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01A	memo	From: Smith to HAK	12/12/68	B

FILE GROUP TITLE

BOX NUMBER

HAK Office Files

1

FOLDER TITLE

8

RESTRICTION CODES

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John McClaughry
Special Assistant to Mr. Nixon
in Community Affairs

*Larry acknowledges
with a probably
delay.*

Nixon Agnew
Campaign Committee

Staff of Richard M. Nixon
450 Park Avenue
New York, N. Y. 10022
(212) 661-6400

12/3

~~No Reply~~

Henry ---

Congratulations on your appointment!
The President-elect has made a wise
choice.

Enclosed, a venerable memo on East West
trade I am convinced it makes good
sense. Bob Ellsworth bought it big 4
years ago. There is a speech that goes
with it, which you can have if you're
interested.

Also RN quote on world law, which I
think should be the central theme of
our foreign policy in the long view.

I'm on the domestic thing at the moment,
and whatever expertise I had in foreign
affairs has been largely dissipated. But
if you want to chew any of this over please
call.

John McClaughry

TO: Issues Review Board
FROM: J. McClaughry
SUBJECT: East-West Trade

6
East-West Trade

601

12/4

6/29/66

DEC 4 1966

Background: Since the beginning of the Cold War it has been U.S. practice, under four presidents, to maintain a large "positive list" of items that cannot be exported to communist-ruled nations. Legislation in effect prohibits the granting of most-favored-nation treatment to communist controlled countries with the exception of Poland and Yugoslavia, which were differentiated by Congressional action in 1963. Over the past decade the other industrialized nations of the West have made drastic reductions in their "positive lists" and have expanded trade manyfold with the East. Realizing that their West European colleagues were obtaining large economic benefits from East-West trade, the American business community has become overwhelmingly in favor of expanding such trade in all but the most obvious military items. While such official policy, since 1956, has been that East-West trade is acceptable, except in the prohibited items, the regulations have been so vague and the administration so uncertain that the mere process of getting export licenses has become an almost insuperable obstacle. It is apparent to all observers that present U.S. trade policy is a shambles; that we are completely out of step with our Allies with no prospect of an agreement on our terms; that foreign businessmen are getting profits that Americans could be getting; and that increased trade between the industrialized nations of East and West is probably inevitable.

Theories: There are essentially two classes of theories on the question. The first class has only one principal variety--the restrictive theory. This holds that East-West trade is per se undesirable and should be opposed insofar as possible. A variant of this theory is that East-West trade is basically undesirable, but that government should not actively oppose what private business wants to do except where security is clearly involved. This variant, despite the intentions of the present Administration, constitutes the effective theory behind government policy today.

In the second class are theories which see expanded East-West trade as desirable; each, of course, makes exceptions for items obviously related to military needs.

A) The economic only theory: This theory is based on the Law of Comparative Advantage--mutual trade is mutually beneficial. Increasing East-West trade will help both sides and, if U.S. exports exceed imports (as they would almost certainly do), the U.S. balance of payments problem would be eased. Profits now flowing to our allies would start to flow here.

B) The economics plus politics theory: This theory comes in two forms. The first, resembling the economics only theory, suggests that East-West trade will not only produce mutual economic benefits, but will also gradually exert a subtle influence that will mellow relations between East and West, ameliorate

the harshness of the communist regimes, promote travel and cultural exchange, and in general have a pervasive, beneficial effect on international relations. This generally does not see increased trade as a political weapon in any overt sense, but relies on insidious side effects to produce bonus benefits.

The other form of this theory sees increased trade as a reward to be given in return for a political concession, such as tearing down the Berlin Wall, acquiescing in a blockade of North Vietnam, and the like. It sees trade as a part of a strategy for obtaining political benefits not directly related to the trade issue.

The "passive" form of the economics plus politics theory is the one now being formulated by the Johnson Administration under the slogan "building bridges with the East." The "active" form has been espoused by Senators Javits and Mundt, to name two.

