TRANSMITTAL LETTERS

May 4, 1998

The Honorable Newt Gingrich

Speaker

U.S. House of Representatives

Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed herewith is a draft bill, the "International Anti-Bribery Act of 1998," which contains legislative proposals to implement the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the "OECD Convention"). This Convention was forwarded by the President to the Senate on May 1, 1998, for its advice and consent.

Administrations of both parties have long urged our trading partners to criminalize bribery of foreign public officials by their nationals, as the United States did in 1977 in the Foreign Corrupt Practices Act of 1977 (the "FCPA"). These bipartisan efforts finally succeeded when thirty-three countries signed the OECD Convention in Paris in December of last year. The OECD Convention, when fully implemented by all parties, will help create the level playing field and transparent contracting long sought by American businesses as they compete around the world for public contracts.

The OECD Convention calls on all parties to make it a criminal offense "for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business." It further calls on all parties to exert territorial jurisdiction broadly and, where consistent with national legal and constitutional principles, nationality jurisdiction.

The draft bill would amend the FCPA to conform to the requirements of and to implement the OECD Convention. First, the FCPA currently criminalizes payments made to influence any decision of a foreign official or to induce him to do or omit to do any act in order to obtain or retain business. The bill would make explicit that payments made to secure "any improper advantage," the language used in the OECD Convention, are prohibited by the FCPA.

Second, the OECD Convention calls on parties to cover "any person." The current FCPA covers only issuers with securities registered under the 1934 Securities Exchange Act and "domestic concerns." The bill would, therefore, expand coverage to include all foreign persons who commit an act in furtherance of a foreign bribe while in the United States.

Third, the OECD Convention includes officials of public international organizations within the definition of "public official." Accordingly, the bill similarly expands the FCPA definition of public officials to include officials of such organizations.

Fourth, the OECD Convention calls on parties to assert nationality jurisdiction over offenses committed abroad when consistent with national legal and constitutional principles. Accordingly, the bill would provide for jurisdiction over the acts of U.S. businesses and nationals in furtherance of unlawful payments that take place wholly outside the United States.

Fifth and finally, the bill would amend the penalties applicable to employees and agents of U.S. businesses to eliminate the current disparity between U.S. nationals and non-U.S. nationals employed by or acting as agents of U.S. companies. In the current statute, such non-U.S. nationals are subject only to civil penalties. The bill would eliminate this restriction and subject all employees or agents of U.S. businesses to both civil and criminal penalties.

The International Anti-Bribery Act would affect receipts (new criminal fines) and direct spending (outlays from the Crime Victims Fund (CVF)). Therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act. Receipts from fines would be deposited into the CVF and could be spent in the following year. Thus, direct spending from the CVF would match the deposits into the CVF with a one-year lag. Our preliminary estimate is that the net effect of the enrolled bill on the deficit will be less than $500,000 annually. This proposal should be considered in conjunction with all other proposals that are subject to the pay-as-you go requirement.

With respect to potential impacts on the criminal justice system, the bill imposes new criminal penalties on two classes of persons: (a) foreign nationals employed by or acting as agents of U.S. companies, and (b) foreign nationals and foreign companies that engage in unlawful acts in the U.S. In addition, the liability of U.S. persons is expanded to the extent that unlawful acts taken wholly outside the United States will now result in the same penalties as those taken within the United States under the existing statute.

It would be appreciated if you would lay this draft bill before the House of Representatives. An identical proposal has been transmitted to the President of the Senate.

The Office of Management and Budget has advised that there is no objection to the presentation of this proposal to the Congress from the standpoint of the Administration's program.

Sincerely,

Ann M. Harkins

Acting Assistant Attorney General