

# CMIREPORT



## Collaboration on Anti-Corruption Norway and Brazil

Tina Søreide and Claudio Weber Abramo

R 2008:1

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## About the authors

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## About this report

Much has been said about anti-corruption initiatives, about the causes and consequences of corruption, and about what governments can do to combat this problem. Most discussions and policy recommendations focus on what governments can do *within* their jurisdictions. This report takes a different approach by exploring how countries and players can *combat corruption through cross-border collaboration*.

## Bilateral collaboration and Norwegian presence in Brazilian markets

The report argues that the fight against corruption needs stronger transnational cooperation and attempts to map out issues that might be relevant for such collaboration. The focus is on corruption in the business environment and the situations reported concern trade between Norway and Brazil, with a focus on Norwegian presence in Brazil. Although the Norwegian Government is well concerned about corruption in Norwegian markets, this report is commissioned by the Norwegian Ministry of Foreign Affairs, and relates to broader perspectives on how to promote Norwegian industry and Norwegian interests in general, in foreign countries.

Discussions of corruption and anti-corruption initiatives can often appear too general and too abstract. Addressing bilateral anti-corruption collaboration between specific countries has the advantage of forcing discussion to take a practical perspective on the challenges presented by corruption. Such a perspective will include a recognition and assessment of existing counter-corruption institutions and initiatives - and of how they work out in particular socio-political environments.

Brazil is an important market for Norwegian industry and dialogue between the two countries is already good. The present study is part of a broader initiative to strengthen those ties.

## Realistic perspective

Transnational dialogue on an issue as sensitive as corruption requires the ability to address such challenges from a realistic perspective. While research data on the prevalence of corruption are incomplete and far from reliable, they do give grounds for assuming that the problem is quite common – in most countries. Collaboration will not work unless we recognize that corruption is challenging the business environment. To encourage realistic perspectives on the issues, the initial sections of this report will present and discuss some background information on perspectives on corruption in Brazil, including Norwegian firms' responsibility and their attitudes to corruption in foreign markets.

## Workable initiatives

Collaboration can be fruitful only if it supports initiatives with a practical impact. Anti-corruption initiatives in business-related environments take very different forms – such as encouraging ethical conduct, monitoring transactions, improving procedures, or sanctioning detected crime. In order to

identify possible initiatives for collaboration between countries, we will begin by discussing anti-corruption measures in general with a view to highlighting some factors that might be important to understanding their effectiveness.

On the basis of these discussions, we will then offer some suggestions about anti-corruption collaboration. However, our ambition in this report is not to provide an exhaustive list of the relevant issues, but rather to stimulate some initiatives.

## Acknowledgements

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## Contents

ABOUT THE AUTHORS.....	III
ABOUT THIS REPORT .....	III
BILATERAL COLLABORATION AND NORWEGIAN PRESENCE IN BRAZILIAN MARKETS .....	III
REALISTIC PERSPECTIVE.....	III
WORKABLE INITIATIVES.....	III
ACKNOWLEDGEMENTS.....	IV
<b>EXECUTIVE SUMMARY .....</b>	<b>VII</b>
1. INTRODUCTION.....	VII
2. ANTI-CORRUPTION INITIATIVES: WHAT WORKS?.....	VII
3. ANTI-CORRUPTION INITIATIVES IN BRAZIL.....	VII
4. NORWEGIAN FIRMS IN BRAZIL.....	VIII
5. A PROGRAMME FOR COLLABORATION .....	VIII
<b>1. INTRODUCTION.....</b>	<b>1</b>
BACKGROUND: INTERNATIONAL CONVENTIONS AGAINST CORRUPTION .....	1
BILATERAL COLLABORATION AND DIALOGUE: NORWAY AND BRAZIL.....	1
<b>2. ANTI-CORRUPTION INITIATIVES: WHAT WORKS? .....</b>	<b>3</b>
INITIATIVES TO COMBAT CORRUPTION .....	3
THE EVOLUTION OF ANTI-CORRUPTION INITIATIVES IN A COUNTRY .....	4
THE CHALLENGE OF DEVELOPING EFFICIENT ANTI-CORRUPTION INITIATIVES .....	4
VOLUNTARY ANTI-CORRUPTION INITIATIVES IN THE PRIVATE SECTOR.....	5
VOLUNTARY INITIATIVES AS PART OF AN ANTI-CORRUPTION PROGRAMME.....	6
AND SO, WHAT WORKS? .....	7
<b>3. ANTI-CORRUPTION INITIATIVES IN BRAZIL.....</b>	<b>8</b>
ANTI-CORRUPTION IN A DECENTRALIZED STATE .....	8
FIRMS' PERSPECTIVES ON CORRUPTION IN BRAZIL .....	9
FIRMS WISH TO COMBAT CORRUPTION .....	10
<b>4. NORWAY AND NORWEGIAN FIRMS IN BRAZIL .....</b>	<b>12</b>
INTERVIEWS WITH REPRESENTATIVES OF NORWEGIAN FIRMS IN BRAZIL .....	12
FIRMS' RESPONSIBILITY TO COLLABORATE ON INITIATIVES TO COMBAT CORRUPTION .....	13
BUSINESS RESPONSES TO CORRUPTION: ENTRY, TAXATION, AND THE COURT SYSTEM.....	14
NORWEGIAN FIRMS IN FOREIGN MARKETS – A BUSINESS SURVEY.....	16
<b>5 A PROGRAMME FOR COLLABORATION .....</b>	<b>18</b>
CUSTOMS REGULATION AND PROCEDURES .....	18
PUBLIC PROCUREMENT.....	19
LEGAL COOPERATION.....	21
ACADEMIC COLLABORATION .....	22
<b>REFERENCES .....</b>	<b>23</b>





## Executive summary

### 1. Introduction

- 1.1 International conventions against corruption, signed and ratified by a growing number of countries, are an important tool in combating corruption. However, conventions are merely legal permissions, and will change nothing unless they are actually implemented. Greater collaboration across countries is now needed in order to draw real benefits from legal reforms.
- 1.2 General discussions about collaboration often produce vague conclusions and ineffectual policy recommendations because they do not take account of the specific circumstances relating to particular countries. This report examines the relationship between Norway and Brazil, two very different countries in different regions, yet with strong trade relations and good dialogue. A programme for collaboration on anti-corruption between different countries might identify new aspects for consideration and be useful in a broader anti-corruption perspective.

### 2. Anti-corruption initiatives: What works?

- 2.1 Collaboration on anti-corruption requires a common understanding of what initiatives might work. There are different categories of anti-corruption initiatives: laws and regulations, economic incentives, and more or less coordinated voluntary initiatives. To be effective, an anti-corruption programme should ideally include a combination of initiatives. In addition, it is useful to distinguish between initiatives that focus on *preventing* corruption and initiatives that focus on uncovering and prosecuting corruption *after* the event, although the two can clearly overlap.
- 2.2 The choice of initiatives is complicated, however. On the one hand, factors that are often thought to influence the incidence of corruption, such as the risk of being apprehended, sanctions, and lower returns from the involvement in such crime, are all very difficult to implement. On the other hand, the introduction of voluntary initiatives to reduce business corruption often proves ineffective because it entails encouraging agents to act responsibly while leaving them with a choice. However, there are grounds for differentiating between compliance systems within firms, which often are efficient, and voluntary initiatives introduced to regulate firms as players in a market, which often have little impact.
- 2.3 Efforts invested in developing initiatives to reduce corruption should – as far as possible – focus on diminishing externally given opportunities for such crime, and not rely primarily on agents' moral values or disincentives to be involved. Most countries would benefit from a stronger emphasis on formal regulation, forced transparency via the enactment of freedom of information laws, close monitoring of decision-making processes, reform of public procurement regulations and so forth – that is to say, measures that act on the objective circumstances that favor corruption.

### 3. Anti-corruption initiatives in Brazil

- 3.1 A fruitful collaboration will require realistic perspectives on the issues considered. Brazil has signed and implemented anti-corruption conventions and, at least at the Federal level, is gradually building better means to prevent and combat corruption, including strengthening the General Comptroller's Office (CGU). Nevertheless, the implementation of anti-corruption

initiatives nationwide is challenged by the country's high level of decentralization, under which every state and municipality is fully responsible for planning, executing and controlling its expenditures.

- 3.2 Private firms in Brazil report that corruption is one of their main constraints. According to one survey, a majority had been asked for bribes in connection with procurement or taxation. A significant proportion of private companies stating a willingness both to participate in voluntary anti-corruption programmes and to pay/invest money in order to reduce the problem. Nevertheless, most firms do not defend their rights against decisions taken by public officials that they perceive to be contestable.

