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7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA)	No. CR 06-0160 MMC
)	
12 v.)	<u>PLEA AGREEMENT</u>
)	
13)	
14 AKZO NOBEL CHEMICALS INTERNATIONAL)	
B.V.,)	
15)	
Defendant.)	
16)	

17 **PLEA AGREEMENT**

18 The United States of America and AKZO NOBEL CHEMICALS INTERNATIONAL
19 B.V. ("defendant"), a corporation organized and existing under the laws of the Netherlands,
20 hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal
21 Rules of Criminal Procedure ("Fed. R. Crim. P.):

22 **RIGHTS OF DEFENDANT**

- 23 1. The defendant understands its rights:
- 24 (a) to be represented by an attorney;
- 25 (b) to be charged by indictment;
- 26 (c) as a corporation organized and existing under the laws of the Netherlands,
- 27 to decline to accept service of the Summons in this case, and to contest the jurisdiction of
- 28 the United States to prosecute this case against it in the United States District Court for

1 the Northern District of California;

2 (d) to plead not guilty to any criminal charge brought against it;

3 (e) to have a trial by jury, at which it would be presumed not guilty of the
4 charge and the United States would have to prove every essential element of the charged
5 offense beyond a reasonable doubt for it to be found guilty;

6 (f) to confront and cross-examine witnesses against it and to subpoena
7 witnesses in its defense at trial;

8 (g) to appeal its conviction if it is found guilty; and

9 (h) to appeal the imposition of sentence against it.

10 **AGREEMENT TO PLEAD GUILTY**
11 **AND WAIVE CERTAIN RIGHTS**

12 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph
13 1(b)-(g) above, including all jurisdictional defenses to the prosecution of this case, and agrees
14 voluntarily to consent to the jurisdiction of the United States to prosecute this case against it in
15 the United States District Court for the Northern District of California. The defendant also
16 knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other
17 writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742, that challenges the
18 sentence imposed by the Court if that sentence is consistent with or below the recommended
19 sentence in Paragraph 8 of this Plea Agreement, regardless of how the sentence is determined by
20 the Court. This agreement does not affect the rights or obligations of the United States as set
21 forth in 18 U.S.C. § 3742(b) and (c). Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive
22 indictment and plead guilty at arraignment to a one-count Information to be filed in the United
23 States District Court for the Northern District of California. The Information will charge the
24 defendant with participating in a conspiracy to suppress and eliminate competition by fixing the
25 price of hydrogen peroxide sold in the United States and elsewhere, beginning on or about July
26 1, 1998 and continuing until on or about December 1, 2001, in violation of the Sherman Antitrust
27 Act, 15 U.S.C. § 1.

28 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to

1 the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to
2 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

3 **FACTUAL BASIS FOR OFFENSE CHARGED**

4 4. Had this case gone to trial, the United States would have presented evidence
5 sufficient to prove the following facts:

6 (a) For purposes of this Plea Agreement, the “relevant period” is that period
7 beginning on or about July 1, 1998 and continuing until on or about December 1, 2001.
8 During the relevant period, the defendant was a corporation organized and existing under
9 the laws of the Netherlands. The defendant has its principal place of business in
10 Amersfoort, the Netherlands. During the relevant period, the defendant, including its
11 subsidiaries, was a producer of hydrogen peroxide, was engaged in the sale of hydrogen
12 peroxide in the United States and elsewhere, and employed 5,000 or more individuals.
13 Hydrogen peroxide is a chemical compound with strong oxidizing properties that is
14 widely used as a bleaching agent. Hydrogen peroxide has multiple industrial uses,
15 including applications in the electronics, energy production, mining, cosmetics, food
16 processing, textiles, and pulp and paper manufacturing industries. During the relevant
17 period, the defendant’s sales of hydrogen peroxide to U.S. customers totaled
18 approximately \$82,900,000.

19 (b) During the relevant period, the defendant, through certain executives and
20 employees, participated in a conspiracy among major hydrogen peroxide producers, the
21 primary purpose of which was to suppress and eliminate competition by fixing the price
22 of hydrogen peroxide sold in the United States and elsewhere. In furtherance of the
23 conspiracy, the defendant, through certain executives and employees, engaged in
24 discussions with representatives of other major hydrogen peroxide producers. During
25 these discussions, agreements were reached to fix the price of hydrogen peroxide to be
26 sold in the United States and elsewhere.

