



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 21, 1983

M E M O R A N D U M

TO: William French Smith
Attorney General

Edward C. Schmults
Deputy Attorney General

D. Lowell Jensen
Associate Attorney General

Theodore B. Olson
Assistant Attorney General
Office of Legal Counsel

Stephen S. Trott
Assistant Attorney General
Criminal Division

Jonathan C. Rose
Assistant Attorney General
Office of Legal Policy

FROM: Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

SUBJECT: Dingell Request for DOJ Closing Memoranda
in Foreign Corrupt Practices Act Cases

Pursuant to the agreement reached at the September 20 meeting regarding the subject disclosure issue, Marshall Cain and Cary Copeland of this Office met with James Christy and Cecile Srodes, Associate Minority Counsels with the House Committee on Energy and Commerce, to outline our proposed resolution of the disclosure dispute and solicit the reaction of the Minority.

DOJ representatives outlined the background of the controversy, of which the Minority staffers were intimately aware, and explained our reluctance to disclose information in the closing memoranda (1) identifying staff attorneys who closed or recommended

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closing the various cases; (2) identifying the informants who made the allegations; (3) identifying the corporations and foreign nationals alleged to have engaged in Foreign Corrupt Practices Act violations; and (4) revealing grand jury material.

The Minority staffers acknowledged our duty to redact 6(e) material but otherwise rejected in very emphatic terms anything short of disclosure of the closing memos with 6(e) material deleted. Christy said that we should expect no "aid or comfort" from the Minority with respect to withholding anything but grand jury material. Christy was indignant that we would even suggest that the Congress had no right to closing memos and suggested that the vote in Committee would be unanimous in insisting upon disclosure. DOJ representatives, in an effort to clarify the scope of disclosure insisted upon, asked a second time if the Committee would insist upon disclosure of the identity of informants and Christy indicated without hesitation that the Congress had an absolute right to that information. Our representatives inquired as to the legislative need for such information and the response was that the Congress does not have to justify its documentary requests, that the Members of Congress are elected and have certain oversight responsibilities and within the scope of their jurisdiction they have a right to any information they wish from the Executive Branch (presumably excluding 6(e) material, the disclosure of which is prohibited by statute).

Our representatives expressed appreciation for the guidance which had been provided but were treated to a departing salvo from Christy to the effect that the Department is dead wrong on this issue, that the SEC, FTC, ICC and every other agency in town comply with Committee requests, and that we should have learned our lesson after the EPA matter. Christy also indicated that the Committee would be releasing information on Monday with respect to the EPA case which will reflect adversely upon the Deputy Attorney General and an Assistant Attorney General.

Again, it should be emphasized that this very hostile reception was accorded us by Minority staff on the Dingell Committee. I am confident that the Minority Members will react in a similar fashion.



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 19, 1983

Honorable John D. Dingell
Chairman
Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is to acknowledge receipt of the September 15, 1983 letter to the Attorney General from you and Chairman Wirth, received by the Department today, concerning the Foreign Corrupt Practices Act.

A further response will be forthcoming as soon as possible.

Sincerely,

Robert A. McConnell
Assistant Attorney General

Identical letter to Chmn. Wirth

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FRANK M. POTTER, JR.
CHIEF COUNSEL AND STAFF DIRECTOR

U.S. House of Representatives
 Committee on Energy and Commerce
 Room 2125, Rayburn House Office Building
 Washington, D.C. 20515

September 15, 1983

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OFFICE OF
LEGISLATIVE AFFAIRS

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The Honorable William French Smith
 Attorney General of the United States
 Department of Justice
 Tenth and Constitution Avenue, N. W.
 Washington, D. C. 20530

Dear Mr. Attorney General:

In accordance with the provisions of Rules X and XI of the Rules of the House of Representatives, the Subcommittees on Oversight and Investigations and Telecommunications, Consumer Protection, and Finance are conducting a legislative oversight inquiry into the adequacy and the administration of the Foreign Corrupt Practices Act (FCPA).

