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## Case 2-5: Coping with Corruption in Trading with China

- 1) List all the different types of bribes, payments, or favors represented in this case under (a) FCPA, (b) Criminal Law of PRC, and (c) Law Against Unfair Competition of the PRC. Why is each either legal or illegal?**

Under the FCPA there is a distinction between bribery and extortion depending on the activity resulted from voluntary or demanded payment. Bribery can be classified as one company offering money to a high ranking officer in a country to get the company's goods for import classified under a different code in his bill of lading to avoid higher taxes and duty fees on the items being imported. In fact, all countries consider this type of payment illegal. Extortion by a high ranking individual in a country in some countries is not considered illegal, although it is in the U.S. If an official requests that a company makes a payment, or else a contract that the company has with the country will and can be avoided, is an example of extortion. A lot of times this type of demand is overlooked, because the payment can be justified by stating, the payment is needed in order to keep the contract or work started.

The CPC (The Communist Party of China) address two laws in the fight against corruption in their country. One of the laws implemented is The Criminal Law of the PRC (People's Republic of China), which classifies its type of bribery as common bribery. This type of bribery includes payments or gifts to state employees and officials of state owned enterprises in return for benefits. The second law implemented by the CPC is the Law Against Unfair Competition for the PRC which is known as commercial bribery under the CPC law. This type of law prohibits

any business within the country to give money or property to customers to sell or purchase products. Anyone who is found guilty under these two laws is illegally committing bribery. But the second law under the Law Against Competition of the PRC is somewhat confusing, because the law states that it prohibits members of taking gift exceeding \$500, at the same time it does not mean that any gift under \$500 will not be a violation of the law. The trouble with these laws is, they vary by what a gift can mean and there are many holes in this law which unfortunately does not make it a 100% violation if convicted.

**2) For those practices that you listed as illegal, classify each as lubrication, extortion, or subornation, and explain your reasoning.**

The illegal practice of bribery can be easily classified under subornation. Subornation involves a large payment, service, or gift given to an official in order to get a process moving faster or basically have an official look the other way if a law is being broken. An example that I can think of that involved bribery under the classification of subornation could be the issue of my wife trying to get a visa from the PRC of China. Getting a visa to come to America from China is extremely hard. You need to have years of documentation and proof that you the sponsor will be able to support the individual requesting a visa. After three years of the application process, my wife was finally sent a letter for an interview at the U.S Embassy in Guangzhou to see if she would be approved or disapproved for a visa to enter into the United States.

Hoping to bring my wife home with me, I went to Guangzhou China to support my wife in her attempt to obtain her visa based solely on her application without any form of payment to any official. Unfortunately my wife was denied and we had to come up with a way to expedite her paperwork for a second interview for an approval. My wife's parents paid an undisclosed large sum of money to law officials which guaranteed them that she would be approved the second interview. I stayed in China for a month during the first disapproval until she got a second chance at her interview. When the second interview came around she passed easily with flying colors and had her visa within 3 days. This type of action may be illegal, but sometimes it has to be done, and without it I am sure she never would have gotten the opportunity to come to this country. Although a large sum of money was given in exchange for a service, this still is illegal and falls under bribery classification of subornation. This same type of illegal example

can also be applied to The Criminal Law of the PRC under common bribery classified under subornation. When that payment by my wife's parents in return for a benefit both my wife's parents and the Chinese Embassy officials broke this law, but again I felt that it had to be done in order to guarantee my wife's approval for her visa into the United States.

In the U.S extortion is illegal and it can be classified under both lubrication and subornation. Whether the payment being made is small or large to an individual or government the fact is the U.S still classifies these actions as illegal. If 2 parties have a contract to get to work on a new construction site and one of those parties does not start working until some type of payment is received, large or small, this is an example of extortion. The contract should outline when and how payment arrangements are made to the other party, but when the working party starts to ask for more than what the contract states this could cause problems. Sometimes a small or large payment outside of the contract is needed in order to get things going and to make sure that things are going according to the time schedule. I honestly do not see a problem with these types of payments that are "outside" of the contract, but unfortunately in the U.S. these types of actions are not considered legal.

**3) Which of the payments, favors, or bribes are illegal under the Foreign Corrupt Practices Act (FCPA)?**

Phillip Cateora explains in our International Marketing Textbook what illegal acts fall under the Foreign Corrupt Practices Act:

The Foreign Corrupt Practices Act makes it illegal for companies to pay bribes to foreign officials, candidates, or political parties. Stiff penalties can be assessed against company officials, directors, employees, or agents found guilty of paying a bribe or of knowingly participating in or authorizing the payment of a bribe (Cateora 206).

