PROTECTING THE ABILITY OF THE UNITED STATES TO TRADE ABROAD

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. Res. 265

A RESOLUTION TO PROTECT THE ABILITY OF THE UNITED STATES TO TRADE ABROAD

OCTOBER 6, 1975

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PROTECTING THE ABILITY OF THE UNITED STATES TO TRADE ABROAD

MONDAY, OCTOBER 6, 1975

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m. in room 2221, Dirksen Senate Office Building, Senator Abraham Ribicoff (chairman of the subcommittee) presiding.

Present: Senators Ribicoff, Byrd, Jr., of Virginia, Gravel, Fannin, Hansen, and Packwood.

Senator RIBICOFF. The committee will be in order.

We are meeting this morning on the basis of Senate Resolution 265, and it is only fitting that these hearings open with Senator Frank Church.

I do want to take this opportunity of commending Senator Church for the outstanding work he has done in this field. His disclosures to the Congress and the public are long overdue. It seems to me were it not for the hard work of Senator Church and his staff, many of these problems would not have come to public view.

I would like to make a few comments of how this resolution came about. The chairman of this committee, Senator Long, and myself, during the month of August visited many capitals of the world—our trading partners. And during this trip we had many occasions to talk with one another about the problems of trade. A report will soon be out for the benefit of the entire Finance Committee.

What disturbed me as I traveled around the world was the realization that American business was being internationally blamed for activities which are very obvious to me were a very common practice throughout the entire world. Not only the countries of the West—Western Europe, Japan, and the United States—but certainly through Africa, the Middle East, and Asia. And the time had come, if we were going to put a stop to the activities of payments under the table, or bribery, by American companies—which we should—I saw no reason why there should not be an international code of conduct applying to American competitors throughout the world, because it became obvious that if it were taken for granted that there would be payoffs, and the American companies, who should be making payoffs then would be barred from making payoffs, the business that they should be getting would be going to foreign competitors who were undertaking the same practices.

There was a considerable discussion. Where do you go about this? How do you do it? We had been in Geneva, and we had had a number

of talks with other trade representatives in GATT, and it became obvious to us that the place where you should start is really at GATT.

Here, the major trading countries of the world were gathered. And it seemed to us that our American trade representative must take the initiative.

It is a good legal issue; it is a good moral issue. And I sort of resented American companies being pilloried for what was a common practice throughout the world. So that is the background of this resolution.

We talked to Senator Church, and he became a cosponsor. It is only right that Senator Church should be the first witness, and I want to express my appreciation for your being here Senator Church.

Are there any comments by Senator Hansen or Senator Packwood?

Senator HANSEN. I have none.

Senator PACKWOOD. I have none.

Senator RIBICOFF. I ask unanimous consent that my complete introductory statement, the committee press release, and Senate Resolution 265 be put in the record at this point.

[The material referred to follows:]

OPENING STATEMENT BY ABE RIBICOFF—FINANCE COMMITTEE HEARINGS ON SENATE RESOLUTION 265

Today, we are holding public hearings on Senate Resolution 265, which Senator Long, Church and myself have cosponsored.

This resolution seeks to insure that American corporations are able to compete fairly in their commercial dealings abroad without being coerced or induced in any way to participate in the widespread practices of bribery, indirect payments, kickbacks or unethical political contributions.

During the past few months, we have all learned of the disturbing extent to which American firms have been involved in these wholly unjustifiable activities. The publicity that has accompanied these disclosures has made it seem to many that this kind of corporate misconduct is primarily an American practice. It has been argued that if we stop our companies from engaging in these sordid activities we will be ending the problem. But the fact is, foreign corporations have been involved too, probably to even a greater extent than our own companies.

To prevent American companies from continuing their past abuses we will need stronger laws that will force complete and accurate disclosure. But that is not enough. To the end the problem we will need an international solution, and that is the goal of this resolution.

So long as foreign companies are willing to make these secret payments, and so long as foreign governments accept, and frequently require bribery, unethical political contributions and the like, strict disclosure laws will only tie the hands of our own corporations and prevent them from competing effectively for thier fair share of foreign markets. If we do not deal with these practices internationally by finding a multilateral solution, the companies of other countries will continue these intolerable practices, and the ability of the United States to trade abroad will be jeopardized.

The Trade Act of 1974 states that "The overall United States objective under section 101 and 102 shall be to obtain more open and equitable access and the harmonization, reduction or elimination of devices which distort trade or commerce."

A foreign government's tacit acceptance of bribery, unethical political contributions and other similar practices by either it's officials or it's companies poses a clear threat to the fair and equitable trade of all nations.

Under the provisions of the Trade Act of 1974, we therefore call on the President to take immediate action on these matters. This resolution urges him, through his Special Representative for Trade Negotiations and other appropriate officials, to initiate negotiations on an international basis in an effort to end this problem. These negotiations should set as their objective the establishment of a code of ethical conduct for commercial dealings with governments and public and private enterprises. Such negotiations could be conducted within the framework of the current multilateral trade negotiations and in such other existing international bodies as may be deemed appropriate.

Without such an international agreement, the problem will go on. The policies of foreign governments will remain unchanged. And the corporations of other nations will continue to engage in these illicit and unethical practices. American corporations will be less able to compete, further straining our troubled economy, as well as our moral indignation.

PRESS RELEASE BY COMMITTEE ON FINANCE

SEPTEMBER 30, 1975.

FINANCE SUBCOMMITTEE ON TRADE SETS HEARINGS ON PRACTICES BURDENING INTERNATIONAL TRADE

The Honorable Abe Ribicoff (D., Conn.), Chairman of the Subcommittee on Trade of the Committee on Finance, today announced that the Subcommittee will hold hearings on the practices of international bribery, kickbacks, and illegal payments burdening international commerce. The hearing will be held at *9:30 a.m. on Monday, October 6, 1975, in Room 2221, Dirksen Senate Office Building.* Leadoff witness will be Senator Frank Church (D., Idaho). The names of additional witnesses who will testify before the Subcommittee will be announced later.

Senator Ribicoff is co-sponsor with Senator Church and Senator Russell B. Long (D., La.), of Senate Resolution 265, a resolution intended to spur the negotiation of an international code of conduct for the elimination of bribery, kickbacks, and other practices burdening international commerce.

The Trade Act of 1974 directed the President to negotiate principles of fair trade and to eliminate, on a reciprocal basis, barriers to the free flow of commerce. "Illegal payments, bribery and kickbacks have become so widespread internationally that they constitute perhaps the most important 'non-tariff barrier' facing businessmen and traders," Senator Ribicoff said. He commended the work of Senator Church's Subcommittee on Multinational Corporations of the Committee on Foreign Relations which revealed what is taking place in the real world in this regard.

Senator Ribicoff pointed out that Senate Resolution 265 directs the President to exercise his authorities under the Trade Act of 1974 to negotiate an international code to eliminate the practices of bribery, kickbacks, and illegal payments which operate as barriers to international trade. He added that the negotiations would be carried out in the context of the GATT multilateral trade negotiations now underway in Geneva.

"This resolution seeks to insure that American corporations and industry are able to compete fairly in foreign markets without being coerced or induced in any way to participate in the widespread practices of bribery, indirect payments, kickbacks or unethical political contributions," the Senator said.

Senator Paul Fannin, Ranking Minority Member of the Subcommittee, said, "It has become apparent that American business has been burdened by certain practices which are contrary to the concept of free trade. I commend Senator Ribicoff for scheduling these hearings."

Senator Ribicoff stated that the Subcommittee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the Record. Statements submitted for inclusion in the Record should be typewritten, not more than 25 double spaced pages in length, and mailed with five (5) copies by October 30, 1975 to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510.

94TH CONGRESS
1ST SESSION

S. RES. 265

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25 (legislative day, SEPTEMBER 11), 1975

Mr. RIBICOFF (for himself, Mr. LONG, and Mr. CHURCH) submitted the following resolution; which was referred to the Committee on Finance

RESOLUTION

To protect the ability of the United States to trade abroad.

Whereas recent statements of American multinational corporations before the Congress and recent disclosures of the Securities and Exchange Commission have revealed that policies and practices in foreign nations necessitate the use of special and unusual payments through middlemen, and the use of direct and indirect payments to foreign government officials, to reasonably and effectively compete in those markets; and

Whereas public disclosure by American multinational corporations and by the Securities and Exchange Commission have revealed direct and indirect involvements by the governments of other nations in unreasonably and unjustifiably restricting and limiting trade and commerce with its agencies and offices by requiring or inducing political contributions to reasonably and effectively compete in those markets; and

Whereas the practices of bribery, indirect payments, kickbacks, unethical political contributions, and other such similar disreputable activities have been found to be widespread internationally and are a significant influence on the conduct of trade and commerce, and may otherwise continue on the part of other governments and business enterprises in other nations, which would give rise to unfair, unjust, and unreasonable conditions of competition in world trade and commerce; and

Whereas it is the intent of Congress that American companies be able to compete fairly without participating or being required, coerced, or otherwise induced to participate in such improper practices; and

Whereas the Trade Act of 1974 stipulates that the overall objective of the United States in negotiating trade agreements is to obtain more open and equitable market access and the harmonization, reduction, or elimination of devices which distort trade or commerce and stipulates as a major purpose of that Act that trade agreements should assure substantially equivalent competitive opportunities for United States commerce, and provides the Executive with appropriate negotiating powers towards these ends; and

Whereas the Trade Act of 1974 requires (section 301) that "whenever the President determines that a foreign country or instrumentality * * * (2) engages in discriminatory or other acts or policies which are unjustifiable or unreasonable and which burden or restrict United States commerce," "the President shall take all appropriate and feasible steps within his power to obtain the elimination of such restrictions or subsidies * * *"; and

Whereas the Trade Act of 1974 and related legislative history provides that the Committee on Finance shall provide oversight and that the chairman of the Committee on Finance shall appoint congressional delegates to serve as official advisors to conferences, meetings, and negotiating sessions relating to agreements pursuant to the Trade Act of 1974: Now, therefore, be it

Resolved, That the President's Special Representative for Trade Negotiations and appropriate officials of the Departments of State, Commerce, Treasury, and Justice, in consultation with the chairman of the Committee on Finance and the congressional delegates for trade agreements, initiate at once negotiations within the framework of the current multilateral trade negotiations in Geneva, and in other negotiations of trade agreements pursuant to the Trade Act of 1974, with the intent of developing an appropriate code of conduct and specific trading obligations among governments, together with suitable procedures for dispute settlement, which would result in elimination of such practices on an international, multilateral basis, including suitable sanctions to cope with problems posed by nonparticipating nations, such codes and written obligations to become part of the international system of rules and obligations within the framework of the General Agreement on Tariffs and Trade,

and other appropriate international trade agreements pursuant to the provisions and intent of the Trade Act of 1974.

Senator RIBICOFF. Senator Church.

STATEMENT OF HON. FRANK CHURCH, U.S. SENATOR FROM THE STATE OF IDAHO

Senator CHURCH. Thank you. Mr. Chairman, members of the committee, I welcome the opportunity to testify before this committee in support of Senate Resolution 265, urging the President to seek an international agreement to curb the widespread practice in international business of paying bribes and kickbacks as a means of promoting exports.

As you have mentioned, the Subcommittee on Multinational Corporations has held extensive hearings on the subject of political contributions and agents' fees paid by U.S. corporations to promote sales abroad. The hearings have convinced me that a solution to this problem must be sought on both the national and on the international levels. The subcommittee will soon introduce strong legislation to curb the illegal practices of U.S. firms operating abroad. But that legislation will be effective only if American companies can be convinced that their competition in other countries are operating under similar constraints. Therefore, I am cosponsoring Resolution 265 in the hope that such an expression from the Congress will convince the administration to take the lead in seeking an international agreement to end these destructive practices.

It has been a very sorry, sordid tale that the subcommittee had heard—a tale of kickbacks and shakedowns, of bribery and corruption in the very highest military and governmental circles abroad, and the condoning of secret slush funds, false bookkeeping, Swiss bank accounts and "fake" subsidiaries by the top executives of some of America's leading firms.

Corporate representatives tell us that corruption is an integral part of doing business abroad; that paying bribes is a common and accepted practice or a way of life, as so many of them put it. They say they have no choice but to go along with the system of payoffs in order to compete with European and Japanese firms; and in the end, this benefits the U.S. economy and does little harm abroad.

But let us be clear that we are not just talking about a little "baksheesh" to grease the palm of some petty clerk in order to speed needed documents on their way through the bureaucratic labyrinth. What we are talking about is a concerted effort by the petroleum industry to buy favorable tax and energy legislation in a European country in which one U.S. company alone made over $50 million in contributions to the government parties and members of the cabinet over a 9-year period.

What we are talking about is an arms industry campaign to flood the Middle East with weapons, in which a U.S. aircraft company paid over $100 million in agents' fees in one country to sell an airplane which has no competitor. A large part of that $100 million is known to have ended up in the Swiss bank accounts of high military and civilian defense officials of the purchasing country.

I could go on with other examples, but it suffices to say that what is at issue here is a massive and widespread perversion of the free enterprise system.

There is no doubt that these practices are common, and that they are used by foreign and American firms alike. The blame for this situation probably rests equally with those who pay the bribes and those who accept them. With sums of this magnitude, it is impossible to say where the shakedown ends and bribery begins.

However, while such methods may be common practice abroad, I am skeptical of the argument that it is perfectly all right because everyone does it. I know of no country where bribes and kickbacks are either legal or publicly accepted. And the fact that the corporations, by their own admission, go to such lengths to disguise these practices, through the use of double bookkeeping, numbered Swiss bank accounts, and a system of code names that would do credit to the CIA, puts the lie to the argument that it is accepted practice.

However, morality in the international business community is not our responsibility, nor is enforcing the law in other lands. What this Government and this Congress must concern itself with are the very real and serious political and economic consequences that spreading corruption can have for U.S. interests both at home and abroad.

Perhaps of most immediate concern is the role of the corporate agents' fees, and through them, bribes to Government officials, in fueling a new arms race in the Middle East and other parts of the world. Documents and public testimony before the Multinational Subcommittee show that military procurement decisions which are supposed to be made on the basis of fundamental national security considerations, instead, all too often, are based on the size of payoffs made to key people in the military and civilian defense establishments. As these bribes are usually a fixed percent of the cost of a particular weapon being sold, the more weapons sold, the bigger the kickback for the purchaser. The incentive is, therefore, great to buy the most expensive weapons and in greater quantities than are really needed. One country's unnecessarily bloated defense budget then immediately becomes the rationale for its neighbors or potential adversaries to acquire more weapons just to keep up. And so it goes in a vicious and never-ending cycle.

Unfortunately, the U.S. Government, and particularly the Departments of State and Defense which often oversee our participation in overseas arms sales, has failed to establish clear guidelines for industry on the use of agents' fees. Instead, it has given some companies the impression that it is willing to tolerate the use and misuse of agents' fees so long as growing arms exports continue to contribute to a more favorable balance of payments for the United States.

For lack of any comprehensive policy to deal with the real root of the problem, the high price of OPEC oil, this administration is depending heavily on the export of sophisticated and expensive weapons to soak up some of the oil money and return it to the U.S.'s economy. Thus, ironically, as the U.S. commitment and direct involvement in maintaining peace in the Middle East is growing, so is its willingness to provide all sides in that conflict with the instruments of another war.

Arms exports do provide jobs and do help the U.S. balance of payments situation. But to make this country's financial and economic well-being dependent on building up an arms race in a politically volatile area such as the Middle East or the Persian Gulf is pure folly.

The arms sales policy of this country and, one would hope, the arms purchasing policy of other countries, should be based exclusively on an assessment of legitimate defense needs. Some other means of providing full employment and a balanced flow of trade for this country must be found. I personally can see no justification for the use of commercial sales agents in what is still primarily a government-to-government transaction. I will recommend that agents' fees on arms sales no longer be considered a justifiable cost of foreign military sales contracts or a deductible business expense for tax purposes.

There is also little doubt that widespread corruption serves to undermine those moderate democratic and pro-free-enterprise governments which the United States has traditionally sought to foster and support. Several oil companies testified before the subcommittee that they had made huge political contributions in Italy and Korea, for example. They claimed to be supporting the democratic forces who are friendly to foreign capital in those countries, but in fact, they were subverting the basic democratic processes of those two countries by making illegal contributions and were, at the same time, providing the radical left with its strongest election issue. The large and steady gains made by the Italian Communist Party in recent elections are due in no small part to the fact that it is believed to be the only non-corrupt political force in the country, while the other parties are seen as the handmaidens of foreign and domestic financial interests. So that while bribes and kickbacks may bolster sales in the short run, the open participation of American firms in such practices can, in the long run, only serve to discredit them and the United States. Ultimately, they create the conditions which bring to power political forces that are no friends of ours, whether a Quaddafi in Libya, or the Communists in Italy.

I have focused on the foreign policy aspects of this issue because that is the chief concern of my subcommittee. But corrupt practices also have an impact here at home. As was revealed by the Watergate investigation, the same techniques used by the corporations to make surreptitious payments abroad were also used to make illegal political contributions in the United States. The slush funds and secret bank accounts from which money was drawn to pay foreign politicans also provided the means of disguising corporate contributions to American politicians.

And as most of the foreign contributions and payoffs are deducted as legitimate business expenses from U.S. taxes owed by the corporations, they also constitute a considerable loss of revenue for the U.S. Government. Finally, smaller firms which cannot afford to maintain a worldwide network of highly paid agents are put at a distinct disadvantage when competing for foreign markets against the large multinationals.

The business community itself is beginning to recognize that corruption is not in the best long-term interest. Robert Dorsey, chairman of the board for Gulf Corp., who admitted in public testimony to having made illegal contributions in Korea, told the subcommittee:

> You can help us and many other multinational companies which are confronted with this problem by enacting legislation which would outlaw any foreign contributions by an American company. Such a statute on our books would make it easier to resist the very intense pressures which are placed upon us from time to time.

Richard Millar and Thomas Jones of the Northrup Corp., testified as well that these are pernicious practices, but that the corporations themselves cannot correct them and that they await legislative guidelines. Thus, it is clear that the business community engaged in international sales, and the executives of important multinational corporations, expect that the Congress of the United States will provide leadership with respect to the U.S. Government policy. That leadership has certainly not been forthcoming from the executive branch.

For these reasons, I feel strongly that some form of national legislation with regard to bribes and payoffs in foreign commerce is in the best domestic and foreign policy interests of this country. The Subcommittee on Multinational Corporations is, at the present time, considering several proposals ranging from an absolute ban on political contributions in foreign countries and the use of agents in arms sales, to more stringent public disclosure of agent and consultant fees paid abroad. Full public disclosure would allow for the legitimate use of agents and consultants while making it very difficult for corporations to disguise payoffs to Government officials.

However, as the Senate Resolution 265 points out, this is not just an American problem, but an international one. Neither I nor my colleagues on the subcommittee have any desire to unfairly penalize U.S. companies in the competition for foreign markets.

Therefore, some form of international agreement is a necessary corollary to any national legislation. The fact that the largest trading nation in the world and the home of most of the leading multinational firms has demonstrated its good faith on this issue by moving unilaterally will, I believe, greatly enhance the acceptability of such an agreement to other governments.

I, therefore, hope that Congress adopts this resolution, and that the President will then take the necessary steps to initiate international negotiations in this vital area as soon as possible.

Senator RIBICOFF. Thank you very much Senator Church.

During your hearing did you receive any testimony of practices of multinational companies based abroad, based in foreign countries other than the United States.

Senator CHURCH. We solicited testimony from American firms with respect to the practices of foreign multinationals. They were not able to give us specifics. They spoke in generalities. They said that they believed that these practices which they themselves admitted were commonplace, they believed that foreign firms did engage in them. But they were not able to furnish us specific information.

Senator RIBICOFF. Is there any question in your mind that this is not merely an American phenomenon, but it is a common practice?

Senator CHURCH. I think it is a common practice. I can understand why executives of American firms would not be able to furnish evidence on foreign firms. But I have seen stories in the press that do relate to foreign firms engaging in payoffs and bribes. I think recently there was some testimony and reports in the press of certain Belgian Members of Parliament, I believe, who spoke of efforts by a French firm to bribe them in connection with the sale of a French war plane. So, I do think we can take judicial notice of the fact that these practices are widespread and certainly are not confined to American firms alone.

Senator RIBICOFF. This Sunday there was a timely article in the New York Times magazine section "Is Bribery Defensible?" And it mentions a certain $200 million contract that Lockheed missed.

> Lockheed did agree to pass no more bribes. And it subsequently lost a jumbo jet contract in India to a French company that Lockheed alleges had contributed $1.5 million to the ruling Congress Party.

That would not surprise you?

Senator CHURCH. No; that would not surprise me.

Senator RIBICOFF. This article also indicates that this practice has been going on since the 1600's when the British East India Co. started to operate in Asia:

> Nations like Great Britain and Sweden, whose standards of government ethics are a good deal stricter than our own take it for granted their businessmen will pay bribes when operating abroad, especially in developing countries. Without it, says the Financial Times of London, business simply would not get done.

Do you feel if there was an international code of conduct that required all multinationals to stay within that code, then there would not be a restriction on business if everybody was on an equal basis.

Senator CHURCH. Of course. Furthermore, I think that even in the developing countries it is seldom that those who really preside over the governments engage in corruptions of this kind; and they do their best to root it out of their own regimes. If it became known to them that American firms refrained from paying big bribes that go into the millions and that add greatly to the cost of the merchandise being purchased, I think in the long run it would be a boon to the American firms.

This easy argument that we must do it because others do and what does it matter because we can add the price of it to the cost of merchandise and indeed, even take it as a deductible item on our taxes, really means that we throw ourselves in bed with these other foreign companies and we become smeared by the same brush. I think it is a very shortsighted practice and even if American firms were to refrain from doing it unilaterally, I believe in the long run it would serve their best interests.

Nevertheless, they do feel the hot breath of their competitors. They do believe that their competitors engage in this practice and so an international code of conduct, if it can be obtained and enforced, would be the ideal solution to the problem.

Senator RIBICOFF. In your work with your subcommittee did you find that these bribes and payoffs only took place in developing countries or were they also part and parcel of even developed countries?

Senator CHURCH. There is no line of demarcation. It is easy for us to say that in developing countries, particularly when we are thinking in terms of Africa and Asia, that their cultures are corrupt. That is a peculiar form of Western myopia. The truth of the matter is that we have found equally corrupt practices in Western Europe, particularly it is true in Italy. We are now looking at Germany. I am afraid we are going to find the same practices developing in Germany. So that this is not a matter that you can say was regional or has to do exclusively with the underdeveloped countries. It is a worldwide problem.

Senator RIBICOFF. Senator Fannin?

Senator FANNIN. Thank you, Mr. Chairman. I am sorry I was not here to listen to your full statement. I know that you have been going into this matter very thoroughly. I also agree with you that we cannot condone bribery, payola, that certainly we want to do our part and more to try to control what is happening in our American companies, as well as in other parts of the world.

The Latin American companies have been talked about for years about payoffs and all. It is a very serious problem. Do you not consider this as a trade problem, the same as foreign subsidies would be a trade problem, although this is more serious and it is in a little different category?

As I say, I am not in any way comparing them from the standpoint of the illicit part of the problems we are having with the payoffs. But is this not something that could be handled through General Agreements on Tarrifs and Trade to a certain extent?

Senator CHURCH. I think it would be very helpful if a code of conduct could be established. There would be serious problems of enforcing it, of course, but, nevertheless, it would be a step in the right direction.

