

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

UNITED STATES OF AMERICA)
) Criminal No. 01-075
v.)
) Judge William H. Yohn, Jr.
TOYO TANSO USA, INC. and)
TAKESHI TAKAGI,) Filed: 02-14-01
)
Defendants.)

GOVERNMENT’S RULE 11 MEMORANDUM

The United States, Toyo Tanso USA, Inc. (TTU) and Takeshi Takagi have entered into plea agreements, pursuant to which TTU and Takeshi Takagi will waive indictment and plead guilty to the captioned Information. The one-count Information charges TTU and Takeshi Takagi with a violation of the Sherman Act, 15 U.S.C. § 1. The purpose of this memorandum is to provide the Court with sufficient information to accept these pleas by setting forth the violated statute, a description of the criminal Information, the terms of the Plea Agreements, and a preliminary statement of facts which support the agreements.

I
STATUTE VIOLATED

A. 15 U.S.C. Section 1

Section One of Title 15, United States Code, provides:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

B. The Information

The Information charges TTU and Takeshi Takagi, an authorized representative of 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 in unreasonable restraint of trade and commerce from at least as early as July 1993 and continuing until at least February 1998.

C. Elements of the Offense

The elements of a Sherman Act offense, each of which the United States must prove beyond a reasonable doubt at trial, are:

- (1) the conspiracy charged was formed, and it was in existence at or about the time alleged;
- (2) the defendants knowingly formed or participated in that conspiracy; and
- (3) the activity which was the object of the conspiracy was within the flow of, or substantially affected, interstate or foreign commerce.

D. Maximum Penalty

The maximum penalty TTU may receive upon its conviction in this case is a fine in an amount equal to the largest of: (a) \$10 million; (b) twice the gross pecuniary gain derived from the crime; or (c) twice the gross pecuniary loss caused to the victims of the crime.

The maximum penalty Takeshi Takagi may receive upon his conviction in this case is a period of imprisonment of three years and a fine in an amount equal to the largest of:

(a) \$350,000; (b) twice the gross pecuniary gain derived from the crime; or (c) twice the gross

pecuniary loss caused to the victims of the crime.

II **FACTUAL BASIS**

This statement of facts is intended to be used as a factual basis for the guilty pleas of TTU and Takeshi Takagi. It is not intended to be exhaustive in terms of details surrounding the charged conspiracy.

A. Background

Isostatic graphite is a fine grain carbon product with great strength and resistance to heat and chemical reaction. It is commonly used to produce, among other products, electrodes for electrical discharge machinery, dies for the continuous casting of metals, and various products used in the semi-conductor industry, which require its unique properties.

B. The Conspiracy

During the period covered by the Information, TTU was a Delaware corporation with its principal place of business located in Troutdale, Oregon. TTU sold various forms of isostatic graphite, including non-machined and semi-machined isostatic graphite, to various customers located in the United States and foreign countries. During that same period, Takeshi Takagi, as an authorized representative of TTU, was similarly engaged in the business of selling non-machined and semi-machined isostatic graphite to customers in the United States and foreign countries.

As alleged in the Information, beginning at least as early as July 1993 and continuing through at least February 1998, Takeshi Takagi and TTU and certain other competitor companies entered into and participated in a combination and 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. The combination and conspiracy engaged in by the defendants and co-conspirators was in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

The conspiracy consisted of a continuing agreement, understanding, and concert of action among the conspirators, the substantial terms of which were to agree to fix and maintain prices and to coordinate price increases for the sale of non-machined and semi-machined isostatic graphite in the United States and elsewhere.

For the purpose of forming and carrying out the charged combination and conspiracy, the defendants and co-conspirators:

- (1) participated in meetings and conversations in the Far East, Europe, and the United States to discuss the prices and grades of non-machined and semi-machined isostatic graphite sold in the United States and elsewhere;
- (2) agreed, during those meetings and conversations, to charge prices at certain levels and otherwise to increase and maintain prices of non-machined and semi-machined isostatic graphite sold in the United States and elsewhere;
- (3) agreed, during those meetings and conversations, to freeze market shares of sales of non-machined and semi-machined isostatic graphite among the co-conspirators to levels then in effect at the time the conspiracy was formed;
- (4) agreed, during those meetings and conversations, to restrict their sales of non-machined and semi-machined isostatic graphite to each others' customers;
- (5) agreed, during those meetings and conversations, to eliminate discounts from the

fixed price of non-machined and semi-machined isostatic graphite offered to customers in the United States and elsewhere;

- (6) agreed, during those meetings and conversations, to standardize the grades of non-machined and semi-machined isostatic graphite offered to customers in the United States and elsewhere for the purpose of facilitating the implementation of the above-described agreement; and
- (7) issued price announcements and price quotations in accordance with the agreements reached.

C. Interstate and Foreign Commerce

At all times during the conspiracy, TTU, located in Troutdale, Oregon, or other conspirators from other locations, sold a substantial quantity of non-machined and semi-machined isostatic graphite to customers located in states or countries other than the states or countries in which non-machined and semi-machined isostatic graphite were produced.

