1980

Effects of Peace in the Middle East on Trade with the United States

Robert M. Campbell
Effects of Peace in the Middle East on Trade with the United States

by Robert M. Campbell*

I. INTRODUCTION

A FULL DISCUSSION of the effects of peace in the Middle East on trade with the United States is impossible within the constraints of a brief article. Political and economic uncertainties in the Middle East and the United States make some limitations in the definition of the subject desirable. Accordingly, this article will be circumscribed in scope by the following limiting definitions.

1. Effects. The article will deal principally with the short term effects of peace in the Middle East. In particular, it will briefly discuss the effects of peace on those political and economic factors peculiar to the area which presently restrain trade between the United States and the Middle East and which give rise to legal problems.

2. Peace. Much of the discussion will concentrate on the Treaty of Peace, witnessed by the United States and signed on March 26, 1979.1 On April 25, 1979 Egypt and Israel also exchanged instruments of ratification. The Treaty of Peace and its Annexes do not deal expressly with the crucial Palestinian problem involving the Gaza Strip, the West Bank and the city of Jerusalem.2 Instead, Egypt and Israel addressed a joint letter

---


1 For the text of the Treaty of Peace, Annexes, and Agreed Minutes to certain articles of the Treaty and Annexes, see 18 Int'l Legal Materials (No. 2) 362 (Mar. 1979). For other letters and memoranda concerning the Treaty of Peace, see id. at 530. These include two Additional Memoranda of Agreement between the Governments of the United States of America and the State of Israel dated March 26, 1979 which obligate the United States to (a) take appropriate measures to promote full observance of the Treaty of Peace and (b) supply oil to Israel under certain contingencies for a period of 15 years.

For the text of the Camp David Agreements referred to in the Treaty of Peace and accompanying letters, see 17 Int'l L. Legal Materials 1463 (1978).

2 The Gaza Strip is a narrow strip of territory bounded by the Mediterranean Sea, Egypt and Israel. The West Bank is the area lying along the west bank of the Jordan River which lies in the eastern part of Israel. Although the City of Jerusalem is not mentioned by name in the Treaty of Peace or in the text of the two "Framework" documents themselves, the letter of September 17, 1978 from Mr. Sadat to President Carter which accompanied the "Framework Documents" stated in part "Arab Jerusalem is an integral part of the West Bank." 17 Int'l L. Legal Materials 1473 (1978). On the other hand, Mr. Begin's letter to
to President Carter dated March 26, 1979 which confirmed that they would implement certain provisions included in the documents—"A Framework for Peace in the Middle East Agreed at Camp David" and "Framework for the conclusion of a Peace Treaty between Egypt and Israel"—relating to the West Bank and the Gaza Strip. The letter further stated that Egypt and Israel agreed to start negotiations relative to these matters within a month after the exchange of the instruments of Treaty ratification. However, there are still major differences of opinion to be settled in regard to such matters including: (a) the status of the city of Jerusalem, (b) continued new settlements by Israelis on the West Bank, and (c) the extent and nature of the "autonomy" to be given to the West Bank and Gaza. At this time, it is difficult to estimate whether Egypt and Israel will be able to come to an agreement between themselves on the handling of these important issues, and it is even more difficult to estimate the reaction of the other Arab countries to the hoped-for agreement. Palestinians, Syrians and Jordanians are the Arabs most directly concerned with the solution of these problems, but all of the Arab countries, including Egypt, are vitally interested in finding acceptable solutions to these problems.

There is no specific provision in the Peace Treaty which states that the peace is dependent upon a negotiated settlement of these vital issues. However, it is generally believed that unless the current negotiations on these vital issues are successful, the Treaty will fall apart. Moreover, even if the Treaty itself does not fall apart, a failure to resolve these critical questions could ultimately preclude the Israeli-Egyptian goal of a broad peaceful settlement with all the Arab countries. Thus, this article will also touch on some of the long-term effects of the Treaty and the Palestinian negotiations as they affect import and export trade between the United States and the Middle East.

3. Middle East. For purposes of this article, the Middle East is considered to embrace fifteen nations: Bahrain, Egypt, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, United Arab Emirates (U.A.E.), Yemen Arab Republic, and Yemen (Aden). Iran is not included because it is frequently not considered a part of the Middle East. Moreover, trade between the United States and Iran presents unique problems at this time due to the recent


* 18 INT'L LEGAL MATERIALS (No. 2) 530 (Mar. 1979).
Iranian revolution and the hostage crisis. Libya is included on this list (although generally considered a part of North Africa) because it is part of the Arab League boycott of Israel. This article will focus on U.S. trade with Egypt, Israel, Kuwait, Libya, Saudi Arabia, and the U.A.E. These six countries have the largest trade with the United States, and will sometimes be referred to in this article as “selected Middle Eastern Countries.” In 1977, U.S. exports to these selected Middle Eastern Countries amounted to 85.8 percent of total U.S. exports to the Middle East, and imports from these six nations amounted to 91.2 percent of total imports from the Middle East.

4. Trade. As used in this article, trade will be confined to its usual meaning — sale or transfer of products or services. Unless otherwise noted, statistics of exports do not include military grant aid shipments, but do include commercially financed shipments and shipments under government financed shipments and shipments under government financed programs such as AID and PL-480. The term trade encompasses both U.S. imports and exports. The overwhelming proportion of U.S. imports from the Middle East consists of petroleum products. Although brief references will be made to the activities of the Organization of Petroleum Exporting Countries (OPEC), any extended discussion of OPEC is beyond the scope of this article. In addition, no effort will be made to discuss direct or portfolio investment.

II. THE PRESENT STATUS OF TRADE BETWEEN THE UNITED STATES AND THE MIDDLE EAST

The following table shows U.S. exports to and imports from the selected Middle Eastern Countries in 1978. Statistics for the Middle Eastern Countries as a whole are also given.

---

5 For example, the discussion of Middle Eastern Affairs in the Encyclopedia Britannica Yearbook, 540-43, (1978), contains no mention of Iran. Iran is not a member of the Arab League and it has not been at war with Israel. Much of the discussion in this article of trade between the United States and the Middle East turns on the Arab League Boycott in the Middle East on trade between members of the Arab League with Egypt and Israel and between the members of the Arab League and the United States.

6 Id. The nature and duration of peace in the Middle East will have a vital effect on trade between Libya and the United States.


8 Id. at Table 1.

9 Id. at Table 11 & 12.
In 1978, U.S. exports to the six selected countries represented 6.3 percent of the total U.S. exports of $143,575 million.\textsuperscript{10}

As the table shows, the 1978 U.S. balance of trade with these six countries was a deficit of $2,530 million. This is a dramatic change from the situation existing in 1972, prior to the 1973 Egyptian-Israeli war, the ensuing oil crisis and the increasing imports of oil by the United States. In 1972, the U.S. balance of trade with these six countries was a surplus of $567 million.\textsuperscript{11} During that six year period, exports from the United States to the selected Middle Eastern Countries grew from $1,192 million to $9,092 million, but imports from these countries to the United States grew even more sharply — from $625 million to $11,818 million.\textsuperscript{12}

With regard to 1979, the United States Department of Commerce has stated that the outlook for trade between the United States, the Near East and North Africa (a broader area than the Selected Middle Eastern Countries) is unsettled.\textsuperscript{13} The Department of Commerce also predicted that "a peace settlement between Egypt and Israel would provide greater financial resources and a more conducive climate for economic develop-

\begin{tabular}{lll}
\textbf{Country} & \textbf{Imports to U.S. ($ million)} & \textbf{Exports from the U.S. ($ million)} & \textbf{Balance of Trade ($ million)} \\
\hline
Egypt & 105 & 1,134 & \\
Israel & 719 & 1,925 & \\
Kuwait & 50 & 745 & \\
Libya & 3,779 & 425 & \\
Saudia Arabia & 5,307 & 4,370 & \\
U.A.E. & 1,858 & 453 & \\
\hline
Total six countries: & 11,818 & 9,092 & (2,726) \\
Total Middle East:* & 12,819 & 14,034 & 2,530 \\
\hline
\end{tabular}

