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PRESIDENT'S TASK FORCE  
ON FOREIGN PAYMENTS

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White House



What should we do about it?

Major suggestion for new laws

- Federal charter
- Public director
- Make all violations of foreign law a federal crime.

My own judgement is that any of these would be unfortunate  
Too often we have a notion of another law or two, etc.

- A. But we cannot simply oppose all changes. We do have to restore both the system of self-enforcement and its reputation.
- B. Also, we must recognize the dilemma of American business and those who claim [ ] ability to compete abroad.

Helpful to divide issue somewhat artificially

(1) Typical violation of foreign laws and practices -- currency, taxes, export or import requirements are always a problem but must be kept out of this dispute. Lawyers and accountants have always had trouble with Treaty of Rome, and Proxmire's bill would do particular mischief by getting into this area.

(2) The Proxmire Report:

The Commission intends to submit to Senator Proxmire on May 3 a detailed report summarizing the facts contained in public disclosures, which we also will provide the Task Force.

- A. Our staff presently is compiling the data contained in these reports. Preliminary analysis of that data suggests the following.
  - 1. Some 70 companies will make disclosure regarding questionable, improper, or illegal foreign payments.

2. Slightly more than half (presently 35 of 68) companies will indicate that they made questionable, improper or illegal foreign payments aggregating as much as \$100,000 in a single year. Some companies will reveal that their payments substantially exceeded that amount.
3. A substantial number of companies will indicate that members of senior management in this country were unaware of the questionable, improper or illegal foreign payments.
  - a. Present indications are that of the 35 instances in which payments aggregating \$100,000 in one year were made, 11 companies report no knowledge [ ] impropriety.
  - b. Some 16 companies indicate some knowledge of senior management in this country; 6 do not indicate affirmatively or negatively
4. Substantially all of the companies will have indicated in public filings their intention to cease improper or illegal foreign payments.
5. A small number, probably fewer than 5 companies will have publicly indicated their intention to continue payments of a questionable nature.
  - a. Examples:
    1. Castle & Cook has made numerous small payments, averaging some \$80,000 a year, primarily to military personnel to guard plants and personnel in remote areas, and to port officials. The company states that these practices are “generally accepted” in the recipient countries and that they are essential to the protection of their employees.

2. Rollins Company indicated its intention to local government officials to obtain permission to install and maintain certain equipment, contending that these payments are “customary” and are essential to continued operation in that country.
3. [ ] such payments and a policy against their initiation. It acknowledged, however, that it might authorize payments in response to demands by foreign officials where no reasonable alternative is available and if the payment is approved by the company’s chief executive officer. In such cases, the company intends publicly to disclose the payments and describe the circumstances in a generic fashion.
4. Sante Fe International, while indicating the general undesirability of payments to minor foreign government officials  
  
to settle tax and customs claims, will continue to make such payments “if no reasonable alternative exists” and the payment is approved by the President of the Company.

- (3) The problems were with what we are wrestling over:
  - A. The gross, bribe to get business. Not as many disclosed as papers may suggest, probably fewer than 20, but huge sums and major business involved.
  - B. The so-called grease payments, giving to low-level extortion to get officials to do what they are supposed to do.
  - C. The commission paid with genuine uncertainty about what the agent does with his money and the political contributions, apparently legal, in foreign countries.

D. Occasionally real extortion, kidnapping, destruction.

Speak briefly as to each of the four

- (A) Out present efforts, [ ]  
business and, by disclosure, generally will stop all but the most unusual case. I'll come back to this.
- (B) The so-called grease payments, the uncertain commissions, and allegedly legal foreign contributions all fit a single analysis. If fully disclosed to accountants and board and if the board has some independence then SEC action should not interfere. We have generated confusion, and there is some disagreement among the four of us. Our job is not to stop such payments but rather to make sure people doing it, are accountable.
- (C) Where real extortion, like kidnapping, is involved, I am confident that our role will not be harmful. Obviously unique.

That leaves us with two somewhat conflicting problems

- (A) How can we be sure we are making officers accountable, getting to the bottom? Restore confidence.
- (B) Are we, as some claim, naively interfering with our capacities to compete abroad.

What more can be done to restore confidence in the system

- (A) IRS, Justice, and Commerce Department can help us and we can help them. We should have liaison people. We would welcome Justice leadership in coordinating law enforcement.
- (B) We will initiate a selective enforcement effort to test the depth of disclosure and the candor of some major multi-nationals. The report on questionable payments and the permanence of the decision of some companies to change their habits.
- (C) I have had informal discussion with NYSE, Jim Needham to see if they can make a major new effort to give boards a truly independent character. We have been assured of their early cooperation. Among steps:
  - (i) [ ]
  - (ii) Require a majority of truly independent directors

- (iii) Eliminate apparent conflicts from lawyers serving both as securities counsel and as directors, etc.

If we do not get help we perhaps have power to do it, but I am confident we will get help.

What more can be done to strengthen the ability and resolve of the system to deal with the problem?

- b. The Commission also is considering the proposal of an alternative to the Proxmire bill which would increase the ability and responsibility of the private sector to discover these practices and make informed judgments regarding their continuation and their proper disclosure under the federal securities laws. In essence, the legislation we are contemplating would:
  - Impose a requirement on management to establish a system of internal accounting controls that would reasonably assure that transactions are properly identified and executed only in accordance with management's authorization.
  - Require that auditors include in their reports an opinion as to the adequacy of the company's system of internal controls.
  - Specifically provide for liability for making false or misleading statements or omitting material facts necessary to make the statements made not misleading to an independent accountant conducting an audit of any company registered with the Commission.
- c. These steps, if taken in good faith, will give our present system a good chance to redeem itself and work.

What about the charge that we are naively destroying American business opportunities?

- a. So far as gross bribes are concerned, the point does not hold water.
  - Evidence not there
  - My own experience
  - The better managed companies avoid it
  - And some corporate executives recently have expressed their condemnation of these practices

David Lewis, Chairman of the Board of  
General Dynamics:

“Disclosure of unbelievably bad business practices by some [ ] have [ ] the image of American business to what is probably its lowest point in history. Because most people believe that the actions of the few are typical of the whole business community the black tar which so justly covers the few now splatters us all.

A.W. Clausen, President of the Bank of America:

“Integrity is not some impractical notion dreamed up by naive do-gooders. Our integrity is the foundation for, the very basis of our ability to do business. If the market economy ever goes under, our favorite [ ] -- socialist economics and government regulators -- won't be to blame. We will.”

- b. Obviously, as we clean up the past such as Lockheed, international and other problems. But, its a balancing process. Point Lockheed settlement. Rules have not changed. Some managements have changed and others will do so.
- c. In future, there will be cases of unfair and illegal competition. How do we all help American business.
  - From our standpoint we will impose some disclosure on all foreign companies who trade here (approximately 100 listed here and [ ] since 1973.)
  - International negotiation of codes of conduct will be helpful but not effective by themselves.
  - I suggest this task force should attempt to use economic force of Treasury, Defense, Commerce, and state to investigate complaints by American business of unethical developings. Keep in mind that the only place real harm can be done is a real bribe.
  - A procedure like anti-dumping statute, could be set up, with loss of certain licenses.
- d. Some legislation might be needed. Points of my comments are:
  - (i) that when the subject matter is broken down, we can deal with it without pervasive new laws, and



- (ii) our help is needed as much to restore confidence in business as it is to ferret out and stop improper conduct.

I do concede, however, that time is short, if the response of business and government is not quick and effective we may have to consider fundamental changes in the structure of the American corporations.