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Original Filed April 12, 2002

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11

12 UNITED STATES OF AMERICA ) No. CR 02-0078 SI  
13 v. )  
14 PATRICK STANTON, ) **PLEA AGREEMENT**  
15 Defendant )  
16 \_\_\_\_\_ )

17 The United States of America and PATRICK STANTON ("defendant"), with  
18 the advice of counsel, enter into the following Plea Agreement under Rule  
19 11(e)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

20 **RIGHTS OF DEFENDANT**

21 1. The defendant understands and agrees that by pleading guilty he is  
22 giving up the following rights which he would have if the case went to trial:

23 (a) The rights to plead not guilty, to be presumed innocent, and to  
24 require the government to prove all of the elements of the crimes  
25 beyond a reasonable doubt;

26 (b) The right to a speedy and public jury trial with the assistance of

1 an attorney, including an attorney appointed by the court if he  
2 could not afford one;

3 (c) The right to a unanimous jury verdict;

4 (d) The right to confront and cross-examine government witnesses;

5 (e) The rights to testify on his own behalf, to present evidence  
6 and/or witnesses, and to compulsory process;

7 (f) The right not to testify or have adverse inferences drawn if he  
8 does not testify;

9 (g) The rights to pursue any affirmative defenses (including but not  
10 limited to the statute of limitations), Fourth or Fifth  
11 Amendment claims, or any other claims presented or that could  
12 be presented in any pretrial or post-trial motion;

13 (h) The rights to both appeal and collaterally attack, including the  
14 filing of a motion pursuant to 28 U.S.C. § 2255, the guilty plea,  
15 the judgment of guilt, orders of the Court, and any part of the  
16 sentence imposed by the Court;

17 (i) The right to be indicted by a grand jury for the felony charges to  
18 which he is pleading guilty;

19 (j) The right, as a citizen of France, to decline to accept service of  
20 the Summons in this case, and to contest the jurisdiction of the  
21 United States to prosecute this case against him in United  
22 States District Court; and

23 (k) The right to be charged in the State and District where the  
24 offense occurred.

25 **WAIVER OF RIGHTS AND OFFENSE CHARGED**

26 2. Subject to the express condition stated in this paragraph, the defendant

1 waives each of the rights set out in Paragraph 1(a)-(k), including all jurisdictional  
2 defenses to the prosecution of this case, and agrees voluntarily to consent to the  
3 jurisdiction of the United States to prosecute this criminal case against him in  
4 United States District Court. Under Rule 7(b), Fed. R. Crim. P., the defendant will  
5 waive indictment. The defendant will plead guilty to a one-count Information filed  
6 in the United States District Court for the Northern District of California. It is  
7 expressly understood that all waivers of rights are conditioned on the Court  
8 accepting this Plea Agreement. If this Plea Agreement is rejected or voided, the  
9 defendant's waivers likewise will be rendered void and his rights will remain in full  
10 force and effect. The Information will charge the defendant with participating in a  
11 conspiracy to suppress and eliminate competition by fixing the prices and  
12 allocating market shares of monochloroacetic acid and sodium monochloroacetate  
13 (collectively referred to as "MCAA") to be sold in the United States and elsewhere,  
14 beginning in or about September 1995 and continuing until in or about December  
15 1996, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

16 3. Under the terms of this Plea Agreement, the defendant will plead  
17 guilty to the criminal charge described in Paragraph 2, and will make a factual  
18 admission of guilt to the Court in accordance with Rule 11, Fed. R. Crim. P., as set  
19 forth in Paragraph 4.

20 **FACTUAL BASIS FOR OFFENSE CHARGED**

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

23 (a) For purposes of this Plea Agreement, the "relevant period"  
24 begins in or about September 1995 and continues until in or about December  
25 1996. During the relevant period, the defendant was a Department Head of  
26 the Chlorine, Bromine, and Derivatives Division of Elf Atochem S.A. ("Elf"), a

