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## Q2 2021: Latin America Enforcement Review

This summary is part of our regular reporting of trends and developments related to investigations and enforcement activity into fraud, corruption, and other misconduct by authorities in the United States and the Americas and reviews key developments during Q2 in 2021.

### **Continued Coordination Among U.S. Enforcement Agencies in Latin America**

Ongoing enforcement and regulatory activities undertaken by the U.S. Government continued to make headlines throughout Q2 of 2021.

In early June 2021, at the conclusion of official visits to Mexico and Guatemala, U.S. Vice President Kamala Harris announced the creation a new Department of Justice task force that will focus on pursuing investigations, prosecutions, and asset recoveries relating to corruption, as well as the training of regional law-enforcement officials across Latin America. The task force, which includes support from the U.S. Department of Homeland Security and the U.S. Department of State is intended to “enhance U.S. enforcement efforts against the most prolific and dangerous human smuggling and trafficking groups operating in Mexico and the Northern Triangle countries of Guatemala, El Salvador, and Honduras.”<sup>1</sup>

In addition to the continued focus on Latin America by the U.S. Department of Justice, which announced several plea agreements in cases with connections to Latin America during Q2, a variety of other U.S. authorities took increasingly active roles in significant investigations throughout the region, including matters related to money laundering and drug trafficking.

An interesting and recent example is the investigation into PDVSA, which we have reported on in prior quarterly updates. Specifically, the Homeland Security Investigations (HSI) unit of U.S. Immigration and Customs Enforcement is being credited for its role in the money laundering case brought against Venezuela’s Supreme Court chief justice, Maikel Jose



Moreno Perez, who was accused of accepting bribes to quash an action against an unnamed defendant.<sup>2</sup>

The Drug Enforcement Administration (DEA) also appears to be increasing its contributions to corruption-related investigations, having been credited for assisting in the prosecution of Alex Saab, a Venezuelan businessman with reported ties to President Nicolás Maduro.<sup>3</sup>

These recent developments suggest a broadened scope for certain U.S. enforcement authorities following the March 2019 announcement that the FBI, which regularly has a role in investigating FCPA matters, had created its own dedicated international corruption squad based in Miami to handle the growing number of corruption-related cases with connections to Latin America.<sup>4</sup>

### **Brazil: The Long Tail of Lava Jato and Related Enforcement Updates**

As described in our last quarterly review,<sup>5</sup> the conclusion of the Lava Jato task force in Curitiba was announced in February 2021 by the Brazilian Federal Prosecution Service (“MPF”).<sup>6</sup> More recently, in March, the MPF announced the conclusion of the Lava Jato task force in Rio de Janeiro.<sup>7</sup>

According to an April 8, 2021 statement from the MPF, the Operation Car Wash task force in Rio was formally disbanded on March 31, 2021, after almost five years of work, and after imposing 4.13 billion Reais (US \$727 million) in penalties and compensation from 180 collaboration agreements and nine leniency agreements.<sup>8</sup> The MPF also indicated that the Rio task force secured 183 convictions during its tenure. Pending matters from the now-disbanded team will now be handled by the MPF’s organized crime department, Gaeco (Grupo de Atuação Especial de Combate ao Crime Organizado), and will continue to be led by Eduardo El Hage, who previously led the now-disbanded task force.<sup>9</sup>

Despite the end of yet another chapter of Lava Jato, enforcement actions related to Brazil continue in full force both inside and outside of Brazil.

#### *Odebrecht and Braskem*

In May 2021, an indictment was unsealed in the Eastern District of New York against two Austrian bankers for their alleged roles in a money laundering scheme involving corruption at Brazilian construction company Odebrecht. The indictment charges the two defendants with participating in a scheme to defraud Brazil’s tax authority of more than \$100 million in taxes and to create slush funds that Odebrecht used to bribe officials.

The indictment describes a “secret financial structure for moving money around the world,” using layered transactions through multiple levels of offshore entities and bank accounts across the globe.<sup>10</sup> According to the charging document, the indicted bankers and others used fraudulent transactions and sham agreements to move over \$170 million from New York bank accounts in Odebrecht’s name to offshore accounts held by shell companies where the money would be used for bribes, in a scheme that ran from 2006 to 2016.<sup>11</sup>

Relatedly, on April 15, 2021, the U.S. Department of Justice announced that Jose Carlos Grubisich, the former CEO of Braskem S.A., a publicly traded Brazilian petrochemical company and a subsidiary of Odebrecht, pleaded guilty before a federal court in Brooklyn.<sup>12</sup> Grubisich admitted to a broad scheme to create a slush fund used to pay government officials and political parties in Brazil to obtain business, and to conspiring to violate the anti-bribery and books and records provisions of the FCPA.