On June 21, 1983, you were requested to provide to the Subcommittee on Telecommunications, Consumer Protection, and Finance information relating to the Department's enforcement of the FCPA. The information was requested in connection with the Subcommittee's responsibility under House Rules X and XI.

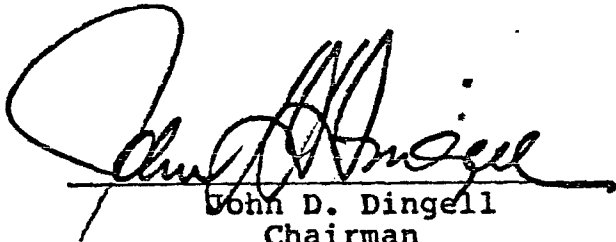
You were requested to provide summary information concerning both open and closed investigations. In addition, the letter specifically requested that copies of all closing memoranda relating to the FCPA cases closed without prosecution to be provided to the Subcommittee no later than June 27, 1983.

On July 18, 1983, the Department responded by producing information in summary form, but omitting the closing memoranda. The Department's letter stated that it was providing "summaries of the investigations rather than providing the attorney's closing memoranda." The Subcommittee staff had several discussions with Department officials in which compliance with the letter was requested.

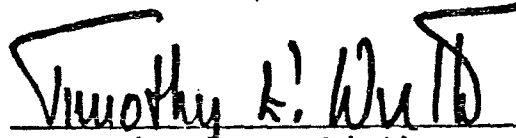
The Honorable William French Smith
September 15, 1983
Page 2

Pursuant to Rules X and XI of the Rules of the House of Representatives, we request that you provide the closing memoranda to us no later than 5:00 p.m., Friday, September 23, 1983 at the offices of the Subcommittee on Oversight and Investigations, Room 2323 of the Rayburn House Office Building. If you have questions concerning this request, please call Patrick McLain at 225-4441.

Sincerely,



John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations



Timothy E. Wirth
Chairman
Subcommittee on
Telecommunications, Consumer
Protection, and Finance



U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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Honorable Timothy E. Wirth
Chairman, Subcommittee on
Telecommunications, Consumer
Protection and Finance
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In response to your letter of June 21, 1983, which requests updated information concerning the Department of Justice's enforcement activities under the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-1 and 2) ("FCPA"), the Department submits the attached information.

Our response follows a format similar to our October 29, 1981, response to your original request of September 1, 1981. However, since the situation has now changed substantially since 1981 (e.g. there are no pre-act cases to report; cases closed on September 15, 1981, have already been reported), we have structured our response in four parts.

Part I addresses all cases, criminal and civil, brought by the Department under the FCPA since September 15, 1981.

Part II addresses all open investigations. This is provided in summary form based upon the inquiries contained in your questionnaire of September 1, 1981.

Part III updates in summary form those cases which were open in September 1981 but which are now closed.

Part IV updates in summary form those cases which were opened after September 1981 but which are also now closed.

With respect to Parts III and IV, we have prepared and enclosed as Attachment II summaries of the investigations rather than providing the attorneys' closing memoranda.

I. FCPA Prosecutions

In Attachment I submitted herewith we are providing the publicly filed documents in each of the following nine FCPA prosecutions brought by the Department since September 15, 1981:

1. United States v. Sam P. Wallace Company, Inc.
2. United States v. Alfonso A. Rodriguez
3. United States v. Crawford Enterprises, et al
4. United States v. C. E. Miller Corporation and Charles E. Miller
5. United States v. International Harvester Co.
6. United States v. Ruston Gas Turbines, Inc.
7. United States v. Gary D. Bateman
8. United States v. Applied Process Products Overseas, Inc.
9. United States v. Gary D. Bateman and Applied Process Products Overseas, Inc. (civil)

II. Open FCPA investigations.

The information provided in this subpart pertains to the 20 open investigations of possible violations of the FCPA.* We provide this information with the same caveats noted in our response of October 29, 1981.

Summary Responses to Original Questions (5-28)

(5) The date on which the payment was made.

All pending investigations involve allegations of payments occurring on various dates between 1978 and 1983. In most instances the allegations refer only to a calendar year, not a precise date.

