

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA)	
)	Criminal No. 02-711
v.)	
)	Filed: 09-27-02
IAN G. HUTCHINSON,)	
)	Violation: 15 U.S.C. § 1
Defendant.)	
)	

PLEA AGREEMENT

The United States of America and Ian G. Hutchinson (“defendant”) 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 rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) as a citizen of the United Kingdom, to decline to accept service of the Summons in this case, and to contest the jurisdiction of the United States to prosecute this case against him in the United States District Court for the District of New Jersey;
 - (d) to plead not guilty to any criminal charge brought against him;
 - (e) to have a trial by jury, at which he would be presumed not guilty of the charge and at which the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;
 - (f) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;

- (g) not to be compelled to incriminate himself;
- (h) to appeal his conviction, if he is found guilty at trial; and
- (i) 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)-(h) above, including all jurisdictional defenses to the prosecution of this case, and agrees voluntarily to consent to the jurisdiction of the United States to prosecute this case against him in the United States District Court for the District of New Jersey. The defendant also waives the right to appeal the imposition of the sentence against him, so long as the sentence imposed is consistent with the recommended sentence contained in Paragraph 8 of this Plea Agreement. Further, pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty at arraignment to a one-count Information to be filed in the United States District Court for the District of New Jersey. The Information will charge the defendant with participating in a conspiracy that began at least as early as February 1996 and continued until at least December 1997, to suppress and eliminate competition by fixing the price of carbon cathode block, as defined in the Information, that was sold in the United States and elsewhere, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, 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 at least as early as February 1996 and continuing until at least December 1997. From the beginning of the relevant period until January 9, 1997, the defendant was the Commercial and Business Development Director of Hepworth Refractories, Ltd. From January 10, 1997, to the end of the relevant period, he was the Director of Marketing Operations and Business Development of Hepworth Refractories, Ltd. Hepworth Refractories Ltd. was an entity organized and existing under the laws of the United Kingdom and with its principal place of business in Sheffield, England. Also during the relevant period, the defendant was a Director of Hepworth Refractories, Inc., a company organized and existing under the laws of Ohio. During the relevant period, Hepworth Refractories, Ltd., was a producer of carbon cathode block and was engaged in the sale of carbon cathode block in the United States and elsewhere. Hepworth Refractories, Ltd., sold carbon cathode block in the United States through its wholly-owned U.S. subsidiary, Hepworth Refractories, Inc. Carbon cathode block is a carbon product with great strength and resistance to heat and chemical reaction. Because of its superior conductivity properties, it is commonly used in aluminum smelters or pots in the production of primary aluminum 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 carbon cathode block, the primary purpose of which was to fix the price of carbon cathode block sold in the United States and elsewhere. In furtherance of the conspiracy, the defendant engaged in conversations and attended meetings with representatives of other major carbon cathode block producing firms.

During such meetings and conversations, agreements were reached to fix the price of carbon cathode block to be sold in the United States and elsewhere.

(c) During the relevant period, carbon cathode block sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution of carbon cathode block, as well as payments for carbon cathode block, traveled in interstate and foreign commerce. The business activities of Hepworth Refractories, Ltd. and co-conspirators, in connection with the production and sale of carbon cathode block affected by this conspiracy, were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(d) During the relevant period, acts in furtherance of this conspiracy were carried out within the District of New Jersey.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

(a) a term of imprisonment for three (3) years (15 U.S.C. § 1);

(b) a fine in an amount equal to the greatest of (1) \$350,000, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d)); and

(c) a term of supervised release of one (1) year following any term of imprisonment. If the defendant violates any condition 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 United States Sentencing Guidelines (“U.S.S.G.”) § 5D1.2(a)(3)).

6. In addition, the defendant understands that:

(a) pursuant to U.S.S.G. § 5E1.1, 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 U.S.S.G. Manual in effect on the day of sentencing. Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to the defendant or in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).

SENTENCING AGREEMENT

8. Pursuant to Fed R. Crim. P. 11(e)(1)(C), the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of \$30,000, to be paid within ten business days from the date of the imposition of sentence; to be sentenced within the range of zero (0) to six (6) months; and to pay no restitution (“the recommended sentence”). The United States and defendant agree that the United States will make no specific recommendation to the Court regarding a sentence within the agreed upon range and that the defendant can argue for no confinement. The defendant understands that the Court may impose a period of confinement within the zero to six month range or a period of probation and, should the sentence be within that range, the defendant may not withdraw his guilty plea as set forth in Paragraph 11 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 defendant’s principal is \$2,767,000. The defendant understands that the Court will order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3 in addition to any fine imposed.

