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Going Further in Combating Transnational Bribery: Voluntary Disclosure and Federal Transparency in America's Foreign Corrupt Practices Law

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Abstract

The objectives of this research are to analyse the role of incentives and mitigation strategies in promoting voluntary self-reporting as a mechanism to enforce anti-corruption regulations, particularly under the Foreign Corrupt Practices Act (FCPA) in the United States. Through a comprehensive literature review, the findings highlight that voluntary disclosures by corporations significantly enhance collaboration between business and government entities. A company's choice to self-report Foreign Corrupt Practices Act (FCPA) violations is a complex strategic move influenced by legal inducements, cost-benefit analysis, reputational risks, and financial impacts. Future studies should investigate the long-term effects of self-reporting on corporate image and financial stability through longitudinal research. This research underscores the critical role of transparency and accountability in the global arena, where businesses face increasing demands for ethical conduct and regulatory compliance.

Keywords

America; Federal Transparency; Overseas Corrupt Practices Laws; Voluntary Disclosure

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1. INTRODUCTION

Transnational bribery has become a major problem in international business practice. For nearly four decades, the Foreign Corrupt Practices Act (FCPA) has been the cornerstone of efforts to eradicate corrupt practices that involve bribing foreign officials for business gain (Hasen et al., 2021; Vuona, 2019). However, amidst the United States (US) government's vigorous efforts to address this problem, an important question remains: When should companies proactively report potential FCPA violations to the US Department of Justice (DOJ) or the US Securities and Exchange Commission (SEC)? Voluntary disclosure and transparency under the Foreign Corrupt Practices Act (FCPA) in the United States has involved several significant transnational corruption cases(Erie, 2019; Legoria et al., 2023). According to Erie, such disclosure promotes the public and other stakeholders to access relevant information, thereby increasing the accountability of public officials. The FCPA, enacted in 1977, aims to prevent American

companies and their associated individuals from engaging in paying bribes to foreign officials to obtain or retain business.

The Foreign Corrupt Practices Act (FCPA) plays an important role in combating international bribery by establishing strict legal standards for United States companies operating abroad. The FCPA requires companies to maintain accurate financial records and prevent unauthorized payments to foreign officials. In this case, transparency and voluntary reporting are key elements. Voluntary reporting helps increase transparency and accountability, which is important for detecting and preventing corrupt practices. By making data accessible to the public and other stakeholders, voluntary reporting not only strengthens public trust but also reduces opportunities for bribery and corruption. Prominent cases, such as those involving Siemens AG(Blanc et al., 2019), Petrobras (Pündrich et al., 2021), Odebrecht/Braskem (Hellvig, and), Walmart(Reich & Bearman, 2018), and Goldman Sachs highlight a variety of issues related to foreign corrupt practices in the United States. Siemens AG faced allegations of widespread bribery in various countries, while Petrobras faced a money laundering scandal involving Brazil's national oil company.

The Odebrecht/Braskem case highlights the scale of bribe payments made by Brazilian construction companies, while Walmart is faced with the challenge of ensuring FCPA compliance across its global operations. Additionally, Goldman Sachs was involved in the 1MDB scandal in Malaysia involving money laundering and corruption, demonstrating the global impact of foreign corruption laws in the United States. These examples illustrate the importance of strict law enforcement and transparency in addressing cross-border corruption (Rabinovych, 2023,Kassimova et al., 2023,Pahlevi & Bustomi, 2023) and the complexity of addressing corruption in multinational enterprises.

John S. Baker (2004) suggests the paradox: while implementing compliance programs and voluntarily disclosing violations may not guarantee leniency, failure to do so almost certainly ensures penalties for violations (Hopwood, 2019). Laufer's concept shows how governments and corporations often exist in a symbiotic relationship, especially in the context of law enforcement, where both parties seek mutually beneficial solutions amidst financial risks and legal threats (Spahn, 2009). Through negotiation theory, Laufer reveals the importance of negotiation and compromise in the legal system, which allows adaptation and flexibility in handling corporate cases. This emphasises the need to balance between strict law enforcement and the need for flexible strategies, demonstrating the complexity of achieving fairness and effectiveness in corporate governance and law enforcement (Berridge, 2022; Kaufman et al., 2018; Pizer, 2021).

