FROM WASHINGTON
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U.S. Marcuss-Munk mission enters the Ribicoff tax amendment muddle

America's new anti-boycott law —its effect on relations with Kingdom

VERY soon senior deputy assistant secretary of commerce Stanley Marcuss and assistant general counsel of the Treasury department Russell Munk will be going on a special visit to Saudi Arabia.

The timing and details of their trip have been, in the words of one official aware of the sensitive nature of this impending tete-a-tete between middle-level U.S. and Kingdom officials, "classified".

Theirs is a difficult but not impossible mission. For Marcuss and Munk will be trying to convince Saudi officials that certain proposed new guidelines interpreting the Ribicoff tax amendment anti-boycott law need not greatly interfere with U.S.-Saudi trade and should not cause another squabble between the two governments over evolving U.S. anti-boycott guidelines.

Penalties

The U.S. now has two anti-boycott laws administered by separate government departments. The Commerce Department administers the main law which is written into the Export Administration Act (EAA). The Treasury Department administers a separate law, the Ribicoff tax amendment, which is enforced by tax penalties imposed by the Internal Revenue Service. As for the Commerce Department's sanctions, civil and criminal penalties are applicable to violations of EAA.

In the process of drawing up guidelines interpreting these recently enacted laws, the two departments have come up with different restrictions in regard to letters of credit and the "self-certification" procedure whereby shippers and insurers utilised by U.S. exporters certify that they are in full compliance with the laws of Arab countries.

Harmonise

As Marcuss admitted in congressional testimony on March 28 before the sub committee on international economic policy and trade of the House Committee on Foreign Affairs, "we have done everything possible to harmonise Treasury and Commerce Department anti-boycott programmes. (but) There are limits to how far we can go because the statutes differ."

Marcuss did not want to add publicly, as have other officials at Commerce, the privately expressed frustrations that the new Treasury guidelines are not the only possible interpretation in dealing with the tax anti-boycott statute. "We have very little lee. Way in our law, and our law doesn't compel the conclusion (that self-certification) is illegal," confides another Commerce insider. "But their law (Treasury's) is broad and does not compel their conclusion."

Says still another Commerce person: "Treasury's law only applies to agreements while Commerce's law applies to agreements and actions." "because Treasury can only latch on the agreements, it tries to find implied agreements everywhere," this source concludes, implying that this is the motivation behind the proposed new guidelines.

The actual background to the impending Marcuss-Munk mission can be traced back to March 1978. It was then that the Kingdoms monetary authority (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 the Kingdom.

Compliance

Everyone realised that these new Saudi practices were designed to be boycott-enforcing as well as to conform with U.S. anti-boycott laws recently enacted.

Then in April the Commerce Department made an important distinction which, in effect, allowed this new Saudi procedure as in compliance with the anti-boycott provisions of the EAA.

Commerce's OK may have even been informally extended in a meeting with a SAMA official sometime early in 1978 — a meeting to which Treasury people were not invited or even made aware of, though officials from the state department did attend.

Obligation

In allowing carriers and insurers to provide the "self-certification" 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 general reporting obligation imposed by the EAA to notify Commerce each time requests were made to boycott Israeli products and ports as well as other companies who do not observe the boycott.

Already, the confusing and uncertain situation has caused a number of business deals to fall through involving at least tens of millions of dollars, another official estimates.

All the while, treasury had been maintaining that the new Saudi procedures did not meet the tax anti-boycott requirements written into section 999 of the internal revenue code and popularly known as the "Ribicoff tax amendment." Through an auditing procedure the internal revenue service was charged by this law with using tax penalties to prevent compliance with the boycott of Israel.

Treasury took the position, which it has consistently maintained against considerable challenge, that this kind of distinction between exporters on the one hand and shippers and insurers on the other was little more than a commerce-created loophole to accommodate the Saudis. And ever since then Treasury has been looking for ways to assert this position. Today's proposed new guidelines are Treasury's way.

Sometime last summer, both the Commerce and Treasury Departments reached an agreement to co-ordinate their guidelines and come up with 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 some Treasury officials view the situation.

Saviours

Then in February of this year Treasury gave Commerce and the State Department two weeks notice that the new guidelines were going to be made public. That set off a major internal "hornet's nest" with bitter recriminations inside the bureaucracy. "Commerce people view themselves as saviours responsible for allowing business to go forward," said one Treasury official involved in preparing the new guidelines. "Many of their rules are intentionally created loopholes. They see large changes in Arab practices and they feel we'll 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."

Said another disgruntled Treasury official at the time: "State Department people are convinced of their need to protect the world from the Treasury Department."

Guidelines

Earlier this year officials at Commerce and State seemed resigned that those guidelines would soon be made public. "Then it'll be up to the Saudis what to do," said one frustrated insider.

But today it remains conceivable that Saudi reaction to the Marcuss-Munk visit might affect whether the guidelines actually are issued. Still, no one here is confidently predicting whether the guidelines will come out before or after the trip — or at all. Though such matters are normally matters of legal interpretation handled at the administrative level, everything affecting U.S.-SAUDI relations has been bucked up to the top political people. The very highest levels at the White House and the State Department have become concerned, in addition to Treasury and Commerce.

Even exactly what is at stake no one is precisely sure at this point. For no one knows just how the Saudis will actually react when and if the new guidelines become effective. That in fact is a major reason, it seems, for the Marcuss-Munk dialogue.

The Saudis may take a rather tough line with these two officials — especially if the guidelines remain unissued at the time of the trip. But some officials are crossing their fingers and hoping that even if the guidelines do come out, Riyadh won't want to create a public feud and some acceptable procedures will evolve without too much loss of trade.

Still, quite a number of involved bureaucrats at Commerce and State, and also in the office of the Kingdom's affairs at the Treasury department, have "fought like hell" to keep those guidelines bottled up. "We're raising as many red flags as we can to try to stop" their release, notes some one close to the controversy.

Procedures

The overall purpose then of the Marcuss-Munk visit to Riyadh, probably early this month is "to explain this new situation with the Treasury guidelines to the Saudis," says one insider who believes the new guidelines would put "a real link in trade" between the two countries "since every letter of credit will be subject to them" and since the Saudis just aren't in a mood to further revise their procedures as a result of conflicting American laws administered by two separate departments.