

Addressing the Challenges of International Bribery and Fair Competition 2003

**The Fifth Annual Report Under Section 6
of the International Anti-Bribery and
Fair Competition Act of 1998**

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THE SECRETARY OF COMMERCE
Washington, D.C. 20230

The Honorable Richard Cheney
President of the Senate
Washington, DC 20510

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. President and Mr. Speaker:

It is with great honor that I provide to Congress the fifth annual report mandated by the International Anti-Bribery and Fair Competition Act of 1998 (IAFCA). Section 6 of the IAFCA directs that the Secretary of Commerce submit a report to the Senate and the House of Representatives assessing progress on the implementation of the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Antibribery Convention) and addressing other related matters.

I am pleased to report that an important milestone was reached in 2003 with regard to implementation of the Antibribery Convention. With the adoption in January by Turkey of implementing legislation, all 35 signatories now have laws in force to criminalize the bribery of foreign public officials in international business transactions. The other country that had not yet done so as of last year's report, Chile, adopted such laws in October 2002. While Ireland remains the only country that still must deposit its instrument of ratification with the Secretary-General of the OECD, we understand that Ireland nonetheless is in a position to prosecute cases of bribery of foreign public officials. We expect Ireland to respond to all credible allegations of bribery and to deposit its instrument of ratification this year.

Aggressive enforcement of these important laws must be a priority for each Party to the Antibribery Convention. I am pleased to report that several Parties are investigating or prosecuting cases of bribery of foreign public officials under their implementing laws. In addition, we have seen a noticeable drop in reports of alleged instances of bribery, from an average of 60 contracts a year to just 40 over the past year. While it is much too early to properly attribute the drop to any specific cause, we hope it is a combination of a perceived willingness of Parties to prosecute cases and compliance by companies with these new laws. We will watch these developments very closely in the coming year.

To assist Parties in establishing effective regimes to investigate and prosecute cases, over the past year OECD Ministers secured additional funds and a commitment for expedited monitoring activities of the Working Group on Bribery. The United States Government was

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The Honorable J. Dennis Hastert
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instrumental in securing these objectives. To support this important work, earlier this year my Department provided a grant of \$100,000 targeted specifically for these enforcement reviews. Enforcement reviews of Iceland, Germany, and Bulgaria were completed over the past year. A review of Canada is currently underway, and a schedule for other countries has been established. We will continue to support this vital work of the OECD and ensure that the high standards set for these reviews are met.

Over the past year, the U.S. Government continued efforts to urge Parties to address credible allegations of bribery of foreign public officials. To support future efforts, the Department has instructed its Foreign Commercial Officers to bring credible allegations of bribery by foreign competitors to the attention of appropriate U.S. Government officials.

The Bush Administration is determined to secure concerted international action to address corruption in its many forms and on its many fronts. Consistent with Trade Promotion Authority (TPA), we are seeking and obtaining binding commitments in trade agreements that promote transparency and that specifically address the corruption of public officials. Also consistent with TPA, we are vigorously seeking to secure meaningful agreements on trade facilitation and transparency in government procurement in the World Trade Organization. We have also secured agreement among the Group of Eight countries to a collection of initiatives to fight corruption and the mismanagement of public resources.

In May, I led the U.S. delegation to the Third Global Forum on Fighting Corruption and Safeguarding Integrity (Global Forum III) hosted by the Republic of Korea in Seoul. In my remarks to Global Forum III attendees, I reiterated my firmly held belief that fighting corruption remains the shared responsibility of governments, the private sector, and civil society. Governments must adopt and enforce effective anti-corruption laws. Corporations must establish awareness and compliance programs and their officers must be responsible corporate stewards. Corporations working in free markets can spread the essential values of honest competition and the rule of law. Finally, civil society and the media can act through vigilance in exposing corruption to the sunshine of public scrutiny.

In his televised remarks to Global Forum III attendees, President Bush commended participants to the important cause of putting an end to "an ancient injustice that protects the undeserving and holds back the hopes of millions." We all bear a moral responsibility to assist the millions trapped in global poverty discover lives of hope, freedom, and opportunity.

Sincerely,

A handwritten signature in black ink, appearing to read "D. L. Evans", written in a cursive style.

Donald L. Evans

Executive Summary

This fifth annual report under the International Anti-Bribery and Fair Competition Act of 1998 (IAFCA) examines the progress that signatory countries have made in implementing and enforcing the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-bribery Convention).

All 35 signatories have enacted legislation to implement the convention, and two-thirds of these signatories have had these laws for more than three years. We understand that several countries have investigations under way and that one or two countries have prosecutions planned. However, except for the U.S. government, no other party has prosecuted a case of bribery of a foreign public official under its implementing legislation and obtained a conviction. Since July 1, 2002, the U.S. government has instituted several enforcement actions, 14 in the prior year.

In his videotaped remarks in May 2003 to participants at the third Global Forum on Fighting Corruption and Safeguarding Integrity (Global Forum III), hosted by the government of South Korea, in Seoul, President George W. Bush stated: “Fighting corruption is essential to meeting the great challenges of our times. Peace-loving people everywhere are confronting the forces of global terror. Societies on every continent are striving for greater freedom and democracy, and more and more

nations are building their prosperity through markets and trade. Corruption undermines all of these enterprises.”

This report reiterates the important message of last year’s report that all parties must demonstrate the political will to accord priority to the active and effective enforcement of national anti-bribery laws; the negative consequences of inaction are far too great.

Reviews of Ireland’s implementing legislation—as well as amendments by Hungary to correct for deficiencies in its implementing laws—are included herein. U.S. government assessments of the implementing legislation of the 29 countries reviewed in prior years, as well as more comprehensive background and resource material, can be found in earlier reports available at www.export.gov/tcc.

This report also addresses other issues identified in the IAFCA. Among these are steps taken by signatories to implement the OECD recommendation to disallow the tax deductibility of bribes and an assessment of anti-bribery programs and transparency in several major international organizations.

Major Findings

Meaningful progress continues in the implementation of the convention. As of June 7, 2003, all 35 signatories had adopted laws to implement the convention. Since our last

report, Chile and Turkey have completed this important task. The legislation of Ireland, reviewed in this report, appears to meet most of the obligations of the convention, although we do have some concerns related to jurisdiction and sanctions. In addition, Ireland remains the only signatory that must still deposit its instrument of ratification with the OECD.

Some parties (e.g., the United Kingdom, Japan, the Slovak Republic, and Hungary) have taken steps to correct some of the deficiencies in their implementing legislation identified by the OECD Working Group on Bribery. Work by several of these parties, and other parties, remains to be undertaken and accomplished. In 2003 the United Kingdom introduced a new anti-corruption bill into Parliament, and we understand Japan plans to make further amendments to its laws implementing the convention.

As of June 7, 2003, the OECD Working Group on Bribery had completed two additional Phase II reviews of enforcement regimes in Germany and Iceland. This brings the total number of reviews completed to four. A review of Bulgaria will soon be completed, a review of Canada was undertaken at the June 2003 plenary session of the working group, and reviews of France and Norway are scheduled for October and December 2003, respectively.

Unfortunately, the Phase II review process has not proceeded as rapidly as the U.S. government had expected. We will continue to encourage all participants in the OECD Working Group on Bribery to provide adequate resources to the group and to increase the number of such reviews undertaken each year significantly. We believe that enforcement reviews for all parties should be completed on a cycle of no more than five years, which requires—with the present number of parties—that at least seven reviews be conducted each year. In December 2002, we met with some success when the OECD Council agreed to re-allocate OECD budget funds to support peer review of convention enforcement.

We are encouraged by information coming to our attention that several parties are pursuing allegations of bribery of foreign officials and that some prosecutions may indeed soon be brought. In addition, we estimate that between May 1, 2002, and April 30, 2003, the competition for 40 contracts worth \$23 billion may have been affected by bribery by foreign firms of foreign officials. This is a noticeable drop from the previous five years, which averaged very close to 60 contracts each year. While it is much too early to properly attribute the drop to any specific cause, we hope it is a combination of a perceived willingness of parties to prosecute cases and

compliance by companies with these new laws. We will monitor these developments very closely in the coming year.

Over the next year we will continue to strongly urge parties to address all credible allegations of bribery of foreign public officials. When information is received relating to acts of bribery that may fall within the jurisdiction of other parties to the convention, the information will be forwarded, as appropriate, to national authorities for action.

On October 17, 2002, New Zealand adopted legislation to deny the deductibility of bribes paid to foreign and domestic public officials in the conduct of business. Now, each of the 35 signatories to the Antibribery Convention has affirmed that bribes paid to foreign public officials are not tax deductible. Despite important positive steps taken by the remaining signatories to disallow the deductibility of bribes, we remain concerned that the practice of tax deductibility still continues. Careful monitoring is needed to ensure that the rules are actually enforced; the United States will continue to play an active role in this effort.

The U.S. government continues to advocate for a careful and deliberate approach for expansion of Antibribery Convention membership. We believe that the primary focus should be to attract countries that are important global market participants and whose accession to the convention would bring significant mutual benefits. The financial resources of the working group are not sufficient to permit a rapid expansion of membership without reducing OECD staff support for priority activities like peer review of convention enforcement.

The U.S. government believes that the issues of bribes to political parties and candidates, and the other issues identified by the OECD Council in 1997 related to possible coverage by the convention, continue to merit the attention of the working group. However, at this time we believe that the focus of the OECD Working Group on Bribery and parties to the Antibribery Convention should be on enforcement of the convention, especially given the resource constraints faced by the group.

The U.S. government continues to believe that raising public awareness of anti-bribery laws is another very important element in making the convention a success. This includes informing the relevant prosecutorial authorities of the new tools they have to prosecute corruption, as well as counseling businesses and the general public about anti-bribery laws. Based on reports from U.S. embassies and public sources of information, we continue to be discouraged by the lack of attention given to this very important implementation issue.

The United States will continue to encourage other governments to increase public awareness within their countries. We will also continue to urge other governments to promote awareness of the convention and national laws in their business communities and to encourage businesses involved in international trade to develop and adopt corporate compliance programs.

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Introduction

Of the 6 billion people on this planet, nearly half subsist on less than two dollars a day. While the issue of poverty is complex, it cannot be disputed that corruption contributes to the cycle of poverty. The bribery of public officials is a pernicious form of corruption. Bribes to corrupt public officials, those charged with the public trust but lacking a moral compass, deprive countries of the resources needed to promote growth and development, keeping too many in a state of poverty.

One of the most important instruments in the fight against corruption established by the governments of developed countries is the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Antibribery Convention). The convention obligates the parties to criminalize bribery of foreign public officials in the conduct of international business. It proscribes the activities of those who offer, promise, or pay a bribe. For this reason, the Antibribery Convention is often characterized as a “supply side” agreement, as it seeks to affect the conduct of companies in exporting nations.

The Antibribery Convention entered into force in 1999, and as of June 7, 2003, all of the convention’s 35 signatories¹ had laws on their books making it a crime to bribe a foreign public official. As of July 2003, the convention has been in force for over three years for

almost two-thirds of the signatories. Although the U.S. government recognizes that achieving the convention’s goals will take time, other parties to the convention must begin showing real progress toward bringing prosecutions under their new laws. We are not aware of any convictions obtained by parties to the convention for violations of laws implementing the convention, other than the cases the United States has prosecuted. All parties should take concrete steps in response to credible reports of bribery of foreign public officials and prosecute cases where the facts justify such action. Rigorous enforcement of each party’s respective laws implementing the convention is needed to maintain the convention as a credible multilateral, anti-corruption instrument. This fifth report to Congress describes the progress signatories have made in meeting their obligations under the Antibribery Convention.

At the same time, other efforts and vehicles must be used to fight corruption and complement the objectives of the Antibribery Convention. Programs to promote good governance and address corruption more broadly contribute to the goal of improving national welfare within individual countries. Accountability and transparency in governance are necessary foundations of economic progress and successful development and therefore constitute a primary objective of U.S. foreign policy. One example of an administration effort to

increase accountability and transparency of governments is the Millennium Challenge Account (MCA) announced by President George W. Bush in March 2002. The MCA will provide billions of dollars of extra developmental assistance to countries that, among other things, are engaged in promoting good governance and the fight against corruption. Progress in addressing corruption is one of several grounds for qualifying as an MCA recipient country. In addition, on June 2, 2003, President Bush and his G8 colleagues endorsed agreement on a transparency and anti-corruption action plan. It commits the G8 to, among other things, seek to deny safe haven to corrupt leaders and their assets, push for accelerated and effective implementation of the OECD Antibribery Convention, and establish pilot projects on public finance and procurement transparency in developing countries with large extractive industry sectors.

Enlisting the active support of the private sector is a key element in promoting the objectives of the Antibribery Convention. Because of the influence of the United States' Foreign Corrupt Practices Act of 1977 (FCPA), U.S. businesses have already developed corporate compliance codes and ethical guidelines to fight bribery and corruption. In addition, the OECD Guidelines for Multinational Enterprises were expanded in June 2000, to include a major section on combating bribery. Awareness by business of these instruments and the incorporation of these objectives in the private sector's approach to doing business are essential components of the convention's full implementation. As Commerce Secretary Donald L. Evans expressed in his remarks to participants at the third Global Forum on Fighting Corruption and Safeguarding Integrity (Global Forum III), in Seoul, South Korea, in May 2003: "Corporate governance is one aspect of corporate stewardship. Responsible corporate stewards are moral business leaders who strengthen democratic capitalism by working for the growth and success of both their companies and the communities in which they do business. Corporations, working in free markets, can spread the essential values of honest competition and the rule of law."

