

**VI. L'INFLUENCE AMERICAINE:
entre "géoéconomie" et "sécurité économique".**

1. Textes officiels.

2. Articles.

1. Textes officiels.

- *Export Enhancement Act of 1992*, Title 15 Commerce and Trade, Chapter 73 Export Enhancement, Subchapter III Export Promotion, sec. 4727. Trade Promotion Coordinating Committee.
- Executive order 12835 "*Establishment of the national economic council*", The White House, Washington, 25 janvier 1993.
- *Presidential Decision Directive/NEC-2*, The White House, Washington, 24 mars 1993.
- "National Export Strategy", *Business America*, 1995, chapitre "Advocacy".
- *US Government Advocacy Guideline*, octobre 1996.
- GARTEN Jeffrey E., "Competing to win in the global marketplace", Remarks by the Under Secretary of Commerce for International Trade before The Council on Foreign Relations, New York, 9 janvier 1995.
- Economic Security Act, 1^{er} février 1996, projet de loi non adopté.
- Industrial Espionage Act, 1^{er} février 1996, projet de loi non adopté.
- "Traduction de l'Economic Espionage Act of 1996" par J. Dupré et M. Pasquier, *Revue Droit et Défense*, n°1, 1997, pp.65-66.
- Horowitz Richard, "The economic espionage act of 1996 : issues of importance for security directors", *OSS Notices*, vol.5, n°5, mai 1997, pp.4-5.

ANNEXE I
Export Enhancement Act Of 1992

TITLE 15--COMMERCE AND TRADE
CHAPTER 73--EXPORT ENHANCEMENT
SUBCHAPTER III--EXPORT PROMOTION

Sec. 4727. Trade Promotion Coordinating Committee

(a) Establishment and purpose

The President shall establish the Trade Promotion Coordinating Committee (hereafter in this section referred to as the "TPCC"). The purpose of the TPCC shall be--

- (1) to provide a unifying framework to coordinate the export promotion and export financing activities of the United States Government; and
- (2) to develop a governmentwide strategic plan for carrying out Federal export promotion and export financing programs

(b) Duties

The TPCC shall--

- (1) coordinate the development of the trade promotion policies and programs of the United States Government;
- (2) provide a central source of information for the business community on Federal export promotion and export financing programs;
- (3) coordinate official trade promotion efforts to ensure better delivery of services to United States businesses, including--
 - (A) information and counseling on United States export promotion and export financing programs and opportunities in foreign markets;
 - (B) representation of United States business interests abroad; and
 - (C) assistance with foreign business contacts and projects;
- (4) prevent unnecessary duplication in Federal export promotion and export financing activities;
- (5) assess the appropriate levels and allocation of resources among agencies in support of export promotion and export financing and provide recommendations to the President based on its assessment; and
- (6) carry out such other duties as are deemed to be appropriate, consistent with the purpose of the TPCC.

(c) Strategic plan

To carry out subsection (b) of this section, the TPCC shall develop and implement a governmentwide strategic plan for Federal trade promotion efforts. Such plan shall--

- (1) establish a set of priorities for Federal activities in support of United States exports and explain the rationale for the priorities;

(2) review current Federal programs designed to promote the sale of United States exports in light of the priorities established under paragraph (1) and develop a plan to bring such activities into line with the priorities and to improve coordination of such activities;

(3) identify areas of overlap and duplication among Federal export promotion activities and propose means of eliminating them;

(4) propose to the President an annual unified Federal trade promotion budget that supports the plan for priority activities and improved coordination established under paragraph (2) and eliminates funding for the areas of overlap and duplication identified under paragraph (3); and

(5) review efforts by the States (as defined in section 4721(i) of this title) to promote United States exports and propose means of developing cooperation between State and Federal efforts, including co-location, cost-sharing between Federal and State export promotion programs, and sharing of market research data.

(d) Membership

(1) In general

Members of the TPCC shall include representatives from--

- (A) the Department of Commerce;
- (B) the Department of State;
- (C) the Department of the Treasury;
- (D) the Department of Agriculture;
- (E) the Department of Energy;
- (F) the Department of Transportation;
- (G) the Office of the United States Trade Representative;
- (H) the Small Business Administration;
- (I) the Agency for International Development;
- (J) the Trade and Development Program;
- (K) the Overseas Private Investment Corporation;
- (L) the Export-Import Bank of the United States; and
- (M) at the discretion of the President, such other departments or agencies as may be necessary.

(2) Chairperson

The Secretary of Commerce shall serve as the chairperson of the TPCC.

(e) Member qualifications

Members of the TPCC shall be appointed by the heads of their respective departments or agencies. Such members, as well as alternates designated by any members unable to attend a meeting of the TPCC, shall be individuals who exercise significant decisionmaking authority in their respective departments or agencies.

(f) Report to Congress

The chairperson of the TPCC shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on

Foreign Affairs of the House of Representatives, not later than September 30, 1993, and annually thereafter, a report describing the strategic plan developed by the TPCC pursuant to subsection (c) of this section, the implementation of such plan, and any revisions thereto.

(Pub. L. 100-418, title II, Sec. 2312, as added Pub. L. 102-429, title II, Sec. 201, Oct. 21, 1992, 106 Stat. 2199.)

Ex. Ord. No. 12870. Trade Promotion Coordinating Committee

Ex. Ord. No. 12870, Sept. 30, 1993, 58 F.R. 51753, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Export Enhancement Act of 1992 (Public Law 102-429, 106 Stat. 2186) [see Short Title of 1992 Amendment note set out under section 635 of Title 12, Banks and Banking], and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Establishment. There is established the "Trade Promotion Coordinating Committee" ("TPCC"). The Committee shall comprise representatives of each of the following:

- (a) Department of Commerce;
- (b) Department of State;
- (c) Department of the Treasury;
- (d) Department of Agriculture;
- (e) Department of Energy;
- (f) Department of Transportation;
- (g) Department of Defense;
- (h) Department of Labor;
- (i) Department of the Interior;
- (j) Agency for International Development;
- (k) Trade and Development Agency;
- (l) Environmental Protection Agency;
- (m) United States Information Agency;
- (n) Small Business Administration;
- (o) Overseas Private Investment Corporation;
- (p) Export-Import Bank of the United States;
- (q) Office of the United States Trade Representative;
- (r) Council of Economic Advisers;
- (s) Office of Management and Budget;
- (t) National Economic Council;
- (u) National Security Council; and
- (v) at the discretion of the President, such other departments

or agencies as may be necessary.

Members of the TPCC shall be appointed by the heads of their respective departments or agencies. Such members, as well as their designated alternatives, shall be individuals who exercise significant decision-making authority in their respective departments or agencies.

Sec. 2. Chairperson. The Secretary of Commerce shall be the chairperson of the TPCC.

Sec. 3. Purpose. The purpose of the TPCC shall be to provide a unifying framework to coordinate the export promotion and export financing activities of the United States Government and to develop a governmentwide strategic plan for carrying out such programs.

Sec. 4. Duties. The TPCC shall:

- (a) coordinate the development of the trade promotion policies and programs of the United States Government;

(b) provide a central source of information for the business community on Federal export promotion and export financing programs;

(c) coordinate official trade promotion efforts to ensure better delivery of services to U.S. businesses, including:

(1) information and counseling on U.S. export promotion and export financing programs and opportunities in foreign markets;

(2) representation of U.S. business interests abroad; and

(3) assistance with foreign business contacts and projects;

(d) prevent unnecessary duplication in Federal export promotion and export financing activities;

(e) assess the appropriate levels and allocation of resources among agencies in support of export promotion and export financing and provide recommendations, through the Director of the Office of Management and Budget to the President, based on its assessment; and

(f) carry out such other duties as are deemed to be appropriate, consistent with the purpose of the TPCC.

Sec. 5. Strategic Plan. To carry out section 4 of this order, the TPCC shall develop and implement a governmentwide strategic plan for Federal trade promotion efforts. Such plan shall:

(a) establish a set of priorities for Federal activities in support of U.S. exports and explain the rationale for the priorities;

(b) review current Federal programs designed to promote the sale of U.S. exports in light of the priorities established under paragraph (a) of this section and develop a plan to bring such activities into line with those priorities and to improve coordination of such activities;

(c) identify areas of overlap and duplication among Federal export promotion activities and propose means of eliminating them;

(d) propose, through the Director of the Office of Management and Budget, to the President an annual unified Federal trade promotion budget that supports the plan for priority activities and improved coordination established under paragraph (b) of this section and eliminates funding for the areas of overlap and duplication identified under paragraph (c) of this section; and

(e) review efforts by the States to promote U.S. exports and propose means of developing cooperation between State and Federal efforts, including co-location, cost-sharing between Federal and State export promotion programs, and sharing of market research data.

Sec. 6. Report. The chairperson of the TPCC, with the approval of the President, shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Foreign Affairs of the House of Representatives, not later than September 30, 1993, and annually thereafter, a report describing the strategic plan developed by the TPCC pursuant to section 5 of this order, the implementation of such a plan, and any revisions to the plan.

William J. Clinton.

Executive Order 12835

Establishment of the National Economic Council

January 25, 1993

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, including sections 105, 107, and 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Establishment. There is established the National Economic Council ("the Council").

Sec. 2. Membership. The Council shall comprise the:

- (a) President, who shall serve as Chairman of the Council;
- (b) Vice President;
- (c) Secretary of State;
- (d) Secretary of the Treasury;
- (e) Secretary of Agriculture;
- (f) Secretary of Commerce;
- (g) Secretary of Labor;
- (h) Secretary of Housing and Urban Development;
- (i) Secretary of Transportation;
- (j) Secretary of Energy;

- (k) Administrator of the Environmental Protection Agency;
- (l) Chair of the Council of Economic Advisers;
- (m) Director of the Office of Management and Budget;
- (n) United States Trade Representative;
- (o) Assistant to the President for Economic Policy;
- (p) Assistant to the President for Domestic Policy;
- (q) National Security Adviser;
- (r) Assistant to the President for Science and Technology Policy; and
- (s) Such other officials of executive departments and agencies as the President may, from time to time, designate.

Sec. 3. Meetings of the Council. The President, or upon his direction, the Assistant to the President for Economic Policy ("the Assistant"), may convene meetings of the Council. The President shall preside over the meetings of the Council, provided that in his absence the Vice President, and in his absence the Assistant, will preside.

Sec. 4. Functions. (a) The principal functions of the Council are:

(1) to coordinate the economic policy-making process with respect to domestic and international economic issues; (2) to coordinate economic policy advice to the President; (3) to ensure that economic policy decisions and programs are consistent with the President's stated goals, and to ensure that those goals are being effectively pursued; and (4) to monitor implementation of the President's economic policy agenda. The Assistant may take such actions, including drafting a Charter, as may be necessary or appropriate to implement such functions.

(b) All executive departments and agencies, whether or not represented on the Council, shall coordinate economic policy through the Council.

(c) In performing the foregoing functions, the Assistant will, when appropriate, work in conjunction with the Assistant to the President for Domestic Policy and the Assistant to the President for National Security.

(d) The Secretary of the Treasury will continue to be the senior economic official in the executive branch and the President's chief economic spokesperson. The Director of the Office of Management and Budget, as the President's principal budget spokesperson, will continue to be the senior budget official in the executive branch. The Council of Economic Advisers will continue its traditional analytic, forecasting and advisory functions.

Sec. 5. Administration. (a) The Council may function through established or ad hoc committees, task forces or interagency groups.

(b) The Council shall have a staff to be headed by the Assistant to the President for Economic Policy. The Council shall have such staff and other assistance as may be necessary to carry out the provisions of this order.

(c) All executive departments and agencies shall cooperate with the Council and provide such assistance, information, and advice to the Council as the Council may request, to the extent permitted by law.

Presidential Decision Directive/NEC-2

The White House, Washington

March 24, 1993

TO: THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF AGRICULTURE
THE SECRETARY OF COMMERCE
THE SECRETARY OF LABOR
THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY OF TRANSPORTATION
THE SECRETARY OF ENERGY
THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY
THE CHAIR OF THE COUNCIL OF ECONOMIC ADVISERS
THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET
THE UNITED STATES TRADE REPRESENTATIVE
THE ASSISTANT TO THE PRESIDENT FOR ECONOMIC POLICY
THE ASSISTANT TO THE PRESIDENT FOR DOMESTIC POLICY
THE NATIONAL SECURITY ADVISER
THE ASSISTANT TO THE PRESIDENT FOR SCIENCE AND TECHNOLOGY
POLICY

SUBJECT: Organization of the National Economic Council

To assist me in carrying out my responsibilities in the area of the national economy, I hereby direct that the National Economic Council system be organized as follows.

A. The National Economic Council (NEC)

The National Economic Council will be the principal forum for consideration of economic policy issues requiring Presidential determination. The responsibility, functions, and membership of the NEC shall be as set forth in Executive Order 12835 and this Presidential Decision Directive. The NEC shall (1) advise and assist me in integrating all aspects of national economic policy—macro-economics, micro-economics, domestic, international and sectoral (in conjunction with the National Security Council); (2) develop and manage the economic policy-making processes with respect to domestic and international economic issues; (3) coordinate economic policy advice to the President; (4) ensure that economic policy decisions and programs are consistent with the President's stated goals, and ensure that those goals are being effectively pursued; and (5) monitor implementation of the President's economic policy agenda. The Assistant to the President for Economic Policy may take such actions as may be necessary or appropriate to implement these responsibilities. As provided in Executive Order 12835, (1) the Council may function through established or ad hoc committees, task forces or inter-agency groups. (2) The Council shall have a staff to be headed by the Assistant to the President for Economic Policy. The Council shall have such a staff and other assistance as may be necessary to carry out the provisions of this order. (3) All executive departments and agencies shall cooperate with the Council and provide such assistance, information, and advice to the Council as the Council may request, to the extent permitted by law. Along with its subordinate committees, the NEC shall be my principal means for coordinating Executive departments and agencies in the development and implementation of national security [sic] policy.

The NEC shall have as its members the President, the Vice President, the Secretary of State, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Energy, the Administrator of the Environ-

mental Protection Agency, the Chair of the Council of Economic Advisers, the Director of the Office of Management and Budget, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, the National Security Adviser, and the Assistant to the President for Science and Technology Policy. The heads of other Executive departments and agencies and other senior officials shall be invited to attend meetings of the NEC where appropriate.

The NEC shall meet as required. The Assistant to the President for Economic Policy, at my direction and, when appropriate, in consultation with the Secretary of the Treasury, the Director of the OMB, and the Assistant to the President for National Security Affairs, shall be responsible for determining the agenda and ensuring that the necessary papers are prepared. Other members of the NEC may propose items for inclusion on the agenda. The Assistant to the President shall be assisted by a National Economic Council staff.

B. The NEC Principals Committee (ECON1)

An NEC Principals Committee is established as the senior interagency forum for the consideration and integration of policy issues importantly affecting the national economy. The NEC Principals Committee shall review, coordinate, and monitor the development and implementation of national economic policy. The NEC/PC should be a flexible instrument—a forum available for Cabinet-level officials to meet to discuss and resolve issues not requiring the President's participation. The Assistant to the President for Economic Policy will serve as chair of the NEC Principals Committee. The Assistant to the President for National Security Affairs shall be informed of meetings and invited to attend all those with international economic and international security implications and considerations.

The NEC Principals Committee shall have as its members the Secretary of the Treasury; the Director of the Office of Management and Budget; the Chairman of the Council of Economic Advisers; the Secretary of Commerce; and the Secretary of Labor; and the Assistant to the President for National Security Affairs as appropriate. Other heads of departments or agencies shall be invited as needed.

The Assistant to the President for National Economic Policy shall be responsible—in consultation with the Secretary of Treasury and the Director of OMB, and, when appropriate, the Assistant to the President for National Security Affairs—for calling meetings of the NEC/PC, for determining the agenda, and for ensuring that the necessary papers are prepared.

C. The NEC Deputies Committee (ECON2)

An NEC Deputies Committee shall serve as the senior sub-Cabinet interagency forum for consideration of policy issues affecting the national economy. The NEC Deputies Committee shall review and monitor the work of the NEC interagency process (including Interagency Working Groups established pursuant to Section D below). The Deputies Committee also shall focus significant attention on policy implementation. Periodic reviews of the Administration's major economic initiatives shall be scheduled to ensure that they are being implemented in a timely and effective manner. Also, these reviews should periodically consider whether existing policy directives should be revamped or rescinded.

