

Anti-Corruption*

LESLIE BENTON, JEFFREY CLARK, MIKHAIL REIDER-GORDON, AND ANNE TAKHER*

I. U.S. Developments

A. COMPANY PROSECUTIONS AND SETTLEMENTS

1. *NATCO Group Inc.*¹

On January 11, 2010, oilfield services company NATCO Group Inc. settled the U.S. Securities and Exchange Commission's (SEC) FCPA books, records, and internal controls charges and agreed to pay a \$65,000 civil penalty. The SEC alleged that NATCO improperly recorded \$55,000 in extorted bribes and other questionable payments made by a wholly-owned subsidiary of the company in response to threats of fines, jail, and deportation to Kazakhstan.

2. *BAE Systems plc*²

On February 5, 2010, BAE Systems plc announced that it had reached a global settlement agreement with the U.K. Serious Fraud Office (SFO) and the U.S. Department of Justice (DOJ) over the agencies' long-running investigations into the defense contractor's business dealings in multiple countries. Under its settlement with the DOJ, on March 1, 2010, BAE pled guilty to conspiring to defraud the United States by impairing and impeding its lawful functions, to making false statements about its FCPA compliance program, and to violating the Arms Export Control Act and International Traffic in Arms Regula-

* This report of international developments during 2010 was prepared by the ABA International Law Section's Anti-Corruption Committee. Leslie Benton is a Senior Vice President of Levis Strategic Communications LLC; Jeffrey Clark is a Partner at Willkie Farr & Gallagher LLP; Mikhail Raider-Gordon is a Managing Director, Litigation and Forensics at Capstone Advisory Group LLC; and Anne Taker is the Director of Member Services for TRACE International, Inc.

1. Press Release, U.S. Sec. & Exch. Common, Litig. Release No. 21374: SEC Files Settled Civil Action Charging NATCO Group Inc. with Violations of the Foreign Corrupt Practices Act, (Jan. 11, 2010), *available at* <http://www.sec.gov/litigation/litreleases/2010/lr21374.htm>.

2. Press Release, U.S. Dep't of Justice, BAE Sys. PLC Pleads Guilty & Ordered to Pay \$400 Million Criminal Fine (Mar. 1, 2010), *available at* <http://www.justice.gov/opa/pr/2010/March/10-crm-209.html>; Press Release, U.K. Serious Fraud Office, BAE Systems plc (Feb. 5, 2010), *available at* <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/bae-systems-plc.aspx>; Press Release, U.K. Serious Fraud Office, BAE fined in Tanzania defense contract case (Dec. 21, 2010), *available at* <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/bae-fined-in-tanzania-defence-contract-case.aspx>.

tions. BAE agreed to pay a \$400 million fine and to retain an independent compliance monitor for a three-year period. The DOJ settlement relates to BAE's activities in multiple countries, including Sweden's lease of Gripen fighter jets to the Czech Republic and Hungary in the late 1990s and the company's "Al Yamamah" sales of Tornado aircraft and other materials to Saudi Arabia from the mid-1980s and early 2000s. BAE's settlement with the SFO covers payments to a marketing adviser in connection with the sale of a radar system to Tanzania in 1999. On December 21, 2010, after the company pleaded guilty to failing to keep proper accounting records, the Southwark Crown Court sentenced BAE to pay a £500,000 (\$775,000) fine, £225,000 in costs incurred by the SFO, and to make an *ex gratia* payment of £29.5 million for the benefit of the people of Tanzania.

3. *Nexus Technologies, Inc.*³

On March 16, 2010, Nexus Technologies, Inc. (Nexus) pled guilty to charges that it paid over \$250,000 in bribes between 1999 and 2008 to Vietnamese officials to secure contracts for the sale of defense, security, and communications equipment. Nexus pled guilty to conspiracy and violations of both the FCPA and the Travel Act, and it agreed to cease operations. In related actions, Nexus's founder, partner, and two employees conceded guilt.

4. *Innospec Inc.*⁴

On March 18, 2010, Innospec Inc. (Innospec) reached a formal settlement with the DOJ, SEC, and SFO resolving the agencies' coordinated bribery investigation into activities in Iraq and Indonesia. In the United States, Innospec pled guilty to wire fraud and FCPA violations in connection with kickbacks paid to the former Iraqi government and Ministry of Oil officials under the United Nations Oil for Food Program and violations of the U.S. embargo against Cuba. Innospec agreed to pay a \$14.1 million criminal fine and to retain a monitor for at least three years. Furthermore, Innospec settled with the SEC over FCPA violations in Iraq and Indonesia, agreeing to disgorge \$11.2 million in profits and prejudgment interest,⁵ and it settled with the Treasury Department's Office of Foreign Assets Control for \$2.2 million. On the same day, Innospec's U.K. subsidiary pled guilty in Southwark Crown Court to paying bribes in Indonesia and was ordered to pay a \$12.7 million criminal fine.

3. Press Release, U.S. Dep't of Justice, *Nexus Technology Inc. & Three Employees Plead Guilty to Paying Bribes to Vietnamese Officials* (Mar. 16, 2010), available at <http://www.justice.gov/opa/pr/2010/March/10-crm-270.html>.

4. Press Release, U.S. Dep't of Justice, *Innospec Inc. Pleads Guilty to FCPA Charges and Defrauding the United Nations; Admits to Violating the U.S. Embargo Against Cuba* (Mar. 18, 2010), available at <http://www.justice.gov/opa/pr/2010/March/10-crm-278.html>; Press Release, U.S. Sec. & Exch. Common, Litig. Release No. 21454: SEC Files Settled Foreign Corrupt Practices Act Charges Against Innospec, Inc. for Engaging in Bribery in Iraq & Indonesia with Total Disgorgement & Criminal Fines of \$40.2 Million (Mar. 18, 2010), available at <http://www.sec.gov/litigation/litrelases/2010/lr21454.htm>.

5. Hereafter, "disgorgement" will refer to the disgorging of both profits & prejudgment interest.

5. *Daimler AG*⁶

On April 1, 2010, Daimler AG and three subsidiaries settled FCPA charges related to improper payments made to foreign officials in at least twenty-two countries over a ten-year period. Daimler subsidiaries in Russia and Germany each pled guilty to conspiracy and substantive FCPA charges, agreeing to pay \$27.26 million and \$29.12 million in criminal fines, respectively. Daimler and its Chinese subsidiary entered into separate deferred prosecution agreements (DPAs) with the DOJ. Daimler's DPA requires it to retain a monitor for a three-year period. In total, Daimler and its three subsidiaries agreed to pay \$93.6 million in combined criminal penalties and Daimler agreed to disgorge \$91.4 million to the SEC.

6. *Technip S.A.*⁷ and *Snamprogetti Netherlands B.V./ENI S.p.A.*⁸

On June 28, 2010 and July 7, 2010, Technip SA (Technip) and Snamprogetti Netherlands BV (Snamprogetti) settled FCPA charges with the DOJ and SEC for \$338 million and \$365 million, respectively. Technip, a Paris-based engineering company and Snamprogetti, the Amsterdam-based indirect subsidiary of Italian company ENI SpA, along with KBR of the United States and JGC Corporation of Japan comprised a four-company "TSKJ" joint venture that was alleged to have paid hundreds of millions in bribes to Nigerian officials between 1995 and 2004 to secure engineering, procurement, and construction contracts for the development of liquefied natural gas facilities on Bonny Island in Nigeria. Technip entered into a DPA with the DOJ, agreeing to pay a \$240 million criminal fine and retain a monitor for a two-year period and also agreed to pay \$98 million in disgorgement to the SEC. Snamprogetti similarly entered into a DPA, agreeing to pay a criminal fine of \$240 million, and, along with ENI and Saipem SpA (ENI's partially-owned subsidiary into which Snamprogetti was merged in 2008) agreed to ensure that their compliance programs satisfied certain standards. Snamprogetti and ENI settled with the SEC, agreeing jointly to pay \$125 million in disgorgement. In February 2009, Halliburton and KBR settled FCPA charges related to their involvement, resulting in \$579 million in combined penalties.

