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T N 7

THE WHITE HOUSE

WASHINGTON

ACTION

October 9, 1974

MR-7

MEMORANDUM FOR

THE PRESIDENT

FROM:

KEN COLE

SUBJECT:

CARGO PREFERENCE

The Conference Committee has filed its Report on the cargo preference bill. In general, it appears that they did not accept the changes you have requested.

The Conferees have adopted the compromise language we worked out with Paul Hall's representatives and the waiver now reads:

"(7) The requirements of paragraph (1) may be temporarily waived by the President upon determination that an emergency exists justifying such a waiver in the national interest."

When this compromise was reached, we clearly pointed out that the Congressional intent, as interpreted from the Conference Committee Report, would have to indicate that this is intended to be an extremely broad waiver and not limited simply to national security considerations. In fact, the Committee Report says nothing about the scope of the waiver and only refers to the issue of its duration:

"It should be noted that the waiver provision agreed upon by the Conferees is more restrictive than the provision that would apply to the House bill...It is the intent of the Conferees that the temporary duration of the waiver referred to in the provision is to exactly coincide with the duration of the emergency which triggered the waiver."

Our departmental lawyers interpret the Congressional history of this bill and the Merchant Marine Act it amends, as requiring a showing of national security emergency prior to waiver. The Conference Report does absolutely nothing to dispel this interpretation.

On the other hand, Bill Baroody reads the waiver as giving the broad authority you asked for with respect to scope, i.e., you can waive for economic reasons. However, given the uncertainties of interpreting the provision, he recommends

you indicate tomorrow the strong possibility of veto unless the floor debates on the Conference waiver provision clearly establishes legislative intent that the President has broad waiver authority including the power to waive for emergency economic reasons.

Timmons, Cole and others believe that floor debate on the Committee Report will not overcome the existing legislative history which restricts the waiver.

The other items of concern we expressed to the Conferees, i.e., fee rebates, Mondale Amendment, three-year wait period and double-bottoms, were resolved in a manner inconsistent with the Administration's position. (See Tab A, prepared by OMB, for further detail of these provisions.)

Conference Committee changes will make the bill even more inflationary than previously reported. (The original estimate by Commerce Department is \$600 million in the first year, rising in succeeding years.) Many callers today make the point that this bill is a blatant violation of the principles behind your call for Inflation Impact Statements for governmental action.

The Conference Report is expected to go to the Senate and House floors tomorrow. A veto signal from you could affect the Senate outcome. Further, it could delay Senate action and possibly even result in a change in the Committee Report.

Bill Timmons says we should let Congress know your position prior to the Senate vote so our supporters (against the bill) can vote accordingly. Bill cannot guarantee that your veto, if necessary, would be sustained.

ACTION

- (1) Signal veto if bill and Report come down as reported.

Recommend: Ash, Cole, Dent, Eberle, Kissinger, Seidman, Simon and Timmons

Yes WR7. No _____

- (2) If no veto signal, indicate strong possibility of veto if floor debates do not clearly establish broad waiver authority including waiver for emergency economic reasons.

Recommend: Baroody, Marsh (as long as waiver can be invoked for economic reasons)

Yes _____ No _____