



Testimony of William A. Reinsch
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Before the Senate Foreign Relations Committee

UN Convention Against Corruption
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Mr. Chairman and Members of the Committee, thank you for the opportunity to testify in support of Senate ratification of the UN Convention against Corruption. I am the President of the National Foreign Trade Council (NFTC), a trade association of more than 300 companies committed to an open, rules-based trading system. Along with our USA*Engage coalition, we support multilateral cooperation and economic, humanitarian and diplomatic engagement as the most effective means of advancing U.S. foreign policy interests and American values.

My testimony details the American business community's support for swift ratification of the Convention in accordance with the statements received from the Administration in its transmittal package.

American business understands that corruption is highly detrimental to the global trading system. It impedes economic growth and development and siphons money from productive uses. In addition, it disadvantages U.S. firms internationally, as domestic laws like the Foreign Corrupt Practices Act have held American firms to higher standards than many of their foreign competitors. The business community supports efforts to create a more stringent anticorruption regime and thereby raise the bar for the behavior of foreign businesses and governments and in the process promote expanded investment and growth.

Ten organizations, including the NFTC, American Petroleum Institute, Business Roundtable, National Association of Manufacturers, U.S. Chamber of Commerce and U.S. Council for International Business, have written you, Mr. Chairman, indicating that "the Convention can be a critical tool in the global fight against corruption," and that it "is non-controversial and has broad support." The letter states that "timely Senate ratification is necessary for the United States to play a leadership role in moving implementation forward." Mr. Chairman, I would like to ask that this letter be included in the record following my testimony.

The business community has come to its support for the Convention after a long and fruitful dialogue with representatives of the Administration, including those who negotiated the document. I would like to thank these individuals for their hard work on this Convention and for their outreach to the business community. In particular, former Assistant Secretary of State for Economic and Business Affairs Tony Wayne and his staff should be commended for their efforts.

Our interaction with Ambassador Wayne and his staff is a fine example of how good government is supposed to work. During the negotiation of the Convention, some of my members raised concerns as to how this new instrument might affect U.S. law and questioned its potential domestic impact on American companies. Administration officials carefully listened to our concerns, participated in an extensive, open and frank dialogue, and provided detailed language in the transmittal package that enables us to come to four very positive conclusions about the potential of the Convention to benefit American business:

- 1) The Convention will level the playing field for U.S. businesses.
- 2) There are no domestic costs or obligations imposed on the United States.
- 3) Effective and transparent implementation by foreign governments is imperative.
- 4) The Convention will benefit trade and improve investment climates worldwide.

I would like to discuss each of these in turn, as together they make clear why prompt ratification of this Convention by the United States is important to the American business community:

Leveling the playing field for U.S. businesses

This Convention will level the playing field for American business by holding foreign companies around the world – in places including Brazil, China, France, Russia and the United Kingdom – accountable for acts of corruption.

It is the first truly global anticorruption effort. This Convention improves substantially upon other existing regional conventions that have attempted to address the issue of corruption. The broadest of the four, the Inter-American Convention Against Corruption, includes all thirty-five nations of the Western Hemisphere. The strongest of the four, the Organization for Economic Cooperation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, has 30 parties from Europe, Asia, and the Western Hemisphere. However, it only covers bribery and not other forms of corruption such as interference in a judicial process, which also threaten the interests of U.S. business. The Council of Europe Criminal Convention on Corruption has forty-five states parties, nearly all in Europe. Africa attempted its own convention, but that convention has not yet entered into force. Thus some of the major exporters - including China and India - and all of Africa have been omitted from the international anti-corruption legal regime until now.

Thus, by harmonizing anti-corruption obligations at a higher standard than any before, and globalizing that standard for the first time, the United Nations Convention raises the bar overall and has the potential to level the playing field to a greater degree than any treaty or convention currently in existence.

