

The Political Economy of Anti-Bribery Enforcement

Lauren H. Cohen
Harvard Business School & NBER

Bo Li
Tsinghua University

2nd London Political Finance 2021

Motivation

- Level playing field: fundamental to efficiency

Motivation

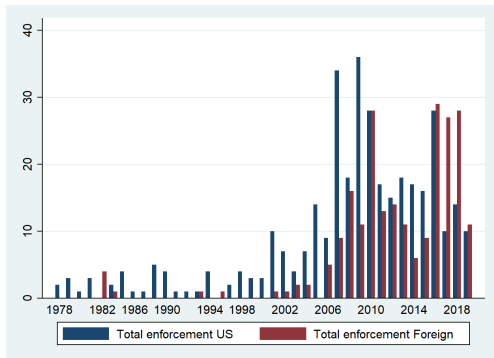
- Level playing field: fundamental to efficiency
- Bribing distorts competition
 - Favoring certain groups of firms
 - Inefficiency in resource allocation and production

Motivation

- Level playing field: fundamental to efficiency
- Bribing distorts competition
 - Favoring certain groups of firms
 - Inefficiency in resource allocation and production
- Anti-bribery enforcement
 - Within a single-country
 - How to enforce globally: who, when, where
- **Question:** Do political motives drive enforcement actions?
- Broad implications around the globe

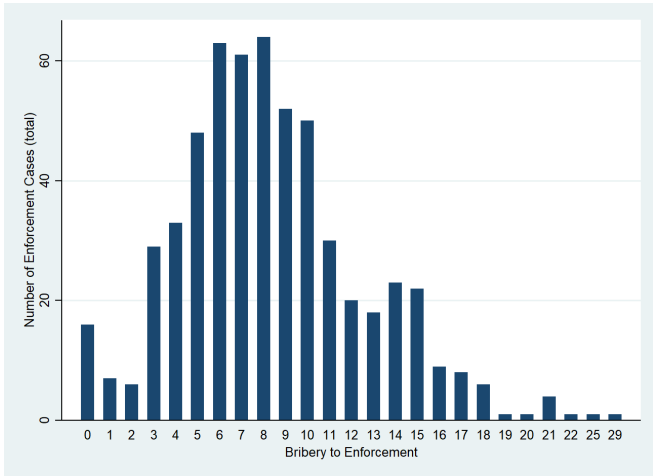
Motivation

- Foreign Corrupt Practices Act (FCPA) of 1977 (FCPA)
- Prohibit bribery of foreign officials
- Intended to create a level playing field
- Targeted firms in over 70 countries
- Political incentives: cases brought by SEC/DOJ with U.S. Congress oversight



Notes: This figure shows the number of anti-bribery enforcement actions initiated by both the U.S. Department of Justice (DOJ) and Securities and Exchange Commission (SEC) in each year between 1978 and 2018.

Figure: The time lag between bribery actions and anti-bribery enforcements



Notes: This graph plots the number of anti-bribery enforcement and the number of years between bribery actions initially occurred and enforcement actions.

This paper

Do political incentives influence enforcement actions?

This paper

Do political incentives influence enforcement actions?

Data:

- Hand-collected case-level data on enforcement actions by SEC and DOJ
 - Countries involved, headquarters and subsidiaries, district courts, monetary penalties
- U.S. and foreign companies: subsidiary and network data

This paper

Do political incentives influence enforcement actions?

Data:

- Hand-collected case-level data on enforcement actions by SEC and DOJ
 - Countries involved, headquarters and subsidiaries, district courts, monetary penalties
- U.S. and foreign companies: subsidiary and network data

Identification:

- Variation in political incentives
- Timing of Senate elections is **predetermined**
- Cross-sectional and time-series heterogeneity in the timing of elections

Preview of Results

- Regulators **do not** respond equally to all firms:
 - Using exogenous variation in the timing and location of U.S. Congressional elections
 - In the year leading up to elections
 - **Increases** in the probability of enforcement on foreign firms by 23% ($t = 3.04$)
 - No changes for U.S. firms in pre-election years
 - Pronounced in recent periods 2006-2017 (4 elections)

Preview of Results

2 Political motives

- Constituent interests:
 - ↓ in industries with large number of U.S. establishments/employment
- Judiciary chair:
 - ↑ in state whose senator is appointed chair of the judiciary committee

3 Economic motives

- Competition:
 - ↑ if foreign firms compete with U.S. firms
- Supply-chain network:
 - ↑ if foreign firms have extensive production networks outside of U.S. (less exposure to U.S. networks)

Preview of Results

- How firms respond to enforcement?
 - Extensive margin: reduction in segment corruption exposure after enforcement (both U.S. and foreign firms)
 - Intensive margin: reduction in sales in perceived corrupt countries
 - Cross-country comparison: firms headquartered in low-corrupt countries reduce corruption exposure more (sensitive to enforcement actions)

How Were Firms Targeted?

