

**Institutional framework and bribery in Latin America: The case of
PetroTiger Ltd. and Ecopetrol S.A.**

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Abstract

Due to different institutional interpretations, there is a broad set of perceptions and attitudes towards bribery and corruption. Especially in the international business context, it is not likely to have a uniform understanding and consensus regarding the interpretation and the handling of these behaviours. This paper analyses the corruption environment in Latin America. Based on analysing the specific case of the firm PetroTiger Ltd., which was engaged in bribery activities with the Colombian state-controlled firm Ecopetrol S.A. in 2010, this study finds characteristics of corruption in the Latin American region. This research distinguishes itself from the existing literature since it provides new insights in one specific region, including a broad set of dimensions and approaches. A compilation of desk research, media analysis and the Latin American Corruption Perception Index by the

Transparency International underpins the corruption in this region. The primary findings show that the Latin American region differs from others because its level of perceived corruption is defined by its strong cultural influences, the internal economic drivers of Latin American firms, and the weak enforcement of legislation. Above all, this paper confirms that each region has its own characteristics and that the global perception on corruption is changing negatively. Taking this into account, this research explains the main causes for Latin America, and here for gives insights for further research that specific focusses on the cultural, economic or legal factors.

Introduction

During the last decade in Latin America, more and more companies are expanding their businesses to foreign markets (Cuervo-Cazurra 2010, Dunning and Lundan 2008, Vargas-Hernandez, Pelayo Maciel and Lopez Morales 2013). The network and knowledge of these firms are increasing and financial power leads to a stronger position of these firms (Fagre and Wells 1982, Mudambi and Navarra 2004,

Root 1988), whereby public pressure increases such that it becomes a responsible actor in society (Werhane 2012). Through this, the relationship between multinationals and their stakeholders ends up resulting in an unbalanced plight of power. The power of multinationals in various countries indicates an unstable distribution of power in relation to the society that they are operating in. Nowadays, firms consist of half of the hundred biggest economies in the world in comparison to economies countries themselves (Bettignies and Lepineux 2009). For example, firms like Wal-Mart Stores Inc. and Royal Dutch Shell show higher revenues in 2012 than the GDP of several countries such as Austria, South Africa or Colombia.

Society and government assert that powerful multinationals should operate socially responsible (Carroll and Shabana 2010, Mohr, Webb and Harris 2001). This implies that transcending power of organizations through self-regulation and internal control will stay within universal norms and values of the international society reflected by (inter)national regulations and principles.

One mainstream trend nowadays for large corporations is to develop a staunch Corporate Governance policy to eliminate unethical behaviour and corruption within the firm, such as bribery in this case. Although there is a correlation between corporate governance and the global level of corruption, there is still an increase of individual cases of bribery activities (Wu 2005). One example is the case of WalMart de Mexico in 2005: Officials were bribed in order to speed up business activities in the country

(Barstow and Xanic von Betrab 2012). Another comparable example is that of the German firm Siemens: Greek officials were also bribed in the period starting from 1998 up until 2002 (BBC News Business 2011). Similarly, the UK firm BAE System was accused for bribes to foreign authorities in Saudi Arabia and Hungary in order to win contracts (Musgrove 2010). In addition, large multinationals operating in Latin America have also been found guilty of bribery. For instance, fashion firm Ralph Lauren bribed officials in Argentina between 2005 and 2009 to obtain paperwork for goods to clear customs and avoid inspections (Bloomberg 2013). The Brazilian aircraft firm Embraer S.A. is accused of bribing Argentinian and Dominican officials in the purchase of an aircraft for an amount of almost 94 million USD (Dominican Today 2013).

There is a substantial amount of published academic studies with regards to unethical behaviour of large corporations (Adams, Tashchian and Shore 2001, Palazzo 2007). This paper sheds light on the behaviour of multilatinas (multinationals from Latin America), and how these firms get tempted to

overcome the excess the existing norms, values and (international) regulations within societies. This paper contributes to the existing literature on bribery, since it extends previous research by investigating if the same patterns of bribery worldwide are also applicable within Latin America. This will be done by analysing the case study of the company PetroTiger Ltd. accused for bribery activities of the multilatina Ecopetrol S.A. Is there a difference in bribery activities and corruption of multilatinas in comparison to multinationals from outside the region? Complementary to that, criminological perspectives are included whereby the behaviour of firms are analysed in bribery sensitive situations since institutional and cultural perceptions of corruption and bribery in particular may differ from one country or region to another (Clark and Cornish 2001). For instance, the United Nations' Global Compact declares as its principle Anti-Corruption: "Businesses should work against corruption in all its forms, including extortion and bribery" (UN Global Compact 2014).

Literature Review

This section summarizes previous published research on bribery and international business, and provides an understanding of how bribery can affect organizations and economies. Firstly, different perspectives of the terminology are discussed and to which extent bribery has different cultural values.

Thereafter, the trends of bribery are shown, taking a closer look at international business in particular. Also, the effects of (international) regulations to combat bribery will be shown and in which way corruption affects specific business environments.

