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7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 UNITED STATES OF AMERICA )  
 )  
12 )  
 v. )  
13 )  
 )  
14 YUJI KOMATSU, )  
YOSHIHIKO KATSUYAMA, )  
15 WAKAO SHINODA, and )  
HITOSHI HAYASHI, )  
16 )  
 )  
 Defendants. )  
17 \_\_\_\_\_ )

No. CR 01-0019 PJH  
INDICTMENT  
VIOLATION:  
Title 15, United States Code,  
Section 1 (Price Fixing,  
Volume Allocation)  
San Francisco Venue  
Filed: January 23, 2001

18 The Grand Jury charges as follows:

19 I.

20 DESCRIPTION OF THE OFFENSE

21 1. The following individuals are hereby indicted and made defendants on the  
22 charge stated below:

- 23 (a) YUJI KOMATSU;  
24 (b) YOSHIHIKO KATSUYAMA;  
25 (c) WAKAO SHINODA; and  
26

1 (d) HITOSHI HAYASHI.

2 2. Beginning in or about 1979 and continuing into 1996, the exact dates being  
3 unknown to the Grand Jury, the defendants and their coconspirators entered into and  
4 engaged in a combination and conspiracy to suppress and eliminate competition by fixing  
5 the prices and allocating the volumes of sorbates to be sold in the United States and  
6 elsewhere. The combination and conspiracy engaged in by the defendants and their  
7 coconspirators was an unreasonable restraint of interstate and foreign trade and  
8 commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

9 3. The charged combination and conspiracy consisted of a continuing  
10 agreement, understanding, and concert of action among the defendants and their  
11 coconspirators, the substantial terms of which were:

- 12 (a) to agree to fix and maintain prices and to coordinate price increases for  
13 sorbates to be sold in the United States and elsewhere; and  
14 (b) to agree to allocate among major sorbates producers the volumes of  
15 sorbates to be sold in the United States and elsewhere.

16 II.

17 MEANS AND METHODS OF THE CONSPIRACY

18 4. For the purpose of forming and carrying out the charged combination and  
19 conspiracy, the defendants and their coconspirators did those things that they combined  
20 and conspired to do, including, among other things:

21 (a) Meetings, Telephone Conversations, and Discussions

- 22 (1) participating in meetings among major sorbates producers,  
23 which were held at least twice a year, to discuss the prices and  
24 volumes of sorbates to be sold in the United States and elsewhere. The  
25 meetings were held in various locations throughout the world,  
26 including: Salzburg, Austria; Vienna, Austria; Prague,

1 Czechoslovakia; Helsinki, Finland; Athens, Greece; Budapest,  
2 Hungary; Tokyo, Japan; Warsaw, Poland; Lisbon, Portugal;  
3 Stockholm, Sweden; Interlaken, Switzerland; and Zurich, Switzerland;

4 (2) participating in telephone conversations to discuss the prices  
5 and volumes of sorbates to be sold in the United States and elsewhere;  
6 and

7 (3) participating in other discussions regarding the prices and  
8 volumes of sorbates to be sold in the United States and elsewhere.

9 (b) Agreement to Fix Prices

10 (1) agreeing during the meetings, telephone conversations, and  
11 discussions to charge prices at certain levels, known as "target prices,"  
12 and otherwise to increase or maintain target prices of sorbates to be  
13 sold in four regions of the world: the United States, Europe, the  
14 Americas (including Canada, Mexico, and South America), and the  
15 region called rest of the world (including Asia) ("the four world  
16 regions");

17 (2) agreeing that the target prices for sorbates to be sold in the  
18 United States would be the final, delivered prices charged to the end  
19 user;

20 (3) agreeing to establish different target prices in the United States  
21 based on amounts purchased by the end users, including a separate  
22 target price for the largest purchasers, known as the "ultrabigs";

23 (4) agreeing to direct the corporate conspirators' U.S. subsidiaries  
24 and trading companies (collectively referred to as "intermediate  
25 sellers") to announce new target prices for U.S. end users in the trade  
26 magazine *Chemical Market Reporter* ("CMR"), and agreeing on the

1 timing and the order in which the intermediate sellers would  
2 announce new target prices in the CMR;

3 (5) directing the intermediate sellers to issue pricing  
4 announcements in the CMR in accordance with the target-price  
5 agreements;

6 (6) directing the intermediate sellers to charge certain prices and  
7 quote certain bid prices in the United States to ensure that the prices  
8 charged and the bid prices quoted to end users were in accordance  
9 with the target-price agreements;

10 (7) causing sorbates prices to end users and customers to be raised  
11 or maintained in the United States and elsewhere;

12 (8) accepting payment for the supply of sorbates sold at collusive,  
13 noncompetitive prices to end users and customers in the United States  
14 and elsewhere; and

15 (9) agreeing to continue to fix sorbates prices from year to year.

