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WESTCONN INTERNATIONAL TRADE ASSOCIATION  
NORWALK, CT.  
NOVEMBER 19, 1981

B. P. R. A.  
(BUSINESS PRACTICES AND RECORDS ACT)  
"AN HONEST ATTEMPT TO SAVE JOBS"

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MR. URDA, OFFICERS AND FELLOW MEMBERS OF WESTCONN INTERNATIONAL TRADE ASSOCIATION; THANK YOU FOR INVITING ME TO SPEAK THIS EVENING.

STANDING HERE, BEFORE A GROUP OF BUSINESSMEN WHO UNDERSTAND THE PROBLEMS AND COMPLEXITIES OF INTERNATIONAL COMMERCE, IS DIFFERENT FROM THE ATMOSPHERE IN WHICH I FOUND MYSELF LAST MAY, WHEN I TESTIFIED BEFORE A BANKING SUB-COMMITTEE OF THE UNITED STATES SENATE.

WHEN I GAVE TESTIMONY TO THAT PANEL, I SOUGHT TO MAKE CONGRESS MORE AWARE OF THE DESTRUCTIVE NATURE OF LEGISLATION ENACTED DURING THE LAST SEVERAL YEARS - LEGISLATION DESIGNED BY WELL-MEANING BUT OVERLY-ZEALOUS PUBLIC OFFICIALS.

I REFER IN PARTICULAR, OF COURSE, TO THE NOTORIOUS FOREIGN CORRUPT PRACTICES ACT OF 1977. WHICH AT THE TIME OF ITS ENACTMENT, WAS EXPECTED TO BE A GET-TOUGH MEANS OF ELIMINATING OVERSEAS PAYMENTS. LONG ENTRENCHED CUSTOMS OF GREASING THE WHEELS OF FOREIGN COMMERCE CAME TO LIGHT, YOU MAY RECALL, AS PART OF A ONE-SIDED MEDIA BLITZ IN THE MID-1970S.

AND, YES INDEED, THE FOREIGN CORRUPT PRACTICES ACT CAN BE VERY TOUGH; SO TOUGH, IN FACT, THAT IT IS IMPOSSIBLE FOR AMERICAN BUSINESSMEN TO SELL OVERSEAS AGAINST JAPAN AND EUROPEAN EXPORTERS.

BUT FAR FROM BEING A BENEFIT, THE FCPA IS A MAJOR CONTRIBUTOR TO AMERICAN MASSIVE UNEMPLOYMENT—OUR NATIONAL ECONOMIC DISEASE,

AS MORE AND MORE UNION MEMBERS ARE LAID OFF IN BALTIMORE, LOS ANGELES AND NEW LONDON.

AND THERE ARE SOME HARD FACTS THAT MAKE THIS STATEMENT UNDENIABLE. AFTER WORLD WAR II, THE UNITED STATES MADE SIGNIFICANT HEADWAY INTO FOREIGN MARKETS. BY 1951, AMERICA'S SHARE OF INTERNATIONAL TRADE ROSE TO 20 PERCENT.

BUT SINCE THEN, THIS COUNTRY'S ECONOMIC STATUS DECLINED IN WORLD MARKETS. DURING THE PAST TWENTY YEARS, U.S. EXPORTS HAVE BEEN GROWING AT ONLY ONE-HALF THE RATE OF OTHER INDUSTRIALIZED NATIONS AS AMERICAN ENTERPRISES LOSE THEIR SHARE OF EXPORT BUSINESS. AND EVEN THOUGH THE UNITED STATES IS STILL THE WORLD'S LARGEST EXPORTER WITH SOME \$150 BILLION IN ANNUAL EXPORTS, CLUMSY LEGISLATIVE POPFLYS, SUCH AS THE FOREIGN CORRUPT PRACTICES ACT, ARE FURTHER HAMPERING OUR COMPETITIVE CAPABILITIES. IN THE LATE 1970s, EXPORTS AMOUNTED TO ONLY 7 PERCENT OF AMERICA'S GROSS NATIONAL PRODUCT - COMPARED WITH 12 PERCENT OF JAPAN'S GNP AND 23 PERCENT OF GERMANY'S GNP.

AND WHO IS SUFFERING UNDER THIS ILL-CONCEIVED LAW? NOT JUST THE INTERNATIONAL TRADERS IN THIS ROOM - NOT JUST THE WELL-TO-DO TOP MANAGERS AND BOARD OF DIRECTORS OF MULTI-NATIONAL CORPORATIONS - THE REAL VICTIMS OF THIS LAW ARE SMALL, INDEPENDENT EXPORTERS AND, MOST IMPORTANT, LABOR - ABLE BODIED, HONEST, AMERICANS WHO ARE EAGER TO WORK, BUT CANNOT FIND EMPLOYMENT BECAUSE EUROPE AND JAPAN ARE BEATING THE PANTS OFF YOU IN THE THIRD WORLD EXPORT BUSINESS - WITHOUT ARROGANT AMERICAN RESTRAINTS.

AND JUST AS I TOLD THE SENATE BANKING SUB-COMMITTEE IN WASHINGTON, I PARAPHRASE AGAIN TONIGHT; THE FOREIGN CORRUPT PRACTICES ACT IS AMBIGUOUS AND INEXACT. IT CALLS UPON BUSINESSMEN AND ACCOUNTANTS

TO PLAY GUESSING GAMES AS TO WHAT IS AND IS NOT PROHIBITED.

