

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :
 :
 v. : **CRIMINAL NO. 15-513**
 :
TAMINCO, US INC. :

**UNITED STATES' MEMORANDUM FOR
ENTRY OF PLEA AND SENTENCING**

Introduction

The United States of America, by and through its counsel, the United States Attorney for the Eastern District of Pennsylvania, now submits for the assistance of the Court this memorandum concerning the entry of a criminal guilty plea and the sentencing in the above case. This matter arises from the actions of defendant Taminco US, Inc. (Taminco), a chemical manufacturer, having sold for export a List I chemical, methylamine, without adequately knowing the customer to whom it was sold. In addition, when certain shipments of methylamine for export became missing, Taminco failed to report that missing List I chemical to the United States Drug Enforcement Administration (DEA) as required by statute. These offenses occurred between March and June of 2010, and later with respect to failure to report missing chemicals,¹ in violation of Title 21, United States Code, Sections 842(a)(9), (a)(10) and (c)(2)(A), all misdemeanors. For the reasons set forth below, the government recommends that the Court accept Taminco's guilty plea and impose sentence on Taminco in accordance with the parties' agreement.

¹ The plea agreement contains a waiver of the statute of limitations (¶ 9), and a tolling agreement has been agreed to.

The government and Taminco have agreed that the appropriate resolution of this matter consists of a guilty plea by Taminco to the six counts charged, under the terms of a plea agreement. Taminco has signed a plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) under which, with the Court's approval, it will plead guilty to six counts of selling a List I chemical (methylamine) for export without having identified its customer, and, included in the last three of those counts, also failing to report to DEA the fact that the shipments were missing, in violation of 21 U.S.C. §§ 842(a)(9), (a)(10) and (c)(2)(A). Under the plea agreement, the parties have agreed that the appropriate sentence in this case is a fine of \$650,000 and forfeiture of \$210,374. The parties also recommend that the Court proceed to impose sentence immediately, without requiring a presentence investigation.

The plea agreement resolves a criminal investigation into Taminco's shipments of methylamine from the United States to Mexico between 2007 and 2010. During the period which was the subject of this investigation, Taminco operated as an independent company. In December, 2014, an established chemical company acquired Taminco. Taminco is now a wholly-owned subsidiary of that company. That chemical company had no involvement with Taminco during the period in which the investigated conduct occurred.

This guilty plea is part of a global resolution that includes a civil settlement agreement with the United States, involving a civil fine for a portion of the investigated conduct.

I. CRIMINAL CHARGE

The information here charges Taminco with six counts of selling a List I chemical, methylamine, for export without adequately identifying the customer to whom it was being sold. Counts One through Three charge sales of 16,800 kilograms each to company GC in February and

March of 2010, and Counts Four through Six charges sales of 16,800 kilograms each to company CRC in March and June of 2010, all in violation of 21 U.S.C. §§ 842(a)(9) and (c)(2)(A). In addition, Counts Four through Six also charge Taminco with failing to report missing List I chemicals in connection with those shipments, as required by statute, in violation of 21 U.S.C. §842(a)(10) and (c)(2)(A).

A. Statutory Basis

The Controlled Substances Act and its associated regulations regulate certain chemicals because of their potential use in the manufacture of controlled substances. 21 C.F.R. §1310.02. “List I” chemicals are regulated because they are known to be used in the manufacture of a controlled substance and are important in the manufacture of the controlled substance. 21 U.S.C. §802(34).

Methylamine, also known as monomethylamine (MMA), is a List I chemical. 21 U.S.C. §802(34)(M); 21 C.F.R. §1310.02(13). Methylamine is a necessary chemical for the P2P method of manufacturing methamphetamine, a Schedule II controlled substance.

Section 842(a) of Title 21 sets out requirements on those who deal in regulated chemicals. Among those, and as relevant to this case, are the following:

(a) Unlawful acts

It shall be unlawful for any person—

* * *

(9) who is a regulated person to engage in a regulated transaction without obtaining the identification required by [section] 830(a)(3) of this title.

(10) negligently to fail to keep a record or make a report under section 830 of this title or negligently to fail to self-certify as required under section 830 of this title;

* * *

(c) Penalties

* * *

(2)(A) If a violation of this section is prosecuted by an information or indictment which alleges that the violation was committed knowingly and the trier of fact specifically finds that the violation was so committed, such person shall, except as otherwise provided in subparagraph (B) of this paragraph, be sentenced to imprisonment of not more than one year or a fine under Title 18, or both.

Section 830 of Title 21 sets out certain obligations of the person who engages in a “regulated transaction.” The following requirements from §830 are relevant here:

(a) Record of regulated transactions

* * *

(3) -- It is the duty of each regulated person who engages in a regulated transaction to identify each other party to the transaction. It is the duty of such other party to present proof of identity to the regulated person. The Attorney General shall specify by regulation the types of documents and other evidence that constitute proof of identity for purposes of this paragraph.

(b) Reports to Attorney General

(1) Each regulated person shall report to the Attorney General, in such form and manner as the Attorney General shall prescribe by regulation –

* * *

(C) any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated person;

A “regulated transaction” means “a distribution, receipt, sale, importation or exportation of, or an international transaction involving shipment of, a listed chemical [above a threshold amount, if established for the chemical].” 21 U.S.C. §802(39). For MMA, there is a threshold amount of one kilogram. 21 C.F.R. §1310.04(f). A “regulated person” is a person who manufactures, distributes, imports or exports a listed chemical” 21 U.S.C. §802(38).