It is true that this a trade problem. It is also true in the larger and deeper sense that it is a political problem because when these practices become too pervasive as they have in Italy, we see the Communist Party making dramatic gains. So what starts out to be a trade problem, soon becomes a political problem. And, practices of this kind, when they start abroad, have a way of coming back to plague us in our own country. Corporations that get in the habit of doing this kind of business abroad feel less and less inhibition about doing it here at home as well. We have seen much evidence of this.

Senator FANNIN. I agree with you. It certainly is a political problem. In South America this has been a serious problem in many of the countries; Brazil, Argentina, Chile, and quite a number of the other—Paraguay, Uraguay, the ones that do work with the Communist countries and especially the Soviet Union. And the Soviet Union is subsidized from the standpoint of furnishing funds for many subversive organizations that would perhaps even get into the trade program. So I agree this is something we should work toward solving to the greatest extent possible and I think this is something we will question Ambassador Dent about since he is going to be the next witness. But we certainly appreciate your comments.

Senator CHURCH. Thank you, Senator.

Senator RIBICOFF. Senator Hansen?

Senator HANSEN. Senator Church, as a practical matter, how quickly do you think we can make any significant progress in this area? Would it be your conviction that we will be able to persuade a majority of nations around the world now participating in this sub rosa kind of dealing to enter into an agreement with us?

Senator CHURCH. I suppose that the Ambassador could best respond to that question. My curbstone opinion would be, it might not be too difficult to secure agreement on a code of conduct. The difficulty will lay in enforcing it afterwards. And that is why I think that such a code, though it is certainly a worthy objective, will not represent an adequate solution to this problem. I think it will have to combine some attempt to achieve a code of conduct at the international level with some law in this country dealing directly with the problem as it affects American firms.

Senator HANSEN. Internationally, how widespread is the admission by companies in other nations to admit what American corporations here have admitted? Do British, Japanese, French, German firms admit it?

Senator CHURCH. I do not know that either the English or the Japanese Governments have undertaken an investigation of this matter. Actually, it has been through the investigation of my Subcommittee on Multinational Corporations that this has first come to light. But that has had some interesting repercussions. Since we began to make these disclosures, both Iran and Saudi Arabia have made laws or edicts against the use of commissions in connection with the purchase of military weapons, so foreign governments are beginning to react to these disclosures.

I think that we can expect some European governments to open up inquiries now. An inquiry that is somewhat comparable is underway in Germany. We really did open up the question with the disclosures that we have made in the past few months and I expect we will see more governmental reaction to those disclosures in foreign capitals.

Senator HANSEN. Senator Church I am going to pose a series of hypotheticals and follow them with a question. Your committee has made public findings of wrongdoing in this and other countries. If we assume an appropriate interval for other countries to examine their business corporations; then, assume there may be perhaps three or four countries in the world willing to then enter into an international agreement with us as the resolution before us proposes; then further assume that those few nations who agree upon a specific course of action will follow through with the enactment of domestic legislation making these activities illegal. Is it your suggestion that this small group of nations will provide the framework and precedent for other nations to act likewise. Further do you believe nations will seek to trade with those nations which have outlawed the activities mentioned in the resolution because those agreeing nations will have lower priced commodities.

Senator CHURCH. Absolutely. I think, as I said earlier, nothing would have a greater long-term benefit than for it to be known throughout the world that when you deal with American firms you are not engaging in big payoffs to governmental officials in the purchasing country that adds immensely to the price. But your question leads me also to the conclusion that if this could be made, this general subject could be made the subject of an international convention. If the parties, the governmental parties to the convention, undertook to back up their treaty obligation with appropriate domestic law, that would be the most effective means of all for dealing with the problem.

Senator HANSEN. Well, I suspect that if we were to proceed as you indicate and did secure the support of a few other nations and proclaimed to the rest of the world that companies national to that group of countries who made illegal such practices we would be in a position to say to other nations we can sell you whatever you need more cheaply because there will not be any payola attached. However, it might not follow that the response by the purchasing authorities in other countries around the world would be as immediate as favorable

as we would hope. I guess that is one of those things we just have to find out.

Senator CHURCH. Yes, it is a risk we have to take.

Senator HANSEN. It is a risk we have to take. I think you made a very important contribution. I do not know how these things are going to work. I am a little bit dismayed with the prospects of achieving very quickly any international agreement or accord. It seems like we cannot hardly agree on the time of day, let alone anything else.

Senator CHURCH. It is always a slow process.

Senator HANSEN. Thank you, Mr. Chairman.

Senator RIBICOFF. Senator Packwood?

Senator PACKWOOD. Frank, in your statement you make reference to considering several proposals ranging from an absolute ban on political contributions in foreign countries, and several other things.

Let me first say this. In Oregon, it is legal for corporations to contribute to ballot issues. If corporations are allowed to make contributions in Oregon legally, is there any reason why American corporations should be prohibited by American law from contributions?

Senator CHURCH. No. I had in mind those foreign countries where the making of a corporate contribution to a political party or to a political candidate was illegal under the laws of that country. That, I understand, is the case in many foreign countries. I would think it would be sufficient simply to outlaw corporate contributions in foreign lands where such contributions are illegal under the laws of the land of the country concerned.

Senator PACKWOOD. That brings us down to a tougher question. So in essence, you are saying we are not going to try to impose our standard on other countries if they legally allow something. The problem comes with all the things in theory that they legally ban, but in practice they actually accept.

Senator CHURCH. Yes.

Senator PACKWOOD. And there your statement is somewhat amorphous. You are not really saying, why, of course, those countries ban them and they enforce them, and the Americans are leading the way in violation. You are not saying that. And yet you are saying that if they are illegal in a foreign country, that we should make them illegal by American law. I am not quite following your train of thought.

Senator CHURCH. By American law we have already made corporate contributions, corporate political contributions, illegal in this country. Since the multinationals are domiciled in this country, we also have the authority to make such contributions illegal abroad under American law.

My suggestion is that we make them illegal only where, under the laws of a foreign country, they are also illegal.

Senator PACKWOOD. I understand that. It is more de facto rather than de jure where contributions are made under the table, where bribes are made under the table, and we all are aware that they are made. Are you saying that if the law of the country outlaws bribes in somewhat the same way we outlaw corporations and at the same time we practice it, where a foreign county outlaw such practices, we would almost incorporate that and make it a violation of American law, and we would enforce it ourselves regardless of whether the foreign country enforces its own law?

Senator CHURCH. That is right. That is what I am saying, and there is no doubt in my mind that the U.S. Government has the authority to do this. I think that unless we do enact laws of this kind, we are not likely to root out the practice.

As a matter of fact, a number of the corporate executives who have appeared before this Subcommittee on Multinational Corporations, as I indicated in this statement, asked for the enactment of such laws, because they find themselves under great pressure from time to time. They felt that if our law prohibited the practice, they then could stand up to that pressure and say, "Look, we cannot do it, because regardless of whether or not we will be penalized in Korea for doing it, we would be violating American law, and we would be subject to the penalties that are prescribed under American law for this action."

I think such a law would give these corporate executives a measure of protection in dealing with the pressures of extortion in foreign countries.

Senator PACKWOOD. I have no further questions, Mr. Chairman.

Senator RIBICOFF. Thank you very much. We do appreciate your taking the time out of a very busy day.

Senator CHURCH. Thank you very much, Mr. Chairman.

Senator RIBICOFF. Ambassador Dent, please?

STATEMENT OF HON. FREDERICK B. DENT, SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS, EXECUTIVE OFFICE OF THE PRESIDENT

Ambassador DENT. Mr. Chairman and members of the subcommittee, it is as always a pleasure for me to meet with our congressional advisers in a continuing effort to seek international agreements which will facilitate the freer and fairer world trade mandated by the Trade Act of 1974.

In this connection, you have asked for my views on Senate Resolution 265, which I gather is aimed at this same worthy objective. Frankly, I regret that in the case of this initiative, there has not been time since its introduction 10 days ago for the consideration and consultation which we regard as central to our mutual responsibilities in the crucial current round of multilateral trade negotiations. However, recognizing and appreciating your desire to move quickly on this important issue, I am delighted to share with you our reactions.

As we understand it, Senate Resolution 265 is intended to focus world attention on what is now being increasingly revealed as a very serious problem; defined in the resolution as "practices of bribery, indirect payments, kickbacks, unethical political contributions, and other such similar disreputable activities which have been found to be widespread internationally and are a significant influence on the conduct of trade and commerce." Moreover, we recognize as the intent of the resolution that we not simply recognize and expose these unfortunate and disruptive unethical practices, but that we do something to prevent them.

Mr. Chairman, I fully agree with the thrust and purposes of Senate Resolution 265. I can assure you that I reflect the resolve of the President and this administration in saying that we are determined that corrective action to control these abuses must and will be taken.

Let me substantiate that endorsement in principle by citing a few specifics. Treasury Secretary Simon has discussed the problem with the Finance Ministers of Germany, France, Canada, Japan, and Britain at the recent meeting of the World Bank and International Monetary Fund, and with the Secretary General of the Organization of Economic Cooperation and Development—OECD—all of whom have responded favorably to the idea of an internationally developed corrective to it. Accordingly, the United States has proposed such a provision to the current session of the OECD Committee on International Investment and Multinational Enterprises, where guidelines for multinational enterprises are currently being considered. An OECD working party on restrictive business practices also is actively concerned with business-government dealings.

Secretary of State Kissinger, in his September 1 speech to the Special Session of United Nations in New York, pledged U.S. leadership and cooperation in its efforts, specifically through a number of its related organizations, such as the new U.N. Commission on Trans-National Corporations, the U.N. Conference on Trade and Development, and others, to codify and establish ethical guidelines for international business practices.

This also is an immediate concern of Defense Secretary Schlesinger's as well, particularly in the area of arms sales, in which the Pentagon and State Department have cooperated in applying stricter new regulations governing disclosure of payments and fees made in weapons sale and purchase contracts. Under new requirements of the State Department announced on September 25, U.S. arms exporters must certify their contact for the purchasing government, including the name of any agent and amount of fee paid; while the Defense Security Assistance Agency requires additionally an approval of such certification from the purchasing government.

Further, the United States has participated actively in efforts of regional international organizations such as the Organization of American States, through its Economic and Social Council, and Inter-American Committee on the Alliance for Progress, to explore and develop the work for similar codes of multinational business and business-government ethics, often in close consultation with such institutions as Harvard University, the Massachusetts Institute of Technology, and the Stanford Regional Institute.

Resolution 265 quite correctly makes clear that this problem is not one which plagues private corporate enterprises of United States or foreign nationality alone, but rather that it is governmental as well as private in scope.

Nevertheless, this committee will be interested in, and perhaps may wish to review and consider, some of the extensive analyses and recommendations on this subject which have been developed by private international business organizations on behalf of leading executives who represent the best of private entrepreneurial statesmanship in trade, commerce, banking, and finance throughout the world.

To cite just a few which come to mind:

The International Chamber of Commerce has developed a set of "Guidelines for International Investment" which includes observance of national laws and requirements for disclosure of profits and other financial information.

The Pacific Basin Economic Council, comprised of regional private enterprise leaders, has adopted a "Charter on International Investments" which, among other suggested requirements, calls for maintenance of "high standards of conduct . . . and integrity."

The Chamber of Commerce of the United States has drawn up "Elements of Global Business Conduct," including strict legal observance and refrain from partisan political activity.

This document, in fact, has served as the basis for adoption of a growing number of individual corporate ethical standards and policies. Perhaps one of the best known of these is Caterpillar Tractor's "Code of Worldwide Business Conduct," which contains this forthright statement:

> The law is a floor. Ethical business conduct should normally exist at a level well above the minimum required by law. Caterpillar employees shall not accept costly entertainment or gifts—excepting mementos and novelties of nominal value—from dealers, suppliers, and others with whom we do business. And we will not tolerate circumstances that produce, or reasonably appear to produce, conflict between the personal interests of an employee and the interests of the company.

In addition, similar efforts have been conducted under the auspices of the Conference Board, the American Management Association, and the American Society of International Law.

None of these efforts to make provision for the prevention of the abuses addressed by Senate Resolution 265 purport to cure all of them. Particularly, the area of so-called political contributions is one which needs further study, and certainly much greater international understanding, since in many instances, our political systems differ so distinctly from one another. Nor have questions of adherence to ethical codes, dispute settlement procedures and sanctions in the event of violation, been satisfactorily answered.

Noteworthy, however, is the fact that this complex and important problem has been and is under intensive study at the highest levels in the executive branch of this Government, by the United States with the cooperation of other governments in a number of important international forums, and by thoughtful private sector leaders the world over. The fact that the disease has not yet been eradicated should not detract from the dedicated diagnostic and corrective research and development that is well advanced.

This fact, along with recognition that the problem affects all facets of business and business-government relationships, leads me frankly to wonder whether the multilateral trade negotiations now underway in Geneva are, or should be considered, the only competent international forum in which to negotiate admittedly much-needed solutions to the problem—or even, in fact, whether it may prove to be the most effective one.

I have no philosophic disagreement with the proposition of S. Res. 265 that unethical payments can be or are a distorting and unfair trade practice and a major obstacle to the achievement of the objectives of the Trade Act and the Tokyo Declaration. I have, however, some quite practical reservations, as to how one negotiates the ethics of trade practices in the MTN.

For one, no government is likely to concede nonconformity with commonly held principles of morality and decency. It may be appropriate to note here that some U.S. companies have found it desirable

to withdraw from important markets where they found unpalatable business practices to be a practical necessity; while others have found upon investigation that similar unethical understandings commonly believed to be required in other markets are actually not necessary at all.

Another is the question of precisely what countries might be expected to "trade" in exchange for a code of ethical international commercial practices. Further, an already ambitious round of trade negotiations is currently being quite sorely tested by almost universally shared domestic pressures caused by economic recession and unemployment. It is questionable whether this is the time at which we should inject in these negotiations additional burdens of negotiating global morality in investment contracts, loans, sales, and purchases of stock and debt instruments, manufacturing and licensing agreements, and other equally sensitive nontrade business transactions.

Another practical consideration is the fact that most countries involved in recent public disclosures of instances of unethical business practices are not participants in the multilateral trade talks in Geneva.

Finally, it seems to me that in addressing a problem of this breadth and depth, the arbitrary confinement of the search for its solution to one particular forum is less hopeful than attacking its causes at their roots wherever they may be—over as broad an area as possible.

In consideration of these questions, I recommend that your committee consider broadening the charge of Senate Resolution 265, as suggested in Chairman Ribicoff's floor statement accompanying the resolution, "to negotiate corrective codes of ethics and sanctions in the MTN" by adding "or in such other existing international bodies as may be deemed appropriate."

We would be glad to work with you and your staff to consider any other recommendations which may be developed in the course of these hearings or your considerations.

The sponsors of Senate Resolution 265 deserve commendation for their forthright and imaginative approach to the very serious problem it addresses. I assure you that we, in the executive branch, have a common view of the problem, and will cooperate in the effort to achieve its objectives.

Thank you, Mr. Chairman.

Senator RIBICOFF. Ambassador Dent, may I say, before asking a few questions, that I am very disappointed in the statement, because your statement seems to indicate just what has been continuously wrong with American negotiators in trade matters; not just under this administration, but under previous administrations as well. And that is why there has been continuous skepticism in the Finance Committee concerning whether the United States is getting the right type of deal abroad.

That is why there were so many safeguards written in the 1974 Trade Act. Now, when you say, "I have, however, some quite practical reservations as to how one negotiates the ethics of trade practices in the MTN," and page 7, "It is questionable whether this is the time in which we should inject in these negotiations the additional burdens of negotiating global morality"—here we have a basic problem.

American corporations have been pilloried on the front pages and the television of not only the United States but throughout the entire world. And the world and the American people have been given to believe that American corporations are the only malefactors of this practice. And, yet, anybody who knows what is going on worldwide knows this is a worldwide phenomenon; that business houses and business corporations in every nation of the world are paying under the table and are guilty of bribes but none of them paint them this way.

You are worried about the American position of negotiating. From our trip of last August what comes out loud and clear is that every country in the world is standing still and expecting the salvation of their business and economic problems from the United States. Whether you go to Germany, you go to France, you go to England, or in Geneva itself the United States is a key. The American market is what they want.

And when we wrote that 1974 Trade Act, I think there was unanimous feeling around this table, Democrats and Republicans. We expected once and for all that the American negotiators look out for the interests of American business and not be so hypersensitive to what other people do.

Now we have these universal practices all over the world. And American business is being blamed. Talking for myself, personally, I do not intend to sit by and see American business put in a disadvantageous position. And they certainly are in a disadvantageous position because this Congress will, I am sure, follow up the Church committee's proposals and have every type of restriction against American corporations. And I will be voting for these: against bribes and against payoffs. But to tie the hands of American business and to leave the businesses throughout the world to do what they want, I think, is a disaster.

Here we have the situation that I quoted of Lockheed losing its business to a French company because they would not pay off. And Lockheed has done its share of paying off.

Let me quote from a recent interview on West German television: "An official of that country's Finance Ministry admitted it was morally indefensible to allow German companies to deduct foreign bribes on their tax returns. But he said he feared that if West Germany changed its laws, its firms would be out of business, the others would get the business in our stead."

So you have got this thing universally. And believe me if any European company or country would rather do business with somebody in South America or Asia or the Middle East instead of the United States by violating a fair code of practices, that is up to them. Good riddance to them.

Now, to me, you seem to be unable to take this up in GATT even though you are anxious to take up illegal subsidies in the GATT. Now what is the difference between an illegal subsidy and a bribe or a payoff? You are willing to take that up in GATT are you not?

Ambassador DENT. Mr. Chairman, the difference is simply this: a subsidy is paid by a government. It is controlled by a government and comes out of public funds. A bribe frequently is a private sector action which is done outside of government control and even, in

many instances, knowledge. The same article to which you refer also mentions the fact that in India the average income of public servants is $1,650, the reason being that they are expected to make as much on the side as they can. Granted, we have some leverage in trade negotiations. But when we give aid and other assistance, why can we not address the ethics and morals of the people who are going to receive these from the taxpayers of the United States?

Senator RIBICOFF. Well, how about the taxpayers of the other countries? Let me say this: If this is your philosophy, Mr. Dent, how you are going to go into the negotiations, you are going to have a lot of trouble with this single U.S. Senator. I have just given you notice right now. I cannot talk for anybody else. But as one of the Senate observers and participants, if your attitude is let every other country do what they want, that we are going to tie the hands of American business, you are going to have a lot of trouble with me.

Now here is a statement from Lockheed Corp. that has been pilloried. They could not testify today, but they have offered a strong endorsement. And Lockheed's statement by Daniel Haughton, chairman of the board of Lockheed, "to protect this leadership and retain the favorable balance-of-trade impact, we need the kind of international solution envisioned by Senate Resolution 265, preserving the capability of the U.S. industry to compete throughout the world on an equal footing with business from other nations."

[The information referred to above follows:]

STATEMENT BY DANIEL J. HAUGHTON, CHAIRMAN OF THE BOARD, LOCKHEED AIRCRAFT CORPORATION

The following statement is submitted in support of Senate Resolution 265, which calls for the negotiation of an international agreement relating to commissions and other payments in connection with foreign sales.

International agreements as contemplated by the Resolution, if negotiated and adhered to, would serve the important purpose of preventing United States companies from being placed at a disadvantage in the international marketplace in competition with foreign concerns, and would thus prevent a serious detrimental impact on U.S. balance of trade and on the foreign sales of American industry—sales that totaled almost $300 billion during just the last five years and continue to provide millions of jobs in this country.

With respect to the aerospace industry alone, with which I am most familiar, the U.S. has in the past been the world leader, with a very significant favorable impact on balance of trade. For example, the U.S. aerospace industry is now exporting more than $7 billion worth of products per year, and the Aerospace Industries Association has estimated that almost 250,000 jobs in our industry exist because of these export sales. The favorable impact of these sales on the U.S. balance of trade last year was more than $6.3 billion.

To protect this leadership and retain the favorable balance of trade impact, we need the kind of international solution envisioned by Senate Resolution 265, preserving the capability of U.S. industry to compete throughout the world on an equal footing with business from other nations.

I would summarize the reasons we support Senate Resolution 265 as follows:

We recognize the need, as disclosed by recent inquiries, for limitations on payments made in connection with foreign sales.

In achieving such limitations, we favor an international approach as envisioned by the Resolution, because it would apply uniformly and simultaneously to all U.S. industry and also would require adherence by foreign competitors. Resulting agreements, if negotiated and adhered to, therefore would not jeopardize the ability of U.S. industry to compete in the world market.

Further, this Resolution would apply only prospectively, to future dealings in the international marketplace. We consider this to be eminently more fair than selective, retroactive punishment of certain American companies for past activities.

The approach envisioned by the Resolution also appears designed to achieve the important objective of changing these foreign sales practices without undue harm to American companies, American workers, and American shareholders.

Therefore, I would urge not only that the Resolution be adopted, but that it be adopted promptly and that our nation's negotiators be urged to press for international agreement on this matter as quickly as possible. There have been a number of indications, including certain statements and actions by countries in which some of these practices have come to light, that the climate would be receptive at this time to some form of international agreement.

Senator RIBICOFF. In other words, what you are saying is the United States should have a strong moral code for its corporations. Let the rest of the world do what it wants. And, if this is the case, you will find one American corporation after another losing its competitive position and its business because someone else is guilty of payoffs.

I do not follow you, Mr. Dent.

Ambassador DENT. Senator, that is a misquotation of our intent and of our actions. I just mentioned in the testimony that Secretary Simon took up this problem during the first week in September at the IMF meeting with foreign finance ministers of major industrialized nations. We have taken this question to the OECD. Last week, Secretary Kissinger was outspoken to the United Nations on this subject. We are not complacent. It is just a question of whether we concentrate in a single arena or whether we broaden the attack. And it ought to include not only trade areas, but also, perhaps, when we consider aid bills and other legislation, use every method possible to achieve this result.

Senator RIBICOFF. It is not going to wash. Now, Secretary Simon might have had these talks. I see no reference to it. I follow the press fairly well. There has been no report on Secretary Simon. OECD is a debating society. When has OECD ever accomplished anything? In other words, here in GATT is where there is muscle. You have got American muscle with GATT when we go into our General Agreement on Tariff and Trade. The one key country in the world is the United States of America and everybody is waiting for the opening up of American trade. The whole future is dependent on American trade. And this is where you get to the guts of trade, at the GATT negotiations.

But you are now saying, let us not do it in GATT. I cannot understand it.

Ambassador DENT. No, I said let us do it in all locations. I did not eliminate GATT.

Senator RIBICOFF. No, but you are downgrading the fact of your reluctance to open up in GATT because we have got problems and it is going to be difficult. But I do not understand how you can say that the GATT negotiations are supposed to deal with nontariff barriers. But illegal bribes, kickbacks and the like, which are a way of life in many countries, should not be dealt with in the trade negotiations. To me, this is the worst type of trade distortion. And I would expect that the President of the United States would instruct you to make sure that this is on the agenda. And I would like to see any country in the world stand up there in Geneva and say they are for bribes and kickbacks. I would like to see any nation admit that they are for this practice. Let them do it. And if we have to compete with that type of nation that wants to give bribes and kickbacks,

and we tie the hands of our American corporations and say that is wrong, then I say we should close our markets to them. They do a lot more business in the United States than we do with them.

Now, if you are going to use your power, for heaven's sakes use it. It is not just a question of using your armaments and using geopoliticis, but using ecopolitics. And if we do not understand the power of ecopolitics in the affairs of a nation, we are in serious trouble in the United States.

And may I say, I think the great weakness of American policy is that Secretary Kissinger does not know much about ecopolitics. And this is one of our great problems. And I am concerned that there are not many people in this administration or past administrations that have paid attention to ecopolitics. But I do believe that if the Congress of the United States, Democrats and Republicans alike, are going to make sure that the United States position in the 1974 Trade Act, as set out, are going to be strictly adhered to, and if they are not adhered to, you and your associates are going to have an awful lot of trouble from the Senate of the United States.

