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DEC 20 2013

CLERK OF THE COURT  
U.S. DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
URBANA, ILLINOIS

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
URBANA DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ALFRED C. TOEPFER INTERNATIONAL )  
 (UKRAINE) LTD., )  
 )  
 Defendant. )

CRIMINAL NO. 13-20062

Count 1: 18 U.S.C. § 371  
(Conspiracy to Violate the Anti-  
Bribery Provisions of the Foreign  
Corrupt Practices Act,  
15 U.S.C. § 78dd-3)

**INFORMATION**

The United States charges that, at all times relevant to this Information, unless otherwise stated:

COUNT ONE  
Conspiracy  
(18 U.S.C. § 371)

1. The Foreign Corrupt Practices Act of 1977, as amended, Title 15, United States Code, Sections 78dd-1, *et seq.* ("FCPA"), was enacted by Congress for the purpose of, among other things, making it unlawful for certain classes of persons and entities to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official for the purpose of assisting in obtaining or retaining business for or with, or directing business to, any person.

2. At certain times between in or around 2002 and in or around 2008, the Ukrainian government did not have the money to pay value-added tax ("VAT") refunds that it owed to companies that sold Ukrainian goods outside of Ukraine.

3. During this period, Alfred C. Toepfer International (Ukraine) Ltd. (“ACTI Ukraine”), described more fully below, was located in Ukraine and sold commodities both in and outside of Ukraine. In order to obtain VAT refunds from the Ukrainian government, ACTI Ukraine, with the help of its affiliate, Alfred C. Toepfer International G.m.b.H. (“ACTI Hamburg”), described more fully below, paid third-party vendors to pass on nearly all of that money as bribes to government officials.

4. In order to disguise the bribes, ACTI Ukraine and ACTI Hamburg devised several schemes involving the use of Vendor 1 and Vendor 2, described more fully below. In some instances, ACTI Ukraine and ACTI Hamburg paid Vendor 1, a vendor that provided export-related services for ACTI Ukraine, to pass on nearly all the money they paid it as bribes to Ukrainian government officials in exchange for those officials’ assistance in obtaining VAT refunds for and on behalf of ACTI Ukraine. In addition, ACTI Ukraine purchased unnecessary insurance policies from Vendor 2 so that Vendor 2 could use nearly all of that money to pay bribes to Ukrainian government officials in exchange for those officials’ assistance in obtaining VAT refunds for and on behalf of ACTI Ukraine.

5. In total, ACTI Ukraine, ACTI Hamburg, and their executives, employees, and agents paid roughly \$22 million to Vendor 1 and Vendor 2 to pass on nearly all of that money to Ukrainian government officials to obtain over \$100 million in VAT refunds. These VAT refunds gave ACTI Ukraine a business advantage resulting in a benefit to ACTI Ukraine and ACTI Hamburg of roughly \$41 million.

6. In furtherance of the bribery scheme, employees from ACTI Ukraine and its co-conspirators, while in the territory of the United States, and specifically in the Central District of Illinois, communicated in-person, via telephone, and via electronic mail (“e-mail”) with

employees of ACTI Ukraine's and ACTI Hamburg's parent company, Archer Daniels Midland Company ("ADM"), which owned an 80% share of the ACTI entities, about the accounting treatment of VAT refunds in Ukraine. During those communications, the ACTI employees mischaracterized the bribe payments as "charitable donations" and "depreciation."

Relevant Entities and Individuals

7. ADM was headquartered in Decatur, Illinois and incorporated in Delaware. ADM issued and maintained a class of publicly traded securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 781), which traded on the New York Stock Exchange and, therefore, was an "issuer" within the meaning of the Foreign Corrupt Practices Act ("FCPA"), 15 U.S.C. § 78dd-1. ADM manufactured and sold protein meal, vegetable oil, corn sweeteners, flour, biodiesel, ethanol, and other value-added food and feed ingredients, and processed oilseeds, corn, wheat, cocoa, and other agricultural commodities.

