

FOREIGN INFLUENCE ON THE U.S. POLITICAL PROCESS

HEARING

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

—————
SEPTEMBER 19, 1990
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Printed for the use of the Committee on Finance

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U.S. GOVERNMENT PRINTING OFFICE

40-683

WASHINGTON : 1991

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S361-38

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FOREIGN INFLUENCE ON THE U.S. POLITICAL PROCESS

WEDNESDAY, SEPTEMBER 19, 1990

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:09 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Lloyd Bentsen (chairman of the committee) presiding.

Also present: Senators Moynihan, Baucus, Riegle, Daschle, and Heinz.

[The press release announcing the hearing follows:]

[Press Release No. H-55, Sept. 12, 1990]

SENATOR BENTSEN CALLS HEARING ON FOREIGN INFLUENCE IN WASHINGTON; SCOPE, EFFECTS ON GOVERNMENT POLICIES TO BE EXAMINED

WASHINGTON, DC—Senator Lloyd Bentsen, Chairman, announced Wednesday a Finance Committee hearing next week to examine the scope and effects of foreign influence on U.S. policy decisions.

The hearing is scheduled for *Wednesday, September 19, 1990 at 10 a.m.* in Room SD-215 of the Dirksen Senate Office Building.

Witnesses will include Kevin Phillips, editor of the American Political Report; Clyde V. Prestowitz Jr., president of the Economic Strategy Institute; Elliot Richardson, former U.S. Attorney General and senior partner with the law firm of Milbank, Tweed, Hadley & McCloy; and Susan J. Tolchin, professor of public administration at George Washington University.

"A number of analysts and commentators have noted that foreign governments and private interests spend hundreds of millions of dollars each year seeking to influence political opinion and the policymaking process in the United States. A substantial amount of this money is used to procure the services of influential Washington lobbyists, many of whom are former senior U.S. Government officials, to represent the foreign interests before the Federal Government," Bentsen said.

"I want to use this hearing to explore further the concerns being raised about the large amounts being spent by foreign interests to influence U.S. Government policies on trade and other critical economic matters. I also hope to review the extent to which former U.S. Government officials are representing these foreign interests and the consequences of this representation. These issues should be examined in a searching and balanced fashion to determine what, if any, steps are necessary to address them," Bentsen said.

OPENING STATEMENT OF HON. LLOYD BENTSEN, A U.S. SENATOR FROM TEXAS, CHAIRMAN, SENATE FINANCE COMMITTEE

The CHAIRMAN. This hearing will come to order. I think the hearing we have this morning is going to be exceedingly interesting and I hope informative for all of us. What we are trying to decide is the degree of foreign influence in the U.S. political process. We have an open system of government and that is one of our greatest strengths. But it is also why we are so vulnerable to the

massive lobbying efforts of other countries that do not necessarily have American interests as their first priority.

Simply put, I would like to phrase it this way: How do we preserve that open system of government while assuring that we are not hurt by undue foreign influence? For a long time I have been concerned about the impact that foreign money is having on the U.S. political process. Now that is not a new phenomenon. But in recent years foreign interests have become much more sophisticated in the way they spend money to try to influence policymaking in the United States. I really became aware of the breadth of the spending by foreign interests on international trade issues as we were working on the 1988 Trade Act.

The campaign that was bankrolled then by Toshiba Corp. drew the most attention. But for months as we developed that act, I, as well as other members of this committee, and members of the executive branch, heard from a variety of foreign interests who had an axe to grind in that bill. It wasn't just the Pacific Rim, it was the European Community also.

We estimated in 1988 that foreign interests spent more than \$100 million to lobby on the 1988 Trade Act. There is obviously nothing comparable that we have done in those other countries. This spending by a foreign interest takes many forms, some of them direct and some of them much more subtle.

Most notably, foreign interests spend large amounts of money to enlist the services of former U.S. officials to lobby their causes. These former officials are just part of the revolving door so common in Washington. We do not see anything comparable to that in other countries.

In addition, while foreign nationals cannot contribute to political campaigns, U.S. subsidiaries of foreign countries can do so. PAC's of foreign controlled companies contributed over \$2.8 million in the 1988 election. Now I have tried to remedy this by legislation passed by the Senate earlier this year that puts limitations on contributions from PAC's of corporations that are more than 50 percent foreign owned.

Ironically, as we accommodate this massive lobbying effort by foreign companies, our companies are often denied effective access to trade policymakers in those countries. There is simply not a two-way street when it comes to lobbying and trying to influence the political process.

So today I want to explore the consequences of the expenditure of hundreds of millions of dollars that foreign interests spend each year lobbying both the executive branch and the Congress. What do those interests get for their money? What is the impact on decisions that may be important to our economic future? How do we draw the line between appropriate lobbying and undue influence?

There are also some legitimate questions as to whether current laws and regulations assure us that these activities are subject to the light of day, so that we know who is paying these interests and these lobbyists that present their point of view to us. After all, free speech is furthered when we can judge fully who is speaking and who they represent.

And finally, perhaps we need to think about why government service in this country is too often seen as a way of advancing one's

future career, something to be put on a resume, instead of as a life-long rewarding experience.

We can best keep officials working for us and not for foreign interests if we keep them in the U.S. Government and make those careers attractive for them. That is one of the things we want to explore in this hearing: how we can do that better.

The witnesses that we have today have all devoted considerable attention to the question of foreign influence and U.S. policymaking. And before hearing from them I would defer to other members of the committee for any comments.

Senator Heinz?

OPENING STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM PENNSYLVANIA

Senator HEINZ. Mr. Chairman, if I may, I would like to congratulate you on a timely and appropriate hearing. It is clear to me that the Congress and the public have grown increasingly concerned about foreign influence on U.S. policymaking. And, Mr. Chairman, you asked the right question when you asked how can we preserve our open system of government against hidden influences.

You also mentioned Toshiba, which came to this committee because of an amendment that Senator Garn and I offered to the trade bill; and we all found out just how much disclosed foreign lobbying there can be. At the same time we also recognized that we were lobbied by a lot of people who were not registered lobbyists. So I would like to direct my remarks briefly this morning to the question of foreign lobbying.

The usual defense of foreign lobbying is that we live in an increasingly interconnected global market place and that this forces businesses to seek good relations with many governments, not just their own; and prompts governments to intercede with others in defense of their commercial interests. All that is true, but it remains that amid this complex web of national interests America continues to play the fly while Japan and others play the spider.

We end up in this unenviable position because we stubbornly ignore another reality. Global political integration has not kept pace with economic integration. Like it or not we still live in a world of nation states. It is those nation states that still make the economic decisions that affect our lives and determine the nature of competition.

Laura Tyson of the University of California at Berkeley succinctly summarized the consequences of these two conflicting realities. I quote, "As long as foreign firms are protected or promoted by their home governments and as long as they are allowed to engage in anti-competitive practices in their home markets, the playing field for domestic and foreign firms remains uneven. Foreign firms may compete like us in the relatively open U.S. marketplace while American firms are simply not able to compete like them abroad."

What this tells me is that as long as we live in a world of national borders and so long as other nations act to protect and promote their economic interests, we have no choice but to do likewise.

Having said that, I think we should all understand that the unassailable basic reality of foreign lobbying is that its purpose is to

advance the interests of the foreign company or government. While all foreign interests do not inevitably conflict with our own, neither are they inevitably consistent. They demand close analysis, closer in my judgment than the interests of domestic parties, although they too are not always consistent with the broader national interest.

Indeed, as we get deeper into this issue, I think we will discover that often the most effective foreign lobbying is done by Americans who either see a coincidence of interest or more often have become dependent on their own foreign relationships and are made to dance to their new master's tune. Many domestic companies have become foreign supply junkies, so fearful of being cut off that they are willing to shill for foreign interests.

A current example of this is the opposition of some domestic computer companies to the flat panel display dumping case, Mr. Chairman. These companies, dependent on the dumped panels, are short-sightedly trying to destroy the very industry that could make them independent if they would nurture it rather than attack it.

The question of what to do about foreign influence is similarly complicated. We are an open society. We believe in free speech and the right to petition the government. We do not believe that that right should be denied people because they represent interests that oppose ours.

My answer to that question is disclosure. If representatives of foreign interests fully disclose their relationship we can more carefully assess their point of view and take its origins into account. Unfortunately, the current state of disclosure is grossly inadequate.

A GAO report released only last week found that more than half of those filing under the Foreign Agents Registration Act failed to do so in a timely or proper way. That is why I have introduced legislation, S. 176, to both broaden the scope of disclosure required under the act and to make the enforcement reforms recommended by the GAO 10 years ago and again last week.

Others may wish to go farther, but without the question of full disclosure being answered, we are not taking the first step. We should take it immediately.

The CHAIRMAN. Thank you, Senator Heinz.
Senator Riegle?

**OPENING STATEMENT OF HON. DONALD W. RIEGLE, JR., A U.S.
SENATOR FROM MICHIGAN**

Senator RIEGLE. Thank you, Chairman Bentsen. First of all, I want to also commend you for the leadership in focusing this issue and I want to strongly support the comments and concerns that you expressed at the outset. I think in noting the sharp rise in U.S. foreign debt and also the sharp and continuing rise in ownership of U.S. assets that it is logical to expect that foreign interests are going to try to participate in our U.S. political and policymaking process to a greater extent.

We do now, I think, need to properly ask whether this foreign lobbying and influence on policymaking is damaging U.S. national interests. Even defining U.S. national interests is not simple these

days because globalization and cross border ownership of industry complicates the problem by itself.

I would suggest that one test we ought to use in trying to define the degree to which U.S. national interest is harmed or hurt is by measuring the degree to which high valued-added production in the United States is being fostered and being promoted versus being damaged in some way and reduced.

I would say just looking at where we stand today—that countries like Japan and others would never tolerate and do not tolerate anything like the kind of invasion, if you will, of their policy setting process such as we have now in the United States.

I want to just draw reference to Mr. Prestowitz's comment on page 3 and 4 of his testimony today. He cites the example of the reclassification of light trucks as cars for import purposes as a result of Japanese lobbying. That decision, for those of us who were involved in it, know that it occurred over the very strenuous objections of American companies, all of the American companies and the United Auto Workers as well. The net result was to produce an annual savings of \$500 million for the Japanese auto makers and to create a \$500 million annual loss in U.S. Customs receipts.

It is obvious that that decision was the result of a coordinated strategy employed by Japanese industry and government to safeguard Japanese interests and not American interests. I am drawing from Mr. Prestowitz's comments in saying that.

I would just add one other example. It has been touched on that there is now an invasion into the political process beyond policy decisions, and right down into elections and how elections are conducted. In the last election cycle, the Foreign Automobile Dealers Political Action Committee raised and spent in elections in the United States more money on campaigns than did Ford, Chrysler, General Motors and the United Auto Workers combined.

It is a very significant aggregate statistic, especially when you look at where that money went and how it was brought late into the campaign process and the particular Senate seats where that money was targeted, and the influence that that begins to have, both in terms of either targeting and removing people who have a hard-nosed view on trade issues from the point of view of the United States, or in a sense to incur something of a favorable tilt from of people who supported and who are elected.

It is a very vivid example, I think, of how we have a problem here that we have to find an answer to. I noticed that Mr. Phillips makes some suggestions as to how we might deal with it. I think public financing of campaigns by itself would solve a lot of problems and create very few. So hopefully we can get into that discussion.

But I thank the Chairman for yielding to me.

The CHAIRMAN. Thank you.

Senator Baucus?

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA

Senator BAUCUS. Mr. Chairman, I think this is a very important hearing that goes to the heart of who we are as a country and our

future. It is very clear that we are very interconnected in the world, economically, politically, and socially. It is also, I think, somewhat clear that some other countries are more cohesive and more organized and exert more effort in the degree to which they help themselves, than we do in our country.

I think that since the war, to some degree, we Americans have gone overboard to help other countries, other peoples. That has not been quite as true with the country of Japan, some Asian countries and some European countries. The question now is: Are we as Americans going to exert ourselves as a cultural matter to be a coherent team and exert a little more nationalism so that we are, again, first among equals in the world? That is the question.

Part of this is business ethics. But basically, it is a matter of American culture. I think, frankly, as is usually the case, the American people are a little bit ahead of those who are inside the beltway. That is, I think the American people are much, much more concerned about burden sharing, much more concerned about we Americans taking care of ourselves more than we have in the past; and I very much hope that that translates into legislation or ethical standards so that there is less of this revolving door problem, so that more Americans stand up more for America, rather than standing up for themselves as individuals.

That is, to me, what this comes down to. This being the degree to which we as a country, as a nation, are going to be a team, be proud of ourselves as Americans and stick together as Americans. Not that we want to hurt other countries and other people, it is just that we do not want other countries, other people hurting us, taking advantage of us.

I hope that these hearings get at that problem and begin to lay a foundation or framework so that we can begin to craft some legislation that begins to get at that very deep fundamental question.

I thank you.

The CHAIRMAN. Thank you.

I think we are fortunate to have a panel here this morning that will have some differing points of views, but I think will deal with objectivity and have delved in this problem in great depth.

One of that panel would be Mr. Kevin Phillips, who is publisher of the "American Political Report." He is with the American Political Research Corporation and the author of a new book, "Politics of Rich and Poor," that has stirred a great deal of interest. So we would be pleased to have you come forward, Mr. Phillips and take a position.

Mr. Clyde Prestowitz, Jr., the President of the Economic Strategy Institute and author of "Trading Places: How We Allowed Japan to Take the Lead." Here again is a man who has dealt with this problem for several years, devoted a good part of his life to it, who is one of the authorities in the field and very prominent.

The Honorable Elliot Richardson, chairman of the Association of International Investment, a man who I suppose will have something of a differing point of view in regard of the comments of Mr. Prestowitz. He is an articulate spokesman for his point of view and an old friend.

And then, of course, Susan Tolchin. Dr. Tolchin is professor of public administration, School of Business and Public Management

at George Washington University; and the co-author with Martin Tolchin of "Buying Into America: How Foreign Money is Changing the Face of Our Nation." We are very pleased to have you this morning, Dr. Tolchin.

Mr. Phillips, we will have you lead off. I will have to say that as much as I have looked forward to these hearings and we have worked to prepare them, they have advised me that we have a meeting of the leadership on the Budget Summit. I thought I had had enough of that. I had some 11 days out at Andrews. I tried to go over the wall, but the police dogs got me. [Laughter.]

Not quite. But it has been quite a major problem and one which is going to take a great deal more work. So if you will forgive me, I will be leaving very soon and Senator Baucus will be presiding as Chairman.

Mr. Phillips, if you would proceed, please?

STATEMENT OF KEVIN P. PHILLIPS, PUBLISHER, AMERICAN POLITICAL REPORT, AMERICAN POLITICAL RESEARCH CORPORATION AND AUTHOR, "THE POLITICS OF RICH AND POOR," BETHESDA, MD

Mr. PHILLIPS. Thank you, Mr. Chairman. My name is Kevin Phillips, editor and publisher of the "American Political Report" and most recently author of a book, "The Politics of Rich and Poor," which devote some attention to the changes in economic policy and wealth patterns during the 1980's and to the rise of foreign political and economic influence in the United States.

What I propose to refer to this morning is that while growing foreign, political and economic influence is cause for concern, it is also a symptom of other problems in historical processes that will not be easy to change or reverse. Most of the publicity surrounding my recent book is focused on its discussion of the upward redistribution of wealth in the United States during the 1980's. But several parts of the book discuss circumstances and trends quite relevant to today's subject of inquiry.

During the 1980's, in a nutshell, a convergence of forces opened up the United States to an unseemly level of foreign political and economic influence. First, in the early 1980's, the Reagan administration decided to do two things—tolerate huge budget deficits and let the trade deficit soar, partly in order to let the U.S. market bolster foreign economies.

Within a few years, a lot of foreign companies and nations had a vastly increased stake in the United States as a market for their goods. Then in the second half of the decade, the government, as everyone knows, let the dollar slide to spur U.S. trade and exports. The result was that foreigners now saw their currencies rise. In dollar terms, their wealth soared. That gave them more purchasing power to spend on keeping their access to the U.S. market and it also made the United States a bargain basement in terms of the price levels of corporations and real estate. The result was that foreign investors began buying so much that pretty soon they wound up forming lobbies to protect their investments as well as their markets. And they had a lot more of both.

During the same period, meanwhile, the United States of the 1980's was going through what "The Politics of Rich and Poor" calls a "heyday" of conservative and capitalist policy—a period of wealth and debt and speculation quite akin to the 1920's and the "gilded age" of the late 19th century. Besides helping create the economic climate that drew foreign imports into U.S. markets and then drew in foreign corporate and real estate purchases, the spirit of the 1980's did some other things. It made everybody think about money.

Markets and transactions were the religion, and government should get out of the way. So just as greed went into overdrive, government lost its desire to regulate. Americans saw foreigners waving their checkbooks and Americans put out their hands.

And with so many people talking about the international economy and emphasizing "capitalism" over "national boundaries," it did not matter so much whose money a lawyer, lobbyist or investment banker took. All investment was good, the president said. The "Selling of America" became a business.

The 1980's are over, fortunately, and the country's mood is beginning to change. But undoing the damage will be a process of decades, if ever. We are not just talking about Washington; we are also talking about the new level of foreign influence in and ownership of American finance—and even access to American research and American universities. My sense is that the public is starting to understand what has been lost, and as they understand better, they are going to be angrier still.

But dealing with America's new level of foreign influence on decisionmaking is not going to be easy. And since many of the influence-mongers are Americans drafting legislation won't be easy, either.

My sense is that some of the cures have to be broader and more sweeping correctives of what went wrong in the 1980's. Undoubtedly, that includes some legislation dealing with revolving doors, foreign lobbyists and political action committees. But arguably, it also suggests a massive reform of the overall Federal lobbying laws and perhaps a shift to Federal financing of elections to restrict the role of private money.

Arguably, meanwhile, the tax system also has a role in cracking down on the domestic money culture and perhaps in reducing the deficit by increasing the burden on the small minority of Americans whose wealth increased so much during the 1980's. I would add parenthetically that some of those were working for foreign interests or supporting their financial maneuvers.

Finally, avoiding another dollar collapse that once again increases foreign wealth and makes America a bargain basement would also be useful. Trying to stop foreign influence-mongers in Washington without reference to these larger pressures and problems probably will not work.

Finally, let me conclude by coming back to some more direct politics. Trying to deal with foreign lobbying and influence-mongering by legislation may be difficult, not only because the economic pressure is so huge, but because so many of the people—the lobbyists, the influence-mongers—involved are Americans.

On the other hand, that also suggests a possible solution. Maybe we should begin dealing with the problem at the political level—at the Republican and Democratic National Committees and in the campaigns of Congressmen and Senators. If foreign influence peddling is pernicious, then the two national committees and individual Congressmen and Senators should refuse to hire as campaign aides and advisers people who are also lobbyists for foreign interests. It is a big group in this city and people cut off from influence can't influence peddle. No legislation is needed for this and it would send a big message: that America is getting serious about making its own decisions in its own interests.

Thank you for your attention.

[The prepared statement of Mr. Phillips appears in the appendix.]

