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A BILL

To require the disclosure of payments to foreign officials and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Payments Disclosure Act".

DEFINITIONS

SEC. 2. For purposes of this Act:

(a) "person" means:

(1) an individual who is a citizen of the United States;

(2) an individual who has been lawfully admitted for permanent residence as described in section 101(a)(20) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(20)); or

(3) a legal entity, other than a noncommercial government entity, organized under the laws of the United States or a State or political subdivision thereof;

(b) "anything of value" means any direct or indirect gain or advantage, or anything that might reasonably be regarded by the beneficiary as a direct or indirect gain or advantage, including a direct or indirect gain or advantage to any other individual or entity;

(c) "foreign affiliate" means a legal entity organized under the laws of a foreign country, or political subdivision thereof, at least 50 per cent of which is beneficially owned directly or indirectly by a person or persons subject to the provisions of this Act;

(d) "Secretary", unless otherwise specified, means the Secretary of Commerce;

(e) "foreign public official" means:

(1) an officer or employee, whether elected or appointed, of a foreign government; or

(2) an individual acting for or on behalf of a foreign government;

and includes an individual who has been nominated or appointed to be a foreign public official or who has been officially informed that he will be so nominated or appointed;

(f) "official action" means a decision, opinion, recommendation, judgment, vote, or other conduct involving an exercise of discretion by a foreign public official in the course of his employment;

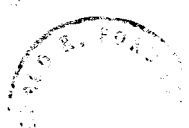
(g) "State" means a State of the United States, the District of Columbia, Puerto Rico, or any territory or possession of the United States; and

(h) "foreign government" means:

(1) the government of a foreign country, irrespective of recognition by the United States;

(2) a department, agency, or branch of a foreign government;

(3) a corporation or other legal entity established or owned by, and subject to control by, a foreign government;



(4) a political subdivision of a foreign government, or a department, agency, or branch of the political subdivision; or

(5) a public international organization.

REPORTING REQUIREMENTS

SEC. 3. A person shall report to the Secretary, in accordance with regulations promulgated by the Secretary, payments hereafter made on behalf of the person or the person's foreign affiliate to any other individual or entity in connection with: an official action, or sale to or contract with a foreign government, for the commercial benefit of the person or his foreign affiliate.

RECORDKEEPING REQUIREMENTS

SEC. 4. In order to insure that a person who is required to report under section 3 of this Act has sufficient information in his possession to report accurately, the Secretary may promulgate rules and regulations requiring such person to keep such records, in the form and manner prescribed by the Secretary, as he deems necessary to carry out the purposes of this Act. In devising the record keeping requirements, the Secretary shall consult with other federal agencies to eliminate unnecessary duplication in records required by the agencies. The agencies are authorized, where appropriate, to combine in a single form the records required under this Act and under any other Act.

ENFORCEMENT; COMPLIANCE WITH
REQUIREMENTS

SEC. 5. To the extent necessary or appropriate to the enforcement of this Act, the Secretary, and officers and employees of the Department of Commerce specifically designated by the Secretary, may make such investigations and obtain such information from, make such inspections of the books, records, and other writings of, and take the sworn testimony of, any individual or entity. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any individual or entity to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such individual or entity, the district court of the United States for any district in which such individual or entity is found or resides or transacts business, upon application by the Attorney General, and after notice to any such individual or entity and hearing, shall have jurisdiction to issue an order requiring such individual or entity to appear and give testimony, or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

CIVIL REMEDIES

SEC. 6. (a) Civil Penalties.-- A person who fails to file a report required under section 3 of this Act, or who fails to maintain the records required under section 4, or who files a report under section 3 but negligently omits information required to be reported under section 3 or negligently states false information required to be reported under section 3, shall

be subject to a civil penalty of not more than $100,000.

(b) Injunction.-- Upon evidence satisfactory to the Attorney General that a person is engaged in an act or practice that constitutes a violation of this Act, the Attorney General may bring an action in a district court of the United States to enjoin such an act or practice, and, upon a proper showing, a permanent or temporary injunction or restraining order shall be granted by the court together with such other equitable relief as may be appropriate.

CRIMINAL PENALTIES

SEC. 7. (a) Failure to File.-- A person who knowingly:

(1) fails to file a report required under section 3 of this Act;

(2) fails to maintain records required under section 4 of this Act; or

(3) omits required information from, or falsifies information in, records kept under section 4 of this Act;

shall be fined not more than $10,000 or imprisoned for not more than one year, or both, except that a legal entity shall be fined not more than $100,000.

(b) Knowing Falsification.--A person who files a report required by this Act which he knows or should know contains a false statement, or which he knows or should know omits required information, shall be fined not more than $100,000 and imprisoned not more than three years, except that a legal entity shall be fined not more than $500,000.

DISSEMINATION OF REPORTS

SEC. 8. (a) Dissemination within the United States.-- The Secretary shall, upon receipt of a report, disseminate copies of the report to the Department of Justice, the Department of State, and the Internal Revenue Service. If the person who filed the report is subject to the jurisdiction of the Securities and Exchange Commission, the Secretary shall also transmit a copy of the report to the Securities and Exchange Commission. Until the report is released to the public, it shall be maintained in accordance with section 1905 of title 18, United States Code. The report shall be transmitted, upon request, subject to an appropriate arrangement to assure its confidentiality, to Committees of the Congress having legislative jurisdiction over the subject matter of the report. A report shall be made public one year after receipt in accordance with rules and regulations promulgated by the Secretary, unless the Secretary of State makes a specific determination in writing that foreign policy interests dictate against disclosure, or unless the Attorney General makes a specific determination in writing that the status of an ongoing investigation or prosecution dictates against public disclosure through other than conventional judicial processes.

(b) Dissemination to a Foreign Government. The Attorney General, with the concurrence of the Secretary of State, may furnish any information contained in a report made under this Act to the appropriate law enforcement authorities of the foreign government concerned in accordance with applicable procedures and international agreements. The Secretary of State, with the concurrence of the Attorney General, may provide any such information to the foreign government concerned.

REGULATIONS

SEC. 9(a). Promulgation of Regulations.-- The Secretary shall promulgate such regulations as are necessary to carry out the purposes of this Act. The regulations shall include:

(1) a requirement that the report include the name of every recipient who receives anything of value over a specified amount and the amount received by each such recipient;

(2) a requirement that the report include information concerning multiple payments with respect to a single transaction which total over a specified amount; and

(3) a definition of certain types of payments which are not required to be reported because they are regular business payments not inconsistent with the purposes of this Act, or are bona fide payments to

a foreign government, such as taxes or fees paid pursuant to duly promulgated laws, regulations, decrees, or other legal action.

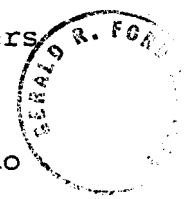
(b) Consultation with Other Agencies.-- In devising the reporting regulations, the Secretary shall consult with other federal agencies to eliminate unnecessary duplication in reports required by the agencies. The agencies are authorized, where appropriate, to combine in a single form the reports required under this Act and under any other act.

CONFORMING AMENDMENT

SEC. 10. The provisions of this Act, other than section 9(b), shall not apply to payments made in connection with (a) sales of defense articles or defense services under section 22 of the Arms Export Control Act or (b) commercial sales of defense articles or defense services licensed or approved under section 38 of the Arms Export Control Act.

PROVISIONS OF LAW
NOT AFFECTED

SEC. 11. (a) Rights and Duties Under Certain Other Laws Unaffected.-- Nothing in this Act shall be construed as affecting the rights or duties arising under the Securities Act of 1933, 15 U.S.C. 77a et seq., the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq., the Public Utilities Holding Company Act of 1935, 15 U.S.C. 79a et seq., the Trust Indenture Act of 1939, 15 U.S.C. 77aaa, the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., and the Investment Advisers Act of 1940, 15 U.S.C. 80b-1 et seq., and any subsequent amendments thereto. Persons subject to this Act shall be required to



make such public disclosure of the matters described in section 3 of this Act as may be otherwise required under the statutes listed above. Nothing in this Act shall preclude persons reporting pursuant to the provisions of this Act from making public disclosure of any payment described in section 3.