#### 4. Norwegian firms in Brazil

- 4.1 Norwegian industry is strong in sectors that are considered prone to corruption in any country. Despite significant emphasis in Norway on the responsibility of firms, corruption is a challenge for Norwegian exporters. Some understanding of the particular contexts in which challenges to honest business practice arise was obtained through interviews with executives of Norwegian firms operating in Brazil and with some of their Brazilian business partners, as well as through a business survey of Norwegian exporters conducted in 2004. Challenging situations occur most frequently in association with the process of getting established in Brazilian markets, in dealing with customs and taxation, and in responding to situations when competitors appear to have gained benefits through corruption or other forms of financial crime.

#### 5. A programme for collaboration

- 5.1 Recommendations for collaboration are developed on the basis of the current status of the international fight against corruption, the "what works" debate, and the perspectives of some Norwegian and Brazilian firms. The following four areas appear particularly relevant.
- 5.2 Customs regulation and procedures: Complex bureaucratic regulations and slow procedures were described as a source of corruption. Collaboration could therefore take the form of establishing a permanent forum where obstacles are discussed between representatives of import/export firms and the authorities.
- 5.3 Public procurement: The most common form of corruption in public procurement occurs when conditions for participation in a tender competition are defined in such a way as to preordain the result. One mechanism that can help reduce this risk would be for tender conditions to be subjected to public discussion before the formal call is made.
- 5.4 Legal cooperation: Criminal organizations and firms involved in corruption exploit the situation of almost non-existent barriers to capital movement across borders, while investigations of corruption are usually restricted to the legal jurisdictions within which the crime occurs. Bilateral treaties are needed to bolster anti-corruption conventions. There is no bilateral treaty on legal collaboration between Norway and Brazil. This should be considered and followed up with informal legal collaboration between judicial institutions.
- 5.5 Academic collaboration: An important contribution to solving obstacles could be made by collaborative research between Brazil and Norway that draws on an interdisciplinary approach and includes different perspectives and data sets.

# 1. Introduction

## Background: International conventions against corruption

The broad endorsement of international anti-corruption conventions during the last decade represents a significant step forward in the international fight against corruption. A legal and formal basis for collaboration across borders has been established. However, the implementation of these conventions, and the realization of the intentions behind them, will not come automatically. These will require substantial additional efforts.

When the OECD Convention on cross-border bribery was enacted in November 1997, it was expected to have significant positive impacts on corruption. A decade later, disappointingly few cases of transnational bribery have been prosecuted in signatory States.<sup>1</sup> One of the reasons for this is that corruption is very difficult to prove and prosecute. Corrupt deals are not based on written contracts and there are numerous ways of hiding the transactions and of making it impossible to identify a connection between transactions and corrupt decision-making. As a result, there are very few convictions for corruption, even if business surveys, the media, and perception studies all suggest that corruption is widespread worldwide.

The drafting of international conventions against corruption, and the growing number of countries that sign and ratify them, should not be seen as results. They merely set the stage for action. They consist in sets of formal stipulations, and are hence only tools, which means they will not change anything unless they are actually used. Using these tools to tackle cross-border corruption will require cross-border collaboration. The success of the conventions will therefore depend not only on individual jurisdictions, but also on the collaboration between them. This will necessarily include dialogue on how to use the conventions to combat corruption.<sup>2</sup>

## Bilateral collaboration and dialogue: Norway and Brazil

The intention behind this report is to offer input to such dialogue. If not providing a complete set of solutions, it will discuss elements that should be included in a bilateral collaboration to combat cross-country corruption. The report focuses on such collaboration between two specific countries, Norway and Brazil. Although dialogue and collaboration between countries need not to be justified, there are some reasons behind this choice.

1. By focusing on two specific countries the discussion becomes more orientated to practice and policy. Rather than describing optimal forms of collaboration and as many contingencies as possible, the report examines current status and what might be realistically achieved between Norway and Brazil.
2. A desire to collaborate already exists between Brazil and Norway, as was underscored by President Luiz Inácio Lula da Silva during his visit to Norway in September 2007. Several initiatives have been initiated to improve dialogue, not only between the governments but also between public institutions, academic institutions, business organizations, and NGOs in both countries. The Norwegian Foreign Ministry, in particular, has been fostering such dialogue.

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<sup>1</sup> See Heimann et. al. (2005), (2006) and (2007).

<sup>2</sup> See also [http://www.transparency.org/news\\_room/in\\_focus/2006/oecd\\_progress#actions](http://www.transparency.org/news_room/in_focus/2006/oecd_progress#actions) for Transparency International recommendations to improve enforcement of the OECD Convention.

3. Brazil represents a large market for the Norwegian export industry, in fact the largest market for Norwegian firms in Latin America.<sup>3</sup> A large number of Norwegian firms have been active in Brazil over many years, including industries such as shipping, energy, timber, construction, and finance. Corruption is an issue in the context of trade relations, even if measured only by recurrent scandals and denunciation in the media. Dialogue on anti-corruption initiatives is relevant in all trade relations.

For information about foreign direct investments and trade in goods and services between Brazil and Norway, see Statistics Norway.<sup>4</sup> Statistical data on Norway-Brazilian trade can also be found at the home page of the Brazilian Ministry of International trade.<sup>5</sup>

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<sup>3</sup> Norwegian exports to Brazil, excluding shipping and oil rigs, were worth \$309, 8 million in 2006, while the value of Norway's imports of goods from Brazil totaled approximately \$580 million. Brazilian export from Norway included cod fish, diesel oil, paper, and machinery. Norwegian imports from Brazil consisted primarily of metal/aluminium, agricultural products, including coffee and oil seeds, and chemical products.

<sup>4</sup> See [www.ssb.no](http://www.ssb.no) and <http://www.desenvolvimento.gov.br/portalmDIC/sitio/interna/interna.php?area=5&menu=576>

<sup>5</sup> <http://www.desenvolvimento.gov.br/portalmDIC/sitio/interna/interna.php?area=5&menu=576>.

## 2. Anti-corruption initiatives: what works?

Corruption is often a cross-border activity, whereas investigation and prosecution are primarily national undertakings. Legal cooperation between countries is critically important to control the crime once it is detected. The UN Anti-Corruption Convention, to which both Brazil and Norway are signatories, is predicated upon the assumption that such cooperation will be forthcoming. Dialogue about the challenge of business corruption will establish a better basis for long term cooperation in this respect.

However, cooperation on the investigation and prosecution of cases is not enough to control cross-border business corruption. Cooperation is also required on the development of anti-corruption initiatives in general, including prevention of such crimes. Cooperation between very different countries, such as Brazil and Norway, can highlight new aspects of the problem for consideration and therefore be useful in developing broader anti-corruption perspectives.

### Initiatives to combat corruption

The many anti-corruption initiatives introduced during the last decade take very different approaches to the problem.<sup>6</sup> Most initiatives fall into one of the following four groups:

- . *Laws and regulations*: Such as the U.S. Foreign Corrupt Practices Act, the OECD Anti-Corruption Convention, and improved procurement rules adopted by individual countries;
- . *Coordinated voluntary initiatives*: Global Compact, Extractive Industries Transparency Initiative (EITI), initiatives that evolved from cooperation between businesses and governments, where various actors accept obligations and some level of control;
- . *Uncoordinated voluntary initiatives*: Company codes of conduct and corporate social responsibility (CSR) policies.
- . *Economic incentives*: Norwegian Oil Fund, World Bank blacklisting, environmental taxes.

These types of initiatives can be categorized according to a scale, with laws and regulations, external monitoring efforts and enforcement on one side of the axis, and initiatives aimed at eliciting voluntary action on the other. Incentives that rely on economic mechanisms are a separate category. An important distinction can be drawn between anti-corruption measures that focus on preventing or limiting contexts in which opportunities for bribery arise and anti-corruption measures that focus on detection, prosecution and punishment after the event.

Initiatives to strengthen *after-the-event* efforts basically concern complaints from interested parties about decisions already taken by the administration. The measures are thus by definition limited to stimulating ways for complaints to be presented to and processed by the State. Initiatives to strengthen *before-the-event* efforts, on the other hand, cover the whole spectrum from regulatory and State-management reforms to establishing better information exchange mechanisms between the State and society (including private firms), thus adding to mutual trust.

Given the observed reluctance of firms to complain about perceived corruption after the event, establishing hotlines and similar mechanisms are in themselves unlikely to resolve the obvious lack of trust in the public authorities. *Preventative measures* are more likely to be effective in this respect. By submitting to discussion matters that concern both firms and the government, it

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<sup>6</sup> See Kolstad, Fritz and O'Neil (2007) for information about various initiatives and discussion about how they work.

becomes possible to build a relationship leading to mutual trust. It is important to observe that, in order to build trust, such dialogues should always be public and open to the participation of all interested parties.<sup>7</sup>

## The evolution of anti-corruption initiatives in a country

Which particular anti-corruption initiatives evolve in a given country will depend on many factors, including the will to enforce formal anti-corruption initiatives and possible opposition to the implementation of certain forms of formal anti-corruption control. Other factors with potentially decisive impacts include the capacity of local legal institutions, the quality and independence of the media, the existence of anti-corruption NGOs, and the strength of lobby groups opposing additional or stronger control mechanisms.

