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UNCLAS SECTION 01 OF 02 MADRID 07030

E.O. 12065: N/A
TAGS: BEXP, ETRA, SP
SUBJECT: FOREIGN CORRUPT PRACTICES ACT (FCPA) -- S. 708,
CHAFEE AMENDMENT
REF: STATE 134964
FROM FCS MADRID

1. REGRET DELAY IN FORWARDING THIS REPORT, AND HOPE THAT FOLLOWING COMMENTS MAY STILL PROVE USEFUL.

2. IN RESPONSE TO REFTTEL, COMATT CONTACTED AMERICAN CHAMBER OF COMMERCE IN SPAIN AND SURVEYED EIGHT (8) U.S. FIRMS AND THEIR AMERICAN MANAGERS OPERATING IN SPAIN. MOST U.S. FIRMS SELECTED ARE THOSE WHICH ARE INVOLVED IN LARGE PROJECTS AND MUST ACTIVELY COMPETE AGAINST FOREIGN FIRMS FOR CONTRACTS. IN CASES WHERE PERMISSION HAS BEEN GRANTED TO MAKE USE OF INFORMATION PUBLICLY, THESE FIRMS ARE IDENTIFIED BY NAME.

3. GENERAL COMMENTS: ALL US BUSINESSMEN SURVEYED WERE IN VARYING DEGREES FAMILIAR WITH THE FCPA, BUT MOST WERE UNAWARE OF THE CHAFEE AMENDMENT OR OF THE ADMINISTRATION'S ATTEMPTS TO SIMPLIFY ACCOUNTING PROVISIONS. THESE BUSINESSMEN, MANY OF WHICH HAVE HELD POSITIONS WITH PRESENT OR SIMILAR COMPANIES IN LATIN AMERICA, MIDDLE-EAST AND AFRICA, WERE UNANIMOUS IN THEIR COMMENTS THAT SPAIN DOES NOT PRESENT THE TEMPTATION OF HAVING TO MAKE ANY SORT OF PAYMENTS TO "AGENTS" OR GOVERNMENT OFFICIALS IN ORDER TO OBTAIN CONTRACTS. SEVERAL SAID THAT, AFTER THEIR OWN EXPERIENCES

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ELSEWHERE, THEY WERE "PLEASANTLY SURPRISED" BY CONDITIONS IN SPAIN. SOME GOVERNMENT OFFICIALS MAY ACCEPT SMALL GRATUITIES AT CHRISTMAS TIME AND ON OTHER OCCASIONS, BUT IN GENERAL, THE GOS OFFICIALS WITH WHOM THESE U.S. BUSINESSMEN HAVE COME INTO CONTACT HAVE BEEN CAREFUL TO AVOID ANY BEHAVIOR WHICH MIGHT CREATE A CONFLICT OF INTEREST. SOME HIGH-RANKING SPANISH MILITARY OFFICERS HAVE EVEN REFUSED LUNCHEON INVITATIONS FOR THIS REASON, ON THE ORDER OF THEIR SUPERIORS. CONSEQUENTLY, SAY U.S. BUSINESSMEN, THEY CAN PROVIDE NO EXAMPLES OF EMBARRASSMENT TO LOCAL OFFICIALS, OR IRRITATIONS IN BILATERAL RELATIONS. SIMILARLY, NO COMPANY CAN (OR WILL) CITE A CONCRETE EXAMPLE WHERE FCPA HAS IN ANY WAY CAUSED THE COMPANY TO LOSE BUSINESS IN SPAIN.

4. ON OTHER ASPECTS OF THE FCPA, U.S. COMPANY OFFICIALS MADE THE FOLLOWING COMMENTS:

--- MCDONNELL-DOUGLAS: THE COMPANY OFFICIAL KNOWS OF SEVERAL U.S. FIRMS WHICH NO LONGER WANT TO DO BUSINESS OVERSEAS BECAUSE "THEY WERE ONCE BURNED AND DO NOT WANT TO BE BURNED AGAIN." IN REGARD TO MCDONNELL-DOUGLAS ITSELF, THE COMPANY'S REGULATIONS ARE MORE STRICT THAN CALLED FOR BY THE FCPA, AND THIS CREATES AN ADDED BURDEN. E.G., EMPLOYEES MUST SIGN LOYALTY OATHS, NOTARIZED BY A U.S. CONSULATE. SINCE THERE IS A FEE FOR NOTARIZATION, QUIPPED THE OFFICIAL, U.S. GOVERNMENT IS THE ONLY GOVERNMENT WHICH HAS MADE ANY MONEY FROM MCDONNELL-DOUGLAS AS A RESULT OF THE FCPA.

