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STATEMENT OF

J. KENNETH FASICK

DIRECTOR, INTERNATIONAL DIVISION

BEFORE THE

SUBCOMMITTEE ON ANTITRUST, MONOPOLY AND

BUSINESS RIGHTS

OF THE

SENATE JUDICIARY COMMITTEE

ON

[U.S. PARTICIPATION IN THE
INTERNATIONAL ENERGY AGENCY] DLG01104

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Mr. Chairman and Members of the Subcommittee:

We welcome the opportunity to discuss GAO's work concerning U.S. involvement in the International Energy Agency (IEA), and the relationship of the results of that work to the antitrust defense provided U.S. oil companies that participate in the IEA.

During the last 2 years, we issued seven reports that dealt with various aspects of the International Energy Agency and the International Energy Program and, in July, we started another review which we expect to complete next spring. Before discussing our current review, I would like to briefly touch

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on some of the points made in our earlier reports. (Attachment 1 is a listing of the seven reports.)

In our October 21, 1977, report on "U.S. Oil Companies' involvement in the International Energy Program", we noted several matters related to the IEA allocation system's test and IEA's emergency management system in general which we believed might pose future problems. These included:

--the potential anticompetitive impact of exchanges of confidential and proprietary data,

--the monitoring responsibility of Federal Trade Commission and Justice Department employees, and AGC00059 AGC00037

--U.S. Government recordkeeping requirements.

These areas are important because they directly affect the ability of the Federal Trade Commission and the Justice Department to fulfill their major Energy Policy and Conservation Act responsibility--monitoring oil company participation in the International Energy Program (IEP) to minimize anticompetitive effects, while substantially achieving the purpose of the IEP.

Our January 3, 1978, report titled, "More Attention Should be Paid to Making the U.S. Less Vulnerable to Foreign Oil Price and Supply Decisions," concluded that the United States should continue its involvement in the IEA and continue to develop the national emergency sharing organization and demand restraint programs which are prescribed as parts of the emergency allocation system. However, we added that it must be recognized that the

IEA emergency allocation system may not work unless the United States and other IEA nations undertake measures to significantly reduce their dependence on Organization of Petroleum Exporting Countries oil supplies.

In that report, we also reviewed information supplied to the IEA by five major U.S. oil companies submitted for the 2nd quarter of 1976 to determine its accuracy and reliability. On the basis of our examination, we concluded the companies were generally reporting accurate information in accordance with government regulations, and the data fairly represented the price and volumes of their acquisitions of OPEC crude oil for that period. We also noted the possibility that important oil producing nations could intimidate IEA nations in such a way as to effectively neutralize the IEA's emergency sharing system once activated.

More recently, our reports on the Iranian oil cutoff--"Analysis' of the Energy and Economic Efforts of the Iranian Oil Short Fall," issued March 5, 1979, and "Iranian Oil Cutoff: Reduced Petroleum Supplies and Inadequate U.S. Government Response" issued September 13, 1979--disclosed that, while the Iranian disruption was significant, it was not serious enough to trigger the IEA emergency allocation system. Six of the 19 U.S.-based oil companies we reviewed, however, did allocate crude oil supplies in a manner similar to that provided for

under the IEA agreement. As a result of the methods used to allocate crude oil supplies, the U.S. lost an additional 200,000 barrels a day.

Concerns about IEA were again echoed in our June 19,1979, report on Factors Influencing the Size of the U.S. Strategic Petroleum Reserve.

The U.S. Government position is that the IEP oil sharing system will work. However, our discussions with officials of the Department of Energy and State revealed doubt and concern about what would happen in the event of a severe or extended supply disruption. This doubt was based upon:

--a questionable definition of emergency reserves which causes overstatement of available stocks,

--the absence of a mechanism to settle price disputes among oil companies facing potential economic losses in allocating oil from countries with higher prices to countries with fixed prices, and

--insufficent mandatory reallocation procedures.

Mr. Chairman, I would now like to turn to our current review.