8. ACTI Ukraine was an indirect 80%-owned subsidiary of ADM headquartered in Ukraine. ACTI Ukraine traded and sold commodities in and outside of Ukraine. Employees of ACTI Ukraine and its co-conspirators traveled to the United States on business and communicated with ADM employees in the United States in person, via e-mail, and via the telephone regarding the VAT refunds in the Ukraine.

9. ACTI Hamburg was an indirect 80%-owned subsidiary of ADM headquartered in Germany. ACTI Hamburg traded and sold commodities in and outside of Germany. Employees of ACTI Hamburg and its co-conspirators traveled to the United States on business and communicated with ADM employees in the United States in person, via e-mail, and via the telephone regarding the VAT refunds in the Ukraine.

10. Vendor 1 was a U.K. export company that used both truck and rail services for the export of goods from Ukraine. From 2002 to 2008, ACTI Ukraine and ACTI Hamburg retained Vendor 1 to provide export-related services.

11. Vendor 2 was a Ukrainian insurance company that provided insurance policies for, *inter alia*, commodities. From 2007 to 2008, ACTI Ukraine made payments to Vendor 2, which it claimed were for insurance policies for ACTI Ukraine's commodities.

#### The Conspiracy

12. Paragraphs 1 through 11 are realleged and incorporated by reference as though fully set forth herein.

13. From in or around 2002, and continuing through in or around 2008, the defendant, ACTI Ukraine, did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly conspire, confederate and agree with ACTI executives and employees, Vendor 1, Vendor 2, and others, known and unknown, to commit an offense against the United States, that is, while in the territory of the United States, in the Central District of Illinois and elsewhere, to willfully and corruptly make use of the mails and means and instrumentalities of interstate commerce and to do any other act in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value, to a foreign official, and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised to a foreign official, for purposes of: (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and agencies and

instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist ACTI Ukraine, ACTI Hamburg, ACTI executives and employees, Vendor 1, Vendor 2, and others in obtaining and retaining business for and with, and directing business to, ACTI Ukraine and others, in violation of Title 15, United States Code, Section 78dd-3(a).

Purpose of the Conspiracy

14. The purpose of the conspiracy was to obtain VAT refunds from the government of Ukraine for ACTI Ukraine by paying amounts to Vendor 1 and Vendor 2 for the purpose of passing on nearly all of that money as bribes to Ukrainian government officials in exchange for those officials' assistance in obtaining VAT refunds for and on behalf of ACTI Ukraine.

Manner and Means of the Conspiracy

15. The manner and means by which ACTI Ukraine, ACTI Hamburg, and their co-conspirators sought to accomplish the purpose of the conspiracy included, among other things, the following:

16. ACTI Ukraine and ACTI Hamburg, through their employees, discussed in person, via telephone, and via e-mail making payments to Vendor 1 and Vendor 2 for the purpose of passing on nearly all of that money as bribes to government officials in Ukraine in order to obtain VAT refunds for and on behalf of ACTI Ukraine.

17. ACTI Ukraine and ACTI Hamburg, through their employees, offered to pay, promised to pay and authorized payments to Vendor 1 and Vendor 2 for the purpose of passing on nearly all of those payments as bribes to Ukrainian government officials in exchange for those officials' assistance in obtaining VAT refunds for and on behalf of ACTI Ukraine.

18. ACTI Ukraine and ACTI Hamburg, through their employees, disguised the bribe payments by funneling the payments through Vendor 1 and Vendor 2.

19. ACTI Ukraine and ACTI Hamburg, through their employees, paid Vendor 1 for export-related services when, in fact, the purpose of a number of those payments to Vendor 1 was so that Vendor 1 could use nearly all of that money to pay bribes to Ukrainian government officials in exchange for those officials' assistance in obtaining VAT refunds for and on behalf of ACTI Ukraine.

20. ACTI Ukraine, through its employees, purchased unnecessary insurance policies from Vendor 2 so that Vendor 2 could use nearly all of that money to pay bribes to Ukrainian government officials in exchange for those officials' assistance in obtaining VAT refunds for and on behalf of ACTI Ukraine.

