



Anti-Bribery Compliance Solutions

GLOBAL ENFORCEMENT REPORT 2011

The TRACE *Global Enforcement Report 2011* provides an updated summary of international anti-bribery enforcement trends based on the cases and investigations tracked in the online TRACE Compendium.

Most countries have criminalized the payment of bribes to their government officials and signed international conventions requiring the criminalization of bribery of various types. The goal of such laws and conventions is to create a fair and transparent international business market rather than one skewed by under-the-table deals that enrich government officials at the expense of their fellow citizens.

Among the first international anti-bribery laws was the United States *Foreign Corrupt Practices Act of 1977* (FCPA). Most countries have enacted their laws prohibiting foreign bribery since 2000. Passing such laws is an important first step toward promoting international business transparency, but enforcement is a necessary second step in the effort to reduce corruption.

Unfortunately, little data is consistently available on the pace of, and trends in, international anti-bribery enforcement, although such information is essential to understanding to what extent countries are putting muscle behind their anti-bribery statutes and encouraging greater transparency in global business. In 2010, TRACE launched the *Global Enforcement Report—GER*—to meet this need.

The TRACE *GER 2011* principally provides a summary of all known international anti-bribery enforcement actions since the FCPA's passage some 34 years ago. TRACE has collected information about all publicly known enforcement actions—including investigations, prosecutions, settlements and cases settled with no finding of bribery—in the online TRACE Compendium. *GER 2011* analyzes the actions currently included in the TRACE Compendium.

Some caution is required to put this data in context. Research on global anti-bribery enforcement is complicated by the secrecy surrounding international law enforcement, as well as by the desire of international companies to obscure public knowledge about their bribery allegations, investigations, convictions or penalties. This means TRACE cannot know or accurately estimate how many enforcement actions are unknown and thus not yet in the Compendium or the *GER 2011*. Moreover, TRACE recognizes that classifying bribery investigations as enforcement actions can be problematic, since investigations can be dropped due to insufficient evidence or closed without any resolution or can continue indefinitely with no formal action ever taken.

For this summary, TRACE nonetheless defines investigations as enforcement actions, because they serve as one indicator of a country's commitment to anti-bribery enforcement, whatever their outcomes. No imputation of guilt has been made by this inclusion. In fact, a majority of countries has failed to pursue even one international bribery investigation in the period. Whenever TRACE obtains new or improved information regarding enforcement actions, the Compendium is updated accordingly. The *GER 2011* thus reflects several corrections to the data reported in the 2010 edition.

TRACE also includes investigations and cases brought against individual employees or representatives of companies (including employees of local subsidiaries of international companies). Many countries do not have legal mechanisms in place to pursue corporate entities for violations of anti-bribery laws; prosecutors therefore focus on the individuals through whom companies operate.

Neither the Compendium nor *GER 2011* includes purely internal matters involving local companies bribing local government officials. Enforcement actions are included if the alleged bribe had an international component and involved an allegation of a payment to a government official or to an employee of a state-owned entity.

International anti-bribery enforcement continues to increase worldwide, as more countries move slowly from enacting anti-bribery laws to initiating actions to identify and prosecute the individuals and companies who break them.

The TRACE *GER 2011* summarizes known international enforcement actions by countries to date. New developments and ongoing trends are highlighted below.

New Developments:

- ❖ Foreign bribery enforcement by countries other than the United States actually *fell* in 2010, while the United States surged ahead with a more than a doubling of its formal enforcement figures between 2009 and 2010. (*See Figure II.*)
- ❖ Nigeria, Italy and South Korea lead enforcement activity worldwide for domestic or “inbound bribery,” defined as the bribery of their own government officials by foreign companies. Nigeria’s rate of domestic enforcement rose from one to twelve in the past year, largely due to the Nigerian Government’s aggressive pursuit of multinational companies that had recently settled *Foreign Corrupt Practices Act* investigations in the United States. First-time domestic bribery investigations were initiated in several countries, including Croatia, Cuba, Georgia, Israel, Latvia and Poland. (*See Figure V.*)
- ❖ The financial services sector has been subject to a rapid increase in enforcement, with the number of actions involving the industry more than doubling over the past year from 11 to 26 cases/investigations. This is largely due to the U.S. Securities and Exchange Commission’s new probes into financial firms over possible bribery in connection with sovereign wealth fund investments. (*See Figure VII.*)

Ongoing Trends:

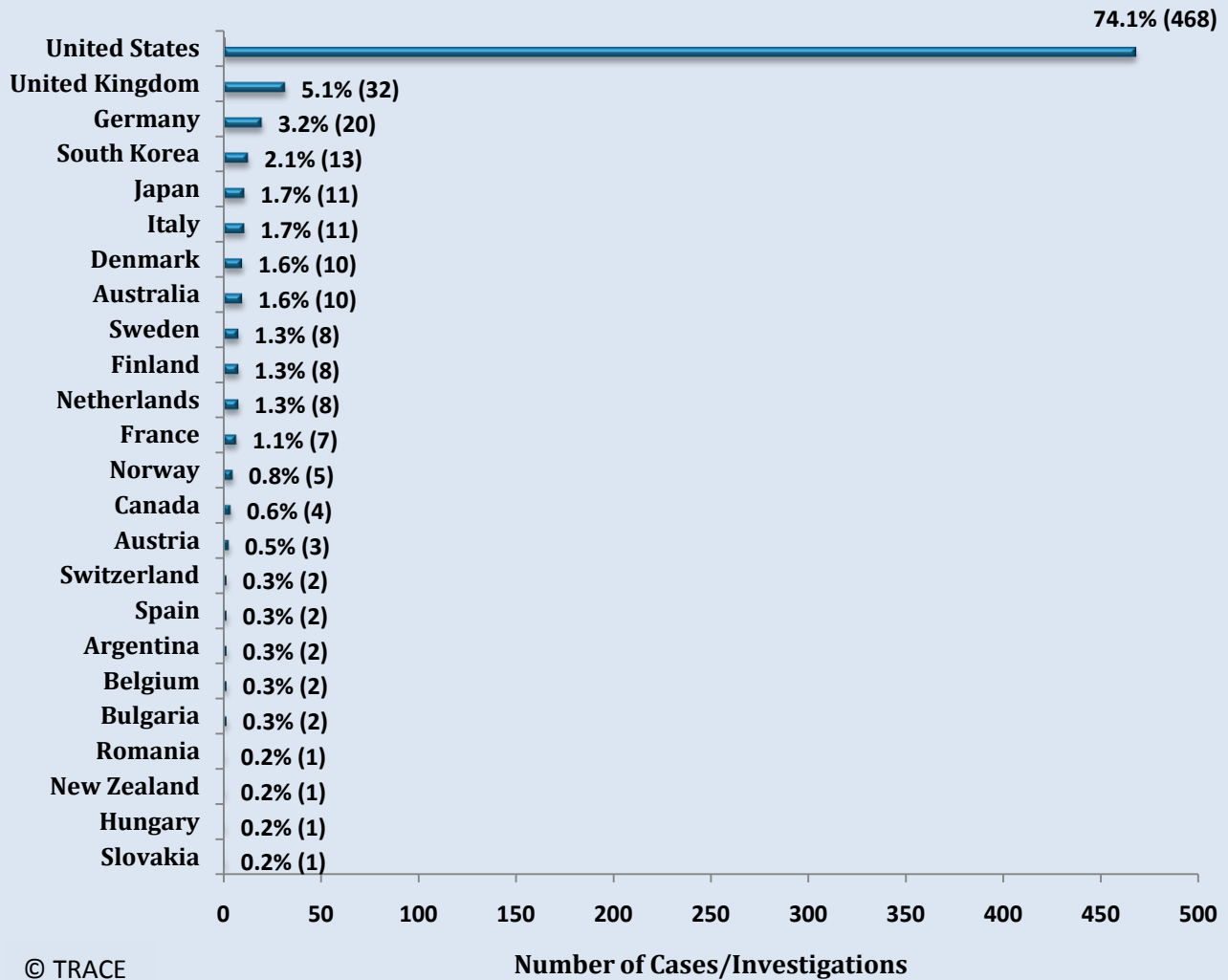
- ❖ Just 24 countries have pursued enforcement of their foreign bribery laws and just 40 have pursued enforcement of their domestic bribery laws against foreign citizens or companies in the last 34 years. There is considerable overlap in the countries that have pursued both. (*See Figures IV and V.*)
- ❖ The United States has pursued 3.5 formal foreign bribery enforcement actions for every one enforcement action pursued by all other countries since the year 2000. (*See Figure II.*)
- ❖ The United States aggressively pursues foreign companies and individuals for foreign bribery violations. One out of every five *Foreign Corrupt Practices Act* matter involves a company headquartered outside of the United States or an individual employed or retained by such a company. (*See Figure III.*)
- ❖ The United Kingdom continues in a strong second place for the enforcement of foreign or “outbound” bribery. (*See Figures I and IV.*)
- ❖ The largest number of enforcement actions involves alleged bribe payments to officials in China, Iraq and Nigeria. (*See Figure VI.*)
- ❖ The extractive industries sector has been the subject of international anti-bribery enforcement actions more than any other sector. (*See Figure VII.*)
- ❖ Government officials of OECD countries received alleged bribes at a rate significant in comparison to the rate in non-OECD countries. (*See Figure VI.*)

WHICH COUNTRIES ARE ENFORCING?

