



The Rising Global Tide of ABAC Enforcement:

Is Your Compliance Program Ready for a
Multipolar World?

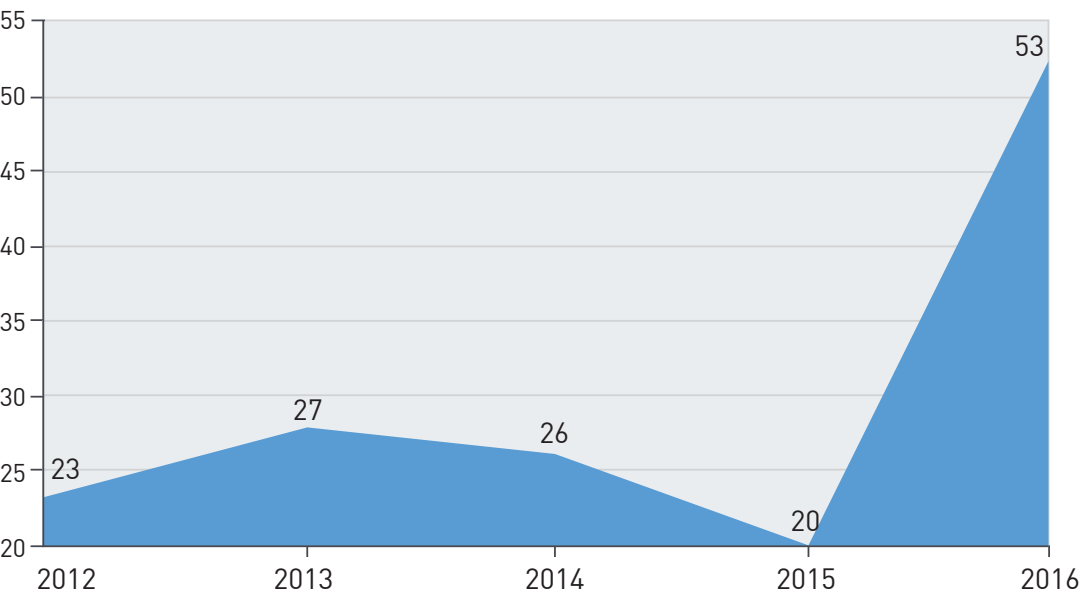
INTRODUCTION

With political volatility at home and abroad, it’s tempting to assume that the days of escalating Anti-Bribery and Anti-Corruption (ABAC) enforcement are over. However, the facts tell a different story. The United States is doubling down on its commitment to the Foreign Corrupt Practices Act (FCPA) even as other countries gain strength and momentum in their respective ABAC efforts. From Brazil, to Peru, to South Korea, a new global trend is emerging: the notable increase in governments’ capacity and will to investigate, enforce and levy heavy penalties on ABAC violators. Now more than ever, businesses must develop agile compliance systems responsive to the complexity of this emerging global regulatory framework.

THE U.S. RENEWS ITS COMMITMENT TO THE FCPA

Questions about the changing U.S. Department of Justice (DOJ) gave way to a renewed commitment to enforce the FCPA. Speaking at the Ethics and Compliance Initiative Annual Conference on April 24, 2017, Attorney General Sessions stated in no uncertain terms that the DOJ “will continue to strongly enforce the FCPA and other anti-corruption laws.”

