

105TH CONGRESS
1ST SESSION

H. R. 2071

To require the Federal Government, in procuring goods and services and in providing certain foreign trade and investment assistance relating to trade and exports, to give a preference to entities that adopt and enforce a corporate code of conduct and to provide for an annual administrative review and petition process to ensure compliance with such code.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1997

Mr. SANDERS (for himself, Mr. EVANS, Mr. FILNER, Mr. LIPINSKI, and Mr. LEWIS of Georgia) introduced the following bill; which was referred to the Committee on Government Reform and Oversight, and in addition to the Committees on International Relations, Banking and Financial Services, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require the Federal Government, in procuring goods and services and in providing certain foreign trade and investment assistance relating to trade and exports, to give a preference to entities that adopt and enforce a corporate code of conduct and to provide for an annual administrative review and petition process to ensure compliance with such code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Good Corporate Citi-
3 zenship and Federal Procurement Incentives Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) For centuries, corporations have been char-
7 tered exclusively by governments to serve the public
8 good and to promote the general welfare.

9 (2) Many large United States corporations
10 started as small businesses and became economic
11 powerhouses largely because of the hard work and
12 sacrifices, made across several generations, by Amer-
13 ican working families in hundreds of thousands of
14 American communities.

15 (3) The strength and profitability of United
16 States companies is largely derived from the produc-
17 tivity and loyalty of their American employees and
18 the support of local communities and stable markets
19 that nurture and sustain their corporate growth.

20 (4) Enlightened corporate leaders in America
21 readily acknowledge their debt to society in general
22 and to their workers and home communities in par-
23 ticular that are crucial to the amassing and perpet-
24 uation of great corporate wealth.

25 (5) Purely self-interested corporate leaders rec-
26 ognize that, if companies are to survive and expand,

1 working families must earn enough to be good con-
2 sumers, and home communities must be strong
3 enough to provide profitable markets.

4 (6) Unbridled corporate greed and “robber-
5 baron” myopia have prompted public backlash
6 among the American people at different times in the
7 Nation’s history, resulting in public demand for gov-
8 ernmental redress and enhanced public regulation in
9 furtherance of greater corporate accountability.

10 (7) After the Great Depression and the Na-
11 tion’s victory in World War II, a new generation of
12 American corporate leaders took it to heart when
13 Fortune magazine called upon them to be “indus-
14 trial statesmen” who looked after the well-being of
15 their workers and communities as well as stockhold-
16 ers.

17 (8) More recently, United States corporations
18 since the 1970’s have had to respond to a new era
19 of global economic integration and unparalleled
20 international competition, resulting in widespread
21 corporate restructuring and necessitating a reexam-
22 ination of the responsibilities of corporations to their
23 workers, their home communities, and the environ-
24 ment, as well as their stockholders.

1 (9) Declining available resources, deficit spend-
2 ing, and rising national debt during the past 25
3 years make it extremely problematic for government
4 at any level to check and balance expanding cor-
5 porate influence in America and abroad.

6 (10) Public confidence has declined substan-
7 tially in the capacity and effectiveness of government
8 at all levels to counteract unfair economic competi-
9 tion and to command greater corporate responsibil-
10 ity inside and outside of the marketplace.

11 (11) At the same time, public concern is mush-
12 rooming about the increasing concentration of unac-
13 countable corporate power and declining corporate
14 responsibility across national borders.

15 (12) Yet every year the United States Govern-
16 ment provides a wide array of taxpayer-financed
17 services and financial subsidies as well as special tax
18 breaks as assistance to United States-based multi-
19 national corporations, especially to enable such com-
20 panies to invest overseas, to create jobs in foreign
21 countries, and to expand their access to foreign mar-
22 kets.

23 (13) For the balance of the 1990's and beyond,
24 market-driven approaches to public problem-solving

1 may often be preferred to greater corporate regula-
2 tion.

