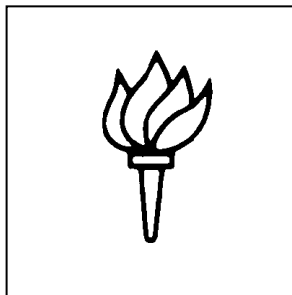


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Foreign Affairs and Enforcement of the
Foreign Corrupt Practices Act

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Abstract

We examine the factors that explain the distribution across companies and countries of sanctions imposed in Foreign Corrupt Practices Act (FCPA) enforcement actions. We use a dataset of FCPA actions resolved from 2004 to 2011. We find evidence that the sanctions in an individual FCPA action are positively correlated with the size of bribe, the profit related to the bribe, and the amount of business affected by the bribe. The sanction increases if a subsidiary faces FCPA charges, if the FCPA violation occurs in multiple countries, if the ultimate parent company of entities involved in the FCPA violation is foreign, and if foreign regulators are involved in the action. We also conduct a number of country-level tests to assess factors that explain the ultimate distribution of FCPA sanctions across countries. Looking to the distribution of aggregate total monetary sanctions by country where FCPA violations take place, we find that aggregate sanctions are proportional to our measure of overall bribe activity in a violation country. We report evidence that the SEC and DOJ impose disproportionately greater aggregate sanctions for violations in countries with a lower GNI per capita as well as weaker local anti-bribery institutions. The SEC and DOJ also impose disproportionately greater aggregate sanctions for violations where the home country of the ultimate parent company of FCPA defendants has a bilateral cooperation agreement with the SEC, a Mutual Legal Assistance Treaty with the United States, and stronger local anti-bribery institutions.

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1. Introduction

The United States has a history of policing the world. U.S. law allows people to be prosecuted for foreign misconduct in areas as varied as money laundering, sex tourism, terrorism, and torture. There are several alternative explanations of this kind of extraterritorial regulation. One account views extraterritorial regulation as the product of predominantly parochial concerns, such as the desire to prevent activity that causes harm within U.S. territory or is offensive to fundamental U.S. values. Other accounts claim that extraterritorial regulation is motivated by concerns about foreign affairs, such as the desire to promote the development of less developed countries or to enhance the competitiveness of domestic firms. Yet another account claims that, regardless of regulators' motivations, practical constraints and global interdependence will ensure that extraterritorial regulation is influenced by the extent to which it can be coordinated with the activities of foreign regulators.

For businesspeople, the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977 (FCPA) are emerging as the most important source of extraterritorial U.S. regulation. The number of enterprises prosecuted for violating the FCPA's anti-bribery provisions has increased from an average of 2.4 cases per year from 1998 to 2006, to 12.6 per year since then. FCPA liability also now comes with headline-grabbing sanctions: Siemens \$800 million, Halliburton \$580 million, Daimler \$180 million. And these figures do not include the costs of investigations. Fees were rumored to be as high as \$850 million in the Siemens case and \$500 million in the Daimler case. Meanwhile, criminal prosecutions of individuals for violations of the FCPA have become more common and sentences have ranged up to 15 years of imprisonment.

This Article provides a quantitative analysis of recent patterns of enforcement of the FCPA's anti-bribery provisions. Understanding what explains enforcement of the FCPA is of great practical importance for businesses trying to decide how to conduct their affairs. It is also

important for scholars interested in how law enforcement officials enforce extraterritorial regulation and the impact of such regulation on transnational misconduct. Finally, this line of research has implications for the design of regimes to govern transnational misconduct. For instance, analysis of how US officials enforce the FCPA should inform thinking about whether it is necessary or appropriate to create some sort of international organization to prosecute transnational bribery.

Our aim in this study is to examine the extent to which four broad theories explain the recent pattern of enforcement of the FCPA. Each of these theories yields different predictions about the factors that will account for the behavior of the relevant enforcement agencies. The first theory, *Proportionality*, is most consistent with the text of the relevant legislation, guidelines and international conventions. It suggests that differences in treatment of defendants will depend entirely on differences in their moral culpability. This may reflect the idea that the purpose of the FCPA is to make a statement that bribery is equally immoral regardless of where it takes place. Alternatively, proportionality may reflect an attempt to apply deterrence optimally (at least in a rough sense), imposing greater sanctions on more egregious and extensive harms all other things being equal (such as detection probability). In contrast with our other theories, this theory is inherently parochial because it suggests that patterns of enforcement will not be affected by foreign policy considerations or the presence (or absence) of foreign regulators.

Our second theory, *Altruism*, suggests that FCPA enforcement is influenced by foreign policy considerations. In particular, *Altruism* suggests that the FCPA will be enforced with a view to the interests of foreign actors, with U.S. enforcement making up for the shortcomings of foreign states that are not capable of regulating transnational activity on their own. On this

account, differences in treatment of defendants might be explained by the needs or institutional capacity of the country whose official has been bribed.

Third, *Self-Interest* suggests that US enforcement will tend to promote the interests of the United States. This implies that factors such as the nationality of the defendant and the extent to which the misconduct prejudiced U.S. firms ought to be taken into account.

Our fourth theory, *Coordination*, suggests that US officials' enforcement decisions will be influenced by the actions of foreign regulators. Those regulators might complement U.S. enforcement actions by helping to gather evidence. Alternatively, foreign regulators might impose sanctions that serve as substitutes for U.S. enforcement.

Our analysis explores the extent to which these four theories explain variations in the treatment of actors who violate the FCPA. Using a dataset of FCPA cases resolved from 2004 to 2011, we find evidence in support of *Proportionality*. A particular violation of the FCPA's anti-bribery provisions may involve multiple defendants, including a parent company, subsidiaries, employees, and related individuals. For purposes of our analysis we group all defendants involved in the same FCPA violation fact pattern as one FCPA "action" (and later test the importance of different types of defendants). Sanctions in an individual FCPA action are positively correlated with the size of bribe, the profit related to the bribe, and the amount of business affected by the bribe. The sanction also increases with the extensiveness of the violation, as measured by whether a subsidiary also faces FCPA charges. Looking to the distribution of aggregate FCPA sanctions by country, we find that aggregate sanctions are proportional to a measure of overall bribe activity in each violation country. We also find support for *Altruism*. Using the overall bribe activity level in a particular country as our baseline, we report evidence that the SEC and DOJ impose disproportionately greater aggregate sanctions for violations in countries with a lower GNI per capita as well as weaker local anti-bribery

institutions. Our analysis provides support for *Coordination*. The SEC and DOJ impose disproportionately greater aggregate sanctions for home-violation country pairs (e.g., French companies bribing Chinese officials would be a France-China home-violation country pair) where the home country has a bilateral cooperation agreement with the SEC, a Mutual Legal Assistance Treaty with the United States, and stronger local anti-bribery institutions. Lastly, although sanctions are lower in any individual FCPA action involving a U.S. company (consistent with *Self-Interest*), we find that the SEC and DOJ impose disproportionately greater aggregate sanctions where the U.S. is the home country (inconsistent with *Self-Interest* but arguably due to the relative ease of access to evidence for the DOJ and SEC when U.S. companies are involved in a FCPA violation).

Part 2 sets forth our hypotheses. Part 3 describes the dataset. Part 4 reports tests of the hypotheses based on FCPA action level data. Part 5 reports tests focusing on countries where violations may take place (the “violation” countries). Violation countries are defined as all countries where a potential FCPA enforcement action may take place (excluding the United States). Part 6 reports tests based on the incorporation country of the ultimate corporate parent of entities involved in a FCPA violation (the “home” country) paired with particular countries where violations may take place, giving specific “home-violation” country pairs. Part 7 concludes.

2. Hypotheses and Related Literature

The FCPA was enacted in the aftermath of the Watergate scandal in direct response to revelations that U.S. corporations maintained secret slush funds from which they made illegal contributions to domestic political campaigns and questionable payments to foreign public officials (Davis 2012). The core of the FCPA is a prohibition on bribery of foreign officials. The

current version of the statute prohibits bribery of foreign officials in order to assist the bribepayer in “obtaining or retaining business for or with, or directing business to, any person.” Other provisions of the statute require firms to keep accurate books and records and to maintain adequate internal accounting controls.

Under the anti-bribery provisions, foreign officials are defined broadly to include any officer or employee or any person acting in an official capacity on behalf of “a foreign government or any department, agency, or instrumentality thereof, or of a public international organization.”¹ This definition is arguably broad enough to cover employees of state-owned enterprises.

As for the bribe payers, the FCPA applies to the following categories of entities:

- Issuers – firms with securities registered under federal securities laws or which are U.S. reporting issuers
- Domestic concerns – U.S. citizens, nationals or resident; firms with their principal place of business in the United States or organized under the laws of one of the United States or its territories.
- Any persons – who engage in bribery while in the territory of the United States
- Any officer, director, employee, or agent of such person or any stockholder thereof acting on behalf of an issuer, domestic concern or other person.²

The FCPA provides for broad jurisdiction over extraterritorial activity. For entities that are domestic concerns, there is no need for any of the prohibited conduct to have taken place in the United States or for the defendant to have made use of the mails or any means or instrumentality of international or interstate commerce.³ For issuers that are not domestic concerns and other persons the statute requires that the prohibited conduct be connected more strongly to the United States. For those entities use of the mails etc is expressly required and,

¹ 15 U.S.C. §§ 788dd-1(f)(1), 78dd-2(h)(2), 78dd-3(f)(2).

² 15 U.S.C. §§ 78dd-1(a), 78dd-2(a), 78dd-3(a).

³ 15 U.S.C. §§ 78dd-1(g), 78dd-2(i).

depending on the type of entity, it is either express or implied that some of the prohibited conduct must have taken place in territory of the United States.⁴ There is, however, jurisprudence under other statutes which suggests that entities who act wholly outside the United States may be liable under U.S. law for conspiracy if their co-conspirators act within in the U.S.⁵

The anti-bribery provisions of the FCPA are enforced by both the U.S. Department of Justice (DOJ) and the Securities and Exchange Commission (SEC). The DOJ has jurisdiction over civil and criminal enforcement. The FCPA provides for criminal penalties for legal persons of up to \$2 million and \$100,000 for individuals. However, under the Alternative Fines Act those penalties can be increased to a maximum of twice the gross financial loss or gain caused by the corrupt payment.⁶ Subject to these limits, sentences are subject to the recommendations set out in the U.S. Sentencing Guidelines. In case of a criminal conviction victims are entitled to restitution.⁷ Assets that constitute or are derived from violation of the FCPA are subject to civil or criminal forfeiture, and in principle can be transferred to countries which have assisted in the forfeiture.⁸ To date, however, there have been no instance in which an organizational defendant has paid restitution for violation of the FCPA's anti-bribery provisions and only one instance in which forfeited assets were returned to the country whose officials were bribed.

The SEC has authority over civil enforcement against issuers as well as their officers, directors and agents. The FCPA provides for relatively modest civil penalties of \$10,000 per violation.⁹ However, the SEC routinely relies on other statutory provisions to order greater civil

⁴ Both requirements are express in the case of "any persons". The territorial requirement is implied in the case of non-US issuers. See, 15 U.S.C. §§78dd-1(a), 78dd-3(a).

⁵ U.S. v. MacAllister, 160 F.3d 1304 (11th Cir., 1998); U.S. v. Manuel, 371 F. Supp. 2d 404 (S.D.N.Y. 2005).

⁶ 18 USCS § 3571(d).

⁷ 18 USC § 3663A. See also 18 USC § 3771(a)(6).

⁸ See 18 U.S.C. § 981, 18 U.S.C. § 1956(c)(7), 28 U.S.C. § 2461(c); 18 U.S.C. 981(i).

⁹ § 78ff(c).

penalties and disgorgement of profits earned from violations of the FCPA.¹⁰

Resources devoted to enforcement of the FCPA have increased in recent years. In 2008 the Federal Bureau of Investigation created a national FCPA squad and in January 2010 the SEC created a specialized unit to focus on violations of the FCPA (OECD 2010: 13).

2.1. Hypotheses

The *Proportionality*, *Altruism*, *Self-Interest*, and *Coordination* theories lead us to test several hypotheses. The hypotheses deal with (1) what sanctions we expect in an individual FCPA action and (2) what violation and home countries the DOJ and SEC tend to target FCPA enforcement.

