

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

UNITED STATES OF AMERICA)	
)	Criminal No. 99-233
v.)	
)	Filed: 5/20/99
TOKAI CARBON CO., LTD.,)	
)	Judge Clarence C. Newcomer
Defendant.)	

PLEA AGREEMENT

The United States of America and Tokai Carbon Co., Ltd. (hereinafter “Tokai Carbon”) 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. Tokai Carbon understands its right:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against it;
 - (d) to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove it guilty beyond a reasonable doubt;
 - (e) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;
 - (f) to appeal its conviction if it is found guilty at trial; and
 - (g) to appeal the imposition of sentence against it.

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. Tokai Carbon waives the rights set out in Paragraph 1(b)-(f) above. Tokai Carbon also waives the right to appeal the imposition of the sentence against it, so long as the sentence imposed is consistent with the recommendation in Paragraph 8 of this Plea Agreement. Pursuant to Rule 7(b), Fed. R. Crim. P., Tokai Carbon will waive indictment and plead guilty pursuant to Fed. R. Crim. P. 11(e)(1)(C) to a one-count Information, to be filed in the United States District Court for the Eastern District of Pennsylvania. The Information will charge Tokai Carbon with participating in a conspiracy to suppress and eliminate competition by fixing the price and allocating the volume of graphite electrodes sold in the United States and elsewhere, beginning at least as early as July 1992 and continuing until at least June 1997, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. Pursuant to the terms of this Plea Agreement, Tokai Carbon will plead guilty at arraignment to the criminal charge described in Paragraph 2 above, and will make a factual admission of guilt to the Court in accordance with Rule 11, Fed. R. Crim. P., 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 beginning at least as early as July 1992 and continuing until at least June 1997.

Throughout the relevant period, Tokai Carbon was a corporation organized and existing under the laws of Japan with its principal place of business in Tokyo, Japan. During the

relevant period, Tokai Carbon, was a manufacturer and seller of graphite electrodes. Graphite electrodes are large columns used to conduct electricity in electric arc furnace steel making in the United States and elsewhere. During the relevant period, Tokai Carbon, was engaged in the sale of graphite electrodes in the United States and elsewhere.

(b) During the relevant period, Tokai Carbon, through several of its officers and employees, participated in a conspiracy among the major graphite electrode manufacturing companies, the primary purposes of which were to fix the price and allocate the volume of graphite electrodes sold in the United States and elsewhere. In furtherance of the conspiracy, Tokai Carbon, through several of its officers and employees, engaged in conversations and attended meetings with representatives of the other major graphite electrode producing firms. During such meetings and conversations, agreements were reached as to the prices the firms would charge for, and the volumes the firms would sell of, graphite electrodes in the United States and elsewhere.

(c) During the relevant period, graphite electrodes sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution thereof, as well as payments therefor, traveled in interstate and foreign commerce. The business activities of Tokai Carbon and co-conspirators in connection with the production and sale of graphite electrodes affected by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(d) Substantial quantities of graphite electrodes affected by this conspiracy were sold by one or more of the conspirator companies to customers in the Eastern District of Pennsylvania.

POSSIBLE MAXIMUM SENTENCE

5. Tokai Carbon understands that the maximum penalty which may be imposed against it upon conviction for a violation of the Sherman Antitrust Act is a fine in an amount equal to the largest of:

- (a) \$10 million (15 U.S.C. § 1);
- (b) twice the gross pecuniary gain derived from the crime

(18 U.S.C. § 3571(d)); or

- (c) twice the gross pecuniary loss caused to the victims of the crime

(18 U.S.C. § 3571(d)).

6. In addition, Tokai Carbon understands that:

- (a) pursuant to § 8B1.1(a)(2) of the United States Sentencing Commission Guidelines ("U.S.S.G."), the Court may order it to pay restitution to the victims of the offense;

- (b) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the defendant to pay a \$400.00 special assessment upon conviction for the charged crime; and

- (c) a term of probation of at least one year, but not more than five years, may be imposed (18 U.S.C. § 3561(c)(1)).

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, self-incriminating information provided to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to Tokai Carbon or in determining the applicable Guidelines range, except to the extent provided for in

U.S.S.G. § 1B1.8(b).

SENTENCING AGREEMENT

8. Pursuant to Rule 11(e)(1)(C), Fed. R. Crim. P., the United States and Tokai Carbon agree that the appropriate disposition of the case is, and agree jointly to recommend that the Court impose, a sentence requiring Tokai Carbon to pay a fine to the United States in the amount of \$6 million.

(a) The \$6 million shall be payable as follows:

(1) the first payment in the amount of \$1.5 million will be due within fifteen days from the date of imposition of sentence; and

(2) thereafter, the defendant shall make three payments, each on the yearly anniversary of the date of sentencing, according to the following schedule: \$1.5 million plus accrued interest on the first anniversary of the date of sentencing; \$1.5 million plus accrued interest on the second anniversary of the date of sentencing; and \$1.5 million plus accrued interest on the third anniversary of the date of sentencing. Interest shall be calculated in accordance with 18 U.S.C. § 3612(f) and shall be due on the unpaid balance of the fine remaining as of the fifteenth day after the date of judgment.

