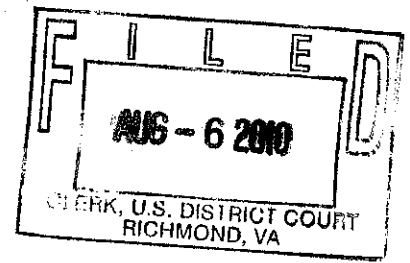


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division



UNITED STATES OF AMERICA,)
)
 v.)
)
 UNIVERSAL LEAF TABACOS LTDA.,)
)
 Defendant.)

Criminal No. 3:10cr225

AGREED SENTENCING MEMORANDUM

The United States of America, by and through undersigned counsel, the United States Department of Justice, Criminal Division, Fraud Section and the United States Attorney's Office for the Eastern District of Virginia (the "USAO") (collectively, the "Department of Justice" or the "Department"), and the defendant, Universal Leaf Tabacos Ltda. ("Universal Brazil" or "Defendant"), a Brazilian corporation, by its undersigned attorneys, and Universal Corporation, on behalf of its wholly owned subsidiary Universal Brazil, respectfully submit this Sentencing Memorandum for the Court's consideration in resolving the corporate plea of guilty in the case captioned above. For the reasons set forth below, the Department and the Defendant respectfully request the Court to accept the guilty plea of UNIVERSAL LEAF TABACOS LTDA. ("UNIVERSAL BRAZIL"), pursuant to Rule 11(c)(1)(b), Fed. R. Crim. P., to consolidate the entry of the plea of guilty and the sentencing into one proceeding, to waive the presentence report, and to sentence the company in accordance with the terms of the Plea Agreement filed simultaneously herewith.

I. INTRODUCTION

A. The Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act of 1977 (hereinafter, the "FCPA"), as amended, Title 15, United States Code, Sections 78dd-1, *et seq.*, prohibits certain classes of persons and entities from making payments to foreign government officials to obtain or retain business. Specifically, Title 15, United States Code, Section 78dd-3(a)(1), prohibits any person, other than an issuer or a domestic concern, while in the territory of the United States, from corruptly making use of the mails or any means or instrumentality of interstate commerce or doing any other act in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money or anything of value to any foreign official for the purpose of obtaining or retaining business for, or directing business to, any person. Furthermore, Title 15, United States Code, Sections 78m(b)(2)(A) and (b)(5), required issuers to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflected transactions and dispositions of the company's assets and prohibited the knowing falsification of such books, records or accounts.

In the case presently before the Court, there is a two-count criminal Information charging UNIVERSAL BRAZIL with: (a) conspiracy to commit an offense against the United States, in violation of Title 18, United States Code, Section 371, that is, to violate the FCPA (15 U.S.C. § 78dd-3) and to falsify books and records of the company in violation of the FCPA (15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), and 78ff(a)); and (b) violating the anti-bribery provisions of the FCPA (15 U.S.C. § 78dd-3(a)). The defendant has agreed to enter a plea of guilty to the Information.

B. The Corporation

Universal Corporation (“Universal”) is a leaf tobacco merchant that purchases, processes and sells tobacco to manufacturers of consumer tobacco products worldwide. Universal is a publicly traded Virginia corporation which maintains its principal place of business in Richmond, Virginia. UNIVERSAL BRAZIL, is a wholly owned Brazilian subsidiary of Universal, headquartered in Santa Cruz do Sul, Brazil. Beginning in 2000, UNIVERSAL BRAZIL sold Brazilian-grown tobacco to the Thailand Tobacco Monopoly (“TTM”).

C. Summary of the FCPA Violations

The Information charges UNIVERSAL BRAZIL with violations of the FCPA based upon corrupt payments made by UNIVERSAL BRAZIL to foreign officials in Thailand. UNIVERSAL BRAZIL and two other companies (referred to herein as “Company A” and “Company B”) sold Brazilian tobacco to the TTM. Each of the three companies retained sales agents in Thailand, and collaborated through those agents to apportion tobacco sales to the TTM among themselves, coordinate their sales prices, and pay kickbacks to officials of the TTM in order to ensure that each company would share in the Thai tobacco market. From 2000 to 2004, UNIVERSAL BRAZIL made four annual sales to the TTM. Company A and Company B also made four annual sales at or about the same time. The kickbacks were paid by each company at approximately the same rate based upon the number of kilograms of tobacco sold to the TTM from each annual Brazilian tobacco crop.

II. FACTUAL SUMMARY

The government’s investigation began with a self-disclosure by counsel for Universal in 2006.¹ In 2006, a former UNIVERSAL BRAZIL employee with knowledge of the bribery

¹ The Department encourages companies to disclose evidence of potential FCPA violations promptly. The agreed disposition with UNIVERSAL BRAZIL and its parent Universal partly

scheme in Brazil reported the conduct to Universal through Universal's website.² Based on the tip provided by the former employee, Universal's counsel and outside auditors investigated the matter, identified a series of suspicious payments, and reported this information to the Department. Thereafter, Universal and UNIVERSAL BRAZIL cooperated in the Department's and the U.S. Securities and Exchange Commission's (SEC) joint investigation of this matter.

