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The Anti-Corruption Laws of the United States and Mexico

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THE ANTI-CORRUPTION LAWS OF THE UNITED STATES AND MEXICO

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My topic is anti-corruption laws and developments in the United States and Mexico. I am going to focus on the U.S. side of this equation and especially on recent enforcement trends with respect to the Foreign Corrupt Practices Act (FCPA),[1] although I will also touch on the impact of our recent accounting scandals and the increasing linkages that I see between money laundering and anticorruption laws, as evidenced by the USA PATRIOT Act.[2] I am also going to touch briefly on the impact of international standards on the developments in the law in both the United States and Mexico.[3]

The international side is the right starting point because there is a great deal going on in the international arena. There has been a global anticorruption movement which has produced—in a very rapid period of time by the standards of international treaty development—international legal standards that have affected both the United States and Mexico. This is particularly true when you get into the area of standards of conduct in international business transactions. Until five years ago, there were no international legal standards in the anticorruption arena. We had in virtually every country of the world domestic bribery laws, especially laws that dealt with the issue of public-sector corruption. These were fairly unevenly enforced in many countries and, because they were criminal laws, there was typically very limited application to corporate conduct, to the conduct of business entities as opposed to their application to individuals.

If you look back to roughly five years ago, there was only one country in the world that had a law in the arena of transnational bribery or bribery in international business transactions, and that was the United States. That was, of course, the FCPA, which was passed in 1977 in the wake of scandals in the United States about the payment of bribes by many US companies in order to secure contracts overseas. But it is not just a bribery law. It is a law that also deals with accounting standards, corporate governance and internal control requirements.

Thus, there was one transnational bribery law and all these domestic bribery laws. Most countries as recently as five years ago permitted corporations to take a tax deduction for bribes that they paid in order to get business. And you had some efforts, in the same decade when the FCPA was passed, to develop international

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1. Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494, as amended by Title V of the Omnibus Trade & Competitiveness Act of 1988, Pub. L. No. 100-418, §§5001-03, 102 Stat. 1415 (codified as amended at 15 U.S.C. §§78m(b)(2), 78m(b)(3), 78dd 2, 78ff (2000))

2. USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001)

3. For a general survey of the subject, see Lucinda A. Low and Michael L. Burton, *The OECD, OAS and Council of Europe Antibribery Conventions: New International Standards and their Implications*, 11 Cal Int'l Practice 17 (2001); Also see *Symposium – A Review of the Foreign Corrupt Practices Act on its Twentieth Anniversary: Its Application, Defense and International Aftermath*, 18 NW J Int'l & Bus. 263 (1998)

standards that had failed miserably. But in the 1990s things changed. First there was the growth of a global anticorruption movement. You had the founding of nongovernmental organizations such as Transparency International out of Berlin, Germany.[4] You had the recognition of the importance of the rule of law, transparency, and an absence of corruption as well as the transition to globalization of economic activity and to democracy, to the opening of political activity in many countries. And even if you look at the North American Free Trade Agreement (NAFTA) there are 19 references in the NAFTA to transparency.[5] So even in the NAFTA, which became effective on January 1, 1994, you saw the glimmerings of the concept that transparency, closely related to anticorruption, is important to achieve the benefits of trade agreements.

Then in the latter part of the 1990s, we came to have true international standards. The first of these came within the Americas, with the OAS Convention, the Inter-American Convention Against Corruption (ICAC) which was approved in 1996 and entered into force in 1997.[6] Today, virtually every major country in the hemisphere is a party to it, including both the United States and Mexico. It deals quite broadly with both the criminalization of corrupt activities, including transnational bribery, and what are called preventive measures.

Around the same time the OECD, which represents the major capital exporting countries, began to take a great interest in this subject, pressing their countries to eliminate the tax deductibility of bribes, which most of them have now, and in 1997, approving a convention on transnational bribery which entered into force in 1998 and has achieved very rapid acceptance among the major capital exporting countries.[7] Again, both the US and Mexico are parties to this convention. This is a narrower instrument, much narrower than the OAS convention, and it basically targets bribery in international business transactions that affects public officials, like the FCPA does, and some related offenses in the money laundering arena and with respect to accounting standards.

