

UNITED STATES DEPARTMENT OF COMMERCE
Office of the Secretary
Washington, D.C. 20230

March 31, 1976

**MEMORANDUM FOR SECRETARIAL REPRESENTATIVES, FIELD OFFICES AND
INFORMATION OFFICERS**

FROM: Horace S. Webb

The President today named Secretary Richardson to head a Cabinet level task force on questionable corporate payments abroad. I thought the attached materials issued by the White House press office would be of interest to you.

FOR IMMEDIATE RELEASE

MARCH 31, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

Recent disclosures that American-based corporations have made questionable payments during the course of their overseas operations have raised substantial public policy issues here at home.

The Federal Government is already undertaking a number of firm actions to deal with this matter. Full-scale investigations to determine whether U.S. laws have been violated are currently underway in the Securities and Exchange Commission, the Internal Revenue Service, and elsewhere. In addition, I have directed my advisers in the areas of foreign policy and international trade to work with other governments abroad in seeking to develop a better set of guidelines for all corporations.

To ensure that our approach to this issue is both comprehensive and properly coordinated, I am today establishing a Cabinet-level Task Force on Questionable Corporate Payments Abroad.

The Task Force will be chaired by the Secretary of Commerce, Elliot Richardson, and it will include among its members the Secretaries of State, Treasury and Defense as well as the Attorney General and other high-ranking members of the Administration.

I have directed the Task Force to conduct a sweeping policy review of this matter and to recommend such additional policy steps as may be warranted. The views of the broadest base of interest groups and individuals are to be solicited as part of this effort. I have also asked that periodic progress reports be submitted to me during the course of the review, and that a final report be on my desk before the end of the current calendar year.

The purpose of this Task Force is not to punish American corporations but to ensure that the U.S. has a clear policy and that we have an effective, active program to implement that policy.

To the extent that the questionable payments abroad have arisen from corrupt practices on the part of American corporations, the United States bears a clear responsibility to the entire international community to bring them to a halt. Corrupt business practices strike at the very heart of our own moral code and our faith in free enterprise. Businesses in this country run the risk of ever greater governmental regulation if they illegally take advantage of consumers, investors and taxpayers.

Before we condemn American citizens out of hand, however, it is essential that we also recognize the possibility that some of the questionable payments abroad may result from extortion by foreign interests. To the extent that such practices exist, I believe that the United States has an equal responsibility to our own businesses to protect them from strong-arm practices. It is incumbent upon us to work with foreign governments to curb any such abuses.

From the facts at hand it is not clear to me where true justice lies in this matter, and that issue may never be resolved to everyone's satisfaction. The central policy question that needs to be addressed today is rather how we can arrive at clear, enforceable standards to prevent such questionable activities in the future. That is the key issue to which this new Task Force will direct its attentions.

FOR IMMEDIATE RELEASE

MARCH 31, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

MEMORANDUM FOR

THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF COMMERCE
THE SPECIAL REPRESENTATIVE FOR
TRADE NEGOTIATIONS
THE DIRECTOR, OFFICE OF MANAGEMENT
AND BUDGET
ASSISTANT TO THE PRESIDENT FOR
ECONOMIC AFFAIRS
ASSISTANT TO THE PRESIDENT FOR
NATIONAL SECURITY AFFAIRS
EXECUTIVE DIRECTOR, COUNCIL ON
INTERNATIONAL ECONOMIC POLICY

Subject: Task Force on Questionable Corporate Payments Abroad

This is to advise you of my decision to appoint you to a Cabinet-level Task Force which I am establishing to examine the policy aspects of recent disclosures of questionable payments to foreign agents and officials by U.S. companies in conjunction with their overseas business operations. The Task Force will be chaired by Secretary Richardson and will report to me through the Economic Policy Board and National Security Council. Status reports on the efforts of the Task Force should be presented to me from time to time, and a final report is due prior to the close of the current calendar year.

Although the Federal Government is currently taking a number of international and domestic steps in an attempt to deal with this problem, I believe that a coordinated program to review these efforts and to explore additional avenues should be undertaken in the interest of ethical conduct in the international marketplace and the continued vitality of our free enterprise system.

The full dimensions of this problem are not yet known but it is clear that a substantial number of U.S. corporations have been involved in questionable payments to foreign officials, political organizations or business agents. The possibility exists that more can be done by our government. There would also appear to be some interest in guidance as to what standards

should be applied to the foreign sales activities of the overwhelming majority of American businessmen who are deeply concerned about the propriety of their business operations.

The Task Force should explore all aspects of this problem and seek to obtain the views of the broadest base of interested groups and individuals. While the problems are complex and do not lend themselves to simple solutions, I am confident that your labors will contribute to a better international and domestic climate in which American business continues to play a vital and respected role.

GERALD R. FORD

#

Office of the White House Press Secretary

THE WHITE HOUSE
FACT SHEET

TASK FORCE
ON QUESTIONABLE CORPORATE PAYMENTS ABROAD

The President today announced the creation of a Cabinet-level Task Force, to be chaired by Elliot L. Richardson, Secretary of Commerce. It will examine the matter of questionable payments by U.S. corporations to foreign officials, political organizations and business agents. The Task Force will report to the President through the Economic Policy Board and National Security Council. A final report is due from the group prior to the close of the current calendar year.

