

FEDERAL COURT OF CANADA
(TRIAL DIVISION)

BETWEEN:

HER MAJESTY THE QUEEN

and

NIPPON CARBON CO. LTD.

Accused

STATEMENT OF ADMISSIONS

(pursuant to section 655 of the *Criminal Code of Canada*)

I THE ACCUSED

1. Nippon Carbon Co., Ltd. ("Nippon") is a corporation incorporated under the laws of Japan with its principal place of business in Tokyo, Japan. Nippon is a producer of graphite and carbon products and plays an important role in the production, manufacture, distribution, sale and supply of graphite electrodes throughout the world. Nippon does not have a Canadian subsidiary.
2. Throughout the relevant period, Nippon was engaged in the manufacture in Japan of graphite electrodes in various diameters ranging from 75 mm to 750 mm (3" to 30") for sale to steel producers, foundry operators and other users of electric arc furnaces and ladle furnaces. Nippon sold these products in markets outside of Canada.

II OTHER CORPORATIONS

3. During the relevant period only two manufacturers maintained production facilities for graphite electrodes in Canada. UCAR Inc. ("UCAR Canada", wound up in April 1999) was a corporation incorporated under the laws of Ontario with its principal place of business in Welland, Ontario, and was a subsidiary of UCAR International

Inc. ("UCAR US"). UCAR US and its subsidiary companies (collectively "UCAR" - now "Grafftech") was one of the two largest manufacturer of graphite electrodes in the world, and was involved in the manufacture, production, distribution, sale and supply of graphite electrodes throughout the world, including Canada.

4. During the relevant period, SGL Carbon Aktiengesellschaft ("SGL AG") was a corporation incorporated under the laws of Germany with its principal place of business in Wiesbaden, Germany, SGL AG operated subsidiaries in many countries of the world including SGL Canada Inc. in Canada (collectively "SGL"). SGL was one of the world leaders in the production, manufacture, distribution, sale and supply of graphite electrodes throughout the world, including Canada. Both of the foregoing entities have previously pleaded guilty to charges under s. 46 of the Act before this Court based upon the conspiracy herein referred to.
5. Other than the accused, significant participants in the manufacture, production, distribution, sale and supply of graphite electrodes in the world market during the relevant period included: Showa Denko KK, Tokai Carbon Co., Ltd., SEC Corporation and VAW AG (now Erftcarbon GmbH & Co.) (all of the foregoing shall be referred to as the "other producers").

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 an 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 to produce molten steel. 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 750 mm. Graphite electrodes are also produced in varying grades, including regular-power, high-power and ultra-high power grades according to the furnace use. According to the Commissioner of Competition (the "Commissioner")

and based upon information of which Nippon is unaware but does not contest for purposes of this proceeding, during the relevant period, mini-mill steel production and refining applications in Canada required high-power graphite electrodes generally ranging in diameter from 300 mm to 600 mm. The foundry and abrasives industries commonly, although not exclusively, used small diameter (300mm and smaller) regular grade graphite electrodes. The largest electrodes (650 mm, 700 mm and 750 mm diameters) were used in the newest electric arc steel-making furnace technology, which is not then in operation in Canada. Graphite electrodes sold throughout the period for less than \$2000 per tonne to over \$3500 per tonne (\$US).

IV THE CANADIAN MARKET FOR GRAPHITE ELECTRODES

8. According to the Commissioner and based upon information of which Nippon is unaware but does not contest for purposes of this proceeding, in Canada and worldwide, the production and supply of graphite electrodes is concentrated. Graphite electrodes are used by steel manufacturing concerns throughout Canada. During the relevant period, SGL Canada and UCAR Canada (presently UCAR), the only two suppliers of any significance to the Canadian market, supplied over 90 percent of this market for high-power graphite electrodes.
9. According to the Commissioner of Competition (the "Commissioner") and based upon information of which Nippon is unaware but does not contest for purposes of this proceeding, 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.
10. Between 1992 and 1997, Nippon did not sell any graphite electrodes in the Canadian market. In 1986 Nippon had stopped selling into the Canadian market because of unfavorable business conditions including the anti-dumping proceedings taken by the Government of Canada before the Canadian International Trade Tribunal and its predecessor and the significant appreciation of the Japanese Yen against the Canadian Dollar.

V THE AGREEMENT

11. UCAR, SGL and the other producers met in or about May 1992 to formulate the agreement herein described, and from time to time thereafter at over twenty

meetings held throughout the world for the purposes of monitoring, adjusting and amplifying the arrangements referred to herein with respect to the involvement of individual participants. Producers of graphite electrodes through their representatives including certain senior officers met and agreed to allocate amongst producers specific volumes of graphite electrodes to be supplied, to restrict graphite electrodes production capacity and sales into certain markets, and to fix the prices they would charge for graphite electrodes, throughout the world including Canada (the "Agreement"). Nippon attended such meetings and participated in this process. The Agreement had the effect or result of lessening competition unduly in the Canadian market for graphite electrodes.

12. Nippon and the other participants to the Agreement agreed to divide world markets and to allocate the approximate volume of graphite electrodes to be sold by each participant or group of participants. Some participants reduced or eliminated exports to and/or capacity to sell and supply their electrodes in competitors' home markets except in accordance with the Agreement. 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.
13. It was the understanding of UCAR and SGL that Nippon would not resume the sale of graphite electrodes into Canada during the period between 1992 and 1997 and to do so would have been inconsistent with the Agreement. By supporting and maintaining the Agreement, Nippon assisted the implementation of the Agreement by UCAR and SGL AG in their Canadian home market, which the latter accomplished by giving directions consistent with the Agreement to their respective Canadian subsidiaries.
14. At various times from May 1992 until at least June 1997, representatives of Nippon engaged in conversations and attended further meetings with representatives of other producers and suppliers of graphite electrodes, including some of those referred to in paragraph 5 above, 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. Nippon and other participants in the Agreement monitored and enforced the Agreement through the exchange of sales and customer information.

15. Nippon knew the objects and purposes of the Agreement, and this knowledge, together with meetings and discussions as aforesaid were kept confidential by the participants (including Nippon) and limited to certain senior executives of their organizations. The participants also employed further efforts to conceal the Agreement.


VI OTHER CONSIDERATIONS

16. Nippon has agreed to submit to the jurisdiction of the Canadian courts solely for the purpose of entering a plea of guilty to an offence of aiding and abetting the commission of offences contrary to section 46 of the *Competition Act* and section 21(1) of the *Criminal Code*, thereby saving considerable costs of further investigation and proceedings which would otherwise have been incurred by the Government of Canada.

VII CONCLUSION

17. Nippon admits the foregoing pursuant to section 655 of the *Criminal Code*.
18. Nippon acknowledges, on the basis of the admissions set out herein with respect to the Agreement, that all constituent elements of the indictable offence of aiding and abetting the offence under subsection 46(1) of the *Competition Act* and pursuant to subsection 21(1) of the *Criminal Code* have been established.

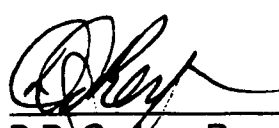
Nippon Carbon Company, Ltd.



Michio Inoue
Representative Director
Executive Vice President

Date: February 25, 2005

Her Majesty the Queen



D.D. Graham Reynolds, Q.C.
for the Attorney General of Canada

Date: March 2nd 2005

Court No. I- <>

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