

**OCDE**

ORGANISATION DE COOPÉRATION ET  
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**OECD**

ORGANISATION FOR ECONOMIC  
CO-OPERATION AND DEVELOPMENT

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**CONSEIL AU NIVEAU DES MINISTRES**

**26-27 MAI 1999**

**POINT 5**

**COMMERCE, INVESTISSEMENT : DEFIS ET OPPORTUNITES POUR LE SYSTEME MULTILATERAL,  
ET OBJECTIFS POUR UN NOUVEAU CYCLE DE NEGOCIATIONS COMMERCIALES  
DE L'OMC**

**ETATS-UNIS**

**Déclaration : la Corruption**

**Mr. David L. AARON  
Under-Secretary of Commerce for International Trade**

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**COUNCIL AT MINISTERIAL LEVEL**

**26-27 MAY 1999**

**ITEM 5**

**TRADE, INVESTMENT: POLICY CHALLENGES AND OPPORTUNITIES FOR THE MULTILATERAL  
SYSTEM, AND OBJECTIVES FOR A NEW WTO ROUND**

**UNITED STATES**

**Statement: Bribery**

**Mr. David L. AARON  
Under-Secretary of Commerce for International Trade**

## OECD ANTI-BRIBERY CONVENTION

### ISSUE

The OECD Anti-Bribery Convention entered into force on February 15, 1999, for the twelve countries that have now ratified it: Iceland, Japan, Germany, Hungary, the U.S., Finland, the U.K., Canada, Norway, Bulgaria, Korea, and Greece. However, many key signatory countries still need to ratify the Convention, particularly France, Italy, the Netherlands, and Belgium. Also, the OECD is continuing to address the issues of bribes to political parties and candidates and the use of foreign subsidiaries as intermediaries. We seek to have Ministers reaffirm that these issues will remain on the Working Group's agenda. In addition, we will continue pressing the Convention signatories who have not already done so to end tax deductions for overseas bribes.

### POINTS TO MAKE

- Earlier this year, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions went into effect. We could not have succeeded without the strong support of the OECD Secretariat and the Convention signatories.
- This is an agreement that will be of great benefit to exporters in all of the signatory countries and the taxpayers of the importing and capital-importing countries of the world.
- The Convention represents a significant accomplishment, but we must not lose momentum. Thus far, **only thirteen** of the Convention's thirty-four signatories have deposited their instruments of ratification with the OECD. And **only 15 countries** have passed implementing legislation.
- I urge all signatory countries that have not yet completed their domestic procedures to do so as soon as possible.
- I urge the following **countries to submit legislation** in their home countries: Argentina, Denmark, Ireland, Luxembourg, New Zealand, Poland, and Portugal.
- I urge the following **countries to pass their legislation**: Argentina, Australia, Brazil, Chile, Czech Republic, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Poland, Portugal, the Slovak Republic, Spain, Switzerland, and Turkey.
- In addition, the Working Group on Bribery must address several important unresolved issues over the next year. These are:
  - bribery acts in relation to foreign political parties;
  - bribery of candidates and nominees—that is, advantages promised or given to persons who are anticipated to become foreign public officials;

- bribery of foreign officials as a predicate offense under money laundering legislation;
  - the role of foreign subsidiaries in bribery transactions; and
  - the role of offshore centers in bribery transactions.
- As the Working Group continues to examine these issues, I ask that the other signatories work with the United States to ensure that bribes paid to political parties, party officials, and candidates for office do not become "loopholes" - in other words, a means by which the prohibitions of the Convention can be evaded.
  - Also, we need to remember that not all of the signatories to the Convention have totally eliminated the tax deductibility of bribes to foreign public officials. We need to ensure that any Convention signatories that still provide a tax deduction for a bribe to a foreign public official immediately introduce legislation to eliminate the deduction and all signatories should effectively implement this prohibition.
  - Finally, we have begun the important task of examining each country's legislation implementing the Convention within the Working Group. I urge each signatory to devote sufficient resources to the monitoring process to ensure that the Convention becomes and remains an effective weapon against corruption.