THE VERY BASIS OF THE LAW--THAT EXECUTIVES AND CORPORATIONS CAN BE HELD CRIMINALLY LIABLE IF THEY HAVE "REASON-TO-KNOW" THAT THEIR ACTIONS WILL LEAD TO OVERSEAS BRIBERY OR THE VICTIMS OF EXTORTION--IS ITSELF SUBJECT TO COUNTLESS INTERPRETATION.

SHOULD A CONNECTICUT EXPORTER HAVE REASON-TO-KNOW THAT A PAYOFF IS BEING MADE BY A LOCAL AGENT, JUST BECAUSE HE CHARGES HIGHER FEES OR COMMISSIONS THAN THE EXPORTER NORMALLY PAYS?

OR TAKE THE CASE OF AN AMERICAN BUSINESSMAN WHO OWNS LESS THAN FIFTY PERCENT OF A FOREIGN COMPANY WHOSE LAWS FORBID MAJORITY AMERICAN OWNERSHIP.

OR YOU CAN HAVE A JOINT VENTURE IN THE THIRD WORLD SHARED WITH AN ENGLISH, DUTCH, GERMAN OR SWISS FIRM FOR STRAIGHTFORWARD COMMERCIAL PURPOSES.

CAN CONGRESS TELL ME WHY YOUR CONNECTICUT MINORITY STOCKHOLDER COULD BE HELD LIABLE FOR MISCONDUCT OF THE JOINT COMPANY'S PERSONNEL IN A THIRD COUNTRY - EVEN THOUGH THE AMERICAN IN HARTFORD HIMSELF EXERCISES NO CONTROL OVER THE DECISIONS OF THE MAJORITY STOCKHOLDER? SHADES OF CATCH 22?

IN SOME COUNTRIES NATIONALISTIC SENTIMENT RUNS STRONG.

MEXICAN LAW, FOR EXAMPLE, REQUIRES THAT BEFORE YOU DO BUSINESS THERE YOU MUST SIGN A STATEMENT COMMITTING YOURSELF TO ABIDE BY THE MEXICAN CONSTITUTION. THE MEXICAN CONSTITUTION STIPULATES THAT ANY EFFORT TO COMPLY WITH A FOREIGN LAW, SUCH AS THE INFORMATION-GATHERING PROCEDURE MANDATED UNDER YOUR FCPA'S ACCOUNTING REQUIREMENTS IS IN ITSELF A VIOLATION OF THE MEXICAN CONSTITUTION.

SO WHAT DO YOU DO? YOU TELL ME WHICH COUNTRY'S LAW

YOU SHOULD TRY TO OBEY WHEN A CONFLICT OF THIS TYPE ARISES? THIS IS LUNACY.

THE FCPA POSES ALL, BUT ANSWERS NONE OF THESE QUESTIONS. ABOUT THE ONLY CRYSTAL CLEAR SECTION OF THE LAW IS ITS PUNISHMENT PROVISIONS; THE DEPARTMENT OF JUSTICE MAY PROSECUTE A BUSINESS EXECUTIVE ON REASON-TO-KNOW VIOLATIONS. CONVICTION, CARRIES SENTENCES UP TO FIVE YEARS IN PRISON AND \$10,000 IN INDIVIDUAL FINES.

FURTHER, THE SEC MAY FILE CIVIL CHARGES AGAINST FIRMS SUSPECTED OF MAKING FOREIGN PAYOFFS BASED ON BROAD, VAGUE INTERPRETATIONS OF THE FCPA.

AT THE SHAW MUDGE & CO. GROUP, WHERE WE MANUFACTURE FRAGRANCES, FLAVORS AND CHEMICALS, OUR BUSINESS RECENTLY WAS STUNG -- AND STUNG PAINFULLY -- BY THIS LAW'S FRIGHTENING FALLACIES.

WE BECAME INVOLVED IN A STRAIGHT-FORWARD, BOY SCOUT EXPORT PROJECT WITH A STATE-OWNED COMPANY, IN A DEVELOPING ASIAN COUNTRY.

OUR TECHNOLOGY IN USING NEW MATERIALS BEAT OUT THE BEST THAT OLDER EUROPEAN AND ASIAN COMPETITORS HAD TO OFFER. JUST AS WE WERE ABOUT TO CLOSE THE DEAL -- AFTER TWO YEARS AND ABOUT \$120 THOUSAND SPENT -- THE MANAGER OF THE STATE-OWNED PLANT INFERRED THAT A LARGE SUM OF MONEY MUST BE DEPOSITED IN A SWISS BANK ACCOUNT.

"THAT'S WHAT WE'RE GETTING NOW," THE MANAGER TOLD OUR PEOPLE. AND BECAUSE NEITHER I NOR OTHERS WHO WORK FOR THE SHAW MUDGE & CO. GROUP COULD GET REASONABLE ASSURANCES, WE HAD TO ABANDON THE PROJECT, LOSE THE \$120 THOUSAND WE ALREADY SPENT. THAT PROJECT WOULD HAVE CAUSED ME TO HIRE ANOTHER 8-10 PEOPLE.

MULTIPLY THAT JOB LOSS ACROSS THE COUNTRY AND SEE HOW GREAT IT IS TO OUR COUNTRYMEN IN SOUTH CHICAGO, DETROIT, WATTS AND NEW HAVEN.

