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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ) **FILED JUNE 1, 1995**  
 ) CR.  
 v. )  
 ) RULE 11(e)(1)(B) PLEA AGREEMENT  
 TIERNAY METALS, INC. ) BETWEEN THE UNITED STATES OF  
 ) AMERICA AND TIERNAY METALS, INC.  
 Defendant. )  
 )  
 \_\_\_\_\_ )

The United States of America and TIERNAY METALS, INC. hereby enter into the following plea agreement pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure (Fed. R. Crim. P.)

1. The Defendant agrees to plead guilty to a one-count Information, to be filed in the United States District Court for the Central District of California, charging that during the period

January 1991 through September 1991, it participated in a conspiracy to fix prices for the sale of small press hard alloy ("SPHA") aluminum extrusions to customers located throughout the United States, in violation of the Sherman Act, 15 U.S.C. § 1.

2. The Defendant understands that the maximum penalty for a corporation convicted under 15 U.S.C. § 1 for a crime that took place after November 16, 1990, is the greater of: a) \$10,000,000, b) twice the pecuniary gain the corporation derived from the crime, or c) twice the pecuniary loss caused to the victims of the crime. 18 U.S.C. § 3571(c)(d).

3. The Defendant understands that a mandatory \$200 special assessment will be imposed. 18 U.S.C. § 3013.

4. The Defendant waives any defenses that it might have to the Information described in paragraph 1 above. The Defendant also waives indictment pursuant to Fed. R. Crim. P. 7(b).

5. The United States and the Defendant agree and stipulate that the sentence to be imposed for this offense is governed by the United States Sentencing Commission, Guidelines Manual (Nov. 1990)("1990 Sentencing Guidelines"), Section 2R1.1., and that the "volume of commerce" for Guidelines' calculation purposes is \$22.7 million. Under section 2R1.1., the fine range to be imposed on a corporate defendant is 20% to 50% of the volume of commerce affected by the conspiracy and, as set forth in paragraph 2, the statutory maximum is a fine of \$10 million ("Sentencing Guidelines range"). Accordingly, if the Court accepts the stipulated amount of \$22.7 million, the 1990 Sentencing Guidelines range would be a fine between \$4.5 million and \$10 million.

6. The United States and the Defendant agree that if the Court finds that the Defendant is unable to pay the minimum fine called for by the 1990 Sentencing Guidelines range, that a downward departure from the 1990 Sentencing Guidelines due to inability to pay is warranted in this case under § 5K2.0. A downward departure for a corporation's inability to pay is warranted under the 1990 Sentencing Guidelines because they do not take into account the fact that corporate defendants may be unable to pay the fine called for by the Sentencing Guidelines range without substantially jeopardizing the corporation's continued viability.

The Sentencing Guidelines effective starting on November 1, 1994, those which are currently in effect, take into account the fact that fines on corporate defendants may jeopardize the continued viability of an organization, and provides for a departure in such circumstances. Under section § 8C3.3. of the current Sentencing Guidelines, the Court may depart from the Sentencing Guidelines range if the Court finds that the organization is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay the minimum fine called for by the Sentencing Guidelines range, provided that the reduction shall be no more than is necessary to avoid substantially jeopardizing the continued viability of the organization. If the Court finds that the Defendant is unable to pay the minimum fine called for by the 1990 Sentencing Guidelines range without substantially jeopardizing the corporation's continued viability, this would constitute a mitigating circumstance not taken into account in the 1990 Guidelines and a departure under § 5K2.0 would be warranted.

7. In the event that the Court determines no downward departure is appropriate due to inability to pay, the United States and the Defendant agree that the fine should be \$4.5 million.

8. The United States agrees that it will not oppose a request by the Defendant to pay the fine imposed by the Court over a period of five years at an appropriate interest rate.

9. The Defendant agrees to provide the United States with all materials that it intends to provide to the United States Probation Office or the Court in connection with an inability to pay argument two weeks prior to the time such materials are required to be submitted to the Probation Office or the Court. Defendant estimates that it will take approximately six weeks to have the relevant report prepared.

10. The United States agrees that it will not oppose an argument by the Defendant to offset its fine by the amount of any fine imposed on William A. Steinmetz, the Defendant's part-owner and Chairman of the Board, provided the Defendant is sentenced to pay a fine that is equal to or greater than the minimum of the 1990 Sentencing Guidelines range amount.

