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136F

urgent staffing

Date: 3/2/79

MEMORANDUM

FOR ACTION:

ATTORNEY GENERAL BELL
 SECRETARY BLUMENTHAL
 EIZENSTAT
 BRZEZINSKI
 MCINTYRE

FOR INFORMATION:

THE VICE PRESIDENT
 FRANK MOORE
 JACK WATSON
 CHARLIE SCHULTZE
 FRED KAHN

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: VANCE-KREPS MEMO, "EXPORT DEVELOPMENT"

YOUR RESPONSE MUST BE DELIVERED
 TO THE STAFF SECRETARY BY:

TIME:

DAY: IMMEDIATE TURNAROUND

DATE:

ACTION REQUESTED:

Your comments

Other:

STAFF RESPONSE:

I concur.

No comment.

Please note other comments below:

THE SECRETARY OF STATE

WASHINGTON

March 2, 1979

PRIORITY

1979 MAR 2 PM 1 43

MEMORANDUM FOR: THE PRESIDENT

FROM:

JW Cyrus Vance, Secretary of State *caj*
Juanita Kreps, Secretary of Commerce

SUBJECT:

Export Development

As you instructed at the February 26 Cabinet meeting, we have reviewed the points on export policy raised by the National Governors Conference. We believe that there should be a strong policy statement on the importance of exports to the national interest added to the Export Administration Act (EAA). We also believe that criteria for imposing export controls for foreign policy reasons should be contained in Administration statements and legislative history, rather than in statute, but would support strengthening EAA provisions to indicate that the President should consider economic and trade consequences in decisions on export controls.

We ask that you decide the following issues:

1. Impact of Foreign Availability on Foreign Policy Export Controls

The Governors, some members of Congress, and the business community oppose export controls for foreign policy purposes when alternative foreign suppliers exist. We have considered two different ways to respond to their concerns without limiting Executive Branch discretion to impose such controls.

In both cases we proposed that the EAA should call for consideration of economic and trade consequences on export licensing decisions.

Option 1. State proposes that the Export Administration Act be amended to provide that, in administering controls for foreign policy purposes, weight will be given to foreign availability. This reflects your September 26 National Export Policy statement. In State's view, to go beyond this would imply that controls would not be imposed where foreign availability exists except in extraordinary circumstances. In some situations we may wish to distance ourselves from abhorrent acts of other Governments, such as apartheid, even if the only trade effect of our controls were to divert export sales to our competitors.

Option 2. Commerce proposes that the Act be amended to require that controls for foreign policy purposes not be imposed where there is foreign availability unless the President (or his designee) determines that failure to impose controls would be detrimental to our foreign policy. This would parallel wording in the existing statute, which now applies only to controls for security purposes. In Commerce's view, to do less than this could be construed as an indication that the Administration does not consider foreign availability to be a serious factor. Commerce also believes that this option does not weaken our ability to distance ourselves from other Governments--only that such a decision be a high-level one. Controls are difficult to defend if they do not effectively deny trade.

Option 1 _____ Option 2 _____

2. Time Limits for Processing Export Applications

Members of Congress and the Governors objected to the extended time required for the processing of some export license applications. We do not want to enact amendments to the Act which would require automatic approval or denial after a specified period. We recommend instead that you direct that cases still unresolved after 90 days be referred to Cabinet-level, for action within 14 days.

Approve _____ Disapprove _____

3. Foreign Corrupt Practices Act

In your Export Policy Statement you instructed Justice to provide "guidance with respect to the meaning of the Foreign Corrupt Practices Act." Efforts are underway to implement this instruction. However, to be effective, guidance must be both detailed and specific. We need to clarify as precisely as possible what types of payments are prohibited by this statute. We have received numerous reports of transactions lost to foreign competition solely because of uncertainty about the law's scope.

