

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
) Criminal No. 02-193
v.)
) Filed: 5-8-02
NIPPON ELECTRODE COMPANY, LTD.,)
) Violation: 15 U.S.C. § 1
)
Defendant.)

PLEA AGREEMENT

The United States of America and Nippon Electrode Company, Ltd., (hereinafter “NDK”), a corporation organized and existing under the laws of Japan, hereby enter into the following Plea Agreement pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”).

RIGHTS OF DEFENDANT

1. NDK understands its right:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against it;
 - (d) to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove every element of the charged offense beyond a reasonable doubt in order for it to be found guilty;
 - (e) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;
 - (f) to be charged in the State and District where the offense occurred;
 - (g) as a corporation organized and existing under the laws of Japan, to contest

service of the Summons in this case, to contest venue, and to contest the jurisdiction of the United States to prosecute this case against it in the United States District Court for the Eastern District of Pennsylvania;

- (h) to appeal its conviction if it is found guilty at trial; and
- (i) to appeal the imposition of sentence against it.

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

2. NDK waives the rights set out in Paragraph 1(b)-(i) above, waives all jurisdictional defenses to the prosecution of this case, waives all objections to venue, and agrees voluntarily to consent to the jurisdiction of the United States to prosecute this case against it in the United States District Court for the Eastern District of Pennsylvania. Pursuant to Rule 7(b), Fed. R. Crim. P., NDK will waive indictment and plead guilty pursuant to Fed. R. Crim. P. 11(e)(1)(C) to a one-count Information, to be filed in the United States District Court for the Eastern District of Pennsylvania. The Information will charge NDK with participating in a conspiracy to suppress and eliminate competition by fixing the price of carbon cathode block sold in the United States and elsewhere beginning at least as early as February 1996, and continuing until at least December 1997, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. Pursuant to the terms of this Plea Agreement, NDK will plead guilty at arraignment to the criminal charge described in Paragraph 2 above, and will make a factual admission of guilt to the Court in accordance with Rule 11, Fed. R. Crim. P., as set forth in Paragraph 4 below.

FACTUAL BASIS FOR OFFENSE CHARGED

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

(a) For the purposes of this Plea Agreement, the “relevant period” is that period beginning at least as early as February 1996 and continuing until at least December 1997. Throughout the relevant period, NDK was a corporation organized and existing under the laws of Japan, with its principal place of business in Tokyo, Japan. During the relevant period, NDK manufactured and sold carbon cathode block. Carbon cathode block is a carbon product with great strength and resistance to heat and chemical reaction. Because of its superior conductivity properties, it is commonly used in aluminum smelters or pots in the production of primary aluminum in the United States and elsewhere. During the relevant period, NDK was engaged in the sale of carbon cathode block in the United States and elsewhere.

(b) During the relevant period, NDK, through several of its officers and employees, participated in a conspiracy among the major producers of carbon cathode block, the primary purpose of which was to fix the price of carbon cathode block sold in the United States and elsewhere. In furtherance of the conspiracy, NDK, through several of its officers and employees, engaged in conversations and attended meetings with representatives of the other major producers and sellers of carbon cathode block. During such meetings and conversations, agreements were reached as to the prices the firms would charge for carbon cathode block sold in the United States and elsewhere.

(c) During the relevant period, carbon cathode block sold by one or more of the conspirator firms, as well as payments therefor, traveled in interstate and foreign commerce. The business activities of NDK and the co-conspirators in connection with the production and sale of carbon cathode block affected by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(d) During the relevant period, acts in furtherance of this conspiracy were

carried out within the United States.

POSSIBLE MAXIMUM SENTENCE

5. NDK understands that the maximum penalty which may be imposed against it upon conviction for a violation of the Sherman Antitrust Act is a fine in an amount equal to the largest of:

- (a) \$10 million (15 U.S.C. § 1);
- (b) twice the gross pecuniary gain derived from the crime

(18 U.S.C. § 3571(d)); or

- (c) twice the gross pecuniary loss caused to the victims of the crime

(18 U.S.C. § 3571(d)).