Since a legal system is unlikely to be able to enforce the law completely, and given the different variables in play, many of which are subjected to controversy, the fight against corruption requires a combination of different approaches. For instance, debates about corruption and the responsibility of agents to avert such crime are important in evoking moral attitudes, thereby making corruption less acceptable. Publicity about the negative consequences of corruption and information campaigns will often be necessary to establish general support for investigation and prosecution.<sup>8</sup>

There is limited information about the efficiency of various initiatives, however, and it is not possible to single out the most efficient combination of anti-corruption efforts for any given country. What one can do is to point out aspects that seem to be important in understanding the potential impacts of particular initiatives.

## The challenge of developing efficient anti-corruption initiatives

According to the literature on criminal law, the prevalence of unwanted behaviour can be reduced either by *increasing sanctions*, through formal changes in the regulations, or by increasing the *risk of detection*, through better enforcement of existing regulations, which is a practical matter, and not a formal procedure.

Economic incentive theory suggests that an agent calculates the expected payoffs of corruption. Specifically, the agent is assumed to gauge the benefits of corruption, such as the size of the bribe or of the amount embezzled, versus the risk of being caught and the ensuing sanctions and other more market-related losses. Sanctions might include fines, imprisonment, dismissal and associated loss of income, as well as informal sanctions, such as injury to reputation. The agent chooses corruption over honest conduct when, in such a calculation, the benefits outweigh the risks.<sup>9</sup> The implication of this theory is that the level of corruption can be reduced by decreasing the benefits, or by increasing the risks associated with such activity, or both.

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<sup>7</sup> This is one of the reasons why Transparency International's "Integrity Pact" methodology is not a good answer. The methodology, which is restricted to specific public contracting situations and includes only limited sets of interested firms, might induce distrust among those that are not allowed to participate.

<sup>8</sup> The Tanzanian Competition Authority *The Fair Competition Commission* has started to establish consumer groups to increase the general understanding of the impacts of unfair competition on prices and products. One of the reasons for this initiative is to avoid negative reactions towards surprise operations in large firms conducted to confiscate proof. In the Philippines the conviction of former President Joseph Estrada for corruption was presented by the authorities in a very careful way to avoid demonstrations, since he still enjoys substantial support, particularly among poorer parts of the population, despite the crime he has committed.

<sup>9</sup> Some relevant references: Andvig and Moene (1991), Aidt (2003), Bardhan (1997), Søreide (2007).

When it comes to the real world, however, these suggestions are often very difficult to implement. The factors believed to influence such crime, i.e. the revenues for those involved, the risk of being apprehended, and the ensuing sanctions, are difficult to regulate. Decreasing the benefits of involvement in corruption is difficult given the secrecy involved in a corrupt transaction. Besides, a bribe is targeted at the personal economy of the person making the decision. The amounts involved may be very small when compared to the financial value of the decision being “bought” through corruption. Increasing the risk associated with the involvement in corruption is also a challenge. The risk is determined by the probability of being caught multiplied by the consequences thereof. Hence, even when those apprehended can expect to incur very high penalties, the impact on the risk is negligible if the probability of being caught is microscopic.

It is very difficult to increase the probability of being sanctioned for involvement in corruption. Even if suspicions appear justified, corruption is extremely hard to prove. As a result, very few cases of corruption ever come to court, including in countries where corruption is known to be prevalent.<sup>10</sup> Developing anti-corruption strategies is thus a complicated assignment. Given the difficulties of controlling corruption through disincentives, the use of alternative initiatives, notably prevention and voluntary initiatives, would seem more appropriate. However, the impact of “softer” initiatives is also uncertain.

## Voluntary anti-corruption initiatives in the private sector

Voluntary anti-corruption initiatives are primarily options for individual agents – the latter are essentially free to make a choice if and when they find the option reasonable or rewarding. Consisting mainly of an encouragement to act responsibly, voluntary anti-corruption initiatives tend not to take full account of the factors that more directly influence agents’ incentives. Unless they include some form of independent monitoring of managerial processes (such as public procurement, tax collecting, customs, license-granting etc.), the results of voluntary anti-corruption initiatives in terms of changing corporate behavior will be modest.

### Initiatives *by* firms (for internal use), versus *on* firms (as players in a market)

The more general problem with anti-corruption initiatives can be contrasted to voluntary initiatives initiated internally in firms, when the top management *decides* (i.e. voluntarily) to introduce forced compliance systems within the company to reduce fraud and kickbacks. For company employees, these initiatives will often have the same force as laws and externally enforced control mechanisms, and will thus have an impact on their incentives. At least in theory, the prevalence of corruption in the company bureaucracy (for instance in relation to its own acquisition of goods and services in the private market) is expected to decrease as a result. These systems can have an impact on the company culture, depending on how forcefully they are enforced.

Whether this impact extends to the top management’s inclination to participate in corruption in order to win contracts is uncertain. Many of the last decade’s cases on corruption, such as those involving Enron, Siemens, Exxon and Norwegian Statoil, point to the fact that internal codes of conduct may fall short when it comes to top management and how it conducts business on behalf of the company. High moral values will not necessarily prevent business leaders from involvement in corruption since their ethical choices will depend on where they place their loyalty, whether on

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<sup>10</sup> The relationship between the prevalence of corruption and the number of court cases is unclear. One would obviously expect more cases being brought to court where corruption is more prevalent. On the other hand, we also know that intrinsic corruption may hinder that cases are being brought to court. The number of court cases will sometimes be an indicator of the general willingness to sanction such crime, but never an indicator of the prevalence of corruption in a country.

company profitability (including the protection of employees) or the welfare of the society at large.<sup>11</sup>

It would be naïve to think that all American (listed) firms adopt Ethics Codes because of a moral imperative. More likely, most do so because they must be able to show that their employees and agents were duly informed that they should not bribe. If this requirement is not complied with, the CEO can be held responsible under American law (Sarbanes-Oxley) for bribery committed by an agent/employee. In other words, not informing the employees/agents carries a high risk to the actor responsible.

It is also worth noting that corruption is unlawful in most, if not all, countries. Thus, a firms' claim, in their codes of conduct, that they will not be involved in corruption to win contracts can be seen as a degradation of the law. It is needless to say that we will not rob a bank, and similarly, it should be needless to inform about intentions of an honest business conduct.

Hence, while the existence of internal compliance systems in firms can be important, the impact of codes of conduct is uncertain when it comes to the way firms gain contracts. To be effective, these procedures have to be supported by external monitoring efforts and enforcement. Voluntary integrity pacts, for instance, are not sufficient to address the problem.<sup>12</sup>

## Voluntary initiatives as part of an anti-corruption programme

Voluntary initiatives are sometimes introduced as a response to the difficulties of introducing State-sponsored formal anti-corruption programmes, and in this sense can be seen as second-best solutions. When formal prevention and control mechanisms are not achievable (for political or practical reasons), agents are at least actively encouraged to respect the law. This approach might be an instrumental step towards achieving more formal mechanisms in time, by serving to increase awareness of the importance of anti-corruption. Communication about corruption is often discussed as a significant factor in fostering more honest business practice.<sup>13</sup>

When it comes to the question of protecting markets from the influences of corruption, governments should work towards state-controlled formal initiatives, such as enacting regulations, optimizing competitive conditions, enforcing existing regulations, improving monitoring opportunities, allowing investigation units to operate independently, and reducing bottlenecks in the court system.

What we observe as a general trend, however, is that many anti-corruption campaigners, donors as well as governments, prioritize voluntary initiatives, without even trying to get more formal mechanisms established. According to Kolstad, Fritz and O'Neil (2007), who conducted a thorough analysis of anti-corruption programmes in several countries, the importance of the underlying incentives among agents involved in corruption is very much neglected in anti-corruption campaigns. Limited knowledge about the efficiency of different anti-corruption initiatives might explain this result. A more likely explanation, however, is the relative practical convenience of setting up voluntary initiatives. Such initiatives are far easier to establish than legal enforcement since they require only a very limited number of adherents and avoid the far more daunting challenge of changing a country's institutional and managerial environment. Political factions, firms, agents, and lobby groups almost always lend their vocal support to voluntary initiatives,

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<sup>11</sup> Rose-Ackerman (2002).

<sup>12</sup> An Integrity Pact is a voluntary agreement around a given public tender whereby all public officials and all firms participating in the competition promise to avoid corruption. For a critical assessment of the Integrity Pact methodology, see Weber Abramo (2003b).

