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Commerce/Treasury Enforcement

Coming T-guidelines slam SAMA; Mideast, infighting delay release

"Commerce/Treasury Enforcement" is a regular monthly feature of the *Boycott Law Bulletin*. It provides news and information about the U.S. government's anti-boycott enforcement policies, procedures and actions.

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Taking place behind-the-scenes in Washington is a major confrontation pitting the Treasury Department's anti-boycott arm against those at the Commerce and State Departments.

It's a battle over turf as well as law. At stake are many millions of tax-penalty dollars, further road-blocks in U.S.-Arab trade, and another foreign policy squabble between the Carter Administration and Saudi Arabia at a most inopportune time.

The struggle has actually been going on for about a year. But it was only a few weeks ago that Treasury actually completed in-house its proposed new guidelines and made the firm determination to go ahead with them independently from Commerce. Treasury did so even though the new guidelines would rule against the current practice in Saudi Arabia of requiring shippers and insurers utilized by U.S. exporters to make declarations of "self-certification" that they are in full compliance with the laws of Saudi Arabia—a practice which, it seems, the Saudis believe Commerce and State have blessed.

Early in March before Carter's Middle East trip, Treasury gave two weeks notice to Commerce and State of its new guidelines. That set off a major internal "hornet's nest," to quote one

Treasury official, and what will happen now is uncertain.

Says one government official, "Those new guidelines could come out tomorrow or 20 years from now." Says another, "The commerce people view themselves as saviours responsible for allowing business to go forward. Many of the rules are intentionally created loopholes. They see large changes in Arab practices and they feel we mangle our laws half-way to meet what the Saudis have done...There's been incredible pressure put on Treasury by Commerce to go along."

And still another insider notes, "State Department people are convinced of their need to protect the world from the Treasury Department."

If the Treasury guidelines are issued, there's a general agreement in Washington that "Commerce's loophole will be destroyed...and they'll have to face the questions they haven't wanted to." But there's also a general feeling that the Saudis can work out other procedures than "self-certification" and maybe the whole thing wouldn't be so difficult if the Saudis hadn't been misled last year into thinking that everything was OK. "Why does SAMA (Saudi Arabian-Monetary Authority) have to have the general statement?" one frustrated Treasury official asks.

Yet another Treasury official, this one much more uneasy with the proposed new guidelines and their political as well as business ramifications

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warns that "The Saudis have been accommodating to our anti-boycott laws. The 'self-declaration' is a face-saving device the Saudis have come up with and now we're going to bash them in the teeth."

Details of the proposed new guidelines and the back-room struggle are only now becoming known—more detailed information in next month's column. But here is a general outline and chronology of what's been going on:

A year ago, in March 1978, SAMA issued new instructions requiring U.S. exporters to agree to provide a certificate by the owner, agent or master of the vessel transporting their goods that the vessel is "eligible" to enter Saudi ports and also by the insurer that it has an agent in Saudi Arabia. Everyone realized that these new Saudi practices were designed to be boycott-enforcing as well as to conform with U.S. anti-boycott laws. In April Commerce made an important distinction which in effect allowed this Saudi procedure as in compliance with the anti-boycott provisions of the Export Administration Act (EAA).

Commerce's OK may have even been informally extended in a meeting with a SAMA official sometime early last year—a meeting to which Treasury people were not invited or even made aware of, though officials from the State Department did attend.

In allowing carriers and insurers to provide the "self-certifications" required by the Saudis, Commerce, however, cautioned exporters that they could not certify the blacklist status of their carriers and insurers. Commerce further noted that carriers and insurers still had the reporting obligation.

All the while, Treasury had been maintaining that the new Saudi procedures did not meet Ribicoff Amendment tax anti-boycott requirements (section 999 of the Internal Revenue Code) which the Internal Revenue Service is charged with enforcing through an auditing procedure of

required reports. Treasury took the position, which it has consistently maintained against considerable challenge, that this kind of distinction between exporter on the one hand and shippers and insurers on the other was little but a Commerce-created loophole to accommodate the Saudis.

Treasury has been doubly frustrated because Commerce has acted as if the EAA is the anti-boycott law and as if they are the only ones who should really decide how the boycott law should be interpreted and enforced. In many cases, Treasury officials insist, both Commerce and State have misled business groups by not alerting them that they could face tax penalties down the road.

This has been especially the case with regard to the SAMA self-certification requirements which is why Treasury seems so determined to come forward with new guidelines.

The Treasury-Commerce in-fighting got so heated that after a Chicago speech by Senior Deputy Assistant Secretary of Commerce Stanley Marcuss (See Dec. 1978 issue of the Boycott Law Bulletin. Ed.) in which Marcuss totally overlooked the Treasury Department's role in anti-boycott enforcement, the Secretary of the Treasury wrote the Secretary of Commerce requesting that this "misleading of the business community" cease.

The new Treasury guidelines which may or may not soon appear are the result of this continual haggling between Commerce and Treasury for the past year.

Commerce, with State's apparent cooperation and encouragement, has consistently attempted to keep Treasury out of the picture. When a number of Treasury officials visited the Middle East last summer they were instructed not to meet with Arab government officials. Not only were Commerce and State worried that such meetings could cause problems, it seems that higher-ups at Treasury are aware that this lack of contact insulates the Department from any possible future accusations that Treasury conspired with Middle East governments to get around the anti-boycott laws.

Further, at a meeting in Tangiers last May with economic personnel from various Middle East embassies, Treasury officials found themselves ostracized for "causing trouble" by insisting that the tax anti-boycott law be made known in addition to the EAA.

"Many people in Commerce and State just want the tax law to go away," notes one government official who adds that "many lower level people at Commerce are not even fully aware of the (tax) law."

And as one Treasury official notes, "We're not in the business of selling this law. But our attitude is it is the law and so it does result in tax penalties if it's violated. And so we owe it to the public to make everyone aware of the law."

Furthermore, sources close to these developments reveal, there is a considerable danger that if nothing is done now I.R.A. auditors one or two years hence may start levying penalties against unsuspecting businesses. "This is a very dangerous situation because in a few years there will be real tax problems when people get audited."

If the new guidelines are issued, some persons argue, all this can be made prospective in application in view of the fact that the law has been so confused and uncertain. But if the guidelines are buried and I.R.S. takes action in the future then it might be too late for prospective treatment and what's taking place right now may be heavily penalized.

Sometime last summer, Commerce and Treasury reached an agreement to coordinate their guidelines and reach some consensus about the new SAMA requirements. But months went by with Commerce offering excuse after excuse for further delay—at least this is how Treasury views the situation and the explanation for why Treasury has put together its own guidelines.

After the two weeks notice was given it appears Commerce and State urged a further delay arguing that President Carter was in the Middle East, an Egypt-Israeli treaty was imminent, and this was not a good time to be stirring up a sensitive issue. And that's where things now stand—in the political thicket of inter-agency rivalry.