



TRACE & U.S. DEPARTMENT OF COMMERCE DISCUSS INTERNATIONAL TRADE & ANTI-BRIBERY MAY, 2013

In celebration of World Trade Week, which runs from May 19 to May 25, TRACE International caught up with representatives from the U.S. Department of Commerce to discuss the many ways in which the Department is helping companies face the challenges posed by bribery in international trade. We learned, for example, that the Department's Trade Compliance Center offers counsel to those facing bribery concerns overseas and also assists with related problems such as suspected bribery by a competitor. The conversation also covered what the U.S. Government is doing more broadly to advance anti-corruption and good governance initiatives globally. Read the full interview below:

TRACE: *Can you start off by explaining for our readers who may be unfamiliar with the U.S. Commercial Service of the U.S. Department of Commerce what it is that your division does to help U.S. companies conduct business overseas?*

Dept. of Commerce: Through export counseling, trade promotion, advocacy and the utilization of private-public partnerships, the U.S. Commercial Service assists U.S. businesses in navigating the often complicated and unpredictable international trade environment, enabling sales abroad from U.S. firms to support jobs here in the United States. With a global network of approximately 1,400 trade professionals located in 108 U.S. Export Assistance Centers in U.S. locations, and in U.S. Embassies and Consulates in more than 70 countries, the U.S. Commercial Service works one-on-one with U.S. companies through every step of the exporting process to ensure they are able to pursue export opportunities and compete fairly in the global market.

TRACE: *And how are U.S. businesses taking advantage of your network of export and industry trade specialists?*

Dept. of Commerce: The end-to-end export assistance solutions provided by the U.S. Commercial Service help U.S. businesses of all sizes identify opportunities to increase their sales and lower the risks of overseas transactions. Companies can benefit from export counseling, strategic planning, market

research, pre-screened business appointments abroad, international contacts and trade leads, advocacy, matchmaking, reducing trade barriers, trade events and missions, and more.

In FY2012, U.S. firms working with the U.S. Commercial Service reported approximately 14,200 export successes worth billions of dollars in sales; 266 of these successes were from companies that had never exported before, and 5,083 were from firms that exported to a new market. Eighty-three percent of these successes were reported by small and medium-sized enterprises employing fewer than 500 persons. Many of these companies report that as a result of exporting and international diversification, they have been better able to weather changes in the economy while building their international competitiveness and bottom line. For more information on the U.S. Commercial Service, visit www.export.gov.

TRACE: *The U.S. Department of Commerce's Trade Compliance Center also provides support to American exporters and investors who are approached to pay bribes while conducting business abroad. Can you explain how the Department of Commerce views the problem of foreign bribery and what assistance it provides to companies that face bribery and corruption in their dealings abroad?*

Dept. of Commerce: The United States Government has been a leader in the international fight to reduce corruption and bribery by rigorously promoting good governance and the rule of law. Transparency of government actions, explicit prohibitions on corrupt acts, the maintenance of effective ethical standards for government officials, and the promotion of strong law enforcement and judicial systems are important components of this campaign.

The U.S. Congress enacted the U.S. Foreign Corrupt Practices Act (FCPA) in 1977 in response to revelations of widespread bribery of foreign officials by U.S. companies. The FCPA was intended to halt those corrupt practices, create a level playing field for honest U.S. businesses, and restore public confidence in the integrity of the marketplace. The Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) share FCPA enforcement authority and are committed to fighting foreign bribery through robust enforcement. An important component of this effort is education. The recent publication, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* produced by the Criminal Division of the DOJ and the Enforcement Division of the SEC, provides businesses and individuals with information to help them abide by the law, detect and prevent FCPA violations, and implement effective compliance programs. The Guide is available at <http://www.justice.gov/criminal/fraud/fcpa/guidance/> and <http://www.sec.gov/spotlight/fcpa.shtml>, respectively.

