

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

UNITED STATES OF AMERICA	)
	) Criminal No. 01-075
v.	)
	) Filed: 03-22-01
TAKESHI TAKAGI,	)
	) Violation: 15 U.S.C. § 1
Defendant.	)
	)

**PLEA AGREEMENT**

The United States of America and Takeshi Takagi, the defendant, with the advice of counsel, 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. The defendant understands his 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 him;
  - (d) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every element of the charged offense in order for him to be found guilty beyond a reasonable doubt;
  - (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
  - (f) to not be compelled to incriminate himself;
  - (g) to appeal his conviction if he is found guilty at trial; and

(h) to appeal the imposition of sentence against him.

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

2. The defendant waives the rights set out in Paragraph 1(b)-(g) above. The defendant also waives the right to appeal the imposition of sentence against him, so long as the sentence imposed is consistent with the recommendation in Paragraph 8 of this Plea Agreement. The defendant also agrees to accept service of the summons in this case and waives any right to contest the jurisdiction of the United States to prosecute this case against him in the United States District Court for the Eastern District of Pennsylvania. Pursuant to Rule 7(b), Fed. R. Crim. P., the defendant 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 the defendant with participating in a conspiracy to suppress and eliminate competition by fixing the price of non-machined and semi-machined isostatic graphite sold in the United States and elsewhere, beginning at least as early as July 1993, and continuing until at least February 1998, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. Pursuant to the terms of this Plea Agreement, the defendant 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 purposes of this Plea Agreement, the “relevant period” is that period beginning at least as early as July 1993, and continuing until at least February 1998. Throughout the relevant period, the defendant was the Director and General Manager of the International Division or Director, Corporate Planning of Toyo Tanso Company, Ltd. (“TTJ”), and an authorized representative of Toyo Tanso USA, Inc. (“TTU”), a Delaware corporation whose principal place of business is Troutdale, Oregon. During the relevant period, TTU and TTJ were engaged in the sale of non-machined and semi-machined isostatic graphite in the United States and elsewhere.

(b) During the relevant period, the defendant participated in a conspiracy with other persons and entities engaged in the manufacture and sale of isostatic graphite, the primary purpose of which was to fix the price of non-machined and semi-machined isostatic graphite sold in the United States and elsewhere. In furtherance of the conspiracy, the defendant engaged in conversations with and attended meetings with representatives of the other major producers of isostatic graphite. During such meetings and conversations, agreements were reached as to the prices the firms would charge for non-machined and semi-machined isostatic graphite in the United States and elsewhere.

(c) During the relevant period, non-machined and semi-machined isostatic graphite 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 and foreign commerce. The business activities of TTU and the co-conspirators in connection with the production and sale of non-machined and semi-machined isostatic graphite affected by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and

commerce.

(d) Substantial quantities of non-machined and semi-machined isostatic graphite affected by this conspiracy were sold by conspiracy participants to customers in the Eastern District of Pennsylvania.

**POSSIBLE MAXIMUM SENTENCE**

5. The defendant understands that the maximum penalty which may be imposed against him upon conviction for a violation of the Sherman Antitrust Act (15 U.S.C. § 1; 18 U.S.C. § 3571(a), (b)) is:

(a) a term of imprisonment of three (3) years;

(b) a fine in an amount equal to the greatest of (1) \$350,000, (2) twice the gross pecuniary gain derived from the crime, or (3) twice the pecuniary loss caused to the victims of the crime (18 U.S.C. § 3571(d)); and

(c) a term of supervised release of one (1) year following any term of imprisonment. If the defendant violates the conditions of supervised release, the defendant could be imprisoned for the entire term of supervised release (18 U.S.C. § 3559 (a)(5); 18 U.S.C. § 3583(b)(3) and (e)(3); and U.S.S.G. § 5D1.2(a)(3)).

