

## TRADE REPORT

# Administration Is Boycotting Anti-Arab Boycott Bills

The Arab boycott is particularly controversial this year because of election year pressures, continuing tension in the Mideast and the Arabs' new wealth.

BY PAUL LEWIS

The Ford Administration is fighting hard to stop Congress from passing new legislation that would make it more difficult—and perhaps illegal altogether—for U.S. companies to cooperate with the 20-year-old Arab boycott of Israel in order to get access to the fast-growing markets of the oil-rich Middle East.

At the best of times, the boycott issue is a controversial and delicate one. But this year, the vastly increased financial power of the Middle East oil producers has combined with the continuing diplomatic stalemate between Israel and its Arab neighbors and the American election campaign to make the whole subject more complex still.

The Administration stoutly maintains that it already has done all that it can to discourage compliance and ensure that the boycott does not result in discriminatory acts at home. New legislation, argues the Administration, risks damaging the country's growing economic stake in the Middle East and undercutting its diplomatic efforts to promote a lasting peace there—which alone can end the boycott and give Israel the security it needs.

Its opponents disagree, believing that the Arab boycott is a dangerous bluff that can and must be called, and that the United States is the only country with the willpower and the economic muscle for the task.

Within the Administration's own ranks, quite a number of officials think the new drive for anti-boycott legislation will be hard to stop in the present political climate. In the end, they suspect President Ford's real choice may turn out to be between seeking a compromise with Congress now or a highly controversial veto later on in the election campaign.

The Administration's current campaign against boycott legislation is concentrated in the House, where the International Relations Committee is considering a move by Rep. Edward I. Koch, D-N.Y. to include his anti-boycott amendment (HR 11463) in the renewal of the Export Administration Act of 1969, which expires on Sept. 30.

The Koch amendments closely resemble those already added by Sen. Adlai E. Stevenson III, D-Ill., to the Senate version of the new Export Administration Act (S 3080), which has been reported by the Senate Banking, Housing and Urban Affairs Committee and is awaiting floor action.

Although several other tougher anti-boycott bills have been introduced in the House, the Stevenson-Koch measures generally are thought to have the best chance of passage this year.

However, the Senate Finance Committee has accepted an amendment to the Tax Reform Act by Sen. Abraham Ribicoff, D-Conn., ending certain tax savings for companies participating in the boycott, and this must be considered a dark horse in the field of anti-boycott legislation.

**Background:** In order to understand the battle now raging over the Stevenson-Koch amendments and other pieces of anti-boycott legislation, it is necessary to recall the main facts about the Arab boycott of Israel.

The primary boycott began in 1946, when the members of the League of Arab States banned the import of goods from what was then British-mandated Palestine in an effort to stop the creation of Israel. But in 1948, the State of Israel was set up, and in 1951 the Arab League instituted the so-called secondary and tertiary boycotts.

Under the secondary boycott, the Arabs sought to encourage foreign com-

panies to boycott Israel as well by establishing a blacklist of those with substantial economic ties with the Jewish state and refusing to do business with them.

James A. Baker III, then undersecretary of Commerce, told the University of Texas Law School on Feb. 19 that U.S. firms generally are blacklisted because of "the establishment of a plant in Israel, the supply of a significant portion of the components for products assembled in Israel, entry into partnership with Israeli companies, supply of technical advice to Israeli manufacturing plants and refusal to answer questions posed by Arab governments."

In theory, the Arab states apply the primary and secondary boycotts by refusing to deal with blacklisted firms and asking those they do have business relations with to certify that goods they supply are not of Israeli origin and do not contain Israeli components.

The so-called tertiary boycott comes when an Arab concern insists that the U.S. company not use sub-contractors, shippers, insurance agents or component manufacturers that are blacklisted or, in some cases, because they are Jewish-owned or managed.

**Dispute:** The Arab states participating in the boycott regard themselves as being at war with Israel and that boycotts are recognized universally as a legitimate part of any country's war effort against its enemies.

Moreover, the boycott also is an accepted instrument of diplomacy even when war-like conditions do not exist. The United Nations currently is boycotting Rhodesia, though the United States is stopped from participating by the so-called Byrd Amendment. (*For more about the Byrd Amendment, see Vol. 8, No. 20, p. 656.*)

And over the years the United

States has instituted trade boycotts against Russia, China, Albania, Cuba, North Korea and North Vietnam.

But while the United States has tried to dissuade allies from trading with countries it was boycotting and to ban foreign subsidiaries of American companies from doing so, it has never blacklisted foreign companies and attempted to mount a secondary or tertiary boycott.

