



GLOBAL ENFORCEMENT REPORT 2012

Introduction

The TRACE *Global Enforcement Report 2012* provides an updated summary of international anti-bribery enforcement trends based on the cases and investigations tracked in the TRACE Compendium, TRACE's public, online database of transnational corruption cases.

Among the first international anti-bribery laws was the United States *Foreign Corrupt Practices Act of 1977* (FCPA). Since then, most countries have criminalized the payment of bribes to their own government officials, and signed international conventions such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption, which establish binding standards for the criminalization of bribery of foreign public officials in international business transactions.

Unfortunately, little data is consistently available on the pace of, and trends in, international anti-bribery enforcement, although such information is essential to understanding the extent to which countries are enforcing their anti-bribery statutes and encouraging greater transparency in global business. TRACE publishes the *Global Enforcement Report (GER)* annually to meet this need.

The *GER 2012* offers both graphic and textual analyses of all publicly known enforcement actions—including investigations, prosecutions, settlements and cases settled with no finding of bribery—since the first such cases were prosecuted in the United States following the enactment of the FCPA through 2012. Neither the TRACE Compendium nor the *GER 2012* includes purely internal matters involving local companies bribing local government officials. Enforcement actions are included only if the alleged bribe has an international component and involves an allegation of a payment made to a government official or to an employee of a state-owned entity.

Some caution is required to put this data in context. Research on global anti-bribery enforcement is complicated by the secrecy surrounding international law enforcement, as well as by the desire of some companies to obscure public knowledge about bribery allegations, investigations, convictions or penalties in which they may be involved. TRACE cannot know or accurately estimate how many enforcement actions may be underway but not made public; nor can TRACE record details of such cases in the TRACE Compendium. Moreover, TRACE recognizes that classifying bribery investigations as enforcement actions can be problematic, since investigations are sometimes dropped due to insufficient evidence, or for security or political considerations; they may be closed without any resolution; or they may continue indefinitely with no formal action ever being taken.

For this summary, TRACE nonetheless defines investigations as enforcement actions, because they serve as one indicator of a country's commitment to anti-bribery enforcement, regardless of the outcome. No imputation of guilt is made by this inclusion. Whenever TRACE obtains new or improved information regarding an enforcement action, or when the status of an enforcement action changes, the TRACE Compendium is updated accordingly. The *GER 2012* thus reflects several updates to the data reported in earlier editions of the *GER*.

The TRACE Compendium and *GER 2012* also include investigations and cases brought against individual employees or representatives of companies (including employees of local subsidiaries of international companies). Many countries do not have legal mechanisms in place to pursue corporate entities for violations of anti-bribery laws; prosecutors therefore focus on the individuals through whom companies operate. However, when a company and its employees or representatives face separate or multiple investigations or cases in one country involving substantially the same conduct, only one enforcement action is counted in the *GER 2012*. An enforcement action in a country with multiple investigating authorities, such as the United States, is also counted as one enforcement action in the *GER 2012*. These represent modifications in measurement from previous editions of the *GER*. For this reason, results in the *GER 2012* are not comparable to *GERs* from previous years.

Key Findings

New developments and ongoing trends from the *GER 2012* are highlighted below.

New Developments

- ❖ Foreign/outbound bribery enforcement actions (excluding investigations) by the United States declined by 52 percent between 2011 and 2012. (See Figure II.) However, the absolute number of foreign/outbound bribery enforcement actions (excluding investigations) brought by the United States in the ten-year period from 2002 through 2012 exceeds the number of enforcement actions pursued in the rest of the world. (See Figure II.)
- ❖ Foreign/outbound bribery enforcement actions (excluding investigations) by countries other than the United States declined by 42 percent between 2011 and 2012. (See Figure II.)
- ❖ South Korea, Nigeria and China lead enforcement activity worldwide for domestic/inbound bribery, defined as the bribery of a country's own government officials by foreign companies. Fifteen countries from many regions of the world began pursuing a domestic/inbound bribery enforcement action for the first time in 2012. (See Figure V.)
- ❖ The *GER 2012* includes a new chart showing the number of declinations (for both foreign/outbound and domestic/inbound bribery) issued from 1977 through 2012, by country. A declination is a decision by an enforcement authority not to take any enforcement action or to close an official inquiry into possible improper payments. The United States accounts for nearly 75 percent of all declinations, although six other countries have also declined to pursue enforcement actions. (See Figure VIII.)