(6) The amount of the bribe or questionable payment and relationship to the U.S. company's: a) annual revenues worldwide; b) annual revenues in the country in which the payment was made; c) size of the contract or amount of business related to the payment.

* Eight of these investigations are inactive and closing memoranda are in preparation.

The amounts alleged are as follows; where known, the amount of the contract in question is in parenthesis following the amount of the alleged bribe:

\$10,000; \$30,000; \$35,000; \$45,000; 2 at \$100,000; 2 at \$200,000; \$215,000; \$300,000 (\$5.3 million); \$1.9 million; \$2 million (\$12 million); \$3.5 million (\$18 million).

In seven instances there are no allegations of a specific bribe amount.

The additional information requested in (a)-(c) is not known by the Department.

- (7) The nature of the payment (e.g., direct cash payment to an official; payment of hotel room or transportation; gift other than cash or cash equivalent).

Nineteen of the investigations involve allegations that the payment was in the form of money or its equivalent and was paid directly to the foreign official. In the remaining instance there was no specific allegation of the nature of the benefit paid.

- (8) The level of foreign government official to which the payment was made. Describe also any other persons who received payments.

In three investigations there are no specific allegations of the level of foreign official alleged to have received the payment.

In the remaining 17 investigations allegations were made of payments to the following levels of foreign government officials:

President	- 1
Ministry Head	- 8
High Ministry Official	- 3
Senior Military officer	- 4
Ambassador	- 1

- (9) Whether the payment was legal in the country in which it was made. If not, whether or not the relevant anti-bribery laws are enforced in that country, in general and in this particular case.

In 17 of the pending investigations the alleged payments are illegal in the foreign country involved. In the remaining three investigations the legality of the payments is presently unknown.

In ten of the investigations the foreign country involved is generally regarded as enforcing its anti-bribery statutes. In the remaining ten the current enforcement policies of these nations are unknown.

In 19 of the investigations it is not known whether or not the foreign country has initiated an investigation. In one instance the foreign country has made inquiries with respect to the matter.

- (10) Whether the payment was customary in the country in which it was made.

The Department's files do not contain sufficient information to provide a definitive response to this question.

- (11) The effect of disclosure, if any, of the payment in the foreign country (e.g., prosecution of the foreign government official by the foreign country, election defeats or other political effects).

In 18 of the open investigations there have been no disclosures of alleged payments to the foreign country involved. In the two instances where there have been disclosures, one has resulted in a prosecution.

- (12) Level of the U.S. Company management which:
a. directed or participated in making the payment;
b. approved or authorized the payment;
c. had knowledge of the payment;
d. had reason to know about the payment.

In 11 of the investigations the specific knowledge is not known but knowledge is attributed to the following levels:

President	- 3
President of subsidiary	- 1
Senior management	- 7

In two instances the allegations concerned individuals and therefore this question does not apply.

In eight instances no specific information is available.

Insufficient information exists to classify the level of knowledge and participation into the categories requested in (a)-(d).

(13) Whether the payment was concealed from the U.S. Company corporate management.

In three of the investigations the alleged payment was concealed from management. In nine instances the payments were not concealed.

In eight instances either insufficient information is available to answer this question, or the allegation concerned individual rather than corporate conduct.

(14) Whether any investigation by management was undertaken with respect to the payments. If so, state when the investigation was made and what were the results.

In 13 of these investigations there was no investigation conducted by management before the Department began its inquiry. In two instances there were investigations but the results are unknown. In the remaining five instances this information is either unavailable or the allegation concerned individual conduct. It should be noted that only seven allegations involved publicly held corporations.

(15) Means used to accumulate funds for the payment (e.g., invoicing through a foreign subsidiary; accumulation of funds in an off-the-books account).

In 11 investigations there were no specific allegations of the means used to accumulate the funds nor was such evidence developed.

In eight of the investigations the means allegedly used to accumulate the funds were agents' commissions. In the remaining instance the funding mechanism is alleged to be a price mark-up on the commodity involved.

(16) Means used to make the payment (e.g., through a dummy corporation, foreign sales agent).

