

“ANTI-BRIBERY MEASURES”

REMARKS TO
APEC ANTI-CORRUPTION AND TRANSPARENCY WORKSHOP
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Introduction

On behalf of my colleagues in the Transparency International APEC member economies and around the world, I would like to extend our appreciation to the Governments of China and the United States, the co-sponsors of this important anti-corruption workshop, for inviting us to participate. It is an important and welcome opportunity to exchange views and lessons learned.

Having worked for the past 12 years to raise awareness and promote action to reduce corruption and enhance transparency, TI appreciates the inclusion of civil society in your deliberations. As a coalition comprised of business, lawyers, accountants, academics, journalists and other concerned citizens in over 90 countries, we trust we bring a diverse and constructive perspective to the table.

We have had the pleasure to share our perspectives with many of you, your governments and institutions over the years and believe that, working together, we have made good progress on our common objectives. I am honored to join my co-panelists who have contributed so much to this good progress.

We commend the Anti-Corruption and Transparency Task Force for its work and agree with your statement that “APEC’s goal of economic prosperity can not be achieved unless corruption, both in our domestic economies and in international business transactions, is effectively addressed and significantly reduced.”

Your statement is borne out by statistics demonstrating that corruption impedes foreign investment, diverts capital from productive use, distorts decision-making and undermines public trust. These consequences of corruption are what drive our collective efforts and create a pressing need for action.

Clearly, the APEC leaders recognized this when they made fighting corruption and improving transparency a priority objective under the 2006 APEC theme, “Towards a Dynamic Community for Sustainable Development and Prosperity.”

This task force plays an important role in carrying out the leaders’ mandate. Your “strong anti-corruption commitment to enhance an open and transparent business climate, safeguard integrity in government and private sector, and uphold the rule of law throughout the Asia Pacific region,” as expressed in your February 26, 2006 statement, provides a strong foundation for moving the agenda forward.

Moving the agenda forward is the challenge we face today and in the days ahead. The public and private sector must make progress implementing anti-corruption and transparency commitments into their daily operations. Today, we have a window of opportunity when many of the necessary stakeholders are focused on these issues, including officials in the developed and developing economies, World Bank and other lending institutions, the private sector and other civil society actors.

By engaging and *integrating* the efforts of these diverse stakeholders, we can maximize our chances of success. I want to emphasize the need for integration because the reality is that bribery and corruption cannot exist without collusion among different actors: bribery involves the public and private sector; embezzlement requires an official intent on stealing from the state and a bank willing to hold and protect the proceeds against recovery; fraud in procurement requires engineers and construction companies willing to partner with officials to subvert the proper use of public funds; and, accounting fraud and sham transactions require accountants and lawyers as

facilitators. As we have seen in the 2006 TI Global Corruption Report, even doctors, pharmacies, and hospitals can play a role in corruption in the health sector, sometimes with deadly consequences.

This is not meant as a wholesale condemnation, but rather to underscore the need to engage all of the many different stakeholders in the reform process. Our success will depend on integrating all our efforts toward our shared objective of implementation.

It is with these two themes in mind, implementation and integration, that I would like to discuss the subject of this panel: *OECD Convention and Other Anti-Bribery Measures*. I would like to focus my remarks on the conventions (OECD Convention and the UN Convention Against Corruption), the APEC Transparency Standards and private sector anti-bribery codes. Taken together, these anti-bribery measures provide an important and comprehensive prevention program. If we prevent bribes in the first place, we lessen the need to recover proceeds.

I. CONVENTIONS

Let me start with the role of the conventions: The OECD Convention on Bribery of Foreign Public Officials is of signal importance as an anti-bribery measure because it promises to stem the flow of large scale bribes from major exporting nations. For TI national chapters and civil society more generally, its importance is underscored by the World Bank statistic that \$1 trillion in bribes are paid annually and the Oil for Food scandal, which alleged that over 2,200 companies in 58 countries were involved in kickbacks and fraud.

Stemming the flow of bribes is an important priority for all of us, but it is particularly important for countries that are struggling to instill integrity in their public service and to maximize the effective use of their public resources. Doing so is a far greater challenge if companies are offering substantial inducements in return for official favors.

What is needed is a regime that applies to all major exporters, creating a level playing field for all competitors. The Convention's unique attribute is that its prohibition on transnational bribery applies to *many* of the world's major exporters at the same time.

However, not all major exporters, including some APEC member economies, are parties to the OECD Convention. So, it is important in the first instance for those economies which are major exporters to adhere to the OECD Convention – or move promptly to implement the UNCAC prohibition on transnational bribery.

