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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 05-00277 MHP
12)
13 v.) PLEA AGREEMENT
14 SYNDIAL S.p.A.,)
15 Defendant.)
16 _____)

17 The United States of America and Syndial S.p.A. (“defendant”), a corporation organized
18 and existing under the laws of Italy, hereby enter into the following Plea Agreement pursuant to
19 Rule 11(c)(1)(c) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

20 **RIGHTS OF DEFENDANT**

- 21 1. The defendant understands its rights:
- 22 (a) to be represented by an attorney;
- 23 (b) to be charged by Indictment;
- 24 (c) as a corporation organized and existing under the laws of Italy, to decline
25 to accept service of the Summons in this case, and to contest the jurisdiction of the
26 United States to prosecute this case against it in the United States District Court for the
27 Northern District of California;
- 28 (d) to plead not guilty to any criminal charge brought against it;

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

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

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

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

8
9 **AGREEMENT TO PLEAD GUILTY**
AND WAIVE CERTAIN RIGHTS

10 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph
11 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any
12 appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal
13 under 18 U.S.C. § 3742, that challenges the sentence imposed by the Court if that sentence is
14 consistent with or below the recommended sentence in Paragraph 8 of this Plea Agreement,
15 regardless of how the sentence is determined by the Court. This agreement does not affect the
16 rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b) and (c). Pursuant to
17 Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty at arraignment to a
18 one-count Information to be filed in the United States District Court for the Northern District of
19 California. The Information will charge the defendant with participating in a conspiracy to
20 suppress and eliminate competition by fixing the price of polychloroprene rubber sold in the
21 United States and elsewhere, beginning in or about September 1999 and continuing until in or
22 about April 2002, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

23 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to
24 the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to
25 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

26 **FACTUAL BASIS FOR OFFENSE CHARGED**

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

1 (a) For purposes of this Plea Agreement, the “relevant period” is that period
2 beginning in or about September 1999 and continuing until in or about April 2002. During the
3 relevant period, the defendant was a corporation named Enichem S.p.A., organized and existing
4 under the laws of Italy with its principal place of business in Milan, Italy. On or about May 1,
5 2003, Enichem S.p.A. changed its legal name to Syndial S.p.A. During the relevant period, the
6 defendant (or its subsidiaries, direct or indirect) was a producer of polychloroprene rubber, was
7 engaged in the sale of polychloroprene rubber in the United States and elsewhere, and employed
8 200 or more individuals. Polychloroprene rubber, also known as “chloroprene rubber,”
9 “polychloroprene,” “PCP,” or “butaclor,” is a specific type of synthetic rubber which has end-
10 use applications in the automotive, adhesives, and construction industries. Polychloroprene
11 rubber is produced by free radical initiated emulsion polymerization of chloroprene or emulsion
12 co-polymerization of chloroprene and at least one other co-monomer, and optionally, other
13 additives. During the relevant period, the defendant’s sales of polychloroprene rubber to U.S.
14 customers totaled at least \$33,786,000.

15 (b) During the relevant period, the defendant, through its officers and employees,
16 participated in a conspiracy among major polychloroprene rubber producers, the primary
17 purpose of which was to suppress and eliminate competition by fixing the price of
18 polychloroprene rubber sold in the United States and elsewhere. In furtherance of the
19 conspiracy, the defendant, through its officers and employees, engaged in discussions and
20 attended meetings with representatives of other major polychloroprene rubber producers. During
21 these discussions and meetings, agreements were reached to fix the price of polychloroprene
22 rubber to be sold in the United States and elsewhere.

23 (c) During the relevant period, polychloroprene rubber sold by one or more of the
24 conspirator firms, and equipment and supplies necessary to the production and distribution of
25 polychloroprene rubber, as well as payments for polychloroprene rubber, traveled in interstate
26 and foreign commerce. The business activities of the defendant and its co-conspirators in
27 connection with the production and sale of polychloroprene rubber affected by this conspiracy
28 were within the flow of, and substantially affected, interstate and foreign trade and commerce.

1 (d) Polychloroprene rubber affected by this conspiracy was sold by one or more of
2 the conspirators to customers in this District.

