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KEY REGULATIONS FOR A FAIR ECONOMY

Dear Sir:

I have enclosed an overview of some key American laws that regulate business activities in the United States. The laws are grouped in five categories: Environmental Protection, Trade Regulation, Securities Regulation, Consumer Protection and Employment. In each category, I have summarized the laws, the present deficiencies or loopholes in each law and why they were enacted.

The reason for loopholes in American business regulation is to secure the wealth and power of a relatively small number of families by permitting profits to be maximized as much as is socially acceptable. Since all business regulations in America have been enacted in an environment in which a small number of families control vast amounts of wealth, these families have been able to dilute the effectiveness of all regulations, even in the face of public outrage over some abhorrent event caused by industry's pursuit of the maximization of profits.

The vast concentration of wealth achieved in America's previous free market of the nineteenth century and its subsequent ineffectively regulated market of the twentieth century has resulted in 1% of American households owning approximately 34% of all the wealth in the United States while at the same time owning approximately 45% of all the financial wealth (securities, bonds, etc.). In comparison, the middle class, which comprises about 40% of America's families, owns a little over 10% of the wealth, and the poorest 40% owns virtually nothing.

The flaw in America over the years and today differs only in degree with the flaw in your country before the August coup and the potential danger for your counry since the coup -- so many have too little because so few have too much. America has its group of families, who through their wealth, exercise a disproportionate influence over the political, economic and social life of the public; the Soviet Union had the Communist Party which did the same in your country. Now, however, for your country there is a transition: the former rulers and managers are trying to regain their position of influence and privilege by becoming wealthy. In other words, it appears that some persons in your country seek to create through a free market a small group of wealthy families that will rule Russia as a shadow government, just as a relatively small number of wealthy families run America.

The vast concentration of wealth, and therefore power, in relativiely few hands can be mitigated with certain laws which at the same time do not destroy incentive, innovation or the ambition to achieve material well being. For example, an upper limit on the net worth for all households would avoid high concentrations of wealth and distribute your nation's wealth more equitably; however, it would not destroy incentive as does an economic system which guarantees certain minimum payments regardless of productivity. A net worth limit of one million or two million U.S. dollars per household should provide more than enough incentive for persons (now owning virtually nothing) to take risks, use their ingenuity and work long hours for the material rewards of success. Once a successful businessman, professional or any other worker reaches the net worth limit, he may retire with his wealth or continue working without material rewards but still earning all the psychological benefits that come from exercising his talents and knowledge. The limit on net worth would make it possible for many more persons to participate in and contribute to the creation of wealth in your country, avoid the growth of a monied ruling class and still offer material incentives to inventors, innovators and hard workers.

Other regulations, besides a net worth limit, can also contribute to an equitable distribution of wealth, material well-being and a safe environment for your people providing the loopholes are avoided. The following are some of the key laws enacted in America with the publicized purpose of ensuring an equitable economy that creates material well-being for most its citizens within a safe environment. The reality of course is much different -- the laws provide effective propaganda but ineffective regulation because of loopholes and lax enforcement. America's market, while no longer free, is still unfair.

1. ENVIRONMENTAL PROTECTION

Before 1970 Federal environmental protection efforts were scattered among numerous agencies. The two key programs were air and water pollution control, both of which were dismal failures. The air pollution program, for example, had failed to divide the country into air quality regions, had dealt with only two pollutants and failed to approve any state air quality plan -- regardless of effectiveness.

In 1970 all pollution control efforts were consolidated under a new agency, titled the Environmental Protection Agency (the "E.P.A."). Also in 1970, amendments to the Clean Air Act required a 90 percent reduction in automobile emissions by 1975 (in subsequent legislation the automobile industry was able to weaken and delay these emission standards), ordered the E.P.A. to establish national ambient air quality standards, required states to produce air pollution control plans by 1975 that met Federal air pollution standards and allowed citizens to sue the E.P.A. for failure to enforce the law.

Amendments to the Federal Water Pollution Control Act in 1972 required industry to use the best practical technology for water pollution control by 1977 and the best available technology by 1983 and established as goals of the E.P.A. for the 1980's: fishable and swimable waters and zero discharges of insufficiently treated wastes into America's waterways.