Background

The United States launched a campaign against international corrupt business practices more than 26 years ago with the passage of the FCPA. The law established substantial penalties for persons making payments to foreign officials, political parties, party officials, and candidates for political office to obtain or retain business.

Enactment of the legislation reflected deep concern by the American public about the involvement of U.S. companies in unethical business practices.

The FCPA had a major impact on how U.S. companies conduct international business. However, in the absence of similar legal prohibitions by key trading partners, American businesses were put at a significant disadvantage in international commerce. Their foreign competitors continued to pay bribes without fear of penalties, which resulted in billions of dollars in lost sales for U.S. exporters.

Recognizing that bribery and corruption in foreign commerce could be effectively addressed only through strong international cooperation, the United States undertook a long-term effort to convince the leading industrial nations to join it in passing laws to criminalize the bribery of foreign public officials. The Omnibus Trade and Competitiveness Act of 1988 reaffirmed this goal and called on the U.S. government to negotiate an agreement at the OECD on the prohibition of overseas bribes. After nearly 10 years, the effort succeeded. On November 21, 1997, the United States and 33² other nations adopted the Antibribery Convention. It was signed on December 17, 1997, and it entered into force for 12 of the signatories on February 15, 1999. All signatories to the convention also agreed to implement the OECD 1996 recommendation on eliminating the tax deductibility of bribes.

To implement the obligations of the United States under the convention, the U.S. Congress enacted the International Anti-Bribery and Fair Competition Act of 1998 (IAFCA), which amended certain provisions of the Securities Exchange Act of 1934 and the FCPA that relate to the bribery of foreign public officials. The United States ratified the convention on November 20, 1998, and deposited its instrument of ratification with the OECD on December 8, 1998. The convention entered into force for the United States on February 15, 1999.

Section 6 of the IAFCA provides that not later than July 1, 1999, and July 1 of each of the five succeeding years, the secretary of commerce shall submit to the House of Representatives and the Senate a report on implementation of the convention by other signatories³ and on certain matters relating to international satellite organizations addressed in the IAFCA.⁴

The United States has committed significant resources to the task of monitoring implementation of the convention. The Commerce, State, Justice, and Treasury departments have worked as a team to monitor implementation and enforcement of the convention. U.S. government agencies have established a comprehensive

monitoring process that includes active participation in the OECD Working Group on Bribery meetings on the convention, bilateral discussions with other governments on implementation and enforcement issues, and careful tracking of bribery-related developments abroad. Preparation of the annual reports to Congress is part of this process of making the convention an effective multilateral, anti-corruption instrument.

Conclusion

Although OECD countries have made significant progress over the past five years, a great deal of work still needs to be done in curtailing corruption, including bribery in international business transactions. The U.S. government receives ongoing reports indicating that the bribery of foreign public officials continues to influence the award of billions of dollars in contracts around the world. Aggressive enforcement of anti-bribery laws must be a priority for each party to the Antibribery Convention. The U.S. government is encouraged that several parties are investigating or prosecuting cases of bribery of foreign public officials under their implementing laws. Furthermore, we have seen a noticeable drop in reports of alleged instances of bribery, from an average of 60 contracts a year to just 40 over the past year. While it is much too early to properly attribute the drop to any specific cause, we hope it is a combination of a perceived willingness of parties to prosecute cases and compliance by companies with these new laws (see Chapter 9).

The U.S. government is steadfast in its commitment to reduce and eliminate the incidence of such bribery. Promoting good governance and rule of law throughout the world, while securing effective implementation and enforcement of the Antibribery Convention, will be instrumental in achieving that goal.

¹The 30 current member states of the OECD are Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, South Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, the Slovak Republic, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. In addition to these countries, Argentina, Brazil, Bulgaria, Chile, and Slovenia are signatories to the Antibribery Convention.

²In November 2001, Slovenia became the 35th signatory to the convention.

³The Senate, in its July 31, 1998, resolution giving advice and consent to ratification of the convention, requested that the

president submit a similar report on enforcement and monitoring of the convention to the Senate Committee on Foreign Relations and the speaker of the House of Representatives. The president delegated responsibility for this report to the secretary of state. In light of the similarity of the reporting requirements, the Commerce and State departments have worked together, in close coordination with the Justice and Treasury departments, the Office of the United States Trade Representative, and the United States Securities and Exchange Commission, to prepare the two reports.

⁴Congress also requested in the IAFCA that this report address certain advantages available to the international satellite organizations, the International Telecommunications Satellite Organization (INTELSAT), and the International Mobile Satellite Organization (Inmarsat). Since passage of the IAFCA, both Inmarsat and INTELSAT have been privatized and, as a result, there is no intergovernmental participation, including the U.S. executive branch, in these private companies. Therefore, reporting on these organizations has been terminated.



Ratification Status

The Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Antibribery Convention) entered into force on February 15, 1999¹ for 12 of the then 34 signatories.² With the adoption by Turkey in January 2003 of legislation to implement the Antibribery Convention, all 35 signatories now have implementing legislation (see Table 1). While Ireland adopted legislation to implement the convention in July 2001, as of June 7, 2003, the government of Ireland still had not deposited its instrument of ratification with the OECD and remains the only signatory not a party to the convention. Irish authorities expect ratification by October 2003, after the Irish “extradition order” has been amended.

Since our 2002 report to Congress, three signatories completed their domestic processes to implement the convention: Brazil, Chile, and Turkey. The legislation of these parties is scheduled to be reviewed by the OECD Working Group on Bribery in June 2003, October 2003 and January 2004, respectively. The OECD Working Group on Bribery assessments concluded up to June 2003 can be viewed at www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-document-31-nodirectorate-no-6-16889-31,00.html and through a link on the U.S. Commerce Department’s Trade Compliance Center Web

site at www.tcc.mac.doc.gov/cgi-bin/doi.cgi?226:54:458690964:17.

The OECD Working Group on Bribery reviewed Ireland’s legislation at its plenary session on June 12–14, 2002; a U.S. government assessment appears in Chapter 2 of this report. We expect to include U.S. government assessments of the legislation of Brazil, Chile, and Turkey in the 2004 report to Congress.

The following information is an update on the internal legislative processes completed by Brazil, Chile, and Turkey to enact implementing legislation since our 2002 report to Congress. This information is based on data obtained from U.S. embassies and reports from the signatories themselves to the OECD, the latter of which are publicly available at the OECD Web site referred to earlier in this chapter.

Brazil

Draft implementing legislation was approved by the president and submitted to Congress on February 20, 2001. The Federal Chamber of Deputies approved the bill in October 2001, and it was submitted for discussion by the Senate on November 1, 2001. The Senate approved Law No. 10.467/2002 on June 6, 2002, which was signed by

the president on June 10, 2002, and entered into force upon publication in the *Official Gazette* on June 11, 2002.

Chile

A bill to implement the Antibribery Convention was submitted to Parliament in December 2001, with a request by the executive in March 2002 that the bill be given urgency status. The Chamber of Deputies passed the bill in July 2002, and the Senate passed it in September 2002. The bill was published in the *Official Gazette* and entered into force the first week of October 2002.

Turkey

The Ministry of Justice and the prime minister approved draft implementing legislation, and it was submitted to Parliament on November 3, 2000. It was approved by the Justice Commission in 2001. The legislation was adopted by Parliament on January 2, 2003, and it entered into force upon publication in the *Official Gazette* on January 11, 2003.

Efforts to Encourage Implementation and Enforcement

Efforts over the past few years by the United States to encourage signatories to adopt implementing legislation and complete their ratification procedures have been successful. Personal involvement by the Secretaries of Commerce, State, and the Treasury over the past few years to

promote the prompt implementation of the Antibribery Convention has produced results, together with peer pressure applied in the OECD Working Group on Bribery. All 35 signatories have adopted legislation to implement the convention and are now in a position to prosecute cases of bribery under their jurisdiction.

Our current monitoring focuses on the enforcement of implementing laws. The Secretaries of Commerce, State, and the Treasury, as well as senior officials of these agencies, have used a variety of opportunities to comment on the importance of effectively enforcing national laws that implement the convention. For example, on May 31, 2003, in remarks during the closing plenary session to participants of Global Forum III, Commerce Secretary Donald L. Evans urged parties to take effective steps to rigorously enforce their anti-bribery laws. U.S. agencies will also continue to encourage the U.S. and foreign private sectors to support the convention through corporate compliance programs.

¹Article 15 of the Antibribery Convention states that the convention shall enter into force on the 60th day following the date upon which five of the 10 countries, which have the 10 largest shares of OECD exports and which represent by themselves at least 60 percent of the combined total exports of those 10 countries, have deposited their instruments of acceptance, approval, or ratification with the OECD Secretariat. For each signatory depositing its instrument after such entry into force, the convention shall enter into force on the 60th day after deposit of its instrument.

²On November 5, 2001, Slovenia became the 35th signatory to the convention, 60 days after it deposited its instrument of accession with the OECD Secretariat.

**Ratification Status of Signatory Countries to the OECD Antibribery Convention
(As of June 7, 2003)**

Signatory Country	Ratified	Legislation Approved	Instrument of Ratification Deposited with OECD Secretariat¹	Convention Enters into Force
Totals: 35	34	35	34	34
Argentina	October 18, 2000	November 1, 1999 ⁴	February 8, 2001	April 9, 2001
Australia	October 18, 1999	June 17, 1999	October 18, 1999	December 17, 1999
Austria	April 1, 1999	October 1, 1998 ²	May 20, 1999	July 19, 1999
Belgium	June 9, 1999	April 3, 1999 ²	July 27, 1999	September 25, 1999
Brazil	August 6, 2000	June 11, 2002 ²	August 24, 2000 ⁵	October 23, 2000 ⁵
Bulgaria	June 3, 1998	January 15, 1999	December 22, 1998	February 15, 1999
Canada	December 17, 1998	December 10, 1998	December 17, 1998	February 15, 1999
Chile	March 8, 2001	October 2002 ²	April 18, 2001 ⁵	June 17, 2001 ⁵
Czech Republic	December 20, 1999	April 29, 1999	January 21, 2000	March 21, 2000
Denmark	March 30, 2000	March 30, 2000	September 5, 2000	November 4, 2000
Finland	October 9, 1998	October 9, 1998	December 10, 1998	February 15, 1999
France	May 25, 1999	June 30, 2000	July 31, 2000	September 29, 2000
Germany	November 10, 1998	September 10, 1998	November 10, 1998	February 15, 1999
Greece	November 5, 1998	November 5, 1998	February 5, 1999	February 15, 1999
Hungary	December 4, 1998	December 22, 1998	December 4, 1998	February 15, 1999
Iceland	August 17, 1998	December 22, 1998	August 17, 1998	February 15, 1999
Ireland		July 9, 2001		
Italy	September 29, 2000	September 29, 2000	December 15, 2000	February 13, 2001
Japan	May 22, 1998	September 18, 1998	October 13, 1998	February 15, 1999
Korea	December 17, 1998	December 17, 1998	January 4, 1999	February 15, 1999
Luxembourg	January 15, 2001	January 15, 2001	March 21, 2001	May 20, 2001
Mexico	April 21, 1999	April 30, 1999	May 27, 1999	July 26, 1999
The Netherlands	December 13, 2000	December 13, 2000	January 12, 2001	March 13, 2001
New Zealand	May 2, 2001	May 2, 2001	June 25, 2001	August 24, 2001
Norway	December 18, 1998	October 27, 1998	December 18, 1998	February 15, 1999
Poland	June 11, 2000	September 9, 2000	September 8, 2000	November 7, 2000
Portugal	March 31, 2000	June 4, 2001	November 23, 2000	January 22, 2001
Slovak Republic	February 11, 1999	September 1, 1999 ³	September 24, 1999	November 23, 1999
Slovenia	December 2000	N/A	September 6, 2001	November 5, 2001
Spain	December 1, 1998	January 11, 2000	January 14, 2000	March 14, 2000
Sweden	May 6, 1999	March 25, 1999	June 8, 1999	August 7, 1999
Switzerland	December 22, 1999	December 22, 1999	May 31, 2000	July 30, 2000
Turkey	February 1, 2000	January 11, 2003 ²	July 26, 2000 ⁵	September 24, 2000 ⁵
United Kingdom	November 25, 1998	1889, 1906, 1916 ⁴ February 14, 2002	December 14, 1998	February 15, 1999
United States	November 20, 1998	November 10, 1998	December 8, 1998	February 15, 1999

¹ The convention entered into force February 15, 1999. The convention enters into force for all other signatories on the 60th day after each signatory deposits an instrument of ratification with the OECD.

² Date legislation came into effect.

³ Date partial implementing legislation came into effect.

⁴ The U.K. initially relied exclusively on existing legislation to implement the convention but adopted the Anti-terrorism, Crime and Security Act of 2002 on February 14, 2002, to address some of the concerns of the OECD Working Group on Bribery. On March 24, 2003, the U.K. government introduced a draft bill to modernize the existing law on corruption. Argentina relied on legislation implementing the Inter-American Convention Against Corruption (see Chapter 2 of 2001 and 2002 reports to Congress).