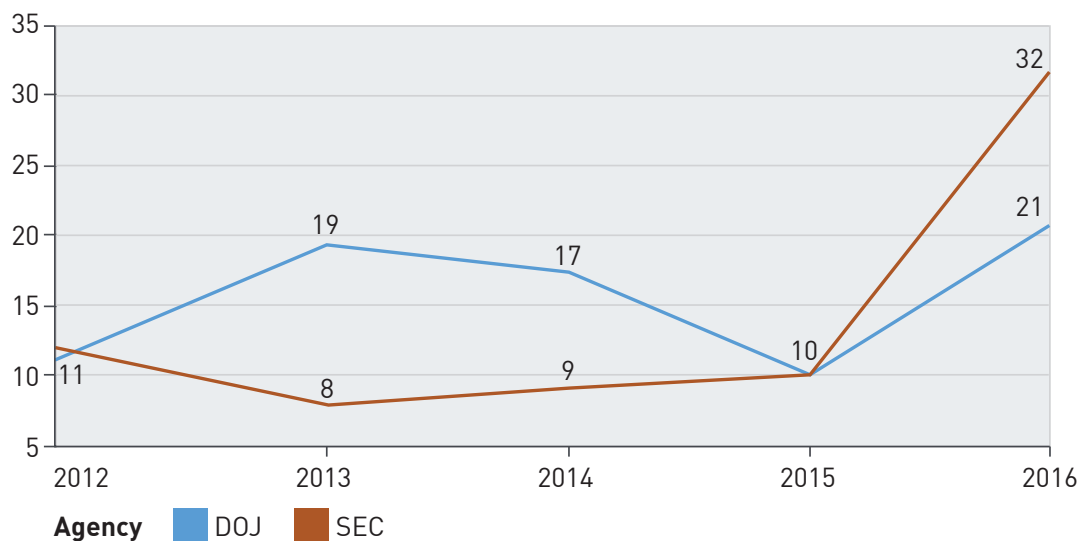
FCPA Enforcement Actions: 2012-2016



Data: Stanford Law School Foreign Corrupt Practices Act Clearinghouse

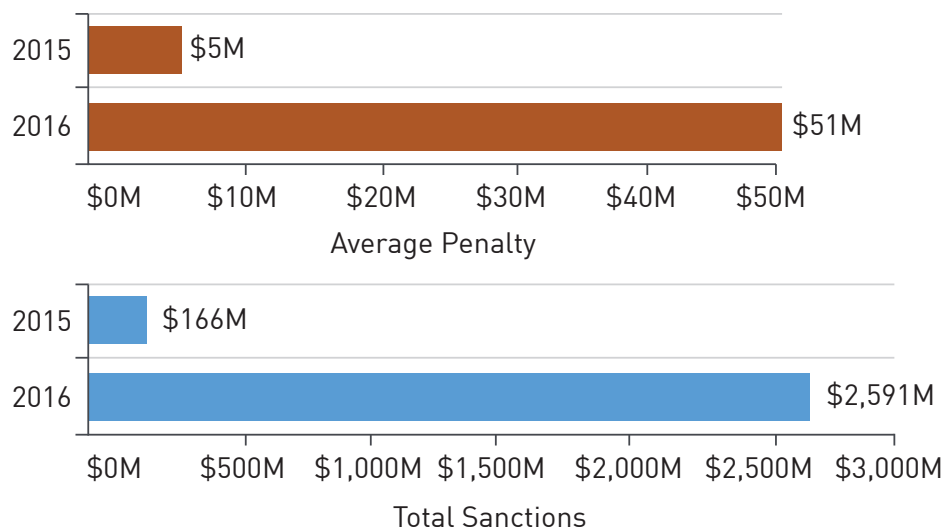
Sessions’ remarks suggest that DOJ’s upward trajectory of the FCPA enforcement will continue unabated. Last year alone saw a doubling in enforcement actions—the sharpest increase in almost 5 years.

DOJ & SEC Enforcement Actions: 2012-2016



DOJ's counterparts at the Securities and Exchange Commission (SEC) parallel this increase. Last year, the SEC tripled its enforcement and for the first time, surpassed DOJ in the number of enforcement actions. In addition to a greater number of enforcement actions, the average penalties for FCPA violations dramatically increased last year from an average of \$5 million to \$51 million. Total sanctions increased as well, from \$165 million to \$2.6 billion. This represents a tenfold increase from 2015.

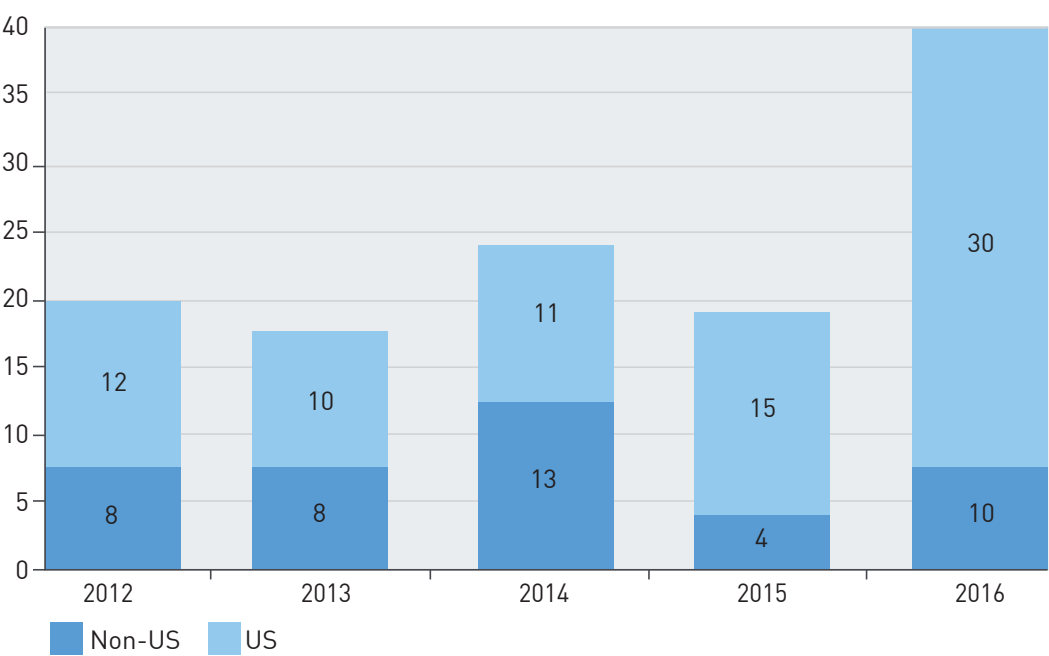
Average Penalties and Total Sanctions: 2015-2016