Ambassador DENT. Senator, we abide by that act very carefully. One of the elements of the act, and this has been disappointing to me in this particular instance, calls for consultation between the Congress and the Trade Negotiation Office.

We have been meeting with the Ways and Means Committee and with the Senate Finance Committee representatives, and this resolution was introduced without any discussion in advance. We are ready and willing to undertake all assignments given to us with great dedication and sincerity.

Senator RIBICOFF. In other words, as I understand, you are piqued at your office because Senator Long and Senator Church and I did not consult with you. Since when does a U.S. Senator have to clear a resolution or a bill he puts in to the floor of the U.S. Senate with you?

Ambassador DENT. It certainly is not pique. We are trying to make our collaboration as effective as possible. We believe in bringing to you the problems that we have, and the reverse; we think this is the way that we can get this job done: pulling together for the interests of American workers and American business to our very best ability.

Senator RIBICOFF. Your whole testimony is that you want a lot more talk all over the world in every type of forum and no action. We sit here and we see actions from and about the major business corporations of this country. They have been pilloried and placed upon the front pages of every paper in the world and it has been given to believe that only American companies engaged in these practices. And those of us who know the affairs of the world, know that every government and that companies all over the world do this. And we felt the time has come to move fast in the international forum where we have clout, and that is GATT, to put the American companies on the same basis as companies from all over the globe.

And it is very disappointing to find from this administration through you that we are going to talk about this in all of the forums. The only place at the present time where we have got clout is at GATT and that is a very big club and I for one do not expect that the American corporations are going to be prevented from doing what every corporation of every other country in the world is allowed to do.

Senator Fannin.

Senator FANNIN. Thank you, Mr. Chairman.

This is a very complex problem, I think we all recognize that and a very serious one. I wish we had more clout in GATT. As far as I am concerned, I may disagree with the Chairman as far as the clout we have. The way we have been pushed around over the years, why, if we have clout, we have not used it.

And I know that we have problems as far as OECD is concerned. As far as its being a forum. At the same time I think we must utilize all of these international groups.

Mr. Ambassador, it is something that cannot be solved overnight. But I think that the first steps must be taken at the first moment possible. If we could use OECD to a greater extent—as I understand it, OECD is quite a large organization, 24 nations, and about 100 economists. What do we do with all of those people if we cannot use them on something like this?

Ambassador DENT. OECD is a large organization. The membership, as you indicated, consists of developed countries. But of course the GATT negotiation started in Tokyo with 105 countries represented. Part of the advantage of getting started in a smaller group can be that it can develop a consensus that might be transferable.

Now, Senator, you mentioned the clout of the United States. I think we should make abundantly clear what we mean; that implies to me that perhaps we are disadvantaged in world trade.

But let us look at the facts. Our exports in the last 2 years have doubled. They are running at a rate of $105 billion. Even on a CIF basis, which is the least advantageous method of valuation, we were in surplus by $2.5 billion.

Our major competitor, the European Common Market, is in deficit at the moment. Our closest neighbor and largest individual trading partner is Canada. It is in deficit. So, I think the trading interests of the United States are being served well. Of course, they can be served better. But I think we should have a clear perspective. We will try to improve all conditions of trade. When it comes to reforming the trade system, we are the ones seeking changes.

Senator FANNIN. What is our position with relationship to ratios with Japan?

Ambassador DENT. The Japanese are also in surplus. Their exports are off considerably this year because of the lack of demand elsewhere in the world.

One other thing we ought to recognize is that traditionally only about 3 to 4 percent of Gross National Product has moved into world trade. Today 7.5 percent of Gross National Product is moving abroad. So that international trade is a greater part of the U.S. economy than ever before in history.

Senator FANNIN. What provokes me is in the automotive industry—and I realize I am a bug on that—but when we see countries like Canada exporting maybe 50 to 55 percent of their manufacturing of cars, the number of cars manufactured in Japan, 30 percent or so and others, and we are what, 1 percent, 2 percent.

Ambassador DENT. Well, the Canadian trade is covered by the U.S.-Canada Automotive Agreement. And under that agreement we have a substantial surplus this year. It is working in the favor of the United States. So we have what might be called a common market in automobiles and automobile parts between ourselves and Canada.

And at the present time, because of the recession in our automobile industry and the continued purchasing strength up there, we have a surplus well over a billion dollars in prospect for this year.

Senator FANNIN. Well, I am getting a little off the track but I do feel that all of those problems are brought about, not all of them, but many of them are brought about with trade with Canada. I think that is just a bad agreement as far as the United States is concerned.

But with Japan, we have a very serious problem, with Japan, Inc. I know they do not like to have one say that. I am talking about dumping of automobiles and other problems where we can apply the countervailing duties. And I understand that the Japanese want us to stop investigating what is happening as far as cars coming into this country under unfair conditions.

But we are talking now about this particular legislation, Senate Resolution 265, to protect the ability of the United States' trade abroad. And I think it does pertain to what has been discussed by Senator Church. But at the same time there are so many different facets of it. And we talked about the coordination of activities on the part of the administration negotiators, Secretary Simon, Secretary Schlesinger, Secretary Kissinger and you and your special trade representatives and all.

Is this something where we should establish a committee with a chairman to be responsible for resolving this problem? Is it something that is not going to be focused upon sufficiently without some special action being taken?

Ambassador DENT. I think we need to take action wherever it is possible and practical. That includes the talks in Geneva, it includes the OECD, it includes the United Nations and its various forums. It includes those private sector talks, which are conducted in the various areas of the world. We have private sector discussions with the Common Market, with the countries of South America and their industries and, as I mentioned, the Pacific Basin. That involves the private sector in all of those countries. What we have to do in this case is to mount a broad legal and moral effort to upgrade ethics. I think that when we look at the ethical standards in the world we recognize what a job we have to do and that we cannot spare any area and assume it will be handled by someone else.

Senator FANNIN. When we talk about upgrading ethics, do we see failure of the United Nations to perform as it should?

Now, of course, I realize that its part in the world is for maintaining peace, but are we talking about moral efforts too when we are talking about the United Nations?

Ambassador DENT. Absolutely. They use moral suasion to contain the forces that would build conflict in the world.

Senator FANNIN. If they had been doing a good service for the member nations, would they not have been disclosing all of these unethical practices that have been taking place?

Would they have been trying to do something about them?

Do they have committees that work on problems of this nature?

Ambassador DENT. Well, the UNCTAD is the United Nations group that works particularly in the area of trade and development and in related economic areas. It will be meeting late next spring, and this might be a subject that could be discussed there as well.

Senator FANNIN. Is it not a subject for which the U.N. should really take a responsibility?

Ambassador DENT. I think it has to do with the ethics of the world. Certainly that is part of their effort.

Senator FANNIN. I agree with the chairman that the dollars and the cents are going to bring results. The economics of being in line with what others are doing as a basis of penalizing when they are not performing properly, it seems to me, is the way to bring some of the nations into line. And I guess that is the idea of the chairman so far as GATT is concerned.

But I do think this is such a broad subject. What is your answer as far as establishing a committee with the chairman being responsible for trying to bring this to a conclusion?

Ambassador DENT. Types of committee?

Senator FANNIN. No. To have the President establish a committee and have a chairman and have the responsibility to try and solve these problems.

Is this something that might work out? To concentrate on it, in other words.

Ambassador DENT. It seems to me that we do have facets within the executive branch which are responsible for trade and international relations. In the financial field, the efforts are reflected through Secretary Simon's efforts in the diplomatic field by the efforts of Secretary Kissinger; Secretary of Defense Schlesinger has been involved in this in the area of arms sales, and that he is trying to upgrade.

I would hope within the administration we have enough commitment and momentum going that, with the support of Congress as indicated in this resolution, and in conjunction with the Senate Finance Committee, to see it through successfully, hoping that the publicity engendered will be of tremendous assistance for the private sector as well.

Senator FANNIN. Thank you.

Senator RIBICOFF. Senator Gravel.

Senator GRAVEL. I think Senator Hansen was here before I was.

Senator HANSEN. That is all right.

Senator GRAVEL. No; we are under the early bird rule, and I think that is a good rule.

Senator HANSEN. I think he wants to have the last word, Mr. Chairman.

Mr. Chairman, I appreciate and have great empathy for your righteous indignation over practices that good morals just cannot condone. But I do not exactly read into your statement, Mr. Secretary, the same thrust that I infer was gathered by our chairman.

It seems to me that, in the first place, if it is true—and I would gather in reading American newspapers that insofar as the average readership in this country goes, it certainly is pretty much of a fact that the only bad corporations are American corporations. I think the media, the press, has done a pretty good job in convincing the average American that business is no good, and the bigger it is the worse it is.

From my reading of many of the bills that have been introduced—and I do not speak now at all about Resolution 265, but other bills, bills to split up the oil companies, bills to impose extremely high taxes

on oil company profits—they seem to suggest that the average American—if his only knowledge is gained from reading the papers and listening to TV—he certainly would believe that the main culprits are American multinational corporations.

That was the point I had in mind when I asked Senator Church how widely admitted these practices may be, or how widespread they were. I think you raise a very practical question when you say "whether this is the time in which we should inject into these negotiations additional burdens of negotiating global morality in investment contracts, loans, sales and purchases of stock and debt instruments, manufacturing and licensing agreements, and other equally sensitive nontrade business transactions."

My guess is that we may not find a great rush among the nations of the world to admit that these things are taking place. We have not witnessed throughout the rest of the world the determined digging and probing that characterizes the attitudes of many of the committees of the Congress in examining into the activities of the business and private sectors in other countries as we find it here at home.

So I think it would not be surprising for a number of countries to say, you raise an interesting question, but it is one that is not a problem in our country. If we were to focus entirely on the multinational trade negotiations as the exclusive forum, it would result in our missing many other very effective ways of achieving the end result.

You spoke about what Caterpillar Tractor is doing. This certainly represents the kind of business ethic that is needed. It is one thing to pass laws; it is an entirely different thing if you can have a business community persuaded on its own initiative that this is the direction in which we should be moving.

So, I come up with a little different slant on what you are saying, perhaps, than may be inferred by other members of this committee. But I get back to this question: if it is going to work we will have to get enough countries of the world to participate in the activity called for in Senate Resolution 265. Can we get the required participation by using only the forum of GATT?

If we cannot get many countries to agree by utilizing only GATT, then I wonder, are we going to throw up our hands and say, we are not going to pursue this further, because of an unwillingness to utilize additional forums.

One of the questions I tried to ask of Senator Church—how small a group he thought could be effective, and if, indeed, he believed that a small group should perhaps be the nucleus, hoping that others would come to it.

Would you have any observations on that point?

Ambassador DENT. Yes, Senator, I certainly would.

One of the things that the Trade Act mandates is that we report to the Congress on the balance that we achieved in what we gave and what we got in the way of reciprocity in the negotiations.

Most of the items which we have up for negotiation can be judged on this—and I might mention the six working groups. Tariffs, you can give and take and get an equitable balance. The nontariff barriers, such as quantitative restrictions, subsidies and countervailing duties, standards, and customs, we can try to reach an analysis both involving jobs and dollars.

In the sectoral negotiations and safeguards, the same holds true. Now here is one that is going to be hard—the one that we are discussing, the ethical code. How do you report the gains and losses, just as you say, if, out of the 90 or 100 nations we get 25? Do we proceed or do we not?

And these other issues relate largely to exclusive Government actions, Government policies, whereas this is a corruption that penetrates the private sector. It is not just payola on the part of Government officials, and when it is, in virtually all of the cases, it is a corrupt individual not carrying out a Government policy.

So from that viewpoint, we have quite different things. One would negotiate removal of what we consider to be unfortunate trade practices, and on the other side is the corruption of individuals who should be replaced, either in the private sector or on the public payrolls of other countries.

Senator HANSEN. I would say this: that if the countries of the world were well goverened, I hope they realize that the best trading practice is to trade with companies and countries that do not condone the activities expressed in Senate Resolution 265.

American earthmoving equipment, or whatever it might be, is simply the cost of making it and marketing it. And that that marketing cost would not include any payola.

So, it would be slow, but I wonder in the long run if this might not be a pretty good point of departure for us to take.

Ambassador DENT. I think you are right, Senator.

What we need to do is to promulgate across the land—and across the waters—moral indignation over this whole question of payola.

This morning there have been numerous references to the term "multinational." I think we should be abundantly clear that this applies to all U.S. based companies, and not just multinational. A multinational company is one which operates, has investments and plants in a number of countries.

Payola applies to a company, or even an agricultural cooperative marketing group, who is based solely in the United States, and finds a corrupt barrier in reaching the market. So it is not just multinational; it is domestic based, it is industrial goods, it is agricultural products, and services from the United States—engineering services and the like—that are affected by this insidious and harmful problem that we find abroad.

Senator HANSEN. Mr. Chairman, just let me conclude by saying that I find much merit in this resolution. I would hope that we would seize upon every opportunity, through every mechanism, to achieve the result that you strive for and hope for.

It is a result I hope may be achieved shortly. I think my only difference with you—and that is very difficult for me to have many differences with you, Mr. Chairman—is to say that there may be a number of mechanisms through which we could hope to achieve the result that I think we all want.

Senator GRAVEL. I agree very strongly with the chairman, Mr. Dent. In looking at your statement I find an area of considerable confusion—and that is on page 6 of your statement where you have some reservations "as to how one negotiates the ethics of trade practices." You are quite right. We cannot legislate morality. We have tried many times,

and have always failed. Morality or ethics comes from a majority within the people, within the trading community.

The chairman realizes this, and I hope that the administration realizes it—divorce the two. Take away the morality side of it, the ethics side of it—just put that aside. Let us leave that for the groups that you spoke of—the chamber of commerce and our Government, and others that want to work on elevating the morality of the people. Let us just get down to the impact of these kinds of practices from a purely trade point of view, and stay away from morality and ethics.

Obviously, these practices are discriminatory practices. They are what many of us really were trying to do something about in the 1974 act.

Now, what is the difference between bribing the head of the Defense Department to sell materials, so that he buys ours rather than buys the French product, and the difference in our economy of dumping a product or none at all? They both have a negative economic impact. So, if you take away the moral and ethical considerations, you have specific acts within the areas of commerce that are detrimental and unfair to us. And we want to see those acts terminated.

You are not going to do that by lecturing the world community. As sincere as we may be, they will be only empty words until the world matures to a higher level. And we do not want to wait until the world matures to that level. We want to be the driving force to that maturity, and the best way to do that is to make these nations pay in terms of dollars and cents. That is the muscle that the chairman was referring to.

Our negotiators must put this in their portfolio and call these practices such as dumping and bribery, precisely what they are—discriminatory practices, We do not want to argue with the other delegates about the fact that it is ethical. We want to argue that it is a discriminatory practice toward American industry, and we want to see it terminated. And they can include that in any trade agreements right now—written right in there—that bribery and these kind of things cannot be done. They should occupy no less and no greater place than dumping and other trade practices.

So, I would hope that the administration could see their way clear to divorce the two. I think that by putting the two together in practical terms, we are trying to treat bribery and the rest not as ethical violations, but as trade practice violations, because they are discriminatory.

Let's imagine that I gave you a bribe so that you would buy my products. That is a very discriminatory thing you are now going to do. You are going to discriminate against other people in my favor. That is discriminatory, and yet we have a law on the books that says that we can negotiate those things out of existence.

So, you have all of the power you need right now. I think that this resolution would just serve to dot the "i"s on laws that we have in existence. And it would charge you to be more acutely aware that in your negotiations, when you are talking about not allowing dumping, you cannot allow bribery either. And I think that would clear up the problem, as far as I am concerned.

Ambassador DENT. We would certainly try to do that. We just think that wherever we have an opportunity to bring this issue to the surface in another international forum, it would be wise to do that.

Senator GRAVEL. I agree with you, because that is how you create a climate of opinion.

Ambassador DENT. Build a momentum.

Senator GRAVEL. I would hope that would be your second line of attack. Your first line of attack would be where they count the money; under the reasoning that I put forward, that these are discriminatory practices. And I think that the nature of your statement, which is a fine statement, really took it in its highest moral terms. And for that, I commend you, and I agree with. But I also think it has another facet to it, which we are already equipped in law to do something about. So I would hope you would begin to look upon it in that light.

Ambassador DENT. Thank you, Senator.

Senator GRAVEL. Thank you, Mr. Chairman.

Senator RIBICOFF. Mr. Dent, it is not a question of other forums. That is just fine. It is a question where you can be effective, and not just have another debating society. I think this is where you and I differ.

Now, section 121 of the Trade Act directs the President to take such action as may be necessary to bring international trade agreements into conformity with principles promoting the development of an open, nondiscriminatory and fair world economic system. In addition, paragraph 3 of section 121 directs the President to negotiate agreements extending to conditions of trade not presently covered under international trade agreements.

Do you share my view that initiation of negotiation on the code of conduct against these international payments practices is entirely appropriate, and in fact required, by section 121 of the act?

Ambassador DENT. Senator, I agree that we should make the effort in Geneva. I think we should make the effort as widely as we can, and I think we ought to also consider where we have leverage as we make AID grants and other benefits to foreign countries, to introduce it in there as well; try to do it—this objective—on as broad a front as possible. We have commitments in the trade area, some of which are not fully carried out. Why not try to use every facet we have at our beck and call?

Senator RIBICOFF. Now, I have no objection to adding into this resolution and in such other forums and international bodies as may be deemed appropriate. That does not bother me at all. What bothers me is the seeming reluctance of yourself and the gentleman who is to follow you—and I read his statement—is your reluctance to use the economic power and the position of the United States in GATT to go into this problem.

Now, also, in section 102, is it not true that the necessity of making these illegal payments and kickbacks also represents a barrier to starting trade which is an appropriate subject of negotiation, pursuant to the authority of section 102, along the lines that Senator Gravel had put it? Now, in discussing the 1974 Trade Act abroad, there is not a person involved in these GATT negotiations that is not aware of the role of Congress. What concerns them is the prospective lack of coordination between the executive branch and Congress; and I must confess that if this is the attitude that would develop, they will start worrying about the lack of coordination between the executive branch and Congress on the question of trade negotiations

Ambassador DENT. Senator, this is precisely the point I made earlier. We have met three times in the past month with the House Ways and Means Committee, and we have met with the Senate Finance Committee in order to coordinate objectives, viewpoints, and goals, so that in no instance will the negotiations proceed on a basis which is contrary to the desires and commitment of Congress.

I can think of nothing more unfortunate for the United States' trading interests than for us to bring back some sort of agreement or code which would meet with the disapproval of the Congress. And that is precisely why, in keeping with the letter of this law, we are trying to coordinate as fully and as closely as possible.

Senator RIBICOFF. What I am pointing out is that you seem to be shying away from bringing this problem up with the other distortions in trade in GATT. In the statement, you are only dealing with a few nations—what do you have, 24 nations in OECD? You have about 100 nations involved in MTN in Geneva. Every nation that is in OECD is in GATT, but GATT is where the crunch is. GATT is where the power is. Everything else is a debating society in which people express good will and good intentions, and nothing ever comes of it.

But here is an opportunity to go into the one forum where you can do something. And that is why GATT becomes the key organization in all of these negotiations. And I would be very, very curious to see which nation would stand up in GATT and say that this is not a distortion, and we are for bribery. Could you name one that would publicly say they are for bribery?

Ambassador DENT. Certainly not; no one would. And there is no question about unwillingness to take it up. It is just the wisdom of concentrating in a single forum. And also, the GATT negotiations, as you know, are under heavy pressure at the moment. Some of our trading partners have thought that, because of the voluminous buildup of trade grievances in this country, that it might undermine the effectiveness of the negotiations, causing them to withdraw.

I do not think that will happen. I think that if that should happen, we should not have these eggs in one basket. We should be trying to do it as broadly as possible.

Senator RIBICOFF. So do I understand, then, that your feeling is, if we just added the phrase, "and in such other existing international bodies as may be deemed appropriate," that this resolution would meet with your approval, if we have that phrase in it?

Ambassador DENT. That is consistent with what we suggested, Senator, and we indicated willingness as well to consider any other suggestions that come along in either the committee's deliberations or the hearings. In other words, we do not have a closed mind. That is the suggestion as of the moment?

Senator RIBICOFF. But if the Senate passes this resolution, do you feel it would be incumbent upon you to negotiate this question in GATT?

Ambassador DENT. It would certainly be an expression of the Congress that we should make the effort. There is no question.

Senator RIBICOFF. I know it is the expression of Congress. But would you comply with the expression of congressional intent?

Ambassador DENT. Of course, we would follow the intent of Congress.

Senator RIBICOFF. Senator Byrd?

Senator BYRD. I have no questions, Mr. Chairman.

Senator RIBICOFF. All right.

Thank you very much, Mr. Dent. Mr. Travis Reed, please?

STATEMENT OF HON. TRAVIS REED, ASSISTANT SECRETARY OF COMMERCE FOR DOMESTIC AND INTERNATIONAL BUSINESS, ACCOMPANIED BY S. STANLEY KATZ, ACTING DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL ECONOMIC POLICY AND RESEARCH

Mr. REED. Mr. Chairman, members of the committee, I appreciate this opportunity to appear before the committee with respect to Senate Resolution 265, To Protect the Ability of the United States to Trade Abroad.

As the President has indicated, this administration deplores instances in which U.S. firms have considered it necessary to make unethical payments in order to conduct business in some foreign countries. If the Congress can devise measures that will effectively eliminate such practices, they will be strongly supported by the administration.

In this connection the initiative proposed in Senate Resolution 265 calling for negotiation of an international agreement to deal with this problem deserves most serious consideration. Before commenting on this proposal, I would like to make a few brief remarks on the nature of the problem as we see it.

First, as it relates to the national economic interest, it is quite clear that U.S. firms are becoming increasingly concerned with the difficult and unfair conditions of competition they face in many markets abroad where unethical payments, such as bribes and kickbacks to foreign agents and officials, are prevalent. While some firms have adopted corporate codes which deal with these practices, there are international dimensions to this problem which such codes cannot resolve. When American firms are forced to consider making unethical payments, it generally means that they are competing against foreign firms which are not constrained from making such payments. Thus an international code could be an effective means of eliminating unethical payments and establishing fair and equal access to foreign business opportunities. To date, no effective effort to develop principles governing this aspect of international conduct has been made, although there is a clear need for an agreement among governments, to which corporations could adhere. Thus the Department of Commerce would support an effort to reach an international agreement that would deal effectively with this problem.

Although the problem could be taken up as part of the multilateral trade negotiations, as proposed in Senate Resolution 265, we are not certain that that forum is the only one to deal with this issue. The trade negotiations, as the committee knows, involve a very large number of countries not all of which necessarily share our interest in a code of conduct concerning unethical payments. Consequently, if this prob-

lem were introduced only into the MTN, it might not receive the degree of support and attention necessary to reach an effective agreement. In that forum, the industrialized exporting countries in which most multinational corporations are based and with which we could realistically expect to reach an effective agreement constitute a relatively small portion of the total participants.

In addition, the MTN agenda already includes a large number of complex and difficult negotiating objectives in the tariff and non-tariff barrier areas, and it may not be in our best interest to add yet another major problem to that agenda.

Since the best prospects for an effective code lie in negotiations with other industrialized countries, the Organization of Economic Cooperation and Development might provide a more promising forum for reaching agreement on this subject, both from the standpoint of effective provisions and early conclusion.

