If you do business in the Middle East...

Remember certain practices are **ILLEGAL**
THE ARAB BOYCOTT: PITFALL FOR AMERICAN BUSINESS

Since the end of 1973, when the Organization of Petroleum Exporting Countries quadrupled the price of oil, bringing billions of petrodollars into the treasuries of Arab countries, American business has looked to the Arab world as a new and promising area for capital investments, investment capital and markets for goods and services.

To help businessmen make the most of these opportunities, the U.S. Department of Commerce and private organizations serving the business community have issued a variety of publications summarizing procedures and regulations for doing business in the Middle East. These materials provide valuable information on taxation, banking, import and export regulations, tariffs and other business topics. But because they are designed to promote and encourage ties with the Arab countries, they often ignore or play down one important aspect of U.S.-Arab dealings: the Arab boycott against Israel and its legal and moral implications.

What It Is
The Arab boycott operates on several levels:

There is the direct boycott of Israeli-made goods and services. Arab states have refused to do business with Israel ever since the Jewish state was created in 1948.

There is a secondary boycott of companies that invest in, or do business in or with Israel—a practice engaged in more or less capriciously, depending on the whims and business preferences of the individual Arab countries.

More recently (and less openly), there are signs of a tertiary boycott, aimed at companies
that do business with companies that do business with Israel, and even at companies with "Zionists" (read Jews) on their boards or in executive posts.

The direct—or primary—boycott is an issue between the Arab states and Israel. But, the secondary and tertiary boycotts are of concern to every American company doing, or planning to do, business in the Arab world. They are contrary to clearly enunciated American policy and, in some cases, in clear violation of Federal laws and regulations—as well as of an increasing number of state laws. They interfere with accepted American business ethics and practices. And they can involve complying companies in government sanctions, adverse publicity, civil-rights protests, stockholder complaints, litigation and other serious problems here at home.

How It Works

Boycott demands on American business take several forms. As a condition of doing business with Arab interests, exporters have been asked to stipulate that they do not sell to Israel, and shipping lines have been asked to certify that vessels carrying goods to Arab countries do not put in at Israeli ports. Manufacturers may be asked to declare that they have no operations in Israel or that their products contain no Israeli-made components, and banks may be asked to honor letters of credit valid only for those recipients who have no dealings with Israel.

Companies eager to do business in the Arab world may be given to understand that they stand a better chance if there are no Jews in their management or if they do not deal with predominantly Jewish-owned or Jewish-managed companies. And Saudi Arabia and certain other Arab countries usually will not grant entry visas to Jews who may be assigned to work teams there.

The Arab League and the various Arab governments all maintain separate blacklists, so
that a company may be on one list but not on another, and may find itself added to or re-
moved from such lists for no apparent reason. And Arab interests, both government and pri-
ivate, often ignore all boycott restrictions when a particular business deal is important to them.

Pressures and Counterpressures

As Arab-American business contacts multi-
ply, boycott pressures are likely to increase. But anti-boycott pressures are growing too. Out-
spoken government officials, business leaders, labor unions, civic bodies, civil-rights organiza-
tions and church groups are all making their voices heard. Congress is considering a wide variety of anti-boycott legislation. The Federal Government has issued new regulations curb-
ing boycott-related discrimination against American citizens and businesses, and requir-
ing more companies than before to report any demands for boycott participation, as well as their responses to such demands. The Com-
merce Department and Foreign Service sta-
tions no longer circulate notices of trade oppor-
tunities that include boycott requirements. And a number of states are examining their own laws and regulations to see if they need strengthening.

Hard as it is to be caught between two sets of pressures, many American businessmen wel-
come the anti-boycott moves—particularly the legal prohibitions—because they make it pos-
sible for companies to reject boycott demands without jeopardizing business opportunities or risking unfair competition from more pliant competitors. "It's against the law for our com-
pany to do what you ask" is a valid answer in any language.

The following pages summarize the chief Federal and state laws and regulations that bear on business dealings with countries which seek to impose boycott practices as a condition for conducting such business, and also touch on some recent international legal and adminis-
trative declarations on the issue.
FEDERAL PROVISIONS

The Export Administration Act of 1969 declares that it is U.S. policy to oppose boycotts imposed by foreign countries against countries friendly to the U.S., and empowers the President in certain cases to prohibit or curtail exports by firms that participate in them. In addition, particular aspects of the boycott—especially those that result in discrimination against American citizens or companies—are barred by Federal civil-rights law and a number of other Federal laws and regulations.