We recommend that Justice and the SEC, in consultation with State, Commerce, and Treasury issue detailed regulations or guidelines to reduce uncertainties in the statute. This is not a recommendation for regulation to legitimize any form of bribery; as with any law, Congress intends to prohibit certain conduct and not to prohibit other conduct. These regulations or guidelines would simply provide clarity and certainty.

Approve _____ Disapprove _____

4. Exemption from Antitrust Regulations for Export of Services

The Webb-Pomerene Act exempts U.S. firms forming a consortium for the export of goods from the Sherman and Clayton Acts.

We recommend that:

- 1) This exemption be extended to cover services, along the lines of one of the recommendations suggested by the National Commission for the Review of Antitrust Laws and Procedures, and
- 2) you direct Justice to prepare legislation to this end.

Implementation of such legislation would give exporters of services, particularly construction and engineering companies, greater assurances that their joint export efforts would not violate U.S. antitrust laws.

Approve _____ Disapprove _____

5. Antitrust Business Review Procedures

The Justice Department provides firms with statements of enforcement intentions as to proposed business actions after a full review of each case. So long as the facts are complete and do not change, the Justice Department will not institute criminal action. The FTC could, however, initiate adverse action on the very same facts on which Justice has rendered a favorable review.

The Attorney General should be directed to initiate action to make the Justice Department's Business Review Procedure Letters on antitrust matters binding on the Federal Trade Commission, including the drafting of any legislative proposals which may be necessary.

Approve _____ Disapprove _____

6. Tax Policies

We recommend that you direct a review of tax policies relevant to doing business abroad. The recommendations emerging from such a review should be consistent with the new MTN subsidy code.

Approve _____ Disapprove _____

If you approve there are two courses of action:

Option 1. Make no public announcement of such a review, because it is not yet apparent whether desirable changes can be devised. Treasury prefers this option.

Option 2. Indicate publicly that you will ask for such a review, because there is an urgent need to find means to encourage exports.

Option 1 _____ Option 2 _____

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

ACTION

March 5, 1979

MEMORANDUM FOR: THE PRESIDENT

FROM: ZBIGNIEW BRZEZINSKI 

SUBJECT: Changes to the Export Administration Act

I want to add some comments to Henry Owen's recommendations on the Vance-Kreps decision memorandum (see Tabs A and B).

While I agree with Henry on most issues, I have reservations about the first issue.

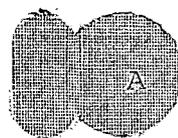
Issue #1, foreign availability on foreign policy export controls. You gain nothing by letting the foreign availability issue be tied explicitly (as Kreps desires) or vaguely (as Vance recommends and Henry Owen agrees) to foreign policy export controls. The tie can have only one consequence: to make your exercise of these controls more difficult and more constrained. They are key to your non-proliferation policy, and they play a role in the execution of a number of other policies, e.g., human rights and terrorism. At the same time, the effect of introducing "foreign availability" is insignificant for the foreign trade balance. If it were to become great, you do not need a change in the law to relax these controls. Even the moderate proposals by Vance, therefore, has the potential to narrow Presidential discretion in the conduct of foreign policy.

RECOMMENDATION:

That you reject both options under Issue #1 and direct Vance and Kreps to oppose Congressional efforts to introduce "foreign availability" as a limiting condition for your use of foreign policy export controls.

Issue #2, time limits for processing export applications. If you approve the Vance-Kreps recommendation to set a time limit which raises cases to the Cabinet-level, you should also specify that Defense should have the right to veto approvals at the Cabinet-level. A number of attempts have been made to introduce a majority vote decision rule. That would allow State and Commerce to override Defense's judgment in national security cases. Given the efforts by a number of Congressmen to stop all technology transfers, it would not be wise for you to appear ambiguous about national security controls during a SALT ratification debate.

It will simply generate a needle in the flap.



MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 3, 1979

MEMORANDUM FOR: THE PRESIDENT
FROM: HENRY OWEN ^{VO}
SUBJECT: Export Development

1. General. The Vance-Kreps memo is the result of a meeting that Cy, Juanita, Jack Watson, and I had with staffs last Monday to review the Governors' proposals regarding export promotion. We agreed on measures that would both give added emphasis to the export program you announced last fall and address some of the Governors' major concerns. We could not meet all of the Governors' demands without major -- and in some cases undesirable -- changes in present legislation, particularly in the export control area, and without reversing present US tax policies. Considering these political and economic constraints, I believe that the Vance-Kreps program is a reasonable compromise, which merits your support.

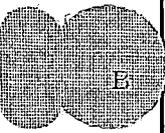
2. Specific Issues. Here are my comments on each of the specific recommendations:

Issue #1 (impact of foreign availability on foreign policy export controls): I agree with the State Department in favoring Option #1, which would amend the Export Administration Act to include your directive that US agencies weigh both export consequences and foreign availability when considering the use of export controls for foreign policy purposes. This option would respond to pressures from the Governors and the business community without reducing your discretionary authority to control exports that are not in the national interest. ACDA points out that adoption of Option 2, which Commerce favors, could prove detrimental to US nonproliferation policy by limiting, if not precluding, US ability to control the export of many Commerce licenses dual-use items that have significance for ~~gas~~ nuclear explosives programs.

Issues 2-5: I support the agreed State-Commerce recommendations on these four issues: Setting a time limit for processing applications, issuing guidelines about the meaning of the Foreign Corrupt Practices Act, exempting the export of services from anti-trust legislation, and making anti-trust business review procedures binding.

Issue 6 (tax policies): I recommend Option 1, i.e., initiating a review of relevant tax policies but avoiding a public announcement, which would be premature and might raise expectations we could not fulfill.

3. Conclusion. These are useful decisions, but they do not exhaust what can be done. We have set up an interagency group to view export disincentives created by US law and regulations; it may produce further recommendations for your consideration.



THE SECRETARY OF STATE

WASHINGTON

March 2, 1979

PRIORITY

1979 MAR 2 PM 1 43

MEMORANDUM FOR: THE PRESIDENT

FROM: *JW* Cyrus Vance, Secretary of State *cv*
Juanita Kreps, Secretary of Commerce

SUBJECT: Export Development

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In both cases we proposed that the EAA should call for consideration of economic and trade consequences on export licensing decisions.

Option 1. State proposes that the Export Administration Act be amended to provide that, in administering controls for foreign policy purposes, weight will be given to foreign availability. This reflects your September 26 National Export Policy statement. In State's view, to go beyond this would imply that controls would not be imposed where foreign availability exists except in extraordinary circumstances. In some situations we may wish to distance ourselves from abhorrent acts of other Governments, such as apartheid, even if the only trade effect of our controls were to divert export sales to our competitors.

Option 2. Commerce proposes that the Act be amended to require that controls for foreign policy purposes not be imposed where there is foreign availability unless the President (or his designee) determines that failure to impose controls would be detrimental to our foreign policy. This would parallel wording in the existing statute, which now applies only to controls for security purposes. In Commerce's view, to do less than this could be construed as an indication that the Administration does not consider foreign availability to be a serious factor. Commerce also believes that this option does not weaken our ability to distance ourselves from other Governments--only that such a decision be a high-level one. Controls are difficult to defend if they do not effectively deny trade.

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Approve _____ Disapprove _____

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We recommend that:

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Implementation of such legislation would give exporters of services, particularly construction and engineering companies, greater assurances that their joint export efforts would not violate U.S. antitrust laws.

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The Attorney General should be directed to initiate action to make the Justice Department's Business Review Procedure Letters on antitrust matters binding on the Federal Trade Commission, including the drafting of any legislative proposals which may be necessary.

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6. Tax Policies

We recommend that you direct a review of tax policies relevant to doing business abroad. The recommendations emerging from such a review should be consistent with the new MTN subsidy code.