The CHAIRMAN. Let me comment just a moment since I have to leave. Mr. Phillips, I have read your book and I have it in my library. I have it marked page after page because I thought you made some very excellent observations. I agree certainly with a great part of it. It is being reflected in this Summit meeting at the present time. The numbers are in the last decade that the top six-tenths of 1 percent of our people have increased their earnings by some 87 percent; and the middle 20 percent have increased theirs only by 3 percent and having a tough time hanging on. The bottom 40 percent have taken a serious hit. All of that is a part of the Summit.

Mr. Prestowitz, and the rest, I apologize to you for having to get on with the Summit meeting.

Senator Baucus, if you would step up here now.

Senator BAUCUS. Okay, Mr. Prestowitz, you are next.

STATEMENT OF CLYDE V. PRESTOWITZ, JR., PRESIDENT, ECONOMIC STRATEGY INSTITUTE AND AUTHOR, "TRADING PLACES; HOW WE ALLOWED JAPAN TO TAKE THE LEAD," WASHINGTON, DC

Mr. PRESTOWITZ. Thank you. I am Clyde Prestowitz, president of the Economic Strategy Institute and author of the book, "Trading Places."

I think there are four key questions on this topic: (1) Is there foreign influence; (2) Is it effective?; (3) What's wrong with it? and (4) What to do about them?

Is there foreign influence? Yes. I think the evidence is overwhelming. It is massive.

Is it effective? I believe it is. Let me cite several examples. When I was an official at the Commerce Department we were engaged in a major negotiation with a foreign country and a high official of the U.S. Government who was obviously being courted by an important business figure in the country with whom we were negotiating changed his positions. He took positions that were clearly much less aggressive, much more flexible than he had been taking in the past. A year later he left the U.S. Government and he was retained as a consultant by the corporation whose interests were at stake.

There are other examples of that. In the recent SII negotiations a State Department official left the State Department in the middle of negotiations and was retained by foreign interests which were the subject of negotiation. Indeed, he was in a position to reveal to the other side the entire U.S. negotiating position.

It works in another way. The high officials of the U.S. Government are appointed by the President. They are political appointees. Much of the discussion of this question of foreign influence is centered around the activities of ex-U.S. officials. But there is another kind of powerful operative in our system—that is the high political party functionary. The Republican and/or Democratic party functionary who is important in raising funds, who helps organize conventions, and who among other things suggests names for appointment to the top positions, when a top U.S. Government trade position is open and the President is called upon to make an appointment, many of those high functionaries of the party, who are not necessarily office holders themselves, who may never have been office holders, nevertheless they are consulted about whom to appoint.

I would say that it is unlikely that appointments to those positions would be made by people who are clearly at odds with some foreign interests. Because most—I should not say most, but many of those party functionaries are retained at very high rates by foreign interests.

It works in another way. In fact, it is working in this hearing right now. Those of us who are testifying here today are going to choose our words carefully because this room is full of foreign interests and some of what we say here is likely to appear on the evening news in a number of foreign capitals.

As you know I run an Institute which is a non-profit, public institute and my institute is dedicated to developing the rationale for and the substance of policies to achieve leadership for the United States in industry and technology. I can tell you that my institute, of course, is supported by donations from private sources including corporations, labor unions and other foundations.

I can tell you that some of my donors have had it suggested to them that their businesses could suffer if they continued to support my institute. What we say here today is going to be noted carefully. It will be reported back to important officials in foreign governments and foreign companies. They will consult together and it is very possible that we will become the objects of defamation campaigns or other kinds of negative publicity and pressure which can hurt our interests.

So even by dint of having a public hearing you put some of the witnesses in a position where they may not be willing to speak openly. Because what they say can be used to retaliate against them. And so in all of these ways foreign influence tends to form the frame work within which issues are presented. It tends to create an atmosphere in which it is possible—I mean it is not only possible it is probable—that high officials of the U.S. Government are being named by the very people with whom they will negotiate.

Now the third question: What is wrong with all this? I think that a key distinction has to be made. Clearly there are legitimate foreign interests. Clearly there are a number of foreign interests

which deserve representation and it is proper to have them represented.

On the other hand, I would say that there are instances when the American interest and foreign interest are at odds. For example, I believe that it is in the interest of the United States to have a vital, dynamic semi-conductor industry. I believe it is in the interest of the United States to have a leading position in the aerospace industry. I believe that when foreign governments engage in active industrial policies which are aimed at coordinating those government's policies with their company's activities to change the position of American leadership and to achieve leadership in those areas for foreign companies, then clearly the foreign country's interest and the American interest are in conflict.

When Americans represent the foreign interest they, in my judgment, are in conflict with the judgment of their own country and that is not legitimate. That is the kind of thing you have to stop.

My time is up. I will leave the rest of it to questions. Thank you.

Senator BAUCUS. Thank you very much, Mr. Prestowitz.

[The prepared statement of Mr. Prestowitz appears in the appendix.]

Senator BAUCUS. Mr. Richardson is scheduled next.

STATEMENT OF HON. ELLIOT L. RICHARDSON, CHAIRMAN, ASSOCIATION FOR INTERNATIONAL INVESTMENT, WASHINGTON, DC

Mr. RICHARDSON. Thank you very much, Mr. Chairman. I am pleased to be here today as chairman and representative of the Association for International Investment. I should add, perhaps, Mr. Chairman, that I am not a lobbyist for any foreign company and I am not registered for any purpose under—

Senator BAUCUS. Mr. Richardson, could you please pull your microphone a little closer so we can all hear you better. Thank you very much.

Mr. RICHARDSON. I was just saying that although I am the chairman for the Association for International Investment I am not a lobbyist for any foreign company, nor am I registered under the Foreign Agents Registration Act for any purpose.

The Association for International Investment itself was founded in early 1988 to represent the U.S. subsidiaries of foreign companies, American-based multinationals, state governments and American Chambers of Commerce abroad. Our basic role is to support U.S. international investment policy which has traditionally favored and still does favor the free flow of capital in response to market forces.

I understood through the committee staff that the three topics in which the committee is primarily interested is first, the propriety and legality of foreign-owned U.S. company PAC's, the adequacy of the Foreign Agents Registration Act, and the ethical aspects of representation of foreign companies or their U.S. subsidiaries in the political process by former government officials.

My oral statement will touch on each of these issues briefly; and I would appreciate, Mr. Chairman, the opportunity to have my full written statement, which addresses these topics more fully, included in the record.

Senator BAUCUS. All statements will be in the record.

Mr. RICHARDSON. Thank you, Mr. Chairman.

First then let me note that there are two distinct themes common to the issues at hand. First, access to the electoral process and second, access by foreign-owned U.S. companies to the political process. With respect to elections, it is sufficient, I think, to say simply that foreigners have no right to be involved, that foreignness itself is a disqualification.

With respect, however, to access to the political process it should be noted that the entirety of the American political system is based on a competition of ideas in an open and transparent decision-making system, the very purpose of which is to serve the public interest generally. Where the U.S. subsidiaries of foreign companies and their American employees are concerned, the issue is whether there is any good reason why their participation should be restricted.

This issue is pointed out certainly by the role of political action committees sponsored by foreign-owned U.S. companies. I am, of course, aware of Chairman Bentsen's amendment to the Senate Campaign Finance Reform Bill that would prohibit U.S. companies with more than 50 percent foreign ownership from sponsoring a PAC.

The Federal Election Commission, in addition, has proposed regulations and invited comments on rulemaking that would accomplish administratively what Senator Bentsen's amendment would seek to do through legislation. Meanwhile, a proposed House bill would impose a 20 percent foreign ownership threshold that would also place restrictions on PAC's organized by certain law firms and certain trade associations.

Let me emphasize the point, Mr. Chairman, that I fully share the concern that economic power should not be allowed to distort the electoral process. This concern is not peculiar, however, to the role of foreign-owned U.S. corporate PAC's, but in the view of many people is aroused by the very existence of PAC's generally.

I am aware of no substantial evidence and have heard only modest anecdotal evidence indicating that foreign-owned U.S. corporate PAC's have attempted to exercise inappropriate influence. The real issue is whether the treatment accorded U.S. companies and the Americans employed by those companies should differ, depending upon the nationality of the owners of the majority of the corporate shares.

My answer, Mr. Chairman, is that this consideration should not be controlling. In that context, my prepared statement summarizes statistics from a study by the congressional Research Service entitled, "PAC's Sponsored by Corporations, Partly or Wholly Owned by Foreign Investors." The statement appends tabulations of those statistics.

Basically they indicate that the total contributions by foreign-owned U.S. company PAC's represent a rather small proportion of total corporate PAC contributions, under 5 percent in the 1985-86 cycle and just about 5 percent in the 1987-88 cycle.

In the case of contributions to Federal candidates the contributions from the PAC's of companies with a majority of foreign ownership amounted to only 1.7 percent of all PAC contributions in the

1985-86 election and 1.8 percent in 1987-88. Foreign-owned U.S. company PAC's and all U.S. corporate PAC's turn out to have followed almost identical patterns in the distribution of their candidates' contributions as between the two major parties.

Beyond this, Mr. Chairman, we need to have an eye on the constitutional issues that would be raised by denying American citizen employees their constitutional right to freedom of association. Freedom of association has been repeatedly held to be specifically protected by the First Amendment. There are cases which in this connection have also addressed the constitutional rights associated with political contributions.

Further—

Senator BAUCUS. I am going to have to ask you to summarize the best you can, Mr. Richardson.

Mr. RICHARDSON. I would add simply that there have been no complaints filed with the FEC charging that foreign persons have attempted to influence these PAC's.

Finally, Mr. Chairman, with respect to the revolving door issue that has been touched on here, it is a question of judgment I think of when and how you draw the line with respect to former government service and in what matters an individual should be entitled to act. Here, as in all the other aspects of this situation, I think the question is really when an abuse has been demonstrated sufficient to justify a specific remedy.

As to that, speaking as an individual, and on behalf of the Association, we are certainly ready to give our support to anything that makes realistic sense without otherwise curtailing the kinds of freedom of communication upon which our system is based.

Thank you.

[The prepared statement of Mr. Richardson appears in the appendix.]

Senator BAUCUS. Thank you very much, sir.

Dr. Tolchin?

STATEMENT OF SUSAN J. TOLCHIN, PH.D., PROFESSOR OF PUBLIC ADMINISTRATION, SCHOOL OF BUSINESS AND PUBLIC MANAGEMENT, GEORGE WASHINGTON UNIVERSITY, AND CO-AUTHOR WITH MARTIN TOLCHIN OF "BUYING INTO AMERICA: HOW FOREIGN MONEY IS CHANGING THE FACE OF OUR NATION," WASHINGTON, DC, ACCOMPANIED BY AMY BIRGENSMITH, RESEARCH ASSISTANT; SHARON WEINBERG AND KENT MCKAY, MASTERS OF PUBLIC ADMINISTRATION PROGRAM STUDENTS, GEORGE WASHINGTON UNIVERSITY

Dr. TOLCHIN. Thank you, Mr. Chairman. I welcome the opportunity to speak this morning and congratulate the committee for undertaking this very timely topic. Joining me this morning is my Research Assistant, Amy BirgenSmith, and two graduate students from the Masters of Public Administration Program at George Washington University, Sharon Weinberg and Kent McKay.

Every school child knows the story of how their forbears dumped a load of tea into Boston Harbor to protest foreign influence over their tax system. The rest is history. The Revolutionary War established a long and proud tradition of political sovereignty, and from

that time on, Americans struggled hard to remain free of the wars, economic problems, and imperialist agendas of the European nations.

I think the feisty colonists would be very surprised today to see their early efforts crushed by the rising tide of political influence, the result of the recent surge of foreign investment into the United States.

To a large extent the country has been unprepared for the staggering rise in foreign investment—\$196 billion in 1976 to \$2.3 trillion today, according to official figures—I believe that number is underestimated by about 50 percent. There are many benefits to foreign investment, including jobs, fresh capital and new technology. But one of the more troubling consequences of this investment involves the virtually unrestricted political influence these investors now exercise on U.S. politics. It is just part of the cost of doing business; and it is almost axiomatic to say that as the investment increases so will the political influence.

Why is this important? It is important because at least 20 percent of those investors are foreign governments whose interests may or may not be congruent with American interests. Foreign investors own a large stake in perpetuating the current laissez-faire climate toward foreign investment and this is probably the reason why the United States remains the only major industrialized country in the world with no policy toward foreign investment or foreign influence. It is also the only country that leaves the fate of its critical technologies, manufacturing base, and banks to the vagaries of the global marketplace and to the new class of entrepreneurs that takes increasing advantage of America's naivete.

Indeed, this has an enormous impact on policy. Look at the increase in foreign investment in U.S. banking assets over the last 2 years, from 16 percent to 25 percent. If that trend line continues it means that by the year 2000, 77 percent of the Nation's banking assets will be owned by foreign investors; this translates into an enormous potential in profits for those investors.

Is this good for America? I don't know. But it is certainly something U.S. leaders ought to be looking at and will not look at if foreign lobbyists have their way. The impact of foreign influence spells a diminution in American sovereignty over vital policies. We have seen the impact of foreign influences on policies ranging from trade, tax, supercomputers, machine tools, semi-conductors and my own special interest, foreign investment data collection.

Other countries collect much better data on foreign investment and we have been struggling over the last 4 years to no avail to improve U.S. data collection.

Why do we need it? We cannot make policy in this area unless we know how much investment is actually coming in. National security is another vital policy area which bears further scrutiny.

There are additional examples of foreign political influence over U.S. policy, which I will not iterate here, but are in my testimony. But the real question is: What do we do about it? No one blames foreign investors for their accelerating influence. The question is why a sovereign nation like the United States allows it.

There are three reasons for this untrammelled political influence in this country. One is the fact that we are now a debtor nation,

the first time in history that an industrialized country has passed from creditor to debtor status. The White House is terrified of doing anything to offend the buyers of the U.S. debt and, of course, we all know that one can not say "no" to his banker.

Second, is the revolving door. Clyde Prestowitz mentioned the case of David Olive, a State Department negotiator who quit mid-negotiation to go work for Fujitsu, a conglomerate dealing with this area of expertise in the State Department.

The United States is also alone among its trading partners in allowing this breach of ethics to continue. The U.S. Federal Government has 3,000 political appointees, compared with 150 in the United Kingdom, 400 in France, 60 in West Germany and none in Japan. This is blunting our competitiveness and I think that we need to do something about it.

One of the remedies that I suggest, among others, is closing the revolving door, not with a pallid compromise like a year's moratorium. I think we have to shut our ears to spurious arguments from individuals who argue that you will not get good people to work for government if they cannot look forward to lobbying the government afterward. What an insult to the millions of career public servants who have served their country without the blandishments of future promises of lobbying, to my students in public administration who look forward to serving their government as a professional career, the millions of public health officials, and the tens of thousands of Americans now sitting in the broiling sands of Saudi Arabia.

Other countries recruit and retain dedicated public servants and pay them well to serve. Why can't we do this as well? When did the last German or Japanese trade official quit midstream to go work for IBM? What is needed is a 10-year moratorium for subcabinet appointees and a life-time moratorium for cabinet appointees barring them from working for foreign governments and foreign corporations. I think it is better to do nothing than compromise on this issue.

Each foreign political success spells new limits on U.S. sovereignty. If a nation cannot collect its own data, protect its national security, make trade laws and collect taxes without foreign intervention, then it begins to look more and more like the colonial government its citizens fought so hard to refute.

We must learn the difference between interdependence and independence in the global economy. I think we are sinking more and more into a condition of dependence.

Thank you, Mr. Chairman.

[The prepared statement of Dr. Tolchin appears in the appendix.]

Senator BAUCUS: Thank you, Dr. Tolchin.

I think the testimony from all of you was very helpful.

Mr. Richardson, what is wrong with a 10-year moratorium on subcabinet appointees and a life-time moratorium on Cabinet officials going to work for private industry? Or working for some foreign interest that is working against, at least in the economic point of view, the interest of the United States.

Mr. RICHARDSON. Well I think there are two comments that ought to be made, Mr. Chairman. One is, in the first place, what do we really mean when we talk about "foreign influences?" Some

companies, for example, which happen to be domiciled abroad, nevertheless have a majority of their employees working in the United States and their largest markets are here.

Senator BAUCUS. What about just the basic principle? There may be a definitional question. Just the basic concept.

Mr. RICHARDSON. Well, all right, let's pass the question of what is foreign. The other side of the coin is that merely because an enterprise is foreign does not mean that the positions it is taking are inimical to U.S. interests. The consumer movement, by and large, for example, the believers in free trade, the believers in the free flow of investment, end up on the same side as the "foreign interests."

So to say that an individual, a former Cabinet member, should never work for a foreign-owned enterprise is, I think, much too restrictive of his own freedom to do what he believes to be in the national interest. The problem here, Mr. Chairman, in large measure is the suspicion that merely because somebody is working on behalf of a foreign interest that this somehow also, therefore, represents a betrayal of that individual's commitments to his own nation.

Senator BAUCUS. I am just curious. In Japan would a MITI Vice Minister, an appointed top official in the bureaucracy, that is not a member of the Parliament, but a top official in the MITI bureaucracy, feel that his interests were restricted if he is unable to go work for IBM?

Mr. RICHARDSON. There are former MITI officials now working as consultants to American companies.

Senator BAUCUS. How widespread is the other side of this coin? That is, top Japanese officials in the Finance Ministry or MITI, for example, going to work for—

Mr. RICHARDSON. I would not advise the Japanese to put a lifetime prohibition on this. I think there ought to be some judgment exercised with respect to whether or not the individual was involved in the issue. There ought to be, obviously, limitations in the manner in which issues are represented and addressed and the way influence is used.

Senator BAUCUS. It just seems to me that from what little experience I have with Japan there is sort of a cultural ethic among top officials, either because of legal restrictions or because of cultural restrictions, that does not look toward working for a private company.

Mr. RICHARDSON. It is a totally different situation, Mr. Chairman, for a whole lot of other reasons. There is nothing like the wholesale turnover in senior jobs in the Japanese Government, the British Government, the French or German Governments. There is nothing like the low level of esteem for career public servants in those countries, which is the reason why I have been a founder and leading member of the National Commission of Public Service.

I think the low level of compensation for Federal officials—and in this connection I would add the Congress—is a serious indictment of the American people's own recognition of the importance of public service.

Senator BAUCUS. What is the solution to that indictment?

Mr. RICHARDSON. Well I think—Mr. Chairman, I will not elaborate now, but the report—

Senator BAUCUS. It is as good as time as any right now.

Mr. RICHARDSON [continuing]. Contains all the recommendations we could come up with that we think would help to improve that situation.

Senator BAUCUS. Give me one or two major solutions.

Mr. RICHARDSON. Well pay is certainly one. But another is some restriction on the number of political appointees and better preparation of political appointees in working with career people. There needs to be much more emphasis starting at the high school level and going beyond that on the significance of and opportunities for satisfying service in Government, the rewards of public service, which could perhaps in time help to overcome the negativism of recent years.

Senator BAUCUS. I would like to ask the other three panelists, to what degree are our economic difficulties, the huge debt, the foreign debt, for example, held by foreigners, and the lower dollar, at least compared to 1985, which has made the U.S. real estate cheaper in foreign terms, to what degree are these really large sort of macro problems that we have to dig ourself out of causing some of the questions that we are addressing today? And on the other hand, to what degree are they problems involving revolving door questions and public financing, perhaps of campaigns—that solutions of legislation, within the short term, can begin to address?

