

**Remarks of General Counsel Kerry to the Symposium: Toward
Coherence in International Economic Law: Perspectives at the
50th Anniversary of the OECD
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Good afternoon. I want to thank the OECD, the American Society of International Law, and the George Washington International Law Review for inviting me to speak today at this valuable event. I'm pleased to come and talk about the role of the U.S. Commerce Department in promoting ethical business practices internationally.

It's a special pleasure to be introduced by Nancy Boswell. Nancy and Transparency International USA are crucial partners in our work. Many of their affiliates around the world work at real personal risk. They are our colleagues and our conscience. We will miss Nancy's fulltime leadership, but I know her voice will still be heard.

It's also a pleasure to be on a panel with Jose Fernandez. The Commerce Department is only one part of a team of agencies working on these issues. I can't think of a better interagency collaboration than our partnership with the Departments of State and Justice and the SEC in fighting international corruption. I am grateful to my colleague and friend Jose for his leadership and collaboration.

Our leadership comes from the top. President Obama has set a clear path for this Administration. In Ghana and Cairo, he spoke about the link between corruption and human rights and well-being: having a government that is transparent and free of corruption is a human right and a path to investment and development. For us, this means working with the business community and civil society, NGOs, and other countries to promote lawful and ethical international business practices.

At the Commerce Department, Secretary Gary Locke, who is leading the Administration's efforts to meet the President's goal of doubling U.S. exports, has emphasized that corruption

is also a business problem, inhibiting the ability of U.S. companies to export and to grow. He also emphasized to me to me that our efforts to promote U.S. companies abroad must include a focus on ethical business practices, to make sure all companies, U.S. and foreign, are behaving in ways that are consistent with our values and principles as well as our laws.

This administration has stepped up efforts to work with international partners to build up mechanisms against corruption and enforce existing mechanisms. It's an integral part of the trade agenda and development agenda as well as the law enforcement agenda.

The Justice Department is holding companies' feet to the fire when they fail to behave ethically. The foundation is the Administration's commitment to rigorous FCPA enforcement. As Assistant Attorney General Breuer noted in November, "In the past year, we've imposed the most criminal penalties in FCPA-related cases in any single 12-month-period ever. Well over \$1 billion."

DOJ now has over a dozen attorneys dedicated solely to prosecuting FCPA cases, and we have attracted to the FCPA Unit prosecutors of extremely high caliber and profile. The SEC has also stepped up its enforcement efforts and has an FCPA unit. The recent Anti-Bribery Working Group examination of the United States showed that the U.S. enforcement record is second to none.

But our work has become much broader than just FCPA enforcement.

In the legal arena as an administration, we have engaged with the courts in interpreting the U.S. law that allows actions against those who have violated international law abroad, the Alien Tort Claims Act. In these cases, we seek to balance between protecting U.S. companies against frivolous law suits and providing redress for claimants who have been harmed by those who have violated international law.

We do not believe it is appropriate for companies to violate international law, and we want to work with the courts to make sure that U.S. law is interpreted consistent with our values.

We are enlisting the private sector in building these values into business practices. Secretary Locke and I have both been engaged with the business community at forums like this one to share concerns and ways of encouraging compliance and good practices.

In May, I will go to Doha, Qatar for a regional conference on integrity in the private sector put on by the Commercial Law Development Program in my office, in close cooperation with the Middle East/ North Africa-OECD Investment Program and United Nations Development Program. I can think of no better place or time for such a program than now, when that region is in the midst of exploring new hopes and new models of governance.

In the G20, the White House support for work on anti-corruption is evident its leadership in forming the G20 Anticorruption Working Group to conduct outreach to the business community to partner with G20 country companies in a public-private effort to fight corruption alongside G20 government meetings.

Next month, the G20 and the OECD, with the support of the U.N. Office of Drugs and Crime, will be putting on a conference in Paris called “Joining Forces against Corruption: G20 Business and Government.” The conference will feature speakers from G20 countries, international institutions such as the World Bank, international organizations including Transparency International, and multinational companies.

We are also using the Asia-Pacific Economic Cooperation forum to help us get out the word. In 2007, APEC Leaders endorsed a Code of Conduct for Business as well as Complementary Anti-Corruption Principles for the Public and Private Sectors. The code of conduct provides descriptions of various forms of bribery, clear guidance on how to identify corrupt practices, and practical steps businesses should take to counter corruption. It was a result of collaboration between APEC governments and APEC businesses.

The APEC Experts Task Force on Anti-Corruption and Transparency has been helping small and medium enterprises implement the Code of Conduct by holding capacity-building seminars and workshops for such enterprises as well as chambers of commerce.

We are also educating the business community on the rules and expectations, so they have clear guidance in their dealings.