Definition of bribery

The Organization for Economic Co-Operation and Development (OECD) describes bribery as the offering, promising or giving of something in order to influence a public official in the execution of

his/her official duties (OECD Observer 2000, 3). Complementary to that, a bribe is a payment, in money or in kind, that involves a reciprocal obligation, and that aims at inducing the unethical behaviour of the person receiving the bribe (Rose-Ackerman 1999). Another author (Harvey 2001) argues that not all payments to a principle for any purpose is by definition a bribe, however, any payment made to an agent is a bribe if the payment is made to the agent rather than the principle and the agent does not forward or report the payment to the principle. Corporations have different explanations of what is mentioned by the terminology of bribery in their Code of Conduct. There is a need for a deeper explanation in business associations and international organizations with this meaning (Gordon and Miyake 2001).

According to Gordon and Miyake (2001) there are three main operational difficulties that organizations have to cope with by what is mentioned with the terms corruption and bribery. First of all, firms have difficulties with drawing the line between acceptable relationship-building and corrupt practices or bribery. Another issue is the extortion and facilitation of payments where the problem lies in the finding of a formulation that recognizes the difficult situations that enterprises may face in certain business environments without creating a huge loophole in the anti-corruption guidelines. Finally the tolerance of different practices in different cultures could be an excuse for bribery practices. The latter is mainly relevant for multinationals when doing cross-cultural business.

But in what way does bribery affect business environment? There are many contradicting researches about whether bribery activities have negative or positive implications. Based on the Criminal Division of the United States Department of Justice and the Enforcement Division of the United States Securities and Exchange Commission (2012), bribery should be seen as a blockade for the free market system. Foreign corporate bribery affects the stability of overseas business and also the domestic competitive climate when domestic firms engage in such practices as a substitute for a healthy competition for foreign business. Besides that, other research shows that corruption leads to an increase of transaction costs and a decrease of incentives for foreign direct investment (Seligson 2002). Complementary to that, Hung Mo (2001) claims that the main channel through which corruption affects economic growth is political instability. The estimated annual amount of money circulating due

to bribery is estimated on 1,000 billion USD (The World Bank 2013). The annual costs for the European Union each year for corruption, including bribery, is 120 billion euros (European Commission 2012). Furthermore, the increase of corruption also shows also a correlation with a decrease in GDP growth and GDP per capita (Dreher and Herzfeld 2005). What are the reasons that international firms become engaged in bribery activities? Carmichael (1995) explains three modes of why those firms feel the need for this behaviour. First, in certain countries normal business activities can not be initiated or completed without paying bribes. Also, the justification of "everybody does it" encourages firms to demonstrate this behaviour. Finally, firms which are in desperate need for business may resort to bribery (Carmichael 1995). Complementary to Carmichael's approach, other research classifies three sources of bribery: (1) economic factors, (2) cultural factors and (3) legal factors (Sanyal 2005). Examples of the execution of bribery include winning contracts, influencing a procurement process, circumventing the rules for importation of products, gaining access to nonpublic bid tender information, evading taxes or penalties, influencing the adjudication of lawsuits or enforcement actions, obtaining exceptions to regulations and avoiding contract terminations (U.S. Department of Justice & U.S. Securities and Exchange Commission 2012). The term bribery –so as the executions above- is not that clearly defined whether it is a crime or not, but it is generally accepted as being a crime (Finckenauer 2005).

Bribery in International Business

There are several published studies with respect to the increasing amount of bribery done in international business (Sanyal 2005, Sanyal and Samanta 2004, Baughn, et al. 2010, McKinney and Moore 2008). According to Baughn et al. (2010) this is mainly has to do with increasing globalization, leading to cross-border business transactions between societies with very different norms and regulations regarding bribery. The explanation for the willingness to bribe abroad depends both on domestic (economic development, culture, and domestic corruption in the supplying country) and international factors (those countries' patterns of trade and involvement in international accords). Based on Baughn et al. (2010) there are three situations when the propensity to provide bribes is the

lowest: (1) when corruption is not tolerated in the multinational firms' home countries, (2) when the firms' home countries were signatories of the OECD anti-bribery convention, and (3) when those countries trade heavily with wealthier nations. Other research shows that bribery in international trade is driven by push and pull forces showing that multinationals are proactive parties as it come to seeking pro bribery conditions in exporting countries instead of being victims of corruption in host countries (Sung 2005). Depending on the financial performance of a corporation and the health of an economic environment defines whether a firm would act socially responsible or not. If a firm shows bad financial features, the chance it would engage in bribery is more likely (Campbell 2007).

As mentioned earlier a weak legal system, poor financial market and high policy uncertainty is correlated with the bribe sensitivity of firms in that particular country (Tsalikis and LaTour 1995). Other research also shows that corruption which is associated with poor institutions has a negative effect on the growth of a country's GDP. In case of other sorts of corruption that is not related to governance characteristics shows the opposite. In that case corruption helps in overcoming inefficient barrier (Mironov 2005). From the FDI perspective, the higher the level of corruption in a host country is, less inward FDI takes place (Wei 2000). This mainly has to do with the fact that foreign investors avoid countries with corruption because investors see it as unethical behaviour which may impede operational activities (Habib and Zurawicki 2002).

The attitude towards bribery is not only based on the characteristics of a firm but also the environment of doing business that affects the firm's bribery decision (Chen, Yasar and Rejesus 2008). Culture plays an important role showing that corrupt behaviour differs in each country due to norms and cultural systems (Hooker 2009). Based on the Cultural Dimensions of Hofstede, research reveals differences between cultures towards the engagement in bribery. According to the Cultural Dimensions theory, individuals that from countries with low power distance, low long-term orientation or high individualism are less likely to engage in bribery. However, the level of economic development of a country should also be taken into consideration when analysing these countries' cultural aspects (Sanyal and Guvenli 2009). Therefore, cultural differences along with other environmental aspects between countries should be taken into considerations. Also, the different perceptions that people have

towards the ethical norms of bribery play an important role. For example, one study shows that between men and women, there is a different perception and approach of handling bribe giving and/or taking. The results showed that women are more resistant against this form of corruption (Güvenli and Sanyal 2012).

