The Lion Awakens: The Foreign Corrupt Practices Act—1977 to 2010

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I. INTRODUCTION

In December 2008, "Siemens A.G., the German engineering giant," settled bribery cases in Germany and the United States by paying fines and penalties of more than $1.6 billion.[1] The U.S. actions were brought under the Foreign Corrupt Practices Act (FCPA). Mr. Reinhard Siekaczek, an accountant for the firm, admitted that from 2002 to 2006 he oversaw an annual bribery budget of approximately $40–$50 million at Siemens.[2] "Matthew W. Friedrich, the acting chief of the [U.S. Department of Justice's (DOJ) Criminal Division], called the corruption at Siemens 'systematic and widespread.' Linda C. Thomsen, the [Securities and Exchange Commission's (SEC)] enforcement director, described it as 'egregious and brazen.' Joseph Persichini Jr., the director of the [Federal Bureau of Investigation's (FBI)] Washington field office, which led the investigation, called it 'massive, willful and carefully orchestrated.'"[3]

Company managers and sales staff used the slush fund to cozy up to corrupt government officials worldwide. For example, according to court documents, Siemens paid $5 million in bribes to the son of Bangladesh's Prime Minister and other senior officials in order to win a mobile phone contract in the country. Mr. Siekaczek's group also paid $12.7 million in bribes to senior officials in Nigeria in order to secure government contracts. In Argentina, a subsidiary of Siemens paid in excess of $40 million in bribes to win a $1 billion contract to produce national identity cards. In Israel, Siemens provided $20 million to senior government officials to build power plants. Additionally, Siemens paid $16 million to obtain urban rail lines in Venezuela, $14 million for medical equipment in China, and $1.7 million to "Saddam Hussein and his cronies" in Iraq.[4]

After decades of obscurity, the FCPA now occupies center stage in the federal government's war on white-collar crime.[5] The DOJ increased the

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1. Siri Schubert & T. Christian Miller, *At Siemens*, Where Bribery Was Just a Line Item, N.Y. TIMES, Dec. 21, 2008, SundayBusiness, at 1, *available at* http://www.nytimes.com/2008/12/21/business/worldbusiness/21siemens.html.

2. *Id.*

3. *Id.* at 6.

4. *Id.*

5. Many scholarly articles have been written about the Foreign Corrupt Practices Act. *See generally*, Andrea Dahms & Nicolas Mitchell, *Foreign Corrupt Practices* Act, 44 AM. CRIM. L. REV. 605 (2007); Tor Krever, *Curbing Corruption? The Efficacy of the Foreign Corrupt Practices Act*, 33 N.C. J. INT'L L. & COM. REG. 83 (2007); Jack G. Kaikati, George M. Sullivan, John M. Virgo, T. R. Carr & Katherine S. Virgo, *The Price of International Business Morality: Twenty Years Under the Foreign Corrupt Practices Act*, 26 J. BUS. ETHICS 213 (2000); Rebecca Koch, *The Foreign Corrupt Practices Act: It's Time to Cut Back the Grease and Add Some Guidance*, 28 B.C. INT'L & COMP. L.

number of its FCPA investigations sevenfold during the last three years, and that is just the beginning. The DOJ has publicly announced its intention to vigorously enforce the law and is hiring an army of new prosecutors just to handle these cases.[6]

No one is immune from FCPA scrutiny. Current cases and subpoenas directed to entire industries are probing every manner of transaction—from a shipment of rice to the design of a space station. Whenever U.S. business crosses a border, an FCPA investigation is now a distinct possibility.[7]

It is well-known that the FCPA not only prohibits bribery of foreign officials,[8] but imposes reporting obligations on public companies—somewhat similar to the requirements of the Sarbanes-Oxley Act of 2002.[9] But the anti-bribery provisions of the FCPA also apply to private businesses—both large and small—and to individuals, both in the United States and abroad. Penalties can include stiff prison terms and millions of dollars in fines. U.S. businesses and citizens can be held accountable for the acts of their foreign sales and marketing agents,

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REV. 379 (2005); Krever, *supra*; Steven R. Salbu, *Bribery in the Global Market: A Critical Analysis of the Foreign Corrupt Practices Act*, 54 WASH. & LEE L. REV. 229 (1997); David E. Dworsky, *Foreign Corrupt Practices Act*, 46 AM. CRIM. L. REV. 671 (2009); Justin F. Marceau, A Little Less Conversation, *A Little More Action: Evaluating and Forecasting the Trend of More Frequent and Severe Prosecutions Under the Foreign Corrupt Practices Act*, 12 FORDHAM J. CORP. & FIN. L. 285 (2007); Barbara Crutchfield George & Kathleen A. Lacey, *Investigation of Halliburton Co./TSKJ's Nigerian Business Practices: Model for Analysis of the Current Anti-Corruption Environment on Foreign Corrupt Practices Act Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 503 (2006).

6. In an October 2006 speech to the American Bar Association's FCPA Institute, Assistant Attorney General Alice Fisher, then head of the DOJ's Criminal Division, announced an expanded doctrine of FCPA enforcement to "root out global corruption." She was quoted as saying "I want to send a clear message today that if a foreign company trades on U.S. exchanges and benefits from U.S. capital markets, it is subject to our laws." Alice Fisher, Assistant Attorney General, speech to the American Bar Association's Foreign Corrupt Practices Act Institute (Oct. 16, 2006) *available at* www.justice.gov/criminal/fraud/pr/speech/2006/10-16-06AAGFCPASpeech.pdf.

7. Virginia A. Davidson & Eric S. Zell, *The Foreign Corrupt Practices Act: Pitfalls In Doing Business Overseas*, THE FEDERAL LAWYER, Nov./Dec. 2008, at 20.

8. *See* 15 U.S.C. §§ 78dd-1(a), 78dd-2(a).

9. *See* 15 U.S.C. § 78m(b)(2)(A); *see also* Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified in scattered sections of 11, 15, 18, 28 & 29 U.S.C.).

distributors, and consultants—perhaps even without direct knowledge of an illegal payment.[10]

Over the past three decades, the corrupt payment of foreign government officials by U.S. business firms has evolved into an important public issue connected to the globalization of international trade. Congress enacted the FCPA in 1977[11] in order to prevent U.S. businesses and individuals from using illicit payments to foreign officials "to influence any official act, induce unlawful action, or obtain or retain business."[12] The world economy has evolved substantially in the thirty-two years since the FCPA was originally enacted, as international trading by multinational corporations from around the world has exploded and new markets and new economic powers have emerged.

Since 1977, several events have contributed to change the way the DOJ and the SEC have enforce the FCPA which include: two significant amendments to the FCPA in the past twenty-one years, the influence of increasing globalization, several significant international agreements, and new anti-bribery laws in foreign countries. This article examines the history of the FCPA and its provisions, the historical enforcement of the FCPA and its influences on foreign anti-corruption laws, and recent trends in enforcement of the FCPA. In order to better portray the evolution of FCPA enforcement, a brief history of the origins of this law and its provisions will also be provided. The following sections explain the FCPA and detail the events that led to the enactment of the law in 1977, as well as the subsequent amendments to the law in 1988 and 1998.

II. HISTORY OF THE FCPA

The origins of the FCPA enactment can be traced to the Watergate hearings and the connection of the Nixon administration to the failed burglary of the Democratic National Committee (DNC) headquarters in 1972. Although the focus of the Watergate hearings was the attempted burglary of the DNC headquarters, what former SEC enforcement chief Stanley Sporkin found most interesting were illegal contributions to the Nixon reelection campaign made by corporate executives. These illegal

10. *See,* Marie M. Dalton, *Efficiency v. Morality: The Codification Of Cultural Norms In The Foreign Corrupt Practices Act*, 2 N.Y.U. J. L. & BUS. 583, 605 (2006).

11. Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78m(b), (d)(1), (g)–(h), 78dd-1, 78dd-2, 78dd-3, 78ff, *amended by* Foreign Corrupt Practices Act Amendments of 1988, 15 U.S.C. §§ 78dd-1 to 78dd-3, 78ff, and the International Anti-Bribery and Fair Competition Act of 1998, 112 Stat. 3302 (1998) (codified at §§ 15 U.S.C. 78dd-1 to 78dd-3, 78ff) [hereinafter *FCPA*].

12. Koch, *supra* note 5, at 383.

contributions prompted Sporkin and his staff to conduct an investigation examining the financial reports of these corporations with the purpose of determining how these illegal payments were recorded on corporate books.[13]

Upon further investigation, Sporkin and his team uncovered secret mislabeled accounts that had been used to hide various illicit payments, including funds used for bribes and other illegal political contributions beyond the Nixon reelection campaign.[14] The SEC chose to conduct a formal investigation following Sporkin's initial informal investigation, the results of which brought to light some $300 million in questionable or illegal payments made to foreign government officials, politicians, and political parties by over 400 U.S. corporations, 117 of which were Fortune 500 companies.[15] These revelations caused the resignation of many important officials in Japan, the Netherlands, Italy, and other countries, as well as considerable public outcry in the United States.[16]

After completing these investigations, Sporkin (who later became a federal district judge) and the SEC determined that the rash of illegal and illicit payments could be curbed if legislation was passed to discourage such actions by punishing "public companies that disguise bribes in their books," and in 1977, the U.S. Congress passed the Foreign Corrupt Practices Act in an attempt to respond to the public pressure to eliminate foreign corruption by U.S. firms abroad.[17] This new law was enacted as an amendment to the 1934 Securities and Exchange Act.[18]

A. Foreign Corrupt Practices Act (FCPA) of 1977

The primary objective of the FCPA was to reduce or eliminate illicit bribes made by U.S. firms to foreign officials. Simply stated, "the FCPA prohibits any bribe to a foreign official to influence any official act, induce unlawful action, or obtain or retain business," and it requires that

13. John Gibeaut, Battling Bribery Abroad, A.B.A. J., Mar. 18, 2007, at 50, *available at* http://www.abajournal.com/magazine/article/battling_bribery_abroad/.
14. *Id*.
15. *Id*.
16. Kaikati et al., *supra* note 5, at 213, 218.
17. Gibeaut, *supra* note 13, at 50
18. Dahms & Mitchell, *supra* note 5, at 605.

publically traded companies achieve certain "standards regarding their accounting practices, books, and records."[19]

The FCPA, when enacted in 1977, had two primary provisions: the anti-bribery provision and the accounting provision. The FCPA was first amended in 1988 and then again in 1998. The following sub-sections of this article detail the anti-bribery and accounting provisions of the FCPA, and the 1988 and 1998 amendments.

1. Anti-Bribery Provisions

The anti-bribery provisions were included in the FCPA to deter corporations from using bribery as a tool of influence while doing business with an official of a foreign nation. For the SEC and the DOJ to successfully hinder the use of illegal and illicit bribery by U.S. corporations, the FCPA had to be written in such a way that specifically defined bribery:

> The anti-bribery provisions of the FCPA . . . criminalize bribery of a foreign official to influence any official act, induce any unlawful action, induce any action that would assist in obtaining or retaining business, or secure any improper advantage. These provisions prohibit individuals or businesses from directly or indirectly offering, paying, promising, or authorizing to pay money or anything of value to any foreign official.[20]

In order for a violation of the FCPA's anti-bribery provisions to occur, the SEC and DOJ must provide specific proof of the violation in question. The FCPA provided a list of elements that must be proven by the SEC or DOJ in determining if bribery has occurred; Table 1 lists these necessary elements in order for a case to fall within the FCPA.

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19. *Id*. at 612–13.
20. Dworsky, *supra* note 5, at 678–79.

Table 1: Elements of an FCPA Bribery Offense	
(i)	A U.S. "issuer," "domestic concern," or "any person," including the officers, directors, employees, agents, or shareholders acting on behalf of the issuer, domestic concern, or person;[21]
(ii)	makes use of the mails or any means or instrumentality of interstate commerce;
(iii)	in furtherance of an offer, payment, promise to pay, or authorization to pay anything of value;
(iv)	to any foreign official, any foreign political party or official thereof, or any candidate for foreign political office, or other person, knowing that the payment to that other person would be passed on to a foreign official, foreign political party or official thereof or candidate for foreign political office;
(v)	inside the territory of the United States or, for any United States personality, outside the United States;
(vi)	to corruptly;
(vii)	influence any official act or decision, induce an action or an omission to act in violation of a lawful duty, or to secure any improper advantage;
(viii)	or induce any act or decision that would assist the company in obtaining, retaining, or directing business to any person.[22]

The FCPA also provides two affirmative defenses—that is, there is no liability for payments that are (1) legal in the country in which they are made or (2) those considered "reasonable and bona fide expenditures."[23] Each defense could merit a thorough examination, but are beyond the scope of this article.

In addition to these two affirmative defenses, the FCPA also allows corporations to make facilitating, or so called "grease payments," to foreign government officials for "routine government actions," which by

21. 15 U.S.C. § 78dd-1(a), (g) (for issuers); 15 U.S.C. § 78dd-2(a), (i) (for domestic concerns) (2006); 15 U.S.C. § 78dd-3(a) (for "any person").

22. 15 U.S.C. § 78dd-1, 78dd-2, 78dd-3; *see also* Dahms & Mitchell, *supra* note 5, at 614–15.

23. *See* Foreign Corrupt Practices Act Amendments of 1988, Pub. L. No. 100-418, § 5003, 102 Stat. 1415, 1420–21 (1988).

