Stop Bribery Everywhere

The time is ripe for U.S. companies to press for global antibribery enforcement.

**THE FAILURE OF MANY INDUSTRIALIZED NATIONS** to meet their commitments under the 1997 Organisation for Economic Co-Operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD convention) creates a substantial disadvantage for corporations subject to U.S. jurisdiction because the United States has the world’s strongest enforcement program. This disadvantage is especially troubling during a world recession when there is a desperate scramble for global orders and sales, and when some nations ignore their enforcement obligations under the OECD convention in order to promote trade and protect jobs, allowing companies in those nations to bribe overseas with impunity.

Nonenforcement is, in fact, pernicious protectionism.

A new administration in Washington, D.C.—committed to transparency, integrity, and fair competition—creates an opportunity to have U.S. business voices heard and acted upon, especially in this time of global turmoil.

When I first became general counsel of General Electric Company in 1987, some in American business sought to water down the Foreign Corrupt Practices Act because it was allegedly hurting U.S. competitiveness. A number of us argued instead that the law should be “leveled up,” not “leveled down.”

Thus began the quest for the OECD convention and the formation of Transparency International, the global anticorruption NGO (disclosure: I was part of that effort and now serve on the board of Transparency International–USA). As discussed below, the “level up,” rather than “level down,” position is as right today as it was then. Then there was the hard problem of putting laws prohibiting foreign bribery on the books in the industrialized world. Today, there is the hard problem of having those laws enforced energetically and uniformly.

**ILLUSTRATION BY PHIL FOSTER**
The Problem
Currently, 37 countries have ratified the anti-bribery OECD convention and have enacted national laws, comparable to the U.S. Foreign Corrupt Practices Act, which prohibit bribery of foreign officials by transnational companies. These nations account for more than two-thirds of world exports. But the efforts to implement the convention at the national level have been mixed at best. The basic problem: The OECD itself has no enforcement powers. It can only monitor efforts of signatory nations through its highly professional Working Group on Bribery, provide reports about member state findings. According to a 2008 Transparency International study, even among the 34 signatory nations—including the United Kingdom and Japan—have taken little or no action in enforcing the national anti-bribery laws required by the OECD convention. By contrast, late last year Siemens AG agreed to pay a record $1.3 billion to U.S. and German authorities for accounting and conspiracy offenses resulting from probes that the Munich-based company allegedly paid more than $500 million for expenses for lobbying in the United States, among other things. The US must also use its multilateral clout in the G8 group of major exporters (Canada, France, Germany, Italy, Japan, Russia, the UK, and the US) to make anticorruption enforcement a priority. Individual U.S. companies need actively to push the U.S. government to take more multilateral and bilateral actions that lead to meaningful member state efforts to live up to their enforcement obligations under the convention. A corporate campaign is under way that provides a ready vehicle to pressure member states, including the Chamber of Commerce, the AFL-CIO, the National Association of Manufacturers, the National Foreign Trade Council, and the United States Council for International Business, and—in coordination through Transparency International USA. The actions
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