The United States, for example, might introduce a proposed code for negotiation in the framework of one of the OECD standing committees. One possibility would be the Committee for International Investment and Multinational Enterprise. This Committee, of which the United States is a member, was formed this past January for the express purpose of producing a code of international behavior for the voluntary adherence of multinational enterprises. The code being considered by that Committee deals with a broad range of related international business practices and policies embracing investment, ownership, employment, technology transfers, and information disclosure.

Until recently, the matter of unethical payments was considered outside the scope of the Committee's work. However, at the July meeting one of the members suggested that the problem of such payments be examined in the context of the code of behavior governing multinational enterprises. This topic is now before the Committee. In the meeting of the Committee just ended the United States suggested a tentative formula as a basis for discussion. It might, therefore be more productive for the United States to press for the addition of an unethical payments section to the pending OECD work on a multinational corporation code than to introduce this subject into the MTN in Geneva.

To sum up, an international agreement governing payments practices, as suggested in Senate Resolution 265, would seem to be the most promising means of dealing with the problem of unethical payments. However, I would urge that careful consideration be given to finding the most appropriate organization from the standpoint of reaching an agreement that will effectively eliminate unethical payments practices among the competing multinational enterprises of the industrialized countries.

Senator RIBICOFF. Mr. Secretary, have you ever attended any meetings of OECD?

Mr. REED. Mr. Chairman, I have been in this Government for 2 months. I have not attended any OECD meetings.

Senator RIBICOFF. In other words, you do not know from first hand very much about OECD.

Mr. REED. Not from first hand, sir.

Senator RIBICOFF. Have you ever attended any negotiations at GATT.

Mr. REED. No. I have attended sessions gathering information for the GATT negotiations.

Senator RIBICOFF. Do you know how many members there are in OECD?

Mr. REED. Yes; there are 24 nations.

Senator RIBICOFF. Do you know how many people or how many countries are involved in negotiations at GATT?

Mr. REED. There are 102.

Senator RIBICOFF. 102.

Do you know whether every nation that is involved in OECD is also involved in GATT?

Mr. REED. I believe they are.

Senator RIBICOFF. I think you can assume that they are, so you have a question of four times as many countries involved in GATT as involved in OECD.

Now, what puzzles me, too, now you want to send this to OECD where there will be a voluntary adherence of multinational enterprises. You are supposed to be in your job protecting American business, and here all over the world, and especially in the press of the United States, there is painted the picture that only American corporations are wrongdoers, only American corporations give bribes, payoffs, and political contributions, and of course you are aware that this practice is common throughout the world. It is not confined just to American companies; is that not correct?

Mr. REED. Yes, sir, that is correct.

Senator RIBICOFF. Why should we not try to bring about in the world a situation where American companies can fairly compete with other worldwide companies in trying to get the same business?

Mr. REED. Senator, there is no objection to that by me or by the administration. What we are saying in suggesting the use of the OECD is that we would be dealing with the major industrialized nations of the world, the payers, so to speak, of these bribes and illicit payments, and I would like to get unanimity of thought among 24 of the industrialized countries prior to taking the issue to the GATT.

Senator RIBICOFF. Yes; but the only country at the present time worldwide that is being buffeted around in public opinion and the propaganda, even from the countries that take the bribes and insist upon the bribes, is the United States of America or the Nation that is perverting people all over the world, and the American company is painted as the business and ethical outlaw, when we know that all countries in the world are part and parcel of this operation, and the job, as I see it, is to use American clout—and American clout is at GATT more than any place else—to assure that there is an international code of conduct in which American business is competing the same as other business because you have got this dilemma.

It is very obvious after the hearings of the Church committee and what has surfaced in front of the committee and to the American people and to the world that this Congress in the months ahead will be passing various legislation, tax legislation, antitrust legislation, criminal legislation, outlawing the practices that have taken place,

so every American corporation would be subject to American sanctions, but yet our competitors throughout the world would not have those sanctions against them, and we put ourselves in a bad competitive position.

Would you say that if the United States was the only Nation with laws outlawing these practices, that American companies would be at a disadvantage?

Mr. REED. Of course, those companies would be at a disadvantage, and it is not my idea or the administration's idea to put U.S. corporations at any disadvantage, Mr. Chairman, but I've spent the last 15 years of my life in the field of international trade, and in the last 18 months prior to coming to government, I have participated in the financing of over $300 million of equipment going abroad, and I have never been involved in a transaction of that nature. I do not think that 98 percent of the companies in this country have. I think we are talking about a small percentage.

I am very much in favor of not having our companies pilloried around the world in various newspapers, and I think to that end we could be a little more judicious and cautious in the way we pillory in this country. I think we are causing a great deal of that difficulty ourselves, and I am all in favor—and I repeat, this administration is all in favor—of protecting U.S. corporations and their ability to trade fairly in the world. I just think that we should find a number of forums in which to do this.

Senator RIBICOFF. And yet you have some of the flagship American corporations publicly involved and they have admitted it—Exxon, Lockheed, Northrop, Gulf. We have this letter from the chairman of Lockheed indicating the problem that Lockheed has had and making the specific statement that it is important for America's competitive position that it be placed on the same footing as other businesses.

Lockheed lost a substantial contract recently to the French just because it stopped making these payments, and you are going to find that American corporations will continue to lose this business. Now, section 121 of the Trade Act directs a President to take such action as may be necessary to bring international trade agreements into conformity with principles promoting the development of an open, nondiscriminatory, and fair world economic system.

In addition, paragraph 3, of section 121 directs the President to negotiate agreements extending the conditions of trade not presently covered under international trade agreements. Do you share my view that the initiation of negotiations on the code of conduct against these international payment practices is entirely appropriate and in fact required by section 121 of the Trade Act?

Mr. REED. With respect to it being an appropriate subject for negotiation, I do, Mr. Chairman.

Senator RIBICOFF. Is it not true that the necessity of making these illegal payments and kickbacks actually represents a barrier, distorting trade, which is an appropriate subject for negotiations pursuant to the authority of section 102 of the Trade Act?

Mr. REED. Yes, sir.

Senator RIBICOFF. Just one point—on page 6, you mention the unethical payments section of the pending OECD work on a multinational corporation code.

Mr. Dent was very, very careful to point out that it was unfair to refer just to multinational corporations because many corporations that were involved, either here or abroad were not multinationals but basically corporations that did business in the single country, and then did business abroad. They were not multinational, so OECD is only working on a multinational code, not on a general business code.

Mr. REED. That is correct, but I would hasten to add also, Mr. Chairman, that what we are attempting to do is certainly not to condone sin or unethical payments. I am sure you are aware of that.

What we are attempting to do is obtain some unanimity of thought within a smaller group, particularly the payers, the people who are making the payments. The OECD, we think, provides a proper vehicle at the moment to attempt to get some unanimity of thought in regard to how this universal code of conduct would be accepted and could then be introduced into GATT or any other appropriate body.

Senator RIBICOFF. But you see, OECD really has no power. You have never been to OECD, and you have never been to GATT. I would guess that I have visited OECD I believe some four different occasions over the years, and it is, for all practical purposes, a study group. They get together and do a lot of research, and they do study, but they have got no muscle. They cannot translate anything into action.

But when you get down to GATT, you are really negotiating with some 102 countries on all the problems of trade and tariffs and distortions and the basis of fair conduct. This is where there is power, and with it comes the American power that they all look to, and they all need.

We just returned from a visit just at the end of August, and you get to realize that every country in the world marks time until the United States takes a position, and they know where they stand, and here is an opportunity, as far as I am concerned, to place American business on the same basis.

It hurts; it hurts us personally. We are concerned about it. It hurts us competitively to see that the American companies are the only ones being traduced, the only ones being blamed, the only ones being pilloried when we know that companies all over the world are engaged in the exact same practice.

Senator Hansen?

Senator HANSEN. Thank you, Mr. Chairman. I share completely the chairman's feeling and frustration that American companies and American-based multinational corporations are regarded as the bad characters. I think that though he has not made any mention of this situation, certainly it is my thinking that it could also be said that the CIA worldwide is regarded as the most despicable undercover agency that you could imagine anywhere, that we would assassinate people, we would rub out leaders in any other country in the world. If there is any doubt about that I guess all you have got to do is read an American newspaper.

I do not have the feeling at all that the CIA is the worst enemy of civil rights that we could have. I think that we have contributed, certainly those of us in the Congress in a very significant way, have contributed to this widely held conviction that we are bad characters. I do not mean in saying that to imply at all that we ought to pull

back, that we ought not to investigate. I think that in the long run the elements of an open society that make possible this introspection is good.

But one of the problems, one of the sickening, saddening experiences we are going to have to go through I guess is the feeling that is rampant in this country and maybe around the world that of all the countries, of all the businesses you could deal with, American companies are the bad guys.

I do not know that I have any questions to ask you. But I did want to make the observation that if these views are held internationally, and I do not doubt but what they are, I think I maybe know some of the reasons that they are held internationally. I have been disturbed, as I believe perhaps many people have, in some of the attacks that have been made on our information gathering agencies such as the CIA in the political system as we practice it in this country.

There are certain advantages in the disclosure of information that is not necessarily widely known. You will get headlines. We have gotten them. We will continue to get them. And I suspect that as long as the system works as it does and I do not think it ought to be changed for any other system, this is one of the results of it that I think is bound to follow. And it is rather interesting that we attack on the one hand and then turn around later and, fearing the results of an overkill maybe, wonder what we can do to change the mores of the rest of the world.

I do not know how quickly we can change them. I do not know, in the first place, that we are going to be able to get very many other countries to admit what we admit here. It is not a question of getting them to agree that bribes should be outlawed. They say sure, we think they should be. We do not practice them in our countries. I think that is what we would probably run into if we were to talk to the 24 OECD members or the 102 GATT members. There would be few countries indeed that admit that it even goes on.

So I guess I am going to be frustrated in knowing how to proceed. I think we ought to pursue it on many fronts. I think the objectives are good. I do not think that we necessarily will speed the achievement of those objectives by circumscribing our area of activity too much and if I read what you are saying, I gather that you too, along with Secretary Dent, would favor a broadening of the attack so as not to confine it exclusively to the MTN, is that right?

Mr. REED. That is correct, Senator. And I should just like to add that while I have not attended GATT negotiations, and while I have not attended OECD meetings, there is one thing a businessman understands in this world and that is leverage. And to the extent that this Government can properly and in the right forums use leverage for the benefit of U.S. business, we should do so in every possible way.

I am glad that you made the comment that a great deal of the pillorying that is going on in the world is probably to some degree our fault, here in the forums of our Government. I should like us, in a constructive way, to look prospectively at the multinational corporations' activities for the future. I think it serves some useful purpose to investigate past practices. But I would like us to look at it prospectively and to move ahead with an international code of conduct using whatever leverage we have, in whatever forums we can find.

Senator HANSEN. If I could make one further observation, Mr. Chairman, it would be to note this: That at the time of the oil embargo almost 2 years ago, the United States did not suffer as much as otherwise would have been the case, precisely because some of the multinational corporations that had access to oil in the Middle East also had many contacts around other parts of the world. And I am convinced on the basis of what little I know that there were directives going out from other countries and from other companies as well to have oil come to the United States that would not otherwise have come here.

Now, I suspect if somebody wants to investigate that, they can make quite a story out of that, too. I would just point out that if they do, they do it at risk, we may get damned cold this winter if we have another embargo.

Thank you, Mr. Chairman.

Senator RIBICOFF. Senator Byrd?

Senator BYRD. Thank you, Mr. Chairman.

Mr. Secretary, do you support Senate Resolution 265?

Mr. REED. Yes, sir, I do, with that modification that the chairman suggested earlier.

Senator BYRD. You mentioned that 98 percent of the corporations do not engage in such practices as are enumerated in the resolution. That is an encouraging statement, I think. Does that apply to 98 percent of the multinationals as well as 98 percent of all the corporations?

Mr. REED. The figure 98 percent is my own estimate. It is not something that is statistically proven.

Senator BYRD. Yes; but when you applied the 98 percent, do you apply it to all corporations doing business overseas, or do you apply it to the multinationals only?

Mr. REED. I would apply it to all corporations doing business overseas.

Senator BYRD. Then, would you apply the same figure to the multinationals?

Mr. REED. I think so.

Senator BYRD. Under the current tax laws, how are such payments treated?

Mr. REED. As I understand it, those payments have been an added expense of doing business and have been deducted.

Senator BYRD. So, a corporation that finds it necessary or desirable to pay a bribe deducts that for income tax purposes, as an expense? Is that your understanding?

Mr. REED. That is my understanding, Senator.

Senator BYRD. In how many countries would you say it is a practice of the Government—or Government officials—to seek and accept bribes or kickbacks or other unethical contributions?

Mr. REED. Are you asking me the specific number of countries?

Senator BYRD. Yes.

Mr. REED. I do not know.

Senator BYRD. Do you have any idea?

Mr. REED. I would defer to Mr. Katz, maybe he has an answer.

Mr. KATZ. No, sir, we do not have an answer to that question, Senator. The problems, of course, are that in some cases these are

people who are not part of the Government. In some cases they are. The practices are so varied and diverse.

Senator BYRD. I cannot hear you very well.

Mr. KATZ. I say the practices are so varied and diverse because in some cases these are not people who are part of the Government, but allege they are. In some cases they are Government officials. It would be very difficult to come up with a number of countries as such. We know it is very widespread among the less developed countries.

Senator BYRD. Has the Department delved into this matter to an extent where it can pinpoint some of the countries?

Mr. KATZ. No, sir, we have not delved into it to that extent.

Senator BYRD. How deeply have you delved into it?

Mr. KATZ. We have been following the information that has been developed here in the Congress extensively. In addition, we have, as you know, under the Export Administration Act the requirement that some of these practices be reported to the Department of Commerce.

Senator BYRD. Some of the practices must be reported to the Department of Commerce?

Mr. KATZ. Yes, sir.

Senator BYRD. What practices must be reported?

Mr. KATZ. This subject has been delved into fairly deeply in detail by another committee, Senator. But basically it involves requests from U.S. companies to comply with Arab boycotts.

Senator BYRD. That is not the precise subject we are speaking of now, though. Is that not different from what we are speaking of now?

Mr. KATZ. It is related to the subject, yes.

Senator BYRD. I had not related that exactly in my own mind. I was thinking more at the moment of what page 2 of the resolution says in the third "whereas," being bribery, indirect payments, kickbacks and unethical political contributions.

Senator RIBICOFF. May I say to my colleague, he is absolutely right. The problem of a boycott is completely a different subject than we are addressing ourselves to here.

Senator BYRD. That was certainly my impression.

Mr. KATZ. I am sorry, Senator. I was trying to be more responsive in terms of the kinds of information that the Department has collected in this broad area. You are absolutely correct, this is not a question of kickbacks.

Senator BYRD. Has the Department sought information on the matters under discussion here, namely bribery, kickbacks and unethical political contributions?

Mr. KATZ. Not to the best of my knowledge.

Senator BYRD. Thank you, Mr. Chairman. Thank you, Mr. Reed.

Senator RIBICOFF. Thank you very much, Mr. Reed.

Mr. Stewart, please.

Mr. Stewart, may I say before you testify that the Finance Committee is deeply concerned about the future of the members that make up your type of industry. You exported $23 billion worth of goods in 1974, and we have been aware over many years—this is not just a question of this present administration—of what we consider, to a certain extent, an indifference toward the problems of American commerce and American business. And that is why in writing the 1974 Trade Act—it was passed unanimously, Democrats and Re-

publicans alike—to assure that those in the executive branch, or those in negotiations—and it has nothing to do with those negotiating at the present time—would always be concerned with the competitive problems of American business: so that they would be able to be treated equally with their competitors throughout the world.

STATEMENT OF CHARLES W. STEWART, PRESIDENT, MACHINERY & ALLIED PRODUCTS INSTITUTE, ACCOMPANIED BY PAUL H. PRATT, ASSISTANT SECRETARY

Mr. STEWART. Thank you, sir. I will be very brief.

Senator RIBICOFF. Your entire statement will go into the record as if read.

Mr. STEWART. I would appreciate it, including the attachments.

Senator RIBICOFF. Yes, sir. The entire statement and the exhibits will go on the record as if read.

Mr. STEWART. Depending upon whatever limitations you may have on the length of the record, I would like to suggest several additional items be included.

Senator RIBICOFF. Without objection, so ordered.

Mr. STEWART. I mean this quite sincerely, I think the record should include your comments on the Senate floor when you introduced Senate Resolution 265.

Senator RIBICOFF. Without objection, that is so ordered.[1]

Mr. STEWART. Second, the proposed rules by the Department of State amending the International Traffic in Arms Regulations as "contingent fees" published in the Federal Register of Monday, August 25, 1975, page 37043.

Senator RIBICOFF. Without objection, so ordered.

Mr. STEWART. Finally, I offer for the staff's interest whether you put it in the record or not, because of the repeated reference to the document, "A Code of Worldwide Business Conduct," Caterpillar Tractor Co., published in 1974.

Senator RIBICOFF. Without objection, that should go in, too.[2]

Mr. STEWART. Sir, I would like to say, preliminarily, that if I leave one thought with the committee, I would urge, first, the resolution should be adopted in its present form, or with a minor modification that you, yourself, have presumably accepted: namely, that we would use every resource of the U.S. Government to deal with this problem, and that might include bilateral discussions or any other intergovernmental technique to accomplish the objectives of the resolution.

So, we endorse it; we commend you and the two Senators who joined you in introducing the resolution.

I suggest that the regulatory proposals of the Department of State, which I have entered into the record, are unilateral in character; they are totally unnecessary at the present time; and they would be contrary to the objective of the resolution. They would create unilaterally requirements on American companies to inform foreign governments with respect to the identification of their agents and amounts of commissions, when, to the best of our knowledge, no such requirements are placed upon foreign companies who compete against U.S. suppliers.

[1] See p. 42.
[2] See p. 50.

Senator RIBICOFF. In other words, your objection—I think this is what has been bothering all of us on the committee that there should be uniform rules applied to everybody.

Mr. STEWART. Precisely.

Senator RIBICOFF. That everybody should be treated the same; that American business should be on the same basis as business concerns throughout the world. I mean, this is what has been bothering us all along on this committee over the years.

Again, as I say, this is not just this administration; it has been in the process for many, many years.

Mr. STEWART. And these proposed State Department rules that I refer to take another Government-ordered step in the direction of treating American companies in a discriminatory fashion. Hence, our recommendation—in addition to endorsing your resolution with the modification we seem to be in agreement on—is that the Senate express its sense that these proposed State Department rules should be deferred, and not adopted in their present form.

Much has been said about the United States not being the only country whose corporations engage in certain indiscreet or improper activities.

I say that in terms of the facts that there are thousands of companies in the United States that do not engage in these improper practices at all. For example, even in the Middle East it is not uncommon for a company to have a bona fide contract with an agent; the identity of that agent is known to the foreign government; the agent actually negotiates the contract and receives his commission.

The fact of the negotiation and the identity of the individual are all out in the open. If the foreign government at any time wants to know the amount of the commission, all it has to do is to exercise its sovereign power against a national of that country. There is another point that ought to be borne in mind. These bona fide arrangements are ongoing contracts. These men who serve as agents in the business sector that I am describing are people who bring expertise to the job.

So we should not stop, if I may say so respectfully, with the proposition that the United States is not the only culprit.

In addition to that, many, many companies do not even engage in these practices, and yet they receive an adverse fallout because they do engage in international trade.

Now, I have a few brief points that I would like to underline, including a quote from Senator Percy in the hearings which Senator Church has been holding. This took place on September 12.

Senator Percy said:

> While these practices—referring to practices that had been discussed—cannot be condoned nor excused, there also must be some balance in how we, the public, view a certain company's activities. First, respectfully, that company is not the sole practitioner of these sales tactics. There have been numerous firms before this Subcommittee admitting similar practices, and their testimony indicates that bribes, paybacks, and under-the-table deals are a way of life in many aspects of international business.

And then Senator Percy went on to say, against his Bell & Howell background:

> I must say that having dealt in a multinational corporation for many years, and dealt directly with its overseas business, I don't think we were even a nation before these practices were invented by other nations, other societies, long before

we ever entered the business community. And I sometimes think we are quite even amateurish at the way we go about it compared with the skill and dexterity which is used by foreign companies to gain business.

And when Mr. Haughton was on the stand, he introduced a clipping from an English newspaper which said that there was a new ministry that had been created in France and, translated roughly, it is the ministry of bribe.

So much that goes on in the area of international business, particularly as practiced by foreign companies, is not necessarily on the record. The United States is an open society, and we are in the process of becoming even more open.

And the United States, in its trade negotiations and in its conduct of business, with certain unfortunate exceptions, seems to place everything on top of the table as a general proposition. And that is part of the problem that we confront in this discussion.

I want to emphasize a comment I made before, namely, that many relationships carried on by U.S. companies even with the Middle East countries or with Indonesia or with some of the other countries that have received so much attention in the press, are legitimate relationships and are not subject to criticism.

On another aspect of the subject, we outline in our statement—not to be negative about the resolution, even to the slightest extent—that we should be realistic about the fact that it is not easy to develop a code of conduct. And I illustrate that point in our statement by referring to the provisions of the armed services procurement regulation, which govern commissions insofar as domestic sales to the U.S. Government by U.S. companies are concerned.

Such words as "reasonable," "bona fide," comparisons between services performed and the amount of the commission, and so on are subject to varying interpretations. The only purpose for inserting those comments in our statement is to suggest realistically that the development of a code of conduct is not an easy assignment. But it is a crucial one, and it is one that, in my judgment, we should undertake.

Senator RIBICOFF. May I say I have looked at your material, It is very valuable, and I appreciate it.

Mr. STEWART. Finally, may I say that we felt that an industry representative should come before this committee and say that the resolution is sound. It should be adopted on a crash basis. We would hope that you would modify it slightly along the lines we have discussed. If there is anything further that the institute can do to assist this committee and its staff in a commendable effort, we offer our services.

Senator RIBICOFF. Thank you.

I am just wondering, how many American companies are members of the Machinery and Allied Products Institute?

Mr. STEWART. It ranges between 450 and 500, depending on how many companies are being merged, and how many new members are in the process of affiliating.

Senator RIBICOFF. So that is a substantial segment of American industry and the people that are members of the institute come from all over the Nation.

Mr. STEWART. Correct, sir.

Our statement indicated the very substantial export volume of U.S. machinery. It should also be noted that U.S. capital investment annually now is running at more than $10 billion. These products are produced by the companies that are affiliated with the institute. That is the kind of industry sector we are talking about.

Senator RIBICOFF. Thank you very much.

Senator Hansen?

Senator HANSEN. I have no questions, Mr. Chairman.

Senator RIBICOFF. Thank you very much. We do appreciate your coming here, and please be assured that we on the Finance Committee are very much concerned with American business to make sure it gets a square deal.

Mr. STEWART. May I emphasize that I hope you and the full committee will be concerned with those proposed State Department regulations which we discussed in detail in our statement.

Thank you.

Senator RIBICOFF. Thank you.

[Senator Ribicoff's comments referred to on page 39 and the prepared statement of Mr. Stewart with attachments follow:]

[From the Congressional Record, Sept. 25, 1975]

SENATE RESOLUTION 265—SUBMISSION OF A RESOLUTION TO PROTECT THE ABILITY OF THE UNITED STATES TO TRADE ABROAD

Mr. RIBICOFF. Mr. President, Senator Long, Senator Church and myself have today submitted a resolution to protect the ability of the United States to trade abroad. This resolution seeks to insure that American corporations and industry are able to compete fairly in foreign markets without being coerced or induced in any way to participate in the widespread practices of bribery, indirect payments, kickbacks or unethical political contributions. We condemn these disreputable activities for what they are.