Besides these two conventions, which are both in force, there is a Criminal Law Convention in the Council of Europe,[8] which includes a great deal of Eastern Europe and the former Soviet Union. In the European Union there are regional instruments and there is also an initiative underway in Africa. There is a global United Nations

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4. Transparency International ("TI"), a Berlin-based group founded by former World Bank officials, is the leading non-governmental organization (NGO) in the anti-corruption field. TI publishes each year a "Corruption Perceptions Index" ranking countries on the basis of their perceived levels of corruption. *See* Transparency International, *2002 Corruption Perception Index* (visited April 13, 2003) http://www.transparency.org/pressreleases_archive/2002/2002.08.28.cpi.en.html. In 1999, TI also began publishing a "Bribe Payers Index." ranking countries according to the perception that that their nationals engage in bribery in international business. Transparency International, 2002 Bribe Payers Index (visited April 13, 2003) http://www.transparency.org/cpi/2002/bpi2002.en.html.

5. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex, 32 I.L.M. 605.

6. Inter-American Convention Against Corruption, Mar. 29, 1996, 35 I.L.M. 724 (1996). For a detailed analysis of the Convention, see Lucinda A. Low, Andrea Bjorklund and Kathryn Cameron Atkinson, "The Inter-American Convention Against Corruption: A Comparison with the United States Foreign Corrupt Practices Act", 38 *Va. J. Int'l* 243 (1998).

7. *See* OECD Convention, signed Dec. 17, 1997 in Paris, France, *reprinted in* 37 I.L.M. 1 (1998), entered into force Feb. 15, 1999, *available at* http://www.oecd.org/daf/nocorruption/ (last visited April 14, 2003).

8. Criminal Law Convention on Corruption, Europ. T.S. No. 173 (1999), *available at* http://conventions.coe.int/treaty/EN/searchsig.asp?NT=174&CM=8&DF= (last visited April 14, 2003).

convention that is under negotiation dealing with corruption.[9] Indeed, if you look at the different regions of the world, only Asia as a region does not have a convention in place or in progress. They have taken a somewhat different approach to this issue.

And besides the conventions, there are new rules in international financial institutions. The World Bank, the Inter-American Development Bank (IABD), and other international financial institutions have adopted new standards that apply to private contractors and consultants who receive bank financing for their work.[10] If they engage in corrupt practices, these new standards say, they can be sanctioned, including permanently debarred from eligibility for participation in Bank-financed contracts.

So what do these international standards mean? Well, they mean dramatic things for the issue of transnational bribery or bribery in international business transactions. Before there was one unilateral statute, the U.S. FCPA. This has now evolved into an international standard which more than sixty countries have accepted in the last five years.

The conventions have also brought new oversight bodies. There is a peer review mechanism in the Organization for Economic Cooperation and Development (OECD), and a new one that was recently established in the Organization of American States (OAS),[11] and another one in the Council of Europe,[12] that hold countries' feet to the fire. Does the implementing legislation which a country passes meet the standards of the international treaty? Are countries actually enforcing? These are questions that are being addressed in these international bodies. In 2002, the OECD, in fact, conducted a thorough review by United States of the FCPA.[13]

There are new enforcement tools that these conventions contain. They seek to make instruments of mutual legal assistance and extradition more available and useful in the fight against corruption. They increase international cooperation, and they strengthen the ties between corruption and money laundering and increase the ability to use money laundering statutes to go after the proceeds of corruption. And they have brought more serious penalties for corrupt practices, as well as an increase in corporate liability.

Enforcement under these new conventions, of course, takes time, but it is a beginning. Recently, Japan brought a case against the company Mitsui, the large trading house, alleging that Mitsui officials had paid bribes in connection with power projects in Mongolia.[14] These accusations have resulted in the resignation of

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9. *See* Draft United Nations Convention Against Corruption, *available at* http://www.unodc.org/unodc/crime_cicp_committee_corruption_session_4.html. (last visted April 14, 2003).

10. *See* 1996 Guidelines for Procurement under IBRD Loans and IDA Credits, *available at* http://www.worldbank.org/html/opr/procure/guidelin.html (last visited April 14, 2003).

11. See Third Summit of the Americas: Plan of Action, *available at* http://www.oas.org/juridico/English/SumcorIII.htm (last visited April 14, 2003).

