

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)

FILED

DEC 20 2013

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

PLEA AGREEMENT

The United States of America, by and through the Fraud Section of the Criminal Division of the United States Department of Justice and the United States Attorney’s Office for the Central District of Illinois, (collectively the “Department of Justice” or the “Department”), and the defendant, Alfred C. Toepfer International (Ukraine) Ltd. (the “Defendant”), by and through its undersigned attorneys, and through its authorized representative, pursuant to authority granted by Defendant’s Supervisory Board, hereby submit and enter into this plea agreement (the “Agreement”), pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. The terms and conditions of this Agreement are as follows:

The Defendant’s Agreement

1. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the Defendant agrees to waive its right to grand jury indictment and its right to challenge venue in the District Court for the Central District of Illinois, and to plead guilty to a one count Information charging the Defendant with one count of conspiracy to commit offenses against the United States in violation of Title 18, United States Code, Section 371, that is, to violate the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977 (“FCPA”), as amended, Title 15, United States Code, Section

78dd-3. The Defendant further agrees to persist in that plea through sentencing and, as set forth below, to cooperate fully with the Department in its investigation into all matters related to the conduct charged in the Information.

2. The Defendant understands and agrees that this Agreement is between the Department and the Defendant and does not bind any other division or section of the Department of Justice or any other federal, state, or local prosecuting, administrative, or regulatory authority. Nevertheless, the Department will bring this Agreement and the cooperation of the Defendant, its direct or indirect affiliates, subsidiaries, and parent corporation, to the attention of other prosecuting authorities or other agencies, if requested by the Defendant.

3. The Defendant agrees that this Agreement will be executed by an authorized corporate representative. The Defendant further agrees that a resolution duly adopted by Defendant's Supervisory Board in the form attached to this Agreement as Exhibit 1, or in similar form, represents that the signatures on this Agreement by Defendant and its counsel are authorized by Defendant's Supervisory Board, on behalf of the Defendant.

4. The Defendant agrees that it has the full legal right, power, and authority to enter into and perform all of its obligations under this Agreement.

5. The Defendant agrees to abide by all terms and obligations of this Agreement as described herein, including, but not limited to, the following:

- a. to plead guilty as set forth in this Agreement;
- b. to abide by all sentencing stipulations contained in this Agreement;
- c. to appear, through its duly appointed representatives, as ordered for all court appearances, and obey any other ongoing court order in this matter, consistent with all applicable U.S. and foreign laws, procedures, and regulations;

- d. to commit no further federal or state crimes;
- e. to be truthful at all times with the Court;
- f. to pay the applicable fine and special assessment; and
- g. to work with Archer Daniels Midland Company (“ADM”) in fulfilling

ADM’s obligations described in the Corporate Compliance Program, attached as Attachment B to the non-prosecution agreement with ADM.

6. Except as may otherwise be agreed by the parties hereto in connection with a particular transaction, the Defendant agrees that in the event the Defendant sells, merges, or transfers all or substantially all of its business operations as they exist as of the date of this Agreement, whether such sale(s) is/are structured as a stock or asset sale, merger, or transfer, the Defendant shall include in any contract for sale, merger, or transfer a provision fully binding the purchaser(s) or any successor(s) in interest thereto to the obligations described in this Agreement.

7. The Defendant agrees to continue to cooperate fully with the Department, the Federal Bureau of Investigation (the “FBI”), and the U.S. Securities and Exchange Commission (the “SEC”) in investigations into all matters related to the conduct charged in the Information, in a manner consistent with all applicable U.S. and foreign laws, procedures, and regulations, including foreign labor, data protection, and privacy laws. At the request of the Department, the Defendant shall also cooperate fully with foreign law enforcement authorities and agencies and the Multilateral Development Banks (“MDBs”). The Defendant shall, to the extent consistent with the foregoing, truthfully disclose to the Department all factual information not protected by a valid claim of attorney-client privilege or work product with respect to the activities of the Defendant and its affiliates, its present and former directors, officers, employees, agents,

consultants, contractors, and subcontractors, concerning all matters relating to corrupt payments and/or violations of the internal controls or books and records provisions about which the Defendant has any knowledge and about which the Department, the FBI, the SEC, or, at the request of the Department, any foreign law enforcement authorities and agencies and MDBs, shall inquire. This obligation of truthful disclosure includes the obligation of the Defendant to provide to the Department, upon request, any non-privileged or non-protected document, record, or other tangible evidence relating to such corrupt payments to foreign public officials or to employees of private customers about which the aforementioned authorities and agencies shall inquire of the Defendant, subject to the direction of the Department.