In 12 investigations the means allegedly used to make the payment were sales agents. In one instance the payment was allegedly made directly to the foreign government official. In the remaining seven instances the means are unknown.

- (17) Whether the payment involved the falsification of corporate books and records.

In 18 investigations it is unknown whether there was falsification of corporate books and records.

In one investigation it is believed that books and records were falsified. In one instance it is believed that they were not falsified.

- (18) Whether there was any indication that the U.S. company lacked sufficient internal accounting controls or failed to keep accurate books and records other than in the specific instance in which the questionable payment was disclosed or charged.

None of these 20 investigations involves an allegation that the company's recordkeeping was suspect in areas unrelated to the alleged payment.

- (19) Whether the U.S. company had a code of conduct proscribing activities such as the questionable payment.

Six of the companies currently under investigation had codes of conduct proscribing the alleged payment at the time made. Five companies did not have such codes of conduct.

In six of the investigations it is not known if the company had a code of conduct and in three instances the allegations concerned individual rather than corporate conduct.

- (20) If a foreign subsidiary was involved, then the degree of a) ownership by the parent U.S. company; b) voting control by the U.S. parent.

One of the pending investigations involves a foreign subsidiary which is wholly owned and controlled by an American parent corporation.

- (21) The nature of competition in the country (e.g., whether there were only foreign competitors, other U.S. competitors).

The nature of the competition in the 20 open investigations is as follows:

No competition	- 5
Only U.S. competition	- 4
Both U.S. and foreign competition	- 9
Unknown	- 2

- (22) Reason for the bribe (e.g. to gain favorable business treatment, to secure approval of government application, to avoid customs duties, to reduce taxes).

In 17 of the investigations the reason for the alleged bribe was to gain favorable business treatment; in one instance it was to reduce customs duties; in one instance it was to obtain government approval of a license; and in one instance the reason is unknown.

- (23) Where the payment was made to gain business, whether it was clear that the payment resulted in obtaining the business was the determining factor, a contributing factor, etc.

In those cases where the payment was made to obtain favorable business treatment, six allegedly involved payments which were the determining factor and five allegedly involved payments which were a contributing factor.

In six instances this information is unknown.

- (24) Whether domestic commercial bribery was also involved.

In one instance there is an allegation or evidence of domestic commercial bribery.

- (25) Whether illegal domestic political contributions or bribes of U.S. government officials were also involved.

None of the open investigations involve allegations or evidence of any illegal United States political contribution or bribery of U.S. government officials.

- (26) Whether the company's securities were registered with the U.S. Securities and Exchange Commission (SEC).

Seven of the investigations involve corporations subject to the jurisdiction of the SEC.

(27) How the DOJ became aware of the facts constituting the basis for the allegations. If the case was referred to the DOJ by the SEC or other governmental agency or department, please identify the agency or department.

The Department has received allegations of potential FCPA violations from the following sources:

Confidential informants	- 8
Developed during other criminal investigations	- 4
Federal Bureau of Investigation	- 2
Foreign government	- 1
Local state law enforcement	- 1
Former employees	- 1
Competitor	- 1
Newspaper	- 1
SEC	- 1

(28) Whether the DOJ consulted with the Department of State or any other department, agency, or office of government, including the office of the President, with respect to the case. If so, please identify the department, agency, or office, and state the dates of such consultation.

During the course of four of these investigations the Department has contacted and consulted with the State Department.

III. Investigations open as of September 15, 1981 and closed prior to July 1, 1983.

The information provided in this subpart pertains to the 29 investigations of possible violations of the FCPA which were open as of September 15, 1981 and have been closed without prosecution by the Department prior to July 1, 1983. Those investigations which were open as of September 1981 and which resulted in prosecutions are addressed in Part I. This information is also being provided with the same caveats noted in our response of October 29, 1981.

Summary Responses to Questions (5-28)

(5) The dates on which the payments were made concerning the twenty-nine closed investigations occurred on various dates between 1978 and 1981. In most instances the allegations only specified a calendar year.

- (6) The amount of the bribe or questionable payment and relationship to the U.S. company's: a) annual revenues worldwide; b) annual revenues in the country in which the payment was made; c) size of the contract or amount of business related to the payment.

