



2017 OECD GLOBAL
**ANTI-CORRUPTION
& INTEGRITY FORUM**

**OFFSETS IN PUBLIC-SECTOR PROCUREMENT:
TOOLS FOR ECONOMIC DEVELOPMENT
OR AVENUES FOR CORRUPTION?**

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This paper was submitted as part of a competitive call for papers on integrity, anti-corruption and inclusive growth in the context of the 2017 OECD Global Anti-Corruption & Integrity Forum.

Abstract

In “perfect” free market economics, when a global company prepares a bid in response to a public tender, the consideration of the bid should only be about offering the most technologically advanced product at the best price. Instead, many international public-sector procurement requests are saddled with more socially beneficial requirements. Often the government agency wants to spark innovation and economic development by obtaining, e.g., a license for such technology or a guaranteed investment from the seller to foster development in the agency’s country. Those arrangements, the “offsets”, are industrial compensation required by foreign governments as condition to purchase of goods and services from nondomestic suppliers.

While the jury is still out on the effectiveness of offsets for economic development, given the enormous “perception” of upside, countries will continue to require them. What makes this matter even timelier is that the OECD recognized the potential for corruption in development by publishing the *Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption*.

Offsets represent a valuable tool for success in international markets: (i) buyers see them as opportunity to use the offsets to either “jump start” or develop specific industries (mainly those dependent on technology and innovation); (ii) buyers use the offsets as tool for the large investments required for infrastructure and defence upgrades. From a seller’s perspective, offsets help companies open the door to markets that would not otherwise be available. Because local partners are often part of the discussion in infrastructure and defence-procurement, it is common for suppliers to propose offset agreements aimed at developing industrial relationships through joint production or development.

The corruption risks associated with offsets are many, i.e. (a) improperly influencing the need for an acquisition, with reward through offset, (b) improperly influencing the award of the contract, with reward through the offset, (c) improper payments as part of the offset package as a vehicle for payment of bribes and (d) improper payments as a cover-up for lack of implementation of offset is great. All these risks can potentially cancel the economic development benefits that an offset arrangement might bring.

In conclusion, the paper will propose a multi-lateral system solution (from the OECD, importer government, industry and exporter government perspective) to lower the corruption risk and increase the appetite for offset and therefore unleash the potential to “jump start” economic development.

Keywords: offset, transparency, corruption, economic development, OECD

Introduction

Until the United States presidential election of 2016, most observers believed that defence spending for most of the Western Countries would continue its multi-year decline (IFBEC 2015). While the new United States President has proposed significant increases in defence spending, he has also publicly suggested many defence programmes are rife with waste and need to be trimmed. This uncertainty, coupled with a Congress concerned about deficit spending, means that defence contractors will have to continue to look elsewhere to sell their goods and increase profits. According to a recent study of aerospace and defence industry representatives, 94% of the respondents indicated that foreign markets will be important to their company in the future. (Avascent 2013). Nevertheless, as developing countries have become more sophisticated in their purchases, the sales have often come with an offset requirement. It was recently estimated that the market for all offsets will double over the next five years to an estimated US\$500 billion (one-half trillion dollars) (Costello 2014). As with any market that large coupled with the secrecy often associated with military and other industrial purchases, corruption is a significant concern, if not an outright problem. This paper will provide background into the offset system for public procurement primarily in the defence and aerospace industries, will identify areas of specific corruption concern and will suggest a multi-party solution to minimize the tension between offset requirements and implementation.

I. Offsets – Definitions and Categories

To understand the corruption risk associated with offsets, a clear understanding of what offsets are and how they are implemented is required. Simply put, an offset is any pledge or commitment made by a seller to the purchaser in order to win the business. Offsets can take many forms, but can be generalized into two distinct categories – direct offsets and indirect offsets. The US Department of Commerce defines a direct offset as something “directly related to the article(s) or service(s) exported or to be exported pursuant to the [purchase] agreement.” An indirect offset is “unrelated to the article(s) or service(s) exported or to be exported pursuant to the [purchase] agreement.” (US Dept. of Commerce 2016 Report).