3 (14) Accordingly, top priority should be as-
4 signed to using the influence of government, as a
5 powerful customer in the marketplace, to reward
6 good corporate citizenship and to avoid doing busi-
7 ness with corporations that neglect or abandon their
8 workers and home communities and despoil the envi-
9 ronment.

10 (15) Every year the United States Government
11 buys more than \$200,000,000,000 in goods and
12 services, ranging from weapons systems to cleaning
13 supplies, making it the largest customer in the
14 American marketplace.

15 (16) Harnessing the immense purchasing power
16 that the United States Government wields through
17 its procurement practices to reward good corporate
18 citizenship and to discourage corporate irresponsibil-
19 ity would serve as a powerful inducement for greater
20 corporate accountability at home and abroad.

1 **SEC. 3. PREFERENCE IN AWARD OF CONTRACTS AND IN**
2 **GRANTING CERTAIN FOREIGN TRADE AND IN-**
3 **VESTMENT ASSISTANCE FOR ENTITIES**
4 **ADOPTING AND ENFORCING CORPORATE**
5 **CODE OF CONDUCT.**

6 (a) PREFERENCE IN AWARD OF CONTRACTS.—

7 (1) IN GENERAL.—In entering into contracts to
8 procure goods or services, the head of an executive
9 agency shall give a preference to contracting with
10 entities that have adopted and are enforcing the cor-
11 porate code of conduct set forth in section 4.

12 (2) STANDARDS.—The Federal Acquisition
13 Regulation shall include standards with respect to
14 the preference required by this subsection.

15 (b) PREFERENCE IN PROVIDING CERTAIN FOREIGN
16 TRADE AND INVESTMENT ASSISTANCE.—

17 (1) DEPARTMENT OF COMMERCE.—(A) The
18 Secretary of Commerce shall give preference to an
19 entity that has adopted the corporate code of con-
20 duct set forth in section 4—

21 (i) in providing United States exporters
22 with introduction to contacts in foreign coun-
23 tries pursuant to section 2301(b)(4) of the Om-
24 nibus Trade and Competitiveness Act of 1988
25 (15 U.S.C. 4721(b)(4)); and

26 (ii) in coordinating trade missions.

1 (B) The Secretary of Commerce shall promul-
2 gate regulations containing standards with respect
3 to the preference required by this paragraph.

4 (2) OVERSEAS PRIVATE INVESTMENT CORPORA-
5 TION.—(A) In providing financing and issuing in-
6 vestment insurance, reinsurance, and guaranties to
7 entities pursuant to the Foreign Assistance Act of
8 1961, the Overseas Private Investment Corporation
9 shall give preference to an entity that has adopted
10 the corporate code of conduct set forth in section 4.

11 (B) The Board of Directors of the Overseas
12 Private Investment Corporation shall promulgate
13 regulations containing standards with respect to the
14 preference required by this paragraph.

15 (3) TRADE AND DEVELOPMENT AGENCY.—(A)
16 In providing assistance under section 661 of the
17 Foreign Assistance Act of 1961 (22 U.S.C.
18 2421(b)), the Trade and Development Agency shall
19 give preference to an entity that has adopted the
20 corporate code of conduct set forth in section 4.

21 (B) The Director of the Trade and Develop-
22 ment Agency shall promulgate regulations contain-
23 ing standards with respect to the preference required
24 by this paragraph.

1 (4) EXPORT-IMPORT BANK.—(A) In providing
2 guarantees, insurance, and credit, and in participat-
3 ing in extensions of credit, the Export-Import Bank
4 of the United States shall give preference to an en-
5 tity that has adopted the corporate code of conduct
6 set forth in section 4.

7 (B) The Board of Directors of the Export-Im-
8 port Bank of the United States shall promulgate
9 regulations containing standards with respect to the
10 preference required by this paragraph.

11 **SEC. 4. CORPORATE CODE OF CONDUCT.**

12 It is the sense of Congress that any entity awarded
13 a contract with the Federal Government for goods or serv-
14 ices or provided assistance in a form described in section
15 3(b) should adopt and adhere to the following principles
16 in all its domestic and foreign operations:

17 (1) Provide a safe and healthy workplace.

