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(as prepared for delivery)

VICE PRESIDENT'S CONFERENCE ON CORRUPTION
Panel on "Global and Regional Anti-Corruption Frameworks"

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Opening

I am very pleased to have the opportunity to speak to you concerning the U.S. position on some of the international economic anti-corruption initiatives that you've been hearing about at this conference.

Bribery/Corruption Generally

As other speakers have indicated, the recent entry into force of the OECD Antibribery Convention is an event worth celebrating. Today, here at this conference, it is hard to imagine that there could have ever been arguments against adopting such laws. In the real world, unfortunately, international corruption is a serious problem. Bribery and corruption undermine the goals of economic and political development in individual countries as well as a level playing field for business throughout the world. We have all finally recognized that bribery and graft cause significant losses for everyone: governments, taxpayers, consumers, and businesses.

We in the U.S. Government have long been aware of the problem that bribery poses for international business. We have had our share of problems with corruption in both the domestic and foreign contexts - just like the rest of the world. In fact, before we had our law banning foreign bribery, investigations by the U.S. Securities and Exchange Commission (SEC) in the mid-1970s revealed that over 400 U.S. companies admitted making questionable or illegal payments in excess of \$300 million to foreign government officials, politicians, and political parties. At that time many U.S. public companies maintained cash "slush funds" from which both illegal campaign contributions were being made in the United States and illegal bribes were being paid to foreign officials. Scandals involving payments by U.S. companies to public officials in Japan, Italy, and Mexico led to political repercussions within those countries and damaged the reputation of American companies throughout the world.

The Foreign Corrupt Practices Act

It was because of these disclosures that U.S. Congress enacted the Foreign Corrupt Practices Act of 1977 (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 in accordance with the U.S. policy of encouraging the development of democratic institutions and honest, transparent business practices.

What does our law do? Basically, the FCPA generally requires all U.S. business entities and U.S. citizens to refrain from making any unlawful payments to foreign public officials, political parties, party officials, or candidates for public office for the purpose of obtaining or retaining business. In addition, the FCPA requires issuers of securities to institute adequate accounting controls and to maintain accurate books and records. Civil and criminal penalties were enacted for the failure to comply with this law.

The OECD Convention

After the passage of the FCPA in 1977, our companies complained that they operated at a disadvantage relative to their foreign competitors who were able to bribe foreign officials without fear of penalty. So, as you can imagine, we in the United States have sought to convince other countries to criminalize such behavior. Finally, we are gratified that criminalization of bribery of foreign officials has become embodied in a global convention sponsored by the OECD and signed by 34 of the world's major exporting countries. We will participate in the OECD Working Group on Bribery to ensure that the Convention's provisions are appropriately implemented.

Indeed, monitoring implementation of the Convention is one of our top priorities. In particular, we will participate with other OECD countries in an evaluation process in which member countries' implementing laws will be analyzed for their conformity with the letter and spirit of the Convention. In addition, we will continue our own efforts to monitor the status of other countries' implementation and ratification efforts and post relevant information on our Department of Commerce homepage, and our Trade Compliance Center website, at www.doc.gov. Moreover, we will persist in pushing hard for resources for the Secretariat to assist the Working Group on Bribery in carrying out its activities, especially in monitoring the implementation of the Convention by the Parties. As you know, in the second phase of the implementation procedure, these activities could include on-site visits to Parties' countries, which could be a considerable expense.

U.S. Implementation of the OECD Convention

Last fall the U.S. ratified the OECD Convention and passed implementing legislation which amended the FCPA. Since the Convention for the most part mirrors our law, we had to make only a few changes to come into full compliance.

First, as required by the Convention, our new legislation adds officials of international agencies to the definition of foreign public official.

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

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

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

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

Follow up Work in the OECD

We need to make sure we do not lose momentum. We need to address outstanding issues not fully covered by the Convention, such as bribes to political parties, candidates, and party officials. And even though the OECD Convention entered into force last week, there are many signatories to the Convention, such as France, Italy, the Netherlands, and Belgium, who have not yet completed the processes necessary for ratifying the Convention and passing implementing legislation. These four countries represent almost one-fourth of all OECD exports. We need them, and all other signatories, to join in this endeavor by ratifying the Convention and passing strong implementing legislation.

Furthermore, remarkably, several OECD member countries still allow tax deductions for bribes paid to foreign officials. Others allow tax deductions for these bribes unless there has been a criminal conviction relating to the bribery. And still others have “grandfathered” certain bribes to foreign officials and tax deductions for such bribes. This means that violations that began in the past may continue to be allowed. As you can see, our work in the OECD is far from over: it is really just beginning.

