MADE IN THE U.S.A.
ETHICS CASE: DUMPED IN BRAZIL, AFRICA,

Ethics in Dealing With Uncertainty in Capital Budgeting, or What Happens When a Project is No Longer Sellable

In an uncertain world, capital budgeting attempts to determine what the future of a new product will bring and how then to act on that forecast. We never know for certain what the future will bring, but we do arrive at some idea of what the distribution of possible outcomes looks like. Unfortunately, when there is uncertainty, the outcome is not always a good one. For example, what happens if the government rules that our product is not safe? The answer is that we must abandon the product. The question then becomes what to do with the inventory we currently have on hand. We certainly want to deal with it in a way that is in the best interests of our shareholders. We also want to obey the law and act ethically. As with most ethical questions, there is not necessarily a right or wrong answer.

When it comes to the safety of young children, fire is a parent's nightmare. Just the thought of their young ones trapped in their cribs and beds by a raging nocturnal blaze is enough to make most mothers and fathers take every precaution to ensure their children's safety. Little wonder that when fire-retardant children's pajamas hit the market in the mid-1970s, they proved an overnight success. Within a few short years more than 200 million pairs were sold, and the sales of millions more were all but guaranteed. For their manufacturers, the future could not have been brighter. Then, like a bolt from the blue, came word that the pajamas were killers.

In June 1977, the U.S. Consumer Product Safety Commission (CPSC) banned the sale of these pajamas and ordered the recall of millions of pairs. Reason: The pajamas contained the flame-retardant chemical Tris (2,3-dibromoprophyl), which had been found to cause kidney cancer in children.

Whereas just months earlier the 100 medium- and small-garment manufacturers of the Tris-impregnated pajamas could not fill orders fast enough, suddenly they were worrying about how to get rid of the millions of pairs now sitting in warehouses. Because of its toxicity, the sleepwear could not even be thrown away, let alone sold. Indeed, the CPSC left no doubt about how the pajamas were to be disposed of—buried or burned or used as industrial wiping cloths. All meant millions of dollars in losses for manufacturers.

The companies affected—mostly small, family-run operations employing fewer than 100 workers—immediately attempted to shift blame to the mills that made the cloth. When that attempt failed, they tried to get the big department stores that sold the pajamas and the chemical companies that produced Tris to share the financial losses. Again, no sale. Finally, in desperation, the companies lobbied in Washington for a bill making the federal government partially responsible for the losses. It was the government, they argued, that originally had required the companies to add Tris to pajamas and then had prohibited their sale. Congress was sympathetic; it passed a bill granting companies relief. But President Carter vetoed it.

While the small firms were waging their political battle in the halls of Congress, ads began appearing in the classified pages of Women's Wear Daily. "Tris-Tris-Tris We will buy any fabric containing Tris," read one. Another said, "Tris—we will purchase any large quantities of garments containing Tris."' The ads had been placed by exporters, who began buying up the pajamas, usually at 10 to 30% of the normal wholesale price. Their intent was clear: to dump the carcinogenic pajamas on overseas markets.

Tris is not the only example of dumping. In 1972, 400 Iraqis died and 5,000 were hospitalized after eating wheat and barley treated with a U.S.-banned organic mercury fungicide. Winstrol, a synthetic male hormone that had been found to stunt the growth of American children, was made available in Brazil as an appetite stimulant for children. Depo-Provera, an injectable contraceptive known to cause malignant tumors in animals, was shipped overseas to 70 countries where it was used in U.S.-sponsored population control programs. And 450,000 baby pacifiers, of the type known to have caused choking deaths, were exported for sale overseas.

Manufacturers that dump products abroad clearly are motivated by profit or at least by the hope of avoiding financial losses resulting from having to withdraw a product from the market. For government and health agencies that cooperate in the exporting of dangerous products, the motives are more complex.

For example, as early as 1971, the dangers of the Dalkon Shield intrauterine device were well documented.4 Among the adverse reactions were pelvic inflammation, blood poisoning, pregnancies resulting in spontaneous abortions, tubal pregnancies, and uterine perforations. A number of deaths were even attributed to the device. Faced with losing its domestic market, A. H. Robins Co., manufacturer of the Dalkon Shield, worked out a deal with the Office of Population within the U. S. Agency for International Development (AID), whereby AID bought thousands of the devices at a reduced price for use in population-control programs in 42 countries.