*Iran not included

\textsuperscript{10} Id. at Table 1.
\textsuperscript{11} Id. at Table 11 & 12.
\textsuperscript{12} Id. at Table 11 & 12.
\textsuperscript{13} World Trade Outlook for Near East and North Africa, U.S. Dept. of Com., Overseas Bus. Rpt., OBR No. 79-09, at 3 (Apr. 1979). The U.S. Dept. of Commerce uses the term "Near East" in place of "Middle East" for purposes of foreign trade compilations. It lists under the heading "Near East" in the United States Foreign Trade Annual 1972-78, Tables 11 and 12, all of the countries of the Middle East, as used herein, plus Iran but not Libya. Import and export values shown are f.a.s. transactions values. It lists under the heading "North Africa (other than Egypt)" Algeria, Libya, Morocco, Tunisia and three countries with much smaller imports and exports.
ment in both countries."\textsuperscript{14} However, this prediction was made prior to the strong negative reaction of the other Arab League members to the Egyptian-Israeli Peace Treaty.\textsuperscript{15}

In the largest Arab market, Saudi Arabia, United States suppliers account for the largest percentage of imported goods. United States suppliers also lead in Israel and Egypt with the latter often being considered the largest potential Arab market.\textsuperscript{16} They rank second or third in Kuwait and the U.A.E.\textsuperscript{17} Entirely apart from the strategic importance of the oil produced by the Middle East, the Middle East is clearly an area of great importance to the export trade of the United States.

A. Background to the Egyptian-Israeli Treaty of Peace

The establishment of Israel as an independent state in 1948-49, brought a constant state of turmoil to the Middle East. Since Israel's independence, four major wars have been fought between Israel and the Arab nations of the Middle East. In all of those wars, Egypt was the principal Arab country involved. In terms of population,\textsuperscript{18} military strength and technical skills,\textsuperscript{19} Egypt is superior to the other Arab countries. In fact, until the recent peace negotiations, Egypt was the leader of the Arab world, with the headquarters of the Arab League located in Cairo.

Prior to Egypt's recognition of Israel by signing the Treaty of Peace, no Arab country had ever recognized the existence of the State of Israel. Moreover, almost all the Arab countries have regarded themselves as in a continuing state of war with Israel.\textsuperscript{20} The cost in human lives and destruction of property has been tremendous.\textsuperscript{21}

In the spring of 1979, Senator Church of the Senate Foreign Relations Committee requested Secretary of State Vance to furnish an esti-

\textsuperscript{14} Id.
\textsuperscript{15} Note 1 supra and related text.
\textsuperscript{16} Lill, U.S.-Arab Commerce, Middle East Econ. Dig. 7 (March 2, 1979).
\textsuperscript{17} Id.
\textsuperscript{18} Feige, Economic Consequences of Peace in the Middle East, Challenge 5 (Jan.-Feb. 1979) at 9.
\textsuperscript{19} Middle East Peace Package: Hearings on S. 1007 Before the Senate Comm. on Foreign Relations, 96th Cong., 1st Sess. 79 (1979) [hereinafter cited as Hearings on Middle East Peace Package].
\textsuperscript{20} The Arab position is that the truces and ceasefires which brought active hostilities to a halt in each of these conflicts did not constitute a peace so that the state of war continued. House Subcomm. on Oversight and Investigation of the Comm. on Interstate and Foreign Commerce, 94th Cong., 2nd Sess., Report on The Arab Boycott and American Business 85 (Subcomm. Print 1976) [hereinafter cited as 'Moss Report'].
\textsuperscript{21} 125 Cong. Rec. S5175 (daily ed. May 2, 1979) former Secretary of State Cyrus Vance estimated in an April 3, 1979 letter to Senator Frank Church that there have been some 115,000 Arab and 40,000 Israeli military casualties since 1948, in addition to heavy Jordanian and Lebanese internal casualties.
mate of the cost to the United States of the four wars between Israel and the Middle Eastern countries during the period of 1948 to 1978. Secretary Vance's letter of April 23, 1979 emphasized the difficulty of quantifying the financial cost of these four wars to the United States, but set the estimated cost to the United States at between $55 billion and $70 billion.22

Both Egypt and Israel spend a tremendous portion of their gross domestic product on military expenditures—in 1977, 27.6 percent for Egypt and 29.4 percent for Israel.23 These percentages may be compared to six percent for the United States and two percent for most developing nations.24 Yet, other Middle Eastern governments spend equally large percentages of their total budgets for military purposes. Defense comprises approximately 24.4 percent of the Saudi Arabian budget for 1979-80 (including special projects) and 28.8 percent of that budget (excluding special projects).25

The United States is a principal supplier of arms to various Middle Eastern countries. The Senate Foreign Relations Committee Report on

22 Id. at 175-76. Secretary of State Vance’s estimate of the financial costs to the United States is broken down as follows (in billions of dollars):

<table>
<thead>
<tr>
<th>Description</th>
<th>Billions of Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. contribution to U.N. Refugee Agency for persons displaced</td>
<td>.8</td>
</tr>
<tr>
<td>By Middle East wars</td>
<td></td>
</tr>
<tr>
<td>U.S. share of cost of U.N. peace-keeping forces</td>
<td>.3</td>
</tr>
<tr>
<td>Military assistance to Israel (over the 30 year period)</td>
<td>9.9</td>
</tr>
<tr>
<td>Military assistance to Jordan (over the 30 year period)</td>
<td>.39</td>
</tr>
<tr>
<td>Promotion of economic stability</td>
<td></td>
</tr>
<tr>
<td>direct economic assistance to Middle Eastern countries</td>
<td>13.0</td>
</tr>
<tr>
<td>Replacement of Israeli battlefield losses in 1973 war (grant funds)</td>
<td>2.2</td>
</tr>
<tr>
<td>Cost to U.S. economy of oil embargo of 1973-74</td>
<td>15.0</td>
</tr>
<tr>
<td>Cumulative cost of increased oil prices to U.S. since 1973-74 estimated at</td>
<td></td>
</tr>
<tr>
<td>$300 billion; attributing 5% or 10% of this amount to 1973 war, the effect</td>
<td></td>
</tr>
<tr>
<td>is</td>
<td></td>
</tr>
<tr>
<td>15.0 minimum</td>
<td></td>
</tr>
<tr>
<td>30.0 maximum</td>
<td></td>
</tr>
<tr>
<td>56.59 minimum</td>
<td></td>
</tr>
<tr>
<td>71.59 maximum</td>
<td></td>
</tr>
</tbody>
</table>

23 Feige, supra note 18, at 6.
24 Id. at 7.
25 MIDDLE EAST ECON. DIG., (June 1, 1979), at 40.
the International Security Assistance Act of 1978 discussed the new policy of "arms transfer restraint" announced by President Carter on May 19, 1977. The Committee Report stated that about $19.4 billion worth of arms transfer proposals had been transmitted formally and informally to Congress in less than one year after announcing the President's arms policy. Among those transfers were the following:

<table>
<thead>
<tr>
<th>Country</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Israel</td>
<td>$2.3 billion</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>5.1 billion</td>
</tr>
<tr>
<td>Egypt</td>
<td>.7 billion</td>
</tr>
<tr>
<td>Jordan</td>
<td>.1 billion</td>
</tr>
<tr>
<td>Total</td>
<td>$8.2 billion</td>
</tr>
</tbody>
</table>

If the transfer to Iran ($6.9 billion) were included, the total transfers to these five countries, $15.1 billion, would constitute 77.8 percent of the total United States arms transfer proposals referred to above.