CURRENT GAO REVIEW

Our current review of U.S. participation in the International Energy Agency focuses on a variety of issues including relevant legal and antitrust matters, freedom of information

issues, and general operational questions concerning the economic, foreign policy, and energy policy costs and benefits to the United States.

Since beginning our review in July 1979, we have had discussions with officials of the Departments of Energy, State, Justice and Treasury, and the Federal Trade Commission and have selectively reviewed appropriate U.S./IEA records of these agencies. We have also contacted representatives of U.S. oil companies participating in the IEA, performing a limited verification of IEA information in their files. We have also monitored recent IEA Industry Advisory Board meetings involving U.S. and foreign oil companies, and officials from the IEA Secretariat, the European Economic Community, and the U.S. Government. DLG02981

We intend to complete our review in the spring of 1980. At that time we expect to issue a report with conclusions, recommendations, and other matters for consideration. In the months ahead, we will be contacting the U.S. mission to the IEA, the IEA Secretariat, foreign oil companies, participating IEA country energy/oil ministries, and those in the European Economic Community energy and antitrust ministries. We will also more intensively enter our review stage in Washington conducting an indepth analysis of U.S. Government and U.S. oil company participation in the IEA.

BENEFITS OF U.S. PARTICIPATION IN IEA

U.S. Government and U.S. oil company officials have generally conveyed the view that U.S. participation in the International Energy Program and in the International Energy Agency has been beneficial to the U.S. and all member consuming countries. They maintain that cooperation among consumer countries and between these countries and companies has improved. They say this is due in part to the establishment of an Industry Advisory Board that advises the IEA on a wide variety of oil market issues. The submission of market information by companies and countries to the IEA has also assisted in the furthering of a cooperative relationship.

U.S. oil companies' participation in the IEA was requested by the U.S. Government shortly after the inception of the agency. Although companies were initially reluctant to participate, they have participated regularly over the past four years. They now generally perceive their participation in the IEA as beneficial to their own interests and to the interests of oil-consuming countries. They see the IEA, in the event of an emergency short-supply allocation, as bearing the responsibility for multilateral allocation of oil supplies among participating IEA-consuming countries. The companies contend that during the 1973 Arab oil emergency they were unjustifiably criticized for allocation decisions they had made in the absence of a governmentally-mandated system. They believe

that the IEA mechanism shifts the primary burden of responsibility from their shoulders to a multilateral governmental institution while at the same time upholding the basic historical distribution system utilized by the companies during the 1973 emergency.

The IEA also presents the companies, they say, with a more acceptable form of government intervention than the more direct forms as are reflected in various nationalization schemes and/or emergency mobilization boards.

While the overall responsibility of the IEA is to increase cooperation among oil-consuming nations, its primary and most significant function is the allocation of supplies under emergency short-supply conditions. This function distinguishes it from an informational/cooperative type of venture. If it did not have this function, practically all of its responsibilities could be carried out within the Organization of Economic Cooperation and Development organizational setting.

LEGAL ELEMENTS OF THE AGREEMENT

U.S. participation in the IEA began in 1974 when it and 15 other nations signed an international energy agreement designed to carry out a comprehensive program of consumer country cooperation in the wake of the 1973 Arab oil embargo. The Agreement remains in effect for a term of 10 years thereafter, unless and until the Governing Board, composed of member nations and acting by majority vote, decides

on its termination. Any nation wishing to withdraw may do so by giving 12 months written notice.

The Agreement calls for a general review of the International Energy Program (Agreement) after May 1, 1980. U.S. officials we contacted knew of no effort underway at this time to fulfill that review requirement.

The instrument of U.S. participation in the International Energy Program (Agreement) and the International Energy Agency is considered by the U.S. Executive Branch to be an Executive Agreement. According to sources we have contacted, most other participating countries perceive the instrument to be an an international treaty.

Under the Agreement, member countries are committed to the Program's mandatory emergency allocation system as well as various mandatory information requirements. In the event of a major short-term international shortage, the U.S. will be committed to whatever decision IEA members make concerning the allocation of oil supplies among themselves, including oil of U.S. multinational oil companies.