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If you approve there are two courses of action:

Option 1. Make no public announcement of such a review, because it is not yet apparent whether desirable changes can be devised. Treasury prefers this option.

Option 2. Indicate publicly that you will ask for such a review, because there is an urgent need to find means to encourage exports.

Option 1 _____ Option 2 _____

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

March 5, 1979

MEMORANDUM FOR: RICK HUTCHESON
FROM: Randy Jayne 
SUBJECT: Vance/Kreps Memo on Export Development

OMB believes that the President should make decisions now only on the first two issues, which deal with the Export Administration Act.

Issue 1: Impact of Foreign Availability on Foreign Policy Export Controls. OMB supports the State recommendation (Option 1) that the Administration propose an amendment to the Export Administration Act to require only that the President weigh foreign availability in considering export restrictions on foreign policy grounds.

Issue 2: Time Limits for Processing Export Applications. OMB supports the agreed recommendation that the President direct that all cases not resolved in 90 days be raised to the Cabinet level for decision within 14 days.

The final four issues deal with export disincentives, on which a report is due to the President in early April. We believe that the President should receive the views of Justice before deciding on corrupt practices (Issue 3) and antitrust exemptions (Issues 4 and 5). Tax policies (~~Issue 6~~) are already included in the study on export disincentives. Further, it would be appropriate to review these proposals in light of the MTN implementation package, since the Administration could benefit politically from tying actions in these areas. We therefore recommend that the President 1) defer decisions on these issues; and 2) request that Secretary Kreps include a full discussion of these issues in her upcoming report on export disincentives. This action would be responsive to the concerns of the governors while ensuring that final decisions are fully staffed.

With regard to these latter issues, we also believe there are sound political reasons to defer pending completion of the broader "disincentives" review. If the President is to take credit for any major export initiatives, we should make it as visible as possible by presenting it as a package, rather than parcelling items out one by one.

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

March 5, 1979

MEMORANDUM FOR THE PRESIDENT

From: Charlie Schultze *eLS*
Subject: Export Development

I would like to concur with Secretaries Vance and Kreps' message to add a strong policy statement to the Export Administration Act (EAA). I feel that we should continue work on expanding our export base through the National Export Policy, and strengthen the EAA in a manner consistent with our efforts to implement the MTN. Therefore, I recommend:

- o You approve Issues 2-5 in the decision memo
- o You choose Option 2 in Issue 1
- o You disapprove the tax study in Issue 6; if you approve the study I agree with Treasury that there should be no public announcement.

Issue 1: Impact of Foreign Availability on Foreign Policy
Export Controls

I would recommend that you choose Option 2, so that any U.S. foreign policy decision that would merely have the effect of diverting business from U.S. to other sources would be made only at the highest possible level. There do arise occasions where U.S. interests are best served by using economic sanctions against foreign countries. But if the products that are consequently denied are easily available from other countries, then the major injury of this action will be to U.S. citizens rather than to the offending parties. Decisions with such an impact should not be permitted at the levels allowed by Option 1.

Issues 2-5:

I believe that each of these proposals should be approved. They would each have the likely effect of increasing U.S.

exports and emphasizing to the business community the Administration's resolve in this matter, without any budgetary allocations.

Issue 6: Tax Policy

It is difficult to argue against a study. Nevertheless, it is very unlikely that any study will surface proposals that do not violate the spirit, if not the letter, of the MTN subsidies code and our negotiating position in Geneva.

- o This issue keeps resurfacing, despite your past opposition to DISC and other export tax subsidies.
- o The types of tax proposals that are possible are likely to have already been considered by Treasury and are usually rejected because they are either inconsistent with our GATT obligations, are too expensive, or are poor economic policy.
- o Such tax policies impose a perpetual budget cost in return for a one-time improvement in the trade balance.
- o They are poor economic policy, for they prevent an efficient division of labor between countries.

If you do decide to commission the study, I urge that you not announce it publicly, for the reasons set forth by Treasury in the decision memo.



