

FEDERAL COURT OF CANADA  
(TRIAL DIVISION)

BETWEEN

HER MAJESTY THE QUEEN

and

CARBONE OF AMERICA INDUSTRIES CORP.

Accused

STATEMENT OF FACTS

**I THE ACCUSED**

1. Carbone of America Industries Corp. ("Carbone of America"), a corporation incorporated under the laws of the United States with its principal place of business in Parsippany, New Jersey, United States and its affiliate Carbone of America (LCL) Ltd. ("Carbone Canada") a corporation incorporated under the laws of Canada with its principal place of business in Toronto, Ontario, Canada, are producers and sellers of graphite and carbon products and play an important role in the production, manufacture, distribution, sale and supply of isostatic graphite products throughout North America.
2. In Canada, throughout the relevant period, Carbone of America, a manufacturer of isostatic graphite, was together with its affiliate Carbone Canada engaged in the sale and supply of isostatic graphite products.

## **II OTHER CORPORATIONS**

3. Significant participants in the manufacture, production, distribution, sale and supply of isostatic graphite in the world market include: SGL Carbon Aktiengesellschaft Tokai Carbon Co., Ltd., Toyo Tanso Co. Ltd., Nippon Steel Chemical Company and Ibiden Co.. All of the foregoing shall be referred 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 either 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 MARKET FOR ISOSTATIC GRAPHITE**

6. Sales in Canada of isostatic products by all producers in the period 1993-1997 were in the range of (Cdn) \$7 to 10 million per annum.
7. Between January 1994 and February 1998, Carbone of America sold, either directly or through Carbone Canada, approximately (CDN) \$1.65 million of the affected product into Canada.

## **V THE AGREEMENT**

8. In or about July 1993, and from time to time thereafter at over fifteen meetings held throughout the world, representatives of Carbone of America and the producers, including certain of their most senior officers, met and entered into an anti-competitive agreement to fix the price of non-machined and semi-machined isostatic graphite sold in Canada and elsewhere (the "Agreement"). During the course of those meetings, they also agreed to set specific volumes of non-machined and semi-machined isostatic graphite that each company would supply in Canada and elsewhere using a uniform system of product grading and nomenclature, which Agreement would have the effect or result of lessening competition substantially in the Canadian market and elsewhere.
9. In addition, there were numerous local meetings convened in North America and elsewhere to work out local issues to ensure conformity amongst producers agreed to by the conspiracy. At various times from December 1993 until February 1998, representatives of Carbone of America engaged in conversations and attended such local meetings with representatives of other producers and suppliers of non-machined and semi-machined isostatic graphite, 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 and customer issues. Carbone of America and its co-conspirators monitored and enforced the Agreement through the exchange of sales and customer information.

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


## **VI OTHER CONSIDERATIONS**

11. Carbone of America has agreed, pursuant to the Immunity Program Under the Competition Act and the policy of the Attorney General of Canada regarding immunity, to cooperate and plead guilty to an offence contrary to section 45 of the *Competition Act*, thereby saving considerable costs of further investigation and trial which would otherwise have been incurred by the Government of Canada.
12. Pursuant to his responsibilities for the administration and enforcement of the *Competition Act*, the Commissioner has conducted and continues to conduct an extensive inquiry into the isostatic graphite industry in Canada. Carbone of America has promised to and will cooperate with the Commissioner in this inquiry.
13. 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 isostatic graphite.

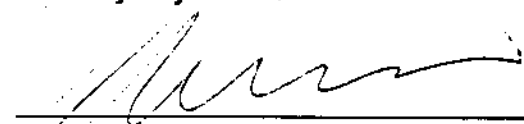
**VII CONCLUSION**

- 14. Carbone of America admits the foregoing pursuant to section 655 of the *Criminal Code*.
  
- 15. Carbone of America acknowledges, on the basis of the admissions set out herein with respect to the Agreement, that all constituent elements of an indictable offence under section 45 of the *Competition Act* have been established.

**Carbone of America**

  
\_\_\_\_\_  
By: Atty for  
Its: Carbone of America  
Date: Feb 22 / 01

**Her Majesty the Queen**

  
\_\_\_\_\_  
William J. Miller  
for the Attorney General of Canada  
Date: 21 Feb / 01