2.1.1. FCPA Action Level Hypotheses

Proportionality. Our baseline hypothesis is that the treatment of FCPA defendants will be determined primarily by their perceived moral culpability or, alternatively, the need for deterrence, and that broader foreign policy considerations will be irrelevant.¹¹ This hypothesis is consistent with applicable legal principles. As detailed in Appendix 3, the U.S. Sentencing Guidelines recommend that penalties be calculated using a formula that takes into account various proxies for the defendant's level of culpability. For organizational defendants this generally means that penalties are calculated by reference to factors such as the pervasiveness of misconduct within the organization, whether the organization voluntarily reported its misconduct to enforcement authorities, and whether it cooperated in the investigations. For

¹⁰ For statutory authority see Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Pub. L. No. 101-429, §§202(a), 203, 104 Stat. 931 (codified at 15 U.S.C. §§78u-2(e), 78u-3(e) (2000)).

¹¹ Note that while we posit a proportional relationship between the egregiousness and extensiveness of a FCPA violation and the penalty imposed because of the violation is consistent with deterrence, we do not examine whether the precise level of the penalty is optimal. Stevenson and Wagoner (2011), for example, argue that FCPA penalties are too low from an optimal deterrence perspective.

defendants who pay bribes to foreign public officials the Sentencing Guidelines recommend taking into account the number and size of the bribes paid and the pecuniary gains realized. The OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, to which the United States is a party, seems to preclude consideration of altruism or self-interest in the enforcement of anti-bribery laws. Article 5 of the Convention provides that “Investigation and prosecution of the bribery of a foreign public official . . . shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.” Accordingly, at the FCPA action level of data we posit the following hypothesis.

Hypothesis 1: The most severe sanctions in an FCPA action will be imposed in cases involving factors that enhance recommended penalties under the Sentencing Guidelines.

Altruism. If enforcement is motivated by altruism then, all other things being equal, the US should impose the most severe sanctions on firms whose bribes cause harm to the inhabitants of foreign countries most in need of U.S. assistance. That need might be measured in terms of the country’s level of economic or political development. Alternatively, it might be measured in terms of the extent to which U.S. law enforcement is required to compensate for the shortcomings of local law enforcement agencies. At the FCPA action level of data we predict:

Hypothesis 2: The most severe sanctions in an FCPA action will be imposed on defendants who pay bribes in less developed violation countries and in violation countries where local anti-corruption institutions are weak.

Self-Interest. If enforcement of the FCPA is motivated by national economic interest, narrowly conceived, then the most severe penalties should be imposed in cases where (a) the

payment of a bribe is most likely to prejudice U.S. firms and (b) imposition of the penalty is least likely to prejudice U.S. firms. The first factor weighs in favor of imposing severe sanctions upon foreign firms who are most likely to be competing with U.S. firms. The second factor weighs in favor of sanctioning foreign firms since the resulting penalties provide a net gain to the US economy (in the form of fines or penalties received by the US Treasury). The combination of these factors weighs in favor of imposing higher sanctions upon foreign firms that are most likely to compete with U.S. firms—in particular those foreign firms that compete in countries that receive substantial amounts of exports or investments from U.S. firms.

An alternative conception of where U.S. self-interest lies suggests that a broader range of defendants will attract heavy sanctions. In order to protect its firms from competitive pressures to pay bribes the U.S. may wish to discourage even U.S. firms from paying bribes for favors they could obtain by legitimate means. One way of distinguishing such cases might be to consider whether the bribe was paid to obtain a favor that the official is legally permitted to grant, such as the award of a government contract, as opposed to an illegal favor, such as an exemption from paying customs duties. At the level of an individual FCPA action we predict the following:

Hypothesis 3: The most severe sanctions will be imposed upon foreign defendants and in particular on foreign defendants who pay bribes in violation countries that receive substantial amounts of exports or investment from U.S. firms. Alternatively, the most severe sanctions will be imposed on U.S. firms for paying bribes to obtain or retain business with the government.

Coordination. Whether U.S. officials are motivated by *Proportionality*, *Altruism* or *Self-Interest*, foreign regulators can assist in achieving these objectives by providing evidence or imposing their own sanctions upon firms. There are conflicting ways U.S. officials might adjust their behavior in response. One possibility is that regulators will lower sanctions to reflect the

imposition of sanctions by foreign regulators. Given a particular desired level of sanctions—whether driven by *Proportionality*, *Altruism*, or *Self-Interest* – the U.S. needs to impose a lower sanction if the defendants already face sanctions from a foreign regulator for the same offense. This version of the *Coordination* theory implies that at the level of an individual FCPA action U.S. officials will impose lower sanctions upon firms that have already been, or are likely to be, sanctioned by foreign regulators.¹² *Coordination*, in other words, implies that U.S. officials will take into account the penalties imposed by foreign regulators in assessing what penalty to assess to further proportionality. At the level of an individual FCPA action, we predict the following:

Hypothesis 4: The least severe sanctions will be imposed on firms that have been sanctioned by foreign regulators or otherwise are under investigation by foreign regulators, all other things being equal.

2.1.2. Country Level Hypotheses

Our country level hypotheses focus on how U.S. enforcement agencies distribute sanctions for FCPA violations across violation countries and home countries.

At the country level of data, *Proportionality* predicts that the DOJ and SEC will impose sanctions in proportion to the level of bribe activity in violation countries.

Hypothesis 5: The DOJ and SEC impose sanctions in proportion to the level of bribe activity within violation countries.

In other words, in a world where the DOJ and SEC focus on enforcing the FCPA in accordance with applicable legal principles and are not influenced by *Altruism*, *Self-Interest*, or *Coordination* we expect enforcement actions to be proportional to the amount of bribes in

¹² The other two interpretations of *Coordination* have implications for how officials might distribute sanctions across types of FCPA actions but do not have testable implications for the penalties that will be imposed in individual actions.

countries. Firms doing business in countries with a greater amount of FCPA-related bribe activity should face a greater amount of FCPA actions and penalties.

Altruism predicts that the U.S. will tend to target firms that engage in bribery in countries that are poorer or which have weaker anti-corruption institutions. Our country-level hypothesis is accordingly:

Hypothesis 6: U.S. enforcement agencies will disproportionately target firms doing business in less developed violation countries and in violation countries with weaker anti-corruption institutions.

If *Self-Interest* affects how U.S. enforcement agencies distribute FCPA sanctions then, all other things being equal, we predict the following at a country-level of analysis.

Hypothesis 7: U.S. enforcement agencies will disproportionately target firms with a foreign home country and foreign firms that pay bribes in violation countries that receive substantial amounts of exports or investment from U.S. firms.

At the level of countries that the U.S. targets for FCPA enforcement, another implication of the *Coordination* theory is that U.S. enforcement agencies will be more likely to bring actions against issuers from home countries where the U.S. has strong cooperative relationships and therefore greater ability to determine the full extent of wrongdoing. U.S. officials might wish to minimize the resources devoted to enforcing the FCPA and target only companies where evidence on FCPA violations is easiest to develop. Alternatively, U.S. officials may have a taste for cooperation and target companies targeted by other regulators. At the country-level of data we predict:

Hypothesis 8: U.S. enforcement agencies will disproportionately target firms incorporated in a home country with a cooperation agreement with the SEC or DOJ.

2.2. Related Literature

The *Proportionality* theory is designed to reflect the legal standard set out in Article V of the OECD Convention. Our remaining theories are based largely on existing literature. The *Self-Interest* and *Altruism* theories and references to them in the legislative history of the FCPA are developed in Davis (2002, 2010, and 2012). Garret (2011) focuses on the prosecution of foreign firms and discusses a wide variety of potential influences on patterns of enforcement, including those we have labeled *Self-Interest*, *Altruism* and *Coordination*. Garret also argues that US prosecutors generally operate in an increasingly collegial and collaborative fashion with foreign prosecutors. The importance of *Coordination* in the form of assistance in gathering evidence is also emphasized by Kaczmarek and Newman (2011) and MacLean (2012).

The *Proportionality*, *Self-Interest*, *Altruism*, and *Coordination* theories parallel more general theories of state behavior. Our broad distinction between extraterritorial regulation undertaken for parochial reasons as opposed to concerns about foreign affairs is similar to a distinction drawn by Putnam (2009). Her analysis suggests that parochial concerns, specifically, the desire to prevent domestic policies from being undermined or to uphold basic rights “at the core of U.S. political and legal identity”, provide the best explanations of U.S. courts’ decisions on whether to assert extraterritorial jurisdiction across a range of subject areas. As for which kinds of foreign affairs might be relevant, the idea that extraterritorial regulation might be influenced by economic self-interest is consistent with Raustiala (2006). Several scholars have suggested that various sorts of extraterritorial regulation might be used to assist weak states (see Davis 2010: 283-284). Finally, the idea that effective extraterritorial regulation of transnational bribery requires at least coordination – if not active collaboration – with foreign regulators echoes Slaughter’s (2004: 285) more sweeping claim that “States can only govern effectively by actively cooperating with other states.”

There have not been many studies of the causes as opposed to the consequences of patterns of FCPA enforcement.¹³ Several of the relevant studies aim primarily to describe patterns and trends rather than to test explanatory theories. The law firms of Shearman and Sterling LLP and Gibson Dunn & Crutcher LLP separately have reported summary statistics on the increase in FCPA enforcement actions in the late 2000s (Shearman and Sterling LLP, 2012; Gibson Dunn & Crutcher LLP, 2011). Others have noted the recent rise in the aggressiveness of FCPA enforcement (Weiss, 2009; Koehler, 2010).

The main evidence bearing on the *Proportionality* hypothesis concerns the impact of voluntary disclosure of FCPA violations to the DOJ or SEC. Hinchey (2011) surveys settled FCPA cases from 2002 to 2009 and finds that the ratio of fines levied and the amount of bribes paid is greater for companies that voluntarily disclose FCPA violations. Shearman and Sterling LLP, in contrast, reports that the DOJ over 2007 to 2011 provided discounts from 3% to 67% for FCPA cases involving voluntary disclosures and negotiated resolutions (Shearman and Sterling LLP, 2012).

Garret (2011) and McLean (2012) offer empirical studies bearing on *Self-Interest*, *Altruism* and *Coordination*. Garret (2011) finds that the foreign firms prosecuted under the FCPA and other statutes tend to be relatively large and to receive relatively large fines. He points out that this finding is consistent with *Self-Interest* but acknowledges that his analysis is inconclusive because it does not control for the type of misconduct. McLean (2012) sheds light on both *Self-Interest* and *Coordination*. He shows that the number of FCPA cases per violation

¹³Several previous studies have examined the impact of FCPA enforcement on firm's investment behavior. One of the most recent, Cuervo-Cazurra (2008), provides evidence that investors from countries that implemented the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997 reduced their investments in countries with greater amounts of corruption. Kaczmarek and Newman (2011) provide evidence that enforcement of the FCPA induces subsequent enforcement action by countries whose firms have been targeted. Karpoff, Lee and Martin (2012) examine the impact of FCPA enforcement on the share prices of targeted firms showing that there is little impact beyond the costs imposed directly by regulators.

country is associated with the stock of US FDI, measures of the level of corruption, and the existence of a cooperation agreement with the SEC (but not the DOJ). Proxies for US foreign policy interests or the existence of an MLAT were not significant. An important limitation of McLean’s analysis is that it does not take into account the defendants’ home countries. For the reasons set out above we believe that characteristics of the home country should be relevant if enforcement is influenced by either *Self-Interest* or *Coordination*.

3. Dataset

Our dataset includes cases that involved allegations that a corporate defendant violated the FCPA’s anti-bribery provisions and that were resolved in 2004 to 2011 by the US Department of Justice (“DOJ”) or the Securities and Exchange Commission (“SEC”).¹⁴ Cornerstone Research assisted in the data collection for SEC investigations. Table 1 reports the number of FCPA actions – where, as indicated above, each action is a group of cases involving defendants involved in the same FCPA violation fact pattern – in our dataset by resolution year and categorized by whether the ultimate parent company of the corporate defendant is a foreign or US company. We use the resolution year for the DOJ action. Where there was no DOJ resolution we use the SEC resolution year.

[Insert Table 1 Here]

Our tests employ a number of explanatory variables at the FCPA action level. Appendix 1 defines the FCPA action level variables and Appendix 2 provides summary statistics. We also look at country-level data to test the factors that drive the incidence of FCPA actions in specific

¹⁴ The limitation to allegations of bribery results in the exclusion of most of the cases associated with the Oil-for-Food scandal. Those cases involved allegations of kickbacks being paid to the government of Iraq rather than individual Iraqi officials. We nonetheless included those Oil-for-Food cases that also contained allegations of bribery or books and records violations in countries other than Iraq. Later in the paper, we exclude these Oil-for-Food cases in robustness tests of our regression results.

violation countries. For our country-level tests, we limited our countries of analysis to the 213 countries in the World Bank's World Development Indicators & Global Development Finance dataset.¹⁵ Excluding the United States, 212 countries form our universe of possible violation countries. Appendix 1 defines the country level variables and Appendix 2 provides summary statistics.