The regulations require that the regulated person must identify the other party to the transaction. “For export transactions, this shall be accomplished by good faith inquiry through reasonably available research documents or publicly available information which would indicate the existence of the foreign customer.” 21 C.F. R. §1310.07(a). Further, “[t]he regulated person must verify the existence and apparent validity of a business entity ordering a listed chemical. For export transactions, a good faith inquiry to verify the existence and apparent validity of a foreign business entity may be accomplished by such methods as verifying the business telephone listing through international telephone information, the firm’s listing in international or foreign national chemical directories, or other commerce directories or trade publications, confirmation through foreign subsidiaries of the U.S. regulated person . . .” 21 C.F.R. §1310.07(b).

The regulations also require that the regulated person must report “any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated person. The regulated person responsible for reporting a loss in-transit is the shipper.” 21 C.F.R. §1310.05(a)(3). Such reports are to be made to the local DEA Divisional office. Id. at (a).

B. The Criminal Charges

The specific criminal charges which the information alleges and to which Taminco has agreed to plead guilty is that Taminco failed to adequately identify its customer GC to whom it was exporting MMA for three specific shipments of MMA in March of 2010, and failed to adequately identify its customer CRC to whom it was exporting MMA for three specific shipments of MMA in March of 2010 and June of 2010. In addition, for the three shipments identified in Counts Four through Six, the shipments to CRC, Taminco also failed to report to DEA that these shipments had disappeared and became missing. Information at ¶¶ 24-25.

II. PLEA AGREEMENT

Defendant Taminco has agreed to the terms of a plea agreement with the government. A copy of this plea agreement is attached as Attachment A to this memorandum. This plea agreement is entered into under Federal Rule of Criminal Procedure 11(c)(1)(C), and includes an agreed-upon sentence. The essential terms of the plea agreement are summarized as follows:

1. Taminco agrees to plead guilty to a six-count information charging it with failing to identify customers in Mexico with respect to six shipments of MMA, and, with respect to three of those shipments, with failing to report missing MMA. It also agrees to forfeiture of \$210,374.

2. The agreement is made under Rule 11(c)(1)(C) and the parties agree that the appropriate sentence is: a fine of \$650,000, a forfeiture judgment of \$210,374 as substitute assets, and a special assessment of \$750. Taminco agrees to pay these penalties within 10 business days of the date of sentencing (and will pay the special assessment on the day of sentencing). The parties agree that the moneys received for the charged shipments are no longer available. Because Taminco has entered into a Memorandum of Agreement with the DEA, Taminco need not be placed on probation.

3. Taminco has also reached a settlement regarding a civil fine concerning this conduct.

4. Taminco waives any defenses and objections under the Double Jeopardy and Excessive Fines Clauses of the Eighth Amendment. The parties agree that this case does not involve restitution.

5. Taminco waives any claim under the Hyde Amendment for attorney's fees and other litigation expenses.

6. Taminco understands the maximum penalties for the charged offenses.

7. With respect to the defendant's conduct, the parties stipulate to the following facts and basis for the plea, criminal fine and forfeiture:

- a. Taminco manufactured, distributed, sold and exported monomethylamine (MMA).
- b. MMA is a List I chemical and its manufacture, distribution, import and export are regulated by federal statutes and regulations.
- c. Taminco engaged in regulated transactions involving the sale of MMA to customers in Mexico during the period 2007 to 2010. As relevant to this plea agreement, it prepared MMA as a 40% aqueous solution for shipment to these customers and had the MMA packaged in 55-gallon drums for shipment. This mixture is known as MMA-40.
- d. Taminco knowingly engaged in regulated transactions involving the sale of MMA to customers in Mexico without obtaining the required identification of customers IPP, GC and CRC during the period 2009 through 2010.
- e. Taminco sold and distributed shipments of 16,800 kilograms each of MMA-40 to customer GC in Mexico on or about February 18, 2010, March 2, 2010 and March 3, 2010 (Taminco order numbers

74492, 74493, and 74790) and at the time Taminco made these shipments it had knowingly engaged in regulated transactions without obtaining the required identification of customer GC.

- f. Taminco sold and distributed shipments of 16,800 kilograms each of MMA-40 to customer CRC in Mexico on or about March 2, 2010, March 3, 2010 and June 29, 2010 (Taminco order numbers 75731, 75735, and 77843) and at the time Taminco made these shipments it had knowingly engaged in regulated transactions without obtaining the required identification of customer CRC.
- g. At some time following Taminco's sale and delivery of the shipments of MMA-40 described in paragraph f above to the freight forwarders in Laredo, Texas that were designated by the customer and before delivery to the customer, CRC, in Mexico, some or all of the product disappeared when it was diverted from the intended recipient. Taminco learned in September 2010 that it could not verify that some or all of the product in the shipment reached the intended recipient in Mexico. Taminco subsequently knowingly failed to report to the appropriate DEA Field Office that the shipments were missing and/or that delivery could not be verified.
- h. Taminco received a total of \$210,234.07 in exchange for the MMA-40 it shipped and distributed as charged in Counts One through Six of the Information.

