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"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.

By Mark A. Bruzonsky

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SHAKE-UP IN ANTIBOYCOTT PROGRAM; INTERNAL INVESTIGATIONS AND BITTER STAFF INFIGHTING HAVE BROUGHT ENFORCEMENT TO VIRTUAL STANDSTILL.

Major changes are taking place within the antiboycott program at the Commerce Department after a series of internal investigations into allegations of mismanagement and personnel abuse. The staff itself has dwindled to about two-thirds its former size after numerous transfers for those requesting reassignment.

For some months, since late last year, the entire antiboycott enforcement effort has been "paralyzed" in the opinion of a number of sources both inside and outside the Commerce Department.

(The Commerce Department began assembling its antiboycott staff in late 1978 and early 1979. By March 1979, the Antiboycott Compliance Staff, as it was originally called, had initiated 92 investigations of possible violations of the EAA antiboycott rules. But the first enforcement action did not come until late August 1979. Since then there have been only five enforcement actions, averaging about one per month up to the end of 1979. (The Finagrain case was settled Aug. 27; Library Bureau charged on Oct. 16; Cameron Iron Works settled Oct. 30; Core Labs charged Nov. 19; and Reimers Electra Steam settled Dec. 5.) But since the turn of the year there has not been a single enforcement action announced, even though Commerce Secretary Klutznick revealed in last month's column that more than 300 investigations have been initiated.)

"Interim Acting Director" Richard Seppa seems to be making valiant efforts to rebuild an effective antiboycott enforcement program, but little visible progress has been made to date.

Still others associated with the program strongly

deny it has been paralyzed — though they admit that the program has suffered. These sources suggest that simple "personnel problems" centered around a few individuals caused all the troubles and that these problems have now been worked out. It is suggested that numerous enforcement actions can be expected soon.

Former Acting Director Vincent Rocque has been placed somewhat in limbo on the staff of Deputy Assistant Secretary for Export Administration Eric Hirschhorn. While it is rumored that Rocque might become one of Hirschhorn's deputies, it is also known that a number of former members of the antiboycott staff have been urging Rocque's dismissal and that Rocque himself has circulated dozens of resumes outside the Department should he decide not to remain.

The new head of the Office of Antiboycott Compliance, Seppa, is said to be concerned that Rocque is in some ways undermining his rebuilding efforts. Indications are that there may be a number of competing ideas as to how the program should be restaffed and how its investigative chores should be carried out.

Seppa originally agreed to be detailed to the antiboycott office for 120 days from his position as Director of Statutory Import Programs. But it is uncertain now if he will compete in the Civil Service selection process for a permanent Director; sources say it is likely Seppa will agree to remain for a period of weeks or months beyond his original early May termination date. Seppa's decision may be affected by whether Rocque is offered a position under Hirschhorn and whether in that capacity Rocque would be involved in antiboycott matters.

INVESTIGATIONS, STAFF MOVES

The two top antiboycott officials under Rocque since last year, Howard Fenton and Art Kaplan, have been relieved of all supervisory responsibilities as a result, it appears, of the various investigations and Seppa's taking charge. It remains unclear what role they will play as the antiboycott program is entirely

reorganized, probably beginning in May.

The study soon to be completed by ITA Director of Administration, Mike Doyle, and Under Secretary Donald Furtado is now expected to recommend that antiboycott affairs continue to be handled by the Office of Antiboycott Compliance, rather than shifting them into the Office of Export Administration. But at least some persons knowledgeable about the overall situation have concluded that this issue — the possible transfer of antiboycott matters to OEA — has been greatly misunderstood. Rather than weakening antiboycott enforcement as suggested by some Commerce insiders and so reported in this column previously, such a shift to OEA might be just what the program needs, these sources suggest. Such a changeover, however, is now being opposed for, it appears, two basic reasons:

1. After the flip-flop on the UN Security Council vote on Israeli settlements policy, it is feared within the administration that to shift antiboycott to OEA now might be interpreted by Jewish groups as a "demotion" of antiboycott activities, and

2. Persons formerly associated with the program — including Rocque, and more recently Hirschhorn — believe the program needs to be kept separate from OEA and with a strong complement of attorney-investigators.

Among developments of the past few months: In mid-April a 40-page report by Commerce Department Inspector General Mary Bass was finally completed — six months tardy. IG Bass' investigation and report were requested last August by the United States Merit Protection Board to which antiboycott staff member Steve Plitman had filed a formal complaint against Howard Fenton. (Plitman's complaint, according to informed sources, centered on what he regarded as an unwarranted low performance rating.) The report — said to be explosive — is being tightly held by Commerce; one source outside the department says the report details an "incredible situation" of mismanagement and incompetence.

But the Bass report is considered "such a bad piece of investigative work" that it is being termed only a "draft report," and the Commerce Department refuses to release it, even to the Merit Board which requested it. Commerce's refusal to release the report to the Merit Board is said to be legally valid under the procedure by which the board requested the IG's investigation, but Commerce's tactics are being questioned by persons familiar with the bizarre developments in the antiboycott staff in the past year.

