

NORA MANELLA
United States Attorney
SHARON McCASLIN
Assistant United States Attorney
1200 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-2273

RICHARD B. COHEN
WILLIAM P. NICHOLSON
PHILLIP R. MALONE
Trial Attorneys
Antitrust Division
U.S. Department of Justice
450 Golden Gate Avenue
Box 36046, 10th Floor
San Francisco, California 94102
Telephone: (415) 556-6300

Attorneys for Petitioner
United States of America

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)	FILED JUNE 1,1995
)	CR.
V.)	
)	RULE 11(e)(1)(B) PLEA AGREEMENT
TD MATERIALS, INC.,)	BETWEEN THE UNITED STATES OF
)	AMERICA AND TD MATERIALS, INC.
Defendant.)	
)	
_____)	

The United States of America and TD MATERIALS, INC. (the Defendant) hereby enter into the following plea agreement pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure (Fed. R. Crim. P.)

1. The Defendant agrees to plead guilty to a one-count Information, to be filed in the United States District Court for the Central District of California, charging that during the period January 1991 through September 1991, it participated in a conspiracy to fix prices for the sale of small press hard alloy ("SPHA") aluminum extrusions to customers located throughout the United States, in violation of the Sherman Act, 15 U.S.C. § 1.

2. The Defendant understands that the maximum penalty for a corporation convicted under 15 U.S.C. § 1 for a crime that took place after November 16, 1990, is set forth in 18 U.S.C. § 3571(c).

3. The Defendant understands that a mandatory \$200 special assessment will be imposed. 18 U.S.C. § 3013.

4. The Defendant waives any defenses that it might have to the Information described in paragraph 1 above. The Defendant also waives indictment pursuant to Fed. R. Crim. P. 7(b).

5. The Defendant understands that the sentence to be imposed upon the Defendant will be based on the United States Sentencing Commission, Guidelines Manual ("Sentencing Guidelines"), Section 2R1.1., and that the volume of commerce for Sentencing Guidelines' calculation purposes under that section is \$18.35 million.

6. The United States and the Defendant agree that the Defendant will be unable to pay the minimum fine called for the Sentencing Guidelines in effect between November 1, 1990 and October 31, 1991 (1990 Sentencing Guidelines) and still remain viable as a corporation. Accordingly, if the 1990 Sentencing Guidelines are applied in this case, the United States agrees to not oppose a request by the Defendant to the Court (1) to reduce the fine to an amount it can

afford to pay without jeopardizing its continued viability, and (2) to pay the fine in installments over time, up to a period of five years, at the appropriate interest rate. In addition, the United States agrees that it will stand mute at the time of sentencing with regard to an appropriate fine amount, or any factually correct argument made by the Defendant for a downward departure from the Sentencing Guidelines based on an inability to pay.

7. The United States and the Defendant agree that if the 1990 Sentencing Guidelines are applied, a departure from the 1990 Sentencing Guidelines due to inability to pay is warranted in this case under § 5K2.0. The Departure is warranted because the 1990 Sentencing Guidelines do not take into account the fact that corporate defendants may be unable to pay the fine called for by the Guidelines and still remain viable.

The Sentencing Guidelines effective starting on November 1, 1994, those which are currently in effect, take into account the fact that fines on corporate defendants may jeopardize the continued viability of an organization, and provides for a departure in such circumstances. Under section § 8C3.3. of the current Sentencing Guidelines, the Court may depart from the Sentencing Guidelines if the court finds that the organization is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay the minimum fine called for by the Sentencing Guidelines, provided that the reduction shall be no more than is necessary to avoid substantially jeopardizing the continued viability of the organization. The minimum fine called for by the 1990 Sentencing Guidelines would put Defendant into bankruptcy. This constitutes a mitigating circumstance not taken into account in the 1990 Guidelines and a departure under § 5K2.0 is warranted.

8. The United States will not seek restitution in this case because the victims are not readily identifiable and the appropriate amount of restitution cannot be accurately calculated.