- i. The parties agree that Taminco made 26 shipments during 2009 and 2010 in connection with regulated transactions in which it had knowingly engaged without obtaining the required identification from customers, and that these shipments are relevant conduct pursuant to U.S.S.G. §1B1.3. The parties agree that using appropriate values for its pecuniary gain for these shipments and an appropriate multiplier from §8C2.5, the appropriate fine in this case is \$650,000 pursuant to Sentencing Guideline §8C2.8.
- j. Taminco was acquired in December 2014 by a large multi-national chemical corporation headquartered in the United States. Since December 2014, Taminco has been a wholly owned subsidiary of the large multi-national chemical corporation. The large multi-national chemical corporation did not have any involvement with Taminco during the period of the violations charged in the Information.

8. Taminco and DEA have entered into a Memorandum of Agreement (MOA) with DEA under which Taminco will comply with certain requirements concerning the manufacture of List I chemicals and, subject to Taminco's compliance with those terms, the DEA has agreed to forego administrative action against Taminco's DEA registrations.

9. Taminco waives defenses under the Speedy Trial Act and the Constitution's Speedy Trial provision for the charges to which it is pleading guilty, if the plea is accepted by the Court.

10. Taminco understands that this guilty plea agreement does not bind any other government agency, or any component of the Department of Justice, except as specified in this agreement. The government takes no position on the tax treatment of any matters related to this case.

11. If the Court imposes the agreed-upon sentence, the government will not appeal and Taminco waives all rights to appeal or collaterally attack the conviction, sentence, or any other matter relating to this prosecution, other than claims that cannot be waived.

12. Taminco waives all rights to request or receive any records pertaining to the investigation or prosecution of this case, including, without limitation, any records that may be sought under the Freedom of Information Act or the Privacy Act.

13. Taminco is satisfied with the legal representation provided by its lawyers; Taminco and its lawyers have fully discussed this guilty plea agreement; and Taminco is agreeing to plead guilty because Taminco admits that it is guilty of the offenses described in paragraph 1.

14. Taminco will acknowledge acceptance of this guilty plea agreement by the signature of its counsel and of an authorized corporate officer. Taminco shall provide to the government for attachment to this plea agreement a notarized resolution by Taminco's Board of Directors authorizing the corporation to enter a plea of guilty, and authorizing a corporate officer to execute this agreement.

15. The parties agree to waive the presentence investigation and report pursuant to Rule 32(c)(1) of the Federal Rules of Criminal Procedure, and will jointly request that Taminco be sentenced at the time that the guilty plea is entered and accepted by the Court.

16. It is agreed that this guilty plea agreement contains no additional promises, agreements or understandings other than those set forth in this written guilty plea agreement, and that no additional promises, agreements or understandings will be entered into unless in writing and signed by all parties.

III. COMPONENTS OF THE GLOBAL RESOLUTION

The plea agreement is part of a global resolution reached between the United States and Taminco concerning the conduct involved here. Under the terms of a separate civil settlement with the United States, Taminco will pay \$475,000 as civil penalties for this conduct. Along with the civil settlement, Taminco is executing a Memorandum of Agreement with DEA under which Taminco has agreed to comply with certain requirements regarding the manufacture, sale and shipment of listed chemicals and DEA has agreed to forego administrative action against Taminco's DEA registrations, subject to Taminco's compliance with the terms of the MOA.

IV. ELEMENTS OF THE OFFENSES

A. Failure to Identify Customer

The information charges six counts of failing to identify Taminco's export customer, in violation of 21 U.S.C. §§ 842(a)(9) and (c)(2)(A). In order to prove a violation of this offense, the government would have to prove:

1. The defendant was a "regulated person," that is, a person who manufactures, distributes or exports a listed chemical.
2. The defendant engaged in a "regulated transaction," that is, the sale, distribution or export of a listed chemical above the threshold amount, here the sale, distribution or export of more than one kilogram of methylamine.

3. Prior to the transaction the defendant did not obtain the required identification of the other party to the transaction.
4. The defendant acted knowingly in failing to obtain the required identification.

B. Failure to Report Missing and Disappeared Shipments

The information charges three counts of failing to report to DEA missing or disappeared shipments of a listed chemical, in violation of 21 U.S.C. §§ 842(a)(10) and (c)(2)(A).

In order to prove a violation of this offense, the government would have to prove:

1. The defendant was a “regulated person,” that is, a person who manufactures, distributes or exports a listed chemical;
2. There was an unusual or excessive loss or disappearance of a listed chemical, here methamphetamine, while under the control of the defendant;
3. The defendant did not report to the DEA the loss or disappearance of the listed chemical;
4. The defendant acted knowingly in failing to report the loss or disappearance.

C. Forfeiture

The forfeiture component of the information and plea agreement arises from the provisions of Section 881 of Title 21 providing for forfeiture in certain drug cases. That provision states that among the items subject to forfeiture are “all moneys . . . furnished or intended to be furnished by any person in exchange for a . . . listed chemical in violation of this subchapter . . .”. 21 U.S.C. §881(a)(6). Here, the shipments for which Taminco did not adequately identify its

customer – those charged in Counts One through Six – are transaction in which Taminco received funds for a listed chemical in violation of the statutory provision in the subchapter. That is, §842(a)(9) made it unlawful to engage in a regulated transaction without having identified the customer. The moneys that Taminco received are identified in the Information and total \$210,374. Under federal forfeiture law, the government can pursue criminal forfeiture in any case where the defendant is charged with a violation of an Act of Congress which contains a civil forfeiture remedy. See 28 U.S.C. § 2461(c) (allowing criminal forfeiture where the defendant is charged “in a criminal case with a violation of an Act of Congress for which the civil or criminal forfeiture of property is authorized . . .”). Thus, because civil forfeiture is authorized here under §881, then criminal forfeiture is authorized as well.