FCPA standards are considered to be "non-discretionary actions" that are ordinarily and commonly performed by a foreign official.[24] For example, obtaining permits, licenses or other official documents, expediting lawful customs clearances, obtaining entry or exit visas . . . ."[25] Unfortunately, the FCPA does not specify a cap amount that would be considered in excess of grease payment. The issue of grease payments is examined in further detail later in this article.[26]

2. Accounting Provisions

In addition to the anti-bribery provision, the FCPA also included specific provisions with regard to accounting and bookkeeping standards the SEC and DOJ should consider when examining a case that may fall within the FCPA. The accounting provisions of the FCPA have been described as follows:

> The FCPA amended the Exchange Act by adding record-keeping and internal control requirements for certain entities already subject to the Exchange Act's provisions. As a result, even non-material payments not recorded accurately could constitute a violation of U.S. law. The principal accounting provisions are contained in 15 U.S.C. § 78m(b)(2) and b(5), which state the record-keeping and internal control requirements, as well as the necessary standard to impose criminal liability for a failure to meet these requirements.[27]

Not only does the FCPA define the accounting provisions, but it also specifies the parties to whom the law is intended to apply. For the purposes of law enforcement by the SEC and DOJ, the accounting provisions in the FCPA primarily apply to those publicly-held entities considered "issuers"—companies that either have securities registered with the SEC under section 12 of the 1934 Securities Exchange Act or are required to file reports under section 15(d) of the Exchange Act.[28] The FCPA offers a further explanation of the parties to whom the accounting provisions apply:

> The accounting provisions are broad and apply to all dealings undertaken by the issuer, regardless of whether the business actually engages in foreign operations or whether the transaction is considered a bribe. In addition, an issuer that

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24. *See* 15 U.S.C. § 78dd-1(b) (2000); *see also* 15 U.S.C. § 78dd-2(b)(2000) & 15 U.S.C. § 78dd-3(b)(2000).
25. Foley and Lardner, LLP, *The FCPA Explained*, FCPA ENFORCEMENT, http://fcpaenforcement.com/explained/explained.asp (last visited Oct. 31, 2010).
26. *See infra* Part III.A.
27. Dahms & Mitchell, *supra* note 5, at 609.
28. 15 U.S.C. § 78o(d) (2006). *See also* Dworsky, *supra* note 5, at 676–77.

> controls more than fifty percent of the stock of a foreign subsidiary must ensure that the subsidiary adheres to the books and records provisions.[29]

For the purposes of the FCPA, therefore, an entity that owns more than 50% of the voting stock in another entity, as defined by the Financial Account Standards Board, is a corporation considered to have "control" over the foreign subsidiary.

B. Amendments to the FCPA

The FCPA has been amended on two separate occasions: first in 1988 and then again in 1998. The first amendment in 1988 was an indirect amendment necessary in part due to the passage of the federal Omnibus Trade and Competitiveness Act (OTCA). The second amendment to the FCPA occurred in 1998 as a direct amendment to the law. The following subsections outline both amendments to the FCPA.

1. The 1988 Amendment

The first amendment to the FCPA came about in the form of the Omnibus Trade and Competitiveness Act of 1988.[30] This law was in response to slumping foreign trade between the United States and international firms, as the U.S. trade deficit continued to grow.[31] As one scholar noted following of the 1988 amendment to the FCPA:

> During the 1980s, critics began calling for modification of the FCPA. In 1988, the FCPA was revised under the aegis of the Omnibus Trade and Competitiveness Act (OTCA). According to Senator Heinz, one of the principal sponsors of the 1988 Amendments to the FCPA, the changes embodied an effort to eliminate some exportation obstacles facing U.S. firms in the era of a burdensome trade deficit. Of particular concern were charges that the FCPA as originally enacted was so vague as to be indecipherable. Critics contended that U.S. businesses shunned legitimate transactions, the legality of which was difficult to assess under the statute's ambiguous language.[32]

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29. Dahms & Mitchell, *supra* note 5, at 609–10; *see* 15 U.S.C. § 78m(b)(2) (2006) (FCPA text).

30. U.S. DEP'T OF JUSTICE, OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988, H. R. REP. NO. 100-576 (1988) (Conf. Rep.), *available at* http://www.justice.gov/criminal/fraud/fcpa/history/1988/tradeact-100-418.pdf.

31. Jennifer Dawn Taylor, *Ambiguities in the Foreign Corrupt Practices Act: Unnecessary Costs of Fighting Corruption?*, 61 LA . L. REV. 861, 867–70 (2001) (discussing competitive disadvantage that American corporations face because of the FCPA).

32. Salbu, *Bribery in the Global Market*, *supra* note 5, at 243.

The reasons for addition of the 1988 amendment to the FCPA appear to have been three-fold: (1) to promote participation in international trade by U.S. corporations, (2) to help participating corporations avoid FCPA violations while engaging in international trade, and (3) a direction by Congress to the executive branch to "recommend" that other nations pass anti-corruption laws. The second amendment to the FCPA in 1998, which is detailed in the following subsection, was passed for very different reasons.

2. The 1998 Amendment

A decade after the passage of the 1988 amendment to FCPA, the law was amended a second time. Corruption in foreign countries by U.S. corporations was still common, even after the 1988 amendment, but by 1998, the United States and the world economy had undergone dramatic change. The United States had experienced Desert Storm in 1991, but more importantly, the global market had opened up with the collapse of Communism in Russia and the 1989 destruction of the Berlin Wall.

With the adoption of the FCPA in 1977, the United States became the first country to adopt a sweeping law prohibiting bribery of foreign officials, and for many years it was alone in having such a law. American companies often complained that this law put them at a distinct disadvantage in obtaining international business since bribery and kickbacks were a regular feature of commerce in many nations.[33] With the encouragement of the United States,[34] the Organisation of Economic Co-operation and Development (OECD) enacted the "Convention on Combating Bribery

33. *See* S. REP. NO. 105-277, at 2 (1998) (describing disadvantages faced by American businesses relative to foreign competitors prior to 1998); Taylor, *supra* note 23, at 869. *See also* Sara Nathan, *U.S. Tie Loans to Corruption: Weigh Bribery in Aid Decisions*, U.S.A. TODAY, Feb. 17, 1999 (industry groups claim $30 billion in lost business from mid-1997 to mid-1998).

34. "As the United States ramped up the FCPA in 1998, it also persuaded the 30 industrialized nations belonging to the Organization for Economic Cooperation and Development to sign a treaty agreeing to adopt similar laws." Gibeaut, *supra* note 13, at 50–51. Indeed the 1988 Amendments to the FCPA had required that the President pursue the negotiation of an international agreement with the member countries of the OECD to govern acts prohibited by the FCPA. H.R. REP. NO. 100-576, 924 (1988) (Conf. Rep.), reprinted in 1988 U.S.C.C.A.N. 1547, 1957. See also the discussion of the U.S. interests in the OECD treaty at: Andrew Brady Spalding, *Unwitting Sanctions: Understanding Anti-Bribery Legislation As Economic Sanctions Against Emerging Markets*, 62 FLA. L. REV. 351, 391–92 (2010).

of Foreign Public Officials in International Business Transactions" in November 1997 (effective in February 1999).[35]

The OECD—an organization originally composed of thirty economically strong Western European, North American and Asian nations; but today composed of thirty-three members from around the world—was created to provide "a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and co-ordinate domestic and international policies."[36] The purpose of the OECD Convention was to combat the widespread effects of bribery throughout the world. According to the organization's own materials, the OECD "brings together the governments of countries committed to democracy and the market economy from around the world to:

- Support sustainable economic growth
- Boost employment
- Raise living standards
- Maintain financial stability
- Assist other countries' economic development
- Contribute to growth in world trade"[37]

The OECD Convention on Combating Bribery is not self-executing, rather it requires each member nation to enact a law in its own country prohibiting bribery of foreign and international officials and organizations.[38]

The OECD explains the purpose of the OECD Convention as follows:

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35. *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, INT'L MONETARY FUND, Sept. 18, 2001, at 3, http://www.imf.org/external/np/gov/2001/eng/091801.pdf.

36. *The OECD: What Is It?*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (2008) at 7, *available at* http://www.oecd.org/dataoecd/15/33/34011915.pdf.

37. *About OECD*, ORGANISATION FOR ECON. CO-OPERATION & DEV., http://www.oecd.org/pages/0,3417,en_36734052_36734103_1_1_1_1_1,00.html.

38. All thirty-three OECD countries (Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States) and seven non-signed OECD countries (Argentina, Brazil, Bulgaria, Chile, Estonia, Slovenia, and South Africa) have signed the OECD Convention. *See OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: Ratification Status as of 6 October 2010*, ORGANISATION FOR ECON. CO-OPERATION & DEV., http://www.oecd.org.libproxy.boisestate.edu/dataoecd/59/13/40272933.pdf (last visited Oct. 6, 2010).

> [T]he Revised Recommendation on Combating Bribery in International Business Transactions, adopted by the Council of the Organization for Economic Co-operation and Development (OECD) on 23 May 1997 . . . called for effective measures to deter, prevent and combat the bribery of foreign public officials in connection with international business transactions, in particular the prompt criminalization of such bribery in an effective and coordinated manner and in conformity with the agreed common elements set out in that Recommendation and with the jurisdictional and other basic legal principles of each country . . . .[39]

As a founding member of the OECD and a leading proponent of the Convention, clearly U.S. compliance with the agreement was important, and it became a congressional priority. In order to properly align the FCPA with the OECD convention, the FCPA needed to be amended. Congress ratified the OECD Convention and enacted implementing legislation, and "these new amendments broadened the reach of potential FCPA bribery violations by expanding the scope of persons covered by the Act to include some foreign nationals."[40] However, the most important effect of the 1998 amendment to the FCPA was that it extended the FCPA's jurisdiction beyond U.S. borders to allow greater enforcement efforts by U.S. prosecutors. Essentially, this meant that the reach of the amended FCPA had been expanded and thus allowed for an increase in SEC and DOJ enforcement of the FCPA which represented a step forward in the battle against corruption in foreign business practices.[41]

The 1998 amendment to the FCPA redefined the parties to whom the anti-bribery provisions applied. Prior to the 1998 amendment, the FCPA applied only to those persons considered either "issuers" of stock in controlling corporations and persons considered part of "U.S. domestic concerns" in foreign nations. The wording in the 1998 amendment added the phrase, "any person," meaning that the FCPA now applied to any

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39. *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, ORGANISATION FOR ECON. CO-OPERATION & DEV., (Apr. 10, 1998), *available at* http://www.oecd.org/dataoecd/4/18/38028044.pdf.

40. Dahms & Mitchell, *supra* note 5, at 607.

41. The 1998 amendments subject foreign nationals who are agents or employees of U.S. issuers to criminal penalties under the FCPA. Securities Exchanges Act, 15 U.S.C. § 78ff(c) (2006). In addition, the 1998 amendments broaden the definition of "foreign official" to include any officer of a "public international organization." 15 U.S.C. § 78dd-1(f). The FCPA adopts the definition of a "public international organization" from the International Organizations Immunity Act. 22 U.S.C. § 288 (2006). *But see* Barbara Crutchfield George, Kathleen A. Lacey & Julia Birmele, *The 1998 OECD Convention: An Impetus for Worldwide Changes in Attitudes Toward Corruption in Business Transactions*, 37 AM. BUS. L.J. 485, 515–17 (2000) (discussing potential weaknesses and unresolved issues in OECD including the conduct of bribe-takers, coercive forms of bribery, the tax deductibility of bribes, and the shortcomings of implementing legislation).

individual who could be considered an agent of a corporation or any official, regardless of governmental level, in a foreign nation.[42]

In addition to adding the category of "any person," the 1998 amendments removed the requirement of a territorial nexus between the corrupt act and the United States. Consequently, the FCPA now permits prosecution of U.S. issuers and persons for any act regardless of whether any means of interstate commerce are used. The new part of the law expanded the FCPA to provide that a foreign company or person was now subject to liability if it caused, either directly or through an "agent," an act in furtherance of the corrupt payment to take place within the United States.[43] This change suggests that the FCPA can reach foreign agents and employees of domestic concerns, as well as U.S. nationals living anywhere in the world who have very little contact with the United States.[44]

This expansive view of federal powers under the FCPA has led to criticism by several commentators. Attorney Justin Marceau argues forcefully that the DOJ's "newly clarified theory of foreign entity liability must be challenged in court. The prosecution of foreign entities, outside of certain narrowly defined statutory parameters, must be struck down by federal courts."[45] Marceau is particularly critical of the DOJ action against DPC-Diagnostics. This producer of medical equipment admitted to paying $1.6 million in bribes to physicians and laboratory personnel in China to obtain business there. Under the 1998 amendment to the FCPA, foreign nationals were made subject to the FCPA for the first time so long as the person or entity committed an act in furtherance of the corrupt payment "while in the territory of the United States." However, DPC was a wholly owned subsidiary of a California company and had not committed any of the acts in the United States.[46] Nevertheless the DOJ prosecuted, and obtained a guilty plea based on

42. The 1998 amendments expand the extraterritorial jurisdiction of the FCPA by proscribing bribery committed outside U.S. territory by issuers (including an officer, director, employee, agent, or stockholder acting upon behalf of such issuer) and any "U.S. person." 15 U.S.C. § 78dd-1(g) (for issuers); 15 U.S.C. § 78dd-2(i) (2006) (for domestic concerns).

43. Carolyn Hotchkiss, *The Sleeping Dog Stirs: New Signs of Life in Efforts to End Corruption in International Business*, 17 J. PUB. POL'Y & MARKETING 108 (1998).

44. Dahms & Mitchell, *supra* note 5, at 607.

45. Marceau, *supra* note 5, at 296–310.

46. *Id*. at 294–95, citing Press Release, Dep't of Justice, DPC (Tianjin) Ltd. Charged with Violating The Foreign Corrupt Practices Act (May 20, 2005), *available at* www.usdoj.gov/criminal/fraud/press/dpcfcpa.pdf.

the theory that DPC was an agent of the American company. Marceau argues that this approach clearly violated the legislative history of, and previous case history related to the FCPA.[47]

The amendments to the FCPA in 1988 and 1998 changed the interpretation of the law and the way the SEC and DOJ investigated FCPA violations. Prior to the amendments, interpretation of the FCPA varied due to the confusing, and often vague, wording written into the original 1977 law. For this, and other reasons, enforcement of the FCPA during the first quarter century after its enactment was fairly sparse. However, the number of FCPA cases brought by the SEC and DOJ has exploded in recent years.

