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FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
~~1a Memorandum~~	~~Leach to Cannon and Dunham re Arab Financial Surpluses and the prospect for substantial incremental Arab investment in an American energy financing corporation. To be opened w with item 1b.~~ SYS-WHM 11/27/00	~~5/5/76~~	~~C(A)~~
1bSpecial Report	Department of the Treasury Special Report re A Survey of Projections of OPEC Financial Accumulations. 9 pp To be opened on December 31, 1981	1/29/75	A
~~2 Memorandum~~	~~See item 1a To be opened with item 1b.~~ SYS-WHM 11/27/00	~~5/5/76~~	~~C(A)~~
3	From Memo Case Leach to Cannon re Arab Boycott May 5, 1976		
~~3Memo~~	~~Scowcroft and Siedman to GRF Re Arab Boycott 6 pp.~~ SYS-WHM 11/27/00	~~ND~~	~~A~~
4 Memo	Asst. Sec. Treasury to Members of Committee on Foreign Investment in the United States re Working-level Meeting on OPEC Investments in Energy Sector	9/13/76	C

FILE LOCATION

Files of Paul Leach Domestic Council
Arab Boycott and Foreign Investment

KGH
August 2, 1979

RESTRICTION CODES

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Controlling Foreign Investment

Just four years ago, after Japan's reserve assets had climbed to more than $20 billion from less than $3 billion almost overnight, those people who predict the future by making straight-line projections were informing us that by the year

capital market has been doing the job effortlessly, it can't be trusted to do it right. Sen. Harrison Williams of New Jersey and Sen. Jacob Javits of New York, whose states have about the highest unemployment rates around, are supporting a bill

1a

THE WHITE HOUSE

WASHINGTON

May 5, 1975

MEMORANDUM FOR: JIM CANNON
DICK DUNHAM

FROM: PAUL LEACH

SUBJECT: Arab Financial Surpluses and the Prospect for Substantial Incremental Arab Investment in an American Energy Financing Corporation

The American economy may require as much as $1 trillion of energy-related capital investment by 1985. One much discussed potential source of a part of this capital is the group of oil exporting Arab countries presently experiencing large trade surpluses.

An analysis of the Arab financial situation, as currently projected, is important.

If an Energy Financing Corporation is to influence the flow of capital from Arab countries to the U.S., the Corporation must have a substantial incremental effect on the total flow of funds to the U.S. By this, I mean that the total Arab investment in the economy (Treasury securities, bank deposits, corporate securities, real estate, etc.) must be increased over what it would be without the Corporation. Otherwise, the Corporation will merely be a capital allocation mechanism.

The five most recently available projections of total OPEC financial accumulations over the period from the end of the boycott to 1980 range from $152 billion to $300 billion (including $60 billion in 1974). After 1980, there is a projected reduction in accumulated surpluses as the oil countries, in the aggregate, run trade deficits. These projections are:

PROJECTION	BILLIONS
Hollis Cheney, World Bank Officer in January, 1975 Foreign Affairs	$300

<u>PROJECTION</u>	<u>BILLIONS</u>
OECD in January, 1975	$245
Department of the Treasury in January, 1975	200-250
Morgan Guaranty in January, 1975	179
Edward Fried in <u>Energy</u> <u>and</u> <u>U.S.</u> <u>Foreign</u> <u>Policy</u> Study	152

Apparently, the Treasury and Morgan Guaranty are currently revising their estimates downward.

To date, a fifth or a sixth of the surpluses has flowed into the U.S. in the form of bank deposits, purchases of government securities and a relatively small investment in corporate securities and real estate. The remainder of the surpluses has gone into foreign bank deposits, Eurodollar loans, development loans, foreign government securities and some foreign real estate and equities. If this trend continues, the total Arab investment in the U.S. by 1980 will be $25 to 60 billion.

There is no compelling reason to believe that the existence of a new set of "Agency" securities (similar to the currently available Fannie Mae, Federal Home Loan Bank, Ginnie Mae and Federal Land Bank securities) will attract any substantial increment of Arab investment. However, Arab investments in Treasury and other Agency securities might be reduced as Arabs diversify into the new Corporation's debt. The private Kuwaiti, Iranian and Saudi investors buying equities and real estate in the U.S. (i.e., the "Arab Sheiks" we read about) may not be enticed by modest yields somewhat above those available on Treasury securities. And Arab governments or governmental authorities already have Treasury securities, Federal Agency securities and bank deposits available for investment, if desired. In addition, Wall Street investment bankers are very active in selling "private placements" and "public offerings" of prime corporate debt (e.g., GM, GE, Ford, U.S. Steel, Caterpillar and Shell Oil) to some Arab private investors and governments.

In my opinion, (1) total Arab investments in the U.S. will not be large, relative to the $1 trillion energy investment needs, and in any case, (2) there would be little or no incremental flow into the U.S. resulting from creation of an Energy Financing Corporation.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS

19-1b

Date: 4/23/75

To: Paul Leach

From: John Davis

Attached are some of the financial flow projections that you expressed an interest in. You should note the two tables at the end represent recent modifications of some of the projections described in the Treasury report. I have the feeling that many of these numbers are now in the process of being revised. Hope this is useful.

19-2

ASSISTANT SECRETARY OF THE TREASURY

WASHINGTON, D.C. 20220

April 23, 1975

3321 Main Treasury Building

MEMORANDUM FOR PAUL LEACH
DOMESTIC COUNCIL

From: Gerald L. Parsky

Subject: OPEC Financial Accumulations

Per our conversation I am enclosing recent work done by the staff here at Treasury on OPEC financial accumulations.

As I mentioned to you, I discussed this area extensively with the countries involved and would be glad to meet with you and Dick Dunham on this subject at any time.

Please let me know.

Gerry Parsky

Enclosure

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This form marks the file location of item number 16,

as listed on the pink form (GSA form 7122, Withdrawal Sheet) at the front of the folder.

2

THE WHITE HOUSE

WASHINGTON

May 5, 1975

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In my opinion, (1) total Arab investments in the U.S. will not be large, relative to the $1 trillion energy investment needs, and in any case, (2) there would be little or no incremental flow into the U.S. resulting from creation of an Energy Financing Corporation.

THE WHITE HOUSE

WASHINGTON

May 5, 1976

MEMORANDUM FOR: JIM CANNON

FROM: PAUL LEACH Paul

SUBJECT: ARAB BOYCOTT

The attached memorandum deals with the general issue of whether or not to support any new proposed anti-Arab Boycott legislation. The specific issue involves whether or not to support a "compromise" on the "Stevenson Bill" which would have three main effects:

1. It would require disclosure of boycott request compliance reports submitted to the Commerce Department by U.S. firms, on the grounds that the Export Administration Act declares it to be the policy of the U.S. to oppose boycotts;

2. It would bar religious, racial, ethnic, or sex discrimination by U.S. exporters;

3. It would prohibit refusals by U.S. firms to do business with other firms pursuant to foreign boycott requests.

I am not particularly well-versed on this matter and the decision memorandum is not fully illuminating. However, based on what I know and can glean from this memorandum, I would support Option 1, i.e., oppose any legislation.

THE WHITE HOUSE

WASHINGTON

May 4, 1976

MEMORANDUM FOR PHILIP BUCHEN
JOHN O. MARSH
MAX FRIEDERSDORF
JAMES M. CANNON

FROM: L. WILLIAM SEIDMAN

SUBJECT: Arab Boycott

A memorandum for the President on the Arab Boycott issue is attached.

I would appreciate your comments and recommendations on this memorandum by 3:00 p.m. Wednesday, May 5, 1976.

3

~~CONFIDENTIAL~~

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE PRESIDENT

FROM: BRENT SCOWCROFT
L. WILLIAM SEIDMAN

SUBJECT: Arab Boycott and Related Discrimination

The decisions announced in your statement of November 20, 1975 on the related issues of the Arab boycott and religious discrimination have been implemented. The Federal Reserve Board has issued a letter to member banks outlining their obligations with respect to Arab boycott and discrimination measures. The Justice Department has filed a civil anti-trust suit charging the Bechtel Corporation with refusing to deal with any U.S. sub-contractors on the Arab League boycott list and requiring its sub-contractors, in turn, not to deal with U.S. firms on the boycott list. The Department of Commerce has decided to release publicly letters charging United States firms with a violation of its regulations pertaining to the Arab boycott. The Department of Commerce has also ceased circulating tender offers requesting bids on projects from American firms if they contain a request to comply with the boycott.