<sup>13</sup> Hass, Mazzi and Leary (2007) discuss the importance of communication in association with infrastructure projects.



whereas support for and involvement in in-depth institutional and managerial reforms are much harder to come by.

Nevertheless, the potential contribution voluntary initiatives can make in terms of bolstering an anti-corruption strategy should not be underestimated. Our concern is that voluntary initiatives, codes of conduct, self-regulation, and encouraged self-imposed transparency, often replace or divert attention from anti-corruption initiatives aimed at the whole of society. The introduction of a range of voluntary initiatives can easily give the impression that ‘something is being done’ about corruption. An emphasis on voluntary efforts therefore carries the risk that the design and implementation of more vital anti-corruption actions will be delayed.

### And so, what works?

Most countries would benefit from a stronger emphasis on formal regulation, forced transparency via the enactment of access to information laws, close monitoring of decision-making processes, opening up of public markets via reform of public procurement regulations and other reforms – that is, measures that act on the objective circumstances favoring corruption. The question of involvement in corruption should be considered part of companies’ CSR strategy only insofar as it is understood that such types of voluntary initiatives would be subsidiary to more generic state-sponsored actions aimed at the whole of society as embodied by the State. Likewise, anti-corruption NGOs that focus their efforts on voluntary initiatives miss the fact that corruption is not a phenomenon amenable to localized remedies, but rather reflect dysfunctions that should primarily be addressed at the level of the State. Initiatives to reduce corruption should – as far as possible – focus on ways of diminishing externally given opportunities for such crime, and not rely primarily on agents’ moral values or disincentives to be involved.

### 3. Anti-corruption initiatives in Brazil

Brazil is a signatory to all relevant anti-corruption international conventions: The Organization for Economic Cooperation and Development [OECD] Convention from 1997 (which provides for legal means for Brazilian firms and/or their representatives to be prosecuted in Brazil if accused of paying bribes abroad); the Organization of American States [OAS] Convention from 1996 (which is much broader than the OECD Convention, covering many fields with direct impact on the domestic environment) and the recent United Nations Anti-Corruption Convention insert date (whose breadth is similar, although not identical, to that of the OAS).<sup>14</sup>

With respect to the formal requirements of these three Conventions, Brazil is virtually fully compliant. Studies show that the country has successfully changed its legislation to conform to the provisions of the OECD and OAS Conventions. No study aimed at formal compliance was yet made concerning the UN Convention, but since the latter does not significantly depart from the OAS Convention with regard to the legal framework, essential compliance with that Convention can be expected (the principal addition the UN Convention makes to the OAS Convention concerns regulations regarding the repatriation of stolen assets, a matter on which the Brazilian laws are mainly compliant).<sup>15</sup>

As well as promulgating the legal instruments required by the Conventions, Brazil has been gradually building better ways of preventing and combating corruption at the Federal level, as well as reinforcing pre-existing institutions and organizations. Although the Federal government does not include an overarching anti-corruption agency with full normative authority over the Executive branch, such function has been partially covered by the General Comptroller's Office (CGU), the organization responsible for the Federal government's internal control. Several initiatives formalized as decrees (not requiring legislative approval) as well as new laws (submitted to Congress for discussion and approval) have been developed by the CGU, often aided by the Council for Transparency and Combating Corruption, a forum that brings together representatives from both State bodies and civil society. For example, in 2006 the government submitted to Congress a new bill drafted by the CGU and the Council for Transparency designed to regulate conflicts of interest and post-public employment at the Federal Executive level; the bill is still to be discussed by Congress.

Other institutions have also been active in combating corruption in Brazil. The Federal Police has conducted numerous operations against criminal organizations involved in corruption and fraud and the Public Ministry (public prosecutor's office) has systematically brought charges against persons accused of corruption.

#### Anti-corruption in a decentralized state

The implementation by the Federal government of anti-corruption initiatives is a poor guide to the situation in the country's 26 states (plus the Federal District, which counts as a 27<sup>th</sup> state) and 5,651 municipalities. The difficulties of combating corruption in Brazil are compounded by the country's unusually – in international terms – high degree of decentralization.<sup>16</sup> The effects of

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<sup>14</sup> Brazil and Norway are also signatories to the 1958 New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards) a foundation instrument of international arbitration. See [http://www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/NYConvention\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html)

<sup>15</sup> See Weber Abramo (2003a) and the follow-up report, Baracui (2006). Concerning the OECD Convention, see Weber Abramo (2007a).

<sup>16</sup> For a historical depiction of the tradition of decentralization in Brazil, see Willis et. al. (1999).

decentralization on governance in Brazil are often portrayed negatively: “In the area of intergovernmental relations, excessive decentralization was deemed to have disorganized sectoral public policies and caused more inefficiency”.<sup>17</sup> Every state and municipality in Brazil is fully responsible for planning, executing and controlling its expenditures. Given Brazil’s well-known regional inequalities, most towns and some states lag behind the Federal standards of financial control.

This fact has been highlighted by audits carried out by the CGU in municipalities that conduct Federal government budgetary programmes under agreements with specific Ministries. (These “voluntary” agreements, as they are called, correspond to only a small percentage of the municipalities’ and states’ expenditures; since they are “voluntary”, they allow for external control, which is why the CGU is able to audit the proceedings.) According to the CGU, irregularities were found in more than 90% of these agreements, and serious irregularities were found in almost 60% of them.<sup>18</sup>

The situation has prompted the CGU to suggest modifications in the control requirements imposed by the Federal Ministries on states and municipalities wishing to participate in the “voluntary” programmes. Proposed changes include electronic auctions to conduct tenders and standardized accounts registry mechanisms.

## Firms’ perspectives on corruption in Brazil

Judging from the available evidence, private firms operating in Brazil (whether domestically or foreign-owned) hold more pessimistic than optimistic opinions about the extent to which corruption affects business in the country.

A survey of 78 private firms conducted in 2003 by *Transparência Brasil* and Kroll showed that corruption was ranked in second place (after high levels of taxation) among fourteen perceived obstacles to the development of the private sector.<sup>19</sup> Another investigation, sponsored by *Transparência Brasil*, the World Bank and the municipality of São Paulo, among firms based in that city, also ranked corruption as the second most important (after violence) of eight obstacles.<sup>20</sup>

Besides collecting the opinions of private firms’ representatives about various aspects of the relationship between the State and society, both surveys also attempted to assess actual experiences with bribery arising from different types of interactions. In the TBrasil/Kroll survey, about half the firms declared that they participate or tried to participate in public tenders. Among those, 62% said that they had been asked for bribes. Concerning taxation and other dues, 53% of firms reported having been subjected to requests for bribes or other indirect payments. State taxes, as opposed to municipal and federal ones, were identified as the most vulnerable to corrupt practices.

Of course, opinions about corruption reported in surveys cannot be taken as a measure of the actual phenomenon of corruption. It is very difficult, if not impossible, to separate the objective factors that might produce such opinions from the subjective factors arising from general feelings and hearsay. Surveying actual experiences can give better insights into the empirical situations experienced by firms, but even so it would be difficult to generalise without knowing how representative the collected data are.

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<sup>17</sup> Melo and Rezende (2004).

<sup>18</sup> See reports in [www.cgu.gov.br](http://www.cgu.gov.br).

<sup>19</sup> Weber Abramo (2003c).

<sup>20</sup> Speck and Weber Abramo (2003).

Nonetheless, expressed opinions cannot be dismissed as fictions. They must be taken seriously as an objective rendition of a certain attitude of mind, regardless of their basis in fact. All governments must take (some) account of opinion because trust (or distrust) is an important element in determining the failure or success of official initiatives and programmes in many fields.

## Firms wish to combat corruption

In respect of expressed opinion, it is interesting to observe that a high percentage of firms surveyed stated that, at least in principle, they would be willing to spend money to reduce corruption. The question was specifically asked in the São Paulo survey, with the result that 34% declared that they would do so, with varying amounts of money. This suggests that initiatives to promote collaboration between State institutions and private firms, with a view to reducing the risk of corruption in state-business interactions, would receive significant support from private firms.

Another indication that firms are willing to combat corruption comes from the adoption of internal norms aimed at avoiding involvement in illegal acts. Most transnational firms in particular have adopted ethics codes that explicitly prohibit employees from engaging in bribery. For firms based in countries that subscribe to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, claiming to enforce such internal regulations has become a necessity.

The trend to institute an internal environment in which corruption is at least formally condemned was clearly reflected in the TBrasil/Kroll survey. 78% of the respondent firms had adopted (in 2003) an internal ethics code explicitly prohibiting the payment of bribes to public officials. At the same time, however, 21% of these same firms stated that their managerial policies implicitly recognize the fact of bribery, and hence that they in some way have to adjust to their business environment.