Second, these transnational bribery prohibitions can only be effective if enforced, and enforced consistently by *all* parties. Raising the risk of prosecution in both the country where companies pay bribes as well as in their home country is a necessary deterrent. Consistent enforcement would level the playing field among competitors and substantially reduce bribery as a factor in international business.

The reality is that although all parties to the OECD convention have enacted laws, few have enforced them. TI's 2005 "Progress Report" found what, at best, could be called only a 'promising start' to making the convention a reality.

More must be done to send a message to companies to stop bribery. We urge APEC task force members who are parties to the OECD Convention to take action on enforcement. Those who are not members should consider the importance of enforcing similar prohibitions under UNCAC.

We are aware that some economies believe foreign bribery is a sovereign issue best left to the country in which bribes are paid. But, virtually all countries have laws prohibiting bribery of their officials. The UNCAC transnational bribery prohibition strongly indicates the global consensus on the importance of every country taking responsibility for the conduct of its companies when operating abroad not to violate local law.

We believe that the OECD follow-up monitoring process plays a vitally important role in promoting enforcement. It has been the most effective means of convening governments to discuss both the progress and the challenges they face. TI national chapters have participated regularly over the years in this process and fully appreciate its important function.

Unfortunately, the continued vitality of this process is threatened unless the parties agree to continue it with full funding and vigor beyond 2007. Given the importance of the OECD Convention, we are urging renewal of the process at this year's OECD ministerial. We hope that the ACT members of the OECD will support this outcome.

The UNCAC must have a similar process to be effective. Its preventive measures calling for public sector codes of conduct, conflict of interest standards and disclosure of assets complement the provisions requiring criminalization of bribery and extortion by improving the standards of conduct in the first place. They are also vitally important to ensuring that stolen assets, once recovered, are not stolen again.

Given this range of measures, the potential of the UNCAC is substantial. However, we have learned from experience with other conventions that its potential is more likely to be fully realized if a follow-up mechanism is created. Such a mechanism would help promote implementation, identify and mobilize capacity building resources, help address difficulties securing legal assistance and asset recovery and assist in many other ways with what is expected to be a challenging undertaking.

For the past year, TI has been working with experts from existing mechanisms to draw on lessons learned and develop recommendations to present to the UNCAC Conference of State Parties in December of this year. We are pleased to learn that there is a growing consensus for an effective UNCAC follow-up process and hope many of your economies will support it. (A copy of the TI study is available on the TI website.)

We recognize that implementation of the UNCAC, given its broad scope, will be challenging both technically and financially for many countries. Therefore, we have urged the World Bank and the regional banks to offer their support for integrating convention implementation into their country assistance strategies. We believe such assistance would be welcome.

II. APEC TRANSPARENCY STANDARDS

Moving beyond conventions, the APEC Transparency Standards, which all APEC economies have agreed to implement, provide a valuable means for reducing bribery, particularly in procurement.

One need only look to the 2004 economic leaders' statement from Santiago to understand why transparency is so essential. In particular, I would note the following points from the statement:

“ Transparency

- is an important element in promoting economic growth and financial stability at the domestic and international levels;
- is conducive to fairer and more effective governance and improves public confidence in government;
- is a basic principle underlying trade liberalization and facilitation, where the removal of barriers to trade is in large part only meaningful to the extent that the members of the public know what laws, regulations, procedures and administrative rulings affect their interests, can participate in their development, can participate in administrative proceedings applying them and can request review of their application under domestic law.
- ensures the accountability and integrity of central banks and financial agencies, and provides the public with needed economic, financial and capital markets data; and
- will be enhanced through well-targeted, demand-driven capacity building to assist developing economies make progress toward greater openness.”

The General Transparency Standards, particularly requiring publication, notice and comment, are important mechanisms for ensuring that members of the public know about measures that affect their interest and can have an impact on them.

This is of particular importance in the context of public procurement where corruption and bribery are more prevalent. Transparency in the government procurement context means that sufficient and relevant information is made available to all interested parties consistently and in a timely manner through a readily accessible, widely available medium.

The Area Specific Transparency Standards on Government Procurement, agreed in 2004, build on the Non-Binding Principles and identify elements and illustrative practices on the principles of transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination.

They are supported by all the Economies and have been adopted as the basis of the Government Procurement section of APEC economies’ Individual Action Plans.

