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## Anti-Corruption

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# Anti-Corruption

MARGARET AYRES, JEFFREY CLARK, ALAN GOURLEY, AND ALEXANDRA WRAGE\*

## I. Introduction

Siemens' record setting \$1.6 billion combined settlement with U.S. and German enforcement authorities in December 2008 provided a spectacular cap to a year in which U.S. enforcement of the Foreign Corrupt Practices Act (FCPA) continued at a brisk pace in 2008, and European anti-corruption enforcement continued to intensify. U.S. authorities continued to make the FCPA a top enforcement priority, bringing significant criminal and civil enforcement cases against both companies and individuals. In an emerging trend, the U.S. Department of Justice (DOJ) and U.S. Securities and Exchange Commission (SEC) continued industry-wide investigations of medical device and oil services companies. In addition, several large, multi-jurisdictional investigations being conducted simultaneously by European and U.S. authorities appeared to be nearing completion, with ABB establishing an \$850 million reserve related to E.U. and U.S. investigations of corruption and anti-corruption behavior.<sup>1</sup>

## II. U.S. Developments

### A. COMPANY PROSECUTIONS AND SETTLEMENTS

#### 1. *Lucent Technologies*

On December 21, 2007, Lucent Technologies, Inc. settled FCPA books and records and internal controls charges with the DOJ and SEC. Lucent allegedly paid over \$10 million for more than 300 trips for Chinese government officials to visit the United States. Although the trips were purportedly for factory inspections or training, many of them in-

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1. *ABB to Take a \$850 Million Charge*, WALL ST. J., Dec. 20, 2008, at B5.

volved primarily sightseeing, entertainment and leisure.<sup>2</sup> Lucent agreed to pay a criminal fine of \$1 million and a civil penalty of \$1.5 million.<sup>3</sup>

### 2. *Westinghouse Air Brake Technologies Corporation*

On February 14, 2008, Westinghouse Air Brake Technologies Corporation (Wabtec) settled FCPA charges related to \$137,000 of corrupt payments in India by employees of Wabtec's Indian subsidiary to obtain business with the Indian Railway Board.<sup>4</sup> Wabtec paid a \$300,000 criminal fine and \$375,000 in civil penalties, disgorgement, and interest.<sup>5</sup> The SEC also required Wabtec to hire an independent compliance consultant.<sup>6</sup>

### 3. *Willbros Group Inc.*

On May 14, 2008, Willbros Group Inc. and its wholly-owned subsidiary, Willbros International, Inc., settled enforcement actions with the DOJ and SEC, agreeing to pay \$32.3 million in fines and penalties and to hire an independent compliance monitor.<sup>7</sup> Willbros paid more than \$6.3 million to Nigerian government officials in connection with obtaining a \$387 million contract for a Nigerian gas pipeline project, paid \$300,000 to Ecuadorian government officials to secure a \$3 million gas pipeline contract in that country, and engaged in a tax fraud scheme in Bolivia that resulted in material misstatements in its financial statements.<sup>8</sup> Willbros entered into a deferred prosecution agreement with the DOJ and agreed to a criminal fine of \$22 million.<sup>9</sup> The SEC settlement called for disgorgement of \$8.9 million plus prejudgment interest of \$1.4 million.<sup>10</sup> In a related matter, four former Willbros employees also settled FCPA charges with the SEC. Two

2. Press Release, United States Dep't of Justice, Lucent Technologies Inc. Agrees to Pay \$1 Million Fine to Resolve FCPA Allegations (Dec. 21, 2007), *available at* [http://www.usdoj.gov/opa/pr/2007/December/07\\_crm\\_1028.html](http://www.usdoj.gov/opa/pr/2007/December/07_crm_1028.html).

3. *Id.*; Press Release, SEC, Litigation Release 20414: SEC Files Settled Action Against Lucent Technologies, Inc. in Connection With Payments of Chinese Officials' Travel and Entertainment Expenses; Company Agrees to Pay \$1.5 Million Civil Penalty (Dec. 21, 2007), *available at* <http://www.sec.gov/litigation/litreleases/2007/lr20414.htm>.

4. Press Release, U.S. Securities & Exchange Comm'n, Litigation Release No. 20457: SEC Sanctions Westinghouse Air Brake Technologies Corporation for Improper Payments to Indian Government Employees (Feb. 14, 2008), *available at* <http://www.sec.gov/litigation/litreleases/2008/lr20457.htm> [hereinafter SEC Sanctions Westinghouse].

5. *Id.*; Press Release, U.S. Dep't of Justice, Westinghouse Air Brake Technologies Corporation Agrees to Pay \$300,000 Penalty to Resolve Foreign Bribery Violations in India (Feb. 14, 2008), *available at* [http://www.usdoj.gov/opa/pr/2008/February/08\\_crm\\_116.html](http://www.usdoj.gov/opa/pr/2008/February/08_crm_116.html).

6. SEC Sanctions Westinghouse, *supra* note 4.

7. Press Release, U.S. Securities & Exchange Comm'n, Litigation Release No. 20571: SEC File Settled FCPA Action Against Willbros Group, Inc. and Several Former Employees (May 1, 2008), *available at* <http://www.sec.gov/litigation/litreleases/2008/lr20571.htm> [hereinafter SEC—Willbros]; Press Release, U.S. Dep't of Justice, Willbros Group Inc. Enters Deferred Prosecution Agreement and Agrees to Pay \$22 Million Penalty for FCPA Violations (May 1, 2008), *available at* [http://www.usdoj.gov/opa/pr/2008/May/08\\_crm\\_417.html](http://www.usdoj.gov/opa/pr/2008/May/08_crm_417.html) [hereinafter DOJ—Willbros].

8. DOJ—Willbros, *supra* note 7.

9. *Id.*

10. SEC—Willbros, *supra* note 7.

former Willbros executives, Jim Bob Brown and Jason Edward Steph, had previously pled guilty to criminal FCPA charges and are awaiting sentencing.<sup>11</sup>

#### 4. *AGA Medical Corporation*

On June 3, 2008, AGA Medical Corporation entered into a deferred prosecution agreement with the DOJ under which AGA agreed to pay a \$2 million criminal penalty and hire an independent corporate monitor.<sup>12</sup> AGA made corrupt payments through its local Chinese distributor to induce doctors employed by government-owned hospitals in China to purchase AGA's products. In addition, AGA paid bribes to officials in China's State Intellectual Property office to approve several AGA patents.

#### 5. *Faro Technologies, Inc.*

On June 5, 2008, Faro Technologies, Inc. entered into a non-prosecution agreement with the DOJ and settled charges with the SEC that the company violated the anti-bribery, books and records, and internal controls provisions of the FCPA.<sup>13</sup> Employees of Faro's Chinese subsidiary made corrupt payments totaling over \$444,000 to Chinese officials to secure contracts valued at approximately \$4.9 million.<sup>14</sup> The company agreed to pay a \$1.1 million criminal penalty and disgorgement and prejudgment interest of approximately \$1.85 million.<sup>15</sup> It also agreed to hire an independent corporate monitor.

#### 6. *Con-Way Inc.*

On August 27, 2008, the SEC filed a settled enforcement action against international freight transportation company Con-Way, Inc., alleging violations of the books and records and internal controls provisions of the FCPA stemming from improper payments made by Emery Transnational, a Philippines-based company controlled by a U.S.-based subsidiary of Con-Way. The SEC alleged that Emery paid officials at the Philippines Bureau of Customs and the Philippine Economic Zone Area \$244,000 to induce them to violate customs regulations, settle customs disputes, and reduce or not enforce fines for administrative violations.<sup>16</sup> Emery also allegedly paid \$173,000 to foreign officials at four-

11. *Id.*

12. Press Release, U.S. Dep't of Justice, AGA Medical Corporation Agrees to Pay \$2 Million Penalty and Enter Deferred Prosecution Agreement for FCPA Violations (June 3, 2008), available at <http://www.usdoj.gov/opa/pr/2008/June/08-crm-491.html>.

13. Order Instituting Cease-And-Desist Proceedings, Making Findings, and Imposing a Cease-And-Desist Order Pursuant to Sec. 21C of the Securities Exchange Act of 1934, Exchange Act Release No. 57933, at Sec. IV (June 5, 2008) [hereinafter Cease and Desist Order]; Press Release, U.S. Dep't of Justice, Faro Technologies Inc. Agrees to Pay \$1.1 Million Penalty and Enter Non-Prosecution Agreement for FCPA Violations (June 5, 2008), available at <http://www.usdoj.gov/opa/pr/2008/June/08-crm-505.html> [hereinafter DOJ—Faro]; U.S. Securities & Exchange Comm'n., *Enforcement Proceedings: SEC Sanctions Faro Technologies, Inc. for Improper Payments to Chinese Government Employees*, SEC NEWS DIGEST, Issue 2009-110, June 6, 2008, available at <http://www.sec.gov/news/digest/2008/dig060608.htm> [hereinafter *SEC Sanctions Faro*].

14. DOJ—Faro, *supra* note 13; *SEC Sanctions Faro*, *supra* note 13.

15. *SEC Sanctions Faro*, *supra* note 13; Cease and Desist Order, *supra* note 13.

16. Press Release, U.S. Securities & Exchanges Comm'n, Litigation Release No. 20690: SEC Files Settled Enforcement Action Charging Con-way, Inc. with Violations of the Foreign Corrupt Practices Act, available at <http://www.sec.gov/litigation/litreleases/2008/lr20690.htm> (Aug. 27, 2008).

teen state-owned airlines that conducted business in the Philippines to induce them to improperly reserve space for Emery shipments on airplanes; under-weigh Emery shipments; and improperly consolidate shipments, resulting in lower charges for Emery.<sup>17</sup> Con-Way agreed to pay a \$300,000 civil penalty.<sup>18</sup>

#### 7. *Nexus Technologies, Inc. and Employees*

On September 4, 2008, Nexus Technologies, Inc. and four of its employees, Nam Quoc Nguyen, Joseph T. Lukas, Kim Nguyen, and An Nguyen, were charged with conspiracy to violate the FCPA and substantive FCPA violations. The defendants allegedly made over \$150,000 in corrupt payments to Vietnamese officials in exchange for confidential information and bid rigging to obtain contracts with various Vietnamese government agencies.<sup>19</sup> All four individuals charged are U.S. citizens and, therefore, are "domestic concerns" under the FCPA.

