been done and I assume that is correct.

Senator STEVENSON. Assuming or accepting the fact that it is happening, and that some companies do accede, and further that American corporations are concerned, among other things, about lost economic opportunities, what do they think—or what does NAM think that the Government of the United States should do? What should the United States do, if anything?

Mr. LEIMERT. I can't speak for the NAM, because as I just said, the NAM has no policy in that area. I think perhaps this is something that, if you would care to address yourself to, you might, but——

Senator STEVENSON. Has it been considered by NAM, discussed?

Mr. LEIMERT. Has it, John?

Mr. KLINE. Mr. Chairman, our general policy would oppose any distortion on trade flows and, therefore, boycott action. We realize that under certain circumstances under U.S. law, the boycott actions are imposed, and we certainly accept the reasons for these for considerations such as national security. We are not in any position to judge the justification for the imposition of boycotts abroad.

To the extent that boycotts exercised by other countries would distort trade flows, we would also object to these. We have certainly discussed the specific boycott question under consideration by this committee in formulating this statement, and in the task force groups which have considered this question. We do not have a policy within the association that allows us to go beyond the general statements that we have made and address this very specific boycott issue.

We feel that it is important that the consideration that does take place on this issue should not be tied directly to the question of foreign investment in the United States, the desirability of it, or any type of regulations or restrictions that should be placed on it.

Senator STEVENSON. In formulating the statement, the NAM has taken no position with respect to the boycott. That is curious.

The boycott does interfere with free flows of investment and trade, and U.S. companies, which NAM purports to represent, are being hurt. I don't think that is just Jewish companies, any corporation which seeks suppliers, and suppliers which may be Jewish are vulnerable.

I certainly don't detect any burning indignation or concern on the part of the NAM, about the economic consequences of this boycott for its own members or for what it portends about the situation in the world, which you purport to be very concerned about.

Isn't it possible for NAM to take a position on this issue, or doesn't it regard it as very important?

Mr. KLINE. To the extent it does distort trade, we certainly object to it, as we do other obstacles which distort trade flows. We believe this boycott, as with apparently most other economic boycotts, are based on political reasons. We are not in a position to judge what steps the U.S. Government should take to counter such boycott action. We would support the removal of this, or any other obstacle which does distort trade flow.

Senator STEVENSON. Is that the rationale, if the distortions of the free market force are politically motivated, why, then, those distortions are beyond the concern or competence of the NAM? Any po-

litically motivated interference in the marketplace is all right; is that really what you are saying?

Mr. KLINE. It certainly is not beyond our concern, Mr. Chairman. But it is beyond, I believe, our competence to address the question of what type of political action should be taken to specifically counter this boycott action.

Mr. LEIMERT. I think, sir, that as part of the statement I just read, we made the following statement which I will repeat, "We therefore believe that congressional consideration of a proper response to this boycott issue may be dealt with better in separate hearings and should not be tied to decisions on regulation of foreign investment * * *." We think——

Senator STEVENSON. If I might interrupt, we have had separate hearings, and we have before this committee separate legislation. That is what S. 953 is all about.

Mr. LEIMERT. It is my understanding that the legislation upon which we are commenting contains provisions which would mix the regulation on foreign investment and address itself to the boycott issue as well.

Senator STEVENSON. No, we have S. 425 and S. 953. S. 425 is the bill that deals with investment, and S. 953 is my bill which deals with the boycott. Senator Williams has held hearings on his foreign investment bill; we have had hearings in this subcommittee in the past on foreign investment. That bill has been referred to this committee. Now we are holding hearings on both, but primarily on 953, the boycott legislation. And all of the witnesses were notified of that fact.

Mr. FINCH. Mr. Chairman, if I may, we did discuss this with a member of your staff and we did indicate before an official invitation was tendered that we could not comment on the Arab boycott due to a lack of official policy and it is with that understanding we accepted the formal invitation.

Senator STEVENSON. Does NAM expect to adopt an official policy on the boycott? Will it take the matter up so we may receive the benefit of your wisdom on that rather serious situation?

Mr. LEIMERT. I think I would urge them to do so and that we can discuss the matter further and we would be delighted to either address you a memorandum or appear again, if that would be your pleasure, to talk about it.

Senator STEVENSON. We would welcome that opportunity.

Mr. LEIMERT. I just want to, at the risk of being redundant, say that what we are trying to do here this morning is separate the two things, that we think that nothing should be done, no further legislation is needed to control foreign investment, that in fact we ought to be doing the opposite, we ought to be encouraging all we can get, because we really need it. Capital formation, the need for capital formation is, in my view, probably the outstanding economic problem of the day. And we need it as much as anyone else if we are to lead this country into a period of strong noninflationary growth.

So, therefore, we just don't think we ought to do anything that will discourage that type of investment, and that these other problems such as the boycott, should be considered in such a way or handled in such a way as not to have that result.

Senator STEVENSON. Well, I think you have made that very clear, and I am sympathetic to your purpose of trying to attract foreign investments to the United States and not to support any legislation which has the effect of discouraging foreign investment in the United States, though I am not convinced at the present time that monitoring investment flows in the United States would have that effect.

Mr. LEIMERT. A potential investor, even though there is no restriction there per se, wonders why do they want to know this? Why do they ask this? What are the reasons behind it? Could we be led down the path as has happened in many countries where one thing leads to another, and the first thing you know you have nationalization of some industry. It is this kind of uncertainty which is just death to anybody's decision to invest. If he is uncertain about it, he is not going to invest. That, to me, is the key problem.

Senator STEVENSON. Thank you very much, gentlemen. If you do have further advice on the boycott issue, we would appreciate receiving it.

Our final witness is Mr. David T. Devlin, vice president, First National City Bank of New York.

STATEMENT OF DAVID T. DEVLIN, VICE PRESIDENT, FIRST NATIONAL CITY BANK OF NEW YORK

Mr. DEVLIN. Mr. Chairman, I would like to include my statement in the record, along with the appendix.

Senator STEVENSON. It will be entered in the record including the appendix.

Mr. DEVLIN. I am an economist, and since November 1973 have been a vice president of First National City Bank in the economics department, concentrating on issues of international finance. Previously I was in charge of the work on U.S. balance of payments and multinational corporations at the Bureau of Economic Analysis in the Department of Commerce.

I have been asked to testify on the financial problems associated with OPEC funds. I will focus on two issues: The likely size of the OPEC capital surplus; and the need for legislative restraints on investment of such funds—and other investments—in the United States as embodied in S. 425 and S. 995. I will also be glad to answer any questions on S. 953.

Citibank has recently published an analysis of the OPEC capital surplus, and I include that analysis as an appendix to this testimony.

The current account surplus of the OPEC countries in 1974, and thus their accumulation of capital abroad during the year, was about $65 billion. The current account covers exports and imports of goods and services, including income on investments, as well as unilateral transfers or gifts.

The $65 billion included a buildup in trade credits of some $10 billion, reflecting lags in payments to OPEC for oil and by OPEC for imports. So the money they had to put into world capital was about $55 billion, according to our estimates.

In 1975 the OPEC imports are continuing to rise very fast, and oil receipts have fallen sharply. As a result their surplus this year should drop to about $35 billion, perhaps slightly more.

Most of the resulting improvement in the current accounts of oil importing countries has been concentrated in the 10 largest industrial countries, who are in a deep recession and have been the major suppliers of the consumer and capital goods imports by OPEC. As a consequence, the OPEC induced deficit in 1975 appears to be concentrating in the poorer OECD countries and the nonoil LDC's. Their deficit in 1975 could be just as large as it was in 1974.

For the future it is important to emphasize—although many of us have put together figures on what the OPEC capital accumulation will be through 1980 or through 1985—that you can do little more than create scenarios. You want them to be logically consistent, you want them to be based on economic theory, but they are scenarios, not projections of estimates, because we don't have the knowledge or certainty to really do something like that.

The uncertainties include how fast the OPEC development plans will be implemented, and thus how quickly OPEC imports will grow, the likely demand for OPEC oil and the price of such oil.

We feel that the central scenario we have created is the most plausible sort of outcome, although we also created a high and a low variant of it in order to give an idea of the magnitude of the variation of the capital accumulation.

The scenario is based on economic theories, and history. It is based on expectations that the current high price of oil will reduce demand and increase non-OPEC energy supplies; that OPEC imports will continue to rise, although much slower than the 70-percent increase in 1974; and that in the latter 1970's, as the non-OPEC supplies come on line, OPEC will have to accept a reduction in the real price of oil in order to keep a reasonable share of the total market. The more OPEC prices are raised in the short run, the faster these pressures will come to bear.

This scenario assumes that the political cohesion of the OPEC cartel will mostly be maintained, although that is not sure, but that the lower the demand for their oil, the harder it will be for them to maintain the cartel price.

Thus in the 1980's, competition may well develop between the members of OPEC, leading to a reduction in the price of OPEC oil. Such competition has been a problem historically for most cartels. Despite the benefits to a producing group as a whole which result from restraint of production in order to maintain high prices, the incentive of individual members to try to increase their share of the total makes negotiation and allocation of shares very difficult, and extensive price cutting usually results, particularly in the longer run as demand adjusts and alternative supplies can be developed.

On this basis, the most plausible scenario in our view is for current account surpluses until 1979, with a total buildup of surplus capital funds by OPEC on the order of $200 billion in 1979 dollars by then. After that the OPEC current account should go into deficit—some countries will maintain small surpluses, but they will be offset by the deficits of others—with a reduction in the accumulated surplus.

This $200 billion is of course a lot of money; but it is clearly trivial in terms of the size of world financial markets even by today's standards and will be more so in 1979. What looked like a tiger is thus ex-

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pected to turn into a Cheshire cat, that poses little threat to the stability of the world financial system.

Some commentators have interpreted this analysis to imply that nothing need be done by the United States or other consumer governments in response to the OPEC cartel. That is not so. The essence of a cartel is to hold the price of a commodity above the free market price and thus get more income from consumers than otherwise; that is to say, more automobiles, or capital equipment per barrel of oil.

The basic issue is the transfer of income, rather than whether or not producers spend it, or how large their accumulation of unspent capital abroad will be.

While the scenario described is largely based on market forces, it is clear that the governments of oil-importing countries, such as the United States, have every incentive to aid the market process by encouraging reductions in demand for oil and increases in alternative supplies. This would not only increase the downward pressure on the cartel price of oil, and reduce the magnitude of the OPEC surplus, but would also reduce the transfer of income from oil consumers to producers implied by the cartel price.

With this view of the OPEC surplus, we do not see the need for precipitate action to discourage investments in the United States by OPEC or indeed any other foreign investors.

We have a serious belief in free international flows of capital, generally, which benefit both the investor and the recipient. The benefits of such flows of capital, and in the case of direct investment often accompanied by transfer of managerial expertise and technology, are similar to the benefits of international trade in goods, where consumers on both sides benefit. While there are U.S. national interests that deserve special consideration, we believe that present laws and the bodies charged with the administration of these laws are adequate to protect these interests.

[The complete statement and appendix follow:]

STATEMENT BEFORE

SENATE BANKING SUBCOMMITTEE
ON INTERNATIONAL FINANCE

BY
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JULY 23, 1975

I am an economist, and since November 1973 have been a Vice President of First National City Bank in the Economics Department, concentrating on issues of international finance. Previously, I was in charge of the work on the U.S. balance of payments and multinational corporations at the Bureau of Economic Analysis in the Department of Commerce.

I have been asked to testify on the financial problems associated with OPEC funds. I will focus on two issues: The likely size of the OPEC capital surplus; and the need for legislative restraints on investment of such funds (and other investments) in the United States as embodied in S 425 and S 995.

1. Citibank has recently published an analysis of the OPEC capital surplus, and I include that analysis as an appendix to this testimony. The current account surplus of the OPEC countries in 1974—and thus their accumulation of capital abroad during the year—was about $65 billion. (The current account covers exports and imports of goods and services, including income on investments, as well as unilateral transfers or gifts.) The $65 billion included some $55 billion that was investable and a build up in trade credits of some $10 billion, reflecting lags in payments to OPEC for oil and by OPEC for imports.

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In 1975, OPEC imports are continuing to rise and oil receipts have fallen sharply. Their current account surplus should therefore drop to about $35 billion for the year. Most of the resulting improvement in the current accounts of oil importing countries has been concentrated in the ten largest industrial countries, who are in a deep recession and have been the major suppliers of the consumer and capital goods imports by OPEC. As a consequence, the OPEC induced deficit in 1975 appears to be concentrating in the poorer OECD countries and the non-oil LDC's. This implies their deficit will be as large as in 1974.

It is important to emphasize that all figures on the OPEC capital accumulation in later years are little more than scenarios. The terms projections or estimates imply more knowledge and certainty than we have. There are a number of major uncertainties: how fast the OPEC development plans will be implemented and thus how quickly OPEC imports will grow; the likely demand for OPEC oil; and the price of such oil. We feel that the central scenario in our report is the most plausible outcome. It is based on expectations that the current high price of oil will reduce demand and increase non-OPEC energy supplies; that OPEC imports will continue to rise, although much slower than the 70 percent increase in 1974; and that in the latter 1970's, as the non-OPEC supplies come on line, OPEC will have to accept a reduction in the real price of oil in order to keep a reasonable share of the total market. The more OPEC prices are raised in the short-run, the faster these pressures will come to bear.

This scenario assumes that the political cohesion of the OPEC cartel will mostly be maintained (although that is not sure), but that the lower the

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demand for their oil, the harder it will be for them to maintain the cartel price. Thus in the 1980's competition may well develop between the members of OPEC, leading to a reduction in the price of OPEC oil. Such competition has been a problem historically for most cartels. Despite the benefits to a producing group as a whole which result from restraint of production in order to maintain high prices, the incentive of individual members to try to increase their share of the total makes negotiation and allocation of shares very difficult and extensive price cutting usually results, particularly in the longer run as demand adjusts and alternative supplies can be developed.

On this basis, the most plausible scenario in our view is for current account surpluses until 1979, with a total build up of surplus capital funds by OPEC on the order of $200 billion by then. After that the OPEC current account should go into deficit with a reduction in the accumulated surplus. While $200 billion is, of course, a lot of money, it is clearly trivial in terms of the size of world financial markets even by today's standards and will be more so in 1979. What looked like a tiger is thus expected to turn into a Cheshire Cat, that poses little threat to the stability of the world financial system.

Some commentators have interpreted this analysis to imply that nothing need be done by the U.S. or other governments in response to the OPEC cartel. That is not so. The essence of a cartel is to hold the price of a commodity above the free market price and thus get more income from consumers than otherwise; that is to say, more automobiles, or capital equipment per barrel of oil. The basic issue is the transfer of income, rather than whether or

not the producers spend it, or how large their accumulation of unspent capital abroad will be.

While the scenario described is largely based on market forces, it is clear that the governments of oil importing countries, such as the U.S., have every incentive to aid the market process by encouraging reductions in demand for oil and increases in alternative supplies. This would not only increase the downward pressure on the cartel price of oil and reduce the magnitude of the OPEC surplus, but would also reduce the transfer of income from oil consumers to producers implied by the cartel price.

