Time for China to step up to global anti-corruption responsibilities

China, the world's largest exporter, is failing to enforce its own laws on foreign bribery. Gillian Dell believes that China should join the major exporting nations to take action against foreign bribery.
Chinese exports have been in the spotlight recently, thanks to the US-China trade war that has seen enormous tariffs imposed on Chinese goods entering the US. Transparency International has been looking at China’s exports too but for a different reason, namely because of its inaction against criminal activity that could skew the entire playing field of international trade which important treaties and conventions are meant to protect.

**Exporting Corruption 2018**

Our new report, *Exporting Corruption 2018*, assesses country enforcement against foreign bribery in line with obligations in the OECD Anti-Bribery Convention. It classifies 44 countries into four bands of enforcement based on the data available regarding how much they investigate and prosecute companies that pay bribes to win business abroad.

Although China is not a signatory to the OECD Convention, we included it along with three other major Asian exporters - Hong Kong, India and Singapore – because, together, these four jurisdictions are responsible for more than 16 per cent of global exports.

The results show that China, the world’s largest exporter, with over 10 per cent of global exports, is failing to enforce its own laws on foreign bribery. According to the information available, there have been no investigations or charges ever laid in China against its companies, citizens or residents for foreign corrupt practices.

At the same time, Chinese companies and individuals have been the subject of publicly reported corruption investigations and charges laid in numerous countries, including Algeria, Bangladesh, Ethiopia, Kenya, Philippines, Sri Lanka, the United States and Zambia.
The Chinese companies ZTE, China Sonangol, China International Fund, China Nuclear Industry Fifth Construction Co., Ltd., China Machinery Industry Construction Group, Inc, Zhonghui International Mining Group, China State Construction Engineering Corporation and China Communications Construction Company, among many others have been named in reports.

Just recently, prosecutors in Kenya charged three Chinese men with trying to bribe detectives investigating fraud involving ticket sales on a US $3.2 billion railway built by a Chinese company. The men are senior employees with China Roads and Bridges Corporation, the company that constructed and runs the railway opened last year.

China should join the major exporting nations that are taking action against foreign bribery.
between Nairobi and the port of Mombasa. The case is of special interest because it provides an example of an effort to undermine the justice system in Kenya.

In our report, we recommend that China become a party to the OECD Anti-Bribery Convention, something the G20 has repeatedly called for and the OECD has been working towards for many years.

Although China has an international law obligation to enforce against foreign bribery under the UN Convention against Corruption, that treaty’s review mechanism lacks the depth of reviews and the formal follow-up to be found in the OECD Working Group on Bribery’s review process for the OECD Convention.

**The Belt and Road Initiative**

In response to our recommendation that China become a party to the OECD Anti-Bribery Convention, one commentator stated that for China “corruption and whatever way they can influence other governments is, in effect, part of their foreign policy...they see it as one among many tools to extend the influence of China around the world, from the Silk Road to Africa to other areas of the world.”

This reflects some of the concerns that exist about China’s Belt and Road Initiative, a programme through which China is spearheading the funding and construction of new infrastructure and trade networks across Eurasia and Africa, aiming at an investment of more than US$1 trillion for projects across over 70 countries.

However, the statement quoted is overly cynical and short-sighted. It is not unreasonable to expect that China will sooner or later recognise that it is not in its self-interest to conduct a foreign and trade policy that discredits the country’s business representatives as corrupt partners.
With the international community trying to pull together to combat corruption, using corruption as a tool for winning business around the world is not a winning foreign policy formula. One need only look to Malaysia’s break with China and cancellation of projects following the change of government in that country. Or at voters’ recent rejection of the Maldives’ corruption-accused and China-backed president in September’s election. There has also been criticism of Chinese projects in Myanmar and Sri Lanka.

