

THE WHITE HOUSE

WASHINGTON

February 24, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: EDWARD SCHMULTS

SUBJECT: Questionable Foreign Payments
by U.S. Companies_____

This is to present background information and a series of options which are available to you as part of the effort to construct a framework for dealing with the problem of payments made by U.S. companies to foreign officials and political organizations in connection with their sales activities.

THE PROBLEM

The United States Government is having difficulty in deciding how to handle the concerns raised by the practice of certain U.S. corporations in making questionable payments to foreign officials and political organizations. Domestic law may not address the problem adequately and businessmen and others have said that the government should provide greater guidance as to what standards should be applied to foreign sales activities. Many believe that the practice of making questionable payments is doing great damage domestically to our free enterprise system and thus merits immediate attention by the Executive branch.

While the full dimensions of the problem are not known, disclosures have been made that Lockheed Aircraft Corporation paid \$2 million to Japanese officials and another \$1.1 million to a high Dutch official to promote the sale of its airplanes abroad. In addition to Lockheed, other multinational corporations such as Northrop, Gulf and United Brands have been alleged to be participants in schemes to bribe foreign officials. Such revelations have led to pressures for strong new actions against bribery and political contributions abroad.

EXISTING INITIATIVES

A variety of multilateral and unilateral programs are underway to meet the problem of bribes and other illegal or unethical conduct by U.S. corporations abroad.

1. International Initiatives. Although proposals for an international code of conduct for multinational corporations have been under consideration for a number of years, until recently none of these efforts has sought to deal with the specific question of bribery payments. In international discussions, the U.S. has always expressed strong objections to payoffs but only

in the past year have events led to the development of a series of multilateral anti-bribery initiatives:

- Senate Resolution 265, passed on November 12, 1975, commits the U.S. government to seeking an international code of conduct covering “. . . bribery, indirect payments, kickbacks, unethical political contributions and other such similar disreputable activities,” as part of the current GATT multilateral trade negotiations under the Trade Act of 1974;
 - OECD Standard of Conduct, initiated by the U.S., and tentatively approved in October 1975, calls for enterprises of member countries of the Organization for Economic Cooperation and Development to observe the “highest standards of behavior”;
 - UN Resolution, adopted December 15, 1975, condemns corrupt corporate practices and calls on member governments to cooperate in eliminating them;
 - OAS Resolution, adopted July, 1975, by the Permanent Council of the Organization of American States, to condemn bribery and to urge member states, insofar as necessary, to clarify their national laws with regard to such activities.
2. National Initiatives. Three aspects of U.S. unilateral efforts should be noted:
- Policy Review. The Departments of State, Defense and Commerce , the FTC, the Emergency Loan Guarantee Board, the Justice Department’s Antitrust Division, the SEC and the IRS have been conducting a continuing review of existing authorities to stem illegal payments by U.S. companies to foreign agents or official
 - Enforcement. Investigations by federal agencies already may involve as many as 50 corporations. Several law enforcement agencies, e.g., IRS and SEC, have recently announced that they will further intensify their investigative efforts.
 - Legislation. Two legislative proposals to require public disclosure of fees paid to agents or officials abroad are currently pending in the Senate.

NATURE OF U.S. INTERESTS

Beyond moral concerns, there appear to be five areas in which the subject of payments by U.S. companies to foreign agents or officials is of immediate interest.

1. Antitrust. Overseas payments by U.S. companies could become an antitrust issue if questions of anticompetitive behavior arise. The Department of Justice is the lead agency in this area.

2. Corporate Disclosure. The Securities and Exchange Commission monitors and regulates the disclosure practices of U.S. companies. A major concern of the SEC is to assure that corporate information which is important to the potential investor, including costs of doing business abroad, be disclosed in a corporation's financial reports.

3. Military Sales and Assistance. The Department of Defense is specifically responsible for implementing the Military Assistance Program and the Foreign Military Sales Program, both of which involve justification for the inclusion of substantial agent's fees.

4. Tax Reporting. The Internal Revenue Service is responsible for investigating the propriety of all business deductions. Our Federal tax law provides that illegal payments are not deductible as business expenses.

5. International Implications. Foreign payments by U.S. companies have international implications which raise foreign policy issues of concern to the State Department. Additionally, this problem impacts substantially on efforts toward drafting an international code of conduct for multinational corporations as suggested by S. Res. 265.

RESERVATIONS

There is a need to distinguish between actions which the U.S. might take unilaterally and actions which require multilateral action. The former approach has certain inherent limitations.

1. The prohibition of illegal payments by U.S. firms without commensurate restraints on such payments by foreign competitors places the U.S. firms in a potentially disadvantageous position.

2. An important dimension of any policy analysis must be the consideration of the possible effect of any actions on trade, on the location of private corporations and on the international flow of capital.

3. Proposals which would make it a criminal act for U.S. companies to engage abroad in what are regarded as improper activities at home pose serious difficulties. The State Department has opposed extraterritorial penal legislation because enforcement of such laws could involve the U.S. in the investigation of the conduct of foreign government officials.

4. Even general disclosure legislation raises difficulties at the State Department since such legislation presumably would require making the names of the payee as well as the payor public.

OPTIONS

The basic issue put forward here is the desirability of establishing a review group to recommend such steps as may be warranted to combat payments made by U.S. companies to foreign officials and political organizations in connection with their sales activities. Assuming your desire to

establish such a group, additional issues arise regarding the appropriate structure and operations of the organization.

1. Should there be established under the umbrella of the Economic Policy Board and National Security Council a Cabinet-level Task Force to deal with the problem at hand? (The alternatives would be to assign the problem to one of several existing entities or to a sub-Cabinet level Task Force.)

PRO: Would forcefully demonstrate your commitment to developing solutions to the problem.

CON: Could be perceived as a political ploy to temporarily avoid the problem.

Approve [State, DOD, Treasury, Justice and Commerce] _____ Disapprove _____

2. Should the Task Force include only specified representatives of the Economic Policy Board and the National Security Council (Seidman, Scowcroft, Commerce, Defense, Treasury, State, CIEP and STR)? (The alternative would be to include all members.)

PRO: A representative group would cover essential areas of expertise and would be far more manageable.

CON: Inclusion of all members of the EPB and NSC would ensure the most comprehensive review of the problem.

Approve [State, DOD, Treasury, Justice and Commerce] _____ Disapprove _____

3. Should the Attorney General be included as a member of the Task Force?

PRO: The Department of Justice would lend general legal and antitrust expertise to the group.

CON: The addition of Justice might be perceived as lending an enforcement or punitive dimension to the group.

Approve [State, DOD, Treasury, Justice and Commerce] _____ Disapprove _____

4. Should Secretary Richardson chair the Task Force? (The only alternative candidate who has been suggested is Secretary Simon.)

PRO: The Department of Commerce has an important institutional interest and Secretary Richardson has the necessary background and great public credibility.

CON: Secretary Simon has established a position of leadership within the Administration on this subject.

Approve [State, DOD, Treasury,
Justice and Commerce] _____

Disapprove _____