Examples of direct offsets include requiring the seller to manufacture part of the components or good to be sold in the purchasing country. Brazil, Turkey and India have been very strict and upfront about their desire to increase their domestic defence industry by requiring sellers to manufacture components domestically. Brazil’s Embraer SA, the third largest aircraft manufacturing company, has

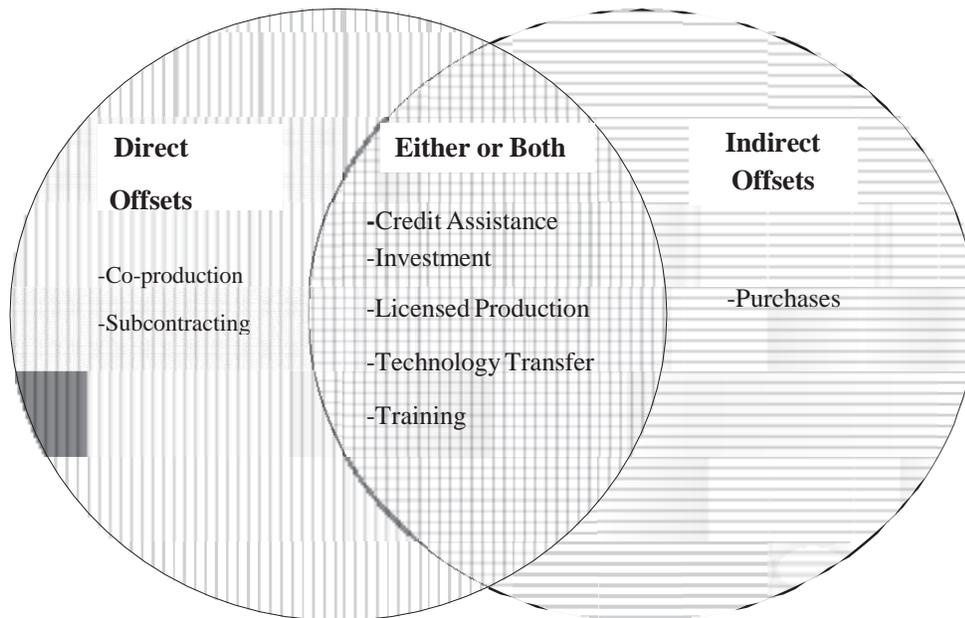
grown significantly resulting from government imposed technology transfer offsets. (Dempsey 2011). Turkey's recent deal for the purchase of military drones from Israel requires direct off-sets through the guaranteed purchase of Turkish made components. (Turkey Wonk 2013). India's deal with France's Dassault Aviation originally required that the majority of the fighter aircraft be produced by an Indian manufacturer under the direction of Dassault. However, after Dassault was not able to confirm that the Indian partner could deliver timely, the deal was changed to exclude local participation, but the contract was significantly reduced and a new round of tenders were prepared requiring local support. As the Chief of the Indian Air Force stated "...I'm sure whoever gives the best deal [will win]...it will depend upon who provides the best transfer of technology; and of course, the price tag." (Defense World 2016). These sort of direct offsets are often referred to as co-production commitments (agreement authorizing the transfer of technology to allow the purchaser to manufacture all or part of the purchased good) or sub-contracting comments (overseas production of a part or component of the purchased good). (US Dept. of Commerce 2016 Report).

Examples of indirect offsets include requiring Raytheon to develop a shrimp farm in Saudi Arabia as part of its sale of missile technology to the Kingdom (Hoyos 2013) or Sukhoi, one of Russia's major aircraft manufacturers, transferred certain space-related technology to the Malaysian National Space Agency in connection with the sale of 18 fighter jets. (McKinsey 2014). Neither of these offset transactions were directly related to the sale of the defence item, but both were instrumental in the decision by the importer country to award the contract.

Other commonly used types of offsets can be a combination of direct or indirect offsets depending on the circumstances in which they are used. These common offset commitments include credit assistance (loans or guarantees from the seller), investments (establishment or providing additional capital to a subsidiary or affiliate of the seller in the purchasing country, either related or unrelated to the transaction), technology transfers (transfer occurring as a result of the agreement that can include research & development conducted in the purchasing country or technical assistance, etc.) and training (generally training related to the production and maintenance of the good, including computer training or engineering training) can be classified as either direct or indirect depending on the circumstances. (US Dept. of Commerce 2016 Report). The benefits of offsets, whether direct or indirect, from the purchaser's perspective are self-evident. Governments count on these local investments and purchases to acquire technological know-how and to justify to their constituents the capital expenditures required for their defence and other high cost purchases and to correct imbalances in foreign trade. (McKinsey 2014). From the seller's perspective, offsets can assist in opening up new markets and to strengthen local

partnerships within the supply chain. (IFBEC 2015). Below there is a depiction of categories and types of offsets (with examples):

Figure I.1. Categories of Offsets and Examples



(US Dept. of Commerce 2016 Report).