MOVING ON FROM THIS LOCAL EXAMPLE, LET ME GIVE YOU ANOTHER. LAST SEPTEMBER, THE BRITISH GOVERNMENT PROHIBITED DALLAS-BASED ENSERCH CORPORATION FROM ACQUIRING, WITH A \$300 MILLION OFFER, THE LONDON-BASED DAVY CORPORATION, LIMITED -- PARTLY BECAUSE OF RESTRICTIONS GROWING OUT OF THE FOREIGN CORRUPT PRACTICES ACT.

GREAT BRITAIN'S MONOPOLIES AND MERGERS COMMISSION CONSIDERED VARIOUS AMERICAN LAWS WHICH, POSSIBLY, MIGHT BE ADVERSE TO THE ACTIVITIES OF BRITAIN'S DAVY CORPORATION, IF IT MERGED WITH AMERICA'S ENSERCH CORPORATION. FOR THE MOST PART, THE COMMISSION CONCLUDED THAT THE PROPOSED MERGER WOULD NOT JEOPARDIZE DAVY'S INTERNATIONAL ACTIVITIES. BUT THERE WAS ONE EXCEPTION.

AND I QUOTE DIRECTLY FROM THE COMMISSION'S REPORT:

"THE FOREIGN CORRUPT PRACTICES ACT SEEMS TO US ... LIKELY TO HAVE AN EFFECT ... ON DAVY'S PROSPECTS IN CERTAIN COUNTRIES. THIS ACT REQUIRES A UNITED STATES CORPORATION AND ITS OFFICERS TO BE ABLE TO DEMONSTRATE THAT THEY HAD NO REASON-TO-KNOW OF ANYTHING DONE BY THE CORPORATION OR ITS OVERSEAS SUBSIDIARIES WHICH WOULD BE IN BREACH OF THE LAW. A CORPORATION SO PLACED MAY WELL DECIDE TO BE ON THE SAFE SIDE, AND FEEL OBLIGED TO LET BUSINESS OPPORTUNITIES PASS. THUS, IT IS ENSERCH'S POLICY TO AVOID ALTOGETHER THE USE OF ANY AGENT WHO IS IN A GOVERNMENT POSITION ... EUROPEAN AND JAPANESE COMPETITORS WILL NOT BE SUBJECT TO THE SAME LEGAL CONSTRAINTS."

IN OTHER WORDS, ONE REASON THAT THE COMMISSION DENIED APPROVAL FOR THE ENSERCH-DAVY MERGER GREW OUT OF ITS CONVICTION THAT -- BECAUSE OF THE FOREIGN CORRUPT PRACTICES ACT -- SUCH A MERGER MIGHT THREATEN SOME OF ITS COUNTRY'S INTERNATIONAL BUSINESS OPPORTUNITIES.

ALL THROUGH THE COMMISSION'S REPORT, REFERENCES ARE MADE TO THE RELATIONSHIP BETWEEN DAVY'S EXPORT CONTRACTS AND BRITISH JOBS. IN ITS CONCLUDING PARAGRAPH THE COMMISSION SAYS "WE FORESEE DETRIMENTS TO EXPORTS AND EMPLOYMENT ARISING FROM THE LOSS OF DAVY'S NATIONAL CHARACTER AS A BRITISH BIDDER IN OVERSEAS MARKETS...

"AND THE EFFECTS OF CERTAIN U. S. LEGISLATION". "THE LOWER LEVEL OF EXPORTS WOULD LEAD NECESSARILY TO A LOWER LEVEL OF EMPLOYMENT."

AS A POSTSCRIPT, TWO WEEKS AFTER THE OFFICIAL DISAPPROVAL OF THE ENSERCH BID, DAVY WAS AWARDED AN \$893.8 MILLION CONTRACT IN INDIA. A DAVY SPOKESMAN TOOK PAINS TO EMPHASIZE THAT IT WOULD "BRING SOME 50,000 WORKER-YEARS OF WORK TO BRITAIN". THEY CAN'T AFFORD TO SACRIFICE 50,000 WORKER-YEARS". CAN WE? SHOULD WE? PERHAPS CERTAIN COMFORTABLY EMPLOYED PEOPLE IN WASHINGTON CAN, BUT THE AFL/CIO CANNOT.

BUT FOR THE LIFE OF ME, NO MATTER HOW LONG I PONDER, I CANNOT SEE WHY AMERICAN LABOR MUST PAY THIS PRICE. IT IS KEEPING NORWALK'S BLACKS, HISPANICS, AND YOUNG PEOPLE OUT OF WORK -- COMPANIES AND THEIR WORKERS IN EUROPE AND JAPAN THRIVE IN INTERNATIONAL COMMERCE -- AND WITH THEIR NATIONS' RESPECT AND ENCOURAGEMENT.

HERE IN CONNECTICUT, ESPECIALLY, THE SMALL AND MEDIUM-SIZED MACHINE TOOL MANUFACTURERS -- ARE VERY VULNERABLE TO DOWN TRENDS IN THE AMERICAN ECONOMY -- THEY NEED FOREIGN MARKETS WHEN U.S. DEMAND IS SLUGGISH - PARTICULARLY AROUND EAST HARTFORD, NEW BRITAIN, NEW LONDON AND WALLINGFORD.

