

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
) Criminal No. 98-CR-85-1
 v.)
) Judge Lowell A. Reed, Jr.
 SHOWA DENKO CARBON, INC.,)
) Filed 9/8/98
 Defendant)

PLEA AGREEMENT

The United States of America and Showa Denko Carbon, Inc. (hereinafter "SDC"), a corporation organized and existing under the laws of South Carolina, 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."):

1. The United States of America desires to obtain the cooperation of Showa Denko Carbon, Inc., a corporation organized and existing under the laws of South Carolina, and the cooperation of Showa Denko KK, and any company controlling SDC (hereinafter and only for purposes of this Plea Agreement "the SDC Affiliates"), and their respective current and former directors, officers and employees in the conduct of the current federal investigation of alleged violations of federal criminal laws in the graphite electrode industry, and any federal investigations in the carbon and graphite products industries resulting directly therefrom and any litigation or other proceedings arising or resulting directly from any such investigations to which the United States is a party (hereinafter "Federal Proceedings").

2. SDC and the SDC Affiliates desire to provide the United States their cooperation and the cooperation of their respective current and former directors, officers and employees in the Federal Proceedings.

3. Therefore, it is agreed by and between SDC and the United States as follows:

SHOWA DENKO CARBON, INC.'S COOPERATION

4. SDC agrees that it and the SDC Affiliates will cooperate fully with the United States in the conduct of the Federal Proceedings, including the criminal prosecution to be brought by the United States against SDC described in Paragraph 9 of this Plea Agreement. Such cooperation shall include, but not be limited to:

(a) the production to the United States of all non-privileged documents and other materials relevant to the Federal Proceedings in the possession, custody, or control of SDC or the SDC Affiliates, wherever located, requested in good faith by the United States in connection with the Federal Proceedings; and

(b) using its best efforts to secure the full and truthful cooperation, in connection with the Federal Proceedings, of Yoshikazu Watanabe and Kazue Yamato, including making such persons available upon reasonable notice on a reasonable number of occasions in the United States and elsewhere at SDC's expense for interviews, grand jury testimony and trial testimony.

5. The full and truthful cooperation of any person subject to Paragraph 4(b) above shall include, but not be limited to:

(a) making his relevant personal documents and other materials available in the United States to attorneys and agents of the United States;

(b) upon reasonable notice by the United States on a reasonable number of occasions, making himself available in the United States and elsewhere for interviews with attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with the Federal Proceedings, without falsely implicating any person or intentionally withholding any information;

(d) otherwise giving the United States access to knowledge or information he may have relevant to the Federal Proceedings; 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) and making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), in connection with the Federal Proceedings.

GOVERNMENT'S AGREEMENT

6. The United States agrees:

(a) so long as any person identified in Paragraph 4(b) above provides the cooperation described in Paragraph 5 above, not to bring criminal charges against such person for any act or offense committed prior to the date of this Plea Agreement, which was undertaken in furtherance of, or in connection with, any attempted or completed antitrust conspiracy involving the sale or manufacture of graphite electrodes ("Relevant Offenses in the Graphite Electrode

Market") and while such person was employed by SDC or any of the SDC Affiliates;

(b) not to bring criminal charges against any current or former director, officer or employee of SDC or any of the SDC Affiliates for any Relevant Offenses in the Graphite Electrode Market, which was undertaken while such person was employed by SDC or any of the SDC Affiliates. However, should the United States become aware that any former or current director, officer or employee of SDC or any of the SDC Affiliates, other than those persons identified in Paragraph 4(b) above, may have information relevant or necessary to any federal prosecution for any Relevant Offenses in the Graphite Electrode Market, the United States shall request such person's cooperation pursuant to the terms of this Plea Agreement by written request delivered to counsel for SDC by overnight delivery or by facsimile transmission. SDC shall use its best efforts to secure such person's cooperation with the United States. If, within 30 days from the date the United States so notifies counsel for SDC, such person agrees, in writing delivered to undersigned counsel for the United States by overnight delivery or by facsimile transmission, to provide his or her cooperation to the United States, then upon such person's cooperation as described in Paragraph 5 above, such person shall continue to receive the full non-prosecution protections granted in Paragraph 6(b) of this Plea Agreement. If, within 30 days from the date the United States so notifies counsel for SDC, such person fails to agree, in writing delivered to undersigned counsel for the United States by overnight delivery or by facsimile transmission, to provide his or her cooperation to the United States, then the terms of this Plea Agreement as they pertain to such person shall be rendered null and void, and the agreement not to prosecute such person granted in this Plea Agreement shall be void; and

