

THE ADMINISTRATION STRONGLY OPPOSES TITLES 2 AND 3 OF S. 3084 WHICH WOULD:

-- mandate disclosure of required reports to the Commerce Department of responses by U. S. firms to boycott-related requests;

-- duplicate laws or regulations already in effect which bar discrimination in export transactions on the basis of race, religion or national origin;

-- prohibit refusals to deal among U. S. firms pursuant to foreign boycott requirements or requests.

1. THE ADMINISTRATION HAS ALREADY TAKEN STRONG MEASURES TO DEAL WITH INTERNATIONAL BOYCOTTS AND DISCRIMINATORY PRACTICES. FURTHER LEGISLATION IS UNNECESSARY.

With regard to the boycott:

The Justice Department has:

-- filed a major anti-trust suit to prohibit implementation of contractual provisions requiring one U. S. firm to refuse to deal with other firms in the U. S. or requiring subcontractors to do so.

The Commerce Department has:

-- extended the mandatory boycott reporting requirements to service organizations such as banks and insurers;

-- expanded its program to inform U. S. exporters of U. S. boycott opposition policy and encourage non-compliance with boycotts;

-- accelerated its enforcement of export regulations relating to the boycott;

-- stopped disseminating to U. S. exporters trade opportunity information drawn from documents with boycott clauses;

Other U. S. Government agencies such as AID, Exim Bank and OPIC have refused to participate in transactions governed by contracts with boycott clauses.

On November 20 the President reaffirmed his commitment to tolerate no boycott-related discrimination against U. S. citizens. As a result:

-- Export regulations now prohibit compliance with any boycott request involving discrimination against U. S. citizens on basis of race, religion, color, sex or national origin.

-- Neither the U. S. Government nor federal contractors can select personnel for overseas assignments on a discriminatory basis and the State Department must follow up any discriminatory visa denial for such personnel through diplomatic channels (To date all such efforts have been successful.);

-- The SEC, Federal Reserve Board and FDIC have advised their regulated industries against discriminatory action;

The Administration considers these actions and existing civil rights laws sufficient to eliminate the threat of boycott-related discrimination against Americans. If experience indicates further action is necessary, the Administration will take it.

2. NEW ANTI-BOYCOTT LEGISLATION COULD IMPEDE U. S. EFFORTS TO PROMOTE A SETTLEMENT BETWEEN ISRAEL AND ARAB STATES.

-- Our fundamental national interests require a positive U. S. role in the promotion of an Arab-Israeli peace settlement. The alternative is retrogression to hostilities, terrible suffering by both Israelis and Arabs, a grave exacerbation of international tensions, instability and possibly another oil embargo.

-- To be effective, the United States must maintain the confidence and credibility of both sides.

-- We believe new anti-boycott legislation will be seen as a confrontational act which will strengthen the hand of opponents to closer Arab-U. S. ties and further progress towards peace and be harmful to our overall economic and political interests in the Middle East.

-- Arab countries perceive the boycott as a legitimate policy tool in their existing dispute with Israel. Accordingly, the ultimate solution to the boycott issue, like solutions to the issues of territory, security, sovereignty and recognition, all of which characterize the Arab-Israeli dispute, must be found in the context of further progress towards a peaceful settlement acceptable to both sides.

3. NEW LEGISLATION COULD HINDER CURRENT EFFORTS TO OBTAIN RELAXATION OF BOYCOTT ENFORCEMENT AND HURT THE U. S. ECONOMY

-- While the most effective means of eliminating the boycott is progress towards an overall peace settlement in the Middle East, careful and nonconfrontational actions taken by the Administration have produced encouraging modifications in boycott practices which have mitigated the practical effect of the boycott on U. S. firms.

-- However, passage of stronger anti-boycott legislation carries a very high risk of open political confrontation and more stringent rather than more flexible enforcement of boycott regulations.

-- The response of key Arab states to new legislation could be a shift to third country suppliers for a wide range of goods and services now supplied by U. S. firms (with the resultant adverse effect on U. S. income and jobs).

4. NEGATIVE ASPECTS OF PROPOSED LEGISLATION

A. Disclosure

-- Making public Commerce Department information about U. S. firms' compliance with boycott requests will also make available information concerning noncompliance. This disclosure could give boycott officials an enforcement tool and make it more difficult for Arab business partners to tolerate de facto noncompliance by U. S. businesses.

B. Refusals to Deal

-- The U. S. antitrust laws prohibit agreements or conspiracies to engage in anti-competitive boycott activities. The refusal-to-deal provisions would go beyond the scope of the antitrust laws by, among other things, prohibiting boycott activities which are not connected with undefined "restrictive practices." If put into force, such legislation could deal a very serious blow to direct U. S. business with the Middle East.

-- These provisions could have the unintended and undesirable effect of encouraging some firms to make general use of non-boycotted suppliers in their worldwide trade, since making general use of boycotted firms except for projects in boycotting countries might be considered prima facie evidence of refusal to deal.

-- Responsible enforcement would require extensive staffing and funding resources which Congress heretofore has been reluctant to provide even for the enforcement of existing Export Administration Act provisions directly related to national security interests.