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Attorneys for the United States

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO VENUE

13 UNITED STATES OF AMERICA )

No. CR 05-0314 MJJ

14 v. )

PLEA AGREEMENT

15 WOLFGANG KOCH, )

16 Defendant. )  
\_\_\_\_\_ )

17  
18 **PLEA AGREEMENT**

19 The United States of America and Wolfgang Koch (“defendant”) hereby enter into the  
20 following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal  
21 Procedure (“Fed. R. Crim. P.”):

22 **RIGHTS OF DEFENDANT**

23 1. The defendant understands his rights:

24 (a) to be represented by an attorney;

25 (b) to be charged by Indictment;

26 (c) as a citizen and resident of Germany, to decline to accept service of the

27 Summons in this case, and to contest the jurisdiction of the United States to prosecute

28 this case against him in the United States District Court for the Northern District of

1 California;

2 (d) to plead not guilty to any criminal charge brought against him;

3 (e) to have a trial by jury, at which he would be presumed not guilty of the  
4 charge and the United States would have to prove every essential element of the charged  
5 offense beyond a reasonable doubt for him to be found guilty;

6 (f) to confront and cross-examine witnesses against him and to subpoena  
7 witnesses in his defense at trial;

8 (g) not to be compelled to incriminate himself;

9 (h) to appeal his conviction, if he is found guilty; and

10 (i) to appeal the imposition of sentence against him.

11  
12 **AGREEMENT TO PLEAD GUILTY**  
**AND WAIVE CERTAIN RIGHTS**

13 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph  
14 1(b)-(h) above, including all jurisdictional defenses to the prosecution of this case, and agrees  
15 voluntarily to consent to the jurisdiction of the United States to prosecute this case against him in  
16 the United States District Court for the Northern District of California. The defendant also  
17 knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other  
18 writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under  
19 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court if that sentence is  
20 consistent with or below the recommended sentence in Paragraph 8 of this Plea Agreement,  
21 regardless of how the sentence is determined by the Court. This agreement does not affect the  
22 rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b) and (c). Further,  
23 this agreement does not affect the right of the defendant to claim that his constitutional right to  
24 effective assistance of counsel was violated. Further, pursuant to Fed. R. Crim. P. 7(b), the  
25 defendant will waive indictment and plead guilty at arraignment to a one-count Information to be  
26 filed in the United States District Court for the Northern District of California. The Information  
27 will charge the defendant with participating in a conspiracy to suppress and eliminate  
28 competition by maintaining and increasing the prices of certain rubber chemicals to be sold in

1 the United States and elsewhere, beginning in or about January 1999, and continuing until in or  
2 about December 2001, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to  
4 the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to  
5 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

6 **FACTUAL BASIS FOR OFFENSE CHARGED**

7 4. Had this case gone to trial, the United States would have presented  
8 evidence sufficient to prove the following facts:

9 (a) For purposes of this Plea Agreement, the “relevant period” is that period  
10 beginning in or about January 1999, and continuing until in or about December 2001.  
11 During the relevant period, the defendant was Product Manager of Rubber Chemicals of  
12 Bayer AG (“Bayer”), an entity organized and existing under the laws of Germany and  
13 with its principal place of business in Leverkusen, Germany. During the relevant period,  
14 Bayer was a producer of rubber chemicals and was engaged in the sale of rubber  
15 chemicals in the United States and elsewhere. Rubber chemicals are a group of additives  
16 used to improve the elasticity, strength, and durability of rubber products. Rubber  
17 chemicals are used primarily in the manufacture of tires, outdoor furniture, hoses, belts,  
18 and footwear. During the relevant period, Bayer’s sales of rubber chemicals to U.S.  
19 customers totaled at least \$99 million.