Foreign / Outbound Bribery Enforcement Activity



Figure I: Foreign / Outbound Bribery Enforcement By Country,
1977 - July 2011
(N = 632)



Twenty-four countries pursued 632 foreign bribery enforcement actions between 1977 and July 2011, including known matters still in the investigative stage. The United States established the strongest record in the period, undertaking nearly 75 percent of all actions. This record is noteworthy, even given that the United States passage of the world's first foreign bribery law—the *Foreign Corrupt Practices Act of 1977*—gave the country a considerable head start on enforcement. The United States has accumulated over 14 times as many anti-bribery enforcement actions as the country with the next highest total, the United Kingdom. Many countries worldwide have not pursued a single enforcement action in the 34-year period.

WHICH COUNTRIES ARE ENFORCING?

Foreign / Outbound Bribery Enforcement Activity



**Figure II: Foreign / Outbound Bribery Enforcement, 2000-2010
(N=321)**

	US (SEC & DOJ)	ALL OTHERS
2000	2	0
2001	8	0
2002	6	2
2003	7	0
2004	11	11
2005	11	4
2006	19	6
2007	41	5
2008	31	14
2009	31	23
2010	83	6
TOTAL	250	71

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**Number of Formal Cases
(ongoing investigations *not* included)**

Figure II modifies the analysis to examine formal foreign bribery enforcement actions, but not investigations, pursued over the last eleven years. During this time, most countries were required to criminalize foreign bribery following the entry into force of several international anti-bribery conventions.

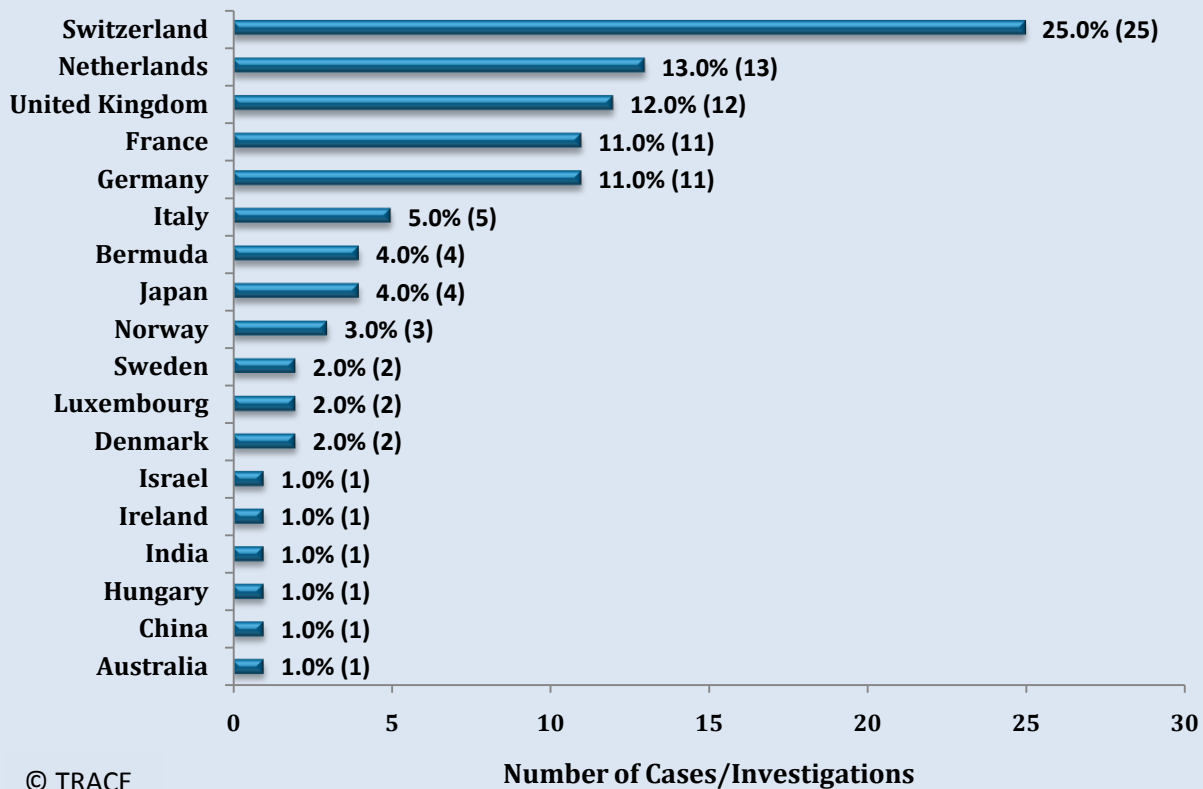
As shown, the United States continued to dominate enforcement, undertaking over 3.5 times more foreign bribery enforcement actions than all other countries combined. The figure also illustrates the clear linear trend toward more enforcement actions each successive year of past decade by the United States and all other countries. While foreign bribery enforcement outside of the United States declined in 2010 relative to 2009, increasingly high levels of enforcement are expected to continue in the current decade.