THE SECRETARY OF THE TREASURY
WASHINGTON 20220

March 5, 1979

MEMORANDUM FOR THE PRESIDENT

Subject: Export Development proposals of Secretaries
Vance and Kreps

The Treasury supports all the proposals on which Secretaries Vance and Kreps are in agreement.

Regarding issue 1 -- the impact of foreign availability on foreign policy export controls -- we endorse option 2, the Commerce proposal.

Regarding issue 6 -- tax policies -- Treasury feels that it would be neither productive nor appropriate to conduct another review of tax incentives for exports at this time. You made determinations on the subject only six months ago, and the situation has not changed appreciably since then. In addition, the MTN includes new prohibitions and restrictions on the use of tax incentives for exports. The chances of coming up with new tax incentives that are not directly proscribed by the proposed MTN are not high; on the other hand, it would not be appropriate to conduct a review on the assumption that the MTN will not pass.

A handwritten signature in black ink, appearing to read 'Bob Carswell', is written in a cursive style.

Robert Carswell
Acting Secretary

3/5/79

THE WHITE HOUSE
WASHINGTON

BILL/RICK:

Congressional Liaison's Comments on the
Vance-Kreps Memo re Export Development:

Before any action is taken in regard to substantive policy changes, consultation is necessary with the Hill, particularly Bill Alexander who informally heads a group of around 30 Congressmen who consider themselves the experts on Export Development.

CL would like to have the additional time necessary to consult before any announcements are made, etc.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 6, 1979

TO: RICK HUTCHESON

FROM: LES FRANCIS

SUBJECT: Vance/Kreps Memo on Export Development

From Bill Cable;

There is an Export Development Task Force comprised of the Chairman and Ranking Member of each of the Committees and subcommittees that deal with trade in the House. This task force includes such committees as the Banking Committee, the Ways and Means Committee, Agriculture Committee and the Commerce Committee. Bill Alexander (D-Ark) is the Chairman of the task force. He suggests the following course of action prior to making any decision regarding Export Development: (1) the President should first appoint the Export Council that has been authorized; and (2) develop, along with the Congressional Leadership, an overall coherent plan to expand U.S. exports.

The task force -- consulted in advance -- is likely to support many of the ideas recommended in this memo, but if they are not consulted they are likely to react less favorably.

THE WHITE HOUSE
WASHINGTON

Pick - -

Gene Eisenberg called -

re: Vance/Kreps memo.

Watson wasn't included
on action part - has

comments -- will be

down by ed.

. Maria

FOR STAFFING
FOR INFORMATION
FROM PRESIDENT'S OUTBOX
LOG IN/TO PRESIDENT TODAY
IMMEDIATE TURNAROUND
NO DEADLINE
LAST DAY FOR ACTION -

ACTION
FYI

ADMIN CONFID
CONFIDENTIAL
SECRET
EYES ONLY

VICE PRESIDENT
EIZENSTAT
JORDAN
KRAFT
LIPSHUTZ
MOORE
POWELL
WATSON
WEXLER
BRZEZINSKI
MCINTYRE
SCHULTZE

ADAMS
ANDRUS
BELL
BERGLAND
BLUMENTHAL
BROWN
CALIFANO
HARRIS
KREPS
MARSHALL
SCHLESINGER
STRAUSS
VANCE

ARAGON
BOURNE
BUTLER
H. CARTER
CLOUGH
COSTANZA
CRUIKSHANK
FALLOWS
FIRST LADY
GAMMILL
HARDEN
HUTCHESON
JAGODA
LINDER
MITCHELL
MOE
PETERSON
PETTIGREW
PRESS
RAFSHOON
SCHNEIDERS
VOORDE
WARREN
WISE

cc Ginsburg

Then add to package

in Hold File

But could you add
this to Vance/Kreps
export package in
hold file

Thanks,
M



Office of the Attorney General
Washington, D. C. 20530

March 7, 1979

RL
MEMORANDUM FOR: THE PRESIDENT
FROM: Griffin B. Bell **GBR**
SUBJECT: State and Commerce March 2 Memorandum
on Export Development

These comments respond to issues 3, 4 and 5 raised in the memorandum to you from the Secretaries of State and Commerce. I recommend that you disapprove the proposals on these issues which Justice sees in this form for the first time.

