

Appendix "B"

Court No.

FEDERAL COURT OF CANADA  
(TRIAL DIVISION)

BETWEEN

HER MAJESTY THE QUEEN

and

TOKAI CARBON CO., LTD.

Accused

STATEMENT OF FACTS

I THE ACCUSED

1. Tokai Carbon Co., Ltd ("Tokai") is a corporation incorporated under the laws of Japan with its principal place of business in Tokyo, Japan. Tokai 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. Tokai does not have a Canadian subsidiary.
2. Throughout the relevant period, Tokai was engaged in the manufacture in Japan of graphite electrodes in various diameters ranging from 75mm to 750mm (3" to 30") for sale to steel producers, foundry operators and other users of electric arc furnaces and ladle furnaces. Tokai 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") is a corporation incorporated under the laws of Ontario with its principal place of business in Welland, Ontario, and is a subsidiary of UCAR International Inc. ("UCAR US"). UCAR US and its subsidiary companies (collectively "UCAR") is the largest manufacturer of graphite electrodes in the world, and is involved in the manufacture, production, distribution, sale and supply of graphite electrodes throughout the world, including Canada.
  
4. SGL Carbon Aktiengesellschaft ("SGL AG") is a corporation incorporated under the laws of Germany with its principal place of business in Wiesbaden, Germany. SGL AG operates subsidiaries in many countries of the world including SGL Canada Inc. in Canada (collectively "SGL"). SGL is 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 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 include: Showa Denko KK, Nippon Carbon Co., Ltd., SEC Corporation and VAW AG (now Erftcarbon GmbH & Co. KG.) (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 750mm. Graphite electrodes are also produced in varying grades, including regular-power, high-power and ultra-high power grades according to the furnace use. Mini-mill steel production and refining applications in Canada require high-power graphite electrodes generally ranging in diameter from 300mm to 600mm. The foundry and abrasives industries commonly, although not exclusively, use small diameter (300mm and smaller) regular grade graphite electrodes. The largest electrodes (650 mm, 700 mm and 750 mm diameters) are used in the newest electric arc steel-making furnace technology, which is not presently 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. In Canada and worldwide, the production and supply of graphite electrodes is concentrated. Graphite electrodes are used by steel manufacturing concerns throughout Canada. SGL Canada and UCAR Canada have been the only two

suppliers of any significance to the Canadian market. During the period between 1992 and 1997, SGL Canada and UCAR Canada supplied over 90 percent of the Canadian market for high-power graphite electrodes.

9. According to the Commissioner of Competition, 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. Tokai does not have any information to confirm or contradict this statement.
10. Between 1992 and 1997, Tokai did not sell any graphite electrodes in the Canadian market although Tokai did from time to time receive inquiries from Canadian companies regarding the possibility of sales of graphite electrodes. In 1986 Tokai had stopped selling into the Canadian market because of unfavorable business conditions including the anti-dumping proceedings 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, 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"). Tokai attended such meetings and participated in this process. The Agreement would have the effect or result of lessening the competition substantially in the Canadian market and elsewhere.

12. Tokai 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 and selling and supplying 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 Tokai 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, Tokai 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 Tokai 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. Tokai and other participants in the Agreement monitored and enforced the Agreement through the exchange of sales and customer information.

15. 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

16. Tokai has agreed to plead guilty to an offence of aiding and abetting the commission of offences contrary to section 46 of the *Competition Act*, thereby saving considerable costs of further investigation and trial which would otherwise have been incurred by the Government of Canada.
17. Pursuant to his responsibilities for the administration and enforcement of the *Competition Act*, the Commissioner of Competition has conducted and continues to conduct an extensive inquiry into the Canadian market for graphite electrodes and related products. Tokai has promised to and will cooperate with the Commissioner in this inquiry.
18. 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 graphite electrodes.

**VII CONCLUSION**

- 19. Tokai admits the foregoing pursuant to section 655 of the *Criminal Code*.
  
- 20. Tokai 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 46 of the *Competition Act* have been established.

**Tokai Carbon Company, Ltd**

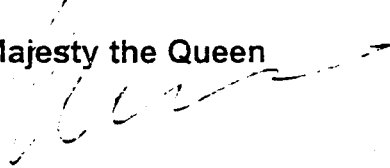


By: Robert Bruce McLean

Its: Managing Director

Date: 1/10/2001

**Her Majesty the Queen**



William J. Miller

for the Attorney General of Canada

Date: 02/01/2001

Court file No. T-

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Statement of Facts

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