WHICH COUNTRIES ARE ENFORCING?

Foreign / Outbound Bribery Enforcement Activity



**Figure III: United States FCPA Enforcement of Foreign Entities,
1977 - July 2011
(N=100)**



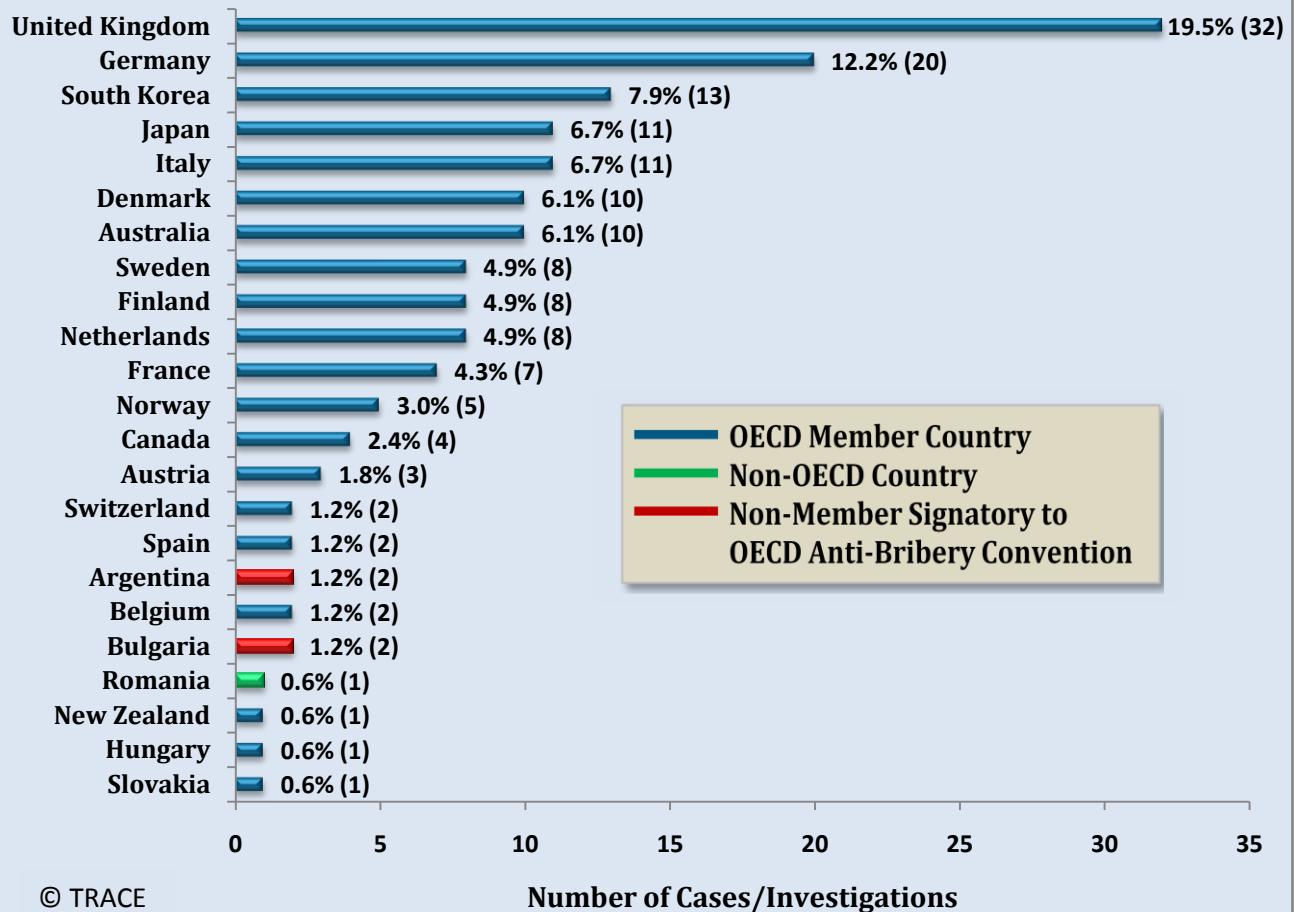
The United States has pursued *Foreign Corrupt Practices Act* actions against a significant number of foreign companies and individuals employed or retained by such companies. Over 20% of FCPA actions (including formal charges and settlements along with known ongoing investigations) involve companies headquartered outside of the United States. Swiss entities represent the largest contingent, followed by a sizeable number of actions involving Dutch, UK, French and German companies.

