February 13, 2025

The Honorable Pamela Bondi
Attorney General of the United States
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Bondi,

As former General Counsels of the OECD who oversaw the drafting and operation of the OECD Anti-Bribery Convention and former Chairs of the OECD Working Group on Bribery, we share the United States' concern for an even playing field in international business.

We believe, however, that the announced pause on the enforcement of the US Foreign Corrupt Practices Act (FCPA), if prolonged, will not serve its intended purpose to "restore American competitiveness and security." It may achieve the very contrary by putting American companies operating abroad at serious risk and depriving the United States of a deterrent instrument it has used to protect US companies from unfair practices by foreign competitors.

The concern for an even playing field would be best addressed by the United States resuming vigorous enforcement and bringing its influence to bear on other countries to more effectively enforce compliance with similar laws by their own companies and nationals.

Several facts lead us to these conclusions.

First, the United States is no longer the only country that makes it a crime to bribe foreign government officials.

When the FCPA was adopted in 1977, and for the subsequent twenty years, it put US companies at a competitive disadvantage. Other countries were not only turning a blind eye to the bribery of foreign government officials by their companies, they were also allowing those bribes to be tax deductible. The United States, in response to a 1989 Congressional mandate, began an arduous diplomatic effort that ended this through the 1997 conclusion of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (the OECD Anti-Bribery Convention), signed and ratified by the United States.
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Today the prohibition of bribery abroad, along with the obligation to enforce laws against it, has become part of the international public order, a universal norm recognized and accepted in several international treaties, to which 191 countries are parties. In fact, the FCPA is one of the few national laws that has become a recognized international standard. Dozens and dozens of countries now have "FCPA style" legislation.

Second, the FCPA does not cover only US companies.

In addition to US businesses, the FCPA also covers foreign companies through several jurisdictional links, even if the bribery essentially occurred outside the United States. A foreign company that is listed on the NYSE or that uses the US banking system falls under the

jurisdiction of the FCPA. In fact, this expanded coverage was a consequence of the US ratification of the OECD Anti-Bribery Convention.

Third, the FCPA does not appear to have been disproportionately or overly enforced against US companies.

A note just issued by the law firm Gibson Dunn reports that "the majority of defendants in FCPA enforcement actions over the past decade have been non-U.S. companies and individuals. Specifically, between 2015 and 2024, 50% of all corporate defendants and 62% of all individual defendants in FCPA enforcement actions by DOJ or SEC were foreign. Foreign companies account for eight of the top ten largest monetary recoveries from corporate FCPA enforcement actions, totalling $6.1 billion of the $8.3 billion "Top Ten" total. This has led some to allege that the FCPA was designed to target foreign companies!

Fourth, a prolonged pause will not enhance American competitiveness and security

To weaken or suspend US enforcement of the FCPA long-term would put American companies in a very difficult situation and at risk. US companies would no longer be able to invoke the FCPA to shield themselves from solicitations. This would most probably increase the demand of bribes by foreign public officials. Moreover, the many other countries that have FCPA-like anti-bribery laws, with extraterritorial reach and a treaty obligation to enforce them, would look more closely at how US companies operate abroad. In other words, if the US no longer does the job, other countries are likely to do it.

Fifth, FCPA enforcement is not a cost for US taxpayers.

As mentioned above, the ten largest enforcement actions generated more than 8 billion dollars in revenue for the US treasury, mostly from foreigners!

Sixth, a number of countries with companies engaged in significant international business are not adequately enforcing anti-bribery laws.

Today a few G20 countries and other major economies are still not party to the OECD AntiBribery Convention. The OECD Convention has put in place a monitoring mechanism, through the OECD Working Group on Bribery, that works to bring about an equal level of implementation. Nevertheless, a number of Parties to the OECD Convention are not presently enforcing their legislation as they should.

Conclusion and Recommendations:

The FCPA is a highly valued example of US leadership, and a matter in which its interests coincide with the those of the entire international community.

The US should seek to persuade all G20 countries to become parties to the OECD Anti-Bribery Convention and therefore subject to Working Group monitoring and peer pressure.

The US should preserve its standing as a responsible anti-bribery law enforcer and the influence this affords it within the Working Group in order to induce all Parties to investigate and prosecute their own companies operating abroad.

The US should make it a priority to engage other countries in countering bribery of foreign public officials, as this will protect the American companies operating globally and ensure fair competition. It should use its extraordinary leverage and its strong bilateral connections to persuade deficient countries to adopt foreign bribery legislation and to enforce it effectively against their own companies and nationals.

We hope that you will agree that this is the best way to ensure a level playing field.

We would welcome your reply and the opportunity to respond to any questions you may have.

Sincerely,

Nicola Bonucci, Christian Schricke and David Small
(Former OECD General Counsels)

Danielle Goudriaan, Drago Kos, and Mark Pieth
(Former Chairs of the OECD Working Group on Bribery)

cc: FCPA Unit of the Fraud Section, Criminal Division