

Archer Daniels Midland Company

Case ID:

ST-407

Case Cluster :

Archer Daniels Midland Company

Jurisdiction of Settlement:

United States

Jurisdiction of Settlement / Enforcement Agency:

Securities and Exchange Commission

Jurisdiction of Foreign Public Official(s) :

Ukraine

Year of Settlement:

2013

Month/Day of Settlement (or Notes):

12/20

Other Jurisdictions of Settlement:

Germany

Settlement with Individual or Legal Person?:

Legal Person

Type of Settlement:

Civil

Legal Form of Settlement:

Permanent Injunction

Monetary Sanctions (Types):

Disgorgement of Profit, Prejudgment Interest

Total Monetary Sanctions (US\$):

\$36,467,366

Civil Disgorgement of Profits (US\$) :

\$33,342,012

Civil Prejudgment Interest (US\$) :

\$3,125,354

Civil Fine / Penalty (US\$):

\$0

Other Civil Monetary Sanctions (US\$):

\$0

Monetary Sanctions Returned / Ordered Returned (US\$):

\$0

Monetary Sanctions Returned / Ordered Returned (Explanation):

NA

UNCAC Articles(s) Implicated:

Art.16

OECD Anti-Bribery Convention Articles Implicated:

Art. 1, Art. 2, Art. 8

Offenses - Alleged:

Falsification of books and records; Internal controls violations

Offenses - Settled:

No admission or denial of alleged offenses

Public Procurement Contract / SOE Involved?:

No (VAT Fraud)

Summary:

According to the US Securities and Exchange Commission Press Release, the agency "today charged global food processor Archer-Daniels-Midland Company (ADM) for failing to prevent illicit payments made by foreign subsidiaries to Ukrainian government officials in violation of the Foreign Corrupt Practices Act (FCPA). An SEC investigation found that ADM's subsidiaries in Germany and Ukraine paid \$21 million in bribes through intermediaries to secure the release of value-added tax (VAT) refunds. The payments were then concealed by improperly recording the transactions in accounting records as insurance premiums and other purported business expenses. ADM had insufficient anti-bribery compliance controls and made approximately \$33 million in illegal profits as a result of the bribery by its subsidiaries. [] According to the SEC's complaint filed in U.S. District Court for the Central District of Illinois, the bribery occurred from 2002 to 2008. Ukraine imposed a 20 percent VAT on goods purchased in its country. If the goods were exported, the exporter could apply for a refund of the VAT already paid to the government on those goods. However, at times the Ukrainian government delayed paying VAT refunds it owed or did not make any refund payments at all. On these occasions, the outstanding amount of VAT refunds owed to ADM's Ukraine affiliate reached as high as \$46 million. The SEC alleges that in order to obtain the VAT refunds that the Ukraine government was withholding, ADM's subsidiaries in Germany and Ukraine devised several schemes to bribe Ukraine government officials to release the money. The bribes paid were generally 18 to 20 percent of the corresponding VAT refunds. For example, the subsidiaries artificially inflated commodities contracts with a Ukrainian shipping company to provide bribe payments to government officials. In another scheme, the subsidiaries created phony insurance contracts with an insurance company that included false premiums passed on to Ukraine government officials. The misconduct went unchecked by ADM for several years because of its deficient and decentralized system of FCPA oversight over subsidiaries in Germany and Ukraine." (Source: US Securities and Exchange Commission, "SEC Charges Archer-Daniels-Midland Company With FCPA Violations," December 20, 2013.)

Sources :

US v. Archer-Daniels Midland Company, Case No. 2:13-cv-2279 (CD. Ill), Complaint filed December 20, 2013; US Securities and Exchange Commission, "SEC Charges Archer-Daniels-Midland Company With FCPA Violations," December 20, 2013, at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540535139>