#### 8. *Aibel Group Limited*

On November 21, 2008, Aibel Group Ltd., a U.K. company, pleaded guilty to violating the foreign bribery provisions of the FCPA and conspiracy to violate the FCPA in connection with the payment of \$2.1 million in bribes to Nigerian customs officials.<sup>20</sup> These bribes were made through an agent in Nigeria in order to avoid or reduce customs duties and otherwise receive preferential treatment. This is the same conduct for which three affiliated companies, each subsidiaries of Vetco International Ltd., had pleaded guilty in February 2007. At that time, Aibel Group had entered into a deferred prosecution agreement with the DOJ.<sup>21</sup> The November 2008 guilty plea by Aibel Group resulted from an unspecified failure to meet its obligations under the deferred prosecution agreement despite what the DOJ acknowledged was Aibel's commitment of "substantial time, personnel, and resources" to do so.<sup>22</sup> Aibel agreed to pay a criminal fine of \$4.2 million and will be subject to two years of organizational probation, including a requirement to submit periodic reports regarding progress in implementing anti-bribery compliance measures.<sup>23</sup>

#### 9. *Siemens AG*

On December 15, 2008, Siemens AG and three subsidiaries pled guilty to FCPA violations related to what DOJ described as a systemic and widespread effort to make and hide hundreds of millions of dollars in bribes worldwide involving virtually all of its business,

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17. *Id.*

18. *Id.*

19. Press Release, U.S. Dep't of Justice, Philadelphia Export Company and Employees Indicted for Paying Bribes to Foreign Officials (Sept. 5 2008), available at <http://www.usdoj.gov/opa/pr/2008/September/08-crm-782.html>.

20. Press Release, U.S. Dep't of Justice, Aibel Group Ltd. Pleads Guilty to Foreign Bribery and Agrees to Pay \$4.2 million in Criminal Fines (Nov. 21, 2008), available at <http://www.usdoj.gov/opa/pr/2008/November/08-crm-1041.html> [hereinafter DOJ—Aibel]; United States v. Aibel Group Ltd., Criminal No. H-07-05-S (S.D. Tex. filed Nov. 12, 2008).

21. DOJ-Aibel, *supra* note 20.

22. Plea Agreement at 10, United States v. Aibel Group Ltd., No. 4:07-cr-0005 (S.D. Tex. Nov. 21, 2008).

23. *Id.*

including power generation, transportation, telecommunications, and medical devices. Siemens AG pled guilty to both FCPA false books and records charges and, for the first time in the history of the enforcement of the FCPA, criminal internal controls charges based on its willful failure to maintain a system of internal controls. Three subsidiaries, Siemens S.A. (Argentina), Siemens Bangladesh Ltd., and Siemens S.A. (Venezuela), each pleaded guilty to conduct related to specific bribes that had some nexus to the United States. Siemens agreed to pay \$800 million to U.S. enforcement authorities: a \$450 million criminal fine<sup>24</sup> and an additional \$350 million to the SEC<sup>25</sup> in civil fines, disgorgement, and interest. Although, according to a sentencing memorandum filed by the DOJ, under the U.S. Sentencing Guidelines Siemens could have faced a criminal fine of \$1.35 billion to \$2.7 billion, the DOJ agreed to recommend to the court a reduced criminal fine based on Siemens' "exceptional" cooperation, including the sharing of two internal investigations (one focusing exclusively on allegations related to the Oil-for-Food program and one focused on bribery more generally), and remedial measures the company had taken. On the same day, the Munich Prosecutors Office announced a €395 million settlement of bribery charges.<sup>26</sup> Combined with the U.S. settlements and an earlier October 2007 settlement with the German enforcement authorities, the German fine brought Siemens' total fines and penalties to \$1.6 billion, dwarfing the previous record penalty in an FCPA case, Baker Hughes' \$44.1 million settlement in 2007.<sup>27</sup>

In addition, the Siemens settlement has spawned at least two ancillary actions. First, Argentina is reportedly using the Siemens Argentina settlement and admissions contained in it to have a 2007 international arbitration award revised on grounds that Siemens has admitted bribery in obtaining the national identity card project that was the subject of that arbitration.<sup>28</sup> Second, the United States has brought an action seeking the forfeiture of approximately \$3 million held in a Singapore bank account, which amount allegedly represents a portion of the bribe to be paid by Siemens Bangladesh.<sup>29</sup>

Notwithstanding its settlement with U.S. and German authorities, Siemens remains the subject of corruption-related investigations in other countries.<sup>30</sup>

24. Press Release, U.S. Dep't of Justice, Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations and Agree to Pay \$450 Million in Combined Criminal Fines (Dec. 15, 2008), *available at* <http://www.usdoj.gov/opa/pr/2008/December/08-crm-1105.html> [hereinafter DOJ—Siemens AG].

25. Press Release, U.S. Securities & Exchanges Comm'n, Litigation Release No. 20829: SEC Files Settled Foreign Corrupt Practices Act Charges Against Siemens AG for Engaging in Worldwide Bribery With Total Disgorgement and Criminal Fines of Over \$1.6 Billion (Dec. 15, 2008), *available at* <http://www.sec.gov/litigation/litreleases/2008/lr20829.htm>.

26. DOJ—Siemens AG, *supra* note 24.

27. Transcript of Press Conference Announcing Siemens AG and Three Subsidiaries Plead Guilty to FCPA Violations, <http://www.usdoj.gov/opa/pr/2008/December/08-opa-1112.html> (last visited Apr. 24, 2009).

28. *Argentina Takes the Offensive as Siemens Pleads Guilty to Corruption Charges*, INVESTMENT TREATY NEWS, Dec. 23, 2008, <http://www.investmenttreatynews.org/cms/news/archive/2008/12/23/argentina-takes-the-offensive-as-siemens-pleads-guilty-to-corruption-charges.aspx>.

29. Complaint for Forfeiture in rem, In re Assets Held in Name of Zasz Trading & Consulting Pte Ltd., No. 1:09-cv-00021 (D.D.C. Jan. 8, 2009).

30. SIEMENS, LEGAL PROCEEDINGS – FIRST QUARTER FISCAL 2009 (Jan. 27, 2009), *available at* <http://w1.siemens.com/press/pool/de/events/2009-q1/2009-q1-legal-proceedings-e.pdf>.

1. *Oil-for-Food*

Over the past year, the DOJ and SEC resolved four more cases related to the United Nations Oil-for-Food program by bringing FCPA books and records and wire fraud charges related to kickbacks paid to the Iraqi government.

In December 2007, Dutch pharmaceutical company Akzo Nobel N.V. entered into a non-prosecution agreement with the DOJ and consented to an injunction with the SEC related to allegations that subsidiaries made kickbacks totaling \$280,000 to the Iraqi government under the Oil-for-Food program.<sup>31</sup> Akzo Nobel agreed to pay \$3 million in disgorgement, pre-judgment interest, and civil penalties in connection with its settlement with the SEC.<sup>32</sup> Under its agreement with the DOJ, if Akzo Nobel did not resolve a parallel investigation by Dutch authorities within 180 days and pay fines of at least €381,000, it would have to pay a criminal fine in the United States equal to \$800,000, or the difference between \$800,000 and any amounts paid to Dutch authorities.<sup>33</sup>

In February 2008, Flowserve Corporation entered into a deferred prosecution agreement with the DOJ and settled books and records and internal controls charges with the SEC in connection with \$600,000 in kickbacks made, and an additional \$173,000 of kickbacks offered, to the Iraqi government by two Flowserve subsidiaries.<sup>34</sup> The company paid a \$4 million criminal penalty and \$6.55 million in civil penalties, disgorgement, and interest.<sup>35</sup> In addition, the company's Dutch subsidiary was required to pay a fine to the Dutch Public Prosecutor.

In March 2008, AB Volvo settled charges related to the Oil-for-Food program with the DOJ and SEC. Two Volvo subsidiaries allegedly paid over \$6 million in illicit kickbacks to the Iraqi government.<sup>36</sup> Volvo agreed to pay \$12.6 million in civil penalties, disgorgement, and interest to settle books and records and internal controls charges alleged by the

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31. Press Release, U.S. Dep't of Justice, Akzo Nobel Acknowledges Improper Payments Made by Its Subsidiaries to Iraqi Government Under the U.N. Oil for Food Program, Enters Agreement with Department of Justice (Dec. 20, 2007), *available at* [http://www.usdoj.gov/opa/pr/2007/December/07\\_crm\\_1024.html](http://www.usdoj.gov/opa/pr/2007/December/07_crm_1024.html) [hereinafter DOJ-Akzo Nobel]; Press Release, U.S. Securities & Exchange Comm'n, Litigation Release 20410: SEC Files Settled Books and Records and Internal Controls Charges Against Akzo Nobel N.V. For Improper Payments to Iraq Under the U.N. Oil for Food Program—Company Agrees to Pay Over \$2.9 Million (Dec. 20, 2007), *available at* <http://www.sec.gov/litigation/litreleases/2007/lr20410.htm> [hereinafter SEC-Akzo Nobel].

32. SEC—Akzo Nobel, *supra* note 31.

33. DOJ—Akzo Nobel, *supra* note 31.

34. Press Release, U.S. Securities & Exchange Comm'n, Litigation Release No. 20461: SEC Files Settled Books and Records and Internal Controls Charges Against Flowserve Corporation for Improper Payments to Iraq Under the U.N. Oil for Food Program—Company Agrees to Pay Over \$6.5 Million in Civil Penalties, Disgorgement of Profits, and Prejudgment Interest (Feb. 21, 2008), *available at* <http://www.sec.gov/litigation/litreleases/2008/lr20461.htm> [hereinafter SEC—Flowserve]; Press Release, U.S. Dep't of Justice, Flowserve Corporation to Pay \$4 Million Penalty for Kickback Payments to the Iraqi Government under the U.N. Oil for Food Program (Feb. 21, 2008), *available at* [http://www.usdoj.gov/opa/pr/2008/February/08\\_crm\\_132.html](http://www.usdoj.gov/opa/pr/2008/February/08_crm_132.html).