Because the moneys here are no longer available for seizure, the government can seek substitute assets. See 18 U.S.C. § 2461(c) (the procedures set forth in 21 U.S.C. § 853 apply to this criminal forfeiture); 21 U.S.C. § 853(p) (allowing the forfeiture of substitute assets if the items subject to forfeiture are no longer available). Pursuant to the plea agreement, the government here seeks, and defendant has agreed to pay, a forfeiture judgment for substitute assets in the amount of \$210,374.

V. THE MAXIMUM PENALTIES

The Court may impose the following statutory maximum sentence for each count of conviction: a fine of \$200,000, a special assessment of \$125, criminal forfeiture, restitution, and a five-year term of probation.

The total statutory maximum penalty is a fine of \$1,200,000, a special assessment of \$750, criminal forfeiture, restitution, and a five-year term of probation.

VI. THE FACTS AT TRIAL

In the plea agreement, the parties have stipulated to a factual basis sufficient to support the entry of this plea. Plea Agreement, ¶7. These stipulated facts are set forth above. The government submits that those facts provide the factual basis for the charged offenses. In order to give the Court context for these stipulations, the government here sets forth some of the broader facts that it would prove if the case were to proceed to trial.

A. Regulatory Background

The government would show that monomethylamine (MMA) is a List I chemical which is closely regulated by the United States Drug Enforcement Administration (DEA). The regulatory requirements are set out both in Title 21 of the United States Code, 21 U.S.C. §§830, and 842, and in Title 21 of the Code of Federal Regulations, 21 C.F.R. Part 1310.

Among the requirements imposed on manufacturers and exporters of MMA are the requirements that seller/exporter know its customers. Section 830(a)(3) states that “[i]t is the duty of each regulated person who engages in a regulated transaction to identify each other party to the transaction.” 21 U.S.C. §830(a)(3). Another requirement for manufacturers and sellers of MMA is that it report to DEA whenever there is a loss or disappearance of the listed chemical. Section 830(b)(1)(C) requires that the regulated person report to the DEA “any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated person.” 21 U.S.C. §830(b)(1)(C). The report is to be made to the head of the DEA Divisional office in which the regulated entity is located. 21 C.F.R. §1310.05(a). When there is a loss in-transit, the regulated person responsible for reporting that loss is the supplier. 21 C.F.R. §1310.05(a)(3).

B. Monomethylamine

MMA is a precursor in the manufacture of methamphetamine. This chemical is used in the “P2P” method of manufacturing methamphetamine. This is a method which is used in Mexico in this manufacturing process. Although MMA has legal and legitimate uses (and thus is not itself a controlled substance), is highly regulated due to its use in methamphetamine manufacture.²

MMA can be shipped as an aqueous solution at 100% purity. However, when shipped in 55-gallon drums instead of railroad tank cars, it is usually diluted to be 40% MMA, and is often referred to as MMA-40. A 200 liter (approximately 55-gallon) drum of MMA-40 will theoretically be able to produce approximately 88 kg. of d,l-methamphetamine, although the practical conversion will likely be somewhat less. One report suggests that 62 kg. of methamphetamine would be the practical yield.

C. Initial Investigation

On August 31, 2011, while investigating the attempted smuggling of three 55-gal drums of MMA across the border to Mexico, DEA agents in San Luis, Arizona, found drum wrappings in a house connected to the smuggling. These drum wrappings were wrappings from Taminco drums containing MMA. The smuggling which DEA was investigating had been attempted on August 4, 2011, when CBP officers seized three drums of MMA from a truck at the San Luis border crossing. The driver said that there had been 20 barrels of MMA to be moved over the border, and that two other trucks had crossed 7-10 barrels of MMA into Mexico. A confidential source on August 30, 2011 told DEA agents the location of a house where precursor was stored, which was connected to the shipper of the August 4th shipment. Agents executed a

² Among its legitimate uses is agricultural pest control.

search warrant at that house on August 31st and found the Taminco wrappers in the house. The source later told DEA that the barrels connected to the wrappers had already been moved to Mexico.

DEA agents contacted Taminco concerning the wrappings. A Taminco representative told DEA that, based on the batch numbers on the wrappers, the drums had been ordered from Taminco by an individual, RC, in Mexico, who distributed Taminco chemicals in that country. The drums with these wrappers had been part of a shipment to RC's company, CRC. RC at times had been contracted as a non-employee agent of Taminco in Mexico, and later Taminco realized that he was also acting as a non-employee distributor of Taminco chemicals in Mexico.

Additional drums of MMA which had been manufactured and shipped by Taminco to the company CRC were discovered in Arizona. In December of 2011, Customs and Border Protection officers intercepted and seized five Taminco drums of MMA-40 as an individual attempted to smuggle them into Mexico in Nogales, Arizona. In April 2012, DEA agents found and seized six drums of MMA-40 which had been sold and shipped by Taminco. DEA seized these drums of MMA-40 from a self-storage unit in Nogales, Arizona. All of these drums were marked monomethylamine, displayed Taminco's manufacturing label, and stamped on the lid as destined to CRC via the Laredo, Texas, point of entry.

D. Further Investigation

DEA agents and DEA Diversion Investigators determined that the drums of MMA which were seized at the border crossings in Arizona and in the self-storage unit in Arizona had been a part of shipments from Taminco to the company CRC in March of 2010. Records from

Taminco showed that the drums were part of 96-drum shipments numbered 75731, 75733, and 75735 which were shipped to a freight forwarder at the U.S. –Mexican border at Laredo during the first 10 days of March, 2010, for export into Mexico. Each 96-drum shipment contained 16,800 kilograms of MMA-40. They were part of a group of 5 shipments of 96 drums each.