UNTIL LATELY, RELATIVE TO THE OTHER STATES IN THE COUNTRY, CONNECTICUT RANKS FIRST IN THE PERCENTAGE OF JOBS -- SOME 113 THOUSAND OF THEM -- DIRECTLY OR INDIRECTLY DERIVED FROM EXPORT SALES.

IT'S VERY CLEAR. THE FIGHT TO CORRECT THE HASTILY WRITTEN FOREIGN CORRUPT PRACTICES ACT IS OUR FIGHT; IT IS THE FIGHT OF CONNECTICUT BUSINESSMEN. IT IS THE FIGHT OF CONNECTICUT'S AFL/CIO AND THE CONNECTICUT LABOR COUNCIL ... FOR IT HURTS YOU. THIS IS A STRUGGLE IN WHICH YOUR INTERESTS MERGE. YOU MUST BE UNITED IF YOU ARE TO COMPETE OVERSEAS. GOVERNMENT AND BUSINESS MUST MATURE AND SET ASIDE 50 YEARS OF HOSTILITY IF YOU WANT TO COMPETE AGAINST JAPAN AND EUROPE.

OVER THE LAST THIRTY YEARS, MORE THAN 86.7 PERCENT OF NEW JOBS HAVE BEEN CREATED BY SMALL, INDEPENDENT ENTERPRISES, AND ACCORDING TO PROJECTIONS BY THE U.S. DEPARTMENT OF LABOR, IT WILL BE NECESSARY TO CREATE AN ADDITIONAL 20 MILLION NEW JOBS BY THE YEAR 1990.

YOU MUST MOBILIZE YOUR SHOP STEWARDS, FOREMEN AND SUPPLIERS TO SEE THAT THE CONGRESSIONAL CONTINGENT FROM THIS STATE GET A MOVE ON IN DECEMBER.

IN THE NEXT DECADE SMALL AND MEDIUM-SIZED EXPORTERS COULD CREATE 500 THOUSAND TO 600 THOUSAND OF THOSE NEW JOBS AND, AT THE SAME TIME IMPROVE AMERICA'S TRADE BALANCE BY 20 TO 30 BILLION DOLLARS.

RIGHT NOW, THERE ARE SOME 300 THOUSAND AMERICAN BUSINESSES IN MANUFACTURING, OF WHICH ONLY 25 THOUSAND EXPORT REGULARLY - YET 85 PERCENT OF TOTAL U.S. EXPORTS ARE ATTRIBUTABLE ONLY TO THE NATION'S LARGEST 250 CORPORATIONS - OR 1%. THE DEPARTMENT OF COMMERCE ESTIMATES THAT ALL SMALL BUSINESS ACCOUNTS FOR NO MORE THAN TEN PERCENT OF ALL U.S. EXPORTS.

THE 20 THOUSAND OR SO SMALL OR MEDIUM SIZE FIRMS THAT DO EXPORT REGULARLY ARE NOT DOING NEARLY AS WELL AS THEY COULD. THE FEDERAL GOVERNMENT ESTIMATES THAT ANOTHER 20 THOUSAND SMALL BUSINESSES -- NOT SELLING OVERSEAS AT ALL -- COULD ENTER THE EXPORT MARKET EASILY.

AS A MATTER OF FACT, SMALL BUSINESSES CAN SERVE SOME MARKETS MORE SUCCESSFULLY THAN THE MULTINATIONALS, BECAUSE INDEPENDENT ENTREPRENEURS RESPOND MORE QUICKLY, GIVE BETTER SERVICE THAN CORPORATE BUREAUCRACIES. SMALL BUSINESSES CAN MAKE A PROFIT FROM DEALS THAT ARE TOO SMALL TO INTEREST BIG BUSINESSES, BUT NOT IN THE SHADOW OF THE FCPA.

SINCE THE VIETNAM ERA OF THE 1960s IT SEEMS EVERYBODY HAS URGED THAT AMERICA STOP INTERFERING IN THE AFFAIRS OF FRIENDS AND ALLIES AND ESPECIALLY THIRD WORLD EMERGING NATIONS.

WHAT THEN INDEED COULD BE MORE MEDDLESOME ... WHAT COULD BE MORE ARROGANT ... WHAT COULD BE MORE DOMINEERING THAN TO INSIST THAT ANOTHER COUNTRY -- AN INDEPENDENT, SOVEREIGN STATE IN ITS OWN RIGHT -- ADHERE TO LAWS SET DOWN BY THE CONGRESS OF THE UNITED STATES OF AMERICA -- NO MATTER HOW MUCH THEIR MOSLEM, ASIAN AND ANCIENT AFRICAN CUSTOMS DIFFER FROM OURS?

SOME FOREIGN GOVERNMENTS AND OBSERVERS RESENT THE INTRUSION OF U.S. LAW INTO THEIR COUNTRY, MOST, IF NOT ALL, ASEAN - ASSOCIATION OF SOUTHEAST ASIAN NATIONS - COUNTRIES HAVE LAWS AGAINST WHAT THEY CONSIDER TO BE CORRUPTION AND ENFORCE THEM AS THEY SEE FIT.

AS ONE THAI BUSINESSMAN PUT IT ... "WE HAVE BEEN A NATION FOR 1000 YEARS AND A CULTURE FOR 3,000 AND RESENT THE UNITED STATES TELLING US THAT OUR BUSINESS PRACTICES ARE IMMORAL."