- From the DOJ:
 - *"The Department also takes seriously our obligation to provide **guidance** in this area. Our goal is not simply to prosecute FCPA violations, but also to prevent corruption at home and abroad and promote a level playing field in business transactions."*
- From the Senate Judiciary Committee:
 - *As a part of its oversight functions over the Justice Department and the criminal laws of the United States, this **Committee** is well suited to examine the impact of the FCPA and to ask **hard** questions about whether the act is succeeding in its mission or is needlessly hurting **American job creation**.*
 - *FCPA fines made up **half of all** DOJ Criminal Division penalties in fiscal year 2010. This is a **considerable windfall** for the Federal Government (the Wall Street Journal, Jan 24, 2011).*
 - *Businesses that are trying to comply with the FCPA assert that the law is being enforced in a **vague and impenetrable** manner. Because the risks of prosecution are so great, with million-dollar fines and possible prison sentences, companies would rather settle with the Justice Department than go to court.*

How Were Firms Targeted?



- *United States of America v. Total, S.A.*: settlement \$398.2 million
- Total paid \$60 million in bribes to an Iranian government official
- Long investigations: bribery took place 1995-1997 (16 to 18 years ago)
- Exxon Mobil, headquartered in Irving, TX, is one of Total's biggest competitors worldwide
- The 2014 **Senate election** in Texas on November 4, 2014
- Incumbent Republican **Senator John Cornyn** run for re-election and won
- Settlement reached on May 29, 2013

Before The
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 69654 / May 29, 2013

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 3461 / May 29, 2013

ADMINISTRATIVE PROCEEDING

File No. 3-15338

In the Matter of

TOTAL, S.A.,

Respondent.

x
: ORDER INSTITUTING
: CEASE-AND-DESIST
: PROCEEDINGS PURSUANT
: TO SECTION 21C OF THE
: SECURITIES EXCHANGE
: ACT OF 1934, MAKING
: FINDINGS, AND IMPOSING
: A CEASE-AND-DESIST

FACTS

On the basis of this Order and the Respondent's Offer, the Commission finds¹ that:

Summary

1. From approximately September 1995 to November 2004, Total and others paid approximately \$60 million in unlawful payments to intermediaries for the purpose of inducing an Iranian government official (the "Iranian Official") to use his influence to assist Total in connection with obtaining contracts to develop the Sirri A and E oil fields and two phases of the South Pars oil and gas field in Iran. Between 1995 and 2004 the Iranian Official was first the head of one wholly owned subsidiary of the National Iranian Oil Company ("NIOC") and later the head of another NIOC wholly owned subsidiary. The Iranian Official was also a government advisor to a high-ranking Iranian official. Total made these payments at the direction of the Iranian Official to intermediaries through a consulting and services agreement and subsequent amendments, entered into with an intermediary designated by the Iranian Official ("Intermediary One").

Data

- Case-level data [source: *DOJ and SEC*]
 - Coverage: 389 investigations and 589 enforcements 1978-2019
 - Involves bribery actions in more than 120 countries
 - Hand collected info on
 - dates (period of bribery, initiation, resolution)
 - locations (district courts, countries involved, subsidiaries involved)
 - agencies (prosecuting agency, prosecuting attorneys, assisting agencies, whistle blower)
 - resolution outcomes (bribe payment, sanction to bribe ratio, type of bribe, purpose of bribe, plea agreement, number of countries involved, forms of payment, self-report/voluntary cooperation etc.)