6. In addition, the defendant understands that:

(a) pursuant to United States Sentencing Guidelines (U.S.S.G.) § 5E1.1.(a)(2), the Court may order him to pay restitution to the victims of the offense; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3., the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

### **SENTENCING GUIDELINES**

7. Sentencing for the offense to be charged will be conducted pursuant to the United States Sentencing Guidelines Manual in effect on the day of sentencing. The United States and the defendant agree on the determination of the U.S.S.G. offense level in this case, as set out below, based on currently available information. The defendant understands that, should the United States become aware of information that renders incorrect the calculation of the defendant's total offense level, criminal history category, or applicable adjustments or enhancements set out below, the United States will so notify the Court before 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 Takeshi Takagi or TTU, 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 the defendant agree that the appropriate disposition of this case is, and agree jointly to recommend that the Court impose, a sentence requiring the defendant to pay a fine to the United States in the amount of \$10,000 to be paid within 15 days from the date of the imposition of sentence; to serve a term of confinement within a range of zero to three months; and to pay no restitution. The United States understands that the defendant will recommend to the Court that it impose a non-custodial sentence. The defendant understands that the United States will make no specific recommendation to the Court regarding confinement within the agreed-upon range. The defendant understands that the Court may impose any period of confinement within the zero to three month range and, should the sentence be within that range, the defendant may not withdraw

his guilty plea as set forth in Paragraph 10 below. The defendant and the United States further agree that for purposes of determining the U.S.S.G. sentence in this case, the volume of affected commerce attributable to the defendant's principal is \$18,745,000.

(a) The defendant understands that the Court will order him to pay a \$100 special assessment under 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3, in addition to any fine imposed; and

(b) The United States will not object to the defendant's request that, in the event that any term of incarceration is imposed, the Court make a recommendation to the Bureau of Prisons that the defendant be assigned to a Federal Prison Camp (FPC). The United States also will not object to the defendant's request that, in the event that any term of incarceration is imposed, the defendant be released following the imposition of sentence to allow him to self-surrender to his assigned correctional facility on a specified date. The Court's denial of any request by the defendant in Paragraph 8(b) will not void this Plea Agreement.

9. The United States agrees that the defendant has accepted responsibility for his offense and is entitled to a two-level reduction in his offense level pursuant to U.S.S.G. § 3E1.1. The United States and defendant agree that, based on the volume of commerce attributable to him and his acceptance of responsibility, defendant's Guidelines offense level is 13. The United States and defendant understand that imposition of the jointly recommended sentence will require the Court to depart from the United States Sentencing Guidelines. Subject to the full and continuing cooperation of the defendant described in Paragraph 11 of this Plea Agreement, and prior to sentencing in the case, the United States will move the Court to depart downward from the Guidelines pursuant to U.S.S.G. § 5K1.1 because of the defendant's prior and promised substantial assistance in the investigation and prosecution of other individuals and corporations

for violations of the federal criminal antitrust laws. The United States will fully advise the Court of the fact, manner, and extent of the defendant's ongoing cooperation and his commitment to prospective cooperation with the United States' investigation 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 the defendant at sentencing. The decision to file a motion pursuant to U.S.S.G. § 5K1.1 lies within the sole discretion of the United States, subject to its obligation to act in good faith.

10. The United States and the defendant understand that the Court retains complete discretion to accept or reject the agreed-upon recommendations provided for in this Plea Agreement. If the Court does not accept the recommended sentence, this Plea Agreement will be void and the defendant will be free to withdraw his guilty plea (Fed. R. Crim. P. 11(e)(4)). If the defendant does withdraw his plea of guilty, this Plea Agreement, the guilty plea, and any statements made in connection with or in furtherance of the plea or this Plea Agreement, or in the course of discussions leading to the plea or this Plea Agreement, shall not be admissible against the defendant or against TTU or its parent in any criminal or civil proceeding (Fed. R. Crim. P. 11(e)(6)). In addition, should the Court reject the Plea Agreement and should the defendant then withdraw his guilty plea, the United States agrees that it will dismiss the Information without prejudice to the United States' right to indict the defendant on the charge contained in the Information and any other related charges. The defendant understands that the joint recommendations set out in Paragraph 8 are not binding on the Court. No one has promised or guaranteed the defendant what sentence the Court will impose.

