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FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
#4a letter	G. Griffith Johnson to Charlie confidential 4 p	2/65	A
#5 NSAM	NSAM 326	3/17/65	A
#5a, #6	duplicates of #5		

## FILE LOCATION

National Security File, NSAM File, NSAM 326

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Copy sent to Col. C. James George,  
Exec. Secy to the Administrator, NASA,  
12/3/65

THE WHITE HOUSE  
WASHINGTON

April 13, 1965

cc: Mr. B. Smith  
1a S

MEMORANDUM FOR  
MR. J. WILLIAM DOOLITTLE

SUBJECT: NSAM No. 326

Thank you for sending me the latest version of your committee's report in response to National Security Action Memorandum No. 326.

This is to confirm that the deadline for the final report has been shifted from April 15 to May 5, 1965.

F. M. Bator

Francis M. Bator



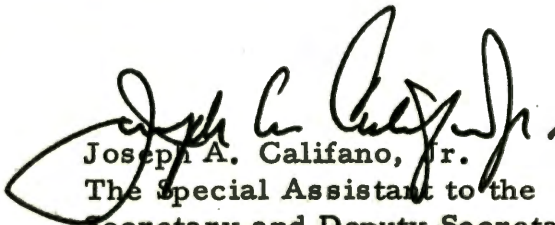


OFFICE OF THE SECRETARY OF DEFENSE  
WASHINGTON, D.C. 20301

11 SAM 324  
✓  
2  
MAR 25 1965

MEMORANDUM FOR Mr. J. William Doolittle  
First Assistant, Civil Division  
Department of Justice

Pursuant to our telephone conversation of March 24, 1965, we  
have designated Mr. Charles K. Nichols, Deputy Director of the  
Office of Foreign Economic Affairs (ISA), (OX7-4145) to partici-  
pate with you in activities related to National Security Action  
Memorandum 326, dated March 17, 1965.

  
Joseph A. Califano, Jr.  
The Special Assistant to the  
Secretary and Deputy Secretary  
of Defense

cc:; Mr. McGeorge Bundy



OFFICE OF THE SECRETARY OF THE TREASURY  
WASHINGTON

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a copy of this  
DEC 29 1964  
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Dear Griff:

Recent incidents have led us to believe that the desirability of continuing to administer the Cuban Assets Control Regulations as they apply to foreign subsidiaries in the same manner as heretofore should be reviewed.

You will recall that, when the issuance of the Regulations was originally being considered, your Department requested that they contain a general license authorizing foreign subsidiaries of U. S. firms to trade with Cuba. The request was based principally on a desire to avoid foreign policy difficulties with Canada. Although the Treasury was opposed to any such general license being issued, we acceded in the understanding that your Department was being successful in persuading subsidiaries to refrain voluntarily from Cuban trade.

Subsequently, it was mutually agreed to interpret the license as not applying to U. S. citizens who, as officers or directors, were exercising or in a position to exercise managerial control of subsidiaries trading with Cuba. It was of course recognized that this interpretation would have the effect of precluding trade with Cuba by subsidiaries in certain cases. The rationale for this restrictive interpretation was that, while the Canadians might have some basis for contending that we ought not to control entities incorporated under Canadian law, they could not similarly object to our control over U. S. citizens.

However, the Canadians have objected, and with success, in two recent cases, i.e., the Allis Chalmers and Allied Maintenance cases. In both of those cases, the principal executive personnel of the U. S. subsidiaries in Canada were U. S. citizens. After Canadian protests, your Department requested the issuance of licenses which, by authorizing the participation of the U. S. citizens, permitted in one case the shipment of control valves to Cuba, and in the other case the service and repair of Cuban airplanes at Gander Airfield. These protests have been reinforced by the Canadian Embassy's memorandum No. 663 of November 10, 1964, to the Department of State addressed both to the general question of control of subsidiaries and to the particular Allied Maintenance case.

A third case has now arisen. The Standard Oil Company of New Jersey has informed us that their 70-percent-owned Canadian subsidiary, Imperial Oil Company, has fueled Cuban airplanes at

*Copy down on New grounds?*  
*quotation gone*  
*Para - don't give signal*  
*May get some people at*  
*mansion who call informally*  
*What do we get in return*



Halifax between January and June of this year. Jersey Standard states that Imperial Oil is the sole supplier of fuel at this airport, and it anticipates further requests from Cuba for such fuel. Jersey Standard has therefore asked whether a Treasury license is needed for such transactions, and whether such a license would be granted. The firm states that two of nine directors of the Canadian subsidiary are U. S. citizens. In this connection, we understand from a former Jersey Standard employee now in the Commerce Department that, typically, Jersey Standard places on the board of all its foreign subsidiaries a U. S. citizen whose assignment is to represent the controlling stockholders and, for all practical purposes, to set major policy for the subsidiary. Under these circumstances, it would appear that the two U. S. citizens who are directors of Imperial Oil Co., Ltd., would need a Treasury license if the Canadian firm is to continue to fuel Cuban planes.

