REPORT BY THE

# Comptroller General

OF THE UNITED STATES

# Unresolved Issues Remain Concerning U.S. Participation In The International Energy Agency

The International Energy Agency (IEA), established in 1974 and composed of 21 oil consuming countries including the United States, serves as an energy policy coordinating forum. However, IEA's Emergency Sharing System, designed primarily to respond to short-term oil supply disruptions, suffers from data errors, lack of a comprehensive price dispute settlement mechanism, and a misleading representation of emergency oil stocks which raise serious questions about the System's workability.

Under most supply disruptions involving the IEA Emergency Sharing System, the United States will be obliged to divert oil imports to other IEA countries. In situations similar to the Arab Oil Embargo of 1973, when the United States was the boycotted country, it would benefit from the System.

International oil disruptions in 1979 and 1980 raise serious questions about the viability of the IEA in responding to escalating oil prices and other forms of market disruption. These situations also raise questions about the adequacy of existing U.S. legislation to authorize U.S. participation in certain IEA ad hoc emergency activities.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-203093

The Honorable Max Baucus
The Honorable Howard M. Metzenbaum
United States Senate

This report assessing U.S. participation in the International Energy Agency responds to your request that we review U.S. involvement in this multilateral energy agency.

As arranged with you, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of its issuance. At that time, we will send copies to interested parties and make copies available to others upon request.

Milton J. Socolar

Acting Comptroller General
of the United States

REPORT BY THE COMPTROLLER GENERAL OF THE UNITED STATES

# UNRESOLVED ISSUES REMAIN CONCERNING U.S. PARTICIPATION IN THE INTERNATIONAL ENERGY AGENCY

## D I G E S T

The International Energy Agency (IEA), established in 1974 and composed of 21 oil consuming countries, is a multilateral organization designed to facilitate responses to short-term energy disruptions and long-term supply problems. IEA's Emergency Sharing System is the mechanism available to respond primarily to short-term supply interruptions. As IEA's principal proponent, the United States contributed 25 percent ($2.45 million) of the agency's budget for fiscal year 1981.

The IEA serves as an energy policy coordinating forum for consuming nations. It has improved member countries' understanding of the oil market and provided them with a better sense of what needs to be done on an international and national level during a period of continuous supply uncertainty.

The IEA's success in a rapidly changing market environment depends greatly on the willingness of participating countries to support its basic objectives of (1) sharing supplies in an emergency, (2) developing a comprehensive oil market information system, (3) establishing a long-term cooperation program emphasizing import controls and accelerated development and use of alternative fuels, and (4) improving consumer-producer relations.

This review was requested by Senators Max Baucus and Howard M. Metzenbaum of the Judiciary Committee.

## IEA ORGANIZATION AND MANAGEMENT

The IEA is an autonomous organization of the Organization for Economic Cooperation and Development (OECD). Although the IEA's annual budget ($9.8 million in fiscal year 1981) is part of the OECD budget, the IEA Governing Board, composed of delegates from each participating country, controls IEA's budget and overall operations. (See organization chart on p. 17.)

Tear Sheet



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An international Secretariat of 126 staff prepares many of the IEA's market analyses and policy option studies. A voluntary group of 47 oil companies (21 from the United States) provides data on the oil market and implements emergency allocation decisions. A smaller advisory group drawn from the industry group, the Industry Advisory Board, advises and consults with the Secretariat and representatives of the Governing Board.

Although industry influence is significant in the IEA, the Governing Board is the final decisionmaker. It meets frequently and makes decisions on a consensus basis.

At Governing Board meetings, only government representatives of participating countries and the Secretariat attend. No transcripts of Governing Board meetings are made. Written conclusions, which are not made available to the public by the IEA, are sent to participating governments. (See pp. 21 and 22.)

Meetings between the IEA and industry are not open to the public. Members of Congress and their designees are permitted to attend, however, and monitors from the Departments of Justice, Energy, and State and the Federal Trade Commission attend for antitrust purposes. Justice and the Federal Trade Commission make semiannual summary reports of industry IEA activities to the Congress. (See pp. 22, 23, and 86 through 89.)

SUPPLY DISRUPTIONS

IEA's complex Emergency Sharing System suffers from data errors, lack of a comprehensive price dispute settlement mechanism for member countries, and a misleading representation of emergency reserves, which raise serious questions about the System's workability. A March 1981 appraisal of the most recent test of the System by the Department of Energy's Economic Regulatory Administration underscored these deficiencies. (See ch. 3.)

Under most supply disruption scenarios involving the IEA Emergency Sharing System, the United States will be obliged to divert oil imports to other IEA countries. In situations similar to the Arab Oil Embargo of 1973-74,

when the United States was the boycotted country, the United States would benefit under the System.

Sharing supplies during an emergency is the heart of the IEA system and is considered to be in the broad economic, foreign policy, and national security interests of the United States. Without IEA, the United States would be forced to compete with many of its allies for scarce oil supplies, with potentially harmful effects to relations with them. GAO's assessment of IEA member countries' efforts to cope with future oil supply disruptions indicates that IEA member countries have established an institutional framework and developed broad policy objectives but have yet to greatly reduce their vulnerability. (See pp. 44 and 45.)

OIL MARKET INFORMATION

With the cooperation and assistance of the oil companies, IEA countries have developed information systems on crude oil costs, crude oil import prices, and the financial operations of international oil companies. A framework for consultation with oil companies was created which allows representatives of the Governing Board and the Secretariat to discuss energy policy with individual oil companies that would not be covered in a regular reporting system. However, the IEA information system falls far short of being a comprehensive global system capable of describing the market's total operation and structure. (See ch. 4.)

LONG-TERM COOPERATION

IEA countries have agreed to general long-term principles focusing on intensified conservation, reduced import dependence, and expanded research and development, but individual country performance has not always reflected these commitments because of differing national energy policies, programs, and procedures as well as levels of implementation. These problems are further exacerbated by national political differences and general economic policy conflicts which, coupled with environmental concerns in some countries, have produced significant obstacles to long-term cooperation. Nevertheless, the IEA seems to have heightened member countries' awareness of the effects of oil dependence and encouraged them to establish target goals and coordination. (See ch. 5.)

## U.S. POLICY TOWARD AND MANAGEMENT OF U.S. PARTICIPATION IN THE IEA

Management of U.S. participation in the IEA, an informal process involving the Executive Office of the President and the Departments of State and Energy, has generally been effective. However, some international energy policy decisions have been inconsistent with U.S. positions in the IEA. This was apparent in the U.S. 1979 decision to temporarily subsidize distillate oil imports for home heating purposes, which contradicted its position as a member of the IEA to reduce oil imports. It was also apparent at the 1979 Tokyo Summit when U.S. participants prepared for the conference without integrating actions already taken or under consideration in the IEA.

The current administration is reviewing U.S. policy toward the IEA. Although the review has not been completed, the Secretary of Energy, as the chief U.S. delegate to the June 1981 IEA ministerial meeting, reaffirmed that the IEA will remain the focus of U.S. international energy policy. He emphasized that it is the central mechanism for protecting industrialized countries from unexpected and unwarranted oil supply disruptions and, in the long-run, for reducing dependence on insecure foreign sources of oil. While reiterating its support for the IEA, he underscored the new administration's commitment to market forces and stock draws as the primary response to international supply crises and emphasized that the formal IEA Emergency Sharing System should be used only as a last resort. He also stressed that in subcrisis situations, the United States supports ad hoc measures that would be defined in the event the market mechanism and stock drawdown did not work. (See ch. 6.)

## ANTITRUST ISSUES

U.S. participation in the IEA reflects a dichotomy between the operational role of the Departments of State and Energy and the regulatory role of the Department of Justice and the Federal Trade Commission. Under the Energy Policy and Conservation Act of 1975, as amended, Justice and the Federal Trade Commission are primarily responsible for monitoring the participation of U.S. oil companies in the IEA for antitrust purposes. In recent years, antitrust

considerations have increasingly intruded upon energy and foreign policy objectives in U.S. representation in the IEA. Foreign governments and oil companies in particular have reacted negatively to the extension of U.S. antitrust law into a multilateral organization.

Nevertheless, assuming that the United States and other participating countries desire some form of international emergency allocation, the existing antitrust system, accompanied by strict monitoring of oil company activities, appears far preferable to unilateral oil company allocation decisions.

U.S. legislation and the Voluntary Agreement governing U.S. oil company involvement in the IEA provide the United States with the unusual opportunity of observing the oil industry in action during an emergency. This is in marked contrast to the situation in 1973, when industry managed the shortage and reallocated supplies without direct Government involvement. (See ch. 7.)

## EFFECTS OF THE CHANGING ROLE OF THE IEA ON THE UNITED STATES

IEA participating governments and companies expressed concern about the failure of member countries to restrain rising oil prices and the failure of the current formula for computing oil allocation rights and obligations to adequately consider the differing economic needs and capabilities of member countries. The 1979 Iranian crisis, which sparked a 160-percent increase in world petroleum prices in the absence of a serious supply shortage of 7 percent or more, revealed the vulnerability of the IEA. Efforts by participating countries to reduce anticipated consumption by 5 percent failed to prevent the crisis.

In the wake of the Iranian crisis, IEA governments have attempted to become more involved in implementing and monitoring joint energy policy. Following the onset of the Iraq-Iran war in September 1980, IEA adopted two new activities that particularly affect price.

The first is a system for consultations between governments and industry on oil stock policies.

IEA member countries decided that oil stocks should be used flexibly to meet short-term market disruptions, thereby discouraging purchases on the spot market and reducing upward pressures on price.

The second essentially is an informal sharing system to correct petroleum supply imbalances. It was designed primarily to moderate potential market pressures on prices during the latter part of 1980 and the first quarter of 1981 due to potentially serious supply imbalances resulting from the Iraq-Iran conflict.

Whether the informal sharing system is covered by U.S. legislation implementing the International Energy Program which established the IEA has been questioned.

Legislation implementing U.S. obligations under the Program was based on the assumption that the international oil allocation would not arise until the threshold of a 7-percent shortage in oil consumption was reached.

The informal sharing system substantially changes this obligation; imbalances are not limited to 7-percent or greater oil supply shortfalls before certain actions are taken, and international oil allocation has become an instrument for restraining rapid spot market oil price increases by correcting supply imbalances. The informal sharing system also has the potential for supplanting the use of the selective trigger under the International Energy Program.

Particular concerns about the informal sharing system that Congress should be aware of include its impact on U.S. antitrust issues and other complementary energy legislation. (See ch. 8.)

## AGENCY COMMENTS AND GAO'S EVALUATION

Several agencies commented that GAO's report presented a useful and comprehensive overview of IEA's structure, operation, and problems. However, the Departments of State, Energy, and Justice, and the Federal Trade Commission disagreed with several of GAO's conclusions.

--Energy and Justice argue that the 1980 test of IEA's Emergency Sharing System clearly demonstrates the workability of the System.

--State claims that the United States would have no allocation obligation to give up oil supplies in certain non-embargo situations.

--Justice and the Federal Trade Commission disagree with some aspects of GAO's evaluation of the U.S. antitrust clearance procedure.

--Justice disagrees with GAO's negative characterization of foreign reaction to U.S. antitrust monitoring in the IEA.

--State and Energy disagree with GAO's description of IEA's 1980 decisions concerning sharing of supplies and stock management in the wake of the Iraq-Iran war.

Despite these disagreements, GAO remains convinced that (1) the 1980 test of the Emergency Sharing System challenges the System's viability in an actual emergency, (2) in the majority of supply disruptions, the United States would have to divert oil supplies to other IEA countries, (3) decisions stemming from the interagency antitrust clearance process should be explained, (4) foreign reaction to U.S. antitrust monitoring of U.S. industry involvement in IEA activities remains negative, and (5) IEA Governing Board decisions in late 1980 responding to the Iraq-Iran war represented for this event the establishment of an informal sharing system and a flexible stock management policy.

Specific agency comments and GAO's evaluation appear in chapters 3, 7, and 8 of the report.

# CONTENTS

## ABBREVIATIONS

| | |
|---|---|
| CERD | Committee on Energy Research and Development |
| CIAB | Coal Industry Advisory Board |
| DOE | Department of Energy |
| EEC | European Economic Community |
| EPCA | Energy Policy and Conservation Act |
| ERD&D | Energy research development and demonstration |
| FTC | Federal Trade Commission |
| GAO | General Accounting Office |
| IAB | Industry Advisory Board |
| IEA | International Energy Agency |
| IEP | International Energy Program |
| ISAG | Industry Supply Advisory Group |
| IWP | Industry Working Party |
| mmbd | million barrels a day |
| NSC | National Security Council |
| OECD | Organization for Economic Cooperation and Development |
| OPEC | Organization of Petroleum Exporting Countries |
| SEQ | Standing Group on Emergency Questions |
| SLT | Standing Group on Long-Term Cooperation |
| SOM | Standing Group on the Oil Market |
| SPC | Standing Group on Relations with Producer and Consumer Countries |

## CHAPTER 1

## INTRODUCTION

The International Energy Agency (IEA) consists of 21 major oil-consuming countries 1/ who are members of the Organization for Economic Cooperation and Development (OECD). IEA was established in November 1974, in the wake of the Arab Oil Embargo, in an attempt to establish energy cooperation as a deterrent to future politically inspired oil supply disruptions. The United States, as the world's largest consumer of petroleum and a primary target of the 1973 embargo, was the moving force in establishing the IEA. The United States currently funds 25 percent of the IEA's overall budget, which in fiscal year 1981 came to a $2.45 million contribution.

### GENESIS OF IEA

The February 1974 Washington Energy Conference of major oil-consuming nations focused on the common vulnerability of import-dependent countries to the increasingly powerful Organization of Petroleum Exporting Countries (OPEC) cartel. The Embargo of 1973-74 demonstrated the need for the major industrialized countries to coordinate the development of a short-term emergency sharing system and longer term energy cooperation focused upon reducing excessive import dependence. Consuming countries had scrambled frantically in an attempt to gain assured access to oil supplies, often through negotiating bilateral contracts with individual OPEC governments, which resulted in a tripling of oil prices, economic disruption in terms of spiraling prices, decreased economic growth, and increased unemployment. The resultant chaos, disunity, and uncertainty also challenged, and to some extent strained, the overall political, security, and economic ties that bound many of the industrialized countries. As a result of the Conference, an Energy Coordinating Group composed of 12 countries 2/ of the OECD worked for 9 months developing the International Energy Program (IEP) which established the International Energy Agency. Former OECD energy groups had developed emergency sharing of oil supplies for European nations, but the 1973-74 crisis demonstrated OECD's inability to be responsive to the demands of the situation. Clearly a new, more comprehensive system capable of effective action was in order.

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1/Australia, Austria, Belgium, Canada, Denmark, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States, and West Germany.

2/Belgium, Canada, Denmark, Italy, Ireland, Japan, Luxembourg, Netherlands, Norway, United Kingdom, United States, and West Germany.

The 16 countries 1/ that originally signed the IEP Agreement on November 18, 1974, represented diverse interests, energy resource positions, national energy policies, economic policies, and political orientations. Although the United States was particularly interested in protection against 1973-74 type political embargoes, most European countries also wanted better information on the structure and operation of the international oil market. European nations and Japan, with greater degrees of import dependence, were intent on insuring access to supplies. Greater government involvement in the oil market in several European nations and Japan contrasted sharply with the privately oriented markets of the United States and West Germany, and this posed some difficulty in reaching agreement on a workable structure for the IEA. Ultimately, an agreement was reached to use the multinational oil companies' existing distribution systems and to insure that the IEA would not become a supranational organization with broad regulatory powers.

Perhaps the most conspicuous example of the diverse interests among consumer nations has been France's decision not to participate in the IEA, because it contended that (1) the IEA would be a counterproductive, confrontational mechanism, (2) the IEA would be dominated by the United States, (3) French energy interests would be better served by maintaining bilateral agreements with OPEC governments, and (4) there was considerable domestic political opposition to any multilateral energy effort that would require some sacrifice of French national interests.

Despite the diverse interests, the IEP Agreement was signed on the grounds that it unified member countries. The final agreement provided for voluntary participation to improve emergency sharing of supplies, develop an oil market information system, establish a long-term cooperative effort to reduce import dependence and develop alternative energy sources; coordinate and harmonize national energy policies; and establish consumer-producer dialogs. U.S. participation in the IEP/IEA is authorized through an executive agreement. However, other member countries perceive this involvement as a treaty commitment.

The uniqueness of the IEA as an international organization is reflected in its Emergency Sharing System, designed to respond to an oil shortage of 7 percent or more of one or more IEA countries or the entire group. Particularly significant is the participating countries' agreement to share supplies based on a formula derived from individual country consumption and import levels. The success of this system depends to a large extent on the willingness of individual IEA nations to adhere to their respective

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1/Austria, Belgium, Canada, Denmark, Ireland, Italy, Japan, Luxembourg, Netherlands, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States, and West Germany.

emergency-sharing commitments in an actual emergency. The IEP Agreement and the IEA do not provide for sanctions against member countries which do not meet their obligations.

U.S. PARTICIPATION IN IEA

Management of U.S. participation in the IEA is shared informally by the State and Energy Departments, together with the National Security Council. The Department of Justice and the Federal Trade Commission (FTC), along with the Departments of Energy and State, monitor the antitrust aspects of U.S. participation. State has traditionally had the primary responsibility for managing U.S. participation because of key foreign policy considerations affecting U.S. relationships with other IEA participating countries, and Energy has been responsible for technical advice. Since 1978 the dichotomy between the operational role of State and Energy and the regulatory role of Justice and the FTC has been an increasing source of problems with U.S. participation in the IEA, because an essential element of U.S. membership in the IEA Emergency Sharing System is the voluntary participation of U.S. oil companies.

Discussions held in London in October 1974 between the Energy Coordinating Group and a group of 13 oil companies, including 5 U.S. multinational firms (Exxon, Mobil, Texaco, Socal, and Gulf), focused on companies' perceptions of and roles in the IEP, specifically the formation of industry advisory groups to implement information development on the oil market and emergency sharing. It was clear that, given the nature of the international oil market and the dominant role of companies in that market, company participation in the IEA would be essential for IEA to become operational and provide some form of deterrent to future OPEC embargoes. It was also clear that the IEA would be highly dependent upon company participation, particularly in developing and implementing the Information and Emergency Sharing Systems, which are essential to the realization of the IEA's objectives.

These five U.S. companies together with eight foreign companies 1/ later formed the core of the Industry Advisory Board, which advises IEA on emergency-sharing issues. (See list on p. 5) The composition of this industry group has been modified to permit medium-sized U.S. international companies and additional foreign oil companies to participate. The Industry Supply Advisory Group, an ad hoc group of the Industry Advisory Board, was

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1/British Petroleum,Co. Ltd.; Ente Nazionale Idrocarburi (Italy); Petrofina, S.A. (Belgium); OeMV-Aktiengesellschaft (Austria); Shell International Petroleum Co. Ltd. (a British/Dutch company, not the American affiliate); Statoil (Norway); VEBA OEL, A.G. (West Germany), and representatives of Petroleum Association of Japan and Petroleum Producers Association of Japan.

also established to advise the Allocation Coordinator in emergency-sharing situations. The Industry Working Party, composed of U.S. and foreign oil companies, advises the IEA on market information systems. The major U.S. oil companies have continuous involvement on these advisory panels, and the smaller U.S. companies participate in the Industry Advisory Board on a rotating basis. Currently, 7 of the 18 firms on the Industry Advisory Board are American; 13 of the 20 firms on the Industry Supply Advisory Group are American; and 5 of the 13 firms in the Industry Working Party are American. Company participation also includes the Reporting Company Group (21 U.S. and 26 foreign companies--see list on p. 5) which, under emergency reporting procedures, informs the IEA about production, imports, exports, and other market-related data. Some of these companies participate in one or more of these entities.

For the companies, IEA provided an opportunity to avoid the difficult allocation decisions they made in the 1973-74 embargo period which resulted in considerable criticism by consuming countries. The principal allocation decisionmaker in IEA is the Executive Director; however, his decisions are subject to the final authority of the Governing Board members. The IEA's system of relying heavily on international oil company participation also assured minimal disruption of the companies' established supply and distribution lines, a critical factor in an embargo situation when governments are considering a variety of options to insure adequate energy supplies. The companies also perceived their advisory status as a means of representing their interests against IEA countries imposing possible additional informational and market management requirements on them. And, in the final analysis, many companies believe that participation in a nonregulatory IEA is preferable to such more direct forms of government involvement as emergency mobilization and nationalization.

From a U.S. Government perspective, participation in IEA by U.S. oil companies presents a sensitive antitrust problem. Granting an antitrust defense, thereby permitting U.S. companies to cooperate in the informational, consultative, and emergency sharing aspects of the IEA, is essential to those companies' participation in the IEA. Coupled with the defense has been the establishment of appropriate antitrust safeguards by the U.S. Government, which have emphasized antitrust monitoring by Justice and the FTC. U.S. companies have insisted that, without appropriate antitrust defenses and monitoring, they would not participate in the IEA for fear of subjecting themselves to possible antitrust charges by private sector interests, with resultant litigation. The U.S. Government has generally agreed with the companies' position on this matter.

The extensive involvement of U.S. international companies in the IEA and the serious obligations of the U.S. Government under the Emergency Sharing System could not be carried out effectively

## OIL COMPANIES THAT PARTICIPATE IN IEA

### Reporting Company Group (note a)

Amerada Hess Corporation (U.S.)
Anonima Petroli Italiana (Italy)
Ashland Oil, Inc. (U.S.)
Atlantic Richfield Company (U.S.)
Axel Johnson & Co. A.B. (Sweden)
British National Oil Company
British Petroleum Co. Ltd. (United Kingdom)
Caltex Petroleum Corporation (U.S.)
Champlin Petroleum Company (U.S.)
CEPSA (Spain)
Cities Service Company (U.S.)
Continental Oil Company (U.S.)
Daikyo (Japan)
Ente Nazionale Idrocarburi (Italy)
Exxon Corporation (U.S.)
Getty Oil Company (U.S.)
Gulf Oil Corporation (U.S.)
Hispanoil S.A. (Spain)
Idemitsu Kosan Co. Ltd. (Japan)
Mabanaft GMBH (West Germany)
Maruzen Oil Co. Ltd. (Japan)
Mitsubishi (Japan)
Mobil Oil Corporation (U.S.)
Montedeson (Italy)
Murphy Oil Company (U.S.)
Nippon Mining Co., Ltd. (Japan)
OeMV Aktiengesellschaft (Austria)
Occidental Petroleum Corporation (U.S.)
Petro-Canada Ltd. (Canada)
Petrofina S.A. (Belgium)
Petroliber (Spain)
Petroner (Spain)
Phillips Petroleum Company (U.S.)
Saarbergwerke (West Germany)
Shell International Petroleum Co., Ltd. (United Kingdom-Netherlands)
Shell Oil Company (U.S.)
Standard Oil Company of California (U.S.)
Standard Oil Company (Indiana) (U.S.)
Standard Oil Company of Ohio (U.S.)
Statoil (Norway)
Svenska Petroleum (Sweden)
Sun Company (U.S.)
Texaco, Inc. (U.S.)
Union Kraffstoff Wesseling (West Germany)
Union Oil Company of California (U.S.)
VEBA OEL, A.G. (West Germany)
Wintershall (West Germany)

### Industry Advisory Board

Atlantic Richfield Co.
British National Oil Corp.
British Petroleum Co. Ltd.
Ente Nazionale Idrocarburi
Exxon Corporation
Gulf Oil Corporation
Mobil Oil Corporation
Occidental Petroleum Corporation
OeMV Aktiengesellschaft
Petro-Canada Ltd.
Petrofina S.A.
Petroleum Association of Japan
Petroleum Producers Association of Japan
Shell International Petroleum Co., Ltd.
Standard Oil Company of California
Statoil
Texaco, Inc
VEBA OEL A.G.

### Industry Supply Advisory Group

Standard Oil Company of California
British Petroleum Co. Ltd.
Petro-Canada Ltd.
Shell International Petroleum Co. Ltd.
Texaco, Inc.
Ashland Oil, Inc.
Cities Service Company
Continental Oil Company
Ente Nazionale Idrocarburi
Exxon Corporation
Gulf Oil Corporation
Mobil Oil Corporation
Petrofina, S.A.
Petroleum Association of Japan
Phillips Petroleum Company
Shell Oil Company
Standard Oil Company of Indiana
Standard Oil Company of Ohio
Sun Company
VEBA OEL, A.G.

### Industry Working Party

Shell International Petroleum Co., Ltd.
British Petroleum Co. Ltd.
Ente Nazionale Idrocarburi
Exxon Corporation
Gulf Oil Corporation
Mobil Oil Corporation
Petrofina S.A.
OeMV Aktiengesellschaft
Petroleum Association of Japan
Petroleum Producers Association of Japan
Standard Oil Company of California
Texaco Inc.
VEBA OEL, A.G.

a/Countries in parentheses represent headquarters locations.

by the signing of an agreement alone. Therefore, specific legislation, the Energy Policy and Conservation Act of 1975, was enacted to implement the executive agreement which binds the United States to the IEP. During the past 2 years, however, the IEA, with U.S. approval, has authorized several informal actions, involving data collection, consultations with oil companies, oil stock management, and an informal sharing scheme, which have caused concerns about whether the act authorizes such a broad interpretation of U.S. involvement in the IEA.

At the same time, we recognize that the United States, and particularly the U.S. oil companies, have been a restraining influence on full participation in and implementation of oil stock management and the informal sharing system.

THE CHALLENGE OF 1979

The chaos of the international oil market that precipitated the formation of the IEA was followed by 4 years of relative tranquility, with only slight increases in the price of crude oil and no recurrence of the 1973-74 embargo. During these 4 years, the IEA established a framework and infrastructure for developing short- and long-term energy cooperation programs. Considerable attention was focused on improving coordination and communication among member countries, participating companies, and the small but increasingly influential IEA Secretariat. Government and industry advisory meetings were convened regularly, long-range goals and objectives discussed, and two tests of the Emergency Sharing System conducted. Nevertheless, the winter of 1978 found IEA little closer to its goal of reduced consumption and import dependence. In fact, the energy needs of IEA countries met by imports had decreased by only one percent, from 35 to 34 percent over 6 years. The United States, the promoter and key member of IEA, for example, had increased its dependence on imported oil--from 37 percent in 1974 to 43 percent in 1978, with an all-time high of 48 percent in 1977.

With the onset of the revolution in Iran in the winter of 1978, the complete cutoff of Iranian production in December of that year, and the subsequent return to only limited production the following year, a new period of oil market instability began, punctuated by threatened supply disruptions and rapidly escalating crude oil prices.

The Iranian disruption acted as a catalyst for increased world oil prices and a new round of bilateral contracts between producer and individual consuming countries. Despite decisions by Saudi Arabia and other moderate OPEC governments to increase crude oil supplies by a million barrels a day (mmbd) to offset the Iranian shortfall, prices continued to rise and the once marginal spot market became more of a dominant factor, especially in the chaotic environment. Also, low levels of stocks globally helped to exacerbate the supply uncertainty.

Between December 1978 and December 1980, international oil prices increased 160 percent, from $12 to $13 a barrel to $30 to $37 a barrel. In the final analysis, the scramble by some IEA countries and international oil companies to cover themselves in the market by entering into bilateral contracts with OPEC producers at spot-market prices resulted in a global energy condition that was more severe than that created by the 1973-74 embargo.

The IEA attempted to be responsive to the challenge of 1979 and 1980. It convened numerous government and industry meetings and was able to establish a March 1979 goal of reducing anticipated IEA-wide consumption by 5 percent by the end of the year. That target was never met, as the participating countries, except for the United States and a few others, were able to reduce anticipated consumption by an average of only 2.6 percent by the end of 1979. 1/ While the IEA exhorted its members to refrain from bilateral contracts at spot market prices, it reluctantly admitted that, without a 7-percent shortage, there was no mechanism in place to stabilize the market. This experience reflected the fact that the IEP Agreement was not designed to be responsive to rapidly escalating prices. It also demonstrated that the lessons of 1973-74 had not been learned and that, when challenged by an unstable market, IEA nations in many instances opted for bilateral actions instead of multilateral unified action.

The 1979 situation also reflected weaknesses in IEA's Emergency Sharing System. During the early stages of the Iranian shortfall, there was some concern that a 7-percent shortfall might occur, at least on a selective individual country basis, necessitating activation of the Emergency Sharing System. The data IEA received concerning production, inventories, imports, and exports was so unreliable that no trigger decision could have been made

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1/The Department of State, in commenting on a draft of this report, said that the characterization of the 1979 collective IEA commitment to reduce oil import demand by 2 mmbd was unduly critical. It stated that the IEA agreement stimulated a number of measures to reduce oil consumption in IEA countries, the effect of which undoubtedly was to reduce pressure on prices, but did not outline what measures were specifically taken. State pointed out that savings were achieved by the fourth quarter of 1979 which were running at about 1.5 mmbd, or roughly 3.5 percent of IEA countries' consumption.
We point out, in this regard, that State itself has recognized that the cut in consumption was not successful. In a March 23, 1981, speech before an energy conference, the Deputy Assistant Secretary of State for International Energy Policy said "In retrospect the IEA decision in March 1979 to cut imports by 2 million b/d (5% of demand) was not effective and involved no binding commitments on the part of governments."

with any firm assurance that an actual 7-percent or greater shortage did exist. Fortunately, increases in supply by Saudi Arabia and other producing countries made such a painful decision unnecessary.

In 1979 IEA, however, did provide consuming nations with information concerning the nature and degree of problems confronting the international oil market that had not been available during 1973-74. It gave these nations the opportunity to meet in a common forum to assess this information and to at least consider appropriate action. While the decision to reduce consumption had not been overwhelmingly successful, it was a first step toward constructive action. However, the market disruption of 1979-80 was considerably different than the embargo-type crisis the IEA was established to resolve, and it raised the fundamental question of whether the IEP and the IEA could be responsive to the markedly different energy environment characterized by supply instability and rapid price increases not tied to a politically inspired embargo.