6. In addition, NDK understands that:

- (a) pursuant to § 8B1.1(a)(2) of the United States Sentencing Commission Guidelines ("U.S.S.G."), the Court may order it to pay restitution to the victims of the offense;

- (b) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order NDK to pay a \$400.00 special assessment upon conviction for the charged crime; and

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

SENTENCING GUIDELINES

7. Sentencing for the offense to be charged will be conducted pursuant to the U.S.S.G. manual in effect on the day of sentencing. Pursuant to U.S.S.G. § 1B1.8, self-incriminating information provided to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to NDK or in determining the applicable Guidelines range, except to the extent provided for in U.S.S.G. § 1B1.8(b).

SENTENCING AGREEMENT

8. Pursuant to Rule 11(e)(1)(C), Fed. R. Crim. P., the United States and NDK agree that the appropriate disposition of the case is, and agree jointly to recommend that the Court impose, a sentence requiring NDK to pay a fine to the United States in the amount of \$450,000, to impose no probation, and to pay no restitution. The United States and NDK further agree:

(a) That, for the purposes of determining the U.S.S.G. sentence in this case, the volume of commerce attributable to NDK is \$2,075,000 and the agreed-upon fine falls within the Guidelines range;

(b) The \$450,000 fine shall be paid on the date of the imposition of sentence or within seven days thereafter;

(c) The Court will order NDK to pay a \$400.00 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1 in addition to any fine imposed; and

(d) The Court retains complete discretion to accept or reject this Plea Agreement. If the Court rejects this Plea Agreement, it is further agreed that this agreement shall automatically convert to a plea agreement pursuant to Rule 11(e)(1)(B), Fed. R. Crim. P., and the aforementioned sentence shall be the joint recommendation of the parties, although not binding on the Court. If the Court does not accept the parties' joint recommendation pursuant to Rule 11(e)(1)(B), Fed. R. Crim. P., NDK shall have no right to withdraw its plea. Finally, it is also agreed that the parties will not seek either an upward or a downward departure under the Sentencing Guidelines.

9. Subject to the full and continuing cooperation of NDK described in Paragraph 12 of this Plea Agreement, and prior to sentencing in the case, the United States will fully advise the Court of the fact, manner, and extent of NDK's ongoing cooperation and its commitment to

prospective cooperation with the United States' investigations and prosecutions. The United States may comment on the evidence and circumstances of the case, bring to the Court's attention all facts relevant to sentencing, address the Court regarding the nature and seriousness of the offense, respond to questions raised by the Court, correct inaccuracies in the presentence report or sentencing record and rebut any statement made by or on behalf of NDK at sentencing.

10. The United States and NDK jointly submit that this Plea Agreement, together with the record that will be created by the United States and NDK at sentencing, and the further disclosure described in Paragraph 9 of this Plea Agreement, provides sufficient information concerning NDK, the offense charged and NDK's role in the offense to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and NDK will jointly request that the Court accept NDK's guilty plea and immediately impose sentence on NDK on the day of arraignment, pursuant to the provisions of Rule 32(b)(1), Fed. R. Crim. P., and U.S.S.G. § 6A1.1. The Court's denial of the request to impose sentence immediately based on the record provided by NDK and the United States will not void this Plea Agreement.

11. In light of the probability of civil causes of action, which potentially provide for a recovery of a multiple of actual damages, the United States agrees that it will not seek a restitution order with respect to the offense charged in the Information.

