

## Ball Corporation

**Case ID:**

ST-60

**Case Cluster :**

Ball Corporation

**Jurisdiction of Settlement:**

United States

**Jurisdiction of Settlement / Enforcement Agency:**

Securities and Exchange Commission

**Jurisdiction of Foreign Public Official(s) :**

Argentina

**Year of Settlement:**

2011

**Month/Day of Settlement (or Notes):**

03/24

**Other Jurisdictions of Settlement:**

Unknown

**Settlement with Individual or Legal Person?:**

Legal Person

**Type of Settlement:**

Civil

**Legal Form of Settlement:**

Consent to Cease-and-Desist Order

**Monetary Sanctions (Types):**

Civil Penalty

**Total Monetary Sanctions (US\$):**

\$300,000.00

**Civil Disgorgement of Profits (US\$) :**

\$0

**Civil Prejudgment Interest (US\$) :**

\$0

**Civil Fine / Penalty (US\$):**

\$300,000

**Monetary Sanctions Returned / Ordered Returned (US\$):**

\$0

**UNCAC Articles(s) Implicated:**

Art.16

Art.26

**OECD Anti-Bribery Convention Articles Implicated:**

Art. 1, Art. 2, Art. 8

**Offenses - Alleged:**

Falsification of books and records, Internal controls violations

**Offenses - Settled:**

No admission or denial of alleged offenses

**Public Procurement Contract / SOE Involved?:**

No (Customs)

**Summary:**

According to the June 2011 United States Report to the OECD, Ball Corporation, "entered into a settlement with the SEC pertaining to the company's alleged violations of the books and records and internal controls provisions of the FCPA. According to the SEC's cease-and-desist order, after Ball acquired an Argentine company, Fornamental, S.A. in March 2006, certain accounting personnel at Ball learned that Fornamental employees may have made questionable payments and caused other compliance problems before the acquisition. Despite learning of these payments after the acquisition, Ball failed to take sufficient action to ensure that such activities did not recur at Fornamental. Within months of Ball's acquisition of Fornamental, two Fornamental executives, the then-Fornamental President and then-Fornamental Vice President of Institutional Affairs - authorized improper payments to Argentine officials. Specifically, in the period between July 2006 and October 2007, Fornamental's senior officers authorized at least ten unlawful payments totaling approximately \$106,749 to Argentine government officials. These payments were intended to induce government custom officials to circumvent Argentine laws prohibiting the importation of prohibited used machinery, equipment and parts and also to secure the exportation of raw materials at reduced tariffs. Fornamental's bribes were funneled through a third party customs agent, who often included the bribes on invoices sent to the company. The bribes often appeared on the invoices as separate line items described inaccurately as "fees for customs assistance "customs advisory services," "verification charge," or simply "fees." According to the SEC's order, the true nature of these payments was then mischaracterized as ordinary business expenses on Fornamental's books and records." (Source: US Report to the Organisation for Economic Co-operation and Development, "Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions," Information as of May 31, 2011, Ball Corporation Case Summary, at 19-20.)

**Sources :**

US Report to the Organisation for Economic Co-operation and Development, "Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions," Information as of May 31, 2011, Ball Corporation Case Summary, at 19-20, accessed at <http://www.oecd.org/dataoecd/18/8/42103833.pdf>. In the Matter of Ball Corporation, Order Instituting Cease and Desist Proceedings, Administrative Proceeding File No. 3-14305 (March 24, 2011), accessed at <http://www.sec.gov/litigation/admin/2011/34-64123.pdf>