



U.S. Department of Justice

Criminal Division

December 20, 2007

John L. Hardiman, Esq.
Sullivan & Cromwell LLP
One New Fetter Lane
London EC4A 1AN
England

Re: Akzo Nobel N.V.

Dear Mr. Hardiman:

On the understandings specified below, the United States Department of Justice, Criminal Division, Fraud Section ("this Office" or "the Department") will not criminally prosecute Akzo Nobel N.V. and its subsidiaries and affiliates (collectively referred to herein as "AKZO NOBEL"), including its former subsidiaries N.V. Organon and Intervet International B.V.) for any crimes (except for criminal tax violations, as to which this Office cannot and does not make any agreement) related to AKZO NOBEL's participation in the United Nations Oil for Food Program, including the making of, and agreement to make, improper kickback payments, paid directly or indirectly by AKZO NOBEL to the Iraqi government between 2000 and 2002, and the accounting and record-keeping associated with these improper payments, all as described in Appendix A to this letter, which is incorporated by reference herein.

Akzo Nobel N.V. admits, accepts, and acknowledges responsibility for the conduct of its former subsidiaries N.V. Organon and Intervet International B.V., as set forth in Appendix A and agrees not to make any public statement contradicting Appendix A.

If AKZO NOBEL fully complies with the understandings specified in this agreement, including all Appendices hereto (the "Agreement"), no information given by or on behalf of AKZO NOBEL at the request of this Office (or any other information directly or indirectly derived therefrom) will be used against AKZO NOBEL in any criminal tax prosecution. This Agreement does not provide any protection against prosecution for any crimes except as set forth above, and applies only to AKZO NOBEL and not to any other entities or any individuals except as set forth herein. AKZO NOBEL expressly understands that the protections provided to AKZO NOBEL under this Agreement shall not apply to any successor entities, whether the successor's interest arises through a merger or plan of reorganization, unless and until such successor formally adopts and executes this Agreement. The protections arising from this Agreement will not apply to any purchasers of all or substantially all of the assets of AKZO NOBEL, unless such purchaser enters into a written agreement, on terms acceptable to this Office, agreeing in

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substance to undertake all obligations set forth in this Agreement.

This Agreement shall have a term of two (2) years from the date of this Agreement, except as specifically provided in the following paragraph. It is understood that for the two (2) year term of the Agreement, AKZO NOBEL shall: (a) commit no felony violations of federal law; (b) truthfully and completely disclose information with respect to the activities of AKZO NOBEL, its officers and employees, and others concerning all matters about which this Office inquires of it, which information can be used for any purpose, except as otherwise limited in this Agreement; and (c) bring to this Office's attention all criminal conduct by, or criminal investigations of, AKZO NOBEL or any of its senior managerial employees, that comes to the attention of AKZO NOBEL or its senior management, as well as any administrative proceeding or civil action brought by any governmental authority that alleges fraud by or against AKZO NOBEL.

Until the date upon which all investigations and prosecutions arising out of the conduct described in this Agreement are concluded, whether or not they are concluded within the two (2) year term specified in the preceding paragraph, AKZO NOBEL shall: (a) cooperate fully with this Office, the Federal Bureau of Investigation, the Securities and Exchange Commission, and any other law enforcement agency designated by this Office, in connection with any investigation related to the matters described in Appendix A; (b) assist this Office in any investigation or prosecution arising out of the conduct described in this Agreement by providing logistical and technical support for any meeting, interview, grand jury proceeding, or any trial or other court proceeding; (c) use its best efforts to secure the attendance and truthful statements or testimony of any officer, agent or employee at any meeting or interview or before the grand jury or at any trial or other court proceeding; and (d) provide this Office, upon request, all non-privileged information, documents, records, or other tangible evidence about which this Office or any designated law enforcement agency inquires.¹

It is understood that any assistance AKZO NOBEL may provide to federal criminal investigators shall be pursuant to the specific instructions and control of this Office and designated investigators.

It is understood that AKZO NOBEL shall adopt and maintain a set of internal controls, including a compliance code and compliance standards and procedures, as set forth in Appendix B, which is incorporated by reference herein.

¹ The Department reserves the right to request information, documents, records or other tangible evidence that may be subject to a claim of attorney client and/or attorney work product privilege. Similarly, AKZO NOBEL reserves the right to refuse to provide such information, documents, records or other tangible evidence based upon the assertion of a valid claim of privilege.