Perhaps IEA's most significant accomplishment regarding the crisis of 1979 was its analysis of the dynamics of the market, which concluded that (1) for economic, political, financial, and technical reasons, OPEC production may be substantially lower throughout the 1980s than previously estimated and (2) with heightened political instability in OPEC producing countries, the market problems that had been anticipated for the late 1980s could be experienced much earlier. IEA also observed that, as in 1979, a relatively small excess demand can have a dramatic impact on the average price of petroleum. For instance, the 1979 events demonstrated how inextricably interwoven energy and economic policy are in the current and projected international energy environment.

A major finding of this analysis was the significant change in the structure of the international oil market. Specifically, direct marketing by OPEC to consuming countries increased by 2 mmbd in 1979, to 13 mmbd, a major growth from the 2.4 mmbd level of 1973. Oil sold by producing countries to major oil companies under long-term contracts amounted to only 42 percent of all internationally traded crude oil in 1979 compared with 75 percent in 1973. In essence, the IEA concluded that the international oil market was undergoing considerable change and might indeed have serious implications for the IEP and IEA, which were designed to be responsive to conditions that existed almost a decade ago.

## IRAQ-IRAN CONFLICT: ANOTHER CRISIS

Before the aftershocks of the 1979 crisis had settled, the advent of the Iraq-Iran War in September 1980 posed a new energy security threat. In a matter of days, 3.8 mmbd of the 17.5 mmbd of crude oil exported by Persian Gulf countries was cut off. Turkey, Portugal, Spain, Japan, Italy, France, and others which

had been major recipients of Iraq's exports were seriously affected.

The 1980 crisis confronted the IEA with another potential emergency-sharing trigger situation. The IEA, with the experience of 1979 fresh in mind, moved quickly to respond to the challenge posed by the Iraq-Iran War. On October 1, 1980, it convened a special meeting at which it exhorted member countries to (1) meet the imbalance between supply and demand resulting from the Iraq-Iran disruption through existing stocks rather than through making abnormal purchases on the spot market, (2) consult with oil companies to implement this measure, (3) consult with member governments to ensure consistent and fair implementation, and (4) reinforce conservation and fuel substitution measures. These IEA measures come close to supply management and emergency sharing without activating the formal Emergency Sharing System. Although these measures initially may have contributed to restraining spot prices, such prices steadily increased through November 1980 as the conflict continued. More recently, spot prices are falling as consuming country demand has decreased and stocks have risen to record levels.

At the time the conflict started, the IEA believed that those countries that had relied on Iran and Iraq's oil supplies would experience even greater supply problems during 1981. This prospect prompted the IEA to evaluate its measures, and in late November 1980 it concluded that (1) spot market activity and prices would increase as the war continued, (2) some companies, for legal and economic reasons, were reluctant to cooperate with IEA and with governments' requests to move stocks to countries in need, (3) small increases in production by Saudi Arabia, Kuwait, and Nigeria would not likely fill the oil gap left by the combatants, and (4) the drawdown of stocks could be only a temporary solution. Continuing deterioration of the market could possibly set up conditions wherein the IEA Emergency Sharing System could be triggered in 1981.

Thus, the IEA Governing Board met in Paris on December 9, 1980, and reaffirmed its October 1 measures and articulated a new supply-demand balance strategy designed to prevent and/or minimize further erosion of the oil market's stability. The new approach called for the IEA Secretariat and participating countries and companies to work together to ensure that stocks are drawn down in an orderly manner and that countries seriously affected by the continued conflict are supplied by the other countries, thus minimizing the existing supply-demand imbalance. Should these measures fail and the supply situation worsen, the Emergency Sharing System could be activated.

The tight market situation projected for 1981 by the IEA did not materialize despite the continuation of the Iraq-Iran war, because of

--high inventories among most IEA countries;

--a substantial decline in oil consumption (about 7.5 percent) in 1980 compared with 1979, brought about by reduced economic growth, higher oil prices, and the continuing impact of energy policies introduced since 1973-1974;

--growing export levels of crude oil from Iraq and Iran;

--increases in oil production by some OPEC countries, which helped to offset declines from Iran and Iraq; and

--prompt action by IEA countries in October and December 1980 to discourage undesirable oil purchases on the spot market and to draw down stocks to compensate for the supply shortfall.

## CONGRESSIONAL CONCERNS

The chaotic international energy market of 1979 coupled with the June 30, 1979, expiration of the antitrust defense for U.S. oil companies to participate in the IEA sparked new interest in Congress for a better understanding of U.S. involvement in the IEA. The executive branch supported extension of the antitrust defense through 1986. U.S. multinational oil companies market the largest share of oil sold in the world, and their non-participation in the IEA would hopelessly cripple IEA's ability to distribute oil in an emergency.

Extension of the antitrust defense through October 31, 1979, enabled the Subcommittee on Energy and Power, House Committee on Interstate and Foreign Commerce, to hold hearings in July on U.S. companies' continued participation in the IEA. The Subcommittee expressed concern over the (1) market information provided to the IEA by the oil companies, (2) secrecy surrounding IEA meetings with U.S. oil companies, and (3) nature of oil companies' participation in the Emergency Sharing System. Executive branch witnesses, in describing the role of the companies, were frequently unable to overcome congressional concern about data inaccuracies, insufficient public involvement and disclosure, and oil companies' dominance in administering the Emergency Sharing System. Instead of resolving congressional concern, the hearings gave rise to additional questions over the appropriateness of U.S. companies' involvement. Hearings held on October 3 and 5, 1979, by the Subcommittee on Antitrust and Monopoly, Senate Committee on the Judiciary, echoed the uncertain congressional attitude, and executive branch witnesses were again unable to satisfy concerns of members of this Subcommittee.

As a result of these hearings, Congress granted an extension of the antitrust defense to November 30, 1979, and, after additional discussion, opted for an extension through March 15, 1981, to enable it to further study the impacts of an antitrust defense. This defense was once again extended through September 30, 1981, to provide the new administration with an opportunity to evaluate its entire policy toward the IEA.

## OBJECTIVES, SCOPE, AND METHODOLOGY

We made this review at the request of the Chairman, Subcommittee on Limitations of Contracted and Delegated Authority, Senate Committee on the Judiciary. He asked us to specifically address:

1. How is the IEA organized and managed?

2. Is the IEA Emergency Sharing System effective?

3. How is U.S. participation in IEA managed?

4. What are the overall advantages and disadvantages of U.S. participation in the IEA?

5. Is U.S. antitrust monitoring of U.S. multinational oil company participation in the IEA adequate?

6. Has the IEA effectively represented U.S. energy interests to date?

7. What commitments and policies has the United States assumed as a member of the IEA?

The Chairman of the Subcommittee on Antitrust and Monopoly, Senate Committee on the Judiciary, later seconded the request, urging us to focus specifically on antitrust enforcement, possible conflicts of interest among IEA participants, and public access to IEA proceedings and documents.

On October 3, 1979, we testified at hearings of the Subcommittee on Antitrust and Monopoly on extending the antitrust defense. We identified concerns about U.S. participation in the IEA that had been discussed in our past reports (see app. I) and described the issues and methodology of our current review. In our past reports, we expressed doubts over the effectiveness of IEA's Emergency Sharing System, the impact of that System on the United States, the Government's problems in effectively implementing antitrust monitoring provisions, and weaknesses in arriving at a satisfactory definition of emergency reserves.

Our current review describes the operation of the IEA and its impact on the United States, evaluates overall U.S. participation

in the IEA, assesses the effectiveness of the U.S. antitrust monitoring, and addresses changes in the world energy situation that affect the IEA and U.S. participation in it.

To accomplish our objectives, we met with representatives of most of the foreign governments that participate in the IEA; the resident administrative and operational staff of the IEA Secretariat; officers of all involved major U.S. and foreign oil companies and the Departments of State, Energy, Treasury, and Justice; the Federal Trade Commission; and Executive Office of the President officials responsible for U.S. participation.

We attended several meetings of the IEA's Industry Advisory Board, observing the dynamics of the government-industry interchange. We reviewed classified and unclassified transcripts of Board meetings to assess their accuracy and completeness as well as semiannual Justice and FTC reports covering IEA activities of U.S. oil companies.

We reviewed various IEA and executive branch documents and publications of U.S. and foreign oil companies. All information from the private sector was obtained on a voluntary basis. We also contacted cognizant congressional staff members and the Congressional Research Service, Congressional Budget Office, and Office of Technology Assessment and reviewed relevant congressional hearings and studies.

Although we were briefed by U.S. and IEA officials on the proceedings of several IEA Governing Board meetings with participating governments, the executive branch has repeatedly denied us access to these meetings on the grounds that admitting us as part of the U.S. delegation would create an undesirable precedent, violate the separation of powers principle of the Constitution, and possibly antagonize participating foreign governments.

Incorporated as appendixes are official comments from the Departments of Energy, Justice, and State and from the Federal Trade Commission. We also considered comments made by the U.S. Mission to the IEA/OECD, the IEA Secretariat, and the Chairman of the Industry Advisory Board. The comments were assessed and addressed as appropriate throughout the body of this report.

## CHAPTER 2

## IEA ORGANIZATION AND MANAGEMENT

The creation of an Emergency Sharing System, an Oil Market Information System, a long-term Cooperation Program encompassing conservation and development of alternative fuels, and a producer-consumer dialog called for a dynamic international organization, capable of assessing the world energy situation and evolving a viable strategy for responding to it.

IEA, an autonomous organization of the OECD, was established as a compromise among those participating nations advocating an OECD-controlled entity and those urging a totally independent organization. Participating countries envisioned a voluntary international organization whose members could take unified action to meet oil market disruptions when and if the need arose; they were not interested in developing a supranational organization with broad regulatory powers.

IEA consists of the Governing Board, composed of representatives of the 21 participating nations, which makes all final decisions; the Secretariat, a standing professional staff selected from member governments and charged with a variety of administrative functions; and the industry advising and reporting groups.

IEA's budget is part of the OECD budget, but the IEA Governing Board controls IEA's budget and overall operations. The IEA budget for fiscal year 1981 is $9.8 million. (See app. II for the 1981 scale of participation in the IEA.) OECD provides administrative support to the IEA including its headquarters space in the OECD building in Paris, but IEA retains management control of the administrative support and the space. The IEA Executive-Director serves as the Coordinator of Energy Policies for the Secretary General of the OECD, while the Combined Energy Staff of the OECD is, in fact, the IEA's staff. In 1981, 126 positions were authorized for the IEA, 61 of which are professionals. The United States has 18 individuals assigned to the IEA Secretariat, 15 of whom are professionals.

### INTERNATIONAL ENERGY PROGRAM

The IEP Agreement, setting forth the basic goals and objectives of the 21 participating governments and authorizing the establishment of the IEA and its operating rules and procedures and the establishment of industry consulting groups, was approved by the participating governments after being initially applied on a provisional basis. The duration of the Agreement is 10 years from January 19, 1976, the date of its entry into force and thereafter unless and until the IEA Governing Board, acting by majority, decides to terminate it.

Article 74 of IEP requires that "This Agreement shall be subject to a general review after 1st May 1980;" until recently, IEA's preoccupation with the crisis environment in the international oil market has prevented it from formally undertaking this effort. The Department of Energy (DOE) informed us in July 1981, however, that the IEA Ad Hoc High Level Group on the IEP currently is examining certain issues related to the scope and adequacy of the IEP and is expected to report its findings and recommendations to the Governing Board in late 1981.

The Agreement can be amended only through a unanimous vote of the Governing Board, and to date amendments have only occurred as needed to accept and accommodate new members. Amendments are conditional upon each participating country's approval; in many instances, such approval involves a vote of national legislatures. For the United States, its IEA implementing legislation, the Energy Policy and Conservation Act of 1975, as amended, permits U.S. representatives to the IEA to approve new members without specific legislative action; other substantive amendments, however, may require separate congressional action.

The absence of any amendments to the IEP other than those admitting new members since its adoption is, in part, testimony to its broadness and flexibility and in part to the fear that the national ratification process would provoke several countries to reconsider their continued participation in the IEA. As a consequence, the IEA Governing Board has relied extensively on its existing internal decisionmaking process. As the 1979 events challenged the IEA, the Governing Board considered a number of possible actions not specifically authorized by the IEP, including such proposals as a stock management system, certain cooperative arrangements with oil companies, lowering the Emergency Sharing System trigger, import targets and ceilings, informal governmental sharing, and coordinated price restraint in response to supply disruptions. IEA members and their governments were concerned whether some proposals, if implemented, should require formally amending the IEP. It is the opinion of senior U.S. Government officials that some proposals would require U.S. congressional action for authorization, effective implementation, or imposition of sanctions. The Secretariat has argued that sufficient authority for such activities exists under article 22 of the IEP, which states that "The Governing Board may at any time decide by unanimity to activate any appropriate emergency measures not provided for in this Agreement, if the situation so requires."

## GOVERNING BOARD

The IEA Governing Board (1) adopts decisions and makes recommendations to carry out the objectives of the IEP, (2) delegates powers to other groups of the IEA, mainly the Secretariat, (3) appoints the Executive Director of the Secretariat, and (4) reviews international energy developments. As of July 1981

the Governing Board had met 65 times. Except at ministerial-level meetings, which have recently been occurring twice a year and involve cabinet-level officers of member countries, the Governing Board is generally represented by either foreign affairs or energy officials from each member country; the United States is usually represented by the Assistant Secretary for Economic and Business Affairs, Department of State, with the Assistant Secretary for International Affairs, DOE, occasionally acting in that capacity.

Much of the work of the Governing Board is prepared by its four standing groups, each composed of members from participating country delegations and focusing on the principal objectives of the IEP. The groups essentially are subcommittees working with the Secretariat in analyzing issues critical for the Governing Board. (See chart 1.)

1. Standing Group on Long-Term Cooperation (SLT),

2. Standing Group on the Oil Market (SOM),

3. Standing Group on Relations with Producer and Other Consumer Countries (SPC), and

4. Standing Group on Emergency Questions (SEQ).

In addition, a Committee on Energy Research and Development was created to promote cooperative research and development efforts and an Ad Hoc Group on International Relations was established to deal broadly with international energy relations.

Voting procedures

Although the IEP provides for complicated voting arrangements tailored to specific issues, we are aware of only one instance of formal voting since the IEA was created in 1974. All other decisions have been made by "consensus."

The following excerpts from an article written by the IEA Legal Advisor describe the voting system provided in the IEP, some of the reasons for the differing voting arrangements, and what actually happens.

> "The Agreement provides for one of the most complex voting arrangements existing in any international organization. In adopting those voting arrangements, the Participating Countries departed from the principle of 'one country one vote' which was derived from the traditional doctrine of 'sovereign equality of states' and which is applied in OECD and most other international organizations. The 'one country one vote' principle could not be applied in the Agency because it could not reflect the different magnitudes of the interests of

Participating Countries in the decisions to be taken in the Agency. Nor could it reflect the relative ability of Agency countries to shape the action that might have been taken if the Agency had not been established.

"* * * Unanimity is required under the Agreement for a number of fundamental decisions such as the amendment of the Agreement,' * * * changes in voting weights and voting requirements for majority and special majority action in the event of membership changes, and * * * in particular decisions which impose on Participating Countries new obligations not already specified in this Agreement.' During its first two years of operation the Governing Board has adopted, under the rule of unanimity, numerous 'new obligations,' * * *. [Article 62.1 of the IEP provides that "Unanimity shall require all of the votes of the Participating Countries present and voting. Countries abstaining shall be considered as not voting."]

* * * * *

"Article 62.3 provides that 'Majority shall require 60 percent of the total combined voting weights and 50 percent of the general voting weights cast.' A table of voting weights appears in Article 62.2 * * *.

"The voting weights reflect two considerations: (1) an element of equality, and (2) an element of oil consumption. The juridical equality of each Participating Country as a member of the Agency is reflected in the General Voting Weight (GVW) schedule, in which three weights are allocated equally to each Participating Country, whatever its size or the importance of its oil consumption.

"Oil consumption of Participating Countries is reflected in a separate scale of Oil Consumption Voting Weights (OVW) on a proportionate basis.

"[Combined voting weights are the sum of the GVW and OVW.]"

* * * * *

"* * * Most of the Governing Board's decisions have been taken by consensus, without having issues submitted to a formal vote. On several occasions where disagreement might have occurred, the views of the Participating Countries have been expressed in the Governing Board in such a way that the Chairman could judge that the requisite majority was present. Rather than force a matter to formal vote, the practice of the Board has been to adopt decisions by consensus, in reliance upon the

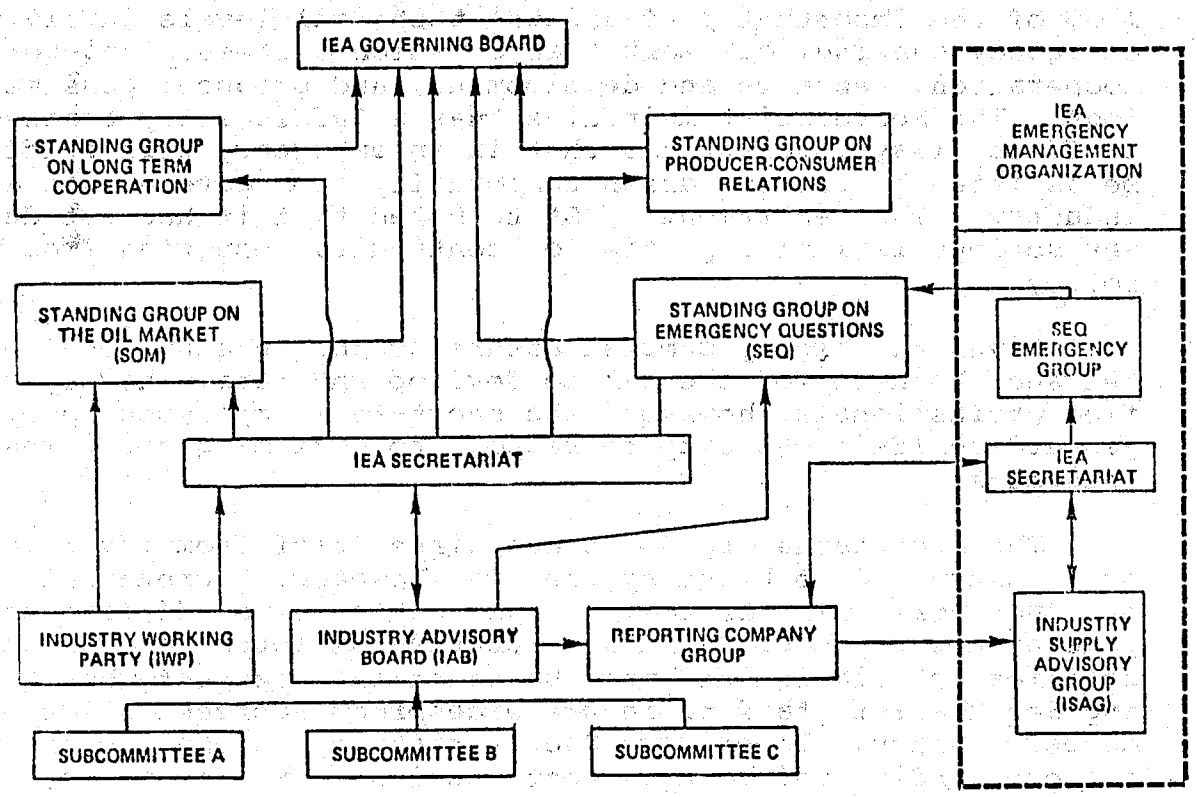
Chairman's perception of views within the Governing Board. This procedure enables the Board to move expeditiously in dealing with political subjects which might otherwise prove difficult to manage in a multilateral institution."

## SECRETARIAT

The IEA Secretariat, headed by an Executive Director who serves at the discretion of and is directly responsible to the Governing Board, consists of about 126 international staff largely drawn from member countries; half of these are categorized as professionals. It is the principal day-to-day working group responsible to the Governing Board and its standing groups and is the intermediary between member governments and industry advisory groups. (See chart 1.)

Chart 1

IEA Organizational Structure




Source: Department of Justice

The Secretariat must be sensitive to all member countries and it possesses a degree of independence and objectivity which makes it the focal point for effective IEA action. It reports country actions taken to meet IEA obligations and contributes to moving each country toward IEA's collective goals.

The Secretariat also serves as the combined energy staff for the OECD and is housed within the OECD complex in Paris. As an autonomous body within the OECD, the IEA has a separate budget approved by the IEA Governing Board and, as a formality, by the OECD. Its personnel and administrative practices generally follow those of OECD, although there are some important distinctions; for example, Secretariat employees, except for the Executive Director and some high-ranking staff and some technicians, have only 3 to 5-year contracts. Unlike OECD, the Secretariat expects a turnover in staff to ensure fresh thought and dynamic action as well as to prevent the establishment of an entrenched bureaucracy. The Executive Director told us that the IEA suffers no loss of expertise because of the 3 to 5-year policy. Nevertheless, this policy could prevent organizational continuity at many of the important professional technical levels involving emergency sharing, oil market information systems, long-term cooperation, research and development, and producer-consumer dialogs. The Secretariat maintains that a sufficiently trained staff is always present and that in an emergency this staff would be assisted by experts drawn temporarily from governments and industry. The Department of State noted that it had not detected any serious lack of expertise or continuity resulting from this policy.

Given the highly complex nature of the international oil market and the need for the IEA to develop and retain highly qualified professionals, however, the short-term employment policy may jeopardize IEA's capacity to respond to consuming countries' best interests.

The Secretariat recruits and hires staff from government or industry. Once hired by the IEA, however, Secretariat employees must work only for the IEA, and can have no affiliation with governments or industry. The Executive Director told us that some political considerations must be taken into account when appointing Secretariat staff to insure widespread representation of each member country. Generally, Secretariat appointments match the scale of individual country contributions. For instance, U.S. appointees comprise 25 percent of the Secretariat staff. The Executive Director also noted that, although IEA has no formal conflict of interest requirements, he tends to favor recruiting persons not involved with the oil industry. According to IEA officials, only two or three employees have joined the Secretariat from private oil industry. The Executive Director said that there is no prohibition against former Secretariat employees accepting positions with any oil company.

Catalyst for IEA actions

Achieving IEP objectives rests mainly with each member country, but the Secretariat provides the impetus for collective action by initiating and refining topics to be decided upon by the Governing Board.

Despite its small staff, the Secretariat is responsible for or involved in virtually all IEA activities, including

--developing and disseminating reliable oil market information and data;

--analyzing both the short- and long-term energy situation;

--activating, monitoring, and directing the IEA Emergency Sharing System;

--developing long-term alternate energy proposals, including multilateral research and development projects;

--promoting oil consumer-producer dialogs; and

--responding to any matters mandated by the Governing Board.

The Secretariat is organized into separate offices which correspond to the functional activities of each Governing Board standing group.

Despite its structured organizational framework, the Secretariat, according to IEA officials, shifts its staff from one office to another to meet priority needs. The Executive Director stated that flexible management leads to more productive and timely work and keeps the organization dynamic and sharp; however, he also admitted that some Secretariat projects and activities had to be delayed or scaled down because of changes in staff allocation caused by recent world energy crises, such as the 1979 Iran situation and the 1980 Iraq-Iran conflict.

Although shifting professionals from one specialized area to another may have some advantages, another question could be raised concerning whether an individual who is expert in one area can bring the same degree of expertise to a different area. Some IEA member countries, on the other hand, have said that participating countries want to keep the budgets of international organizations from expanding and are inclined to support increased participation by individual government delegations rather than increasing the Secretariat staff. In April 1980, the IEA asked for nine additional staff positions, eight of which were authorized and

assigned to the emergency-sharing, oil market monitoring, and data areas.

INDUSTRY ADVISORY GROUPS

The 47 international oil companies that voluntarily participate in IEA activities, including 21 U.S. oil companies, are involved in approximately 80 percent of all oil traded among IEA member countries.

An Industry Advisory Board (IAB), composed of 7 major international oil companies and 11 independent and national oil companies, advises the SEQ on emergency oil-sharing questions, appropriate emergency data and information systems, legal questions, and other industry concerns. The IAB helped to write the IEA Emergency Management Manual detailing operating procedures for implementing the Emergency Sharing System. The IEA also established an Industry Supply Advisory Group (ISAG) which during an actual emergency and at the direction of the IEA Allocation Coordinator will assist in coordinating operational and logistical actions necessary to ensure that the Emergency Sharing System is implemented.

To assist the IEA in developing a general information system on the oil market, an Industry Working Party (IWP) composed of oil companies was created. The IWP works primarily with the SOM and IEA Secretariat in addressing problems related to the development and maintenance of the oil market information system, which includes data on oil trade, such as costs of crude oil and oil products, prices and import information, and other oil supply and demand data.

Each of these industry advisory bodies has significant participation and is usually chaired by the major multinational oil companies--Exxon, Gulf, Standard Oil of California, Mobil, Texaco, Shell International, and British Petroleum Co., Ltd., which accounted for 42 percent of the crude oil traded in 1979 in other than the spot market. The majors are active in all IEA industry-related activities because they conduct extensive business in all IEA countries. Officials from the majors told us they joined and are active in the IEA because they would be needed in any effective IEA Emergency Sharing System and they believe that

--it is in their interests to provide information on the oil industry and oil market to member governments to keep them more informed;

--the IEA provides a degree of protection from other, less-appealing alternatives, such as greater government regulation or nationalization; and

--collective action by a multilateral group of oil-consuming countries is necessary to respond to supply shortages and uncertainties.

Officials from smaller oil companies told us they are not concerned that the majors tend to take the lead in the IEA industry groups, because the smaller companies do not have comparable international operations or resources to devote to IEA matters. They explained that their interest in the IEA is more passive, and representatives from some foreign national companies told us they participate in IEA mainly because their governments want them to.

### Industry critical to IEP objectives

The IEA Secretariat relies heavily on industry advice and information provided through an informal consultation procedure. During 1979 and 1980 the Secretariat held many consultations with individual companies which helped to alleviate potential emergency selective trigger actions in Sweden and Italy. (See ch. 3.)

Despite the clear consensus on the importance of oil industry participation in IEA, some controversy exists over the extent of U.S. oil companies' involvement. Specifically, the United States requires certain safeguards on U.S. company involvement to protect against unfair or anticompetitive advantages which might be gained in carrying out IEA-mandated actions. However, some IEA officials question whether these safeguards hamper effective U.S. company participation and thereby limit achieving the objectives outlined in the IEP. Issues surrounding U.S. antitrust concerns and other safeguards are discussed in greater detail in chapter 7.

## PUBLIC ACCESS TO IEA ACTIVITIES

Discussions of access to IEA meetings and documents must be broken down into at least two separate categories--activities of the IEA Governing Board and Standing Groups and activities of the industry advisory groups.

### Access to governmental activities

The IEP does not specify who may attend IEA meetings, although it does provide that each participating country shall have representation on the Governing Board and the Standing Groups. The Governing Board's security principles and procedures prescribe that access to all IEA meetings, whether held in the OECD or elsewhere, shall be strictly limited to authorized representatives of participating countries, IEA staff, and other persons authorized by the Executive Director. Neither the IEP nor the Governing Board, however, has imposed limits on who may become an authorized representative of a participating country. Therefore, the United States selects its own authorized representatives to participate in IEA Governing Board meetings.

Industry representatives normally do not attend Governing Board meetings. However, the industry advisory groups were specifically established by the IEA to advise the Standing Groups and industry representatives often are invited to and do attend portions of meetings of the Standing Groups to give advice.

No transcripts are made of Governing Board or Standing Group meetings, although U.S. Government representatives prepare summaries of Standing Group meetings in which U.S. companies participate. The Governing Board decided at its first meeting that minutes would not be prepared in the absence of a decision specifically requesting their preparation, so as to enable the Board to proceed in a flexible way, assuring maximum operational efficiency and simplicity. Conclusions of the Governing Board are prepared by a member of the IEA staff, but these are classified by the IEA and accepted and/or reclassified by the Department of State and do not reflect debate that may have occurred before a consensus was reached. Copies of the classified conclusions are sent to participating government representatives.

Access to industry activities

The IEP contemplated industry participation in IEA activities from the beginning. Despite U.S. legislation which significantly affects the functioning of the industry advisory groups, these groups were created by the IEA. Unilateral U.S. action does not necessarily change their charters or functions.

The Governing Board decides who may have access to meetings of the industry advisory groups; for example, it determined that, aside from the industry representatives, IAB meetings should be attended only by the Chairman of the SEQ and the Executive Director of the IEA and/or their representatives. Country representatives should be present only when a national legal requirement exists.

At the IAB and IWP meetings we attended, the only country representatives present were from the United States, except for one occasional representative of the European Economic Community who periodically monitors selected meetings for antitrust purposes. At some of the meetings, as many as seven U.S. officials were in attendance, including representatives of the Departments of Energy, State, and Justice and the FTC. U.S. representatives may attend these industry advisory group meetings because Section 252 of the Energy Policy and Conservation Act (EPCA) requires that no meetings may be held to develop or carry out a voluntary agreement or plan of action to implement the allocation and information provisions of the IEP unless a regular full-time U.S. Federal employee is present. EPCA also provides that no representative of a committee of Congress may be prevented from attending these meetings. Thus there is no question that U.S. Government officials have adequate access to these industry advisory meetings.

On the other hand, EPCA explicitly provides that meetings of bodies created by the IEA need not be open to all interested persons. This includes the industry advisory groups. At least one statutorily permissible basis for excluding interested persons is that a wider disclosure would be detrimental to U.S. foreign policy interests. President Gerald R. Ford determined in Executive Order 11932 (Aug. 4, 1976) that:

> "The Agreement on an International Energy Program * * * is a substantial factor in the conduct of our foreign relations and an important element of our national security. The effectiveness of the Agreement depends significantly upon the provision and exchange of information and material by participants in advisory bodies created by the International Energy Agency. Confidentiality is essential to assure the free and open discussion necessary to accomplish the tasks assigned to those bodies."