I mean if you had to quantify a degree to which we are addressing this question of foreign influence because of economic problems, what percent is it economic and what percent is it because of officials that can too easily leave in the middle of negotiations and go to work for say a foreign entity? I would like the three of you to address that question the best you can.

Mr. PHILLIPS. Well if I can start, I think that the economic pressure that built up in these several dimensions during the 1980's. First, when foreign corporations and economic interests succeeded in enlarging their share of U.S. markets, especially in the first half of the decade. And then in the second half of the decade when foreigners were able to build up an enormous increase in their investments and asset base of the United States.

You created a very obvious set of circumstances which enlarge their economic interests in influencing our decisionmaking process right at the time when I think this very unfortunate interaction with the spirit of the 1980's more or less say, hey, anything goes.

So my sense is at this point if you try to put a purely legislative approach in place where you are limiting what people can do, especially where you are limiting Americans and it is a hard situation to draw the line, basically what you are likely to do is what so often happens with legislation where you have this powerful force of economics behind it, looking to find a way to influence things.

You don't just test the creativity of K Street, if I can put a geographic location on it, to come up with various devices for circumventing laws and regulations. I suspect they would be rather skilled at that.

So my sense is, there has to be something at the same time where you try to dam where the water goes, you have to alleviate the water pressure. And in the sense of a cheap dollar that makes this country a bargain basement, in the sense of a come-and-get-it

attitude, that we are not even going to monitor where the foreign investment is coming from, you cannot accept these either; you obviously have to deal with a deficit that is forcing us to run a credit card economy. I think all of these things go into it.

So I would think the problems have to be dealt with as an overall concept; it's not enough just to think of one side of the equation.

Senator BAUCUS. I appreciate that. But if you were to quantify it the best you can, how much of it is because of the water behind the dam? That is because of the economic pressures. On the other hand, how much can be cured with basic legislation that Congress gets into on a yearly basis?

Mr. PHILLIPS. Well I would say at this point that a good two-thirds would be the water pressure. Because the importance of these assets and markets and deals and relationships is so great that my sense is that if you did slap the legal limitations on that the creativity of circumventing these and finding ways to do it would be such that you would still have two-thirds of your problem, if that is the way to approach the numbers game.

Senator BAUCUS. Does that mean we should not address the other one-third? Or should we in the meantime address the other one-third?

Mr. PHILLIPS. No, I think you try to address the one-third. But I think the way you put credibility in force behind addressing the one-third is to simultaneously take note and address the two-thirds.

Senator BAUCUS. Thank you.

Mr. Prestowitz?

Mr. PRESTOWITZ. I essentially agree with Kevin Phillips. I think that—let me just comment on the revolving door, however. The revolving door is just made to order for kind of dovetailing with water behind the damn that you are talking about. I mean the way we run the government, it essentially is a training ground for lobbyists and particularly for lobbyists for foreign interests.

I mean we do not pay officials sufficiently to attract people who are established in their careers except to the very top Cabinet jobs. So typically what we get in mid-level and upper-level government jobs are relatively young people who are trying to make their careers. They do it by becoming involved in politics. They get a high-level position. They are going to be there for a couple of years. They know when they get there they are going to get out in 2 or 3 years.

And what are they going to sell when they get out? Well they know how to influence the government. For whom is that skill most valuable? Foreign interests. So the system is really made to order for that kind of thing. I think you have to address that. As Kevin said, while you are addressing the other water behind the dam.

The second point which I think is very important, and it is part of the water behind the dam, is this: we have not identified it as a major American interest to have economic leadership. I mean one thing I think is very interesting is that I dare say there are no lobbyists in Washington right now for Saddam Hussein because it has been clearly identified that Iraq and the interests of Iraq and the interests of the United States are at odds. And no American wants to be seen to be on the side of Iraq right now.

What we haven't done is to clearly say that it is important for the United States to promote certain economic interests. That it is important for us to have the leadership position in aerospace, for example. That it is important for us to have a leadership position in super computers. We have not said that.

In fact, we keep asking ourselves the question, who is "us"? Does it matter whether Americans make super computers or not? In fact, Mike Boskin has made the statement that potato chips, semiconductor chips, they are all chips. What difference does it make? As long as you have that attitude, you cannot define the American interest. Then you get into the situation that because the American interest is not defined, we essentially are into the ethics of kind of what I call the legal ethics of representation, where everybody is entitled to a defense. That plays to the revolving door.

Senator BAUCUS. Do other officials in other countries revolve through the door as often as do we?

Mr. PRESTOWITZ. In other countries?

Senator BAUCUS. Yes.

Mr. PRESTOWITZ. No.

Senator BAUCUS. Let's say Germany, for example. European countries. Is their pay better? If there is not as much revolving door in European countries, why? What is the reason for it?

Mr. PRESTOWITZ. I think you would have to recognize what Mr. Richardson said is true. The Parliamentary system simply does not provide the opportunities for influence that our system provides.

One, because you do not have a revolving door. Virtually all the officials there are career officials. They are not going to leave in 2 years. They are not thinking about who they are going to work for in 2 years. Their career is in the bureaucracy.

The second thing is, in a parliamentary system, the executive branch and the legislative branch are one and the same. The Prime Minister dominates the Parliament.

Senator BAUCUS. That is true. But why are the bureaucrats more career-oriented in those countries than here?

Mr. PRESTOWITZ. In other countries?

Senator BAUCUS. Yes.

Mr. PRESTOWITZ. Because they do not have the system of political appointment that we have. Japan, Germany, France, England run their governments—the Prime Minister simply does not appoint the top officials in those departments. Their tradition is that he appoints—

Senator BAUCUS. Well like the Finance Minister in Canada.

Mr. PRESTOWITZ. He appoints the Minister and that is it.

Senator BAUCUS. Right. The next level is not appointed.

Mr. PRESTOWITZ. That's right.

Senator BAUCUS. So you are saying—in your judgment, would it help if say not the Secretary of State, but the Under Secretary and Assistant Secretaries were not appointed?

Mr. PRESTOWITZ. In the United States?

Senator BAUCUS. Yes. Would that help?

Mr. PRESTOWITZ. I would like to see a substantial reduction of political appointments, yes.

Senator BAUCUS. Do others on the panel agree with that statement?

Dr. TOLCHIN. I do. I agree with that. You cannot count more than a dozen former government officials in Japan now representing U.S. companies, compared with the hundreds and hundreds in this country in reverse. So I think that something has to be done even though I agree that some companies who have cross ownership are obviously representing Americans as well.

Senator BAUCUS. I might add at that point, the trouble with that concept is that we are not a parliamentary form of government. The Chief Executive, when he is elected, wants to implement policy. In other countries he can because he is the government.

Dr. TOLCHIN. That is correct.

Senator BAUCUS. But in this country it is a bit more difficult. That is a non-parliamentary form of government. And if he could not appoint his people, it would be difficult for him to implement policy. I don't know whether it argues for converting to a parliamentary form of government or not, but I do see problems, frankly, in our form of government of limiting the Chief Executive's ability to make certain appointments.

Dr. TOLCHIN. That is right.

Senator BAUCUS. Go ahead.

Dr. TOLCHIN. I just want to make several points. First, there is the problem of the deficits: we are the land of the free and the home of the deficits—deficits that have cost us our independence with regard to trade and investment policy.

The first solution, of course, is to reduce the deficit and get our house in order. But when you make that kind of a statement, very often it becomes a cop-out for avoiding other areas of policymaking; everyone kind of sits back and says, "well, we cannot do a thing before we reduce our deficits."

As a result we do not scrutinize all the other policies that really could be addressed much more easily than what is most important, of course, reducing our deficits. I think that some of those policies, especially those in the areas of trade and investment policies, could go a long way toward reducing those trade and investment deficits.

For example, why haven't we been able to address the issue of reciprocity? We have the most open country in the world toward foreign investment and I hope we remain that way. But when we try to invest in other countries, we find that the door is not always as open.

Even though there are often no laws restricting investment in other countries, there are customs and traditions that produce the same result. An official in Japan, for example, responded to my question about why the Chrysler Corporation could not open up a corporation jet leasing company in Japan without a majority Japanese partner with: "We knew they would fail; we couldn't let them in."

That is a very interesting example of the very different approach to reciprocity abroad. Why don't American investors have the same privileges in other countries that we grant investors in this country? We are all capitalists. We believe in the freedom to fail, as well as the freedom to succeed. But what has happened is that we are practicing free trade while other countries are practicing managed trade. This leaves us with a seriously blunted competitive

edge. How much would our trade deficit have been reduced had we pushed over the years for investment reciprocity?

Senator BAUCUS. Well that seems to play, and Mr. Prestowitz touched on the same point, asking who are we as a country, what are we all about. Isn't it true, Mr. Richardson, that this openness that we have in our country, which we are proud of as Americans, has a very definite cost? Namely, we do not have any real priorities as a country, who we are and what we are all about so it is not as tempting to establish any preeminence in any industry, say aerospace or semi-conductor. You know, a chip is a chip, whether it is a semi-conductor or a potato chip.

Wouldn't it help if our country did have, if not managed trade, at least some sense of national goal, national focus, so that the offshoot of that would be that the Americans would be more American, be a little less inclined as a cultural matter, as an ethical matter, in making a buck working for a foreign company? Isn't that part of the problem?

Mr. RICHARDSON. I think that is a key and very difficult, important issue, Mr. Chairman. I think that, for example, it makes sense to identify semi-conductors as critically important as Mr. Prestowitz previously noted. I think personally the creation of Sematech was a good idea. The question of how far you can go beyond that in the realm of industrial policy, of course, is a highly controversial issue.

The problem is not so much one of whether or not in principle it might be desirable, it is a question of whether or not it is practical, given an economy of this scale and given the traditional relationships between the private sector and government.

In that connection, Mr. Chairman, I would like to make a couple of other points that were suggested by the comments of other members of the panel. It is important, I think, to keep steadily in view the fact that we deliberately created in Philadelphia in 1787 a very different kind of government than other governments in the world. The Federalist papers visualize the kind of competition among what Madison called factions, that we see exhibited every day here on Capitol Hill.

We have steadfastly clung to the conviction that the public interest would emerge as the result of this kind of competition. The consequence of that in turn is that lobbying whether on behalf of foreign or domestic interests is a very intensive process here in Washington. There is no counterpart in any other capital.

That, in turn, leads to some comments on the revolving door process and the distinction between other governments. Parliamentary distinction is certainly one. And, indeed, in the United Kingdom, for example, the turnover when there is a change in the Prime Minister from one party to another is so limited that Margaret Thatcher, for example, retained as her top private Secretary the same individual who had been the private secretary of her predecessor, the Laborite, James Callaghan.

The number of people who are replaced in the change of government in the principal industrial parliamentary countries is extremely small. My task force with the National Commission of Public Service addressed this issue and called for approximately cutting in half the number of political appointees in the U.S. Gov-

ernment. But that would be cutting it from somewhere over 4,000 to about 2,000 people. That is itself a vastly larger number than those countries have.

I might add, Mr. Chairman, that we have been unable to get introduced in the Senate a bill that would call for that reduction. We have had draft legislation pending in Senator Glenn's committee for some time and no Republican will co-sponsor it because of that single provision.

I would add further, Mr. Chairman, that as an illustration of the point that the U.S. national interest is not necessarily undercut by foreign companies, that the only two companies in the United States that would like to cooperate and are in fact in the process of cooperating in the development of high definition television in the United States in order to compete with Japan are two foreign-owned companies—North American Philips, a Dutch company, and Thomson, a government-owned French company. And if the United States becomes a competitor with Japan in HDTV it will be because of these two foreign-owned companies.

Finally, Mr. Chairman, I would add that there are undoubtedly opportunities for improving the transparency of all of this and giving policy makers better information. While I have appeared from time to time in other hearings with Dr. Tolchin in opposition, for example, to the Bryant bill, I have always said that we in AFII favor improvement in the quality of the information available to policy makers and we have been involved with and supportive of the Exon bill which we hope is about to be placed on the Senate consent calendar, S. 2516. That would improve the quality of information available with respect to foreign investment interests.

Senator BAUCUS. Here is an off the wall question.

Mr. RICHARDSON. Finally, Mr. Chairman, if there are improvements to be made in the Foreign Agents Registration Act, so much the better.

Senator BAUCUS. Do public opinion polls in other countries indicate that the electorates confidence in public officials is declining at the same rate that it seems to be declining in America?

Mr. RICHARDSON. I do not know, Mr. Chairman. Because the level of public confidence in politicians in the United States has never been very high, notwithstanding my own deep conviction that politics is the most difficult of the arts and the noblest of the professions.

Senator BAUCUS. Thank you. [Laughter.]

But I am thinking about an article I saw in the New York Times this morning and maybe the L.A. Times as well, showing the degree to which American's confidence in public officials has declined. I am just curious whether that same phenomenon occurs in other countries to the same degree.

Mr. RICHARDSON. I do not think it is to the same degree, Mr. Chairman, and I think there is real reason to be concerned in the United States by the failure of the political system to address the macroeconomic phenomena that have been touched on here this morning. It is a simple fact that the in-flow of foreign funds has to balance the current account deficit. And those of us who believe that there should be maximum freedom in the flow of foreign investment into and out of the United States do not necessarily be-

lieve that the rate at which the United States has been going in debt has been a healthy thing.

Senator BAUCUS. I would like to ask the panel, to what degree could public financing help address these problems. One of you has spoken in favor of public financing. Let's briefly go down the line.

Mr. PHILLIPS. I did cite that. Let me answer a question that you asked a second ago first. Are other countries showing a decline in confidence in politicians that is somewhat comparable? Yes. In point of fact, Japan. There has been a massive disillusionment on the part of the people in Japan with their politicians and their influence peddling over there.

So I think it is very much to the point in trying to guard against foreign influence with the American political process. You may, in fact, want to look at the quality of politics and influence peddling in Japan, which is perhaps the principal country involved in influence peddling in the United States. So the extent to which confidence in which Japanese politicians and so forth has been declining may actually be relevant to the concern we ought to have here in this country about the role of extending this Japanese political system in the United States.

On the second point, I did mention public financing. I think one of the great difficulties in dealing with foreign political influence is this question of who is foreign and what exactly is a foreign interest relative to American citizens who happen to work for a foreign subsidiary. I think that that suggests that more and more of the emphasis in the end is going to have to be on a system that tries to squeeze out money politics in general as opposed to a very difficult effort to define and ascertain foreign political monetary influence role in the American system.

So I think this does push us toward an argument for public financing of elections.

Senator BAUCUS. Okay.

Mr. Prestowitz?

Mr. PRESTOWITZ. I agree with Mr. Phillips. I would favor moving toward public financing.

I would also say something else with regard to this question of how we handle the definition of what our interest is. I have been listening to Mr. Richardson's testimony and let me say that I have always been a great admirer of Mr. Richardson. I will never forget the tremendous, courageous, heroic act that he performed in refusing to fire the special prosecutor in the Nixon administration. He has always been a hero of mine for that.

But, you know, there is not a counterpart to Mr. Richardson in a number of other countries. He is arguing for free flow of investment into and out of the United States. I think there are many of us who support that concept and principle. But in Japan there is no committee chaired by a man of his stature arguing for the free flow of investment into and out of Japan or in Korea or in France or in anywhere else.

I think that in looking at how we define these issues there has to be some sense of whether we are extending to others privileges in terms of participation in our political processes, in our debate, on the basis of principles which they are saying in the United States

that they adhere to, but which they clearly do not adhere to in their own countries.

I think that is a very important question we need to address.

Senator BAUCUS. Okay.

Dr. Tolchin? Public financing, I will get to you.

Dr. TOLCHIN. Many of the reforms that I would suggest for foreign companies and foreign governments with regard to PAC's should also be extended to U.S. PAC's. The subject of this morning's hearing, however, was on foreign political influences.

I think the question of "foreign" comes up in terms of what is a foreign company and what is a U.S. company? I think it is important for the U.S. Congress to take a look at that very question. It is also important for Americans to know who is giving direction to that particular PAC. Are it leaders taking orders from lobbyists in the United States or from corporate lobbyists who take their direction from foreign capitals?

Where is the corporation's know-how, research and development, and value-added components? Are they located here or at corporate headquarters abroad? They are very important questions that only the Congress can really start to address in a meaningful way.

Because what has happened in this country is that not only are we moving back to the Boston Tea Party, but to a system of governance more like the Articles of Confederation than the Constitution Ambassador Richardson referred to. States are now conducting individual economic policy in this area, seizing the leadership on semi-conductors and automobiles and light trucks and so on away from the Federal Government.

In effect, many of these foreign multinationals are larger than most countries. They are certainly larger than Montana or New Mexico or Kentucky or any of the States that now find themselves in the position of trying to get jobs for their States, luring the Toyotas and other multinationals here with lavish incentives at taxpayers' expense, without anyone here in Washington figuring out whether this is good for the country as a whole.

We are a great country, but we really need to move back to what the Founding Fathers meant.

Senator BAUCUS. Thank you.

Mr. Richardson, you are the final one.

Mr. RICHARDSON. On the question of public financing, Mr. Chairman, I have always thought that was a tough call. I started in politics in an era of small contributions from a lot of individuals and obviously that is a better situation than one in which Government has to write rules as to who qualifies for how much.

Maybe we have reached a point where that has to be done. I also think that we may need to abolish PAC's altogether. But in that connection I think it should be stressed that, speaking as a politician, the pressure is exerted by an interest group which may have a PAC as to its positions, and whether or not it will endorse a candidate—a much more burdensome pressure than any exerted by whether or not the candidate is going to get \$5,000 from a PAC. That is intrinsically a part of the system.

I do not think, therefore, that reforms addressed to campaign financing are going to create courage on the part of candidates, nor

involvement on the part of the general public. The deterioration of the trends in these respects, I think, is genuinely disturbing.

Finally, while I greatly appreciate the kind words by Mr. Prestowitz just now, the fact is that I am not nearly as unique as he would suggest. I can think of, in Japan, for example, Saburo Okita or the late Mr. Maekawa, author of the Maekawa Report, whose basic economic principles and policies toward trade and investment, I would say, are on all fours, not just with mine, but with this administration and with the initiatives put forward being discussed in the Strategic Investments Initiative.

My efforts now in the Philippines are to persuade the Philippines that it is in their interest to reduce barriers to foreign direct investment. It is fair to say that the Government of the Philippines understands that. I think there are many people, many of them holders of Ph.D.'s from American universities in countries all over the world who recognize that the growth of the most successful countries has been in large measure because they have adopted policies of world market competitiveness.

Senator BAUCUS. I want to thank each of you. Each of you have been very, very forthcoming and very thoughtful in your suggestions and your comments. We have a lot of work ahead of us. This is not an easy issue. But we should not shirk from addressing the problems we are facing. I thank each of you very much for coming to testify.

The hearing is adjourned.

[Whereupon, the hearing was adjourned at 11:34 a.m.]



APPENDIX

ADDITIONAL MATERIAL SUBMITTED

[SUBMITTED BY SENATOR BILL BRADLEY]

[From the New Republic, September 24, 1990]

TRB FROM WASHINGTON

THE NEFARIOUS EAST

"Today Japan controls the most sophisticated and successful political-economic machine in the United States." So writes Pat Choate in an excerpt from his long-awaited book about the Japan lobby, *Agents of Influence* (Knopf). The excerpt appears in the current *Harvard Business Review*. You will be hearing a lot about this book, since it says what so many people long to hear, and since its author is a brilliant self-promoter.

