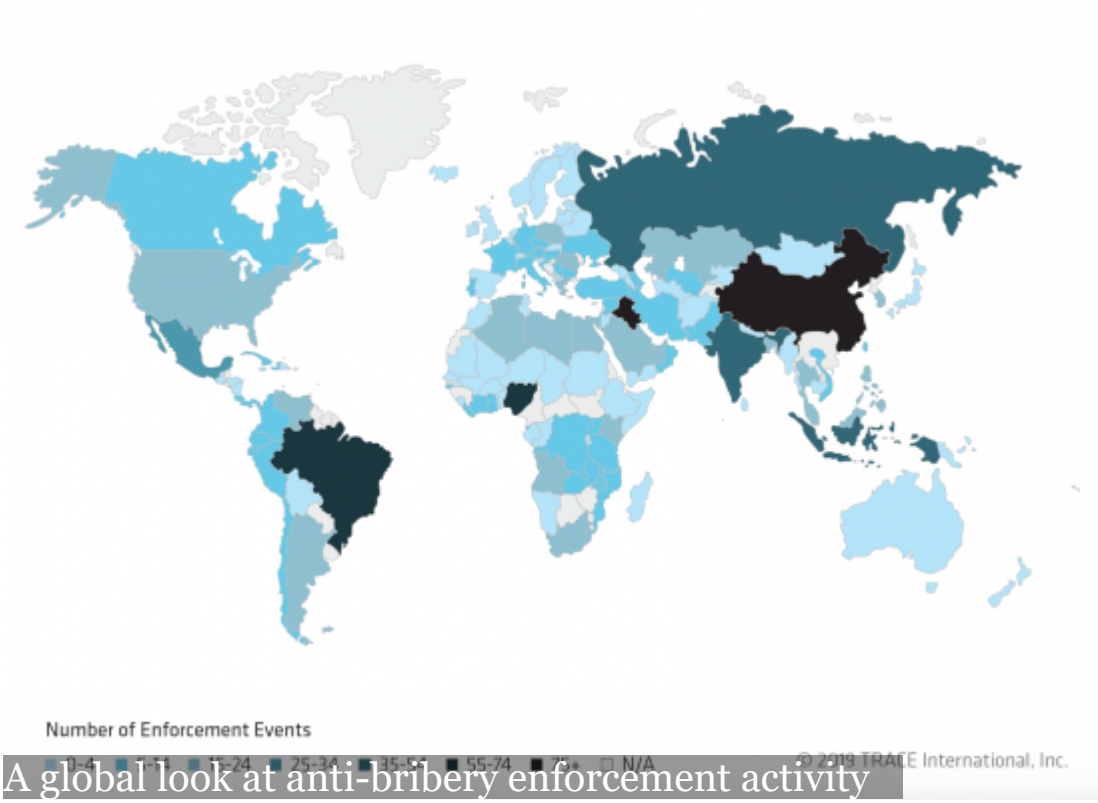
News



A global look at anti-bribery enforcement activity

Jaclyn Jaeger | March 20, 2019

Europe's anti-corruption efforts are escalating and now account for more than half of all foreign bribery investigations globally, surpassing the United States, which maintains the strongest overall enforcement record for bribery and corruption. Elsewhere around the world, domestic foreign bribery enforcement is on the rise, effectively resulting in many corporate enforcement actions.

Those are just a few key findings to come from the 2018 Global Enforcement Report conducted by anti-bribery group TRACE International. It serves as a helpful resource for compliance, risk, and legal teams that want to better understand which countries are enforcing anti-bribery laws or where bribery and corruption is prevalent to guide their risk management efforts.

The report provides a global glimpse into all known enforcement activity—investigations, enforcement actions, and declinations—starting with the first U.S. prosecutions of bribery cases in 1977, following enactment of the U.S. Foreign Corrupt Practices Act. The latest data covers enforcement activity through Dec. 31, 2018, and is based primarily on cases and investigations tracked in the TRACE Compendium, an online database of cross-border corruption cases.

The report assesses two types of bribery: the bribery of foreign officials (improper payments made by a foreign company to a government official who is not a citizen of the government initiating the enforcement event) and the bribery of domestic officials (improper payments made by a foreign company to a government official who is a citizen of the government initiating the enforcement event).

The findings, broken down by country and industry, are analyzed in more detail below.

