

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
TOYO TANSO USA, INC.,	)	
	)	Violation: 15 U.S.C. § 1
Defendant.	)	

**PLEA AGREEMENT**

The United States of America and Toyo Tanso USA, Inc. (hereinafter “TTU”) 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. TTU 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 in order for it to be found 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; and
  - (g) to appeal the imposition of sentence against it.

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

2. TTU waives the rights set out in Paragraph 1(b)-(f) above. TTU also waives its right under Paragraph 1(g) to appeal the imposition of the sentence against it, so long as the sentence imposed is consistent with the recommendation in Paragraph 8 of this Plea Agreement. Pursuant to Rule 7(b), Fed. R. Crim. P., TTU 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 TTU 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, TTU 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, TTU was a corporation organized and existing under the laws of the state of

Delaware, and was engaged in the sale of non-machined and semi-machined isostatic graphite in the United States and elsewhere.

(b) During the relevant period, TTU, through several of its officers, employees, and representatives, participated in a conspiracy among the major producers 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, TTU, through several of its officers, employees, and representatives, engaged in conversations and attended meetings with representatives of the other major sellers 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 sold 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 one or more of the conspirator companies to customers in the Eastern District of Pennsylvania.

### **POSSIBLE MAXIMUM SENTENCE**

5. TTU 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, TTU 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 the defendant 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 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 TTU agree that the appropriate disposition of the case is, and agree jointly to recommend that the Court impose, a sentence requiring TTU to pay a fine to the United States in the amount of \$4.5 million and to pay no restitution.

(a) The United States and TTU agree that, for the purposes of determining the U.S.S.G. sentence in this case, the volume of commerce attributable to TTU is \$18,745,000, which includes sales made by Toyo Tanso Company, Ltd. (“TTJ”). The agreed upon fine falls within the Guidelines range.

(b) The \$4.5 million fine shall be payable in five equal payments as follows:

(1) \$900,000 to be paid within 15 days from the date of imposition of sentence;

(2) \$900,000 plus accrued interest to be paid within one year from the date of the imposition of sentence;

(3) \$900,000 plus accrued interest to be paid within two years from the date of the imposition of sentence;

(4) \$900,000 plus accrued interest to be paid within three years from the date of the imposition of sentence; and

(5) \$900,000 plus accrued interest to be paid within four years from the date of the imposition of sentence.

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

(d) TTU agrees that within 30 days following the date of imposition of sentence, either TTU or TTJ 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.

(e) TTU 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.

(f) The United States and TTU understand that the Court retains complete discretion to accept or reject the agreed-upon recommendation provided for in this Plea Agreement. If the Court does not accept the recommended sentence, this Plea Agreement will be void and TTU will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(e)(4)). If the defendant does withdraw its 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 TTU, TTJ or their subsidiaries in any criminal or civil proceeding (Fed. R. Crim. P. 11(e)(6)).

9. Subject to the full and continuing cooperation of TTU and TTJ described in Paragraph 11 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 TTU's and TTJ's ongoing cooperation and their 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.

10. In light of the pendency 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.

#### **TOYO TANSO USA, INC.'S COOPERATION**

11. TTU, TTJ and their subsidiaries 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 industries, 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 TTU, TTJ or their 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 12 of this Plea Agreement, of all persons described in Paragraph 13(a) 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 TTU's expense, for interviews and testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.

12. The ongoing, full, and truthful cooperation of each person described in Paragraph 11(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**

13. The United States agrees to the following.

(a) Subject to the exceptions noted in Paragraphs 13, 19 and 21, the United States will not bring criminal charges against any current or former director, officer, or employee of TTU, TTJ or their subsidiaries, other than Takeshi Takagi, with whom the United States has entered into a separate plea agreement (Exhibit A), for any act or offense committed prior to the date of this Plea Agreement and while such person was employed by TTU, TTJ or their subsidiaries that was undertaken in furtherance of any attempted or completed antitrust conspiracy involving the sale or manufacture of non-machined and semi-machined isostatic graphite or other graphite or carbon products. The non-prosecution term of this Paragraph is contingent upon 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 TTU, TTJ or their subsidiaries concerning other graphite or carbon products.

(b) Should the United States determine that any current or former director, officer, or employee of TTU, TTJ or their 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 TTU) or, if the individual is not known by the United States to be represented, to the undersigned counsel for TTU.

(c) In the event that any person requested to provide cooperation pursuant to Paragraph 13(b) fails to comply with such person's obligations under Paragraph 12 of this Plea Agreement, 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.