- I. Scope of the Problem. While the full dimensions of the situation are not known, recent disclosures and allegations indicate that a substantial number of U.S. corporations have been involved in questionable payments to foreign officials, political organizations, or business agents. The Securities and Exchange Commission recently indicated that the number of U.S. corporations previously examined or currently under examination by the Commission is "more than eighty-five".

- II. International Initiatives. Proposals for an international code of conduct for multinational corporations have been under consideration for some time. Recently, efforts have been made to deal with the specific question of illegal or unethical payments. In international discussions, the U.S. has expressed strong objections to any unlawful activity but only in the past year or so have events led to the development of a series of multilateral initiatives on the payments problem.
 - A. Senate Resolution 265, passed on November 12, 1975, calls for the U.S. government to seek 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.

 - B. OECD Guidelines, now under negotiation in the Organization for Economic Cooperation and Development, include a provision, suggested by the U.S., which condemns the giving or receiving of bribes.

- C. UN Resolution, adopted December 15, 1975, condemns corrupt corporate practices and calls on member governments to cooperate in eliminating them. Additionally, on March 5, 1976, the U.S. proposed negotiation of an effective international agreement on corrupt practices. This proposal is now under consideration.
 - D. OAS Resolution, adopted July 1975, by the Permanent Council of the Organization of American States, condemns bribery and urges member states, insofar as necessary, to clarify their national laws with regard to such activities.
- III. Domestic Initiatives. Three aspects of U.S. domestic efforts should be noted:
- A. Policy Review. A number of Executive Branch departments as well as the SEC have been reviewing existing authorities to stem illegal payments by U.S. companies to foreign agents or officials.
 - B. Enforcement. As noted above, investigations by federal agencies already involve many corporations. Several law enforcement agencies, e.g., IRS and SEC, have recently announced that they will further intensify their investigative efforts.
 - C. Legislation. Various legislative proposals have been made to address the issue, such as requiring public disclosure of fees paid to agents or officials abroad. To date, no new legislation has been requested by the Administration.
- IV. Current U.S. Interests. Beyond moral concerns, there are at least five areas in which the subject of payments by U.S. companies to foreign agents or officials is of interest under current law.
- A. International Implications. Foreign payments by U.S. companies have international implications which raise foreign policy issues of concern to the State Department, e.g., they encumber relations with foreign governments and contribute to the deterioration of the international investment climate.
 - B. Antitrust. Overseas payments by U.S. companies could become an antitrust issue if questions of anti-competitive behavior arise. The Department of Justice is the lead agency in this area.
 - C. 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.
 - D. Military Sales and Assistance. The Department of Defense has principal operating responsibility 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.

- E. Tax Reporting. The Internal Revenue Service is responsible for investigating the propriety of all business deductions. Our Federal tax law provides that illegal expenditures are not deductible as business expenses.
- V. Current Federal Law. Present Federal law does not directly prohibit payments by U.S. companies or individuals to foreign individuals or companies, although such payments may violate foreign laws. However--
- A. Criminal liability in the U.S. can result from the filing of false statements with the U.S. government, i.e., false certifications filed with the Export-Import Bank, the Department of Defense, or the Agency for International Development may constitute criminal fraud under 18 U.S.C. §1001.
 - B. Payments made abroad which would be illegal if made in this country may not be deducted from business taxes, and claiming such deductions may constitute a criminal tax violation.
 - C. False statements made to the Securities and Exchange Commission concerning or concealing such bribes, provided the amounts involved are "material", may constitute criminal fraud.
- VI. Complexities of the Issue. Competing considerations in this area must be carefully weighed before remedial steps are taken. For example:
- A. 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 since the enforcement of such laws could involve the U.S. in the investigation of the conduct of foreign government officials.
 - B. Unilateral disclosure legislation could raise foreign affairs difficulties to the extent that such legislation presumably would require making the names of the payee as well as the payor public.
 - C. The prohibition of certain payments by U.S. firms without commensurate restraints on similar payments by foreign competitors could place U.S. firms in a disadvantageous position.
 - D. An important dimension of any analysis in this area 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.

VII. The President's Task Force. The Task Force on Questionable Corporate Payments Abroad was established by Presidential directive (copy attached).

A. Membership.

The Secretary of State	Henry A. Kissinger
The Secretary of the Treasury	William E. Simon
The Secretary of Defense	Donald H. Rumsfeld
The Attorney General	Edward H. Levi
The Secretary of Commerce	Elliot Richardson
The Special Representative for Trade Negotiations	Frederick B. Dent
The Director, Office of Management and Budget	James T. Lynn
Assistant to the President for Economic Affairs	L. William Seidman
Assistant to the President for National Security Affairs	Brent Scowcroft
Executive Director, Council on International Economic Policy	J.M. Dunn

B. Chairman. The Task Force will be chaired by Commerce Secretary Elliot Richardson.

C. Scope of Review. The President has encouraged the Task Force to consider all policy dimensions of questionable foreign payments by U.S. corporations and to obtain the views of the broadest base of interested groups and individuals. The President has specifically directed that the SEC be invited to participate in the efforts of the Task Force.

D. Organization. The Task Force will report to the President through the Economic Policy Board and National Security Council.

E. Duration. Status reports from the Task Force will be submitted to the President from time to time. The final report is due prior to the close of the current calendar year.

#