The Department of Commerce's International Trade Administration, through its components including the Market Access and Compliance Office and the U.S. Commercial Service, help U.S. exporters and investors to address foreign trade barriers, including corruption. Commerce and other U.S. Government agencies are available to provide assistance and information to American companies that believe they are being adversely affected by corruption, including bribery of foreign public officials. Multilateral anticorruption agreements, such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention Against Corruption, as well as Free Trade Agreements (FTAs) of the United States, prohibit both bribery of foreign public officials, domestic bribery, and solicitation of bribes by such officials.

For example, if a firm has evidence that a foreign competitor from a country that is a party to such agreements has promised, offered or given a bribe to a foreign official, that firm can bring this to the attention of the Trade Compliance Center at the U.S. Department of Commerce. The Center will review the complaint and contact the firm for additional information, as needed. The information will then be directed to the appropriate agency, whether the Departments of State, Justice, Commerce, or the SEC, for follow-up action as appropriate. This could involve diplomatic contacts with the government of the

foreign competitor or the government of the country where the transaction occurred. It could also lead to an investigation in the United States if there is a potential violation of U.S. law. The Departments of Commerce and State also encourage U.S. businesses to seek the assistance of U.S. embassies when they are confronted with bribe solicitations or other corruption-related issues overseas.

TRACE: *How is the information that U.S. businesses provide to the U.S. government kept confidential?*

Dept. of Commerce: Confidential commercial information submitted by U.S. businesses to the U.S. government is protected from disclosure by the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(4)), which exempts from disclosure commercial or financial information which is privileged or confidential, and the Trade Secrets Act (TSA) (18 U.S.C. § 1905), which prohibits the disclosure of confidential commercial information to any extent not authorized by law.”

TRACE: *On the subject of bribery, is the U.S. Department of Commerce in coordination with the Department of State at all? For example, I know that the Department of State puts out Country Commercial Guides which highlight corruption concerns.*

Dept. of Commerce: Besides enforcement efforts by DOJ and SEC, the U.S. government is also working to address corruption abroad and level the playing field for U.S. businesses through the efforts of the Departments of Commerce and State. Both Commerce and State advance anti-corruption and good governance initiatives globally and regularly assist U.S. companies doing business overseas in several important ways. Both agencies encourage U.S. businesses to seek the assistance of U.S. embassies when they are confronted with bribe solicitations or other corruption-related issues overseas.

The Department of Commerce offers a number of important resources for businesses, including the International Trade Administration’s [United States and Foreign Commercial Service](#) (Commercial Service). The Commercial Service has export and industry specialists located in over 100 U.S. cities and 70 countries who are available to provide counseling and other assistance to U.S. businesses, particularly small and medium-sized companies, regarding exporting their products and services. Among other services, these specialists can help a U.S. company conduct due diligence when choosing business partners or agents overseas. The International Company Profile Program, for instance, can be part of a U.S. business’ evaluation of potential overseas business partners.

Additionally, the Department of Commerce’s Office of the General Counsel maintains a [website](#), which contains recent articles and speeches, links to translations of the FCPA, a catalogue of anti-corruption resources, including links to the DOJ and SEC FCPA websites, and a list of international conventions and initiatives. As noted above, ITA’s Trade Compliance Center also hosts a [website](#) with anti-bribery resources. It contains an online form through which U.S. companies can report allegations of foreign bribery by foreign competitors in international business transactions. The Department of Commerce also provides information to companies through a number of U.S. and international publications designed to assist firms in complying with anti-corruption laws. For example, the Department of Commerce has included a new anti-corruption section in its Country Commercial Guides, prepared by market experts at U.S. embassies worldwide, that contains information on market conditions for more than 100 countries, including information on the FCPA for exporters.

The Department of Commerce has also published a guide, *Business Ethics: A Manual for Managing a Responsible Business Enterprise in Emerging Market Economies*, which contains information about corporate compliance programs for businesses involved in international trade.