Several previous studies have highlighted key developments in various fields related to law enforcement and policy reforms. Garrett (2020) noted that enforcement of foreign corruption laws in the United States, particularly under the Foreign Corrupt Practices Act (FCPA), has seen a significant rise

in both the scale and number of cases. The resolution of cases has become the predominant enforcement approach, despite the Department of Justice's (DOJ) efforts to provide more detailed guidance on case resolution (Garrett, 2020b). Lima-de-Oliveira (2020) observed that local content (LC) policies in Brazil's oil and gas sector underwent substantial revisions following corruption scandals involving Petrobras, suppliers, and politicians. These revisions resulted in more institutionalized and transparent measures, such as LC obligations remaining a requirement during the bidding process (Lima-de-Oliveira, 2020). Martin et al. (2021) highlighted that unions successfully mitigated real wage losses and navigated the implementation of new national legal norms and profit-sharing agreements through interpretative strategies. They also managed to counteract anti-labour reforms in local practices, despite challenges such as the abrupt abolition of the "union tax" and organizational difficulties (Martin et al., 2021).

This article introduces an analytical approach to understanding the intricacies of voluntary disclosure under the Foreign Corrupt Practices Act (FCPA) in the United States. It evaluates the advantages and risks of self-reporting potential FCPA violations while addressing the complexities of global business operations and legal risk management. Furthermore, it highlights the federal government's initiatives to incentivise companies to disclose violations and collaborate in investigations, providing valuable insights into compliance and mitigation strategies for anti-corruption laws.

Despite an increase in FCPA enforcement cases showcasing successful resolutions and corporate-government cooperation, a significant gap persists in understanding the long-term effects of voluntary disclosure on global business practices and corporate reputations. Existing research often focuses on individual case studies or policy reviews but fails to explore how voluntary disclosure reshapes corporate strategies, internal governance, and stakeholder perceptions of integrity. Additionally, the absence of comparative studies across industries limits insights into the effectiveness of sector-specific compliance approaches, underscoring the need for further investigation into strategic and reputational implications within a globally transparent and accountable framework.

This paper serves as a comprehensive guide to the challenges and implications of voluntary disclosure in FCPA enforcement. While the US government incentivises self-reporting through policy frameworks, companies must weigh these incentives against the operational complexities and potential risks of managing international legal compliance. By analysing the role of incentives, policies, and strategic mitigation, this research aims to advance the understanding of voluntary disclosure within the broader context of anti-corruption enforcement and corporate accountability.

2. METHOD

The research methodology employed in this study is an in-depth literature review (Thomas et al., 2020), chosen to facilitate a comprehensive understanding of this complex subject. This approach involves critically analysing relevant literature on voluntary disclosure in anti-corruption law enforcement, with a particular focus on the Foreign Corrupt Practices Act (FCPA) in the United States. Primary sources include academic journals, books, research reports, and official documents from the Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC).

The data collection process involves systematically identifying and selecting literature and documents related to the research theme (Snyder, 2019). Sources are accessed through academic databases such as Google Scholar, JSTOR, and ProQuest, as well as official DOJ websites. This ensures the inclusion of current and credible information on policies, guidelines, and case studies.

Data analysis methods include descriptive and qualitative approaches. Collected data are systematically examined to identify significant patterns, trends, and findings concerning voluntary disclosure in anti-corruption enforcement. The descriptive analysis provides an overview of key concepts, theories, and practices, while qualitative analysis delves deeper into contextual factors, such as corporate self-reporting motivations and governmental responses.

The analysis involves comparing and contrasting information from diverse sources, considering expert perspectives, and employing a comparative approach to evaluate U.S. policies alongside those of other countries with similar anti-corruption frameworks. The findings support the formulation of robust arguments and conclusions about the effectiveness, incentives, and implications of voluntary disclosure in combating transnational bribery.

3. FINDINGS AND DISCUSSION

3.1. Voluntary Disclosure Cases

The interactions between companies violating the Foreign Corrupt Practices Act (FCPA) and U.S. law enforcement agencies—particularly the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC)—represent a nuanced dynamic, where punishment and cooperation unfold in intricate detail. At its core lies the challenge of navigating the perilous choice between voluntarily disclosing violations and risking punitive consequences. John S. Baker (2004) critiques the Sentencing Commission's punitive approach, highlighting a paradox: implementing compliance programs and self-disclosing misconduct does not guarantee leniency. Instead, as Hopwood (2019) notes, voluntary efforts often lead to punishment, discouraging proactive compliance measures.

Professor Laufer underscores the pragmatic reality: corporations, facing substantial financial and legal risks, must often collaborate with regulatory authorities to find mutually beneficial solutions. In

such cases, reciprocal assurances become essential. This necessity arises from constrained resources, the intricate nature of corporate structures, and the significant evidentiary challenges prosecutors encounter.