27 (c) During the relevant period, hydrogen peroxide sold by one or more of the
28 conspirator firms, and equipment and supplies necessary to the production and

1 distribution of hydrogen peroxide, as well as payments for hydrogen peroxide, traveled in
2 interstate and foreign commerce. The business activities of the defendant and its
3 co-conspirators in connection with the production and sale of hydrogen peroxide affected
4 by this conspiracy were within the flow of, and substantially affected, interstate and
5 foreign trade and commerce.

6 (d) Hydrogen peroxide affected by this conspiracy was sold by one or more of
7 the conspirators to customers in this District.

8 **POSSIBLE MAXIMUM SENTENCE**

9 5. The defendant understands that the statutory maximum penalty which may be
10 imposed against it upon conviction for a violation of Section One of the Sherman Antitrust Act is
11 a fine in an amount equal to the greatest of:

12 (a) \$10 million (15 U.S.C. § 1);

13 (b) twice the gross pecuniary gain the conspirators derived from the crime (18
14 U.S.C. § 3571(c) and (d)); or

15 (c) twice the gross pecuniary loss caused to the victims of the crime by the
16 conspirators (18 U.S.C. § 3571(c) and (d)).

17 6. In addition, the defendant understands that:

18 (a) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of
19 probation of at least one year, but not more than five years;

20 (b) pursuant to § 8B1.1 of the United States Sentencing Guidelines
21 (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”), 18 U.S.C. § 3563(b)(2) or
22 3663(a)(3), the Court may order it to pay restitution to the victims of the offense; and

23 (c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the
24 defendant to pay a \$400 special assessment upon conviction for the charged crime.

25 **SENTENCING GUIDELINES**

26 7. The defendant understands that the Sentencing Guidelines are advisory, not
27 mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing,
28 along with the other factors set forth in 18 U.S.C. §3553(a), in determining and imposing

1 sentence. The defendant understands that the Guidelines determinations will be made by the
2 Court by a preponderance of the evidence standard. The defendant understands that although the
3 Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its
4 sentence must be reasonable based upon consideration of all relevant sentencing factors set forth
5 in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. § 1B1.8, the United States agrees that
6 self-incriminating information that the defendant provides to the United States pursuant to this
7 Plea Agreement will not be used to increase the volume of affected commerce attributable to the
8 defendant or in determining the defendant's applicable Guidelines range, except to the extent
9 provided in U.S.S.G. § 1B1.8(b).

10 **SENTENCING AGREEMENT**

11 8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant
12 agree that the appropriate disposition of this case is, and agree to recommend jointly that the
13 Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of
14 \$32 million, pursuant to 18 U.S.C. § 3571(d), payable in full before the fifteenth (15th) day after
15 the date of judgment ("the recommended sentence"). The parties agree that there exists no
16 aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
17 consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines
18 justifying a departure pursuant to U.S.S.G. § 5K2.0. The parties agree not to seek or support any
19 sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not
20 set forth in this Plea Agreement. The parties further agree that the recommended sentence set
21 forth in this Plea Agreement is reasonable.

22 (a) The defendant understands that the Court will order it to pay a \$400
23 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine
24 imposed.

25 (b) Both parties will recommend that no term of probation be imposed, but the
26 defendant understands that the Court's denial of this request will not void this Plea
27 Agreement.

28 (c) The United States and the defendant jointly submit that this Plea

1 Agreement, together with the record that will be created by the United States and the
2 defendant at the plea and sentencing hearings, and the further disclosure described in
3 Paragraph 10, will provide sufficient information concerning the defendant, the crime
4 charged in this case, and the defendant's role in the crime to enable the meaningful
5 exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States
6 and defendant agree to request jointly that the Court accept the defendant's guilty plea
7 and impose sentence on an expedited schedule as early as the date of arraignment, based
8 upon the record provided by the defendant and the United States, under the provisions of
9 Fed. R. Crim. P. 32(c)(1)(A)(ii), U.S.S.G. § 6A1.1, and Rule 32-1(b) of the Criminal
10 Local Rules. The Court's denial of the request to impose sentence on an expedited
11 schedule will not void this Plea Agreement.

12 (d) The United States contends that had this case gone to trial, the United
13 States would have presented evidence to prove that the gain derived from or the loss
14 resulting from the charged offense is sufficient to justify the recommended sentence set
15 forth in this paragraph, pursuant to 18 U.S.C. § 3571(d). For purposes of this plea and
16 sentencing only, the defendant waives its rights to contest this calculation.