Ongoing Trends

- ❖ In the last 35 years, 25 countries have pursued enforcement of foreign/outbound bribery laws, and 64 countries have pursued enforcement of domestic/inbound bribery laws. There is considerable overlap in the countries that have pursued both. (See Figures I and V.)
- ❖ The United States has pursued approximately 2.5 foreign bribery enforcement actions for every enforcement action pursued by all other countries combined since 2002. (See Figure II.)
- ❖ Approximately 25 percent of the foreign/outbound bribery enforcement actions and investigations pursued by the United States from 1977 through 2012 involved a company headquartered outside of the United States or an individual employed or retained by such a company. (See Figure III.) Enforcement of foreign/outbound bribery laws by the United States against these companies and individuals represents approximately 46 percent of foreign/outbound bribery enforcement by all other countries combined (See Figures I and III.)
- ❖ The United Kingdom continues to rank second, behind the United States, in the number of enforcement actions of foreign bribery. (See Figures I and IV.)
- ❖ The largest number of enforcement actions involve alleged bribe payments to officials in Iraq, China and Nigeria. All domestic and foreign bribery enforcement actions combined have involved allegations of bribery in 120 separate countries. (See Figure VI.)
- ❖ The extractive industries sector has been subject to more domestic/inbound and foreign/outbound bribery enforcement actions than any other sector. However, the manufacturing/service provider sector has nearly as many enforcement actions as the extractive industries. The aerospace/defense/security and health care sectors rank third and fourth, respectively. (See Figure VII.)