35. SEC—Flowserve, *supra* note 34.

36. Press Release, U.S. Securities & Exchange Comm'n, Litigation Release No. 20504: SEC Files Settled Books and Records and Internal Controls Charges Against AB Volvo for Improper Payments to Iraq Under the U.N. Oil for Food Program—Company Agrees to Pay Over \$12.6 Million in Civil Penalties, Disgorgement of Profits, and Interest (Mar. 20, 2008), *available at* <http://www.sec.gov/litigation/litreleases/2008/lr20504.htm>.

SEC.<sup>37</sup> It also entered into a deferred prosecution agreement with the DOJ, agreeing to pay a \$7 million criminal penalty related to wire fraud and FCPA books and records charges.<sup>38</sup>

In December 2008, Fiat S.p.A. and three of its subsidiaries settled charges that the subsidiaries had paid approximately \$4.4 million in kickbacks to the Iraqi government in violation of the Oil-for-Food program. Under a deferred prosecution agreement with the DOJ, Fiat agreed to pay a \$7 million criminal fine.<sup>39</sup> Fiat also agreed to pay approximately \$10.8 million in civil penalties, disgorgement and interest to settle civil books and records and internal controls charges brought by the SEC.<sup>40</sup>

## 2. *Oil Services and Oil and Gas Companies*

Panalpina World Transport Holding Ltd., a Swiss freight forwarding company, disclosed that it is under investigation by the DOJ for potential FCPA violations in several countries, including Nigeria.<sup>41</sup> In 2007, three Vetco Gray entities pled guilty to FCPA charges relating to corrupt payments to Nigerian customs officials through a “major international freight forwarding and customs clearance company.”<sup>42</sup> Approximately a dozen oil services companies, and one oil and gas company, have disclosed either DOJ or internal investigations into potential corruption relating to freight forwarding and customs practices in various countries, including Nigeria.<sup>43</sup>

## 3. *Medical Device Companies*

The industry-wide investigation into medical device companies, which began in late 2007, continued in 2008. In addition to Biomet, Inc.; Stryker Corp.; Zimmer Holdings, Inc.; Smith & Nephew Plc.; and Medtronic, Inc., each of which announced FCPA investi-

37. *Id.*

38. Press Release, U.S. Dep’t of Justice, AB Volvo to Pay \$7 Million Penalty for Kickback Payments to the Iraqi Government Under the U.N. Oil for Food Program (Mar. 20, 2008), available at [http://www.usdoj.gov/opa/pr/2008/March/08\\_crm\\_220.html](http://www.usdoj.gov/opa/pr/2008/March/08_crm_220.html).

39. Press Release, U.S. Dep’t of Justice, Fiat Agrees to \$7 Million Fine in Connection with Payment of \$4.4 Million in Kickbacks by Three Subsidiaries Under the U.N. Oil for Food Program (Dec. 22, 2008), available at [http://www.usdoj.gov/criminal/nptft/pr/press\\_releases/2008/dec/12-22-08\\_fiat-agree4penalty.pdf](http://www.usdoj.gov/criminal/nptft/pr/press_releases/2008/dec/12-22-08_fiat-agree4penalty.pdf).

40. Press Release, U.S. Securities & Exchange Comm’n, Litigation Release No. 20835: SEC Files Settled Books and Records and Internal Controls Charges Against Fiat S.p.A. and CNH Global N.V. For Improper Payments to Iraq Under the U.N. Oil for Food Program — Fiat Agrees to Pay Over \$10 Million in Disgorgement, Interest, and Penalties (Dec. 22, 2008), available at <http://www.sec.gov/litigation/litreleases/2008/lr20835.htm>.

41. Panalpina World Transport Holding, *Panalpina Posts Convincing 2007 Annual Results*, Mar. 13, 2008, available at [http://www.panalpina.com/www/global/en/media\\_news/news/news\\_archiv\\_2/08\\_03\\_13.html](http://www.panalpina.com/www/global/en/media_news/news/news_archiv_2/08_03_13.html); PANALPINA WORLD TRANSPORT HOLDING, PANALPINA ANNUAL REPORT 2007 119, available at [http://www.panalpina.com/www/global/en/ir/annual\\_reports.-Slot2-0007-DownloadRef.pdf](http://www.panalpina.com/www/global/en/ir/annual_reports.-Slot2-0007-DownloadRef.pdf); Panalpina World Transport Holding, *Panalpina Investigates Business Practices in Certain Countries*, May 25, 2007, [http://www.panalpina.com/www/global/en/media\\_news/news/news\\_archiv\\_2/07\\_07\\_24.html](http://www.panalpina.com/www/global/en/media_news/news/news_archiv_2/07_07_24.html).

42. Press Release, U.S. Dep’t of Justice, Three Vetco International Ltd. Subsidiaries Plead Guilty to Foreign Bribery and Agree to Pay \$26 Million in Criminal Fines (Feb. 6, 2007), available at [http://www.usdoj.gov/opa/pr/2007/February/07\\_crm\\_075.html](http://www.usdoj.gov/opa/pr/2007/February/07_crm_075.html).

43. Associated Press, *US Justice Department Probing Oil Operations in Nigeria*, INTERNATIONAL HERALD TRIBUNE, July 24, 2007, available at <http://www.ihf.com/articles/ap/2007/07/25/business/NA-FIN-US-Nigeria-justice.php>.



gations related to product sales outside the United States in October 2007, Wright Medical announced in June 2008 that it, too, was under investigation.<sup>44</sup> Biomet, Zimmer, and Smith & Nephew had previously resolved charges related to kickbacks paid to doctors in the United States and have monitors as part of those resolutions.

### C. INDIVIDUAL PROSECUTIONS

#### 1. *Robert W. Philip*

On December 13, 2007, the SEC settled with former Schnitzer Steel Industries Chairman and CEO Robert W. Philip. Schnitzer had previously settled with the SEC and entered into a deferred prosecution agreement with the DOJ in connection with payments to managers of government-owned steel mills in China that purchased scrap metal from a Schnitzer subsidiary. Mr. Philip agreed to a permanent injunction and paid a \$250,000 civil fine.<sup>45</sup>

#### 2. *Ramendra Basu*

On April 22, 2008, Ramendra Basu was sentenced to fifteen months in prison, two years supervised release, and fifty hours of community service for violations of the FCPA. Basu, a former trust funds manager at the World Bank, pled guilty in December 2002 to directing World Bank contracts to consultants in exchange for kickbacks and conspiring to bribe a Kenyan government official. After initially cooperating with U.S. and Swedish authorities, Basu later unsuccessfully sought to withdraw his guilty plea.<sup>46</sup>

#### 3. *Steven J. Ott, Roger Michael Young, and Yaw Osei Amoako*

On July 21 and September 2, 2008, respectively, former ITXC Corporation executives Steven J. Ott and Roger Michael Young were sentenced for conspiring to violate the anti-bribery provisions of the FCPA and the Travel Act.<sup>47</sup> Ott and Young conspired to make corrupt payments of approximately \$267,000 to employees of state-owned telecommunications companies in several African countries in order to obtain and retain contracts.<sup>48</sup> Ott was sentenced to "five years probation, including six months in a community confine-

44. Wright Medical Group, Inc. Current Report (Form 8-K) (June 10, 2008), available at <http://www.sec.gov/Archives/edgar/data/1137861/000095014408004708/0000950144-08-004708.txt>.

45. Press Release, U.S. Securities & Exchange Comm'n, Litigation Release No. 20397: SEC Charges Former Chairman/CEO of Schnitzer Steel for Authorizing Cash Bribes to Foreign Officials (Dec. 13, 2007), available at <http://www.sec.gov/litigation/litleases/2007/lr20397.htm>; Securities and Exchange Commission v. Robert W. Philip, Case No. CV 07-1836 (MO) (D. Or. Dec. 13, 2007).

46. Press Release, U.S. Dep't of Justice, Former World Bank Employee Sentenced for Taking Kickbacks and Assisting in the Bribery of a Foreign Official (Apr. 25, 2008), available at [http://www.usdoj.gov/opa/pr/2008/April/08\\_crm\\_341.html](http://www.usdoj.gov/opa/pr/2008/April/08_crm_341.html).

47. Press Release, U.S. Dep't of Justice, Former ITXC Corporation Executives Sentenced for Roles in Foreign Bribery Scheme (Sept. 2, 2008), available at <http://www.usdoj.gov/opa/pr/2008/September/08-crm-766.html> [hereinafter DOJ-ITXC]; see also Press Release, U.S. Securities & Exchange Comm'n, Litigation Release No. 19821: SEC Sues Two Former Executives of ITXC Corp. for Violations of the Anti-Bribery Provisions of the Foreign Corrupt Practices Act (Sept. 6, 2006), available at <http://www.sec.gov/litigation/litleases/2006/lr19821.htm>.

48. DOJ-ITXC, *supra* note 47.

ment center and six months home confinement, and ordered to pay a \$10,000 fine.<sup>49</sup> Young was sentenced to “five years probation, including three months of home confinement and three months in a community confinement center,” and ordered to pay a \$7,000 fine.<sup>50</sup> Both Ott and Young received reduced sentences based on their cooperation with the investigation. A third former IXTC employee, Yaw Osei Amoako, had previously pled guilty and been sentenced in 2007 to a prison term of eighteen months. Also, on May 6, 2008, the SEC announced that it had settled civil FCPA enforcement actions against Ott, Young, and Amoako.<sup>51</sup> In connection with the settlement, each defendant was permanently enjoined from violating the FCPA. Amoako was required to pay \$188,453 in disgorgement and interest.<sup>52</sup>

#### 4. *Frederick Bourke and David Pinkerton*

In 2005, Viktor Kozeny, Frederic Bourke Jr., and David Pinkerton were charged with FCPA and Travel Act violations in connection with an alleged scheme to acquire controlling interests in SOCAR, the Azerbaijan national oil company, by bribing Azeri officials. In 2007, the District Court granted Bourke’s and Pinkerton’s motions to dismiss the FCPA counts, finding that the government had failed to timely file a motion to stay the statute of limitations. The court later granted reconsideration as to three of the counts. In July 2008, the government withdrew all charges against Pinkerton. On August 29, 2008, the Second Circuit upheld the dismissal of the remaining charges against Bourke, leaving only three charges pending against Bourke.<sup>53</sup> Kozeny has yet to appear in the United States because he is contesting extradition from the Bahamas.<sup>54</sup>

#### 5. *Albert “Jack” Stanley*

On September 3, 2008, Albert “Jack” Stanley, the former Chief Executive Officer of Kellogg, Brown & Root, Inc. (KBR), pled guilty to FCPA and mail and wire fraud conspiracy charges in connection with a decade-long scheme to bribe Nigerian government officials to obtain engineering, procurement, and construction contracts to build liquefied natural gas facilities valued at more than \$6 billion.<sup>55</sup> KBR was part of a four-company

49. *Id.*

50. *Id.*

51. Press Release, U.S. Securities & Exchange Comm’n, Litigation Release No. 20556: Former Executives of ITCX Corp. Settle Foreign Bribery Charges (May 6, 2008), available at <http://www.sec.gov/litigation/litreleases/2008/lr20556.htm>.