12. Monitoring under the Council of Europe Convention is implemented by the Group of States Against Corruption. See Evaluations Group/Group B (2001), *available at* http://www.greco.coe.int/evaluations/cycle1/Eval1GroupeB(2001).htm (last visited April 14, 2003).

13. United States: Phase 2, Report on Application of the Convention of Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation of Combating Bribery in International Business Transactions (Oct. 2002), *available at* http://www.oecd.org/pdf/M00035000/M00035038.pdf (last visited April 14, 2003).

14. *Japan/Mongolia: Mitsui Suspected of Bribery*, Transparency International's Quarterly Newsletter, Sept.

all the senior executives of Mitsui, and criminal proceedings are underway in Japan. Canada has also brought a case, I am sorry to say, involving United States Customs officials, but that goes to the point that this is a continual fight in all our countries.[15] The Convention regimes are starting to show some results in other countries. I can attest from personal experience that the World Bank is very active in enforcing its anticorruption standards. I have just defended a company for over two years in the first major contested proceedings under those new rules.

What have the international standards meant for the United States and Mexico? I am going to defer to my Mexican colleagues to describe what's happening in Mexico, but from the standpoint of someone from the United States, I just want to say that I think it is very, very interesting what is going on in Mexico. Mexico has vigorously pursued, even before the current administration, an anticorruption program on the preventive side. Mexico has done some of the most innovative things that I have seen of any country, and that includes my own country, in using information technology, computers and the power that they offer, to try to eliminate bureaucratic discretion, government discretion, and to bring transparency and thereby reduce corruption in areas like public procurement, which are highly vulnerable to corruption. They have innovative agreements between professional bodies, including the Barra Mexicana and the Controlaría, for monitoring certain kinds of government activities, and for improving professional standards. They have also amended their criminal laws. There is a new article 222bis of the Mexican Penal Code, which implements the offense of transnational bribery, pursuant to Mexico's obligations under the OECD and OAS conventions.[16] So there are some very interesting thing going on Mexico, and they have really assumed a leadership role in the Americas in this arena.

In the United States, the FCPA was revised and amended in 1998, upon the occasion of the United States becoming party to the OECD Convention, to reflect the treaty obligations that the United States has assumed. The effects of these amendments have been to expand the FCPA.[17] They have expanded slightly the criminal offense that is defined by the FCPA. They have expanded the extent of FCPA jurisdiction, not only over US persons who are now subject to nationality jurisdiction so that their acts anywhere in the world are covered but also over foreign persons. Although there are two territoriality standards, depending on which part of the FCPA you use, there is increasing application of the FCPA to foreign persons. And the 1998 amendments expanded the criminal penalty reach of the FCPA.

Partly as a result of this and partly as a result of the changed climate towards this offense around the world, we have seen an unprecedented expansion of enforcement activity with respect to the FCPA in the last few years. This expansion has not just been at the criminal level but has been civil and administrative as well. You may

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2002, *available at* http://www.transparency.org/newsletters/2002.3/headlines.html.

15. A court in Calgary indicted a Canadian firm (Hydro Kleen Group Inc.) and two of its executives, as well as the U.S. Customs agent, in connection with an alleged bribe to favor the company and hamper its competitors with respect to entry into the United States. *See* Candis McLean, *A Bad Odour In 'Pigging'*, Report Newsmagazine, July 22, 2002, at 33.

16. Código Penal Federal. Cap. X. *Cohecho*, Art. 222bis

17. Legislation amending the FCPA was enacted on November 10, 1998. *See* The International Anti-Bribery and Fair Competition Act of 1998 (Pub. L. 105-366)

know that enforcement authority over the FCPA in the United States is shared between our Department of Justice and the Securities and Exchange Commission (SEC). The SEC, of course, focuses only on so-called issuers, companies with publicly traded stock in the United States.

I would like to just mention five enforcement trends that I see.