NDK'S COOPERATION

12. NDK, its parents and its subsidiaries will fully and truthfully cooperate with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of the federal antitrust and related criminal laws in the carbon cathode block industry, any other federal investigation resulting therefrom, and any litigation or other proceedings arising

or resulting from any such investigation to which the United States is a party (“Federal Proceeding”). Such cooperation shall include, but not be limited to:

(a) producing to the United States all documents, information and other materials (except documents qualified as privileged under the laws of the United States or protected under the work-product doctrine), wherever located, that are in the possession, custody or control of NDK, its parents or its subsidiaries, requested by the United States in connection with any Federal Proceeding; and

(b) using their best efforts to secure the ongoing, full and truthful cooperation, as defined in Paragraph 13 of this Plea Agreement, of all current and former directors, officers and employees of NDK, its parents and its subsidiaries (excluding Shogo Ando and Hiroshi Suetake) upon reasonable notice and request by the United States, including making such persons available in the United States and at other mutually agreed-upon locations, at NDK’s expense, for interviews and testimony in grand jury, trial and other judicial proceedings in connection with any Federal Proceeding.

13. The ongoing, full and truthful cooperation of each person described in Paragraph 12(b) above will be subject to the procedures and protections of this Paragraph, and shall include, but not be limited to:

(a) producing in the United States and at other mutually agreed-upon locations upon reasonable notice, all documents (including claimed personal documents) and other materials not privileged under United States law requested by attorneys and agents of the United States;

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

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements or declarations (18 U.S.C. § 1001) or obstruction of justice (18 U.S.C. §1503);

(d) otherwise voluntarily providing the United States with any non-privileged material or information not requested in (a)-(c) of this Paragraph, that he or she may have that is related to any Federal Proceeding; and

(e) when called upon to do so by the United States, testifying in trial and grand jury or other proceedings in the United States, fully, truthfully and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503) and contempt (18 U.S.C. §§ 401-402), in connection with any such Federal Proceeding.

GOVERNMENT'S AGREEMENT

14. Upon acceptance of the guilty plea called for by this Plea Agreement, imposition of the agreed-upon sentence, and subject to the cooperation requirements of Paragraph 12 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against NDK, its parents or its subsidiaries for any act or offense committed prior to the date of this Plea Agreement that was undertaken in furtherance of or in connection with any attempted or completed antitrust conspiracy involving the manufacture and sale of carbon cathode block or in connection with any investigation thereof ("Relevant Offense"). The non-prosecution terms of this Paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws or to any crime of violence.

15. With respect to individuals, the United States agrees to the following.

(a) Subject to the exceptions noted in Paragraphs 15(d) and 20, the United States will not bring criminal charges against any current or former director, officer or employee of NDK, its parents or its subsidiaries (other than Shogo Ando and Hiroshi Suetake) for any Relevant Offense committed prior to the date of this Plea Agreement and while such person was employed by NDK, its parents or its subsidiaries.

(b) Should the United States determine that any current or former director, officer or employee of NDK, its parents or its subsidiaries may have information relevant to any Federal Proceeding, the United States may request such person's cooperation pursuant to the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for NDK) or, if the individual is not known by the United States to be represented, to the undersigned counsel for NDK.

(c) Except as provided in Paragraphs 15(d) and 21, information provided to the United States pursuant to the terms of this Plea Agreement pertaining to any Relevant Offense committed prior to the date of this Plea Agreement, and while the person providing the information was employed by and acting as an employee of NDK, its parents or its subsidiaries, or any information directly or indirectly derived from such information, may not be used against such person, NDK, its parents or its subsidiaries or any current or former director, officer or employee of any such entity (except Messrs. Ando and Suetake) in a criminal case, except a prosecution for perjury (18 U.S.C. § 1621), making false statements or declarations (18 U.S.C. § 1001), making a false statement or declaration in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503) or contempt (18 U.S.C. §§ 401-402) committed subsequent to the date of this Plea Agreement.

(d) In the event that any person requested to provide cooperation pursuant to

Paragraph 15(b) fails to comply fully with such person's obligations under Paragraph 13 of this Plea Agreement, then all the terms of this Plea Agreement as they pertain to such person, including Paragraph 15(c), shall be rendered null and void, and the agreement not to prosecute such person granted in this Plea Agreement shall be void.