WHICH COUNTRIES ARE ENFORCING?

Foreign / Outbound Bribery Enforcement Activity



**Figure IV: Foreign / Outbound Bribery Enforcement by Countries other than the United States, 1977 - July 2011*
(N=164)**



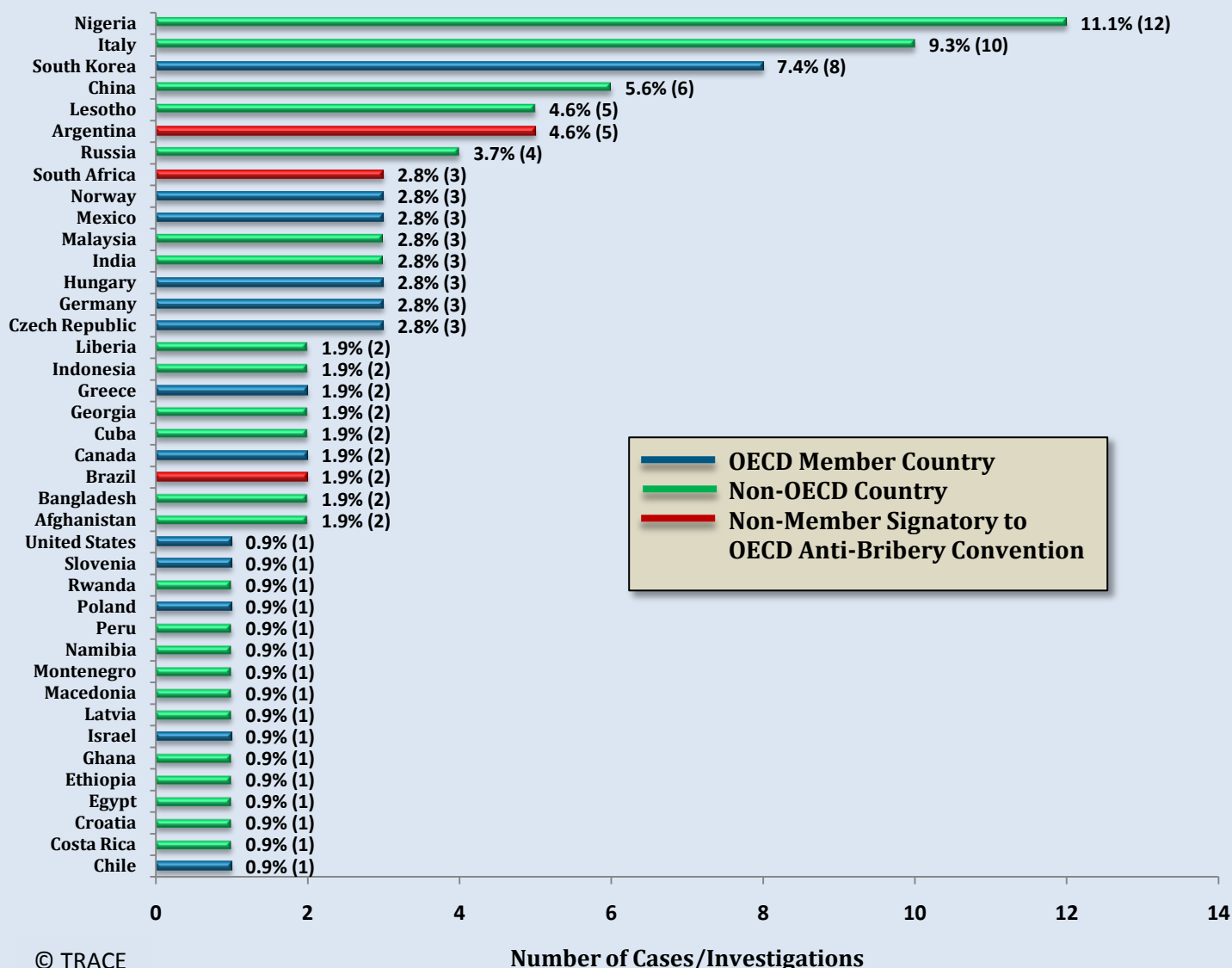
Some 164 foreign bribery enforcement actions (including investigations) were pursued by countries other than the United States from 1977 to July 2011. As shown, the United Kingdom undertook 19.5 percent of all such actions, putting it in a strong second place overall for enforcement countries. Note that Romania is the only non-signatory to the OECD Anti-Bribery Convention among 23 enforcing countries (not including the United States).