21. ACTI Ukraine and ACTI Hamburg, through their employees, while in the Central District of Illinois, communicated in-person, via telephone, and via e-mail with ADM executives about the accounting treatment of VAT refunds in Ukraine and, during those discussions, mischaracterized the bribe payments as "charitable donations" and "depreciation."

Overt Acts

22. In furtherance of the conspiracy and to achieve its purpose and object, at least one of the conspirators committed, and caused to be committed, in the Central District of Illinois and elsewhere, the following overt acts, among others:

23. In or around July 2002, executives from ACTI Hamburg traveled to ADM's headquarters in Decatur, Illinois for business meetings. In one of those meetings, these ACTI executives met with executives from ADM's tax department and discussed ACTI Ukraine's ability to recover VAT refunds and the way in which ACTI Ukraine was accounting for the

write-down of those refunds. During this discussion, the ACTI Hamburg executives stated that the way in which ACTI Ukraine was recovering its VAT refunds was by making charitable donations. ACTI Ukraine was not making such donations in conjunction with VAT recovery. In fact, ACTI Ukraine was writing down its VAT receivable based upon anticipated payments to Vendor 1.

24. On or about January 12, 2007, an executive at ADM sent an e-mail to executives at ACTI Hamburg and ACTI Ukraine about a reserve being carried on ACTI's books regarding VAT refunds in 2006, and asked, "Regarding the provision for the VAT receivable, I was wondering if there was any formula you used to come up with the 20% provision, perhaps based on the ageing of the amounts due?"

25. On or about January 12, 2007, in response to the e-mail referenced in Paragraph 24 above, an executive from ACTI Hamburg sent an e-mail stating, "On the one hand, we have – most probably – to pay a price for recovering the VAT from the authorities. The price range, which we heard about is between 10% up to 35% in some regions....The depreciation of 20% is an estimation – to the best of our actual knowledge – about the costs, which we have to spend for recovering about 5% interest and about 15% real costs for recovering."

26. On or about January 22, 2007, ACTI Ukraine obtained a VAT refund of roughly \$11.1 million from the Ukraine government.

27. On or about January 23, 2007, ACTI Hamburg made a payment of roughly \$2 million to Vendor 1, which was approximately eighteen (18) percent of the VAT refund that ACTI Ukraine received the day before, for the purpose of passing on nearly all of that money to government officials in exchange for paying the VAT refund to ACTI Ukraine.

28. On or about January 23, 2007, an ACTI Hamburg employee sent an e-mail to an ADM executive in Decatur, Illinois, copying executives from ACTI Hamburg, stating, "I'd like to confirm you [sic] the VAT amount refunded on January 23rd, 2007: It is UAH 56.2 mln. (or approx. USD 11.1 mln.) All yours in case of questions."

29. On or about January 23, 2007, one of the notified executives referred to in Paragraph 28 above sent an e-mail to other ADM executives, stating, "Can you find out what the basis of payment was. Does it catch-up ACTI's claims through a certain point in time or was it based on some % of the amount owed?"

30. On or about January 23, 2007, an ADM executive responded to the e-mail referenced in Paragraph 29 above and stated, "I spoke with [an executive at ACTI Hamburg] and he said this is from 2005...but the collection came with a price, the price being the government required a 'depreciation' (as [the ACTI Hamburg executive] called it) of 18%.....basically, the companies owed the money from the government had to write off 18% to collect this amount. He is hopeful there is no more 'depreciation' but he does not have a clear picture as to when the payment might be received or how the govt will settle the balance."

31. On or about January 26, 2007, ACTI Ukraine obtained a VAT refund of roughly \$28 million from the Ukraine government.

32. On or about January 30, 2007, ACTI Hamburg made a payment of roughly \$5 million to Vendor 1, which was approximately eighteen (18) percent of the VAT refund that ACTI Ukraine received four days earlier, for the purpose of passing on nearly all of that money to government officials in exchange for paying the VAT refund to ACTI Ukraine.