6. Press Release, U.S. Dep't of Justice, *Daimler AG and Three Subsidiaries Resolve Foreign Corrupt Practices Act Investigation & Agree to Pay \$93.6 Million in Criminal Penalties* (Apr. 1, 2010), available at <http://www.justice.gov/opa/pr/2010/April/10-crm-360.html>; Press Release, U.S. Sec. & Exch. Common, SEC Charges Daimler AG with Global Bribery (Apr. 1, 2010), available at <http://www.sec.gov/news/press/2010/2010-51.htm>.

7. Press Release, U.S. Dep't of Justice, *Technip S.A. Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay \$240 Million Criminal Penalty* (June 28, 2010), available at <http://www.justice.gov/opa/pr/2010/June/10-crm-751.html>; Press Release, U.S. Sec. & Exch. Common, Litig. Release No: 21578: SEC Charges Technip with Foreign Bribery & Related Accounting Violations—Technip to Pay \$98 Million in Disgorgement & Prejudgment Interest; Co. Also to Pay a Criminal Penalty of \$240 Million (June 28, 2010), available at <http://www.sec.gov/litigation/litreleases/2010/lr21578.htm>.

8. Press Release, U.S. Dep't of Justice, *Snamprogetti Netherlands B.V. Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay \$240 Million Criminal Penalty* (July 7, 2010), available at <http://www.justice.gov/opa/pr/2010/July/10-crm-780.html>; Press Release, U.S. Sec. & Exch. Common, Litig. Release No: 21588 (July 7, 2010), available at <http://www.sec.gov/litigation/litreleases/2010/lr21588.htm>.

7. *Veraz Networks, Inc.*⁹

On June 29, 2010, California-based Veraz Networks, Inc. (Veraz) settled with the SEC over FCPA books, records, and internal controls charges, agreeing to a \$300,000 civil penalty. The SEC alleged that Veraz made or offered improper payments to officials in China and Vietnam, including gifts and entertainment provided to employees of state-controlled telecommunications companies, following Veraz's initial public offering in April 2007.

8. *Alliance One International Inc. and Universal Corporation*¹⁰

On August 6, 2010, two major tobacco merchants and their subsidiaries settled FCPA charges with the DOJ and SEC. Two subsidiaries of Alliance One International Inc. (Alliance) pled guilty to FCPA charges: Alliance One International AG, a Swiss subsidiary, to bribing Thai officials to secure contracts with the Thailand Tobacco Monopoly and Alliance One Tobacco Osh LLC, a Kyrgyzstan subsidiary, to bribing officials in Kyrgyzstan. The subsidiaries were fined \$5.2 million and \$4.2 million, respectively. Alliance entered into a non-prosecution agreement (NPA) under which it agreed to retain a monitor for three years. Alliance also settled with the SEC, agreeing to pay \$10 million in disgorgement. Universal Corporation's (Universal) subsidiary, Universal Brazil, pled guilty to FCPA violations related to bribes paid to secure contracts with the Thailand Tobacco Monopoly and agreed to pay a \$4.4 million criminal fine. Universal entered into a NPA under which it must retain a monitor for a minimum of three years. Universal also settled with the SEC, disgorging \$4.5 million.

9. *Mercator Corporation*¹¹

On August 6, 2010, Mercator Corporation (Mercator), a now-defunct New York merchant bank headed by James H. Giffen, pled guilty to violating the FCPA by giving two snowmobiles to senior Kazakh officials in 1999. Mercator, which advised the Government of Kazakhstan on various oil and gas transactions, allegedly made the gifts to maintain its lucrative advisory position. On November 19, 2010, Mercator was ordered to pay a \$32,000 fine.

9. Press Release, U.S. Sec. & Exch. Common, Litig. Release No: 21581: SEC Charges California Telecommunications Company with FCPA Violations (June 29, 2010), available at <http://www.sec.gov/litigation/litreleases/2010/lr21581.htm>.

10. Press Release, U.S. Dep't of Justice, Alliance One International Inc. and Universal Corporation. Resolve Related FCPA Matters Involving Bribes Paid to Foreign Government Officials (Aug. 6, 2010), available at <http://www.justice.gov/opa/pr/2010/August/10-crm-903.html>; Press Release, U.S. Sec. & Exch. Common, Litig. Release No: 21618: SEC Files Anti-Bribery Charges Against Two Global Tobacco Companies (Aug. 6, 2010), available at <http://www.sec.gov/litigation/litreleases/2010/lr21618.htm>.

11. Press Release, U.S. Dep't of Justice, New York Merchant Bank Pleads Guilty to FCPA Violation; Bank Chairman Pleads Guilty to Failing to Disclose Control of Foreign Bank Account (Aug. 6, 2010), available at <http://www.justice.gov/opa/pr/2010/August/10-crm-909.html>; Oil Dealer Giffen Avoids Prison in Overtime Bribe Case, BLOOMBERG BUSINESSWEEK, Nov. 19, 2010, <http://www.businessweek.com/news/2010-11-19/oil-dealer-giffen-avoids-prison-in-onetime-bribe-case.html>.

10. *ABB Ltd.*¹²

On September 29, 2010, ABB Ltd. settled FCPA charges with the DOJ and SEC. ABB Ltd.'s U.S.-based subsidiary, ABB Inc., pled guilty to FCPA charges related to bribes paid to officials at Mexican state-owned electric utilities and paid a \$17.1 million criminal fine. ABB Ltd. entered into a DPA with the DOJ and agreed to the charging of its Jordan-based subsidiary, ABB Near East Trading Ltd., with wire fraud and FCPA books and records charges in connection with payments to the former Iraqi government under the U.N. Oil-for-Food Program. ABB Ltd. paid a criminal fine of \$1.9 million. ABB Ltd. also settled with the SEC, agreeing to pay \$39 million in penalties and disgorgement.

11. *Lindsey Manufacturing Company*¹³

On October 21, 2010, a grand jury indicted Lindsey Manufacturing Company (Lindsey Manufacturing), a California-based manufacturer of emergency restoration systems for electric utilities, along with two executives, on conspiracy and substantive FCPA charges. The directors of Lindsey Manufacturing's sales representative in Mexico, Grupo Internacional de Asesores S.A., have also been indicted.

12. *Panalpina-Related Cases*¹⁴

On November 4, 2010, Panalpina World Transport (Holding) Ltd. (Panalpina), a global freight forwarding and logistics services firm based in Basel, Switzerland, and multiple oil-and-gas services companies and subsidiaries, resolved FCPA investigations for a combined total of \$156 million in criminal penalties and \$80 million in civil disgorgement and penalties.

12. Press Release, U.S. Sec. & Exch. Common, Litig. Release No: 21673: SEC Charges ABB for Bribery Schemes in Mexico & Iraq—ABB to Pay \$39 Million in Disgorgement and Civil Penalties (Sept. 29, 2010), available at <http://www.sec.gov/litigation/litreleases/2010/lr21673.htm>; Press Release, U.S. Dep't of Justice, ABB Ltd. and Two Subsidiaries Resolve Foreign Corrupt Practices Act Investigation and Will Pay \$19 Million in Criminal Penalties (Sept. 29, 2010), available at <http://www.justice.gov/opa/pr/2010/September/10-crm-1096.html>.

13. Press Release, U.S. Dep't of Justice, California Company and Two Executives Indicted for Their Alleged Participation in Scheme to Bribe Officials at State-owned Electrical Utility in Mexico (Oct. 21, 2010), available at <http://www.justice.gov/opa/pr/2010/October/10-crm-1185.html>.

