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## **AGCO agrees to pay penalties as part of Oil-for-Food investigation**

**By Sara Wyant**

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AGCO Corp., a U.S. corporation based in Duluth, Ga., agreed to pay a \$1.6 million penalty for illegal kickbacks paid to the former government of Iraq, Assistant Attorney General of the Criminal Division Lanny A. Breuer announced yesterday. AGCO agreed to the payment as part of a deferred prosecution agreement with the Department of Justice. The matter is part of the Department's ongoing investigation into the United Nations (U.N.) Oil-for-Food Program.

A criminal information was filed against AGCO's wholly owned U.K. subsidiary, AGCO Ltd., in U.S. District Court for the District of Columbia, charging AGCO Ltd. with one count of conspiracy to commit wire fraud and to violate the books and records provisions of the Foreign Corrupt Practices Act. AGCO, an international manufacturer of agricultural machinery and equipment, has acknowledged responsibility for improper payments made by its subsidiaries' officers, employees and agents to the former government of Iraq in order to obtain contracts with the Iraqi Ministry of Agriculture to sell agricultural equipment and parts. The deferred prosecution agreement requires that AGCO and its subsidiaries, including AGCO Ltd., cooperate fully with the Justice Department's ongoing investigation.

According to the agreement and the information, between 2000 and 2003, AGCO Ltd. paid approximately \$553,000 to the former government of Iraq to secure three contracts by inflating the price of the contracts by 13 to 21% before submitting the contracts to the U.N. for approval. The company concealed from the U.N. that the price of the contracts had been inflated and then used the additional funds to pay a kickback to the former Iraqi Ministry of Agriculture.

In recognition of AGCO's thorough review of the improper payments and the company's implementation of enhanced compliance policies and procedures, the Justice Department has agreed to defer prosecution of AGCO Ltd. for three years. If AGCO and AGCO Ltd. abide by the terms of the agreement for the three-year term, the Justice Department will dismiss the criminal information at that time.

According to the DOJ, the Oil-for-Food Program was established by the U.N. to enable Iraq to sell its oil for humanitarian purposes in the context of an extensive international sanctions regime. The program mandated that the proceeds of oil sales be deposited in a U.N. bank account and that those proceeds be used by the Iraqi government only to purchase humanitarian goods and services approved by the U.N., such as food, medicine, and other necessary infrastructure items. Beginning in 2000, the former government of Iraq began requiring companies wishing to sell humanitarian goods to government ministries to pay a kickback, often mischaracterized as an "after sales services fee," to the government in order to be granted a contract. The amount of that fee was usually 10% of the contract price. Such payments were not permitted under the Oil-for-Food Program or other sanction regimes then in place.

In a related matter, AGCO reached a settlement today with the U.S. Securities and Exchange Commission (SEC) under which it has agreed to pay a civil penalty of \$2.4 million and approximately \$16 million in disgorgement and prejudgment interest relating to sixteen Oil-for-Food contracts.

Also today, AGCO agreed to a disposition resolving an ongoing investigation by the Danish State Prosecutor for Serious Economic Crime. The charges were based on two Oil-for-Food contracts executed by AGCO's Danish subsidiary, AGCO Danmark A/S. AGCO agreed to pay approximately \$630,000 in disgorgement of profits in connection with those charges. AGCO will pay a combined total of more than \$20 million in fines, penalties, and disgorgement of profits in connection with the cases brought by the Department of Justice, the SEC and the Danish State Prosecutor's Office.

In a statement, AGCO pointed out that "The Company cooperated fully with the SEC and DOJ in their investigations of the Company and received a credit in calculating the settlement amount for this cooperation."