B. Special Political Factors Affecting Trade between the United States and the Middle East.

There are three crucial political factors affecting trade: (1) the tension between Israel and the Arab countries, (2) the special relationship between Israel and the United States, and (3) the Arab League Boycott of Israel. Moreover, one must consider the panoply of U.S. legislation, regulations and administrative proceedings which affect this trade. In particular:

1. The anti-boycott amendments to the Export Administration Act adopted in 1977, and the related regulations;
2. The anti-boycott amendment to the Tax Reform Act of 1976, and its related regulations;
3. Proceedings under the U.S. antitrust acts against U.S. exporters who comply with the Arab League boycott demands;

---

29 Id.
31 Restrictive Trade Practice or Boycotts, 15 C.F.R. § 369 (1979), at 264. Under regulations effective January 18, 1978, agreements entered into on or before May 16, 1977 had until December 31, 1978 to come into compliance. Provisions were included for further extensions on a case by case basis through December 31, 1979. See § 369.5.
32 I.R.C. §§908, 999, 952 (a) (3), 995 (b) (1) (F) (ii).
CASE W. RES. J. INT'L L.

(4) The usual export controls under the Export Administration Act which apply to all exports of U.S. origin equipment to any country; and
(5) The Foreign Corrupt Practices Act which also applies to U.S. exports to all countries.

Each of these trade provisions affect trade between the United States and the Middle East. Factors (4) and (5) listed above will not be altered by the Treaty on Peace or any general settlement of Mideast problems. Theoretically, however, if a broad peaceful settlement were reached, the Arab boycott of Israel would disappear and with it the necessity of complying with the statutes and regulations under (1), (2), and (3).

C. The Arab League Boycott

The Arab League Boycott has already been the subject of much literature. This section will survey the historical origin of the Arab League Boycott, the identity of the boycotting countries prior to the Peace Treaty, the general nature and application of the Boycott, the effect of the Arab League Boycott on trade between the United States and the Middle East, and the effect of the anti-boycott legislation of the United States on the Middle East.

The origin of the Arab League Boycott dates to 1945, shortly after the founding of the Arab League. At that time the League consisted of seven countries: Egypt, Syria, Lebanon, Iraq, Transjordan, Saudi Arabia and Yemen. By 1974, the League had grown to nineteen nations: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the U.A.E., and Yemen (Aden), plus the Palestine Liberation Organization (PLO).

The Yemen Arab Republic later became a member of the Arab League and Iran (although not a member of the Arab League) announced on January 11, 1979, that it would no longer supply oil to Israel. Egypt is currently suspended from membership.

---

36 Moss Report, supra note 20 at 10.
37 1 ENCYCLOPEDIA BRITANNICA MICROPEDIA 470 (1974).
38 ECONOMIST, Jan. 20, 1979, at 52, col. 1
39 ECONOMIST, Apr. 7, 1979, at 64, col. 1 and related text.
D. The Nature of the Boycott

The Arab League Boycott operates at three different levels. On the first level, the boycotting Arab countries refuse to deal commercially with the State of Israel and its nationals or to import Israeli products. On the second level, the boycotting countries refuse to deal with non-Israeli companies or individuals who support the economy of Israel or its military effort. On the third level, there is what is sometimes called the secondary boycott in which certain Arab States refuse to do business with those firms or individuals which do not themselves support the economy of Israel or strengthen its military efforts but which do business with other companies who support the economy of Israel or strengthen its war effort. This article will deal primarily with the effect of the secondary boycott on U.S. exports to the Middle East. The primary boycott (affecting trade between the boycotting countries and Israel) does not have a direct effect on trade between the United States and the Middle Eastern countries, although it may well have some indirect effect on U.S. trade with Israel. The tertiary (or extended secondary boycott) will not be discussed in this article as it is not believed to be a substantial factor bearing upon the trade of the United States.

Although reference will be made to the Arab League Boycott or to the boycott of Israel by the Arab countries, not all of the members of the Arab League apply the boycott to the same extent. For example, six Moslem countries (Algeria, Mauritania, Morocco, Somalia, Sudan and Tunisia) apply the primary boycott, i.e., they do not permit importation of Israeli goods, but they do not apply the secondary or tertiary boycott. U.S. legislation is not intended to reach the primary boycott since this is a matter between the Arab states and Israel. A primary boycott it accepted, under international law, as a legitimate measure for one country to use against another hostile or enemy country. Indeed, the United States has maintained economic boycotts against various foreign countries ever since World War II.

Section 999(a)(3) of the Tax Reform Act of 1976 requires that a public listing of the Arab Boycott countries be made quarterly by the Department of the Treasury. As of January 2, 1979 the Department listed the following as countries boycotting Israel: Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudia Arabia, Syria, the U.A.E., and the Yemens. Note that the six countries applying only the primary boycott referred to above are not included on this list.

40 Moss Report, supra note 20 at 1.
41 Turk, supra note 35 at 472-475.
42 Moss Report, supra note 20 at 9, 10.
43 Id. at 9.
In order to consider the effect of the secondary boycott on U.S. exports to the Middle East it is important to discuss, in general terms, the nature and extent of the secondary boycott. The boycott of Israel is administered by the Head Office for the Boycott of Israel in Damascus, Syria. It published the General Principles for Boycott of Israel [herein after cited as Boycott Rules] in 1972.\textsuperscript{46} The Boycott Rules are complex, and their frequent amendment results in considerable confusion over their interpretation and application. Article 15 of the Boycott Rules\textsuperscript{46} is the key provision. There are four major points in its application:

1. The secondary boycott applies only to companies (private or public) which "support the economy of Israel, develop its industry, or increase the efficiency of its military effort."\textsuperscript{47}
2. No general principle is laid down as to foreign arms plants that supply Israel with arms or ammunition. Each case is to be considered separately.\textsuperscript{48} Clearly the various Arab states wish to be free to import arms from whatever source seems most desirable, regardless of connections with Israel.
3. The Boycott Rules\textsuperscript{49} prohibit any freight-carrying ship from calling on Israeli and Arab ports on the same round trip, thus presumably raising freight costs for Israel while blacklisting certain foreign ships.
4. The administration of the Boycott Rules is far from uniform. The governments of some Arab countries have blithely considered the Boycott Rules not applicable where the government itself is the importer. The Moss Report states that "[A] review of Export Administration Act reports confirms that some firms listed on the Arab blacklist are still able to do business with Arab countries."\textsuperscript{50}

The first of these four points requires further analysis. The language of the Boycott Rules is general, but Article 15 lists examples of activities of foreign companies which would fall within the ban:\textsuperscript{51}

1. Establishing a plant in Israel;
2. Establishing an assembly plant in Israel (including assembly plants in Israel established by the agents of foreign companies);
3. Maintaining general agents or head offices for the Middle East in Israel;

\textsuperscript{46} Multinational Corporations and United States Foreign Policy: Hearings on Political and Financial Consequences of the OPEC Price Increases Before the Subcomm. on Multinational Corporations of the Senate Comm. on Foreign Relations, 94th Cong., 1st Sess., pt. 11, at 442 (1975) [hereinafter cited as Hearings on OPEC].
\textsuperscript{47} Id. at 449.
\textsuperscript{48} Moss REPORT, supra note 20 at 86.
\textsuperscript{49} Hearings on OPEC, supra note 45 at 469.
\textsuperscript{50} Id. at 461.
\textsuperscript{51} Moss REPORT, supra note 20 at 38.
\textsuperscript{52} Hearings on OPEC, supra note 45, at 449-50.
(4) Granting to Israeli companies the right to use their name or trademark;
(5) Becoming partners in Israeli companies or manufacturing plants;
(6) Supplying advice or technical assistance to Israeli manufacturing plants;
(7) Refusing to reply to questions from the boycott authorities as to their relations to Israel; and
(8) Importing goods from Israel (but with substantial exceptions).