18 (2) Ensure fair employment, including the
19 avoidance of child and forced labor; the avoidance of
20 discrimination based upon race, gender, national ori-
21 gin, or religious beliefs; the respect of freedom of as-
22 sociation and the right to organize and bargain col-
23 lectively; and the payment of a living wage to all
24 workers.

1 (3) Uphold responsible environmental protection
2 and environmental practices.

3 (4) Comply with United States and local laws
4 (whichever are more stringent) promoting good busi-
5 ness practices, including laws prohibiting illicit pay-
6 ments and ensuring fair competition.

7 (5) Maintain, through leadership at all levels, a
8 corporate culture that respects free expression con-
9 sistent with legitimate business concerns, and does
10 not condone political coercion in the workplace; that
11 encourages good corporate citizenship and makes a
12 positive contribution to the communities in which
13 the company operations; and where ethical conduct
14 is recognized, valued, and exemplified by all employ-
15 ees.

16 (6) Require similar behavior by partners, sup-
17 pliers, and subcontractors under terms of contract.

18 (7) Implement and monitor compliance with the
19 principles listed in paragraphs (1) through (6) of
20 this section through a program that is designed to
21 prevent and detect conduct that is not in compliance
22 with such principles by any employee of the entity
23 or of a foreign supplier of the entity and that in-
24 cludes—

1 (A) standards for ethical conduct of em-
2 ployees of the entity and foreign suppliers
3 which refer to the principles;

4 (B) procedures for assignment of appro-
5 priately qualified personnel at the management-
6 level of the entity to monitor and enforce com-
7 pliance with the principles;

8 (C) procedures for reporting violations of
9 the principles by employees and foreign suppli-
10 ers;

11 (D) procedures for selecting qualified indi-
12 viduals who are not employees of the entity or
13 foreign suppliers to monitor compliance with
14 the principles, and for auditing the effectiveness
15 of such compliance monitoring;

16 (E) procedures for disciplinary action in
17 response to violations of the principles;

18 (F) procedures designed to ensure that, in
19 cases in which a violation of the principles has
20 been detected, reasonable steps are taken to
21 correct the violation and prevent similar viola-
22 tions from occurring;

23 (G) procedures for providing educational
24 and employment-related counseling to any child

1 employed by the entity or foreign supplier in
2 violation of the principles; and

3 (H) communication of all standards and
4 procedures with respect to the principles to
5 every employee and foreign supplier of the en-
6 tity—

7 (i) by requiring each employee and
8 foreign supplier to participate in a training
9 program; or

10 (ii) by disseminating information in
11 writing that explains the standards and
12 procedures.

13 **SEC. 5. ANNUAL COMPLIANCE REVIEW AND REPORT.**

14 (a) REVIEW OF ENTITIES RECEIVING PREF-
15 ERENCES.—In the case of each entity that received a pref-
16 erence and was awarded a contract or was provided assist-
17 ance under section 3 by an executive agency, the head of
18 the executive agency shall conduct an annual review of the
19 entity to determine whether the entity is in compliance
20 with the corporate code of conduct set forth in section 4.

21 (b) COMPLIANCE REPORT TO CONGRESS.—Not later
22 than September 30 of each year, the head of each execu-
23 tive agency shall prepare and submit to Congress a report
24 on the progress of the implementation of the requirements

1 of this Act with respect to the agency. The report shall
2 include—

3 (1) a list of each entity that received a pref-
4 erence and was awarded a contract or was provided
5 assistance under section 3 by the agency; and

6 (2) the type of contract and the nature of as-
7 sistance involved.

8 **SEC. 6. LIMITATIONS ON PREFERENTIAL TREATMENT.**

9 (a) **TERMINATION OF CONTRACT OR ASSISTANCE.**—

10 The Secretary of Commerce shall terminate a contract
11 awarded or assistance provided to an entity that received
12 a preference under section 3 in the award of the contract
13 or the provision of the assistance if, after an investigation
14 initiated under section 7, a decision is issued that the con-
15 tractor or the recipient of the assistance is not adhering
16 to the corporate code of conduct set forth in section 4.