We are also working hard on other anticorruption efforts around the globe. Initiatives like the

OECD Convention, aimed at addressing the supply side of the corruption, need to be matched by anticorruption measures of other country groups in order to make the global fight against corruption truly effective.

The OAS Convention

One such instrument is the Inter-American Convention Against Corruption, or the OAS Convention. Because another speaker has addressed the substance of the OAS Convention, I would only like to briefly raise a few points concerning the U.S. position on this treaty.

The United States signed the OAS Convention in June 1996 and it was transmitted to the U.S. Senate in April 1998 as part of our ratification process. Like the OECD Convention, the OAS Convention obligates its parties to criminalize the bribery of foreign public officials. However, the OAS Convention also addresses corruption generally. In addition, while the OECD Convention is a supply-side agreement geared towards developed exporting countries, the OAS Convention, because it addresses both domestic active and passive bribery, is appropriate for transitional or developing economies.

Although the OAS Convention differs from the OECD Convention, the OAS Convention represents an important vehicle through which the United States can continue its dialogue with our neighbors on corruption issues. We view the OAS Convention as a important complement to the OECD convention. Our Secretary of Commerce has made U.S. ratification of the OAS Convention a high priority. We will be working with the private sector and our Senate in an effort to promote a better understanding of this important agreement.

Council of Europe, Criminal Law Convention

Another significant regional initiative that you have heard about today concerns the Council of Europe Criminal Law Convention. We in the U.S. Government appreciate the very important efforts to combat bribery and corruption undertaken by our European trading partners. We applaud their initiative in signing the Council of Europe Criminal Law Convention, which was opened for signature on January 27 of this year.

APEC and WTO

As we are all aware, corruption and cronyism were significant contributing factors in the recent Asian economic crisis. So we believe this year is a good time to emphasize the importance of anti-corruption and transparency initiatives in Asia and elsewhere.

As you know, at the APEC Summit in November in Kuala Lumpur, APEC Leaders focused on

economic recovery. They know that transparency (or openness of government processes) is key to restoring growth and open markets. APEC has already made significant strides on this issue. It has issued non-binding principles on transparency in government procurement and published best practices for open and competitive bidding. It has also covered transparency in its collective action plans on investment and services. Several APEC member countries have signed onto both the OECD and OAS Conventions.

We now have a base to build on in APEC to encourage more countries to sign onto other transparency related accords, such as those in the WTO. Transparency and due process in government procurement are critical factors in ensuring that public funds are invested productively, providing the greatest economic and social returns. In 1996, the WTO's agreement on government procurement went into effect. The WTO Agreement on Government Procurement has high standards and market access requirements. But only the European Union members and 11 other countries signed on. So we are now working with our trading partners to improve the agreement in hopes of expanding membership. And we hope to conclude a WTO agreement on transparency in government procurement later this year, which I encourage all countries to actively support. We hope this new agreement will address the basics of how governments should publish laws, and regulations, and procurement opportunities. We want to see governments put out clear criteria on how proposals will be evaluated and award contracts based on those criteria.

We in the U.S. Government are also currently working very closely with the private sector on an APEC agenda which will address bribery, corruption, and transparency from a variety of different angles. Among the ideas that we are developing is a hands-on training program designed to work with Southeast Asian SMEs and promote the use of internationally accepted accounting standards in their financial record keeping.

Africa

Africa Transparency Initiative

As you have already heard, representatives from eleven African countries have met several times now, most recently this week at a meeting held at the World Bank, in cooperation with the Global Coalition for Africa, to discuss principles against corruption and the possibility of an African Anticorruption Agreement. We in the U.S. Government wholeheartedly support such forward-looking efforts. Also, anticorruption will be one of the primary themes at the African Ministerial being held on March 16-18 here in Washington.

Commercial Law Development Program

On a more general level, the Commercial Law Development Program, or "CLDP," is a Department of Commerce, Office of the General Counsel, initiative funded in part by the Agency for International Development. The CLDP provides "rule of law" training and consultative services to

lawmakers, regulators, judges, lawyers and educators seeking assistance in the evaluation, revision and implementation of evolving legal systems. In the area of corruption, CLDP assists foreign governments to address areas such as government procurement, reform of the judiciary and government ethics issues, transparency and regulatory reform. We are currently developing proposals to expand these programs to other parts of the world, particularly Africa, and would appreciate any suggestions you may have.

Closing

So as you can see, we're very enthusiastic about these global initiatives to combat corruption in the economic sphere. It is our hope that all of you here will take the enthusiasm of this conference back to your own countries, and that together, we will all continue to make great strides in the battle against bribery and corruption.