The amounts alleged are as follows:

Unidentified minor gratuities; \$10,000; \$40,000; \$42,000; \$50,000; four at \$100,000; \$165,000; \$200,000; \$400,000; two at \$500,000; \$800,000; \$2 million.

In twelve instances no specific bribe amounts were alleged.

The additional information requested in (a)-(c) is not known by the Department.

- (7) The nature of the payment (e.g., direct cash payment to an official; payment of hotel room or transportation; gift other than cash or cash equivalent).

In sixteen of the investigations the allegations were that cash or its equivalent had been paid directly to the foreign official. In one investigation the allegation was that the bribe was the gift of an automobile.

In the remaining instances there were no specific allegations of the nature of the benefit paid.

- (8) The level of foreign government official to which the payment was made. Describe also any other persons who received payments.

In ten of these investigations there were no specific allegations of the level of foreign official allegedly receiving the payment.

In the remaining 19 investigations allegations were made of payments to the following levels of foreign government officials:

President	- 1
Prime Minister	- 3
Royalty	- 2
Minister	- 3
Ministry official	- 5
Military officer	- 3
Police officer	- 1

- (9) Whether the payment was legal in the country in which it was made. If not, whether or not the relevant anti-bribery laws are enforced in that country, in general and in this particular case.

In 24 of these investigations the alleged payments were clearly illegal in the foreign country involved. In the remaining five the legality of the payments was unknown.

In eight of the investigations the foreign country involved is generally regarded as enforcing its anti-bribery statutes. In the remaining 21 instances, the enforcement policies of the foreign country involved were unknown.

In 25 of these investigations whether or not the foreign country had initiated an investigation was unknown. In the remaining four instances the foreign country did investigate and/or prosecute.

- (10) Whether the payment was customary in the country in which it was made.

The Department's files do not contain sufficient information to provide a definitive response to this question.

- (11) The effect of disclosure, if any, of the payment in the foreign country (e.g., prosecution of the foreign government official by the foreign country, election defeats or other political effects).

In 25 of these 29 closed investigations there were no known disclosures of the alleged payment to the foreign country.

In three instances disclosures did occur and resulted in investigations and/or prosecutions by the foreign country. In one instance disclosure was made which resulted in a decision by the foreign country to not prosecute.

- (12) Level of the U.S. company management which:
a. directed or participated in making the payment;
b. approved or authorized the payment;
c. had knowledge of the payment;
d. had reason to know about the payment.

In 15 of the 29 closed investigations there were no specific allegations as to the level of management involved, nor was the level of management knowledge and participation ever substantiated to the degree necessary to respond to this

question. In five investigations the question is not applicable because the alleged conduct was individual rather than corporate.

In nine cases there were allegations of knowledge and participation by management in the alleged bribery. The level of management was as follows:

President	- 2
President of foreign subsidiary	- 1
Senior Management	- 4
Middle management	- 2

Insufficient information exists to classify the level of knowledge and participation into the categories requested in (a) - (d).

(13) Whether the payment was concealed from the U.S. company corporate management

In one instance it was alleged that there was concealment of the payments by lower level employees. In seven instances the allegation was that the payments were not concealed from management. In the remaining 21 investigations the question of concealment was not alleged.

(14) Whether any investigation by management was undertaken with respect to the payments. If so, state when the investigation was made and what were the results.

In four of these matters, management investigations were conducted before the Department's inquiry commenced. These investigations resulted in two instances of corporate determinations that no payments had been made, and two companies reported the results of their investigations to the SEC. In four other management investigations the results of the investigations were unknown.

In 11 instances there was no investigation by company management prior to commencement of the department's inquiry.

In seven instances it was not known whether or not any corporate investigation was conducted. In three instances the conduct under investigation was individual and not corporate.

- (15) Means used to accumulate funds for the payment (e.g., invoicing through a foreign subsidiary; accumulation of funds in an off-the-books account).

In 17 investigations the original allegations made no reference to the means used to accumulate the funds. In four instances the means allegedly used were agent's commissions, and in five other instances the allegations referred to the use of off-book accounts.