16 (c) Agreement to Allocate Sales Volumes

17 (1) agreeing during the meetings, telephone conversations, and  
18 discussions to allocate among the corporate conspirators the volumes  
19 of sorbates to be sold in the four world regions;

20 (2) allocating each corporate conspirator's volumes of sorbates to be  
21 sold in each of the four world regions, using an agreed-upon formula to  
22 calculate each corporate conspirator's allocated share by region;

23 (3) agreeing to exchange, on a regular basis, the actual  
24 volumes of sorbates sold by each corporate conspirator in the  
25 four world regions, for the purpose of monitoring and enforcing  
26 the volume-allocation agreements; and

1 (4) agreeing to continue to allocate sales volumes of sorbates from  
2 year to year.

3 (d) Monitoring and Enforcing the Agreements

4 (1) participating in meetings, telephone conversations, and  
5 discussions to discuss the actual prices and volumes of sorbates sold by  
6 each corporate conspirator in each of the four world regions for the  
7 purpose of monitoring and enforcing adherence to the target-price and  
8 volume-allocation agreements;

9 (2) discussing and agreeing to certain bid prices to be quoted to end  
10 users in the United States to ensure that the bid prices would be in  
11 accordance with the target-price agreements; and

12 (3) exchanging the actual volumes of sorbates sold by each  
13 corporate conspirator in each of the four regions of the world to ensure  
14 that the sorbates sales of each corporate conspirator did not exceed its  
15 allocated sales volume.

16 (e) Concealing the Conspiracy

17 (1) agreeing at the meetings to stagger the order and the timing of  
18 price announcements in the CMR to avoid detection by U.S. antitrust  
19 authorities;

20 (2) agreeing at the meetings to avoid holding meetings in certain  
21 countries, including the United States and member countries of the  
22 European Commission, to avoid detection by those countries' antitrust  
23 authorities;

24 (3) agreeing at the meetings on the need to dispose of notes  
25 memorializing the meetings or other documents referring to the  
26 meetings or other activities of the conspiracy; and

1 (4) attempting to conceal the conspiracy and conspiratorial contacts  
2 through various other means.

3 III.

4 DEFENDANTS AND COCONSPIRATORS

5 5. Defendant YUJI KOMATSU is a resident and citizen of Japan. During part  
6 of the period covered by this Indictment, defendant YUJI KOMATSU was the General  
7 Manager of the Sales Department at Ueno Fine Chemicals Industry, Ltd. ("Ueno") and a  
8 Member of Ueno's Board of Directors. During the period covered by this Indictment, Ueno  
9 was a Japanese company that engaged in the business of producing sorbates and, through  
10 its trading company, selling sorbates to customers in the United States.

11 6. Defendant YOSHIHIKO KATSUYAMA is a resident and citizen of Japan.  
12 During part of the period covered by this Indictment, defendant YOSHIHIKO  
13 KATSUYAMA was the Deputy General Manager of the Sales Department at Ueno.

14 7. Defendant WAKAO SHINODA is a resident and citizen of Japan. During  
15 part of the period covered by this Indictment, defendant WAKAO SHINODA was the  
16 General Manager of Ueno's U.S. subsidiary, Ueno Fine Chemicals Industry (U.S.A.) Inc.

17 8. Defendant HITOSHI HAYASHI is a resident and citizen of Japan. During  
18 part of the period covered by this Indictment, defendant HITOSHI HAYASHI was a  
19 salesman for the Organic Chemicals Division of Daicel Chemical Industries Ltd.  
20 ("Daicel"). During the period covered by this Indictment, Daicel was a Japanese company  
21 that engaged in the business of producing sorbates and, through its trading company,  
22 selling sorbates to customers in the United States and elsewhere.

23 9. Various corporations and individuals, not made defendants in this  
24 Indictment, participated as coconspirators in the offense charged in this Indictment and  
25 performed acts and made statements in furtherance of it.

26 10. Whenever in this Indictment reference is made to any act, deed, or

1 transaction of any corporation, the allegation means that the corporation engaged in the  
2 act, deed, or transaction by or through its officers, directors, employees, agents, or other  
3 representatives while they were actively engaged in the management, direction, control,  
4 or transaction of its business or affairs.

5 IV.

6 TRADE AND COMMERCE

7 11. Sorbates are chemical preservatives used primarily as mold inhibitors in  
8 high-moisture and high-sugar food products. All references to sorbates in this Indictment  
9 include the products potassium sorbate and sorbic acid.

10 12. During the period covered by this Indictment, the defendants and their  
11 coconspirators sold and distributed sorbates, and caused the sale and distribution of  
12 sorbates, in a continuous and uninterrupted flow of interstate and foreign trade and  
13 commerce to customers located in states or countries other than the states or countries in  
14 which the defendants and their coconspirators produced sorbates.

15 13. The business activities of the defendants and their coconspirators that are  
16 the subject of this Indictment were within the flow of, and substantially affected,  
17 interstate and foreign trade and commerce.

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V.

JURISDICTION AND VENUE

14. The combination and conspiracy charged in this Indictment was carried out, in part, in the Northern District of California within the five years preceding the return of this Indictment.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

A TRUE BILL

\_\_\_\_\_/s/\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_/s/\_\_\_\_\_  
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Acting Assistant Attorney General

\_\_\_\_\_/s/\_\_\_\_\_  
Christopher S Crook  
Chief, San Francisco Office

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\_\_\_\_\_/s/\_\_\_\_\_  
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