This supports our argument made above that the adoption of an ethics code by a firm is not sufficient to prevent its involvement in bribery. At the very least, internal regulations must be actively enforced by the firm to take effect.

## Response when victimized by corruption

One sign that internal regulations per se mean little is found in responses to a sub-set of questions in the TBrasil/Kroll survey that tried to pinpoint steps respondent firms had taken to confront actual cases of corruption.

About half the firms (56%) maintained an internal mechanism (hotline or equivalent) enabling people to denounce cases of corruption. Most of these (89%) claimed to protect such whistleblowers from retaliation. However, when asked how many reported cases of corruption had been subsequently investigated and denounced, there was no significant difference in frequency among firms that maintained such mechanisms and those that did not (32% vs. 30%). Nor did the existence of an ethics code prohibiting bribery correlate significantly with reported cases. In fact, firms without an ethics code reported more internal cases (32%) than those with such a code (20%). A total of 14% of firms declared that employees have been punished for having taken part in acts of bribery.

The Transparência Brasil/Kroll survey also highlighted the important fact that firms participating in public tenders mostly do not appeal to the authorities when they suspect that they have lost business due to competitors paying bribes to public officials who took the relevant decisions. Although the

Brazilian regulations provide ample opportunity for appealing against a decision, either through administrative processes or before a court of law, firms usually do not exercise these prerogatives. Only 23% of the firms had administratively contested a decision, 5% had appealed to the Audit Institution (the external control body, one at Federal level and one for each state<sup>21</sup>) and 5% had appealed to the courts.

In other words, most firms appear not to defend their rights when confronted with decisions that they consider doubtful. In principle, economic rationality would compel a firm to appeal when faced with a decision that wrongfully harmed its interests. So, either economic rationality does not fully function in such situations or other rational factors intervene. Although the TBrasil/Kroll survey did not further pursue this issue, the most common justification given by a firm for not defending its rights is a reluctance to appear hostile to clients and competitors. Fear of retaliation would accordingly be the rational factor in a firm's decision not to defend its rights.<sup>22</sup>

In Brazil, firms are sometimes heard to complain' of receiving unfavourable treatment from the authorities because they have contested earlier administrative decisions. However, there is no statistically robust and objective evidence available to determine whether exercising the right to appeal subsequently harms a firm's interests or not.

To encourage firms to report perceived cases of corruption, it is important for them to have confidence in the ability of the authorities both to investigate the crime and to ensure that the firm making the allegation will not suffer penalties in the future. Collaboration between governments to prevent and combat corruption can play a significant role in fostering such trust.

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<sup>21</sup> A few municipalities also have such "Audit Courts", as they are called. Despite the name, they are not part of the Judicial system.

<sup>22</sup> From hearsay – as far as the present authors are aware, no empirical investigation of the issue was conducted in Brazil.

## 4. Norway and Norwegian firms in Brazil

Norway scores well on international perception-based corruption rankings and has been commended by OECD for its implementation of that organization's anti-corruption Convention.<sup>23</sup> Cross-border corruption has rarely been detected, yet Norway is one of the few countries to have brought cases to court on the basis of this convention.<sup>24</sup> Nevertheless, it is impossible from such information to accurately describe or generalize about the business practices of Norwegian firms. Since corruption is very difficult to detect and prosecute, and since the quality of legal institutions vary significantly across countries, we cannot make assumptions about the business practices of Norwegian firms overseas on the basis of the number of cases that come to court in Norway.

What we do know is that Norwegian industry is outward-oriented and well exposed to international attitudes and business cultures. We also know that its most important sectors of operation are among those described by Transparency International's Bribe Payers Index 2002 as those most exposed to corruption: oil and gas, power transmission, and construction. In addition, Norwegian firms are present in many of the most challenging markets, in terms of rankings on various business climate indicators. There are therefore grounds for questioning their ability to operate according to domestic and international laws and regulations, including in Brazil.

There are some counter-forces that may decrease the potential of Norwegian firms to become involved in corruption. The role of Norwegian industry in cross-border corruption is widely debated in the Norwegian business press.<sup>25</sup> Cases attract considerable attention, and this is in itself a potential deterrent against corruption. The Norwegian Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim) tends to follow up on signals or suspicions of economic crime and appears sufficiently independent.<sup>26</sup>

Even more important for many firms, however, is the attitude of the most important business organization in Norway, the Confederation of Norwegian Enterprise (NHO). This organization began addressing the issue of anti-corruption very early, during the 1990s, and has continuously underscored the responsibilities of individual firms. It has organized several conferences, the first in 2000, focusing on the risk of becoming involved in corruption and the negative consequences for Norwegian firms in general if individual firms are found to be involved. These initiatives have motivated many firms to develop their own strategies to avoid involvement in corruption.

### Interviews with representatives of Norwegian firms in Brazil

There are no reported cases of corruption involving Norwegian firms operating in Brazil. Does this mean that Norwegian firms are not involved in bribery or related forms of inappropriate business practice? As in any other environment, the absence of reported cases is not the same thing as the absence of cases. The TBrasil/Kroll survey reveals a significant prevalence of such problems in Brazil. The presence of Norwegian firms in this market implies that corruption must be an issue for

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<sup>23</sup> Although there are no obvious reasons to expect perception-based corruption indices to inform very much about actual levels of corruption. See e.g. Weber Abramo (2007b). For the OECD evaluation, see OECD (2004).

<sup>24</sup> For cases on the OECD Convention on corruption, see Heimann et. al. (2005), (2006) and (2007).

<sup>25</sup> The newspaper *Dagens Næringsliv*, devoted to business news, has been perhaps the most important watchdog on corruption in Norway and their active journalism has resulted in several cases being brought to court ([www.dn.no](http://www.dn.no)).

<sup>26</sup> This independence was recently debated in the media. For instance, the huge revenues the Norwegian state receives as a result of oil concessions in foreign markets may challenge the independence of a national investigating body: Will there be sufficient incentives to investigate the award of these concessions? There is no specific reason to think otherwise, yet there is awareness of this potential conflict of interest (*Dagens Næringsliv*, Oct. 22 and Oct. 24 2007).

them. In order to gain some insights into their experiences in this respect, we conducted a small qualitative study for this project. 18 interviews were conducted by Tina Søreide in August 2007. The respondents included executives of Norwegian firms' subsidiaries in Brazil, representatives of Brazilian firms, Brazilian lawyers, and a few other actors with knowledge about the Brazilian business climate. Innovation Norway, the Norwegian export agency, contributed by facilitating the visit.

The main purpose of the interviews was to identify Norwegian firms' perceptions of the business environment in Brazil, what they consider obstacles to business, and how they deal with those obstacles. Among the issues discussed were: entry into the Brazilian markets, competition, tender procedures, regulation, customs, and opportunities to respond if victimized by illegal business practice. Anti-corruption issues at firm and government levels were also discussed. Questions were phrased in ways that related to international business challenges rather than in ways that implied corruption was prevalent in Brazil. Most of the interviewed business leaders were reluctant to inform on challenges relating to corruption, including their own possible involvement in such practices.<sup>27</sup> The discussions were nevertheless very useful in revealing some of the opportunities and potential difficulties of operating in Brazil. However, given the low number of responses, combined with the sensitivity of the topic, the information deriving from these interviews does not allow for generalizations. It should also be noted that responses to many of the questions diverged substantially. As a result, the summary presented here should not be considered indicative of the views of the Brazilian business environment in general nor of views held by all Norwegian firms operating in Brazil.

Although the problem of corruption was a concern for many of the business people addressed in this survey, it was not described by them as an everyday burden. The majority of the executives interviewed did not admit that corruption might be influencing their firm's market position and did not think they had lost contracts as a result of such crime. These experiences are in marked contrast to the results of the TBrasil/Kroll survey mentioned above. The executives did express some frustrations regarding the different ways of doing business in Norway and Brazil, due to culture, regulatory framework, and market-related matters. In general, however, they found the business environment in Brazil to be rapidly improving and depicted a very promising market for Norwegian firms.

## Firms' responsibility to collaborate on initiatives to combat corruption

Some of the firms interviewed by Søreide will consider compliance with regulations difficult in the short term, although most of them recognize unquestionable benefits in the long run. They expressed an understanding for the fact that collaboration on anti-corruption between the Norwegian and Brazilian governments will be strengthened if a majority of the firms supports the initiatives. For instance, the more representatives of Norwegian firms realize that a failure to comply with regulations entails a risk to the reputation of other Norwegian firms in the market; the stronger collaboration on anti-corruption measures between the Norwegian and Brazilian governments is likely to become. This is an attitude that can not be taken for granted, however, since Norwegian firms are partly competing against one another, and will not necessarily be concerned about their own individual reputation - especially if corrupt practices can put them in a competitive lead. The respondents expressed a clear willingness to support anti-corruption initiatives, however, as long as they were being launched in a trade-promoting manner.

