

UNCLASSIFIED  
Department of State

Legal Form Corr Proc  
OUTGOING  
TELEGRAM  
Act

PAGE 01 STATE 134964  
ORIGIN EB-08

5940

STATE 134964

INFO OCT-00 ADS-00 INR-10 EUR-12 AF-10 CIAE-00 EA-12  
H-01 10-15 NEA-07 NSC-05 ARA-16 NSAE-00 COME-00  
L-03 TRSE-00 PCH-04 STR-10 JUSE-00 SP-02 /115 R

CREATE PROBLEMS IN FOREIGN RELATIONS AND CUTS DOWN EXPORTS,  
WE ANTICIPATE FURTHER HEARINGS ON THE COMPANION HOUSE BILL,  
H. R. 2530, WHICH IS IDENTICAL IN ITS TERMS TO S. 708.

DRAFTED BY EB/OCA/GHTHIGPEN  
APPROVED BY EB/ERNEST JOHNSTON  
L/LEI/MPEAY EB/DIA/PLINCOLN  
EB/OT/WEDGAR  
EB/JTARRANT  
EUR/EX/TADAMS  
NEA/EX/SJKRYS  
AF/EX/RSALAZAR  
EA/EX/KOHARRIS  
ARA/EX/JWEINER

5. IN VIEW OF SENATOR HEINZ' REQUEST FOR SUCH INFORMATION  
AND RELEVANCE OF REQUESTED INFORMATION TO LATER HEARINGS,  
WE WOULD APPRECIATE BEST AVAILABLE INFORMATION FROM POSTS  
BY JUNE 2 ON FOLLOWING POINTS:

(A) DETERRENT EFFECT OF FCPA, IF ANY, ON BUSINESS -- CAN  
YOU CITE CONCRETE EXAMPLES WHERE FCPA DISCOURAGED U.S.  
FIRMS FROM BIDDING ON CONTRACTS OR WHERE U.S. FIRMS LOST  
OUT TO FOREIGN FIRMS BECAUSE OF AMBIGUITIES OF PRESENT  
ACT? (WE DO NOT HAVE IN MIND UNRESTRICTED BRIBERY COMPE-  
TITION; RATHER WHETHER U.S. FIRM MIGHT HAVE DONE BETTER  
WITH FCPA MODIFIED ALONG CHAFEE LINES).

(B) EMBARRASSMENT TO FOREIGN OFFICIALS -- CAN YOU CITE  
EXAMPLES WHERE THE EXTRATERRITORIAL REACH OF THE ACT HAS  
OR MAY HAVE CREATED IRRITATIONS IN BILATERAL RELATIONS?

(C) ANY OTHER COMMENTS.

P 230119Z MAY 81 ZEX  
FM SECSTATE WASHDC  
TO ALL DIPLOMATIC POSTS PRIORITY  
KABUL POUCH  
BEIRUT POUCH

6. EXAMPLES SHOULD BE UNCLASSIFIED BUT PLEASE PROVIDE  
CLASSIFIED PARAGRAPHS, IF NECESSARY, TO PLACE IN CONTEXT  
OR ADD FURTHER DETAILS.

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7. PLEASE CITE SOURCE NUMBERS OF PREVIOUSLY REPORTED  
MATERIAL. HAIG

E.O. 12065: N.A.

TAGS: ETRD; BEXP

NOTE BY DC/T: POUCHED KABUL AND BEIRUT.

SUBJECT: FOREIGN CORRUPT PRACTICES ACT (FCPA) -- S. 708,  
-CHAFEE AMENDMENT

1. ON MAY 20, USTR, COMMERCE, STATE, AND JUSTICE TESTIFIED  
ON THE CHAFEE AMENDMENT (S. 708) TO SIMPLIFY FCPA, BEFORE A  
JOINT HEARING OF THE SUBCOMMITTEE ON INTERNATIONAL FINANCE  
(HEINZ) AND THE SUBCOMMITTEE ON SECURITIES (D'AMATO) OF  
THE SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS  
ADMINISTRATION WITNESSES, LED BY BROCK OF USTR AND INCLUD-  
ING JOHNSTON OF STATE (EB), PROVIDED STRONG SUPPORT FOR THE  
BILL, ALTHOUGH SUGGESTING SOME CHANGES. QUESTIONING BY  
HEINZ, D'AMATO, AND CHAFEE, PREDICTABLY, WAS FRIENDLY,  
WHILE PROXHIRE, AUTHOR OF 1977 LAW, RAISED STRONG OBJECTIONS.

2. IN ESSENCE, CHAFEE BILL SEEKS TO REMOVE AMBIGUITIES OF  
FCPA BY, INTER ALIA: (A) CLARIFYING RELATIONSHIPS BETWEEN  
U.S. PRINCIPAL AND AGENT -- CONCEPT OF "REASON TO KNOW"  
WOULD BE REPLACED BY REQUIREMENT THAT U.S. PRINCIPAL DIRECT  
OR AUTHORIZE PROHIBITED ACT BEFORE U.S. PRINCIPAL WOULD  
BE CULPABLE FOR ACTS OF AGENTS. (B) LIBERALIZING  
EXPEDITING OR FACILITATING ("GREASE") PAYMENTS TO TAKE INTO  
ACCOUNT LOCAL CUSTOM (C) PERMITTING PAYMENTS IF LAWFUL  
IN COUNTRY WHERE MADE (D) SIMPLIFYING ACCOUNTING PROVISIONS

BY USE OF "MATERIALITY" STANDARD AND (E) CENTRALIZING  
ANTIBRIBERY ENFORCEMENT IN THE JUSTICE DEPARTMENT, REMOV-  
ING SEC FROM THAT AREA. MOREOVER, S. 708 EXHORTS ADMINI-  
STRATION TO CONTINUE EFFORTS TO REACH INTERNATIONAL AGREE-  
MENT ON ILLICIT PAYMENTS.

3. AMONG CHANGES SUGGESTED BY ADMINISTRATION WAS THAT  
ACCOUNTING PROVISIONS OF CHAFEE BE DROPPED WITH SUBSTITU-  
TION OF SIMPLE, GENERAL PROVISION FOR CRIMINALIZATION OF  
FRAUDULENT RECORD KEEPING DESIGNED TO CONCEAL ILLICIT PAY-  
MENTS.

4. ADMINISTRATION WITNESSES, INCLUDING DEPARTMENT, MADE  
CLEAR THEIR VIEW THAT INTENT OF S. 708 IS NOT REPEAT, NOT  
TO GUT FCPA -- BRIBERY OF FOREIGN OFFICIALS WOULD STILL  
BE CRIMINAL OFFENSE -- BUT TO LESSEN UNDESIRABLE CONSE-  
QUENCES OF ACT. IN DEPARTMENT'S VIEW, EXISTING LAW CAN

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