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The Effect of the OECD Convention in Reducing Bribery in International Business

Subarna Samanta
Professor of Economics, School of Business
The College of New Jersey, PO Box 7718
Ewing, New Jersey 08628, 1.609.771.3496, USA
Email: SSamanta@tcnj.edu

Rajib Sanyal*
Professor of Management, Willumstad School of Business
Adelphi University, Garden City, New York 11530, USA
Email: RSanyal@adelphi.edu

** Corresponding author*

Abstract
Purpose: To determine if the OECD Convention against bribe giving in international business has been effective in reducing the propensity of firms to give bribes.
Design/methodology/approach: The Bribe Payer's Index for OECD and non-OECD countries are compared statistically to determine if there is a difference between the two groups.
Findings: Firms from OECD countries are perceived to be less likely to give bribes than firms from non-OECD countries
Research Limitations/Implications: Multilateral treaties against bribery that includes coordination of investigation and prosecution among law enforcement officials from member countries have an impact on discouraging firms from the member countries to give bribes in international business. Apart from international treaties, there are other factors that contribute to reduced levels of bribe giving by firms.
Practical Implications: Firms from OECD countries can find the cost of bribe giving to be very high as they not only violate the law of their home country but they can be prosecuted and punished in multiple jurisdictions. Firms from non-OECD countries may not have such restraint on giving bribes when doing business in non-OECD countries.
Originality/value: This is the first study that investigates the effect of the OECD Convention on Combating Bribery on actual levels of bribe giving and ascertains whether such international agreements bear the desired results.

Keywords: Bribery, Bribe Giving, OECD Convention, Bribe Payers Index, International Business

Introduction

The growth in international business has been accompanied by increasing incidences of bribe giving to secure contracts. The World Bank estimates that more than USD1 trillion in bribes is paid each year out of a world economy of USD30 trillion – 3 percent of the world's economy (Labelle, 2006). Bribery is seen as undesirable – it raises the cost of doing business, creates uncertainty, perverts market mechanisms, retards economic growth, erodes public respect for the rule of law, misallocates resources, and distorts competition (Mauro, 1995, Lambsdorff, 2003). In response, worldwide efforts have been mounted to curb bribe giving. National governments, inter-governmental bodies, business organizations, and civil society groups have

adopted laws, treaties, protocols, codes of conduct, policies, and other strategies to combat this problem (Tanzi, 1998).

While there is a growing body of work on the subject of bribery in international business, not much has been written on the effectiveness of a coordinated application of an international treaty designed to combat bribery. A distinctive feature of international business is that national laws and their enforcement are the sovereign right of individual countries and firms doing business across borders have to abide by the laws and regulations of both home and host countries (Schaffer, Filiberto, and Earle, 2009). International treaties usually means an agreement among sovereign nations to compromise on their absolute right to create and enforce (or not enforce) laws on agreed upon situations and instead cooperate with other sovereign countries to apply a law uniformly across borders on individuals and entities.

The United States (U.S.) was among the first major countries to enact a law -- Foreign Corrupt Practices Act (FCPA) 1977 -- barring bribery in international business (Craig and Woof, 2002, U.S. Department of Justice, undated). The law was only intermittently enforced until the late 1990s. Since then, the U.S. government has markedly stepped up investigations and prosecutions of violators of the law with punishment that includes hefty fines, disgorgement of profits, and even imprisonment of corporate officials (U.S. Department of Justice, 2014). There are several reasons for this increase in prosecuting bribe giving, one being the adoption by the Organization for Economic Cooperation and Development (OECD) of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (referred henceforth as the OECD Convention). The OECD Convention established the first multilateral legally binding standards to criminalize bribery of foreign public officials in international business transactions and provided for a host of related measures that makes this effective (OECD, 2011). The main elements of the OECD Convention are shown in Table 1.