11. The United States and the Defendant reserve the right to allocute at the time of sentencing to advise the court of the facts, circumstances and significance of the offense pursuant to Fed. R. Crim. P. 32(a)(1). The United States reserves the right to provide the Court and the United States Probation Office statements of facts related to the criminal conduct for which the Defendant was responsible and further reserves the right to correct and comment upon any misstatements of fact made by the Defendant or its attorneys in the course of the presentencing investigation, the sentencing, or other proceedings.

12. The United States will not seek restitution in this case because the victims are not readily identifiable and the appropriate amount of restitution cannot be accurately calculated.

13. The Defendant understands that the sentence to be imposed upon it is within the sole discretion of the sentencing judge, the United States makes no promise or representation as

to what sentence it will receive, and regardless of the Court's sentence, it will not have the right to withdraw its guilty plea.

14. The Defendant agrees to use its best efforts to make its past and present employees, officers, and directors available to the United States for interviews, grand jury testimony, and trial testimony upon reasonable request by the United States Department of Justice, Antitrust Division. The Defendant agrees to furnish to the Antitrust Division upon the Antitrust's Division's request all information and documents in the Defendant's possession or control that are relevant to the Antitrust Division's investigation and possible prosecutions of collusive or noncompetitive conduct in the aluminum extrusion industry.

15. The Defendant and those of its employees, officers and directors who are interviewed or who give testimony must at all times give complete, truthful, and accurate information and testimony. If the Defendant withdraws from this agreement, fails to use its best efforts to make its employees, officers, and directors available for interviews or as witnesses before the grand jury or at trial as reasonably requested, or if the Defendant otherwise violates any provision of this agreement, this agreement shall be null and void and shall not prevent the United States from prosecuting the Defendant or any of its employees, officers, or directors for any crimes. Any such prosecution may be premised upon information provided by the Defendant or its employees, officers, and directors, and such information may be used against the Defendant or any of its employees, officers or directors.

16. Subject to the full and continuing cooperation of the Defendant, as set forth in paragraphs 12 and 13, the United States agrees that no additional federal criminal charges will be filed against the Defendant, or any past or present officers, directors, or employees (except for

William A. Steinmetz, the Defendant's principal owner, who is being charged with the same conduct as Defendant in a separate Information, and who is entering into a separate plea agreement with the United States) for violations of 15 U.S.C. § 1, 18 U.S.C. § 1341 (mail fraud), 18 U.S.C. § 1343 (wire fraud), or 18 U.S.C. § 1001 (false statements), or for any violation of any other federal statutes relating to collusive or anticompetitive activities by the Defendant in its pricing and sales of SPHA aluminum extrusions which occurred prior to the execution of this agreement.

17. The Defendant understands that this agreement does not bind state or local prosecuting authorities.

18. The Defendant understands that this agreement does not prohibit the United States or any third party from initiating or prosecuting any civil proceedings directly or indirectly involving the Defendant.

19. The Defendant understands that it may be subject to administrative action by federal, state, or local agencies other than the Antitrust Division of the Department of Justice, as a result of its guilty plea entered pursuant to this agreement, and that this plea agreement in no way controls whatever action, if any, such agencies take. If requested by the agency, the United States will inform the agency of the facts of, and resulting from, this case that may be relevant to that agency's decision about whether to take action, or what action to take.

20. The Board of Directors of the Defendant has reviewed this agreement, has voluntarily agreed to it, and has adopted a resolution to that effect. A copy of the Board of Directors resolution will be filed with the court at or before sentencing. The Defendant and the United States each represents and warrants that it has the full right, power, and authority to

execute and deliver this agreement and that no approval or authorization by any other person or entity is required for the agreement to be binding on each party.

21. This plea agreement constitutes the entire agreement between the United States and the Defendant concerning the disposition of charges in this case. No additional promises, agreements, or conditions have been entered into other than those set forth herein and none will be entered into unless in writing and signed by all the parties.

Dated this \_\_\_\_\_ day of May, 1995.

FOR THE UNITED STATES

FOR TIERNAY METALS, INC.

\_\_\_\_\_  
Richard B. Cohen  
William P. Nicholson  
Phillip R. Malone  
Trial Attorneys  
Antitrust Division  
U.S. Department of Justice

BY: \_\_\_\_\_  
Duly Authorized Representative

\_\_\_\_\_  
Robert K. Baker, Esq.  
Counsel for Tiernay Metals, Inc.