C) The economics plus law theory: This theory accepts as a premise that by and large, wherever possible, international trade should be kept separate from international politics. Instead, its goal is to bring the communist nations into the legal institutions that have made "capitalistic" trade possible between Western nations: impartial third party adjudication of disputes, anti-dumping agreements, currency convertibility, patent and copyright protection, decentralized contracting authority within state trading systems, waiver of sovereign immunity for state trading corporations, etc. Like the "active" form of the economics plus politics theory, however, the economics plus law theory sees trade as a part of a strategy, but with this important distinction: where the economics plus politics advocates envision expanding trade in return for some concession--a zero-sum interaction whereby the other side must pay politically for the privilege of obtaining the economic benefits--the economics plus law advocates envision expanding trade as a means of building international order by causing the communist nations to accept the Western notions of orderly legal behavior in the international arena--a non-zero-sum interaction where the benefits of the interaction accrue to both parties at a higher level than the mere exchange of ephemeral concessions. One strength of the economics plus law theory is that it is consonant with the strong American aversion to state trading, which the economics plus politics theory, carried to its logical conclusion, will produce.

This theory offers advantages, too, over the economics only theory. Businessmen are troubled about "trading with the devil" for mere material benefit. By envisioning such trade as part of a strategy for order and freedom, these guilt feelings may be assuaged, without at the same time moving down the road to federal control over the export economy.

But perhaps the most attractive feature of the economics plus law theory is that it can make a substantial contribution to the construction of a world of law and order--an ancient American dream. The communists have steadfastly rejected almost every attempt to institutionalize the rule of law and impartial third party adjudication, claiming that existing international law is a product of the capitalist exploiters and that there can be no such thing, given the nature of the class struggle, as a truly impartial judge. The Soviet Union,

however, has now adhered to the International Patent Convention, despite Marxist doctrine that the fruits of invention belong to the entire proletariat and not to just the inventor. This concession is obviously an attempt to promote a more favorable climate for the expansion of trade with the West. The Soviet Union has on at least one recent occasion permitted a state trading corporation to submit to arbitration, waiving sovereign immunity, with the Stockholm Board of Trade--another milestone. If advancing the economics plus law theory can produce progress toward communist acceptance of the Western idea of the rule of law and the legal institutions through which law is applied, this would be a development of great benefit to all mankind.

Current developments: On February 16, 1965, President Johnson appointed a special committee on U.S. Trade Relations with Eastern European Countries and the Soviet Union, chaired by J. Irwin Miller. On April 29, 1965, the Committee recommended that the President be given discretionary authority to negotiate commercial agreements with individual Communist countries when he determines any such agreement to be in the national interest and to grant them in such agreements the "most favored nation" treatment according to all our other trading partners."

In his 1966 State of the Union Message, the President asked Congress to give him most-favored-nation authority, as recommended by the Miller Committee. On May 11, Secretary Rusk transmitted a draft bill (S 3363) to achieve this objective. Immediate opposition arose from Rep. Wilbur Mills (D. Ark.), Chairman of the House Ways and Means Committee to which the bill was referred. It is not expected that the Administration will press for action on the bill during the 89th Congress, but some hearings may be held in the Senate. The subject will undoubtedly be a major issue of the 90th Congress.

Advantages of advocating the economics plus law theory:

1. The emphasis on the separation of trade and politics will enlist the support of "conservative" economists, like the University of Chicago school.
2. This theory views increased East-West trade as a strategy for advancing the American objectives of liberty, law, and order in the world, as opposed to the Administration's Pollyanna notions of gradual sodality.
3. This theory provides businessmen eager to expand trade with a rationale for so doing, calming their doubts over "trading with the devil."
4. This theory can tap the American idealism on behalf of a world of law and order--a strain which runs deep in the Anglo-Saxon nature.
5. The theory recognizes the fact of life that trade is going to expand with the East in any case.

QUOTES ON WORLD LAW

Richard M. Nixon,
Academy of Political Science
April 14, 1959

"More and more the leaders of the West have come to the conclusion that the rule of law must somehow be established to provide a way of settling disputes among nations as it does among individuals...I am now convinced, and in this I reflect the steadfast purpose of the President and the wholehearted support of the Secretary of State and the Attorney General, that the time has now come to take the initiative in the right direction of establishment of the rule of law in the world to replace the rule of force...We should be prepared to show the world by our example that the rule of law, even in the most trying circumstances, is the one system which all free men of good will must support."

Dwight D. Eisenhower
State of the Union Message
January 1959

"It is my purpose to intensify efforts during the coming two years...to the end that the rule of law may replace the obsolete rule of force in the affairs of nations."