The NEC Deputies Committee shall have as its members the Deputy Assistant to the President for Economic Policy (who will serve as the chairman) and the appropriate senior officials of Deputy Secretary or Under Secretary rank chosen by the relevant heads of departments or agencies which compose the NEC in consultation with the Deputy Assistant to the President for Economic Policy. The Deputy Assistant to the President for National Security Affairs shall be a member of the NEC Deputies Committee and attend meetings as needed. The Deputy Assistant to the President for Economic Policy may invite representatives of other Executive departments and agencies, and other senior officials, to attend meetings of the NEC Deputies Committee where appropriate in light of the issues to be discussed.

The Deputy Assistant to the President for Economic Policy shall be responsible for calling meetings of the NEC Deputies Committee, for determining the agenda, and for ensuring that the necessary papers are prepared. The NEC Deputies Committee shall ensure that all papers to be discussed by the NEC or the NEC Principals Committee fully ana-

lyze the issues, fairly and adequately set out the facts, consider full range of views and options, and satisfactorily assess the prospects, risks, and implications of each. The NEC Deputies Committee may task the interagency groups established pursuant to Section D of this Presidential Decision Directive.

D. Interagency Working Groups (ECON3)

A system of Interagency Working Groups—some permanent, others *ad hoc*—is hereby authorized. The NEC Interagency Working Groups shall be established at the direction of the Deputies Committee, which shall also determine the chair of the NEC Interagency Working Groups—either departmental or NSC, NEC, or DPC. The Interagency Working Groups shall convene on a regular basis—to be determined by the Deputies Committee—to review and coordinate in the implementation of Presidential decisions in their policy areas. Strict guidelines shall be established governing the operation of the Interagency Working Groups, including participants, decision-making path and time frame. The number of these working groups shall be kept to the minimum needed to promote an effective NEC system.

WILLIAM J. CLINTON

Advocacy

"As Secretary of State, I have repeatedly emphasized the top priority that the Clinton Administration attaches to America's economic security as a goal of our foreign policy. Along with our development assistance, our export and investment promotion efforts help to strengthen free markets and modernize vital sectors in developing economies around the world. They lift living standards and multiply future demands for American goods. And they contribute to our other foreign policy goals. By helping to build prosperity, they reinforce stability in new democracies struggling to overcome legacies of repression and conflict."

William M. Christopher, Secretary of State

Countering Economic and Political Pressure

A time when the U.S. economy has expanded, remained sluggish, political changes and economic liberalization have opened eras of developing markets around the world. This has led to fierce global competition as nations compete for deals - particularly infrastructure projects which are susceptible to political pressures.

By the turn of the century, China plans to install 100 million new telephone lines, and by 2000, South Korea hopes to double its power generation capabilities by building 70 new power plants. The industrialized nations recognize that it is vital for their firms to get in on the ground floor of these and other upcoming deals, and to help set the standards which often ensure follow-on deals, future profits, and employment at home. Our top competitors for these lucrative international contracts are Japan, Canada, and European Union countries such as the United Kingdom, Germany and France.

The stakes are enormous. The World Bank has estimated that, to sustain present levels of growth, East-Asian economies will need to invest between \$1.2 and \$1.5 trillion over the next decade in infrastructure alone. Latin America will need another \$600 - \$800 billion. India has announced its intention to absorb \$10 billion per year in foreign investment over the next five years.

The United States strives for international contracting practices where decisions are based on economic merits through clear, transparent and speedy decision making processes. However, we also recognize that the governments of our competitors fight to help their "home teams" win these contracts through various tactics - some legitimate, others questionable - to "tilt the playing field" to their advantage. The most common of legitimate tactics is "commercial diplomacy", which simply means government-to-government lobbying, often in the form of

Advocacy Supports U.S. Jobs

Applied Telecommunications, a small Texas telecommunications firm, won its bid to upgrade a satellite earth station for data and TV transmission and reception in Uruguay in July, 1996.

Facing stiff competition from a French firm, Applied Telecommunications requested U.S. Government advocacy support. On July 3, 1996, Secretary Kantor called the President of Ariel, Ricardo Lombardo to encourage the selection of a U.S. telecommunications company and ensure that U.S. companies get fair and equal treatment. On July 5, 1996, Secretary Kantor sent a follow up letter to President Lombardo to reaffirm his support for U.S. bidders. In addition, the U.S. Embassy in Montevideo supported U.S. bidders throughout this project, including an advocacy letter from Deputy Chief of Mission, Nancy Mason, supporting U.S. bidders to Lombardo. The project has an estimated value of \$2.2 million, mostly all of which will be in U.S. exports. The company estimates that 34 jobs in the following states will be supported as a result of this contract: Texas, Illinois, New York, Arizona, Pennsylvania and Virginia.

Aidan Shack, President of Applied Telecommunications stated, "The support we have received from the U.S. Department of Commerce and the U.S. Embassy in Uruguay was instrumental in us winning this project. This is the largest project our company has won to date and we are as happy as Michael Johnson was when he won the gold medal in the 400 meters. This once again highlights the important partnership between the private and public sector."

trade missions led by ministers or other heads of state. These missions are particularly successful in less developed countries, who welcome the attention and importance that Ministerial level visits convey. The following are examples of legitimate foreign "commercial diplomacy" that provide stiff competition for U.S. companies.

- France: Already this year, Foreign Minister de Chatelet has led business delegations to China, Indonesia, and Malaysia, and President Chirac has traveled to Singapore and Thailand. Paris has targeted 15 countries for intensified export promotion activities. Many of these are in Asia - an urgent priority for the French government and business.

- Canada: Prime Minister Chretien led a group of businessmen, politicians, and trade officials to India in January 1996. While in India, Canadian businesses signed deals worth approximately \$2.5 billion. The value of the signings in India is particularly impressive considering that two-way trade between Canada and India totalled approximately \$550 million in 1994.

- United Kingdom: Prime Minister Major recently traveled to Thailand in March, and Trade Minister Nelson visited China with a team of corporate leaders last January. The U.K. has also developed strategic initiatives which target geographic areas to address sectors and issues which are felt to need specific attention.

- Germany: Since November 1995, Chancellor Kohl has led large business delegations to China, Vietnam and Singapore. The China trip resulted in 12

contracts signed worth DM 2.1 billion.¹ German industry, with the support of the government, has launched initiatives targeting Japan, the Middle East, South Africa, and Latin America, similar to its programs developed for Asia in 1993.

New Competitors: The competition for major procurement is not just from these major U.S. competitors. A host of other countries are making greater use of government-backed export promotion campaigns to expand their sales in foreign markets. The governments of Italy, Spain, Australia, Taiwan, Malaysia, and Mexico, for example, are using a variety of these tactics—particularly high-level visits and trade missions—to assist their firms in overseas markets.

Questionable tactics go beyond lobbying to economic and political pressure. The most frequently used economic tactics include: offers to credit loan or debt obligations; promises of other forms of aid or the threat of actually cutting existing aid; or promises of certain rights or privileges. The most frequently used political tactics include: promises of future market access; favors in international arenas; appeals for regional unity; and promises of better bilateral relations. Sometimes these political pressures can include the threat to harm existing relations. Some examples of these types of pressures are:

- Mauritania was reportedly pressured by the French Government to award an \$18 million satellite earth station contract to Alcatel rather than a U.S. firm as a reward for French political support. The U.S. firm's bid was \$1 million lower and deemed technically superior by independent consultants.
- Japan made a strong pitch for a contract to build a high-speed railhead between Beijing and Shanghai, describing the project as symbolically important to Sino-Japanese relations.
- Recently six Taiwan telecommunications officials were convicted of accepting \$37 million in bribes from Ericsson between 1988 and 1991 in exchange for six switching contracts totaling \$220 million.
- Linking landing rights with aircraft sales.
- A European firm offered to pay unspecified "commissions" to a number of senior Asian officials of the Asian organization which awarded the firm a communications services contract worth nearly \$1 billion.

The U.S. Response

Prior to the creation of the National Export Strategy and the TXXC team, the United States government did not support our disadvantaged U.S. companies with specific deals through a systematic and comprehensive advocacy program. With

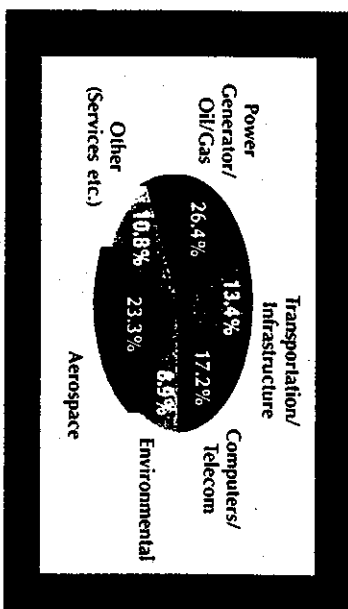
¹ 1995 DM 2.2 billion = \$1.47 billion (U.S. dollars)

the creation of the TXXC, we realized that international business lost by American firms was too important for the U.S. government to ignore, and that our non-interventionist strategy was, in the words of the late Secretary Brown, tantamount to unilateral disarmament.

Thus the Advocacy Network was created, to respond to both the legitimate and questionable tactics of foreign competition. When a U.S. business requests advocacy, the advocacy network reaches to the highest levels within their agencies to provide a quick response that can level the playing field for U.S. competition.

Our advocacy efforts focus on decisions made or influenced by foreign governments. They typically involve infrastructure projects which show enormous promise in key growth sectors, such as telecommunications, aerospace, transportation, environmental technologies, energy and financial services.

Successful Advocacy Projects by Industry



Business Development Missions

Our advocacy efforts are often bolstered by on-the-ground high-level, person-to-person contact through our Business Development Missions. Led by Cabinet or Sub-Cabinet officials, the missions are a critical part of our strategy, and serve to help U.S. firms to explore and enter new markets. Our Business Development Missions are comprised of senior executives from firms looking to do business in the country or region, as well as senior officials from the TXXC agencies—with close support provided by our Paris overseas. The members of the delegation work closely together on ways to help American firms take better

Advocacy is "Key" In Helping a North Carolina Firm Win in Haiti

In January of 1996, NORTEL signed a contract to expand Haiti's telecommunications infrastructure. The contract (completed an agreement which was initiated during the joint Commerce/State-led Presidential Business Development Mission in March 1995,

Letting still competition from foreign telecommunications firms, NORTEL requested U.S. government Advocacy support. In March 1995, during a Presidential Business Development Mission to Haiti, both the Commerce Department's Deputy Secretary David Barram and the State Department's Deputy Secretary Strobe Talbott, who led the mission, advocated on behalf of NORTEL.

NORTEL's Vice President for Government Relations and International Trade, Vincent Puritano, said, "The support we have received from the Department of Commerce, the State Department, and the U.S. Embassy in Haiti during the March 1995 Presidential Business Development Mission was the key for NORTEL in winning this additional contract. This once again highlights the important partnership between the private and public sector."

All of the equipment will be manufactured and sourced out of NORTEL's Raleigh, North Carolina plant which employs nearly 9,000 workers. At a value of \$14 million, the contract will support an estimated 238 U.S. jobs.

advantage of business opportunities - both short and long-term - in the countries that we visit. The ultimate goal of every one of our missions is to help create high-wage jobs for hard-working people in the U.S. Some examples follow:

Focusing on Africa: Last February, the White House transmitted to Congress the first of five annual reports on a new Comprehensive Trade and Development Policy toward the Countries Of Africa. The Clinton Administration is the first to develop such a policy toward a region long overlooked in U.S. foreign economic and commercial policy. The report stressed that in the future African trade and foreign investment. The private sector will have a lead role in generating poverty-alleviating growth and building prosperity, and the U.S. and building through TCCC agencies government - through USAID - will also work Development (USAID) - will also work closely with African governments to identify and remove impediments to the functioning of free markets. It is up to the Africans themselves to empower their own private sectors to partner with U.S. enterprises.

"The State Department's and foreign service officers' roles are changing. Back when international business accounted for 6 percent of U.S. business, the promotion of our businesses abroad was not seen as a priority. But today, the role of international trade to the U.S. is tremendously important. We see other governments helping their businesses, and we aren't going to stand by and not help ours."

- Dennis Jett,
U.S. Ambassador to Mozambique

companies totaling nearly \$500 million, and he advocated on behalf of U.S. firms competing for projects that eventually could total more than \$3 billion in U.S. exports.

He also signed a Memorandum of Understanding between the Department of Commerce and the Southern Africa Development Community (SADC) aimed at increasing trade and investment ties between the United States and that important twelve-country regional organization. The agreement outlines a framework for cooperation between the Commerce Department and SADC, with respect to commercial development in Southern Africa. The SADC agreement complements the initiative for Southern Africa implemented by USAID, designed to help SADC increase regional trade and economic integration. Secretary Brown also opened a new Commercial Service office in the U.S. Embassy in Accra, Ghana, acknowledging the growing interest of U.S. business in Ghana as that country aggressively implements economic reforms. Lastly, the Secretary also challenged African leaders to recommit their countries to democracy, transparency, and lowering of commercial barriers.

After his mission to Africa Secretary Brown moved to further consolidate the U.S. commercial partnership with the region by establishing a permanent Africa Working Group of the TCCC. The Africa Working Group convenes periodically to help formulate and implement U.S. trade and investment initiatives toward Africa, to address specific problems and impediments to U.S. commercial expansion in the region, and to coordinate U.S. government measures to resolve them. The Working Group serves to institutionalize interagency coordination of U.S. government programs to support a stronger commercial relationship with Africa, and to ensure that the programs continue well into the future.

Building Our Initiatives in Asia:

Last June, Secretary Mickey Kantor led a Presidential Trade and Economic Policy Mission to South Korea, Indonesia and Thailand. The mission included a business delegation comprised of eight CEOs and an official delegation from Commerce, the office of The U.S. Trade Representative (USTR), the Department of Transportation, and the Overseas Private Investment Corporation (OPIC).

Shortly after the White House report was released, the late Secretary of Commerce Ron Brown led an historic Commercial Development Mission to Africa. The mission visited five countries: Cote d'Ivoire, Ghana, Kenya, Uganda, and Botswana. In each country major initiatives were undertaken with African governments and private sector representatives to begin a lasting process of economic and commercial expansion based on close cooperation with American companies.

During the mission Secretary Brown held discussions with government leaders and private representatives from nearly 40 African countries and more than 150 U.S. firms. He announced contracts and agreements for American

For a more detailed explanation of our commercial strategy for Africa, see Appendix I

The Advocacy Network Helps Small Company Win "Despite Fierce Competition"

A small telecommunications firm - with fewer than 200 employees and located in Pennsylvania - was facing stiff competition from Japanese and Australian firms in its bid for a \$41 million telecommunications contract in Indonesia. The firm, InterDigital Communications Corporation, won the contract in March, 1996, with the assistance of the TRCC's Advocacy Network. Robert Willschire, Vice President of InterDigital, said the combination of advocacy and a letter of support from F-Im Bank, combined to help the firm win the deal. "In spite of fierce competition from large firms,"

InterDigital received U.S. government support from many TRCC agents as well as competing for this project. The late Secretary Brown advocated on behalf of InterDigital at the 1994 Asian Pacific Economic Cooperation (APEC) conference and also sent advocacy letters to many Indonesian State Ministers, including the State Minister for Economic, Financial and Supervision for Development, the State Minister for National Development Planning, the Minister of Finance, and the Minister of Tourism, Posts and Telecommunications. The U.S. Embassy in Indonesia actively supported InterDigital in-country, as did the Export-Import Bank while it provided critical financing for the project in the form of fixed-aid credits.

Larry Campagna, InterDigital Communications Chairman of the Board, said, "The U.S. government's active support is necessary to achieve the needed thing to a free market internationally. I strongly agree with the Commerce Department's, State Department's, and Export-Import Bank's efforts to support U.S. firms, particularly those of us who have small businesses and could not compete nearly as successfully without U.S. government assistance." The company estimates that the \$41 million contract, of which virtually all is U.S. export content, will support about 700 jobs in the following states: California, Florida, Illinois, Maryland, Massachusetts, Ohio, North Carolina, Oregon, New York, Pennsylvania, South Carolina, Tennessee, and Texas.

American exports to Asia have tripled in the last ten years, and may well triple again over the next decade given current growth projections. Yet, despite this region of rapid growth, in many key sectors U.S. firms have not made significant gains in market share. The mission focused on efforts to engage Asia on a commercial policy basis and to build on current economic and strategic initiatives in the region. The goal was to develop a strong public-private partnership to help improve America's position in East Asia over the next three to five years, specifically in the key automotive, telecommunications, and transportation infrastructure sectors.