Table 1: Elements of the OECD Convention on Combating Bribery

Elements of the OECD Convention on Combating Bribery
• Make it a crime to bribe foreign public officials while conducting international business • Create a definition of a foreign public official • Impose effective, proportionate and dissuasive sanctions for individuals and organizations • Establish territorial and nationality jurisdiction over the offence • Establish the bribery of foreign public officials as a predicate offence to money laundering • Disallow economic and political considerations in investigating and prosecuting the offence • Set accounting and auditing standards for prohibiting the use of accounting documents for bribing • Facilitate mutual legal assistance and extradition • Provide for systematic monitoring

Note. From http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

Signed in 1997, the OECD Convention came into effect in 1999 and applies to the worldwide operations of companies based in OECD's member countries. Countries that signed it were required to put in place enabling legislation that criminalizes the act of bribing a foreign official. Individual countries are responsible for implementing laws and regulations that conform to the OECD Convention and, therefore, provide the enforcement. In the main, these countries have outlawed bribe giving by firms based in their home country, barred the taking of tax write off on bribes (as a business expense), imposed stiff penalties including fines and imprisonment, permitted inter-governmental cooperation to investigate, prosecute and punish violators, including through information sharing and extradition, and required firms to adopt internal management and accounting controls that prevent bribe giving to occur. The intention of these

laws is to make bribe giving expensive to bribe givers, both as individual managers as well as corporate entities and thus deter, reduce, and stop it (Nichols, 2012).

The OECD is an organization of 34 democratic countries with market based economies that work with each other to promote economic growth, prosperity, and sustainable development. The organization provides a setting where peer review can act as a powerful incentive to improve policy and implement "soft law" – non-binding instruments – which can on occasion lead to formal agreements or treaties such as the convention against bribery. OECD member countries account for 59 percent of world GDP, three quarters of world trade, 95 percent of world official development assistance, and 18 percent of the world's population. Established in 1961 with headquarters in Paris, it is the successor to the Organization for European Economic Cooperation, created to implement the Marshall Plan, following World War II (OECD, undated).

The supply of and demand for bribes sustain the high prevalence of bribery today. Bribe giving constitutes the supply side of this phenomenon, bribe taking reflects the demand side. Both FCPA and the OECD Convention seeks to primarily address the supply side of bribery using legal sanctions and law enforcement methods to make the cost of bribe-giving unacceptably high for businesses. By compelling compliance with the law, the nation state expects businesses based in its country or foreign businesses operating in its geographical realm to desist from offering bribes to win a commercial advantage. In turn, to comply, firms will bring about changes in its practices and policies so that bribe-giving is not part of its organizational culture or an aspect of its business practices.

As the OECD Convention has been codified and operationalized, cooperation and coordination among national law enforcement and prosecutorial agencies of OECD member countries have expanded to not only information-sharing but also collecting and supplying evidence for prosecution and in the imposition of penalties in multiple jurisdictions. This means that firms engaging in bribery can violate the laws of more than one country and there is higher probability that they can be caught and the evidence will be strong (Cuervo-Cazurra, 2008). For instance, U.S. law enforcement agencies are able to secure cooperation from their counterparts in member countries to investigate and prosecute violations of U.S. law, foreign law, and international covenants (something that was difficult prior to the adoption of the OECD Convention and hence, the hitherto sluggish enforcement of the FCPA). The U.S. has also joined with 53 other jurisdictions, including most OECD members – as part of the *No Safe Haven* policy – in an effort to deny sanctuary to the corrupt, those who corrupt them, and their assets. Consequently, since the beginning of this century, firms based in OECD countries are operating in a global regulatory environment that prohibits them from bribe giving with the pain of prosecution (as well as reputational damage) while their competitors based in countries that are not signatories to the OECD Convention do not have such rules to abide by or inter-governmental cooperation to contend with. This applies only when competing for business in non-OECD countries.

Since the adoption of the OECD Convention, investigation of bribery and prosecution of violators, often through cross-country cooperation among law enforcement officials, have increased greatly. Firms found guilty in one country often face charges and attendant consequences in other countries too. Cuervo-Cazurra (2008) notes that such coordinated enforcement has led to the decline in the supply of bribes by firms from these countries. Sanyal and Samanta (2011), analyzing bribe giving data over a nine year period found that the perceived level of bribe giving by firms from the major exporting countries has been declining at a time when the enforcement of national anti-bribery laws had been stepped up greatly.