1 corporation organized and existing under the laws of France, with its  
2 principal place of business in Paris, France. During the relevant period, Elf  
3 was a producer of MCAA and was engaged in the sale of MCAA in the United  
4 States and elsewhere. MCAA is a reactive compound that is used to form a  
5 number of intermediate chemicals. Markets for MCAA and its derivatives  
6 include drilling fluids, plastic stabilizers, herbicides, and pharmaceuticals. In  
7 his capacity as a Department Head of Elf's Chlorine, Bromine, and  
8 Derivatives Division, the defendant was responsible for the sales and  
9 marketing of MCAA worldwide;

10 (b) During the relevant period, the defendant participated in a  
11 conspiracy among major MCAA producers, the primary terms of which were  
12 to fix the prices and allocate the market shares of MCAA to be sold in the  
13 United States and elsewhere. In furtherance of the conspiracy, the defendant  
14 engaged in discussions and attended meetings with representatives of other  
15 major MCAA producers. During these discussions and meetings, agreements  
16 were reached to fix the prices and allocate the market shares for MCAA to be  
17 sold in the United States and elsewhere; and

18 (c) During the relevant period, MCAA sold by one or more of the  
19 conspirator firms, and equipment and supplies necessary to the production  
20 and distribution of MCAA, as well as payments for MCAA, traveled in  
21 interstate and foreign commerce. The business activities of the defendant, his  
22 current employer, Elf, and their coconspirators in connection with the  
23 production and sale of MCAA affected by this conspiracy were within the flow  
24 of, and substantially affected, interstate and foreign trade and commerce.

25 //

26 **POSSIBLE MAXIMUM SENTENCE**

1 5. The defendant understands that the maximum penalty that may be  
2 imposed against him upon conviction for a violation of the Sherman Antitrust Act  
3 is a term of imprisonment of three years (15 U.S.C. § 1); a term of supervised  
4 release of one year to follow imprisonment (18 U.S.C. § 3559(a)(5), 18 U.S.C.  
5 § 3583(b)(3), and United States Sentencing Commission Guidelines ("U.S.S.G.") (§§  
6 5D1.1, 5D1.2(a)(3)); and a fine equal to the largest of:

7 (a) \$350,000 (15 U.S.C. § 1);

8 (b) Twice the gross pecuniary gain the conspirators derived from the  
9 crime; or

10 (c) Twice the gross pecuniary loss caused to the victims of the crime  
11 (18 U.S.C. § 3571(d)).

12 6. In addition, the defendant understands that:

13 (a) Under U.S.S.G. § 5E1.1(a)(2), the Court may order him to pay  
14 restitution to the victims of the offense; and

15 (b) Under 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3, the Court  
16 is required to order the defendant to pay a \$100 special assessment upon  
17 conviction for the charged crime.

18 **SENTENCING GUIDELINES**

19 7. Sentencing for the offense to be charged will be based on the U.S.S.G.  
20 Manual in effect on the day of sentencing. The United States and the defendant  
21 agree on the determination of the U.S.S.G. offense level in this case, as set out  
22 below, based on currently available information. The defendant understands that,  
23 should the United States become aware of information that renders incorrect the  
24 calculation of the defendant's total offense level, criminal history category, or  
25 applicable adjustments or enhancements set out below, the United States will  
26 notify the Court before sentencing. Under U.S.S.G. § 1B1.8, self-incriminating

1 information provided to the United States under this Plea Agreement and  
2 discussions leading to this Plea Agreement will not be used to increase the volume  
3 of affected commerce applicable to the defendant or in determining the Guidelines  
4 range.

5	(a)	Base Offense Level (§ 2R1.1(a))	10
6	(b)	Volume of Affected Commerce (§ 2R1.1(b)(2)(D)) (More than \$6.25 million)	+4
7	(c)	Total Adjusted Offense Level	14
8	(d)	Victim-Related Adjustments (§ 3A)	+0
9	(e)	Role in the Offense Adjustments (§ 3B) (Aggravating Role § 3B1.1(b))	+3
10	(f)	Obstruction Adjustments (§ 3C)	+0
11	(g)	Acceptance of Responsibility (§ 3E1.1(b)(2))	-3
12	(h)	Total Offense Level	14
13	(i)	Criminal History Category (§ 4A1.1)	I
14	(j)	Therefore, the appropriate range of sentence is 15 to 21 months 15 imprisonment, no term of probation (§ 5B1.1), supervised release 16 of one year (§§ 5D1.1, 5D1.2(a)(3)), restitution (§ 5E1.1), a fine of 17 1% to 5% of the volume of commerce (§§ 2R1.1(c)(1), 5E1.2(b)), 18 and a special assessment of \$100 (§ 5E1.3).	