52. *Id.*; see also Press Release, U.S. Securities & Exchange Comm’n, Litigation Release No. 19356: SEC Sues Former Regional Director of ITCX Corp. for Violations of the Anti-Bribery Provisions of the Foreign Corrupt Practices Act (Sept. 1, 2005), available at <http://www.sec.gov/litigation/litreleases/lr19356.htm>.

53. *United States v. Kozeny*, 541 F.3d 166 (2d Cir. 2008).

54. *United States v. Kozeny*, No. 05-CR-518 (S.D.N.Y. filed Oct. 21, 2008); *United States v. Kozeny*, 493 F. Supp. 2d 693 (S.D.N.Y. 2007); Sasha L. Lightbourne, *Kozeny’s Extradition Denied*, THE BAHAMAS J., Oct. 25, 2007, available at <http://www.jonesbahamas.com/print.php?a=14585>.

55. Press Release, U.S. Securities & Exchange Comm’n, Litigation Release No. 20700: SEC Charges Former CEO of Kellogg, Brown & Root, Inc. with Foreign Bribery (Sept. 3, 2008), available at <http://www.sec.gov/litigation/litreleases/2008/lr20700.htm> [hereinafter SEC—KBR CEO]; Press Release, U.S. Dep’t of Justice, Former Officer and Director of Global Engineering and Construction Company Pleads Guilty to Foreign Bribery and Kickback Charges (Sept. 3, 2008), available at <http://www.usdoj.gov/opa/pr/2008/September/08-crm-772.html> [hereinafter DOJ—KBR CEO].

joint venture that allegedly paid over \$180 million to two consultants during the course of the bribery scheme.<sup>56</sup> Stanley's plea to mail and wire fraud charges relates to his receipt of approximately \$10.8 million in kickbacks from consultants whom he caused his former company to hire in connection with liquefied natural gas projects around the world.<sup>57</sup> Stanley's plea agreement calls for him to serve seven years in prison and pay \$10.8 million in restitution.<sup>58</sup> On the same day, Stanley settled civil FCPA charges brought by the SEC, consenting to the entry of a judgment that permanently enjoins him from violating the anti-bribery, record-keeping, and internal controls provisions of the FCPA.<sup>59</sup> Stanley's agreements require him to cooperate with the ongoing investigations.

#### 6. *Christian Sapsizian*

On September 23, 2008, French citizen Christian Sapsizian, a former employee of Alcatel CIT, was sentenced to thirty months in prison and three years of supervised release, and required to forfeit \$261,500.<sup>60</sup> Sapsizian pled guilty in June 2007 to FCPA charges in connection with more than \$2.5 million in bribes to Costa Rican officials to obtain a telecommunications contract for Alcatel.<sup>61</sup> Sapsizian's past cooperation, as well as his commitment to continue to cooperate with the ongoing investigation in the future, were taken into consideration by the court at sentencing.

#### 7. *Richard John Novak*

On October 2, 2008, Richard Novak was sentenced to three years probation for violations of the FCPA. Novak pled guilty in March 2006 to wire fraud and bribery under the FCPA for his part in a scheme to bribe Liberian officials to obtain accreditation of "diploma mill universities."<sup>62</sup>

#### 8. *Gerald and Patricia Green*

Gerald Green, a Hollywood film executive, and his wife Patricia, who were first arrested and charged by criminal complaint in December 2007, were indicted in January 2008 for allegedly making corrupt payments totaling more than \$900,000 to an official of the Tourism Authority of Thailand in order to obtain a license for their company, Film Festival Management, Inc., to manage the Bangkok International Film Festival.<sup>63</sup> A superseding indictment returned in October 2008 expanded the charges to allege improper payments totaling \$1.8 million to receive several contracts with Tourism Authority of Thailand

56. SEC-KBR CEO, *supra* note 55.

57. DOJ-KBR CEO, *supra* note 55.

58. *Id.*

59. SEC-KBR CEO, *supra* note 55.

60. Press Release, U.S. Dep't of Justice, Former Alcatel CIT Executive Sentenced for Paying \$2.5 Million in Bribes to Senior Costa Rican Officials (Sept. 23, 2008), available at <http://www.usdoj.gov/opa/pr/2008/September/08-crm-848.html>.

61. *Id.*

62. United States v. Novak, No. CR-05-180-3-LRS (E.D. Wash. Sept. 19, 2008).

63. Press Release, U.S. Dep't of Justice, Film Executive and Spouse Indicted for Paying Bribes to a Thai Tourism Official to Obtain Lucrative Contracts (Oct. 2, 2008), available at <http://losangeles.fbi.gov/dojpressrel/pressrel08/la100208ausa.htm>.

worth \$14 million.<sup>64</sup> The superseding indictment also added money laundering and tax charges.<sup>65</sup> The Greens allegedly sought to conceal their activities by using business entities with false addresses and telephone numbers. They are awaiting trial.

#### 9. *Martin Eric Self*

On November 17, 2008, Martin Eric Self was sentenced to two years of probation and a \$20,000 fine in connection with FCPA charges.<sup>66</sup> Self, the former president and part owner of Pacific Consolidated Industries LP (PCI), had pleaded guilty in May 2008 to charges related to entering into a \$70,000 marketing agreement with a person he understood to be a relative of a U.K. Ministry of Defense official in order to obtain lucrative equipment contracts with the Royal Air Force.<sup>67</sup> Another PCI official, Leo Winston Smith, was indicted in 2007 and is awaiting trial.<sup>68</sup>

#### 10. *Shu Quan-Sheng*

On November 17, 2008, Shu Quan-Sheng, a physicist who had previously worked for various U.S. government labs, pleaded guilty to illegally exporting defense services and technical data to China and offering bribes to Chinese government officials. Shu, a naturalized U.S. citizen, is President of Virginia-based company AMAC International. Shu admitted to having offered bribes to officials of China's 101st Research Institute to induce the award of a hydrogen liquefier project to an unnamed French company while Shu was acting as its representative. AMAC stood to earn a "success fee" of ten to fifteen percent on the project, which was valued at approximately \$4 million.<sup>69</sup>

#### 11. *James K. Tillery and Paul G. Novack*

On December 19, 2008, DOJ unsealed an indictment of James Tillery, a former executive of Willbros International, Inc. (WII), and Paul Novack, a consultant for WII, charging them with conspiracy, money laundering, and substantive FCPA violations related to the Nigerian and Ecuadorian pipeline projects, allegations that Willbros settled earlier in the year. Mr. Novack was arrested upon his return to the United States from South Africa, after the U.S. revoked his passport. Mr. Tillery remains at large.<sup>70</sup>

64. Press Release, U.S. Dep't of Justice, Film Executive and Spouse Indicted for Paying Bribes to a Thai Tourism Official to Obtain Lucrative Film Festival Management Contracts (Jan. 17, 2008), *available at* [http://www.usdoj.gov/opa/pr/2008/January/08\\_crm\\_032.html](http://www.usdoj.gov/opa/pr/2008/January/08_crm_032.html).

65. *Id.*

66. United States v. Self, No. SA CR 08-110 (C.D. Cal. May 7, 2008) (plea agreement); Press Release, U.S. Dep't of Justice, Former Pacific Consolidated Industries LP Executive Pleads Guilty in Connection with Bribes Paid to U.K. Ministry of Defence Official (May 8, 2008), *available at* <http://www.usdoj.gov/opa/pr/2008/May/08-crm-394.html> [hereinafter DOJ-Pacific Consolidated].

67. Self, No. SA CR 08-110, DOJ-Pacific Consolidated, *supra* note 66.

68. DOJ-Pacific Consolidated, *supra* note 66.

69. Press Release, U.S. Dep't of Justice, Virginia Physicist Pleads Guilty to Illegally Exporting Space Launch Data to China and Offering Bribes to Chinese Officials, *available at* <http://www.usdoj.gov/opa/pr/2008/November/08-nsd-1020.html> (Nov. 17, 2008); United States v. Shu Quan-Sheng, No. 2:08cr194 (E.D. Va. filed Nov. 12, 2008).

70. Press Release, U.S. Dep't of Justice, Former Willbros International Executive and Consultant Charged in \$6 Million Foreign Bribery Conspiracy (Dec. 19, 2008), *available at* <http://www.usdoj.gov/criminal/pr/>

## D. NEW DOJ CORPORATE PROSECUTION GUIDELINES

In August 2008, the DOJ announced revisions to its corporate charging guidelines, in particular its rules for assessing and crediting corporate cooperation in criminal cases.<sup>71</sup> The new guidelines, which were announced after the DOJ came under increasing pressure from Congress, civil liberties groups, the defense bar, and the business community to revise its policies related to the waiver of attorney-client privilege and work product protection, contain several significant changes in policy. First, under the new guidelines, credit for cooperation will no longer depend on whether a corporation waives the attorney-client privilege or work product protection. Rather, federal prosecutors are directed to credit the disclosure of relevant facts, regardless of the method by which they are disclosed and whether it involves a waiver of privilege. Second, the circumstances under which prosecutors may request certain types of highly protected privileged communications, such as legal advice or the mental impressions of counsel, have been narrowed substantially and are now limited to certain long-standing, well-rooted exceptions to the privilege, such as when an advice-of-counsel defense is asserted or the communication is in furtherance of a crime or a fraud. Third, prosecutors may no longer consider whether a corporation has advanced attorneys' fees to its employees, officers, or directors when evaluating cooperation. Fourth, the DOJ will no longer consider whether a corporation has entered into a joint defense or common interest agreement when assessing corporate cooperation. Fifth, prosecutors may no longer consider whether a corporation has disciplined or terminated employees in assessing cooperation.<sup>72</sup>

The 2008 guidelines represent a significant retrenchment from prior DOJ policies established through the 2003 Thompson Memorandum<sup>73</sup> and its successor, the 2006 McNulty Memorandum.<sup>74</sup> Those policies enabled prosecutors to seek waivers of attorney-client privilege from companies seeking full credit for cooperating in a DOJ investigation.