(b) Authority of Securities and Exchange Commission.-- Nothing in this Act shall be construed as affecting or conditioning the authority of the Securities and Exchange Commission to enforce the statutes listed in subsection (a) or to investigate violations thereof. The Commission shall have the authority to premise such enforcement or investigation on information received pursuant to section 8(a) of this Act.

RIGHTS AND REMEDIES PRESERVED

SEC. 12. The rights and remedies provided by this title shall be in addition to, and shall not be in derogation of, any and all other rights and remedies that may exist at law or in equity.

PROPOSED FOREIGN PAYMENTS DISCLOSURE ACT

STATEMENT OF PURPOSE AND NEED

The proposed Foreign Payments Disclosure Act was prepared by the Cabinet-level Task Force on Questionable Corporate Payments Abroad, created by President Ford on March 31, 1976 to conduct a sweeping policy review of the questionable payments problem.

Based upon an interim report of the Task Force, President Ford on June 14 directed that legislation be prepared requiring reporting and disclosure of certain payments made in relation to business with foreign governments.

The proposed legislation is designed to help deter improper payments in international commerce by American corporations and their officers; to help restore the good reputation of American business; to help deter would-be foreign extorters from seeking improper rewards from American businessmen; and to set a forceful example to our trading partners and competitors regarding the imperative need to end improper business practices.

Most important, as stated by President Ford in his message to the Congress regarding this legislation, it:

> "will help restore the confidence of the American people and our trading partners in the ethical standards of the American business community. In so doing, it can yield substantial long-term benefits to American business, to American foreign policy, and to international commerce."

In deciding upon a legislative approach, the President and the Task Force: (i) reviewed the ongoing efforts of the federal government with regard to the questionable payments problem; (ii) analyzed the adequacy of current laws in dealing with the problem; and (iii) evaluated alternative means to strengthen deterrence of improper payments and to increase confidence in American business.

Ongoing Approach to the Questionable Payments Problem

The current Administration approach to the questionable payments problem includes both (a) vigorous enforcement of current law and (b) pursuit of effective international agreements.

(a) Enforcement of Current Law

Investigative enforcement activities are being conducted by audit agencies, the Internal Revenue Service (IRS), the Federal Trade Commission (FTC), the Department

of Justice, and the Securities and Exchange Commission (SEC). The investigative activities of all these agencies are ongoing -- and the product of their investigations will continue to emerge in accord with fair and orderly legal process.

It is reasonable to conclude that the exposures to date have increased the attentiveness of responsible enforcement agencies in general -- and that they have increased the deterrent effect of current law thereby. A particularly noteworthy example is provided by the IRS's guidelines of May 10, 1976 -- requiring affidavits concerning "slush funds," bribes, kickbacks or other payments, regardless of form, made directly or indirectly to obtain favorable treatment in securing business or special concessions; or made for the use or benefit of, or for the purpose of opposing any government, political party, candidate or committee.

As is well known, the SEC has played a leadership role in this area. Its prompt and vigorous actions to discover questionable or illegal corporate payments and to require public disclosure of material facts relating to them, is contributing an important measure of deterrence to such practices.

(b) Pursuit of International Agreements

The recent Organization for Economic Cooperation and Development (OECD) Ministerial Conference adopted the following declaratory policy:

"Enterprises should:

(i) not render -- and they should not be solicited or expected to render -- any bribe or other improper benefit, direct or indirect, to any public servant or holder of public office;

(ii) unless legally permissible, not make contributions to candidates for public office or to political organizations;

(iii) abstain from any improper involvement in local political activities."

Ambassador Dent has asked the General Agreement on Tariffs and Trade to take up the questionable payments issue, as called for in Senate Resolution 265. The resolution proposes negotiation in the Multilateral Trade Negotiations of an international agreement to curb "bribery, indirect payments, kickbacks, unethical political contributions and other such similar disreputable activities." The U.S. has indicated that negotiation of such an agreement is a matter of top priority.

Most significantly, the U.S. has proposed negotiation in the United Nations of a treaty on corrupt practices. The proposal is for an agreement to be based on the following principles:

(i) It would apply to international trade and investment transactions with governments, i.e., government procurement and other governmental actions affecting international trade and investment as may be agreed;

(ii) It would apply equally to those who offer to make improper payments and to those who request or accept them;

(iii) Importing governments would agree to establish clear guidelines concerning the use of agents in connection with government procurement and other covered transactions, and establish appropriate criminal penalties for defined corrupt practices by enterprises and officials in their territory;

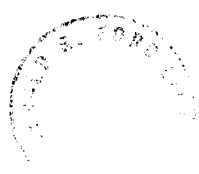
(iv) All governments would cooperate and exchange information to help eradicate corrupt practices;

(v) Uniform provisions would be agreed upon for disclosure by enterprises, agents and officials of political contributions, gifts and payments made in connection with covered transactions.

The proposal is currently under review in the UN Economic and Social Council (ECOSOC) with a strong U.S. recommendation that ECOSOC give the issue priority consideration.

The U.S. objective is to have ECOSOC pass a resolution on corrupt practices which will create a group of experts charged with writing the text of a proposed international treaty on corrupt practices and reporting that text back to ECOSOC in the summer of 1977. The U.S. goal would then be to forward an agreed text to the UN General Assembly for action in the fall of 1977.

It is the view of the President and the Task Force that the ultimate legal basis for adequately addressing the questionable payments problem must be an international treaty along the lines proposed by the United States. A treaty is required to make the "criminalization" of foreign bribery fully enforceable -- for, in the absence of foreign



cooperation, it would be extremely difficult, and in many cases impossible, for U.S. law enforcement officials and potential defendants to be assured of access to relevant evidence. A treaty is also required to treat the actions of foreign as well as domestic parties to a questionable transaction. And a treaty is required to assure that all nations, and the competing firms of differing nations, are treated on the same basis.

In order to advance the prospects of favorable international action with respect to the U.S. proposal, the State Department has coordinated a special series of direct representations to foreign governments. We will continue to pursue a satisfactory international agreement by every appropriate means.

While continuing to pursue the long-term approach toward an international agreement, it is nonetheless necessary to supplement current U.S. law -- as indicated by the following discussion.

Sufficiency of Current Laws

The Task Force undertook a review and analysis of the sufficiency of current laws to deal with the problem of deterring questionable payments by American businessmen

and to restore public confidence in business standards. It concluded that current law, while providing a number of indirect means to deal with the problem was not fully sufficient.

It is clear that existing securities laws and the Internal Revenue Code can have important bearing upon the questionable payments problem -- the former by requiring disclosure of "material" improper payments, and the latter by denying tax deduction of illegal payments. In addition, vigorous application of securities and tax standards is prompting increased internal corporate accountability.

Further, the Task Force identified a range of anti-trust provisions which might be applied to questionable or illegal payments abroad. However, effective application of these laws to transactions involving foreign payments is problematical. Finally, the Task Force identified a number of certification requirements imposed on companies doing business abroad with federal assistance, such as that provided by the Export-Import Bank and the Agency for International Development. Deliberate falsification of such certifications can give rise to criminal liability. Nevertheless, these certification

requirements can only apply to firms which avail themselves of these federal assistance programs.

The Task Force is persuaded that the SEC's system of reporting and disclosure offers substantial deterrence to future improper practices by SEC-regulated firms. To further strengthen the SEC's capacity to perform its vital functions, the Administration endorsed -- and will continue to support the enactment of -- legislation first proposed by Chairman Hills of the SEC. By making explicit what is already implicit in the SEC's authorities, this legislation can enhance the effectiveness of the SEC disclosure system as it pertains to SEC-regulated companies by assuring integrity of corporate reporting systems and the accountability of corporate officials.