Both the general and area specific standards were to be implemented no later than 2005.¹

We understand that the Senior Officials Meeting last month in Vietnam agreed to consider developing a plan to assess economies’ progress in implementing the APEC transparency standards.² Given the importance of transparency to reducing opportunities for corruption, we urge the ACT members to coordinate with the CTI to ensure that progress is made and reported to the public.

¹ On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the “Statement to Implement APEC Transparency Standards” (“Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

² Implementation of these standards is a CTI priority objective. (“All economies to implement the Transparency Standards into domestic laws, regulations, procedures and administrative rulings of general application.”)

Implementation of these standards in the APEC economies sets an important precedent for the WTO and hopefully will help promote action in that context in the future.

III. PRIVATE SECTOR

Let me conclude with one last but critically important anti-bribery measure – action by the private sector. For every public act of corruption, there is usually a company, banker, attorney, accountant, engineer or other private sector actor facilitating or benefiting from the act. We must work to change this dynamic.

UNCAC Article 12 provides a sound framework for private sector reform. It calls on parties to promote development of private sector codes of conduct, professional conflict of interest standards and transparency. Of particular note are the provisions requiring parties to prohibit off book accounts and promote good financial practices.

Implementation of these provisions will help promote private sector action. But there must also be a change in corporate culture. Fortunately, there are signs of change in the private sector's interest in the issue. Among the contributing factors are a growing recognition of the increased risk of prosecution, public outrage at corporate scandals, stepped up anti-money-laundering regimes and an increased interest in corporate responsibility.

A few organizations have encouraged this shift. TI has worked with the private sector and created a model code of conduct and implementation guidance to help companies develop and benchmark effective anti-bribery programs.

TI worked with a group of leading multinationals and non-corporate stakeholders from around the world to develop its *Business Principles for Countering Bribery* and guidance on how to implement such principles. These tools are available on the TI website (www.transparency.org) and we hope you will find them useful in working with the private sector.

We have also focused on small and medium-size businesses, which have special needs. Although smaller companies are bound by the same rules as larger ones, they often lack the human and financial resources to devote to compliance. To address this challenge, TI chapters are developing tools and approaches tailored to SMEs.

We are working with leading private sector organizations, including the World Economic Forum, to promote adoption of these principles. Since 2004, almost 100 companies representing over US\$70 billion in revenues have agreed to follow anti-bribery principles and to implement a zero tolerance policy.

TI has engaged with other sectors as well. Its first effort was with leading international private banks. In 2000, they adopted common anti-money laundering guidelines, known as the Wolfsberg Principles. The group is currently considering measures not only to ensure their employees do not engage in bribery but also to protect against the misuse of their operations by others engaged in bribery and corrupt practices. These include conducting further due diligence where indicated and reporting suspicious activity. We are hopeful that they will soon announce progress on common preventive measures.

We have other sector work ongoing in defense, engineering and construction, water and forestry. The aim of these initiatives is to create a higher standard of anti-bribery compliance by convening the major corporate players in a given sector and facilitating their agreement to a common code.

Beyond this direct engagement with the corporate sector, TI is working with organizations which can create incentives or pressure for improved corporate conduct. We are currently working with institutional investors, rating agencies and corporate governance groups to develop appropriate means to assess risks related to bribery and positive incentives for good corporate performance.

The UN Global Compact, a voluntary initiative with about 3,00 signatory companies, recently introduced a 10th principle³ against corruption. This has provided impetus to action and reporting on the topic.

The World Bank and regional development banks are also beginning to use their leverage to secure broader corporate anti-bribery compliance. The World Bank now requires bidders on large civil works to certify they have taken steps to prevent bribery by their employees and anyone acting on their behalf. This is a first step in what we hope will be a requirement of all development banks for companies and consultants to have effective anti-bribery programs to qualify to work on the front end, and, on the back end, to take these programs into account in their sanctions processes.

We urge APEC member economies to encourage their colleagues at the World Bank and multilateral banks to support such requirements.

The World Bank is now receiving voluntary disclosures from companies about bribery implicating other companies and public officials. They are also vigorously investigating bribery allegations, blacklisting violators and publishing those lists. These anti-bribery measures would be far more effective if the Asian and Inter-American Development Banks adopted similar measures. We urge ACT members to support such action.

Conclusion:

In conclusion, there has clearly been good progress in the development of anti-bribery measures for both the public and private sector. Today, we face the challenge of moving forward on implementation of these measures. There is much work to do to move from commitments to implementation. We appreciate this opportunity to share our thoughts and look forward to working with you to meet this challenge.