The major deficiency with these and other environmental regulations is lenient enforcement. Violations of pollution standards are rarely detected. An American firm might be visited once a year by a pollution inspector. Furthermore, pollution standards are often violated, and the violators are not adequately punished. In 1983, 82 percent of discharges violated the regulations. Since the E.P.A. maintains a low level of enforcement and rarely takes polluters to court, polluters find it more profitable to pollute than to adhere to environmental standards.

The reasons the clean air and clean water amendments were enacted were a series of events that outraged the American public. In the late 1960's an oil well off the coast of Santa Barbara, California, burst, and 20,000 gallons of crude oil washed up on the beach. Also the Cuyahoga River in Ohio was so polluted that it caught fire.

2. TRADE REGULATION

The law of trade regulation attempts to assure fair competition among businesses because it is in the public interest that quality, price and service in an open and competitive market for goods and services be the determining factors in the business rivalry for the customer's dollar. There are two main areas of trade regulation laws: antitrust and unfair competition.

The purpose of antitrust laws are to preserve or establish a competitive market, so no single buyer or seller, or groups of buyers or sellers, can control the price of goods or services solely by their actions. In a market where companys are allowed to collude, prices can be fixed, markets divided and boycotts executed in order to exploit more money from consumers. In a monopoly market, where there is only one seller of an item, that seller can limit production and, thus, raise the price a consumer pays. On the other hand, in a competitive market, price is set by supply and demand.

Section I of the Sherman Antitrust Act prohibits agreements between companies that restrain trade. There are three key restraints on trade that are prohibited under Section 1.

The first is price fixing, which is an agreement to affect or inhibit price competition. The prohibition covers agreements between sellers to establish maximum or minimum prices at which certain commodities or services are offered for sale, agreements between sellers to change prices of goods or services simultaneously or to fix the price at which its purchasers must resell its product.

The second prohibition is market allocation or division whereby competitors agree not to complete with each other in specific markets, which may be defined by geographic area, type of customer or class of product.

The third prohibition is a boycott, which is an agreement among competitors not to deal with a supplier or customer. An example would be where General Electric, Whirlpool and Fridgidaire (competing manufacturers) agree not to deal with any wholesaler of their products who does not follow their pricing policy.

The problems or loopholes in Section I of Sherman Act include inadequate penalties for violating the law. The fines for engaging in any of the prescribed acts are trivial compared with the profits made from the violations. For example, the avarage price fixing fine in the 1960's was 0.21 percent of the sales involved. In addition, prison sentences average only a few months. A businessman would logically conclude that the gains from violating the law far exceed the penalties, even if, he was unlucky enough to be caught.

Another loophole in Section I is that intent to fix prices, divide markets or boycott has to be proven in court along with the fact that two or more businesses agreed to engage in such activities. Intent and agreements entered into in secret are very difficult to prove. This problem could be corrected by only requiring the result of business actions to be proved. If prices appeared fixed, markets appeared divided or boycotts to exist, then that would be sufficient for a conviction.

Another deficiency in Section I is that consumers are not allowed to sue companies violating the law. This is ironic since the purpose of the law is to protect consumers.

Section 2 of the Sherman Act prohibits the unfair attainment of monopoly power or the abusive use of that power once attained. It does not prohibit all monopolies, even though, the economic reason for the law was to prevent a monopolist from using its power to produce fewer goods at a higher price. Two loopholes are that violation of Section 2 requires proving in court a company intended to monopolize, which is very difficult, and the penalties for firms convicted under Section 2 have been inadequate. The appropriate remedy for monopolization is divestiture; however, from 1890 to 1974 the U.S. goverment has obtained substanial divestiture in only 23% of all the cases it won. One possible solution to the law's inadequacy is to make all monopolies illegal and require divestiture when the goverment wins a case.

The Sherman Antitrust Act, enacted in 1890, grew out of an era of free markets in the late 1800's that made possible the growth of large corporations (trusts) which exercised unprecedented power over many markets. The American Sugar Refining Company controlled 98% of its market, Standart Oil controlled 80% of its market, American Tobacco - 93%, U.S. Steel - 66%, Aluminum Company of America - 90%, and there were other large corporations controlling their respective markets, such as International Harvester and Nabisco. There were also trusts in the markets of leather, rope, buttons, glue, wallpaper, starch and salt. Consumers, small businessmen and farmers were forced to pay exorbitant prices for necessery goods because of the lack of competition in these markets. Initially, the states passed laws against trusts, and then the federal goverment passed the Sherman Act. Senator John Sherman said, "If we will not endure a King as a political power, we should not endure a King over production and transportation and the sale of the necessaries of life."