The recent investigations of Congress, the SEC and others have revealed the shocking extent to which American firms, foreign firms, and foreign governments have been involved in these unethical and unjustifiable activities. I commend the thoroughness of these investigations, and I thank those responsible, particularly Senator Church, for uncovering these revelations. I am pleased that Senator Church has agreed to join Senator Long and myself in sponsoring this resolution.

It has been argued that American companies were unable to compete in certain foreign countries because of their lack of familiarity with "local customs." Some of these companies seem to have found it necessary to hire agents who acted as middlemen in dealings with the foreign government. Huge amounts of money were given to these agents for the purpose of bribing the foreign government's officials in keeping with "local customs." One such agent was allegedly given over $200 million during a 5-year period to obtain contracts for a company from a Middle Eastern nation.

In another publicized case, both national and foreign oil companies active in a Western European country were pressured into joining a trade alliance whose major purpose was to contribute to a wide range of political parties on behalf of its members, the oil companies. The alliance borrowed money to make the contributions. To repay the loan, it assessed each oil company for its share on the basis of that company's sales to the state-owned utility company. Over a 10-year period, one corporation paid $50 million for this kind of political contribution.

No single nation, or single company is responsible for these abuses. When a government looks the other way, corruption tends to seep in, anywhere in the world. If one company is asked to give bribes and agrees, others will tend to follow so that they can remain competitive. Corruption of this sort is infectious. And we must put a stop to it now.

The publicity that has accompanied the recent revelations has made it seem to many that this is strictly an American problem. But the truth is, many foreign companies have engaged in these same practices, probably to even a greater extent that our companies. The foreign governments that allow or encourage such practices are not limited to any one part of the world.

Stricter laws are needed to force complete and accurate disclosure by our corporations. But disclosure is only one aspect of the problem. So long as foreign companies are willing to make these secret payments, and so long as other governments tolerate and frequently require bribery, unethical political contributions and the like, strict disclosure laws will only tie the hands of American corporations competing for a share of foreign markets. It is not enough to restrict our own companies without making any effort to end the basic problem internationally. American companies cannot compete fairly with companies of other nations who remain free to continue past abuses.

What we face is not our problem alone. It is an international one and we must find an international solution.

A major purpose of the Trade Act of 1974 is to reduce any barriers and distortions to trade while insuring opportunities of U.S. firms to compete fairly in World markets. That act specifically states that:

"The overall United States negotiation objective under sections 107 and 102 shall be to obtain more open and equitable market access and the harmonization, reduction, or elimination of devices which distort trade or commerce."

A foreign government's unspoken policy of requiring bribes or secret payments in order to compete fairly is, clearly, a device which distorts trade or commerce. And the assessment of self-serving political contributions on the basis of sales to the State-owned utility company constitutes a barrier to open and equitable market access.

Under the provisions of the Trade Act of 1974, we therefore call on the President of the United States to take immediate action on these matters. In accordance with the terms of this resolution, I expect him to instruct his special representative for trade negotiations and other appropriate officials to initiate international negotiations in an effort to eliminate this threat to the trade and commerce of the United States.

These negotiations must begin without delay, since our companies are already under the gun. Their objective should be the development of an appropriate code of conduct, together with specific trading obligations between governments. Suitable procedures for settlement of disputes should be established. Such negotiations could be conducted within the framework of the current multilateral trade negotiations and in such existing international bodies as may be deemed appropriate.

STATEMENT OF THE MACHINERY ALLIED PRODUCTS INSTITUTE, CHARLES W. STEWART, PRESIDENT

The Machinery and Allied Products Institute welcomes the opportunity to appear before the Subcommittee on International Trade of the Committee on Finance to offer our views on S. Res. 265 which is intended "to protect the ability of the United States to trade abroad" by directing the Executive Branch to initiate multilateral negotiations on an appropriate code of conduct among governments which could result in the elimination of certain "disreputable" trading practices.

As some of the members of this Subcommittee may know, the Machinery and Allied Products Institute is the national organization of capital goods and allied equipment manufacturers. These companies have a vital stake in international trade and investment. For example, U.S. exports of machinery totaled $23 billion during 1974, 24 percent of total U.S. exports during that year. The companies affiliated with the Institute are in an overall sense commercially oriented as distinguished from being primarily government contractors including companies which sell defense products to the United States Government and abroad. On the other hand, there is a segment of the Institute membership which does engage, at least to some extent in terms of its total sales, in U.S. Government contract activity and in sales of defense products abroad.

The matters to which S. Res. 265 is addressed are important, sensitive, and complex. Our comments are directed principally to the contingent fees (or commissions) aspect of the Resolution[1] because the practice of making such payments to foreign sales representatives is a normal (and entirely ethical) part of the sales effort of a great number of U.S. companies and because such payments

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[1] Some of the public policy issues involved in political contributions and similar payments abroad are discussed at some length in recent addresses by Ray Garrett, Jr. Chairman of the Securities and Exchange Commission. See in particular, "Confidence in Business," Sept. 12, 1975, and "Homily on the Glories of Right Conduct and the Wages of Sin," June 27, 1975.

already are the subject of proposed action by the Department of State. Congressional and public concern regarding so-called contingent fees (or commissions) is of comparatively recent origin and has arisen principally because of reports of substantial payments to "middlemen" in connection with arms sales to the Middle East. The Department of Defense has been requiring certain information regarding identification of agents and commissions with respect to Foreign Military Sales to foreign countries, which sales involve directly the Department of Defense. Currently, the Department of State has proposed amendments[2] to its International Traffic in Arms Regulations about which we have a number of reservations that are discussed later in this statement.

We endorse the general approach of S. Res. 265 since it reflects recognition on the part of the Senate that the United States should not proceed unilaterally in dealing with the matter of fees, commissions, and other business practices which appear questionable without perhaps serious damage to our foreign trading interests. While we have some questions as to how effective a code of conduct may result from deliberations within the framework of Multilateral Trade Negotiations, we think the multilateral approach of S. Res. 265—with some modification to permit bilateral discussions—is required if the United States export interests are to be protected. In brief, we commend Senators Ribicoff, Long, and Church for introducing S. Res. 265 and for the very articulate explanation by Senator Ribicoff in the Congressional Record when the Resolution was introduced. In addition to this expression of general endorsement, we believe that the sense of urgency which is referred to in the Resolution should receive prompt response by the Senate Finance Committee and by the Senate at large.

ROLE OF FOREIGN SALES AGENTS IN U.S. EXPORTS

To the extent we have knowledge, we would like first to discuss the manner in which companies typically employ agents—not only in the Middle East but in other parts of the world. Because of the nature of their products, volume of sales in a particular market, etc., companies are unable to maintain a direct sales force (i.e., salaried employees of the company) in all of the countries of the world. When it is not feasible to have direct sales representation (and, for many companies, this may be the case for most countries of the world), they are presented by distributors or agents. For many types of "big ticket" capital goods, the agent approach is used even in major markets. Typically these agents are under on-going, contractual relationships with the U.S. company and these arrangements provide for the payment of specified amounts (generally stated as a percentage of sales) for transactions consummated in their territory. These representatives typically also hold themselves out to be, and in fact are, bona fide representatives of the U.S. companies and are known as such to the local government and business community. The services performed by the numerous agents engaged by an individual American company may vary greatly, depending on the complexity of the product, the competence and resources of the agent, and the nature of the market in which he serves. We understand that remuneration for the agent may range from a "finder's fee" for the agent whose role is only that of unearthing a prospective order to a larger amount when the agent also has a role in the engineering or negotiation of the transaction. It should also be emphasized that U.S. companies consider agent fee structures as highly confidential or proprietary information which should not be divulged to customers (including foreign government customers) and/or competitors, U.S. or foreign.

DEPARTMENT OF STATE REGULATIONS REQUIRING DISCLOSURE OF PAYMENTS TO FOREIGN SALES REPRESENTATIVES

With this background as to the manner in which U.S. companies typically use agents to further overseas sales, we should like to emphasize some of the objections we have to the unilateral approach to the contingent fee matter which the Department of State is espousing in proposed amendments to the International Traffic in Arms Regulations. Summarized very briefly, these proposed amendments would require that applicants for licenses to export Munitions List items (or technical data) to foreign governments, when the contract amount is $100,000 or greater and the amount of the fee or commission paid is $10,000 or more, attest that they have advised the purchaser government as to the identity of the recipient of the fee or commission *and* the amount of such payment. In a letter to the Director of the Department of State's Office of Munitions Control dated September 22, 1975,

[2] Federal Register, Aug. 25, 1975, p. 37043.

a copy of which is attached as a part of this statement, we raised several questions concerning this approach. Our concerns are as follows:

Might not the requirement that a U.S. company report information concerning foreign nationals to a foreign government intrude upon the prerogatives of that foreign government. If information concerning activities of foreign nationals acting as agents (or in some similar capacity) for U.S. companies is sought, should not any inquiry concerning the conduct and business activities of those foreign nationals emanate from the foreign government rather than from regulations imposed upon the U.S. company by the U.S. Government.[3] This question suggests an approach which we believe is relevant to the thrust of S. Res. 265. Should not bilateral government-to-government exchanges on the types of transactions involved precede consideration of unilaterally-imposed reporting requirements by the United States and multilateral discussions of a code of conduct. (It is possible, of course, that we are not privy to the extent to which bilateral discussions may have taken place or are taking place.)

In view of competitive and other considerations, divulgence of highly confidential agent fee information almost certainly would have an adverse effect on export sales of U.S. companies. For example, in some situations a foreign government purchasing officer, knowing the amount of the commission which will result from the sale, may hope to reduce the purchase price by bargaining down the commission. In a less conscientious environment (by our standards), divulgence of the amount of the commission might actually encourage payoffs as foreign officials seek some share in the commission. (We do not have supporting evidence on this point but raise it as a distinct possibility.) In addition, we should acknowledge that in many countries income reporting is not as complete as it might be. In each of these situations the American company's agent, whose fee is divulged, may be subject to income loss and may be tempted to offer his services to a foreign company whose government does not require such disclosure. There are very few Munitions List items offered for sale on which there is not significant foreign competition. An information article on "Agent's Fees in the Middle East" in July 1974 was cleared for open publication by the Directorate for Security Review, Department of Defense. A copy of this document is attached as a part of this statement.

It is our understanding from discussions with certain member company executives that foreign governments do not have disclosure requirements similar to those proposed by the Department of State and generally do not have as extensive requirements for export licensing as does the United States. In this connection, the U.S. Departments of State and Commerce probably have or could obtain confirmatory information as to the policy and practice of foreign governments whose exporters compete with U.S. companies.

In view of the history and purpose of U.S. controls on exports of arms, we question whether the statutes under which these controls have been exercised are the proper vehicle for dealing with the issue of fees and commissions. We also raise the question as to whether the underlying statutes even permit the type of regulation that is proposed.

As we believe our comments suggest, the issues involved in the proposed Department of State regulations relate to broad questions of U.S. national policy—foreign and domestic—and certain ramifications of these issues still are being explored by other government agencies, notably the Securities and Exchange Commission and the Internal Revenue Service. These studies are still not complete, as we understand it. We therefore urge an expression of the intent of the Senate that the Department of State should defer finalization and implementation of its proposed regulations until a coherent national policy balancing trade interests with those of disclosure has been formulated.

MORE SPECIFIC COMMENTS CONCERNING S. RES. 265

At this point we offer more detailed comments concerning the approach embodied in S. Res. 265. While, as emphasized throughout this statement, we applaud the Resolution's objectives and the recognition that it gives to the fact that "disreputable" activities cannot be curbed by unilateral U.S. action, we have some qualifications concerning the Resolution's approach and the likelihood that effective rules of conduct can be developed in the context of the Multilateral Trade Negotiations. As noted earlier in the discussion of the Department of State regula-

[3] As pointed out in the statement of Mark B. Feldman, Deputy Legal Adviser, Department of State, before the Subcommittee on International Economic Policy of the House Committee on International Relations on June 5, 1975, "It is the responsibility of host governments to set out the rules under which firms and public officials deal with each other" and "It would be not only presumptuous but counterproductive to seek to impose our specific standards in countries with differing histories and cultures."

tions, in some cases bilateral discussions concerning information requirements of purchasing governments might be the most appropriate way to proceed and perhaps S. Res. 265 should be modified to recognize this alternative or the possibility of undertaking bilateral discussions first. However, any requirements which might be developed on a bilateral basis should not require a disclosure of the amount of commissions and any such requirements should not be more onerous for U.S. exporters than for exporters of competitor nations.

It appears to us that in order to protect the very substantial U.S. commercial interests, the key objective of international negotiations should be a code of conduct which would apply equally to at least our major competitor nations. Since the industrial nations (i.e., the United States, the major countries of Western Europe and Japan) have a fairly common understanding of commercial practices and in recent decades have used a variety of forums to find common ground on complex trade and financial subjects, negotiations among these nations on rules of conduct would appear to offer better chances of success than negotiations—such as the Multilateral Trade Negotiations—which embrace many more countries with greatly differing cultures and traditions of commercial practice.

DIFFICULTY IN DRAFTING A SO-CALLED CODE

In any attempt to develop a code which would lay down definitive standards of conduct and practice, it seems fair to say that expectations of drafting a "tight" code should not be set too high. For example, company practice with respect to contingent fees and commissions is very diverse. What is "reasonable" under one set of circumstances may not be under a different combination of circumstances. A reasonableness test would have to take into consideration a number of factors including the nature of the product, the value of the agent's services, the amount of time which might be involved in negotiating a very large and complex project or "system" and the conditions in the specific market. In this connection, Department of Defense Procurement Circular 74-1 dated August 26, 1974, provides certain policy guidance in determining the applicability and reasonableness of agent's fees/commissions in Foreign Military Sales transactions. Such criteria as the following are used in this document: "bona fide," "to the extent reasonable," the criterion of comparison of services with the amount of the fee/commission, and whether the sale is the initial one or a follow-on. All of these words of art require interpretation and, as we have previously stated, that interpretation must be made in very wide ranging sets of circumstances. The code we envision as agreed upon by the interested nations would probably end up by being somewhat flexible and necessarily so. This is not to say that the effort should not be made but, if undertaken, the project must be realistically managed.

CONCLUSION

Again borrowing from the statement of Mark B. Feldman, Deputy Legal Adviser of the Department of State, in this very complex area of national and international policy, "we need to move carefully." This careful approach, however, does not in any way conflict with prompt enactment of the Resolution before this Subcommittee, with possible modifications such as those we have suggested. We repeat our specific recommendation made earlier in this statement, namely, that prompt enactment of Senate Resolution 265 or a similar Resolution with the same thrust and objective should be accompanied by a statement of legislative intent that the proposed amendments to the State Department regulations on disclsoure of contingent fees should be indefinitely deferred.

We have tried to approach this subject and the specifics of S. Res. 265 with humility. A terribly sensitive, complex, and vital aspect of U.S. national, foreign, and international commercial policy is involved. The Institute repeats its commendation of the sponsors of the Resolution and the balanced and constructive framework which it provides for an effective and reasonable solution to the problems under discussion.

MACHINERY AND ALLIED PRODUCTS INSTITUTE,
Washington, D.C., September 22, 1975.

Mr. WILLIAM B. ROBINSON,
Director, Office of Munitions Control, Bureau of Politico-Military Affairs, U.S. Department of State, Washington, D.C.

DEAR MR. ROBINSON: This letter concerns the notice of proposed amendments dealing with "contingent fees" to the International Traffic in Arms Regulations which appeared in the August 25 Federal Register, p. 37043. I should make it

clear at the outset that these comments do not represent a formal Institute policy statement approved by its Executive Committee. What we attempt to do in this communication is to place certain questions or issues before Department of State officials working inthis policy area. Thus, this is an Institute staff document as distinguished from a formal policy statement.

While we recognize the public and foreign policy implications of the proposed amendments to the regulations, the changes raise a number of very important and complex questions that require the most careful examination by the Department of State before possible adoption in final form. Among the questions which, in our view, deserve most careful attention are the following:

The August 25 Federal Register notice states that "Undisclosed contingent fees can damage the foreign policy interests of the United States." Is there another side to this proposition; might not the proposed changes conceivably intrude upon the prerogatives of foreign governments involved? For example, if information is to be sought concerning activities of foreign nationals acting as agents (or in some similar capacity) for U.S. companies, should any inquiry as to the conduct and business activities of these foreign nationals emanate from the foreign government rather than from regulations imposed upon U.S. companies by the United States Government? In view of the issues implicit in this question, is it fair to ask if a government-to-government exchange of ideas on the types of transactions involved in the proposed regulations should precede any unilateral requirements by the United States which, although imposed directly on U.S. companies, cover transactions involving foreign governments and nationals subject to their jurisdiction and reporting by U.S. companies to foreign governments?

It is our understanding that a significant number of U.S. companies operating abroad, including the Middle East, retain on an ongoing contractual basis qualified foreign nationals as agents or representatives. The arrangements with these sales representatives call, in the typical case, for the payment of fees (commissions) contingent upon sales being realized in the representative's assigned territory. (It should be noted that such agents may be involved in furthering commercial sales as well as military items.) Has sufficient consideration been given to the fact that U.S. companies consider agent fee structures as highly confidential or proprietary information which should not be divulged to customers (including foreign government customers) and/or competitors, U.S. or foreign?

Further it is our understanding that the overseas sales representatives described above publicly hold themselves out to be, and in fact are, bona fide agents or representatives of a U.S. company and, therefore, their identity and their relationo ship with the U.S. company is already known to the foreign government. Indeed, typically negotiations with respect to particular sales take place between representatives and the foreign government. Under these circumstances, should not regulations—if they are to be issued in final form—include an exception to the requirement of a certification as to the amount of the commission or similar payment? Isn't this appropriate in view of the great sensitivity of company agent fee schedules and in the light of the fact that the foreign government can—and, if it is in its judgment necessary and appropriate, should—obtain any information it wishes direct from the agent or U.S. corporate representative who is a national of that country? In posing this question with respect to a particular (but general) arrangement, we do not mean to suggest that exceptions should not be considered for other arrangements where fee disclosure could have adverse effects—government or private—more than offsetting any advantages gained by such disclosure.

In view of the history and purpose of U.S. controls on exports of arms, are the statutes under which these controls have been exercised the proper vehicle for dealing with the contingent fee question? More specifically, do the underlying statutes permit such regulation as is proposed?

Although we understand that the Department of Defense is furnishing information on the identity and compensation of foreign agents or representatives involved in U.S. company sales of military goods to foreign countries, does this necessarily represent a precedent for the proposed requirements in Department of State regulations relating to sales which are handled strictly in commercial channels as distinguished from having actual DOD participation in the transactions?

We want to make one final observation which is a procedural matter. Since these regulations were issued in proposed form in the Federal Register on August 25, they reached interested U.S. companies and other interested parties during the vacation period. Moreover, in order to respond constructively, some companies may have believed it necessary to engage in international communications which, of course, take time. Finally, the subject matter is, as we have noted,

important and sensitive. Under the circumstances, we trust that comments which are received within a reasonable period after the announced deadline of September 24 will be considered filed in a timely manner and thus given full consideration. While we have been advised informally that this will be the case, the point is referred to here for purposes of emphasis and confirmation.

Sincerely,

CHARLES W. STEWART, *President.*

AGENT'S FEE IN THE MIDDLE EAST

(An article on "Agent's Fees in the Middle East" cleared for open publication by the Directorate for Security Review, Department of Defense, July 1974)

The Middle East, Far East and Latin America are areas of the world where an agent is generally required for the successful completion of a commercial sale. In some areas of the Middle East it is a legal requirement to have a local agent before a proposal is considered. For the most part the Request for Quotations will request among other things, who the local agent is and without this information little or no serious consideration will be given to the contractor's response.

HISTORY

While agents or concessionaries existed since pre-biblical times, it was during the industrial revolution that the prominence of agents became a factor to be considered in manufacturing—commerce as we know it. At that time a local agent was engaged by the purchaser who required a given product or commodity and did not have the talent, facility, or faculty to locate the equipment or product in a complex international market place. The local agent who was well versed in national and international commerce was rewarded for his time and effort in the form of a fee paid by the purchaser. Hence, the term "finders fee" evolved and was based on a negotiated amount, depending entirely upon the supply and demand of the commodity. Since then, the term finders fee has taken on a somewhat different connotation.

As manufacturers or users of equipment became more sophisticated, they began employing their own purchasing agents at a fixed salary to fill the role—formerly accomplished by an outside agency on a percentage basis. This was done primarily to eliminate the excessive fees required for alleged scarce material. With this transition, the more aggressive agents turned their efforts from a purchasing function, on behalf of the buyer—to one of selling—on behalf of the supplier, in many cases dealing with the same principals.

WHY USE AN AGENT

The use of sales agents in some foreign countries by U.S. companies has developed over the years on the basis that locals must deal with locals because of an inherent mistrust of foreigners. Foreign marketeers generally have a reputation for aggressiveness (not appreciated in some areas of the world), have little or no local language competence, insist on doing business in their language and on their terms, and are unfamiliar with customs, procedures and regulations of the purchasing country. Generally, the local purchaser is much more at ease in dealing with a local representative or agent because of long standing friendships or business arrangements. In addition, the local agent relieves the purchaser of the arduous task of communicating with the foreign supplier in a strange language. In essence, the agent again becomes a middleman between buyer and seller, serving a useful purpose to both parties.

The question as to whether agents are necessary, has arisen many times. There is the classic example of a new Vice President of a U.S. firm who, after reviewing company agent's fees, decided that a local Middle East agent's contract could be cancelled. All that the company had in the country at that time was a continous but lucrative servicing contract that had been negotiated many years ago. Within 48 hours after the agent had been cancelled, all local work permits of the company's employees were withdrawn. Needless to say, the agent was reinstated immediately.

Another case involved competition by two U.S. firms in a North African country. As the competition became keener, one of the contractors found it almost impossible to obtain a visa for its sale personnel, which would have enabled their marketing people to make a sales presentation. This action was attributable to the influence of one of the competitive agents.

THE PROBLEM

In the past, the volume of sales to the Middle East have been rather limited with the result that the agent's commission has been nominal and, in general, in proportion to the effort expanded by the agent. Recently, however, the countries in the Middle East have embarked on huge defense modernization programs involving hundreds of millions of dollars. Obviously the agent's fee, since it is based on a percentage of sales, is inordinately large and in no way can be equated directly with the amount of effort expended by the agent or representative.

With the increasing expenditures in the Middle East for defense modernization, the Gulf countries are becoming increasingly aware of additional cost for which there is little in the way of value received. More importantly, they are concerned with the influence on the equipment selection process which is being applied by local agents. This influence, if not countered, can result in the acquisition of equipment unsuited or marginal to the defensive posture of the procuring country. A classic example of influence by a local agent on procurement resulted in the purchase by one country of used aircraft. These aircraft have been plagued with maintenance problems since arrival in country with the resulting capability of having not more than three aircraft fully operational at any one time. This same agent was influential in promoting European wheeled vehicles with complete disregard of local desert conditions and tempertures. The result—complete immobility due to engine overheating during the hot summer months.

INFLUENCE

The term "influence" is used here rather loosely. To be more specific, it can range from normal friendships or family ties between local agent and procuring officer to the payment of substantial sums of money to individuals in high government positions with somewhat lesser amounts paid to lower echelon government officials. One local agent had admitted to the writer that he has three members of the National Assembly (Parliament) of the country on retainer fees for the purpose of obtaining inner circle intelligence and to promote the sale potential of his principal's product.

Since most major defense contractors (both U.S. and foreign) have local agents for the express purpose of influencing a sale, it is no wonder that the decision-making process is complicated by conflicting points of view as to the proper equipment to acquire. Obviously the agent with the greatest margin of profit or percentage has a distinct advantage over those with a lesser fee in that greater "influence" can be applied to all personnel in the governmental decision-making chain.