The successful prosecution of Siemens AG, one of the largest engineering companies in the world, based in Germany, for international bribery, is a case study on how the OECD

Convention worked. Investigators found that over several years, the company had funded USD1.36 billion in bribes to foreign government officials around the world to obtain contracts, including the United Nations Oil-for-Food Program in Iraq, telecommunication equipment in Nigeria and Bangladesh, and medical devices in China, Russia, and Vietnam. Prosecuted both in the U.S. and Germany, the company paid USD450 million in fines and USD350 million in disgorgement of tainted profits to U.S. authorities. As part of the company's settlement with the Munich Public Prosecutor's Office, the company paid approximately USD569 million which included a fine and disgorgement of profits, based on charges of corporate failure to supervise officers and employees. Officials at the U.S. Department of Justice and the U.S. Securities and Exchange Commission worked closely with the Munich Public Prosecutor's Office throughout the investigation. The cross-border collaboration was made possible by the use of mutual legal assistance provision of the OECD Convention. Government officials stated that the high level of cooperation between German and U.S., law enforcement agencies was a key factor in bringing the systematic corruption at Siemens to light (Mayer Brown, 2008).

There are other such examples. Norway fined its state oil company the equivalent of over USD3 million in 2004 for paying bribes to an Iranian government official to obtain a contract to develop gas fields in Iran. After that, the U.S. Securities and Exchange Commission started its own investigation and fined the company over USD10 million and also required it to disgorge another USD10.5 million of profits, in addition to being put under compliance review (Schaffer, Filiberto, and Earle, 2009). In summary, the issue of bribe giving in international business is being sought to be tackled through a multilateral legal treaty, the OECD Convention.

This paper, builds on the previous study by Samanta and Sanyal (2011) to examine whether firms based in OECD countries, and thus bound by the OECD Convention, are perceived to be less likely to give bribes when compared to firms from non-OECD countries. Based on the above discussion, we hypothesize that firms from countries that are members of the OECD are less likely to be perceived as giving bribes than firms from non-OECD countries.

Method

Bribery, for the purpose of this study, is defined as "the offering, promising or giving something in order to influence a public official in the execution of his/her official duties" (OECD Observer, 2000). In the international context, bribery involves a business firm from country A offering financial or non-financial inducements to officials of country B to obtain a commercial benefit.

In conducting this study, secondary data on national measure of bribery were used. Countries for which this data are available are categorized into two groups – members of OECD and those that are non-members. The data – Bribe Payers Index (BPI) – measures the perception of bribe giving by firms from these countries. The data for the two groups are statistically compared using both parametric (t-test) and non-parametric tests (Komogorov-Smirnov). As hypothesized, it is expected that the two groups of countries will be significantly different from each other on their BPI.

Data and data sources. The principal measures of bribery today come from Transparency International, a Berlin-based nongovernmental organization, through its Corruption Perceptions Index and Bribe Payers Index. These indices provide both information and publicity about the perceived levels of bribe taking and bribe giving across the countries of the world (Transparency International, 2011). The BPI is a measure of the supply side of bribery and is used in this study. The index indicates the perceived propensity of firms based in a particular country to give bribes to foreign government officials to win business. Transparency International's indices are widely reported and accepted as credible indicators of incidence of bribery in the world.

The BPI is based on information obtained through interviews with hundreds of senior business executives located in various countries where substantial foreign trade and investment occurs. The business executives represent firms of different sizes and sectors but in general large and foreign owned firms are oversampled. The BPI score range from 0 to 10 for individual countries: the higher the score for a country, the lower the likelihood of companies from that country to engage in bribery when doing business abroad. The BPI was first compiled in 1999 for 19 of the top exporting countries in the world. Since then, the Index has been issued regularly. The 2011 data, the latest available, is used in this study.