8. The Defendant agrees that any fine or restitution imposed by the Court will be due and payable within ten (10) business days of sentencing, and the Defendant will not attempt to avoid or delay payment. The Defendant further agrees that it will pay or cause to be paid to the Clerk of the Court for the United States District Court for the Central District of Illinois the mandatory special assessment of \$400 within ten (10) business days from the date of sentencing.

The United States' Agreement

9. In exchange for the guilty plea of the Defendant and the complete fulfillment of all of its obligations under this Agreement, the Department agrees it will not file additional criminal charges against the Defendant or any of its direct or indirect affiliates, subsidiaries, or its parent corporation, ADM, relating to (a) any of the conduct described in the Statement of Facts, or (b) information disclosed by the Defendant or its parent company, ADM, to the Department prior to the date of this Agreement, except as set forth in the non-prosecution agreement with ADM. This paragraph does not provide any protection against prosecution for any corrupt payments, false accounting, or failure to implement internal controls or

circumvention of internal controls, if any, made in the future by the Defendant or by any of its officers, directors, employees, agents or consultants, whether or not disclosed by the Defendant pursuant to the terms of this Agreement. This Agreement does not close or preclude the investigation or prosecution of any natural persons, including any officers, directors, employees, agents, or consultants of the Defendant, who may have been involved in any of the matters set forth in the Information, Statement of Facts, or in any other matters.

Factual Basis

10. The Defendant is pleading guilty because it is guilty of the charge contained in the Information. The Defendant admits, agrees, and stipulates that the factual allegations set forth in the Information are true and correct, that it is responsible for the acts of its present and former officers and employees described in the Statement of Facts attached as Exhibit 2 and incorporated herein, and that the Statement of Facts accurately reflects the Defendant's criminal conduct.

Defendant's Waiver of Rights, Including the Right to Appeal

11. Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 limit the admissibility of statements made in the course of plea proceedings or plea discussions in both civil and criminal proceedings, if the guilty plea is later withdrawn. The Defendant expressly warrants that it has discussed these rules with its counsel and understands them. Solely to the extent set forth below, the Defendant voluntarily waives and gives up the rights enumerated in Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410. Specifically, the Defendant understands and agrees that any statements that it makes in the course of its guilty plea or in connection with the Agreement are admissible against it for any purpose in any U.S. federal criminal proceeding if, even though the Department has fulfilled all of its obligations

under this Agreement and the Court has imposed the agreed-upon sentence, the Defendant nevertheless withdraws its guilty plea.

12. The Defendant is satisfied that the Defendant's attorney has rendered effective assistance. The Defendant understands that by entering into this agreement, Defendant surrenders certain rights as provided in this agreement. The Defendant understands that the rights of criminal defendants include the following:

- (a) the right to plead not guilty and to persist in that plea;
- (b) the right to a jury trial;
- (c) the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings;
- (d) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses; and
- (e) pursuant to Title 18, United States Code, Section 3742, the right to appeal the sentence imposed. Nonetheless, the Defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described below (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742, or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The Defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the

Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a. The Defendant waives all defenses based on the statute of limitations and venue with respect to any prosecution related to the conduct described in the accompanying Statement of Facts or Information that is not time-barred on the date that this Agreement is signed in the event that: (a) the conviction is later vacated for any reason; (b) the Defendant violates this Agreement; or (c) the plea is later withdrawn, provided such prosecution is brought within one year of any such vacation of conviction, violation of agreement, or withdrawal of plea plus the remaining time period of the statute of limitations as of the date that this Agreement is signed. The Department is free to take any position on appeal or any other post-judgment matter.