⁵ Deposited instrument of ratification with legislation still being drafted or before parliament.

Review of National Implementing Legislation

Introduction

This chapter contains a review of the implementing legislation of Ireland, the only signatory to enact legislation and have it reviewed by the OECD Working Group on Bribery since our 2002 report to Congress. We hope to include U.S. government assessments for Brazil, Chile, and Turkey in our 2004 report. Updated information for Hungary, a party that amended its legislation in the past year in response to the Phase I recommendations of the working group, is also provided below.

This report was prepared following the same procedures and using the same sources as described in prior reports.¹ The views contained in this chapter are those of U.S. government agencies and staff and not necessarily those of the OECD Working Group on Bribery. The Working Group Country Reports on the implementing legislation reviewed to date are made public on the OECD Web site at www.oecd.org and are linked through the U.S. Commerce Department's Web site at www.export.gov/tcc.

We are continuing to review information on relevant legislation and to monitor parties' implementation and enforcement of the convention, independently and within the OECD Working Group on Bribery. Further analysis of implementing legislation and related laws is required for us to have a thorough understanding of how each country is attempting to fulfill its obligations to meet

the convention's standards for criminalizing the bribery of foreign public officials. Equally important now that almost all signatories are parties to the convention will be how countries apply and enforce their implementing legislation (see Chapter 3).

Concerns about Implementing Legislation

Based on information currently available, we remain generally encouraged by the efforts of the other parties that have implemented the convention. However, for a number of countries, including Japan and the United Kingdom, we still have the same concerns that were listed in last year's report about how requirements have been addressed and, in some cases, the absence of specific legislative provisions to fulfill obligations under the convention. However, we understand that both parties plan to amend their legislation soon. On March 24, 2003, the U.K. government introduced a draft bill (i.e., the Corruption Act, see www.official-documents.co.uk/document/cm57/5777/5777.pdf) to modernize the existing law on corruption. Japan too may soon introduce legislation to address weaknesses identified by the working group, including potential problems with jurisdiction over the offense and the adequacy of sanctions.

Amendments to Implementing Legislation Described in Prior Reports

In December 2001, Hungary enacted amendments providing for criminal liability for managers for bribery acts by their employees, deleting the “unlawful disadvantage” defense, increasing prison sentences for natural persons, extending the statute of limitations for certain offenses, changing the definition of foreign public officials, and reworking its laws on confiscation of assets and bribe proceeds. This legislation entered into force on April 1, 2002. In December 2001, Hungary also enacted legislation establishing the criminal liability of legal persons for any intentional breach of the criminal code, including anti-bribery provisions. This legislation will enter into force upon publication of the act for Hungary’s accession to the European Union.

Hungary should be commended for taking action to improve its implementing legislation, particularly for introducing liability for legal persons, deleting the aforementioned defense, and increasing, at least for certain offenses, the statute of limitations, issues about which we raised concerns in our 2001 report. However, we are concerned that the new Hungarian law establishing criminal liability for corporations requires that certain conditions must be met in order to impose such liability. For instance, the legal person must have realized a gain when the alleged offense was committed by a person who is not associated with the legal person, and there must be an identifiable natural person employed by or who represents the company that has allegedly committed the bribery act, and that person must be convicted. These requirements raise concerns as to whether Hungary has fulfilled its obligations under Antibribery Convention Articles 2 and 3.1. Further, this legislation is dependant upon Hungary’s accession to the European Union, and it therefore is not likely to come into effect until mid-2004 at the earliest. Another problem is that Hungary has amended its definition of foreign public officials so that it now depends on the laws of other countries. This raises concerns about whether all foreign public officials as defined in Article 1 of the Antibribery Convention will in every case be covered. For a more detailed description of the Hungarian amendments, see: www.oecd.org/pdf/M00041000/M00041034.pdf.

U.S. Implementing Legislation: FCPA

In addition to the 1998 amendments to the Foreign Corrupt Practices Act of 1977 (FCPA) and the other actions

to implement the Antibribery Convention identified in prior reports, the United States has taken the following action since our last report to implement the convention:

On November 1, 2002, to conform to the Working Group’s Phase I recommendation, Congress approved amendments to the U.S. Sentencing Guidelines. The amendments adjust the sanctions for the bribery of foreign public officials to those applicable to bribery of domestic public officials.

Ireland²

Ireland signed the convention on December 17, 1997. The Irish president signed the Irish implementing legislation, the Prevention of Corruption (Amendment) Act of 2001 (2001 act), on July 9, 2001. With the exception of Section 4(2)(c), which apparently relates to domestic bribery, the 2001 act entered into force on November 26, 2001. As of June 7, 2003, the government of Ireland still had not deposited its instrument of ratification with the OECD, and it remains the only signatory not a party to the convention. Irish authorities expect ratification by October 2003, after the Irish “extradition order” has been amended.

Ireland has a common law legal system. Its pre-convention corruption laws generally are contained in the Public Bodies Corrupt Practices Act of 1889 and the Prevention of Corruption Acts of 1906 and 1916, which are the same laws that the United Kingdom claimed fulfilled its obligations under the convention (see 2001 report, Chapter 2, pp. 68–70, for an analysis of these acts). The Prevention of Corruption (Amendment) Act of 2001 was adopted to implement fully the convention (as well as international obligations in the European Union and the Council of Europe). Collectively, these laws are referred to as the Prevention of Corruption Acts, 1889–2001.

Overall, the Irish legislation appears to meet most of the obligations of the convention. Perhaps the most serious concern is that Ireland does not provide for nationality jurisdiction for offenses under the convention, although we understand it intends to do so for offenses committed by Irish officials and under anti-corruption legislation that implements its EU obligations. Finally, as with several other EU member states’ implementing legislation for the Antibribery Convention, there is some overlap between the definitions of a foreign public official and that of an EU public official, which is troublesome as the fines for the active bribery offenses of an EU official are lower than those provided for under the Irish legislation implementing its convention obligations.

Basic Statement of the Offense

The basic statement of the offense of bribery in the 2001 act, Section 2, provides that:

- (2) A person who:
 - (a) corruptly gives or agrees to give, or
 - (b) corruptly offers,
any gift or consideration to an agent or any other person, whether for the benefit of that agent, person or another person, as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence.

This section replaces Section 1 of the Prevention of Corruption Act of 1906. Although "gift" is not defined, "consideration" is defined in Section 2(5) of the 2001 act as including "valuable consideration of any kind." Section 2(5) also provides that a "principal" includes an employer. According to Irish authorities, corrupt intent is required, and bribery acts made through or to intermediaries and third parties are covered. The legislation goes beyond the requirements of the convention in that it covers both public and private sector bribery.

Jurisdictional Principles

Irish courts generally practice territorial jurisdiction. Section 6 of the 2001 act provides that a person may be tried in Ireland for an offense under the Public Bodies Corrupt Practices Act of 1889 or 1906 if any of the acts alleged to constitute the offense are committed in Ireland, notwithstanding that other acts constituting the offense were committed outside of Ireland.

Ireland only provides for nationality jurisdiction in cases of international bribery where the payor is a domestic public official (see Section 7 of the 2001 act). According to the Explanatory Memorandum accompanying the 2001 act, this was done so that an Irish official could not avoid prosecution simply by leaving the country to engage in corrupt acts. Obviously an Irish national could do the same, so it is unclear why nationals who are not officials are not covered. Furthermore, Ireland has provided for extraterritorial jurisdiction over Irish nationals in anti-corruption legislation implementing some EU instruments. See Section 45(2) of the Criminal Justice (Theft and Fraud Offences) Act of 2001. This differential treatment would appear to conflict with the requirements of Antibribery Convention Article 4.2.

Coverage of Payor/Offeror

The 2001 act applies to "a person." Pursuant to Section 11 of the Irish Interpretation Act of 1937, "person" includes natural and legal persons, or "bodies corporate." Furthermore, Section 9 of the 2001 act, concerning bodies corporate, provides:

- (1) Where an offence under the Prevention of Corruption Acts, 1889 to 2001, has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any wilful neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
- (2) Where the affairs of a body corporate are managed by its members, Subsection (1) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Coverage of Payee/Offeree

The 2001 act provides that any person who corruptly gives, agrees to give, or offers any gift or consideration to an agent or any other person will be guilty of an offense. Public officials are covered by the definition of "agent," as amended by the 2001 act:

- (5) In this Act "agent" includes
 - (a) any person employed by or acting for another,
[...]
 - (c)
 - (i) a member of the government of any other state,
 - (ii) a member of a parliament, regional or national, of any other state,
 - (iii) a member of the European Parliament (other than a person who is a member by virtue of the European Parliament Elections Act, 1997),
 - (iv) a member of the Court of Auditors of the European Communities,
 - (v) a member of the Commission of the European Communities,

- (vi) a public prosecutor in any other state,
- (vii) a judge of a court in any other state,
- (viii) a judge of any court established under an international agreement to which the State is a party,
- (ix) a member of, or any other person employed by or acting for or on behalf of, any body established under an international agreement to which the State is a party, and
- (x) any other person employed by or acting on behalf of the public administration of any other state.

Irish authorities have explained that this list is not exhaustive and that other types of persons not listed above may fall within the definition of “agent” depending on the facts of the case.

Penalties

Under Subsection 2(4) of the 2001 act, penalties for the basic offense of bribery vary depending on whether the case is concluded through a summary conviction or a conviction on indictment. For the former, which are tried in district court without a jury, the penalties are a fine not exceeding £2,362.69 (approx. €3,000 or \$3,530) or imprisonment for a term not exceeding 12 months, or both. For a conviction on indictment, which is generally tried in a circuit court before a jury, the penalties are an unlimited fine or imprisonment of a term not exceeding 10 years, or both.

The penalties for both domestic and foreign bribery are the same. However, under overlapping legislation implementing Ireland’s EU obligations, the fines for bribery of EU officials are lower: five years imprisonment and/or a fine. Irish officials have explained that this overlap would only occur in certain limited circumstances.

Confiscation of proceeds is provided for under Section 9 of the Irish Criminal Justice Act, after a conviction on indictment. Pursuant to the Irish Proceeds of Crime Act of 1996, civil forfeiture is also available and a criminal conviction is not a prerequisite. Apparently civil forfeiture is limited to property (the proceeds of the crime) valued at less than £10,000 (approx. €12,697 or \$14,943).

The Irish Companies Act of 1990, Section 160 provides for additional civil and administrative sanctions (e.g., court order disallowing the offender from being appointed or acting as an auditor, director or other offi-

cer in a company or disqualification for a period determined appropriate by the court).

Apparently there is no statute of limitations for indictable offenses. The statute of limitations for summary offenses is six months.

Books and Records Provisions

The Irish books and records provisions are contained in the Irish Companies Act of 1990. All companies are required to keep proper books and records on a continuous and consistent basis in accordance with the principles set forth in Article 8 of the convention. In addition, external audits are required for all but small, private limited companies. Apparently there are currently no provisions in Irish corporate law relating to internal audits. The Auditing Practices Board (U.K.) creates voluntary auditing standards that are publicized in Ireland by the Institute of Chartered Accountants. The Companies Act also contains provisions on auditing requirements.

Money Laundering

The provisions on money laundering are contained in Section 31 of the Criminal Justice Act of 1994, amended by Section 21 of the Criminal Justice (Theft and Fraud Offence) Act of 2001. Indictable domestic and foreign bribery offenses qualify as predicate offenses for purposes of Irish money-laundering legislation. According to Irish authorities, a conviction for the predicate offense is not required.

Extradition and Mutual Legal Assistance

The provisions of the Irish Extradition Acts, 1965–2001, govern extradition. Section 8 of the Extradition Act of 1965 generally provides that Ireland may allow extradition to a foreign country where that country is a party to a multilateral extradition treaty with Ireland, or under conditions of reciprocity. The Antibribery Convention would qualify as a multilateral treaty for purposes of extradition. Generally, Ireland will not extradite its nationals unless such extradition is provided for pursuant to a bilateral treaty or arrangement. It is unclear whether, in the event that Ireland refuses to extradite one of its nationals, the country would always refer the matter to its own prosecutorial authorities, as required by Convention Article 10.3, since Ireland does not have nationality jurisdiction for acts of bribery of foreign public officials committed abroad (see discussion under Jurisdictional Principles).

Ireland is a party to several international conventions on mutual legal assistance, and may also grant mutual legal assistance under the Criminal Justice Act of 1994.

Although dual criminality is usually not required for mutual legal assistance requests, dual criminality is necessary for requests concerning search and seizure, confiscation, and forfeiture. According to the Bankers Books Evidence Act of 1879, authorities may by court order inspect financial institution records for the purpose of gathering evidence.

Complicity, Attempt, and Conspiracy

According to the Irish Criminal Law Act of 1997, Subsection 7(1), a person who aids, abets, counsels, or procures the commission of an indictable offense will be punished as a principal. Under Subsection 10(2), anyone guilty of the offense of attempt is also subject to the same punishment as a principal committing the same offense. Irish authorities have explained that conspiracy is an

offense under Irish common law, and there is no distinction between attempt and conspiracy for bribery.