Under the agreement, the United States has substantial formal IEA-voting power as a delegate and considerable informal influence. In addition to this formal and informal influence, the U.S. like all other IEA members does reserve the prerogative to withdraw from the organization whose membership in

the final analysis remains essentially voluntary. Of course, withdrawal from the IEA has all sorts of diplomatic and international economic/political ramifications.

ANTITRUST MATTERS

Significant to U.S. participation in the International Energy Program (IEP) and the IEA has been the antitrust defense provided U.S. oil companies to meet as a group, to advise the IEA Secretariat and to participate in the allocation of supplies once a decision by the IEA has been made. This antitrust defense has been authorized by section 252 of the Energy Policy and Conservation Act of 1975. It appears that IEA as presently structured cannot effectively function in an international energy emergency without the cooperation and assistance of the oil companies. The U.S. oil companies that we have visited have stated that they will cease participation in all IEA activities if the antitrust defense for such activities is not extended.

Although we have not had an opportunity to review all of the documents at the Departments of Justice, Energy, and State and the FTC, associated with the IEA, we have found thus far no evidence of U.S. oil companies' committing antitrust violations through their participation in the IEA. We have found, however, that certain aspects of the antitrust safeguards of the U.S. Government have caused some concern among members of the American public, as well as among members of participating

companies, both U.S. and non-U.S. These concerns fall into 3 general categories: (1) uncertainties resulting from the absence of a U.S. plan of action; (2) classification of monitoring data; and (3) administrative problems. During the course of our review, we will continue to examine these areas.

LACK OF U.S. PLAN OF ACTION

Under section 252 of the Energy Policy and Conservation Act, in order for a U.S. oil company to obtain the benefit of an antitrust defense for a particular action, the action has to have been taken in the course of developing or carrying out the Voluntary Agreement or a U.S. Plan of Action. The Voluntary Agreement is the document, issued by the Department of Energy with the approval of the Attorney General after consultation with the Federal Trade Commission, which sets forth the procedures and conditions under which U.S. reporting oil companies may voluntarily participate in IEA-related activities. Among its provisions are rules regarding meetings and consultations, the exchange of confidential or proprietary information, general classes of actions that are permissible after the President determines that an international energy supply emergency exists, and recordkeeping requirements. Procedures have been developed and implemented under the Voluntary Agreement for such things as prior clearances associated with industry advisory meetings

and consultations. However, these are not effective in the context of a real international energy emergency, where a multiplicity of actions may be required in relatively short time frames. It is contemplated that the U.S. Plan of Action, which has not yet been finalized, would provide rules appropriate for an emergency. Until DOE prescribes a U.S. Plan of Action, clarifying the circumstances in which the antitrust defense would be available during an emergency, the U.S. oil companies have no assurance that they would be in a position to undertake actions necessary to mitigate the international energy emergency without subjecting themselves to antitrust suits. It is therefore critical for the DOE to prescribe the U.S. Plan of Action before the occurrence of an international energy emergency.

CLASSIFICATION OF MONITORING DATA

Under the provisions of the Energy and Policy Conservation Act and the Voluntary Agreement promulgated thereunder, U.S. companies are authorized to participate in advisory bodies created by the IEA, provided a full and complete record is kept of the meetings. These records or transcripts are to be available under the Freedom of Information Act with certain exceptions. The exceptions relate to the protection of the foreign policy interests of the United States and to trade secrets. Because of the application of these exceptions, substantial portions of the transcripts are classified and rendered unavailable to the public.

We were advised that the non-U.S. oil company representatives did not want their statements transcribed verbatim at industry advisory meetings. To mollify this concern it was agreed by the U.S. Government that no statement made at these meetings by a foreign company representative or a representative of the IEA Secretariat would be available to the public. It is our understanding that to fulfill this informal agreement, the Department of State classifies and deletes all such statements from the transcripts before they are made available to the public, regardless of substantive content, on the basis of protecting the foreign policy interests of the United States. Since foreign oil companies chair certain of the industry advisory groups and a representative of the IEA Secretariat is a major participant in the discussions at most meetings, substantial portions are deleted from the public transcripts.