Which Countries and International Organizations Are Enforcing?

Foreign/Outbound Bribery Enforcement Activity



Twenty-five countries and two public international organizations (the United Nations and the World Bank) pursued 468 foreign/outbound bribery enforcement actions from 1977 through 2012, including known matters still in the investigative stage. The United States maintained the strongest enforcement record during this period, undertaking nearly 65 percent of all actions. The enactment of the FCPA in 1977 gave the United States a considerable head start on enforcement compared to other countries. The United States has accumulated nearly eight times as many anti-bribery enforcement actions as the country with the next highest total (the United Kingdom). Many countries have not pursued a single enforcement action in the 36-year period.

* The "Unspecified" category indicates cases or investigations where the country enforcing an anti-bribery law has not been specified in legal documents, the media or other reports.

Which Countries and International Organizations Are Enforcing?

Foreign/Outbound Bribery Enforcement Activity

**Figure II: Foreign/Outbound Bribery Enforcement
2002-2012 (N = 272)**

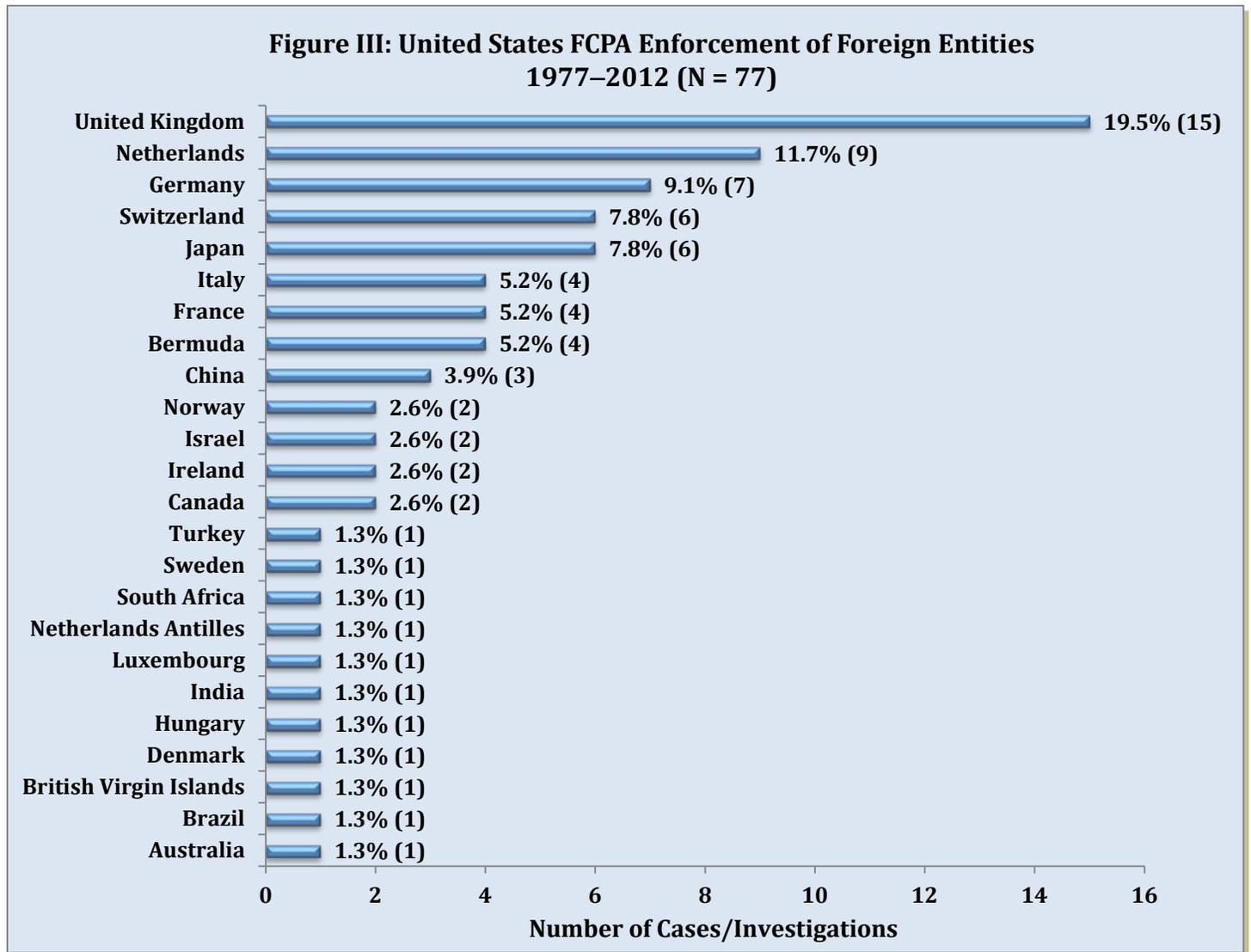
	United States (DOJ & SEC)	All Others
2002	4	0
2003	4	0
2004	1	12
2005	4	3
2006	4	1
2007	7	2
2008	14	15
2009	20	17
2010	26	9
2011	42	12
2012	20	7
TOTAL	194	78