In addition, several state governments have adopted laws on the boycott issue, some of which go well beyond the policy guidelines approved by you. We have also engaged in extensive discussions with Arab Governments and Israel on the entire question, including numerous exchanges through diplomatic channels and during Secretary Simon's March trip to the Middle East. Secretary Simon in his discussions with both Arab and Israeli leaders distinguished between the boycott and religious discrimination. He stated clearly that you desired an end to the boycott and that you felt that the only effective, peaceful way to end the boycott was to resolve the Arab-Israeli conflict. He also stated that we would oppose legislation directed to the boycott.

The cumulative effect of these actions has been mixed. The Arab Governments, as well as American businesses, appear to understand and accept the anti-discrimination aspect of our policy. Saudi Arabia has taken steps to distinguish between religious discrimination and its political attitude toward Israel, and to ease somewhat the process of obtaining visas for persons of the Jewish faith, even though some problems

~~CONFIDENTIAL~~

remain.

There have also been several specific indications of greater flexibility in the application of boycott regulations and some firms have been or soon will be removed from the list. Yet, there has also been some disruption of United States commercial dealings with the Arab world, primarily due to reluctance by American firms to risk possible legal action.

Arab Governments, to varying degrees, have resented our boycott related actions, although thus far they are generally cooperating in quiet, gradual efforts to minimize difficulties. Despite this quiet cooperation, high-level Arab leaders (particularly in Saudi Arabia and Kuwait) indicate they are prepared to retaliate commercially against United States business if we continue to apply what they view as unwarranted public pressure.

This memorandum seeks your guidance on the Administration's position on several pieces of pending legislation dealing with various aspects of the boycott/discrimination issue, all of which would, to various degrees, move the United States into a considerably tougher anti-boycott position than embodied in your November 20 statement. A summary of all the pending bills is attached at Tab A.

Stevenson Bill

The bill requiring the urgent formulation of an Administration position is an amendment to the Export Administration Act proposed by Senators Stevenson and Williams and a similar bill introduced in the House by Representative Koch.

The proposed legislation would have three main effects:

(1) It would require disclosure of boycott request compliance reports submitted to the Commerce Department by U.S. firms, on the grounds that the Export Administration Act declares it to be the policy of the U.S. to oppose boycotts.

(2) It would bar religious, racial, ethnic, or sex discrimination by U.S. exporters.

(3) It would prohibit refusals by U.S. firms to do business with other firms pursuant to foreign boycott requests.

The provisions on disclosure of compliance with Arab boycott requests could have some negative effect on consumer-oriented businesses in this country, causing them either to avoid the Arab market completely or to go to third country affiliates in order to avoid a possible counterboycott.

The provisions barring discrimination are identical for all intents and purposes to the measures announced by you on November 20.

The provisions of the bill which prohibit U.S. firms from refusing to do business with other U.S. firms on the boycott list are unclear as to their intent and effect. As presently drafted these provisions are more far reaching than the Justice Department conception of the applicability of our anti-trust laws (as set forth in the Bechtel suit), and if enforced strictly would deal a serious blow to United States business with the Arab world. Even large multinational corporations now heavily engaged in the Arab world would probably shift procurement to third country affiliated or unrelated firms in order to avoid possible problems. Many smaller companies would probably terminate business with the Arab world.

Given the policy which we have followed since your November 20 statement, the Arabs will tend to view Administration acceptance of any additional legislation on the Arab boycott as a shift in the Administration's position in response to the Israeli lobby.

There has been considerable interagency review of how best to deal with the Stevenson-Williams-Koch legislation. A Working Group, chaired by the NSC staff discussed the issue at length and prepared a paper which was discussed by the EPB Executive Committee on April 30.

There is agreement that the Administration should seek to limit additional anti-boycott legislation to the absolute minimum, in accordance with your policy decision of last November which remains the best approach under present circumstances. However, there is also agreement that it may be desirable to accept a compromise with Congress in the form of a suitably amended Stevenson-Williams-Koch bill if this will avoid passage of worse legislation and if the only other alternative is a Presidential veto.

Options

Two options for dealing with the Stevenson-Williams-Koch bill are presented for your consideration.

Option 1: Maintain the position outlined in your November 20 statement and strongly oppose all additional legislation as unnecessary and counterproductive, but do not indicate that you would necessarily veto any additional legislation thus leaving open the possibility of compromise later if sufficient opposition to the legislation does not develop.

Advantages:

- o This would be fully consistent with your statement of November 20 and the position maintained by the Administration since then that no additional legislation is needed.

- o If efforts to block new legislation succeeded, it would retain Arab confidence of the Administration as well as encouraging them to ease the practical application of the boycott. It would avoid the serious danger of an Arab backlash (similar to the Soviet backlash over Jackson-Vanik) because they believed we were applying excessive public pressure.

- o It would minimize the loss of business by U.S. firms to other countries due to U.S. anti-boycott regulations.

  If efforts to block new legislation failed, an opportunity would remain to choose between trying to obtain an acceptable compromise or either vetoing or acquiescing to unacceptable legislation.

Disadvantages:

- o This approach could produce a confrontation between the Administration and Congress and Jewish groups given the strong pressures which exist for some additional action.

- o It could also result in Congress pressing stronger legislation and rejecting last-minute efforts at compromise, than would have been the case were the Administration to seek a compromise from the outset.

- o This approach could place the President in the position of having either to acquiesce to the legislation or veto the bill.

Option 2: Modify your opposition to any additional legislation by beginning work immediately with key members of Congress to reach agreement on an amended bill.

Two approaches to an amended bill have been considered. Both approaches would accept the sections of the bill on antidiscrimination and disclosure and seek clear agreement from key Members of Congress and Jewish leaders that there will be no additional legislative action.

Approach A: Attempt to delete the section of the bill on refusal to deal in exchange for agreement to the idea of public disclosure of boycott request compliance reports, either by administrative action or by enactment of that section of the bill.

A public statement by the Administration supporting explicitly the efforts of the Justice Department to apply the Sherman Act to refusal to deal cases should be considered as a possible concession to obtain deletion of that section from the bill.

Approach B: Attempt to amend the section of the bill on refusal to deal by substituting language proposed by Justice which would substantially narrow its application and bring it into line with Justice's present concept of the applicability of the Sherman Act to refusal to deal actions by U.S. firms pursuant to the Arab boycott.

Advantages:

- Seeking a compromise from the outset through consultations with key Members of Congress and Jewish leaders would avoid a confrontation with them and could ultimately make an acceptable compromise easier to achieve.
- Enactment of Stevenson's legislation should substantially undercut the prospects for more harmful legislation.

  The Administration could provide Congress with the precise changes it would like in the bills before they move so far down the legislative path as to make changes difficult.

Disadvantages:

- This would appear as a retreat from the Administration position held since November 20. Once the Administration signallled a willingness to compromise, Members of Congress and others who support strong anti-boycott legislation may assume that they are in a strong position and do not need to accept a compromise.
- Some legislation would result which, depending on its nature, could create serious difficulties for U.S. foreign policy and economic interests in the Arab world and raise additional barriers to U.S. firms doing business in Arab countries.

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- o Some legislation would result which, depending on its nature, could create serious difficulties for U.S. foreign policy and economic interests in the Arab world and raise additional barriers to U.S. firms doing business in Arab countries.

Decision

Option 1 ________ Maintain the position outlined in your November 20 statement and strongly oppose all additional legislation as unnecessary and counterproductive, but do not indicate that you would necessarily veto any additional legislation thus leaving open the possibility of compromise later if sufficient opposition to the legislation does not develop.

Supported by:

Option 2 ________ Modify your opposition to any additional legislation be beginning work immediately with key members of Congress to reach agreement on an amended bill.

Supported by:

From Memo Case Leach to Cannon re Arab Boycott 5/5/76

MAJOR ANTI-BOYCOTT LEGISLATION

SENATE BILLS

1. Stevenson-Williams Bill (S. 953)

Title I

* Would require that U.S. firms report to the Department of Commerce on whether they intend to comply and whether they have complied with boycott requests which they receive.

* Would require that boycott reports hereafter filed with the Department of Commerce be made public, except that commercial information regarding the value, kind, and quantity of goods involved in any reported transaction may be kept confidential.