Influence is not always related directly to a cash gratuity. It can include the rent-free use of a villa in France or a flat in London along with car and servants. Sometimes the government official is a silent partner in the agency or other business completely divorced from his normal activities from which he receives a financial benefit.

THE AGENT'S FEE

The "points" or percentage of a sale received by an agent vary depending upon the size, reputation, and effectiveness of the agent. U.S. contractors selling major systems usually limit their standard fee to an agent of between four and six percent. On less expensive equipment the percentage can exceed 25 percent of the selling price. There are known cases, however, where the agent has insisted upon an additional four to five percentage points to insure the successful completion of the sale because of some "unusual" added expenses. The French and British industries are masters in dealing through agents and generally have no compunction to agreeing to excessive fees, if, in the final analysis, the sale is consummated. In an on-going negotiation in the Middle East, one European aircraft contractor had a tidy 21 points for the local agent. On the basis of this $200 million contract, the agent had millions to use for influence and still retain a respectable profit for his effort. Intensive negotiation of this contract by the country over an eight-month period finally resulted in a reduction of 16 percentage points and ultimately to a complete elimination of any agent's fee in the price of the aircraft.

In another ME country an agent for a French firm was reported to have netted $40 million on a contract valued at $200–300 million.

THE CURRENT TREND

A trend has now developed throughout the Middle East to purchase defense material on a government-to-government basis. The prinicpal reason for this development is to eliminate the influence factor in equipment selection as well as to restrict the payment of exorbitant fees to a local agent on major procurements. While the development of this trend to go government-to-government on defense procurement is being dictated by the very highest government officials (Heads of State, Ministers of Defense, etc.), it must be kept in mind that the second echelon and lower governmental officials who are normally the benefactors of gratuities, still continue to become involved in exerting influence for a fee. A distinction must also be made between what top governmental officials say publicly and what they really mean. In one ME country the Defense Minister has repeatedly stated in public that no "third party" will be used for the procurement of equipment for their defense modernization program. Yet the Defense Council, of which he is a member, has approved the use of local agents for the procurement of defense material.

CURRENT REGULATIONS

The Armed Service Procurement Regulation (ASPR) permits payment of reasonable agents' fees as part of "cost of sales" on Foreign Military Sales (FMS) and contains general guidelines on how "reasonableness" is to be determined.

There are exceptions, however, such as in the case of Iran. The Iranian Government has categorically stated that under no circumstances will they permit a fee for an agent in the price of any U.S. equipment purchased under FMS. This has resulted in the issuance of Defense Procurement Circular No. 117 dated 23 November 1973, and dictated the inclusion of the following paragraph on all USG Letters of Offer to Iran.

"Notwithstanding any other provision of this contract, any direct or indirect costs of agent's fees/commissions for contractor sales agents involved in FMS to the Government of Iran shall be considered as an unallowable item of cost under this contract."

CONCLUSIONS

While this is only one example of a country that has already taken concrete steps to remove the agent's fee from defense procurement activities, it is fully expected that other countries in the Middle East will soon follow suit. Therefore, U.S. contractors who are already doing business through agents in these areas, or those that are contemplating making agency arrangements should be aware of this trend in the Middle East and be guided accordingly.

As stated in the onset of this paper, the more aggressive agents earlier switches from a purchasing function to one of a selling function. It will be most interesting to see how and in what form they adapt to this latest trend. One thing for sure, this lucrative function, developed over the past two thousand years, will not evaporate easily.

[From the Federal Register, Aug. 25, 1975]

DEPARTMENT OF STATE

[22 CFR Parts 123, 124, 125, 127]

[Docket No. SD-114]

INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

CONTINGENT FEES

Recent reports of substantial payments as contingent fees in connection with international arms sales have generated considerable official and public concern. Undisclosed contingent fees can damage the foreign policy interests of the United States. Accordingly, the Department of State proposes to amend the International Traffic in Arms Regulations to require disclosure of contingent fees in material amounts which are to be paid in connection with transactions involving the export of items on the U.S. Munitions List and related technical data.

The proposed amendments to Parts 123, 124, 125 and 127 of Title 22, Code of Federal Regulations, are set out below. Interested persons are invited to submit written comments, suggestions or data to the Office of Munitions Control, Bureau of Politico-Military Affairs, Department of State, Washington, D.C. 20520, on or before September 24, 1975.

PART 123—LICENSES FOR UNCLASSIFIED ARMS, AMMUNITION AND IMPLEMENTS OF WAR

1. Amend § 123.01 by designating the present section as paragraph (a) and by adding the following new paragraph (b).

§ 123.01 Export license.

* * * * * * *

(b)(1) As a further condition precedent for the approval of an application for an export license in connection with any commercial contract having a value of $100,000 or greater, and showing the consignee or end-user to be a foreign government, its designee, or an entity acting on its behalf, the Department of State requires that the applicant furnish an attested statement that:

"This transaction does not involve the direct or indirect payment of any material amount for fees or commissions contingent upon the accomplishment, in whole or in part, of the terms of the transaction."

Or, if the transaction does involve such payment, an attested statement that:

"This transaction involves the direct or indirect payment of fees or commissions contingent upon the accomplishment, in whole or in part, of the terms of the transaction. (*Applicant*) has advised the Government of ---------- as to the identity of the recipient and the amount of the fee or commission to be received."

(2) For purposes of this paragraph (b), "a material amount" shall be deemed to be $10,000 or more.

PART 124—MANUFACTURING LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

2. Amend § 124.01 by designating the present section as paragraph (a), changing the parenthetical references (a) and (b) therein to (1) and (2), and adding the following new paragraph (b).

§ 124.01 Manufacturing license and technical assistance agreements.

* * * * * * *

(b)(1) As a condition precedent for the approval of a proposed manufacturing licensing agreement or a technical assistance agreement with a foreign government, its designee, or an entity acting on its behalf, the Department of State requires that the applicant furnish an attested statement that:

"This agreement does not involve the direct or indirect payment of any material amount for fees or commissions contingent upon the accomplishment, in whole or in part, of the terms of the agreement."

Or, if the agreement does involve such payment an attested statement that:

"This agreement involves the direct or indirect payment of fees or commissions contingent upon the accomplishment, in whole or in part, of the terms of the agreement. (*Applicant*) has advised the Government of ---------- as to the identity of the recipient and the amount of the fee or commission to be received."

(2) For purposes of this paragraph (b), "a material amount" shall be deemed to be $10,000 or more.

PART 125—UNCLASSIFIED TECHNICAL DATA AND CLASSIFIED INFORMATION (DATA AND EQUIPMENT)

3. Amend § 125.03 by designating the present section as paragraph (a), changing the parenthetical references (a) and (b) therein to (1) and (2), and adding the following new paragraph b.

§ 125.03 Export of technical data.

* * * * * * *

(b)(1) As a condition precedent for the approval of applications to export technical data or classified equipment and classified information in connection with a contract having a value of $100,000 or greater, and showing the consignee or end-user to be a foreign government; its designee, or an entity acting on its behalf, the Department of State requires that the applicant furnish an attested statement that:

"This transaction does not involve the direct or indirect payment of any material amount for fees or commission contingent upon the accomplishment, in whole or in part, of the terms of the transaction."

Or, if the transaction does involve such payment, an attested statement that: "This transaction involves the direct or indirect payment of fees or commissions contingent upon the accomplishment, in whole or in part, of the terms of the transaction. (*Applicant*) has advised the Government of ---------- as to the identity of the recipient and the amount of the fee or commission to be received."

(2) For purposes of this paragraph (b) "a material amount" shall be deemed to be $10,000 or more.

PART 127—VIOLATIONS AND PENALTIES

4. Amend § 127.02(b) by adding at the end thereof the following:

§127.02 Misrepresentation and concealment of facts.

* * * * * * *

(b) * * *

(14) Contingent fees or commissions statement.

(Sec. 414, as amended, 68 Stat. 848, (22 U.S.C. 1934) secs. 101 and 105, EO. 10973, 26 FR 10469.)

Dated: August 19, 1975.

[SEAL]

CARLYLE E. MAW,
Under Secretary of State
for Security Assistance.

[FR Doc. 75-22516 Filed 8-22-75; 8:45 am]

A CODE OF WORLDWIDE BUSINESS CONDUCT, CATERPILLAR TRACTOR CO., OCTOBER 1, 1974

To Caterpillar Managers:

As you know, large business corporations everywhere in the world are being given increasing public scrutiny.

This is understandable. A sizable economic enterprise is a matter of justifiable public interest—sometimes concern—in the community and country in which it is located. And when substantial amounts of goods, services and capital flow across national boundaries, the public's interest is, logically, even greater.

Not surprisingly then, the growth of multinational corporations has led, among other things, to increasing public calls for standards, rules, and codes of conduct for such firms.

It seems unlikely the world will any time soon agree on a "code" or single set of rules pertaining to all facets of international business. But, nevertheless, we conclude it is timely for Caterpillar to set forth *its own beliefs*, based on ethical convictions and international business experiences that date back to the turn of the century.

This "Code of Worldwide Business Conduct" is therefore offered under the several headings that follow. Its purpose is to guide us, in a broad and ethical sense, in all aspects of our worldwide business activities.

Of course, this code is not an attempt to prescribe actions for every business encounter. It *is* an attempt to capture the basic, general principles to be observed by Caterpillar people everywhere.

To the extent our actions match these high standards, such can be a source of pride. To the extent they don't (and I'm by no means ready to claim perfection), these standards should be a challenge to each of us.

I can think of no document bearing my signature which I consider more important than this one. So I trust my successors will cause it to be updated as events may merit. And I also trust *you* will give these principles your strong support in the way you carry out your daily responsibilities as Caterpillar managers.

W. H. FRANKLIN,
Chairman of the Board.

OWNERSHIP AND INVESTMENT

In the case of business investment in any country, the principle of mutual benefit to the investor and the country should prevail.

We affirm that Caterpillar investment must be compatible with social and economic priorities of host countries, and with local customs, tradition and sovereignty. We intend to conduct our business in a way that will earn acceptance

and respect for Caterpillar, and allay concerns—by host country governments—about "foreign" ownership.

In turn, we are entitled to ask that such countries give careful consideration to our need for stability, business success and growth; that they avoid discrimination against "foreign" ownership; and that they honor their agreements, including those relating to rights and properties of citizens of other nations.

We recognize the existence of arguments favoring joint ventures and other forms of local sharing in the ownership of a business enterprise.

Good arguments also exist for full ownership of operations by the parent company: the high degree of control necessary to maintain product uniformity and protect patents and trademarks, and the fact that a single facility's profitability may not be as important (or as attractive to local investors) as its long-term significance to the integrated, corporate whole.

Caterpillar's experience inclines toward the latter view—full ownership—but with the goal of worldwide ownership of the total enterprise being encouraged through listing of parent company stock on many of the world's major stock exchanges.

Since defensible arguments exist on both sides of the issue, we believe there should be freedom and flexibility—for negotiating whatever investment arrangements and corporate forms best suit the long-term interests of the host country and the investing business, in each case.

CORPORATE FACILITIES

Caterpillar plants, parts warehouses, proving grounds, product demonstration areas and offices are to be located wherever in the world it is most economically advantageous to do so, from a long-term standpoint.

Decisions as to location of facilities will, of course, consider such conventional factors as nearness to sources of supply and markets, possibilities for volume production and resulting economies of scale, and availability of a trained or trainable work force. Also considered will be political and fiscal stability, demonstrated governmental attitudes, and other factors normally included in defining the local investment or business "climate."

We do not seek special treatment in the sense of extraordinary investment incentives, assurances that competition from new manufacturers in the same market will be limited, or protection against import competition. However, where incentives have been offered to make local investment viable, they should be applied as offered in a timely, equitable manner.

We desire to build functional, safe, attractive factories to the same high standard worldwide, but with whatever modifications are appropriate to make them harmonious with national modes. Facilities are to be located so as to complement public planning and be compatible with local environmental consideration.

Facility operations should be planned with the long-term view in mind, in order to minimize impact of sudden change on the local work force and economy. Other things being equal, facilities will give preference to local sources of supply, and to local candidates for employment and promotion.

RELATIONSHIPS WITH EMPLOYEES

We aspire to a single, worldwide standard of fair treatment of employees. Specifically, we intend:

1. To select and place employees on the basis of their qualifications for the work to be performed—without discrimination in terms of race, religion, national origin, color or sex.
2. To protect the health and lives of employees by creating a clean, safe work environment.
3. To maintain uniform, reasonable work standards, worldwide, and strive to provide work that challenges the individual—so that he or she may feel a sense of satisfaction resulting from it.
4. To attempt to provide continuous employment and avoid capricious hiring practices. Employment stabilization is a major factor in corporate decisions.
5. To compensate people fairly, according to their contribution to the Company, within the framework of prevailing practices.
6. To promote self-development, and assist employees in improving and broadening job skills.
7. To encourage expression by individuals about their work, including ideas for improving the work result.
8. To inform employees about Company matters affecting them.

9. To accept without prejudice the decision of employees on matters pertaining to union membership and union representation; and where a group of employees is lawfully represented by a union, to build a Company-Union relationship based upon mutual respect and trust.

10. To refrain from employing persons closely related to members of the board of directors, administrative officers and department heads—in the belief that nepotism is neither fair to present employees, nor in the long-term interests of the business.

PRODUCT QUALITY

Wherever in the world Caterpillar products are manufactured, they will be of uniform design and quality. Wherever possible, parts and components are to be identical. When such isn't practicable, they will be manufactured to the same high quality standard, with maximum interchangeability.

We strive to assure worldwide users of after-sale parts and service availability at fair prices. Wherever possible, such product support is to be offered by locally based, financially strong, independently owned dealers. We back the availability of parts from dealers with a worldwide network of corporate parts facilities.

We acknowledge that the pursuit of product quality is not only a matter of providing the best value in terms of cost, but also of providing products responsive to the public's desire for lower equipment noise levels, compliance with reasonable emission standards, and safe operating characteristics. We shall continually monitor the impact of Caterpillar products on the environment—striving to minimize any potentially harmful aspects, and maximizing their substantial capability for beneficial contributions.

TECHNOLOGY

We intend to take a worldwide view of technology. We locate engineering facilities in accordance with need, and without reference to countries or nationalities involved. We exchange design and specification data from facility to facility, on a worldwide basis, while recognizing local restrictions that may exist.

We desire to raise the technical capacity of employees and suppliers in all countries in which Company facilities are located. And we provide access, as appropriate, to technical competence which we have elsewhere in the organization.

FINANCE

The principal purpose of money is to facilitate trade. Any company involved in international trade is, therefore, unaviodably involved in dealing in several of the world's currencies, and in exchanges of currencies on the basis of their relative values.

Our policy is to conduct such currency dealings only to the extent they may be necessary to operate the business and protect our interests.

We buy and sell currencies only in amounts large enough to cover requirements for the business, and to protect our financial positions in those currencies whose relative values may change in foreign exchange markets. We manage currencies the way we manage materials inventories—attempting to have on hand the right amounts of the various kinds and specifications used in the business. We don't buy unneeded materials or currencies for the purpose of holding them for speculative resale.

INTERCOMPANY PRICING

With respect to pricing of goods and services transferred within the Caterpillar organization, typically from one country to another: such pricing is to be based on ethical business principles consistently applied throughout the enterprise. It is to reflect cost and a reasonable assessment of the value of the good or service transferred. Prices are not to be influenced by superficial differences in taxation between countries.

DIFFERING BUSINESS PRACTICES

While there are business differences from country to country that merit preservation, there are others which are sources of continuing dispute and which tend to distort and inhibit—rather than promote—competition. Such differences deserve more discussion and resolution. Among these are varying views regarding anti-competitive practices, international mergers, accounting procedures, tax sysetms, transfer pricing, product labeling, labor standards, repatriation of profit and securities transactions. We favor multilateral action aimed at harmonizing or resolving differences of this nature.

COMPETITIVE CONDUCT

Fair competition is fundamental to continuation of the free enterprise system. We support laws of all countries which prohibit restraints of trade, unfair practices, or abuse of economic power. And we avoid such practices in areas of the world where laws do not prohibit them.

We recognize that in large companies like Caterpillar, particular care must be exercised to avoid practices which seek to increase sales by any other basis than quality, price and product support.

In relationships with competitors, dealers, suppliers and users, Caterpillar employees are directed to avoid arrangements which restrict our ability to compete with others—or the ability of any other business organization to compete freely with us, and with others.

Relationships with dealers are established in the Caterpillar dealership agreements. These embody our commitment to fair competitive practices, and reflect the customs and laws of the various countries in which Caterpillar products are sold. The dealership agreements are to be scrupulously observed.

In relations with competitors, Caterpillar personnel shall avoid any arrangements or understandings which affect our pricing policies, terms upon which we sell our products, and the number and type of products manufactured or sold—or which might be construed as dividing customers or sales territories with a competitor.

Suppliers are not required to forego trade with our competitors in order to merit Caterpillar's purchases. Suppliers are free to sell products in competition with Caterpillar, except in a situation where the product involved is one in which we have a substantial proprietary interest—because of an important contribution to the concept, design, or manufacturing process.

No supplier shall be asked to buy Caterpillar products in order to continue as a supplier. The purchase of supplies shall not be influenced because the supplier is a user of Caterpillar products—unless evaluations of quality, price and service provide no substantial basis for choosing a different supplier.

OBSERVANCE OF LOCAL LAWS

A basic requirement levied against any business enterprise is that it know and obey the law. This is demanded by those who govern; and it is widely acknowledged by business managers.

However, a corporation operating on a global scale will inevitably encounter laws from country to country that are incompatible, and which may even conflict with each other.

For example, laws in some countries may encouarge or require business practices which—based on experience elsewhere in the world—we believe to be wasteful or unfair. Under such conditions it scarcely seems sufficient for a business manager to merely say: we obey the law, whatever it may be!

We are guided by the belief that the law is not an end but a means to an end—the end presumably being order, justice, and, not infrequently, strengthening of the governmental unit involved. If it is to achieve these ends in changing times and circumstances, law itself cannot be insusceptible to change or free of criticism. The law can benefit from both.

Therefore, in a world increasingly characterized by a multiplicity of divergent laws at national, state and local levels, Caterpillar's intentions fall in three parts: (1) to obey the law; (2) to neither obstruct nor defy the law; and (3) to offer, where appropriate, constructive ideas for change in the law—based on our worldwide experience with the advancement of the wisest, fairest usage of human and natural resources.

BUSINESS ETHICS

The law is a floor. Ethical business conduct should normally exist at a level well above the minimum required by law.

One of a company's most valuable assets is a reputation for integrity. If that be tarnished, customers, investors and desirable employees will seek affiliation with other, more attractive companies. We intend to hold to a single standard of integrity everywhere. We will keep our word. We will not promise more than we can reasonably hope to deliver; nor will we make commitments we do not intend to keep.

In our advertising and other public communications, we will avoid not only untruths, but also exaggeration, overstatement and boastfulness.

Caterpillar employees shall not accept costly entertainment or gifts (excepting mementos and novelties of nominal value) from dealers, suppliers, and others with whom we do business. And we will not tolerate circumstances that produce, or reasonably appear to produce, conflict between the personal interests of an employee and the interests of the Company.

We seek long lasting relationships—based on integrity—with employees, dealers, suppliers and all whose activities touch upon our own.

PUBLIC RESPONSIBILITY

We believe there are three basic categories of possible social impact by business:

1. First is the straightforward pursuit of daily business affairs. This involves the conventional, but often misunderstood, dynamics of private enterprise: developing desired goods and services, providing jobs and training, investing in manufacturing and technical facilities, dealing with suppliers, paying taxes, attracting and holding customers, earning a profit.

2. The second category has to do with conducting business affairs in a *way* that is socially responsible. It isn't enough to design, manufacture and sell useful products. A business enterprise should, for example, employ people without discrimination, see to their job safety and the safety of its products, help protect the quality of the environment, and conserve energy and other valuable resources.

3. The third category relates to initiatives beyond our operations, such as helping solve community problems. To the extent our resources permit—and if a host country or community wishes—we will participate selectively in such matters, especially where our facilities are located. Each corporate facility is an integral part of the community in which it operates. Like individuals, it benefits from character building, health, welfare, educational and cultural activities. And like individuals, it also has citizen responsibilities to support and develop such activities.

All Caterpillar employees are encouraged to participate in public matters of their individual choice. Further it is recognized that employee participation in political processes or in organizations that may be termed "controversial" can be public service of a high order.

But clearly, partisan political activity is a matter for individual effort. The Company will not attempt to influence such activity in any city, state or nation. Caterpillar will not contribute money, goods or services to political parties and candidates, or support them in any way.

Where its worldwide experience can be helpful, the Company will offer recommendations to governments concerning legislation and regulation being considered. Further, it will selectively analyze and take public positions on *issues* that have a relationship to operations, when Caterpillar's experience can add to the understanding of such issues.

Finally, we affirm that the basic reason for the existence of any company is to serve the needs of people. The public is, therefore, entitled to a reasonable explanation of operations of a business especially as those operations bear on the public interest. Larger economic size begets an increased responsibility for such public communication.

INTERNATIONAL BUSINESS

We believe the pursuit of business excellence and profit—in a climate of fair, free competition—is the best means yet found for efficient development and distribution of goods and services. And we believe the international exchange of goods and ideas promotes human understanding, and thus harmony and peace.

These are not unproven theories. The enormous rise in post-World War II gross national product and living standards in countries participating significantly in international commerce has demonstrated the benefits to such countries. And it has also shown their ability to mutually develop and live by common rules, among them the gradual dismantling of trade barriers.

As a company that manufactures and distributes on a global scale, Caterpillar recognizes the world is an admixture of differing races, religions, cultures, customs languages, economic resources and geography. We respect these differences. Human pluralism can be a strength, not a weakness; no nation has a monopoly on wisdom.

It is not our aim to attempt to remake the world in the image of any one country. Rather, we would hope to help improve the quality of life, wherever we do business, by serving as a means of transmission and application of knowledge that has been found useful elsewhere. We intend to learn and benefit from human diversity.

We ask all governments to permit us to compete on equal terms with our competitors. This applies not just to the government of a particular country; it also applies to the substantial way such a government can control or impact on the business of a company in other lands.

We aim to compete successfully in terms of design, manufacture and sale of our products, not in terms of artificial barriers and incentives.

Senator RIBICOFF. Mr. Garcia, please proceed.

STATEMENT OF RAYMOND GARCIA, EMERGENCY COMMITTEE FOR AMERICAN TRADE

Mr. GARCIA. Mr. Chairman, I am Raymond Garcia. I am with the Emergency Committee for American Trade, and I am here to testify on behalf of Senate Resolution 265. I have my statement here.

Senator RIBICOFF. Your entire statement—I have read it. It is excellent. It will go in the record as if read, sir.

Mr. GARCIA. Thank you very much, Senator. I want to make just a few points, in light of the lateness of the hour, and because all of us want to get to lunch.

We are very much for this resolution, and we think that you have done a great service in introducing it. First of all, what you have done is, you have made it very clear that we are dealing not just with an American phenomenon; we are dealing with an international phenomenon. I think sometimes people lose sight of that fact.

Second, your resolution is directed to governments. The issue of bribery and corruption is also a government problem and, as such, it has to be solved by governments.

Third, I think you rightly frame the resolution in the context of the GATT, because the GATT is the only set of rules that internationally govern trade. It is true that the OECD is a forum for discussion, and while it would be very useful, I think, to begin the discussion in the OECD, to get like-minded countries together, ultimately for the code to be fully effective, it should be incorporated in the rules of the GATT.