As is evident by the various types of offset types, not all offset commitments are equal. Purchaser countries often use and specify “multipliers” to enhance certain commitments. As defined by the US Department of Commerce, a “multiplier” is a factor applied to the value of certain offset transactions to calculate the credit value earned. This provides incentives to sellers to tailor their offset proposal to areas targeted by the purchaser for development. Multipliers significantly affect the calculation of offset obligations. Multipliers can either be positive or negative depending on what the purchaser deems most valuable. For example, India recently updated its Defense Procurement Procedure, now managed by the new Defense Offset Management Wing. As part of that effort, India announced two strategic initiatives: the sustainable development of their national companies, and technological defence acquisitions. In the revised policy, India establishes a multiplier of 1.5 for offsets with Micro, Small, and Medium Indian Enterprises, and a multiplier of 3 for technological acquisitions within the Defense Research and Development Organization. (MIT 2015). Multipliers account for approximately 12% of the total number of offset transactions for United States’ defence contractors. (US Dept. of Commerce 2016 Report).

Recent trends suggest that indirect offsets requiring longer-term commitments and obligations upon the seller are becoming more prevalent among developing countries. Further, many countries are requiring the creation of joint ventures or the transfer of actual design and production capabilities instead of mere foreign direct investment into a wholly-owned subsidiary corporation. (Metzger 2015). In 2013 and 2014, indirect offset transactions accounted for 65% and 74%, respectively, of the total offset transactions. In 2015, the number dipped to 52%, which is below the 22-year historical average of 58%. (US Dept. of Commerce 2016 Report). Using indirect offsets, the importer country leverages the economic development that could be potentially generated by the offset programme to create a longer, more sustainable environment; not just one-off transactions affiliated with a particular purchase.

While most observers believe that offsets are most relevant in developing countries as an effort to jump start local innovation and economic development, well over 100 countries have some form of a formal offset programme (Costello 2014). In the United States, the “buy American” rule is an example of an offset requirement programme. The “buy American” rule mandates that a substantial amount (50% or more) of the components in a weapons’ platform be manufactured in the United States. 41 U.S.C. §§ 8301–8305. The irony of the “buy American” act is that the official policy of the United States is to oppose offsets in military sales. (Frost & Sullivan 2013). Offsets are also not favored by official pronouncements of the European Union and the World Trade Organization. EU Directive 2009/81 treats offsets as illegal, but most countries get around this provision by invoking the national security exception under Article 346 of the European Union Treaty. Similarly, Article XVI of the Agreement on Government Procurement by the WTO bars the use of offsets except for national security. (Metzger 2015).

II. Correlation between the Offset Market and Corruption

Given the size of the market, the competitive and secret nature of the industries involved, there is a high degree of risk for corruption in offset transactions. According to the Organisation for Economic Co-operation and Development (OECD) the defining characteristics of industries susceptible for corruption risk in procurement include: strong capital intensity, advanced technology and sophistication of materials, and economic rarity. Further avenues of risk arise because it is often difficult to make direct comparisons on price, coupled with the number of actors in the procurement process. (OECD 2007).

Offset transactions, by their nature, fit every concern identified by the OECD. First, because of the variety of forms that the projects can take, especially with indirect offset projects, corruption can be a special risk to be reviewed. Sellers trying to fulfill an indirect offset commitment must perform extensive due diligence on each project to understand who all of the participants are, including any brokers, agents or other third parties and how they may be connected to government officials in the purchasing country by family or business relationships. Not only must due diligence must be performed up front, but it is equally important during the implementation phase of the project. Second, given the widespread use of offset brokers and other intermediaries, there is a tremendous risk of corruption. Many offset deals are put together by offset brokers, companies or individuals who specialize in structuring offset transactions, and may involve other third parties in implementing the offset project. Third, because the offset transactions involve foreign governmental officials with authority to approve the offset project, there is a risk that the official will direct the work to a project that benefits the official either directly or indirectly through business or family connections. (Weissman 2014). In 1995, the US Department of Justice issued an advisory opinion (95-02) on whether an offset transaction violated the Foreign Corrupt Practices Act. The word “offset” has become such a dirty word that most companies prefer the term “industrial participation”. (The Economist 2013).