* Would prohibit U.S. firms from furnishing, pursuant to a boycott request, any information regarding the race, religion, or nationality of its employees, shareholders, officers, or directors, or the employees, shareholders, officers, or directors of any other U.S. company.

* Would prohibit U.S. firms from refusing to do business with other U.S. firms pursuant to a boycott request.

* Maximum administrative penalties applicable under the Act would be increased from $1,000 to $10,000. In addition, would make it clear that export privileges may be suspended for a violation of the anti-boycott provisions of the Act.

* Would require public disclosure of Commerce Department charging or warning letters against U.S. companies for failing to comply with anti-boycott provisions of the Act.

* Would require that the Commerce Department provide the State Department with summaries of the information contained in boycott reports for appropriate action by the State Department.

* Would require that the semi-annual reports to Congress under the Export Administration Act include an accounting of what action the Executive Branch has taken to effect the anti-boycott policy of the Act.

* Would clarify the Act to leave no doubt that it applies to banks, other financial institutions, insurers, freight forwarders, and shipping companies.

Title II

* Would amend section 13(d) of the Securities Exchange Act to expand the disclosure requirements imposed thereunder on those who acquire the beneficial ownership of more than 5% of any equity security by requiring disclosure of the following:

  (a) The residence, nationality, and nature of the beneficial ownership of the person acquiring the securities. (The latter would include, for example, whether the beneficial owner has the right to direct the voting of the securities, the receipt of dividends, or the proceeds of sale);

  (b) The background and nationality of each associate of the purchaser who has a right to acquire additional shares of the insurer.

* Would impose new disclosure requirements as follows:

  Every holder of record, of, and any other person having an interest in, 2% or more of a class of any equity security, would be required to file reports as prescribed by the SEC at such time as the SEC may require. The SEC would have authority to make such exceptions to the above as are not inconsistent with the public interest or the protection of investors.

  The 2% threshhold is to be reduced to 1% on September 1, 1976 and to 1/2 of 1% on September 1, 1977. However, the SEC may extend or shorten such periods if the SEC, after public comment, concludes that such change is not inconsistent with the public interest or the protection of investors.

The bill was originally reported out of the Senate Banking and Currency Committee on February 6, 1976. However, it was decided to defer full Senate action until legislation to provide a simple extension of the Export Administration Act was considered, at which time the two pieces of legislation would be combined. This did, in fact, occur at the subcommittee level on April 27 when the extension bill, S. 3084, was favorably reported to the full Committee with the Stevenson-Williams bill incorporated in it. Full Committee mark-up and final reporting of the legislation is expected Thursday, April 29 or Friday, April 30.

2. Ribicoff Bill (S. 3138)

The bill would deny tax benefits on foreign source income to taxpayers who participate in or cooperate with the boycott of Israel. These benefits include the foreign tax credit and tax deferral, and DISC. The denial would apply to that foreign source income derived through direct or indirect dealings with boycotting countries.

The bill is pending before the full Senate Finance Committee where no action is currently scheduled.

HOUSE BILLS

It is anticipated that those House bills pending before the International Relations Subcommittee on International Trade and Commerce will be considered as amendments to legislation to extend the Export Administration Act scheduled to come before the full committee some time in June.

1. Bingham Bill (H. R. 4967)

The bill would prohibit US companies from answering or complying in any way with boycott requests.

The bill is pending before the IRC Subcommittee on International Trade and Commerce.

2. Drinan Bill (H. R. 5913, 5997, 6431, 6661 and others)

The bill would make it unlawful for any US exporter to engage in such practices as:
--furnishing information to a foreign agent concerning the race, religion or national origin of its employees or the employees of firms with which it does business;
--furnishing information on business dealings with a boycotted country or firm; or refusing, because of dealings with a foreign agent, to do business with a boycotted country or firm.
The bill would require the Secretary of Commerce to revoke the export license of any exporter violating these provisions.

The legislation is pending before the IRC Subcommittee on International Trade and Commerce.

3. Koch Bill (H. R. 11464)

This bill is almost identical to the Stevenson-Williams Bill and has been dually referred to the House International Relations Committee and Interstate and Foreign Commerce Committee.

4. Holtzman Bill (H. R. 5246 and others)(almost 100 cosponsors)

The bill would prohibit any business enterprise from using economic coercion to induce another not to do business with, employ or otherwise discriminate against (on the basis of race, religion, etc.) any US or foreign person in respect to its activities in the United States. The bill would also make it unlawful to yield to such coercion or take discriminatory action to prevent the coercion from ever occurring.

The bill is pending before the Judiciary Subcommittee on Monopolies.

Estimates of Petrodollar Surplus Are Cut; Some Predict Additional Downgradings

5-23-75

By CHARLES N. STABLER
Staff Reporter of THE WALL STREET JOURNAL

NEW YORK—Petrodollar watchers are sharply downgrading earlier estimates of the volume of surplus funds accumulating in

crease), and that will just do more economic damage to a variety of countries."

Mr. Simon was in New York to address a dinner meeting of the American Iron and Steel Institute.

Surplus for 1975

According to Morgan Guaranty's monthly publication, World Financial Markets, OPEC oil production in the first quarter of this year averaged 26 million barrels daily, down 14% from the average for all

Glenn Schleede

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

September 13, 1976

MEMORANDUM FOR: MEMBERS OF THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES

HONORABLE JAMES M. CANNON
HONORABLE BRENT SCOWCROFT
HONORABLE ALAN GREENSPAN
HONORABLE FRANK G. ZARB

Subject: Working-level Meeting on OPEC Investments in Energy Sector

The FEA has requested that the Committee on Foreign Investment in the United States (CFIUS) review current U.S. policy and procedures on foreign investment in the United States in regard to direct investments by OPEC governments in the energy sector. Accordingly, I have asked Deputy Assistant Secretary John M. Niehuss to hold a working level meeting of the CFIUS to give FEA an opportunity to explain why current U.S. policy and procedures should be changed in this regard. (Attached is a FEA memorandum on this subject.) The report of this working group will be transmitted to the Committee with a recommendation for any further action by the CFIUS.

Pursuant to Section 1(a) of the Executive Order creating the CFIUS, representatives of FEA, CEA, NSC and the Domestic Council are also invited to participate in the working group.

The working group meeting will be held on ~~Thursday, September 16 at 2:30 p.m. in Room 4125, Main Treasury.~~ Please notify Mr. Niehuss' office (964-5881) as to who will attend for your agency.

Gerald L. Parsky
Gerald L. Parsky

Attachment

LIMITED OFFICIAL USE

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

OFFICE OF THE ASSISTANT ADMINISTRATOR

MEMORANDUM FOR FRANK G. ZARB

FROM: CECIL B. THOMPSON CBT

SUBJECT: OPEC GOVERNMENT DIRECT INVESTMENT IN THE U.S. ENERGY SECTOR: ISSUES PAPER

Attached is a revised draft of the OPEC investment issues paper, reflecting comments by you and John Hill. The key issues posed are:

- Do OPEC government investments in the U.S. energy sector warrant special review beyond existing safeguards/procedures?
- If so, what review/monitoring procedures are required?

The discussion notes that while presently proposed OPEC investments in the U.S. energy sector are limited, the potential risks associated with such investments may justify special treatment. The paper does not, however, make any formal policy recommendation.

Enclosure

cc: Alan Greenspan
Gerald Parsky
John Niehuss
John Hill
Bruce Pasternack

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DATE 29 AUG 1976

ISSUE: What Should be the U.S. Government Policy toward Direct Investment by OPEC Governments in the U.S. Energy Sector?

SOURCE: Office of International Energy Affairs

BACKGROUND:

As a result of the oil price increases of 1973-1976, OPEC governments are earning revenues surplus to their estimated development and consumption requirements. These surplus revenues (perhaps $200 billion by 1980) are concentrated among the Persian Gulf nations, and give Iran, Saudi Arabia, Kuwait, Qatar and the United Arab Emirates the financial capability to invest downstream in the operations of firms operating within the U.S. energy sector. Moreover, these governments have periodically expressed the intent to invest directly in the energy companies of oil consuming countries; various companies have expressed a willingness to accept their participation.