In view of the Canadian protests which will undoubtedly arise if a license is denied, and in view of the positions taken by your Department in previous cases, it appears likely that licenses will be requested for foreign policy reasons in this and other cases of this nature which may hereafter arise. If so, it is our view that the Treasury should no longer attempt to apply its Regulations to subsidiary cases. In dealing with the banking and business communities, it has been our experience that it is essential to administer drastic Regulations of this character in an impartial manner, and to make exceptions only when particular facts exist which serve to differentiate the case for which an exception is sought from other cases.

Applying this rule to the Canadian situation, we believe that exceptions can properly be made on humanitarian grounds for U. S. citizen participation in shipments by subsidiaries of foods and drugs from Canada to Cuba, and such licenses have been issued at the request of your Department. On the other hand, we see no basis for an exception in the Allis Chalmers, Allied Maintenance or Jersey Standard cases other than the mere existence of Canadian protests. This is particularly true in the Allied Maintenance case, where the possibility of Canadian protests was fully recognized and carefully discussed with your Department on three separate occasions before the ruling was made by the Treasury that a license should be denied.

If, as we see it, no basis for an exception in such cases exists other than Canadian protests, and since Canadian protests may be anticipated in many if not all future cases, it would then



be preferable in our view to abandon present attempts to control Canadian subsidiaries through the Cuban Assets Control Regulations, rather than to continue what amounts to a paper control serving only to exacerbate relations.

I would therefore appreciate the views of your Department on the following alternatives, particularly in the light of the Allied Maintenance and Jersey Standard cases, both of which involve the servicing and/or the fueling of Cuban aircraft in Canada:

(1) Abandoning all subsidiary controls under the Cuban Assets Control Regulations;

(2) Continuing the existing narrow interpretation precluding U. S. citizens who are officers or directors of foreign subsidiaries from participating in trade by the subsidiaries with Cuba. As indicated above, the Treasury does not feel that it can properly continue along this line unless exceptions are limited to cases where unusual factual distinctions exist. In our view, such distinctions were not present in the Allis Chalmers or Allied Maintenance cases, and do not appear to be present in the Jersey Standard case; or,

(3) Revoking the general license for subsidiaries, despite the Canadian protests which will ensue. This course would be preferable from our viewpoint, but we recognize that foreign policy considerations exist which apparently may not permit it to be followed.

I am sending a copy of this letter to Mr. McGeorge Bundy for his information and any comments he may have.

Sincerely yours,

Charles A. Sullivan  
Assistant to the Secretary

The Honorable  
G. Griffith Johnson  
Assistant Secretary  
for Economic Affairs  
Department of State  
Washington, D. C.

cc: Mr. McGeorge Bundy  
The White House

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DEPARTMENT OF STATE  
BUREAU OF INTER-AMERICAN AFFAIRS  
OFFICE OF THE COORDINATOR  
OF CUBAN AFFAIRS

DATE 2/23/65

TO: Mr. Gordon Chase, White House

Gordon - Per your request  
to John Cummins.

*Charlie Calhoun*

Rm 6909 - ARA/CCA  
Ext. 8544  
~~8676~~ ~~8539~~



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DECLASSIFIED  
E.O. 12958, Sec. 3.5  
State Dept. Guidelines

By g NARA, Date 12-15-95

Dear Charlie:

In your letter of December 29, 1964 you indicated certain dissatisfaction with the administration of the Cuban Assets Control Regulations as they affected subsidiaries in which United States nationals had a management responsibility. Your letter reflected the difficulties that have arisen from time to time as a result of granting a general exception from the regulations to foreign based companies owned by United States nationals, (sec. 515.541), while United States personnel who may be involved in the management of such subsidiaries are not similarly exempt. The problem, as you of course know, relates primarily to Canadian subsidiaries of United States firms.

In your letter you listed three alternatives. One would be to repeal section 515.541--thus bringing all subsidiaries of United States firms under the Cuban Assets Regulations. Under present circumstances, we would be opposed to this alternative. The effect on the economic isolation of Cuba of such a proposal would be outweighed by the adverse effect on our relations with friendly foreign countries, particularly Canada. As you recall, section 515.541 was specifically drafted in order to minimize the resentment of foreign countries at the attempt by the United States to reach beyond its borders to enforce our economic controls. The issue is a particularly irritating one for Canada in view of the feeling in that country that American business has "colonized" Canada and that the Canadian Government should be the primary regulator of business located in the territory of Canada, regardless of ownership.