Thus arguably the sale of commercial goods to Israel (if not used in its military effort) does not violate the Boycott unless it is coupled with one of the actions described in paragraphs (1) through (6) above. Similarly, the import of goods from Israel does not violate the Boycott if the importation is for sale within the country in which the importing company has its headquarters and the importing company has not "persistently refused" to offer Arab products for sale.52

Although the range of proscribed actions set forth in paragraphs (1) to (6) above includes some actions which are frequently associated with the export of goods, there is indeed some justification for the statement of the Commissioner General for the Arab League Boycott that, "[I]f it turns out that these relations (i.e., the relations between the foreign company and Israel) do not go beyond pure ordinary business relations, the matter is over and dealings with such companies are not restricted."53 Similarly, Secretary of Commerce Morton testified before the Subcommittee on Oversight and Investigations on September 22, 1975 as follows, "[I]n fact, a U.S. firm trading with Arab countries may very well be trading with Israel as well, since the Arab boycott list does not extend to U.S. firms engaging in routine trading with Israel" (emphasis added).54

Before considering the effects of the boycott on U.S. trade with the Middle East, it is useful to examine its method of operation. The control of imports into the Arab countries is usually handled either by the government agency issuing import licenses (if an import licensing system is in effect) or by the customs authorities (if no import licensing system exists in the given country). The boycott mechanism provides for the publication and maintenance of extensive lists of foreign companies whose products are proscribed in order to guide import licensing authorities and customs authorities.55 A separate list is published for each foreign country. Each list includes not only the names of the parent companies but

---

52 Id. at 450.
53 Moss Report, supra note 20 at 86 (Letter of August 31, 1975 from Mohammed Mahgoub, Commissioner General of Central Office for the Boycott of Israel, to District Committee No. 12, Nat. Assn., Securities Dealers, Inc.).
54 Id. at 15.
55 Hearings on OPEC, supra note 45 at 371.
also the names of its affiliated companies and of the trademarks used by
these companies (commonly referred to as “the blacklist”). Each Arab
country publishes its own lists which are revised from time to time to
reflect companies added or deleted. Copies of the list are not widely dis-
bursed but a copy of the “Directory of Boycotted Foreign Companies
and Establishments—United States of America” published by the Cham-
ber of Commerce and Industries of Saudi Arabia is included in the record
of Senate Hearings on OPEC. The list is sixty-seven pages long with
approximately twenty-five items per page, for a total of roughly 1500
items. However, one can easily be misled by this figure into overestimat-
ing the total number of concerns on the blacklist. For example, R.C.A. is
on the list along with thirty-three items relating to R.C.A. including the
names of various affiliated companies which occupy two full pages of the
list. Similarly, Hertz is on the list, with eleven items relating to Hertz
and its affiliates. Thus the number of parent companies on the list is
much smaller than 1500. Another more realistic approach is the calcula-
tion of the proportion of the companies which appear in the 1978 Fortune
List of 500 Largest United States Industrial Corporations and which also
appear on the blacklist. Checking the names of the fifty largest compa-
"nies and the fifty smallest companies on Fortune’s list, only about five
percent of the 100 companies checked were on the boycott blacklist.
Moreover, as pointed out above, the fact that a company’s name is on the
blacklist does not necessarily mean that the boycott countries import
none of its products.

The net result of extensive investigations carried out by the Moss
Committee as to the quantitative effect of the boycott on U.S. trade with
the Middle East is that the boycott has had a fairly substantial effect on
United States trade with the Middle East, although that effect is impossi-
bile to quantify precisely. The boycott has affected U.S. exports to the
Middle East in several ways. First, it undoubtedly has had some effect on

56 Id. at 374-441.
57 Id. at 427-29.
58 Id. at 401-02.
59 FORTUNE, May 7, 1979, at 270.
60 Id. These companies included Coca Cola Corporation, Ford Motor Company, Mon-
santo, RCA and Xerox.
61 Moss Report, supra note 20 at 41. The Moss Report discusses the impact of the
boycott on U.S. export trade under the headings “Economic Analyses of Trade Data” and
“Impact on Domestic Firms,” at 35 and 41, respectively. The only instance of a quantified
impact on export sales cited in the Moss Report is with respect to exports of RCA, at 41:
An RCA executive told the subcommittee that prior to being placed on the
“blacklist,” RCA did approximately $10 million worth of business annually with
Arab countries. RCA, the subcommittee was told, had every reason to believe that
its sales to these companies would increase above the $10 million figure. Since
being blacklisted, its annual sales to the same countries have dropped to less than
$9 million, a direct loss of over $1 million annually.
U.S. exports to Israel, since some American companies may have elected to forego the Israeli market in order not to harm their exports to the Arab countries. It has also had an undoubted effect on those U.S. firms whose names are on the blacklist because of trade with Israel. Of course, to establish what U.S. exports to the Middle East might have been without the boycott is an impossible task. The data submitted by exporting firms pursuant to the Export Administration Act's reporting requirements from 1969 to 1977 certainly did not attempt to provide this information.\(^6\)

III. Effect of the Export Administration Act Amendments of 1977 on United States Trade with the Middle East.\(^6\)

As previously noted U.S. trade with the Middle East grew sharply after the oil embargo and the increase in petroleum prices. The impact of this sharp increase in trade caused the Arab League Boycott to become an even more controversial subject in the United States.\(^4\) In its report on the Export Administration Amendments of 1977, the Senate Committee on Banking, Housing and Urban Affairs commented as follows:\(^5\)

The increase in boycott demands by the Arab States reflects continued political tensions in the Middle East and the dramatically enhanced economic power of the oil-producing states since the oil embargo of 1973. Increased petroleum prices and the accumulation of oil earnings have significantly changed the dimensions of the boycott. Its power and reach promise to grow as trade and investment with the West expand. As they do, the pressure on United States firms to comply with the boycott if they wish to do business with the Arab States will undoubtedly grow as well.

Opponents of the boycott launched an intensive drive to broaden the U.S. legislation so that those companies complying with the boycott (subject to certain exceptions) would be in violation of U.S. law and subject to criminal penalties.\(^6\)

The 1977 EAA Report makes a clear distinction between the primary boycott and the secondary and tertiary boycotts\(^7\)


\(^{\text{65}}\) Id. at 63.

\(^{\text{66}}\) Id. at 22-24.

\(^{\text{67}}\) Id. at 21.
The committee is aware that primary boycotts are a common, although regrettable, form of international conflict and that there are severe limitations on the ability of outside parties to bring such boycotts to an end. However, the committee strongly believes that the United States should not acquiesce in attempts by foreign governments through secondary and tertiary boycotts to embroil American citizens in their battles against others by forcing them to participate in actions which are repugnant to American values and traditions.

The Committee noted that there were potential dangers in enacting legislation of this type which, unless very carefully drafted, could seriously alienate the Arab countries and cause even greater turmoil in the Middle East:

The committee also recognizes that such legislation, however well intentioned, could unjustly interfere with the sovereignty of others and thus violate the very principle which this bill seeks to establish. Moreover, legislation which fails to recognize the political sensitivities of the Arab States themselves, most of which are as jealous of their prerogatives as the United States is of its own, could erode U.S. influence in the Arab world and undermine efforts toward peace. Given the reality of the world's dependence on Arab oil, a breakdown in those efforts would be dangerous in the extreme and could trigger a backlash which ultimately harms the very interests this legislation seeks in part to protect. And antiboycott legislation which prolongs the conflict in the Middle East could paradoxically prolong the boycott which this bill seeks to address.

As a result of this delicate balance of interests the Export Administration Amendments of 1977 required the issuance of rules and regulations prohibiting any U.S. citizen, with respect to his activities in interstate or foreign commerce of the United States, from taking certain specified actions with intent to comply with any boycott imposed by a foreign country against a country friendly to the United States. At the same time, the Act created certain exceptions to these prohibitions. It was believed that much of the export trade of the United States to the Arab countries would fall within these exceptions. Generally, the prohibitions are broadly phrased, and the exceptions narrowly phrased. Even with the help of the Commerce Department regulations, it is difficult for an exporting company to be sure that its acts fall within the exceptions so as to avoid violating the law.

Almost all persons or concerns testifying in regard to the Export Ad-
EFFECTS OF PEACE ON U.S. TRADE

ministration Amendments of 1977 were opposed to the secondary and tertiary boycott in principle. However, exporters were generally critical of the legislation as originally proposed because it would severely prejudice U.S. exports to the Arab countries, vis a vis foreign exports, not handicapped by similar legislation. Foreign companies would be in a more favorable position than U.S. exporters and would thereby obtain a larger share of the Arab market. This in turn would work to the disadvantage of the U.S. balance of payments.