In discussing the risk of corrupt behavior in offset transactions, Transparency International UK noted:

“Offset transactions carry potentially high risks of corruption, not only due to the high level of secrecy within the defence procurement as a whole, but because they usually lack the scrutiny and monitoring of the corresponding acquisition contract. Additionally, most offset transactions have few, if any, transparency and public accountability requirements.” (TI Report 2012)

Although there have been very few specific prosecutions related to corruption in offset transactions, one recent scandal involves the purchase of helicopters by the Indian army. The VVIP helicopter scandal in India involves allegations that approximately \$65 million was funneled through middlemen and phony offset partners to pay bribes to Indian Army and other officials (Hindu 2016). Another prominent scandal involves Portugal’s purchase of two submarines from a German consortium that was facilitated by the payment of €6.4 million in bribes to establishment figures in Portugal (TI Report 2012).

TRACE International in a February 2013 report concluded that 30% of governments that use offsets “fail to impose any due diligence or auditing requirements on their contracts” and that transparency concerning offset contracts is “very restricted at best in 60 of these countries.” The lack of transparency and the wide range of transactions that could represent an offset transaction make corruption a significant risk for sellers. Set out below is a chart which shows the 20 largest markets for the use of offsets in defence procurement compared to that market’s rankings in the Transparency International’s Corruption Perception Index and the World Bank’s Ease of Doing Business index. As is evident from the chart, more than a half of the top 20 defence offset markets score negatively in the CPI ranks and the Ease of Doing Business rankings.

Table II.1. Co-relation among offset markets, CPI 2016 and EODB 2016

OFFSET MARKETS ⁱ	OFFSET MARKETS BY COUNTRY (Projected 2016-2021) ⁱⁱ (USD Billion)	CPI 2016 (Transparency International) ⁱⁱⁱ x/176 countries	EASE OF DOING BUSINESS 2016 (World Bank) ^{iv} x/190 countries
SAUDI ARABIA	40.68	62	94
INDIA	31.9	79	130
SOUTH KOREA	28.87	52	5
BRAZIL	26.51	79	123
UAE	20.5	24	26
AUSTRALIA	17.18	13	15
COLOMBIA	13.83	90	53
UK	10.42	10	7
TURKEY	9.71	75	69
POLAND	9.32	29	24
CHILE	9.27	24	57
NORWAY	7.87	6	6
TAIWAN	7.77	31	11
GREECE	7.76	69	61
INDONESIA	7.27	90	91
NETHERLANDS	7.24	8	28
ITALY	6.88	60	50
SINGAPORE	6.28	7	2
GERMANY	5.74	10	17
SOUTH AFRICA	5	64	74

ⁱ www.frost.com/prod/servlet/cio/275947347 - page 7

ⁱⁱ www.frost.com/prod/servlet/cio/275947347 - info compiled from pages 17/18

ⁱⁱⁱ http://www.transparency.org/news/feature/corruption_perceptions_index_2016#table

^{iv} <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Chapters/DB17-Mini-Book.pdf?la=en>

III. Proposed Solution System: An Idea

This paper aimed at proposing a solution system for the tension between offset requirements and its completion, a country's need for innovation and corruption avenues that exist and that need to be shut down so both parties – the exporter company and the importer country – reach optimal balance in providing (and completing) an offset that meets the requirements (for the exporter) and achieves the innovation needs (for the importer country).

None of the solutions proposed here should be taken individually; because those issues are so intertwined and intrinsically related that it is the view of the authors that no sole solution would work without the other proposed ideas for the solution system to tackle the problem. As one can likely perceive from the explanation below, the solution system is complex and its implementation does not seem to be easy – “short term pain for a long term gain” is the right expression here.

Additionally, because this paper represents an academic approach to the problem, different jurisdictional systems may face different legal hurdles during its implementation, depending upon existing and intended public procurement laws and regulations. The authors took that into consideration as one of the reasons to include the OECD as one of the parties in the solution system.

