UNITED STATES DISTRICT COURT

DISTRICT OF DELAWARE

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>HERCULES INCORPORATED: MITSUI PETROCHEMICAL INDUSTRIES, LTD. and MITSUI PETROCHEMICAL INDUSTRIES (U.S.A.) INC.,<br><br>Defendants. | ) | Civil Action No. 4667<br><br>Filed: May 31, 1973<br><br>Entered: July 3, 1973 |

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on May 31, 1973 and each of the defendants having appeared; and plaintiff and defendants, by their respective attorneys, having severally consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence or an admission by any party hereto with respect to any such issue, and the Court having considered the matter and being duly advised,

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint herein states a claim for relief against defendants under Section 1 of the Act of Congress of July 2, 1890, 15 U.S.C. §1, as amended, commonly known as the Sherman Act, and under Section 7 of the Act of Congress of October 15, 1914, 15 U.S.C. §18, as amended, commonly known as the Clayton Act.

II

As used in this Final Judgment:

(a) "Hercules" shall mean defendant Hercules Incorporated, a corporation organized and existing under the laws of the State of Delaware, with its present principal office at Wilmington, Delaware, and its subsidiaries and affiliates with principal offices in the United States.

(b) "Mitsui" shall mean defendant Mitsui Petrochemical Industries, Ltd., a corporation organized and existing under the laws of Japan, with its principal office at Tokyo, Japan, and its subsidiaries and affiliates with principal offices in the United States.

(c) "Mitsui (U.S.A.)" shall mean defendant Mitsui Petrochemical Industries (U.S.A.), a wholly owned subsidiary of defendant Mitsui, a corporation organized and existing under the laws of the State of New York, with its present principal office at New York, New York;

(d) "H-M Plastics" means a partnership by and between defendants Hercules and Mitsui (U.S.A.) to manufacture and sell HDPE in the United States.

(e) "HDPE" shall mean high density polyethylene resin, one of a group of plastics known as polyolefins, derived from petrochemicals.

(f) "Subsidiary" shall mean a company of which the parent owns more than 50% of outstanding capital stock; "affiliate" shall mean a company of which the parent owns 50% or less of the outstanding capital stock and over whose affairs the parent has the right to exercise management control.

(g) "Person" shall mean any individual, partnership, firm, association, corporation, or other business or legal entity.

III

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant and to each of its directors, officers, agents, subsidiaries, affiliates, successors and assigns in the United States, and to all persons in active concert or participation with any such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

(A) Within 90 days after entry of this Final Judgment, defendants Hercules and Mitsui (U.S.A.) are ordered and directed to dissolve their partnership arrangement in H-M Plastics upon terms and conditions subject to approval by the plaintiff or this Court upon a showing

by the defendants that the terms and conditions of such dissolution will not lessen competition in any line of commerce in any section of the country.

(B) The terms and conditions for dissolution of such joint venture or partnership arrangement in H-M Plastics may include the sale by one party to the other, or to a third party, of not less than its entire interest therein, or a winding up of the partnership and payment of its debts and distribution of its assets to the partners or sale of such assets to one or more purchasers which may include Hercules or Mitsui.

V

(A) Upon entry of this Final Judgment, all license agreements among any of the defendants entered into after September 30, 1969 relating to high density polyethylene shall be terminated and each defendant is prohibited from, in any manner, restricting or limiting any other defendant's right to use of any and all technological information or know-how acquired by it pursuant to said license agreements or through its participation in or operation of H-M Plastics, provided however, that, in the case of technological information or know-how contributed by one defendant to H-M Plastics and used by another defendant subsequent to entry of this Final Judgment, the defendant using such technological information or know-how may be required reasonably to compensate the defendant contributing the same, such reasonable compensation to be determined by agreement of the parties concerned, or failing such agreement by an arbitrator to be mutually agreed upon or, failing such agreement, to be

appointed by this Court upon application of any defendant and upon notice to the plaintiff.

(B) Upon entry of this Final Judgment, the Polypropylene License Agreement between Hercules and Mitsui dated May 18, 1970 shall be terminated and each defendant is prohibited from, in any manner, restricting or limiting any other defendant's right to use any and all technological information or know-how acquired by it pursuant to said license agreement provided, however, that until the third anniversary of the entry of this Final Judgment, but not thereafter, Mitsui may require Hercules to confine its disclosures of Mitsui's technological information and know-how for use in Japan to third parties in which Hercules owns at least 50% interest of the outstanding stock and Hercules may require Mitsui to confine its disclosures of Hercules technological information and know-how for use in the United States to third parties in which Mitsui has at least such 50% interest.

VI

(A) Upon entry of this Final Judgment, defendants Mitsui and Mitsui (U.S.A.) on the one hand and Hercules on the other hand are each enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with each other to hinder, restrict, limit or prevent the other party or parties from entering into competition with it or with H-M Plastics in any line of commerce in the United States, provided, however, that without more, nothing herein shall prohibit the transfer, licensing or enforcement

of rights under patents and technological information and know-how.

(B) On entry of this Final Judgment defendant Hercules is enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with any other person actually or potentially engaged in the manufacture and sale of polypropylene resin to hinder, restrict, limit or prevent such other person from enjoying all rights to manufacture and sell polypropylene resin in the United States, provided, however, that, without more, nothing herein shall prohibit the transfer, licensing or enforcement of rights under patents and technological information and know-how.

(C) Defendants Mitsui, Mitsui (U.S.A.) and Hercules are each enjoined and restrained from simultaneously remaining partners or retaining any joint interest, partnership arrangement, or other joint interest, in any form in H-M Plastics or in any other person engaged in the manufacture or sale in the United States of polypropylene resin or HDPE.

(D) Defendants Mitsui and Mitsui (U.S.A.) are enjoined and restrained from knowingly permitting any of its officers, directors or employees from serving in any managerial capacity with defendant Hercules Incorporated in the United States.

(E) Defendant Hercules is enjoined and restrained from knowingly permitting any of its officers, directors or employees to serve in any managerial capacity with either of the defendants Mitsui Petrochemical Industries, Ltd., or Mitsui Petrochemical Industries (U.S.A.) Inc. in the United States.

(F) Defendant Hercules is enjoined from entering into, adhering to, maintaining or claiming any rights under any contract, agreement or understanding with any person whereby such person shall not compete with Hercules in any line of commerce in the United States as a condition of Hercules' agreeing to do business with that person in another line of commerce in the United States, provided, however, that, without more, nothing herein shall prohibit the transfer, licensing or enforcement of rights under patents and technological information and know-how.

VII

For the purpose of determining or securing compliance with this Final Judgment and for no other purpose:

(a) duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) access in the United States during the office hours of each United States defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody and control of such defendant relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of such defendant, but without restraint or

interference from it, to interview officers, directors, agents or employees of such defendant residing or otherwise present in the United States who may have counsel present, regarding any such matters;

(b) upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, any defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be requested;

provided, however, that no information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of plaintiff who receives actual notice of this Final Judgment and such information shall not be further divulged except in the course of legal proceedings in which the Department of Justice is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

## VIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or effectuation of this Final Judgment, for

the modification of any of the provisions hereof, for the enforcement of compliance herewith and for the punishment of violations hereof.

Dated: July 3, 1973

/s/ JAMES L. LATCHUM
United States District Judge