Ultimately, as Laufer explains, this dynamic reveals a critical insight into corporate governance: governments and corporations, despite their adversarial roles, often function in a symbiotic relationship, compelled by circumstances to negotiate middle-ground solutions. These negotiated exchanges, though driven by the threat of sanctions, are essential tools for achieving mutual objectives.

Laufer not only exposes the power dynamics between governments and corporations but also prompts us to assess the value and effectiveness of legal systems that allow space for negotiation and compromise (Laufer, 2017). Using negotiation theory, he demonstrates how threats and bargaining underpin many corporate decisions in navigating legal frameworks, encouraging reflection on the delicate balance between strict law enforcement and strategic adaptability in corporate cases (Berridge, 2022; Kaufman et al., 2018; Pizer, 2021).

Filip's memorandum, officially titled *Principles for the Federal Prosecution of Business Organizations*—commonly known as *Principles of Prosecution*—has become a pivotal guide for federal prosecutors in deciding whether to pursue cases against companies or business entities (Buell, 2020; Diamantis & Laufer, 2019; Garrett, 2020a). Codified in the U.S. Attorney's Manual on August 28, 2008, the Principles outline nine key factors prosecutors must consider before making a decision. First, they stress the nature and gravity of the offence, including potential harm to the affected community. This criterion is crucial in prioritising corporate prosecutions for certain types of crimes. Additionally, prosecutors are instructed to assess the extent of the violations, particularly whether company management was complicit or negligent in preventing misconduct. The company's historical conduct, including prior criminal, civil, and regulatory actions, is another critical factor.

Timely and voluntary disclosure of wrongdoing, along with cooperation during investigations, increases the likelihood of prosecution. Furthermore, existing corporate compliance programs and their effectiveness are scrutinized. Corrective actions—such as enhancing compliance measures, replacing culpable management, providing restitution, and cooperating with relevant authorities—are also evaluated.

Prosecutors must also weigh the collateral effects of prosecution, including potential harm to shareholders, pensioners, employees, and other uninvolved parties, as well as the broader societal impact. Lastly, the sufficiency of prosecuting individuals responsible for corporate misconduct and the adequacy of alternative remedies, such as civil penalties or regulatory enforcement, are key considerations. By carefully evaluating these factors, prosecutors can make informed and equitable decisions about whether to prosecute a company or business entity. The *Principles of Prosecution* serve

as an invaluable framework for ensuring justice in corporate law enforcement.

Data indicates that companies voluntarily disclosing violations of the Foreign Corrupt Practices Act (FCPA) can reap significant benefits (Lawson et al., 2019; Salbu, 2018). These include reduced sanctions, lower fines, or mitigated penalties if prosecuted and found guilty. The U.S. government further incentivizes voluntary reporting by offering measures such as deferred prosecution agreements (DPAs), suspension of penalties, or other rewards.

However, the choice to voluntarily report FCPA violations is a strategic decision requiring careful analysis of costs and benefits. Companies must weigh factors such as reputational risks, financial consequences, and potential legal ramifications. Voluntary disclosure is a key strategy in combating transnational bribery, employed by numerous governments and legal frameworks to address corporate corruption. Relevant data and insights on this approach can be found in reports, legal analyses, and academic research. For instance, Transparency International reports that companies engaging in voluntary disclosures often experience reduced penalties or fines during trials. This underscores the view that voluntary disclosure represents constructive cooperation with authorities in enforcing anti-corruption regulations.

The data indicates that the US government, particularly the DOJ and SEC, offers incentives to companies that voluntarily disclose FCPA violations. These incentives may include reduced sanctions, deferred prosecution agreements (DPAs), or positive evaluations of compliance programs. Case studies of companies that resolved FCPA cases through voluntary disclosures provide significant insights into the potential advantages and consequences of such actions.

Moreover, the decision to report FCPA violations voluntarily is a strategic one that requires careful deliberation. Companies must weigh costs and benefits, including reputational risks, financial implications, and legal consequences. In certain scenarios, voluntary disclosure may be more advantageous than facing severe penalties from a government investigation.

Data on voluntary disclosures in addressing transnational bribery underscores the complexity of these decisions. Such disclosures can be a powerful tool in combating international corruption, but they require strategic foresight and a thorough understanding of potential outcomes. Case studies, policy analyses, and continued research are crucial for exploring the dynamics and best practices in this field.

Cases involving violations of the Foreign Corrupt Practices Act (FCPA) illustrate the global issue of bribery and the significance of corporate transparency and cooperation in combating corruption (Forbes, 2019; Legoria et al., 2023; Olczak, 2021; Routh, 2018). Notable examples include Alstom SA, Siemens AG, Alcoa World Alumina LLC, and Daimler AG. While these companies did not voluntarily disclose their violations, legal proceedings proceeded regardless, and some received reduced penalties due to subsequent cooperation. These instances provide valuable insights into how U.S. legal authorities

address cross-border bribery and how corporations can mitigate the consequences of their actions.

