THE SECRETARY OF COMMERCE

WASHINGTON, D.C. 20230

June 3, 1976

MEMORANDUM FOR THE PRESIDENT

SUBJECT: RECOMMENDED INITIATIVE RE "QUESTIONABLE PAYMENTS ABROAD"

As you know, the Task Force is split in its recommendations to you. My personal recommendations are: (a) that you seek a legislative initiative as proposed; (b) that this initiative take the "disclosure" as opposed to the "criminalization" approach; and (c) that you endorse the "Hills bill." An outline of a reporting and disclosure bill which I favor is attached to this memorandum.

A summary of reasons which support my recommendations is as follows:

(1) It is imperative that the United States take the lead in restoring and maintaining confidence in the accountability and responsibility of multinational corporations--and, more fundamentally, in the integrity of the free-enterprise system. Measures taken to date have not proved--and do not seem likely to prove--adequate to restore and maintain the necessary degree of confidence. In my view, this point applies regardless of one's assessment of the technical adequacy of current law and regulation. The issue is one of symbols as well as substance.

(2) While I recognize that the best long-term solution must be an international one, I don't believe, as a practical matter, that such a solution will be forthcoming soon enough to restore confidence in a sufficiently timely fashion.

(3) It is my considered judgment that current law is not adequate. It is not clear that the SEC has adequate authority to compel public disclosure of those questionable payments which are not "material" as heretofore conventionally defined. The Internal Revenue Code reaches only those transactions in which a questionable payment is improperly deducted as a

business expense. A corporation which does not seek the tax benefit of such deductions is in no way constrained from making questionable payments by the Code. SEC's authority applies only to issuers of securities--and does not reach certain significant U.S. firms doing international business. And, as currently applied, SEC authority does not require disclosure of the names of recipients--hence, is not a fully effective deterrent of extortion. (A staff memorandum detailing inadequacies of current law is attached.)

(4) There is a need to act in a way that is publicly perceived to be positive in response to Congressional legislative initiatives and to allay skepticism as to the seriousness of the Administration in its quest for remedies. Continued disclosures--absent any further Administration initiative--will compound the problems of Congressional pressure and public skepticism; and such further disclosures will inevitably be forthcoming, seriatim, as the product of the investigatory processes already engaged.

(5) It is my personal judgment that if the Administration comes forward with a positive approach to legislation, we will be in a position to work with the Congress to achieve a fully satisfactory legislative outcome.

(6) The recommended "disclosure" approach would help protect U.S. business from extortion. It would be effective as soon as enacted, in contrast to the Attorney General's criminal legislation, the effectiveness of which would depend upon other nations' willingness to enter enforcement agreements with the U.S. It would avoid the difficult definitional problems inherent in the criminal approach.

Elliot L. Richardson

Attachments