

(“FCPA”), 15 U.S.C. § 78dd-1(a). By virtue of its status as an issuer within the meaning of the FCPA, Fiat was required to make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflected the transactions and disposition of assets of Fiat and its subsidiaries, including those of CNH Italia, which were incorporated into the books of Fiat.

3. “Employee C,” a citizen of Italy, was the CNH Italia Business Director for Africa, the Middle East, and Asia, based in Modena, Italy.

4. “Company Z,” a Jordanian company, acted as an agent and distributor for CNH Italia in connection with sales to the Iraqi government made under the United Nations (“U.N.”) Oil for Food Program (“OFFP”).

The United Nations Oil for Food Program

5. On or about August 6, 1990, days after Iraq’s invasion of Kuwait, the U.N. adopted Security Council Resolution 661, which prohibited U.N. member-states from transacting business with Iraq, except for the purchase and sale of humanitarian supplies. Resolution 661 prohibited virtually all direct financial transactions with the government of Iraq.

6. On or about April 15, 1995, the U.N. adopted Security Council Resolution 986, which served as a limited exception to the Iraq sanctions regime in that it allowed Iraq to sell its oil. However, Resolution 986 required that the proceeds from oil sales be used by the Iraqi government to purchase humanitarian supplies, including but not limited to food, for the Iraqi people. Hence, this program became known as the Oil for Food Program. Payments made to the Iraqi government that were not approved by the U.N. and that were outside the strict contours of the OFFP were prohibited.

7. The rules of the OFFP required that the proceeds from all sales of Iraqi oil be deposited into a U.N.-controlled escrow account at the New York, New York, branch of Banque

Nationale de Paris (“BNP-Paribas”). That escrow account funded the purchase of humanitarian goods by the Iraqi government.

8. Under the rules of the OFFP, a supplier of humanitarian goods contracted with a ministry or other department of the Iraqi government to sell goods to the government. Once that contract was finalized, the contract was submitted to a U.N. Committee (“the 661 Committee”) which reviewed the contracts to ensure that their terms complied with all OFFP and Iraqi sanction regulations. The 661 Committee accepted the contracts, rejected them, or asked the supplier to provide additional information upon which the committee could make a decision.

9. If a contract was approved by the 661 Committee, a letter of credit was issued by BNP-Paribas to the supplier’s bank stating that the supplier would be paid by the OFFP for the relevant goods once certain conditions were met, including delivery of the goods to Iraq and inspection of the goods by a U.N. contractor based in Geneva, Switzerland, that provided inspection services in Iraq on behalf of the U.N. (the “inspection company”). Once those conditions were deemed by the U.N. to have been met, the U.N. would direct BNP-Paribas to release payment to the supplier.

10. On or about December 10, 1996, the first Iraqi oil exports under the OFFP began. The OFFP continued from in or about December 1996 until the United States’ invasion of Iraq on or about March 19, 2003. From in or about December 1996 through March 2003, the United States government prohibited United States companies and individuals from engaging in transactions with the government of Iraq, unless such transactions were authorized by the U.N. pursuant to the OFFP.

11. Beginning in approximately August 2000, the Iraqi government demanded that suppliers of humanitarian goods pay a kickback, usually valued at 10% of the contract price, to

the Government of the Republic of Iraq in order to be awarded a contract by the government. These kickbacks violated OFFFP regulations and U.N. sanctions, which prohibited payments to the Iraqi government that were not expressly approved by the U.N. and that were not contemplated by the guidelines of the OFFFP.

12. Often, these kickbacks were termed “after sales service fees” (“ASSFs”), but did not represent any actual service being performed by the supplier. These ASSFs were usually included in the contract price submitted by the supplier to the U.N. without disclosing to the U.N. that the contract contained an extra 10% which would be returned to the Iraqi government. Including the 10% in the contract price allowed the supplier to avoid paying the 10% out of its profits; instead, the suppliers caused the U.N., unknowingly, to fund the kickbacks to the Iraqi government.

13. Some suppliers labeled the ASSFs as such, thereby leading the U.N. to believe that actual after-sales services were being provided by the supplier. Other suppliers disguised the ASSFs by inserting fictitious line items into the contracts for goods or services that were not being provided. Still other suppliers simply inflated their contract prices by 10% to account for the payments they would make, or cause to be made, to the Iraqi government.

CNH Italia's Kickback Scheme

14. From in or about December 2000, through in or about January 2002, CNH Italia and its agent and distributor, Company Z, obtained four contracts worth approximately €12 million with the Ministry of Agriculture of the Government of the Republic of Iraq to supply agricultural equipment under the OFFFP. To obtain these contracts, CNH Italia paid approximately \$1 million in kickbacks to the Iraqi government.

15. More specifically, in or about December 2000 and May 2001, CNH Italia, with Company Z serving as its agent, entered into two direct contracts with the Ministry of Agriculture to provide tractors. Thereafter, in order to conceal its kickback payments, CNH Italia sold tractors and harvesters indirectly to the Iraqi government through Company Z, which entered into two contracts in or about January and February 2002 with the Ministry of Agriculture for the sale of CNH Italia products.