Correspondence between Taminco and RC indicated that in March 2010 Taminco was having trouble moving MMA shipments across the border to Mexico due to new Mexican regulation of precursor chemicals such as MMA. There were five loads delivered to the border for CRC in early March, 2010, and only two of them were crossed over into Mexico. The other three were removed from the warehouse in Laredo by the business partner of RC, where they had been delivered, and their further location was never further reported. Taminco never sought to confirm the location of these in-transit drums, and never found out where they were. These drums were not delivered to their destination. The MMA drums seized in Arizona were part of these three loads.

The wrappers which DEA agents found on August 30, 2011, in a house in Arizona, and which a source reported were connected to drums of MMA which had been moved across the border, indicated that these drums were part of shipment 77843 by Taminco to CRC. This shipment was sent by Taminco to the border at Laredo, Texas, on approximately June 29, 2010. Taminco never sought to confirm the continued location of these in-transit drums, and never found out where they went. Taminco never confirmed that these drums were delivered to their destination.

In both cases, with respect to the June delivery for which wrappers were found in Arizona, and with respect to the March shipments for which some of the drums were seized in Arizona, Taminco never reported to DEA that the drums were missing or had disappeared.

Prior to shipping these 16,800 kilogram loads of MMA to CRC, Taminco did not verify the legitimacy of the company CRC. Although it had dealt with RC for some time, this was the first order for this company CRC which appeared to be a distribution company run by RC. Taminco had no information concerning where RC would warehouse the MMA. When a Taminco employee in Mexico attempted to ascertain CRC's customers and the end uses of the MMA, RC provided only three businesses. When the employee attempted to contact them, one was not reachable, one said it sold to others, and one appeared to be a recognized company. The employee never attempted to determine who the second company sold to, and never visited the locations of any of these companies to verify their existence and use of the MMA.

E. Customer GC

Independently of the missing drums of MMA from the March 2010 shipments to CRC, Taminco became aware in September of 2010 that it could not verify shipments of MMA to a different customer in Mexico, GC. This was a customer for whom RC acted as an agent of Taminco in making sales to GC. Taminco had been shipping MMA to GC for many months, with the last shipments occurring in March of 2010. DEA, in connection with a license review for the company that put MMA in drums for Taminco, asked Taminco to verify that shipments to GC had been received. Taminco was unable to do so. After receiving word from RC that GC may have shut down, a compliance officer at Taminco said in a 9/28/10 email that they couldn't simply report to DEA that "we believe that our customer shut down and that we do not have any proof of

receipt or status on 9 truckloads (896 drums),” and the officer suggested that Taminco’s representative in Mexico travel to the address to which Taminco shipped the MMA to GC investigate what happened to those shipments. Taminco’s representative did so and found only a vacant lot and no evidence that GC was in the area. Taminco had not adequately identified its customer GC.

F. Relevant Conduct

In addition to the specific shipments for which Taminco is charged in the information, they made other shipments to customers CRC, GC and IPP between January 2009 and June of 2010. This is relevant conduct to the offenses charged. These included 26 separate shipments in 2009 and 2010 to these customers. Each of these shipments was conducted without adequate identification of the customer. The penalties agree to and recommend that the Court, as part of the sentencing in this case, take into account this relevant conduct.

V. SENTENCING CONSIDERATIONS

The parties jointly request that Taminco be sentenced on the day it enters its guilty plea. The parties have further agreed upon the appropriate sentence for the conduct pleaded to, and jointly urge the Court to accept the plea agreement and the agreed-upon sentence. The sentence the parties have agreed upon, and which they jointly propose to the Court, is a criminal fine of \$650,000 and a forfeiture judgment of \$210,374.

This agreed-upon fine and forfeiture reflect the factors set forth in 18 U.S.C. § 3353(a) and take into account the advisory sentencing guidelines here. Because the defendant is a corporation, Chapter 8 of the Guidelines (Organizations) is applicable. Section 842(a)(9) and

(10) are assigned to guideline §2D3.2. This guideline is explicitly covered by the fine guidelines of Chapter 8. U.S.S.G. §8C2.1(a). The offense level for the Chapter 2 calculation is an offense level of 4. §2D3.2(a). This results in a base fine of \$5,000 if §8C2.4(d) is applied. Because a fine based on the pecuniary gain will be greater than that found under §2D3.2, the fine table in Chapter 8 will be applicable.

The fine range to be calculated under the provisions of Chapter 8 depends on pecuniary gain and a multiplier. The Chapter 8 guideline has provisions for a culpability score based on factors related to the organization and the conduct. The fine range itself is based on the use of a multiplier (a range for which results from the culpability score) and the pecuniary gain to the defendant organization. In reaching the recommended penalties here, the parties have discussed the sentencing factors, but have not explicitly agreed on the culpability score, a multiplier and the pecuniary gain. The government has used its estimates of these calculations in reaching agreement on the proposed sentence, and that estimate is based on a specific pecuniary gain for each of the loads of MMA within the 26 shipments included in relevant conduct. The result of a fine of \$650,000 is consistent with a Chapter 8 calculation.