Boycott Activities

Anti-Trust Violations: Agreements to boycott have been held to violate the Sherman Anti-Trust Act, which outlaws contracts, combinations or conspiracies in restraint of interstate or foreign trade and imposes substantial civil and criminal penalties for such violations. A promise by an American company not to trade with Israel may well violate the Sherman Act; an agreement not to trade with American companies that deal with Israel would certainly do so. And on November 20, 1975, President Ford announced that anti-trust action could be taken in such cases.

The Department of Justice is currently investigating a number of companies that are believed to be complying with the boycott. On January 16, 1976, the Department filed a civil anti-trust suit against the Bechtel Corporation, charging the San Francisco construction company with refusing to subcontract work to American companies blacklisted by the Arabs. If the suit is sustained, Bechtel—and other companies liable to similar Federal suits—may also find themselves facing triple-damage lawsuits by the excluded companies.
It is no defense in an anti-trust action to argue that a boycott agreement was made or carried out abroad. If U.S. commerce, either domestic or international, is affected—as it inevitably is—American law has jurisdiction. Nor can the rule that foreign sovereigns are immune from suit be used as a defense in an anti-trust action. This rule does not apply when foreign governments engage in commercial enterprises or act as partners in commercial stock corporations.

In the same way, American companies cooperating in foreign boycotts cannot rely on the "act of state" doctrine to legitimate their activities. This rule—that American courts will not pass on what other governments do in their own territories—has no bearing on boycott actions taking place solely or mostly in the U.S. The so-called "foreign compulsion defense" ("foreign law required us to do it") is also a slim reed for companies participating in the Arab boycott, for the same reason.

Unfair Competition: The Federal Trade Commission Act provides that an importer or a third party in an import deal who enters into an agreement to boycott goods or articles of another person (such as an Israeli producer or manufacturer or an American Jewish producer or manufacturer) may be required to pay three times the normal duty on his imports. The Act also empowers the Federal Trade Commission, which is charged with protecting businesses from unfair competition, to declare a practice unfair if it conflicts with the basic policies of the various Federal anti-trust acts—even if that practice does not actually violate those laws.

Boycotts have been ruled to come under the FTC Act, and so have practices carried out abroad which "radiate unlawful consequences" in the U.S. That means the FTC could find certain actions of American companies complying with the Arab boycott unfair and could order such actions stopped.
Disclosure Responsibility

Reporting Requirements: The Export Administration Act requires companies to report to the Commerce Department all requests for boycott compliance. In December 1975, the Commerce Department announced it had fined four companies and warned 212 others for failing to report boycott requests properly.

Tightened Commerce Department regulations now extend these requirements to banks, insurers, freight forwarders, shipping companies and other businesses that serve exporters, and include the obligation to report whether or not they plan to go along with boycott requests. In addition, the U.S. Department of State has a regulation requiring its Authenticating Officer to refuse certification of documents when there is "good reason to believe that the certification is required for an unlawful or improper purpose." The Department has ruled that "documents which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by foreign countries against countries friendly to the U.S. shall be considered contrary to public policy for purpose of these regulations."

Confidentiality: Whether reports of boycott requests and a company's response to them can be made public is the subject of much debate. The Export Administration Act states that information "deemed confidential" must not be disclosed, unless "the withholding thereof is contrary to the national interest."

Under this clause, then-Secretary of Commerce Rogers C. B. Morton refused, until late 1975, to disclose any company reports, even to Congress. Threatened with a contempt citation by the House Foreign Commerce Subcommittee on Oversight and Investigation, Mr. Morton ultimately agreed to divulge the data to the Subcommittee, whose chairman, Rep. John E. Moss (D.-Calif.), promised to handle it in accordance with its "alleged confidential nature." Given current pressures for a more open gov-
ernment, the Subcommittee or the Commerce Department itself may well decide it is in the national interest to release the names of the companies and how they choose to deal with boycott requests.