16. In order to generate the funds to pay the kickbacks and to conceal those payments, CNH Italia and Company Z inflated the price of the contracts by approximately 10% before submitting them to the 661 Committee and the U.N. for approval.

17. After the U.N. approved the CNH Italia and Company Z contracts, BNP-Paribas issued letters of credit, via international wire communications, to banks used by CNH Italia and Company Z. These letters of credit authorized CNH Italia and Company Z to be paid the contracted amounts, which included the 10% kickbacks to be paid to the Iraqi government.

**COUNT ONE
(Conspiracy)**

THE CONSPIRACY AND ITS OBJECTS

18. Paragraphs 1 through 17 of this Information are re-alleged and incorporated by reference as if set out in full.

19. From in or about December 2000, through in or about January 2002, within the territory of the United States and elsewhere, CNH Italia, Company Z, Employee C, and others known and unknown, did unlawfully and knowingly combine, conspire, confederate, and agree together to commit the following offenses against the United States:

a. to knowingly devise, and intend to devise a scheme and artifice to defraud the U.N. and the OFFP, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, through the use of interstate and foreign wire communications, in violation of Title 18, United States Code, Section 1343; and

b. to knowingly falsify and cause to be falsified books, records, and accounts required to, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Fiat, an issuer within the meaning of the FCPA, contrary to Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff(a).

PURPOSE OF THE CONSPIRACY

20. The primary purpose of the conspiracy was to obtain and retain lucrative business with the Government of the Republic of Iraq through the payment of kickbacks to the government that were concealed from the U.N. and mischaracterized as legitimate charges.

MANNER AND MEANS OF THE CONSPIRACY

21. To achieve the objects of the conspiracy, CNH Italia and others used the following manner and means, among others:

a. It was part of the conspiracy that CNH Italia agreed to cause kickbacks to be paid to the government of Iraq in exchange for being awarded contracts by the government.

b. It was a further part of the conspiracy that CNH Italia and Company Z submitted contracts to the U.N. for approval that failed to disclose, and concealed, the fact that the prices of the contracts had been inflated by 10% in order to generate money to pay the kickbacks to the Government of the Republic of Iraq.

c. It was a further part of the conspiracy that beginning on or about January 30, 2002, CNH Italia sold its products in Iraq through Company Z in order to conceal CNH Italia's payment of kickbacks to the Government of the Republic of Iraq.

d. It was a further part of the conspiracy that CNH Italia caused the transmission of international wire communications, to and from the United States: (i) to provide notice to the U.N. that CNH Italia goods had been shipped to, and inspected in, Iraq; and (ii) to provide notice to banks used by CNH Italia and Company Z that the U.N. was authorizing payments pursuant to the contracts.

e. It was a further part of the conspiracy that for certain contracts, CNH Italia mischaracterized its payments of kickbacks to the Government of the Republic of Iraq on its books and records as "service fees" to Company Z when CNH Italia was aware that a substantial portion of the money it paid to Company Z was being kicked back to the government.

OVERT ACTS

23. In furtherance of the conspiracy and to accomplish its unlawful objects, the following acts, among others, were committed within the territory of the United States and elsewhere:

Contract 601985

a. On or about December 24, 2000, CNH Italia executed a contract, referenced by the U.N. as Contract 601985, with the Iraqi Ministry of Agriculture, to supply 100 tractors with accessories for €1,693,850, which included an extra 10% to be used to pay a kickback to the Iraqi government.

b. In or about April 2001, the Iraqi Ministry of Agriculture sent a facsimile pertaining to Contract 601985 to Company Z, which Company Z then faxed to CNH Italia on or

about April 8, 2001. The facsimile requested a bank guarantee for “after sales services value” within ten days and referenced a December 24, 2000 letter from CNH Italia to the Ministry of Agriculture promising such a bank guarantee.

c. In or about April 2001, Company Z paid the Iraqi government \$141,532 in kickbacks on behalf of CNH Italia in connection with Contract 601985.

d. On or about June 7, 2001, upon notification of the U.N.’s approval of Contract 601985, BNP-Paribas in New York, New York, sent a facsimile to its Milan branch issuing a letter of credit in favor of CNH Italia for €1,693,850 to be paid upon delivery of the 100 tractors to Iraq.

e. From in or about October 2001, to in or about November 2001, CNH Italia caused the tractors purchased pursuant to Contract 601985 to be delivered to Iraq, prompting the inspection company to send several facsimiles from Iraq to the U.N. in New York, New York, notifying the U.N. that the products had been received and inspected upon entry into Iraq. This notification, in turn, triggered payment by the U.N. to CNH Italia for Contract 601985.