We lastly look at home-violation country pairs. For example, a bribe by a company whose ultimate corporate parent is based in Germany to Chinese government officials involves a Germany-China home-violation country pair. The home countries include the 213 countries World Development Indicators & Global Development Finance dataset. The potential violation countries include the 212 countries in the World Development Indicators & Global Development Finance excluding the United States (since the FCPA does not address bribes against U.S. officials). Appendix 1 defines the home-violation country pair level variables and Appendix 2 provides summary statistics.

4. FCPA Action Level Tests

We begin by examining the *Proportionality* claim that the most severe sanctions will be imposed in actions involving the most culpable defendants where culpability is measured by factors that enhance recommended penalties under the Sentencing Guidelines, including the egregiousness and extensiveness of the wrongdoing and whether the defendants voluntarily reported their wrongdoing and cooperated with authorities. We then use FCPA action level data to test the *Altruism*, *Self-Interest*, and *Coordination* hypotheses.

¹⁵ The World Bank data is available at <http://data.worldbank.org/data-catalog/world-development-indicators>. Note that not all the “countries” in the World Bank dataset are independent (including Hong Kong). We nonetheless treat these countries as independent for purposes of our FCPA analysis.

4.1. Proportionality

4.1.1. Magnitude of the Bribe

We assess the relationship between three measures of the dollar magnitude of the FCPA violation, our proxies for culpability, and the total monetary sanction assessed against all defendants in an individual FCPA action imposed by the SEC or DOJ (Total Monetary Penalty). In the case of the SEC, the sanction often includes disgorgement. The three culpability measures we use are: the total bribe amount (Bribe Amount), the amount of profit the company generated as a result of the bribe (Bribe Profit), and the amount of business affected by the bribe (Bribe Business). For each culpability measure, we divide our data sample between those FCPA actions with the median or less for each measure and those FCPA actions that are greater than the median. Panel A of Table 2 reports the p-value from a t-test of the difference in mean for Total Monetary Penalty for the median or less sample compared with the greater than median sample for each measure.

[Insert Table 2 Here]

Panel A of Table 2 reports that FCPA actions involving a greater than median Bribe Amount, Bribe Profit, or Bribe Business correlate with a statistically and economically larger mean total monetary penalty. This correlation is consistent with the *Proportionality* theory (Hypothesis 1) and reflects either a need to punish more morally reprehensible conduct or, alternatively, the need to impose greater sanctions to deter larger magnitude wrongdoings.

For the same dollar magnitude of FCPA violation, the SEC and DOJ may impose greater penalties on larger companies to increase deterrence. A \$1 million penalty may affect a \$100 million market capitalization company differently than a \$10 billion market capitalization company and the SEC and DOJ may increase the size of the sanction to take this differential into account. To control for company size, we estimate an ordinary least squares model on FCPA

action level data with the log of 1 + the Total Monetary Penalty as the dependent variable. We include the log of the market capitalization of the top corporate defendant in an FCPA action as an independent variable. We include the Bribe Amount as an independent variable to test the relationship between Bribe Amount and the Total Monetary Penalty. The model is as follows estimated with robust standard errors:

$$\ln(1 + \text{Total Monetary Penalty}) = \alpha + \beta_1 \ln(\text{Market Cap}_i) + \beta_2 \text{Bribe Amount}_i + \varepsilon_i$$

We report the results as Model 1 in Panel B of Table 2. We use Model 1 as the base model for tests on FCPA action level data later in the Article (referred to as the “Bribe Amount model”). We replace Bribe Amount with Bribe Profit and report the results as Model 2. We replace Bribe Amount with Bribe Business and report the results as Model 3.

In the three models of Panel B of Table 2, the coefficients on Bribe Amount, Bribe Profit, and Bribe Business are positive and significant at the 1% level. Similar with the summary statistic results, the SEC and DOJ impose greater penalties on companies that engage in larger dollar amount FCPA violations, consistent with *Proportionality* (Hypothesis 1).¹⁶

¹⁶ As a robustness test, we estimate the models of Table 2 omitting FCPA actions with any Oil-for-Food related claims. Unreported, we obtained the same qualitative results in Table 2.

We also estimate the models of Table 2 with the log of 1 + the total DOJ monetary penalty for a particular FCPA action as the dependent variable (excluding the SEC monetary penalty which includes disgorgement). Unreported, we obtain the same qualitative results as in Table 2.

Our tests relating the dollar magnitude of the FCPA violation and the monetary penalty treat SEC and DOJ penalties as the same and do not take into account non-monetary penalties. As an alternate test, we classify our FCPA actions by the type of penalty outcome. We define Penalty Severity as follows: 0 = no penalty; 1 = SEC sanction but no monetary penalty; 2 = SEC sanction with monetary penalty; 3 = criminal penalty with no prosecution agreement; 4 = criminal penalty with deferred prosecution agreement; and 5 = criminal penalty with immediate prosecution/guilty plea. We estimate an ordered logit model using Penalty Severity as the dependent variable with Bribe Amount, Bribe Profit, and Bribe Business as independent variables in separate models. Unlike the models of Panel B of Table 2 we do not include market capitalization as an independent variable because we have no a priori theory why the SEC or DOJ would be more or less likely to impose different types of sanctions based on the market capitalization of the top corporate defendant in an FCPA action. Unreported, we obtain similar results as

4.1.2. Extensiveness of FCPA Violation

In addition to the dollar magnitude of the FCPA violation, we conjecture that the extensiveness of the FCPA violation should result in a larger monetary penalty. To test this possibility, we look at whether a subsidiary in addition to the top corporate entity is charged with a violation in a particular FCPA action (Any Subsidiary), any employee is charged with a violation (Any Employee), and whether the violation occurs in more than one country (Multiple Countries). Panel A of Table 3 reports the p-values from t-tests of the difference in mean for Total Monetary Penalty for the FPCA actions where the extensiveness measure in question is present (=1) or absent (=0). We also look at the number of violation years as a measure of extensiveness. Panel A reports the p-value from a t-test of the difference in mean for Total Monetary Penalty for the cases with median or less violation years compared with the cases with greater than median violation years.

[Insert Table 3 Here]

The results from Panel A indicate that the SEC and DOJ impose greater penalties for more extensive FCPA violations. Any Subsidiary and Multiple Countries correspond with a greater mean Total Monetary Penalty. The t-tests for the difference in mean total monetary penalty involving Any Subsidiary and Multiple Countries are significant at 1% levels. FCPA actions involving greater than the median number of violation years also correspond with a greater mean Total Monetary Penalty (significant at the 1% level).

in Panel B of Table 2 for the Bribe Amount. The coefficient on Bribe Amount is positive and significant at the 5% level. FCPA actions involving a greater Bribe Amount are more likely to result in more severe qualitative penalties as measured by the Penalty Severity variable. In contrast, the coefficients on Bribe Profit and Bribe Business are not significantly different from zero in the Penalty Severity models, inconsistent with the *Proportionality* hypothesis.

The SEC and DOJ may impose larger penalties on larger companies. More extensive violations in an FCPA action may also correlate with larger bribe amounts. The correlations in Panel A of Table 3 above may simply be due to the SEC and DOJ imposing larger penalties where the bribe amount is larger. To control for the effects of market capitalization and bribe amount on the Total Monetary Penalty, we estimate a series of ordinary least squares model with robust standard errors based on Model 1 of Table 2 above (the Bribe Amount model with log of 1 + the Total Monetary Penalty as the dependent variable). We add Any Subsidiary, Any Employee, Multiple Countries, and Violation Years in separate models as independent variables. Panel B of Table 3 reports the results.

Panel B of Table 3 provides similar support as the t-tests in Panel A for the correlation between the extensiveness of a violation in an FCPA action, now controlling for bribe amount and market capitalization, and the Total Monetary Penalty. The coefficient on Any Subsidiary is positive and significant at the 1% level. The presence of a subsidiary involved sufficiently in the FCPA violation to result in charges against the subsidiary correlates with a greater Total Monetary Penalty, consistent with *Proportionality*. Similarly, the coefficients on Multiple Countries and Violation Years are positive and significant at the 1% level. The presence of a FCPA violation that spans multiple countries or a greater number of violation years correlates with a larger Total Monetary Penalty, consistent with *Proportionality*.¹⁷

¹⁷ One weakness of our extensiveness findings is that we do not have information on the number of subsidiaries for each top corporate entity charged with a FCPA violation. It could be, for example, that no subsidiary is charged because the particular corporate entity does not have any subsidiaries; instead, the FCPA violation takes place through the use of an internal corporate division and is just as extensive as for a corporate entity that uses a subsidiary in the violation. Nonetheless, if a true relationship exists between extensiveness of violation (with FCPA charges against subsidiaries as a proxy for extensiveness) and a greater Total Monetary Penalty, the lack of complete information on subsidiaries biases against finding a correlation between our observed Any Subsidiary variable and greater Total Monetary Penalties.

As a robustness test, we estimate the models of Table 3 omitting FCPA actions with any Oil-for-Food related claims. Unreported, we obtained the same qualitative results in Table 3 except that the coefficient on Violation Years, while positive, is no longer significant.

4.1.3. Mitigating Factors

Both the SEC and DOJ profess to reduce FCPA sanctions if the defendants engage in mitigating activities. To test for this possibility, we code for whether the defendants in our FCPA actions voluntarily disclosed the FCPA violation to the SEC or DOJ (Voluntary Disclosure), cooperated with the SEC or DOJ (Cooperation), or engaged in voluntary remediation to reduce the possibility of future FCPA violations (Remediation). Panel A of Table 4 compares the Total Monetary Penalty given the presence (=1) with the absence (=0) of one of these mitigating activities.

[Insert Table 4 Here]

While the Total Monetary Penalty is lower for all three types of mitigating activities, Panel A reports that the reduction is significant only where the defendants made voluntary disclosure of the FCPA violation to the SEC or DOJ.

To control for the effects of market capitalization and the bribe amount on the size of the monetary penalty, we estimate a series of ordinary least squares model based on Model 1 of Table 2 (the Bribe Amount model with log of 1 + the Total Monetary Penalty as the dependent variable) on FCPA Action level data. We add Voluntary Disclosure, Cooperation, and Remediation in separate models as independent variables. Panel B of Table 4 reports the results.

We also estimate the models of Table 3 with the log of 1 + the total DOJ monetary penalty for a particular FCPA action as the dependent variable (excluding the SEC monetary penalty which includes disgorgement). Unreported, we obtain the same qualitative results as Table 3.

We estimate a series of ordered logit models with Penalty Severity as the dependent variable and with Bribe Amount as a control for the magnitude of the bribe in each model. In separate models, we include independent variables for Any Subsidiary, Any Employee, Multiple Countries, and Violation Years. Unreported, the coefficient on Any Subsidiary in Model 1 remained positive and significant, at the 1% level. The results for Any Subsidiary in the unreported ordered logit model is consistent with Hypothesis 1. In contrast, the coefficients on Any Employee, Multiple Countries, and Violation Years are not significantly different from zero.

Panel B of Table 4 provides no evidence to support the hypothesis that voluntary disclosure (internal) or cooperation or remediation correlates with reduced total monetary penalties. Once we control for market capitalization and Bribe Amount, the correlations between the mitigating factors, including voluntary disclosure, with the Total Monetary Penalty are not significant. It is possible that only defendants with particularly egregious instances of FCPA violations engage in mitigating activities. While mitigating activities reduce the Total Monetary Penalty, the more egregious nature of the violation may increase the Total Monetary Penalty, leading to the lack of an observable correlation in Panel A of Table 4. Our inclusion of the Bribe Amount in the models in Panel B of Table 4 in part controls for egregiousness; however, we cannot completely rule out the possibility that mitigating activities occur when violations are more egregious.¹⁸

In sum, we find evidence that the SEC and DOJ impose greater sanctions for violations in an FCPA action that involve greater Bribe Amounts (as well as greater Bribe Profits and Bribe Business). We also find some evidence that the extensiveness of the violation matters for size of the sanction. In particular, charges against Any Subsidiary or a violation that spans Multiple Countries correlate with greater sanctions. Both these findings support the *Proportionality* theory (Hypothesis 1). In contrast, we do not find evidence that the presence of mitigating activities on the part of FCPA defendants correlates with a reduced sanction.

¹⁸ As a robustness test, we estimate the models of Table 4 omitting FCPA actions with any Oil-for-Food related claims. Unreported, we obtained the same qualitative results in Table 4.