Thus, non-Government persons of the United States, aside from the official industry representatives, have been excluded from the industry advisory group meetings. Similarly, no such persons from other participating countries were in attendance at any of these meetings we attended, and we are not aware of any who have ever been permitted to attend these meetings.

Information disclosure

Neither the IEP nor the IEA Governing Board has established special requirements for disclosing information concerning industry advisory group meetings. Despite the fact that these groups are creatures of an international organization, the national legislation of the United States governing the participation of U.S. companies dominates their procedures.

EPCA requires that, where practicable, a verbatim transcript be kept of any meeting to develop or carry out a voluntary agreement or plan of action to implement the petroleum allocation or information requirements of the IEP. Transcripts of these IEA industry advisory group meetings are prepared at the direction and expense of and are the property of the U.S. Government rather than of the IEA. They were intended to be useful to the United States in facilitating congressional oversight, antitrust monitoring, and information disclosure.

The transcripts are deposited with the Department of Energy, and the full and complete transcripts, whether partially classified or not, are available to representatives of committees of Congress, the Attorney General, and the FTC. The transcripts were also intended to be available for public inspection and copying, subject to the limitations in EPCA that matters may be withheld from the public in the interest of national defense or foreign policy or to protect trade secrets. The President has delegated

to the Department of State the authority to classify portions of the transcripts on the basis of the first two reasons.

The public information disclosure objectives of EPCA dealing with industry advisory meetings have not been entirely achieved. For example, there are delays associated with the need to make the transcripts available for review of accuracy by all participants. Even if the administrative problems associated with the transcripts were remedied, there would still be impediments to having a meaningful record of meeting activities in a public reading room. This results from practical issues that may not have been contemplated at the time EPCA was enacted.

The industry advisory groups are voluntary groups set up to assist an international organization. Most of the companies which participate are not U.S. companies, and several are either partially or wholly owned by the governments of other IEA members. For example, 7 of the 18 IAB member companies and 5 of the 13 IWP member companies are U.S. companies. All the companies participate voluntarily at the request of member governments.

Apparently from the beginning, the foreign companies and the IEA Secretariat objected to having their comments at industry advisory meetings made available to the public. They informally agreed to permit the United States to transcribe their verbatim remarks only on condition that they could review the transcripts for accuracy and that the confidentiality of their remarks would be protected. Consequently, the State Department classifies all remarks of representatives of foreign companies and of the IEA Secretariat at these meetings as being in the interest of the U.S. national defense or foreign policy, as is authorized by EPCA.

In our interviews with representatives of foreign companies and governments, we found virtually universal opposition or reluctance to permitting remarks of their companies to be made available to the public. Neither the IEA nor the home governments of those companies have required that their remarks at IEA industry advisory meetings be made available to their own people, let alone the American people. In fact, there is no tradition of public access to governmental documents in most IEA countries comparable to the U.S. Freedom of Information Act although there is some movement in this direction in some countries. Under these circumstances, as a matter of principle, many would view the American publication of their remarks as an unreasonable attempt to extend U.S. legislation to cover foreign companies or the affairs of an international organization. In addition, some voiced a concern that the press might distort their remarks or present them out of context.

A number of companies indicated that they and their governments would have to reconsider participation in the industry advisory groups if the United States conditioned participation of U.S. companies on publication of the complete transcripts of the

proceedings of the meetings, including the remarks of foreign company representatives. Although we cannot predict whether there actually would be withdrawals, it would appear that it is not unreasonable for the Department of State to conclude that classification of the remarks of representatives of foreign companies and the Secretariat was necessary in the interest of the U.S. national defense and foreign relations to assure the viability of both the industry advisory groups and the IEA. According to the Secretariat, the IEA and the U.S. Government need to respect the confidentiality of the statements made by representatives of non-U.S. companies and by the Secretariat. On the other hand, unless at least the more significant of the foreign companies and governments modify their positions, the transcripts appearing in the DOE public reading room will continue to represent an incomplete record of what transpired at the meetings.

## CHAPTER 3

## ASSESSMENT OF IEA EMERGENCY SHARING SYSTEM

The development and refinement of the Emergency Sharing System was and continues to be the primary objective of the IEA. Crucial to this System is each participating country's willingness to subject its domestic oil production and supplies to international allocation during an emergency. Each member has a direct interest in ensuring the viability of the System to act as a means of collective security during severe oil shortages that can threaten each member's economic and political well-being.

To "trigger" the Emergency Sharing System, the IEA Secretariat must make a finding that a member country, or the group as a whole, is experiencing or can be expected to experience a 7-percent or more supply shortfall below a base period level of consumption. (The base period is the most recent four quarters, with a delay of one quarter necessary to collect information.) Within 8 days the finding to activate the system must be rejected by the Governing Board or it will go into effect. If confirmed, IEA members are expected to implement the prescribed measures within 15 days.

Emergency information and data systems developed by the Secretariat permit it to determine total quantities of available oil supplies. Once the Emergency Sharing System is triggered, the Secretariat calculates individual country allocation rights (to receive oil) and obligations (to give up oil) using a complex allocation formula. The formula determines how much oil each country is entitled to after subtracting its demand restraint obligation (either 7 or 10 percent of historical consumption) and its emergency reserve drawdown obligation. The emergency reserve drawdown obligation assumes that each country will draw down those reserves at a rate based on the participating country's imports as a percent of total imports of the IEA group. The Emergency Sharing System assumes that each participating country maintains (1) emergency oil reserves (governmental and private) equivalent to at least 90 days' net imports (as of Jan. 1, 1980) to be drawn down during an oil disruption, (2) an effective demand restraint program which can be activated to reduce oil consumption--7 percent if supplies are cut by at least 7 percent and 10 percent if supplies are cut by 12 percent or more, and (3) an effective national emergency oil-sharing organization to carry out its obligations under the System.

The Emergency Sharing System consists of three types of allocations, which can be implemented at the same time.

--Type 1 is essentially a continuation of normal commercial transactions by the oil industry, where each company voluntarily rearranges its own individual supply schedule to meet a crisis as it chooses.

--Type 2 is the formal involvement of companies interacting with the IEA, wherein the IEA facilitates reallocation by matching voluntary company offers to receive and provide oil so as to satisfy country allocation rights and obligations.

--Type 3 requires that the IEA Allocation Coordinator notify member governments with allocation obligations (or members with jurisdictions over particular oil companies) that they must order a company or companies to ship oil to countries with allocation rights.

Type 1 and Type 2 allocations, which are essentially voluntary, are expected to take care of the vast majority of reallocation rights and obligations. However, in the event of remaining allocation imbalances, a Type 3 mandatory allocation may occur. Thus, only under Type 3 allocations will member governments require companies to actually reallocate oil. They are involved, however, through their national emergency sharing organizations throughout the allocation process.

EMERGENCY DATA SYSTEM

To operate the Emergency Sharing System efficiently, the IEA, with the assistance of the oil industry, developed a special information system, which, through questionnaires, collects three major types of oil data from member countries and/or participating companies.

1. Quarterly historical supply data, including indigenous production, imports, exports, stocks, and stock changes for crude oil and oil products. (Questionnaire D).

2. Quarterly supply and demand forecast data (Quarterly Oil Forecast).

3. Monthly supply data (historical, current, and forecast) (Questionnaire B collects this data from member countries and Questionnaire A collects this same data from 47 reporting oil companies.)

IEA uses Questionnaire D for calculating the base period final consumption and net oil imports.

Questionnaires A and B are submitted after the Emergency Sharing System is activated or when an emergency appears imminent to serve as the primary basis for calculating allocation rights and obligations. They give the Secretariat a 5-month supply picture (current month, 2 previous historical months, and 2 forward months). Questionnaire A is submitted by the reporting oil companies, which account for about 80 percent of total IEA member countries' oil supplies. Questionnaire B is submitted by each member government and gives a total petroleum picture; it includes

the same data provided in Questionnaire A plus the other 20 percent of oil supplies which are available from nonreporting companies and other sources.

Role of Allocation Coordinator

If the Emergency Sharing System is activated, all supply data submitted by member countries and reporting oil companies is channeled to the Allocation Coordinator, who computes allocation rights and obligations and transmits them to involved companies and members. In operating the allocation process, the Coordinator guides and supervises the Industry Supply Advisory Group, which is responsible for developing and recommending to him for approval a coordinated program of oil reallocations based on voluntary offers from reporting companies. The Allocation Coordinator reports to the Standing Group on Emergency Questions about whether the IEP objectives are being fulfilled.

Role of oil industry

The IEA has always recognized the critical role of the oil industry in IEA activities, and its information systems, allocation programs, and procedures are derived from the normal commercial operations of the companies.

The Industry Advisory Board meets regularly to advise and assist the IEA, and ISAG was established to develop an emergency supply operations manual of procedures and guidance for an allocation system and to provide expertise and assistance to the Allocation Coordinator during an emergency.

Role of member countries

Each IEA member country is responsible for ensuring that its national oil emergency measures are compatible with its obligations to the IEA. To meet these obligations, each country is required to establish a standby national emergency sharing organization responsible for:

--Coordinating with IEA's Emergency Sharing System.

--Ensuring that accurate, timely, and reliable data is supplied to the IEA through Questionnaire B for the effective operation of the IEA Emergency Sharing System.

--Coordinating implementation of demand restraint measures.

--Establishing a workable "fair-sharing" program, so that all oil companies share the burden of IEA cooperation equally.

--Assessing the national product supply and demand situation to ensure that efforts are made to solve national product imbalances locally.

--Coordinating and consulting with nonreporting oil companies concerning the development of voluntary offers and providing advice on reporting companies' offers, including assessing their impact on the national supply position.

--Issuing direct instructions (via "supply orders" in the United States) to companies to implement Type 3 mandatory allocations.

The national emergency sharing organizations differ from country to country, reflecting different oil supply and political structures. In most IEA countries, the energy ministries act as the organization; for example, the Department of Energy performs all such functions in the United States.

Table I illustrates how the system would work under a 9-percent general shortfall involving 5 countries. In this example, countries heavily dependent on imports (B, C, D) incur the most hurt to their total consumption and, therefore, have allocation rights, while countries less dependent (A) or not dependent (E) on imports incur less hurt and have allocation obligations.

As shown, the United States, with characteristics similar to country A in the hypothetical example, would stand to lose imports in this type of an IEA shortage scenario. An embargo-type scenario directed against the United States would give the opposite result.

## WILL EMERGENCY SHARING SYSTEM WORK?

### Actual shortages have not activated system

Several IEA countries encountered oil supply situations in 1979 which threatened to activate the IEA Emergency Sharing System. In fact, in the spring of 1979, Sweden experienced a temporary supply shortfall of greater than 7 percent and requested that the System be triggered. The IEA Secretariat consulted with the Swedish Government and the oil companies involved to alleviate the shortage condition and determined that no real oil emergency existed and that the situation would remedy itself if the Swedish Government took certain domestic actions, including raising national price ceilings to ensure supply. These consultations headed off a potential dispute within the IEA, and the Swedish situation eventually improved.

The IEA used similar informal crisis management measures to alleviate similar supply shortages in other IEA countries; its

Table 1

Hypothetical Example of IEA Emergency Program

| | Countries | | | | | IEA |
|---|---|---|---|---|---|---|
| | A | B | C | D | E | total |
| | (mmbd) | | | | | |
| Normal situation: | | | | | | |
| Domestic production | 3,500 | 0 | 0 | 0 | 500 | 4,000 |
| Net imports | 2,500 | 2,000 | 1,000 | 500 | 0 | 6,000 |
| Total supplies | 6,000 | 2,000 | 1,000 | 500 | 500 | 10,000 |
| 9-percent shortfall: | | | | | | |
| Domestic production | 3,500 | 0 | 0 | 0 | 500 | 4,000 |
| Net imports | 2,125 | 1,700 | 850 | 425 | 0 | 5,100 |
| Total supplies | 5,625 | 1,700 | 850 | 425 | 500 | 9,100 |
| IEA supply rights and allocation obligations: | | | | | | |
| Consumption during base period | 6,000 | 2,000 | 1,000 | 500 | 500 | 10,000 |
| Less 7 percent demand restraint | 420 | 140 | 70 | 35 | 35 | 700 |
| Permissible consumption | 5,580 | 1,860 | 930 | 465 | 465 | 9,300 |
| Less emergency reserve drawdown obligation | 83 | 67 | 33 | 17 | 0 | 200 |
| Supply right | 5,497 | 1,793 | 897 | 448 | 465 | 9,100 |
| If available supplies are: | 5,625 | 1,700 | 850 | 425 | 500 | 9,100 |
| The allocation right or obligation is: | -128 | 93 | 47 | 23 | -35 | 0 |

Source: Paper by Dieter Kempermann, "Das Krisenversorcuncssystem der IEA auf dem Prufstand," Jan. 1977. Mr. Kempermann was then a senior staff member of the IEA Secretariat.

willingness to adjust to circumstances not foreseen during the establishment of the Emergency Sharing System indicates its flexibility to deal with changing market conditions. The use of these informal means of remedying temporary supply disruptions means the formal System has never been tested under actual conditions.

System tests

The System has been tested three times by the IEA, on a limited basis in 1976 and more comprehensively in 1978 and 1980, to

--assess the effectiveness of the procedures, communications, and data processing on which the allocation system is based;

--assess the effectiveness of each member nation's emergency planning organization; and

--train the Secretariat and industry personnel in the implementation of the oil allocation system.

Actual disruption scenarios are constructed for test purposes and historical oil company and country data are used as the basis for operating the test. During a test, allocation rights and obligations are assessed; however, actual diversion of supplies does not take place. The tests focused primarily on the management of supplies and did not address such commercial issues as the pricing of oil allocations; therefore, the tests were of limited application and value. Results of the three tests revealed several problems, but IEA's final appraisal of test 3 pronounced the system workable and noted that U.S. participation in the test had improved.

Staff of DOE's Economic Regulatory Administration, in a March 1981 appraisal of the 1980 test, concluded that it had serious reservations about whether the system would function effectively in an actual emergency. Specifically, it identified three major weaknesses of the IEA system.

First, the data was inadequate. Oil was "lost" from the system during the implementation of allocation rights and obligations. Large discrepancies in historical data emerged, requiring subjective resolution by the IEA Secretariat on an estimated basis. The data problem would have been even more severe using current data if there had been an actual emergency, because the statistics become more reliable as additional information is accumulated over a period of time.

Second, there was a lack of a price-resolution mechanism. The IEP lacks a specific provision covering pricing of oil traded during an emergency. The decision to exclude a pricing provision

from the IEP was intentional on the part of the signatory governments. Some agency staff believe that until such a mechanism is approved and successfully tested, the readiness of the oil-sharing system is, at best, questionable.

Third, there are deterrents to voluntary cooperation between the U.S. Government and industry in emergency planning. A major lesson of the test was that the effectiveness of the oil sharing system hinges predominately on the extent to which U.S. Government and industry can cooperate in solving energy emergencies. The U.S. Government's antitrust approach toward U.S. involvement in the IEA, according to the appraisal, appears to be insensitive to the need for effective, cooperative working relationships between the Government and industry.

The appraisal also highlighted other domestic problems including uncoordinated Federal and/or State Government approaches to energy emergency preparedness and an overall limited Government and public awareness of the U.S. commitment to the IEA.

The IEA assessment of the 1980 test noted that the System was workable and stated that U.S. participation had improved over that of the prior tests despite the existence of problems noted by DOE. IEA tends to view the tests as a learning experience for the System's workability.

Agency comments and our evaluation

DOE officials contend that the Economic Regulatory Administration's report is overly critical of test 3 performance and does not reflect the Department-wide position, which is considerably more positive. Although documents provided by Department-wide representatives also confirm problems in test 3 concerning data accuracy, absence of price dispute mechanisms, and antitrust difficulties that caused operational delays, they note that test 3 was a considerable improvement over tests 1 and 2, which were more limited evaluations of IEA's Emergency Sharing System. Specifically, they cited (1) improved communication and coordination among the IEA Secretariat, government representatives, and oil industry participants, (2) more accurate and reliable trade data, (3) fewer antitrust difficulties resulting from the presence of U.S. antitrust monitors, (4) development of improved operational guidelines for managing an emergency, and (5) involvement of national emergency sharing organizations and some nonreporting oil companies. Overall, within the limitations of the test guidelines, DOE officials maintain that test 3 was a successful Emergency Sharing System training exercise which, despite problems alluded to in the Economic Regulatory Administration's report, demonstrated the IEA's Emergency Sharing System would function effectively if and when triggered.

However, the problems reflected in the Economic Regulatory Administration's report and reiterated in this report appear to be sufficiently serious to challenge the current readiness of the System to function effectively in an actual emergency.

Although the IEA Secretariat generally supports the positive interpretation of test 3 as a successful training exercise, it also acknowledges a wide variety of operational problems consistent with those identified by the Economic Regulatory Administration, including concern over the adequacy of the IEA's computer operation.

The Industry Advisory Board's assessment of test 3 was generally consistent with the overall DOE and IEA interpretation. However, it also expressed concerns similar to those of the Economic Regulatory Administration's report. Those concerns were expressed in the April 1981 FTC report on industry activities in the IEA, which stated that:

> "The IAB was concerned that AST-3 [test 3] was of limited value in predicting the effectiveness of the allocation system during a real emergency. AST-3 was a hypothetical volumetric and logistical exercise only. It did not address commercial issues, such as price of allocated oil. The IAB noted that the entire success of the test was based on the willingness of both countries and companies to come forward with voluntary offers. Yet, willingness to make voluntary offers during a real emergency will depend in a large part on the terms of the voluntary offer transaction. The IAB suggested that price should be tested at a future AST. Companies also recognized that even the introduction of pricing in a test would not remove uncertainty as to how companies and countries would react during a real emergency."

The Justice Department also took exception to the Economic Regulatory Administration description of antitrust problems in test 3 and asked for more specific information. In addition, Justice stated that the IEA Secretariat/ISAG appraisal of test 3 found in general that the antitrust safeguards did not "significantly" impair operations of the system.

The March 1981 Economic Regulatory Administration's report provided the following additional information on test 3 antitrust problems.

> "Mechanisms have been established under the Agreement [U.S. Voluntary Agreement--see ch. 7] to protect the proprietary nature of company-specific trade data and to cover antitrust considerations. However the rigidities of the mechanism hindered the necessary exchange of information among industry and government representatives, both within the IEA and in industry during AST-3. ERA staff experience in resolving domestic

supply aberrations has consistently demonstrated the need for cooperation during an energy emergency. The ability to plan that cooperation in advance of an emergency could make a considerable impact on government and industry readiness and response.

"Therefore, a new approach to antitrust considerations needs to be initiated that would both facilitate emergency planning and protect proprietary interests. Within the U.S. Government, an inter-agency committee has already begun work on these issues."

Although the ISAG concluded that U.S. antitrust monitoring in test 3 was a vast improvement over that in test 2, it also criticized U.S. antitrust requirements in test 3 as being burdensome and restrictive. Specifically, IAB members expressed concern that (1) every voluntary offer made during the test was recorded, (2) U.S. antitrust clearances did not cover nonreporting companies, and (3) ISAG's subgroups could not meet without a U.S. antitrust monitor present. The IAB noted that during test 3, the United States had 20 antitrust monitors present during the 8 weeks, 4 or 5 were present at any one time, while the EEC antitrust section had 1 antitrust monitor present throughout the entire test. (See ch. 7 for detailed information on antitrust monitoring.)

Data problems

Accurate and timely information on available and projected oil supplies is critical to successful operation of the IEA Emergency Sharing System. Supply data from reporting oil companies and from each member country contribute greatly to the Secretariat's decision on when to activate the System and to its management of the reallocation of oil supplies.

In addition to those problems noted above by DOE, a 1980 IEA analysis indicates that:

--Work of the IEA on emergency questions was severely hampered by the poor quality of some Questionnaire B and quarterly oil data. In some IEA countries, there was inadequate coverage of importers, exporters, producers, and holders of stock in Questionnaire B reporting systems. This applied especially to nonreporting companies.

--Inaccurate forecasting of available oil supplies in monthly submissions resulted in consistent overestimates of available supply; error rates ranged from 0.3 to 9.5 percent and averaged 4.2 percent from March 1979 through April 1980.

In mid 1979, an IEA ad hoc data group was formed to determine the cause of data errors. In a 1981 analysis, the group identified major causes of data errors which were similar to those identified in test 3.

--Governmental administration problems, such as inadequate, poorly trained staff, constant personnel turnover, and preparation and transmission errors.

--Different government agencies involved in collecting data, using different standards and guidelines.

--Difficulty in projecting forward supplies, especially those of smaller oil companies, resulting in a downward bias in times of oil shortage.

--Incomplete coverage of oil industry activities in some national data systems, especially where industries other than oil industries are importing oil products.

--Oil redirected during its voyage or incorrectly labeled by the exporting country.

--Redirection of oil held in transshipment terminals.

--Double counting and other reporting errors.

--Leads and lags which arise when oil exported from one IEA country to another may be several weeks on its voyage.

--Cutoff date problems which arise when countries and companies freeze data on dates not corresponding to those in the reporting instructions.

To improve the quality of data, the Secretariat has recently undertaken initiatives to (1) expand the number of reporting companies from 33 to 48 to provide wider coverage, (2) collect more information and data on oil stocks held at sea, (3) provide more clear and consistent reporting instructions and guidelines for Questionnaires A and B, and (4) keep member governments informed of potential data problems.

Despite these efforts, IEA officials admit that errors in emergency data submissions cannot be completely eliminated; errors are inherent due to multiple sources, the dynamics of the oil market, and the nature of forecasting supplies. IEA officials appear uncertain as to what is an acceptable error margin. On October 26, 1979, IEA reported that data error rates were "too large to allow meaningful reallocations in an emergency." Since then, it has reported that data error margins of 2 to 3 percent are "acceptable" to effectively operate the Emergency Sharing System.

DOE informed us in July 1981 that the SEQ Ad Hoc Group on Data Improvement is continuing to function and is about to complete a study of trade data discrepancies which provides correction measures for a number of identified discrepancies; notes some inherent discrepancies such as those relating to transit times and differences in forecasts; and proposes means of coping with remaining discrepancies. The Group, DOE says, has also improved procedures for reporting backflows of material to refineries; is establishing a criteria for a transition from quarterly to monthly reports of historic supply, consumption, and stock data; and is documenting national reporting practices of non-oil hydrocarbons.

We believe the quality of emergency supply data affects the degree of confidence each member has in IEA's ability to ensure fair sharing during an emergency. The question of whether IEA can successfully operate its Emergency Sharing System with 2 to 3-percent error rates remains unanswered. However, the known data problems may contribute to an overall reluctance to activate the System except under clearly defined and severe shortages.

Potential pricing problems

The IEP Agreement states that prices of redirected oil should reflect "comparable commercial transactions" but does not define this term; thus potential price disputes between IEA member countries can occur which might delay or disrupt the allocation process. A likely price dispute could occur during a Type 3 allocation, when a country with an allocation obligation must direct shipment of oil to a country which has an allocation right but whose national price ceiling is too low to attract economical shipments by oil companies. Unless the involved countries and companies can reach agreement through arbitration or other means, it is likely the oil will not be diverted according to the IEA allocation formula.

The IEA established a Dispute Settlement Center in July 1980 to arbitrate price disputes between and among buyers and sellers of oil because it recognized that price disputes during international oil allocations are inevitable and that such a mechanism would be "highly important to the success of emergency allocation" by providing rapid and uniform decisions. IEA officials believe the Dispute Settlement Center will ensure smooth operation of the Emergency Sharing System in most instances. Nevertheless, the dispute resolution mechanism is handicapped, because agreement by the oil companies to use the Dispute Settlement Center is voluntary; it does not address price disputes between IEA member countries; and the operation of the Center in an emergency has never been tested. The question of whether creation of the Center will solve potentially serious price dispute problems remains open.

DOE concern

DOE officials expressed concern that potential unresolved price disputes could affect the U.S. obligation to the IEA. They contend that DOE would not force a U.S. oil company to divert oil to another IEA country to meet U.S. allocation obligations unless the company agreed beforehand to use a mutually acceptable price dispute mechanism. On the other hand, DOE has stated that DOE regulations do not impair the absolute authority granted by EPCA to allocate oil to meet U.S. IEP obligations. Company litigation over a supply order would delay the allocation process only if an injunction were issued.

DOE regulations issued in May 1979 authorize supply orders to be issued to U.S. companies to sell oil to meet U.S. allocation obligations, stating that:

> "a firm issued a supply order would not be required to sell, exchange, or otherwise provide the oil specified in the order unless the firm to which the oil is to be supplied agrees in advance to submit any dispute to a mutually acceptable arbitration or other dispute settlement procedure." (Underscoring supplied.)

If recipient companies refuse to submit potential price disputes to arbitration due to a national pricing policy, DOE is caught in a dilemma between forcing a U.S. company to ship the oil or not fulfilling U.S. obligations under the IEP. In either case, the Emergency Sharing System may not be entirely effective, because, in the first instance, companies might litigate the DOE supply order, thereby delaying the allocation process and, in the second instance, the System would not receive oil from the United States.

90-day emergency oil reserve misleading

Beginning January 1, 1980, each IEA country agreed to maintain emergency oil reserves equal to 90 days of net oil imports. The IEA describes emergency reserves as including crude oil, oil products, and unfinished oils held in refining tanks, bulk terminals, pipeline tankage, barges, oil tankers in port, inland ship bunkers, and storage tank bottoms. Working stocks held by industry and large consumers are also included. DOE, U.S. oil companies, and some IEA officials believe that this definition is too broad and does not truly reflect real reserves which could be used in an emergency. They said that industry inventories are primarily the working stocks necessary to ensure normal operations and that stocks only above this level are pure emergency reserves.

IEA officials stated that the broad definition of emergency reserves was a political compromise to achieve a consensus on establishing a quantifiable commitment. They said some IEA members were opposed to a more strict (and realistic) definition of

emergency reserves because of the difficult domestic political liabilities in establishing costly government reserve programs or forcing the oil industry to maintain and finance additional stocks.

Amount of actual U.S. emergency reserves unknown

DOE officials told us that the U.S. oil industry holds stocks sufficient to meet IEA emergency reserve obligations. However, they also say that the 154 days of net imports reported to IEA on January 1, 1980, does not truly reflect reserves actually available during an oil shortage. Officials from several major U.S. oil companies told us that they have little oil reserves which could be used in an emergency and that the U.S. Strategic Petroleum Reserve is meant to meet U.S. obligations. Industry officials contend that their oil stocks are part of working inventories and that very little oil is available as a pure emergency reserve. In fact, all the companies we contacted said they had no stocks available or set aside for IEA purposes.

Assessments of industry's ability to meet the 90-day net import obligation vary greatly. A June 1978 report contracted by DOE, "Inventories Management in the Petroleum Industry," concluded that the American petroleum industry stocks are already channeled for specific uses and there would be little excess stock for use during an oil emergency. An earlier study by the U.S. National Petroleum Council concluded that only 23 of the 153 days of U.S. reserves reported to IEA in 1976 represented "pure reserves." A November 1979 DOE analysis of the appropriate size of the U.S. Strategic Petroleum Reserve estimated that about 125 million barrels of private stocks could be drawn down during an emergency. However, despite the President's authority to implement inventory controls under the Emergency Petroleum Allocation Act, DOE officials contend that they have no power over how reserves are used by industry; they indicated that some companies may decrease stocks during an emergency while other companies might increase stocks. Thus, even if DOE had a reasonable estimate of emergency reserves held by U.S. oil companies, there appears to be no Government program which would dictate how industry would use such reserves during an emergency.

Importance of U.S. emergency reserves

In April 1979, DOE published the "Simulation Study of Eight Petroleum Supply Disruption Scenarios" which was written under contract by Wharton Econometric Forecasting Associates, Inc. The study shows that emergency reserves (in this case defined as the Strategic Petroleum Reserve) can provide a significant buffer against the impact of oil shortages on the U.S. economy.

For example, the study presents an oil embargo scenario of 2 mmbd, equal to about 11.8 percent of total U.S. oil consumption. 1/ With no drawdown of the emergency reserves, the United States would suffer about a 4.8-percent decline in gross national product, a 1.6-percent increase in the unemployment rate, and a 3.9-percent increase in inflation (based on consumer price index). Embargoes of greater amounts of oil (4 mmbd to 6 mmbd) show correspondingly greater declines in gross national product and increases in unemployment and inflation. The study also provides embargo scenarios with various drawdowns of the Strategic Petroleum Reserve whose results indicate much lower declines in gross national product and increases in unemployment and inflation.

Results of the Wharton study were basically reconfirmed in a separate November 1979 DOE analysis of the appropriate size of the Strategic Petroleum Reserve, which contained several oil interruption scenarios and their impacts on the United States. The study concluded that "the economic costs of even relatively small interruptions which result in large price increases are frighteningly large, * * * GNP losses of most of the interruptions postulated could exceed $100 billion."

Based on the current U.S. emergency reserve position, the potential for buffering the harsh consequences of potential oil shortages for any lengthy major disruption is limited.

U.S. ability to effectively manage demand restraint programs questionable

Because the United States does not have unencumbered reserves equal to 90 days of net oil imports, it will be increasingly vulnerable to oil shortages and will have to rely on demand restraint over and above IEA's 7 or 10-percent demand restaint standard. According to DOE, the demand restraint obligation may be met by any measure which reduces a country's rate of final consumption. IEA says that demand restraint can be achieved by allocation or conservation, among other measures. However, during an emergency the potential for rapid switching to alternative energy sources is limited and the United States may have to rely heavily on the market mechanism, allocation, and conservation.

Within the past few years, DOE proposed a vast array of programs meant to restrain demand during an oil shortage, including a program for meeting IEP requirements. These programs included standby mandatory product allocations, a standby refinery yield program, gas rationing, and a multitude of other conservation measures, such as reduced speed limits, temperature controls, compressed workweeks, odd-even gas days, and so on. Many of these

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1/The scenario assumes embargoes lasting one year and used 1978 as the base year to calculate supply effects.

conservation measures required congressional approval plus at least a 90-day startup period.