In three instances the question is not applicable.

- (16) Means used to make the payment (e.g., through a dummy corporation, foreign sales agent).

In 14 investigations the original allegations made no reference to the means employed to make the payments. In 14 other investigations the following mechanisms were allegedly used to make the payments:

Sales agents	- 7
Cash transported	- 3
Swiss accounts	- 2
Direct payment	- 1
Dummy corporation	- 1

In the remaining instance the payment was determined to be an embezzlement rather than a bribe.

- (17) Whether the payment involved the falsification of corporate books and records.

In four instances the use of false books and records were alleged. In the remaining instances there were either no allegations of falsification of records (21) or there were no corporate records to falsify (4).

- (18) Whether there was any indication that the U.S. company lacked sufficient internal accounting controls or failed to keep accurate books and records other than in the specific instance in which the questionable payment was disclosed or charged.

In only one instance was there an allegation that a company's recordkeeping was suspect in areas unrelated to the alleged payment.

- (19) Whether the U.S. company had a code of conduct proscribing activities such as the questionable payment.

In eight of these 29 investigations there were company codes of conduct allegedly in existence. In five instances the companies had no codes of conduct. In the remaining situations it was not known whether company had a code of conduct.

- (20) If a foreign subsidiary was involved, then the degree of a) ownership by the parent U.S. company; b) voting control by the U.S. parent.

Four investigations involved allegations of foreign subsidiaries wholly owned and controlled by the U.S. company. In all other instances either no subsidiaries were involved or the allegations concerned individual rather than corporate conduct (19), or insufficient information was available to answer this question (6).

- (21) The nature of competition in the country (e.g., whether there were only foreign competitors, other U.S. competitors).

The nature of the competition reflected in the allegations in these 29 investigations was as follows:

No competition	- 4
Only U.S. competition	- 9
Only foreign competition	- 3
Both foreign and U.S.	- 4
Unknown	- 9

- (22) Reason for the bribe (e.g., to gain favorable business treatment, to secure approval of government application, to avoid customs duties, to reduce taxes).

In these 29 investigations the reason for the alleged bribe was as follows:

Gain favorable business	- 17
Obtain government approval	- 3
Avoid customs duties	- 1
Avoid tax	- 1
Obtain immunity for illegal conduct	- 1
Obtain release of imprisoned employees	- 1

- (23) Where the payment was made to gain business, whether it was clear that the payment resulted in obtaining the business was the determining factor, a contributing factor, etc.

In five situations the alleged bribe was alleged to be the determining factor in obtaining the business, and in five instances it was alleged to be a contributing factor.

In the remaining 13 situations where the bribe was alleged to have been paid to obtain business, insufficient information was available to respond to this question.

- (24) Whether domestic commercial bribery was also involved.

In only one investigation was domestic commercial bribery alleged to have occurred.

- (25) Whether illegal domestic political contributions or bribes of U.S. government officials were also involved.

There were no instances involving an allegation of illegal U.S. political contributions or bribes.

- (26) Whether the company's securities were registered with the U.S. Securities and Exchange Commission (SEC).

Fifteen of these investigations involved companies subject to the jurisdiction of the SEC.

- (27) How the DOJ became aware of the facts constituting the basis for the allegations. If the case was referred to the DOJ by the SEC or other governmental agency or department, please identify the agency or department.

The Department received the allegations of potential FCPA violations from the following sources:

Confidential informants	- 8
State Department	- 5
Other Department investigations	- 4
Foreign governments	- 4
Securities and Exchange Commission	- 3
Agency for International Development	- 2
Corporate disclosure	- 1
Former Employee	- 1
Media	- 1

- (28) Whether the DOJ consulted with the Department of State or any other department, agency, or office of government, including the office of the President, with respect to the case. If so, please identify the department, agency, or office, and state the dates of such consultation.

At various times during the pendency of these investigations the Department contacted and consulted the following department, agencies and offices:

State Department	- 9
Securities and Exchange Commission	- 2

IV. Investigations opened after September 15, 1981 and closed prior to July 1, 1983.

The information provided in this subpart pertains to the 21 FCPA investigations which were opened after September 15, 1981 and were closed prior to July 1, 1983. None of these investigations were, therefore, discussed in the Department's response of October 29, 1981. We provide this information with the same caveats noted in our earlier response.

