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Information Note

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THE U.S. ANTI-BOYCOTT LEGISLATION

(Paper submitted by the U.S. Congress Delegation)

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I appreciate the opportunity to discuss the intent and effect of American legislation directed against the participation of U.S. nationals and business in foreign boycotts, notably the Arab boycott of Israel.

Since 1965, U.S. law has declared participation in foreign boycotts or restrictive trade practices to be against American policy. Unfortunately, this policy was not strongly enforced. When trade between the United States and Arab countries expanded after 1973, American companies had no clear basis on which to resist participation in the Arab boycott of Israel. In 1976, the U.S. Commerce Department reported that, from April through September of that year, American exports to Arab states made in compliance with boycott conditions totalled more than \$3 billion. This was double the total for the preceding six months.

Faced with these statistics and a growing outcry from the American public, the U.S. government took the following actions:

- By Presidential order, effective December 1, 1975, all American firms and individuals were prohibited from discriminating against other Americans on the basis of race, colour, religion, sex or national origin.

- The U.S. tax laws were changed in late 1976 to deny certain foreign tax benefits to U.S. companies cooperating with international boycotts.

- The President signed in June 1977 a comprehensive law outlawing all U.S. participation in international boycotts.

To understand the intent of these laws, one must distinguish among various aspects of the Arab boycott of Israel.

First, the boycott interferes with basic civil rights. Numerous individuals and firms are barred from doing business directly or indirectly with Arab states solely because of their race, religion or sex, or the race, religion or sex of their officers, directors or shareholders. Of the more than 1,800 companies and individuals believed to be on 21 secret Arab blacklists, many are there simply because their officers or directors are Jewish.

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This is the most reprehensible aspect of any boycott. The new U.S. law absolutely forbids Americans from complying with boycott demands based on these factors. I understand the French Penal Code was also recently amended to prohibit French public servants and citizens from agreeing to such discriminatory requests.

The second major aspect of a boycott is economic. In this, we must distinguish between primary and secondary boycotts. Under a primary boycott, citizens of one state are forbidden from doing business with citizens of another. In practice, for example, Americans may not trade with Cubans and Arabs may not trade with Israelis. Citizens of countries which are not parties to the dispute are not affected. A primary boycott is a regrettable, but widely accepted, tool of international warfare. The American antiboycott legislation does not interfere with the operation of such primary boycotts.

Under a secondary boycott, one of the enemy states tries to extend its trade restrictions to neutral, third countries. In practice, the Arabs deny trade not only to Israelis but also to Americans and Europeans who do business directly or indirectly with Israelis. The effect of a secondary boycott is to divide the industries of innocent countries into those companies which can do business with the boycotting state and those which cannot. This discrimination seriously restricts freedom of trade and limits competition. The Arab boycott of Israel is virtually unique in imposing these secondary restraints upon third parties.

The antiboycott law signed by President Carter attacks this secondary boycott by forbidding American companies and individuals from agreeing not to do business with Israel as a condition of doing business with the Arabs. It also tries to prevent black-listing of firms doing business with Israel by forbidding Americans from responding to boycott-related requests for information about their business dealings with Israel or with firms which do business with Israel. The law covers not only American firms operating in the United States but also any permanent U.S. establishment of a foreign firm and any subsidiary controlled by a U.S. firm resident in a foreign country, except where the U.S. law conflicts with the law of that foreign country as to activities exclusively within that foreign country.

It is too early to predict the full impact of this antiboycott law since regulations will not become effective for at least three months. But for several reasons we feel that the effect of the law on U.S. /Arab relations will not be severe or long-term. First, the Arabs have demonstrated on numerous occasions that they will not allow their secondary boycott to interfere with a productive trade relationship. Many American companies, principally

hotel chains, banks and defence contractors, trade with the Arab states and Israel. Second, many Arab businessmen have privately objected to the secondary boycott since it restricts them from doing business with black-listed American companies such as Coca-Cola, Ford and Xerox. Third, Arab boycott operations have already been changed to take account of the 1975 restrictions imposed upon American compliance with requests for discrimination based upon race, colour, religion, sex or national origin.

There is another cause for uncertainty as to the impact of the American antiboycott legislation. We do not yet know the extent to which similar action will be taken by other trading partners of the Arabs. We note a few very encouraging signs. In addition to the French law referred to earlier, regulations in the Netherlands and Germany, we understand, restrict compliance with certain aspects of the Arab boycott. Furthermore, the Canadian Government in October indicated it would deny official support to any trade conducted in compliance with the Arab boycott. The new British Foreign Secretary also announced in Parliament in March that he was "firmly opposed to the boycott" and would "welcome discussions with the new American Administration about their new measures." Finally, written remarks of EC Commissioner Claude Cheysson in the European Parliament in November indicated that the boycott was contrary to the "spirit and principles of the cooperation which the Community wishes to establish with the Arab countries" and might violate Articles 85 and 86 of the Treaty of Rome as well as bilateral agreements between the Community and several Arab states.

We welcome these initiatives on the part of the European Community and look forward to a broad international commitment to oppose secondary boycotts which inhibit open competition and impair free trade.

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