Early in 1981, DOE's standby conservation programs, except for the public information and minimum gasoline purchases programs, were withdrawn by the new administration. Additionally, Executive Order 12287, issued on January 30, 1981, exempts all crude oil products from allocation controls adopted pursuant to the Emergency Petroleum Allocation Act. The loss of both standby conservation and allocation programs would appear to make the U.S. ability to meet its IEA demand restraint and domestic allocation obligations highly doubtful.

In June 1978, DOE made a limited test of the standby crude oil program concurrently with IEA's test of its Emergency Sharing System. DOE's test, which focused heavily on data transmissions from the domestic oil industry and excluded the effect of pricing on the program, showed that many data submissions were incomplete, inaccurate, and late and that instructions to refiners were confusing.

An IEA official's appraisal of DOE's performance during test 2 concluded that "the organizational setup in DOE was not sufficient to deal with the complexities of coordinating both systems." An unofficial IEA version of the test called U.S. performance "a failure." DOE's performance in the most recent IEA Emergency Sharing System test shows some improvement in coordination.

Despite this criticism, DOE officials claimed the former standby crude oil and refinery yield program would have worked if activated. However, in our April 1980 report, "Gasoline Allocation: A Chaotic Program In Need of Overhaul" (EMD-80-34), we concluded that DOE was "ill-prepared to manage the 1979 gasoline supply shortage" and cited DOE's ad hoc approach to crisis management as a contributing factor. Additionally, our March 4, 1981, report, "The Department of Energy's Reorganization of Energy Contingency Planning Holds Promise--But Questions Remain" (EMD-81-57), noted that, despite the February 24, 1981, reorganization which emphasized emergency planning, the international aspect of contingency planning had apparently been ignored, thus neglecting the necessary coordination between U.S. emergency plans and the IEA Emergency Sharing System.

We noted, however, that DOE has no formal national emergency sharing organization, procedures manual, or staffing organization. Instead, it relies on an ad hoc organization involving at least six internal offices which, according to DOE officials, will come together to manage DOE responsibilities in the event of an oil shortage.

Officials of several major U.S. oil companies told us they lack confidence in DOE's ability to effectively manage U.S. demand restraint programs. They cited such problems as the DOE staff's

lack of knowledge of the complex oil market, poor emergency planning, poor coordination of domestic programs, and programs which are often contradictory and incompatible.

DOE's performance in operating the gasoline allocation program, its current ad hoc approach to its national emergency sharing organization responsibilities, and its past performance during tests of its crude oil programs do not bode well for successful interface between the IEA and U.S. systems.

## POTENTIAL U.S. ADVANTAGES AND DISADVANTAGES FROM EMERGENCY SHARING SYSTEM

Our analysis of the complicated IEA Emergency Sharing System shows that the United States would probably incur an allocation obligation during either a general worldwide shortfall (over 7 percent) or a shortfall experienced by any other IEA member country. The United States would have an allocation right if it were the target of an oil embargo resulting in a shortfall of 7 percent or more.

Several intangible factors, however, complicate a straightforward analysis. For example, U.S. officials argue that the United States gains collective security through the IEA Emergency Sharing System, which is more desirable than a highly competitive and potentially destructive "go-it-alone" approach to solving oil shortages. They believe that the sacrifice of oil supplies to help U.S. allies is a small price to pay for continued cooperation among consuming countries and that the economic benefits of sharing are also tied to U.S. foreign policy and national security interests.

In addition, we agree with the IEA Secretariat that the advantages of the Emergency Sharing System to the United States include not only the possibility of the United States receiving oil in an emergency, particularly in case of an embargo or other supply event reducing supply to the United States, but also the direct and vital interest of the United States in the security of supply to all industrialized democracies which are IEA members.

Because the stakes involved are so high, U.S. officials believe the IEA Emergency Sharing System should be activated only during a sudden and severe oil crisis, when each IEA member country would readily accept its obligations under the IEP. They contend that the System is onerous and costly to operate and somewhat heavyhanded for dealing with temporary market disruptions or the gradual supply reductions which have characterized the world oil market since early 1979.

Two recent studies also question the viability of this System.

--An October 1980 Congressional Research Service study on the effect of the Iraq-Iran conflict on the oil market concludes that the viability of the System is doubtful because it depends on the private oil sector and fails to encompass the activities of non-IEA countries. The study points out that, if the IEA System was triggered, oil exporters would significantly increase oil prices and would tend to break contracts with IEA members. Since the IEP has no provisions concerning oil prices, countries would be forced to accept prevailing market prices.

--A January 1981 Harvard study on energy and security concluded that triggering of the System would allow some time for oil-consuming countries to take economic and military actions and might temporarily restrain significant price increases. The study raised doubts whether the System could be effective in supply crises of less than 7 percent or more than 20 percent and for a prolonged period of time.

Agency comments and our evaluation

The Department of State argues that whether the United States would give or receive oil under the system depends on which oil supplies are interrupted. It contends that our point that the United States would receive oil only if it were the target of an embargo is technically untrue and that, in most circumstances, an interruption of Western Hemisphere or African supplies would put the United States in a receiving position. State Department officials concede that in the overwhelming majority of non-embargo type supply disruptions, the United States would indeed have an allocation obligation because the United States produces over half of its consumption, unlike most IEA countries which are much more import dependent and, therefore, more likely to incur allocation rights in the event of a supply disruption. State Department officials also concede that the prospect of a non-embargo type disruption in the Western Hemisphere and Africa of the magnitude that would result in the United States receiving oil supplies is extremely unlikely.

EFFECT OF GOVERNMENT-TO-GOVERNMENT DEALS ON EMERGENCY SHARING SYSTEM

Since 1974, the oil market for which the Emergency Sharing System was founded has changed dramatically. In 1973, the major oil companies handled 75 percent of all crude oil traded internationally; by the end of 1979, their share had fallen to 42 percent. Because supplies are now reaching the market from other channels, the multinational oil companies' ability to adjust imbalances through intracompany allocation and third-party transactions is reduced. The arrangements that replace these companies' functions lack the same flexibility to balance the global system.

Many of these new arrangements take the form of direct producer-consumer contracts. In 1979, government-to-government contracts increased about 50 percent, from around 3.8 mmbd to 5.8 mmbd. In bypassing the multinational oil companies via direct producer-consumer contracts, OPEC gains more and more control over the destinations of its crude oil. Among other benefits, producers hope to gain political benefits ranging from generally improved relationships to specific foreign policy objectives, such as Iraq's insistence on an Israel/Egypt/South Africa boycott clause in contracts.

In an effort to cope with these rapid changes, the IEA ministers agreed in early 1980 that more information on government-to-government contracts was needed.

IEA's preliminary observations indicated that the broader implications of these new trading activities involved "the security of petroleum supply to IEA member countries and the flexibility of the international distribution system, increased politicization of the oil trade, and manageability of emergency situations." IEA concluded that the continued buildup of government-to-government deals may endanger the flexibility of the international distribution system.

In June 1981, nevertheless, the Secretariat noted that, even though increasing volumes of oil are being traded on government-to-government deals, most of it seems eventually to find its way into the company supply systems, so this might not be so serious a problem. In addition, the State Department points out that the percent of oil imported into IEA countries by companies participating in the IEA system has not changed.

The Secretariat has noted a need to identify flows of oil which are "dedicated" to specific country destinations, since this could reduce the flexibility of the international oil distribution system generally and perhaps also affect the smooth functioning of the Emergency Sharing System.

In a study contracted by DOE, "Response of Oil Companies and Consuming Countries to OPEC's Increasing Control of Crude Oil Exports," dated October 1979, Petroleum Economics, Limited, observed that "with supplies of oil that traditionally flowed through oil company channels threatened with restrictions, the efficiency of oil sharing programs organized by IEA is called into question." We have this matter under review in our study of the changing structure of the international oil market and its impact on the United States.

## OTHER EMERGENCY SHARING SYSTEMS

The European Economic Community (EEC) has an emergency sharing system which covers petroleum and other fuels used in the generation of electricity. All members of the EEC, except France,

are members of the IEA. The North Atlantic Treaty Organization also has an emergency sharing system which is activated under severe crises or wartime conditions when the defense needs of its member countries are not being satisfied, regardless of the level of the shortfall.

Differences and similarities between the IEA and EEC systems are

--both encompass demand restraint emergency stock requirements and oil sharing although they are defined differently;

--the IEA has no oil movement restrictions, the EEC does;

--the IEA system is more structured;

--the EEC has no direct involvement of the oil industry; and

--formulas for triggering the sharing mechanisms differ.

Despite the differences, both organizations believe the two systems can operate effectively on an individual and simultaneous basis in the event of an actual triggering.

These emergency sharing systems represent a positive step toward improved multilateral cooperation among developed consuming countries. Whether they represent an effective deterrent and/or response to supply disruptions remains to be seen. Individually or collectively, no system will be effective unless

--all participating countries agree that the system is important, that it is critical to their national interest, and that each country will accept an allocation obligation as well as an allocation right; and

--an acceptable price dispute process exists to prevent conflicts between buyers and suppliers that could delay, if not prevent, effective and efficient operation.

## CONCLUSIONS

Our assessment of IEA member efforts to cope with future oil supply disruptions and disruptions stemming from war or civil unrest--widely considered a likely prospect sometime in the 1980s--indicates that IEA members have not taken strong enough action to meet this likelihood. IEA members have established an institutional framework and developed broad policy objectives to meet the threat of future oil shortages, but they have yet to limit their vulnerability to such shortages. Our assessment shows that IEA's complex Emergency Sharing System suffers from data

problems, lack of an adequate price dispute settlement mechanism for member countries, and a misleading representation of emergency reserves, which raise serious questions about the System's workability and contributes to a reluctance to use it except in severe oil disruptions, such as those experienced in 1973-74.

The United States has a stake in the success of the common efforts of IEA members to meet future oil shortages. Under non-embargo supply disruption scenarios involving the Emergency Sharing System, the United States would likely be obligated to divert oil imports to other IEA countries. Sharing supplies during an emergency is the heart of the IEA system and represents the broad economic, foreign policy, and national security interests of the United States. Without IEA, the United States would be forced to compete with many of its allies for scarce oil supplies, with potentially harmful effects to its relations with them. The IEA Secretariat agreed with this assessment, stating that:

> "* * * another scramble for oil supplies would produce yet another huge price explosion with catastrophic economic consequences. And the nature of the oil market is such that when prices go up they do not quickly come down even if they are gradually eroded in real terms between supply interruptions. The U.S. is now fundamentally tied into the world economy and therefore has a major interest in avoiding anything which may lead to further economic disruption."

## CHAPTER 4

## ANALYSIS OF IEA'S OIL MARKET INFORMATION SYSTEM

The need for independent information about the international oil market's operation and structure has been a primary concern of member countries since the IEA was established. Government monitoring of or intervention in this market was not common before the oil embargo of 1973, when swift changes started to take place in the market. IEA member countries, which comprise most of the world's largest oil importers and consumers, became very conscious of their dependence on secure supplies of crude oil and oil products and the rapid passing of control over oil production and price levels from oil companies to producing countries.

Consequently, participating governments became concerned that the bulk of the international oil market depended on the oil industry's experience and logistics expertise and processing and marketing capabilities. Thus, they agreed to include in the IEP a comprehensive international Oil Market Information System and a permanent framework for consultation with oil companies. The IEP can be interpreted as indicating that, with the establishment of this system, they intended to play a more active role in relation to the oil industry. Participating governments agreed that adequate knowledge of the operation and structure of the international oil market and the activities of the international oil companies was essential to the success of IEA's emergency and overall cooperative programs.

IEA's Oil Market Information System consists of (1) a General Section dealing with the international oil market and the activities of oil companies and (2) a Special Section dealing with information essential to ensure the efficient operation of emergency measures; i.e., volume data or oil supply and demand.

### STANDING GROUP ON THE OIL MARKET

To set up the Information System, the IEP provided for a Standing Group on the Oil Market composed of one or more representatives from each participating country, to define, review the operation, and report on the Information System and to establish and operate the framework for consultation with oil companies.

The Secretariat was given responsibility for operating the Information System and distributing the information to the participating countries. It was also assigned the task of preparing reports on the international oil situation. However, the SOM has provided for ad hoc task forces to help with these responsibilities.

As agreed in article 27 of the IEP, commencing in 1975 IEA members began collecting certain data from oil companies within

their jurisdictions. This data is submitted to the IEA Secretariat on a regular basis and has been incorporated into the following information systems.

--Crude oil import prices

--Petroleum product import prices

--Crude oil costs

--Financial information system

In July 1979, in response to the Iran crisis, the Governing Board considered setting up (1) a spot market reporting system and (2) a register of international crude oil market transactions. Since that time, IEA has set up a crude oil import register 1/ system and modified Questionnaires A and B to encompass information on oil stocks at sea. However, no spot market reporting system was established.

To further improve the ongoing surveillance of the oil market, IEA ministers agreed in December 1979 to obtain more information on state-to-state transactions. The SOM developed a quarterly reporting system on government involvement in the oil market, including direct purchases by government or state companies and other activities which affect crude oil purchases by private parties. The reporting was terminated after an extensive analysis by the IEA Secretariat in 1980. The SOM at the end of January 1981 agreed that no further analysis should be made before the autumn of 1981. IEA points out that the analysis of destination restrictions is, however, taking place in the Standing Group on Emergency Questions.

A U.S. delegate to SOM disclosed that there is not much enthusiasm within the IEA for setting up the spot market registration system, particularly because of the legal and administrative complexities involved. Information on the spot market would require a complex, fast, reporting system covering the whole IEA/OECD area, according to the Secretariat. Collecting such information would entail considerable work for those involved and could cause legal problems in member countries, such as jurisdiction over an entity with an office but no domicile in a particular country.

Moreover, information on the current spot market has been described as sketchy, incomplete, and full of rumors. The

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1/Registers are records maintained by each IEA member nation, of the volume, price, and other relevant transactional information for each cargo of oil imported.

market does not really exist at any one place; transactions are made by telephone or telex contacts among many participants. The same cargo may change hands several times before it reaches the ultimate consumer. The total volume traded is very difficult to estimate and is more a guess. Similarly, real price data on such transactions is not available. The U.S. mission to the IEA informed us that the total volume of oil traded on the spot market is in any event less than 10 percent of the amount in world trade and is normally less than 5 percent.

Finally, additional information is gained from consultations between member countries and the oil companies. These consultations provide information not available in the formal data system concerning the industry's views about the structure and near-term outlook of the world oil market.

## OIL INDUSTRY CRITICAL TO SOM

To provide technical assistance to SOM, member countries asked participating companies to organize the Industry Working Party. The IWP proposed the types of data to be included in the Information System and gave advice on defining the data, designing the data acquisition system, and setting up the procedures for all data systems and the framework for consultations with the oil companies. Through the consultation framework, one or more participating countries consult with and request information from individual oil companies on all significant aspects of the oil industry. IWP suggestions have been solicited and substantially implemented, and IWP continues to have an important role in SOM efforts; for example, its technical know-how was useful in a recent Governing Board decision to modify and/or improve the Information System to adapt it to the changing circumstances in the oil market.

The SOM holds periodic consultations with individual oil companies, discussing such matters as arrangements for access to major sources of crude oil, worldwide exploration and prospects, the international marine transportation sector and tanker market, oil industry structure, oil market situation and outlook, future role of the international oil companies, and the spot market. SOM consultations are confidential and are not provided an antitrust defense under the U.S. Voluntary Agreement. (See ch. 7.).

### Access to oil company data

Since formation of the IEA, "transparency" or access to oil company data on cost, profit, storage, production, processing, and transportation has been a point of disagreement among IEA member countries. Some members have argued that the IEA can serve as a mechanism through which the "reasonableness" of prices can be assessed, and transparency would permit governments to (1) determine the differences in profit margins between countries, 1/ (2) learn whether companies favor their affiliates and discriminate against independents, (3) evaluate the balance-of-payment

impact of oil imports, and (4) determine whether a less expensive source of oil may be available. Some members distrust oil companies and want to make their operations more transparent.

On the other hand, the United States, supported by Britain and Canada, argued that proprietary information must be protected in a free enterprise system. The United States initially opposed the creation of the Oil Market Information System and only conceded--after making certain modifications--in order to obtain agreement on the IEP. According to a 1979 Congressional Research Study, the data collection system originally desired by the opposing countries would have been in violation of U.S. law.

Oil companies were also reported to be against the proposed system, arguing that the information would be leaked and would harm their competitive positions and that opening their books to public scrutiny would put them at a disadvantage vis-a-vis other petroleum companies.

On May 22, 1976, the Governing Board agreed on the means for achieving oil market transparency. A consensus had to be reached and, consequently, the members decided on a procedure to aggregate the data of individual companies into one national report and to submit this report to the IEA Secretariat. Aggregation of data is made for three or more companies; when a country submits data on only two companies, the Secretariat uses the data internally only.

To further protect confidentiality of data, the United States proposed and IEA adopted the so-called Black Box System for crude oil cost data. According to the U.S. Mission to the IEA, under this system, representatives of member countries bring computer cards containing their countries' proprietary data to the IEA computer room, where the data is aggregated. The cards containing individual company cost information remain under national control throughout the exercise.

The majority of the delegates to SOM took the position that crude oil import price data should be made available to the Secretariat company by company as obtained by participating governments. They argued that centralized collection and monitoring of data was necessary to allow for comparison of data and uniform interpretation and that, to have a reliable system for monitoring

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1/According to DOE, some governments hoped that transparency would permit the profit margins between countries to be determined, but this has not been demonstrated in practice, owing principally to differences in accounting systems and regulations between companies and countries. The SOM has received considerable expert advice from industry and non-industry sources on this subject.

international operations, each government should have access to individual company data. Such operations, they said, represent a significant element in national energy policies.

The delegates from opposing countries pointed out that the need for transparency should be balanced with the need to protect proprietary data and competition and to comply with the legal requirements of any participating country; this could be achieved through aggregating the individual company data provided by countries. The United States favors aggregation.

As a solution to this disagreement, the Governing Board decided on what has been designated as the "Chairman's Compromise." If anomalies or inconsistencies occur in data received by a participating country or in the aggregated data received by the Secretariat from two or more participating countries, the Executive Director of IEA, after consultation with SOM and the legal adviser, may request one or more participating countries to review with the Secretariat on a company-by-company basis the appropriate unaggregated data to reconcile any anomalies or inconsistencies. According to the Secretariat, while no one was entirely satisfied with the compromise, it did enable the IEA to proceed and IEA has not since been subject to requests to reopen the issue.

Concerns of companies

According to an IEA official, there is still no total understanding of the world oil market in IEA and, to some extent, even in the private sector. Knowledge of the market, the IEA asserts, is inhibited by the oil companies' confidentiality concerns; they have not endorsed the inclusion in the Information System of some data they view as proprietary. Testing the accuracy of data requires going through more detailed information, which according to an IEA official, runs contrary to confidentiality.

To illustrate, in discussing the proposed reporting instructions for the oil product import register that was recently terminated, the United States argued that prices cannot be masked in such a way as to protect confidentiality and provide information of value simultaneously. For instance, including in the reporting system the name of the seller, which SOM delegates considered significant, could lead to competitive problems. Likewise, in developing the monitoring system for the spot market, industry delegates pointed out at an IWP meeting that very substantial confidentiality problems would be involved in transmitting information from home governments to IEA. Further, the scope of the first analysis of a crude oil import price register was also reported to have been substantially restricted due to confidentiality rules; data on approximately 21 percent of the total volume of crude oil imported to to IEA countries could not be circulated to member countries.

## USEFULNESS OF INFORMATION SYSTEM

The United States is a very active contributor to SOM efforts. It proposed the system of compiling oil market data to protect proprietary information as well as the system for the spot market register which the SOM considered. DOE's delegate to SOM claimed that in addition to the Information System, the United States has benefitted from information derived from SOM proceedings. He also said that consultations between companies and governments antedated the IEA but may have become more frequent and meaningful.

A DOE report claims that the U.S. Government, through SOM efforts, has expanded its oversight of international oil company activities and that, with the addition of IEA's Information System to its other sources of information, DOE is in a unique position to assess world oil industry developments. However, in the opinion of the DOE delegate to the SOM, the major benefit of SOM activities to the United States is the increased knowledge gained by other IEA members, which has enhanced overall understanding of the importance of oil energy matters and made collective action easier to implement.

According to DOE's delegate to the SOM, the Oil Market Information System has been of greater use to smaller countries than to larger ones. The smaller countries like the system because it gives them the market data that large countries have. Delegates from one country informed us that the System has been useful as a source of analysis and synthesis of world oil market data.

Some participating company officials have also indicated that the Information System is the IEA's primary accomplishment. Others stated that the System has allowed participating countries to have similar backgrounds from which to make decisions and greater understanding of the oil market. Officials from some countries feel that the Oil Market Information System is the most reliable, extensive, and best available in the international oil market. One of these officials even claimed that the System's data is more reliable than data compiled by the major oil companies and intelligence agencies.

According to an SOM document, the reports prepared from the Information System are useful to governments in communicating with oil companies operating in their countries. The crude oil cost and import price data enable national governments to compare their own costs and prices with those of IEA countries in making their own crude purchases. Also, import price data on petroleum products was requested to allow countries to make comparative analyses to ascertain the impact of imports on their product price levels and to gauge their competitive situations.

However, a February 1981 report to the SOM by an ad hoc IEA group evaluating the oil import registry systems included the

following conclusions.

--The computer and programing resources are inadequate to meet all IEA needs. This has resulted in delays in the Secretariat's work on crude import data and no product import data has yet been processed. There is little hope of this situation improving in the near future. The Secretariat saw little use for the crude and product data in its own work and questioned its value to delegations due to its lateness. The Secretariat felt that its reports on crude oil import data should be made annually or semiannually or, at a maximum, quarterly.

--It was the unanimous consensus of the ad hoc group that the crude oil register should be continued indefinitely; most countries favored continuing the present monthly reports, and one country favored quarterly reports.

--The majority of the ad hoc group found the oil product register to be of little value and recommended that it be dropped. A few countries favored maintaining the product register. The United States and one other country believed that, if the product import register were discontinued, some form of the old product price information system should be reinstated. (The product register was discontinued by Governing Board decision, on recommendation of the SOM, in June 1981.)

--For the crude oil import registry, the questions of reporting errors and the quality of information were raised and it was felt that these questions should be left to the Secretariat to pursue bilaterally with the countries concerned.

Another method by which information is exchanged is through consultations between member countries and their oil companies. IEA countries, including the United States, find consultations with oil companies most useful in gaining knowledge of the structure of the oil market and the short-term outlook. The SOM, according to a DOE official, uses consultations any time it wants to update information on oil market activities. IEA recently held several consultations with certain oil companies to obtain their views on the short-term oil market and on the future implications of current structural changes.

Analyzing Information System data

Officials of some countries and companies informed us that IEA makes little analysis of the oil market data collected; one company official said that although the data is adequate, the interpretation is not. A number of delegates from other partici-

pating countries and companies have expressed dissatisfaction with the amount of IEA's analysis. Some government officials remarked that the data provides only a partial picture and must be interpreted to be useful and that unanalyzed information is not useful in understanding marketing conditions; they believe that IEA is collecting more data than it can use.

## CONCLUSIONS

With the cooperation and assistance of the oil companies, IEA has developed information systems on crude oil costs, crude oil import prices, petroleum product prices, and financial operations of international oil companies. The information is supplied by member countries and reporting companies through a series of IEA questionnaires. In addition, a framework for consultation with oil companies was created which allows countries to collect information on the oil market from individual oil companies that is not made available by the regular reporting system. Officials of certain oil companies and governments have indicated that the IEA efforts in this area have been valuable in improving the information flow and understanding between their respective organizations.

In response to the turbulence in the oil market caused by Iranian disruptions, IEA has transformed its crude and product cost and price reporting systems into an import register system which has been in operation since the end of 1979. These changes are designed to increase the IEA's and governments' ability to determine oil market conditions and, subsequently, to moderate developments in that market.

However, due to legal and administrative complexities, oil companies could not provide all the data that IEA member governments want. The total transparency desired by some IEA governments conflicts with a free enterprise system. Oil companies argue that proprietary information would be leaked and harm their competitive position. Proprietary information has to be protected, and protective measures entail administrative complexities.

In addition to the problems imposed by confidentiality requirements, establishing spot market monitoring involves technical questions of enormous difficulty. The spot market is complex, not centralized, and constantly changing, making it difficult to get a proper view of the market.

Nevertheless, IEA has installed the first and only worldwide Oil Market Information System. The oil industry's assistance and cooperation has allowed IEA countries, particularly the smaller ones, to acquire a level of understanding of the oil market which they did not have before.

## CHAPTER 5

## IEA'S LONG-TERM COOPERATION PROGRAMS

In January 1976, IEA countries agreed within the International Energy Program to undertake joint and individual programs to promote energy conservation, accelerate the development of alternative sources of energy within and outside IEA countries, encourage and promote new and beneficial technologies for the efficient production and use of energy, and work to remove legislative and administrative measures which impair the achievement of the overall objectives of the program.

These long-term cooperation programs took effect on March 8, 1976. However, the IEA reported in its 1980 Annual Review of Energy Policies and Programs of IEA Countries that:

--From 1975 to 1979, in response to higher rates of economic growth (3.8 percent), energy and oil consumption increased by 3.1 percent and 2.9 percent, respectively. Nevertheless, compared with 1973, the energy required to produce a unit of gross domestic product in 1979 fell by almost 7 percent and oil used per unit of gross domestic product declined by almost 11 percent; in 1980, oil consumption dropped by about 7.5 percent and gross domestic product dropped about 1 percent.

--In 1979, despite the efficiency gains realized in energy and oil use and the considerable growth in IEA energy production, net oil imports increased again to about 24.5 mmbd. (In March 1980, IEA reported that in 1973 about 35 percent of IEA members' energy needs were satisfied by imported oil; by 1979, oil dependence was about 33 percent.)

--The use of alternative energy sources increased by about 10 percent between 1973 and 1979 but, reflecting the relatively long lags associated with bringing new sources of supply onstream, almost two-thirds of this increase occurred in 1979.

--Lower consumption estimates of energy projections for 1985 and 1990 have been substantially offset by reduced projections for domestic oil production. It is now estimated that overall IEA indigenous oil production will be lower by 2.5 mmbd in 1985 and 3.1 mmbd in 1990. This represents by far the largest change in expectations with regard to individual supply sources. Approximately nine-tenths of the reduction is accounted for by downward revisions by the United States.

--The increase in oil prices experienced between 1973 and 1979 resulted in an overall increase of 102 percent in the real cost of oil in the industrial sector and 118 percent in the residential sector in those IEA countries for which data are available (Canada, Germany, Italy, Japan, the United Kingdom, and the United States).

IEA also reported in March 1980 that, although member countries have accomplished much over the past 5 years, each country can and should do more in light of the gravity of the situation.

To achieve the long-term programs, the IEA countries agreed to periodically establish medium and long-term objectives of reducing their dependence on imported oil. Accordingly, in October 1977, IEA adopted an oil import objective of 26 mmbd for 1985 which was revised downward by the Governing Board in December 1979 to 24.6 mmbd. Although IEA believes that each country is responsible for developing and implementing its own energy policies, it has also assumed the role of encouraging the national governments to strengthen their energy policies. To implement this, the IEA ministers adopted the following 12 guiding principles for energy policies.

"1. Reduce oil imports by conservation, supply expansion, and oil substitution.

"2. Reduce conflicts between environmental concerns and energy requirements.

"3. Allow domestic energy prices sufficient to bring about conservation and supply creation.

"4. Slow energy demand growth relative to economic growth by conservation and substitution.

"5. Replace oil in electricity generation and industry.

"6. Promote international trade in coal.

"7. Reserve natural gas to premium users.

"8. Steadily expand nuclear generating capacity.

"9. Emphasize research and development, increasing international collaborative projects.

"10. Establish a favorable investment climate, establish priority for exploration.

"11. Plan alternative programs should conservation and supply goals not be fully attained.

"12. Cooperate in evaluating world energy situation, R & D and technical requirements with developing countries."

The Standing Group on Long-Term Cooperation, composed of one or more representatives from each participating country, is responsible for developing and implementing the long-term cooperation programs. The IEA Governing Board selects the chairman and the vice chairman for the SLT and since the outset a U.S. official has served as chairman. The Secretariat does the preliminary work for the SLT, identifying areas where considerable potential to realize objectives exists.

Subordinate to the SLT are conservation, accelerated development of alternative energy sources, and nuclear subgroups. A separate, high-level Committee on Energy Research and Development (CERD) was created to promote cooperative energy research and development among IEA countries. Meeting on an ad hoc basis, these groups perform indepth studies and exchange experiences, information, and views and develop policy recommendations on topics related to their areas.

ANNUAL REVIEW PROCESS

In 1977, IEA's Governing Board directed SLT and CERD to review annually the effectiveness of IEA members' energy policies and programs. These annual reviews, which are considered by the United States as "critical," are to provide a regular check on the progress of individual countries and the group toward achieving the objective of reducing dependence on oil imports. The long-term cooperation program stipulates that the reviews will

(1) provide a thorough and systematic assessment of national programs and policies on the basis of common criteria;

(2) identify areas in which programs might be improved; and

(3) promote cooperation in the areas of conservation and accelerated production, including detailed exchanges of information, experience, and expertise in such areas.

The reviews also evaluate the countries' progress in eliminating legislative and administrative obstacles to energy investment and trade.

Once each year the SLT and the CERD designate a "rapporteur" to perform indepth evaluations for 6 to 8 countries each year. The SLT's rapporteurs cover the member countries' energy policies and programs, and CERD's rapporteurs cover the energy research, development, and demonstration policies and programs. The first

full cycle of evaluations has been completed for all major IEA members. DOE states that these reviews have served to focus additional attention on national R&D policies and priorities and on IEA policies and objectives. Although recommendations to strengthen energy policies are also made, the member countries are not bound by these recommendations. They have agreed to give the recommendations serious consideration in formulating national energy policies. The IEA has found that publishing annual reviews will encourage efforts to reduce dependence on oil imports.