International regulations and bribery

Many monitor international organizations have their official policy, statements or agreements towards bribery or corruption such as the United Nations Convention against Corruption (October 2006),

Criminal Law Convention of Corruption by the Council of Europe (October 2000) and the AntiCorruption Policy by the EU. In this paper the two most relevant agreements are briefly discussed:

a. Foreign Corrupt Practices Act (FCPA)

This regulation, which was established in 1977 in the United States by the Department of Justice and the Securities and Exchange Commission, was the first federal law implemented by all countries which prohibited persons or entities in engaging in bribery activities with foreign government officials or foreign political parties. FCPA is divided into two parts: the anti-bribery provision and the accounting provision. The first provision consists of three parts, which aims to (1) prohibit any payment –anything of value- to a (2) foreign official in order to (3) obtain or retain business. The latter provision refers to a more transparent and openness of the firms' (internal) audits, whereby the books and records show a detailed, accurate and fair reflection of transactions. The federal US authorities are aggressively investigating firms whether they are in compliance with this Act. The punishment for violating is mostly dealt with by imposing high fines. Nowadays, a majority of developed countries have adopted this legislation into their own national regulation (The United States Department of

Justice 2013, Worldcompliance 2013, FCPA Professor 2012, ICAEW 2014).

Shortly after the introduction of the FCPA, there was thorough research done regarding the effectiveness of such legislation (Baruch 1979, Graham 1984, Siegel 1979). Up until 2014 there remains mixed thoughts about whether regulating bribery in a society is viable. One of the criticisms towards the FCPA is that this law was established to define the terminology of what is mentioned by bribery in the United States. Although as mentioned earlier, the line between what is acceptable or not is remains unclear. The law does not clarify enough whether a payment is considered as a bribe or not. This eventually led to confusion for companies who did not want to take the risk of violating the law. Companies became more cautious towards international trade which eventually led to missed business opportunities (Beed, Fleming and Shooshtari 2007). Another argument is that a bribe is culturally dependent. This cultural dependency makes it unmanageable for firms to define per country where they do business whether a particular payment is seen as a bribe. The FCPA has done less business in foreign countries (Beed, Fleming and Shooshtari 2007). Another criticism is that the FCPA is deeply focused on one side of bribery. Since a bribe involves two parties, the supply and the demand side, both should be investigated. This law unfortunately was more focused on the supplier side, lacking regulation towards the demand side. A fourth argument is that the legislation only works if more countries participate. Since FCPA was introduced only in the United States, the effectiveness of this law was not visible, especially in its earliest years of implementation (Kaikati, et al. 2000). Finally, other studies put into perspective that this regulation has had little general positive impact. More important this research concludes, is the message behind what should be seen as courageous attempt of the United States to address the rising concerns towards bribery in the global business environment (Cragg and Woof 2002).

b. Organization of American States (OAS)

Although not as influential and important as the two first agreements discussed, the Organization of American States is relevant for understanding the regulation process of the Latin American market. The Organization was established in order to achieve among its member states an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty,

their territorial integrity, and their independence (Organization of American States 2014). Today, the OAS consists of 35 independent states of the American continent and constitutes the main political, juridical, and social governmental forum in the hemisphere (Organization of American States 2014).

Since 1996, there was an international anti-corruption legal instrument initiated among its members. Since 2002, the Inter-American Convention against Corruption and the Follow-Up Mechanism for its Implementation (MESICIC) was introduced, with the aim to prevent, detect, punish and eradicate corruption in the Americas (Organization of American States 2011).

Research shows that regulations such as the OAS are an important eye opener for the recognition of the existence of bribery in Latin America. Only important to take into account that Latin American countries, which are mostly seen as masculine regions, the consequences of violating the law are not so effective. As such, there should be a more enforced implementation of the agreements done by the OAS to improve the effectiveness (Husted 2002). Other studies argue that regulation is necessary in Latin America because bribery is significantly distorting the firm growth in the Latin American region.

This especially true for young firms who suffer from this type of business environment (The World Bank 2012). Apart from that, other studies conclude that conventions such as the OECD and OAS are effective in Latin America, and as supported above, the strong cultural –masculine- aspects should be taking into account for further development of policies in this regard (Husted 2002).

In conclusion, there are mixed outcomes about whether bribery activities should be prohibited or in what way it should be regulated. As seen above, each convention or act has its own negative and positive aspects. Although in general we can conclude that bribery leads to distortion of the GDP of a country (Irish Anticorruption 2013). The difficult part is how this negative issue should be approached. Not all legislations and regulations are that helpful to combat bribery. Regulation can lead to less attractive business environments, which leads to less trade with other (corrupted) countries, and as a result may lead to also a decrease in GDP (D'Souza 2012). The implementation of regulations should be seen more as the global standards of the norms within international trade taking place (Cragg and

Woof 2002).