NOR SHOULD YOU, AS AMERICANS, FEEL ANY MORE SHAME IN ABIDING BY THE LAWS AND CUSTOMS OF AFRICA THAN THE BRITISH, WHEN YOU ARE COMPETING THERE. WHEN AN AMERICAN BUSINESSMAN MAKES THE EXPECTED PRACTICE OF COMMON COURTESY WITH A GIFT OF RESPECT FOR MOSLEMS - OFTEN A PAYMENT - OR WHEN THE LONG-STANDING CONVENTION IN CERTAIN COUNTRIES OF UNDER-INVOCING OR OVER-INVOCING IS DEMANDED, YOU HAVE NO CHOICE BUT TO CONFORM TO THESE DEMANDS OR TO SURRENDER YOUR STANDING AND COMMERCIAL RELATIONSHIP TO THE COMPETITOR FROM EUROPE AND JAPAN WHO HAS ACCEPTED LOCAL TRADITIONS - AND WHO IS POUNCING WITH FEROCITY ON THE CHANCE TO KNOCK YOU AND YOUR PEOPLE OUT.

JUST THIS FALL IN NEW REPUBLIC MAGAZINE, JOHN LIEBER WROTE AN ARTICLE, "BRIBERY IS BACK" ATTACKING THE GROWING REALISM THAT UNORTHODOX CUSTOMS MAY BE NECESSARY FOR AMERICAN FIRMS TO COMPETE ABROAD. I WROTE TO MR. LIEBER, EXPLAINING TO HIM MY OWN EXPERIENCES UNDER THE FOREIGN CORRUPT PRACTICES ACT, ABOUT OUR DECISION TO ABANDON A GOLDEN CHANCE BECAUSE MONEY WAS SUDDENLY EXPECTED. AND IN MY TELEPHONE CALL AND LETTER TO MR. LIEBER, I PUT TO HIM THE QUESTION THAT CLEARLY ANSWERS ITSELF: "WOULD MY COMPLIANCE HAVE BEEN BRIBERY, OR WOULD I HAVE BEEN THE VICTIM OF EXTORTION?"

AND, TO THOSE OF YOU HERE TONIGHT, I PUT THE QUESTION, AND SUGGEST AN ANSWER WHICH SEEMS FAIR TO MY EMPLOYEES. WHO STARTS IT WHEN AXLE GREASE IS DEMANDED AND PROVIDED? WHO SHOULD BE HELD LIABLE? THE ANSWER IS SIMPLY - NOBODY IS AT FAULT AND NOBODY SHOULD BE HELD LIABLE - CERTAINLY NOT THE AMERICAN BUSINESSMAN WHO MUST GREASE THE WHEELS OF COMMERCE TO COMPETE IN AN INTERNATIONAL TRANSACTION, AND NOT THE FOREIGN OFFICIAL WHOSE BUSINESS CUSTOMS AND SOCIAL VALUES ARE DIFFERENT AND WHOSE LOCAL STANDING AND VALUES ARE PARAMOUNT TO HIM.

REMEMBER WHERE ALL THIS BEGAN? NOT IN A DEVELOPING THIRD WORLD COUNTRY, BUT JAPAN; A BRIBERY SCANDAL THAT CAUSED THE FALL OF PRIME MINISTER TANAKA. HE EVEN WENT TO JAIL BRIEFLY ON A MINOR CONVICTION. WHERE IS THE EX PRIME MINISTER NOW?

ACCORDING TO THE NEW YORK TIMES (NOVEMBER 15TH) HE'S BACK IN THE DIET, RE-ELECTED BY A NEAR-RECORD MAJORITY. SAYS THE "TIMES" HE IS "...THE MOST POWERFUL MAN IN JAPANESE POLITICS. NO ONE CAN HOPE TO BE PRIME MINISTER WITHOUT MR. TANAKA'S BACKING".

THE SAME ARTICLE QUOTED THE OPINION OF ONE OF HIS CONSTITUENTS -

QUOTE : "I'M SURE HE USED THE MONEY FOR THE GOOD OF THE NATION".

ISN'T THAT A NEAT SUMMATION OF THE JAPANESE ATTITUDE?

OUR GOVERNMENT ASKS YOU TO COMPETE. AS AMERICANS, YOU MUST WAKE UP AND ACCEPT THE REAL WORLD FOR WHAT IT IS. IF YOU DON'T, YOU WILL FIND YOURSELVES INCAPABLE OF CONDUCTING INTERNATIONAL BUSINESS -- AND CONTINUE THE DECLINE AS AN INTERNATIONAL ECONOMIC POWER AND CONTINUE THE JOB EROSION THAT HAS SET IN.

IN TWO ASEAN COUNTRIES THAT CONTAIN THE MOST LUCRATIVE EXPORT MARKETS -- AMERICAN EXPORTERS ARE UNABLE TO DO ANY BUSINESS WITHOUT VIOLATING THE FCPA. THIS LAW SEGREGATES THE WORLD INTO COUNTRIES WHICH ARE SUITABLE FOR U.S. COMPANIES TO CONDUCT BUSINESS IN AND THOSE WHICH ARE NOT SUITABLE. HOW RIGHTEOUS WE ARE!

IN ONE SOUTH AMERICAN COUNTRY, FOR EXAMPLE, THERE IS A BUILT-IN, WELL-ENTRENCHED PRACTICE OF UNDER-INVOICING. THE U.S. SECURITIES AND EXCHANGE COMMISSION MAINTAINS THAT UNDER-INVOICING IS A VIOLATION OF ITS FOREIGN CORRUPT PRACTICES ACT.