19 **SENTENCING AGREEMENT**

20 8. Under Rule 11(e)(1)(C), Fed. R. Crim. P., the United States and the  
21 defendant agree that the appropriate disposition of this case is, and agree to jointly  
22 recommend that the Court impose, a sentence of imprisonment for a period of  
23 ninety (90) days, the payment of a criminal fine of \$50,000, and no period of  
24 supervised release. The United States will not object to the defendant's request  
25 that the Court make a recommendation to the Bureau of Prisons that the Bureau  
26 of Prisons designate that the defendant be assigned to a Federal Minimum

1 Security Camp (if possible, at Lompoc, California) to serve his sentence of  
2 imprisonment and that the defendant be released following the imposition of  
3 sentence to allow him to self-surrender to the assigned correctional facility on a  
4 specified date. This paragraph (excluding subparagraphs 8(a) - (c)) constitutes the  
5 agreed-upon sentence in this case.

6 (a) The United States and the defendant further agree to jointly  
7 recommend that the \$50,000 fine be paid in full before the fifteenth day after  
8 the date of judgment. The defendant understands that the Court will order  
9 him to pay a \$100 special assessment under 18 U.S.C. § 3013(a)(2)(A) and  
10 U.S.S.G. § 5E1.3, in addition to any fine imposed;

11 (b) The United States agrees that at the initial appearance or  
12 arraignment it will recommend the release of the defendant on his personal  
13 recognizance, under 18 U.S.C. § 3142, without restriction as to travel, pending  
14 the sentencing hearing in this case; and

15 (c) In the event that the defendant fails to return to the United  
16 States to serve his sentence of imprisonment at a Federal Minimum Security  
17 Camp, the defendant agrees not to oppose or contest any request for  
18 extradition by the United States to face charges either in the Information  
19 referenced in Paragraph 2 of this Plea Agreement or in any related  
20 indictment.

21 9. The United States and the defendant agree that the Guidelines  
22 sentence range exceeds the agreed-upon sentence. The United States agrees that,  
23 based on the defendant's past and ongoing cooperation, which occurred prior to the  
24 sentencing hearing in this case, it will file a motion, under U.S.S.G. § 5K1.1, for a  
25 downward departure from the Guidelines sentence range and will request that the  
26 Court impose the agreed-upon sentence set out in Paragraph 8 because of the

1 substantial assistance the defendant has provided in the government's  
2 investigation of violations of federal criminal laws in the MCAA industry. Subject  
3 to the ongoing, full, and truthful cooperation of the defendant described in  
4 Paragraph 12, the United States will fully advise the Court and the Probation  
5 Office of the fact, manner, and extent of the defendant's past and ongoing  
6 cooperation with the United States' investigation and prosecutions, all material  
7 facts relating to the defendant's involvement in the charged offense, and all other  
8 relevant conduct. Under U.S.S.G. § 1B1.8, the United States agrees that self-  
9 incriminating information previously unknown to the United States that the  
10 defendant provides under this Plea Agreement and in discussions leading to this  
11 Plea Agreement will not be used in determining the defendant's applicable  
12 Guidelines range.

13 10. The United States and the defendant understand that the Court  
14 retains complete discretion to accept or reject the agreed-upon sentence in  
15 Paragraph 8.

16 (a) If the Court does not accept the agreed-upon sentence, this  
17 entire Plea Agreement, except Paragraph 10(b), below shall be rendered null  
18 and void.

