

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

UNITED STATES OF AMERICA)
) Criminal No. 01-75
v.)
) Judge William H. Yohn, Jr.
TOYO TANSO U.S.A, INC. and)
TAKESHI TAKAGI,) Filed: 06/06/01
)
Defendants.)

GOVERNMENT'S MOTION FOR A GUIDELINES
DOWNWARD DEPARTURE FOR DEFENDANT TAKESHI TAKAGI

I
INTRODUCTION

On March 22, 2001, Takeshi Takagi executed a waiver of indictment and entered a plea of guilty to a one-count criminal Information charging him with participating in a conspiracy to fix the price of non-machined and semi-machined isostatic graphite beginning at least as early as July 1993 and continuing until at least February 1998, in violation of Title 15 U.S.C. § 1. Mr. Takagi entered his plea pursuant to a Rule 11(e)(1)(C) plea agreement. Under the terms of the Plea Agreement, the United States and Mr. Takagi agreed that the appropriate disposition of this case is a sentence requiring the defendant: (1) to pay a fine in the amount of \$10,000, payable within 15 days of sentencing; (2) to serve a term of confinement within a range of zero to three months; and (3) to pay no restitution. The United States has agreed to make no specific recommendation to the Court regarding confinement within the agreed-upon range. The defendant will ask the Court that it impose a non-custodial sentence.

Based on the defendant's prior and promised cooperation in the continuing investigation and prosecution of Sherman Act violations by other individuals and companies involved in this matter, the United States hereby moves for a downward departure from the Guidelines sentence applicable to Mr. Takagi.

II SUBSTANTIAL ASSISTANCE

Mr. Takagi's cooperation in this investigation was critical in our plea negotiations with him and his employer and co-defendant, Toyo Tanso U.S.A., Inc. But for Mr. Takagi's acceptance of responsibility and commitment to cooperate with the United States in this investigation, there very likely would have been no plea agreement with either defendant.

Since entering into the Plea Agreement, Mr. Takagi has provided what the United States believes is full and substantial cooperation. We have found him at all times to be truthful and candid, and the evidence he provided has been corroborated by other independent sources. Given Mr. Takagi's position of responsibility at Toyo Tanso U.S.A., Inc., and his active role in the conspiracy, he was uniquely situated to, and did in fact, advance the investigation by providing significant evidence against his co-conspirators. The United States expects to present that evidence, along with other evidence collected during the course of the investigation, to the grand jury and ask it to consider returning an indictment against the remaining individual co-conspirators, all of whom are also foreign nationals. Should the co-conspirators be indicted, the United States believes, and is fully confident that, Mr. Takagi will provide complete, truthful, and valuable testimony at trial.¹

¹ Because the co-conspirators likely to be charged in the proposed indictment are not United States citizens and reside outside the Court's jurisdiction, there is no way to know when Mr. Takagi will have the opportunity to testify at trial. Such individuals may be unwilling to voluntarily submit to the Court's jurisdiction as Mr. Takagi has done.

It should be noted that these worldwide conspiracies orchestrated by foreign-based defendants are difficult to prove absent testimony of co-conspirators who are willing to submit voluntarily to the jurisdiction of the United States. As a Japanese national, Mr. Takagi could have chosen to remain outside the jurisdiction of the United States and refused to cooperate with the United States. Instead, he chose to accept responsibility for his illegal conduct, voluntarily submit to our jurisdiction, and cooperate fully in our investigation. Had he not voluntarily submitted to the Court's jurisdiction, he faced little risk of being tried and convicted for his role in the offense.²

Of even greater significance than Mr. Takagi's anticipated testimony is the assistance Mr. Takagi already has provided in the prosecution of the Mitsubishi Corporation for its role in aiding and abetting a conspiracy to fix the prices of graphite electrodes, a conspiracy in which neither Mr. Takagi nor Toyo Tanso U.S.A. participated.³ Mr. Takagi's willingness to subject himself to the Court's jurisdiction and enter a guilty plea enabled the United States to obtain key documentary evidence otherwise outside its reach that was critical in the Government's successful prosecution of Mitsubishi. Based at least in part on that documentary evidence, Mitsubishi was convicted by a jury and has paid a fine of \$134 million.⁴

² Mr. Takagi's plea was entered pursuant to Rule 11(e)(1)(C). He may withdraw his guilty plea should the Court reject the Plea Agreement and impose a sentence greater than the agreed-upon range of imprisonment or fine. If Mr. Takagi withdraws his plea, the United States would then be required to dismiss the Information and seek an indictment against him, which could result in Mr. Takagi again being outside the Court's jurisdiction.

³ *United States v. Mitsubishi Corporation*, Crim. No. 00-33 (E.D.Pa.).

⁴ The graphite electrode conspiracy was of much greater significance than the isostatic graphite conspiracy, involving approximately twenty times the volume of commerce.

III
CONCLUSION

For the reasons set forth above, the United States respectfully requests that the Court grant its motion for a Guidelines Downward Departure and impose a sentence on Mr. Takagi that is consistent with the terms of the Plea Agreement.

Dated:

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 6th day of June 2001, a copy of the Government's Motion for a Guidelines Downward Departure for Defendant Takeshi Takagi has been mailed to counsel of record for the defendant as follows:

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