3. Foreign Corrupt Practices Act.

For the second time and without advancing any new justification for such action, you are asked by State and Commerce to order the Department of Justice to issue detailed regulations or guidelines to reduce asserted "uncertainties" in the Foreign Corrupt Practices Act. Based on compelling legal, political and public policy considerations as previously enunciated in our July 14, 1978 memorandum on the subject from Deputy Attorney General Civiletti to you, such an order would be entirely inappropriate. There is a paucity of data available to support the conclusion advanced by Commerce and State that American exports are being hampered by the Foreign Corrupt Practices Act. Moreover, such a conclusion would be contrary to strong Administration pronouncements on the subject to the effect that American businessmen need not resort to bribery abroad to compete in foreign markets.

Based on your previous direction that we provide "guidance" to the business community in the Foreign Corrupt Practices Act, we have been exploring with Commerce various alternative approaches for assisting the business community in this area. Before expanding on the prior direction to the Justice Department we recommend that we first evaluate the impact of the steps to be embarked on by Justice pursuant to your original export policy statement.

4. Exemption from Antitrust Regulations
for Exports of Services.

You are here asked to again support a new law to extend the Webb-Pomerene Act specifically to cover export of services and to direct Justice to draft this legislation. In September in connection with your national export policy statement you ruled against this. Now, you are being asked to reverse yourself. Such a law is totally unnecessary. It was not recommended by the Antitrust Review Commission.

The Justice Department, in 1976, gave an advisory business review opinion making it clear that exporters of services, in this case specifically manufacturing, construction and engineering companies, could form joint consortia for foreign markets without violating U.S. antitrust law. This business review was reported and amplified in the Antitrust Guide for International Operations issued by Justice in January, 1977. This Guide is a comprehensive analysis indicating how American businesses can avoid antitrust problems while promoting exports. It is improbable that U.S. construction and engineering firms interested in exports are unaware of the Guide, or of the Department's view that joint ventures related to such exports will almost always pass muster under the antitrust laws.

The fact is that the antitrust laws simply do not discourage the kind of activity to which the proposal of State and Commerce relates. If there is any problem at all -- and I am skeptical that there is -- it is one of perception. Frankly, I am loath to recommend a new antitrust immunity to deal with perception problems. To do so would lead to questions about this Administration's commitment to the antitrust laws. Rather, I would recommend the kind of approach that you have already approved: continued efforts on our part to educate those segments of the business community who remain unsure of our enforcement policies.

Finally, the Webb-Pomerene Act is viewed in foreign countries as promoting legal United States export cartels not unlike OPEC. In international meetings and in our enforcement efforts we are discouraging other countries from forming export cartels aimed at gouging the U.S. consumer. This legislation would undercut that effort and could raise questions at this critical point in the MTN about United States commitment to greater competitiveness in international markets.

5. Antitrust Business Review Procedures.

This proposal is based on misinformation. When the Justice Department gives a favorable business review it states a present intention not only as to criminal but also as to civil enforcement. While it is true that the FTC has independent authority to initiate an antitrust proceeding after Justice has rendered a favorable business review, it has never in fact done so and will not do so in the future. Justice and FTC have carefully developed a clearance and coordination mechanism to avoid such conflicts. The existence of this mechanism is known to counsel for sophisticated construction and engineering firms. It works as to domestic as well as to international matters. Its success was illustrated when I approved the Lykes-LTV merger. Although under tremendous pressure, the FTC refused to second-guess my decision.