The USG has by tradition maintained an "open door" policy which has been relatively liberal toward foreign direct investment (FDI) in the U.S. Such a policy makes the U.S. an attractive market for investment capital; it reflects a basic premise that investment will be governed by commercial factors and that investment by U.S. entities abroad will receive reciprocal treatment by host governments.

Recent events suggest that the basic premise underlying the FDI policy may not be valid where OPEC government investment in U.S. energy is concerned, and that such investments in energy may warrant special treatment and safeguards. Such treatment and safeguards already exist in the case of FDI in nuclear energy, defense, communications, transportation, and banking.

The principal recent events and trends that led to this concern are as follows:

° The embargo and subsequent oil and gas pricing actions which demonstrated that international energy pricing and trade are the subject of extensive political negotiations, and are no longer governed primarily by commercial considerations.

LIMITED OFFICIAL USE

° Actions of OPEC governments to nationalize domestic production; these governments have exercised their sovereign prerogatives, but in the process have altered drastically the regime of reciprocal treatment.

° In direct response to the embargo and pricing actions, the U.S. and other major oil importing nations have adopted energy objectives requiring safeguard measures, beyond those typically provided for in conventional international commerce, aimed at reducing their dependence on OPEC oil, to alleviate price and supply security concerns; energy has thus been singled out as a critical economic sector by both producing and consuming countries.

As a result of the embargo, nationalization actions and the responses of the oil importing countries have limited the extent to which purely commercial factors will determine the supply and price of oil. It is appropriate and timely, therefore, to review these new "terms of trade" to determine whether any modification of FDI policy is warranted to reflect these new conditions.

DISCUSSION:

Expanded OPEC Role

To date the most active OPEC government in exploring FDI prospects with the U.S. energy sector has been Iran. Discussions were held in 1974 with Ashland Oil; in 1975 with Shell Oil Corporation (U.S.), and with the U.K. Government concerning British Petroleum (with SOHIO holdings); and most recently with Occidental Petroleum Corporation, NEPCO, Crown Central Petroleum Corporation, and again with Ashland Oil.

In addition, the Sun Oil Company is actively sounding out prospective buyers, including OPEC governments or national oil companies, to dispose of its Caribbean refinery.

It is in the specific context of this sequence and timing of ventures that various USG agencies and coordinating groups have dealt with the issues posed by FDI in the energy sector.

To broaden the perspective on these developments, it is useful to consider briefly the basic premise of U.S. open door policy; exceptions to this policy, FDI safeguards in place domestically; safeguard measures in selected other IEA countries; and the consistency between energy policy goals and FDI policy.

Premises to U.S. Open Door FDI Policy

Foreign investment has played an important role in the economic development of the United States. In the 19th century, foreign direct investment provided capital for the railroads and remained a major source of capital for industry until World War I. Since World War II, however, U.S. direct investment abroad has expanded rapidly and now exceeds the amount of foreign investment within the U.S. In 1974 U.S. direct investment abroad had a book value of $118.6 billion while foreign direct investment in the United States totalled $21.7 billion, of which approximately one-third was committed to the U.S. energy sector.

U.S. policy at the Federal and local levels traditionally has encouraged foreign investment. This policy is one of the foundations of U.S. international economic policy, and reflects U.S. commitments to:

- Free market mechanisms, affording maximum productive, profit-maximizing latitude to commercially motivated investors, and
- Reciprocal treatment of U.S. investors by foreign governments.

The benefits of this policy are considerable, and well-known. In the present international setting of attempts to create a "new economic order," it is particularly important to maintain the validity of fundamental U.S. economic policies such as those pertaining to FDI.

U.S. Exceptions to the Open Door Policy

The principal rationale for the exceptions in place appears to derive from a combination of national security concerns, and reciprocal treatment for U.S. investment abroad.

Some of the major economic sectors which have been singled out for special treatment through safeguard measures are:

- Broadcast communications industry;
- Commercial banking;
- Defense-related industries;

° Transportation;

° Commercial and non-commercial development of nuclear power

Communications. The Federal Communications Act of 1934 requires that the FCC receive disclosure of stockholders of licensees seeking to invest in the communications field. Federal statute prohibits foreign-owned or controlled corporations from receiving a license to operate an instrument for the transmission of communications. A corporation is considered alien if any director or officer is an alien, or if more than one-fifth of its capital stock is own by aliens.

Banking. Only banks incorporated within the United States may become members of the Federal Reserve System and/or the Federal Deposit Insurance Corporation. However, foreign banks may operate in many states if they conform to state and federal standards.

Defense. The National Disclosure Policy and the Industrial Security Program, as codified in various statutes and regulations (most notably the National Security Qualifications of any foreign-owned, controlled, or influenced corporation which has work contracts related to classified material. Any company engaged in classified defense contract work is required to keep the Department of Defense informed on changes in its managerial personnel or board of directors and/or transfers of ownership. National security is the predominant rationale behind this policy.

Transportation. The most stringent restrictions are those designed to prohibit foreign participation in coastal maritime trade (cabotage), as set forth in the Merchant Marine Act of 1920, the Shipping Act of 1916 and the Registry Acts (1792). Similar federal restraints exist in aviation, as codified in the Federal Aviation Act of 1958. In the case of railroads, several state laws prohibit foreign ownership but no federal restrictions exist.

Nuclear Power. **The Mining Law of 1872 restricts** uranium mining to U.S. corporations while the Atomic Energy Act and other statutes prohibit aliens or alien-controlled corporations from operating nuclear reactors.

Other Restrictions. As thoroughly documented by the 1976 Commerce Department's Report to Congress on Foreign Direct Investment in the United States, numerous restrictions exist in other sectors, especially electric utilities and insurance.

U.S. FDI Safeguards

The United States has in place a number of safeguard mechanisms to monitor the scope and nature of foreign direct investment in the United States. At least 20 federal agencies compile data on foreign direct investment activities; the following paragraphs summarize the principal efforts:

- In May, 1976, a joint Commerce-Treasury study group published an exhaustive benchmark survey of foreign direct investment, as required by the Foreign Investment Study Act of 1974.

- On May 7, 1974, the President issued Executive Order 11858, establishing an interagency Committee on Foreign Investment in the United States (CFIUS) under the chairmanship of the Department of the Treasury. The Committee is supported by an Office of Foreign Investment in the United States in the Department of Commerce. FEA has been granted "permanent advisory status" to the interagency committee

- Section 26 of the Federal Energy Administration Act requires the Administrator to monitor "Foreign Ownership of, Influence on, and Control of Domestic Energy Sources and Supplies;" this responsibility has been extended.

- The Department of Commerce regularly collects reports quarterly and annually,from foreign persons which hold, either as individuals or as affiliates, controlling interest in a business enterprise operating in the U.S. A report must be submitted for foreign direct investments amounting to 25 percent or more of a U.S. corporation's voting stock, owned directly or indirectly. Exempt from such reporting are business organizations whose value is less than $2 million. Commerce also collects certain balance of payments information from a sample of 400 foreign companies in the United States.

- The Security and Exchange Commission, by virtue of the Securities Act of 1933, the Securities and Exchange Act of 1934 and its recent amendment, gathers a wide variety of ownership data, including information on any investor proposing to acquire more than 5% of the shares of a company.

- The Internal Revenue Service also collects ownership information for taxation purposes.

° Although the Federal Trade Commission does not gather ownership data on a regular basis, the Commission does collect such information during special reviews or in their study of proposed mergers.

° In addition, the recently published Report to Congress on Foreign Direct Investment in the United States has recommended improvements to these monitoring systems to provide for more comprehensive oversight of FDI activities in the U.S. economy.

Safeguards in other IEA Countries

Concern in other IEA member countries over OPEC government FDI has resulted from two specific actions which occurred in the Federal Republic of Germany (FRG): the July 1974 purchase of a 25 percent share in the steel making division of the Krupp holding group by Iran, and the December 1974 purchase of a 14 percent share in Daimler-Benz by Kuwait. Chancellor Schmidt's response was that "there are limits . . . we would step in with legal measures." The countries which expressed the most concern were those which have healthy economies and would provide the most attractive places for OPEC FDI, e.g., Japan, France (not an IEA member) and the Netherlands. These countries have taken the most aggressive posture toward OPEC FDI. Japan and France immediately initiated high-level internal reviews of the prospects for OPEC FDI and their policies towards it. The Dutch Parliament has openly considered legislation which would limit FDI. Other countries such as the United Kingdom, whose economies would be assisted by OPEC FDI, have either been more neutral of have stated their willingness to accept OPEC FDI.