IN AN ASEAN COUNTRY -- POTENTIALLY AN EVEN MORE LUCRATIVE EXPORT MARKET THAN THE ONE I JUST MENTIONED -- IT IS IMPOSSIBLE FOR AN AMERICAN TO TRANSACT BUSINESS WITHOUT OVERTLY VIOLATING THE FCPA; NO MATTER HOW MUCH BETTER AND COMPETITIVELY-PRICED YOUR PRODUCTS, THAT COUNTRY IS CLOSED TO YOU - IT'S HANDS OFF, PERIOD! I HOPE YOUR LAID OFF UNION WORKERS KNOW WHAT THAT SANCTIMONIUS BILL DID TO THEM WHEN THEY STAND IN LINE AT THE WELFARE OFFICE.

LET ME QUOTE TO YOU FROM A LETTER I SENT TO ONE OF MY AGENTS IN A COUNTRY WHERE WE FELT WE HAD TO TERMINATE FURTHER EXPORT EFFORTS, JUST BECAUSE OF THE FOREIGN CORRUPT PRACTICES ACT VAGARIES.

AND I QUOTE DIRECTLY NOW FROM THAT LETTER ... "THE PROBLEM IS THAT WE SIMPLY DON'T KNOW WHAT WE CAN AND CANNOT DO UNDER THIS LAW. EACH INQUIRY OR ORDER WHICH IS IRREGULAR IN ANY WAY POSES A LEGAL PROBLEM FOR US. THE CONSEQUENT DELAYS AND OUR FREQUENT INABILITY TO FOLLOW THE INSTRUCTIONS OF THE CLIENT LEADS TO MISUNDERSTANDINGS, ILL WILL AND OFTEN FINANCIAL LOSSES ON BOTH SIDES. WE HAVE DECIDED THAT IT IS BETTER NOT TO ATTEMPT TO ENGAGE IN BUSINESS IN A NUMBER OF COUNTRIES UNTIL THE FOREIGN CORRUPT PRACTICES ACT IS EITHER REPEALED OR AMENDED IN A REASONABLE FASHION."

I SENT THAT LETTER RELUCTANTLY, BUT OUT OF NECESSITY. I AM NOT ABOUT TO PLACE MYSELF IN CRIMINAL JEOPARDY. BUT MY EUROPEAN COMPETITORS ARE GIVEN NATIONAL HONORS FOR THE SAME PRACTICES.

MARK FELDMAN, FORMER DEPUTY LEGAL ADVISOR TO THE STATE DEPARTMENT, RELATING TO QUESTIONABLE CORPORATE PAYMENTS ABROAD UNTIL HE RESIGNED FROM GOVERNMENT SERVICE LAST SPRING, TESTIFIED BEFORE CONGRESS THE SAME DAY I DID -

ALLOW ME TO QUOTE BRIEFLY FROM MR. FELDMAN'S TESTIMONY...

"IN A GREAT MANY DEVELOPING COUNTRIES CIVIL SERVANTS ARE POORLY PAID, AND IT IS A CUSTOMARY PRACTICE TO PROVIDE THEM GRATUITIES. THE NAME VARIES FROM COUNTRY TO COUNTRY BUT THE IDEA IS THE SAME. SUCH PAYMENTS MAY BE REQUIRED TO PROCESS PAPERS, TO CLEAR GOODS THROUGH CUSTOMS, OR EVEN TO MAKE AN OVERSEAS PHONE CALL. WHATEVER THE MORAL VALIDITY OF THIS PRACTICE, IT WOULD BE IMPOSSIBLE TO DO BUSINESS IN LARGE AREAS OF THE WORLD WITHOUT SUCH PAYMENTS."

FELDMAN ENDORSED LEGISLATION TO CLARIFY THE LAW, AND PERMIT SUCH CUSTOMARY PAYMENTS. "AS DRAFTED ... I HAVE NO DOUBT THAT U.S. EXPORTS HAVE BEEN DAMAGED BY THE FOREIGN CORRUPT PRACTICES ACT,: FELDMAN TESTIFIED.

IN WEST GERMANY, COMPANIES ARE ALLOWED TO DEDUCT THESE OVERSEAS PAYMENTS AS A NORMAL OPERATING EXPENSE. LAST YEAR - 1980 - IN ITALY, SIMILAR DEDUCTION ALLOWANCES WERE APPROVED, THE ITALIAN GOVERNMENT WANTED NO MISUNDERSTANDING THAT THIS USE OF PAYMENTS IN THEIR EYES IS GOOD INTERNATIONAL BUSINESS PRACTICE.

IN THE UNITED STATES, THE FEDERAL GOVERNMENT ESTIMATES THAT TWO-AND-ONE-HALF MILLION AMERICAN JOBS DEPEND ON EXPORTING; THAT'S ONE OUT OF EVERY EIGHT WORKERS IN THE MANUFACTURING LABOR FORCE.

AND WHAT MAY BE SURPRISING TO MANY AMERICANS, EVEN IF IT IS KNOWN BY THOSE HERE TONIGHT, SMALL BUSINESS IS BIG IN THE EXPORT MARKETPLACE. THREE OUT OF FIVE AMERICAN EXPORTERS HAVE FEWER THAN ONE HUNDRED EMPLOYEES.