Despite IEA's recent efforts to publicize the need for improvements in individual country performance, certain problems will continue to limit the effectiveness of the annual review process. These problems, as identified in a 1978 State Department study, included:

> "Variation between governments and industry on future supply, created by widely different assumptions about potential OPEC production and because the supply portion of the report prepared by the Secretariat is based largely on inputs from member governments and because of pressure from IEA members on the Secretariat to come up with a pessimistic forecast to provide a better rationale for strengthening domestic energy programs;
>
> "Differences in projected national GDP [gross domestic product] growth rates, which largely drive future energy demand levels. Here the problem is primarily on the government side because, for domestic political reasons, IEA members have usually overstated expected GDP growth rates and we have not found a politically palatable way to make them more realistic; and,
>
> "The different objectives of governments and industry, the former are seeking to dramatize the energy problem to build public and political support for stronger national energy programs, while the latter's forecasts are primarily based on commercial and domestic political consideration, i.e., industry's desire to demonstrate that energy problems can safely be left in its hands and its fear of government over-regulation."

Some improvement has been made in the area as consultation with industry has become more frequent and comprehensive and as the Secretariat has developed a better information system and expertise.

DOE has pointed out that the forecast data submitted by governments are only one element among several used in evaluating the need for improving country performance, including

--performance of the country to date (policies in place or planned which will affect the country's performance) and

--private industry forecasts and first-hand information gleaned through visits to the country by the IEA review team.

Moreover, DOE states that the IEA does not accept country forecasts at face value but evaluates the "achievability of energy balances" in a separate section of each country report. The IEA frequently determines that the forecasts submitted can only be achieved with new and stronger policies. The IEA has become well aware of the often wide divergence of government/industry forecasts for an individual country and the need for stronger measures to mitigate this uncertainty.

DOE also states that the IEA has undertaken a much more active role in evaluating and quantifying the outlook for the IEA. For instance, in the 1980 Review, the IEA estimated that oil imports for the Group in 1985 could be held to below the aggregate forecast submitted by national governments.

Moreover, DOE notes that the annual reviews have become the basis for identifying specific measures to be taken to strengthen national energy programs. These suggestions are submitted to IEA ministers for review and made public along with ministerial communiques.

ENERGY CONSERVATION

IEA energy policy calls for vigorous conservation measures which include pricing, establishing minimum energy efficiency standards, investing in energy savings equipment and techniques, and developing new technologies and processes to more efficiently use available energy supplies.

IEA members' growth rates of total consumption of primary energy increased annually by 5.0 percent from 1960 to 1973 and by only 0.8 percent from 1973 to 1978.

SLT reviews of energy conservation programs called for more government involvement through rapid or stronger implementation of energy policies and programs. The 1977 and 1978 review recommendations called for continued and expanded emphasis on conservation measures, such as price restructuring, strengthening incentives for retrofitting, building codes for all new buildings, increased automobile fuel efficiency, less energy-intensive industrial processes, increased use of waste heat and district heating, and combined production of heat and electricity. The 1979 review estimated that, if member countries implemented these recommendations, energy demand could be further reduced by about 5 percent by 1985.

Lines of action for energy conservation and fuel-switching were adopted at the December 1980 ministerial governing board meeting.

Alternate energy sources

In 1981 the IEA noted that reliance on alternative forms of energy in general should be approximately 58 mmbd in 1990, an increase of about 19.3 mmbd from the 1979 level. However, IEA reviews have consistently mentioned that overall progress in this effort is hampered by (1) infrastructure constraints which make the expanded use of coal difficult because of inadequate port and transport facilities and (2) environmental and safety concerns which pose difficulties for coal and nuclear energy development. In general, as stated in the 1978 review, IEA countries need to improve the investment climate for exploration, development, and production of oil and gas and overcome environmental and safety-related delays concerning coal and nuclear power.

When SLT followed up on its 1977 and 1978 recommendations for accelerated development programs, it found that some IEA countries' abilities to rapidly develop alternative energy sources were inhibited by:

1. Laws which prohibit construction and operation of nuclear power plants.

2. Governments' lack of the necessary power to force utilities to switch from oil to coal.

3. Lack of new government incentives to ensure rapid development of unconventional and frontier oil resources.

4. Some governments' lack of new measures to monitor uranium policy to ensure that uranium exports are effectively safeguarded.

5. Governments' lack of power to accelerate exploration of hydrocarbons.

6. Lack of progress on siting policies.

7. Lack of review or improvement in contingency planning against possible disruptions of gas supplies.

8. Lack of major policy developments for producing and using coal.

Subsequently, in 1979, IEA countries were asked to:

1. Encourage the accelerated exploration and development of oil and gas by appropriate pricing and leasing policies and, where necessary, by financial and fiscal incentives, particularly for high-risk, high-potential areas.

2. Ensure the timely construction of the infrastructure necessary for the accelerated use of steam coal and natural gas, including port facilities, distribution terminals, transportation and pipeline networks, and storage facilities.

3. Expand steam coal and natural gas imports by lifting regulations that restrict trade, consistent with maintaining the indigenous coal production required by energy, social, and regional policies and by securing long-term contracts with suppliers.

4. Strengthen efforts to increase the use of steam coal through careful environmental planning which addresses fully such problems as combustion technology, emission control, and waste disposal.

5. Ensure the steady expansion of nuclear power whenever possible, having due regard to legal and constitutional provisions; this will require strong efforts to secure appropriate sites, improve licensing procedures, strengthen safety procedures, and achieve satisfactory forms of nuclear waste disposal on both an intermediary and permanent basis.

6. Develop synthetic fuels and renewables as quickly as possible and increase public support where necessary for their demonstration and commercial use.

IEA believes that determining the proper mix of efforts on new technologies is crucial to preparing member countries for the time when they can no longer depend on conventional sources of energy. It believes that today's decisions on the size and emphasis of national energy research, development and demonstration (ERD&D) programs will largely determine the mix of new technologies available in the post-1990 period.

DOE said that consequently the IEA recently completed a 2-1/2-year R&D strategy development project to guide assignment of R&D priorities in national programs of members and in the cooperative R&D program under the CERD. Its objective is to facilitate the availability of new energy technologies, when needed, which take into consideration national resources, economic needs, fossil energy availabilities, and environmental protection. It also hopes to provide a bridge between national and international ERD&D efforts. Most importantly, CERD has anticipated that the strategy project results will lead to more explicit judgments on the proper

balance for the distribution of countries' ERD&D budgets and will guide countries in ERD&D program emphasis.

IEA's projects

IEA's principal ERD&D activities, besides developing a strategy and fostering effective national programs through annual reviews, also include R&D collaboration in conservation; coal technology; nuclear and fusion power; solar, geothermal, ocean, and wind energy; biomass conversion; and hydrogen production. IEA reported in March 1980 that 18 member countries are participating in 48 of these projects at a cost of $580 million and that this represented only a small proportion of the total ERD&D budgets of IEA members.

The cost of participation in IEA collaborative projects compared with total IEA government ERD&D budgets is low. In 1979, IEA countries spent only 0.6 to 15.6 percent of their nonfission ERD&D budgets on IEA projects and the average percentage of national ERD&D budgets flowing into the collaborative projects, excluding nuclear, was 5.2 percent.

We were informed by IEA officials that resources limit countries' participation in the ERD&D cooperative programs. According to some IEA officials, there is some reluctance to spend money on international projects, possibly because the element of control is not the same as for domestic projects. Also, DOE points out that a major impediment has been widespread reluctance to cooperate in technology areas with relatively near-term commercial potential to avoid jeopardizing the competitive positions of national industry groups. In addition some IEA countries have expressed preferences for bilateral ERD&D arrangements, which they consider to be more manageable, though a number of these have been arranged under IEA auspices.

IEA LONG-TERM EFFORTS NEED IMPROVEMENT

IEA believes that the government of each country is responsible for developing and implementing energy policies. However, it has resolved that it has a role in encouraging the development and full implementation of governments' energy policies.

During the last 3 years, IEA reported that although its members have made significant accomplishments, response is insufficient to meet long-term energy needs.

IEA officials and U.S. delegates cited that without IEA, member countries would not have been able to benefit from the exchange of information and coordination of energy conservation activities which IEA provides.

SLT made a critical assessment of projected electricity and nuclear growth in IEA countries, which indicated that the projected nuclear power capacity is possible only if national administrations provide the needed support and endeavor to collectively solve their common nuclear fuel cycle problems. Otherwise, according to IEA's evaluation, the projected goals of the nuclear development programs will be pushed 3 to 5 years further away, resulting in increased oil imports for electric generation.

A 1978 IEA study of steam coal prospects to the year 2000 examined the possibilities of substituting coal for oil in the next two decades. IEA told us that this study served as the impetus for it to adopt a set of principles for coal policy and, subsequently a consensus to establish a Coal Industry Advisory Board (CIAB) on July 11, 1979. The CIAB, which consists of 37 persons active in coal-related establishments, will assist IEA in implementing the principles for coal policy. DOE points out that Board members contribute their views as independent individuals examining broad industry-wide issues without the disclosure of confidential or proprietary data of any company. The CIAB provides advice to the IEA on actions which are required to enhance the production, trade, and use of coal.

IEA countries, in deciding to agree on the principles for coal policy, expressed firm political determination to bring about the substitution of coal for oil. The principles call for cooperative measures and coordination of national policies. To ensure accomplishment of this program, the IEA Governing Board also decided to set up a systematic periodic assessment of the countries' coal policies. As of November 1979, the Secretariat had already made a preliminary assessment of projected coal development and use and of national coal policies.

IEA's role is to try to point out to the public that this situation is serious. In addition to the annual reviews, in October 1979 IEA tried to achieve this through a publicity campaign, the International Energy Conservation Month. Countries' observations of the conservation month varied in scope and character. IEA officials said that the campaign was given visible governmental support through proclamations by heads of state; however, public funding was inadequate to give the campaign the needed push.

## Lack of consensus on IEA strategy

IEA countries' efforts in long-term IEA programs varied in terms of strength, size, scope, and priorities. For instance, ERD&D budgets and energy efficiency achievements varied even among countries with similar economic growth. Budget distribution by technology area also varied, demonstrating differing assessments of benefits from developing the various areas. In addition, not all member countries actively participate in IEA's collaborative

projects. Such divergency of efforts seems to reflect member countries' attitudes that national priorities preempt IEP goals.

In 1979, the SLT made an analysis of conservation programs. Several country programs were considered to be strong and comprehensive, while other countries were called upon to take further strengthening measures. Although several countries were reported to have recently adopted resolutions to prepare conservation programs, their programs have yet to be developed. One country's program was cited in this latest review as suffering from limited public funding and staffing while another was cited as still in need of significant demand reduction measures.

Participating country and Secretariat representatives have stated that IEA efforts in the long-term cooperation area have produced few results. While all countries have agreed to general long-term principles focusing on intensified conservation, reduced import dependence, and expanded research and development, individual IEA country performance has been mixed. Difficulties in this area stem from differing national energy policies, programs, and procedures. These problems are further exacerbated by national political differences and differing economic policy objectives. It's IEA's opinion that these issues, coupled with environmental concerns in some countries, have produced significant obstacles to the success of the long-term cooperation program. Nevertheless, IEA believes some degree of conservation, import reduction and increased, better focused research and development probably has occurred as a result of its facilitating efforts. And, at the minimum, the Secretariat said, it is remarkable that IEA countries have set out fairly common lines of energy strategies.

## U.S. PERFORMANCE IMPROVING

Both the 1977 and 1978 annual reviews judged as inadequate the U.S. contribution to the attainment of SLT's 1977 objective of reduced oil imports. In the 1979 review, however, U.S. performance was reported to have improved. This was due to the reduction of U.S. oil consumption by about 2.4 percent from 1978 to 1979. Such improvement was attributed to the rapid escalation in oil prices, slow rise in demand, increase in Alaskan oil production, and fuel switching away from oil (mainly to natural gas) in the industrial sector.

In its 1980 review of U.S. energy policy and programs, the SLT described U.S. progress as being significant. It concluded that the United States had dramatically reversed its energy situation. The review observed that, although total U.S. energy demand fell only slightly, oil consumption showed a larger decrease and net oil imports fell sharply from 8.0 mmbd in 1978 to a figure below 6.5 mmbd. It praised the United States for

--phased decontrol of domestic crude oil prices;

--enactment of the windfall profits tax;

--support of synfuels legislation; and

--proposals to modify environmental considerations, speed up nuclear licensing, and assist coal conversion by utilities.

The 1980 report cautioned that many uncertainties continue to exist in the international and domestic energy market which could work against continued U.S. energy performance, including

--renewed economic growth generating increased oil demand;

--the unresolved debate in the United States over reconciliation of energy and environmental objectives; and

--disagreement over demand restraint and conservation measures, such as a gas tax, domestic allocation programs, etc.

PRODUCER-CONSUMER RELATIONS

Another objective of the countries that established the IEA was to improve producer-consumer relations. The IEP Agreement generally stated that the IEA would:

> Promote cooperative relations with oil producing countries and with other oil consuming countries, including developing countries, giving full consideration to the needs and interests of other oil consuming countries, particularly those of the developing countries.
>
> Keep under review developments in the energy field with a view of promoting a purposeful dialog as well as other forms of cooperation with producer countries and other consumer countries.
>
> Encourage stable international trade in oil and promote secure oil supplies on reasonable and equitable terms.
>
> Keep under review developments in the international energy situation and its effect on the world economy.

To accomplish these goals, the IEP provided for a Standing Group on Relations with Producer and Other Consumer Countries to examine and report to the Governing Board, the member countries' activities to achieve these specific objectives as well as to submit proposals to the Board on appropriate cooperative action. The SPC would also coordinate with the SLT. However, the SPC no

longer exists; a U.S. official informed us that it was unable to agree on how to proceed.

The Ad Hoc Group on International Energy Relations, which replaced the SPC, was originally envisioned as a coordinating mechanism for IEA's energy policy stand at the Conference on International Economic Cooperation in 1977, and it is still in existence.

The IEA was an observer in the Conference's Energy Commission. No productive agreements were reached at the Conference and it served to highlight deep divisions of interest among consumers and the less moderate members of OPEC.

Since the Conference ended in 1977, IEA's sole ongoing effort to attempt to reopen dialog with producers has been to identify topics for discussions, but no agreement on topics has been reached. On the other side, there are considerable divisions within OPEC as well, which provide little basis for productive multilateral discussions between producers and consumers.

In a May 1980 ministerial meeting, the IEA Governing Board reiterated its commitment to improving producer-consumer relations and expressed a willingness to discuss short, medium, and long-term energy issues with producing countries. It also expressed support for the August 1981 U.N. Conference on New and Renewable Sources of Energy.

## CONCLUSIONS

IEA has contributed to member countries' awareness of the impact of oil dependence and encouraged them to establish target goals and to exchange information and knowledge through the annual review process. Member countries have improved energy demand management and supply since IEA was created, but no one, including U.S. delegates, can precisely relate the degree that the IEA has influenced the achievements of the participating countries through the review process or other means.

It is clear, however, that SLT efforts have put together useful information on country energy policies and programs and stressed the importance of countries taking action as soon as possible. Simply put, IEA can claim to have provided an institutional framework to provide an extra push for the implementation and development of energy policies. IEA has also initiated a number of ERD&D projects.

The IEA has been least successful in the producer-consumer dialog area, and its efforts at developing some form of dialog have produced no tangible results. It is the opinion of some IEA national government officials that the IEA's poor performance in this area is as much a result of OPEC lack of interest as any other factor. In any case, the U.S. Mission to the IEA said that producer-consumer relations are periodically reviewed.

## CHAPTER 6

## MANAGEMENT OF U.S. PARTICIPATION IN THE IEA

### KEY AGENCIES

U.S. participation in the IEA is authorized by an executive agreement signed by the United States in November 1974 and implemented by the Energy Policy and Conservation Act of 1975 as amended. The Departments of Energy and State share operational responsibility for U.S. participation. The Treasury Department, which had a significant role in U.S. efforts to develop the IEA and in managing initial U.S. participation, has had minimal involvement in recent years.

The Secretary of Energy usually heads the highest level IEA ministerial meetings, and the Assistant Secretary of State for Economic and Business Affairs usually heads the U.S. delegation to regular official Governing Board meetings with the Assistant Secretary of Energy for International Affairs occasionally acting in that capacity. The United States maintains continuous liaison with the IEA through its permanent delegation to the OECD. DOE and State share responsibilities for representing the United States in various short and long-term activities. In the previous administration, integration of U.S. participation in the IEA into overall U.S. energy policy took place through the cabinet-level Energy Coordinating Committee and the National Security Council (NSC). Major U.S. decisions on IEA issues, such as lowering import targets or integrating IEA members' stock policies, were made by either one or both of these high-level organizations and carried out by either State or DOE within the IEA structure, depending on particular circumstances.

Significant to U.S. participation in the IEA has been the antitrust defense provided to U.S. oil companies to meet as a group, advise the IEA Secretariat, and participate in the allocation of supplies once IEA has made an emergency sharing decision. Under section 252 of the EPCA, the Department of Justice and the Federal Trade Commission are primarily responsible for monitoring the IEA activities of U.S. oil companies to insure that IEP goals are achieved in the least anticompetitive manner. These two agencies submit semiannual reports to the Congress summarizing their antitrust monitoring activities. (See ch. 7.)

### U.S. Mission

The U.S. Mission to the OECD is the primary U.S. coordinator with IEA. A Foreign Service Officer serving as Energy Advisor within the Mission is the permanent U.S. representative on IEA matters, reporting to the Counselor for Economic and Social Affairs and, through the Counselor, to the Ambassador. He/she is the U.S. Mission's link to the IEA Secretariat and to energy policy specialists of the other 20 national delegations. He/she

reports on energy-related developments within the IEA, recommending appropriate responses. He/she is the resident member for OECD/IEA meetings on energy policy and the principal U.S. representative to a number of working-level committees. In essence, the Energy Advisor is the principal day-to-day link between the staffs of DOE, the State Department, and the IEA. This role is essentially one of liaison and coordination. Substantive U.S. involvement is in the domain of State and DOE officials from Washington, who frequently shuttle to and from IEA headquarters in Paris. The manner in which U.S. representation at the IEA is orchestrated has created no major communication problems with the IEA and has not adversely affected U.S. participation.

State Department

State Department participation in the IEA is implemented through the Office of the Deputy Assistant Secretary for International Energy Policy, which includes the Offices of Energy Consumer Country Affairs and Energy Producer Country Affairs. IEA matters are primarily conducted through the Office of Energy Consumer Country Affairs, which reports through the Deputy Assistant to the Assistant Secretary of State for Economic and Business Affairs. The six professional staff members of the Office spend approximately 50 percent of their time on IEA issues, preparing U.S. position papers on various topics coming before the IEA Governing Board, coordinating those papers with other U.S. agencies, monitoring all IEA functions, representing the United States at IEA standing group meetings, and providing staff assistance for IEA Governing Board meetings at the official and ministerial levels.

Funding of U.S. participation in the IEA comes from the State Department budget for the OECD; however, no line item exists within the OECD appropriation for the IEA. (See ch. 2.)

Energy Department

DOE's participation in the IEA is managed through the Office of the Deputy Assistant Secretary for International Energy Resources, which reports to the Assistant Secretary for International Affairs, who occasionally acts as the U.S. delegate to official IEA Governing Board meetings. The Office of Energy Consuming Nations under the Deputy Assistant Secretary has primary responsibility for staff-level work on IEA issues. A staff of approximately 12 professionals performs almost identical functions to those carried out by State for the IEA. However, due to the informal coordination process between these two agencies, staff efforts are often more complementary than redundant, with each agency alternating primary and secondary roles on various IEA issues. Each agency's focus changes periodically, and both agencies cover all IEA areas, at least on an informational level, to insure a proper, integrated understanding of IEA activities.

DOE is also responsible for integrating U.S. participation in IEA's Emergency Sharing System with implementation of the U.S. domestic emergency allocation or other fair-sharing programs. (See ch. 3.)

DECISIONMAKING PROCESS

An informal interagency U.S. decisionmaking process has been in existence since the inception of the IEA. No formal executive order, procedures, or legislation delineate how U.S. participation at the operational policy level should be managed. DOE and State officials described their coordination as surprisingly effective, due in part to the fact that several members of DOE's Consuming Countries staff are former Foreign Service Officers who transferred to DOE when it was created in 1977.

The general consensus among IEA officials, oil company representatives, DOE, State, other U.S. Government officials, and representatives of foreign governments is that the State Department has traditionally dominated the management of U.S. participation; this largely has been a result of DOE's preoccupation during the 1974-1978 period with domestic energy issues and of the general lull in OPEC pricing during that time. Additionally, State has the lead role as manager of U.S. relations with multilateral organizations.

The Iranian crisis in late 1978 caused White House level interagency committees to become increasingly involved in the management of U.S. participation in the IEA, and the Energy Coordinating Committee started to focus more intensely on the IEA activities in an attempt to determine other consuming countries' energy concerns and to express U.S. international energy views.

The President established the Energy Coordinating Committee, chaired by the Secretary of Energy, in September 1978 to (1) ensure communication and coordination among executive agencies concerning energy policy and management of energy resources and (2) develop and consider recommendations from time to time for implementing Federal energy policies or managing energy resources that involve two or more executive agencies. The Committee was potentially capable of playing a significant role in formulating international energy policy; however, in our report dated September 30, 1980, "Formulation of U.S. International Energy Policies," (ID-80-21), we found no evidence that it had done so. The Committee met infrequently, which suggests that coordination was being accomplished in other ways, principally informal communication at the cabinet level and higher.

However, the new administration has placed central cabinet-level interagency decisionmaking responsibility with the Cabinet Council on Natural Resources, chaired by the Secretary of the Interior. State Department officials say that to date the Council has not played an important role in U.S. IEA policy formulation. An interagency subcabinet group referred to as the

Interdepartmental Group on International Energy Policy, has assumed a major role in formulating U.S.IEA policy. This Group is chaired by the Assistant Secretary of State for Economic and Business Affairs and has comparable level participation by DOE, Justice, Treasury and Defense; the Office of Management and Budget; and the Central Intelligence Agency. The Office of Management and Budget serves as the link to the Executive Office of the President and played a key role in preparing the U.S. Government's position at the June 1981 IEA ministerial conference in Paris.

The National Security Council has always been involved in managing U.S. participation in the IEA, but its degree of involvement has varied. During the 1979-1980 Iranian crisis period, NSC staff became actively involved in developing U.S. IEA policy and proposals as high-level concern over the prospect of triggering the IEA's Emergency Sharing System grew. For example the NSC staff initiated the policy proposal to establish lower import targets among IEA countries in 1979 which was advanced by the U.S. delegation to the IEA and approved by the Governing Board. More recently, the NSC has assumed a non-crisis role.

Energy policy decisionmaking

It is not always easy to maintain a U.S. energy policy that is consistent with U.S. positions in the IEA. For example, in the spring of 1979 the United States subsidized the import of distillate oil for home heating purposes, which contradicted its position in the IEA advocating a reduction in consumption and imports. The IEA Secretariat said that this decision had a negative effect on the world energy market by increasing demand and escalating prices. The Secretariat also criticized the United States for working against IEA objectives and its publicly espoused position to lower petroleum imports.

At the 1979 Tokyo Summit, which many titled the "energy summit" because of its focus on consuming countries' energy problems, the Special U.S. Ambassador for Summits, whose office is in the Executive Office of the President, largely ignored State Department officials' advice to emphasize the role of the IEA in responding to consuming countries' energy needs. Instead, he chose to place emphasis on the Summit as a key consuming country energy vehicle. This approach was strongly advocated by France, which saw the Summit as an opportunity to reduce the importance of the IEA to which it did not belong.

Many non-Summit European countries 1/ who are members of the IEA perceived the Summit as focusing on the energy interests of large countries at the expense of smaller countries whose energy situations were equally precarious. The IEA Executive Director

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1/Austria, Belgium, Luxembourg, the Netherlands, Sweden, Switzerland, and Turkey.

met with key U.S. energy officials to emphasize the importance of U.S. recognition of the IEA, and at the 11th hour, after considerable discussion, the United States and other Summit participants provided for some IEA participation in the process. In fact, IEA market information was used extensively as the basis for discussing import reduction, conservation, and other market activities and the IEA Executive Director did serve as a principal energy adviser to the Summit participants. According to the staff within the Executive Office of the President, by the end of the Summit, all participants generally agreed that the IEA served a major role in advancing the energy interests of consuming countries. The result of the Summit was to crystallize the point that the Summit would establish energy objectives for major consuming countries taking into consideration the interests of the smaller non-Summit IEA members, and that the IEA would implement those objectives on a day-to-day basis.

The policy context

It is the opinion of some executive branch, IEA, and participating government officials that the United States has had somewhat of an ambivalent and uneven policy toward the IEA although it is one of the agency's major proponents and one of its charter members. Despite its support for many IEA objectives, such as reduced import levels, increased conservation, improved cooperation in energy policy and research and development, and refinement of an improved Emergency Sharing System, the United States through 1978 adhered to domestic price controls and increased its levels of imports. The Secretariat stated that these actions were severely criticized by many IEA members, who contended that as a major member of the IEA and a principal consuming nation, the United States should have set the example by dramatically reducing consumption and import levels and by allowing domestic oil prices to rise to world price levels.

Between 1975 and 1978, a period when the world oil market reflected adequate supplies and no real price increases, the United States and other IEA members generally followed a static policy characterized by a lack of a sense of urgency. The United States emphasized its domestic energy program and focused primarily on bilateral relations that specifically involved its principal suppliers. The U.S. relationship with Saudi Arabia is perhaps the most obvious example of this policy, with the United States promoting extensive economic and military ties while concurrently urging the Saudis to keep production levels up and prices below OPEC-approved levels. The U.S. relationship with Iran had a similar orientation before the revolution of 1978. Prior to 1979, the United States was little concerned over possible conflicts between its objectives and those of the IEA, in which emphasis was theoretically placed on minimizing bilateral agreements. (The current administration stated that its IEA partners support the U.S. close relations with producer countries.)

In 1979, as market instability, supply interruptions, and price increases mounted, the United States initiated a more active policy toward the IEA predicated on the fact that energy is a central element in the economic well-being of industrial nations; continued U.S. and allied access to adequate supplies of oil at reasonable prices is vital to U.S. political, military, and economic stability; and it is not possible to separate energy from other aspects of overall relationships with other countries.

The U.S. IEA policy that emerged in 1979:

--Concluded that the international oil market of the 1980s would be significantly different than that of the early 1970s. Market instability punctuated by periodic supply disruptions and escalating prices would be the norm. Gradual long-term decreases in OPEC production would significantly affect consuming countries' import and consumption patterns as well as their rates of economic growth. Control of the market would increasingly shift away from consumers and private multinational oil companies to producing nations and their respective national oil companies.

--Acknowledged that, if the IEA is to be responsive to this changing global energy situation, it would have to develop short-term and long-term policies significantly different from those envisioned at its inception. To accomplish this, informal and flexible short-term measures had to be established, such as monthly market information systems, sharing systems that operate without reference to a specific trigger level but which are designed to deter rapidly escalating prices accompanying supply interruptions, and stock management approaches that allow for targeted use of sufficient stocks to meet short-term contingencies and thus minimize, if not prevent, periodic disruptions. Central to these approaches has been the more direct involvement of U.S. and foreign multinational oil companies as the logistical arm of the IEA and individual member countries. Such involvement has presented and will continue to present antitrust concerns that must be resolved by the U.S. Government. (See chs. 7 and 8.)

--Concluded that, if the IEA is to be responsive to the common interests of its members and the changing international oil market, its role may increasingly be one of advising members on market management as well as policy coordination, information gathering and analysis, and emergency sharing. This trend raises antitrust questions. (See ch. 8.)

--Used U.S. bilateral relations with producer countries to support decisions made in the IEA. For example, in

1979 the United States urged producers not to reduce production or to raise prices to the extent that adequate supplies would not be available on the world market to satisfy consuming countries' needs due to serious cutbacks in Iranian production. A similar situation occurred in September 1980 following the outbreak of the Iraq-Iran war.

--Used U.S. bilateral relations with consuming countries to support the policies and decisions of the IEA. Potential selective Emergency Sharing System trigger situations involving Sweden in May 1979, Italy in December 1979, Japan in April 1980, and Turkey in November 1980 were resolved in part through U.S. discussions with these countries, U.S. oil companies, other members of the IEA, and the IEA Secretariat. In each case, the trigger was not pulled and each country's supply crisis was resolved by employing bilateral relations to support the IEA's multilateral objectives.

The new administration is currently reviewing U.S. policy toward the IEA. The Secretary of Energy, as the Chief U.S. delegate to the June 1981 IEA ministerial meeting, reaffirmed that the IEA will remain the focus of U.S. international energy efforts. He cited it as "* * * the central mechanism for protecting the industrial countries from unwarranted and unexpected shortages of oil supply and for marshalling Western will and resources to reduce dependence on insecure sources of supply." He added that "The United States helped to create the IEA and stands by it." The Secretary also stated that the United States intends to extend the antitrust defense covering U.S. oil company participation in the IEA, which expires at the end of September 1981.

The Secretary emphasized a strong preference for market mechanisms in developing responses to subtrigger crises and other forms of market disruptions. To the extent that market mechanisms are not adequate to respond to disruptions, the United States supports the maintenance of adequate levels of stocks, specifically increasing IEA stock levels and filling the Strategic Petroleum Reserve at an accelerated rate. It also strongly supports other IEA countries' development of emergency reserves similar to the Strategic Petroleum Reserve.

In a July 14, 1981, congressional hearing on the IEA, the Assistant Secretary of State for Economic and Business Affairs further extended and clarified U.S. policy on international supply disruptions when he said "In general, this Administration will rely to the maximum extent feasible on normal market forces to restore equilibrium between demand and supply of oil. In our view, price is the most efficient allocator of scarce supplies among potential consumers. It should therefore be the primary instrument of equilibration, particularly where it is a reduction

in demand which is required." The Assistant Secretary also referred to the Strategic Petroleum Reserve as the major U.S. supply disruption weapon.