* Figure IV does not include United States FCPA enforcement actions, to enable more detailed comparison of enforcement activity.

WHICH COUNTRIES ARE ENFORCING?

Domestic / Inbound Bribery Enforcement Activity

Figure V: Domestic / Inbound Bribery Enforcement By Country, 1977 - July 2011
(N = 108)

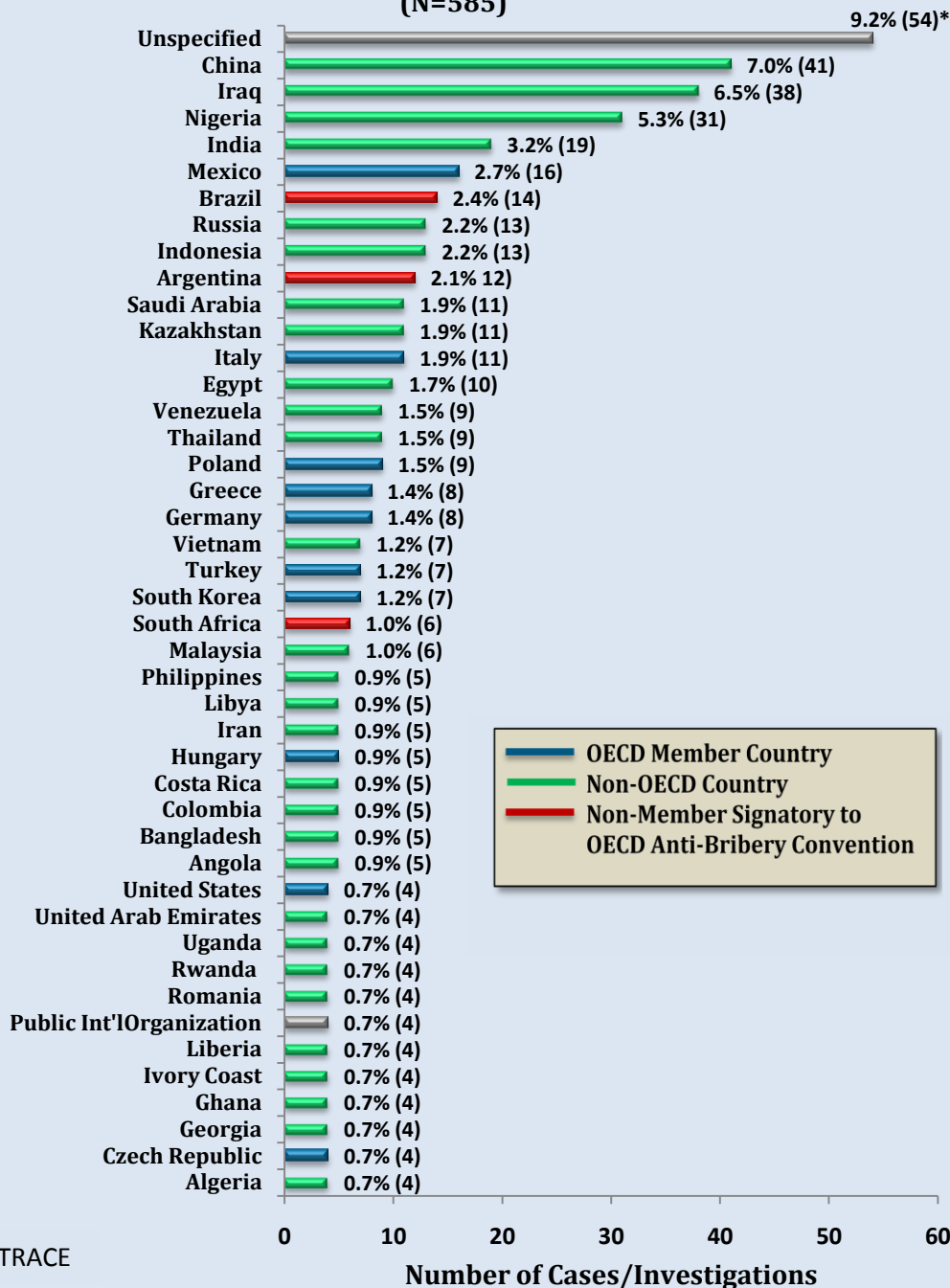


Nigeria, Italy and South Korea have the lead when it comes to enforcement against bribery of their own government officials by foreign companies – i.e., domestic or “inbound” bribery. The past year saw a dramatic rise in Nigerian domestic bribery enforcement largely as a result of that government’s pursuit of 11 multinational companies that recently settled with the United States Government for violations the *Foreign Corrupt Practices Act* in connection with their business activities in Nigeria. First-time domestic bribery investigations were initiated in several countries, including Croatia, Cuba, Georgia, Israel, Latvia and Poland.

As shown in Figures I and IV, South Korea and Italy they are also among the 24 countries enforcing foreign or “outbound” bribery. In terms of inbound bribery enforcement, the United States ranks 25th among the 40 enforcing countries, with just one known action in the period.