(e) The non-prosecution terms of this Paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws or to any crime of violence.

16. The United States agrees that when any person travels to the United States for interviews, court appearances or grand jury appearances, pursuant to this Plea Agreement, or meetings with counsel in preparation thereof, the United States will take no action, based upon any offense subject to this Plea Agreement, to subject such person to arrest, service of process or prevention from departing the United States. This Paragraph does not apply to an individual's commission of perjury (18 U.S.C. § 1621), making false statements or declarations (18 U.S.C. § 1001), making a false statement or declaration in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503) or contempt (18 U.S.C. §§ 401-402) in connection with any testimony provided in trial, grand jury or other judicial proceedings in the United States.

17. NDK understands that it may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon any conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, such other agencies may take. However, the United States Department of Justice, Antitrust Division, agrees that, if requested, it will advise the appropriate officials of any government agency considering administrative action against NDK, its parents or its subsidiaries, based upon any conviction resulting from this Plea Agreement, of the fact, manner and extent of the cooperation of NDK, its parents and its subsidiaries, as described herein, as a matter for such

agency to consider before determining what administrative action, if any, to take with regard to NDK, its parents or its subsidiaries.

REPRESENTATION BY COUNSEL

18. NDK has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. NDK has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charges, any possible defenses to the charges, and the nature and range of possible sentences.

VOLUNTARY PLEA

19. NDK's decision to enter into this Plea Agreement and NDK's decision to tender a plea of guilty are freely and voluntarily made and are not the result of force, threats, assurances, promises or representations other than the representations contained in this Plea Agreement. There have been no promises or representations to NDK as to whether the Court will accept or reject this Plea Agreement.

VIOLATION OF THE PLEA AGREEMENT

20. NDK agrees that, should the United States determine in good faith, during the period any Federal Proceeding is pending, that NDK has failed to provide full cooperation (as described in Paragraph 12 of this Plea Agreement) or has otherwise failed to comply with any of the provisions of this Plea Agreement, the United States may notify counsel for NDK in writing by personal or overnight delivery or facsimile transmission of its intention to void any of its obligations under this Plea Agreement (except its obligations under this Paragraph), and NDK, its parents and its subsidiaries, as well as their current and former directors, officers and employees, shall be subject to prosecution for the substantive offense which is the subject of the investigation of carbon cathode block resulting in this Plea Agreement.

21. NDK understands and agrees that in any further prosecution of NDK, its parents

and its subsidiaries, as well as their current and former directors, officers and employees resulting from the release of the United States from its obligations under this Plea Agreement because of NDK's violation of this Plea Agreement, any documents, statements, information, testimony or evidence provided pursuant to Paragraphs 12 and 13 of this Plea Agreement, and any leads derived therefrom, may be used against NDK, its parents and its subsidiaries, as well as their current and former directors, officers and employees, in any such further prosecution. Statements made by an individual who has complied fully with his obligations under Paragraph 13, however, may not be used directly against that individual. NDK hereby unconditionally waives its right, in any such further prosecution, to move to exclude such evidence, notwithstanding the protections of Rule 11(e)(6), Fed. R. Crim. P., or any other such law. Should this Plea Agreement become void, NDK agrees that it will waive any defense to any charges which it might otherwise have under any statute of limitations or the Speedy Trial Act from the date of the execution of this Plea Agreement.

ENTIRETY OF AGREEMENT

22. This Plea Agreement constitutes the entire agreement between the United States and NDK concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing signed by the United States and NDK.

23. The undersigned representative of NDK is authorized to enter this Plea Agreement on behalf of NDK as evidenced by the Resolution of the Board of Directors of NDK attached hereto and incorporated herein by reference.

24. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

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

Dated:

Respectfully submitted,

TAKUJI FUKUDA
Managing Director, Nippon
Electrode Company, Ltd.

EDWARD S. PANEK
PEDRO DE LA TORRE

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