In South Korea, Secretary Kantor encouraged the South Korean government to accelerate market liberalization, advocated on behalf of U.S. business interests in the airport, urban transportation and power sectors, and discussed with key South Korean government officials problems in the South Korean trade and investment regimes, particularly intellectual property rights protection, and how rectifying these problems can advance South Korea's own goal of obtaining high-technology investment. In Indonesia, the Mission focused on bilateral trade issues, such as intellectual property rights, encouraged liberalization of foreign investment in distribution, and the need for Indonesia to improve its investment climate to move forward in developing high technology national industries.

In Thailand, Secretary Kantor raised concerns about express cargo services, and opportunities in telecommunications

Long-Term Assistance Helps a Kansas Energy Company Win in India

Black & Veatch, a large Kansas energy company, and its partners recently won its bid to build a 500 megawatt combined cycle electrical power plant in India.

TRCC support for Black & Veatch in this project ranged from energy experts at the Commerce Department, the local Commercial Service office in Kansas, the India desk officers at both the Departments of State and Commerce, the Export-Import Bank, the Department of Energy, the Advocacy Center, and the Embassy staff located in India. The TRCC Advocacy Network also met several times to coordinate U.S. government efforts to advance this project as well as other power projects in India. Black & Veatch was one of the companies that received the support of the late Secretary of Commerce Ronald H. Brown during his trade mission to India in 1995.

The TRCC-coordinated effort helped Black & Veatch win the "Kerala" power project in India, which has a total value of \$565 million and a U.S. export content of \$250 million, supporting an estimated 500 U.S. jobs over the life of the agreement.

and transportation infrastructure. Mission members also took part in business roundtables focusing on U.S. export and investment opportunities in the automotive, telecommunications, and general infrastructure sectors. This mission followed one I led last November by Secretary of Transportation Federico Peña to Vietnam, Thailand, Hong Kong, Macau, Indonesia, Malaysia, Japan and the Philippines to help American firms in the transportation sector enter these rapidly growing markets. During that mission, Secretary Peña signed air transport agreements to expand air service opportunities with Hong Kong, Macau and the Philippines, agreed to resume formal talks for a new air transport agreement with Thailand, and witnessed the establishment of a joint venture agreement for the first-ever Indonesian manufacturer of advanced air navigational aids. Secretary Peña's mission led to the signing of billions of dollars in agreements. The U.S. Trade and Development Agency (TTA) is also working aggressively on air and rail projects in ASEAN, including a training grant for aviation officials at the Bangkok Airport, a Thai high speed rail project, and joint programs with the TTT/FAA to promote the use of American equipment in Indonesia.

Supporting the Peace Process in Bosnia and Croatia: Secretary of Commerce Mickey Kantor led a Business Development Mission to Bosnia and Croatia in July. This mission continued the efforts begun by Secretary Brown and 34 other government and private sector officials in April which ended tragically when their plane crashed near Dubrovnik, Croatia. Secretary Kantor was joined on the mission by 18 U.S. companies, eleven of which had lost executives on the Brown trip. Also joining Secretary Kantor were Ruth Harkin, President and CEO of CPMC, Joseph Grammbsen, Director of TDA, Thomas Dine, Assistant Administrator of USAID, and Michael Turner, Mayor of Dayton, Ohio.

Prior to the trip, the Commerce Department co-chaired an extensive interagency process which developed a cohesive commercial and investment policy for Bosnia and Croatia to help undergird the peace process and to obtain more U.S. exports and investment in the region. In Dubrovnik, the mission produced the first-ever accord between Croatia and Bosnia-Herzegovina to work together on

Advocacy Helps a Tennessee Firm Overcome Hurdles to Win an Israeli Power Project

Thomas & Betts Corporation, a large Tennessee electrical firm with over 2,000 employees, won a contract with Israel in January of 1996 to produce steel transmission poles and other electrical utility products. Throughout the process, which started in 1994, T&B experienced many roadblocks in its efforts to win the contract with an Israeli government organization. With assistance from the Advocacy Center, the Commercial Service, and the State Department, however, T&B was able to overcome a sudden change in the organization's interpretation of the "Buy-Israel" regulations which altered its tender requirements and favored local suppliers.

The majority of these poles and parts will be supplied from factories in Minnesota and Texas, and the \$10 million contract will create and maintain many jobs for U.S. workers. The coordinated T&B effort helped lead to the success of the bid in a market known for intense foreign competition.

Louis Wolk, Director of Export for Thomas & Betts, wrote, "I have been involved in the international export business for twenty years. During this time I never considered the U.S. Department of Commerce or the U.S. Embassies as resources for increasing exports for my company...I would encourage other exporters to use the resources available to them through the U.S. Department of Commerce and U.S. Embassies to significantly increase sales and overcome some of the unique barriers that confront exporters in the pursuit of international business."

the tourist center of Dubrovnik. These projects received TDA support, including the funding of a \$500,000 feasibility study on the development of intermodal facilities at Ploce and Sarajevo.

In Sarajevo, Secretary Kantor unveiled significant new Clinton Administration trade and investment policy initiatives. First, Secretary Kantor outlined steps to regularize trade and investment relations between the U.S. and Bosnia, including support for future Bosnian accession to the World Trade Organization. Second, Secretary Kantor announced measures to further involve American companies in the \$5.1 billion Bosnian reconstruction effort. Over three years, twelve million dollars in USAID funds will be shifted into commercially-oriented TDA grants in the infrastructure sector. USAID's construction efforts will focus on repairing housing, implementing a private sector reconstruction finance facility and providing technical assistance in five areas: privatization, financial sector reform, enterprise restructuring, fiscal reforms and political reforms. These

transportation projects linking the two nations. Cooperation on these projects will benefit from the Federal Highway Administration's (FHWA) authority through the 1991 Intermodal Surface Transportation Efficiency Act to work more directly with the U.S. private sector to promote American technologies.

abroad. FHWA's international activities foster the use of American standards, specifications, equipment and technology, translating into overseas jobs and exports for American highway and transportation-related companies. After historic face-to-face talks, chaired by Secretary Kantor, Croatian Prime Minister Matusa and Bosnian Prime Minister Miranovic reached agreement with the United States to cooperate on two vital road projects to support the Federation of Bosnia and Herzegovina as well as give Croatia a surface transportation link between its northern and southern regions. The first of these would support the Port of Ploce with a transportation corridor to Sarajevo and exiting the Sava River in the north. The second would provide access from the Croatian capital Zagreb to Ribice in

Bosnia and Herzegovina, then south to Sarajevo. These projects received TDA support, including the funding of a \$500,000 feasibility study on the development of intermodal facilities at Ploce and Sarajevo.

efforts, which will receive about \$150 million in FY 1996 funding, will draw upon the goods and services of U.S. companies. This will include at least another \$5 million that will be directed by the U.S. Special Representative toward strategic equipment purchases. An additional \$200,000 will be directed toward the Clinton Democracy Corps to provide technical support by stationing U.S. business executives in Bosnian businesses.

The Advocacy Center

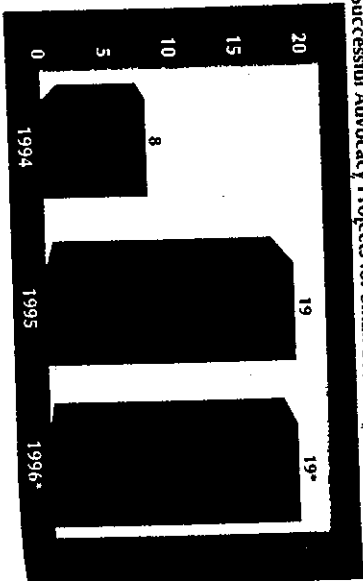
As described in detail in the 1995 National Export Strategy Report, the heart of the Interagency Advocacy Network - the Advocacy Center - provides a single point of contact for reaching the many different agencies involved in advocacy support. The Advocacy Center works one-on-one with U.S. exporters requesting government assistance in bidding competitions, in holding hands-on counseling and support from our world-wide network. The Center tracks hundreds of projects worldwide and advocates on behalf of U.S. firms during high-level business development missions, as well as on a daily basis by U.S. Ambassadors and their country teams.

Advocacy can range from visits, telephone calls and letters from a commercial officer, U.S. Ambassador or cabinet level official, through to high-level advocacy from the Vice President and even the President.

The Advocacy Network is Working

In the two plus years that the Advocacy Center has been operational, U.S. exporters have received advocacy support in securing over 230 foreign business

Successful Advocacy Projects for Small Business, FY 1994-95



Advocacy Provides Critical Assistance to a Pennsylvania Firm Competing in Israel

In June of 1996, Middatlantic Energy Corporation, an energy development firm with offices in Pennsylvania and West Virginia, successfully signed a contract with Israel to build a 150 MW power plant. This commercial power plant project, designed to convert oil shale to clean electric power, is the first of its kind in Israel. Securing the contract did not come easily for Middatlantic Energy, however.

Under intense competition from European companies who were able to use marketing behaviors inconsistent with U.S. practices, Middatlantic turned to the U.S. government for help. The Advocacy Center made Israel Minister Segou aware of the difficulties the company was encountering, as well as the benefits of Middatlantic's proposal, during both a U.S. visit to Israel and later during the Minister's visit to the United States. He and the Minister of Finance received letters on behalf of Middatlantic Energy from the late Secretary Brown, Secretary of Energy Hazel O'Leary, and Ambassador Indyk, who also played an important role by making personal contacts with Israeli government officials and ensuring high level government attention through the entire period of contract negotiations and approvals.

The efforts of the U.S. government combined with the endorsement of the government of Israel resulted in Middatlantic's successful execution of the contract and the establishment of a foundation for a similar project in Jordan. The Israeli project has an estimated cost of \$300 million, with the U.S. content estimated to have a value of over \$150 million. Together, these two ventures represent an investment of over one billion dollars and will serve not only to foster economic development in the region but also to promote cooperation between Israel and Jordan - thereby supporting the peace process.

Michael H. Schwartz, Senior Vice President of Middatlantic Energy, said that "small and mid-sized American companies cannot successfully compete with our European and Japanese counterparts without U.S. government support, and the role of the U.S. government in this case was critical to Middatlantic's success."

agreements valued in excess of \$40 billion in U.S. domestic content over the life of these agreements. Our efforts have helped firms - both large and small - to win contracts overseas, supporting American jobs here at home.

U.S. firms may have had more success overseas to sell, were they not also facing questionable foreign business practices, which are difficult to counter and even more difficult to prove. In fact, we estimate that over the past eight years, U.S. firms lost about 100 out of 200 separate overseas competitions due (at least in part) to political and economic pressure brought to bear by other governments. We conservatively estimate these losses for U.S. companies at \$25 billion. Given that these 200 tracked projects represent only a small fraction of the total number of projects offered during these eight years, and also given that the number does not include follow-up contracts, we estimate the true losses at several times this number.

Strategy for 1997

Our advocacy program has been very effective - but we must do more. During the coming year, we will work to fortify and expand our efforts by:

- Increasing coordination between our Advocacy Center and our trade financing agencies to ensure that our priorities overlap. Currently our Advocacy project priorities may or may not have finance agency involvement. One element of a more comprehensive overseas commercial development strategy would be to link the Advocacy Center to these projects in the trade finance agency "pipeline" through both geographically-focused and Advocacy Network inter-agency meetings. This will

"The world is changing - the energy marketplace is expanding. We are witnessing unprecedented demand overseas for technologies that can meet energy needs in an environmentally sensitive manner. Foreign governments support their export industries with a broad range of assistance alternatives. The U.S. government should meet this competition head on."

Hazel O'Leary, Secretary of Energy

ensure both that our Advocacy priorities reflect those projects on which we provide a full range of financial services, and that we are providing those services on the most commercially significant projects. Included within this coordination is the linking of the advocacy center database tracking system to government financing agencies, and the automatic mailing of Ex-Im Bank application forms in response to every advocacy request received at the Advocacy Center.

- Continuing to augment our Advocacy staff through interchanges with other TPCC agencies and the private sector and better coordination with the Multilateral Development Banks. We will continue to harness our Advocacy Center expertise by encouraging staff exchanges with other TFC's agencies and the private sector as necessary. We will also enhance the Advocacy Network's relationship and coordination with the Commercial Officers assigned to each U.S. Executive Director's Office at the Multilateral Development Banks.
- Broadening our Advocacy efforts to include more U.S. government agencies. Currently the Departments of Commerce, State, Transportation and Energy are the major advocates on behalf of U.S. companies and workers. We will expand our efforts in the coming year to include other U.S. government agencies in a more active manner, such as the Environmental Protection Agency and USAID.
- Developing a system to track visits to the U.S. by foreign officials. Our usual focus to date has been on advocacy overseas. We recommend developing a system to track visits by foreign officials who visit the U.S. to arrange meetings with appropriate government officials who can advocate for specific projects during their visit. These visits to the U.S. often hold significant opportunities for advocacy.
- Improving information gathering and monitoring of foreign competitive practices. Through the Advocacy Center, we will continue to monitor practices brought to our attention by U.S. industry and through our worldwide network that affect U.S. participation in particular projects. In addition to enhancing a complete advocacy response, this information can be used to help inform our trading partners of the need for greater discipline over practices.
- Improving coordination with international organizations. We will work more closely with the Commercial Service Officers assigned to assist the U.S. Executive Directors at the Multilateral Development Banks (MDBs) to provide them with information to enable the U.S. Executive Directors to inform the banks of questionable competitive practices, to facilitate enforcement of preventative procedures.

U.S. GOVERNMENT ADVOCACY GUIDELINES

PURPOSE

- To expand U.S. exports and export-related employment as a means to promote U.S. economic health and well-being.
- To assist USG personnel in determining whether and to what extent USG support is appropriate in connection with a transaction involving U.S. interests.

BACKGROUND

USG officials, particularly in our Embassies abroad, are increasingly approaching foreign governments on behalf of U.S. commercial interests. In this connection, however, they are often faced with requests to intervene in support of parties to proposed transactions in which there is some question as to the degree and nature of U.S. participation.

USG export promotion policy has historically looked to U.S. incorporation and domestic content in determining whether USG support is appropriate in a particular instance. The increasingly complex nature of international commercial transactions now necessitates revisiting the issue of which factors should be considered in determining whether or not to provide USG advocacy support in any given circumstance. The guidelines that follow are provided to Ambassadors and Embassy Commercial personnel for the purpose of assisting in these determinations on a case-by-case basis.

The issues that arise with respect to any individual transaction may include, for example: determining whether to support any bid in which the goods or services to be delivered do not contain the traditional U.S. content level of more than 50 percent; determining whether to support a bid by a foreign-owned, U.S.-incorporated firm that may or may not contain more than 50 percent U.S. content; differentiating between or among bids by more than one U.S. firm, bids by foreign subsidiaries of U.S. firms, and bids by various consortia where differences in the degree of U.S. participation and viability of the bid may or may not be significant. The guidelines below place a premium on U.S. content, including employment, in the determination of whether and to what extent a given bid is considered to be in the U.S. national interest. While any bid meeting the 50 percent U.S. content threshold is presumed to be in the national interest, bids with lesser U.S. content may, under certain circumstances, also be determined to be deserving of comparable, nondiscriminatory treatment by the USG. Conversely, USG support for a bid may not be in the national interest -- even if the bid contains greater than 50 percent U.S. content -- if, for example, the bidding firm's home market is closed to U.S. firms.

Obviously, no guidelines can address dispositively all possible fact situations likely to be faced by posts abroad. Therefore, in particularly complex cases, consultations with interested Washington agencies may be required before a determination can be reached.

GUIDELINES

1. The overall basis for determining the nature and extent of USG support for a viable bid or proposal in connection with an international transaction shall be the U.S. national interest. A U.S. national interest determination will first weigh and assess the foreseeable, material benefits to the U.S. economy that may potentially be derived from a transaction, and then assess the merit of a request for USG support of any bid or proposal made in connection with the transaction.
2. A bid or proposal in which the U.S. content of the goods or service to be provided exceeds 50 percent of their total value (including materials, equipment and labor) shall be presumed to be in the U.S. national interest.
3. In cases where the U.S. content does not exceed 50 percent, the following factors, often associated with U.S. ownership, may be considered in determining whether USG support of a bid or proposal is in the U.S. national interest:

U.S. materials and equipment content.

- U.S. labor content.
- Contribution to the U.S. technology base including conduct of research and development in the U.S.
- Repatriation of profits to the U.S. economy.
- Potential for follow-on business that would benefit the U.S. economy.

The USG may determine that a bid or proposal that meets one or more of the above factors in a clear and substantial way is in the U.S. national interest.

