

FEDERAL COURT OF CANADA  
(TRIAL DIVISION)

BETWEEN:

HER MAJESTY THE QUEEN

and

THE NIPPON SYNTHETIC CHEMICAL INDUSTRY CO., LTD.

Accused

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AGREED STATEMENT OF FACTS

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I. THE ACCUSED

**Nippon Gohsei**

1. The Nippon Synthetic Chemical Industry Co., Ltd ("Nippon Gohsei") is a Japan based corporation engaged in the production and export of potassium sorbate and sorbic acid ("sorbates"). From time to time during the relevant period, Nippon Gohsei exported sorbates into Canada through distributors.

II. OTHER RELEVANT CORPORATIONS

**Note:** Nippon Gohsei has no direct knowledge of the facts set out in paragraphs 2 - 6 which are based on information obtained by the Commissioner of Competition (the "Commissioner").

**Eastman Chemical Company**

2. Eastman Chemical Company ("Eastman") is a Kingsport, Tennessee based corporation organized and existing under the laws of the State of Delaware. Eastman produces and exports sorbates to its Canadian subsidiary, Eastman Chemical Canada, Inc. of Toronto, Ontario. In addition, Van Waters & Rogers Ltd./Van Waters & Rogers Ltée sold sorbates produced by Eastman Chemical Company, Inc., in Canada.

**Hoechst AG**

3. Hoechst AG ("Hoechst") is a corporation organized and existing under the laws of Germany. Throughout the relevant period, Hoechst produced, manufactured, distributed, sold and supplied sorbates, which it exported into Canada through its Food Ingredients Business Unit.

**Daicel Chemical Industries, Ltd.**

4. Daicel Chemical Industries, Ltd. ("Daicel") is a Japan based corporation engaged in the production, manufacturing, distribution, sale and supply of sorbates during the relevant period. Daicel sells sorbates in Canada through a distributor, St. Lawrence Chemical Inc./Les Produits Chimiques St. Lawrence Inc.

**Ueno Fine Chemicals Industry, Ltd.**

5. Ueno Fine Chemicals Industry, Ltd. ("Ueno") is a Japan based corporation engaged in the production, manufacturing, distribution, sale and supply of sorbates, during the relevant period. Ueno sells sorbates in Canada through a distributor.

**Chisso Corporation**

6. Chisso Corporation ("Chisso") is a Japan based corporation engaged in the production, manufacturing, distribution, sale and supply of sorbates, during the relevant period. Chisso sells sorbates in Canada through a distributor.

**III. SORBATES AND THE CANADIAN MARKET FOR SORBATES**

7. Sorbates are chemical preservatives used primarily as mold inhibitors in high moisture and sugar foods such as dairy and bakery products, fruit, berry and vegetable products, flavours, spices, syrups and pet foods. There are no manufacturing or refining facilities for sorbates in Canada. Nippon Gohsei and the other companies identified in paragraphs 2 - 6 above produce and supply a substantial majority of the total volume of sorbates sold in Canada and elsewhere.
8. Based on the facts obtained by the Commissioner, of which Nippon Goshei is unaware, total sales of sorbates in Canada throughout the period of the offence were approximately \$37 million. Nippon Gohsei began to supply the Canadian market for sorbates only in 1989. The total volume of sales of sorbates in Canada by Nippon Gohsei during the relevant period was less than \$250,000.

#### IV. THE 1979-1996 AGREEMENT


9. At various times in the period between approximately January, 1979 and March, 1996, executives of Nippon Gohsei engaged in conversations and, until December, 1995 attended meetings with the representatives of the other sorbate producing companies. The meetings during the relevant period generally occurred in locations in Europe and Japan.
10. As a result of these conversations and meetings, an unlawful conspiracy amongst the producers identified herein was reached in relation to the sale and supply of sorbates. The parties agreed to fix, raise and maintain the prices at which each company would sell sorbates, and they also agreed on an allocation among themselves of the volume of sorbates that each company would supply, in Canada and elsewhere.

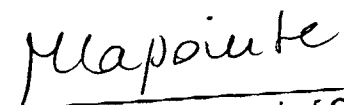
#### C. OTHER CONSIDERATIONS

11. Pursuant to his responsibilities for the administration and enforcement of the *Competition Act*, the Commissioner has conducted ~~and continues to conduct extensive inquiries~~ into the sorbates industry in Canada. He considers that Nippon Gohsei's cooperation with this inquiry has assisted in the investigation of other individuals and corporations for violations of the *Competition Act* in relation to sorbates.
12. The decision by Nippon Gohsei to appear and submit to the jurisdiction of the Canadian Courts to plead guilty has saved considerable costs of further investigation and trial which would otherwise have been incurred by the Government of Canada.

#### D. CONCLUSION

13. Nippon Gohsei admits the above facts, pursuant to section 655 of the *Criminal Code*, solely for the purpose of dispensing with their proof at trial in this proceeding.
14. Nippon Gohsei acknowledges, on the basis of its admission of the facts set out herein, with respect to the agreement alleged in the Indictment, that all the constituent elements of an indictable offence under paragraph 45(1)(c) of the *Competition Act* have been established.
15. The parties agree that this document may be executed by signature conveyed by facsimile transmission or in counterparts.

  
The Nippon Synthetic Chemical  
Industry Co., by its counsel  
September 4 , 2001

  
The Attorney General of Canada  
by Manon Lapointe  
September 6<sup>th</sup> , 2001

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