For example, Alstom SA faced substantial fines after admitting to violating the FCPA's provisions on record-keeping and internal controls. Initially uncooperative and refraining from voluntary disclosure, Alstom eventually assisted investigations into other entities, which influenced the penalty imposed (Sánchez-Bordona, 2022). Similarly, Siemens AG, though initially silent on its infractions, later worked with the U.S. Department of Justice. This cooperation and remedial actions resulted in fines below the standard threshold (Zimmerer, 2020). Alcoa World Alumina LLC received reduced penalties for violating FCPA anti-bribery rules. Factors influencing the fine included the company's financial state, extensive cooperation, and significant remedial measures (Bray, 2019).

Daimler AG, while not self-reporting, cooperated significantly with authorities, resulting in reduced fines. This underscores the importance of transparency and proactive collaboration with legal entities when addressing corruption. These cases highlight three critical lessons: 1. While voluntary disclosure is not always present, subsequent cooperation can significantly reduce penalties, 2. Remediation efforts demonstrate a company's commitment to reform and preventing future violations, 3. Effective compliance programs and sound corporate governance are pivotal in detecting and mitigating corruption.

Studies by Professors Stephen Choi and Kevin Davis, along with other researchers, reveal that voluntary disclosure alone does not guarantee reduced penalties. Companies like Siemens and Daimler AG, despite not self-reporting, received leniency for their cooperation and remediation efforts. This suggests that mitigation measures such as cooperation, transparency, or remediation are not uniformly effective in reducing sanctions.

Research by Choi, Davis, and others controlled for factors like the amount of bribery involved but found no significant link between mitigation activities and reduced monetary penalties. This suggests that despite pressure on companies to voluntarily disclose misconduct, investigation outcomes and penalties are primarily determined by underlying facts, not solely by self-reporting. Legal practitioners' experiences confirm this finding. Investigation results and penalties are shaped more by the seriousness of the case and the strength of evidence than by voluntary disclosures. While the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) warn of harsher penalties for non-reporting, outcomes remain fact driven.

Voluntary disclosure under the Foreign Corrupt Practices Act (FCPA) has emerged as a strategic tool for companies, shaped by factors such as reputational risk, financial impact, and legal considerations. Although the U.S. government offers incentives like reduced sanctions or deferred prosecution agreements (DPAs), decisions to self-report are nuanced, as illustrated by cases involving Alstom SA, Siemens AG, Alcoa World Alumina LLC, and Daimler AG. These examples highlight

diverse approaches to balancing legal compliance, corporate responsibility, and business interests.

Corporate governance theory (Rose, 2015) emphasises that voluntary disclosure should complement broader compliance strategies. Companies must prioritise corruption prevention while viewing disclosure as one component of achieving corporate integrity and equitable law enforcement. This perspective reinforces the importance of proactive compliance efforts over reactive measures.

3.2. Application of International Corruption Law

Application of anti-corruption laws on a global scale, facilitated through collaboration between corporations and regulatory authorities, has become an increasingly prevalent method for addressing violations of the Foreign Corrupt Practices Act (FCPA) (Koehler, 2019; Trautman & Kimbell, 2018). A notable example is the resolution of the Ralph Lauren Corporation case, where the company demonstrated significant cooperation with the Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) after identifying misconduct within its Argentinian operations.

The investigation revealed that Ralph Lauren's subsidiary in Argentina engaged in bribery, paying customs officials to expedite the importation of goods. Promptly after uncovering this issue through an internal audit, the company voluntarily disclosed the violation to the SEC and DOJ. This swift and proactive response was pivotal in resolving the matter through a Non-Prosecution Agreement (NPA). The SEC and DOJ commended Ralph Lauren Corporation for its transparency, as the company provided detailed information on its misconduct, comprehensive documentation, and a thorough review of its global operations (Matias, 2023; McCoy & Chi, 2022).

The use of NPAs and Deferred Prosecution Agreements (DPAs) has become a standard approach in enforcing international anti-corruption statutes. These mechanisms allow companies to avoid protracted litigation, admit wrongdoing, and implement corrective measures. In Ralph Lauren's case, although the company incurred substantial financial penalties, its cooperation enabled it to avoid criminal prosecution while emphasizing its commitment to ethical practices.