C. FCPA Enforcement

The next subsections of this report briefly address certain federal anti-corruption actions taken prior to the enforcement of the FCPA, then enforcement of the law after the 1998 amendment to the FCPA, and finally the changes in FCPA enforcement that have taken place over the past six years. Tables 2 through 7, which can be found in the appendices A, B, and C accompanying this article, provide lists of anti-corruption cases brought prior to the enactment of the FCPA, a list of FCPA cases prior to the 1998 amendment, and a list of notable FCPA cases initiated in the past five years.

1. The First Twenty-Five Years

Prior to the enforcement of the FCPA, the DOJ brought a total of fifteen cases against corporations and individuals for bribery-related offenses that might have fallen under the jurisdiction of the FCPA's anti-bribery provision.[48] As indicated by this limited number of cases brought by the DOJ, as well as by the outcome of those cases, anti-bribery enforcement appears to have been concerned with: the Currency and Foreign Transactions Reporting Act (CFTRA); Mail and Wire Fraud; False statements to Export-Import Bank, the Commerce Department, and Agency for International Development; and Conspiracy to defraud

47. *Id.* at 309. *See also* Erik Paulsen, Note, *Imposing Limits on Prosecutorial Discretion in Corporate Prosecution Agreements*, 82 N.Y.U. L. REV. 1434, 1436–37 (2007).

48. SHEARMAN & STERLING LLP, FCPA DIGEST OF CASES AND REVIEW RELEASES RELATING TO BRIBES TO FOREIGN OFFICIALS UNDER THE FOREIGN CORRUPT PRACTICES ACT OF 1977 371–73 (2010), *available at* http://www.shearman.com/files/upload/FCPA-Digest-Spring-2010.pdf.

the Federal Maritime Administration.[49] A list of these pre-FCPA cases can be found in Table 2, located in Appendix A of this article.

This subsection presents a history of the enforcement of the FCPA during its initial twenty-five years. During the first quarter century of the FCPA's history, enforcement of the law appears to have been minimal, at best. Over this time period, the SEC and the DOJ pursued only about sixty FCPA cases against corporations in violation of the FCPA, or an average of slightly more than two per year.[50] Clearly, the FCPA was underutilized in achieving the purposes for which the law was created. Additionally, the actual lack of enforcement of the law may also indicate how the ambiguous wording in the law may have dissuaded companies from venturing overseas for business during the first decade of FCPA enforcement. One author stated: "the 1988 amendment was largely in response to complaints by U.S. corporations that the original Act was too vague and wide in scope."[51]

Enforcement of the FCPA after enactment and up to the 1998 amendment consisted of DOJ prosecutions of twenty-five cases.[52] A list of these cases, including dates, parties to the cases, as well as details and outcomes is contained in Appendix B of this article within Tables 3, 4, and 5. The outcomes of these twenty-five FCPA cases prosecuted by the DOJ resulted in approximately $35.2 million in total fines, fees, and penalties levied against the defendants. The most prominent FCPA cases during the first two decades of the law's enforcement involved the illegal sale of U.S. arms to Middle-Eastern nations.[53] All of these cases involved violations of the FCPA, either bribery or "books and records" problems; some also involved violations of the CFTRA; conspiracy to violate the FCPA; false statements; and wire fraud and money laundering.

The following subsection addresses the enforcement of the FCPA from 2003 through late 2010.

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49. *Id.*
50. Gibeaut, *supra* note 13, at 48
51. Tor Krever, *Curbing Corruption? The Efficacy of the Foreign Corrupt Practices Act*, 33 N. C. J. INT'L. & COM. REG. 83, 88 (2007).
52. U.S. DEP'T OF JUSTICE, *supra* note 30.
53. Patrick M. Norton, *The Foreign Corrupt Practices Act Dilemma*, 33 CHINA BUS. REV. 22, 23 (2006).

2. Enforcement from 2003 to the Present

In the current post-Enron, Sarbanes-Oxley Act (SOX) era, the SEC and the DOJ have dramatically increased civil and criminal enforcement of the FCPA, compared with the previous twenty-five years.[54] Not only are these agencies bringing many more cases, but the DOJ is also starting to utilize novel theories of liability to prevent corrupt corporations from avoiding prosecution.[55] As previously mentioned, the relatively low-level of FCPA enforcement during this period may have been caused by the vagueness of this anti-corruption law,[56] as well as the blind eye the federal government apparently had turned towards the subject of foreign corruption by U.S. corporations.

Since 2004, however, both the SEC and DOJ have begun to aggressively enforce the law. The SEC hired hundreds of employees to enforce corporate compliance cases, the DOJ hired two attorneys to focus only on FCPA cases, and the FBI created a new four-person unit which handles only FCPA investigations.[57] Government officials publicly announced that they will be monitoring companies for FCPA violations more carefully than they have before.[58]

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54. *See, e.g.*, Emma Schwartz, *Hiking the Cost of Bribery*, U.S. NEWS & WORLD REP., Aug. 13, 2007, at 31 ("[I]n recent years, federal prosecutors have begun cracking down on companies and their executives for bribing officials overseas. . . . Using a 1977 law, the Foreign Corrupt Practices Act, the feds have prosecuted four times the number of foreign bribery cases in the past five years as in the preceding five.").

55. Marceau, *A Little Less Conversation*, *supra* note 5 at 285. For example, Marceau begins his article with these comments: "In the wake of increasingly common, creative, and severe prosecutions under the Foreign Corrupt Practices Act ("FCPA"), scholars and practitioners must acknowledge that the time for talk—i.e., non-punitive voluntary disclosures and abstract debate—has given way to an era of aggressive enforcement actions by the Department of Justice and the Securities Exchange Commission. The bare numbers tell much of the story: the Department of Justice has initiated four times more prosecutions over the last five years than over the previous five years. Also instructive are prosecutors' growing use of novel and ever more broad theories of liability under the FCPA." *Id.*

56. *See, e.g.*, Steven R. Salbu, *Information Technology in the War Against International Bribery and Corruption: The Next Frontier of Institutional Reform*, 38 HARV. J. ON LEGIS. 67, 89 n.161 (2001).

57. Sue Reisinger, *On Bended Knee: Companies Are Disclosing Overseas Bribes in Record Numbers. But Is Confession Always Necessary?*, CORP. COUNSEL (July 1, 2007), http://www.law.com/jsp/cc/PubArticleCC.jsp?id=900005484219.

58. *See, e.g.*, Eric Torbenson, *Tougher Laws Have Reduced Financial Fraud, SEC Official Says*, DALLAS MORNING NEWS, Aug. 14, 2007, at A5 (quoting Deputy Assistant Attorney General Barry Sabin), *available at* http://www.dallasnews.com/sharedcontent/dws/bus/stories/DN-sec_14bus.ART.State.Edition1.35aca7f.html.

In 2003, the DOJ prosecuted two FCPA cases, while the SEC failed to institute a single FCPA case.[59] This total of two FCPA prosecutions in 2003 represented a fairly typical number of FCPA cases pursued by these two federal entities during the previous twenty-five years.[60] However, 2004 proved to be the beginning of change regarding FCPA prosecutions. During that year, the DOJ once again prosecuted only two FCPA cases, but the SEC brought three FCPA prosecutions, compared to zero in the previous year.[61]

The number of SEC-prosecuted FCPA cases steadily increased on a yearly basis over the next three years. FCPA prosecutions brought by the SEC grew to five in 2005, eight in 2006, then jumped to twenty in 2007. Another thirteen actions were brought in 2008, and fourteen more instituted in 2009.[62] Similarly, FCPA prosecutions by the DOJ during this five-year timeframe produced comparable results.[63] The DOJ brought two prosecutions in 2003, two in 2004, seven in 2005, seven in 2006, eighteen cases in 2007, twenty in 2008, and twenty-six in 2009.[64]

The activity continues to increase. In fact, since January of 2007, the SEC has brought forty-seven FCPA actions, and the DOJ has instituted sixty-four actions—considerably more than all of the actions filed from 1977–2003.[65] These figures do not include the numerous investigations currently underway and self-disclosures that will likely lead to FCPA enforcement. The recent trend of increased FCPA enforcement activity is best captured in the following chart and graph, which each track the number of FCPA enforcement actions filed by DOJ and the SEC during the past six years:[66]

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59. Gibson, Dunn, & Crutcher, LLP, *2007 Year-End FCPA Update* (Jan. 4, 2008), http://www.gibsondunn.com/publications/pages/2007Year-EndFCPAUpdate.aspx [hereinafter Gibson, Dunn 2007 Year-End FCPA Update].

60. From 1978 to 2000, the federal government "averaged only about three FCPA-related prosecutions a year." Priya Huskins, *FCPA Prosecutions: Liability Trend to Watch*, 60 STAN. L. REV. 1447, 1449 (2008).

61. Gibson, Dunn 2007 Year-End FCPA Update, *supra* note 59.

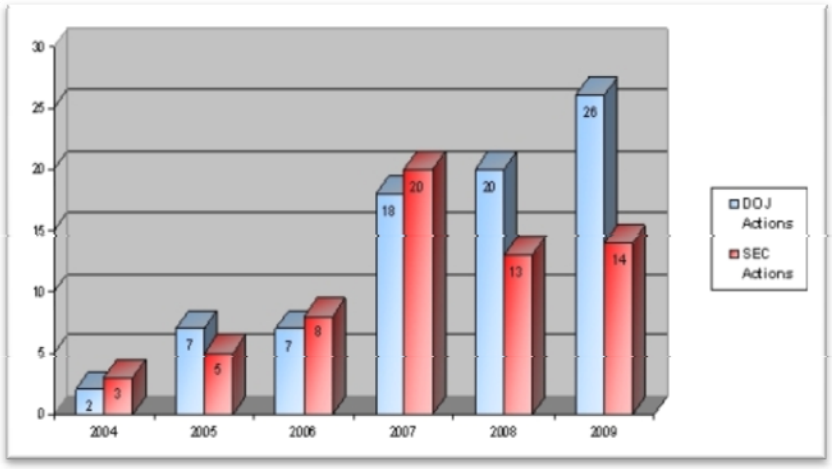
62. Gibson, Dunn & Crutcher, LLP, *2009 Year-End FCPA Update* (Jan. 4, 2010), http://www.gibsondunn.com/Publications/Pages/2009Year-EndFCPAUpdate.aspx [hereinafter Gibson, Dunn 2009 Year-End FCPA Update].

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* (chart and graph).



2009		2008		2007		2006		2005		2004	
DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC
26	14	20	13	18	20	7	8	7	5	2	3

The following are a few examples of recent FCPA enforcement and compliance actions:

- In September 2010 the SEC announced that it had reached a settlement with ABB Ltd, a Swiss engineering company, to pay $39.3 million in fines (without admitting guilt) regarding charges for violating the FCPA. ABB and two subsidiaries, ABB Inc. of Sugar Land, Texas and ABB LTD-Jordan, based in Amman, had been charged with paying more than $2.7 million in bribes to receive contracts worth $100 million. ABB Ltd. later agreed to pay the DOJ $19 million in criminal fines and pleaded guilty to one count of conspiracy and one count of violating the FCPA to settle its subsidiaries legal matters.[67]
- Daimler AG agreed in March 2010 to pay $185 million (split almost evenly between the SEC and DOJ) to settle allegations that it had committed serious violations of the FCPA. The DOJ had accused the German automaker of making hundreds

67. *ABB To Pay $39.3 Million to Settle Subsidiaries' FCPA Violations*, WALL ST. J., Sept. 29, 2010, http://blogs.wsj.com/corruption-currents/2010/09/29/abb-to-pay-393-million-to-settle-subsidiaries-fcpa-violations/.

of improper payments worth tens of millions of dollars to secure government contracts in at least twenty-two countries, including China, Russia and Greece.[68]

- On January 19, 2010, following a "sting" operation at a Las Vegas trade show, the DOJ indicted twenty-two executives and employees in the military and law enforcement equipment industry for engaging in a scheme to bribe the minister of defense of an African country. This action involved 150 FBI agents, was the first use of undercover techniques to discover FCPA violations, and was the largest single investigation and prosecution against individuals to date.[69]
- In February 2009, Halliburton and its KBR subsidiary agreed to pay $579 million in disgorgement and penalties to settle charges that one of its former units bribed Nigerian officials during the construction of a gas plant.[70]
- As we noted at the beginning of this article, on December 15, 2008, the SEC announced an "unprecedented settlement" of $800 million with Siemens AG as a result of extensive and systematic practices that violated the FCPA. Siemens AG also settled with the German Government for $854 million for the same violations, for a combined historic penalty of $1.654 billion related to foreign corrupt practices.[71]
- In September 2008, Albert "Jack" Stanley, former officer and director of Halliburton, admitted that he had conspired to pay Nigerian officials $180 million for engineering, procurement,

68. Vanessa Fuhrmans & Thomas Catan, *Daimler to Settle With U.S. on Bribes*, WALL ST. J., Mar. 24, 2010, B1.

69. Ronald W. Breaux et al., *Enforcement of the Foreign Corrupt Practices Act: The Hits Keep Coming*, HAYNES & BOONE, LLP, Feb. 1, 2010, http://www.haynesboone.com/enforcement_of_the_fcpa/.

70. Alan M. Field, *Long Arm, Getting Longer*, J. OF COM., Dec. 21, 2009, 26, *available at* http://www.joc.com/trade/long-arm-getting-longer. According to the indictment, Jeffrey Tesler, a U.K. solicitor acting as agent for the joint venture partners in the Bonny Island natural gas pipeline project, passed along millions of dollars from the joint venture to top-level Nigerian officials in exchange for the award of more than $6 billion in contracts. Included in the recipients were 3 vice-presidents of the government. Gibson, Dunn 2009 Year-End FCPA Update, *supra* note 62, at 3.

