

## **THE GLOBAL FIGHT AGAINST BRIBERY AND CORRUPTION: U.S. LAW AND POLICY**

speech by Ambassador Schneider  
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The U.S. Government has been fighting a long and often lonely battle to raise awareness of the need to combat corruption, both as a drain on the global economy and as a threat to the growth of democracy. I congratulate Deloitte Touche for taking the initiative to call attention to this issue.

The United States was at least twenty years ahead of the rest of the world in acting aggressively against global corruption. In 1977, following rising public concern about the behavior abroad of U.S. firms, Congress passed the Foreign Corrupt Practices Act. That law established civil and criminal penalties for U.S. nationals who bribed foreign officials.

In the intervening 20 years, the U.S. Department of Justice has brought over thirty criminal prosecutions and dozens of civil actions under various provisions of this law. U.S. firms take the law seriously; indeed, one complaint has long been that the Foreign Corrupt Practices Act was causing American business to lose contracts overseas.

Until recently, U.S. concerns about controlling corruption abroad found little resonance among our trading partners. Bribery was generally considered simply to be part of human nature, a trivial issue, or even a normal business expense, to be deducted from taxes at home.

Over the last few years, however, we have seen a profound and much-needed change in that conventional wisdom. Experience in the developing world has shown that corruption is not merely another way of doing business or a "cultural difference". Rather, it is a heavy burden on the economy, leading to misallocation of resources, poisoning the business climate and sapping long-term economic development.

Both the Asian economic crisis and the upheavals in Russia have shown that corruption, cronyism and weak legal systems can lead to severe instability, aggravate capital flight, and scare off foreign investment. One World Bank study described corruption as a "hidden tax" on some of the world's most fragile economies.

The global size of this "corruption tax" is hard to estimate, but we believe that it is a substantial drag on the developing world as well as a heavy expense for firms doing business there.

The Asian Development Bank recently estimated that corruption costs many governments in the Asian region as much as 50 percent of their tax revenues -- money that

could be used to build roads or public transport, improve literacy, or provide basic health care.

Corruption in government contracting leads to further waste of scarce resources. Contracts won through bribes are often never fulfilled, or public works never built. Corrupt contracts leave governments with outdated drugs, equipment that doesn't work, or inferior, high-cost supplies. Such transactions can cost lives as well as money. The tragic aftermath of the recent earthquake in Turkey showed how corruption -- in this case of building inspectors -- can interfere lethally with public safety and the functions of government.

The U.S. Department of Commerce found that in the last five years alone, May 1994 to April 1999, bribery was alleged to have affected the outcome of 294 international contracts involving \$145 billion dollars in trade. In 1998 alone, we know of about 60 contracts worth almost \$30 billion in which there have been credible allegations of bribery.

If anything, these numbers probably underestimate the problem. After all, those giving and receiving bribes are rarely eager to let that fact be known. Bribery appears to be particularly rampant in defense procurement (about half the allegedly tainted contracts), aerospace, communications, infrastructure, energy and transportation.

In short, corruption has become a problem that we cannot ignore. Increasingly, around the world, people and governments are taking action. Transparency International, founded just six years ago to combat bribery, now has over 70 national chapters. On the government side, with the support of many business groups, we have taken the most important initial step in completing the OECD Bribery Convention.

In December 1997, after almost ten years of often painful negotiation, OECD member states signed this landmark agreement to attack one side of the corruption equation -- the supply side -- by enacting broad-based penalties against corporations that use bribery to gain unfair advantages. The agreement commits governments to punish corporations who pay bribes to foreign officials; and, perhaps even more important, to end tax deductibility of such bribes.

Completion of the Bribery Convention has long been a priority of the Clinton Administration. We were among the first to ratify, and our implementing legislation, the International Anti-Bribery and Fair Competition Act of 1998, is already in place.

#### The International Anti-Bribery and Fair Competition Act

The International Anti-Bribery and Fair Competition Act of 1998 incorporated the basic principles of the Convention into U.S. law. In doing so, it extends the provisions of the Foreign Corrupt Practices Act in several important ways:

First, it adds officials of international agencies to the definition of "foreign public official".

Second, it amends our laws to eliminate disparities between penalties that can be imposed on U.S. nationals and non-U.S. national employees and agents of U.S. firms.

Third, the Convention calls for the prohibition of bribes by "any person." The old FCPA covered only U.S. companies and persons. Thus, the FCPA as amended now applies to acts committed by all foreign natural and legal persons while in the territory of the United States.

Fourth, the FCPA has been amended to cover acts by U.S. businesses and nationals, in furtherance of unlawful payments, that take place wholly outside the United States.

Finally, the Convention also requires that governments prohibit bribes made for the purpose of securing "any improper advantage." This prohibition has been incorporated into our law.