These differences notwithstanding, there are points of commonality. European countries make a distinction between acquisition of existing enterprises and new investments in which control is retained by the domestic participant. Established FDI in most all cases is afforded national treatment by the host. Almost all developed countries restrict FDI in selected key sectors considered to be of national importance (e.g., public utilities, raw materials). Compulsory reporting of investment transactions is the norm but the coverage and detail required very widely.

Beyond these points of commonality national strategies for dealing with potential FDI by OPEC governments take on a more individual character.

FRG

- Starting with Iran and Kuwait, has discussed with OPEC governments the creation of specific bilateral arrangements regarding advance notification of FDI;
- uses banking and industrial organizations to provide warning of overture by OPEC governments to purchase sizeable blocks in German private sector;
- in the private sector some firms seek to preempt unwanted FDI or control its effect by limiting shareholder voting rights.

Netherlands

- relies upon voluntary reporting by the participants themselves;

- requires prior agreement by the Board of Directors of the target firm (thus, realistically, Royal Dutch Shell is immune from OPEC FDI).

Japan

- has no specific requirements for notification of intended OPEC government FDI, but induces voluntary prior notification by delaying its decision until the investor withdraws its investment or agrees to government terms;

- requires prior agreement by the Board of Directors (which in effect means government approval) of the target firm.

United Kingdom

- exercises control through 50% or greater participation in energy production ventures;

Italy

- has preempted foreign commercial activities through concessions and favored treatment of domestic national oil company;

- avoids specific legal restrictions by providing direct government assistance to competing firms to make FDI in target firm unattractive.

Canada

- continues to welcome FDI in its energy sector from all sources;

- but Foreign Investment Review Board carefully reviews all FDI.

France (not an IEA member)

- requires government approval before a substantial FDI can be made;

- if FDI is opposed by the government, investment in the target firm by another domestic company is sometimes encouraged to prevent FDI.

Other methods which have been applied in IEA countries include:

- reductions of the proportion of equity that can be acquired by the foreign firm;
- assurances that no FDI above the original level will be obtained.

Energy Policy Goals and FDI Policy

In response to the Embargo and OPEC, the U.S. has singled out its energy sector for policy treatment which runs counter to the domestic laissez-faire policy tradition. In particular, to meet the price and supply risks posed by the oil producer countries, specific national energy targets have been developed, and are gaining general acceptance.

Implicit in these import and domestic resource development goals is the recognition that conventional international economic exchanges will not meet our broader interests. Theory shows that unfettered international trade and specialization maximize collective economic well-being. However, the U.S. and the IEA countries collectively have determined to accelerate the development of their costlier indigenous, alternative energy resources, at a measurable, recognized loss of optimal economic well-being, because of the unacceptable risks which would result from continued, high dependence upon OPEC.

The issue that is thus posed is whether the prospects and consequences of OPEC investment are consistent with the overall strategy of risk containment within the U.S. and IEA, and with the energy policies and goals recently developed.

Approach

To assess the impact of FDI by OPEC governments in the U.S. energy sector, the following topics are discussed below:

- An assessment of the risk posed by OPEC government investment in terms of:
  - U.S. energy supply security, including long-term energy objectives;
  - U.S. energy prices, including risks of extension of cartel rents downstream;
  - Impact on credibility of U.S. energy policies and posture.
- A discussion of existing control mechanisms to deal with risks identified above;

- Conclusions concerning the probability of the risks posed by OPEC FDI;

- Policy options to deal with risks, if warranted.

Risk Assessment

As noted above, OPEC government may accumulate surplus revenues on the order of $200 billion by 1980. For comparison, Table 1 shows the net value of U.S. assets held by 30 international petroleum companies.

Table 1

Net Investment in Fixed Assets (Dec 31, 1974)
30 International Petroleum Companies
($ billion)

	U.S.	World
Production	25.9	37.9
Transportation	4.0	10.6
Refining/Chemical Plants	11.7	23.1
Marketing	7.9	16.1
Other	2.5	3.6
TOTAL	51.9	91.2

Source: Chase Manhattan Bank, 1974 Financial Analysis of a Group of Petroleum Companies

Assets of natural gas, coal and uranium producers are more difficult to estimate; the increase in value of U.S. energy company assets is at least $25 billion.

Energy Supply Security and U.S. Long-Term Energy Objectives

The intentions of certain OPEC governments to use energy as a political instrument raise concerns that these governments might use their investments in U.S. energy companies to:

- In the short-term, render an embargo more effective by obstructing implementation of the IEP; and

- In the longer-term, increase U.S. dependence on OPEC oil, at the expense of non-OPEC supplies.

° Short-Term Supply Security

A major area of concern is the potential for obstruction of the IEP. Through downstream petroleum investments, OPEC governments could acquire the potential to target an embargo through access to the IEA emergency sharing system, through expanded control of logistics (especially tankers and refineries) and through an enhanced monitoring capability resulting from involvement in domestic operations.

In other energy sectors, the risks posed by OPEC are much less severe. In coal, given the U.S. position as a net exporter, there is little reason for concern. In uranium and nuclear technology, preventing nuclear weapons proliferation is the principal issue; this transcends specific energy concerns, and is receiving priority attention.

° Long-Term Energy Development

The possibility of conflict arises perhaps most acutely in this area, because domestic supply development goals are not necessarily consistent with the investment behavior of a transnational corporation with rigorous return on investment concerns. While it is impossible to quantify expected effects, the following hypotheses probably apply to a transnational firm at the margin of its financial, entrepreneurial or technical resources:

- A U.S.-controlled enterprise is more likely to accept for overriding national reasons a less-than-optimal investment strategy, than a foreign controlled enterprise.
- An enterprise subject to OPEC government influence, if not control, would be less likely to accept a diminished rate of return as a fee for "good corporate citizenship."
- In the case of two energy investment prospects with apparently identical ROI, one in the U.S. and one overseas, OPEC influence and political motivation increase the likelihood of a bias against the U.S. venture.

The USG has a wide range of tax measures and regulatory controls which govern the operations of domestic energy companies; these controls apply equally to all U.S. corporations regardless of the nationality of the stockholders. Underlying these controls, however, is the premise that corporations are profit-maximizers and will act accordingly. It is possible that the motives of an OPEC-controlled company might cause decisions which, though legal, would run counter to the objectives of U.S. energy policy.

If OPEC governments proceed with plans to construct export refineries, OPEC-owned marketing companies may be required to sell OPEC-refined products over non-OPEC products. Such distortions could reduce domestic refinery utilization and increase U.S. balance of payments due to the higher cost of products.

The prospect of OPEC preventive investment in coal or uranium in order to slow their development seems far-fetched. Some OPEC governments, including Iran, have substantive concerns about their own future energy needs following depletion of their oil reserves. Downstream investment in uranium enrichment, nuclear technology and solar research may simply reflect a realization that these energy sources will be essential a decade or two hence as depletion sets in.

Energy Prices

OPEC controls world oil pricing through its reserves. They might attempt to extend this cartelization to downstream petroleum operations (tankers, refining, marketing)or into other energy sectors to extract additional rents. Such an OPEC strategy, however, appears improbable if undertaken solely to gain pricing leverage.

Downstream petroleum operations are the most likely target, based on recent activity. However, the magnitude of financial outlays required and the diversity of commercial interests involved would make an extension of OPEC control extremely costly and become ipso facto a large potential liability (subject to expropriation) and manifest itself visibly and easily. Cartelization of crude oil production has proven the most cost-effective pricing strategy; incremental steps downstream yield little.

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Moreover, even by OPEC standards, the capital required is considerable. It should be noted, however, that an investment of less than 50 percent of market value is frequently sufficient to gain effective control of a large corporation. Thus an outlay of less than half of the estimated market value of the U.S. oil industry would be sufficient to achieve effective control, absent measures which would prevent such an occurrence.

The risks are probably the greatest in the area least under U.S. Government control: tanker fleets. Given the depressed condition of the world tanker market, the opportunity exists for OPEC governments to expand rapidly their investments in tankers at bargain prices. If OPEC governments were to acquire a substantial portion of the world fleet and impose flag preferences, the potential for monopoly rents in transportation tariffs would be very real.