However, by no means all firms engaged in international commerce are regulated under the securities laws and subject to the disclosure requirements of the Commission. Also, the Commission requires disclosure of payments only when necessary or appropriate for the protection of investors. Further, it has not generally required reporting of the name of a recipient of a material, improper payment, a requirement which the Task Force believes can be an

important deterrent to extorters. In addition, the Commission's system of disclosure -- focusing as it does primarily on the interests of the investing public -- is not designed to respond to some of the broader public policy and foreign relations interests related to the questionable payments problem.

Accordingly, the Foreign Payments Disclosure Act deals with all U.S. participants in foreign commerce -- not just Commission regulated firms -- and it calls for the active involvement of the Secretaries of State and Commerce and the Attorney General in administering a system which addresses the full range of public policy interests inherently involved in the questionable payments problem.

Selection of "Disclosure" Rather Than "Criminalization" Approach

The Task Force considered two principal competing legislative approaches -- a "disclosure" approach and a "criminalization" approach. While it is possible to design legislation which requires disclosure of foreign payments and makes certain payments criminal under U.S. law, the Task Force unanimously rejected this approach. The disclosure-plus-criminalization scheme would, by its very ambition, be ineffective. The existence of U.S. criminal penalties for

certain questionable payments would deter their disclosure and thus the positive value of the disclosure provisions would be reduced. In the Task Force's opinion, the two approaches cannot be compatibly joined.

The Task Force carefully considered the option of "criminalizing", under U.S. law, improper payments made to foreign officials by U.S. corporations. Such legislation would have represented the most forceful possible rhetorical condemnation of such conduct. It would have placed business executives on clear and unequivocal notice that such practices should stop. It would have made it easier for some corporations to resist pressures to make questionable payments.

The Task Force concluded, however, that the criminalization approach would represent little more than a policy assertion, for the enforcement of such a law would be very difficult if not impossible. Successful prosecution of offenses -- and fair defense in relation to such prosecutions -- would typically depend upon access to witnesses and information beyond the reach of U.S. judicial process. Other nations, rather than assisting in such prosecutions, might resist cooperation because of considerations of national preference or sovereignty. Other nations might be especially offended

if we sought to apply criminal sanctions to foreign-incorporated and/or foreign-managed subsidiaries of American corporations. The Task Force concluded that unless reasonably enforceable criminal sanctions were devised, the criminal approach would represent poor public policy.

Based upon analysis of the sufficiency of current law and of the options described above, the President decided to ask the Congress to enact legislation providing for full and systematic reporting and disclosure of payments in connection with their commercial relations with foreign governments.

Proposed Legislation

The Foreign Payments Disclosure Act will require reporting to the Secretary of Commerce of certain classes of payments made by U.S. businesses and their foreign subsidiaries and affiliates in relation to business with foreign governments. Specifically, reports will be required of all payments made in connection with sales to or contracts with foreign governments or official actions by foreign public officials, where such are for the commercial benefit of the payor or his foreign affiliate.

The reporting requirement covers fees of agents and other intermediaries and political contributions as well as payments made directly to foreign public officials.

The legislation provides that the Secretary of Commerce shall issue regulation necessary to carry out its purposes. These regulations shall contain a requirement that reports include names of recipients of payments and shall establish a threshold amount below which payments need not be reported. An exception is made to this threshold concept for multiple payments totaling the threshold amount with respect to a single transaction. The purpose of this threshold will be to exclude so-called "grease" or "facilitating" payments, i.e., small payments made to expedite low level official actions such as customs processing. Reporting of such minor payments could create burdens far outweighing the benefits sought by this legislation. The Secretary will further have the authority to define by regulation certain types of payments which will not be required to be reported because they are regular business payments not inconsistent with the purposes of the Act, or are bona fide payments to a foreign government such as taxes or other fees paid pursuant to law, regulation or other legal action.

The Secretary is also authorized to require, by regulation, the keeping of records necessary to carry out the purposes of the Act and to make investigations, inspect books and issue subpoenas as necessary and appropriate to the enforcement of the Act.

Civil penalties are provided for failures to report or maintain required records or negligent omissions or misstatements in reports filed. Criminal misdemeanor penalties are provided for knowing failures to file or to maintain records or to include complete or correct information in records. Filing of a report containing false statements or knowing omission of required information will be penalized as a criminal felony.

Reports filed pursuant to this legislation shall be kept confidential for one year from the date of filing so as to protect business proprietary concerns and to lessen possible foreign relations problems. On receipt, however, the reports submitted to the Secretary of Commerce would be made available to the Departments of State and Justice, the IRS and, where appropriate, to the SEC. The Department of Justice or the State Department can as appropriate relay information contained in such reports

to authorities in foreign jurisdictions. The reports will also be transmitted upon request and with appropriate arrangements for confidentiality to appropriate Committees of the Congress. After the expiration of the one-year period, reports will be made available for public inspection and copying unless a specific written determination is made by the Secretary of State that foreign policy interests dictate against public disclosure, or a specific written determination is made by the Attorney General that the status of an ongoing investigation or prosecution dictates against public disclosure through other than conventional judicial processes.

The bill will seek to avoid duplication of reporting and record keeping requirements. First, it exempts sales of defense articles or defense services under the Arms Export Control Act from the reporting requirements. This exemption is based upon the fact that the Arms Export Control Act, as recently amended, provides for comprehensive reporting to the State Department and the Congress of information regarding payments with respect to such transactions. Second, the Secretary of Commerce is given authority to work with other agencies to eliminate unnecessary duplication in reports and records. The legislation explicitly states that it is not designed

to amend in any way current legal requirements relating to reporting and disclosure, enforced by other agencies of government such as the SEC and the IRS.

PROPOSED FOREIGN PAYMENTS DISCLOSURE ACT

SECTION-BY-SECTION ANALYSIS OF THE BILL

Short Title

Section 1 of the bill provides that it may be cited as the Foreign Payments Disclosure Act.

Definitions

Section 2 defines certain terms used in the bill. "Person" is defined to mean individuals who are the citizens or resident aliens of the United States or legal entities organized under the laws of the United States or any state or political subdivision thereof. An exception is made for government entities which are not organized for commercial purposes. Federal, state or local government entities having commercial or trade promotion purposes would be subject to the Act.

"Anything of value" is defined broadly to include any direct or indirect gain or advantage to a direct beneficiary or to any third party beneficiary.

"Foreign affiliate" is defined to mean any legal entity organized under the laws of a foreign country, whenever it is at least 50 percent beneficially owned by persons subject to the Act. More complex definitions of ownership or control were rejected for the purposes of clarity and simplicity of administration.

"Foreign public official" is defined to mean an officer of employee of a foreign government, whether elected or appointed, or an individual acting for or on behalf of a foreign government. The term further is defined to include an individual who has been nominated or appointed to be a foreign public official but who has not yet formally entered office.

"Official action" is defined to mean any decision, opinion, recommendation, judgment, vote, or other conduct involving an exercise of discretion by a foreign public official in the course of his employment.

"Foreign government" is defined broadly to include any government of a foreign country; a department or agency thereof; a corporation or other legal entity under control of a foreign government; any political subdivision of a foreign government; and any public international organization.

Reporting Requirements

Section 3 of the bill sets forth classes of payments which must be reported to the Secretary of Commerce in accordance with regulations promulgated by the Secretary. These include payments made, after passage of the bill, on behalf of a person subject to the Act or the person's

foreign affiliate to any other individual or entity in connection with: an official action, or sale to or contract with a foreign government for the commercial benefit of the person or his foreign affiliate.