UNFAIR COMPETITION

The purpose of the law of unfair competition is to prevent businesses from taking unfair advantage of their competitors. The law prohibits the unauthorized use of trade secrets, trade symbols, copyrights and patents. A business would be unlikely to invest resources in research and development unless its inventions, discoveries and proceses were protected by patents and trade secrets. Additionally, a business would not devote time and money to marketing its goods or services if its trade symbols were not protected. Furthermore, without copyright protection, the publishing, entertainment and computer software industries would be vulnerable to having their efforts pirated by competitors.

A trade secret is information that is commercially valuable, guarded from disclosure and not common knowledge. Trade secrets may include a list of customers and contracts with suppliers. The law is violated when another person discovers a trade secret by a means other than independent research or inspection of the finished product.

Trade symbols are protected under the Federal Lanham Act, which prohibits one business from passing off its goods or services as the goods or services of another business by using the other business' trade symbol. In America, a business can register its trade symbol with the Federal Goverment, which is the easiest way to prove ownership and the exclusive right to use that symbol.

Federal law provides protection to authors of original works under the Copyright Act. Protected works include literary, musical, dramatic, pantomimes, choreographic, pictorial, graphic, sculptural, motion picture, audio visual and sound recordings. The law is violated when someone uses anothers copyrighted work without the owner's permission.

A patent is a grant by the Federal goverment of monopoly right to an inventor to exclusively make, use or sell his invention for a period of 17 years. A process, machine, manufactured object or composition of matter may be patentable if it is novel, useful and not obvious. The law is violated whenever someone makes, uses or sells a patented invention without permission of the patent holder.

The laws of unfair competition do not have significant loopholes because their main purpose is to protect businesses and, therefore, profits.

3. SECURITIES REGULATION

The primary purpose of Federal securities regulation is to prevent fraudulent practices in the sale and purchase of securities and thereby foster public confidence in the securities markets. There are two main statutes: the Securities Act of 1933, which focuses on the issuing of securities, and the Securities Exchange Act of 1934, which regulates the trading (buying and selling) of already issued securities. The 1933 Act has two main objectives: (1) to provide investors with necessary information concerning securities newly offered for sale to the public, and (2) to prohibit misrepresentation, deceit and other fraudulent acts and practices in the sale of newly issued securities. The 1934 Act's provisions (1) require most publicly held companies to register with the government and submit periodic reports, (2) prohibits the use of fraud in selling or buying securities, (3) prohibits the directors, officers, employees and others from using information not available to the general public in buying or selling securities (insider trading) and (4) regulates proxy solicitations and tender offers.

The 1933 and 1934 Acts fail to regulate a number of securities sold to the public and the fines are small compared to the millions to be made in violating the acts. In addition, the maximum five year prison term provided for under the Acts is rarely imposed.

Both the 1933 and 1934 Acts were passed in response to the American stock market crash in 1929 and the ensuing depression. During the late 1920s, there was a frenzy of activity on Wall Street. Stock prices continued to rise, and nearly everyone was borrowing money to buy stocks advertised as being investments in credit worthy companies. In reality many of the stocks were worthless. Their prices kept rising because of market manipulation by brokers, traders and the companies themselves, officers and directors of such companies knew of their firm's tenuous finances, so they sold their shares to unsuspecting members of the public. As the stock market reached unprecedented highs, many corporate executives, even of stable companies, acted on information they possessed but the public did not and sold their shares. With the stock market crash and resulting depression, many of the fraudulent schemes used to lure an unsuspecting public into buyng stock were exposed. The resulting scandals shocked America's confidence in a free and orderly stock market. To restore the public's confidence that the stock market would no longer be a predatory but a fair market, the 1933 and 1934 Acts were passed.

As stated above the trivial sanctions of the acts have not created a completely fair market. Listed below is a chronology of some insider trading for 1986-87. These are clear examples that the two acts and subsequent law have not been effective in deterring fraud on Wall Street.

May 12, 1986 SEC charges Dennis Levine of Drexel Burnham Lambert with making $12.6 million since mid-1980 from insider trading. SEC also names as defendant Bernhard Meier, Mr. Levine's broker at Bank Leu International in Nassau.

