

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Richmond Division

UNITED STATES OF AMERICA,)	
)	
v.)	Criminal No.: 3:10CR225
)	
UNIVERSAL LEAF TABACOS LTDA.,)	
)	
Defendant.)	

THE UNITED STATES' SUPPLEMENTAL SENTENCING MEMORANDUM

COMES NOW the United States of America, by and through its attorneys (“the Government”), and hereby respectfully submits this Supplemental Sentencing Memorandum in support of the Plea Agreement and Sentencing Memorandum filed in the above-captioned case.

I. Procedural Background

1. On August 6, 2010, the United States filed a two-count Criminal Information against the defendant, Universal Leaf Tabacos Ltda. (“Universal Brazil” or “the Defendant”), alleging Conspiracy to Violate the Foreign Corrupt Practices Act (15 U.S.C. §§ 78dd-1, *et seq.*) (“FCPA”), in violation of Title 18, United States Code, Section 371, and a separate violation of the Foreign Corrupt Practice Act, in violation of Title 15, United States Code, Section 78dd-3. (Docket No. 1.)

2. On that same date, the parties filed a signed Plea Agreement with an attached Statements of Facts (Docket No. 3) and an Agreed Sentencing Memorandum (Docket No. 4).

3. A plea hearing was held before the Honorable Dennis W. Dohnal, United States Magistrate Judge, on August 12, 2010. At the hearing, Judge Dohnal accepted the Defendant's guilty pleas to both counts of the Criminal Information.

4. A sentencing hearing is presently set for August 24, 2010.

5. In preparation for the sentencing hearing, the Court held a conference call with the parties on August 11, 2010. Subsequently, the Court ordered the Defendant and the Government to file pleadings that explained the sales transactions underlying the charged conduct and to explain the basis of the gross revenue, gross profit, and net profit figures provided to the Court for the purpose of assessing an appropriate criminal penalty (Docket No. 10).

II. Related Civil Matter

6. On August 6, 2010, Universal Corporation, Universal Brazil's parent corporation, entered into a Consent Agreement with the U.S. Securities and Exchange Commission ("SEC") in which Universal Corporation consented to the entry of a final judgment permanently enjoining the company from violating the anti-bribery, books and records, and internal control provisions of the FCPA, and agreed to pay disgorgement and prejudgment interest totaling approximately \$4.5 million. *See SEC v. Universal Corporation*, 1:10-cv-01318 (D.D.C. August 6, 2010). The Consent Agreement resolved the civil investigation relating to the same conduct that is the basis of the current criminal prosecution pending before the Court.

III. Factual Background

7. Universal Brazil, a wholly owned subsidiary of Universal Corporation, is a tobacco merchant that purchases, processes, and sells tobacco to manufacturers of tobacco products worldwide. Universal Brazil was headquartered in Santa Cruz do Sul, Brazil and organized under the laws of Brazil.

8. From in or around March 2000, to in or around July 2004, Universal Brazil and two of its competitors entered into an agreement to pay kickbacks to representatives of the Thailand Tobacco Monopoly (TTM) in exchange for the TTM agreeing to award contracts for the sale of tobacco in Brazil exclusively to the three companies. Pursuant to this agreement, between in or around June 2000, and in or around December 2004, Universal Brazil paid approximately \$697,800 in kickbacks to representatives of the TTM through an agent. In exchange for the kickback payments, Universal Brazil was awarded five (5) orders for the sale of Brazilian leaf tobacco. As further described herein and in the Defendant's Supplemental Sentencing Memorandum of Law, the total sales amount of the five (5) sales orders was approximately \$9.8 million, the gross profit from the sales was approximately \$5.1 million, and the net profit was approximately \$2.3 million.

IV. The Plea Agreement

9. Pursuant to the Plea Agreement and through the entry of its guilty pleas, the Defendant has accepted responsibility for its criminal conduct. Further, pursuant to the Plea Agreement, the Defendant has agreed to several undertakings to help strengthen the company's compliance program in the future. Specifically, pursuant to Paragraph 8 of the Plea Agreement, the Defendant has agreed to, *inter alia*:

a. implement a compliance and ethics programs designed to detect and prevent violations of the FCPA, other anti-corruption laws, and all applicable foreign bribery laws; and

b. hire and cooperate with an independent corporate monitor.

10. In addition to these undertakings, the Defendant agreed to jointly recommend to the Court a fine of \$4.4 million as an appropriate criminal penalty in this matter.

V. Calculation of the Criminal Penalty

A. Statutory Maximum Penalty

11. The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 371 is a fine of \$500,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest, Title 18, United States Code, Sections 3571(c)(3) and (d); five years' probation, Title 18, United States Code, Section 3561(c)(1); and a mandatory special assessment of \$400, Title 18, United States Code, Section 3013(a)(2)(B).

12. The statutory maximum sentence that the Court can impose for a violation of Title 15, United States Code, Section 78dd-3 is a fine of \$2,000,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest, Title 15, United States Code, Section 78dd-3(e)(1)(A), Title 18, United States Code, Section 3571(d); five years' probation, Title 18, United States Code, Section 3561(c)(1); and a mandatory special assessment of \$400, Title 18, United States Code, Section 3013(a)(2)(B). The statutory maximum sentences for multiple counts can be aggregated and run consecutively.

