

Non-jury

SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

C A N A D A

PROVINCE OF/DE L' ONTARIO

TORONTO REGION
RÉGION de TORONTO

BETWEEN

HER MAJESTY THE QUEEN
SA MAJESTÉ LA REINE

- AGAINST -
- CONTRE -

MITSUBISHI CORPORATION

Accused

STATEMENT OF ALLEGATIONS BY THE ATTORNEY GENERAL
OF CANADA

A. THE ACCUSED

1. Mitsubishi Corporation ("Mitsubishi") is a corporation incorporated under the laws of Japan with its principal place of business in Tokyo, Japan.

2. Mitsubishi sells graphite electrodes and acts as a sales agent of graphite electrodes for manufacturers of graphite electrodes around the world. Mitsubishi did not sell graphite electrodes in Canada during the relevant period.

3. Between February 25, 1991 and until January 26 1995, Mitsubishi owned fifty per cent of the outstanding voting stock of graphite electrode manufacturer UCAR US, described *infra*.

B. OTHER CORPORATIONS

4. UCAR International Inc. ("UCAR US") and its subsidiary companies (collectively "UCAR") is one of the largest manufacturers of graphite electrodes in the world, and is involved in the manufacture, production, distribution, sale, and supply of graphite electrodes throughout the world, including Canada. UCAR Inc. ("UCAR Canada") was a corporation incorporated under the laws of Ontario with its principal place of business in Welland, Ontario and was a subsidiary of UCAR US. UCAR Canada was wound up in the spring of 1999.

5. SGL Carbon Aktiengesellschaft ("SGL AG") is a corporation incorporated under the laws of Germany with its principal place of business in Weisbaden, Germany. SGL AG operates subsidiaries in many countries of the world including SGL Canada Inc. in Canada (collectively, "SGL"). SGL is a producer of graphite and carbon products and is one of the world leaders in the production, manufacture, distribution, sale and supply of graphite electrodes throughout the world, including Canada.

6. UCAR and SGL sell and supply graphite electrodes in various diameters ranging from 75 mm to 750 mm (3" to 30") to steel producers, foundry operators, and other users of electric arc furnaces and ladle furnaces in Canada and export markets.

7. Other significant participants in the manufacture, production, distribution, sale and supply of graphite electrodes in the world market during the relevant period included Showa Denko Carbon Inc., Tokai Carbon Co. Ltd., Nippon Carbon Co. Ltd., SEC Corporation, VAW Carbon GmbH and The Carbide Graphite Group (the "other significant manufacturers").

C. GRAPHITE ELECTRODES

8. Graphite electrodes are consumed primarily in the production of steel in electric arc furnaces, the steel making 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.

9. 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.

D. THE CANADIAN MARKET FOR GRAPHITE ELECTRODES

10. In Canada and worldwide, the production and supply of graphite electrodes is concentrated. SGL Canada and UCAR Canada have been the only two suppliers of any significance to the Canadian market. During the period between 1992 and 1997, SGL Canada and UCAR Canada supplied over 90 percent of the Canadian market for high-power graphite electrodes.

11. Between 1992 and 1997, the Canadian steel, foundries and abrasives industries are estimated to have consumed at least Cdn\$440 million of high-power graphite electrodes, or an annual average of Cdn\$88 million.

E. THE AGREEMENT

12. In or about May 1992, representatives of SGL, UCAR, and the other significant manufacturers, including certain of their most senior officers, met and entered into an anti-competitive conspiracy, combination, agreement or arrangement to restrict their graphite electrodes production capacity and to fix the prices they would charge for, and allocate the volumes they would sell of, graphite electrodes in world markets (the "Agreement"), which Agreement would have the effect or result of lessening competition substantially in the Canadian market and elsewhere.

13. Pursuant to a contractual arrangement made between Mitsubishi, Union Carbide, and UCAR at the time of Mitsubishi's acquisition of a 50% interest in UCAR, several Mitsubishi managers and employees were seconded to UCAR. Ichiro Fukushima ("Fukushima") was one such Mitsubishi manager. Between May 1991 and December 1992 Fukushima was seconded by Mitsubishi to UCAR US, where he was employed first as Director, Export Sales Coordination and subsequently as Vice President of Export Sales. During his secondment to UCAR US, Fukushima attended the above referenced meeting in May 1992 in London, England. Fukushima knew the objects of the meeting and assisted the participants at that meeting by translating between Japanese and English.

14. SGL, UCAR, and certain of the other significant manufacturers who were participants to the Agreement agreed to divide world markets and to allocate among themselves the approximate volume of graphite electrodes to be sold by each participant, with some participants reducing or eliminating exports to competitors' home markets. In each market, one participant was designated to fix the price that other participants supplying that market would follow. Under the Agreement, UCAR was the designated price leader in North America.

15. At various times from May 1992 until at least June 1997, representatives of SGL AG and UCAR engaged in conversations and attended further meetings with the other significant manufacturers in order to implement, confirm, adjust and maintain the Agreement. The said meetings included "working" discussions at which the participants would resolve specific price, marketing, supply or production issues. The participants monitored and enforced the Agreement through the exchange of sales and customer information.

16. Between approximately January 1993 until January 1995, when Mitsubishi sold its interest in UCAR, Fukushima held the position with Mitsubishi of General Manager, UCAR Business Department.

17. In November 1993, Fukushima was invited to attend and did attend a meeting of senior executives of the participants to the Agreement in London, England. Fukushima participated in that meeting for the purposes of facilitating communication by translating for the senior executives at that meeting.

18. At various times through January 26, 1995 when Mitsubishi sold its investment in UCAR, Fukushima had knowledge of and facilitated meetings in Japan between Robert Krass ("Krass"), then President of UCAR US and senior executives of the Japanese participants in the conspiracy by arranging transportation for Krass to these meetings.

19. Knowledge of the Agreement, meetings and discussions as aforesaid were kept confidential by the participants and limited to certain senior executives within their organizations, and further efforts to conceal the Agreement were employed.

20. For the purposes of giving effect to the Agreement regarding prices to be charged in Canada and policies to be implemented regarding the prohibition on discounting to customers, UCAR US gave to UCAR Canada and SGL AG gave to SGL Canada directives, instructions or intimations of policy which were implemented.

21. Throughout the period of the conspiracy, UCAR Canada and at 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 Cdn\$2645 per metric tonne and continuing until at least June 1997.

F. CONCLUSION

22. Mitsubishi does not admit, but for purposes of this proceeding does not contest the foregoing allegations and acknowledges that the Attorney General of Canada could establish them as facts at any trial. Accordingly this Court may treat these allegations as having been established for purposes of this proceeding.

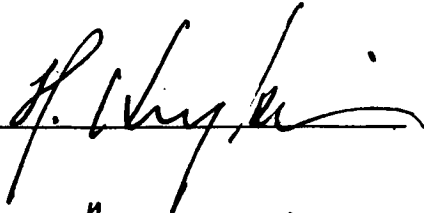
23. Mitsubishi acknowledges that if the foregoing allegations are established, all constituent elements of its participation as an aider and abettor of the an indictable offence under section 46(1) of the *Competition Act* and section 21(1) of the *Criminal Code* have been established.

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

Mitsubishi Corporation

The Attorney General of Canada
By his Counsel,
D.D. Graham Reynolds, Q.C.

Per



This 29th day of March, 2005

This 16th day of March, 2005 File: 2-465050

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HER MAJESTY THE QUEEN

AND

MITSUBISHI CORPORATION

(Court file no.)

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**STATEMENT OF ALLEGATIONS BY THE
ATTORNEY GENERAL OF CANADA**

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