20 (b) During the relevant period, the defendant participated in a conspiracy with  
21 other persons and entities engaged in the manufacture and sale of rubber chemicals, the  
22 primary purpose of which was to maintain and raise the prices of certain rubber  
23 chemicals sold in the United States and elsewhere. In furtherance of the conspiracy, the  
24 defendant engaged in conversations and attended meetings with representatives of other  
25 major rubber chemical producing firms. During such meetings and conversations,  
26 agreements were reached to raise and maintain prices of certain rubber chemicals to be  
27 sold in the United States and elsewhere.

28 (c) During the relevant period, rubber chemicals sold by one or more of the

1 conspirator firms, and equipment and supplies necessary to the production and  
2 distribution of rubber chemicals, as well as payments for rubber chemicals, traveled in  
3 interstate and foreign commerce. The business activities of Bayer and its co-conspirators  
4 in connection with the production and sale of rubber chemicals affected by this  
5 conspiracy were within the flow of, and substantially affected, interstate and foreign trade  
6 and commerce.

7 (d) Rubber chemicals affected by this conspiracy were sold by one or more of  
8 the conspirators to customers located in this District.

9 **POSSIBLE MAXIMUM SENTENCE**

10 5. The defendant understands that the statutory maximum penalty which may be  
11 imposed against him upon conviction for a violation of Section One of the Sherman Antitrust  
12 Act is:

13 (a) a term of imprisonment for three (3) years (15 U.S.C. § 1);

14 (b) a fine in an amount equal to the greatest of (1) \$350,000, (2) twice the  
15 gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross  
16 pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18  
17 U.S.C. § 3571(b) and (d)); and

18 (c) a term of supervised release of one (1) year following any term of  
19 imprisonment. If the defendant violates any condition of supervised release,  
20 the defendant could be imprisoned for the entire term of supervised release  
21 (18 U.S.C. § 3559(a)(5); 18 U.S.C. § 3583(b)(3) and (e)(3); and U.S.S.G. § 5D1.2(a)(3);  
22 and United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or  
23 “Guidelines”) § 5D1.2(a)(3)).

24 6. In addition, the defendant understands that:

25 (a) pursuant to U.S.S.G. § 5E1.1, the Court may order him to pay  
26 restitution to the victims of the offense; and

27 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the  
28 defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

**SENTENCING GUIDELINES**

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration off all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). The United States and the defendant agree on the determination of the U.S.S.G. offense level in this case, as set out below, based on currently available information. The defendant understands that, should the United States become aware of information that renders incorrect the calculation of the defendant’s total offense level, criminal history category, or applicable adjustments or enhancements set out below, the United States will notify the Court before sentencing. Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to the defendant or in determining the defendant’s applicable sentencing guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).

(a)	Base Offense Level (§ 2R1.1(a))	10
(b)	Volume of Affected Commerce (§ 2R1.1(b)(2)(F)) (More than \$37.5 million)	+6
(c)	Total Adjusted Offense Level	16
(d)	Victim-Related Adjustments (§ 3A)	+0
(e)	Role in the Offense Adjustments (§ 3B)	+0
(f)	Obstruction Adjustments (§ 3C)	+0
(g)	Acceptance of Responsibility (§ 3E1.1(a) and (b))	-3
(h)	Total Offense Level	13
(i)	Criminal History Category (§ 4A1.1)	I

1 (j) Therefore, the appropriate Guidelines range is 12 to 18 months imprisonment, no  
2 term of probation (§ 5B1.1), supervised release of one year (§§ 5D1.1,  
3 5D1.2(a)(3)), restitution (§ 5E1.1), a fine of 1% to 5% of the volume of commerce  
4 (§§ 2R1.1(c)(1), 5E1.2(b)), and a special assessment of \$100 (§ 5E1.3).

4 **SENTENCING AGREEMENT**

5 8. (a) Pursuant to Fed R. Crim. P. 11(c)(1)(C), the United States and the defendant  
6 agree that the appropriate disposition of this case is, and agree to recommend jointly that  
7 the Court impose, a sentence requiring the defendant to pay to the United States a criminal  
8 fine of \$50,000, payable in full before the fifteenth (15<sup>th</sup>) day after the date of judgment; a  
9 period of incarceration of four months; no restitution; and no period of supervised release  
10 (“the recommended sentence”). The parties agree that there exists no aggravating or  
11 mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by  
12 the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a  
13 departure pursuant to U.S.S.G. § 5K2.0. The parties agree not to seek or support any  
14 sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that  
15 is not set forth in this Plea Agreement. The parties further agree that the recommended  
16 sentence set forth in this plea agreement is reasonable.