Penalty

13. 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 pecuniary gain or gross pecuniary loss resulting from the offense, whichever is greatest, Title 18, United States Code, Section 3571(c)(3), (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).

Sentencing Recommendation

14. The parties agree that pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the Court must determine an advisory sentencing guideline range pursuant to the United States Sentencing Guidelines. The Court will 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). The parties' agreement herein to any guideline sentencing

factors constitutes proof of those factors sufficient to satisfy the applicable burden of proof. The Defendant also understands that if the Court accepts this Agreement, the Court is bound by the sentencing provisions in paragraph 16.

15. The Department and the Defendant agree that a faithful application of the United States Sentencing Guidelines (U.S.S.G.) to determine the applicable fine range yields the following analysis:

- a. The 2012 U.S.S.G. are applicable to this matter.
- b. Offense Level. Based upon U.S.S.G. § 2C1.1, the total offense level is 36, calculated as follows:

(a)(2) Base Offense Level	12
(b)(1) Multiple Bribes	+2
(b)(2) Value of benefit received more than \$20,000,000	+22
TOTAL	36
- c. Base Fine. Based upon U.S.S.G. § 8C2.4(a)(1), the base fine is \$45,500,000 (the fine indicated in the Offense Level Fine Table)
- d. Culpability Score. Based upon U.S.S.G. § 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 an individual within substantial authority personnel participated in, condoned, or was willfully ignorant of the offense	+3
(g)(1) The organization, prior to imminent threat of disclosure or government investigation and within a reasonably prompt time after becoming aware of the offense, reported the offense to appropriate governmental authorities, fully cooperated in the	

investigation, and clearly demonstrated recognition
and affirmative acceptance of responsibility for its
criminal conduct - 5

TOTAL 3

Calculation of Fine Range:

Base Fine	\$45,500,000
Multipliers	0.60(min)/1.20 (max)
Fine Range	\$27,300,000 / \$54,600,000

16. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the Department and the Defendant agree that the following represents the appropriate disposition of the case:

a. Fine. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the Defendant agree that the appropriate disposition of this case is, and agree to recommend jointly, that the Court impose a sentence requiring the Defendant to pay or cause to be paid a criminal fine of \$17,771,613, payable in full on or before the tenth (10th) business day after the date of judgment (“the recommended sentence”). The parties have agreed that a fine of \$17,771,613, which reflects an approximately thirty-percent reduction off the bottom of the fine range as well as a deduction of \$1,338,387 commensurate with the fine imposed by German authorities on Alfred C. Toepfer International G.m.b.H. in connection with the conduct described in Exhibit 2 and the related Information, is the appropriate disposition based on the following factors and those in 18 U.S.C. § 3553(a): (1) the Defendant’s timely, voluntary, and thorough disclosure of the conduct; (b) the Defendant’s extensive cooperation with the Department; and (c) the Defendant’s early,

extensive, and unsolicited remedial efforts already undertaken and those still to be undertaken.

b. Mandatory Special Assessment. The Defendant shall pay or cause to be paid to the Clerk of the Court for the United States District Court for the Central District of Illinois within ten (10) business days of the time of sentencing the mandatory special assessment of \$400 per count.

17. The parties further agree, with the permission of the Court, to waive the requirement of a Pre-Sentence Investigation Report pursuant to Federal Rule of Criminal Procedure 32(c)(1)(A)(ii), based on a finding by the Court that the record contains information sufficient to enable the Court to meaningfully exercise its sentencing power. The parties agree, however, that in the event the Court orders the preparation of a Pre-Sentence Investigation Report prior to sentencing, such order will not affect the agreement set forth herein.

18. The parties further agree to ask the Court's permission to combine the entry of the plea and sentencing into one proceeding, and to conduct the plea and sentencing hearings of the Defendant in one proceeding. The parties agree, however, that in the event the Court orders that the entry of the guilty plea and sentencing hearing occur at separate proceedings, such an order will not affect the agreement set forth herein.