III
PLEA AGREEMENTS

The guilty pleas in this case will be entered pursuant to plea agreements between TTU, Takeshi Takagi, and the Antitrust Division.

A. TTU

The Plea Agreement between TTU and the United States provides that TTU will enter a plea of guilty in the Eastern District of Pennsylvania pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, to a one-count criminal Information charging the company with participating in a conspiracy to restrict competition by fixing the price of non-machined and

semi-machined isostatic graphite sold in the United States and elsewhere from 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.

Also pursuant to the Plea Agreement, the United States and TTU agree to jointly recommend that the Court impose a sentence requiring TTU to pay a fine to the United States in the amount of \$4.5 million as an appropriate disposition of the case. The fine is due and payable 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. Should the Court reject the agreed-upon disposition of the case, TTU will be free to withdraw its plea.

TTU, its parent, and subsidiaries have agreed to fully cooperate with the United States in the conduct of the present investigation of the non-machined and semi-machined isostatic graphite and other graphite or carbon products and any litigation or other proceedings to which the United States is a party resulting therefrom. Such cooperation includes, but is not limited to, the production of relevant documents under the control of TTU and its parent and subsidiaries. TTU must also use its best efforts to secure, in connection with the present investigation and any litigation resulting therefrom, the full and truthful cooperation of current directors, officers, and employees of TTU, including its parent and subsidiaries with relevant information who are identified by the United States. Such cooperation includes testifying truthfully in trial and grand

jury proceedings.

Also pursuant to the Plea Agreement, the United States agrees, subject to the continuing full cooperation of TTU and its parent and subsidiaries, not to bring further criminal proceedings against TTU or its parent and subsidiaries for any act or offense committed prior to the date of the Plea Agreement undertaken in connection with any antitrust conspiracy involving the sale or manufacture of non-machined and semi-machined isostatic graphite or other graphite or carbon products. Subject to their continuing cooperation, directors, officers, and employees of TTU and its parent and subsidiaries (other than Takeshi Takagi) will receive the same non-prosecution protection.

B. Takeshi Takagi

The Plea Agreement provides that Takeshi Takagi will enter a plea of guilty in the Eastern District of Pennsylvania pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, to a one-count criminal Information charging him with participating in a conspiracy to restrict competition by fixing the price of non-machined and semi-machined isostatic graphite sold in the United States and elsewhere from 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.

Pursuant to the terms of the Plea Agreement, the United States and Takeshi Takagi agree to jointly recommend that the Court impose a sentence requiring Mr. Takagi to pay a fine to the United States in the amount of \$10,000, which fine is to be paid within 15 days of the date of sentence, and to serve a term of confinement within a range of zero to three months. Under the terms of the Plea Agreement, the United States will make no specific recommendation to the Court regarding confinement within the agreed-upon range. The terms of the Plea Agreement,

however, allow the defendant to recommend to the Court that it impose a non-custodial sentence. Under the terms of the Plea Agreement, the defendant may not withdraw his guilty plea so long as the Court imposes a sentence within the agreed-upon range.

The terms of the Plea Agreement also require Mr. Takagi to fully cooperate with the United States in the conduct of its present investigation of the non-machined and semi-machined isostatic graphite and other graphite or carbon products industry. In return for Mr. Takagi's cooperation, the United States intends to make a motion for a downward departure from the Sentencing Guidelines pursuant to U.S.S.G. § 5K1.1 based on Mr. Takagi's prior and promised substantial assistance in the investigation and prosecution of other individuals and corporations for violations of the federal criminal antitrust laws. Under the terms of the Plea Agreement, the United States will fully advise the Court of the fact, manner, and extent of Mr. Takagi's ongoing cooperation and his commitment to prospective cooperation with the United States' investigations and prosecutions, all facts relating to his involvement in the charged offense, and all other relevant conduct.

Subject to Takeshi Takagi's continuing cooperation, the United States has agreed not to bring further criminal charges against him for any act or offense committed prior to the date of the Plea Agreement undertaken in connection with any antitrust conspiracy involving the sale or manufacture of non-machined and semi-machined isostatic graphite or other graphite or carbon products.

Finally, in exchange for Mr. Takagi's plea, the United States has agreed not to seek to remove the defendant from the United States and to grant him a nonimmigrant waiver of inadmissibility on the basis of Mr. Takagi's guilty plea and conviction in this case.

Takeshi Takagi has agreed to fully cooperate with the United States in the conduct of the present investigation of the non-machined and semi-machined isostatic graphite or other graphite or carbon products. Such cooperation includes, but is not limited to, the production of relevant documents under his control, making himself available upon reasonable notice, not at the expense of the United States, for interviews in the United States and at other mutually agreed-upon locations, and 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 information. Such cooperation also includes testifying truthfully in trial and grand jury proceedings.

Dated:

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 14th of February 2001, a copy of the Government's Rule 11 Memorandum has been faxed and mailed to counsel of record for the defendants as follows:

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