17 9. The United States and the defendant agree that the applicable Guidelines fine
18 range exceeds the fine contained in the recommended sentence set out in Paragraph 8 above.
19 Subject to the full and continuing cooperation of the defendant, as described in Paragraph 13 of
20 this Plea Agreement, and prior to sentencing in this case, the United States agrees that it will
21 make a motion, pursuant to U.S.S.G. § 8C4.1, for a downward departure from the Guidelines
22 fine range and will request that the Court impose the recommended sentence set out in Paragraph
23 8 of this Plea Agreement because of the defendant's substantial assistance in the government's
24 investigation and prosecution of violations of federal criminal law in the hydrogen peroxide
25 industry and in other chemical industries.

26 10. Subject to the ongoing, full, and truthful cooperation of the defendant described in
27 Paragraph 13 of this Plea Agreement, and before sentencing in the case, the United States will
28 fully advise the Court and the Probation Office as to: (i) the fact, manner, and extent of the

1 defendant's cooperation and its commitment to prospective cooperation with the United States'
2 investigation and prosecutions; (ii) all material facts relating to the defendant's involvement in
3 the charged offense; and (iii) all other relevant conduct.

4 11. The United States and the defendant understand that the Court retains complete
5 discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea
6 Agreement.

7 (a) If the Court does not accept the recommended sentence, the United States
8 and the defendant agree that this Plea Agreement, except for Paragraph 11(b) below,
9 shall be rendered void.

10 (b) If the Court does not accept the recommended sentence, the defendant
11 will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the
12 defendant withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any
13 statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the
14 guilty plea or this Plea Agreement or made in the course of plea discussions with an
15 attorney for the government shall not be admissible against the defendant in any criminal
16 or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the
17 defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of the
18 Plea Agreement, the statute of limitations period for any offense referred to in Paragraph
19 15 of this Plea Agreement will be tolled for the period between the date of the signing of
20 the Plea Agreement and the date the defendant withdrew its guilty plea or for a period of
21 sixty (60) days after the date of the signing of the Plea Agreement, whichever period is
22 greater.

23 12. In light of the civil class action cases filed against the defendant, which potentially
24 provide for a recovery of a multiple of actual damages, the United States agrees that it will not
25 seek a restitution order for the offense charged in the Information.

26 **DEFENDANT'S COOPERATION**

27 13. The defendant and its parents and subsidiaries that are engaged in the sale or
28 production of hydrogen peroxide (collectively, "related entities") will cooperate fully and

1 truthfully with the United States in the prosecution of this case, the conduct of the current federal
2 investigation of violations of federal antitrust and related criminal laws involving the
3 manufacture or sale of hydrogen peroxide, any other federal investigation resulting therefrom,
4 and any litigation or other proceedings arising or resulting from any such investigation to which
5 the United States is a party ("federal proceeding"). The ongoing, full, and truthful cooperation
6 of the defendant shall include, but not be limited to:

7 (a) producing to the United States all non-privileged documents, information,
8 and other materials, wherever located, in the possession, custody, or control of the
9 defendant or any of its related entities, requested by the United States in connection with
10 any federal proceeding; and

11 (b) using its best efforts to secure the ongoing, full, and truthful
12 cooperation, as defined in Paragraph 14 of this Plea Agreement, of the current and former
13 directors, officers, and employees of the defendant or any of its related entities as may be
14 requested by the United States, but excluding Dag Strömqvist and Börje Andersson,
15 including making such persons available in the United States and at other mutually
16 agreed-upon locations, at the defendant's expense, for interviews and the provision of
17 testimony in grand jury, trial, and other judicial proceedings in connection with any
18 federal proceeding.