This reporting requirement will be further delineated by the issuance of regulations pursuant to Section 9(a) of the bill, which requires the Secretary, by regulation, to set a threshold amount below which payments need not be reported, and to define types of payments which need not be reported. Thus, while the reporting requirements of the bill will extend to proper as well as improper or illegal payments, the regulations issued by the Secretary will exclude from reporting certain regular business payments not inconsistent with the purposes of the bill and bona fide payments such as taxes.

The terms "individual or entity," as used in Section 3, refer to foreign public officials, foreign governments, and agents or intermediaries used in connection with covered transactions or official actions.

Record Keeping Requirements

Section 4 allows the Secretary of Commerce to promulgate rules and regulations prescribing record keeping, necessary to carry out the purposes of the Act. The Secretary is to consult in the design of these record keeping requirements with other federal agencies so as to eliminate unnecessary duplication of record keeping. It is anticipated that the SEC's record keeping requirements for firms regulated by the SEC may suffice for purposes of compliance with this bill.

Enforcement

Section 5 grants the Secretary of Commerce authority to inspect books and records, issue subpoenas and take sworn testimony as necessary and appropriate to the enforcement of the Act.

Civil Remedies

Section 6 provides a civil penalty of not more than $100,000 for failure to file a report required by Section 3, failure to maintain records required by Section 4, or for negligent omission or inclusion of false information in a report required under Section 3. Section 6 also gives the Secretary the power to request the Attorney General of the United States to bring an action in federal

district court to enjoin a person from continuing to engage in any act or practice that constitutes a violation of the bill.

Criminal Penalties

Section 7(a) provides criminal penalties for knowing violations of the requirements of Sections 3 and 4 of the Act. Individuals may be fined not more than $10,000 or imprisoned for not more than one year, and a fine of $100,000 is provided for legal entities such as corporations. Section 7(b) penalizes as a felony, knowing falsification of reports required by Section 3. Individual offenders may be fined not more than $100,000 and imprisoned not more than three years. A legal entity is subject to a criminal fine of up to $500,000.

Dissemination of Reports

Section 8(a) requires the Secretary, upon receipt of a report, to disseminate it to the Departments of State and Justice, the Internal Revenue Service and, where appropriate, to the Securities and Exchange Commission.

Section 8(b) states that the Department of Justice or the State Department can, as appropriate, relay information

contained in such reports to authorities in foreign jurisdictions. Except for the aforementioned dissemination, the Secretary of Commerce must keep reports confidential in accordance with 18 U.S.C. § 1905, for one year from date of receipt. This one-year period will help protect business competitive information and lessen possible foreign relations problems. Reports are to be shared, however, upon request and subject to appropriate assurances of confidentiality, with Committees of Congress having appropriate legislative jurisdiction. After the expiration of the one-year period, reports are to be available for public inspection and copying, unless a specific determination is made in writing by the Secretary of State that foreign policy interests dictate against public disclosure, or the Attorney General makes a specific determination in writing that the status of an ongoing investigation or prosecution dictates against public disclosure through other than conventional judicial processes.

Regulations

Section 9(a) grants the Secretary of Commerce broad regulatory authority.

Regulations are to include a requirement that names of recipients of payments be reported. Further, they are to contain a definition of types of payments not required to

be reported because they are regular business payments not inconsistent with the purposes of the Act, or are bona fide payments to a foreign government, such as taxes or fees paid pursuant to law, regulation, decree or other action.

In addition, in accordance with Section 9(a)(1), the Secretary is to set a threshold amount below which payments need not be reported. An exception is made to this threshold concept for multiple payments totaling the threshold amount with respect to a single transaction. The purpose of this threshold will be to exclude so-called "grease" or "facilitating" payments, i.e., small payments made to expedite low level official actions such as customs processing. Reporting of such minor payments could create burdens far outweighing the benefits sought by the Act.

Section 9(b) directs the Secretary, in devising reporting regulations, to consult with other federal agencies to eliminate unnecessary duplication. Agencies are authorized, where appropriate, to combine in a single form, reports required under this bill and any other law.

Conforming Amendment

Section 10 states that the provisions of the Act, other than Section 9(b), shall not apply to certain sales

of defense articles and services pursuant to the Arms Export Control Act. This exemption is based upon the fact that the Arms Export Control Act provides for comprehensive reporting to the State Department and the Congress of information regarding payments with respect to such transactions (Section 604 of P.L. 94-329).

Provisions of Law Not Affected

Section 11 makes clear that the requirements of the bill in no way alter or affect rights and duties arising under laws administered by the Securities and Exchange Commission. Similarly, it states that nothing in the bill is to be construed as affecting or conditioning the authority of the Securities and Exchange Commission. It provides further that the Commission shall have the authority to premise enforcement or investigative actions on information received under Section 8(a) of the bill from the Secretary of Commerce.

Rights and Remedies Preserved

Section 12 states that the bill does not take away any rights and remedies which may exist at law or in equity. Thus, nothing in the bill should be construed to affect rights and remedies of individuals who may bring shareholder derivative suits under state law.

FOR IMMEDATE RELEASE MARCH 31, 1976

Office of the White House Press Secretary

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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.

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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.

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FOR IMMEDIATE RELEASE MARCH 31, 1976

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

EXCHANGE OF REMARKS
BETWEEN THE PRESIDENT
AND
ELLIOT RICHARDSON
SECRETARY OF COMMERCE

THE OVAL OFFICE

10:30 A.M. EST

THE PRESIDENT: I just signed the necessary documents establishing a Cabinet level task force to undertake a very comprehensive study of the payments by American corporations overseas. I have appointed the Secretary of Commerce, Elliot Richardson, to be the Chairman of the Cabinet task force. It is not a group that will undertake the enforcement but it will be a task force that will study the very broad ramifications -- and they are very broad -- in this very delicate field.

The Secretary of Commerce, because of his service as Attorney General, Secretary of Defense, as well as his opportunity to serve over in Great Britain in his new post, I think is uniquely qualified for that very important assignment.

I will be getting periodic reports on a regular basis and policy decisions will be made as opportune based on the study.

You have got a big job, Elliot, and I know it is in good hands.

SECRETARY RICHARDSON: Well, thank you, Mr. President.

Certainly, the members that you have appointed to this task force are the people in the Government who have concerns in one way or another with these questionable payments. We will, as you have asked us to do, be giving you a progress report looking toward our final recommendation before the end of the calendar year.

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As you have emphasized in your own statement, the problem really is how we arrive at clear, enforceable standards to prevent such questionable practices in the future. We surely won't be undertaking to investigate the facts.

What we need really is a picture of the ramifications of the problem that we can get from the SEC, the IRA and the other agencies that are charged with that responsibility, and then use that information as the basis for examining the policy implications.

THE PRESIDENT: Thank you very much.

I think the American people will be very anxious to have a comprehensive Government policy to avoid the problems that we had in the last few years in an area that involves our economy, involves our foreign relations, it involves the enforcement of civil as well as criminal proceedings.

So I look forward to the first report and the final report.

SECRETARY RICHARDSON: Thank you, Mr. President.

THE PRESIDENT: Thank you all very much.

END (AT 10:32 A.M. EST)

FOR IMMEDIATE RELEASE MARCH 31, 1976

Office of the White House Press Secretary

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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

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FOR YOUR USE AND INFORMATION MARCH 31, 1976

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.

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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.

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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.

VIII. 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.

# # #

FOR IMMEDIATE RELEASE JUNE 14, 1976

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

STATEMENT OF THE PRESIDENT

THE BRIEFING ROOM

11:35 A.M. EDT

Ten weeks ago I appointed a Task Force headed by Secretary Richardson to review our policies toward corporations that engage in questionable payments to other nations. Today, based upon the findings of that Task Force, I am announcing three new initiatives.

First, as a deterrent to bribery by American-controlled industries, I am directing the Task Force to prepare legislation that would require corporate disclosure of all payments made with the intention of influencing foreign government officials. Failure to comply with the new disclosure laws would lead to civil and criminal penalties.