33. On or about January 30, 2007, an executive from ACTI Hamburg sent an e-mail to two ADM executives in Decatur, Illinois, stating, "Just to give you a further up-date:



Meanwhile, we have received further VAT-amounts of UAH 152.2 million (= EUR 22.8 million). Costs for this transaction amount to 18%. We are covered by our depreciation, which we have booked as per end of November 2006.” In fact, ACTI Ukraine’s VAT refund had been reduced by the amount of payments made to Vendor 1, not because of some offset for depreciation.

34. On or about January 30, 2007, an employee from ACTI Hamburg sent an e-mail to another employee from ACTI Hamburg, stating, “Please send me an overview of the completed VAT numbers as soon as you can, the corresponding payments to [Vendor 1], and the percentage.”

35. On or about January 30, 2007, the ACTI employee responded to the e-mail referenced in Paragraph 34 above, and stated, “I’m not going to put anything in writing, but I have calculated it and will give you copies.”

36. On or about May 4, 2007, an executive from ACTI Hamburg sent an e-mail to an executive from ACTI Ukraine, stating, “After our discussions in Hamburg, you wanted to present 1-3 alternative models for ‘VAT costs’ because the ‘insurance solution’ cannot be considered a durable local solution. What local solution can you propose?”

37. On or about January 25, 2008, an executive from ACTI Hamburg sent an e-mail to two other ACTI Hamburg executives, and stated, “[An executive from ACTI Ukraine] informed me that he was just told by his head bookkeeper that ACTI Kiev was informed that it would not receive any more refunds of VAT. The people in this organization have been replaced in the meantime. This is about new people, who have led me to understand that it is necessary to participate in new programs (such as insurance) in order to get more refunds in the future. At the moment, we have been taken out of the refund procedure! I have informed [the ACTI Ukraine

executive] about the status of our current audit and asked him to get alternatives and present them. There is no way that cash arrangements are possible! [The ACTI Ukraine executive] is worried now (why not before?) that we will sit on the prorated VAT if we use an export program. These are very large sums.”

38. On or about February 6, 2008, an executive from ACTI Hamburg sent an e-mail to another executive from ACTI Hamburg attaching a memo which stated, “(a) A call just came in from [an executive from ACTI Ukraine]. He just got an offer from someone to set up VAT refunds at a price 3% lower than the current arrangement. [The ACTI Ukraine executive] cannot say what documentation we would receive. He is showing no change in providing additional insurance that would then propel the cash transaction. I refused, because for me the documentation is more important than the price. In addition, he expects even higher quota shares if needed (the \$6.00 p.to. costs). That is to be paid when the license is issued; physical export comes later. I refuse to pay [Vendor 1] in advance! He will do some more checking about whether he can do something about freight. (b) Thirty minutes later, another conversation with [the ACTI Ukraine executive] . . . The existing insurance money will now be used for VAT refunds.”

39. On or about February 19, 2008, an executive from ACTI Ukraine sent an e-mail to an executive from ACTI Hamburg, and stated, “Discussed with [an executive from ACTI Ukraine] and yes he . . . confirmed under old system coverage possible. For new crop we will need as well [Vendor 1] system reinstated. [Vendor 1] promised to talk to [an executive from ACTI Hamburg].”

40. On or about February 19, 2008, an executive from ACTI Hamburg sent an e-mail to an executive from ACTI Ukraine, stating, "Please stop further VAT repayments without having a clean/acceptable documentation."

41. On or about August 20, 2008, an executive from ACTI Ukraine sent an e-mail to two executives from ACTI Hamburg, stating, "Here is the status and the choice of solutions regarding insurance and VAT in Ukraine. . . . Local insurance through [Vendor 2]. The contracts completed here, either sporadically or ad hoc, include no kind of insurance protection, but serve the purpose only of generating a commission for the VAT repayment in this manner. Regardless of the wording of the contract, the content is completely different. That means that in a case of conflict, claims could not be made successfully. It must be clear how a contractual relationship of that sort must be evaluated from a legal point of view! Prior experience with [Vendor 2] is that the agreements have been maintained. Nonetheless, there is no experience for cooperation in insurance questions with this company."

All in violation of Title 18, United States Code, Section 371.

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