¹U.S. government assessments of the implementing legislation of the following 27 countries appear in the 2001 report: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Japan, South Korea, Mexico, Poland, Iceland, Italy, Luxembourg, the Netherlands, Norway, the Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom. Assessments of New Zealand and Portugal appear in the 2002 report.

²This summary of Ireland's legislation should not be relied on as a substitute for a direct review of applicable legislation by persons contemplating business activities relevant to these provisions.

Review of Enforcement Measures

Enforcement of National Implementing Legislation

As of July 2003, the convention has been in force for more than four years for 12 signatories, including five G7 countries, and for more than three years for almost two-thirds of the signatories. Although the U.S. government recognizes that achieving the convention's goals will take time, other parties to the convention must begin showing real progress toward bringing prosecutions under their new laws. The lack of such prosecutions is disappointing and disturbing.

The Antibribery Convention provided for systematic follow-up to monitor and promote its full implementation. As explained in greater detail below, this is a "peer review" process of two phases: Phase I, now substantially complete, evaluated the conformity of each party's laws with the requirements of the convention; Phase II, begun in late 2001, is intended to evaluate each party's actual enforcement of its laws. Unfortunately, the Phase II review process has not proceeded as rapidly as the U.S. government expected. We believe that enforcement reviews for all parties should be completed on a cycle of no more than five years, which requires—with the present number of parties—that at least seven reviews be conducted each year. The U.S.

government firmly believes that a rigorous Phase II enforcement process is necessary to encourage parties to take the necessary steps to investigate and to prosecute unlawful conduct by their domestic corporations. For that reason, we have encouraged all participants to provide adequate resources to the OECD Working Group on Bribery for it to conduct these reviews and to increase the number of such reviews undertaken each year significantly. In December 2002, we met with some success when the OECD Council agreed to re-allocate OECD budget funds to support peer review of convention enforcement.

In remarks during the closing plenary session of Global Forum III, hosted by the Republic of Korea, in Seoul, Secretary Donald L. Evans pointed out that to give life to commitments embodied in multilateral anti-corruption instruments like the Antibribery Convention, they must be backed with concrete actions. Such concrete actions include following up on all credible allegations of bribery, initiating prosecutions when evidence supports the allegations, and imposing sanctions that are effective, proportionate, and dissuasive. It is the responsibility of each party to implement and enforce its national laws independently, as well as to be proactive and not await Phase II review or other public scrutiny of its enforcement regimes. At this time, we are not aware

of any convictions obtained by parties to the convention for violations of laws implementing the convention, other than the cases the United States has prosecuted. We understand, however, that allegations of bribery payments to foreign officials are being pursued by certain parties, although we are aware of only one country that has brought charges thus far (in a case that has not yet gone to trial). We recognize that as with investigations in this country, the confidentiality of the procedures prior to prosecution may be a factor that does not allow us to obtain a full appreciation of the actions being undertaken by parties to investigate such cases. Nonetheless, all parties should take concrete steps in response to credible reports of bribery of foreign public officials.

With regard to reports in the general media of alleged bribery of foreign officials, we recognize that they are not always sufficiently credible to lead to an official response. Nevertheless, in many cases they should prompt prosecutors at least to make preliminary inquiries. Furthermore, prosecution by a government whose foreign officials were bribed is another avenue prosecutors in party states should utilize to develop information on potential violations. There have been several recent, well-publicized criminal prosecutions in Africa and Asia implicating companies from parties to the convention. These are examples of cases in which prosecutions under laws implementing the convention may result. The U.S. government expects and encourages each party to follow such cases and bring its own prosecutions if warranted. This is essential both to fulfill its obligations under the convention as well as to help support the rule of law in other countries.

Enforcement in the United States

In the United States, Foreign Corrupt Practices Act (FCPA) investigation of bribery of foreign public officials and prosecution are subject to the same rules and principles that govern any other federal criminal or civil investigation. To ensure that uniform and consistent prosecutorial decisions are made in this particular area, the Criminal Division of the U.S. Department of Justice supervises all criminal investigations under the FCPA.

In the 26 years since the passage of the FCPA, the U.S. Department of Justice has brought 38 criminal prosecutions, seven civil enforcement actions under the anti-bribery provisions of the FCPA, and 19 foreign bribery criminal cases utilizing federal criminal statutes other than the FCPA. In addition, the U.S. Securities and Exchange Commission (SEC) has brought several civil enforcement actions under the anti-bribery provisions as

well as hundreds of cases under the books and records provisions. Since July 1, 2002, the following enforcement actions have been instituted or concluded:

- *United States v. Robert Richard King and Pablo Barquero Hernandez* (W.D. Mo. 2001)
United States v. Richard Halford (W.D. Mo. 2001)
United States v. Albert Reitz (W.D. Mo. 2001).
A grand jury in Kansas City, Missouri, returned an indictment in July 2001 charging a Kansas City businessman and a Costa Rican national with *inter alia* conspiracy and substantive violations of the FCPA in connection with an alleged scheme to bribe officials and political parties in Costa Rica to obtain a concession to build a commercial port and resort. The defendant was convicted at trial in June 2002, and his appeal is pending. In addition, two co-conspirators pleaded guilty to conspiring to violate the FCPA. The remaining defendant, the Costa Rican agent, remains a fugitive.
- *United States v. Joshua Cantor* (S.D.N.Y. 2001)
In the matter of American Banknote Holographics Inc. (SEC 2001)
SEC v. Joshua Cantor, et al. (S.D.N.Y. 2003).
In a series of related criminal and administrative proceedings in July 2001, the U.S. Department of Justice and the SEC brought enforcement actions against an officer of American Bank Note Holographics (ABNH) and its former parent company, American Bank Note Inc., both of which were public companies, in connection with bribes paid to a Saudi Arabian official to obtain a contract to manufacture holographics for Saudi currency. Cantor, the president of ABNH, pleaded guilty to a felony violation of the FCPA, and ABNH agreed to a cease and desist order and agreed to pay a \$75,000 penalty based on its conduct. In April 2003, Cantor agreed to a settlement of an SEC complaint that imposed a 10-year ban on his acting as an officer or director of any public company; sentencing in his criminal case is still pending.
- *United States and SEC v. KPMG Siddharta Siddharta & Harsano and Sonny Harsano* (S.D. Tex. 2001)
In the Matter of Baker Hughes Inc. (SEC 2001)
SEC v. Eric L. Mattson and James W. Harris (S.D. Tex. 2001).
In a series of related civil and administrative proceedings in September 2001, the U.S. Department of Justice and the SEC brought enforcement actions

against Baker Hughes, two former company officers, and its foreign-based accountants in connection with the payment of a bribe to an Indonesian tax official to obtain favorable tax treatment. The foreign accounting firm and one of its partners agreed to a consent judgment. In addition, Baker Hughes agreed to a cease and desist order. The FCPA anti-bribery charges in the SEC complaint against the company's former chief financial officer and controller were dismissed by the trial judge on the basis of *U.S. v. Kay* (see below). The remaining books and records and internal controls charges were dismissed on a joint motion of the parties. The SEC has filed an appeal from the dismissal of the FCPA anti-bribery charges.

- *United States v. David Kay and Douglas Murphy* (S.D. Tex. 2001).

In April 2002, a district judge in Houston, Texas, dismissed an indictment charging the former chief executive officer and a vice-president of American Rice Inc., with violating anti-bribery provisions of the FCPA by paying alleged bribes to Haitian customs officials to accept false bills of lading and other shipping documents, thereby resulting in lower customs duties. The district court found that the alleged conduct was not "to obtain or retain business" as required by the FCPA. The government appealed this decision, and it was argued before the Court of Appeals for the Fifth Circuit in March 2003. A decision is expected shortly.

- *United States v. Gautam Sengupta* (D.D.C. 2002)
United States v. Ramendra Basu (D.D.C. 2002).

The defendants in these matters, both former officials of the World Bank, pleaded guilty to, among other charges, violations of the FCPA for receiving kickbacks and facilitating a bribe to a Kenyan official by a Swedish company. Sentencing is pending.

- *United States v. Richard G. Pitchford* (D.D.C. 2002).

In August 2002, Pitchford, the country manager of the Central Asia American Enterprise Fund for Turkmenistan, pleaded guilty to conspiracy, theft from a government program, and a violation of the FCPA in connection with bribes paid to a British official to assist a British company to obtain a contract from the fund. Pitchford was sentenced to a year and a day in prison, three years of supervised release, and a \$400,000 fine.

- *United States v. Syncor Taiwan* (S.D. Cal. 2002)
SEC v. Syncor International Corp. (D.D.C. 2002)
In the Matter of Syncor International Corp. (SEC 2002).

In a series of related criminal, civil, and administrative actions in November and December 2002, the U.S. Department of Justice and the SEC brought enforcement actions against Syncor International Corporation and one of its foreign subsidiaries in connection with bribes paid to doctors employed by government hospitals in Taiwan, Mexico, Belgium, France, and Luxembourg. In the criminal case, the foreign subsidiary was sentenced to a \$2,000,000 fine. In the civil case, the parent company agreed to pay a \$500,000 fine. In the administrative case, the company agreed to retain an outside consultant to advise it on developing adequate internal controls and compliance mechanisms.

- *United States v. James H. Giffen* (S.D.N.Y. 2003).

In April 2003, a grand jury sitting in New York returned an indictment against James H. Giffen, a U.S. national who acted as an advisor to the Republic of Kazakhstan and its officials in connection with the sale of rights to Kazakh oil fields and pipelines. The indictment charged Giffen with conspiracy, FCPA violations, mail and wire fraud, money laundering, and subscribing to false tax returns. In the addition, the indictment sought the forfeiture of \$84 million laundered through 11 Swiss bank accounts. Trial in this matter is pending.

Department of Justice Opinion Procedure

The U.S. Department of Justice has also provided assistance to American businesses engaged in international business transactions. Since 1980, the department has issued 39 opinions in response to requests from U.S. businesses stating whether it would take enforcement action if the requestors proceeded with actual proposed transactions. In 2003, the department issued one opinion:

In Opinion Release 03-01, the U.S. Attorney General opined that a U.S. company, which in the process of acquiring another U.S. company had discovered illicit payments, could proceed with the transaction without fear of FCPA prosecution for pre-acquisition payments in the circumstances described in the release. These circumstances included the disclosure to the SEC and the Department of Justice of the payments, both

companies' cooperation with the ensuing investigations, and implementation of rigorous compliance programs.

The opinion procedure is set forth at 28 C.F.R. Part 80. It is also available on the Fraud Section Web site at www.usdoj.gov/criminal/fraud/fcpa.html.

U.S. Efforts to Promote Public Awareness

For many years prior to the adoption of the Antibribery Convention, the U.S. government sought to educate the business community and the general public about international bribery and the FCPA. As a result, U.S. companies engaged in international trade are generally aware of the requirements of U.S. law. Since U.S. ratification of the convention and the passage of the International Anti-Bribery and Fair Competition Act of 1998, the U.S. government has increased efforts to raise public awareness of U.S. policy on bribery and initiatives to eliminate bribery in the international marketplace.

Officials of the Commerce, State, and Justice departments continue to be in regular contact with business representatives to brief them on new developments on anti-bribery issues and discuss problems they encounter in their operations. This close relationship and cooperation with the private sector was a contributing factor to the successful Phase II review of the United States conducted in March 2002 by examiners from two member countries and the OECD Secretariat. Additional information on public awareness programs of the U.S. government can be found in last year's report at www.export.gov/tcc.

Efforts of Other Signatories

Rigorous enforcement of these new laws against bribery of foreign public officials is one part of the process in making the convention a success. Another very important element is raising public awareness of the laws. While businesses are responsible for understanding and complying with the laws in the environments in which they operate, each party to the convention bears the responsibility of publicizing that bribes are no longer an acceptable way to obtain an international contract and that serious criminal penalties can be imposed upon those who bribe or attempt to bribe foreign public officials.

Based on reports from U.S. embassies and public sources of information, we are discouraged by the lack of

attention being given to this very important implementation issue. While some countries have taken steps to promote awareness of the convention, most have not. This unfortunate situation is being confirmed in most of the results of the enforcement reviews undertaken so far. The United States has the most extensive public outreach program of any signatory to the convention and appreciates the value provided by such activities. We urge other parties to the convention to undertake active public awareness programs. Such programs should include as an integral component advocacy of effective corporate compliance programs for businesses to ensure compliance with national laws implementing the convention. Full participation by governments, business, and civil society is critical to making the Antibribery Convention an effective deterrent to corruption.

Monitoring Process for the Convention

Monitoring is crucial for promoting effective implementation and enforcement of the convention by signatory countries. The OECD has developed a comprehensive monitoring process that provides for input from the private sector and non-governmental organizations. In addition to the OECD process, the U.S. government has its own intensive monitoring process, of which these annual reports to the Congress are an integral part. The United States continues to encourage all signatories to participate fully in the OECD monitoring process and establish their own internal mechanisms for ensuring follow-through on the convention by governments and the private sector. We have also stressed the importance of devoting sufficient resources to ensure that the monitoring process is effective.

OECD Monitoring

The OECD has established a rigorous process to monitor implementation and enforcement of the convention and of the 1997 Revised Recommendation of the Council on Combating Bribery in International Business Transactions (revised recommendation).