Investigations. According to TRACE, Europe had 157 open investigations into alleged bribery of foreign officials, a 37 percent jump from the previous year's report. The United Kingdom, although trailing significantly behind the United States, had the second highest number of investigations at 47. In comparison, the United States had 107 open investigations across 19 countries, representing 35 percent of the 303 open foreign bribery investigations globally.

Among U.S. investigations, 37 concern foreign bribery allegations involving companies headquartered outside of the United States or individuals with non-U.S. citizenship. The highest number involved companies or individuals in the United Kingdom and Switzerland, with seven investigations, followed by Germany, with five, according to TRACE.

Companies or individuals from the Americas and Asia Pacific made up just 11 percent and 5 percent, respectively, of U.S. investigations concerning alleged bribery of foreign officials being conducted against non-U.S. companies and individuals. One development that may increase investigative activity in the Asia Pacific is the Department of Justice's newly announced China Initiative, aimed at countering Chinese economic espionage. Among the Justice Department's stated priorities as part of this initiative include identifying FCPA cases involving Chinese companies that compete with U.S. companies.

Enforcement actions. From 1977 through 2018, 23 countries concluded 392 enforcement actions for the alleged bribery of foreign officials. The United States maintained the strongest enforcement record during this period, bringing 263 enforcement actions (67 percent of all foreign bribery cases).

Eighty-nine of these enforcement actions involved companies headquartered outside the United States or individuals with non-U.S. citizenship. European companies and individuals made up the majority (60 percent) of U.S. enforcement actions against non-U.S. companies and individuals concerning alleged bribery of foreign officials—mainly in the United Kingdom, followed by the Netherlands, Switzerland, and France.

Other regions of the world where U.S. enforcement authorities brought enforcement actions include Asia Pacific (19 percent); the Americas (15 percent); the Middle East (2 percent); and Africa (1 percent). According to TRACE, the United States brought 25 enforcement actions in 2018 alone, including two matters resolved through declination with disgorgement—the Insurance Corporation of Barbados and Polycom.

In comparison to the United States, European countries initiated 104 enforcement actions for foreign bribery since 1977, including in the Asia Pacific, the Americas (excluding the United States), and the Middle East. Cross-border coordination among European enforcement authorities could bump up these numbers in the future. One recent example is the 220 million Danish Krone fine (U.S. $33.3 million) that global coatings manufacturer Hempel reached with Danish and German authorities in March for bribery payments made to ship managers in Germany.

Domestic bribery. While the United States and Europe focus heavily on the bribery of foreign officials, elsewhere around the world many countries are focusing on the bribery of domestic officials. Overall, the total cumulative number of domestic enforcement actions grew 22 percent globally.

Among 86 countries conducting domestic bribery investigations, Brazil leads the way with 25. This is in no small part due to the fallout from the massive corruption investigation into Brazilian state-owned energy company Petrobras, which implicated the highest levels of the Brazilian government and dozens of companies after it was discovered that some of Brazil's largest construction and engineering companies received inflated contracts from Petrobras—excess markups that were then used to funnel kickbacks to Petrobras executives and high-ranking politicians.

Investigations into a second massive investigation, "Operation Weak Flesh," also continue following allegations made in 2017 that agribusiness executives at JBS and BRF bribed food inspectors and politicians to overlook unsanitary practices in exchange for approving sales to domestic and foreign meat and poultry buyers. It's been reported that nearly 2,000 politicians were involved.

Other countries that are actively investigating domestic bribery include India (16) and China (13). Recent anti-corruption developments, however, may increase enforcement activity moving forward. For example, India's Prevention of Corruption Act, which expressly prohibits bribery by commercial organizations and establishes an adequate compliance defense, came into force in July 2018. And in China, the establishment of a powerful new anti-corruption enforcement body—the National Supervisory Commission—now makes it even more imperative that foreign multinational companies carefully review existing interactions with public officials in the country and enhance their due diligence and third-party risk management efforts.

China and Algeria have brought the most enforcement actions concerning the bribery of domestic officials, each with 10 actions. They are followed by Nigeria and South Korea, each with seven actions; Brazil with six; and Cuba, Germany, and Indonesia, with five.

Bribery of government officials. Officials in Asia Pacific were the alleged recipients of bribes in approximately 38 percent of enforcement actions, followed by the Americas (excluding the United States) and Africa with 17 percent each, Europe (14 percent), and the Middle East (11 percent).

Chinese officials were the alleged recipients of bribes in more than 100 different enforcement events, more than any other country in the TRACE report. Iraq had the next highest number of enforcement events, followed by Brazil, Nigeria, and India.