Research Methodology

This paper based on qualitative approach contains an analysis of the case of PetroTiger Ltd. and Ecopetrol S.A. explaining the bribery-scandal that took place in 2010, focusing on the first mentioned firm. The analysis will look at the drivers of the firm's involvement in bribery activities, the environment in which the bribery took place and the home country's institutional attitudes towards bribery. In this research methodology, data-gathering and data-analysis are linked (Decorte and Zaitch 2009). For this case study, data is analysed in order to explain one specific case, with the eventual goal of finding patterns that occur in the Latin American region. Important to mention is that information is gathered from different sources, which is called data triangulation. Data triangulation will guarantee validity and reliability of the data by using multiple sources (Decorte and Zaitch 2009). The way of obtaining data is through (a) desk research, namely publicly available secondary sources, and (b) the Latin American Corruption Perception Index Analysis. Below both data are described, including the way of obtaining the data and the validity and reliability are underpinned. This paper also took into account media reports analysis. To ensure whether all available information was considered, this research has been carried out by obtaining information from several sources such as corporate websites, digital newspapers, press releases, corporate reports and websites. Approaching this bribery scandal from six different media channels assures the availability of data. . The media reports analysis has the aim of analysing the bribery activities of PetroTiger Ltd. and Ecopetrol S.A. in 2010. The framework for this method is processed into three stages. Firstly, corporate information is collected. In this stage most of the information is acquired from official corporate websites. The next stage is dedicated to the bribery case itself. All media sources as mentioned before were used to present a uniform description of the whole bribery case. Validity of the information was pursuing since for each statement at least two media sources confirm the analysis. The latter stage is related to the interpretation of this particular bribery for the total Latin American region. Several theories and frameworks are used that fit in the overarching framework of Sanyal (2005) who states that corruption exists out of three sources: cultural,

economic and legal. In Table 1, all media channels that were used as information resources are presented.

TABLE 1 Selection of Media

Selection of Media						
Media	Name	Language				
Corporate website	Tiger Companies	English				
Corporate website	PTS Colombia	English				
Corporate website	Inelectra Internacional	English				
Corporate website	Ecopetrol	English				
Digital News paper	Bloomberg	English				
Digital News paper	Corporate Crime Reporter	English				
Digital News paper	BN Americas	English				
Digital News paper	Law 360	English				
Digital News paper	Colombia Reports	English				
Digital News paper	Yahoo News	English				
Digital News paper	The FCPA Blog	English				
Digital News paper	Dinero	Spanish				
Digital News paper	Caracol	Spanish				
Digital News paper	El Tiempo	Spanish				
Press Release	US Department of Justice	English	Press	Release		
	US District Court of New Jersey	English				
Social Media	LinkedIn	Spanish				
Sustainability Report	Ecopetrol	English				
Website	Rigzone	English				

a. Latin American Corruption Perception Analysis

In addition to the desk research methods, the Latin American Corruption Perception Analysis by Transparency International analyses the case study of one bribery case and takes a closer look into the Latin American region as a whole. The Latin American Corruption Analysis is an analysis that is fully based on evidence obtained from the independent organization Transparency International.

The concerns expressed by Transparency International (2013) are the increasing corruption worldwide in terms of the number of cases and the countries getting involved in institutional corruption.

In Table 2 the CPI features for 23 Latin American countries are presented into three time periods, showing the index score and world rank for each country. In the last two columns the alteration are shown between the period 2003-2013 and 2008-2013. According to the index, Latin American country Uruguay, with an index rate of 73, shows the lowest perception of corruption in Latin America. In 2003 and 2008 Chile had the highest CPI.

Although there is an increase of 13 percent in the Corruption Perception Index between 2003 and 2013 in Latin American countries, there is still a concern about the overall perception of corruption in the Latin American region.

Also remarkable are the features over the period of 2008 to 2013. Between 2003 and 2013 seven countries experienced significant growth in the perception of corruption. In the 5-years period, only Ecuador, Haiti and Brazil had a continuous growth rate. In 2003-2013 the average CPI growth was 13 percent. During this period of time there was a declining growth of only 6 percent. On the other hand the number of countries with an extreme decrease of CPI is reduced. Only Mexico and Guatemala have a decrease of 6 percent over the last five years.

TABLE 2 Corruption Perception Index: Latin America

Corruption Perception Index: Latin America										
		2013	2008	2003						
	Country	CPI	Rank	CPI	Rank	CPI	Rank	Δ '03-'13	Δ '08-'13	
1	Uruguay	73	19	69	23	55	33	33%	6%	
2	Chile	71	22	69	22	74	20	-4%	3%	
3	Puerto Rico	62	33	58	36	NA	NA	NA	7%	
4	Costa Rica	53	49	51	47	43	50	23%	4%	
5	Cuba	46	63	43	65	46	43	0%	7%	
6	Brazil	42	72	35	80	39	54	8%	20%	
7	Peru	38	83	36	72	37	59	3%	6%	
8	El Salvador	38	83	39	67	37	59	3%	-3%	

9	Colombia	36	94	38	70	37	59	-3%	-5%	
10	Suriname	36	94	36	72	NA	NA	NA	0%	
11	Ecuador	35	102	20	151	22	113	59%	75%	
12	Panama	35	102	34	85	34	66	3%	3%	
13	Argentina	34	106	29	109	25	92	36%	17%	
14	Bolivia	34	106	30	102	23	106	48%	13%	
15	Mexico	34	106	36	72	36	64	-6%	-6%	
16	Guatemala	29	123	31	96	24	100	21%	-6%	
17	Dom Republic	29	123	30	102	33	70	-12%	-3%	
18	Nicaragua	28	127	25	134	26	88	8%	12%	
19	Guyana	27	136	26	126	NA	NA	NA	4%	
20	Honduras	26	140	26	126	23	106	13%	0%	
21	Paraguay	24	150	24	138	16	129	50%	0%	
22	Venezuela	20	160	19	158	24	100	-17%	5%	
23	Haiti	19	163	14	177	15	131	27%	36%	
Total participants					177	180	133			
Average CPI		37,8	35,6	33,5			13%	6%		

For the countries Puerto Rico, Suriname and Guyana data is limited. The features for 2003 are not available.