4. All bids or proposals that are determined to be in the U.S. national interest under paragraphs 2 or 3 above shall be supported by the USG in an equal, non-discriminatory manner, except that, in the case of foreign or foreign-controlled bidders, the USG may take into account, with respect to the relevant product or service, the absence of competitive opportunities for U.S. firms in the bidder's home

market that are substantially equivalent to those available in the U.S. market for like products or services, as reflected in National Trade Estimate Reports on Foreign Trade Barriers prepared by the Office of the United States Trade Representative.

5. It shall be the responsibility of the firm or entity seeking USG support to advise the post in a timely manner of its interest. Firms should be prepared to substantiate to the satisfaction of the post the applicability of the above criteria, with documentation (when necessary and appropriate). Firms may be informed that their failure to provide such information in a timely manner may preclude USG support.
6. A firm seeking USG support must agree that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with the matter for which advocacy assistance is being sought; and (2) maintain and enforce a policy that prohibits the bribery of foreign officials. The firm must further acknowledge that failure to comply with the terms of the agreement may result in the denial of advocacy assistance.
7. In complex or sensitive transactions (including those specifically referred to in paragraph 4), the post should consult with interested Washington agencies for advice on a case-by-case basis.

October 1996

After the Uruguay Round:

**COMPETING TO WIN
IN THE GLOBAL MARKETPLACE**

Remarks by
JEFFREY E. GARTEN
Under Secretary of Commerce for International Trade

Before
The Council on Foreign Relations
New York, N.Y.

January 9, 1995

SUMMARY

Earlier this year, a consortium of U.S. companies, led by Raytheon, competed head-to-head with a French group to win a \$1.4 billion project in Brazil to monitor the environment of the Amazon Basin using satellite and radar technology. The French group was heavily supported by its government. Consistent with its efforts to help American companies penetrate the global marketplace, the Administration mounted a full court press to help the Raytheon group. It involved the Secretary of Commerce, the Chairman of the Export-Import Bank, the President of the Overseas Private Investment Corporation, the head of the Trade and Development Agency, the head of the Environmental Protection Agency, the head of NASA, officials from the National Security Council, the National Economic Council, and the Departments of State, Interior, and Treasury, and ultimately, President Clinton. In Washington, the Administration team met in a "war room" setting everyday for two weeks, maintaining constant touch with our Embassy in Brazil. A high-powered business mission, led by Secretary Brown, was sent to Brazil. At the eleventh hour, the U.S. group won the bid, which could be worth close to \$700 million in exports and support 12,000-15,000 high paying jobs in the United States.

This presentation is about such high-intensity advocacy – why we do it; how we do it; where we have succeeded; what the overall results have been; and what we need to think about for the future.

"We are now positioning ourselves to compete for new markets and the jobs they will create at home as never before...We are at the beginning of a new era of fierce commercial competition in the global marketplace, and I am determined that we as a nation fulfill our enormous potential."

President Bill Clinton

"America's future depends on our ability to compete successfully in the international marketplace. Our position as the world's undisputed economic leader, our national security, and the livelihood of millions will turn on how well the businesses, workers, and government of the United States respond to this challenge."

Ron Brown, Secretary of Commerce

"It is time for a new aggressiveness if America is to compete and win again in the global marketplace. For too long, American business and the United States Government have let our competitors gain the advantage in the battle for new markets around the world."

Kenneth Brody
President and Chairman
Export-Import Bank of the United States

From the beginning, the Clinton Administration has put trade at the center of its domestic and foreign policy. It was exactly the right thing to do -- economically essential and politically courageous. The NAFTA, the GATT, the focus on freeing up trade in Asia and Latin America, the singling out of the big Emerging Markets as prime opportunities for the future, the efforts to boost competitiveness at home through education, training programs, and through investment in American technology -- all this will strengthen our economy at home and help us to maintain influence abroad.

Under the leadership of President Clinton, Vice President Gore, and Secretary Brown -- as well as many others, including Secretary Christopher, former Secretary Bentsen, incoming Treasury Secretary Rubin, Secretary O'Leary, Ambassador Kantor, Ex-Im Bank Chairman Brody, OPIC President Harkin, and TDA Director Grandmaison -- we have made support for U.S. companies fighting to win markets abroad a critical component of our overall approach to trade. In 1993, when we first began preparing a National Export Strategy,¹ Secretary Brown, as chairman of the effort, pressed us to realize America's full potential for increasing exports through a systematic program of active support, a strategy we came to call "advocacy." In essence he said, "Go to bat for U.S. companies competing abroad, and aim for one thing -- home runs."

In the upcoming year, the importance of these efforts will be greater than ever. With the conclusion of the Uruguay Round, and with the new opportunities for trade in Asia, Latin America, and Eastern Europe, it is essential that we re-double our drive to compete. In my view, there is no greater imperative than to turn up the heat on every aspect of our export drive, but most especially on high-intensity support for U.S. firms striving to win deals abroad.

Of course, there are many kinds of advocacy. Our trade negotiations, such as NAFTA, GATT, and the Japan Framework, are themselves a type of advocacy. By seeking reduction or elimination of both tariff and non-tariff barriers, and by emphasizing the need for protection of patents, trademarks, and copyrights, it is in these negotiations that we focus on the broad interests of our industries from aerospace to banking. U.S. Business Development Committees with foreign governments -- like South Africa, Russia, or China -- entail another type of advocacy, because they focus on ways to increase our trade and investment with other countries by reducing such impediments as discriminatory taxes, strangling regulations, or unfair government procurement practices.

Our regular trade promotion efforts also constitute a type of advocacy. Such activities as trade fairs that display U.S. products, trade missions that help U.S. firms to find business partners, and all manner of export counseling that the Department of Commerce and other government agencies provide all advance the foreign purchase of our goods and services.

Today, however, I want to discuss advocacy with special reference to those activities with the highest profile -- those instances when the Administration puts its full weight behind the efforts of U.S. firms to win significant contracts abroad. In a world where dozens of countries are opening their markets for the first time, and where competition to get in on the ground floor is fierce and often played without clear rules, this kind of advocacy is the most visible, and the most competitive, and it is the arena in which the Administration has broken the most new ground.

I will focus on several issues: why such advocacy is important; how it works; where it has worked; the results we have achieved; and some reflections on future policies.

¹ See Toward A National Export Strategy: U.S. Jobs: U.S. Exports, Report to the Congress, September 30, 1993.

WHY ADVOCACY IS IMPORTANT

For the Clinton Administration, advocacy is not just an activity; it is also an attitude. Advocacy is not just a strategy of the Department of Commerce, as might have been the case in the past Administrations; it is also a preoccupation throughout the Administration.²

Let me tell you why advocacy is important.

Reason #1: U.S. Jobs and Our Standard of Living

First, and foremost, advocacy on behalf of deals which produce U.S. exports is important to creating jobs and raising our standard of living.

The importance of exports to our economy can no longer be disputed. Over the last seven years, U.S. exports of goods and services accounted for over one-third of our economic growth. Export-related jobs grew eight times faster than total employment. Exports made an especially significant contribution to the manufacturing sector, accounting for almost all the net job growth.

All the data indicate that somewhere between 15,000 and 20,000 U.S. workers are supported by each billion dollars worth of manufactured goods we export. (That is, new jobs were either created or old ones saved.) The figure for services exports is somewhat lower than that for manufactured goods, but in the same range.

And these are higher paying jobs. The Department of Commerce estimates that the wages paid to U.S. workers in export-oriented manufacturing industries are at least 13 percent higher than the average wage paid in the U.S. manufacturing sector, and much higher if compared to average wages in the economy as a whole. Other respectable sources have put the figure at 17 percent.

Reason #2: Balance of Payments Pressures

The second point I want to make about the importance of advocacy is that we will need a sustained export drive to offset ever increasing imports. America has become much more competitive over these past several years.³ But so have many other countries, particularly the Big Emerging Markets. The Chinas, the Brazils, the Mexicos, the South Koreas will be enormous markets for us, to be sure, but they will also be supplying an increasing portion of the goods and services we use.

We are heartened by the prospects of these next few years. Economic recovery in Europe and Japan, strong growth in Asia, the continued openings of markets in Latin America -- they all bode well for U.S. exports, which could increase by 11 percent next year, compared to 8 percent in 1994. Some Administration forecasts show exports growing three times faster than any other component of U.S. national income over the next decade.

But the fact is -- growth abroad won't be enough. Our trade deficit for 1994, which will hit something like \$110 billion, is likely to be at least as high next year even if the economy slows slightly. As the world's most open economy, and as a nation which still consumes and spends much more than it saves and invests, the prospects ahead are for continued large trade deficits for years to come. The solutions, including continued budget deficit reduction, are critical, but we all know they will take time. There is, therefore, a high premium on aggressive export promotion, of which advocacy is a key element.

² See The National Export Strategy, Second Annual Report to the Congress, October 5, 1994.

³ See Competing to Win in a Global Economy, Report to the United States Congress, September 21, 1994.

Reason #3: Sky-High Commercial Stakes

Third, the stakes in the kind of advocacy efforts I'm talking about are high -- very high.

The world has changed dramatically over the past few years. Capitalism is the rage just about everywhere. But there is also an emerging recognition that infrastructure is a key bottleneck in growth and development, and there is a huge demand for infrastructure building in those non-traditional markets with enormous growth potential into the twenty-first century.

The Asian Development Bank, for example, has estimated that approximately \$1 trillion would be spent on infrastructure development in the Asian region by the year 2000. A recent Business Week article contained an estimate of \$1.9 trillion expenditure on infrastructure in Asia during the same period.

In the next seven years, the governments within the Chinese Economic Area (Hong Kong, Taiwan, and China) plan to spend approximately \$560 billion on infrastructure-related equipment, technologies, and expertise. These demands are particularly intense in areas in which U.S. firms are strong competitors -- power generation, oil and gas, air and surface transportation, telecommunications and environmental technologies.

In Indonesia, the government plans to spend over \$113 billion on infrastructure in the next decade.

In Latin America, the pent-up demand from the deep recession of the 1980's is enormous. Recent reports by the Economist Intelligence Unit and the World Bank indicate that the demand for investment in infrastructure in Latin America could approach \$500 billion over the next decade -- or \$50 billion a year in bidding for international contracts.

The possibilities in Central Europe, the former Soviet Union, and in the Middle East, are significant, too.

It is important that U.S. companies get the share of this enormous market to which the quality of their goods and services should entitle them. It is also vital that our firms get in early and first, so that they can gain the critical experience of being in on the ground floor, understanding the foreign market, and building the all-important relationships with customers and government officials that will allow them to win other projects. Nothing so drove home this lesson to many of us last year as the competition to build the first metro in China in which American firms lost to their German counterpart. It is possible that our rivals will now have the inside track in all the subway systems in China -- where there is likely to be more systems built in the next two decades than all of Europe and North America combined.

Reason #4: Governments Award Contracts

It would be a great advantage to U.S. firms if all the contracts abroad were awarded by merit alone. But we all know this is not the case. In the Big Emerging Markets, selection of the winning bid is made with heavy involvement by host governments -- overtly and behind the scenes. This is almost always the case in the big infrastructure projects, and in the big projects where governments are selling government-owned companies to the private sector. Together, these two kinds of transactions constitute the bulk of significant deals in the Big Emerging Markets.

It would be naive to think that competing foreign firms can win without support from their governments. In fact, the absence of demonstrated interest on the part of a home government in the project that its firms are bidding on is a disadvantage when every other government is in their fighting for its companies.

What choice, therefore, does our government have but to play the game, and play it hard?

Reason #5: Brutal Government-Supported International Competition

Let me say some more about the kind of competition we face.

We do not fear fair competition. In fact, we welcome it. But we should recognize the pressure that governments are under to support their exporters and capture market share, the cozy relationship in many foreign countries between public and private sectors, and the highly aggressive export promoting role that foreign governments have been playing for years.

Let's look at the way other governments are actively helping their firms to compete:

Presidential and ministerial trade missions and interventions have played a major role in international competition. Prior to President Clinton and Secretary Brown lending their support for American aircraft producers on a Saudi national airlines contract for \$6 billion worth of aircraft, the European partners involved in the Airbus consortium sent seven secretarial or ministerial level missions to Saudi Arabia to advocate on behalf of their company and made another half-dozen or so high-level contacts.

When Secretary Brown was in Brazil pressing on behalf of Americans for a \$1.4 billion Amazon basin surveillance system contract, a French minister was on the ground advocating just as hard for the French competitor.

When I was in India in November, preparing for Secretary Brown's upcoming trip, the United Kingdom trade minister arrived on the Concorde with some one hundred British business executives. In fact, a broad array of British officials, including parliamentarians, industrialists, heads of Chamber of Commerce, the Royal Family, and the Prime Minister, have been covering India for the past 12 months. Direct intervention by the Prime Minister on behalf of British companies involved in specific bids is not unusual.

By leading a trade mission to China, Chancellor Helmut Kohl helped German businesses secure contracts worth approximately \$2.6 billion. Of course, Germany is not the only nation which has sent prime ministerial trade missions to China; so has Canada, France, the U.K., and Singapore.

Brazil is another example. In 1994, Secretary Brown led a Presidential Business Development Mission to Brazil. Within a six-month period, however, London sent four ministerial delegations — led successively by the Treasury, the Ministry of Foreign Affairs, the Ministry of Trade, and by former Prime Minister Thatcher.

Foreign aid is being used in commercial competition. One of Japan's primary competitive tools is massive foreign aid. In the 1990's, Japan's aid level will be equal to the lending of the World Bank. Japan argues that for 90 percent of this there is no quid pro quo in the form of obligations on the part of the recipient to buy Japanese products. But frankly it is hard to tell, because the system of awarding such aid is not clear to most people outside the Japanese government. What we do know is that American firms, highly competitive though they are, receive less than five percent of this "untied" aid.

Japan's Official Development Assistance now has surpassed the World Bank and the Asian Development Bank to become the largest donor of aid to China. We, of course, provide no aid to China.

Japan spends about \$2 billion annually in Indonesia. Our aid is around \$100 million.

Most of Japan's aid is not directed at humanitarian projects, but goes to support Japanese trade and investment.

All this must be seen in the context of dwindling U.S. aid, aimed almost entirely at non-commercial objectives, half of which goes to Egypt and Israel.

Often U.S. companies are actually competing against foreign government-owned enterprises that are financially supported by their government "parents."

Foreign competitors for air and rail transportation projects include Aeroport de Paris, the French Government controlled airport authority; SOFRETU, the French Government's transit export agency; SOFRERAIL, the French Railroad engineering entity; Flughafen Frankfurt, the Frankfurt airport authority; and Transmark, the British National Railroads overseas consulting arm.

In telecommunications, we face many competitors that are fully- or majority-owned by foreign governments, including France Telecom, Deutsche Bundespost (Germany), and NTT (Japan).

A unique competitor in water, transportation, and infrastructure projects is NEDECO of the Netherlands, a consortium of ten of Holland's consulting organizations with special links to the Dutch ministries, including the ability to draw on government staff through government representatives on its board.

These and many other so called "parastatal" competitors receive financial support from their parents to spend lavishly on bid preparation cost and representative expenses.

Foreign governments are devoting more resources to international commercial competition on the ground than we are. In all of China, we have eleven foreign commercial service officers, hardly enough to cover Guangdong Province and the rest of southern China, the highest growth region in China. Germany, a country one-third our size, is able to harness its entire Chamber of Commerce in China as an organized Government-Industry partnership for coordinating export promotion. France and Canada each have more officers than we do. Japan and Germany carry out high-profile trade events and other means of support for their private sectors through well staffed and funded, quasi-private trade promotion organizations which far surpass our efforts. Each also provides considerable official development assistance to support exporters.

In Brazil, the biggest market in South America -- accounting for nearly half the continent's population, half its GDP, and half of its landmass -- eighty percent of the French mission is directly engaged in commercial activities, compared to roughly 10 percent for the United States. There, too, the German Chamber of Commerce is Bonn's agent employing German civil servants and receiving tax benefits to fund trade promotion activities.

Foreign governments are partnering with their firms in innovative ways that are hard for America to match, given its traditional "arm's length" relationship between business and government.

Some examples: the Singapore government is building industrial communities in China, where Singaporean firms will be located.

In India, a Japanese industrial town, incorporating all infrastructure basics (power, water, sewage treatment, and telecommunications) is being set up.

In Indonesia, the Japanese and Koreans are each organizing consortiums in which their big firms are bringing along their traditional smaller suppliers. The invisible hand of the two governments is part of their packages.

We are not even close to doing the same for U.S. firms.

One of the standard competitive tactics we see is foreign governments detailing personnel to an agency of a foreign government as "advisors." These advisers then act to influence procurements for their countries' businesses.