The solution system is composed of the OECD, the importer country's government, the exporter country's government and the relevant trade associations, each one with roles as explained below.

III.1. OECD's role

It is Slaughter and Zaring's theory that using extraterritoriality as a foreign policy aid is worse than assisting countries in finding political and legal instruments allowing them to cooperate and coordinate their actions. (Slaughter and Zaring 1997). Similarly, Falvey and other authors defend that “*each country would benefit from cooperative multilateral actions taken by other countries, acting in their combined interests*” (Falvey et al. 1999). In other words, it appears that assisting the countries in finding ways to collaborate and coordinate their enforcement is better than relying on unilateral tools for enforcement based on regulations that have extraterritorial application.

On the other hand, there are authors who believe that unilateral enforcement by a major economy is the key to initiate a trend for an international regulatory standard (Coffee 2014).

As seen in the creation of FCPA and the history of its enforcement, the United States used enforcement leadership to try and ensure markets that are more efficient in the future. Because of the United States' influence on the global economy, the international trade community and United States' long-term trade partners (and foreign companies with global presence) quickly moved to adapt to the then-new regulation. The United States' action was followed by a number of countries and eventually by the OECD.

While it is true that a major economy can affect global trade by creating regulation with extraterritorial application, smaller countries generally do not have enforcement resources available, and cannot impose, so easily, their jurisdiction over transnational activities of foreign companies. Thus, it is necessary to have an institution to harmonize the need for certain regulations instead of relying on enforcement to dictate the trends.

This is where the OECD becomes relevant for this solution system. As the legal systems of the OECD Anti-Bribery Convention (the "OECD Convention") signatory countries are not the same, the OECD Convention "*seeks to assure a functional equivalence among the measures taken by the Parties to sanction bribery of foreign public officials, without requiring uniformity or changes in fundamental principles of a Party's legal system.*" (Commentaries to the OECD Convention).

Thus, if the OECD was, and has been, so successful in causing countries to implement legal measures to curb and sanction bribery of foreign officials, why shouldn't the OECD also require such signatory countries to adopt measures to make offsets, their requirements, implementation and completion more transparent, which would definitely lead to better results in global trade and economic development?

Such offset transparency rules could become part of the existing OECD anti-bribery framework, and the OECD Working Group would have the task of policing its adoption and implementation by the signatory countries, using the same tools currently employed for the review of anti-bribery regulation adoption and implementation: peer reviews, self-assessments and the publication of reports with recommendations ("name and shame") that are very efficient and have been able to improve the anti-bribery regulation scenario globally.

In addition, if the OECD creates rules for offset transparency as suggested above, the signatory countries main task would be to embed such rules in the country's legal system and enforce them. A good analogy can be made to Article 1 of the OECD Convention, which requires the signatory countries to "make it a crime to bribe foreign public officials in international business transactions". The signatory countries then interpret this mandate imposed by the OECD Convention and reflect it into the country's legal system, by creating functionally equivalent regulation that is verifiable and enforceable in accordance with OECD standards.

III.2. The Importer Country's Government Role

The importer country's government's role in the solution system that this paper proposes is more straightforward. The government has the required powers to add or modify public procurement laws and regulations within its own territory. For the ease of explanation, the suggested solution under this section can be described in three different moments that are aligned with the evolution of the public procurement and offset implementation phases. All of the suggestions below depend on assessment on current offset requirements under the relevant jurisdiction and adaptation to them.

III.2.1. Before publishing a tender that requires offset:

a) the importer country should create a "sourcing centre of expertise", comprised of well-paid staff specialized in offsets, with audit, finance or technology educational backgrounds. Such personnel should be treated as holders of sensitive strategic positions, with strict hiring requirements, due diligence (comprehensive background checks) and mandatory adherence to special code of conduct and annual personal wealth and assets disclosure requirements. All those measures would go a long way to assure that the local staff assessing implementation and completion for the offset are not, at least in theory, easily corruptible.

b) the importer country should require, in the tender, that the price of the offset is provided separately from the price of the product or service being acquired through the tender. While this may already be true under the regulations of certain countries, the cast of obscurity surrounding the offset cost provides incredible "wiggle room" for wrongdoing by both the supplier and the importer country during its implementation.