17 (b) **WITHDRAWAL, SUSPENSION, OR LIMITATION OF**
18 **PREFERENCE.**—The designation of an entity as eligible to
19 receive a preference under section 3 may be withdrawn,
20 suspended, or limited if, after any investigation initiated
21 under section 7, a decision is issued that the entity is no
22 longer in complete compliance with the corporate code of
23 conduct adopted by the entity pursuant to section 4. Such
24 entity shall cease to be eligible for a preference under sec-
25 tion 3 on the day on which the Secretary of Commerce

1 issues the decision under section 7. The Secretary of Com-
2 merce shall promptly publish the text of any such decision
3 in the Federal Register and shall submit a copy of the
4 decision to the Congress. Within 30 days after the date
5 of publication of the decision under the preceding sen-
6 tence, the President shall issue an Executive order or
7 Presidential proclamation revoking the eligibility of the en-
8 tity for a preference under section 3, for a time period
9 considered appropriate by the President.

10 **SEC. 7. INVESTIGATIONS OF COMPLIANCE WITH COR-**
11 **PORATE CODE OF CONDUCT.**

12 (a) PETITIONS.—(1) Any person may at any time file
13 a petition with the Secretary of Commerce requesting that
14 action be taken under section 6 and setting forth the alle-
15 gations in support of the request. Petitions alleging the
16 failure of an entity to comply with the corporate code of
17 conduct adopted by the entity pursuant to section 4 may
18 seek—

19 (A) the termination of a contract awarded or of
20 assistance provided to an entity that received a pref-
21 erence under section 3 in the award of the contract
22 or in the provision of the assistance;

23 (B) the withdrawal, suspension, or limitation of
24 the eligibility of an entity for a preference under sec-
25 tion 3; or

1 (C) action under both subparagraphs (A) and
2 (B).

3 (2) The Secretary of Commerce shall review the alle-
4 gations in any petition filed under paragraph (1) and, not
5 later than 45 days after the date on which the Secretary
6 of Commerce receives the petition, shall initiate an inves-
7 tigation unless the petition is dismissed under paragraph
8 (3).

9 (3) The Secretary of Commerce may determine not
10 to initiate an investigation with respect to a petition only
11 upon issuing a finding that the petition is frivolous. This
12 finding shall be made without regard to whether similar
13 allegations were made in a previously reviewed petition
14 and shall focus exclusively on whether the facts alleged
15 in a petition, if true, would fail to establish a prima facie
16 case for noncompliance with the corporate code of conduct
17 set forth in section 4. Only if the facts alleged in a peti-
18 tion, if true, fail to make out a prima facie case, or if
19 a petition contains only conclusory allegations with no alle-
20 gation of supporting facts, shall a petition be dismissed
21 as frivolous. If the Secretary of Commerce does find a pe-
22 tition to be frivolous, the Secretary of Commerce shall
23 issue a written decision indicating the specific reasons
24 therefor and shall publish notice of the determination, to-
25 gether with a summary of such reasons, in the Federal

1 Register. A copy of the decision shall be sent to the peti-
2 tioner and shall be made available for public review.

3 (4) The Secretary of Commerce may constitute one
4 or more special committees to review petitions under in-
5 vestigation and make written recommendations with re-
6 spect to each petition. The written recommendations shall
7 be available to the public. The members of the special com-
8 mittees may be drawn from other agencies within the exec-
9 utive branch, and each member shall have the necessary
10 expertise relevant to the issues raised in any petitions to
11 be considered. The Secretary of Commerce, any Assistant
12 Secretary of Commerce, or another designee of the Sec-
13 retary of Commerce shall be the chair of any special com-
14 mittee constituted under this section. Any special commit-
15 tee that reviews a petition containing allegations of non-
16 compliance shall include at least one member designated
17 by the Secretary of Labor, the Secretary of State, and the
18 Administrator of the Environmental Protection Agency.