This collaborative enforcement strategy underscores that corporations willing to self-report and collaborate with authorities can achieve expedited resolutions and improved governance. Ralph Lauren Corporation also took significant steps to enhance its compliance program, including revising anti-corruption policies, translating them into multiple languages, enhancing third-party due diligence, and providing training to employees. Additionally, it ceased operations in Argentina to minimize future risks. These actions exemplify the company's dedication to rectifying past errors and aligning with international anti-corruption standards. This model of cooperation reinforces global efforts to combat corruption and foster responsible corporate conduct.

On the other hand, this case prompts significant inquiries regarding the application of Non-

Prosecution Agreements (NPAs) and Deferred Prosecution Agreements (DPAs) in addressing corruption cases. These mechanisms enable corporations to avoid criminal prosecution by satisfying specific conditions, often without formally admitting guilt in court. The utilization of NPAs and DPAs is frequently perceived as affording governments substantial leverage in negotiations, imposing considerable fines and liabilities on companies without conclusive evidence of their culpability. This raises concerns about the equity of the negotiation process and the power dynamics between corporations and enforcement authorities, underscoring the need for a critical reassessment of NPAs and DPAs to ensure a balanced, transparent, and equitable resolution framework for all stakeholders involved.

The enforcement of laws targeting transnational corruption, particularly under the purview of the U.S. Foreign Corrupt Practices Act (FCPA), encounters intricate challenges and dynamic considerations. A company's decision to voluntarily disclose potential corruption violations to authorities represents a strategic move fraught with both risks and opportunities. Voluntary disclosures enable organizations to shape the narrative and signal a commitment to regulatory compliance, potentially bolstering their reputation as proactive and responsible entities in mitigating corruption risks. Conversely, enhanced whistleblower reporting systems, such as those instituted by the Dodd-Frank Wall Street Reform and Consumer Protection Act, amplify the risks for companies that opt not to disclose identified violations, heightening their exposure to external scrutiny and enforcement actions.

In the realm of mergers and acquisitions, due diligence has emerged as a critical mechanism for uncovering potential violations of the Foreign Corrupt Practices Act (FCPA). Acquiring entities often require target companies to disclose such violations as a prerequisite for the transaction. This approach underscores a heightened awareness that legal liabilities can transfer to the acquiring company, making the identification and mitigation of corruption risks a vital component of the due diligence process. Furthermore, international collaboration and the enhanced exchange of information between regulatory bodies are pivotal in detecting and addressing cross-border corruption effectively.

Conversely, the repercussions of voluntary disclosure can be profound and adverse. These may include reputational harm, stock price depreciation, and exposure to civil litigation, alongside intensified scrutiny and enforcement actions by foreign governments and international organizations. The associated investigative costs can impose a significant burden, both financially and in terms of employee time and resources. Companies must carefully balance the advantages of voluntary disclosure against these potential drawbacks while prioritizing the enhancement of robust internal compliance mechanisms and fostering an organizational culture that categorically opposes corruption. Constructive engagement between the private sector and regulatory authorities is equally essential for fostering a more transparent and equitable global business environment.

The case of the Ralph Lauren Corporation exemplifies how collaborative efforts between corporations and law enforcement can serve as an effective strategy to combat the complexities of transnational corruption. This case underscores the necessity of steadfast commitment to compliance and ethical integrity in the international business landscape. Collectively, these insights provide a nuanced understanding of voluntary disclosure within the FCPA framework, emphasizing that transparency, accountability, and international cooperation are indispensable in the global fight against corruption.

4. CONCLUSION

This study highlights the pivotal role of voluntary corporate disclosures in anti-corruption law enforcement, as demonstrated through an extensive review of existing literature. Specifically, the decision by companies to voluntarily report violations of the Foreign Corrupt Practices Act (FCPA) emerges as a multifaceted strategic action shaped by legal incentives, cost-benefit analyses, reputational considerations, and financial repercussions. Such disclosures serve as a critical mechanism for fostering effective collaboration between business entities and government authorities. While voluntary reporting is a nuanced and challenging strategy, its effectiveness hinges on carefully balancing legal advantages, reputational risks, and economic implications.

However, a key limitation of this research lies in its reliance on secondary sources; empirical investigations are necessary to corroborate and deepen the insights presented. Future studies could employ longitudinal designs to assess the sustained impact of voluntary reporting on corporate reputation and financial outcomes. Overall, this research underscores the significance of voluntary reporting in advancing anti-corruption efforts, especially within a global landscape that increasingly prioritizes corporate transparency and accountability. The findings hold considerable relevance for policymakers, regulators, and corporate leaders striving to navigate the evolving demands of ethical governance and public trust.

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