Data

- U.S. Senate elections
 - MIT Election Data and Science Lab (MEDSL) - 1985 to 2017
 - Congressional Committee assignments: Charles Stewart III and Jonathan Woon, 103rd to 115th Congresses
- Firm-level data [source: *Compustat North America and Global*, *Bureau van Dijk Orbis*]
- State-level data [source: *Bureau of Economic Analysis*, *Bureau of Labor Statistics*]
- Global network exposure [source: *FactSet Revere*]
 - Competitors; supply-chain network

Table: Top 10 Countries Involved

Country	Total cases	Total firms	Corruption score
China	66	43	6.1
Niger	26	14	7.4
Mexico	24	12	7.1
Indonesia	21	12	6.8
Venezuela	21	7	8.0
Brazil	19	13	6.0
Russia	16	10	7.7
Gabon	13	2	7.1
Thailand	13	6	6.2
Argentina	13	9	6.5

Enforcement around the Electoral Cycle

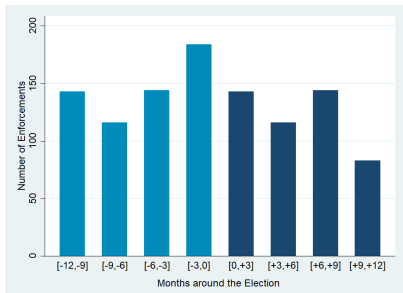


Figure: U.S. Companies

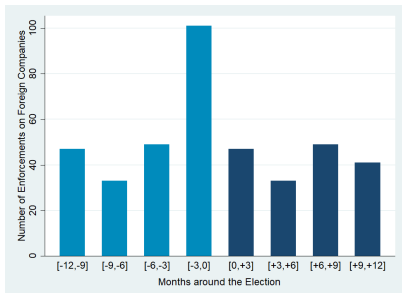


Figure: Foreign Companies

Cases against foreign firms jump from 49 (6 months prior) to 101 (3 months prior)

Empirical Strategy

Exploit variation in the timing of Senate elections:

$$TARGET_{cist} = \alpha_c + \alpha_i + \alpha_s + \alpha_t + \beta(PREELECTION)_{cist} + X'_{cist}\delta + \varepsilon_{cist} \quad (1)$$

- c : country, i : firm, s : state, t : year
- $(PREELECTION)_{cist}$: 1 if one year before election in state s , 0 otherwise
- X_{cist} : firm-level controls, augment with state-level controls
- Fixed effects: country, state, firm, year
- Standard errors clustered at firm-level

Table: Effect of Senate Elections on Anti-bribery Enforcement

outcome	Target	Target US		Target Foreign	
	1985-2017 (1)	1985-2017 (2)	2006-2017 (3)	1985-2017 (4)	2006-2017 (5)
Pre-election	0.0007 (0.0007)	-0.0006 (0.0005)	-0.0011 (0.0010)	0.0014*** (0.0004)	0.0028*** (0.0010)
Firm, state controls	Yes	Yes	Yes	Yes	Yes
Year, indu FE	Yes	Yes	Yes	Yes	Yes
Country, state FE	Yes	Yes	Yes	Yes	Yes
Firm FE	Yes	Yes	Yes	Yes	Yes
Observations	137,840	137,840	74,230	137,840	74,230
R-squared	0.4682	0.4703	0.7361	0.4276	0.6634

Notes: The unit of observation is a firm. The time period is 1985 to 2017. Standard errors in parentheses are clustered at firm level. State-level controls include: Employment Rate, Log(GDP) , Log(Population). Significance level: *** p<0.01, ** p<0.05, * p<0.1

- Enforcement against foreign firms increases by 23% leading up to elections
- Stronger effect in 2006-2017 by 46%

Table: Constituent Interests

outcome	Target (1)	Target U.S. (2)	Target Foreign (3)
Pre-election	0.0034*** (0.0012)	0.0002 (0.0008)	0.0032*** (0.0009)
Local concentration	-0.4017** (0.1655)	-0.1820 (0.1219)	-0.2197** (0.0976)
Pre-election × Local concentration	-0.0217 (0.0136)	-0.0050 (0.0097)	-0.0167* (0.0097)
State, firm controls	Yes	Yes	Yes
Year, indu FE	Yes	Yes	Yes
Country, state FE	Yes	Yes	Yes
Firm FE	Yes	Yes	Yes
Observations	91,474	91,474	91,474
R-squared	0.6047	0.6180	0.5550

- Enforcement on foreign firms ↓ 30% if the fraction of local industry concentration ↑ from 25th to 75th