The first, and I have already suggested this, is that there is a focus on foreign targets. This is no longer just a statute that can bite US persons. Foreign issuers, foreign companies that have a class of securities, including American Depositary Receipts (ADR's) traded on a US exchange, are subject to the FCPA. Both the bribery provisions and the accounting standards of the FCPA apply to them. In the last few years the SEC has brought its first case against a foreign issuer, the Italian company Montedison, which was ultimately settled with a penalty.[18]

Now, I note that there are currently, by my count, twenty-five Mexican companies that have ADRs or some type of security listed in the United States. That includes some of the biggest Mexican companies that are household names. So there are Mexican companies that are under SEC jurisdiction and fully subject to the FCPA.

There has also been enforcement activity targeted at foreign companies and foreign nationals who are not issuers. For example, a year ago, the Indonesian affiliate of the accounting firm KPMG and one of its named partners, an Indonesian national, were targeted in an enforcement action that resulted from a disclosure by the Texas-based company Baker Hughes.[19] Even though the government's theory of jurisdiction over them was very aggressive, both of them settled and paid penalties. In a case that the Department of Justice brought last year involving payments to political parties and party officials in Costa Rica to advance a port project, the so-called *King* case, the Justice Department brought criminal charges against a Costa Rican lawyer who was allegedly involved in the scheme carried out by this U.S. company, and the United States is trying to obtain extradition of that individual from Costa Rica.[20] A few years earlier, in the *Saybolt* case, which involved payments to secure a concession in the Canal Zone in Panama by a company that was ultimately owned and controlled in the Netherlands, a foreign national, a UK national living in the United States, not only was fined but served jail time, and the United States is attempting to extradite the chairman of that company from the Netherlands.[21]

So there is a targeting of foreign nationals, and that is a new development.

Another important development, and this is especially true when you are talking about issuers, publicly traded companies, under the books and records provisions of this statute, parent companies are now being held strictly liable for the acts of their controlled foreign affiliates, even in instances where bribery has not been proven. Some examples of this: the IBM Argentina case[22] has gone through two grand juries

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18. *SEC v. Montedison, S.A.A.*, SEC Litigation Release No. 16948 (2001).

19. *U.S. v. KPMG Siddharta Siddharta & Harsono and Sonny Harsono*, Civil Action No. 01-CVH-01-3105 (S.D. TX 2001), SEC Litigation Release No. 17127 (2001).

20. *U.S. v. King and Barquero* (W.D. Mo. 2001)

21. *U.S. v. Mead* (D.N.J. 1998), 2 *Foreign Corrupt Practices Act Rep.* 699.533 and 699.606 (W.A. Hancock ed. 2003; *U.S. v. Pluimers* (D.N.J. 1998)

22. *International Business Machines Corp.*, Exchange Act Release No. 34,43761 (2000).

and no basis for bribery liability was found. But IBM was held liable by the SEC for books and records errors at IBM Argentina, its wholly owned subsidiary, even though the IBM parent company had put into place extensive compliance programs and internal controls and the SEC found no fault with those. This is the clearest case of strict liability that we have seen.

The *BellSouth* case,[23] the settlement of which was announced in 2002, involved a minority owned but controlled affiliate of BellSouth Corporation in Nicaragua, as well as a controlled Venezuelan affiliate, and in the Nicaraguan aspect of the case, which involved payments to a consultant in Nicaragua who was married to a legislator with authority over telecommunications projects in the Congress of Nicaragua. Again no proof of bribery was found in the payments to the consultants. The responsibility came on the books and records side.

In the *Baker Hughes* case,[24] which principally involved payment issues in Indonesia, Baker Hughes did an internal investigation which also turned up payment issues in India and Brazil involving a company that had been acquired by Baker Hughes, or affiliates that had been acquired by Baker Hughes in those countries for which it had responsibility.

So there is strict liability on the accounting side. The accounting standards are very different from the bribery standards, because they do not turn on proof of bribery. There is no intent requirement; there is no financial materiality standard; and the SEC is applying a concept of qualitative accuracy of books and records, not just quantitative accuracy. In other words, if you make a $100,000 payment, your books and records are not accurate simply if they say, "I made a $100,000 payment." If they do not accurately characterize what that $100,000 payment was for, there may be a violation. For example, in a *Chiquita* case in Colombia, they said that bribes were really maritime fees.[25] In the BellSouth case, they characterized the payments as consulting fees. Those were considered to be qualitatively inaccurate statements in the books and records. So that is the third enforcement trend.