71. Press Release, Sec. & Exch. Comm'n, SEC Charges Siemens AG for Engaging in Worldwide Bribery (Dec. 15, 2008), http://www.sec.gov/news/press/2008/2008-294.htm.

and construction contracts spanning more than a decade. Stanley now faces years in prison and $10.8 million in fines.[72]

- That same month, a sixty-two-year-old assistant to the vice president for a telecommunications company, Alcatel CIT, was sentenced to thirty months in prison for paying $2.5 million to Costa Rican officials in exchange for $149 million in mobile telephone contracts.
- On May 14, 2008, Wilbros Group, Inc., an engineering and construction company, reached a $32.3 million settlement with the DOJ and SEC for bribing Nigerian and Ecuadorian officials and failing to keep adequate records pursuant to the FCPA.[73]
- In the largest penalty in 2007, Baker Hughes entered into a plea agreement with the SEC and the DOJ that led to a combined fine of $44 million.[74]
- In November 2007, Chevron agreed to pay $30 million in civil and criminal penalties for: (1) unlawful kickbacks under the UN Oil for Food Program during Saddam Hussein's rule in Iraq, and (2) the failure to maintain proper books and records as required by the FCPA.[75]
- In October 2007, Ingersoll-Rand Co. paid $2.5 million in civil and criminal penalties for the travel and entertainment expenses spent on eight Iraqi officials that exceeded $20,000.[76]

These very different cases indicate the government is looking for targets large and small, individual and corporate, public and private, high-tech and low-tech. Anyone considering doing business overseas needs a basic understanding of the FCPA and needs to develop some simple compliance strategies.

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72. *See also*, Barbara Crutchfield George & Kathleen Lacey, *Investigation of Halliburton Co./TSJ's Nigerian Business Practices: Model for Analysis of the Current Anti-Corruption Environment on Foreign Corrupt Practices Act Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 503, at 503–05 (2006) (describing the confluence of French, DOJ, SEC, and Nigerian investigations into Halliburton/TSKJ).

73. Press Release, Sec. & Exch. Comm'n, SEC Charges Willbros Group and Former Employees with Foreign Bribery (May 14, 2008), http://www.sec.gov/news/press/2008/2008-86.htm.

74. Sec. & Exch. Comm'n v. Baker Hughes, Inc., Acct'g and Auditing. Enforc. Rel. No. 2602, 2007 SEC LEXIS 858, at *1–7 (S.D. Tex. Apr. 26, 2007); United States v. Baker Hughes Servs. Int'l, Inc., No. 4:07-CR-00129 (S.D. Tex. Apr. 11, 2007).

75. Sec. & Exch. Comm'n v. Chevron Corp., No. 07 CIV 10299, 2007 SEC LEXIS 2625, at *3–4 (S.D.N.Y. Nov. 14, 2007).

76. Sec. & Exch. Comm'n v. Ingersoll-Rand Co., No. 07-CV-01955, 2007 SEC LEXIS 2532, at *5 (D.D.C. Oct. 31, 2007).

A brief list of some notable FCPA cases prosecuted by both the SEC and DOJ over the past six years can be found in Tables 6 through 8, located in Appendix C of this report. These tables contain the dates, names of the parties to the cases, and details and outcomes of each case. By examining the sample list of cases presented in Tables 6 through 8, the significant increase in FCPA prosecutions throughout the past six years can be evidenced, not only by the numbers of cases, but also by the amount of fines, fees, and penalties levied against the defendants.

One important difference between FCPA prosecutions in previous decades compared to those of the past five years is that the penalties now often include the disgorgement of profits tied to the actions deemed to be FCPA violations. In the past few years, the SEC and DOJ have been regularly demanding the disgorgement of profits when dealing with FCPA violators. Inclusion of these profits has led to a dramatic increase in the level of the total amount of fines, fees, and penalties levied by the SEC and DOJ. For the cases included in Tables 6 through 8 included in Appendix C of this article, the total amount of fines, fees, and penalties, with disgorged profits included, is a total of $2,421,681,799.

Note that Tables 6 through 8 in Appendix C is not a complete list of FCPA prosecutions since 2002. It also should be noted that in the case against Titan Corporation,[77] the total fine included, "a criminal fine of $13 million, along with a civil penalty and disgorgement to the SEC in the amount of approximately $15.5 million. . . . The combined penalty, $28.5 million, was at that time the largest fine ever imposed on a company in the history of the FCPA."[78] Considering the size of this fine against a single corporation, amounting to nearly as much as the total fines levied by the DOJ and SEC prior to 2002, it is easy to see that the federal government has changed its position on corruption significantly.

The increases in the numbers of FCPA cases brought by the federal government in recent years can be attributed to new trends and creative prosecution of FCPA violations by the SEC and DOJ. The following section and subsections of this report address such trends.

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77. Sec. & Exch. Comm'n v. The Titan Corp., No. CIV.A. 05-0411 (S.D. Cal. Mar. 1, 2005), *available at* http://www.sec.gov/litigation/litreleases/lr19107.htm.

78. DANFORTH NEWCOMB, FCPA DIGEST OF CASES AND REVIEW RELEASES RELATING TO BRIBES TO FOREIGN OFFICIALS UNDER THE FOREIGN CORRUPT PRACTICES ACT OF 1977 114 (2007).

III. RECENT FCPA ENFORCEMENT TRENDS

A. "Grease" Payments

According to Alexandra Wrage, president of a U.S. firm that provides much anti-bribery training for U.S. and foreign businesspeople engaged in overseas commerce, the ambiguous wording of the FCPA and the breadth of interpretations of what constitutes a violation continue to create problems for businesses operating in foreign nations.[79]

Although the FCPA prohibits nearly all forms of gifts or monetary contributions to high-level foreign officials, the law does allow for the use of "facilitating payments" made to low-level foreign officials for the purposes of expediting or secure performance of government actions considered routine. This type of bribe, often called a "grease payment," is permitted under the FCPA.[80] Unfortunately, the ambiguity of the FCPA has created problems in determining the level of monies that are allowed to be made in the form of grease payments, as the FCPA does not provide a cap for legal facilitating payments. However, although nothing in the law sets any limit, in practice, there appears to be a maximum ceiling of about $1,000 for grease payments.[81]

While many critics like Koch believe that the legality of grease payments only contributes to the much larger problem of corruption that the FCPA was created to curb, others point out that this form of payment is a regular cost of doing business overseas that can easily be hidden. In his 2006 article, Segal addresses the issue of what the SEC or DOJ could do to better enforce the FCPA against corrupt corporations that successfully hide bribes and other FCPA-prohibited payments in financial statements:

> [I]ncreasing the difficulty of tracing money is a critically important part of any corrupt enterprise's operation if it wishes to avoid detection. A review of the cases shows that more than half of those caught bribing could either have avoided detection easily, or made it much more difficult to prosecute them had only simple steps been taken to disguise money flows. As a result, without greatly increased funding for investigation, the FCPA is a flawed model on which to base all expectations of foreign bribery deterrence.[82]

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79. Sheri Qualters, *Risk of Bribe Probes Grows for Business*, NAT'L L.J., Jan. 7, 2008, at 9. Another article quoted Ms. Wrage as stating that when she offered a course dealing with the Foreign Corrupt Practices Act in Dubai in 2005 only 20 people showed up, but when the course was offered again in November 2006 more than 220 people attended, some from as far away as Bangladesh and Greece. Gibeaut, *supra* note 13, at 48.

80. Koch, *supra* note 5, at 380.

81. Dahms & Mitchell, *supra* note 5, at 617–18.

82. Philip Segal, *Coming Clean on Dirty Dealing: Time for a Fact-Based Evaluation of the Foreign Corrupt Practices Act*, 18 FLA. J. INT'L L., 169, 171–72 (2006).

"Facilitating" or "grease payments" represent one example of the problems with FCPA interpretation, and it is differences in interpretation, as well as an increase in government and social pressure, both domestically and abroad, which have created new trends of FCPA enforcement and interpretation. The following subsections of this article detail some of the more significant changes in enforcement of the FCPA that have taken place over the past six years, including the enforcement of the FCPA against individuals, FCPA enforcement in foreign countries, and the self-reporting of FCPA violations by corporations.[83]

B. FCPA Enforcement against Individuals

One of the more important trends in FCPA enforcement in recent years has been the application of the FCPA against individual persons. During 2006, the DOJ and SEC aggressively pursued FCPA action against ten individuals in seven separate cases,[84] and FCPA charges were filed in cases against fifteen individuals during 2007.[85] Although the FCPA is commonly perceived—and perhaps, historically speaking, with good reason—to be a statute of predominantly corporate enforcement, 60% of the FCPA defendants in 2008 were individuals. Mark Mendelsohn, the Deputy Chief of the Fraud Section in DOJ's Criminal Division and DOJ's top-FCPA enforcer for several years, said of the continuing trend of holding individuals to answer for foreign bribery: "To really achieve the kind of deterrent effect we're shooting for, you have to prosecute individuals."[86] SEC Associate Director Fredric Firestone, speaking at a separate engagement, expressed a similar sentiment: "The Commission [SEC] very clearly has stated to us that enforcement actions

83. *See* Philip Urofsky & Danforth Newcomb, *Recent Trends and Patterns in FCPA Enforcement*, Shearman & Sterling LLP, October 1, 2009, *available at* http://www.shearman.com/files/upload/LT-100209-FCPA-Digest-Recent-Trends-and-Patterns-in-FCPA-Enforcement.pdf.

84. F. Joseph Warin, Robert C. Blume, Jeremy A. Bell & J. Taylor McConkie, *The Foreign Corrupt Practices Act: Recent Developments, Trends, and Guidance*, 21 Insights 2, 4–5 (Feb. 2007), *available at* http://www.gibsondunn.com/publications/Documents/Warin-Blume-FCPA-RecentDevelopmentsTrendsandGuidance.pdf.

85. Gibson, Dunn 2007 Year-End FCPA Update, *supra* note 59.

86. Dionne Searcey, *To Combat Overseas Bribery, Authorities Make It Personal*, WALL ST. J., Oct. 8, 2009, at A 13, *available at* http://online.wsj.com/article/SB125495862894771979.html?mod=article-outset-box.

against individuals as well as companies is a priority."[87] The message seems to be effective. Sharie Brown, who heads the FCPA practice at the law firm DLA Piper, says the new strategy has prompted corporate boards and senior managers to strengthen compliance measures to ward off bribery. Brown added: "Imprisonment is something that few senior executives ever think they will face."[88]

Not only have federal cases been brought against U.S. citizens for FCPA violations, cases have also been brought against *foreign* individuals as well. In 2006, the DOJ brought FCPA charges against an Iraqi citizen employed by a government contractor working in Iraq:

> On March 24, 2006, the DOJ announced that Faheem Mousa Salam, an employee of a government contractor working in Iraq, had been arrested and charged with violating the FCPA. According to the criminal complaint, Salam offered a bribe to a senior official with the Iraqi Police to induce him to purchase a map printer and 1,000 armored vests. . . . Salam also met and discussed additional improper payments with an undercover agent posing as a U.S. procurement officer. On August 4, 2006, the DOJ announced that Salam pled guilty to an FCPA anti-bribery charge. . . . the case is notable in that it was based only on an offer of an improper gift, rather than an actual payment. It also provides a rare example of the use of the statute's nationality-based jurisdiction to charge an individual.[89]

An additional case exists involving a foreign individual charged with FCPA violations. In *United States v. Si Chan Wooh*, Wooh was named as a defendant in a separate case related to the case against Schnitzer Steel and SSI International Far East, Ltd:

> Wooh, a former Executive Vice President and head of SSI, conspired with Schnitzer Steel, SSI, and SSI International Far East, Ltd. (a South Korea-based wholly-owned subsidiary of Schnitzer managed by SSI) to make payments to officers and employees of government-owned customers in China to induce them to purchase scrap metal. The payments were made to foreign officials primarily in the form of commissions, refunds, and gratuities via off-book foreign bank accounts.[90]

The *Salam* and *Wooh* cases demonstrate that the SEC and DOJ are instituting FCPA enforcement against individuals involved in bribery, not just in the United States, but in foreign nations, as well.

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87. Gibson, Dunn & Crutcher, LLP, *2008 Year-End FCPA Update* (Jan. 5, 2009), http://www.gibsondunn.com/Publications/Pages/2008Year-EndFCPAUpdate.aspx [hereinafter Gibson, Dunn 2008 Year-End FCPA Update].

88. Searcey, *supra* note 87.

89. Margaret Ayes, John Davis, Nicole Healy & Alexandra Wrage, *Developments in International Efforts to Prevent Corruption*, 41 INT'L L. 597, 599 (2007).

