



Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, MARCH 19, 2007
WWW.USDOJ.GOV

NSD
(202) 514-2008
TDD (202) 514-1888

Chiquita Brands International Pleads Guilty to Making Payments to a Designated Terrorist Organization And Agrees to Pay \$25 Million Fine

WASHINGTON — Chiquita Brands International Inc. ("Chiquita"), a multinational corporation incorporated in New Jersey and headquartered in Cincinnati, Ohio, pleaded guilty today before the Honorable Royce C. Lamberth of the U.S. District Court for the District of Columbia to one count of engaging in transactions with a specially-designated global terrorist, announced Assistant Attorney General Kenneth L. Wainstein National Security Division; U.S. Attorney Jeffrey A. Taylor; Wendy Wysong, Deputy Assistant Secretary, U.S. Department of Commerce ("Commerce"); and William Reid, Special Agent in Charge, U.S. Immigration and Customs Enforcement (ICE), Washington, D.C. Office of Investigations.

Chiquita pleaded guilty pursuant to a written plea agreement. Under the terms of the plea agreement, Chiquita's sentence will include a \$25 million criminal fine, the requirement to implement and maintain an effective compliance and ethics program, and five years' probation. Chiquita also has agreed to cooperate in this ongoing investigation. Sentencing will occur on June 1, 2007.

The plea agreement arises from payments that Chiquita had made for years to the violent, right-wing terrorist organization United Self-Defense Forces of Colombia – an English translation of the Spanish name of the group, "Autodefensas Unidas de Colombia" (commonly known as and referred to hereinafter as the "AUC"). The AUC had been designated by the U.S. government as a Foreign Terrorist Organization ("FTO") on Sept. 10, 2001, and as a Specially-Designated Global Terrorist ("SDGT") on Oct. 31, 2001. These designations made it a federal crime for Chiquita, as a U.S. corporation, to provide money to the AUC. In April 2003, Chiquita made a voluntary self-disclosure to the government of its payments to the AUC, giving rise to this investigation.

"Like any criminal enterprise, a terrorist organization needs a funding stream to support its operations. For several years, the AUC terrorist group found one in the payments they demanded from Chiquita Brands International. Thanks to Chiquita's cooperation and this prosecution, that funding stream is now dry and corporations are on notice that they cannot make protection payments to terrorists," said Assistant Attorney General Wainstein.

"Funding a terrorist organization can never be treated as a cost of doing business," stated U.S. Attorney Taylor. "American businesses must take note that payments to terrorists are of a whole different category. They are crimes. But like adjustments that American businesses made to the passage of the Foreign Corrupt Practices Act decades ago, American businesses, as good corporate citizens, will find ways to conform their conduct to the requirements of the law and still remain competitive."

"This case clearly demonstrates the commitment of the Commerce Department and its Bureau of Industry and Security to the Administration's fight against terrorist financing," said Commerce Deputy Assistant Secretary Wysong.

"The message to industry from this guilty plea today is that the U.S. Government will bring its full power to bear in the investigation of those who conduct business with designated terrorist organizations, even when those acts occur outside of the United States," said ICE Special Agent in Charge Reid.

Chiquita's Payments to the AUC

Following the company's disclosure, the investigation leading to this prosecution developed evidence that for over six years – from sometime in 1997 through Feb. 4, 2004 – Chiquita paid money to the AUC in two regions of the Republic of Colombia where Chiquita had banana-producing operations: Urabá and Santa Marta. Chiquita made these payments through its wholly-owned Colombian subsidiary known as "Banadex." By 2003, Banadex was Chiquita's most profitable operation. Chiquita, through Banadex, paid the AUC nearly every month. In total, Chiquita made over 100 payments to the AUC amounting to over \$1.7 million.

Chiquita began paying the AUC following a meeting in 1997 between the then-leader of the AUC, Carlos Castaño, and a senior executive of Banadex. Castaño implied that failure to make the payments could result in physical harm to Banadex personnel and property. No later than September 2000, Chiquita's senior executives knew that the corporation was paying the AUC and that the AUC was a violent, paramilitary organization led by Carlos Castaño. Chiquita's payments to the AUC were reviewed and approved by senior executives of the corporation, including high-ranking officers, directors and employees.

For several years Chiquita paid the AUC by check through various intermediaries. Chiquita recorded these payments in its corporate books and records as "security payments" or payments for "security" or "security services." Chiquita never received any actual security services in exchange for the payments.

Beginning in June 2002, Chiquita began paying the AUC in Santa Marta directly and in cash according to new procedures established by senior executives of Chiquita. The newly-implemented procedures concealed the fact that Chiquita was making direct cash payments to the AUC. A senior Chiquita officer had described these new procedures to Chiquita's Audit Committee on April 23, 2002.