**Number of Formal Cases
(ongoing investigations *not* included)**

Figure II modifies the analysis in Figure I to examine formal foreign/outbound bribery enforcement actions, but not investigations, pursued from 2002 through 2012. During this time, most countries were required to criminalize foreign/outbound bribery following the entry into force of several international anti-bribery conventions. During this period, the United States continued to dominate enforcement, enforcing almost 2.5 times more foreign/outbound bribery actions than all other countries combined. However, the number of formal cases brought by the United States and by the rest of the world declined in 2012, as compared to both 2011 and 2010.

Which Countries Are Enforcing?

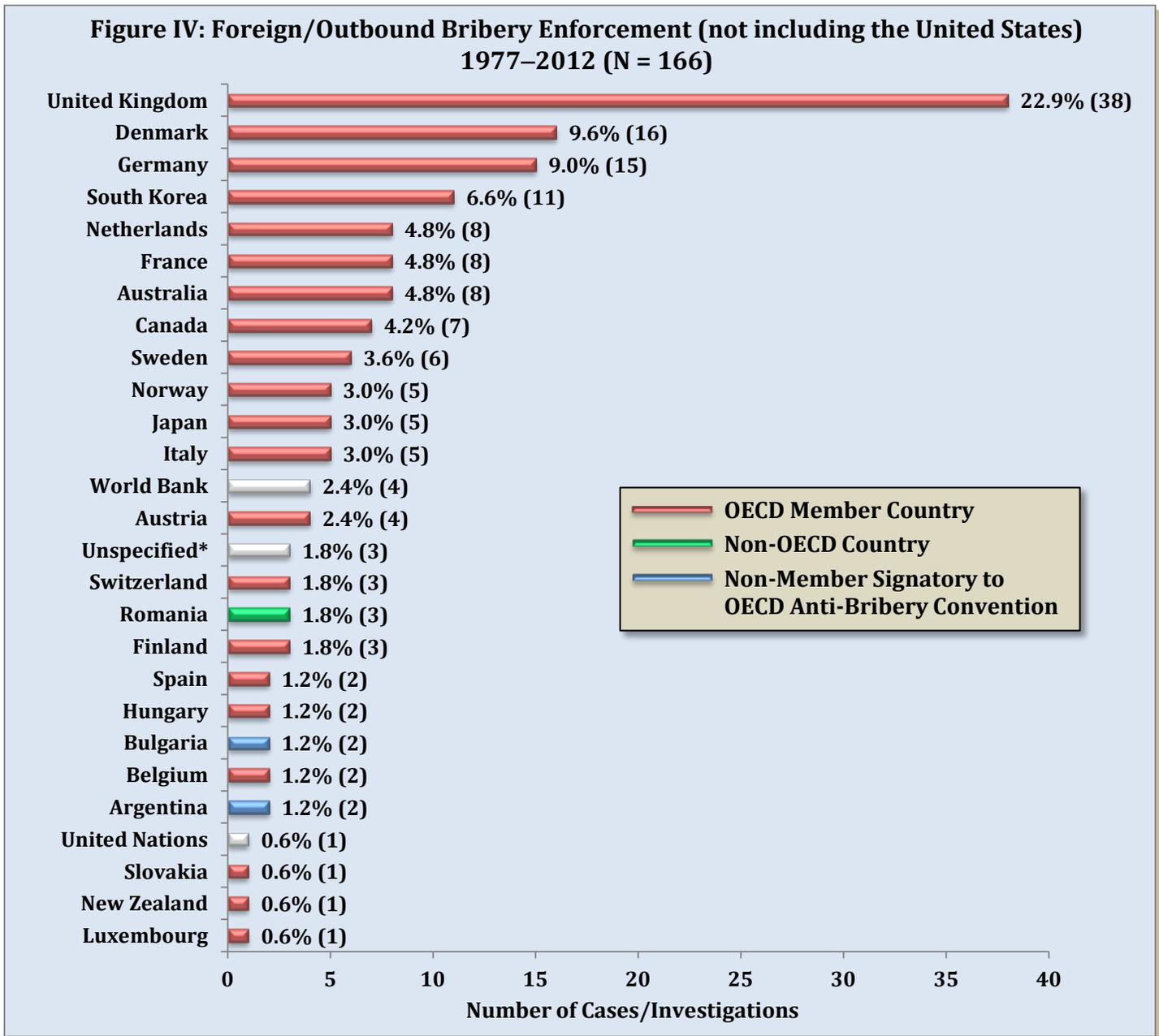
Foreign/Outbound Bribery Enforcement Activity



The United States has pursued FCPA actions against a number of foreign companies and individuals employed or retained by such companies. Slightly more than 25 percent of FCPA actions initiated by United States enforcement authorities (including both formal charges and ongoing investigations) involve companies headquartered outside of the United States. Companies headquartered in the United Kingdom, the Netherlands and Germany represent the largest contingents among these cases, followed by companies from Switzerland and Japan.

Which Countries and International Organizations Are Enforcing?