For a detailed description of the framework for monitoring the convention, which includes a summary of the modalities for the process, refer to this chapter in the 2001 report to Congress at www.export.gov/tcc. The modalities are also available on the OECD Web site at:

- www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-document-86-nodirectorate-no-6-7218-31,00.html for Phase I and

- www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-document-86-nodirectorate-no-6-7223-31,00.html for Phase II.

The questionnaires for both Phase I and II are also available on the OECD site at:

- www.oecd.org/EN/documents/0,,EN-documents-86-nodirectorate-no-26-no-31,00.html.

Through October 2002, the OECD Working Group on Bribery completed reviews of the implementing legislation of 32 signatory countries. These individual Working Group country reviews and annual reports to ministers are posted on the OECD Web site at:

- www.oecd.org/EN/document/0,,EN-document-86-nodirectorate-no-3-16889-31,00.html and
- www.oecd.org/EN/documents/0,,EN-documents-88-nodirectorate-no-11-no-31,00.html, respectively.

The U.S. government assessment of the implementing legislation of Ireland, reviewed since our last report, and an update of Hungary's implementation, are included in Chapter 2 of this report. For U.S. government assessments for those reviewed before then, refer to the 2001 and 2002 reports to Congress available at www.export.gov/tcc.

Phase II of the monitoring process—the goal of which is to study the structures in place to enforce the laws and rules implementing the convention and revised recommendation and to assess their application in practice—began in late 2001 with a review of Finland. Since then, the United States, Germany, Iceland, and Bulgaria have been reviewed. The U.S. government (Department of Justice and SEC) participated as a lead examiner in the Phase II enforcement review for Canada, which will be presented to the working group at its June 2003 meeting. The Phase II reviews of France and Norway are scheduled for October and December 2003, respectively.

Phase II Reviews of Germany and Iceland

Following are brief summaries highlighting various issues raised in enforcement reviews of Germany and Iceland, undertaken at the October and December 2002 OECD Working Group on Bribery meetings, respectively. For the more detailed analyses and recommendations of the working group, see:

- www.oecd.org/EN/document/0,,EN-document-31-nodirectorate-no-3-16889-31,00.html.

Although Bulgaria also underwent a Phase II evaluation this year, its working group report will not be posted until later this year. Therefore, in deference to the working group, our report will contain a summary of Bulgaria's Phase II report next year.

Germany

The German statute implementing the convention, the Act on Combating Bribery of Foreign Public Officials (ACIB), entered into force in February 1999. Although no cases have been brought, German authorities contend that they are investigating several cases at this time. The fact that no prosecutions have been brought, combined with Germany's federal system, made it difficult to conduct substantive analysis concerning several aspects of Germany's enforcement efforts. The working group encouraged Germany to institute procedures to enhance coordination and monitoring of foreign bribery investigations and prosecutions.

Although there have been some outreach efforts to increase public awareness of the ACIB and the convention in Germany, the working group recommended that more needed to be done. According to the report, codes of conduct are being more frequently used by German businesses. The working group noted that the government could do more to educate the private sector on the ACIB and promote such codes, particularly for small and medium-sized enterprises.

The working group also recommended that Germany institute a program of training law enforcement officials concerning foreign bribery investigations.

One of the main problems discussed in the report concerns Germany's lack of criminal liability for legal persons, as Germany provides for liability for legal persons under its Administrative Offenses Act. During the on-site review, the examiners found that, at least in some major areas such as Berlin and Frankfurt, administrative fines have rarely been imposed on legal persons for corruption offenses. The examiners also noted that the lack of criminal liability for legal persons could negatively affect Germany's ability to secure mutual legal assistance. Another problem with the liability regime for legal persons is that the standard of prosecutorial discretion differs under the Administrative Offenses Act for prosecution of legal persons, in that it is discretionary, compared with the mandatory standard for prosecution of natural persons in the criminal context. To resolve this problem, the working group recommended that Germany issue guidelines on the use of prosecutorial discretion. Additionally, the working group questioned whether the

available monetary sanctions for legal persons were effective, proportionate, and dissuasive in practice, as in principle they cannot exceed 1 million euros.

Iceland

Iceland's statutes that implement the convention (Act No. 147/1998, amending its general penal code, and Act No. 144/1998, on the criminal liability of legal persons), entered into force on December 30, 1998. Iceland has prosecuted very few cases for domestic bribery and no international bribery cases. There is a general perception in Iceland that there is little corruption. Its main industries, fishing and fish processing, are not ones that typically involve bribery of foreign public officials. As there have been no international bribery cases, the working group recommended that several issues be revisited as case law develops. These include the treatment of bribes paid through intermediaries and to third parties, the definition of foreign public official, criminal liability of legal persons, jurisdiction, and several other elements of the offense.

The working group suggested that the government of Iceland do more to promote awareness of the convention to its business community and to relevant government agencies. According to interviews with the private sector, although companies claimed that there is very little corruption on the part of Icelandic businesses, they admitted that it is difficult for them to monitor and be responsible for the actions of their agents. Private sector participants also expressed the view that, although they do not actively seek to bribe others, foreign public officials seeking bribes sometimes solicit them. The working group therefore recommended that the government of Iceland engage the private sector in a dialogue about these concerns and issue policy guidance.

Working Group Resources

With Phase II monitoring now under way, the working group has moved to a critical phase in making the convention an effective instrument—ensuring rigorous enforcement of the convention's obligations. However, the monitoring activities of the working group are resource intensive and, until recently, the OECD has not had adequate funds available to carry out peer reviews. The United States takes monitoring of the convention very seriously and has committed significant resources to this endeavor, at times through substantial supplemental funding for the working group. A recent example is the \$100,000 grant the U.S. Department of Commerce provided to the OECD Working Group on Bribery specifically for Phase II enforcement reviews. The United

States also demonstrates leadership by urging other OECD countries to provide financial support for anti-bribery work. In December 2002, the OECD Council agreed to re-allocate OECD budget funds to support peer review of convention enforcement. The decision was taken after the United States highlighted the critical importance of increasing resources to monitor implementation of the convention.

Monitoring of the Convention by the U.S. Government

Monitoring implementation and enforcement of the convention has been a priority for the U.S. government since it entered into force. The U.S. government is committed to ensuring full compliance with agreements with our trading partners. At the U.S. Commerce Department, monitoring compliance with the convention—and international agreements generally—remains a high priority. Other U.S. government agencies are also actively involved and making important contributions. The Commerce, State, Justice, and Treasury departments as well as the SEC continue to cooperate as an interagency team to monitor implementation and enforcement of the convention. Each agency brings its own expertise and has a valuable role to play.

In the year ahead, the U.S. Department of Commerce, in close collaboration with the State and Justice departments and other agencies, will continue its rigorous monitoring of the convention, with particular emphasis on monitoring the enforcement by parties of their laws implementing the convention. We will enhance our efforts to urge the relevant authorities in each party to address all credible allegations of bribery of foreign public officials. When information is received relating to acts of bribery that may fall within the jurisdiction of other parties to the convention, the information will be forwarded, as appropriate, to national authorities for action. The U.S. government recognizes that acts of bribery most often occur on foreign soil and that proactive efforts must be undertaken to help level the playing field for U.S. companies competing for international contracts. To support these efforts Commerce Under Secretary for International Trade Grant D. Aldonas spoke to more than 225 Commercial Service staff members at a recent training session and directed senior commercial officers to report to Washington credible allegations of bribery by foreign competitors. In addition, as a party to the convention, we must take preventive action when we learn that bribes are being solicited in international tenders. We will seek to engage other parties to take coordinated action when such allegations are made and

approach such governments to let them know our companies cannot pay bribes, will not pay bribes, and that such tenders must be decided on the commercial merits of proposals.

The United States continues to have the most intensive monitoring program of any signatory country. Our system is transparent and open to input from the private

sector and non-governmental organizations. We encourage other signatory countries to undertake similar programs and expect them to find it in their interest to ensure that other parties are complying with the obligations of the convention, so that we all make it a truly meaningful, multilateral anti-corruption instrument.

Laws Prohibiting Tax Deduction of Bribes

The OECD Council made an important contribution to the fight against bribery in 1996 by recommending that member countries that had not yet disallowed the tax deductibility of bribes to foreign public officials should reexamine such treatment with the intention of denying deductibility. This recommendation was reinforced in the OECD Council's 1997 Revised Recommendation on Combating Bribery in International Business Transactions, which laid the foundation for negotiation of the OECD Antibribery Convention. All 35 signatories to the convention agreed to implement the OECD Council's recommendation on denying the tax deductibility of bribes.

On October 17, 2002, New Zealand adopted legislation to deny the deductibility of bribes paid to foreign and domestic public officials in the conduct of business. Now, each of the 35 signatories to the Antibribery Convention have affirmed that bribes paid to foreign public officials are not tax deductible.¹ Some parties deny tax deductibility of bribes explicitly in their laws, while others only permit deductions for expenses specified in their tax laws or related to proper business activity.

Despite the important positive steps taken by signatories to the convention, we remain concerned that tax deductibility of bribes to foreign public officials may still be continuing. This continued practice may be due to one or more of the following reasons: the legal framework may disallow the deductibility of only certain types of

bribes or bribes by companies above a certain size; the standard of proof for denying a tax deduction (e.g., the requirement of a conviction for a criminal violation) may make effective administration of such laws difficult; the relevant laws may not be specific enough to deny deductibility of bribes effectively in all circumstances; and overly broad categories for allowable deductions may permit disguised bribe payments.

Furthermore, Phase II reviews by the OECD Working Group on Bribery have identified potential weaknesses in application of rules denying deductibility. For example, tax examiners may not be sufficiently aware of the laws or policies requiring the denial of tax deductibility of bribes to foreign public officials, especially where such prohibitions are not explicitly disallowed under domestic laws. Also, tax examiners may not be sufficiently trained in detecting the payment of bribes to foreign officials. Working Group proposals to ameliorate such concerns include the express denial of deductibility of bribes in a country's relevant laws and increasing awareness of tax authorities as to the non-tax deductibility of bribes through the issuance of guidelines and the provision of special training courses to assist in the detection of payment of bribes to foreign officials. In this regard, the *Bribery Awareness Handbook*, published by the OECD Committee on Fiscal Affairs, is a useful manual for tax officials to assist in the detection of bribes.

Whatever the nature of the legal or administrative gaps that perpetuate the practice of tax deductibility of bribes to foreign public officials, signatories to the convention are obligated to stop this practice. Further, all signatories must recognize that enactment of rules denying deductibility is only the first step. Careful monitoring must continue to ensure that the rules are actually enforced, and the United States will continue to play an active role in that effort.

¹As part of the monitoring process on the convention and the OECD Council's recommendation, the OECD gathers information on signatories' laws implementing the recommendation on tax deductibility. Information on current and pending tax legislation regarding the tax deductibility of bribes is available on the OECD Web site:

- www.oecd.org/EN/home/0,,EN-home-626-nodirectorate-no-no-no-31,00.html.

The information on the Web site is based entirely on reports that the signatories themselves provide to the OECD Secretariat.



Adding Signatories to the Convention

The OECD Working Group on Bribery and the United States believe that a targeted expansion of Antibribery Convention membership could help to eliminate bribery of foreign public officials in international business transactions. The United States expects that a small number of additional qualified applicants may satisfy the conditions for accession to the convention in the coming years. The working group is considering options to refine the existing criteria and procedures for accession. That work is expected to continue through the end of 2003. The United States is working closely with other members of the working group to develop constructive and practical approaches in response to the desire of other countries to be associated with the Antibribery Convention, the group, and its work. The United States continues to advocate a careful and deliberate approach to enlargement. The primary focus should be to attract countries that are important global market participants and whose accession to the convention would bring significant mutual benefit. The financial resources of the working group are not sufficient to permit a rapid expansion of membership without reducing OECD staff support for priority activities like peer review of convention enforcement.

Development and Application of Accession Criteria

Article 13.2 of the Antibribery Convention provides that it shall be open to accession by non-signatories that have become full participants in the OECD Working Group on Bribery. In addition, OECD commentaries on the convention permit non-signatories to participate in the working group provided that they accept the 1997 Revised Recommendation of the Council on Combating Bribery in International Business Transactions and the 1996 OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials. In October 1999, the working group reaffirmed the use of traditional OECD criteria for participation by non-member countries in OECD work as set forth in an OECD Council resolution: they should be “major players” whose inclusion would provide “mutual benefit.” Using these criteria, the working group approved the accession application of Slovenia in April 2001, and Slovenia acceded to the convention in September 2001. In its report to the OECD Council on Slovenia’s accession, the working group noted that resource constraints would have to be factored into future decisions on expansion. In addition, the group

cautioned that the recommendation for immediate, full participation of Slovenia should not be regarded as a precedent for future candidates. The United States and other members of the working group expressed special interest in seeking more regional diversity among prospective signatories.

In 2001 and 2002, the working group reviewed the applications of Croatia, Estonia, Latvia, Lithuania, and Romania after the OECD Council requested a “technical opinion” of their qualifications for accession to the convention. By the end of 2002, the working group had held several extensive discussions about the five candidates for accession but was not able to reach a consensus for any recommendation. Based on this experience of trying to apply the existing criteria for accession, countries in the working group decided that further work was needed to develop a shared understanding of how to apply them.