We also estimate the models of Table 4 with the log of 1 + the total DOJ monetary penalty for a particular FCPA action as the dependent variable (excluding the SEC monetary penalty which includes disgorgement). Unreported, we similar qualitative results. The coefficients on Voluntary Disclosure (Model 1), Cooperation (Model 2), and Remediation (Model 3) are not significantly different from zero.

We estimate a series of ordered logit models with Penalty Severity as the dependent variable and with Bribe Amount as a control for the magnitude of the bribe in each model. In separate models, we include independent variables for Voluntary Disclosure, Cooperation, and Remediation. Unreported, the coefficients on Voluntary Disclosure, Cooperation, and Remediation are all positive and significant at the 10% level. These results are contrary to the hypothesis that remediation activities help mitigate the penalties imposed under the FCPA. Nonetheless, it is possible that defendants are more likely to engage in mitigating activities for more egregious FCPA violations.

4.2. Altruism

We test whether the SEC and DOJ impose greater sanctions on defendants whose violations occur in less developed countries. We use the GNI Per Capita for 2003 as obtained from the World Bank as our measure of development. We also test whether the SEC and DOJ impose greater sanctions on defendants whose violations occur in countries with weaker local anti-bribery institutions. We use the World Bank's scores for the effectiveness of government (Gov. Effectiveness) and the rule of law in the country (Rule of Law) as our measures for the strength of a country's anti-bribery institutions. We take these scores from 2003, the year before the start of our dataset period.

We use our FCPA action level data to see whether our measures for development and the strength or weakness of anti-bribery institutions in a country where violations are alleged to have taken place correlate with the SEC and DOJ sanction. For each FCPA action, we compute the mean for GNI Per Capita, Gov. Effectiveness, and Rule of Law for all the violation countries involved in the specific FCPA action. For example, if an FCPA action involved FCPA violations (including bribes, books and records, and other violations) in China, Nigeria, and Mexico, we computed the mean Gov. Effectiveness and Rule of Law scores for these three countries in 2003.

We first compare the Total Monetary Penalty for those FCPA actions with median or lower GNI per capita, Gov. Effectiveness, and Rule of Law measures and those cases with greater than median measures. Panel A of Table 5 reports the results of this comparison.

[Insert Table 5 Here]

Note from Panel A that countries with lower GNI Per Capita, weaker government effectiveness, and weaker rule of law correlate with a greater Total Monetary Penalty in an

FCPA action. The t-tests for all three variables are significant (ranging from the 5% to 10% levels).

To control for the effects of market capitalization and the bribe amount on the size of the total monetary penalty, we estimate a series of ordinary least squares model based on Model 1 of Table 2 above on FCPA action level data (the Bribe Amount model with log of 1 + the Total Monetary Penalty as the dependent variable). We add in separate models GNI Per Capita (Model 1), Gov. Effectiveness (Model 2), and Rule of Law (Model 3) as independent variables. The inclusion of Bribe Amount in the models controls for Proportionality and allows us to determine whether GNI Per Capita, Gov. Effectiveness, and Rule of Law correlate with disproportionate FCPA total monetary sanctions. Panel B of Table 5 reports the results.

In the models in Panel B of Table 5, only the coefficient on Gov. Effectiveness (in Model 2) is negative and significantly different from zero (at the 10% level). The coefficients on GNI Per Capita and Rule of Law are not significant.¹⁹ At the individual FCPA action level of data, we find only limited evidence that the DOJ or SEC adjust the penalty to be greater for bribes that take place in weaker regime or more developing countries once Proportionality is controlled for with Bribe Amount (Hypothesis 2). The coefficient on Bribe Amount, in contrast, is positive and significant at the 1% level, consistent with *Proportionality* as the primary determinant of sanctions at the individual FCPA action level of data.²⁰

¹⁹ We measure GNI Per Capital, Gov. Effectiveness, and Rule of Law in the violation countries as of the year 2003 for the regressions in Panel B of Table 5. As a robustness test we obtain measures for each of these variables from the World Bank for the year prior to the resolution year for each FCPA action. Unreported, the coefficients on GNI Per Capita, Gov. Effectiveness, and Rule of Law are not significantly different from zero—inconsistent with Hypothesis 2.

²⁰ As a robustness test, we estimate the models of Table 5 omitting FCPA actions with any Oil-for-Food related claims. Unreported, in the re-estimated models of Table 5, the coefficients on GNI Per Capita, Gov. Effectiveness, and Rule of Law are now all insignificant—inconsistent with Hypothesis 2.

We also estimate the models of Table 5 with the log of 1 + the total DOJ monetary penalty for a particular FCPA action as the dependent variable (excluding the SEC monetary penalty which includes disgorgement). Unreported, we obtained similar qualitative results as in Panel B of Table 5.

4.3. Self-Interest

To test *Self-Interest*, we look at FCPA action level data to see whether the SEC and DOJ impose more severe sanctions on foreign defendants compared to US defendants. Self-interest could include discouraging US companies from competing against one another using bribes to obtain business that they could otherwise obtain through legitimate means. We categorize the FCPA violations in our FCPA action level data based on whether they are to Retain Gov. Services (legitimate) versus other more illegitimate objectives (such as bribing a custom official to allow illegal entry of a product).

We compare the mean Total Monetary Penalty for FCPA actions involving an ultimate US parent company (US Company = 1) and ultimate foreign parent company (= 0). We also compare the mean Total Monetary Penalty for FCPA actions where the defendants are alleged to have paid bribes to obtain or retain government services (Retain Gov. Services = 1) and FCPA actions without such allegations (= 0). Panel A of Table 6 reports the results of these comparisons.

[Insert Table 6 Here]

Panel A of Table 6 reports a statistically significant and economically large differential between the mean total monetary penalty for US companies (\$25.3 million) and foreign companies (\$118.1 million). To control for the effect of market capitalization and the Bribe Amount on the Total Monetary Penalty, we estimate an ordinary least squares model based on Model 1 of Table 2 (the Bribe Amount model with log of 1 + the Total Monetary Penalty as the

We estimate a series of ordered logit models with Penalty Severity as the dependent variable and with Bribe Amount as a control for the magnitude of the bribe in each model. In separate models, we include independent variables for GNI per capita, Gov. Effectiveness, and Rule of Law. Unreported, the coefficients on GNI Per Capita, Gov. Effectiveness, and Rule of Law are all insignificant. The results for GNI Per Capita and Rule of Law are similar to those in Panel B of Table 5. The result for Gov. Effectiveness is weaker than the result in Panel B of Table 5.

dependent variable) using FCPA action level data. We add US Company as an independent variable. Model 1 of Panel B of Table 6 reports the results. Model 2 replaces US Company in Model 1 with Retain Gov. Services. Model 3 adds Retain Gov. Services and US Company x Retain Gov. Services to Model 1 to test for whether the SEC and DOJ care more about the retention of government services when US companies are making the bribes. The inclusion of Bribe Amount in the models controls for *Proportionality* and allows us to determine whether US Company, Retain Gov. Services, and the US Company x Retain Gov. Services interaction term correlate with disproportionate FCPA total monetary sanctions.

Panel B of Table 6 supports the hypothesis that US companies are fined disproportionately less compared with foreign companies, consistent with Hypothesis 3. The coefficient on US Company is negative and significant at the 1% level. There is however no evidence that the SEC or DOJ imposes a greater penalty when the FCPA violation involves a bribe to retain government services or the services of a government instrumentality. This is inconsistent with Hypothesis 3.²¹

4.4. Coordination

To test *Coordination*, we look at FCPA action level data to see whether the SEC and DOJ impose lower sanctions on defendants that have been sanctioned by foreign regulators or otherwise are under investigation by foreign regulators. We categorize the FCPA violations in

²¹ As a robustness test, we estimate the models of Table 6 omitting FCPA actions with any Oil-for-Food related claims. Unreported, we obtained the same qualitative results in Table 6.

We also estimate the models of Table 6 with the log of 1 + the total DOJ monetary penalty for a particular FCPA action as the dependent variable (excluding the SEC monetary penalty which includes disgorgement). Unreported, we obtain similar qualitative results as in Panel B of Table 6.

We estimate a series of ordered logit models with Penalty Severity as the dependent variable and with Bribe Amount as a control for the magnitude of the bribe in each model. In separate models, we include independent variables for US Company (Model 1), Retain Gov. Services (Model 2), and US Company, Retain Gov. Services, and US Company x Retain Gov. Services (Model 3). Unreported, the coefficients on all the variables are not significantly different from zero. These results are inconsistent with the *Self-Interest* hypothesis (Hypotheses 5 and 7).

our FCPA action level data based on (a) whether the defendants faced an investigation by a foreign regulator (regardless of whether a sanction was eventually applied on the defendants) (Foreign Regulator) and (b) whether the defendants also were sanctioned by a foreign regulator (Foreign Reg. Sanction).

We compare the mean Total Monetary Penalty for FCPA actions with (= 1) and without (= 0) a Foreign Regulator. We also compare the mean Total Monetary Penalty for FCPA actions with (= 1) and without (= 0) a Foreign Reg. Sanction. Panel A of Table 7 reports the results of these comparisons.

[Insert Table 7 Here]

Note from Panel A that FCPA actions with an investigation by a foreign regulator (Foreign Regulator) and with an investigation where the foreign regulator imposes a sanction (Foreign Reg. Sanction) both correlate with a much greater total monetary penalty (significant at the 1% level). This is contrary to Hypothesis 4.

To control for the effect of market capitalization and the Bribe Amount on the Total Monetary Penalty, we estimate an ordinary least squares model based on Model 1 of Table 2 (the Bribe Amount model with log of 1 + the Total Monetary Penalty as the dependent variable) using FCPA action level data. We add Foreign Regulator as an independent variable. Model 1 of Panel B of Table 7 reports the results. Model 2 replaces Foreign Regulator in Model 1 with Foreign Reg. Sanction.

As with the t-tests in Panel A, the models of Panel B of Table 7 are inconsistent with Hypothesis 4. The coefficients on Foreign Regulator and Foreign Reg. Sanction are both positive and significant at the 1% level. Sanctions imposed by U.S. enforcement agencies in an individual FCPA action are higher when a foreign regulator is also involved in the action. A competing view of *Coordination* is that U.S. regulators seek to bring cases in situations where evidence is easiest

to obtain (we test the targeting of FCPA actions later in the paper). *Coordination* means greater evidence for U.S. regulators and thus greater penalties because the U.S. regulators have an easier time making their FCPA case. Alternatively, it could be that the most egregious FCPA actions tend to attract the attention from both U.S. and foreign regulators. While we control for the Bribe Amount in Panel B of Table 7, our models may omit factors correlated with egregiousness and the presence of a foreign regulator, leading to the positive relationship between Foreign Regulator and Foreign Reg. Sanction and the total monetary penalty but not necessarily demonstrating causation.²²

5. Country Level Tests

Our FCPA action level tests provide evidence that the DOJ and SEC are influenced by the egregiousness and extensiveness of the bribe in an underlying violation in determining the sanction to apply in any individual action, consistent with *Proportionality*. We also find that the DOJ and SEC tend to impose lower sanctions on US issuers compared with foreign issuers, consistent with *Self-Interest*. We do not, however, find support for *Altruism* or *Coordination* in the FCPA action level data.

In this Section, we look at how FCPA enforcement is distributed among countries where bribes may take place—the violation countries. As our measure of FCPA enforcement in a

²² As a robustness test, we estimate the models of Table 7 omitting FCPA actions with any Oil-for-Food related claims. Unreported, we obtained the same qualitative results in Table 7.

We also estimate the models of Table 7 with the log of 1 + the total DOJ monetary penalty for a particular FCPA action as the dependent variable (excluding the SEC monetary penalty which includes disgorgement). Unreported, we obtained similar qualitative results as in Panel B of Table 6. The coefficient on Foreign Regulator is positive and remains significant at the 1% level. The coefficient on Foreign Reg. Sanction is positive but is not significant at only the 5.1% level.

We estimate a series of ordered logit models with Penalty Severity as the dependent variable and with Bribe Amount as a control for the magnitude of the bribe in each model. In separate models, we include independent variables for Foreign Regulator (Model 1) and Foreign Reg. Sanction (Model 2). Unreported, the results are somewhat weaker than the ones in Table 7. The coefficient on Foreign Regulator is positive but significant at only the 10% level. The coefficient on Foreign Reg. Sanction is positive but now is not significantly different from zero.

specific violation country, we compute the sum of the total monetary penalties for all FCPA actions that are related to violations in a particular country (the “aggregate total monetary sanction”). For example, we compute the aggregate total monetary sanction related to violations in China by adding the total monetary penalties for all FCPA actions that mention China as a violation country.²³ These country-level data allow us to assess whether characteristics related to our Altruism and Self-Interest hypotheses explain the level of FCPA enforcement related to a particular violation country, weighted by size of sanctions. As an alternative measure, we also look at the simple number of FCPA actions in each violation country as reported in the footnotes.