14. Press Release, U.S. Dep't of Justice, Oil Services Company and a Freight Forwarding Company Agree to Resolve Foreign Bribery Investigations and to Pay More Than \$156 Million in Criminal Penalties (Nov. 4, 2010), available at <http://www.justice.gov/opa/pr/2010/November/10-crm-1251.html>; Press Release, U.S. Sec. & Exch. Common, Litig. Release No: 21727: SEC Charges Panalpina with Violating the Foreign Corrupt Practices Act (Nov. 4, 2010), available at <http://www.sec.gov/litigation/litreleases/2010/lr21727.htm>; Press Release, U.S. Sec. & Exch. Common, Litig. Release No: 21725: SEC Charges Transocean for Bribery Scheme in Nigeria—Transocean to Pay Disgorgement and Civil Penalties of \$7,265,080 (Nov. 4, 2010), available at <http://www.sec.gov/litigation/litreleases/2010/lr21725.htm>; Press Release, U.S. Sec. & Exch. Common, Litig. Release No: 21724: SEC Charges GlobalSantaFe Corp. with Bribery and Other FCPA Violations (Nov. 4, 2010), available at <http://www.sec.gov/litigation/litreleases/2010/lr21724.htm>; Press Release, U.S. Sec. & Exch. Common, Litig. Release No: 21729: SEC Charges Tidewater Inc. (Nov. 4, 2010), available at <http://www.sec.gov/litigation/litreleases/2010/lr21729.htm>; Press Release, U.S. Sec. & Exch. Common, Litig. Release No: 21726: SEC Charges Pride International with Violating the Foreign Corrupt Practices Act (Nov. 4, 2010), available at <http://www.sec.gov/litigation/litreleases/2010/lr21726.htm>; Press Release, U.S. Sec. & Exch. Common, Litig. Release No: 21728: SEC Charges Noble with FCPA Violations (Nov. 4, 2010), available at <http://www.sec.gov/litigation/litreleases/2010/lr21728.htm>.

a. Panalpina and its U.S.-based subsidiary, Panalpina Inc., admitted that between 2002 and 2007, the companies paid thousands of bribes totaling at least \$27 million to officials in at least seven countries, including Angola, Azerbaijan, Brazil, Kazakhstan, Nigeria, Russia, and Turkmenistan. Panalpina entered into a DPA with the DOJ, while Panalpina Inc. agreed to plead guilty. The agreements impose a \$70.56 million criminal penalty. In a related SEC civil action, Panalpina Inc. agreed to pay \$11.3 million in disgorgement.

b. Royal Dutch Shell plc and its Nigerian subsidiary, Shell Nigeria Exploration and Production Company Ltd. (SNEPCO), entered into a DPA over allegations that SNEPCO knew that some or all of the money it paid to subcontractors would be paid as bribes to Nigerian customs officials by Panalpina. SNEPCO agreed to pay a \$30 million criminal penalty. In a related SEC civil action, Royal Dutch Shell and a U.S. subsidiary, Shell International Exploration and Production Inc., agreed to pay \$18.1 million in disgorgement.

c. Transocean Ltd. (Transocean), a Switzerland-based offshore oil drilling services and equipment provider, and GlobalSantaFe Corporation, which merged with Transocean in 2007, also resolved FCPA charges related to payments made on their behalf by Panalpina. Transocean Inc., a Caymans Island subsidiary of Transocean Ltd., entered into a DPA with the DOJ, agreed to pay a \$13.44 million criminal penalty, and agreed to pay \$7.2 million in disgorgement to resolve SEC charges. GlobalSantaFe Corporation agreed to pay \$2.69 million in disgorgement.

d. Tidewater Marine International Inc. (Tidewater Marine), a Cayman Island subsidiary of global offshore service and supply vessels operator Tidewater Inc., entered into a DPA with the DOJ and agreed to pay a \$7.35 million criminal penalty. The charges related to bribes paid by Tidewater Marine to Azeri tax inspectors, and bribes paid through Panalpina to Nigerian customs officials. Tidewater Inc. agreed to pay \$8.3 million in disgorgement and civil penalties to resolve SEC charges.

e. Pride International Inc. (Pride) entered into a DPA with the DOJ and Pride's wholly-owned French subsidiary, Pride Forasol S.A.S. (Pride Forasol) and agreed to plead guilty to FCPA charges. The charges against Pride relate to bribes paid to officials in Venezuela, India, and Mexico, allegedly to extend drilling contracts in Venezuela, to resolve a customs dispute in India, and to avoid customs duties and penalties in Mexico. The agreements require the payment of a \$32.625 million criminal penalty. In a related SEC civil action, which included payments to Nigerian customs officials through Panalpina, Pride agreed to pay \$23.5 million in disgorgement.

f. Noble Corporation entered into a DPA with the DOJ over allegations that the company paid bribes to Nigerian customs officials through Panalpina and falsely recorded the payments in its records. Noble Corporation agreed to pay a \$2.59 million criminal penalty and \$5.5 million in disgorgement in a related SEC civil action.

13. *RAE Systems Inc.*¹⁵

On December 10, 2010, without admitting or denying the SEC's charges, San Jose-based RAE Systems Inc. (RAE) consented to the entry of a court order permanently en-

15. Press Release, U.S. Sec. & Exch. Common, Litig. Release No: 21770: SEC Files Settled FCPA Case Against RAE Systems Inc. (Dec. 10, 2010), *available at* <http://www.sec.gov/litigation/litreleases/2010/lr21770.htm>.

joining the company from future violations of the FCPA's anti-bribery, books and records and internal controls provisions. The company—which is a global provider of rapidly-deployable, multi-sensor chemical and radiation detection systems—agreed to pay \$1,147,800 in disgorgement and \$109,212 in prejudgment interest, and to comply with certain undertakings regarding its compliance program. Sales personnel at two of RAE's joint ventures in China allegedly made \$400,000 in improper payments to Chinese officials from 2004 through 2008 in order to secure contracts worth \$3 million in revenue.

14. *Alcatel-Lucent S.A.*¹⁶

On December 27, 2010, Alcatel-Lucent, S.A. (Alcatel), a Paris-based global provider of telecommunications equipment and services, agreed to pay over \$137 million in penalties to the DOJ and SEC to resolve charges that the company and its subsidiaries bribed government officials in Costa Rica, Honduras, Malaysia and Taiwan from 2001 to 2006 in order to secure telecommunications contracts. The conduct at issue involved Alcatel S.A.'s worldwide sales practices prior to its merger with Lucent Technologies, Inc. in November 2006. The DOJ filed criminal information in U.S. District Court for the Southern District of Florida charging Alcatel with one count of violating the FCPA's internal control provisions and one count of violating the FCPA's books and records provisions. The DOJ and Alcatel entered into a three-year deferred prosecution agreement under which Alcatel agreed to retain an independent compliance monitor (who is to be a French national). The DOJ also filed criminal information charging three subsidiaries—Alcatel-Lucent France S.A. (formerly known as Alcatel CIT S.A.), Alcatel-Lucent Trade International A.G. (formerly known as Alcatel Standard A.G.) and Alcatel Centroamerica S.A. (formerly known as Alcatel de Costa Rica S.A.)—with conspiring to violate the FCPA's anti-bribery, books and records and internal controls provisions. Each of the three subsidiaries agreed to plead guilty to the charges. Alcatel and the three subsidiaries agreed to pay a combined \$92 million criminal penalty. The SEC filed a settled civil enforcement action to resolve charges that Alcatel violated the FCPA's anti-bribery, books and records, and internal controls provisions. Alcatel agreed to pay \$45,372,000 in disgorgement and prejudgment interest.