The count of inbound bribery enforcement actions does not include purely domestic cases in which citizens or companies bribe their own government officials (although it does include situations where local employees or subsidiaries of a foreign company engage in improper conduct). In many countries, domestic bribery laws have been in place longer than foreign bribery laws and the number of enforcement actions is higher than any category tracked by the Compendium and analyzed for *GER 2011*. The United States *Foreign Corrupt Practices Act* does not cover domestic bribery, although such bribery is addressed by other United States laws.

Figure VI: International Enforcement Activity By Country of Bribe Payment (four or more actions), 1977 - July 2011 (N=585)



There has been one enforcement action involving bribe payments in each of the following countries: Belarus, Belgium, Benin, Bolivia, Burma, Cook Islands, Cuba, Ethiopia, French Polynesia, Krygyzstan, Kuwait, Latvia, Lesotho, Luxembourg, Macedonia, Mongolia, Morocco, Mozambique, Namibia, Niger, Norway, Pakistan, Sao Tome and Principe, Singapore, Slovakia, Switzerland, Syria, The Gambia, Turks & Caicos, Ukraine

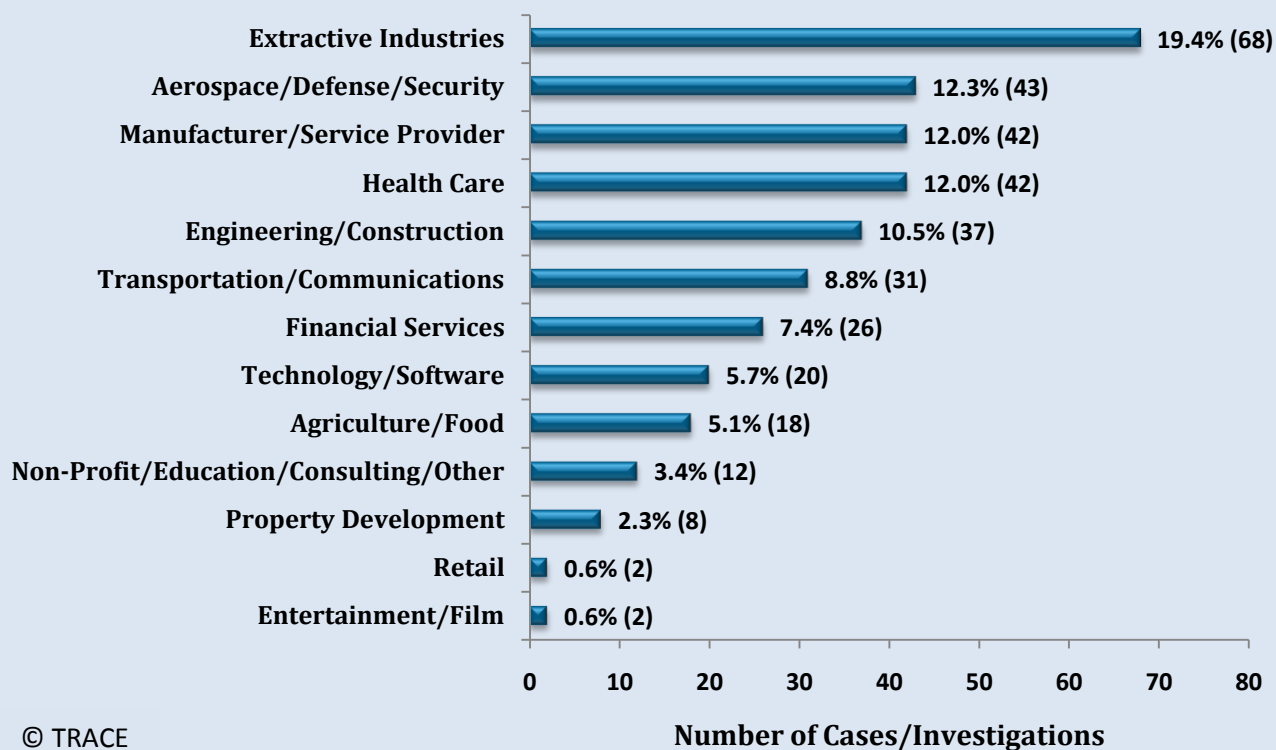
There have been two enforcement actions involving bribe payments in each of the following countries: Afghanistan, Angola, Austria, The Congo, Dominican Republic, Equatorial Guinea, France, Gabon, Haiti, Honduras, Jamaica, Mali, Montenegro, Netherlands, Nicaragua, Oman, Panama, Peru, Portugal, Senegal, Serbia, Spain, Sudan, Tanzania, Trinidad and Tobago, Turkmenistan, Uzbekistan, Yemen, Zambia