Thank you.

³ The Global Compact has 10 principles, the first nine related to environmental, human rights and labor

I. Government Procurement

Introduction

The Government Procurement Experts Group (GPEG) was established in 1995 to consider ways to increase transparency of, and liberalise, government procurement markets in accordance with the goals of the Bogor Declaration. APEC identified and agreed a collective action plan for government procurement. A key component of the plan was to develop a set of non-binding principles on government procurement. This was in line with the APEC General Principle of flexibility, enunciated in the Osaka Action Agenda: “Considering the different levels of economic development among the APEC economies and the diverse circumstances in each economy, flexibility will be available in dealing with issues arising from such circumstances in the liberalisation and facilitation process”.

In 1999 GPEG completed the Non-Binding Principles on Government Procurement (NBPs) that identify elements and illustrative practices on the principles of transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination. The NBPs have the support and commitment of all Economies and have been adopted as the basis of the Government Procurement section of APEC economies’ annually revised Individual Action Plans recording progress towards the Bogor goals of free and open trade and investment.

The NBPs have been a major contributor to the success of Economies and GPEG in promoting transparency in government procurement. The majority of GPEG members have completed their voluntary reviews and reports of their government procurement systems against the non-binding principle of Transparency. Through this process, Economies are exploring how best to implement the principles and to voluntarily bring their systems into conformity with them. This general transparency principle applies to all aspects of government procurement, including the elements of the general operational environment, procurement opportunities, purchase requirements, bid evaluation criteria and award of contracts. Establishing and maintaining transparent procurement markets not only assists Economies to learn from each other but also enables industry to obtain a clear understanding of the procurement markets operating within member economies.

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the “Statement to Implement APEC Transparency Standards” (“Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

Paragraph 7 of the Leaders’ Statement states that, consistent with the transparency standards in paragraphs 1-6 of the Leaders’ Statement, Economies will follow the transparency provisions contained in the APEC Government Procurement Experts Group (GPEG) NBPs. In paragraph 8 of the Leaders’ Statement, APEC Leaders instructed that “APEC sub-fora that have elaborated transparency provisions should review these

regularly and, where appropriate, improve, revise or expand them further,” and also instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement. Ministers Responsible for Trade meeting in Khon Kaen on June 2-3 “instructed officials to complete work underway to develop area-specific Transparency Standards.”

The Transparency Standards on Government Procurement, as set out below, are consistent with and fully reflect the General Principles in the Leaders' Statement and the transparency-related provisions of the NBPs. Implementation of both the Transparency Standards on Government Procurement and the NBPs will promote transparency in government procurement in the Asia-Pacific region.

Transparency Standards on Government Procurement

Transparency in the government procurement context means that sufficient and relevant information should be made available to all interested parties consistently and in a timely manner through a readily accessible, widely available medium. This applies to all aspects of government procurement, including the general operational environment, procurement opportunities, purchase requirements, bid evaluation criteria and award of contracts.

1. Consistent with paragraph 1 of the Leaders' Statement, each Economy will:
 - (a) ensure that its laws, regulations, and progressively judicial decisions, administrative rulings, policies (including any discriminatory or preferential treatment such as prohibitions against or set asides for certain categories of suppliers), procedures and practices (including procurement methods) related to government procurement (collectively referred to as "procurement rules") are promptly published or otherwise made available, for example, via the Internet, in such a manner as to enable interested persons and other Economies to become acquainted with them;
 - (b) designate an official journal or journals and publish the procurement rules in such journals on a regular basis and make copies of the journals readily available to the public (e.g., via the Internet); and
 - (c) promote observance of the provisions of this paragraph by the regional and local governments and authorities within its customs territory.
2. Each economy will disseminate information on its procurement rules, for example, by:
 - (a) publishing either a positive or negative list of the procuring entities subject to its rules; and
 - (b) providing a description of its procurement rules on the APEC Government Procurement Experts Group Home Page and linking its government procurement Home Page, where available, with the APEC Government Procurement Experts Group Home Page.
3. Consistent with paragraph 2 of the Leaders' Statement, when possible each Economy will publish in advance any procurement rules that it proposes to adopt; and provide, where applicable, interested persons a reasonable opportunity to comment on such proposed procurement rules.

4. Consistent with paragraph 3 of the Leaders' Statement, each Economy will endeavor upon request from an interested person or another Economy to promptly provide information and respond to questions pertaining to any actual or proposed rules. Each Economy will also establish contact points for such inquiries.

