

CANADA,  
PROVINCE OF ONTARIO  
TORONTO REGION

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**HER MAJESTY THE QUEEN**

**- against -**

**TAKAYASU MIYASAKA**

**Accused**

---

**AGREED STATEMENT OF FACTS**

---

**I. THE ACCUSED**

**Takayasu Miyasaka**

1. Takayasu Miyasaka is citizen of Japan, resident at all material times outside Canada. During the relevant period, he was employed by Daicel Chemical Industries, Ltd. ("Daicel"), latterly in the capacity of Executive Officer & General Manager, Products Division, Plastics Business Group of Daicel. Daicel is a Japan-based corporation which engaged in the production, manufacturing, distribution, sale and supply of sorbates during the relevant period. Throughout the period, Daicel sold sorbates in Canada through distributors, currently, St. Lawrence Chemical Inc./Les Produits Chimiques St. Lawrence Inc. Mr Miyasaka was responsible for the marketing of sorbates on behalf of Daicel throughout the world and in Canada.

**II. OTHER RELEVANT CORPORATIONS**

**Note:** The Accused has no direct knowledge of the facts set out in paragraphs 2 - 7 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.

**Nippon Gohsei**

4. The Nippon Synthetic Chemical Industry Co., Ltd. ("Nippon Gohsei") is a Japan-based corporation engaged in the production and export of sorbates. From time to time during the relevant period, Nippon Gohsei exported sorbates into Canada through distributors, currently, Mitsui & Co. (Canada) Ltd.

**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 sold sorbates in Canada through a distributor, currently, Ashland Canada Inc.

**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, Tomen Canada Inc.

**Cheminova Agro A/S**

7. Cheminova Agro A/S ("Cheminova") is a Danish corporation engaged in the production, manufacturing, distribution, sale and supply of sorbates, during the relevant period. Cheminova sells sorbates in Canada through a distributor, Quadra Chemicals Ltd./Quadra Chimie Limitée.

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

8. Sorbates (sorbic acid and potassium sorbate) are chemical preservatives which

are used primarily as mold inhibitors in high moisture and high 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. Daicel and the other companies identified in paragraphs 2 - 7 above produce and supply a substantial majority of the total volume of sorbates sold in Canada and elsewhere.

9. Based on the facts obtained by the Commissioner, of which the Accused is unaware but does not contest for the purposes of this proceeding, total sales of sorbates in Canada throughout the period of the offence were approximately \$37 million. The total volume of sales of sorbates in Canada by Daicel during the relevant period was approximately \$8 million.

#### **IV. THE 1979-1996 AGREEMENT**

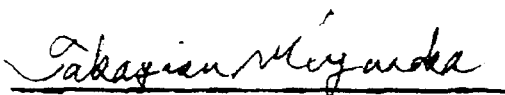
10. At various times in the period between approximately January, 1979 and September, 1996, Mr. Miyasaka and other senior representatives of Daicel engaged in conversations and attended periodic meetings with senior representatives of the other sorbate producing companies. The meetings during the relevant period generally occurred in locations in Europe and Japan.
11. As a result of these conversations and meetings, an unlawful conspiracy among the producers identified herein was reached in relation to the sale and supply of sorbates which was maintained throughout the period. The parties periodically 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**

12. 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. Mr. Miyasaka has cooperated, and has agreed to continue to provide complete, truthful and candid cooperation with the Commissioner's inquiries. The Commissioner considers that Mr. Miyasaka will make a valuable contribution to these inquiries and that his information and evidence will assist in the investigation of other individuals and corporations for violations of the *Competition Act*.
13. The decision by Mr. Miyasaka to appear and submit to the jurisdiction of the Canadian Courts to plead guilty has saved considerable costs of further investigation, extradition and trial which would otherwise have been incurred by the Government of Canada.

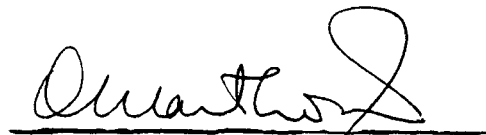
**D. CONCLUSION**

14. Mr. Miyasaka 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.
15. Mr. Miyasaka acknowledges, on the basis of his admission of the facts set out herein, that with respect to the agreement alleged in the Indictment, all the constituent elements of an indictable offence under paragraph 45(1)(c) of the *Competition Act* have been established.
16. The parties agree that this document may be executed by signatures conveyed by facsimile transmission or in counterparts.



---

Takayasu Miyasaka  
September 19, 2000



---

The Attorney General of Canada  
by D. Martin Low, Q.C.  
August 31, 2000

HER MAJESTY THE QUEEN

- and -

TAKAYASU MIYASAKA

Respondent

Applicant

SUPERIOR COURT OF JUSTICE  
(TORONTO REGION)

AGREED STATEMENT OF FACTS

Brian Heller  
HELLER, RUBEL  
208 - 111 Richmond Street West  
Toronto, Ontario  
M5H 2G4  
(416) 863- 9311

Counsel for the Applicant

D. Martin Low, Q.C.  
Department of Justice  
Industry Canada  
Legal Services  
Place du Portage, Phase 1  
50 Victoria Street  
Hull, Quebec  
K1A 0C9  
(819) 997-3325

Counsel for the Attorney General of Canada