Why do governmental and population-control agencies approve the sale and use overseas birth control devices proved dangerous in the United States? They say their motives are humanitarian. Since the rate of dying in childbirth is high in Third World countries, almost any birth control device is preferable to none. Third World scientists and government officials frequently support this argument. They insist that denying their countries access to the contraceptives of their choice is tantamount to violating their countries' national sovereignty.

Apparently this argument has found a sympathetic ear in Washington, for it turns up in the "notification" system that regulates the export of banned or dangerous products overseas. Based on the principles of national sovereignty, self-determination, and free trade, the notification system requires that foreign governments be notified whenever a product is banned, deregulated, suspended, or canceled by an American regulatory agency. The State Department, which implements the system, has a policy statement on the subject that reads in part: "No country should establish itself as the arbiter of others' health and safety standards. Individual governments are generally in the best position to establish standards of public health and safety."

"Dumping" is a term apparently coined by Mother Jones magazine to refer to the practice of exporting to overseas countries products that have been banned or declared hazardous in the United States. Unless otherwise noted, the facts and quotations reported in this case are based on Mark Dowie,

Critics of the system claim that notifying foreign health officials is virtually useless. For one thing, other governments rarely can establish health standards or even control imports into their countries. Indeed, most of the Third World countries where banned or dangerous products are dumped lack regulatory agencies, adequate testing facilities, and well-staffed customs departments. Then there is the problem of getting the word out about hazardous products. In theory, when a government agency such as the Environmental Protection Agency (EPA) or the Food and Drug Administration (FDA) finds a product hazardous, it is supposed to inform the State Department, which is to notify local health officials. But agencies often fail to inform the State Department of the product they have banned or found harmful. And when it is notified, its communiques typically go no further than the U.S. embassies abroad. One embassy official even told the General Accounting Office (GAO) that he "did not routinely forward notification of chemicals not registered in the host country, because it may adversely affect U.S." exporting. When foreign officials are notified by U.S. embassies, they sometimes find the communiques vague or ambiguous or too technical to understand.

In an effort to remedy these problems, at the end of his term in office, President Carter issued an executive order that (1) improved export notice procedures; (2) called for publishing an annual summary of substances banned or severely restricted for domestic use in the United States; (3) directed the State Department and other federal agencies to participate in the development of international hazard alert systems; and (4) established procedures for placing formal export licensing controls on a limited number of extremely hazardous substances. In one of his first acts as president, however, President Reagan rescinded the order. Later in his administration, the law that formerly prohibited U.S. pharmaceutical companies from exporting drugs that are banned or not registered in this country was weakened to allow the export of drugs not yet approved for use in the United States to 21 countries.

But even if communication procedures were improved or the export of dangerous products forbidden, there are ways that companies can circumvent these threats to their profits—for example, by simply changing the name of the product or by exporting the individual ingredients of a product to a plant in a foreign country. Once there, the ingredients can be reassembled and the product dumped.5 Upjohn, for example, through its Belgian subsidiary, continues to produce Depo-Provera, which the FDA had consistently refused to approve for use in this country. And the prohibition on the export of dangerous drugs is not that hard to sidestep. "Unless the package bursts open on the dock," one drug company executive observe, "you have no chance of being caught."

Unfortunately for us, in the case of pesticides, the effects of overseas dumping are now coming home. The EPA bans from the United States all crop uses of DDT and Dieldrin, which kill fish, cause tumors in animals, and build up in the fatty tissue of humans. It also bans heptachlor, chlordane, leptophos, endrin, and many other pesticides, including 2,4,5-T (which contains the deadly poison dioxin, the active ingredient in Agent Orange, the notorious defoliant used in Vietnam), because they are dangerous to human beings. No law, however, prohibits the sale of DDT and these other U.S.-banned pesticides overseas, where, thanks to corporate dumping, they are routinely used in agriculture. The PDA now estimates, through spot checks, that 10% of our imported food is contaminated with illegal residues of banned pesticides. And the PDA's most commonly used testing procedure does not even check for 70% of the pesticides known to cause cancer.