AN IDEA WHOSE TIME HAS COME: CURBING BRIBERY AS A TRANSNATIONAL MARKETING STRATEGY

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ABSTRACT

In the 1970s, the U.S. Congress began a series of hearings to scrutinize the manner in which U.S. business firms conducted themselves abroad. Specifically, the Congress wanted U.S. businesses to halt the practice of using illicit payments to foreign government officials as a method to increase their sales. Congress noted that bribing a public official not only penalizes the company who loses a sale because of it, but recognized that there are downstream consequences too for the nation that permits such unethical behavior.

The legislation arising from these hearings was the 1977 Foreign Corrupt Practices Act (FCPA). Since put into law, critics of the FCPA have argued that it unduly hampers their overseas competitive position. These critics maintain that no other countries' multinational firms are bound by such a law. Further, while laudable, the FCPA places U.S. firms at a disadvantage in those foreign locations where commercial bribery is an accepted business practice and monies obtained through that practice is considered part of an official's income.

Recognizing that the FCPA was hampering U.S. sales abroad, the Carter administration attempted to get other countries to adopt legislation similar to the FCPA. The Omnibus Trade and Competitiveness Act of 1988 specifically addressed correcting perceived injustices in trade practices, such as bribery. The Act recognized that U.S. exports were impeded by the FCPA, especially in those countries where bribery was nearly universal. But the only inroads made by the Act was that some of the ambiguity in the FCPA language was removed and illegal payments was clarified.

Over the past twenty years, many countries have passed laws whose intent is to eliminate transnational bribery. These countries include many who are well known for tolerating corruptive practices such as bribery. Some other countries maintain that their existing criminal statutes cover bribery. Arguably, some enforcement against bribery has taken place. But whereas some countries have begun to put pressure on people who offer or accept bribes, treatment of the problem is by no means uniform. Aside from non-standardizing the meaning of bribery, a big part of the enforcement problem is that attention paid to bribery is temporary.

A new organization, Transparency International (TI) was established in 1993 to help focus attention on corruptive practices around the world. TI now annually publishes a comparative rank-ordered index of countries perceived to be corrupt. It appears that TI is attempting to spotlight the problem of corruption by revealing the degree of practice for each country.

The publication of TI's corruption index should serve as a wake-up call for the politicians of those countries who are ranked high. Those politicians likely believe that to be identified in relative terms as a country whose officialdom is corrupt is not good for politics.

After twenty years as one of the few countries in the world that passed a specific law to outlaw transnational bribery, now with the help of TI U.S. efforts to get other trading blocs, international or regional organizations, and individual nations to join with it are finally paying off.

An international response against bribery is beginning to take shape. Chief among these initiatives are those undertaken by the United Nations (issued a declaration condemning all corrupt practices), the Organization of Economic Cooperation and Development (issued a statement advocating that its member nations take effective measures to combat bribery) and the Organization of American States (signed the first anti-bribery treaty instrument in support of the fight against bribery.)

After two decades of trying, the U.S. is finally seeing other nations, trading blocs and international organizations become partners in its battle to curb bribery as an accepted business practice.