2. With this view of the OPEC surplus, we do not see the need for precipitate action to discourage investments in the United States by OPEC or indeed any other foreign investors. Free international flows of capital generally benefit both the investor and the recipient. The benefits of such flows of capital--and in the case of direct investment often accompanied by transfer of managerial expertise and technology--are similar to the benefits of international trade in goods where consumers on both sides benefit. While there are U.S. national interests that deserve special consideration, we believe that present laws and the bodies charged with the administration of these laws are adequate to protect these interests.

CITIBANK
Money International

VOL. 3 NO. 5 MAY 30, 1975

The Opec capital surplus—from tiger into tabby cat

When the Organization of Petroleum Exporting Countries (Opec) quadrupled the price of oil in 1973-74, it touched off a chain reaction that began with a cosmic bang but has since got less explosive. Stage I triggered fears—sometimes bordering on panic—that the huge increase in oil revenues would be neither lent, spent nor invested in the consuming countries and that an ever-growing Opec surplus would disrupt financial markets and cause an international economic "collapse." In Stage II, it was demonstrated that the shock could be borne, that the private financial markets, with some assistance from governments and the International Monetary Fund, were able to transfer or "recycle" Opec capital to countries saddled with large oil deficits. In Stage III, just beginning, the likelihood is that sooner or later the once-terrifying Opec capital surplus will be eroded by a growing deficit in the Opec current account.

The reasons for anticipating such a turnabout for Opec—its enormous 1974 surplus on current account dwindling into a deficit in 1980—are twofold:

- Opec's imports—purchases of all sorts of goods and services from the rest of the world—are expanding much faster than expected.
- Opec's oil revenues are much lower than had been generally foreseen. World demand for oil has been weakened, not only by the swift runup in price but also by the deep recessions into which most countries have fallen.

Together, these two developments suggest that, sometime in the years ahead, Opec's current-account surplus will indeed be replaced by a deficit. The timing and dimensions of the turnaround could be more or less as suggested in the table below. But other scenarios are possible, too.

The outcome will depend on the evolution of

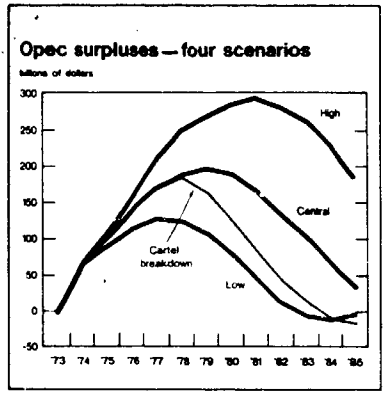
The rise and fall of the Opec surplus—the central scenario

	1973	1974	1975	1976	1977	1978	1979	1980	1985
Oil production, millions of bbl./day	31	30	28	27	29	29	30	31	32
Price per bbl.—current dollars	$ 3.40	11.40	11.30	11.80	11.20	10.70	9.90	9.10	9.10
1975 dollars			11.30	11.20	10.20	9.20	8.10	7.10	5.60
Exports of goods and services	45	135	121	134	137	141	142	142	183
Billions of dollars									
Oil exports	38	126	107	116	114	113	108	103	107
Dividends, interest and other	7	9	14	18	23	28	34	39	76
Imports of goods and services	−37	−65	−79	−92	−105	−118	−131	−146	−216
Transfers	−2	−4	−6	−5	−3	−3	−3	−3	−2
Current account	6	66	36	37	30	19	8	7	−35
Accumulated capital holdings abroad*	†	66	102	139	169	188	196	184	30

† Less than $1 billion. All figures are rounded, so totals may not add.

* Accumulated capital holdings abroad for each yearend are obtained by adding the current account surplus for that year to the capital holdings of the previous yearend. For example, the current account surplus in 1976 is $37 billion. When added to the capital holdings for end-1975, which are $102 billion, the result is $139 billion in holdings for end-1976.

Prepared by Citibank's Economics Department for customers of First National City Bank and Citicorp.



Opec's current account, which in turn will depend mainly on future trends in Opec's revenues and imports. The credit side of a country's current account is essentially the sum of its exports of goods and services, including net returns on foreign investment. The debit side reflects its imports of goods and services, and its gifts or "transfers" to other countries. In any given year, a surplus on current account indicates that the country's net claims against the rest of the world—and hence its capital wealth abroad—have increased for the year. Conversely, a current-account deficit means that such claims have diminished. Consequently, if Opec runs a current-account deficit in 1980, its store of capital wealth will be less at the end of 1980 than at the end of 1979.

Current-account analysis is based on accounting concepts that may require some clarification (box, page 4). In particular, last year produced a discrepancy between Opec's current account and its investable surpluses, due to sudden surges in the value both of its exports and imports. But so large a discrepancy is not likely to recur. That's why the current account provides the most solid basis for delving into the future of Opec's capital hoard.

This approach confronts hard problems in their most acute form. Indeed, it forces the analyst into a tight corner where more questions are raised than can be answered with certitude.

One burning question is how the future demand for Opec oil will respond to the current high price or to changes in price. A preliminary answer is that responsiveness, or price elasticity, over the long run will hinge on a complex set of factors. They include the impact of high prices on consumption, the growth of non-Opec oil supplies, the degree to which coal is substituted for oil, and the speed and efficiency with which nuclear-energy supplies can be expanded.

Then there are the more strictly political questions, such as the scope of Opec's economic-development programs and the cohesiveness of the cartel, which are even more difficult to answer. Nonetheless, it is possible to construct scenarios based on what are now reasonable assumptions about the factors that will determine Opec's surpluses.

Four scenarios are offered here; and four corresponding curves—showing the growth path of accumulated Opec surpluses for each scenario—are sketched in the chart opposite. The central scenario, with peak accumulation occurring in 1979, is deemed the most plausible. The high-accumulation scenario moves to a much higher peak in 1981, as the chart indicates. A low-accumulation scenario peaks out sooner, in 1977. And finally, a fourth scenario envisages the possibility that the cartel might break apart.

Figures for the central scenario are provided in two tables, on pages 1 and 3.

Oil revenues: The top two lines of the table on page 1 give year-by-year estimates for Opec oil production and for the price per barrel. These two lines establish the framework for the central scenario; they exemplify its basic assumptions.

First of all, it's assumed that the cartel will hold firmly together through 1985. Secondly, the scenario starts with the fact that Opec's output was cut sharply this year to maintain prices in the face of recession-weakened demand. But it's assumed that Opec production will increase next year as the world economy recovers, and that it will continue to rise gradually in the years ahead.

This year's cutback was deep—from a high point of 32 millions of barrels per day (mbd) in June 1974 to 25 mbd last March-April. All the same, oil inventories bulged and little storage space was left. Some Opec members shaded their prices a bit to maintain output, but on average the real price of crude gave very little ground; and as demand picks up over the next few months and into 1976, the movement of the price is far from certain.

However, from 1977 onward, the exploration efforts launched this year will begin to pay off in non-Opec oil, so that Opec will be forced to keep a tight rein on its own output to prevent a sharp fall in prices. Later still, other forms of energy will become available in greater volume, while the flow of non-Opec oil keeps rising. At that stage, Opec members will probably step up their production in an effort to rebuild their dwindling share of the market—an effort that is unlikely to succeed in the long run. By 1985, this combination of events could lower the real price —expressed in constant 1975 dollars—to an equilibrium level, perhaps $5-6 per barrel.

But a real price at $5-6 would mean that, in 1985, a barrel of Opec oil would be worth little more than half as much as in 1975, in terms of the real bundle of goods and services for which it could be exchanged. Assuming a 5% average annual rate of infla-

tion for the intervening period, the 1985 price per barrel is estimated at $9.10 in current dollars.

Imports: Estimates of imports in the table on page 1 are influenced heavily by what is known about the cartel's plans to raise living standards through heavy capital investments. And it is in this respect that the position of Opec's members, especially those in the Middle East, is unique. They are committing themselves to long-term capital projects—petrochemical complexes, gas-gathering systems, desalination facilities and the like—all carrying price tags that run in the billions of dollars. Work on such projects cannot be halted before completion without incurring hefty losses and undermining widespread expectations of a better life.

This suggests that, as revenues grow more slowly than expected and imports grow more rapidly, the capital surplus accumulated by Opec will reach a peak, and then decline. The central scenario puts the peak at about $196 billion in 1979.

The diversity within Opec

The table below shows how each of the Opec members fares as the central scenario unfolds. As early as 1976, at least five of them—Libya, Indonesia, Algeria, Iran and Ecuador—find no surplus or even a growing deficit in their current accounts. From then on, imports into these five continue to rise, but at a slower rate as they run down their previous accumulations of capital. After these accumulations are used up, it's assumed that these countries will keep running moderate deficits and that they will borrow to finance them. But eventually there will be a limit to borrowing, and imports will be greatly reduced.

By 1977-78, the significant surpluses in the current-account balances of Iraq, Venezuela and Abu Dhabi are also likely to disappear. And after 1980, the central scenario provides that all the Opec countries, except perhaps Qatar, will have current-account deficits, financed either by running down accumulated assets or by borrowing.

But events may take a different course from the one traced by the central scenario. In particular, a good deal of uncertainty surrounds demand for Opec oil through 1985—which is why it is necessary to present a high-accumulation scenario.

In this scenario, the key assumption is that demand will remain high in 1975—and that it will grow faster from then on than was suggested by the central scenario. This rapid rise in demand could reflect sluggish consumer response to high prices, a slow growth of non-Opec supplies, or both. The higher the demand, the easier it will be for Opec to maintain high prices. Therefore, the high-accumulation scenario assumes that prices in real terms will decline very slowly. In 1985, the price per barrel might be $15 in current dollars—or $9 in 1975 dollars, again assuming an annual 5% rate of inflation. If world inflation were to return to double-digit rates, the 1985 price could be much higher—especially if Opec prefers present to future income and decides to raise its price.

But higher revenues might encourage most Opec states simply to buy more imports. As a result, it's assumed that, in most Opec countries, the surpluses will pile up no faster in the high-accumulation scenario than in the central scenario. However, three countries spell the difference. They are Saudi Arabia, Kuwait and Qatar—where the present constraint on imports is an unwillingness to spend, not a lack of spendable revenue. As surpluses in these three countries grow very rapidly, the total Opec surplus peaks at about $300 billion in 1981, rather than $196 billion in 1969. And with a return to rapid inflation, the high-accumulation peak could be even higher.

But there's a third possibility: Overall demand could be lower than in the central scenario. In the low-accumulation scenario, it is assumed that the demand for Opec oil drops to 25 mbd in 1975, rises temporarily

How the oil states will share the wealth—the central scenario

net assets abroad in billions of dollars

	1973	1974	1975	1976	1977	1978	1979	1980	1985
Saudi Arabia	5.2	24.2	36.5	54.6	69.1	81.0	88.8	90.4	15.8
Kuwait	3.5	10.9	17.4	24.7	31.7	38.0	43.3	47.1	24.8
Iran	—4.6	11.0	12.0	13.0	12.0	9.0	4.0	—1.1	—3.5
Iraq	1.1	5.0	7.8	10.3	11.3	11.2	9.4	6.3	—3.2
Venezuela	0.6	8.4	14.4	19.3	23.0	24.7	24.0	20.1	—2.5
Nigeria	—0.6	4.2	9.0	14.1	18.6	22.3	24.7	25.4	3.1
Libya	2.3	4.0	4.0	3.7	2.8	2.3	2.1	1.4	—1.1
Indonesia	—5.1	—3.4	—3.0	—3.3	—3.6	—4.2	—5.1	—6.8	—4.3
Algeria	—2.6	—2.8	—5.9	—7.7	—9.1	—10.7	—11.1	—11.9	—13.1
Ecuador	—0.3	—0.1	0.2	0.5	0.6	0.5	0.5	0.3	—0.9
Abu Dhabi	0.3	2.3	2.9	4.2	4.5	4.6	4.4	3.7	0.4
Qatar	0.5	2.5	4.2	6.1	8.1	9.8	11.4	12.8	14.9
Total Opec	0.5	66.5	102.3	139.5	169.0	186.5	196.2	188.7	30.3

Red indicates peak accumulations of net assets abroad.

in 1976-77 as the world economy revives, then falls to 20 mbd in 1980 as non-Opec supplies expand rapidly, and only recovers to 27 mbd in 1985 after sharp cuts in Opec prices. Prices in 1985 are assumed to be $4.50 per barrel in 1975 dollars and $7 in 1985 dollars.

Under these circumstances, Opec's big spenders would have to cut imports faster than in the central scenario because the revenue constraint would come into play sooner. Opec's accumulation of assets would peak at $130 million in 1977, and the reduction in the surplus from the central scenario would be concentrated in the high-surplus countries.

But there's a problem common to all these scenarios—they assume that, in the future, each Opec member's share of total Opec revenue will not change significantly from the present or recent past. However, most cartels break up over the issue of revenue sharing.

Suppose that some Opec members—that have the ability to increase their output—decide their shares are inadequate to finance their development plans. They may seek to build up their shares at the expense of their fellow cartelists.

In that event, a "cartel breakdown" scenario could occur. It would run like this: An Opec member in need of more revenue would shade its price to increase its share of the pie substantially. As its share expanded, the shares of other Opec members would decrease—and they could respond by shading their prices. Thereupon the first pricecutter would find its share shrinking back to its original size. Since short-run demand for oil is fairly inelastic, total revenue would be reduced by the price shading; each member of the cartel would be worse off. If the original pricecutter tried once again to increase his share, the other Opec members again will retaliate. The result would be a downward spiraling of the oil price until it reached a free-market level of perhaps $5-6 per barrel in 1975 dollars.

The price umbrella

But what is the likelihood that the Opec cartel will fall apart? So far, Saudi Arabia, Abu Dhabi, Libya and Algeria have been willing to accept major reductions in their revenue shares. Of those four, only Saudi Arabia is in a position where further cuts in production would not reduce its oil revenues below what it expects to spend for imports in the near-term future.

However, it is the existence of countries that need not spend all of their revenues that distinguishes the Opec cartel from other cartels. As long as Saudi Arabia and a few others hold up the price umbrella by cutting production, there is little chance that competition for shares will cause a sharp fall in price.

Over the longer haul, in the late 1970s and early 1980s, growing non-Opec supplies of energy will diminish the demand for Opec oil, and the receipts of countries now enjoying huge surpluses may fall closer to the level of their spending on imports. If that happens, they will no longer be willing to maintain the price by accepting outsized cuts in production. Then Opec would suffer the fate of other cartels.

This possibility should not be lightly dismissed. While the central scenario now appears the most plausible, the alternatives—especially a cartel breakdown—cannot be ruled out. However, there is a simpler and more solid conclusion to be drawn. It is that, whichever scenario unfolds, the accumulated Opec surpluses will shrink. What first seemed to be a ferocious tiger in 1973-74 has since been declawed—and is now turning into a Cheshire Cat.

Opec: the red and the black

In the public press, the swift buildup of Opec's capital wealth is rarely presented in current-account terms. Most estimates of Opec surpluses focus solely on oil revenues.

But this isolates one segment of world trade—oil—and only part of that, from other international transactions. Furthermore, oil revenues are counted when payments are actually made, not when the oil is shipped. All this makes it difficult to compare Opec's balance of payments with the uniform estimates that the International Monetary Fund prepares for all member countries.