The time frame between when the OECD Convention came into effect (1999) and the BPI data used here (2011) provides a sufficient time gap of over a decade for firms from OECD countries to adopt enabling changes in their international business code of conduct, strengthen internal control processes, create integrity pacts, and alter their actual modus operandi. It is expected that in this time frame, national law enforcement agencies would have developed the requisite procedures and protocols for inter-governmental coordination of efforts to enforce the treaty provisions.

Sample size. There are 28 countries included in this study; 15 of them are members of the OECD and 13 are non-members. The countries along with their BPI are listed in Table 2. Firms from these countries account for nearly 90 percent of the world's trade and investment. Note that the OECD has many more countries as its members; however, BPI data are not available for all of them.

Table 2: OECD and non-OECD Countries and 2011 Bribe Payers Index

OECD Members	Bribe Payers Index	Non-OECD Members	Bribe Payers Index
Australia	8.5	Argentina	7.3
Belgium	8.7	Brazil	7.7
Canada	8.5	China	6.5
France	8.0	Hong Kong	7.6
Germany	8.6	India	7.5
Italy	7.6	Indonesia	7.1
Japan	8.6	Malaysia	7.6
Korea, South	7.9	Russia	6.1
Mexico	7.0	Saudi Arabia	7.4
Netherlands	8.8	Singapore	8.3
Spain	8.0	South Africa	7.6
Switzerland	8.8	Taiwan	7.5
Turkey	7.5	United Arab Emirates	7.3
U.K	8.3		
U.S.A	8.1		

Note. A BPI of 10 indicates firms from that country never bribes while a score of 0 means bribes are always given. From http://www.transparency.org/research/bpi/.

Research design. The BPI data for the two groups were compared. Two statistical tests were conducted. A two group independent samples t-test was conducted to determine if the BPI scores for these two groups of countries were significantly different.

Given the size (small samples) and nature of the sample (possible non-normality), it seemed appropriate to also test the data using a non-parametric test; hence, the Kolmogorov-Smirnov two sample test was performed. We have also computed the empirical distribution of these two groups of countries. The empirical cumulative distribution functions (CDF) are presented below in Figure 1.

Results

Tables 3 and 4 summarize the statistical results. The mean BPI score for the two groups are 8.0 (OECD countries) and 4.8 (non-OECD countries) respectively.

Table 3: T-test results

Method	Variances	DF	DF	P value
Pooled	Equal	26	3.94	0.00
Satterthwaite	Unequal	25.45	3.94	0.00

Table 4: Komogorov-Smirnov non-parametric test results

Komogorov-Smirnov non-parametric test	
D = maximum |F1 – F2|	0.7143
Asymptotic Pr > D	0.0016
Exact Pr > =D	0.0007

As the results presented in Table 3 shows, the t-statistic values and p values are same for both equal variance and unequal variance (between the two samples). It is evident from the p-value of the test statistic that there exists significant difference between these two groups of countries. Similarly, the p values for the non-parametric Kolmogorov-Smirnov test (see Table 4) confirms that the BPI for OECD member countries are significantly different from the non-member countries. From the graph in Table 5, it is visually apparent that the cumulative distribution function (CDF) of the member countries stochastically dominates the CDF of the non-member countries, thus corroborating the results of the parametric tests.

Thus the results of both types of tests show that these two groups of countries differ significantly with respect to their BPI score. The results support the hypothesis that firms from OECD countries are, on the whole, seen as less likely to give bribes compared to firms based in non-OECD countries.

Discussion

The findings suggest that the OECD Convention appears to have had the intended effect of reducing bribe giving by firms from member countries when conducting international business. To the extent this conclusion is correct, it indicates that international treaties that incorporate multilateral legal enforcement of their provisions can play a meaningful role in curbing bribe giving. The greater chances of being caught and the high cost, as a consequence of being successfully prosecuted in multiple jurisdictions, appears to be a deterrent to bribe giving on the part of firms from OECD countries.

