

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

UNITED STATES OF AMERICA) Criminal No. 00-033
)
v.) Judge Marvin Katz
)
MITSUBISHI CORPORATION,) Violations: 15 U.S.C. § 1 and 18 U.S.C. § 2 (a)
)
Defendant.) Filed: 05/10/01

SENTENCING AGREEMENT

The United States of America, by its attorneys, acting with the authorization of the Acting Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and Mitsubishi Corporation (hereinafter Mitsubishi) hereby enter into the following Sentencing Agreement:

1. Mitsubishi has been found guilty in the United States District Court for the Eastern District of Pennsylvania in Criminal No. 00-033 of aiding and abetting (18 U.S.C. §2(a)) a violation of Section 1 of the Sherman Act (15 U.S.C. §1) in connection with a conspiracy to suppress and eliminate competition by secretly fixing the price and allocating the volume of graphite electrodes sold in the United States and elsewhere.

2. Mitsubishi understands that the maximum penalty which may be imposed against it as a result of its conviction in this case is a fine in an amount equal to the largest of:

- (a) \$10 million (15 U.S.C. § 1, 18 U.S.C. §2);
- (b) twice the gross pecuniary gain derived from the crime; or
- (c) twice the gross pecuniary loss caused to the victims of the crime

(18 U.S.C. § 3571(d)).

3. In addition, Mitsubishi 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)).

4. Mitsubishi hereby waives all rights to appeal or otherwise challenge its conviction.

Mitsubishi further waives its right to appeal the imposition of sentence against it, so long as the sentence imposed is consistent with the recommendation in Paragraph 5 of this Sentencing Agreement.

5. The United States and Mitsubishi agree that the appropriate sentence in this case is, and agree jointly to recommend that the Court impose, pursuant to the United States Sentencing Guidelines and 18 U.S.C. § 3571(d), a sentence requiring Mitsubishi to pay a fine to the United States in the amount of \$134 million, payable within 15 days of the date of sentencing. Mitsubishi 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. The United States agrees that it will not seek a restitution order with respect to the offense for which Mitsubishi was convicted because a restitution hearing would unduly complicate and prolong sentencing since civil actions seeking damages on behalf of victims already have been filed.

6. The United States agrees that it will not seek a term of probation for the defendant.

7. The United States and Mitsubishi jointly submit that this Sentencing Agreement, together with the record that was created by the United States and Mitsubishi at trial and any Sentencing Memoranda filed by the parties, shall provide sufficient information concerning Mitsubishi, the offense charged in this case, and Mitsubishi's role in the offense to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553.

8. The United States and Mitsubishi understand that the Court retains complete discretion to accept or reject the agreed-upon recommendation provided for in Paragraph 5 of this Sentencing Agreement. If the Court does not accept the recommended sentence, either party may appeal the sentence.

9. The United States and Mitsubishi agree that for purposes of sentencing in this case, the following calculation of the Sentencing Guidelines is appropriate:

(a) Mitsubishi has a base fine of \$35,090,000 based on 20% of the volume of the affected commerce, U.S.S.G. §§ 2R1.1 and 8C2.4:

\$168,150,000	50% of conspirator UCAR International's total United States affected sales of graphite electrodes for the portion of this conspiracy period during which Mitsubishi owned 50% of UCAR, July 1992-Jan 1995 (50% of \$336,300,000)
\$ 7,300,000	Mitsubishi's sales of graphite electrodes (manufactured by conspirator Tokai Carbon) to its only United States customer during the duration of the conspiracy.
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\$175,450,000	Volume of Commerce
\$ 35,090,000	Base Fine (20%)

(b) Mitsubishi has a culpability score of 10 with a resultant multiplier of 2.0 to 4.0, U.S.S.G. §§ 8C2.5 and 8C2.6:

+5	Base level of culpability
+3	200+ employees and participation of Fukushima, a high level person within the unit
+2	Prior criminal history
0	No violation of an order
0	No obstruction of justice
0	No effective program to prevent and detect violations of the law
<u>0</u>	No acceptance of responsibility
+10	Culpability Score
2.0--4.0	Multiplier

(c) Mitsubishi has a Sentencing Guidelines fine range of \$70,180,000 to \$140,360,000. The agreed-upon fine of \$134,000,000 is near the upper end of this fine range.

10. The United States and Mitsubishi agree that because the Sentencing Guidelines fine exceeds the \$10 million statutory maximum under the Sherman Act, the fine must be based on the alternative fine provisions of 18 U.S.C. § 3571(d). In order to avoid the uncertainty and expense of a litigated sentencing hearing, and the expenditure of judicial resources, and in order to allow the Court to proceed directly to sentencing, the United States and Mitsubishi stipulate that the loss to the victims and/or the gain to Mitsubishi and others from the offense is sufficient to support a fine of \$134 million. The United States and Mitsubishi agree that absent the preceding stipulation, a hearing under 18 U.S.C. § 3571 would be necessary to determine the loss to the victims from the offense or the gain to Mitsubishi and others, because there is currently

insufficient evidence in the record from which a determination of loss or gain can be made.

Dated:

Respectfully submitted,

MITSUBISHI CORPORATION

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