In December 2002, the OECD Council instructed the working group “to develop, on an urgent basis, recommendations consistent with the provisions of the convention, on institutional, structural and financial arrangements that will preserve the effectiveness of the convention and assure its openness to new parties.” The work began in early 2003, and the working group held an ad hoc special session in mid-April to discuss structural and financial aspects of enlargement. This work continues, and the working group is scheduled to deliver a progress report to the OECD Council during the summer of 2003.

Also in December 2002, the OECD Council decided to invite representatives of Estonia to participate in the Working Group on Bribery. The group will reassess the application of Estonia as a full participant in the working group in light of the results of its current deliberations on institutional arrangements.

Subsequent Efforts to Strengthen the Convention

At the time the Antibribery Convention was negotiated, the United States sought to include coverage of bribes paid to political parties, party officials, and candidates for public office. These channels of bribery and corruption are covered in the U.S. Foreign Corrupt Practices Act (FCPA). However, they are not specifically covered in the convention. Although the United States did not succeed in that effort, signatories to the convention did agree that a number of issues related to coverage should be studied further. In all, five issues relating to corruption and the convention were identified at the December 1997 OECD Council meeting for additional examination: bribery acts in relation to foreign political parties; advantages promised or given to any person in anticipation of that person becoming a foreign public official; bribery of foreign public officials as a predicate offense for money-laundering legislation; the role of foreign subsidiaries in bribery transactions; and the role of offshore centers in bribery transactions. These issues have been discussed to varying degrees over the past several years. However, although several countries have stated that they would make bribery of foreign public officials a predicate offense for their respective money-laundering legislation, irrespective of whether their systems made domestic bribery of public officials a predicate, no agreement has been reached to expand the scope of the convention to explicitly cover any of these matters. For a

more detailed discussion of these issues, refer to prior reports to Congress available at www.export.gov/tcc and www.state.gov.

While expanding the scope of the convention to include bribes to political parties and candidates is of particular importance to the U.S. government, unfortunately, to date, we have not persuaded other convention parties to include this broader coverage of bribery in the convention. The United States remains concerned that failure to prohibit the bribery of political parties, party officials, and candidates for office may create a loophole through which bribes may be directed at the present time and in the future. Although no such loophole exists in the FCPA, our experience shows that firms do attempt to obtain or retain business with bribes of this nature. In fact, the first case brought under the FCPA involved a payment to a political party and party officials. In the fight against corruption, bribes to political parties, party officials, and candidates are no less pernicious than bribes to government officials. Press accounts continue to indicate that corporations based in countries that are parties to the convention may still attempt to use this mode of bribery to obtain or retain business in foreign markets.

However, at this time the U.S. government firmly believes that the focus of the OECD Working Group on Bribery and parties to the Antibribery Convention should be on enforcement of the convention, especially given

the resource constraints faced by the group. We believe that individual action by each party to prosecute cases of foreign bribery and collective action by all parties to encourage such action is needed to keep the Antibribery Convention a credible multilateral anti-corruption instrument. Absent rigorous action to pursue legitimate allegations of bribery, and to prosecute cases where warranted, a real danger exists that the Antibribery Convention will soon be viewed as irrelevant. Companies based in countries that do not prosecute may continue to bribe with impunity, recognizing that the political will or the technical capacity does not exist at home to investigate their actions.

The U.S. government believes that the five aforementioned issues identified by the OECD Council continue to merit the attention of the working group, but not until long-term funding for the working group has been secured, and not until we are certain that adequate resources are available to support rigorous peer monitoring of enforcement. In the year ahead, we will continue to work with other delegations to identify effective ways to preserve the integrity of the convention and the important work of the OECD Working Group on Bribery. Those discussions will include periodic reviews of the appropriate scope for the expansion of the Antibribery Convention.



Anti-bribery Programs and Transparency in International Organizations

Congress directed that the annual report should include an assessment of anti-bribery programs and transparency regarding international organizations covered by the International Anti-Bribery and Fair Competition Act (IAFCA). More than 80 organizations fall within IAFCA purview. They include large institutions, such as the World Bank, International Monetary Fund (IMF), and the World Trade Organization (WTO), as well as smaller and less well-known technical bodies.

Under the convention, any official or agent of a public international organization is considered a “foreign public official” and thus must be covered by a legal prohibition against bribery. Since the Foreign Corrupt Practices Act (FCPA) did not include officials of public international organizations in its definition of a “foreign official,” the United States needed to amend the FCPA to bring it into conformity with the convention. The amendment, embodied in the IAFCA, applies this provision to all public international organizations designated by executive order under Section 1 of the International Organizations Immunities Act (22 U.S.C. 288) and to any other international organization designated by the president by executive order for the purposes of the FCPA.

U.S. agencies have selected for review several major international organizations that have the potential to affect international bribery on a large scale through their policies and activities. International financial institutions—including the IMF, the World Bank, and regional development banks—are particularly important because they extend financial or development assistance amounting to billions of dollars annually in countries around the world. These institutions have an important role to play in promoting good governance and in assisting borrowing countries to combat corruption. We have included the WTO, the United Nations, the Organization of American States (OAS), the Organization for Economic Cooperation and Development (OECD), and the Organization for Security and Cooperation in Europe (OSCE) because of their active work in promoting international anti-bribery initiatives and encouraging national governments to strengthen relevant domestic laws.

As a matter of policy, the United States seeks to encourage all public international organizations to maintain high standards of ethics, transparency, and good business practices in their operations. The greater attention given to international bribery issues over the past

several years, in the OECD and other fora, has helped to promote positive change in many organizations.

International Financial Institutions

Recognizing the importance of corruption as an international development and financial issue, the United States has, in cooperation with other shareholder countries, aggressively pressed international financial institutions to implement anti-corruption strategies, policies, and programs.

As a result, major financial institutions—the IMF and the multilateral development banks (MDBs): the World Bank, the European Bank for Reconstruction and Development, the African Development Bank, the Asian Development Bank, and the Inter-American Development Bank—are playing a growing role in promoting good governance, transparency, and accountability.

An overview of IMF and MDB anti-bribery and good governance activities is provided below. A more detailed discussion of significant steps taken by the IMF and MDBs may be found in earlier reports at www.export.gov/tcc. Relevant information is also in the reports of October 2001 and December 2002 submitted by the U.S. Department of the Treasury to Congress on MDB monitoring, supervision, and anti-corruption programs.¹ In addition, all of the international financial institutions post materials related to their good governance, transparency, and anti-bribery activities on their respective Web sites.²

All the aforementioned financial institutions are actively engaged in providing financial and technical assistance to borrowing countries to assist in combating corruption, including efforts to promote the rule of law, judicial reform, civil service reform, independent central banks, stronger procurement systems, independent audits of government programs, as well as efforts to counter financial abuse like money-laundering.

International Monetary Fund

The IMF has worked to improve transparency and governance at the IMF itself. It strongly encourages member countries to enhance transparency, strengthen governance, and take other steps to combat corruption.

IMF staff guidelines dated 1997 call for IMF staff to place a high priority on promoting good governance and outline ways this might be accomplished. Attention to good governance is reflected through a range of IMF work, including the promotion of codes and standards embodying good practices in terms of provision of high

quality and reliable data, openness in fiscal policy, and openness in monetary and financial policies. It is also reflected in policies that have expanded the range of IMF documents that are made available to the public, including through the IMF Web site, regarding both the institution itself and its relationships with member countries. Additionally, it is reflected in the use of conditions in lending programs to further objectives in specific countries.

Multilateral Development Banks

Since 1996, the boards of all of the MDBs have approved anti-corruption policies, and all of the MDBs now have anti-corruption or good governance policies in place. These policies are designed with both an internal focus to eliminate opportunities for corruption in institutional operations and an external focus to link lending to borrower progress in combating corruption and to help governments put in place strong governance systems. While more remains to be done to engage the institutions fully in the fight against corruption, progress has been made in recent years.

All MDBs have fraud investigative units or mechanisms. Most have established hotlines for reporting allegations and protections for whistle blowers. All the MDBs have added specific fraud and corruption language to their rules for the procurement of goods and services and for selection of consultants. The strengthened rules include sanction provisions. Firms and individuals have been debarred from participation in contracts financed by an MDB, either for a specified period or indefinitely. All the institutions have staff codes of conduct that prohibit unethical or fraudulent practices.

The World Bank has become the focal point for developing innovative methods for analyzing and quantifying corruption in individual countries. The World Bank Institute, which is a research and training arm of the World Bank Group, has created “diagnostic” approaches to measure and better understand the nature and scope of corruption. Information on the bank’s anti-corruption work may be found on the bank’s Web site:

- www.worldbank.org/wbi/governance, and
- www.worldbank.org/publicsector/anticorrupt.

All MDBs routinely discuss governance and corruption in their country strategies. However, the treatment of these issues in country strategies varies, and we are seeking an increase in candor and an improvement in the quality and timeliness of underlying diagnostic work.

A recent World Bank assessment, "Mainstreaming Anti-Corruption Activities in World Bank Assistance: A Review of Progress Since 1997" (prepared by the Operations Evaluation Department, April 2003), provides a comprehensive desk review of all World Bank initiatives in mainstreaming anti-corruption concerns in its work. In addition, it examines relevance and early outcomes of World Bank support for anti-corruption activities in six countries. Following the World Bank Board's discussion of the assessment, which is scheduled for July 2003, the assessment will be posted on the Web site of the World Bank.

The World Bank continues to place emphasis on fiduciary assessments, such as country procurement assessment reports, country financial accountability assessments, and public expenditure reviews. The World Bank and one of the regional MDBs jointly produce some of these assessments, and all assessments are shared among the MDBs. The World Bank has committed to working with its borrowers to produce a comprehensive set of these core fiduciary assessments by mid-2004. Moreover, the IDA-13 replenishment agreement of July 2002 sets out a timetable for the completion of core diagnostic studies for active recipient countries, with half of those studies planned for Africa. Reflecting the U.S. government's belief that more direct links between the findings of these diagnostics and lending decisions are critical, meeting the timetable is one of the conditions for the United States' additional \$100 million contribution in the second year of the IDA-13 replenishment, and additional \$200 million in the third (final) year.

The MDB Heads of Procurement Group, which initially focused on harmonizing procurement documents among MDBs, has produced some concrete results. Several "master" standard documents have been agreed: a bidding document for procurement of goods was completed in October 1999 and revised in July 2002, and prequalification documents for procurement of works were completed in October 2002. Progress has not been as rapid as had been anticipated, and strong commitment by all the MDBs will be needed to keep the process on track. The group also has facilitated discussions among its members on addressing fraud and corruption.

Over the past year, the regional MDBs have continued to undertake additional activities to improve governance and anti-corruption. For example, the Inter-American Development Bank's Oversight Committee on Fraud and Corruption posted its first semi-annual report on the bank's Web site. The Office of the Auditor General

of the Asian Development Bank (ADB) has conducted audit training programs and fraud investigation workshops in a number of the bank's borrowing countries. The African Development Bank has an explicit requirement that an assessment of governance concerns, including the impact of corruption on the effectiveness of the bank's interventions, be included in its country strategy papers. The European Bank for Reconstruction and Development is continuing its legal transition program, which aims to improve the legal environment of the countries in which the bank operates. This bank also is undertaking a corporate governance regional assessment project, which is designed to assess the status of corporate governance related laws and regulations in all 27 countries in which the bank operates.

All the MDBs have established, or are in the process of establishing, performance-based allocation mechanisms in their concessional loan windows, with a heavy emphasis on governance criteria, which provide more resources to countries that are successful in combating corruption and promoting good governance. The United States has taken the position that these allocation mechanisms could be expanded to the full MDB lending portfolio and should be made transparent to the public.

Major International Organizations

Organization of American States

The Organization of American States continues to play an active role in the fight against bribery and corruption in the Western Hemisphere. In public statements and joint resolutions, the OAS has emphasized its concern about the negative impact of corrupt practices on good governance, economic development, and other national interests. OAS member states are aware that corrupt practices thwart the process of economic and social development, undermine good governance, and pose an obstacle to the observance of human rights.

Debate in the 1994 OAS General Assembly sparked a long-term commitment to address the problems of bribery and corruption in the hemisphere. The Plan of Action of the first Summit of the Americas, held in Miami in 1994, mandated, among other things, negotiation of the Inter-American Convention Against Corruption (Inter-American Convention). The Inter-American Convention was successfully negotiated and signed by 21 countries on March 29, 1996. Seven additional countries later signed the convention, including the United States, which signed on June 2, 1996. The

Inter-American Convention entered into force on March 6, 1997. Twenty-nine countries had deposited instruments of ratification or accession with the OAS as of June 2003. The United States ratified the Inter-American Convention on September 15, 2000, and deposited its instrument of ratification on September 29, 2000.

The Inter-American Convention addresses a broad range of corrupt acts, including domestic corruption and transnational bribery. Signatories agree to enact legislation making it a crime for individuals to offer bribes to public officials and for public officials to solicit and accept bribes. It is, therefore, considerably broader in scope than the OECD Antibribery Convention, which covers only the offering, promising, or giving of bribes to foreign public officials.

Reflecting continued member interest in unethical practices, the OAS also adopted in 1997 the Inter-American Program for Cooperation in the Fight Against Corruption, which is ongoing. The program includes a strategy to secure prompt ratification of the Inter-American Convention, which has contributed greatly to the recent ratifications and accessions. Under its auspices, the OAS has conducted comparative studies of legal provisions in member states and drafted codes of conduct for public officials. The program also mandates implementing a system of consultations with international organizations, conducting media campaigns, and formulating educational programs.