B. OIL FOR FOOD

The DOJ and SEC continued to bring cases against companies that paid kickbacks to the former Iraqi government to secure business under the U.N.'s Oil for Food Program.¹⁷ In addition to Innospec, Inc., Daimler AG, and ABB Ltd., all of which resolved Oil for

16. Press Release, U.S. Dep't of Justice, Alcatel-Lucent S.A. and Three Subsidiaries Agree to Pay \$92 Million to Resolve Foreign Corrupt Practices Act Investigation (Nov. 4, 2010), *available at* <http://www.justice.gov/opa/pr/2010/December/10-crm-1481.html>; Press Release, U.S. Sec. & Exch. Common, Litig. Release No. 21795: SEC Files Settled Foreign Corrupt Practices Act Charges Against Alcatel-Lucent, S.A. With Total Disgorgement and Criminal Fines of Over \$137 Million, (Dec. 27, 2010), *available at* <http://www.sec.gov/litigation/litreleases/2010/lr21795.htm>.

17. Press Release, U.S. Sec. & Exch. Common, Litig. Release No. 21601: SEC Files Settled Books and Records and Internal Controls Charges Against General Electric Company and Two Subsidiaries for Improper Payments to Iraqi Ministries Under the U.N. Oil for Food Program; GE Agrees to Pay Over \$23.4 Million in Disgorgement, Interest, & Penalties (July 27, 2010), *available at* <http://www.sec.gov/litigation/litreleases/2010/lr21602.htm>.

Food related charges with other FCPA charges (discussed above), and Innospec agent Ousama M. Naaman (discussed below), General Electric Company (GE) similarly resolved Oil for Food charges. On July 27, 2010, the SEC charged GE and two subsidiaries—formerly known as Ionics, Inc. and Amersham plc—with paying illegal kickbacks to the Iraqi Ministry of Health and Ministry of Oil in connection with sales of humanitarian goods under the program. GE, Ionics, and Amersham consented to the entry of a final judgment and GE was ordered to pay \$22.5 million in disgorgement and a \$1 million civil penalty.¹⁸

C. INDIVIDUAL PROSECUTIONS

U.S. enforcement authorities brought more and bigger cases, implementing strategies to target culpable individuals involved in bribery and to conduct industry-wide investigations and prosecutions. In addition to imposing criminal penalties and disgorgement of profits on companies found guilty of violating its terms, the FCPA provides that those individuals, both employees and agents, who are responsible for the bribes, may be separately prosecuted.¹⁹ Consequently, a number of the individual prosecutions discussed in this section were of officials in companies whose criminal penalties were summarized in the previous section.

1. *FCPA Sting Operation (“Shot Show”) Indictments*²⁰

On January 18, 2010, twenty-two executives and employees of companies in the military and law enforcement products industries were arrested in Las Vegas and Miami in connection with alleged violations of the FCPA. The investigation is reportedly “the most expansive use ever of undercover techniques to uncover FCPA violations.”²¹ In connection with the arrests, multiple search warrants were executed in the United States and the United Kingdom. The individuals allegedly agreed to pay a twenty percent commission to a sales agent they believed to be connected to the Minister of Defense in an African country to secure a \$15 million deal to supply the country’s Presidential Guard. The sales agent was an undercover Federal Bureau of Investigation (FBI) agent and the Minister’s demands were part of an FBI sting operation. The defendants were charged with FCPA

18. Press Release, U.S. Dep’t of Justice, Innospec Agent Pleads Guilty to Bribing Iraqi Officials and Paying Kickbacks Under the Oil for Food Program (June 25, 2010), available at <http://www.justice.gov/opa/pr/2010/June/10-crm-747.html>.

19. 15 U.S.C.A. §§ 78dd-1, 78dd-2. (2000) “The FCPA potentially applies to *any* individual, firm, officer, director, employee, or agent of a firm & any stockholder acting on behalf of a firm.” Criminal Resource Manual 10108, U.S. Attorney’s Office, available at http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm01018.htm. “In 1977 the Foreign Corrupt Practices Act became the world’s first law to criminalize the bribery of foreign officials by both individuals & corporate actors.” Daniel M. Firger, *Transparency & the Natural Resource Curse: Examining the New Extraterritorial Information Forcing Rules in the Dodd-Frank Wall Street Reform Act of 2010*, 41 GEO. J. INT’L L. 1043, 1074 (2010).

20. Press Release, U.S. Dep’t of Justice, Twenty-Two Executives & Employees of Military and Law Enforcement Products Companies Charged in Foreign Bribery Scheme (Jan. 19, 2010), available at <http://www.justice.gov/opa/pr/2010/January/10-crm-048.html>.

21. See Lanny A. Breuer, Assistant Attorney Gen., Remarks at the Am.n Bar Ass’n Nat’l Inst. on White Collar Crime, (Feb. 25, 2010), <http://www.pnnewsire.com/news-releases/remarks-by-lanny-a-breuer-assistant-attorney-general-for-the-criminal-division-at-the-american-bar-association-national-institute-on-white-collar-crime-85375107.html>.

and money laundering offenses. The sting operation represents the first large-scale use of undercover techniques in the FCPA enforcement context. All but one defendant has entered a plea of not guilty.

2. *Juthamas Siriwan and Jittisopa Siriwan*²²

On January 19, 2010, an indictment against Juthamas Siriwan, former Governor of the Tourism Authority of Thailand, and her daughter, Jittisopa Siriwan, was unsealed, charging the two with money laundering offenses. The Siriwans are the alleged bribe recipients connected to the investigation of Gerald and Patricia Green (discussed below).

3. *Richard T. Bistrong*²³

On January 21, 2010, Richard T. Bistrong, the former Vice President of International Sales for Armor Holdings Inc., a Florida-based armor systems manufacturer that was acquired by BAE Systems in 2007, was charged with conspiracy to violate the FCPA's anti-bribery and books and records provisions and with conspiracy to export controlled goods without a license, in connection with the company's business development efforts in various countries. Bistrong is reportedly "Individual 1" in the FCPA Sting indictments discussed above. He pled guilty on September 16, 2010.²⁴

4. *Jim Bob Brown and Jason Edward Steph*²⁵

On January 28, 2010, Jim Bob Brown, a former executive at Willbros International, Inc., was sentenced to twelve months and one day in prison. Brown had pled guilty in 2006. Also on January 28, 2010, Jason Edward Steph, another former executive at Willbros International, Inc., was sentenced to fifteen months in prison. Steph had pled guilty in 2007.

5. *Charles Paul Edward Jumet and John W. Warwick*²⁶

On April 19, 2010, Charles Paul Edward Jumet, former Vice President and later President of Virginia-based Ports Engineering Consultants Corporation (PECC), was sentenced to eighty-seven months in prison and was ordered to pay a fine of \$15,000, in connection with improper payments made to former Panamanian officials that secured maritime contracts for the company. Jumet's sentence is the longest ever imposed for FCPA violations. Jumet pled guilty to FCPA and false statement charges in November

22. Indictment at 1, *United States v. Siriwan*, No. 09-00081 (C.D. Ca. Jan. 28, 2009).

23. Complaint at 5-10, *United States v. Bistrong* Criminal No. 10-00021 (D. D.C. Jan. 21, 2010).

24. Richard L. Cassin, *Key Witness in Shot-Show Case Pleads Guilty*, THE FCPA BLOG (Sept. 16, 2010, 5:54 PM), <http://www.fcpablog.com/blog/2010/9/16/key-witness-in-shot-show-case-pleads-guilty.html>.

25. Press Release, U.S. Dep't of Justice, Former Willbros International Executives Sentenced to Prison for Their Roles in \$6 Million Foreign Bribery Scheme (Jan. 28, 2010), *available at* <http://www.justice.gov/opa/pr/2010/January/10-crm-102.html>.

26. Press Release, U.S. Dep't of Justice, Virginia Resident Sentenced to 87 Months in Prison for Bribing Foreign Government Officials (Apr. 19, 2010) *available at* <http://www.justice.gov/opa/pr/2010/April/10-crm-442.html>; Press Release, U.S. Dep't of Justice, Virginia Resident Sentenced to 37 Months in Prison for Bribing Foreign Government Officials (June 25, 2010), *available at* <http://www.justice.gov/opa/pr/2010/June/10-crm-750.html>.