That this recommendation is based on misinformation indicates that here too the problem is one of perception more than one of reality. A perception problem is better dealt with by education than by new law. I believe we can increase public information about the usefulness of the business review procedure by an educational program. You directed us to do just this last September in your National Export Policy statement. Since then we have announced a new procedure to give accelerated business reviews within 30 business days to all export-related requests. We are cooperating with the Commerce Department in distributing to potential exporters 40,000 copies of the Guide. We fully intend to continue this effort.

I have a final concern. If we propose an unnecessary limitation on FTC jurisdiction we could generate a major domestic jurisdiction squabble in which the goal of facilitating exports would be lost.

Date: 3/2/79

MEMORANDUM

FOR ACTION:

FOR INFORMATION:

ATTORNEY GENERAL BELL
SECRETARY BLUMENTHAL

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: VANCE-KREPS MEMO, "EXPORT DEVELOPMENT"

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME:

DAY: IMMEDIATE TURNAROUND

DATE:

ACTION REQUESTED:

Your comments

Other:

STAFF RESPONSE:

I concur.

No comment.

Please note other comments below:

RECEIVED
OFFICE OF THE
ATTORNEY GENERAL
MAR 5 1979
9:50 PM

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required

THE SECRETARY OF STATE

WASHINGTON

March 2, 1979

PRIORITY

1979 MAR 2 PM 1 43

MEMORANDUM FOR: THE PRESIDENT

FROM: *JM* Cyrus Vance, Secretary of State *caj*
JM Juanita Kreps, Secretary of Commerce

SUBJECT: Export Development

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3. Foreign Corrupt Practices Act

In your Export Policy Statement you instructed Justice to provide "guidance with respect to the meaning of the Foreign Corrupt Practices Act." Efforts are underway to implement this instruction. However, to be effective, guidance must be both detailed and specific. We need to clarify as precisely as possible what types of payments are prohibited by this statute. We have received numerous reports of transactions lost to foreign competition solely because of uncertainty about the law's scope.

We recommend that Justice and the SEC, in consultation with State, Commerce, and Treasury issue detailed regulations or guidelines to reduce uncertainties in the statute. This is not a recommendation for regulation to legitimize any form of bribery; as with any law, Congress intends to prohibit certain conduct and not to prohibit other conduct. These regulations or guidelines would simply provide clarity and certainty.

Approve _____ Disapprove _____

4. Exemption from Antitrust Regulations for Export of Services

The Webb-Pomerene Act exempts U.S. firms forming a consortium for the export of goods from the Sherman and Clayton Acts.

We recommend that:

- 1) This exemption be extended to cover services, along the lines of one of the recommendations suggested by the National Commission for the Review of Antitrust Laws and Procedures, and
- 2) you direct Justice to prepare legislation to this end.

Implementation of such legislation would give exporters of services, particularly construction and engineering companies, greater assurances that their joint export efforts would not violate U.S. antitrust laws.

Approve _____ Disapprove _____

5. Antitrust Business Review Procedures

The Justice Department provides firms with statements of enforcement intentions as to proposed business actions after a full review of each case. So long as the facts are complete and do not change, the Justice Department will not institute criminal action. The FTC could, however, initiate adverse action on the very same facts on which Justice has rendered a favorable review.

The Attorney General should be directed to initiate action to make the Justice Department's Business Review Procedure Letters on antitrust matters binding on the Federal Trade Commission, including the drafting of any legislative proposals which may be necessary.

Approve _____ Disapprove _____

6. Tax Policies

We recommend that you direct a review of tax policies relevant to doing business abroad. The recommendations emerging from such a review should be consistent with the new MTN subsidy code.

Approve _____ Disapprove _____

If you approve there are two courses of action:

Option 1. Make no public announcement of such a review, because it is not yet apparent whether desirable changes can be devised. Treasury prefers this option.

Option 2. Indicate publicly that you will ask for such a review, because there is an urgent need to find means to encourage exports.

Option 1 _____ Option 2 _____