What has been made available to the Merit Board is a three-page letter from Secretary Klutznick in which he reviews developments in a general way and indi-

cates that changes have been made to correct past "management problems". But the Klutznick letter itself is being criticized from both sides in the dispute. Some say it is a whitewash of the serious charges of mismanagement, incompetence and personnel abuse. Others say the letter was only a formality required as a response to an inquiry by the Special Counsel. These sources say the letter is not a particularly important comment on the antiboycott program.

Former Acting Assistant Secretary Stan Marcuss, in fact, denies that he ever endorsed the views associated with his name in the letter. Marcuss told the Bulletin that the letter is full of "overstatements" that go beyond the actual problems that have existed within the antiboycott program.

The text of the Klutznick letter, reproduced below, suggests that the full story of the alleged "paralysis" within the antiboycott program could well be as profound and controversial as the rumblings around Washington suggest.

THE KLUTZNICK LETTER

The Secretary of Commerce
Washington, D.C. 20230

11 April 1980

Dear Ms. Eastwood:

Your letter to the Department of August 6, 1979, asked us to look into alleged problems of mismanagement on the Anti-Boycott Compliance (ABC) Staff within the International Trade Administration (ITA). That agency has taken the following steps with regard to the ABC Staff.

An internal review of the ABC Staff by Acting Assistant Secretary for Trade Administration Stanley J. Marcuss concluded that there was sufficient evidence of management problems to warrant action. Serious as these problems are, many of them are of the kind which can arise with any new program during its start-up phase. The problems related to:

- * The lack of a permanent career director.
- * Staff morale problems.
- * Inadequate guidance to the staff on the program's scope, philosophy and operations; inadequate office procedures and instructions.
- * Some insensitivity by some supervisors to the views and concerns of staff members.
- * A lack of proper training, especially in the investigative area (or at least a failure by management

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demonstrate to staff members that they possessed all the tools needed to conduct thorough investigations).

* Inadequate communication between management and staff.

Based on this review, Acting Assistant Secretary Marcuss and ITA Director of Administration Mr. Michael Doyle, met with the ABC Professional Staff on February 7, 1980. The purpose of the meeting was to announce to the staff a number of management actions in response to the problems. The actions included:

* Undertaking an organizational study of the Office of Export Administration and the ABC program with recommendations to ITA Deputy Under Secretary Donald Furtado on any changes which may be warranted concerning organization of the ABC program. That study should be completed by early April 1980.

* Naming Richard M. Seppa interim Acting Director of the ABC Staff, pending conclusion of the study.

* Suspending the two-team system pending conclusion of the study. This could facilitate communication and cooperation among all staff members.

* Having the GS-14 supervisors assist the Acting Director in overseeing the handling of cases by the rest of the staff instead of functioning as team leaders. They are intended to provide legal and investigative advice to the staff and the Director, handle business contacts, and prepare and conduct educational programs for the public as assigned by the director.

* Making efforts to improve communication between management and staff.

* Having the Acting Director be responsible for all office organizational matters and for setting the office's operating and management policies. The Acting Director is to be responsible for evaluation of work performed and for completely reviewing existing office procedures as well as for assessing the need for written formal guidance on the handling of cases, including the need for an ABC manual.

* Selecting an Administrative Assistant from the ABC Staff during the interim period to support the Acting Director in personnel, budget and other administrative matters to assist in the day-to-day operations of the office. As part of his assignment, he is to review training needs and report to the Acting Director with a recommended training program. (The person selected as Administrative Assistant was recommended in writing by 13 members of the ABC Staff.)

* Having the Director clarify the program's enforcement strategy and philosophy and respond to any questions the staff may have on the program. The Director is to set forth the nature of compliance officer functions; delineate the appropriate distinction between legal and investigative work; review case loads, travel, involvement in policy matters and the decision-making process.

* Transferring those who indicated a desire to be transferred from the ABC program. Some arrangements have already been worked out for these individuals.

Inspector General Mary Bass, who completed her draft report on this matter on February 21, 1980, concurs in the steps being taken by ITA.

Sincerely,

[Signed]

Philip M. Klutznick
Secretary of Commerce

Ms. Mary Eastwood
Acting Special Counsel
for the Office of Special Counsel
1717 H Street, NW
Washington, D.C. 20419

TOUGHER ENFORCEMENT LIKELY

As a result of the staff turmoil, transfers and investigations, it is almost certain that the Commerce Department's antiboycott enforcement program will increase in both pace and severity. Indeed, some of those critical of the program to date — including those within and outside of the department — say that the enforcement program could hardly get more meek.

The staff shake-up and reorganization, whatever form it may finally take, will itself mean a more efficient and productive program, say observers. Added to that probability is the near certainty that in the wake of the current controversy over the program, Commerce will be eager to display its enforcement teeth in antiboycott matters. As already indicated, antiboycott officials say that the four-month hiatus in enforcement actions will soon end. Perhaps with a bang.

LATE WORD....
ROCQUE GOES TO SULLIVAN & WORCESTER.