The other point I wanted to make is I agree with you and with Ambassador Dent that the language of the resolution should be broadened along the lines that you have indicated. I believe this would strengthen our hand and speed up action on a broad front, not only in the GATT, but in the OECD and the United Nations. And, perhaps, as I suggest at the end of my statement, the Congress might also investigate the proposal that Milton Gwirtzman made in the article "Is Bribery Defensible?" in yesterday's edition of the New York Times magazine, for strengthening the international lending agencies procedures against payoffs on projects from their loans. Since the U.S. Government contributes so heavily to these institutions, we might be able to make some progress there.

Again, I want to thank the Senator very much for introducing this resolution. I think it is timely, and we would like to see action on this as quickly as possible, so that American multinational corporations and others might be treated more fairly in the world economy.

Senator RIBICOFF. Thank you very much.

What impresses me is that here you are, sir, representing 64 of the largest American multinationals, and I imagine these probably are the flagship American companies throughout the world, are they not?

Mr. GARCIA. They are, sir.

Senator RIBICOFF. And Charles Stewart, some 450 to 500 people, some of the biggest companies in the world too, who recognize the thrust of my resolution, that we do not condone what has taken place. We recognize we have got a competitive world society. As Mr. Stewart indicated, this has been going on since 1600, when you had the British East India Co., and what we are saying is, if we are going to outlaw these practices for American companies, and it is apparent we are, let us make sure that American companies are not placed at a disadvantage, that we make sure where we have the muscle, at GATT, more than any other forum, as you say—I have no objection to any of the others—that we are sure there is an international conduct so that the American businessmen can go out and compete fairly on price and on quality.

And when people say, how do you know what is going to be done, I can assure you from my experience and knowledge that an American company that loses a contract is going to know if another company in another country has paid off. You cannot handle these things secretly. They are not throwing these millions of dollars around, with these huge contracts. Everybody sort of knows what the next man is doing. There are no secrets.

I do appreciate having the support of the Emergency Committee for American Trade, and thank you very much for being with us, Mr. Garcia.

Senator Hansen.

Senator HANSEN. Thank you, Mr. Chairman.

I have no questions.

Senator RIBICOFF. Thank you very much.

The committee will stand adjourned, and without objection, the article "Is Bribery Defensible?" by Milton S. Gwirtzman from the October 5 Sunday Times will go in the record at this point.

Senator RIBICOFF. The committee is now recessed, subject to the call of the Chair.

[The prepared statement of Mr. Garcia and an article from the New York Times follows:]

STATEMENT BY RAYMOND GARCIA ON BEHALF OF THE EMERGENCY COMMITTEE FOR AMERICAN TRADE

Mr. Chairman and members of the subcommittee, I am Raymond Garcia and am pleased to be here today to testify on behalf of the Emergency Committee for American Trade on Senate Resolution 265, to Protect the Ability of the United States to Trade Abroad.

The Emergency Committee or ECAT as it is known was formed in 1967 to oppose the surge of protectionism that followed the Kennedy Round of trade negotiations. ECAT's members are the chairmen or chief executive officers of 64 of the largest American multinational enterprises. They have a substantial stake in international business and in keeping the channels of commerce free from harmful distortions. While we have not had time to consult our members individually on their views on the proposed resolution, its thrust and objectives are consistent with the policies we have expressed repeatedly over the years since we were formed.

In 1968, when ECAT first expressed its views before a Congressional committee, our founding chairman, the late Arthur K. Watson said:

"Our experience in world markets, however, leads us to the firm recommendation that we begin now to lay the foundations for a 'Fair Competition Policy' that would achieve a substantial degree of commonness in the environment in which international business is transacted. The objective of this policy should be to create a

code or series of codes that would establish common norms and standards. It's achievement would allow U.S. industry to further increase its potential in overseas markets."

Two years later, our current chairman, Donald M. Kendall repeated that view when he said to the House Ways and Means Committee:

"What we believe is needed is the negotiation of a series of agreements adding up to a 'fair competition policy' that would establish reasonably equal competitive conditions for all traders. . . ."

We are pleased to state that position again here today. And we commend you, Mr. Chairman, and your colleagues, Senators Long and Church, for introducing Senate Resolution 265. As you said in your floor statement, the resolution ". . . seeks to insure that American corporations and industry are able to compete fairly in foreign markets without being coerced or induced in any way to participate in the widespread practices of bribery, indirect payments, kickbacks or unethical political contributions."

The resoltuion correctly recognizes that the problem is not just an American problem. Foreign firms engage in similar practices, perhaps with a great deal more experience and skill than our own companies. For the United States Government to take unilateral domestic action would neither get rid of the problem nor would that be fair to American companies. Foreign firms would gain a competitive advantage by being free to continue unethical practices with impunity. Since the problem is international in scope, it requires international action to effectively reduce or eliminate it.

Similarly, private efforts alone to establish voluntary codes of conduct are not enough to attack the problem. The record abundantly shows that bribery and corruption can only thrive with the direct or indirect tolerance of governments. Thus, governments, as your resolution clearly suggests, must speak out loudly and in concert against unethical practices, if they are to be eradicated.

The climate in the business community is increasingly receptive to a critical examination of ways of promoting ethical behavior. Last month a "Workshop on Corporate Codes of International Business Conduct," sponsored by the Public Affairs Council attracted representatives from more than 50 major U.S. firms. A majority of them indicated that their companies were considering developing individual codes of conduct similar to the outstanding "Code of Worldwide Business Conduct" that the Caterpillar Tractor Company published a year ago. In January this year, the Chamber of Commerce of the United States issued a list of "Elements of Global Business Conduct for Possible Inclusion in Individual Company Statements." Earlier business efforts to codify ethical behavior include the Pacific Basin Charter and the International Chamber of Commerce's "Guidelines for International Investment."

International organizations are also increasingly involved in considering ways of regulating multinational company behavior. The efforts of the UN, the OECD, the OAS and ILO in this regard are well known. Thus, Senate Resolution 265 is being introduced at a time when both the private and public sectors are actively working to reform international business practices.

What all of these groups appear to agree on is that this tack is highly complicated and will take considerable ingenuity, skill, patience and time to end in any concrete results. The problem of standardizing ethical behavior involves dealing with a diversity of laws, practices and customs in countries divided by differing religions and stages of development. No matter how serious or well-intentioned we might be in seeking to negotiate a code of ethical behavior, we should be aware of the complexity of the task and be prepared for very slow progress and even possible failure at an international solution to the problem.

For these reasons, we wonder whether the resolution should restrict our negotiators to seeking solutions solely within the trade agreements program. The current multilateral trade negotiations are moving quite slowly and to burden them with yet another task might unduly complicate their progress. We would suggest that the resolution be expanded to give our Government the greatest possible flexibility for action. Specifically, we would endorse Ambassador Dent's suggestion for broadening the language of the resolution to permit the negotiation of codes in any appropriate forum.

Furthermore, the Congress might also investigate a proposal for strengthening the international lending agencies procedures against payoffs on projects financed with their loans. This was suggested by Mr. Milton S. Gwirtzman in his article, "Is Bribery Defensible?," which appeared in yesterday's edition of "The New York Times Magazine." Since the United States Government contributes so heavily to these institutions, we might be able to make some progress there.

Again, we commend the Senate for the timely introduction of a resolution that seeks to help protect American business competitiveness abroad and we pledge whatever help we can give to our negotiators in successfully concluding an international code of fair competition.

[From the New York Times Magazine, Oct. 5, 1975]

Is Bribery Defensible?

(By Milton S. Gwirtzman) [1]

It has been above 110 degrees each day in the dusty Middle Eastern capital city. The American sales representative has already been through two bouts with dysentery; worse yet, the only liquor available is a foul substance called "ponzoo." After three months of presentations before lesser officials, the American is finally granted an audience with the Minister. For the nth time, he goes through his product's performance, his company's reputation, the attractive price. The Minister listens, obviously bored, then points to a round little man in the back of the room. "This is Mr. Faud," he says. "Mr. Faud will pay a visit upon you tonight."

That evening, over still more glasses of ponzoo, Mr. Faud informs the American he can have the contract if his company will pay $1 million to the Minister. A quick exchange of coded cables with the home office, and the bargain is sealed. As fast as he can clear out, the American heads for the airport and home.

This has not been an easy year for American business. Still struggling to recover from the worst sales decline in 30 years, the business community has been hit with sweeping new regulations of its products and advertising by the Government, and with increasing complaints about high prices and defective merchandise by a public whose faith in the free-enterprise system, according to recent polls, has sunk to a new low. In this already embattled atmosphere, some of the big multinational firms have been targets of a highly publicized series of revelations concerning bribery and payoffs abroad. Some of the country's flagship corporations—Exxon, Lockheed, Northrop, Gulf, United Brands—have admitted funneling massive amounts of cash to officials of foreign governments and hiding the transactions from their shareholders and directors. With their ethics as well as their profits under attack, many businessmen view themselves as Job beset by a plague of boils.

Of all the tribulations, the exposure of shady foreign business practices was the most unexpected, concerning as it does a practice that has existed at least since the 1600's, when the British East India Company won duty-free treatment for its exports by giving Mogul rulers "rare treasures," including paintings, carvings and "costly objects made of copper, brass and stone." Nations like Great Britain and Sweden, whose standards of government ethics are a good deal stricter than our own, take it for granted their businessmen will pay bribes when operating abroad, especially in developing countries. "Without it," says The Financial Times of London, "business simply would not get done." The only difficulty such bribes pose for British firms, according to a recent survey by The Financial Times, is one of morale. Some British executives feel unfairly treated when comparing their own modest and highly taxed salaries with what The Times calls "the large, tax-free rewards going to an assortment of foreign middlemen."

But in the United States, this traditional way of doing business abroad has become food for scandal because of the new climate of openness and honesty that former Vice President Agnew ruefully but accurately called in his resignation speech the "post-Watergate morality." It was largely corporate funds, laundered in foreign countries and returned to the U.S. in black satchels, that financed the Watergate break-in and the subsequent illegal payoffs to cover it up. In the course of its investigations, the Special Prosecutor's Office found in the possession of Richard Nixon's personal secretary a list of firms that had made illegal corporate contributions to President Nixon's campaign. The Securities and Exchange Commission, which protects shareholders by requiring companies to disclose material facts of their activities, went after the firms for failure to report these contributions to their owners. Further probing revealed that some of the devices used to hide illegal contributions had also been used to hide the bribery of foreign officials from the companies' shareholders, and even from their own auditors. The S.E.C. then moved to require disclosure of the questionable overseas practices, arguing that, while there is no law against such payments, the amounts of the bribes and the names of the recipients were important facts that present and prospective shareholders had a right to know.

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[1] Milton S. Gwirtzman is an international lawyer with offices in Washington and Paris.

Firms caught up in these proceedings feel as if they have been hit by a ton of bricks. When the facts began to unravel about a $1.25-million bribe paid by United Brands to the former President of Honduras to reduce the tax on the production of bananas, the company's president committed suicide, its stock dropped 40 per cent, its holdings in Panama were expropriated and its tax and tariff concessions in Honduras were revoked.

The Internal Revenue Service is investigating more than 100 corporations for improperly deducting payoffs and political contributions on their tax returns. (A bribe is not a legitimate business deduction. An agent's fee is.) A series of hearings by the Senate Subcommittee on Multinational Corporations, led by Senator Frank Church of Idaho, has fueled a push for new legislation, ranging from compulsory disclosure of such payments to their criminal prosecution to a requirement that the State Department keep watch on American businessmen and report all suspicious activities to the appropriate U.S. authorities.

All of this presents the American businessman operating abroad with a seemingly cruel dilemma. If he keeps paying foreign officials, he runs afoul of the post-Watergate morality in all its fury. If he is prevented from making these payments, either by law or by the chilling effect of disclosure, he risks the loss of important sales and investment opportunities to foreign competitors, who can apparently continue to pass bribes without embarrassment. The Lockheed case presents the most dramatic example of this predicament; despite considerable initial pressure from Congress and the S.E.C., the company refused to reveal the names of the recipients of the $25-million to $30-million in bribes it admitted having paid in the last five years. The firm, represented by former Secretary of State William Rogers, argues that if the whole truth were known about what it did to secure orders for aircraft from certain foreign governments, the orders could well be canceled, the company ruined, and the $200-million in loans the Government has made to keep Lockheed afloat would be lost for good. Lockheed did agree to pass no more bribes, and it subsequently lost a jumbo-jet contract in India to a French company that, Lockheed alleges, had contributed $1.5-million to the ruling Congress party.

American business activities abroad generate 15 per cent of the gross national product, 30 per cent of the total profits of the nation's corporations and an estimated 10 million American jobs. In large measure, the preservation of our current fragile economic health depends upon profits from foreign investment and dollars earned through overseas sales. It is important, therefore, to consider the true extent of the problem of foreign bribery, and its underlying causes, in order to decide what might be done about it.

U.S. business abroad runs the gamut from the people who sell the American college T-shirts so popular with the young in foreign countries, to Exxon, whose revenues from foreign operations total $27-billion a year. The ordinary businessman sells to private concerns. He is not enmeshed in the kind of payoffs that have been making news. Most American exporters have dealt with upright commission merchants in Europe and elsewhere for years. They may have to cross the palm of a local customs inspector to clear a shipment, or be overly generous at holiday time, but by and large the goods they offer are purchased or rejected on the basis of price and quality. The side inducements are no different from those that are part of daily practice in almost every field of business in the United States.

In general, the larger the company, the bigger the deal. The bigger the deal, the more heavily involved the foreign government is, either as purchaser, owner of natural resources or regulator. The bigger the government's stake, the more likely it is that large amounts of money will pass under the table. From the revelations of recent months, few can contest that graft and bribery of significant proportions are widespread, particularly in the developing countries. And the system by which the U.S. Government, the world's biggest arms merchant, sells its wares through private American firms is apparently shot through with corruption, not only in Asia and the Middle East, but in Europe as well.

The biggest payoffs are made by the large multinational companies, and they are part of a broader tendency to place the corporations' interests ahead of those of the countries in which they operate. Some multinationals can, and have, moved factories from country to country with little regard for the workers involved and shifted profits earned in one country to others where the tax systems are more indulgent. Studies have shown that multinational firms' ability to transfer large sums of money from one currency to another at a profit played an important role in the devaluation or revaluation of each of the world's major currencies over the past seven years, and the resultant breakdown in the world monetary system that had previously been based on fixed parities between national moneys.

(When former President Nixon blamed the devaluation of the dollar on "international speculators," he was speaking of some of his heaviest compaign contributors.) When firms routinely engage in these kinds of maneuvers, concepts of moral ethics as well as national allegiance tend to blur. Lawyers for Investors Overseas Services, during the heyday of the Swiss-based mutual fund conglomerate, once advised their chairman, Bernard Cornfield, that his best option as a man with a six-figure tax bill would be to become a citizen of Iceland.

Top managers of these companies often follow a lifestyle that tends to encourage unethical practices. Some heads of multinational companies have virtually unrestricted power. Jetting around the world in their personal planes, whisked from one meeting to the next by limousine, with immediate access to millions of dollars to spend as they see fit, they are driven by one overriding goal: to improve the company's earnings. This style of management has some advantages, but time for ethical reflection is not among them. These multinational managers are neither grafters nor thieves, but somewhere in the frenzy of travel, pressure and ambition they may lose their ability to balance the needs of their shareholders with the accepted standards of moral behavior. It happens at home—to this day, tobacco companies refuse to concede any medical link between cancer and cigarettes. It happens far more easily abroad, where the managers feel less sense of local commitment and may not develop the ethical antennae that result from having to relate to one's neighbors.

Nor can they always look for help to their shareholders and directors. At the annual meeting of United Brands in August the majority of shareholders were far more concerned with the company's passing its common dividend than with its massive bribes in Central America. They cheered a statement by one of their number that bribery was "essential in doing business in many parts of the world." At the annual meeting of Exxon, a resolution to require disclosure of the firm's payments abroad was defeated, 97 per cent to 3 per cent. Despite the devastating publicity suffered by Ashland Oil for payoffs in four countries and illegal contributions to scores of U.S. politicians, its directors recommended against firing its chief executive, Orin Atkins (who was directly responsible for most of the payments), on the ground that since he had taken over, the corporation's net income had grown from $31-million to $113-million.[2]

If corporate bribery abroad has offended the post-Watergate morality, the companies implicated have nevertheless taken a greater share of the blame than they deserve. Bribery abroad is not exactly the corruption of innocents. Several of the incidents spotlighted by the Senate hearings smack more of protection and extortion than of simple bribery. In the most outrageous case, the chairman of the ruling party in South Korea threatened to close the $300-million operation of Gulf Oil in that country unless the company made a donation of $10-million to his party's presidential campaign. Gulf's chairman, Bob Dorsey, was able to shave the demand down from $10-million, which he considered "not in the interests of the company" to $3-million, which he said was.

The reasons multinationals must do business amid a profusion of outstretched hands go deep into the history and structure of the lands in which they operate. In much of Asia and Africa, the market economy as we know it, in which the sale of goods and services is governed by price and quality competition, never has existed. What has developed in its stead are intricate tribal and oligarchic arrangements of social connections, family relations and reciprocal obligations, lubricated by many forms of tribute, including currency. In a meeting at the Department of Defense in 1973 (a report of which was subpoenaed from the files of the Northrop Corporation) Adnan Khashoggi, one of the most successful middlemen in the Middle East, justified his enormous sales commissions—$45 million on a single deal for fighter planes—by his need to cover his operating expenses and also take care of his pecuniary "loyalties" to Saudi Arabia's royal family. Another memo explained Northrop's loss of a contract to build a communications system by noting that Saudi officials wished to help out the local agent of a Northrop competitor, one Ibriham el-Zahed. "They felt," the memo said, "that by awarding a contract to his principals, he will make enough money to pay off his debts. This may sound like an amazing reason to people sitting in Century City [Northrop's California headquarters] but can be a very valid one in Saudi Arabia."

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[2] Such activities are not universal. Several large U.S. multinationals, as a matter of corporate policy, prohibit foreign political contributions and come down hard on suspected bribes. Among them are RCA, I.B.M. and Bendix. W. Michael Blumenthal, president of Bendix, says his company prefers to pass up increased profits and occasionally an entire national market rather than engage in the ethical compromises and deceptions such practices necessarily involve. It is, of course, easier for a firm that has a virtual monopoly of its product line, like I.B.M., to stay pure.

In most developing countries, civil-service salaries are deliberately low—the average Indian bureaucrat makes $1,650 a year—on the assumption that people will supplement their salaries by taking money where they can find it. Where political instability is the rule, the tenure of high officials is always uncertain and often short. Bribes provide a form of retirement fund. It is considered far more patriotic to take the money from rich foreign corporations than out of one's own country.

None of this is new. Some 70 years ago, Joseph Conrad wrote, in "Nostromo," about the mythical Latin republic of Costaguana, in which a foreign-owned silver mine kept a regular payroll of government officials. The brother of the insurgent general spoke of his intention "to demand a share in every enterprise—in railways, in mines, in sugar estates, in cotton mills, in each and every undertaking—as the price of his protection." Since the voyages of discovery, foreigners have come to the Third World to extract what they could from its land and its labor. This exploitation has been countered by levies on them for the benefit of those in power at the moment. Despite their undoubted role in modernizing the economies of developing countries, foreign companies are still looked upon by the people of the Third World as latter-day conquistadors. Little wonder that when the recent revelations of bribery became sensational worldwide news, the wrath of the nations involved was directed almost solely at the companies. When Ashland admitted it had paid $150,000 to the President and Prime Minister of Gabon to protect oil concessions, the Government accused the company of blackmail and racism. In fact, in much of Africa, the historic resentment of white exploitation impels black regimes to demand bribes from Western companies without moral qualms.

The responsibility for present practices must also be shared by our Government, which not only encouraged investment in countries whose ethical standards differ from ours, but also in many respects set the pattern for the graft under censure today. American intelligence agencies have regularly dealt in bribery and payoffs wherever they seemed to be useful tools in strengthening American influence abroad and frustrating the designs of Communist nations. Bribes have been used not just to acquire useful information, but to restore the Shah to power in Iran, to purchase votes in international organizations against Cuba, and to "destabilize" the Allende Government in Chile. We shall probably never know how may of the electoral campaigns of pro-West political parties were financed by secret contributions from the C.I.A. The important thing here is that these have been accepted tactics for more than a generation.

The rapid acceleration of American private investment in foreign lands, which began in the mid-nineteen-sixties, was seen by our foreign-policy makers as a welcome opportunity. If U.S. firms could build a nation's infrastructure, supply its consumer goods and hire a portion of its workers, the greater the likelihood the nation would be bound to ours by the safest and strongest of ties, economic self-interest. As a result, our Government wrote the foreign investment laws of several developing countries and urged our multinationals to make use of them. New programs were established to insure foreign investment against the risks of war and expropriation. Embassy personnel were ordered to scout out export possibilities for American firms, which were published in Commerce Business Daily, the Government's daily list of business opportunities.

Sometimes the government-business relationship was even closer than it seemed. After the 1967 exposé of the C.I.A.'s use of American student groups as fronts for intelligence activities, the C.I.A. decided that new organizations were needed for the purpose of deep cover. A special office was established in Washington to place agents in the overseas offices of American companies. At the same time, multinationals began recruiting former intelligence agents to run their operations abroad. Often this meant a man retired from the Government, in whose service he had bribed foreign officials, to begin a new career bribing the same officials on behalf of private enterprise. When Kermit ("Kim") Roosevelt Jr., grandson of President Roosevelt, became an "international consultant" to Northrop and other clients, he was able to use the same network of spies he had run when head of operations for the C.I.A. in the Middle East. (Roosevelt himself has not been linked to any bribe attempts. For Northrop, he concentrated on intelligence-gathering and high-level contracts. He is said to have told one old friend that he "always stayed away from the payments side.")

Armaments sales provide the most dramatic and dangerous example of corporate profit-seeking, foreign customs and U.S. policy goals combining to create a massive network of bribery. As cut-backs in Western defense budgets have dried up domestic markets for arms, purchases by Third World countries have in-

creased. In addition to maintaining domestic employment and lowering the unit cost of arms produced for our own defense, such exports were considered by our Government to be the most effective way of cementing diplomatic relations. Recipient countries, it was argued, would find it difficult to stay out of the U.S. orbit if they depended upon us for their military hardware, its maintenance and spare parts, and the training of personnel in its use.

When the war in Vietnam wound down, the most important market for armaments became the Middle East. For a generation, the U.S. and the Soviet Union, as well as Britain and France, have tried to strengthen their influence in that region by catering to the Arab rulers' fears of Israel and each other. The sharp rise in the price of OPEC oil gave the Arabs the means to buy the most sophisticated modern weaponry. Such sales have become a vital element of the "recycling" procedure, by which Western countries try to earn back some of their petro-dollars. From less than $1-billion in 1966, the total arms imports of Middle Eastern nations, including Israel, have shot to more than $9-billion in 1974. Last year, the United States alone sold $6.5-billion worth of armaments, more than half of them going to Iran, where the Shah has expressed a keen interest in purchasing aircraft capable of delivering nuclear weapons.

Given the stiff competition from other countries and the way business is done in that region, the Middle East arms race was bound to generate millions of dollars in graft. Under recent Saudi Arabian law, no foreign company could do business without a local agent. When Northrop, with strong encouragement from the Pentagon, undertook to sell its F-5 fighter plane there, the Saudi Minister of Defense told Kermit Roosevelt to advise the firm to hire Adnan Khashoggi, who had previously been the agent for Lockheed and Raytheon. To get the sale approved, the firm fattened Khashoggi's fee to include $450,000 for two Saudi Air Force general who were threatening to hold up the deal. Northrop president Thomas Jones says he knew nothing about this, but admits that on a quick trip to Jidda, the graft question was raised, and he told Khashoggi that "Northrop is a company that meets its obligations." The bribe money was deducted from Northrop's income tax and included as a reimbursable cost in its bill to the Department of Defense. Since the recent scandals, both claims have been withdrawn. Some of the fighters were transferred by the Saudis to Egypt and Syria for use against Israel. Thus the U.S. Government is encouraging unethical practices in order to unload American weapons that increase the risk of war.