c) the importer country should, in the contract, require specific audits to be conducted by the “sourcing centre of expertise” with an aim to have multiple touchpoints during the offset implementation that could easily identify and indicate whether the offset implementation is being carried out honestly and efficiently.

d) the importer country should implement objective requirements and milestones for evaluating completion of the offset. As already highlighted in this paper, many of the current issues that allow for the offset programmes to be such a rich medium for corruption revolve around the lack of transparency in its implementation – one of the most common situation occurs when the supplier bribes the personnel evaluating the offset completion so they can “look the other way” and certify completion of the offset. Thus, having objective criteria for evaluation of the completion of the offset would mitigate or eliminate this gray zone by removing subjectivity. Additionally, removing subjectivity also assists the courts of the importer country in deciding whether the offset is indeed completed, in the likely event that such completion becomes the object of litigation;

e) the importer country should clearly establish what is the intended benefit of the offset that it is requiring in the tender. Such expectations have to be realistic – as one of the ideas behind offsets is that such country uses the offset programme to receive technology and know-how that is not otherwise available within the importer country. That being said, the expectation of the importer country cannot be that (i) the offset implementation will catapult the importer country to a leading global role within the industry for such technology or know-how or (ii) the offset immediately prompts economic development and innovation never experienced before by the importer country.

III.2.2. During the offset implementation:

a) the importer country should enforce the tools it has available to monitor the implementation of the offset. It is very common that the offset programme obligations continue long after the main object of the tender has been delivered by the supplier. It is worth noting that failure to monitor the offset cripples the country’s ability to (i) promptly correct offset programmes that may be derailing, keeping the potential for the seized offset benefits on track and (ii) collect data that would be relevant to suggest improvements in the public procurement and offset transparency regulations;

b) engage the civil society to monitor and oversee the offset performance and governance. The country’s citizens bear an inherent interest in public purchasing and use of public funds and may serve as

an independent party to provide a “check and balance” both in regards to the rightful implementation of the offset programme by the supplier as well as the honest and accurate monitoring of it by the “sourcing centre of excellence” comprised of government employees. To implement the idea of having citizens acting as a “check and balance”, it is evident that the importer country’s government has to make information available to the population so it can organize and engage. That’s an additional benefit – making offset-related information easily accessible and publicly available to the citizens helps transparency in the process, which is the ultimate goal of having offset regulations.

III.2.3. After offset implementation:

a) the importer country should conduct a thorough review of the offset performance by the supplier using an independent organization and, in the event there are identifiable issues that require improvement, assess whether those issues could have been prevented by amending public purchasing laws or offset transparency regulations and if so, amend them.

The measures recommended here are similar to the measures recently announced by the OECD in its 2016 *Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption* (2016 Recommendation). While the 2016 Recommendation seeks to create “measures to prevent and detect corruption in projects financed by ODA, and detail sanctions to be provided in ODA contracts to enable agencies to respond adequately to all cases of corruption.” The 2016 Recommendation, like the authors’ proposal, also sought to outline “a comprehensive system for corruption risk management within donor agencies, including: codes of ethics; whistleblowing mechanisms; financial control and monitoring tools; sanctions; co-ordination to respond to corruption cases; and communication with domestic constituencies (tax payers and parliaments) on the management of corruption risks” in the host country.

III.3. The Exporter Country’s Government Role

In regards to the exporter country’s government role in the solution system that this paper proposes, the approach can be summarized by suggesting that the exporter country creates regulations that impose publicity requirements to companies that are providing, implementing or arranging offset programmes. Such regulation would require that the suppliers and contractors annually publish their offset obligations, their performance, the upcoming steps and time remaining for completion. Again the concept behind this suggestion is to increase the transparency during the offset programme

implementation by generating several data points (publication by suppliers and publication by importer country as suggested under 3.2.2. above) that can be compared and cross-checked by the involved countries and other citizens and nations, fostering an environment of multilateral cooperation which could potentially encourage investment of more resources in the involved countries (importer and exporter) by demonstrating maturity and stability in the public procurement process and ultimately in the legal system of such countries.