2009. On June 25, 2010, John W. Warwick, former President of PECC, was sentenced to thirty-seven months in prison for conspiring to violate the FCPA.

6. *Jean Fourcand, Robert Antoine, and Juan Diaz*²⁷

On February 19, 2010, Jean Fourcand, President and Director of Miami-based Fourcand Enterprises Inc., pled guilty to money laundering in connection with bribes paid to former officials at Haiti's state-owned telecommunications company, Telecommunications D' Haiti, to secure business advantages for three Miami-based telecommunications companies. On March 12, 2010, Robert Antoine, former Director of International Affairs at Telecommunications D' Haiti, pled guilty to conspiracy to commit money laundering. On July 30, 2010, Juan Diaz, President of J.D. Locator Services, a Miami-based intermediary, was sentenced to fifty-seven months in prison for FCPA and money laundering violations.

7. *Nam Quoc Nguyen, An Quoc Nguyen, Kim Anh Nguyen, and Joseph T. Lukas*²⁸

On March 16, 2010, three employees of Nexus Technologies, Inc. pled guilty to charges in connection with the bribery and received varying prison or probation sentences. Joseph T. Lukas, a former partner in Nexus who pled guilty in June 2009, received a two-year prison sentence.

8. *Gerald Green and Patricia Green*²⁹

On August 12, 2010, Gerald and Patricia Green, husband-and-wife Hollywood film producers, were each sentenced to six months in prison followed by six months of home confinement and were ordered to jointly pay \$250,000 in restitution. They were convicted of FCPA conspiracy and substantive violations as well as money laundering violations in connection with a bribery scheme to secure Thai government contracts, including valuable contracts to manage and operate the country's annual film festival. The U.S. government, which first requested twenty-year prison sentences, is appealing the sentences.

27. Press Release, U.S. Dep't of Justice, Florida Businessman Pleads Guilty to Money Laundering in Foreign Bribery Scheme (Feb. 19, 2010), *available at* <http://www.justice.gov/opa/pr/2010/February/10-crm-167.html>; Press Release, U.S. Dep't of Justice, Former Haitian Government Official Pleads Guilty to Conspiracy to Commit Money Laundering in Foreign Bribery Scheme (Mar. 12, 2010), *available at* <http://www.justice.gov/opa/pr/2010/March/10-crm-260.html>; Press Release, U.S. Dep't of Justice, Florida Businessman Sentenced to 57 Months in Prison for Role in Foreign Bribery Scheme (July 30, 2010), *available at* <http://www.justice.gov/opa/pr/2010/July/10-crm-883.html>.

28. Press Release, U.S. Dep't of Justice, Former Nexus Technologies Inc. Employees and Partner Sentenced for Roles in Foreign Bribery Scheme Involving Vietnamese Officials (Sept. 16, 2010), *available at* <http://www.justice.gov/opa/pr/2010/September/10-crm-1032.html>; Press Release, U.S. Dep't of Justice, Nexus Technologies Inc. & Three Employees Plead Guilty to Paying Bribes to Vietnamese Officials (Mar. 16, 2010), *available at* <http://www.justice.gov/opa/pr/2010/March/10-crm-270.html>.

29. Notice of Appeal at 1-2, *United States v. Green*, No. 08-00059-GW (C.D. Ca. Sept. 10, 2010).

9. *Ousama M. Naaman and David P. Turner*³⁰

On June 25, 2010, Ousama M. Naaman, a Lebanese-Canadian citizen and Innospec Inc.'s agent in Iraq during the U.N. Oil for Food Program (discussed above), pled guilty to conspiracy and substantive FCPA charges after being extradited from Germany. On August 5, 2010, Naaman and David P. Turner, a former Business Director of Innospec Inc., settled civil charges with the SEC, with Naaman agreeing to pay disgorgement of \$877,106 and a \$438,038 civil penalty, and Turner agreeing to disgorge \$40,000.

10. *Bobby J. Elkin, Jr., Baxter J. Myers, Thomas G. Reynolds, and Tommy L. Williams*³¹

On April 28, 2010, the SEC filed a civil action against four former executives and senior employees of Dimon, Inc. (now Alliance One International, Inc.) for FCPA violations in connection with tobacco purchases and sales in Kyrgyzstan and Thailand (discussed above). The four defendants settled the charges, with Myers and Reynolds agreeing to pay civil penalties of \$40,000 each. On August 3, 2010, Elkin pled guilty to conspiracy to violate the FCPA; on October 21, 2010, he was sentenced to three years of probation and a \$5,000 fine.

11. *Enrique Faustino Aguilar Noriega and Angela Maria Gomez Aguilar*³²

On September 15, 2010, Enrique Faustino Aguilar Noriega and Angela Maria Gomez Aguilar, directors of Grupo Internacional de Asesores S.A., a sales representative in Mexico for Lindsey Manufacturing Company (discussed above), were indicted on FCPA and money laundering charges in connection with bribery. Enrique Aguilar remains a fugitive; Angela Aguilar was arrested on August 10, 2010.

12. *Keith E. Lindsey and Steve K. Lee*³³

On October 21, 2010, Keith E. Lindsey and Steve K. Lee, executives at Lindsay Manufacturing Company (discussed above), were indicted for FCPA charges in connection with bribery.

30. U.S. Dep't of Justice, *supra* note 16; Press Release, U.S. Sec. & Exch. Comm'n, Litig. Release No: 21615: SEC Files Settled Charges Against David P. Turner and Ousama M. Naaman for Engaging in Bribery (Aug. 5, 2010), *available at* <http://www.sec.gov/litigation/litreleases/2010/lr21615.htm>.

31. Press Release, U.S. Sec. & Exch. Comm'n, Litig. Release No: 21509: SEC Files Anti-Bribery Charges Against Former Finance Executives and Senior Employees of Global Tobacco Company (Apr. 28, 2010), *available at* <http://www.sec.gov/litigation/litreleases/2010/lr21509.htm>; Press Release, U.S. Dep't of Justice, North Carolina Businessman Pleads Guilty to Role in Foreign Bribery Scheme (Aug. 4, 2010), *available at* <http://www.justice.gov/opa/pr/2010/August/10-crm-894.html>.

32. Press Release, U.S. Dep't of Justice, Two Intermediaries Indicted for Their Alleged Participation in Scheme To Bribe Officials at State-owned Electrical Utility in Mexico (Sept. 15, 2010), *available at* <http://www.justice.gov/opa/pr/2010/September/10-crm-1034.html> [hereinafter Two Intermediaries]; Press Release, U.S. Dep't of Justice, California Company and Two Executives Indicted for Their Alleged Participation in Scheme to Bribe Officials at State-owned Electrical Utility in Mexico (Oct. 21, 2010), *available at* <http://www.justice.gov/opa/pr/2010/October/10-crm-1185.html> [hereinafter California Company].

33. Two Intermediaries, *supra* note 32; California Company, *supra* note 32.

13. *Joe Summers and Bobby Benton*³⁴

On August 11, and August 9, 2010, respectively, Joe Summers, former Venezuela Country Manager, and Bobby Benton, former Western Hemisphere Vice President for Pride International, Inc., settled civil FCPA charges with the SEC. Summers agreed to a pay a \$25,000 civil penalty and Benton agreed to pay a \$40,000 civil penalty.

14. *James H. Giffen*³⁵

On August 6, 2010, James H. Giffen pled guilty to one count of failing to disclose information on his income tax return, in connection with the Mercator Corporation FCPA investigation (discussed above). For seven years, Giffen fought charges that he bribed government officials in Kazakhstan in violation of the FCPA, claiming that the U.S. government knew about his classified work in the country. At his sentencing on November 19, 2010, Giffen received no jail time or probation.

