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7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 UNITED STATES OF AMERICA)

Case No. CR-05-0017 PJH

13 v.)

PLEA AGREEMENT

14)
15 ZEON CHEMICALS L.P.,)

16 Defendant.)
17

18 **PLEA AGREEMENT**

19 The United States of America and Zeon Chemicals L.P. (“Defendant”), a limited
20 partnership organized and existing under the laws of the State of Delaware, hereby enter into the
21 following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal
22 Procedure (“Fed. R. Crim. P.”):

23 **RIGHTS OF DEFENDANT**

- 24 1. The Defendant understands its rights:
- 25 (a) to be represented by an attorney;
 - 26 (b) to be charged by Indictment;
 - 27 (c) to plead not guilty to any criminal charge brought against it;
 - 28 (d) to have a trial by jury, at which it would be presumed not guilty of the

1 charge and the United States would have to prove every essential element of the charged
2 offense beyond a reasonable doubt for it to be found guilty;

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

5 (f) to appeal its conviction if it is found guilty;

6 (g) to contest whether venue properly lies in the Northern District of
7 California; and

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

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

10 2. The Defendant waives the rights set out in Paragraph 1(b)-(g) above, and agrees
11 voluntarily to consent to venue in the United States District Court for the Northern District of
12 California. The Defendant also waives the right to appeal the imposition of sentence against it,
13 so long as the sentence imposed is consistent with the recommendation in Paragraph 8 of this
14 Plea Agreement.

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21 Pursuant to Fed. R. Crim. P. 7(b), the Defendant will waive indictment and
22 plead guilty to a one-count Information to be filed in the United States District Court for the
23 Northern District of California. The Information will charge the Defendant with participating in
24 a combination and conspiracy to suppress and eliminate competition by increasing and
25 maintaining the price of acrylonitrile-butadiene rubber (“NBR”) sold in the United States and
26 elsewhere, beginning on or about May 14, 2002 and continuing until on or about December 31,
27 2002, in violation of Section One of the Sherman Antitrust Act (15 U.S.C. § 1).

28 3. The Defendant, pursuant to the terms of this Plea Agreement, will plead guilty to

1 the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to
2 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

3 **FACTUAL BASIS FOR OFFENSE CHARGED**

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

6 (a) For purposes of this Plea Agreement, the “relevant period” is that period
7 beginning on or about May 14, 2002 and continuing until on or about December 31,
8 2002. During the relevant period, the Defendant was a limited partnership organized and
9 existing under the laws of Delaware. The Defendant has its principal place of business in
10 Louisville, Kentucky. During the relevant period, the Defendant sold NBR in the United
11 States and elsewhere. NBR is used to manufacture, among other things, hoses, belting,
12 cable, o-rings, seals, adhesives, and sealants. The business activities of the Defendant
13 and its co-conspirators in connection with the production and sale of NBR affected by
14 this conspiracy were within the flow of, and substantially affected, interstate and foreign
15 trade and commerce.

16 (b) During the relevant period, the Defendant, through its employees,
17 participated in a conspiracy among major NBR producers, the primary purpose of which
18 was to suppress and eliminate competition by increasing and maintaining the price of
19 NBR sold in the United States and elsewhere. In furtherance of the conspiracy,
20 agreements were reached between the Defendant and other NBR producers to increase
21 the price of NBR to be sold in the United States and elsewhere.

22 (c) During the relevant period, NBR sold by one or more of the conspirator
23 firms, and equipment and supplies necessary to the production and distribution of NBR,
24 as well as payments for NBR, traveled in interstate and foreign commerce.

25 **POSSIBLE MAXIMUM SENTENCE**

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

- 1 (a) \$10 million (18 U.S.C. § 1);
2 (b) twice the gross pecuniary gain the conspirators derived from the crime
3 (18 U.S.C. § 3571(c) and (d)); or
4 (c) twice the gross pecuniary loss caused to the victims of the crime by the
5 conspirators (18 U.S.C. § 3571(c) and (d)).

