

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

OFFICE OF
POLICY DEVELOPMENT
1982 MAY 17 P 5:26

May 17, 1982

32003

MEMORANDUM FOR: EDWIN L. HARPER
FROM: WENDELL W. GUNN
SUBJECT: Business Accounting and Foreign Trade
Simplification Act

Your question: Where do we stand on amending the Foreign Corrupt Practices Act?

On November 23, 1981, the Senate approved by voice vote a bill, S708, to ease the law prohibiting U.S. companies from bribing foreign officials. The major provisions of S708 are attached.

The Subcommittee on Telecommunications, Consumer Protection and Finance of the House Committee on Energy and Commerce has held three sets of hearings (non-legislative) to date. Chairman Timothy Wirth requested a statement of the Administration's position on S708 and received a response on March 2, 1982 from Bill Brock, representing the combined efforts of USTR, the Departments of Justice, State and Commerce.

The Subcommittee has indicated that it has some problems with S708 but has not yet been specific. The legislative affairs office of USTR will be meeting with the Subcommittee staff on Wednesday, May 19 to determine specifics and initiate new movement.

Good summary
7/1s keep me posted.
SL

May 17, 1982

Business Accounting and Foreign Trade Simplification Act
S 708

Major Provisions:

- o Strike requirements that a company keep detailed books and records, which the SEC uses to track payment of bribes. Instead, companies can devise a "system of internal accounting controls." This is designed to relieve companies from expensive and time-consuming record-keeping to satisfy the SEC.
- o Limit criminal liability for keeping false records to those who "knowingly" do so. Before, the law prohibited even inadvertent accounting errors.
- o Establish a separate standard for civil liability; companies would not be liable if they tried "in good faith" to keep true records.
- o Exempt from penalties those who made good faith efforts, within their firms, to end illegal payment practices. Sponsors reasoned that those without full control of a company cannot be held liable for its action.
- o Prohibit any attempt to "direct or authorize, expressly or by course of conduct" a bribe. The "course of conduct" language refers to winks, shrugs and other non-verbal approval of a bribe offer. Under current law, persons or companies are liable who had "reason to believe" that bribes are being paid.
- o Exempt from the law a range of gifts or payments to a foreign official that the bill views as not corrupting. Gifts, payments, offers or promises of anything of value are legal if they are lawful in the official's country, constitute a courtesy, are a necessary marketing expense (such as travel or lodging for the officials) or are needed to satisfy an existing contract. Current law has been criticized as too vague on what is unlawful.

- o Allow "any facilitating or expediting payment" to an official that speeds a "routine" government action.
- o Keep the present penalties for violating the law: a fine of up to \$1 million for a corporation, and a fine of up to \$10,000 and/or five years in prison for officers, directors, employees or stockholders of the firm.
- o Move all enforcement authority to the Justice Department, which now shares jurisdiction with the SEC, a set-up widely viewed as inefficient. The SEC will continue to police a company's books related to overseas payments.
- o Order the attorney general to determine, six months after the bill's enactment, if further clarification of the law is needed. He then may issue guidelines to clear up ambiguities.
- o Require the president to report to Congress, a year after the bill's enactment, on how it is operating.
- o Urge the president to negotiate bilateral and multilateral agreements with other nations to establish standards of conduct for international business.

OFFICE OF POLICY DEVELOPMENT STAFFING MEMORANDUM

DATE: 5/4/82 ACTION/CONCURRENCE/COMMENT DUE BY: 5/10/82

SUBJECT: Getting Rid of U.S. Barriers to U.S. Exports

	ACTION	FYI		ACTION	FYI
HARPER	<input type="checkbox"/>	<input type="checkbox"/>	SMITH	<input type="checkbox"/>	<input type="checkbox"/>
PORTER	<input type="checkbox"/>	<input type="checkbox"/>	UHLMANN	<input type="checkbox"/>	<input type="checkbox"/>
BANDOW	<input type="checkbox"/>	<input type="checkbox"/>	ADMINISTRATION	<input type="checkbox"/>	<input type="checkbox"/>
BAUER	<input type="checkbox"/>	<input type="checkbox"/>	DRUG POLICY		
BOGGS	<input type="checkbox"/>	<input type="checkbox"/>	TURNER	<input type="checkbox"/>	<input type="checkbox"/>
BRADLEY	<input type="checkbox"/>	<input type="checkbox"/>	D. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>
CARLESON	<input type="checkbox"/>	<input type="checkbox"/>	OFFICE OF POLICY INFORMATION		
FAIRBANKS	<input type="checkbox"/>	<input type="checkbox"/>	GRAY	<input type="checkbox"/>	<input type="checkbox"/>
FRANKUM	<input type="checkbox"/>	<input type="checkbox"/>	HOPKINS	<input type="checkbox"/>	<input type="checkbox"/>
HEMEL	<input type="checkbox"/>	<input type="checkbox"/>	OTHER		
✓ KASS Gunn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
B. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
MALOLEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Where do we stand on amending the foreign export priorities act?

check Bill Snyder 6190

EDWIN L. HARPER
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