According to the U.S. Department of Justice, approximately \$250 million were diverted through the slush funds. Pursuant to the terms of a plea agreement, Grubisich has agreed to pay approximately \$2.2 million in forfeiture. Acting United States for the Eastern District of New York Attorney Mark J. Lesko noted that “[the] Office is committed to the prosecution of corrupt gatekeepers, including officers and directors of public companies, who, like Grubisich, use the



United States' financial system to commit crimes" and that the guilty plea "demonstrates the Department's commitment to holding individuals accountable for corrupt and fraudulent conduct, including those at the highest corporate echelons."<sup>13</sup>

#### *Amec Foster Wheeler Energy Limited*

On June 25, 2021, the British multinational consultancy, engineering, and project management company Amec Foster Wheeler agreed to pay approximately \$41 million to the U.S. Department of Justice and the U.S. Securities and Exchange Commission in penalties and disgorgement to resolve FCPA matters related to conduct in Brazil.

As part of the resolution, the company entered into a three-year deferred prosecution agreement with the U.S. Department of Justice. The DPA requires the company to pay more than \$18 million to resolve charges related to the bribery scheme.<sup>14</sup> The company was charged with one count of conspiracy to violate the anti-bribery provisions of the FCPA. According to the DPA, between 2011 and 2014, Amec Foster Wheeler conspired with an Italian sales agent affiliated with a Monaco-based intermediary to bribe decision-makers at Brazil's state-owned Petrobras in exchange for a \$190 million contract to design a gas-to-chemicals complex.

According to the U.S. Securities and Exchange Commission order dated June 25, the company was charged with violating the FCPA's books and records and internal accounting controls provisions.

The resolutions were coordinated with the U.S. Securities and Exchange Commission, the U.S. Department of Justice, the Brazil Controladoria-Geral da União (CGU)/Advocacia-Geral da União (AGU) and the MPF, and the United Kingdom Serious Fraud Office (SFO).<sup>15</sup> As part of the settlement, Amec Foster Wheeler agreed to pay \$22.7 million in disgorgement and prejudgment interest. The SEC's order provides for offsets for up to \$9.1 million of any disgorgement paid to the CGU/AGU and the MPF in Brazil and up to \$3.5 million of any disgorgement paid to the SFO in the United Kingdom. Therefore, the company's minimum payment to the SEC would be approximately \$10.1 million.

#### **Mexico's Anti-Corruption Efforts**

##### *Pemex*

The ongoing investigations into allegations of corruption related to the Mexican state-owned petroleum firm, Pemex, continued during Q2 of 2021. In April, the chairman of Mexican steelmaker Altos Hornos de México (AHMSA) and so-called "King of Steel," Alonso Ancira, agreed to pay \$216.7 million to Pemex as part of a resolution of corruption and bribery-related charges that stem from the sale of the long-dormant Agro Nitrogenados fertilizer plant to Pemex. The fertilizer plant, located in Veracruz, was sold by the steelmaker to Pemex in 2012 at a premium of more than \$200 million.

Ancira, who had previously been extradited to Mexico from Spain, was released from his prison sentence by a federal judge in Mexico pending his payment of the criminal fine over the next several years. President López Obrador has publicly stated that the funds paid by Ancira will be used to buy fertilizer for agricultural producers throughout Mexico.<sup>16</sup>

##### *IMSS*

In May 2021, the Instituto Mexicano Del Seguro Social (IMSS), a Mexican government agency that provides healthcare services, petitioned the United States' Courts of Appeal for the Sixth and Seventh Circuits to consider whether the agency can pursue claims for damages under U.S. law stemming from FCPA violations allegedly committed by medical device manufactures against Mexican officials.<sup>17</sup>

The appeals follow denial of requests for compensation by separate district courts, which both held that Mexico was the better venue for the lawsuits.