Based on data from the Transparency International Organization, The Corruption Perception Index

2013 (Transparency International 2013)

Case study Findings: PetroTiger Ltd. and Ecopetrol S.A.

This section presents the firm-based analysis of PetroTiger Ltd. and Ecopetrol S.A., followed by the case study of their bribery activities in 2010 in which three ex-executives of the firm PetroTiger Ltd. paid two major bribes in order to win contracts from the Colombian firm Ecopetrol S.A. The analysis is based on actual news reports of several agencies. The case study has been assessed taking into account several theoretical interpretations of bribery.

PetroTiger Ltd.

PetroTiger Ltd., a United States company registered as a British Virgin Island firm, specialized in hydrocarbon and infrastructure services; it is one of the largest post-drilling production services companies in Latin America. This multinational has been present since 2008 in in different regions all over Colombia. It is also active in different projects in countries such as Peru, Ecuador, Mexico, Alaska, Syria, Russia and Indonesia. Their presence in Colombia exists out of three acquisitions in a three-year period. The firm, which is part of the umbrella corporation TigerCompanies, acquired their first Colombian firm in 2008. In that year the Colombian firm Gómez Cajiao y Asociados S.A., which

TABLE 3 Acquisitions PetroTiger Ltd. in Colombia

Acquisitions PetroTiger Ltd. in Colombia					
Year	Ownership	Acquired Firm	Main activities	Experience	CSR (a)
Oct 2008	60%	Gómez Cajiao y Asociados S.A.	Engineering, design and project management	40 Years	NA
Aug 2009	100%	Production Testing Services	Petroleum Production services	20 Years	No
July 2010	100%	Inelectra Internacional	Energy	45 Years	Yes

is specialized in engineering design and project management, became member of the group through 60% ownership. A year later, the firm Production Testing Services (PTS), a petroleum production firm that is a market leader in the Andean Region, was acquired. The last firm got in July 2010 fully owned by TigerCompanies, which is the firm Inelectra Internacional, a corporation with 40 years of experience in the energy sector. After the last acquisition, the number of employees of PetroTiger Ltd. in total is estimated to be 1,500 (Rigzone 2014). Presently under the name of parent company TigerCompanies, three active subsidiaries are operating independently: PetroTiger Ltd., Inelectra Internacional and Gómez Cajiao.

(a) CSR policy is available for the public through the corporate website

Based on data from the corporate websites of Production Testing Services, Inelectra Internacional and Tiger Companies (Tiger Companies 2012, PTS Colombia 2009, Inelectra Internacional 2011) In production firms, an HSEQ department is desired, which stands for Health, Safety, Environment and Quality. This department is supposed to adhere to these four pillars within the firm. PetroTiger Ltd. achieved several awards and certifications over the last years thanks to their HSEQ department. Some of their achievements are presented in Table 4.

TABLE 4 Certification and Awards PetroTiger Ltd.

Certifications and Awards PetroTiger Ltd.

Year	Sort	Name	Main activities
	2005	Certification	ISO 9001 Quality Management
2007	Award	ARP SURA National	SURA Award
2007	Award	ARP SURA Regional	SURA Award
2008	Certification	OHSAS 18001	Safety Management
2008	Certification	RUC: 99%	Colombian Safety Council
2009	Award	Learning Award BP Contractors	BP Award
	2009	Certification	ISO 14001 Environmental Management
	2011	Award	ARP SURA national SURA Award

Based on data from the corporate website of TigerCompanies (TigerCompanies 2012)

Since 2013, the corporate website (<http://petrotiger.com>) of PetroTiger Ltd. has had limited access. Crucial information about the firm for the public such as international presence, history of the firm, sustainability projects and the Annual Report are not retrievable. It is unclear if there is any relation between the bribery activities of the firm and the current status of their corporate website. The parent firm TigerCompanies and its subsidiaries provide limited information about PetroTiger Ltd. on their corporate websites.

Ecopetrol S.A.

As one of the biggest oil and gas services companies in Latin America and with yearly revenues of more than 30 million USD in these last few years, Ecopetrol S.A. is the industry market leader in

Colombia. The corporation was founded in 1951 and is originally a Colombian state-controlled firm. Besides their operations in the host country, this multilatinas is also present in several projects in Brazil, Peru and the Gulf of Mexico (Ecopetrol S.A. 2012). Currently the group firm exist out of 25 subsidiaries in- and outside Colombia. In 2012, more than 60% of the revenues from the firm came from earnings outside the country.