B. Sentencing Guidelines Analysis

13. Pursuant to *United States v. Booker*, 543 U.S. 220 (2005), in fashioning an appropriate sentence, the Court must determine an advisory sentencing guideline range pursuant to the United States Sentencing Guidelines ("USSG"). The Court can then determine a reasonable sentence within the statutory range after considering the advisory sentencing guideline range and the factors listed in Title 18, United States Code, Section 3553(a).

14. Pursuant to Paragraph 17 of the Plea Agreement, the parties agreed that the application of the Sentencing Guidelines to the criminal charges resulted in a Guidelines fine range of \$6,300,000 – \$12,600,000 based on the following analysis:

Calculation of Offense Level:

Base Offense. Based upon USSG § 2C1.1, the total offense level is 30, calculated as follows:

(a)(2) Base Offense Level	12
(b)(1) Specific Offense Characteristic (More than one bribe)	+2
(b)(2) Specific Offense Characteristic (Value of Benefit Received between \$1 million and \$2.5 million) ¹	+16
TOTAL	<u>30</u>

Base Fine. Based upon USSG § 8C2.4(a)(1), the base fine is \$10,500,000 (fine corresponding to the Base Offense level as provided in Offense Level Table).

Calculation of the Culpability Score:

Based upon USSG § 8C2.5, the culpability score is 3, calculated as follows:

(a) Base Culpability Score	5
(b)(3) The organization had 200 or more employees and tolerance of the offense by substantial authority personnel was pervasive throughout the organization	+3
(g) The organization (A) prior to an imminent threat of disclosure or government investigation; and (B) within a reasonable amount of time after becoming aware of the offense, reported the offense, fully cooperated, and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct	- 5
TOTAL	<u>3</u>

Calculation of Fine Range:

Base Fine	\$10,500,000
Multipliers, culpability score of 3 (U.S.S.G. § 8C2.6):	0.6 – 1.2
Fine Range (U.S.S.G. § 8C2.7):	\$6,300,000 – \$12,600,000

¹ “The value of ‘the benefit received or to be received’ means the net value of such benefit.” See U.S. SENTENCING GUIDELINES MANUAL § 2C1.1, cmt. n. 3 (2004).

C. Downward Departure

15. The Government recommended a criminal penalty of \$4.4 million which is approximately 30% below the bottom of the Guidelines range. As further described in the Agreed Sentencing Memorandum, the Government submits that the proposed penalty is appropriate in this case given: (1) the Defendant's prompt and timely self-disclosure of the potentially corrupt payments; (2) the Defendant's extensive cooperation throughout the Government's investigation; (3) the remedial measures taken by the Defendant and Universal Corporation; (4) the Defendant's agreement to pay approximately \$4.5 million to settle related civil charges with the SEC; and (5) the Defendant's and Universal Corporation's agreement to continue to enhance its compliance program. The actions taken by the Defendant to cooperate in investigations and to remediate improper conduct should be encouraged and incentivized, and the Government submits that the proposed downward departure provides an appropriate recognition of the Defendant's efforts to rehabilitate its practices and procedures.

VI. Evaluation of the Profit Calculations

16. In calculating the Defendant's criminal penalty, consistent with the Sentencing Guidelines, the Government based its calculations on the Defendant's "net profit."² In reaching a determination of what constituted the net profit, the Government obtained and reviewed a substantial amount of information relating to the sales transactions, including: sales orders, invoices, and financial records.

17. Based on this review, the Government submits the following brief explanation of the factors considered to calculate the gross revenue (also referred to as "sale amount"), gross profit, and net profit.

² See U.S. SENTENCING GUIDELINES MANUAL § 2C1.1, cmt. n. 3 (2004).

- Sales amount: \$9,887,654. The sales amount is the total value of the contract price paid by the TTM to Universal Brazil for the five (5) sales orders that are the basis of the conduct charged in this case.
- Gross profit amount: \$4,731,457. The gross profit amount is the sales value minus the costs of the goods sold. The costs of goods sold included: the cost Universal Brazil incurred to subsidize the growth and purchase of the tobacco from local farmers and the cost to process, sort, and pack the tobacco.
- Net profit amount: \$2,372,954. The net profit amount is the gross profit minus overhead expenses (Selling, General and Administrative Expenses) and taxes. These expenses included: legitimate sales commissions paid to marketing and sales agents and salaries and benefits.

18. The following chart provides additional information about the breakdown of these amounts by sales order:

Year	Invoice Number	Sales Amount	Gross Profit	Net Profit
2000	TB-00/185	\$1,649,264	\$665,597	\$270,015
2001	TB-00419	\$4,560,054	\$2,484,289	\$1,167,512
2002	TB-001241	\$1,075,200	\$524,242	\$238,353
2003	TB-002051	\$1,130,880	\$631,043	\$300,075
2004	TB-003233	\$1,472,256	\$851,026	\$396,999

19. The Government confirmed that the factors used to calculate the amounts described above were based on historical data from the Defendant's internal books and records that were maintained during the relevant period of conduct, thereby ensuring that no additional factors (i.e. expenses) were included to improperly reduce the net profit calculation for purposes

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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