6 6. In addition, the Defendant understands that:

- 7 (a) pursuant to § 8B1.1 of the U.S.S.G., the Court may order it to pay
8 restitution to the victims of the offense;
9 (b) pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, the Court is
10 required to order the Defendant to pay a \$400 special assessment upon conviction for the
11 charged crime; and
12 (c) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of
13 probation of at least one year, but not more than five years.

14 **SENTENCING GUIDELINES**

15 7. Sentencing for the offense to be charged will be conducted pursuant to the
16 U.S.S.G. Manual in effect on the day of sentencing. Pursuant to U.S.S.G. § 1B1.8, the United
17 States agrees that self-incriminating information that the Defendant and its cooperating directors,
18 officers, and employees provide to the United States pursuant to this Plea Agreement will not be
19 used to increase the volume of affected commerce attributable to the Defendant or in
20 determining the Defendant's applicable sentencing guidelines range, except to the extent
21 provided
22 in U.S.S.G. § 1B1.8(b).

23 **SENTENCING AGREEMENT**

24 8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the Defendant
25 agree that the appropriate disposition of this case is, and agree to recommend jointly that the
26 Court impose, a sentence requiring the Defendant to pay to the United States a criminal fine of
27 \$10.5 million, pursuant to 18 U.S.C. § 3571(d), payable in full before the fifteenth (15th) day
28 after the date of judgment ("the recommended sentence").

1 (a) The Defendant understands that the Court will order it to pay a \$400
2 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, in
3 addition to any fine imposed.

4 (b) Neither party will recommend a term of probation, but the Defendant
5 understands that the Court is free to impose a term of probation.

6 (c) Subject to the ongoing, full, and truthful cooperation of the Defendant as
7 described in Paragraph 11 of this Plea Agreement, the United States will fully advise the
8 Court of the fact, manner, and extent of the Defendant's cooperation and its commitment
9 to prospective cooperation with the United States' investigation and prosecutions, all
10 material facts relating to the Defendant's involvement in the charged offense, and all
11 other relevant conduct. The United States and the Defendant jointly submit that this Plea
12 Agreement, together with the record that will be created by the United States and the
13 Defendant at the plea and sentencing hearings, will provide sufficient information
14 concerning the Defendant, the crime charged in this case, and the Defendant's role in the
15 crime to enable the meaningful exercise of sentencing authority by the Court under 18
16 U.S.C. § 3553. The United States and the Defendant agree to request jointly that the
17 Court accept the Defendant's guilty plea and impose sentence on an expedited schedule
18 as early as the date of arraignment, based upon the record provided by the Defendant and
19 the United States, under the provisions of Fed. R. Crim. P. 32(c)(1)(A)(ii), U.S.S.G. §
20 6A1.1, and Rule 32-1(b) of the Criminal Local Rules. The Court's denial of the request
21 to impose sentence on an expedited schedule will not void this Plea Agreement.

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

25 (a) If the Court does not accept the recommended sentence, the United States
26 and the Defendant agree that this Plea Agreement, except for Paragraph 9(b) below, shall
27 be rendered void. Neither party may withdraw from this Plea Agreement, however,
28 based on the imposition of a term of probation.

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

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

17 **DEFENDANT'S COOPERATION**

18 11. The Defendant and any of its parents (direct or indirect) engaged in the sale or
19 production of NBR and affiliates Zeon Chemicals Europe Limited, Zeon Europe GmbH, Zeon
20 Asia Pte Ltd., and Tokyo Zairyo Co., Ltd. (such parents and affiliates hereafter collectively
21 referred to as "Related Entities") will cooperate fully and truthfully with the United States in the
22 prosecution of this case, the conduct of the current federal investigation of violations of federal
23 antitrust and related criminal laws involving the manufacture or sale of NBR, and any litigation
24 or other proceedings arising or resulting from any such investigation to which the United States
25 is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of the Defendant
26 and its Related Entities shall include, but not be limited to:

27 (a) producing to the United States all non-privileged documents, information,
28 and other materials (with translations into English), wherever located, in the possession,

1 custody, or control of the Defendant or any of its Related Entities, requested by the
2 United States in connection with any Federal Proceeding; and

3 (b) using its best efforts to secure the ongoing, full, and truthful cooperation,
4 as defined in Paragraph 12 of this Plea Agreement, of the current directors, officers, and
5 employees of the Defendant or any of its Related Entities as may be requested by the
6 United States (but excluding John Stothard and Hiroyuki Hirakawa), including making
7 these persons available in the United States and at other mutually agreed-upon locations,
8 at the Defendant's expense, for interviews and the provision of testimony in grand jury,
9 trial, and other judicial proceedings in connection with any Federal Proceeding.