Ecopetrol has developed a CSR strategy which including several policies regarding their relation with stakeholders, corporate governance, human rights, sustainability and ethics (Ecopetrol 2014). Especially the latter one is worth mentioning since one of the pillars for this subject is their anticorruption plan. This plan brings to the attention the risks with regards to fraud, corruption, money laundering and terrorist financing which is in compliance with Article 73 of Law 1474 Anti-Corruption Status (Ecopetrol 2014). An important risk to mention is the award of third parties without reporting a conflict of interest, in exchange for personal favours and benefits. This risk has a high probability of occurrence.

Case study: bribery activities PetroTiger Ltd. and Ecopetrol S.A.

Media firm Bloomberg (2014) released on April 7, 2014 an article revealing that between the period June 2009 and February 2010 three ex-executives, Gregory Weisman, Joseph Sigelman and Knut Hammarskjold participated in paying bribes on behalf of the firm PetroTiger Ltd. to an official of the

Colombian state-owned firm Ecopetrol S.A. Weisman was the former general counsel for the firm. Sigelman and Hammarskjold were both co-CEOs during that period. The two executives were charged guilty by the United States Department of Justice (2013, 2013) for the following accusations:

- Conspiracy to Commit Wire Fraud (In violation of Title 18, United States Code, Section 1349);

- Conspiracy to Violate the Foreign Corrupt Practices Act (In violation of Title 18, United States Code, Section 371);

- Substantive violation of the Foreign Corrupt Practices Act (All in violation of Title 15, United States Code, Section 78dd-2, and Title 18, United States Code, Section 2.);

- Conspiracy to Commit Money Laundering (All in violation of Title 18, United States Code, Section 1956(h)).

Ecopetrol S.A. is a state controlled firm and thus has the ability to assign contracts for projects in Colombia. The former executives of PetroTiger Ltd. paid bribes to an ex-official of the firm, David Orlando Durán Flórez, who was in charge over the approval and the allotment of contracts by Ecopetrol S.A. to secure approval for an oil service contract (Corporate Crime Reporter 2014). To obscure the payments that were made, the wife's official, the official's wife Johana Navarro Carvajal became involved (BN Americas 2014). PetroTiger Ltd transferred several payments to the official's wife, under the guise of business consulting services for the firm. These activities were actually never carried out by Navarro Carvajal (United States District Court of New Jersey 2013). In order to win an oil services contract, which was worth approximately \$39 million USD, the ex-executives of PetroTiger Ltd. paid an amount of around \$333,500 USD (Law 360 2014, Colombia Reports 2014). One of the emails sent by Navarro, which was found by the FBI, confirms her role in this case. In the email, she thanked the ex-CEO for the payment transaction. She also stated that she was waiting the second payment for the next week (El Tiempo 2014). According to the resume of Durán Flórez, he left Ecopetrol short after the bribery activities. Before the publicity of this case, he was no longer employed for the firm, according to his publicly available profile on LinkedIn (2014). Whether there is a relation between this bribery and Flórez' departure from the firm is unconfirmed. One media reports his retirement in April 2011 was his reason for leaving the firm (Caracol 2014).

The case came into publicity when in 2011 a process started when the Board of Directors detected possible irregularities during an external audit. This led to a separation of the three ex-executives' positions by April 2011 (Yahoo News 2014).

Another violation by these ex-executives, which is not fully related to bribery but worth mentioning, is their attempt to secure kickbacks for an acquisition of a firm. Here for they increased the acquisition price of the target firm. Two of the owners agreed with this initiative of PetroTiger's executive, with the aim to kick back an amount of this purchase for own purpose. The payment was falsely justified within a side letter under the name —Manilla Split" (The FCPA Blog 2014). The payments were deposited into a bank account in the Philippines under the division of Manila, using the code name —Manilla Split" (Dinero 2014).

Interpretation to the PetroTiger Ltd. and Ecopetrol S.A. bribery case according to the institutional frameworks

From the above case, many questions remain unanswered due to lack of corporate information and the seclusion of the firm. It is clear that PetroTiger Ltd., its holding and sister entities took a step back in publicity. Their lack of transparency towards this bribery case, their current operational activities and the future CSR and business plan are a mystery. A classical approach to analyse this case from a criminological perspective is the Routine Activity Approach. This theory states that any offender who commits a crime always calculates rationally its costs and benefits. In this case the offender is PetroTiger Ltd. The theory also states that there are always persons inside organisations who will be ready to engage into bribery activities (Clark and Cornish 2001). PetroTiger Ltd. decided to employ displacement strategy, either physically disappearing from the attention of the public, or visually, whereby they actually remain at the same place in its operation and strategy, but not manifesting itself on internet or other public sources. This is an example of rationality and specific decision making as explained by the theory. The lack of information is evidence in support of the theory since it reveals the behaviour of the firm and their aversive attitude towards their responsibilities in society.

To what extent is this firm fully guilty to the bribery activities in 2010? Sung (2005) distinguished the push and pull forces of bribery in international trade. The demand-pull forces include the role of multinationals as victims in host countries of international bribery whereas supply-push forces claims that multinationals are proactive in international bribery activities in host countries. His analysis shows that the supply-push forces are strongly supported by cross-national data. In the case of PetroTiger Ltd. it is evident that the proactive attitude of the firm was a key factor of the case of bribery in Colombia. The position of the firm is characterized by three factors: First of all it was PetroTiger Ltd. who was the party that initiated and thus wanted to benefit from this situation as they were eager to win this contract. In addition, as presented in the media analysis, the formal CEO's initiated the obscurement of payment transactions by transferring amounts of money to the wife of the Ecopetrol S.A. official. Finally, their proactive attitude reveals itself again since there was a second case in which the firm tries to secure kickbacks during an acquisition.