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It is understood that AKZO NOBEL will pay no monetary penalty in connection with this Agreement, based on AKZO NOBEL's representation that its former subsidiary, N.V. Organon, has agreed to enter into a criminal disposition with the Dutch National Public Prosecutor's Office for Financial, Economic and Environmental Offences (the "Dutch Public Prosecutor"). AKZO NOBEL represents that, pursuant to this contemplated disposition with the Dutch Public Prosecutor, N.V. Organon will admit criminal liability and pay a criminal fine of no less than €381,602.

It is understood that if there is no such criminal disposition with the Dutch Public Prosecutor within 180 days of the signing of this Agreement, then AKZO NOBEL shall pay a monetary penalty of \$800,000 to the United States Treasury. It is further understood that if the criminal fine paid as part of the criminal disposition with the Dutch Public Prosecutor is less than €381,602, then AKZO NOBEL shall pay to the United States Treasury the difference between the amount of the fine paid as part of the criminal disposition with the Dutch Public Prosecutor and \$800,000, at the currency exchange rate prevailing as of the date of the execution of the agreement between AKZO NOBEL and the Dutch Public Prosecutor. Any such required payment to the United States Treasury shall be made within 210 days of the signing of this Agreement. AKZO NOBEL agrees that no tax deduction will be sought in connection with this payment or any payment to the Dutch authorities. The time limits set forth in this paragraph may be extended upon mutual agreement of the parties.

It is understood that, should this Office determine that AKZO NOBEL has committed any felony violation of federal law during the term of this Agreement, has given false, incomplete, or misleading testimony or information, or has otherwise violated any provision of this Agreement, AKZO NOBEL shall thereafter be subject to prosecution for any federal violation of which this Office has knowledge, including perjury and obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against AKZO NOBEL, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the expiration of the term of this Agreement plus one year. Thus, by signing this Agreement, AKZO NOBEL agrees that the statute of limitations with respect to any prosecution that is not time-barred on the date of this Agreement shall be tolled for the term of the Agreement plus one year.

It is understood that, should this Office determine that AKZO NOBEL has committed any felony violation of federal law during the term of this Agreement, has given false, incomplete, or misleading testimony or information, or has otherwise violated any provision of this Agreement: (a) all statements and admissions made by AKZO NOBEL to this Office or other designated law enforcement agents, including Appendix A hereto, and any testimony given by AKZO NOBEL before a grand jury or other tribunal, whether prior or subsequent to the signing of this Agreement, and any leads from such statements or testimony, shall be admissible in evidence in any criminal proceeding brought against AKZO NOBEL; and (b) AKZO NOBEL shall assert no

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claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed. By this Agreement, AKZO NOBEL waives all rights in the foregoing respects.

It is further understood that this Agreement does not bind any federal, state or local prosecuting authority other than this Office. This Office will, however, bring the cooperation of AKZO NOBEL to the attention of other prosecuting and other investigative offices, if requested by AKZO NOBEL.

It is further understood that AKZO NOBEL and this Office may disclose this Agreement to the public. In connection with this Agreement, AKZO NOBEL shall only issue a press release if it first determines that the text of the release is acceptable to this Office.

With respect to this matter, from the date of execution of this Agreement forward, this Agreement supersedes all prior, if any, understandings, promises and/or conditions between this Office and AKZO NOBEL. No additional promises, agreements, and conditions have been entered into other than those set forth in this letter and none will be entered into unless in writing and signed by all parties.

Very truly yours,

STEVEN A. TYRRELL
Chief, Fraud Section

MARK F. MENDELSON
Deputy Chief, Fraud Section

By:

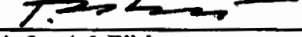

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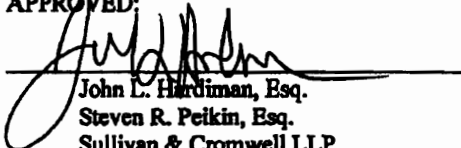
AGREED AND CONSENTED TO:

Akzo Nobel N.V.

By: 
A. Jan A.J. Eijsbouts
Legal Advisor, Akzo Nobel N.V.

20 December 2007
Date

APPROVED:


John L. Hardiman, Esq.
Steven R. Peikin, Esq.
Sullivan & Cromwell LLP
Attorneys for Akzo Nobel N.V.