19. This Agreement is presented to the Court pursuant to Fed. R. Crim. P. 11(c)(1)(C). The Defendant understands that, if the Court rejects this Agreement, the Court must: (a) inform the parties that the Court rejects the Agreement; (b) advise the Defendant's counsel that the Court is not required to follow the Agreement and afford the Defendant the opportunity to withdraw its plea; and (c) advise the Defendant that if the plea is not withdrawn, the Court may dispose of the case less favorably toward the Defendant than the Agreement

contemplated. The Defendant further understands that if the Court refuses to accept any provision of this Agreement, neither party shall be bound by the provisions of the Agreement.

20. In the event the Court directs the preparation of a Pre-Sentence Investigation Report, the Department will fully inform the preparer of the Pre-Sentence Investigation Report and the Court of the facts and law related to the Defendant's case. If the Court orders a Pre-Sentence Investigation Report or a separate sentencing date, the parties agree to waive the time requirements for disclosure of and objections to the Pre-Sentence Investigation Report under Fed. R. Crim. P. 32(e), so as to accommodate a sentencing hearing prior to the date that would otherwise apply. At the time of the plea hearing, the parties will suggest mutually agreeable and convenient dates for the sentencing hearing with adequate time for (a) any objections to the Pre-Sentence Report, and (b) consideration by the Court of the Pre-Sentence Report and the parties sentencing submissions.

Breach of Agreement

21. The Defendant agrees that if it breaches this Agreement, commits any federal crime subsequent to the date of this Agreement, or has provided or provides deliberately false, incomplete, or misleading information in connection with this Agreement, the Department may characterize such conduct as a breach of this Agreement. The Defendant understands and agrees that the Department shall only be required to prove a breach of this Agreement by a preponderance of the evidence. In the event of such a breach, (a) the Department will be free from its obligations under the Agreement and may take whatever position it believes appropriate as to the sentence; (b) the Defendant will not have the right to withdraw the guilty plea; (c) the Defendant shall be fully subject to criminal prosecution for any other crimes that it has committed or might commit, if any, including perjury and obstruction of justice; and (d) the

Department will be free to use against the Defendant, directly and indirectly, in any criminal or civil proceeding any of the information or materials provided by the Defendant pursuant to this Agreement, as well as the admitted Statement of Facts.

22. In the event that the Department believes that the Defendant has breached this Agreement, the Department agrees to provide the Defendant with written notice of such breach. The Defendant shall, within thirty (30) days of receipt of such notice, have the opportunity to respond to the Department in writing to explain the nature and circumstances of such breach, as well as the actions the Defendant has taken to address and remediate the situation. In the event of a breach of this Agreement by the Defendant, if the Department elects to pursue criminal charges, or any civil or administrative action that was not filed as a result of this Agreement, then:

a. The Defendant agrees that any applicable statute of limitations is tolled between the date of the Defendant's signing of this Agreement and the discovery by the Department of any breach by the Defendant plus one year; and

b. The Defendant gives up all defenses based on the statute of limitations (as described in Paragraph 12), any claim of pre-indictment delay, or any speedy trial claim with respect to any such prosecution or action, except to the extent that such defenses existed as of the date of the signing of this Agreement.

Public Statements by Defendant

23. The Defendant expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for the Defendant make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Defendant set forth above or the facts described in the attached Statement of

Facts. Any such contradictory statement shall, subject to cure rights of the Defendant described below, constitute a breach of this Agreement, and the Defendant thereafter shall be subject to prosecution as set forth in Paragraphs 21-22 of this Agreement. The decision whether any public statement by any such person contradicting a fact contained in the Statement of Facts will be imputed to the Defendant for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of the Department. If the Department determines that a public statement by any such person contradicts in whole or in part a statement contained in the Statement of Facts, the Department shall so notify the Defendant, and the Defendant may avoid a breach of this Agreement by publicly repudiating such statement(s) within five (5) business days after notification. The Defendant shall be permitted to raise defenses and to assert affirmative claims in other proceedings relating to the matters set forth in the Statement of Facts provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the Statement of Facts. This Paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of the Defendant in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of the Defendant.