19 (5)(A) The investigation of a petition conducted
20 under this subsection shall commence with the Secretary
21 of Commerce publishing a summary of the petition in the
22 Federal Register, along with a request for any person to
23 submit information relevant to the petition. Following
24 publication, the Secretary of Commerce shall conduct an
25 independent investigation and gather information from all

1 available sources. As part of the review process, the Sec-
2 retary of Commerce shall, as soon as practicable, and in
3 no event later than 90 days following the filing of the peti-
4 tion, provide opportunity for the presentation of informa-
5 tion concerning the issues, including a public hearing.

6 (B) With respect to any petition alleging noncompli-
7 ance, the Secretary of Commerce shall consult with the
8 Secretary of Labor, the Secretary of State, the Adminis-
9 trator of the Environmental Protection Agency, or any
10 combination of the foregoing, as appropriate, as to wheth-
11 er such violations have occurred or are occurring. Each
12 official in the preceding sentence with whom the Secretary
13 of Commerce consulted shall provide the Secretary of
14 Commerce with written recommendations regarding the
15 disposition of the allegations that shall be entered in the
16 record of the investigation. The Secretary of Commerce,
17 or any member of any special committee constituted under
18 paragraph (4), may also seek advice from experts in the
19 fields of human rights, worker rights, environmental pro-
20 tection, and equal opportunity employment. The advice
21 may be in writing or taken as oral testimony at a public
22 hearing and shall be entered in the record of the investiga-
23 tion.

24 (6) After completion of the investigation, and in no
25 event later than 270 days following the date the petition

1 was filed, the Secretary of Commerce shall issue a decision
2 whether to grant the relief requested in the petition. The
3 decision must be in writing and clearly reference the issues
4 presented, the factual findings regarding the allegations,
5 and the standard applied in determining whether the facts
6 as found required action under section 6. A copy of the
7 decision shall be provided to the petitioner, any other
8 party that submitted information relevant to the petition
9 and be made available for public review. A summary of
10 the decision shall be published in the Federal Register.

11 (b) INITIATION OF INVESTIGATION BY MEANS
12 OTHER THAN PETITION.—If the Secretary of Commerce
13 determines that an investigation should be initiated with
14 respect to any matter in order to determine whether the
15 matter requires action under section 6, the Secretary of
16 Commerce shall publish such determination in the Federal
17 Register and shall initiate such investigation using the
18 procedures of paragraphs (5) and (6) of subsection (a).

19 (c) PROMULGATION OF REGULATIONS.—The Sec-
20 retary of Commerce shall promulgate regulations to imple-
21 ment this section. The regulations may include—

22 (1) procedures for the creation of special com-
23 mittees under subsection (a)(4);

24 (2) coordinating investigations with other agen-
25 cies;

1 (3) consolidating multiple petitions concerning
2 the same contract or entity; and

3 (4) holding hearings on similar petitions at the
4 same time in order to efficiently gather information.

5 (d) JUDICIAL REVIEW OF DETERMINATIONS.—(1)
6 Except as provided in paragraph (2), any final decision
7 dismissing or denying a petition requesting action under
8 section 6(a) may be appealed by the petitioner to the Unit-
9 ed States Court of Appeals for the Federal Circuit for re-
10 view. The decision shall be reviewed as a final agency ac-
11 tion.

12 (2) Any final decision dismissing or denying a peti-
13 tion requesting action under section 6(b) may be appealed
14 by the petitioner to the United States Court of Appeals
15 for the District of Columbia Circuit for review. The deci-
16 sion shall be reviewed as a final agency action. Notwith-
17 standing any provision of section 1581 of title 28, United
18 States Code, the denial or dismissal of a combined petition
19 filed under subsection (a)(1)(C) may be appealed in its
20 entirety under this subsection.

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