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<sup>27</sup> Some of the respondents vaguely admitted that practices that are close to corruption could have had occurred - at early stages of their establishment or under circumstances they would describe as extortion. For instance, because their financial loss would be significant if no payment was made. In general, however, the firms would never pay bribes, and they had codes of conduct and training to help them prevent cases.

By including questions on various business-climate challenges, the interviews proved useful in understanding where firms' compliance systems were being challenged, i.e. to identify the situations where some firms sometimes find it difficult to act in accordance with Brazilian law. These are exactly the situations where a particular awareness of the risks of becoming involved in bribery and strict professionalism might have a positive influence on the business environment.

### *The role of agents*

To understand the activity of Norwegian firms in Brazil, we should also consider their main facilitators, primarily their consultancies or agents and the Norwegian export agency (Innovation Norway). These actors share the interests of Norwegian firms, they are expected to assist Norwegian entrants in many different ways, and they will sometimes be informed about or asked to give advice on business climate challenges, including corruption.

Prior to the OECD anti-bribery convention or the UN convention, it was quite common for firms to hire local agents to smooth the entry process by offering bribes (to customs, regulators, and politicians). Since the OECD convention and other legal improvements, the use of an intermediary no longer frees the firm from responsibility for acts committed on their behalf.

Agents, mostly professional consultants, are still used. There are reasons to believe that some of them are asked to handle obstacles to trade, such as bottlenecks in the customs, tax system, or regulations, even if that might involve informal payments. These practices impede progress in the area of preventing corruption. Although many firms have policies and compliance systems that prohibit "under the table" payments, more efforts are needed to eliminate tolerance of these practices. Hence, while professional expertise, like lawyers, accountants and engineers, might be useful and even decisive for the success of entry, agents hired primarily to handle obstacles in informal ways should never be used.

A survey of Norwegian exporters, presented below, included a smaller survey of Norwegian embassies. Twenty-four of the Norwegian embassies outside the OECD area responded to a questionnaire on corruption and how they would advise Norwegian firms on such matters. A clear majority described the business climate in their country of residence as challenging, and assumed that foreign companies who conducted business honestly could lose out. Most of them would never advise Norwegian firms to adopt business practices that would be unacceptable in Norway. Nevertheless, five of the embassy representatives would make such a suggestion, and a few others expressed uncertainty. The survey was conducted in 2004 and attitudes and practices may have changed since due to significant debate and attention to the issues.

In this respect, the Norwegian export agency might play an important role, by emphasizing why reliance on agents to solve obstacles to entry in informal ways is unacceptable.

## Business responses to corruption: entry, taxation, and the court system

Entry to Brazilian markets was described by the Norwegian firms surveyed as challenging, yet they attributed this more to regulation and taxation than to the challenge of getting contracts. According to one respondent, "*Brazil is one of the most complicated markets to get established*". Another stated that "*entry to Brazil is expensive, but promising if things are done right*". This refers to the selection of business partners, which is very important in Brazil as elsewhere. Some firms try to benefit from using less expensive agents, namely, consultants with few qualifications other than knowledge about how to get firms established. As pointed out by another firm: "*It is critically important to establish contact with truly professional environments, and not make use of the first agent who wants to assist you*".



According to one CEO, “many firms misunderstand the Brazilian business culture”. Some others pointed to a “Brazilian way” of handling difficulties, implying a propensity in the country’s business environment to circumvent regulations. This might reflect ambivalence or confusion within the attitude of particular firms about how best to accommodate business practices when challenges occur.

### **‘The Brazilian way’**

“The Brazilian way” (*jeitinho brasileiro*) is an expression that describes an alleged special propensity of Brazilians to bend or circumvent rules. One would apply the “Brazilian way” to tax avoidance, to avoid waiting in line for the delivery of a service and a multitude of other situations where some kind of written or unwritten rule is disobeyed. However, the expression can also be used to imply positive aspects of the Brazilian attitude, notably flexibility and readiness to adapt.<sup>1</sup>

The notion that there exists a “Brazilian way” of dealing with rules or expected behaviours goes beyond a simple statistical discovery that Brazilians bend rules. It refers to an ingrained cultural trait that allegedly permeates the relationship of the average Brazilian with all institutions. Adopting the “Brazilian way” is a part of being an average Brazilian. Or so goes the belief.

The basic flaw in the idea that Brazilians exhibit a special propensity to disobey rules or bend them to their own benefit is that it assumes that bending rules is not present (in some degree) in other societies.<sup>2</sup>

Recent academic attempts to examine the alleged propensity using surveys and statistical methods<sup>3</sup> are limited to samples of Brazilians. Since they did not compare the data from Brazil with data collected among members of other cultures, they do not broach the central tenet that Brazilians are special in that regards. Those empirical investigations are useful to help understand how widespread the cultural acceptance of rule-bending behaviours is among Brazilians (which is seemingly high), but they cast no light on the matter of whether there exist a distinctive “Brazilian way”.

There is no empirical reason to believe that, all other factors being equal, Norwegians (or citizens of other countries) are less prone to bend rules than Brazilians.

1 Barbosa (1995).

2 Barbosa also notes the existence of similar social mechanisms in other societies (such as the “*chtara*” among the working class in Algeria).

3 The leading academic commentator on the “Brazilian way” is the anthropologist Roberto da Matta (Notre Dame University), who has frequently written about the issue. More recently, Alberto Carlos Almeida, a political scientist from the Fundação Getúlio Vargas, has conducted empirical surveys about the “Brazilian way”. See his book *A Cabeça do Brasileiro* (The Brazilian’s Mind), 2007.

According to one of the Brazilian experts interviewed, the entry challenges are very similar for all foreigners regardless of nationality, although there seem to be some patterns in how the different firms respond to these challenges. Some of the interviewees assumed that the risk of corruption is particularly high during the entry period. It is not only easier to make mistakes because the market and local partners are unfamiliar but it is also deemed crucial to acquire needed information about the markets and tender procedures. In addition, it is essential not to fail to deliver on the first contract, for instance, because of bottlenecks in Customs. Two interviewees actually admitted that their firms had been involved in some form of undue business practice to get established in Brazil, despite their explicit anti-corruption policy. Another interviewee said he would expect that firms with strong internal compliance rules to take longer to get established, indicating that such rules would prevent illegal shortcuts. We were also told that the better technically qualified a firm is, the easier it is for it to avoid corruption.

## Taxation

Complaints from the private sector about the tax burden are common in Brazil. Many firms viewed the Brazilian system as particularly demanding. As a result, it was claimed, a firm's competitiveness will sometimes depend on its "*skills on strategic tax planning*" – while the importance of "*implementing business in tax-efficient manners*" was underscored. A few firms even claimed that informal sales by competitors had driven them out of a segment of the market. These are areas where firms might be challenged, yet all the firms seemed far more concerned with correct payment of taxes, and not tax avoidance.<sup>28</sup>

## Response and the court system

Among the few firms who claimed to be victims of corruption, the inclination to respond in any formal way was minuscule. The attitudes expressed by the firms clearly point to a lack of trust not only in the judicial system but also in the attitudes of their clients when confronted with challenges to their decisions. Filing complaints on tender procedures or in courts is considered "*a fuzzi*", "*risky*", "*expensive*", "*wasted*" – and an act that might lead to negative attention. Most firms seem to prefer to stay silent about corruption, even if such crime has cost them important contracts. This is an area where attitudes should be changed. The potential impact on the business environment of complaining – formally – and bringing cases to court might be significant.

## Anti-corruption initiatives

When asked about anti-corruption initiatives, most of the firms noted the importance of compliance practices. Firm representatives did not seem overly naïve on this issue, however. They indicated clearly that a country manager's main objective is to win contracts, and that training is needed to incorporate codes of conduct into the firm's decision-making. When it came to government initiatives, many respondents pointed to the need to standardize required documentation, simplify rules, improve and follow up on regulation, privatize some public services, and ease communication with the bureaucracy. Several respondents noted the role of the independent Brazilian media in reporting on corruption cases.

Although the interviews provided limited information about the actual practices of Norwegian firms in Brazil, the views and experience of Norwegian firms operating in foreign markets at large were surveyed in another investigation, to which we now turn.

## Norwegian firms in foreign markets – a business survey

In 2004, another effort was made to obtain more information about Norwegian firms' attitudes to and involvement in corruption when operating abroad. A survey including approximately 100 questions on corruption was responded by 82 Norwegian executives with significant international business experience. NHO encouraged and collaborated on this initiative, although it was an independent research project.<sup>29</sup>

Most of the respondents to this survey described corruption as a significant challenge affecting their foreign operations. In fact, two-thirds of the firms claimed to have lost an important contract because of corruption, and more than 40% believed that tender conditions were sometimes tailored to favor the offer from a particular company. Many of the firms had experienced challenges in

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<sup>28</sup> For more on taxation issues in the context of foreign direct investment in Brazil, see Motta Veiga (2004).