## E. NEW DOJ OPINION PROCEDURE RELEASES

Continuing an apparent effort to reinvigorate its FCPA opinion procedure, the DOJ issued three new opinion procedure releases in 2008.

In Release 08-01, dated January 15, 2008, a U.S.-based company sought an opinion on the DOJ's enforcement policy with respect to a contemplated purchase of a majority interest in a company that was majority-owned, but was being privatized by, a foreign govern-

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press\_releases/2008/12/12-19-08willbros-guilty.pdf; Indictment, United States v. Tillery, No. 4:08-cr-00021 (S.D. Tex. Jan. 17, 2008).

71. Press Release, U.S. Dep't of Justice, Justice Department Revises Charging Guidelines for Prosecuting Corporate Fraud (Aug. 28, 2009), available at <http://www.usdoj.gov/opa/pr/2008/August/08-odag-757.html>; DEP'T OF JUSTICE, UNITED STATES ATTORNEY'S MANUAL § 9-28.000 (2008) (Principles of Federal Prosecution of Business Organizations).

72. UNITED STATES ATTORNEY'S MANUAL, *supra* note 71.

73. Memorandum from Larry D. Thompson, Deputy Attorney Gen., to Heads of Department Components, U.S. Attorneys, regarding Principles of Federal Prosecution of Business Organizations (Jan. 20, 2003), available at [http://www.usdoj.gov/dag/cftd/business\\_organizations.pdf](http://www.usdoj.gov/dag/cftd/business_organizations.pdf).

74. Memorandum from Paul J. McNulty, Deputy Attorney Gen., to Heads of Department Components, U.S. Attorneys, regarding Principles of Federal Prosecution of Business Organizations (Dec. 12, 2006), available at [http://www.usdoj.gov/dag/speeches/2006/mcnulty\\_memo.pdf](http://www.usdoj.gov/dag/speeches/2006/mcnulty_memo.pdf).

ment-owned company.<sup>75</sup> A General Manager of the majority state-owned target company was to purchase the company in a privatization transaction and then sell a majority stake to the U.S. company. Questions arose regarding whether the General Manager was restricted or required by the foreign country's privatization regulations to disclose to the foreign government his ownership interests and planned sale to the U.S. company. The U.S. company represented that it disclosed the relevant interests to the foreign government and received assurances that the foreign private company owner's status did not give rise to any restrictions or disclosure obligations under the foreign company's privatization regulations. The DOJ stated that it did not intend to take any enforcement action, citing the (1) reasonable due diligence conducted by the U.S. company regarding compliance with both the FCPA and local law; (2) the transparency of the transaction through disclosures to the foreign government; (3) representations and warranties from the foreign private company owner regarding past and future anti-corruption compliance; and (4) the U.S. company's contractual rights to terminate its relationship with the foreign private company owner for any violations of anti-corruption laws.<sup>76</sup>

In Release 08-02, Halliburton Company requested an opinion in connection with a proposed acquisition of a British company in an auction.<sup>77</sup> Due to certain U.K. law restrictions, Halliburton was unable to conduct FCPA due diligence prior to bidding on the company. Unable to ascertain whether the target company had any potential FCPA issues, Halliburton sought an opinion from the DOJ as to whether the transaction itself would violate FCPA; whether Halliburton would "inherit" any FCPA liabilities related to pre-acquisition conduct of the target company; and whether Halliburton could be held criminally liable for FCPA violations occurring between the acquisition and the completion of post-closing FCPA due diligence.<sup>78</sup> The DOJ stated that it did not intend to take enforcement action against Halliburton, provided Halliburton fulfilled its proposed post-closing FCPA due diligence plan, under which it would: (1) immediately post-closing disclose to the DOJ whether any pre-closing information learned by Halliburton suggested the existence of FCPA issues; (2) present to the DOJ a comprehensive, risk-based FCPA and anti-corruption due diligence work plan, including periodic progress reports to the DOJ; (3) retain external counsel and forensic accountants to conduct the due diligence; (4) require agents and other third parties to sign new contracts with FCPA representations and warranties and safeguards; (5) impose its own anti-corruption code of conduct on the target company immediately after the acquisition; and (6) disclose to the DOJ any anti-corruption issues uncovered by the due diligence and complete any additional steps deemed necessary by the DOJ to complete the due diligence and remediate any problems.<sup>79</sup>

In Release 08-03, non-profit TRACE International sought an opinion regarding its plan to pay for certain travel expenses associated with the travel of Chinese journalists

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75. U.S. Dep't of Justice, Foreign Corrupt Practices Act Review, Opinion Procedure Release No. 08-01 (Jan. 15, 2008), *available at* <http://www.usdoj.gov/criminal/fraud/fcpa/opinion/2008/0801.pdf>.

76. *Id.*

77. U.S. Dep't of Justice, Foreign Corrupt Practices Act Review, Opinion Procedure Release No. 08-02 (June 13, 2008), *available at* <http://www.usdoj.gov/criminal/fraud/fcpa/opinion/2008/0802.html>.

78. *Id.*

79. *Id.*

employed by state-owned media to a TRACE press event in China.<sup>80</sup> The DOJ found that payments for inter-city transportation, one night's lodging for out-of-town journalists, and cash stipends to cover meals and local transportation fell within the FCPA's promotional expense affirmative defense. The opinion release noted that the journalists are not typically reimbursed by their employers for these types of expenses; the travel expenses would be paid to all interested journalists, regardless of whether the journalists ultimately provided coverage of the event; TRACE would notify the journalists' superiors of the payments; the payments were lawful under Chinese law; TRACE had no business pending with any Chinese government agency; and TRACE would accurately record the payments in its own books and records.<sup>81</sup>

### III. Enforcement Actions Abroad

#### A. CASES

##### 1. *Brazil*

The Brazilian government is investigating allegations that Telecom Italia (TI) bribed Brazilian politicians, lobbyists, and police officers from 2003 to 2006 in the battle for control of Brasil Telecom, after two former TI managers reportedly provided evidence to Italian prosecutors. Daniel Dantas, the head of the investment company Opportunity, once a partner of TI, has accused TI of illegally wiretapping telephone conversations and paying millions of dollars in bribes to Brazilian officials. Dantas is also currently being investigated by the Brazilian Federal Police for corruption. TI has denied Dantas' allegations.<sup>82</sup>

##### 2. *Finland*

Patria, the Finnish government-controlled defense firm, is under investigation in connection with allegations that it bribed officials to obtain contracts in Egypt and Slovenia. In November 2008, the former CEO and marketing director of the company were detained for two weeks in connection with the probe and then released.<sup>83</sup>

80. U.S. Dep't of Justice, Foreign Corrupt Practices Act Review, Opinion Procedure Release No. 08-03 (July 11, 2008), available at <http://www.usdoj.gov/criminal/fraud/fcpa/opinion/2008/0803.html>.

81. *Id.*

82. Antonio Regalado, *In Brazil, Business as Usual Often Involves Wiretapping*, WALL ST. J., Oct. 7, 2008, at A1, available at <http://online.wsj.com/article/SB122331824781908463.html>; *The Quiet Brazilian*, ECONOMIST, Sept. 18, 2008, available at [http://www.economist.com/people/PrinterFriendly.cfm?story\\_id=12253318](http://www.economist.com/people/PrinterFriendly.cfm?story_id=12253318); *Brazil Probes Alleged TI Bribes*, LA STAMPA, July 15, 2008, available at 2008 WLNR 13216608.

83. *Finnish Police Release Defense Firm Chiefs Held in Bribery Probe*, DOW JONES BUS. NEWS, Nov. 28, 2008, available at <http://www.easybourse.com/bourse-actualite/eads/finnish-police-release-defense-co-chiefs-held-in-graft-probe-NL0000235190-570493>; *Finnish Defence Firm Faces More Bribery Charges: Report*, AGENCE FRANCE PRESSE, Sept. 19, 2008, available at 9/19/08 AGFRP 15:23:00 (Westlaw); *Slovenian PM Demands Apology over Finnish TV Bribe Report*, DOW JONES BUS. NEWS, Sept. 2, 2008, available at <http://www.easybourse.com/Website/dynamic/Outillmprimer.php?page=/bourse-actualite/marches/slovenian-pm-demands-apology-over-finnish-tv-bribe-report-514288>; Leander Schaelaekens, *Analysis: European Defense Contracts*, UPI SECURITY AND TERRORISM, Aug. 21, 2008, available at [http://www.accessmylibrary.com/coms2/summary\\_0286-35003955\\_ITM?email=acbrown@smu.edu&library=Carrollton%20Public%20Library](http://www.accessmylibrary.com/coms2/summary_0286-35003955_ITM?email=acbrown@smu.edu&library=Carrollton%20Public%20Library); Agence

### 3. France

In July 2008, the Paris state prosecutor requested that a long-running corruption investigation into whether bribes were paid in connection with the sale of six frigates to the Taiwanese Navy in 1991 be closed. Ultimately, the prosecutor decided that the investigation had not produced any evidence of illegal payments made in association with the frigate deal and thus requested that the case be closed. The scandal "was one of a series of cases that underpinned accusations of widespread corruption during the final years of French President François Mitterand's administration."<sup>84</sup>

### 4. Germany

After fighting extradition since his arrest in Canada nine years ago, Karlheinz Schreiber may face deportation to his native Germany to face charges of fraud, bribery, and tax evasion as a result of the Canadian Supreme Court's rejection of his final appeal in March 2008.<sup>85</sup> Former German junior defense minister Ludwig-Holger Pfahls testified in a German court that Schreiber paid him \$2.8 million in kickbacks in exchange for completing an arms deal involving sale of thirty-six armored tanks to Saudi Arabia during the 1991 Gulf War.<sup>86</sup> Swiss authorities have committed to helping Germany with Schreiber's prosecution and have agreed to allow Germany access to Schreiber's bank accounts.<sup>87</sup>

In June 2008, German prosecutors decided to close their investigation of Thyssen-Krupp for alleged bribery related to the sale of ships and submarines to the South African Navy and a potential sale of ships to Angola.<sup>88</sup>

In May 2008, public prosecutors in Wiesbaden, Germany announced an investigation into German construction group Bilfinger Berger for allegedly paying kickbacks to top officials of the Peoples Democratic Party in Nigeria in connection with a contract to build a gas-liquefaction plant in Nigeria.<sup>89</sup> The bribes were allegedly passed through Julius Berger Nigeria PLC, a Nigerian company 49 percent owned by Bilfinger Berger.<sup>90</sup> Bilfinger Berger reportedly alerted German authorities to the investigation at the request of U.S. investigators.<sup>91</sup>

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France Presse, *Slovenia to Cancel Deal with Patria if Bribery Proved*, DEFENSE NEWS, May 15, 2008, available at <http://www.defensenews.com/story.php?id=3531626>.