In Mexico alone, Germany has committed \$3.5 million in 1994 to promote the exports of its environmental technologies. In the past few years, the Germans have spent a total of \$8.8 million for technical assistance, including 24 technical experts assigned to the offices of the Mexico City Metropolitan Commission for Environmental Protection and other key government agencies. When the specifications for Mexico's environmental equipment are drawn up, who will be surprised if they match German suppliers?

A lot of competition is not above board. A discussion of foreign competitors practices would be divorced from reality if it did not include a recognition that tactics more "questionable" than those just mentioned are a part of everyday competition for major projects overseas. These practices include bribery. American firms are prohibited by stringent laws and criminal penalties from any form of illicit payments,

but some of our rivals give tax breaks for "fees" which are of dubious character.

Let me reiterate that where the market mechanism is working, where bidding is open and transparent, where host and home governments are not involved, there is no need for U.S. Government advocacy. We never intervene where there is no request from the U.S. company. If the company is satisfied that the playing field is level, so are we. Even in circumstances where we are asked to intervene, we have to satisfy ourselves that our companies are being truly disadvantaged by the intervention of other governments, including their failure to remove egregious trade barriers.

HOW ADVOCACY WORKS

Let me now turn to how the system actually operates.

Advocacy Network

As part of the National Export Strategy, we have created an Advocacy Network composed of representatives from each of the nineteen U.S. Government agencies that have a role in export trade promotion. The network meets at least every month and is chaired by an Assistant Secretary of Commerce in the International Trade Administration. Members of the Advocacy Network are able to reach the highest levels of their agencies for quick response to advocacy requests from American business. The mandate of the Advocacy Network includes the following:

Strategic Planning: This interagency group is a forum that keeps the docket for all the projects we are considering. It orders priorities in light of fast-changing events, but it is also a way for us to keep our eyes on the horizon. At these sessions we can discuss how to react to an emergency situation, but we can also ask one or two agencies to keep an idea on projects with a longer gestation period. At times, other agencies of the U.S. Government are brought into the network process -- for example, the Nuclear Regulatory Commission for nuclear power projects, or NASA for satellite projects.

Information Gathering: Gathering accurate and up-to-date information on projects is, of course, critical. We rely heavily on the U.S. & Foreign Commercial Service. But we are also helped by the ability to draw from the numerous other sources in all nineteen Advocacy Network agencies. For example, the Federal Aviation Administration at the Department of Transportation regularly interacts with aviation authorities around the globe. This provides a valuable source of information on aerospace infrastructure projects. Perhaps the principal supplements to Department of Commerce sources are those provided by the State Department, and the financing agencies -- Ex-Im, OPIC, and the TDA.

Project Vetting: One of the major functions of the Advocacy Network is to assist in the determination of whether it is appropriate to advocate on a particular project -- particularly those that may raise environmental or workers rights questions. Where Ex-Im or OPIC financing is involved we do not provide advocacy if the project is outside their guidelines on these specific issues. Even where a project is within the guidelines, the views of other Advocacy Network members, such as Environmental Protection Agency and the Department of Labor, are often invaluable in determining whether advocacy is appropriate for a particular project. As you can imagine, many other policy issues can arise when we consider whether to support a particular project. We may have a question about whether to back a nuclear power project, for example. There may be an issue relating to the appropriateness of any commercial activity in a country where we have serious foreign policy problems. Through the Network, we have an interagency sounding board. If a particular policy issue is highly sensitive or controversial, we will kick it up to the National

Economic Council or the National Security Council.

Financing: The ability to finance U.S. exports is an obvious key to U.S. success in gaining business abroad. I will discuss particular aspects of U.S. financing agencies in a moment, but let me point out the tremendous advantage we achieve by bringing together through the Advocacy Network representatives of Ex-Im, the OPIC, the TDA and the Department of the Treasury to work on particular financing issues. For the first time, we have created a forum where programs of these agencies can be used to supplement one another to the benefit of American business.

For example, Ex-Im financing of the export content of a project has on several occasions been supplementary to OPIC guarantees or insurance on the investment portion. One example is the Dabhol power project in India where Ex-Im is providing limited recourse financing and OPIC will provide a \$100 million in all-risk guarantees of debt financing and \$200 million of political risk insurance for equity and debt financing. In some of these cases the feasibility studies for the project were initially financed by TDA. Agencies of other governments have long worked together on financing packages. Now, through the Advocacy Network, for the first time we do, too.

Performance Measures: the Advocacy Network has also been active in formulating the performance measures necessary to gauge the scope and direction of our advocacy effort. Typical quantitative measures include the export content of contracts secured and the number of jobs supported by those exports. Data is gathered to help the Administration continually evaluate its efforts. A summary of this information is included in annual reports to Congress on the National Export Strategy.

Advocacy Center

The Clinton Administration isn't the first to help U.S. companies, of course. It is the first, however, to mount such an aggressive and systematic export promotion strategy and to infuse the entire cabinet with such consciousness for the need to do commercial battle in this fiercely competitive global marketplace.

When the Administration first started to look at an export strategy, one of the glaring deficiencies was the lack of a "nerve center" for this activity. Advocacy tended to be rather ad hoc. There were several different agencies involved, including the White House. But nowhere was the process institutionalized and conducted as an ongoing function. Disparate offices were unconnected both physically and in terms of communication. There was no repository of data, and no institutional memory so that the Government might learn from its experience or measure results.

There was no sense of the need to have the capacity to mobilize resources for the ongoing battle.

There was no dedicated cadre of people whose sole purpose was high-intensity advocacy.

To address these problems, last year we set up a permanent "war room" which we call the Advocacy Center.

The Center has undergone quite a transition in the last year. At first, it was just a few people crammed into a dim, government office. As the team became overwhelmed by requests to handle multiple projects, and to prepare Secretary Brown and others for high-level advocacy trips, it expanded to a few more people, still without adequate facilities, including computers and software. Then, after the resounding success of several advocacy efforts -- examples of which I will give in a minute -- we took the decision to make the "war room" what it should be, what it must be: a sizable operation, more akin to a Wall Street trading floor than the office you'd find in a typical government building.

And that's just about what we are now. The new facility, located in the International Trade Administration of the Commerce Department, it is in its final stage of construction. We are expanding

around 20 people. The Center is staffed partly by industry specialists, so that we can marshal the requisite expertise for specific deals. It is tied into all parts of the Commerce Department, including our industry and country desks, foreign and domestic commercial service, the Office of Business Liaison, the General Counsel, the Technology Administration, and the Bureau of Export Administration. It is linked to all the departments and agencies of the Advocacy Network, with the same Assistant Secretary of Commerce having immediate oversight of both the Advocacy Network and the Advocacy Center.

Here's how it works. A project comes in from one source or another. It could be through the Advocacy Network. It could be from a U.S. Ambassador abroad or a CEO who has called Secretary Brown or another cabinet officer. It could be an alert from Ken Brody at Ex-Im or Ruth Harkin at OPIC. It could be direct contact from a senior company official.

If we are going to move on the project -- to make representations abroad, to mobilize government finance -- we need two things. First, we need a staffing capability to analyze and vet the request. Next, we need a sense of deal making urgency proportional to the high stakes.

The Advocacy Center is designed to supply both.

U.S. Ambassadors And Their In-Country Teams

If the Advocacy Center may be called the Administration's advocacy command post, the ambassadors and their staffs -- including the Foreign Commercial Service -- are the front lines. I have had the privilege of serving in three Administrations before this one, and in each case I spent some time in the State Department. I can tell you one thing for sure: never before have our ambassadors played so skillful and so aggressive a role in commercial affairs. In one embassy after another, America's business interests have risen to the top of their priorities. Equally important, our diplomats are going head-to-head with their foreign counterparts with enthusiasm and great energy.

The Foreign Commercial Service, which reports both to the ambassadors in the field and to the Commerce Department, constitutes the ambassador's troops. They too, have been doing a superb job, even though they are badly understaffed in many of the critical posts where our commercial interests are mushrooming.

Our advocacy projects are often initiated by our embassies, which alert us to a looming problem or competition. They may be the first to know, because U.S. executives routinely drop by to explain what's going on with their projects. Alternatively, many times CEOs will contact us directly in Washington. It doesn't matter how the project initially comes to our attention, however, since we are all on the same team, and the most critical issues quickly find their way to the Advocacy Network and Center. And in every case, before approaching a foreign government we will work out a strategy with our ambassador on the spot, seeking advice about who to approach and how.

Financing Agencies

Over the past year, Ex-Im, OPIC, and TDA have spearheaded Administration efforts to develop a new, aggressive trade finance strategy to help American firms compete and win overseas. Together with the Department of Commerce these agencies now meet regularly on a senior level to discuss a more integrated approach to helping U.S. firms sell their goods and services abroad. We call this the National Export Strategy "Rump Group" and I have the pleasure of convening it on behalf of Secretary Brown in his capacity as chairman of the National Export Strategy.

Because our major competitors often provide concessionary financing for capital projects tied to the purchase of that country's goods and services, we have had to become increasingly aggressive in combating such tactics. Our goal is to see the total elimination of this kind of competition, and we have been active in trying to negotiate and monitor common rules through the Organization for Economic

Cooperation and Development (OECD).

But we have also decided two other things. One, until there is a real standstill on violations of the rules, we will not sit by and watch others win pivotal deals. And two, the best way to get others to abide by the rules is to demonstrate that even if they cheat, they won't win.

Ex-Im has now established a Tied-Aid Capital Projects Fund to counter and ultimately eliminate the use of trade-distorting foreign tied-aid credits. The Fund, operating with a budget of \$150 million, seeks to level the international field for U.S. exporters.

Ex-Im does not use the Capital Projects Fund to initiate credits, but is prepared to counter potential foreign tied-aid. Whenever possible, Ex-Im seeks agreement among governments of the Organization for Economic Cooperation and Development (OECD) against providing tied-aid financing for projects. If such agreements are not reached, Ex-Im provides exporters with an early indication of its willingness to counter foreign offers.

The strategy is already helping U.S. companies compete on a more even basis with our major competitors. Over the past year, Ex-Im announced its willingness to match, if necessary, foreign tied aid on major projects. Among the ongoing competitions are contracts for an airport, a hydropower project, and medical equipment in China; locomotives, airport equipment, and a telecommunications system in Indonesia; and power plant emissions scrubbers in Turkey.

OPIC has also become more aggressive. It has raised its project finance limits from \$50 million to \$200 million per project. Political risk insurance includes not only the traditional violence, war, and expropriation provisions but inconvertibility of currency as well. OPIC has made capital available for a variety of funds that take equity positions in projects. It has made up to \$100,000 per project in assistance for feasibility/pre-investment studies of environmental investment projects in Asia.

Both Ex-Im and OPIC are moving towards the forefront of new ways to finance large projects overseas, further enhancing the prospect for our firms to compete.

A third type of financing occurs through funding of feasibility studies. The main operation here is the TDA, into which we are consolidating all feasibility work. TDA enables American businesses to become involved in the early stage of planning infrastructure projects overseas. The studies include advice to a host country about the availability of appropriate U.S. equipment and services -- advice that often leads to follow-up contracts for the feasibility study contractor and to U.S. exports during the project's implementation. Like Ex-Im and OPIC, TDA has become more aggressive than ever.

All three agencies lead trade and investment missions of U.S. business leaders. And under the National Export Strategy all three agencies are working closely together to give U.S. firms a powerful, combined financing capability to compete abroad.

Presidential Business Development Missions

The Clinton Administration has given special priority to what we call Presidential Business Development Missions as a tool of advocacy. These are not the usual trade missions that have taken place in past Administrations. The preparation is much more extensive. The effort is much more intense. The focus is on real deals. The follow-up is comprehensive. And the results to date match the effort.

I could illustrate these deal-making missions with reference to any one of several that Secretary Brown has taken -- to the Middle East, to South Africa, to Russia, to Brazil and Argentina, to China. The next trip is India, coming up next week, so let me discuss that one.

The trip has been in preparation for several months. From the beginning, we have identified dozens of projects in which U.S. firms have an interest. Extensive information was gathered from the

Embassy, through the Advocacy Network, and from American companies which are involved in India.

In November, I took a small delegation from the U.S. Government to New Delhi, Bangalore and Bombay. We spent a week with U.S. Embassy officials, Indian government leaders, and a large number of people in both the U.S. and Indian private sectors. On this basis, we put together a more refined analysis of the possibilities -- not just for Secretary Brown's trip, but for projects the Administration could support over the next few years. Incidentally, we had a starting point from the projects that Secretary O'Leary had been pushing since her very successful trip to India last year. She, in turn, will have our list when she goes back to India later this year.

When I returned from India, the projects on which we wanted to focus underwent a thorough vetting for all policy considerations. That vetting included both the embassy and the interagency Advocacy Network in Washington.

Secretary Brown's advocacy efforts will now focus on two kinds of projects -- those where decisions could be accelerated because of his trip, possibly leading to the awarding of contracts, and those that we want to push along, but which have a longer-term horizon.

Following the trip, we will continue to track projects. Where there is a "Memorandum of Understanding" or a "Letter of Intent," we will push for the next stage. Where action has not taken place, we will keep the project high on the radar screen. Our Ambassador and his team will continue to push. So will all the cabinet and sub-cabinet people who will travel to India.

The follow up to a Presidential Business Development Mission often includes the establishment of an ongoing commercial forum where the two governments and their private sectors can continue discussions on trade and investment opportunities in critical sectors. In China, we established a Joint Commission on Commerce and Trade to look at everything from telecommunications to environmental projects. In India, we plan to launch the "U.S.-India Commercial Alliance," with particularly heavy focus on U.S.-India business ties in key industrial sectors.

The Advocacy Center will be the captain of the follow-up team. The full-court press won't let up.

Other Advocacy Tools

The advocacy team in Washington and the Ambassadors in our embassies abroad are one team. When it is determined that a project is worth fighting for, we have several alternatives in addition to those I have already discussed.

In virtually every case our ambassador will be asked to discuss the matter with senior officials of the host government.

In many cases cabinet officials like Secretary Brown will send a letter to the key foreign government officials expressing the Administration's strong views on the need for our open and transparent bidding process or, if the decisions are down to the wire, on the hope that U.S. firms are seriously considered. Many times, such letters are followed-up with direct phone calls from Washington, often with personal visits either at subcabinet or cabinet level, too. We also take every opportunity to push projects of U.S. firms in the course of doing other business with foreign governments. For example, not long ago Secretary Brown was at the headquarters of the European Union in Brussels on consultations about trade and telecommunications policy. While there he took the opportunity to meet with top officials in the Belgian government to support several American firms competing for a privatization project. The last time I went to Japan for trade negotiations under the "framework," I spent a good deal of time pressing on behalf of U.S. firms bidding on the Nagano Olympics.

Advocacy Focus

We, of course, seek opportunities to promote U.S. sales and support American jobs wherever we find them throughout the world -- without rigid, preconceived notions of geography and sector. The key issue is that a U.S. firm comes to us for help, the playing field is not level because of another government's involvement, and the project is important to the U.S. economy. Nevertheless, given scarce resources and the need to build expertise, we do need a combined geographical and industry focus.

Our primary country focus is the Big Emerging Markets - the BEMs.⁴

In Asia they are the Chinese Economic Area (which includes China, Hong Kong, and Taiwan), South Korea, Indonesia, and India; in Africa -- South Africa; in Central Europe -- Poland and Turkey; and in Latin America -- Mexico, Brazil, and Argentina.

Our calculations indicate that by the turn of this century -- less than five years away -- the ten BEMs as a group will be importing more from us than either Japan or the European Union. By the year 2010, their imports could well exceed those from both Japan and Europe combined. In fact, during the period 1990 - 2010, the BEMs could account for \$1 trillion in incremental U.S. exports.

Our exports to the BEMs totalled \$106 billion in 1992, approximately a quarter of our exports. But while the ratio of Big Emerging Market's GDP to the Industrialized World's GDP is 1 to 4 today, it will be 1 to 2 in less than 20 years. We expect that BEMs will more than double their share of world imports, as well, rising to nearly 27 percent by 2010. No other category of market shows such dramatic growth potential.

In our in-depth studies of such BEMs as Indonesia, China, Argentina, and Brazil, we have formulated a vision of the areas where their imports are likely to be greatest. This, in turns, leads to our sectoral focus.

Several clusters of industries are high on the list. They include:

- *Information technology*, including telecommunications, computers, and software;
- *Environmental technology*, including pollution control equipment and consulting services;
- *The transportation industry*, including aviation, automotive trade, and the services and equipment needed to build modern rail systems and airports;
- *Energy technology*, especially for the soaring demand for electric power;
- *Health care technology*, including advanced medical equipment, pharmaceutical, biotechnology, and hospital management services;
- *Financial services*, including banking, insurance, and the securities business.