--- LOCKHEED: MANAGER COMMENTED SOMEWHAT RUEFULLY THAT IT WAS THE LOCKHEED SCANDAL OF MID-SEVENTIES WHICH UNDOUBTEDLY HAD MOST TO DO WITH BRINGING ABOUT THE FCPA. AFTER THAT, NOBODY WANTED ANYTHING TO DO WITH LOCKHEED. THE FIRM INSTITUTED A SYSTEM OF CHECKS-AND-BALANCES ON ITS EMPLOYEES, TO SUCH AN EXTENT THAT IT BECAME VERY HARD TO COMPLY WITH THE INTERNAL REGULATIONS. THESE REGULATIONS CREATED CONSIDERABLY MORE PAPERWORK. IN SPAIN, LOCKHEED HAD DIFFICULTY LIVING DOWN ITS REPUTATION AS RESULT OF THE SCANDAL, BUT HAS NOW RE-ESTABLISHED ITSELF: THE SPANISH AIR FORCE HAS BEEN PLEASED WITH ITS LOCKHEED C-130 AND HAS RECENTLY PURCHASED FIVE ADDITIONAL AIRCRAFT.

--- NORTHRUP: MANAGER CANNOT POINT TO ANY SPECIFIC PROBLEMS IN SPAIN. HE HAS SEEN NO EVIDENCE WHATSOEVER OF CORRUPTION, AT LEAST IN THE SPANISH AIR FORCE. ON A MORE GENERAL NOTE, HOWEVER, MANAGER POINTED TO SEVERAL PROBLEMS CAUSED BY THE FCPA. HE KNOWS OF MANY OTHER COMPANIES, E.G., WHICH, IN ORDER TO GET AROUND THE LAW'S REPORTING REQUIREMENTS, HAVE ESTABLISHED A SEPARATE SPANISH COMPANY, OR JOINED AN EXISTING ONE, SO THAT THEY CAN ISOLATE THEMSELVES FROM THE BIDDING AND CONTRACTING PROCESS. THE SPANISH FIRM ACTS AS THE CONTRACTING PARTY; THE U.S. FIRM PROVIDES EQUIPMENT

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AND ASSISTANCE DIRECTLY TO THE SPANISH FIRM, AND CAN THEN SAY IT HAD
"NO REASON TO KNOW". ANOTHER EXAMPLE: PARENT CORPORATIONS ARE
RETICENT TO ALLOW THEIR OVERSEAS SALESMEN TO TAKE THE BT.

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FROM FCS

INITIATIVE IN CONTACTS IN THE LOCAL BUSINESS COMMUNITY. BECAUSE OF WHAT THIS MANAGER CALLS A "FEAR-OF-REACTION" SYNDROME, THE U.S. FIRMS ARE SO BUSY COVERING THEMSELVES, THEY CAN NO LONGER SELL ANYTHING. NOW, SAYS THE MANAGER, THERE ARE NO LONGER COMMISSIONED AGENTS, BUT RATHER "REPRESENTATIVES" WHO WORK FOR A FIXED FEE WHETHER A SALE REQUIRES SIX MONTHS OR SIX YEARS OF EFFORT, AND IT HAS BECOME NECESSARY TO ITEMIZE EVERY EXPENSE WHICH A REPRESENTATIVE HAS INCURRED. IN THE CASE OF HIS OWN FIRM, HE HAS NOT BEEN AUTHORIZED TO GRANT A BONUS TO A SALESMAN IN LATIN AMERICA WHO WAS RESPONSIBLE FOR CONCLUDING A LARGE SALE, AND WHO IS ABOUT TO LAND ANOTHER BIG CONTRACT. THIS FEAR OF REACTION BY MANAGEMENT, STRESSED THIS OFFICIAL, DISCOURAGES INITIATIVE AND HARD WORK BY EMPLOYEES.

5. WE UNDERSTAND, ADDITIONALLY, THAT MR. JOHN WHARTON, FORMER MANAGER FOR INTERNATIONAL SALES FOR WILCOX CORP. AND WHO IS NOW BACK AT COMPANY HEADQUARTERS IN KANSAS CITY, WOULD HAVE USEFUL COMMENTS TO PROVIDE. TODMAN BT

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