Under unusual circumstances, the current-account approach can cause some confusion about the size of the investable surplus. In 1974, the total value of Opec exports was $135 billion, of which oil accounted for $126 billion. Out of this $126 billion, some $16 billion accrued to private foreign-owned oil companies. So in terms of the current account, this $16 billion was an outflow—and was included in the total of Opec's imports. When imports and transfers were deducted from total exports last year, there was a $66 billion surplus in Opec's current account.

But because of lags, both on the receipts and payments side of the ledger, the $66 billion overstated what Opec actually could spend, lend or invest abroad in 1974. For example, some $19 billion of the $110 billion due to governments wasn't really going to be paid until 1975, so actual government oil revenues in 1974 came to about $91 billion. Partially offsetting this was Opec's delay in paying for its mighty surge of imports. Perhaps as much as $7 billion of the $35 billion worth of imports was not paid for until 1975. So it seems that Opec's actual investable surplus was $54 billion in 1974—because $66 - 19 + 7 = 54.

A gap of $12 billion between Opec's current-account surplus and its investable surplus is a freak occurrence. Last year was an extraordinary year for Opec, with extraordinary surges both in exports and imports. Because it won't happen again, current-account analysis is a good way of looking into Opec's future.

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Senator STEVENSON. Thank you, Mr. Devlin. Your central scenario is an optimistic one, and I am glad to have it. I wish I could feel quite as optimistic as you do, having argued for almost 2 years now with economists and others about the ability of OPEC to decrease production as opposed to price, only to be proved right so far.

I approach all of the scenarios of economists with some continued scepticism. Also as chairman of another subcommittee, the Oil and Gas Production Subcommittee of the Senate, I have some familarity with wordwide production not just of oil, but of alternative sources, including other fossil fuels, natural gas, and I guess I just can't be—well, to begin with, quite as optimistic as you are about reducing demand for oil, partly because of the lag time on the alternative sources, partly because some sources are rapidly depleting, like natural gas, unless we reduce the demand, just reduce industrial activity and have a recession or depression, and that is clearly not the way to do it.

Mr. DEVLIN. No, sir.

Senator STEVENSON. I suppose you have tried to project demand, and your conclusions are more optimistic than most of ours, and on the supply side, too.

That has been part of the continuing argument. The economists, the Secretary of the Treasury and all others say well, you just wait, the high price of oil is going to produce a lot of new oil; it will come out of the China Sea, it will come out of the jungles of the Amazon; we will all get washed away with it. But it just hasn't happened.

Where are these non-OPEC producers that you have identified? Is North Sea Production?

Mr. DEVLIN. I think there have been lists around——

Senator STEVENSON. Of future non-OPEC production, additional non-OPEC supplies?

Mr. DEVLIN. So far what has happened is the worldwide recession has sharply cut industrial activity due to consumers not buying things, and that is part of the drop in the demand for oil since last year.

We have run some regressions associating world demand for oil, with world economic growth. And from these equations we have become convinced that the magnitude of the drop we have seen in production so far—the consumption numbers are very soft—suggests that the fall is more than could be explained by the magnitude of the world recession. That is what you would expect.

You expect part of the reduction in demand due to the high price to happen the first year, after the high prices are instituted. But there are adjustments that take a longer time on the demand side. For instance, you pay attention for the first time to insulation in buildings, because it is expensive not to. It is these kinds of factors that will affect demand in the long run.

Now the alternative supplies, I suppose there is a standard list of them, the North Sea——

Senator STEVENSON. This is short-term demand?

Mr. DEVLIN. I am really focusing this analysis on the latter part of the 1970's when non-OPEC supplies come on strongly. I don't expect anything this year or next. As you know production in the United States is actually declining. I think something could be done about that. A higher price for oil would lead to more production.

Senator STEVENSON. Have you taken into consideration, for example, depleted natural gas supplies in the United States, and the need for alternatives?

Mr. DEVLIN. In respect to the natural gas supplies, it strikes me that the price has been held down very low and that has encouraged a number of people to use natural gas who would not have used it if it were at the market price, and that low price has encouraged a great deal of people not to look for any more.

Senator STEVENSON. My point is, as the price goes up, and as natural gas simply runs out they will be encouraged to use oil. Every time the Geodetic Survey comes up with another report, we have lost another third of our oil and gas resources.

Mr. DEVLIN. I saw that report, yes.

Senator STEVENSON. The energy has to come from somewhere, at least we hope so. And most of the alternatives are pretty far distant, including the technologies for conversion of coal.

Mr. DEVLIN. I would not expect in the kind of scenario that I am talking about, to depend on any of the more exotic supplies, such as nuclear fuels, liquified coal, those kinds of things. I really expect this to happen through increased supplies of oil and coal. An enormous increase in the use of coal in the United States is possible, saving a great deal of oil, despite the fact that the price of coal has gone up in sympathy with oil.

I might also say, parenthetically, that I have more or less been involved in the matter of energy since 4 or 5 years ago when I was here in Washington. And it struck me both here, and in New York, that there was a division between the energy economists and financial economists, such as myself. And the financial types tend to say, well, if the price changes, you will have shifts in demand and supply; and the energy people tend to say, well, the price has never shifted, and even if it did, there would not be any change in demand or supply.

The facts will prove it one way or another.

Senator STEVENSON. You were going to say something about the supply side, the non-OPEC future sources of oil and I think I interrupted you.

Mr. DEVLIN. I did not have anything new in mind. The conventional list indicates the North Sea, the North Slope, Mexico, and offshore areas of the United States. And we will probably discover oil in all sorts of new places that we had not even thought of, because the monetary incentive for looking for it is so strong now.

I think it is the small wildcat drillers that tend to be the most enthusiastic and believe this.

Senator STEVENSON. Getting back to the investment of the OPEC surplus, most of that investment in the United States is short term, isn't it, bank deposits, and so on, and if so, what are the banks doing to protect themselves against investment shifts? Do you want to elaborate on that subject?

Mr. DEVLIN. Yes. The money that came into the United States last year was around $11 billion; something like half of that was in bank deposits and commercial paper, the other half in U.S. Government and agency securities, and a trivial amount in private long term investments, real estate, and the stock market.

No individual bank has to accept a deposit if it feels it would in any sense adversely affect its liquidity structure, and none of the big banks do it. So what happens if they do not want deposits? All they have to do is shave their quotas a little bit, and the deposits go elsewhere.

There was a great deal of worry about this last summer when short term interest rates were very high. But what actually happened is when the big banks did not want the money, it spilled over to the smaller banks. When short term interest rates came down from the very high levels they had reached, largely because of inflation, the funds shifted into the longer term maturities.

One would expect this trend to continue. I might also mention that if you have a big deposit and for some reason or other the depositor takes it out of your bank and puts it someplace else, the total amount of funds available has not changed. To replace the deposit you lost, you might go through one or two intermediaries and get the same amount back.

Money is very fungible in the markets. I think it is very easy to exaggerate the possibility that any particular bank could come under great pressures because of some arbitrary switching around of OPEC deposits, even if OPEC wanted to do it.

Generally our experience has been they don't want to. That is a way to lose money. I am speaking not only of switching within national money markets, but also switching between money markets, thus affecting exchange rates for currencies. There have been some marginal movements of OPEC funds affecting exchange rates, say more flows into German marks or Swiss francs than there used to be. But it is surprising how little of that shifting there is. Of course, a good deal of the funds will be concentrated in Saudi Arabia and Kuwait who we believe are very conservative investors, based on our extensive discussions with them.

Senator STEVENSON. Well, I know a little bit about what it is like to be an Arab sheik because I once had about a billion dollars to invest in banks, when I served as a State treasurer in Illinois, and I discovered in that role that I had a certain amount of influence with the banks and developed some new investment policies which influenced the lending activities of the banks, the effort being to funnel these funds into activities that benefit the public.

I mention that experience because of the Arab boycott. And because it suggests to me that depositors of some billions of dollars potentially have at least some influence over the activities of U.S. banks.

What is the effect of the boycott on U.S. banks and isn't a bank like First National City, which acts as a depository for Arab states, under a great deal of pressure or at least capable of being put under a great deal of pressure to comply with boycott requests lest it lose deposits.

Is First National City a depository of funds from OPEC or Arab boycotters?

Mr. DEVLIN. Absolutely. When the original flows started we were often cited as one of the 10 banks to which the funds would go, because they knew about us, and they didn't know about most banks.

The problem here is partly on the OPEC side, too. They got an enormous amount of money, quite suddenly, and it took them some time to gear up procedures to handle it, and to some extent they very

much needed the big banks to give them advice and make sure the flows kept moving.

I mean you wouldn't want a billion dollars sitting around not paying interest for weeks. So they had to go to the big banks initially.

And I might say that given the relative size of the money and capital markets in the United States and in the Eurodollar market, which is really an extension of the U.S. money market, OPEC really can't put its surplus funds very many other places because the other national money and capital markets are so small, it is very hard for them to absorb large amounts.

So I am saying the dependence is not just one way, it is really a mutual thing. And certainly whenever you enter into a business deal with anybody, banks, nonbanks, what have you, there is always a certain interaction. But it is up to the management of each of the organizations to decide what they are willing to deal about and what they are not willing to deal about, how far they will go to get certain things done and how far they won't go. And I should say Citibank is diversified all around the world. Although there is a big source of funds in the Middle East, we have many other markets as well.

I can probably also say something as to how we think about the boycott. It is not really clear to us what should be done about it.

There are three different kinds of boycotts. The first is the primary one by the Arabs who do not want to buy Israeli goods. And the second is that they don't want to deal with firms, in the United States and elsewhere, who give major support to Israel. Now just what major support is very hard to define. You can't find rules which would explain why all of the people on the boycott list are there and why others are not there. It is hard to come to a consistent definition of what the criterion is.

According to statements of the boycotters they are not interested in preventing firms from doing normal trading with Israel, and I might say normal banking with Israel. We have a number of correspondent relations with bankers in Israel, and it is good business.

The third kind of boycott is pressure that would lead to a U.S. firm discriminating against another U.S. firm or an individual on the basis of race, color, or creed.

I should say first that all of these types of boycotts, as far as Citibank can see, don't make any economic or moral sense. On principle, we are one of the firmest supporters of free markets. We believe in it and we take that view with the U.S. Government or any other government we talk to.

In respect to this third kind of boycott, it is even more serious than the other two. The kind of boycott, where you discriminate on the basis of race, color or creed, is intolerable, and to the extent it is not illegal, it clearly should be.

I might say that a company or country simply can't allow that sort of thing to occur.

Now as to the second kind of boycott, where to some extent firms are faced with the choice of either dealing with Israel or dealing with certain Arab countries, it is very hard to decide what to do about it.

I looked at S. 953, and as far as I can see it says that the President would have power, presumably if he wished to use it—I wasn't sure about that—to slow down or cut back exports to, or investments in

countries which discriminate against a country with which we have friendly relations.

My first question, is all right, what would that do? What would be the total result of doing that?

To the extent the President used that power, and he cut off exports to or investments in a number of Arab countries, I guess our conclusion is it wouldn't really do much good. The Europeans and Japanese would move in with their exports, and with their investments. I don't believe Israel would be helped much, because I don't think they have been hurt much by the boycott. It has been a nuisance, but serious economic damage has not resulted. In addition to that, during a temporary period while our exports were disrupted, a lot of workers in the United States would have to make some painful adjustments.

In addition, there is a foreign policy argument one can make. That is, to the extent we are trying to be a peacemaker, a reconciler in the Mideast, a cutoff of exports and investment would clearly hurt that effort.

Of course the clear way to get the boycott stopped is to get what we want for other reasons, and that is peace.

Senator STEVENSON. Has Citibank been requested to comply with the boycott?

Mr. DEVLIN. No; not to my knowledge. I talked to the responsible people in the bank and I didn't find that to be the case.

Senator STEVENSON. Do you know about the experience of other banks?

Mr. DEVLIN. Not very much. I mean I have read the papers, certainly, as to what happened in London, where some banks were reported under pressure, and some so-called Jewish banks were kept out of or there was an attempt to keep them out of some syndications.

I should say that Citibank, as comanager, has been involved in syndications in which there were both Arab banks and some of these so-called Jewish banks. So we have all been together.

Senator STEVENSON. Does Citibank have branches in Arab states?

Mr. DEVLIN. Yes; we have had a branch in Saudia Arabia for 10 years, and also have branches in a number of other Arab countries.

Senator STEVENSON. Do you have a branch in Israel?

Mr. DEVLIN. No; we do not have a branch in Israel. I should say we don't have branches in a number of other countries, also, including Sweden and some Arab countries, for instance.

We think that branch banking in Israel would not make us enough money. On the other hand, we do have fairly extensive credit relations with the commercial banks operating in Israel, and normal commercial transactions take place.

Senator STEVENSON. Do other banks have branches in both Israel and Arab states?

Mr. DEVLIN. My impression—and I am not an expert on it—is that there are probably no more than one or two American banks in Israel and they don't have branches in Arab countries. One of those I think is quite small. Another is part of a consortium of some sort.

I don't think any of the major New York banks have branches in Israel, although as far as I know they have the same commercial relations with the banks there that we do.

Senator STEVENSON. You don't know of any pressure received by your bank or others to discriminate against, or not do business with U.S. firms because they are Jewish or because they have associations with Israel?

Mr. DEVLIN. I have no knowledge of any case, and I did ask around.

Senator STEVENSON. There is an allegation that American banks routinely require boycott compliance forms from steamship lines as one of the documents to be submitted before honorary letters of credit are given.

Are you familiar with that allegation?

Mr. DEVLIN. Yes. City Bank acts as an intermediary between say a U.S. exporter and a bank in say Saudi Arabia who is paying for the imports from that U.S. exporter. As part of the documentation, a statement from the U.S. exporter is required that the ship on which he is shipping the goods will not stop in Israel before it stops in say Saudia Arabia, or wherever it is going. We process these letters of credit, and I must say we process them in almost a factory like atmosphere, and if that is part of the condition on which the payment is made, then we honor it.

There is also a certification as to the origin of the goods and this is customary in all foreign trade, I should say, and there is nothing special required by Arab States in respect to that.

Senator STEVENSON. We have a form of such a document, I believe, and it reads as follows:

To Whom It May Concern:

To attest that the above captioned vessel is not owned by Israel or an Israeli citizen, and to the best of our knowledge does not appear on the blacklist of the Office of Boycott of Israel deposited with the diplomatic and consular missions of Arab countries abroad. Further, this vessel will not call at any Israeli port.

Mr. DEVLIN. I have seen different versions of this. I have seen separately the first part of the one you mentioned. I hadn't seen one where all of that was in there. There are a number of varieties; each country evidently has its own.

We feel what we do is certainly legal under existing laws, and we don't feel very much involved. We are just an intermediary between the exporter and the bank abroad that is paying him; we just process the stuff for them.

Senator STEVENSON. We have a rollcall in process now, so I think rather than pursue the colloquy further, though it has been very helpful, we will adjourn. Thank you.

We will keep the record open for 2 weeks for any additional testimony or comments that anybody would like to submit. Thank you, Mr. Devlin.