Summary Responses to Original Questions (5-28)

- (5) The date on which the payment was made.

In 12 instances the allegations cited payments occurring on various dates between 1979 and 1982. In most of these allegations reference was made only to a calendar year, not to a precise date. In the remaining nine investigations a specific year of payment was not alleged.

- (6) The amount of the bribe or questionable payment and relationship to the U.S. company's: a) annual revenues worldwide; b) annual revenues in the country in which the payment was made; c) size of the contract or amount of business related to the payment.

The amounts alleged are as follows: where known, the amount of a related contract is shown in parenthesis following the amount of the alleged payment:

\$1,000; \$7,000; \$10,000 (\$4.5 million); \$12,000;
\$13,000 (\$800,000); \$20,000; \$100,000; \$300,000.

In 13 instances there were no allegations of a specific bribe amount.

The additional information requested in (a)-(c) is not known by the Department.

- (7) The nature of the payment (e.g., direct cash payment to an official; payment of hotel room or transportation; gift other than cash or cash equivalent).

Ten of the investigations involved allegations that the payment was in the form of money or its equivalent and was paid directly to the foreign official. One investigation involved payment in the form of firearms and in another the alleged payment consisted of sexual favors. In the remaining nine instances there was no specific allegation of the benefit paid.

- (8) The level of foreign government official to which the payment was made. Describe also any other persons who received payments.

In 11 investigations there were no specific allegations of the level of foreign official alleged to have received the payment.

In the remaining ten investigations, allegations were made of payment to the following levels of foreign government officials:

Ministry Head	- 3
Senior Military Officer	- 2
Agency Official	- 2
National Bank Officer	- 1
Consular Official	- 1
Customs Official	- 1

- (9) Whether the payment was legal in the country in which it was made. If not, whether or not the relevant anti-bribery laws are enforced in that country, in general and in this particular case.

In 13 of these closed investigations the alleged payments were illegal in the foreign country involved. In the remaining eight investigations the legality of the payments is presently unknown.

In eight of the investigations the foreign country involved is generally regarded as enforcing its anti-bribery statutes. In the remaining instances, the enforcement policies of the nations involved are unknown.

- (10) Whether the payment was customary in the country in which it was made.

The Department's files do not contain sufficient information to provide a definite response to this question.

- (11) The effect of disclosure, if any, of the payment in the foreign country (e.g., prosecution of the foreign government official by the foreign country, election defeats or other political effects).

In 17 of these closed investigations there have been no disclosures of the alleged payments to the foreign countries involved. In the four instances where there have been disclosures, three have resulted in foreign prosecutions and one, thus far, has not resulted in a prosecution.

- (12) Level of the U.S. company management which:
a. directed or participated in making the payment;
b. approved or authorized the payment;
c. had knowledge of the payment;
d. had reason to know about the payment.

In five of the investigations the specific level of management knowledge was unknown; In 12 instances the allegations generally specified the level of management knowledge as follows:

High level management	- 10
Mid-level management	- 1
Sole proprietorship	- 1

In four instances the allegations concerned individuals and therefore this question is inapplicable.

- (13) Whether the payment was concealed from the U.S. company corporate management.

In seven of the investigations the alleged payment was not concealed from management. In the remaining 14 instances either insufficient information is available to answer this question, or the allegations concerned individual rather than corporate conduct.

- (14) Whether any investigation by management was undertaken with respect to the payment. If so, state when the investigation was made and what were the results.

In four of these instances there was no investigation conducted by management before the Department began its inquiry. In one instance there was such an investigation, and its results were furnished to the Department. In the remaining 16 investigations this information is either unavailable or the allegation concerned individual conduct. It should be noted that only four of the allegations involved publicly held corporations.

- (15) Means used to accumulate funds for the payment (e.g., invoicing through a foreign subsidiary; accumulation of funds in an off-the-books account).