Companies that fail to divulge certain actions connected with the boycott may also be violating the Securities Exchange Act of 1934, which requires all stock acquisitions and tender offers involving more than 5 per cent of a given class of security in publicly held companies to be reported to the Securities and Exchange Commission. The facts to be disclosed include—in addition to the identity of the purchasers, the amount and source of purchase funds, the number of shares involved and plans for acquiring control or for merger or liquidation—any "contracts, arrangements or understandings" concerning the issuer's securities. There are substantial penalties for misleading or untrue statements—and these could well apply to tender offers by an Arab government or business seeking to take over an American corporation if they failed to reveal plans to change the company's business relationships with Israel, to stop dealing with companies on the Arab boycott list, or to drop Jewish directors or executives—all matters which might affect the company's profits and losses and the value of stock holdings.*

Shareholder resolutions have already been submitted for inclusion in the proxy statements of more than 100 corporations challenging them to disclose any involvement they may have in the Arab boycott or in any other restrictive trade practices.

Boycott-Related Discrimination

_In General Business Dealings:_ On November 20, 1975, President Ford announced new Administration policies to protect American

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*The Foreign Investment Study Act of 1974, designed to probe the "nature, scope, and magnitude" of foreign investments in the U.S., also requires reports from businesses partly or wholly owned by foreigners, either to the Secretary of Commerce or the Secretary of the Treasury.
Jews from discrimination due to Arab blacklisting. Among other things, the new rules impose penalties on exporters who drop Jewish suppliers to please Arab customers, and banks that refuse credit to Jewish borrowers in order to attract Arab deposits. On the same day, new regulations under the Export Administration Act forbade American exporters to answer or comply with boycott requests that would cause discrimination based on religion against American companies or citizens.

In Contracts or Agreements: Joint actions against individuals or companies have been ruled contrary to the Sherman Act except where the individuals themselves have been guilty of illegal or unethical behavior. That means, for example, that any agreement among companies to keep Jews out of corporate directorships, exclude Jewish-owned or operated firms from underwriting syndicates or refuse business dealings with such firms is illegal.

In Banking: In February 1975, the Comptroller of the Currency issued a warning to national banks against accepting deposits, investments or loans on condition that none of their board members or controlling stockholders be Jewish, or agreeing to other religious criteria for doing business. The warning was based on the Federal Deposit Insurance Act, which provides that a national bank engaging in "an unsound or unsafe practice" may be ordered to cease and desist, and to take affirmative remedial steps.

In his statement of November 20, President Ford praised the Comptroller of the Currency's move, asked the Federal Deposit Insurance Corporation, the Federal Reserve Board and the Federal Home Loan Bank Board to take similar steps in relation to financial institutions within their jurisdiction, and warned that discriminatory banking practices — whether directed against customers, stockholders, employees, officers or directors—would not be
tolerated. The Federal Reserve Board acted quickly; in mid-December, a notice to member banks warned that even passive participation by U.S. banks in boycotts against friendly nations constitutes a "misuse" of their "privileges and benefits" when such actions discriminate against U.S. citizens or businesses.

The Board specifically urged banks not to honor letters of credit that included boycott stipulations—as is sometimes the case when Arab importers arrange payments to U.S. exporters. Such clauses, the Board said, are an unjustifiable departure from normal letter-of-credit practice, and banks which permit them violate U.S. policy and possibly Federal and state laws as well.

**In Hiring and Promotion:** Religious discrimination in employment is barred by the Civil Rights Act of 1964 and a variety of other Federal, state and local laws and regulations. A company that fires or refuses to hire Jews because they are Jews is breaking the law, whether it acts on its own initiative or under pressure from Arab interests, and even if the job involves work outside the U.S.

The U.S. Equal Employment Opportunity Commission, which is responsible for seeing that the Civil Rights Act is honored, has declared that it will not tolerate discriminatory practices connected with the boycott, and has instructed its staff accordingly.

**Exclusion of Americans by Other Countries:** Private contractors or subcontractors on U.S. Defense Department or other government projects overseas must report to the State Department any attempts by foreign countries to exclude employees or job applicants on religious grounds. Federal agencies are barred from taking the discriminatory policies of host governments into account in assigning personnel overseas and must report discriminatory visa rejections or other exclu-
sionary acts to the State Department for intervention through diplomatic channels.