3 **POSSIBLE MAXIMUM SENTENCE**

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

7 (a) \$10 million (15 U.S.C. § 1);

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

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

12 6. In addition, the defendant understands that:

13 (a) pursuant to § 8B1.1 of the United States Sentencing Guidelines
14 (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”), 18 U.S.C. § 3563(b)(2) or
15 3663(a)(3), the Court may order it to pay restitution to the victims of the offense;

16 (b) pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, the Court is
17 required to order the defendant to pay a \$400 special assessment upon conviction for the
18 charged crime; and

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

21 **SENTENCING GUIDELINES**

22 7. The defendant understands that the Sentencing Guidelines are advisory, not
23 mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing,
24 along with the other factors set forth in 18 U.S.C. § 3553(a), in imposing sentence. The
25 defendant understands that the Guidelines determinations will be made by the Court by a
26 preponderance of the evidence standard. The defendant understands that although the Court is
27 not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence
28 must be reasonable based upon consideration of all relevant sentencing factors set forth in 18

1 U.S.C. § 3553(a). Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating
2 information that the defendant provides or has provided to the United States pursuant to this Plea
3 Agreement will not be used to increase the volume of affected commerce attributable to the
4 defendant or in determining the defendant's applicable Guidelines range, except to the extent
5 provided in U.S.S.G. § 1B1.8(b).

6 **SENTENCING AGREEMENT**

7 8. Pursuant to Fed. R. Crim. P. 11(c)(1)(c), the United States and the defendant
8 agree that the appropriate disposition of this case is, and agree to recommend jointly that the
9 Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of \$9
10 million, payable in installments as set forth below with interest accruing under 18 U.S.C. §
11 3612(f)(1)-(2) ("the recommended sentence"). The parties agree that there exist no aggravating
12 or mitigating circumstances of a kind, or to a degree, not adequately taken into consideration by
13 the U.S. Sentencing Commission in formulating the Sentencing Guidelines that should result in a
14 sentence outside of the Guidelines range. The parties agree not to seek or support any sentence
15 outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth
16 in this Plea Agreement. The parties further agree that the recommended sentence set forth in this
17 Plea Agreement is reasonable.

18 (a) The United States and the defendant agree to recommend, in the interest of
19 justice pursuant to 18 U.S.C. § 3572(d)(1) and U.S.S.G. § 8C3.2(b), that the fine be paid
20 in the following installments: within thirty (30) days of imposition of sentence – \$2
21 million (with no accrued interest); at the one-year anniversary of imposition of sentence
22 ("anniversary") — \$2 million (plus any accrued interest); at the two-year anniversary —
23 \$2 million (plus any accrued interest); at the three-year anniversary — \$2 million (plus
24 any accrued interest); and at the four-year anniversary — \$1 million (plus any accrued
25 interest); provided, however, that the defendant shall have the option at any time before
26 the four-year anniversary of prepaying the remaining balance (plus any accrued interest)
27 then owing on the fine.

28 (b) The defendant understands that the Court will order it to pay a \$400

1 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, in
2 addition to any fine imposed.

3 (c) Both parties will recommend that no term of probation be imposed, but
4 the defendant understands that the Court's denial of this request will not void this Plea
5 Agreement.

6 (d) Subject to the ongoing, full, and truthful cooperation of the defendant
7 described in Paragraph 11 of this Plea Agreement, and before sentencing in the case, the
8 United States will fully advise the Court of the fact, manner, and extent of the
9 defendant's cooperation with the United States's polychloroprene rubber investigations
10 and prosecutions; of the defendant's commitment to prospective cooperation with such
11 investigations and prosecutions; of all material facts relating to the defendant's
12 involvement in the charged offense; and of all other relevant conduct.

13 (e) The United States and the defendant jointly submit that this Plea
14 Agreement, together with the record that will be created by the United States and the
15 defendant at the plea and sentencing hearings, will provide sufficient information
16 concerning the defendant, the crime charged in this case, and the defendant's role in the
17 crime to enable the meaningful exercise of sentencing authority by the Court under 18
18 U.S.C. § 3553. The United States and defendant agree to request jointly that the Court
19 accept the defendant's guilty plea and impose sentence on an expedited schedule as early
20 as the date of arraignment, based upon the record provided by the defendant and the
21 United States, under the provisions of Fed. R. Crim. P. 32(c)(1)(A)(ii), U.S.S.G. § 6A1.1,
22 and Rule 32-1(b) of the Criminal Local Rules. The Court's denial of the request to
23 impose sentence on an expedited schedule will not void this Plea Agreement.

