TRANSPARENCY INTERNATIONAL
U.S. Office

FIGHT FOREIGN CORRUPTION, PROTECT U.S. BUSINESS
PASS THE FOREIGN EXTORTION PREVENTION ACT

SUMMARY

American companies operating abroad are increasingly faced with demands from foreign officials for bribes, and with competition from unethical companies that are willing to pay them.

When foreign officials demand bribes, they steal from their citizens, reward and encourage unscrupulous business practices, punish law-abiding U.S. businesses, distort markets, sow the seeds of economic and social unrest, and often fortify and finance authoritarian regimes.

Current U.S. law does not punish foreign officials who demand bribes from U.S. companies. Instead, it only punishes U.S. companies if they pay them.
This imbalanced legal framework is at odds with dozens of other countries, including Germany, the United Kingdom, and France, who criminalize both the demanding and the giving of foreign bribes.

A short, simple, and bipartisan measure known as the Foreign Extortion Prevention Act (FEPA) would fix this imbalance, extend much-needed protections to U.S. businesses operating abroad, and equip the Department of Justice (DOJ) with a powerful new tool for combating corruption.

THE PROBLEM

A recent survey by the OECD found that foreign officials who demand or receive bribes are criminally sanctioned only 20% of the time. The report also concluded that “the information flow between demand-side and supply-side enforcement authorities is often slow.”

In Transparency International’s most recent study on the enforcement of anti-bribery laws, *Exporting Corruption*, researchers concluded that to improve enforcement the UN, OECD, and G20 must “include issues on both the supply and demand side” of foreign bribery.

EXAMPLES

In **Hungary**, government officials accepted bribes from Microsoft vendors in exchange for rewarding the company with valuable contracts with government agencies. While Microsoft ultimately paid $26 million in fines and penalties under the U.S. Foreign Corrupt Practices Act (FCPA), the Hungarian officials who accepted the bribes have yet to be held accountable.

In **Kazakhstan**, government officials threatened to arrest and deport employees of a U.S. oil and gas firm (NATCO) unless NATCO paid a bribe. While NATCO ultimately paid tens of thousands of dollars in civil penalties under the FCPA for covering up the bribes, the Kazakh officials who extorted them have yet to be held accountable.

In **Haiti**, law-abiding companies were found to have faced an "unfair and illegal" disadvantage after Haitian officials working for the country's sole provider of landline telephone service used their positions to accept millions of dollars in bribes from unethical telecommunications companies.

In **Russia**, officials in the Russian Attorney General's office used their positions to accept bribes from Hewlett Packard in exchange for a valuable contract. While Hewlett Packard ultimately paid nearly $60 million in FCPA fines, the Russian bribe-takers have yet to be held accountable.

In **Guinea**, the Guinean Minister of Mines used his position to accept bribes from Chinese state-owned companies, thus partially excluding law-abiding companies from a billion-dollar natural resource market.

HOW FEPA WOULD PROTECT U.S. BUSINESSES AND FIGHT FOREIGN CORRUPTION

FEPA would expand the current federal bribery statute to cover any foreign official or agent thereof who "corruptly demands, seeks, receives, or accepts" a bribe in or affecting U.S. interstate commerce.

The criminalization of foreign demand-side bribery is the law in the United Kingdom, Germany, France, and dozens of other countries, and is expressly encouraged by the United Nations Convention Against Corruption, to which the U.S. is a signatory.

Corrupt officials could face a criminal fine of up to $250,000 or three times the value of the bribe (whichever is greater), and a prison sentence of up to 15 years.

Reflecting the relationship between corruption, the rule of law, and economic stability, FEPA commits the proceeds of these sanctions to existing DOJ programs that will streamline its enforcement and counteract the emergence of corrupt foreign officials.

As many FEPA enforcement actions will rely on assistance from foreign governments, FEPA requires the DOJ to provide data on how promptly the DOJ is responding to requests for assistance from foreign governments, and to study how the U.S. mutual legal assistance treaty (MLAT) process could be improved.

Finally, FEPA would require the DOJ to publish an annual report that summarizes the scale and nature of foreign bribery, that addresses the effectiveness of U.S. diplomatic efforts to protect U.S. companies from foreign bribes, and that discusses efforts of foreign governments to prosecute demand-side bribery cases.

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