The Foreign Economic Aid Act of 1975 bars U.S. development assistance to countries which discriminate on the basis of religion against U.S. citizens or companies assigned there to work on development programs.

Exclusion of travelers: The Government also frowns on compliance by private companies with discriminatory visa policies for travelers. One American brokerage firm was considerably embarrassed in the fall of 1975 when it offered clients a Mideast tour and asked them to supply proof that they were Christians, "so we may obtain the necessary visas." In response to the vigorous protests that were lodged with the investment house and the State Department, the latter urged the company to refrain from any action that would exclude non-Christians from this or future trips.

Pending Anti-Boycott Legislation and Regulations

In his November 1975 statement, President Ford announced that the Administration would propose new laws to prevent businesses from using "economic means to coerce any person or entity to discriminate against any United States person or entity" on the basis of race, color, religion, national origin or sex. On January 19, 1976, Attorney General Edward H. Levi submitted for consideration by the Administration a measure providing that civil actions could be brought, either by aggrieved persons or by the Attorney General, in cases involving such discrimination.

Also pending is an amendment to the Equal Credit Opportunity Act barring credit discrimination for reasons of race, color, religion or national origin.

A number of Congressmen are also working on new measures concerning discrimination sparked by the Arab boycott. A bill sponsored by Sens. Adlai E. Stevenson 3d (D.-Ill.) and
Harrison Williams, Jr. (D.-N.J.), and approved by the Senate Banking Committee, would prohibit U.S. companies—including financial institutions, insurers, shipping companies and freight forwarders—from refusing to deal with other U.S. companies because of boycott requests, and from disclosing information about the race, religion or national origin of employees, directors or shareholders when such information is sought for boycott purposes. A companion bill was introduced in the House by Rep. Edward I. Koch (D.-N.Y.).

The Stevenson-Williams bill would mandate public disclosure of boycott compliance by companies and increase the penalties provided under the Export Administration Act, up to and including suspension of export license privileges. The Administration would be required to report to Congress twice yearly on actions to implement the anti-boycott provisions of the law.

An amendment to the Foreign Military Aid-Sales Bill, introduced by Sens. Clifford P. Case (R.-N.J.), Hubert H. Humphrey (D.-Minn.) and Jacob K. Javits (R.-N.Y.), and adopted by the Senate, would terminate any arms sale if the foreign government involved is found to discriminate against U.S. citizens or companies on the basis of religion or race, and would require the President to report to Congress on such discrimination in connection with a U.S. military aid program. In addition, a bill introduced by Rep. Elizabeth Holtzman (D.-N.Y.) would prohibit companies from bringing economic pressures on individuals or corporations to discriminate against Americans because of religion, or because they trade with another country, and would penalize companies that yield to such pressures.
Many state laws also restrict compliance with the Arab boycott. Because New York is the nation’s business capital, the largest number of applicable statutes are to be found there. A survey of relevant New York State laws prepared by a prestigious law firm and sent to the Governor and the state’s Attorney General indicate which New York laws have bearing on boycott practices—and point the way for similar interpretation or new legislation in other states.

**General Business Statutes**

**Anti-Trust Statute:** New York’s anti-trust law, the Donnelly Act, forbids arrangements that restrain, or could restrain, business competition, and violators face both criminal penalties and civil liability. The state courts have ruled that only “unreasonable” restraints are barred; in contrast to Federal law, concerted refusals to deal are not automatically considered unreasonable or illegal. But *unjustified* refusals to deal, when carried out by individuals and groups in concert with one another, have been ruled illegal, and the cases to date indicate that a refusal to deal based on private political consideration would be deemed “unjustified.” This means that a business victimized by concerted actions inspired by Arab blacklisting could, in all likelihood, invoke the state anti-trust law in seeking relief.

**Breach of Contract Law:** Under New York State law, a person or organization that induces a business to break a contract may be guilty of conspiracy. Liability under this law could in-
clude Arab interests which persuade an American corporation to renege on an agreement with another corporation.