The OECD Convention triggered changes in firms based in the member countries with respect to their internal business practices which were made compliance-sensitive. While non-OECD countries may have national laws that forbid their firms from using bribes to win international business, in the absence of a multilateral legal enforcement mechanism, the effectiveness of such national laws, if any, is diminished. Furthermore, the OECD Convention provisions do not apply to firms domiciled in non-OECD countries doing business in non-OECD countries. Thus, these firms may give bribes and escape any legal prosecution. This might explain why firms from non-OECD countries, in general, are perceived to have a higher propensity to offer bribes.

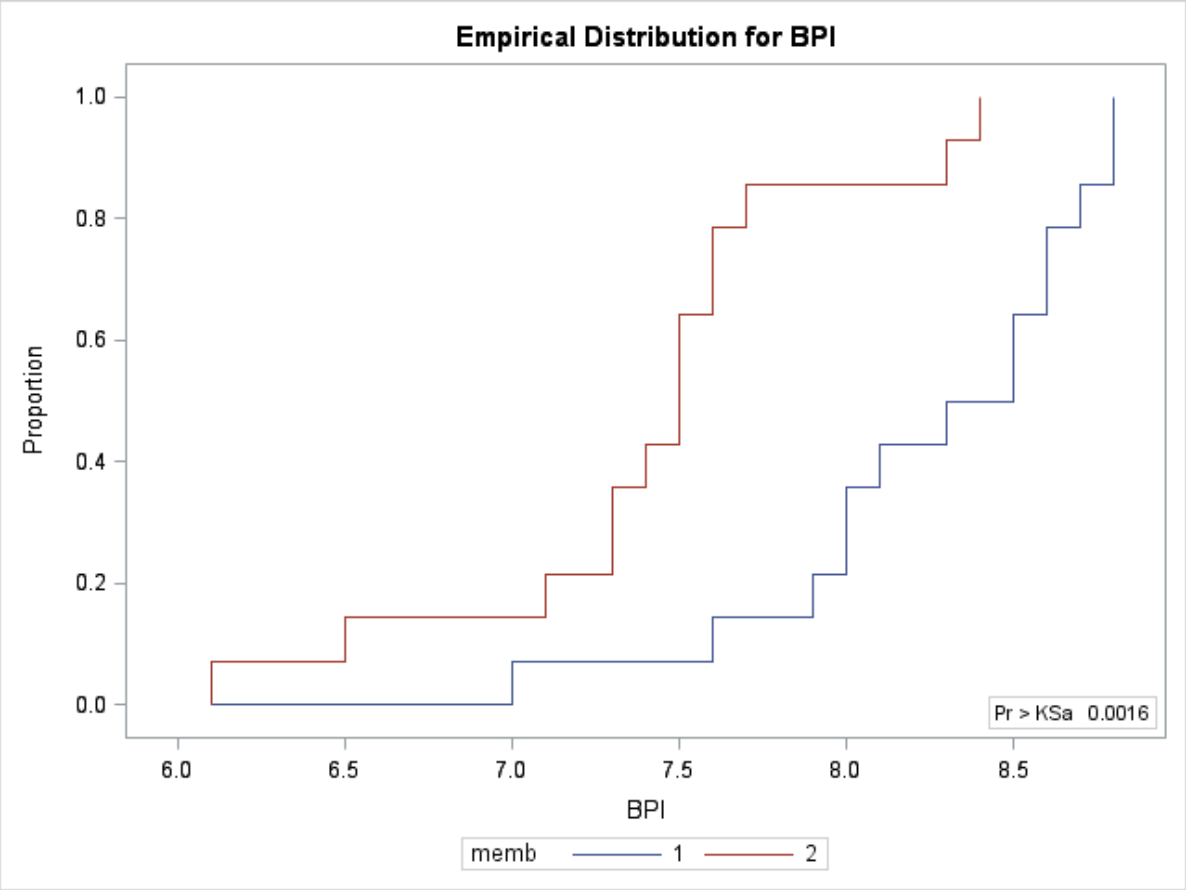

Figure 1: Empirical Distribution for BPI

It is worth noting that among OECD countries Turkey has a BPI of 4.2 which is lower than the average BPI for non-OECD countries in the sample. Turkey is also among the least developed country in that group. In the non-OECD group, Hong Kong and Singapore have BPI scores of 8.4 and 9.2 respectively, which are higher than the average BPI of 8.0 for the OECD group. Both Hong Kong and Singapore have among the highest per capita income in the world with strong domestic legal systems. It is likely that firms from these countries function in an environment of legal probity which attaches to them when they conduct business overseas.