The legislative compromise which embodied the most controversial aspects of the Export Administration Amendments of 1977 was worked out in protracted negotiations between the private parties supporting and opposing the proposed legislation. Congress accepted and enacted the essence of the compromise agreed to by these parties.

A separate legislative drive, spearheaded by Senator Jackson, resulted in an amendment to the Tax Reform Act of 1976 which, in effect, imposed tax penalties on those concerns which failed to comply with the anti-boycott provisions of the amendment. Unfortunately, although the amendments to the Tax Reform Act of 1976 relating to the boycott deal with precisely the same problem as that covered by Export Administration Amendments of 1977, the legislation does not deal with the problem in the same terms. In certain respects the two pieces of legislation are inconsistent. Furthermore, two different administrative agencies (Commerce and Treasury) are charged with administering the two acts. Consequently, some of the activities permitted under the Export Administration Amendments of 1977 are in violation of the amendments to the Tax Reform Act. For example, it is legal under the Export Administration Act of 1977 and the Commerce Department regulations for a U.S. exporter to agree to comply generally with a country's laws without any specific reference to the boycott laws. However, under the Treasury Department guidelines, this is deemed to be an agreement to participate in a boycott.

72 1977 EAA REPORT, supra note 64.
73 Id. at 23.
74 Id. at 78 (additional views of Senator Stevenson).
76 Id.
78 251 INT'L TRADE REP. EXPORT WEEKLY (BNA) (0-1) - (0-2). Testimony of Stanley Marcus of the U.S. Dept. of Commerce relating to the operations of the Export Administration Amendments of 1977 before the House Comm. on Interstate and Foreign Commerce [hereinafter cited as ITEX].
79 Id. at (0-1).
81 I.R.C. § 999(b).
The Export Administrations Amendments Act of 1977 became effective on December 31, 1977, but the regulations provided a grace period until December 31, 1978 with respect to written agreements entered into before May 17, 1977. No estimate has been found as to the number of contracts affected by this grace period, but it probably applies to many major long-term contracts, such as construction projects extending over a period of years.

It is reasonably clear, however, that the boycott and the U.S. legislative response to it has had an impact. It has complicated the administrative work load of the U.S. exporter who must comply with both the requirements of the boycott authorities and of the U.S. government. It has also interjected an issue of almost explosive intensity into the relations between the Jewish community in the United States and the U.S. exporters to the Middle East. A result of the combined effects of these factors may be to discourage a certain number of U.S. exporters from attempting any exports to the Middle East, whether to Israel or to the Arab countries.

Despite the boycott countries general bitterness toward the U.S. government interference with the Arab reaction to the Israeli problem, all of the Boycott countries have made some accommodation to assist U.S. companies in complying with the U.S. legislation.

Under the tertiary boycott some of the Arab countries sought to require exporting concerns to agree not to deal with other foreign concerns who violated the secondary boycott. In more concrete terms, if a U.S. Company A had agreed to manufacture fighter planes for Israel, an Arab country might request that other U.S. companies B and C (who wished to export unrelated goods to the Arab country in question) not use components obtained from Company A in the goods to be exported by companies B and C to the Arab country in question. This type of restraint seemed to have a clear effect on the domestic commerce of the United States, and as indicated above, this was a principal concern of Congress in adopting the 1977 Amendments to the Export Administration Act.

---

83 Anti-Boycott Law Creates Confusion, MIDDLE EAST ECON. Dig. (March 16, 1979), at 15.
84 Almost all boycotting countries accept a positive certificate of origin (i.e., the goods shipped are of United States origin), which is acceptable under the Export Administration Amendments of 1977, instead of the so-called negative certificate of origin (i.e., the goods are not of Israeli origin), which was previously required by a number of the boycotting countries. Furthermore, Saudi Arabia and Kuwait have modified their requirements in an effort to make the certifications requested coincide with the permitted exceptions under the 1977 EAA Amendments. See, 50 U.S.C. App. §§2402, 2403, 2403-1a, 2403a, 2404-2407, 2409, 2410, 2411a, 2412, 2413, (1976 & Supp. I 1977); MIDDLE EAST ECON. Dig., supra note 83, at 16.
85 1977 EAA REPORT, supra note 64.
The United States Justice Department also took the position that the tertiary boycott in some cases violated the U.S. antitrust laws. The Antitrust Division was successful in obtaining a consent decree against one company, the Bechtel Corporation.

The effect that these two pieces of legislation and the Bechtel litigation have had on exports from the United States to the Middle East must be examined. Despite the dire predictions of critics, exports to the Boycott countries increased in 1978. Probably the clearest official U.S. Government statement on this point is the testimony of Stanley Marcus of the Commerce Department regarding the Export Act's anti-boycott provisions. "I believe," said Marcus, that:

... we have been successful in fulfilling the antiboycott goals of Congress while minimizing the impact on United States exports. In the year since the regulations became effective, United States exports to the boycotting countries of the Middle East rose 18%. To Saudi Arabia they have grown by 22%; to Kuwait, by 36%. So clearly the impact on our trade has not been disastrous as some predicted it would.

On the other hand a number of business transactions have undoubtedly failed because United States companies have been unable to comply with boycott demands. Our information on this source is largely anecdotal, however. There is no way to secure an accurate measure of the transactions that have not been attempted or have failed because of conflicts between American law and boycott requirements. Overall, however, we are encouraged by the fact that major conflicts have been avoided and our trade with the Middle East continues to grow.

However, it is claimed with some justification that because of the grace period referred to above, the full impact of the anti-boycott legislation will only become fully apparent in 1979 or perhaps 1980.

IV. PEACE TREATY PROVISIONS RELATING TO ECONOMIC AND TRADE MATTERS.

Article I (3) of the Treaty of Peace provides that upon completion of the interim withdrawal, the Parties will establish normal and friendly relations in accordance with Article III (3). Article I1 (3) provides that this normal relationship will include full economic relations and the ter-

---

86 See note 32, supra.
87 Id.
88 ITEX, supra note 78, at (0-1).
90 MIDDLE EAST ECON. DIG., supra note 83, at 15.
91 INT'L LEGAL MATERIALS, supra note 1, at 363.
mination of economic boycotts. Annex III of the Treaty sets out the process by which Egypt and Israel undertake to achieve such a relationship.\footnote{Id. at 389.} In Article 2 of Annex III, the parties agree, upon completion of the "interim withdrawal,"\footnote{Article II of the Appendix to Annex 1 to the Treaty provides that the preliminary withdrawal is to be completed within nine months from the date of exchange of instruments of ratification, i.e. on or before January 26, 1980. \textit{Id.} at 362.} to terminate all economic boycotts of each other and to negotiate an agreement on trade and commerce as soon as possible and not later than six months after the withdrawal.

Thus, for example, if the preliminary withdrawal is completed at the latest date specified in the treaty (i.e., nine months after ratification of the treaty) economic boycotts must be terminated no later than January 25, 1980. Of course, Egypt may well elect to terminate its boycott at an earlier date, and indications are that this is in fact taking place; at least in part and on a \textit{de facto} basis.\footnote{\textit{Things go better for (Coca Cola)}, \textit{Middle East Econ. Dig.}, (July 20, 1979) at 20. As pointed out above, Egypt's obligation under the Peace Treaty to terminate all economic boycotts of Israel becomes operative only upon completion of the interim withdrawal, but Egypt is apparently lifting its secondary boycott on at least some of the American companies before the interim withdrawal is completed. Egypt is also lifting the boycott ban on at least some English companies. \textit{UK Company Follows Coca Cola}, \textit{Middle East Econ. Dig.}, (Aug. 10, 1979), at 18.}

Other provisions of Annex III deal with the free movement of persons and vehicles between Egypt and Israel to be effective upon completion of the interim withdrawal,\footnote{\textit{Id.} at 390.} and with transportation and telecommunications between the two countries.\footnote{\textit{Id.} at 393.} The Agreed Minutes to Annex III specify that normal economic relations between the parties will also include normal commercial sales of oil by Egypt to Israel.\footnote{\textit{Id.} at 391.}

Article V of the Treaty, relating to the use of the Suez Canal to the Strait of Tiran and the Gulf of Aquaba,\footnote{\textit{Id.} at 365.} and Article 8 of Annex III, relating to right of passage through territorial seas,\footnote{\textit{Id.} at 365. 391.} became effective upon ratification of the Treaty. These provisions were not tied to the completion of the preliminary withdrawal.\footnote{\textit{Id.} at 365, 391.} Article V (1) of the Treaty of Peace contains important provisions relative to movement of ships and cargoes. Those relating to the Suez Canal are of particular importance to Israel,\footnote{\textit{Id.} at 365. This paragraph provides that ships of Israel and cargoes destined for or coming from Israel shall enjoy right of free passage through the Suez Canal and its ap-}
Israel were unable to use the Suez Canal for many years. Such provisions relate primarily to relations between Egypt and Israel but they will also have important effects on trade between these countries and the United States.