Second, I am announcing my support of pending legislation to strengthen the law requiring corporations to keep their shareholders fully and honestly informed about their foreign behavior.

Finally, I am asking our major trading partners to work with us in reaching agreement on a new code to govern international corporate activities. Let me emphasize my conviction that the vast majority of American-based corporations are honest, upstanding citizens in the international community. Nonetheless, we must recognize that unethical behavior by only a few companies can spoil the environment for everyone. Our system of private enterprise, a system that has provided a higher standard of living and greater economic security than any system known to man, is under constant attack today because many citizens no longer trust big business.

In order to renew and to restore public faith in free enterprise, we must avoid or provide the public with concrete assurance that major corporations are clean and honest.

The initiatives I am announcing today can be a big step in that direction.

Thank you very much.

END (AT 11:37 A.M. EDT)

FOR IMMEDIATE RELEASE June 14, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

On March 31, I established the Task Force on Questionable Corporate Payments Abroad. I directed the Task Force to conduct a sweeping policy review and to recommend such additional policy steps as might be warranted.

From the initial findings of the Task Force it is clear that the questionable payments problem must be taken seriously. The number of U.S. firms implicated has been relatively small, but the pattern of improper behavior involved cannot be tolerated. It is totally inconsistent with American values. It threatens to harm our foreign relations. If allowed to continue, it could badly erode public and international confidence in American business and American institutions.

The United States is the foremost advocate of principles of fair, open and democratic political behavior and of free, honest and competitive economic behavior. We have an affirmative responsibility for leadership in efforts to advance the application of these principles.

My statement creating the Task Force noted that we have already initiated a wide range of enforcement actions and international initiatives to address the questionable payments problem. I have decided, however, that we can and must do more:

(1) We must take additional legislative steps to improve the deterrent effect of United States law. I have therefore directed the Task Force to develop a specific legislative initiative which would require reporting and disclosure of payments by U.S.-controlled corporations made with the intent of influencing, directly or indirectly, the conduct of foreign government officials. In order that the Congress will have time to enact this legislation in this session, I have instructed the Task Force to proceed with the drafting of detailed specifications as quickly as possible.

(2) We must assure the integrity of corporate reporting systems and the accountability of corporate officials. The Administration will therefore support legislation proposed by the Securities and Exchange Commission to make it unlawful (a) for any person to falsify any book, record or account made, or required to be made, for any accounting purpose; and (b) for any person to make a materially false or misleading statement to an accountant in connection with any examination or audit.

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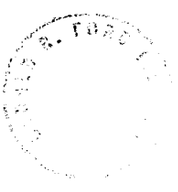

(3) We must accelerate progress toward an international agreement consistent with the principles put forward by the United States at the Second Session of the United Nations Commission on Transnational Enterprises. I will ask our major trading partners to give our proposed questionable payments agreement priority consideration.

In taking these necessary steps, I wish to emphasize that I do not mean to imply any condemnation of American business in general. To the contrary, I am confident that the overwhelming majority of American businessmen have conducted themselves as good citizens both at home and abroad. Unfortunately, American business, and Americans generally, have become the victims of the improper actions by a few -- and of guilt-by-association.

I have decided upon the additional actions announced today as an important way to curb spreading cynicism and to help restore confidence in basic American institutions and principles.

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FOR IMMEDIATE RELEASE JUNE 14, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

DECISIONS ON QUESTIONABLE CORPORATE PAYMENTS ABROAD

The President today announced three decisions based on his review of an interim report by the Cabinet Task Force on Questionable Corporate Payments Abroad. The decisions are: (1) to propose new corporate "disclosure" legislation with regard to questionable payments abroad; (2) to endorse legislation proposed by the SEC intended to assure the integrity of corporate reporting procedures and the accountability of corporate executives; and (3) to seek priority treatment at forthcoming international meetings for the United States' proposed international agreement on questionable payments.

I. Background. The President created the Cabinet Task Force on Questionable Corporate Payments Abroad on March 31, 1976. The Task Force is chaired by Commerce Secretary Elliot Richardson. Its members include: Secretary of State; Secretary of Treasury; Secretary of Defense; Attorney General; Special Representative for Trade Negotiations; Director, Office of Management and Budget; Assistant to the President for Economic Affairs; Assistant to the President for National Security Affairs; and Executive Director, Council on International Economic Policy.

In creating the Task Force the President directed it to conduct a comprehensive policy review and to explore whether "additional avenues should be undertaken in the interest of ethical conduct in the international marketplace and the continued vitality of our free enterprise system." He instructed the Task Force to provide him with interim reports and a final report by the end of the current calendar year.

The President's decisions followed his receipt of the first interim report of the Task Force.

II. The Decisions

A. "Disclosure" Legislative Initiative. The President announced that he had decided to submit legislation to the Congress requiring reporting and disclosure of certain payments by U.S.-controlled corporations made with the intent of influencing, directly or indirectly, the conduct of foreign government officials. The President instructed the Task Force to develop detailed specifications for such legislation as quickly as possible -- in order to allow Congressional action on the proposal in this session of Congress.

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In announcing these decisions, the President expressed confidence that the overwhelming majority of American businessmen have conducted themselves as good citizens both at home and abroad. The President's decisions derived in part, he said, from a need to halt the growing trend of spreading cynicism and to help restore confidence in basic American institutions and principles.

B. Corporate Accountability Decision. The President endorsed legislation proposed by SEC Chairman Roderick Hills in his Report of May 12. The legislation would amend the Securities Exchange Act of 1934:

-- to prohibit falsification of corporate accounting records;

-- to prohibit the making of false and misleading statements by corporate officials or agents to persons conducting audits of the company's books and records and financial operations;

-- to require corporate management to establish and maintain its own system of internal accounting controls designed to provide reasonable assurances that corporate transactions are executed in accordance with management's general or specific authorization, and that such transactions are properly reflected on the corporation's books.

C. Acceleration of International Efforts. The President announced his intention to seek priority treatment for the United States' proposed international agreement on questionable corporate payments abroad.

The proposed agreement was first put forward by the United States in a United Nations forum on March 5, 1976. If successful, it would result in an international treaty based on the following principles:

-- It would apply to international trade and investment transactions with Governments, i.e., government procurement and other governmental actions affecting international trade and investment as may be agreed;

-- It would apply equally to those who offer or make improper payments and to those who request or accept them;

-- Importing Governments would agree to establish clear guidelines concerning the use of agents in connection with government procurement and other covered transactions, and establish appropriate criminal penalties for defined corrupt practices by enterprises and officials in their territory;

-- All Governments would cooperate and exchange information to help eradicate corrupt practices;

more

-- Uniform provisions would be agreed for disclosure by enterprises, agents and officials of political contributions, gifts and payments made in connection with covered transactions.

The President's initiative will supplement related U.S. international initiatives taken in the OAS, OECD, GATT and UN.

III. Ongoing Activities.

A. Policy Development and Coordination. The Task Force will continue to have responsibility for policy development and coordination within the Executive Branch in accordance with the President's directive of March 31.

B. Investigations. Responsibility for investigative activities will remain with the appropriate investigative agencies and not the Task Force. Investigative and enforcement actions of the audit agencies, the IRS, the FTC, the SEC and the Department of Justice are ongoing in accordance with the dictates of current law.

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FOR IMMEDIATE RELEASE JUNE 14, 1976

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

PRESS CONFERENCE
OF
ELLIOT RICHARDSON
SECRETARY OF COMMERCE

THE BRIEFING ROOM

11:37 A.M. EDT

SECRETARY RICHARDSON: Ladies and gentlemen, you have heard the President's announcement. You have, I believe, copies of a somewhat fuller version of the statement he just gave and you also have a fact sheet on decisions on questionable corporate payments abroad, so I would be very glad to proceed directly to your questions.