In other energy sectors, OPEC control over pricing would require sizeable outlays with little chance for success. OPEC governments at present have no significant investments in coal or uranium reserves. The magnitude of investments required to impact on the prices of these resources would be enormous, and constitute an investment hostage in host countries.

Credibility of U. S. Energy Posture

In this amorphous area, the perceptions by the public at large, the Congress, other IEA countries, and OPEC itself of the U.S.'s ability to implement its energy goals are an intangible but important element which affects the U.S. energy policy process.

More specifically, the coincidence of possible near-term price actions by OPEC, and a series of highly visible OPEC movements into the U.S. energy sector could create the appearance of U.S. helplessness, notwithstanding technical counter-arguments about downstream competitive structures, and monitoring committees and statutes currently in place.

Existing Control Mechanisms

There are in place control mechanisms which restrict the scope of any proposed OPEC government investment in U.S. energy sectors.

° Current USG Foreign Investment Review: The Committee on Foreign Investment in the U. S. (CFIUS) is charged with the responsibility of monitoring the impact of foreign investment in the United States and for coordinating the implementation of U.S. policy on such investment. One of its major tasks is to review investments which, in its judgment, might have major implications for our national interest. Since its establishment in May 1975, the Committee has considered several investments, including the proposed Rumanian investment in the Island Creek Coal Company, the proposed takeover of Copperweld, Inc. by Imetal, and most recently, the proposed joint venture between the National Iranian Oil Co. (NIOC) and Occidental Petroleum Co. From the Committee's consideration of at least the first two of these cases, there was no inherent contradiction between the general policy of allowing a free flow of investment into the U.S. economy, including the energy sector, and energy objectives. Consequently no objection was raised to these investments on the basis of their implications for the national interest.

° Federal and State Regulation and Oversight: oversight of the U.S. energy sector is already extensive. While OPEC-owned companies might behave differently, they would be subject to regulations and laws which insure the compatibility of industry actions with national goals and policies.

° The Interior Department has limited powers over the nationality of corporations leasing of public land, including the OCS. Foreign control of onshore leases through U.S. incorporated entities can be prevented if it can be proven that reciprocal rights are denied in the relevant foreign country.

° The Nuclear Regulatory Commission may deny licenses for reactors or nuclear processing plants to an alien or a foreign-controlled corporation.

In addition to these authorities and measures, there are other general avenues for dealing with foreign investment behavior in the U.S.:

- U.S. antitrust legislation, which provides a means of limiting some forms of foreign investment. Under provisions of the Clayton and Sherman Acts, foreign government ownership of U.S. energy facilities could be restricted to prevent concentration or anti-competitive practices, particularly if the cumulative level of such investments threatened to give OPEC governments a major share of the U.S. market.

- The Trading with Enemy Act, which gives the President authority in time of war or national emergency to take a wide variety of protective measures vis-a-vis enemy or hostile-controlled enterprises. This authority was invoked to create the Office of Foreign Direct Investments in 1968 and more recently to impose temporary export controls. Since this statute requires a Presidential declaration of national emergency, its use poses a number of difficult political problems.

It is often argued that downstream investments render OPEC government more vulnerable given the threat of expropriation. While theoretically correct, this argument ignores the political and statutory obstacles to such action. In the absence of a declaration of war, special legislation would be required to seize the assets of an OPEC government; even then, compensation would have to be paid. Moreoever, such action could jeopardize the status of U.S. investments abroad.

Conclusions

1) OPEC governments have the capability and have indicated the intent to expand their investments in the U.S. energy sector to secure market access, as reflected in:

° Accelerated foreign direct investment by major OPEC countries, notably Kuwait and Iran, in OECD countries; and

° Focussed interest in U.S. energy companies on the part of Iran; in particular, Iran has proposed to acquire an interest in Occidental Petroleum

° The OAPEC Secretariat has recently characterized energy downstream investment by producers as a necessary response to the IEP, thus introducing a political element in what has been represented to date as a commercial strategy.

2) In direct contrast to OAPEC's tone and the active Iranian interest, the official Saudi Government position is conservative. The Saudis are increasing their longer term holdings and direct placement loans, particularly in U.S. corporations. Investment criteria are specific: the Saudi Arabian Monetary Agency has instructed its portfolio managers to keep investments below 5% of outstanding equity in each venture.

As of late 1975, SAMA had not invested directly in the equity of any firm and apparently had no interest in acquiring any management interest. Other guidelines limit tne amount of portfolio assets in any one industry and in any one company. Saudi private investors have, however, been encouraged to expand the Saudi flag tanker fleet. The Kuwaiti Government has expressed intentions to limit investment abroad in much the same manner. The future stability of all governments in the Persian Gulf, however, can be questioned.

3) There are substantial supply security, and less severe price concerns which would arise from OPEC investment in U.S. energy sectors; the problems of public perceptions in the U.S. and IEA may be significant.

4) Existing control mechanism can limit the risks associated with OPEC government investment in the U.S. energy sector, but cannot assure complete compatibility of such investments with evolving U.S. energy objectives.

5) Although the U.S. policy towards FDI is generally characterized as "open door", there are restrictions which limit or prohibit foreign investment in certain sectors both on grounds of national security, and extension of reciprocity to U.S. investors abroad.

6) There is also evidence of emerging sentiment in other IEA countries to safeguard basic industries and key firms from OPEC government influence or control, e.g.,

° German conditions upon Iranian investment in Krupp;

° Chancellor Schmidt's statement "there are limits... we would step in with legal measures."

7) OPEC governments have nationalized U.S. producer companies and assets, and have restricted or banned further investment in their energy sectors.

8) OPEC investments in the U.S. energy sector might render those governments vulnerable to expropriation or retaliation in the event of a confrontation with the U.S.; however, use of this sanction is extremely contentious and difficult, and should be viewed only a last-resort measure.

Why not let invest

So we can expropriate at time of Next Embargo?

ISSUES/OPTIONS ANALYSIS

The first issue which must be resolved can be simply stated: Is OPEC government investment in U.S. energy sectors sufficiently different to warrant special consideration? If the answer is affirmative, there are two sets implementing options which must be addressed:

- What type of review procedure is required?
- What degree of FDI monitoring in U.S. energy sectors is desirable?

ISSUE 1: Should U.S. policy be modified to provide for distinct treatment of OPEC government direct investment in the U.S. energy sector?

Any proposed deviation from the tradition of non-discriminatory, open-door policy toward foreign direct investment in the U.S. economy should be assessed very carefully.

The issue raised here involves a difficult judgment between the maintenance of the open-door policy, with all of its obvious and considerable benefits to date, and the safeguarding of energy policy goals, there progress to date has been laborious.

The underlying question is a judgment of whether the combination of real and perceived risks stemming from OPEC investment warrants special and visible safeguards by the U.S. Government.

Option A - Treat OPEC Distinctly

PROs:

- Elevates national energy sector to the level of policy concern about defense, transportation, communications, and banking, as reflected in existing foreign investment safeguards under U.S. legislation.
- Meets actively some of the public, Congressional and international concerns about effectiveness of U.S. energy policies.
- Protects parts of U.S. energy infrastructure from OPEC takeover at distressed price levels, brought about (in part) by OPEC actions.
- Avoids adding an additional incendiary dimention to the domestic divestiture debate.
- Reflects Congressional interest, as expressed in Section 26 of the FEA Act, to give special attention to this issue.

CONs:

- Significant conceptual departure from open-door principles.
- Will have the effect of discouraging or delaying potentially-productive ventures.
- May appear gratuitously confrontational, at a time of incertainty concerning CIEC resumption, and other economic dialogues with the Third World.
- May spark OPEC price reaction, or appear to legitimize imminent price action by OPEC.

Option B - Do not Treat OPEC Distinctly; Rely on Existing Mechanisms

[The Pro-Con discussion above applies here, reversed].

ISSUE 2: How Should the USG Review OPEC Direct Involvement in the U.S. Energy Sector?

The CFIUS mechanism has no statutory authority. The Executive Order does not impose upon CFIUS any periodic monitoring function, or any before-the-fact evaluation procedure.

The following options could formalize and tighten the CFIUS mechanism.

Option A - Review by CFIUS of OPEC investment in U.S. energy sector, at stated periodic intervals.

PROs:

° Minimum intervention within existing mechanism.

° Does not require implementing legislation.

° Can be presented as mild, non-confrontational measure.