These new provisions will affect not only U.S. firms, but also foreign corporations with holdings in the United States. Moreover, they are part of a global trend. The 34 signatories of the Convention are home to most of the world's largest multinational corporations and account for a large majority of total world trade. As the signatories move to implement the Convention, these rules will become the global norm.

#### Where Do We Go from Here?

The OECD Convention is a milestone in our efforts to combat the corrosive effects of corruption. However, it is only the first step in a longer and broader process. We need to move forward now with implementation. Fifteen of the signatories of the Convention, representing two-thirds of OECD trade, have already ratified the Convention and put implementing legislation in place. We hope that the remaining signatories, including the Netherlands, will follow shortly.

At the same time, we must make the principles of the Convention a global reality. The Convention's mutual evaluation process allows us first to examine together the laws of each implementing country for compliance with the convention. We will then examine how well those laws are being enforced. Over time, this evaluation mechanism should become an important tool to use against corruption.

We will also seek to extend the Convention to close some important loopholes. For example, we want the Convention to cover bribery of foreign political parties, party officials, and candidates for political office, all of whom potentially hold the levers of power in developing countries. The U.S. Foreign Corrupt Practices Act already covers these groups. We will also seek a universal end to the practice of allowing tax deductibility of bribes.

However, as I noted earlier, these efforts cover only half of the equation -- the supply side. What of the demand side? As we say in America, it takes two to tango. Those who routinely demand bribes must also become the target of international pressure.

Under the leadership of Vice President Gore and Secretary of State Albright, the United States has developed a strategy for promoting the rule of law, transparency and good governance in developing countries, to limit the opportunities for corruption.

Our evolving approach is threefold:

--First, we want to achieve basic, globally accepted standards of transparency and accountability, both in government and in the private sector. To this end, in February 1999, Vice President Gore chaired a groundbreaking conference attended by almost 90 nations. It was evidence of the sea change in global opinion that not only developed but developing countries, and especially the transition economies of Central and Eastern Europe, were eager participants. From that conference emerged a set of basic principles that countries can use to combat official corruption. We are also pushing for an agreement in the upcoming WTO Round that would ensure greater transparency and accountability in government procurement.

--Second, we are supporting and encouraging regional approaches to fighting corruption. We are working with the U.S. Congress to ratify the Inter-American Convention Against Corruption. The Global Coalition for Africa, representing eleven African countries, has adopted a series of anti-corruption principles. Also, the Council of Europe has also undertaken important anti-corruption initiatives.

--Finally, we want to promote key structural reforms in emerging markets, to remove incentives for corruption and develop more favorable climates for growth. Countries fighting corruption often focus heavily on law enforcement. We must also recognize that corruption is a systemic problem. To make progress, countries must attack the problem from different angles. We recommend that governments take the following eight steps:

- 1) Reform economic policy: deregulate and reduce bureaucratic discretion over matters such as the issuance of business licenses. A country where permits are required for everything is a country in which bribery can flourish.

- 2) Let in more daylight: streamline, and make more predictable and transparent, government transactions such as procurement, privatization, and customs. Licensing decisions in areas such as telecommunications or energy, where the stakes are high, must be made in the open.

- 3) Reform the public sector: downsize governments in formerly state-controlled economies -- and pay remaining civil servants a living wage, so that they need not live off bribes.

- 4) Reform public finance: As we saw in the Asia crisis, lack of transparency and controls in public finance can lead to disaster.

- 5) Reform the courts: An honest, independent judiciary is essential to building public confidence and promoting democratic, market-based institutions.

6) Reform commercial law:: put in place fair and predictable commercial laws to attract foreign investment and limit opportunities for extortion and graft.

7) Get the public involved in oversight:: improve public education and civic awareness; support human rights and citizen advocacy groups and the development of an independent media.

8) Finally, make ethics reform a priority. Codes of conduct for government and judicial officials and financial disclosure rules are a must for developing popular confidence in public officials and institutions.

Such reforms will be difficult for many countries. Once achieved, however, they will do more than merely combat corruption. They will also lay the groundwork for economies which both foreign and domestic entrepreneurs, large and small, can flourish.

The private sector can be a major agent of change in this process. First, you can help by establishing your own internal codes of practice. Some of you here today have been pioneers in this field.

Second, you can offer to share your experiences on best practices with your business partners in emerging markets.

Third, you can help us keep up the pressure on governments in emerging markets for transparency, accountability, and good governance.

Finally, you can encourage signatories to the OECD Convention who have not yet ratified the agreement to complete the process.

Increasingly, the private sector is telling us that corruption is a major investment problem worldwide. We now have the opportunity, together with other international players like the World Bank, to solve that problem together. We especially look forward to working with the Dutch on the follow-on conference to Vice President Gore's forum, about which my Dutch colleague will have more to say.

Thank you.