May 13, 1986 Mr. Levine is arrested and charged with obstructing justice for attempting to destroy records. He is released on a $5 million bond.

June 5, 1986 Mr. Levine pleads guilty to four felony charges and agrees to cooperate with the goverment in its investigation. Settling civil insider-trading charges, he agrees to pay $11.6 million.

July 1, 1986 SEC charges Robert Wilkis and Ira Sokolow, former investment bankers at Lazard Freres and Shearson Lehman Brothers, with exchanging confidential information with Mr. Levine. They settle with SEC. Mr. Wilkis allegedly made about $3 million from insider trading. Mr. Sokolow agreed to give up $120,000 in profits.

July 3, 1986 David Brown, investment banker at Goldman Sachs, resigns amid SEC investigation.

July 14, 1986 Ilan Reich, takeover lawyer at Wachtell, Lipton, Rosen & Katz, resigns amid goverment invesigation.

August 19, 1986 Litton Industries Inc. sues Shearson Lehman and Mr. Levine, charging that Mr. Levine's insider trading made Litton pay more than necessary to take over Itek Corp. Suit seeks $30 million in damages.

Sept. 4, 1986 Mr. Sokolow and Mr. Brown plead guilty to criminal charges of passing stolen information to Mr. Levine.

Oct. 3, 1986 Mr. Reich is indicted by federal grand jury in the Levine case.

Oct. 9, 1986 Mr. Reich pleads guilty to two criminal counts for his role in the Levine case. Mr. Brown agrees to pay $145,790 to the SEC.

Nov. 6, 1986 Mr. Sokolow is sentenced to a year and a day in prison for his role in the Levine case.

Nov. 14, 1986 Ivan Boesky agrees to pay $100 million penalty for trading on insider information supplied by Mr. Levine from Feb. 1985 to Feb. 1986; agrees to plead guilty to unspecified criminal charges. (Boesky made over $1 billion from his activities.)

Nov. 18-19, 1986 Drexel is identified as being under investigation for possible securitieslaw violations in connection with the Boesky probe.

Dec. 18, 1986 FMC Corp., in a lawsuit similar to Litton Industries', accuses Mr. Boesky and others with inflating the cost of the company's recapitalization plan.

Dec. 23, 1986 Mr. Wilkins pleads guilty to four felony counts for his key role in the Levine case; Randall D. Cecola, formerly a junior financial analyst at Lazard, pleads guilty to two count of filing false tax returns and settles SEC charges of participating in the Levine scheme.

Jan. 12, 1987 Mr. Brown sentenced to 30 days in prison on weekends and fined $10,000.

Jan. 23, 1987 Mr. Reich sentenced to a year in prison.

Jan. 28, 1987 Michael Davidoff, former head trader for Mr. Boesky, pleads guilty to one count of securities fraud for violating capital reguirements at Mr. Boesky's firm. Mr. Davidoff, who had close contacts with many Wall Street traders, agrees to cooperate with the goverment.

Feb. 9, 1987 Mr. Wilkins sentenced to a year and a day in prison.

Feb. 10, 1987 Mr. Cecola sentenced to six years' probation.

Feb. 11-12, 1987 Three top Wall Street figures-Robert M. Freeman, a Goldman Sachs partner; Timothy L. Tabor, a former official at Kidder Peabody and Merrill Lynch; and Richard Wigton, a Kidder vice presidentarrested and charged with an information-swapping conspiracy that allegedly made Kidder millions of dollars in illegal profits. Mr. Freeman was also charged with trading for his own account on the information.

4. CONSUMER PROTECTION

In 1914 Congress enacted the Federal Trade Commision Act that created the Federal Trade Commission (the "F.T.C."). Among some of the commission's purposes were to protect the consumer from false and misleading advertising, false and misleading descriptive names of products and false or inadequate labeling of products. Much of the F.T.C.'s history, however, has been one of favoring business over the consumer, whom the F.T.C. was suppose to protect. One period of exception occured in the 1970's when the F.T.C. pursued aggressive consumer protection policies. With the election of Ronald Reagan, however, the F.T.C. dropped 25% of its pending cases against businesses and discontinued studies into over-the-counter drug advertising and automobile insurance. Under the Reagan administration, the F.T.C. became pro-business at the expense of the consumer. A graphic example was the "survival suit" case. Hundreds of survival suits had been sold to the Federal goverment and private buyers to save persons involved in ocean accidents. The suits leaked and people drowned instead of being saved. To repair the suits would have cost no more than a few cents per suit. The F.T.C. decided not to order a recall of the suits for repair. Its reasoning was that the free market would handle the problem because relatives of drowning victims would sue the manufacturer for damages, and the manufacturer would then recall the suits for repairs.