For our country level tests, we start with a version of the *Proportionality* theory as our baseline. We posit that the DOJ and SEC impose aggregate sanctions in proportion to the magnitude of the overall bribe activity in specific violation countries (Hypothesis 5). Using this baseline, we test whether aggregate sanctions vary disproportionately to the overall bribe activity due to Altruism or Self-Interest motives.

We lack information on the actual level of bribes by companies in particular countries. We instead construct a proxy for the level of bribes in a particular violation country (Bribe Level) equal to the inward foreign direct investment (FDI) stock in the country measured in 2003 multiplied by a country-level corruption measure ranging from 0 (lowest level of corruption) to 1 (highest level of corruption) based on the World Bank’s Control of Corruption index measure from 2003.²⁴ FCPA actions typically involve a foreign issuer bribing a domestic official or

²³ In computing the aggregate sanction, where an individual FCPA action names more than one country as a violation country, we divided the total monetary penalty for that action pro rata among the named violation countries.

²⁴ Our scaled corruption score is equal to $(-\text{World Bank Control of Corruption Score}/5) + 0.5$. For example, the World Bank Control of Corruption score for China in 2003 is -0.42628. This gives a scaled corruption score of 0.58526. If China had an inward FDI stock of \$100 billion, for example, then the Bribe Level we use for China would equal \$100 billion x 0.58526 or \$58.5 billion.

employee of a government instrumentality. Indeed, every observation in our dataset involves a foreign issuer bribing a domestic official of a violation country (e.g., we do not observe any FCPA actions filed against a Chinese issuer bribing a Chinese official for example). The greater the amount of FDI stock in a violation country with a higher level of corruption, the greater we presume is the level of actual bribe activity in the violation country.

We first test whether *Altruism* causes the DOJ and SEC to deviate from enforcing the FCPA in proportion to the Bribe Level in violation countries. We then test whether *Self-Interest* or *Coordination* causes the DOJ and SEC to deviate from proportionate enforcement of the FCPA.

5.1. Proportionality and Altruism

We tabulate the number of FCPA actions naming a specific country as the location of a bribe or other FCPA violation, excluding the United States. Table 8 reports on where FCPA violations take place (the Violation Countries). Note from Table 8 that the top two countries in terms of where FCPA violations take place are China and Nigeria and that the top 10 countries are all developing countries. As an initial matter, the frequency data in Table 8 is consistent with the SEC and DOJ disproportionately targeting FCPA violations in less developed countries (Hypothesis 2).

[Insert Table 8 Here]

To test the factors that explain the decision of the SEC and DOJ to target companies doing business in particular countries, we estimate an ordinary least squares model on country level data with the aggregate total monetary sanctions applied in all the FCPA actions in our

dataset naming a particular country as a violation country, excluding the United States, as the dependent variable.²⁵

For our independent variables, we include the Bribe Level variable as our proxy for the level of actual bribe activity in a particular violation country. The Bribe Level variable allows us to test for Proportionality (Hypothesis 5)—whether the DOJ and SEC apply aggregate sanctions proportionally to the overall level of bribe activity in violation countries. To test for the relationship between the aggregate sanctions related to a violation country and the country’s level of economic development we include GNI per capita for the specific country (Violation GNI Per Capita) as an independent variable (allowing us to test Hypothesis 6). The model is as follows with robust standard errors:

$$\ln(\text{Aggregate Total Monetary Penalty}_i) = \alpha + \beta_1 \text{Bribe Level}_i + \beta_2 \text{Violation GNI Per Capita}_i + \epsilon_i$$

We report the results as Model 1 in of Table 9. We replace Violation GNI Per Capita with the World Bank Gov. Effectiveness score for each country (Violation Gov. Effectiveness) and report the results as Model 2 of Table 9. Lastly, we replace Violation GNI Per Capita with the World Bank’s Rule of Law score for each country (Violation Rule of Law) and report the results as Model 3 of Table 9. Models 2 and 3 allow us to test whether U.S. enforcement agencies disproportionately (relative to the Bribe Amount) enforce the FCPA in countries with weak anti-bribery institutions (Hypothesis 3).

[Insert Table 9 Here]

In all three models of Table 9, the coefficient on Bribe Level is positive and significant at

²⁵ For example, suppose that one FCPA action results in \$100 million of fines imposed on a company for bribes made in Nigeria and Malaysia. A second FCPA action results in \$15 million of fines imposed on a company for bribes made in Malaysia. If these are the only 2 FCPA actions that involve Malaysia then the aggregate total monetary penalty for the violation country Malaysia is equal to \$65 million (\$50 million from the split of the fine in the first action plus the full \$15 million from the second action).

the 1% level. The aggregate total monetary sanction in a violation country is correlated with the actual level of bribes in that country as measured by our Bribe Level variable, consistent with *Proportionality* (Hypothesis 5). Model 1 of Table 9, however, indicates that the development level of the country also affects the amount of FCPA enforcement. The coefficient on Violation GNI Per Capita is negative and significant at the 1% level. Rather than simply target FCPA actions in proportion to the magnitude of bribes in a particular violation country, the DOJ and SEC disproportionately target countries with lower economic development, consistent with *Altruism* and Hypothesis 2. Table 9 also provides evidence that countries with weaker domestic anti-bribery institutions against bribes, as measured by Violation Gov. Effectiveness and Violation Rule of Law, are more likely to have a greater number of FCPA actions naming the country as a violation country. These results support Hypothesis 6 and are consistent with *Altruism* (Hypothesis 6). Controlling for the overall level of bribe activity in a country, the SEC and DOJ disproportionately target companies doing business in countries with weaker anti-bribery institutions.²⁶

5.2. Self-interest

In this section, we test whether *Self-interest* explains how the SEC and DOJ target companies doing business in particular countries for FCPA enforcement actions. We conjecture that the SEC and DOJ may disproportionately, relative to the actual level of bribes in a country, target countries where U.S. companies do business (Hypothesis 7). We test this hypothesis by

²⁶ As a robustness test, we estimate the models of Table 9 omitting FCPA actions with any Oil-for-Food related claims in our computation of the aggregate total monetary penalty for the violation countries. Unreported, we obtained the same qualitative results in Table 9.

We also estimate the models in Table 9 with a negative binomial model with the number of FCPA actions involving the particular home-violation country pairing as the dependent variable and the same independent variables. Unreported, we obtained the similar qualitative results as in Table 11 with negative coefficients on Violation GNI Per Capita, Violation Gov. Effectiveness, and Violation Rule of Law all significant at the 5%, 5%, and 1% levels.

examining the relationship between the aggregate total monetary sanctions applied in all the FCPA actions in our dataset naming the country as a violation country, excluding the United States, and the amount of U.S. foreign direct investment in the violation country (US FDI), the amount of U.S. affiliate assets in the violation country (US Affiliate Assets), and the amount of U.S. affiliate sales in the violation country (US Affiliate Sales). We obtain the US FDI, US Affiliate Assets, and US Affiliate Sales data from the 2004 U.S. Direct Investment Abroad survey conducted by the Bureau of Economic Analysis.

To provide a multivariate test that controls for the overall level of bribe activity in a particular violation country, excluding the United States, we estimate an ordinary least squares model based on Model 1 of Table 9 replacing GNI Per Capita with the US FDI variable. We report the results in Model 1 of Table 10. We replace US FDI with US Affiliate Assets and report the results in Model 2. We replace US FDI with US Affiliate Sales and report the results in Model 3. All models use robust standard errors.

[Insert Table 10 Here]

The models of Table 10 provide evidence that the presence of US business in a violation country is negatively correlated with the aggregate magnitude of FCPA sanctions involving an ultimate foreign parent company for violations taking place in that specific country. If anything, the SEC and DOJ appear to target foreign companies committing FCPA violations in countries where the US does less business. This result is inconsistent with Hypothesis 7. It is instead arguably consistent with *Altruism* on the part of the SEC and DOJ to the extent countries where the U.S. does less business correlates with countries that are in greater need of outside enforcement to protect against bribes.²⁷

²⁷ As a robustness test, we estimate the models of Table 10 omitting FCPA actions with any Oil-for-Food related claims in our computation of the aggregate total monetary penalty for the violation countries. Unreported, we obtained the same qualitative results in Table 10.

5.3. Coordination

Our last set of country-level tests examine whether *Coordination* explains decisions by the DOJ and SEC on how to distribute sanctions for violation of the FCPA. If *Coordination* were irrelevant we would expect that the SEC and DOJ would target companies solely in proportion to the bribe activity in violation countries regardless of characteristics of the home country of the ultimate corporate parent of entities involved in the bribe. Against this baseline *Proportionality*, we test whether the SEC and DOJ target companies disproportionately where the home country anti-bribery legal regime is strong to ease the burden of the SEC and DOJ in collecting evidence and making its FCPA case (Hypothesis 8).

We first report in Table 11 the range of home countries in which the ultimate corporate parents in our dataset are incorporated. From Table 11, note that non-US FCPA defendant companies are incorporated in relatively developed countries, including in particular Switzerland and the United Kingdom. Most strikingly, companies from more developing countries, including China in particular, do not face any FCPA actions. While Chinese companies do business around the world including in many countries with low economic development and weak anti-bribery institutions, including in particular Nigeria and several other countries in Africa (Hurt, 2009), US officials focus their enforcement efforts not on Chinese companies but instead on foreign issuers from more developed countries.

[Insert Table 11 Here]

To test the *Coordination* hypothesis, we focus on home-violation country pairs as our unit of analysis. We look at how FCPA enforcement is distributed among home-violation

We also estimate the models in Table 10 with a negative binomial model with the number of FCPA actions involving the particular violation country as the dependent variable and the same independent variables. Unreported, we obtained the similar qualitative results as in Table 10 with negative coefficients on US FDI, US Affiliate Assets, US Affiliate Sales all significant at the 1% level.

country pairs. As our measure of FCPA enforcement, we compute the sum of the total monetary penalties for all FCPA actions that are related to particular home-violation country pairs (the home-violation country pair aggregate total monetary sanction).²⁸ Looking at home-violation country pairs allows us to control both for the overall level of bribe activity in a particular violation country while assessing the importance of the anti-bribery regime of the home country and the presence of enforcement cooperation agreements between regulators in the home country and the U.S. SEC.

If the DOJ and SEC target FCPA enforcement solely based on where bribes occur, we expect that the aggregate total monetary sanction for any particular home-violation country pair will be in proportion to the amount of bribe activity in that home-violation country pair. Because we cannot observe the level of actual bribes, we construct a proxy for the bribe level in each home-violation country pair (HV Bribe Level). We first obtain the total FDI outward stock in 2003 from any particular home country from UNCTAD. We lack comprehensive data on where the FDI outward stock from any particular home country is located for all the countries in our dataset. Instead, we obtain from UNCTAD the amount of goods exports by the home country to each violation country averaged over the 2003 to 2010 period (to smooth the fluctuations in the export amount per year) and determine the fraction of exports from the home country to each violation country. We multiply the total FDI outward stock for a particular home country by the fraction of exports from the home country to a particular violation country to obtain a measure of the FDI outward stock for the home-violation country pair (HV FDI Outward Stock). We define HV Bribe Level as equal to HV FDI Outward Stock multiplied by our country-level corruption measure ranging from 0 (lowest level of corruption)

²⁸ In computing the aggregate sanctions, where an individual FCPA action names more than one country as a violation country, we divided the sanction for that action pro rata among the named violation countries.

to 1 (highest level of corruption) based on the World Bank's Control of Corruption index measure from 2003.²⁹ We use HV Bribe Level, which is proportional to both the amount of FDI stock from a particular home country to a violation country pair and the level of corruption in the violation country, as our proxy for the bribe level in the home-violation country pair.

Note that HV Bribe Level, because it depends on the amount of outward FDI stock from each home country in our dataset (213 countries) to each violation country (212 countries excluding the United States), ignores the level of bribes in same country pairs since we do not have data on same country investments (since these are not "foreign" direct investments). Thus, HV Bribe Level is defined on a maximum of 44,944 pairs.³⁰ While same country home-violation country pairs are ignored in our tests, we conjecture that the most egregious bribes will tend to take place when a foreign company (from the perspective of the violation country) compared with already entrenched domestic companies seek to curry governmental favor. In our dataset, every FCPA enforcement action involved a home-violation country pair with different home and violation countries.