On the other hand, it is also true that the Arab boycott is very unevenly enforced. Although the Central Boycott Office in Damascus, Syria decides which companies should be blacklisted, its recommendations are not binding, and in practice each country has its own list and its own particular restrictions.

According to State Department analysts, the strictest enforcers at present are the richest Arab countries, Saudi Arabia, Kuwait and the Gulf states. Poorer countries like Egypt and Syria are more pragmatic, even though they have been to war with Israel. Some Arab countries like Morocco, Tunisia and Algeria barely enforce the boycott at all.

As a result, anomalies abound. For instance, International Business Machines Corp. has plants in three Arab countries and Israel, while Olivetti (Ing. C) & Co. has agents in 12 Arab countries as well as Israel.

Nevertheless, while no one doubts that the Arabs have every right to refuse to trade with Israel, the secondary and tertiary boycotts are regarded by many as distasteful because they result in American companies being compelled to carry out the Arabs' boycott of Israel for them and in some cases to discriminate against other U.S. firms and individuals because of their dealings with the Jewish state.

Clearly, Congress cannot force the Arabs to import Israel goods, do business with particular companies, or make American companies invest in Israel. What it can do, however, is to regulate the information about the origin of goods, subcontractors and so on, that American firms provide Arab customers and that is necessary for successful enforcement of the boycott. It can also try to stop one American firm from discriminating against another in order to get Arab business.

#### ADMINISTRATION POSITION

The President already has authority to make compliance with the boycott much more difficult for U.S. companies under the Export Administration Act.

The act states that the United States opposes boycotts by a foreign



Two sides of the boycott debate: Will Maslow (above) of the American Jewish Congress and Treasury Secretary William E. Simon (below)



country against any friendly nation and "encourages and requests" American companies not to comply. It requires firms to report confidentially to the Commerce Department all boycott requests, although it leaves it up to the Secretary of Commerce to decide what action he will take "to carry out the purposes" of the act. Finally, and most importantly, it authorizes the President to limit or prohibit American companies from answering boycott questionnaires.

**Implementation:** However, it is only in the last few months that the Administration has begun to implement this part of the act in any serious way—or, indeed, that any really serious effort has been made to get it to do so.

This intensified concern about the Arab boycott among Jewish groups, some businesses and in Congress prob-

ably has its roots in the 1973 Middle East war. But it chiefly reflects the realization that the Arab world's vastly increased wealth and demand for western goods and services as a result of the oil price explosion makes the boycott a much more potent weapon for encouraging foreign companies to discriminate against Israel.

In any event, in February 1975, growing concern about the boycott, together with some well-publicized examples of Arab discrimination against Jewish banks led Ford to pledge that he would not tolerate any discrimination against Americans on racial or religious grounds.

Since then, the Administration has taken several steps to tighten up boycott reporting requirements and to prevent discrimination against American companies or individuals as a result of the Arab boycott. These include:

- a publicity drive to remind companies they must report boycott requests and a new requirement that they also tell the Commerce Department in confidence whether they are complying or not;

- an investigation of reporting violations that led to civil penalties being imposed against five firms and warnings to 240 others;

- new administrative regulations issued last Nov. 21 prohibiting U.S. exporters from discriminating against American firms and citizens on grounds of race and religion as a result of the boycott;

- a Federal Reserve Board circular discouraging U.S. banks from handling letters of credit that contain boycott provisions, though not imposing any "new legal regulations" on them;

- an announcement that the Commerce Department no longer will circulate information about overseas business opportunities that contain boycott provisions;

- a Justice Department antitrust suit against the Bechtel Corp. charging it with conspiring with its subsidiaries to discriminate against certain subcontractors as a result of the boycott.

Generally, the Administration's acts have been designed to prevent racial or religiously motivated discrimination among Americans. What the Administration has not been prepared to do is to use its authority under the Export Administration Act to prohibit compliance with boycott requests for information altogether, to publish the names of companies complying with the boycott and to seek new authority beyond existing antitrust law to stop companies from discriminating against each other to secure Arab orders.

**Resistance:** The more extreme anti-boycott legislation introduced into the present Congress would simply ban compliance with any boycott requests, including those for information about a company's goods and relationships. A notable example of this is the bill (HR 4967) introduced by Rep. Jonathan B. Bingham, D-N.Y.

The Senate Banking Committee rejected this approach when it was considering the Stevenson amendment, calling it "a counter-boycott" that effectively would ban American firms from doing business with the Arab world.

The Administration also was adamantly opposed, fearing that any blanket prohibition against boycott compliance would lead the Arabs to give their business to other countries. Treasury Secretary William E. Simon warned the House International Relations Committee on June 9 that "there is precious little that the U.S. presently supplies to Arab nations that is not available from sources in other countries, and they are eager to take our place."