In the appeals, IMSS claims that the district courts erred in their decisions because they failed to properly consider the United Nations Convention Against Corruption, to which both Mexico and the United States are signatories. The Convention requires member countries to allow their courts to order companies and individuals to pay damages to member states who suffered harm. The UN Office on Drugs and Crime is said to be preparing a court filing that will support IMSS's position.<sup>18</sup>

*U.S.-Mexico Cooperation*

On April 27, U.S. Attorney General Merrick B. Garland and Mexico Attorney General Alejandro Gertz Manero affirmed their commitment to work together to address law enforcement matters that impact the people and communities of the United States and Mexico, during a call held on that date. In particular, they discussed the need to continue bilateral cooperation to fight organized and transnational crime, and to disrupt the supply chains of illegal and illicit drugs. Other areas to further strengthen bilateral cooperation were also highlighted, including firearms tracking, illicit finance, and human smuggling and traffickers.<sup>19</sup>



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<sup>1</sup> <https://www.justice.gov/opa/pr/attorney-general-announces-initiatives-combat-human-smuggling-and-trafficking-and-fight>

<sup>2</sup> Lines blur between US agencies on corruption cases (April 1, 2021), <https://globalinvestigationsreview.com/just-anti-corruption/lines-blur-between-us-agencies-corruption-cases/>;

<sup>3</sup> *Id.*

<sup>4</sup> FBI creates Miami team after overload of South American corruption cases (March 14, 2019), <https://globalinvestigationsreview.com/just-anti-corruption/fbi-creates-miami-team-after-overload-of-south-american-corruption-cases>

<sup>5</sup> <https://www.kslaw.com/news-and-insights/q1-2021-latin-american-enforcement-review>

<sup>6</sup> MPF, Lava Jato passa a integrar o Grupo de Ação Especial de Combate ao Crime Organizado no Paraná, (February 3, 2021), <http://www.mpf.mp.br/pr/sala-de-imprensa/noticias-pr/lava-jato-passa-a-integrar-o-gaeco-no-parana/view>

<sup>7</sup> Força-tarefa da Lava Jato no Rio de Janeiro recuperou R\$ 4,13 bi em colaborações e leniência (April 8, 2021), <http://www.mpf.mp.br/rj/sala-de-imprensa/noticias-rj/forca-tarefa-da-lava-jato-no-rio-de-janeiro-recuperou-r-4-13-bi-em-colaboracoes-e-leniencia>

<sup>8</sup> *Id.*

<sup>9</sup> Após cinco anos e 55 operações, Lava Jato do Rio também chega ao fim como força isolada (March 31, 2021), <https://politica.estadao.com.br/blogs/fausto-macedo/apos-cinco-anos-e-55-operacoes-lava-jato-do-rio-tambem-chega-ao-fim-come-forca-isolada/>

<sup>10</sup> Indictment available at <https://www.moneylaunderingnews.com/wp-content/uploads/sites/12/2021/05/Indictment.pdf>

<sup>11</sup> *Id.*

<sup>12</sup> Former CEO of Braskem Pleads Guilty to Bribery (April 15, 2021), <https://www.justice.gov/usao-edny/pr/former-ceo-braskem-pleads-guilty-bribery>

<sup>13</sup> *Id.*

<sup>14</sup> Amec Foster Wheeler Energy Limited Agrees to Pay Over \$18 Million to Resolve Charges Related to Bribery Scheme in Brazil (June 25, 2021), <https://www.justice.gov/opa/pr/amec-foster-wheeler-energy-limited-agrees-pay-over-18-million-resolve-charges-related-bribery>

<sup>15</sup> SEC Charges Amec Foster Wheeler Limited With FCPA Violations Related To Brazilian Bribery Scheme (June 25, 2021), <https://www.sec.gov/news/press-release/2021-112>

<sup>16</sup> El 'rey del acero' Alonso Ancira sale de prisión tras acordar el pago de 216 millones de dólares a Pemex (April 20, 2021), <https://elpais.com/mexico/2021-04-19/el-rey-del-acero-alonso-ancira-saldra-de-prision-tras-acordar-el-pago-de-216-millones-de-dolares-a-pemex.html>

<sup>17</sup> A Mexican agency's dogged pursuit of life sciences companies over FCPA violations (May 12, 2021) <https://globalinvestigationsreview.com/just-anti-corruption/fcpa/mexican-agencys-dogged-pursuit-of-life-sciences-companies-over-fcpa-violations>

<sup>18</sup> A Mexican agency's dogged pursuit of life sciences companies over FCPA violations (May 12, 2021) <https://globalinvestigationsreview.com/just-anti-corruption/fcpa/mexican-agencys-dogged-pursuit-of-life-sciences-companies-over-fcpa-violations>

<sup>19</sup> Readout of U.S. Attorney General Merrick B. Garland's Call with Mexico Attorney General Alejandro Gertz Manero (April 27, 2021), <https://www.justice.gov/opa/pr/readout-us-attorney-general-merrick-b-garland-s-call-mexico-attorney-general-alejandro-gertz>