We are adjourned.

[Thereupon, at 12:30 p.m., the hearing was concluded.]

[The following statements and data were ordered inserted in the record at this point:]

United States Council of the International Chamber of Commerce Inc 1212 Avenue of the Americas New York NY 10036 (212) 354-4850

The United States Council of the International Chamber of Commerce agrees with much of Senator Inouye's statement of March 21st when he introduced S. 1303. It is only with some diffidence that we take issue with his conclusions and put the Council on record as opposing S. 1303. The Council could n have wished a better statement on the need for and contribution of foreign capital to the economy of the United States or on the impact that foreign investment here has had heretofore. Also we agree fully that it is undesirable to allow anti-Arab sentiments to pyramid into a full-scale attack on the desirability of foreign investment in the United States.

The United States Council also supports the desire for improved statistics on foreign investment in the U.S. A. including improved reporting on beneficial ownership of foreign investments providing the extend and collection procedures are not so burdensome as to inhibit the flow of capital to the United States. A consensus of the Council membership recently taken overwhelmingly favored improved information with such limitations.

Of course, a clear distinction must be made between information secured before the event, which we opposed, and improved information recorded after the event, which we favor. It is one thing for Government to improve its knowledge of what has occurred, of who owns what, etc. It is an entirely

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different matter to inject the Government into proposed major business transactions involving foreign interests during the process of negotiation. Such negotiations often involve consideration of many alternative possibilities and are usually sensitive to premature disclosure. Pre-screening of business activities destroys any semblance of a market economy. For these reasons the United States Council is opposed fundamentally to Senator Roth's bill, S. 995.

The CIEP and OMB study of "United States Government Data Collection Activities With Respect to Foreign Investment in the United States", published just this Spring, shows conclusively that the Federal Government already collects a mass of statistical information on foreign investment here. Little of this information is coordinated. Much of it is unknown to other than the collecting agency. Perhaps a considerable amount of it is not subject to serious analysis or use by many of the twenty different agencies which already are securing such data.

The Administration is taking steps to effect a correlation of this information now. The United States Council supports that effort rather than new legislation. If, after study, the Administration finds that additional statutory authority is needed, then perhaps new legislation may be helpful.

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United States Council of the International Chamber of Commerce Inc 1212 Avenue of the Americas New York NY 10036 [illegible]

The United States Council is concerned about the possibility of retaliatory action by other nations if our data collection procedures are too burdensome. In general, our membership fears that improved statistical information, if collection procedures are burdensome, could raise some barrier to the free inward flow of investment to the U.S. A. at a time when our near-term future capital requirements are particularly heavy. But more than that is at stake. Ever since World War II, the United States had led the free nations in seeking reduced barriers to the free international flow of capital. Quite a number of other nations have taken a much more restrained position. We realize that United States investment in many parts of the World has faced and continues to face greater restrictions than we place on foreign investment coming in to this country. But the Council still believes that unnecessary handicaps to the free inward flow of investment should be avoided.

Let us now review somewhat more specifically the position of the United States Council on the problems that concern this Subcommittee. In the face of the kind of questions that have been raised recently concerning the desirability of permitting further foreign investment in the United States, we asked our membership some relevant questions. With few exceptions their answers provide a strong supporting consensus for the position we have outlined herein. Obviously, a consensus is made up of many different

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views, some expressed in individual ways, some qualified and with a few that do not follow the overwhelming unanimity of majority opinion.

First, the Council asked whether its members still favor continued unrestricted foreign investment in the United States subject only to present regulations such as those which apply to defense industries. With few exceptions, the answers were resoundingly affirmative.

Our membership believes overwhelmingly that our policies on foreign investment have served the nation well, that the United States should continue to lead the World in freeing the flow of capital as well as trade, that artificial barriers dilute the global benefits of investment and technology, and that the new potential which is being created abroad for increased foreign investment in American business and industry should be welcomed and utilized to mutual interest.

Second, as stated before, there was almost total agreement among our members favoring improved statistics on foreign investments that have been completed, as well as improved reporting on beneficial foreign ownership. There was doubt whether improving our information can be achieved without raising a barrier to the free inward flow of investment.

Third, the United States Council asked its members whether they believed it possible for the United States to take restrictive actions or impose screening on foreign investments here without incurring retaliatory action

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by other countries against the much larger American investments abroad. Again, the overwhelming consensus of our members is that screening or other restrictions imposed on foreign investment in this country will carry substantial possibilities of retaliation. United States individual and corporate investors have six times as much direct investment abroad as foreigners have in this country. The Council wishes to stress, therefore, in the most emphatic manner possible, that the United States has far more to lose in risking such retaliation than any other country.

Of course, a number of our members referred to the restrictions on United States investment which exist now in some foreign countries. A few raised the question of retaliation against these. However, it is generally felt, particularly by the Council's Foreign Investment Committee, that it is far more fruitful for the United States to concentrate its efforts on reducing restrictions abroad rather than risking new restrictions, even through new reporting requirements. In our view, the United States net balance of foreign investment, taking into account both direct and portfolio investment, is so strong that we should not relax our World leadership towards the free international flow of capital.

Action to correlate, codify, improve, and where possible, reduce present reporting requirements will be less likely to incur retaliatory action against United States investments abroad than new legislation. With the

huge capital requirements of the United States during the next decade in financing jobs for the growth in our labor force, in providing new domestic sources of energy, in environmental protection, in defense expenditures and other programs, the United States Council believe that the inward flow of capital should be encouraged.

AMERICAN INSURANCE ASSOCIATION

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August 4, 1975.

The Honorable Adlai Stevenson, III
Chairman, Subcommittee on International
Finance
Committee on Banking, Housing and Urban Affairs
5300 Dirksen Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Stevenson:

S. 425 "Foreign Investment Act of 1975."

On behalf of our nationwide membership, I would like to enter the following comments in the record of your recent hearings concerning foreign investment in the United States.

Our companies support S. 425 sponsored by Senator Harrison Williams from two points of view: (1) as corporations owned by large numbers of public shareholders, and (2) as investors in common stock issued by other public companies. S. 425 would amend the Securities Exchange Act of 1934 (the Act) to improve substantially the information available to a publicly held company and its stockholders in the event a foreign investor acquires more than five percent of its outstanding shares in preparation for a take-over attempt.

More importantly, S. 425 would also establish a new procedure whereby corporations would be able to ascertain the names of the beneficial owners of their outstanding stock, regardless of whether the owner is foreign or domestic.

Persons who hold stock in the record for the account of an undisclosed person would be required to report the undisclosed name to the company issuing the securities. The issuing company in turn would be required to file an ownership list with the Securities & Exchange Commission (SEC), which presumably would become public information. This procedure would provide a means for removing misunderstandings about the ownership of American business. In recent years, unfounded allegations have been possible about interlocking controls on public companies by large investors because information was not available about some owners' true identity.

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While we support disclosure of ownership information where the number of shares owned is sufficient to provide a basis for an attempt to influence management, or to acquire control of the issuing company, S. 425 as presently drafted would require disclosure of every shareholder's identity.

In his testimony before you July 22, SEC Chairman Ray Garrett said the "scope and extent" of Section 14(g) in S. 425 "are not necessary for the protection of investors. The burden on nominees would appear to be excessive and the benefits to the public too remote." We agree.

Within the existing framework of the Act, including previous amendments in this area sponsored by Senator Williams, ownership of less than five percent of the securities in a particular class is not deemed sufficient to invoke the reporting requirements which provide information to other investors. We suggest Section 14(g) (2) in S. 425 be amended as follows to require issuers to report ownership interests to the Commission only when they exceed the five percent level:

> "(2)...Every such issuer shall file such a list~~, or any specified part thereof,~~ of the identity, residence and nationality of the beneficial owners of more than five per centum of the securities of each such class and the persons (other than the beneficial owners) possessing sole or shared authority to exercise the voting rights evidenced by more than five per centum of such securities with the Commission at such times as the Commission, by rule, may prescribe, but in no event shall such list ~~or specified part thereof~~ be filed less frequently than annually or more frequently than quarterly."

Chairman Garrett suggested two different approaches to this subsection. First, disclosing in required filings the largest 20 or 30 shareholders of any class of a company's voting securities, and the extent of their voting authority. This form of disclosure was developed by Senator Lee Metcalf in connection with his Subcommittee's study on Disclosure of Corporate Ownership. The point behind both Senator Metcalf's approach, and our suggested amendment to S. 425 is ownership in a publicly held company should be disclosed when it affects other investors. The five percent level has traditionally been used as the threshold for this type of disclosure, and in this instance we believe it should be retained. We have no objection, however, to the type of disclosure developed by Senator Metcalf.

The second alternative to subsection 14(g) (2) put forward by Chairman Garrett is the disclosure required should be limited to any holder of more than one or two percent of the company's outstanding stock. While this recognizes the need for limitations in 14(g) (2), it overlooks the fact a substantial number of investments may be disturbed by an unnecessary change in the five percent reporting threshold. If the reporting level were reduced from five to three percent, the question is raised whether investors in that narrow category would choose to reduce their holdings rather than submit to the new reporting requirements. The resulting selling pattern might affect the current recovery in our equity markets. One must also ask what type of useful information would be produced by requiring reports from beneficial owners of between two and five percent of a public company's securities. It seems more logical for the Congress to retain the existing threshold rather than disturb existing patterns of investment in order to obtain a small amount of information of little, if any, interest to investors.

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I hope these comments will be helpful, and that you will let us know if any other information might be useful.

Sincerely,

Walter D. Vinyard, Jr.
Counsel

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STATEMENT BY THE NEW YORK STOCK EXCHANGE, INC. BEFORE THE SUBCOMMITTEE ON INTERNATIONAL FINANCE OF THE SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS ON S. 425
JULY 25, 1975

Introduction

The New York Stock Exchange has long been a proponent of free capital flows across national borders and of initiatives that will encourage greater internationalization of capital markets in the years ahead. We have on many occasions gone on record in favor of stimulating the flow of capital among nations and have recommended policies designed to stimulate international capital flows. The Exchange's Board of Directors has recommended adoption of policies designed to stimulate capital flows, such as the elimination of the withholding tax on interest and dividend income received from U.S. securities by foreigners.

The Exchange believes the unhampered movement of both direct and portfolio investment into the United States has been advantageous to this country, both in its favorable impact on the U.S. balance of payments and in the support it has provided for U.S. investment abroad. Moreover, the steadily increasing interdependence of nations in the areas of trade, investment and finance warrant a national commitment to a policy of free capital flows to the greatest degree consistent with the national interest.

Last year, foreign interest in U.S. stocks waned considerably. In 1973, net purchases by foreigners of U.S. stocks and long-term bonds were reported at a record high of $4.7 billion, with net

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purchases of corporate stock alone reaching $2.8 billion. In sharp contrast, the 1974 figures show that foreign interest in the U.S. securities markets tumbled sharply. During 1974, net foreign purchases of U.S. securities, excluding U.S. Government obligations, came to only $1.5 billion, with net purchases of stock amounting to barely more than $500 million.

The crucial long-term reason for encouraging foreign investment is a simple one: the domestic saving capacity of the economy may be insufficient to meet America's capital needs. This is the conclusion of a recent NYSE research report on the capital needs and saving potential of the U.S. economy.

Exchange economists foresee this capital shortfall amounting to just under $650 billion over the 1974-85 period. The Exchange is not alone in focusing on the enormous financing needs facing this nation. Studies undertaken by the economic research departments of the General Electric Company, the Metropolitan Life Insurance Company and Chase Manhattan Bank, confirm that there will be a capital shortage in the years ahead. These conclusions are further buttressed by an Atlantic Council report on financing energy supply and use. Some studies are even predicting a shortfall considerably higher than that anticipated by the NYSE.

A shortfall in savings in this country will result in a diminished rate of growth, exacerbating current economic problems.

Reduced productive capacity will have a particularly adverse impact on U.S. export industries, reducing their competitiveness in world markets. Social and economic inequities could arise, as economic growth -- the main vehicle of social progress -- slows to a snail's pace.

Today, there is considerable concern over the prospect of massive, concentrated foreign investment that could lead to control of major, vital U.S. industries. The OPEC nations have recently been the central focus of this concern, since their sudden accumulation of vast amounts of investable funds could theoretically enable them to buy large parts of U.S. industry and thereby might subject this nation's economic destiny to control by outsiders.

In 1974, the distribution of OPEC surplus funds was not concentrated in any particular country. Much less oil money entered the U.S. than had been predicted. Indeed, as the year progressed, the proportion of OPEC funds placed in this country actually diminished. Of the total OPEC surplus of $55 billion, only about $11 billion entered the U.S. Of the $11 billion, less than $1 billion was placed in real property and corporate equities. Thus, the initial alarm about vast OPEC control of U.S. industry appears to be unfounded.

The Need for Foreign Capital

The United States must not turn its back on foreign capital. Other countries offer attractive investment opportunities for foreign funds, and today, the U.S. is competing with those other nations for whatever investment funds may be available. As the figures for last year demonstrate, foreign investors can and are channeling much of their funds into other markets. If too many obstacles are put in the path of foreign investment in the U.S., such funds will simply be diverted elsewhere.

Clearly, one of the ways to help overcome an deficiency in domestic savings is to stimulate foreign investment. Foreign capital inflows would help put the full productive capacity of the country to work, creating additional jobs and economic opportunities.

Foreign Investment by U.S. Corporations

For years, U.S. official and private sources have maintained that American investment abroad has been instrumental in reconstructing the European economy, as well as stimulating the growth of the developing nations. Few other economic factors have been as crucial to upgrading the world's standard of living as investments abroad by U.S. corporations.

Given the far greater amount of U.S. investment abroad than foreign direct investment in this country, it would be somewhat

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awkward for this country to impede foreign investment here. According to Commerce Department estimates, the total book value of foreign investment in the U.S. increased steadily over the past decade from $7.6 billion in 1962 to about $20 billion in 1974. Nevertheless, U.S. foreign direct investment has been far greater, increasing from a book value of $37.2 billion in 1962 to about $120 billion in 1974. Thus, U.S. direct investment abroad is about six times greater than foreign investment in this country.

The larger that foreign investments become in this country, the greater will be the concern of foreign investors with this country's economic health. It is unlikely that foreigners would initiate policies which might undermine their own investments or invite retaliatory action.

With relatively few exceptions, the U.S. has not discriminated between investment from foreign and domestic sources. The foreign investment community is aware of and undoubtedly understands the need for existing restrictions on foreign investments in certain sensitive areas of the economy. These areas include communication, transportation, atomic energy, and public lands. Various legal barriers to foreign investment also apply under the antitrust provisions of the Sherman, Clayton, and Robinson-Patman Acts. At a time when unemployment and capital shortage considerations are of great importance, the existing restrictions would seem to be sufficient to safeguard vital U.S. interests.

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Government Review of Foreign Investment

The various government agencies interested in foreign investment have undertaken a three part program to review, coordinate, and supplement the existing data on foreign investment in the U.S. Phase one of this project, a review of the data currently supplied by foreign investors, has recently been completed. Indeed, the Council on International Economic Policy and the Office of Management and Budget have combined their efforts to publish an excellent document entitled "United States Government Data Collection with Respect to Foreign Investment in the United States." This document reviews and describes the U.S. data collection and dissemination activities with respect to foreign investment and shows that present requirements are more extensive than is commonly known.