17 (b) The United States will not object to the defendant’s request that the Court  
18 make a recommendation to the Bureau of Prisons that the Bureau of Prisons designate that  
19 the defendant be assigned to a Federal Minimum Security Camp (if possible at Lompoc,  
20 California) to serve his sentence of imprisonment and that the defendant be released  
21 following the imposition of sentence to allow him to self-surrender to the assigned  
22 correctional facility on a specified date.

23 (c) The defendant understands that the Court will order him to pay a \$100  
24 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3 in addition  
25 to any fine imposed.

26 (d) The United States and the defendant agree, pursuant to U.S.S.G. §  
27 5E1.1(b), that the defendant should not be ordered to pay restitution in light of the civil  
28 cases filed against Bayer, the defendant’s employer, including *In Re Rubber Chemicals*

1        *Antitrust Litigation*, C 03-1496 MJJ, in the United States District Court, Northern District  
2        of California, which potentially provide for a recovery of a multiple of actual damages.

3        9.        Based on the information now known to it, the United States agrees that it will make  
4 a motion, pursuant to U.S.S.G. § 3E1.1, for a downward adjustment of three levels for acceptance  
5 of responsibility due to the defendant's timely notification of his intention to enter a guilty plea.

6        10.        The United States and the defendant agree that the applicable sentencing  
7 Guidelines fine and incarceration ranges exceed the fine and term of imprisonment contained in  
8 the recommended sentence set out in Paragraph 8 above. Subject to the full and continuing  
9 cooperation of the defendant, as described in Paragraph 14 of this Plea Agreement, and prior to  
10 sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G.  
11 § 5K1.1, for a downward departure from the Guidelines fine and incarceration ranges in this case  
12 and will request that the Court impose the fine and term of imprisonment contained in the  
13 recommended sentence set out in Paragraph 8 of this Plea Agreement because of the defendant's  
14 substantial assistance in the government's investigation and prosecutions of violations of federal  
15 criminal law in the rubber chemicals industry. The United States and the defendant further agree  
16 that the recommended fine set out in Paragraph 8 above is appropriate, pursuant to U.S.S.G. §  
17 5E1.2(e), due to the inability of the defendant to pay a fine greater than that recommended.

18        11.        The United States and the defendant jointly submit that this Plea Agreement, the  
19 record that will be created by the United States and the defendant at the plea and sentencing  
20 hearings, and the further disclosure described in Paragraph 12, will provide sufficient information  
21 concerning the defendant, the offense charged in this case, and the defendant's role in the offense  
22 to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553.  
23 The United States will not object to the defendant's request that the Court accept the defendant's  
24 plea of guilty and impose sentence on an expedited schedule as early as the date of arraignment,  
25 based upon the record provided by the defendant and the United States, under the provisions of  
26 Rule 32(b)(1), Fed. R. Crim. P., U.S.S.G. § 6A1.1, and Rule 32-1(b) of the Criminal Local Rules.  
27 The Court's denial of the request to impose sentence on an expedited schedule will not void this  
28 Plea Agreement. Should the Court deny defendant's request to impose sentence on an expedited

1 schedule, the United States agrees that, at the initial appearance or arraignment, it will  
2 recommend the release of the defendant on his personal recognizance, under 18 U.S.C. § 3142,  
3 without restriction as to travel, pending the sentencing hearing in this case.

4 12. Subject to the ongoing, full, and truthful cooperation of the defendant described in  
5 Paragraph 14 of this Plea Agreement, and before sentencing in the case, the United States will  
6 fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's  
7 cooperation and his commitment to prospective cooperation with the United States' investigation  
8 and prosecutions, all material facts relating to the defendant's involvement in the charged offense,  
9 and all other relevant conduct.