15. *Wojciech Chodan*³⁶

On December 6, 2010, Wojciech Chodan, the former commercial vice president and consultant to M.W. Kellogg Limited, KBR's subsidiary in the United Kingdom, pleaded guilty in U.S. District Court in Houston to one count of conspiracy to violate the FCPA in connection with his role in the TSKJ consortium's bribery scheme in Nigeria. Chodan was extradited to the United States on December 3rd, having been initially indicted on February 17, 2009.

16. *Jorge Granados and Manuel Caceres*³⁷

On December 20, 2010, Jorge Granados, the former Chief Executive Officer at Latin Node, Inc. (Latin Node), and Manuel Caceres, the former Vice President of Business Development, were arrested and indicted for allegedly paying more than \$500,000 in bribes to government officials in Honduras. The 19-count indictment, which was initially returned by a federal grand jury in Miami on December 14, 2010, charged the two men with criminal violations of the FCPA and money laundering. On April 7, 2009, Latin Node, a Miami-based telecommunications company, pleaded guilty to one-count charging

34. Press Release, U.S. Sec. & Exch. Comm'n, Litig. Release No: 21617: SEC Charges Former Employee of Pride International with Violating the Foreign Corrupt Practices Act (Aug. 5, 2010), available at <http://www.sec.gov/litigation/litreleases/2010/lr21617.htm>; SEC News Digest No. 2009-238 (Dec. 14, 2009), available at <http://www.sec.gov/news/digest/2009/dig121409.htm>.

35. Press Release, U.S. Dep't of Justice, New York Merchant Bank Pleads Guilty to FCPA Violation; Bank Chairman Pleads Guilty to Failing to Disclose Control of Foreign Bank Account (Aug. 6, 2010), available at <http://www.justice.gov/opa/pr/2010/August/10-crm-909.html>; *Oil Dealer Giffen Avoids Prison in Onetime Bribe Case*, BLOOMBERG BUSINESSWEEK, Nov. 19, 2010, <http://www.businessweek.com/news/2010-11-19/oil-dealer-giffen-avoids-prison-in-onetime-bribe-case.html>.

36. Press Release, U.S. Dep't of Justice, UK Citizen Pleads Guilty to Conspiring to Bribe Nigerian Government Officials to Obtain Lucrative Contracts as Part of KBR Joint Venture Scheme (Dec. 6, 2010), available at <http://www.justice.gov/opa/pr/2010/December/10-crm-1391.html>.

37. Press Release, U.S. Dep't of Justice, Former Senior Executives of Latin Node Inc. Charged with Bribing Honduran Officials and Money Laundering (Dec. 20, 2010), available at <http://www.justice.gov/opa/pr/2010/December/10-crm-1463.html>.

the company with violating the FCPA in connection with its business activities in Honduras and Yemen, and agreed to pay a \$2 million fine.

D. OTHER U.S. DEVELOPMENTS

1. *Opinion Procedure Releases 10-01, 10-02, and 10-03*³⁸

The DOJ issued three FCPA Opinion Procedure Releases in 2010, providing guidance on the issues of hiring a foreign official in connection with performance under a U.S. government contract, providing a grant to a local microfinance institution on whose board a sitting government official serves, and retaining a consultant that also lobbies on behalf of a foreign government.

2. *Dodd-Frank Act Whistleblower Provisions*³⁹

The Dodd-Frank Wall Street Reform and Consumer Protection Act, which was signed into law on July 21, 2010, includes sweeping changes to federal securities laws. Of significance to corporate compliance programs, the Act's whistleblower "bounty" provisions entitle whistleblowers that provide "original information" to the SEC ten to thirty percent of the monetary sanctions recovered following a successful enforcement action that results in sanctions of over \$1 million. The whistleblower provisions take effect in April 2011.

II. Anti-Corruption Enforcement Activity Abroad

A. CASES

1. *Australia*

In October 2010, Australian Federal Police, along with the U.K.'s SFO and police in Spain, arrested employees and agents of Securrency International Pty. Ltd. (Securrency) for their role in corruptly securing contracts in Africa, Asia, and South America for Securrency, a company jointly owned by British firm Innovia Films and the Reserve Bank of Australia. An independent audit conducted on behalf of Securrency's Board found that management had failed to implement appropriate policies and procedures related to foreign agents and that certain payments to agents lacked documentation.⁴⁰

38. Opinion Procedure Release 10-01, U.S. Dep't of Justice No. 10-01 (Apr. 19, 2010), available at <http://www.justice.gov/criminal/fraud/fcpa/opinion/2010/1001.pdf>; Opinion Procedure Release 10-02, U.S. Dep't of Justice No. 10-01 (July 16, 2010), available at <http://www.justice.gov/criminal/fraud/fcpa/opinion/2010/1002.pdf>; Opinion Procedure Release 10-03, U.S. Dep't of Justice No. 10-01 (Sept. 1, 2010), available at <http://www.justice.gov/criminal/fraud/fcpa/opinion/2010/1003.pdf>.

39. H.R. 4173—111th Congress: Dodd-Frank Wall Street Reform and Consumer Protection Act (2010), available at <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>.

40. Samuel Rubinfeld, *Arrests Made in International Raid on Australian Banknote Company*, WALL ST. J. BLOGS, Oct. 6, 2010, 10:38 PM, <http://blogs.wsj.com/corruption-currents/2010/10/06/arrests-made-in-international-raid-on-australian-banknote-company/>.

2. *China*

Based on a 2009 investigation into allegations that employees of Australian mining company Rio Tinto had paid bribes to executives of sixteen of China's major steel mills, four employees of the company based in China were convicted by the Intermediate People's Court in Shanghai on March 29, 2010 for accepting millions of dollars in bribes from Chinese officials and for illegally obtaining secret information from the state-run steel companies. China-born Stern Hu, who headed Rio Tinto's iron ore operations in China, was sentenced to ten years in jail. "Three other executives, all Chinese nationals, were jailed for seven to fourteen years on bribery and secrets charges."⁴¹

3. *Germany*

In April 2010, the former head of Siemens' telecommunications division, Michael Kutschereuter, was found guilty of abetting bribery and breach of trust. He was sentenced to two years probation and fined €160,000. Siemens' head of accounting for the same division, Hans Werner Hartmann, was also given eighteen months probation and fined €40,000.⁴²

4. *Nigeria*

a. In an agreement with Nigeria's office of Attorney-General of the Federation (SAN), construction conglomerate Julius Berger Nigeria Plc, the local unit of Bilfinger Berger AG of Germany, pled guilty to being an accessory and conduit for distributing bribes to government officials and agreed to pay the Nigerian government \$29.5 million in fines. The conduct at issue related to the charges previously resolved by Siemens and Halliburton (now KBR).⁴³

b. The Italian oil services group Saipem agreed to pay a penalty of \$30 million to settle a Nigerian investigation into a bribery case involving the construction of gas facilities by an international consortium which included U.S. company KBR Inc., France's Technip, and Japan's JGC. The deal with Nigerian authorities resolves a probe into the activities of Saipem unit Snamprogetti Netherlands, as part of the TSKJ consortium, in connection with contracts to build liquid natural gas facilities on Bonny Island, Nigeria. The Nigerian Federal government agreed to dismiss all charges against Snamprogetti NL and drop any civil claims and criminal charges in any other jurisdictions. Saipem will also pay \$2.5 million as reimbursement of legal costs and expenses.⁴⁴

41. Lucy Hornby & Rujun Shen, *China Jails Rio Tinto Staff for 7-14 Years*, REUTERS, Mar. 29, 2010, <http://www.reuters.com/article/idUSTRE62SOR020100329?pageNumber=1>.