## **BACKGROUND**

A major priority of the U.S. since the 1970s has been having other developed countries prohibit the bribery of foreign public officials in a manner similar to the U.S. Foreign Corrupt Practices Act (FCPA). The OECD Anti-Bribery Convention, signed by thirty-four countries (the 29 OECD member countries and Argentina, Brazil, Bulgaria, Chile and the Slovak Republic) obligates the world's largest economies to make it a crime to bribe the officials of other countries in international business transactions. The Convention obligates the Parties to criminalize bribery of foreign public officials, including officials in all branches of government, whether appointed or elected. The definition of a public official covers any person exercising a public function, including for a public agency or public enterprise; and any official or agent of a public international organization.

## **FOLLOW-UP**

The Convention requires the Parties to cooperate in a follow-up program, within the framework of the OECD Working Group on Bribery, to monitor and promote full implementation. This process began last year, when signatories were asked to reply to a detailed questionnaire on their implementation of the Convention. In April of this year, the Working Group reviewed the implementing legislation of the U.S., Germany, and Norway. The Working Group is scheduled to review the implementing legislation of Finland, Bulgaria, Greece, Canada and Korea on July 7-9, 1999, and that of Japan, the United Kingdom, Hungary, Belgium, Australia, Sweden and Iceland in

October 1999. The U.S. government has also begun to review other countries' legislation independently to ensure that it meets the Convention's requirements. DOC's Trade Compliance Center is playing a key role in the monitoring process.

## **OTHER ISSUES**

At the time of the December 1997 signing, the OECD Council also committed to an accelerated work plan to deal with certain issues not fully resolved in the final text of the Convention: the bribery of foreign political parties; bribery of payments to persons who are anticipated to become public officials (candidates and nominees); bribery of foreign officials as a predicate offense under money laundering legislation; the role of foreign subsidiaries in bribery transactions; and, the role of offshore centers in bribery transactions. We seek to have Ministers reaffirm that these issues will remain on the Working Group's agenda. Of particular importance to the U.S. is the issue of bribery of foreign political parties, party officials, and candidates.

### **Reporting and Monitoring Requirements**

The International Anti-Bribery and Fair Competition Act of 1998 (IAFCA Section 6) directs that, not later than July 1, 1999, and each of the five succeeding years, the Secretary of Commerce shall submit to the House of Representatives and Senate a report on implementation of the OECD Convention by other signatories and on certain matters relating to international satellite organizations addressed in the Act. The following areas relating to the Convention are to be covered: ratification by signatory countries, national implementing legislation, enforcement actions, laws prohibiting the tax deduction of bribes, possible new signatories to the Convention, efforts to expand the scope of the Convention, anti-bribery programs in international organizations, involvement of the private sector and non-governmental organizations, and additional information on related matters. With regard to international satellite organizations, the IAFCA specifies that the report should examine advantages, in terms of immunities, market access or other factors, in countries or regions served by these organizations. In addition, it asks for an assessment of progress in implementing Section 5 of the Act relating to the international satellite services industry.

The Commerce Department report, being coordinated by the Trade Compliance Center, will address all of the areas noted in Section 6 of the IAFCA. However, since the OECD Convention has been in effect less than five months and has been ratified by only 12 countries, the first report to the Congress will have limited information on implementing legislation and enforcement actions. Future reports are expected to provide more extensive information as additional signatory countries enact implementing legislation and begin enforcing their anti-bribery laws.

The U.S. Senate, in its July 31, 1998, resolution giving advise and consent to ratification of the OECD Convention, requested that the President submit a similar report on enforcement and monitoring to the Senate Committee on Foreign Relations and the Speaker of the House of Representatives.

Preparation of these annual reports is part of a broader ongoing effort of the Administration to monitor implementation of the Convention and encourage effective action against bribery and

corruption by trading partners around the world. It includes regular contacts with business community and non-governmental organizations, dissemination of information about the Convention and anti-bribery legislation over the internet and other initiatives to promote international cooperation in combating these harmful practices.