Foreign/Outbound Bribery Enforcement Activity

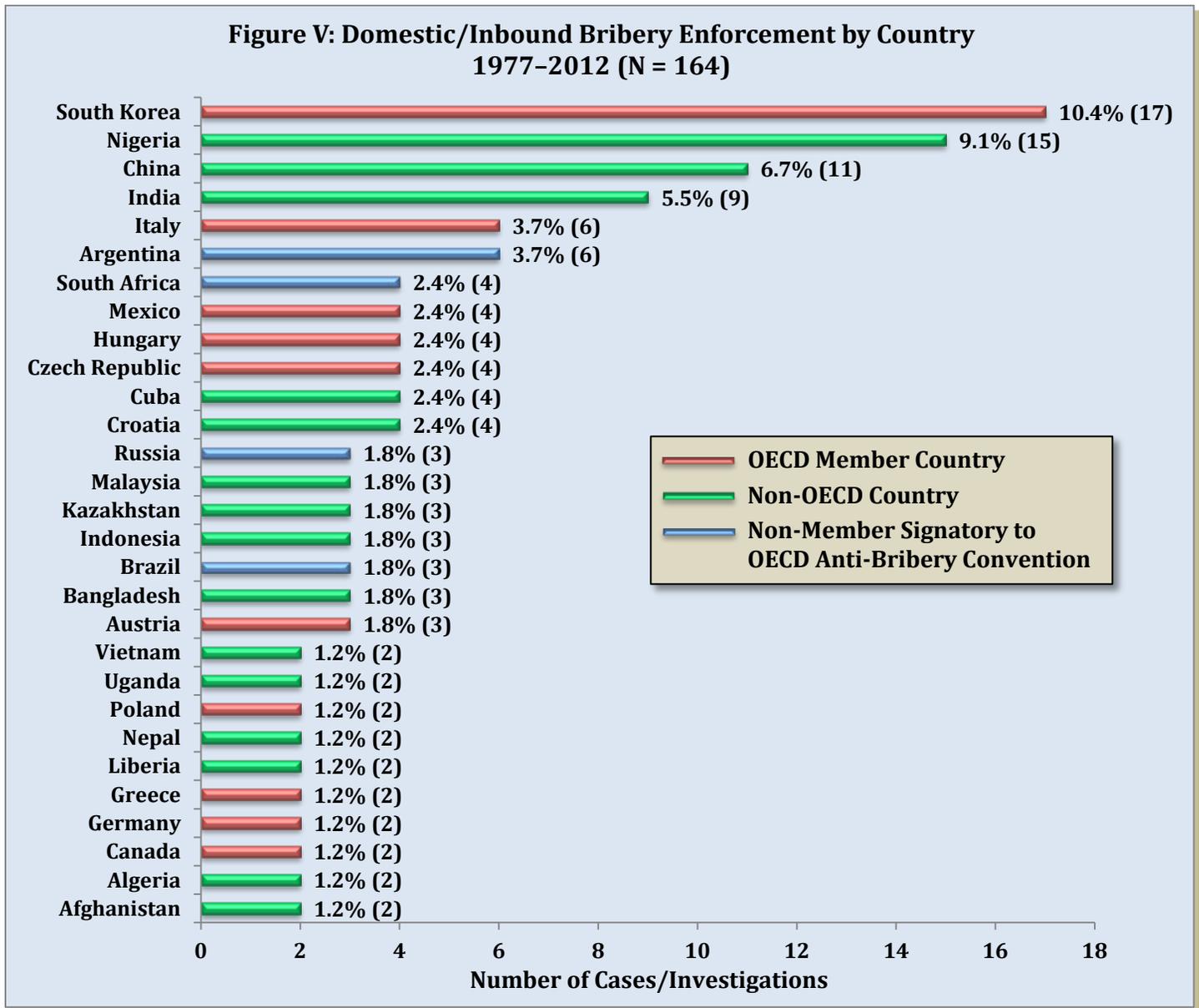


Countries other than the United States and two public international organizations (the United Nations and the World Bank) pursued 166 foreign/outbound bribery enforcement actions and investigations from 1977 through 2012. As shown in the graph, the United Kingdom undertook nearly 23 percent of all enforcement by countries other than the United States. Denmark and Germany have also been actively pursuing foreign bribery offenses. Romania remains the sole non-signatory to the OECD Anti-Bribery Convention among these enforcing countries.

* The "Unspecified" category indicates cases or investigations where the country of enforcement has not been specified in legal documents, the media or other reports.

Which Countries Are Enforcing?

Domestic/Inbound Bribery Enforcement Activity



South Korea, Nigeria and China lead a group of 64 countries in enforcement actions and investigations of bribery offenses involving their own government officials and foreign companies (domestic/inbound bribery). Fifteen countries initiated domestic/inbound enforcement actions for the first time in the past year, including Guinea, Kenya, Iraq, the Philippines and Tunisia. Figure V includes only countries that have enforced at least two actions. There are 35 countries that do not appear in Figure V (but whose cases and investigations are included in the total of 164 enforcement actions) that have each enforced a single action in the 36-year period from 1977 through 2012.

This data does not include cases or investigations in which citizens or domestic companies are alleged to have bribed their own government officials; it does include cases and investigations in which local employees or subsidiaries of a foreign company are alleged to have bribed local government officials.

Where Is the Misconduct Occurring?