He displayed similar hostility to Ribicoff's plan to deny tax deferrals on foreign-source income and the benefits of the domestic international sales corporation (DISC) to companies if the Treasury Department determined that they had refused to do business with Israel, or with Jewish-owned companies. Simon called the plan "contrary to sound principles of tax policy," and the Administration hopes it will be killed in the conference committee on the Tax Reform Act, which is now before the Senate.

But the Administration showed itself every bit as hostile to the much more moderate Stevenson-Koch proposals, which provide for public disclosure by the Commerce Department of the names of companies complying or not complying with boycott requests; for an outright prohibition on U.S. firms supplying any information about the race, religion, sex or national origin of their own or any other company's directors, employees or shareholders; and for a ban on U.S. firms refusing to deal with other American companies as a result of boycott pressure.

To discourage the House International Relations Committee from including these measures in the Export Administration Act, the Administration fielded a blue ribbon team of witnesses at the hearings on June 8-11. Besides Simon—who spearheaded the attack—it included Secretary of Commerce Elliot L. Richardson and assistant secretary of State Joseph E. Greenwald.

In opposing publication of the confi-

dential boycott compliance reports, Simon argued that this would make it harder for Arab countries to turn a blind eye to cases where American firms refused to go along with boycott requests by disclosing cases of noncompliance as well as compliance.

His stand was supported by Thomas A. Christiansen of the Hewlett-Packard Co. of Palo Alto, Calif., speaking on behalf of the Chamber of Commerce of the United States. Christiansen said disclosure of compliance "could be unfairly misinterpreted as an implication of wrongdoing, causing unwarranted injury to the firm."

Privately, Administration officials fear that the more militant Jewish organizations would try to boycott complying companies and that this could be particularly damaging for companies in the competitive consumer products field.

Simon went on to argue that the provisions of the Koch amendment barring disclosure of information about the race or religion of a company's personnel was irrelevant because Ford's anti-boycott regulations already cover this.

Finally, he took issue with the so-called refusal to deal provisions, forbidding companies to discriminate against each other as a result of the boycott.

This was unnecessary, he said, if it went no further than existing antitrust

Even if these "refusal to deal" provisions were changed to make them more easily enforceable, Simon complained that they could leave blacklisted companies worse off than before, since other U.S. firms might fear that a consistent policy of using blacklisted companies only in non-Arab parts of the world could itself be construed as a conspiracy to support the boycott and that they would be on safer legal ground using non-blacklisted firms everywhere.

Beyond these objections to the detailed provisions of the Koch amendments, the Administration witnesses also went on to raise more general objections to the whole idea of new legislation against the boycott.

In the first place, they maintained, the primary and secondary boycotts of Israel—that is to say, the refusal to import from Israel or do business with blacklisted companies—can only be ended in the context of an over-all Middle East peace settlement.

As for the tertiary boycott—the attempt to get one American company to discriminate against another—existing antitrust laws could be brought into play where the evidence of a conspiracy exists, while other regulations prohibit discriminatory acts based on race or creed, Administration witnesses said.

In fact, the officials say, in only

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legislation, which prohibits "agreements or conspiracies to engage in anti-competitive boycott activities" and which already had enabled the Justice Department to institute proceedings against Bechtel.

But if the provision were intended to extend existing law to cases where "a firm unilaterally and without any agreement chose not to do business with another firm," it would be unenforceable in Simon's view. Government and the courts would have to decide why a firm did not, for example, pick a particular subcontractor, and that would be very difficult if not impossible, Simon said.

Commerce Secretary Richardson warned that the "refusal to deal" provision might make it an offense "if a U.S. firm doing business in an Arab country were to order one kind of truck than another, because it knows the country will not permit importation of the second truck."

about 20 per cent of the boycott requests reported to the Commerce Department have Arab purchasers asked for assurances that goods did not come in whole or part from blacklisted companies.

Usually, the U.S. companies are only asked to state that the goods are not of Israeli origin or being shipped on vessels that call at Israeli ports on their way to the Middle East.

### BOYCOTT CASES

The number of cases of blatant racial discrimination—for instance, a demand that a supplier not deal with "Jewish" or "Zionist" concerns—is minuscule, and Arab leaders continually maintain that the boycott is directed against Israel and not against Jews or Zionists as such in America.

Out of the 50,000 boycott request reports filed with Commerce between 1970 and 1975, only 28 such demands were found. Another analysis of the

30,000 requests filed between October 1975 and March 1976 produced a mere six, and all were disowned by the governments concerned.