24 9. The United States and the defendant understand that the Court retains complete
25 discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea
26 Agreement.

27 (a) If the Court does not accept the recommended sentence, the United States
28 and the defendant agree that this Plea Agreement, except for Paragraph 9(b) below, shall

1 be rendered void.

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

15 10. In light of the civil cases filed, which potentially provide for a recovery of a
16 multiple of actual damages, the United States agrees that it will not seek a restitution order for
17 the offense charged in the Information.

18 **DEFENDANT'S COOPERATION**

19 11. The defendant, its parents, and any direct or indirect subsidiaries (including any
20 entity that was a subsidiary of Enichem S.p.A. during the relevant period) currently or previously
21 engaged in the sale or production of polychloroprene rubber (collectively, "related entities"),
22 will cooperate fully and truthfully with the United States in the prosecution of this case, the
23 conduct of the current federal investigation of violations of federal antitrust and related criminal
24 laws involving the manufacture or sale of polychloroprene rubber, any other federal
25 investigation resulting therefrom involving the manufacture or sale of polychloroprene rubber,
26 and any litigation or other proceedings arising or resulting from any such investigation to which
27 the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation
28 of the defendant shall include, but not be limited to:

1 (a) producing to the United States all non-privileged documents, information,
2 and other materials, wherever located, in the possession, custody, or control of the
3 defendant or any of its related entities, requested by the United States in connection with
4 any Federal Proceeding; and

5 (b) using its best efforts to secure the ongoing, full, and truthful
6 cooperation, as defined in Paragraph 12 of this Plea Agreement, of the current and former
7 directors, officers, and employees of the defendant or any of its related entities as may be
8 requested by the United States who have or had responsibilities relating to the
9 manufacture or sale of polychloroprene rubber (but excluding Sergio Castro), including
10 making these persons available in the United States and at other mutually agreed-upon
11 locations upon reasonable notice, at the defendant's expense, for interviews and the
12 provision of testimony in grand jury, trial, and other judicial proceedings in connection
13 with any Federal Proceeding.

14 12. The ongoing, full, and truthful cooperation of each person described in Paragraph
15 11(b) above will be subject to the procedures and protections of this paragraph, and shall
16 include, but not be limited to:

17 (a) producing in the United States and at other mutually agreed-upon
18 locations all non-privileged documents, including claimed personal documents, and other
19 materials, wherever located, requested by the United States in connection with any
20 Federal Proceeding;

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

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

28 (d) otherwise voluntarily providing the United States with any non-privileged

1 material or information not requested in (a) - (c) of this paragraph that he or she may
2 have that is related to any Federal Proceeding;

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

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

15 **GOVERNMENT'S AGREEMENT**

16 13. Upon acceptance of the guilty plea called for by this Plea Agreement and the
17 imposition of the recommended sentence, and subject to the cooperation requirements of
18 Paragraph 11 of this Plea Agreement, the United States agrees that it will not bring further
19 criminal charges against the defendant or any of its related entities for any act or offense
20 committed before the date of this Plea Agreement that was undertaken in furtherance of an
21 antitrust conspiracy involving the manufacture or sale of polychloroprene rubber. The
22 nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation
23 of the federal tax or securities laws, or to any crime of violence.

24 14. The United States agrees to the following:

25 (a) Upon the Court's acceptance of the guilty plea called for by this Plea
26 Agreement and the imposition of the recommended sentence and subject to the
27 exceptions noted in Paragraph 14(c), the United States will not bring criminal charges
28 against any current or former director, officer, or employee of the defendant or its related

1 entities for any act or offense committed before the date of this Plea Agreement and
2 while that person was acting as a director, officer, or employee of the defendant or its
3 related entities that was undertaken in furtherance of an antitrust conspiracy involving the
4 manufacture or sale of polychloroprene rubber (a “Relevant Offense”), except that the
5 protections granted in this paragraph shall not apply to Sergio Castro;

6 (b) Should the United States determine that any current or former directors,
7 officers, or employees of the defendant or its related entities who have or had
8 responsibilities related to the manufacture or sale of polychloroprene rubber may have
9 information relevant to any Federal Proceeding, the United States may request that
10 person’s cooperation under the terms of this Plea Agreement by written request delivered
11 to counsel for the individual (with a copy to the undersigned counsel for the defendant)
12 or, if the individual is not known by the United States to be represented, to the
13 undersigned counsel for the defendant;