Protection Against Misrepresentation: New York's law against fraudulent misrepresentation authorizes the Attorney General to bring suit to enjoin deceptive or fraudulent actions in business, trade or commerce, and to compel restitution. Businesses that comply with an Arab blacklist without informing their stockholders or customers of this fact may well be guilty of a materially deceptive practice under this statute since, if they knew the facts, customers might choose to take their business elsewhere, and stockholders might decide to take action to change such policies in order to prevent loss of good will or head off lawsuits against the company.

Anti-Discrimination Statutes

Discriminatory Boycotts: A new, far-reaching law forbidding boycotts based on race or religion took effect in New York on January 1, 1976. Its primary provision reads:

It shall be an unlawful discriminatory practice (i) for any person to discriminate against, boycott or blacklist, or to refuse to buy from, sell or trade with, any person, because of the race, creed, color, national origin or sex of such person, or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person willfully to do any act or refrain from doing any act which enables any such person to take such action.

Among other significant provisions, a non-resident person or foreign corporation that violates the new law is to be "prohibited from transacting any business within this state."

The New York anti-boycott law plainly aims at discrimination against American citizens or companies that might arise from Arab blacklist ing practices. But its ban on boycotts based on
national origin might also be construed to forbid boycott action against Israeli citizens and/or companies or those of other foreign countries.

**Discrimination Against Individuals:** The New York State Constitution contains a comprehensive provision barring racial and religious discrimination by persons or corporations. In addition, the State Human Rights Law specifically bans such discrimination in employment. Both civil and criminal penalties are provided against any person who perpetrates, aids or incites such a civil-rights violation.

A number of boycott-related discrimination complaints have been brought under New York's various civil-rights statutes. The State Division of Human Rights found "probable cause" in a case charging the American Bureau of Shipping with discriminating against Jewish applicants for jobs in Arab countries. The New York City Human Rights Commission, in a case involving a Jewish receptionist fired by the American Independent Oil Company, allegedly because the job required her to greet Arab visitors, warned employers that they face legal action if they discriminate in employment because of foreign pressures.

**Discrimination in Banking:** The New York Human Rights Law forbids financial institutions to practice racial or religious discrimination in granting credit or fixing credit rates, conditions or terms. This provision, enforceable by the Superintendent of Banking, would, of course, cover written or oral agreements to exclude or restrict underwriting firms owned or managed by Jews.

**Investigations**

The New York Office of Legislative Oversight and Analysis, acting for the State Assembly's Committee on Government Operations, has been looking into allegations of boycott participation, and has subpoenaed or interviewed over 100 companies. Public hearings on the
findings have been held and further hearings are planned. One subpoenaed corporation, General Electric, challenged the probe as unconstitutional state interference in foreign affairs, but a U.S. District Court found nothing in the investigation that would "alter or defeat our national foreign policy."

The New York Attorney General's office also plans continuing surveillance of Middle East dealings with a view to possible regulation. His office has sent out a questionnaire to banking and underwriting firms, inquiring about transactions, pressures or suggestions that would limit participation in any underwriting group on the basis of racial, religious, ethnic or political considerations.

The Attorney General's office is also considering legislation requiring stock prospectuses to state that no discriminatory coercion or conditions are involved in the proposed offering.

In Other States
There is no doubt that boycott and blacklisting practices and the discrimination they promote will be receiving increasing attention around the country. New legislative and administrative approaches are already under way in several states.

Illinois has a new law barring the blacklisting of businesses by companies that honor the Arab boycott and forbidding financial institutions to accept letters of credit containing "any provision which discriminates or appears to discriminate against any person on the basis of ethnic or religious grounds, or of any connection between that person and any other entity."

California, Maryland, Pennsylvania, Ohio and several other states have introduced or are considering similar measures.

In Massachusetts, the State Commission Against Discrimination has announced a vigorous drive to uncover any violations of the state's anti-discrimination laws resulting from Arab boycott pressures.
Banking commissioners in several states have sent warnings to state-chartered banks under their supervision along the same lines as the Comptroller of the Currency's notice to national banks.

A number of State Attorneys General have indicated that they plan to investigate possible violations of state law involved in boycott compliance. And human-rights commissions in many cities and states have warned that they will not permit boycott-related discrimination.