90. NEWCOMB, *supra* note 78, at 18.

C. FCPA Enforcement in Foreign Nations

Speaking at an FCPA conference, DOJ's Mendelsohn called 2008 the year of "foreign coordination."[91] Obviously, the biggest single instance was the Siemens case, where the U.S. officials worked with German colleagues. The DOJ's Friedrich echoed this sentiment: "We are now working with our foreign law enforcement colleagues in bribery investigations to a degree that we never have previously."[92] And, as reported in the Wall Street Journal, anti-bribery prosecutors from around the globe gathered in Paris during the summer of 2008 for an "informal, roll-up-your sleeves meeting" as part of a first-of-its kind effort to increase collaboration in international investigations.[93] Not only have the SEC and the DOJ stepped up enforcement of the FCPA in the United States, but other nations are increasingly active in bringing charges against non-U.S. citizens and companies for corruption and bribery. As one author has noted:

> One of the clearest trends in Foreign Corrupt Practices Act (FCPA) enforcement today is increased cooperation between the authorities of the United States and those of other nations—and the consequent rise of multijurisdictional investigations. The U.S. Department of Justice is more than ever before reaching out to its counterparts, particularly in Western Europe, to share evidence and theories and obtain access to witnesses.[94]

European Union nations, including Germany and the United Kingdom (U.K.), appear to be coordinating with U.S. law enforcement in major corruption cases, such as the Siemens matter. In addition, one of the earliest FCPA actions against a foreign corporation involved cooperation between the United States and Norway:

> The Norwegian energy company Statoil ASA became the subject of the first criminal FCPA enforcement action against a non-U.S. company over a plan to bribe an Iranian government official in exchange for oil and gas development contracts. The guilty plea agreement announced in October specifically mentioned that the Norwegian authorities conducted their own investigation and, to underscore the point about multinational cooperation, the $21 million

91. Gibson, Dunn 2008 Year-End FCPA Update, *supra* note 88.
92. *Id.*
93. *Id.*
94. Mark Miller, *Corruption Cases Go International*, NAT'L L.J., Mar. 26, 2007, at S1.

penalty imposed in the United States was reduced by the amount of the penalty levied by the Norwegians.[95]

Foreign investigations involving FCPA violations is a good sign in the battle against corruption, but are these types of investigations easy? As Miller points out, "involvement of a foreign jurisdiction only compounds the variables affecting . . . decisions" of a company deciding on the appropriate steps to take when FCPA violations are involved.[96]

There have been other cases involving FCPA prosecution against firms in foreign nations since the Statoil ASA case. Other notable FCPA cases involving foreign corporations include *United States v. Vetco Gray Controls, Inc. et al.*,[97] and *United States v. SSI International Far East, Ltd.*[98] In the *Vectco Gray* case, a subsidiary of the firm, Vetco Gray U.K. Ltd., was named as a defendant and levied with the largest fine of the company's three subsidiaries, a $12 million fine. According to Newcomb, SSI International Far East, Ltd. was named in their case because, "SSI Korea made payments to officers and employees of private customers in South Korea and private and government-owned customers in China to induce them to purchase scrap metal.[99] The payments were made to foreign officials primarily in the form of commissions, refunds and gratuities via off-book foreign bank accounts."[100] *Vetco Gray* and *SSI International* are both contained within the information found in Appendix C.

The FCPA enforcement against individuals—in both the United States and abroad—and FCPA enforcement against foreign corporations are two of the most noticeable trends in enforcement of the FCPA. However, another trend of enforcement tactics by the DOJ and SEC must be mentioned. Companies that find themselves in violation of the FCPA are now reporting the violations directly to the SEC and the DOJ in hopes of avoiding the stiffer penalties and potentially devastating fines similar to the $28.5 million levied against Titan Corporation.

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95. *Id.*
96. *Id.* at S4.
97. United States v. Vetco Gray Controls, Inc., No. 4:07-CR-00004-001-003 (S.D. Tex. Feb.17, 2007), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/vetco-controls.html.
98. United States v. SSI Int'l Far East, Ltd., No. CR-06-398-KI (D. Or. Oct. 17, 2006).
99. NEWCOMB, *supra* note 78, at 25.
100. *Id.*

D. Self-Reporting of FCPA Violations

Aside from the enforcement of the FCPA against individuals, and the enforcement of the FCPA against foreign corporations, the next most prominent trend in FCPA enforcement is the self-reporting of FCPA violations by corporations. The DOJ and the SEC have taken a more lenient approach to self-reported illegalities when seeking a sentence for FCPA violations—at least that is their claim.[101] If a corporation has committed an FCPA violation and brings this fact to the attention of the SEC or DOJ prior to either agency's discovery of the deviation of the law, the punishment for the violation is typically less significant than those handed down to violators whose undisclosed FCPA digressions are first discovered by the federal government in an FCPA investigation. DOJ point man for FCPA issues, Mark Mendelsohn, has stated that "self-reporting won't wipe the slate clean," but that the DOJ, "looks favorably on corporate confession if it turns into a prosecution."[102] Mendelsohn added: "We reward disclosure and genuine cooperation."[103] Most significantly, the influence of the Sarbanes-Oxley Act of 2002 and the rising economic power of China have had the greatest influence on the recent trends in FCPA enforcement. The following section and subsections examine the influences of Sarbanes-Oxley and China on changes in FCPA enforcement.

IV. INFLUENCES ON CHANGES IN FCPA ENFORCEMENT

As presented in previous sections, enforcement of the FCPA appeared to be fairly insignificant from the enactment of the law until recent trends in FCPA enforcement emerged, and the number of cases brought by the SEC and DOJ increased significantly over a relatively short period of time. It appears that this increase in FCPA enforcement, as well as creative enforcement by the federal government, has been influenced by a number of variables. The enactment of Sarbanes-Oxley Act of 2002 (SOX) and the emergence of China and other nations as global economic powers appear to have had a significant influence on the increase in the

101. *Id.* at 7.
102. Joshua Lipton, *Kicking Back at Kickbacks*, 6 CORP. COUNS. 17 (Dec. 1, 2006), *available at* http://www.law.com/jsp/cc/PubArticleCC.jsp?id=900005467424#.
103. *Id.*

number of FCPA cases in recent years. This section of the article focuses on the influence of SOX on the enforcement of the FCPA.

Following the Enron debacle and the subsequent WorldCom scandal in 2001 and 2002, the U.S. federal government took action to avoid similar situations from taking place in the future. With hopes of placing more responsibility on top executives and decision makers for future corporate collapses similar to those of Enron and WorldCom, Congress passed the SOX in 2002. This SEC-enforced law proclaims that corporate accounting records must be totally accurate and that all financial statements be publically certified by the CEO and CFO of publically held corporations.[104] Professor Prentice has stated that SOX requires:

> [T]hat CEOs and CFOs of public companies certify that the company's periodic reports do not contain material misstatements or omissions and 'fairly present' the firms' financial condition and results of operations. In addition, the officers must affirm that they are responsible for the internal controls, have designed them to ensure that material information is brought to their attention, have evaluated their effectiveness, have presented in the report their conclusions about their effectiveness, and have discussed in the report any changes in the internal controls, including corrective actions taken. Section 906(a) creates a new criminal penalty for officers who knowingly certify an inaccurate financial statement. Finally, and most significantly, SOX [section] 404 requires the filing of a management report attested to by the external auditor assessing the reliability of the issuer's internal financial controls.[105]

Not only has the impact of SOX on corporations curbed "massive securities frauds that undermined the very heart of the federal securities laws,"[106] but it has also had an impact on the enforcement of the FCPA. According to LaCroix: "[T]he primary reason for the dramatic increase in the number of FCPA enforcement actions is the self-examination required under [SOX], interacting with the self-reporting compelled under the federal prosecutorial guidelines for corporate criminality."[107] SOX requires senior management to carefully scrutinize their company's internal controls and processes. Increased scrutiny often leads to increased self-identification of FCPA concerns.[108]

The effect of SOX on the changes in FCPA enforcement may not be that obvious, however, SOX is arguably the most important piece of

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104. *See* Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, § 302, 116 Stat. 745, 777–78 (2002) (codified at 15 U.S.C. § 7241 (2000)).

105. Robert Prentice, *Sarbanes-Oxley: The Evidence Regarding the Impact of SOX 404*, 29 CARDOZO L. REV. 703, 705–06 (2007).

106. *Id.* at 705.

107. Kevin LaCroix, *Foreign Corrupt Practices Act: A '70s Revival and Growing D&O Risk*, NAT'L UNDERWRITER PROP. & CASUALTY, Apr. 2, 2007 at 21.

108. *Id.*

corporate legislation passed by Congress since the Securities and Exchange Act of 1934. The law created a situation in which corporate executives can now be held personally accountable for any misleading financial information hidden behind the numbers of financial statements. Combined with FCPA, SOX creates a double-edged sword for the SEC to wield in the battle against corruption.

V. OTHER IMPORTANT FCPA ISSUES NEEDING FURTHER EXAMINATION

There are many other significant issues involved with, or related to, the enforcement of the FCPA, which need more research, but are beyond the scope of this article. Some of the most important, or most interesting to this author are:

- *Emergence of China as a Global Economic Power.* The effect of the growing power of China, not only on the world economy, but on the enforcement of anti-bribery laws and treaties. It has often been stated that bribery is a regular part of doing business in China[109] (although those who study China would argue that the concepts of *guanxi* and *hong bao* are much more complicated than mere "bribery").[110] Since so many business firms operating

109. "Widespread corruption in China puts many U.S. companies between the proverbial rock and a hard place…China's leaders have long acknowledged that widespread corruption is one of the country's main problems and have repeatedly vowed to eliminate it." Patrick M. Norton, *The Foreign Corrupt Practices Act Dilemma*, 33 CHINA BUS. REV. 22 (2006).

110. *See, e.g.*, Alexandra A. Wrage, *Bribes and Transparency on Chinese Holidays: a Primer*, WALL ST. J. CHINA REALTIME REP. BLOG (Jan. 23, 2009, 2:23 AM), http://blogs.wsj.com/chinarealtime/2009/01/23/bribes-and-transparency-on-chinese-holidays-a-primer/ (Hong Bao are the "'red envelopes' stuffed with money traditionally given between friends, family and business partners during the Spring Festival"). Guanxi is a complex term which begins with "connections" and represents the ancient Chinese belief in doing business only with those who already know, or have some connection with, and the necessity of forming and maintaining such relationships through a variety of means. *See, e.g.*, Tom Dunfee & Danielle E. Warren, *Is Guanxi Ethical? A Normative Analysis of Doing Business in China*, 32 J. BUS. ETHICS 191 (2001). Another source states: "*Guanxi*. It's the first word any businessperson learns upon arriving in China. Loosely translated, *guanxi* means 'connections' and, as any China veteran will tell you, it is the key to everything: securing a business license, landing a distribution deal, even finding that coveted colonial villa in Shanghai. Fortunes have been made and lost based on whether the seeker has good or bad *guanxi*, and in most cases a positive outcome has meant knowing the right government official, a

in China are totally or partially owned by the Chinese government and strongly influenced by Communist party officials, many business managers or officers who receive bribes or other payments may well also be considered "government officials," and thus such payment would violate the FCPA.[111] As China moves to the center of global commerce, the interaction of Chinese business practices and customs with international laws will be most interesting to follow.

- *Foreign National Anti-Corruption Laws.* In the past decade there have been a series of international treaties and agreements reached, all aimed at combating bribery and corruption, and many nations have enacted their own anti-bribery laws. In recent years, foreign anti-corruption enforcement has also taken center stage in nations such as Australia, Bolivia, Brazil, China, Costa Rica, the Dominican Republic, Germany, India, Namibia, Sweden, and the U.K.[112] How these laws will be enforced and how U.S. officials will cooperate and interact with foreign enforcers will bear watching.
- *International Treaties.* The most well-known global anti-corruption treaty occurred with the 1998 signing of the OECD Convention on Combating Bribery of Foreign Public Officials. This treaty required that the thirty-five member nations of the OECD enact anti-bribery laws, and all have done so. This law has spurred the enactment of many national laws as discussed above.[113] But there are also several other important international agreements such as: (1) The Committee of Experts of the Follow-Up Mechanism for the Inter-American Convention Against Corruption; (2) The Group of States Against Corruption (GRECO); (3) The United Nations Convention Against Corruption; (4) the United Nations Global Compact's 10th Principle Against Corruption; and (5) The World Bank's Department of Institutional Integrity (INT). Regional organizations such as the Organization of American States, the Council of Europe, and more recently the African Union, have

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relationship nurtured over epic banquets and gallons of XO brandy." Frederick Balfour, *You Say Guanxi, I Say Schmoozing*, BUS. WK., Nov. 19, 2007, at 84.

111. Patrick M. Norton, *The Foreign Corrupt Practices Act Dilemma*, CHINA BUS. REV., Nov.–Dec. 2006, at 22–23.

112. Ayes et al., *supra* note 87, at 604–07.

113. *See supra* notes 27–35 and text accompanying.

also developed anti-corruption conventions. The scope and influence of each agreement will require more research.

- *Anti-Corruption Non-Governmental Organizations.* International business activities by corporations and business people around the globe are being scrutinized more than ever before. At the same time, several new anti-corruption compliance organizations (NGOs) have been founded in recent years, with the goal of promoting corporate compliance with corruption laws.[114] These anti-corruption compliance organizations include such organizations as (1) Transparency International; (2) The Corner House; (3) The International Anti-Corruption Conference; (4) TRACE; and (5) The Center for International Private Enterprise (CIPE); (6) Business for Social Responsibility, and many more. These organizations serve as watchdogs to report corruption, and many also help business firms design and implement compliance policies to detect bribery before it becomes public. What role will they play in the future of international business?
- *Does the FCPA Represent Moral Imperialism?* Late in the research for this article, the author came across a fascinating series of articles arguing both sides of this question. Professor (now Dean) Steven Salbu wrote a series of thoughtful articles about ten years ago advocating the position that the FCPA and other anti-bribery laws represent an imposition of one particular set of Western ethical principles on the rest of the world who may not share this ethical, legal basis.[115] While some scholars agree, there have also been a number of well-written articles by

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114. *See generally* Michael Goldhaber, *Dirty Companies for Sale*, 27 AM. LAW., Mar. 4, 2005, 13–14, *available at* http://www.law.com/jsp/law/sfb/lawArticleSFB.jsp?id=900005543369.

115. *See generally* Steven R. Salbu, *The Foreign Corrupt Practices Act as a Threat to Global Harmony*, 20 MICH. J. INT'L L. 419, 441 (1999); Steven R. Salbu, *Are Extraterritorial Restrictions on Bribery a Viable and Desirable International Policy Goal Under the Global Conditions of the Late Twentieth Century*? 24 YALE J. INT'L L. 223 (1999); Steven R. Salbu, *Battling Global Corruption in the New Millennium*, 31 L. & POL'Y INT'L BUS. 47 (1999); Steven R. Salbu, *Bribery in the Global Market: A Critical Analysis of the Foreign Corrupt Practices Act*, 54 WASH. & LEE L. REV. 229 (1997); Steven R. Salbu, *Information Technology in the War Against International Bribery and Corruption: The Next Frontier in International Reform*, 38 HARV. J. ON LEGIS. 67 (2001); Marie M. Dalton, *Efficiency v. Morality: The Codification of Cultural Norms in the Foreign Corrupt Practices Act*, 2 N.Y.U. J. L. & BUS. 583, 619–20 (2006).