Table: Congressional Influence

outcome	Target US (1)	Target Foreign (2)
Pre-election	-0.0013* (0.0007)	0.0012* (0.0006)
Judiciary Chair	0.0020*** (0.0004)	0.0018*** (0.0003)
Pre-election × Judiciary Chair	0.0011 (0.0007)	0.0012** (0.0006)
State, firm controls	Yes	Yes
Year, indu FE	Yes	Yes
Country, state FE	Yes	Yes
Firm FE	Yes	Yes
Observations	124,276	124,276
R-squared	0.5318	0.4478

- Regulators respond more (less) aggressively against foreign (U.S.) firms when senator is appointed chair of the judiciary committee

Table: Exposure to Foreign Supply Chain Network

outcome	Target (1)	Target U.S. (2)	Target Foreign (3)
Pre-election	0.0007 (0.0020)	-0.0002 (0.0018)	0.0009 (0.0009)
ForeignNetwork	-0.0100 (0.0067)	-0.0024 (0.0063)	-0.0076*** (0.0026)
Pre-election × ForeignNetwork	0.0144*** (0.0043)	-0.0002 (0.0016)	0.0146*** (0.0040)
State, firm controls	Yes	Yes	Yes
Year, indu FE	Yes	Yes	Yes
Country, state FE	Yes	Yes	Yes
Firm FE	Yes	Yes	Yes
Observations	39,363	39,363	39,363
R-squared	0.6712	0.6681	0.6302

Regulatory actions are sensitive to firms' global network exposure:

- Foreign network: share of supply-chain networks located outside of home country
- U.S. companies do not experience increases in enforcement if more exposed to global networks
- Foreign firms face ↑ enforcement with more foreign exposure

Table: Foreign Competition

outcome	Target (1)	Target U.S. (2)	Target Foreign (3)
Pre-election	0.0029 (0.0019)	0.0001 (0.0016)	0.0028*** (0.0010)
Foreign Competitor	-0.0122 (0.0226)	-0.0096 (0.0125)	-0.0026 (0.0175)
Pre-election × ForeignCompetitor	0.0097 (0.0061)	-0.0030 (0.0028)	0.0127** (0.0055)
State, firm controls	Yes	Yes	Yes
Year, indu FE	Yes	Yes	Yes
Country, state FE	Yes	Yes	Yes
Firm FE	Yes	Yes	Yes
Observations	39,363	39,363	39,363
R-squared	0.6711	0.6682	0.6298

Enforcements are responsive to foreign competitors:

- Enforcement on U.S. companies are insensitive to foreign competition
- Enforcement on foreign firms ↑ 24% for a 25th to 75th ↑ in the fraction of foreign competition faced

Table: U.S. Competitors

outcome	(1)	Target Foreign	(2)
Pre-election	0.0036*** (0.0012)		0.0035*** (0.0012)
U.S. Competitor	-0.0665 (0.0758)		
Pre-election × U.S. Competitor	0.0361** (0.0168)		
Non-U.S. Competitor			0.0115 (0.0122)
Pre-election × Non-U.S. Competitor			0.0084 (0.0053)
State, firm controls	Yes		Yes
Year, indu FE	Yes		Yes
Country, state FE	Yes		Yes
Firm FE	Yes		Yes
Observations	39,363		39,363
R-squared	0.6302		0.6298

Foreign enforcements are responsive to U.S. competitors in particular:

- Foreign firms (↑ 40% for a S.D. ↑ in the fraction of U.S. competition (i.e., 0.094))

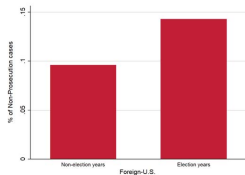
Table: DOJ versus SEC Enforcement

outcome	Target U.S.		Target Foreign	
	(1)	(2)	(3)	(4)
Pre-election	-0.0086 (0.0086)	-0.0078 (0.0087)	0.0173*** (0.0057)	0.0180*** (0.0057)
DOJ	0.0261 (0.0182)	0.0307* (0.0177)	-0.0149* (0.0089)	-0.0138 (0.0095)
Pre-election × DOJ	-0.0086* (0.0050)	-0.0085* (0.0050)	0.0103** (0.0045)	0.0097** (0.0046)
State, firm controls	Yes	Yes	Yes	Yes
Year, indu FE	Yes	Yes	Yes	Yes
Country, state FE	Yes	Yes	Yes	Yes
Firm FE	No	Yes	No	Yes
Observations	8,361	8,361	8,361	8,361
R-squared	0.5107	0.5539	0.5002	0.5191

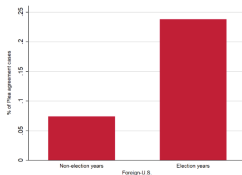
- DOJ target foreign firms more aggressively leading up to elections

Weaker Cases?

