



USING FREE TRADE AGREEMENTS TO TACKLE CORRUPTION

Corruption is a blight on international trade and commerce and affects economic growth, productivity and competitiveness. It can have a particularly devastating effect on small businesses. This year's APEC meetings are an important opportunity for participating countries to agree on including anti-corruption chapters in the various free trade agreements currently being negotiated.

Australia is hosting the Asia Pacific Economic Co-operation (APEC) processes during 2007.

One area where the grouping could make a real contribution to facilitating international trade and commerce within the Asia Pacific region would be tackling the scourge of corruption.

The *APEC Course of Action on Fighting Corruption and Ensuring Transparency* is a good start, but more needs to be done.

One option is the inclusion of specific anti-corruption chapters into all the free trade agreements Australia has, is, or will be negotiating.

THE BLIGHT OF BRIBERY

Corruption, whatever its form, whether bribery or extortion, is a blight on international trade and commerce and on the economies and societies where it is found.

The World Bank uses the term 'the cancer of corruption' and estimates it costs the global economy around \$US1 trillion – that's \$US1 thousand billion - annually.

Such money, properly spent in areas like targeted infrastructure development, health and education programs and development assistance, would make a substantial contribution to economic growth and social development around the world.

The commercial, economic, political and social costs of corruption are well known.

Corruption impedes economic growth, undermines the standing of governing institutions (such as legislatures), diminishes the effectiveness of administrative bodies (such as public services) and results in losses of economic and social benefits to ordinary citizens.

Corruption also has a negative impact on productivity (i.e. efficiency) and undermines the fundamental competitiveness and viability of enterprises, where scarce entrepreneurial skills and time are devoted to engaging in corruption rather than productive, value-adding activity.

The increased risk created by corruption in international business transactions undermines the efficiency and economic development which flow from international trade and investment liberalisation.

In simple terms, the economic and social dividends of international trade and investment and of economic growth go down as the incidence of corruption goes up.

Everyone outside of the corruption transaction loses.

TACKLING CORRUPTION

Those looking for a single 'magic bullet' remedy for corruption are likely to be disappointed, reflecting the numerous forms taken by, and the wide range of motivations of those engaged in, corruption.

Corruption can take the form of extortion, where a corrupt government official demands a benefit to make something happen (or not), or bribery, where a corrupt individual offers a public servant a benefit to make something happen (or not).

It can be a minor payment such as fifty dollars to a technician to get a land-line telephone connected in a developing country or to a leading-hand to get a container of goods off the wharf sooner rather than later.

At the other end of the range, it can be grand corruption, where millions, even tens of millions, of dollars exchange hands to secure contracts for massive defence procurement or infrastructure projects.

Or it can be somewhere in between.

Motivation can range from a desire to supplement a relatively poor public sector salary, to ambition (needing money to ostensibly buy promotion within a corrupt civil service) to outright rapacious greed (a self-centred desire for a luxurious lifestyle, regardless of the consequences to others).

Given the numerous drivers of corruption on both the demand and the supply side, different manifestations ranging from minor payments to grand corruption, and cultural attitudes, from 'normality' through to abhorrence, any concerted efforts to tackle corruption must be multi-faceted and tailored to the particular circumstances being actioned.

However, an essential foundation for any anti-corruption program must be effective governance. This means integrating proactive and enforcing measures in governing institutions – especially parliaments, the judiciary and the bureaucracy – to foster integrity, increase transparency and enhance accountability.

APEC AND ANTI-CORRUPTION ISSUES

The APEC grouping, of which Australia is a founder member, has taken several useful steps to expand its role in the international anti-corruption agenda.

The foundation document for APEC was the *Santiago Commitment to Fight Corruption and Ensure Transparency*, adopted by APEC Leaders at their meeting in Santiago, Chile, in November 2004.

The *Commitment* acknowledges the destructive consequences of corruption for economic growth, social development, good governance and the soundness of political systems.

The APEC Leaders also stressed the importance of the *United Nations Convention Against Corruption* (UNCAC) as the world's first legally binding global instrument specifically targeted to fight corruption.

Specifically, they agreed to a series of anti-corruption principles, focusing on initiatives such as:

- denying safe haven to those found guilty of public corruption;
- promoting co-operation on extradition, mutual legal assistance and the recovery and return of the proceeds of corruption; and

- implementing preventative and punitive anti-corruption policies and practices consistent with the UNCAC.

The *Santiago Commitment* – a statement of general principles - was complemented by the more definitive and concrete *APEC Course of Action on Fighting Corruption and Ensuring Transparency*, also endorsed by APEC Leaders.

The *Course of Action* provides a sound program of work, containing some thirty action points, with identifiable and deliverable outcomes, for APEC to tackle corruption within the Asia Pacific region.

Key features of the *Course of Action* include:

- all APEC members agree to ratify and implement within their domestic legal systems the United Nations Convention Against Corruption;
- taking all necessary measures to enhance the anti-corruption measures in, and transparency of, domestic public administration both in general as well as government procurement, customs procedures, intellectual property protection and regulatory enforcement; and
- preventing corruption by improving accounting, inspecting and auditing standards in both the private and public sectors.

Both the *Commitment* and the *Course of Action* have been given substance through APEC's Anti-Corruption and Transparency Capacity Building Program, which will provide technical assistance to help more heavily impacted APEC developing country members tackle the scourge of corruption.

Useful initiatives include practical training in areas of investigatory and judicial techniques, as well as money laundering and asset forfeiture and recovery.

The APEC Business Advisory Council (ABAC) anti-corruption recommendations – which provide business with useful guidelines on how to deal with corruption (addressing such issues as political contributions, gifts and hospitality) – should be integrated into the *Course of Action*.