Professor Philip Nichols and others responding to Salbu advocating the opposite view—that people in all parts of the world will benefit if bribery and corruption are eliminated.[116] One author has argued that a "culture of corruption" (1) directly and negatively impacts the safety of ordinary consumers throughout the world who depend on imports; (2) directly undermines environmental reform technology and clean-up efforts globally, and (3) frustrates efforts to achieve very basic human rights.[117] This issue is worthy of much more research and discussion, but is beyond the scope of this article.

VI. CONCLUSION

In the first twenty-five years after the enactment of the FCPA in 1977, enforcement of the law was minimal. This law was initially enacted to prevent U.S. businesses and individuals from using illicit payments to foreign officials "to influence any official act, induce unlawful action, or obtain or retain business."[118] Enforcement by the DOJ and SEC during its first twenty-five years amounted to less than three prosecutions per year. Several factors led Congress to amend the law in 1988, and again in 1998. These amendments substantially expanded the scope of the law.

Since 2004, there has been a tremendous increase in FCPA enforcement actions by the SEC and DOJ—the number of FCPA investigations over the past six years has greatly surpassed the actions taken by the Federal Government during the entire period from the 1977 enactment of the FCPA through 2002. Significant influences on this development may include the FCPA amendments, the enactment of SOX, the continuing series of financial scandals starting with Enron and continuing with the sub-prime mortgage scandal, the financial meltdown of 2008–2009, and the increasing globalization of business.

The increase in FCPA prosecutions by the U.S. federal government has been accompanied by a heightened sense of the need to combat bribery around the world, to the signing of several important international anti-corruption treaties, and to the enactment of laws similar to the FCPA in

116. Phillip M. Nichols, *Regulating Transnational Bribery in Times of Globalizations and Fragmentation*, 24 YALE J. INT'L L. 257, 289 (1999); Phillip M. Nichols, *The Myth of Anti-Bribery Laws as Transnational Intrusion*, 33 CORNELL INT'L L.J. 627 (2000).

117. *See*, Elizabeth Spahn, *International Bribery: The Moral Imperialism Critiques*, 18 MINN. J. INT'L L. 155 (2009); *See also*, Bill Shaw, *The Foreign Corrupt Practices Act and Progeny: Morally Unassailable*, 33 CORNELL INT'L L.J. 689, 701 (2000).

118. Koch, *supra* note 5, at 383.

many other nations. Along with new laws and treaties, anti-corruption cooperation between nations has also developed considerably since bribery in international business has consequences that cross national borders. Consequently, as more nations around the world enact anti-corruption laws and join anti-bribery treaties, corporations doing business in foreign nations are under the microscope. Similarly, as foreign governments begin to prosecute corporations the world over, international anti-corruption compliance organizations and NGOs have formed to watch carefully for signs of corruption. Other organizations assist corporations in understanding laws such as the FCPA and how to best avoid corruption violations when doing business in foreign nations.

All of the developments surrounding the FCPA as discussed in this article, as well as the previously identified key issues needing further examination, will significantly affect the conduct of international business in the next decade. It is essential for business leaders and legal scholars to carefully watch the development of new laws, treaties, and enforcement techniques, both in the United States and globally, as nations increase their efforts to eliminate corruption and bribery from international business transactions.

APPENDIX A: PRE-FCPA CASES

Appendix A includes pre-FCPA cases, including parties to the case, and details and the outcome of the case, all of which can be found in Table 2 below.

Table 2: Pre-FCPA Cases

Date	Case	Details and Outcome
N/A	*United States v. U.S. Lines, Inc*. (Cr. No.)	Conspiracy to defraud the Federal Maritime Administration. Fine of $5,000.
1978	*United States v. Sea-Land Service, Inc.* (Cr. No. 78-103)	Conspiracy to defraud the Federal Maritime Administration. Fine of $5,000.
1978	*United States v. Seatrain Lines, Inc*. (Cr. No. 78-49)	Conspiracy to defraud the Federal Maritime Administration and Currency and Foreign Transactions Reporting Act. Fines against Seatrain of $260,000 and against a subsidiary, Ocean Equipment, of $260,000.
1978-Mar-24	*United States v. The Williams Companies* (Cr. No. 78-00144), D.D.C.	Currency and Foreign Transactions Reporting Act (transporting currency in excess of $5,000 into and out of the United States without proper reporting). Fine and civil penalty of $187,000
1978-Apr-12	*United States v. Page Airways, Inc., Fed. Sec. L. Rep*. (Cr. No. 79-00273) (CCH), 96,393 D.D.C.	Currency and Foreign Transactions Report Act. Fine and civil penalty of $52,647.
1978-Apr-26	*United States v. Control Data Corporation* (Cr. No. 78-00210), D.D.C.	Mail fraud and Currency and Foreign Transactions Reporting Act. Fine and penalty of $1,381,000.
1978-Jul-19	*United States v. Company* (Cr. No. 78-538), S.D.N.Y.	United Brands paid $2.5 million in bribes to the president of Honduras in an effort to receive a reduced local tax on the exportation of bananas. The company also sought a twenty-year extension of favorable terms on its Honduran properties. Fine of $15,000.

1978-Nov-15	*United States v. Westinghouse Electric Company* (Cr. No. 78-00566), D.D.C.	False statements to the Export-Import Bank and Agency for International Development. Fine of $300,000.
1979-Jun-1	*United States v. Lockheed Corporation* (Cr. No. 79-00270), D.D.C.	Currency and Foreign Transactions Reporting Act, wire fraud, false statements to Export Import Bank. Fine and penalties of $647,000.
1979-Jun-1	*United States v. Gulfstream American Corporation (formerly known as Grumman American Aviation Corporation)* (Cr. No. 79-00007), D.D.C.	False statements to Export-Import Bank and Commerce Department (Shipper's Export Declarations). Fine of $120,000.
1979-Jul	*United States v. Textron, Inc.* (Cr. No. 79-00330), D.D.C.	Currency and Foreign Transactions Report Act. Fine and civil penalty of $131,670.
1981-Sep-8	*United States v. McDonnell Douglas Corporation, et al*. (Cr. No. 79-516), D.D.C.	Mail fraud, wire fraud, conspiracy, false statements to Export-Import Bank.
Note: All above information was taken from *FCPA Digest of Cases and Review Releases Relating to Bribes to Foreign Officials under the Foreign Corrupt Practices Act of 1977*, by Shearman & Sterling LLP, March 4, 2010, pp. 371–73, available at http://www.shearman.com/files/upload/ FCPA-Digest-Spring-2010.pdf.		

Appendix B includes FCPA cases prior to the 1998 amendment, including parties to the case and details and the outcome of the case, all of which can be found in Tables 3, 4, and 5 on the following pages.

Table 3: Pre-1998 FCPA Criminal Prosecutions

Date	Case	Details and Outcome
1979	*United States v. Kenny International Corp*., (Cr. No. 79-372), D.D.C.	The company pled to one count of violating the FCPA and consented to an injunction against further FCPA violations. The corporation was fined $50,000 and required to pay restitution to the Cook Islands government in the amount of NZ $337,000. The chairman of Kenny Int'l consented to a civil injunction and agreed to enter a plea of guilty to criminal charges pending in the Cook Islands.
1982	*United States v. Crawford Enterprises, Inc., Donald G. Crawford, William E. Hall, Mario S. Gonzalez, Ricardo G. Beltran, Andres I. Garcia, George S. McLean, Luis A. Uriarte, Al L. Eyster and James R. Smith,* (Cr. No. H-82-224), S.D.Tx, Houston Division, Crawford Ent.	Pled no contest & fined $3,450,000. D. Crawford pled no contest & fined $309,000. W. Hall pled no contest & fined $150,000. A. Garcia pled no contest & fined $75,000. A. Eyster pled no contest & fined $5,000. J. Smith pled no contest & fined $5,000. G. McLean Acquitted
1982	*United States v. C.E. Miller Corporation and Charles E. Miller,* (Cr. No. 82-788), C.D. Cal.	The corporation pled guilty and was fined $20,000. The individual defendant pled guilty and was sentenced to three years' probation and 500 hours community service.

Note: All above information was taken from "FCPA Prosecutions and Civil Enforcement Actions," *Int'l Agreements Relating to Bribery of Foreign Officials,* U.S. Department of Justice.

APPENDIX B: PRE-1998 FCPA CRIMINAL PROSECUTIONS CONTINUED–TABLE 4

Table 4: Pre-1998 FCPA Criminal Prosecutions (continued)		
1983	*United States v. Marquis King*, (Cr. No. 83-00020), D.D.C.	The defendant pled guilty to violations of Currency and Foreign Transactions Reporting Act and was sentenced to 14 months incarceration and required to pay prosecution costs.
1982	*United States v. Ruston Gas Turbines, Inc*., (Cr. No. H-82-207), S.D. Tex.	The corporation pled guilty to an FCPA violation and was fined $750,000.
1982	*United States v. International Harvester Company*, (Cr. No. 82-244), S.D. Tex.	The corporation pled guilty to one count of conspiracy to violate the FCPA and was fined $10,000 plus costs of $40,000. An individual defendant also pled guilty to one count and was sentenced to one year incarceration (suspended).
1983	*United States v. Applied Process Products Overseas, Inc.*, (Cr. No. 83-00004), D.D.C.	The company pled guilty to an FCPA violation and was fined $5,000. In addition it consented to a permanent civil injunction.
1983	*United States v. Gary Bateman*, (Cr. No. 83-00005), D.D.C.	The defendant pled guilty to five CFTR misdemeanors and was sentenced to three years probation. In addition, he agreed to pay a civil penalty of $229,512, a civil tax payment of $300,000, and costs of prosecution of $5,000.
1983	*United States v. Sam P. Wallace Company, Inc.*, (Cr. No. 83-0034) (PG), D.P.R.	The corporation pled guilty to three counts of FCPA accounting violations and was fined $30,000. In addition, it also pled guilty to a CFTR violation and was fined $500,000.
1983	*United States v. Alfonso A. Rodriguez*, (Cr. No. 83-0044 (JP)), D.P.R.	The defendant pled guilty to one count of FCPA bribery and was sentenced to three years' probation and fined $10,000.

1985	*United States v. Harry G. Carpenter and W.S. Kirkpatrick, Inc.*, (Cr. No. 85-353), D.N.J.	The corporation pled guilty to an FCPA violation and was fined $75,000. The individual defendant pled guilty to one count FCPA bribery and was sentenced to three years probation, community service, and a fine of $10,000.
1985	*United States v. Silicon Contractors, Inc., Diversified Group, Inc., Herbert D. Hughes, Ronald R. Richardson, Richard L. Noble and John Sherman,* (Cr. No. 85-251), E.D. La.	The corporation pled guilty to an FCPA violation, agreed to a permanent civil injunction, and was fined $150,000. Hughes, Richardson, Noble and Sherman agreed to permanent injunctions in a civil case.
1989	*United States v. NAPCO International, Inc. and Venturian Corporation*, (Cr. No. 4-89-65), D. Minn.	The defendants pled guilty to three counts of FCPA bribery and were fined $785,000. In addition, they paid $140,000 in a civil settlement and $75,000 to settle tax charges.
1989	*United States v. Richard H. Liebo,* (Cr. No. 4-89-76), D. Minn.	The defendant was convicted of FCPA bribery and false statements and was sentenced to eighteen months incarceration (suspended) with three years probation.
1989	*United States v. Goodyear International Corp.*, (Cr. No. 89-0156), D.D.C.	The corporation pled guilty to one count of FCPA bribery and was fined $250,000.
1989	United States v. Joaquin Pou, Alfredo G. Duran, and Jose Guasch (S.D. Fla. 1989) United States v. Robert Neil Gurin (S.D. Fla.)	Guasch and Gurin pled guilty to conspiracy to violate the FCPA; Duran was acquitted at trial; Pou jumped bail.
1990	*United States v. Young Rubicam Inc., Arthur R. Klein, Thomas Spangenberg, Arnold Foote Jr., Eric Anthony Abrahams, and Steven M. McKenna*, (Cr. No. N-89-68 (PCD)), D. Conn.	The company pled guilty to one count of conspiracy to violate FCPA and was fined $500,000.
1990	*United States v. George V. Morton*, (Cr. No. 3-90-061-H), N.D. Tex. (Dallas Div.).	The defendant pled guilty to one count of conspiracy to violate FCPA and was sentenced to three years probation.

1990	*United States v. John Blondek, Vernon R. Tull, Donald Castle and Darrell W.T. Lowry*, (Cr. 741), N.D. Tex.	Two of the defendants were acquitted at trial. The charges were dismissed against the two remaining defendants. In separate cases, the Canadian agent, Morton, pled to conspiracy to violate the FCPA and the company agreed to a civil injunction enjoining it from future violations of the FCPA.
1990	*United States v. F.G. Mason Engineering and Francis G. Mason*, (Case No. B-90-29), JAC, D. Conn.	The corporation pled guilty to one count of conspiracy to violate the FCPA, was fined $75,000, and was required to pay restitution of $160,000. The individual defendant also pled guilty to one count of conspiracy to violate the FCPA, was sentenced to five years probation, and was fined $75,000 (joint with Company).
1990	*United States v. Harris Corporation, John D. Iacobucci and Ronald L. Schultz*, (Cr. No. 90-0456), N.D. Cal.	The court granted a motion for judgment of acquittal at the close of the government's case.
1994	*United States v. Herbert Steindler, Rami Dotan, and Harold Katz*, (Cr. No. 194-29), S.D. Ohio.	One defendant pled guilty to three counts of conspiracy, wire fraud and money laundering and was sentenced to 84 months incarceration and required to forfeit $1,741,453. The remaining defendants are fugitives.
Note: All above information was taken from "FCPA Prosecutions and Civil Enforcement Actions," *Int'l Agreements Relating to Bribery of Foreign Officials*, U.S. Department of Justice.		