To test the factors that explain the decision of the SEC and DOJ to target companies from particular home countries doing business in particular violation countries, we estimate an ordinary least squares model on home-violation country pair level data with the aggregate total monetary sanctions applied in all the FCPA action in our dataset for a particular home-violation country pair as the dependent variable.

²⁹ For example, suppose that France has a total outward FDI stock of \$1 billion. France has total goods exports of \$10 billion and goods exports to China of \$500 million. We compute the amount of outward FDI stock from France (home country) to China (violation country) as equal to \$50 million ($\$1 \text{ billion} \times (\$500 \text{ million}/\$10 \text{ billion})$). Lastly, the World Bank Control of Corruption score for China in 2003 is -0.42628, giving a scaled corruption score of 0.585255. The Bribe Level for China-France in this example is equal to \$50 million \times 0.585255 or \$29.3 million.

³⁰ We compute the maximum number of pairs as follows. First we multiplied 213 potential home countries by 212 potential violation countries, giving 45,156 pairs. Then we subtracted the 212 potential same country home-violation country pairs, giving 44,944. Due to a lack of data, our tests do not include the theoretical maximum 44,944 pairs.

For our independent variables, we first include the HV Bribe Level variable as our control for the level of actual bribe activity in a particular home-violation country pair. Under the *Proportionality* hypothesis, aggregate sanctions at the home-violation country pair level of data should be in proportion to the level of bribe activity attributable to a particular home-violation country pair. Against the *Proportionality* hypothesis as a baseline, we include a variable for whether the home country has a longstanding enforcement cooperation agreement with the SEC (SEC Agreement = 1) and for countries without such an agreement effective as of the resolution date for each FCPA action (= 0) to test the *Coordination* hypothesis. Since 2003, the SEC has participated with numerous other countries in the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation (Multilateral MOU) and the Exchange of Information sponsored by the International Organization of Securities Commissions. In addition to the U.S. SEC, signatories to the Multilateral MOU include over 85 financial and securities regulatory authorities including the regulatory authorities from Hungary, Pakistan, and Thailand.³¹ We nonetheless use the existence of a bilateral enforcement cooperation agreement between the U.S. and a particular country (all dating prior to 2003) as our proxy for a longstanding agreement.³² We assume that countries that entered into the older bilateral enforcement cooperation agreements have much longer and deeper cooperation ties with the U.S. SEC. Because the United States is the home country for most ultimate parent companies in our dataset, we also include an indicator variable for the United States as the home country (US Home). The DOJ and SEC may tend to go more after U.S. companies either because evidence relating to bribes by such companies is relatively easy to obtain or because the DOJ and SEC

³¹ See http://www.iosco.org/library/index.cfm?section=mou_siglist.

³² We obtained information on the SEC's bilateral cooperative arrangements with foreign regulators at http://www.sec.gov/about/offices/oia/oia_cooparrangements.shtml. These countries included Argentina, Australia, Brazil, Canada, Chile, France, Germany, Hong Kong, Israel, Italy, Japan, Jersey (not in our dataset), Mexico, Netherlands, Norway, Portugal, Singapore, Spain, Switzerland, and the United Kingdom.

view their FCPA mission as primarily to stop bribes by U.S. companies to foreign officials (which would be inconsistent with the *Self-Interest* Hypothesis). The model is as follows with errors clustered by violation country:

$$\ln(\text{Aggregate Total Monetary Penalty}_i) = \alpha + \beta_1 \text{HV Bribe Level}_i + \beta_2 \text{US Home}_i + \beta_3 \text{Home SEC Agreement}_i + \epsilon_i$$

We report the results in Model 1 of Table 12. We replace SEC Agreement with a variable for whether the home country entered into a Mutual Legal Assistance Treaty with the United States as of 2003 (Home MLAT). We report the results in Model 2. We replace SEC Agreement with the World Bank Government Effectiveness score from 2003 for the home country as another measure of the strength of the anti-bribery regime within the home country (Home Gov. Effectiveness). We report the results in Model 3. We replace SEC agreement with the World Bank Rule of Law score from 2003 for the home country as another measure of the strength of the anti-bribery regime within the home country. We report the results in Model 4.

[Insert Table 12]

In all the models of Table 12, the coefficients on the HV Bribe Level variable are positive and significant at the 1% level. This is consistent with the DOJ and SEC targeting in proportion to the actual level of bribes in particular home-violation country pair (consistent with Hypothesis 5). Table 12 however also provides support for the *Coordination* theory (Hypothesis 8). The coefficient on SEC Agreement is positive and significant at the 5% level. Controlling for the level of bribes in a home-violation country pair, the aggregate total monetary sanction for a particular home-violation country pair is disproportionately greater where the home country has a

longstanding enforcement agreement with the U.S. SEC.³³ Similarly, the coefficient on Home MLAT is positive and significant at the 1% level. The aggregate total monetary sanction is greater where the home country entered into a Mutual Legal Assistance Treaty with the United States as of 2003. The coefficients on Home Gov. Effectiveness and Home Rule of Law are also positive and significant at the 5% level. The aggregate total monetary sanction for a particular home-violation country pair is disproportionately larger for countries with a stronger anti-bribery regime (that presumably can provide evidence and other assistance to the SEC or DOJ in prosecuting a FCPA action).³⁴ Lastly, the coefficients on US Home in all three models are positive and significant at the 1% level. This could reflect either that evidence is easiest for the DOJ and SEC to obtain for U.S. firms or that the DOJ and SEC care most about enforcing the FCPA on U.S. companies, inconsistent with the *Self-Interest* hypothesis.

7. Conclusion

We find support for the hypothesis that *Proportionality* drives the SEC and DOJ in specific cases. Once a case is filed, the sanction imposed in an FCPA action increases with the

³³ As a robustness test, we estimate the models of Table 12 omitting FCPA actions with any Oil-for-Food related claims in our computation of the aggregate total monetary sanction for home-violation country pairs. Unreported, we obtained the same qualitative results in Table 12.

We also estimated Model 1 of Table 12 replacing Home SEC Agreement with an indicator variable (Home IOSCO Agreement) for whether a country had a regulator that was a signatory of the IOSCO Multilateral MOU as of October 2003 obtained from <http://www.fsa.go.jp/inter/ios/20031016/01.pdf>. We used the signatories as of October 2003 because such signatories are more likely than later signatories to have developed stronger enforcement ties with the U.S. SEC. The countries included Australia, Canada, France, Germany, Greece, China-Hong Kong, Hungary, India, Italy, Jersey (not in our dataset), Lithuania, Mexico, New Zealand, Poland, Portugal, South Africa, Spain, Turkey, and United Kingdom. Unreported, the coefficient on the Home IOSCO Agreement variable is positive but significant at the 12.5% level, beyond conventional levels of significance. We speculate that some of the early IOSCO Multilateral MOU signatories that were not already longstanding bilateral signatories with the U.S. SEC had weaker ties with the U.S. compared with the more longstanding bilateral signatories.

³⁴ As a robustness test, we estimated the models in Table 12 with a negative binomial model with the number of FCPA actions involving the particular home-violation country pairing as the dependent variable and the same independent variables. Unreported, we obtained the similar qualitative results as in Model 4 of Table 12 with a positive coefficient on Home Rule of Law significant at the 1% level. The coefficient on US Home is again positive and significant at the 1% level. The re-estimated Models 1, 2, and 3 of Table 12 failed to converge to a solution.

size of bribe, the profit related to the bribe, and the amount of business affected by the bribe. The sanction also increases with measures of the extensiveness of the FCPA violation, including in particular whether a subsidiary is sufficiently involved to face separate FCPA charges. *Proportionality* may reflect either an aspect of moralism in the FCPA or the need to impose penalties that provide sufficient deterrence against FCPA violations. We also find support for the claim that *Proportionality* is important for how the DOJ and SEC distribute sanctions across different violation countries since aggregate total monetary sanctions are proportional to our proxies for the level of bribe activity in violation countries and home-violation country pairs.

We find mixed support for our *Altruism* theory. Sanctions in individual FCPA actions do not vary with the underlying economic development, as measured by GNI per capita, or strength of legal institutions, as measured by World Bank rule of law scores. In contrast, *Altruism* does appear important in how the DOJ and SEC distribute sanctions among violation countries. The aggregate total monetary sanctions related to a particular violation country, controlling for the overall bribe level in that country, is greater for countries with a lower GNI per capita, as well as weaker government effectiveness and rule of law scores.

We also find mixed evidence that *Self-Interest* motivates the SEC and DOJ. The SEC and DOJ impose greater sanctions, all other things being equal, on foreign companies. We nonetheless find no evidence though that the total monetary penalty in a particular FCPA action varies based on whether the FCPA violation involves a bribe to retain government services or other violations. Using our country-level data, we do not find that the SEC and DOJ target foreign companies that commit FCPA violations in countries where the U.S. does more business (if anything it is the opposite).

We lastly find mixed evidence on the *Coordination* theory. At the level of individual FCPA actions, we find that the activity of a foreign regulator (both an investigation as well as a

sanction) correlates with significantly higher and not lower sanctions. The DOJ and SEC do not appear to temper their FCPA sanctions to take into account foreign regulators. It could be that the DOJ and SEC obtain better evidence when a foreign regulator is involved, allowing the DOJ and SEC to construct a stronger case leading to a higher sanction. Alternatively, an egregious FCPA violation may attract both U.S. and foreign regulators, leading to the positive correlation between foreign regulators and the U.S. sanction without implying any causation. Looking at country level data, we find evidence that the SEC and DOJ impose disproportionately greater aggregate total monetary sanctions for home-violation country pairs where the home country has a longstanding bilateral cooperation agreement with the SEC, a Mutual Legal Assistance Treaty with the U.S., and strong local anti-bribery institutions, consistent with the *Coordination* theory.

We have found evidence that the magnitude of sanctions imposed on defendant companies in FCPA actions depends not only on what they did but where they are from and where they committed their violations. These findings should be of great interest to firms and policymakers. Our findings also raise additional questions. For instance, we can say that when the effects of their decisions are analyzed across countries, U.S. officials behaved as if they were motivated by *Altruism*. However, we cannot determine whether that pattern of enforcement is driven by conscious decisions on the part of particular enforcement officials or unobserved institutional constraints. The mechanisms that generate the patterns of enforcement of enforcement we have observed merit further research.

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Table 1: Number of FCPA Actions

Resolution Year	Foreign Company	US Company	Total
2004	1	3	4
2005	0	4	4
2006	2	2	4
2007	1	9	10
2008	3	4	7
2009	0	10	10
2010	11	10	21
2011	8	12	20
Total	26	54	80

Table 2: Dollar Magnitude of the FCPA Violation

Panel A

Variable	<= Median		> Median		p-value
	N	Mean Total Monetary Penalty	N	Mean Total Monetary Penalty	
Bribe Amount	37	6.5	37	112.8	0.003
Bribe Profit	20	8.2	20	156.9	0.005
Bribe Business	19	11.4	20	164.0	0.017

p-values are from t-tests are on case level data. Total Monetary Penalty is in millions of dollars.

Panel B: OLS Regression of Total Penalty (SEC + DOJ) an FCPA Action with Magnitude of Bribe

	Model 1	Model 2	Model 3
ln(Market Cap.)	0.104 (1.02)	0.0540 (0.49)	0.0176 (0.13)
Bribe Amount	0.00837** (4.63)		
Bribe Profit		0.0195** (5.88)	
Bribe Business			0.000690** (5.08)
Constant	1.296 (1.62)	2.036* (2.42)	2.223* (2.24)
N	57	32	34
adjusted R ²	0.265	0.517	0.422

t statistics in parentheses; + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$. Dependent variable is the log of 1 + the total monetary penalty (SEC + DOJ). Regressions are estimated on FCPA action level data with robust standard errors.

Table 3: Extensiveness of the Violation in an FCPA Action

Panel A

Variable	=0			=1	p-value
	N	Mean Total Monetary Penalty	N	Mean Total Monetary Penalty	
Any Subsidiary	56	25.5	25	121.5	0.008
Any Employee	63	49.8	18	73.8	0.557
Mult. Countries	41	7.3	40	104.1	0.003

Variable	<= Median			> Median	p-value
	N	Mean Total Monetary Penalty	N	Mean Total Monetary Penalty	
Violation Years	40	14.5	36	108.0	0.008

p-values are from t-tests are on case level data. Total Monetary Penalty is in millions of dollars.