<sup>29</sup> Also this study was conducted by Tina Søreide. For more information about results, see Søreide (2006).

relation to local business partners: for instance, when such partners offered illegal payments on behalf of a partnership without informing the leading firm.

Another difficulty concerned whether to act on suspicions that competitors had offered bribes or that tender rules had been violated. A clear majority of respondents stated that they would not report the case, even if they were convinced that corruption had occurred.<sup>30</sup>

Few firms revealed involvement in corruption. The most common form of involvement was facilitation payments, i.e. informal payments offered 'to get things done' – usually bureaucratic services. Half the respondents said that they never make "irregular payments to get things done," 24 percent said they seldom do so, and 17 percent admitted that they sometimes or frequently make this kind of payment. The reported sizes of facilitation payments varied, but there was no clear link between the size of these reported payments and the size of the responding firms. Almost half of the respondents who paid facilitation payments said that they had no problems in abiding by the regulations.

The respondents were also asked if it is necessary to offer valuable gifts or pay bribes to clients, directly or through an agent, in order to be able to operate in certain countries. 27% reported finding that gifts or bribes were required, with nine percent admitting to have agreed to a request from an agent, an adviser, or a consultant for money that would most likely be used for bribery. Another six percent said that they probably had agreed to such a request at some time. A few firms admitted that during the last decade they had obtained a contract, a license, or a concession in a way that they deemed important to keep confidential. Large firms were more challenged than smaller firms, and also revealed less trust in their competitors' business practices. Firms exposed to competitive pressure were no less inclined to be challenged by corruption, even if fair competition is often seen as force against corruption.

The results of this 2004 survey of Norwegian exporters points to a prevalence of business corruption in markets where Norwegian firms operate, and reveals that many Norwegian firms are in fact challenged by the problem. Further, it showed that some Norwegian firms have been involved in illegal practices, despite a good ranking of Norway in corruption indices and despite the stated disinclination of firms to take part in such arrangements.

The combination of results from the interviews with business people in Brazil and this anonymous business survey of Norwegian exporters produce the most realistic if still limited picture to date of Norwegian firms and their attitudes to and potential involvement in corruption in Brazilian markets.

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<sup>30</sup> When asked to explain how they move on after cases where corruption has cost them contracts, 24% of the firms reported that 'they would adjust their strategies to the local business culture' while 28% responded 'no big reaction, corruption is part of the game'. Only 5% would leave the country under those circumstances, and 13% would report the problem through alternative channels, for instance through political channels.

## 5 A programme for collaboration

Collaboration on anti-corruption entails establishing a common platform for dialogue and defining suitable fields where joint efforts are worth pursuing. An obvious criterion for selecting such fields is the economic impact of the envisaged results. Another is the broad institutional effect the particular initiative might achieve. We now turn to some areas where collaboration can be particularly fruitful. It should be noted that we do not intend to cover all the areas where collaboration and dialogue is possible.

### Customs regulation and procedures

Any firm (Brazilian or foreign) importing finished products or components into Brazil has contact with Customs authorities. Freeing an import with Customs is a process necessarily involving bureaucratic procedures that, in any country, are notoriously prone to manipulation.

During the interviews conducted in Brazil, Customs was the area most frequently referred to as a challenge. Complex bureaucratic regulations and slow procedures were described as a source of corruption. Nonetheless, many Norwegian firms pointed to improvements in this domain - a view supported by the latest World Bank's Business Environment Report, which cites important reforms in Brazil.<sup>31</sup>

Nevertheless, a significant share of the Norwegian firms interviewed for this project revealed uncertainty about how to handle delays at Brazilian customs. One firm complained that *"bribes are not demanded but problems are created, because the officials know that time is far more valuable for the firms than it is for them"*. This might mean that, although bribes are not explicitly requested, some kind of facilitation payment is expected. To prevent 'problems' being 'created', another firm operated very strict internal checks on all bureaucratic formalities, including in relation to Customs: *"we control all our paper work four times"*.

According to one firm, *"It can be difficult to avoid paying bribes in customs"*, while another claimed that *"strikes in harbours are a big challenge, which sometimes is solved by corruption – or by letting intermediaries solve the problem"*.

Since difficulties at Customs have a potentially high impact (directly and indirectly) both on firms' costs and on the finished product's final prices, it would be of benefit to all concerned to avoid as much as possible the creation of artificially-induced bottlenecks. Importing firms are in a privileged position when it comes to suggesting ways to streamline the Customs procedure, and they could be encouraged to participate in a permanent forum, sponsored by the Brazilian government, specifically dedicated to the issue.<sup>32</sup> The Federal government has been sympathetic towards such concerns. Thus, the Internal Revenue Secretary (Secretaria da Receita Federal) of the Finance Ministry opened dialogue channels with Procomex, a business-sponsored organization dedicated to the issue. This led to fruitful discussion of measures to enhance the efficiency of the Customs procedures.<sup>33</sup>

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<sup>31</sup> The World Bank (2008). For data on the business environment and reforms in Brazil, see <http://www.doingbusiness.org/Reformers/LAC.aspx>

<sup>32</sup> See Black (2005) on the importance of expertise on defining regulations.

<sup>33</sup> See reports at the organization's website, [www.procomex.com.br](http://www.procomex.com.br).

Customs is already a concern in current WTO trade negotiations (the Doha-round) on trade facilitation. Dialogue and initiatives between very different countries, like Brazil and Norway, on how to reduce corruption in Customs may prove important to bring new aspects and arguments into consideration, and strengthen opportunity to reach progress on this area internationally.<sup>34</sup>

## Public procurement

The Brazilian public procurement and contracting law<sup>35</sup> is mandatory for all public entities. Publicly-controlled corporations must also obey the same law – with one exception, Petrobras, whose procurement procedures are regulated by a special codicil.<sup>36</sup>

Although inefficiencies in public procurement can arise at any phase of a tender, the most crucial phase occurs with the definition of conditions (technical, financial etc.) of participation. This is when artificial barriers which might keep some firms from submitting tenders are erected.

Economic theory and practice show that artificially reducing the number of participants in a given market results in economic disadvantages. Not only are prices kept higher than they would be if all potential participants were allowed to participate in the market in question, but secondary benefits arising from technical advances, greater organizational efficiency, improved financial engineering are also diminished. In general, artificially reducing market competitiveness runs counter to both public and private interests.

Most of the respondents to the survey conducted among Norwegian firms operating in Brazil described the public procurement environment as professional and generally steered towards the best price-quality combination. This view included Petrobras-conducted procurement, despite its exemption from ordinary rules. However, respondents, Norwegian as well as Brazilian, did report certain irregular episodes, which included: tender criteria designed to fit a specific company, evaluation commissions requesting bribes in exchange for secret information about the procedure, information leaked with the aim of influencing the outcome of the tender, and even one instance where a contract that had been awarded and signed was changed on the basis of some formal prerequisite, this development being presumed to have resulted from bribery.

Several firms were convinced that they had lost contracts because competitors had offered bribes. Informal trading of confidential information about tender criteria or competitors' bids was most frequently mentioned in this context. One respondent claimed that he knew that his company had lost a huge contract because competitors had offered bribes. However, his company did not file a formal complaint on the tender procedures for fear of sanctions from those involved and the potential loss of future contracts. This concern was shared by several of the respondents. Besides, tender rules were not seen as a sufficient obstacle to corruption, yet being important to ensure a fair selection of the winning bid. The rules were generally seen as professional enough but the consequences when they were not respected were believed to be too few.

## Pre-tender debate

One way to reduce the possibility of artificial barriers being erected is to open up discussions about conditions of participation before the formal call for bids is made. When firms acting in a given market are made aware of the conditions of participating in a tender only after such conditions were

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<sup>34</sup> The importance of trade facilitation to reduce corruption is already emphasized in Norway's Action Plan for Trade and Development, which can be downloaded on: [www.regjeringen.no/en/dep/ud/Documents](http://www.regjeringen.no/en/dep/ud/Documents) .

<sup>35</sup> Law 8666/93.

<sup>36</sup> Decree 2745/98, according to Art. 67 of Law 9478/97.

already defined by the administration, the only path to try to change conditions perceived to be illegal or unfair is to formally complain. In the Brazilian context they can contest such conditions both administratively and judicially, but in practice they do not do that very often, as shown by the results of the *Transparência Brasil/Kroll* survey previously mentioned. The right to contest is mostly not taken up, perhaps because most firms do not want to appear to be adversarial towards their public clients.

