Foreign Countries Have Strong Foundation To Fill FCPA Void

By **Stephen Kohn** (May 5, 2025)

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Shifting U.S. enforcement priorities may soon create a crisis in international anti-corruption efforts.

For decades, the U.S. spearheaded those efforts through prosecutions under the Foreign Corrupt Practices Act. On Feb. 10, however, President Donald Trump issued Executive Order No. 14209, pausing enforcement of the FCPA.[1]

During the pause, the U.S. Department of Justice plans to reevaluate the enforcement strategies, and presumably approve a new approach that could weaken future U.S. prosecutions. The move will surely create a void that needs to be filled.

Due to the increasingly transnational nature of FCPA prosecutions,[2] and the proven models of detection and enforcement endorsed by the Organization for Economic Cooperation and Development, liberal democracies across the globe are well equipped to fill that void.

They could do it through a sort of "Reverse Marshall Plan" that would have them take the lead in rolling out an effective international anti-corruption regime.[3]

An early sign that they are willing and able came on March 20, when the U.K.'s Serious Fraud Office, France's Parquet National Financier and the Office of the Attorney General of Switzerland announced a new International Anti-Corruption Prosecutorial Taskforce to collaborate on the enforcement of the countries' wide-reaching antibribery laws.[4]

If the U.K., France, Switzerland and other countries are committed to aggressive antibribery enforcement that includes the best practices of the U.S. FCPA program, antibribery enforcement could expand in the years ahead, regardless of U.S. priorities.

FCPA prosecutions are already transnational.

On their face, most current FCPA prosecutions are U.S. cases. In reality, however, they are deeply transnational in nature.

First, whistleblowers who are not U.S. citizens aggressively take advantage of the FCPA's robust whistleblower law passed as part of the Dodd-Frank Act. Between 2011 and 2021 — the last year statistics were published — over 5,000 non-U.S. citizens from over 135 countries filed claims under the Dodd-Frank whistleblower law that covers the FCPA.[5]

Second, successful prosecutions now overwhelmingly focus on foreign companies. Between 2014 and 2024, approximately 71% of FCPA sanctions were levied against foreign companies.[6] These sanctions were collected in cases in which the U.S. prosecuted 166 businesses and individuals,[7] headquartered outside the U.S., under the U.S. law, resulting in $21.3 billion in fines paid to the U.S. by foreign companies.[8]

Moreover, according to Stanford Law School's FCPA Clearinghouse,[9] nine out of the 10 largest FCPA actions — measured by U.S. monetary sanctions per entity group — were

against foreign companies. They included the largest FCPA enforcement action ever: a $3.5 billion case in 2016 against Odebrecht SA, a global construction conglomerate based in Brazil, and Braskem SA, a Brazilian petrochemical company.[10]

At the same time that U.S. cases have increasingly focused on foreign misconduct, foreign law enforcement agencies have worked closely with U.S. authorities to use the FCPA to hold companies in their own countries accountable. The list of foreign authorities that have cooperated with the U.S. on FCPA enforcement matters since 2014 is extensive. In successful prosecutions over the past decade, agencies from 62 countries cooperated with U.S. cases and were officially thanked by the U.S. for their help.[11]

Given the transnational nature of FCPA-style enforcement, it would not be a giant leap for countries with weak antibribery laws, or a lack of political will to fully enforce them, to alter their policies and fill the void created by changes to U.S. policies.

The OECD has provided a strong foundation.

Since 1997, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,[12] more commonly known as the OECD Anti-Bribery Convention, has been adopted by 46 countries, including the U.K., Switzerland, Japan, South Korea, Canada, Australia and every country in the European Union.[13]

Each of these countries has passed its own version of the FCPA. The convention lays the foundation for an effective transnational antibribery regime, with the potential for far larger jurisdictional reach and impact than the current U.S.-based FCPA.

Furthermore, the OECD completed detailed audits, published in 2020, of the U.S. FCPA program, which offer insights into the successes of its approach.[14] The OECD closely examined the U.S. law — both its formal legal requirements, and how it was being implemented in practice.