Although both the Secretary of Energy and the Assistant Secretary of State pledged the United States to the IEA Emergency Sharing System, they opposed establishment of a formal emergency sharing system for supply disruptions under 7 percent. Instead, the United States currently supports ad hoc measures to be defined at the time of a crisis.

The National Energy Plan issued by the administration on July 17, 1981, generally reiterates the international energy principles set forth above, placing emphasis on market forces as the primary response to an international supply disruption.

## CHAPTER 7

## U.S. ANTITRUST MONITORING

From the beginning, the U.S. Government recognized that the IEP Agreement could not be successfully implemented without the assistance of at least the major U.S. international oil companies; yet the actions required could have anticompetitive consequences and result in antitrust suits against the companies. To obtain and authorize the companies' assistance in carrying out the U.S. obligations under the IEP, the Energy Policy and Conservation Act authorized the development and implementation of a Voluntary Agreement. This Agreement, administered by DOE, sets forth the circumstances under which industry can participate in IEA activities. Upon approval for participation in the Voluntary Agreement, a U.S. company has available to it a statutory defense against any civil or criminal suit brought under Federal or State antitrust laws for actions taken to carry out the Agreement, provided the actions were not taken for the purpose of injuring competition.

Prior to 1975, the Defense Production Act of 1950, as amended, gave industry an antitrust immunity in meeting national security needs, and its provisions were relied upon prior to the passage of EPCA for implementing U.S. obligations under the IEP.

### MONITORING STRUCTURE

The Justice Department and the FTC, on behalf of the U.S. Government, share responsibility for enforcing U.S. antitrust laws. These laws, among other things, prohibit price fixing, divisions of the market, and other contracts, combinations or conspiracies in restraint of trade. Thus, although DOE administers the Voluntary Agreement and the State Department has related responsibilities, EPCA charges Justice and FTC with primary responsibility for monitoring the Agreement's development and implementation "in order to promote competition and to prevent anticompetitive practices and effects, while achieving the purposes" of the Act.

Among the more significant antitrust safeguards set forth in EPCA and the Voluntary Agreement (see app. III for a summary list) are advance notice of IEA industry advisory meetings; attendance by U.S. Government monitors at all of these meetings; maintenance of a verbatim transcript of most meetings and a complete record of other meetings and communications outside of the advisory meetings; limitations on discussions at meetings; confinement of most IEP pre-emergency industry activities to the meeting context; exchange of confidential or proprietary information permitted only with advance Government approval; and semiannual reports by Justice and the FTC on their IEA monitoring.

The two antitrust agencies believe that they assign a relatively high priority to IEA monitoring responsibilities given them by EPCA. Justice has entrusted this task to the Antitrust Division's Energy Section, whose five professional staff members assigned during 1979 1/ expended an estimated 3,146 staff hours and 1,500 secretarial hours. This represented $68,620 in salaries, plus supplies and services; an additional $20,263 in travel costs was incurred.

The FTC's Bureau of Competition had a total of five attorneys assigned to this function at various times during 1979. 1/ The agency expended a total of 3,074 professional and 1,537 clerical hours at a cost of about $60,000. In addition, expenditures for travel totaled approximately $18,000.

Separate semiannual reports by Justice and FTC note that no adverse impact on competition has thus far been discerned because of the oil companies' participation in the IEP. These agencies did, however, note their objection to the suggestion by the IEA that bilateral consultations take place between a company and the Secretariat to unofficially reallocate world oil supplies in certain circumstances, and the suggestion has not yet been fully accepted by all other member countries. Justice and FTC conclusions relate only to oil industry activities within the IEA context.

We did not observe situations which would contradict the conclusions of the semiannual reports. Nevertheless, at least two aspects of the IEA antitrust safeguards warrant further discussion: (1) clearances and (2) monitoring of industry advisory meetings.

CLEARANCES

Section 252 of EPCA, as amended, which provides for the Voluntary Agreement and the antitrust defense, expires September 30, 1981. Under the Voluntary Agreement:

> " * * * confidential or proprietary information or data may be exchanged with, or provided to participants, the IEA, or other persons or entities, only if the Administrator [the Department of Energy], after consultation with the Secretary of State, and with the concurrence of the Attorney General after consultation with the Federal

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1/The 1979 figures are given as more representative of normal agency expenses for IEA monitoring than the 1980 figures. The 1980 figures would reflect the substantial increase in monitoring activity required by the 10-week test of the IEA's emergency oil allocation system held in Paris in the fall of 1980.

Trade Commission, has approved in writing the exchange or provision of such types of information or data."

This process and the document of approval is referred to as a "clearance." DOE, State, Justice, and the FTC are involved in the clearance approval process.

Exchanges of proprietary or confidential information may take place in a number of different contexts, such as submission of data by the companies to the IEA Secretariat, individual company consultations with the IEA Secretariat, or group company consultations with the IEA Secretariat through the Industry Advisory Board or with the Standing Group on Emergency Questions. A clearance may authorize any one or more of the above.

Authorization to exchange proprietary or confidential data is not taken lightly. When the oil companies act in conformity with the clearances, they receive the protection of an antitrust defense for anticompetitive consequences which result, as long as the actions were not taken with an intent to injure competition. Clearances for the exchange of information in one or more of the ways mentioned above have been granted when an imminent international oil emergency has been perceived which could trigger the IEA's Emergency Sharing System. Such was the case with the Iranian oil cutback and the Iraq-Iran conflict. However, even in these situations, clearances were generally for short-time durations and subject to significant controls so as to minimize anticompetitive consequences. In addition, clearances were provided for the three tests of the Emergency Sharing System, again subject to significant controls. The last two test clearances were published in the Federal Register for public comment before they were approved.

During our review, concerns about the clearance process were frequently voiced, including the (1) short-term nature of the clearances, (2) clearance delays, (3) lack of sufficient written regulations describing the clearance process, (4) desirability of using the clearance mechanism for submitting industry information to the IEA, (5) operation of clearances with respect to consultations, and (6) absence of adequate standby clearances which could become operational in an actual emergency.

Short-term nature of clearances

The U.S. Government has taken the position that, to justify the anticompetitive risks associated with the exchange of proprietary or confidential information, an actual need must be demonstrated that cannot be fulfilled in some other manner having a less anticompetitive risk. To establish such need, the IEA Secretariat must determine that a shortage exists which is sufficient to trigger the emergency system or such an emergency must be clearly impending, requiring the IEA to consult with the oil industry regarding the situation and the appropriateness of the

measures to be taken. Clearances granted thus far have been of short-term nature. Nevertheless, with minor modifications, the clearance issued in November 1978 to deal with the Iranian oil situation remained in effect until June 30, 1980. This was accomplished through a series of short-term extensions. 1/ A new clearance was issued in September 1980 due to the Iraq-Iran conflict. This clearance was to expire on March 15, 1981, but was extended to June 30, 1981.

A primary element of the clearances has been the authorization for U.S. oil companies to submit company-specific proprietary or confidential data to the IEA Secretariat in the form of Questionnaire A. IEA has adopted safeguards to prevent one company from learning the proprietary data of another. During these clearances, no data has been shared among the companies that has not been aggregated to prevent identification by company. Thus a significant element of the clearance is merely enabling the IEA Secretariat to obtain basic oil industry data essential to allocation.

Because of the short-term nature and lack of assured continuity of the U.S. clearances, the IEA Secretariat has at times expressed frustration in not being assured a continual set of data over long periods of time. It believes that such data is important in foreseeing general and selective shortfalls and in enabling a better understanding of the international oil market and that it is essential in an emergency. Interruption of the data flow to the IEA means that assessments the IEA makes for governments on oil market uncertainties when they arise cannot be supported by an optimum data base. In addition, since industry is providing the data, short-term notice of the activation, deactivation, and reactivation of information data systems does not facilitate long-term company or IEA planning.

In accordance with the provisions of EPCA and the IEP, it is not inappropriate for the administering U.S. Government agencies to limit the duration of clearances to short periods as long as the authority providing the basis for the exchange of proprietary or confidential data depends upon the existence or imminence of an international oil emergency. This is done despite the impact that short-term clearances might have on both the IEA Secretariat and industry. Short-term clearances provide a mechanism for frequently evaluating the severity of the need for the information against changing events and circumstances as well as for tailoring the antitrust limitations and controls in the clearance to the situation. In addition, as the Department of Justice has indicated, it is politically easier to extend a short-term clearance

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1/Updates extending the first approval were issued on Dec. 22, 1978; Feb. 9, Mar. 16, Apr. 20, July 6, Nov. 2, and Dec. 6, 1979; and Apr. 4, 1980.

if circumstances warrant it than to try to revoke an existing clearance upon a determination that circumstances no longer warrant it.

Clearance delays

Because of the short-term nature of the clearances, it is important that clearance decisions be made in a timely manner; that is, with sufficient lead time to enable industry to supply the necessary information or hold the scheduled meetings to deal with those items on the agenda which may be affected by a clearance. No delays in data submissions to IEA have yet occurred because of clearance delays. However, although we are not aware of any scheduled meetings that had to be canceled or postponed because of clearance delay, we were advised of instances where clearances were approved at the very last minute, even though industry representatives were traveling half-way around the world to attend scheduled meetings.

DOE, State, Justice, and FTC must approve a clearance as well as the clearance document itself, and this requires both time and coordination. When it is anticipated that there might be disagreements among the agencies, more time should be planned for this process. A DOE official told us that an additional and perhaps more common factor is obtaining, in a short time frame, the attention and availability of high-level officials in the agencies whose approval must be obtained before agency positions become official. Should this be a persistent problem, the number of officials within each agency whose approval must be obtained prior to a final agency decision could be reduced. In addition, of course, timely approval of a clearance by the United States presupposes a timely request by the IEA with adequate explanation of the need for the clearance.

Agency roles in clearance process

The Voluntary Agreement requires the approval of DOE for a clearance, after consultation with the Department of State, and the concurrence of the Attorney General, after consultation with the FTC. Accordingly, both DOE and Justice have veto authority over a clearance, while State and the FTC have consultative responsibilities. Nevertheless, the roles and procedures of these agencies in the clearance decisionmaking process are not clear.

For example, in June 1980 the IEA Secretariat, because of continuing uncertainties in the international oil market, requested extension of a clearance due to expire on June 30. Both DOE and State strongly favored the extension, believing the international oil situation justified it. Justice, relying on its own energy information sources as well as on information supplied by DOE and State, vetoed the request for the extension based in

substantial part on its independent determination that no international oil emergency existed or was imminent. The final decision denying the extension was not put in writing nor were the positions of the agencies put in writing and officially approved.

The Congress recognizes the potentially conflicting objectives of the energy and foreign policy aspects of the IEP on the one hand and the antitrust concerns and anticompetitive risks on the other hand. However, should Justice have authority to supersede a determination by DOE and State concerning an actual or imminent international oil supply emergency and the implications of such an emergency for the IEA? And should one of the agencies which has veto power assume the authority to make independent determinations on all elements, including energy, foreign policy, and antitrust? If so, energy and foreign policy concerns may be placed secondary to antitrust and anticompetitive concerns.

Agency comments and our evaluation

Both Justice and FTC now assert that Justice did not exercise its veto authority in June 1980. Justice received merely an "informal" request from DOE in late June 1980 to concur in a renewal of the clearance through the end of 1980. Justice concedes that it had made an independent examination of the international oil market and had concluded that the then-existing situation did not warrant a credible concern that an oil crisis existed or was impending. Consequently, Justice requested further documentation from DOE which might tend to show the existence or imminence of an emergency. No additional information was provided, and the clearance lapsed with no "formal" request for extension being presented to Justice and FTC for review.

In addition, Justice and FTC contend that the role of the various agencies in issuing antitrust clearances is not to resolve competing considerations of energy, foreign policy, and antitrust but to interpret and apply the law as imposed by Congress. Justice states that it simply determined, without contradiction by State and DOE that the acknowledged and legally required conditions needed for a clearance were not present in June 1980 and therefore it could not concur in the granting of permission for companies to submit confidential data to the Secretariat. Justice sets forth lengthy data to support its decision.

We emphasize that we do not now and did not in the report draft intend to express an opinion on the merits of the June 1980 decision not to extend the clearance. Our concern is with the process by which clearance decisions are made. In this regard, EPCA describes the duties of Justice and FTC in the context of antitrust monitoring and preventing anticompetitive practices and effects while achieving substantially the purposes of the IEP. In addition, the Voluntary Agreement prescribed participation by the four agencies--DOE, State, Justice, and FTC--in the clearance process, presumably to ensure input and perspective on energy,

foreign policy, and antitrust aspects of the decision. Equally importantly, the Voluntary Agreement provides for a segmented decisionmaking process. First, DOE must approve a clearance after consultation with State. Second, Justice must concur after consultation with FTC. This does not describe a decisionmaking process in which all four parties participate fully and equally on all issues. Clarification is desirable on whether the role of Justice and FTC is or should be limited in the clearance process to evaluating antitrust risks and proposing alternatives and controls to prevent anticompetitive consequences.

In addition, the agencies involved in the clearance process should not be able to avoid accountability by merely designating a request as "informal" and not setting forth in writing their positions. Not only was this the situation in June 1980, but a similar circumstance also developed in June 1981 where a clearance was not extended. The mechanics of the clearance process and coordination should be set forth in a published interagency agreement. Currently, there is no published document apprising affected outside parties, including the IEA Secretariat and companies and members of the public of these matters. The interagency agreement need not render the decision process inflexible, but it can describe a flexible but orderly system. At a minimum, it should consider providing that the basis for granting or denying a clearance be explained.

INFORMATION SUBMISSION TO IEA

It has been suggested that the clearance procedure, however effective for exchanges of confidential or proprietary data among participating companies, is not necessary for industry submission of data to the IEA, primarily because the U.S. Government can obtain the same information without an industry antitrust defense. One consequence of the clearance procedure is the concomitant attaching of the statutory antitrust defense, whose use and application has not been tested or clarified in litigation.

An alternative would be for DOE to require U.S. companies to submit necessary information to it, and DOE or State would then supply the information to the IEA when appropriate.

We do not question the objectives of not providing an antitrust defense in situations where it is not essential and of reducing the uncertainties of litigation for all parties; however, on analysis, we believe the alternative involves a fundamental reordering of the existing IEA information structure. Consequently, the proposal could not be effectively implemented unilaterally by the United States, and we have reservations whether other participating governments would agree to it. There are also existing domestic impediments, and we are not thoroughly convinced the alternative is preferable to the existing system.

## Unilateral U.S. action ineffective and inappropriate

When authorized by a clearance, Questionnaire A information currently is submitted voluntarily to the IEA and the government of the country where the oil company or its affiliate operates. For example, Exxon operating in the United States voluntarily submits its Questionnaire A data to the IEA and the U.S. Government while Exxon-Germany voluntarily submits its Questionnaire A data to the German Government.

Under the proposed alternative data system, the U.S. Government would require Questionnaire A-type information from companies operating in the United States (in lieu of the clearance system and voluntary submission) and would prepare Questionnaires B. However, what about information from a U.S. company subsidiary operating abroad, such as Exxon-Germany? And under what authority may the United States provide to the IEA the disaggregated data it has collected from U.S. companies?

U.S. companies or their affiliates operate in virtually every IEA country, and the governments may or may not have authority to require them to submit Questionnaire A data. Even assuming that the U.S. Government had jurisdiction to require these subsidiaries to submit Questionnaire A data to it, it is not the U.S. Government that needs this data, but the IEA and other governments, so that they can prepare the Questionnaire B. The U.S. Government lacks authority to provide disaggregated Questionnaire A data to other governments and has not completed the administrative procedures enabling it to provide this data to the IEA.

At the very least, for the proposed alternative data system to be effective, all IEA members would have to approve it and have authority to require submission of Questionnaire A data and to transfer this data to the IEA. In our interviews with U.S. and foreign governments and oil companies, we detected no dissatisfaction with the voluntary procedures for providing emergency information to the IEA.

## U.S. Government data submission to IEA

Under section 254 of EPCA, in the absence of an international energy supply emergency the U.S. Government may not submit trade secrets or commercial or financial information to the IEA in disaggregated form without specific certification by the President. That certification, which can only be made after interested persons have had the opportunity to present their views, is that the IEA has adopted and is implementing security measures ensuring that no information will be disclosed to any person or foreign country until it has been aggregated to avoid company identification. No such certification has ever been made

or any administrative proceeding initiated. Thus, Questionnaire A, which contains company-specific proprietary or confidential data, may not presently be submitted by the U.S. Government to the IEA.

In any proceeding leading to a certification, at least three concerns would have to be overcome.

1. Adequacy of safeguards for the IEA computer system which stores the disaggregated company data.

2. Lack of existing conflict-of-interest regulations for IEA staff.

3. Diplomatic sensitivities associated with an IEA government evaluating, in a domestic administrative proceeding, the adequacy of the information protection safeguards of an international organization.

Even if these concerns were resolved, should the U.S. Government provide disaggregated proprietary or confidential company data to IEA without company consent, it could be liable to the company for unauthorized disclosures or uses of that information by the IEA or its employees which would injure the company. There would be similar potential liability if the U.S. Government ordered the U.S. reporting companies to submit the Questionnaire A data directly to the IEA without their consent. However, the United States has no authority to order U.S. reporting companies to submit Questionnaire A data to the IEA if the companies do not choose to do so voluntarily upon a request and clearance.

Benefits of existing system

In view of the difficulties associated with the proposed alternative data system, the benefits of the existing system appear all the more cogent. First, the ability to cross-check Questionnaire A information, which would be lost in the alternative system, is an important means of maintaining the integrity and accuracy of the data in an environment where economic and political stresses on both nations and companies are strong and could be expected to be even greater during an actual international oil supply emergency.

Second, mechanisms are preferred which minimize potential taxpayer costs while at the same time achieving the U.S. obligations under the IEP with minimal anticompetitive risks. At the present time, these objectives appear most readily achievable through existing voluntary cooperation between companies and governments rather than through confrontation. We emphasize cooperation between individual companies and governments rather than cooperation among companies.

Third, although not a determinative factor, the psychological benefits associated with voluntary cooperation are more likely to result in more meaningful and participatory assistance by the affected companies.

Last, but perhaps most important of all, the present system is in existence and has the support of all 21 member nations and the reporting companies. It is not clear that such agreement could be obtained for the alternative system.

## CONSULTATIONS AND CLEARANCES

Article 19.6 of the IEP Agreement requires the Secretariat to obtain oil companies' views regarding oil market developments related to the possibility and appropriateness of activating emergency measures. Both group and bilateral consultations between the IEA Secretariat and U.S. companies take place in this context. Both types of consultations are covered by the Voluntary Agreement. Therefore, if a U.S. oil company obtains a clearance from DOE authorizing the exchange or provision of proprietary data during these consultations, the company will be covered by the section 252 antitrust defense of EPCA.

The prevailing view has been that the Voluntary Agreement does not cover consultations unrelated to IEP emergency measures. Therefore, no clearance is required for providing proprietary data during such consultations and no antitrust defense is provided by EPCA. The companies undertake these consultations, which are usually bilateral in nature, at their own risk; consequently, in some instances U.S. companies have requested that a U.S. Government law enforcement representative be present at these consultations even though it is not legally required.

In addition, there have been many communications and consultations by companies with the Secretariat since 1975 for which no clearances were necessary because they did not involve discussion of confidential information.

### Clearances granted

The Iranian emergency clearances authorized both group and bilateral company consultations with the Secretariat. Group consultations were limited to formal meetings. The clearances listed the types of confidential information that could be discussed, and no other confidential or proprietary information could be divulged without advance approval of U.S. Government observers. Disclosure of price and company market-share information was explicitly disapproved unless approved in advance by monitors attending the meeting.

If a U.S. Government monitor was not present at bilateral discussions between the Secretariat and a U.S. company, the company was required to submit a complete written record of the

meeting to the U.S. Government after each consultation. The company has an incentive to be as inclusive and comprehensive as possible in its written record, because the scope of this record will limit the coverage of the antitrust defense. In any event, the more recent clearance letters required the attendance of a U.S. Government monitor at bilateral consultations in addition to submission of a complete written record of the meeting.

Suggested alternative procedure

It has been suggested that mere bilateral consultations between a U.S. company and the Secretariat, even those associated with the activation of emergency measures, should not provide a basis for an antitrust defense and should be removed from the coverage of the Voluntary Agreement. In lieu of present procedures and clearances, the IEA would make a direct request to the U.S. Government to consult with a U.S. company, and the Secretariat with the U.S. Government would set forth the permissible topics. The U.S. Government would order the affected company to consult with the IEA. A U.S. Government monitor would be present during the consultation.

We believe that no antitrust defense should be provided in situations where it is not essential. However, we doubt that the suggested alternative procedure can be effective if implemented in a confrontational manner. First, mandated consultation essentially is a form of personal service. The law in the past has not looked favorably on ordering the specific performance of a personal service. Second, assuming it was legal to order a company official to consult with the Secretariat, the U.S. Government would be potentially liable for the unauthorized use or release by the IEA or its staff of confidential or proprietary information supplied to the IEA by a company official without the company's consent. In addition, and very important, it is unlikely that meaningful participation in the consultations could be induced by Government compulsion.

A major argument for the suggested alternative is that companies voluntarily consult with the SOM and the Secretariat on nonemergency issues without an antitrust defense because it is in their interests to do so. Although we have not canvassed them on this issue, we acknowledge that companies might also find it in their interests to voluntarily consult with the Secretariat on a bilateral basis on emergency issues without an antitrust defense. However, we doubt they would enthusiastically or meaningfully do so under Government compulsion.

STANDBY CLEARANCES

Perhaps the greatest risk of anticompetitive behavior would occur during an international energy supply emergency. Authorized joint activities during an emergency have come to be referred to

as a "plan of action." DOE, in conjunction with State, and Justice, in consultation with FTC, must approve a plan of action before it may be carried out with antitrust protection. In addition, EPCA provides that:

> "a plan of action may not be approved by the Attorney General * * * unless such plan (A) describes the types of substantive actions which may be taken under the plan, and (B) is as specific in its description of proposed substantive actions as is reasonable in light of known circumstances."

Under section 6 of the Voluntary Agreement, the following actions are permissible during an emergency:

> "(A) Arrangements between or among the participants, or with other persons and entities, for the most effective use, without regard to ownership, of terminal and storage facilities, tankers, pipeline capacities, and other transportation facilities so as to minimize duplications, multiple loadings and discharging, split cargoes, long hauling, cross hauling, and back hauling, and idle time in port.
>
> "(B) Arrangements among the participants for the purchase, loan, sale, or exchange of petroleum by and among themselves, or with other persons or entities.
>
> "(C) Alterations in the rate of production of petroleum. Such alterations may be accomplished by any one or more appropriate methods including the following: increasing or decreasing drilling for or production of oil; adjusting or establishing transportation facilities and crude throughput facilities, including adjustments in the through-put, quality specifications or yields or conversion of equipment now installed for the manufacture of any one particular petroleum product to the manufacture of another petroleum product; the processing of selected crude oils or the exchange of components between various refineries; processing agreements; or exchange of refinery capacity."

In light of the procedures subsequently outlined and agreed to in the IEA Emergency Management Manual, 1/ it is not

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1/The "handbook" setting forth the duties, responsibilities, and actions to be taken during an international energy emergency by member governments, the IEA Secretariat, and participating oil companies.

clear whether all these actions need to be permitted in an international energy emergency. However, different actions may be required to assure that the IEA Allocation Coordinator and the Industry Supply Advisory Group can act effectively in the international allocation of oil. Whatever may have been the "known circumstances" back in March 21, 1976, when the Voluntary Agreement became effective, circumstances now justify a plan of action that (1) sets forth with greater detail the substantive actions that companies might legally take during an emergency and (2) minimizes uncertainty about the propriety of their actions and the risk of anticompetitive conduct.

On May 8, 1981, DOE published in the Federal Register a proposed plan of action and requested comments from industry and the public. The proposed plan of action will supplement the currently approved Voluntary Agreement and does contain more detail on the types of actions which companies may take legally during an international energy supply emergency. However, the plan does not modify any provisions of section 6 of the Voluntary Agreement, about which concern has been expressed.

Following review of submitted comments and resulting possible revision of the proposed plan of action, the draft will be provided to the companies participating in the Voluntary Agreement for their consideration. Any plan of action they adopt is subject to approval by DOE and Justice after consultation with the FTC. If adopted and approved, the plan of action would go into effect only if the President makes a finding that an international energy supply emergency exists.

INDUSTRY ADVISORY MEETINGS

The monitoring of IEA industry advisory meetings is one of the most important safeguards against the IEA system being used for anticompetitive purposes. These industry advisory groups include the Industry Advisory Board, Industry Working Party, Industry Supply Advisory Group, and Reporting Company Group. U.S. companies became members of these groups by invitation of the IEA, and memberships must be approved by DOE and the Attorney General. Monitoring of industry advisory meetings includes:

1. Advance notice to DOE of all meeting times, places, expected participants, and agendas.

2. Attendance of a full-time U.S. Government employee.

3. Authorized presence of representatives of DOE, State, Justice, FTC, any U.S. Government employee designated by DOE, and any other person as may be required by law (including representatives of congressional committees).

4. A complete record, usually a verbatim transcript, of the proceedings.

5. Availability to the public of declassified portions of meetings transcripts.

6. Required antitrust monitoring of industry IEA activities and semiannual reports thereon by Justice and the FTC.

This monitoring system has provided an effective deterrent to anticompetitive conduct during Government-sanctioned industry meetings. U.S. Government or industry officials have suggested the elimination of the (1) transcripts, because they are a financial and administrative burden, (2) semiannual reports, and (3) monitoring and reporting requirements of either Justice or the FTC as duplicative. Some congressional representatives have even suggested that the industry advisory meetings be eliminated altogether as no longer necessary. We would not recommend any of these measures at this time.

The complete, unclassified transcripts provide an unbiased, nonsubjective, historical record of these meetings. Responsible decisionmakers in both the executive and legislative branches who have access to these transcripts can evaluate what has transpired thus far in order to establish policy in the future. Verbatim transcripts also may be of significant evidentiary value in the event of any antitrust litigation stemming from a company's advisory role in IEA. Thus, we believe the transcripts should be continued.

The semiannual reports required of Justice and the FTC force these agencies to exercise continual oversight over oil industry-IEA activities and to justify and support their findings in writing. The more significant the commodity, such as petroleum, is to the Nation and the general public, the more important it is that adequate public resources be devoted to protecting its commerce from anticompetitive practices. Particularly in situations like the IEA, where the public does not have meaningful access to basic data because of substantial classification, regular and frequent evaluations and reports by experts in the field provide some assurance to both the public and decisionmakers that they will not be taken advantage of, at least in the context of the IEA. Moreover, these unclassified reports provide additional basic factual information to the public about IEA activities, particularly those in which industry participates. We note that the semiannual reports of both Justice and the FTC have become increasingly more comprehensive and analytical. They already address many aspects of the more significant issues raised at industry advisory meetings and in some instances attempt to summarize meeting activities.

Monitoring and reporting by either Justice or FTC should not be eliminated to preclude duplication. These agencies have complementary general enforcement responsibilities under the U.S. antitrust laws to prevent anticompetitive practices in commerce. We have not found justification for a different system related to IEA activities. Justice, however, has suggested that these reports be made by each agency on an annual basis, but staggered so that a report by one or the other would be issued every 6 months.

Our observations of meetings

We attended several industry advisory group meetings. Despite the fact that these groups belong to an international organization, U.S. legislation governing the participation of U.S. companies dominates their procedures. At some meetings, as many as seven U.S. Government officials were present, although the usual number is three (one each from Justice, FTC, and DOE). In contrast, no other governments' representatives were present at any of the Industry Advisory Board or Industry Working Party meetings, except for one occasional representative of the European Economic Community who periodically monitors selected meetings for antitrust purposes.

Much of the monitoring process has occurred in the procedures established prior to the meetings. Thereafter, attorneys accompanying oil company representatives are diligent in confining their clients to the agenda and in restraining them and the Secretariat from discussing topics with antitrust consequences. Thus, there is generally no need for U.S. Government monitors to intervene at these meetings.

U.S. companies are generally pleased that verbatim transcripts are kept of the meetings and that U.S. Government officials are present. Representatives of the non-U.S. companies and their governments indicated to us that they have now accepted the fact of U.S. Government monitoring of the industry advisory meetings; their remaining concerns involve the substance of U.S. antitrust law and the administrative burden of reviewing the transcripts for accuracy, rather than the monitoring.

Based on our observation, the major international oil companies, both U.S. and non-U.S., play a lead role in the IEA industry advisory meetings, yet we found no evidence that the meetings have been used to generate or support anticompetitive activities. The major oil companies devote more staff and money to advisory activities and have a greater company financial interest; the smaller companies will not spend comparable resources, but they were being encouraged by the majors to participate more actively in industry advisory group activities.

We are not aware of any U.S. oil company whose request to participate in the Voluntary Agreement has been denied, although one moderate-sized company has withdrawn. One U.S. company, which has not participated actively in IEA industry advisory group activities, told us of its dissatisfaction that the IEA had not activated the international allocation trigger during the initial Iranian crisis. Yet we are aware of no oil company which has expressed concern that the dominance of the majors in these meetings has competitively harmed any other participating company or that the IEA systems that have been developed do not carry out the interests of the smaller companies as well as those of the majors.

In general, we believe both the United States and the IEA have thus far benefited substantially from the participation of both U.S. and non-U.S. oil companies in IEA industry advisory bodies. Although there may be disagreement concerning the role that industry should have in future IEA activities, no oil company or government representative that we interviewed expressed a desire that industry advisory groups be discontinued as no longer necessary.