(b) Tokai Carbon understands that the Court will order it to pay a \$400.00 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1 in addition to any fine imposed.

(c) Tokai Carbon agrees that by the date of sentencing it will post a letter of credit or stand by letter of credit issued by a United States bank or a United States branch of a foreign bank to the benefit of the United States or its designee to guarantee the

unpaid balance of the fine including interest in a form acceptable to the Court.

(d) The United States and Tokai Carbon jointly submit that this Plea Agreement, together with the record that will be created by the United States and Tokai Carbon at sentencing and the further disclosure described in Paragraph 9 of this Plea Agreement, provides sufficient information concerning Tokai Carbon, the offense charged in this case, and Tokai Carbon's role in the offense to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and Tokai Carbon will jointly request that the Court accept Tokai Carbon's guilty plea and immediately impose sentence on the day of arraignment pursuant to the provisions of Rule 32(b)(1), Fed. R. Crim. P., and U.S.S.G. § 6A1.1. The Court's denial of the request to impose sentence immediately based upon the record provided by Tokai Carbon and the United States will not void this Plea Agreement.

(e) The United States and Tokai Carbon understand that the Court retains complete discretion to accept or reject the agreed-upon recommendation provided for in this Plea Agreement. If the Court does not accept the recommended sentence, this Plea Agreement will be void and Tokai Carbon will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(e)(4)). If Tokai Carbon does withdraw its plea of guilty, this Plea Agreement, the guilty plea, and any statements made in connection with or in furtherance of the plea or this Plea Agreement, or in the course of discussions leading to the plea or the Plea Agreement, shall not be admissible against Tokai Carbon in any criminal or civil proceeding (Fed. R. Crim. P.11(e)(6)).

9. Subject to the full and continuing cooperation of Tokai Carbon described in Paragraph 11 of this Plea Agreement, and prior to sentencing in the case, the United States will fully advise the Court of the fact, manner, and extent of Tokai Carbon's ongoing cooperation and its commitment to prospective cooperation with the United States' investigation and prosecutions, all facts relating to Tokai Carbon's involvement in the charged offense, and all other relevant conduct.

10. The United States and Tokai Carbon agree that the agreed-upon fine falls within the Guidelines range. The United States agrees that it will not seek a restitution order with respect to the offense charged in the Information since civil actions seeking damages on behalf of victims have already been filed.

TOKAI CARBON'S COOPERATION

11. Tokai Carbon, including its subsidiaries, will fully and truthfully cooperate with the United States in the prosecution of this case, the conduct of the current federal investigations of violations of the federal antitrust and related criminal laws in the graphite electrodes industry and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). Such cooperation shall include, but not be limited to:

(a) producing to the United States all non-privileged documents, information and other materials, wherever located, in the possession, custody or control of Tokai Carbon or any of its subsidiaries, requested by the United States in connection with any Federal Proceeding;

(b) securing the ongoing, full and truthful cooperation, as defined in Paragraph 12 of this Plea Agreement, of Hiroshi Yamazaki and Naoshi Takahashi,

including making such persons available in the United States and at other mutually agreed-upon locations, at Tokai Carbon's expense, for interviews and the provision of testimony in grand jury, trial and other judicial proceedings in connection with any Federal Proceeding; and

(c) using its best efforts to secure the ongoing, full and truthful cooperation, as defined in Paragraph 12 of this Plea Agreement, of all persons described in Paragraph 13(a), in addition to those specified in subparagraph 11(b) above, as may be requested by the United States, including making such persons available in the United States and at other mutually agreed-upon locations, at Tokai Carbon's expense, for interviews and the provision of testimony in grand jury, trial and other judicial proceedings in connection with any Federal Proceeding.

12. The ongoing, full, and truthful cooperation of each person described in either Paragraph 11(b) or 11(c) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

(a) producing in the United States and at other mutually agreed-upon locations all non-privileged documents (including claimed personal documents) and other materials requested by attorneys and agents of the United States;

(b) making himself or herself available for interviews, not at the expense of the United States, 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;

(d) otherwise voluntarily providing the United States with any materials or information, not requested in (a) - (c) of this paragraph, that he or she may have related to any such Federal Proceeding; and

(e) when called upon to do so by the United States, testifying in trial and grand jury or other 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), obstruction of justice (18 U.S.C. § 1503), and contempt (18 U.S.C. §§ 401- 402), in connection with any such Federal Proceeding.

GOVERNMENT'S AGREEMENT

13. The United States agrees to the following.

(a) Subject to the exceptions noted in Paragraph 13(c), the United States will not bring criminal charges against any current director, officer, or employee of Tokai Carbon and its subsidiaries, or any person who held such a position as of June 30, 1997, for any act or offense committed prior to the date of this Plea Agreement, that was undertaken in furtherance of any attempted or completed antitrust conspiracy involving the sale of graphite electrodes.