19 (b) If the Court does not accept the agreed-upon sentence, the  
20 defendant will be free to withdraw his guilty plea (Fed. R. Crim. P. 11(e)(4)).  
21 If the defendant does withdraw his guilty plea, this Plea Agreement, the  
22 guilty plea, and any statements made in connection with or in furtherance of  
23 the plea or this Plea Agreement, or in discussions leading to the plea or this  
24 Plea Agreement, shall not be admissible against the defendant in any  
25 criminal or civil proceeding (Fed. R. Crim. P. 11(e)(6)). In addition, should the  
26 Court not accept the Plea Agreement and should the defendant then



1 withdraw his guilty plea, the United States agrees that it will dismiss the  
2 Information, without prejudice to the United States' right to indict the  
3 defendant on the charge contained in the Information and any other related  
4 charges. For a period of ten (10) consecutive days following the withdrawal of  
5 the guilty plea, the United States shall take no action, based either upon the  
6 offenses subject to this Plea Agreement or any actual or alleged violation of  
7 the Plea Agreement, to revoke the defendant's release on his personal  
8 recognizance, to subject the defendant to service of process or arrest, or to  
9 prevent the defendant from departing the United States.

10 11. In light of civil cases filed that potentially provide for a recovery of a  
11 multiple of actual damages, the United States agrees that it will not seek a  
12 restitution order for the offense charged in the Information.

13 **DEFENDANT'S COOPERATION**

14 12. The defendant will fully and truthfully cooperate with the United  
15 States in the prosecution of this case, the current federal investigation of violations  
16 of federal antitrust and related criminal laws involving the manufacture or sale of  
17 MCAA, any other federal investigation of MCAA resulting from the current  
18 investigation, and any litigation or other proceedings arising or resulting from any  
19 investigation to which the United States is a party ("Federal Proceeding"). This  
20 cooperation shall include, but not be limited to:

21 (a) Producing in the United States and at other mutually agreed-  
22 upon locations all documents, including claimed personal documents, and  
23 other materials in his possession, custody, or control requested in writing by  
24 the United States;

25 (b) Upon reasonable notice by and at the request of the United  
26 States, making himself available for interviews in the United States or at

1 other mutually agreed-upon locations;

2 (c) Responding fully and truthfully to all inquiries of the United  
3 States in connection with any Federal Proceeding, without falsely implicating  
4 any person or intentionally withholding any information, subject to the  
5 penalties of making false statements or declarations (18 U.S.C. § 1001) or  
6 obstruction of justice (18 U.S.C. § 1503);

7 (d) Otherwise voluntarily providing the United States with any  
8 materials or information not requested in (a) - (c) of this paragraph that he  
9 may have that is relevant to any Federal Proceeding; and

10 (e) When called upon to do so by the United States in connection  
11 with any Federal Proceeding, testifying in trial and grand jury or other  
12 proceedings in the United States fully, truthfully, and under oath, subject to  
13 the penalties of perjury (18 U.S.C. § 1621), making false statements or  
14 declarations in grand jury or court proceedings (18 U.S.C. § 1623), and  
15 contempt (18 U.S.C. §§ 401-402).

16 **GOVERNMENT'S AGREEMENT**

17 13. Upon acceptance of the guilty plea called for by this Plea Agreement  
18 and imposition of the agreed-upon sentence, and subject to the cooperation  
19 requirements of Paragraph 12, the United States agrees that it will not bring  
20 further criminal charges against the defendant for any act or offense committed  
21 before the Court's acceptance of this Plea Agreement and undertaken in  
22 furtherance of an attempted or completed antitrust conspiracy involving the  
23 manufacture or sale of MCAA ("Relevant Offense"). The non-prosecution terms of  
24 this paragraph do not apply to any civil liability to the United States, to any  
25 violations of the federal tax or securities laws, or to any crime of violence.

26 14. The United States agrees that when the defendant is required to travel

1 to the United States for interviews by the United States, grand jury appearances,  
2 or court appearances under this Plea Agreement, the United States will take no  
3 action, based upon any offense subject to this Plea Agreement, to subject the  
4 defendant to arrest, service of process, or prevention from departing the United  
5 States, except where the United States has sought to void the Plea Agreement  
6 under Paragraph 18. Counsel for the United States shall provide the defendant a  
7 letter to such effect in connection with any such travel required by the United  
8 States. This paragraph does not apply to the defendant's commission of perjury  
9 (18 U.S.C. § 1621), making false statements or declarations (18 U.S.C. § 1001),  
10 making false statements or declarations in grand jury or court proceedings (18  
11 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§  
12 401-402) in connection with any testimony provided under this Plea Agreement in  
13 trial, grand jury, or other judicial proceedings in the United States. The United  
14 States also agrees that documents provided under Paragraph 12 shall be deemed  
15 responsive to outstanding grand jury subpoenas issued to Elf.