One commentator has listed four good reasons why it is in the Chinese government’s interest to tackle corruption in the Belt and Road Initiative, namely that:

1. it will make the programme more effective which will also offer security benefits;
2. it will enhance China’s soft power by producing projects that actually generate goodwill;
3. efforts to counter corruption overseas and at home are complementary; and
4. a clean Belt and Road Initiative will have greater international legitimacy.

Another commentator has outlined three reasons why China should start enforcing its foreign bribery law aggressively. He argues that foreign bribery by Chinese companies is detrimental to China’s foreign policy given that it is more and more widely known; that prosecuting foreign bribery could promote a culture of corporate integrity at home by sending the message that bribery is not acceptable in any circumstance; and that committing to prosecuting foreign bribery will demonstrate goodwill that will encourage other countries to assist China’s anti-corruption efforts.
Developments in China
Under President Xi Jinping, China has undertaken a very robust – and controversial - anti-corruption campaign domestically, recognizing its importance for the health of the country’s economy and its institutions.

There are signs that China may also be recognising, as it should, the importance of collective efforts to combat international corruption in order to build a healthier global economy and credible institutions around the world.

In 2011, the Chinese government criminalised the bribery of foreign officials by individuals and businesses in China, as well as by Chinese citizens located outside China, through an amendment to Article 164 of the Criminal Law. This was intended to fulfil China’s obligations as a state party to the UN Convention against Corruption.

However, there are weaknesses in this legal framework. The Criminal Law does not define several key terms in Article 164 and that article also does not appear to expressly prohibit the offering or promising of bribes nor to contain an explicit prohibition of *indirect* payment of bribes to foreign officials (eg. through a third party) or explicitly cover companies’ liability for actions of their subsidiaries.

The 2016 official review of China’s implementation of the UN Convention Against Corruption found that in relation to UNCAC Article 16(1), China should ensure that “the similarities of bribery of foreign and national public officials are taken into account in order to maintain necessary consistency in the criminalisation of these two types of acts.”

The Chinese government has recently signalled that it may focus more on foreign bribery enforcement. China’s Central Commission for Discipline Inspection and Ministry of Supervision held a symposium together with the World Bank in 2017, which focused in part on best practices to mitigate potential corruption risks associated with the Belt and Road initiative.
In December 2017, five departments, led by the National Development and Reform Commission, issued guidelines for overseas investment by private Chinese firms, which included a requirement that Chinese firms do not bribe local officials overseas.

In addition, the State-owned Assets Supervision and Administration Commission (“SASAC”), the agency overseeing companies owned by the central government, issued Guidance on Strengthening the Control of Overseas Corruption Risk in Centrally Owned Enterprises, which requires centrally owned companies to strengthen their anti-corruption compliance system.

Furthermore, in January 2018, Hao Peng, the Party Chief of SASAC announced that the agency would strengthen the investigation and punishment of foreign corruption by centrally owned companies or their foreign subsidiaries.

The way forward
China is not alone in its poor performance in foreign bribery enforcement; 21 of the other countries evaluated in TI's 2018 Exporting Corruption report also fall into the lowest enforcement category. These countries should also up their game.

But as the world's leading exporter, China has a special responsibility since the practices of China's companies abroad have a significant influence on global trade practices. As long as China does not enforce hard-won international standards for conducting business, competitors from countries that do enforce will find themselves disadvantaged.
This may lead to a reduction in enforcement worldwide, destabilising the global marketplace and triggering a race to the bottom. The time has come for China to join the major exporting nations that are taking action against foreign bribery. Encouraging recent signals from China should be translated into a stronger legal framework and robust enforcement action.

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Endnotes
3. http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402612_text. For individuals responsible, penalties range from criminal detention and a monetary fine to imprisonment for 10 years with monetary fines depending on the amount of bribe. For business entities, penalties are monetary fines.
4. For example, at the opening ceremony of the Belt and Road Forum for International Cooperation in May 2017, Chinese President Xi Jinping called for strengthening “international counter-corruption cooperation” so that the Belt and Road initiative has “high ethical standards.”