Q Mr. Secretary, throughout the fact sheet the reference is to questionable corporate behavior. The President used the term "bribery." This is just a euphemism for bribery, isn't it?

SECRETARY RICHARDSON: Questionable payments actually range through somewhat broader scope than this. A payment is extorted, for example. It isn't necessarily a bribe. And at the other end there are payments which may go into political accounts in countries where political contributions by corporations are not legal, they are legal in some countries but the payment may nevertheless be questionable.

To the extent that it is made by a company with a direct interest in the business of that country, then there are payments which, because of their sheer size, when made through an agent may be questionable in the sense of giving rise to the question "Where did the money go," even though on the face of the payment itself you do not have evidence of a bribe.

So in this sense the phrase really is broader than the term "bribery."

Q Mr. Secretary, the corporate accountability part of the proposals by the SEC to prohibit falsification of accounting records, that sort of thing, isn't it already illegal to falsify accounts, or are there no Federal laws on the subject?

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SECRETARY RICHARDSON: I don't think there is any SEC requirement that deals directly with falsification of accounts in the sense of putting in a payment like this under a different heading. At any rate, on this I rely really on the report of the SEC itself and the recommendations by the Chairman, Rod Hills. The legislation the President is endorsing here today that deals with that aspect of it is legislation that has already been proposed to the Congress by the SEC.

Q On that same subject, are there some types of companies in which SEC regulations or the original Securities and Exchange Act prohibit falsification of accounts? I am thinking particularly of utilities.

SECRETARY RICHARDSON: There are certainly criminal penalties attached to the falsification of the information filed with the SEC. Their legislation here goes beyond the requirement of registration or of reporting to them by prohibiting falsification of corporate accounting records even in a situation where it might not be determined that a report to the SEC was material in the sense that the shareholders were necessarily entitled to that information.

Q Mr. Secretary, what foreign countries have been sounded out and have said they might be interested in a treaty?

SECRETARY RICHARDSON: In the instance of the treaty, the United States at the ECOSOC meeting of the UN Commission on Transnational Corporations was held in Lima from the first of March to the twelfth of March, there proposed an international agreement or treaty that would cover the things that are spelled out in the fact sheet under acceleration of international efforts.

We have also, of course, as you know I am sure, proposed language that has been included in the Organization of Economic Corporation and Development's proposed code of ethics for--or code of conduct for--multinational corporations, and that is about to be considered at the ministerial meeting later this month.

Ambassador Dent proposed language for inclusion in the GAAT but the most important international initiative this country has taken is the one that was put forward at the UN meeting in Lima on March 5 and the contacts by the United States with other countries since then have been directed toward getting their support for that initiative at the ECOSOC meeting later this summer where we hope that there will be a resolution calling on the ECOSOC to adopt an agreement or treaty language along these lines.

MORE

Q Mr. Secretary, at the risk of oversimplifying this, why not just ask for legislation making it illegal for American corporations to bribe foreign officials?

SECRETARY RICHARDSON: Well, as a matter of fact, this was one of the major options that was considered and submitted to the President with a variance that the criminal penalty attached in circumstances where the United States has entered into a bilateral agreement with the other country for the enforcement of such a prohibition. The problem, of course, is that we would be making criminal under U.S. law an act that takes place in another country and that would create problems of investigation and enforcement.

Another problem is the problem of the definition of exactly what kinds of payments are covered. You would have to have a pretty clear limitation in a criminal statute to things that could be proved to be bribes or extortion.

So the option really was whether to go that route or to follow a disclosure route with the idea that the reporting of questionable payments -- payments to influence the action of other governments -- would create a deterrent effect and when that information was in turn reported by the United States to that other government would create a basis for the other government to look into the question of whether or not there had been a violation of its own law.

So it is contemplated here that there would be first a reporting requirement of all payments above a certain amount to a U.S. department or agency -- there has been no decision yet on what department or agency -- and then the communication in due course by the State Department to the other country. This would then be followed by the publication of these reports in the U.S.

Q What amount? And I have another question beyond that. What amount are we talking about, payments beyond what amount?

SECRETARY RICHARDSON: There has not been a decision yet on what the amount will be and this would have to be resolved by the steering group that has been working on this to date. We really needed a decision from the President on what route he wanted to take. In any event, I was under obligation to submit a report or some kind of communication to Senator Proxmire. I am, as a matter of fact, sending him a letter which goes into all of this quite fully and which will be available later in the day.

Q Now to go back to Ann's question for one minute. Despite the difficulties of enforcement and investigation, did I understand you correctly the United States is going to try to do this wherever it can in bilateral trade agreements with individual countries? That is, make bribery of officials in another country --

SECRETARY RICHARDSON: We will be dealing bilaterally with other countries and, of course, the disclosure approach that is set forth here in the President's announcement would call for communication of what is reported to us to the other country and that then lays the foundation for bilateral cooperation in the enforcement of their laws as well as our own. All countries for all practical purposes, with negligible exceptions, do prohibit bribery and payments to influence official conduct and so on, so it is a question then of cooperating with them in the enforcement of their own law.

Q Mr. Secretary, what about indirect payments such as legal fees paid to counsel with which appointed or elected officials are partners of?

SECRETARY RICHARDSON: If the payment related directly to influence official conduct, it would have to be reported. We have an additional drafting problem to pursue as to exactly what payments are within the scope of the phrase "directly or indirectly to influence," but presumably we would not want automatically to include routine payments to agents u related to influencing official conduct.

Q Mr. Secretary, how would this legislation apply to, say, satellite societies which are in practice satellite societies of American enterprise which are self-incorporated abroad as independent societies?

SECRETARY RICHARDSON: You are talking about the subsidiaries of U.S. firms?

Q Yes.

SECRETARY RICHARDSON: Payments by subsidiaries or any controlled corporation would have to be reported. It would be reported by the parent corporation in the U.S.

Q Mr. Secretary, does this apply to all corporation in the United States, even non-profit? The reason I ask this question is because there have been a number of arrests, as you may know, of various groups in the United States that have funded Northern aid in Ireland but then there are church groups that have funded the World Council of Churches' program to combat racism as it is called that have funded terrorist groups in Southern Africa.

SECRETARY RICHARDSON: That is a new question to me, I had not thought about that, but I think --

Q They are corporate.

SECRETARY RICHARDSON: -- as it stands it would cover all corporations.

Q All corporations, even churches?

Q In your Task Force report to the President, were you specific about the number of corporations that are involved in questionable practices and the total dollar amount involved and, if so, could you tell us what it was?

SECRETARY RICHARDSON: No, we were not, Lou. We know that the universe of the corporations involved in U.S. export activities is about 30,000 but we did not conduct any additional investigation of our own as to the incidents or scope or type of these payments. There has been some misunderstanding about the function of our Task Force. As the President originally announced, it was formed to make policy recommendations to him as to what to do in this general area, not to take over the investigative or enforcement roles of other agencies and principally the SEC and the IRS.

So our information about the scope of the problem, the amounts of money involved and so on, is the information we obtained from the SEC and the IRS -- mainly the SEC. The SEC, of course, as you know, has summarized its own findings in its report which was dated May 12, 1976, and which contains detailed tabulations in the back, but these findings by the SEC were ample for purposes of our charge which was the question what do you do about it in the future?

SECRETARY RICHARDSON: What makes you think that corporations will step forward and honestly and voluntarily disclose that they have made payoffs abroad?

SECRETARY RICHARDSON: Well, to some extent the protection to them in doing so. To some extent, it is a way through the process of communications by the U.S. to the other country of stimulating the enforcement of that other country's own laws. To that extent, therefore, American firms would be assisted in generally stimulating uniform standards. It should be made clear. By the way, one thing that ought to be emphasized perhaps as a part of the whole picture that now exists, as a result of all the attention that has been given to this subject and as a result of the SEC's own investigation and the IRS requirements that have been stiffened for reporting to it and for the disallowance of payments, a great many companies have adopted their own internal code of ethics.