The parties urge upon this Court that the proposed fine and forfeiture are appropriate under section 3553(a). The proposed criminal resolution accomplishes the goals of sentencing under 18 U.S.C. § 3553(a). It is the product of extensive negotiations between the parties, addressing the seriousness, nature and circumstances of the offenses, and the history and characteristics of the defendant. It also reflects the harm caused by the regulatory violations here which increased the risk that MMA from Taminco may have reached the hands of methamphetamine manufacturers in Mexico. This fine promotes respect for the law, and will

deter Taminco and other companies in the industry from further unlawful actions with respect to List I chemicals. A criminal fine of this magnitude will also serve as general deterrence to others who might be tempted to skirt these important regulatory requirements.

Conclusion

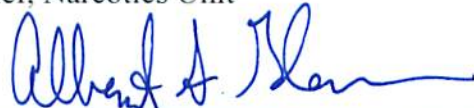
For these reasons, the United States respectfully recommends that the Court accept the plea agreement and Taminco's plea of guilty to the Information, and sentence Taminco to a criminal fine in the amount of \$650,000, impose an asset forfeiture money judgment in the amount of \$210,374 and require a special assessment of \$750. The United States also asks that the Court impose this sentence following the company's plea of guilty at the conclusion of the plea hearing.

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney



THOMAS R. PERRICONE
Assistant United States Attorney
Chief, Narcotics Unit



ALBERT S. GLENN
CHARLENE KELLER FULLMER
Assistant United States Attorneys

Dated: October 26, 2015

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum was served upon defense counsel on the date below by email and U.S. Mail, and on the probation office by U.S. Mail, as follows:

Eric Kraeutler
Attorney at Law
Morgan Lewis
1701 Market Street
Philadelphia, PA 19103

Ronald DeCastro
Chief United States Probation Officer
United States Probation Office
Suite 2400 – Federal Building
600 Arch Street
Philadelphia, PA 19106



Albert S. Glenn
Assistant United States Attorney

Dated: October 27, 2015

Appendix A

APPENDIX A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :
 :
 v. : **CRIMINAL NO. 15-**
 :
TAMINCO US, INC. :

GUILTY PLEA AGREEMENT

Under Federal Rule of Criminal Procedure 11(c)(1)(C), the United States, the defendant, Taminco US Inc. (Taminco), and the defendant's counsel enter into the following guilty plea agreement. Any reference to the United States or the government in this agreement, unless as otherwise specifically provided for in this plea agreement, shall mean the Office of the United States Attorney for the Eastern District of Pennsylvania.

1. Taminco agrees to plead guilty to a six-count Information charging it with engaging in regulated transactions without obtaining the required identification of certain customers in Mexico who purchased a List I chemical from Taminco, and in three of those counts also with failing to report a subsequent disappearance of the shipments of the List I chemical, all misdemeanors, in violation of 21 U.S.C. §§ 842(a)(9) and 842(a)(10). Taminco further agrees not to contest forfeiture as set forth in the notice of forfeiture seeking criminal forfeiture of \$210,374 in substitute assets, in lieu of the proceeds that were received for the transactions charged and that are no longer available, all arising from the defendant's sales for export to Mexico of methylamine, a List I chemical, between February 18, 2010 and June 29, 2010. The defendant further acknowledges its waiver of rights, as set forth in the attachment to this agreement.

2. The parties agree that this plea agreement is made pursuant to Fed.R.Crim.P. 11(c)(1)(C) and that the following specific sentence is the appropriate disposition of this case. Taking into consideration the factors set forth in 18 U.S.C. §§ 3553(a) and 3572, the agreed upon sentence is as follows:

- a. Taminco agrees to pay the special assessment in the amount of \$750 on the date of sentencing.
- b. Taminco agrees to pay a financial penalty of \$860,374, of which \$650,000 will be applied as a criminal fine, and an additional \$210,374 will be forfeited as substitute assets to satisfy the forfeiture obligation. The defendant will pay these amounts within 10 business days of the date of sentencing. The defendant and the government agree that these fine and forfeiture payments represent a fair and just resolution of all issues associated with fine and forfeiture calculations.
- c. Taminco agrees that, as a result of its acts or omissions, the forfeitable property, that is, the moneys which it received in exchange for the List I chemicals sold as charged in the Information, are no longer available for forfeiture as they cannot be located or have been transferred, sold or deposited with a third party, or otherwise disposed of, within the meaning of federal law. As a result, Taminco agrees to the entry and satisfaction of a judgment and preliminary order of forfeiture on the date of the guilty plea, forfeiting to the United States the sum of \$210,374 as substitute

assets for these funds. Taminco will make payment to the United States, by means of a wire transfer to the United States Marshals Service or check payable to same, in the amount of \$210,374, this amount representing substitute assets for the funds received from the offenses for which it is pleading guilty, subject to forfeiture in full satisfaction of the judgment and preliminary order of forfeiture.

- d. Simultaneously with entering into this Guilty Plea Agreement, Taminco and the United States Drug Enforcement Administration (DEA) have entered into a Memorandum of Agreement (MOA) under which Taminco will be subject to certain heightened compliance requirements and DEA will forego administrative action against Taminco's DEA registrations as provided under the terms of the MOA. In view of the existence of this MOA, the government agrees that a term of probation need not be imposed and that Taminco will not be placed on probation.

If the Court does not accept this plea agreement, then either and both the defendant or the government will have the right to withdraw from the plea agreement and insist that the case proceed to trial.

3. Under a separate civil settlement between Taminco and the United States, executed contemporaneously with this guilty plea agreement, Taminco will pay \$475,000 in civil penalties pursuant to 21 U.S.C. §842 for violations of that statute.