19 14. The ongoing, full, and truthful cooperation of each person described in Paragraph
20 13(b) above will be subject to the procedures and protections of this paragraph, and shall
21 include, but not be limited to:

22 (a) producing in the United States and at other mutually agreed-upon
23 locations all non-privileged documents, including claimed personal documents, and other
24 materials, wherever located, requested by attorneys and agents of the United States;

25 (b) making himself or herself available for interviews in the United States and
26 at other mutually agreed-upon locations, not at the expense of the United States, upon the
27 request of attorneys and agents of the United States;

28 (c) responding fully and truthfully to all inquiries of the United States in

1 connection with any federal proceeding, without falsely implicating any person or
2 intentionally withholding any information, subject to the penalties of making false
3 statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

4 (d) otherwise voluntarily providing the United States with any non-privileged
5 material or information not requested in (a) - (c) of this paragraph that he or she may
6 have that is related to any federal proceeding;

7 (e) when called upon to do so by the United States in connection with any
8 federal proceeding, testifying in grand jury, trial, and other judicial proceedings fully,
9 truthfully, and under oath, subject to the penalties for perjury (18 U.S.C. § 1621), for
10 making false statements or declarations in grand jury or court proceedings (18 U.S.C. §
11 1623), for contempt (18 U.S.C. §§ 401-402), and for obstruction of justice (18 U.S.C. §
12 1503); and

13 (f) agreeing that, if the agreement not to prosecute him or her in this Plea
14 Agreement is rendered void under Paragraph 16(c), the statute of limitations period for
15 any relevant offense as defined in Paragraph 16(a) will be tolled as to him or her for the
16 period between the date of the signing of this Plea Agreement and six (6) months after
17 the date that the United States gave notice of its intent to void its obligations to that
18 person under the Plea Agreement.

19 **GOVERNMENT'S AGREEMENT**

20 15. Upon acceptance of the guilty plea called for by this Plea Agreement and the
21 imposition of the recommended sentence, and subject to the cooperation requirements of
22 Paragraph 13 of this Plea Agreement, the United States agrees that it will not bring further
23 criminal charges against the defendant or any of its related entities for any act or offense
24 committed before the date of this Plea Agreement that was undertaken in furtherance of an
25 attempted or completed antitrust conspiracy involving the manufacture or sale of hydrogen
26 peroxide. The nonprosecution terms of this paragraph do not apply to civil matters of any kind,
27 to any violation of the federal tax or securities laws, or to any crime of violence.

28 16. The United States agrees to the following:

1 (a) Upon the Court’s acceptance of the guilty plea called for by this Plea
2 Agreement and the imposition of the recommended sentence and subject to the
3 exceptions noted in Paragraph 16(c), the United States will not bring criminal charges
4 against any current or former director, officer, or employee of the defendant or its related
5 entities for any act or offense committed before the date of this Plea Agreement and
6 while that person was acting as a director, officer, or employee of the defendant or its
7 related entities that was undertaken in furtherance of an attempted or completed antitrust
8 conspiracy involving the manufacture or sale of hydrogen peroxide (“relevant offense”),
9 except that the protections granted in this paragraph shall not apply to Dag Strömqvist or
10 Börje Andersson;

11 (b) Should the United States determine that any current or former director,
12 officer, or employee of the defendant or its related entities may have information relevant
13 to any federal proceeding, the United States may request that person’s cooperation under
14 the terms of this Plea Agreement by written request delivered to counsel for the
15 individual (with a copy to the undersigned counsel for the defendant) or, if the individual
16 is not known by the United States to be represented, to the undersigned counsel for the
17 defendant;

18 (c) If any person requested to provide cooperation under Paragraph 16(b) fails
19 to comply with his or her obligations under Paragraph 14, then the terms of this Plea
20 Agreement as they pertain to that person, and the agreement not to prosecute that person
21 granted in this Plea Agreement, shall be rendered void;

22 (d) Except as provided in Paragraph 16(e), information provided by a person
23 described in Paragraph 16(b) to the United States under the terms of this Plea Agreement
24 pertaining to any relevant offense, or any information directly or indirectly derived from
25 that information, may not be used against that person in a criminal case, except in a
26 prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration
27 (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. § 1503);

28 (e) If any person who provides information to the United States under this

1 Plea Agreement fails to comply fully with his or her obligations under Paragraph 14 of
2 this Plea Agreement, the agreement in Paragraph 16(d) not to use that information or any
3 information directly or indirectly derived from it against that person in a criminal case
4 shall be rendered void;

5 (f) The nonprosecution terms of this paragraph do not apply to civil matters
6 of any kind, to any violation of the federal tax or securities laws, or to any crime of
7 violence; and

8 (g) Documents provided under Paragraphs 13(a) and 14(a) shall be deemed
9 responsive to outstanding grand jury subpoenas issued to the defendant or any of its
10 related entities.