For all these reasons, it would be unwise, as well as unfair, simply to write off bribery abroad to corporate lust. It is a symbol of far deeper issues that really involve America's role in the world. For the past 30 years, from Dean Acheson to Henry Kissinger, the governing principle of U.S. foreign policy has been that a Communist threat to our nation's vital interests exists, sufficient to require a major American presence throughout the world and whatever means are necessary to maintain U.S. influence.

Since our multinational companies, like Government agencies, are important instruments of our nation's global power, it is argued they should not be hobbled by home-bred notions of business morality. After all, if such firms were Government-owned, as many of their foreign competitors are, their managers would be servants of the state and presumably have the same license as intelligence agents to pass bribes for the good of the country. And is there really a distinction in this regard between state-owned companies and firms like Northrop and Lockheed, whose customers are governments and whose products give our policies their clout? If ending these practices means that other nations, through their instruments of power, will best us in the contest for international influence, don't we almost have to hold our noses and let the multinationals do what they say they must?

There is, of course, a growing force of opinion in this country that holds such a view of our past foreign policy to be both obsolete and dangerous, arguing that bribery abroad goes hand in hand with coziness with dictators, the excesses of the C.I.A. and everything else that has put us on the defensive in so many parts of the world. A foreign policy that at one stroke can justify bribes, the purchase of influence, the overthrow of governments and assassinations of foreign leaders subverts not just the free-enterprise system, but all our national ideas. Moreover, in its own terms, it doesn't work. The brutal lesson of Vietnam and Cambodia was that a corrupt regime, no matter how great its friendship for or dependence upon the United States, does not serve our interests; no amount of armaments can save such a regime from ultimate rejection by its own people. In China, Cuba, Algeria, Vietnam and—potentially—Portugal, the issue of graft among the ruling class has been an important part of the revolutionary appeal of Communist movements.

The people who have taken over in these countries, whatever their other failings, usually are fanatically puritanical when it comes to rejecting bribes. If American policy results in more revolutions, not only will U.S. influence be destroyed, but trade will cease and the assets of American firms will be expropriated. Thus even by the test of the most single-minded corporate manager, bribery is ultimately bad for business.

These opposite views of American foreign policy cannot be resolved by argument. With the right pair of candidates, they may be a central issue in next year's Presidential election. One thing is certain, however: To implement this last view will require far greater changes in how our country acts abroad than the mere cessation of graft. If that is all that changes, business will be handicapped in many foreign countries and our economy may suffer as a result.

Yet this may be exactly what occurs. The investigations by Congress and the S.E.C. have enjoyed a remarkable staying power on the front pages of the nation's press. The revelations undoubtedly have struck a sensitive national nerve. A sufficient head of steam exists in Congress to push through new laws outlawing both bribery and political contributions abroad. Whether such a law is sensible or even enforceable, is another question. It has always been difficult to give extraterritorial effect to American criminal law, in countries where local law is different. Robert Vesco in Costa Rica and the Vietnam draft resisters in Canada and Scandinavia are testimony to that. To prove a case of bribery abroad might well require evidence and witnesses American courts cannot command, any more than Bolivia has been able to force Mr. Dorsey of Gulf to come to that country and testify about his company's activities there. The task of keeping watch on what businessmen and foreign officials do would radically change the atmosphere of our embassies and cause widespread resentment abroad. If businessmen avoid our embassies, the important work they are doing to identify trade opportunities could well be wasted.

There is more to be said for a new law making it easier for the S.E.C. to require disclosure of foreign bribes. Forty years of experience with securities legislation has shown that if gamey activities must be exposed in public, they will usually—but not always—die a natural death. If disclosure is to be mandated, however, it should be limited to payments made in the future. Some exposure of past activities has been necessary to focus public concern on the issue. But aside from providing an unending public spectacle, there is little reason to continue to call business executives on the carpet to account for activities that were not only legal, but practiced by their competitors, accepted and expected by the host countries, condoned and in some cases encouraged by our own Government.

It would be far better if reform could be coordinated with other countries and with international organizations. Since the U.S. puts up such a large share of the capital of the World Bank, the Inter-American Development Bank and other international organizations, we could ask that these agencies strengthen their procedures against payoffs on projects financed with their loans.

In a recent interview on West German television, an official of that country's Finance Ministry admitted it was "morally indefensible" to allow German companies to deduct foreign bribes on their tax returns, but, he said, he feared that if West Germany changed its laws, its firms would be "out of business . . . the others would get the business in our stead." The best place to initiate common reform may be in the organization for Economic Cooperation and Development, whose membership comprises all the Western industrialized nations, and which is now working on guidelines for the conduct of both multinational companies and the countries in which they operate. If the U.S. were to insist on strong prohibitions against bribery in this document, member nations might in concert, adopt such strictures for themselves.

In addition, former Under Secretary of State George Ball has proposed an international companies law, similar to the one being written for the European Common Market. Under Ball's proposal, multinationals would derive their right to do business not from the state of Delaware, or even from one country, but from an international authority. Companies would have to meet world standards in all their activities, from capital transfers to tax procedures, or lose the right to do business in the countries that adhere to the law.

All these proposals are fraught with the delay and frustration that come with any attempt to break new ground in international law. But if they could be implemented, it would not be the first time that nations found themselves able to do together what none dared do alone.

Yet even if we have to act alone, it will not be the first time. Last year, we were ready to impeach a President for actions that are accepted practices abroad. Watergate showed not that America was the most corrupt of nations, but that it was the most sensitive. The truth is that we have stood for worthy ideals even while playing international hardball. The export of Marshall Plan aid, Food for Peace and the Peace Corps volunteers were actions others admired and then followed. One of our ideals is that we are an open society that lets its conduct hang out for ethical inspection. Perhaps the export of the new morality born of the Watergate tragedy would not hurt us in this wearied world.

[Whereupon, at 12:04 p.m., the subcommittee recessed, subject to the call of the Chair.]

[By direction of the chairman, the following communications were made a part of the record:]

NATIONAL SECURITY INDUSTRIAL ASSOCIATION,
Washington, D.C., October 6, 1975.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Subcommittee on International Trade, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The National Security Industrial Association (NSIA) desires to submit for the record its endorsement of Senate Resolution 265, on which we understand your Subcommittee is holding hearings today.

NSIA is a non-profit Association of approximately two hundred-fifty American industrial and research companies of various types and sizes, from large to small, representing all segments of an industry which provides products and services to the United States Government. The Association's essential purpose is to foster an effective working relationship between the Government and industry in the interest of the national security.

We believe the multilateral negotiations envisioned in SR 265 is the appropriate and equitable approach to the problem of special and unusual payments abroad, rather than the unilateral action comtemplated by the State Department in its proposed change to the ITAR, which we feel is unnecessary, inappropriate and prejudicial to the foreign trade interest of the United States and American companies.

Sincerely,

J. M. LYLE, *President.*

ELECTRONIC INDUSTRIES ASSOCIATION,
Washington, D.C., October 17, 1975.

Subject: Endorsement of Senate Resolution 265.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Subcommittee on International Trade, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR SENATOR RIBICOFF: The Electronic Industries Association comprises over 260 member companies including, in our Government Products Division, most of those who provide defense electronic equipment and systems to both national and international markets.

Through our Government Products Division, we have expressed, in some depth, our concern over the precipitous actions taken, or being planned, by the Departments of Defense and State in this area. A copy of our recent statement to the President's Council on International Economic Policy is enclosed. We call to your attention the last paragraph of Page 3 of the attached "Statement of Concerns and Recommendations of the Government Products Division. . . .", which expresses our recommendation that a comprehensive U.S. national policy on the proper use of foreign representatives be developed *with coordination through a recognized international forum.*

We are gratified that Senate Resolution 265, as introduced by you and Senators Long and Church, also recognizes the necessity of treating this matter through a properly constituted international mechanism.

We are pleased to express our wholehearted endorsement of this Resolution and trust the enclosed material will provide useful supporting information in this most mportant endeavor.

The inclusion of this material in the record of the recent hearings on this Resolution, as conducted by your Subcommittee, would be appreciated.

Yours very truly,

V. J. ADDUCI.

Enclosures.

Subject: Recent Unilateral Department of State and Department of Defense Administrative Actions Relative to the Use of "Agents" in Connection With the Export of Defense Products.

Mr. J. M. DUNN,
Executive Director, Council on International Economic Policy, Executive Office Building, Washington, D.C.

DEAR MR. DUNN: The Government Products Division of the Electronic Industries Association respectfully requests that the subject planned actions of the Department of State and Department of Defense not be implemented because they are in conflict with, and will significantly inhibit, the national policy of export expansion, and for other reasons.

The attached statement expresses our objections and offers our recommendations for remedial action.

The Electronic Industries Association was organized over fifty years ago and currently has a membership of 260 companies. These companies represent about 80% of the $35 billion electronics industry and employ about 1.3 million people. EIA member companies have plants and employees in virtually all of the fifty United States. Members of our Government Products Division are major suppliers of defense electronic products for national and international markets. It is our belief that implementation of the aforementioned actions by the Department of State and Department of Defense would adversely affect the international free enterprise system and could seriously jeopardize:

Ten billion dollars in foreign defense sales
Over seven hundred thousand U.S. jobs

and could result in:

Increased cost of weapon systems to the U.S. because of the diminished production base with resultant additional burden to the individual U.S. taxpayer
Loss of highly desirable U.S. "presence" in friendly foreign states

We request your serious consideration of our concerns and remedial recommendations described in the attached statement.

Representatives of our Association would be pleased to discuss this matter further and we look forward to receipt of your reply.

Yours very truly,

J. A. CAFFIAUX,
Staff Vice President, Government Products Division.

Attachment.

STATEMENT OF CONCERNS AND RECOMMENDATIONS OF THE GOVERNMENT PRODUCTS DIVISION OF THE ELECTRONIC INDUSTRIES ASSOCIATION

[Recent Unilateral Department of State and Department of Defense Administrative Actions Relative to the Use of "Agents" in Connection With the Export of Defense Products]

Reference 1: DOS/OMC/ITAR, parts 123, 124, 125, 127, title 22 CFR.
Reference 2: ASD:ISA(SA)/DSAA Directive on agents fees—August 1975.

One of the keystones of the free enterprise system is that it provides a mechanism for government, industry and labor to join together in a wide range of efforts to improve the way of life for all Americans. One such effort which is becoming increasingly more important is in export expansion with its resultant favorable impact on U.S. jobs and balance of payments.

Currently, the U.S. is dependent upon forty-three critical elements which must be imported, a fact which continually erodes at the balance of payments. The referenced Department of State and Department of Defense regulations will inhibit the flexibility of U.S. industry to compete against other countries exporting high technology products, such as Italy, Germany, France, UK, Japan, and increasingly, the Soviet Bloc; and deny to the U.S. a major opportunity to achieve the favorable trade so necessary for job-producing exports and their resultant favorable economic impact.

Recently, proposed State Department changes to the International Traffic in Arms Regulations would require, as a condition of export license approval, that when a transaction involves the direct or indirect payment of contingent fees or commissions, the U.S. seller must advise the purchasing foreign government of the identity of the recipient and the amount of such fees.

A related Defense Department action requires a similar disclosure as well as DoD approval of the reasonableness of the fee and specific acceptance by the foreign government of such fees.

Because of our genuine belief in the free enterprise principle, the Electronic Industries Association Government Products Division records herewith its opposition to these recent actions by the Department of State and the Department of Defense relative to the export of defense products.

We believe that these actions are contrary to, and will significantly inhibit, the expressed national policy of export expansion.

Secretary of State Henry Kissinger, in a recent statement on U.S. POLICY ON TRANSNATIONAL ENTERPRISES, said:

> Specifically, the United States believes that:
>
> > Transitional enterprises are obliged to obey local laws and refrain from unlawful intervention in the domestic affairs of host countries. Their activities should take account of public policy and national development priorities. *They should respect local customs.* They should employ qualified local personnel, or qualify local people through training.

We believe that these actions by the Department of State and Department of Defense are the most recent in a continuing series of proposed actions which are contrary or inimical to the stated intent of the U.S. Policy expressed by Secretary Kissinger and the Trade Act of 1974 as approved by Congress.

It is because of our grave concern, as expressed above, that we would like to present some specific reasons for our objections to the proposed actions of Department of State and Department of Defense:

1. These actions impose what is, in effect, unilateral new trade restrictions on U.S. industry, without a similar restriction being imposed on our foreign competitors. Thus, these actions become *self-imposed new Non-Tariff Barriers* and are contradictory to the objectives of the Trade Act of 1947 and of U.S. efforts currently in preparation for the upcoming GATT Trade Negotiations. Generally, similar kinds of actions (standards and taxes), by precedent, have been handled in recognized international forums and bilateral agreements with all affected countries participating, rather than by the unilateral action of U.S. Government agencies. To do otherwise is a unilateral administrative action which is contrary to the objectives of the Trade Act of 1974 dedicated to emphasizing the need for establishing fair and equitable conditions of international trade. The implementation of these changes would also appear to represent a U.S. infringement into the internal affairs of foreign sovereign powers.

2. These proposed actions will *deter many legitimate independent foreign representatives* (agents) from wanting to be associated with U.S. firms. Instead, they will prefer to align themselves with foreign competitors, thus denying U.S. industry the very important services they provide and which are so essential to maintaining a favorable export sales program.

We have attached a paper covering some of our views on the proper role of in-country representatives and agents.

3. Subject actions could readily *result in disclosure* of U.S. prices, agents and commissions paid which would unfairly provide foreign competition with privileged, proprietary pricing information. Under normal U.S. Government policies, such pricing data is protected. However, there is no assurance of similar protection of this information when it is made available to foreign governments.

4. Compliance with these Department of Defense and Department of State requirements will *introduce additional delays* which could be critical in what even now is a lengthy export approval process. U.S. companies are already at a disadvantage in conducting international sales efforts because of the administrative delays in securing export license approval. In most cases, our foreign competitors are relatively unrestrained in this regard and can, therefore, often initiate proposals, stimulate business interests and respond faster to international sales opportunities.

5. In the absence of a clear, coordinated U.S. national policy on the proper role of foreign representatives and agents, these unilateral departmental actions (taken without consultation with industry as envisioned by the Administration and Congress under the Trade Act of 1974) run the risk of creating new issues of a foreign policy nature which could *cause adverse changes in the classic trade patterns,*

and economic and political alignments. Similarly, these changes could encourage foreign governments to solicit U.S. assistance in resolution of their related internal problems.

For these and other reasons, we respectfully request that these Departmental actions not be implemented until full consideration is given to the issue raised.

We are keenly aware of the highly publicized Congressional concerns on this subject and we are not adverse to continuing to provide appropriate information to satisfy Department of Defense and Department of State requirements. Further, we fully intend to comply with pertinent foreign laws covering the subject. However, we believe it inappropriate for the U.S. Government to unilaterally require that this information be provided to foreign governments and to potential customers.

In the event that a foreign government requests the U.S. Government to provide them with such information, U.S. compliance should be contingent upon the request being equally applicable to all other governments and international suppliers.

In the interests of preserving U.S. industrial competitiveness in the international market, the general standards of conduct envisioned under the Trade Act of 1974 dictate that the U.S. Government should seek such assurances of equity.

Accordingly, we believe that a comprehensive, coordinated U.S. national policy on the proper use of foreign representatives should be developed with participation by Government, labor and industry and, where foreign governments are concerned, with subsequent coordination through a recognized international forum. We are hopeful that through such a discussion of the issues and ramifications, a uniform national policy could be identified and implemented, which would assist, rather than deter, the U.S. in achieving its national and international objectives of fair and equitable conditions of international trade.

EIA Government Products Division Statement on Use of Agents, Representatives, Consultants or Distributors

The use of agents, representatives, consultants or distributors (hereinafter referred to as representatives) is a time-honored, well-established practice and an essential part of the free enterprise system in both domestic and international business.

In his statement of U.S. Policy on Transnational Enterprises, Secretary of State Kissinger said:

> Specifically, the United States believes, that:
>
> Transnational enterprises are obliged to obey local laws and refrain from unlawful intervention in the domestic affairs of host countries. Their activities should take account of public policy and national development priorities. *They should respect local customs.* They should employ qualified local personnel, or qualify local people through training.

The U.S. Department of Commerce, in many of its publications on international marketing specifically recommends that U.S. businessmen employ local representatives in the Near East and North Africa—"local representation is virtually essential for sales penetration" and "the key to success or failure often hinges on this choice" (of local representative) and "In most cases they simply do not get any government business unless their Middle East representative appoints a Saudi agent and "The importance of a U.S. Exporter having a reliable and capable representative in Iran cannot be overstressed" and in Morocco "the U.S. exporter should be prepared to train the local agent in selling and servicing his product" and "Any American firm wishing to sell in Kuwait must adhere to Kuwait Commercial Law and do so through a (Kuwaiti national) agent" and "to sell products in Bahrain it is generally preferable to appoint a Bahraini rather than a regional Middle East distributor.

U.S. aerospace/electronic industry officials have spent many years selling to the Department of Defense. They know the language, the systems, procedures, regulations, the needs, etc. And yet, hardly a week goes by that some new procedure, requirement, or change does not occur. Multiply that situation by numerous foreign countries and the magnitude of the problem begins to come into focus. The requirement for representatives who know their country comes into perspective. The vital need of representatives who not only know the products of the industry they represent and how they should be promoted in their territory, but who can educate their clients and guide them as to the correct approach from the viewpoint of the customer.

Such local representatives can vary from one man to an organization bigger than the firm they are representing. Most American corporations can't afford to station a full-time company-paid employee or maintain branch offices in each of the foreign countries in which they conduct business. Since many American products are sold domestically to distributors, retailers and the consumer by commissioned salesmen (stocks, real estate, appliances, cosmetics, insurance and automobiles) the extension of this practice to overseas sales is a normal action.

U.S. firms compete against other industrial nations (France, England, Germany, Italy, Japan, etc.) who have used local foreign representatives longer than we, who know their importance and have the full support of their Governments to obtain export business in order to stay economically viable. Further, there is evidence of growing Soviet Bloc competition.

Enumerated below are the specific responsibilities and functions of a bona fide "in-country representative":

1. identify opportunities–vs–U.S. Company product lines
2. make initial contacts to generate customer interest
3. advise the U.S. company when a visit by the experts is timely
4. set up appointment schedules to permit a successful three-day visit instead of a three-week, month, or year-long sales campaign
5. brief the U.S. company on the politics of the nation
6. identify the decision makers
7. identify the procurement process in a specific case
8. enlighten the U.S. company on competitors' position, approach, strengths, weaknesses, etc.
9. funnel customer questions to the U.S. company and keep proposal on top
10. translate U.S. company briefings, letters, etc., and the customers communications
11. furnish in-country, in-city transportation
12. identify in-country firms whose products or services can be used in your approach and bid to achieve the very important IN-COUNTRY-CONTENT and OFFSETS (also assist in negotiating offsets)
13. consult on legal matters or representation thereof
14. assist in getting billings paid
15. assist in import/customs procedures
16. assist U.S. technicians in locating housing, transportation, etc., for longer term visits, required for delivery assembly, training, logistics, etc.
17. feed back information on product performance and customer satisfaction
18. provide offices and staff for use of personnel
19. provide guidelines as to the "do's" and "don'ts" in the represented country
20. assist in establishment of Licenses and collection of Accounts Receivable

The aerospace and electronic industries could not have expanded their export sales over the last ten years without a local representatives' network in foreign countries. We do not condone payment of illegal fees to influence peddlers or government officials. Many U.S. companies use a fee, no front end money to secure a sale. They carefully screen prospective representatives through in-country contacts, through the local American Embassy, MAAG/Milgroup, Department of Commerce, International financial services, his references, and other firms he represents. U.S. companies are looking for intelligent, professional businessmen who will protect their reputation and assist in obtaining good profitable job producing business. They often use a Regional U.S. employee to monitor, motivate and assist the foreign representatives, who generally cover two to ten countries.

Normally commissions or fees represent payment for services rendered but are not paid to the foreign representative until the U.S. company is paid. U.S. firms strive for the lowest commission consistent with competition, the region of the work they deal in and the laws and customs of that region and country. The fees and commissions paid are considered a normal cost of doing business, are included in the purchase price and represent no imposition on the U.S. taxpayer.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Subcommittee on International Trade,
Committee on Finance, U.S. Senate,
Washington, D.C.

OCTOBER 16, 1975.

DEAR MR. CHAIRMAN: The Department of State shares with you the view that the objectives to which Resolution 265 addressed itself are of major importance and that we must move ahead with all possible speed in addressing them. Because

of the importance we attach to this issue and because we welcome your Subcommittee's joining us in trying to develop effective solutions to this problem, I would like to set out our position.

As we view it, the purpose of Resolution 265 is to bring the unethical practices with which it treats to greater world attention and to stimulate action to eliminate them as a factor in world trade. Not only should those practices be eliminated, but we feel strongly that they should be done away with in a manner which would not place enterprises of the United States at a disadvantage in the competitive world market.

The issue of ethical practices poses many thorny problems. And although there is work underway now in many forums to deal with this problem, much remains to be done. For example, the question of what types of payments, such as political contributions, would be considered permissible under a code of ethical business practices has not been addressed. Nor has the issue of what mechanism would be suitable for dispute settlement. We are certain that most countries would readily subscribe to a code of practices which outlaws the acceptance of bribes by foreign countries. However, to ensure compliance we would actually have to go behind the borders of counties involved and to sit in judgment on how the countries enforced their domestic legislation. Clearly this is a very difficult problem. Nonetheless, we agree with you that serious initiatives must be undertaken now. However, if we are to achieve our objectives the choice of effective tactics and the proper forum are essential.

With regard to tactics, I would suggest that we undertake, as a first step, the promotion of a consensus among developed countries, whose firms are most affected, that unethical practices shall not be followed. Once there is an understanding that we have a common interest in developing guidelines which will help protect our firms from the type of pressures which have led to the granting of bribes, we might together adopt measures to the effect that foreign investors should neither make nor be solicited to make payments to government officials or contributions to political parties or candidates.

The Organization of Economic Cooperation and Development (OECD) provides a forum where it might be possible to work effectively to develop a consensus regarding steps to be taken. Its membership includes the major industrialized countries whose firms have been subjected to the type of pressures we are seeking to negate and the organization and its secretariat have experience in developing the type of consensus and ultimately agreed guidelines we seek.

Once agreement is reached among principal developed countries, efforts could then be expanded and intensified among all affected countries in the United Nations where work is already underway to develop principles of behavior with regard to multinational enterprises.

I have serious doubts, however, that the Multilateral Trade Negotiations (MTN) in Geneva would provide a forum where we could realistically expect to make progress, at least in the initial stages of our work, in this area. The MTN already has a full platter. Its membership is too diverse to permit the early development of a consensus on this issue, while at the same time it does not include many of the countries in which bribery incidents have occurred. Not only would we risk not achieving our near-term goals regarding ethical business practices, but introducing the issue of ethical practices into the MTN could retard progress being made in Geneva by premature introduction of another complex issue into the negotiations.

I believe we share a common goal in this area, elimination of a facet of international trade that no one—excepting perhaps those who profit illegally from it—wishes to see continue. I am sure that, working together with this Subcommittee we will be able to find effective means for dealing with this problem. You can be assured of our full cooperation.

Sincerely yours,

JULIUS L. KATZ,
Acting Assistant Secretary
for Economic and Business Affairs.

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