Panel B: OLS Regression of Total Monetary Penalty (SEC + DOJ) in an FCPA Action with Extensiveness of Violation

	Model 1	Model 2	Model 3	Model 4
ln(Market Cap.)	0.0948 (1.15)	0.131 (1.29)	0.0238 (0.26)	-0.00697 (-0.07)
Bribe Amount	0.00636** (4.22)	0.00858** (4.81)	0.00677** (4.13)	0.00716** (4.27)
Any Subsidiary	1.921** (5.44)			
Any Employee		0.747 (1.67)		
Mult. Countries			1.527** (4.08)	
Violation Years				0.147** (3.23)

Constant	0.748 (1.14)	0.880 (1.07)	1.197 ⁺ (1.70)	1.323 ⁺ (1.74)
<i>N</i>	57	57	57	55
adjusted <i>R</i> ²	0.520	0.288	0.430	0.376

t statistics in parentheses; ⁺ *p* < 0.10, ^{*} *p* < 0.05, ^{**} *p* < 0.01. Dependent variable is the log of 1+ the total monetary penalty (SEC + DOJ). Regressions are estimated on FCPA action level data with robust standard errors. Appendix 1 provides definitions and Appendix 2 provides summary statistics for the FCPA action-level variables in the models.

Table 4: Mitigating Factors in an FCPA Action

Panel A

Variable	=0			=1	p-value
	N	Mean Total Monetary Penalty	N	Mean Total Monetary Penalty	
Vol. Disclosure	25	146.0	52	15.3	0.000
Cooperation	22	77.6	54	51.1	0.504
Remediation	20	56.7	52	58.1	0.974

p-values are from t-tests are on case level data. Total Monetary Penalty is in millions of dollars.

Panel B: OLS Regression of Total Monetary Penalty (SEC + DOJ) in an FCPA Action with Mitigating Factors

	Model 1	Model 2	Model 3
ln(Market Cap.)	0.0488 (0.45)	0.102 (0.98)	0.0757 (0.71)
Bribe Amount	0.00743** (3.76)	0.00827** (4.52)	0.00810** (4.44)
Vol. Disclosure	-0.562 (-1.07)		
Cooperation		0.150 (0.36)	
Remediation			0.421 (0.88)
Constant	2.194* (2.11)	1.241 (1.42)	1.280 (1.42)
N	54	56	54
adjusted R ²	0.265	0.252	0.257

t statistics in parentheses; ⁺ p < 0.10, * p < 0.05, ** p < 0.01. Dependent variable is the log of 1 + the total monetary penalty (SEC + DOJ). Regressions are estimated on FCPA action level data with robust standard errors. Appendix 1 provides definitions and Appendix 2 provides summary statistics for the FCPA action-level variables in the models.

Table 5: Violation Country Characteristics for FCPA Actions

Panel A

Variable	<= Median		> Median		p-value
	N	Mean Total Monetary Penalty	N	Mean Total Monetary Penalty	
GNI Per Capita	39	87.8	38	27.0	0.085
Gov. Effective	40	90.7	37	22.2	0.052
Rule of Law	39	92.5	38	22.1	0.045

p-values are from t-tests are on case level data. Total Monetary Penalty is in millions of dollars.

**Panel B: OLS Regression of Total Monetary Penalty (SEC + DOJ) in an FCPA Action—
Violation Country Characteristics**

	Model 1	Model 2	Model 3
ln(Market Cap.)	0.0965 (0.91)	0.122 (1.17)	0.115 (1.07)
Bribe Amount	0.00815** (4.48)	0.00734** (4.01)	0.00763** (4.07)
GNI Per Capita	-0.0000583 (-1.10)		
Gov. Effectiveness		-0.952+ (-2.00)	
Rule of Law			-0.568 (-1.34)
Constant	1.560+ (1.88)	0.946 (1.11)	0.948 (1.03)
N	55	55	55
adjusted R ²	0.266	0.303	0.274

t statistics in parentheses; + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$. Dependent variable is the log of 1 + the total monetary penalty (SEC + DOJ). Regressions are estimated on case level data with robust standard errors. Appendix 1 provides definitions and Appendix 2 provides summary statistics for the FCPA action-level variables in the models.

Table 6: Self-Interest and the Total Monetary Penalty in an FCPA Action

Panel A

Variables	=0	Mean Total Monetary Penalty		=1	p-value	
	N			N		
US Company	26	118.1		55	25.3	0.009
Retain Gov. Services	20	12.3		61	69.2	0.147

p-values are from t-tests are on case level data. Total Monetary Penalty is in millions of dollars.

Panel B: OLS Regression of Total Monetary Penalty in an FCPA Action with US Company

	Model 1	Model 2	Model 3
ln(Market Cap.)	0.161+ (1.84)	0.0971 (0.95)	0.146 (1.61)
Bribe Amount	0.00622** (3.90)	0.00809** (4.47)	0.00595** (3.68)
US Company	-1.863** (-4.73)		-2.086* (-2.67)
Retain Gov. Services		0.613 (1.27)	0.505 (0.66)
US Company x Retain Gov. Services			0.269 (0.29)
Constant	2.237** (3.17)	0.886 (1.03)	1.977+ (1.99)
N	57	57	57
adjusted R ²	0.474	0.273	0.483

t statistics in parentheses; + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$. Dependent variable is the log of 1 + the total monetary penalty (SEC + DOJ). Regressions are estimated on FCPA action level data with robust standard errors. Appendix 1 provides definitions and Appendix 2 provides summary statistics for the FCPA action-level variables in the models.

Table 7: Coordination and the Total Monetary Penalty in an FCPA Action

Panel A

Variables	=0			=1	p-value
	N	Mean Total Monetary Penalty	N	Mean Total Monetary Penalty	
Foreign Regulator	64	13.7	17	211.0	0.000
Foreign Reg. Sanction	70	23.8	11	254.4	0.000

p-values are from t-tests are on case level data. Total Monetary Penalty is in millions of dollars.

Panel B: OLS Regression of Total Monetary Penalty in an FCPA Action with Other Regulator

	Model 1	Model 2
ln(Market Cap.)	0.0892 (1.04)	0.0784 (0.82)
Bribe Amount	0.00537** (3.29)	0.00627** (3.42)
Foreign Regulator	2.075** (4.89)	
Foreign Reg. Sanction		1.601** (2.97)
Constant	0.981 (1.46)	1.267+ (1.69)
N	57	57
adjusted R ²	0.484	0.358

t statistics in parentheses; + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$. Dependent variable is the log of 1 + the total monetary penalty (SEC + DOJ). Regressions are estimated on FCPA action level data with robust standard errors. Appendix 1 provides definitions and Appendix 2 provides summary statistics for the FCPA action-level variables in the models.

Table 8: Violation Countries

Country	Number of	Number of	Number of
	FCPA Actions	FCPA Actions	FCPA
	ALL	DOJ	Actions SEC
CHINA	18	12	15
NIGERIA	17	13	14
INDONESIA	8	7	6
INDIA	7	3	7
IRAQ	6	6	6
MEXICO	6	6	3
UNITED ARAB EMIRATES	5	5	3
ARGENTINA	5	3	4
EGYPT	5	4	4
KAZAKHSTAN	5	4	3
VENEZUELA	5	4	4
VIETNAM	5	4	3
AZERBAIJAN	4	4	3
BANGLADESH	4	4	3
BRAZIL	4	2	3
THAILAND	4	3	4
TURKEY	4	3	3
ANGOLA	3	2	3
COSTA RICA	3	3	2
RUSSIA	3	3	3
TURKMENISTAN	3	3	3
BULGARIA	2	2	1
ECUADOR	2	2	1
GREECE	2	2	2
HONDURAS	2	2	1
HUNGARY	2	2	1
KOREA, SOUTH	2	0	2
MACEDONIA	2	1	1
MYANMAR	2	2	1
MALAYSIA	2	2	1
PANAMA	2	2	1
PHILIPPINES	2	1	2
POLAND	2	1	2
TAIWAN, CHINA	2	2	1
UZBEKISTAN	2	2	2
AUSTRIA	1	1	1
BENIN	1	1	1
BAHRAIN	1	1	1
BOLIVIA	1	1	1

COTE D'IVOIRE	1	1	1
CZECH REPUBLIC	1	1	0
GERMANY	1	1	0
SPAIN	1	1	0
FRANCE	1	1	0
GABON	1	0	1
GHANA	1	1	1
GUINEA	1	0	1
EQUATORIAL GUINEA	1	0	1
CROATIA	1	1	1
IRAN	1	1	1
ITALY	1	0	1
KYRGYZSTAN	1	1	1
LIBERIA	1	1	1
LATVIA	1	1	1
MONTENEGRO	1	0	1
OMAN	1	1	1
ROMANIA	1	1	1
SAUDI ARABIA	1	1	0
YEMEN	1	1	0

Table 9: OLS Model of Total Monetary Sanctions Directed at Bribes in a Violation Country

	Model 1	Model 2	Model 3
Bribe Level	0.0240** (3.12)	0.0238** (2.88)	0.0233** (3.00)
Viol. GNI Per Capita	-0.0000368** (-3.69)		
Viol. Gov. Effectiveness		-0.249* (-2.39)	
Viol. Rule of Law			-0.345** (-3.11)
Constant	0.906** (6.57)	0.628** (5.76)	0.621** (5.85)
<i>N</i>	172	185	185
adjusted <i>R</i> ²	0.104	0.082	0.107

t statistics in parentheses; + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$. Dependent variable is the log of 1 + the Total Monetary Sanctions Directed at Bribes in a Violation Country in the time period of our dataset. Models are estimated on country level data (excluding the United States) with robust standard errors. Appendix 1 provides definitions and Appendix 2 provides summary statistics for the country-level variables in the models.

Table 10: OLS Model of Total Monetary Sanctions Directed at Bribes in a Violation Country

	Model 1	Model 2	Model 3
Bribe Level	0.00566 (0.65)	0.00515 (0.56)	0.0113 (1.28)
US FDI	-0.0125** (-3.94)		
US Affiliate Assets		-0.000989* (-2.06)	
US Affiliate Sales			-0.00712** (-4.06)
Constant	2.055** (5.44)	1.703** (4.37)	1.912** (4.85)
<i>N</i>	47	44	47
adjusted <i>R</i> ²	0.132	0.046	0.120

t statistics in parentheses; * $p < 0.10$, * $p < 0.05$, ** $p < 0.01$. Dependent variable is the log of 1 + the Total Monetary Sanctions Directed at Bribes in a Violation Country in the time period of our dataset. Models are estimated on country level data (excluding the United States) with robust standard errors. Appendix 1 provides definitions and Appendix 2 provides summary statistics for the country-level variables in the models.

Table 11: Home Countries

Country	Number of FCPA Actions ALL	Number of FCPA Actions DOJ	Number of FCPA Actions SEC
UNITED STATES	56	33	46
SWITZERLAND	6	4	6
GERMANY	4	3	3
UNITED KINGDOM	4	3	3
CAYMAN ISLANDS	2	0	2
FRANCE	2	2	2
JAPAN	2	2	0
NORWAY	2	2	1
ITALY	1	1	1
LUXEMBOURG	1	1	1
NETHERLANDS	1	1	0
PANAMA	1	1	1

Table 12: OLS Model of Total Monetary Sanctions Directed at Bribes in a Home-Violation Country Pair

	Model 1	Model 2	Model 3	Model 4
HV Bribe Level	0.0000173 ^{**} (8.35)	0.0000171 ^{**} (8.34)	0.0000175 ^{**} (8.29)	0.0000175 ^{**} (8.28)
US Home	0.287 ^{**} (4.60)	0.287 ^{**} (4.61)	0.277 ^{**} (4.61)	0.278 ^{**} (4.60)
Home SEC Agreement	0.0174 [*] (2.27)			
Home MLAT		0.0499 ^{**} (2.71)		
Home Gov. Effectiveness			0.00388 [*] (2.39)	
Home Rule of Law				0.00374 [*] (2.48)
Constant	0.000251 (1.23)	0.000265 (0.66)	0.00245 [*] (2.24)	0.00268 [*] (2.26)
<i>N</i>	30437	30437	29631	29824
adjusted <i>R</i> ²	0.078	0.082	0.077	0.077

t statistics in parentheses; ⁺ $p < 0.10$, ^{*} $p < 0.05$, ^{**} $p < 0.01$. Dependent variable is the log of 1 + the Total monetary sanctions directed at bribes in a home-violation country pair in the time period of our dataset. Models are estimated on home-violation country pair level data with errors are clustered by violation country. Appendix 1 provides definitions and Appendix 2 provides summary statistics for the home-violation country pair-level variables in the models.