(d) Except as provided in Paragraphs 13(e), 20, and 21, information provided to the United States pursuant to the terms of this Plea Agreement pertaining to any antitrust conspiracy relating to the sale or manufacture of non-machined and semi-machined isostatic graphite or other graphite or carbon products 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 TTU, TTJ or their subsidiaries, or any information directly or indirectly derived from such information, may not be used against TTU, TTJ or their subsidiaries or any current or former director, officer or employee of any such entity 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).

(e) In the event a person asked to provide information to the United States pursuant to this Plea Agreement fails to comply fully with his obligations under Paragraph 12 of this Plea Agreement, the agreement in Paragraph 13(d) not to use information, or any information directly or indirectly derived from such information, against such person in a criminal case shall be void.

(f) The non-prosecution terms of this Paragraph do not apply to any civil

liability to the United States, to any violation of federal tax or securities laws, or to any crime of violence.

(g) Any documents provided by TTU, TTJ or their subsidiaries pursuant to the terms of this Plea Agreement will be deemed responsive to the outstanding grand jury subpoena issued to TTU.

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 11 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against TTU, TTJ or their subsidiaries for any act or offense committed prior to the date of this Plea Agreement that was undertaken in furtherance of any attempted or completed antitrust conspiracy involving the sale or manufacture of non-machined and 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 violation of the federal tax or securities laws, or to any crime of violence.

15. The United States agrees that when any person travels to the United States for interviews, court appearances, grand jury appearances, or any other reason, pursuant to this Plea Agreement, 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 statement to an

attorney or agent of the United States or testimony provided in trial, grand jury, or other judicial proceedings in the United States.

16. TTU 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 TTU, TTJ or their subsidiaries based upon any conviction resulting from this Plea Agreement, of the fact, manner, and extent of the cooperation of TTU, TTJ and their subsidiaries, as described herein, as a matter for such agency to consider before determining what administrative action, if any, to take with regard to TTU, TTJ or their subsidiaries.

#### **REPRESENTATION BY COUNSEL**

17. TTU has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. TTU 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**

18. TTU's decision to enter into this Plea Agreement and TTU'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 TTU as to whether the Court will accept or

reject this Plea Agreement.

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

19. TTU agrees that, should the United States determine in good faith, during the period any Federal Proceeding is pending, that TTU has failed to provide full cooperation (as described in Paragraph 11 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 TTU 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 TTU, TTJ and their subsidiaries, as well as their current and former directors, officers and employees, shall be subject to prosecution for the substantive offenses which are the subject of the investigation of non-machined and semi-machined isostatic graphite and other graphite or carbon products resulting in this Plea Agreement.

20. The defendant understands and agrees that in any further prosecution of TTU, TTJ or their subsidiaries or any of their current or former directors, officers or employees, resulting from the release of the United States from its obligations under this Plea Agreement because of the defendant's violation of this Plea Agreement, any documents, statements, information, testimony or evidence provided pursuant to Paragraphs 11 or 12 of this Plea Agreement, and any leads derived therefrom, may be used against TTU, TTJ or their subsidiaries or their current or former directors, officers or employees, in any such further prosecution. Statements made by an individual who has complied fully with his obligations under Paragraph 12, however, may not be used directly against that individual. The defendant 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. The defendant does not waive any right it may have to exclude such evidence under the Constitution of the United States. Should this Plea Agreement become void, the defendant 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**

21. Simultaneously with the execution of this Plea Agreement, the United States and Takeshi Takagi will enter into a separate plea agreement, a copy of which is attached hereto as Exhibit A. Should Takeshi Takagi fail to enter a plea of guilty pursuant to the Plea Agreement between Takeshi Takagi and the United States, the United States may then void the provisions of this Plea Agreement that preclude the United States from prosecuting current or former directors, officers, or employees of TTU, TTJ and their subsidiaries, and such former directors, officers and employees shall be subject to prosecution for the substantive offenses which are the subject of the investigation of non-machined and semi-machined isostatic graphite and other graphite or carbon products resulting in this Plea Agreement. In any prosecution of any current or former director, officer or employee of TTU, TTJ or their subsidiaries resulting from the release of the United States from its obligations under this Plea Agreement because of Takeshi Takagi's failure to enter a plea of guilty pursuant to the Plea Agreement between the United States and Takeshi Takagi, any documents, statements, information, testimony or evidence provided pursuant to Paragraphs 11 or 12 of this Plea Agreement, and any leads derived therefrom, may be used against such current or former directors, officers or employees. Statements made by an individual who has complied fully with his obligations under Paragraph 12, however, may not be used directly against

that individual. This Plea Agreement and the Plea Agreement with Takeshi Takagi constitute the entire agreement between the United States and TTU 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 TTU.

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

23. 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.

24. 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,

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TAKESHI TAKAGI  
Toyo Tanso USA, Inc.

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

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