

**FEDERAL COURT OF CANADA
(TRIAL DIVISION)**

BETWEEN

HER MAJESTY THE QUEEN

and

ROBERT J. HART

Accused

AGREED STATEMENT OF FACTS

I THE ACCUSED ROBERT J. HART

1. Robert J. Hart ["Hart"], aged 67, is a citizen of the United States of America and resident at all material times outside Canada. Hart joined Union Carbide in 1961 and held various manufacturing and marketing positions in the Carbon Products Division in the United States, Europe and South America. In 1986, he became Vice President and General Manager of the Carbon Products Division, first for the Pan American and South African regions and later worldwide. In 1991, following the formation of UCAR International Inc. ("UCAR US") [now GrafTech International Ltd.] through a joint venture between Union Carbide and Mitsubishi Corporation, Hart was named Vice President and General Manager, North and South America and later Senior Vice President and Chief Operating Officer of UCAR US, with responsibility for the UCAR US carbon products business activities worldwide, including UCAR Inc. ("UCAR Canada). Hart was a significant shareholder in UCAR US. Hart left UCAR US in March, 1988.

1998
gms

2. During 1992 through 1997 (the "relevant period"), UCAR Canada was a corporation incorporated under the laws of Ontario with its principal place of business in Welland, Ontario, and a subsidiary of UCAR US. UCAR Canada was wound up in the spring of 1999. UCAR US and its subsidiary companies (collectively "UCAR") were among the largest manufacturers of graphite electrodes in the world and were involved in the manufacture, production, distribution, sale and supply of graphite electrodes and other carbon and graphite products throughout the world, including Canada.
3. UCAR Canada sold and supplied graphite electrodes in various diameters ranging from 75mm to 750mm (3" to 30") to steel producers, foundry operators and other users of electric arc furnaces and ladle furnaces in Canada and export markets.

II. CORPORATIONS

4. Throughout the relevant period, S.G.L. Canada Inc. ("SGL Canada") was a corporation incorporated under the laws of Canada with a manufacturing facility in Lachute, Quebec and a sales office in Montreal, Quebec. SGL Canada was a subsidiary of SGL Carbon Aktiengesellschaft of Germany and, together with SGL Carbon Corporation of the US, was a member of the SGL North American carbon and graphite business unit (collectively, "SGL"). SGL was also a world leader in the production, manufacture, distribution, sale and supply of graphite electrodes throughout the world, including Canada.
5. During the relevant period, other significant participants in the manufacture, production, distribution, sale and supply of graphite electrodes in the world market included: Tokai Carbon Co. Ltd., Nippon Carbon Co. Ltd., SEC Corporation, and Mitsubishi Corporation.

III. GRAPHITE ELECTRODES

6. **Graphite electrodes are consumed primarily in the production of steel in electric arc furnaces, the steelmaking technology used by all "mini-mills", and for steel refining in ladle furnaces. A graphite electrode conducts electric current into a furnace, where an arc is formed between the electrode tip and the scrap metal and other materials in the furnace charge. The resultant high temperature created by the arc provides the necessary heat for the metallurgical reactions taking place in the furnace. A graphite electrode is shaped in the form of a cylindrical rod with sockets at each end, permitting electrodes to be threaded together into columns. New sections are added to the electrode column as it is consumed in the furnace.**

7. **Graphite electrodes of varying lengths are produced in diameters ranging from 75 mm to 750mm. Graphite electrodes are also produced in varying grades, including regular-power, high-power and ultra-high power grades according to the furnace use. Mini-mill steel production and refining applications in Canada require high-power graphite electrodes generally ranging in diameter from 300mm to 600mm. The foundry and abrasives industries commonly, although not exclusively, use small diameter (300mm and smaller) regular grade graphite electrodes. The largest electrodes (650 mm, 700 mm and 750 mm diameters) are used in the newest electric arc steel-making furnace technology, which is not presently in operation in Canada.**

IV. THE CANADIAN MARKET FOR GRAPHITE ELECTRODES

8. **In Canada and worldwide, the production and supply of graphite electrodes was concentrated. During the relevant period UCAR Canada and SGL Canada supplied over 90 percent of the Canadian market for high-power graphite electrodes.**

9. **During the relevant period, the Canadian steel, foundries, and abrasives industries are estimated to have consumed at least CAN\$440 million of high-power graphite electrodes, or an annual average of CAN\$88 million.**

V. THE AGREEMENT

- 10. Beginning in or about May 1992, certain of the aforementioned graphite electrode manufacturers entered into an anti-competitive conspiracy, combination, agreement or arrangement (the "Agreement") in respect of the manufacture, distribution, sale, and supply of graphite electrodes. The Agreement had the effect or result of preventing or lessening competition unduly for these products in the Canadian market and elsewhere.**

- 11. The principal terms of the Agreement were:**
 - (a) to fix and maintain prices and to coordinate price increases for the sale of graphite electrodes in Canada and elsewhere; and**