Efforts to coordinate and centralize the information on foreign investment are presently underway and are expected to be completed in the near future. Once this is done, the gaps in the existing data can be effectively determined and steps can be taken to obtain any missing information. In addition, the SEC review of corporate takeovers and acquisitions, along with the related subject of nominees and beneficial owners, should be completed in the near future.

The President has recently authorized the creation of a Committee on Foreign Investment in the United States. It will be this Committee's responsibility to monitor foreign investment in

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the United States, both direct and portfolio, and to coordinate the implementation of United States policy on such investment.

The work of these agencies and committees should prove extremely helpful in formulating what additional information on foreign investment is required and what, if any, legislative actions are necessary. We believe that action on any pending legislation should be held in abeyance until the work of these bodies has been completed.

Discriminatory Economic Practices

The Exchange recognizes the seriousness of the use of economic sanctions, specifically boycotts, as a means to political ends. We applaud those companies who have resisted being used as pawns in such practices. It is extremely important that U.S. corporations be precluded from participating in boycotts, regardless of their ownership.

It is obvious that any discussion of economic boycotts centers around recently publicized Arab efforts to apply such sanctions against companies contributing to the economic and defense capabilities of Israel. While there is little evidence of discriminatory practices by U.S. companies under Arab control, there has been some indication that a few U.S. owned corporations succumbed to Arab boycott demands.

We do not believe that preventing foreign participation in the ownership of U.S. corporations will solve the problem of discriminatory economic practices. It is important to devise a method to

insure that discriminatory practices are not imported along with foreign capital; however, it is just as important to insure that domestically owned corporations do not participate in such activities.

We believe the focus of legislation designed to prevent the use of economic sanctions should not be solely on the limitation of foreign capital inflows. It is more important to make it uncomfortable for any U.S. company, regardless of ownership, to engage in discriminatory practices.

S. 425 -- Sections 3 and 4

When the Exchange testified on S.425 last March, we voiced our support of the proposed amendments to paragraph (1) of subsection 13(d) of the 1934 Act contained in Section 3(a) of S.425. Persons reporting under this subsection would be required to disclose their residence and nationality and, in addition, to file financial statements and information regarding the identity of any person who possesses sole or shared voting rights evidenced by the equity securities so acquired. At that time, however, we also stated our belief that several provisions of S.425 could prove detrimental to U.S. interests. We still believe this is so.

Section 3(b) of S.425 would require prior notification and Presidential approval for foreign purchases exceeding 5% of the stock of a U.S. company. It would seem more appropriate

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for an investor to know what he can do prior to making his commitments. The review procedure outlined in Section 3(b) will create uncertainty in the minds of foreign investors over whether the U.S. really welcomes foreign investment. As past history has demonstrated time and again, investors avoid countries or projects that increase the risk or uncertainty of their investment decisions.

Basically, we believe that it is in this country's interest to retain an open door policy with respect to foreign investment. This belief is also shared by many Senators, Congressmen, and the Administration. However, every nation has the right to protect its national security and foreign policy as well as maintain effective control over its economic environment.

Clearly, those companies and industries considered sensitive for this country's national security should be controlled by U.S. citizens. At the same time, many companies are involved in economic activities which are not critical to U.S. national defense or security. For these companies, existing regulations and requirements, such as those contained in Sections 13, 14 and 16 of the Securities Exchange Act of 1934, pertaining to disclosure, are sufficient. Such regulations should be reviewed if there is concern over enforcement and compliance with them.

To balance the two goals of preserving national security and economic independence and attracting sorely needed foreign capital,

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it might be useful to have appropriate governmental agencies prepare a list of those companies or sectors in which substantial foreign investment might have to be approved. In this manner, large potential foreign investors would learn beforehand that their investment may be subject to governmental review. This procedure would be fairer to both the company and investor than a Presidential review of all foreign investments exceeding 5% of a U.S. company.

It might be interesting to know what other countries are doing with regard to foreign investment. According to a recent issue of U.S. News & World Report, West German officials are drawing up a list of 700 companies which are too important to be controlled by foreigners. The Economist reports that any foreign investment of 20% or more in a French company must obtain the approval of the French Ministry of Finance. It would appear reasonable to request foreigners planning "substantial" investments in this nation to consult beforehand with the appropriate governmental bodies. Naturally, if a particular foreign investment is considered harmful to the national interest, steps could be taken to block the investment.

With changes in the 1934 Act as specified by Section 3(a) of S.425, a sharply improved monitoring device on foreign investment in this country will be available. Information as to the nationality and address of 5% shareholders will enable governmental

agencies to "flag" substantial foreign investments in publicly held companies. This will allow all interested parties to keep track of trends in foreign investment into this country.

Section 4 of the bill sets forth a new subsection, 14(g), of the Exchange Act. In general, this subsection provides for the identification of all beneficial owners of the equity securities of so-called "13(d) companies".

In fact, we are not unfamiliar with the issues relating to this topic. On two recent occasions, the Exchange has availed itself of the opportunity to express publicly its views regarding the proposal that brokerage firms holding stock in "street name" and banks and trust departments holding stock in nominee form should be required to furnish issuers with the names of their customers (i.e., beneficial owners).

As you will note in the enclosed letter to the Securities and Exchange Commission dated December 31, 1974 (Exhibit A), our first such public expression involved the submission of written comments in connection with the Commission's public investigatory proceedings in the matter of Beneficial Ownership, Takeovers and Acquisitions by Foreign and Domestic Persons regarding its review of the so-called "Williams Act." In this document, the Exchange reiterated its continuing support for the regulatory scheme envisioned under subsections 13(d) and 14(d) of the Exchange Act, although we were troubled by a proposal similar in nature to Section 4 of S. 425

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which, as we pointed out, would create a host of operational problems for banks, transfer agents and brokerage firms. The Exchange suggested further that constructive changes in the area of shareholder communications could most effectively be achieved through the identification of improvements within the existing dissemination mechanisms which have evolved, in large part, pursuant to Exchange Rules.

Additionally, on March 6, 1975, Mr. John E. Leslie, Chairman of the Exchange's Advisory Committee on International Capital Markets as well as Chairman and Chief Executive Officer of Bache & Co. Inc., presented the Exchange's views regarding the "Foreign Investment Act of 1975" before the Senate's Subcommittee on Securities.

"Beneficial Ownership" -- Operational Considerations

Insofar as the thrust of S.425 is concerned with corporate control, we believe that the disclosure requirements provided for in subsection 13(d) are adequate for that objective. In our judgment, the provisions of th proposed new subsection 14(g) do not relate directly to the primary purpose of S.425.

Further, the proposed new subsection 14(g) could drastically affect the practice of having stocks registered in bank or broker name. The chief purpose of such registration has been, at times, misconstrued. It is not meant to conceal the names of beneficial owners from issuers. Rather, it is a practical means of providing

shareholders with certain services and benefits. The classic situation, of course, is the margin customer to whom the broker provides a portion of the funds used to purchase and carry securities. As a matter of standard business practice, the broker protects himself by having the securities registered in his own name with the benefits of ownership accruing to the customer. In addition, many customers elect, of their own accord and as a matter of convenience, to leave their fully-paid securities registered in the names of their brokers. In these cases, the broker maintains custody of the security and insures prompt collection of dividends for his customer.

Under Section 4, shareholder lists would begin to become outdated almost immediately upon publication because they would not reflect subsequent purchases and sales. That factor alone would obviate their usefulness to corporations in fulfilling shareholder communication requirements under Exchange rules and under the federal securities laws. For reliable records, corporations would still have to turn to brokers and other nominee holders to transmit such shareholder communications as annual reports, proxy material, and dividends. Because SEC Rules 14(a)-3 and 14(c)-7 already require issuers to transmit such material to beneficial owners through the shareholders-of-record, we feel that adoption of Section 4 would not really facilitate shareholder communications.

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In fact, if the Section were adopted, a situation could arise where all stock now registered in bank or broker name would, as a practical matter, be registered directly in the names of the individual owners. That is the only way in which an ongoing, accurate list of shareholders could be maintained by the issuer. We contend that such an eventuality would be detrimental to the shareholder and to all concerned. The concept of margin accounts, in spite of the many benefits they afford, could well be jeopardized. Along with each certificate in a margin account, brokers would have to maintain a written stock power -- a doubling of paperwork. In addition, the purpose of the Depository Trust Company (DTC) -- automated bookkeeping transfers of securities -- would be seriously set back because individually registered stock is not eligible for deposit in DTC. We would have to return to physical delivery of certificates between brokers in settling contracts -- a procedure that the Congress, the SEC, and the industry have been working to eliminate.

Indeed, our most obvious objection to the Section is one of operational considerations -- for both the broker and the issuer. At present, more than 350 New York Stock Exchange member firms hold stock in their names for beneficial owners. Each company could expect to receive 350 (annual) to 1,400 (quarterly) lists a year from brokers alone, and that number would have to be added to the lists of the thousands of nominee names. Furthermore,

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all of the brokers' lists would have to be sent to both issuers directly and to DTC for recompilation and transmittal to issuers. Thus, by the time a company received and put them into working order, the lists would be obsolete.

Of even greater consequence to the brokerage industry, however, is the enormous amount of paperwork and expense that would be required in supplying such lists. Assuming about 8,500 companies would receive lists of beneficial owners, each broker would prepare and transmit from 8,500 to 34,000 of these lists each year. We have not yet attempted to calculate the expense of such an effort. These numbers speak for themselves. In short, the operational nightmare that would be created for brokers by these lists would far outweigh any value they might provide to companies receiving them.

Section 4 in Light of S. 249

We further believe that the proceedings relative to Section 4 of S. 425 are premature in light of new subsection (m) of Section 12 of the Exchange Act, which became law pursuant to the enactment of the Securities Acts Amendments of 1975. Subsection (m) authorizes the Commission to study the practice of recording the ownership of securities in the records of the issuer in other than the name of the beneficial owner of such securities.[1/] Basically, our primary

1/ Subsection (m) also raises a question whether communications can be facilitated between issuers and beneficial owners, while retaining the benefits of such practice. The Exchange maintains that the issue of record ownership and the question of shareholder communications are key items inextricably linked to the subject matter of Section 4 of S. 425.

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concern at this time has to do with the method by which the important issues relating to Section 4 will be determined. In this regard, we submit that the Congressional mandate contained in the 1975 Act establishes a straightforward and logical approach to the proposal at hand. The Exchange feels that the Congress, by authorizing and directing the Commission to make a study and to report both preliminary findings and final conclusions within specified time frames, has created a central clearing house (with respect to Section 4 of S. 425 and other related issues) for in-depth constructive analysis. Accordingly, we respectfully urge the Subcommittee to consider, during the course of its deliberations, what appears to be most obvious and particularly critical -- that any legislation proposed prior to the tolling of the above-mentioned time frames, which relates, directly or indirectly, to the areas of concentration specified in subsection (m), may tend to frustrate the statutory requirement that a study be made by the Commission in advance of its reporting final conclusions and recommendations.

SEC Release No. 11243

Finally, the Exchange suggests that the Subcommittee should consider the relevance of the Securities Exchange Act of 1934 Release No. 11243 dated February 13, 1975 (Exhibit B, attached) to the proposed legislation. In this Release, the Commission reemphasized its concern that proxy materials and other issuer communications reach beneficial owners in a timely manner during the 1975

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proxy solicitation season. The Release also indicated that interested persons (including the public) could send communications regarding complaints with respect to the dissemination process to Mr. Lee A. Pickard, Director, Division of Market Regulation, at the Commission, bearing the File No. S7-552.

Inasmuch as the Exchange has noted that certain interested persons have asserted in several public forums that the practice of holding equity securities in "street name" and nominee form has created widespread shareholder communications problems, we reviewed File No. S7-552 on May 21, 1975. Based upon an analysis of the File at that time which, incidentally, contained fewer than 10 communications, it is the position of the Exchange that such assertions are completely without foundation.[2/] Thus, to the extent that the far-reaching and costly reporting requirements of Section 4 have been designed to remedy operational breakdowns, the Exchange categorically believes that they are unreasonably burdensome; and, further, that the adoption and implementation of such requirements would be clearly inappropriate under any analytical standards.

2/ During the course of arriving at its position, the Exchange gave significant weight to the fact that the File cited only six problem incidents in comparison to the hundreds of thousands of annual reports and proxy statements regularly transmitted.

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Conclusion

The thrust of S. 425 is to clarify the facts of corporate control. Section 3(a) of S. 425 contains amendments to Section 13(d) of the Securities Exchange Act of 1934 and would provide for disclosure at a level of ownership which adequately addresses this objective. Corporations are entitled to have detailed information about investors holding more than 5% of a company's equity.

We believe that Section 3(b) of S. 425 would neither serve to protect national security nor encourage sorely needed foreign investment. A Presidential review of every foreign investment exceeding 5% of a U.S. company is inappropriate. There are other means of protecting this nation's security and economic independence while assuring foreign investors that their funds are welcome.

Finally, Section 4 of the bill does not really help to achieve the bill's primary intent. It is not necessary for issuing corporations to know the identity of all, including the smallest, beneficial owner. While issuers would derive little benefit from such information, the complete disclosure of the names of every beneficial owner would create monumental problems for the brokerage industry. We believe that any specific inquiries regarding the reporting of beneficial ownership should be determined pursuant to the Congressional mandate set forth in the Securities Acts Amendments of 1975.

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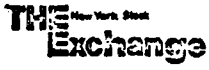
EXHIBIT A



Mr. George A. Fitzsimmons
Secretary
Securities and Exchange
Commission
500 North Capitol Street
Washington, D.C. 20549

December 31, 1974

Re: Public Fact-Finding Investigation In The Matter Of Beneficial Ownership, Takeovers And Acquisitions By Foreign And Domestic Persons (File No. 4-175)

Dear Mr. Fitzsimmons:

Pursuant to the procedures set forth in the Securities Act of 1933 Release No. 5526 dated September 9, 1974, the New York Stock Exchange, Inc. (Exchange) hereby submits specific written comments of its views concerning certain general topics and specific inquiries being examined by the Commission during the course of the proceedings in connection with the above-captioned investigation.

Initially, I would like to state that the Exchange appreciates being afforded the opportunity to participate in the instant proceedings. While the "Williams Act" and the amendments thereto have had a positive impact on our markets since their enactment in 1968 and in 1970, respectively; nevertheless, the Exchange recognizes that there are certain questions regarding the provisions of the statute and the rules and regulations adopted thereunder. Therefore, we believe that a comprehensive review of the regulatory scheme established by the "Williams Act" is both appropriate and in the public interest at this time. Indeed, the Exchange supports the Commission's efforts to identify improvement opportunities in connection with the disclosure of securities transactions.

Regarding the substantive content of this letter, please be advised that it is the intention of the Exchange to limit its submission of facts to the following issues: communications between issuers and the beneficial owners of their securities; the definition of the term "beneficial owner" for the purposes of subsections 13(d) and 14(d) of the Securities Exchange Act of 1934; and disclosure and other requirements in connection with tender offers. Each of the aforementioned issues and the comments of the Exchange with respect thereto are set forth below.