As in the BEM category itself, these "Big Emerging Sectors" are illustrative; they are not our exclusive focus and priorities may change. We also have a great interest in advanced materials, in the chemical industry, and in industrial machinery, for example, all of which could be added to the initial list. But it is crucially important to have a starting point and a focus to our efforts.

⁴ For a more complete explanation of the Big Emerging Markets Strategy and how we are implementing it, see "Big Emerging Markets: International Commercial Policy for the Twenty-First Century," before the New York Chamber of Commerce and the New York City Partnership, N.Y., N.Y., December 2, 1994.

Assisting Small and Medium-Sized Businesses

Advocacy isn't just for the big guys. We are deeply committed to our efforts beyond the Fortune 500 companies.

In fact, the lion's share of our human and financial resources in trade promotion at Commerce are devoted to those who can benefit most from federal government assistance -- small and medium sized companies. Direct support for these firms may not always involve top cabinet officials, but senior commercial officers in our embassies around the world, strongly supported by their ambassadors, make representations on behalf of small and medium-sized U.S. firms everyday. Their efforts are multiplied by others in the Administration from State, Treasury, Energy, and Transportation -- because we are keeping similar lists now, coordinating approaches, following up on one another's efforts.

Moreover, every one of the Presidential Business Development Missions and, for that matter, virtually all the more routine trade missions, include executives from small and medium-sized firms. A few examples: The CEO of a company called Environmental Remediation Technology, based in Clinton, Mississippi and employing 5 people went to Russia with Secretary Brown. The CEO and owner of Systems Integrated, from Orange, California and employing 50 people, went to China. The CEO of Brooks Sausage Company, from Kenosha, Wisconsin (100-150 employees) went on the mission to South Africa.

We also have programs targeted on minority-owned businesses. On the eve of the NAFTA vote in December 1993, for example, Secretary Brown led such a mission to Mexico. Next month, one of our Assistant Secretaries will lead a similar trip to Brazil after having led successful missions to South Africa and Mexico again this year. Our new Export Assistance Centers around the United States are designed especially to service smaller firms wishing to have government help. They consolidate under one roof the full services of all our export promotion agencies, including financing, thereby creating a one-stop location. These centers are up and running in Baltimore, Chicago, Los Angeles and Miami. Eleven more are planned for 1995 in the following cities: Atlanta, Boston, Cleveland, Dallas, Denver, Detroit, New Orleans, New York, Philadelphia, Seattle, and St. Louis.

In addition, we are making a major effort to link our federal efforts to state and local export promotion services where small and medium-sized companies are more heavily involved. This is one of our big goals for 1995. Just this morning, I met with an organization called the New York City Partnership to discuss how we can work more closely with the city's export promotion agencies. Later this month, we will be deepening such linkages with organizations in California. We will mount many more efforts like this.

In several countries, we have now established special U.S. Commercial Centers outside of the embassies to provide a broader range of export enhancing activities for U.S. firms, particularly smaller ones that do not have foreign operations and support systems, and need information and marketing help. Last year, we opened U.S. Commercial Centers in Sao Paulo and in Jakarta. We plan to establish one in Shanghai this year, and eventually in India and in all the other Big Emerging Markets. We have recently set up several similar business centers throughout the former Soviet Union.

Occasionally it is said that the Administration is focusing on helping big companies to win deals abroad and neglecting the needs of small and medium-sized companies to export or otherwise penetrate world markets. This is a serious misreading of our efforts and our goals.

It is true that high-intensity advocacy makes the headlines, and it is also understandable, I believe. In addition, it is important to realize that there is little else that the government can do for the Fortune 500, for they are generally far ahead of us in how to deal in the global market, which should also not be a surprise. Moreover, don't forget that when a big firm wins a big deal overseas, the fortunes of many small and medium-sized suppliers -- and the thousands of communities in which they reside -- are boosted, too.

But this is just part of the story. Most small and medium-sized firms don't ask for or need high-intensity advocacy. They need trade financing and working capital. They need marketing advice. They need introductions to foreign decisionmakers.

Helping these small and medium-sized firms in this way constitutes most of what the International Trade Administration does.

In our data bases of thousands of "success stories," over 90 percent of the cases involve small and medium-sized firms.

About 80 percent of the budget of the U.S. & Foreign Commercial Service and nearly 60 percent of what we spend on export promotion in the International Trade Administration is aimed at helping small and medium-sized businesses. Virtually all the export promotion events sponsored by the US&FCS are aimed at small and medium sized firms -- trade shows, trade missions, etc.

To take another example, we have a Trade Information Center that anyone can call (1-800-USA-TRADE) for exporting help. In 1994, we received over 57,000 calls. Ninety-six percent were from small businesses; 55 percent of the calls were from representatives of companies who employed less than 10 people.

EXAMPLES OF ADVOCACY EFFORTS

I want to turn now to some specific examples of our advocacy efforts. In what I am about to describe, however, there should be no inference that somehow the U.S. Government itself wins deals or deserves credit for the contracts. In every case, it is the U.S. firm that has invested the time and resources. If a contract has been won, it is because the firm had the best product. But as I said before, when the playing field is artificially tilted because their governments are weighing in, it helps to have Uncle Sam on your side.

Brazil: The SIVAM Case

The Brazilians decided some time ago that they needed a way to monitor what was happening in the vast Amazon basin. "SIVAM" is a Brazilian acronym for the surveillance project, which consists of mixed satellite/aircraft/radar system that would allow Brazilians to spot environmental degradation (such as destruction of rain forest), to be more effective in drug interdiction, and to serve other land use planning purposes.

Last spring, the project was offered for international bids and in the final round the bidders boiled down to a U.S. consortium lead by Raytheon and a French group lead by Thompson CSF. The French were extremely aggressive both through their embassy and their offering of financing. They were close - very close - to winning the deal.

In late March of 1993, I was down in Brazil to look for opportunities to promote the U.S. commercial interests and to lay the groundwork for a Presidential Business Development Mission which Secretary Brown would lead a few months later. As a result of work pulled together by the Advocacy Network and the Advocacy Center, I was armed with detailed information on the SIVAM Project. Working with the Embassy, I met with senior Brazilian officials to tell them how important the deal was to the United States, and I met with representatives of the U.S. firms involved. From Brazil, I called Ken Brody, chairman of Ex-Im, and to Secretary Brown to alert them to the competition our companies were facing and the very real prospect we would lose the deal because of French aggressiveness.

When I returned to Washington, we continued to monitor the project until Raytheon came in to see several agencies, saying they had all but lost the deal to the French, alleging massive French government support, pointing to the fact that the French companies involved were state-owned companies, and asking

all stops to be pulled out. At that eleventh hour, the Advocacy Network was called into action and we met every day, at 8:00 a.m., for about two weeks to plan and implement a strategy. I chaired the group, and I reported to Secretary Brown every afternoon to receive guidance.

In rapid order we were able to make several things happen. First, the head of our National Oceanic and Atmospheric Administration contacted his counterpart in Brazil to say how important the project was to the Administration. His letter was followed by one from the Director of the Environmental Protection Agency and by the head of NASA to their counterparts in Brazil. Meanwhile, both Ex-Im and OPIC were examining financing alternatives with the U.S. consortium, and reporting back to our group. TDA was preparing a proposal, too. Then Treasury contacted the French government and asked for information regarding their financing offer, information which was never received in a form that was clear enough for us to be sure exactly what they were offering. So, in the heat of the competition, Ex-Im had no choice but to tell the Brazilians that it would match the French government's offer. On top of that, President Clinton then sent a letter to the President of Brazil, expressing support for the U.S. team.

Secretary Brown then went to Brazil with a group of U.S. chief executive officers, including the chairman of Raytheon. Just as the French had been doing for many months, the Secretary and his delegation pressed hard for U.S. interests. Nothing was decided while they were there.

But when he returned, Brown was on the phone virtually everyday with Raytheon, Brazilian officials, and Ken Brody of Ex-Im. Our embassy in Brasilia was working around the clock on the project. A few weeks later, Secretary Brown and Raytheon were notified that the Brazilians decided in favor of the U.S. group. The result was that the Brazilians saw that based on price and technical quality, the Raytheon offering was superior and awarded the contract on that basis. The amount of that contract alone was \$1.4 billion with a U.S. export content of approximately \$700 million. The export content alone should support some 12,000 to 15,000 higher-paying jobs in the United States.

China: Multiple Projects and McDonnell Douglas

China is an important case study, because it illustrates how our advocacy system works when it comes to a market with many megaprojects, but one where the foreign competition is exceptionally fierce,

00. On September 2 of this year, Secretary Brown concluded a Presidential Business Development Mission to Beijing, Shanghai, Guangzhou, and Hong Kong. A variety of deals were concluded, aggregating to approximately \$6 billion dollars. Equally important, Brown was pushing for over \$25 billion in projects that could be awarded months, even years, after the trip was over. Among the firms involved were Pitney Bowes, TRW, Sprint, IBM, Westinghouse, AES Corporation, Entergy, General Electric, and AT&T. It was, without doubt, a highly successful mission, but the results were not achieved overnight.

In fact, there were two preparatory trips to China to identify projects and try to push them along. In addition, in the spring of last year, the Chinese Minister for Trade, one of the key Vice Premiers, and one of the most important Chinese officials dealing with science and technology, all visited the United States, where several senior officials in the Administration pressed hard on behalf of specific deals pending for U.S. firms. For several months, our ambassador in Beijing was pushing Chinese officials on these same projects.

In Washington, there was heavy vetting of the projects by the Advocacy Network. The Advocacy Center was in full gear. Secretary Brown and his staff were in constant communication with key American firms doing business in China.

When Brown arrived in China with 25 CEOs representing small, medium and large companies and a high-powered interagency delegation, there was no doubt in our minds, or in the minds of top Chinese officials, what we were after. We had done our homework, and we had worked closely with our Chinese

counterparts so that they had focused on the same priorities we had.

Secretary Brown had a clear mission. A centerpiece of every discussion he had was the deals sought by U.S. firms. He brought these up in big meetings and small. He talked details. These discussions took place with the President of China, the Prime Minister, two Vice Premiers and several Ministers. Our ambassador was following up on the heels of every discussion.

As in the case of SIVAM, not everything happened on the trip itself. In fact, from the minute his plane returned to Washington, Secretary Brown led an intensive push to close some of the deals that were still open.

One of these was a major aircraft sale to China by McDonnell Douglas. The firm had an existing agreement with China to deliver 40 aircraft to the Chinese beginning in 1997 with options that would allow for an additional 130 planes by the end of the decade. The total value of the 40 aircraft program exceeded \$1.2 billion. The contract could be worth as much as \$7 billion if all 170 planes are delivered. However, Beijing wanted the planes built in China.

In November, months after the mission, Chinese Vice Premiere Li Lanqing, with whom Secretary Brown had had long discussions on the project in Beijing, came to Washington. While he was there, McDonnell Douglas signed a Trunk Aircraft Program Contract Amendment, which modified the pre-existing agreement by specifying that the first 20 aircraft would be produced in Long Beach, California instead of China. The benefits to the economy of California should not be overlooked.

Indonesia: Paiton Power Project

In late 1991, Indonesia announced plans to do what others in Asia had failed to do -- initiate an extensive private power program. To achieve this goal, the government decided to invite foreign companies to bid on the first privately-financed build-own-transfer power plant in Paiton, East Java. The project, valued at over \$2.6 billion, involved setting up a turnkey operation equal in generating capacity to over 37 percent of Java's current electrical supply.

Dozens of companies expressed interest, but in the end only two proposals were submitted. The first was from a U.S. company, International Electric Incorporated (IEI). The second was from an Indonesian consortium, Bimantara, who had partnered with Hopewell Group of Hong Kong. Hopewell, owned by the billionaire industrialist Gordon Wu, was a hands-down favorite given the depth of its experience building large power plants in Asia. However, within five weeks after submitting their joint proposal with Bimantara, Hopewell dropped out. Bimantara then approached IEI about partnering on the bid.

The Indonesian government, citing a need for more competition, called for a second round of proposals. A U.S. lead consortium of Mission Energy, General Electric, and Mitsui responded. With two bids in hand, the Indonesian government opened negotiations with IEI. The negotiations, after six months of false starts, collapsed completely, paving the way for Mission Energy to negotiate in earnest for the Paiton Project.

Over the next twelve months, the U.S. Government moved into action to support Mission Energy. The U.S. Ambassador to Indonesia wrote letters of support on behalf of Mission Energy, and sent Washington monthly updates on how the Paiton Power Project talks were progressing. When it looked like the negotiations might stall, our Ambassador arranged for the Indonesian Paiton Power Purchasing Negotiating Team to visit Washington in April, 1993 to meet with select U.S. Government officials at the Departments of Commerce, Energy, State, and Ex-Im Bank. Secretary Brown, in bilateral meetings with key Indonesian government officials, also raised U.S. support for Mission Energy, and sent advocacy letters of support to key Indonesian Ministers involved in the project on Mission's behalf. In early 1994, I went to Indonesia with a small group from Commerce and pushed the project with senior government officials in Jakarta. All of these efforts were undertaken to ensure that Mission had the support it needed.

In fact, Mission needed to fight hard to keep its competitors at bay, for companies like Hopewell of Hong Kong and others were still hoping they would find a way to get back in.

In the end, the two-year long effort to support Mission Energy's bid paid off. Secretary Brown, during his November 1994 visit to Jakarta, witnessed the signing of the Paiton Power Purchase agreement between the Indonesian government and Mission Energy. According to Mission Energy's press release, the total value of U.S. goods and services is expected to exceed \$500 million and the project is estimated to support 5,000 U.S. jobs.

Mexico: Environmental Projects

Not all the advocacy we do is so high profile. And, as I said before, most of it relates to *non-Fortune 500* firms. The case of environmental projects in Mexico is illustrative.

Following from the NAFTA agreement and the Administration's strong commitment to protecting the environment, a key component of our National Export Strategy became helping U.S. firms to penetrate the market for environmental technology and services south of the border. We established a special deputy assistant secretary for environmental exports in the Department of Commerce. We did extensive market studies. We sent senior officials to Mexico to explore possibilities for U.S. firms.

The market for environmental products in Mexico is highly competitive with the Germans and Japanese focusing intensely on gaining market share, with considerable support from both Bonn and Tokyo.

For the most part, the Administration's advocacy tools in the environmental sector of Mexico have consisted of working closely with U.S. companies to provide marketing advice and financing. The Advocacy Center is providing backup as necessary, but our embassies and government financing agencies in Washington are bearing most of the load.

And there have been some real successes.

In June 1994, United States Filter Corporation won a bid to invest \$20 million Cuernavaca, Mexico to build the country's first privately-funded wastewater treatment plant. U.S. Filter will operate the plant for 13 years, and then turn over responsibility for the plant to Cuernavaca. This project was important for two reasons: first, it represented the first major U.S. environmental investment in Mexico since the passage of NAFTA; and second, it was the first U.S. presence in a market that will eventually build or upgrade more than 100 municipal wastewater treatment plants over the next five years. These projects represent approximately \$770 million in potential business for U.S. companies.

In early summer 1994, Metaclad Corporation won a permit to build and operate Mexico's first integrated hazardous waste treatment plant. The projected long-term value of this investment is \$100 million. This project represents the first U.S. presence in a market that will implement approximately \$1.4 billion in hazardous waste management and treatment projects in the next few years.

Thailand: Strategically Supporting Contracts Which Can Lead to Substantial U.S. Exports

Sometimes we push hard for engineering and design contracts which will lead to substantial U.S. sales in the future.

After months of review, the field of bidders for the engineering design contract for Bangkok's second international airport, requiring over \$1 billion in construction, was reduced to two contestants -- the U.S. consortium of Murphy Jahn-Tams and the French Government Agency, Aeroport de Paris. Both bids were close in terms of technical merits and price. However, the French government was enhancing Aeroport de Paris's bid with advocacy efforts such as offering soft loans for project components and sponsoring a trip to airport facilities in France for the decision makers. The French were expected to win the deal. Therefore, U.S. Government advocacy assistance became the ammunition needed to counteract

the French efforts and level the playing field.

Officials at the U.S. Embassy recognized the need for advocacy at the early stages of the bidding process and provided continuous support through the ambassador and commercial officers who met with and sent letters to the Thai Prime Minister and other decision makers. When advocacy became the needed weapon for a U.S. win, the interagency advocacy network kicked into high gear and implemented strategic actions. An advocacy team was established including Ambassador Lamberston and his commercial officers along with the Departments of Commerce, State, and Ex-Im, and TDA. State Department Under Secretary Spero advocated on behalf of the U.S. firms during her visit to Bangkok in early 1994 and her October meeting with Deputy Prime Minister Supachai. Secretary Brown advocated for the U.S. bid during his bilateral-meeting at APEC last November. Ex-Im offered competitive financing to match the French soft loans and Chairman Brody provided a strong advocacy letter to the Thai government. TDA offered a \$500,000 training grant and a letter of support.