Table 5: Pre-1998 FCPA Criminal Prosecutions (concluded)		
Date	**Case**	**Details and Outcome**
1994	*United States v. Vitusa Corporation*, (Cr. No. 94-253)(MTB), D.N.J.	The corporation pled guilty to an FCPA violation and was fined $20,000.
1994	*United States v. Denny Herzberg*, (Cr. No. 94-254)(MTB), D.N.J.	The defendant pled guilty to an FCPA violation and was sentenced to two years probation and fined $5,000.
1994	*United States v. Lockheed Corporation, Suleiman A. Nassar and Allen R. Love*, (Cr. No. 1:94-Cr-22-016), N.D., Ga. Atlanta Div.	The corporation pled guilty to conspiracy to violate the FCPA and was fined $21.8 million. In addition, it had to pay a $3 million civil settlement. Defendant Nassar pled guilty to two counts and was sentenced to eighteen months imprisonment. Defendant Love pled guilty to one count in a related case and was fined $20,000.
Note: All above information was taken from "FCPA Prosecutions and Civil Enforcement Actions," *Int'l Agreements Relating to Bribery of Foreign Officials*, U.S. Department of Justice.		

APPENDIX C: NOTABLE FCPA CASES IN RECENT YEARS

Appendix C includes notable FCPA cases from 2003–2010, including parties to the case, and details and the outcome of the case, all of which can be found in Table 6 below through Table 8 on the following pages.

Table 6: Notable FCPA Cases in Recent Years

Date	Case	Details and Outcome
2010	*United States v. BAE Systems PLC* (D.D.C. 2010)	In 2000, BAE Systems PLC formerly British Aerospace, made commitments to the U.S. government to create and implement policies and procedures to fall under compliance with FCPA. On February 4, 2010, the DOJ filed a criminal information, charging BAE with conspiring to defraud the United States and to make false statements to the U.S. government, and violating the Arms Export Control Act and International Traffic in Arms Regulations. BAE pleaded guilty and agreed to pay $400 million in penalties, implement a compliance system, and to retain a compliance monitor for three years. BAE was not charged with FCPA liability.
2009	*United States v. Daniel Alvirez and Lee Allen Tolleson* (D.D.C. 2009) *United States v. Helmie Ashiblie* (D.D.C. 2009) *United States v. Andrew Bigelow* (D.D.C. 2009) *United States v. R. Patrick Caldwell and Stephen Gerard Giordanella* (D.D.C. 2009)	On December 11, 2009, the DOJ charged the twenty-two executives and employees in the military and law enforcement equipment industry with conspiring to violate the FCPA, substantive violations of the FCPA, and conspiring to engage in money laundering. This is the single largest investigation and prosecution against individuals in the history of the

	United States v. Yochanen R. Cohen (D.D.C. 2009) *United States v. Haim Geri* (D.D.C. 2009) *United States v. Gregory Godsey and Mark Frederick Morales* (D.D.C. 2009) *United States v. Amaro Goncalves* (D.D.C. 2009) *United States v. Saul Mishkin* (D.D.C. 2009) *United States v. John M. Mushriqui and Jeana Mushriqui* (D.D.C. 2009) *United States v. David R. Painter and Lee M. Wares* (D.D.C. 2009) *United States v. Pankesh Patel* (D.D.C. 2009) *United States v. Ofer Paz* (D.D.C. 2009) *United States v. Jonathan M. Spiller* (D.D.C. 2009) *United States v. Israel Weisler and Michael Sacks* (D.D.C. 2009) *United States v. John Benson Wier* (D.D.C. 2009)	enforcement of FCPA. The FBI was brought in to complete the undercover investigation. The outcome is undetermined at this time.
2009-July	*United States v. Control Components, Inc.* (C.D. Ca 2009)	CCI pleaded guilty to two counts of violations of the anti-bribery provisions of the FCPA and one count of conspiracy to violate the FCPA and Travel Act. CCI agreed to pay a criminal fine of $18.2 million as well as adopt an anti-corruption compliance code, and a three year probation period. Six executives and two former employees have been indicted on related allegations. See below.
2009	*United States v. Novo Nordisk A/S,* (D.D.C. 2009)	Novo Nordisk was charged with conspiracy to commit wire fraud and violate the books and records provisions of the FCPA. Charges were

		dropped in exchange for a fine of $9 million, cooperation with further investigation, a compliance program, $3 million in civil penalties, and $6 million in disgorgement of profits in a settlement with the SEC.
2009	*United States v. Stuart Carson, Hong Carson, Paul Cosgrove, David Edmonds, Flavio Ricotti, and Han Yong Kim* (C.D. Ca 2009)	All six defendants were indicted for conspiracy to violate the FCPA and the Travel Act. Additionally, Carson was indicted on two counts of bribery and one count for obstruction of justice for intentionally destroying records. Cosgrove was indicted on six counts of bribery under the FCPA and one count under the Travel Act. Edmonds was indicted on three counts of bribery under the FCPA and two counts under the Travel Act. Ricotti was indicted on one count of bribery under the FCPA and three counts under the Travel Act. Kim was indicted on two counts of bribery under the FCPA."
2009-Feb	*United States v. Jeffery Tesler and Wojciech J. Chodan* (S.D. Tex. 2009)	The eleven-count indictment includes one count of conspiring to violate the anti-bribery provisions of the FCPA and ten counts of violating the anti-bribery provisions of the FCPA. The DOJ is seeking $132 million from Tesler and Chodan if convicted on more than one count.
2009-Feb	*United States v. Kellogg Brown & Root LLC* (S.D. Tex. 2009)	Kellogg Brown & Root LLC pleaded guilty to one count of conspiring to violate the FCPA and four counts of violating the anti-bribery provisions of the FCPA. KBR agreed to pay $402 million and Halliburton agreed to pay $382 million of the fine. Halliburton and KBR settled a separate SEC case

		paying disgorgement of $177 million in profits. In September 2008, Albert Stanley, former CEO and Chairman of Kellogg Brown & Root LLC, admitted he participated in a scheme to bribe Nigerian government officials.
2008	*United States v. Siemens Aktiengesellschaft* (D.D.C 2008) *United States v. Siemens S.A.(Argentina)* (D.D.C 2008) *United States v. Siemens Bangladesh Ltd.* (D.D.C 2008) *United States v. Siemens S.A. (Venezuela)* (D.D.C. 2008)	This seller of power and electrical equipment was the first company ever charged with a criminal violation of the FCPA. Siemens AG (Argentina) pleaded guilty to conspiring to violate the FCPA's books and records provisions and paid criminal fines of $450 million on top of $350 million disgorgement of ill-gotten profits. German authorities collected additional penalties. Independent monitors were put in place for four years, and $3 million in bank accounts were forfeiture for a bribery scheme in Bangladesh.
2008-Jan	*United States v. James K. Tillery and Paul G. Novak* (S.D. Tex. 2008)	This oil and gas pipeline construction company was indicted on one count of conspiracy to violate the FCPA, two counts of violating FCPA, and one count of conspiracy to commit money laundering.
2008	*United States v. Fiat S.p.A., et al.* *United States v. Iveco S.p.A.* (2008) *United States v. CNH Italia S.p.A.* (2008) *United States v. CNH France S.A.* (2008)	In the U.N. Oil-for-Food Program in Iraq, the DOJ charged Iveco and CNH Italia with conspiracy to commit wire fraud and violate the FCPA's books and records provisions. DOJ also alleged CNH France conspired to commit wire fraud. Fiat entered into a three-year deferred prosecution agreement with the DOJ and agreed to pay $7 million. In 2008, Fiat and CNH Global entered an agreement with the SEC for failure to maintain internal controls and for books and records violations. This agreement resulted in

		$5.3 million in disgorgement of profits, pre-judgment interest of $1.9 million, and $3.6 million in civil penalty.
2008	*United States v. Shu Quan-Sheng* (E.D. Va. 2008)	Shu Quan-Sheng pled guilty to one count of violating the FCPA and two counts of violating the Arms Control Export Act. Shu was ordered to forfeit $356,740 in commission payments, and was sentenced to fifty-one months in prison, followed by a two year supervised release.
2008	*United States v. Albert Jackson Stanley* (2008)	Albert Stanley, a former director of Kellogg, Brown, & Root, Inc. pleaded guilty to one count of conspiring to violate the FCPA and one count of conspiring to commit mail and wire fraud. Stanley faces seven years in prison and payment of $10.8 million in restitution.
2008-June	*United States v. Faro Technologies Inc.* (2008)	Faro entered into a two year deferred-prosecution agreement and agreed to pay $1.1 million in criminal penalties and a two-year period with an independent compliance officer.
2008	*United States v. Willbros Group, Inc., and Willbros Int'l, Inc.* (2008)	Willbros Group and Willbros International, procurement companies of oil and gas construction contracts, entered into a three year deferred prosecution agreement. A $22 million fine will be collected in four installments, and have a position for an independent corporate monitor for three years.
2008	*United States v. AB Volvo (2008)* *United States v. Volvo Construction Equipment AB* (2008) *United States v. Renault Trucks*	The parent company of Volvo Construction and Renault Trucks SAS, AB Volvo, entered into a three-year differed prosecution agreement with

	SAS (2008)	the DOJ and agreed to pay a fine of $7 million. VCE and Renault were alleged to have committed conspiracy to commit wire fraud and violate FCPA's books and records provisions.
2007	*United States v. Gerald Green and Patricia Green* (C.D. Cal. 2007)	The Greens were arrested for money laundering, tax counts (Patricia) and an added count of obstruction of justice against Gerald. The Greens created contracts for the annual Bangkok International Film Festival. The Greens were found guilty of conspiracy to violate the FCPA and money laundering laws, and Patricia Green was found guilty of falsely subscribing U.S. income tax returns.
2007	*United States v. Chevron Corp.* (S.D.N.Y. 2007)	Under the United Nations Oil-for-Food Program the Chevron Corp. purchased oil from Iraq. Chevron entered into a two-year deferred-prosecution agreement and agreed to pay a total of $27 million. In addition, the SEC issued charges against Chevron resulting in a monetary penalty of $3 million and disgorgement of $25 million.
2007-Apr	*United States v. Baker Hughes Svcs. Int'l, Inc.* (No: H-07-129) (S.D. Tex. April 2007)	Baker Hughes is a U.S. oilfield services company. BHSI pleaded guilty to violations of the anti-bribery and books and records provisions of the FCPA and agreed to an $11 million criminal fine. BHSI also agreed to serve a three-year term of organizational probation and adopt a comprehensive anti-bribery compliance program.

2006-Feb	*United States v. Vetco Gray Controls Inc. et al.*, (No. 4:07-cr-00004) (S.D. Tex. February 2006) *United States v. Aibel Group Ltd.* (No. 4:07-cr-00005) (S.D. Tex. February 2006)	Vetco Gray Controls Inc., Vetco Gray Controls Ltd., and Vetco Gray UK Ltd. pleaded guilty to violations of the anti-bribery provisions of the FCPA and agreed to a collective fine of $26 million, paying $6 million, $8 million and $12 million respectively. They also agreed to hire an independent monitor to oversee the implementation of a robust compliance program, to undertake an investigation of the company's operations as required under FCPA Opinion Release 04-02, and to agree that any potential buyer of the company would be bound to those monitoring and investigation conditions. Aibel Group Ltd entered a deferred prosecution agreement relating to the same underlying conduct.
2006	*United States v. Christian Sapsizian and Edgar Valverde Acosta* (No. 1:06-cr-20797) (S.D. Fla. 2006)	On March 20, 2007, a superseding indictment was filed against Mr. Sapsizian and Mr. Acosta. On June 7, 2007, the DOJ announced that Mr. Sapsizian pleaded guilty to two counts of conspiracy and violating the FCPA. He now faces up to ten years in prison, $250,000 in fines, and $330,000 in forfeiture. The terms of his plea agreement provide for an immediate forfeiture of $261,500. Sentencing for Mr. Sapsizian has been set for December 20, 2007. Separately, on June 14, 2007, the Court transferred Mr. Acosta to fugitive status.
2006	*United States v. Jim Bob Brown* (No. 4:06-cr-00316) (S.D. Tex. 2006)	On September 14, 2006, the DOJ reported that Brown pleaded guilty to violating the FCPA by conspiring with

		others to bribe Nigerian and Ecuadorian officials. Brown is cooperating with the government's ongoing investigation as part of his plea agreement.
2006-Oct	*United States v. SSI Int'l Far East, Ltd.* (No. CR 06-398-KI) (D. Or. October 2006)	SSI Korea agreed to plead guilty to violating the anti-bribery and accounting provisions of the FCPA and pay a $7.5 million penalty. Schnitzer Steel entered into a three-year deferred prosecution agreement and agreed to retain a compliance monitor for three years. In the SEC proceeding, Schnitzer Steel agreed to pay disgorgement and prejudgment interest of $7.7 million and retain a compliance monitor.

Note: Above information through *United States v. Baker Hughes Svcs. Int'l*, Inc was taken from *FCPA Digest of Cases and Review Releases Relating to Bribes to Foreign Officials under the Foreign Corrupt Practices Act of 1977*, by D. Newcomb, October 5, 2007, pp. 23–27; Cases after *United States v. Baker Hughes Svcs. Int'l*, were taken from *FCPA Digest of Cases and Review Releases Relating to Bribes to Foreign Officials under the Foreign Corrupt Practices Act of 1997*, by Shearman & Sterling LLP, October 1, 2009, pp. 31–77, and the most recent information is from *FCPA Digest of Cases and Review Releases Relating to Bribes to Foreign Officials under the Foreign Corrupt Practices Act of 1997*, by Shearman & Sterling LLP, March 4, 2010, available at http://www.shearman.com/files/upload/FCPA-Digest-Spring-2010.pdf.

