

May 20, 2008

The Honorable Carlos M. Gutierrez
Secretary of Commerce
US Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Dear Secretary Gutierrez:

We are writing on behalf of the undersigned organizations to seek the Administration's support for the steps outlined below to address an immediate challenge to US business and to the anti-corruption movement more broadly.

The OECD Anti-Bribery Convention (the "Convention") has still not fully achieved its objective of reducing foreign bribery in international business and development. This landmark agreement is important because it imposes a foreign bribery prohibition on competitors from most of the major industrialized nations simultaneously. Unless there is consistent, across-the-board enforcement, contracts may go to competitors from countries with weaker enforcement records, and efforts to bring China and India under similar foreign bribery constraints will be undermined.

At this time, while all parties have enacted laws making it a crime to bribe foreign officials, not enough are enforcing them and some even appear to be flouting their Convention commitments. According to Transparency International's 2007 Progress Report on OECD Enforcement, only one-third of the 37 parties have taken substantial enforcement action, with the United States leading the way. However, nearly two-thirds of the parties – notably G8 members Canada, Japan and the UK – have done little or nothing to enforce their Convention obligations.

The UK has yet to adopt an adequate foreign bribery law, and its decision to terminate the investigation into allegations of bribery in the Al Yamamah deal on the basis of national security is particularly troubling. The Convention expressly prohibits consideration of national economic interest or the potential effect on relations with another state to influence decisions whether to investigate or prosecute. (Article 5). The UK action threatens to create a dangerous precedent for others seeking to avoid their commitments.

The United States has been the driving force behind the OECD Convention, but, if it is not fully enforced, transnational bribery will continue to undermine fair competition, penalizing US companies that operate with integrity. It will also undermine effective use of resources, investment and economic development, the rule of law and democracy as well as energy security and national security.

Foreign bribery will only abate if there is a credible threat of enforcement and dissuasive sanctions in all major exporting nations. Accordingly, we strongly recommend the Administration to:

1. Urge the UK government formally and at the highest levels to enact during the 2008 parliamentary session a foreign bribery law fully compliant with its Convention obligations.
2. Call for a G8 report detailing each Party's progress on OECD Convention enforcement and encourage those which have not brought cases to do so.
3. Call for an OECD annual report listing all foreign bribery prosecutions, including convictions and other dispositions. The report should also reflect failures to correct deficiencies identified in country reviews. The first annual report covering 2008 should be compiled early in 2009.
4. Urge the OECD Working Group to reaffirm Article 5 of the Convention subject only to a narrowly drawn and reviewable exception based on the 'necessity doctrine' as recognized under international law.
5. Insist on high-level technical participation by all member governments in the OECD Working Group with continued rigorous on-site visits and candid assessments of countries' enforcement efforts.
6. Support accession to the Convention by China, India and Russia, including participation in the follow-up process to promote consistent enforcement.

We believe that the OECD Ministerial Meeting on June 4-5, 2008, is a crucial opportunity to elevate attention and pressure on all OECD members to fulfill their commitment. We appreciate the Administration's long-standing support for the global anticorruption agenda and urge the United States to take the lead in this effort. We have sent an identical letter to Secretary Rice and Attorney General Mukasey.

American Society of Civil Engineers
National Association of Manufacturers
National Foreign Trade Council

Transparency International-USA
United States Council for International Business
USA*Engage