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Clayton Questions International Cooperation

The rise in international cooperation has been a constant theme in speeches from top FCPA officials in both the SEC and DOJ for some time now, but SEC Chairman Jay Clayton recently took a different stance on the global state of play.

Charles Cain, Chief of the SEC's FCPA Unit, has been a vocal cheerleader for the SEC's efforts at working across jurisdictions. "The fuse was lit a long time ago," he [said during a November 2018 conference](#), "and we are seeing the outgrowth of that with the coordinated global resolutions." A meeting of 200 enforcement officials from 40 countries took place soon after that and, in December 2018, at another conference, [Cain said](#) the audience would be shocked by some of the countries that participated wholeheartedly in that event.

The DOJ has been similarly vocal about the value of coordinating efforts with overseas colleagues. Deputy Assistant Attorney General Matthew Miner, in a June 2019 [speech](#), credited global collective efforts for the [Technip](#) and [MTS](#) resolutions. Other significant multilateral actions include [Odebrecht](#), [SocGen](#), [Keppel](#), [Telia](#) and [Rolls-Royce](#). In fact, increasing global enforcement may have been a factor that led to the DOJ's issuance of its "anti-piling on policy," [in which it reassured companies](#) that it will consider the fines of other agencies and countries when coming to resolutions. Our readers consistently cite the difficulty of managing investigations on multiple fronts and negotiating parallel resolutions, and we have featured [many articles](#) on [strategies](#) to handle those challenges.

Despite all this, in a speech on September 9, 2019, echoing a paper he [wrote](#) in 2011, Chairman Clayton said that the U.S. is "acting largely alone" in its vigorous FCPA enforcement "and other countries may be incentivized to play, and I believe some are in fact playing, strategies that take advantage of our laudable efforts." He said he has not seen any "meaningful improvement" in international cooperation, aside from a few "isolated indicia." The "FCPA-driven withdrawal" of companies from certain jurisdictions is top of mind for him, he noted.

Despite Clayton's criticism, he emphasized that no change in enforcement is forthcoming. As always, we will be monitoring enforcement closely to see if his assurances are borne out and analyzing the international enforcement climate from many angles.

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