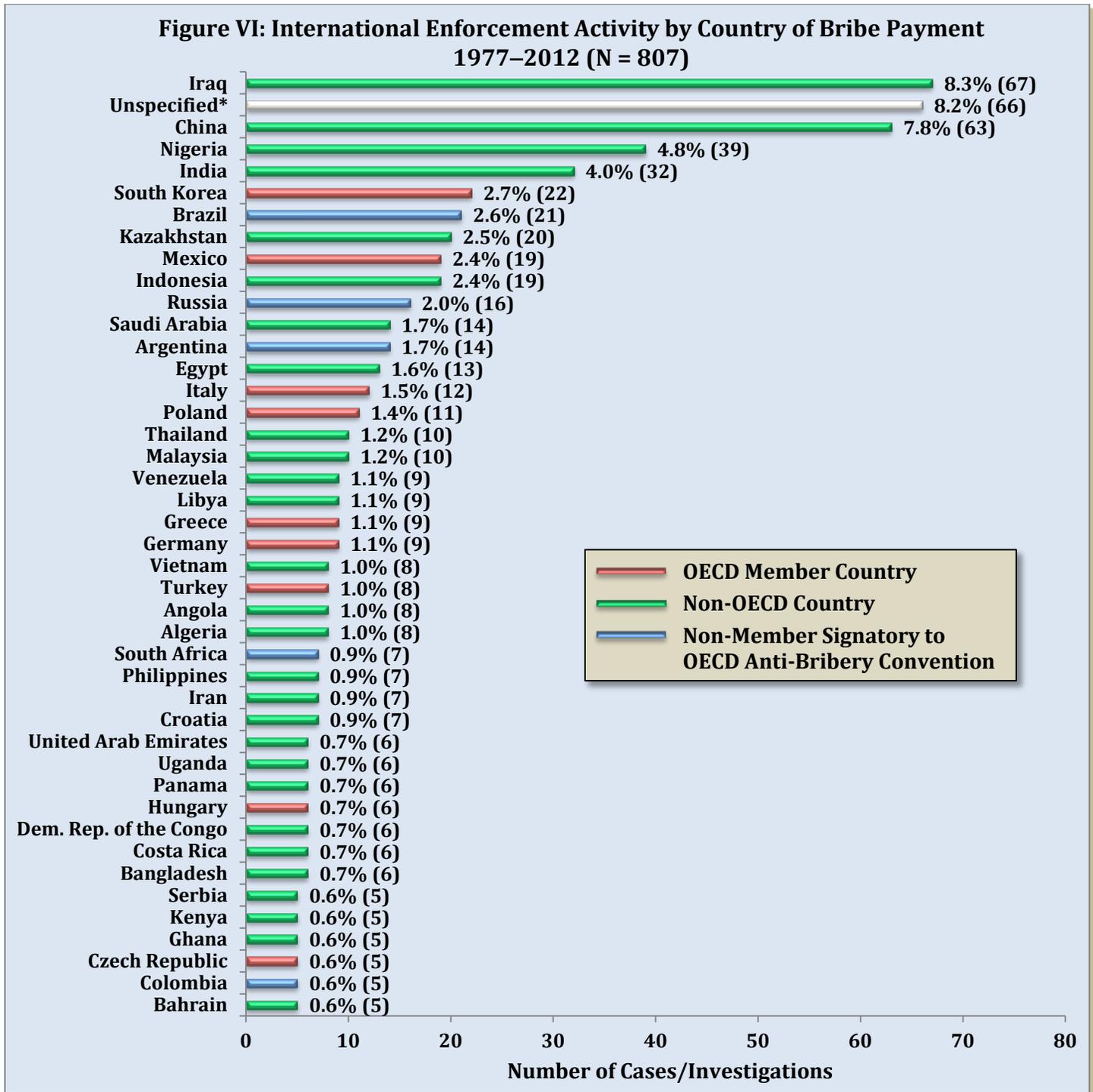


Figure VI shows those countries whose government officials were involved or alleged to be involved in foreign/outbound or domestic/inbound bribery enforcement actions or investigations in at least five instances. Note that these enforcement actions and investigations have involved payments to government officials in 120 countries, which reflects the pervasiveness of transnational bribery of public officials. Government officials in Iraq appear most frequently in this list, in large part due to the United Nations Oil-for-Food Program investigation. OECD countries account for nine of the countries listed in this chart. Enforcement actions often involve allegations of improper payments made to government officials in more than one country; each such country is listed in this chart. This explains why the number of cases and investigations in this figure is higher than in other figures.

* The "Unspecified" category indicates cases or investigations where the country of bribe payment has not been specified in legal documents, the media or other reports.

Which Industries Are Targeted?