Contract 1100303

f. On or about May 12, 2001, CNH Italia executed a contract, referenced by the U.N. as Contract 1100303, with the Iraqi Ministry of Agriculture, to supply 200 tractors with spare parts for €3,838,992, which included an extra 10% to be used to pay a kickback to the Iraqi government.

g. On or about January 22, 2001, on behalf of CNH Italia, Company Z deposited \$305,584 into an account held by the Iraqi government at a Jordanian bank, representing kickbacks in connection with Contract 1100303, which had originally been

submitted for approval in or about 2000, but was on hold until it was revised and executed on or about May 12, 2001.

h. On or about June 3, 2002, upon notification of the U.N.'s approval of Contract 1100303, BNP-Paribas in New York, New York, sent a facsimile to its Milan branch issuing a letter of credit in favor of CNH Italia for €3,838,992 to be paid upon delivery of the 200 tractors with spare parts to Iraq.

i. In or about September 2002, CNH Italia caused the tractors and spare parts purchased pursuant to Contract 1100303 to be delivered to Iraq, prompting the inspection company to send several facsimiles from Iraq to the U.N. in New York, New York, notifying the U.N. that the products had been received and inspected upon entry into Iraq. This notification, in turn, triggered payment by the U.N. to CNH Italia for Contract 1100303.

Contract 1100313

j. On or about November 4, 2001, Company Z sent a letter to Employee C stating that direct contracts between CNH Italia and the Iraqi government were impractical as long as the "famous 10" was required, a reference to the 10% kickbacks.

k. In or about November 2001, Employee C told the Iraqi Minister of Agriculture that CNH Italia had concerns about entering into further direct contracts with the Ministry of Agriculture due to the 10% kickback requirement, and the Minister of Agriculture and Employee C agreed CNH Italia would sell products to Iraq through Company Z to further conceal the kickback payments.

l. On or about January 30, 2002, Company Z executed a contract, referenced by the U.N. as Contract 1100313, with the Iraqi Ministry of Agriculture, to supply 100 CNH Italia tractors for €2,972,638, which was approximately 20% more than the price Company Z

paid CNH Italia for the tractors. This mark-up included the extra 10% to be used to pay a kickback to the Iraqi government, as well as the profit for Company Z.

m. On or about June 25, 2002, upon notification of the U.N.'s approval of Contract 1100313, BNP-Paribas in New York, New York, sent a facsimile to a Jordanian bank used by Company Z issuing a letter of credit in favor of Company Z for €2,972,638 to be paid upon delivery of the 100 tractors to Iraq.

n. On or about October 22, 2002, CNH Italia caused Company Z to deliver the 100 CNH Italia tractors purchased pursuant to Contract 1100313 to be delivered to Iraq, prompting the inspection company to send a facsimile from Iraq to the U.N. in New York, New York, notifying the U.N. that the products had been received and inspected upon entry into Iraq. This notification, in turn, triggered payment by the U.N. to Company Z for Contract 1100313.

o. On or about December 3, 2002, with the knowledge of CNH Italia, Company Z paid the Iraqi government \$237,865 in kickbacks in connection with Contract 1100313.

Contract 1100148

p. On or about February 21, 2002, Company Z executed a contract, referenced by the U.N. as Contract 1100148, with the Iraqi Ministry of Agriculture, to supply 50 CNH Italia wheat combine harvesters for €3,468,078, which was approximately 20% more than the price Company Z paid CNH Italia for the wheat combine harvesters. This mark-up included the extra 10% to be used to pay a kickback to the Iraqi government, as well the profit for Company Z.

q. On or about June 11, 2002, upon notification of the U.N.'s approval of Contract 1100148, BNP-Paribas in New York, New York, sent a facsimile to a Jordanian bank

used by Company Z issuing a letter of credit in favor of Company Z for €3,468,078 to be paid upon delivery of the 50 wheat combine harvesters to Iraq.

r. On or about December 13, 2002, CNH Italia caused Company Z to deliver the 50 CNH Italia wheat combine harvesters purchased pursuant to Contract 1100148 to Iraq, prompting the inspection company to send a facsimile from Iraq to the U.N. in New York, New York, notifying the U.N. that the products had been received and inspected upon entry into Iraq. This notification, in turn, triggered payment by the U.N. to Company Z for Contract 1100148.

s. On or about March 10, 2003, with the knowledge of CNH Italia, Company Z paid the Iraqi government \$338,996 in kickbacks in connection with Contract 1100148.


Books and Records

t. In or about 2002, in order to conceal on its corporate books and records the kickback payments made to the Iraqi government, CNH Italia improperly characterized payments to Company Z, part of which were paid as kickbacks to the Iraqi government, as “service fees” to Company Z.

w. At the end of Fiat’s fiscal year 2002, the books and records of CNH Italia, including those containing false characterizations of the kickbacks paid to the Iraqi government, were incorporated into the books and records of Fiat for purposes of preparing Fiat’s year-end financial statements.

(All in violation of Title 18 U.S.C. §371).

STEVEN A. TYRRELL
Chief, Fraud Section

By: 

Lori A. Weinstein
Trial Attorney, Fraud Section
(202) 514-0839

Criminal Division
United States Department of Justice
1400 New York Avenue, N.W.
Washington, D.C. 20005