(c) that information provided to the United States pursuant to the terms of this Plea Agreement pertaining to any act or offense committed prior to the date of this Plea Agreement and while such person was employed by and acting as an employee of SDC or any of the SDC Affiliates, or any information directly or indirectly derived from such information, may not be used against such person, nor against any other former or current director, officer or employee of SDC or any of the SDC Affiliates in any criminal case, except a prosecution for perjury, giving a false statement or obstruction of justice committed after the date of this Plea Agreement, unless such person has been identified in Paragraph 4(b) or identified by the United States to counsel for SDC in the manner prescribed in Paragraph 6(b) above and does not provide full and truthful cooperation pursuant to the terms of this Plea Agreement. In the event any person identified in Paragraph 4(b) above or providing cooperation pursuant to Paragraph 6(b) above fails to comply fully with such person's obligations under Paragraphs 5 and 6 of this Plea Agreement, the terms of this Plea Agreement as they pertain to such person shall be rendered null and void, and any immunity or agreement not to prosecute such person granted in this Plea Agreement shall be void. The immunity and non-prosecution terms of this Paragraph do not apply to any criminal violations of the federal tax laws or acts of violence.

7. Subject to the continuing full and truthful cooperation of SDC and the SDC Affiliates, as described in Paragraphs 4 and 5 of this Plea Agreement, and SDC's fulfillment of each other obligation contained in this Plea Agreement:

(a) the United States agrees not to bring further criminal charges against SDC or any of the SDC Affiliates (other than the prosecution to be brought by the United States

against SDC described in Paragraph 9 of this Plea Agreement) for any Relevant Offenses in the Graphite Electrode Market; and

(b) the United States agrees that information pertaining to any act or offense committed prior to the date of this Plea Agreement, which was undertaken in furtherance of, or in connection with, any attempted or completed antitrust conspiracy involving the sale or production of carbon and graphite products, other than graphite electrodes, provided to the United States pursuant to Paragraphs 4 and 5 of this Plea Agreement, or any information directly or indirectly derived from such information, may not be used against SDC or any of the SDC Affiliates in any criminal case except a prosecution for obstruction of justice committed after the date of this Plea Agreement.

The terms of this Paragraph do not apply to any criminal violations of the federal tax laws or acts of violence.

8. The United States agrees that when any person subject to Paragraphs 4(b) or 6(b) of this Plea Agreement is required by the United States to travel to the United States for interviews, court appearances or grand jury appearances pursuant to this Plea Agreement, the United States shall take no action based upon any act or offense committed prior to the date of this Plea Agreement, which was undertaken in furtherance of, or in connection with, any attempted or completed antitrust conspiracy to subject any such person to arrest, detention, service of process or prevention from departing the United States.

OFFENSE CHARGED

9. Pursuant to Rule 7(b), Fed. R. Crim. P., SDC will waive indictment and the United States will file a one-count criminal Information in the United States District Court for the Eastern District of Pennsylvania, charging SDC with participating in a conspiracy to suppress and eliminate competition by fixing the price of graphite electrodes in the United States and elsewhere, from in or about 1993 until approximately January 1997, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

RIGHTS OF DEFENDANT

10. SDC understands its rights:
- (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 it guilty beyond a reasonable doubt;
 - (e) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;
 - (f) to appeal its conviction if it is found guilty at trial;
 - (g) to appeal the imposition of sentence against it; and
 - (h) to be charged in the state and district where the offense occurred.

**SDC'S AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

11. SDC has informed the United States that it will waive the rights set out in Paragraph 10(b)-(h) above. Pursuant to Rule 7(b), Fed. R. Crim. P., SDC will waive indictment and plead guilty to a one-count Information, to be filed in the United States District Court for the Eastern District of Pennsylvania. The Information will charge SDC with participating in a conspiracy to suppress and eliminate competition by fixing the price of graphite electrodes in the United States and elsewhere, from in or about 1993 until approximately January 1997, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

FACTUAL BASIS FOR OFFENSE CHARGED

12. At arraignment, the United States will state its position that had the case gone to trial, the United States would have presented evidence, including testimony of executives of graphite electrode manufacturing firms doing business in the Eastern District of Pennsylvania, including SDC, to prove the following facts:

(a) for purposes of this Plea Agreement, the relevant time period is that period from in or about 1993 until approximately January 1997. During this period, SDC was a corporation organized and existing under the laws of South Carolina. Throughout the relevant time period, SDC was a producer of graphite electrodes. Graphite electrodes are large carbon columns used to conduct electricity in electric furnace steel making in the United States and elsewhere. Throughout the relevant time period, SDC was engaged in the sale of graphite electrodes in the United States and elsewhere;

(b) during the relevant time period, SDC participated in a conspiracy among the major graphite electrode producing companies, the primary purpose of which was to fix the price of graphite electrodes sold in the United States and elsewhere. In furtherance of the conspiracy, SDC, through its authorized representatives and employees, engaged in conversations and attended meetings with representatives of the other major graphite electrode producing firms. During one or more of these meetings and during one or more of these conversations, agreements were reached as to the prices the firms would charge for graphite electrodes in the United States and elsewhere. The purpose of the agreements was to raise the price of graphite electrodes in the United States and elsewhere;

(c) during the relevant time period, graphite electrodes sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution thereof, as well as payments therefor, traveled in interstate commerce. The business activities of SDC and co-conspirators in connection with the production and sale of graphite electrodes were within the flow of, and substantially affected, interstate trade and commerce; and

(d) substantial quantities of graphite electrodes affected by this conspiracy were sold by SDC and other co-conspirators to customers in the Eastern District of Pennsylvania.

POSSIBLE MAXIMUM SENTENCE

13. SDC 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 (18 U.S.C. § 1);
- (b) twice the gross pecuniary gain derived from the crime; or
- (c) twice the gross pecuniary loss caused to the victims of the crime (18

U.S.C. § 3571(b)), and a term of probation of at least one year, but not more than five years (18 U.S.C. § 3561(c)(1)).

In addition, SDC understands that, 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 and that 18 U.S.C. § 3013(a)(2)(B) requires the Court to order the defendant to pay a \$400.00 special assessment upon conviction for the charged crime.

14. 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 SDC or in determining the applicable Guidelines range.

SENTENCING AGREEMENT

15. Pursuant to Rule 11(e)(1)(C), Fed. R. Crim. P., the United States and SDC agree that the appropriate disposition of the case is a sentence requiring SDC to pay a fine to the United States within a range of \$29 million to \$32.5 million. The United States and SDC agree jointly to recommend that the Court impose, pursuant to 18 U.S.C. § 3571, a sentence requiring SDC to pay a fine to the United States in the amount of \$29 million.

- (a) The fine shall be payable in five equal payments as follows:

(1) twenty percent of the total fine plus accrued interest to be paid within 6 months from the date of imposition of sentence;

(2) twenty percent of the total fine plus accrued interest to be paid within 12 months of the date of imposition of sentence;

(3) twenty percent of the total fine plus accrued interest to be paid within 18 months of the date of imposition of sentence;

(4) twenty percent of the total fine plus accrued interest to be paid within 24 months of the date of imposition of sentence; and

(5) twenty percent of the total fine plus accrued interest to be paid within 30 months of the date of imposition of sentence.

(b) Pursuant to 18 U.S.C. § 3612(f), interest shall be due on the unpaid balance of the fine remaining after the 15th day following the date of imposition of sentence.

(c) SDC agrees that within 15 days following the date of imposition of sentence, it will post a letter of credit or standby letter of credit issued by a United States bank or a United States branch of a foreign bank to the benefit of the United States or its designee to guarantee the unpaid balance of the fine including interest in a form acceptable to the Court.

(d) SDC understands that the Court will order it 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.

(e) The United States and SDC acknowledge that the Court may impose a term of probation. The parties agree that the following conditions of probation are appropriate:

(1) the term of probation may be up to five years, but SDC may petition the Court for early termination of the term of probation;

(2) SDC shall submit to the United States Probation Office a written policy specifically outlining procedures or policies adopted by SDC to ensure against future participation in violations of the Sherman Antitrust Act;

(3) SDC shall submit to the United States Probation Office executed documents from senior executives and sales personnel acknowledging receipt of the written Antitrust policy and an agreement to comply with the provisions of the policy; and

(4) SDC shall hold annual seminars for senior executives and sales personnel to address corporate policies concerning Antitrust violations. Counsel shall submit a summary of the topics to be discussed during the seminars.