**4) Assuming that the FCPA did not exist, what is the ethical response to each of the payments, favors, or bribes you have identified?**

I think the common sense response to anyone in power and control of a country would be what is the right and wrong decision to make. By that I mean, the government or person in power must make a choice of knowing what the common good is for the people of that country as well as the benefits that go along with it. Are the decisions being made respect the rights of the people within that particular country? I believe that most people who the difference between right and wrong, unfortunately they are just not followed a lot of times. Sometimes people in power will do acts that are considered wrong and unjust in order to benefit themselves. If not for some of these laws on corruption, the world might be a totally different place when it comes to work ethics. Investing outside of your country might be a lot harder then what it is now if some of these acts were not followed.

In some countries where corruption runs a country like Haiti, Nigeria, China, or Jamaica it is extremely hard for the society in that country to help make that country change because they are so use to the work ethics that are implemented already. It is up to the people in power and the society together to want to make a change so everyone and every business can have a fair share of the market. The reality is that does not happen often for some of these under developed nations. The U.S has led the way in International Bribery and Corruption, and other countries should follow the United States examples of our framework to make ethical business decisions principals a way of society. Without a foundation of basic principals it will be very hard for a country that is corrupt to ever get out of their unethical ways.

**5) In your view, which of the expenses detailed in the lawsuit could be in violation of the FCPA, and which could be legitimate business expenses as the American Company contends? Discuss.**

I think the most significant aspect of the lawsuit is the evidence against the American company paying Chinese Government Officials over a million dollars in fees for services and also extending gifts to a consultant that included hotels, shopping sprees, and entertainment luxuries. Another negative aspect the American company has against them in the lawsuit is the fact that the American company arranged for two Chinese banking officials and their family members vacations around the world to countries like Hong Kong, France, the U.S., and Italy. It

even goes on to talk about how the U.S Company paid for Chairman's wife and son of the Chinese company to take tennis lessons as well as golf fees. The Americans responded that all of the payments made were legitimate payments that were needed in order to keep the contract with the software company. To me unless it states in the contract that the U.S. company needed to pay for the Chairman's son tennis and golf lessons, then I believe that these are not legitimate reasons for the U.S. company to make extravagant purchases in order to keep the contract with the Chinese software company.

Although this is an illustration of a civil lawsuit and the FCPA and U.S. Government was not involved, it would be pretty hard to convince these two entities that the payment made by the U.S. Company to the Chinese company was solely based on the principals of their contracts. It seems like the U.S. Company went overboard with the gifts and payments for making sure that their contract with the Chinese software company was locked in completely. This type of corruption should not be tolerated in any country and both companies should be exposed. If it were not for companies like these, we would not need all of these foreign corruption laws. This is a perfect example of why we do need these laws implemented and precisely followed.

**6) Discuss the legal/ethical issues raised by the comments by the retired Foreign Service agent and the consultant.**

I think what the Foreign Service Agent is trying to do as he says is, "level the playing field" (Cateora 629). From his perspective I can understand that he is trying to help U.S. Company's compete in a foreign market that is corrupt, but on the other hand he is just as bad as the people of that country that are corrupt. He is corrupt himself and not standing behind the law for which he works for and stands for. If someone is acknowledged to be a Foreign Service Agent and is supposed to enforce and abide by the laws of which he enforces, then why is this officer in this position if he or she cannot do the job? In all fairness, the law shouldn't even exist if those that are supposed to enforce it do not abide by it.

Unfortunately the story does not get into the host country the Foreign Service Agent is working in, I am sure that will have a greater weigh on my opinion on this subject, but honestly if he is working in the most corrupt country rated by the CPI in 2007 which was Haiti, then as far

as I am concerned most companies will not even want to do business in a country that is so corrupted as Haiti is. I think that the Service Agent should either be fired for not doing his or her job correctly or relocated somewhere else where he or she is not put in that position of power to make up the rules and be part of the problem in that particular host country.

**7) List alternatives to paying bribes in international markets and discuss the plusses and minuses of each.**

In my opinion there are not too many alternatives to paying bribes. Corruption and bribery among a lot of countries have become the way to do business now a day's which is pretty sad. If I had to choose another method rather than paying a bribe, then I would have to choose compromising on an agreement that is beneficial to both parties. Depending on what type of perks and stipulations are sketched into the contract, both parties have to agree (the host country government and the MNC) and lock into the binding contract that will be beneficial and fair to both sides.

An advantage to have both parties locked in on a binding contract without the possibility of bribery of payments, gifts, or services is having a transaction that is running a way it is supposed to. By that, I mean, if countries want to do business in a productive and ethical way, then both parties need to leave out the offering or demand of briberies. If all businesses and host countries abide by a universal law that is understood in all cultures then we would not need to have all of these Foreign Practice Laws that seem to make things worse.

On the other hand a disadvantage to this scenario would be a business or host country not complying with the universal law implemented. Almost 100% positively there will always be a stray in the pack that will cause disruption and deceit to make things more beneficial to them. If this problem were to occur, then in fact it is best to have these other Foreign Corruption Laws intact. In some ways it is good to have these laws, but in other ways it doesn't matter if they even exist. Countries and cultures need to come up with a way that will put everyone on the same side of the fence. Unfortunately with greedy politicians and corrupt societies I am afraid we will never see that day come.

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