

NATIONAL SECURITY COUNCIL

INFORMATION

March 16, 1976

MEMORANDUM FOR: BRENT SCOWCROFT

FROM: ROBERT HORMATS

SUBJECT: Meeting with the President on Questionable
Foreign Payments by US Companies
(2:30 p.m., Cabinet Room)

The meeting has been called to discuss a series of options (contained in Ed Schmults' memo at Tab A) for bureaucratically dealing with the problem of payments made by US companies to foreign officials and organizations.

A variety of efforts are underway to meet the problem of corporate bribes and other illegal or unethical conduct. Internationally, Senate Resolution 265 (November 12, 1975) commits the USG to seeking an international code of conduct covering bribery, kickbacks, etc. as part of the current Multilateral Trade Negotiations. Other activities in the OECD (where the US has negotiated strong language on corrupt practices in voluntary guidelines for multinational corporations were being drawn up), UN, and OAS have aimed [] ensuring the observance of high standards of corporate behavior. [] March 5, Ingersoll told Proxmire's subcommittee of the SEC that [] US is proposing a multilateral agreement on corrupt practices applying to international trade and investment transactions with governments, apply equally to those who offer jobs and those who request or accept them; importing countries would agree to establish clear guidelines concerning the use of agents in connection with government procurement and to establish appropriate criminal penalties for bribes and extortion by enterprises and officials.

Within the USG, State, DOD, Commerce, FTC, Justice, SEC and IRS have been conducting a review of existing authorities to curtail illegal payments by US companies to foreign agents or officials. Investigations by federal agencies are underway for as many as 50 corporations; the IRS and SEC have recently announced that they will further intensify their investigative efforts. And two legislative proposals to require public disclosure of fees paid to agents or officials abroad are pending in the Senate.

Ed Schmults' memo points out there are five areas in which the subject is of immediate interest: anti-trust issues if questions of anti-competitive behavior arise (Justice is lead agency); corporate disclosure of information important to the potential investor, including costs of doing business abroad; military sales and assistance issues involving justification for the inclusion of large agents' fees; tax reporting issues relating to the illegality of deducting such payments as business expenses (IRS is investigating); and the international political implications.

Schmults also points out the need to distinguish between actions which might be taken unilaterally and those which must be done multilaterally. For example, the prohibition of illegal payments by US firms without comparable restraints by foreign competitors could be disadvantageous to US firms. Our actions must also be weighed in terms of their effect on trade, location of private corporations and the international flow of capital. Consistency between what is illegal to do at home and abroad, issues of extraterritoriality and international political problems of general disclosure are also complex.

The Bureaucratic Issues for the Meeting

The basic issue for the meeting is the desirability of establishing a review group to recommend steps to combat payments made by US companies to foreign officials.

Issue 1. Should there be an EPB/NSC Cabinet level task force, or should the issue be assigned to one of several existing entities, or a sub-Cabinet level task force? All the main interested agencies believe that an EPB/NSC umbrella group would forcefully demonstrate the President's commitment to developing solutions to the problem.

Issue 2. Should the task force be limited to specified representatives of the EPB/NSC (Seidman, Commerce, DOD, Treasury, CIEP, STR and you), or include all members? All key interested agencies agree that a limited but representative group of the membership noted above would cover essential areas and be far more manageable than a larger group.

Issue 3. Should the Attorney General be a member? All interested agencies agree that inclusion of the AG would lend a general legal and anti-trust expertise to the group.

Issue 4. Should Richardson chair, as opposed to Simon? All the main interested agencies agree that Richardson's chairing is desirable given the interest of Commerce and Richardson's background and credibility.