The fourth enforcement trend, and this is a continuing and long-term trend, is of enforcement officials taking aggressive positions. I mentioned the jurisdictional standard in Baker Hughes over the foreign nationals that was based on an effects test. These were people who never came to the United States but whose actions were deemed to have an effect in the United States. I have mentioned the theories of books-and-records liability and there are others.

Most companies settle these cases. Most companies in the United States do not like to litigate these cases, and so most cases tend to be settled, not litigated, which means that some of the aggressive jurisdictional theories of enforcement officials are not tested.

Now, some are litigated and we have had some interesting results this year. The government just won its criminal case in the Costa Rican payments case, but they lost in another trial involving customs payments in Haiti. This is the *American Rice* case, where a district court in Houston held earlier this year that payments to

23. *SEC v. BellSouth Corporation*, Accounting and Auditing Enforcement Release No. 1495 (2002).
24. *In the matter of Baker Hughes Inc.*, Admin. Proc. Rel. No. 34-44784 (2001).
25. *In the matter of Chiquita Brands International, Inc.*, Admin. Proc. Rel. No. 34-44902 (2001).

customs officials were not payments to obtain or retain business.[26] Needless to say that case is on appeal. If it stands up under appeal, the United States will have to amend the law, because it would then be out of compliance with the OECD Convention. But it shows that when some of these cases are litigated, the government's positions do not always hold up.

There is an enforcement emphasis on gatekeepers. Who are the gatekeepers? Well, this is a term you will run into in the money laundering area as well. They may include, among others, lawyers and accountants, with the traditional continuing emphasis on senior management. In the *American Rice* Haiti case, the Justice Department lost at trial and is appealing. After the Justice Department lost, the SEC brought a books-and-records case against the senior management of that company, and they included the Chairman. The theory against the Chairman is a control-person theory under Section 21A of the Securities Exchange Act of 1934.[27] So they are targeting management responsibility and gatekeeper responsibility.

We have seen unprecedented international cooperation in these cases. Since these cases are by definition transnational, this is of great consequence to effective enforcement in combating corruption.

There is some convergence between anticorruption laws and anti-money laundering laws. If you look at the USA PATRIOT Act, you will see that there are new obligations in the private banking area for the financial institutions to exercise enhanced due diligence with people who are known in the financial industry as PEPs.[28] PEPs are "politically exposed persons." That means senior government officials, their close family members or close business associates. Financial institutions in the United States, when these individuals are opening private banking accounts, now have to exercise enhanced due diligence. Also we have seen an expansion of potential money laundering liability when the predicate offense for money laundering is a corruption-related activity. Those both come out of the USA PATRIOT Act.

What about Enron and the current corporate scandals? These were not initially bribery scandals. They were accounting scandals and corporate governance scandals, although there is now an FCPA piece in the Enron case that is being investigated. And the accounting and governance issues very much implicate the accounting standards of the FCPA. These scandals have already led to huge reforms in the United States in the area of corporate governance and corporate systems of control. Some of you may be familiar with the Sarbanes-Oxley legislation that was passed earlier this year.[29] This is going to increase the responsibilities of corporate management for compliance systems for governance systems. It is going to increase and accelerate the trend requiring that the private sector police itself effectively. So this is an enormously significant development.

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26. *U.S. v Kay*, 200 F. Supp. 2d 681 (S.D. TX 2002).

27. 15 U.S.C. §78u-1 (2000)

28. 31 U.S.C. § 5318(i)(3) as amended by Section 312 of the USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

29. An Act to Protect by Improving the Accuracy and Reliability of Corporate Disclosures Made Pursuant to the Securities Laws, and for other Purposes (Sarbanes-Oxley Act of 2002) Pub. L. 107-204, 107th Congress (2002)

The U.S. experience, I think, shows that the fight against corruption is a continual one, a *lucha continua*. Our current issues have to do with corporate governance, accounting standards and I have not even mentioned campaign finance laws, but we have those issues, too.

I was in an African country not too long ago, meeting with some business people and foreign investors. They said to me, "*¿Por qué debo contratar a un abogado cuando puedo comprar un juez?*" "Why should I hire a lawyer when I can buy a judge?" The answer is that fighting these issues is an essential part of the rule of law, and the rule of law is key to the success and stability of the business activities that we are all interested in. Fighting corruption is also good for lawyers.