24. The Defendant agrees that if the Defendant or any of its direct or indirect subsidiaries issues a press release or holds a press conference in connection with this Agreement, the Defendant shall first consult with the Department to determine whether (a) the text of the release or proposed statements at any press conference are true and accurate with respect to matters between the Department and the Defendant; and (b) the Department has no objection to the release or statement. Statements at any press conference concerning this matter shall be consistent with this press release.

Complete Agreement

25. This document states the full extent of the agreement between the parties. There are no other promises or agreements, express or implied. Any modification of this Agreement shall be valid only if set forth in writing in a supplemental or revised plea agreement signed by all parties.

AGREED:

FOR ALFRED C. TOEPFER INTERNATIONAL (UKRAINE) LTD.:

Date: 12/18/13

By: s/Irina Prisyazhnyuk
Irina Prisyazhnyuk
General Director – Alfred C.
Toepfer International (Ukraine) Ltd.

Date: 12/19/13

By: s/Robin M. Bergen
Robin M. Bergen
Cleary Gottlieb Steen & Hamilton LLP
Counsel for Alfred C. Toepfer
International (Ukraine) Ltd.

FOR THE DEPARTMENT OF JUSTICE:

JAMES A. LEWIS
United States Attorney for the
Central District of Illinois

JEFFREY H. KNOX
Chief, Fraud Section
Criminal Division
Department of Justice

s/Eugene L. Miller

s/Daniel S. Kahn

By: Eugene L. Miller
Eugene L. Miller
Assistant United States Attorney

By: Daniel S. Kahn
Daniel S. Kahn
Trial Attorney, Fraud Section

OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside counsel for Alfred C. Toepfer International (Ukraine) Ltd. (the "Defendant"). I understand the terms of this Agreement and voluntarily agree, on behalf of the Defendant, to each of its terms. Before signing this Agreement, I consulted outside counsel for the Defendant. Counsel fully advised me of the rights of the Defendant, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with the Supervisory Board of the Defendant. I have advised and caused outside counsel for the Defendant to advise the Supervisory Board fully of the rights of the Defendant, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of the Defendant, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the General Director of Alfred C. Toepfer International (Ukraine) Ltd., and that I have been duly authorized by the Defendant to execute this Agreement on behalf of the Defendant.

Date: December 18, 2013

ALFRED C. TOEPFER INTERNATIONAL
(UKRAINE) LTD.
s/Irina Prisyazhnyuk

By: _____

Irina Prisyazhnyuk
General Director
Alfred C. Toepfer International (Ukraine) Ltd.

CERTIFICATE OF COUNSEL

I am counsel for Alfred C. Toepfer International (Ukraine) Ltd. (the “Defendant”) in the matter covered by this Agreement. In connection with such representation, I have examined the relevant documents and have discussed the terms of this Agreement with the Defendant’s Supervisory Board. Based on our review of the foregoing materials and discussions, I am of the opinion that the representative of the Defendant has been duly authorized to enter into this Agreement on behalf of the Defendant and that this Agreement has been duly and validly authorized, executed, and delivered on behalf of the Defendant and is a valid and binding obligation of the Defendant. I have carefully reviewed the terms of this Agreement with the Supervisory Board and the General Director of Alfred C. Toepfer International (Ukraine) Ltd. I have fully advised them of the rights of the Defendant, of possible defenses, of the Sentencing Guidelines’ provisions and of the consequences of entering into this Agreement. To my knowledge, the decision of the Defendant to enter into this Agreement, based on the authorization of the Supervisory Board, is an informed and voluntary one. Further, I have carefully reviewed the attached Statement of Facts with my client. To my knowledge, the decision of the Defendant to stipulate to these facts, based on the authorization of the Supervisory Board, is an informed and voluntary one.

Date: December 19, 2013

s/Robin M. Bergen

By:

Robin M. Bergen
Cleary Gottlieb Steen & Hamilton LLP
Counsel for Alfred C. Toepfer
International (Ukraine) Ltd.