Chiquita Continued to Pay the AUC After the AUC Was Designated as an FTO

The U.S. government designated the AUC as an FTO on Sept. 10, 2001, and that designation was well-publicized in the American public media. The AUC's designation was even more widely reported in the public media in Colombia, where Chiquita had its substantial banana-producing operations. Chiquita also had specific information about the AUC's designation as an FTO through an Internet-based, password-protected subscription service that Chiquita paid money to receive. Nevertheless, from Sept. 10, 2001 through Feb. 4, 2004, Chiquita made 50 payments to the AUC totaling over \$825,000.

Chiquita Continued To Pay the AUC Against the Advice of Outside Counsel

On Feb. 20, 2003, a Chiquita employee told a senior Chiquita officer that he had discovered that the AUC had been designated by the U.S. government as an FTO. Shortly thereafter, these Chiquita officials spoke with attorneys in the District of Columbia office of a national law firm ("outside counsel") about Chiquita's ongoing payments to the AUC. Beginning on Feb. 21, 2003, outside counsel emphatically advised Chiquita that the payments were illegal under United States law and that Chiquita should immediately stop paying the AUC directly or indirectly. Outside counsel advised Chiquita:

"Must stop payments."

"Bottom Line: CANNOT MAKE THE PAYMENT"

"Advised NOT TO MAKE ALTERNATIVE PAYMENT through CONVIVIR"

"General Rule: Cannot do indirectly what you cannot do directly"

Concluded with: "CANNOT MAKE THE PAYMENT"

"You voluntarily put yourself in this position. Duress defense can wear out through repetition. Buz [business] decision to stay in harm's way. Chiquita should leave Colombia."

"[T]he company should not continue to make the Santa Marta payments, given the AUC's designation as a foreign terrorist organization[.]"

"[T]he company should not make the payment."

On April 3, 2003, a senior Chiquita officer and a member of Chiquita's Board of Directors first reported to the full Board that Chiquita was making payments to a designated FTO. A Board member objected to the payments and recommended that Chiquita consider taking immediate corrective action, including withdrawing from Colombia. The Board did not follow that recommendation, but instead agreed to disclose promptly to the Department of Justice the fact that Chiquita had been making payments to the AUC. Meanwhile, Banadex personnel were instructed to continue making the payments.

Chiquita Disclosed the Payments to the Department of Justice, but Continued to Make Them

On April 24, 2003, a senior Chiquita officer and a Chiquita Board member, along with outside counsel, disclosed to officials of the U.S. Department of Justice that Chiquita had been making payments to the AUC for years, and

represented that the payments had been made under threat of violence. Department of Justice officials told the Chiquita representatives that the payments were illegal and could not continue. Department of Justice officials acknowledged that the issue of continued payments was complicated. On Sept. 8, 2003, outside counsel advised Chiquita in writing that: "[Department of Justice] officials have been unwilling to give assurances or guarantees of non-prosecution; in fact, officials have repeatedly stated that they view the circumstances presented as a technical violation and cannot endorse current or future payments."

Notwithstanding the persistent advice of its outside counsel, the Department of Justice's statement that the payments were illegal and could not continue, and Board involvement in the matter, Chiquita continued to pay the AUC throughout 2003 and early 2004. From April 24, 2003 (the date of Chiquita's initial disclosure to the Justice Department) through February 4, 2004, Chiquita made 20 payments to the AUC totaling over \$300,000. Chiquita sold Banadex to a Colombian buyer in June 2004.

Chiquita has already provided the government with voluminous corporate records and made numerous company witnesses available for questioning in connection with this matter. As part of the plea agreement, Chiquita has committed to cooperate fully with the ongoing investigation.

The plea agreement is the result of a joint investigation by the Department of Commerce and ICE. In announcing today's plea agreement, Assistant Attorney General Wainstein, U.S. Attorney Taylor, Deputy Assistant Secretary Wysong, and Special Agent in Charge Reid commended the concerted efforts of Commerce Special Agent Christopher Tafe and ICE Special Agent Theodore Schmitz. They praised Oliver John-Baptiste of the Litigation Support Unit, Paralegal Specialist Amber Wetzel, Assistant U.S. Attorneys Jonathan M. Malis and Denise Cheung, and Department of Justice Trial Attorney Stephen Ponticiello, who are prosecuting the case. They also recognized the efforts of former Assistant U.S. Attorney John A. Beasley and Linda Otani McKinney, Assistant U.S. Attorney Jeanne M. Hauch, and Department of Justice Trial Attorney Michael D. Taxay, all of whom worked on this matter at earlier stages.

###