10 13. The United States and the defendant understand that the Court retains complete  
11 discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea  
12 Agreement.

13 (a) If the Court does not accept the recommended sentence, the United States  
14 and the defendant agree that this Plea Agreement, except for Paragraph 13(b) below, shall  
15 be rendered void. Neither party may withdraw from this Plea Agreement, however, based  
16 on the type or location of the correctional facility to which the defendant is assigned to  
17 serve his sentence.

18 (b) If the Court does not accept the recommended sentence, the defendant will  
19 be free to withdraw his guilty plea (Fed. R. Crim. P. 11(c)(5) and(d)). If the defendant  
20 withdraws his plea of guilty, this Plea Agreement, the guilty plea, and any statement made  
21 in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this  
22 Plea Agreement or made in the course of plea discussions with an attorney for the  
23 government shall not be admissible against the defendant in any criminal or civil  
24 proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant  
25 agrees that, if he withdraws his guilty plea pursuant to this subparagraph of the Plea  
26 Agreement, the statute of limitations period for any Relevant Offense, as defined in  
27 Paragraph 15 below, will be tolled for the period between the date of the signing of the Plea  
28 Agreement and the date the defendant withdrew his guilty plea or for a period of sixty (60)



1 days after the date of the signing of the Plea Agreement, whichever period is greater. For a  
2 period of three (3) consecutive days following such a withdrawal of the guilty plea under  
3 this subparagraph, the United States shall take no action, based upon either a Relevant  
4 Offense or any actual or alleged violation of the Plea Agreement, to revoke the defendant's  
5 release on his personal recognizance, to subject the defendant to service of process, arrest,  
6 or detention, or to prevent the defendant from departing the United States.

7 **DEFENDANT'S COOPERATION**

8 14. The defendant will cooperate fully and truthfully with the United States in the  
9 prosecution of this case, the conduct of the current federal investigation of violations of federal  
10 antitrust and related criminal laws involving the manufacture or sale of rubber chemicals in the  
11 United States and elsewhere, any other federal investigation resulting therefrom, and any  
12 litigation or other proceedings arising or resulting from any such investigation to which the  
13 United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of the  
14 defendant shall include, but not be limited to:

15 (a) producing in the United States and at other mutually agreed-upon locations  
16 all documents, including claimed personal documents, and other materials, wherever  
17 located, in the possession, custody, or control of the defendant, requested by attorneys and  
18 agents of the United States;

19 (b) making himself available for interviews in the United States and at other  
20 mutually agreed-upon locations, not at the expense of the United States, upon the request of  
21 attorneys and agents of the United States;

22 (c) responding fully and truthfully to all inquiries of the United States in  
23 connection with any Federal Proceeding, without falsely implicating any person or  
24 intentionally withholding any information, subject to the penalties of making false  
25 statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

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

1 (e) when called upon to do so by the United States in connection with any  
2 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the  
3 United States, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C.  
4 § 1621), making false statements or declarations in grand jury or court proceedings (18  
5 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), and obstruction of justice (18 U.S.C. §  
6 1503).

7 **GOVERNMENT'S AGREEMENT**

8 15. Subject to the full, truthful, and continuing cooperation of the defendant, as  
9 described in Paragraph 14 of this Plea Agreement, and upon the Court's acceptance of the guilty  
10 plea called for by this Plea Agreement and the imposition of the recommended sentence, the  
11 United States will not bring further criminal charges against the defendant for any act or offense  
12 committed before the date of this Plea Agreement that was undertaken in furtherance of an  
13 antitrust conspiracy involving the manufacture or sale of rubber chemicals ("Relevant Offense").  
14 The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any  
15 violation of the federal tax or securities laws, or to any crime of violence.