42. *No Jail For Convicted Siemens Execs*, THE FCPA BLOG, Apr. 21, 2010, 8:15 AM), <http://www.fcpcbog.com/blog/2010/4/21/no-jail-for-convicted-siemens-exec.html>.

43. Tobi Soniyi, *Nigeria: Bribe Scandal-Julius Berger to Pay FG U.S.\$29.5 Million Fine*, THIS DAY, Sept. 27, 2010, <http://allafrica.com/stories/201009271069.html>.

44. Danilo Masoni, *Saipem Settles Nigeria Probe for \$30 mln*, REUTERS AFRICA, Dec. 20, 2010, <http://af.reuters.com/article/energyOilNews/idAFLDE6BJ1N020101220>.

5. Singapore

The former head of AEM-Everett Holdings Ltd. was fined \$153,000 for corruption charges, but not jailed, after disclosing that he and other AEM-Evertech executives bribed employees of companies including Seagate Technology Plc., Infineon Technologies AG, and STMicroelectronics NV.⁴⁵

6. United Kingdom

a. Along with its settlement with U.S. authorities (discussed above), in February 2010, BAE reached an agreement with the Crown Court, agreeing to pay £30 million in fines to settle a long-running bribery investigation.⁴⁶ Under the terms of the SFO settlement, BAE pled guilty to failing to maintain accurate books and records regarding commission payments to an agent in Tanzania.

b. In April 2010, Robert John Dougall, former Director of Marketing at Deputy International Limited, a subsidiary of Johnson & Johnson, pled guilty in connection with £4.5 million in corrupt payments made to medical professionals in Greece via Deputy's Greek distributor. Dougall was sentenced to a twelve-month prison term that was suspended due to his cooperation with the prosecution.⁴⁷

c. Julian Messene, the CEO of London-based insurance brokerage PWS, was sentenced in October 2010 to twenty-one months in prison, was fined £100,000, and was disqualified from acting as a company director for a five-year period for paying \$1.2 million in bribes to Costa Rican officials to retain contracts.⁴⁸

d. In December 2010, the Weir Group plc, a Glasgow-based engineering firm, pled guilty in the High Court in Edinburgh to sanctions violations related to the United Nations Oil-for-Food program. The company paid £3 million in kickbacks through a Swiss bank account to an Iraqi agent between 2000 and 2002 from funds in the UN Oil-for-Food program. Weir was fined £3 million and ordered to repay £13,945,962, representing the gross profits, kickbacks and agent fees. The case represents the largest confiscation order to date in the United Kingdom and the first use in Scotland of confiscation powers under the Proceeds of Crime Act 2002 against a large corporation for conduct overseas.⁴⁹

45. Andrea Tan, *Singapore Whistleblower Fined Rather Than Jailed After Disclosing Bribery*, BLOOMBERG, Oct. 11, 2010, <http://www.bloomberg.com/news/print/2010-10-11/singapore-whistleblower-fined-rather-than-jailed-after-disclosing-bribery.html>.

46. Rhys Jones, *BAE to be Handed Tanzania Fine on Tuesday*, REUTERS, Dec. 20, 2010, <http://uk.reuters.com/article/idUKLDE6BJ1RV20101220>.

47. Frances Gibb, *Whistleblower Wins Appeal Against Jail Term in Greek Medical Corruption Case*, SUNDAY TIMES, May 13, 2010, <http://www.timesonline.co.uk/tol/news/uk/crime/article7125154.ece>.

48. Sean O'Hare, *London Businessman Pleads Guilty to Costa Rica Bribes*, TELEGRAPH, Oct. 27, 2010, <http://telegraph.co.uk/finance/personalfinance/offshorefinance/8088125/London-businessman-pleads-guilty-to-Costa-Rica-bribes.html>.

49. Press release, U.K. Crown Office and Procurator Fiscal Services, Dec. 15, 2010, <http://www.copfs.gov.uk/. . .10/12/Crown-Secures-record-£139-million-Weir-Group-convicted-paying-kickbacks-Iraq-contracts>.

7. *Vietnam*

A Vietnamese official was sentenced to life in prison for accepting a bribe of \$262,000 from Japanese company Pacific Consultants International (PCI). PCI executives pled guilty but did not serve any jail time. The judge in the Japanese trial suspended the \$860,000 fine imposed as well.⁵⁰

B. ANTI-CORRUPTION EFFORTS

1. *Australia*

In February 2010, Australia increased the maximum penalties for bribery of foreign public officials from \$330,000 to up to ten percent of a company's annual turnover.⁵¹

2. *Cambodia*

In March 2010, the Cambodian parliament passed an anti-graft law that has been fifteen years in the making. The new law contains a clause under which whistleblowers making corruption allegations can be jailed for up to six months if their claims cannot be proven. The law also requires government officials in Cambodia to make annual declarations disclosing their assets and imposes prison sentences of up to fifteen years for any official found guilty of accepting a bribe.⁵²

3. *China*

On July 11, 2010, China issued new anti-corruption rules that went into effect requiring all mid-level to senior Communist Party officials at state-owned businesses to report the investments, income, and assets for themselves and family members.⁵³

4. *Morocco*

Morocco issued forty-three new measures targeted at fighting corruption. Among the measures were mandatory asset declarations for top state officials and government protection for whistleblowers.⁵⁴

50. Huynh Ngoc Sy, *Vietnam Official Jailed for Life Over Japan Aid Scam: Court*, ASSOCIATED FOREIGN PRESS, Oct. 18, 2010, <http://www.asiaone.com/News/AsiaOne+News/Crime/Story/A1Story20101018-242889.html>.

51. OECD: Working Group on Bribery in International Business Transactions, *Steps Taken by State Parties to Implement and Enforce the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, at 5, Working Group Meeting on Bribery, Section: Australia (June 2010), available at <http://www.oecd.org/dataoecd/30/24/41753107.pdf>.

52. *Cambodian Officials Told to Declare Assets*, ASSOCIATED PRESS, Jan. 5, 2011, http://www.google.com/hostednews/afp/article/ALeqM5gXrx9tIRMGkqWuH2iTAbi_txaeQ?docId=CNG.850d68793570b46d02fb10bc04d9b6d.241.

53. *China Expands Anti-corruption Law*, BBC NEWS ASIA-PACIFIC, July 12, 2010, <http://www.bbc.co.uk/news/105050812?print=true>.

54. *Morocco Launches 2-year Anti-corruption Drive*, REUTERS, Oct. 22, 2010, <http://af.reuters.com/article/Print?articleId=AFLDE69L19V20101022>.

5. *Romania*

In August 2010, Romania's senate restored the powers of the European-mandated National Integrity Agency (ANI), giving the ANI the power to compel people running for public offices to disclose their assets. Incorrect statements of wealth can be punished criminally. In addition, civil courts in the country regained their power to seize politicians' assets in connection with corruption investigations.⁵⁵

6. *Spain*

In June 2010, Spain modified its criminal code to include a new law regarding the bribery of foreign public officials in international commercial transactions. The new law extends criminal liability to companies for the first time. Companies now can be criminally liable for crimes committed in their name or for their benefit by individuals acting on their behalf and for offenses where there have been inadequate controls over persons with authority to act on the company's behalf. The new law allows for consideration of any controls implemented by the company to prevent crimes from occurring. The revisions to the criminal code went into effect in December 2010.⁵⁶

7. *Taiwan*

In July 2010, the Taiwanese government announced the creation of a new agency, under the Ministry of Justice, that would be responsible for investigating government corruption.⁵⁷

8. *United Kingdom (U.K.)*

The U.K. Parliament passed the long-awaited U.K. Bribery Act, which significantly reformed the country's anti-bribery laws. The Act prohibits both the payment and receipt of bribes and applies to both public and private (commercial) bribery. In contrast to the FCPA, the U.K. Bribery Act contains neither a defense for reasonable and bona fide business expenditures directly related to government contract or promotional activities, nor an exception for facilitating payments.