20 December 2007
Date

APPENDIX A

STATEMENT OF FACTS

The following Statement of Facts is incorporated by reference as part of the Agreement between the United States Department of Justice, Criminal Division, Fraud Section ("this Office" or "the Department") and Akzo Nobel N.V.:

I. Relevant Parties

1. At all times relevant to the facts described herein, Akzo Nobel N.V. ("Akzo Nobel") was a corporation organized under the laws of the Netherlands with its headquarters in Arnhem. Akzo Nobel was a Fortune 500 company that operated in more than eighty countries, producing and selling coatings, chemicals, human healthcare products, and animal healthcare products. Akzo Nobel was also an issuer as that term is used in the Foreign Corrupt Practices Act, Title 15, United States Code, Section 78dd-1, *et seq.* ("FCPA"), and its American Depository Receipts were registered with the Securities and Exchange Commission pursuant to 15 U.S.C. § 781(g) and quoted on the National Association of Securities Dealers Automated Quotations market.

2. At all times relevant to the facts described herein, N.V. Organon ("Organon") was a wholly-owned subsidiary of Akzo Nobel, organized under the laws of the Netherlands, that directly or indirectly manufactured and sold prescription pharmaceuticals, including hormone and anesthesia products.

3. At all times relevant to the facts described herein, Intervet International B.V. ("Intervet") was a wholly-owned subsidiary of Akzo Nobel, organized under the laws of the

Netherlands, that manufactured and sold veterinary vaccines and animal pharmaceuticals.¹

4. Both Organon and Intervet sold products to the government of Iraq through the United Nations Oil for Food Program.

5. At all times relevant to the facts described herein, "Employee A" was Intervet's Middle East Regional Sales Manager, responsible for sales to the government of Iraq through the United Nations Oil for Food Program.

6. At all times relevant to the facts described herein, "Employee B" was Employee A's supervisor, Intervet's Middle East Regional General Manager, with oversight responsibility for sales to the government of Iraq through the United Nations Oil for Food Program.

7. At all times relevant to the facts described herein, "Agent A" was an agent based in Jordan used by both Intervet and Organon in connection with sales to the government of Iraq through the United Nations Oil for Food Program.

8. At all times relevant to the facts described herein, "Agent B" was an agent based in Jordan used by Intervet in connection with sales to the government of Iraq through the United Nations Oil for Food Program.

II. The United Nations Oil for Food Program

9. On or around August 6, 1990, days after Iraq's invasion of Kuwait, the United Nations ("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

¹ Akzo Nobel sold N.V. Organon and Intervet International B.V. to Schering-Plough Corporation in a transaction that closed November 19, 2007.

government of Iraq.

10. On or around April 15, 1995, the U.N. adopted Security Council Resolution 986, which provided a limited exception to the Iraq sanctions regime in that it allowed Iraq to sell its oil. However, Resolution 986 required that the proceeds of oil sales be used by the Iraqi government to purchase humanitarian supplies for the Iraqi people, including but not limited to food. Thus, this program became known as the Oil for Food Program ("OFFP"). 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.

11. 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 branch of Banque Nationale de Paris ("BNP-Paribas"). That escrow account funded the purchase of humanitarian goods by the Iraqi government.

12. Under the provisions of the OFFP, a supplier of humanitarian goods contracted with a ministry or other department of the Iraqi government to sell goods to the Iraqi 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 Iraq 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.

13. If a contract was approved by the 661 Committee, a letter of credit was issued by the New York branch of 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. 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.

14. On or around December 10, 1996, the first Iraqi oil exports under the OFFP began. The OFFP continued from in or around December 1996 until the United States invasion of Iraq on or around March 19, 2003. From in or around 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. 31 C.F.R. § 575.201, *et seq.*

15. Beginning in approximately August 2000, the Iraqi government demanded that suppliers of humanitarian goods pay a kickback, usually valued at ten percent of the contract price, to the Iraqi government in order to be awarded a contract by the government. These kickbacks violated U.N. OFFP 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 OFFP guidelines.

16. Often, these kickbacks were termed "after sales service fees" ("ASSFs"). They did not, however, involve the performance of any actual service by the supplier. Typically, suppliers included these ASSFs in the contract price submitted to the U.N. without disclosing to the U.N. the fact that the contract contained an extra ten percent that would be kicked back to the Iraqi government. Including the ten percent in the submitted contract price allowed the supplier to avoid paying the ten percent out of its profits; instead, the suppliers caused the U.N., unknowingly, to fund the kickbacks to the Iraqi government.

