

QUESTIONABLE PAYMENTS - DRAFT LEGISLATION

SECTION 1. SHORT TITLE

SECTION 2. FINDINGS AND PURPOSES

SECTION 3. PAYMENTS TO FOREIGN PERSONS

Every United States person shall file with the Department of Commerce a report in the 60-day period following the close of each calendar quarter describing any direct or indirect payments (including contributions or gifts or the furnishing of anything of value) in an amount in excess of \$10,000 paid or agreed to be paid by such person or its foreign agents or affiliates during the preceding calendar quarter:

(i) to any person or entity employed by, affiliated with, or representing directly or indirectly, a foreign government or instrumentality thereof;

(ii) to any foreign political party or candidate for foreign political office; or

(iii) to any person retained to advise or represent a United States person (or its foreign agents or affiliates) in connection with obtaining or maintaining business with a foreign government or instrumentality thereof or with influencing the legislation

or regulations of a foreign government.

SECTION 4. RULES AND REGULATIONS

The Secretary of Commerce shall issue such rules and regulations as are necessary or appropriate to implement the provisions of section 3. Rules and regulations issued by the Secretary shall require that the reports include all relevant details concerning the payments described in section 3, including, but not limited to:

- (i) the name and address of each person who made a payment (or contribution or gift or the furnishing of anything of value);
- (ii) the date and amount of such payment;
- (iii) the name and address of each recipient and beneficiary, direct and indirect, of each payment and in the case of a person who is an official of a foreign government or instrumentality thereof, the official position of that person;
- (iv) a description of the purpose for which such payment was furnished; and

(v) a statement whether the payment was legal in the country in which it was made.

SECTION 5. EXCEPTIONS

Rules and regulations issued by the Secretary shall not require United States persons to report:

- (i) the payment of discounts and allowances, if any, to buyers, which are stated on their invoices;
- (ii) the regular remuneration of their regular full-time directors, officers and employees; or
- (iii) regular commissions or fees paid in the ordinary course of business to their regular sales agents or sales representatives and readily identifiable on their books and records as to amount, purpose and recipient.

SECTION 6. RULES AND RECORDS

Every United States person and its foreign agents and affiliates making payments reported pursuant to section 3 shall maintain related books and records for not less than five years.

SECTION 7. DISCLOSURE

The Secretary of Commerce shall transfer copies of the reports filed under section 3 to the Secretary of State who, in his discretion, shall notify the foreign governments identified in the reports. The reports shall be made available for public inspection and copying no later than one year after receipt by the Commerce Department.

SECTION 8. PENALTIES

Whoever knowingly violates any provision of this Act or any regulation issued thereunder shall be fined not more than \$_____ or imprisoned for not more than _____ years, or both. The Secretary of Commerce may impose a civil penalty not to exceed \$_____ for each violation of this Act or any regulation issued thereunder.

SECTION 9. DEFINITIONS

(1) The term "United States person" means an individual, corporation, partnership, business venture, trust, or estate ordinarily resident in or doing business in the United States.

(2) The term "agent" means any individual or business organization retained or employed by a United States person to perform such services on its behalf as the Secretary of Commerce may, by regulation, define, including, but not limited to, promoting, selling, soliciting, or securing indications of interest for any product or service produced, sold, distributed, or performed by the United States person or any of its foreign affiliates.

(3) The term "foreign affiliate" means any corporation or partnership organized under the laws of a foreign country in which one or more United States persons own, directly or indirectly, an interest of greater than 50 percent.

(4) The term "foreign government" means the government of a country other than the United States, any political or local subdivision thereof, any agency or instrumentality of such a government or subdivision, and any politician, political party, or political association within a foreign country.