A. United States Actions and Agreements Supportive of the Treaty of Peace

The United States is not a party to the Peace Treaty; President Carter signed the Treaty and the Agreed Minutes only as a witness. However, six Treaty-related documents approved by Congress, obligate the United States in various ways.\textsuperscript{102}

Three of these documents in particular will have an important effect on trade with Egypt and Israel. The first is the United States-Israeli Agreements on the construction and funding of air bases.\textsuperscript{103} Second, in a letter from Secretary of Defense Harold Brown to Egypt, the United States obligated itself to sales over a three year period\textsuperscript{104} of military equipment and services to Egypt. These sales are valued up to $1.5 billion — this amount to be financed by FMS (Foreign Military Security) credits of up to $500,000,000 a year. Finally, in a letter from Secretary Brown to Israeli Defense Minister Ezer Weizman, the United States promised to help Israel relocate its Sinai Military facilities to the Negev and to make possible additional military equipment purchases of $3 billion with $800 million in grants and the balance in loans.\textsuperscript{105}

The third document, the extension of a 1975 agreement between the United States and Israel, may also have an effect on trade between the United States, Israel and Egypt. In this document the United States agrees to a ten year extension of its previous five year commitment to supply Israel with its oil requirement at world market prices should Israel be unable to obtain its oil from other sources (the fifteen year period starts only when Israel makes its first call on the United States under the agreement).\textsuperscript{106} The other pertinent documents are the Israel and United

\textsuperscript{102} Hearings on Middle East Peace Package, supra note 19, at 139-182.

\textsuperscript{103} Id. at 152-179.

\textsuperscript{104} Id. at 182.

\textsuperscript{105} Id. at 180.

\textsuperscript{106} Israel has made no call on the United States under the 1975 agreement so that the fifteen year life of the commitment has not begun to run. Id. at 17, 54-55. For years, Israel has relied on Iran for approximately 50\% or more of its oil. On January 11, 1979, the Baktiari government of Iran banned the export of oil to Israel. \textit{Economist}, supra note 38. This action by Iran makes Egypt's commitment to sell oil to Israel a matter of substantial importance to the United States.
States Memorandum on assurances as well as letters from President Carter to President Sadat and Prime Minister Begin regarding consultations, aerial monitoring and permanent stationing of United Nations personnel in the limited force zone.107

Pursuant to the above undertakings, the Administration recommended to Congress that it provide special assistance to Egypt and Israel (in addition to the aid provided for these countries by the International Security Assistance Act of 1978).108 To place this special assistance in proper perspective, it should be noted that (exclusive of this special assistance), United States assistance to Israel had averaged annually approximately $1050 million in grants and $775 million in loans in the fiscal years 1977, '78 and '79.109 Similarly, United States assistance to Egypt also had been running at high levels in recent years; it amounted annually to approximately $1 billion ($750 million in economic support funds and $250 million in PL-480 aid).110 At the hearings on the Middle East Peace Package, former Secretary Vance testified that the Administration expected that “normal” aid to Egypt and Israel would continue at about these levels.111

The Special International Security Assistance Act of 1979 provides a three-year program involving $4,800 million to assist Egypt and Israel in implementing the Peace Treaty.112

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Military</td>
<td></td>
</tr>
<tr>
<td>Israel base construction</td>
<td>$800 million</td>
</tr>
<tr>
<td>Israel (other redeployment)</td>
<td>$2,200 million</td>
</tr>
<tr>
<td>Egypt military assistance</td>
<td>$1,500 million</td>
</tr>
<tr>
<td>Total Military</td>
<td>$4,500 million</td>
</tr>
<tr>
<td>Economic</td>
<td></td>
</tr>
<tr>
<td>Egypt economic supporting assistance</td>
<td>$300 million</td>
</tr>
<tr>
<td>Total</td>
<td>$4,800 million</td>
</tr>
</tbody>
</table>

Of these total amounts, $1.0 billion would be made available by grants, $3.7 billion would be available for Foreign Military Security loans at market rates of interest, and $0.1 billion by concessional loans.113

107 INT’L LEGAL MATERIALS, supra note 1, at 532, 536.
109 For a detailed recapitulation of aid extended by the United States to Israel over the years 1949-1979, See Hearings on Middle East Peace Package, supra note 102, at 183-84.
110 Id. at 22.
111 Id at 53.
113 Despite the provisions of the act that much of this aid is to be furnished on a loan
B. Reaction of The Other Arab States to the Peace Treaty

The immediate reaction of the other Arab states and the PLO to the Peace Treaty was strongly adverse. At a meeting in Baghdad on March 31, 1979, the PLO and the eighteen Arab states attending the conference unanimously adopted the following political and economic resolutions.\textsuperscript{114}

(1) Political measures:

(a) to withdraw immediately all Arab ambassadors,
(b) to cut off political and diplomatic relations,
(c) to suspend Egypt's membership in the Arab League,
(d) to transfer temporarily the League's headquarters to Tunisia, and
(d) to suspend Egypt's membership in all inter-Arab organizations.

(2) Economic measures:

(a) to cut off loans, deposits, guarantees, bonds, contributions (financial, material or technical) to the Egyptian government;
(b) to ban economic aid given by Arab funds, banks and financial establishments;
(c) to refrain from purchasing Egyptian government bonds;
(d) to cut oil supplies to Egypt;
(e) to ban commercial exchanges with Egyptian public and private establishments which deal with Israel;
(f) to call for an economic boycott against all Egyptian individuals and institutions which deal with Israel.

Although the resolutions were adopted unanimously, the adoption came only after extensive and bitter debate among the members present. Saudi Arabia and its supporters favored less drastic resolutions; the PLO, Iraq and Syria were the leaders of the hard line policy. The Sudan, Somalia, Oman and Yemen elected to maintain diplomatic relations with Egypt after the sixteen other members of the Arab League had broken relations with Egypt.\textsuperscript{115}

Some members of the Arab League (particularly Saudi Arabia) had been extending substantial economic assistance to Egypt, amounting to approximately $1 billion a year.\textsuperscript{116} It was not immediately clear\textsuperscript{117}

\textsuperscript{114} \textit{Economist}, supra note 39.
\textsuperscript{115} N.Y. Times, May 1, 1979, at 3, col. 1.
\textsuperscript{116} \textit{Hearings on Middle East Peace Package}, supra note 19, at 43.
whether the sanctions against economic aid would apply to pre-existing commitments by Arab states to Israel; but as events developed, it became clear that they will be so applied, and that prior existing obligations will not necessarily be honored.\textsuperscript{118}

V. EFFECTS OF THE PEACE TREATY ON TRADE

Some of the immediate effects of the Peace Treaty on trade between the Middle East and the United States may be identified. At the outset, the Treaty should probably be viewed as giving greater stability to the entire area.\textsuperscript{119} However, any analysis of this broad subject requires a separate inquiry into the short term effects on the trade between the United States and Egypt, the United States and Israel, and the United States and other Middle Eastern countries. The phrase short term describes the period between the signing of the Treaty and the date on which Egyptian-Israeli negotiations over the status of the Gaza Strip, the West Bank, and Jerusalem are completed or broken off. Perhaps the phrase short term should be extended to the date when it becomes clear whether the negotiated settlement is acceptable to either all or most of the other Middle Eastern countries.