17. In many cases, during or after contract negotiations, the Iraqi government asked the supplier to sign an auxiliary contract, usually called a "side letter," memorializing the supplier's commitment to pay the ASSFs. These side letters usually stated explicitly that the supplier agreed to pay a set amount, approximately ten percent of the contract price, to the Iraqi government in advance of the arrival of the goods in Iraq.

18. Some suppliers described the ASSFs as such in the contracts submitted to the U.N. for approval, 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.

III. Akzo Nobel Subsidiaries Made Improper Payments to Iraq

19. While the OFFP was in effect, Akzo Nobel's Organon and Intervet subsidiaries utilized consultants in the Middle East to facilitate sales of pharmaceuticals to the Iraqi government. Akzo Nobel subsidiaries Organon and Intervet made kickback payments to the Iraqi government through third-party agents, in exchange for sales contracts with the Iraqi government.

A. Intervet Authorized a \$38,741 Kickback Payment to the Government of Iraq Through Its Agents

20. During the course of the OFFP, Intervet conducted business in Iraq through Agent A and Agent B, who were paid jointly on all contracts with the government of Iraq regardless of which agent secured the contract. Prior to August 2000, the agents each received a fee equivalent

to five percent of the price of each contract for which they provided services. In August 2000, the agents' fees were reduced to 2.5 percent of the relevant contract price as a result of price pressures in the region.

21. In September 2000, Agent A negotiated a contract with the Iraqi State Company for Agricultural Supplies (the "Agricultural Ministry") on behalf of Intervet. This contract was referenced by the U.N. as Contract 800686. Agent A told Employee A that the Agricultural Ministry required Intervet to pay a kickback of five percent of the contract price to the Agricultural Ministry. Employee A informed Agent A that he would not agree to pay the kickback, but soon became aware that Agent A signed a letter addressed to the Agricultural Ministry promising to pay the kickback. At the contract signing on October 21, 2000, Employee A saw Agent A deliver an envelope to one of the Iraqi representatives. Employee A did not ask the agent about the contents of the envelope.

22. Shortly after the signing of Contract 800686, Agent A informed Employee A and his supervisor, Employee B, that he had paid the five percent kickback to the Agricultural Ministry, which amounted to \$38,741, and asked to be reimbursed. Employee A and Employee B agreed that Intervet would reimburse Agent A for the kickback payment. Intervet did so by reverting to its earlier commission arrangement with Agent A and Agent B, and providing each agent with a five percent commission. The agents were thereby able to keep their standard 2.5 percent commission and be reimbursed for the five percent that they had passed on to the Agricultural Ministry. In November 2001, Intervet received payment from the U.N. escrow account for this contract. Part of the U.N. payment was used to fund Intervet's payments to Agent A and Agent B.

23. Intervet improperly characterized the kickback payment to the Agricultural Ministry as legitimate agent commission payments on its corporate books and records when Intervet was aware that a significant portion of those payments constituted a kickback to the Agricultural Ministry. At the end of Akzo Nobel's fiscal year, in each year from 2000 through 2002, the books and records of Intervet, including those containing false characterizations of the kickback given to the Agricultural Ministry, were incorporated into the books of Akzo Nobel for purposes of preparing Akzo Nobel's year-end financial statements.

24. On Contract 800686, Intervet earned profits of \$200,741.

B. Organon Authorized \$240,750 in Kickback Payments to Iraq Through Its Agent

25. Organon entered into three contracts on which it paid kickbacks to the Iraqi Ministry of Health. Organon used Agent A to assist it in obtaining the three contracts, and Agent A and an Organon employee negotiated with the Ministry of Health for each of the contracts. Prior to the execution of these three contracts, Agent A had received from Organon a commission of five percent of the relevant contract price; however, Organon increased Agent A's commission to fifteen percent once the Iraqi government began demanding ten percent kickback payments in exchange for OFFP contracts.

26. With regard to the first contract, dated June 18, 2001, which the U.N. referenced as Contract 901408, Organon and the Ministry of Health agreed on an initial contract price, but the Ministry of Health demanded a kickback of ten percent of that price. Consequently, when Organon prepared the contract documents to be approved by the U.N., Organon inflated the contract price by ten percent to cover the kickback payment, thereby concealing the kickback

from the U.N. In connection with this contract, Agent A requested that Organon pay ten percent of his commission to an affiliated entity called "Sabbagh Drugstore." Organon employees agreed and made the requested payment in September 2001.