However, if the firms are allowed to discuss the conditions before the administration has taken decisions, then the adversarial component would be replaced by a collaborative endeavour aimed at reaching the most economically efficient set of conditions. The Brazilian regulations allow for such discussions to happen. In fact, in the general law (Law 8666/1993/), it is predicated that public tenders involving values above about US\$ 50 million must be subjected to a public audience. This mechanism of opening conditions of tender to public discussion could be extended to situations where lower values are involved. Such a procedure has been adopted by the administration of the city of São Paulo, Brazil's largest municipality.<sup>37</sup> According to that regulation, the conditions for participating in any tender whose predicted value exceeds R\$ 12 million (about US\$ 6.6 million) must be subjected to public consultation on the Internet. The administration must provide arguments when turning down any suggestions that arise.<sup>38</sup>

As well as fulfilling the direct economic function of allowing better conditions to be formulated, the establishment of an explicit mechanism of discussion also has the subjective advantage of fostering trust between the public administration, business participants and independent observers. Of course, the establishment of such a mechanism must be open to all interested parties, domestic or foreign, and in particular cannot be limited to firms from any single country. However, engaging foreign governments – in our case the Norwegian authorities – in fostering participation in the mechanism can give a powerful boost to the credibility of the initiative.

## Procurement procedures and the WTO General Procurement Agreement (GPA)

A final concern is how Norwegian-Brazilian dialogue on anti-corruption in relation to public procurement would complement or support international initiatives on the same issue. A significant international collaboration on public procurement is the WTO "Government Procurement Agreement" (GPA). The agreement has been referred to as an initiative that, if enforced, would automatically have a preventive impact on corruption as well. And similarly, reluctance against implementation of the GPA has sometimes been suspected to reflect protection of power constellations and their influence on procurement-related decisions.

Norway and Brazil are countries where procurement rules are already very strict, GPA-rules are already implemented, or will not make much difference. Both countries are net exporters, however, and will benefit if the GPA becomes a real multilateral agreement, covering countries where current procurement regulations are weak. Dialogue on anti-corruption in procurement should thus include ways to strengthen this initiative internationally and from different angles.

In addition, a dialogue between Norway and Brazil on this matter will be important to identify the weaknesses in the GPA and similar procurement rules in terms of functioning as a barrier against corruption. As part of a collaboration on this issue, it should be discussed how the GPA initiative could be strengthened to better prevent such crime.

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<sup>37</sup> Municipal Decree 48046/06.

<sup>38</sup> The economic results of this procedure, which was adopted in late 2006, are still to be evaluated. A longer time-period is required before prices before and after the measure was adopted can be compared.

## Legal cooperation

Criminal organizations and firms involved in corruption exploit the situation of the virtual absence of obstacles to capital movement across borders, while investigations of corruption usually are restricted to the legal jurisdictions within which the crime occurs. One of the goals of the OECD anti-bribery convention is therefore to ease investigation and prosecution.<sup>39</sup>

The UN Convention against Corruption strengthened this ambition, claiming in Article 1 that one of its main purposes is “to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery”. Article 5 requires State parties to have effective, coordinated anti-corruption policies.

The formal basis for legal cooperation to tackle international corruption has been significantly improved, and these improvements have been implemented in the national legal systems of signatories to the conventions. However, whether this collaboration functions in practice depends very much on the willingness of governments to cooperate and on communication at the individual level, bilateral treaties, former business between the nations in question, diplomatic ties, etc.

Consider, for instance, Article 9 of the OECD anti-bribery convention, which states: “Each Party [country] shall, to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the scope of this Convention and for non-criminal investigation within the scope of this Convention brought by a Party against a legal person”.

Signatories to the OECD convention are thus expected to cooperate “to the fullest extent possible” to provide evidence and support the investigation of cases that have been initiated by other countries. “To the fullest extent possible” is not very specific, however, and requires no more than minimum collaboration. There are numerous opportunities for governments to find excuses, i.e. legal or diplomatic justifications, for why collaboration on a given case is not possible after all. Collaboration is very much up to individual countries and the degree to which they wish to assist other countries in their investigations. Bilateral dialogue and established contact prior to a request for collaboration can be decisive for a government’s willingness to collaborate and by extension for the prosecution of a given case.<sup>40</sup>

## Bilateral treaty

Brazil and Norway have as yet no bilateral treaty on legal collaboration. While the issue is treated by the anti-corruption conventions, there are reasons for bolstering legal collaboration in other ways. The contents of international conventions are usually restricted to the largest common denominator between the signatories, and thus are generally formulated in vague terms. The outcome in respect of specific cases depends on how the contents of the conventions are interpreted. It is up to each single jurisdiction to decide how to implement the intentions of the conventions.

For instance, in addition to signing the anti-corruption conventions and many other international treaties which include legal collaboration, the US government has also established a network of bilateral agreements in order to ensure sufficient collaboration when serious cases occur. Other countries followed rapidly, and international collaboration on anti-corruption investigations is

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<sup>39</sup> Harari and Berthod (2007) offer a broader discussion about international and bilateral collaboration on the contents of the OECD anti-bribery convention.

<sup>40</sup> Harari and Bethod (2007).

increasingly regulated by a combination of conventions and bilateral treaties. Regional conventions, such as the Inter-American Convention against Corruption and the EU Convention against Corruption, often complement the international conventions. When it comes to individual countries in different regions, with significant trade relation and perhaps also with different legal traditions (Civil Law versus Common Law), there might be a need to establish stronger legal collaboration.

Regardless of how the content of conventions might be bolstered through formal or informal collaboration, there are other aspects that should be considered. These are related to informal collaboration, diplomatic sensitivity, and the increasing prevalence of letting companies involved in corruption collaborate on investigation.

### Informal collaboration

Cooperation on investigations often occur through informal police-to-police channels, on public record information, locating persons, serving documents, executing requests for investigations, or conducting joint investigations.<sup>41</sup> Provided that no coercive measures are envisaged, there will not always have to be a formal request at the government level. The willingness to follow up on informal requests to support an investigation conducted by another jurisdiction will probably be greater in cases where communication and good diplomatic relations between the two parties already exist, as is the case between Norway and Brazil.<sup>42</sup>

A good relationship between the countries is also important when a formal request is needed, for instance on extradition or actions to secure evidence. Asking for cooperation can be a sensitive issue diplomatically, since it indicates that corruption has occurred in the country from which the evidence must be secured. In the investigatory stage, there might be uncertainty about how high in the bureaucratic system the crime has occurred. In some cases there might be a political unwillingness to pursue the case. Bilateral dialogue on anti-corruption and collaboration will ease these circumstances because it fosters confidence that investigations will not put a good diplomatic relationship at risk.

### Academic collaboration

Another field where bilateral collaboration is important for developing better understandings of business climate challenges is academic research. There is already some collaboration between research institutions in Brazil and Norway, and the Norwegian government has decided to strengthen general competence on Latin American issues. However, as far as we are aware, there is no specific collaboration between academic institutions on anti-corruption issues. The basis for collaboration exists, however, since both countries have several strong academic environments with research programmes on trade and anti-corruption issues.<sup>43</sup> Joint programmes involving Norwegian and Brazilian academic institutions could profitably exploit the academic strengths of both countries to enhance knowledge about public sector-related phenomena, including corruption.

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<sup>41</sup> Abbell (2004).

<sup>42</sup> There is an increasing tendency now to let the firm undertake parts of the investigation in which the firm itself is involved. The suspected firm will hire "an independent team" of investigators and collaborate with this team, providing evidence of their own crime. These arrangements might speed up investigations, contribute to sort out the actual circumstances in a given case, and reduce expenses for the public. The responsibility for investigation and prosecution still rests with public institutions, and it is very important that the work of these independent institutions is not decelerated by this trend.

<sup>43</sup> Including IPEA (Instituto de Pesquisa Econômica e Aplicada) in Brazil and CMI (Chr. Michelsen Institute) in Norway.



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## SUMMARY

International conventions against corruption, signed and ratified by a growing number of countries, are an important tool in combating corruption. Greater collaboration across countries is now needed in order to draw real benefits from legal reforms. This report, commissioned by the Norwegian Ministry of Foreign Affairs, is a step in that direction as it examines the potential for collaboration on anti-corruption issues between two countries. The focus is on corruption in the business environment and the situations reported concern trade between Norway and Brazil, with a focus on Norwegian presence in Brazil. Recommendations for collaboration are developed on the basis of the current status of the international fight against corruption, a discussion of the efficiency of different anti-corruption initiatives, and a survey of the perspectives of some Norwegian and Brazilian firms. The areas of customs regulation and procedures, public procurement, legal cooperation, and academic collaboration are found to be particularly relevant for transnational anti-corruption collaboration. The main ambition of the report has been to stimulate further initiatives and dialogue between Norway and Brazil, as well as cross-border anti-corruption efforts in general.

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