## **DEFENDANT'S COOPERATION**

11. The defendant will fully and truthfully cooperate with the United States in the prosecution of this case, the conduct of the current federal investigations of violations of the federal antitrust and related criminal laws in the non-machined and semi-machined isostatic graphite and other graphite or carbon products industry, any other federal investigation resulting therefrom, and any litigation or other proceeding 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 in the United States and at other mutually agreed-upon locations all documents (including all claimed personal documents) and other materials, wherever located, relevant to any Federal Proceeding in the possession, custody, or control of the defendant requested by the United States in connection with any Federal Proceeding;

(b) upon reasonable notice by the United States, making himself available, not at the expense of the United States, for interviews in the United States, and at other mutually agreed-upon locations, upon the request of attorneys and agents of the United States in connection with any Federal Proceeding;

(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 materials or information, not requested in (a) - (c) of this Paragraph, that he may have related to any such Federal Proceeding; and

(e) when called upon to do so by the United States in connection with any Federal Proceeding, 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), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503).

12. To enable the Court to have the benefit of all relevant sentencing information, the United States may request, and the defendant will not oppose, that sentencing be postponed until the defendant's cooperation is complete.

### **GOVERNMENT'S AGREEMENT**

13. Subject to the defendant's full and continuing cooperation, as described in Paragraph 11 above, and upon the Court's acceptance of the defendant's guilty plea and imposition of sentence in this case and acceptance of the guilty plea of TTU and imposition of the sentence called for by the separate plea agreement with TTU (Exhibit A):

(a) The United States agrees not to bring further criminal charges against the defendant 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, combination or scheme involving the manufacture or sale of non-machined and semi-machined isostatic graphite or other graphite or carbon products. The non-prosecution term of this Paragraph is further contingent upon (1) disclosure by the defendant to the United States within sixty (60) days of the execution of this Plea Agreement of all potential violations of federal antitrust laws known to the defendant, and (2) the provision of full, complete and truthful cooperation by the defendant to the United States consistent with the terms of Paragraph 11 in connection with any investigation by the United States or any attempted or completed antitrust

conspiracy, combination or scheme involving the manufacture or sale of non-machined or semi-machined isostatic graphite or other graphite or carbon products. The non-prosecution terms of this Paragraph do not apply to any civil liability to the United States, to any violations of the federal tax or securities laws, or to any crime of violence.

(b) The United States agrees that when the defendant is required to travel to the United States for interviews, grand jury appearances, or court appearances under this Plea Agreement, including all appearances related to entry of the guilty plea and sentencing, the United States will take no action, based upon any offense subject to this Plea Agreement, to subject the defendant to arrest, service of process, or prevention from departing the United States except where the United States has sought to void the Plea Agreement under Paragraph 16. This Paragraph does not apply to the defendant's commission of perjury (18 U.S.C. § 1621); making false statements or declarations (18 U.S.C. § 1001); making false statements 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 statement to an attorney or agent of the United States or testimony provided under this Plea Agreement in trial, grand jury, or other judicial proceedings in the United States. The United States also agrees that documents provided under Paragraph 11 shall be deemed responsive to outstanding grand jury subpoenas issued to TTU.

(c) Subject to the full and continuing cooperation of the defendant, as described in Paragraph 11 of this Plea Agreement, and upon the Court's acceptance of the defendant's guilty plea and imposition of sentence in this case, the United States agrees not to seek to remove the defendant from the United States under section 240 of the Immigration and Nationality Act, based upon the defendant's guilty plea and conviction in this case, should the

defendant apply for or obtain admission to the United States as a nonimmigrant (hereinafter referred to as the “agreement not to seek to remove the defendant”). The agreement not to seek to remove the defendant is the equivalent of an agreement not to exclude the defendant from admission to the United States as a nonimmigrant or to deport the defendant from the United States. (Immigration and Nationality Act § 240(e)(2)).

(d) The Antitrust Division of the United States Department of Justice has consulted with the Immigration and Naturalization Service of the United States Department of Justice (“INS”). The INS, in consultation with the United States Department of State, has agreed to the inclusion in this Plea Agreement of this agreement not to seek to remove the defendant.