APPENDIX C: NOTABLE FCPA CASES IN RECENT YEARS CONTINUED–TABLE 7

Table 7: Notable FCPA Cases in Recent Years (continued)		
Date	**Case**	**Details and Outcome**
2006-Oct	*United States v. Statoil ASA* (No. 06-cr-00960-RJH-1) (S.D.N.Y. October 2006)	Statoil entered a three-year deferred prosecution agreement and has admitted to violating the anti-bribery and accounting provisions of the FCPA. It has also agreed to pay a $10.5 million penalty. In the SEC proceeding, it has agreed to pay $10.5 million in disgorgement and retain a monitor. Statoil has already paid a NOK 20 million ($3.045 million USD) fine to the Norway National Authority for Investigation and Prosecution of Economic Crime, without admitting or denying any liability, which will be deducted from the U.S. fines. On October 18, 2004, Richard Hubbard accepted a fine of NOK 200,000 ($30,300).
2006-Jun	*United States v. Steven Lynwood Head* (No. 06-cr-01380) (S.D.Cal. June 2006)	Steven Lynwood Head pled guilty to a one-count information charging falsification of the books, records and accounts of an issuer under the federal securities laws. Pursuant to the plea agreement, Head will cooperate with the government's ongoing investigation of individuals formerly associated with Titan. In September 2007, Head was sentenced to six months imprisonment, supervised release for a term of three years, and a $5,000 fine.
2006-Mar	*United States v. Richard John Novak* (No. 05-180-3-LRS) (E.D.Wash. March 2006)	On March 20, 2006, Novak pled guilty to one count of violating the FCPA and an additional count of wire fraud and mail fraud. Additional defendants involved in

		the scheme have either pled guilty or are currently being prosecuted on various non-FCPA charges.
2006	*United States v. Faheem Mousa Salam* (No. 06-cr-00157-RJL) (D.D.C. 2006)	The government filed criminal information against Salam on June 7, 2006. On August 4, 2006, Salam pled guilty to one count of violating the anti-bribery provisions of the FCPA. On February 2, 2007, Salam was sentenced to three years in prison followed by two years of supervised release.
2005	United States v. DPC (Tianjin) Co. Ltd., (No. CR 05-482) (C.D. CAL 2005) In the Matter of Diagnostic Products Corporation, SEC Administrative Proceeding File No. 3-11933 (May 20, 2005)	In a company filing dated August 2005, DPC disclosed that it had agreed to pay approximately $4.8 million as part of a settlement with the SEC and DOJ, consisting of $2.0 million in fines and approximately $2.8 million in disgorgement of profits and interest. In addition, Tianjin pled guilty to violations of the FCPA, was issued a cease and desist order, and agreed to take certain actions, including engaging an independent monitor for its FCPA activities in China, to avert future violations.
2002-Apr 2001-Dec	*United States v. David Kay* (Cr. No. 4-01-914) S.D. Tex., Dec. 12, 2001. *United States v. David Kay and Douglas Murphy*, (Cr. No. 4-01-914) S.D. Tex., Apr. 2002	As vice president of marketing for ARI, David Kay was responsible for supervising sales and marketing in Haiti. Kay was charged with twelve counts of violating the FCPA. Douglas Murphy, as president of ARI, was also charged with twelve counts of violating the FCPA. In May 2002, U.S. District Judge David Hittner dismissed the indictments against Murphy and Kay.
Note: All above information was taken from *FCPA Digest of Cases and Review Releases Relating to Bribes to Foreign Officials under the Foreign Corrupt Practices Act of 1977*, by D. Newcomb, October 5, 2007, pp. 28–50, Shearman & Sterling LLP.		

APPENDIX C: NOTABLE FCPA CASES IN RECENT YEARS CONCLUDED–TABLE 8

Table 8: Notable FCPA Cases in Recent Years (concluded)

Date	Case	Details and Outcome
2005-Oct	*United States v. Viktor Kozeny, Frederic Bourke, Jr., and David Pinkerton* (Cr. No. 05-518) (S.D.N.Y. October 2005)	On October 6, 2005, Kozeny, Bourke, and Pinkerton were charged in a twenty-seven-count indictment in U.S. District Court in Manhattan. The indictment seeks, among other things, $174,000,000 in fines and forfeiture. Kozeny, an Irish citizen and resident of the Bahamas, has challenged the right of the United States to seek his extradition given that he is neither a U.S. citizen, nor a resident, and was not in violation of an offence under Bahamian law. On September 28, 2006, a court in the Bahamas ordered Kozeny to be extradited, although Kozeny's lawyers announced that they intended to appeal the order. On June 21, 2007, the District Court in the Southern District of New York granted the motions to dismiss of Bourke and Pinkerton as to all FCPA counts. The court found that the indictment was time-barred because the government did not move to suspend the running of the statute of limitations to allow it to collect foreign evidence until after the statute of limitations had expired. The court found that filing such an application must be done before the running of the ordinary statute of limitations. The court found, in dicta, that the allegations were otherwise sufficient to withstand a motion to
2003-Aug	*United States v. Hans Bodmer* (Cr. No. 03-947) (S.D.N.Y., August 2003)	
2003-Jul	*United States v. Clayton Lewis* (Cr. No. 03-930) (S.D.N.Y., July 2003)	
2003-Mar	*United States v. Thomas Farrell* (Cr. No. 03-290) (S.D.N.Y., March 2003)	

		dismiss. Certain false statements counts against the defendants survived the motion to dismiss. On July 5, 2007, the government moved for reconsideration of the court's June 21, 2007 decision, arguing that three of the counts of the indictment (including conspiracy to violate the FCPA and the Travel Act and a substantive FCPA violation) should not have been dismissed as time-barred. The court agreed with the government and on July 16, 2007, granted the government's motion for reconsideration and reinstated these three counts. The government appealed the balance of the court's June 21, 2007 order to the United States Court of Appeals for the Second Circuit on July 19, 2007. The appeal is currently being briefed, and oral argument is set for October 19, 2007.
2005	*United States v. Titan Corporation* (Cr. No. 05-314), S.D. Cal. 2005	Titan pleaded guilty on March 1, 2005, to three felony counts of violating the FCPA and agreed to pay a criminal fine of $13 million, along with a civil penalty and disgorgement to the SEC in the amount of approximately $15.5 million. Titan also agreed to retain an independent consultant to review and further implement its FCPA compliance procedures. The combined penalty, $28.5 million, is the largest fine ever imposed on a company in the history of the FCPA.
Note: All above information was taken from *FCPA Digest of Cases and Review Releases Relating to Bribes to Foreign Officials under the Foreign Corrupt Practices Act of 1977*, by D. Newcomb, October 5, 2007, pp. 32–40, Shearman & Sterling LLP.		

APPENDIX D: INTERNATIONAL ANTI-CORRUPTION TREATIES

Appendix D contains a list of International Anti-Corruption Treaties, all of which can be found in Table 9 below and continued on the next page.

Table 9: International Anti-Corruption Treaties

Treaty Name	**Purpose and Overview**
Mutual Evaluation Mechanisms	The Committee of Experts of the Follow-Up Mechanism for the Inter-American Convention Against Corruption began the second round of reviews this year. The Committee met again in December 2006 (too late for inclusion in this update) to finalize the first six reports.
The Group of States Against Corruption (GRECO)	Peer review organization that monitors the States Parties' compliance with the Council of Europe's anticorruption instruments issued second round reports on Andorra, Georgia, Moldova, and the Ukraine.
The Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions	Working Group on Bribery Monitors implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. In 2006, the OECD Working Group issued phase two country reports for Australia, Austria, the Czech Republic, Denmark, Japan, the Netherlands, New Zealand, and Spain and progress reports for Bulgaria, Canada, Finland, France, Germany, Iceland, and Luxembourg.
The United Nations Convention Against Corruption	The United Nations Convention Against Corruption entered into force on December 14, 2005, and the first Conference of States Parties (COSP) was held in December 2006 in Amman, Jordan. The United States deposited its instrument of ratification on October 30, 2006.

United Nations Global Compact's 10th Principle Against Corruption	The U.N. Global Compact is an international multi-stakeholder initiative that brings companies together with U.N. agencies, labor, and civil society to promote responsible corporate citizenship through promotion of ten voluntary universal principles in the areas of human rights, labor, the environment, and anti-corruption. In 2006, the Global Compact Office published Business Against Corruption – Case Stories and Examples, a collection of case stories illustrating how its participants implemented the 10th Principle Against Corruption.
The World Bank	The World Bank's Department of Institutional Integrity (INT) investigates allegations of fraud, corruption, collusion, and coercion, as well as obstructive practices related to Bank operations. The Bank is currently enhancing its investigation and sanctioning capabilities with proactive tools that further combat corruption through prevention and deterrence. One of these new tools is the Voluntary Disclosure Program (VDP), which was publicly launched on August 1, 2006. Under the VDP, participants commit to: (1) not engage in misconduct in the future; (2) disclose to the Bank the results of an internal investigation into past bad acts in Bank-financed or supported projects or contracts; and (3) implement a robust internal compliance program monitored by a Bank approved compliance monitor. Participants pay the costs associated with almost every step of the VDP process. In exchange for full cooperation, VDP participants avoid debarment for disclosed past misconduct, their identities are kept confidential, and they may continue to compete for Bank-supported projects.
Note: All above information was taken from *Developments in U.S. and International Efforts to Prevent Corruption,* by M. Ayres, J. Davis, N. Healy & A. Wrage, Summer 2007, pp. 608–609, The International Lawyer.	

APPENDIX E: ANTI-CORRUPTION COMPLIANCE ORGANIZATIONS

Appendix E contains a list of Anti-Corruption Compliance Organizations, all of which can be found in Tables 10 and 11 below.

Table 10: Anti-Corruption Compliance Organizations

Organization Name	**Purpose and Overview**
Center for International Private Enterprise's (CIPE)	The Center for International Private Enterprise's (CIPE) anti-corruption work targets both supply- and demand-side corruption – those who demand bribes in exchange for services and those who supply bribes and demand preferential treatment. In 2006, CIPE partnered with TRACE to provide anti-bribery training in seven countries. CIPE worked with Transparency International to promote the implementation of the Business Principles for Countering Bribery and to develop a Small to Medium Enterprise (SME) anti-bribery toolkit. In Lebanon, CIPE and the Lebanese Transparency Association developed and introduced a corporate governance code for SMEs. In Mozambique, CIPE teamed with the Sofala Commercial and Industrial Association to survey the business community, gauge corruption perceptions, and develop policy recommendations to reduce corruption. In Russia, CIPE is working with the INDEM foundation to provide businesspeople with tools to resist extortion by government officials.
The Corner House	U.K.-based research and advocacy group that focuses on how the government can combat corruption, and monitors particular cases of corruption involving U.K. companies and

	individuals. In April 2006, the United Kingdom's Export Credits Guarantee Department (ECGD) accepted many of the Corner House's recommendations with regard to tightening its anti-corruption procedures. This followed an extensive consultation that resulted from Corner House's judicial review of the ECGD's earlier weakening of these procedures after industry lobbying. The Corner House also gave evidence to an influential Parliamentary Committee enquiry, the All Party Group, on Africa. The U.K. government's response to the Committee's final report in June 2006 included taking up one of the Corner House's key recommendations to the government of setting up a special police unit specifically to investigate overseas corruption offenses.
The International Anti-Corruption Conference	On November 15-18, 2006, Guatemala hosted the 12th International Anti-Corruption Convention. The more than 1000 representatives of 115 nations met in plenary and in workshops to discuss a range of issues in anti-corruption efforts, focusing on practical measures to reduce its deleterious effects. The resolution issued at the end of the conference focused on effective implementation of the UNCAC. The plenary also issued an "Action Agenda" to guide future efforts
Note: All above information was taken from *Developments in U.S. and International Efforts to Prevent Corruption,* by M. Ayres, J. Davis, N. Healy & A. Wrage, Summer 2007, pp. 610–611, The International Lawyer.	

APPENDIX E: ANTI-CORRUPTION COMPLIANCE ORGANIZATIONS (CONCLUDED)–TABLE 11

Table 11: Anti-Corruption Compliance Organizations (concluded)

Organization Name	**Purpose and Overview**
TRACE	A nonprofit business association working with companies to improve their anti-bribery programs while lowering the cost associated with compliance. TRACE undertakes benchmarking research and disseminates the results to companies to help them ensure that their policies are squarely within "best practices." In cooperation with partner law firms in seventy countries, TRACE also maintains an online Resource Center with summaries of foreign local law. At the end of 2006, TRACE announced the launch of BRIBEline, a multilingual anonymous hotline that will enable those from whom bribes are demanded to report the demand by country and government ministry. The information will be collated and reported in the aggregate as a new empirical measure of corruption. TRACE also held anti-bribery workshops in twelve cities worldwide. The workshops are open to the public and cover the U.S. Foreign Corrupt Practices Act, international conventions, and local law.
Transparency International.	Transparency International (TI) and its chapters in ninety-five countries work with governments, civil society, and the private sector to address domestic and international corruption. TI has developed a set of corruption assessment tools, including National Integrity Surveys, the Global Corruption Barometer, the Bribe Payers Index, and the Corruption Perceptions Index. The 2006 TI Global Corruption Report provided an

	overview of the state of corruption around the world with a focus on the health sector. TI also advocates for effective development assistance by promoting anti-corruption and transparency requirements within major donor institutions such as the World Bank, actively promoting the development, implementation, and monitoring of international anti-corruption conventions, promoting transparency requirements in trade agreements, developing tools to enhance anti-bribery standards in the private sector, and publishing an annual Progress Report on Enforcement of the OECD Convention to keep pressure on governments to increase enforcement. TI has also worked to secure U.S. ratification of the UNCAC and has developed recommendations for an effective UNCAC monitoring process.

Note: All above information was taken from *Developments in U.S. and International Efforts to Prevent Corruption,* by M. Ayres, J. Davis, N. Healy & A. Wrage, Summer 2007, pp. 610–611, The International Lawyer.