However, it is too easy to blame all responsibilities only on one particular firm. Bribery always includes two or more parties (Sanyal and Guvenli 2009). There are more responsibility factors when it comes to international bribery. Sanyal (2005) explains three sources that contribute to the level of bribery and corruption in society, which include culture, economy and legality. Using this theory as a basis, the impact in international bribery is described within (1) the case of PetroTiger Ltd., (2) the Latin American region and (3) using theories that underpin the importance of each source.

Cultural

The cultural dimensions of Hofstede were previously analysed and it was found that for the Latin American region there is a relation between the level of corruption and the cultural Power Distance of a country's culture. As shown in Table 5, the majority of the Latin American countries show a strong cultural power distance, which explains the features regarding the high corruption scores in this particular region. This major presence of corruption has high influence on the economic opportunities and business growth in the Latin American region (Charoensukmongkol and Sexton 2011).

In the case of PetroTiger Ltd., it is a firm founded in the United States and thus holds different cultural business values compared to Latin American firms. For example, the Power Distance in Colombia is higher than in the United States showing that both countries have different attitudes and values towards inequality (Hofstede 2014). In Colombia inequality is more accepted as part of society than in the country of origin of PetroTiger Ltd. Relating these cultural aspects, the business environment for the firm was more attractive to engage in bribes than in their home market.

Economic

Based on research of Carmichael (1995), there are three reasons from an economic perspective of why a firm engages itself in bribery. The first is that in certain countries, normal business transactions can not be initiated or completed without paying bribes. There is a need to bribe officials in order to continue businesses and operations in a country. The second reason is the neutralization method in which “everybody does it” is used as a legitimate argument to engage in corruption. It also refers to a firm that is in desperate need for business and revenue, therefore they will neglect their internal values to make sure that the existence of the firm will still be intact.

In the case of PetroTiger Ltd. all three factors play an important role explaining the reasons for their bribery activities. Since Colombia is ranked 94th in 2013 in the level of corruption, and corruption is still entrenched in the business environment of the country, it is necessary for firms to pay bribes in order to fulfil business operations in Colombia. Although Ecopetrol S.A. has a staunch sustainability report on how to avoid corruption within the firm, this particular case also shows that Ecopetrol S.A. may not have a reliable and trustworthy way towards their customers on how several contracts are obtained. It is likely that PetroTiger Ltd. could not trust that the contract provided by the statecontrolled firm would be granted to the firm with the best business proposal. Also, the neutralization argument that bribery and corruption is a fully ‘accepted’ business method in Colombia justifies their behaviour. This might be an explanation to the number of firms and officials in Colombia engaged in these activities. A good example is the case against ex-president Alvaro Uribe,

who was involved in a bribery scandal with congress members in order to be supported for his re-election in 2006 (Colombia Reports 2012). The fact that such cases take place in Latin America on regular basis allows firms such as PetroTiger Ltd. to justify their engagement in bribery. The desperate need for firms to win business contracts and their engagement in bribery is explained by the aforementioned economic reason. Since the financial statements of PetroTiger Ltd. are not available to the public, there are not enough insights into their economic position in the market. However, we have seen that the oil company acquired three Colombian firms in a short period of time and that all of the entities presented themselves as sustainable, experienced and market leading firms. Based on this we can assume that the economic position of PetroTiger Ltd. was stable. On the other hand, in 2008, the worldwide economic recession had an impact on the financial results of many firms. The petroleum sector particularly suffered from this downturn. Therefore it can be assumed that PetroTiger Ltd. short after the world crises had the desperate need to maintain business opportunities to stay sustainable.

Legal

Based on the literature review section in which several legal frameworks regarding bribery and corruption are discussed, we can deduce that in the case of PetroTiger Ltd., the Foreign Corruption Practices Act from the United States played the most important role in this case. The former Co-CEO executives got convicted based on the FCPA legislation by the United States Department of Justice.

The Latin American region has several global agreements implemented in their national regulation as mentioned in the literature review. A concern which was already addressed before is that in Latin American countries there is the willingness to combat against bribery with national regulations, OECD Convention, OAS and the UN Global Compact. However, enforcement is a big issue since countries do not have the tools, resources and collaboration with other countries to minimize bribery (Cragg and Woof 2002, Husted 2002).

In the case of PetroTiger Ltd., the United States Department of Justice had a huge impact on the process of the trial, since the firm was in violation of its legislation. Concerning would have been the

enforcement of the Colombian, or another Latin American department of Justice. As mentioned before, to strengthen enforcement for this region with regards to bribery there should be not only more tools related to the financial resources of a country, but also knowledge and support from other Latin

American countries and other regions. Although Transparency International measured the Corruption Perception Index of Latin America, the number of Latin American cases in the media is not in line with the high corruption score. It is there for typically that in Latin America there are more corrupted cases, however due to lack of enforcement not many cases are eventually prosecuted.