III.4. The Relevant Trade Association's Role

The trade association's role is a pivotal one, as it provides for the "industry arm" of the solution system suggested in this paper. While the regulations are an important part of the suggested solution system, the trade association's role would serve to promote and support the offset transparency initiative "by the industry and for the industry". The lack of industry support (along with lack of regulation enforcement and accountability) can be the difference between success and failure in integrity-promoting efforts.

A great example of this is the Brazilian Clean Companies' Act which was enacted after a strong outcry by Brazilian citizens but it was never embraced by the industries that are more exposed to bribery-risks, which culminated in the recent Car Wash Operation (which took place 1 year after the Act passed), shutting down all Brazilian infrastructure construction companies, and ultimately led to the impeachment of the Brazilian president and an economic recession.

The trade associations of the industries that are required to provide offset should find creative and proactive ways to promote integrity in offset programmes, for example:

- a) enacting or amending existing relevant industry's code of conducts to address offset corruption risks;
- b) requiring that the associated companies specifically address offset corruption risks in the companies' code of business conduct and compliance programmes, including creating specific offset policies and risk assessment procedures; plus face-to-face training to targeted employee populations;
- c) requiring that the associated companies employ compliance and internal audit professionals that are familiar with public procurement and offset risks;

d) requiring that the associated companies employ specialized sales professionals in government sales processes and potentially create centres of excellence for government sales and offset implementation;

e) requiring that the associated companies have a restrictive process to identify and select offset intermediaries and apply their integrity standards to such intermediaries;

f) requiring that the companies currently providing offset programmes annually present their offset obligations, their performance, the upcoming steps and time remaining for completion for the board of directors, subject to board's approval;

g) developing and publishing industry-wide guidance for integrity in public procurement and offset programmes, fostering collaborative discussion and training workshops for the associated companies.

Again it is important to emphasize that the buy-in of the industry is vital for achieving integrity in offset programmes. While the examples above may look like expensive additions to an industry that is already crippled by corruption costs, the benefits that may be achieved definitely outweigh the costs for its implementation.

IV. Conclusion

As this paper made clear, there are numerous avenues for corruption before, during and after offset programmes are implemented. While anti-corruption laws are designed to block some of these avenues, the lack of clarity and objective requirements for offsets makes the offset programme environment the "perfect medium" for proliferation of corrupt "organisms" that deplete the importer country of its economic development capabilities, generate waste of public funds, cripple the citizens' trust in the offset benefits and ultimately annihilates the importer country's chance to use the offset as a jump start to innovation.

The risks associated with offset programmes are not new or unknown. Because of its vast dissemination, the authors advocate that a multilateral solution system would have a better chance of success in addressing and eliminating the offset corruption risks when compared to single-sided regulation and enforcement by major global economies.

Thus, this paper aimed at proposing a solution system for the tension between offset requirements and their completion, a country's need for innovation and corruption avenues that exist and that need to

be shut down so both parties – the exporter company and the importer country – reach optimal balance in providing (and completing) an offset that meets requirements (for the supplier) and achieves the innovation needs (for the importer country).

The solution system suggested here would be composed by different activities performed by the OECD, the importer country's government, the exporter country's government and the relevant trade associations. One can note that it is not a simple implementation, but rather a complex solution for an even more difficult problem that definitely requires a collaborative and pro-active approach to be eradicated.

Although a long-standing problem, the corruption risk associated with offset programmes is extremely similar to other menaces to global integrity and rightful and honest business transactions, and as with other such menaces, it is a solvable issue by employing clear and straightforward leadership and strong and public transparency requirements that the authors tried to summarize in this paper.

The solution system idea could only be made possible because of the successful implementation of the OECD Convention. The OECD Convention, by being a comprehensive tool to require that the signatory countries enact anti-bribery regulation, stands out as a perfect tool for requiring the expansion of anti-bribery and transparency efforts by the signatory countries by adding a pro-active target to the integrity risks posed by offset programmes.

Bibliography

COFFEE, J. C. 2014. *Extraterritorial financial regulation: Why E.T. Can't come home*. Cornell Law Rev. Cornell Law Review, 99, 1259-1302.