The U.S. team was selected to conduct the design work. The company is currently negotiating the price to do the work. Once the contract is signed, it is expected that a significant portion of the \$1 billion airport construction projects will go to U.S. firms for contracts such as avionics/navaids, communications systems, baggage handling systems, passenger loading bridges, people movers, etc. In addition, the facility will be an international showcase for aviation and airport technology.

OVERALL RESULTS

In these days of severe pressure on budgets and intense attention to government efficiency, it is more important than ever to try to measure the cost effectiveness of any government activity. Advocacy is no exception. We need to be effective, and we need to be satisfied with the results.

In 1994, the Clinton Administration was involved in providing advocacy on transactions -- where U.S. companies got the business -- with a U.S. export content of some \$20 billion. That is export content. The value of the transactions themselves is estimated at somewhere around \$46 billion. Twenty billion dollars of exports is estimated to support some 300,000 U.S. jobs which, on average, pay more than other jobs, as I mentioned at the outset.

When it comes to small and medium-sized businesses, while our records are not complete, they do show that the Advocacy Center itself has assisted in securing \$1 billion in contracts, with approximately \$500,000,000 in U.S. export content, supporting about 8,000 jobs.

This is not a bad record for one year. My guess is, moreover, that it substantially underestimates the value of advocacy since we still do not include the numerous interventions that our Ambassadors are increasingly making, nor the many seemingly routine activities that seem to pay off. Not long ago, just to take one example, a company in Maryland asked us to intervene in a heated competition taking place in Vietnam. It first made contact with our new Export Assistance Center in Baltimore, which then contacted the Advocacy Center. After vetting the project, we determined there was a solid case. But we have no official relations with Vietnam, so all we could do was to send some strong, detailed advocacy letters. We did. The company won the deal. The number of such letters that we in the Administration send like this are too many to count.

REFLECTIONS ON THE FUTURE

We have had to make up for many years when other governments recognized the nature of international competition -- and took operational steps to deal with it -- while we were preoccupied with other things. But in 1993 and 1994, we have made great strides in catching up.

Now that we have a system up and running, we have to turn up the heat. There are several imperatives now, including the following:

— First, it is vital that budgetary pressures not undercut the resources of our government financing agencies at precisely the time when they have become more important than ever in helping U.S. companies win deals abroad and create good jobs at home. It's a simple proposition: without highly competitive financing from Ex-Im, OPIC, and TDA, American firms will loose out in every one of the Big Emerging Markets.

Second, I hope I have made it clear how important the U.S. & Foreign Commercial Service is to both high-intensity advocacy and to helping small and medium sized firms. We will need to strengthen the U.S. & Foreign Commercial Service, particularly in the high growth Big Emerging Markets where we are often woefully understaffed. We also need to sharpen our industry and country expertise, from a commercial perspective, in the U.S. government.

Third, we need to continue our expansion of export promotion efforts focussed on small and medium-sized businesses, and to do an even better job. I discussed a lot of the things we are already doing. However, we need a better way to communicate our range of services to the very large universe of smaller firms in the U.S. We need to be ahead, or at least stay even with, the latest information technology now available to U.S. firms. We are not where we want to be when it comes to financing alternatives for smaller exporters. Our links to state and local organizations could be deeper and broader. While we are moving in every one of these directions.

Fourth, as in virtually every other area of policy, we need to communicate our advocacy goals and strategy better than we have, and to a much wider audience in the United States. The purpose is not just to let people know what we are doing but to make sure they have access to our work if they want it. With a new Congress in place, we need especially to gain legislative support and understanding for the substantial efforts we are making, the results we are achieving, and the need to turn up the heat even further for the future.

Finally, it is important to underline the Administration's desire to remove itself and other governments from intervention in the global marketplace. Our goal is simple: a global marketplace that has free and fair competition among private companies. To this end, it is important to keep up pressure in international organizations and on individual countries to have workable constraints on export subsidies, mixed credits, illicit payments, etc. But until the playing field is level and clean, until our trading partners come to the table with the serious intent to jointly police an open market, surely we would be crazy to ignore our vital interests.

CONCLUSION

Let me end with a simple point that Secretary Brown has made on several occasions.

We have a strategy, and it is working. It is producing real results for the United States -- real deals, real jobs, real community development.

I believe that advocacy is an excellent example of government effectiveness in these changing times. What we are doing is a break from the past -- not just different for the sake of being different, but different because we are making a difference.

Yes, we can do even better. And yes, we must.

But in the post Cold War World, where economic competition is the great challenge of our times, if we do not compete to win, then we will lose. There is no middle ground.

Thank you very much.

Industrial Espionage Act of 1996

S 1556 IS

104th CONGRESS

2d Session

To prohibit economic espionage, to provide for the protection of United States proprietary economic information in interstate and foreign commerce, and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 1, 1996

Mr. KOHL (for himself and Mr. SPECTER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit economic espionage, to provide for the protection of United States proprietary economic information in interstate and foreign commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Industrial Espionage Act of 1996'.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS- Congress finds that--

- (1) sustaining a healthy and competitive national economy is imperative;
- (2) the development and production of proprietary economic information involves every aspect of interstate commerce and business;
- (3) the development, production, protection, and lawful exchange, sale, and transfer of proprietary economic information is essential to maintaining the health and competitiveness of interstate commerce and the national economy;
- (4) much proprietary economic information moves in interstate and foreign commerce and proprietary economic information that does not move in interstate or foreign commerce directly and substantially affects proprietary economic information that does;
- (5) the theft, wrongful destruction or alteration, misappropriation, and wrongful conversion of proprietary economic information substantially affects and harms interstate commerce, costing United States firms, businesses, industries, and consumers millions of dollars each year; and
- (6) enforcement of existing State laws protecting proprietary economic information is frustrated by the ease with which stolen or wrongfully appropriated proprietary economic information is transferred across State and national boundaries.

(b) PURPOSE- The purpose of this Act is to promote the development and lawful utilization of United States proprietary economic information produced for, or placed in, interstate and foreign commerce by protecting it from theft, wrongful destruction or alteration, misappropriation, and conversion.

SEC. 3. PREVENTION OF ECONOMIC ESPIONAGE AND PROTECTION OF PROPRIETARY ECONOMIC INFORMATION IN INTERSTATE AND FOREIGN COMMERCE.

(a) IN GENERAL- Title 18, United States Code, is amended by inserting after chapter 89 the following new chapter:

CHAPTER 90--PROTECTION OF PROPRIETARY ECONOMIC INFORMATION

Sec.

1831. Definitions.

1832. Criminal activities affecting proprietary economic information.

1833. Criminal forfeiture.

1834. Import and export sanctions.

1835. Extra territoriality.

1836. Construction with other laws.

1837. Preservation of confidentiality.

1838. Law enforcement and intelligence activities.

Sec. 1831. Definitions

As used in this chapter:

(1) The term 'person' means a natural person, corporation, agency, association, institution, or any other legal, commercial, or business entity.

(2) The term 'proprietary economic information' means all forms and types of financial, business, scientific, technical, economic, or engineering information, including, but not limited to, data, plans, tools, mechanisms, compounds, formulas, designs, prototypes, processes, procedures, programs, codes, or commercial strategies, whether tangible or intangible, and however stored, compiled, or memorialized, if--

(A) the owner has taken reasonable measures to keep such information confidential; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable, acquired, or developed by legal means by the public.

(3) The term 'owner' means the United States person or persons in whom, or United States Government component, department, or agency in which, rightful legal, beneficial, or equitable title to, or license in, proprietary economic information is reposed.

(4) The term 'United States person' means--

(A) in the case of a natural person, a United States citizen or permanent resident alien; and

(B) in the case of a non natural person, an entity substantially owned or controlled by the United

States Government or by United States citizens or permanent resident aliens, or incorporated in the United States.

Sec. 1832. Criminal activities affecting proprietary economic information

(a) Any person, with intent to, or reason to believe that it will, injure any owner of proprietary economic information having a value of not less than \$100,000 that is produced for, or placed in, interstate commerce, and with intent to convert it to his or her own direct use or benefit or the direct use or benefit of another, knowingly--

(1) steals, wrongfully appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains such information;

(2) wrongfully copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, or replicates such information;

(3) receives, buys, or possesses such information, knowing the same to have been stolen or wrongfully appropriated, obtained, or converted;

(4) attempts to commit any offense described in paragraphs (1) through (3);

(5) wrongfully solicits another to commit any offense described in paragraphs (1) through (3); or

(6) conspires with one or more other persons to commit any offense described in paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy, shall, except as provided in subsection (b), be fined not more than \$250,000 or imprisoned not more than 15 years, or both.

(b) Any corporation that commits any offense described in paragraphs (1) through (6) of subsection (a) shall be fined not more than \$10,000,000.

Sec. 1833. Criminal forfeiture

(a) Notwithstanding any provision of State law, any person convicted of a violation under this chapter shall forfeit to the United States--

(1) any property constituting or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and

(2) any of the person's property used, or intended to be used, in any manner or part to commit or facilitate the commission of such violation.

(b) The court, in imposing a sentence on such person, shall order, in addition to any other sentence imposed described in this section.

(c) Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed by section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except for subsection 413(d) which shall not apply to forfeitures under this section.

(d) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund established under section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) all amounts from the forfeiture of property under this section remaining after the payment of expenses and sale authorized by law.

Sec. 1834. Import and export sanctions

(a) The President may prohibit for a period of up to 3 years, the importation into, or exportation from, the United States of any product produced, made, assembled, or manufactured by a person convicted of any offense described in section 1832₉₅

(b) The Attorney General may impose a civil penalty not to exceed 5 times the value of the exports or imports involved or \$100,000, whichever is greater, against any person who knowingly violates any order of the President issued under the authority of this section. Such penalty may be imposed only after notice and opportunity for a hearing on the record in accordance with sections 554 through 557 of title 5.

Sec. 1835. Extra territoriality

(a) This chapter applies to conduct occurring within the United States.

(b) This chapter applies to conduct occurring outside the territorial and special maritime jurisdiction of the United States, its territories, and possessions if--

(1) the offender is a United States person; or

(2) the victim of the offense is an owner (as defined in section 1831), and the offense was intended to have, or had, an effect in the United States.

Sec. 1836. Construction with other laws

This chapter shall not be construed to preempt or displace any other Federal or State remedies, whether civil or criminal, for the misappropriation of proprietary economic information, or to affect the otherwise lawful disclosure of information by any government employee under section 552 of title 5 (commonly known as the Freedom of Information Act).

Sec. 1837. Preservation of confidentiality

In any prosecution under this chapter, the court may enter such orders and take such other action as may be necessary and appropriate to preserve the confidentiality of proprietary economic information, consistent with rule 16 of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and other applicable laws. An interlocutory appeal by the United States shall lie from a decision or order of a district court authorizing the disclosure of proprietary economic information.

Sec. 1838. Law enforcement and intelligence activities

This chapter does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States.'

(b) TECHNICAL AMENDMENT- The table of chapters for title 18, United States Code, is amended by inserting after the item relating to chapter 89 the following new item: 1831'.

SEC. 4. WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS.

Section 2516(1)(a) of title 18, United States Code, is amended by inserting 'chapter 90 (relating to economic espionage and protection of proprietary economic information in interstate and foreign commerce),' after 'title:'.

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Economic Security Act of 1996

S 1557 IS

104th CONGRESS

2d Session

To prohibit economic espionage, to provide for the protection of United States vital proprietary economic information, and for other purposes. IN THE SENATE OF THE UNITED STATES

February 1, 1996

Mr. SPECTER (for himself and Mr. KOHL) introduced the following bill; which was read twice and referred to the Select Committee on Intelligence A BILL

To prohibit economic espionage, to provide for the protection of United States vital proprietary economic information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Economic Security Act of 1996'.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS- Congress finds that--

- (1) economic security is an integral part of national security;
- (2) the development of new ideas and technical innovation is critical to sustaining a healthy and competitive national economy;
- (3) encouraging innovation and creativity requires adequate protection of vital economic proprietary information, both tangible and intangible;
- (4) over 50 countries have covertly tried to obtain advanced technologies from United States industries;
- (5) the theft, wrongful destruction or alteration, misappropriation, or wrongful conversion by foreign governments or their agents of vital economic proprietary information belonging to United States owners directly and substantially threatens the health and competitiveness of critical segments of the United States economy and, consequently, the Nation's security; and
- (6) current laws are inadequate to protect against economic espionage by foreign governments or those acting on their behalf.

(b) PURPOSE- The purpose of this Act is to protect the national security by preventing economic espionage and furthering the development and lawful utilization of United States vital proprietary economic information by protecting it from theft, wrongful destruction or alteration, misappropriation, and conversion by foreign governments and their agents or instrumentalities. This Act is intended to protect the vital proprietary economic information of the United States Government and United States firms, businesses, industries, and individuals both domestically and abroad by punishing individuals, corporations, and institutions that engage in economic espionage with the intent or purpose of aiding foreign nations or governments and their

instrumentalities and agents.

SEC. 3. PREVENTION OF ECONOMIC ESPIONAGE AND PROTECTION OF VITAL PROPRIETARY ECONOMIC INFORMATION.

(a) IN GENERAL- The National Security Act of 1947 (50 U.S.C. 421 et seq.) is amended by adding at the end the following new title:

'TITLE IX--ECONOMIC ESPIONAGE AND PROTECTION OF VITAL PROPRIETARY ECONOMIC INFORMATION

'SEC. 901. DEFINITIONS.

As used in this title:

'(1) The term 'foreign corporation, institution, or instrumentality' means any corporation, agency, component, institution, association, instrumentality, or legal, commercial, or business entity that is substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign government or subdivision of a foreign government.

'(2) The term 'foreign agent' means any officer, employee, proxy, servant, delegate, or representative of a foreign nation or government.

'(3) The term 'person' means a natural person, corporation, agency, association, institution, or any other legal, commercial, or business entity.

'(4) The term 'vital proprietary economic information' means all forms and types of financial, business, scientific, technical, economic, or engineering information, including data, plans, tools, mechanisms, compounds, formulas, designs, prototypes, processes, procedures, programs, codes, or commercial strategies, whether tangible or intangible, and however stored, compiled, or memorialized, if--

'(A) the owner has taken reasonable measures to keep such information confidential; and

'(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable, acquired, or developed by legal means by the public.

'(5) The term 'owner' means the United States person or persons in whom, or United States Government component, department, or agency in which, rightful legal, beneficial, or equitable title to, or license in, vital proprietary economic information is reposed.

'(6) The term 'United States person' means--

'(A) in the case of a natural person, a United States citizen or permanent resident alien; and

'(B) in the case of a non natural person, an entity substantially owned or controlled by the United States Government or by United States citizens or permanent resident aliens, or incorporated in the United States.

'SEC. 902. ENGAGING IN ECONOMIC ESPIONAGE TO AID FOREIGN NATIONS, GOVERNMENTS, CORPORATIONS, INSTITUTIONS, INSTRUMENTALITIES, OR AGENTS.

'(a) IN GENERAL- Any person who, with intent to, or reason to believe that it will, injure any owner and benefit any foreign nation, government, corporation, institution, instrumentality, or agent--

'(1) steals, wrongfully appropriates, takes, carries³⁹⁸ away, or conceals, or by fraud, artifice, or

deception obtains vital proprietary economic information;

(2) wrongfully copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys vital proprietary economic information;

(3) receives, buys, or possesses vital proprietary economic information, knowing the vital proprietary economic information to have been obtained by any of the means described in paragraph (1) or (2);

(4) attempts to commit any offense described in paragraphs (1) through (3);

(5) wrongfully solicits another to commit any offense described in paragraphs (1) through (3); or

(6) conspires with one or more other persons to commit any offense described in paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy, shall, except as provided in subsection (b), be fined not more than \$500,000 or imprisoned not more than 25 years, or both.

(b) CORPORATIONS- Any corporation that commits any offense described in subsection (a) shall be fined not more than \$10,000,000.

SEC. 903. CRIMINAL FORFEITURE.

(a) IN GENERAL- Notwithstanding any provision of State law, any person convicted of a violation under this title shall forfeit to the United States--

(1) any property constituting or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and

(2) any of the person's property used, or intended to be used, in any manner or part to commit or facilitate the commission of such violation.