5. Consistent with paragraph 4 of the Leaders' Statement, in administrative proceedings applying to any procurement rule, each Economy will ensure that:

- (a) wherever possible, persons of another Economy that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;
- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and
- (c) its procedures are in accordance with domestic law.

6. Consistent with paragraph 5 of the Leaders' Statement, where warranted, each Economy will ensure that appropriate domestic procedures are in place to enable prompt review and correction of final administrative actions, other than those taken for sensitive prudential reasons, regarding matters covered by these Standards, that:

- (a) provide for tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and have no substantial interest in the outcome of the matter;
- (b) provide parties to any proceeding with a reasonable opportunity to present their respective positions;
- (c) provide parties to any proceeding with a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority; and
- (d) ensure, subject to appeal or further review under domestic law, that such decisions are implemented by, and govern the practice of, the offices or authorities regarding the administrative action at issue.

7. Each Economy will endeavour to maximize transparency in access to procurement opportunities. This should be accomplished where possible by:

- (a) where open tendering is adopted, publishing procurement opportunities in a medium readily accessible to suppliers (e.g., on the Internet);

- (b) making the same information on procurement opportunities available in a timely manner to all potential suppliers;
- (c) publishing contact details of purchasers, and their product/ service purchase interests, for suppliers wishing to register their interest in being notified of bidding opportunities that may not be publicly advertised;
- (d) making available early advice of complex high-value procurement needs through staged procedures such as public requests for information, requests for proposals and invitations for pre-qualification, and allowing adequate time for interested suppliers to prepare and submit a response;
- (e) making publicly available requirements and procedures for pre-qualification of suppliers; and
- (f) any time limits established for various stages of the procurement process.

8. Each Economy will make available for suppliers all the information required to prepare a responsive offer. This should include where possible:

- (a) providing in procurement notices the following information: the nature of the product or service to be procured; specifications; quantity, where known; time frame for delivery; closing times and dates; where to obtain tender documentation, where to submit bids, and contact details from which further information can be obtained;
- (b) providing any changes to participating suppliers; and
- (c) providing tender documentation and other information to suppliers promptly on request.

9. Each Economy will maintain transparent criteria for evaluating bids and evaluate bids and award contracts strictly according to these criteria. This should be done where possible by:

- (a) specifying in procurement notices or tender documentation all evaluation criteria, including any preferential arrangements; and
- (b) maintaining, for a predetermined period proper records of decisions sufficient to justify decisions taken in the procurement process.

10. Each Economy will award contracts in a transparent manner. This should be accomplished where possible by:

(a) publishing the outcome of the tender including the name of the successful supplier and the value of the bid; and

(b) as a minimum promptly notifying unsuccessful suppliers of the outcome of their bids and where and when contract award information is published, and debriefing unsuccessful suppliers on request.

11. Consistent with paragraph 11 of the Leaders' Statement, an Economy does not need to disclose confidential information where such disclosure would impede law enforcement, the enactment of laws, or that would be contrary to the public or national interest, or compromise security of the economy concerned or that would prejudice the legitimate commercial interests of particular persons or enterprises. Each economy will keep commercially sensitive information secure and prevent its use for personal gain by procurement officials or to prejudice fair, open and effective competition.

Santiago, Chile
21 November 2004

We, the Economic Leaders of APEC, reaffirm the commitment made in the Shanghai Accord to pursue implementation of APEC's transparency principles. In so doing, we observe that transparency:

- is an important element in promoting economic growth and financial stability at the domestic and international levels;
- is conducive to fairer and more effective governance and improves public confidence in government;
- is a General Principle in the Osaka Action Agenda which requires its application to the entire APEC liberalization and facilitation process;
- is a basic principle underlying trade liberalization and facilitation, where the removal of barriers to trade is in large part only meaningful to the extent that the members of the public know what laws, regulations, procedures and administrative rulings affect their interests, can participate in their development, can participate in administrative proceedings applying them and can request review of their application under domestic law;
- in monetary, financial and fiscal policies, and in the dissemination of macroeconomic policy data ensures the accountability and integrity of central banks and financial agencies, and provides the public with needed economic, financial and capital markets data; and
- will be enhanced through well-targeted, demand-driven capacity building to assist developing economies make progress toward greater openness.

Accordingly, we are committed to implementing the following transparency standards, taking into account the General Principles in the Osaka Action Agenda. We recognize that implementation of these standards will be an important APEC-led contribution to achieving a successful outcome for the WTO Doha Development Agenda.