

FEDERAL COURT OF CANADA
(TRIAL DIVISION)

BETWEEN

HER MAJESTY THE QUEEN

and

TOYO TANSO USA, INC.

Accused

AGREED STATEMENT OF FACTS

I THE ACCUSED

1. Toyo Tanso USA, Inc. ("TTU"), with its principal place of business in Troutdale, Oregon, is a corporation incorporated under the laws of the State of Delaware and is an indirectly owned subsidiary of Toyo Tanso Co., Ltd. ("TT"), a corporation incorporated under the laws of Japan with its principal place of business in Osaka, Japan. TTU is a manufacturer of isostatically molded graphite products, including non-machined and semi-machined isostatic graphite [the "Products"], which it sells and supplies to customers throughout North America, including Canada.
2. Throughout the relevant period, TTU directly or indirectly through an independent distributor, Electrodes Canada Inc. ("Electrodes Canada"), engaged in the sale and supply of the Products in Canada.

FEDERAL COURT OF CANADA
COUR FÉDÉRALE DU CANADA

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Date

March 28, 2003
Louise Joubert
Registry Officer
Agent du greffe

II OTHER CORPORATIONS

3. Significant participants in the manufacture, production, distribution, sale and supply of the Products in the world market for the relevant period include: SGL Carbon Aktiengesellschaft, Tokai Carbon Co., Ltd., Carbone of America Industries Corp., Nippon Steel Chemical Company and Ibiden Co. All of the foregoing shall be referred to collectively as the "Producers" in relation to the manufacture and sale of isostatic graphite products.

III ISOSTATIC GRAPHITE

4. Isostatic graphite is a fine grain, high-strength material that is produced by compressing carbon under equal pressure from all directions to eliminate any grain orientation, then baking and graphitizing it. Manufacturers produce multiple grades of material with different qualities such as density, grain size, and discharge rate. The production process is lengthy, technical and specialized.
5. Manufacturers of isostatic graphite sell their products as non-machined, semi-machined, or machined into finished products. The affected product in this matter is non-machined and semi-machined isostatic graphite which is sold primarily to distributors or end users for use in electric discharge machining and the continuous casting of molten metal, although some is sold to independent machine shops and for other uses. There are hundreds of end user/customers for various isostatic graphite products.

IV THE CANADIAN MARKET FOR ISOSTATIC GRAPHITE PRODUCTS

6. Sales in Canada directly or indirectly of the Products by all Producers, including TTU, in the period 1993-1997 were in the range of (Cdn) \$7 to 10 million per annum.
7. Between July 1993 and February 1998, TTU sold, either directly or indirectly

through Electrodes Canada, approximately \$200,000 of the Products into Canada.

V THE OFFENCE

8. In the aftermath of communications, beginning in July 1993, between representatives of TTU and the other Producers, at a meeting held in or about December 1994 between TTU and Electrodes Canada, representatives of TTU attempted by agreement, to influence upward, the price at which Electrodes Canada supplied or offered to supply or advertised TTU's products in Canada. Notwithstanding the agreement, TTU maintains that Electrodes Canada did not increase the price at which it supplied or offered to supply or advertised TTU's products in Canada following that meeting.

VI OTHER CONSIDERATIONS

9. TTU has agreed to plead guilty to an offence contrary to paragraph 61(1)(a) of the *Competition Act*, thereby saving considerable costs of further investigation and trial that would otherwise have been incurred by the Government of Canada.
10. TTU also has agreed, pursuant to the Immunity Program Under the *Competition Act* and the policy of the Attorney General of Canada regarding immunity, to cooperate fully with the Competition Bureau's ongoing inquiry into the carbon and graphite products industry in Canada. Because of the complex nature of the industry, its international ramifications and jurisdictional considerations, this cooperation 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 carbon and graphite products in Canada, including isostatic graphite.

VII CONCLUSION

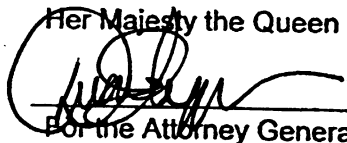
11. TTU admits the foregoing facts pursuant to section 655 of the *Criminal Code* solely for the purpose of dispensing with their proof at trial in this proceeding.
12. TTU acknowledges, on the basis of the admissions set out herein, that all constituent elements of an indictable offence under paragraph 61(1)(a) of the *Competition Act* have been established.

TOYO TANSO USA, INC.


CORPORATE SECRETARY

FEBRUARY 6, 2002

Her Majesty the Queen


For the Attorney General of Canada by her

counsel D.D. Graham Reynolds, Q.C. / Duane E. Schippers
March 28th, 2003



Court file No. T-189-01

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