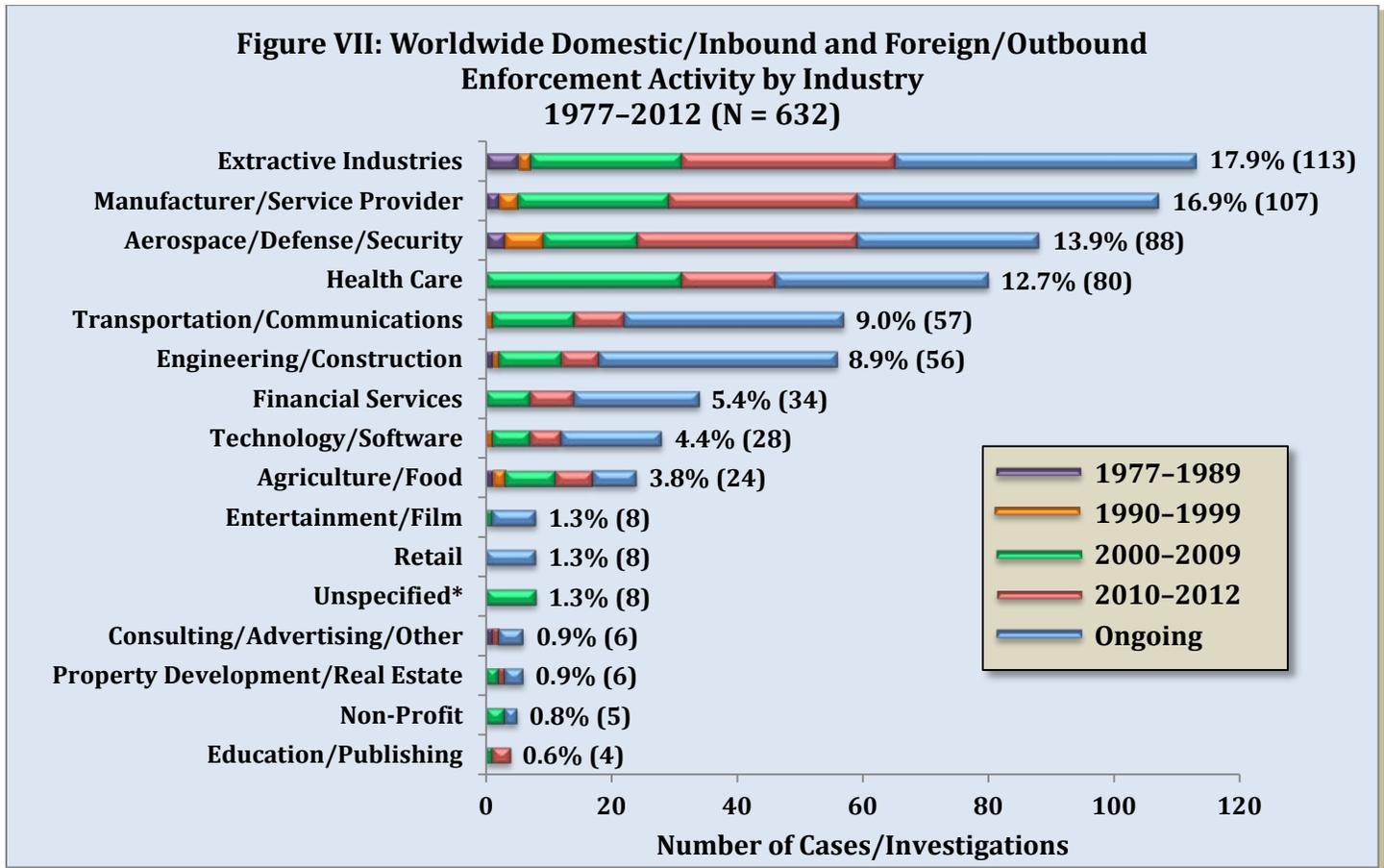


Figure VII shows which industries have experienced the most domestic/inbound and foreign/outbound enforcement activity from 1977 through 2012. The extractive industries again represent the highest number of enforcement actions, although the manufacturer/service provider sector has nearly caught up. These two sectors account for approximately 35 percent of known enforcement activity, and are followed by the aerospace, defense and security sector and the health care industry. These four industries had the largest number of enforcement actions from 2010 through 2012, and numerous companies in these industries are currently being investigated. In addition to these industries, there are large numbers of companies from the transportation/communications and engineering/construction industries that are currently under investigation.

Active enforcement in a given industry raises awareness of risk within that industry, and may lead to higher levels of voluntary disclosure.

* The "Unspecified" category indicates cases or investigations where there is insufficient information about the company or individual to determine the relevant industry.

Where Are Declinations Occurring?