THESE SMALL, INDEPENDENT EXPORTERS CANNOT POSSIBLY COPE WITH THE BURDENSOME PAPERWORK, AND SPECIAL ACCOUNTING STANDARDS REQUIRED BY THE FOREIGN CORRUPT PRACTICES ACT - OR AFFORD THE \$200./HR. LEGAL FEES ON EVERY \$10,000 COMPETITIVE OPPORTUNITY.

THIS IS THE MESSAGE THAT I TRY TO BRING - MOBILIZE YOUR

CONGRESSMEN, SUPPLIERS, LABOR LEADERS - ESPECIALLY THE AFL/CIO - THE CONNECTICUT LABOR COUNCIL. ALREADY, THE NATIONAL SMALL BUSINESS ASSOCIATION - OF WHICH I AM A DIRECTOR - AND WHICH IS THE MOST EFFECTIVE GRASS ROOTS NATIONAL SMALL BUSINESS ASSOCIATION, THE SMALL BUSINESS COUNCIL OF THE U.S. CHAMBER OF COMMERCE - OF WHICH I AM A MEMBER - THE SMALLER BUSINESS ASSOCIATION OF NEW ENGLAND - THE OLDEST REGIONAL VOLUNTEER GRASS ROOTS ASSOCIATION - OF WHICH I AM A DIRECTOR, AND OTHER COMMERCE AND INDUSTRY ORGANIZATIONS HAVE MADE THIS CAUSE THEIR TOP INTERNATIONAL PRIORITY FOR THIS 97TH SESSION OF CONGRESS.

RHODE ISLAND SENATOR JOHN CHAFEE INTRODUCED BPRA - THE BUSINESS PRACTICES ACCOUNTING AND FOREIGN TRADE SIMPLIFICATION ACT -- SENATE BILL 708 -- WHICH IS DESIGNED TO AMEND AND CLARIFY THE FOREIGN CORRUPT PRACTICES ACT. SIMILAR LEGISLATION HAS BEEN INTRODUCED IN THE HOUSE OF REPRESENTATIVES BY NEW JERSEY CONGRESSMAN MATTHEW RINALDO. BUT THE MODIFICATIONS GO FAR BEYOND NAME-CHANGING COSMETICS.

S.708 ALSO WOULD REVISE THE CRITICAL REASON-TO-KNOW PROVISION. IT WOULD IMPOSE LIABILITY ONLY IF AMERICAN BUSINESSMEN -- AND I QUOTE DIRECTLY NOW FROM THE CHAFEE BILL -- "PAY, GIVE, OFFER, OR PROMISE, DIRECTLY OR INDIRECTLY" A BRIBE TO A HIGH FOREIGN OFFICIAL. IMAGINE BEING INVITED AS A GUEST TO THE WEDDING OF A FOREIGN OFFICIAL. I CAN'T GIVE A WEDDING PRESENT. DISCOURTESY!

THE CHAFEE BILL EXCLUDES LIABILITY IF THE PAYMENT IS NOT DESIGNED TO MAKE THE FOREIGN OFFICIAL DO ANYTHING THAT IS ILLEGAL IN HIS COUNTRY. IT PROVIDES GREATER EXEMPTIONS FOR EXPEDITING AND FACILITATING PAYMENTS, AS YOU MAY KNOW, THE SEC HAS BLOWN UP MINOR INFRACTIONS OF THE FCPA INTO BANNER HEADLINES IN THE NEWS MEDIA. REMOVING SEC AUTHORITY TO INTERPRET THE LAW WILL RESTRAIN OVER-ZEALOUSNESS IN THE AREA OF ENFORCEMENT.

FINALLY, THE CHAFEE BILL CALLS UPON THE PRESIDENT OF THE UNITED STATES TO PROMOTE COOPERATION AMONG OTHER NATIONS TO PREVENT INTERNATIONAL BRIBERY.

REALISTICALLY, THIS LAST PROVISION HAS NOT MET WITH MUCH ENTHUSIASM WITHIN THE INTERNATIONAL ECONOMIC COMMUNITY. LET ME REFER AGAIN TO THE VERY CANDID TESTIMONY OF ERSTWHILE DEPUTY LEGAL ADVISOR MARK FELDMAN.

AND I QUOTE DIRECTLY NOW; "SOME OF OUR CLOSEST ALLIES HAVE TOLD US PRIVATELY THAT PAYMENTS ARE NECESSARY IN CERTAIN FOREIGN MARKETS AND THEIR ECONOMIES ARE NOT STRONG ENOUGH TO RISK THE LOSS OF BUSINESS IN THOSE MARKETS."

IN OTHER QUARTERS ABROAD, I AM AFRAID THERE IS A CYNICAL SATISFACTION THAT U.S. LEGAL RESTRICTIONS ... "TAKE US OUT OF COMPETITION..." "TO ME, THE MOST CONVINCING EVIDENCE IS THE DETERMINATION WITH WHICH OUR MAJOR TRADING PARTNERS HAVE RESISTED U.S. EFFORTS TO ESTABLISH INTERNATIONAL CONTROLS OVER BRIBERY AND EXTORTION..."