The states parties formally established a follow-up mechanism on June 4, 2001, on the margins of the OAS General Assembly meeting in San Jose, Costa Rica. The mechanism created a committee of experts that is responsible for conducting reviews of convention implementation and issuing a report on each state party analyzed. The committee also has the responsibility for ensuring adequate civil society participation in the monitoring process. A conference of the states parties that have ratified the Inter-American Convention has the overall responsibility for the successful implementation of the mechanism.

The committee has met four times since its inception to design and launch the follow-up mechanism. After hearing presentations on the evaluation processes of the OECD and the Council of Europe Group of States Against Corruption, the committee adopted its rules of procedure. The committee chose as topics for the first round the articles pertaining to mutual assistance, technical cooperation, and civil society participation, as well as several provisions from the article on preventive measures. The experts established the order in which the

states parties will be reviewed: Argentina, Paraguay, Colombia, and Nicaragua form the first group, with the United States scheduled to be reviewed near the end of the first round. The committee selected by lottery the two-member teams that will be responsible for reviewing each of the 22 states parties. The United States will be reviewed by Jamaica and Panama, and will be responsible for participating in the review of the Bahamas and Canada.

All parties to the mechanism have responded to the first round questionnaire, and 14 have agreed to have their responses posted on the OAS Web site. The committee adopted its first report—on Argentina—at its February 2003 meeting and agreed to use the format of that report as the basis for future reports in this round. The reports for Colombia, Nicaragua, and Paraguay should be adopted in short order at the next meeting of the committee of experts, scheduled for July 2003, in conjunction with the first meeting of the conference of states parties since the mechanism began to function.

Organization for Economic Cooperation and Development

The OECD is a leader in the global fight against bribery and corruption and serves as a key forum for industrial countries in developing multilateral approaches to combat bribery and corruption. Through its activities, the OECD addresses corruption from the perspective of both the recipients of illicit payments, for example by promoting public ethics and good governance, and the providers of illicit payments, by promoting initiatives to stop the flow of such payments at their source. The OECD currently has 30 member countries, including most of the major trading partners of the United States. OECD members share a commitment to market-oriented policies, good governance, and democratic practices. Because of these common interests, consensus for joint action has often been more practical to achieve within the OECD than within larger, more diverse international organizations.

OECD support for international anti-corruption initiatives goes beyond negotiating the convention and monitoring its implementation. The OECD Anti-Corruption Division, the OECD Development Center, and the Trade Committee launched a number of these initiatives.

The Anti-Corruption Division is the focal point within the OECD Secretariat to support the fight against bribery and corruption in international business transactions. It supports the OECD Working Group on Bribery and is responsible for helping to implement a program of peer review and surveillance to monitor and

promote full implementation of the convention and related instruments. The division also engages in outreach activities with non-member countries that are not directly related to the Antibribery Convention. The division's Anti-Corruption Ring Online (AnCorR Web) offers access to more than 5,000 selected references to books, journals, papers, reports, and other documents related to corruption and bribery, as well as a wide range of downloadable electronic resources. AnCorR Web can be reached at www1.oecd.org/daf/nocorruptionweb/info.htm.

The purpose of the division's outreach activities is to expand the range of countries that incorporate the standards of the convention and other anti-corruption instruments, to raise awareness of the problems of corruption, and to strengthen cooperation between the various stakeholders involved in the fight against corruption. Initiatives included among the outreach programs are the Stability Pact Anti-Corruption Initiative for Southeast Europe, the Anti-Corruption Network for Transition Economies, the joint ADB/OECD Forum on Combating Corruption in the Asia-Pacific Region, and the Governance Outreach Initiative for Latin America.

Other important anti-corruption work has been undertaken in the OECD outside the division. With a view to taking measures to deter bribery in officially supported export credits, the OECD Working Party on Export Credits and Credit Guarantees (ECG) agreed in November 2000 on an action statement on bribery and officially supported export credits. Among other things, such action may include informing applicants requesting support about the legal consequences of bribery in international business transactions, having an applicant provide an anti-bribery undertaking or declaration, and refusal to approve credit, cover or other support if there is sufficient evidence that bribery was involved in the award of an export contract. In 2002, the ECG considered the results of its mapping survey on anti-bribery measures adopted in export credit systems, which showed that a significant number of concrete new measures had been put in place since the adoption of the action statement. ECG members also agreed on a revised in-depth survey, which better reflects the specific undertakings set forth in the action statement, and which should contribute positively to the ongoing review of the implementation of the OECD Antibribery Convention. The action statement can be viewed on the OECD Web site at www.oecd.org/ech/docs/bribery-en.pdf.

Seeking to build on the experience in the OECD, and given the deep-seated relationship of bribery and corruption to the entire global trading system, the U.S. govern-

ment supports work in the OECD Trade Committee on corruption as it relates to trade. An objective is to identify the practices or characteristics of a trade regime that may make it susceptible to bribery and corruption. The trade committee undertook an inspection of the available data sources regarding corruption in customs processing, import licensing, pre-shipment inspection, and government procurement. Some further work on the issue will be undertaken under other parts of the trade committee's work program (i.e., trade facilitation) or may be addressed under others (i.e., government procurement or governance).

The OECD Guidelines for Multinational Enterprises help to reinforce the Antibribery Convention. Originally adopted in 1976, the guidelines are non-binding recommendations to enterprises made by the 37 governments that adhere to them. Their aim is to help multinational enterprises operate in harmony with government policies and with the expectations of civil society. In the most recent revision adopted by the OECD ministers on June 27, 2000, a new chapter on combating bribery tracks closely the key provisions of the convention. While the guidelines are voluntary and not legally enforceable, they draw attention to the pernicious effects of bribery and corruption and encourage companies to take a proactive approach to addressing the problem.

Organization for Security and Cooperation in Europe

The Organization for Security and Cooperation in Europe is a regional security organization whose 55 participating states are in Europe, the former Soviet Union, and North America. The OSCE addresses issues in three primary areas: security, human rights, and economic security (which has been focused recently on corruption).

The United States is a founding member of the OSCE and participates in the process through a U.S. agency: the Commission for Security and Cooperation in Europe. The commission includes nine members each from the House and Senate, as well as three administration officials from the State, Defense, and Commerce departments. Assistant Secretary of Commerce William H. Lash III, in his role as commissioner, has addressed the underlying problems that threaten the economies of Europe, particularly rule of law, judicial insecurity, and corruption.

Over the past several years, the United States has sought to focus attention on the threats posed by organized crime and corruption in the region during several OSCE fora. Assistant Secretary Lash has spoken on the

pernicious effects of corruption at universities in the region, during press conferences, and with his ministerial counterparts. In addition, the U.S. Department of Commerce is cooperating with OSCE missions in implementing bilateral programs to promote business ethics in the public and private sectors.

United Nations

Over the past several years, the United States has been successful in bringing together a coalition of developed and developing countries in the United Nations to fight corruption and bribery, recognizing their impact on political, economic, and social development. While U.N. resolutions on bribery and corruption are non-binding, they have brought increased attention to the problem of corrupt practices and have encouraged member states to take action through national legislation and adherence to international agreements, such as the OECD Anti-bribery Convention and the Inter-American Convention Against Corruption.

Both the U.N. General Assembly and the Economic and Social Council have debated these issues at length and endorsed a number of resolutions in support of corrective action. Corruption and bribery have also been the subjects of specialized meetings, such as the U.N. Commission on Crime Prevention and Criminal Justice.

Beginning in 1996, the general assembly adopted a series of resolutions pledging specific actions to fight corruption and bribery. These included the establishment of an International Code of Conduct for Public Officials (Resolution 51/59) and pledges to criminalize bribery of foreign public officials, and to deny the tax deductibility of bribes paid to any public official or elected representative of another country.

In 1998, the general assembly called for international cooperation against corruption and bribery in international commercial transactions, and in 1999 adopted two resolutions calling upon governments to undertake anti-corruption and anti-bribery efforts in order to create an enabling environment for business, and strengthening national and international capacities to combat corrupt practices and bribery in international transactions.

Also in 1999, the United States led a successful effort to include a provision on official bribery in the Convention on Transnational Organized Crime. The provision obligates parties to the convention to establish as criminal offenses acts of bribery involving domestic public officials. The convention also addresses bribery of foreign public officials, but this provision is not mandatory.

In 2000, the U.N. General Assembly approved a resolution on crime and justice and established an effective

international legal instrument against corruption. The Crime Commission Secretariat analyzed existing international instruments, recommendations, and discussions relating to corruption; it also prepared a study for the Crime Commission's regular session in May 2001.

In 2001, the general assembly again condemned corruption, bribery, money laundering, and the transfer of funds of illicit origin. Resolution 56/188, "Preventing and Combating Corrupt Practices and Transfer of Funds of Illicit Origin and Returning Such Funds to the Countries of Origin," invited the U.N. Economic and Social Council to finalize its consideration of the draft terms of reference for the negotiation of a U.N. convention against corruption.

At the International Conference on Financing for Development (Monterrey, Mexico, March 18–22, 2002), U.N. members agreed that fighting corruption is a priority. They pledged to negotiate a comprehensive convention against corruption, including addressing the question of repatriating illicitly acquired funds and stronger cooperation to eliminate money laundering. Member states were also urged to become parties to the International Convention for the Suppression of the Financing of Terrorism (paragraph 65 of the Monterrey Consensus). In addition to General Assembly resolutions, several U.N. bodies are taking actions to combat bribery and corruption.

In January 2002, the United Nations, under the auspices of the U.N. Center for International Crime Prevention (CICP) of the U.N. Office for Drug Control and Crime Prevention (ODCCP), in Vienna, began negotiations to develop the first global convention relating to the fight against corruption. The terms of reference for the negotiations were developed by a group of experts from various member states who met in Vienna in August 2001. The convention will address a broad range of topics, including criminalization of corruption, measures governments can take to prevent corruption, international cooperation among parties, and measures to facilitate the recovery of illicitly acquired assets funneled abroad. Negotiators will meet at least three times per year in order to finalize the convention by the end of 2003. The United States is actively participating in the negotiations and has contributed funds so that representatives from developing countries can also participate in the negotiations.

At the 2002 World Summit on Sustainable Development in Johannesburg, U.N. member states reiterated the importance of anti-corruption measures as essential for sustainable development, and committed themselves to "the timely completion of the negotiations on a

comprehensive United Nations convention against corruption, including the question of repatriation of funds illicitly acquired to countries of origin.”

The CICP has also developed a global program against corruption that is now being implemented in several countries. This program begins with detailed studies as to the extent of the corruption problem in each participating country, and uses CICP experts to help participating governments create detailed plans for addressing identified problems.

In 2001, CICP issued a “toolkit” for fighting corruption, which is available on-line and updated periodically. In 2002, the CICP updated its manual on practical measures against corruption; this draft revision is being circulated for comment among member states.

The United Nations also has a global program against money laundering within the ODCCP. Its goal is to increase the effectiveness of international action against money laundering by offering comprehensive technical expertise to requesting member states. It focuses on three main areas of activity: promoting cooperation—training, institution building, and awareness raising; understanding the money laundering phenomenon—research and analysis; and raising the effectiveness of law enforcement.

The U.N. Commission on International Trade Law (UNCITRAL) continues to provide valuable legal assistance to countries interested in improving their procurement laws and regulations, thus limiting the opportunities for bribery and corruption. In 1994, UNCITRAL approved a model law on procurement of goods, construction, and services, which was aimed at preventing bribery and corruption. Several countries have based their procurement laws or standards on provisions of the UNCITRAL model law. Many of the new democracies in Central and Eastern Europe and the former Soviet Union have benefited from UNCITRAL projects. Albania and Poland, for example, have enacted legislation based on the UNCITRAL model law.

The United Nations Development Program (UNDP) has tackled corruption as a problem of poor governance. It recognizes that minimizing corruption is critical to reducing poverty and achieving sustainable development. UNDP country initiatives include supporting capacity building of independent anti-corruption commissions, strengthening journalism as a tool for deterring and exposing corruption; and helping to improve civic education to fight corruption.

The United Nations Conference on Trade and Development (UNCTAD), as part of its investment climate reviews on developing countries, has done work

on the impact of bribery on foreign direct investment. In 2001, UNCTAD published a paper on the impact of bribery of foreign public officials on foreign direct investment (UNCTAD/ITE/IIT/25). The paper examines transnational bribery in the context of international investment agreements, and how these agreements have addressed the issue of combating transnational bribery through international obligations by states to criminalize such transactions.

In February 2002, in Vienna, the United Nations convened an interagency anti-corruption coordination meeting in order to enhance the sharing of information and best practices among U.N. and other stakeholders in the fight against corruption. Organized by the ODCCP, it included agencies that are assisting countries and organizations fight corruption: CICP, the U.N. Office of Internal Oversight Supervision, the UNDP, the U.N. Department of Economic and Social Affairs, the Council of Europe, Interpol, the OECD, and Transparency International.