According to Choate, Japanese interests spend \$400 million a year influencing political opinion in the U.S. This includes everything from hiring Washington lawyers to funding academic studies. If it also includes bribing public officials or sneaking mind-control drugs into the nation's water supply, Choate hasn't found out, although his ominous, Hitchcockian prose style leads you to expect such horrors around the next page.

Choate's essay is a Potemkin Village of misleading anecdotes and half-true statistics. When he's not hyperventilating, the author adopts the mock-scholarly style of much business writing: the "six basic messages," the "five techniques," the "six national and corporate goals," and so forth. These devices tart up a shoddy piece of work.

It's certainly plausible that all Japanese interests spend a total of \$400 million on "public affairs," broadly defined in the United States. What do they get for their money? Choate's examples of Japanese policy "successes" are few. His insistence that Japan has succeeded in brainwashing the American people into a state of catatonic approval is laughable. What world has Choate been living in? Resentment and hostility toward Japan are epidemic in America, as Choate's book is about to demonstrate.

Lobbyists, public relations consultants, and so on, generally spend at least as much effort hustling their own clients as they do hustling others on behalf of their clients. Choate offers no evidence that the Japanese have beaten these odds. Quite the reverse.

Under the heading "How to Make an American Governor a Japanese Lobbyist," he flourishes—as if he's found the smoking gun—a 1986 speech by Eddie Mahe Jr., "a leading Republican political consultant and a paid adviser to the Japanese embassy," to some Japanese businessmen. Choate summarizes Mahe's advice. First, "couch all issues in terms of jobs." Governors like people who offer to create jobs in their states. Second, "Couch trade issues in real rather than theoretical terms." Third, meet with as many public officials as possible, to develop goodwill. Follow these "three simple principles," and next thing you know, you will be "investing in or opening up a plant in the United States."

Choate does not say how much Mahe got paid for giving away to foreigners these deep secrets of the American system. Nor does he explain what is so awful about offering to create jobs and open factories, or about governors succumbing to such temptations.

With heavy irony, Choate keeps emphasizing that none of the activity he describes is illegal. Most of it, though, isn't even objectionable. He mentions, for exam-

ple, a program that sends American social studies teachers to visit Japan. He fails, characteristically, to note that the United States runs many similar junkets to expose foreigners to our country. Instead, he trumps up a harmless quote from an anonymous consultant: "One teacher who has visited Japan can infect hundreds, even thousands, of other teachers with his or her enthusiasm." *Infect!* Choate declares portentously that this infectious enthusiasm is "the real purpose of the program."

The Washington industry of influence-for-hire—which accounts for just one-fourth of Choate's \$400 million—is indeed deplorable, though hardly invented or used exclusively by the Japanese. Maybe it's somewhat more deplorable, on balance, for Washington big shots to sell their influence to foreigners than to domestic interests. But surely there is a more important ethical question: Are you using your influence to promote bad policies or good policies? Lobbyists for Japanese companies are usually pushing to keep America's markets open. Lobbyists for "American" interests, in disputes with the Japanese, are usually pushing for trade restrictions. Such restrictions may help their particular clients, but they hurt American citizens in general.

Choate's dunderheadedness on this point is illustrated by one of his rare examples of a Japan lobby success. Despite opposition from all three domestic automakers, the Japanese last year got the government to define light trucks as cars, rather than trucks, for purposes of import duties. Cars pay a duty of 2.5 percent; trucks pay 25 percent. The wily Orientals "financed a public relations campaign built on the theme that [the opposite] ruling would harm U.S. consumers by increasing prices on light trucks." Which, of course, it would—a factor Choate does not pause to consider. A 25 percent tariff is a huge burden. And—to the extent you can make any sense of these protectionist distinctions—light trucks are more like passenger cars than like heavy trucks these days, in terms of who buys them and what they are used for. They are consumer items, not business equipment.

But Choate is not through with his story. Having gotten their low tariff, "the Japanese convinced the Bush administration to reclassify the vehicles as trucks" for purposes of meeting fuel efficiency and safety standards. In this case, though, at least one domestic manufacturer, Chrysler, was lobbying alongside the Japanese—a bit of the story Choate leaves out. He also barely mentions that the U.S. Government has imposed a quota on Japanese car imports for almost a decade. A moment's consideration of that small fact would complicate his assertion that the Japanese auto lobby, is a roaring "success."

Choate can be selective. He can also be simply wrong. "Japan is a closed political market," he writes. He has said, "Any Japanese government official who would go to work for an American company in Tokyo would be ostracized." They do it to us, in other words, but they won't let us do it to them. Yet, according to Michael Berger in *The San Francisco Chronicle*, many major American corporations (IBM, Salomon Brothers, etc.) have former Japanese officials on their payrolls in Tokyo. They earn their keep the same way former American officials do: supplying information, lobbying former colleagues, and so on. They are not ostracized.

"Among the nations of the world, only the Japanese government offers a tax break to its companies that make corporate contributions to civic affairs—in the United States. That "civic affairs" is a typical Choate weasel phrase. But civic good works, charitable contributions, advertising, public relations, even lobbying are all tax deductible for American corporations, whether conducted here or abroad.

Fun with numbers. "Japan spends more on its 1,000-person lobby in Washington D.C. than the five most influential American business organizations—the U.S. Chamber of Commerce, the national Association of Manufacturers [etc.]—combined." (Emphasis his.) This impressive but meaningless equation includes spending by Toyota, Mitsubishi, etc., on one side but excludes General Motors, IBM, etc., on the other. The Chamber of Commerce and so on are just a small part of American business's presence in Washington. Any idiot who's lived half a day here knows that American business spends far more than Japanese business trying to affect the American government.

"[B]etween 1973 and 1990, one-third of the principal trade officials in the Office of the U.S. Trade Representative . . . left to become registered foreign agents; most did work for Japan." Since virtually all former USTR officials become trade lobbyists for *someone*, Choate's figures mean that the vast majority are working for American companies (if not for America's true interests). If whoever signs up the most former officials wins the nation's business establishment is safe.

Similarly, the import lobby's political action committee, known as AUTOPAC, is "one of the top PACs in the United States." True. According to the Federal Election Commission, it ranked sixth over the past year, with \$2.86 million to give away. But ranked seventh, just \$100,000 behind, was the United Auto Workers. Over two

years, the UAW comes in way ahead of AUTOPAC. And Ford, Chrysler, and GM also have PACs. Clearly, when it comes to buying the loyalty of America's elected politicians, America's car makers are still No. 1. Choate seems unaware, by the way, that the contributors to AUTOPAC are not Japanese (that's illegal) but Americans who think imports are good for America.

Choate objects to the label "McCarthyism" as a description of his line of patter. Certainly it is not McCarthyite merely to criticize Japan. But Choate's talk of "agents," his easy accusations of disloyalty, his imagery of infection of the body politic, his woozy mixture of false-hoods, half-truths and exaggerations, all strike a familiar chord:

American companies, pressed in the market for the consumer's favor, may now face the defection of their own government as an ally in global competition. For the American public, the issue is even more stark. With so much Japanese money influencing so many officials in government, the question for the American people is, "Who do you trust?"

What would you call that?

Choate is a classic Washington type—a variation on the lobbyists and superlawyers he excoriates—the policy hustler. He makes his living marketing ideas. His income depends on keeping those ideas simple, extreme—and appealing. Until recently he was "vice president for policy analysis" at TRW Corporation. Nice work if you can get it.

Just lately, Choate and TRW have parted ways, apparently over *Agents of Influence*. Choate isn't talking for the record, but he's got friends. "His departure, to the friends, is proof of the book's thesis," according to one of many newspaper articles about the rift. If it's true that TRW no longer finds it useful to have a person with Choate's view's identified as "vice president, TRW Corp." when he's quoted in the papers—and being quoted in the papers was part of what he was being paid for—it's hard to get too indignant. Live by policy, die by policy. Anyway, it says here that Choate still has a "consulting arrangement with TRW. A martyr with a golden parachute! And he says *Japan* has got America conned.

—MICHAEL KINSLEY

PREPARED STATEMENT OF KEVIN PHILLIPS

My name is Kevin Phillips, editor and publisher of the *American Political Report*, and most recently, author of a book, *The Politics of Rich and Poor*, which devotes some attention to the changes in economic policy and wealth patterns during the 1980s and to the rise of foreign political and economic influence in the United States.

What I propose to refer to this morning is this: how growing foreign political and economic influence in the United States is cause for concern, but also a symptom of other problems and historical processes that will not be easy to change or reverse.

Most of the publicity surrounding my recent book has focused on its discussion of the upward redistribution of wealth in the United States during the 1980s and the effect that could have on the economics and politics of the 1990s. But several parts of the book discuss circumstances and trends quite relevant to today's subject of inquiry.

During the 1980s, in a nutshell, a convergence of forces opened up the United States to an unseemly level of foreign political and economic influence. Obviously, this is only a partial list of forces involved, but here they are: First, in the early 1980s, the Reagan Administration decided to do two things—tolerate huge budget deficits and let the trade deficit soar, partly in order to let the U.S. market bolster foreign economies. Within a few years, a lot of foreign companies and nations had a vastly increased stake in the United States as a market for their goods. Then in the second half of the decade, the government—as everyone knows—let the dollar slide to spur U.S. trade and exports. The result was that foreigners now saw their currencies rise. In dollar terms, their wealth soared. That gave them more purchasing power to spend on keeping their access to the U.S. market—and it also made the U.S. a bargain basement in terms of the price levels of corporations and real estate. The result was that foreign investors began buying so much that pretty soon they wound up forming lobbies to protect their *investments* as well as their *markets*. And they had a lot more of both.

During this same period, meanwhile, the United States of the 1980s was going through what *The Politics of Rich and Poor* calls a "heyday" of conservative and capitalist policy—a period of wealth and debt and speculation quite akin to the

1920s and the Gilded Age of the late 19th Century. Besides helping create the economic climate that drew foreign imports into U.S. markets and then drew in foreign corporate and real estate purchases, the spirit of the 1980s did some other things. It made everybody think about money. Markets and transactions were the religion, and government should get out of the way. So just as greed went into overdrive, government lost its desire to regulate. Americans saw foreigners waving their checkbooks and put out their hands. And with so many people talking about the international economy and emphasizing *capitalism over national boundaries*, it didn't matter so much whose money a lawyer, lobbyist or investment banker took. All investment was good, the president said. The "Selling of America" became a business.

The Eighties are over, fortunately, and the country's mood is beginning to change. But undoing the damage will be a process of decades—if ever. We are not talking just about Washington; we are also talking about the new level of foreign influence in and ownership of American *finance*—and even access to American *research* and American *universities*. My sense is that the public is starting to understand what has been lost, and as they understand better, they're going to be angrier still. But dealing with America's new level of foreign influence on decision making is not going to be easy. And since many of the influence-mongers are Americans, drafting legislation won't be easy, either.

My sense is that some of the cures have to be broader and more sweeping correctives of what went wrong in the 1980s. Undoubtedly that includes some legislation dealing with revolving doors, foreign lobbyists and political action committees, but arguably it also suggests a massive reform of the overall Federal lobbying laws and perhaps a shift to Federal financing of elections to restrict the role of private money. Also, government has to correct the excessively deregulatory and "we're all international now" spirit of the 1980s and there are signs of that in the cracking down on foreign insider trading and the tax practices of foreign multi-nationals. Arguably, meanwhile, the tax system also has a role in cracking down on the domestic money culture and, perhaps, in reducing the deficit by increasing the burden on the small minority of Americans whose wealth increased so much during the 1980s. Finally, avoiding another dollar collapse that once again increases wealth and makes America a bargain basement would also be useful. Trying to stop foreign influence-mongers in Washington without reference to these larger pressures and problems probably won't work.

However, let me conclude by coming back to some more *direct* politics. Trying to deal with foreign lobbying and influence-mongering by legislation may be difficult not only because the economic pressure is so huge but because so many of the people involved are Americans. On the other hand, that also suggests a possible solution. Maybe we should begin dealing with the problem at the political level—at the Republican and Democratic National Committees, and in the campaigns of Congressmen and Senators. If foreign influence-peddling is pernicious, then the two national committees and individual Congressmen and Senators should refuse to hire as campaign aides and advisers people who are also lobbyists for foreign interests. It is a big group in this city, and people cut off from influence can't influence-peddle. No legislation is needed for this—and it would send a big message: that America is getting serious about making its *own decisions* in its *own interests*. Thank you for your attention.

PREPARED STATEMENT OF CLYDE PRESTOWITZ

The issue of foreign influence on the U.S. policy-making process has received a substantial amount of attention recently. There is no doubt that such influence is significant; according to some recent reports, spending by Japanese government and industry alone on U.S. lobbying efforts totals in the hundreds of millions of dollars. The large number of former officials in the employ of foreign interests is evidence of the impact that these dollars have in Washington. Outside of the Capitol, one need only look at the dependence of many university scientific research programs on Japanese and other foreign funding to see how much influence foreign interests can have on important projects and technologies. The dependence of top Japan and Asian studies programs in particular on Japanese sources of funding shows the actual and potential power of the Japanese lobby to influence the American debate on Japan-U.S. relations in general, and issues of importance to economic policy makers in particular. As time goes on, the parameters of this issue become increasingly large.

The numbers speak for themselves: total annual Japanese expenditures on lobbying in the U.S. are estimated to exceed \$400 million, equal to the total expenditures of both political parties on their 1988 House and Senate election campaigns combined, and greater than the cumulative total of the five most influential American business organizations. These are the expenditures of Japanese interests alone in lobbying the U.S. government, and do not include the monies spent by other foreign governments and corporations in their own lobbying campaigns.

The numbers, of which you are all aware, point to the substantial impact of foreign interests on the formulation of U.S. economic policies. These influences are not limited to the outcome of particular decisions, but can and do affect both the policy-making process of the government as well as the policy environment in which issues vital to America's economic future are made. I am much more concerned about the indirect influence of foreign interests on U.S. policy-making, and believe that today there exists a serious problem caused by the access foreign interests have to our political decision-making system I am particularly concerned when the activity of foreign interests add up to a constant, coordinated campaign aimed at influencing the entire U.S. policy process.

In looking at the impact of foreign influence, there are three questions which need to be answered: Is foreign influence and the effect it has on our political process something to worry about? If so, what aspects should we worry about? Finally, what should we do to correct the problem caused by the impact of foreign interests on the American political process?

The first question is really one of effectiveness; the influence of foreign interests is only worrisome to the extent that it is effective, or is likely to be effective in the future. I submit that foreign interests operating in the U.S. are extremely effective in influencing the outcome of economic policy decisions in ways which may not be in America's best interest. This is done at many levels: influencing particular decisions, influencing the process by which economic policy decisions are made, and finally by shaping the general environment and terms of the debate, which in turn influence both the process and the outcomes. These indirect effects are far more powerful than lobbying in the classic sense of picking a sac issue and trying to effect a particular outcome.

Let's look at a few concrete examples of the influence of foreign interests on the outcome of policy decisions. When I was in government during a major trade negotiation, a high U.S. official became involved. During this time, he was obviously being coveted by a foreign company, whose chairman wined and dined him at great expense. In this particular negotiation, the official took a much more flexible position than he had earlier taken in similar circumstances. About one year after the negotiation, he left the government and was retained by the firm as a consultant I believe that his representation of U.S. interests in that particular case may have been influenced by the possibility of future employment by that firm.

Other examples include the head of a department in Commerce who left on a Friday, and on Monday was advising foreign clients in his area of expertise. A principal State Department expert on bilateral high technology trade who had prepared position papers, knew the U.S. negotiating strategy, and had access to confidential information on U.S. companies, was hired by one of Japan's largest electronics firms in the position of senior Washington representative right in the middle of negotiations. A lead negotiator for the Commerce department sent out letters to Japanese firms who were on the other side of the table during negotiations, soliciting employment, and touting himself as the best man to represent their interests in Washington. All of the above examples show the tremendous influence that foreign interests have in subverting the American policy process to their particular wishes, which may be injurious to U.S. interests.

A particularly stunning example of this influence occurred recently, with the reclassification of light trucks as cars for import purposes as a result of Japanese lobbying. This decision occurred over the strenuous objections of Chrysler, Ford and GM, and resulted in an annual savings of \$500 million for Japanese auto makers—and an annual loss of \$500 million in U.S. customs receipts. The decision was the result of a coordinated strategy employed by Japanese industry and government to safeguard Japanese—not American—interests.

Foreign interests have gained the ability to affect not only particular outcomes, but the entire process by which decisions are made. When I was in the Commerce Department, there was a particular senior official who was known to be extremely close to a lobbyist. This lobbyist had no notable trade clients until this particular official became involved with trade issues. Almost overnight, the lobbyist bloomed with foreign clientele. It was widely known that the lobbyist woke the official up in the morning and put him to bed at night; he exerted a tremendous influence over

his decisions. I had officials in that agency inform me that they regularly neglected to give this official the benefit of their candid opinions on certain issues because of their concern that it would immediately be passed on clients of the lobbyist.

Another way in which foreign interests can influence the policy-making process can be seen in the making of Presidential appointments. The average tenure of senior U.S. Government officials is approximately 2 years. The Undersecretary of Commerce, Deputy USTR, and similar important positions are filled by appointment, based on the inquiries of White House personnel in consultation with Administration allies and party functionaries. The access of foreign interests to the political process, and the large donations they make, mean that in many cases the White House is consulting with representatives of these interests. As a result, foreign interests can have a large influence on who is named to negotiate with them. An example of the access to this process that foreign interests have was the announcement of Carla Hills' appointment to USTR in Tokyo, two days before it was officially announced in Washington.

Foreign interests can also determine the overall policy environment or debate as well as influencing both the outcome of particular decisions and the process of policy-making. For example, when former government officials are called to testify as "expert witnesses" before Congress, there is often no mention of the current affiliation of these "experts." Although many high-ranking officials have been retained to represent foreign interests, their views are presented as those of objective individuals. Yet the former official who now depends on a foreign benefactor for his daily bread no doubt feels explicit or implicit pressures to not damage his current relationship.

Another example of the impact of foreign influence on the policy debate is the support given to those persons and institutions whose views favor foreign interests. This causes a problem of self-censorship, because institutes or individuals who are dependent on donations must be guided by the sensitivities and concerns of the donors, even in the absence of explicit direction. Persons who are opposed to certain kinds of trade policies are often singled out for massive criticism in various media, and may become the objects of organized campaigns to discredit and denounce them. If you are an academic, or a think tank researcher, and take a particular stance on trade or foreign economic issues, it may be difficult to find employment. As an example, I recently asked a friend of mine, a friend of many years and a person prominent in technological circles, to join my advisory board and work with me on a project. This friend does a lot of work with Japan, and before joining he said that he would have to consult with senior executives in certain Japanese companies to get their assurance that he would not be "blackballed" for working with me.

The above examples are intended to show the effects of foreign influence not so much in achieving a specific payoff or a particular *quid pro quo*, but to craft the environment in which policy discussions are held and decisions made, and to shape the terms of debate in the U.S. on issues of national trade and economic policy. I believe that foreign interests, and the Japanese in particular, are successful in shaping the environment in which policy debates and decisions are made, as well as wielding influence at the level of process and individual decisions.