International Declarations

Economic boycotts and embargoes against third countries were declared contrary to international law by a panel of world-respected jurists, gathered at the World Conference on Law in Washington in October 1975. Countries which impose such boycotts, said the panel, must pay reparations to third-party states injured by such action.

Also in October 1975, the president of International Bank for Reconstruction and Development, Robert L. McNamara, declared that the World Bank did not recognize the Arab boycott. "The Bank's rules do not permit bidders for a contract financed under a Bank loan to be excluded because they trade with Israel or are located in a country that trades with Israel," he wrote in answer to an inquiry by Rep. David R. Obey (D.-Wis.). "A contract awarded in violation of this rule would not be eligible for finance under a Bank loan."
THE CORPORATE RESPONSE

The American business community has also been speaking out on the issue of the Arab boycott, and reaffirming its commitment to fair business ethics and non-discrimination. At stockholders' meetings, in internal directives and in replies to inquiries from civic and religious groups, many of the largest and most influential companies in the nation have emphasized that they conduct their affairs, "internally or externally, without consideration of race, color, creed or national origin" (Xerox); would not "participate in any . . . venture where a condition of the venture is discriminatory" (Bank of America); and "most certainly would resist any discriminatory pressures" (Armstrong Cork).

A number of corporations stress that they would oppose pressures not to do business with Israel or with business partners of Israel. "We have not been blacklisted . . . We are not aware of any such pressures. Should we receive any, we would resist them" (IBM). "We have not been confronted with . . . boycotts or blacklisting, but we would not condone or participate in any such action if we were" (First Wisconsin National Bank of Milwaukee). "The Company strongly opposes restrictive practices and boycotts against countries friendly to the U.S. and will take no action, including even the making of routine factual statements on export documents, which could be construed as being in any way supportive of such restrictive trade practices" (Scott Paper).

Many of the nation's most prestigious universities have also made it clear that they would forgo contracts that might entail discrimination against American citizens. In mid-1975, a consortium of five Midwestern universities (Illinois, Indiana, Michigan State, Minnesota and Wisconsin) decided unanimously to halt work on a program for the University of Riyadh in Saudi Arabia because a Jewish professor proposed
for the program was denied a visa. Harvard too has decided to shun Saudi Arabian involvement because of visa problems. The Massachusetts Institute of Technology (MIT) insisted on adding a clause to a projected Saudi water-desalting contract allowing cancellation in the event of discriminatory acts. (The Saudis rejected the contract.)

No Either/Or

Of course an ever-increasing number of companies are doing business both in Arab countries and in Israel. When an Arab enterprise wants to do business with a particular company, or needs a particular product or service, the boycott is quietly ignored. “We are going to continue to do business in Israel . . . and if we can do business in an Arab country, all the better,” explained the Ford Company, which is now planning a new venture in Egypt.

In an article in Commerce Today (Oct. 13, 1975), former Secretary of Commerce Morton posed the question, “Won’t I have to stop trading with Israel in order to sell to the Arab countries?” and answered it with a resounding “no.” Pointing out that “Israel is one of the most important trading partners this country has,” he noted that in 1974 “U.S. exports to Israel exceeded those to any other country in the Middle East except Iran.”

“Thousands of companies,” Mr. Morton explained, “continue to market their goods and services profitably to both the Arabs and Israelis, and the astute businessman aggressively looks for commercial opportunities in Israel as well as with her newly wealthy neighbors.”

General Telephone, General Electric, IBM, Raytheon, Hilton, McDonnell Douglas, TWA, Hertz and Avis are among the many American giants operating in both markets.

And in the coming months, many additional companies will decide to do business in the Middle East on terms that reflect a sound business basis rather than a submission to foreign political pressures.
To American business leaders:

The American Jewish Committee--the oldest human relations agency in the United States--has, for the past seven decades, devoted itself to securing the right of men and women of all faiths, races and ancestries to be judged on the basis of their individual talents, skills and abilities, not on the basis of their group labels.

Our experienced business leaders and trained professionals have worked closely with businesses large and small around the country on executive recruitment, management training, Federal contract compliance and other matters involving equitable employment practices.

We stand ready to work with you in the same way on problems related to the Arab boycott. Please feel free to call upon us.

ELMER L. WINTER, President