## FOREIGN ATTITUDES TOWARD ANTITRUST MONITORING

Many IEA countries have a long history of cooperation between industry and government; it is not uncommon for the government to own all or part of significant sectors of their economies. Accordingly, a number of the oil companies participating in IEA activities, including some of the major ones, are wholly or partly owned by governments.

Most IEA countries are generally less concerned about anticompetitive practices than is the United States. For example, the Director General for Competition of the European Economic Community, 9 of whose 10 members participate in the IEA, has significantly less stringent antitrust monitoring requirements for industry advisory meetings. They include:

1. Advance notice of the date, location, and agenda of industry advisory meetings.

2. Authorization for the Director's representative to attend meetings, but no requirement to do so.

3. Authorization to make a complete record of meetings, but thus far the Director has been satisfied with receiving copies of the minutes and all circulated documents.

4. The Director may raise objections at a meeting or within 30 days thereafter, but imposes penalties only prospectively for actions taken after a company has been notified of the objections.

Some representatives of other participating governments and foreign oil companies as well as some Secretariat officials expressed outright frustration with U.S. antitrust requirements, particularly in the context of the tests of the Emergency Sharing System and the problems anticipated in an actual emergency. One individual opined, "What good are antitrust laws going to be when the West goes down the drain!"

Some countries view U.S. antitrust requirements as an attempt by the United States to impose its antitrust laws extra-territorially. Although not only as a result of IEA matters, the United Kingdom has enacted the "Protection of Trading Interests Act of 1979," which, among other things, (1) provides for non-enforcement within the United Kingdom of foreign multiple damage judgments, including those for violation of U.S. antitrust law, and (2) permits its citizens and corporations to recover certain sums paid by them in foreign judicial proceedings for multiple damages, including U.S. antitrust proceedings.

In the light of these realities, the United States should be cognizant of the views of other IEA participants and be sensitive to the differing values and economic systems of other participating nations.

Agency comments and our evaluation

The Department of Justice took issue with our characterization of foreign reactions to U.S. antitrust monitoring in the IEA. It refers to the favorable ISAG appraisal of U.S. antitrust monitoring in test 3 as evidence that antitrust monitoring does not constitute a problem for the Secretariat, foreign governments, and foreign oil companies. To the contrary, representatives of these entities in extensive interviews during our review commented negatively on U.S. antitrust monitoring, stating that it varied from being an inconvenience to a major disruption. Also, although the ISAG in assessing test 3 concluded that U.S. antitrust monitoring did not significantly disrupt the operation of the test, it did criticize U.S. antitrust monitoring for causing several delays which, in an actual emergency, could prove to be quite detrimental to the Emergency Sharing System (see ch. 3).

Furthermore, the IEA's Executive Director informed the State Department in July 1981 that:

> "Antitrust concerns are understood and shared in the IEA; the United States legal requirements could, however, under specific circumstances inhibit optimum reaction of industrialized countries to short-term oil market deteriorations, particularly in sub-crisis situations; they also could prove to be burdensome to the operation of the established IEA Emergency Allocation Systems."

He added that:

"There would be advantage in reviewing the antitrust requirements for these particular situations and it might prove to be advisable to facilitate companies' cooperation with the agency and its member countries under appropriate but workable safeguards and restricted in time and extent to the specific needs of the situation at hand."

## CONCLUSIONS

At the present time, we do not recommend any further fundamental or major structural changes in the U.S. antitrust provisions related to the IEA. However, we do not mean that the system cannot be improved. We recognize that these antitrust provisions must strike a balance among a number of major, and sometimes conflicting, policy considerations, and we have been neither convinced that there is a better alternative system nor that existing deficiencies and uncertainties cannot be resolved within the context of the present structure.

Major policy considerations include:

--Protection of petroleum, which is a very significant commodity for the Nation and the general public, from anticompetitive restraints on its commerce.

--The IEA Emergency Sharing System must not be impaired by antitrust requirements that may be in excess of those necessary to prevent anticompetitive impacts.

--Petroleum industry participation in the Emergency Sharing System is essential. Officials of the U.S. oil companies we visited stated they would not voluntarily participate without meaningful protection from antitrust suits arising out of IEA activities authorized and determined by the U.S. Government to be in the Nation's interest.

--U.S. appreciation that the IEA is an international undertaking which necessitates recognition of and sensitivity to differing values and economic and political systems of other participating nations.

Among the more significant problems inhibiting the effectiveness of the IEA Emergency Sharing System is the inability as yet to devise meaningful antitrust controls appropriate to tests or actual emergency settings which do not impede the international allocation process. In addition, a plan of action more compatible with the procedures set forth in the Emergency Management Manual must be promulgated.

Progress is being made on both these issues. In fact, Justice simply disagrees that antitrust controls would significantly impair the operation of the international allocation process, as evidenced by the experience during test 3. The IEA, on the other hand, asserts that the legal requirements of U.S. antitrust law could prove burdensome to the operation of the established IEA emergency allocation system. IEA suggests that there may be advantage in reviewing the antitrust requirements for these particular situations as well as for subcrisis situations, to facilitate companies' cooperation with the IEA and its member countries.

Moreover, some uncertainties still exist over whether present antitrust procedures have prevented all anticompetitive impacts; for example, during our review the FTC was examining whether the dissemination and discussion of supply forecasts at industry advisory meetings affect the market. The FTC has since completed its analysis and found no evidence that any company took supply actions based on this information, although it suggested a number of alternative methods of providing the IEA with industry views without industry group discussions. Both Justice and the FTC are investigating whether some companies took potentially anticompetitive supply actions in response to IEA Secretariat requests during separate bilateral consultations to ameliorate supply problems in particular countries. In addition, some IEA Secretariat personnel may not be completely familiar with or sensitive to U.S. antitrust law or differentiate between antitrust law and requirements of other laws. For example, there is some concern that statements by the Secretariat at oil industry advisory group meetings may have tended to influence company inventory policies. However, in none of these instances has any anticompetitive impact yet been demonstrated. Nevertheless, as the IEA continues to undertake more nontraditional activities and assuming these activities are agreeable to Congress, the antitrust monitoring requirements should be reviewed and tailored to these new activities.

Assuming that the United States and other participating countries desire some form of international emergency allocation, the existing system, accompanied by strict monitoring of oil company activities, appears far preferable to unilateral oil company allocation decisions. The provisions of EPCA and the Voluntary Agreement provide the U.S. Government with the unusual opportunity of observing the oil industry in action during an emergency. This is in marked contrast to the situation in 1973, when industry managed the shortage and reallocated oil supplies without direct involvement of Government representatives. The antitrust monitoring and the recording of certain proceedings should be very helpful in assuring the integrity of the allocation process.

# CHAPTER 8

## ANALYSIS OF EFFECTS OF IEA'S CHANGING ROLE ON THE UNITED STATES

When the International Energy Agency was created, its operational objectives were not as comprehensive as they are today. For example, its Emergency Sharing System was a standby system, to become operational only during general or selective shortfalls in excess of 7 percent. During these emergencies, the international oil companies of IEA member countries would be available to assist the IEA, and their established organizational competence and experience in the international logistics of oil movement would be enlisted. The governments and the oil companies would work together in a spirit of constructive cooperation. Consequently the IEA Secretariat, or bureaucracy, was small, composed of a core of people knowledgeable about the complexities of the international oil business. IEA's other activities, although not unimportant, similarly did not require a large staff.

### FORCES INDUCING CHANGE

During our interviews with IEA participating governments and companies, we were advised of two major perceived deficiencies in the IEP Agreement. First, it failed to directly address or come to grips with the critical issue of sharply rising oil prices. Second, the mechanical mathematical computation of international oil allocation rights and obligations among member countries failed to adequately consider the differing economic needs and capabilities of member countries, particularly in the absence of provisions to restrain oil prices.

Perhaps in partial recognition of these concerns, IEA member governments, through the Governing Board, are attempting to become more involved in implementing and monitoring joint energy policy. That policy, however, includes the prevention of oil shortfalls that affect only some member countries using less formal measures than activating the standby Emergency Sharing System. Moreover, some IEA participants want to decrease the influence of the international oil companies by building up the strength and expertise of the Secretariat and participating governments concerning the international oil market. Some would even like to use the IEA as an instrument for restructuring the international oil market. This conglomeration of forces has resulted in a series of IEA initiatives.

### NEW INITIATIVES AND THEIR IMPLICATIONS FOR THE UNITED STATES

Some participants view several recent initiatives of the IEA as expansive and beyond its traditional role, giving it more the nature of a continuous international energy management agency for

Western consuming countries than primarily a standby coordinator and facilitator during international oil supply emergencies. These activities reflect special efforts of member governments to find some concerted means of reducing dependence on petroleum, rectifying short-term supply imbalances to avoid upward price pressures on crude oil and petroleum products, and restructuring their internal economies so far as energy is concerned.

Import targets and ceilings

Import targets and ceilings are tools for helping to limit overall petroleum demand in IEA countries. These mechanisms were first put forward at the Tokyo Summit and have since been agreed to by the IEA members. Import targets establish agreed anticipated future oil supply needs, both for the IEA as a whole and for each member country, and provide the guidelines necessary for future supply planning. Import ceilings represent a political commitment to the degree of self-restraint which individual countries are willing to impose upon themselves. Both provide standards for measuring IEA individual member efforts to minimize oil dependence.

U.S. implications

Subsequent to the establishment of oil import targets, the Congress endorsed the concept of energy targets in Title III of the Energy Security Act of 1980. The President is required to submit an energy target to Congress for imported crude oil and refined petroleum. The Energy Security Act sets forth a specific procedure for congressional action on the President's proposed targets and provides that the targets "shall be considered as an expression of national goals and shall not be considered to have any legal force or effect."

The IEA Secretariat had been using data obtained from Questionnaires A and B to monitor performance relative to the import targets. In the view of the U.S. Government, since Questionnaires A and B are submitted only when an international energy emergency (7-percent selective or general oil supply shortfall) exists or is imminent, this data will not always be available to the Secretariat on a continuous basis. We appreciate that there is disagreement over the propriety and suitability of the Secretariat's use of Questionnaire A and B data to monitor import targets. Nevertheless, if it is agreed that import targeting is a useful mechanism for furthering the purposes of the IEP, the Secretariat needs data on a continuing basis for monitoring purposes. This need not necessarily be data obtained from Questionnaires A and B. The U.S. Government might wish to join with other IEA member governments, after consulting with the international oil companies, to provide authority for the Secretariat to obtain the necessary data to monitor achievement of import targets.

## Flexible stock policy and informal sharing system

The IEA has adopted two new activities that particularly affect price. The first was an agreed upon procedure for consultations on oil stock policies between governments and the IEA Secretariat and between governments and the oil industry. The IEA decided that oil stocks should be used flexibly to meet short-term market disruptions and, thereby, discourage purchases on the spot market and reduce upward pressures on price. It was contemplated that governments would use political persuasion and influence to affect company stock policies rather than legislation or formal regulations. This procedure was used to ameliorate supply losses resulting from the Iraq-Iran conflict, although there may be disagreement over the degree of its success in that instance.

IEA also adopted what is, in essence, an informal sharing system, although it has not been designated as such. This system is used when imbalances in, between, or among countries occur. It was designed to moderate potential market pressures on price during the latter part of 1980 and the first quarter of 1981 due to potentially serious imbalances resulting from the Iraq-Iran conflict. It was primarily adopted for this temporary purpose; however, if imbalances caused by supply disruptions were to persist beyond the first quarter of 1981, the Governing Board decided it may continue it or keep it available for future use if necessary. Due to the more favorable supply situation, it was not continued beyond the first quarter of 1981.

Under the informal sharing system, using the data received from Questionnaires A and B, country supply positions are compared against a theoretical supply determined by distributing total oil expected to be available to the IEA group among member countries in proportion to their base period final consumption. At the request of a member country, or on his own initiative, the IEA Executive Director identifies major crude oil or product imbalances which seem likely to result in upward pressures on price. There need not be a 7-percent selective or general shortfall or any other particular shortfall to qualify as an imbalance; this is a discretionary decision made by the Secretariat.

Once it has been determined that an imbalance exists, the informal sharing system is an elaboration, extension, and intensification of the consultation process used in implementing the flexible stock policy. The Secretariat consults with the countries concerned as to its assessment of the imbalance and the measures required to correct it and discusses the situation with all delegations. The Secretariat also consults with individual companies in assessing the seriousness of the imbalance and in finding possible solutions and requests governments to consult with companies operating in their jurisdictions. The Executive Director, taking all these consultations into account, identifies possible measures and sources that might provide the amounts

of oil necessary to correct the imbalance. The Secretariat proposes these solutions to the governments of countries concerned for "appropriate action as a matter of urgency." Each member government pledged its "full support in order to ensure effective implementation." Commitments were also made to reduce imbalances among companies.

The informal sharing system is a response to IEA's recognition that serious price consequences can flow from supply disruptions which are less than the 7-percent shortfall required to activate the formal Emergency Sharing System. This informal system attempts to provide a restraining influence and to take into account the differing economic needs and capabilities of member countries. In the calculation for measuring an imbalance, the Secretariat is in a position to take into consideration a country's real requirements on a current basis, as estimated by the Secretariat in consultation with countries concerned. In addition, in identifying major imbalances which seem likely to result in market pressures, the Secretariat can take into account "changes in demand for such reasons as economic growth, weather, and changes in energy structure."

### Flexible stocks and U.S. implications

Implementation of the flexible stock policy for U.S. companies was not specifically envisioned by EPCA. As indicated earlier, the IEP did not include an express objective of controlling the price of crude oil or petroleum products, even in an emergency; article 10 of the IEP merely refers to "basing the price for allocated oil on the price conditions prevailing for comparable commercial transactions." The IEA system, although not infringing on the governments' rights to control their price policies, was oriented toward nondiscriminatory treatment of countries and companies. Consequently, EPCA's international energy provisions did not address the control or influence of price.

We do not mean to imply that the formal IEA Emergency Sharing System would not also affect oil prices; its demand restraint element should lessen upward pressures on price. In addition, the combination of IEA allocation and fair sharing by each participating country within its domestic oil industry should tend to reduce upward pressures on price. If companies are guaranteed a fair

share of oil, they should refrain from seeking spot market supplies, thus alleviating the pressure on spot market prices. 1/ Moreover, allocation should tend to equalize remaining pressures among participating countries. These benefits, which have helpful restraining effects on prices, are indirect consequences of the international allocation system explicity set forth in the IEP.

The IEA Secretariat at first sought implementation of the flexible stock policy through bilateral consultations with individual companies. Oil stock management to restrain prices is outside the context of the IEA Emergency Sharing System, however, so the U.S. Government has taken the position that these bilateral consultations are not covered by the Voluntary Agreement. Therefore, U.S. companies do not have the antitrust protection with respect to proprietary information they may convey to the Secretariat during bilateral consultations or for supply actions they may take in response to Secretariat requests.

Both the Justice Department and the FTC have expressed concern about the antitrust consequences of the Secretariat's use of bilateral consultations to request supply actions; however, neither agency has found that U.S. companies have taken supply actions in response to Secretariat requests. The companies have stated that the purpose of bilateral consultations should be to enable the companies to clarify different situations for the Secretariat, not to obtain company agreement to take particular supply actions. For example, bilateral consultations between the Secretariat and individual companies in the past have provided the Secretariat with assessments of oil production in individual countries, evaluations of the Secretariat's Quarterly Oil Forecast, projections of petroleum supply and demand, reasons for tightness in oil markets, accuracy of Questionnaire A and B data, and methodological problems with the calculation of base period final consumption. The U.S. Government has strongly discouraged Secretariat use of bilateral consultations to induce company supply actions.

In part because of these U.S. concerns, the flexible stock policy ultimately adopted by the IEA does not explicitly provide for bilateral consultations between the Secretariat and companies. Instead, consultations on stock policies are encouraged between

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1/DOE told us that such a guarantee will not exist after the expiration of the Emergency Petroleum Allocation Act which is currently under review and is scheduled to expire on Sept. 30, 1981. If there is not such a guarantee through Government-supervised "fair sharing" among companies domestically in the United States during an international energy emergency, we have serious reservations whether any international petroleum allocation program, formal or informal, can be effective.

governments and the IEA Secretariat and between governments and their oil industries.

Nevertheless, even if the requests for oil stock drawdowns are made by the U.S. Government to an individual company rather than by the Secretariat to the individual company, potential problems still remain. The desirability of U.S. Government oversight of U.S. companies' management of their oil stocks during non-emergencies has not been affirmed by Congress. In addition, mechanisms should be built into the U.S. decisionmaking process to minimize anticompetitive consequences of any stock drawdown or buildup requested by the U.S. Government. This could be accomplished by requiring advisory participation by the Justice Department and the FTC in the decisionmaking process. Moreover, if the actions of the companies are going to continue to be voluntary, protection from antitrust suits appears useful in order to assure company cooperation.

### Informal sharing system and U.S. implications

Of the new initiatives of the IEA, the informal sharing system has potentially the greatest legal and policy concerns for the United States, ranging from coverage under U.S. legislation implementing the IEP to antitrust concerns. Controversy starts with whether the system is covered within U.S. domestic legislation implementing the IEP.

EPCA was enacted to implement U.S. obligations under the IEP on the assumption that international allocation of oil would not arise until the threshold oil shortage of 7 percent was reached. The informal sharing system substantially changes this obligation; imbalances are not limited to 7-percent or greater oil supply shortfalls and international oil allocation has become an instrument for restraining rapid spot market oil price increases by correcting supply imbalances. It has the potential also for supplanting the use of the selective trigger under the IEP.

Regardless of whether EPCA, as a matter of technical legal interpretation, can or cannot be construed as authorizing the informal sharing system, such a system is a substantially different program from that presented to the Congress in 1974.

Among the particular concerns of the informal sharing system that Congress should be aware of are antitrust issues and the impact on other domestic legislation.

### Antitrust considerations

If the United States is to fulfill its pledge of "full support in order to ensure the effective implementation" of the informal sharing system, it must consider the domestic legal situation. Under existing domestic legislation, the U.S. Government has viewed its authority to order international allocation supply

actions by U.S. companies as contingent upon IEA's declaring an international energy emergency. Under the informal sharing system, however, there need not be a declaration of an international energy emergency and the U.S. Government must use persuasion to obtain U.S. company cooperation. This may not be sufficient to induce U.S. companies to take very active roles in the informal sharing system. Not only would such actions be contrary to their economic interests in some instances but also the absence of antitrust protection would be a primary legal impediment.

At the same time, the U.S. Government decisionmaking process should incorporate procedures to minimize anticompetitive concerns associated with supply actions if the informal sharing system were to be implemented. It may be desirable for the Justice Department and the FTC to be involved in these consultations to minimize (monitor and explain) potential adverse domestic and international reactions associated with U.S. antitrust issues.

Other domestic legislative considerations

The informal sharing system may affect the provisions of other U.S. domestic legislation, including the President's authority under the EPCA to draw down the Strategic Petroleum Reserve, activate energy conservation contingency plans, and invoke the standby rationing authority. Also affected is the President's authority to implement the emergency energy conservation program under the Emergency Energy Conservation Act and petroleum inventory controls under the Emergency Petroleum Allocation Act. Furthermore, it affects the Export Administration Act's provision authorizing exports of oil "to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency." Authority to activate all of these programs is presently statutorily expressed in terms of fulfilling U.S. obligations under the IEP. If participation in the IEA informal sharing system is considered an obligation of the United States under the IEP, these U.S. domestic programs might be subject to activation without reference to any particular international oil supply shortfall threshold.

CONCLUSION

There may be a question as to whether the U.S. decision to undertake IEA's new initiatives, particularly the informal sharing system, is covered by existing legislative authority. The problem may stem in part from the interrelationship of language of the IEP and EPCA.

Article 73 of the IEP provides that:

"This Agreement may at any time be amended by the Governing Board, acting by unanimity. Such amendment shall come into force in a manner determined by the Governing

Board acting by unanimity and making provision for Participating Countries to comply with their respective constitutional procedures."

EPCA defines the IEP as the

" * * * Agreement on an International Energy Program, signed by the United States on November 28, 1974, including (A) the annex entitled 'Emergency Reserves,' (B) any amendment to such Agreement which includes another nation as a party to such Agreement, and (C) any technical or clerical amendment to such Agreement."

Thus EPCA does not cover substantive or nontechnical amendments to the IEP. Amendments that require implementing authority or extension of the antitrust or contract defense would require enactment of legislation by the Congress.

The new activities of the IEA were initiated merely by approval of the Governing Board, because article 61 of the IEP provides that the Governing Board by unanimous vote can impose on participating countries new obligations not already specified in the IEP. This avoids the requirement of the IEP that amendments provide for participating countries to comply with their respective constitutional procedures. Therefore, to the extent that activities are initiated by Governing Board decision rather than IEP amendment, the instances where U.S. congressional approval should be sought are less clear and are subject to disagreement. An example is the informal sharing system. Chapters III and IV of the IEP specifically provide for a formal international oil allocation system to be activated by an IEA determination that a 7-or 12-percent selective or general oil shortfall exists. Nevertheless, when participating countries chose to institute the informal sharing system despite these provisions, the Governing Board did not amend the IEP, it merely made a decision.

To some extent there may have been reliance on article 22 of the IEP, which provides that:

"The Governing Board may at any time decide by unanimity to activate any appropriate emergency measures not provided for in this Agreement, if the situation so requires."

Yet there is considerable opinion both within the U.S. Government and among participating oil companies that formal international oil allocation is specifically provided in the IEP to the exclusion of alternative systems which have different threshold shortfalls. Under this reasoning, amendment of the IEP would be essential to institute an informal sharing system.

## AGENCY COMMENTS AND OUR EVALUATION

Agency comments expressed considerable disagreement and concern about our treatment of IEA's new activities, particularly the flexible stock policy and informal sharing system.

The Department of Energy disputes that IEA countries have agreed to a "system" of flexible use of stocks in a crisis. It asserts that a variety of proposals have been made over the past 6 months but that each suffers from serious shortcomings and the prospect for an IEA agreement on any such system remains unlikely. DOE does state that the fundamental idea of these proposals is to establish an arrangement or mechanism whereby stocks would be used in an agreed or coordinated manner by IEA countries. It also acknowledges that in December the ministers did agree to encourage a stock draw in the first quarter of 1981 as one of several ad hoc measures for dealing with any temporary oil supply shortage arising from the Iraq/Iran war; however, this "decision" does not represent "agreement" on flexible use of stocks.

In the official Governing Board meeting of October 1, 1980, the IEA member countries agreed to take the following measures, which were confirmed at the ministerial level on December 9 and extended through the first quarter of 1981.

--"Urging and guiding both private and public market participants to refrain from any abnormal purchases on the spot market;

--"In accordance with the decision taken by Ministers in May 1980 on stock policies, immediate consultations by member countries with oil companies to carry out the policy that in the fourth quarter there will be a group stock draw sufficient to balance supply and demand, taking into account whatever additional production is available to the group;

--"To this end, active consultation between governments of the IEA to ensure consistent and fair implementation of these measures taking account of market structures in individual countries, and to adjust for imbalances which might occur in particular situations;

--"Reinforcement of conservation and fuel substitution measures which are already contributing to lower demand for oil."

If this did not rise to a "system" of flexible use of stocks, it at least constituted an agreement on procedures for coordinated management of stocks to prevent upward price pressures on the oil market. Accordingly, we do not agree with DOE concerning these activities.

DOE also states that we mistakenly describe the IEA ministers December 9, 1980, decision concerning correction of imbalances as a "simplified sharing system." We were aware that the term "simplified sharing system" had been applied to proposals advanced by the IEA Secretariat involving a new, somewhat automatic sharing system for supply shortfalls that did not reach the formal 7-percent trigger level. However, the purpose of the December 9 decision was the same; it merely differed in the degree of its flexibility. Nevertheless, we have limited its characterization in this report to "informal sharing system."

DOE also states, however, that the IEA has not adopted an informal sharing system and the United States does not support one. The December decision was designed merely as a temporary response in meeting initial oil supply shortfalls resulting from the Iraq/Iran war, which certain IEA countries bore more heavily than others. The ministerial decision did not represent establishment of any formal mechanism for sharing oil supplies outside the IEA's existing Emergency Sharing System but rather a flexible response and an informal process in which national governments retained full discretion and responsibility for any action that was required.

The Department of State, although conceding that the IEA did undertake coordinated efforts to resolve specific oil supply difficulties and did urge companies to draw down stocks to balance the market, indicates that these efforts were unique to and on behalf of Turkey only. U.S. actions were guided by U.S. recognition of the vital importance of Turkey as a NATO ally, and there is no formal IEA system for dealing with such situations. State adds that IEA countries have under study whether IEA policies should be adopted on flexible stocks or simplified systems for mitigating country-specific supply imbalances. This study is part of an overall review of the adequacy of the IEA emergency preparedness program, a review mandated by the IEA charter. In addition, State comments that it is not accurate to characterize flexible stock policies and informal sharing as active, existing parts of the IEA program and that there is no automatic U.S. obligation to participate in informal sharing.

In contrast to DOE and State comments, the other comments we received seem to accept the existence and nature of the IEA informal sharing system. For example, the IEA Executive Director concedes that the system existed but that it has been overtaken by a process of establishing standby measures to improve preparedness, which are referred to in the communique issued by the IEA energy ministers on June 15, 1981. In testimony before a U.S. Senate Governmental Affairs Subcommittee on July 14, 1981, the IEA Executive Director specifically stated that these standby measures included "use of stocks" and "dealing with supply imbalances among IEA members, so as to avoid pulling the selective trigger under the IEP wherever possible."

He further testified that:

> "The IEA is presently reviewing the experience over the last two years to try to refine and improve the tools that can be introduced speedily and effectively in order to prevent price rises during periods [of precrisis]. * * * Secondly, the U.S. should continue to work in a cooperative manner with other IEA countries to prepare effective means for coordinating actions during times of pre-crisis. The work in this area is far from finished. Active and supportive U.S. actions are critical. * * *"

The U.S. Mission to the IEA in Paris states that since the IEA Emergency Sharing System was not designed for use except in severe disruptions (7-percent shortfall or more), less formal options for possible use in a subcrisis have been considered. Both the flexible stock policy and system for rectifying imbalances are ad hoc responses to specific market circumstances, and they have not been adopted by the IEA on a permanent basis. In addition, the system we described as the "simplified sharing system" is not intended to supplant the selective trigger but to be used as a possible alternative approach when the selective trigger would be a clumsy answer to a relatively small and localized supply shortfall.

The FTC in its April 1981 semiannual report on IEA monitoring explicitly calls the December 9 inventory-balancing plan an "allocation scheme," and one which is not within the scope of the IEP's allocation and information provisions as defined in EPCA. Since the inventory-balancing plan would occur without a finding of a 7-percent shortfall and without use of the sharing formula, demand restraint measures, or inventory drawdown requirements as found in the formal allocation system, the FTC concluded that the antitrust defense could not be properly applied to such a plan.

Justice explicitly states that, in providing a clearance for individual oil company consultations with the Secretariat pursuant to the December 9 Governing Board decision, the U.S. Government informed the U.S. oil companies that they would not have a section 252 antitrust defense for any supply actions taken pursuant to their consultations with the Secretariat or discussions with governments. However, Justice thinks it is an overstatement for the report to state that a new U.S. IEA policy supporting less than 7-percent sharing has emerged and to imply that U.S. and foreign multinational oil companies are becoming the logistical arm of the IEA and individual member governments.

The chairman of the Industry Advisory Board does not dispute that the IEA adopted oil stock management and informal sharing systems, but he does not believe they were implemented. He states that U.S. companies might incur significant risks under present U.S. law if they should participate in implementation of either of these proposals.

We cannot agree with DOE that the IEA did not adopt an informal sharing system and that the United States did not support it. The December 9, 1980, Governing Board decision was in substantial part the proposal of the U.S. Government. Internal DOE memoranda circulated before the December ministerial meeting explicitly referred to the proposal as an informal sharing system. In addition, regardless of whether one characterizes it as an inventory-balancing system or an informal sharing system, the substance of the program is important, not the name. As the FTC stated, inventory balancing was an allocation scheme outside the formal sharing system, regardless of its name, resulting in informal sharing of oil supplies. Moreover, it is somewhat misleading to overemphasize the informality of the system. The system did provide for mathematical comparison of country supply positions with base period final consumption to measure imbalances, although the Executive Director of IEA had considerable discretion as to what constituted a serious oil supply imbalance.

However, we agree with DOE and the U.S. Mission to the IEA that the system was designed as a temporary response, and we agree with State that it is not now an active, existing part of the IEA program. The December 9 Governing Board decision explicitly stated that:

> "This decision is made in order to moderate potential market pressures during the first quarter of 1981. If imbalances caused by supply disruptions prevail beyond that period, the Governing Board may continue it, or keep it available for future use if necessary."

As the Executive Director of the IEA commented, the system was overtaken by events, primarily the substantial supply of oil on the international market which alleviated the concern over imbalances and the program thus was not extended beyond the first quarter of 1981. Whether it will be activated in the future, either alone or in conjunction with other measures, is not clear.

We cannot agree with State that the December 9 decision was unique to and on behalf of Turkey only. An unpublicized annex to the October 1, 1981, agreement on measures indicates that at least seven IEA countries were substantially affected by the Iraqi supply cutoff. Moreover, the words of the December 9 decision in no way limit its application to a single country. We set forth the whole of the decision here so that its provisions can be seen in context.

> "<u>THE GOVERNING BOARD DECIDES THAT</u>:
>
> "The International Energy Agency will apply the following measures for the purpose of correcting serious oil supply imbalances which may arise between countries or companies as a result of the Iraq/Iran supply disruption, with effect from 9th December 1980.

"1. PURPOSE

The purpose of this decision is to correct serious imbalances which remain despite national efforts to correct internal imbalances and which are likely to result in undue market pressures on price, rather than to correct every imbalance which could arise.

"2. DATA BASE

The Secretariat will continue to receive, process and analyse Questionnaires A and B on a monthly basis for the duration of the Iraq/Iran petroleum supply disruption. Data will also be provided on stocks at sea in Questionnaire A for forward months and in Questionnaire B for non-reporting companies for current and forward months.