The Act also contains a strict liability offense for commercial organizations that fail to prevent bribery. Companies can avoid liability under this provision by demonstrating that at the time of the bribery they had in place "adequate procedures" to prevent bribery. The Act does not define "adequate procedures," though the U.K. Ministry of Justice will publish general guidance on its meaning. The Act entered into force in October 2010.⁵⁸

55. Radu Marinus, *Romania Moves to Restore Powers of Anti-Graft Body*, REUTERS, Aug. 16, 2010, <http://www.timeslive.co.za/world/article606014.ece/Romania-moves-to-restore-powers-of-anti-graft-body>.

56. Velasco Lawyers Website, *A Business Law View on the New Criminal Law 2010 in Spain*, <http://www.velascolawyers.com/en/articles-and-publications/company-law/112-a-business-law-view-on-the-new-criminal-law-2010-in-spain.html> (last visited Jan. 11, 2011).

57. Michelle Lu, *President Ma Announces New Anti-corruption Agency*, TAIWAN TODAY, July 21, 2010, <http://www.taiwantoday.tw/ct.asp?xItem=111548&ctNode=413>.

58. United Kingdom of Great Britain, Ministry of Justice, *The Bribery Act 2010*, THE QUEEN'S PRINTER, Apr. 8, 2010, <http://www.legislation.gov.uk/ukpga/2010/23/contents>; United Kingdom of Great Britain, Ministry of Justice, *Consultation on Guidance About Commercial Organizations Preventing Bribery* (Section 9 of

III. International Anti-Corruption Treaties and Public International Organizations

A. INTERNATIONAL ANTI-CORRUPTION TREATIES

In February 2010, the Organization for Economic Co-operation and Development (OECD) Working Group on Bribery issued guidance for companies to ensure that their measures to prevent and detect foreign bribery are effective.⁵⁹ The *Good Practice Guidance on Internal Controls, Ethics, and Compliance* encourages companies to develop risk-based measures and to regularly monitor, reassess, and adapt them to changing circumstances and needs. They should also include a clear policy prohibiting foreign bribery that is supported by senior management and regularly communicated throughout the company, and specific provisions on: gifts, hospitality, entertainment, customer travel, political contributions, charitable donations, facilitation payments, and solicitation and extortion.

In June, for the first time, the OECD Working Group on Bribery issued Convention enforcement data. The data revealed that, at that time, thirteen countries had sanctioned 148 individuals and seventy-seven entities in criminal foreign bribery proceedings. Of those individuals, at least forty were sentenced to jail time. The Working Group will continue to update the data on an annual basis.⁶⁰

In 2010, the Working Group also conducted the first of its Phase 3 peer reviews that focus on, among other things, enforcement efforts and results.⁶¹ Finland was cited for needing to improve awareness of bribery laws and penalties among Finnish companies. The United States was commended for its enforcement efforts to date but was given recommendations to improve enforcement, including increasing transparency in the use of non-prosecution and deferred prosecution agreements, ensuring that limitation periods are not too short to fully investigate and prosecute violations, and consolidating open-source data on the application of the FCPA.⁶²

The Open-Ended Intergovernmental Working Group on Prevention, which was established by the Conference of States Parties to the United Nations Convention Against Corruption (UNCAC) in 2009 to advise and assist the Conference in implementing the Convention's preventive measures, held its first intercessional meeting in December 2010.⁶³

the Bribery Act 2010, Consultation Paper CP11/10), THE QUEEN'S PRINTER, Sept. 14, 2010, <http://www.justice.gov.uk/consultations/docs/bribery-act-guidance-consultation1.pdf>.

59. OECD, *Good Practice Guidance on Internal Controls, Ethics, and Compliance*, OECD COUNCIL, Feb. 18, 2010, available at <http://www.oecd.org/dataoecd/5/51/44884389.pdf>.

60. OECD, *Working Group on Bribery Data on Enforcement of the Anti-bribery Convention*, WORKING GROUP ON BRIBERY DATA (June 2010), available at <http://www.oecd.org/dataoecd/11/15/45450341.pdf>.

61. OECD, *Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Revised Recommendations on Combating Bribery in International Business Transactions*, at 61, United States: Phase 3 (Oct. 15, 2010), available at <http://www.oecd.org/dataoecd/10/49/46213841.pdf>.

62. *Id.*; United States: *OECD Recognizes Anti-Bribery Enforcement and Recommends Enhancements*, OECD (Oct. 20, 2010), available at http://www.oecd.org/document/33/0,3343,en_21571361_44315115_46223073_1_1_1_1,00.html.

63. United Nations Office on Drugs and Crime Website, *First Intersessional Meeting of the Open-ended Intergovernmental Working Group on Prevention*, <http://www.unodc.org/unodc/en/treaties/CAC/working-group4-meeting1-presentations.html> (last visited Jan. 11, 2011).

B. PUBLIC INTERNATIONAL ORGANIZATIONS

In April 2010, five multilateral development banks (MDBs)—the World Bank, the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Bank—agreed to cross-debar firms and individuals found to have engaged in wrongdoing in MDB-financed development projects. Under the agreement, a company debarred for more than one year by any bank will be debarred from conducting business with all five.⁶⁴ Mutual enforcement requires that certain criteria be satisfied, including that the sanctioning institution makes the initial debarment public. A participating bank may decide not to enforce a debarment decision if to do so would be inconsistent with its legal or other institutional considerations.

Also in April, the World Bank debarred Macmillan Publishers, Limited (Macmillan) for a period of six years based on the company's admission that a subsidiary paid bribes in an unsuccessful bid for a World Bank contract in Sudan. Macmillan self-reported the improper payments to the Bank and received a reduced debarment period. That period may be further reduced to three years if the company continues to cooperate with the Bank. As part of the settlement, Macmillan agreed to implement a compliance program and hire a monitor to ensure its effectiveness. Macmillan also confirmed that it has voluntarily disclosed the matter to the U.K.'s SFO.

For 2010 as a whole, the World Bank debarred thirty-five companies and individuals for engaging in fraud, corruption, collusion, coercion or obstructive practices. The Bank also cross-debarred twelve companies and individuals that had been debarred by the Asian Development Bank in accordance with the new cross-debarment agreement among the MDBs.⁶⁵

In June, the United Nation's Global Compact, the World Economic Forum's Partnering Against Corruption Initiative, the International Chamber of Commerce, and Transparency International launched an expanded version of the anti-bribery toolkit RESIST: Resisting Extortions and Solicitations in International Transactions. It includes advice for companies on responding to bribe demands in customs, tax, and other corruption-prone areas.⁶⁶

IV. Civil Society Efforts in 2010

The Extractive Industries Transparency Initiative completed its validation—the initiative's quality assurance mechanism—of Timor-Leste, Ghana, and Mongolia. The three countries join Azerbaijan and Liberia as the only countries to achieve the "EITI Compliant" designation. Iraq, Afghanistan, Chad, Indonesia, and Togo became EITI Candidate

64. *FCPA Summer Review 2010*, MILLER & CHEVALIER, <http://www.millerchevalier.com/Publications/MillerChevalierPublications?find=37004> (last visited Jan. 11, 2011).

65. World Bank Listing of Ineligible Firms & Individuals, <http://www.worldbank.org/debarr> (last visited Mar. 22, 2011).

66. International Chamber of Commerce World Business Organization Website, *Dealing with Extortion and Solicitation: New and Expanded RESIST Training Toolkit Unveiled*, <http://www.iccwbo.org/policy/anticorruption/index.html?id=37568> (last visited Jan. 11, 2011).

countries in 2010. Cameroon, Gabon, Kyrgyzstan, and Nigeria were designated as EITI Candidate countries that are “close to compliance.”⁶⁷

67. See generally EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE, <http://eiti.org/> (last visited Jan. 11, 2011).