The Departments of Commerce and State also provide advocacy support, when determined to be in the national interest, for U.S. companies bidding for foreign government contracts. The Department of Commerce's Advocacy Center, for example, supports U.S. businesses competing against foreign companies for international contracts, such as by arranging for the delivery of an advocacy message by U.S. government officials or assisting with unanticipated problems such as suspected bribery by a competitor.

The Department of State's Bureau of Economic and Business Affairs (specifically, its [Office of Commercial and Business Affairs](#)) similarly assists U.S. firms doing business overseas by providing advocacy on behalf of U.S. businesses and identifying risk areas for U.S. businesses. Also, the Department of State's economic officers serving overseas provide commercial advocacy and support for U.S. companies at the many overseas diplomatic posts where the Commercial Service is not represented.

The Departments of State and Commerce both promote U.S. government interests in addressing corruption internationally through country-to-country diplomatic engagement; development of and follow-through on international commitments relating to corruption; promotion of high-level political engagement (e.g., the G20 Anticorruption Action Plan); public outreach in foreign countries; and support for building the capacity of foreign partners to combat corruption. In fiscal year 2009, the U.S. government provided more than \$1 billion for anti-corruption and related good governance assistance abroad.

The Department of State's [Bureau of International Narcotics and Law Enforcement Affairs](#) (INL) manages U.S. participation in many multilateral anti-corruption political and legal initiatives at the global and regional level. INL also funds and coordinates significant efforts to assist countries with combating corruption through legal reform, training, and other capacity-building efforts. In addition, the U.S. Agency for International Development (USAID) has developed several [anti-corruption programs and publications](#). Finally, the Department of State's brochure [Fighting Global Corruption: Business Risk Management](#) provides guidance about corporate compliance programs as well as international anti-corruption initiatives.

TRACE: *Overall, how does the U.S. government negotiate on behalf of U.S. businesses in trade discussions with other countries to address corruption and bribery issues?*

Dept. of Commerce: U.S. investors and business people operating abroad see bribery and other forms of corruption as a significant barrier to trade and investment. Corruption and bribery threaten the integrity of markets, undermine fair competition, distort resource allocation, corrode public trust, and impedes the rule of law. Countries with strong laws against bribery and corruption and records of enforcement are more attractive destinations for investment and trade because they give U.S. businesses greater confidence that they will be able to compete based on the quality of their goods and services and receive fair and consistent treatment from government officials and institutions.

Corruption and bribery are also a major concern of civil society groups that seek to expand good governance practices throughout the world. In the United Nations, OECD, APEC and other international fora, countries have agreed that corruption is a global problem that requires transnational partnerships to combat. Thus, strong provisions against public corruption and bribery have been a critical part of U.S. FTAs for years. These provisions also benefit U.S. FTA partners, as they represent a commitment to good governance practices and rule of law, which serves to attract investment and expand trade. Since conclusion of the U.S.–Singapore FTA in May 2003, U.S. FTAs have contained provisions committing the parties to deterring bribery and corruption. Early versions contained more generalized commitments. The U.S.–Morocco FTA, signed in 2004, moved to more detailed and binding commitments, and the

United States has included similar provisions in all subsequent FTAs. Multilateral, plurilateral, and bilateral efforts to end corruption and bribery continue in multiple forums.

About TRACE International – *TRACE International is a 501c(6) non-profit membership organization that pools resources to provide practical and cost-effective anti-bribery compliance solutions for multinational companies and their commercial intermediaries and is dedicated to increasing commercial transparency. For additional information about TRACE International, please visit www.TRACEinternational.org.*

About the U.S. International Trade Administration – *The International Trade Administration (ITA) is the premier resource for American companies competing in the global marketplace. ITA has 2,400 employees assisting U.S. exporters in more than 100 U.S. cities and 72 countries worldwide. For more information on ITA visit www.trade.gov.*