9. The United States and the defendant agree that the applicable United States Sentencing Guidelines range of confinement exceeds the term contained in the recommended sentence set out in Paragraph 8 above. The United States and the defendant further agree that subject to the full and continuing cooperation of the defendant, as described in Paragraph 12 of this Plea Agreement, and prior to sentencing in this case, the United States will move, pursuant to U.S.S.G. § 5K1.1, for a downward departure from the Guidelines sentence in this case and

will request that the Court impose the recommended sentence set out in Paragraph 8 of this Plea Agreement, because of the defendant's substantial assistance in the government's investigation and prosecutions of violations of federal criminal law in the carbon cathode block and other industries.

10. Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 12 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation and his commitment to prospective cooperation with the United States' investigations and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct.

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

(a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 11(b) below, shall be rendered void.

(b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw his guilty plea (Fed. R. Crim. P. 11(e)(4)). If the defendant withdraws his plea of guilty because the Court does not accept the recommended sentence, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the

defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Crim. P. 11(e)(6). In addition, the defendant agrees that, if he withdraws his guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period will be tolled for the period between the date of the signing of the Plea Agreement and the date the defendant withdrew his guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater. For a period of three (3) consecutive days following such a withdrawal of the guilty plea under this subparagraph, the United States shall take no action, based upon either the offenses subject to this Plea Agreement or any actual or alleged violation of the Plea Agreement, to revoke the defendant's release on his personal recognizance, to subject the defendant to service of process, arrest or detention, or to prevent the defendant from departing the United States.

DEFENDANT'S COOPERATION

12. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the manufacture or sale of any cathode block products used in the production of primary aluminum, any other federal investigation resulting therefrom, including but not limited to the investigation of the product industries set forth in Appendix A hereto, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

(a) producing in the United States and at other mutually agreed-upon locations all documents, including claimed personal documents, and other materials, wherever located, in the possession, custody, or control of the defendant requested by attorneys and agents of the United States;

(b) making himself available for interviews 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 material or information, not requested in (a) - (c) of this paragraph, that he may have that is related to any Federal Proceeding; and

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

GOVERNMENT'S AGREEMENT

13. Subject to the full, truthful, and continuing cooperation of the defendant, as described in Paragraph 12 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, the

United States will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving the manufacture or sale of any cathode block products used in the production of primary aluminum and such other products as are set forth in Appendix A hereto. The non-prosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

14. The defendant understands that he may be subject to administrative action (including removal from the United States) by the Immigration and Naturalization Service of the United States Department of Justice (INS), and that this plea agreement does not control, in any way, what action, if any, the INS may take. However, the Antitrust Division of the United States Department of Justice agrees that, if administrative proceedings are instituted against the defendant, it will advise the INS of the fact, manner and extent of the defendant's cooperation with the United States. Subject to the full and continuing cooperation of the defendant, as described in Paragraph 12 of this Plea Agreement, the Antitrust Division of the United States Department of Justice, in order to obtain the defendant's promised cooperation and assistance, further agrees to recommend that the INS not institute removal proceedings during the period of his cooperation and, if proceedings are ultimately instituted, when appropriate, recommend that the INS grant deferred action status to the defendant, his current spouse and two unmarried minor daughters by his current spouse, unless they are otherwise ineligible.

REPRESENTATION BY COUNSEL

15. The defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's 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 alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

16. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is 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 the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

17. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has failed to provide full and truthful cooperation, as described in Paragraph 12 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify the defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and shall also notify his counsel by telephone of its intention to 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, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any offense referred to in Paragraph 13 of this Plea Agreement, the statute of limitations period will be tolled for such offense for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

18. 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 based on 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. In addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Crim. P. 11(e)(6) and Fed. R. Evid. 410.

ENTIRETY OF AGREEMENT

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

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.

Dated: 9-13-02

Respectfully submitted

/s/

IAN G. HUTCHINSON
Defendant

/s/

BRYAN B. LAVINE, ESQUIRE
Counsel for Ian G. Hutchinson

/s/

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APPENDIX A

TO THE PLEA AGREEMENT BETWEEN THE UNITED STATES AND IAN G. HUTCHINSON

The protections afforded and the obligations imposed by the terms of the Plea Agreement between the United States and Ian G. Hutchinson regarding Mr. Hutchinson's participation in a conspiracy to suppress and eliminate competition in the sale of carbon cathode block (including Paragraphs 12 and 13 of the Plea Agreement) shall pertain with equal force to Mr. Hutchinson's participation in and/or information regarding any antitrust conspiracy involving the manufacture or sale of the following products:

1. **[Redacted]**
2. **[Redacted]**