CONs:

° May not address issue of central concern, if risks inherent in OPEC FDI are judged to be high.

° May not be sufficient to allay Congressional and public concerns, if stepped-up OPEC investment proposals materialize.

Option B - Require prior consultations by venturing firms, U.S. and OPEC, with CFIUS

[Sub-Option: threshold test of financial size and energy impact can be established to screen out insignificant ventures.]

PROs:

° Significant improvement in effectiveness over retrospective reporting approach in Option A.

° Meets many of the Congressional and public concerns.

° Can be broadened through CFIUS to allow for prior consultation with other key groups such as Congressional leaders and IEA countries.

CONs:

- Interposes time-consuming procedure in an investment environment that may be severely over-regulated as it stands.
- Formalization of prior consultation into a requirement will probably necessitate new legislation.
- Imposes potentially-heavy administrative burden on CFIUS and its member agencies.

Option C - Mandatory prior consultations with CFIUS; recommendations by CFIUS to ERC/EPB on desirability of each major proposed venture.

PROs:

- Most rigorous procedure for review if risk is assessed to warrant careful scrutiny.
- Gives USG latitude to respond flexibly to OPEC actions, to the extent that OPEC ventures continue to be proposed.

CONs:

- Major intervention; puts USG into role of assessing an open-ended number of ventures, and possibly having to justify these assessments in diverse forums such as the courts, international negotiations, and the Congress.
- May engage USG in continual, venture-by-venture bargaining and specifications traditionally left to market mechanisms.
- May politicize domestic investment decision-making.

Policy Guidelines

Whichever option is selected, an important ingredient in any process will be the elaboration of coherent policy guidelines. The important issues which these guidelines should treat include:

1) Nationality of prospective investor (OPEC vs non-OPEC, Arab vs non-Arab)

2) Degree of ownership

3) Type of managerial control

4) Company position in U.S. energy market

5) Company position in IEP

6) Company position in world energy market particularly tanker fleet ownership

7) Other energy investments by the same investor

8) Cumulative effect of all investors' interests on his position in the U.S. and world energy markets

When the ERC selects the preferred option, an ERC task force should immediately develop guidelines for CFIUS which answer these and other pertinent questions.

ISSUE 3: To What Extent Should the USG Monitor Foreign Investment in U.S. Energy Companies

Monitoring to date by FEA has been on an annual, ad hoc basis out of existing resources. The first report was published in December, 1974. A new report is in final draft form. There are reasons to argue that additional monitoring is not necessary.

Option A - Annual Reports with Existing Resources of Major Changes in Energy FDI Only

PROs:

1. No new commitment of resources

2. Supply continues existing practice and thereby minimizes adverse effects on future investment

3. Meets minimum requirements of Section 26 of the FEA Act.

CONs:

1. Strains existing resources since monitoring is conducted on an ad hoc basis

2. Monitoring is at present incomplete

3. Does not provide adequate basis for detecting portfolio investment

Option B - Semiannual Reports with Additional Resources and Monitoring on Both FDI and Portfolio Investment

PROs:

1. Would ensure maximum compliance with Section 26 of the FEA Act.

2. Would provide an even more accurate data base for policy determinations regarding limitations on foreign investments.

3. Would answer Congressional and public criticism and allay fears of foreign "takeovers" of U.S. energy facilities.

4. Would relate to need for greater "transparency" of energy industry.

CONs:

1. Would require commitment of considerable resources.

2. Even comprehensive monitoring would not reveal with certainty, the full extent of portfolio investment by foreigners.

3. Would require either changes in existing reporting forms or the promulgation of new questionnaires.

4. Substantial field investigations would be required. Questionnaires alone would not suffice.

5. Might tend to discourage desirable foreign investment.

6. Might threatend status of U.S. investments abroad.

THE WHITE HOUSE

WASHINGTON

October 5, 1976

MEMORANDUM FOR: ART QUERN

FROM: PAUL LEACH

SUBJECT: Arab Boycott Memorandum for Secretary of Commerce

I have no objection to this, which probably has more domestic benefit than international cost. Also, there is a school of thought which argues that the Sunshine Act will have the same result, so why not issue this order now?

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 4, 1976 Time:

FOR ACTION: cc (for information):

Phil Buchen
Jim Cannon
Max Friedersdorf

Jack Marsh
Brent Scowcroft
Bill Seidman

Jim Lynn (Paul O'Neill)
Bob Hartmann

1976 OCT 5 5 37

FROM THE STAFF SECRETARY

DUE: Date: October 5, 1976 Time: C.O.B.

SUBJECT:

Proposed Presidential Letter to
Secretary of Commerce re: Boycott Reports

ACTION REQUESTED:

____ For Necessary Action

_X_ For Your Recommendations

____ Prepare Agenda and Brief

____ Draft Reply

_X_ For Your Comments

____ Draft Remarks

REMARKS:

The Original of this memorandum was taken by the Presidential Party --- your comments must be dexed to them as promptly as possible -- therefore - the reason for the quick turnaround. Thank you.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President

THE WHITE HOUSE

WASHINGTON

October 4, 1976

MEMORANDUM FOR

THE SECRETARY OF COMMERCE

SUBJECT: Boycott Reports

I would like the Department of Commerce to take appropriate steps to permit, prospectively, the public inspection and copying of boycott-related reports filed with the Department of Commerce. Only business proprietary information regarding such things as quantity and type of goods exported, the release of which could place reporting firms at a competitive disadvantage, should not be made available to the public.

During the past year, there has been a growing interest in and awareness of the Arab boycott on American business. Disclosure of boycott-related reports will enable the American public to assess for itself the nature and impact of the Arab boycott and to monitor the conduct of American companies. To provide adequate notice to American exporters of this new policy, these inspection procedures should be placed in effect for reports filed after December 1, 1976.

In contrast to legislative proposals which were pending when Congress adjourned, public disclosure of boycott reports will strengthen existing policy against the Arab boycott of Israel without jeopardizing our vital, diplomatic and economic interests in the Middle East. I continue to believe that a lasting Middle East peace represents the only true means to end the Arab boycott.

THE WHITE HOUSE

WASHINGTON

October 4, 1976

The President today directed the Secretary of Commerce to take appropriate steps to permit, prospectively, the public inspection and copying of boycott-related reports filed with the Department of Commerce. Only business proprietary information regarding such things as quantity and type of goods exported, the release of which could place reporting firms at a competitive disadvantage, will not be made publicly available.

During the past year there has been a growing interest in and awareness of the impact of the Arab boycott on American business. Disclosure of boycott-related reports will enable the American public to assess for itself the nature and impact of the Arab boycott and to monitor the conduct of American companies. To provide adequate notice to American exporters of this new policy, the President asked the Secretary of Commerce to place it in effect for reports filed after December 1, 1976.

Public disclosure of boycott reports will complement positive steps already taken by my Administration to implement this Nation's policy in opposition to restrictive trade practices and boycotts. Other affirmative steps taken during the past year to give full effect to national policy have included the following:

1. On December 1, 1975, the Export Administration Regulations were amended to prohibit compliance with any boycott request which would discriminate against U.S. citizens or firms on the basis of race, color, religion, sex or national origin.

2. On December 1, 1975, the Regulations were amended to extend the reporting requirements to any person or firm other than the exporter handling any phase of the export transaction (such as banks, insurers, shipping companies, and freight forwarders.)

In addition, other actions taken by the Administration to implement the anti-boycott policy include:

1. On October 1, 1975, the reporting requirements were amended to require reporting firms to indicate whether or not they had complied, or intended to comply, with the reported boycott-related requests.

2. On December 1, 1975, the Department of Commerce ceased dissemination of information on trade opportunities containing boycott requests.

3. On April 29, 1976, the Secretary of Commerce directed that all charging letters alleging violations of the Export Administration regulations relating to the boycott be made public.

4. On a continuing basis, the Department of Commerce has referred and continues to refer reports of boycott requests that call for discriminatory actions against U.S. antitrust laws to the Departments of State and Justice for appropriate action.

In contrast to legislative proposals which were pending when Congress adjourned, public disclosure of boycott reports will strengthen existing policy against the Arab boycott of Israel without jeopardizing our vital, diplomatic and economic interests in the Middle East. Lasting Middle East peace, a primary diplomatic goal of the Administration, represents the only true means to end the Arab boycott.