World Trade Organization

Bribery and corruption can affect international trade in many different ways. If left unchecked, they can negate market access gained through trade negotiations, undermine the foundations of the rules-based international trading system, and frustrate broader economic reforms and stabilization programs. U.S. firms report a variety of problems, but two key issues involve customs and government procurement. Bribes or “facilitation fees” from foreign customs officials can be an every day element of the customs importation process in many countries. U.S. firms’ experiences in bidding for foreign government procurement contracts consistently suggest that corruption frequently plays a significant role in determining how and to whom those contracts are awarded.

At the WTO Ministerial Conference in Doha, ministers agreed that new negotiations on trade facilitation and transparency in government procurement will take place after the fifth session of the ministerial conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations. Trade facilitation is critical to a country’s ability to create a stable border transaction environment that will attract investment opportunities and increased trade.

Similarly, the WTO Working Group on Transparency in Government Procurement is now focused on building consensus on elements for a potential agreement. Such an agreement will be an important addition to the rules-based international trading system by setting out basic

transparency obligations that suppliers throughout the world could expect to find in the government procurement systems of all members.

¹In accordance with the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2001, Sections 802(b) and 803(b)(1).

²The Web sites are *www.imf.org*, *www.worldbank.org*, *www.iadb.org*, *www.ebrd.com*, *www.afdb.org*, and *www.adb.org*.

Private Sector Involvement in Monitoring and Implementation

In the Omnibus Trade and Competitiveness Act of 1988, Congress directed the executive branch to pursue an agreement in the OECD concerning the bribery of foreign public officials in international business transactions. Since that time, the U.S. government has worked to build and maintain a strong cooperative relationship with the U.S. private sector, to combat international bribery and corruption and raise awareness of preventive measures. This relationship helped to achieve international agreement on the Antibribery Convention, and enactment of implementing legislation by the signatories. The U.S. government is committed to maintaining this valuable relationship as it seeks to ensure effective implementation and enforcement of the Antibribery Convention.

The Bush administration values input from the private sector and makes every effort to inform the private sector of its anti-corruption policies and programs. The private sector publicizes the convention, calls the public's attention to the problem of corruption and bribery in international business, and provides useful information on progress by signatories and their companies to combat corrupt practices.

To help ensure the success of Phase II peer reviews of enforcement, the U.S. government encourages the private sector and non-governmental organizations to play an

active role in monitoring implementation of the convention. Private sector participation in Phase II of the monitoring process is crucial. We will continue to advocate openness and transparency in the process. The active participation of the private sector and non-governmental organizations is vital to the effective implementation and enforcement of the Antibribery Convention.

Private sector organizations and the U.S. government continue to co-sponsor and participate in international anti-corruption conferences. The United States solicits the views of private sector organizations and companies about international anti-corruption strategies in the OECD and other international fora, including the United Nations, the Council of Europe, the World Trade Organization, the Organization of American States, and Asia-Pacific Economic Cooperation.

Senior officials of the Commerce, State, and Justice departments frequently engage private sector representatives in discussions about the convention and the need for strong enforcement of anti-bribery legislation by its parties. In November 2002, Commerce Secretary Donald L. Evans and Commerce Under Secretary Grant D. Aldonas took part in the Trans-Atlantic Business Dialogue (TABD) CEO Conference in Chicago, Illinois. The TABD's Chicago Conference Report, found at www.tabd.org/recommendations/Chicago02.pdf, notes the importance

of the Antibribery Convention, the role of the business community in implementing the convention, and the importance of adequate funding of Phase II evaluations.

In addition to senior-level contacts, officials of the Commerce, Justice, State, and Treasury departments communicate with the private sector on convention-related issues through a variety of other channels.

U.S. officials provide information on the convention to the private sector by participating in a wide range of meetings on the convention held by corporations, law firms, and business associations. In addition, U.S. officials attend meetings and hold informal consultations with groups that have a strong interest in combating international corruption, including Transparency International, the American Bar Association Task Force on International Standards for Corrupt Practices, the U.S. Council for International Business, and the International Bar Association.

U.S. agencies make use of the existing advisory committee structure as a forum for dialogue with the private sector when discussions go beyond the exchange of information and into the solicitation of recommendations of advice on specific matters of policy. For example, the U.S. Department of Commerce maintains an ongoing dialogue with the private sector through its regularly scheduled meetings of industry sector advisory committees, industry functional advisory committees, and the President's Export Council. Commerce officials have raised the issue of international bribery before the TABD, a public-private partnership in which U.S. and EU businesses meet to discuss trans-Atlantic trade barriers and relay their findings to governments. TABD members continue to stress the importance of fighting corruption and bribery at their annual conferences. The U.S. State Department receives input on bribery and transparency issues through its Advisory Committee on International Economic Policy. In addition, senior State Department economic policy officials frequently discuss U.S. policy for combating corruption on a less formal basis with business organizations and companies. In November 2002, Commerce Under Secretary for International Trade Grant D. Aldonas and State Under Secretary for Economic, Business and Agricultural Affairs Al Larson conducted an outreach roundtable for the business community on issues related to the Antibribery Convention.

In addition, the U.S. private sector participates in monitoring the implementation of the convention through international business groups, such as the OECD Business and Industry Advisory Committee, a group composed of private sector representatives from OECD member countries. This group strongly supports the convention and speaks out frequently on the need to fight corruption and bribery. The OECD Trade Union Advisory Committee has also endorsed the convention and its effective implementation.

The International Trade Administration's Trade Compliance Center uses its Compliance Liaison Program and other initiatives to enlist the cooperation of the private sector in monitoring bribery of foreign public officials and implementation of the convention. The business community and non-governmental organizations can help our anti-corruption efforts by reporting instances of alleged bribery and possible violations of convention obligations directly to the Trade Compliance Center at www.export.gov/tcc.

U.S. officials respond to public inquiries on the convention and the status of its implementation on a daily basis. The convention and related commentaries, as well as the full text of the IAFCA and other background materials, are posted on the Web sites of the Commerce, Justice, and State departments (see appendix to the 2002 report on the Commerce site). The Justice Department has posted on its Web site the responses of the United States to the OECD Working Group on Bribery's Phase I and Phase II questionnaires, as well as the working group's Phase I and Phase II final reports relating to the United States. The Commerce Department provides detailed information on the status of the implementation of the convention by our trading partners. The Commerce Department's Trade Compliance Center has included on its Web site a guide to help businesses understand key provisions of the convention. In addition, the U.S. Office of Government Ethics has a Web site with information on anti-corruption issues. The Department of State has issued a 2001–2003 edition of *Fighting Global Corruption: Business Risk Management*. This publication, prepared with the assistance of the Department of Commerce and Department of Justice, is designed to assist businesses and organizations in navigating the international anti-corruption environment, and is also found on the State Department's Web site at www.state.gov/inl/rls/rpt/fgcrpt/2001.

Additional Information on Enlarging the Scope of the Convention

The International Anti-Bribery and Fair Competition Act (IAFCA) directs the U.S. Department of Commerce to review additional means to enlarge the scope of the OECD Antibribery Convention, or otherwise increase its effectiveness, while taking into account the views of private sector participants and representatives of non-governmental organizations. Such additional means are to include, but not be limited to, improved record-keeping provisions and the possible expansion of the applicability of the convention to additional individuals and organizations. The IAFCA also asks that this annual report assess the impact on U.S. business of Section 30A of the Securities Exchange Act of 1934 and Sections 104 and 104A of the Foreign Corrupt Practices Act (FCPA).

Additional Individuals and Organizations and Other Means of Enlarging the Convention

The five issues identified by the OECD Council in December 1997 for additional examination have been the major focus of the OECD Working Group on Bribery's activities outside the realm of peer monitoring. They are addressed in Chapter 6 of this report. However, as discussed therein, at this time the U.S. government

firmly believes that the focus of the working group and parties should be on enforcement of the convention, especially given the resource constraints faced by the group.

After the U.S. government has more experience with monitoring the enforcement of the convention, we will be in a better position to assess its effectiveness in combating international bribery and to identify additional means for enlarging its scope and otherwise increasing its effectiveness. In making our assessment, we will continue to consult actively with representatives of the private sector and non-governmental organizations to obtain their views.

Improved Record Keeping

The provisions of Article 8 of the convention on accounting practices are not as comprehensive as those in Section V of the 1997 Recommendation of the Council on Combating Bribery in International Business Transactions. Article 8 directs signatories to take certain measures regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards in order to prohibit certain practices that might facilitate the bribing of foreign public officials or of hiding such bribery. The 1997 recommen-

dation, however, addresses a wider range of safeguards against corruption, including accounting requirements, independent external audits, and internal company controls.

The United States would like to see signatories to the convention implement all elements of Section V of the 1997 recommendation. The United States will continue to encourage signatories to institute the entire recommendation without delay.

Section 404 of the Sarbanes-Oxley Act of 2002 directs the Securities and Exchange Commission to adopt rules requiring each annual report of a company, other than a registered investment company, to contain a statement of management's responsibility for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and management's assessment, as of the end of the company's most recent fiscal year, of the effectiveness of the company's internal control structure and procedures for financial reporting. Section 404 also requires the company's independent auditor to attest to and report on management's assessment of the effectiveness of the company's internal controls and procedures for financial reporting in accordance with standards established by the Public Company Accounting Oversight Board. To implement Section 404, the SEC recently voted to adopt rules concerning management's report on its assessment of internal control over financial reporting, the independent auditor's report concerning management's assessment, and management certifications of disclosures in periodic Exchange Act reports. The SEC press release regarding these rules is available at www.sec.gov/news/press/2003-66.htm.

Impact on U.S. Business

The U.S. government has long been aware of the problems that the bribery of foreign public officials poses for international business and good governance. In the 1970s, widely publicized incidents of bribery by U.S. companies damaged the reputation of U.S. business. It was because of such problems that Congress enacted the FCPA to bring a halt to the bribery of foreign officials and to restore public confidence in the integrity of the American business system. Through the FCPA, the United States declared that American companies must act ethically in obtaining foreign contracts and carrying out business in foreign countries.

The impact of the FCPA was widespread. One positive effect was that the law contributed to the perception

that U.S. firms operate with greater integrity in the international market. In addition, U.S. businesses were induced to compete on the strength and quality of their goods and services, which helped them to be more competitive around the world. Over time, many companies recognized the importance and value of establishing awareness and corporate compliance programs specifically related to the FCPA as vehicles to prevent such bribery. But the FCPA also left U.S. firms at a disadvantage relative to their foreign competitors, who were able to bribe foreign officials without fear of penalty. Some foreign companies were even able to deduct bribes paid to foreign public officials from their taxes. The disparity between U.S. law and the laws of other OECD countries was one of the reasons the U.S. government sought to persuade other countries to prohibit bribes to foreign public officials and enact criminal prohibitions against the bribery of foreign public officials.

The negative consequences suffered by U.S. businesses occur not because of the FCPA, but rather when foreign competitors are not subject to comparable laws or when countries with such laws fail to enforce them. Today, all convention signatories have enacted criminal laws against foreign bribery. Therefore, the impact on businesses will be a function of the commitment all parties maintain with regard to the proscriptions embodied in the convention.

The U.S. government continues to assert that aggressive enforcement of these important anti-bribery laws should be a priority for each party to the Antibribery Convention. Based on information available from a variety of sources, the U.S. government has received reports indicating that the bribery of foreign public officials influenced the awarding of billions of dollars in contracts around the world. While it is not possible to verify the accuracy or completeness of all these reports, we believe that they are indicative of how widespread the bribery of foreign public officials has been in recent years. However, the U.S. government is encouraged that several parties are investigating or prosecuting cases of bribery of foreign public officials under their implementing laws.

We estimate that between May 1, 2002 and April 30, 2003, the competition for 40 contracts worth \$23 billion may have been affected by bribery by foreign firms of foreign officials. This is a sharp drop from the previous five years, which averaged very close to 60 contracts each year. The decline in alleged incidents of foreign bribery is based almost entirely on the actions of firms from two prominent OECD member states. There was no change in the number of contracts sought by non-OECD

member state firms, raising their share of this activity to 40 percent during the past 12 months. The number of defense contracts declined; the number of civilian contracts did not. U.S. firms are known to have lost at least eight contracts worth \$4 billion.¹ While it is much too early to properly attribute the drop to any specific cause, we hope it is a combination of a perceived willingness of parties to prosecute cases and compliance by companies with these new laws. We will monitor these developments closely in the coming year. Meaningful prosecutions by other parties will send the message to companies engaged in international commerce that competition on the strength and quality of goods and services is the way to conduct business, and that bribery will no longer be tolerated.

To ensure that businesses can compete on a level playing field, the U.S. government will continue to urge the relevant authorities in each party to investigate all credible allegations of bribery of foreign public officials.

We will also continue to urge other governments to promote awareness of the Antibribery Convention and of national laws implementing it in their business communities. Parties to the convention should encourage businesses involved in international trade to develop and adopt corporate compliance programs. The positive results of such actions will benefit all participants in trade, at home and abroad. We will continue to assess the impact of the convention on U.S. business in determining our policies on implementation of the convention and on efforts to strengthen its provisions.

¹We estimate that between May 1994 and April 2003, 514 contracts worth \$260 billion may have been affected by bribery of foreign public officials, with U.S. firms losing 118 of these contracts worth \$40 billion. Figures and additional information for prior years can be found in the 1999–2002 reports to Congress available at www.export.gov/tcc.