**Problems:** But while the Ford Administration thus believes the Koch amendment would be unnecessary and ineffective, it fears also that new legislation would raise a number of additional problems and dangers.

First, it would be perceived by the Arabs as what assistant secretary of State Greenwald called "a confrontational gesture" in his testimony before the House International Relations Committee on June 8.

"We have experienced situations in the past where excessive pressure has produced a backlash which undercut progress being made through diplomatic endeavors," Greenwald said. "Such confrontation would be harmful to our over-all economic and political interests in the Middle East, the most important of which is our desire to promote progress towards a peaceful settlement of the Arab-Israeli dispute."

Secondly, the Administration fears that new legislation will only damage U.S. industry's growing stake in the fast-growing markets of the Middle East without having any serious impact on the boycott itself.

During 1975, U.S. exports to the Arab world exceeded \$5 billion, and as Commerce undersecretary Baker told the same committee last Dec. 11, "it is estimated that each billion dollars of U.S. exports represents 40,000 to 70,000 American jobs."

Finally, by embittering U.S.-Arab relations, the Administration contends, new legislation might also undercut the efforts now being made to reduce or remove boycott requirements through private negotiations with the Arab governments and importers.

Simon reported to the House committee that there had been "a gradual easing of enforcement practices over the past six months." Some Arab governments were negotiating with American firms, even though the latter had refused to give up their relationship with Israel, while other companies had succeeded in getting boycott clauses removed from contracts, letters of credit and shipping instructions.

Some Arab governments will take a company with Israeli investments off their blacklist if it invests as much in their own country. Syria wrote such a provision into its boycott laws in 1975, and Saudi Arabia has indicated support for the idea.

Saudi Arabia also is relaxing its traditional refusal to give entry visas to Jews. Visitors on business for the

World Bank or the Joint United States-Saudi Arabian Economic Commission — which oversees most U.S.-backed development projects in the country — get automatic visas now.

**Contradictions:** At first sight, the claim that the boycott is being eased may look surprising, because the statistical evidence suggests that enforcement is on the increase rather than the reverse. For example, the number of boycott reports filed with the Commerce Department rose from 785 in 1974 to 7,545 in the first three quarters of 1976, while the number of reporting firms increased from 23 to 538 over the same period.

According to the House Interstate and Foreign Commerce Subcommittee on Oversight and Investigations, the



*Commerce Secretary Elliot L. Richardson has urged that a compromise be worked out with Congress.*

value of goods affected by boycott requests was \$630 million in 1975, or 70 times the figure for 1974.

However the Administration believes these statistics are misleading. The big jump in boycott reports is certainly influenced by the fact that most companies never bothered to file until the Administration began to crack down during 1975. The increases also reflect the growing volume of business between the United States and the Middle East as the oil-producing states learn how to spend their new-found wealth. In addition, in December 1975, boycott reporting requirements were extended to the service industries.

#### TESTIMONY

Widely conflicting testimony, either supporting the Administration position or urging new anti-boycott legislation, has been presented to the House International Relations Committee. Support

has come largely from sections of the business community, while Jewish groups have pressed hardest for new legislation.

**Support:** The Administration has been supported in its opposition to any new anti-boycott legislation by the Chamber of Commerce, and on this point, Christiansen said on June 10 that "we feel confident these (existing) laws are adequate to deal with discriminatory and unfair trade practices, whether engaged in by foreign or domestic enterprises."

A forceful statement of the dangers for the American construction industry inherent in displeasing the Arab world came from a spokesman for the Associated General Contractors of America, Edwin L. Jones, president of J. A. Jones Construction Co. of Charlotte, N.C.

Jones warned the House committee on June 10 that the U. S. construction industry "will lose more than \$200 million in potential foreign construction revenue and 80,000 jobs over the next five years if Congress passes anti-boycott legislation to prohibit American construction firms from providing goods and services to many Middle East countries."

These manifestations of business support for the Administration position were welcomed privately by officials who say they have had difficulty getting big companies and trade organizations to take a stance on the matter. They suspect that while many businesses may fear new legislation would put them at a disadvantage against European and Japanese rivals in the Middle East, they are reluctant to say so for fear of criticism at home.

**Opposition:** However, the three major Jewish organizations that also gave testimony June 11 directly challenged the Administration's contention that anti-boycott legislation would be ineffective and merely encourage the Arab countries to take their business elsewhere.

They argued that the flexible enforcement of the boycott showed that the Arabs put business above politics and suggested resistance by U.S. companies would be matched by further concessions. All, therefore, supported passage of stronger anti-boycott legislation.

