

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: 06-19-01
	)	
Defendants.	)	

GOVERNMENT’S SENTENCING MEMORANDUM FOR  
DEFENDANTS TOYO TANSO U.S.A., INC., AND TAKESHI TAKAGI

I  
INTRODUCTION

On March 22, 2001, Toyo Tanso U.S.A., Inc. (TTU) and Takeshi Takagi executed waivers of indictment and pled guilty to a one-count criminal Information filed by the United States charging them 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 the Sherman Act, 15 U.S.C. § 1. TTU and Mr. Takagi entered their pleas pursuant to individual Rule 11(e)(1)(C) Plea Agreements.

II  
TOYO TANSO U.S.A., INC.

Pursuant to the terms of the Plea Agreement entered into with TTU, the United States agreed to and hereby does jointly recommend with TTU that the Court impose a sentence requiring TTU to pay a fine of \$4.5 million. The recommended fine is based on a volume of commerce attributable to TTU of \$18,745,000 and is within the applicable Guidelines range for an Adjusted Offense Level of 15 (\$3,749,000 to \$7,498,000). The terms of the Plea Agreement also

allow TTU to pay its fine over a four-year period with the first payment due within 15 days of sentencing and subsequent annual payments due on the anniversary date of sentencing. The United States respectfully recommends that TTU be permitted to pay the imposed criminal fine as outlined in the Plea Agreement.

The United States also recommends that the Court not impose an order of restitution. Victims of the conspiracy, all sophisticated companies, have instituted class actions seeking treble damages and attorneys fees as provided for persons harmed by violations of the antitrust laws under Section Four of the Clayton Act, 15 U.S.C. § 4. Given the private remedies afforded the victims of this antitrust crime and the difficulty the Court would encounter in attempting to determine the specific losses suffered by each of the many victims of this offense, it is respectfully suggested that an attempt to fashion a restitution order would unduly complicate and prolong the sentencing process.

### III TAKESHI TAKAGI

Pursuant to the terms of the Plea Agreement entered into with Mr. Takagi, the United States agreed and hereby does recommend that the appropriate disposition of this case is a sentence requiring Mr. Takagi to pay a fine in the amount of \$10,000, payable in full within 15 days of sentencing; to serve a term of confinement within a range of zero to three months; and to pay no restitution. As required by the terms of the Plea Agreement, the United States makes no specific recommendation regarding confinement within the agreed-upon range of zero to three months.

The agreed-upon sentence for both fine and imprisonment is below the minimum Sentencing Guidelines range applicable for Mr. Takagi's offense.<sup>1</sup> Based on Mr. Takagi's prior and promised assistance in the investigation and prosecution of other individuals and corporations, the United States filed a motion for a downward departure from the Guidelines pursuant to U.S.S.G. § 5K.1.1.<sup>2</sup>

As noted in the Government's Motion for a Downward Departure, the Plea Agreement presented to the Court was entered into pursuant to Federal Rule of Criminal Procedure 11(e)(1)(C) which provides that the Government may "agree that a specific sentence is the appropriate disposition of the case" and that the defendant may withdraw his plea if the agreement is not accepted by the Court. Such plea agreements, which limit the sentencing discretion of the Court, are used by the Antitrust Division in unusual circumstances where certainty around sentencing is a critical issue in reaching any plea agreement at all. Type "C" plea agreements have been used widely by the Division in international cartel cases and have been accepted by the courts.<sup>3</sup>

International cartels often involve large volumes of commerce and, thus, incur the most severe penalties under the Antitrust Sentencing Guidelines. Faced with such significant penalties,

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<sup>1</sup> Mr. Takagi's Adjusted Offense Level is 13, which requires a term of imprisonment of 12 to 18 months, and a fine in the range of \$187,450 to \$350,000.

<sup>2</sup> See Government's Motion for a Guidelines Downward Departure for Defendant Takeshi Takagi which was filed on June 6, 2001.

<sup>3</sup> Type "C" agreements have become prevalent in international cases largely because the United States lacks jurisdiction over many of the defendants. The willingness of a foreign defendant to submit to jurisdiction is conditioned on the certainty of the sentence he or she will receive.

defendants such as Mr. Takagi will not waive their right to trial without the certainty of a “C” agreement. The prosecution of international cartels also presents other factors warranting the use of “C” agreements. Such trials require the United States to assemble witnesses from around the globe, creating risk in the ability of the Government to present effectively its case at trial.

IV  
CONCLUSION

For these reasons, the Government respectfully urges the Court to accept the Rule 11(e)(1)(C) Plea Agreements presented on March 22, 2001 and impose a sentence consistent with the terms of the Plea Agreements entered into between the United States and TTU and the United States and Mr. Takagi.

Dated:

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 19<sup>th</sup> day of June 2001, a copy of the Government's Sentencing Memorandum for Defendants Toyo Tanso U.S.A., Inc. and Takeshi Takagi, has been mailed to counsel of record for the defendants as follows:

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