84. French Authorities Seek End to Taiwan Bribes Case, REUTERS, Aug. 6, 2008, available at <http://uk.reuters.com/article/oilRpt/idUKL625816220080806>.

85. *Schreiber Loses Bid*, TIMES JOURNAL, Mar. 7, 2008; *Schreiber Loses Bid to Have Extradition Reviewed*, TORONTO STAR, Dec. 12, 2008, available at <http://www.thestar.com/News/Canada/article/552605>.

86. See Tracey Tyler, *Extradited Official Faces Court*, TORONTO STAR, Dec. 2, 2007, available at <http://www.thestar.com/printArticle/281771>.

87. Balz Bruppacher, *Germany Can Use Swiss Bank Documents in Case Against Arms Dealer Schreiber*, AP WORLDSTREAM, Mar. 31, 2008; Ian Austen, *Ex-Premier of Canada Admits 'Error'*, N.Y. TIMES, Dec. 14, 2007.

88. *Bitter Aftertaste*, SUNDAY TRIB. (South Africa), June 22, 2008; *ThyssenKrupp Gets All-Clear*, NEWS24, June 18, 2008; *ThyssenKrupp Accused of Angola Bribes*, LLOYD'S LIST, Feb. 20, 2008; *South Africa: Former Official Allegedly Takes Bribe from German Company*, BBC MONITORING AFRICA, Feb. 5, 2007; *South Africa: Chippy Shaik 'Asked for Arms Bribe'*, AFRICA NEWS, Feb. 5, 2007.

89. Sheenagh Matthews, *Bilfinger Employees Face Probe Into Bribes to Nigeria*, BLOOMBERG.COM, May 26, 2008, <http://www.bloomberg.com/apps/news?pid=20601100&sid=abD0oJPWwbtQ&refer=germany#>.

90. Ayodele Aminu, *Julius Berger Named in Bribe-for-Contract Scandal*, ALLAFRICA.COM, May 26, 2008, <http://allafrica.com/stories/printable/200805261149.html>.

91. Matthews, *supra* note 89.



### 5. India

Four years after closing the Australian Wheat Board (AWB) import case, India's Central Bureau of Investigation announced it has reopened its investigation and arrested the former State Trading Corporation (STC) chairman and an agent of the STC after Australian authorities supplied Indian authorities with information regarding an alleged bribe scheme. The details of the alleged bribe paid by AWB for a decade-old wheat import order from India were first uncovered in 2006 in Australia's Cole report on the Iraqi Oil-for-Food scandal.<sup>92</sup>

In July 2008, India's Central Bureau of Investigation (CBI) reportedly asked the Delhi High Court to close its investigation into French defense firm Thales for lack of evidence. The investigation involved allegations of bribes related to a multi-billion dollar sale of six submarines by Thales's subsidiary, Armaris, and the European defense firm MBDA.<sup>93</sup>

### 6. Ireland

The Irish police are currently investigating allegations that three Irish companies paid kickbacks in connection with the Oil for Food program, as well as claims of potential bribery committed by an Irish national in Azerbaijan and Oman.<sup>94</sup>

### 7. Japan

Japanese tire maker Bridgestone announced that an internal investigation had uncovered possible bribes to foreign government officials that may have violated Japanese law. The company reported the results of the investigation to Japanese prosecutors and the DOJ.<sup>95</sup>

On November 12, 2008, the former President and three other former officials of Pacific Consultants International (PCI) pled guilty to violating Japan's Unfair Competition Prevention Law, which bans bribes to foreign government officials. The former PCI officials admitted to paying about \$820,000 worth of bribes to a Ho Chi Minh City official in connection with road construction projects.<sup>96</sup>

92. Caroline Overington, *Arrests in India Over Sale of Wheat from Australia*, AUSTRALIAN, July 11, 2008; Ritu Sarin, *CBI Reopens wheat Import Case, Arrests Former STC Chairman, Agent*, INDIAN EXPRESS, July 9, 2008.

93. *French Firm Cleared Over Indian Submarine Deal, Says Official*, AGENCE FRANCE PRESSE, July 17, 2008; *CBI Rules Out Corruption, Kickbacks in Scorpene Submarine Deal*, INDIA DEFENSE, May 17, 2008; *Indian Court Orders Probe in Scorpene Deal with French Firm*, AGENCE FRANCE PRESSE, Dec. 20, 2007.

94. *OECD Probes Firms in Irish Bribery Inquiry*, Sunday Independent (Ireland), June 1, 2008.

95. *Bridgestone Says to Exit Marine Hoses Amid Scandal*, AGENCE FRANCE PRESSE, Feb. 12, 2008; *Japan's Bridgestone to End Marine Hose Business; Improper Payments to Middlemen*, INT'L HER. TRIB., Feb. 12, 2008; Press Release, Bridgestone Corp., Improper Payments to Foreign Agents, Feb. 12, 2008, <http://bridgestone.co.jp/english/info/news/2008021201.html>.

96. *PCI Execs Admit Bribery Over ODA in Vietnam*, DAILY YOMIURI (Japan), Nov. 12, 2008, <http://www.yomiuri.co.jp/dy/national/20081112TDY03104.htm>; *Tokyo Consultancy, Ex-Execs Charged with Bribing Vietnamese Official*, JAPAN ECON. NEWswire, Aug. 25, 2008; *ODA and Bribery*, JAPAN TIMES, Aug. 21, 2008; *Former Consultant Arrested over Bribery Linked to Vietnam Aid Project*, JAPAN ECON. NEWswire, Aug. 4, 2008; *PCI Ex-Head 'Admits Bribery'*, DAILY YOMIURI (Tokyo), Aug. 4, 2008; *Several Ex-PCI Officials to be Prosecuted over Bribery in Vietnam*, JAPAN ECON. NEWswire, July 18, 2008; *PCI 'Used H.K. Unit for Bribes'*, DAILY

## 8. Philippines

The Philippine National Police are investigating cross-accusations of bribery and extortion being made by South Korea's Hanjin Heavy Industries Co. Ltd, a ship building company, and Philippine government officials against each other. The allegations relate to Hanjin's construction of a \$2 billion shipyard in the Philippines.<sup>97</sup>

## 9. United Kingdom

Britain's Serious Fraud Office (SFO) is investigating pharmaceutical and medical products companies Eli Lilly, AstraZeneca, GlaxoSmithKline, and Smith & Nephew regarding payments allegedly made to the Iraqi government in connection with the Oil for Food program. The companies have denied wrongdoing and are reportedly cooperating with the investigations.<sup>98</sup>

Ananias Tumukunde, a Ugandan government official, pled guilty in the United Kingdom to accepting £83,000 in bribes from a director of CBRN Team Ltd., a British security company, and money laundering related to overseas corruption and was sentenced to one year in jail.<sup>99</sup> The bribe payor, Neils Tobiasen, a Danish national and the managing director of CBRN, pled guilty and received a five-month jail sentence, suspended for one year.<sup>100</sup> The bribes were paid in connection with a contract to provide security services to the Ugandan Presidential Guard.

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YOMIURI (Tokyo), June 4, 2008. PCI President Martin Eric Self also pled guilty and was sentenced in connection with FCPA charges in the United States. See, *supra*, Section II.C.9.

97. *Senate Probe vs. S. Korean Firm Looms*, SUNSTAR NETWORK ONLINE, May 9, 2008; *PNP: Extortion, Bribery Allegations over Hanjin Shipyard Project Unsubstantiated*, GMA NEWS.TV, May 6, 2008, <http://www.gmanews.tv/print/93603>; A Resolution Directing the Senate Committees on Accountability of Public Officers and Investigations and Environment and Natural Resources to Conduct a Joint Hearing, in Aid of Legislation, on the Alleged Bribery by Hanjin Heavy Industries Inc., and Extortion by Local Government Officials Which Violated/May Violate Environmental Laws and Laws on Graft and Corruption, P.S. Res. No. 387, (May 6, 2008) (Phil.); Gil C. Cabacungan Jr., *Probe Hanjin Bribe Raps, Senate Urged*, PHILIPPINE DAILY INQUIRER, May 5, 2008.

98. David Connolly, *British Investigating Involvement in Oil-Food Kickbacks*, Commercialappeal.com, Jan. 8, 2008, <http://www.commercialappeal.com/news/2008/jan/08/smith-nephew-in-iraq-probe/?printer=1/>; Peter Stiff and Dominic Walsh, *SFO Seeks Smith & Nephew Papers in Iraq Inquiry*, TIMES ONLINE (UK), Jan. 7, 2008, [http://business.timesonline.co.uk/tol/business/industry\\_sectors/health/article3144943.ece](http://business.timesonline.co.uk/tol/business/industry_sectors/health/article3144943.ece); *SFO Asks Smith & Nephew to Hand Over 'Iraq Documents'*, DAILY TELEGRAPH (London), Jan. 7, 2008; *Britain Investigates 3 Drug Makers*, N.Y. TIMES, Dec. 31, 2007; Helen Power & Juliette Garside, *Lilly Joins SFO 'Bribes' List*, Dec. 31, 2007; *Drug Firms Probed Over Iraq Cash*, BBC NEWS, Dec. 30, 2007, <http://news.bbc.co.uk/go/pr/fr/-/hi/business/7164677.stm>.