4. Taminco waives any and all defenses and objections that might be available under the Double Jeopardy and Excessive Fines clauses of the Eighth Amendment. The parties agree that no restitution is required in this case.

5. Taminco waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A (Statutory Note), for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

6. Taminco understands, agrees and has had explained to it by counsel that the Court may impose the following statutory maximum sentence for each count of conviction: a fine of \$200,000, a special assessment of \$125, criminal forfeiture, restitution, and a five-year term of probation. The total statutory maximum penalty is a fine of \$1,200,000, a special assessment of \$750, criminal forfeiture, restitution, and a five-year term of probation. Taminco further understands that the terms and conditions of any Court supervision may be changed and extended by the Court if the defendant violates any of the terms and conditions of that supervision.

7. With respect to the defendant's conduct, the parties stipulate to the following facts and basis for the plea, criminal fine and forfeiture:

- a. Taminco manufactured, distributed, sold and exported monomethylamine (MMA).
- b. MMA is a List I chemical and its manufacture, distribution, import and export are regulated by federal statutes and regulations.
- c. Taminco engaged in regulated transactions involving the sale of MMA to customers in Mexico during the period 2007 to 2010. As relevant to this plea agreement, it prepared MMA as a 40% aqueous solution for shipment to these customers and had the MMA

packaged in 55-gallon drums for shipment. This mixture is known as MMA-40.

- d. Taminco knowingly engaged in regulated transactions involving the sale of MMA to customers in Mexico without obtaining the required identification of customers IPP, GC and CRC during the period 2009 through 2010.
- e. Taminco sold and distributed shipments of 16,800 kilograms each of MMA-40 to customer GC in Mexico on or about February 18, 2010, March 2, 2010 and March 3, 2010 (Taminco order numbers 74492, 74493, and 74790) and at the time Taminco made these shipments it had knowingly engaged in regulated transactions without obtaining the required identification of customer GC.
- f. Taminco sold and distributed shipments of 16,800 kilograms each of MMA-40 to customer CRC in Mexico on or about March 2, 2010, March 3, 2010 and June 29, 2010 (Taminco order numbers 75731, 75735, and 77843) and at the time Taminco made these shipments it had knowingly engaged in regulated transactions without obtaining the required identification of customer CRC.
- g. At some time following Taminco's sale and delivery of the shipments of MMA-40 described in paragraph f above to the freight forwarders in Laredo, Texas that were designated by the customer and before delivery to the customer, CRC, in Mexico, some or all of the product disappeared when it was diverted from the intended

recipient. Taminco learned in September 2010 that it could not verify that some or all of the product in the shipment reached the intended recipient in Mexico. Taminco subsequently knowingly failed to report to the appropriate DEA Field Office that the shipments were missing and/or that delivery could not be verified.

- h. Taminco received a total of \$210,234.07 in exchange for the MMA-40 it shipped and distributed as charged in Counts One through Six of the Information.
- i. The parties agree that Taminco made 26 shipments during 2009 and 2010 in connection with regulated transactions in which it had knowingly engaged without obtaining the required identification from customers, and that these shipments are relevant conduct pursuant to U.S.S.G. §1B1.3. The parties agree that using appropriate values for its pecuniary gain for these shipments and an appropriate multiplier from §8C2.5, the appropriate fine in this case is \$650,000 pursuant to Sentencing Guideline §8C2.8.
- j. Taminco was acquired in December 2014 by a large multi-national chemical corporation headquartered in the United States. Since December 2014, Taminco has been a wholly owned subsidiary of the large multi-national chemical corporation. The large multi-national chemical corporation did not have any involvement with Taminco during the period of the violations charged in the Information.

8. Taminco and the DEA have entered into a three-year Memorandum of Agreement (MOA) under which Taminco has agreed to comply with certain requirements regarding the manufacture, sale and shipment of listed chemicals and DEA has agreed to forego administrative action against Taminco's DEA registrations, subject to Taminco's compliance with the terms of the MOA.

9. Taminco waives all defenses under the Speedy Trial Act or the Speedy Trial provision of the Constitution, and any applicable statutes of limitations to the charges to which it is agreeing to plead guilty under this plea agreement, provided that the guilty plea is accepted by the Court.

10. Taminco understands that this guilty plea agreement does not bind any other government agency, or any component of the Department of Justice, except as specified in this agreement. Further, Taminco understands that the United States takes no position as to the proper tax treatment of any of the payments made by Taminco pursuant to this plea agreement, any civil settlement agreement, or any agreement reached with the DEA.

11. If the Court accepts the recommendation of the parties and imposes the sentence stated in the paragraph 2 of this agreement, the parties agree that neither will file any appeal of the conviction and sentence in this case. Further, the defendant agrees that if the Court imposes the recommended sentence it voluntarily and expressly waives all rights to collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution. However, the defendant retains the right to file a claim, if otherwise allowed by law, that an attorney who represented the defendant during the course of this criminal case provided constitutionally ineffective assistance.

12. Taminco waives all rights, whether asserted directly or by a

representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

13. Taminco is satisfied with the legal representation provided by its lawyers; Taminco and its lawyers have fully discussed this guilty plea agreement; and Taminco is agreeing to plead guilty because Taminco admits that it is guilty of the offenses charged in the Information.

14. Taminco will acknowledge acceptance of this guilty plea agreement by the signature of its counsel and of an authorized corporate officer. Taminco shall provide to the government for attachment to this plea agreement a notarized resolution by Taminco's Board of Directors authorizing the corporation to enter a plea of guilty, and authorizing a corporate officer to execute this agreement.