(f) The United States and SDC jointly submit that this Plea Agreement contains sufficient information concerning SDC, the offense charged in this case, and SDC'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 SDC will jointly request that the Court accept SDC's guilty plea and immediately impose sentence on the day of arraignment despite 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 upon the record provided by SDC and the United States will not void this Plea Agreement.

16. Subject to the full and continuing cooperation of SDC and the SDC Affiliates, as described in Paragraphs 4 and 5 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 SDC's cooperation with the United States' investigation and prosecutions, all facts relating to SDC's involvement in the charged offense, and all other relevant conduct.

17. The United States and SDC agree that the Guidelines fine range exceeds the agreed-upon fine and that the agreed-upon fine exceeds the statutory maximum fine set forth in 15 U.S.C. § 1. Absent such an agreement between the parties, the Court would be required to hold an evidentiary hearing pursuant 18 U.S.C. § 3571 to establish the appropriate level of fine. The United States will file a motion pursuant to U.S.S.G. § 8C4.1 requesting that the Court depart from the sentence calculated pursuant to the U.S.S.G. and impose the agreed-upon sentence set out above because of the substantial assistance provided by SDC and the SDC Affiliates to the investigation of other corporations and individuals in connection with the Federal Proceedings. In light of the private civil actions brought against SDC in the Eastern District of Pennsylvania and elsewhere, the United States agrees that it will not seek a restitution order with respect to the offense charged in the Information.

18. The United States and SDC understand that the Court retains complete discretion to accept or reject the agreed-upon disposition provided for in this Plea Agreement. In the event the Court rejects the aforesaid agreed-upon disposition, this entire Plea Agreement, except this Paragraph, shall, at SDC's option, be rendered null and void, and SDC will be free to withdraw its plea of guilty (Fed. R. Crim. P. 11(e)(4)), and the guilty plea, if withdrawn, shall not be admissible against SDC in any criminal or civil proceeding (Fed. R. Crim. P. 11(e)(6)).

19. The United States agrees that, within three (3) business days after making

available to any state or foreign government any testimony, documents, or information provided to the United States under this Plea Agreement, it will provide written notice of such disclosure to counsel for SDC by overnight delivery or by facsimile transmission, unless the provision of such notice would violate any treaty obligation of the United States or any court order or might jeopardize the integrity of any state or foreign investigation by law enforcement authorities. In addition, the United States agrees that in connection with making any such information available to any state or foreign government, the United States will fully advise the appropriate officials of such state or foreign government of the fact, manner, extent, and value of the cooperation SDC has provided to the United States under this Plea Agreement.

20. SDC understands that it and the SDC Affiliates 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 agrees that, if requested, it will advise the appropriate officials of any governmental agency considering administrative action against SDC or any of the SDC Affiliates, based upon any conviction resulting from this Plea Agreement, of the fact, manner, and extent of the cooperation of SDC and the SDC Affiliates, as described herein, as a matter for such agency to consider before determining what administrative action, if any, to take with regard to SDC or any of the SDC Affiliates.

REPRESENTATION BY COUNSEL

21. SDC has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. SDC 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

22. SDC's decision to enter into this Plea Agreement and SDC'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 SDC as to whether the Court will accept or reject this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

23. SDC agrees that should the United States determine in good faith, during the period of time the Federal Proceedings are pending, that SDC or any of the SDC Affiliates has failed to provide full cooperation (as described in Paragraphs 4 and 5 of this Plea Agreement) or otherwise has violated any other provision of this Plea Agreement, the United States may, by notifying counsel for SDC in writing by personal or overnight delivery or facsimile transmission, void any of its obligations under this Plea Agreement (except its obligations under this Paragraph 23), and SDC and the SDC Affiliates shall be subject to prosecution for any federal crime of which the United States has knowledge, including, but not limited to, obstruction of justice and the substantive offenses subject to the investigation resulting in this Plea Agreement.

ENTIRETY OF AGREEMENT

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

25. The undersigned President of Showa Denko Carbon, Inc. is authorized to enter this Plea Agreement on behalf of SDC as evidenced by the Resolution of the Board of Directors of SDC attached hereto and incorporated herein by reference.

26. The undersigned attorney for the United States has been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

27. 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.

DATED:

Respectfully submitted,

MARK LEDDY
MICHAEL R. LAZERWITZ
DAVID I. GELFAND
Counsel for Showa Denko Carbon, Inc.

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