In the United States, among the 43 countries where U.S. companies and individuals faced a bribery investigation, Chinese officials were the alleged recipients of bribes in 30 investigations, followed by Brazil (14), India (12), and Russia (11).

Among the 98 total countries where U.S. companies and individuals were subject to an enforcement action between 1977 and 2018, Chinese officials were the alleged recipients of bribes in 51 enforcement actions. This is significantly more than the 18 enforcement actions in Nigeria, where U.S. companies and individuals were subject to the second highest number of enforcement actions, followed by Iraq and Indonesia, each with 17 enforcement actions.

Enforcement by industry. Consistent with previous years, the extractive industry experienced the highest number of enforcement actions for alleged bribery of domestic or foreign officials since 1977. In total, 17 enforcement actions resulted from domestic bribery and 40 resulted from foreign bribery.

This finding is not altogether surprising, given that countries that are rich in natural resources also tend to be hotbed areas for bribery and corruption. Heightening this risk is that many countries rich in natural resources also are dominated by state-owned entities, where interactions with foreign government officials are commonplace.

In the United States alone, the extractive industries faced 50 enforcement actions for the bribery of domestic and foreign officials—the highest among all industries. Some of the largest bribery cases in this sector brought by U.S. enforcement authorities have involved Petrobras, as well as Venezuela's state-owned and state-controlled energy company, PDVSA, and Ecuador's state-owned and state-controlled energy company, PetroEcuador.

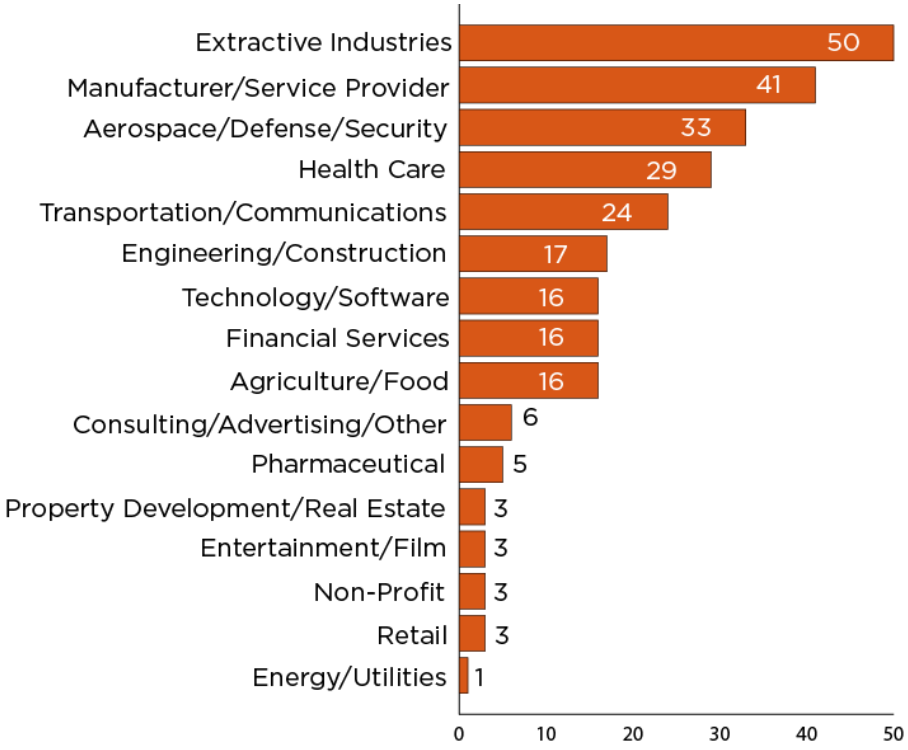
Trailing not far behind the extractive industry, engineering and construction companies represented the second highest number of all non-U.S. enforcement actions globally, with 21 resulting from domestic bribery and 15 resulting from foreign bribery, according to TRACE. Additionally, manufacturers and services providers saw 16 enforcement actions resulting from domestic bribery and 18 from foreign bribery.

Other industries in the TRACE report that have faced bribery investigations and enforcement actions include aerospace/defense, financial services, transportation, pharmaceutical, agriculture, and many more. As global corruption cases like Petrobras demonstrate, if one company is at the center of a massive corruption scheme, enforcement authorities around the world will be quick to investigate what other industries and individuals are connected to the wrongdoing. Having boots on the ground or counsel with knowledge of the region where the company operates will help compliance stay on top of the latest developments.

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Enforcement actions by industry

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Source: TRACE International

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