If it is true that foreign interests are successful in shaping the environment in which these vital policy debates and decisions are made, then the next question is: What is wrong with it? Don't foreign interests have the same rights to representation as U.S. entities and individuals? I believe there are different types of interests. There are many cases where foreign entities need and should have the right to represent themselves to U.S. officials and organizations. For example, when I was in office there was an obscure Commerce regulation which was hampering the ability of the Thai chicken industry to export to the U.S. The industry retained a lobbyist who represented their position, the regulation was removed, and both U.S. consumers and Thai producers benefited from the change. In this case, representation was clearly necessary and acceptable; the interests of both parties to the negotiation were in accord, and both sides benefited. The problem with the access of foreign interests to the government comes when the interests of the foreign entity and those of the U.S. are in conflict. As an extreme example, there is no one in Washington now lobbying for Saddam Hussein; clearly, his interests and those of the U.S. are in conflict, and no upstanding citizen would undertake to convince the U.S. government that they were. Why shouldn't the same logic apply to the less dramatic but possibly more important trade, technology, and economic policy decisions which are made every day in Washington?

The premise of our international trade policy is that all of our trading partners support open markets, free trade, and in general have shared economic objectives and principles. The truth is that in many areas and for various reasons foreign

countries adopt policies in conjunction with industry that are in direct conflict with U.S. interests. The Airbus consortium is an active industrial policy of the governments of Germany, France, Britain and Spain to diminish the U.S. global position in aircraft manufacturing, and supplant it with their production. U.S. leadership in aviation and aerospace is beneficial to the U.S., not only for the jobs it creates and maintains but for the positive spillover effects that this industry has on the economy at large. Similarly, the Japanese Government's support of the supercomputer, optical fiber and semiconductor industries are elements of an active industrial policy aimed at particular objectives which, if realized, would weaken U.S. capabilities in those areas and lead to a corresponding decline in America's level of technology and an erosion of American standards of living.

I submit that representing foreign interests when they are in conflict with U.S. interests pits the interests of the lobbyist against those of his or her own country. This is objectionable under any circumstances; I find it particularly so when the lobbyist is a former high official who is in a position to reveal the U.S. negotiating stance and the positions of U.S. industry participants to their new employers.

What should we do about this? First, it is necessary to define the term "American economic interests." We are ambiguous about this because we operate on the assumption that we have no distinct "economic interest"; in the words of Michael Boskin, head of the Council of Economic Advisors: "Potato chips, semiconductor chips . . . What's the difference?" Until we have a definition of "American economic interests," we cannot deal with the question of foreign influence at all. Once we know and enunciate clearly what our interests and strategy are, it will be easy to identify actions which are incompatible with our interests. This will make it illegitimate for Americans to represent those interests. I realize that making such a definition may take some time but want to stress the central importance of this task in the post-Cold War world, when economics will grow even more important not only to America's prosperity but to its security.

In the short term there are specific measures which can be enacted to eliminate some of the easiest sources of abuse. First among these, the rules regarding former U.S. government officials representing foreign interests must be made stricter. This problem does not exist to a significant extent in any other country of which I am aware. The very decentralization and transparency of the U.S. system makes our government easy to lobby, and particularly susceptible to organized campaigns which aim to "divide and conquer." In parliamentary systems, and in career bureaucracies where officials do not have to worry about job security, officials are open to fewer temptations. In other countries, and especially in Japan, selling oneself to the highest bidder is considered shameful. It is inconceivable that Prime Minister Kaifu or Chancellor Kohl would sell their services to promote foreign or domestic interests, as former President Reagan did in his \$2 million dollar publicity trip to Japan. In the few instances where U.S. firms have retained Japanese advisors, they are not lobbyists in the sense that we use the term here. In many cases, these "advisors" also function as the eyes and ears of the Japanese government inside of U.S. business.

In addition, the functionaries of major political parties, such as fundraisers, convention organizers, and the like, should not be allowed to represent foreign interests. It is unacceptable for the former heads of both the Democratic and the Republican National Committees to have used their clout to arrange meetings with high-level government officials in the course of representing foreign interests.

While these measures are necessary, they are not sufficient to ensure that the U.S. political system serves American needs and interests, and is not dominated by the interests of foreign governments and companies.

To reiterate, we need to define our American economic interests in order to make it clear both to ourselves and to foreign governments and companies which policies and actions represent American interests, and which do not.

PREPARED STATEMENT OF ELLIOT L. RICHARDSON

I. INTRODUCTION

Good morning, Mr. Chairman. My name is Elliot Richardson. I am here this morning on behalf of the Association for International Investment ("AFII") of which I am Chairman.

AFII was founded in early 1988 to represent a partnership of U.S. subsidiaries of foreign companies, American-based multinationals, state governments, and Ameri-

can Chambers of Commerce abroad. We support U.S. international investment policy, which favors the free flow of capital in response to market forces.

AFII does not represent individual members—corporate, state, or chamber—before the Congress or the Administration on matters that affect their particular business interests. Rather, we seek to address issues of public policy that concern everybody with an interest in international investment. I am pleased to have the opportunity to appear before this committee today to address one of these issues of public policy, the role of foreign persons and corporations in the U.S. political process.

Your staff has indicated that there are three topics my testimony should address: the propriety and legality of foreign-owned U.S. company PACs; the adequacy of the Foreign Agents' Registration Act; and the ethical aspects of representation of foreign companies or their U.S. subsidiaries in the political process by former government officials.

I should note from the outset that there are really two distinct themes common to these issues: access to the electoral process and access by foreign-owned U.S. companies to the political process—that is, participating in elections and participating in other governmental processes. When speaking about elections, it is sufficient to say that foreigners have no right to be involved, that "foreignness" itself is a disqualification.¹ I, for one, and AFII for another, firmly believe that foreign persons should not have a role to play in the electoral process. Current law makes this very clear and I have not heard anyone advocating such a change.

Access to the political process is a very different question. The entirety of the American political system is based on a competition of ideas—of an open and transparent decisionmaking system, the very purpose of which is to serve the public interest. Properly stated, the question before us ought not to be whether the U.S. subsidiaries of foreign companies or their American employees should be excluded from the U.S. political process; the issue which should concern us is whether this participation is proper or improper. I intend to devote my testimony to addressing these questions.

II. "FOREIGN" PARTICIPATION IN THE U.S. ELECTORAL PROCESS

As I said a moment ago, AFII and I believe that foreign influence in the American electoral process is inappropriate. That said, I would like to address two issues: attempts to prohibit foreign-owned U.S. companies from sponsoring PACs and the current legal regulation of foreign influence in the political process.

A. FOREIGN DIRECT INVESTMENT AND THE U.S. ELECTORAL PROCESS

1. *Foreign Companies Invest in the U.S. to Make Money, Not to Influence Our Electoral System*

Foreign direct investment in America takes place because foreign companies want to share in the benefits of what is still the most open, dynamic, and exciting economy in the world.² And, once having invested in this country, the U.S. subsidiary is subject to U.S. law and is under constant scrutiny by the American public and press.

Mr. Chairman, I have had the opportunity to read your Dear Colleague letter of May 8th expressing concern with Political Action Committees sponsored by foreign-owned U.S. companies. With respect, I must disagree with the premise upon which your argument is based. In your letter, you say that the trouble with the Federal election law is that "it permits foreign companies to buy into our political process by acquiring U.S. subsidiaries and their American employees who choose to participate in a subsidiary's PAC and then creates inevitable pressure on employees to use their PAC muscle in ways acceptable to the corporate masters in London or Frank-

¹ This disqualification is neither new nor controversial. After all, "the practical importance of nationality lies in its being for many purposes the legally significant tie between the individual and the state." W. Bishop, *International Law* 487 (3rd ed. 1971).

² International direct investment has become an increasingly important force for integrating the world economy. For example, over the 25 year span, 1960-1984, worldwide exports grew faster than international direct investment—at annual rates of 11.8 percent and 9.5 percent, respectively. U.S. Dep't Commerce, *International Direct Investment, Global Trends and the U.S. Role, 1988 Edition* 8 (Nov. 1988). However, in a more recent period, 1983-1988, it has been estimated that international capital flows, in real terms, have risen at a rate in excess of 20 percent per year as compared with a 5 percent annual increase in the volume of world trade. D. Julius, *Global Companies & Public Policy The Growing Challenge of Foreign Direct Investment 14* (1990). For both of these periods of time, both world trade and international investment grew much more rapidly than did world output.

furt or Tokyo." The implication would seem to be that foreign-owned U.S. companies are prepared to exert improper pressure on their American employees to behave in ways that may be inconsistent with the interests of the United States. This is a very serious charge, and I believe it is untrue. I believe that the American executives who run these subsidiaries and their American employees who choose to participate in a subsidiary's PAC would be unlikely to act in ways contrary to the U.S. national interest. Allowing such influence to occur also would be a violation of existing law.

Foreign companies invest in the United States not to influence our electoral process but to make money.³ I understand the concern that economic power should not improperly inject itself into the electoral process. This concern is not peculiar to the presence of foreign-owned U.S. corporate PACs, however, but is a concern arising from the very existence of PACs generally. I am aware of no evidence to the contrary, and only modest anecdotal evidence to indicate that foreign-owned corporate PACs have attempted to exert themselves.⁴ No, Mr. Chairman, I have too much regard for the robustness of our system and the magnitude and innate strength of our economy to think that it could become a real threat.⁵ At its core the issue is whether the treatment accorded U.S. companies and the Americans employed by those companies should differ depending on the nationality of the owners of a majority of corporate shares. For the reasons discussed below, my answer is no.

2. Foreign-Owned U.S. Company PACs

A current and emotionally-charged issue is the role of PACs sponsored by foreign-owned U.S. companies. I note that you, Mr. Chairman, offered an amendment to the Senate campaign finance reform bill, S. 137, which would prohibit U.S. companies with more than 50 percent foreign ownership from organizing or maintaining a PAC. The Federal Election Commission ("FEC") has proposed regulations that invite comments on a Notice of Proposed Rulemaking that would accomplish what your amendment seeks to do through legislation.⁶ And, finally, a proposed House bill would impose a 20 percent foreign ownership threshold which also places restrictions on PACs organized by law firms and trade associations.

One might be tempted to conclude from all this that there exists a pressing public policy issue in need of resolution. As I just noted, however, I am unaware of any such public policy problem having been identified. This should come as no surprise for two reasons. First, current law—which, Mr. Chairman, I believe you sponsored in 1974—isolates foreign influence or control of U.S. corporate PACs. Moreover, contributions by any foreign national in any local, state, or Federal election are prohibited.⁷ The FEC has interpreted this prohibition to extend to any foreign participa-

³ A principal motivation for the rapid increases in direct investment has been the recognition by multinational business enterprises of the necessity of being able to compete in all three major world markets—North America, Europe, and Asia. The United States, as the largest economy in the world, has been an active participant in this practice and is the largest host and home country to direct investment. U.S. and non-U.S. multinational corporations invest abroad for identical reasons: the need to be better able to serve an overseas market. While, initially, it may have been feasible to accomplish this goal primarily through trade, the intensification of competition, the size of the market to be served, and the need to be close to customers and markets require that the businesses engage in direct investment. In the 1980s, much of this investment found its way to U.S. shores, and we are all aware of the growth in foreign direct investment in the U.S. that has occurred.

⁴ See generally M. Tolchin & S. Tolchin, *Buying Into America* (1988); Choate, *Political Advantage: Japan's Campaign for America*, Harv. Bus. Rev. 87 (Sept.-Oct. 1990).

⁵ In spite of the recent large dollar flows of foreign direct investment into America and the expanded operations of U.S. affiliates of foreign parents in this country, foreign ownership continues to play a relatively small role in the U.S. economy. For example, foreign direct investment represented only 2.5 percent of all U.S. domestic net worth in 1989. See generally Board of Governors of the Federal Reserve System, *Balance Sheets for the U.S. Economy 1945-1989* (Apr. 1990). Similarly, while the share of national output accounted for by U.S. affiliates has increased, it still remains small. In 1977, the operations of foreign-owned businesses produced 2.3 percent of the nation's output, while in 1987, the most recent year for which data are available, this share had risen to 4.3 percent. U.S. Dep't. Commerce, *Survey of Current Business* 50 (June 1990). The share of all U.S. employment at U.S. affiliates of foreign parents rose from 1.8 percent in 1977 to 4.1 percent in 1988. U.S. Dep't. Commerce, *Survey of Current Business* 63 (May 1988) and id. at 128 (July 1990).

⁶ Notice of Proposed Rulemaking Concerning Domestic Subsidiaries of Foreign Nationals, 55 *Fed. Reg.* 34280 (Aug. 22, 1990).

⁷ 2 U.S.C. §441e (1988). The Constitutional basis for the legislation is not entirely clear, but would almost certainly arise from the limitation of the right to vote to American citizens found by implication in the Fifteenth and Nineteenth Amendments. See, e.g., *Sugarman v. Dougall*, 413 U.S. 634, 649 (1973).

tion whatsoever in PAC activities.⁸ Thus, the question of who owns the outstanding shares of a U.S. company is in this context irrelevant. Second, the role played by all corporate PACs is limited and foreign-owned U.S. company PACs comprise only a tiny fraction of that limited subset. It is difficult to imagine that even this small fraction of foreign-owned U.S. company PACs would collaborate or even have any reason to collaborate in a "foreign" versus "American" context. Finally, as the data summarized below indicate, the growth of foreign-owned U.S. company PACs and the distribution patterns of candidate contributions as between Democratic and Republican candidates is virtually identical to those for all corporate PACs. Not only is it against the law for foreign persons to influence U.S. corporate PACs, but the data indicate that it has not happened.

The data we have compiled below indicates that the growth in the number as well as the share of corporate PACs has remained proportionate to the increase in all PACs. Throughout the period examined, the role of foreign-owned U.S. company PACs has remained small both in terms of numbers of PACs and financial contributions to candidates.

a. Number of PACs

Table 1 shows the number of PACs, by sponsoring group, for each two-year election cycle going back to the 1979-1980 cycle. The data cover PAC activity through June 30th of the election year for each of the cycles so as to be most comparable to the present, or 1989-1990 cycle.

The total number of PACs has increased from 2,571 in the 1979-1980 cycle to 4,590 PACs during the 1989-1990 cycle. This represents an increase of 2,019 PACs, or 78.5 percent. Over this same interval, the number of corporate sponsored PACs has grown from 1,197 to 1,939, or by 742 PACs, an increase of only 62.0 percent. As a consequence, the relative share of corporate-sponsored PACs to all PACs declined from 46.6 percent in the 1979-1990 election cycle to 42.2 percent for the current election cycle. This information is presented in Table 2.

b. Candidate contributions of PACs

Since the 1979-1980 election cycle, there has been a three-fold increase in the total amount of PAC contributions to candidates from all PACs as well as by corporate-sponsored PACs. As shown in Table 3, candidate contributions from all corporate PACs rose from \$9.6 million for the 1979-1980 election cycle to \$39.2 million for the 1989-1990 cycle. Candidate contributions from all PACs rose from less than \$25 million in the 1979-1980 cycle to \$101.6 million for the current election cycle. However, and more to the point, the relative share of contributions by corporate-sponsored PACs has remained almost unchanged, hovering at 38 percent. This information is shown in Table 4.

Thus, while there have been substantial increases in the absolute amounts of PAC contributions to candidates for Federal office over the past six election cycles, these reflect the increased cost of running a campaign. For example, in the 1980 election, the average campaign expenditure by candidates for the House amounted to \$140,000 while the average in the Senate came to more than \$1 million.⁹ For the 1988 campaign, these expenditures had risen to \$280,000 for the House of Representatives and more than \$2.8 million in the Senate.¹⁰ The point I would like to emphasize is the absence of any evidence to indicate a greater degree of participation in the financing of Federal elections by corporate sponsored PACs. Neither the number nor the contributions to candidates by these PACs have increased relative to the activity undertaken by all PACs.

c. Foreign-owned U.S. company PACs

A 1989 study by the Congressional Research Service, *PACs Sponsored by Corporations Partly or Wholly Owned by Foreign Investors*,¹¹ made an exhaustive search of the records of foreign-owned U. S. company PAC contributions to candidates for Federal office in the 1985-1986 and 1987-1988 election cycles.¹² The study found that there were 102 foreign-owned U.S. company PACs which gave \$2,363,338 to candidates for Federal office in the full 1985-1986 election cycle. This amount represents only 4.8 percent of the \$49.6 million contributed by all corporate PACs.¹³ Two

⁸ FEC Prohibited Contributions, 54 *Fed. Reg.* 48580 (1989) (to be codified at 11 C.F.R. §110.4).

⁹ Congressional Research Service, *Campaign Financing in Federal Elections: A Guide to the Law and its operation* 57 (rev. ed. July 31, 1989).

¹⁰ *Id.*

¹¹ Congressional Research Service, *PACs Sponsored by Corporations Partly or Wholly Owned by Foreign Investors* summary page (Nov. 24, 1989).

¹² *Id.*

¹³ *Id.*

years later, in the 1987-1988 election cycle, 118 corporate PACs with significant foreign ownership gave \$2,812,551 to candidates for Federal office, or some 5 percent of the \$56.3 million total contributed by all corporate PACs.¹⁴ The 102 foreign-owned U.S. corporate PACs in the 1985-1986 cycle¹⁵ represented 5.4 percent of the 1,906 corporate PACs and only 2.2 percent of the 4,596 PACs from all sponsors.¹⁶ For the full two-year 1987-1988 election cycle, the relative participation of foreign-owned PACs also was low. In that cycle, the 118 foreign-owned PACs represented 5.9 percent of the 2,008 corporate PACs and 2.4 percent of the 4,832 PACs from all sponsors.¹⁷

Furthermore, the contributions of these foreign-owned U.S. companies to Federal candidates, as a percentage of PAC contributions to these candidates from all PACs, amounted to only 1.7 percent of all PAC contributions in the 1985-1986 election cycle and to 1.8 percent for the 1987-1988, cycle.¹⁸

The near absence of foreign-owned U.S. companies from the 50 largest corporate contributors is also testimony to the modest role of foreign-owned U.S. PACs. In both the 1985-1986 and 1987-1988 election cycles, only one of the top 50 largest corporate PAC contributors was sponsored by a foreign-owned U.S. company.¹⁹

d. PAC candidate contributions by political party

Foreign-owned U.S. company PACs and all U.S. corporate PACs have followed almost identical patterns in the distribution of their candidate contributions when analyzed by political party. Table 5 and Table 6 provide data for the three election cycles 1985-1986, 1987-1988, and 1989-1990 for the candidate contributions to Republican and Democratic candidates by foreign majority-owned U.S. companies and all U.S. corporations.²⁰ Table 5 shows absolute amounts of contributions while Table 6 shows percentage distributions.

In the 1985-1986 cycle, the foreign majority-owned U.S. company PACs contributed almost \$796,000 to Democratic candidates, or 36.1 percent of their total contributions of \$2.2 million to all candidates. During that same election cycle, all corporate PACs contributed \$17.7 million, or 38.3 percent of their \$46.2 million total contributions, to Democratic candidates. In the 1987-1988 election cycle, the share of total candidate contributions received by Democratic candidates rose to 46 percent for both majority foreign-owned U.S. company PACs and all U.S. company PACs. In the current election cycle, the split between the two parties was also nearly identical; Democratic candidates received 51 percent of foreign majority-owned U.S. company PAC contributions compared to 50 percent of all corporate PAC contributions. For the three election cycles in the aggregate, Democratic candidates received 44 percent of all candidate contributions from both groups of PACs—majority foreign-owned U.S. company PACs and all corporate PACs. These figures and trends indicate that there is no difference in the behavior of PACs on the basis of the nationality of the ownership of the corporation that is sponsoring the PAC.