A. The Thailand Tobacco Monopoly

In or about 1943, the Government of Thailand established the Thailand Tobacco Monopoly ("TTM"), an agency and instrumentality of the government, to manage and control the government-owned tobacco industry in Thailand. The TTM supervised the cultivation of domestic tobacco crops, purchased imported tobacco and manufactured cigarettes and other tobacco products in Thailand. TTM was headed by a Managing Director, appointed by the Finance Ministry, who reported through a Board of Directors directly to the Minister of Finance of Thailand.³ Between 2000 and 2004, UNIVERSAL BRAZIL sold Brazilian tobacco to the TTM.

B. Bribes paid to the TTM

From 2000 through 2004, UNIVERSAL BRAZIL, Company A, and Company B, through their agents, subsidiaries and affiliates, collaborated together to apportion tobacco sales to the TTM among themselves and to coordinate their sales prices in order to ensure that each

reflect credit given for Universal's timely self-disclosure, thorough investigation, and ongoing cooperation.

² Pursuant to Universal's internal compliance program, Universal maintained on its website an employee "hotline" that allowed current and former employees to report improper conduct. It is because of this useful compliance initiative that the improper conduct came to light. The agreed upon disposition partly reflects credit given for Universal's pre-existing compliance program.

³ The employees of the TTM were "foreign officials" within the meaning of the FCPA, 15 U.S.C. § 78dd-3(f)(2)(A).

company would share in the Thai tobacco market. The three companies also agreed to pay “special expenses” to the TTM, calculated at an agreed rate per kilogram of tobacco sold to the TTM; sometimes disguised as part of the “commissions” paid to their sales agents. The “special expenses” were, in fact, paid as kickbacks to TTM officials to induce the TTM to purchase tobacco and to secure an improper advantage for UNIVERSAL BRAZIL, Company A, and Company B. Over a period of four years, the three companies made a single annual sale of tobacco to the TTM corresponding with each annual tobacco crop in Brazil.

From 2000 through 2003, UNIVERSAL paid “special expenses” totaling approximately \$697,800 as kickbacks to TTM officials in connection with its four annual sales of Brazilian tobacco to the TTM. UNIVERSAL BRAZIL realized net profits of approximately \$2.3 million from those sales.

C. False Books and Records

UNIVERSAL BRAZIL failed to account properly for the corrupt “special expenses” paid as kickbacks to the TTM officials, and falsely described those transactions in their books and records. UNIVERSAL BRAZIL falsely described the corrupt payments as legitimate payments of “commissions.” The books and records of UNIVERSAL BRAZIL containing the false characterizations of the kickback payments to TTM representatives, were incorporated into the books, records and accounts of Universal for purposes of preparing Universal’s consolidated year-end financial statements that were filed with the SEC.

III. SENTENCING GUIDELINES ANALYSIS

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 (“USSG”). The Court will then determine a reasonable sentence within the statutory

range after considering the advisory sentencing guideline range and the factors listed in 18 U.S.C. § 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 Sentencing Guidelines analysis in this case results in a Guidelines fine range of \$6,300,000 – \$12,600,000. In the Plea Agreement, the parties stipulate that the following Guidelines calculation, using the 2004 edition of the Sentencing Guidelines Manual, is the proper application of the Sentencing Guidelines to the criminal charges alleged in the Information:

A. 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)	+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).

B. Calculation of the Culpability Score

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

(a) Base Culpability Score	5
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(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	3

C. 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

IV. THE PLEA AGREEMENT

As noted above, the applicable Guidelines range in this case is a fine of \$6,300,000 to \$12,600,000. The Department and the defendant have negotiated a fine below the minimum fine in the range. Defendant UNIVERSAL BRAZIL has agreed to pay a fine of \$4,400,000. The Department submits that a fine below the Guidelines range is appropriate in this case given the company's prompt and timely self-disclosure of the potentially corrupt payments as soon as they

were reported, the nature and extent of the company's cooperation throughout the government's investigation, and the remedial measures taken.

A. Timely Disclosure and Cooperation

Universal and UNIVERSAL BRAZIL's cooperation was both timely and thorough. The company retained outside counsel to conduct an extensive internal investigation. Universal, UNIVERSAL BRAZIL, and their counsel were consistently available to meet with Department attorneys to brief them on the progress and findings of their internal investigation. During the course of the government's investigation, Universal and UNIVERSAL BRAZIL and its outside counsel fully cooperated in good faith with the Department and produced thousands of pages of documents and financial records and made employees available for interviews. Further, Universal and UNIVERSAL BRAZIL terminated or reprimanded employees who were determined to have authorized and facilitated the improper payments.