THE RISE OF THE GLOBAL ABAC COPS

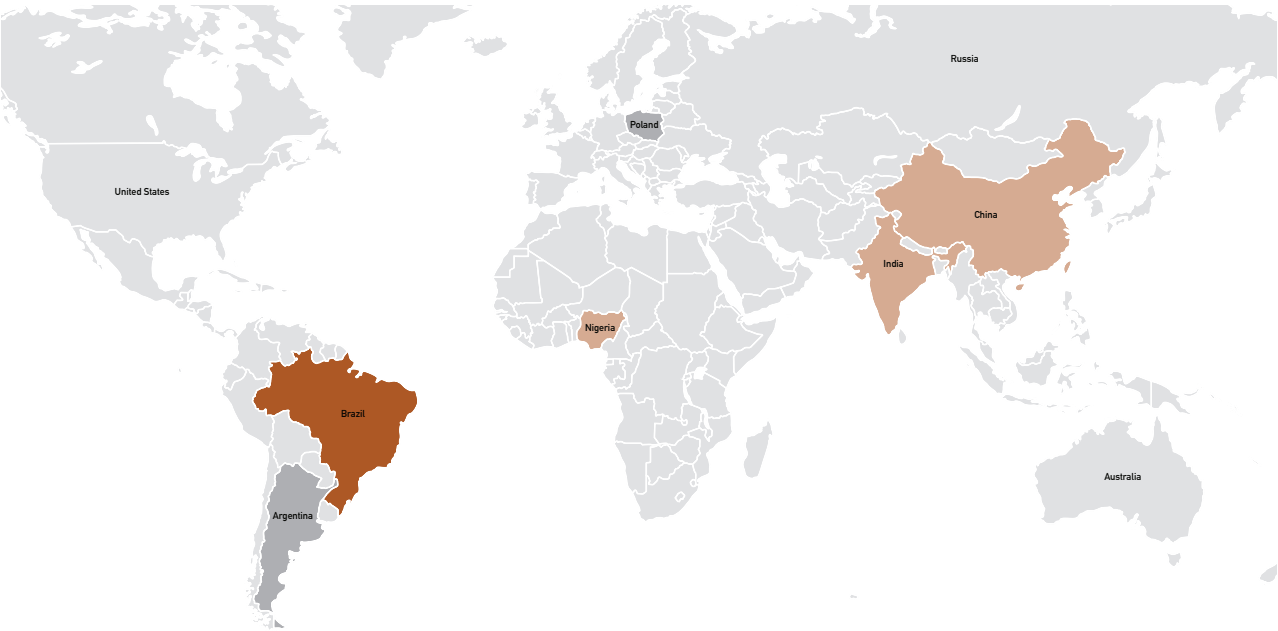
While the U.S. continues to retain its leadership role, it is no longer alone. Relative newcomers like Brazil, China, India and others are becoming increasingly effective at bringing ABAC cases. Today businesses can expect to find more than one ABAC cop patrolling the same beat. And with increasing public pressure and spotlight on companies and politicians, these new enforcers are just as, if not more, serious at rooting out corruption, as evidenced by recent crackdowns like Operation Car Wash in Brazil. In a similar upward trend, we see a doubling in non-US ABAC enforcement actions last year:

ABAC Enforcement on the Rise Worldwide



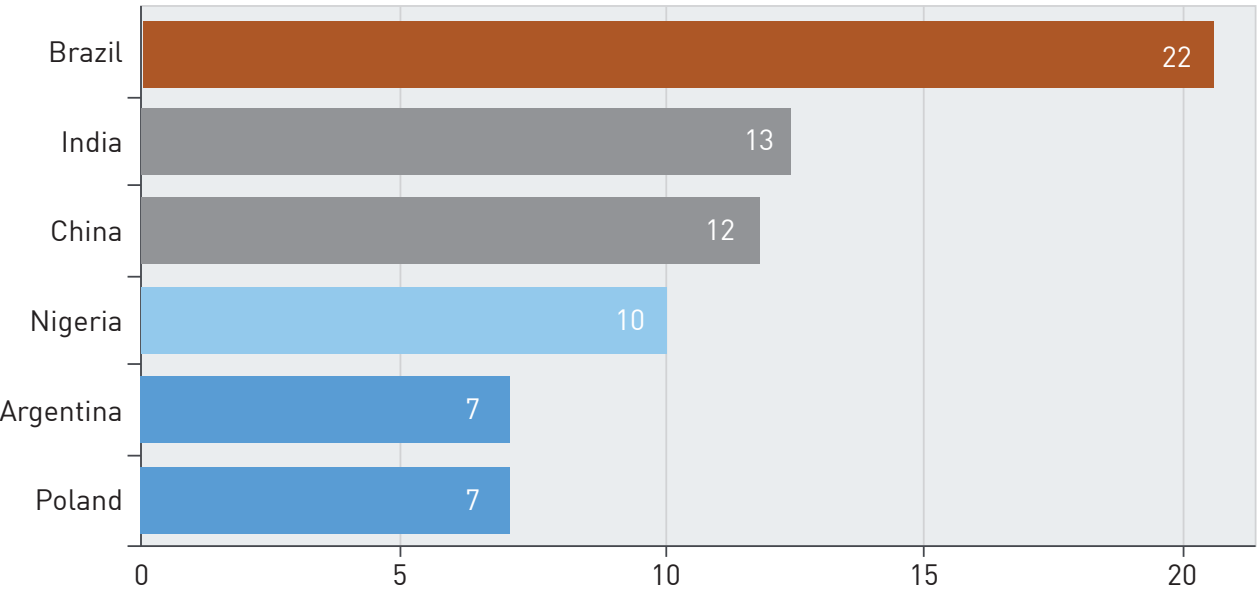
Other countries' growing ability to conduct investigations within their own borders adds new support to U.S. leadership on investigations into bribery abroad. Last year, top countries with the greatest number of domestic bribery investigations were: Brazil, China, India, Nigeria, Argentina and Poland.

Countries Conducting the Most Investigations of Domestic Bribery in 2016



Data: TRACE International, Inc.

Number of Investigations for Alleged Bribing of Domestic Officials in 2016



Data: TRACE International, Inc.

The Odebrecht case represents another example of the rise in global capacity for ABAC enforcement. While the U.S. was in the process of collecting information, the Brazilian probe was well on its way, successfully gathering enough evidence to sentence Odebrecht's Chief Executive Marcelo Odebrecht to 19 years in prison. Other countries in Latin America quickly followed Brazil's example, carrying their own separate investigations into Odebrecht independent of U.S. efforts. In the face of mounting penalties from multiple fronts, Odebrecht quickly negotiated a \$3.5 billion dollar payout to the dozen or so countries involved in the case, the largest foreign bribery settlement in history.

The international regulatory landscape is further complicated, by the adoption of new national anti-corruption laws like Sapin II in France. This law greatly extends prosecutorial powers, allowing the French government to pursue anti-bribery violations of any French national or companies with any part of their operations in France irrespective of where the violation occurs. The law also gives unique emphasis to compliance programs. As of May 2017, all companies that are part of a group whose parent is registered in France, with at least 500 employees and have annual gross revenue over €100 million will be required to adopt a compliance program. Among other elements, the compliance program must specifically have a corruption assessment mechanism and procedures for due diligence on clients, suppliers and third parties. The strong emphasis on compliance is such that the new anti-corruption agency created by the law—"Agence Française Anti-Corruption" (AFA)—has the power to prosecute and sanction companies simply for failure to adopt a compliance program, regardless of whether or not a specific act of bribery occurred.

CONCLUSION

An increase in the number of countries proactively pursuing corruption cases will make multinational settlement agreements—and the multiplied penalties that accompany them—the way of the future. This emerging multipolar enforcement environment presents heightened risk for ABAC compliance. Businesses can no longer target their resources only on FCPA compliance, but must anticipate the possibility of legal action and penalties from multiple countries. Global businesses require a compliance program that accounts for the different fronts of enforcement, and that is agile and responsive to political and legal turbulence.

ABOUT STEELE COMPLIANCE SOLUTIONS, INC.

Steele Compliance Solutions, Inc. is a global compliance intelligence firm offering comprehensive third-party due diligence and software-as-a-service (SaaS) solutions that help organizations comply with regulatory third-party compliance requirements. With more than 26 years of experience, due diligence engagements in more than 190 countries, covering more than 40 languages, Steele provides Fortune 1000 companies with pragmatic solutions. Our suite of products and services include regulatory due diligence, third-party program advisory services, program management services, and a secure, automated third-party management software platform.



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