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Transparency, Bribery and the Export Development Corporation

A submission with respect to the Export Development Corporation statutory review of its mandate and working practices

By
Wesley Cragg*, Chair and President
P.K. Pal**, Member of the Board of Directors

On behalf of
Transparency International Canada

Canadian Involvement in Anti-Corruption Measures

1. Transparency International is an international anti-corruption organization that has been leading the fight against bribery in international commercial transactions since 1993. Transparency International has chapters, formed and forming, in over 77 countries around the world. It is headquartered in Berlin. TI's central mission is to sensitize governments, the private sector and the public generally to the damage corruption inflicts on economic development. Corruption has been proven to undermine economic development as well as the development of democratic institutions and the equitable distribution of economic wealth. It has also been established that corruption inhibits investment, competition and fair trade. The result is higher prices for poorer quality of goods and services as well as the unfair distribution of the benefits of economic activity.
2. In recent years, significant progress has been made in the fight against corruption internationally. With the passage of the OECD Anti-bribery Convention has come the gradual criminalization of the bribery of foreign public officials on the part of an increasing number of countries in the industrialized world. Most international financial institutions, such as the World Bank and the International Monetary Fund, now have vigorous anti-corruption programs in place that include severe penalties for companies that use bribes to win or retain business financed by them.
3. The Canadian Chapter of Transparency International played an active role in persuading the Canadian Government to ratify the OECD Anti-bribery Convention. This was achieved by enacting a new law called "The Corruption of Foreign Public Officials Act" (the "Anti-

Corruption Act”). Canada’s action in this regard resulted in bringing the OECD Convention into effect in February 1999. Since that time, TI-Canada has been pressing for the development of a government wide anti-corruption agenda. It is important that the law be vigorously enforced. It is equally essential that the government and its various ministries and agencies become proactive in emphasizing that the bribery of foreign public officials is now a criminal offence wherever the government is involved in encouraging or facilitating international commerce on the part of Canadians and Canadian companies. Finally, the Canadian Government has an important role to play in encouraging Canadian companies engaged in international commerce to put in place management systems designed to prevent the bribery of foreign public officials.

EDC: Opportunities and Responsibilities

4. The Export Development Corporation has an important role to play in this regard. Its function is to facilitate exports by Canadian corporations. Its focus is on activities to which the anti-corruption legislation specifically applies. It is important that the Export Development Corporation put policies in place that ensure that companies applying for assistance are aware of their obligations under the Canadian criminal code and have taken steps to ensure that their operations comply with that law. To ensure fair competition for international business, it is equally important that the Export Development Corporation use its powers to support initiatives designed to harmonize efforts and procedures for fighting and preventing corruption by parallel agencies and other international bodies.
5. We propose that the Export Development Corporation put in place policies designed to encourage compliance with the Anti-Corruption Act and to penalize companies receiving EDC support that are found to have broken the law.
6. To encourage compliance, we recommend:
 - a) That the EDC require that all companies applying for support declare that they are aware of the Anti-Corruption Act and its provisions and are committed to complying with them in their international business activities. (Note: We have attached two TI Working Papers that suggest ways in which this might be done.)
 - b) That the EDC require that all companies applying for support put measures in place to ensure that their employees and agents are aware of the anti-bribery provisions of the Anti-Corruption Act and understand their obligation to comply with the law
 - c) And that the EDC require companies applying for support or assistance to append a “No-Bribery Affidavit” that affirms their commitment to comply with the Anti-Corruption Act and describes the anti-corruption programs they have put in place to ensure compliance with the law.
 - d) That the EDC determine how best to provide assistance to corporations that request advice on the creation and implementation of effective anti-bribery programs for their employees and agents. (Note: Advice is likely to be particularly important for small- and medium-sized companies that do not have extensive legal departments or experience in international markets.)

7. It is essential that effective sanctions are imposed on companies that fail to comply with the Anti-Corruption Act. Sanctions should extend to subsidiaries and consortia in which the exporter holds a significant share. Sanctions should include legal invalidity of contracts signed with the EDC and disbarment from further EDC contracts for a specified length of time. The period of time should depend on the severity of the violation and the ability of the company in question to demonstrate that, prior to the violation occurring, it had an effective anti-corruption program in place for its employees and agents. In addition, the EDC should take into account in determining the period of debarment the willingness of the company in question to commit itself to the implementation of an effective anti-corruption for its employees and agents.

8. EDC policies should specify clearly that sanctions will be imposed on companies found guilty of breaking the law. However, to wait for convictions before acting is clearly inadequate. Internal procedures similar to those put in place by the World Bank should be developed. Debarment by other international financial institutions or parallel national institutions should also be considered adequate *prima facie* evidence that sanctions are warranted. (See the attached working papers for more detailed proposals by Transparency International in this regard.)

9. Companies submitting claims should be required to disclose all payments by the company, company personnel, sales representatives or other agents, subcontractors or suppliers with respect to fees or commissions paid in connection with the contract as well as the nature of the services provided.

10. The EDC should review its Code of Business Ethics and its Code of Conduct to ensure that the provisions of these two documents adequately reflect its obligations under the Anti-Corruption Act. Guidelines and training programs should be put in place to assist EDC staff in applying EDC anti-corruption policies, practices and procedures. Guidelines and training programs should be designed to assist staff to recognize corrupt payments. Finally the Code of Ethics should be reviewed with a view to communicating clearly the anti-bribery standards that those with whom the EDC does business are expected to meet.

11. Suspicion of corrupt activities should lead to a suspension of a claim until the suspicion has been removed subject to requirements of procedural fairness in this regard. All EDC contracts should contain provisions that allow the EDC to perform a financial audit where the EDC in its own judgement has concluded that bribery of a foreign public official may have occurred. (See 8 above.)

12. EDC rules for confidentiality should be modified so as to ensure that the EDC and its staff are able to file a criminal complaint on discovering a possible breach of the law. Rules for confidentiality should also be modified to permit the EDC to make public any findings on its own part that warrant the imposition of EDC sanctions on a company under contract with the EDC. EDC policy should require that the EDC make public details with respect to any company sanctioned by the EDC for offering bribes to foreign public officials in the course of international commercial activities. (See 8 above.)

13. EDC anti-corruption policies and guidelines should be set out clearly in public documents. A review of anti-corruption policies and guidelines and their application as well as the number of

suspicious cases encountered and any actions resulting in the suspension or disbarment of Canadian companies by the EDC (with details as set out in 12 above) should be made public on an annual basis.

International representation

14. The EDC should use all opportunities resulting from participation in international fora to encourage the harmonization of efforts at the national and international level by parallel agencies and other institutions to fight corruption occurring in the context of export development assistance. It is important that the EDC be proactive in this regard. Active support for anti-corruption policies and procedures on the international scene is one of the most effective ways of demonstrating Canadian government support for strengthening the international anti-corruption agenda. It is an effective way of communicating the Government's resolve to fight corruption at home and abroad. And it is a crucial form of support for Canadian companies concerned about losing global markets to unfair competition.

* Dr. Cragg is the Gardiner Professor of Business Ethics at the Schulich School of Business, York University.

** Mr. Pal is recently retired as VP and Chief Legal Officer and Corporate Secretary of ALCAN Aluminium Ltd.