 - (b) to discuss and share among the parties to the Agreement information about the volume of sales of graphite electrodes made or to be made by each of them in Canada and elsewhere.**

- 12. During subsequent meetings and communications continuing until 1997, the Agreement was confirmed, adjusted and maintained and the parties further agreed and implemented additional terms to:**
 - (a) charge prices of graphite electrodes at certain levels and otherwise to increase and maintain prices in Canada and elsewhere;**

 - (b) eliminate discounts from the fixed selling price in Canada and elsewhere;**

 - (c) allocate among themselves the approximate volume of graphite electrodes to be sold by each corporate conspirator in Canada and elsewhere;**

 - (d) divide markets among themselves, on a region-by-region basis, and in each region designate a company to fix the price that others in that region would follow;**

- (e) restrict their graphite electrode production capacity and restrict non-conspirator companies' access to certain electrode manufacturing technology;**
 - (f) employ methods to conceal the Agreement including the use of code names;**
 - (g) exchange sales and customer information for the purpose of monitoring and enforcing the Agreement; and**
 - (h) issue price announcements and price quotations in accordance with the agreements reached.**
- 13. Knowledge of the Agreement, meetings and discussions as aforesaid was kept confidential by the participants and limited to certain senior executives of their organizations. In order to ensure this, "code names" for the participants were established, documents destroyed, and few notes were retained.**
- 14. The said meetings included "working" discussions at which the participants would meet to discuss the implementation of the Agreement or to resolve specific price, marketing, supply or production issues.**
- 15. For the purpose of giving effect to the Agreement regarding the prices to be charged in Canada and the policies to be implemented regarding the prohibition on discounting to customers, UCAR US gave to UCAR Canada and UCAR Canada did implement directives, instructions or intimations of policy it received from UCAR US so that a regime of uniform pricing between UCAR Canada and SGL Canada existed in Canada.**
- 16. Throughout the period of the conspiracy and in order to implement the said directives, UCAR Canada and, at or about the same time, SGL Canada announced several identical prices and implementation dates for their 350mm to 600mm diameter graphite electrodes commencing in July 1992 with an announced price of \$2645 per metric tonne and continuing until at least June 1997.**

VI. HART'S PARTICIPATION IN THE AGREEMENT

- 17. The Agreement was conceived and originally implemented within UCAR US by Robert Krass ("Krass"), UCAR's CEO and Hart's superior.**
- 18. Hart did not attend either the "top level" or "working group" meetings designed to implement and maintain the Agreement. He was not aware of all such meetings or of their participants. Nevertheless, he was aware of the Agreement and knowingly assisted in implementing and maintaining the Agreement.**
- 19. In particular, Hart conducted conversations and met with senior executives and employees of certain of the conspirator companies, had knowledge of the participation of other UCAR representatives in such conversations and meetings, and approved the participation of another UCAR employee. Hart was aware of the illegality of participating in agreements or arrangements in restraint of competition and consciously shared with competitors, or made available to Krass for the purposes of sharing with competitors, information concerning graphite electrode pricing, customer accounts, and sales volumes in furtherance of the Agreement.**
- 20. Hart further participated in the Agreement by directing UCAR representatives to eliminate discounts, follow the graphite electrode price increases announced by designated geographic market leaders, and raise and maintain the prices of graphite electrodes in Canada and elsewhere, in concert with the Agreement.**

VII. OTHER CONSIDERATIONS

- 21. Pursuant to her responsibilities for the administration and enforcement of the *Competition Act*, the Commissioner of Competition (the "Commissioner") has**

conducted and continues to conduct an extensive inquiry into the carbon and graphite products industry in Canada. Hart has already cooperated and has promised to continue to cooperate with the Commissioner in this inquiry.

22. The decision by Hart to appear, to come to Canada to submit to the jurisdiction of the Canadian Courts in entering a plea of guilty and to cooperate fully with the Commissioner in this inquiry has saved considerable costs of further investigation, extradition, and trial which would otherwise have been incurred by the Government of Canada.
23. Because of the complex nature of the industry, its international ramifications and jurisdictional considerations, this cooperation has assisted and will assist in the investigation of other individuals and corporations for violations of the *Competition Act* in relation to the manufacture, production, distribution, sale and supply of graphite electrodes.

VIII. CONCLUSION

24. The accused admits the above facts, except where otherwise indicated, pursuant to section 655 of the *Criminal Code*.
25. The accused acknowledges that with respect to the Agreement alleged in the indictment, all the constituent elements of an indictable offence under subsection 45(1)(c) of the *Competition Act* have been established.

26. The parties agree that this document may be executed by signature conveyed by facsimile transmission or in counterparts.

Robert J. Hart

Robert J. Hart
.....¹²⁻⁹....., 2004

[Signature]

The Attorney General of Canada by
his counsel, D.D. Graham Reynolds, Q.C.
.....^{JANUARY}.....²⁰....., 2004/s

[Signature]

Court file No.

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(Trial Division)**

HER MAJESTY THE QUEEN

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Accused

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