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Communications Between Issuers And The Beneficial Owners Of Their Securities

The Exchange has reviewed the testimony which certain interested persons have given at the Commission's hearings with respect to the above-mentioned matter. In view of the fact that certain statements contained in that testimony have placed in issue the efficacy of the Exchange rules relating to the transmission of proxy and other material by our member organizations, the Exchange would like to set forth herein its comments regarding the existing mechanisms and policies which have been established pursuant to such rules. Additionally, the Exchange deems it appropriate at this time to comment with respect to the question of the adoption of alternative proxy transmission systems in connection with stock held in "street name".

Very simply, the Exchange encourages broad communications with shareholders on the part of its listed companies. With respect to stock held in "street name", Rules 450-460 and Rule 465 of the Board of Directors of the Exchange have been adopted to facilitate communications involving the transmission of proxy and other material to beneficial owners. The above-mentioned rules also spell out how a member organization must solicit proxies to insure votes. It is noteworthy that these rules apply to members for unlisted as well as listed securities.

From an interpretive standpoint these rules are fairly straightforward. We believe, however, that the important question is whether or not they are being properly followed. In this regard, the Exchange submits for the Commission's information and review a nine-page document entitled Proxy Check List (Exhibit I attached hereto). Completion of this document by Exchange examiners is now standard procedure during the course of each Regular Examination of the operations of an Exchange member organization. Its utilization is intended to guarantee adherence to the Exchange proxy rules and, as a consequence thereof, to contribute to the maintenance of the highest standards of performance in connection with the transmission of proxy and other material to beneficial owners.

Moreover, in reviewing the record of the hearings we note that certain witnesses have suggested that issuers as well as brokers experience difficulties in meeting performance requirements. We have taken particular note of the statistical information developed by the American Society of Corporate Secretaries, Inc. (Society) in its publication entitled 1974 Corporate Communications which the Securities Industry Association introduced into the record of the proceedings on December 10, 1974. Certain facts contained therein strongly suggest that publicly-owned companies must also strive to improve their operational methods in connection with the transmission of proxy and other material to shareholders.

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In a further effort to achieve the highest standard of corporate communications, the Exchange, in conjunction with other organizations, has established an Ad Hoc Committee To Improve Proxy Solicitations (Exhibit II attached hereto lists the members of the Committee). One of its primary functions is to guarantee that all the parties involved in proxy solicitations are fully aware of their respective duties and responsibilities. The Committee, which meets on a regular basis, is committed to identifying and implementing operational improvements. The mailing of the Manual mentioned below to Exchange, Amex and several hundred OTC listed companies is one example of the Committee's recent activities. It is our opinion that the Committee's efforts illustrate both a practical and a constructive approach to the resolution of problems with respect to shareholder communications.

Additionally, the Society has published a booklet entitled Manual For Proxy Solicitation Of Stock In Brokers' Names which delineates the specific functions involved in the dissemination of proxy material to beneficial owners. It is the Exchange's understanding that this publication has already been marked into the record of the proceedings. Nonetheless, a copy of the publication is attached hereto (Exhibit III). As you will note, both the private sector and the brokerage industry contributed to the compilation of the Manual. In any event, the Exchange believes that if both brokers and issuers were to adhere to the guidelines set forth therein, the degree of cohesiveness desired by all interested parties would be achieved.

While standards of performance and the continuing ability to meet such standards are important considerations in evaluating the efficacy of the Exchange proxy rules, the fundamental issue would appear to be whether the existing transmission system is workable from an analytical standpoint. Having considered the problems experienced by persons operating under the current system, particularly those difficulties expressed by certain interested persons who have given testimony at the Commission's hearings on this subject, the Exchange is inclined to conclude that such problems do not stem from an inherently unsound system; rather, it would appear that they are generally related to procedural breakdowns stemming from a misunderstanding of certain acceptable policies and guidelines. Therefore, it is the opinion of the Exchange that the dissemination mechanisms established pursuant to the Exchange proxy rules are effective. Accordingly, the Exchange hereby respectfully suggests that the Commission should decline to issue any rule or rules which would have the effect of implementing an alternative system with respect to the transmission of proxy and other material in connection with stock held in "street name". Further, we recommend that all interested parties should intensify their efforts to improve performance under the existing mechanisms.

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Finally, the Exchange would like to state several additional relevant points in connection with this matter. In particular, we feel compelled to comment regarding the recommendation that brokerage firms holding stock in "street name" and banks and trust departments holding stock in nominee form should be required to furnish issuers with the names of their customers (i.e., beneficial owners) if such customers consent to giving up their anonymity. The stated objective of the recommendation is to enable issuers to mail proxy material, annual reports, etc., directly to shareholders. For the reasons stated below, the Exchange is not in agreement with such a recommendation.

- Participants, brokers, banks and issuers, would encounter apparently excessive, and possibly prohibitive, cost factors during the course of developing and maintaining appropriate systems to implement the recommendation.

- As it is reasonable to assume that not all beneficial owners would consent to direct mailings, participants would be required to retain the existing mechanism and, at the same time, to implement a new one. Thus, operational problems would more than likely be increased. Clearly, such a development would not be in the best interests of the investing public.

- Unfair competition would emerge between brokerage firms and banks if the Commission were to take steps to implement the recommendation while the Comptroller of the Currency declined to do so.

- Insofar as a brokerage firm's list of customers is concerned, it is argued that such a list is a valuable corporate asset. Under the proposed recommendation it would appear that such an asset could not be adequately protected.

- To the extent that a beneficial owner is requested to give up his anonymity, he will be inclined to elect to hold stock in his own name. We submit that activity of this type will disrupt industry efforts to immobilize stock certificates.

- Major operational breakdowns would also occur as the result of variances in mailing and record maintenance techniques utilized by brokers and issuers' transfer agents who maintain advanced automated systems.

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The Definition Of The Term "Beneficial Owner" For The Purposes Of Subsections 13(d) and 14(d) Of The Securities Exchange Act Of 1934

The Exchange is aware that there have been varying opinions handed down regarding this issue in judicial decisions and Congressional reports which have tended to obfuscate the meaning of "beneficial owner". Naturally, the objectives of the provisions of the subsections may be frustrated if the concept of the term is unclear. Accordingly, the Exchange takes a position in favor of clarifying the meaning of the term "beneficial owner". However, based in part on the fact that the adoption of a definition of "beneficial owner" may tend to invite evasion of the reporting requirements envisioned under the "Williams Act", we believe that the term should be clarified by means of flexible published guidelines rather than by definition. Moreover, such guidelines should be developed pursuant to the legislative intent of the Act and in relation to considerations which take into account the rights, privileges and protections of the public and those persons required to file disclosure statements.

Disclosure And Other Requirements In Connection With Tender Offers

The Exchange commends and endorses the efforts of the Commission in conducting the instant investigation regarding the above-mentioned topic. Disclosure to stockholders of events which may affect investment decisions is and has been for many years a primary object of Exchange policy. We consider timely disclosure so vital to the fair operation of a securities market that our rules and procedures subject listed companies to disclosure requirements that are as stringent as those contained in the federal or state securities laws.

In the context of this discussion, the Exchange would like to express the following basic tenets which, in its view, should serve as underlying principles in determining whether to adopt or amend rules, regulations and forms relating to disclosure and other requirements in connection with tender offers.

1. Under any and all circumstances the public should be able to make reasoned investment descisions.

2. Regulations relating to tender offer transactions should be implemented without disrupting important market procedures which have been demonstrated to be workable and in the public interest.

3. Most importantly, persons who make or are affected by tender offer transactions should be able to make decisions and to conduct their respective business and investment activities on a basis that is fair and equitable.

The Exchange would also like to take this opportunity to propose a change with respect to subsection 14(d) (5) of the Exchange Act. It is hereby suggested that the current minimum duration of seven days be extended to ten. This would bring the provision in line with Exchange policy and provide more adequate protection for investors.

****

In conclusion, again, the Exchange would like to thank the Commission for the opportunity to present its views. Furthermore, it is our understanding that this proceeding is essentially a fact-finding effort and that any rules or amendments developed as a result thereof will be proposed for issuance by the Commission in a separate proceeding in which interested persons will be afforded the opportunity to participate. In this regard, we look forward with interest to your continuing efforts with respect to these very important issues.

Very truly yours,

James E. Buck
Secretary

Enclosures

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Exhibit I

PROXY CHECK LIST

er Organization:_____ Examiner:_____
Date:_____

LE 450 RESTRICTION ON GIVING OF PROXIES

NO MEMBER ORGANIZATION SHALL GIVE OR AUTHORIZE THE GIVING A PROXY TO VOTE STOCK REGISTERED IN ITS NAME, OR IN THE NAME OF S NOMINEE, EXCEPT AS REQUIRED OR PERMITTED UNDER THE PROVISIONS RULE 452 UNLESS SUCH MEMBER ORGANIZATION IS THE BENEFICIAL OWNER SUCH STOCK.

LE 451:

Does member organization transmit to beneficial owners of stock all of the material furnished by proxy solicitor? _____

Are the beneficial owners made aware of the following conditions if they fail to furnish voting instructions:

A. Record holder may vote the proxy, if instructions from beneficial owners have not been received by the 10th day before the meeting date, and proxy material had been sent to the beneficial owner at least 15 days before the meeting date? _____

B. Record holder may vote proxy 15 days before meeting date if proxy material had been sent to beneficial owners 25 days or more before the meeting date? _____

If member organization transmits signed proxies to the beneficial owners are the following provisions met:

A. Signed proxy must indicate number of shares held for the beneficial owner, and carry a symbol or code number identifying the proxy records of the member organization? _____

B. Beneficial owners must also receive a letter requesting completion of the proxy, and giving instructions to forward completed proxy to the solicitor? _____

(NOTE: This rule shall not apply to beneficial owners outside the United States).

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LE 451.10

Are beneficial owners furnished with annual reports under the same conditions as those applying to proxy soliciting material? _____

LE 451.20 (Does not refer to signed proxies)

Are beneficial owners furnished with letters requesting voting instructions and giving the following information:

A. Broker may vote on all proposals without instructions from beneficial owner? _____

B. Broker may not vote on any proposals without instructions from beneficial owner? _____

C. Broker may vote on certain but not all of the proposals without instructions from the beneficial owner? _____

LE 451.30

If the member organization furnishes beneficial owner with signed proxies, is the following accomplished:

A. Company or proxy solicitor is notified of the number of proxies sent, the identifying numbers, and the shares represented by such proxies? _____

B. Follow up requests sent to beneficial owners at the request of the solicitor? _____

C. Records kept showing:

1. Date of receipt of proxy material from company or solicitor? _____

2. Names of customers furnished proxy material and date of mailing? _____

3. Number of shares covered by each proxy? _____

4. Code number of each proxy? _____

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451.40

If signed proxies are transmitted to beneficial owners, are letters also furnished indicating:

A. Proxy contains no proposals to be voted on? _____

B. Proxy contains proposals to be voted on? _____

451.50

Is first class mail used to forward proxy material or signed proxies? _____

451.60

Does member organization furnish proxy material to beneficial owner, even though such owner does not want material? _____

451.70

Does member organization furnish proxy material to beneficial owners outside the United States even though this is not required? _____

451.80

If member organization is out-of-town or non-clearing with securities held in an omnibus account, do they bear the responsibility for transmitting proxy material to beneficial owners, and do they keep the proper records? _____

E 451.90

Are the following charges made by member organizations for proxy solicitation?

50¢ for each set of proxy material for those meetings that do not include a proposal which requires beneficial owner instructions, plus postage, with a minimum of $3.00 for all sets mailed; _____

60¢ for each set of proxy material for those meetings which include a proposal requiring beneficial owner instructions, plus postage, with a minimum of $3.00 for all sets mailed; _____

10¢ for each copy, plus postage, for interim reports or other material, with no minimum. _____

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§ 452

Is the member organization familiar with the procedure for giving a proxy to vote stock in the absence of instructions from the beneficial owner, specifically,

A. Person giving proxy must have no knowledge of any contest to action at the meeting? _____

B. Any action is adequately disclosed to stockholders? _____

C. Action does not include authorization for a merger, consolidation or any other matter affecting rights or privileges of stock? _____

If member organization has any stock in its possession or control registered in the name of another member organization does it:

A. Forward to 2nd member organization any voting instructions received from beneficial owner? _____

B. Notify 2nd member organization of non-receipt of voting instructions? _____

C. Request from 2nd member organization the amount of signed proxies, if necessary? _____

§ 452.11

Does the member organization use the information concerning stockholders' meetings and giving of proxies as published in the N.Y.S.E. Inc. Weekly Bulletin? _____

Is the member organization familiar with the eighteen (18) restrictions outlined in this rule, that prevent giving a proxy to vote without instructions from the beneficial owner? (Please refer to following page 4A). _____

§ 452.12

If a member organization, in the absence of instructions, votes a proxy containing discretionary and non-discretionary proposals, does it cross out non-discretionary portion of proxy? _____

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Page 4A.

Rule 452.11

Generally speaking, a member organization may not give a proxy to vote thout instructions from beneficial owners when the matter to be voted upon:

(1) is not submitted to stockholders by means of a proxy statement comparable to that specified in Schedule 14-A of the Securities and Exchange Commission;

(2) is the subject of a counter-solicitation, or is part of a proposal made by a stockholder which is being opposed by management (i.e., a contest);

(3) relates to a merger or consolidation (except when the company's proposal is to merge with its own wholly owned subsidiary, provided its shareholders dissenting thereto do not have rights of appraisal);

(4) involves right of appraisal;

(5) authorizes mortgaging of property;

(6) authorizes or creates indebtedness or increases the authorized amount of indebtedness;

(7) authorizes or creates a preferred stock or increases the authorized amount of an existing preferred stock;

(8) alters the terms or conditions of existing stock or indebtedness;

(9) involves waiver or modification of preemptive rights (except when the company's proposal is to waive such rights with respect to shares being offered pursuant to stock option or purchase plans involving the additional issuance of not more than 5% of the company's outstanding common shares (see Item 12));

(10) changes existing quorum requirements with respect to stockholder meetings;

(11) alters voting provisions or the proportionate voting power of a stock, or the number of its votes per share (except where cumulative voting provisions govern the number of votes per share for election of directors and the company's proposal involves a change in the number of its directors by not more than 10% or not more than one);

(12) authorizes issuance of stock, or options to purchase stock, to directors, officers, or employees in an amount which exceeds 5% of the total amount of the class outstanding;

(13) authorizes

a. a new profit-sharing or special remuneration plan, or a new retirement plan, the annual cost of which will amount to more than 10% of average annual income before taxes for the preceding five years, or

b. the amendment of an existing plan which would bring its cost above 10% of such average annual income before taxes.