9. The Defendant understands that the sentence to be imposed upon it is within the sole discretion of the sentencing judge. The United States makes no promise or representation as to what sentence the Defendant will receive, and the Court does not have to grant the Defendant's requests to reduce the fine amount called for by the Sentencing Guidelines, or to be allowed to pay a fine in installments over time. The Defendant understands that regardless of the Court's sentence, the Defendant will not have the right to withdraw its guilty plea.

10. The United States and the Defendant reserve the right to allocute at the time of sentencing to advise the court of facts, circumstances, and significance of the offense pursuant to Fed. R. Crim. P. 32(a)(1). The United States reserves the right to provide the Court and the United States Probation Office statements of facts related to the criminal conduct for which the Defendant was responsible and further reserves the right to correct and comment upon any misstatements of fact made by the Defendant or its attorneys in the course of the presentencing investigation, the sentencing, or other proceedings.

11. The Defendant agrees to use its best efforts to make its past and present employees, officers, and directors available to the United States for interviews, grand jury testimony, and trial testimony upon reasonable request by the United States Department of Justice, Antitrust Division. The Defendant agrees to use its best efforts to furnish to the Antitrust Division upon the Antitrust's Division's reasonable request all information and documents in the Defendant's possession or control that are relevant to the Antitrust Division's investigation and

possible prosecutions related to collusive or noncompetitive conduct in the aluminum extrusion industry.

12. The Defendant and those of its employees, officers and directors who are interviewed or who give testimony must at all times give complete, truthful, and accurate information and testimony. If the Defendant withdraws from this agreement, fails to use its best efforts to make its employees, officers, and directors available for interviews or as witnesses before the grand jury or at trial as reasonably requested, or if the Defendant otherwise violates any provision of this agreement, this agreement shall be null and void and shall not prevent the United States from prosecuting the Defendant or any of its employees, officers, or directors for any crimes. Any such prosecution may be premised upon information provided by the Defendant or its employees, officers, and directors, and such information may be used against the Defendant or any of its employees, officers or directors, to the extent not inconsistent with prior immunity agreements.

13. Subject to the full and continuing cooperation of the Defendant, the United States agrees that no additional federal criminal charges will be filed against the Defendant or any past or present officers, directors, or employees for violations of 15 U.S.C. § 1, 18 U.S.C § 1341 (mail fraud), or 18 U.S.C. § 1343 (wire fraud), or for any violation of any other federal statutes relating to collusive or anticompetitive activities by the Defendant in its pricing and sales of SPHA aluminum extrusions which occurred prior to the execution of this agreement.

14. The Defendant understands that this agreement does not bind state or local prosecuting authorities.

15. The Defendant understands that this agreement does not prohibit the United States or any third party from initiating or prosecuting any civil proceedings directly or indirectly involving the Defendant

16. The Defendant understands that it may be subject to administrative action by federal, state, or local agencies other than the Antitrust Division of the Department of Justice, as a result of its guilty plea entered pursuant to this agreement, and that this plea agreement in no way controls whatever action, if any, such agencies take. The United States agrees that, if requested, it will inform any agency of the facts of, and resulting from, this case that may be relevant to that agency's decision about whether to take action, or what action to take.

17. The Board of Directors of the Defendant has reviewed this agreement, has voluntarily agreed to it, and has adopted a resolution to that effect. A copy of the Board of Directors resolution will be filed with the court at or before sentencing. the Defendant and the United States each represents and warrants that it has the full right, power, and authority to execute and deliver this agreement and that no approval or authorization by any other person or entity is required for the agreement to be binding on each party.

18. This plea agreement constitutes the entire agreement between the United States and the Defendant concerning the disposition of charges in this case. No additional promises, agreements, or conditions have been entered into other than those set forth herein and none will be entered into unless in writing and signed by all the parties.

Dated this _____ day of May, 1995.

FOR THE UNITED STATES

FOR T.D. MATERIALS, INC.

Richard B. Cohen
William P. Nicholson
Phillip R. Malone
Trial Attorneys
Antitrust Division
U.S. Department of Justice

BY:

Duly Authorized Representative

Maxwell M. Blecher
William C. Hsu
Alicia G. Rosenberg
Counsel for T.D. Materials, Inc.