MR. FELDMAN'S COMMENTS ARE EASILY SUPPORTABLE BY EVENTS. GREAT BRITAIN, LIKE MANY OTHER NATIONS FACING DIFFICULT ECONOMIC PROBLEMS, DEPENDS ON EXPORTS TO BOLSTER INTERNAL INDUSTRY. AT THE END OF A RECENT MEETING OF GATT, RESTRAINTS ON INTERNATIONAL BRIBERY WERE DISCUSSED. THE BRITISH REPRESENTATIVE COMMENTED; "WE WILL WALK DOWN THE PRIMROSE PATH WHEN EVERYBODY ELSE DOES." JAPAN DID NOT BOTHER TO ATTEND.

GREAT BRITAIN IS CERTAINLY NOT ALONE IN THIS ATTITUDE; THE NINE LEADING INDUSTRIAL NATIONS OF THE WORLD WILL NOT ACCEPT ANY CONSTRAINTS LIKELY TO JEOPARDIZE THEIR FOREIGN TRADE. THEY WILL NOT RISK MORE UNEMPLOYMENT - NOT IN THE YOUTH JOB MARKET - THE NUMBER ONE DOMESTIC PROBLEM IN THE UK AND GERMANY.

THE CHAFEE BILL ITSELF IS NOT IDEAL AS FAR AS THE AMERICAN BUSINESS AND LABOR ARE CONCERNED. BUT IT IS THE ONLY GAME IN TOWN THIS SESSION OF CONGRESS. THE ONLY ONE THAT STANDS ANY CHANCE OF BECOMING LAW - AND OF REFORMING SOME OF THE DESTRUCTIVE ELEMENTS OF THE FCPA,

ALREADY, THE CHAFEE LEGISLATION HAS BEEN APPROVED BY THE FULL SENATE BANKING COMMITTEE; AND THE VOTE -- ELEVEN TO FOUR -- WAS BETTER THAN EXPECTED. THREE DEMOCRATS, (YOUR CONNECTICUT SENATOR CHRIS DODD WAS THE LEADER AMONG THEM) JOINED ALL EIGHT REPUBLICANS IN VOTING FOR THE COMMITTEE'S FINAL RECOMMENDATIONS. THE NEXT STEP WILL BE DEBATE BY THE FULL SENATE. WE HOPE THAT THE REPUBLICAN-CONTROLLED SENATE WILL APPROVE THE BANKING COMMITTEE'S RECOMMENDATION TO THE SECOND SESSION IN THIS THE 97TH CONGRESS.

THE NEXT OBSTACLE WILL DEVELOP IN LATE WINTER OR EARLY SPRING - AND THIS IS WHERE YOU MUST GO TO WORK - WHEN THE LEGISLATION IS TAKEN UP IN THE HOUSE OF REPRESENTATIVES. THE HOUSE IS CONTROLLED BY THE DEMOCRATIC PARTY. THE FOREIGN CORRUPT PRACTICES ACT WAS HURRIEDLY PASSED AND SIGNED INTO LAW BY JIMMY CARTER DECEMBER 19, 1977 - SOME MEMBERS ARE NOT YET AWARE OF THE LAW'S IMPACT TO JOBS IN THEIR DISTRICTS.

IT IS UP TO YOU, THEREFORE, TO MAKE CONGRESSMEN AWARE OF HOW DESTRUCTIVE IT IS TO YOUR WORKING MEN AND WOMEN. YOU MUST ADDRESS THIS ISSUE IN TERMS OF JOBS; JOBS FOR WOMEN AND JOBS FOR THE YOUNG WHICH FOR THEM IS NOW A CRISIS.

IF YOU KNOW STAFFERS IN THE HOUSE, GET ON THE PHONE AND TALK TO THEM. TELL THEM ABOUT THIS ISSUE'S POLITICAL AND PERSONAL MEANING TO THEM.

BLACK AND HISPANIC LEADERS HAVE A BIG STAKE IN JOB CREATION. THEY MUST BE MADE AWARE OF THE FCPA'S NEGATIVE EFFECT ON THE JOB MARKET.

ONCE THE CHAFEE-RINALDO LEGISLATION PASSES IN CONGRESS, YOU CAN EXPECT PRESIDENT REAGAN WILL SIGN IT INTO LAW QUICKLY. HE IS COMMITTED TO REMOVING THIS DISINCENTIVE TO INTERNATIONAL TRADE, I KNOW BECAUSE I ASSISTED IN DEVELOPING HIS POSITION PAPER - AT HIS REQUEST - EVEN THOUGH I WAS THEN; AM NOW AN ACTIVE DEMOCRAT. I SERVED AS THE ONLY SMALL BUSINESS PERSON ON HIS APOLITICAL BUSINESS ADVISORY COMMITTEE.

REMEMBER THAT THERE IS NOTHING WRONG IN YOUR FORMING A LOBBYING TASK FORCE WITH OTHERS IN THE WESTCHESTER-FAIRFIELD COMMUNITY. AFTER ALL, THIS IS NOT AN ISSUE THAT AFFECTS JUST ONE PART OF OUR SOCIETY.

THERE IS A PATH OUT OF AMERICA'S ECONOMIC IMPASSE, BUT IT REQUIRES POLITICAL, NOT JUST ECONOMIC GROWTH. WE SHOULD BE ENCOURAGING OUR EMPLOYEES TO GET INVOLVED, EDUCATE THEM ABOUT INTERNATIONAL ECONOMICS FOR REFORM.

GO FORTH AND MULTIPLY.

THANK YOU VERY MUCH.