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

13 (a) producing in the United States and at other mutually agreed-upon
14 locations all non-privileged documents (with translations into English), including claimed
15 personal documents, and other materials, wherever located, requested by attorneys and
16 agents of the United States;

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

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

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

27 (e) when called upon to do so by the United States in connection with any
28 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the

1 United States fully, truthfully, and under oath, subject to the penalties of perjury
2 (18 U.S.C. § 1621), making false statements or declarations in grand jury or court
3 proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401- 402), and obstruction of
4 justice (18 U.S.C. § 1503); and

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

11 **GOVERNMENT'S AGREEMENT**

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

20 14. The United States agrees to the following:

21 (a) Upon the Court's acceptance of the guilty plea called for by this Plea
22 Agreement and the imposition of the recommended sentence and subject to the
23 exceptions noted in Paragraph 14(c), the United States will not bring criminal charges
24 against any current or former director, officer, or employee of the Defendant or any of its
25 Related Entities for any act or offense committed before the date of this Plea Agreement
26 and while that person was acting as a director, officer, or employee of the Defendant or
27 any of its Related Entities that was undertaken in furtherance of an antitrust conspiracy
28 involving the manufacture or sale of NBR ("Relevant Offense"), except that the

1 protections granted in this paragraph shall not apply to John Stothard and Hiroyuki
2 Hirakawa;

3 (b) Should the United States determine that any current or former director,
4 officer, or employee of the Defendant or any of its Related Entities may have information
5 relevant to any Federal Proceeding, the United States may request that person's
6 cooperation under the terms of this Plea Agreement by written request delivered to
7 counsel for the individual (with a copy to the undersigned counsel for the Defendant) or,
8 if the individual is not known by the United States to be represented, to the undersigned
9 counsel for the Defendant;

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

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

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

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

28 (g) Documents provided under Paragraphs 11(a) and 12(a) shall be deemed

1 responsive to outstanding grand jury subpoenas issued to the Defendant or any of its
2 Related Entities.

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

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

20 **REPRESENTATION BY COUNSEL**

21 17. The Defendant has been represented by counsel and is fully satisfied that its
22 attorneys have provided competent legal representation. The Defendant has thoroughly
23 reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the
24 charge, any possible defenses to the charge, and the nature and range of possible sentences.

25 **VOLUNTARY PLEA**

26 18. The Defendant's decision to enter into this Plea Agreement and to tender a plea of
27 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,
28 or representations other than the representations contained in this Plea Agreement. The United

1 States has made no promises or representations to the Defendant as to whether the Court will
2 accept or reject the recommendations contained within this Plea Agreement.

3 **VIOLATION OF PLEA AGREEMENT**

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

22 20. The Defendant understands and agrees that in any further prosecution of it or its
23 Related Entities resulting from the release of the United States from its obligations under this
24 Plea Agreement, because of the Defendant's or its Related Entities' violation of the Plea
25 Agreement, any documents, statements, information, testimony, or evidence provided by it, its
26 Related Entities, or current or former directors, officers, or employees of it or its Related Entities
27 to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived
28 therefrom, may be used against it or its Related Entities in any such further prosecution. In

1 addition, the Defendant unconditionally waives its right to challenge the use of such evidence in
2 any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

3 **ENTIRETY OF AGREEMENT**

4 21. This Plea Agreement constitutes the entire agreement between the United States
5 and the Defendant concerning the disposition of the criminal charge in this case. This Plea
6 Agreement cannot be modified except in writing signed by the United States and the Defendant.

7 22. The undersigned is authorized to enter this Plea Agreement on behalf of the
8 Defendant as evidenced by the Resolution of the Board of Directors of the General Partner of the
9 Defendant attached to, and incorporated by reference in, this Plea Agreement.

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

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