(b) COURT ORDER- The court, in imposing a sentence on such person, shall order, in addition to any other sentence imposed pursuant to this title, that the person forfeit to the United States all property described in this section.

(c) APPLICABLE LAW- Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed by section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except for subsection 413(d) which shall not apply to forfeitures under this section.

(d) CRIME VICTIMS FUND- Notwithstanding section 524(c) of title 28, United States Code, there shall be deposited in the Crime Victims Fund established under section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) all amounts from the forfeiture of property under this section remaining after the payment of the expenses for forfeiture and sale authorized by law.

SEC. 904. IMPORT AND EXPORT SANCTIONS. (a) IN GENERAL- The President may prohibit, for a period of up to 5 years, the importation into, or exportation from, the United States of any product produced, made, assembled, or manufactured by a person convicted of any offense described in section 902.

(b) CIVIL PENALTIES- The Attorney General may impose a civil penalty not to exceed 5 times the value of the exports or imports involved or \$100,000, whichever is greater, against any person who knowingly violates any order of the President issued under the authority of this title. Such penalty may be imposed only after notice and opportunity for a hearing on the record in accordance with sections 554 through 557 of title 5.

SEC. 905. EXTRA TERRITORIALITY.

(a) CONDUCT OCCURRING IN THE UNITED STATES- This title applies to conduct occurring within the territorial and special maritime jurisdiction of the United States.

(b) CONDUCT OCCURRING OUTSIDE THE UNITED STATES- This title applies to conduct occurring outside the United States if--

(1) the offender is a United States person; or

(2) the victim of the offense is an owner, as defined in section 901, and the offense was intended to have or had a substantial or direct effect on the United States.

SEC. 906. CONSTRUCTION WITH OTHER LAWS.

This title shall not be construed to preempt or displace any other Federal or State remedies, whether civil or criminal, for the misappropriation of vital proprietary economic information, or to affect the otherwise lawful disclosure of information by any government employee under section 552 of title 5 (commonly known as the Freedom of Information Act).

SEC. 907. PRESERVATION OF CONFIDENTIALITY.

In any prosecution under this title, the court may enter such orders and take such other action as may be necessary and appropriate to preserve the confidentiality of vital proprietary economic information, consistent with rule 16 of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and other applicable laws. An interlocutory appeal by the United States shall lie from a decision or order of a district court authorizing the disclosure of vital proprietary economic information.

SEC. 908. LAW ENFORCEMENT AND INTELLIGENCE ACTIVITIES.

This title does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States.'

(b) TECHNICAL AMENDMENT- The table of contents of the National Security Act of 1947 is amended by adding at the end the following:

TITLE IX--ECONOMIC ESPIONAGE AND PROTECTION OF VITAL PROPRIETARY ECONOMIC INFORMATION

Sec. 901. Definitions.

Sec. 902. Engaging in economic espionage to aid foreign nations, governments, corporations, institutions, instrumentalities, or agents.

Sec. 903. Criminal forfeiture.

Sec. 904. Import and export sanctions.

Sec. 905. Extra territoriality.

Sec. 906. Construction with other laws.

Sec. 907. Preservation of confidentiality.

Sec. 908. Law enforcement and intelligence activities.'

SEC. 4. WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS.

Section 2516(1)(a) of title 18, United States Code⁴⁰⁹ is amended by inserting 'title IX of the National Security Act of 1947 (relating to economic espionage and protection of vital proprietary

Traduction de l'*Economic Espionage Act of 1996*

(par J. Dupré, doctorant à l'Université de Nice et M. Pasquier, conseil en propriété industrielle)

Section 1. Introduction

Il sera fait référence à cette loi sous le nom "Economic Espionage Act of 1996"

Titre 1. Protection des secrets d'affaires

Section 101. Protection des secrets du commerce

(a) Généralités - Titre 18, le "United States Code" est modifié par l'insertion après le chapitre 89 des éléments suivants :

Sec.

1831. Espionnage économique

1832. Vol de secrets d'affaires

1833. Dérogations

1834. Déchéance

1835. Dispositions destinées à préserver la confidentialité

1836. Procédure d'injonction

1837. Comportements hors des États-Unis

1838. Articulation avec les autres textes légaux

1839. Définitions

Chapitre 90 - Protection des secrets d'affaires

§ 1831. Espionnage économique

(a) Généralités - Quiconque, sachant que l'infraction profite à un gouvernement, une organisation ou un agent étranger, sciemment,

(1) vole, ou sans autorisation s'approprie, soustrait, emporte ou dissimule, ou par fraude, ruse ou tromperie obtient un secret d'affaires,

(2) sans autorisation copie, reproduit, établit des croquis ou dessins, photographie, transfère ou charge par voie informatique, modifie, détruit, photocopie, transmet, livre, envoie, expédie, communique ou transfère un secret d'affaires,

(3) reçoit, achète, détient, un secret d'affaires sachant qu'il a été volé, obtenu, approprié ou détourné sans autorisation,

(4) tente de commettre l'une des infractions prévues aux paragraphes (1) à (3), ou

(5) projette de commettre, avec une ou plusieurs autres personnes agissant à cette fin, l'une des infractions décrites aux paragraphes (1) à (3) encourra, sauf dans le cas de la sous-section b/, une amende d'un montant maximal de 500 000 dollars et, au plus, 15 ans d'emprisonnement, ou l'une de ces deux peines seulement.

(b) Organisations - Toute organisation commettant l'une des infractions décrites à la sous-section (a) encourra une amende d'un montant maximal de 10 millions de dollars.

§ 1832. Vol de secrets d'affaires

(a) Quiconque, avec l'intention de détourner un secret d'affaires en relation avec ou inclus dans un produit fabriqué pour ou mis sur le marché intérieur ou extérieur, dans l'intérêt économique de quelqu'un d'autre que son propriétaire, sachant que l'infraction nuira à tout propriétaire de ce secret, sciemment,

(1) vole, ou sans autorisation s'approprie, soustrait, emporte ou dissimule, ou par fraude, ruse ou tromperie, obtient de telles informations,

(2) sans autorisation copie, reproduit, établit des croquis ou dessins, photographie, transfère ou charge par voie informatique, modifie, détruit, photocopie, transmet, livre, envoie, expédie, communique ou transfère de telles informations,

(3) reçoit, achète, ou détient de telles informations sachant qu'elles ont été volées, obtenues ou détournées sans autorisation,

(4) tente de commettre l'une des infractions prévues aux paragraphes (1) à (3), ou

(5) projette de commettre, avec une ou plusieurs autres personnes, agissant à cette fin, l'une des infractions décrites aux paragraphes (1) à (3), encourra, sauf dans le cas de la sous-section b/, l'amende d'un montant maximal prévue sous ce titre et au plus, 10 ans d'emprisonnement ou l'une de ces deux peines seulement.

b/ Toute organisation commettant l'une des infractions décrites à la sous-section a/ encourra une amende d'un montant maximal de 5 millions de dollars.

§ 1833. Dérogations

Ce chapitre n'interdit pas -

(1) toute autre activité légale conduite par une entité gouvernementale des États-Unis, un État fédéré ou une subdivision politique d'un État fédéré, ou

(2) de signaler une violation suspecte de la loi, à une entité gouvernementale des États-Unis, un État fédéré ou une subdivision politique d'un État fédéré si une telle entité en a légalement l'autorité.

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(1) vole, ou sans autorisation s'approprie, soustrait, emporte ou dissimule, ou par fraude, ruse ou tromperie, obtient de telles informations,

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(3) reçoit, achète, ou détient de telles informations sachant qu'elles ont été volées, obtenues ou détournées sans autorisation,

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Ce chapitre n'interdit pas -

(1) toute autre activité légale conduite par une entité gouvernementale des États-Unis, un État fédéré ou une subdivision politique d'un État fédéré, ou

(2) de signaler une violation suspecte de la loi, à une entité gouvernementale des États-Unis, un État fédéré ou une subdivision politique d'un État fédéré si une telle entité en a légalement l'autorité.

§ 1834. Déchéances

(a) le tribunal, en condamnant une personne pour violation de ce chapitre, ordonnera de surcroît la confiscation au profit de l'État fédéral de

(1) toute propriété constituée ou dérivée de cette personne, toute somme recueillie par cette personne directement ou indirectement, comme résultat d'une telle violation, et

(2) toute propriété de cette personne ou d'une organisation utilisée ou destinée à être utilisée, d'une manière ou d'une autre, pour commettre ou faciliter la réalisation d'une telle infraction, si le tribunal, dans son pouvoir discrétionnaire, en décide ainsi compte tenu de la nature, de la portée et de la gravité de l'utilisation, dans le cadre de l'infraction, de la propriété considérée.

(b) les "propriétés" soumises à confiscation en application de cette section, ainsi que toute saisie et dispositions "connexes", toutes poursuites judiciaires ou administratives y afférentes, seront régies par la section 413 du "Comprehensive Drug Abuse prevention and control Act of 1970" (21 U.S.C. 853) excepté pour les sous-sections (d) et (j) de cette même section, qui ne s'appliquent pas aux confiscations prévues par cette section.

§ 1835. Dispositions destinées à préserver la confidentialité

Pour toutes les poursuites judiciaires ou autres procédures prévues à ce chapitre, le tribunal prendra les mesures nécessaires et appropriées - afin de préserver la confidentialité des secrets d'affaires - compatibles avec les exigences des "règles" fédérales de procédure criminelle et civile, les "règles" fédérales de preuve et toute autre loi applicable. Un "appel interlocutoire" fédéral sera subordonné à une décision ou un ordre d'un tribunal de district autorisant ou dirigeant la divulgation de tout secret d'affaires.

§ 1836. Procédures civiles d'injonction

(a) l'Attorney Général peut, dans une action civile, obtenir une injonction de réparation appropriée, contre toute violation des dispositions de cette section.

(b) les tribunaux de districts américains auront une compétence exclusive pour les actions civiles de cette sous-section.

§ 1837. Comportements hors des États-Unis

Ce chapitre s'applique aussi aux comportements se produisant hors des États-Unis si :

(1) le contrevenant est une personne physique de citoyenneté américaine ou un résidant permanent étranger américain, ou une

organisation régie par les lois des États-Unis ou un État fédéré ou l'une de ses subdivisions politiques, ou

(2) un acte contribuant à l'infraction, a eu lieu sur le territoire des États-Unis.

§ 1838. Articulation avec les autres textes légaux

Ce chapitre ne doit pas être interprété comme empiétant ou remplaçant tout autre recours civil ou pénal, prévu par les lois fédérales des États-Unis, celles des États, des "possessions" ou territoires en cas de détournement d'un secret d'affaires, ou affectant les conditions légales de divulgation d'information par tout employé gouvernemental, telles qu'elles sont fixées par la section 552 du titre 5 (généralement connu sous le nom de "Freedom of Information Act").

§ 1839. Définitions

Sont utilisés dans ce chapitre

(1) le terme "organisation étrangère" signifie toute agence, administration, ministère, composantes, institutions, associations ou toute organisation juridique, professionnelle ou commerciale, société, entreprise, qui est substantiellement détenue, contrôlée, parrainée, dirigée ou dominée par un gouvernement étranger.

(2) le terme "agent étranger" signifie tout officier, employé, mandataire, fonctionnaire, délégué, ou représentant d'un gouvernement étranger.

(3) le terme "secret d'affaires" signifie toute forme et tout type d'information financière, commerciale, scientifique, technique, économique, industrielle, incluant modèles, plans, compilations, mécanismes, formules, dessins, prototypes, méthodes, techniques, procédés, procédures, programmes ou codes, qu'elle se présente sous forme matérielle ou immatérielle, qu'elle soit ou non stockée, compilée, ou mémorisée physiquement électroniquement, graphiquement, ou par écrit, si

(A) le propriétaire de ces informations a pris des mesures raisonnables pour les garder secrètes, et

(B) l'information a une valeur économique propre, actuelle ou potentielle, qui ne consiste pas en des connaissances générales, pouvant être facilement et directement constatées par le public.

(4) le terme de "propriétaire", d'un secret d'affaires signifie la personne ou l'entité qui dispose de manière légitime d'un titre, ou d'une licence, sur lequel repose ledit secret.

**THE ECONOMIC ESPIONAGE ACT OF 1996:
ISSUES OF IMPORTANCE
FOR SECURITY DIRECTORS**
by Richard Horowitz, Attorney at Law

On October 11, 1996, President Clinton signed into law the Economic Espionage Act, creating the new federal crime of theft of a trade secret. The EEA was enacted to thwart attempts by foreign entities to steal American trade secrets, and to allow the federal government to investigate and prosecute those engaged in industrial espionage - even for an American competitor. By making theft of a trade secret a federal crime, the EEA underscores the significance of information legally obtained through open sources.

Trade secret law is not new. While federal law dealing with intellectual property until now covered patents, trademarks, and copyrights, laws protecting trade secrets had been matters of state law. A US Attorney's Office wanting to prosecute a trade secret case had to rely on federal statutes which were interpreted by the courts to not include intangibles or copied information where the owner retained the original. Trade secrets receive federal protection with the passage of the EEA.

Congress's concern for the need for federal trade secret protection was well founded. In his February 1996 testimony to the Senate Intelligence and Judiciary Committees, FBI Director Louis Freeh stated the Bureau is currently investigating about 800 cases of economic espionage conducted by 23 countries. He cited US International Trade Commission statistics that in 1986, US companies lost between \$43 and \$61 billion from foreign intellectual property right infringement, and the 1992 ASIS report "Trends in Intellectual Property Loss," co-authored by Richard J. Heffernan and Dan Swartwood. Of the 325 US corporations which responded to this double-blind survey, 700 incidents of propriety loss were reported at a claimed loss of \$5.1 billion.

Select cases demonstrate the severity of the problem. The FBI in 1995 arrested Bill Gaed, a former employee of two US computer companies, who for almost a decade copied manufacturing specifications and sold them to China, Cuba, and Iran. Before GM's former head of worldwide marketing and seven other employees moved to Volkswagen in 1993, they downloaded 90,000 pages of GM's construction plans, cost and price data, and purchasing lists to bring along with them. The two

companies reportedly settled for \$100 million and Volkswagen's agreement to buy \$1 billion worth of GM parts. The first conviction under the EEA is the case of Patrick Worthing, former employee of PPG Industries. Worthing stole blueprints and other company secrets and offered to sell them to a domestic competitor. PPG alerted the FBI after being informed by the competitor.

A trade secret under the EEA is (1) any information, tangible or intangible, however stored or compiled, (2) from which the owner derives actual or potential value, (3) that is not generally known to or ascertainable through proper means by the public, (4) provided the owner has taken reasonable measures to protect.

In short, activity prohibited under the EEA include obtaining another's trade secret either through outright theft or deception and apply even when the secret is copied or duplicated. Downloading and uploading are explicitly listed among the prohibited activity, as is obtaining the trade secret from another knowing it was stolen. In addition, the EEA always applies to US citizens and corporations, even while abroad, and to foreign entities "if an act in furtherance of the offense was committed in the United States."

An example of a flawed reading of the EEA can be seen in an *Asia Times* article of March 3, 1997, entitled "Washington Draws Line Between Corporate Research and Spying." The newspaper sorely misunderstood that under American trade secret law an employee continues to be under a duty of confidentiality to his former employer when in reviewing the EEA it wrote: "Data about a competitor's product that is obtained through careful analysis of open source material will not be deemed criminal, *nor will information obtained from new employees hired away from competitors*" (*italics mine*).

Maximum penalties for conducting economic espionage under the EEA are, for an individual a \$500,000 fine and 10 years imprisonment, and for a corporation, a \$5,000,000 fine. If conducted on behalf of a foreign entity - for an individual a \$500,000 and 15 years imprisonment and for a corporation, a \$10,000,000 fine.

While the essence the EEA is to provide US companies more protection against economic espionage by making theft of a trade secret a federal crime, it is nevertheless imperative that companies communicate to their employees the implications of this new law. As with all federal law, a judge, in sentencing a defendant corporation, will take into account the extent to which the corporation took necessary measures to detect and

prevent criminal conduct by its employees. Companies therefore should take steps to insure that (1) a potential employee is not induced to reveal a trade secret during a job interview, (2) the company does not benefit from trade secrets of a prior company that an employee may remember, (3) employees seeking information on a competitor are familiar with trade secret law, and (4) company subcontractors abide by appropriate legal standards. Of similar concern is to insure that employees understand the importance of their duty of confidentiality to the company even after they have changed employment.

While the EEA creates a new federal crime, the activities it prohibits were illegal under many state laws and inconsistent with generally accepted professional ethical conduct. Implementing these recommendations therefore is an issue of human relations as much as it is of security or law.

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