B. LEGAL REGULATION OF FOREIGN INFLUENCE

1. Regulations Applicable to All U.S. Companies, Whether American or Foreign-owned

Like all U.S. companies, foreign-owned corporations operating in the United States are subject to significant restrictions governing their political activities. These restrictions take two primary forms. The corporations must comply with laws concerning their lobbying activities—their direct attempts to influence congressional legislation.²¹ They are also subject to specific campaign spending limitations.²²

¹⁴ Id.

¹⁵ Measured through Dec. 1986.

¹⁶ Federal Election Commission, FEC Final Report in 1986 PAC Activity 2 (May 5, 1988) [hereinafter FEC 1986].

¹⁷ Federal Election Commission, FEC Final Report Finds Slower Growth of PAC Activity During 2988 Election Cycle 3 (Oct. 31 1989) [hereinafter FEC 1988].

¹⁸ Total contributions from all PACs came to \$139.8 million for 1985-1986 and \$159.2 million for 1987-1988.

¹⁹ FEC 1986, *supra* note 16, at 13, and FEC 1988, *supra* note at 17, at 21.

²⁰ This analysis focuses on majority-owned U.S. company PACs. The CRS analysis of this issue includes PACs with less than foreign majority ownership. See *supra* note 11. Thus, the figures presented vary marginally.

²¹ For a detailed analysis, see F. Krebs, *Corporate Lobbying: Federal and State Regulation*, 25 C.P.S. (BNA 1981 and 1988 Supp.).

²² For a detailed analysis, see G. Merryman, *Regulation of Corporate Political Activity*, 16-3rd C.P.S. (BNA 1988 and 1989 Supp.).

a. Regulation of corporate lobbying

i. Federal Regulation of Lobbying Act.—The primary legislation affecting Congressional lobbying is the Federal Regulation of Lobbying Act.²³ A person is subject to the provisions of the Lobbying Act if he solicits, receives, or collects contributions, having a principal purpose of influencing the passage or defeat of Congressional legislation, and intending to accomplish this purpose by communicating directly with Members of Congress.²⁴ A “person” includes a corporation.²⁵ Every lobbyist (*i.e.*, someone who meets the above test and is paid to influence the passage or defeat of legislation) must register with the Clerk of the House of Representatives and the Secretary of the Senate.²⁶ Registered lobbyists must also file quarterly reports detailing the money they receive and expend on their lobbying activities, the purposes of their lobbying expenditures, as well as the names of publications in which they have published articles or editorials.²⁷ In addition, the Lobbying Act imposes strict record-keeping requirements. All persons (including corporations) subject to the Lobbying Act are required to maintain detailed accounts of their contributions, and must retain receipts for expenditures.²⁸ On a quarterly basis, they must file statements of their accounts with the Clerk of the House of Representatives.²⁹

ii. Other Federal lobbying regulations.—In addition to the Lobbying Act, there are a few other regulations affecting more limited groups of corporations. The Public Utility Act of 1935³⁰ imposes registration and disclosure requirements on covered companies. Also, the Federal Energy Regulatory Commission has enacted an administrative rule which requires the disclosure of certain lobbying expenses.³¹

iii. Tax provisions affecting corporate lobbying.—Lobbying activities are also affected by the Internal Revenue Code and Internal Revenue Service regulations governing the deductibility of corporate expenditures.³² These rules allow for the deduction of direct lobbying expenditures, but only if the proposed legislation is reasonably related to the trade or business of the taxpayer.³³ Moreover, no deduction is allowed for participation in political campaigns, or for attempts to influence the general public on political matters.³⁴

iv. State and local lobbying regulations.—Corporate lobbying activity is also regulated by state and local lobbying laws. All 50 states have enacted lobbying disclosure laws, regulating individual and corporate involvement in state legislative activities, though these statutes vary widely in scope.³⁵ Foreign-owned U.S. companies are subject to all of these regulations.

b. Regulation of corporate campaign financing

i. Federal Election Campaign Act.—Further restrictions on corporate political activity are imposed by the Federal Election Campaign Act of 1971, as amended,³⁶ and the political financing regulations enacted by the FEC.³⁷ Section 441b of FECA makes it unlawful for any corporation to make a contribution or expenditure in connection with any Federal election or primary.³⁸ There are, however, two major exceptions to the general rule. A corporation may still make expenditures for political communications aimed at its stockholders, administrative and executive personnel, and their families.³⁹ A corporation also may establish and administer a separate segregated fund, commonly known as a PAC, through which its stockholders and administrative and executive personnel may make political contributions.⁴⁰ The

²³ 2 U.S.C. §§261-270 (1988) [hereinafter Lobbying Act].

²⁴ 2 U.S.C. §266; *United States v. Harriss*, 347 U.S. 612, 623 (1954). The scope and application of the Lobbying Act may not be entirely clear because of the difficulty in determining who is a covered person within the Court's definition in *Harriss*.

²⁵ 2 U.S.C. §261(c).

²⁶ 2 U.S.C. §267(a).

²⁷ *Id.*

²⁸ 2 U.S.C. §262.

²⁹ 2 U.S.C. §264.

³⁰ 15 U.S.C. §791(i) (1988).

³¹ 18 C.F.R. Part 101, Account 426.4.

³² I.R.C. §162(e); *Treas. Reg.* §1.162-20(b)(2) (as amended in 1969); for a brief discussion, see also *Mertens Law of Federal Income Tax* §§25.167-25.168.

³³ *Id.*

³⁴ *Id.*

³⁵ For a list of citations of state lobbying laws, see F. Krebs, *supra* note 21, at B-1101-02.

³⁶ 2 U.S.C. §431-455 (1988) [hereinafter FECA].

³⁷ 11 C.F.R. §100.1-115.6.

³⁸ 2 U.S.C. §441b(a).

³⁹ 2 U.S.C. §441b(b).

⁴⁰ *Id.*

PAC may also obtain contributions from the corporation's employees who are not classified as administrative or executive personnel, but may solicit them only twice per calendar year.⁴¹ Contributions may not be solicited from outside sources.⁴²

These separate segregated funds are subject to the political committee registration requirements and corporate PACs, like all other political committees, must file periodic reports of contributions and expenditures.⁴³ Also, contributions to separate segregated funds may not exceed the contribution limitations of Section 441a.⁴⁴ A fund is subject to the contribution limitations for individuals unless it qualifies as a multi-candidate political committee.⁴⁵

ii. *Federal Election Commission regulations.*—The FEC has promulgated regulations to implement FECA, and together with the statute itself they provide for the comprehensive regulation of campaign financing.⁴⁶ PAC reports are filed with the FEC, where they are analyzed for compliance with the statutes and regulations.⁴⁷

iii. *State regulation of corporate political contributions.*—In addition to this Federal regulation, there are also state laws which regulate corporate political contributions and expenditures.⁴⁸ Some of these statutes authorize the establishment of separate segregated funds by corporations. It should be clear, therefore, that corporations are limited in their ability to make financial contributions to U.S. political campaigns. The limitations on corporate campaign spending, when added to the extensive regulation of corporate lobbying, mean that all corporations are highly restricted in their efforts to become involved in the U.S. political process. Foreign-owned U.S. corporations must, of course, comply with all of these Federal, as well as state and local, regulations.

2. In Addition, Foreign-Owned U.S. Companies Are Subject to Additional Regulations

The political influence of foreign-owned U.S. companies is regulated even further by laws that do not apply to U.S.-owned companies. The Foreign Agents Registration Act of 1938⁴⁹ requires the registration and continual scrutiny of all U.S. agents acting on behalf of foreign principals.⁵⁰ Moreover, section 441e of FECA specifically bans foreign nationals from directly or indirectly contributing to any political conventions, caucuses, or any primary, general, special, or runoff elections on the local, state, and Federal levels.⁵¹

a. Foreign Agents Registration Act

FARA authorizes the Attorney General to monitor the activities of U.S. agents acting on behalf of foreign principals.

⁴¹ *Id.*

⁴² *Id.*; importantly, all contributions must be given voluntarily. No contributions may be "secured by physical force, job discrimination or financial reprisals."

⁴³ 2 U.S.C. §434.

⁴⁴ Under §441a, an individual may contribute:

- (A) An aggregate of \$1,000 to any political candidate and the candidate's authorized political committees with respect to any election for Federal office;
- (B) An aggregate of \$20,000 per calendar year to the political committees established and maintained by a national political party;
- (C) An aggregate of \$5,000 per calendar year to any other political committee; and
- (D) No more than \$25,000 in aggregate in one calendar year.

A multi-candidate political committee, (defined in §441a(4) as a "political committee which has been registered under section 433 of this title for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office) may contribute:

- (A) An aggregate of \$5,000 to any political candidate and the candidate's authorized political committees with respect to any election for Federal office;
- (B) An aggregate of \$15,000 per calendar year to the political committees established and maintained by a national political party; and
- (C) An aggregate of \$5,000 to any other political committee.

⁴⁵ There is no ceiling on total annual contributions by multi-candidate committees.

⁴⁶ 11 C.F.R. §100.1-115.6.

⁴⁷ 2 U.S.C. §434, 11 C.F.R. §104.1-104.17.

⁴⁸ For a list of citations of state statutes regulating corporate political contributions, see G. Merryman, *supra* note 22, at C-2-3.

⁴⁹ The Foreign Agents Registration Act of 1938, Pub. L. No. 75-583, 52 Stat. 631 (codified as amended at 22 U.S.C. §611) (1988) [hereinafter FARA].

⁵⁰ 22 U.S.C. §612(a).

⁵¹ 2 U.S.C. §441e.

i. The application of FARA.—FARA applies to any person acting as an agent on behalf of a foreign principal. Although certain activities are exempted, they do not include political activities of agents acting for foreign principals.⁵²

FARA defines the term "foreign principal" as a foreign government or political party, a person outside the United States, or an entity that is organized under the laws of a foreign country or has its principal place of business abroad.⁵³

FARA broadly defines the terms foreign government and foreign political party. For example, the term foreign government includes de facto and de jure governments, plus any insurgents claiming authority.⁵⁴

An agent of a foreign principal is defined by FARA as a person who on behalf of a foreign principal or a person who is supervised, controlled, financed, or subsidized by a foreign principal (1) engages in political activities in the United States; (2) acts as a public relations counsel or political consultant in the United States; (3) solicits or distributes contributions, money, or other things of value within the United States; or (4) represents the interest of the foreign principal before any agency or official of the United States government.⁵⁵

FARA does not, however, apply to all activities by U.S. agents on behalf of foreign principals. As far as U.S. agents who represent foreign principals are concerned, there are two main exemptions. FARA exempts attorneys who represent foreign interests in purely commercial matters.⁵⁶ In addition, nonpolitical activities are also exempted from coverage, including activities which are in furtherance of a bona fide trade or commerce.⁵⁷

ii. The requirements of FARA.—An agent acting on behalf of a foreign principal must meet three main requirements. The agent must file a registration statement with the Registration Unit of the Criminal Division Department of Justice.⁵⁸ The agent must also label all political propaganda, as defined by FAPA, and file it with the Registration Unit.⁵⁹ Finally, the agent is required to keep certain books and records of all his activities on behalf of a foreign principal available for inspection.⁶⁰

An agent acting on behalf of a foreign principal must file a registration statement within ten days after the agent-principal relationship arises. Moreover, the agent of a foreign principal must file a supplemental statement updating his original registration every six months⁶¹ and file another statement within thirty days of terminating the agency relationship.⁶²

The registration statement itself requires the disclosure of all aspects of the agent-principal relationship. The agent's nationality and business records must be supplied⁶³ along with a statement detailing the agent's business and listing all employees involved with the principal.⁶⁴ Moreover, the names and addresses of all foreign principals must be submitted along with copies of each written agreement or a full statement of oral agreements between the agent and the foreign principal.⁶⁵

Finally, the agent's registration statement must disclose (1) the nature and amount of contributions, including money or other things of value the agent has received from each foreign principal within the preceding sixty days;⁶⁶ (2) the names, business, and address of all other persons for whom the registrant is acting and whether they are supervised, directed, owned, controlled, or subsidized, in whole or in part, by a foreign principal;⁶⁷ and (3) a statement of expenses incurred on behalf of the foreign principal.⁶⁸

FARA regulates the political speech of foreign principals by requiring their agents to disclose all political propaganda undertaken on their behalf. There are

⁵² 22 U.S.C. §613.

⁵³ 22 U.S.C. §611(a).

⁵⁴ 22 U.S.C. §611(e).

⁵⁵ 22 U.S.C. §611(c).

⁵⁶ 22 U.S.C. §613(g).

⁵⁷ 22 U.S.C. §613(d).

⁵⁸ 22 U.S.C. §612(a); see also 28 C.F.R. §5.3 (1990).

⁵⁹ 22 U.S.C. §614.

⁶⁰ 22 U.S.C. §615.

⁶¹ 22 U.S.C. §612(b).

⁶² 28 C.F.R. §5.205.

⁶³ 22 U.S.C. §611(a)(1).

⁶⁴ 22 U.S.C. §612(a)(3).

⁶⁵ 22 U.S.C. §612(a)(3)&(4).

⁶⁶ 22 U.S.C. §612(a)(5).

⁶⁷ 22 U.S.C. §612(a)(7).

⁶⁸ 22 U.S.C. §612(a)(8).

two basic parts to this regulation—the definition of political propaganda and the filing requirements.

FARA broadly defines political propaganda and covers an agent's representation of a foreign principal before local, state, or Federal governments.⁶⁹ It also covers any Communication that is intended to influence in any way any segment of the U.S. public.⁷⁰

An agent who transmits "propaganda" has 48 hours to file two copies and a statement describing to whom and where it was disseminated.⁷¹ Moreover, the propaganda must be prefaced or accompanied with a statement describing the relationship between the agent and the foreign principal, and the agent must inform the recipient that he is registered as a foreign agent.⁷² Anytime an agent for a foreign principal appears before a Congressional committee, he must furnish the committee with the Most recent copy of his registration statement as a foreign agent.⁷³

iii. *Enforcement of FARA.*—A willful violation of FARA or a willful failure to disclose Material facts is punishable by a fine of up to \$10,000 and five years imprisonment.⁷⁴ Moreover, while an offense continues the Attorney General may enjoin the agent from performing any duties on behalf of the foreign principal.⁷⁵

FARA, as can be seen, is a comprehensive statutory scheme designed to monitor and regulate lobbying activities on behalf of foreign persons. As such, it serves the objectives of controlling U.S. political activities on behalf of foreign entities.

b. *Federal Election Campaign Act*

FECA makes it unlawful for a foreign national to contribute directly or to make a contribution through any other person in connection with a convention, a caucus, a primary, general, or run-off election or any other local, state, or Federal office.⁷⁶ A "foreign national" is defined by reference to the FARA definition of a "foreign principal."⁷⁷ Thus, FECA acts as a direct prohibition on political contributions from any person or entity that is a foreign government, a person outside of United States, a business entity, or combination of persons organized under the laws of a foreign country or having its principal place in a foreign country.⁷⁸

Although foreign-owned U.S. corporations may organize and maintain PACs, the PAC must be solely under the direction of American citizens and may only solicit contributions from American citizens.⁷⁹ Thus, as long as the foreign-owned U.S. company has its principal place of business in the United States, and all those who contribute to and exercise decision-making authority for the PAC are American citizens, the corporation may have a PAC.⁸⁰

c. *Prohibiting Corporate PACs With Majority Ownership Abroad Would Violate the Constitutional Right of Association of American Citizen-Employees*

Prohibiting foreign-owned U.S. corporations from establishing PACs raises serious Constitutional questions because it would deny the American citizen-employees their constitutional right to freedom of association.

The Supreme Court in *NAACP v. Alabama*⁸¹ recognized that freedom of association is a Constitutional right arising out of the First Amendment and made applicable to the states by the Fourteenth Amendment. According to the Court, "[i]t is beyond doubt that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech."⁸² This right was directly applied in a case involving the Federal Government in *Aptheker v. Secretary of State*,⁸³ where the Court observed that "freedom of association is itself

⁶⁹ 22 U.S.C. §611(j).

⁷⁰ *Id.*

⁷¹ 22 U.S.C. §614(a).

⁷² 22 U.S.C. §614(b).

⁷³ 22 U.S.C. §614(f).

⁷⁴ 22 U.S.C. §618(a) (1) & (2).

⁷⁵ 22 U.S.C. §618(f).

⁷⁶ 2 U.S.C. §441e(a).

⁷⁷ 2 U.S.C. §441e(b)(1).

⁷⁸ 22 U.S.C. §611(b)&(c).

⁷⁹ F.E. C. Advisory Op. No. 1978-21, Fed. Election Camp. Fin. Guide (CCH) §5327 (July 17, 1978).

⁸⁰ F.E. C. Advisory Op. No. 1980-100, Fed. Election Camp. Fin. Guide (CCH) §5548 (Sept. 19, 1980).

⁸¹ 357 U.S. 449 (1958).

⁸² *Id.* at 460.

⁸³ 378 U.S. 500 (1964).

guaranteed in the First Amendment.”⁸⁴ In *United States v. Robel*, the Court added that “[o]ur decisions leave little doubt that the right of association is specifically protected by the First Amendment.”⁸⁵

Corporate employees exercise this right to associate by contributing to PACs. Congress created PACs as part of the elaborate statutory scheme to regulate campaign financing. PACs enable stockholders, management, and employees of a corporation to jointly contribute to political campaigns. Congress extended this privilege to all American citizens employed by U.S. corporations.

The Supreme Court has recognized that the activities of these PACs are entitled to First Amendment protection. In *Federal Election Commission v. National Conservative Political Action Committee*, the Court said that PACs “are mechanisms by which large numbers of individuals of modest means can join together in organizations which serve to ‘amplif[y] the voice of their adherent.’”⁸⁶ According to the Court, “the contributors obviously like the message they are hearing from these organizations To say that their collective action in pooling their resources to amplify their voices is not entitled to full First Amendment protection would subordinate the voices of those of modest means as opposed to those sufficiently wealthy to be able to buy expensive media ads with their own resources.”⁸⁷

Earlier, in *Buckley v. Valeo*,⁸⁸ the Court struck down as unconstitutional FECA’s limitation on independent expenditures by political committees (of which corporate PACs are one type), holding that the limitation “precludes most associations from effectively amplifying the voice of their adherents, the original basis for the recognition of First Amendment protection of the freedom of association.”⁸⁹ *Buckley* recognized that this associational right arises from “the rights of [an] organization’s members to advocate their personal points of view in the most effective way.”⁹⁰

Because PACs receive First Amendment protection, restrictions on the right to join these organizations have Constitutional implications. Although there are no doubt limits on the right to freedom of association (just as there are to free speech), governmental action which may curtail this freedom is “subject to the closest scrutiny.”⁹¹ A significant interference with political association rights may be upheld only if the government “demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms.”⁹²

Strict scrutiny would be the appropriate standard of review because the proposed restriction on establishment of PACs by foreign-owned corporation would affect only a limited group of Americans. Therefore, an Equal Protection analysis of this governmental interference with freedom of association would be required, and strict scrutiny applied because of the inequality in access, involving as it does, a fundamental freedom. The government must offer a compelling justification for such a departure from equality of availability of access where it concerns a fundamental right.⁹³

No compelling governmental interest has been put forward to justify an outright ban on the establishment of PACs by foreign-owned American corporations. As discussed previously, no evidence has been offered to indicate that PACs of foreign-owned corporations behave differently than those of American-owned companies. No complaints have been filed with the FEC charging that foreign persons have attempted to influence these PACs. American citizens who work for U.S. companies which are foreign-owned have the same Constitutional right to freedom of association as do those citizens who work for American-owned businesses. First Amendment rights will be discriminatorily impaired, therefore, by a prohibition against participation by U.S. citizens in PACs solely because they are employed by foreign-owned companies. Such a prohibition is likely, therefore, to be declared unconstitutional.