The audits' overall conclusions speak for themselves: "The lead examiners commend the United States for its sustained and demonstrable commitment to enforcing its foreign bribery offence."[15] This "holistic enforcement policy ... enable[s]" the U.S. and other concerned countries to use these laws to prosecute bribery cases "comprehensively with effective, proportionate, and dissuasive sanctions, while also providing legal certainty to the companies involved."

The OECD attributed the success of the U.S. FCPA to the combination of three basic elements: (1) detection and reporting, i.e., a strong whistleblower law; (2) investigation, i.e., a professional and competent law enforcement or regulatory agency with the legal authority to conduct civil or criminal investigations; and (3) an enforcement process that can issue appropriately large civil or criminal sanctions.

These three components need to be incorporated into locally adopted FCPAs.

As to a strong whistleblower law, the OECD audits are clear that the U.S. awards model works. The auditors identified the Dodd-Frank Act's multifaceted approach to protecting and encouraging whistleblowers to come forward:

> The [U.S. Securities and Exchange Commission's] Dodd-Frank whistleblower programme has coincided with obtaining substantial recoveries for the U.S. government. Since the programme's inception, the SEC has ordered wrongdoers to

pay over USD 2.5 billion in monetary sanctions (including more than USD 1.4 billion in disgorgement of ill-gotten gains and interest) in enforcement actions brought with information provided by meritorious whistleblowers.

By drafting and creating a consensus around best practices to combat international bribery in business transactions, the OECD has successfully completed the first, and perhaps hardest, step in establishing a truly international anti-corruption program.

Expanded jurisdiction increases the risk of prosecution for U.S. businesses.

Based on the significant jurisdictional reach of countries like the U.K., Canada, Japan and Australia — all of whom are part of the OECD's FCPA program — FCPA prosecutions could be expanded if these countries step in where the U.S. is stepping out.

Instead of leveraging the U.S. program and relying on evidence provided by whistleblowers to the U.S. DOJ or SEC, nations could upgrade and invest in their own programs.

Significantly, FCPA enforcement — along with enforcement of related laws, such as anti-money laundering statutes — has been highly profitable for the U.S., bringing in billions of dollars a year from enforcement cases. It would be shortsighted if other democracies, when upgrading their laws and initiating their own FCPA prosecutions, did not also ensure that the sanctions paid by wrongdoers are commensurate with U.S. levels.

Under what I call a "Reverse Marshall Plan" for anti-corruption, the U.K., the EU and other democracies can become leaders in ensuring that bribery does not corrupt international markets.[16] These countries would have the ability to police corporations headquartered in the U.S., just as the U.S. has policed numerous companies headquartered in Europe and the U.K.

U.S. corporations would be at a heightened risk of prosecution because the illegal conduct would be occurring outside the U.S. Just as there is broad transnational jurisdiction over foreign-based companies that pay bribes that harm U.S. investors or businesses, there is also broad transnational jurisdiction if the international bribe payers are U.S. corporations.

The transnational application of the FCPA has allowed the U.S. to prosecute and sanction foreign companies for misconduct occurring overseas, regardless of the enforcement priorities of that company's country. For example, while Sweden may have thought that not enforcing its own antibribery laws might protect its domestic companies, in 2019 the U.S. sanctioned Swedish telecommunications giant Ericsson $1 billion for bribes it allegedly paid in Djibouti, China, Vietnam, Indonesia and Kuwait.[17]

Conversely, other countries will be able to leverage their own FCPAs against U.S. companies for any misconduct. This fact was flagged by many of the major corporate defense firms after Trump's executive order. For example, Sullivan & Cromwell LLP[18] and WilmerHale[19] issued memos to their corporate clients warning them against loosening FCPA compliance given the jurisdiction of other countries. WilmerHale specifically warned that "a vacuum left by US authorities might well increase attention by other countries."

Over the past decades, companies in France, the U.K. and Switzerland have been sanctioned billions of dollars by the U.S. for FCPA violations. Now that those three countries have announced their International Anti-Corruption Prosecutorial Taskforce, they may increase enforcement pressure on U.S. companies.

In the end, U.S. companies will be at a heightened risk of prosecution under a Reverse Marshall Plan, where European countries and liberal democracies use their own FCPA laws to ensure U.S. companies follow the transnational laws prohibiting foreign bribery.