Historically, the enactment of consumer protection laws in the U.S.A. have often been delayed. The Industrial Revolution in America in the late 1800's resulted in a rapid growth in consumer products. False advertising of products was common, the addition of harmful substances to foods was common and medicines were mislabeled. It took from the early 1880's until 1906 to enact a Food and Drug law. The reason the law was enacted was because Upton Sinclaire published "The Jungle", a book detailing unsafe, unsanitary and unhealthy food produced by the meat packing industry. The book caused such an uproar among the public that President Teddy Roosevelt was forced to have legislation passed. The problem with the law was that it only listed certain substances that could not be added to foods. The food industry quickly switched to adding other unsafe substances that were not on the list. The law did require the labeling of dangerous drugs in medicines but such drugs, such as opium, were still allowed to be sold. And the law still did not regulate advertising, that did not happen until 1938.

Despite the passage of the Food and Drug Act in 1906, drugs could still be marketed without testing or government approval. In 1938 the Massengil Corporation marketed without testing a sulfa drug elixir that killed 100 people. The federal government quickly enacted a law requiring government approval of new drugs. Despite the 1938 legislation, drug advertisements were still misleading and numerous drugs were on the market that were of questionable safety and efficacy. In the early 1960's a bill was passed requiring that drugs be proved safe and effective before being marketed. The reason the bill was enacted into law was once again public outrage over birth defects in new born children caused by the drug thalidomide. The pharmacentical industry still found ways to circumvent the law. Just recently it was learned that some American drug companies had bribed employees of the goverment to quickly approve some of their drugs as safe and effective.

In the 1970's the goverment created the Consumer Product Safety Commission to protect consumers from unreasonable risk of injury from hazardous products. Millions persons were injured each year using consumer products, 110,000 permanently disabled and 30,000 killed. During the 1980's the Commission has been ineffective because of staff and budget cuts.

5. EMPLOYMENT LAW

In 1932 the Norris-LaGuardia Act prevented Federal courts from issuing injunctions against unions involved in non-violent labor disputes. Before the law's enactment, company owners could prevent a union from picketing or engaging in otherwise peaceful conduct by simply going to court to get an order (injunction) prohibiting the activity. If the union persisted in its activity, then the participants and union leaders could be jailed indefinitely and fined large amounts.

In 1935 the Wagner Act provided workers the right to self-organization, to form, join and assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. The act also prohibited employers from interferring with employees' rights to unionize and bargain collectively, dominating a union, discriminating against union members, discriminating against an emplyoee because he has filed charges against an employer and refusing to bargain in good faith with the duly established representatives of the employees.

After World War II an irrational fear of communism and the Soviet Union swept America. Business interests used the "red scare" to rescind many of labor's rights guaranteed under prior laws by accusing unions of being pro-communist. In 1947 the Taft-Hartley Act passed Congress. Among other provisions, the act prohibited closed shops, which required an employer to hire only union members; disallowed a union to boycott, strike or picket an employer with whom a union had no labor dispute in order to persuade that employer to cease doing business with the company that was the target of the labor dispute. In addition, the act reinstated Federal Courts with the power to issue injunctions prohibiting non-violent union activities. The Taft-Hartley act has had a major negative impact on organized labor. Although not the sole reason, it is a major reason for the decline of the number of unionized workers from 25% of the work force in 1950 to 13% today.

The preceding is just a cursory overview of some business regulations in America, but the general theme holds true for other regulations as well. Regulations are enacted after long delays and usually only when some event or series of events create a public outrage. The regulations then enacted usually have loopholes or deficiencies or are ineffectively enforced because approximately 1% of America's families have the wealth and thereby the power necessary to control legislation for the long term benefit of their profits. If similiar regulations were enacted in Russia without the loopholes your country would be far along the path to a fair market.

I hope this has been helpful. If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

Roy Den Hollander

ROY DEN HOLLANDER, ESQUIRE