27. In relation to the two subsequent contracts, both dated July 15, 2002 and referenced by the U.N. as Contracts 1200322 and 1200325, Organon agreed with the Ministry of Health on an initial contract price that was inflated by ten percent and submitted those inflated contracts to the U.N., thereby concealing the kickbacks from the U.N. With regard to those two contracts, Agent A requested that Organon pay the extra ten percent commissions directly to an account in Agent A's name. Organon made the payments to Agent A on both contracts on November 25, 2002.

28. The Organon employees were aware that the contract prices submitted to the U.N. were inflated by ten percent and that the increase in Agent A's commission was designed to fund, and resulted in, Agent A's payment of kickbacks, in the amount of \$240,750, to the Ministry of Health.

29. Organon improperly characterized the kickback payments to the Ministry of Health as legitimate agent commission payments on its corporate books and records. At the end of Akzo Nobel's fiscal year, in 2001 and 2002, the books and records of Organon, including those containing false characterizations of the payments given to the Ministry of Health, were incorporated into the books of Akzo Nobel for purposes of preparing Akzo Nobel's year-end financial statements.

30. On Contracts 901408, 1200322, and 1200325, Organon's profits totaled \$1,446,626.92.

APPENDIX B

In order to address any deficiencies in the internal controls, policies and procedures of Akzo Nobel N.V. and its subsidiaries and affiliates (collectively, "AKZO NOBEL") regarding compliance with the Foreign Corrupt Practices Act ("FCPA"), 15 U.S.C. §§ 78dd-1, et seq., and other applicable anticorruption laws, AKZO NOBEL agrees to conduct, in a manner consistent with all of its obligations under this Agreement, a review of its existing internal controls, policies and procedures.

Where necessary and appropriate, AKZO NOBEL agrees to adopt new or modify existing internal controls, policies and procedures in order to ensure that it maintains: (a) a system of internal accounting controls designed to ensure that AKZO NOBEL makes and keeps fair and accurate books, records and accounts; and (b) a rigorous anti-corruption compliance code, standards and procedures designed to detect and deter violations of the FCPA and other applicable anti-corruption laws. At a minimum, this should include, but ought not be limited to, the following elements:

1. A clearly articulated corporate policy against violations of the FCPA and other applicable anti-corruption laws;
2. A system of financial and accounting procedures, including a system of internal accounting controls, designed to ensure the maintenance of fair and accurate books, records and accounts;
3. Promulgation of a compliance code, standards and procedures designed to reduce the prospect of violations of the FCPA, other applicable anti-corruption laws, and AKZO NOBEL's compliance code. These standards and procedures should apply to all directors, officers, and employees and, where necessary and appropriate, outside parties acting on behalf of

AKZO NOBEL in a foreign jurisdiction, including agents, consultants, representatives, distributors, teaming partners, and joint venture partners (collectively referred to as "agents and business partners").

4. The assignment of one or more senior corporate officials of AKZO NOBEL to the implementation and oversight of compliance with policies, standards and procedures regarding the FCPA and other applicable anti-corruption laws. Such corporate official(s) shall have the authority to report matters directly to AKZO NOBEL's Audit Committee of the Board of Directors.

5. Mechanisms designed to ensure that AKZO NOBEL's policies, standards and procedures regarding the FCPA and other applicable anti-corruption laws are effectively communicated to all directors, officers, employees and, where necessary and appropriate, agents and business partners. This should include: (a) periodic training for all directors and officers, and, where necessary and appropriate, employees, agents and business partners; and (b) annual certifications by all executive directors, officers, and, where necessary and appropriate, employees, agents and business partners, certifying compliance therewith.

6. An effective system for reporting suspected criminal conduct and/or violations of the compliance policies, standards, and procedures regarding the FCPA and other applicable anticorruption laws for directors, officers, employees, agents and business partners.

7. Appropriate disciplinary procedures to address, among other things, violations of the FCPA, other applicable anti-corruption laws, and AKZO NOBEL's compliance code, standards and procedures by AKZO NOBEL's directors, officers, and employees.

8. Appropriate due diligence requirements pertaining to the retention and oversight of agents and business partners.

9. Standard provisions in agreements, contracts, and renewals thereof with all agents and business partners that are reasonably calculated to prevent violations of the FCPA and other applicable anti-corruption laws, which may, depending upon the circumstances, include: (a) anticorruption representations and undertakings relating to compliance with the FCPA and other applicable anti-corruption laws; (b) rights to conduct audits of the books and records of the agent or business partner to ensure compliance with the foregoing; and (c) rights to terminate an agent or business partner as a result of any breach of anti-corruption laws or representations and undertakings related to such matters.