Questions and Comments

Franklin Gill: Some years ago it was possible in the United States to approach the Department of Justice or the SEC for waivers of questionable payments, sometimes known as "facilitating payments," for example, payments made to accelerate the review by customs of sensitive pharmaceutical products. Is that kind of a regulatory review still possible in the United States, and is there anything comparable in Mexico?

Lucinda Low: In the United States, there is a procedure and it involves the Department of Justice, not the SEC. They have an opinion procedure whereby a company can go to the Department and obtain the Department's opinion, in advance, of a proposed transaction. It doesn't have to be a facilitating payments issue. It usually isn't because those are exempted by law from the antibribery provisions. But you can go to the Department and provide them with the facts and obtain an opinion on whether they would prosecute under their current enforcement policies if you carried through with the proposed transaction. The procedure is not frequently used. It's been in place in various forms since the statute was passed in 1977. There are approximately three dozen opinions that have been issued under the procedure since it was initiated, so it's about one and a half a year, which isn't, you know, a flood by any means. There are some serious weighing of pros and cons that typically go on before one approaches the DOJ. I've only done it formally once, but in most cases it's not practical either for time reasons or because, if a foreign party's involved, Justice typically asks the foreign party to submit to U.S. jurisdiction in connection with the procedure, which most foreign parties will not do. So it's not a frequently used procedure, but it does exist.

If you can make "facilitating payments" under U.S. law, wouldn't those now violate Mexican law and therefore violate US law as well?

Lic. Rodrigo Labardini: I believe that the facilitating payment would fall within Article 222bis of the Penal Code and constitute the crime of *cohecho*.

Low: Just to clarify, from a U.S. law stand point the rule is such payments are an exception from the bribery provisions; they're not excepted from the books and records provisions. We have to book them properly and that gets you to foreign law.

Man in Audience: Why don't we just define what "facilitating payments" are so everybody would know.

Low: Good thought! Facilitating payments, you will look in vain for an exception by this name. If you look at the statute, what you need to look for is the exception

for payments to secure routine governmental action.[30] The idea behind this exception is that if you're making a payment, and typically it's a fairly small payment, although the statute has no monetary threshold, but typically it's a very small payment, in order to expedite some government action which is not of a discretionary nature, which doesn't involve the award of business or the continuation of business, then you may do it. The statute gives some examples. The classic case is the bureaucrat who has to stamp your papers and who has a stack of papers and yours is at the bottom of the pile. If you slip him a *mordida*, he'll move them to the top of the pile and it'll be processed within a week or a day instead of weeks or months. This is often very important for Customs processing, especially if you have perishable cargo. That's one of the specific exceptions, but there can be others. The OECD convention permits an exception for facilitating payments. A few countries such as Canada have included them in their implementing legislation. Mexico has not, as I understand it.

Labardini: And as to the process for seeking a preliminary opinion as to questionable payments from the U.S. Department of Justice, there is no equivalent procedure in Mexico.

30. §78dd-2(b) Exception for routine governmental action. Subsections (a) and (i) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by the foreign official, political party or party official. This exception was added in the 1988 Amendments. A similar exception existed in the original Act by virtue of the original definition of "foreign official." Prior to the 1988 Amendments, government employees whose duties were primarily "ministerial or clerical" were excluded from "foreign official". See H.R. Conf. Rep. No. 95-831, at 12 (1977); S. Rep. No. 100-85, at 52 (1987). Thus, payments to those employees were not payments to "foreign officials" and, accordingly, fell outside the scope of the Act's prohibitions. The original exception hinged on the duties of the recipient, rather than the purpose of the payment. As a practical matter, however, it was often difficult to determine whether an employee's duties were ministerial or discretionary. S. Rep. No. 100-85, at 52-53; H.R. Rep. No. 100-40, at 77 (1987). Therefore, the 1988 Amendments changed the exception to focus on the purpose of the payment, to allow only those payments that secure or expedite performance of duties that an official is required to perform in the normal course of business and that do not involve the exercise of the official's discretion. S. Rep. No. 100-85 at 52-53; H.R. Rep. No. 100-40 at 77.