⁸⁴ *Id.* at 507.

⁸⁵ 389 U.S. 258, 263 n. 7 (1967).

⁸⁶ 470 U.S. 480, 494 (1985) (quoting *Buckley v. Valeo*, 424 U.S. 1, 22 (1976)).

⁸⁷ *Id.* at 495.

⁸⁸ 424 U.S. 1.

⁸⁹ *Id.* at 22.

⁹⁰ *Id.* at 75.

⁹¹ *NAACP v. Alabama*, 357 U.S. at 461.

⁹² *Buckley*, 424 U.S. at 25.

⁹³ *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 94-6 (1972); L. Tribe, *American Constitutional Law*, 1454, 1458-60 (2d ed. 1988).

III. PHILOSOPHICAL ISSUES

A. ACCESS TO THE POLITICAL PROCESS VERSUS THE ELECTORAL PROCESS

Mr. Chairman, as I stated at the outset, there is a critical distinction between access to the electoral process and access to the political process. Foreign persons are prohibited from participating in the U.S. electoral process. Indeed, I am unaware of any allegation before the FEC or any other agency that foreign persons have attempted to influence foreign-owned U.S. corporate PACs in violation of U.S. law. Moreover, if such an abuse occurred, the appropriate response would be either to enforce existing law or to enact legislation to deal with an identified abuse.

It seems to me, however, that it goes too far, and that the public interest is actually disserved, by the attempt to anticipate a problem that does not now exist, that may never exist, and that, in any event, is adequately addressed by current law. By this I am, of course, referring to the amendment to the Senate campaign finance reform bill that would prohibit any U.S. company with more than 50 percent foreign ownership from sponsoring a PAC. It seems to me that the only actual result of such a change would be to deprive American citizens of their ability to participate in the electoral process through PACs for the sole reason that their employer is foreign-owned.

A separate question is access to the political process. It is a fundamental tenet of our constitutional framework that government works best when all voices may be heard. Indeed, this very point was central to *The Federalist No. 10*, in which James Madison noted that "factions" were inevitable and that the system of government to be established under the Constitution was designed not only to accommodate it but would function better as a result. By "factions" Madison meant interest groups. And what he foresaw as an "advantage[] promised by a well constructed Union"⁹⁴ was the competition among interest groups to present their cases to the Congress in the hope of obtaining a favorable result. The public interest is best served when legislators cast their votes with more rather than less knowledge of the relevant facts and implications. Thus, competition fosters a more open and broadly representative system.

B. "FOREIGN INFLUENCE"

The question of foreign influence has two facets. First, what do we mean by "foreign?" And, second, does this "influence" somehow jeopardize the national interest?

1. "Who Is Us?"

In his article *Who Is Us?*,⁹⁵ Robert Reich addressed one of the fundamental issues in the debate on the foreign investment "issue." By what measure do we distinguish (and of what relevance is such a distinction) between American and foreign-owned U.S. companies?

For most purposes, corporations established under the laws of a state of the United States are considered U.S. companies, whether American or foreign-owned, although exceptions exist in areas fundamental to the sovereignty of the nation, such as national security and the electoral process. "National treatment" is considered a cornerstone of U. S. international economic policy and is a principle the United States has negotiated for abroad.⁹⁶

The proposition put forward by Prof. Reich, simply stated, is that the nationality of the owner of the shares of a company is increasingly irrelevant. What difference does it make if a U.S. company is American or foreign-owned? Does the nationality of the ownership of a U.S. company automatically contribute to American competitiveness? These questions are raised by the internationalization of industries and the globalization of markets, which has profoundly transformed business. Prof. Reich writes that "the competitiveness of American-owned corporations is not the same as American competitiveness."⁹⁷ Corporations base their business decisions not on the national interest but on the best interests of the corporation. Thus, an American-owned multinational may be American in name only; much of its workforce, manufacturing facilities, and assets may all be located elsewhere in the world. American competitiveness, in contrast, is based on a highly skilled and educated

⁹⁴ *The Federalist No. 10*, at 42 (J. Madison) (G. Wills ed. 1982).

⁹⁵ Reich, *Who Is Us?*, Harv. Bus. Rev. 53 (Jan.-Feb. 1990).

⁹⁶ "[N]ational treatment of corporations means equal treatment with domestic corporations." *Sumitomo Shoji America, Inc. v. Avagliano*, 437 U.S. 176, 188 n.18 (1982) (interpreting the Friendship, Commerce and Navigation Treaty between the United States and Japan, 4 UST 2063, TIAS 2863, in a class action suit alleging a violation of Title VII of the Civil Rights Act).

⁹⁷ Reich, *supra* note 95, at 54.

workforce capable of adding value to the American economy through, among other things, advanced research. Why then does it make sense to provide government funds for High Definition Television, or HDTV, research but limit it only to American-owned U.S. companies? North American Philips Corporation, a Dutch-owned U.S. company with 55,000 American employees and one of AFII's founding members, is doing its worldwide HDTV/NTSC research and development in America using American scientists and engineers, and yet it is "foreign." Indeed, North American Philips, which is the 44th largest U.S. exporter, intends to make its HDTV sets in America. At the same time, an American-owned company may wish to perform all of its research and development abroad, but it will receive government funds. This is a simple illustration of the fact that the ownership of outstanding shares has become increasingly irrelevant.

2. Foreign Direct Investment and Academic Research

Often mentioned in the context of foreign investment is the question of whether foreign companies are stripping America of the fruits of its research. There is no doubt that academic research is important to America's competitive position in the world. However, the role played by international investors or their U.S. subsidiaries is greatly misunderstood.

America's research universities are the jewel in our crown. None of America's economic competitors can rival them, either in number or quality. Part of the strength of America's research universities, and perhaps a large part, results from participation in the international cooperative network of organizations that conducts basic research.

Applied research is generally undertaken by industry and government and is aimed at specific commercial or national goals; consequently, the fruits may be proprietary or classified. By contrast, universities engage in basic or exploratory research motivated by intellectual curiosity. The results of this research, even the most incremental advances, are generally published as quickly as possible because researchers want their colleagues to verify the results and, thereby, to enhance their reputations. It almost goes without saying that the results of this research is available to the international community. Foreign companies or their U.S. subsidiaries who build on this information are not taking away knowledge that is "owned" by the United States.

There is another important aspect to this question, and that is the private sector's support for academic research. I am sorry to say that it is here that America's competitors have done better than America has itself. The Japanese have proven themselves most able in this regard and have, in fact, established labs with many American research universities, while many American companies have been reluctant to underwrite research with potential long-term benefits.

IV. SHOULD FORMER GOVERNMENT OFFICIALS BE "AGENTS OF FOREIGN INFLUENCE?"

One of the questions your staff has asked us to address is the appropriate role in the political process, if any, of former government officials working on behalf of foreign companies or foreign-owned U.S. companies. As I indicated earlier, I have a fundamental problem with the term "foreign," and the question of "foreignness" in this context illustrates the difficulty engendered by the American/foreign-owned U.S. company distinction. On its face, the question implies that it is less appropriate for a former government official to undertake a given assignment on behalf of a foreign-owned U.S. company than on behalf of an American-owned U.S. company. It is not clear to me, however, how the propriety of the former government official's conduct is affected by the nationality of the owners of the company that retains him. Insofar as foreign ownership is otherwise relevant, it is addressed by the FARA provisions already discussed. The more significant relationship, and the one that concerns me more, is that between the former official and the agencies in which he served. Clearly, a former government official should not have influence particular in matters with which he was directly involved.

Beyond this is the question of whether the individual should be barred from any contacts with his former agency or, indeed, the rest of the government and, if so, for how long. This was the question addressed by the Ethics in Government Act of 1978 and the 1989 amendments to that Act.⁹⁸ Neither the Ethics Act nor the amend-

⁹⁸ Ethics in Government Act of 1978, P.L. 95-521, 92 Stat. 1824 [codified at 2 U.S.C. §701 (1978) [hereinafter Ethics Act].

ments, it should be noted, distinguish between government officials representing foreign-owned U.S. company and those representing American-owned U.S. companies.⁹⁹ The amendments do prevent former government officials¹⁰⁰ from representing or advising foreign entities for one year after their government service.¹⁰¹ I would like to take a moment, however, to review the Ethics Act, which addresses the conduct of former government officials representing both foreign and domestic parties in the political process.¹⁰² Finally, in passing, I should note that at least 23 government agencies and departments have their own internal regulations on post-employment conflicts of interest.

A. ETHICS IN GOVERNMENT ACT OF 1978

Title V of the Ethics Act prohibits former government officials from representing or advising parties in areas related to their government duties.¹⁰³ Work done on behalf of both foreign and domestic parties is covered.¹⁰⁴ The Ethics Act is divided into a permanent ban, a two-year ban, and a one-year ban on certain activities.

1. Permanent Ban On Certain Activities

The Ethics Act imposes a lifetime ban on any sort of representation on a matter in which a former employee was personally and substantially involved while in government service.¹⁰⁵ This includes any appearance in a professional capacity, either formal or informal.

2. Two-Year Ban

For two years following employment, a former government official may not represent a party in a matter where the United States is a party and the matter relates to his former official responsibilities.¹⁰⁶ There are two basic components to this prohibition. First, the former government official may not act as an attorney, agent, or representative for a person in a matter within his former official responsibilities.¹⁰⁷ Second, the Ethics Act bans advising, counseling, aiding, or assisting the representation of a person in a matter where the former government official had personal and substantial involvement.¹⁰⁸ This makes lobbying by a covered former employee on behalf of such a client a Federal offense,¹⁰⁹ Punishable by a \$10,000 fine and up to two years imprisonment.¹¹⁰

3. One-Year Ban

Finally, the Ethics Act imposes a one year ban on appearing before or communicating with a former agency on behalf of a principal.¹¹¹ That is, for one year a former agency employee may not make any oral or written communications to the agency on behalf of another party on any matter pending before the agency or within the agency's direct and substantial interest.¹¹² This prohibition has been called into question in light of the recent decision of the U.S. Court of Appeals for the District of Columbia in *U.S. v. Nofziger*.¹¹³ That case held that section 207(c) is inapplicable unless the party acting has personal knowledge of all the facts making the communication illegal.¹¹⁴ Nevertheless, the Ethics Act would still appear to apply to matters that the covered former employee knows were part of his duties.

⁹⁹ 18 U.S.C. §207.

¹⁰⁰ The revised section 207(f) covers senior personnel of the executive branch, members of Congress, committee staff, and a variety of other legislative offices. 18 U.S.C. §207(c)-(e) (to be effective January 1, 1991).

¹⁰¹ The revised Act defines foreign entities as a foreign government or foreign political party as defined by FARA. 18 U.S.C. §207(f) (to be effective January 1, 1991). This would include any foreign corporation that as a part of its activities lobbied foreign governments. 22 U.S.C. §611(f).

¹⁰² 18 U.S.C. §207, as amended by Act of Nov. 30, 1989, Pub. L. No. 101-194.

¹⁰³ 18 U.S.C. §207 (1988).

¹⁰⁴ 18 U.S.C. §207(a)&(b).

¹⁰⁵ 18 U.S.C. §207(a).

¹⁰⁶ 18 U.S.C. §207(b).

¹⁰⁷ 18 U.S.C. §207(b)(i).

¹⁰⁸ 18 U.S.C. §207(b)(ii).

¹⁰⁹ The ban on aiding and assisting applies only to certain "high-level officials." This includes persons paid according to sub chapter II of chapter 53 of title 5 or at a comparable or greater rate. It also applies to active duty military officers assigned a pay grade of 0-9 or above. Finally, it applies to persons with significant decision-making or supervisory authority as designated by the Director of the Office of Government Ethics. 2 U.S.C. §207(d)(1).

¹¹⁰ 18 U.S.C. §207(c).

¹¹¹ 18 U.S.C. §207(c).

¹¹² *Id.*

¹¹³ *U.S. v. Nofsiaer*, 878 F.2d 442 (D.C. Cir. 1989).

¹¹⁴ 878 F.2d at 454.

B. AMENDMENTS TO THE ETHICS ACT

The amended section 207 of the Ethics Act,¹¹⁵ which takes effect on January 1, 1991, directly addresses the representation of foreign entities.¹¹⁶ It makes clear that any covered former government employee,¹¹⁷ must refrain for one year after leaving government service from advising or representing a foreign entity in certain circumstances.¹¹⁸ The ban on representation prohibits communications between the former employee and any officer of a Federal agency or department with the intent to influence him.¹¹⁹ Moreover, the former employee is banned from advising a foreign entity on how to influence a decision of an officer of his former government agency or department.¹²⁰ The ethics Act punishes violators with a fine up to \$50,000 and up to five years in prison for a willful violation and one year for any other violation.¹²¹

C. INTER-AGENCY RESTRICTIONS

It should be noted that many Federal agencies have adopted their own post-employment guidelines.¹²² These civil regulations act as a further check on the lobbying activities of former government officials. Moreover, they focus the attention of senior officials on potential conflict issues.

V. CONCLUSION

Mr. Chairman, as I noted at the outset, the Association for International Investment represents a diverse membership whose otherwise differing views and perspectives converge on a single issue: their support for the free flow of international capital in response to market forces. We support U.S. international investment policy which accords national treatment to investors here and works for national treatment for American investors abroad.

Concerning the three issues raised at this hearing, AFII's position is quite straightforward. And, as I noted at the outset, there are really two common themes: access to the electoral process and access by foreign-owned U.S. companies to the political process.

Simply stated, foreigners should not be involved in America's electoral process. But access to the political process is another matter altogether. American government functions best in light of all the facts, and that means that all parties should have a right to be heard.

On the question of PACs, I think the issue of the nationality of the owners of the shares of a U.S. company is largely irrelevant. If we are troubled by economic power spilling over into the electoral process, then we should be concerned about all PACs, not just the PACS of foreign-owned U.S. companies. The treatment accorded U.S. companies and the American citizen-employees of those companies should not differ depending upon the owners of a majority of corporate shares. Besides, who really knows on any given day who owns the shares of large, publicly-traded companies?

With respect to the adequacy of the Foreign Agents Registration Act, I can only say that a broad net is cast by current law. The two relevant issues would appear to be whether the information currently required is sufficient to meet policymakers' needs and whether the groups the Congress seeks disclosure from are covered by current law. While one could always quibble about the margins, it seems to me the current law is adequate.

The final question is the appropriate role in the political process of former government officials working on behalf of foreign companies or foreign-owned U.S. companies. Leaving aside the issue of who is "foreign," the question implies that it is less appropriate for a former government official to undertake a given assignment on behalf of a foreign-owned U.S. company than on behalf of an American-owned U.S. company. It is not immediately apparent why the propriety of the former official's

¹¹⁵ 18 U.S.C. §207 (to be effective January 1, 1991).

¹¹⁶ The Act defines a foreign entity as a foreign country or foreign political party, as defined by FARA. 18 U.S.C. §207(f)(2) (to be effective January 1, 1991).

¹¹⁷ The Act covers senior personnel of the executive branch, members of Congress, committee staff and a variety of other legislative offices. 18 U.S.C. §207(c)-(e) (to be effective January 1, 1991).

¹¹⁸ 18 U.S.C. §207(f)(1) (to be effective January 1, 1991).

¹¹⁹ 18 U.S.C. §207(f)(1)(A) (to be effective January 1, 1991).

¹²⁰ 18 U.S.C. §207(f)(1)(B) (to be effective January 1, 1991).

¹²¹ 121 18 U.S.C. §216(a)&(b).

¹²² For an illustrative list of agency conflict of interest regulations, see 18 U.S.C.A. §207 (Supp. 1990).

conduct is affected by the nationality of the owners of the company that retains him. The real issue is the ethical considerations guiding the official's relationship with the former agency.

I would like to close by thanking the Committee for inviting my testimony.

Table 1.—NUMBER OF PACS, 1979-1990, ELECTION CYCLE ¹

	1979-80	1981-82	1983-84	1985-86	1987-88	1989-90
Corporate.....	1,197	1,496	1,763	1,834	1,937	1,939
Labor.....	305	389	430	409	394	370
Non-Connected.....	377	794	1,175	1,233	1,200	1,288
Trade/Member Health.....	608	655	684	735	820	783
Cooperative.....	37	49	55	57	61	60
Corporation Without Stock.....	47	96	136	153	166	150
Total.....	2,571	3,479	4,243	4,421	4,578	4,590

¹ Activity through June 30 of the election year.

Source: Federal Election Commission, "PACs Contribute \$94 Million to 1990 Congressional Candidates" (Aug. 31, 1990).

Table 2.—NUMBER OF PACS (PERCENTAGE DISTRIBUTION) 1979-1990 (PERCENT) ELECTION CYCLE ¹

	1979-80	1981-82	1983-84	1985-86	1987-88	1989-90
Corporate.....	46.6	43.0	41.6	41.5	42.3	42.2
Labor.....	11.9	11.2	10.1	9.3	8.6	8.1
Non-Connected.....	14.7	22.8	27.7	27.9	26.2	28.1
Trade/Member Health.....	23.6	18.8	16.1	16.6	17.9	17.1
Cooperative.....	1.4	1.4	1.3	1.3	1.3	1.3
Corporation Without Stock.....	1.8	2.8	3.2	3.5	3.6	3.3
Total.....	100.0	100.0	100.0	100.0	100.0	100.0

¹ Activity through June 30 of the election year.

Source: Table 1.

Table 3.—CONTRIBUTIONS TO CANDIDATES, 1979-1990, ELECTION CYCLE ¹

[Thousands of dollars]

	1979-1980	1981-82	1983-84	1985-86	1987-88	1989-90
Corporate.....	9,571	14,073	21,526	30,329	36,129	39,193
Labor.....	6,033	8,658	12,714	16,428	20,585	21,310
Non-Connected.....	1,396	3,048	6,805	8,943	10,057	9,104
Trade/Member Health.....	7,035	10,766	13,759	19,649	24,284	27,803
Cooperative.....	701	936	1,252	1,678	1,559	1,806
Corporation Without Stock.....	219	545	911	1,470	2,309	2,431
Total.....	24,955	38,025	56,967	78,497	94,924	101,647

¹ Activity through June 30 of the election year.