In ten investigations there were no specific allegations of the means used to accumulate the payment funds. Agents' fees were the means used in two instances, and other methods included the use of a pension fund and inclusion of a payment in the price of goods.

- (16) Means used to make the payment (e.g., through a dummy corporation, foreign sales agent).

In five instances the alleged payments were made in cash directly to the foreign government official. In two investigations it was alleged that sales agents were used to make payments and in one instance a price mark-up or rebate on the sale of goods was alleged. In the remaining 13 investigations the allegations did not describe the specific means used to make the payment.

- (17) Whether the payment involved the falsification of corporate books and records.

In nine investigations it was unknown whether corporate books and records were falsified. In three instances it was alleged that corporate books were falsified and in six instances it was believed that falsification had not taken place. In three instances the question did not apply.

- (18) Whether there was any indication that the U.S. company lacked sufficient internal accounting controls or failed to keep accurate books and records other than in the specific instance in which the questionable payment was disclosed or charged.

In no instance was a company's recordkeeping allegedly suspect in areas unrelated to the alleged payment.

- (19) Whether the U.S. company had a code of conduct proscribing activities such as the questionable payment.

Only one company involved in these 21 closed cases was known to have had a code of conduct proscribing the alleged payment and one company was known not to have such a code. In 14 instances it was unknown whether such codes existed and in five investigations the question did not apply.

- (20) If a foreign subsidiary was involved, then the degree of a) ownership by the parent U.S. company; b) voting control by the U.S. parent.

One of these investigations involved a foreign subsidiary wholly owned and controlled by an American parent.

- (21) The nature of competition in the country (e.g., whether there were only foreign competitors, other U.S. competitors).

The nature of the competition in these 21 closed investigations was as follows:

Foreign competition	- 1
Only U.S. competition	- 8
Unknown	- 9
Not applicable	- 4

- (22) Reason for the bribe (e.g., to gain favorable business treatment, to secure approval of government application, to avoid customs duties, to reduce taxes).

In ten of the instances the reason for the alleged bribe was to gain favorable business treatment; in one instance it was to avoid payment of customs duties; in one case the payment was to obtain government approval and one payment was alleged to have been made to affect the outcome of a law suit. In the remaining instances the allegations contained no reference to the specific purpose of the payment.

- (23) Where the payment was made to gain business, whether it was clear that the payment resulted in obtaining the business was the determining factor, a contributing factor, etc.

In four instances it was alleged that the payment was a determining factor in obtaining business; in one instance the alleged payment was cited as a contributing factor. In the remaining instances this information is unknown.

- (24) Whether domestic commercial bribery was also involved.

In no instance was there any allegation or evidence of domestic commercial bribery.

(25) Whether illegal domestic political contributions or bribes of U.S. government officials were also involved.

In one instance there was an allegation of bribery of a U.S. government official.

(26) Whether the company's securities was registered with the U.S. Securities and Exchange Commission (SEC).

Four of the investigations involved corporations subject to the jurisdiction of the SEC.

(27) How the DOJ became aware of the facts constituting the basis for the allegations. If the case was referred to the DOJ by the SEC or other governmental agency or department, please identify the agency or department.

With respect to these closed investigations, the Department received allegations from the following sources:

Federal Bureau of Investigation	- 5
Confidential Informants	- 4
Foreign Governments	- 3
Former Employees	- 2
Developed during other investigations	- 1
Securities & Exchange Commission	- 1
U.S. Congress	- 1
Drug Enforcement Agency	- 1
Competitor	- 1
Central Intelligence Agency	- 1
Voluntary disclosure	- 1

(28) Whether the DOJ consulted with the Department of State or any other department, agency, or office of government, including the office of the President, with respect to the case. If so, please identify the department, agency, or office, and state the dates of such consultation.

During the course of seven of these investigations the Department has contacted and consulted with the following U.S. government Departments and Agencies:

State Department	- 4
SEC	- 2
Central Intelligence Agency	- 1

We hope that the information we have provided will be of assistance to the Subcommittee in its efforts to oversee the present law relating to foreign bribery.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell
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Office of Legislative Affairs