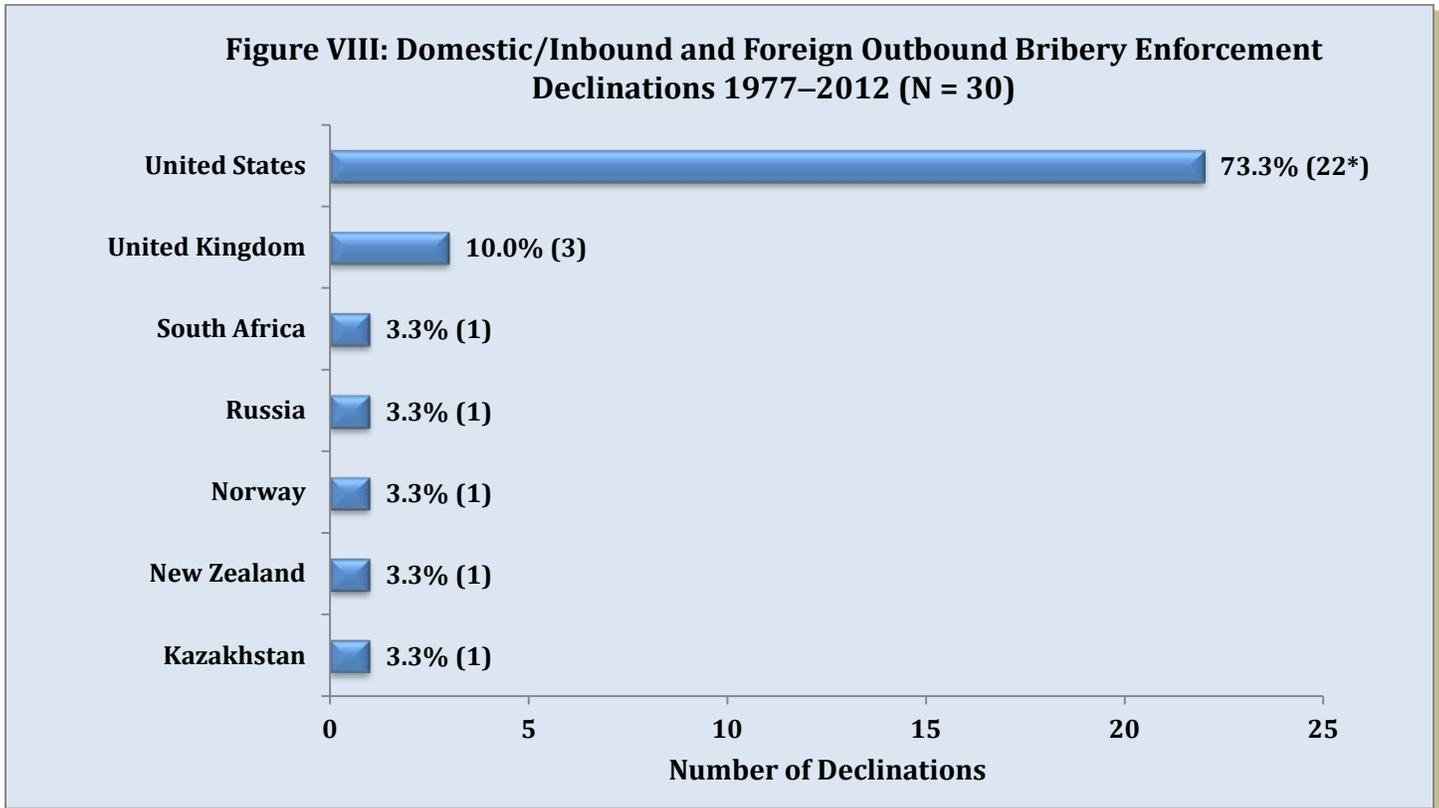


Figure VIII shows the known number of domestic/inbound and foreign/outbound bribery investigations that an investigative authority has declined to turn into a formal enforcement action. The United States has the highest number of such declinations by a significant margin. This may be due to the fact that companies subject to United States securities laws are required to disclose material government investigations. All declinations in New Zealand, Norway, the United Kingdom and the United States involve foreign/outbound bribery investigations, while the declinations in Kazakhstan, Russia and South Africa involve domestic/inbound bribery investigations.

** Two of the declinations for the United States occurred in early 2013.*

Global Enforcement Report 2012

The information included in the *Global Enforcement Report 2012* was collected by TRACE from court documents, company public filings, press releases, news reports and other publicly-available information. The summaries in the online TRACE Compendium are continually revised to reflect new or improved sources of information.

Although TRACE has made every effort to base the findings in *GER 2012* on credible sources, the organization does not guarantee the accuracy of this information.

About TRACE

TRACE is a non-profit membership association that pools resources to provide practical and cost-effective anti-bribery compliance solutions for multinational companies and their commercial intermediaries (sales agents and representatives, consultants, distributors, suppliers, etc.). TRACE provides several core services and products, including: due diligence reports on commercial intermediaries; model compliance policies; an online Resource Center with foreign local law summaries, including guidelines on gifts and hospitality; in-person and online anti-bribery training; and research on corporate best practices.

For additional information, please contact TRACE at info@TRACEinternational.org or visit us at www.TRACEinternational.org.