Although the results reported here offer some evidence that the OECD Convention has curbed bribe giving, it should be noted that membership in the OECD is a political matter where member countries subscribe to certain political, economic, and social principles and policies. Hence, while these commonalities ensure the solidarity inherent in passing and enforcing the anti-bribery compact, it is also likely to keep many countries outside the organization. Non-OECD countries may sign up to the Convention but they may lack the judicial and enforcement mechanisms to be full and effective participants. Political will, high income levels, a developed social and judicial infrastructure, and established corporate governance practices in a country are vital ingredients to reduce bribe giving. Most prosecution and convictions for bribe giving tend to occur in more advanced countries; law enforcement is expensive and requires an honest judiciary.

The results reported here suggests that as a tool to fight bribe giving, more countries need to be brought into the ambit of an internationally binding treaty that incorporates inter-governmental cooperation and coordination to investigate and prosecute erring firms along the lines of the OECD Convention. Leading exporting countries such as Brazil, China, India, and Russia, among others, are not members of the OECD or signatories to the OECD Convention or are

bound to legal cooperation clauses. This gives firms based in these countries an immunity of sorts with respect to bribe giving when doing business in non-OECD countries. They would, however, be violating OECD laws if they engaged in bribe giving in OECD countries. Consequently, the focus of international public policy on eradicating bribe giving has to shift to the arena of non-OECD countries and firms based in these countries. Without legal prohibition and enforcement on a global scale, bribe giving by firms from non-OECD countries to officials in non-OECD countries is likely to persist.

While firms from OECD countries have to adhere to the anti-bribery laws wherever they operate, their rivals from non-OECD countries do not have to contend with such business hygiene when operating in non-OECD countries. To ensure an even playing field, create a global culture of business ethics, establish universally accepted standards of legal conduct, and have uniform consequences for violation of such, it would appear that the OECD Convention (or such similar treaty) will need to extend its reach beyond its current member countries.

Conclusions

It should be recognized that many factors – economic, cultural, and institutional – play a role in the pathology of bribery in international business. This study focused largely on one determinant – the OECD Convention. Future studies could provide additional insights by incorporating the other factors and possibly identify other strategies to combat bribery. They can also examine the domestic business environment of countries and explain how that influences the external behavior of firms from those nations. The current study can be extended by including data from upcoming years to ascertain the continued effectiveness of the OECD Convention. It is also recognized that while statutory laws and their vigorous enforcement play an important role in deterring bribe-giving behavior, the role of other influencing factors such as loss of reputation, decline in employee morale, spoilage of extant business relationships, expectations for greater transparency, and ethics training of corporate officers, among others, in changing corporate conduct in individual firms must be considered and needs to be studied further. As more data become available, researchers can include a larger number of countries in their study and also differentiate bribe giving by nature of industry and not just country of domicile.

This study suggests that enactment of national laws coupled with vigorous transnational enforcement is a potent instrument in the public policy arsenal that can play a deterrent role in reducing the overall level of bribe giving and in the propensity of bribe giving by firms from individual countries. This legal approach raises the cost for firms to engage in bribe giving and makes it harder to hide or escape the long arm of the law. By criminalizing bribe giving and punishing bribe givers, the findings reported here suggests that bribery in international business can be curbed so long the laws are enforced in a coordinated, multi-country manner. They send a powerful signal to all firms to improve their international business hygiene. The public policy task is to bring more countries within the ambit of a cooperative, muscular legal framework and to ensure that the anti-bribery campaign is sustained.

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