The Convention includes mandatory preventive measures including calls to establish anti-corruption policies and bodies, mechanisms to prevent public sector corruption and transparency in public procurement, and measures relating to the judiciary, the private sector and to civil society. The Convention also criminalizes corrupt practices including bribery and embezzlement of public funds and includes provisions to recover illegally-obtained assets and improve mutual legal assistance.

The United States already abides by the requirements spelled out in the Convention. For example, the transnational bribery provisions are incorporated in the United States within the Foreign Corrupt Practices Act. Campaign finance laws, obstruction statutes and various state and federal laws incorporate the remainder of the mandatory provisions contained in the Convention. As a result, no changes to U.S. law are required, which is a key point for the American business community.

No domestic costs or obligations imposed on the United States

The reservations, declarations and understandings contained in the Administration's transmittal package, which accompanies the Convention, ensure that this Convention does not impose any new costs or obligations under U.S. law.

Secretary of State Condoleezza Rice indicated in her September 23, 2005, Letter of Submittal to the Senate that, "if the United States makes the proposed reservations, the existing body of federal and state law and regulations will be adequate to satisfy the Convention's requirements for legislation, and, thus, further legislation will not be required for the United States to implement the Convention."

The Administration has concluded that this Convention does not require any changes to U.S. law and is generally not self-executing, subject to the declarations, understandings and reservations that they have proposed. In addition, nothing in the treaty creates a private right of action to permit foreigners to litigate corruption complaints in U.S. courts. These statements confirm that the United States is already in compliance with its obligations under the Convention and has no further steps to take beyond ratification to implement this treaty in U.S. law.

From our perspective, it is important that the Senate include the reservations, declarations and understandings as part of its advice and consent, as the Administration recommends in its transmittal package. We particularly support the following declaration in its resolution, which is contained on page 21 of the Administration's transmittal package:

"The United States declares that the provisions of the Convention (with the exception of Articles 44 and 46) are non-self-executing. None of the provisions of the Convention creates a private right of action."

With the necessary declarations, reservations and understandings in place, this Convention is costless from a domestic legal perspective, and squarely in the interests of the American business community.

Effective and transparent implementation is imperative

Since this treaty raises the bar for other countries without imposing new obligations on us, the United States must focus its attention on implementation and monitoring. The Administration must make certain that implementation of the Convention is transparent and honest, and that implementation actually focuses on rooting out corruption and is not used as a pretext to bar or

harass American businesses. We should also urge other countries to implement the Convention consistent with due process protections and fundamental rights.

In order to speak with the strongest and most credible voice to shape implementation of the Convention with these objectives in mind, prompt ratification by the Senate of this Convention is imperative. The business community urges the Senate to ratify the Convention before December of this year, when the first Conference of State parties meets in Amman, Jordan.

That meeting will be the first time the parties to the Convention will have an opportunity to discuss implementation, monitoring, and technical and capacity-building assistance.

As countries incorporate the requirements of the Convention into domestic law, U.S. negotiators will be in a position – starting in December – to help ensure that implementation focuses on developing legal mechanisms to root out corruption as opposed to establishing new levers to harass American or other foreign competitors. If we do not have a vote and voice at that meeting, our ability to achieve those objectives will be jeopardized.

This Convention will only be truly effective if it is implemented properly and subject to adequate monitoring. By ratifying this Convention promptly and before the December Conference, the United States will be in the strongest position to guide implementation and monitoring efforts, which will be essential to its ultimate success. Timing is important, and swift ratification is absolutely in the interests of the American business community.

Providing tools for reform-minded leaders

Finally, this Convention will benefit political systems and investment regimes worldwide by empowering reform elements with the tools they need to root out corruption and encourage transparent, stable investment climates.

Consultations and technical assistance from developed countries and institutions will benefit elements in developing countries interested in improving transparency and reducing corruption, thereby improving the climate for American and local businesses and aiding overall development.

For all of these reasons, the National Foreign Trade Council supports swift ratification by the Senate of this Convention subject to the declarations and understandings contained in the transmittal package as received from the Administration.