Source: Federal Election Commission, "PACs Contribute \$94 Million to 1990 Congressional Candidates." (Aug. 31, 1990)

Table 4.—CONTRIBUTION TO CANDIDATES (PERCENTAGE DISTRIBUTION) 1979-1990 (PERCENT) ELECTION CYCLE ¹

	1979-80	1981-82	1983-84	1985-86	1987-88	1989-90
Corporate.....	38.4	37.0	37.8	38.6	38.1	38.6
Labor.....	24.2	22.8	22.3	20.9	21.7	21.0
Non-Connected.....	5.6	8.0	11.9	11.4	10.6	9.0
Trade/Member Health.....	28.2	28.3	24.2	25.0	25.6	27.4
Cooperative.....	2.8	2.5	2.2	2.1	1.6	1.8

Table 4.—CONTRIBUTION TO CANDIDATES (PERCENTAGE DISTRIBUTION) 1979-1990 (PERCENT)
—ELECTION CYCLE ¹—Continued

	1979-80	1981-82	1983-84	1985-86	1987-88	1989-90
Corporation Without Stock.....	0.9	1.4	1.6	1.9	2.4	2.4
Total.....	100.0	100.0	100.0	100.0	100.0	100.0

¹ Activity through June 30 of the election year
Source: Table 3.

Table 5.—CANDIDATE CONTRIBUTION PATTERNS, MAJORITY-FOREIGN-OWNED U.S. CORPORATIONS
AND ALL U.S. CORPORATIONS

(Thousands of dollars)

Election	Majority-foreign owned U.S. corporations	All U.S. corporations
1985-1986:		
Republican.....	1,408.8	28,457.6
Democrat.....	795.9	17,693.8
Total.....	2,204.7	46,151.3
1987-1988:		
Republican.....	1,279.2	28,178.6
Democrat.....	1,099.2	23,994.9
Total.....	2,378.4	52,173.5
1989-1990:		
Republican.....	652.5	17,546.7
Democrat.....	683.1	17,657.1
Total.....	1,335.6	35,208.9

Source: Calculated by AFII from Federal Election Commission Reports.

Table 6.—CANDIDATE CONTRIBUTION PATTERNS, MAJORITY-FOREIGN-OWNED U.S. CORPORATIONS
AND ALL U.S. CORPORATIONS

(In percent)

Election	Majority-foreign owned U.S. corporations	All U.S. corporations
1985-1986:		
Republican.....	63.9	61.7
Democrat.....	36.1	38.3
Total.....	100.0	100.0
1987-1988:		
Republican.....	53.8	54.0
Democrat.....	46.2	46.0
Total.....	100.0	100.0
1989-1990:		
Republican.....	48.9	49.8
Democrat.....	51.1	50.2
Total.....	100.0	100.0
Three election cycles:		
Republican.....	56.4	55.6
Democrat.....	43.6	44.4
Total.....	100.0	100.0

Source: Table 5.

PREPARED STATEMENT OF SUSAN J. TOLCHIN

I welcome this opportunity to testify on the subject of the foreign political influences on U.S. public policy. My comments are drawn from research which appears in *Buying Into America—How Foreign Money is Changing the Face of Our Nation*,¹ co-authored with Martin Tolchin of the New York Times; from data collected for our forthcoming book on foreign investment and U.S. national security; and from current sources. Joining me this morning is my research assistant, Amy Birgenmith, a graduate student in the Department of Public Administration at George Washington University.

Every school child knows the story of how their forebears dumped a load of tea into Boston harbor to protest foreign dominance of their tax system. The rest is history: The War of Independence established a long and proud heritage of American political sovereignty, the struggle to remain free from the wars, economic problems and imperialist agendas of the European nations. The feisty colonists would be surprised today to see their early efforts crushed by the rising tide of foreign political influence, the result of a recent surge of foreign investment into the U.S.

The country was caught unprepared by the staggering numbers of inward investment, which represented the most massive transfer of assets in the history of the industrialized world. Although the \$2.5 trillion plus foreign investment—up from \$196 billion in 1976—brought many benefits, one of the more troubling consequences involves the virtually unrestricted political influence these investors now exercise on American politics. As part of the cost of doing business, foreign governments and foreign-owned companies spend hundreds of millions of dollars to protect their investments; they operate as freely as their U.S. counterparts and enjoy the same constitutional protections the nation guarantees to its own citizens. It is now axiomatic: As investment increases, so will political influence.

Foreign investors own a large stake in perpetuating the current laissez-faire climate toward their investments. America remains the only country among its major trading partners with no policy toward foreign investment; it is also the only country that leaves the fate of its critical technologies, its banks and its manufacturing base to the vagaries of the global marketplace. All major industries are vulnerable, thanks to loopholes in current laws. Foreign owned banking assets, for example, have risen in the last two years from 16 to 25% of total U.S. banking assets. If this trend continues, 77% of all U.S. banking assets will be foreign-owned by the year 2000. This spells enormous potential profits for investors, and a concurrent rise in the political activity to protect them.

Who are these lobbyists, what interests do they represent, and how does our political system work to promote their rapid growth and development? One expanding area of activity that has attracted congressional attention involves foreign PACs. Over 118 Political Action Committees, for example, now answer to foreign multinational parent companies despite the intent of U.S. laws restricting foreign influence on U.S. elections. Several former members of Congress owe their political defeats to the activities of PACs that are influenced by foreign corporations and foreign governments, while others have complained of their increasing political clout. According to the Congressional Research Service, foreign-controlled PACs spent \$2.8 million in 1987-88, accounting for at least 5 percent of all corporate PAC contributions. Although this represents only a minor slice of PAC spending, the existence of foreign-controlled PACs legitimizes the entry of foreign nationals and their representatives into U.S. elections, preparing the way for future expansion.

The argument of the foreign-control led PACs is that they should be considered U.S. companies, since they are incorporated in the United States, hire millions of American workers, and pay taxes to state, Federal and local U.S. governments. At the same time, it is important to remember that these PACs are control led by the corporate lobbyists representing foreign companies and in the case of government-owned corporations, foreign governments. U. S. law has always held that foreign nationals be prohibited from participating in U.S. elections and the intent of that law is very clear. If Americans and their representatives believe that foreign corporations have become such a significant part of American life that they deserve equal representation in the political process then that issue should be fully aired, publicly debated and the law changed.

Other PACs, while technically not defined as foreign PACs, act in the interests of foreign corporations according to the targets of their activities. Last year, four Democratic Senators asked the Justice Department to investigate the activities of

¹ New York: Times Books/Random House, 1988; paperback edition, Berkley/Putnam, 1989; Taiwan and Japan editions, 1989; Korean edition, 1990.

one of the most active of these PACs, the Auto Dealers and Drivers Free Trade P.A.C., alleging that it was acting as a foreign agent for Japanese automobile manufacturers. The group has become one of the largest contributors to congressional candidates, contributing nearly \$2.6 million to congressional races in 1988. The Justice Department later exonerated the auto dealers' PAC, responding that it found no evidence to support the charge that the group was a foreign agent.

A new book by Dr. Pat Choate, *Agents of Influence*, (Knopf, 1990) identifies a latticework of political influence that goes well beyond the PACs and expands the theme of lobbyists as foreign agents. Dr. Choate's work, which represents a great contribution to the literature, identifies over 200 former U.S. government officials—both Democrat and Republic—who have worked as lobbyists for foreign governments and foreign companies during the 1980s. Again, thanks to our relaxed laws in this area, "152 Japanese companies and government agencies have hired 113 firms for Washington representation, in 1988 alone," according to Dr. Choate's research. For this representation and grass-roots activities they will pay more than \$400 million a year, \$100 million in Washington and \$300 million cross the country, a figure that exceeds the combined budgets of the five most influential business organizations in Washington: the U.S. Chamber of Commerce, the National Association of Manufacturers, the Business Roundtable, the Committee for Economic Development, and the American Business Conference. Dr. Choate links U.S. defeats in bilateral negotiations in number of key industries—supercomputers, machine tools, optical fibers, satellites, biotechnology, semiconductors, legal and financial services, aerospace, and telecommunications—to the success of foreign lobbying and America's increasing vulnerability to it.

Another excellent new book, *The Japanese Power Game* (Scribners, 1990), links Japanese political influence in America among other things to America's growing indebtedness—Japan now owns about \$500 billion of U.S. government debt—to Japan. Holstein, a reporter for *Business Week*, concludes that "When an American negotiator threatens to curb Japan's access to the U.S. market, the Japanese understand that this is hollow. Not only do they have channels and access in Washington far over the hapless negotiator's head, but they know how dependent the U.S. government is on Japanese capital."

Foreign political influence takes many forms, and exerts itself on every level of American politics. Evidence of foreign political penetration mounts each day and with each issue as investors and their governments pour increasing amounts of money into their efforts. Since tax policy fomented the birth of the country, perhaps that is a good place to start; let's call it "taxation with representation." A few examples:

- Foreign investors penetrated a closed meeting of the House Ways and Means Committee, resulting in a tax exemption for the Esselte Pendaflex Corporation, an office products company in Garden City, New York, and a wholly-owned subsidiary of Esselte, A.D., a Swedish corporation.

- Foreign investors and the sixteen foreign governments that represented them effectively killed the unitary tax, a state corporate tax that now costs California alone between \$300 and \$600 million a year in lost revenue.

- You don't have to read the President's lips to know that fewer taxes mean more profits. Foreign banks have successfully applied this lesson and not paid their fair share of taxes, and still managed to hoodwink the Internal Revenue Service for at least a decade. No new taxes and no old taxes also helped foreign banks corner market share and gain in the competitive race against U.S. banks, who find it harder to escape IRS scrutiny on their home turf. This spring, the IRS announced that in 1986, the last year for which the agency had comprehensive data, foreign banks reported receipts of \$26.3 billion from their U.S. operations, yet took deductions totalling \$25.9 billion. IRS audits of ten foreign banks in 1989 produced \$100 million in added taxes. How can foreign banks be doing business in the U.S. for ten years and not be making money? It's easy, if you are a multinational corporation and can hide your profits in Zambia; it's even easier if you wield the clout to influence tax policy.

Other examples of political influence abound. In addition to tax legislation and tax enforcement they include victories in trade legislation, ethics laws, defense policy and such basic government functions as information collection. Over the last three years, members of Congress and their staffs report intensified efforts by lobbyists representing foreign interests. One staffer reported spending up to seven hours a day dealing with these lobbyists in the heat of the last trade bill. Senator Tom Harkin, Democrat of Iowa, reflecting the experience of many of his colleagues, testified before the Senate Commerce Committee in March 1988 that a major foreign

multinational in his state called on him and threatened to move the plant to another state if he voted for the Bryant amendment to the 1988 trade bill. Recently, Senator Mitch McConnell, Republican of Kentucky, indicated last month that he'd voted against the Senate measure to ban PACs whose operations are controlled by foreigners because foreign businesses had invested heavily in his state. "My concern was that I've got a Toyota plant in my state," he said.²

The Toshiba case represented one of the most invidious examples of foreign political influence because it affected the nation's ability to monitor its own national security. The loophole that allowed foreign investors to run their own PACs applies in this case as well: the notion that these lobbyists are not foreign multinationals but U.S. companies, since their subsidiaries are incorporated in the United States. Similarly, the law firms and public relations companies representing Toshiba America, Inc., were not required to register with the Justice Department's Foreign Agent Registration Office, because Toshiba America was regarded as a U.S. corporation.

Senator John Heinz, Republican of Pennsylvania, estimated that Toshiba was able, in this way, to spend more than \$9 million to weaken import sanctions levied against Toshiba products in the 1988 trade bill in retaliation for Toshiba's role in selling sensitive, high-tech, defense-related equipment to the Soviet Union. Toshiba paid one law-lobbying firm \$4.3 million. "The message of the Toshiba sanctions is that crime does pay," charged Senator Heinz. "In all the twenty-one years I have been in office, I've never seen a lobbying campaign so orchestrated at so many levels," added Senator Jake Garn, Republican of Utah.

Toshiba prevailed because the money was well spent, and because they used another strategy common to other successful ventures: they organized U.S. companies who depended on Toshiba suppliers. Foreign lobbyists use a variety of techniques at their disposal to influence U.S. companies: they threaten retaliation in their own countries against U.S. subsidiaries, and they work through U.S. suppliers with incentives as well as threats. In the case of unitary tax repeal, Prime Minister Thatcher personally contacted President Reagan as well as initiating an Act of Parliament threatening retaliation against U.S. companies in Great Britain just in case U.S. states proved recalcitrant. Most lobbying takes place on much lower levels, but the results are just as potent. In the Toshiba case, the price of interdependence became clear: U.S. suppliers relied heavily on Toshiba products and did not want to see the company suffer for the decisions of a few.

Foreign governments and foreign companies expended a great deal of money and political capital over the last four years to defeat legislative attempts to improve information collection in the field of foreign investment. Again, the U.S. stands alone in the industrialized world for its paucity of data, as reflected by the following:

- Over sixteen Federal agencies and hundreds of state and local agencies collect data on foreign investment. On the whole, the data are fragmented, duplicative, often inadequate and presented in aggregates that are meaningless and incomplete.
- Real estate acquisitions, for example, are not collected by any Federal agency, despite such dramatic real estate acquisitions that have seen foreign ownership of commercial property rise to nearly 60% in Los Angeles, 33% in Houston, and over 30% in Washington, D.C.
- Foreign acquisitions financed by U.S. banks are not calculated as foreign investments.
- Loopholes in the laws make it easy for foreign investors to conceal their identities through dummy corporations in the Netherlands Antilles or front organizations in the United States.

Other countries know exactly how much foreign money travels across their borders; they have to because they restrict investments they decide are inimical to their national interest. "We couldn't let them in; we knew they would fail," explained Japanese trade official to me last summer, in answer to a question about why his government refused to allow the Chrysler corporation to form a corporate jet leasing company in Japan without a Japanese partner owning a majority of the company. Not only do public officials in Japan know how much money is coming in, but they screen individual companies as well before allowing them to invest. Although no one in the United States suggests duplicating the restrictive Japanese system, one wonders how their lobbyists can argue against a comparable system of data collection for the United States. The reason is simple: The absence of good data

² The New York Times, August 1, 1990.

on foreign investment cripples U.S. policy efforts and that is exactly what politically active foreign investors seek to do.

No one blames foreign investors for their accelerating influence, although many question just why a sovereign nation like the U.S. sits back and ignores it. Foreign investors and their lobbyists function within the law, and they view their activities as critical to the continuing health of their companies. The problem is a U.S. problem, stemming from three basic weaknesses in our system: the temptations and blandishments of our revolving door civil service system, the continuing deficits, and the nation's reluctance to differentiate dependence from interdependence in the global economy.

To take the first problem, the revolving door, America again stands alone among its trading partners in the heavy overlay of political appointees in its public service. The U.S. has 3,000 political appointees in the Federal service; Great Britain has 150; France, 400; West German, 60; and Japan, none. Although the system works to provide more policy flexibility for our President than his counterparts enjoy, in the area of trade policy it works to blunt America's competitive edge. While professional civil servants of long experience serve our major trading partners in trade negotiations, the U.S. must contend with trade negotiators whose average term of service—if they are political appointees—is one and a half years. Examples of conflicts of interest occur with increasing frequency. Senator Strom Thurmond was so angered over the resignation of a leading U.S. textile negotiator who went to work for Hong Kong in the middle of negotiations that he sponsored legislation barring government officials from working for foreign governments and foreign companies for one year after they left government service. President Reagan vetoed the bill.

Early this year, David Olive, an economic and commercial officer at the State Department's Japan desk, left the government in the middle of sensitive negotiations to become deputy director of the new Washington office of Fujitsu, a Japanese electronics manufacturer. Mr. Olive, who helped develop the U.S. negotiating strategy on high tech issues ranging from semiconductors to space stations, took this detailed knowledge with him to his new job. Meanwhile, the U.S. taxpayer has footed the bill for Mr. Olive's on-the-job training, foiled again by the country's fuzzy ethics laws and lax enforcement; lawyers at the Office of Government Ethics said Mr. Olive did not appear to have violated the laws.³

Other officials feather their nests while still in office, as did a Commerce Department official specializing in the auto industry, who wrote to Honda, Nissan and other Japanese auto companies proposing create a trade association to represent their interests after he left office. The official, Robert E. Watkins, served as the department's deputy assistant secretary for automotive affairs and consumer goods; in his official capacity he had negotiated trade agreements with Japan and other countries.

No other industrialized country—either by law or by custom—allows its public officials to share trade secrets with its competitors. This practice raises a number of questions about America's readiness to compete in the increasingly rugged international marketplace. How rigorously will trade officials represent America's interests if even during the short time they remain in office they are looking toward future employment with their present adversaries.

The success enjoyed by foreign lobbyists in the White House is best explained by the second factor: America's new status as a debtor nation. The twin deficits, trade and budget, have propelled America into the dubious status of a net foreign debtor, the first industrialized nation in history to cross the line into debtor status in peacetime. Selling Treasury notes to foreign investors, who hold nearly 30% of the U.S. debt, has become paramount to officials in the executive branch who for the last four years have come to rely on foreign investment of this kind to prop up the budget deficit. Without this foreign investment, the White House keeps reminding the public, interest rates would rise and the nation would risk recession. This fear has led to policies which seek at all costs to pacify foreign investors and, at the very least, do nothing to offend them. Information collection, national security protection, tax policy—any issue that could lead to even minor restrictions on foreign investment meets with stiff White House resistance. Lobbyists know this weakness and take full advantage of it.

Events have propelled the country into a new era in which American national interests must be held paramount. Participation in the global economy shouldn't mean wholesale capitulation on issues that will determine the nation's future posi-

³ Martin Tolchin, "Washington Talk: Capital Ethics," *The New York Times*, November 12, 1987.

tion and economic health. Congress should bite the bullet now, before increasing external political influences further encroach on our interests. Some remedies could include:

- **More Government in the Sunshine.**

The Exon-Lent bill on information collection represents a healthy sign that Congress and the White House recognize the importance of solid data on foreign investment. I hope that Congress continues to legislate to improve information collection so that better foreign investment data becomes available to the public, to scholars and to the press. Since 20% of all investors are foreign governments, not private investors, we need to know exactly who's investing and who is lobbying; without that information our leaders cannot evaluate how this activity helps or hurts American interests. Current aggregate figures grossly underestimate foreign investment, and lack the level of detail critical to responsible decision making.

- **More Government Oversight.**

We need more hearings like this one, to raise issues, close loopholes in the laws, and illuminate the key players on trade and investment issues.

- **Close the Loopholes on PACs.**

I support legislation clarifying foreign influence over PACs as part of an overall effort to restrict foreign influence on the U.S. political process.

- **Halt the Revolving Door.**

Any effort to further professionalize the public service always meets with stiff resistance. A phalanx of elder statesmen of impeccable credentials sound the alarm, testifying before congressional committees that the nation will 'never get good people to serve the government' if they can't look forward to lobbying the government in the future. What an insult to the millions of public servants who enter government as a lifetime career: the dedicated public health officials, the young people in my classes who look forward to serving their country, and the tens of thousands of young men and women now sitting in the broiling sand in Saudi Arabia.

Other countries recruit and retain dedicated public officials and pay them well to serve. You rarely if ever see a Japanese or a French or a German trade official crossing the line mid-negotiation or even after retirement to work for their nation's economic competitors.

Existing ethics legislation as well as pending legislation pales before what is really needed: a ten year moratorium on working for foreign governments or foreign companies for all sub-cabinet public officials, and a lifetime ban for members of the Cabinet.

Each foreign political success spells new limits on U.S. sovereignty. If a nation can't collect its own data, protect its national security, make laws on trade and collect taxes without foreign intervention, then it begins to look more and more like the original colonial government that its citizens fought so hard to refute.