11 17. The United States agrees that when any person travels to the United States for
12 interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for
13 meetings with counsel in preparation therefor, the United States will take no action, based upon
14 any relevant offense, to subject such person to arrest, detention, or service of process, or to
15 prevent such person from departing the United States. This paragraph does not apply to an
16 individual's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. §
17 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. §
18 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401-402) in
19 connection with any testimony or information provided or requested in any federal proceeding.

20 18. The defendant understands that it may be subject to administrative action by
21 federal or state agencies other than the United States Department of Justice, Antitrust Division,
22 based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in
23 no way controls whatever action, if any, other agencies may take. However, the United States
24 agrees that, if requested, it will advise the appropriate officials of any governmental agency
25 considering such administrative action of the fact, manner, and extent of the cooperation of the
26 defendant and its related entities as a matter for that agency to consider before determining what
27 administrative action, if any, to take.

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1 months after the date the United States gave notice of its intent to void its obligations under this
2 Plea Agreement.

3 22. The defendant understands and agrees that in any further prosecution
4 of it or its related entities resulting from the release of the United States from its obligations
5 under this Plea Agreement, because of the defendant's or its related entities' violation of the Plea
6 Agreement, any documents, statements, information, testimony, or evidence provided by it, its
7 related entities, or current or former directors, officers, or employees of it or its related entities to
8 attorneys or agents of the United States, federal grand juries, or courts, and any leads derived
9 therefrom, may be used against it or its related entities in any such further prosecution. In
10 addition, the defendant unconditionally waives its right to challenge the use of such evidence in
11 any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

12 **ENTIRETY OF AGREEMENT**

13 23. This Plea Agreement constitutes the entire agreement between the United States
14 and the defendant concerning the disposition of the criminal charge in this case. This Plea
15 Agreement cannot be modified except in writing, signed by the United States and the defendant.

16 26. The undersigned is authorized to enter this Plea Agreement on behalf of the
17 defendant as evidenced by the Power of Attorney of the defendant attached to, and incorporated
18 by reference in, this Plea Agreement.

19 27. The undersigned attorneys for the United States have been authorized
20 by the Attorney General of the United States to enter this Plea Agreement on behalf of the
21 United States.

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POWER OF ATTORNEY

The undersigned, Mr. P.J.F. Gommers and Mr. C.W. van Zijlen, directors of Akzo Nobel Management B.V., which is the sole director of Akzo Nobel Chemicals International B.V. (the "Company"),

herewith decide,

- That Mr. A.J.A.J. Eijlbouts, General Counsel of the Akzo Nobel Group, is authorized, empowered and directed to execute and deliver, in the name of and on behalf of the Company, the Plea Agreement between Akzo Nobel Chemicals International B.V. and the United States of America in substantially the form of the draft appended hereto; and further
- That Mr. A.J.A.J. Eijlbouts, General Counsel of the Akzo Nobel Group, Mr. Gary R. Spratling, a partner of the firm of Gibson, Dunn & Crutcher LLP (the "Law Firm"), Mr. Daniel G. Swanson, also a partner of the Law Firm, Mr. Stephen C. McKenna, an associate of the Law Firm, and any other member of the Law Firm may represent the Company at any hearing in order to waive indictment and plead guilty in accordance with the provisions of the above-referenced Plea Agreement; and further
- That Mr. A.J.A.J. Eijlbouts, General Counsel of the Akzo Nobel Group, Mr. Gary R. Spratling, a partner of the Law Firm, Mr. Daniel G. Swanson, also a partner of the Law Firm, Mr. Stephen C. McKenna, an associate of the Law Firm, and any other member of the Law Firm are hereby authorized and empowered on behalf of the Company to waive the preparation of a presentence report and proceed immediately to sentencing, to provide information to the Court in conjunction with sentencing, and to represent the Company at any sentencing hearing; and further
- That Mr. A.J.A.J. Eijlbouts, General Counsel of the Akzo Nobel Group, any of the officers of the Company, Mr. Gary R. Spratling, a partner of the Law Firm, Mr. Daniel G. Swanson, also a partner of the Law Firm, Mr. Stephen C. McKenna, an associate of the Law Firm, and any other member of the Law Firm are hereby authorized and empowered to take any and all actions reasonably required or appropriate in order to carry out the intent and purpose of the preceding resolutions.

AKZO NOBEL CHEMICALS INTERNATIONAL B.V.

By:


P.J.F. Gommers
Director, Akzo Nobel Management B.V.

and

By:


C.W. van Zijlen
Director, Akzo Nobel Management B.V.