B. Remedial Measures

The company's remedial measures, outlined below, included the implementation of an enhanced compliance program. Further, UNIVERSAL BRAZIL, pursuant to the plea agreement, and its parent, Universal, pursuant to a Non-Prosecution Agreement (NPA), have agreed to further strengthen their internal controls, implement a rigorous compliance program and engage an independent corporate monitor ("monitor") who will conduct a comprehensive review of the Universal and UNIVERSAL BRAZIL's compliance standards and procedures and its internal controls. The monitor will prepare an initial report and two follow-up reports of his or her findings and make recommendations for improvements in the companies' compliance programs over the three-year term.

Universal and UNIVERSAL BRAZIL took remedial actions including enhancement of the corporate compliance program, replacement of responsible management, and discipline of wrongdoers. Specifically, Universal and UNIVERSAL BRAZIL took the following remedial actions:

- Management established a Compliance Committee comprised of the Chief Financial Officer, the General Counsel, the Head of Internal Audit, the Treasurer, the Controller, and the Principle Sales Director. The Compliance Committee meets on a monthly basis to review and evaluate Universal's compliance programs and training.
- Management established a Chief Compliance Officer who is responsible for the day-to-day operations of Universal's compliance program and Chairs the Compliance Committee.
- Management issued a revised and updated Code of Conduct and translated the Code into fourteen (14) languages.
- Management required sales, finance, and executive-level personnel to attend a day-long in-person training session devoted to FCPA and local anti-bribery laws.
- Management revised and enhanced its payment approval policy which now requires an "approving officer" to review all supporting documentation for a payment and to understand the purpose of the payment prior to approval. The "approving officer" must certify that he or she has reviewed the existing documentation and obtained an understanding of the legitimate business purpose of the payment. The policy also requires that employees investigate any questionable payments and determine that they are legal, legitimate, and appropriate prior to approving the payment.
- Management revised and enhanced its due diligence process for agents. Initially, Universal suspended all commission payments to agents worldwide subject to legal department confirmation that each requested payment was adequately supported. Thereafter, Universal instituted a formal and standardized process for the assessment and approval of existing and proposed sales agents, which is coordinated by Universal's Legal Department. As part of this policy, an officer of Universal, known as a "Relationship Officer," must complete a "Sales Agent Due Diligence Checklist" for each prospective sales agent. This detailed checklist includes disclosure of relationships with foreign governments by owners, officers, directors and employees of the third-party agent or their family members, reference checks, and a list of potential red flags.
- Management conducted, and has pledged to continue to conduct, compliance and/or FCPA training at every global conference held for Universal employees.

- Management terminated and reprimanded certain employees involved in the improper conduct.

V. THE RECORD CONTAINS SUFFICIENT INFORMATION FOR THE COURT TO IMPOSE SENTENCE

Under Federal Rule of Criminal Procedure 32(c)(1)(A)(ii), the Court may proceed to sentencing without the benefit of a presentence report if “the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553, and the court explains its finding on the record.” Fed. R. Crim. P. 32(c)(1)(A)(ii); *see also United States v. Turner*, 816 F.Supp. 1102, 1103 (E.D.Va. 1993) (recognizing that a court can proceed to sentencing without a presentence report when the court “has sufficient information in the record before it to sentence [the defendant] without receiving the report”). Courts imposing sentence on corporate defendants for violations of the FCPA have combined the plea and sentencing hearings into a one proceeding. *See United States v. Siemens, et al.*, 08-CR-367-RJL (D.D.C. Dec. 15, 2008); *United States v. Baker Hughes*, No. 4:07-cr-00129 (S.D. Tex. April 26, 2007).

Universal Brazil respectfully submits that the record presently before the Court contains sufficient information to allow the Court to impose sentence without additional presentence investigation and a report. The facts described in the Information and Statement of Facts, coupled with this Agreed Sentencing Memorandum, detail not only Universal Brazil’s violations of law, but also Universal’s timely and voluntary investigation into the violations, its extensive cooperation with the Department and the SEC, and its remedial actions. This information satisfies the requirements of Rule 32(c)(1)(A)(ii) and permits the Court to impose sentence under 18 U.S.C. § 3553. A presentence investigation and report is not likely to uncover any additional information relevant to the imposition of sentence.


Furthermore, the stock of Universal Brazil's parent company, Universal, is traded on the New York Stock Exchange. Waiving the presentence investigation and report and proceeding immediately to sentencing would avoid any harm to Universal's shareholders that might result from market uncertainty during the interim between entry of the Plea Agreement and sentencing. Under these circumstances, the parties jointly request that the Court immediately impose sentence on the current record after accepting the guilty plea, as contemplated by the Plea Agreement.

VI. CONCLUSION

For the foregoing reasons, the Department and the defendant respectfully recommend that the Court accept the guilty plea to be entered by defendant corporation, UNIVERSAL LEAF TABACOS LTDA., approve the disposition of this matter, as described in this memorandum, and impose sentence according to the terms of the Plea Agreement.


FOR UNIVERSAL LEAF
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Respectfully submitted,



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