(e) So that the defendant will be able to obtain any nonimmigrant visa that he may need to travel to the United States, the INS and the Visa Office, United States Department of State, have concurred in the granting of a nonimmigrant waiver of the defendant’s inadmissibility. This waiver will remain in effect so long as this agreement not to seek to remove the defendant remains in effect. While the waiver remains in effect, the Department of State will not deny the defendant’s application for a nonimmigrant visa on the basis of the defendant’s guilty plea and conviction in this case, and the INS will not deny his application for admission as a nonimmigrant on the basis of his guilty plea and conviction in this case.

(f) This agreement not to seek to remove the defendant will remain in effect so long as the defendant:

- (i) acts and has acted consistently with his cooperation obligations under this Plea Agreement;
- (ii) is not convicted of any felony under the laws of the United States or any state, other than the conviction resulting from the

- defendant's guilty plea under this Plea Agreement, or any conviction under the laws of any state resulting from conduct constituting an offense subject to this Plea Agreement; and
- (iii) does not engage in any other conduct that would warrant his removal from the United States under the Immigration and Nationality Act.

The defendant understands that should the Antitrust Division become aware that the defendant has violated any of these conditions, the Antitrust Division will notify the INS. The INS will then determine, in consultation with the Antitrust Division, whether to rescind this agreement not to seek to remove the defendant.

(g) The defendant agrees to notify the Assistant Attorney General of the Antitrust Division should the defendant be convicted of any other felony under the laws of the United States or of any state.

(h) Should the United States rescind this agreement not to seek to remove the defendant because of the defendant's violation of a condition of this Plea Agreement, the defendant irrevocably waives his right to contest his removal from the United States under the Immigration and Nationality Act on the basis of his guilty plea and conviction in this case, but retains his right to notice of removal proceedings.

#### **REPRESENTATION BY COUNSEL**

14. The defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied that his attorney has provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and

the alternatives available to the defendant other than entering into this Plea Agreement. The defendant acknowledges that counsel has advised him of the nature of the charges, any possible defenses to the charges, and the nature and range of possible sentences. After conferring with his attorney and considering all available alternatives, the defendant has made a deliberate and voluntary decision to enter into this Plea Agreement.

#### **VOLUNTARY PLEA**

15. The defendant's decision to enter into this Plea Agreement and his 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. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject this Plea Agreement. In signing this Plea Agreement, the defendant is not under the influence of any drug, medication, liquor, intoxicant or depressant, and is fully capable of understanding the terms and conditions of this Plea Agreement.

#### **VIOLATION OF PLEA AGREEMENT**

16. The defendant agrees that should the United States determine in good faith, during the period of time that any Federal Proceeding is pending, that the defendant has failed to provide full and truthful cooperation and substantial assistance (as described in Paragraph 11 of this Plea Agreement) or otherwise has materially violated any other provision of this Plea Agreement, the United States, in its sole discretion, may, by notifying the defendant and counsel 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), and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, perjury (18 U.S.C. § 1621); making a false statement or declaration (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); contempt (18 U.S.C. §§ 401-402), and the substantive offenses subject to the investigation resulting in this Plea Agreement.

17. The defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement because of the defendant's violation of the Plea Agreement, any documents, statements, information, testimony or evidence provided by him to attorneys or agents of the United States, federal grand juries or courts, and any leads derived therefrom, may be used against him in any such further prosecution, and the defendant hereby unconditionally waives his 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. The defendant does not waive any right he may have to exclude such evidence under the Constitution of the United States. Should this Plea Agreement become void, the defendant agrees that he will waive any defense to any charges which he 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**

18. Simultaneously with the execution of the Plea Agreement, the United States and TTU will enter into a separate plea agreement, a copy of which is attached hereto as Exhibit A. This Plea Agreement and the Plea Agreement with TTU constitute the entire agreement between the United States and the defendant 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 the defendant.

19. The defendant acknowledges and agrees that this Plea Agreement may be filed and become a part of the record in this case.

20. 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.

21. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement.

Dated:

Respectfully submitted,

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TAKESHI TAKAGI

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LUCY P. MCCLAIN  
RICHARD S. ROSENBERG  
MICHELLE A. PIONKOWSKI

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DANIEL S. SAVRIN, ESQUIRE  
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