We worked in the OECD Working Group on Bribery to create “Good Practice Guidance on Internal Controls, Ethics, and Compliance” for businesses on preventing and detecting such bribery. This guidance is short, concise information on how to prevent bribery, including elements of effective compliance, good accounting practices, and the importance of tone at the top. This OECD good practice guidance builds upon similar guidance issued by Transparency International, the TI Business Principles for Countering Bribery, and the APEC Code of Business Conduct I mentioned above, among others.

This means that the 38 Antibribery Convention Parties together have now provided specific guidance on what constitutes a strong compliance program to prevent and detect foreign bribery.

Commerce has worked with the Department of Justice on a layman’s guide to the Foreign Corrupt Practices Act and we are continuing to develop other materials to help companies behave responsibly and in a manner consistent with U.S. law. We train our U.S. and Foreign Commercial Service officers on the FCPA so that they can provide general information on the statute to U.S. exporters, and provide assistance in the event a U.S. firm is solicited for a bribe.

Finally, in various multilateral organizations and bilateral discussions, we continue to urge other countries to join in fighting corruption by enacting rules that will level the playing field for U.S. companies and raise the bar for responsible conduct by all companies operating in the international arena.

The paradigm of this kind of engagement is our work with the OECD on bribery of foreign public officials.

After Congress enacted the Foreign Corrupt Practices Act (FCPA) in 1977, we wanted our trading partners to do the same to level the playing field for U.S. companies. In most countries, bribery of domestic officials was a crime, but bribery of *foreign* officials was not.

The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1997 was an outgrowth of a partnership with the OECD and OECD countries. Today, 37 other countries have joined the United States in this collective effort to address bribery of foreign public officials in international transactions and engage in robust peer monitoring to ensure that such laws are being enforced. Convention Parties — most recently the UK with its new Bribery Act (overhauling a series of older UK anticorruption laws) — have adopted laws outlawing bribery of foreign officials and countries like the UK and Germany have joined the US in vigorously enforcing their laws: we hope these examples will inspire other countries, like France, to prosecute under their foreign bribery laws as well.

Our OECD work is having an impact. Statistics on foreign bribery show that companies from OECD countries engage in less bribery now than they did before the entry into force of the Antibribery Convention. In fact, we believe that bribery allegations against firms based in countries that are members of the Convention have decreased about 50% since 2007 and such firms have fewer bribery allegations levied against them than companies from non-signatory countries.

But there are many countries that have not joined the Antibribery Convention, some of them significant players in the world economy. For example, we have been hearing from companies in the U.S. and other OECD countries that they are at a disadvantage in third country markets, like Africa, due to Chinese companies not being prohibited from bribing foreign public officials.

So we are working with those countries to encourage them to adopt and enforce strong foreign bribery laws and join the Convention. Russia is an observer to the Working Group on Bribery and has recently drafted a foreign bribery law, looking to accession to Antibribery Convention as a step to joining the WTO. In discussions of the Trans-Pacific Partnership, we are pushing to include anti-corruption obligations.

We have been holding what is turning out to be a very fruitful dialogue with China on transnational bribery since May 2010.

Last year I proposed to my Chinese counterparts that we strengthen bilateral cooperation on anticorruption, with a view toward China's adoption of the legal regime necessary to carry out its obligations as a member of the United Nations Convention Against Corruption and a signatory of G20 communiqués on anti-corruption cooperation, and toward China's eventual accession to the Antibribery Convention.

We have now held several bilateral meetings with Chinese experts and an expert U.S. Government delegation consisting of DOC, DOJ, the SEC, and the State Department.

So it was big news last month that the National People's Congress passed amendments to China's Criminal Code (among many others) criminalizing the bribery of foreign officials and officials of international organizations.

These amendments provide that bribery may be punished by imprisonment of 3-10 years and fines depending on the value of the bribe, and we are informed by Chinese counterparts that the law covers bribes by State Owned Enterprises as well as other Chinese entities.

Of course, the ultimate effectiveness of the amendments in preventing overseas bribery will depend on their enforcement. We look forward to working with our Chinese counterparts to help stand up enforcement and compliance programs and to engage their business sector as we have engaged ours.

The US would like to see Russia, China, and other new economic leaders accede to the Antibribery Convention so that they too will be subject to the rigorous peer review and the best practices and guidance offered by the Working Group on Bribery.

Our work continues. As Huguette Labelle of Transparency International has said, "No country has a monopoly on integrity. We have to work together on this."

This Administration is dedicated to striking the right balance between fostering commerce and promoting good conduct by the business community. I don't see this as a trade-off. I think we can have both, and that we should have both.

We will keep striving to have both.