IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	) Criminal No. 00-033
	)
v.	) Judge Marvin Katz
	)
MITSUBISHI CORPORATION	) Violations: 15 U.S.C. § 1 and 18 U.S.C. §2(a)
	)
Defendant.	) Filed 01-31-01

GOVERNMENT'S RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION TO EXCLUDE GOVERNMENT EXHIBITS 2 AND 3

Defendant has moved for the exclusion of Government Exhibits 2 and 3 based on the contention it has made repeatedly in several memoranda that any evidence predating the inception of the conspiracy it is charged with aiding and abetting is irrelevant. These documents relate to Mitsubishi meetings with Japanese and European manufactures prior to the date the conspiracy was formed. As set forth in previous Government memoranda, Defendant is charged with aiding and abetting in part due to its actions encouraging and facilitating the formation of the conspiracy. Such evidence necessarily predates the charged conspiracy, and in itself is sufficient to establish Defendant's guilt. *See United States v. Galiffa, 734 F.2d 306, 309 (7th Cir. 1984)*.

There is no requirement that the Defendant's acts occur at any particular time in relation to the commission of the substantive crime. *United States v. Barnett*, 667 F.2d 835, 841 (9th Cir. 1982). As the *Barnett* Court stated:

> The fact that the aider and abettor's counsel and encouragement is not acted upon for long periods of time does not break the actual connection between the commission of the crime and the advice to commit it. "It is only necessary that the appellant counseled and advised the commission of the crime, and that the counsel and advice influenced the perpetration of the crime. We know of no rule of law which fixes a time limit within which the crime must be perpetrated." Workman v. State, 216 Ind. 68, 21 N.E.2d 712, 714 (1939).

Id. At 841. Moreover, this evidence is important to establish defendant's intent.

Defendant has cited no law to support its contention that evidence of aiding and abetting that predates the conspiracy can not be relevant. Moreover, while it claims it will be prejudiced by admission of this evidence, it has given no explanation as to how it will be prejudiced.

Defendant claims the Government confirmed in its opening statement that Mitsubishi's meetings with Japanese and European manufacturers did not encourage the conspiracy. That is not correct. To the contrary, this evidence strongly supports the Government's consistent contention that Defendant's meetings were in accordance with its plan to encourage manufacturers to meet and collude.[1] Even a cursory review of these documents show their relevance. For example, GX-3 memorializes statements by Mitsubishi in which it says, among other things, that UCAR would like prices established through discussions with Japanese manufacturers and that it will take retaliatory actions against anyone who cannot keep promises it makes. The document also shows Mitsubishi's intention to talk to manufacturers such as SIGRI to "build a structure, which enables us to cooperate." As Robert Koehler testified today, Mitsubishi did just that in April 1992 when it insisted he meet with Mitsubishi before meeting with the Japanese manufacturers.

Defendant's Motion is based not on its effort to exclude irrelevant or prejudicial evidence, but is simply an effort to exclude the most damning evidence against it, evidence that shows both its plan and intent to cartelize the electrode industry and its efforts to put that plan into effect.

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[1] Evidence at trial has demonstrated that Mitsubishi's pre-conspriracy aiding and abetting activities in fact helped lead to the formation of the conspiracy. Specifically, Mr. Yamazaki testified that it was due to the efforts of Mr. Kimura that Tokai maintained Mitsubishi as a trading house rather than switching to an independent trading house unaffiliated with UCAR. This plainly aided and abetted the formation of the charged conspiracy early the next year.

This evidence is so critical to the Government's case that we request the opportunity to be heard orally on this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 31st day of January 2001, a copy of the Government's Response in Opposition to Defendant's Motion to Exclude Government Exhibits 2 and 3, has been hand-delivered to counsel of record for the defendant as follows:

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