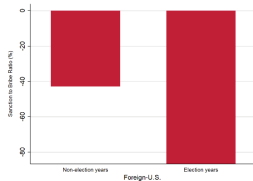
Panel A: Cases never reaching court



Panel B: Plea agreement cases



Panel C: Sanction to bribe ratio



Panel D: Forms of bribery payment

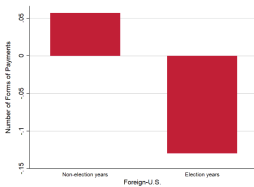


Table: Changes in Corruption Exposure after Enforcement

outcome	Corruption exposure		Seg. in top	Seg. in top	Seg. in top	Seg. in top
	(1)	(2)	50 corrupt (3)	100 corrupt (4)	50 corrupt (5)	100 corrupt (6)
Target US	-0.1819* (0.0989)		-0.1286*** (0.0242)	-0.1761*** (0.0297)		
Target Foreign		-0.2451** (0.1065)			-0.2009*** (0.0292)	-0.2603*** (0.0358)
State, firm controls	Yes	Yes	Yes	Yes	Yes	Yes
Year, indu FE	Yes	Yes	Yes	Yes	Yes	Yes
Country, state FE	Yes	Yes	Yes	Yes	Yes	Yes
Firm FE	Yes	Yes	Yes	Yes	Yes	Yes
Observations	62,059	62,059	62,059	62,059	62,059	62,059
R-squared	0.9096	0.9096	0.9603	0.9581	0.9603	0.9581

- Extensive margin: reduce exposure in corrupt countries – both U.S. (4%) and foreign firms (6%)

Table: Changes in Segment Sales after Enforcement

outcome	Seg. sales in top 50 corrupt (1)	Seg. sales in top 100 corrupt (2)	Seg. sales in top 50 corrupt (3)	Seg. sales in top 100 corrupt (4)
Target US	-0.3184* (0.1796)	-0.4918** (0.1936)		
Target Foreign			-0.2584 (0.2194)	-0.5318** (0.2365)
State, firm controls	Yes	Yes	Yes	Yes
Year, indu FE	Yes	Yes	Yes	Yes
Country, state FE	Yes	Yes	Yes	Yes
Firm FE	Yes	Yes	Yes	Yes
Observations	59,989	59,989	59,989	59,989
R-squared	0.9391	0.9365	0.9391	0.9365

- Intensive margin: reduce segment sales in corrupt countries – both U.S. (3.9%) and foreign firms (4.2%)

Table: Which Foreign Country Reduces Corruption Exposure the Most?

outcome	Corruption exposure (1)	Seg. in top 50 corrupt (2)	Seg. in top 100 corrupt (3)
Target Foreign	-1.8071*** (0.0584)	-2.1803*** (0.0521)	-2.5734*** (0.0636)
Home High Corrupt	0.0858*** (0.0101)	0.0232*** (0.0090)	0.0377*** (0.0109)
Target Foreign × Home High Corrupt	0.6867*** (0.1255)	0.7624*** (0.1120)	0.9200*** (0.1367)
State, firm controls	Yes	Yes	Yes
Year, indu FE	Yes	Yes	Yes
Country, state FE	Yes	Yes	Yes
Observations	62,072	62,072	62,072
R-squared	0.6560	0.7977	0.7892

- Cross-country comparison: convergence to lower corruption level
- Firms from high- (low) corrupt countries reduce exposure by 25% (43%)

Concluding Remarks

- Political incentives shape FCPA enforcement actions
- This is in sharp contrast to what the laws were envisioned for – being initiated to level the playing field
- Main findings:
 - The probability of enforcement spikes over 20% for foreign firms, but not U.S. firms
 - These spikes correspond with political and economic interests
 - More likely to be enforced against foreign competitors and networks
 - Reduction in corruption exposure after enforcements
- Given the foundational importance of the FCPA as a template for level-playing field international regulation and cooperation, shining a light on weaknesses to its current implementation is crucial in improving international agreements moving ahead
- Future global integration and global trade are dependent on this understanding and refinement occurring for both the FCPA and burgeoning trade agreements