Indeed, ABAC could usefully establish a dedicated anti-corruption sub-committee, with formal linkages to the inter-governmental APEC Anti-Corruption and Transparency Taskforce.

ACCI AND ANTI-CORRUPTION

ACCI is not new to the anti-corruption agenda.

Over the years we have taken an active role in promoting pragmatic approaches to dealing with corruption in international business.

In the past decade, we have worked intensively with the Australian Government, and our international affiliates, on key international anti-corruption instruments.

In addition to the work by APEC and ABAC, these include the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and the landmark *United Nations Convention Against Corruption*.

More recently, we have been giving careful consideration to the potential inclusion of specific anti-corruption chapters within the various bilateral and regional freer trade agreements Australia has, is, or will be negotiating.

SMES AND ANTI-CORRUPTION ISSUES

While corruption is a challenge for many of those involved in international trade and commerce, it can be particularly problematic for Small and Medium Enterprises (SMEs).

Larger companies faced with an extortion demand for an illicit payment or other benefit may be in a better position to state a resolute ‘No’.

Strong home country laws, accounting rules, corporate codes of conduct and other transparency practices can steel executives from large multinational companies against outrageous demands for mega-million dollar extortion demands – as was shown by American companies after the enactment of the Foreign Corrupt Practices Act in the mid 1970s.

However, the corruption playing field is somewhat different for smaller to medium sized enterprises who, individually, do not generally have the commercial, legal or political power of their larger counterparts.

In short, their capacity to effectively say ‘No’, with an impact, is much less.

In practical, real world terms, it is very hard for an SME exporter with a container of frozen goods amounting to half his yearly income sitting on a wharf somewhere in the tropics to resist the blandishment: “\$50 or I will disconnect the power at 3 in the morning” or “\$100 or your container will take an extra 4 days to get off the

wharf.”

Taken as a whole, SMEs are minor and reluctant players in the corruption game. They rarely participate in the grand corruption league.

However, they are especially vulnerable in the area of petty extortion by low level, front line officials in barrier control agencies and others with regulatory enforcement powers.

For example, a small amount of a money for the corrupt official to do his or her job, such as issuing licences and permits, stamping official documents, even providing ‘public’ information.

Overwhelmingly, Australian SMEs are unwilling players in the corruption game. They don’t like it and wish it were not there.

ANTI-CORRUPTION CHAPTERS IN AUSTRALIA’S FTAS

One tangible option for dealing with the blight of corruption is to include specific anti-corruption chapters in each of the bilateral and regional freer trade agreements Australia is, or will be, negotiating.

Such a chapter, containing rigorous provisions within a legally binding treaty, should prove uncontroversial to those countries where corruption is not a problem and of valuable assistance to those countries where it is.

It would be particularly revealing where the principle, let alone the substance, of such a chapter was a ‘deal-breaker’. Where this happens, it would have useful information value for both the Australian and international trading communities.

Such an initiative should not constitute a major policy challenge for the Australian Government, which has already accepted the principle of anti-corruption provisions in our bilateral freer trade agreements.

Article 22.5 of the Australia – United States Free Trade Agreement obligates both nations to co-operate “*in seeking to eliminate bribery and corruption and promote transparency in international trade.*”

For the Australian Government, it is only a matter of building on this platform.

The foundation for such anti-corruption chapters would be accession to, ratification of, and implementation of, relevant international instruments.

For all of our existing and prospective FTA partners, this would require meaningful commitment to implementation of the *United Nations Convention Against Corruption*, whilst for developed country counterparts there would be the additional obligation of the *OECD Convention on Foreign Public Officials*.

The foundation commitment to the UNCAC would not be an issue for most other APEC member countries, although some (such as Canada, Japan, Malaysia, New Zealand, South Korea, Thailand and Vietnam) it seems are still to complete the accession and ratification processes.

However, commitment to the UNCAC itself would be the minimal requirement for an anti-corruption chapter.

Just as ACCI looks to the various FTAs to deliver trade and investment outcomes that are ‘WTO-plus’, so to would we want them to deliver anti-corruption outcomes that are ‘UNCAC-plus’ – that is, above and beyond those available in the original forum.

Without being too prescriptive, such ‘plus’ features could usefully include improved definitions and criminalisation of all forms of corruption (not just bribery), clearer texts to overcome differences in cultural perceptions of corruption and harmonisation of laws on specific corrupt conduct, such as where dual criminality is required.

No doubt, those involved in the FTA negotiations processes – already demanding as they are – may groan at the idea of adding an additional stream of activity to an already heavy workload.

However the value of any FTA is not reflected in the demands of the process, but in the tangible outcomes it delivers in trade facilitation and liberalisation – to which corruption is a substantial impediment.

CONCLUSION

Australia has an important role to play in advancing the ‘war on corruption’.

On a regional basis, Australia should look to carry forward APEC’s anti-corruption agenda beyond just 2007 when we are in the APEC Chair.

This work should take the form of continuing to play a leading role in driving the APEC anti-corruption program of work through our engagement in the APEC Anti-Corruption and Transparency Taskforce.

The key performance indicator over the next few years for the Taskforce should be effective implementation of

the *Course of Action*, including an objective, rigorous and transparent performance review of outcomes against commitments after the first five years of its existence (2009).

Bilaterally, we should look to raise the standard for bilateral freer trade agreements, which are the current active, driving force of global trade facilitation and liberalisation, through the inclusion of ‘UNCAC-plus’ anti-corruption chapters in such instruments.

Over time, other nation-pairs undertaking their own bilateral FTA negotiations will be challenged to include similar high quality chapters in their own agreements or be called to account for why they have not.