Conclusion and discussion

This paper states not only that the perception of bribery differ from region to region, but also the regulation and cultural acceptance fleshing the way a region copes with this phenomenon. As presented in the literature review there are several issues that disable the clear cut of the definition bribery and corruption in international business. As mentioned by Gordon and Miyake (2001) there are three difficulties in the expression of bribery and corruption in international business: (1) there is no clear cut definition of what bribery includes, (2) the issues of extortion and facilitation of payment payments and (3) each country or culture has its own interpretation of what is bribery and how to deal with it. However, despite the lack of a staunch framework of bribery, research claims that it eventually leads to slow down of the economy (Dreher and Herzfeld 2005, Hung Mo 2001, Seligson 2002). The two main features where for a firm engages in bribery activities are a weak economic environment and bad financial performance of a firm (Campbell 2007). Based on this there exists a vicious circle whereby corrupted firm deteriorate the country's economy. This downturn of the economic environment in its turn, is for more firms more justified reason to engage in bribery. The may be an explanation of the increasing briber in international business (Baughn, et al. 2010).

The agreement of the Organization of the Americas (OAS) has an important role in the Latin American region.. This agreement includes 35 independent states of the American continent to combat bribery.

Since 2002 the Inter-American Convention against Corruption was introduced with the aim to enforce stronger regulation in the Americas towards corruption. Despite the fact that corruption in a country is not influenced by regulation, but also by factors such as culture and economy (Sanyal 2005), this paper concludes that the implementation of the OAS regulation did somehow contribute to the less corrupted environment in the Latin American region. This conclusion is based on the Corruption Perception Index (Transparency International 2013), which will be further clarified below.

The independent organization Transparency International (2013) presents annual corruption perception indexes (CPI) showing increased global concerns: the number of cases of corruption increases while more and more countries have entrenched corruption in their institutions. Fortunately, this trend is less visible in the Latin American region. Based on features of 23 Latin American countries, measured over a period between 2003 and 2013, there was an increase in CPI of 13%. Uruguay and Chile show the best features by far, both placing within the top 25 least-corrupt countries worldwide. With respect to the improvement of corruption of the last ten years, Ecuador and Paraguay progressed the most. The reason can be explained by that fact that both countries enforced strict corruption regulations in their national legislation.

However, Transparency International also has concern about the Latin American region. First of all, there are still a few Latin American countries that are at the bottom part of the list. Three countries are in the top 25 most corrupted countries worldwide: Haiti, Venezuela and Paraguay. Another reason for concern is that except for just a few Latin American countries, there is no considerable improvement for the majority of the participants. . Therefore, the average decrease of corrupted countries in Latin America is refers to just a few countries that have progressed significantly. Most of the Latin countries show very little or no progress at all. The countries that stand out in a negative sense are the Dominican Republic and Venezuela, who show increases of corruption of 12% and 17% between

2003 and 2013. Another concern is the figures between the time-periods of 2003-2013 and 2008-2013. Comparison shows that there is a declining decrease of corruption of only 6% in the last five years. However outliers in negative sense are reduced, just three countries show significant improvement of corruption.

In order to generalize the patterns found for the specific case of PetroTiger Ltd., this paper aims to identify to which extent the characteristics are applicable for the Latin American region. Despite the choice of focusing this paper on a bribery scandal that took place recently in the Latin American region, the firms' presence vanished completely from their public radar. From a criminological perspective, Clark and Cornish (2001) state that in this case PetroTiger Ltd. rationally calculates its costs and benefits. Due to this rational way of thinking the firm decided to employ displacement strategy, either disappearing from the attention of the public physically, or visually whereby they actually remain at the same place in its operational and strategy, but not manifesting itself on internet or other public sources. Based on this, their lack of public presence should be seen as the most valuable information this research includes.

To create a staunch framework of the Latin American region, this paper relies on the three sources of Sanyal (2005). These three factors explain the contribution to the level of bribery and corruption in society.

1. The first source is the culture. This research confirms that there is a correlation between the level of corruption and the level of Power Distance as mentioned by Sanyal and Guvenly (2009). Since the majority of the Latin American region has a national culture with relative high Power Distance, there is more understanding of why more than 66% of all the countries in the Americas score lower than a CPI of 50.
2. The second source is related to the economic drivers. Based on theory of Carmichael (1995) three economic reasons are playing a role in the level of corruption. Firstly, in certain countries, normal business transactions cannot be initiated without paying bribes. The second reason is the neutralization method whereby "everybody does it" is used as a legitimate argument to engage in corruption. The third refers to firms who are in desperate need for business will exceed their internal values to make sure that the existence of the firm will still be intact. The above motivations come out of the internal values of a firm and as such, outcomes may vary for each firm regardless of the region. In order to generalise the economic

motives for corruption for the Latin American region, there is need for further quantitative research.

3. The third source is related to legislation. As mentioned in previous sections there are several worldwide legislation and regulations implemented. The Latin American Organization of the Americas also plays an important role for the framework of bribery in corruption. However, the success of the publicity of the case of PetroTiger Ltd. is due to the American FCPA legislation. The enforcement of the OAS or national Colombian legislation are too weak to combat such cases, since these countries do not have the tools, resources and collaboration with other countries to minimize bribery (Cragg and Woof 2002, Husted 2002). Although Transparency International measured the Corruption Perception Index of Latin America, the number of Latin American cases in the media is not in line with the high corruption index. Therefore, it is typical in Latin America for there to be more corrupted cases than what is reported. Due to lack of enforcement not many cases are eventually prosecuted or publicly accessible.

Based on the above, the characteristics of the Latin American region distinguish itself through different internal and external sources. In conclusion, the strong cultural power distance, the internal economic drivers of Latin American firms and the weak enforcement of legislation describes the level of corruption in this region.

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