For the American Jewish Congress, Will Maslow, its general counsel, said, "We have found throughout the business community a willingness—even a desire—to challenge the Arab boycott. But businessmen one after another have told us they fear reprisals. They have said to us time and again that they would be willing to defy the boycott if

only they were given some statutory authority to do so."

Maslow said Arab countries choose American firms "because their goods are cheaper, better and more reliable than those which they can buy elsewhere. They will continue to be selected even when federal law forbids American companies to surrender to Arab boycott pressure."

He pointed out that Arab governments already turn a blind eye to boycott requirements when it suits them. For instance, the Ford Motor Co. had \$50 billion in Arab sales last year, although officially blacklisted because it has a small assembly plant in Israel; Hilton Hotels Corp. and Sheraton Corp. of America manage hotels in Arab countries as well as in Israel; while the Chase Manhattan Bank N.A. is the U.S. fiscal agent for Israeli bonds but has never been blacklisted "because the Arabs need it."

After calling the U.S. anti-boycott law "the laughing stock of corporate America," Maslow complained that while the Ford Administration had tried to stop racially motivated discrimination against Jews in America, it refused to prevent U.S. companies from discriminating against those with links to Israel.

For the Anti-Defamation League of B'nai B'rith, Seymour Graubard, the national chairman, said successive administrations had warned that anti-boycott legislation would undercut Middle East peace efforts for over a decade, though peace seems hardly any closer. "We cannot work passively any longer for final peace in the Middle East before seeking to halt Arab coercion of American business firms," he said.

Graubard pointed out that France had received no special treatment by Arabs although it cooperated closely with the boycott, and had fallen behind other European countries in its share of Middle Eastern markets.

For the American Jewish Committee on the Arab Boycott, Lester S. Hyman said the Arabs were testing America's will and that "if they were to encounter a solid front of legal and moral resistance to their discriminatory restrictions, in all probability they would back down because they badly need what the U.S. has to offer."

The advocates of new anti-boycott legislation also got support from Arthur F. Burns, the chairman of the Federal Reserve Board.

In a letter to Rep. Benjamin S. Rosenthal, D-N.Y., chairman of the House Government Operations Subcommittee on Commerce, Consumer and

tary Affairs, released on the same day that Simon was arguing against new legislation before the House International Relations Committee. Burns complained that U.S. banks were acting as enforcers of the Arab boycott and that new legislation was needed to stop this.

He pointed out that many boycott certifications had to be by the U.S. bank handling the letter of credit from the Arab importer. "Our banks are not only securing assurances for Arab importers that they are not buying goods of Israeli origin, but they also serve as the instrumentality whereby U.S. citizens having unrelated dealings with Israel may be denied access to the Arab market," Burns wrote.

He complained that Congress had not made compliance with the boycott illegal, but only encouraged firms

on the crowded and turbulent Middle Eastern stage.

However, there can be little doubt that the new trend in Congress is away from expediency in foreign affairs towards a greater emphasis on principle and morality. For this reason, some Administration officials suspect it may prove impossible to stop Congress from voting some kind of anti-boycott legislation this year. The President would find such a measure hard to veto during an election campaign, particularly if attached to the renewal of the Export Administration Act, which governs U.S. export policy and cannot easily be allowed to lapse.

For some months now, Commerce Secretary Richardson has been pointing out the realities of the situation and suggesting that it might be wisest to try to compromise with the congress-



*Rep. Edward I. Koch has proposed an anti-boycott amendment to the Export Administration Act.*

to resist it. "It is unfair, I believe, to expect some banks to suffer competitive penalties for responding affirmatively to the spirit of U.S. policy, while others profit by ignoring the policy."

At the same time, Rep. John E. Moss, D-Calif., told the subcommittee that all U.S. banks have closed their Israeli offices since the 1973 war but that the number of U.S. bank branches in Arab countries has increased from 10 to 23.

## OUTLOOK

It is not surprising that the Arab boycott of Israel should be proving intensely controversial in the United States, although there has been no comparable debate in other parts of the industrialized world. As Israel's strongest defender, the United States naturally dislikes being blackmailed, although it also wants to safeguard its

sional leadership on a modified version of the Stevenson-Koch approach in return for dropping harsher legislation.

However, the policy so far has been to fight back and give no quarter, though even in the Treasury Department, which recently has borne the brunt of the battle, confidence in final victory is far from overwhelming. As one official said on reading Simon's uncompromising statement of hostility to the proposed new legislation before the House International Relations Committee, "Methinks the gentlemen doth protest too much to be entirely convincing."

For the moment, the Administration is holding out with all its strength. But many would not be surprised if it had to compromise in the end. □