ADMINISTPATIVE PROBLEMS

Under the Voluntary Agreement, the oil companies are required to obtain certain prior clearances associated with industry advisory meetings. These clearances are granted by the Department of Energy, after consultation with the Secretary of State, and with concurrence of the Attorney General after consultation with the FTC. We have been advised by certain U.S. oil companies that clearances are sometimes not received until hours before the beginning of a scheduled Industry Advisory Board or subcommittee meeting, even though

representatives are coming from all parts of the world. Government and oil industry officials told us that without the U.S. Government clearances, U.S. oil companies would not participate and the meeting would not be held.

In addition to the administrative delay with respect to advance clearances, there is a very substantial adminstrative delay in making the verbatim transcripts of industry advisory meetings and consultations available to the public. In some cases more than a year will have passed before a transcript, with classified portions deleted, appears in the public reading room.

We have not completed our examination of the cause for the delays in granting clearances or making transcripts available to the public. In this latter regard, the classified transcripts are available to congressional committees as soon as they are prepared.

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I must reiterate that at this point in our review, our observations are tentative. As we proceed with our review, in addition to completing our examination of the matters discussed above, we will address the following issues and questions:

--The Iranian situation of 1979 resulted in questions concerning the level at which an IEA emergency trigger should be activated and its adequacy in responding to an emergency. The question seems to be whether

the trigger should be pulled at the level now established which is at a 7 percent shortfall level or at some lower level. Also, a question could be raised as to whether the IEA, at this time, would be prepared to carry out an allocation of oil supplies.

--The IEA is not designed to deal with oil prices but since there is a direct relationship between supplies and prices, should it be involved in price structures?

--The 1979 Iranian crisis has stimulated a debate concerning whether the IEA can be responsive to a gradually deteriorating world supply situation that never reaches the point where an IEA trigger action becomes necessary under current procedures. Is this a matter for the participating countries to take under consideration at an early date?

--Out of the recent Tokyo Energy Summit came an agreement to deal with some of the same issues that the IEA was created to handle. What are the interrelationships between the two agreements?

--France is not a member of the IEA but is a member of the European Economic Community (EEC). All other EEC member countries are members of the

IEA. What is the relationship between France and other EEC member countries concerning oil allocation? What is the interrelationship between the EEC and the IEA allocation systems?

--Since January of 1979 the IEA Secretariat has required all oil companies to submit monthly information on current, future, and immediate past imports, exports, inventories, and domestic production. Does the IEA find this information accurate, complete, and useful in determining whether a trigger needs to be activated?

--In the case of a serious international oil shortfall requiring international allocation, would the U.S. stand to gain supplies from other countries or be required to divert oil imports to other IEA countries?

--The management of U.S. participation in the IEA is vested in the Department of Energy and the Department of State. Are the roles of these two agencies well coordinated into a U.S. international energy policy formulation process?

Mr. Chairman, this completes my prepared statement. I would be pleased to answer any questions at this time.

ATTACHMENT I

LIST OF GAO REPORTS DEALING WITH THE INTERNATIONAL ENERGY AGENCY

1) "U.S. Oil Companies' Involvement In The International Energy Program" (HRD-77-154), October 21, 1977

2) "More Attention Should Be Paid To Making The U.S. Less Vulnerable To Foreign Oil Price & Supply Decisions" (EMD-78-24), January 3, 1978

3) "U.S. Energy Conservation Could Benefit From Experiences Of Other Countries" (ID-78-4), January 10, 1978

4) "The United States and International Energy Issues" (EMD-78-105), December 18, 1978

5) "Analysis Of The Energy And Economic Effects Of The Iranian Oil Shortfall" (EMD-79-38), March 5, 1979

6) "Factors Influencing the Size Of The U.S. Strategic Petroleum Reserves" (ID-79-8), June 15, 1979

7) "Iranian Oil Cutoff: Reduced Petroleum Supplies And Inadequate U.S. Government Response" (EMD-79-97), September 13, 1979