A. Trade With Middle East Countries (Other Than Egypt and Israel)

Let us look first at the question of trade between the United States and the Middle Eastern countries other than Egypt and Israel. The Treaty seems to have resulted in a much greater unity among Arab League countries (excluding Egypt) than existed previously, and a worsening of the relationships (at least temporarily) between the moderate Arab states (such as Saudi Arabia and Kuwait) and the United States.\textsuperscript{120} The Treaty also seems to have resulted in an entirely new relationship; almost all Arab countries are now not only opposed to Israel but equally opposed to Egypt. Note also that one of the resolutions proposed by Yasir

\textsuperscript{117} Id. at 39. At the hearings on the Middle East Peace Package, former Secretary of State Vance testified that "the indications are that the Baghdad participants would intend to carry out prior existing obligations."

\textsuperscript{118} Saudi Arabia had promised in 1978 to finance the purchase by Egypt of 50 F-5 E 'Tiger planes from the United States but indications seem to be that Saudi Arabia will not go through with this promise, N.Y. Times, May 22, 1979, at 3, col. 3.

\textsuperscript{119} Former Secretary of State Vance testified, supra note 102, at 29-30, in regard to the Middle East Peace Package:

The fact that Israel and Egypt have agreed to live in peace ... and to establish normal relations ... is a major step in changing the situation in that region. It is very hard to contemplate any conflict that could take place between Arab and Israel if Egypt were not a party to that conflict. ... [I]t will thus lead to greater stability in the area.

\textsuperscript{120} Secretary of State Vance told Congress that American relations with Saudi Arabia had deteriorated because of "clear and sharp differences" over the Egyptian-Israeli peace treaty. N.Y. Times, May 10, 1979, at 1, col. 1.
Arafat at the Baghdad meeting called for an oil, trade and financial boycott against the United States.\textsuperscript{121} This proposal was rejected.

In the short run, the Treaty of Peace probably will have little positive effect on the economies of the Middle Eastern countries, other than Egypt and Israel, unless a solution to the Palestinian problem acceptable to these Middle Eastern countries is developed. At the present time, it is not possible to say what solution (if any) will eventually be worked out. As previously noted,\textsuperscript{122} Egypt and Israel have agreed “to negotiate continuously and in good faith,” to achieve a comprehensive peace settlement in accordance with a “Framework for Peace in the Middle East Agreed at Camp David,” regarding those provisions of the Framework which relate to the West Bank and the Gaza Strip. The parties set themselves the goal of completing the negotiations within one year.\textsuperscript{123} The negotiations started in the latter part of May, 1979 but progress has been very slow. Until these negotiations are finished, trade between the United States and the Middle East countries other than Egypt and Israel probably will not be substantially affected by the Treaty of Peace.\textsuperscript{124}

The effects of the Peace Treaty and the related U.S. commitment\textsuperscript{125} will certainly have a positive effect, even in the short run, on trade between the United States, Egypt and Israel.

\textbf{B. Trade With Egypt}

In the long run, the economy of Egypt will benefit substantially from

\textsuperscript{121} N.Y. Times, April 1, 1979, at 8, col. 2.
\textsuperscript{122} INT'L LEGAL MATERIALS, supra note 1 at 530. This undertaking is contained, not in the Treaty of Peace or its annexes, but in the joint letter of March 26, 1979 to President Carter from President Sadat and Prime Minister Begin.
\textsuperscript{123} Id.
\textsuperscript{124} Id.
\textsuperscript{125} Critics in the United States of the Treaty of Peace might be tempted to claim that OPEC's two substantial increases in the price of oil, which occurred in March and June, 1979, were motivated in part by a desire to retaliate against the United States for its leading supportive role in the negotiation of the Treaty of Peace. There seems to be no basis on which to make such a claim. The text of the OPEC Communique on Oil at the end of the ministerial meeting in Geneva on June 28, 1979 makes no inference to any such connection. N.Y. Times, April 29, 1979, at D-4. The price increases applied to all sales whether to the United States or to others, and were agreed to by all OPEC members. The motivation for the increase appears to have been the general shortage of oil supplies caused by the reduced oil production by Iran.

The Carter Administration has encouraged other industrialized countries to assist in economic aid to Israel and Egypt but it is not certain what part other governments may play in assisting Egypt and Israel after the Peace Treaty. President Sadat is hopeful that Germany and Japan will increase assistance at this time, and the World Bank is considering an increase in aid to Egypt from $200 million to $300 million per year. See Hearings on Middle East Peace Package, supra note 102, at 64-65 (statement of Joseph C. Wheeler, AID Asst. Administrator).
a reduction in military expenditures and a redeployment of expenditures from the military and nonproductive areas to the development of its economy. In the short run, however, Egypt believes that it must keep its military expenditures at a high level because, as former Secretary of State Vance testified, "both Egypt and Israel are taking steps into the unknown." Thus, in the short run, trade between Egypt and the United States probably will be affected in the following ways:

(1) The additional military and economic aid which Egypt will be receiving from the United States will probably result in some increase in American exports to Egypt over the next three years. The increase in aid will amount to approximately $0.6 billion per year for the next three years.

(2) Apart from the effect of this additional military and economic aid package, the goodwill engendered by the United States in supporting the negotiation of the Peace Treaty will have, at least in the short term, a role of some importance in expanding U.S. exports to Egypt.

(3) U.S. trade with Egypt will increase to some extent yet undetermined, since products of American companies previously on the Egyptian boycott blacklist will apparently be welcome once more in Egypt. For example, it was announced recently that after an absence of more than ten years, Coca Cola will again be available in Egypt.

(4) In January of this year, the U.S. Department of Commerce took the position that an Egypt-Israel peace settlement (in addition to providing greater financial resources for economic development in Egypt and Israel) would give rise to opportunities for trade and economic cooperation between Israel and Egypt which, in turn, might result in additional sales and investment by American companies in the areas of communications, transportation, agriculture, tourism, and energy. This may indeed prove true in the long run; but, until an overall Mideast peace is established, prospects for any substantial increase in U.S. exports to Egypt as a result of these factors seem somewhat remote.

---

126 Id. at 15.
127 In general, funds made available for aid to a foreign country may be used for procurement outside the United States only if the President makes certain determinations. 22 U.S.C. § 2354 (1972).
128 Important portions of the military assistance will be provided by the United States military forces out of its existing inventories. For example, a proposed sale of a $594 million of planes and missiles from U.S. Air Force inventories has already been announced. Wall St. J., July 9, 1979, at 14, col. 1.
129 MIDDLE EAST ECON. DIG., supra note 94.
130 Id.
132 Looking back on the five years following the end of World War II there were few
(5) U.S. tourist trade to Egypt may increase as a result of the peace, and this in turn may result in some increase in U.S. imports from Egypt.

(6) Prior to the signing of the Peace Treaty, Israel had required that the following clause appear on bills of lading:\(^{133}\)

This vessel is not to call at or enter the territorial waters of any Egyptian, Yemeni, Jordanian, Saudi Arabian, Iraqi, Lebanese, or Syrian port (or Kuwaiti port) prior to unloading in Israel unless the ship is in distress or subject to force majeure. Transshipment is permitted.

Paragraph 7 of Article 6 of Annex III to the Treaty, Protocol Concerning Relations of the Parties, provides that access to the ports of each party shall be granted "on the same conditions generally applicable to vessels and cargoes of other nations."\(^{134}\) This clause is to be operative "upon completion of the interim withdrawal." The removal of "Egyptian" from the Israeli bill of lading clause (which would be required by Article 6 (7)) would facilitate shipping both to Egypt and to Israel because ships calling on Israeli ports would also be free to call upon Egyptian ports, and might, in the long run, provide better service and/or lower freight rates.