15. The parties agree to waive the presentence investigation and report pursuant to Rule 32(c)(1) of the Federal Rules of Criminal Procedure, and will jointly request that the Court sentence Taminco at the time that the guilty plea is entered and accepted by the Court.

16. It is agreed that this guilty plea agreement contains no additional promises, agreements or understandings other than those set forth in this written guilty plea agreement, and that no additional promises, agreements or understandings will be entered into unless in writing and signed by all parties.

SIGNATURES FOR THE UNITED STATES

LOUIS D. LAPPEN
Acting United States Attorney



PETER F. SCHENCK
Chief, Criminal Division
Assistant United States Attorney



THOMAS R. PERRICONE
Chief, Narcotics Section
Assistant United States Attorney



ALBERT S. GLENN
Assistant United States Attorney



CHARLENE KELLER FULLMER
Assistant United States Attorney

DATED:

10/8/15

SIGNATURE FOR TAMINCO US, INC.

DATE: Oct 15, 2015



CLARK JORDAN
Vice President
Taminco US, Inc.

SIGNATURES OF TAMINCO'S ATTORNEYS

DATE: 10/19/15



ERIC KRAEUTLER
NATHAN J. ANDRISANI
SHEVON L. SCARAFILE
Morgan Lewis & Bockius LLP

TAMINCO US INC.
WRITTEN CONSENT OF SOLE DIRECTOR

The undersigned, being the sole director of Taminco US Inc., a Delaware corporation (the "Corporation"), pursuant to Section 141(f) of the Delaware General Corporation Law and the Bylaws of the Corporation, does hereby consent to the adoption of the following resolution:

RESOLVED, that Clark L. Jordan, an officer of the Corporation, is authorized to negotiate, execute and deliver in the name of and on behalf of the Corporation any and all documents and to take any further actions necessary in connection with resolution of that certain grand jury investigation pending in the Eastern District of Pennsylvania into and allegations concerning circumstances of the Corporation engaging in regulated transactions of monomethylamine, a List I chemical, during the period of 2009 through 2010, without obtaining the required identification of certain customers who purchased the List I chemical for export to Mexico and failing to report a subsequent disappearance of the shipments of the List I chemical, including, without limitation, Settlement Agreement, Guilty Plea Agreement, and Memorandum of Agreement between the United States Drug Enforcement Administration and the Corporation and is authorized to enter a plea of guilty to six misdemeanors in the name of and on behalf of the Corporation in connection with such resolution.

IN WITNESS WHEREOF, the undersigned has executed this written consent this 15th day of October, 2015.


David A. Golden, Sole Director

STATE OF TENNESSEE
COUNTY OF SULLIVAN

Personally appeared before me, David A. Golden, Sole Director of Taminco US Inc., with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand, at office,
this 15 day of October, 2015.


Notary Public

My commission expires: 4/1/19





Attachment

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :
 :
 v. : **CRIMINAL NO. 15-**
 :
TAMINCO US, INC. :

ACKNOWLEDGMENT OF RIGHTS

Taminco US Inc. (Taminco), through its properly authorized officer(s), hereby acknowledges that it has certain rights that it will be giving up by pleading guilty.

1. Taminco understands that it does not have to plead guilty.
2. Taminco may plead not guilty and insist upon a trial.
3. At that trial, Taminco understands:
 - a. that Taminco would have the right to be tried by a jury that would be selected from the Eastern District of Pennsylvania and that along with its attorney, Taminco would have the right to participate in the selection of that jury;
 - b. that the jury could only convict Taminco if all twelve jurors agreed that they were convinced of Taminco's guilt beyond a reasonable doubt;
 - c. that the government would have the burden of proving Taminco's guilt beyond a reasonable doubt and that Taminco would not have to prove anything;
 - d. that Taminco would be presumed innocent unless and until such time as the jury was convinced beyond a reasonable doubt that the government had proven that Taminco were guilty;

- e. that Taminco would have the right to be represented by a lawyer at this trial and at any appeal following the trial, and that if Taminco could not afford to hire a lawyer, the court would appoint one for Taminco free of charge;
- f. that through Taminco's lawyer Taminco would have the right to confront and cross-examine the witnesses against Taminco;
- g. that Taminco could call witnesses to testify in its defense if Taminco wanted to, and Taminco could subpoena witnesses for this purpose if Taminco wanted to; and
- h. that Taminco would not have to call witnesses to testify or otherwise present any defense if Taminco did not want to, and that if Taminco did not present any evidence, the jury could not hold that against Taminco.

4. Taminco understands that if it pleads guilty, there will be no trial and Taminco would be giving up all of the rights listed above, as well as any other rights associated with the trial process arising under statute, common-law, or judicial precedent.

5. Taminco understands that if Taminco decides to enter a plea of guilty, the Court will ask Taminco's representatives questions under oath, and that if any of those representatives lie on behalf of Taminco in answering those questions, those persons could be prosecuted for the crime of perjury, that is, for lying under oath.

6. Taminco understands that if it pleads guilty, it has waived its right to appeal, except as set forth in appellate waiver provisions of the plea agreement.

7. Understanding that Taminco has all these rights and that by pleading guilty Taminco is giving them up, Taminco still wishes to plead guilty.



CLARK JORDAN
Vice President
Taminco US, Inc.



ERIC KRAEUTLER
Morgan Lewis & Bockius
Counsel for Defendant