14 (c) If any person requested to provide cooperation under Paragraph 14(b) fails
15 to comply with his or her obligations under Paragraph 12, then the terms of this Plea
16 Agreement as they pertain to that person, and the agreement not to prosecute that person
17 granted in this Plea Agreement, shall be rendered void;

18 (d) Except as provided in Paragraph 14(e), information provided by a person
19 described in Paragraph 14(b) to the United States under the terms of this Plea Agreement
20 pertaining to any Relevant Offense, or any information directly or indirectly derived from
21 that information, may not be used against that person in a criminal case, except in a
22 prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration
23 (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. § 1503);

24 (e) If any person who provides information to the United States under this
25 Plea Agreement fails to comply fully with his or her obligations under Paragraph 12 of
26 this Plea Agreement, the agreement in Paragraph 14(d) not to use that information or any
27 information directly or indirectly derived from it against that person in a criminal case
28 shall be rendered void;

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

4 (g) Documents provided under Paragraphs 11(a) and 12(a) shall be deemed
5 responsive to outstanding grand jury subpoenas issued to the defendant or any of its
6 related entities.

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

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

24 **REPRESENTATION BY COUNSEL**

25 17. The defendant has been represented by counsel and is fully satisfied that its
26 attorneys have provided competent legal representation. The defendant has thoroughly reviewed
27 this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge,
28 any possible defenses to the charge, and the nature and range of possible sentences.

1 **VOLUNTARY PLEA**

2 18. The defendant’s decision to enter into this Plea Agreement and to tender a plea of
3 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,
4 or representations other than the representations contained in this Plea Agreement. The United
5 States has made no promises or representations to the defendant as to whether the Court will
6 accept or reject the recommendations contained within this Plea Agreement.

7 **VIOLATION OF PLEA AGREEMENT**

8 19. The defendant agrees that, should the United States determine in good faith,
9 during the period that any Federal Proceeding is pending, that the defendant or any of its related
10 entities have failed to provide full and truthful cooperation, as described in Paragraph 11 of this
11 Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United
12 States will notify counsel for the defendant in writing by personal or overnight delivery or
13 facsimile transmission and may also notify counsel by telephone of its intention to void any of its
14 obligations under this Plea Agreement (except its obligations under this paragraph), and the
15 defendant and its related entities shall be subject to prosecution for any federal crime of which
16 the United States has knowledge including, but not limited to, the substantive offenses relating to
17 the investigation resulting in this Plea Agreement. The defendant and its related entities may
18 seek Court review of any determination made by the United States under this Paragraph to void
19 any of its obligations under the Plea Agreement. The defendant and its related entities agree
20 that, in the event that the United States is released from its obligations under this Plea Agreement
21 and brings criminal charges against the defendant or its related entities for any offense referred
22 to in Paragraph 13 of this Plea Agreement, the statute of limitations period for such offense will
23 be tolled for the period between the date of the signing of this Plea Agreement and six (6)
24 months after the date the United States gave notice of its intent to void its obligations under this
25 Plea Agreement.

26 20. The defendant understands and agrees that in any further prosecution
27 of it or its related entities resulting from the release of the United States from its obligations
28 under this Plea Agreement, because of the defendant’s or its related entities’ violation of the Plea

1 Agreement, any documents, statements, information, testimony, or evidence provided by it, its
2 related entities, or current or former directors, officers, or employees of it or its related entities to
3 attorneys or agents of the United States, federal grand juries, or courts, and any leads derived
4 therefrom, may be used against it or its related entities in any such further prosecution. In
5 addition, the defendant unconditionally waives its right to challenge the use of such evidence in
6 any such further prosecution by the United States, notwithstanding the protections of Fed. R.
7 Evid. 410.

8 **ENTIRETY OF AGREEMENT**

9 21. This Plea Agreement constitutes the entire agreement between the United States
10 and the defendant concerning the disposition of the criminal charge in this case. This Plea
11 Agreement cannot be modified except in writing, signed by the United States and the defendant.

12 22. The undersigned is authorized to enter this Plea Agreement on behalf of the
13 defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to,
14 and incorporated by reference in, this Plea Agreement.

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

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