99. Paul Lewis & Rob Evans, *Ugandan is Jailed in UK Bribery Crackdown: Conviction Marks Tougher Line on Corruption*, GUARDIAN, Sept. 23, 2008, <http://www.guardian.co.uk/uk/2008/sep/23/ukcrime.law/print>; Michael Peel, *Guilty Plea to Bribery Sets Legal Landmark*, FIN. TIMES, Aug. 23, 2008; Norman S. Miwambo, *Uganda Dictator Yoweri Museveni; His Top Aide on Science Has Been Arrested in the U.K.*, BLACK STAR NEWS, May 11, 2008, <http://www.blackstarnews.com/?c=122&a=4528>; Edris Kiggundu & Norman Miwambo, *Country VIPs Face UK Arrest*, ALLAFRICA.COM, May 1, 2008, <http://allafrica.com/stories/printable/200805010654.html>.

100. Rob Evans & Paul Lewis, *First Executive Convicted of Foreign Bribery Escapes Jail Term*, GUARDIAN (London), Sept. 27, 2008, available at <http://www.thefreelibrary.com/First+executive+convicted+of+foreign+bribery+escapes+jail+term-a01611655986>; Michael Herman, *Security Boss Escapes Jail over Ugandan Bribes*, TIMES ONLINE (UK), Sept. 26, 2008, <http://business.timesonline.co.uk/tol/business/law/article4832416.ece>.

The SFO is conducting a preliminary investigation of the British engineering group Smiths in connection with a Japanese "golf-for-influence" scandal. The SFO is examining Smiths' connection to Yamada, an intermediary in deals for Smiths to supply chemical warfare detection equipment to Japan's Defense Ministry. Japan's former Vice-Minister of Defense has admitted receiving gifts from former Yamada officials worth more than ¥12 million, including a dozen golfing trips and more than 100 one-day golf outings.<sup>101</sup>

British construction company Balfour Beatty disclosed to the SFO "payment irregularities" in a joint venture it established with an Egyptian company for a project in Egypt. The SFO did not criminally prosecute Balfour Beatty, but used a Civil Recovery Order to impose a fine of £2.25 million.<sup>102</sup> The case marks the first time the SFO has sought to encourage company self-reporting by providing the relatively lenient use of a Civil Recovery Order instead of criminal prosecution.<sup>103</sup>

The SFO is investigating allegations that payments of one billion rand were made as "commissions" to South African government officials in connection with the sale of jets to South Africa by Britain's BAE Systems (BAE) and Sweden's Saab.<sup>104</sup> The SFO's three-year long investigation has reportedly been hindered by a lack of cooperation from the ANC regime. In early 2008, the Scorpions unit of the National Prosecuting Authority of South Africa reopened its criminal investigation into the allegations.<sup>105</sup>

## 10. *Multiple Jurisdictions*

BAE is the subject of ongoing investigations into alleged corrupt payments made by the company to secure defense contracts with governments in Saudi Arabia, South Africa, Romania, Tanzania, and the Czech Republic. Britain's Serious Fraud Office (SFO), which had been investigating the alleged corruption, dropped its investigation in December 2006 under pressure from Saudi Arabia. On July 30, 2008, Britain's High Court ruled that the SFO acted unlawfully in dropping its investigation.<sup>106</sup> The Court stated that the Saudi threat did constitute a threat to national security, as the SFO had argued, but held that "submission to a threat is lawful only when it is demonstrated to a court that there was no alternative course open to the decision-maker," which was not the case in the SFO's decision to drop the investigation.<sup>107</sup> In May 2008, U.S. officials briefly detained BAE's Chief Executive Officer and a non-executive director at separate American airports while they

101. Michael Peel & Sylvia Pfeifer, *Japan 'Golf-for-Influence' Claims Probed*, FIN. TIMES, Aug. 17, 2008.

102. Michael Herman, *Balfour Beatty Gives Up £2.25M After SFO Probe*, TIMES ONLINE (UK), Oct. 6, 2008, available at <http://business.timesonline.co.uk/tol/business/law/article4890205.ece>.

103. *Id.*; Michael Peel, *Balfour Bribery Deal Paves Way to Plea Bargains*, FIN. TIMES (UK), Oct. 7, 2008.

104. Chiara Carter, *New Probes Put Pressure on Mbeki*, SUNDAY TRIBUNE (South Africa), Mar. 23, 2008.

105. *Id.*; Adriaan Basson et al., *Arms Probe Reopened*, MAIL & GUARDIAN, Mar. 20, 2008, <http://www.mg.co.za/printformat/single/2008-03-20-arms-probe-reopened>; *Bribery Charges*, SWEDISH PRESS, March 2008; *Swedish Anti-Graft Unit to Probe Alleged Bribery in South African Arms Deal*, BBC MONITORING AFRICA, Feb. 23, 2007.

106. R v. Director of the Serious Fraud Office, [2008] UKHL60 (appeal taken from Eng.), available at <http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080730/corner-2.htm>. For more background information on the BAE investigation, please see last year's annual report, *Anti-Corruption*, 42 INT'L L. 709-727 (2008).

107. *Id.* ¶27.

examined electronic equipment belonging to the men and issued subpoenas.<sup>108</sup> In late November, 2008, South African law enforcement raided BAE offices in South Africa as part of the SFO's investigation of the matter.<sup>109</sup>

French engineering company Alstom SA is being investigated by French, Swiss, and Brazilian authorities for allegations that it made hundreds of millions of dollars of corrupt payments to win contracts in Asia and South America between 1995 and 2003. In August 2008, Swiss authorities searched Alstom's offices in Switzerland and arrested a former company manager on charges of malfeasance, corruption, and money laundering.<sup>110</sup>

## B. ANTI-CORRUPTION EFFORTS

### 1. *Canada*

There has been only one successful Canadian prosecution in the last decade under the Corruption of Foreign Public Officials Act. Of the thirty-seven signatories to the Organization for Economic Co-operation and Development (OECD), only Canada prohibits its tax inspectors from reporting suspicions of foreign bribery to law enforcement officials. The Canadian definition of foreign bribery limits offenses to those committed in Canada and does not apply to offenses committed overseas by Canadian nationals.<sup>111</sup>

### 2. *China*

Chinese authorities are upgrading a public database of commercial graft as part of a crackdown on bribery involving multinational companies in China. More than 40 percent of the country's corruption cases are thought to involve bribery by multinational companies.<sup>112</sup> The database contains the names of those sentenced on bribery charges by courts nationwide since 1997 and is available to the public. China has also stated that it will work with international organizations to combat corruption through personnel training and exchange programs. For example, the Supreme People's Procuratorate will reportedly co-operate directly with Interpol and the Sino-U.S. Joint Liaison Group in legal

108. Suzy Jagger, *BAE Accused of Being Uncooperative with US Investigators*, TIMES (London), May 20, 2008. See also Josephine Moulds, *BAE Faces Class-Action Suit in America*, DAILY TELEGRAPH, Sept. 21, 2007.

109. Russell Hotten, *BAE Offices Raided over "Arms Bribes"*, DAILY TELEGRAPH, Nov. 28, 2008; *BAE Could Face US Probe Over £40bn Deal*, DAILY TELEGRAPH, Jan. 21, 2007.

110. David Crawford & Antonio Regalado, *Ex-Alstom Manager Arrested As Corruption Probe Widens*, WALL ST. J., Aug. 22, 2008, available at [http://online.wsj.com/article\\_print/SB121939536721663269.html](http://online.wsj.com/article_print/SB121939536721663269.html); David Crawford, *Swiss Prosecutors Widen Probe of Alstom Payments*, WALL ST. J., Sept. 13, 2008, available at <http://online.wsj.com/article/SB122126539807730749.html>; David Crawford and Antonio Regalado, *Bribe Probe Exposes Alstom Network in Brazil*, WALL ST. J., June 19, 2008, available at [http://online.wsj.com/article/SB121382391422986053.html?mod=googlenews\\_wsj](http://online.wsj.com/article/SB121382391422986053.html?mod=googlenews_wsj); Kevin LaCroix, *Anticorruption Developments and D&O Insurance Implications*, D&O DIARY, May 11, 2008, <http://www.dandodiary.com/2008/05/articles/foreign-corrupt-practices-act/anticorruption-developments-and-do-insurance-implications/>; Nicola Clark, *Companies Weigh Hidden Costs of Bribery Cases*, INT'L HER. TRIB., May 7, 2008; David Crawford, *French Firm Scrutinized in Global Bribe Probe*, WALL ST. J., May 6, 2008, available at [http://online.wsj.com/article\\_print/SB121001983179268511.html](http://online.wsj.com/article_print/SB121001983179268511.html).

111. Madelaine Drohan, *Corruption? Who, me?*, GLOBE & MAIL (Canada), Aug. 8, 2008; Madelaine Drohan, *Failure to Launch*, GLOBE & MAIL (Canada), Jan. 24, 2008.

112. *Updated Database to Help Fight Graft*, CHINADAILY.COM.CN, July 16, 2008.

enforcement, including through judicial assistance, international arrests, repatriation, extradition, and the return of assets.<sup>113</sup>

### 3. *Nigeria*

In January 2008, Nigerian President Umaru Yar'Adua sent the chairperson of the Economic and Financial Crimes Commission (EFCC), Mallam Nuhu Ribadu, to a year-long management course.<sup>114</sup> U.S. and world leaders protested the apparent removal because they viewed Mr. Ribadu as an effective leader in the fight against corruption in Nigeria, and they feared that the removal signaled a reluctance to prosecute high-profile corruption cases. President Yar'Adua subsequently appointed to the chairmanship of the EFCC a retired high-ranking police officer Farida Waziri.<sup>115</sup>

### 4. *Russia*

President Dmitry Medvedev has committed to making the fight against corruption a priority and supporting legislation aimed at requiring compliance with international commitments to address bribery. Currently, very few Russian companies are believed to have anti-corruption programs.<sup>116</sup>

### 5. *Turkey*

The OECD has criticized Turkey for its failure to implement key elements of the OECD anti-bribery convention. Turkey repealed the law imposing liability on legal persons for bribing foreign public officials and replaced it with a more limited law; dismissed a bribery investigation of a Turkish holding company and Turkish nationals in a foreign country; and took two years to request information obtained by the Independent Inquiry Committee concerning the Oil for Food Program, which alleged that 139 Turkish companies paid kickbacks to the Iraqi government.<sup>117</sup>

### 6. *United Kingdom*

In September 2008, the SFO announced its intention to move to a new plea-bargain system more akin to the U.S. system in which companies that accept responsibility and

113. *Id.*

114. Statement, Senator Russ Feingold, On the Removal of Nigeria's Economic and Financial Crimes Commission Chairman, Jan. 7, 2008, <http://feingold.senate.gov/~feingold/statements/08/01/20080107nigeria.htm>; Letter from Senator Russ Feingold to President Umaru Yar'Adua (Nigeria), Jan. 7, 2008, *available at* <http://feingold.senate.gov/~feingold/statements/08/01/20080107nigeria.htm>.