Exception may be made in cases of

a. retirement plans based on agreement or negotiations with labor unions (or which have been or are to be approved by such unions); and

b. any related retirement plan for benefit of non-union employees having terms substantially equivalent to the terms of such union-negotiated plan, which is submitted for action of stockholders concurrently with such union-negotiated plan;

(14) changes the purposes or powers of a company to an extent which would permit it to change to a materially different line of business and it is the company's stated intention to make such a change;

(15) authorizes the acquisition of property, assets, or a company, where the consideration to be given has a fair value approximating 20% or more of the market value of the previously outstanding shares;

(16) authorizes the sale or other disposition of assets or earning power approximating 20% or more of those existing prior to the transaction.

(17) authorizes a transaction not in the ordinary course of business in which an officer, director or substantial security holder has a direct or indirect interest;

(18) reduces earned surplus by 51% or more, or reduces earned surplus to an amount less than the aggregate of three years' common stock dividends computed at the current dividend rate.

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452.13

lfter a contest has developed, does a member organi-
ıtion refrain from voting any other proxies except at
ıe direction of the beneficial owner. _____

452.14

f a member organization gives a subsequent proxy, does
: clearly indicate that the proxy is in addition to,
ı substitution for, or in revocation of any prior proxy? _____

452.15

re proxies given by member organization dated and
learly show number of shares voted? _____

f a proxy is manually signed, is the name of the
ember organization typed or rubber stamped on the proxy? _____

452.16

re the following proxy records maintained:

A. Date of receipt of proxy material from issuer or solicitor? _____

B. Names of customers to whom material is sent and date of mailing. _____

C. All voting instructions showing whether verbal or written? _____

D. Summary of proxies voted indicating total shares voted for each proposal, total shares voted against each proposal, total shares not voted on each proposal? _____

E. Verbal instructions to vote:

1. Date of receipt of instructions? _____

2. Name of recipient of instructions? _____

3. What instructions were received? _____

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LE 452.20

Are the following records retained for not less than 3 years, the first two years in an easily accessible place:

A. All proxy solicitation records? _____

B. Originals of communications received? _____

C. Copies of communications sent? _____

LE 453

. Do all proxies given by the member organization clearly indicate the actual number of shares voted? _____

LE 454

. Does the member organization transfer certificates of a listed stock to its own name or name of its nominee prior to taking a record of stockholders when so requested by the Exchange? _____

LE 456

. Has the member organization within the last year represented shareholders in making demands for changes in management or company policies? _____

. If so, has member organization:

A. Received permission of such shareholders to make such demands?

B. Filed with the Exchange information required by Schedule B, where the company is unregistered? _____

LE 457

. Has the member organization engaged, alone or with others, within the last year in any of the following activities relating to a present or prospective proxy contest involving an unregistered company:

A. Requests more than 10 security holders to sign a proxy (other than normal transmission under Rule 451)? _____

B. Requests more than 10 security holders to vote for, or against, or abstain from voting on any proposal? _____

C. Requests another security holder:

1. To join in calling a meeting of security holders? _____

2. To join in litigation against an issuer? _____

3. To join or assist in the formation of a security holders' committee? _____

D. Becomes a nominee for director? _____

E. Becomes a member of a security holders' committee or group? _____

F. Contributes funds toward the cost of a prospective or present proxy contest? _____

. If so, has member organization filed with the Exchange information required by Schedule B? _____

LE 458

. If the answers to question 28A and/or 28B are "yes", has the member organization also filed with the Exchange information required by Schedule A, and given a copy to each person of whom such request was made? _____

LE 458.10

. If the member organization intends to become active in a proxy contest involving a registered company are they aware:

A. That they may advise a customer on his unsolicited request how to vote in a proxy contest, but if they volunteer the advice, the member organization may have to file schedule 14-B with the SEC under regulation 240.14a-11. _____

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459

If the member organization joins with any other person in activity referred to in question 28A and/or 28B are they aware that other person must:

A. File with the Exchange Schedules A & B? _____

B. Give copy of information in Schedule A to each person of whom such request was made? _____

459.10

Is the member organization aware that all information filed with the Exchange in Schedules A & B is public information? _____

460 and 460.10

If a member or member organization specializes in the stock of a company are they aware of the following restrictions:

A. No member, officer, partner, firm, corporation, or employee shall participate in a proxy contest? _____

B. None of the above shall be a director of the company? _____

C. Cannot be in any control relationship with company? _____

D. Cannot accept a finder's fee from the company? _____

465 and RULE 465.10

Does the member organization furnish beneficial owners with interim reports and other material furnished by companies, both listed and unlisted? _____

E 465.30

Does member organization use a form of bill similar to the following for expenses incurred in furnishing beneficial owners with proxy soliciting material, annual reports, interim reports etc. _____

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.30 Form of bill to be used by member organizations.—

TO:			DATE:	
Expenses incurred in connection with mailing of following material:	No. Sets Mailed	Service Fee	Postage Expense	Total Charges
ANNUAL REPORT PROXY SOLICITING MATERIAL INTERIM REPORT POST MEETING REPORT STOCKHOLDER LETTER OTHER:				
FOR CORPORATION RECORDS DATE PAID CHECK NO.				

Notes to Examiner:

1) As a test check to determine whether member organization properly solicits proxies and properly maintains records, refer to a past and recent copy of the New York Stock Exchange, Inc. Weekly Bulletin. Pick three (3) securities where the meeting has been recently held and three (3) securities where the meeting date is scheduled shortly. In each of the groups of three, the following categories should be represented for the check:

   A. Where member organization can vote entire proxy without instructions under the "10 day rule".
   B. Where member organization can vote portions of the proxy only upon receipt of instructions.
   C. Where member organization cannot vote any portion of the proxy without instructions.

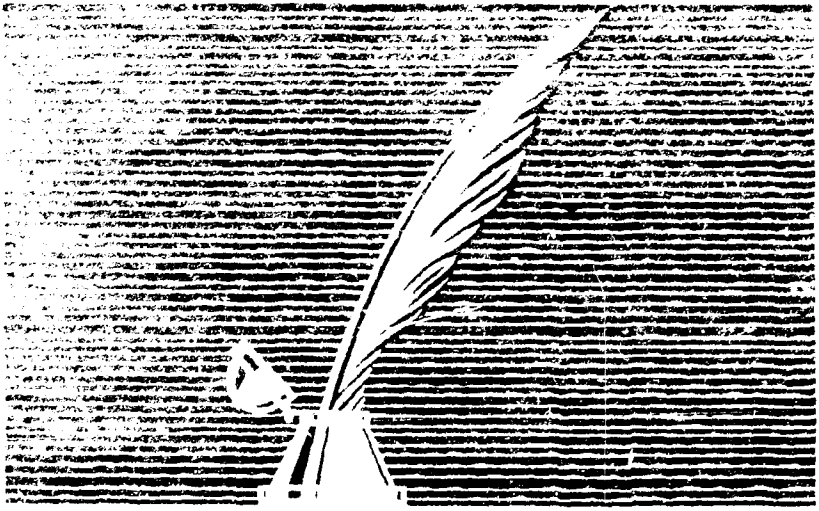
2) Determine whether member organization is forwarding proper voting instructions to Central Certificate Service on the shares held by CCS on record date.

EXHIBIT II

Ad Hoc Committee to Improve Proxy Solicitations

Richard Drew (Chairman)	New York Stock Exchange, Inc.
Robert Carlson	Merrill Lynch, Pierce, Fenner & Smith Incorporated
Marie Kellam	American Telephone & Telegraph Company
Frank Kroha	New York Stock Exchange, Inc.
Charles Layer	Chase Manhattan Bank
Edward McNamara	Bethlehem Steel Corporation
Pamela Mannes	Manufacturers Hanover Trust Company
James Osborn	General Motors Corporation
David Pitou	International Business Machines Corporatic
Frank Reilly	New York Stock Exchange, Inc.
Jack Ruiz	Depository Trust Company, Inc.
Charles Stevens	American Stock Exchange Inc.
Raymond Thorpe	E.F. Hutton & Company Inc.
Gary Tuttle (Secretary)	New York Stock Exchange, Inc.
Richard Welch	Bache & Co. Inc.
James Yore	National Association of Securities Dealers, Inc.

MANUAL FOR PROXY SOLICITATION OF STOCK IN BROKERS' NAMES



AMERICAN SOCIETY OF CORPORATE SECRETARIES, INC. ONE ROCKEFELLER PLAZA, NEW YORK, N.Y. 10020

PREPARED AS A JOINT REPORT OF

THE FOLLOWING ORGANIZATIONS

American Society of Corporate Secretaries, Inc.

The American Stock Exchange, Inc.

The National Association of Securities Dealers, Inc.

The New York Stock Exchange, Inc.

Securities Industry Association

January 1974

Extra copies may be ordered from the offices of any of the above organizations. Price $1.00 per copy. See page eleven for addresses.

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INTRODUCTION

The purpose of this Manual is to promote the use of standard forms and practices in order to facilitate solution of the problems arising in the handling of proxy solicitations, create better financial public relations, and realize a maximum representation of shares in brokers' names at meetings of stockholders.

This Manual has been prepared as a joint report by the American Society of Corporate Secretaries, Inc., The American Stock Exchange, The National Association of Securities Dealers, Inc., The New York Stock Exchange, Inc., and the Securities Industry Association.

I PUBLICITY

Immediate newspaper publicity should be given to the calling of a meeting of stockholders for the purpose of acting upon any matter affecting in any way the rights or privileges of stockholders or any other matter not of routine nature. Such publicity should, of course, describe the matter to be acted upon. It is recommended that a minimum of thirty days be allowed between the record date and the meeting date so as to give ample time for the solicitation of proxies.

II NOTICE TO EXCHANGES OR NASD

The Exchanges or the NASD should be given prompt notice, in writing, of the calling of any meeting of stockholders. Such notice should be received by the Exchanges or the NASD not later than the tenth calendar day prior to the date of record (or the closing of the transfer books) for determination of stockholders entitled to vote at the meeting. Such notice should indicate the date of the meeting, the date of record for determination of stockholders entitled to vote, and describe the matters to be voted upon at the meeting.

If the transfer books are to be closed in lieu of the taking of a record of stockholders, the notice shall state the date of reopening of the books as well as the date of their closing.

III NOTIFICATION TO BROKERS

The standard forms recommended in this Manual have been designed to --

A. Be readily recognized as proxy soliciting material

B. Be easily understood by proxy departments of brokerage firms

"RECOGNITION" of material relating to proxy solicitation is important. Thus, it is urged that the color BLUE be used for all suggested forms. The use of standard forms will insure that proxy material will be processed more expeditiously.

IV RECORD DATE

Brokers should be notified of meetings as far in advance of the record date as possible. Ten days should be deemed an absolute minimum, although longer notice is desirable. (Notifying the brokers of a record date does not relieve the corporations of any responsibility they may have for also notifying the respective Exchanges or the NASD.)

Brokers should be notified of this record date by the use of a search form which also serves to provide a method for brokerage firms to order proxy material and annual reports. (See Exhibit A & B)

DESCRIPTION OF SEARCH FORM

It is recommended that corporations use a blue double postal card approximately 6 1/2" x 8 1/2" for each half. The oversized card lends itself to instant identification as proxy material. The double card should meet the needs of most corporations and brokers in connection with ordering proxy material and in advising brokers about the timetable. The information thus received will enable delivery of proxy soliciting material to brokers in adequate time. Of course, the wording of the suggested forms will not fit all situations. For example, some corporations may have nonvoting stock, whereas others will have all classes of stock entitled to vote. Similarly, in some cases, a bank or proxy soliciting firm will furnish the proxy material, whereas in others, the Secretary's office or the printer may do so. The wording has been drafted to cover most cases but obviously may need revision in order to meet a specific situation, e.g., if a corporation plans a second mailing, it should be so stated, together with the proposed date of mailing.

Under "Delivery of Material to Brokers", please show under "Scheduled Date" your best estimate of the dates you expect to deliver the material. In order to comply with Securities and Exchange Commission and the Exchanges' rules, it is necessary for the corporation to furnish to the broker, for distribution to clients who are beneficial owners, all of the proxy material that the corporation is sending to stockholders, including the proxy and annual report. The columns headed "Date Received" and "Date Mailed" are for the use of the brokers.

The information to be shown under "Shares Entitled to Vote" is to be furnished by the corporation, following the record date.

Mailing instructions must be complete. Brokers must know whether the annual report is to be mailed with the proxy material or whether it is to be mailed separately; also how the annual report and the proxy material are to be mailed (First Class or Third Class). Also, furnish as much advance information as possible about "follow-up mailings".

THE NAME AND PHONE NUMBER OF AN INDIVIDUAL DESIGNATED BY THE CORPORATION MUST BE LISTED FOR INQUIRIES CONCERNING REQUESTS FOR ADDITIONAL PROXY MATERIAL, ANNUAL REPORTS, ETC. THIS INFORMATION IS ESSENTIAL. WHERE A CORPORATION USES THE FACILITIES OF A BANK FOR SOLICITING PROXY MATERIAL, THE CORPORATION MUST FURNISH ON THE "SEARCH CARD" THE NAME AND TELEPHONE NUMBER OF THE INDIVIDUAL AT THE BANK IN CHARGE OF THE SOLICITATION OF PROXIES.

58-527 O - 75 - 27

(EXHIBIT A)

.....
(Name of Company)

Date of meeting .....
Record date .....
Location .....
.....

Shares Entitled to Vote
– FOR BROKER'S USE –

Class of Stock	In Name of Broker	In Name of Cede & Co.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

Delivery of Material to Brokers
FOR BROKER'S USE

	Scheduled Date	Date Received	Date Mailed
Envelopes (9x12)	.....	.....	.....
Annual reports	.....	.....	.....
Proxy material	.....	.....	.....

Mailing Instructions

	Initial Mailing	Follow-up Mailing
Domestic owners	.....	.....
	.....	.....
	.....	.....
	.....	.....
	.....	.....
Foreign owners	.....	.....
	.....	.....
	.....	.....

Addresses:
For return of signed proxies .....
For telegraphic proxies .....
For information about your order, call ..... at .....
(Name) (Phone No.)

Please mail all material upon receipt in accordance with the above instructions. You will be reimbursed at the rate of..... ¢ per set, plus postage, with a minimum of $3.00, including postage, in accordance with the rules of the New York Stock Exchange.

Number of sets required ..... Date requested .....

PLEASE COMPLETE THE ATTACHED CARD AND MAIL IT WITHOUT DELAY

(EXHIBIT B)

.....
(Date)

.....
.....
.....
(Name and address of Company)

Attention: .....

Please furnish the following material for use in connection with your company's next meeting of stockholders:

1. ..... Annual reports

2. ..... Notice of Meeting and Proxy Statement

3. ..... Proxies

Class of Stock

....
....
....
....

4. ..... 9 x 12 plain envelopes;

5. ..... Postage paid envelopes for return of signed proxies to company.

(Please cross out material not needed.)

Please send the above material to the following:

....
(Firm Name)

.....
(Firm Membership — i.e., AMEX, NYSE or NASD)

.....

Attention: ..... Room No. .....

.....
(Name of Proxy Dept. Mgr.) (Phone No.)

NOTE: Broker-client solicitation letter is to be furnished by broker.

The reverse of this card is to be pre-addressed to the corporation, transfer agent, or its proxy solicitor.

Some corporations do not accept telegraphic proxies. If so, please indicate. However, if they are acceptable, list the proper address for their receipt.