FOR IMMEDIATE RELEASE | OCTOBER 7, 1976

Office of the White House Press Secretary

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THE WHITE HOUSE

The President today sent the following Directive to the Secretary of Commerce.

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

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

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

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FOR IMMEDIATE RELEASE OCTOBER 7, 1976

Office of the White House Press Secretary
(Los Angeles, , California)

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THE WHITE HOUSE

FACT SHEET

The President today directed the Secretary of Commerce to take appropriate steps to permit, prospectively, the public inspection and copying of boycott-related reports filed with the Department of Commerce. Only business proprietary information regarding such things as quantity and type of goods exported, the release of which could place reporting firms at a competitive disadvantage, will not be made publicly available.

During the past year there has been a growing interest in and awareness of the impact of the Arab boycott on American business. Disclosure of boycott-related reports will enable the American public to assess for itself the nature and impact of the Arab boycott and to monitor the conduct of American companies. The Department of Commerce will commence public disclosure of reports regarding boycott-related requests received by American companies on or after October 7, 1976.

Public disclosure of boycott reports will complement positive steps already taken by the Ford Administration to oppose the boycott and to insure that American citizens and firms will be fully protected from any discrimination on the basis of race, color, religion, national origin, or sex that might arise from foreign boycott practices. These steps have included the following:

1. In March, 1975, the President established a special White House task force under the direction of the Office of the White House Counsel to conduct a study and to make recommendations regarding actions which could be taken in connection with various aspects of the impact of foreign boycotts and related discrimination.

2. Effective October 1, 1975, the Department of Commerce made it mandatory rather than optional for United States firms to inform the Department whether or not they had complied with requests from foreign governments for information on boycott-related matters.

3. In November, 1975, President Ford announced the most far-reaching Executive Branch actions ever directed at foreign boycott practices. This action was the culmination of the study which the President had directed be undertaken earlier in the year. The President announced decisions and actions to insure that American citizens and firms will be fully protected from any discrimination on the basis of race, color, religion, national origin or sex that might arise from foreign boycott practices. The President further issued specific directives to implement his decisions.

(a) The President signed a Directive to the Heads of All Departments and Agencies which prohibited under Executive Order 11478 and relevant statutes, any Federal agency from taking into account in making selections for overseas assignments any exclusionary policies of a host country based upon race, color, religion, national origin, sex or age. Federal agencies were requested to inform the State Department of visa rejections based on exclusionary policies and the State Department would attempt through diplomatic channels to gain entry for those individuals.

(MORE)

(b) The President instructed the Secretary of Labor to require Federal contractors and subcontractors that have job applicants or present employees applying for overseas assignments to inform the Department of State of any visa rejections based on the exclusionary policies of a host country. The Department of State would then attempt, through diplomatic channels, to gain entry for those individuals.

(c) The President proposed the Economic Coercion Act of 1975 to prohibit a business enterprise from using economic means to coerce any person or entity to discriminate against any U.S. person or entity on the basis of race, color, religion, national origin, or sex.

(d) The President directed the Secretary of Commerce to amend the Export Administration Act's regulations to:

(1) prohibit compliance with any boycott request which would discriminate against U.S. citizens or firms on the basis of race, color, religion, sex or national origin.

(2) extend the reporting requirements to any person or firm other than the exporter handling any phase of the export transaction (such a banks, insurers, shipping companies, and frieght forwarders).

(e) The President state d that his Administration would not tolerate discrimninatory commercial banking practices or policies based upon the race or religious belief of any customer, stockholder, employee, officer or director of a bank and that such practices or policies are incompatible with the public service function of a banking institution in this country.

(f) The President supported legislation to amend the Equal Credit Opportunity Act, which covered sex and marital status, to include prohibition against any creditor discriminating on the basis of race, color, religion, or national origin, against any credit applicant in any aspect of a credit transaction. This legislation passed the Congress and was signed by President Ford on March 23, 1976.

(g) The President urged the Securities and Exchange Commission and the National Association of Securities Dealers to take whatever action necessary to insure that discriminatory exclusion in the investment banking industry was not tolerated and that non-discriminatory participation was maintained.

4. On December 1, 1975, the Secretary of Commerce ceased Commerce Department dissemination of information on trade opportunities containing boycott requests.

5. On January 16, 1976, the Department of Justice filed a civil antitrust suit against an American company charging it with implementing an agreement to refuse to deal with U.S. subcontractors blacklisted by certain Arab countries and to require U.S. subcontractors to refuse to deal with blacklisted persons or entities.

(MORE)

6. On April 29, 1976, the Secretary of Commerce directed that all charging letters issued for violations of the Export Administration Act regulations relating to the boycott be made public.

7. On October 4, 1976, President Ford signed the Tax Reform Act under a provision of which foreign source income attributable to certain boycott-related activity will lose the tax benefits of the foreign tax credit, the Domestic International Sales Corporations (DISCs), and the deferral of United States tax on foreign source income.

These actions have put an effective end to foreign discrimination against American firms or citizens on the basis of religion, national origin, race, color, or sex. Public disclosure of boycott reports will further strengthen existing policy against the Arab boycott of Israel without jeopardizing our vital interests in the Middle East.

# # # #

materials received from Commerce
10/20/76 but never used.

Arab Boycott

Q. Mr. President, since the second debate, you have successfully addressed the question of Eastern Europe, but you haven't really followed up on the Arab boycott issue. (1) Can you tell us why you told the American people that past participants in the boycott would be revealed? (2) Can you respond to Democratic charges that your Administration blocked legislation this year? (3) Can you tell us what Arab boycott legislation you are prepared to support this January?

A. First let's look at the record. Boycott practices began in 1952. After more than 20 years of inactivity, I am the first American President to look seriously at the problem and take corrective action to deal with it.

-- In March 1975, I directed the Secretary of Commerce to study the matter comprehensively and to give me recommendations for dealing with it.

-- As a result of that study I implemented proposals in November 1975 which have put an effective end to practices of discrimination against Americans on the basis of religion, national origin, race or sex.

-- The Anti-Trust Division of the Justice Department has brought the first suit against U.S. business for boycott practices.

-- On October 4 of this year I signed the tax bill which included anti-boycott provision.

-- In addition, I proposed constructive compromises to other legislation being considered in the closing days of this Session.

-- When Congress adjourned without taking final action, I acted on October 7 by directing the Department of Commerce to do what the Congress failed to do; namely, to require public disclosure of future reports on the Arab boycott, effective immediately.

-- There was no suggestion by the Congress of retroactivity in its proposals nor do I think it would be wise in view of the confidentiality which was promised when past reports were submitted to the government.

With respect to legislation in the future, I beleive it is premature to speculate on what may be required. My proposals announced in November 1975 together with the additional measures I have tken since then provide a basis for substantial progress in this area. I believe it would be useful to assess the effect these new efforts will have before proceeding to new measures.

MIDDLE EAST

FORD POSITION

We are involved in the Middle East negotiation because vital US interests (moral, strategic, economic) are at stake.

-- Our commitment to the survival and security of Israel is non-negotiable.

-- The Middle East is a strategic crossroads.

-- The 1973 embargo and oil price rise cost Americans half a million jobs and one percent of national output, and added at least five percentage points to the price index.

We engaged in the negotiation at the request of the parties.

The step-by-step process achieved remarkable results (Egyptian-Israeli disengagement agreement of January 1974; between Syria and Israel in May 1974; Egyptian-Israeli Sinai Agreement of September 1975). We are not wedded to one approach. It was always our expectation that at some point the step-by-step efforts would give way to a more comprehensive approach. Resuming the Geneva Conference might be appropriate at some point. It will depend on what is most workable and acceptable to all the parties.

Face to face negotiations are certainly a goal. We will seek them, but we are willing to continue our mediating role if this is desired. All the agreements thus far involved face-to-face talks at certain stages before or after.

We will proceed in all future negotiations, as we have in the past, in the closest consultation with Israel.

Israel's current proposal -- substantial territorial concessions, in return for an end to the state of war -- is a proposal that should be discussed.

The PLO is excluding itself from any negotiation as long as it refuses to recognize Israel's right to exist as a Jewish state.

US aid to Israel from FY '76 through FY '77 totals over $4.2 billion. All US aid from Israel's independence (1948) through FY '75 totaled $6.1 billion.

Prime Minister Rabin has said that Israel's relations with the US are "at a peak," and he's right.