(7) The reductions in economic aid from other Arab countries to Egypt could well have a substantially adverse effect on trade with the United States since the Egyptian government will have less foreign exchange for imports.\(^{135}\) However the Egyptian economy will benefit from the oil produced at the Israeli-developed off-shore oil wells in the Gulf of Suez which are to be handed over to Egypt in connection with Israel's withdrawal from the Sinai.\(^{136}\) Furthermore, the return of the Sinai Peninsula to Egypt is expected to result in much greater exploratory efforts in that area.\(^{137}\) These benefits may serve to partially offset any losses in foreign assistance.

The Arab countries other than Egypt may seek to increase their own military forces to compensate for a possible lack of Egyptian support. If a solution to the Palestinian problem is reached between Egypt and Israel that is not satisfactory to the Palestinians or to other Arab countries, it is difficult to estimate the effect upon trade between the United States and the other Arab countries; but the result could well be adverse.

Jananese or German tourists in the United States. Of course, the Egyptian-Israeli situation is not precisely analogous.


\(^{134}\) INT’L LEGAL MATERIALS, supra note 1, at 391.

\(^{135}\) *Hearings on Middle East Peace Package*, supra note 19, at 25.

\(^{136}\) *ECONOMIST*, supra note 38. It has been estimated that perhaps 30,000 barrels per day, about twenty percent of Israel’s current requirement of oil, is produced at these fields.

\(^{137}\) Wall St. J., July 9, 1979, at 14, col. 1.
C. Trade with Israel

To be prepared for unknown contingencies, Israel, like Egypt, must keep military expenditures at a high level. However, the costs of peace in the case of Israel are far worse than in the case of Egypt. Under the Peace Treaty, Israel is required to withdraw from all of its military installations in the Sinai, including the major military air bases it has constructed in the Sinai. The U.S. Secretary of Defense estimated the cost of these withdrawals at between $3 billion and $4 billion. The Israeli estimate is from $4 to $5 billion. U.S. aid will cover about $3.0 billion of this amount, leaving possible incremental expenditures of between $1 billion and $2 billion. Thus although Israel, as a result of the conclusion of the Peace Treaty, will cancel much of the previously planned expansion of its armed forces, its future military budget will remain high until a stable, peaceful settlement throughout the Middle East is achieved.

The short run effects of the Treaty of Peace on trade between Israel and the United States may therefore be summarized as follows:

1. The additional military aid package described above will surely result in substantial U.S. exports to Israel. The U.S. Air Force will be the project manager for the two new bases to be constructed in the Negev, and the U.S. Army Corps of Engineers will be the construction agent. Of the total $3 billion in U.S. aid, $0.8 billion will be made available through grant-aids of defense articles and services. U.S. construction firms will be the principal contractors for the air base construction jobs.

2. Treaty provisions relating to the Suez Canal, the Strait of Tiran and the Gulf of Aquaba, especially the provisions assuring that Israeli ships and cargoes destined for or coming from Israel shall enjoy the right of free passage through the Suez Canal and its approaches, should be of substantial benefit to U.S trade with Israel in reducing costs and cutting shipping time. Note that these rights became operative as soon as the Treaty ratification instruments were exchanged.

3. U.S. Defense Secretary Brown's letter to Israeli Defense Minister Weizman stated that in addition to the assistance that the Presi-
dent was prepared to recommend to Congress, Secretary Brown also was prepared to enter into a memorandum of agreement with former Defense Minister Weizman for cooperative research and development and military procurement. The agreement would provide for increased research and development exchange between the two countries and for removal of barriers to competitive bidding by Israeli industries in the U.S. Defense market. In 1978, Israel's exports of arms amounted to $500 million, and in 1979 Defense Minister Weizman indicated that they are expected to rise to $600 million.⁴

(4) Prior to the signing of the Peace Treaty, Israel claimed that it had negotiated a relaxation of the tight U.S. restrictions on the export of Israeli-made weapons containing American components to other countries. Israeli arms exports could be substantially increased by this relaxation of controls.⁴ There is no explicit statement in Secretary Brown's letter or in his testimony before the Committee at the open hearings as to any relaxation of re-export provisions. However, it would, perhaps, not be abnormal to include such a provision in the proposed agreement.

(5) The delivery of the off-shore oilfields in the Gulf of Suez to Egypt will increase Israel's oil imports by placing a further call on its foreign exchange requirements, thus adversely affecting the amount of other imports.

(6) Israeli exports to Egypt may well increase under the Treaty and the agreement on trade and commerce which is to be negotiated.⁴ Any such increase in Israeli exports would increase its ability to import from other nations. It is difficult, however, to estimate how much of an increase in Israeli exports to Egypt can be expected and within what period. As previously noted,⁴ Article 2 of Annex III to the Treaty becomes effective only upon completion of the interim withdrawal, and it is quite possible that no substantial increase in trade between the two countries will occur until an agreement on trade and commerce is reached.

(7) The present high rate of inflation in Israel⁵ may well be increased as a result of the military relocations from the Sinai despite Israel's efforts to insulate its economy from the shock. A further sharp increase in the rate of inflation could adversely affect the Israeli economy and its import and export trade.

---

⁴⁸ INT'L LEGAL MATERIALS, supra note 1, at 362.
⁴⁹ Id.
⁵⁰ The official Israeli government estimate of inflation for 1979 is 80 percent; unofficially, it is estimated at 110%. ECONOMIST, July 28, 1979, at 12.
VI. LONG TERM EFFECTS OF THE TREATY ON TRADE BETWEEN THE
UNITED STATES AND THE MIDDLE EAST

Obviously, this is a much more complicated and conjectural subject
than the short run effects. Any attempt to answer this question would
necessitate making certain predictions as to the vital negotiations now
under way in regard to the Gaza Strip, the West Bank and Jerusalem.
These predictions could include the following:

(A) the negotiations between Egypt and Israel are completely un-
successful and are broken off finally and completely, with the following
alternative results:

(1) Both Egypt and Israel denounce the Treaty of Peace; or
(2) The Treaty of Peace continues in effect and all parts of the
Treaty and annexes are completely carried out.\footnote{There seem to be no specific provisions of the Treaty of Peace requiring cancellation
of the Treaty should the negotiations over the Palestinian problem be unsuccessful. However, it is undoubtedly an issue of great intensity between Egypt and Israel. At the open
hearings on the Middle East Peace Package there apparently was no suggestion that the
Treaty would be abrogated if the negotiations were not successful. However, the successful
negotiation of this issue is considered by some to be a \textit{sine qua non} of the Peace Treaty's
continuing effect. \textit{Economist, supra} note 4, at 61-62, cols. 2, 3.}

(B) That negotiations between Egypt and Israel are completely suc-
cessful as between them, and all parts of the Treaty and Annexes are
completely carried out. The following alternatives with respect to the
other Middle Eastern countries would need to be considered:

(1) The settlement negotiated between Egypt and Israel is ac-
cceptable to all of the other Middle Eastern countries;
(2) The settlement negotiated between Egypt and Israel is ac-
cceptable to none of the other Middle Eastern countries; or
(3) The settlement negotiated between Egypt and Israel is ac-
cceptable to some of the Middle Eastern countries but not accept-
able to the hard line countries.

Each of these various alternatives in turn would need to be analyzed as to
the degree of acceptability and nonacceptability and the long range ac-
tions taken by each country in regard to Egypt or Israel. A detailed ex-
amination of the various possibilities does not seem profitable at this stage.

If a solution to the Palestinian problem is found that is acceptable to
Israel, Egypt and the other Arab countries, a broader peace can be envis-
egaged with more favorable consequences for U.S. trade with the Middle
East than can be envisaged under the present Treaty. Not only would
U.S.-Middle East trade be expanded, but undoubtedly there also would
be a fairly sharp reduction in U.S. exports of arms to that area. However,
if the negotiations called for under the Treaty do not result in a Palesti-
ian solution acceptable to the Arab countries generally, U.S. trade with those Arab countries not willing to accept the negotiated solution could well be adversely affected. One can only hope that the present Treaty, which is at least a first step in the direction of a broad settlement of Middle Eastern problems, will eventually bear fruit in the difficult negotiations to come, yielding a solution acceptable to most if not all of the parties concerned.\footnote{This article's coverage is through December 1, 1979.}