Further, if the voting of foreign holdings may be of importance to a corporation, the corporation should give consideration to making a statement to brokers as to how the material should be sent to foreign holders, such as by airmail or regular mail.

The other part of the double card would be for the use of the broker to indicate its soliciting requirements. (Brokers have expressed concern that during a busy proxy season clerical omissions may occur. Therefore, particularly when important blocks of stock are involved, it may be advisable to maintain a procedure whereby a telephone call is made at or about the record date to any broker from whom a response has not then been received, to make absolutely sure of his requirements.)

V NOTIFYING BROKERS OF SHARES OF RECORD

As soon as the record has been taken and stockholder accounts are posted, it is important to send each broker a notice (Exhibit C) of the number of shares registered in its name at the close of business on the record date. This assists the broker in checking its records because stock may be out on loan or assigned to another firm. By knowing how many shares of stock are registered in its name, the broker can make a more accurate tally and give a maximum vote.

VI DELIVERY OF MATERIAL TO BROKERS

Packages of annual reports, proxy statements, proxies, etc. should be plainly labeled to indicate they contain proxy material and are for inside delivery. In addition, the label should show the name of the corporation and the meeting date. This will assist the broker in locating material and alert the broker to the time available for soliciting.

Proxy material should not be assembled prior to distribution to the broker. Envelopes should be the right size to hold the proxy soliciting material to be sent the brokers' clients.

It is very important, to facilitate prompt handling by brokers, that delivery of annual reports and proxy soliciting material to brokers occur on the same day, and the supplementary or additional material and follow-up material should be identified as such.

The suggested form of label is set forth as Exhibit D. The color should be blue. The preferred minimum size is 5 - 3/8" x 6 - 3/8".

Soliciting material should be delivered to brokers as early as possible to ensure its mailing to clients at the same time the corporation makes its direct mailing to stockholders. It cannot be too strongly stressed that the timely delivery of proxy soliciting material to brokers is of prime importance.

(EXHIBIT C)

.....
(Name of Company)

.....
(Date)

.....
.....
.....
(Name and Address of Broker)

Attention: ....

The following information is as of the record date for the next meeting of stockholders of this Company:

Shares entitled to Vote		
Class of Stock	In Name of Broker	In Name of Cede & Co.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

Please record this information on the card heretofore furnished you by this Company.

(EXHIBIT D)

FROM: [Name of Soliciting Corporation] .....
Street .....
City ..... State ..... Zip Code .....
RETURN POSTAGE GUARANTEED

NOTE TO ADDRESSEE:

CONTENTS
PROXY
MATERIAL

NOTE TO TRUCKER:

INSIDE
DELIVERY

TO:

DATES RELATING TO [Name of Soliciting Corporation] ANNUAL MEETING

RECORD DATE ..... [Month, Date]
ANNUAL MEETING DATE ..... [Month, Date]
PROXY MATERIAL MAILING COMMENCING [Month, Date]

VII BILLING PROCEDURES

Invoices from brokers must set forth individually the number of sets of proxy soliciting material forwarded by the broker to its clients, the service fee incident thereto, the postage expense, and total charge. Also, the name of the brokerage firm and its membership, i.e., AMEX, NYSE, NASD, etc. must be set forth on the bill itself (See Exhibit E). It is recommended that bills from brokers not be paid until these items of information are specifically furnished.

The following are the rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to Rule 451 of the New York Stock Exchange and in mailing interim reports or other material pursuant to Rule 465:

40¢ for each set of proxy material, plus postage, with a minimum of $3.00 for all sets mailed;

10¢ for each copy, plus postage, for interim reports or other material, with no minimum.

The Board of Directors of the New York Stock Exchange approved on December 6, 1973, an increase in the rates for reimbursement of member organizations as follows:

50¢ for each set of proxy material for those meetings that do not include a proposal which requires beneficial owner instructions, plus postage, with a minimum of $3.00 for all sets mailed;

60¢ for each set of proxy material for those meetings which include proposal requiring beneficial owner instructions, plus postage, with a minimum of $3.00 for all sets mailed;

10¢ for each copy, plus postage, for interim reports or other material with no minimum.

The American Stock Exchange and the National Association of Security Dealers, Inc. have similarly adopted the revised rates of reimbursement.

THE ABOVE INCREASE IS PENDING BEFORE THE COST OF LIVING COUNCIL AND YOU SHALL BE ADVISED WHEN AN EFFECTIVE DATE IS ANNOUNCED.

(EXHIBIT E)

BILL FORM

TO:
FROM: (Brokerage (Corporation) Firm) DATE:
MEMBERSHIP: (i.e., AMEX, NYSE, NASD, etc.)

Expenses incurred in connection with mailing of following material:	No. Sets Mailed	Service Fee	Postage Expense	Total Charges
ANNUAL REPORT PROXY SOLICITING MATERIAL INTERIM REPORT POST MEETING REPORT STOCKHOLDER LETTER OTHER:				

FOR CORPORATION RECORDS
DATE PAID
CHECK NO.

VIII DEPOSITORY TRUST COMPANY (Cede & Co.)

In order for Depository Trust Company to provide maximum services as registered owner without unnecessarily destroying the communication link between the issuer and the beneficial owner, Depository Trust Company will very shortly alter its present procedures.

These procedures will provide that as DTC becomes aware of a record date for a stockholder's meeting, they will send to the corporation an order form through which DTC will request a number of proxy voting forms and a small number of proxy statements and annual reports.

On the day following the record date DTC will transmit to the corporation a listing of member organizations and their position in that particular stock. They will also request the corporation to contact these member organizations directly with respect to the voting of these shares.

Upon receipt of the proxy forms from the corporation, DTC will sign the proxy form "Cede & Co." (nominee for DTC) and transmit an amount, depending on the level of the record date position maintained, to the member organization. The member will solicit votes from the beneficial owner, tally them and complete the signed proxy instructions. As the instructions are completed, the member organization will forward these to the corporation or the corporation's agent for inclusion in the general vote.

MISCELLANEOUS

1. To assist brokers and their clients in analyzing proposals and voting, the numbering of the proposals in the notice of meeting, proxy statement, and on the proxy must be coordinated by number or other designation. For example, if a proposal is numbered "1" in the notice of meeting and proxy statement, then it is important that the same proposal be numbered "1" on the proxy form; and similarly where a proposal is designated as "A", "B", etc.

2. The Exchanges require four complete sets of definitive proxy material as soon as possible after material has been cleared by the Securities and Exchange Commission. Proxy material for OTC issues should be sent to the NASD in the same manner.

3. As a part of normal brokerage transactions, stock is often delivered back and forth between stock exchange firms without having the change of ownership recorded on stock transfer books. A request by the Exchanges that members transfer such shares into their own names prior to the record date may make proxy solicitation more effective. (For further information consult with the respective Exchanges.)

4. On request, the Exchanges will advise the corporation whether a particular matter appears to be "controversial" within the meaning of their rules concerning voting of stock by members. (For a detailed explanation of the procedure, consult the appropriate section of the "Company Guide" of The American Stock Exchange and the "Company Manual" for The New York Stock Exchange.) To obtain early consideration, it is suggested that a copy of the proxy material in preliminary form be submitted to the Exchanges for review. Any proxy statement with a proposal(s) other than the election of directors and selection of auditors should be sent to the Exchanges in preliminary form.

5. When a broker may vote without instructions under the Exchanges' rules, it may give a proxy at its discretion no earlier than ten days before the meeting provided the proxy soliciting material is mailed to beneficial owners at least 15 days before the meeting. Corporations should keep these instructions in mind to forestall needlessly contacting brokers before they legally can execute the firm's proxy.

6. Upon receipt of definitive proxy material, the Exchanges show an appropriate symbol in their "Meetings Section" of their Weekly Bulletin to guide members in the voting of proxies. Prompt delivery to the Exchanges of the definitive proxy material will permit publication of this information in time to be of most benefit to Exchange members.

7. Payment of bills from brokers should be made as promptly as possible and should be accomplished within 90 days following receipt.

In Conclusion

Those responsible for drafting this Manual have leaned heavily on the experience and practice of those brokers and corporations whose procedures have appeared to work satisfactorily. In some cases, adoption of certain of the suggested procedures may require changes in what has become established practice. It is the hope of those responsible for developing this Manual that all corporations will conform their soliciting practice to that suggested. Ideas for improved procedures will be welcome and may be forwarded to any of the sponsoring organizations.

American Society of Corporate Secretaries, Inc.
One Rockefeller Plaza - New York, N.Y. 10020

The American Stock Exchange, Inc.
86 Trinity Place - New York, N.Y. 10006

The National Association of Securities Dealers, Inc.
Two Broadway - New York, N.Y. 10004

The New York Stock Exchange, Inc.
11 Wall Street - New York, N.Y. 10005

Securities Industry Association
20 Broad St. - New York, N.Y. 10005

ADDENDUM

MANUAL FOR PROXY SOLICITATION

OF STOCK IN BROKERS' NAMES

Prepared as a joint report of

American Society of Corporate Secretaries, Inc.
American Stock Exchange
National Association of Security Dealers, Inc.
New York Stock Exchange, Inc.
Securities Industry Association

This is an addendum to the booklet titled "Manual for Proxy Solicitation of Stock in Brokers' Names" which was prepared as a joint report by the above groups and released in January 1974. As the procedures of Depository Trust Company have been altered since this booklet was published, there follows an update of the present procedures of Depository Trust Company (Page 9 - Section VIII of Booklet).

DEPOSITORY TRUST COMPANY (Cede & Co.)

In a continuing effort to improve proxy solicitation, Depository Trust Company has devised a new Omnibus Proxy procedure. This procedure will remove the Depository completely from the communication link between issuer and Depository Participant. In essence, the new procedure entails the reassignment of Cede voting rights to its Participants through the execution of an "Omnibus Proxy" which is mailed to the issuing company.

Briefly stated, as of the record date for a stockholders' meeting DTC will produce a Dividend/Proxy Take-Off listing which identifies the Participants to the accounts of which shares are credited and designates the number of shares credited to each account. The listing is machine-printed and attached to an Omnibus Proxy which assigns the voting rights to the Participant's name thereon for the amounts shown, and authorizes these Participants to vote the issues in their firm or corporate name. In addition, each Participant having shares of the relevant security credited to its account receives a Proxy Record Date Notice advising it of the delivery of the Omnibus Proxy and listing to the issuer and the number of shares it is entitled to vote. Thus, the Participants named on the listing may obtain proxy cards, appropriately complete and execute them and return them directly to the issuer.

In the event that subsequent adjustments are necessary in order to accurately reflect a Participant's position a corrected Omnibus Proxy and listing will be produced and forwarded to the issuer. Each Participant whose account is affected by such adjustment is advised of its new record date position by means of a corrected Proxy Record Date Notice. Identical procedures will be followed in the event of adjournments which result in a new record date.

The complete Omnibus Proxy procedure is described in detail in a release sent to all corporations by DTC last October 14.

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A D D E N D U M

MANUAL FOR PROXY SOLICITATION

OF STOCK IN BROKERS' NAMES

Prepared as a joint report of

American Society of Corporate Secretaries, Inc.
American Stock Exchange
National Association of Security Dealers, Inc.
New York Stock Exchange, Inc.
Securities Industry Association

This is an addendum to the booklet titled "Manual for Proxy Solicitation of Stock in Brokers' Names" which was prepared as a joint report by the above groups and released in January 1974.

In this booklet, under the title "BILLING PROCEDURES" (Page 8 - Section VII) there is listed a set of rates of reimbursement which the Board of Directors of the New York Stock Exchange approved on December 6, 1973, subject to Cost of Living Council exemption. A recently announced exemption by the Cost of Living Council now permits utilization of these new rates. They will be effective with respect to proxy soliciting services performed after March 31, 1974:

50¢ for each set of proxy material for those meetings that do not include a proposal which requires beneficial owner instructions, plus postage, with a minimum of $3.00 for all sets mailed;

60¢ for each set of proxy material for those meetings which include a proposal requiring beneficial owner instructions, plus postage, with a minimum of $3.00 for all sets mailed;

10¢ for each copy, plus postage, for interim reports or other material, with no minimum

The American Stock Exchange and the National Association of Security Dealers, Inc. have similarly adopted the revised rates of reimbursement.

Member organizations are required to mail out such material as provided by the Rules when satisfactory assurance is received of reimbursement of expenses at such rates; provided, however, that a member organization may request reimbursement of expenses at lower rates than those mentioned above or, if agreed to by the person soliciting proxies or the company at higher rates. Follow up mailings shall be at the rate of 10¢ per set. A charge for envelopes may be made only if envelopes are not furnished by the person soliciting proxies or distributing material. The 60¢ rate will apply for proxy material covering those meetings which include one or more proposals requiring beneficial owner instructions.

EXHIBIT B

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SECURITIES EXCHANGE ACT OF 1934
Release No. 11243/February 13, 1975

TIMELY DISSEMINATION OF PROXY MATERIAL AND OTHER ISSUER COMMUNICATIONS TO BENEFICIAL OWNERS

The Securities and Exchange Commission announced today that, in view of the fact that the 1975 proxy solicitation season is rapidly approaching, the Commission wishes to re-emphasize its concern that proxy materials and other issuer communications reach beneficial owners in a timely manner.

This matter was one of the subjects of the recent Public Fact-Finding Investigation in the Matter of Beneficial Ownership, Takeovers and Acquisitions by Foreign and Domestic Persons held by the Commission. The Commission's staff is continuing its consideration of the views and opinions received during that hearing.

The process of communication between issuers and beneficial owners is one which requires close cooperation among issuers, transfer agents, soliciting agents, and brokers, banks and other securities recordholders such as securities depositories.

The Commission notes that certain of the self-regulatory organizations have recently increased their efforts to improve this cooperation and, thereby, the communications between issuers and beneficial owners.

Self-regulatory organizations (i.e., securities exchanges and the National Association of Securities Dealers, Inc.) have rules requiring their members to forward proxy materials, annual reports, and other materials to beneficial owners for whom such members hold securities in a name other than the beneficial owner such as in "street" or "nominee" name.

The Commission wishes to remind broker-dealers of their obligations to comply with such applicable self-regulatory requirements in order to facilitate the timely flow of communications between issuers and beneficial shareholders. The Commission has recently adopted rules placing greater responsibilities upon issuers to forward certain materials to recordholders for transmission to beneficial owners. See Securities Exchange Act Release No. 11079 (October 31, 1974).

The Commission believes it would be helpful for issuers, brokers, banks, proxy soliciting agents and the public to report to the Commission or to the appropriate securities exchange or to the National Association of Securities Dealers, Inc. (with a copy to the Commission) and specific problems which are encountered in the issuer-shareowner communications process, including specific instances where participants in the process appear to impede the timely flow of such material, and any complaint which an issuer or broker received from a beneficial owner.

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Such reports should contain all available relevant information, including the identity of the beneficial owner, broker and i r, and all the known dates upon which these and any other persons requested, sent received material.

Communications sent to the Commission on this subject may be addressed to Mr. Lee A. Pickard, Director, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All communications forwarding such material should bear the File No. S7-552 and will be available for public inspection.

By the Commission.

George A. Fitzsimmons
Secretary

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