They have invited the corporation and help of their outside auditors in monitoring observance of these codes. So to a very considerable extent then American companies are adopting self-imposed limitations on their conduct and this, of course, in itself means, therefore, that some inhibiting action as far as competition by other countries' companies considered has already been taken. The question then is how do you go from here to achieve greater uniformity in observing such tendencies among American companies and how do you help to bring about more consistency by other countries in enforcing their own laws?

Q Mr. Secretary, I am unable to follow your reasoning. You say that this disclosure provision, you think, or at least hope, will be a protection to companies implying that this would be an incentive for them to report. Now, if the country in which they made a bribe has a statute saying that bribery is illegal, how in the world do you expect an American company to acknowledge to the public and to its stockholders and to the State Department, and so forth, that it has broken the law?

Whether it is the law of that country or the law of the United States I understand that, you know, in the first place, the fact that we have an extradition treaty with that country and they break the law in that country, then, presumably if they are indicted they could be extradited and put on trial in that country.

Now in the world do you expect them to acknowledge something that is going to send them to jail -- especially a Spanish jail, say? (Laughter)

Q Mexican.

Q Never mind that part of it. What is the reasoning?

SECRETARY RICHARDSON: If, in the face of this law and other applicable U.S. laws, including the SEC's disclosure requirements and Internal Revenue Service tax evasion laws, they nevertheless go ahead and pay a bribe, presumably they won't report it, which leaves us where we are except to the extent that there is an additional penalty here under U.S. law for the failure to report it. So, therefore, where now a company may, let's say, obey the Internal Revenue Service laws, it may take the position that the payment is not required to be disclosed to the SEC because it is not material or the company may not be subject to SEC requirements.

There are about 9,000 companies that report to the SEC, but there are about 30,000, as I said, that do business abroad so that if the company properly shows the payment in its income tax return and is not required to report to the SEC, then it may not be subject to any U.S. prohibition and go ahead and make the payment if it can get away with it under the law of the other country.

What we are saying is that it is required to disclose it and if it does not, then it is subject to a penalty for the violation of this law.

Q Mr. Secretary, the President said he would like the disclosure legislation this year. Your task force has to come up with recommendations. When are you going to come up with recommendations, and what chance really do you have for legislation this year given the election and the fact that Congress won't be in session for a lot of the year?

SECRETARY RICHARDSON: Well, I think the task force should be able to fill in the remaining blanks in this legislation in another week or two, and we would, of course, in the meantime be discussing the subject with Senator Proxmire and staff or other committee people. Since the subject has had a good deal of consideration already in committee, it should be possible. We think this is a better approach than the Proxmire bill itself because it does not attempt to make action in another country a crime under the law of this country, it does not run into the definitional problems, but the Proxmire bill also deals with disclosure requirements. The only difference in that respect or the main difference is that the Proxmire bill is limited to the disclosure requirement. There are companies that have to report to the SEC.

Q Mr. Secretary, do I understand you correctly to be saying now that if a company makes a disclosure as required, no matter what the questionable payment is he is not subject to any further penalty by the United States Government?

SECRETARY RICHARDSON: That is right. The United States, however, reports the payment to the country where it is made and that in itself, of course, puts that country on notice. As I said earlier, payments certainly of bribes, distortion and so on are in violation of the law of that country.

Sarah McClendon?

Q Yes, sir. If I understand this now, you are going to let someone report to IRS that they have made the bribe and then they are going to be able to take that off their income tax and the taxpayers here are going to pay for this bribe and then you are just going to report it to the foreign country?

SECRETARY RICHARDSON: We have not changed the law; that is, we have not proposed to change the tax laws. The tax laws don't permit the deduction.

Q They do not?

SECRETARY RICHARDSON: No. On the contrary, it could be a criminal violation, willful attempted evasion of taxes if you did attempt to take the deduction by putting it under a business expense.

Q Have there not been instances in these defense contractors -- did you not find out in your survey that these defense contractors have been charging these bribes off to the taxpayers as deductions in some way?

SECRETARY RICHARDSON: Well, there have been commissions charged off in instances where the money may have gone on to somebody else and there probably have been cases where they have attempted to deduct bribes where they knew they were bribes.

In any event, the IRS is cracking down on that. They now are requiring a detailed questionnaire about all kinds of payments. The military, in the meanwhile, under the Military Sales Act, is requiring the disclosure of commissions and fees that are paid in connection with any Government contract with another country and, if the commission or a fee is out of line in amount, then this is disallowed. That is part of the price under the Military Sales Act.

Q Mr. Secretary, you have included or incorporated church groups under this. Now, does that include missionary groups or are you just talking about things like Dr. Sun -- whatever his name is -- Moon?

SECRETARY RICHARDSON: I said we had not excluded them. I said in answer to Reverend Kinsolving that we had not --

Q You mean Father.

SECRETARY RICHARDSON: That we had not specifically --

Q He is one of our favorites.

SECRETARY RICHARDSON: We had not, to my knowledge, thought about that question. In any event, the proposal as it stands would -- well, I am not sure it would. This letter to Proxmire says, "All American business entities." I think we will have to give that some more thought.

Q Didn't you say corporations? Because I recall you said to me that it would include all corporations, and all major denominations are incorporated.

SECRETARY RICHARDSON: True.

Q Mr. Secretary, some businessmen argue that payoffs abroad are necessary as part of the whole climate over there and that to prohibit them would be to handicap U.S. firms in their competition for business abroad. Is that one reason why you went for the disclosure route and not the flat prohibition?

SECRETARY RICHARDSON: That was not a major reason. Number one, as to the contention that such payments are necessary, our position is, first of all, that they should not be made; secondly, that the U.S. should pursue through international channels the most effective possible means of achieving uniformity in enforcement measures against such payments; but, third, that a way of contributing to the general improvement of overall standards is to focus public attention on these payments through a reporting requirement and where the law of the other country is concerned to communicate the information.

Finally, as I mentioned earlier, if you rely on a criminal prohibition alone you have to define very precisely exactly what type of payment is prohibited and part of the problem here is the problem of the payment through an agent in a large amount where the company purports not to know exactly where it went.

The one final point to be made here, and that is that the SEC's investigation convinced it that on the whole the showing that these payments were necessary was very thin and unconvincing. Many companies who made the payments were really unable to show that they were necessary.

Q Mr. Secretary, can you give us a ball park figure on the penalty you have in mind for the failure to report bribe payments overseas? Will it be token? Will it be substantial? Or what?

SECRETARY RICHARDSON: It should be substantial. We have got the question of civil penalties and criminal penalties and how to combine them and what their levels ought to be. I just don't know. This is one of the remaining questions that the steering group is going to have to go back to.

Q In preparing for those recommendations concerning the U.S. legislative aspect, have there been any consultations with foreign governments such as Italy or Japan where such legal questions have occurred and have taken major proportion?

SECRETARY RICHARDSON: In connection with what aspect of it?

Q With the U.S. legislative aspect, have there been consultations with foreign governments?

SECRETARY RICHARDSON: No, not really. I had some conversations in Japan the other day about this approach, but that was all.

Q Who would they report to, Mr. Secretary? Just the SEC? I heard you mention the State Department. I was wondering how the information gets to the State Department?

SECRETARY RICHARDSON: Not the SEC.

Q Or the company.

SECRETARY RICHARDSON: Not the SEC.

Q Who would they report to, then?

SECRETARY RICHARDSON: We have not decided yet which department it would be. The obvious possibility would be State or Commerce. In any event, whichever it was the information would then be made available to State for communication by it to the affected country.

MR. CARLSON: The Secretary has a luncheon appointment. Let's take two more questions.

Q You told a group of reporters this morning that whereas the requirement for reporting to the Government agency, whichever one it is, would be more or less instantaneous but the requirement for reporting to the stockholders would be one year -- in other words, they would have a year before they listed this bribe to stockholders. Why do the stockholders have to wait for a year?