16 16. The United States agrees that when the defendant travels to the United States for  
17 interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for  
18 meetings with counsel in preparation therefor, the United States will take no action, based upon  
19 any Relevant Offense, to subject the defendant to arrest, detention, or service of process, or to  
20 prevent the defendant from departing the United States. This paragraph does not apply to the  
21 defendant's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. §  
22 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. §  
23 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401 - 402) in  
24 connection with any testimony or information provided or requested in any Federal Proceeding.

25 17. (a) Subject to the full and continuing cooperation of the defendant, as described  
26 in Paragraph 14 of this Plea Agreement, and upon the Court's acceptance of the defendant's  
27 guilty plea and imposition of sentence in this case, the United States agrees not to seek to  
28 remove the defendant from the United States under Section 240 of the Immigration and

1 Nationality Act, based upon the defendant's guilty plea and conviction in this case, should  
2 the defendant apply for or obtain admission to the United States as a nonimmigrant  
3 (hereinafter referred to as the "agreement not to seek to remove the defendant"). The  
4 agreement not to seek to remove the defendant is the equivalent of an agreement not to  
5 exclude the defendant from admission to the United States as a nonimmigrant or to deport  
6 the defendant from the United States. (Immigration and Nationality Act, § 240(e)(2)).

7 (b) The Antitrust Division of the United States Department of Justice has  
8 consulted with U.S. Immigration and Customs Enforcement ("ICE") of the Department of  
9 Homeland Security. ICE, in consultation with the United States Department of State, has  
10 agreed to the inclusion in this Plea Agreement of this agreement not to seek to remove the  
11 defendant.

12 (c) So that the defendant will be able to obtain any nonimmigrant visa that he  
13 may need to travel to the United States, ICE and the Visa Office, United States Department  
14 of State, have concurred in the granting of a nonimmigrant waiver of the defendant's  
15 inadmissibility. This waiver will remain in effect so long as this agreement not to seek to  
16 remove the defendant remains in effect. While the waiver remains in effect, the Department  
17 of State will not deny the defendant's application for a nonimmigrant visa on the basis of  
18 the defendant's guilty plea and conviction in this case, and ICE will not deny his  
19 application for admission as a nonimmigrant on the basis of his guilty plea and conviction  
20 in this case.

21 (d) This agreement not to seek to remove the defendant will remain in effect so  
22 long as the defendant:

23 (i) acts and has acted consistently with his cooperation  
24 obligations under this Plea Agreement;

25 (ii) is not convicted of any felony under the laws of the United  
26 States or any state, other than the conviction resulting from the defendant's guilty  
27 plea under this Plea Agreement or any conviction under the laws of any state  
28 resulting from conduct constituting an offense subject to this Plea Agreement; and

1 (iii) does not engage in any other conduct that would warrant

2 his removal from the United States under the Immigration and Nationality Act.

3 The defendant understands that should the Antitrust Division become aware that the  
4 defendant has violated any of these conditions, the Antitrust Division will notify ICE. ICE  
5 will then determine, in consultation with the Antitrust Division, whether to rescind this  
6 agreement not to seek to remove the defendant.

7 (e) The defendant agrees to notify the Assistant Attorney General of the  
8 Antitrust Division should the defendant be convicted of any other felony under the laws of  
9 the United States or of any state.

10 (f) Should the United States rescind this agreement not to seek to remove the  
11 defendant because of the defendant's violation of a condition of this Plea Agreement, the  
12 defendant irrevocably waives his right to contest his removal from the United States under  
13 the Immigration and Nationality Act on the basis of his guilty plea and conviction in this  
14 case, but retains his right to notice of removal proceedings.

15 18. The defendant understands that he may be subject to administrative action by federal  
16 or state agencies other than the United States Department of Justice, Antitrust Division, based  
17 upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way  
18 controls whatever action, if any, other agencies may take. However, the United States agrees that,  
19 if requested, it will advise the appropriate officials of any governmental agency considering such  
20 administrative action of the fact, manner, and extent of the cooperation of the defendant as a  
21 matter for that agency to consider before determining what administrative action, if any, to take.