16 15. (a) Subject to the full and continuing cooperation of the defendant,  
17 as described in Paragraph 12 of this Plea Agreement, and upon the Court's  
18 acceptance of the defendant's guilty plea and imposition of sentence in this  
19 case, the United States agrees not to seek to remove the defendant from the  
20 United States under section 240 of the Immigration and Nationality Act,  
21 based upon the defendant's guilty plea and conviction in this case, should the  
22 defendant apply for or obtain admission to the United States as a  
23 nonimmigrant (hereinafter referred to as the "agreement not to seek to  
24 remove the defendant"). The agreement not to seek to remove the defendant  
25 is the equivalent of an agreement not to exclude the defendant from  
26 admission to the United States as a nonimmigrant or to deport the defendant

1 from the United States. (Immigration and Nationality Act, § 240(e)(2));

2 (b) The Antitrust Division of the United States Department of  
3 Justice has consulted with the Immigration and Naturalization Service of the  
4 United States Department of Justice ("INS"). The INS, in consultation with  
5 the United States Department of State, has agreed to the inclusion in this  
6 Plea Agreement of this agreement not to seek to remove the defendant;

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

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

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

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

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

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

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

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

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

17 **REPRESENTATION BY COUNSEL**

18 16. The defendant has been represented by counsel and is fully satisfied  
19 that his attorney has provided competent legal representation. The defendant has  
20 thoroughly reviewed this Plea Agreement and acknowledges that counsel has  
21 advised him of the nature of the charge, any possible defense to the charge, and the  
22 nature and range of possible sentences.

23 **VOLUNTARY PLEA**

24 17. The defendant's decision to enter into this Plea Agreement and the  
25 defendant's decision to tender a guilty plea are freely and voluntarily made and are  
26 not the result of force or threats, assurances, promises, or representations other

1 than the representations in this Plea Agreement. The United States has made no  
2 promises or representations to the defendant as to whether the Court will accept or  
3 reject this Plea Agreement. In signing this Plea Agreement, the defendant is not  
4 under the influence of any drug, medication, liquor, intoxicant or depressant, and  
5 is fully capable of understanding the terms and conditions of this Plea Agreement.

6 **VIOLATION OF PLEA AGREEMENT**

7 18. The defendant agrees that, should the United States determine in good  
8 faith, during the period any Federal Proceeding is pending, that the defendant has  
9 failed to provide full cooperation, as described in Paragraph 12, or otherwise has  
10 violated any other provision of this Plea Agreement, the United States may notify  
11 counsel for the defendant in writing by personal or overnight delivery or facsimile  
12 transmission of its intention to void its obligations under this Plea Agreement  
13 (except its obligations under this paragraph), and the defendant shall be subject to  
14 prosecution for any federal crime including, but not limited to, perjury (18 U.S.C.  
15 § 1621), making a false statement or declaration (18 U.S.C. § 1001), making a false  
16 statement or declaration in grand jury or court proceedings (18 U.S.C. § 1623),  
17 obstruction of justice (18 U.S.C. § 1503), contempt (18 U.S.C. §§ 401-402), and any  
18 Relevant Offense. The defendant agrees that in any such prosecution the United  
19 States may use against the defendant information provided by the defendant to the  
20 United States, federal grand juries, or courts. The defendant may seek court  
21 review of any determination made by the United States under this paragraph.

22 **ENTIRETY OF AGREEMENT**

23 19. This Plea Agreement constitutes the entire agreement between the  
24 United States and the defendant concerning the disposition of the criminal charge  
25 in this case. This Plea Agreement cannot be modified except in writing signed by  
26 the United States and the defendant.



1 knowledge, his decision to enter into this Plea Agreement is an informed and  
2 voluntary one.

3 DATED: March 4, 2002

\_\_\_\_\_  
/s/  
Ray V. Hartwell, Esq.  
Hunton & Williams  
1900 K St., N.W.  
Washington, D.C. 20006  
Attorney for Patrick Stainton

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