(b) Should the United States determine that any person covered by Paragraph 13(a) may have information relevant to any Federal Proceeding, the United States may request such person's cooperation pursuant to the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for Tokai Carbon) or, if the individual is not known by the United States to be represented, to the undersigned counsel for Tokai Carbon.

(c) In the event that any person requested to provide cooperation pursuant to Paragraph 13(b) fails to comply with such person's obligations under Paragraph 12 of this Plea Agreement, then the terms of this Plea Agreement as they pertain to such person shall be rendered null and void, and the agreement not to prosecute such person granted in this Plea Agreement shall be void.

(d) Except as provided in Paragraph 13(e), information provided to the United States pursuant to the terms of this Plea Agreement pertaining to any antitrust conspiracy relating to the sale of graphite electrodes committed prior to the date of this Plea Agreement, or any information directly or indirectly derived from such information, may not be used against the person providing the information in a criminal case, except a prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401 - 402).

(e) In the event a person who provides information to the United States pursuant to this Plea Agreement fails to comply fully with his obligations under Paragraph 12 of this Plea Agreement, the agreement in Paragraph 13(d) not to use such information, or any information directly or indirectly derived from such information, against such person in a criminal case shall be void.

(f) The non-prosecution terms of this paragraph do not apply to any civil liability to the United States, to any violation of the federal tax or securities laws, or to any crime of violence.

14. Upon tender of the guilty plea called for by this Plea Agreement, and subject to the cooperation requirements of Paragraph 11 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against Tokai Carbon or any of its subsidiaries for any antitrust conspiracy relating to the sale of graphite electrodes committed prior to the date of this Plea Agreement. The non-prosecution terms of this paragraph do not apply to any civil liability to the United States, to any violation of the federal tax or securities laws, or to any crime of violence.

15. The United States agrees that when any person travels to the United States for interviews, court appearances, or grand jury appearances pursuant to this Plea Agreement, the United States will take no action, based upon any offense subject to this Plea Agreement, to subject such person to arrest, service of process, or prevention from departing the United States. This paragraph does not apply to an individual's commission of perjury (18 U.S.C. § 1621), making a false statement or declaration in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401- 402) in connection with any testimony provided in trial, grand jury, or other judicial proceedings in the United States.

16. The United States agrees that, within three (3) business days after making available to any state or foreign government any testimony, documents, or information provided to the United States under this Plea Agreement, it will provide written notice of such disclosure to counsel for Tokai Carbon by overnight delivery or by facsimile transmission, unless the provision of such notice would violate any treaty obligation of the United States or any court order or might jeopardize the integrity of any state or foreign investigation by law enforcement authorities. In addition, the United States agrees that in connection with making any such information available to any state or foreign government, the United States will fully advise the appropriate officials of

such state or foreign government of the fact, manner, extent, and value of the cooperation Tokai Carbon has provided to the United States under this Plea Agreement.

17. Tokai Carbon understands that it may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon any conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, such other agencies may take. However, the United States Department of Justice, Antitrust Division, agrees that, if requested, it will advise the appropriate officials of any government agency considering administrative action against Tokai Carbon, based upon any conviction resulting from this Plea Agreement, of the fact, manner, and extent of the cooperation of Tokai Carbon, as described herein, as a matter for such agency to consider before determining what administrative action, if any, to take with regard to Tokai Carbon.

REPRESENTATION BY COUNSEL

18. Tokai Carbon has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. Tokai Carbon has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charges, any possible defenses to the charges, and the nature and range of possible sentences.

VOLUNTARY PLEA

19. Tokai Carbon's decision to enter into this Plea Agreement and Tokai Carbon's decision to tender a plea of guilty are freely and voluntarily made and are not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. There have been no promises or representations to Tokai Carbon as to whether the Court will accept or reject this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

20. Tokai Carbon agrees that, should the United States determine in good faith, during the period any Federal Proceeding is pending that Tokai Carbon has failed to provide full cooperation (as described in Paragraph 11 of this Plea Agreement) or otherwise has violated any other provision of this Plea Agreement, the United States may notify counsel for Tokai Carbon in writing by personal or overnight delivery or facsimile transmission of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and Tokai Carbon and its subsidiaries shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, obstruction of justice and the substantive offenses subject to the graphite electrodes investigation resulting in this Plea Agreement.

ENTIRETY OF AGREEMENT

21. This Plea Agreement constitutes the entire agreement between the United States and Tokai Carbon concerning the disposition of the criminal charges in this case. This Plea Agreement cannot be modified except in writing signed by the United States and Tokai Carbon.

22. The undersigned Director of Tokai Carbon is authorized to enter this Plea Agreement on behalf of Tokai Carbon as evidenced by the Resolution of the Board of Directors of Tokai Carbon attached hereto and incorporated herein by reference.

23. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

24. 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:

Respectfully submitted,

KATSUHIKO NAMBA
Director, Tokai Carbon Co., Ltd.

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