22 **REPRESENTATION BY COUNSEL**

23 19. The defendant has reviewed all legal and factual aspects of this case with his  
24 attorney and is fully satisfied with his attorney's legal representation. The defendant has  
25 thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory  
26 explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives  
27 available to the defendant other than entering into this Plea Agreement. After conferring with his  
28 attorney and considering all available alternatives, the defendant has made a knowing and

1 voluntary decision to enter into this Plea Agreement.

2 **VOLUNTARY PLEA**

3 20. The defendant's decision to enter into this Plea Agreement and to tender a plea of  
4 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,  
5 or representations other than the representations contained in this Plea Agreement. The United  
6 States has made no promises or representations to the defendant as to whether the Court will  
7 accept or reject the recommendations contained within this Plea Agreement.

8 **VIOLATION OF PLEA AGREEMENT**

9 21. The defendant agrees that, should the United States determine in good faith, during  
10 the period that any Federal Proceeding is pending, that the defendant has failed to provide full and  
11 truthful cooperation, as described in Paragraph 14 of this Plea Agreement, or has otherwise  
12 violated any provision of this Plea Agreement, the United States will notify the defendant or his  
13 counsel in writing by personal or overnight delivery or facsimile transmission and may also notify  
14 his counsel by telephone of its intention to void any of its obligations under this Plea Agreement  
15 (except its obligations under this paragraph), and the defendant shall be subject to prosecution for  
16 any federal crime of which the United States has knowledge including, but not limited to, the  
17 substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant  
18 may seek Court review of any determination made by the United States under this Paragraph to  
19 void any of its obligations under the Plea Agreement. The defendant agrees that, in the event that  
20 the United States is released from its obligations under this Plea Agreement and brings criminal  
21 charges against the defendant for any Relevant Offense, the statute of limitations period for such  
22 offense will be tolled for the period between the date of the signing of this Plea Agreement and  
23 six (6) months after the date the United States gave notice of its intent to void its obligations  
24 under this Plea Agreement.

25 22. The defendant understands and agrees that in any further prosecution of him  
26 resulting from the release of the United States from its obligations under this Plea Agreement  
27 based on the defendant's violation of the Plea Agreement, any documents, statements,  
28 information, testimony, or evidence provided by him to attorneys or agents of the United States,

1 federal grand juries, or courts, and any leads derived therefrom, may be used against him in any  
2 such further prosecution. In addition, the defendant unconditionally waives his right to challenge  
3 the use of such evidence in any such further prosecution, notwithstanding the protections of Fed.  
4 R. Evid. 410.

5 23. The defendant agrees to and adopts as his own the factual statement contained in  
6 Paragraph 4 above. In the event that the defendant breaches the Plea Agreement, the defendant  
7 agrees that the Plea Agreement, including the factual statement contained in Paragraph 4 above,  
8 provides a sufficient basis for any possible future extradition request that may be made for his  
9 return to the United States to face charges either in the Information referenced in Paragraph 2 of  
10 this Plea Agreement or in any related indictment. The defendant further agrees not to oppose or  
11 contest any request for extradition by the United States to face charges either in the Information  
12 referenced in Paragraph 2 of this Plea Agreement or in any related indictment.

13 **ENTIRETY OF AGREEMENT**

14 24. This Plea Agreement constitutes the entire agreement between the United States and  
15 the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement  
16 cannot be modified except in writing, signed by the United States and the defendant.

17 25. The undersigned attorneys for the United States have been authorized by the  
18 Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

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

5 DATED: 6/3/05 Respectfully submitted,

7 BY: /s/  
8 Wolfgang Koch  
9 Defendant

BY: /s/  
Michael L. Scott  
Jeane M. Hamilton  
Sidney A. Majalya  
Attorneys  
U.S. Department of Justice  
Antitrust Division  
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11 /s/  
12 DeMaurice F. Smith  
13 Counsel for Wolfgang Koch  
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16 Suite 1000  
17 Washington, DC 20004-1304  
18 Tel: (202) 637-2218

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