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The second alternative that you suggest is complete abandonment of the attempt to control the foreign operations of non-banking subsidiaries located abroad. This could be done by modifying or eliminating paragraph (a) of section 515.541, relating to United States personnel directly engaged in the management of firms which themselves are exempt from the Cuban Assets Regulations. As a rule, the Department of State favors restraint in the exercise of United States jurisdiction beyond our borders. The second alternative would be consistent with this rule provided there were safeguards built into the regulations which would prevent individual American citizens from evading the regulations simply by establishing a foreign subsidiary to engage in the Cuban trade. However, at the present moment, we believe a step along these lines might be misinterpreted generally as indicating an intention on our part to relax economic pressures on Cuba or as suggesting a belief on our part that the need for economic pressure on Cuba is reduced. We are most interested in preventing such misinterpretations. For these reasons, we do not recommend the second alternative.

The third alternative which you pose is substantially the one that is being followed at present. Under this arrangement non-banking firms organized in and operating abroad are exempt from the controls, but where United States nationals are actively engaged in the management of such firms, the managers require specific licenses for transactions involving Cuba. In the past, requests for such licenses have been considered on a case-by-case basis, and there have not been specific criteria for handling such

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such requests. While we realize that there is some awkwardness in handling requests for licenses on this basis, it seems to us that for the present this is still the preferred course.

We do not think that we are in a position to lay down general guidelines on when such licenses should be granted. Clearly one factor is the prospect of legal liability of the subsidiary firm; another is the good faith of the firm in entering into the transaction and in disclosing its details; another is the interest shown in the particular case by the foreign government; and another is the nature of the transaction, as to duration, as to the goods or services being provided, and as to value of such goods and services. We believe, however, that within the framework of these general considerations our two departments will be able to continue to reach agreement in specific situations.

In short, we recognize certain administrative inconvenience in administering this part of the Cuban Assets Control program. We believe, however, that the present system, which may very well involve our two departments in a series of communications on individual cases, is the best compromise between the conflicting interests of continuing our policy of economic isolation of Cuba, and continuing to exercise restraint in the assertion of jurisdiction, with a view to preserving a favorable investment climate for American business in foreign countries.

With

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-4-

With respect to the Imperial Oil case which you raise in your letter, we are not yet in a position to render any advice, but we propose that this matter be fully explored with the appropriate officials of the Standard Oil Company (New Jersey).

Sincerely yours,

G. Griffith Johnson  
Assistant Secretary

L/E:AFLowenfeld:mjb:fa)  
2/4/65; 2/16/65

Cleavances: E/MDC - Mr. Wright  
AZA/OCA - Mr. Crispinus  
EUR/BNA - Mr. Brandon

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March 17, 1965

NATIONAL SECURITY ACTION MEMORANDUM NO. 326

TO: The Secretary of State  
The Secretary of the Treasury  
The Secretary of Defense  
The Attorney General  
The Secretary of Commerce  
The Director of Central Intelligence

SUBJECT: The Foreign Assets Control Regulations, Issued  
on December 17, 1950, and the Cuban Assets  
Control Regulations, Issued on July 8, 1963

It is requested that the Attorney General coordinate an inter-departmental review of the above Regulations, with particular attention to the application of the Regulations to foreign subsidiaries and affiliates of American companies. Consideration should be given to:

- The effectiveness of the Regulations for purposes of economic denial;
- The effect on the position of American business abroad;
- The impact on the foreign relations and foreign policies of the United States.

Mr. Francis Bator will be the staff officer assigned to follow the review.

The results, and any recommendations to the President, should be reported by April 15.

McGeorge Bundy

FMB:mst  
3/16/65

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DECLASSIFIED

Authority NSC memo 8-3195  
By 4 NARA, Date 12-15-96

~~SECRET~~

March 17, 1965

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3/16/65

DECLASSIFIED  
Authority NSC Memo 8-3195  
By g NARA, Date 12-15-99



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THE WHITE HOUSE

WASHINGTON

~~SECRET~~

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*McGeorge Bundy*  
McGeorge Bundy

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*Dispatched 3/18/65*

*Repts. #107-112*

*1 cc in: Bator  
C. Johnson  
NSC Files*

*cy to: Col. C. J. George, NASA*

DECLASSIFIED

Authority *NSC Memo 8-31-95*  
By *4* NARA, Date *12-15-95*

7  
THE WHITE HOUSE  
WASHINGTON

March 16, 1965

Mac:

I have checked this with Dillon, Mann and Ball, and Nick Katzenbach. They are all agreeable. I specifically raised the issue of chairmanship with Dillon. He agrees that under the circumstances (his circumstances), a neutral chairman is a good idea, and he likes the idea of letting Justice do it.

I put in a short deadline; it would be useful to have the results before the Miller Committee is all done. (I will explain to Miller that we are going ahead with this independently of his operation because it is mainly China-Cuba business, but that they will have a chance to have their say if they wish.)

FMB