Indicating that his departure from the Commerce Department has nothing to do with developments in the antiboycott program, Vincent J. Rocque is resigning from the Department effective May 30.

Rocque has served as Assistant Director and Acting Deputy Director of the Bureau of Trade Regulation, and formerly he was the Acting Director of the Department's Antiboycott Compliance Staff. Rocque was instrumental in establishing the Department's antiboycott enforcement program, and he directed its first year of operation.

After leaving Commerce, Rocque will be counsel to the law firm of Sullivan & Worcester, a Boston-based firm with offices in Washington. Rocque said he will be working in the area of trade regulation with emphasis on international trade. He will begin work at Sullivan & Worcester sometime in June.

may not have been the sole reason for failure to secure business, "but antiboycott is very often the major contributing problem."

The official said that because of the increasing role in business played by attorneys, more and more companies are avoiding Arab world business just to be on the safe side. Many companies also fear that business they have with the U.S. government will be at risk if they should become involved in a boycott problem, so they avoid doing business in boycotting countries.

NO CHANCE SEEN FOR REPEAL OF RIBICOFF AMENDMENT AND TREASURY GUIDELINES, SAY LOBBYISTS.

When the Export Administration Act was renewed last year, sources said that the business community had not pressed for desired changes in the EAA antiboycott provisions in order to avoid a major battle with the pro-antiboycott Jewish service organizations (JSOs). And Washington sources said that the major business groups were instead saving their efforts for a hoped-for attempt to secure repeal of the Treasury Department antiboycott provisions — the Ribicoff Amendment to the Tax Reform Act of 1976, which in turn gave birth to the antiboycott Guidelines at Treasury.

The Treasury rules are considered by business to be more troublesome and costly than the Commerce antiboycott regulations, and if they had to choose between the two sets of regulations (recognizing that at best there will always be at least one antiboycott law), they would prefer to live with the EAA.

Noting that the Ribicoff Amendment to the TRA was a rush-up job pushed through Congress when that body failed to produce an EAA antiboycott statute in 1976, business states, correctly, that the EAA Title II antiboycott provisions represent Congress' considered and comprehensive decision on how to deal with foreign boycotts. Consequently, the Treasury rules should be repealed as superfluous and unduly impedimentary.

To see what chances there might be for a business-mounted assault on the Ribicoff Amendment, the Bulletin polled key lobbyists in Washington. Their consensus:

Obviously, no attempt to repeal the Ribicoff Amendment will be made before the presidential elections in November. Whether such an effort is made or can be made with any chance of success depends on the complexion of the new Congress, who

is in the White House and whether he will be willing to back such a move, even covertly and indirectly.

In a phrase, regardless of who is in Congress or the White House, the odds are heavily against a "Repeal Ribicoff" movement even being launched, to say nothing of its chances of success.

The lobbyists say that President Carter, assuming he is returned to the White House, is not likely to even give tacit approval to such an attempt. As for Reagan, said one lobbyist, "if you go on what he has been saying on the campaign trail, he is the most avidly pro-Israeli of any candidate. Even as campaign rhetoric, this has to be taken into account."

In Congress, the single most important factor is that Senator Abe Ribicoff will not be returning to the Senate, and, in the view of the lobbyists, there is no clear successor ready to champion an antiboycott role for the Treasury Department.

In view of the close work between the JSOs and the business community in settling the differences in the final draft of the EAA, the lobbyists suggest that the makeup of the new Congress may be somewhat less important in this case than the willingness of the JSOs to consider repeal of the amendment and the determination of the business community to press the JSOs for an agreement on repeal.

As one lobbyist put it: "The Jewish groups want as strict an antiboycott law as they can get and keep, so with two laws they more or less guarantee a fail-safe system. If a boycott-related action survives Commerce scrutiny, it will likely get caught by Treasury, and vice versa. Now if the business community is going to entice the Jewish groups into giving up one of the two nets, they are going to have to trade for it. And if they are to trade for it, the thing will have to be headed by someone of stature, like Irving Shapiro or someone like him, and business would then have to go after the deal and promote it heavily."

"What would the Jewish groups take in trade for the Ribicoff Amendment? Hard to say; something they value relating to Israel, maybe something before the Senate Foreign Relations Committee. The question is not so much 'what' but 'whether.' Whether the the business community will be smart enough to spot and take the opportunity when it comes up. It would be a very delicate thing."

The lobbyist recalled that once before the question of repealing Ribicoff had come up — "when everyone was saying 'how awful' it was to have the Treasury rules. But when you said, 'Okay, let's mount a political campaign for repeal,' everyone dove for the nearest foxhole."

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The lobbyists doubt that the business community has the political courage or will to mount such a campaign, then, now or in the near future.

One lobbyist sees an opportunity for repeal of the Ribicoff Amendment coming in 1981 when the tax code will again be before Congress. "There is a chance," said the lobbyist, "that as this legislation is working its way through Congress, you might slip in a repeal provision among the hundreds of others as part of an omnibus tax bill." But even this, he said, is not at all likely.