There have been three enforcement actions involving bribe payments in each of the following countries: Azerbaijan, Bahrain, Bulgaria, Canada, Chile, Croatia, Ecuador, Israel, Kenya, Qatar, Slovenia, Taiwan, United Kingdom

Figure VI tracks the rate at which international enforcement actions (of both foreign and domestic bribery) involve payments to government officials in certain countries. In approximately 9 percent of enforcement actions, the country of the bribe recipient is not specified. Iraq stands near the top of this ranking because of the investigations surrounding the United Nations Oil-for-Food Program, which account for the majority of the 38 known actions there. OECD countries account for ten of the 42 bribe-recipient countries listed in the chart. These numbers are based on TRACE Compendium summaries, which cover a common set of conduct and may include more than one discrete enforcement action.

* The "Unspecified" category indicates cases or investigations where the country of bribe payment has not been specified in legal documents, the media or other reports.

**Figure VII: International Enforcement Activity by Industry, 1977 - July 2011
(N=315)**



Over 19 percent of known international bribery enforcement activity (both foreign and domestic) involved extractive industries, followed by aerospace, defense and security industries. These numbers are based on TRACE Compendium summaries, which cover a common set of conduct and may include more than one discrete enforcement action.

Any enforcement activity in an industry raises awareness of risk within that industry and can lead to higher levels of self-disclosure. In addition, the 34-year time frame includes numerous early FCPA cases brought by the United States that may distort more recent industry-related enforcement trends.

The financial services sector has been subject to a rapid increase in enforcement, with the number of actions involving the industry more than doubling over the past year from 11 to 26 cases/investigations.

The information included in the *Global Enforcement Report 2011* was collected by TRACE from court documents; company public filings, including quarterly and annual reports; press releases news reports and other publicly-available information. TRACE provided many of the companies involved in known investigations an opportunity to comment on and confirm the accuracy of this information. The summaries in the online TRACE Compendium are continually revised to reflect new or improved sources of information.

Although TRACE has made every effort to base the findings in *GER 2011* on credible sources, the organization does not guarantee the accuracy of this information.

Any individual or company named herein in connection with an ongoing investigation should, of course, be assumed innocent unless and until there is a finding or admission to the contrary.

About TRACE

TRACE is a non-profit membership association that pools resources to provide practical and cost-effective anti-bribery compliance solutions for multinational companies and their commercial intermediaries (sales agents and representatives, consultants, distributors, suppliers, etc.). TRACE provides several core services and products, including: due diligence reports on commercial intermediaries; model compliance policies; an online Resource Center with foreign local law summaries, including guidelines on gifts and hospitality; in-person and online anti-bribery training; and research on corporate best practices.

For additional information, please contact TRACE at info@TRACEinternational.org or visit us at www.TRACEinternational.org.