115. Nick Tattersall, *Top Nigerian Anti-Graft Official Quits*, REUTERS, Nov. 20, 2008, <http://in.reuters.com/article/oilRpt/idINLK36482620081120>; Olukorede Yishau, *EFCC Under Waziri*, NATION (Nigeria), Aug. 8, 2008, [http://www.efccnigeria.org/index.php?option=com\\_content&task=view&id=322&Itemid=34](http://www.efccnigeria.org/index.php?option=com_content&task=view&id=322&Itemid=34); Chinedu Offor et al, U.S., *Interpol, PRONACO Back Waziri As EFCC Chairman*, DAILY INDEP. NEWSPAPERS (Nigeria), May 28, 2008, [http://www.efccnigeria.org/index.php?option=com\\_content&task=view&id=97&Itemid=34](http://www.efccnigeria.org/index.php?option=com_content&task=view&id=97&Itemid=34).

116. Natalia Leshchenko, *First Features of Anti-Corruption Policy Announced in Russia*, GLOBAL INSIGHT, July 3, 2008; *Russia's New Leader Expected to Fight Corruption as Priority*, BBC WORLDWIDE MONITORING, Mar. 5, 2008.

117. Bruce Zagaris, *OECD Harshly Criticizes Turkey's Enforcement of Anti-Bribery Convention*, INT'L ENFORCEMENT L. REP., Mar. 2008.

plead guilty can receive more lenient sentences. The new system was suggested in response to a review of the SFO compiled by a former U.S. prosecutor. The review concluded that "the SFO uses significantly more resources per case than its New York counterparts and achieves significantly less for its efforts."<sup>118</sup> The SFO publicly praised the report, particularly its recommendation to make better use of plea-bargain arrangements to accelerate the pace of future investigations.<sup>119</sup>

On November 20, 2008, the United Kingdom's Law Commission issued a report, entitled "Reforming Bribery," that had been prepared at the request of Parliament.<sup>120</sup> The report addressed deficiencies in current bribery laws, the U.K.'s obligations under treaty law, and provided a draft of a new law.<sup>121</sup> With respect to foreign bribery, the Law Commission recommended the creation of a separate offense from domestic bribery, similar to the FCPA in the United States; a corporate offense for bribery, and individual liability for persons with responsibility for preventing bribery within a company who negligently fail to prevent bribery.<sup>122</sup>

#### IV. International Anti-Corruption Treaties and Public International Organizations

##### A. MUTUAL EVALUATION MECHANISMS

In 2008, the OECD Working Group on Bribery (WGB)<sup>123</sup> issued reviews of the implementation of the Anti-Bribery Convention in Argentina, Estonia, and South Africa. In addition, the WGB issued follow-up reports on implementation of the Convention by Luxembourg and the United Kingdom. Notably, the WGB criticized implementation of the Convention in all the countries reviewed except South Africa. Turkey and Estonia were criticized for a lack of awareness of foreign bribery laws; Luxembourg was cited for lack of corporate liability; and Argentina for lack of enforcement capacity. The most strongly worded criticism was reserved for the United Kingdom. The WGB noted that it was "particularly seriously concerned about the UK's continued failure to address deficiencies in its laws . . . which has hindered investigations" and noted that reforms are "urgently needed and should be dealt with as a matter of political priority."<sup>124</sup>

118. JESSICA DE GRAZIA, REVIEW OF THE SERIOUS FRAUD OFFICE: FINAL REPORT, June 10, 2008, [http://www.sfo.gov.uk/publications/pdfs/JdeGrazia\\_Final\\_Review\\_of\\_SFO.pdf](http://www.sfo.gov.uk/publications/pdfs/JdeGrazia_Final_Review_of_SFO.pdf); Press Release, SFO (UK), Review of the Serious Fraud Office by Jessica de Grazia, June 10, 2008, [http://www.sfo.gov.uk/news/prout/pr\\_566.asp?id=566#](http://www.sfo.gov.uk/news/prout/pr_566.asp?id=566#) [hereinafter SFO Press Release].

119. SFO Press Release, *supra* note 118; Russell Hotten, *Fraud Office to Adopt U.S.-style Plea Bargaining*, DAILY TELEGRAPH (UK), Sept. 8, 2008, <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/2795910/Fraud-Office-to-adopt-US-style-plea-bargaining.html>; Dominic O'Connell, *SFO Proposes Plea-Bargain System for British Companies*, TIMES ONLINE (UK), July 6, 2008, [http://business.timesonline.co.uk/tol/business/law/corporate\\_law/article4276223.ece](http://business.timesonline.co.uk/tol/business/law/corporate_law/article4276223.ece).

120. U.K. Law Comm'n, REFORMING BRIBERY: LAW COMMISSION CONSULTATION PAPER 185, *available at* <http://www.lawcom.gov.uk/bribery.htm> [hereinafter Law Commission Report].

121. The Ministry of Justice proposed a draft bill based on the report to Parliament on March 25, 2009

122. Law Commission Report, *supra* note 120, at 115-177

123. WGB reports are available at <http://www.oecd.org>.

124. OECD, PHASE 2BIS: REPORT ON IMPLEMENTATION OF THE OECD ANTI-BRIBERY CONVENTION 5, 11, Oct. 16, 2008, <http://www.oecd.org/dataoecd/23/20/41515077.pdf>.

The Group of States Against Corruption (GRECO) continued its third evaluation round, issuing reports on Estonia, Iceland, Latvia, Luxembourg, Monaco, the Netherlands, Slovakia, Slovenia, and the United Kingdom, as well as a combined first and second round report on Switzerland.<sup>125</sup> GRECO expressed concern about the elimination of the Office of the Anti-Corruption Commissioner in Italy. The Committee of Experts for the Inter-American Convention Against Corruption issued second round reports on Belize, Brazil, Canada, Grenada, Guatemala, Guyana, Jamaica, Suriname, St. Vincent & the Grenadines, and the United States.<sup>126</sup>

## B. THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

In 2008, the states parties to the United Nations Convention Against Corruption (UNCAC) continued its self-assessment mechanism and pilot project for mutual evaluation. Many responses to the self-assessment checklist are publicly available.<sup>127</sup> The Second Conference of the States Parties to UNCAC met in Bali in January. The United Nations and Interpol also established an Anticorruption Academy in Austria.

## C. MULTILATERAL DEVELOPMENT BANKS

The World Bank debarred three companies for fraudulent and corrupt practices in 2008.<sup>128</sup> In April, the Bank reported that it had referred a case to the Government of the Democratic Republic of the Congo for prosecution. Investigations by the Integrity Division of the Asian Development Bank led to sanctions against one individual and one firm for bribing government officials.<sup>129</sup> Investigations by the Office of Institutional Integrity of the Inter-American Development Bank resulted in sanctions against thirty-three individuals and firms for corrupt practices.<sup>130</sup>

## V. Civil Society Efforts in 2008

The non-profit community remained active in anti-bribery efforts in 2008. The 13th International Anti-Corruption Conference was held in Athens in October and attracted 1,300 people from 135 countries for lively discussions about corruption and sustainable development.<sup>131</sup>

The Extractive Industries Transparency Initiative (EITI) continued its work to strengthen governance in resource-rich countries by improving transparency over payments by companies to governments, as well as transparency over oil, gas, and mining

125. GRECO reports are available at <http://www.coe.int/t/dg1/greco>.

126. MESICIC reports are available at [http://www.oas.org/juridico/english/mesicic\\_II\\_rep.htm](http://www.oas.org/juridico/english/mesicic_II_rep.htm).

127. The U.S. self-assessment is available at <http://www.state.gov/p/inl/rls/rpt/91886.htm>.

128. An up-to-date list of debarred firms is available on the Department's website at <http://web.worldbank.org>.

129. ASIAN DEVELOPMENT BANK OFFICE OF THE AUDITOR GENERAL, INTEGRITY DIVISION 2008 ANNUAL REPORT at 46, available at <http://www.adb.org/Documents/Reports/Anticorruption/OAG1-Annual-Report-2008.pdf>.

130. IDB OFFICE OF INSTITUTIONAL INTEGRITY, ANNUAL REPORT 2008 at 10, available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1927592>.

131. See 13th International Anti-Corruption Conference, <http://www.13iaacc.org/> (last visited Apr. 25, 2009).

revenues by those host country governments. Twenty-five resource-rich countries around the world are implementing the EITI, and one country, Azerbaijan, has completed the EITI "Validation" process.<sup>132</sup>

BRIBeline, a public, on-line tool that collects reports of bribe demands issued its first full report in July on bribe demands in China, finding that extortionate demands outstripped commercial bribe-demands in that country.<sup>133</sup>

The United Nations Global Compact established new working groups to address supply-chain outreach and corporate reporting in support of the Tenth Principle.<sup>134</sup>

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132. See Extractive Industries Transparency Initiative, <http://eitransparency.org/> (last visited Apr. 25, 2009).

133. The BRIBeline tool and BRIBeline reports are available at [www.bribeline.org](http://www.bribeline.org).

134. UN Global Compact, Tenth Principle, <http://www.unglobalcompact.org/AbouttheGC/TheTEN-Principles/principle10.html> (last visited Apr. 25, 2009).