In fact, the number of U.S. companies held accountable under international FCPAs, and the amount of fines they pay, could be significantly increased from current levels. Under the U.S.-led anti-corruption regime, U.S. companies have had the opportunity to effectively lobby U.S.-based regulators to reduce fines and penalties. This is evident in the numerous cases where U.S. companies have paid low fines.

This opportunity will be greatly diminished if other countries are taking the lead on prosecutions.

Conclusion

The OECD Anti-Bribery Convention, and the numerous FCPA laws already on the books, create a powerful foundation to strengthen existing anti-corruption laws. Modernized and enforced FCPAs can generate billions in income, while holding anyone who pays or receives a bribe accountable.

If they can find the will, European and other democracies can reverse any setback in anti-corruption enforcement.[20]

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[1] https://kkc.com/wp-content/uploads/2025/03/Pausing-Foreign-Corrupt-Practices-Act-Enforcement-to-Further-American-Economic-and-National-Security-%E2%80%93-The-White-House.pdf.

[2] https://whistleblowersblog.org/foreign-corruption-whistleblowers/data-shows-international-focus-of-fcpa-enforcement/.

[3] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5181820.

[4] https://whistleblowersblog.org/foreign-corruption-whistleblowers/u-k-france-and-switzerland-step-up-to-lead-international-anti-bribery-enforcement-with-international-prosecutorial-taskforce/.

[5] https://kkc.com/foreign-sec-whistleblower-tips-country/.

[6] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5181820.

[7] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5181820.

[8] Special thanks to my Chief Law Clerk Melissa Revuelta, who was responsible for

researching and analyzing extensive data on FCPA sanctions from DOJ press releases, SEC press releases, and FCPA Clearinghouse.

[9] https://fcpa.stanford.edu/statistics-top-ten.html.

[10] https://www.justice.gov/archives/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve.

[11] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5181820.

[12] https://kkc.com/wp-content/uploads/2025/03/2bfa620e-en.pdf.

[13] https://kkc.com/wp-content/uploads/2025/03/OECD-WGB-Ratification-Status-September-2024.pdf.

[14] The OECD audits demonstrate that the United States has, by far, prosecuted the most FCPA cases and obtained the largest verdicts. The results for other countries have been mixed. For example, the OECD's most recent monitoring report for France confirmed that France was making "notable progress in enforcing its foreign bribery" laws, and between October 2012 and July 2021 had filed 14 cases, imposing sanctions on "19 individuals and 23 legal persons." See, https://www.oecd.org/en/publications/implementing-the-oecd-anti-bribery-convention-phase-4-report-france_2c7d8500-en.html. But Canada's prosecutorial history has been far less rosy: ". . . enforcement of the foreign bribery offence remains exceedingly low 25 years after the adoption of [Canada's anti-bribery law], considering the size of Canada's economy and the industrial sectors in which its companies operate. Since the entry into force of the [law] in 1999 . . . conclusion of foreign bribery cases with sanctions remains scarce, with only two individuals convicted for foreign bribery and four companies sanctioned," https://www.oecd.org/en/publications/implementing-the-oecd-anti-bribery-convention-phase-4-report-canada_a063fdd3-en.html.

[15] https://www.oecd.org/en/publications/implementing-the-oecd-anti-bribery-convention-phase-4-report-united-states_0cd34e9f-en.html.

[16] As the post-World War II Marshall Plan saw significant investment from the United States into the budding liberal democracies, a "Reverse Marshall Plan" for anti-corruption would be predicated on these liberal democracies taking the lead in rolling out an effective international anti-corruption regime no longer reliant on the United States' lead.

[17] https://www.justice.gov/archives/opa/pr/ericsson-agrees-pay-over-1-billion-resolve-fcpa-case.

[18] https://www.sullcrom.com/SullivanCromwell/_Assets/PDFs/Memos/President-Trump-Issues-Executive-Order-Pausing-FCPA-Enforcement.pdf.

[19] https://www.wilmerhale.com/en/insights/client-alerts/20250211-president-trump-and-attorney-general-bondi-announce-significant-shift-in-fcpa-and-other-corporate-enforcement-priorities.

[20] A version of this article originally published in Columbia Law School's Blue Sky Blog.