SECRETARY RICHARDSON: I said that there would be an interval between the requirement of reporting to the Government department and the publication of the information which might be a year. I don't really know what the interval should be at this point. The reason for it is basically in order that there can be communications by the State Department to the country and so that the situation could be dealt with in the meanwhile without necessarily having publicity focused on it, but also because there may be proprietary information involved.

Q Mr. Secretary, when President Ford initially announced this, he seemed content to wait until the end of the year for any action. You now seemed to have moved up your timetable. Would you comment on whether that is an accurate perception and why you cite it and whether it has any connection with this?

SECRETARY RICHARDSON: He gave us until the end of the year and there presumably will be some continuing role for this task force following this up and keeping in touch with the situation, but he also called for interim reports. One of the first things we did was to review the legislative situation, including the adequacy of existing law. Since the Congress was already dealing with the subject, since I had on behalf of the Administration made a commitment to give a more definite position on legislation to Senator Proxmire and his committee, then Secretary Simon and Robinson and I were able to do in April -- we had all these reasons to reach a judgment on the legislative issue this year in time for Congressional action.

MR. CARLSON: One last question.

Q Mr. Secretary, there was a column the other day -- I don't remember if it was Evans or Novak or Jack Anderson -- but he was rather critical of your task force and said that it has been meeting only sporadically since it was formed. How many times have you met since March 31?

SECRETARY RICHARDSON: Four.

Q For a total of --

SECRETARY RICHARDSON: There have been intervening meetings of the steering group chaired by General Counsel of Commerce J. T. Smith, and Assistant Secretary for Policy Richard G. Darnum, but, of course, the issues we have were and are policy issues.

The criticism of our meetings and so on and whether or not we should have had staff have all been predicated, so far as I have understood them, on the basic misconception that we are or were intended to be an investigative body which we are not, and were not. I think our deliberations have been thorough and thoughtful. The result of them will appear a lot more fully in my letter to Senator Proxmire, which will be available later today.

Thank you very much.

MR. CARLSON: The letter to Senator Proxmire referred to by the Secretary is a lengthy document, about 29 pages, and it will be available at the Commerce Department later this afternoon.

END (AT 12:05 P.M. EDT)

EMBARGOED FOR RELEASE
UNTIL 2:30 P.M., E.D.T.

AUGUST 3, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE CONGRESS OF THE UNITED STATES:

Certain improper activities abroad undertaken by some American corporations have resulted in an erosion of confidence in the responsibility of many of our important business enterprises. In a more general way, these disclosures tend to destroy confidence in our free enterprise institutions.

With this in view, I established the Task Force on Questionable Corporate Payments Abroad on March 31, 1976, and directed it to undertake a sweeping policy review of approaches to deal with the questionable payments problem. On June 14, after reviewing an interim report of the Task Force, I directed the Task Force to develop, as quickly as possible, a specific legislative initiative calling for a system of reporting and disclosure to deter improper payments.

Today, I am transmitting to the Congress my specific proposal for a Foreign Payments Disclosure Act. This proposal will contribute significantly to the deterrence of future improper practices and to the restoration of confidence in American business standards.

This legislation represents a measured but effective approach to the problem of questionable corporate payments abroad:

-- It will help deter improper payments in international commerce by American corporations and their officers.

-- It will help reverse the trend toward allegations or assumptions of guilt-by-association impugning the integrity of American business generally.

-- It will help deter would-be foreign extorters from seeking improper payments from American businessmen.

-- It will allow the United States to set a forceful example to our trading partners and competitors regarding the imperative need to end improper business practices.

-- It does not attempt to apply directly United States criminal statutes in foreign states and thus does not promise more than can be enforced.

-- Finally, it will help restore the confidence of the American people and our trading partners in the ethical standards of the American business community.

more

The legislation will require reporting to the Secretary of Commerce of certain classes of payments made by U.S. businesses and their foreign subsidiaries and affiliates in relation to business with foreign governments. The reporting requirement covers a broad range of payments relative to government transactions as well as political contributions and payments made directly to foreign public officials. By requiring reporting of all significant payments, whether proper or improper, made in connection with business with foreign governments, the legislation will avoid the difficult problems of definition and proof that arise in the context of enforcement of legislation that seeks to deal specifically with bribery or extortion abroad.

The Secretary of Commerce will, by regulation, further define the scope of reporting required. Small or routine payments will be excluded, as will certain clearly bona fide payments such as taxes. Reports will include the names of recipients.

Reports will be made available to the Departments of State and Justice as well as to the Internal Revenue Service and the Securities and Exchange Commission. The Department of Justice and the State Department will, in appropriate instances, relay reported information to authorities in foreign jurisdictions to assist them in the enforcement of their own laws.

Reports also will be made available to appropriate congressional committees. All reports would be made available to the public one year from the date of their filing, except in cases where a specific written determination is made by the Secretary of State or the Attorney General that considerations of foreign policy or judicial process dictate against disclosure.

This proposed legislation is intended to complement and supplement existing laws and regulations which can affect questionable corporate payments abroad.

In this regard, I wish to recognize and build upon the fine record of the Securities and Exchange Commission. The Commission already has taken prompt and vigorous action to discover questionable or illegal corporate payments and to require public disclosure of material facts relating to them. Moreover, as the Commission has noted, public disclosure of matters of this kind generally leads to their cessation. In virtually all the cases reported to the Commission, companies discovering payments of this kind have taken effective steps to stop them and to assure that similar payments do not recur in the future.

A principal emphasis of the Commission's activities in this area has been to prompt the private sector to take actions that would restore the integrity of the existing system of corporate governance and accountability. I applaud this approach and expect the Secretary of Commerce to follow the same spirit in administering this new legislation.

However, not all firms engaged in international commerce are regulated under the securities laws and are subject to the disclosure requirements of the Commission. The Commission requires disclosure of payments only when necessary or appropriate for the protection of investors. Further, it has not

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generally required reporting of the name of a recipient, a requirement which I believe can be an important deterrent to extorters. In addition, the Commission's system of disclosure -- focusing as it does primarily on the interests of the investing public -- is not designed to respond to some of the broader public policy and foreign policy interests related to the questionable payments problem.

Accordingly, the legislation which I am proposing deals with all U.S. participants in foreign commerce -- not just firms subject to Commission regulatory requirements -- and it calls for the active involvement of the Secretaries of State and Commerce and the Attorney General in administering a system which addresses the full range of public policy interests inherently involved in the questionable payments problem.

The Secretary of Commerce will take every feasible step to minimize the reporting burdens under this new legislation. The legislation directs the Secretary to consult with other federal agencies to eliminate duplicative reporting. Where appropriate, agencies are authorized to combine reporting and record-keeping in single forms.

In this regard, I also wish to recognize and build upon the Securities and Exchange Commission's acknowledged expertise in financial reporting. Persons subject to the Commission's jurisdiction must maintain books and records that are sufficient to provide data the Commission believes should be disclosed. The requirement that persons subject to SEC jurisdiction maintain adequate books and records is now implicit in existing law; the legislation recommended by the Commission, which the Task Force and I support, would make that requirement explicit. It is contemplated that the Commission will take further steps to assure that companies it regulates maintain adequate systems of internal accounting controls. Thus, it may well be unnecessary for the Secretary of Commerce to impose additional record-keeping requirements on companies regulated by the Commission to enable compliance with the proposed legislation.

We remain mindful that the questionable payments problem is an international problem which cannot be corrected by the United States acting alone. Consequently, we are continuing our efforts to secure an international agreement which will establish a mutually acceptable framework for international cooperation in eliminating improper business practices.

The legislation I am proposing today can contribute in an important way to the restoration of confidence in America's vital business institutions. I urge its prompt consideration and enactment by the Congress.

GERALD R. FORD

THE WHITE HOUSE,

August 3, 1976.

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