COSTELLO, P. 2014. *How Defense Offsets Help Drive the Global Defense Industry*. Defense One. 4 Dec. 2014. <http://www.defenseone.com/business/2014/12/how-defense-offsets-help-drive-global-defense-industry/100482/>

Defense World.Net *Dassault Rafale Not in Running for 'Make in India' Fighter Aircraft Project for Now*. October 6, 2016.

http://www.defenseworld.net/news/17288/Dassault_Rafale_Not_In_Running_For_Make_in_India_Fighter_Aircraft_Project_For_Now#.WMmsi88zU5E

DEHOFF, K., DOWDY, J. & KWON, O.S. 2014. *Defense offsets: From 'Contractual burden' to competitive weapon*. McKinsey&Company. July 2014. <http://www.mckinsey.com/industries/public-sector/our-insights/defense-offsets-from-contractual-burden-to-competitive-weapon>

DEMPSEY, A. *Don't Fear the Offset*. Army-technology.com. January 6, 2011. <http://www.army-technology.com/features/feature106266/>

FALVEY, R., LLOYD, P. J. & UNIVERSITY OF MELBOURNE. DEPARTMENT OF, E. 1999. *An economic analysis of extraterritoriality*. Victoria: University of Melbourne, Department of Economics.

FERGUSON, W. D. 2013. *Collective action and exchange: a game-theoretic approach to contemporary political economy*.

The Hindu. 2016. *Key events in the VVIP chopper scandal*. December 9, 2016. <http://www.thehindu.com/news/national/Key-events-in-the-VVIP-chopper-scandal/article14260615.ece>

International Forum on Business Ethical Conduct for the Aerospace and Defence Industry. 2015. *Offsets in the Aerospace and Defence Industry*. <http://ifbec.info/wp-content/uploads/2013/07/IFBEC-Offsets-Report.pdf>

KIMLA, D., 2013. *Military Offsets & In-country Industrialisation Market Insight Top 20 Military Offsets Markets*. Frost & Sullivan. March 2013. www.frost.com/prod/servlet/cio/275947347

LITTLE, B., PEREZ, H., POYATO, A., RICHERT, B. & SONG, S. 2015. *Developing a Methodology for Identifying Sustainability Offset Projects with the Aerospace and Defense Industry*. Massachusetts Institute of Technology. May 14, 2015. http://mitsloan.mit.edu/actionlearning/media/documents/s-lab-projects/Lockheed_Martin-Report-2015.pdf

OECD. 2007. *Bribery in Public Procurement: Methods, Actors and Counter-Measures*. OECD Publishing, Paris. <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/44956834.pdf>

OECD. 2016. *2016 Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption*. <http://www.oecd.org/corruption/oecd-recommendation-for-development-cooperation-actors-on-managing-risks-of-corruption.htm>

OECD. 2009. *OECD Principles for Integrity in Public Procurement*. OECD Publishing, Paris. <http://www.oecd.org/gov/ethics/48994520.pdf>

OECD. 1997. *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. OECD Publishing, Paris. http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

SLAUGHTER, A. & ZARING, D. T., *Extraterritoriality In A Globalized World*. 1997.

Strategy&. 2014. *Redesigning offsets for the 21st century How to make offsets successful*. <http://www.strategyand.pwc.com/reports/redesigning-offsets-21st-century>

TAYLOR, T. 2011. *Countertrade Offsets in International Procurement: Theory and Evidence*. *New Horizons in Public Procurement* (2011), Thai, K. (ed.), PrAcademics Press, Florida USA.

The Economist. 2013. *Guns and Sugar*. May 25, 2013.

Transparency International UK 2012. *Due diligence and corruption risk in defence industry offset programmes*. http://ti-defence.org/wp-content/uploads/2016/03/2012-02_DueDiligenceAndCorruptionRiskInOffsets.pdf

Turkey Wonk: Nuclear and Political Musings in Turkey and Beyond. 2013. *Offsets: Turkey's Military Procurement Policy*. February 18, 2013.

US Department of Commerce, Bureau of Industry and Security, *Offsets in Defense Trade, Twenty-First Study*, December 2016. <https://www.bis.doc.gov/index.php/forms-documents/pdfs/1620-twenty-first-report-to-congress-12-16/file>

WEISSMAN, H. 2014. *Offset Deals Can Pose High FCPA Risks For Defense Industry*. Law 360. October 2014.

WINDSOR, D. & GETZ, K. A. 1999. *Regional Market Integration and the Development of Global Norms for Enterprise Conduct: The Case of International Bribery*. Business & Society Business & Society, 38, 415-449.

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