"3. BASIS FOR MEASURING IMBALANCES

Country supply positions will be compared against a theoretical supply determined by distributing total oil expected to be available to the group among countries in proportion to their base period final consumption, taking into account also their real requirements on a current basis, as estimated by the Secretariat in consultation with countries concerned.

"4. COUNTRY IMBALANCES

(A) This decision will be applied to correct imbalances described in paragraph 1 above, for example when a given country:

--suffers a relatively severe loss of overall oil supply (or of major oil products), unless stocks are high enough to compensate.

--falls to disproportionate and potentially dangerous stock levels.

(B) At the request of a member country, or on his own initiative, the Executive Director will identify major imbalances which seem likely to result in market pressures, taking into account stock changes resulting from implementation of the measures agreed by the Governing Board in October 1980, as well as changes in demand for such reasons as economic growth, weather, changes in energy structure, etc.

(C) In such cases the Secretariat will consult with the countries concerned as to its assessment

and as to the measures required to correct the imbalance, and will promptly notify and discuss the situation with all delegations.

(D) The Secretariat will also consult with individual companies in assessing the seriousness of imbalance situations and in finding possible solutions.

(E) The Secretariat may also request governments to consult with companies operating in their jurisdictions with results communicated to the Secretariat.

(F) The Executive Director, taking all such consultations into account, will identify possible measures and sources from which the amounts of oil necessary to correct the imbalance might be provided.

(G) The measures, amounts and possible sources so identified will be proposed by the Secretariat to the governments of countries concerned for appropriate action as a matter of urgency.

"5. COMPANY IMBALANCES

(A) In case serious imbalances arise between companies within a given country as a consequence of the Iraq/Iran supply disruptions, the government of the country concerned will make every effort it considers necessary to encourage companies to refrain from actions which increase pressures on price.

(B) If governments consider that their individual efforts could be supplemented by international action, they may bring the matter to the Governing Board.

(C) In case serious imbalances arise between companies on an international basis going beyond any one country's jurisdiction, the matter can also be brought to the attention of the Governing Board and of the governments concerned so that they can identify solutions.

(D) The Secretariat will supply aggregated data and assist generally in the analysis of such situations.

"6. GOVERNMENT SUPPORT

Each government will provide its full support in order to ensure the effective implementation of this decision.

"7. DURATION

This decision is made in order to moderate potential market pressures during the first quarter of 1981. If imbalances caused by supply disruptions prevail beyond that period, the Governing Board may continue it, or keep it available for future use if necessary.

"8. LEGAL ASPECTS

Governments agree to look into aspects of their legal situation which relate to the implementation of this decision, with a view to improving its efficiency and effectiveness.

In the final analysis, we believe that it is somewhat beside the point for DOE to state that national governments retained full discretion and responsibility for any action that was required under the informal sharing system. It is similarly beside the point for State to comment that there was no automatic U.S. obligation to participate in informal sharing. The December 9 decision provides that measures identified by the Secretariat to alleviate imbalances were to be proposed to the governments of countries concerned "for appropriate action as a matter of urgency." Each government participating in the December 9 Governing Board decision agreed to provide "its full support in order to ensure the effective implementation of this decision." In addition, "Governments agreed to look into aspects of their legal situation which relate to the implementation of this decision, with a view to improving its efficiency and effectiveness." The latter seems particularly addressed to the United States, for it was known that U.S. oil companies would not fully participate in the informal sharing system without the protection of an antitrust defense, which would require an amendment of EPCA. These were commitments by the U.S. Government in the December 9 Governing Board decision to ensure the effective implementation of the system.

## LIST OF GAO REPORTS DEALING WITH THE INTERNATIONAL ENERGY AGENCY

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

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

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

The United States and International Energy Issues (EMD-78-105), Dec. 18, 1978

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

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

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

## FINANCIAL PARTICIPATION IN THE IEA (note a)

| Country | Percent of Contributions |
|---|---|
| Australia | 2.60 |
| Austria | 1.24 |
| Belgium | 2.19 |
| Canada | 5.19 |
| Denmark | 1.21 |
| Germany | 14.25 |
| Greece | 0.71 |
| Ireland | 0.26 |
| Italy | 5.99 |
| Japan | 20.99 |
| Luxembourg | 0.10 |
| Netherlands | 2.95 |
| New Zealand | 0.42 |
| Norway | 0.92 |
| Portugal | 0.41 |
| Spain | 3.45 |
| Sweden | 2.10 |
| Switzerland | 1.99 |
| Turkey | 1.19 |
| United Kingdom | 6.84 |
| United States | 25.00 |
| | 100.00 |

a/These are 1981 assessments which, except for the U.S. contribution (which is fixed at 25 percent), change according to relative changes in gross national product.

## ANTITRUST SAFEGUARDS IN THE ENERGY POLICY AND CONSERVATION ACT

1. Industry advisory meetings must be preceded by timely and adequate notice with identification of the agenda.

2. No meetings may be held unless a regular full-time Federal employee is present.

3. A full and complete record, and where practicable a verbatim transcript, shall be kept of any meeting held.

4. A full and complete record shall be kept of any communication made, between or among participants or potential participants, to develop or carry out a voluntary agreement or plan of action.

5. The transcript or record must be deposited with the Department of Energy and shall be available to the Attorney General and the Federal Trade Commission.

6. Records or transcripts are available to the public, subject to withholding of portions necessary to protect the defense or foreign policy of the United States or trade secrets.

7. Representatives of committees of Congress may attend meetings and have access to any transcripts, records, and agreements kept or made.

8. The Attorney General and the Federal Trade Commission are directed to participate from the beginning in the development of the voluntary agreement, and to propose alternatives which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of the International Energy Program.

9. A voluntary agreement or plan of action may not be carried out unless approved by the Attorney General after consultation with the Federal Trade Commission.

10. The Attorney General shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively any immunity which may be conferred by subsection (f) or (k) of section 252 of the Act.

11. Any voluntary agreement or plan of action shall be available for public inspection and copying, subject to classification exceptions.

12. Any action taken pursuant to a voluntary agreement or plan of action shall be reported to the Attorney General and the Federal Trade Commission pursuant to their regulations.

13. A plan of action may not be approved by the Attorney General unless such plan (A) describes the types of substantive actions which may be taken under the plan, and (B) is as specific in its description of proposed substantive actions as is reasonable in light of known circumstances.

14. The Attorney General and the Federal Trade Commission shall monitor the developing and carrying out of voluntary agreements and plans of action in order to promote competition and to prevent anticompetitive practices and effects, while achieving substantially the purposes of the Act.

15. The Attorney General shall promulgate rules concerning the maintenance of necessary and appropriate records related to the development and carrying out of voluntary agreements and plans of action.

16. Persons developing or carrying out voluntary agreements and plans of action shall maintain these records, to which the Attorney General and the Federal Trade Commission shall have access and the right to copy at reasonable times and upon reasonable notice.

17. An antitrust defense is available to a person in any antitrust civil or criminal action only if

    (A) such actions were taken--

        (1) in the course of developing a voluntary agreement or plan of action, or

        (2) to carry out an authorized and approved voluntary agreement or plan of action and

    (B) such person complied with the requirements and rules under section 252 of the Act.

18. The statutory antitrust defense is not available if the actions were taken for the purpose of injuring competition.

19. Persons interposing the statutory antitrust defense have the burden of proof and must demonstrate that the actions were specified in, or within the reasonable contemplation of, an approved plan of action, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

20. The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once every six months, a report on the impact on competition and on small business of actions authorized by section 252 of the Act.

21. Proprietary or confidential information in a disaggregated form, such that the supplying entity could be identified, may not be submitted to the International Energy Agency unless the President, after hearing, certifies that the IEA has adopted and is implementing security measures which assure that such information will not be disclosed by the IEA or its employees to any person or foreign country without having been aggregated, accumulated, or otherwise reported in such manner as to avoid identification of any person from whom the United States obtained the information or data.

22. If the President determines that the transmittal of certain data or information to the IEA would prejudice competition, violate the antitrust laws, or be inconsistent with United States national security interests, he may require that the data or information not be transmitted.

**Department of Energy**
**Washington, D.C. 20585**

JUL - 8 1981

Mr. J. Dexter Peach
Energy and Minerals Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

The Department of Energy appreciates the opportunity to review and comment on the GAO draft report entitled: "Assessment of U.S. Participation in the International Energy Agency's Operations and Management" (ID-81-38). The draft report contains a number of factual mistakes and descriptive inadequacies which could lead to erroneous judgments concerning the operation of the International Energy Agency (IEA) and U.S. participation therein. Since numerous comments on specific points have been transmitted to your staff, this letter will address certain broader issues raised by the report.

The draft report repeatedly confuses the December 9, 1980, decision of the IEA Ministers concerning correction of imbalances with, and mistakenly describes it as, a "simplified sharing system" to be utilized in the event of supply shortfalls that do not reach the formal 7 percent trigger level. "Simplified sharing system" is a term applied to proposals which some time ago were advanced by the IEA Secretariat, calling for a new, somewhat automatic IEA sharing system for use prior to activation of the existing emergency sharing system. The IEA has not adopted an informal sharing system, and the United States does not support one. The December decision was designed as a temporary response to a request by certain IEA member governments for assistance in meeting initial oil supply shortfalls resulting from the Iran/Iraq war. Given the nature of the Iraqi export facilities, certain IEA countries bore the heaviest burden of the shortfall. The Ministerial decision did not represent establishment of any formal mechanism for sharing oil supplies outside the IEA's existing emergency sharing system which can be triggered by a 7 percent oil supply shortfall. The December decision represented a flexible response and an informal process in which national governments retained full discretion about and responsibility for any action that was required.

The report also indicates the IEA countries have agreed to a system of flexible use of stocks in a crisis. This is not the case. It is true that a variety of proposals have been made over the past 6 months on this concept. The fundamental idea is to establish an arrangement or mechanism whereby stocks would be used in an agreed or coordinated manner by IEA countries. Since each of these proposals suffers from serious shortcomings, the prospect for an IEA agreement on any such system remains unlikely.

In December, Ministers did agree to encourage a stock draw in the first quarter of 1981 as one of several ad hoc measures to deal with any temporary oil supply shortage arising from the Iran/Iraq war. This decision, however, does not represent agreement on flexible use of stocks.

In addition, the report relies heavily on a draft ERA document prepared by staff of DOE's Economic Regulatory Administration on the results of the third test of the IEA's emergency sharing system. The GAO report contains an incomplete description of the comments on the report and incorrectly implies that it reflects a Departmental position. While many of the comments in the ERA report accurately reflect problems that arose during the test, the conclusions are not fully consistent with the report's findings and do not take cognizance of DOE actions to resolve the problems that arose. The United States has moved within the IEA to deal with the issue of trade discrepancies and to address problems connected with pricing. DOE is participating in interagency deliberation to review the existing antitrust procedures. As an agency, therefore, DOE does not accept the assertion made in the draft report that the problems identified are serious enough to make the emergency sharing system unworkable.

DOE appreciates the opportunity to comment on this draft report both informally and in writing and trusts that GAO will consider these comments in preparing the final report.

Sincerely,

Harry L. Peebles

for William S. Heffelfinger
Assistant Secretary
Management and Administration

U.S. Department of Justice

JUN 25 1981

Washington, D.C. 20530

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter is in response to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "Assessment of U.S. Participation in the International Energy Agency's Operations and Management."

Before addressing the more relevant issues of the report, a few prefatory comments are in order. First, since much of the report deals with matters for which the Department has no direct responsibility or in which it is involved only peripherally, we defer to the Departments of State (State) and Energy (DOE) for comments on those matters. Our comments are addressed in particular to Chapter 7 entitled "U.S. Antitrust Management," and to other references in the report to antitrust monitoring and/or the interface of the oil industry with various bodies of the International Energy Agency (IEA). Second, we express no agreement, disagreement or other comment on arguments, opinions, or conclusions expressed by the General Accounting Office (GAO) in its report, except where they are based on stated facts which we suggest are inaccurate or significantly incomplete.[1/]

1. The first section of the report that raises serious questions is the discussion on page 48 of the evaluation by DOE's Energy Regulatory Administration (ERA) of the 1980 test of the IEA Emergency Oil Allocation System. The report quotes without comment or qualification an ERA statement that "The U.S. Government's current antitrust approach toward U.S. involvement in the IEA . . . appears to be insensitive to the need for effective, cooperative working relationships between the Government and industry." It is not clear what ERA intended by this language as your report does not elaborate on the comment, nor has ERA ever made any suggestions to this Department on the matter. It should be noted that the Congress, by enacting Section 252 of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. §6272, has provided U.S. oil companies an antitrust defense for activities in connection with the preparation, testing, or carrying out of the IEA Emergency Oil Allocation System. The provisions (now p. 31)

1/ In addition, the report contains a number of minor factual inaccuracies and inappropriate descriptive terms which Department attorneys assigned to IEA matters have already discussed with your staff.

of Section 252 of EPCA and the Voluntary Agreement and Plan of Action to Implement the International Energy Program (Voluntary Agreement) which was drafted pursuant to its requirements, along with certain DOE record-keeping regulations which Congress also required be promulgated, establish the parameters which this Department must and does observe in carrying out its statutorily required monitoring activities. Thus, it is unfair to state, without some further specific elaboration, that the antitrust authorities are "insensitive to the need for effective, cooperative working relationships between the Government and industry." We note further that the IEA Secretariat/Industry Supply Advisory Group (ISAG) appraisal of the 1980 test, mentioned on page 49 of your report, concluded in general that the antitrust clearances and monitoring did not significantly impair the operations of the oil sharing system. (now p.32)

2. In its discussion on pages 113-116 of "the new U.S. IEA policy that emerged in 1979:" the report appears to assume that our Government supports specific proposals calling for a simplified sharing system that operates below the seven percent level. We are not aware that the U.S. Government has made any decision to support various proposals to that effect which have been advanced by the Secretariat. Admittedly, an IEA Governing Board Decision implemented in December 1980 and in effect through March 1981 did provide for individual company consultations with the IEA Secretariat about country supply imbalances during the unsettled oil market caused by the Iraq/Iran war. That Decision also provided that possible actions needed to remedy country imbalances were not to be mentioned by the Secretariat to companies, but only to individual IEA member governments which would then make their own judgments on the Secretariat's suggestions. The U.S. Government, in providing a clearance for individual oil company consultations with the Secretariat pursuant to the Governing Board Decision, informed U.S. oil companies that they would not have a Section 252 antitrust defense for any supply actions taken pursuant to their consultations with the Secretariat or discussions with governments. Thus, we think it is an overstatement for the report to state that a new U.S. IEA policy supporting less than seven percent sharing has emerged and to imply on page 114 that U.S. and foreign multinational oil companies are becoming the logistical arm of the IEA and individual member governments. (now pp. 71 & 72)

3. Chapter 7 of the report, which deals with U.S. antitrust management, makes an admirable attempt to pull together some difficult concepts, but in places it becomes too abstract. We note, for example, the section beginning on page 119 entitled "Monitoring Structure." Unlike the similar section in Chapter 6 dealing with the responsibilities of State and DOE in connection with substantive aspects of IEA activities, this section does not describe the organization and the responsibilities of the units in Justice and the Federal Trade Commission (FTC) involved in IEA monitoring. It might be useful if your report contained such a description along with an indication of the considerable resources that each agency devotes to its monitoring function. (now p.74)

4. The section dealing with "Clearances," beginning at page 120, does not provide sufficient introductory background information to enable readers to fully understand the discussion. In particular, clearances to submit data, clearances for bilateral discussions with the IEA, and clearances for group consultations should be more clearly distinguished. (now p.75)

For example, it is stated at the bottom of page 120 that clearances for industry to exchange information have been granted when an imminent emergency has been perceived, but the text does not make clear that these clearances are only in the context of group consultations by the Industry Advisory Board at meetings with the Secretariat or the IEA's Standing Group on Emergency Questions which are monitored by antitrust authorities. On page 122, in the context of clearances to submit data, the report states that "little data has been shared among the companies that has not been aggregated to prevent identification by company." In fact, under such clearances, no data is shared among the companies and no data is revealed by the IEA Secretariat, the recipient of the data, which has not been aggregated to prevent identification by company. Finally, the section does not mention the large volume of communications and consultations by companies with the Secretariat since 1975 for which no clearances were necessary because they did not involve discussion of confidential information. (now p.76) (now p.77)

5. Our most important concern with the report is related to the discussion beginning on page 125 which questions whether Justice should have authority "to supersede a determination" by State and DOE concerning the existence of an actual or imminent international oil supply emergency for purposes of deciding whether the U.S. Government should grant a clearance permitting U.S. oil companies to submit company confidential Questionnaire A (QA) data to the IEA Secretariat. The report thus implies that this Department did just that when it refused to concur in the clearance for submission of QA data in June 1980. This is not an accurate characterization of what occurred. (now p.79)

This Department's decision not to concur in continued submissions of QA information to the Secretariat is explained at length on pages 39-42 of the Eighth Report of the Attorney General Pursuant to the Energy Policy and Conservation Act. To summarize, Section 5 of the Voluntary Agreement, which governs participation by U.S. oil companies in IEA activities, bars provision and exchange of confidential and proprietary information and data without express advance approval by DOE and Justice after each has consulted with State and the FTC, respectively. QA submissions do contain confidential and proprietary oil company information and thus need a clearance to be submitted by U.S. oil companies to the Secretariat if the Section 252 antitrust defense is to apply. For over eighteen months after the Iranian Revolution in late 1978, this Department had concurred in clearances for U.S. oil companies to submit QA data to the Secretariat because of the clear potential emergency in the international oil market. The International Energy Program (IEP) envisions the submission of QA data only after an emergency has been triggered, or, by extension, when a potential emergency exists which justifies industry consultation with the IEA Secretariat under Article 19.6 for the purpose of determining whether a general or selective emergency trigger needs to be pulled. In April 1980, the Department cleared the extension of QA submissions through June 1980, but cautioned the Secretariat that the previous potential emergency appeared to be receding and that further renewals would not be warranted without a satisfactory showing of an existing or impending international oil supply emergency as defined in the IEP.

In late June 1980, the Department received a further informal request from DOE to concur in a renewal of the clearance through the end of 1980. Neither State nor DOE made any determination that an actual or imminent supply emergency existed. This Department did independently examine the international oil market--based on much of the same information available to the other agencies and using our own substantial expertise-and concluded that the then existing situation did not warrant a credible concern that an oil crisis existed or was impending. Nevertheless, we informed DOE, and through it State and the IEA Secretariat, that Justice would consider any additional information which tended to show that a supply emergency was impending. Thereafter, however, no additional information was submitted.

As the language on page 124 of your report makes clear, the IEA Secretariat, State and Energy supported an extension of the clearance for QA submissions in June 1980 because of what they regarded as continuing uncertainties in the international oil market. This did not meet the standard for QA submissions previously agreed upon by all the concerned U.S. agencies. Article 19.6 does not envision that mere uncertainties in the oil market, which can be found to exist at almost any time, can justify the provision and exchange of raw company-specific supply data on a continuing basis.2/ (now p. 78)

There were several additional factors which contributed to the Department's decision not to concur in a further clearance. It was clear from the Secretariat's comments at various IEA meetings that it wanted information not so much for emergency purposes, but rather as a source of data for determining whether IEA countries were meeting restrictive import goals adopted during the 1978-79 oil shortfall caused by the revolution in Iran.3/ Further, industry representatives at IEA meetings had become unanimous in the view that the earlier potential emergency in the oil market had disappeared, and the IEA's Industry Advisory Board had adopted an official statement at its June meeting that the IEA Secretariat was "abusing" the QA system by using it as a tool for monitoring imports. Finally, the characterization of this episode in your report is inaccurate in suggesting that energy and foreign policy concerns were placed secondary to antitrust and anticompetitive concerns. This Department was complying with the legal restrictions imposed by Congress when it did not concur in extending an antitrust defense for actions which, in its view, were outside the scope of the IEP. This Department simply determined, without contradiction

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2/ It should be noted that DOE, in a December 18, 1980 letter to Senators Percy and Bradley, stated that "The June 1980 decision not to approve continued submissions of QA data was made on the basis that the QA and QB are part of the IEA's Special Information System, which was designed for use when there is a reasonable probability of an impending supply emergency, or when such an emergency exists . . . . The data clearance was not extended in June 1980 because the U.S. Government was unable to conclude, in the circumstances then existing, that a potential emergency situation existed so as to warrant extension of the antitrust defense to provision of QA data to the IEA."

3/ The draft report correctly notes on page 145 that the Secretariat was using the QA and QB data to monitor import goals. (now p. 94)

by State and DOE, that the acknowledged and legally required conditions needed for a clearance were not present in June 1980 and therefore it could not concur in the granting of permission for companies to submit confidential data to the Secretariat.

6. On pages 138-140, the section on "Foreign Attitudes Toward Antitrust Defense" asserts that some representatives of other participating governments and foreign oil companies, as well as some Secretariat officials, "expressed outright frustration with U.S. antitrust requirements, particularly in the context of the tests of the Emergency Sharing System and the problems anticipated in an actual emergency." In contrast to this unattributed allegation is the IEA Secretariat/ISAG appraisal of Allocation System Test (AST)-3, which noted very few problems with antitrust clearances and monitoring in that test. Moreover, the reference in this section to the United Kingdom's "Protection of Trading Interests Act of 1979" inaccurately implies that law was enacted in response to U.S. monitoring of oil company activities to assist the IEA. That law was enacted in reaction to U.S. antitrust enforcement generally, and, as far as we know, was not related to IEA antitrust monitoring activities. (now pp. 89-91)

7. In the "Conclusions" section on page 140, the report notes that at the present time ". . . we [GAO] do not recommend any further fundamental or major structural changes in the U.S. antitrust provisions related to the IEA."4/ Yet on page 141, the report states that "among the more significant problems inhibiting the effectiveness of the IEA Emergency Sharing System is the inability as yet to devise meaningful antitrust controls appropriate to tests or actual emergency settings which do not impede the international allocation process." We simply disagree with this conclusion and would note that even during a test of the allocation system, where tighter antitrust controls are applied than would be in effect in an actual emergency, the Secretariat/ISAG appraisal of AST-3 found in general that the antitrust safeguards did not significantly impair operation of the system. (now p.91) (now p. 91)

We appreciate the opportunity to comment on your draft report and hope our remarks will be fully considered by your staff in development of the final report. Should you desire any additional information, please feel free to contact me.

Sincerely,

Kevin D. Rooney

Kevin D. Rooney
Assistant Attorney General
for Administration

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4/ It might also be appropriate to include this rather significant conclusion in the section of the Digest dealing with antitrust issues.

DEPARTMENT OF STATE

Washington, D.C. 20520

June 24, 1981

Mr. Frank Conahan
Director International Division
U.S. Government Accounting Office

Dear Mr. Conahan:

The draft report entitled "Assessment of U.S. Participation in the International Energy Agency's Operations and Management" has been reviewed by the Department, the U.S. Mission to the OECD and the IEA Secretariat. The Mission and the IEA Secretariat are providing separate written comments.

By and large, the Department believes that the GAO has made a serious effort to produce a comprehensive and balanced draft report. Nevertheless, we do take issue with some aspects of the draft report's analysis and conclusions. Since several Department officers have met with GAO to highlight specific errors of fact or interpretation, these written comments will cover only major issues raised by the draft report.

Among the most serious difficulties with the draft report are the references to "flexible stock policies" and "a simplified oil sharing system." IEA countries have under study whether IEA policies should be adopted on flexible stocks or simplified systems for mitigating country-specific supply imbalances. This study is part of an overall review of the adequacy of the IEA emergency preparedness program, a review mandated by the IEA charter. It is not accurate to characterize flexible stock policies and informal sharing as active, existing parts of the IEA program.

To be sure, after the outbreak of the Iran/Iraq war the IEA did undertake coordinated efforts to help Turkey resolve specific oil supply difficulties and did urge companies to draw down stocks to balance the market. The efforts on behalf of Turkey, however, were a response to a unique problem. U.S. actions were guided by our recognition of the vital importance of Turkey as a NATO ally. Nevertheless, there is no formal IEA system for dealing with such situations, nor is there any automatic U.S. obligation to participate in "informal sharing". IEA statements urging companies to draw down stocks were hortatory in nature, and were intended primarily to reassure companies that governments supported a restrained and moderate approach.

The draft report's characterization of the 1979 collective IEA commitment to reduce oil import demand by 2 mmb/d is unduly critical. The agreement stimulated a number of measures to reduce oil consumption in IEA countries, the effect of which undoubtedly was to reduce pressure on prices. Many measures took time to bite, but savings achieved by the fourth quarter of the year were running at about 1.5 mmb/d, or roughly 3.5% of IEA countries' consumption.

We disagree with the draft report's criticism of the consensus building process of IEA decision making (pp. 25-26). Consensus building, a common method of decision making in international organizations, is important in ensuring that IEA actions are wisely formulated and vigorously implementated. More formal voting is redundant under these circumstances. (now pp. 15-17)

We also disagree with the draft report's implicit criticism of the IEA policy of limiting most staff appointments to 3-5 year contracts. This policy prevents formation of an entrenched bureaucracy and ensures that the organization is open to fresh ideas. We have not detected any serious lack of expertise or continuity resulting from this policy.

The Department does not believe there is a conflict between U.S. efforts to maintain close relations with important oil producing nations and our policies in the IEA (p. 113). All our IEA partners support our developing close relations with producers. U.S. government relationships with producers do not, of course, include government to government supply relationships, which we have criticized in the IEA and other fora. (now p.70)

The draft report incorrectly argues that the U.S. would receive oil under the system only if it were the target of an embargo (p. 59-60). This is technically untrue. Whether the U.S. would give or receive oil under the system depends on which oil supplies are interrupted. An interruption of Western Hemisphere or African supplies would in most circumstances put the United States in a receiving position. (now p.41)

Sincerely,

Edward L. Morse

Edward L. Morse
Deputy Assistant Secretary
for International Energy Policy

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICE OF THE CHAIRMAN

JUN 17 1981

Mr. Gregory J. Ahart
Director
Human Resources Division
General Accounting Office
Washington, D. C. 20548

Dear Mr. Ahart:

This will respond to your May 18, 1981 letter requesting that the Federal Trade Commission ("Commission") review and comment on the General Accounting Office's ("GAO") proposed report entitled, "Assessment of U.S. Participation in the International Energy Agency's Operations and Management." The Commission believes the proposed report reflects a comprehensive effort to evaluate U.S. participation in the International Energy Agency ("IEA").

The Commission's role in the activities of the IEA is governed by Section 252 of the Energy Policy and Conservation Act which provides a limited antitrust defense for oil company participation in the IEA. Section 252 requires the Commission, along with the Attorney General, to monitor such oil company participation to insure that the goals of the IEA are achieved in the least anticompetitive manner. The Commission is also required to report to the Congress and the President on the effects on competition and small business of oil company participation in the IEA.

The Commission has worked carefully with the Department of Justice ("DOJ") to coordinate our joint responsibilities under this statute. Therefore, the Commission was particularly interested in GAO 's evaluation of the joint monitoring and reporting responsibilities. The Commission was pleased to learn that after evaluating various proposals for modifying the present monitoring system - including the elimination of verbatim transcripts for industry advisory meetings, the elimination of the role of one of the antitrust enforcement agencies, the elimination of the semi-annual reporting requirement and modification of the present procedures for issuing antitrust clearances - GAO concluded that continuation of the present antitrust safeguards and monitoring procedure was warranted. The Commission agrees that the procedures currently set out in Section 252 and the Voluntary Agreement and Plan of Action to Implement the International Energy Program provide sufficient protection for the public interest and do not require substantial modification at this time.

The proposed report also discussed the Commission and State Department's consulting role with the Department of Energy ("DOE") and DOJ on whether or not antitrust clearances are granted for the submission of confidential and proprietary information. The Commission believes that the role of the various agencies in issuing

antitrust clearances is not to resolve competing considerations of energy, foreign policy, and the antitrust laws. The first and foremost issue is whether the activity in question is eligible for the Section 252 antitrust defense extended to oil-company actions taken pursuant to the "allocation and information provisions of the international energy program."*/ Because the standards for this determination are set out in the statute, the question is one of interpreting and applying the law rather than balancing energy, diplomatic, or antitrust policy considerations. Thus, while the non-antitrust considerations are important, the Commission believes resolution of competing interests in those areas are appropriately resolved by other bodies. Since a contrary conclusion may be inferred from the proposed report clarification of this matter is, therefore, suggested.

The proposed report also discusses an incident where GAO believed that DOJ vetoed a clearance on antitrust grounds. The report queries whether such veto authority should supersede other considerations relevant to a clearance. In the instance described in the proposed report, the Commission understands that DOJ neither exercised its veto authority nor made any independent determination on non-antitrust policy considerations. It is our understanding that DOJ merely requested further documentation bearing on the clearance before the official request for clearance was presented. Because no additional information was provided, the existing clearance lapsed with no formal request for extension being presented for further review. In view of these facts, the proposed report's conclusion that DOJ's veto power impeded this clearance, appears to be unjustified and, therefore, should also be clarified.

The report also recommends that a new Plan of Action be developed which describes in more detail the activities which will occur in an emergency allocation. In that regard, the Commission notes that DOE has prepared a proposed Plan of Action which was published for public comment in the Federal Register on May 8, 1981.

Finally, the proposed report states that the Commission has analyzed the competitive impact of circulating aggregated QA/QB forecast supply data at industry advisory meetings. The Commission has completed its analysis and will publish its findings and recommendations in its Tenth Report. The Commission, however, has found no evidence that any company took supply actions based upon this information.

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*/ 42 U.S.C. § 627(b). A detailed explanation of this standard is found in the Commission's Tenth Report, to be issued shortly. This Report will be forwarded to GAO as soon as it is authorized by the Commission.

The Commission has appreciated this opportunity to comment on the proposed report and will be pleased to lend such further assistance as you may require.

By direction of the Commission.

David A. Clanton
Acting Chairman

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