Appendix 1: Variable Definitions

FCPA Action-Level Variables

Variable	Definition and Source
Total Monetary Penalty (\$m)	Sum of DOJ and SEC monetary fines, penalties, and disgorgement assessed against all defendants involved in the same underlying FCPA violation. Source: DOJ and SEC; Sherman and Sterling FCPA Digest.
Market Cap (\$m)	Market capitalization of the top corporate entity named as a defendant in a FCPA action in millions of dollars. Source: The Center for the Research on Securities Prices
Bribe Amount (\$m)	Amount of bribe payment in millions of dollars. Source: DOJ and SEC; Sherman and Sterling FCPA Digest.
Bribe Profit (\$m)	Amount of profit obtained due to the bribe. Source: DOJ and SEC; Sherman and Sterling FCPA Digest.
Bribe Business (\$m)	Amount of business related to the bribe payment in millions of dollars. Source: DOJ and SEC; Sherman and Sterling FCPA Digest.
Any Subsidiary	Indicator variable equal to 1 if a subsidiary in addition to a corporate entity is charged with a violation in a particular FCPA action and 0 otherwise. Source: DOJ and SEC; Sherman and Sterling FCPA Digest.
Any Employee	Indicator variable equal to 1 if an employee in addition to a corporate entity is charged with a violation in a particular FCPA action and 0 otherwise. Source: DOJ and SEC; Sherman and Sterling FCPA Digest.
Mult. Countries	Indicator variable equal to 1 if the FCPA violation occurs in more than one country and 0 otherwise. Source: DOJ and SEC; Sherman and Sterling FCPA Digest.
Violation Years	Number of years during which the alleged FCPA violation took place. Source: DOJ and SEC; Sherman and Sterling FCPA Digest.
Vol. Disclosure	Indicator variable equal to 1 if the defendants in an FCPA action voluntarily disclosed the FCPA violation to the SEC or DOJ and 0 otherwise. Source: DOJ and SEC.
Cooperation	Indicator variable equal to 1 if the defendants in an FCPA action cooperated with the SEC or DOJ and 0 otherwise.

	Source: DOJ and SEC.
Remediation	Indicator variable equal to 1 if the defendants in an FCPA action engaged in remediation activities and 0 otherwise. Source: DOJ and SEC.
GNI Per Capita (\$)	The average gross national income per capita in dollars for 2003 for the violation countries in a particular FCPA action. Source: World Bank.
Gov. Effectiveness	The average World Bank measure of public perception of government effectiveness in a country for the violation countries in a particular FCPA action. Variable ranges from -2.5 (weak effectiveness) to +2.5 (strong effectiveness). Source: World Bank's Worldwide Governance Indicators.
Rule of Law	The average World Bank measure of public perception of rule of law in a country for the violation countries in a particular FCPA action. Variable ranges from -2.5 (weak rule of law) to +2.5 (strong rule of law). Source: World Bank's Worldwide Governance Indicators.
US Company	Indicator variable equal to 1 if the ultimate corporate parent of defendant entities in a FCPA action is incorporated in the United States and 0 otherwise. Source: Compustat; SEC filings.
Retain Services	Indicator variable equal to 1 if the purpose of the bribe was to obtain or retain legitimate government services and 0 otherwise (for example to obtain illegal benefits). Source: DOJ and SEC; Sherman and Sterling FCPA Digest.

Country-Level Variables

Variable	Definition and Source
Aggregate Total Mon. Penalty (\$m)	The aggregate total monetary sanctions applied in all the FCPA actions in our dataset naming the country as a violation country in millions of dollars. Where a particular FCPA action names more than one country as a violation country, we divided the sanction for that action pro rata among the named violation countries. Source: DOJ and SEC; Sherman and Sterling FCPA Digest.
Bribe Level (\$m)	Defined as the inward FDI stock in a country measured in 2004 multiplied by a country-level corruption measure ranging from 0 (lowest level of corruption) to 1 (highest level

	of corruption) based on the World Bank's Control of Corruption index measure from 2003. Source: UNCTAD (FDI Stock) and World Bank (Control of Corruption score).
Violation GNI Per Capita (\$)	The gross national income per capita in dollars for 2003 for a particular country. Source: World Bank.
Violation Gov. Effectiveness	The World Bank measure of public perception of government effectiveness for a particular country. Variable ranges from -2.5 (weak effectiveness) to +2.5 (strong effectiveness). Source: World Bank's Worldwide Governance Indicators.
Violation Rule of Law	The World Bank measure of public perception of rule of law in a country for a particular country. Variable ranges from -2.5 (weak rule of law) to +2.5 (strong rule of law). Source: World Bank's Worldwide Governance Indicators.
US FDI (\$m)	The amount of U.S. direct investment abroad on a historical cost basis in a particular country measured in 2004. Source: 2004 Benchmark Survey of U.S. Direct Investment Abroad conducted by the Bureau of Economic Analysis.
US Affiliate Assets (\$m)	The total assets of foreign affiliates of a U.S. parent company in a particular country measured in 2004. Source: 2004 Benchmark Survey of U.S. Direct Investment Abroad conducted by the Bureau of Economic Analysis.
US Affiliate Sales (\$m)	The total sales of foreign affiliates of a U.S. parent company in a particular country measured in 2004. Source: 2004 Benchmark Survey of U.S. Direct Investment Abroad conducted by the Bureau of Economic Analysis.

Home-Violation Country Pair-Level Explanatory Variables

Variable	Definition and Source Dev.
HV Aggregate Total Mon. Penalty (\$m)	The aggregate total monetary sanctions applied in all the FCPA actions in our dataset for a particular home-violation country pair in millions of dollars. Where a particular FCPA action names more than one country as a violation country, we divided the sanction for that action pro rata among the named violation countries. Source: DOJ and SEC; Sherman and Sterling FCPA Digest.
HV Bribe Level (\$m)	Proxy for the actual level of bribe in each home-violation country pair. We constructed this proxy as follows: we first obtain the total FDI outward stock in 2003 from any particular

	<p>home country from UNCTAD. We then obtained the amount of exports by the home country to each violation country averaged over the 2003 to 2010 period (to smooth the fluctuations in the export amount per year) and determined the fraction of exports from the home country to each violation country. We multiplied the total FDI outward stock for a particular home country by the fraction of exports from the home country to a particular violation country to obtain the FDI outward stock for the home-violation country pair (HV FDI Outward Stock). We define HV Bribe Level as equal to HV FDI Outward Stock multiplied by our country-level corruption measure ranging from 0 (lowest level of corruption) to 1 (highest level of corruption) based on the World Bank's Control of Corruption index measure from 2003. Source: UNCTAD, World Bank.</p>
US Home	<p>Indicator variable equal to 1 if the home country in a particular home-violation country pair is the United States and 0 otherwise.</p>
Home Gov. Effectiveness	<p>The World Bank measure of public perception of government effectiveness for the home country in any particular home-violation country pair. Variable ranges from -2.5 (weak effectiveness) to +2.5 (strong effectiveness). Source: World Bank's Worldwide Governance Indicators.</p>
Home Rule of Law	<p>The World Bank measure of public perception of rule of law in a country for the home country in any particular home-violation country pair. Variable ranges from -2.5 (weak rule of law) to +2.5 (strong rule of law). Source: World Bank's Worldwide Governance Indicators.</p>
Home SEC Agreement	<p>Indicator variable equal to 1 if the home country in a particular home-violation country pair entered into a bilateral enforcement cooperation agreement with the U.S. SEC prior to 2003 and 0 otherwise.</p>
Home MLAT	<p>Indicator variable equal to 1 if the home country in a particular home-violation country pair entered into Mutual Legal Assistance Treaty with the U.S. as of 2003 and 0 otherwise.</p>

Appendix 2: Summary Statistics

FCPA Action-Level Variables

Variable	N	Mean	Median	Standard Dev.
Total Monetary Penalty (\$m)	81	55.1	4.8	151.5
Penalty Severity	81	2.9	3.0	1.4
Market Cap (\$m)	63	11686.9	1779.2	31302.6
Bribe Amount (\$m)	74	27.7	0.9	103.1
Bribe Profit (\$m)	40	34.1	6.1	68.3
Bribe Business (\$m)	39	795.4	11.4	1845.4
Any Subsidiary	81	0.309	0.000	0.465
Any Employee	81	0.222	0.000	0.418
Mult. Countries	81	0.494	0.000	0.503
Violation Years	76	6.171	5.000	4.294
Vol. Disclosure	77	0.675	1.000	0.471
Cooperation	76	0.697	1.000	0.490
Remediation	72	0.722	1.000	0.451
GNI Per Capita (\$)	77	3169.2	1270.0	4162.0
Gov. Effectiveness	77	-0.248	-0.256	0.481
Rule of Law	77	-0.515	-0.497	0.551
US Company	81	0.679	1.000	0.470
Retain Services	81	0.753	1.000	0.434

Country-Level Variables

Variable	N	Mean	Median	Standard Dev.
Aggregate Total Mon. Penalty (\$m)	212	21.0	0.0	148.1
Bribe Level (\$m)	185	9.2	1.3	21.0
GNI Per Capita	184	7606.2	2240.0	12478.8

Gov. Effectiveness	196	-0.034	-0.255	1.004
Rule of Law	201	-0.045	-0.100	0.997
US FDI (\$m)	47	39.4	8.8	66.0
US Affiliate Assets (\$m)	44	257.4	44.0	590.5
US Affiliate Sales (\$m)	47	80.7	28.6	114.8

Home-Violation Country Pair-Level Explanatory Variables

Variable	N	Mean	Median	Standard Dev.
HV Aggregate Total Mon. Penalty (\$m)	41412	0.080	0.000	5.604
HV Bribe Level (\$m)	30437	88.6	0.0	1557.0
US Home	45084	0.005	0.000	0.070
Home SEC Agreement	45084	0.108	0.000	0.310
Home Rule of Law	42432	-0.041	-0.274	1.001
Home Gov. Effectiveness	43095	-0.054	-0.156	1.002

Appendix 3: Penalties under the Sentencing Guidelines

Under the Sentencing Guidelines applicable to organizational defendants, the recommended range of fines is ordinarily calculated by multiplying a Base Fine by a pair of minimum and maximum multipliers. The Base Fine is calculated by reference to rules that account for specific characteristics of the offense. The multipliers are determined by calculating a Culpability Score which is in turn calculated based on rules that take into account various characteristics of the defendant.³⁵ Exceptions to this general approach are made when the organization is operated primarily for a criminal purpose or primarily by criminal means. In such cases “the fine shall be set at an amount (subject to the statutory maximum) sufficient to divest the organization of all its net assets.”³⁶

The offense level for for an organization convicted of violating the anti-bribery provisions of the Foreign Corrupt Practices Act is calculated using a Base Offense Level of 12³⁷ adjusted in accordance with the rules that take into account the following factors:

- (1) if the offense involved more than one bribe or extortion.
- (2) the greatest of the value of the payment, the benefit received or to be received in return for the payment, the value of anything obtained or to be obtained by a public official or others acting with a public official, or the loss to the government from the offense
- (3) if the offense involved an elected public official or any public official in a high-level decision-making or sensitive position.³⁸

The Base Fine for an organization will be the greatest of:

- (1) the fine that corresponds to the offense level calculated in accordance with the above rules,
- (2) the pecuniary gain to the organization from the offense,
- (3) the value of the unlawful payment;
- (4) the value of the benefit received or to be received in return for the unlawful payment; or
- (5) the consequential damages resulting from the unlawful payment.³⁹

The Culpability Score for an organization starts at 5 and is then adjusted to reflect the following factors:

³⁵ §8C2.7(b).

³⁶ §8C1.1.

³⁷ §2C1(a).

³⁸ §2C1(b). Other adjustments are to be made if the offense was committed for the purpose of concealing, or obstructing justice in respect to, another criminal offense or the If the offense involved a threat of physical injury or property destruction. See §2C1(c).

³⁹ §§2C1(d), 8C2.4(a),(b).

- (1) whether high-level personnel of the organization or – depending on the number of employees involved, the unit of the organization – participated in, condoned or were willfully ignorant of the offense, or tolerance of the offense by “substantial authority personnel” was pervasive throughout the unit or organization
- (2) the organization committed a similar offense in the past 5 or 10 years
- (3) the commission of the offense violated a judicial order or injunction
- (4) the organization obstructed justice during the investigation, prosecution or sentencing of the offense
- (5) the organization had in place at the time of the offense an effective compliance and ethics program
- (6) the organization reported the offense within a reasonably prompt time after becoming aware of it,
- (7) the organization cooperated in the investigation and demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct.